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**NUCLEAR REGULATORY COMMISSION**

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ASLBP Number: 20-966-02-LA-BD01

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of: : Docket No.

DTE ELECTRIC COMPANY : 50-341-LA

: ASLBP No.

(Fermi 2) : 20-966-02-LA-BD01

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Wednesday, June 10, 2020

Teleconference

BEFORE:

PAUL S. RYERSON, Chair

SUE H. ABREU, Administrative Judge

GARY S. ARNOLD, Administrative Judge

1 APPEARANCES:

2 On Behalf of DTE Energy, Inc.:

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P-R-O-C-E-E-D-I-N-G-S

10:02 a.m.

CHAIRMAN RYERSON: Good morning again.  
We're here in the matter of --

MS. COLLINS: Are we on the record now?

CHAIRMAN RYERSON: We are.

MS. COLLINS: Okay.

CHAIRMAN RYERSON: Let me go over a few things before we take appearances. We're here in the matter of DTE Electric Company Fermi 2. I am Judge Ryerson. I'm trained as a lawyer and I chair the particular Atomic Safety and Licensing Board at the NRC as assigned to this proceeding.

Also on the line are my fellow judges on this Board. We have Judge Abreu. Judge Abreu is a physician with a specialty in nuclear medicine and she's also a lawyer. We have Judge Arnold. Judge Arnold is a nuclear engineer. We also have our law clerk Taylor Mayhall on the line.

Before we take the formal appearances from all the participants, I would like to go over a few ground rules and housekeeping matters. First, when you speak it will be terrific if everyone can identify themselves before you speak. We will have probably a number of folks talking today and it would be very

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1 helpful, especially for the reporter, and for all of  
2 us frankly, if you will be sure to remember to  
3 identify yourself.

4 This proceeding is being transcribed and  
5 within a few days there should be a transcript  
6 available on the NRC website for anyone to look at.  
7 In addition, we've made a number of listen only  
8 telephone lines available for members of the public or  
9 the press who would like to listen today in real time.

10 By way of background, this proceeding  
11 arises from a petition by Citizens' Resistance at  
12 Fermi 2, which we'll generally call CRAFT, a request  
13 for a hearing on DTE's request for an amendment to its  
14 license. DTE and the NRC staff have both filed  
15 oppositions to CRAFT's hearing request.

16 The purpose of today's conference call is  
17 to help the Board to decide whether CRAFT has  
18 demonstrated standing and whether CRAFT has identified  
19 an admissible contention that is appropriate for an  
20 evidentiary hearing which will be held at a later  
21 time.

22 We're going to proceed as follows. First,  
23 each of the participants may speak for up to 10  
24 minutes and that will be in the order of CRAFT, DTE,  
25 and then the NRC staff. After that the Board will ask

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1 questions. Because we're on a telephone line, we'll  
2 try to do this in a more structured way that might  
3 otherwise be the case.

4 After the 10-minute presentation I will  
5 begin with my questions. Then Judge Abreu and then  
6 Judge Arnold possibly in responses to other judges'  
7 questions will prompt further questions. We'll run  
8 through that batting order as often as need be -- we  
9 need to in order to assure that all the judges have  
10 had their questions answered.

11 In general when a judge asks a question,  
12 the judge will indicate which participant or  
13 participants he or she would like an answer from, but  
14 I think we'll be relatively informal. If you feel it  
15 is very important to respond to a question that you  
16 are not asked, please indicate that at the next  
17 appropriate lull in the conversation and we will  
18 likely be able to recognize you.

19 I know the matter has been fully briefed.  
20 We've all read the briefs and I don't expect myself I  
21 will have many questions. I can't speak for my  
22 colleagues but I am hopeful that this entire  
23 proceeding will not go much beyond an hour. If it  
24 does, we will take a short break and then resume.

25 Dr. Abreu, do you have any comments before

1 we take the formal appearances?

2 JUDGE ABREU: I do not. Thank you.

3 CHAIRMAN RYERSON: Dr. Arnold?

4 JUDGE ARNOLD: I have no comments.

5 CHAIRMAN RYERSON: Thank you. All right.

6 Let's begin.

7 Ms. Collins, on behalf of CRAFT who is  
8 here today?

9 MS. COLLINS: Yes, thank you. Jessie  
10 Pauline Collins, co-chair here on behalf of CRAFT. I  
11 filed leave to intervene to get the public hearing and  
12 intervene in the process. DTE when they got the  
13 License Amendment 141, they committed to removing the  
14 Boroflex.

15 CHAIRMAN RYERSON: Ms. Collins, at this  
16 point we're just taking identifications of the  
17 representatives who are here today.

18 MS. COLLINS: Oh, okay.

19 CHAIRMAN RYERSON: After we've done that  
20 for the different participants, we'll start with your  
21 argument.

22 MS. COLLINS: Okay.

23 CHAIRMAN RYERSON: In addition to you, who  
24 is here with you today?

25 MR. SHERMAN: My name is James Sherman.

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1 I'm co-chair of the Citizens' Resistance at Fermi 2,  
2 CRAFT. and I thank you for the opportunity to be  
3 heard.

4 CHAIRMAN RYERSON: Thank you.

5 Is there anyone else who will be speaking  
6 today?

7 MR. DEER IN WATER: Jesse Deer in Water  
8 here, community organizer for CRAFT and citizen  
9 representative of the Cherokee Nation.

10 CHAIRMAN RYERSON: All right, thank you.  
11 Welcome to all of you.

12 Next for DTE who do we have today?

13 MR. MATTHEWS: Good morning, Chairman  
14 Ryerson, Judges Abreu and Arnold. This is Tim  
15 Matthews of Morgan Lewis & Bockius. It is my honor to  
16 appear before the Board today on behalf of the  
17 licensee, the amendment applicant DTE Electric  
18 Company, or DTE.

19 With me today on our second speaking line  
20 is my colleague Ryan Lighty who will be carrying the  
21 laboring oar today in our opening statement and  
22 respondent to the topics noted in the Board's  
23 prehearing order of April 21st.

24 Also with us today on listening lines are  
25 DTE in-house counsel Jon Christinidis and our

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1 licensing and technical support team who can reach out  
2 if necessary. Thank you.

3 CHAIRMAN RYERSON: Thank you, Mr.  
4 Matthews. Welcome to you and Mr. Lighty.

5 Finally, the NRC staff. Who do we have  
6 today?

7 MS. WOODS: Good morning, Your Honors. My  
8 name is Mary Francis Woods and I, along with Jeremy  
9 Wachutka and Nicolas Mertz, am counsel for the NRC  
10 staff. We also have on a listening line only our  
11 technical experts as well.

12 CHAIRMAN RYERSON: Thank you, Ms. Woods.  
13 Welcome to all of you.

14 All right. We are moving on to the point  
15 where CRAFT may begin with a 10-minute presentation.  
16 I should say that, as you all know, we identified a  
17 couple of questions that we would probably be asking  
18 about in our scheduling order for this proceeding.

19 It is up to you, each of you, whether you  
20 would like to address those questions during your 10  
21 minutes or wait. If you wait, I'm sure we will have  
22 questions for you, but that's entirely up to you. You  
23 may address whatever you would like during the 10  
24 minutes that you have.

25 Ms. Collins, do you want to begin?

1 MS. COLLINS: Well, I just wanted to -- I  
2 don't know when would be the best time. I can go  
3 ahead and put out my comments now and let my co-  
4 compadres here put out theirs. I am concerned that  
5 Detroit Edison made this commitment to remove the  
6 Boroflex. I think they should live up to that  
7 commitment. I think there is too much self-monitoring  
8 and we need to investigate more.

9 What happens if they leave the Boroflex in  
10 there? They haven't told us everything. Their  
11 evaluations are incomplete. They haven't said  
12 anything about cracks in the degraded Boroflex over  
13 the years. Well, if it's breaking off it will be  
14 constantly irradiated. These things need to be looked  
15 at.

16 As far as standing, CRAFT has been walk-  
17 dogging the Fermi Nuclear Reactor since 1993. We have  
18 represented people and been in hearings before.  
19 Hedwid Kaufman, one of our declarants, is a township  
20 trustee for Prince Township community where Fermi is  
21 located. She has edited the CRAFT newsletter for  
22 years. I say that DTE is just grabbing at straws, and  
23 the NRC staff, too, when they try to say we don't have  
24 standing.

25 Okay. Now off my soapbox and to Jim.

1 MR. SHERMAN: Your Honors, thank you again  
2 for this opportunity. My name is Jim Sherman. I'm  
3 the co-chair of CRAFT. I want to express my sincere  
4 gratitude for this opportunity to address this panel.  
5 This is an all-to-rare privilege for us to have your  
6 audience. I also want to thank the interested parties  
7 joining us and on the listening lines for this  
8 important call.

9 It is our objective to provide additional  
10 analysis and perspective with regards to this latest  
11 attempt by DTE to further relax safety regulations at  
12 the Fermi 2 Nuclear Power Plant.

13 This second of three oral arguments I  
14 intend to shed light on the dangers inherent in the  
15 spent fuel pool which relies on proper performance of  
16 the neutron-absorbing materials at question to operate  
17 in relative safety. It is CRAFT's position that  
18 public input and critical analysis is required to  
19 further modify any of these crucial safety systems for  
20 any of these modifications to continue.

21 The spent fuel pool at Fermi 2 was  
22 originally configured to hold 2,305 spent fuel  
23 assemblies but re-racking started right away before  
24 the plant was even open for commercial power. After  
25 multiple re-racking campaigns the spent fuel pool is

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1 at 4,608 assemblies according to MO listing 010310205.  
2 This additional heat load could cause the water in the  
3 spent fuel pool to boil after only four hours and 12  
4 minutes circulation.

5 The degradation of neutron-absorbing  
6 materials is a known problem industry-wide and DTE  
7 made a commitment to remove and replace these  
8 materials at the condition of the license extension.  
9 The term of the extension is yet to begin and DTE  
10 always seeks to undo their promise.

11 Leaving these materials in place is a  
12 known source of debris in the pool as they degrade and  
13 they add no protection from criticality. They are  
14 even modeled as water in DTE's analysis. The panels  
15 are in limited use so they lack the track record of  
16 other neutron-absorbing materials.

17 DTE's analysis -- I'm sorry. I've got to  
18 scroll here.

19 CHAIRMAN RYERSON: You're at three  
20 minutes.

21 MR. SHERMAN: I'm at three minutes now?  
22 I still have a minute-and-a-half I believe.

23 While DTE has analyzed spent fuel pool  
24 criticality, the front loads, boil offs, and drain  
25 downs, we at CRAFT are concerned about unanalyzed

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1 parameters like, for example, the loss of grid  
2 connection and incinerator failure coinciding with a  
3 reactor scram.

4 This scenario could be an issue by  
5 something as common as a severe storm. The plant  
6 would not be able to maintain emergency cooling of the  
7 core or spent fuel. This would be a worst-case  
8 scenario. Decreased boil-off time in the spent fuel  
9 pool could exacerbate such an event.

10 (Telephonic interference) can also  
11 exacerbate such an emergency with radioactive debris  
12 that can cause filters to block the flow of coolant.  
13 This type of event has been quietly underway since the  
14 '90s. As we recently learned, the emergency diesel  
15 generators were found incapable of automatically  
16 engaging a reactor scram, Docket No. NPT20-000 and DTE  
17 was fined \$375,000.

18 This violation dates back to at least 2013  
19 when DTE failed to comply with DRC 005-1-1B. We found  
20 this incredible as an NRC on-site audit in 2015  
21 included a walk-through inspection, Order EA12-049,  
22 was to include the generators. NRC was required to  
23 prepare the walk-through to include the diesel  
24 generator procedures, to include power source by  
25 pathways where manual actions are required. Just a

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1 few years later the generators were in violation.

2 Writing of the root causes were incomplete  
3 and inaccurate equipment inventory records where in  
4 parallel systems testing was ineffective. A multi-  
5 year backlog of unchecked test records failed to  
6 include certain components in its maintenance and  
7 testing programs, and a failure to understand ethical  
8 standards in the environment.

9 We at CRAFT object to the underlying  
10 analysis' conclusion that there is no significant  
11 increase in the probability or consequence of  
12 accidents previously analyzed and unforeseen.

13 I will pass the phone to my team mate  
14 Jesse Deer in Water.

15 MR. DEER IN WATER: Thank you. Greetings,  
16 all. I know we're limited on time. I only got a  
17 couple minutes here.

18 Basically, you know, the issue seems to be  
19 here for me that Boraflex known issues, industry-wide,  
20 there's numerous documents, you know what I mean? I  
21 could name off probably about six of them right now,  
22 informational notices and generic letters -- blah blah  
23 -- so we can get into that later.

24 But I basically feel that, you know, it  
25 was best noted that Boraflex be removed and replaced

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1 with the Boral as mentioned in with that last  
2 amendment 141.

3 So -- and we also feel that, you know,  
4 since now a degradation of the dam as a whole is a  
5 problem, whether it be Boral, carborundum, you know,  
6 Boraflex, boron metals, we feel that getting rid of  
7 this Boraflex will not only with all of our other  
8 things, but we also feel it will help the process of  
9 regulations by gaining more information of Boraflex in  
10 the spent fuel pond and in interactions.

11 We feel like unidentified and unmitigated  
12 degradation poses some criticality and safety concerns  
13 because of the neutron-absorbing materials have a  
14 direct impact on safety whether uncredited or not,  
15 it's still a new factor. And so I would just like to  
16 kind of mention that -- let's see here, hold on a  
17 second -- Boraflex has been identified by the NRC to  
18 degrade to an unsafe status.

19 This has been covered in numerous  
20 documents. Not only as Boraflex is known to degrade  
21 and break down and lose its areal density from washout  
22 and further break down, but as mentioned, the spent  
23 fuel pond's density is -- it's just packed.

24 It's packed really dense and it's already  
25 been running on degraded Boraflex for decades, so we

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1 don't really know what the complete status, you know,  
2 of the pool is. The whole process has been laid out  
3 for safety and that includes the replacement and  
4 removal of Boraflex with the Boral rack before  
5 extended operation.

6 We feel like DTE's only partly evaluated  
7 the newly proposed process, and by not modeling the  
8 spent fuel pool design as built these evaluations are  
9 incomplete.

10 We also feel that by limiting these  
11 evaluations to accidents related to movement in  
12 storage to fuel assemblies in the spent fuel pond that  
13 DTE doesn't have to account for the continued presence  
14 of the Boraflex rack, which if modeled as water, there  
15 are not any changes to observe, but if modeled as  
16 Boraflex, the leftover material that displaces the  
17 water and causes extra irradiated silica and debris in  
18 the filters in the demineralization process, we feel  
19 that if they modeled it, Boraflex, as it is in the  
20 spent fuel pond, then lots of things, well, more  
21 things will have to be taken into consideration and  
22 addressed.

23 But Boraflex is only a liability if left  
24 behind whether in this spent fuel pond or any other.  
25 The presence of Boraflex cannot reduce the probability

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1 of an accident because it is a liability for the  
2 reasons stated above.

3 And in NRC documents and in DTE's response  
4 to what their Boraflex scenario, I believe they didn't  
5 even know when the ponds (phonetic) were placed, but  
6 somewhere in between 1983 and 1986. That points  
7 towards our Contention Eight with, you know, it's a  
8 completely different thing.

9 But anyway, these are things that DTE  
10 needs to consider, the probabilities, you know, that  
11 I mean things that lead to the probability of an  
12 accident. Also they don't seem to mention cracking,  
13 embrittlement, swelling, chemical reactions, et  
14 cetera, that can mess with --

15 CHAIRMAN RYERSON: Thank you. I think  
16 we're going to have to ask you to wrap up in about 30  
17 seconds.

18 MR. DEER IN WATER: Oh, sorry. Yes.

19 But, basically, Boraflex unaccredited does  
20 not contribute to the functions of the SFP and can  
21 only contribute to a source of potential accident and  
22 this reduces the margin of safety and DTE needs to  
23 evaluate this for public safety and well-being.

24 MR. SHERMAN: And we all at CRAFT thank  
25 you.

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1 CHAIRMAN RYERSON: Thank you.

2 MR. SHERMAN: And --

3 MR. DEER IN WATER: I can speak towards  
4 Boral and (telephonic interference) too, if need be,  
5 later.

6 CHAIRMAN RYERSON: All right, very well.

7 For DTE, Mr. Matthews, will you be  
8 speaking or Mr. Lighty?

9 MR. MATTHEWS: Ryan Lighty will speak,  
10 Judge.

11 CHAIRMAN RYERSON: Okay, thank you.

12 Mr. Lighty?

13 MR. LIGHTY: Thank you, Your Honor, and  
14 may it please the Board, Ryan Lighty appearing for DTE  
15 Electric Company.

16 As a general matter, we believe the  
17 pleading sufficiently explained the clear, multiple  
18 and overlapping reasons the petition must be denied.  
19 So in the interest of keeping our discussion today  
20 concise and efficient, we see no need to rehash all of  
21 those arguments here.

22 But before we proceed to the Board's  
23 questions, we think it would be worthwhile to spend  
24 just a moment to clarify what the LAR is and what it  
25 is not in order to help properly frame the issues that

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1 are pending before the Board.

2 So the LAR only seeks approval of three  
3 things. First, to delete a license condition; second,  
4 to revise the associated technical specifications; and  
5 third, to approve a change to the criticality safety  
6 analysis or CSA.

7 It's important to understand what the LAR  
8 does not seek approval for. It does not seek approval  
9 for any physical changes to the facility. It does not  
10 seek approval to install the inserts. It does not  
11 seek to expand the capacity of the pool.

12 It does not seek to depart from the  
13 current criticality threshold or k-effective and it  
14 does not seek approval to use new fuel. It's  
15 important to understand that the LAR also is not  
16 proposing to use snap-in Boraflex and, if approved,  
17 the Boraflex monitoring program would be eliminated.

18 Now each of these topics which are not  
19 part of the LAR are things that the Petitioner  
20 purported to challenge in its petition.

21 It is evident that the Petitioner  
22 fundamentally misunderstands the LAR. For example,  
23 CRAFT makes clear its preference for a lower capacity  
24 in the spent fuel pool, but if the Board denies the  
25 license amendment request as CRAFT has asked, DTE

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1 would actually be forced by the existing license  
2 condition to increase the physical capacity of the  
3 pool.

4 That's the exact opposite of what CRAFT  
5 seems to want. Simply put, the Petitioner fails to  
6 comprehend even the most basic contours of the LAR.

7 So it's inconceivable that -- and  
8 admissible challenge to the actual LAR or a  
9 demonstration of alleged consequences from the actual  
10 LAR to be gleaned from the potpourri of counterfactual  
11 and out-of-scope arguments presented in the petition.

12 Finally, pursuant to 10 CFR Section  
13 50.92(a), license amendment requests are guided by the  
14 same considerations that govern the issuance of a  
15 license or renewed license. So it's important to  
16 understand the technical reason that the NRC included  
17 the subject license conditions in the first place and  
18 for that we must look to the license renewal safety  
19 evaluation report or SER.

20 As clearly explained in the SER, the NRC  
21 was concerned based on accumulated industry operating  
22 experience at other plants that the Boraflex may not  
23 be able to perform its intended function, but more  
24 specifically neutron absorption during the period of  
25 extended operation.

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1           The SER does not contain a single mention  
2 of the mechanical degradation theory that is the  
3 cornerstone of CRAFT's entire petition and it  
4 certainly was not the, quote, consideration, end  
5 quote, that governed the NRC's imposition of that  
6 license condition.

7           So Petitioner's overarching theory, it is  
8 fundamentally flawed. And with that context and as  
9 explained in significant detail in our brief, CRAFT  
10 simply has not demonstrated standing and none of its  
11 contentions satisfy all six of the admissibility  
12 criteria. Accordingly, the Board should deny the  
13 petition for either or both of those reasons.

14           And with that I look forward to helping to  
15 answer any questions that the Board may have. Thank  
16 you, Your Honors.

17           CHAIRMAN RYERSON: Thank you, Mr. Lighty.

18           Turning now to the NRC staff, Ms. Woods,  
19 will you be speaking or who will be speaking for the  
20 staff?

21           MS. WOODS: Yes, Your Honor, it will be  
22 me.

23           CHAIRMAN RYERSON: Thank you.

24           MS. WOODS: Thank you, Your Honor. May it  
25 please the Board, my name is Mary Francis Woods and I

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1 am representing the counsel for the NRC staff.

2 In this proceeding, the NRC staff position  
3 is that the Board should deny CRAFT's hearing for the  
4 two independent reasons that CRAFT has not met its  
5 burden to establish standing and CRAFT has not met its  
6 burden to propose admissible contention.

7 In terms of some background, after it is  
8 used in the reactor the fuel at Fermi 2 is placed in  
9 storage racks which are submerged in a spent fuel  
10 pool. The current storage racks at Fermi 2 contain in  
11 the walls of each of their square cross-section cells  
12 either the material called Boraflex or the material  
13 called Boral.

14 Boraflex and Boral are both neutron-  
15 absorbing materials. Over time, although neutron-  
16 absorbing materials can degrade such as they are left  
17 capable of absorbing neutrons, Boraflex is known to be  
18 especially susceptible to degradation.

19 Because of this, in the 2014 license  
20 renewal application for Fermi 2, DTE explained that it  
21 would maintain the safety of its spent fuels by  
22 removing the racks containing Boraflex and replacing  
23 them with racks containing Boral and regularly  
24 monitoring the Boral's condition and both the new and  
25 preexisting racks.

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1           The objective of these commitments was to  
2           ensure that DTE would not need to rely on Boraflex to  
3           perform the job of absorbing enough neutrons to  
4           maintain subcriticality in the spent fuel.

5           The NRC staff found this approach  
6           acceptable and in 2016 issued the Fermi 2 renewed  
7           license with the condition that the proposed rack  
8           replacement must be completed before the beginning of  
9           the period of extended operation in the year 2025.

10           Now the subject of this proceeding is a  
11           request by DTE to change this approach to neutron  
12           absorption in the Fermi 2 spent fuel pool.  
13           Specifically, instead of physically removing the racks  
14           of Boraflex and replacing them with racks containing  
15           Boral, DTE wants to install neutron-absorbing inserts,  
16           the NETCO-SNAP-IN inserts, into the racks containing  
17           Boraflex. The inserts should be installed against  
18           each of the four walls of each cell between the spent  
19           fuel and the existing Boraflex and they would then do  
20           the job of absorbing neutrons instead of the Boraflex.

21           The license amendment request includes  
22           analysis that asserts that with the use of these  
23           inserts. All of the relevant safety requirements will  
24           be met without having to rely on the existing Boraflex  
25           to absorb neutrons. To note, the NRC has previously

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1 approved the use of similar inserts at other  
2 facilities.

3 In response to the public notice of this  
4 license amendment request, CRAFT requested a hearing  
5 on it. CRAFT appears to assert that it has standing  
6 to participate in such a hearing because of the  
7 proximity of its central office and the residences of  
8 eight of its members to Fermi 2 and points to two  
9 cases to support this assertion.

10 The first case, Turkey Point LBP-01-6,  
11 determined that since spent fuel and a spent fuel pool  
12 is a significant source of radioactivity and since the  
13 license renewal application at issue in that  
14 proceeding would allow the spent fuel pool to be  
15 operated for an additional 20 years, then a proximity  
16 of presumption of standing applies.

17 The instant proceeding though is  
18 distinguishable from the case because although DTE's  
19 license amendment request has to do with a spent fuel  
20 pool, it would not allow the Fermi 2 spent fuel pool  
21 to be operated for any additional amount of time.  
22 Instead, the license amendment would simply change an  
23 aspect of the operation of the Fermi 2 spent fuel pool  
24 over its currently licensed lifetime.

25 The second case that CRAFT cites, Diablo

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1 Canyon LBP-02-23, discusses that a proximity  
2 presumption of standing applies to applications for  
3 permission to construct and operate an independent  
4 spent fuel storage installation or ISFSI or to expand  
5 the capacity of an existing spent fuel pool.

6 Additionally, although not cited by CRAFT,  
7 the construction and operation of ISFSIs is also  
8 discussed in the Holtec International and Interim  
9 Storage Partners proceeding. Each of these examples  
10 generally involves adding a new source of  
11 radioactivity that could in turn result in new or  
12 additional offsite radiological consequences.

13 In the instant proceeding though, the  
14 existing source of radioactivity is staying the same.  
15 This is because Fermi 2's spent fuel pool capacity  
16 would not be changing as a result of this license  
17 amendment request. Therefore, unlike with ISFSI  
18 licensing and spent fuel reracking and expansion  
19 proceedings, the licensing action at issue in this  
20 proceeding does not necessarily implicate any  
21 increased offsite radiological consequences.

22 Since these cases are distinguishable from  
23 the instant proceeding, CRAFT bears the burden of  
24 explicitly explaining how the nature of the proposed  
25 action and the significance of the radioactive source

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1 could give rise to an obvious potential for offsite  
2 radiological consequences.

3 As stated in its reply at page 7, the  
4 nature of the proposed action that CRAFT asserts will  
5 lead to an obvious potential for offsite radiological  
6 consequences is the nonremoval of Boraflex. CRAFT  
7 separately asserts that the nonremoval of Boraflex  
8 will result in, 1) the failure of the spent fuel and  
9 the spent fuel pool enduring transfer to dry storage,  
10 and 2) the adherence of the spent fuel to the storage  
11 rack.

12 CRAFT also raises the possibility of a  
13 spent fuel pool fire. However, even if the Board were  
14 to assume for the purposes of standing that it was  
15 true that the nonremoval of Boraflex will result in  
16 the failure or adherence of the spent fuel, CRAFT does  
17 not explain how and the NRC staff does not understand  
18 how this would then obviously lead to a spent fuel  
19 pool fire and offsite radiological consequences.

20 Because CRAFT does not cite on-point  
21 binding case law or demonstrate that its concerns  
22 could lead to an obvious potential for offsite  
23 radiological consequences, it has not demonstrated  
24 standing and therefore its hearing request should be  
25 denied.

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1 CRAFT's hearing request should also be  
2 denied because none of its proposed eight contentions  
3 are admissible. In Contention One, CRAFT opposed  
4 portions of the NRC staff's proposed no significant  
5 hazard consideration determination and asserts that it  
6 does not agree with this determination.

7 All of its support for this assertion  
8 though is encompassed by other contentions; therefore,  
9 proposed Contention One, itself, is simply a challenge  
10 to a no significant hazard consideration determination  
11 which is explicitly prohibited by the NRC's  
12 regulations at Part 50 Section 58(b)(6).

13 In Contention Two, CRAFT asserts that the  
14 degradation of Boraflex could lead to racks adhering  
15 to spent fuel and the degradation of the spent fuel  
16 itself such that the spent fuel could fail in the  
17 spent fuel pool or when transferred to dry storage.  
18 This contention is not admissible because CRAFT does  
19 not provide any alleged facts or expert opinions which  
20 support that either of these two phenomena is  
21 possible.

22 Moreover, the NRC staff is not aware of  
23 any operating experience that would support the  
24 existence of these phenomena even though approximately  
25 40 U.S. facilities have used Boraflex at some point

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1 with some of those facilities having had the Boraflex  
2 in their spent fuel pools for up to 40 years.

3 In Contention Three, CRAFT asserts that a  
4 k-effective of 0.95 does not leave conservative  
5 margins of subcritical. This contention is not  
6 admissible because it is a challenge to an existing  
7 requirement in the Fermi 2 license that is not  
8 supposed to be challenged by this license amendment  
9 request.

10 In Contention Four, CRAFT asserts that  
11 there are more prudent courses of action that the NRC  
12 and DTE should pursue to ensure subcriticality in  
13 spent fuel pools. This contention is not admissible  
14 because it does challenge the safety of the course of  
15 action that is actually the subject of this licensing  
16 amendment proceeding, namely the installation of  
17 neutron-absorbing inserts.

18 In Contention Five, CRAFT asserts that the  
19 Fermi 2 crane must be certified for 125 tons. This  
20 contention is not admissible because CRAFT does not  
21 explain how it is related to the license amendment  
22 request.

23 On the contrary, the license amendment  
24 request states that an insert and installation tool  
25 weigh less than 1,000 pounds and that a dry fuel

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1 assembly weighs approximately 700 pounds. CRAFT does  
2 not address or challenge these values.

3 In Contention Six, CRAFT asserts that DTE  
4 should be required to conduct an analysis of the Fermi  
5 2 spent fuel pool as currently loaded before the  
6 license amendment request can be approved. This  
7 contention is not admissible because it is challenging  
8 an aspect of DTE's ongoing compliance with NRC  
9 requirements that is unrelated to the license  
10 amendment request.

11 In Contention Seven, CRAFT asserts that  
12 the license amendment request does not adequately  
13 evaluate the use of Global Nuclear Fuel 3. This  
14 contention is not admissible because CRAFT does not  
15 provide any alleged facts or expert opinion as to why  
16 the evaluation is inadequate besides merely asserting  
17 that a spent fuel pool fire could happen.

18 Lastly, in Contention Eight, CRAFT asserts  
19 that DTE is an irresponsible owner. The Commission  
20 has stated that to be admissible such arguments must  
21 relate directly to the proposed licensing action. In  
22 this instance though, CRAFT does not tie its arguments  
23 to the license amendment request.

24 Therefore, Contention 8, as with all of  
25 CRAFT's other proposed contentions, is not admissible,

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1 and as a result CRAFT's hearing request should be  
2 denied. Thank you.

3 CHAIRMAN RYERSON: Thank you, Ms. Woods.

4 I guess we'll start with my questions, and  
5 I -- at least to begin with, I just have a couple and  
6 they're for the NRC staff.

7 On the question of standing you say that  
8 CRAFT did not cite cases that really support CRAFT's  
9 standing. But when we're dealing with, especially  
10 when we're dealing with a pro se Petitioner, is it  
11 necessary for standing purposes that they -- that the  
12 Petitioner cite the correct cases?

13 In other words, they didn't cite, for  
14 example, Holtec. Now you say, I believe, that Holtec  
15 is distinguishable, but nonetheless I think it might  
16 be closer to their position than the cases they did  
17 cite. Would you agree with that?

18 MS. WOODS: Thank you for that question,  
19 Your Honor. In regards to the aspect of the Holtec  
20 case, my colleague Nicolas, Nick Mertz, will be  
21 addressing that question.

22 CHAIRMAN RYERSON: Okay. We'll listen --  
23 I'll wait for Mr. Mertz's answer. Thank you.

24 MR. MERTZ: Thank you, Your Honor. With  
25 regard to the Holtec aspect of that question, no, we

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1 think that case is very easily distinguishable from  
2 the current situation as my colleague, Mary Francis,  
3 noted in her answer or in her introduction.

4 The Holtec case involved bringing lots of  
5 spent fuel to the site of the CISF or Consolidated  
6 Interim Storage Facility. That case cited to several  
7 other cases. In particular, it analogized itself to  
8 ISFSI construction to reracking and spent fuel pool  
9 expansion cases. All of these cases involved adding  
10 additional sources of neutrons.

11 This case is very different from those  
12 cases because it does not involve adding any  
13 additional sources of neutrons to the spent fuel pool.  
14 If you look at the Holtec opinion, in fact, the Board  
15 very heavily --

16 CHAIRMAN RYERSON: Are you speaking of the  
17 Board opinion or the Commission opinion?

18 MR. MERTZ: The Board opinion because the  
19 Commission opinion referred back to the Board opinion.

20 CHAIRMAN RYERSON: Judge Arnold and I are  
21 somewhat familiar with the Holtec example --

22 MR. MERTZ: Yes. Yes. Yes. In that one  
23 it is emphasized the volume of the spent fuel that was  
24 going to be brought to the facility. I think it used  
25 the phrase "much of the nation's spent fuel." Well,

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1 that's not the case in this case. Here, the amount of  
2 neutrons in the spent fuel pools remain the same.

3 And if you look at the text, the  
4 Commission articulated in its Holtec opinion it was  
5 that we consider the nature of the proposed action and  
6 the significance of the radioactive source.

7 Well, the nature of this proposed action  
8 is that it is a license amendment that involves no  
9 additional source of neutrons, and the significance of  
10 the radioactive source is that it is not adding any  
11 source of additional source of neutrons.

12 And the source -- and the amount of spent  
13 fuel in the pool is substantially smaller than the  
14 amount that was contemplated in the Holtec and their  
15 source partners' decision, so it's distinguishable on  
16 background. Yes.

17 CHAIRMAN RYERSON: But here we do have  
18 something else, don't we? We have a license amendment  
19 that among other things would change the safety -- the  
20 criticality safety analysis. Now I take it avoiding  
21 criticality in a spent fuel pool is, would you agree,  
22 is important?

23 MR. MERTZ: My colleague Jeremy Wachutka  
24 will answer this portion of the question.

25 CHAIRMAN RYERSON: Okay. All right.

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1 MR. MERTZ: Thank you.

2 MR. WACHUTKA: Hi, Your Honor. This is  
3 Jeremy Wachutka for the NRC staff. Yes, that is  
4 important.

5 CHAIRMAN RYERSON: Okay.

6 So now let's just picture of the situation  
7 here. We have a pro se Petitioner, no lawyers are  
8 involved, and they're looking at a proposed license  
9 amendment that is proposing to do something to change  
10 the criticality safety analysis at a facility that is,  
11 I think, four and a half miles from the nearest  
12 individual member of the petitioning organization.

13 Now putting aside whether they've  
14 demonstrated sufficient technical understanding to  
15 make a safety related contention, admissible  
16 contention, isn't that a reasonable basis for the  
17 concern of a Petitioner that gets them through the  
18 door for standing?

19 MR. WACHUTKA: Well, Your Honor, the NRC  
20 staff position is that basically for proximity  
21 presumption you have two steps here. The first step  
22 -- or two different ways you could set aside proximity  
23 presumption in a license amendment request proceeding.

24 The first would be to show that there is  
25 binding case law on point. So in this case we talk

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1 about the ISFSI construction and spent fuel expansion  
2 cases and they talk about, you know, within 17 miles.  
3 However, as we discussed, those cases are  
4 distinguishable so the NRC staff doesn't think there's  
5 any cases on point.

6 And then the next step is that if there  
7 aren't any cases on point, the Intervener or the  
8 Petitioner, even a pro se Petitioner, has the burden  
9 of demonstrating the factors that would lead to a  
10 proximity presumption in this case. And as we stated,  
11 those of the nature of the proposed action and the  
12 significance of the radioactive source and if those  
13 lead to obvious potential for offsite radiological  
14 consequences.

15 And in this case, although you're  
16 discussing what the license amendment request does  
17 involve, the CRAFT doesn't discuss that at all. As we  
18 heard in their opening and as we read in their hearing  
19 request and especially in their reply, they seem to  
20 base all their substantive arguments on the fact that  
21 their concern is with the nonremoval of the Boraflex  
22 from the spent fuel pool.

23 So they seemed concerned that the Boraflex  
24 remaining in the spent fuel pool could cause problems  
25 and they state what those problems are. However, and

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1 then they discuss, you know, this fact that there  
2 could be a spent fuel pool fire.

3 But there's no relation between the two  
4 and the NRC staff doesn't understand how, you know,  
5 the potential failure of a spent fuel assembly and a  
6 spent fuel pool could -- or the adherence of a spent  
7 fuel assembly to a rack could cause potential offsite  
8 radiological consequences. So that is the concern.

9 If, you know, CRAFT had discussed what you  
10 are discussing that potentially could be a basis for  
11 standing, but CRAFT only discusses the nonremoval and  
12 these mechanical degradation mechanisms and the NRC  
13 staff doesn't see how that nature of a proposed action  
14 could lead to offsite radiological consequences.

15 CHAIRMAN RYERSON: Yeah. I wonder though  
16 whether we aren't in danger of completing the  
17 standards for standing, for establishing standard and  
18 the standards for an admissible contention? I mean,  
19 granted, the subject here is a relatively technical  
20 one. It's involving criticality.

21 But how much must a pro se Petitioner show  
22 in order to get in the door when the amendment relates  
23 to what I think you'll agree is an important safety  
24 consideration? That is avoiding criticality --

25 MR. WACHUTKA: Yes, Your Honor. Yes. We

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1 agree that this is an important safety consideration,  
2 but the standard isn't just if it's a license  
3 amendment that has to do with criticalities then  
4 there's standing, right? There is still a burden on  
5 the Petitioner to plead something, and neither the NRC  
6 staff nor the Board can fill in blanks if there are  
7 blank spaces here.

8 And the Commission has said that this  
9 applies equally to pro se Petitioners, for instance,  
10 in CLI-15-18. So although the NRC agrees in  
11 principle, the NRC staff still thinks, you know,  
12 there's blank spaces here and those blank spaces need  
13 to be filled. And the only way that the CRAFT filled  
14 them here is talking about mechanical degradation.

15 And then because of that, that's what our  
16 position is that there's not standing. Not that  
17 we're, you know, trying to hold them to an excessively  
18 high standard, we just wanted something in that blank  
19 and they only discuss mechanical degradation for that  
20 blank.

21 CHAIRMAN RYERSON: All right.

22 One last question on standing and probably  
23 for you. In the Holtec Board decision affirmed on  
24 this point by the Commission, did Sierra Club fill in  
25 any blanks? I don't recall that they did. I think

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1 they said we have members who are a few miles away  
2 from this proposed facility and this facility's going  
3 to involve an awful lot of nuclear waste and that's  
4 enough. And I think essentially the Board agreed with  
5 that.

6 Now was there -- in Holtec was there any  
7 specific showing of how placing a whole bunch of casks  
8 and canisters which are separately approved and  
9 licensed by the NRC in a particular location actually  
10 raises a specific risk of offsite radiation? Is there  
11 any showing of that, specifically?

12 MR. WACHUTKA: Well, Your Honor, the NRC  
13 staff position like I discussed previously how you see  
14 this as sort of a two-step process. The first step is  
15 if there's binding Commission precedence that's on  
16 point.

17 And for this, for the Consolidated Interim  
18 Storage proceeding, NRC staff felt that okay, we have  
19 these other cases that discuss the construction and  
20 operation of ISFSIs and those cases granted standing  
21 within 17 miles and those cases are directly on point.  
22 And so that's why no pleading was required because  
23 there was binding case law on point.

24 Whereas, as we've discussed in this case,  
25 this is a separate issue of the installation of

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1 neutron-absorbing materials and we don't think there's  
2 any case on point, and so then there's a requirement  
3 to fill in a blank and that's where our reasoning  
4 comes in on this.

5 CHAIRMAN RYERSON: Okay. Thank you. I  
6 have one other question for the NRC staff right now  
7 and you can tell who best should answer it. It  
8 relates to your argument that the Board should simply  
9 dismiss this petition because it was not properly or  
10 timely served.

11 Who would like to address that argument?

12 MR. WACHUTKA: I can answer that, Your  
13 Honor. Jeremy Wachutka.

14 CHAIRMAN RYERSON: Okay. The staff's  
15 argument is, and I think I'm quoting it, CRAFT did not  
16 serve the hearing request on the staff and DTE by the  
17 deadline, and on that basis the staff is contending  
18 that CRAFT's hearing request should be denied.

19 And I suppose if that's the case, we don't  
20 even need to be concerned with standing and we don't  
21 need to be concerned with contention admissibility, we  
22 could just deny.

23 And my question for you is, does the staff  
24 assert that it has provided sufficient facts for the  
25 Board to make that determination? And if not,

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1 essentially, why did you make the argument?

2 MR. WACHUTKA: Your Honor, this is the NRC  
3 staff. The NRC staff feels that it's our obligation  
4 to bring up all pertinent arguments. And as you can  
5 tell by the fact that this argument was a footnote,  
6 it's definitely not the prime piece of our pleading,  
7 but we believe it is a third independent basis on  
8 which the hearing request could be denied.

9 However, you know, given that it's a pro  
10 se Intervener, we obviously don't think this is as  
11 strong as their other two independent ACs, being that  
12 there's no demonstration of standing and no admissible  
13 contentions.

14 So we think that the regulations do say  
15 that service has to be made by the deadline and there  
16 was plenty of guidance in the notice of opportunity  
17 for hearing about how to serve, pointed with  
18 hyperlinks to the right web page to go to. The web  
19 page explains, you know, which link to click to submit  
20 adjudicatory filing. So it's all there and so it  
21 should have been done.

22 CHAIRMAN RYERSON: I think you may be  
23 adding a number of facts to your original argument,  
24 but in any event, you are -- the staff is standing by  
25 that argument. You're not withdrawing it, so we will

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1 deal with it.

2 MR. WACHUTKA: Yes, Your Honor. We have  
3 all the case law there that is cited is on point.  
4 However, it's not --

5 CHAIRMAN RYERSON: It's not the case law  
6 I'm questioning. I'm questioning whether there are  
7 any facts, whatsoever, other than your conclusion in  
8 that argument. But we will address that.

9 That's all I have right now.

10 Judge Abreu, did you have some questions?

11 JUDGE ABREU: Thank you, Judge Ryerson.  
12 I do have a couple.

13 First, for the NRC staff, you mentioned  
14 that regarding the Interim Storage Facility standing  
15 question that you were relying on the fact that there  
16 was binding precedent. So my question is -- and then  
17 you have -- let me clarify that you have a different  
18 discussion regarding this case because you see the  
19 case as not falling under that same precedent; is that  
20 correct?

21 MS. WOODS: That is correct, Your Honor.  
22 This proceeding can be distinguished from the Holtec  
23 International Interim Storage Partners as my colleague  
24 Nick Mertz had alluded. This instant proceeding in  
25 the license amendment request is not requesting to add

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1 an additional or new source of radioactivity.

2 In actuality, the spent fuel capacity at  
3 Fermi 2 is not going to be changed at this license  
4 amendment request.

5 JUDGE ABREU: My question actually is if  
6 we look back at the Interim Storage Facility case, if  
7 there were not binding precedent, would you have  
8 potentially made the same argument you're using today  
9 or a similar argument regarding standing in that case?  
10 Would you have said no, the Petitioners didn't have  
11 standing despite their proximity?

12 MR. WACHUTKA: This is Jeremy Wachutka for  
13 the NRC staff. I'm not sure what we would have done  
14 and I don't know if I can answer that. But I think  
15 the thinking would still be along the same lines,  
16 which would be if there's no precedent that puts you  
17 into the category of there's a proximity presumption  
18 such as, you know, licensing renewal or their  
19 expansion of spent fuel pools, then the Commission  
20 case law says the next step is the burden is on the  
21 Intervener or Petitioner, whether they're pro se or  
22 not, to show why there's an obvious potential for  
23 offsite radiological consequences.

24 So I mean it has to be obvious, but there  
25 has to be a demonstration of why it is obvious. So I

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1 think in something as big as the Consolidated Interim  
2 Storage Facility, you know, maybe that statement  
3 wouldn't be a very in-depth statement that would be  
4 required.

5 But as for this case, we think the  
6 statement is relying on the mechanical degradation of  
7 the spent fuel or of the Boraflex and we don't see how  
8 that leads to offsite consequence.

9 JUDGE ABREU: Thank you.

10 I have a question for DTE staff or, excuse  
11 me, DTE. The topic is generally in the Contention Two  
12 area, but its more broad question was is there usually  
13 any debris in the spent fuel pool, in general, not  
14 specifically --

15 MR. LIGHTY: Yeah.

16 JUDGE ABREU: -- related to Boraflex?

17 MR. LIGHTY: Thank you, Judge Abreu. This  
18 is Ryan Lighty for DTE. There is a spent fuel pool  
19 cleaning and cooling system that would take care of  
20 any debris that might be in the system. That's  
21 described in the UFSAR and it would generally deal  
22 with that type of an issue. So, you know, in the  
23 event that there was debris.

24 JUDGE ABREU: So what types of debris are  
25 commonly cleaned out of there by that system?

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1 MR. LIGHTY: My understanding is that  
2 there could be some fine particulate silica or  
3 something like that that could be filtered out.  
4 There's minerals in the water as well. There's a  
5 demineralizer with the filters and it just generally  
6 removes impurities.

7 JUDGE ABREU: So a lot of it is just kind  
8 of small particulate matter?

9 MR. LIGHTY: That is my understanding for  
10 the most part, yes.

11 JUDGE ABREU: And under what scenario does  
12 that debris become a problem for the criticality  
13 safety analysis? Is there some known scenario in that  
14 category?

15 MR. LIGHTY: No, it does not affect the  
16 criticality safety analysis at all.

17 JUDGE ABREU: And then for CRAFT -- well,  
18 excuse me, for staff, do you have anything to add to  
19 that?

20 MS. WOODS: Thank you, Your Honor. No, we  
21 do not. We would like to note that in the Updated  
22 Final Safety Analysis Report for Fermi 2 in Section  
23 9.1.3, it does identify the fuel pool cooling and  
24 cleanup system which, in part, is designed to minimize  
25 corrosion product buildup and control water clarity

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1 through filtration/demineralization.

2 JUDGE ABREU: Thank you.

3 Now for CRAFT, based on your  
4 understanding, what kind of debris do you think would  
5 happen with the Boraflex staying in place? This is  
6 the Boraflex that has been described as being  
7 sandwiched between stainless steel sheets. What kind  
8 of debris are you concerned about that wouldn't be  
9 handled by this system that's in place?

10 MR. SHERMAN: May we have just a moment to  
11 confer?

12 JUDGE ABREU: Yes.

13 MR. DEER IN WATER: All right. Jesse Deer  
14 In Water here. Before we answer that we'd like to  
15 refer to -- let's see here. It's a document that has  
16 to do with LaSalle operating license and it talks --  
17 for Boraflex -- and it talks about approximately a  
18 hundred additional spent fuel storage racks per year  
19 become unusable, discontinued due to continued  
20 degradation.

21 And so that sounds like an idea of what  
22 the degradation may look like. We can't really think  
23 of scenarios -- we're not necessarily sure that  
24 there's enough industry experience behind Boraflex  
25 breakdown besides that it is steadily irradiated by

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1 gamma irradiated by and essentially degrades  
2 filtration and overworks the demineralizers.

3 That's all we know and I feel like that's  
4 about all you guys know too and that more needs to be,  
5 you know, known.

6 MR. SHERMAN: If I may add one quick  
7 thing. It's mostly seen as degradation producing fine  
8 particulate matter or small granules, but because of  
9 delamination and cracking if one of these panels were  
10 to break and in a not dissolving way but actually  
11 crack, it could interfere with coolant flow. It could  
12 interfere with all kinds of things.

13 But the main thing is we don't know. We  
14 do know there's enough unknown and of known unknowns  
15 that this could become a public issue and if this  
16 didn't rest with this hearing here and now.

17 MS. COLLINS: And I would like to add a  
18 comment before we sign off. I did not know about the  
19 filings to let the NRC know that we were going to  
20 file, but I filed on the SUNI and NRC answered me and  
21 I told them then we were going to file a leave. So I  
22 feel that was a notice.

23 Then if you give us a week, we will file  
24 an additional memo on the Holtec, but otherwise --  
25 okay, sorry.

1 JUDGE ABREU: Thank you.

2 Do DTE or staff have any comments about  
3 what CRAFT just told us about the Boraflex  
4 degradation?

5 MR. LIGHTY: This is Ryan Lighty with DTE,  
6 Your Honor. I would note that we have the 40 plants.  
7 As staff noted in their opening statement, 40 plants  
8 with Boraflex, and some have been operating with 40  
9 years or more with it. And there has been on  
10 operating experience to indicate that anything like  
11 what CRAFT is speculating about could happen and it is  
12 incumbent upon them to identify some support for these  
13 arguments.

14 Their speculation is simply not enough for  
15 an admissible contention and we think that's  
16 particularly true where their speculations contradict  
17 40 years of operating experience across the industry.

18 JUDGE ABREU: Thank you.

19 Staff, do you have anything?

20 MS. WOODS: Yes, Your Honor. Thank you.  
21 The staff would also like to add that as some of these  
22 facilities have had Boraflex in their spent fuel pools  
23 for up to 40 years, the NRC staff has not experienced  
24 -- has never experienced the items that the Petitioner  
25 is alleging here. Thank you.

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1 JUDGE ABREU: Thank you.

2 That's all of my questions for now, Judge  
3 Ryerson.

4 CHAIRMAN RYERSON: Thank you, Judge Abreu.  
5 Judge Arnold?

6 JUDGE ARNOLD: Didn't you say you wanted  
7 to take a break an hour into this?

8 CHAIRMAN RYERSON: I said I hope we might  
9 not go much more than an hour, but it sounds like we  
10 might be if you have a number of questions, Judge  
11 Arnold.

12 So perhaps this would be a good time then  
13 to take a break. I don't think most of us need to go  
14 very far, so shall we just take, literally, a five-  
15 minute break and resume at 11:07?

16 (Whereupon, the above-entitled matter went  
17 off the record at 11:02 a.m. and resumed at 11:08  
18 a.m.)

19 CHAIRMAN RYERSON: This is Judge Ryerson  
20 again. Let's go back on the record.

21 MR. WACHUTKA: CRAFT is present.

22 CHAIRMAN RYERSON: Okay. That's what I  
23 wanted to check, who was here. We have CRAFT, we have  
24 DTE.

25 MR. MATTHEWS: DTE is here, Judge Ryerson.

1 CHAIRMAN RYERSON: And the NRC staff.

2 MS. WOODS: Yes, Your Honor. The NRC staff  
3 is here.

4 CHAIRMAN RYERSON: And my fellow judges.

5 JUDGE ARNOLD: Judge Arnold is here.

6 CHAIRMAN RYERSON: And Judge Arnold.

7 JUDGE ABREU: And Judge Abreu is here.

8 CHAIRMAN RYERSON: And Judge Abreu.  
9 Excellent. Let's continue with the questions from  
10 Judge Arnold.

11 JUDGE ARNOLD: All right. My first question  
12 is for CRAFT. On page 7 of your petition, you have a  
13 section that's titled Preface to All Contentions. In  
14 this section, you correctly cite the requirement that  
15 Petitioners must demonstrate materiality of each  
16 contention. Is this Section intended to be your  
17 demonstration of materiality for all of your proposed  
18 contentions?

19 MS. COLLINS: We need to confer.

20 MR. DEER IN WATER: Can you repeat one  
21 time, and we will need to confer after that.

22 JUDGE ARNOLD: On page 7 of the petition,  
23 there's a section titled Preface to All Contentions.  
24 In this section, you correctly cite the requirement  
25 that Petitioners must demonstrate materiality of each

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1           contention. Is this Section that's on page 7 intended  
2           to be your demonstration of materiality for all of the  
3           proposed contentions?

4                       MR. SHERMAN: Thank you for the question.  
5           May we confer for a moment?

6                       JUDGE ARNOLD: Yes.

7                       MS. COLLINS: Yes, that's what I meant, and  
8           I hope I got it right.

9                       JUDGE ARNOLD: In reading through that  
10          section, there's one sentence that seems to provide a  
11          link between your contentions and materiality. It is  
12          the sentence, quote, The Applicants LRA and Associated  
13          Analysis have material deficiencies to an extent that  
14          could significantly jeopardize public health and  
15          safety.

16                      Now, do I correctly understand that  
17          sentence to be the core of your argument for  
18          materiality?

19                      MS. COLLINS: Where criticality, I'm  
20          concerned with a fire in the spent fuel pool, because  
21          with the water being displaced by leaving all the  
22          Boraflex there and shoving more debris and stuff in  
23          it, the criticality, that's what I'm afraid of.

24                      JUDGE ARNOLD: If that is intended to be  
25          your showing of materiality, the page 7 discussion, it

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1 does not discuss criticality or a spent fuel fire. I  
2 will go on.

3 On page 6 of your petition, in arguing for  
4 standing, you state, quote, The Petitioners hereby  
5 request to be a party to the proceeding because  
6 continued operation of the Fermi 2 Nuclear Reactor  
7 with degraded Boraflex neutron absorbers, continues to  
8 present a tangible end harm to the health and well-  
9 being of members living within 50 miles of the site.

10 What is the tangible harm you are  
11 specifically alluding to, and how might it come about?

12 MS. COLLINS: May we confer?

13 JUDGE ARNOLD: Yes.

14 CHAIRMAN RYERSON: This is Judge Ryerson.  
15 I'm just confirming, we haven't lost our connection,  
16 have we?

17 MS. MAYHALL: Hi, Judge Ryerson, this is  
18 Taylor. It sounds like CRAFT just hung up.

19 CHAIRMAN RYERSON: I was wondering whether  
20 that was the click.

21 CHAIRMAN RYERSON: That's what it sounded  
22 like to me.

23 JUDGE ARNOLD: I scared them off.

24 CHAIRMAN RYERSON: Pardon? Let's wait for  
25 them to presumably just call back in.

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1 MS. MAYHALL: Okay. I will also just send  
2 them an email to see if they know they got--

3 MR. SHERMAN: Hello? We hit the wrong  
4 button. We are very sorry.

5 MS. COLLINS: Are we back?

6 CHAIRMAN RYERSON: This is Judge Ryerson.  
7 I believe CRAFT was in the process of answering Judge  
8 Arnold's question.

9 MS. COLLINS: Yes, and Judge Arnold, nice  
10 to speak with you again. It's been a couple years but  
11 glad we're both still around. To make a long story  
12 short, yes, to the criticality.

13 JUDGE ARNOLD: Did we just lose her?

14 CHAIRMAN RYERSON: This is Judge Ryerson.  
15 Do we have CRAFT on the line again? Apparently not.  
16 We'll just wait for them to call back in.

17 MS. COLLINS: Okay, are we back?

18 CHAIRMAN RYERSON: Yes.

19 MS. COLLINS: Okay. Is this Dr. Arnold?

20 JUDGE ARNOLD: Yes.

21 MS. COLLINS: Okay. We haven't spoken in a  
22 few years, glad we're both still alive. To make a long  
23 story short, you asked to the criticality on page 4,  
24 and there's just tangible harm, there's dangerous  
25 material being moved around, and we don't know that

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1 answer.

2 JUDGE ARNOLD: Okay. You're concerned that  
3 the tangible harm would be that which would result  
4 from an inadvertent criticality in the spent fuel  
5 pool, correct?

6 MS. COLLINS: Yes.

7 JUDGE ARNOLD: Okay. How would the  
8 possibility of a criticality be affected by a license  
9 amendment?

10 MR. SHERMAN: We have no assurance that the  
11 sedimentary material coming off of the graded neutron  
12 absorbing materials would necessarily be properly  
13 conveyed and caught up in the filtration system, and  
14 could add to conditions in the spent fuel pool such as  
15 lack of circulation through some of the racks, and we  
16 know that the spent fuel pool has already been double  
17 racked from its original design.

18 We feel that it's already, the potential  
19 for existing accidents could be exasperating by not  
20 only the reracking, but by the additional problems of  
21 inherently dangerous materials being moved around in  
22 a pool and changing the pool chemistry, and lack of  
23 marking.

24 All of these can add up incrementally to  
25 being additional concerns. We're not saying that we

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1 have proof it will happen. We're saying that we have  
2 concerns enough that we feel it should be addressed  
3 more.

4 JUDGE ARNOLD: Okay. Next question. On page  
5 13, in discussion Contention 1, you state that by not  
6 physically removing the degraded Boraflex from the  
7 spent fuel itself, Fermi 2 will be out of compliance  
8 with license condition number 3.

9 Are you asserting that a license cannot be  
10 modified using a license amendment? Or that just in  
11 this case it should not be modified.

12 MR. DEER IN WATER: In this case, it should  
13 not be modified. Oh, Jesse Deer in Water, I'm sorry,  
14 sir. I'm very new. But we feel like in this case it  
15 should not be modified.

16 JUDGE ARNOLD: Also, on page 13 regarding  
17 Contention 1 you state, quote, the Boraflex racks can  
18 become damaged and adhere to the fuel assembly,  
19 resulting in loading complications. Do you have  
20 support for that phenomena, where the racks adhere to  
21 the fuel assemblies?

22 MR. SHERMAN: Every time I turn on a  
23 country sink and I see the adherence of particulate  
24 matter and heavy metals on the sink itself, I know  
25 that particulate matter can adhere.

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1 JUDGE ARNOLD: Okay.

2 MR. DEER IN WATER: Also, to build on that,  
3 Jesse Deer in Water here, I would like to again  
4 mention that we don't have all the answers and we're  
5 not even sure if all the answers are out there,  
6 because of lack of operating experience post-Boraflex  
7 degradation, but I can imagine that, it's not a  
8 scenario for anyone to pick apart or anything, but  
9 loose material in a spent fuel pool can be stirred up  
10 by simply taking --

11 I could assume that there's lots of  
12 different scenarios. We could have a better idea of  
13 their current status of the spent fuel pools and me,  
14 I'm just doing my best effort here.

15 JUDGE ARNOLD: Okay. Next question. In your  
16 discussion of Contention 2, on page 10 you state,  
17 quote, Cumulative longitudinal degradation to the  
18 spent fuel has not been evaluated for corrosion and  
19 degradation, blah blah. You use this expression,  
20 cumulative longitudinal degradation here on page 10,  
21 as well as on page 13 and 14.

22 That's a term I'm unfamiliar with. Can you  
23 tell me what cumulative longitudinal degradation is?

24 MR. DEER IN WATER: Just give us one  
25 moment. We'll have an answer for you. That would be

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1 degradation that accumulates over time.

2 JUDGE ARNOLD: Degradation that accumulates  
3 over, okay. I'm moving on now. Next question is for  
4 Detroit Edison. We've already, Judge Ryerson has  
5 already asked a few questions about the sub-critical  
6 by .05 delta K, and we know from the NRC staff that  
7 that's an important requirement. I'm wondering, I'm  
8 trying to get an idea of what that requirement is in  
9 practical terms. Do you have anyone who can answer a  
10 slightly technical question?

11 MR. LIGHTY: Ryan Lighty for DTE. Your  
12 Honor. Unfortunately, none of our technical experts  
13 have a speaking line today. I can give you my  
14 understanding of that threshold, and I believe you're  
15 talking about the 0.95K Effective value.

16 JUDGE ARNOLD: Yes.

17 MR. LIGHTY: What that represents is in  
18 essence a five percent sub-criticality margin. So in  
19 other words, 1.5 and above is critical, and so 0.95 is  
20 five percent below that threshold.

21 JUDGE ARNOLD: Does the staff have anyone  
22 that can give any insight to what that requirement  
23 really is in practical terms?

24 MS. WOODS: Thank you for that question,  
25 Your Honor. If I may, let me consult with my technical

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1 staff, and I can see if we might be able to get that  
2 information for you, but none of them do have speaking  
3 lines. Thank you, Your Honor. Give me just one minute.

4 CHAIRMAN RYERSON: Yes, Judge Arnold,  
5 generally we only permit people to speak who have  
6 filed appearances, so in a sense it's not terribly  
7 relevant who has a speaking line. And as I suspect,  
8 either the staff or DTE will remind us this five  
9 percent standard is established by commission  
10 regulation and is not something that can be challenged  
11 as such in this proceeding.

12 MR. LIGHTY: Your Honor, this is Ryan  
13 Lighty with DTE again. I just, if you have a specific  
14 question on this, our technical experts are on the  
15 listening line, and I'm in communication with them. So  
16 I may be able to relay an answer if it's something  
17 they could answer.

18 JUDGE ARNOLD: Let's wait until the NRC  
19 gets back.

20 MS. WOODS: Your Honor, if we could also  
21 get clarification on the question, that would also  
22 help us in our coordination with our technical staff  
23 to find the best response to your question.

24 JUDGE ARNOLD: It's more than one question,  
25 but we found it's an important consideration. Shutdown

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1 is a K effective of .95 actually close to being  
2 critical? I mean, such than a small tweak in the spent  
3 fuel pool could nudge it into criticality?

4 MR. WACHUTKA: Your Honor, this Jeremy  
5 Wachutka from the energy staff. One thing I would note  
6 is that 0.95 requirement comes from the technical  
7 specifications. It's already shown to be the safe  
8 place to be, and it's also, the same requirement is in  
9 the NRC's regulations at 10 CFR 50.6(a).

10 So this has been determined to be  
11 sufficient, with a sufficient margin to be safe and  
12 conservative. And there's a lot of things that go into  
13 absorbing the neutrons to maintain this level, and  
14 it's not just the neutron-absorbing materials. So they  
15 say roll, but there's a bunch of other things such as  
16 the spacing between the fuel assemblies. You have the  
17 fuel assemblies themselves, their characteristics, the  
18 material in the rack, not just the neutron-absorbing  
19 materials, the water in between, all these things  
20 combine to keep the K effective at 0.95 or less.  
21 Changing one factor wouldn't necessarily nudge it up  
22 significantly.

23 JUDGE ARNOLD: Correct. It shouldn't. The  
24 way the requirement is specified, for someone without  
25 a lot of technical expertise, they might interpret

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1 that as meaning you're 95 percent of the way to  
2 critical. So you're close to critical. And I'm just --

3 MR. WACHUTKA: This is Jeremy Wachutka  
4 again. My technical staff is telling me, to them,  
5 people who know these things, 0.95 is considered far  
6 from critical and it's very conservative.

7 MR. LIGHTY: Your Honor, this is Ryan  
8 Lighty with GTE again. My technical team is telling me  
9 that the calculation of this value is a statistical  
10 combination of variables, and it accounts for  
11 uncertainties in that calculation as well. So minor  
12 tweaks to certain parameters are already addressed in  
13 the calculation.

14 And then here specifically that the  
15 calculations are attached to the license amendment  
16 request and must not be challenged.

17 JUDGE ARNOLD: Okay, let me just ask  
18 Detroit Edison one other thing. I take it then, it  
19 would take quite a large change to the spent fuel to  
20 nudge it to criticality?

21 MR. LIGHTY: Yes, that's correct, Your  
22 Honor.

23 JUDGE ARNOLD: Next question is for the  
24 Petitioner again. In your discussion of Contention 4,  
25 on page 12 you state, CRAFT contends that

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1 consideration to reduce spent fuel density has not  
2 been adequately evaluated and considered, nor has it  
3 been pursued as an alternative.

4 Can you point out to me a requirement for  
5 Detroit Edison to consider alternatives in this  
6 license amendment request?

7 MS. COLLINS: We need to confer, please.

8 MS. WOODS: What is that pause?

9 JUDGE ARNOLD: Could you repeat that?

10 MS. WOODS: What is that?

11 MS. COLLINS: I beg your pardon, we need to  
12 confer.

13 (Telephonic interference.)

14 CHAIRMAN RYERSON: Yes, this is Judge  
15 Ryerson. I think the CRAFT participants are speaking  
16 amongst themselves and don't intend to be on the  
17 record here, but you might be careful that you're not  
18 on the line as you speak?

19 MR. SHERMAN: We have been muting when we  
20 confer. We got back on the line because we were  
21 hearing the background noise. I'm going to mute now.

22 While my colleagues are looking for this  
23 answer, I'd like to bring up an issue that's been  
24 determined with CRAFT about the earlier things from  
25 GTE that if CRAFT were to be able to prevent this LAR

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1 from going through that their only alternative would  
2 be to just put more fuel into the spent fuel pool and  
3 have a more dangerous situation.

4 They have the opportunity to remove the  
5 fuel and put it into dry cask storage. They also have  
6 the opportunity to shut it down and save the rate  
7 payers a lot of money. We will look for a better  
8 answer for you on whether or not they are required to  
9 look at alternatives, although in theory we believe  
10 that they should be.

11 We cannot pin point at this time a  
12 specific requirement that they look into alternatives,  
13 but it should be obvious that a bid has to look into  
14 alternatives after continuing to make multiple changes  
15 upon multiple changes.

16 JUDGE ARNOLD: Okay. Next question. On  
17 pages 14 and 15 of your petition, you discuss  
18 Contentions 4 and 5. But because you are discussing  
19 two contentions, I do not have a clear picture of what  
20 Contention 5 is. I think it has to do with cranes, but  
21 could you give us a one or two concise sentences about  
22 what Contention 5 is?

23 MR. DEER IN WATER: We'll put that together  
24 for you real quick. Jesse Deer in Water.

25 Jesse Deer in Water, speaking towards

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1           Contention 5. We believe if the fuel gets (telephonic  
2           interference) because of degradation there could be  
3           issues with the crane load and (telephonic  
4           interference).

5                         JUDGE ARNOLD: Okay. It is the crane issue.  
6           Thank you. I think the last question I have for you,  
7           on page 16, concerning Contention 6, you state, There  
8           is a need for Fermi 2 specific analysis on the spent  
9           fuel pool at Fermi 2 as currently loaded. Unquote.

10                        But you never explain what type of  
11           analysis. What do you see as the output of the  
12           analysis you claim is missing?

13                        MR. SHERMAN: We're going to confer. I  
14           believe we will have a great answer for you, and thank  
15           you for the excellent question. This is Jim Sherman.

16                        MR. DEER IN WATER: Jesse Deer in Water. As  
17           far as, I believe the specific answer to the question  
18           you might be looking for was, what would we like to  
19           learn from these analysis that we asked for, am I  
20           correct in asking that or am I correct in assuming  
21           that was the answer, or the question?

22                        JUDGE ARNOLD: You state that there is an  
23           analysis missing, and you don't say what you would  
24           expect the output to be of that analysis. So, what  
25           type of analysis are you saying is missing?

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1 MR. DEER IN WATER: Well, to be specific,  
2 actually we can't really be specific. We can tell you  
3 what we would like to know, or what we would like the  
4 analysis to show. We would like to know things like  
5 how the water's going to do that.

6 Maybe what we're saying is that all the  
7 tests that Fermi, I mean that DE has performed has  
8 been on calculations of a spent fuel pool that is not  
9 the spent fuel pool that we're looking at, and we're  
10 kind of afraid that no one really know the real state  
11 of it. We don't want (telephonic interference), but --

12 MS. COLLINS: We would like to see the  
13 analysis that would include mechanical and chemical  
14 assays in addition to the criticality with the  
15 Boraflex panels left in place, taking up space that  
16 could be filled in with water for taking the  
17 criticality down.

18 JUDGE ARNOLD: I'm not exactly sure what  
19 that means, but that was my last question. Let me ask  
20 Detroit Edison, I've asked Petitioner a number of  
21 questions here. Are there any of their answers that  
22 you would like to comment on?

23 MR. LIGHTY: Thank you, Your Honor. This is  
24 Ryan Lighty for DTE. I heard so many new arguments  
25 raised for the first time here on the call today, that

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1 I'm not quite sure where to begin. But just the most  
2 recent discussion about the chemistry program, the  
3 site has a water chemistry program. I'm not sure  
4 exactly what the challenge to that existing current  
5 licensing basis program would be.

6 I've heard new arguments about inadvertent  
7 criticality that were raised for the first time here,  
8 but it's still not clear by what mechanism, what  
9 theory, and there certainly has been no suggestion  
10 that there is support for any of these arguments.

11 And so, again, nothing that we've heard  
12 here today presents a genuine dispute with the license  
13 amendment request.

14 JUDGE ARNOLD: Okay. NRC staff, is there  
15 any of this that you would like to comment on?

16 MS. WOODS: Yes, Your Honor. Thank you so  
17 much. The NRC staff would just like to iterate again  
18 that the assertions that CRAFT has made in this matter  
19 are unsupported. Thank you.

20 JUDGE ARNOLD: Okay. Judge Ryerson, I'm  
21 done with my questions.

22 CHAIRMAN RYERSON: And I have no further  
23 questions. Thank you. Judge Abreu?

24 JUDGE ABREU: I have no further questions.  
25 Thank you.

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1 CHAIRMAN RYERSON: And I take it, Judge  
2 Arnold, you have concluded your questions.

3 JUDGE ARNOLD: Yes, I have.

4 CHAIRMAN RYERSON: Okay. I think that  
5 largely concludes what we hoped to accomplish today.  
6 There was passing mention of the possibility of a  
7 supplemental memorandum. Speaking for myself, and  
8 obviously the Board has not had a chance to discuss  
9 this, but generally the rules, the NRC rules on  
10 contention and admissibility and standing are fairly  
11 clear that there's to be a petition, there's to be an  
12 answer, and there's to be a reply, if the petitioner  
13 chooses to file a reply, and that those will be the  
14 written pleadings.

15 We can't stop anybody from filing  
16 something and moving to have it considered, but I must  
17 say, speaking for myself, I am not normally inclined  
18 to accept something like that that doesn't comply with  
19 the original briefing rules. I don't know if Judge  
20 Abreu or Judge Arnold, you want to comment on that  
21 now, or we just leave that where it is. Judge Abreu?

22 JUDGE ABREU: I concur with you.

23 CHAIRMAN RYERSON: Judge Arnold?

24 JUDGE ARNOLD: I have no comment.

25 CHAIRMAN RYERSON: Okay. Well, on behalf of

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1 the Board, I want to thank everyone for participating  
2 today. These conversations are always helpful and I  
3 think we've done the best we can under the  
4 circumstances with a telephone call. I don't think it  
5 unduly affected the arguments, and I think we  
6 understand what the positions are.

7 Under the NRC rules, the Board is expected  
8 to either issue a written decision within the next 45  
9 days on standing and contention, admissibility, or if  
10 we are unable to do that, to specify when we will  
11 issue a decision. I am reasonably confident that we  
12 will be able to issue a decision within the next 45  
13 days.

14 Judge Abreu, anything else that you would  
15 like to comment on before we adjourn?

16 JUDGE ABREU: Nothing else. Thank you,  
17 Judge Ryerson.

18 CHAIRMAN RYERSON: Judge Arnold?

19 JUDGE ARNOLD: Nothing for me.

20 CHAIRMAN RYERSON: All right. Well, again,  
21 thank you all. Stay well and stay safe, and we stand  
22 adjourned.

23 (Whereupon the above-entitled matter went  
24 off the record at 11:47 a.m.)

25