

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: U.S. Nuclear Regulatory Commission

Title: Georgia Power Co., et al.

Docket No. 50-424-OLA
50-425-OLA
ASLBP No. 90-617-03-OLA

LOCATION: Atlanta, Georgia

DATE: Wednesday, September 19, 1990 **PAGES:** 1 - 169

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U. S. NUCLEAR REGULATORY COMMISSION

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Atomic Safety and Licensing Board)

In the Matter of:)

GEORGIA POWER CO., et al.) Docket Nos. 50-424-OLA

(Vogtle Electric Generating) 50-125-OLA

Plant, Units 1 and 2) ASLBP No. 90-617-03-OLA

Facility Operating Licenses)

NPF-68 and NPF-81)

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Hearing Room 1010

1718 Peachtree Street

Atlanta, Georgia

Wednesday, September 19, 1990

The above-entitled matter convened for prehearing
 conference pursuant to notice at 9:37 a.m.

BEFORE:

CHARLES BECHHOEFER, Administrative Judge

DR. JAMES H. CARPENTER

DR. EMMETH A. LUEPKE

1 APPEARANCES:

2 On behalf of the Nuclear Regulatory Commission:

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1 On behalf of Georgians Against Nuclear Energy

2 (GANE):

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P R O C E E D I N G S

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2 JUDGE BECHHOEFER: Good morning, ladies and
3 gentlemen. This is a prehearing conference in the matter of
4 the application of Georgia Power Company to revise one of
5 the technical specifications applicable to the Vogtle Power
6 Plant. The specification will permit the jacket water high
7 temperature trip, I'm told is a better way of saying it than
8 the official way, to be bypassed to minimize -- assertedly
9 to minimize the potential for spurious generator trips in
10 emergency starts.

11 This Licensing Board consists of -- I'll introduce
12 us -- on my left is Dr. Emmeth A. Luebke, who is a nuclear
13 physicist and on my right is Dr. James Carpenter who is an
14 environmental scientist. My name is Charles Bechhoefer, I'm
15 an attorney and Chairman of the Board.

16 For the benefit of reporters and anyone else here,
17 I would like for all the parties to introduce themselves for
18 the record. I'll guess I'll start from left to right.

19 MR. DOMBY: Yes, Your Honor, representing the
20 applicants is Art Dobby of the firm of Troutman, Sanders
21 here in Atlanta, Georgia. With me today is Mr. Ernie Blake
22 of the Washington law firm of Shaw, Pittman.

23 MS. STANGLER: Carol Stangler, I'm Co-Coordinator
24 of Georgians Against Nuclear Energy, and I would like to
25 introduce Mr. Tom Clements, he is the Southeast Regional

1 Coordinator of Greenpeace Action Nuclear Campaign. They
2 have 60,000 members in Georgia and 1000 members in the
3 Aiken, Augusta and Waynesboro area.

4 MS. CARROLL: My name is Glenn Carroll and I'm
5 with Georgians Against Nuclear Energy.

6 MR. BARTH: Judge Bechhoefer, Drs. Carpenter and
7 Luebke, Mr. Domby, Mr. Blake, Ms. Stangler, Ms. Carroll,
8 good morning, I'm Charles A. Barth, I'm with the Office of
9 General Counsel of the Nuclear Regulatory Commission. Our
10 office is located in Washington, D.C. I have with me at my
11 immediate right Ms. Mitzi Young. Ms. Young is also from the
12 Office of General Counsel in Washington. To my immediate
13 left is Kenneth E. Brockman. Mr. Brockman is the section
14 chief for our Atlanta Regional Office which has charge of
15 the Vogtle facility. To his left, my far left, is Mr. Darl
16 Hood who is the licensing project manager for the Vogtle
17 facility in our Washington, D.C. office. Thank you, Your
18 Honor.

19 JUDGE BECHHOEFER: Before we -- we propose to go
20 through the proposed intervention petition, first in terms
21 of the standing of Georgians -- well are you GANE too?

22 MS. STANGLER: Just call us GANE.

23 JUDGE BECHHOEFER: Before that though, are there
24 any preliminary matters that any party would like to -- any
25 participant I guess in this case -- would like to raise?

1 MR. BARTH: I would, Your Honor, if I may please.
2 Attached to our pleading to the amended Petition to
3 Intervene was an affidavit which was unsigned by David
4 Matthews of our Washington office. We have passed out the
5 signed copies of the affidavit accompanied by a letter dated
6 September 18 addressed to the Judges. I would like to call
7 your attention to the fact that the last sentence on the
8 last page was changed. I spoke with Mr. Matthews about this
9 and since the meaning of the sentence was not changed, in
10 his view, this more clearly states his view and I certainly
11 concur with that, there's no change in the substance of the
12 affidavit which we submitted with our response in opposition
13 to the amended petition to intervene. This merely changes a
14 few words to make it more clear. We will of the same date
15 formally serve the Commission Secretary and the Licensing
16 Board and Appeal Board as required to do, from Washington,
17 Your Honor. But I did want to pass out copies for everybody
18 while we're here. Thank you.

19 JUDGE LUEBKE: I'm sorry, is this a change from
20 his previous writing? Is that what you're saying?

21 MR. BARTH: Yes, Dr. Luebke.

22 JUDGE BECHHOEFER: Okay, let's start off with
23 standing. Has either of the GANE representatives reviewed
24 the position that the applicants and staff, which are
25 essentially similar positions, bottom line at least, have

1 taken, and would you like to either comment or contest any
2 of those statements?

3 MS. CARROLL: Well yes, sir, I have read them. I
4 don't want to be tiresome but I'm unfamiliar with processes
5 like this, so do you think that it would be in our best
6 interest for me to really go through them with a fine-
7 toothed comb and comment or would you prefer an overview?
8 Will there be other opportunities to get more into detail,
9 or is this it?

10 JUDGE BECHHOEFER: This is the opportunity to get
11 into detail, but you may wish to start with an overview.
12 Now I have a few questions to ask both the applicant and
13 staff about some of the precedents they've cited, but I
14 think you probably should present at least your overview
15 first and then any details that you would like to talk about
16 as well.

17 MS. CARROLL: Okay. Basically -- I'll start with
18 an overview. There's a strong effort on the part of the NRC
19 staff and on the law firm representing Georgia Power to say
20 that this is not -- that what we want out of this, which is
21 actually a reliable generator -- to skip ahead to what we
22 want, that's what we want. They say this may not be the
23 forum for that and I feel that the Judges in question will
24 decide that and so we're attempting to stay within the forum
25 and if we've misinterpreted it, then you will decide that.

1 They have pointed out frequently -- again and
2 again and again -- that we do not have an expert's testimony
3 and haven't revealed the expertise upon which we plan to
4 rely. We don't have an affidavit from an expert at this
5 point, but we have received a lot of information from
6 experts, although they are not publicly with us at this time
7 and so our experts told us that an analysis is called for.

8 Now based on that, there's reference time and time
9 again to our bald -- what was the word that was used -- our
10 bald contentions. And our expert and us feel that the
11 assumption that it's okay to bypass the switch are bald.
12 And we feel that since the process was generated from
13 Georgia Power's request, that their request should have
14 basis and until that basis is shown on the public record, we
15 don't feel called upon at this time to provide a basis for
16 arguing with it. There's nothing to argue with yet, there's
17 no empirical data in the record that we can see that says
18 that this move is a good one.

19 Further, in the expert testimony that was offered
20 to us by the NRC staff, of David Matthews, he says that the
21 March 20 accident, the evidence is inconclusive that the
22 problem that was uncovered with the switch -- in other
23 words, there's no conclusions drawn, it is still
24 inconclusive what the problem was on March 20.

25 So the analysis that we desire to see performed

1 should, we think, uncover what really happened that day and
2 then also point to the real way to take care of this.

3 JUDGE BECHHOEFER: Well let me interrupt you for a
4 minute. You know, in our earlier Order which permitted you
5 to make a further showing, which actually the Regulations
6 gave you a right to do, we pointed out that the Commissions
7 new intervention rules do require considerable amount of
8 specificity and including identifying experts who you
9 propose to use. They don't have to produce anything in
10 affidavit form or anything else at the contention stage, but
11 they have to be identified, or should be identified, if you
12 propose to rely on them. And what your petition should have
13 done, I think, if there are such persons, is spell out --
14 just mention who the experts are and what they propose to --
15 some brief background and what they propose to address.
16 They don't have to be under affidavit. I thought we had
17 explained this fairly well, but maybe we didn't -- I'm not
18 sure.

19 MS. CARROLL: Well this isn't our highest ideal,
20 but at this point in time he wishes to remain unidentified
21 because he has been blessed with some contracts with Georgia
22 Power and the Southern Company in the past and he's not real
23 sure he wants to jeopardize that. So that's our --

24 JUDGE BECHHOEFER: Well you know, you can't use
25 him if --

1 MS. CARROLL: -- plan since you said we didn't
2 have to have him on line by this process. I got the
3 information I needed from him and my understanding was that
4 that was what I should bring to this, is correct
5 information, which to the best of my knowledge, it is
6 correct, what he told me.

7 And at any rate, we would point to David Matthews'
8 statement, which points out that the proposed change which
9 Georgia Power has put forth to -- they don't state that it's
10 in response to the March 20 incident, but that is when the
11 whole world knew, including Georgia Power, that there was a
12 problem with that generator. So I will guess, as I see
13 they've guessed about what's in my mind -- I will guess that
14 that's what started this, "gee whiz, we have a problem with
15 the generator, let's fix it." And according to David
16 Matthews, it's not conclusive what the problem is with that
17 generator, so there can't be any claim made that this fixes
18 it. There's no basis for that until an analysis shows --
19 pinpoints the problem within that generator.

20 JUDGE BECHHOEFER: Well I think what you might
21 have to show or what somebody opposing the change has to
22 show is that what they're doing is -- will be somehow
23 adverse to either a regulation or a policy or at the very
24 least public health and safety.

25 Now we've read a lot of material, particularly one

1 of the things you cited, because I don't think anybody else
2 cited that, this NUREG 1410. And there's a lot of very
3 relevant material in there. I'm wondering why you didn't --
4 you cited it, but why didn't you pick any of it out?

5 MS. CARROLL: Well reading the CFR 10, 2. -- is it
6 714?

7 JUDGE BECHHOEFER: Right.

8 MS. CARROLL: Or 748, I don't have it in front of
9 me. You know what I'm talking about, the rules of
10 intervening before the Nuclear Regulatory Commission.

11 JUDGE BECHHOEFER: Yes.

12 MS. CARROLL: We can't talk about anything but the
13 switch and I'm trying to honor that on paper, but here in
14 the room, I'm trying also to be expressive of what we're
15 really here for, and that is to make that generator
16 reliable. And it's hard for me as a volunteer to get
17 through the regulations and the materials and all that stuff
18 about the switch. So I'm trying to honor this court by
19 connecting it to the switch. By calling for an analysis, I
20 think we'll get what we really want out of this, which is
21 what is going on with that generator and why can we not
22 count on it, which poses -- then I will talk to NRC
23 regulations, we're supposed to have two primary power
24 supplies and two backup power supplies. At this point, we
25 contend that we have maybe one backup power supply, because

1 we know that one of them is faulty because of its
2 performance historically on March 20. So I would say they
3 are not in compliance with regulations which call for two --
4 I don't know that the word "reliable" is in the record, but
5 wouldn't it be presumed that they will run when they're
6 called upon to run?

7 JUDGE BECHHOEFER: Well the Board doesn't answer
8 questions as such. We might in a decision, but --

9 With your statement now could you get into the
10 standing question, which is -- basically you're relying on
11 someone who lives 45 miles away.

12 MS. CARROLL: Right.

13 JUDGE BECHHOEFER: The applicants and staff both
14 say that you have to do more. Now I'd like to ask you a
15 question and I'm also going to ask the same question to the
16 other parties, but do you think your situation is at all
17 different from -- I'll give you a hypothetical -- a person
18 who lives say 40 miles from the plant and who wants to
19 object to a policy change or procedure change that affects
20 only workers at the plant. Do you think that would be
21 somewhat different?

22 MS. CARROLL: Let me throw your question back to
23 see if I understood it, please.

24 You're asking me if I think somebody that lives --
25 maybe you're making a metaphor here -- we are too -- our

1 person we're representing who is 45 miles from the plant, us
2 being about 150 miles from the plant, as he is to somebody
3 that's on the site at the plant and should he be concerned
4 with something that would only affect the workers at the
5 plant?

6 JUDGE BECHHOEFER: No, I say do you think there's
7 a difference between what you're doing and this other -- I
8 call it a hypothetical case, but if you read the St. Lucie
9 decision, you'd know it isn't so hypothetical.

10 MS. CARROLL: I didn't read the St. Lucie
11 decision, so I guess throw me out now, but, you know, if I
12 can't participate in democracy --

13 JUDGE BECHHOEFER: Right. It was cited against
14 you several times.

15 MS. CARROLL: I don't understand the question.
16 I'm really sorry that I don't and maybe if I'd read that
17 document I would know what you're talking about. Do you
18 wonder why we care what's going on at Plant Vogtle? Because
19 do you think we're far enough away that we aren't at risk
20 from it or what?

21 JUDGE BECHHOEFER: Well that's the claim that's
22 being made, and the case that's cited against you was a case
23 involving a person who lived, I think it was 40 miles away,
24 who asserted only that he wanted to protect the rights of a
25 workers. The Commission held that that's too far away and

1 that besides that, the worker didn't ask to be represented
2 and a few things like that, and they threw out that case,
3 they said no standing. And I wanted to see if you could
4 differentiate your case -- if you thought your case was any
5 different from that.

6 MS. CARROLL: Well why don't I just talk a minute
7 and we'll see if it's in there.

8 JUDGE BECHHOEFER: I suppose I could let you read
9 the case, but I don't know if that's kosher.

10 MS. CARROLL: That might take a minute.

11 JUDGE BECHHOEFER: It's only five pages.

12 MS. CARROLL: There was some question, as you and
13 I discussed this a little bit, about did I need somebody to
14 represent within ten miles or 50 and you allowed as how, as
15 I recall in our phone conversation, that it was questionable
16 and that it would be something that we would probably nit-
17 pick over later.

18 JUDGE BECHHOEFER: Well I confirmed it in writing,
19 that the 50 miles is the overall rule, but I did mention to
20 you that you'd have to be prepared.

21 MS. CARROLL: If you need us to find somebody in
22 Waynesboro, Georgia to satisfy that, that is a possibility.
23 When Frederick Points was eager to have us represent his
24 interests and was in the 50-mile radius, we stopped there
25 and got down to the rest of our business, thinking that we

1 can pursue that detail of it later, which really is in my
2 mind a formality because I feel threatened by the incident
3 that happened on March 20. That, if it had run its full
4 course, would have threatened me and it certainly would have
5 threatened Frederick Points.

6 That questionable generator is part of that
7 previous scenario and I don't see how anybody can look at
8 what really happened and say that there isn't a potential
9 for that happening again, in which case if that precise
10 scenario arose again, Frederick Points certainly is
11 threatened, I contend -- we contend.

12 JUDGE LUEBKE: Where is Frederick Point, I'm not
13 familiar with --

14 JUDGE BECHHOEFER: He's the 45-mile --

15 JUDGE LUEBKE: Is that the 45 miles?

16 JUDGE BECHHOEFER: Yeah.

17 MS. CARROLL: Uh-huh.

18 JUDGE BECHHOEFER: Solely on standing now, either
19 one of you who is going to address that --

20 MR. DOMBY: Yes, Your Honor. I think in response
21 to your question, St. Lucie clearly should be applied in
22 this case. I think we have a situation where there is a
23 vast distinction between someone living very distant from
24 the plant and a worker on site. In addition, in the St.
25 Lucie case, I noted that it was generally averred that the

1 petitioner in that case would be exposed to contaminated
2 respirators, but there was no articulation in that petition
3 as to how that individual would come in contact or other
4 mechanisms for an exposure to the contaminated respirator.

5 I would submit that there is in fact a vast
6 difference between Mr. Points and an on-site worker who may
7 have standing in this case.

8 JUDGE BECHHOEFER: Well the off-site person -- St.
9 Lucie said the off-site person did not have standing to
10 represent an on-site worker.

11 MR. DOMBY: That's correct. What I meant to imply
12 is that perhaps a worker who works on site would have
13 standing in this proceeding or a similar proceeding, whereas
14 a person very distant from the site does not have standing,
15 based upon the change in question.

16 JUDGE BECHHOEFER: Doesn't this whole procedure
17 involve a matter of how the plant operates during an
18 emergency? I mean that's the subject matter of this
19 proceeding.

20 MR. DOMBY: That's a very broad statement and I'd
21 have to agree with it.

22 JUDGE BECHHOEFER: Well isn't that enough to bring
23 the automatic 50 miles into the picture?

24 MR. DOMBY: No, I don't believe so, Your Honor,
25 for a number of reasons. First of all, I don't believe in

1 this situation that there has been any articulation of how
2 the individual very distant off-site could be affected by
3 what is -- we believe is a very minor change in trip logic
4 at the plant, much the same as you indicated, as a change in
5 procedure. Certainly a change in procedure, if noticed in
6 the Federal Register should not in all instances give
7 standing for someone very distant from the plant.

8 JUDGE BECHHOEFER: Well certainly if it -- I'm not
9 so sure if it involves the reaction of the facility to
10 emergency situations, which is the very reason the 50-mile
11 rule was put in there in the first place. Anybody who
12 presumably could be affected by an accident and who lived
13 within 50 miles, would have standing, is the way I have
14 always understood it. In fact, I think I helped develop
15 that procedure many years ago before I got to be on the
16 Licensing Board.

17 MR. DOMBY: I believe in this particular
18 situation, the scope of this proceeding is limited to a
19 change in some logic for the trip of the diesel generators.
20 We are not examining broadly the response of a plant to
21 emergency situations. I think to say that we are dealing
22 here with emergency scenario broadly, sort of turns on its
23 head a basis of standing. It assumes an event, whereas what
24 I believe is the correct approach is in the first instance
25 for an articulation and some minimal showing of an emergency

1 result which would affect the petitioners.

2 JUDGE BECHHOEFER: Well wouldn't the diesel
3 generator overheating --

4 MR. DOMBY: Pardon me?

5 JUDGE BECHHOEFER: Would a diesel generator
6 overheating leading to perhaps loss of off-site power --
7 loss of on-site power during a station blackout situation --
8 wouldn't all that -- the showing doesn't have to be very
9 strong to establish standing, this showing of effect, its
10 potential effect.

11 MR. DOMBY: I think as I would articulate it,
12 there needs to be a minimal showing of a real possibility,
13 Your Honor, and I don't think that you can get to that
14 minimal showing without assuming facts that are not pled by
15 GANE, and assuming that the legal requirements of the NRC
16 applicable to the plant are not sufficient.

17 JUDGE BECHHOEFER: Would the staff have any
18 comments on first the applicability of St. Lucie, the same
19 question I've asked everybody -- isn't the situation posed
20 by GANE, Ms. Carroll, somewhat different from the off-site
21 person in St. Lucie, who tried for the most part -- not
22 completely, but for the most part -- to represent the
23 interest of workers on the site who hadn't even asked for
24 them to be represented? Isn't that considerably different
25 as a matter of fact?

1 MR. BARTH: We would like the opportunity, Your
2 Honor, to comment upon this.

3 JUDGE BECHHOEFER: Well do it.

4 MR. BARTH: This is brought up in our brief and we
5 affirm our brief at this point. I do think St. Lucie
6 applies directly here. If you take a look at St. Lucie, as
7 you point out it's a five-page opinion. But what is the
8 gravamen of St. Lucie? The gravamen of St. Lucie is the
9 distance and the location of the intervenor or potential
10 intervenor is related to the subject matter of what is
11 occurring. In St. Lucie it was an in-plant worker
12 allegation and someone outside. In this case, we have a
13 diesel generator trip switch and someone 45 miles from the
14 plant. St. Lucie does not stand by itself, nor does 50
15 miles stand by itself.

16 The agency's rules in cases must be read in pari
17 materia together as an integrated whole -- we cannot
18 single out one rule or a biomass rule and say this is
19 magic and stands by itself.

20 I will note, Your Honor, in your Order, you did
21 not cite Cleveland Illuminating Perry, which is a Licensing
22 Board decision, 4 NRC 175, 178. Discussing the 50-mile
23 figure in the Perry Board, the Licensing Board made it clear
24 that interest based upon living distance was related to
25 potential injury or effect. I think this is the holding in

1 St. Lucie by the Commission as well.

2 So I would take St. Lucie, along with Perry, and I
3 would couple these with --

4 JUDGE BECHHOEFER: The Perry one is not precedent
5 as such though, is that not correct?

6 MR. BARTH: I think that being a collateral board,
7 it should ~~given~~ some respect. We cannot disregard licensing
8 boards just like we cannot disregard 50-mile rules.

9 I think that St. Lucie must be read in conjunction
10 with Nuclear Engineering Company, the Sheffield low level,
11 ALAB 473, 7 NRC 737, page 743. That case stands for the
12 proposition that Mr. Fred Points must show some chain of
13 event by which he can suffer an actual injury in fact or
14 potential injury in fact.

15 The further an intervenor lives from the site, we
16 all take it, the less the effect will be. And the Cleveland
17 case stands for the less there will be a propensity to admit
18 this person because his interest is not effective.

19 Fred Points' interest can only be effective if he
20 can show a potential injury or harm which would result from
21 a change in the logic of the trip switch, coupled with St.
22 Lucie which also goes to what is the injury. In St. Lucie,
23 the injury was to an in-plant worker. Why should someone
24 outside have an interest? They don't. In this case, we
25 have a change in the trip logic and someone 45 miles from

1 the site has not shown in their pleading -- which they must
2 -- a change of sequence or actions by which potentially Mr.
3 Fred Points could be heard. To say I am 45 miles from the
4 plant, I am therefore going to be hurt, does not satisfy the
5 Commission's precedence, Your Honor.

6 JUDGE BECHHOEFER: What about their citation of --
7 they didn't articulate this too much in terms of either
8 standing or contentions, but how about their citation of
9 NUREG 1410, which to us says that the person 45 miles away
10 might well be affected by the way the trip switch works or
11 doesn't work, the March 20 incident. There's very little --
12 now the staff and the applicants said -- the staff at one
13 point alluded to the March 20 incident, but only
14 peripherally and the applicants didn't mention it at all.
15 But it apparently is the heart or the reason for the
16 proposed change. But even if it isn't, it certainly is a
17 clear background that we think we may have to take into
18 account, and it has been cited to us -- imperfectly to be
19 sure -- but I might say that the portion that was cited to
20 us shows that about the only reactor that's ever had any
21 real problem with tripping is Vogtle. And that's the very
22 part that was cited by GANE. There were like -- oh, I don't
23 know, they've had more trips than the rest of the industry
24 combined, by many times. There's a certain pattern here
25 that may at least be relevant.

1 And my question to you is, isn't at least their
2 reference to this enough to demonstrate that the person 45
3 miles away might well be affected?

4 MR. BARTH: Your Honor, in my view the incident
5 at Vogtle, as it's referred to, which is reported in the
6 NUREG to which you alluded, is not here at issue. At issue
7 solely is, is this plant safety enhanced by bypassing the
8 high jacket water trip or is it not enhanced by it. That is
9 the issue.

10 I would like to point out --

11 JUDGE BECHHOEFER: Well isn't the issue -- if it's
12 enhanced, why is it enhanced. There's nothing that we can
13 see in the documentation that has any cogent argument or
14 showing or demonstration why reliability would be enhanced.
15 By knocking out a protective switch, the claim is that there
16 might be more danger rather than less.

17 MR. BARTH: Your Honor, I would like to come back
18 to that in a moment, but I would like at the moment to
19 address your previous comment, and that is whether or not
20 the allusion to the NUREG is sufficient.

21 It is the staff's position that the incident is
22 not relevant. It is the staff's position that the NUREG is
23 not relevant. It is the staff's position that they must
24 show some cogent, potential harm to Fred Points, regardless
25 of where he may live, in order to obtain standing. The 50-

1 mile rule was drawn to give a blanket outermost limit.
2 There is no showing in the filing of the amended petition
3 for leave for intervention of any cogent series of accidents
4 or scenarios which could lead to any harm to Fred Points.

5 In regard to the incident which --

6 JUDGE BECHHOEFER: That's the point they generally
7 make -- I mean, they incorporate it by reference to some
8 degree, but they do make that demonstration.

9 MR. BARTH: I would like to point out that the
10 switch did not work and no one was harmed within five feet
11 of the plant, much less 45 miles. If that incident does
12 anything, it shows that there is no harm to result to Mr.
13 Points.

14 Now I think as a matter of substance, our safety
15 evaluation, Your Honor --

16 JUDGE LUEBKE: We're skirting around words here,
17 "potential injury", "effect", "harm to this fellow 45" --
18 what we're talking about is a possible radioactive cloud, is
19 it not?

20 MR. BARTH: That's not what I'm talking about.
21 I'll let the intervenors answer that, sir.

22 JUDGE LUEBKE: Well that's what we read in NUREG
23 1410. In other words, the equipment hatch was open, the
24 personnel hatch was open, the primary coolant system was
25 open when this happened. The potential of a radioactive

1 cloud getting out to 50 miles was almost there. And how you
2 can say that talking about changing the switch is going to
3 automatically avoid this, is not clear and needs to be
4 proved. Now whether it's proved this morning or in a
5 hearing doesn't matter. Maybe it should be proved in a
6 hearing.

7 MR. BARTH: We feel that it's a matter of
8 substance, but our safety evaluation report which was
9 attached to our filing adequately makes the case that
10 bypassing the switch in an emergency start situation
11 enhances the plant safety. This also is in accord with the
12 IEEE standard and with the NUREG 1.9, Revision 2, Position
13 7. But that is again a matter -- apart from Mr. Points'
14 standing, they have to show, Your Honor -- Dr. Luebke --
15 some how that this switch could result in a radioactive
16 cloud, as you put it, coming to Mr. Points' house, 45 miles
17 away. That is totally absent from their filing.

18 It just is not enough, Your Honor, to say I'm
19 going to be hurt -- that's just not enough.

20 JUDGE LUEBKE: But you're saying that the same
21 people that allowed, what, 33 failures during testing of the
22 previous switch, are now going to be so expert as to operate
23 this system with the switch shorted out in a safe manner --
24 the same people, same company.

25 MR. DOMBY: Your Honor, with all due respect,

1 first of all, the applicant is unaware that this particular
2 plant has experienced more trips than other plants.

3 JUDGE BECHHOEFER: Have you read NUREG 1410, which
4 was cited by the intervenor? The very section of NUREG 1410
5 that they cited says that.

6 JUDGE LUEBKE: Appendix I.

7 JUDGE BECHHOEFER: Appendix I. I've got it on my
8 desk here. If you want to take five minutes to read it --
9 or do you want me to read it into the record?

10 MR. DOMBY: The second point is relative to the
11 applicant's application, as well as the NRC staff's
12 analysis, what we have in issue here is not the reliability
13 of the diesels to remain diesels. Rather, we have the
14 reliability of the diesels to perform their safety function.
15 Logically we believe that the application, as well as the
16 NRC staff analysis, has addressed the increased reliability
17 of the diesels to perform their safety function. Granted,
18 the elimination or the bypassing of this switch may result
19 in a diesel being -- well if we assume that a diesel would
20 overheat and be lost, that is an economic lost, Your Honor.
21 It makes the diesel, as a system, unavailable, but what the
22 purpose of that diesel is for, is for availability of power,
23 not to protect itself forever.

24 JUDGE BECHHOEFER: Well what I was going to read
25 into the record is that this Table -- Appendix I, I'm sorry,

1 Table 1.2 of NUREG 1410 says that from 1984 through 1990 --
2 and I don't know what date in 1990, but the document was
3 issued in -- well the manuscript⁺ was completed in May and it
4 was issued in June, so approximately that's the time frame.
5 During that period of time, Vogtle had 33 trips and the rest
6 of the industry had a total of five. And for what its
7 worth, three of those were on one other reactor, but most of
8 the -- I believe it is 11 reactors that have this particular
9 trip, I think five of them had no trips at all during this
10 period of time.

11 So statistically, Vogtle starts out looking very
12 bad, there's no question about it. I'm just saying
13 statistically, that's all that shows. It doesn't give
14 reasons, although every single trip is described in some
15 detail.

16 MR. BARTH: Chairman Bechhoefer, could I return to
17 Dr. Luebke's question to me for a brief moment?

18 JUDGE BECHHOEFER: Right, sure.

19 MR. BARTH: Just an aside, I'd like to point out
20 that the NUREG which you addressed does not specify the
21 other plants which have identical trips to this.

22 JUDGE BECHHOEFER: Oh, yes, it does, it certainly
23 does. It describes every trip in every plant.

24 MR. BARTH: And they are not the identical types
25 of trips which I believe you will find in Vogtle.

1 JUDGE BECHHOEFER: No, you are in error. There
2 are many more trips --

3 JUDGE CARPENTER: In the NUREG, it lists them one-
4 by-one. They were all manufactured by CALCON, they all have
5 the same part number.

6 JUDGE BECHHOEFER: They all had TDI diesel
7 generators.

8 MR. BARTH: Going back to Dr. Luebke's question,
9 as we see this matter, it's a petition to intervene on the
10 license amendment. Does the trip switch bypass make the
11 availability in an emergency situation more reliable or not
12 -- that is the issue. The issue is not, as Mr. Dombay has
13 pointed out, whether the diesel generator will burn out,
14 whether the bearings will go, whether the porthole is open
15 and the gas will escape -- does the overall safety of the
16 plant find itself enhanced if the trip is bypassed. IEEE
17 says so and the NUREG says so and the staff's safety
18 evaluation says so.

19 I think in order for -- to put this in
20 perspective, the standing has got to relate somehow to this
21 assertion that the trip will not make the plant safer, and
22 therefore, Mr. Points is more engendered, in order for him
23 to come in, and then he has to show some kind of scenario by
24 which he might be injured, how the radiation could get out,
25 what would happen. Because there are two diesel generators,

1 which is not a matter we've addressed so far. This is not
2 the only generator --

3 JUDGE LUEBKE: There was only one working.

4 MR. BARTH: You're talking about the incident,
5 Your Honor, I'm talking about --

6 JUDGE LUEBKE: Well the circumstances of the
7 incident are not unique.

8 MR. BARTH: The assumption that if this diesel
9 generator goes, the world comes to an end, certainly is a
10 clear assault upon general design criteria 17, paragraph 2
11 and you need a 2.758 showing that the Commission's
12 regulations requiring two generators in this situation is in
13 error. That is a matter apart from what we've discussed so
14 far. I think what we need to do is focus on where does Fred
15 Points live, what does the bypass do. It makes the
16 generator more available in emergency starts -- that's what
17 it does.

18 JUDGE LUEBKE: Well didn't you just --

19 JUDGE BECHHOEFER: That's what it's supposed to
20 do.

21 JUDGE LUEBKE: -- say that you don't need two
22 emergency generators?

23 MR. BARTH: You do have two, Your Honor.

24 JUDGE LUEBKE: Yeah, but you just said -- I think
25 you said you don't need two.

1 MR. BARTH: If that is so, I was in error. There
2 are two diesel generators and this plant is presently
3 designed in conformity with 2.758. To assert that if one
4 generator goes, the world comes to an end is a challenge
5 upon the single failure criteria of the Commission.

6 JUDGE LUEBKE: It almost did on March 20.

7 MR. DOMBY: Your Honor, with -- I think one thing
8 that we should remember is that NUREG standing alone does
9 describe an incident at the plant under certain situations.
10 At the same time, you have to realize that the subject
11 matter of this proceeding is not the only action taken as a
12 result of that particular incident. And I think it would
13 perhaps miss the mark if we were to assume that the
14 centerpiece of that NUREG is this particular switch.

15 JUDGE CARPENTER: That certainly is true and the
16 bulk of it I've ignored. But the appendices that speak
17 specifically to the switch, I can't blink -- I mean there it
18 is.

19 MR. DOMBY: I understand.

20 JUDGE CARPENTER: There's a background of
21 information about the switch.

22 Mr. Barth, we're getting into a lot of argument
23 here that probably goes beyond where we should be today.
24 Your conclusory statement that this action will increase
25 safety -- we don't have any record to support that. It can

1 be argued both ways. And that's my problem.

2 To say that the intervenors have done a poor job
3 of presenting the issue is certainly true. I have a lot of
4 trouble -- but for me to accept the conclusory statement
5 that "look, NRC has been wrong all these years. We licensed
6 11 power plants that used these trip switches and the NRC
7 didn't know what it was doing" -- I don't buy that. The
8 NUREG says not so. Many people have used these automatic
9 switches, choosing to bypass less important switches, but
10 retaining the high temperature trip switch with a two out of
11 three logic, and have done it successfully.

12 I don't know where that leaves this Board, but it
13 puts a question on the table. It may turn out that you're
14 absolutely right, but I don't want your conclusions as
15 testimony this morning.

16 Now the argument that the intervenor's papers are
17 very thin, to me -- we have not voted -- but it certainly
18 deserves consideration, they are very thin, they're
19 conclusory, they're not supported by proper references, as
20 you and the applicant have pointed out. I think that's all
21 that we're here today to get at, to see if the intervenor
22 can in any way remedy these deficiencies. It's not
23 sufficient to say that you talked to an unnamed expert. I
24 can't protect the public health and safety depending on some
25 unnamed individual. This is not arbitrary. If you have a

1 real point, real facts to bring to this Board, fine -- but
2 you can't say Charlie whispered in my ear in the hall. I
3 just can't go with that. And this is your opportunity to
4 come forth with at least a demonstration that you will come
5 to make a record with witnesses that can be sworn and have
6 names, and that can contribute to this -- not a remarkably
7 difficult technical issue, but a technical issue.

8 And that's where I think you should be focusing.

9 MR. BARTH: Dr. Carpenter, may I make a rejoinder
10 to your comment.

11 JUDGE CARPENTER: Certainly.

12 MR. BARTH: I think you made a comment which is
13 quite true, that you're not interested in conclusions drawn
14 by lawyers. I think this is a fine comment and we should
15 bear that in mind, that is a correct conclusion by you.
16 That is why we appended David Matthews' affidavit. David
17 Matthews is a masters degree electrical engineer. He is not
18 a lawyer -- although lawyers are all right, I guess -- but
19 he is a thorough expert in this. This is why the staff made
20 a safety evaluation report. This is why we appended the
21 safety evaluation report to our answer.

22 JUDGE BECHHOEFER: Mr. Barth, let me ask you
23 something --

24 MR. BARTH: This provides in our view the basis
25 for supporting the proposition that this diesel generator

1 will be more available under emergency situations if the
2 trip is bypassed. I would like to point out also that the
3 current generation of these plants, Your Honor, bypasses the
4 switch. The current generation no longer has this automatic
5 shutdown, that's an old antique which is being left.

6 But the point that you bring out that you cannot
7 have these conclusions by lawyers is right, our conclusions
8 are not supported by the agency lawyers, it's supported by
9 our technical staff, the NUREG 1.9, Revision 2, Section 7,
10 by David Matthews' affidavit -- Reg Guide -- and by the
11 staff's safety evaluation report. We don't think it's just
12 impacted by a lawyer.

13 JUDGE CARPENTER: Well I certainly agree with you.
14 And I say, Mr. Barth, they go far, far beyond -- since it
15 has come up at this point, I compliment staff for its
16 diligence in having an affidavit prepared -- the problem I
17 have is Mr. Matthews tells this Board, quote, "The
18 probability of a valid emergency diesel generator cooling
19 failure coincident with an emergency is considered to be
20 small." I don't know what he means by small. He says
21 "probability", does he mean one chance in 100? What's the
22 basis for concluding that? It's just a naked conclusion.

23 If I accept it, you know, I'm home free.

24 MR. BARTH: Or we're home free.

25 JUDGE BECHHOEFER: Mr. Barth, let me ask you, just

1 on that same line, in terms of -- you know, the staff's
2 safety evaluation was -- well the staff review was
3 essentially completed on I believe it was May 20, 1990,
4 which was the same day the application was submitted. There
5 was a letter which was signed by Mr. Matthews that went out
6 that day, I have a copy here, which said we waive all the
7 requirements of the Tech Spec and we'll prepare the papers
8 and document it at a later date. So as far as I'm
9 concerned, the safety evaluation was almost a rubber stamp
10 of what the applicant said and it was granted that very day
11 -- the very day it was applied for. In fact, it reflected
12 that it was concurred in by telephone earlier that day. So
13 it didn't take the staff very long to review that, did it?

14 Now I don't even know if Mr. Matthews -- well Mr.
15 Matthews was the one that reflected that he had spoken with
16 whoever it was from the applicant that called him about it,
17 but I don't know how much of a review that is. I have the
18 document right here. In fact, I have a few extra copies in
19 case anybody wants to see it.

20 MR. BARTH: Maybe we're mixed up on dates, Your
21 Honor. The date of the safety evaluation --

22 JUDGE CARPENTER: I'm not interested in that date,
23 I'm interested -- I've got a letter right here.

24 MR. BARTH: -- was July 10, 1990.

25 JUDGE CARPENTER: Yeah, I know. But I have a

1 letter dated -- try this one -- May 25, 1990 -- read it.
2 It's a public record I think -- I hope. It's in NUDOCs
3 anyway, which is our now --

4 MR. DOMBY: Judge Carpenter, in terms of the basis
5 of the application as well as the analysis, I would submit
6 that the experience of the March 20, 1990 event as reflected
7 in the NUREG is, to the extent it's an issue, technical data
8 and support for the conclusion that the reliability of the
9 diesels is increased by bypassing the trip feature.

10 MR. BARTH: In response to your question, Your
11 Honor, the safety evaluation was prepared with this letter
12 in mind, the letter is referenced in the safety evaluation
13 and the staff did review the applicant's information, they
14 reviewed the logic of the switches prior to issuing the
15 letter which you just passed out. That's noted in the
16 beginning of our safety evaluation.

17 JUDGE CARPENTER: Yeah, I know, that's where I got
18 the reference.

19 MR. BARTH: And I really don't see the point,
20 because the technical staff did review this matter and this
21 issue, found it was in accord with the NUREG and with the
22 IEEE standard and in their view found it was safer and
23 therefore issued the letter which has been passed out, which
24 is dated May 25, 1990.

25 JUDGE CARPENTER: Which is the same day the

1 application came in.

2 MR. BARTH: You're talking about a formal piece of
3 paper. These people are talking back and forth every day. I
4 assume that our staff knows what the NUREGs stand for and
5 what the IEEE standards are for without having to have a
6 letter from the applicant referring to them.

7 MR. DOMBY: Judge Carpenter, I believe you were
8 going to ask a question --

9 JUDGE LUEBKE: Was Mr. Matthews working before
10 March 20?

11 MR. BARTH: I cannot resist the humor -- I hope he
12 was, he was employed by the agency.

13 (Laughter.)

14 MR. BARTH: But the answer to your question is
15 yes. I talked to Dave Matthews, he was aware of the letter
16 going out with the temporary waiver and therefore, special
17 attention was given to whether or not this would enhance
18 safety or not.

19 JUDGE LUEBKE: I guess what this leads up to in my
20 mind is if he was into this thing before March 20 and you
21 had several test failures of this trip device and you had
22 failure number 9 and failure number 10 and failure number
23 11, why didn't Mr. Matthews do something to make it safe
24 then, before March 20, rather than wait until after March
25 20?

1 MR. BARTH: I think safe is an improper reference,
2 Your Honor. The direct answer to your question is that the
3 plant was in accord with its licensing basis and its
4 technical specifications. I think that every time we have
5 an incident at a plant, some kind of a violation or a blip,
6 does not mean that the plant is not safe. The plant was
7 safe because this thing shut down and nothing happened. The
8 public was not harmed.

9 I would like to point out, Your Honor, that on May
10 23, 1990, the licensee entered into a 72-hour action
11 statement associated with the tech specs after this diesel
12 failed, and what happened at the plant was that the
13 technical specifications provided for problems and they were
14 taken care of. The proof is that Mr. Points was not
15 harmed.

16 JUDGE LUEBKE: That suggests that the tech specs
17 allow a long period of time to do these things.

18 MR. BARTH: You've got to understand, Your Honor,
19 they were in an operating mode four at the time this
20 occurred -- five -- they were in operating mode five at the
21 time this occurred. The plant was basically shut down then.

22 JUDGE LUEBKE: And what is the implication of
23 that?

24 MR. BARTH: They were in mode six, I'm corrected
25 by my technical --

1 JUDGE LUEBKE: What does that mean?

2 MR. BARTH: They were basically in a shut down and
3 they were in conformity with general design criteria 17 at
4 the time.

5 JUDGE LUEBKE: Well according to NUREG 1410, it
6 was kind of a dangerous situation even though they were shut
7 down.

8 MR. BARTH: Problems can happen, Your Honor, and
9 the power company understood there was a problem and they
10 said bypass this switch. Because what happened when the
11 incident occurred, was the generator tripped off twice and
12 if the switch is bypassed, it won't trip off, it'll continue
13 operating. Therefore safety is enhanced.

14 MR. DOMBY: I believe that that was my response to
15 Judge Carpenter's question, that the actual March 20 event
16 does stand for -- support, data, if you will, relative to
17 the technical decision to bypass this automatic trip
18 feature. It also stands for other things -- lessons learned
19 in other areas such as outage planning and Judge Luebke has
20 put his finger on that and there are other analysis of
21 operation at the plant.

22 JUDGE CARPENTER: Once again we're going beyond --

23 MR. DOMBY: You're correct, Judge.

24 JUDGE CARPENTER: -- well into speculation. One
25 can view the description in NUREG 1410 of the alarm clutter

1 in the control room and I'd like to see somebody testify
2 some day what that means with respect to the qualification
3 in Reg Guide 1.9, Revision 2, that these things can be
4 bypassed as long as the operator has sufficient time to take
5 action. Mr. Blake and I are more than familiar with some
6 confusion up in Pennsylvania some years ago with lots of
7 enunciators going off. But one more enunciator off in a
8 control room in an emergency is something that should be
9 thought about.

10 It is certainly true in March that there was not a
11 cooling problem, as I read it, to be dealt with. It was a
12 spurious trip. So even if the operator hadn't paid any
13 attention to the alarm -- well there wouldn't have been an
14 alarm from the diesel, you see, so it's a non-issue, it's
15 not a test of the hypothesis. If there had been a cooling
16 water problem in March that the switch had protected the
17 diesel from, then it would be germane. But see the whole
18 thing is not there. So it is still a hypothetical. And
19 what the frequency is and problems with a cooling water
20 supply to diesels, I have no idea what the probability is.
21 I read, you know, workmen leave valves turned the wrong way
22 and so on, but I don't know what the frequency is, whether
23 it's a real issue or not.

24 But the simple conclusion that look, the thing
25 doesn't work, so the bottom line is to bypass it. I haven't

1 seen any document that advises the other utility companies
2 that have this switch that it should be bypassed. And that
3 gives me pause. Do we have -- at Georgia Power, has a
4 safety improvement been discovered and we failed to put out
5 an information notice to the other utility companies?

6 MR. BARTH: I'll convey your remarks to the proper
7 people in Washington, Your Honor, but I think that's the
8 purpose of the hearing which we are --

9 JUDGE CARPENTER: Well it is in the context that
10 would say look, this really is a non-issue as far as these
11 intervenors are concerned. It's generally recognized this
12 is moving in the right direction.

13 MR. DOMBY: Judge Carpenter, as you say, to get
14 ahead of ourselves perhaps a little bit, I believe there are
15 answers to your question, your technical questions, and I
16 believe -- although I'm not here to testify -- that the
17 configuration of this particular switch, as it was on March
18 20, may not be as representative of the industry as you may
19 assume in your question.

20 JUDGE CARPENTER: That's the point; no record, no
21 conclusion.

22 Yes?

23 MS. CARROLL: Well I would like to say something
24 and also get beyond that. You remarked that our contentions
25 were very thin and I --

1 JUDGE BECHHOEFER: Well we haven't gotten to any
2 of your contentions, we'll go over each one of them.

3 MS. CARROLL: Are we still talking about Frederick
4 Points? I couldn't really tell.

5 JUDGE BECHHOEFER: Yeah, because if you don't have
6 standing, then you don't need to even assert contentions.

7 MS. CARROLL: Okay, as far as standing goes, let
8 me see what we can do here. I'm a little confused because
9 y'all are raising a lot of questions without any answers to
10 them on the table, you know. I'm not sure we can raise
11 March 20, which would certainly illustrate that we do have
12 standing and Frederick Points is threatened, if March 20 is
13 relevant. And when y'all answer that question, I'll be
14 listening and I'll know.

15 I would say -- well gosh, y'all have been talking
16 about the switch. I got confused, y'all go ahead and talk
17 about Frederick Points and whether we have standing. I
18 believe that we do, I believe March 20 is relevant and I
19 believe Frederick Points is threatened by meltdown. If you
20 want me to point to a contention that we talked about that
21 possible scenario and if we failed to do the proper legal
22 thing by not including that section in Frederick Points'
23 affidavit, then that is a failure on our part to do the
24 craft of law. But it's all there and it's all stapled
25 together and I hope that we can connect that contention -- I

1 believe it was 4 -- of GANE's that talks about the scenario
2 of if you lose all power to the plant and the core overheats
3 and the fuel melts and there is a release of radiation,
4 Frederick Points is threatened. And that is -- excuse me,
5 it's in 3, contention 3.

6 MR. BARTH: Your Honor, it occurs to me -- it's
7 interesting that we've talked about the NUREG which you have
8 cited and the NUREG discusses a situation in which the plant
9 was shutdown essentially. The authorization by the NRC is
10 to bypass the emergency trip, to bypass the high jacket
11 water temperature trip switch in an emergency situation.
12 That's when the plant's running. The relationship between
13 those two is --

14 JUDGE BECHHOEFER: Query -- query -- query. There
15 was an emergency start when this plant was shut down on
16 March 20.

17 MR. BARTH: I am advised by my technical people
18 that the mode in which the plant was operating is irrelevant
19 to whether the trip is bypassed. You're right, Your Honor.

20 MS. CARROLL: Isn't this Fred Points thing really
21 tied to the contentions? I mean he is threatened if we're
22 right about everything else and he isn't threatened if we're
23 wrong about everything else. So we're going to need to
24 figure out what's safe and unsafe.

25 JUDGE BECHHOEFER: Well Commission regulations

1 anticipate at least a separate showing about how your
2 interest or Mr. Points' interest, who you represent, would
3 be affected. And that's different from the specific
4 contentions which could go beyond that -- not beyond that,
5 but they could elaborate upon that, they could be derived
6 from that standing, but he's got to show first that he's
7 affected and we're trying to determine whether you have made
8 the requisite showing to be at least granted standing. And
9 then you have to come up with at least one contention beside
10 that.

11 MS. CARROLL: Right.

12 JUDGE BECHHOEFER: And they're separate.

13 MS. CARROLL: But the contentions would provide
14 the proof that we have standing.

15 JUDGE BECHHOEFER: No, no. But there have been
16 decisions which have incorporated the contentions to show
17 the potential effect. There is some precedent on that. And
18 so I'm not saying that that's outside the ball park.

19 MR. BARTH: If we're moving on to contentions, --

20 JUDGE BECHHOEFER: Not yet, we're going to
21 probably -- we'll want a morning break before we go on to
22 the contentions, but do you have anything further to say
23 about the standing question? Otherwise, we'll take a
24 morning break and come back and talk about contentions. Is
25 there anything that anybody hasn't said yet that they want

1 to say?

2 MS. CARROLL: On standing?

3 JUDGE BECHHOEFER: Yeah, on standing. I don't
4 want to cut people off.

5 MR. DOMBY: Your Honor, if I may, only that I'd
6 like to simply refer to the applicants' argument that to
7 presuppose injury to Mr. Points, it assumes an attack on the
8 adequacy of the Commission's regulations. It would have to
9 assume --

10 JUDGE BECHHOEFER: I don't want to -- to me,
11 there's no -- 2.758 is completely irrelevant to anything we
12 have here. There's a request to us to apply the regulation.
13 If it applies, okay; if it doesn't, okay. We're not going
14 beyond any regulation, at least on the standing question.
15 There's no attempt to attack the regulation. That's a red
16 herring. And I -- at least in terms of the standing
17 question.

18 I mean they either -- under the Commission's
19 standards as they have been interpreted numerous times in
20 the past, have they got standing or don't they. The
21 Commission, when it was tightening up its contentions, made
22 a point that it wasn't changing its standing requirements.
23 So in the statement of consideration they said so. So I
24 don't think that 758, at least as to the standing question,
25 really has any bearing at all.

1 MR. DOMBY: Your Honor, what the applicants tried
2 to do is articulate what may not have been articulated by
3 GANE relative to how Mr. Points may be affected, and
4 obviously we do not know exactly what GANE had or intended
5 to say in all their pleadings, but as we viewed it, they
6 were talking about off-site consequences in meltdown. And
7 what we attempted to show was that to assume effect on Mr.
8 Points would have to also logically assume that the
9 Commission's current requirements are inadequate. And I see
10 what Your Honor is saying, you're saying that those issues
11 are addressed later in a proceeding such as this, and not at
12 this time.

13 JUDGE BECHHOEFER: Right. I mean if we should
14 decide --

15 JUDGE CARPENTER: You can prove them wrong.

16 JUDGE BECHHOEFER: Right -- if we should decide
17 that the people had standing, we would probably be deciding
18 that 45 miles is enough. But we're not modifying the rules
19 or changing the rules, we're just applying it. And if we
20 decide that 45 miles isn't good enough under the current
21 rules, well that's again a decision applying the rules. And
22 there is, I think, some difference of opinion as to how it
23 should be applied, but I don't think, at this stage at
24 least, anybody is attacking it, they're just applying it
25 maybe in different ways.

1 So anyway, I don't go too much for the 758
2 arguments. Maybe on certain contentions, yes. That may or
3 may not be the case. When we talk about contentions, we'll
4 get to that, but does anybody have anything else to say
5 about standing? If not, we'll take a 15 minute break.

6 MR. BARTH: Your Honor, I would like two minutes
7 to summarize our position, if I may.

8 JUDGE BECHHOEFER: Sure.

9 MR. BARTH: First of all, we do rest upon our
10 pleading, we think it well recites what the law is. But I'd
11 like to point out that St. Lucie regarded a minor
12 modification, this is a minor modification. We again
13 strongly reiterate there is no showing of a relationship
14 between a minor modification and radiation threat to Fred
15 Points. Although you said you do not like the 2.758, Your
16 Honor, I would like to point out that dropping a diesel and
17 radiation to Fred Points has a big gap which has not been
18 filled out by GANE. We feel that that gap is required to be
19 filled out by the Sheffield case which we cited, which
20 requires them to show some chain or sequence of events by
21 which this radiation could get out and could get to Mr.
22 Points. I think that -- give me 30 seconds, Your Honor?

23 JUDGE BECHHOEFER: Yes.

24 (Brief pause.)

25 MR. BARTH: I think that does it, Your Honor.

1 JUDGE BECHHOEFER: Well as I say, they have cited
2 NUREG 1410. Now whether they threw that in the right
3 affidavit or not, they still have cited it and there are
4 questions as to whether we should consider that as a part of
5 their showing of standing.

6 MR. BARTH: They have not articulated from a
7 showing of the NUREG which you cite, Your Honor, any
8 possible injury to Fred Points. They simply cited a
9 document. I think we're reading a lot more into that
10 document than should be read. This is no place to hold a
11 hearing on the NUREG. This is a place to hold a hearing on
12 whether or not bypassing this trip switch when we have the
13 plant running will enhance the reliability of the diesels --
14 that's the issue before us. I think we should not enlarge
15 upon that issue and I think that the mere citation to the
16 NUREG without a showing of what in that NUREG is going to
17 put radiation on Fred Points' house when he's at home, is a
18 far, far stretch of the imagination from what we believe is
19 occurring. I think that the citation thereto does not
20 fulfill the agency's requirement for coming forth with some
21 kind of showing of potential harm to Mr Points.

22 Thank you, Your Honor.

23 JUDGE BECHHOEFER: Let's take a break for about 15
24 minutes.

25 (A short recess was taken.)

1 - "DGE BECHHOEFER: Back on the record.

2 The next stage is to get into the various
3 contentions, but before we do that, we might say that we
4 have already determined -- we are going to put it in writing
5 later on -- that GANE does have standing to participate. We
6 are inferring that Mr. Points' potential injury is detailed
7 by his contentions plus reference to NUREG 1410. The injury
8 does not have to be proved at this stage of the proceeding,
9 it only has to be alleged. And he has alleged -- he has set
10 forth his contentions, and that plus the fact that he lives
11 45 miles away is, we think, sufficient. We will have to put
12 that down in writing and it will obviously be subject to
13 appeal and we could get reversed on it, but our decision is
14 that GANE does have standing. A second reason is we believe
15 that 45 miles, given an accident scenario at least, is
16 sufficient in itself, without more. And that's a second
17 reason only.

18 We think given anything having to do -- any
19 accident scenarios, up to 50 is sufficient.

20 We have two separate bases and we think that is
21 sufficient to establish standing. That does not establish
22 any of the contentions or valid contentions, I might say,
23 and that's what we're going to consider. But we do believe
24 that the group has standing and we will so move, and again,
25 it will be subject to standard appeal. I don't know whether

1 it will be with the Appeal Board or the Commission because
2 the status of the Appeal Board is in some doubt at this
3 moment. But technically the rules haven't changed yet.

4 So let's get into the various contentions. There
5 are eight of these and I would like to start out by saying,
6 just to save people some time, that both numbers 7 and 8
7 will not be acceptable. They seem to involve matters far
8 beyond the scope of this proceeding.

9 Ms. Carroll, you may wish to make a statement as
10 to those two, but we propose not to even consider those
11 unless you have some indication as to how those could apply
12 to this particular tech spec change.

13 MS. CARROLL: Well 8 follows 7, so --

14 JUDGE BECHHOEFER: That's why we're considering
15 them together.

16 MS. CARROLL: I mean 7 provides the basis for 8,
17 and it was, I'll acknowledge, an effort on our part to
18 stretch this to what's real here, and that is safety,
19 dependent on power being supplied to Plant Vogtle at all
20 times.

21 So -- in doing the historical research to put my
22 contentions together, I was very surprised, being a newcomer
23 to this arena, to find the verbiage which I quoted here,
24 from the Nuclear Regulatory Commission, saying that
25 previously we had been correct in coming up with problems

1 with the generators Georgia Power chose for Plant Vogtle,
2 but that Georgia Power would take care of the problems with
3 them. Now I will state that among those problems, the
4 switch failure was not one of the problems previously
5 stated. However, March 20 showed they did not work out
6 their problems with the generator.

7 JUDGE BECHHOEFER: Right, but you have no way of
8 attaching 7 and 8 at least to the proposed change, as far as
9 we can see. And therefore, we would propose not to accept
10 those and I don't think we need to hear argument on the
11 basis of it unless you could --

12 MS. CARROLL: Well I would ask, if I may -- and
13 you may say you can't ask that, I won't give you an answer -
14 - but that is a real issue of safety. And if this isn't the
15 arena for it, can you tell me briefly in a sentence where we
16 could raise that issue, if not in this proceeding?

17 JUDGE BECHHOEFER: Well I believe there are
18 procedures that -- I think it's Rule 2.206 -- 10 CFR 2.206
19 permits outsiders to ask for a show cause order or something
20 of that sort. We would not be the -- we could conceivably
21 be, but probably wouldn't be the Board chosen to hear that,
22 but a licensing board could be -- if the staff pursues it
23 and if any action is taken, eventually that could get up to
24 a licensing board. It would go through a long staff review
25 procedure first. 206 is entitled Request for Action, under

1 this subpart. "Any person may file a request to institute a
2 proceeding pursuant to 2.206", which is a show cause
3 proceeding, "to modify, suspend or revoke a license or for
4 such other action as may be proper," and then it tells you
5 where to address it and what you should put in it. And the
6 other body of the Commission which handles these things will
7 act on it one way or the other, but anyway, those matters
8 are really beyond anything we have jurisdiction to decide.

9 MS. CARROLL: Well thank you for your advice on
10 the appropriate approach to that.

11 JUDGE BECHHOEFER: It should be addressed to the
12 Executive Director for Operations and then he follows
13 procedure.

14 MS. CARROLL: This would be at Plant Vogtle or at
15 the Nuclear Regulatory Commission?

16 JUDGE BECHHOEFER: At the Nuclear Regulatory
17 Commission.

18 MS. CARROLL: In Washington.

19 JUDGE BECHHOEFER: It says Washington and I think
20 that's still right, although Rockville is where they are. I
21 think if you say Washington, it'll get there.

22 MS. CARROLL: Well I know that you're indulging me
23 and I appreciate it because, as a volunteer citizen at this
24 proceeding, it's a little hard to wade through all the
25 pieces of paper necessary to be a lawyer. So thank you.

1 And we won't contest your dropping 7 and 8. I was aware
2 that was probably stretching the 10 2.758, am I right?
3 714.758?

4 JUDGE BECHHOEFER: 714 is the --

5 MS. CARROLL: Okay. I thought we might be
6 stretching that, but we thought we should test the limits of
7 that because we are aware it's a real safety issue. And if
8 it could have been considered here, we would have liked that
9 very much.

10 JUDGE BECHHOEFER: Well those matters we can't.
11 We have to go through the others one-by-one. In each case,
12 each of your contentions, both the applicant and staff --
13 sometimes for the same, sometimes for slightly different
14 reasons -- have opposed them. And I guess -- I think it
15 would clarify the record, if nothing else, to have for each
16 of these contentions, the applicant and staff start out by
17 summarizing the reasons for opposing it, and then having you
18 respond. You'll have to respond to more than the summary,
19 but this may help the record a little bit. You have a right
20 to respond to anything they've said in their briefs or any
21 other place, but they may wish to at least summarize in each
22 case why they don't believe that your contentions qualify
23 under applicable rules.

24 Mr. Domby, if you'd like to start, just go through
25 one-by-one except we won't do 7 and 8. Let's do each

1 individually.

2 MR. DOMBY: Yes, Your Honor.

3 JUDGE BECHHOEFER: On these we probably won't rule
4 at all today on the various contentions, but I'm not
5 certain about that -- other than 7 and 8, which we're not
6 going to consider.

7 MR. DOMBY: As the Board reviews these
8 contentions, I trust they will refer to our written -- in
9 the event I might overlook one of the bases.

10 JUDGE BECHHOEFER: Of course, of course. This is
11 just mostly to help clarify the record. The petitioners I
12 guess should have a chance to respond and that's now and I
13 think the record would be a little clearer if you summarized
14 first your basic reasons.

15 MR. DOMBY: Right.

16 As a cardinal reason for dismissal of Contention
17 1, frankly Your Honor, I think this is insufficient to put
18 the applicant on notice as to what is in issue in this
19 particular contention. There is definitely a paucity of
20 facts discussed which relate to the first sentence which
21 talks about a contention. There is a failure to allege a
22 non-compliance with any particular regulation, there's a
23 failure to allege any non-compliance with a commitment of
24 the licensee. So we feel that there's no legal basis or
25 factual basis.

1 Finally overall, we fail to see a statement of
2 concise facts or expert opinion in support of the
3 contention. This is something that --

4 JUDGE BECHHOEFER: Well is this the kind of
5 contention which if you display the information omitted but
6 necessary, there is at least a statement -- the last
7 sentence at least puts in a statement of what they believe
8 is missing from the application.

9 MR. DOMBY: Well, it is a statement that obviously
10 fails to consider what was in the applicant's evaluation as
11 well as the staff's evaluation. That obviously was
12 addressed in both instances. And you know, obviously, the
13 homework has not been done here. And to ask questions is
14 not to set forth a factual basis for a contention.

15 JUDGE BECHHOEFER: Well your application I believe
16 referred to an alarm -- two alarms actually.

17 MR. DOMBY: That's correct, local as well as
18 controlled.

19 JUDGE BECHHOEFER: Yeah, yeah, it did. It didn't
20 really detail very much beyond that. I know that there's
21 some problem with whether an alarm is good enough, standing
22 alone at least.

23 MR. BARTH: I'm having trouble hearing, Your
24 Honor.

25 JUDGE BECHHOEFER: I said there may be some

1 problem with an alarm standing alone is good enough, but I'm
2 trying to find out whether the contention is adequate to
3 embrace some of the potential alarm -- the alarm clutter
4 that Dr. Carpenter was referring to.

5 MR. DOMBY: Your Honor, with all due respect, as I
6 view it, a review of contentions at this stage is to
7 determine whether what has been pled is sufficient, it is
8 not the purpose of this prehearing to fill in the gaps at
9 this stage. Not only the notice originally in the June 22,
10 1990 Federal Register clearly explained the obligations of
11 an intervenor in this proceeding. And Your Honor
12 specifically ordered a specific time period for submitting
13 of contentions and again spelled out in great detail what
14 was needed. The staff's original answer as well as the
15 applicant's original answer cited regulations, which had
16 they been reviewed with some diligence that is expected I
17 believe of this tribunal, then we would not be in the mode
18 as it seems we're going down, of filling in the gaps for
19 intervenors who have not otherwise pled facts.

20 And I'm just very concerned, Your Honor, that the
21 due process concepts are being overlooked here for this
22 Board or questions of the applicant and staff to fill in the
23 gaps.

24 JUDGE BECHHOEFER: Mr. Barth, do you have any
25 comments on that one?

1 MR. BARTH: None, Your Honor. Like the power
2 company we affirm our brief and we trust that it will be
3 closely digested. My hesitation is because some of the
4 lawsuits, Service v. Dulles and Vitorelli v. Simpson (sic)
5 stand for the proposition that an agency must abide by its
6 regulations. These agency regulations in 2.714(b)(2) make
7 certain requirements. None of these requirements are met by
8 a single solitary contention. I think that's the most
9 important thing we can say.

10 They talk of no expertise or basis to back up any
11 of their statements. Take a look at Contention Number 1, to
12 which you referred. "GANE contends the high jacket water
13 temperature trip should not be bypassed during an emergency
14 because it involves a significant hazard." Who says it's a
15 hazard, who is their expert, what's the hazard? Nothing.
16 How is the power company supposed to defend this? How is
17 the staff supposed to? Get someone to come say this is a
18 hazard, it's not a hazard?

19 This does not comply with the agency's
20 regulations. They were changed in August specifically to
21 require a higher level of specificity and certainty than
22 mere submission. They require a concise statement of
23 alleged facts or expert opinion. These are both missing.
24 This is 2.714(b)(2)(ii).

25 The most important thing I can say to you today,

1 Your Honor, is they simply do not comport with the agency's
2 regulations in regard to what is required. They do not set
3 forth a scenario by which this could be a significant
4 hazard, they don't specify who is going to testify, what
5 that testimony will be.

6 I would like to make another comment regarding
7 this because it seems to me as I listened to the explanation
8 by the Board and -- the explanation by the power company and
9 the inquiry by the Board, I think that we're missing
10 something. The second sentence of the contention is "The
11 applicants' evaluation with this letter does not explain
12 what will alert the operator." The alarm will. They simply
13 have not read the application, they've not read the safety
14 evaluation. This does not raise a significant -- are we
15 actually going to have a hearing to have people from
16 Washington come down at taxpayers' expense to hold a hearing
17 to have someone say there's an alarm, which is already in
18 the application? This just transgresses the agency's
19 regulations as to what is a permissible contention.

20 I do appreciate your indulgence, Your Honor, thank
21 you.

22 MS. CARROLL: Is it my turn?

23 JUDGE BECHHOEFER: Yes.

24 MS. CARROLL: Well I would say on doing your
25 homework and having been up, I really think that there wasn't

1 even anything to sink our teeth into in the record that
2 Georgia Power and the NRC staff provided to us. They didn't
3 do any homework saying why their experts -- would it be
4 assumed a team of experts designed the generator? They
5 designed it with an automatic safety trip? And Georgia
6 Power showed no basis for saying it's okay to take it off.
7 Was it a pretty color? Did they put something of a pretty
8 color on there to sell the generator, and it's not
9 necessary?

10 So if ours is thin, we say that -- you know, we're
11 scrambling for our lives here and there are people that are
12 paid to stay on top of this, and we think that they should
13 provide the analysis. We will criticize it later, but we
14 should not have to provide the analysis that says this is
15 safe.

16 You said that there is no significant hazard, as
17 near as we can tell from the public record, on about as much
18 basis as we said that it is a significant hazard. We're
19 going with common sense here as well as our anonymous
20 expert, who we hope will not be anonymous if we manage to
21 take this serious safety question further.

22 JUDGE BECHHOEFER: Ms. Carroll, didn't they state
23 that they were doing it to eliminate the possibility --

24 MS. CARROLL: Possibility of spurious trips.

25 JUDGE BECHHOEFER: Right, that's a reason.

1 MS. CARROLL: Well what's the basis that says,
2 first of all -- this is a little after-the-fact of our
3 writing the contentions, but Mr. Matthews' thing says -- and
4 if you'll let me grope a minute, I'll pick it up, on page 4,
5 "On March 20 the root cause for Unit 1 A EDG trip is
6 believed not conclusive to be intermittent actuation failure
7 of two of the three sensors." That is not conclusive --
8 this is serious -- that needs to be conclusive. If that's
9 the problem, if that's why the generator failed, we need to
10 know that for sure. And in the process of finding that out,
11 I daresay we will find out --

12 JUDGE BECHHOEFER: Why didn't you say that in your
13 contention?

14 MS. CARROLL: Beats me -- your laws are so strict,
15 you know.

16 Also based on -- I mean if they can get away with
17 not doing their homework, then by golly, you know, what are
18 we going to sink our teeth into, what are we going to
19 criticize about what they did -- they did nothing. I mean
20 it is just so bare bones what they did. You mentioned it
21 yourself, it looked like it was rubber stamped. That's not
22 good.

23 MS. STANGLER: We would like to see pages and
24 pages of analysis to show what happens when the switch is
25 bypassed, what really does happen. That's just one thing.

1 We still haven't addressed some other issues about the
2 alarms, et cetera, et cetera. But we didn't see any data,
3 any pages of data that shows us that this is going to be
4 safer and this is going to operate better by bypassing this
5 switch. We have not seen anything Georgia Power has given
6 us to show us.

7 MS. CARROLL: We also do see -- oh, go ahead.

8 MS. STANGLER: Go ahead, I'm done.

9 MS. CARROLL: We also do see a significant hazard
10 to the potential of the generator overheating and being
11 completely taken out of service. I mean you've got to
12 understand -- and everybody here understands -- if we're
13 using that generator, we are in an emergency mode. It must
14 run or serious consequences come to bear.

15 So if a designer put automatic safety switches on
16 it, you take those off and the engine overheats, the only
17 intervention being -- and I also need to elaborate here that
18 the record, the NRC regulations, show alarms locally and in
19 the control room -- well I called Mr. Brockman, it was a
20 series of calls and I ended up talking to Mr. Brockman and
21 he told me there is no automatic alarming device but rather
22 the plan is to dedicate an operator to watching the
23 generator in an emergency.

24 So there you have a little detail that's being
25 overlooked, that we're --

1 JUDGE BECHHOEFER: Why didn't you put that in your
2 supplement?

3 MS. CARROLL: Well we discussed that and --

4 JUDGE BECHHOEFER: That's what the supplement is
5 for. When you spell out contentions, these matters should
6 all be spelled out, including identification of your expert.
7 Our problem is -- and the utility has got to respond to
8 these various matters. All of these additional items that
9 you're mentioning now would have been very helpful in having
10 us consider your contentions.

11 MS. CARROLL: I didn't mention it first because
12 it's not in the record -- and I point to that, it's not in
13 the record. I called Mr. Brockman on August 31st around
14 noon time. That's between him and me, you can believe it or
15 not, it's not in the record.

16 JUDGE BECHHOEFER: Well it doesn't have to be, you
17 don't have to establish your case now, you have to establish
18 what your case is going to be. You don't have to come up
19 with an evidentiary presentation at this early stage. You
20 do have to identify people and if they don't want to be
21 identified, well it's a problem but you can't avoid it that
22 way. There are protective order type provisions which we
23 could -- if you need to preserve the confidentiality of
24 somebody, that takes awhile to work out but that can be done
25 if necessary. That's not involved here at this stage.

1 But in order for us to approve contentions, they
2 have to have adequate basis and an adequate explanation why
3 there may be a problem.

4 MS. CARROLL: Well really what's under fire here
5 is actually the craft of our document by not presenting
6 fully what we know into the record, and this is not an
7 opportunity to elaborate on that, to fill in the gaps, for
8 you to ask us the questions and satisfy your concerns?

9 JUDGE BECHHOEFER: Well I think this is an
10 opportunity for that. We may or may not -- for good cause,
11 we could permit various amendments and we may or may not
12 find good cause, but we -- I guess this is your only
13 opportunity to fill in the gaps because right now there's
14 some serious problems.

15 MS. CARROLL: And right or wrong, we point to -- I
16 mean we see the accusations of thinness, and I daresay
17 that's true. And yet, I think it's more important to look
18 at the thinness of Georgia Power and NRC staff's effort to
19 make a change, put this change through. People die if their
20 thinness is a problem.

21 JUDGE BECHHOEFER: Now on that first one, by the
22 way, what about the alarm that was mentioned? You're saying
23 -- what did you mean when it says "does not explain what
24 will alert the operator to potential overheating"?

25 MS. CARROLL: The record --

1 JUDGE BECHHOEFER: What you said --

2 MS. CARROLL: -- did not explain what would alert
3 the operator to overhearing, it said that a person would be
4 --

5 JUDGE BECHHOEFER: Well it said an alarm, the
6 record says an alarm.

7 MS. CARROLL: -- would sit there. If the NRC says
8 that they have time, then this is okay, if you have an
9 operator that has time, but the March 20 accident does not
10 inspire confidence that that will happen very tidily.

11 JUDGE BECHHOEFER: Were you trying to say that the
12 operators won't have adequate time? If you were trying to
13 say that, if you had cited the Reg Guide as being --

14 MS. CARROLL: Keep in mind that --

15 JUDGE BECHHOEFER: I don't see anything about
16 inadequate time in here, and it's a question that we may
17 have ourselves, but have you even said anything about not
18 having adequate time?

19 MS. CARROLL: No.

20 JUDGE BECHHOEFER: That's the kind of thing you
21 should have done in that supplement.

22 MS. CARROLL: It's too late now?

23 MR. DOMBY: Your Honor, this contention was so
24 lacking that the only thing that I could interpret from it
25 was that this was an attack on the no significant hazards

1 consideration of the staff. I didn't know what to make of
2 this other than it was a question as to a statement of fact
3 and an indication that someone hadn't read the evaluations.

4 To the extent that it does call into question the
5 staff's no significant hazards consideration determination
6 under Section 50.9.1, I would simply cite to previous
7 precedent in the Vermont Yankee case, LBP 87-17, a 1987 case
8 where the Chairman presided, relative to the admissibility
9 contentions and attack on the no significant hazards
10 determination.

11 JUDGE BECHHOEFER: Yeah, the rules provide that
12 that determination itself can't be attacked.

13 MR. DOMBY: And that's the only way --

14 JUDGE BECHHOEFER: The staff has exclusive
15 jurisdiction on that. Of course if the matter that a no
16 significant hazards finding is made about, that can be
17 overturned and of course the staff's no hazard finding can
18 be overturned in effect by a ruling saying that whatever the
19 proposed change is should not take place. So that's true,
20 the no significant hazard I view as more or less a device
21 which determines when a hearing must be held. It does not
22 remove from hearing consideration any particular matter,
23 other than the finding made by the staff.

24 There's some question whether the staff should
25 have made the determination itself or have gone to the

1 Commission. Normally when a hearing is requested, the staff
2 would go to the Commission for this. They didn't do that,
3 they made it long before anybody could ever request a
4 hearing. So there's some question whether the staff's
5 procedures were right, but those procedures are not
6 susceptible to attack in a proceeding. There's a specific
7 regulation, 50.91 or something -- whatever it is.

8 MR. DOMBY: 50.91.

9 JUDGE BECHHOEFER: I could look it up here -- but
10 anyway, no significant hazard itself is not subject to
11 challenge, but the underlying action of course is, and
12 that's what you're attempting to do.

13 MS. CARROLL: Right, the background that led them
14 to that conclusion looks --

15 JUDGE BECHHOEFER: Well the conclusion itself --
16 the licensing action itself -- is subject to challenge and
17 that's the reason for this proceeding. But it's just that
18 the preliminary part isn't, the no significant hazards
19 finding meant that the staff could go ahead and authorize
20 the amendment prior to the hearing taking place or
21 concluding. That can't be challenged, but the determination
22 itself as to whether the license amendment should take
23 place, that can be. I don't know if you can understand the
24 difference.

25 MS. CARROLL: I understand what you're saying and

1 I'm just casting about for -- looking how to work in the
2 really narrow framework that's provided here when it's real
3 evident that there were a lot larger problems that somebody
4 somewhere should be confronted with, and we don't seem to be
5 able -- we don't seem to have the right within us to get to
6 them.

7 And it's hard for us not to be dazzled by these
8 obvious safety problems and then stay right on track with,
9 you know, what we're all gathered here for. But we're
10 trying real hard to do that and we do understand that we
11 probably understand the law less than we understand the
12 technical considerations here.

13 JUDGE BECHHOEFER: Dr. Carpenter has a comment.

14 JUDGE CARPENTER: Would you tell the Board again
15 about your telephone conversation with Mr. Brockman?

16 MS. CARROLL: Well it was suggested to me -- I
17 call them the Reed Report guys -- you remember the guys that
18 did the Reed Report for General Electric. Well they have a
19 consulting firm now, and one of their staff members said you
20 need to call Plant Vogtle and find out what the redundancy
21 is, what's the automatic redundancy for that switch. And
22 that was an interesting series of phone calls but it ended
23 up with my talking to Mr. Brockman. And it was Mr. Cord,
24 wasn't it -- or was that Mr. Clark?

25 MR. BROCKMAN: Mr. Clark.

1 MS. CARROLL: -- together, and I asked about that
2 redundancy and I was told that when the emergency generator
3 kicked in, when it was needed, that an operator would be
4 sent and dedicated to watching that generator. Now my
5 expert's take on that was that that's what he'd do too, but
6 it's so tedious watching a generator run, that that's not
7 really as nice as having an automatic switch, because, you
8 know, watching an engine run kind of lulls you into a rhythm
9 and something happens and you might not identify it in time.
10 So he had a problem with that.

11 But that's what I was told and it sounded to me
12 like that was it. I mean it sounds like the local and
13 control room alarming is not in place at Plant Vogtle. And
14 whether we can do that here or not, that needs to be looked
15 into.

16 MR. BARTH: Your Honor, may I have a comment at
17 this time? I think I can save us some time, from the
18 staff's point of view, of exposition. The purpose of this
19 hearing at the moment and what we're doing now is to
20 determine whether these contentions as filed 15 days prior
21 to this, fall within the four square corners of the
22 Commission's regulations set forth in 2.714(b)(2). Fumbling
23 about engines running, whether or not the power company has
24 done its homework, what could be done or couldn't be done,
25 is irrelevant.

1 What we should do is take the contentions that
2 they filed, look at the contentions, find out if they set
3 forth a basis, if they have specificity, if they set forth
4 their expertise upon which they rely, give some indication
5 of what they will testify at hearing if it comes up. It
6 seems to me that is what we're here to do and just to answer
7 very easily -- they did not.

8 Thank you.

9 JUDGE CARPENTER: If I could finish with my
10 question. I'd like to ask whether or not the
11 representatives from Georgia Power can confirm what was
12 stated in this telephone conversation that an auxiliary
13 operator would be assigned to the diesel under emergency
14 conditions, and that that is the procedure which is in place
15 or will be in place in the near future.

16 MR. DOMBY: Your Honor, I'm informed by the
17 technical representatives of Georgia Power that it is the
18 practice of the plant to send an operator out locally when
19 the alarm in the control room is indicated -- whenever the
20 diesel is operating, they dispatch an operator to the diesel
21 and it always was the historic practice of Georgia Power to
22 do so.

23 JUDGE CARPENTER: Well it may be an innocent
24 oversight, but it is definitely an attribute of what GANE
25 calls redundancy. It is not solely dependent on the control

1 room operator to pay attention to the diesel, but instead
2 there is a procedure in place where an auxiliary operator
3 automatically goes to attend to the diesel. Whether it's
4 exciting or not, it's his job.

5 MS. CARROLL: Yes, but that's -- like somebody
6 mentioned earlier, when you've got all these alarms sounding
7 and everything, Three Mile Island showed that it's hard to
8 read all the signs when things are under emergency.

9 And you know, on March 20, the control room was
10 dark. That would certainly hamper watching the generator in
11 the dark.

12 JUDGE CARPENTER: The generator is not in the
13 control room.

14 MS. CARROLL: Right, but my understanding is that
15 the generator room was dark.

16 JUDGE CARPENTER: I believe if you read the NUREG
17 thoroughly, you will find that there was an operator in
18 attendance because the diesel shut down and somebody started
19 it again.

20 MS. CARROLL: That's right -- that's right. Now
21 also to refer to March 20 -- my understanding is that there
22 is an alarm, that when the plant is in an emergency state,
23 then somebody will be verbally told to go, that there isn't
24 an alarm. Now that was my understanding, so I wanted to
25 make that clear. And it needs to be clarified as well,

1 because although the NRC regulations, for instance, said to
2 Georgia Power, well you can do this if you have a local
3 alarm and one in the control room and you send an operator
4 over there. Where does it say that Georgia Power said yes,
5 we're doing that.

6 JUDGE CARPENTER: Ms. Carroll, I just wanted to
7 find out if there was something that might have been in the
8 application and wasn't. It appears there's a good chance
9 there is something that might have been in the application
10 and it's not there.

11 MS. CARROLL: In the application but not at Plant
12 Vogtle.

13 JUDGE CARPENTER: Well I haven't any speculation
14 whatsoever, I just asked the question. I was just curious
15 when you mentioned this telephone call, what you learned was
16 something I was not aware of and I just wanted to get it
17 confirmed.

18 MS. CARROLL: Well I sure wanted to get it in
19 there so you can get it confirmed, because it's important
20 that it be confirmed, ever which way it is.

21 JUDGE CARPENTER: Fine.

22 MS. CARROLL: I would like to reiterate that as I
23 understand it, there is not an alarm in the control room.
24 If the generator overheats, in other words, it will only be
25 known to the operator watching it, that this is happening.

1 There's no alarm to even call them there. This has to be --
2 he has to be given instructions to go in an emergency
3 situation.

4 JUDGE BECHHOEFER: Well the record reflects at
5 least that there either is or will be.

6 JUDGE CARPENTER: I don't think you ought to be
7 testifying right now; (a) you're not sworn and (b) you're
8 not considered for cross examination.

9 JUDGE BECHHOEFER: Right.

10 JUDGE CARPENTER: If you believe that, you may
11 have a chance some day but be prepared to defend your
12 allegations and that's a fairly substantial thing to
13 consider.

14 MS. CARROLL: Well I'm an innocent and I don't
15 know all the legal this and that, so --

16 JUDGE CARPENTER: Well I'm trying to protect your
17 innocence.

18 MS. CARROLL: But I want you to know that where
19 I'm at here is Plant Vogtle needs to be safe. I'm not
20 trying to be right and let somebody else be wrong, but
21 rather to ensure that Plant Vogtle is safe. You guys can
22 help me keep it within the scope of this hearing if I branch
23 out a little bit. I'm trying though to honor and understand
24 the legalities here and not waste anybody's time.

25 JUDGE BECHHOEFER: Yeah, because if it's not in

1 the scope of the proceeding, we can't officially listen to
2 it.

3 MS. CARROLL: That's right. So cut me off, I'm
4 trying to recognize the limits.

5 MR. DOMBY: I think this points out the
6 appropriateness of the Commission's rules that a factual
7 basis must be pled. Simply reading an application that says
8 A is white and then coming into this hearing and saying no,
9 I don't agree that A is white does not form a sufficient
10 factual basis for a contention.

11 JUDGE BECHHOEFER: No, I would fully agree with
12 you, but the real question is whether they, through their
13 lack of experience, have not formulated their contentions as
14 precisely as they might have given at least the one
15 reference that they did provide, which is the NUREG. And
16 one of their contentions is specifically based on NUREG.
17 But the question is there are many things dealing with the
18 other contentions that are also in the NUREG. And I
19 recognize that you're supposed to point out the particular
20 page or section of the document. There are some standards
21 that say that, but the question is how much leeway we can
22 give to an inexperienced group that may not have all the
23 expertise -- legal expertise, at least -- to do that.

24 MR. DOMBY: I understand that, Your Honor. But
25 the flip side of the coin is fairness to the applicant and

1 the staff. We should not be left in the dark without clues
2 as to what the factual and legal basis of a contention is.
3 This particular contention is a prime example of how we are
4 left in the dark, and this process of developing contentions
5 before this Board is not the proper forum for the Board in
6 questions and answers to basically educate intervenors who
7 have no real stake and simply want to air the issue of an
8 event on March 20, 1990.

9 JUDGE BECHHOEFER: Well I wouldn't agree that they
10 don't have a real stake, but at least one member of their
11 group -- we're trying to determine whether to start on 2 now
12 or break for lunch.

13 MS. STANGLER: I have something more to say about
14 number one.

15 JUDGE BECHHOEFER: Oh, I'm sorry.

16 MS. STANGLER: I was just sort of letting things
17 go but I wanted to --

18 JUDGE BECHHOEFER: Yes, go ahead.

19 MS. STANGLER: Our contention 1(c) --

20 MS. CARROLL: No, that's 2(c), Carol.

21 MS. STANGLER: I'm sorry -- oh.

22 JUDGE BECHHOEFER: We're not on 2 yet. I was
23 determining whether we should start 2 and do it all at once
24 or start it and break it when we break for lunch, or break
25 for lunch early and come back early.

1 MR. BARTH: Before you break, Your Honor, I'd like
2 to address one of your comments which I think is relevant
3 here. You inquired about pro se intervenors. And if you
4 look at Consolidated Edison Company of New York, Indian
5 Point and Power Authority, State of New York, Indian Point,
6 LPB 83-5, 17 NRC 134, 136, 1983 requires that pro se or lay
7 persons are required to provide a sound basis for each
8 contention to ensure that there is an issue which warrants
9 adjudication.

10 I think that simply being pro se does not wipe
11 away the Commission's regulations. I think everybody should
12 comply with them.

13 JUDGE BECHHOEFER: No, I believe --

14 MR. BARTH: I think that's also set forth in
15 Consolidated Edison, Indian Point.

16 JUDGE BECHHOEFER: No, I recognize that they
17 haven't provided a basis. The question is whether or not
18 they have to articulate that basis to the same degree that a
19 skilled lawyer would be expected to.

20 MR. BARTH: I think that an unarticulated, hidden
21 basis really doesn't -- in my view of the dictionary --
22 doesn't mean a basis, Your Honor. I think we have to look
23 at what their contentions provided and match the
24 regulations, do they have a basis in them, rather than try
25 to guess what may be in their minds.

1 Thank you, Your Honor.

2 MS. STANGLER: You know, I guess I would just like
3 to say that we are all volunteers in Georgians Against
4 Nuclear Energy, we all have full time jobs scrambling to
5 make a living. We do the best that we can and I just am
6 saying that from my heart. It takes a tremendous amount of
7 time to go through these documents and we are volunteers, we
8 do this completely on our own time. We have done the best
9 we can, I'm sorry that we have not spelled out everything,
10 but it was our understanding that this was a prehearing
11 conference to get some information out to decide if we could
12 really have a real hearing. And so to me, my understanding
13 was that this was just to sort of open up things for you all
14 to decide if we could go beyond this

15 JUDGE BECHHOEFER: Well that's correct, but we do
16 have to meet the standards for setting forth contentions,
17 which appear not only in the regulations, but they appeared
18 in the first order, which I tried to spell them out,
19 although I didn't elaborate on them too much. But I did
20 cite what I thought were the relevant portions. And the
21 question is whether you've met enough of the standards so
22 that -- on any of the contentions you have to have at least
23 one to have a hearing. And that's what we'll have to
24 decide.

25 MS. STANGLER: Right.

1 JUDGE BECHHOEFER: And --

2 MS. STANGLER: Well I guess I'm just saying that
3 we've just done the absolute best we can and it's going to
4 be up to you to decide whether we do have any basis here.

5 JUDGE BECHHOEFER: I think at this stage, we'll
6 break for lunch and start with number 2 after lunch.

7 I might say one thing. It would help if you might
8 want to rethink your statement about not revealing the
9 experts that you're going to use. You may want to consider
10 that during lunch time because if the contentions were
11 backed by expert opinion, it would be very helpful. I'm not
12 saying it's essential and I don't know how we're going to
13 rule on any of it right now, but one of the problems is that
14 the expertise that you intend to rely on, if any, doesn't
15 appear. And the Commission's regulations require that you
16 identify, mention expert opinion on which you're relying.
17 Your petition does not include any of that. It does include
18 a reference to the NUREG, NUREG 1410 and of course that also
19 is contemplated by the regulations. You've done that
20 although you haven't attached it to -- you haven't set it up
21 in a format really that relates it to any particular
22 contention except one of them. There's one of them where
23 you specifically cited it, but at least you've provided
24 that. But you haven't provided any other expert opinion.
25 And I won't say it's necessary or not necessary, but under

1 the rules it certainly would have been helpful. And if
2 there's a hearing authorized, you know, the applicants and
3 staff will be allowed to take the deposition of your expert,
4 et cetera. Of course you have discovery rights as well, but
5 I'm sure that will happen. But without identifying what
6 you're relying on it's difficult for us, other than on this
7 1410 -- it's difficult for us to see what you're going to
8 argue when you -- if you should have any of your contentions
9 approved.

10 So you may want to think about, during lunch time,
11 at least providing for the record the name and some brief
12 qualifications of the person you intend to rely on for each
13 particular contention. Like I say, that is a difficulty
14 that we're having at least and I'm sure the other parties
15 have.

16 MS. CARROLL: May I just ask --

17 JUDGE BECHHOEFER: I'm giving you an hour to think
18 about it.

19 MS. CARROLL: Well we know that if we have a
20 hearing on this process, we understand that we have an
21 expert in that process, and fully intend to do that. There
22 were some that were tied up, up to this point not available
23 to us, that would be available in the future. And I do have
24 to honor this guy, but I can call him and see, you know, if
25 he will let us mention his name or not. But I did

1 understand at this point in the process that if we came to
2 you and we were accurate, which should be our information,
3 not whether we are qualified experts, but a qualified expert
4 talked to us. And if we got the information right, and it's
5 right, that that would satisfy for going forth, in which
6 case we do understand that once we get into a full hearing,
7 that it would be necessary.

8 JUDGE BECHHOEFER: Well the new rules require
9 somewhat more than that. I mean, one of the things is
10 documentation and at least that you've supplied a document,
11 although as I said you didn't connect it up very well with
12 your various allegations. One of them you specifically tied
13 it to but the others you didn't.

14 But the expertise is under the rules, and in so
15 many words, you're supposed to set that forth prior to
16 getting any of your contention -- well prior to getting a
17 contention based on an expert approved, you've got to
18 identify the expert.

19 (Discussion among the Judges.)

20 JUDGE LUEBKE: What we're saying is that if these
21 future experts you were mentioning are less sensitive, you
22 could name them now without -- that would be helpful, I
23 think the Chairman is saying.

24 JUDGE BECHHOEFER: Yeah, there is nothing -- or
25 there's very little on the record now that we can rely on to

1 show that you've qualified under the 714 -- the section that
2 says that -- well I'll just read it, "A concise statement of
3 the alleged facts or expert opinion which support the
4 contention upon which the petitioner intends to rely,
5 together with documents." And you've supplied at least one
6 document, but I guess it should have been put in more than
7 one contention, from what you've said. But be that as it
8 may, t he one document does support one of your contentions
9 or is mentioned in one of your contentions. To the extent
10 you intended to rely on it for the others, you probably
11 should have repeated it, but we'll have to determine whether
12 we can do that or not.

13 MS. CARROLL: Well we'll see what we can do about
14 answering some of those questions in your mind, over lunch.

15 JUDGE BECHHOEFER: Right. I think what the
16 Commission intended was that there not be hearings unless
17 there was a somewhat more well developed basis for going
18 ahead with the hearing, to show that there was a real
19 dispute in law. The Commission has said that several times
20 in their statement of consideration and so they put it in
21 the rules and we're bound by that.

22 I think we'll break about -- are there any
23 restaurants that we could get to and back?

24 MR. BLAKE: There's one right down stairs.

25 JUDGE BECHHOEFER: Oh, is there? Like an hour.

1 MS. CARROLL: I think there's a couple across the
2 street too that are kind of cute.

3 JUDGE BECHHOEFER: Could we get back in an hour?

4 MR. DOMBY: Yes. With the Board's indulgence, I
5 have an illness in the family and I must leave here about
6 5:15 today. So to the extent that you are --

7 JUDGE CARPENTER: Well I have an airplane and I
8 have to leave before 5:15.

9 JUDGE BECHHOEFER: So do I.

10 JUDGE CARPENTER: But illness is a wonderful
11 excuse for us.

12 JUDGE BECHHOEFER: We will try to get through a
13 lot earlier.

14 MS. STANGLER: So what time are we going to meet?

15 JUDGE BECHHOEFER: Is it about 12:20?

16 MS. STANGLER: 1:20?

17 JUDGE BECHHOEFER: Yes, that's fine.

18 (Whereupon, a luncheon recess was taken at 12:20
19 p.m., the conference to resume at 1:20 p.m., the same
20 day.)

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AFTERNOON SESSION

1
2 JUDGE BECHHOEFER: We are back on the record.

3 I have two questions. First, why a footnote
4 rather than a deletion in the tech spec? That, I -- I
5 personally, at least, have no more problems with. The other
6 one -- my question is -- well, maybe I do have a problem.
7 They are sort of interrelated. Should not the -- whatever
8 the footnote be, set forth, the conditions under which the
9 change would be applicable, so that operating procedures
10 which may be in effect now but are not ingrained -- I don't
11 think one has to go to the Commission to change an operating
12 procedure -- should all of this be embodied in a particular
13 tech spec change? In other words, the footnote, under
14 emergency conditions be -- the trip may be bypassed or
15 something like that, rather than the trip may be bypassed
16 without any qualifications as to when, where, who or any
17 other matter. This is a matter of pure -- if we were to say
18 that you were warranted in going ahead with exactly what you
19 did, shouldn't it be done in another way?

20 MR. BARTH: I'm having trouble hearing you, Your
21 Honor.

22 JUDGE BECHHOEFER: I'm sorry. The question
23 basically --

24 MR. BARTH: Was the question to me?

25 JUDGE BECHHOEFER: No, it wasn't. We had asked

1 the applicant a question -- two questions actually. The
2 meat of it was, why the -- of course, the staff approved it.
3 I suppose, I could ask you why. But the conditions under
4 which the trip may be bypassed are not set forth in the
5 footnote at all.

6 MR. DOMBY: I believe I can address that in part,
7 Your Honor, hopefully satisfactorily. The particular tech
8 spec we're talking about here, as you know, is a
9 surveillance tech spec that's only applicable in certain
10 instances, okay. And therefore, it is not broadly viewed.
11 It is not a tech spec that addresses quote the emergency
12 mode only. It addresses a surveillance done. I think the
13 periodicity is every 18 months during refueling.

14 JUDGE BECHHOEFER: Well, the tech spec itself is
15 written in terms of an emergency mode so that things may be
16 done or not done.

17 MR. DOMBY: The tech spec -- I'm sorry.

18 JUDGE BECHHOEFER: That is the addition. The tech
19 spec says that certain things happen concurrent with a
20 safety injection actuation signal. That's where the
21 automatic bypass is supposed to take place. And there is a
22 general footnote that seems to authorize you to bypass it
23 any time without certain qualifications. It isn't limited
24 to the terms of what the tech spec is.

25 MR. DOMBY: I believe that's a correct statement,

1 specific?

2 MR. DOMBY: I'm informed by the applicant's
3 technical representatives that during the conduct of a
4 surveillance, should the diesel be called upon in that
5 particular instance, it is in standby emergency mode.

6 JUDGE BECHHOEFER: Well, putting it another way,
7 could the tech spec be written to permit you to fail to do
8 the test completely always without be cited for any
9 violation or anything like that? Did you just forget to
10 ever do a test based on that tech spec? That's the way i
11 would read it.

12 MR. DOMBY: I guess the technical problem is,
13 during genuine emergencies, it is not bypassed -- during an
14 emergency mode.

15 MR. CARPENTER: I don't understand why this
16 exception is being put in this surveillance requirement
17 procedure when we've been told that during surveillances we
18 won't use the bypass, but only use the bypass for emergency
19 start in the case of a real emergency. This is clearly
20 opposite the other documents.

21 MR. BLAKE: Why don't we ask one of the technical
22 people to talk with the Board directly, so that we can try
23 to get beyond this, so there are no misunderstandings.

24 JUDGE LUEBKE: It's not just a case of saving
25 secretarial time?

1 MR. BLAKE: No, I don't think so.

2 MR. DOMBY: This is Mr. Paul Rushton who is the
3 manager of Licensing and Engineering for Plant Vogtle.

4 JUDGE BECHHOEFER: (To the reporter.) Did you get
5 his name?

6 THE REPORTER: Yes.

7 JUDGE BECHHOEFER: Okay.

8 MR. RUSHTON: I'm the manager of Nuclear
9 Engineering and Licensing and my office is in Birmingham.
10 My name is Paul Rushton. As the spec was written
11 originally, it required us to test a feature of the engine
12 that ensures that all of the non-emergency trips -- and it's
13 in the specification as written, specified which ones were
14 emergency trips. There are many other trips on the engine
15 and the specification previously required that we verify all
16 of those other trips, except the four listed, are
17 automatically bypassed during certain conditions. So, in
18 our desire to eliminate these high jacket water trip sensors
19 from the diesel engine as -- you know, as a feature that
20 operates during emergency mode, we felt that it was perhaps
21 not even necessary to modify the specification to eliminate
22 these trip sensors because we could still do the
23 surveillance as written. You know, whether or not the high
24 jacket water trip sensors are there or not, we could still
25 do the surveillance as written. We can verify that all of

1 the others are automatically bypassed. But to be clear in
2 the tech specs, we felt that it was important to clarify the
3 spec and stipulate, you know, exactly what the condition of
4 the high jacket water trip sensors should be.

5 Our normal mode of operation now is that these
6 things are manually bypassed when the engine is in standby
7 emergency mode. We valve them into service when we run the
8 engine for surveillances or for maintenance purposes so that
9 they are available. But due to their unreliability, we do
10 not want them to be in service when the engine is available
11 for standby emergency mode, most of the time, which is, you
12 know, almost all of the time.

13 JUDGE CARPENTER: But the proposed revision of the
14 tech spec simply has this hand written, triple star insert
15 which say under surveillance conditions the high jacket
16 water temperature trip may be bypassed.

17 MR. RUSHTON: Right. To my way of thinking, sir,
18 that was just a clarification of what the surveillance
19 requirements stipulate. It really did not impact the way we
20 do the surveillance. We still do the surveillance the same
21 way. We verify that the other -- I think there are eight
22 other automatic trip features on the engine that they
23 automatically bypass --

24 JUDGE CARPENTER: I understand.

25 MR. RUSHTON: -- during emergency mode.

1 JUDGE CARPENTER: I understand. I can't put my
2 finger on it real quick, but in the application, I had the
3 impression that it was your intent to use the automatic trip
4 during routine surveillances.

5 MR. RUSHTON: It is.

6 JUDGE CARPENTER: If you get a spurious trip, it's
7 -- you know, it's something to be done something about but
8 it's only a reminder. So why would the thrust of the change
9 go to the trivial case of routine surveillance rather than
10 the statement, under emergency starts, it will be bypassed?

11 JUDGE BECHHOEFER: Or may be bypassed.

12 JUDGE CARPENTER: Or may be bypassed.

13 MR. RUSHTON: We actually considered using that
14 language. We, you know, used the language that we thought
15 was best representative of the engine as we intended to
16 operate it. Even during a surveillance procedure the engine
17 is available for emergency starting. If there was a call
18 for the engine to operate while we were doing a
19 surveillance, it would shift into the emergency mode of
20 operation and if we had the jacket water temperature
21 switches operable when the engine switched to emergency mode
22 of operation, that would place us outside of the tech specs.
23 If the spec said the switches will be inoperable during
24 emergency mode of operation, and we were doing a
25 surveillance and the engine switched to emergency mode of

1 operation, we would now be out of compliance with spec.
2 That's why we left the word emergency out of there.

3 JUDGE BECHHOEFER: Well, it's permissive though.
4 It's may be bypassed. It's isn't will be.

5 MR. RUSHTON: Well, that's --

6 JUDGE BECHHOEFER: It's permissive any way. We're
7 not raising any quarrel with the may. What disturbed us is
8 that this clause could permit you to never, ever test this
9 under any circumstances -- ever. We're not violating a tech
10 spec, so we're not going to do it.

11 MR. RUSHTON: Well that surveillance doesn't
12 require testing of this high jacket water temperature trip
13 switch. The surveillance simply states that we must verify
14 that the other automatic trips automatically bypass. It
15 ensures that other trips are not operable when the engine is
16 running in emergency mode.

17 JUDGE CARPENTER: You've said that several times.
18 I think the Board understands that. What we're trying to
19 understand is what restrictions are there on when the
20 automatic trip will be used and when it won't be used.

21 MR. RUSHTON: The automatic trip is written into
22 our procedures to be placed in service during surveillance
23 runs and maintenance runs. All other times the automatic
24 trip is bypassed in accordance with our procedures.

25 JUDGE CARPENTER: But the page of the tech spec

1 says even though there is a requirement that it be used
2 during surveillance, it may be bypassed. I think that --
3 that, I don't understand, why one page, one document, would
4 say it shall be used and in another document, the tech spec,
5 it says it can be bypassed.

6 MR. RUSHTON: I firmly believe they are
7 consistent.

8 JUDGE CARPENTER: Well, we don't have the
9 procedure in front of us.

10 JUDGE BECHHOEFER: Is the procedure -- does it
11 have the status of a tech spec, so that the NRC would have
12 to maybe look at it if it were changed?

13 MR. RUSHTON: No, sir.

14 JUDGE LUEBKE: Are these matters really so
15 difficult for ordinary people to understand? This is not
16 high tech machinery, is it? This is ordinary plumbing. The
17 language could be simpler, I guess, is what I'm saying, not
18 so tricky.

19 JUDGE BECHHOEFER: Well, what we may be asking for
20 is a little more complexity.

21 JUDGE LUEBKE: You're looking for more complexity,
22 all right.

23 MR. DOMBY: Yes, I think Judge Bechhoefer is
24 right. To be simpler might require more complexity to spell
25 out surveillance and testing and whether or not the bypass

1 is there in emergency standby. We could define what
2 emergency standby is and whether or not it can be bypassed
3 in that particular situation and we can put in exceptions
4 for those two categories.

5 JUDGE BECHHOEFER: Right. My question is really -
6 -

7 JUDGE LUEBKE: That's what I meant. You have to -
8 -

9 JUDGE BECHHOEFER: Yeah, but shouldn't it be done
10 that way in order to -- if you were getting exactly what you
11 sought, other than the specific language here, if you were
12 getting what your application said you wanted, shouldn't it
13 be done?

14 MR. DOMBY: Perhaps, if anything, we can be
15 faulted with the same error that GANE appears to make in
16 terms of articulating as clearly as humanly possible what
17 we're trying to say.

18 JUDGE BECHHOEFER: Oh, I can tell you -- if you
19 want to get real technical, I can tell you where you can be
20 faulted. One of the regulations, which is -- I'll give it
21 to you --

22 MR. BLAKE: Judge Bechhoefer?

23 JUDGE BECHHOEFER: What?

24 MR. BLAKE: The --

25 JUDGE BECHHOEFER: One of the regulations says --

1 I think it's 704, but I'm not sure. It's incorporated by
2 reference into the amendment procedure. It says you've got
3 to have everything typed or printed. Does that qualify?

4 MR. DOMBY: Oh, an explanation there, Judge --

5 JUDGE BECHHOEFER: The staff did it. The staff
6 printed it or typed it.

7 MR. DOMBY: Yes. As approved and as incorporated
8 in technical specifications at the plant, it is typed, sir.

9 JUDGE BECHHOEFER: Right. Yes, I realize that.
10 Whether that's a technical problem or not -- we've talked
11 about a lot of technical problems and we might as well throw
12 a lot of them around.

13 MR. BLAKE: Judge, I want to take one opportunity
14 --

15 JUDGE BECHHOEFER: You're not going to be turned
16 down on that basis in any event.

17 MR. BLAKE: Judge, I want to take one last crack
18 at trying to satisfy Judge Carpenter's question as I
19 understood it.

20 JUDGE BECHHOEFER: Right.

21 MR. BLAKE: At the time this proposal was made,
22 they obviously had to make these changes on each of the four
23 diesels out there. They couldn't do them all
24 instantaneously and remain in compliance with the tech spec
25 if they had make that instantaneous change. So they put in

1 may in order to make it permissive. Some could and some
2 couldn't while this change over was being made. In fact --
3 in point of fact now, we could reorder that footnote to say
4 -- and again, to take your suggestion --

5 JUDGE BECHHOEFER: Well, I wasn't trying to draft
6 --

7 MR. BLAKE: -- in order to make it fully
8 concurrent with the operating procedures, it could be
9 changed to say that this bypass -- this particular trip,
10 will be bypassed in all situations, except during routine
11 surveillance and maintenance. Just the way the procedures
12 require business to be done. I hope that's responsive in
13 trying to take the difference between the procedure and the
14 tech spec. There isn't any difference. That's why we
15 regard them as concurrent.

16 JUDGE CARPENTER: I might have misheard but I
17 thought you misspoke. I thought there were only going to be
18 bypassed during surveillances.

19 MR. BLAKE: They are --

20 JUDGE CARPENTER: They are --

21 JUDGE CARPENTER: I'm sorry. Not going to be
22 bypassed only during surveillances.

23 MR. BLAKE: Only during surveillances and
24 maintenance testing is my understanding.

25 JUDGE CARPENTER: The problem is, one sentence

1 defines --

2 MR. BLAKE: And like I say, we could change that
3 footnote now to read -- the reason it was put -- I was
4 trying to give some history as to why we put in the may
5 because it was a sensible way to accomplish the change to
6 the machinery.

7 JUDGE CARPENTER: Well, five years from now,
8 somebody might look at the may language and not understand
9 why and think it's an option.

10 MR. BLAKE: That's a possibility.

11 JUDGE CARPENTER: When, in fact, I don't think the
12 intent is for it to be an option for somebody.

13 MR. BLAKE: With tech spec bases requirements,
14 which we also adhere to, we hope that that wouldn't be the
15 case.

16 JUDGE CARPENTER: Well, we're behind schedule.

17 JUDGE BECHHOEFER: Let's, I guess, go back into
18 number two. I guess before that, did you have any results
19 about your experts?

20 MS. CARROLL: Yeah. I have a name.

21 JUDGE CARPENTER: Good.

22 JUDGE BECHHOEFER: Well, does he have a name that
23 you can tell anybody about?

24 MS. CARROLL: Yeah. Do you want it just across
25 the board? Well, we actually --

1 JUDGE BECHHOEFER: Well, you ought to --

2 MS. CARROLL: -- have two. One of them, the
3 information is kind of vague on, but he's a real guy, and if
4 we can supply last names -- well, you can weight it for
5 yourself if he's identifiable enough. We can supply his
6 last name later.

7 MS. STANGLER: It's at her home on a little piece
8 of posted note and there's no way of getting into her home
9 from here. We have the first name and we have the title.
10 We have everything about this person except for the last
11 name.

12 JUDGE BECHHOEFER: Well, obviously, if we
13 permitted an amendment to incorporate various names, we
14 would have to give other parties a chance to address -- to
15 see whether they have -- you know, have the qualifications.

16 MS. CARROLL: Well, you know, in a way, we cannot
17 identify them clearly enough here for everybody's purposes
18 to decide whether or not they think he's worth anything. I
19 mean, you'll still have to do your research anyway after
20 this moment to find out if you agree with me that he's an
21 expert. That's why I think possibly you would let us.

22 The real guy is Roger Bisher and he's with Prime
23 Power. He's not aligned with us, now. He has some problems
24 with our organization, however, on this issue. What I
25 specifically -- What unfolds from here, there is nothing to

1 be implied by what he says beyond what I state that he said
2 to us because he values his contract with Georgia Power, and
3 he does not want to get mixed up with us because he would
4 rather have his job with Georgia Power, you see. Okay.

5 MR. DOMBY: Your Honor, first of all, has this
6 expert had any interaction with GAIN in the developing of
7 his contentions?

8 MS. CARROLL: Yes, yes, we have.

9 JUDGE BECHHOEFER: I was going to ask you which
10 contentions, if any, is he going to address?

11 MS. CARROLL: He is going to come up to contention
12 2-A -- Do you want me to go through and cite right now what
13 we plan to refer to and then we can discuss the particular
14 passages, or would you care for me to just go down the list
15 of contentions and --

16 JUDGE BECHHOEFER: At least for the moment just
17 tell us what contentions. We are going to talk about each
18 contention.

19 MS. CARROLL: Okay. So you don't want to hear
20 about NUREG 1410 right now. You just want to hear about
21 Roger Bisher for the moment?

22 JUDGE BECHHOEFER: That's correct. NUREG 1410
23 you've at least supplied us and identified earlier, but --

24 MS. CARROLL: We've found ways to apply it to
25 other -- I mean, we have now specified or relied on that for

1 other contentions at this point. If you would like for me to
2 tell you that now, I will.

3 JUDGE BECHHOEFER: Well, as we go through each
4 contention, we will do that, but --

5 MS. CARROLL: Okay. So 2-B, 2-D -- I'm sorry. 2-
6 A, not 2-B --

7 JUDGE BECHHOEFER: Now, this is for Mr. Fisher?

8 MS. STANGLER: Bisher.

9 MS. CARROLL: Bisher, B-i-s-h-e-r.

10 JUDGE BECHHOEFER: Oh, I'm sorry. B-i, okay. I
11 put an "F" there. B-i, okay.

12 MS. CARROLL: 2-B --

13 JUDGE BECHHOEFER: 2-B?

14 MS. CARROLL: As well on 2-D, we will refer you to
15 David Matthews, although we didn't have the benefit of that
16 at the time we developed the contentions. We now have the
17 benefit of it and it does support that contention. We have
18 Roger Bisher on 4 --

19 JUDGE BECHHOEFER: So 2-A and B are the only parts
20 of 2, right?

21 MS. CARROLL: Right.

22 JUDGE BECHHOEFER: I just wanted to make sure I
23 got that.

24 MS. STANGLER: I thought he said "B".

25 MS. CARROLL: As in "dog".

1 JUDGE BECHHOEFER: Oh, I'm sorry.

2 MS. CARROLL: As in "danger".

3 JUDGE BECHHOEFER: Okay. I just wanted to make
4 sure I was hearing it correctly. I'm not trying to make any
5 changes. 2-A and D, okay.

6 MS. CARROLL: One E as well, I would invoke -- E
7 as in "earth".

8 MR. BARTH: Wait a minute -- wait a minute, Your
9 Honor. We've got Roger Bisher on 2-D, David Matthews on 2-D
10 and then she went to 4. Now --

11 MS. CARROLL Yeah, but then I realized -- I'm
12 thinking on my feet -- I mean I stayed on hold for 15
13 minutes and it made me late to the hearing and I didn't plug
14 him in, I didn't know he'd say yes.

15 So to back up a moment, we also will invoke Roger
16 Bisher on 2-E. on 2-F. To jump ahead, we will invoke him on

17 -- JUDGE BECHHOEFER: Let's do it in order.

18 JUDGE CARPENTER: Stay in order.

19 MS. STANGLER: Yeah, we're in order, we're staying
20 in order.

21 MS. CARROLL: -- 4. And we will also use Roger
22 Bisher's information on 6, or shall I say we have used Roger
23 Bisher's information to develop contention 6.

24 JUDGE BECHHOEFER: So 2-A, D, E and F, 4 and 6,
25 correct?

1 MS. STANGLER: Yes.

2 MS. CARROLL: And also 6.

3 JUDGE BECHHOEFER: Yeah, I said 6.

4 JUDGE LUEBKE: There was another person?

5 MS. CARROLL: David Matthews, surprisingly enough,
6 supports our contentions on several instances.

7 JUDGE BECHHOEFER: You said 2-D. any others?

8 MS. CARROLL: Yes, 3 and 5. Steve no-last-name,
9 by the way, does concur with the others, and we probably
10 don't need to do double duty if we have one expert basis, or
11 something.

12 JUDGE BECHHOEFER: Well the more the better.

13 MS. CARROLL: Well Steve works for the fellows
14 that used to work for GE and uncovered some problems with
15 the Mark I design which is famous because it was covered up
16 and it's called the Reed Report, and I'm not sure the name
17 of their firm right now, and Steve is one of their staff
18 engineers. He talked to us at length over the telephone,
19 and I doubt we can afford -- we cannot probably afford to
20 pay him to come and be an expert witness in the future, but
21 he did provide us information that is the basis for this.
22 And I can supply his last name and the firm name later.

23 MR. DOMBY: Your Honor --

24 JUDGE BECHHOEFER: Is it a Mr. Sholly.

25 MS. STANGLER: Is it Mr. Sholly?

1 MS. CARROLL: I would hate to -- I know I'm not
2 under oath here -- it sounds familiar but --

3 JUDGE BECHHOEFER: There's a Steve Sholly that
4 works for that firm.

5 MS. CARROLL: It's the Reed Report guys.

6 MR. DOMBY: Your Honor, I think this Board has
7 bent over backwards to give an opportunity to GANE to comply
8 with these regulations. We're at the stage now where we are
9 going way beyond just giving them an opportunity. GANE is
10 not new to these proceedings. They were in the licensing
11 case for Vogtle, they had much more sophisticated
12 contentions.

13 And I really feel that at this stage, my client,
14 the applicant, is being seriously prejudiced by the guidance
15 that goes way beyond informing GANE of their rights in this
16 particular forum. And I would just note that for the
17 record.

18 We have not had any indication from GANE that
19 these individuals will testify, we've had every indication
20 that they're not sure if these experts can be relied up.
21 Are we to wait to some point in the future to find out
22 whether or not these experts will be forthcoming? We have a
23 right, the applicants, to know who are the experts today,
24 and what is their contribution, what is their basis to these
25 contentions. Not to postpone for three weeks or some other

1 time in the future, whether or not GANE has sufficiently
2 complied with these requirements.

3 The notice was June 22, GANE has had over 60 days
4 to get their act together, Your Honor.

5 MR. BARTH: May the staff be heard, Your Honor?

6 JUDGE BECHHOEFER: Yes.

7 MR. BARTH: Listening to you before lunch when you
8 discussed the name, from the point of view of the NRC
9 regulations, the name really isn't relevant. The statement
10 of consideration says "A concise statement of alleged facts
11 or expert opinion." The name that gives that is not in the
12 contentions. Putting the name in the contention now does
13 nothing. There are a myriad of cases that you may not
14 conditionally admit a contention or people as intervenors
15 with discover to perfect a contention. That's what we're
16 seemingly doing here, permitting discovery to find out do
17 they have an expert and what does that expert have to say.
18 The Commission's regulations require that that be done 15
19 days prior to the prehearing.

20 I don't frankly care, as a matter of law, what
21 their expert's name is at t his stage of the game. That
expert had to sign off on contention 1, he had to set forth
ne basis for his contention, he had to set forth the facts
and he had to set forth what he's going to say at hearing.
25 This is no time -- and we have a great deal of precedent --

1 to go into discovery over this. This is no time for a
2 fishing expedition. I would further make one small other
3 observation.

4 The contention requires that they set forth facts.
5 They set forth in the first paragraph a conclusion, "a
6 significant hazard", that's a conclusion, that's not a fact.
7 There is no setting forth in this contention by an expert or
8 expert authority as to what that significant hazard --

9 JUDGE BECHHOEFER: We're not talking about 1 now.

10 MR. BARTH: And giving the name now of Steve
11 Sholly or Dr. Kendall does nothing to perfect this
12 contention at this time. We're here to judge whether or not
13 this contention as presented meets the Commission's
14 regulations, not to discover what it could have said, what
15 it might have said, who they might find, who they might
16 discover, what we might discover. This is no time for
17 discovery, we have all kinds of Commission decisions that
18 say this is no time for a fishing expedition or discovery
19 expedition in order to perfect a contention. This is a
20 contention that had to be perfected at the time they walked
21 into this room.

22 JUDGE BECHHOEFER: Well if each of these sub --
23 we're talking about 2 now, we're not talking about the
24 general hazard one which we finished with this morning.

25 MR. BARTH: The addition of the names in

1 contention 2 does not perfect it.

2 MS. CARROLL: Well let me offer this --

3 JUDGE BECHHOEFER: Well did not that add -- if an
4 expert said that TDI has a reason for the trip and the
5 applicant has not shown -- and it's supported by an expert
6 and the applicant has not shown a reasonable basis to change
7 it --

8 MR. BARTH: Your Honor, please look at the words
9 of the contention, "We believe", "we expect" --

10 JUDGE BECHHOEFER: Okay, limit it --

11 MR. BARTH: These are not facts. Those are not
12 facts set forth by an expert, backed by expert opinion.
13 This is the general musings of an uninformed layman.

14 JUDGE BECHHOEFER: Well if you just leave the "we
15 believe" off, just put "the high jacket water temperature
16 trip is designed by the manufacturer not to be bypassed.
17 That's a contention. Leave the extraneous stuff off. Those
18 other words are -- can be thrown away due to inexperience.

19 MR. BARTH: There's no basis in fact, Your Honor.

20 JUDGE BECHHOEFER: The basis in fact is TDI
21 supported by an expert has a reason for the trip.

22 MS. CARROLL: That's what we read. We read the
23 rules the same way you did, they want the expert opinions
24 and we put the expert opinions in here but now the judicial
25 body wants to know where we got those opinions and I went

1 and got that information. And if you don't want it to be
2 entered -- anyway, you know, these are expert opinions. I'm
3 just telling you where we got them now.

4 MR. BARTH: I accept her at her word, Your Honor,
5 these are opinions. And what we need and what the
6 Commission requires is facts.

7 MS. CARROLL: Expert opinions.

8 JUDGE BECHHOEFER: Well expertise is permissible,
9 you know.

10 MR. BARTH: Oh, they've got to set forth who their
11 expert is -- this is no time to bring a name, Your Honor.

12 JUDGE BECHHOEFER: They just did.

13 MR. BARTH: Who in the world is David Matthews,
14 except our David Matthews.

15 MS. CARROLL: That's your David Matthews.

16 MS. STANGOR: We are quoting you: David Matthews
17 as an expert witness.

18 MR. DOMBY: Your Honor, I could sit here and quote
19 GANE's representatives here as experts that support our
20 position. Obviously that would not be a true fact. They
21 can't simply say David Matthews. I could say Judge
22 Bechhoefer. That doesn't suffice under the pleading
23 requirements in this day and age.

24 JUDGE BECHHOEFER: Of course we know Mr. Matthews'
25 qualifications, we have that.

1 MR. BARTH: Your Honor, you have his affidavit, he
2 does not support these contentions. That is just outrageous
3 to suggest that he supports these contentions.

4 MS. CARROLL: Well if that's not outrageous
5 enough, you know who I think is an expert I'd like to
6 invoke, is the team that designed the generator, that put a
7 switch on it.

8 JUDGE BECHHOEFER: Well of course, that you should
9 have done first.

10 MS. CARROLL: They don't happen to be called
11 experts.

12 MR. BARTH: The issue before us is will this trip
13 switch make this generator operate in an emergency situation
14 if the water goes to 200 degrees plus or minus four. That's
15 the issue before us.

16 MS. CARROLL: How can you tell without an
17 analysis?

18 MR. DOMBY: I think the representative of GANE has
19 just put her finger on what GANE is actually after. They
20 just want to ask questions, Your Honor. They don't have a
21 contention here. They want to ask questions.

22 MS. CARROLL: That is true on one level, which is
23 that we contend that the document he submitted to a United
24 States agency to make Plant Vogtle safer doesn't make Plant
25 Vogtle safer. And we contend that you didn't back yourself

1 up when you made that request. We want to see the backup
2 information. If you're sitting on it, we ask for you to put
3 it in the record, if you haven't done it. All our experts
4 say you shouldn't make that change without doing that, that
5 you don't know what you're doing, you aren't showing that
6 you know what you're doing. All of our experts agree on
7 that.

8 MS. STANGLER: And our contentions are brought up
9 to show that, and we would love to go through them and
10 explain them.

11 MR. BARTH: Your Honor, my stipulation is that
12 David Matthews will not support the intervenors' contention
13 2-D, 3 and 5, Your Honor. Second of all --

14 MS. CARROLL: We're pretty sure of that, but he
15 already put something in the record.

16 MR. BARTH: Second of all, who in the world Roger
17 Bisher is does not lend any authority -- the name does not
18 lend any authority to the contentions with regard to the
19 Commission's regulations. I think we should leave this
20 matter now for your consideration.

21 MS. STANGLER: We can be very specific, Your
22 Honor, on exactly what quotes from David Matthews backs up
23 our specific contentions, and we can give Mr. Bisher's
24 credentials.

25 JUDGE BECHHOEFER: Well let's go through there,

1 there's start with 2-A then -- 2 or 2-A. 2-A I guess is in
2 support of 2. Am I correct that these various subparagraphs
3 support the general conclusion within 2?

4 MS. STANGLER: Yes.

5 JUDGE BECHHOEFER: Okay. Then going to 2-A.

6 MS. CARROLL: We expect TDI has reason for said
7 trip, so there you go, we've just invoked the team of
8 experts that designed it, we're saying that -- I mean we
9 don't really expect you to take it seriously.

10 We contend the applicant has not shown a
11 reasonable basis to change the device. And there I point to
12 Steve and to Roger Bisher, who say that they would not make
13 this move without doing an analysis of the generator. I
14 would point --

15 JUDGE BECHHOEFER: Do you have a basis for the
16 statement that TDI has a reason for the trip? Because
17 that's something that should be supported. I mean --

18 MS. CARROLL: No, I guess in a way that's a common
19 sense device, a layman saying a team of experts designed the
20 generator and they put a trip on it, they designed it into
21 it, they saw a need and they put it on there. We do not see
22 the same level of work that shows why that is not necessary,
23 why that trip isn't necessary, as the original team of
24 designers deemed was necessary. And I would say Georgia
25 Power honors them because they bought their product, so that

1 would show their recognition of their expertise.

2 MR. DOMBY: Your Honor, isn't there a difference
3 between conjecture and an allegation of fact?

4 JUDGE BECHHOEFER: Well there may be, that we'll
5 answer -- there very likely is. But we just want to see
6 what the positions are.

7 Now if someone who is an expert, of these two or
8 three people, would come up and make a statement -- but I
9 don't necessarily think the contention is enough to say
10 that. We'll have to decide, but be that as it may, do the
11 experts themselves, that you're relying on now, can they
12 show that there is a reason and the applicant's changing of
13 it violates anything intended by the trip?

14 MS. CARROLL: They say an analysis would be needed
15 to ascertain that.

16 JUDGE BECHHOEFER: Well that's part of your --
17 you've said that elsewhere.

18 MS. CARROLL: Well that's what they told me
19 though, that's what my experts have advised me.

20 JUDGE BECHHOEFER: That appears later on down --
21 okay, we'll get to that one.

22 MS. CARROLL: So anyway, we contend that applicant
23 has not shown a reasonable basis to change the device and
24 our experts looking over Georgia Power's application advised
25 us that they don't see in there a basis that they recognize

1 through their work in the field of emergency generators.
2 They don't see a rationale supporting their conclusion that
3 that is a safe move to make.

4 JUDGE BECHHOEFER: Okay, any further comments
5 before we go to B?

6 MR. DOMBY: No, Your Honor.

7 JUDGE BECHHOEFER: Go to B. Do your experts, any
8 or all -- you have mentioned -- well I guess you haven't
9 mentioned 2-B for your experts.

10 MS. STANGLER: I'd like to address B and C
11 together because they both involve the same issue. B, we
12 contend it is safer to have this essential trip operate
13 automatically so as to eliminate the possibility of operator
14 error. C, we wonder what additional operating procedures
15 and training applicant is planning to provide to its
16 personnel to prevent or respond to overheating during
17 emergency.

18 We are very concerned about operator error and
19 that's what both these B and C address. When you remove the
20 automatic -- you know, when you remove the automatic trip,
21 then you totally rely on operators and in the Regulation
22 Guide that I believe has been approved for Georgia Power, it
23 says Regulation Guide 1.9, Rev. 2 allows this trip to be
24 bypassed under accident conditions, provided the operator
25 has sufficient time to react appropriately to an abnormal

1 diesel generator condition.

2 My concern with this contention -- GANE's concern
3 -- is that you are putting all of the -- you're putting a
4 tremendous amount of responsibility on this operator to deal
5 with this overheating problem. You're -- first of all,
6 you're trying to have them decide that it actually is a
7 problem, that it is overheating and then what are they going
8 to do, what kind of training is going to show them -- to
9 show us that they're going to be responsible. My concern
10 that I have -- that we have -- is listed in the NUREG,
11 whatever number it is.

12 MS. CARROLL: 1410.

13 MS. STANGLER: Thank you. And we have
14 communication problems that have been cited. One quote that
15 we have is, quote, "The licensed and non-licensed operators"
16 -- this is from your report -- "The licensed and non-
17 licensed operators and the plant engineers did not
18 understand the operation of the diesel generator system
19 under abnormal conditions."

20 And second of all, the NRC found, in quotes, from
21 again NUREG 1014 --

22 JUDGE BECHHOEFER: 1410.

23 MS. STANGLER: 1410, thank you. Quote, "Another
24 licensed operator had difficulty gaining access to the
25 sequencer room which contains equipment that starts the

1 generator, and appeared to be unfamiliar with either the
2 startup procedure or the local control panel."

3 And third, also in your accident report, was "An
4 operator found the generator control room dark," obviously
5 because all the lights had gone out.

6 So my concern is that if you're going to allow --
7 if Georgia Power is going to bypass the automatic switch,
8 what assurance do we have that these operators are going to
9 know what to do, especially during abnormal accident
10 conditions.

11 JUDGE LUEBKE: For the record, could you cite the
12 page or item number or something?

13 MS. STANGLER: I'm sorry that I can't.

14 MS. CARROLL: She's only got the executive
15 summary.

16 MS. STANGLER: We have the executive summary, but
17 I can tell you that it was in the Atlanta Business Chronicle
18 July 30, 1990 and if need be, I will find --

19 JUDGE LUEBKE: Okay, that's a citation right
20 there.

21 JUDGE BECHHOEFER: Well it's a newspaper citation,
22 not so good.

23 MS. STANGLER: It is from the Atlanta Business
24 Chronicle.

25 MS. CARROLL: Well the thing about it is, we're

1 not packing the one-inch thick document today. We've got
2 the executive summary and that quote did not come from here.

3 JUDGE LUEBKE: Judge Bechhoefer carries it around.

4 MS. CARROLL: You've got it?

5 JUDGE BECHHOEFER: I've also read it.

6 MR. BARTH: Your Honor, what we're doing at this
7 stage is permitting these people to amend their petition to
8 intervene.

9 JUDGE BECHHOEFER: Yeah, for good cause we can do
10 that, you know.

11 MR. BARTH: But the good cause has to follow
12 2.714(a)(1)(i) through (v) and this is no showing of good
13 cause.

14 They have had this document that Dr. Carpenter
15 held up -- you held up -- available in the local public
16 document room from the Commission for some time. To amend
17 this petition to show good cause and the expert reasonable
18 basis on a newspaper article really leaves me in my legal
19 training somewhere behind. We just cannot do this. I
20 realize we have absolute liberality, but this is treating
21 liberality to an extreme degree.

22 The amending of the petition at this time is
23 without good cause, Your Honor. If you will hear my legal
24 point, I would certainly suggest that we confine ourselves
25 to the contentions as filed and call a halt right now to

1 this amending process under 2.714(a)(1)(i) through (v).
2 This is no place to amend these contentions.

3 The only good cause that's been shown actually is
4 that they've been invited to do this extra dialogue.

5 JUDGE BECHHOEFER: Just to clarify, you intend 2-B
6 and C to invoke the sufficient time criteria which appears
7 in the Reg Guide. It doesn't say that but that's what
8 you're intending to do?

9 MS. STANGLER: Well yes, this B and C -- I'm
10 concerned about the operator error and this concerns me with
11 sufficient time to react properly during an abnormal
12 condition, yes.

13 JUDGE BECHHOEFER: Ideally when you set up
14 contentions, you would have used those phrases and you would
15 have mentioned the Reg Guide and the criteria.

16 MS. STANGLER: Right.

17 JUDGE BECHHOEFER: And you would have said the
18 criteria hasn't been satisfied or there hasn't been an
19 adequate showing that the criteria is satisfied, in terms of
20 how to write a contention.

21 MS. STANGLER: Right. We are lay people and I
22 admit that we are general public, and I'm sorry that we
23 didn't do that. This is a very difficult task for myself
24 personally to digest, all this technical information, but I
25 do feel I have an understanding of it, it didn't happen

1 overnight, I've been studying this. It takes awhile to
2 really understand this and I just must be honest in saying
3 that I did the best I could when we had to file the
4 contentions.

5 JUDGE BECHHOEFER: Do we have -- did the applicant
6 want to respond at all to B and C?

7 MR. DOMBY: I want to --

8 JUDGE BECHHOEFER: Collectively.

9 MR. DOMBY: I'll let our brief speak to that
10 issue.

11 I would say, however, Your Honor, I certainly find
12 it incredible that this Board would read 2-B and 2-C and
13 believe that it contemplates an issue of sufficient time, as
14 these contentions were filed.

15 MR. BARTH: As they're filed, Your Honor -- of
16 course in our view, they fall within Catawba, ALAB 687,
17 which clearly says that vague generalizations just cannot
18 come in.

19 I then ask you to look at the contention and look
20 at the two amendments granted by the NRC. The matter of
21 operating error has no part of either amendment for either
22 Vogtle facility. There should be no way that anyone could
23 ever jump from bypassing the trip that does make this
24 generator more available in emergency than it was before, to
25 operator error. I don't see how that can be bridged.

1 MS. CARROLL: But when you bypass the switch, to
2 replace that you put an operator in its place of the
3 automatic switch, so to me that ties it.

4 MR. BARTH: I do not respond to comments by other
5 counsel but I will say this at this time, when you bypass
6 that switch, the thing runs, it doesn't stop because of any
7 spurious or actual temperature reading. If it runs, that's
8 good, not bad. There's no expert opinion that operating
9 this diesel generator during an emergency is bad. That's
10 what we need in order to have some kind of contention.

11 The staff was wrong. If you operate this in an
12 emergency, and have electricity flowing to all the safety
13 systems so the thing is safe, that's bad -- that's the kind
14 of expert testimony the regulations require they present.
15 Not at this time, but 15 days ago. Not with a name today,
16 but with a name then with his expertise spelled out and what
17 he's going to say. He's got to show this is bad in order to
18 fix this plant so that it's better. They failed to do so,
19 this is no time to amend this. I think that 2.714(a)(1)(i)
20 through (v) prohibits any kind of change at this time.

21 Operator error is ten to the minus six away from
22 the amendments which we approved, Your Honor, which the
23 power company applied.

24 JUDGE BECHHOEFER: The amendment does make more
25 use of operators than if you hadn't done the amendment.

1 MR. BARTH: The question before Your Honor is if
2 the Licensing Board leaves this amendment intact so the high
3 jacket water temperature switch is bypassed in an emergency,
4 and that generator runs during an emergency, is that better
5 than having a trip off and the thing doesn't run in an
6 emergency? That's your question, it is a very, very narrow
7 question. It has nothing to do with analyzing diesels or
8 operator error or anything else. That's the question before
9 us.

10 We have wandered far from it and I hope that we'll
11 get back to what is before us -- is the staff correct that
12 it's better to operate this in an emergency than not.
13 That's the question before you. It's not a question of
14 operator error or meltdowns or anything else.

15 JUDGE BECHHOEFER: Yeah, but I think the question
16 before us is does this make it operate better in an
17 emergency. Is it better to overheat and shut down for that
18 reason or to have a proper test and --

19 MR. BARTH: That's not the amendment. Tests had
20 nothing to do with it, Your Honor, operate during an
21 emergency -- when they turn it on for an emergency, not
22 testing.

23 JUDGE BECHHOEFER: Testing to see if it'll work.

24 MR. BARTH: I don't care about that, Your Honor.
25 The question is when an emergency comes and they need power

1 to operate this darn thing with the switches bypassed, is
2 that better than having the thing maybe have a switch with a
3 little bit of dust -- these are pneumatic switches and it
4 trips off -- is it better to operate this thing, regardless
5 of what happens, in an emergency than not. That's the
6 question.

7 JUDGE LUEBKE: But in 11 other plants it does work
8 -- ten other plants.

9 MR. BARTH: They haven't that as a basis of a
10 contention, they have presented no facts to that. That's
11 irrelevant, Dr. Luebke, as a matter of law.

12 JUDGE BECHHOEFER: Well that's not the question.

13 MR. BARTH: The question before you --

14 JUDGE BECHHOEFER: It's pretty specific -- it's
15 pretty specific.

16 MR. BARTH: I beg your pardon?

17 JUDGE BECHHOEFER: It's a pretty specific
18 reference.

19 MR. BARTH: It's a specific reference. it is not
20 the answer to the question before you. Dr. Luebke is the
21 expert in this whole field. It is better for the public
22 health and safety to run this thing when you've got an
23 emergency -- it's that simple.

24 I would be horrified if we said half this thing
25 shut down in an emergency --

1 JUDGE LUEBKE: It'd have to run a long time, not
2 just ten seconds or one minute.

3 MR. BARTH: That's right, that's what happened
4 when the switch was attached to the thing, it shut down
5 after 30 seconds. What the staff wants is this thing to
6 operate. We want this darned thing to operate in an
7 emergency.

8 JUDGE BECHHOEFER: But maybe the answer is if the
9 switches are installed properly it will operate, and I can
10 show you some support --

11 MR. BARTH: There's no allegation that the
12 switches weren't properly installed, that's strange to us.

13 JUDGE BECHHOEFER: One has just been made.

14 MR. BARTH: Well the court is not an intervenor
15 here.

16 JUDGE BECHHOEFER: No, I realize that, but it's
17 inherent, it's stated, it's reflected in this document.

18 MR. BARTH: I differ with you on this, Your Honor.
19 It was not raised by the intervenors --

20 JUDGE BECHHOEFER: That is isn't, the document is,
21 and I read the document.

22 MR. DOMBY: If I may as the Board, what is the
23 legal basis for this particular contention? Could the Board
24 please inquire of GANE what is the legal basis for this
25 contention?

1 JUDGE BECHHOEFER: Well I think the petitioners
2 probably can't explain the legal basis. If you think you
3 can, please do, but my guess is that they're not lawyers and
4 they won't be able to explain the technical basis.

5 MR. DOMBY: Well let me rephrase it. What non-
6 compliance with regulations or what commitment that the
7 licensee has does GANE allege that we're not complying with?

8 JUDGE BECHHOEFER: GANE alleges that the operators
9 don't have sufficient time, contrary to the Reg Guide --
10 that's what they just said. That would be the legal basis
11 They haven't said it in its very clear words here, but
12 that's what they said they intended to say. And that
13 probably would be a legal basis.

14 MR. DOMBY: I certainly heard Your Honor express a
15 legal basis.

16 JUDGE BECHHOEFER: That's what they just said, so
17 anyhow let's go on to D which is the one where they
18 specifically cited NUREG 1410 and they cited the section
19 that includes the statistics that I read from a little
20 earlier, that's Appendix I -- they have cited that.

21 They've supported the fact -- they've supported at
22 least a claim that the plant operating experience, which are
23 words taken from the application, shows that there have been
24 problems in the past. And I believe Appendix I does
25 constitute a valid basis for that claim.

1 Now whether what they contend and what they seek
2 is proper, it's proper if they can show that correcting the
3 failings, such as they may be -- and I've found a number of
4 these in the NUREG -- would improve performance to the
5 degree that you wouldn't have trips. Those are the
6 installation problems that I referred to. There's one very
7 damning sentence in this NUREG, which shows some improper
8 practices, in my view. It may not be proven, but it's at
9 least this team's belief, and that's some of the things that
10 trouble us as a Board, when we see some what we consider
11 really safety problems with the proposed change.

12 I might as well specifically refer to it as it
13 appears on page 3-21 of the report -- one of the examples,
14 probably the most pronounced. It says "The sensor
15 malfunctions appear to have been caused by the presence of
16 foreign material, i. e., pipe thread sealant and thread
17 spalls, that affected sensor internal moving parts." That
18 is caused by improper installation, in my view at least, and
19 I've got some technical support here, of the sensors. In
20 other words, if they were installed right, you wouldn't have
21 the malfunctions.

22 MR. DOMBY: Your Honor, isn't the subject matter
23 noticed and the issue before this Board the question of
24 whether or not these switches may be safely bypassed, and
25 not the myriad of alternatives that might have been or ought

1 to have been, but rather what the licensee -- what the
2 applicants are proposing is permitted and is safe?

3 JUDGE BECHHOEFER: Well both the application and
4 the staff review indicate that there's a certain increased
5 risk which they claim is then offset by these other things,
6 but the increased risk is there, caused by bypassing.

7 MR. BARTH: We concur with the statement of
8 counsel, Your Honor, as to what's framed. In regard to your
9 last comment, that risk that is additional is not a risk
10 because of the installation of the trip switches.

11 JUDGE BECHHOEFER: No, it's a risk of -- you're
12 talking about the risk of bypassing.

13 MR. BARTH: You said that the staff report says
14 that there may be additional risk.

15 JUDGE BECHHOEFER: Because of bypassing -- because
16 of bypassing.

17 MR. BARTH: We're jumping all over everywhere. The
18 matter was whether or not the switch was properly installed
19 and whether or not there were other alternatives. That's
20 what I thought we were addressing and your next statement
21 was that the staff's report shows that there's additional
22 risk. That additional risk is not because of installation of
23 the switches.

24 JUDGE BECHHOEFER: Yes, it was, that's exactly
25 what the staff report says, that's what the applicant's

1 application concedes.

2 JUDGE CARPENTER: Mr. Barth, did you mean to say
3 installation of the switches?

4 MR. BARTH: I thought that's what we were
5 discussing.

6 JUDGE BECHHOEFER: I'm talking about bypassing
7 now. The question I was responding to is why do we consider
8 alternatives of bypassing. If bypassing causes additional
9 risk, then we have, I think, authority to see if doing
10 something else causes less risk.

11 JUDGE LUEBKE: And the something else is rather
12 simple -- clean out the junk.

13 MR. BARTH: Well that's an assumption made without
14 any kind of basis in fact whatsoever by any experts. That's
15 just a --

16 JUDGE BECHHOEFER: Experts did not prepare this
17 NUREG, I take it. You know, this NUREG is fairly basic and
18 it wasn't even referenced by the applicant at all --
19 applicants at all. And it was only peripherally referenced
20 by Mr. Matthews.

21 MR. BARTH: That's because we felt and still feel
22 that it's not relevant to the issue of whether bypassing the
23 switches makes the availability in an emergency greater.

24 JUDGE BECHHOEFER: I think we may have some
25 disagreement as to relevance but this is also a report that

1 the intervenor petitioners have relied on, and so that we
2 have some obligation at least to look at it, to see what it
3 says.

4 MR. BARTH: Your Honor, the text of the contention
5 as submitted only states that there may be difficulties with
6 these switches. If you take a look at the wording of the
7 text itself of the contention, "The applicants have had
8 difficulties getting the jacket water high temperature
9 sensor to function." On that basis, you expect us and the
10 power company to come in here with experts and contest how
11 these things are mounted, how they're maintained, what the
12 surveillance of these switches is? The only question is does
13 it make the generator more available in an emergency. This
14 general reference in the text of the contention as submitted
15 is only a vague generalization. It does not have any kind
16 of particularity or basis for the contention, Your Honor.

17 JUDGE BECHHOEFER: Right. Well the specific
18 portion which was basis, was the past history. That's
19 specifically referred to. Appendix I is about two pages
20 long or three pages long, five pages long -- at the very
21 least, that is a specific enough reference to that. I agree
22 that they have not referred to them in all the other matters
23 that we think it may be relevant to, and that may be a
24 problem or it may not be a problem, but Appendix I is
25 specifically referenced.

1 MS. YOUNG: Judge Bechnoefer, aren't you reading
2 something more in the contention than what's stated? That's
3 the difficulty staff has. For example, intervenors were
4 under an obligation to put us on notice what their concerns
5 were by drafting their contentions. The contention, as Mr.
6 Barth pointed out, simply states that plant operating
7 experience shows they've had difficulty in getting the
8 sensor to function. That's the only reason that that NUREG
9 is cited in that contention. So how is the staff to read a
10 different basis. Why even should this Board read a
11 different basis than what the intervenors themselves alleged
12 in their pleading?

13 JUDGE BECHHOEFER: Well then it goes on to what
14 they contend should happen.

15 MS. YOUNG: But do they cite to the NUREG for that
16 second proposition, for example?

17 JUDGE BECHHOEFER: No, they don't. They perhaps
18 should but --

19 MS. YOUNG: Why does that contention have basis,
20 why should they be allowed to do a late amendment of their
21 petition at this stage?

22 JUDGE BECHHOEFER: Because our -- we haven't
23 decided whether they should be allowed or not, but if
24 there's a strong public health and safety question raised --
25 and there may well be -- we think that maybe certain

1 technicalities should be dispensed with to permit the
2 question to be raised. Otherwise, it get buried, the
3 amendment is granted and nobody will ever listen to it.
4 It's the only way it can be subject to review. Do you want
5 us to write the Commission and say we find the staff
6 seriously misunderstood or misapplied the regulations and
7 gave it a pro forma approval without any serious
8 consideration? We think you should look at this, this and
9 this -- I could list 50 places that we think should be
10 addressed. Do you want us to write that to the Commission?

11 MR. BARTH: As counsel for the staff, Your Honor,
12 I think it would be preferable and better if the Board has
13 serious safety questions, to write to the Commission, as
14 Judge Smith has done in the past, to express concerns, --

15 JUDGE BECHHOEFER: I've done it myself in the
16 past.

17 MR. BARTH: -- rather than amend the petition to
18 intervene at this stage for the petitioners. I think that
19 the Board's attempt to amend that petition to assuage its
20 own concerns may transgress the function which we are here
21 to do. If you have concerns, this has been done in the
22 past.

23 JUDGE BECHHOEFER: I've done it.

24 MR. BARTH: I have no objection to that procedure.
25 But to use this hearing vehicle to assuage your own

1 concerns, I think is improper, Your Honor.

2 MR. DOMBY: Your Honor, as you review this, as the
3 Board reviews this, I would ask you to duly consider the
4 question as to whether or not this is the appropriate forum
5 to address individual concerns. The applicant is in a
6 situation here where it of course is going to have to spend
7 considerable sums of money and attention, to the extent that
8 this process goes forward, and there are alternative
9 avenues. And I do not think that, you know, aggressive
10 rephrasing of contentions is the proper approach for this
11 particular Board and would do prejudice to the applicants.

12 JUDGE BECHHOEFER: Let's go on to number 2-E. I
13 think we have an obligation to go over each contention,
14 there are past decisions to that effect. And even though I
15 expect --though I haven't read your briefs -- the objections
16 are going to be in a sense similar.

17 My question to the petitioners on E is, is there
18 anything different in E from what they are now saying B and
19 C means. That's the adequacy of whether the operators can
20 react to any changes. E looks like it's -- and perhaps F
21 too, E and F seem to be pretty much the same in that
22 respect.

23 MS. STANGLER: Well we are concerned about the
24 operator, we definitely are concerned about operators, but
25 we're also concerned about the generator overheating in E, F

1 and G. We're concerned that if there's not a sensor, if
2 it's not told automatically that it's overheating then it
3 shuts down complete, never to be restarted, even manually.
4 So those three have to do -- E, F and G have to do with
5 overheating.

6 JUDGE BECHHOEFER: Oh, okay.

7 MS. STANGLER: As well as operator ability. My
8 question is like on E -- well on all of them -- I mean what
9 are you going to do, what is Georgia Power going to do if it
10 overheats? I mean if there's an operator sitting there
11 looking at it, it's like watching grass grow, you know, the
12 thing is humming along and all of a sudden he smells
13 something and maybe he figures it's overheating or
14 something. What's he going to do, is he going to pull the
15 plug? There's no indication from Georgia Power as to what's
16 going to happen if that does overheat, because it's not
17 going to shut down automatically. Is that operator going to
18 know what to do?

19 JUDGE LUEBKE: Normally that would be in written
20 procedures, would it not?

21 MR. DOMBY: Established practice, written
22 procedures, yes, sir.

23 The Board has just been asked a series of
24 questions that really are part and parcel of discovery, not
25 part and parcel of allowing the contention.

1 JUDGE CARPENTER: Well I'm amazed that you think
2 it's unreasonable to assume a person is aware of the fact
3 that the generator is overheating wouldn't turn the
4 generator off, shut it down.

5 MR. BARTH: Dr. Carpenter, the need is for
6 electricity, we're going to run this thing until it burns
7 out. I'm not amazed at all. It's just like the cavitation
8 of the restart pumps. You get cavitation, the agency
9 position now is to keep that core covered. If you need
10 electricity and this thing overheats, it'll run until it
11 burns out. No question of that. Safety is the ultimate
12 goal.

13 MS. STANGLER: Are you addressing that question to
14 me?

15 JUDGE CARPENTER: Yes.

16 MS. STANGLER: I'm amazed that I think --

17 JUDGE CARPENTER: That the operator wouldn't do
18 something.

19 MS. STANGLER: -- the operator wouldn't know what
20 to do?

21 JUDGE CARPENTER: Yes.

22 MS. STANGLER: You know, your own report said --
23 and I'm sorry I cannot quote the page or anything, but I
24 suspect it's the true thing and it's taken from your report,
25 it's in quotes, the NRC reports, quote, "The licensed and

1 non-licensed operators and the plant engineers did not
2 understand the operation of the diesel generator under
3 abnormal conditions." We're talking about a Site II
4 emergency. I mean all hell is breaking loose. We don't
5 know if you've got a 20 year old guy down there watching
6 this generator, because all the big guys are doing all the
7 other stuff. And we don't know if this 20 year old is going
8 to know how to pull the plug or turn it off. I mean I am
9 really concerned about it because we are talking an
10 emergency and an abnormal situation. And we're talking about
11 maybe the lights aren't even on, you know. We're talking
12 about phone communication being down, we're talking about
13 they don't have walkie talkies to --

14 JUDGE BECHHOEFER: Let me ask you, why is that
15 different from anything you said under B and C?

16 MS. STANGLER: Okay, well I'm sorry, maybe it's an
17 over-elaboration.

18 JUDGE BECHHOEFER: We're trying to consider --

19 MR. DOMPY: For what it's worth, Your Honor, I
20 believe that what's being articulated is associated with B
21 and C. Is that's going to help.

22 MS. STANGLER: It is, but -- okay, well --

23 JUDGE BECHHOEFER: Well I mean the question is,
24 you've got lots of contentions here and we have to decide
25 whether any of them meet the criteria and if several of them

1 are --

2 JUDGE LUEBKE: I don't think you cited thi
3 quotation for the record. Could you state the citation for
4 the record?

5 MS. STANGLER: Would you like me to repeat it?

6 JUDGE LUEBKE: Oh, no, not again.

7 MS. STANGLER: Did I cite it for the record?

8 JUDGE LUEBKE: Page or something.

9 MS. STANGLER: No. I didn't.

10 JUDGE LUEBKE: Oh, you don't have it.

11 MS. CARROLL: I would however though while we're
12 talking about the operators, I think it is important and I
13 can be specific in the executive summary, in Section 1 on
14 page 1-4, it discusses that the Vogtle staff experienced
15 communication problems during the incident, which would
16 speak to whether they have time to react appropriately is
17 dependent on communication being good and complete to the
18 operator that needs to go and watch the generator. Also, on
19 the third paragraph -- that was in the first paragraph under
20 Command Controls and Communication of Emergency Activities --
21 -- and in the third paragraph it says that there was some
22 difficulty controlling emergency activities and goes on to
23 cite communication errors involving people being told to do
24 one thing by one guy and then pulled off the job by another
25 guy.

1 And also, if you have an emergency situation and
2 you've got an emergency generator between you and a blackout
3 and it's overheating, what a lousy choice -- pull the plug
4 or turn the generator off and leave the plant without power.
5 So I think it is a legitimate question, is one guy -- does
6 he have that on him, to sit there and decide whether to let
7 the plant go or the generator go? It's a lousy choice.

8 MR. DOMBY: With respect to E, F and G, I notice
9 that in each of those subcontentions, contentions, there is
10 a discussion of warning or forewarned or indication. I
11 think this points out the need for factual basis pleading
12 with particularity as required by the rules, that if GANE
13 has a basis for discounting, disbelieving, otherwise
14 disregarding the representations made by both the staff and
15 the applicant relative to whether or not there are warnings,
16 that it should be stated now on the record.

17 JUDGE LUEBKE: I don't remember these things being
18 well explained in the application.

19 MR. DOMBY: With regard to which, Judge?

20 JUDGE LUEBKE: That you submitted to the staff to
21 get this amendment in.

22 MR. DOMBY: I believe the record does state that
23 local as well as control room indications --

24 JUDGE LUEBKE: Sort of one sentence.

25 MR. DOMBY: Yes, sir, but the -- this is sort of

1 one sentence too, assuming that there is not forewarning or
2 warning or indication.

3 MS. CARROLL: Well that was --

4 MR. DOMBY: But again, at this stage, it is for
5 the intervenors to give a factual basis that is absent here,
6 relative to disputing what is in the application. If they
7 have an expert that believes there are no control room
8 alarms or no local alarms, where is that expert, where is
9 that document?

10 JUDGE ~~LEWIS~~: He'd have to know quite a bit about
11 your plant, wouldn't he?

12 MR. DOMBY: That's right. There has to be some
13 factual basis, Your Honor.

14 MS. CARROLL: They do exist?

15 MR. RUSHTON: Yes.

16 MS. CARROLL: I wasn't sure about that. Earlier
17 today when I mentioned that Mr. Brockman talked about the
18 operator being sent down there, there still is an alarm on
19 the generator that will sound saying I'm overheating, turn
20 me off. Which is lousy, because then you leave Plant Vogtle
21 without power and that's lousy.

22 JUDGE CARPENTER: Nobody says it has to stay off.
23 A man might find why there wasn't any cooling water and turn
24 it back on.

25 MS. CARROLL: Shouldn't we find that out now

1 before there's an emergency. That's what we want, that's
2 what we've called for repeatedly.

3 JUDGE CARPENTER: That's a conclusion.

4 MS. CARROLL: Repeatedly we say where is your
5 information. You say we aren't providing the information to
6 show you're wrong, but we think it's on the people that
7 proposed the change, have a license to operate a nuclear
8 plant safely, to show us that this is safe. And they
9 haven't done that, that's not in the record. There's no
10 data, there's no analysis.

11 JUDGE CARPENTER: We're out of the contention
12 we're talking about now.

13 MR. DOMBY: In the future, a call to the
14 applicants would probably be a better basis for answering
15 questions than filing contentions.

16 MS. CARROLL: What would be a better basis?

17 MR. DOMBY: A call to the applicants.

18 MR. BARTH: Telephone call that is.

19 MS. CARROLL: Well I called, it confused me
20 further apparently.

21 JUDGE BECHHOEFER: Let's go to number 3. Is the
22 contention here that --

23 MR. DOMBY: Your Honor, if I may --

24 JUDGE BECHHOEFER: Yes.

25 MR. DOMBY: -- could you ask the intervenors what

1 the contention is rather than articulating it as you would
2 rewrite it? With due respect.

3 JUDGE BECHHOEFER: Yeah, I guess so. Well I was
4 going to essentially ask what was the contention here and
5 what do you want -- what kind of a ruling would you want on
6 a contention of this sort?

7 MS. CARROLL: Our contention is that it's real
8 crummy when the generator trips off 70 seconds into
9 operation repeatedly and you have to manually restart it.
10 It's real crummy if it overheats and it's not available at
11 all and you've got a station blackout.

12 Now we would point to David Matthews' statement
13 that it's not even conclusive -- the NRC report, as thick
14 and wonderful as it is, wasn't definite that the switch that
15 they're bypassing in order to make it more reliable was
16 actually the problem. It is still inconclusive. An
17 analysis, we would hope, would make us know precisely what's
18 what and I'm not going to guess what that would lead us to.
19 I will tell you that based on past history, we didn't even
20 want a TDI brand of generator to begin with. I will tell
21 you that my expert doesn't -- he does agree with that, but
22 he says given that you have one, it can be fixed, but you
23 need to analyze it to find out what's really wrong. That
24 switch shouldn't be failing, it could be something else in
25 there at one of the systems that is the failure of the

1 switch. And Georgia Power should want very much to know
2 what's wrong with the generator, I think. I mean -- I won't
3 talk too much here, we all have places to be. But anyway it
4 is Item 4 on page 4 of David Matthews' affidavit, about two-
5 thirds of the way down in Item 4, it says what I read
6 earlier, "On March 20, 1990 the root cause for the Unit 1 A
7 EDG trip is believed" -- not conclusive -- "to be
8 intermittent actuation or failure of two out of the three
9 sensors.

10 So you know, we think Georgia Power shouldn't be
11 hauling off to do some concrete action based on inclusive
12 evidence.

13 I answered your question. That was contention 3.
14 Thank you, Your Honor.

15 JUDGE BECHHOEFER: Any further comments beyond
16 briefs?

17 MR. BARTH: Yes, Your Honor. We disagree with the
18 Licensing Board and the applicant, we don't need to ask what
19 the contention is. Let me read it to you. "GANE contends
20 reliability will be decreased since the diesel generator can
21 overheat while on automatic trip." That's the contention
22 which is in 3. The rest of it is chaff that goes around it.
23 They have no expert to support this, they have no statement
24 of facts to support this, they did not proffer any kind of
25 testimony or indicate what testimony there would be at

1 hearing to prove this, and therefore under the Commission's
2 rules, it has to be denied.

3 And second, I would appreciate, if they're going
4 to cite David Matthews in support, I would appreciate if
5 they would cite where in the affidavit this appears.

6 MS. CARROLL: I did, it's in 4 on page 4.

7 MR. DOMBY: The only observation that the
8 applicants have in addition to what is in the brief is GANE
9 makes the factual statement, assumedly backed up by some
10 expert's opinion that they agree the bypass will permit the
11 generator to run with less risk of shutting down as Georgia
12 Power states now occurs. Basically GANE has admitted that
13 the bypass will permit the generator to run with less risk
14 of shutting down, and we would like you to note that for the
15 record, so that that need not be a factual matter that will
16 be in dispute in the future.

17 MR. BARTH: We would not like you to note it for
18 the record, Your Honor, we'd like you to make a decision on
19 that basis and dismiss the proceeding, since they concur
20 basically with the staff's SER in the issuance of the
21 amendments.

22 MS. CARROLL: It's a shame that we're against each
23 other and that we aren't all working together to make Plant
24 Vogtle safe, but that we just blindly defend anything. If
25 the other person says white, then it's our job to say black,

1 and that's not always productive.

2 JUDGE BECHHOEFER: In getting -- I guess we're
3 through with 3 now -- getting into 4, the Board, first of
4 all, thinks that the second sentence of that application
5 does not explain who determined it. We think that's
6 irrelevant. Georgia Power determined it, we don't think
7 that -- they have their own personnel procedures and
8 practices and I'm not sure it matters who made the decision.
9 So that part I don't think we -- I mean we agree that they
10 made a determination but it's the determination of a company
11 to make. So I don't think we have -- unless somebody
12 disagrees with me, but it's our initial view that the second
13 sentence of the first allegation really doesn't make much
14 different, it's sort of irrelevant to whether the -- but the
15 latter sentence. Let's talk about it in terms of the first
16 and last sentences. The first sentence in two regards,
17 should be dropped, one of which is irrelevant and the second
18 one, let's discuss that.

19 In that one, what is -- could you explain that?
20 Are you incorporating there what you talked about earlier as
21 the lack of analysis, that kind of thing? Because if this
22 is the same as you were trying to allege in others, we again
23 wouldn't have to consider it.

24 MR. BARTH: He's asking is it redundant.

25 JUDGE BECHHOEFER: Is it redundant, right, because

1 we only have to say things a certain amount of times.

2 MS. CARROLL: Well the way y'all are picking
3 everything apart, now that it stands as one lonely sentence
4 asking if you would throw another one out based on a paring
5 of two sentences of which you don't like one, then I would
6 ask that -- we think an analysis is in order here and this
7 is what we're contending every which way to Sunday, is show
8 us your data. So you're correct, we have asked that and we
9 probably are asking it again in 5 and 6.

10 JUDGE BECHHOEFER: In a slightly different way.

11 MR. BARTH: I ask your indulgence, Your Honor, I
12 don't find the word "analysis" in contention 4, I'm lost.

13 MS. STANGLER: Empirical data.

14 JUDGE BECHHOEFER: Empirical data.

15 MR. BARTH: I know what that is.

16 MS. STANGLER: That's what we're asking for and
17 have asked for before. We haven't seen any empirical data.

18 MR. BARTH: What empirical data?

19 MS. STANGLER: That shows us that this is safer to
20 bypass the switch and that the switch is the real problem of
21 all of this. We haven't seen any data. I mean NRC rules
22 are that in this diesel generator there's all these switches
23 and they can all be bypassed in an accident or emergency
24 situation except for four.

25 JUDGE LUEBKE: Did you see this phrase in what the

1 applicant put in the application or what the staff put in
2 their safety evaluation?

3 MS. STANGLER: I've seen it all over.

4 JUDGE LUEBKE: Oh, you have seen it, all right.

5 MS. STANGLER: It's the NRC regulations. And so
6 to pull out --

7 JUDGE LUEBKE: I just wanted to be sure that you
8 had seen it.

9 MS. STANGLER: Oh, I've seen it a million times,
10 and you know, to pull out that one thing of the high jacket
11 water level switch and to say well we're just going to
12 bypass that, I think that really needs to be questioned.
13 And we want to have the empirical data to show why -- the
14 basis behind all of that. We know that it's failing, we
15 know that it has failed 66 times, but we want to understand
16 why it's failing and why it can't be fixed.

17 MR. DOMBY: This is a call for discovery, Your
18 Honor, this isn't a contention.

19 MR. BARTH: Well also a call for other remedies
20 above and beyond what is before us, which is whether or not
21 to bypass the switch, do something else.

22 JUDGE BECHHOEFER: Well again, if bypassing the
23 switch creates a greater risk or hazard or whatever you want
24 to
25 call it, than does some other approach and if it's

1 unwarranted, then it should be denied. Can't force the
2 other one, but maybe you can deny this one. So that's --

3 MR. DOMBY: I think Your Honor just put his finger
4 on a very good point. This Board can deny this request and
5 may not order another alternative.

6 JUDGE BECHHOEFER: That's right.

7 MR. DOMBY: I think that also goes to whether or
8 not we have a contention validly before this Board. To ask
9 this Board to ask questions and go well outside the specific
10 subject matter before the Board is basically outside the
11 jurisdiction of this Board.

12 JUDGE BECHHOEFER: Well I'm not sure that's so
13 because these are -- we have an obligation to make sure we
14 understand what's being asserted.

15 MR. DOMBY: Yes, sir.

16 JUDGE BECHHOEFER: And to make sure that they
17 either do or do not address the amendment, the particular
18 amendment that is in issue. So all I'm saying is we can't
19 order an alternative. If we issue a decision saying this
20 creates a hazard, but by the way, if it were done in another
21 way it wouldn't create a hazard, we can't force it but maybe
22 we can inspire somebody to do it that way.

23 MR. BARTH: Your Honor, we're miles beyond the
24 contention which is that they don't explain the empirical
25 data that was the basis of its determination. And by the

1 way --

2 JUDGE BECHHOEFER: You don't have to explain -- if
3 you're alleging that certain -- and it may not be specific
4 enough, but if you're alleging that certain information,
5 important information, was left out of the application,
6 that's permissible type of contention. Perhaps you have to
7 explain --MR. BARTH: Your Honor, that puts no one on notice
8 of anything. The staff would not have responded to that, the
9 power company couldn't respond to that. This thing says
10 Georgia Power has not explained the empirical data which was
11 used. If what you're saying is that the staff did not
12 properly have information before it in the form of IEEE
13 standards and the NUREGs to authorize this amendment, that's
14 one thing. That's not the contention.

15 JUDGE BECHHOEFER: That's not stated, but maybe
16 that is the contention.

17 MR. BARTH: Your Honor, I don't intent to rewrite
18 this for these people. I'm looking for contentions now
19 written, they do not describe what empirical data the power
20 company should have submitted to the NRC. They have not
21 provided an expert with qualifications to say they should
22 have done this, it was necessary. They have not described
23 what that information would be. They have not stated what
24 they would testify to at a hearing if a hearing ever came
25 regarding that information. This contention is just not

1 authorized by the Commission's 2.714(2) regulations --
2 (2)(v).

3 JUDGE LUEBKE: What they say is the phrase is used
4 in the staff writing and in the applicant writing without
5 expansion.

6 MR. BARTH: Doctor, it seems odd -- there would
7 almost seem to be bickering when you seem to be so much on
8 my side. The Commission says you have to cite that portion
9 of the applicant's application to which they refer. They
10 don't. If they did, we've have some idea what they're
11 talking about. All I do is sit here and talk and it seems
12 to me all you do is support me. We have no idea what
13 empirical data in the applicant's application is missing.
14 They haven't cited the applicant's application. They are
15 required -- they're not suggested, it's not a "may" or a
16 "will", it's a "must".

17 JUDGE LUEBKE: I guess we didn't see it either.

18 MR. BARTH: Thank you, Your Honor.

19 JUDGE LUEBKE: Not in detail, we didn't.

20 JUDGE BECHHOEFER: No, we didn't, that's correct.

21 Let's take a quick break and come back for the
22 last two.

23 (A short recess was taken.)

24 JUDGE BECHHOEFER: We're going now to number 5.

25 The question I raise, is there any requirement that you know

1 about that calls for automatic redundancy and also does this
2 have anything to do with the trip, the availability of a
3 trip.

4 MS. CARROLL: No, I'm not aware of a requirement
5 that calls for an automatic trip. I actually believe that
6 came with the generator in question. Not all generators in
7 all plants perhaps have automatic trip.

8 JUDGE BECHHOEFER: Well what do you mean by
9 automatic redundancy? Do you mean two trips?

10 MS. CARROLL: Right. We thought it would be nice
11 to prevent the engine from overheating, if there as another
12 -- if there was a backup. Say there were three switches, so
13 that you would protect that generator. If one switch
14 failed, the second switch would come into bear. And there's
15 nothing that they can call back on, but rather use an
16 operator's judgment.

17 JUDGE BECHHOEFER: But this has nothing to do with
18 bypassing, as far as I can see -- or does it?

19 MS. CARROLL: The switch being automatic is the
20 reference there, that when you take the automatic switch
21 off, there is no other automatic device to shut down the
22 generator. And no, I'm not aware of an NRC regulation that
23 says there must be an automatic device to shut down the
24 generator.

25 JUDGE CARPENTER: You said there's no contention.

1 MS. CARROLL: I guess so, although if you scratch
2 sentence one and you look at sentence two, I would say that
3 David Matthews has said that there is a possibility that the
4 engine will overheat and that's not --

5 JUDGE BECHHOEFER: But that wouldn't be part of
6 this contention so much in terms of the trip. You have said
7 that elsewhere too -- I mean the possibility of the engine
8 overheating is mentioned elsewhere in your contentions, and
9 I was just trying to figure out what's in this one that
10 wasn't in others or that's in this one that relates to the
11 trip.

12 MS. CARROLL: Well I think, as you say, the
13 possibility of the generator engine overheating is stated
14 elsewhere and, as I said, I can't cite any regulation that
15 demands that there be an automatic redundancy.

16 JUDGE BECHHOEFER. Do the applicant and staff have
17 further comments on that one?

18 MR. DOMBY: No, Your Honor, we'll rely on our
19 brief.

20 JUDGE BECHHOEFER: Okay.

21 MR. BARTH: Same for us, Your Honor.

22 JUDGE BECHHOEFER: Okay, let's go to number 6
23 which is the last one. Is this statement any different from
24 the general statements that you have mentioned before when
25 you mentioned your experts? This is one you said was

1 supported by one of your experts.

2 MS. CARROLL: Right. I just reiterate all of the
3 experts that we talked to said that the bypass in question
4 shouldn't be permitted, based on the data that we see, which
5 is nothing -- that there should be analysis showing that by
6 changing the -- working that generator differently than it
7 was designed to work, that that's okay. We would like to
8 see that. And again, I believe that's stated fully
9 elsewhere -- or not. I'm baffled, I admit it.

10 JUDGE BECHHOEFER: Do the applicants, first, have
11 any comments on this one?

12 MR. DOMBY: Other than the fact, as pointed out in
13 our brief, that nowhere is it indicated in this contention,
14 the specific manner in the analysis that GANE finds fault
15 with, and what analysis would be sufficient and what would
16 be the alternative result of a better analysis. This, we
17 feel, is nothing more than again a request for discovery as
18 opposed to a contention.

19 MR. BARTH: We'll rely upon our brief, Your Honor.

20 JUDGE BECHHOEFER: Okay. With that, I believe
21 we've gotten through all the contentions.

22 As of this time, we have reached no decision at
23 all on any of the contentions. We will do that in an order,
24 ruling, that we will issue from back in Washington. We
25 would like to get something -- if we should authorize any

1 contention at all, we would like to know what kind of
2 discovery would be appropriate, in terms of timing and all
3 that. This is purely hypothetical. There may be no
4 contentions at all admitted, but if a contention were
5 admitted, certainly a few of these that we've described
6 clearly won't be, but some other ones where there's still a
7 possibility -- what kind of discovery do you think you would
8 need? Because I think we have to get some sort of a time
9 frame and know exactly what you would be -- what you would
10 need, how much time, et cetera.

11 MR. BARTH: I assume you're not addressing the
12 staff in this request, are you? Because we have no names,
13 no facts, no nothing, so we don't know what we can discover.
14 So count us out for any kind of time table.

15 JUDGE BECHHOEFER: Oh, yes, yes, you won't know
16 until the contentions -- they won't know until the
17 contentions, but they have some idea what their -- what kind
18 of discovery they might need or they should have some sort
19 of idea, assuming all of their contentions, other than the
20 ones that we've already said are not appropriate -- but
21 assuming all of them were admitted, how much discovery do
22 you think you would need in terms of time to ask -- to pose
23 interrogatories, get responses, take depositions, et cetera?

24 MR. DOMBY: Your Honor, perhaps if I may, it seems
25 that perhaps all of us, all the parties to this proceeding,

1 would like to have fuller knowledge as to the scope of the
2 contentions before they would -- if any -- before they could
3 give an indication. Perhaps we could convene a conference
4 call with the parties of record and set a schedule. I would
5 think that that would be pretty expeditious.

6 JUDGE BECHHOEFER: Yeah, I guess we could do that.
7 We just wanted some general guidelines, but I don't know
8 that we're going to approve anything.

9 MS. STANGLER: Are you asking for that now?

10 JUDGE BECHHOEFER: If you had any idea.

11 MS. STANGLER: You're asking for time, like how
12 much time would we need to develop the discovery and the
13 questions and all of that.

14 JUDGE BECHHOEFER: Right, although I guess it's
15 perhaps better maybe to wait until we rule on the
16 contentions.

17 I guess we have -- is there anything else formally
18 that the parties think -- or the participants -- think we
19 ought to consider? We have one or two other things that
20 we're going to mention, but before we get into that, is
21 there anything further that the parties or petitioners wish
22 to consider?

23 MR. BARTH: Not from the staff, Your Honor.

24 MS. CARROLL: Do you want us to supply the
25 information we had on hold, like that Steve guy's last name

1 and the things we cited in the NUREG 1410?

2 MR. DOMBY: Am I to understand that GANE has
3 stated that they don't know if Steve what's-this-guy's-name
4 supports any of these contentions? He simply --

5 MS. CARROLL: No, he does, but I don't have his
6 last name and the name of the company that he works for
7 because all I alluded to is the Reed Report guys and I can
8 supply that information, I just don't have it on my person.

9 JUDGE BECHHOEFER: I assume we should almost have
10 an affidavit saying that these people will not only support
11 the contention, but will help you develop it, before we --

12 MS. CARROLL: Would that be an option, to amend it
13 at this time? I actually thought that would be brought at a
14 hearing process.

15 JUDGE BECHHOEFER: No, that should have been part
16 of the earlier contentions, two weeks ago.

17 MR. DOMBY: I wholeheartedly agree to that, Your
18 Honor.

19 MS. CARROLL: I thought if we came in with the
20 facts and we were right, that if we merited a hearing, we'd
21 then need to formalize it further.

22 JUDGE BECHHOEFER: I had hoped we had spelled out
23 that you had to do really more than that, to establish a
24 contention, but --

25 JUDGE LUEBKE: The Chairman is saying you put it

1 in writing, you sign your name, you have it notarized and you
2 give all the parties at least a copy of it.

3 MR. BARTH: That will be nunc pro tunc 15 days
4 ago?

5 JUDGE BECHHOEFER: Well it might be but all the
6 parties would then still have to be given a chance to
7 respond in writing, I guess, to the adequacy of the
8 contentions if supplemented by experts' testimony. And you
9 ought to put something, at least a summary of the
10 qualifications of each of the experts as well.

11 MR. BARTH: Are you finding that they have good
12 cause to amend the petition at this time under 2.714(a),
13 Your Honor, under the factors (i) through (v)?

14 JUDGE LUEBKE: I think he is.

15 JUDGE BECHHOEFER: We think that there may well --

16 MR. BARTH: The only showing has been by the
17 Board, I remind you.

18 JUDGE BECHHOEFER: Pardon?

19 MR. BARTH: The only showing that we've had is by
20 the Board that this should be done.

21 JUDGE BECHHOEFER: Well that's correct but we're
22 also going --

23 JUDGE LUEBKE: Do you take exception?

24 MS. CARROLL: Of course.

25 MR. BARTH: I'd like to but under the practice we

1 have here in the agency, I can't do that. All exceptions
2 are preserved without the counsel speaking up.

3 JUDGE BECHHOEFER: Oh, of course.

4 If we should decide to admit GANE, I'm sure we'll
5 get at least one and probably two appeals, and of course
6 it's an appealable order. And if we disallow the
7 contentions, that's appealable -- if we disallow all of
8 them, not if we disallow one or two -- if we disallow all of
9 them, that too is appealable. So that's set forth in the
10 rules as well.

11 JUDGE LUEBKE: Tell them what you want them to do.

12 JUDGE BECHHOEFER: Yeah, I think a filing -- and
13 it should be very soon -- maybe giving some description of
14 the expertise and whoever you intend to rely on and a
15 statement better under affidavit that they will support you
16 -- that they not only helped you develop the contentions but
17 that they will support you in presenting it.

18 MS. CARROLL: Well as that goes, I already know
19 that Steve what's-his-name is hireable for a fee and we have
20 a budget of about \$2000 a year, so that's not an option. So
21 it would be a moot point then to supply you with his last
22 name. But he gave us information to get us this far but
23 he's not going to fly down here from Washington and take
24 lots of time with us, because we can't afford him.

25 And there is a possibility on the other guy who

1 has now revealed his identity, but I want to make it really
2 clear for the record as well, that the only thing that he
3 has said --he hasn't said he's for us or anything -- he says
4 we need an analysis. And I told him when I used his name
5 that I would make it clear that that was the only thing that
6 he said. He's drawing no conclusion because he hasn't got
7 anything, as you say, to base his conclusions on. So he
8 could be hired to do the analysis -- I'm sorry, I think I'm
9 bogging us down. I'll be quiet.

10 MR. DOMBY: Your Honor, is a prehearing conference
11 to instruct potential petitioners as to how to overcome the
12 gross deficiencies that we have in this situation? Now we
13 just heard GANE's representative saying that they do not
14 know whether or not they have an expert. The only thing
15 they know they have at this particular point in time, 60
16 days or more after the notice was first put in the Federal
17 Register is they have a NUREG that they cite. And again,
18 GANE was in the Vogtle licensing case, developed
19 sophisticated contentions at that time, and relative to
20 GANE, I do not see good cause for allowing them to
21 supplement at this stage.

22 MS. STANGLER: I would like to respond to that.
23 In 1984 when we intervened on the licensing at Plant Vogtle,
24 et cetera, operations, it was a different group of people.
25 I mean it's six years ago. I was peripherally involved but

1 we had a team of people who volunteered their time, a team
2 of professional people who were -- who did all of this legal
3 stuff that is very difficult to understand. I mean this is
4 not my work, I work 12 hours a day, so this is what I do in
5 my, quote-unquote, free time. And so when we did intervene
6 it was six years ago, we had a different set of people who
7 were able to pull together for this larger issue.

8 MS. CARROLL: And I would add that the rules are
9 different now, period, and they're different at this phase
10 of the licensing, to appeal an amendment and the license to
11 operate are very different animals anyway. So although some
12 of the old people gave us advice within this narrow
13 jurisdiction, it was difficult to interpret.

14 What we had thought -- if we won, what we thought
15 we'd get would be for Georgia Power to have to do the work
16 we say they've omitted anyway. Now I mean, Art, you
17 mentioned to me that there's an analysis but it's not in
18 the record. I don't know that the NRC staff saw it to check
19 up on your work. That's what we thought would be
20 forthcoming, so what we thought we would be asking of our
21 experts would not be to learn everything there is to know
22 about your generator -- I don't even know how much access
23 they'd have to it, but rather to evaluate your analysis.
24 And we can ask somebody to do that beyond what we can ask
25 somebody to do your work that we think you should be doing.

1 MR. DOMBY: Do we have an issue in controversy
2 then?

3 MS. STANGLER: It seems to me -- well it seems to
4 me that the issue is that it just hasn't been empirically
5 proven that bypassing the switch is going to make it safe,
6 that it's going to really solve the problem. We're not even
7 sure if that is the problem. I mean we know -- we have to
8 go beyond it. We want the plant to be safe. It's here and
9 we want it to operate safely and we are concerned about
10 those backup generators as per the March 20 accident.

11 MR. DOMBY: I'm not sure we have an issue then
12 recognizable for this Board. If GANE is saying they want us
13 to come forward with proof, they want us to come forward
14 with proof, with facts, with analyses, and GANE is not
15 prepared at this time to put forth a showing as to their
16 position, I don't believe we have a case or controversy.

17 MS. CARROLL: We don't have a position because we
18 don't think you've actually reached a conclusion of merit.
19 We're still waiting -- I mean you say you're waiting for us
20 to provide something you can sink your teeth into, that's
21 what we're saying is we don't know where you come from when
22 you say this is okay to do this. So if you're sitting on
23 the analysis, put it in the record, we say. We'll check on
24 that. We don't want to perform the analysis, we want you to
25 and then we would like to evaluate it and see if we agree

1 with your conclusion --which we may and we could get out of
2 all of this.

3 MR. DOMBY: Unfortunately case or controversy is a
4 broader route for this forum to decide than if you just
5 simply want information, we do not have a genuine dispute.

6 MS. CARROLL: You could be right.

7 JUDGE LUEBKE: That's not a dispute, is what
8 you're saying?

9 MR. DOMBY: I believe that's the case. We'd be
10 glad to share information with GANE in an informal forum.

11 MS. CARROLL: Well however --

12 JUDGE BECHHOEFER: Well if they disagree with it
13 though --

14 MR. DOMBY: They haven't said -- I have yet to
15 hear them articulate a basis for disagreeing with it, Your
16 Honor. I've heard articulations of questions but I have not
17 heard a factual basis for questioning our analysis.

18 MS. CARROLL: Well what analysis?

19 MR. DOMBY: I heard the Board articulate one.

20 MS. CARROLL: What analysis? We question the
21 existence of the analysis. And at this point, if we get
22 that far, and I think it's reasonable, -- I mean I do not
23 think we should be making decisions about nuclear plants
24 without lots of information to base them on. If we get that
25 analysis at this point, I would be a little scared to stand

1 up against you and go gee, we disagree with you and I'm sure
2 you're going to take our disagreements to heart and fix it.
3 I mean at this point in time, I think it would need to be in
4 a court where somebody that has real authority --

5 MR. DOMBY: In essence they're asking for
6 discovery before a contention, Your Honor.

7 JUDGE BECHHOEFER: I might say that even if we
8 agree completely that none of the contentions are good --
9 and we haven't really decided anything yet -- we have a
10 number of concerns about this application as such and I
11 think Dr. Carpenter would like to get into the first one.

12 JUDGE CARPENTER: I'd like to try and make it
13 simple.

14 You know, we're not entirely charged with just
15 calling balls and strikes and certainly in the absence of
16 this NUREG, I might have one view about these contentions.
17 Without being overly simplistic, virtually all these papers
18 that come across my desk seem to say (1) these CALCON high
19 temperature trip devices cause spurious trips and the
20 licensee says they've had trouble with them, frequent,
21 numerous, spurious trips. Reg Guide 1.9, Revision 2, states
22 that spurious trips should be avoided. Therefore, Georgia
23 Power has CALCON devices at Vogtle and they should be
24 bypassed, and it's that simple if you take the premise that
25 all CALCON trip devices cause spurious trips. And if I

1 didn't have Table 1.2 and NUREG 1410 in front of me, I'd
2 accept that premise.

3 But what the table tells us is that a number of
4 utility companies in addition to Georgia Power have these
5 devices and the empirical data that you're asking for is
6 sitting right in front of you that you refuse to look at,
7 and I can't help but have the question in my mind whether
8 the experience of Georgia Power should lead the industry,
9 those that have the CALCON devices, to bypass them or
10 whether there's something about the devices, as used at
11 Vogtle, that hasn't been discovered at Vogtle yet. To me,
12 that's -- I can't resolve that question on the basis of this
13 table, but I see that at Vogtle there are many, many, many
14 spurious trips and in other plants there are not spurious
15 trips.

16 And I can't avoid in my mind the question of what
17 is site specific about these trips. Now what the Commission
18 might tell us to do with that, I don't know, but it's a
19 question I don't think we can blink.

20 At the same time, the industry has had trouble
21 with the lube oil pressure devices made by the same company,
22 but there's no proposal to bypass them. They could equally
23 as well, if they spuriously trip, disable the diesel.

24 So it seems too simple to me that all we have to
25 do is bypass this thing. And that's where I am today.

1 There's enough to raise a question in my mind and not a real
2 basis for resolving it. I wish it were as simple as finding
3 these contentions to be poorly pled and therefore not
4 eligible for a hearing, but I think we're stuck with looking
5 a little further.

6 JUDGE BECHHOEFER: And I think --

7 JUDGE CARPENTER: I speak for myself and I'll let
8 the other members of the Board speak for themselves.

9 JUDGE BECHHOEFER: Right, I joint Dr. Carpenter,
10 but I might say that the passage of the NUREG which I
11 mentioned, which to me shows that the sensors might have
12 been -- might have been I say because I'm not sure --
13 improperly installed. Also that one of the situations,
14 there's always availability of an additional emergency
15 generator and that's one of the things the staff relies on
16 pretty much in its SER, may not in fact be so. And again I
17 refer to March 20, 1990 and when one is out of service for
18 maintenance, the other one isn't available. And from what I
19 understand, the amendment applies across the board whenever
20 there's an emergency start situation. It doesn't matter
21 whether one or the other generator is down for maintenance
22 or out for maintenance or anything else. That to me raises
23 some problems and I think from the record before me now, I
24 could conclude -- I don't because I haven't looked into it
25 and I don't have a full record before me -- I could conclude

1 that bypassing the trip might be shown to be less safe than
2 improving the installation procedures and performance
3 improved on unwarranted trips like takes place at the other
4 reactors or most of the other reactors.

5 That's I think some of our problems.

6 JUDGE LUEBKE: I would like to add to that, just
7 looking at the incident on March 20, the equipment hatch was
8 open because the plant was shut down for maintenance, and
9 it's reasonable. And that's a heavy, big thing. The
10 personnel hatch was open. Indeed, I read that the primary
11 cooling system was open in several places, large places,
12 like main coolant valves, and I read that after everybody
13 got their heads together, the electricity went on in 41
14 minutes, but if it hadn't gone on for 109 minutes -- is the
15 number I remember -- that boiling would have started in the
16 primary coolant and then in the next paragraph there's a
17 phrase about uncovering the core and anybody that knows much
18 about reactors knows that if the core is uncovered for
19 awhile the fuel starts melting and if the equipment hatch is
20 open and if the primary coolant system is open, you indeed
21 have a situation -- I just hate to say, but it's much worse
22 than TMI -- in other words, this fellow 45 miles away is
23 going to be subject to a radioactive cloud overhead. So
24 this is no trifling matter we're discussing. And to that I
25 say amen.

1 MS. STANGLER: Amen.

2 JUDGE BECHHOEFER: The Board -- we haven't decided
3 what we should do with the various contentions, but we have
4 sort of written what we think the contentions should be in
5 this case and I don't know that we'll admit it or whether
6 we'll just tell the Commission, or if we admit it, whether
7 we'll send it to the Commission and say we're adopting this
8 contention sui spondeo, which we are authorized to do. We
9 have to tell --

10 MR. BARTH: There's some question about that, Your
11 Honor.

12 JUDGE BECHHOEFER: The Commission is authorized to
13 overrule us, of course, or not overrule us.

14 But let me distribute at least copies of what we
15 think --

16 MR. BLAKE: Will we get an opportunity to at least
17 have some brief comments?

18 JUDGE BECHHOEFER: Of course.

19 MR. BLAKE: Thank you.

20 JUDGE BECHHOEFER: We ran a lot of xeroxes.

21 JUDGE CARPENTER: Speaking once again just for
22 myself, we have a great deal of respect for the Commission's
23 revised threshold and it is with considerable concern, we're
24 not saying we raise this issue sui spondeo, but we certainly
25 supplement the pleadings and performance that was put on

1 here today on our own, unavoidably, for the reasons that I
2 said. If I saw no safety issue whatsoever, I would fold up
3 my tent and go home. So I want to make it very clear that
4 we're very conscious of the fact that we're going to have to
5 have the Commission's approval to pursue a contention here
6 perhaps, in lieu of an adequate pleading, if that's where we
7 come out.

8 MR. BARTH: I would make, when it's appropriate,
9 Your Honor, a short statement on behalf of the staff in
10 closing, when you're ready.

11 JUDGE BECHHOEFER: Yeah, we wanted to give
12 everybody a chance to read it first.

13 MR. BARTH: Nothing that has been said today
14 altered our position that the intervenors potentially do not
15 have standing, do not have a valid contention. Nothing that
16 occurred changes our minds of that.

17 We also -- a new point which we were not aware of,
18 we do not feel that the intervenors have made cause for
19 admitting the petition at this time. The Commission issued a
20 CLI in Catawba finding the Appeal Board's criteria for late
21 filed contentions. A special attention of the Commission in
22 the Catawba CLI was that they must avail themselves of
23 publicly available information when it's reasonable
24 available and the time span in which it's available.
25 They've had the Commission's regulations on what they have

1 to plead, they've had the Board's order which has been
2 characterized in various ways but certainly either
3 reiterated the Commission's regulations or certainly spelled
4 out for these people what they have to do which they have
5 not done.

6 The NUREG has been out for some time, there were
7 no citations to it. There is an FSAR in the public document
8 room. They have not availed themselves of public
9 information. And in view of the Commission's requirements
10 in Catawba for late filed contentions that have not shown --

11 JUDGE BECHHOEFER: Well let's correct the record,
12 they do refer to the NUREG specifically. That's why we went
13 into it in so much detail.

14 MR. BARTH: And I would further comment, Your
15 Honor-- JUDGE BECHHOEFER: I mean you say they don't
16 mention it, just read their contentions.

17 MR. BARTH: I'm content, Your Honor, to abide by
18 the citation they have made and the cause to which that
19 citation goes, which was questioned by my co-counsel Ms.
20 Young, and which I strongly agree with her comments. There
21 was a very limited citation. I think we'll let the record
22 speak for itself in that regard.

23 I would state further, Your Honor, that under the
24 Commission's new regulations, the burden of showing that
25 intervenors comply with the Commission's contention

1 requirements falls upon the intervenors, not upon the power
2 company or the staff. I think they have failed to meet this
3 kind of showing.

4 And finally in conclusion, Your Honor, I'd like to
5 say on behalf of Ms. Young, myself, Mr. Brockman and Mr.
6 Hood, that we certainly have enjoyed the pleasant nature and
7 way in which this was done. Sometimes these things get
8 heated and there are tempers flying and I think that this
9 has been a pleasant round and I appreciate the Board's
10 control which kept it well in bounds. For myself, I have
11 personally enjoyed the repertoire with the Board and the two
12 technical members especially. Thank you, Your Honor.

13 JUDGE BECHHOEFER: Well the other parties, we'll
14 start with the applicant, if you have some comments.

15 MR. BLAKE: I do, Judge Bechhoefer. One, I
16 appreciate the Board's honesty in alerting us to what's on
17 your concerns. It has been apparent throughout the day that
18 NUREG 1410 in particular, Appendix I to that NUREG, has
19 played an important role in your concerns and the views you
20 had when you came here today.

21 I wish like the devil I had known that before or
22 that I had had the type questions which you evidence in your
23 initial memorandum and order asking us about the footnote,
24 which we did try to respond to, in our written response and
25 tried again today to clarify for you. Had I known about the

1 others, we would have come today better prepared. I frankly
2 hope we never get into the entire proceeding and we never do
3 address all of these in some detail, but I want right now to
4 address them at least in part.

5 First of all, Dr. Carpenter, with respect to
6 Appendix I on the data and the statistics and the potential
7 mismatch. I think you're right, but the mismatch is not, as
8 I understand it, between Vogtle and other plants around the
9 country. It is in the compilation of the data that you have
10 in Appendix I. As I understand Appendix I, it was compiled
11 and properly by getting data from all other plants across
12 the country based on the NPRDS system data --

13 JUDGE CARPENTER: It is only NPRDS.

14 MR. BLAKE: That's right. With respect to Vogtle,
15 it is not only. The staff, because of the importance and
16 the significance of the March event, came to Vogtle, looked
17 carefully through all of Vogtle's record with respect to its
18 steam generators and the history of performance of those
19 steam generators, and what is reflected in the 60 odd called
20 failures data for Vogtle are a large number of items -- and
21 I'll give you just one example -- I can't cite all of them,
22 but I can give you one. On one occasion the company changed
23 out ten switches. They were counted as, in these data, ten
24 failures. It's not a failure, it's not a trip.

25 The data that we're talking about here were taken

1 from the detailed maintenance and surveillance records,
2 which didn't only start with the plant's operation, which is
3 what NPRDS covers, rather they went all the way back through
4 initial startups and testing and all of those times when
5 you're actually seeing whether or not things are working and
6 appropriately. They're not peculiar to high temperature
7 trips which have taken the diesel off the line during
8 operation, which is what the data is for the other plants.
9 So in fact, you're comparing, as I understand it, apples and
10 oranges and I'm not surprised by your reaction to this. I
11 only tell you that I don't think it indicates a problem
12 between Vogtle and all plants, but rather a simple
13 difference in the way the data was collected and where it
14 was drawn from. I'm sorry that I don't come here better
15 prepared today --

16 JUDGE BECHHOEFER: I might say that we were citing
17 only high temperature trip data.

18 MR. BLAKE: I'm sorry that I can't do better than
19 I'm doing and I've tried to do just on the spur of the
20 moment here now.

21 Let me go to the second item.

22 JUDGE CARPENTER: Let's say -- your point is that
23 you'd like for the Board to have a question in our mind
24 about the nature of the data.

25 MR. BLAKE: That's right.

1 JUDGE CARPENTER: And I accept that. To the
2 extent that we allow intervenors ad nauseam to supplement,
3 we would appreciate anything that you can provide the Board,
4 because as I said to Mr. Barth, you know, it's this NUREG
5 and particularly this Appendix that attracts our attention
6 and we're reluctant to look away from it because of what it
7 apparently says and you're saying it doesn't say that, and
8 that's great.

9 MR. BLAKE: Well I didn't want you to leave today
10 without at least my appreciation as I've gained it over
11 today over the significance of that table and its non-
12 significance.

13 Let me speak to these high temperature trips and
14 whether they might be bypassed and whether we'd be, in that
15 regard, making Vogtle peculiar in the industry and taking
16 away from it an important safeguard which all other plants
17 enjoy and utilize, and apparently successfully. The fact of
18 the matter is that again, because I wasn't aware of the
19 Board's concerns in this regard, I can't do an A plus job,
20 but I can do a pretty good job. I'm looking here at some
21 data which we collected before we took this step and before
22 we decided to take out -- and we determined out of some 10
23 or 15 plants that only a couple of other plants have this
24 trip. The vast majority of TDI diesel generators in this
25 country supporting emergency power for nuclear plants do not

1 have this trip in place. It is bypassed.

2 JUDGE CARPENTER: The trip is absent or the trip
3 is bypassed?

4 MR. BLAKE: The trip is bypassed, is my knowledge
5 as of today. As I say, if I'd realized in advance, I'd have
6 A plus stuff for you, but I'm giving you what I understand,
7 just again so that you won't have a misconception as total
8 as what I believe it to have been unfortunately. So that's
9 my second.

10 The third, Judge Luebke, goes to yours. We do not
11 under-estimate the significance, the importance of that
12 March event. No doubt about it -- nor did NRC, who came
13 down here and studied it very carefully. Nor does what we
14 have taken here with regard to this one trip begin to tell
15 you what our reaction has been to it in order to ensure it
16 won't occur again. But I don't think that the scope of this
17 proceeding as stated by the Board in its notice here,
18 intended that we redo that event, that we study that event,
19 that we take it on in all its potential consequences. I
20 think it is a much narrower proceeding that we're talking
21 about here with these trips and whether or not they ought to
22 be capable of being bypassed, and I leave it at that. But
23 only, we appreciate the significance but I don't think
24 that's what we're talking about in this proceeding. And
25 don't misunderstand that we did understand the significance

1 of the March event.

2 Thank you.

3 JUDGE CARPENTER: The March 20 thing has only been
4 referred to sort of to put things in context, and that's not
5 the issue. The issue is is public safety served by
6 bypassing this trip.

7 MR. BLAKE: Correct.

8 JUDGE CARPENTER: What I'm saying is simply
9 looking at the NUREG, this compilation of data the staff put
10 together, and it raises a question in my mind. The
11 intervenors didn't raise the question very well, but I can't
12 blink it. So if you want to file a supplement which would
13 be not an analysis of the diesel but an analysis of the
14 sensor and its use -- I don't really dare about the
15 crankshaft -- what I really care about is the sensor. If
16 you want to submit a supplemental analysis, I would ask my
17 colleagues to go along in granting you permission to do so.
18 And it might be of great use to the intervenors, who said
19 they'd like to see it.

20 MS. CARROLL: Yeah, I think that sounds great.

21 JUDGE CARPENTER: You know, if the power plant
22 that I live next to doesn't -- has their sensor bypassed,
23 maybe you'd be happy to have your power plant with the
24 sensor bypassed.

25 JUDGE LUEBKE: However, it raises in my mind a

1 question of what did the staff have when they made this
2 great decision. There seems to be sort of a lack of written
3 information that we're going to get supplemented. The
4 impression I get is there must have been sort of a vacuum
5 already before.

6 MR. BARTH: May I have a moment, Your Honor?

7 MR. BLAKE: Judge, that may be -- that conceivably
8 could be an explanation even for GANE's distrust or concerns
9 in this regard. Do you realize that the staff, because of
10 the importance of the March event, had people on site going
11 up one side, down the other side, looking at these switches.
12 They had a lot of information. I don't begin to believe
13 that my information here about the fact that other plants
14 don't have this high temperature bypass is unknown to the
15 staff. I have every reason to believe it's known. They
16 probably know more about these switches than in fact Georgia
17 Power does.

18 The only purpose of my statement was so that you
19 all wouldn't think that we had lightly gone into this,
20 hadn't taken into consideration a number of these concerns.

21 JUDGE LUEBKE: The SER seemed so brief.

22 MR. BLAKE: It may be and as I say it's simply
23 because there was such involvement by the staff and such
24 knowledge of the staff, that may be the simple explanation.

25 MR. BARTH: We have nothing further to add, Your

1 Honor.

2 MS. CARROLL: Is it our turn?

3 JUDGE BECHHOEFER: Yes.

4 MS. CARROLL: We want to thank you very much,
5 because it's very apparent to us that you are concerned with
6 safety and everybody here is well aware of the weaknesses on
7 our part on a legal basis and no doubt more aware -- we
8 think we're up to speed technically and probably ones with
9 real technical know-how could really see our gaps that we're
10 unaware of.

11 But anyway, I just do want to honor you. I have
12 read this and it's a wonderful document. I'm pleased to see
13 us in here as poorly as we may have done. I see that we got
14 some of it right, and the last one is astonishing.

15 MS. STANGLER: I would like to reiterate Ms.
16 Carroll by saying that I really appreciate you hearing our
17 concerns, even though our articulation and our presentation
18 has not been according to, you know, the highest level. If
19 we were being paid to do this, if we had been paid to do
20 this, we would have done a bang up job, we actually could
21 have done it, but we've done it, you know, on a wing and a
22 prayer. We have done the best we could. This is not our
23 jobs and so yes, we were weak and we have been attacked all
24 day, especially by the NRC staff on our weaknesses, but I
25 feel that underneath this, you have understood our safety

1 issues, you have understood what we have tried to
2 communicate, and I commend you on listening to us and
3 preparing this excellent document.

4 And I thank you.

5 JUDGE BECHHOEFER: I would like --

6 JUDGE CARPENTER: Mr. Blake, is that acceptable to
7 you, that you will file some supplemental to what you
8 presented orally?

9 MR. BLAKE: Yes.

10 JUDGE BECHHOEFER: And I think that we will
11 withhold ruling on anything until we see this and have a
12 chance to look at it. It may well be that what's filed will
13 clear up some of these problems.

14 MS. CARROLL: Or at least give us the real
15 questions.

16 MR. DOMBY: Your Honor, do you wish this handout
17 to be appended to the transcript today?

18 JUDGE BECHHOEFER: I think that would be a good
19 idea. It should be inserted in the transcript at some
20 convenient point, maybe where we mentioned it. Do we have
21 enough copies for that?

22 MR. DOMBY: Judge Bechhoefer, I believe we can
23 respond to the Board's request within approximately two
24 weeks if you want an indication of time.

25 JUDGE BECHHOEFER: Right.

1 JUDGE CARPENTER: That's good.

2 JUDGE BECHHOEFER: That may hit me while I'm in
3 Europe but --

4 MR. DOMBY: Perhaps if you dismiss all the
5 contentions before then, you won't have back down.

6 MR. BARTH: If you'll leave your address, I'll see
7 that it's forwarded to you.

8 (Laughter.)

9 JUDGE BECHHOEFER: October 4, I'm going for a
10 couple of weeks and then the panel has an out-of-town
11 meeting -- our licensing board panel. So until about the
12 end of October, I may have a lot of trouble getting
13 seriously involved in it again.

14 MR. DOMBY: We'll use that time then, Your Honor.

15 JUDGE BECHHOEFER: So I'm almost saying if you
16 need more than two weeks, it would not seriously
17 inconvenience us.

18 MR. DOMBY: All right, thank you. And we of
19 course will serve the other parties.

20 JUDGE BECHHOEFER: Anything further before we
21 adjourn?

22 MR. BARTH: Nothing from the staff, Your Honor.

23 JUDGE BECHHOEFER: Okay, we're adjourned.

24 (Whereupon, the conference was adjourned at 4:08
25 p.m.)

REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

in the matter of:

NAME OF PROCEEDING: Georgia Power, Co., et al

DOCKET NUMBER: 50-424-OLA, 50-425-OLA
ASLBP No. 90-617-03-OLA

PLACE OF PROCEEDING: Atlanta, Georgia

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

William L. Harwood

Official Reporter
Ann Riley & Associates, Ltd.

CONTENTIONS

The Applicants have failed to provide sufficient information to permit the technical specification governing the high jacket-water temperature trip during emergency starts to be modified to permit bypassing. Specifically:

(a) Contrary to Regulatory Guide 1.9, Rev. 2, Position 7, the application does not explain what empirical data was the basis for the determination that the high jacket-water temperature trip should be bypassed during an emergency start. It is safer to have this essential trip operate automatically so as to eliminate the possibility of operator error. The application fails to include an analysis that leads to a conclusion that operators have sufficient time to react to alarms.

NUREG-1410, pp. 1-4, 2-7, 3-25, 5-14 (communications problems or failures among staff)

NUREG-1410, p. 1-5 (shortcomings in human factors design of trip alarms)

NUREG-1410, pp. 2-5 (non-trip warning alarms received by operators)

NUREG-1410, pp. 3-17, 5-2, 5-5 (alarm clutter), 5-6 (nuisance alarms)

(b) The "plant operating experience" cited by the Applicants suggests that the Applicants have had difficulties getting the jacket-water high temperature sensor to function (see "Loss of Vital AC Power and the Residual Heat Removal System During Mid-Loop Operations at Vogtle Unit 1 on March 20, 1990," NUREG-1410, Appendix I).

The Applicants have failed to demonstrate why they cannot prevent the spurious trips without imposing the additional risk on diesel generator operability which amendment of the technical specifications entails.

NUREG-1410, p. 3-21 (improper maintenance of sensors)

NUREG-1410, Appendix I (Vogtle has more trips than rest of industry combined)

May 25, 1990 application, Enclosure 2 (small advantage of automatic trip)

SER, at 2 ("increased potential for diesel generator damage")

(c) Contrary to the requirements set forth in 10 C.F.R. Section 50.34(b)(7) and 55.7, the Applicants have failed to set forth what additional operating procedures and training they are planning to provide to their personnel to prevent or respond to over-hearing during an emergency.

NUREG-1410, p. 1-5 (operation of DG control systems not fully understood by Staff).

NUREG 1410, pp. 3-18, 3-22, 3-23, 5-9 (deficiencies in operator training). Ally by the NRC staff on our weaknesses, but I feel that underneath this, you have understood our safety issue