

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board

Title: Pacific Gas and Electric Company
(Diablo Canyon Nuclear Power Plant, Units 1 and 2)
(Construction Period Facility Operating Licenses
Recapture No. DPR-80 and DPR-82)

Docket No. 50-275-OLA-2
50-323-OLA-2
ASLBP No. 92-669-03-OLA-2

LOCATION: San Luis Obispo, California

DATE: Thursday, December 10, 1992

PAGES: 1 - 217

TR.01-

0/1

ANN RILEY & ASSOCIATES, LTD.

1612 K St. N.W., Suite 300

Washington, D.C. 20006

(202) 293-3950

150000

9212150306 921210
PDR ADDOCK 05000275
T PDR

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board

Title: Pacific Gas and Electric Company
(Diablo Canyon Nuclear Power Plant, Units 1 and 2)
(Construction Period Facility Operating Licenses
Recapture No. DPR-80 and DPR-82)

Docket No. 50-275-OLA-2
50-323-OLA-2
ASLBP No. 92-669-03-OLA-2

LOCATION: San Luis Obispo, California

DATE: Thursday, December 10, 1992

PAGES: 1 - 217

TR.01-

0/1

ANN RILEY & ASSOCIATES, LTD.

1612 K St. N.W., Suite 300

Washington, D.C. 20006

(202) 293-3950

150000

9212150306 921210
PDR ADDCK 05000275
T PDR

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

- - - - -X

In the Matter of: :
PACIFIC GAS AND ELECTRIC : Docket Nos. 50-275-OLA-2
COMPANY : 50-232-OLA-2
(Diablo Canyon Nuclear :
Power Plant, Units 1 and 2) : ASLBP No. 92-669-03-OLA-2
(Construction Period Facility :
Operating Licenses Recapture) :
No. DPR-80 and DPR-82 :

- - - - -X

San Luis Obispo City Hall
990 Palm Street
San Luis Obispo, California
Thursday, December 10, 1992

The above-entitled matter came on for pre-hearing
conference, pursuant to notice, at 9:36 o'clock a.m.

BEFORE: THE HONORABLE CHARLES BECHHOEFER, CHAIRMAN
THE HONORABLE DR. JERRY KLINE, MEMBER
THE HONORABLE FREDERICK J. SHON, MEMBER
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ANN RILEY & ASSOCIATES, Ltd.
Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 APPEARANCES:

2

3

ON BEHALF OF PACIFIC GAS AND ELECTRIC:

4

DAVID A. REPKA, ESQUIRE

5

WINSTON & STRAWN

6

1400 L Street, N.W.

7

Washington, D.C. 20005-3502

8

-and-

9

RICHARD F. LOCKE, HOUSE COUNSEL

10

PACIFIC GAS AND ELECTRIC

11

77 Beale Street

12

San Francisco, California 94106

13

14

ON BEHALF OF THE NRC STAFF:

15

ANN P. HODGDON, STAFF COUNSEL

16

ARLENE A. JORGENSEN, STAFF COUNSEL

17

U.S. Nuclear Regulatory Commission

18

Office of General Counsel

19

Washington, D.C. 20555

20

21

22

23

24

25

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 ON BEHALF OF THE SAN LUIS OBISPO MOTHERS FOR

2 PEACE:

3 JILL ZAMEK

4 JUNE VON RUDEN

5 ROCHELLE BECKER

6 NANCY CULVER

7 SANDY SILVER

8 P.O. Box 164

9 Pismo Beach, California 93448

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

P R O C E E D I N G S

[9:36 a.m.]

JUDGE BECHHOEFER: Good morning, ladies and gentlemen. This is a pre-hearing conference, the first pre-hearing conference in the proceeding involving the application by Pacific Gas and Electric Company to recapture or recover a certain period of time in their operating license, the effect of which would be to extend the period of operation of the Diablo Canyon Nuclear Power Plant's Units 1 and 2.

The Atomic Safety and Licensing Board will hear this proceeding. I will introduce the members. On my left is Fred Shon, Frederick Shon, who's a nuclear engineer and physicist. On my right is Dr. Jerry Kline, an environmental scientist. My name is Charles Bechhoefer. I'm the chairman of the Board and I'm an attorney.

Participating today are, one, petitioner for an intervention in this proceeding, the Mothers for Peace, and two other parties, the Pacific Gas and Electric Company, who is the applicant or the licensee as the case may be and the NRC Staff. I would like the representatives of the parties to introduce themselves. I guess I'll start on my left with the staff, Miss Hodgdon.

MS. HODGDON: I'm Ann P. Hodgdon, representing the NRC Staff, and with me today is Arlene Jorgensen, who also

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 represents the staff. And I have two technical staff
2 members with me, Sherri Peterson, who's over here, who's the
3 project manager for this project, and Meena Khanna, who is
4 an intern who's with us from headquarters at Region 3.

5 MS. ZAMEK: This is working?

6 JUDGE BECHHOEFER: Care to introduce yourselves?
7 It's supposed to be working.

8 MS. ZAMEK: I'm Jill Zamek with the Mothers for
9 Peace, and we are representing ourselves today.

10 MS. VAN RUDEN: I'm June van Ruden, a member of
11 Mothers for Peace.

12 MS. CULVER: Nancy Culver, Mothers for Peace.

13 MS. BECKER: Rochelle Becker, Mothers for Peace.

14 MR. REPKA: I am David Repka, Counsel for Pacific
15 Gas and Electric Company. And on my left is Richard Locke,
16 also counsel for the company. For the Board's information,
17 I'd like to introduce or recognize that with me today, among
18 others, are Greg Rueger, who's the company senior
19 vice-president and general manager for nuclear power
20 generation, and Warren Fujimoto, who's vice-president for
21 Nuclear Technical Services.

22 JUDGE BECHHOEFER: Well, the purpose of this
23 conference today is for us to entertain arguments on whether
24 the Mothers for Peace may become a party to this proceeding.
25 This proceeding is a little different from most traditional

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 type of NRC proceedings. The company is seeking to
2 recapture certain periods of time which were occupied by
3 construction.

4 Initially -- at the time PG&E received its
5 operating license -- or applied for its operating licenses,
6 the Commission was -- the Commission is -- which is limited
7 to 40 -- to granting licenses for a period of 40 years, was
8 granting those licenses from the period of the construction,
9 and the period of actual construction was included in that
10 period of time, so that the 40 years did not include 40
11 years of actual operation.

12 Starting about in the early '80s, 1981 or '2, I
13 guess, the Commission changed its policy and began granting
14 operating licenses for the full 40 years from the time of
15 initial operating authority. Pacific Gas and Electric
16 Company is seeking to recapture that period of time. The
17 proceeding must be differentiated between -- or from
18 renewal-type proceedings where if there is a 40-year
19 license, it may be renewed for another period of time, an
20 additional period of time, and different procedures govern
21 that type of proceeding.

22 But I might also add there's very little precedent
23 on what standards govern a proceeding of this type. Staff
24 has granted many of these applications from other reactors.
25 Insofar as I'm aware, in only one case was there a challenge

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 from a petitioner or intervenor. The other cases the staff
2 granted. But one cannot say that that should have any
3 precedent because the very fact that no one sought to
4 intervene in those cases, so that it's a little bit
5 different when someone has a right to a hearing or a right
6 to an opportunity for a hearing as is the case here. This
7 is published in the Federal Register.

8 There was a notice of opportunity for hearing.
9 That's the notice which the Mothers for Peace responded to.
10 When that happens, the fact that the staff has granted many
11 other similar applications is not particularly relevant,
12 because they were unopposed in effect. The one case where
13 there was an opposition, a hearing was held, but it was
14 eventually settled. The parties agreed to certain terms and
15 the proceeding was dismissed on that basis.

16 I might say the Board certainly has nothing
17 against parties trying to settle their differences and work
18 out an arrangement such as happened in the other case which
19 was from Vermont Yankee, but that being aside, if the
20 parties decide they can settle any of the issues through
21 some means or other, we'd certainly welcome any such
22 arrangement and would certainly consider that.

23 But in the interim, we have a request for a
24 hearing petition to intervene, and we must decide which --
25 at least -- there has to be at least one contention which is

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 admissible, and the Mothers for Peace have filed 11
2 different contentions, many with multiple subparts, and we
3 plan to discuss all of those.

4 In addition, a petitioner must establish that it
5 has standing to participate. The Mothers for Peace has
6 submitted the names of five individuals who live within 50
7 miles of the plant. Many of them live as close as five.
8 Some of them live as close as five miles, I believe, from
9 the plant. In terms of standing, if it were a routine
10 operating license or construction permit proceeding, anyone
11 living within 50 miles and who asserts they may be affected
12 by the operation of the plant, construction or operation of
13 the plant, would have standing to participate. the
14 Commission has cut that down a little bit on operating
15 license proceedings and has said that those standards apply
16 only for significant amendments. And, of course, there's
17 the question, then, about what is significant.

18 We believe, by the way, that we should -- the
19 first thing we should consider is standing, and I know that
20 the Mothers for Peace in their proposed agenda did not
21 mention standing at all. The applicants thought we should
22 consider the contentions first, and then if any of the
23 contentions were good, only then should we get into
24 standing. We don't plan to rule on the majority of the
25 contentions here at the conference. There may be some time

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 -- several of them are fairly complicated, and I doubt that
2 we'll have a final answer on those, so I think we would like
3 to start out with the standing question. And the Mothers
4 for Peace has set forth their case, and the NRC Staff is not
5 opposed to that. They didn't say they supported it, but
6 they didn't oppose it, either. I think we should hear both
7 from Mothers for Peace and from the applicant. The
8 applicants do oppose the basis set forth for standing, and I
9 think we should cover that first, because if there's no
10 substantial standing, there won't be any proceeding at all,
11 and that one we might be able to rule on while we're here.
12 But I don't think we could rule on all the contentions.
13 Some of them we may be able to rule on, but all of them I
14 don't think we will.

15 I might -- before we actually get into standing,
16 both parties who have filed proposed agenda have asked for
17 the opportunity to make opening statements, and I think that
18 is appropriate for, well, all three, if the staff desires to
19 make one as well. I think a fairly brief opening statement
20 will be appropriate. And why don't we lead off with the
21 Mothers. You choose your representative.

22 MS. CULVER: Do you want to lead off with them?

23 JUDGE BECHHOEFER: Whichever. It doesn't matter.

24 MR. REPKA: Mr. Bechhoefer, it's our contention at
25 this point in the proceeding the petitioner has the burden

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 and we would defer to them at this point.

2 JUDGE BECHHOEFER: I think you probably should
3 lead off.

4 MS. CULVER: The history of Diablo Canyon forms
5 a pattern of responding to problems with denial,
6 rationalization, and cover-up. PG&E can't respond to
7 problems with solutions because in so many cases there are
8 no solutions except to close the plant down. It is for this
9 reason that we should all be in this room today discussing
10 decommissioning Diablo Canyon rather than extending its
11 license for up to 15 more years.

12 To you this case is business as usual. Whether we
13 have a hearing or not, and whether it includes such issues
14 as earthquake safety, plant aging, and nuclear waste storage
15 is only a matter of abstract law and regulations. To us
16 these decisions, and the whole sorry history of Diablo
17 Canyon, is very concrete and personal. When most of you
18 return to your homes many miles from here, we will be left
19 to live with the reality of Diablo Canyon.

20 The reality is that Diablo Canyon was mistakenly
21 sited next to a major active earthquake fault. The plant
22 was designed and largely built on completely outdated
23 seismic data, and those data become more obsolete each day
24 since seismology is a rapidly growing science that is
25 providing new insights almost on a daily basis. PG&E first

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 tried to rationalize away the discovery of an active fault,
2 and then when it belatedly tried to upgrade the plant, it
3 did such a bad job of it that it became the only nuclear
4 plant in America to receive and then lose its operating
5 license all within a month.

6 The reality is there is no place and no safe
7 method for storing high-level radioactive wastes for the
8 tens of thousands of years it will remain deadly. That
9 means that Diablo Canyon for all practical purposes has
10 already become a permanent, high-level radioactive waste
11 dump. Now PG&E wants to produce an additional 15 years of
12 nuclear wastes for which there is absolutely no storage
13 plans. Will PG&E next ask to be allowed to place monitored
14 retrievable storage casks, another temporary waste storage
15 solution that is becoming permanent, at this dangerous site?

16 The reality is that Diablo Canyon is already an
17 old plant. Many similar nuclear plants are wearing out
18 after 20 to 25 years. Diablo Canyon was designed in the
19 1960's and many of its components and materials have been
20 on-site since the late 1960's, exposed to the corrosion of
21 air and seawater for many years before the plant operated.
22 By the time this proposed extension ends, many of these
23 components and materials will be close to 60 years old.

24 The reality is that there exists at Diablo Canyon
25 a persistent pattern of personnel errors and mechanical

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 failures. We cite many of these problems in our
2 contentions, but PG&E complains that we only mention recent
3 problems. That was partly a factor of time. So let me
4 remind you of a less recent accident at the plant. During a
5 refueling of Unit 2 in April 1987, the residual heat removal
6 system in the containment was lost for one and a half hours.
7 The top of the reactor vessel was off for maintenance work,
8 leaving it open to the air, and the water level was about
9 one half. The water boiled and a series of operator errors
10 combined to create near-disaster conditions. Among the
11 errors was that plant operators had no way of knowing the
12 temperature inside the containment because maintenance was
13 going on and equipment had been disconnected. To compound
14 the danger, an engineer drained much-needed cooling water
15 without telling the control room operators. This was an
16 immediate threat to the lives of everyone who lives in this
17 area, and yet no emergency evacuation was put into effect
18 and the full extent of that day's problems was only
19 disclosed several months later by a newspaper that's out of
20 our county.

21 This license extension request may be a simple
22 administrative matter to you and to PG&E, but to us it's a
23 matter of the personal safety of our families, our friends,
24 our neighbors.

25 The pattern continues. Once again PG&E is asking

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 you to go along with its denials, rationalizations and
2 cover-ups. PG&E seeks to deny any discussion of earthquake
3 safety, saying, "We already dealt with that issue for the
4 original licensing hearing." Doesn't it matter that new
5 evidence strongly suggests that PG&E is wrongly assuming
6 that the Hosgri fault will produce almost exclusively
7 horizontal movement? It is in fact likely to produce much
8 thrusting of plates, creating far more violent ground motion
9 than the plant was designed to withstand. How can it be too
10 late to raise this issue?

11 PG&E denies that there is any problem in storing
12 radioactive wastes when it knows full well that there will
13 not be a permanent waste dump in the foreseeable future.
14 Its spent fuel pools, designed for short-term waste storage,
15 will be full -- reracked and full before this license
16 extension could take effect. What then?

17 PG&E wants to avoid dealing with the problems of
18 aging structures, systems, and components by getting a
19 license extension now, 16 years before it's needed, and
20 before the most serious of these problems becomes obvious.
21 They say we're raising the issue too soon, that it can only
22 be raised when PG&E applies for a license renewal. However,
23 PG&E is asking for an extension that is three quarters as
24 long as the projected 20-year renewal, but which will allow
25 it to avoid complying with the far more rigorous standards

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 required for renewal. No other utility has requested such a
2 long recapture extension. Further, when the inevitable
3 problems of aging do become obvious, PG&E will say they
4 already have their license extension in hand and we raised
5 the issue too late.

6 We're asking you to not reward PG&E for its 15
7 years of mistakes, to not compound the problem of the
8 plant's dangerous site by extending its life, and to accept
9 your responsibility as the guardian of public safety, not of
10 PG&E's corporate profit.

11 Thank you.

12 MR. REPKA: Thank you, Judge Bechhoefer.

13 When Diablo Canyon was first licensed by the NRC,
14 the petitioners were here. The petitioners raised many
15 safety concerns, many of the same contentions that they're
16 raising here today, many of the same contentions that
17 they've raised in their papers in this proceeding. At the
18 time the NRC, PG&E, the advisory committee on reactor
19 safety, and many of them looked very at the designs of this
20 plant and concluded that it was an adequately designed plant
21 and a safe plant. Now that it has been operating for a
22 number of years, Diablo Canyon has proven to be a very
well-run plant, a very reliable plant, a safe plant.

24 We're here today and in this proceeding to discuss
25 one license amendment; not to relitigate and address old

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 issues, issues long ago put to rest. The one amendment
2 before us is truly an administrative change to the license.
3 It's a change that simply conforms the license to the
4 original intent of the designers and the NRC in issuing
5 licenses. The fact is a 40-year operating period was what
6 was presumed at that time.

7 We're also here to talk about 11 proposed
8 contentions. Not new issues that are raised today. Not the
9 old issues from yesteryear.

10 In those 11 issues, the petitioners paint a
11 picture completely at odds with the verifiable public
12 records, at odds with the record that has been compiled at
13 this plant in the last several years. The petitioners paint
14 a picture of shoddy and insufficient maintenance. There is
15 no support for these contentions. The petitioners simply
16 offer a few isolated, out-of-context findings, selectively
17 clipped observations from NRC inspection reports, things
18 that simply do not add up to programmatic problems that
19 might be admissible in an NRC proceeding.

20 In fact, Diablo Canyon has been recognized by the
21 NRC to be one of the truly best-operated and best-operating
22 plants in the country.

23 The petitioners also paint a picture in their
24 papers of an unmotivated and unskilled work force at Diablo
25 Canyon, but quite simply an unmotivated and unskilled work

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 force could not have run a plant as well as this plant has
2 been run. The objective performance indicators which I'll
3 discuss a little bit later this morning clearly support that
4 this plant has been well run and that the people who run it
5 are dedicated, talented professionals, deeply committed to
6 their jobs, to ensuring safety, and to ensuring the
7 reliability of this plant.

8 The petitioners also raised numerous other safety
9 issues such as waste, an issue that's clearly outside the
10 scope of this proceeding based on the NRC's own regulations.
11 They raise issues such as thermal lag, which are not safety
12 significant for Diablo Canyon, which have no basis in fact,
13 and which clearly have no nexus to the amendment at issue,
14 such as seismic issues which were long ago resolved.
15 the Commission recently revised its admissibility
16 thresholds for contentions in its proceedings. Those
17 thresholds require a greater evidentiary basis than the
18 Commission previously required for the admission of
19 contentions, a showing that there is a genuine issue, a new
20 safety concern, a concern that has not been previously
21 litigated, one that could entitle the petitioner to relief.
22 If those new evidentiary standards, those new threshold
23 standards are to have any meaning at all, none of the
24 contentions in this proceeding can possibly be found to be
25 admissible.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 Given the picture of neglect and cynicism painted
2 by the petitioners regarding Diablo Canyon, let me provide
3 some context as opposed to the isolated, out-of-context
4 inspection findings that they offered. Let's look at some
5 of the big picture indicators for Diablo Canyon.

6 In 1992 alone, nrc senior management has commended
7 Diablo Canyon as one of a handful of truly outstanding
8 performers in the United States. The NRC does not put
9 plants on its good performers list lightly. This is an
10 achievement we are very proud of. It is in fact a testament
11 to the people who run this plant and how well it's been run.

12 The NRC also has a program called the Systematic
13 Assessment of Licensee Performance Program. This program
14 focuses on not minor, little safety insignificant details,
15 but the big picture: How this is plant operated? How is
16 management doing? How are the people doing? In the last
17 two assessment periods covering a period of three years,
18 Diablo Canyon has been given a Category 1 rating in plant
19 operations. A Category 1 rating denotes excellence. It
20 denotes achievement far beyond mere compliance with NRC
21 regulations.

22 As a third indicator, Diablo Canyon has achieved
23 an excellent record of performance and reliability evidenced
24 by its high capacity factor. It's well recognized by the
25 industry and by the NRC that a well-run plant is a safe

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 plant. A plant that achieves a high capacity factor is a
2 plant that is avoiding unnecessary risks.

3 Under the unique Diablo Canyon rate structure,
4 financial health of this company is tied directly to the
5 performance, the safety, and the reliability of this plant.
6 The incentives are for Diablo Canyon to operate safely and
7 efficiently.

8 Fourth, Diablo Canyon training programs have been
9 recognized as a model both nationally and internationally by
10 the Institute of Nuclear Power Operations. This again shows
11 our commitment to training and again is completely at odds
12 with the picture painted by the petitioners. Another
13 indicator, operators at Diablo Canyon have achieved a nearly
14 100 percent requalification rate in their requalification
15 testing. This is a percentage and an achievement that far
16 exceeds the industry norm.

17 The plant also has an extensive capital budget and
18 improvement program. It's safe to say that we are
19 constantly reviewing this plant and improving the plant and
20 having a deep commitment and a deep responsibility to do
21 so. Another indication is the parts warehouse at
22 Diablo Canyon. This is one of the largest inventories of
23 replacement parts in the industry. It allows quick,
24 efficient replacements, a testament to our commitment to
25 maintenance. This is not a case, as the petitioners might

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 suggest, of maintenance deferred and avoided. In total,
2 Diablo Canyon is in the elite of nuclear plants of this
3 country, and this is a stark contrast to what the
4 petitioners offer.

5 Quite frankly, we don't take lightly charges of
6 shoddy maintenance or personnel that are unreliable and
7 unmotivated. These allegations and contentions are simply
8 not true. They reflect a longstanding bias, a longstanding
9 opposition to the plant. And a good example of the
10 credibility of the claims that the petitioners bring is the
11 alleged NIRS report on thermal lag which was alleged in the
12 papers to show that thermal lag and earthquakes presented
13 some unique new risk that had not been studied before. We
14 learned through the NRC Staff that in fact no such study
15 even exists. We ask that this licensing Board take a
16 critical look at these proposed contentions and to realize
17 that there is no genuine issue in dispute. Even taken
18 together, all the facts offered would not entitle
19 petitioners to relief in this proceeding.

20 And again another paramount consideration here is
21 the nature of the amendment at stake. As I said before,
22 this is an administrative change. It's a change identical
23 to those granted to over 50 other nuclear units in the
24 country. It provides no new authorizations. PG&E would be
25 entitled to do nothing it's not already entitled to do in

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 the operation of the plant. It does not exempt PG&E from
2 any applicable requirements. It does not eliminate NRC
3 overview, the inspection and enforcement process. It merely
4 conforms the license to the original design basis of the
5 plant. This is not license renewal which relates to
6 operation beyond the statutory 40-year term. It's not an
7 initial license, either. It's not an opportunity to reraise
8 the old issues. This morning the petitioners again talked
9 about new seismic data. In fact, in their written
10 contentions, seismic appears in only two very limited
11 contexts. Thermal lag and the design of the spent fuel
12 pool. Both concerns are totally baseless, but beyond that,
13 the seismic design of Diablo Canyon has been scrutinized
14 more closely than that for any plant in the country.

15 The NRC, PG&E recently completed the long-term
16 seismic program for Diablo Canyon. All of the new
17 information that the petitioners allege has not been taken
18 into account has in fact been taken into account, including
19 the Loma Prieta earthquake of 1989. The seismic design for
20 Diablo Canyon assures safety now and will do so for the full
21 license term. This is not the occasion to replot old fields
22 and relitigate issues long ago put to rest.

23 In conclusion, the Commission's hearing procedures
24 has recently revised or intended to reserve formal hearings
25 for those cases where truly new safety concerns, truly new

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 issues are at stake. That's simply not the case here. We
2 ask that this Board dismiss the proceeding.

3 Thank you.

4 JUDGE BECHHOEFER: Miss Hodgdon?

5 MS. HODGDON: The staff does not wish to make
6 an opening statement.

7 JUDGE BECHHOEFER: I guess we'll get into
8 standing, and if there's any further comments -- we've read
9 the briefs on -- well, on everything, but standing in
10 particular.

11 Do the Mothers for Peace wish to make any further
12 points on standing, Miss Culver or whoever is going to
13 address that?

14 MS. ZAMEK: I would say besides what we've
15 already said in our original contention in standing, when he
16 mentioned that about significant -- when there's a
17 significant action, and I would say that 15 years would be
18 significant since the normal recapture time is 50, somebody
19 mentioned 50 or so plants have already received this
20 recapture, and I doubt that it was for 15 years. This is
21 really a unique case.

22 JUDGE BECHHOEFER: Well, do you perceive
23 additional risk, for instance? The applicant claims they're
24 not making any changes at all.

25 MS. ZAMEK: Yes. Absolutely, I perceive. We're

W. RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 talking a lot of years into the future. We're talking to
2 the year 2025. And for them to claim that there's not going
3 to be any environmental impact for that many years, we're
4 talking 16 years before the license -- their current license
5 expires and then they want another 15 on top of that, and it
6 seems to me that's a little premature.

7 We don't -- they've only been operating, I think,
8 eight years, and there's already some signs of aging, and
9 they've already experienced some problems, and they've
10 already reracked their waste and they don't know what to do
11 with the waste and they haven't said what they're going to
12 do with the waste. I think there's some significant hazards
13 involved here and that's a lot of time in the future here;
14 2,025.

15 MS. BECKER: In addition, Your Honor, the issues
16 that they say have already been litigated, on the seismic
17 issue, when they talk about seismic problems at Diablo
18 Canyon in the past, they did talk about current information
19 in the long-term seismic program. However, no one has ever
20 discussed or litigated or made a ruling on the effects of
21 seismicity earthquakes on an aging nuclear power plant.
22 This is a nuclear power plant that was built, designed in
23 the late '60s and early '70s, and to give them 15 extra
24 years with aging parts, perhaps a problem with fraudulent
25 parts, perhaps a problem with thermal lag, all those in an

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 area of high seismicity, when daily there has been new
2 information on earthquakes in California since the
3 conclusion of the long-term seismic program, and for anyone
4 to put their head in the sand and say this is an issue
5 that's already been litigated is absolutely untrue. No one
6 talked about the effects of an earthquake on an aging
7 nuclear power plant, a nuclear power plant built and
8 designed in the '60s, largely built and designed in the
9 '60s, redesigned, rebuilt in the '70s and '80s. We need to
10 have the time to see what aging is going to do when there
11 are earthquake effects. And to give them an extension of 15
12 years at this point when we have absolutely no idea what
13 aging-related problems are going to happen at Diablo Canyon,
14 what thermal lag, what problems may be with fraudulent
15 parts, what personnel problems that have happened in the
16 past may turn up in the future at a nuclear power plant is
17 very premature. We don't want to relitigate any seismic
18 issues that have already been litigated, but what we want to
19 do is we want to be able to litigate, we want to be able to
20 discuss, we want to have a ruling on what an earthquake
21 could do to a power plant that has had erosion problems --
22 erosion of their components since the late -- the early --
23 late '60s and early '70s. Those parts have been out there.
24 They've been tested. They've had salt water running
25 through them. They've been sitting in salt air for quite

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 some time. To give them 15 more years and say they're going
2 to be just fine in a 7.5 earthquake is something that has
3 certainly not been litigated in the past.

4 MR. REPKA: There's a lot there, and I'll try to
5 pass through several of them.

6 JUDGE BECHHOEFER: Well, this is basically on the
7 standing question. But I do have one question, Mr. Repka,
8 to ask you. Is risk, accident risk, for instance, partially
9 a product of time?

10 MR. REPKA: It's partially a product of time,
11 but --

12 JUDGE BECHHOEFER: And isn't that enough of an
13 incremental risk to warrant standing under the 50-mile --

14 MR. REPKA: I don't think so.

15 JUDGE BECHHOEFER: That's my real question. I see
16 a difference in risk, and I know -- a show on the standing
17 doesn't have to be as much as a show on justifying
18 contention, and I'm just wondering why standing isn't almost
19 a given when you have affidavits of people that live as
20 close as five miles.

21 JUDGE SHON: Mr. Repka, maybe I can clarify
22 exactly what we're driving at here a little bit. Roughly in
23 most analyses the chance of a nuclear accident at a given
24 plant is taken to be a constant with time; that is, constant
25 with every increment in time. That if you propose to

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 increase substantially, that is by a fraction that looks
2 like a half or a third or something like that, the length of
3 time to which a person is exposed to this risk, do you not,
4 by that same token, substantially increase the risk itself?

5 MR. REPKA: I think the answer is no, because you
6 haven't -- through this amendment, you not have changed
7 anything about the plant physically or the way it's
8 operated, and so the design basis is fixed. That design
9 basis has been through the initial licensing review, it has
10 been subject to hearing, it's -- and in that context was
11 determined to be adequate, and there is reasonable assurance
12 of safety. So given that there's no change to something
13 that is already considered to be adequate, to be safe, the
14 additional 13 or 15 years doesn't change that. Similarly,
15 the environmental concerns are -- the plant was originally
16 analyzed environmentally for 40 years of operation, and so
17 the incremental years don't go beyond what was previously
18 analyzed. This is not license renewal again which renewal
19 would exceed what has been previously analyzed and,
20 therefore, would create perhaps new environmental risks or a
21 new safety risk. It's simply not an initial license where
22 you can say all accident scenarios could conceivably create
23 an off-site risk. Those risks have been analyzed and
24 determined to be within the reasonable assurance standard.

25 JUDGE BECHHOEFER: Well, wouldn't evidence an

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 accident was going to happen in 2020, for instance, wouldn't
2 that have been ruled outside the jurisdiction of the wards
3 that previously considered these questions? It would be
4 beyond the juris- -- beyond the license period, and the
5 answer would have been, so what? There's no jurisdiction to
6 even consider that. So --

7 MR. REPKA: I don't think so, because the original
8 applications would have said a 40-year license, and until
9 the staff issued a license --

10 JUDGE BECHHOEFER: I don't think so. I think the
11 initial -- I have not a copy of it, but I'm sure that the
12 operating license set forth the term of years for which the
13 license was sought, and I think anybody who raised questions
14 beyond that term -- turn of years would have been found to
15 be beyond the jurisdiction of the Board to consider at that
16 time. So I think those potential accident -- and I'm just
17 picking 2020 out of the air; it doesn't matter -- would not
18 have been within the jurisdiction of the ward to consider.

19 MS. VON RUDEN: Might I make a brief comment
20 initially?

21 JUDGE BECHHOEFER: Wait until he's through with
22 his.

23 MR. REPKA: I mean, I think you have to keep
24 coming back to the fact of the original design basis, and
25 this is not -- it does not create anything new, anything

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 different.

2 JUDGE BECHHOEFER: Well, again, do you think that
3 an event occurring in this extended period of time or this
4 recaptured period would have even been judic- --

5 MR. REPKA: Well, I think implicitly it was -- the
6 design accident analysis was based on 40 years of operation
7 and that it wasn't tied to any specific calendar dates.
8 That whole design basis was in play as it were in initial
9 licensing, so, yes, it was all subject to hearing at that
10 time. The maintenance program, for example, there's nothing
11 different about what will happen in the maintenance program
12 in 13 additional years than in the first so many years.
13 That maintenance program was the maintenance program and it
14 was subject to hearing at that point.

15 JUDGE BECHHOEFER: Well, were there any -- we
16 haven't gotten to the maintenance contention yet, but --

17 MR. REPKA: I just use that as an example for
18 the --

19 JUDGE BECHHOEFER: But I don't think there were
20 standards for maintenance programs in those days. The staff
21 approved it. I don't think -- if somebody can come in and
22 say that a portion of the maintenance program didn't conform
23 to any particular standards, there were no standards. In
24 fact, I don't think there are now those standards as such.
25 There's been a policy statement since then. I think that

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 when you don't have a specific rule that you conform to, it
2 would be very difficult to raise detail questions. Then
3 when you come back later and say, "Here's some examples,
4 look, the program's not working now," it's a matter of
5 evidence whether it is or isn't working. Those may be
6 out-of-context examples, for instance, but that to me sounds
7 like an evidentiary matter rather than a nonacceptance of a
8 contention. It's a difference of opinion that should be
9 resolved.

10 MR. REPKA: There is a fundamental distinction
11 between the license term and the licensing basis. And the
12 fact of the matter is the licensing basis, it just was not
13 tied to any particular calendar year. It was 40 years of
14 operation. And, you know, I think we're getting hung up on
15 dates unnecessarily and missing what in fact was analyzed.

16 I think that's the essence of license renewal and
17 the issue the Commission is grappling with in the renewal
18 context. The renewal is fundamentally something that goes
19 beyond what has previously been analyzed. It goes beyond
20 the original licensing basis, so at that point there may be
21 standing and there may be standing to address the limited
22 scope of issues that the Commission says can be addressed in
23 a license renewal.

24 Let me back up to that point. In licensing the
25 license renewal rule, the Commission determined that only

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 two issues could be litigated in license renewal. One was
2 age related, degradation, unique to renewal period and any
3 unique issues arising from the Environmental Policy Act.

4 Now, that being the case, to argue that everything
5 in the additional 13 or 15 years now somehow could give rise
6 to off-site conferences, could create standing in this
7 proceeding is completely at odds with what the Commission's
8 saying there it would seem.

9 JUDGE BECHHOEFER: Of course, the Commission had
10 to pass a whole new set of regulations to say that, and
11 those are not applicable.

12 MR. REPKA: They're something completely -- I
13 mean, you cannot have a bigger hearing on a CP recapture
14 than on a license renewal. That simply doesn't make any
15 sense.

16 JUDGE BECHHOEFER: Well, you can if the Commission
17 hasn't set standards. The Commission severely limited the
18 renewal issues and they had to pass a new set of regulations
19 to do it. And the question is, if they didn't take any
20 action and they -- as far as I can see, there's no standards
21 for these recaptures other than maybe the one ruling on the
22 Vermont Yankee case serves as guidance. It's not precedent,
23 but it's guidance, at least. Other than that, I haven't
24 been able to find anything particularly.

25 MR. REPKA: I agree there's no precedent on the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 point, and I don't dispute that one bit, but I think it's
2 absolutely incorrect to say that because there's no
3 precedent, because there's no Commission rule, anything
4 goes. That simply cannot be the case. You have to get back
5 to the fact that the licensing basis is not tied to any
6 particular calendar dates. It was 40 years of operation.
7 And there is no change to that licensing basis.

8 JUDGE SHON: Mr. Repka, let me approach this in a
9 little different way. It seems clear to me that with the
10 change proposed in the license, an additional decade and a
11 half or so of operation would be possible without that
12 change, would it not; isn't this true?

13 MR. REPKA: That's an accurate statement.

14 JUDGE SHON: If, as most people who have
15 scientifically analyzed it seem to think, the rate, if you
16 want, of accrual of hazard is constant with time, no matter
17 how you slice it and how ever small, how ever minuscule a
18 decade and a half of risk may be, it is still an additional
19 decade and a half of risk. Even -- I know it's ten to the
20 minus seventh or something per year, but it is per year, and
21 these numbers are always giving them per year.

22 MR. REPKA: I don't want to overrate that risk,
23 because I think it is a very minuscule number. That's
24 number one. But number two, the licensing basis for the
25 plant is a deterministic basis. It's not a probabilistic

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 basis. And so it's been deterministically determined to be
2 adequate based on the design basis accidents, the design
3 basis effects, and including the design basis earthquake.
4 And regardless of the likelihood of an earthquake or one of
5 those accident scenarios in the additional 13 or 15 years,
6 the fact is deterministically the licensing basis has been
7 determined to be adequate.

8 JUDGE KLINE: But isn't the scope of this
9 proceeding still defined by the amendment at hand; not by
10 the original licensing basis? And I'm still referring just
11 to the scope. Not to any merits. And it seems to me -- I
12 understand there's no precedent, but the idea of an
13 additional incremental risk over time in the context of an
14 amendment where if the amendment is granted, extra time is
15 granted, if the amendment is not granted, extra time is
16 denied no matter how you look at it in terms of initial
17 licensing. Now, we're not governed here by initial
18 licensing so much, but by the terms of the amendment. And
19 in that case, all we're really asking is whether there's a
20 sufficient similarity between the elements that grants
21 standing in the first place, i.e., a generalized sense of
22 risk. No specific injury effect stated at an operating
23 license stage. And the kind of the very analogous
24 generalized risk associated with this amendment. Aren't
25 they sufficiently similar in this case to resolve the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 question of standing? We're not talking about any merits or
2 about whether the contentions are good or not.

3 MR. REPKA: I think it's only superficial
4 similarity. I agree with your first principle, the scope of
5 the proceeding is defined by the amendment, but it's really
6 the definition of that amendment that we're talking about,
7 and if it's an amendment that doesn't change anything about
8 the operation of the plant, it doesn't change anything from
9 what's been previously analyzed, doesn't change the
10 licensing basis, doesn't change the operating procedures, it
11 doesn't change anything and so it, therefore, cannot give
12 rise to -- it can't be the cause of new risk.

13 JUDGE SHON: You've used the word analyzed. What
14 has been analyzed? We've been focusing on what has been
15 authorized. They're not necessarily the same. I believe
16 that what your position is is that the total time-integrated
17 risk that has been analyzed is already greater than what has
18 been authorized, and this is a mere change to in effect
19 equalize them; is that correct?

20 MR. REPKA: You said it better than I have.

21 JUDGE SHON: But how do we know? Isn't even that
22 fact the kind of thing that is subject to contention and a
23 point of disagreement? Surely the Mothers for Peace don't
24 believe that all of the risks that would be incurred in the
25 extended period, in the recapture period have been analyzed.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 They've said so, and they've presented some things that they
2 say show that. Is that not then in itself a matter either
3 for hearing or, at most, for summary disposition rather than
4 for dismissal at the outset?

5 MR. REPKA: Well, I think that jumps several steps
6 beyond. I think we -- if you assume standing, you still
7 have to -- they have some concerns about what may or may not
8 have been previously analyzed, and we don't agree by any
9 stretch of the imagination that they've reached the
10 thresholds necessary to support a contention that would be
11 subject to summary disposition, much less an evidentiary
12 hearing. But on the fundamental point, the scope point, I
13 just continue to disagree that, you know, what has been
14 analyzed -- you know, this truly is a change that simply
15 conforms the license to a change in NRC Staff or NRC legal
16 interpretation in 1982, and so it's a -- it's an act of law
17 more than an act of anything that can create new unanalyzed
18 risks.

19 JUDGE BECHHOEFER: Do you have anything further on
20 this or should we call on the Staff now?

21 MR. REPKA: The only additional point I'd like to
22 make on standing is the Vermont Yankee has come up before,
23 and I think the Board raised it in one of their orders, and
24 I want to reiterate I just don't believe that it provides
25 any precedent at all, because that was the State of Vermont,

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 and the State of Vermont has standing, any state would have
2 standing, that an individual organization would not.

3 JUDGE BECHHOEFER: Well, whoa. I'm not so sure.
4 They came in as an intervenor. Not as an interested state.

5 MR. REPKA: I agree they were not a 2715 state.
6 But the point I was going to make that the NRC Staff raised
7 an excellent point in their brief here. The hazardous
8 materials contention, a contentic. that can't possibly
9 create any off-site risks is when a state might have
10 standing but an organization that lives off site, no matter
11 how close, could not, so I think that shows an example of
12 where the state might have standing, but an individual or
13 organization would not.

14 JUDGE BECHHOEFER: Miss Hodgdon, do you have any
15 comments on standing?

16 MS. HODGDON: Well, I'd like to make just one
17 short comment, and that is when the staff said that they did
18 not dispute standing, the staff was really talking about the
19 geographical 50 miles seemed reasonable given that this does
20 have to do with operation.

21 As far as the scope of -- the geographical scope
22 goes -- and I certainly didn't mean to suggest that the
23 staff was not interested in the larger question of standing
24 beyond that, because the staff is, and certainly what Mr.
25 Repka has said about the way these are regarded is correct.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 I mean, this was analyzed 40-year operation, both from the
2 point of view of health and safety and from the point of
3 view of NEPA, of the environmental risk for 40 years, and I
4 thought we got into something about authorization as opposed
5 to analysis. I think that Judge Bechhoefer also raised the
6 point of decided and put that in there. It wasn't decided
7 on 40 years; therefore, what does it mean that it was
8 analyzed for 40 years?

9 JUDGE BECHHOEFER: 40 years of operation.

10 MS. HODGDON: For 40 years of operation. That's
11 correct. And you said well, the licensing Board wasn't
12 thinking 40 years; it was thinking something else. So I
13 think we have a lot of things going on here, and not just
14 that. But the only point I would wish to add is that as to
15 the point of prematurity where the petitioner says that this
16 amendment application is premature, I would also make
17 another distinction between construction period recapture
18 amendments and license renewal, and that is that in license
19 renewal, the time for application is fixed in that
20 regulation, whereas for construction permit recapture, those
21 amendments can be filed at any time, and there is simply
22 nothing in the regulations that addresses when those should
23 be filed.

24 JUDGE BECHHOEFER: That's correct.

25 MS. HODGDON: That's all I have to say.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: I might add that is accurate,
2 and we recognize that Mothers for Peace position is that
3 this is a somewhat premature. It isn't legally premature.
4 I might say personally that -- I'm not sure the other Board
5 members join in this, but I personally think that if the
6 applicant chooses to apply now, it has every right to do so,
7 but then it cannot legitimately claim that, well, by the
8 time you get to the recapture period, everything will be
9 moot. You're sort of stuck with the facts that you have now
10 if you apply now. So when we get to particular claims based
11 on fact, at least I personally don't think a petitioner
12 should be prejudiced by -- that way. I think the
13 application may be filed at any time, but when you file it,
14 you're stuck with the facts as they exist today. At least
15 in my own opinion. And as I say, I'm not sure the other
16 Board members join in this or not.

17 MR. REPKA: Judge, with your leave, could I say
18 just a few words about whether this is premature or not?

19 JUDGE BECHHOEFER: No, I'm not saying -- certainly
20 legally it's clearly not premature. There's nothing in the
21 rules that says you can't do it.

22 MR. REPKA: And my point is, it goes even beyond
23 that. PG&E has a settlement with the rate Commission that
24 assumes operation for the full 40-year period, so we are
25 obligated to seek at the earliest possible point regulatory

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 assuredness of knowing where we stand with respect to
2 operation. And, number two, perhaps the more obvious point
3 is PG&E has the responsibility to plan its generation
4 capacity and so needs to know what generation capacity will
5 be available at any given point. We can't put a plant on
6 line instantaneously if ten years from now we were to apply
7 for an extension and it got delayed or something happened.
8 So there is a need to know, and that's why we filed the
9 application when we did.

10 JUDGE BECHHOEFER: Right. Now, I'm not disputing
11 that, but I'm just trying to think that maybe some of the
12 prematurity points should not be -- you know, maybe the
13 defense said something will be moot by the time the
14 recapture period starts is really not a good defense when,
15 by the election of the applicant, the applicant has filed
16 this early. I'm not saying you can't do it. That factor
17 should not be one to rule out otherwise legitimate
18 contentions. I'm not saying the contentions are legitimate,
19 but --

20 MR. REPKA: Well, it sounds like it's taking us a
21 lot into the issue of what's the scope here, and I think
22 we'll probably talk about that later.

23 JUDGE BECHHOEFER: That's correct. I don't want
24 to get into that right now.

25 MR. REPKA: But the only thing I would say is,

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 nothing about this application changes the remedies of 10
2 CFR 2.206 if new information were to come along later.

3 JUDGE BECHHOEFER: Yes, but that doesn't give
4 hearing rights to anybody, doesn't it?

5 MR. REPKA: It could if it leads to enforcement
6 action.

7 JUDGE BECHHOEFER: It's based on the staff to --

8 MR. REPKA: The fact of the matter is, the issued
9 license is subject to later 2.206 based on new information.

10 JUDGE BECHHOEFER: That's always true, yes.

11 Anybody want to say anything further on standing?
12 Okay.

13 MS. VON RUDEN: Not being an attorney, I don't
14 know if this is relevant, but that's what this process is
15 for, so that people that aren't attorneys can be a part of
16 it.

17 I attended a meeting on April 2nd of 1992 between
18 PG&E and the NRC, and around the table the comment that I
19 heard from sitting in the back of the room was that in no
20 way is this plant the same plant that it began with, and in
21 fact I believe that there was a program going on to document
22 all the changes so in case of an accident, they might easily
23 research the change, which I thought it was wonderful, and I
24 thought -- I was happy about that. But when I hear the
25 words that there's nothing different here, it's the same, I

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 don't know the laws, but it haunts me that if those two
2 entities, PG&E and the NRC, can smile and laugh and jokingly
3 say this is not the same plant at all in any way that it was
4 when we all began, I can't understand why we can't question
5 at this point the extension of the license, because we are
6 not dealing in any way with the same plant, including the
7 fuel -- the storage of the fuel in the beginning, of course,
8 was not reracked. Was not in the same configuration, and
9 many of the things have been changed and retrofitted, and
10 that's it. I don't know if it's relevant or not. That's
11 what I wanted to say.

12 JUDGE BECHHOEFER: Well, I assume, for instance,
13 just to reracking, that an opportunity for hearing at least
14 was afforded. I don't know whether there was or wasn't a
15 hearing, but if the staff does what it always does, the
16 opportunity would have been afforded.

17 MR. REPKA: I think the point really is that the
18 design basis of the plant has not changed to that degree.
19 It is the same plant. With respect to other specific
20 changes such as the spent fuel pool reracking, those are
21 subjected to the Commission's requirements for license
22 amendments and the hearing procedures that attach to those,
23 so we're not here to apply for a new license for a new
24 plant. That's not what this is all about.

25 JUDGE SHON: Mr. Repka, in effect, I think what

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 you're saying is that although things may have changed about
2 the plant, many things may have changed and overall
3 governing principle call the operating license -- the
4 operating basis that's a term of art has not changed; is
5 that right?

6 MR. REPKA: That's correct.

7 The authorities that exist under the technical
8 specifications have not changed.

9 JUDGE SHON: And the current licensing basis,
10 whatever that may be, is still the same as it was?

11 MR. REPKA: Correct.

12 MS. ZAMEK: Could I say something here? I think
13 we're still talking on standing.

14 JUDGE BECHHOEFER: Yes. Right. We'll wind up
15 eventually, but we're still on standing.

16 MS. ZAMEK: The NRC Staff commented in their
17 response to our contentions that PG&E failed to cite cases
18 relevant to its claim that the 50-mile presumption does not
19 apply, and then further that there is no --

20 JUDGE BECHHOEFER: That sort of resembles
21 something I said.

22 MS. ZAMEK: Yes. I'm repeating it. There is
23 no clear authority on standing if a CP recapture proceeding
24 is not in the NRC Staff response, so, yeah, I was just
25 wondering -- I just wanted to repeat that. That's all.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 Make it clear.

2 JUDGE BECHHOEFER: We also don't offer any
3 objection to your standing, so --

4 MS. ZAMEK: That's true.

5 JUDGE BECHHOEFER: Absent any -- Miss Hodgdon, do
6 you have something further to say on standing?

7 MS. HODGDON: No.

8 JUDGE BECHHOEFER: You're sort of grinning there.

9 MS. HODGDON: No. Nothing.

10 JUDGE BECHHOEFER: I think before we get into
11 other things, contentions, we'll take a short, mid-morning
12 break. Ten minutes, I guess.

13 (Recess taken.)

14 JUDGE BECHHOEFER: Okay. Back on the record.
15 the Board has decided although we are not likely to make
16 rulings on most of the questions that are coming before us
17 during this conference, we have decided that the Mothers for
18 Peace do have standing to participate based on their
19 showing, and I think it will help the discussion further on
20 if we sort of -- if the parties know where we're going.

21 Now, we will establish -- we will issue a
22 pre-hearing conference order which spells out the basis for
23 our conclusion on standing as well as it will spell out our
24 rulings on every contention as well. But basically on
25 standing we think that the risk that exists will continue

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 for additional years, and if the authorization were not
2 granted, that risk would be there for the extra 10 or 15
3 years, 12 or 15 years, whatever. Therefore, there's enough
4 showing of injury in fact to bring into play the 50-mile
5 presumption in the, I think, five members affidavits we have
6 who live considerably closer to 50. As close as five is my
7 recollection. So the Board has decided that we -- there
8 will be standing or we will grant -- we will find that there
9 is standing. But that doesn't mean -- we have to go through
10 contention by contention to determine what, if any,
11 contentions will be adequate. And we would like to just
12 start from the beginning, Number I.

13 I think Mothers for Peace could lead off on
14 Number I, at least make a general statement. There are a
15 lot of specifics that we have to cover in that contention,
16 and we will go through them all, but Mothers may want to
17 make a general statement about contention Roman I, I think
18 it's set forth.

19 MS. ZAMEK: Before we do that, the Mothers for
20 Peace has prepared a written reply to the PG&E and NRC
21 responses that I would like the licensing Board to accept
22 now.

23 JUDGE BECHHOEFER: Is it very long? Because you
24 may want to -- is this reply dealing with a particular
25 contention or what?

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MS. ZAMEK: It --

2 JUDGE BECHHOEFER: Because on standing, you don't
3 have to reply.

4 MS. ZAMEK: I understand.

5 JUDGE BECHHOEFER: You've won that one. You
6 better quit.

7 MS. ZAMEK: There's nothing on standing in here.

8 There was just so many arguments on our
9 contentions from both parties that we just thought it would
10 be best to put it in writing, and we combined both of them
11 together for convenience, and also we didn't get the NRC
12 Staff response until Friday afternoon, so that's why it's at
13 this point now that we're providing it. And we also thought
14 that --

15 JUDGE BECHHOEFER: Well, normally we would just
16 discuss contention by contention at a conference such as
17 this. We have provided for the contentions and then
18 responses. And replies usually, which this would be, would
19 come at the conference.

20 MS. ZAMEK: Right.

21 JUDGE BECHHOEFER: So I don't know whether this is
22 something that you should wish to start your presentation by
23 reading -- just reading or --

24 MS. ZAMEK: Yeah. It's --

25 JUDGE BECHHOEFER: I think it would be preferable

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 than to try to pass it around.

2 MS. ZAMEK: I could read it, but its lengthy.
3 What I did was respond with criticisms with different types
4 of evidence. So I have a lot of different bits of evidence
5 in here that I thought might be too lengthy to read orally
6 but that individually people could read them and comment on
7 them. I could read it if you want.

8 JUDGE BECHHOEFER: No, I don't think we're going
9 to be ruling on -- certainly not on all the contentions.
10 There may be some we do, but -- we're not sure about that.
11 But we would want all the parties to have access to --
12 certainly to anything we had. We don't want statements
13 presented to us that aren't available to the other parties,
14 so --

15 MS. ZAMEK: I have a service list and everything
16 attached. It's for everybody, and enough copies for
17 everybody.

18 MR. REPKA: Judge Bechhoefer, I'm going to object
19 to this, because we haven't seen this, obviously, before
20 today, and I feel like it would be incumbent upon us to
21 respond, and I think the purpose of this conference is to
22 discuss the kinds of things we're here -- that are
23 apparently in this piece of paper which may have a service
24 list on it, but we haven't seen it. So I would rather just
25 take up those issues now orally and not submit more paper.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: We think it will be a better
2 procedure for you not to pass around your statement, but to
3 either read it into the record as a whole or perhaps, more
4 appropriately, as we get to each contention to which it may
5 apply, divide it into parts and keep the parts that are
6 applicable to the particular contention.

7 MS. ZAMEK: Okay. It's organized by contention.
8 It's just that some of it's quite long.

9 JUDGE BECHHOEFER: I see. But as we get to each
10 contention, you could make a general -- we're going to call
11 on you to make a general statement for each contention
12 before we actually get into the details, so if you have,
13 like, Contention I, if you have some general statements or
14 if maybe you have some general statements on contentions
15 generally -- that's not very good English, but -- if you
16 have statements about contentions generally, you could do
17 that at this time, but save the parts that deal with
18 Contentions II through XI, I guess, until we get to those
19 contentions.

20 MS. ZAMEK: Okay.

21 JUDGE BECHHOEFER: And talk about what's either
22 general or Contention I and we'll get into each subpart,
23 too, or each matter cited in support of Contention I.

24 MS. ZAMEK: Okay. Should I begin on Contention I
25 or --

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: Yes. But as I say, you will
2 need to have general statements on contentions. You can do
3 that, too, but just don't do II through XI at this time
4 until we get to --

5 MS. ZAMEK: I understand.

6 JUDGE BECHHOEFER: Until we get to every one of
7 them.

8 MS. ZAMEK: My general statements of Contention I,
9 point one was that the Public Utilities Commissio
10 settlement provides PG&E with an economic incentive to delay
11 repairs. That was part of our contentions, because they get
12 paid by the amount of electricity they produce, and so
13 they're always in a big rush at refueling time and when
14 there's repair times. It's very important to PG&E to get
15 back on line very quickly, because that's how they get paid.

16 Number two, PG&E has a longstanding history of
17 slow response to correct maintenance problems, and that's
18 documented -- we produced a lot of evidence in our
19 contentions in our original petition supplement to petition
20 to intervene, and in this one, our reply, I provided even
21 more, because the NRC Staff and PG&E both complained about
22 different things of recent vintage or different things about
23 there were no violations whatever, so I continued my
24 research, and there was plenty to show the timeliness
25 problem, et cetera, et cetera, and I would like to read from

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 that perhaps later.

2 And a third point is that PG&E has a longstanding
3 history of lack of attention to detail, poor or incomplete
4 work, inadequate instruction to personnel, ineffective
5 surveillance. And perhaps I could read from parts of these.
6 In response to PG&E's comment that all of our evidence was
7 from recent vintage, I selected one from July 5th, 1989, the
8 NRC issued enforcement action 89-85 which included a notice
9 of violation and imposition of civil penalties in the amount
10 of \$75,000.

11 The enforcement action identified two primary
12 concerns: One, failure to implement or maintain the design
13 basis of the plant through engineering and procedures and,
14 two, failure to resolve identified problems in an effective
15 and timely manner.

16 On February 3rd, 1990, an enforcement action
17 89-241 included a notice of violation and imposition of
18 civil penalties in the amount of \$50,000. This was
19 involving problems in the containment circulation sumps.
20 PG&E failed to, quote, "take adequate corrective actions for
21 gaps in the sump trash screens identified in 1985, opening
22 sump access hatches on a number of occasions for time
23 periods exceeding technical specification limits," et
24 cetera, et cetera.

25 On April 10th, 1987, Nancy Culver, in our opening

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 statement, discussed the problem with the loss of residual
2 heat removal system capability. PG&E received five
3 violations for that event.

4 I would like to point out that all the evidence
5 that I show shows problems that repeat themselves again and
6 again despite corrective actions. And this indicates that
7 they're going to persist. They've persisted in their short
8 operating life, and we believe that they will continue to
9 persist.

10 Again, PG&E claims, as Mr. Repka did just earlier,
11 that we've cited isolated operational occurrences and that
12 no finding of fact cited by Mothers for Peace challenges the
13 overall effectiveness of the program. I'm quoting him --
14 them, from their response.

15 But we responded the sheer number and
16 repetitiveness of the problems cited show that there is
17 programmatic maintenance problems, and I think that the
18 additional evidence I've showed clearly shows it.

19 The Systematic Assessment of License Performance,
20 the SALP report, that Mr. Repka claims rated them as
21 Category 1, I find one from January 1, 1990 through
22 January 30th, 1991. As far as I know, the most current one
23 is not yet available. It's for a year-and-a-half period.
24 And I kept seeing Category 2's, which they identified means
25 improving, and I have quote here "Maintenance management

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 appears to need to improve the timeliness of dealing with
2 problems the Board discussed various problems that were
3 allowed to exist until the plant was undesirably affected or
4 high level management involvement was required to resolve
5 the problem." They further state the previous SALP -- that
6 was from, you know, 1987 or so -- noted that the licensee
7 was slow to address some concerns. "The previous SALP
8 recommendations to licensee management included a need for
9 stronger management oversight. The maintenance and
10 surveillance area during this SALP period has been slow to
11 show consistent improvement. This conclusion is based
12 largely on examples of a lack of management aggressiveness
13 in the resolution of problems and examples of a lack of
14 maintenance management oversight. These problems were the
15 subject of several licensee audits and surveillances.
16 Subsequently, the NRC made this area the subject of three
17 special inspection reports, including an enforcement
18 conference."

19 There was a management meeting held April 2nd,
20 1992, to discuss the continuing containment fan cooler unit
21 backdraft damper failures. I'll refer to it as CFCU. This
22 has been going on for quite a while. It's in the original
23 contentions and it keeps coming up in the documents. The
24 discussion centered on, quote, "timely identification and
25 correction of problems." The discussions illustrated that

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 PG&E, quote, "staff is not always resolving indications of
2 system problems in a prompt, thorough manner. The
3 timeliness of your corrective actions for known problems has
4 been a past issue of concern. We encourage you to ensure
5 that emerging issues or problems are not confined to
6 maintenance for resolution but are fully addressed with
7 engineering and quality oversight organizations' involvement
8 from the point of identification."

9 In their discussion -- that was an end quote.

10 In their discussion of the CFCU's, the NRC
11 questioned PG&E with indications of broken bolts on
12 backdraft dampers in March of 1991 were not adequately
13 followed up. And this is a quote. "Mr. Martin observed
14 that the March 1991 failure to evaluate the broken bolt
15 issue illustrated a lack of basic engineering instincts.
16 Mr. Martin closed the discussion of this issue by stating
17 that the attitude should be that if any bolts are broken,
18 there is a problem. He restated the NRC concern that
19 licensee management needed to communicate the right
20 expectations for resolving problems to all engineering
21 groups and to organizations performing the quality assurance
22 functions," end quote.

23 The CFCU backdraft dampers continue to be a
24 problem. Currently there was an event 24435, October 15th,
25 1992, where at this time they have cracks in the vanes in

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 Unit 1, and they comment that this condition could impair
2 the effectiveness of the CFCU's in the event of a loss of
3 coolant accident.

4 The management meeting of April 2nd, 1992, also
5 focused on several feedwater pump problems. One problem was
6 due to the failure of the control system power supply.
7 Mr. Rueger admitted, quote, "that PG&E may have been too
8 narrowly focused on the issue, causing PG&E to fix the
9 existing equipment, rather than to question the adequacy of
10 the design after repeated failures," end quote.

11 "Mr. Fujimoto noted that the equipment had been
12 redesigned in February 1989, and that there was an attempt
13 to make the new design work rather than reassess the
14 design," end quote.

15 "Mr. Martin observed that," quote, "'it was not
16 typical of a strong engineering organization to wait for
17 several failures to fix a deficient design, particularly in
18 the case of these failures which resulted in challenges to
19 operators and the plant."

20 I don't know if you want me keep going or not. I
21 have several pages of this. But it all points to the fact
22 that problems keep occurring, and the reason for that that's
23 stated clearly by the NRC inspectors is that they look
24 symptomatic. They correct an equipment failure, but they
25 don't look at the cause, they don't look at the root causes

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 they don't see that, "Oh, in 1981, this happened," and, "Oh.
2 yes, in 1987, we had a problem here." And in all the
3 documents I reviewed, which were plentiful, I found this
4 recurring pattern. And to me, it points that there is a
5 problematic difference in their maintenance surveillance
6 programs.

7 JUDGE BECHHOEFER: You started saying that they
8 don't see the forest for the trees or something along that
9 line?

10 MS. ZAMEK: Correct. And there is a good --

11 JUDGE BECHHOEFER: Do you have any comments on the
12 applicant's quote from an inspection report 9222, which is
13 September 25th, 1992? There's a quotation on page 21 and 22
14 of their response.

15 JUDGE BECHHOEFER: They quoted an NRC inspection
16 report. Its report 9222.

17 MS. ZAMEK: Are you talking about PG&E's response
18 or --

19 JUDGE BECHHOEFER: PG&E's response to --

20 MS. ZAMEK: To our contentions?

21 JUDGE BECHHOEFER: To your contentions. Pages 21
22 and 22.

23 MS. ZAMEK: Okay.

24 JUDGE BECHHOEFER: They quote a particular
25 inspection report concerning -- well, it starts, "Normal

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 maintenance and surveillance activities." and do you have
2 any comment on how that fits in with some of the examples
3 that Mothers for Peace have brought up?

4 MS. ZAMEK: My comment on that is that in all
5 these inspection reports, there's usually a section they can
6 talk about the strengths and good things they find and then
7 there's the sections for the weaknesses, and I think one of
8 the -- the dispute that we have with PG&E is the
9 significance we attach to weaknesses, and even though an
10 event may occur and it's not issued a violation by the NRC,
11 does not mean that it's not significant, there's not safety
12 implications for it, and I think that's the issue that we
13 refute here.

14 And oftentimes I find that these same paragraphs
15 are repeated in each -- in each report kind of like a
16 blanket statement. They're kind of form letters that, you
17 know, adequate performance, that sort of thing, but, of
18 course, what I look at is the problems that they site is
19 also in these inspection reports.

20 JUDGE SHON: Miss Zamek. I'm over here. It's a
21 little difficult to tell where a person's located, with the
22 speaker arrangements.

23 You used a phrase that is a term of art in this
24 regulatory business, that is "root cause," a while back. As
25 I understand it, what you're saying is that many of the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 things that have been criticized by the staff in the past
2 results in your view from the same root cause which lay
3 uncorrected; is that what you're saying?

4 MS. ZAMEK: Not exactly, because it's not my
5 opinion. I read it in the documents over and over again.
6 It's PG&E's and the NRC's response to what's happened. I
7 just read the documents and then I --

8 JUDGE SHON: Do you have any of these documents
9 that specifically say that we did not analyze the root cause
10 of a difficulty?

11 MS. ZAMEK: . . .

12 JUDGE SHON: You do?

13 MS. ZAMEK: Yes. Would you like me to find them
14 for you.

15 JUDGE SHON: Sure.

16 MS. ZAMEK: I'll need a few minutes to locate them
17 exactly if you have some other business while you're doing
18 that.

19 MS. BECKER: I might add -- is this on --

20 JUDGE BECHHOEFER: It's supposed to be --

21 MS. BECKER: I might add that the Mothers for
22 Peace feel that part of the problem for PG&E's rush through
23 maintenance and unwillingness to go to root causes to just
24 fix the problem at hand is they are not paid when they are
25 shut down. They receive no money for being shut down, and

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 they also can't pass on the cost of replacement parts to
2 their ratepayers under the CPUC rate making scheme that was
3 passed in 1988 by the California Public Utilities Commission
4 and, therefore, we really strongly believe that maintenance
5 problems now that are -- the current problem is fixed, but
6 the overall root cause is not faced maybe -- may continue in
7 the future and may get worse in the future as the
8 replacement parts become larger and more expensive to
9 replace.

10 We -- just reading an article that was recently
11 cited in the Public Utilities Fortnightly November 15th,
12 1992, they stated that many plants didn't get to the 20 to
13 25 years without encountering need for major overall at a
14 midlife crisis. This major overhaul in many cases can be
15 passed through to ratepayers, but that under the rate making
16 scheme in California, PG&E can't pass on any of these costs,
17 even if they're NRC requirements to ratepayers and,
18 therefore, we are concerned that they will either put them
19 off or argue against them continuously until they're either
20 forced to do so or someone says, "Well, maybe we can go
21 around it." That's why we're concerned. That's one of the
22 reasons that we feel that maintenance is not a generic
23 issue. One, that a poorly maintained plant two and a half
24 miles from an earthquake fault is a danger and, two, that
25 because they can't pass the costs of maintenance on to their

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20007
(202) 293-3950

1 ratepayers, that they may try to put off or stall
2 maintaining their plant as the plant ages. Right now the
3 parts -- not all the parts -- some of the parts have been
4 there for quite some time, but some of the parts are not as
5 old and maintenance is not as difficult, but we do feel that
6 as time goes on, this is going to be a bigger cost to the
7 utility and they will hesitate to fix it in a timely manner.

8 JUDGE BECHHOEFER: We have nothing to say about
9 the rate system.

10 MS. BECKER: Absolutely. I know that. It's just
11 one of our concerns about adding an extra life.

12 JUDGE SHON: I know it's your concern and
13 understanding that this rate structure has, in your view, a
14 deleterious effect or might have.

15 MS. BECKER: That's correct.

16 JUDGE SHON: But, surprisingly, the thing that
17 you're talking about, unless I misunderstand it, is one that
18 represents in a sense a sword that cuts both ways.

19 MS. BECKER: Absolutely.

20 JUDGE SHON: Because Mr. Repka has already told us
21 that one of the reasons that we should believe that this is
22 a very, very well-run plant is that it has a high capacity
23 factor.

24 MS. BECKER: That's correct.

25 JUDGE SHON: Which is exactly the point you're

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 making, that by keeping their rates to capacity factor,
2 they're encouraged, you say, not to do needed maintenance.
3 You say is it a good thing because they have a high capacity
4 factor or a bad thing?

5 MS. BECKER: It is a double-edge sword and was
6 found as such by the Commission. And to supposedly rectify
7 that problem, they added an independent safety committee to
8 look into issues. Unfortunately, the safety committee has
9 no authority to do anything if they find something, but the
10 Commission also recognized the fact when they passed through
11 this rate making scheme, that it was a double edge sword.

12 JUDGE BECHHOEFER: Which is this nuclear safety
13 committee you just mentioned?

14 MS. BECKER: It's called the Independent Safety
15 Committee for Diablo Canyon and then you have the chair of
16 the safety committee in your audience today.

17 JUDGE BECHHOEFER: I see. And does Mothers for
18 Peace or any groups similar to yours have a representative
19 on that committee?

20 MS. VON RUDEN: We tried.

21 JUDGE BECHHOEFER: It's happened --

22 MS. BECKER: Well, unfortunately the utility made
23 sure that there were no members of the public on that
24 committee. You have to have experience, background, and
25 knowledge in the nuclear industry to be able to sit on the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 committee, so no, we're not on it.

2 JUDGE BECHHOEFER: So there are plants where
3 representatives -- former intervenor groups.

4 MS. BECKER: We have that kind of knowledge, but
5 none of us have worked at a nuclear power plant.

6 JUDGE KLINE: Understanding your argument, though,
7 what remedies do you seek? What relief would you count as
8 adequate? In other words, what are you asking the Board to
9 rule?

10 MS. BECKER: I'm just asking this Board to
11 consider the fact that maintenance is not a generic issue.
12 Many of the issues -- the contentions that we brought before
13 this licensing Board have been argued as being generic, and
14 we feel that the fact that they can't pass these costs on to
15 ratepayers makes it an issue that is of genuine dispute in
16 our case where maintenance is a genuine issue at nuclear
17 power plants.

18 JUDGE BECHHOEFER: Let me sort of rephrase Judge
19 Kline's question.

20 MS. BECKER: Okay.

21 JUDGE BECHHOEFER: Is the only remedy you see for
22 this denying the extension completely, or do you think that
23 steps could be taken to force an improvement in the
24 maintenance plan?

25 MS. BECKER: My absolute preference would be deny

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 it completely; however, I do think that there's probably
2 steps that could be used to make sure that the public was
3 protected in the interim.

4 JUDGE BECHHOEFER: Would the Mothers for Peace
5 support such additional procedures, perhaps, or --

6 MS. BECKER: It would certainly depend on what
7 they were.

8 JUDGE BECHHOEFER: Which would lead to perhaps an
9 improvement in the practices which you've attempted to spell
10 out.

11 MS. BECKER: Any improvements would be an
12 advantage to the people who live by the plant.

13 JUDGE KLINE: Would you include in your argument,
14 then, a statement of why you believe the current regulations
15 governing violations are inadequate? And I want to clarify
16 that in that under current practice, there is a procedure
17 involving inspections, discovery of violations, notice of
18 violations, some commitment to remedy it even including
19 civil penalties on occasion. The whole idea is that this
20 will provide the necessary incentive to keep the power plant
21 running properly and in compliance with regulations.

22 Now, you have cited a number of these specific
23 instances of these notices of violation and the consequences
24 that flowed from it. Why, in your view, is this not
25 adequate? In other words, why is this a violation of some

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 additional regulation or does it create an undue public
2 hazard, or why is this not an adequate process, in your
3 view?

4 MS. BECKER: Jill, do you want to answer that?

5 MS. ZAMEK: I'm not sure I understood the
6 question.

7 MS. BECKER: I don't think that we said the
8 process isn't adequate. I think that what we're stating is
9 that there is a repeated pattern of violations at the plant
10 in maintenance, and if those continue, to give them an extra
11 13 to 15 years to violate safety regulations would be
12 certainly at a disadvantage to people who live here.

13 JUDGE KLINE: Is it error-free operations, then,
14 that you seek or --

15 MS. BECKER: Oh, it would certainly be what we
16 would like, yes.

17 JUDGE KLINE: But can you practically seek it?
18 See, we're not asking just your sort of qualitative
19 preferences. The Board has to decide things, you know, one
20 way or another, up or down, and so we have to know what it
21 is you're asking for in the first place. And I guess if you
22 point to a process that was designed to correct what the --
23 the deficiencies that you point to, we need to have some
24 qualification of why you think that process isn't working or
25 why you think it's effective. If the amendment were

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 granted, presumably new violations would be found in future
2 inspections and presumably NRC would issue a notice of
3 violation and presumably the company would respond in some
4 way.

5 Now -- and I don't want to get into any merits,
6 but this is the kind of process that would likely -- is that
7 process faulty or fatally flawed or wrong, in your view?

8 MS. ZAMEK: Can I --

9 JUDGE KLINE: Does it not assure safety to do that
10 way?

11 MS. ZAMEK: Well, I think the idea is that we
12 count on the maintenance and surveillance programs to work
13 to protect us so that we don't have, you know, a series of
14 incidents that cause a problem. And so when we've
15 identified that it's not working, when we read this stuff
16 and we see the repeating patterns, when the NRC sites these
17 violations, and they're like little Band-Aids on it. That's
18 my impression on it. They fix that, but then really there
19 was something else that was, you know, this deeper cause,
20 and we're looking at the deeper issues here, these root
21 causes, and finding that the employees are not going to the
22 upper level management which I read in getting help with
23 this sort of stuff, and so -- I lost my train of thought
24 there.

25 JUDGE KLINE: That's all right. Take your time.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MS. ZAMEK: So I was saying that it's not working
2 in this case. It's shown that it's not working because
3 despite corrective actions, they repeat the same problems
4 again and again, particularly in the employees, and we'll
5 get there in the next contention.

6 JUDGE KLINE: So you would ask us to draw an
7 inference that there's a pattern of behavior that hasn't
8 been fixed even though the individual point-by-point
9 inspections are being --

10 MS. ZAMEK: Absolutely. You know, like the crane
11 boom incident, and then just shortly -- and that could have
12 been a very serious incident. And then shortly after that,
13 there was another one with the two-ton chain fall which was
14 very similar. The loading stuff. And it showed that they
15 hadn't learned from the original incident, and that's the
16 sort of stuff that is bothering me.

17 I did find, too, in this -- you're asking for the
18 root causes. That's why I thought if you had this in your
19 hand, I could say, "Turn to page 6." But it's inspection
20 report 90-13 from August 13th, 1990, quote, "The inspection
21 report identified weaknesses regarding the timeliness of
22 PG&E's management systems in establishing the root cause of
23 problems and in implementing corrective actions to prevent
24 recurrences. The management systems designed to recognize,
25 raise, and pursue the resolution of problems were lacking

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 during the report period," end quote.

2 JUDGE KLINE: Was it your view that -- there was a
3 little phrase in there, "implementing corrective actions to
4 prevent recurrences." Is it your view that that did not
5 happen? I mean, was it --

6 MS. ZAMEK: Or it didn't happen in a timely
7 fashion.

8 JUDGE KLINE: I see.

9 MS. ZAMEK: Because sometimes they do, but it
10 takes them two years. They notice a problem, but it takes
11 them a long time to fix it.

12 And then the second one I found just looking
13 briefly was September 12th, 1992, inspection report -- well,
14 the inspection report was from November 5th, 1992, but the
15 event was on September 12.

16 JUDGE BECHHOEFER: Which number report --

17 MS. ZAMEK: I don't have a number on it. A lot of
18 times they don't have numbers on it. They just have the
19 dates. I don't know why.

20 JUDGE BECHHOEFER: Now, what was the --

21 MS. ZAMEK: The quote --

22 JUDGE BECHHOEFER: I mean, what was the date?

23 MS. ZAMEK: Oh, I'm sorry. The date of report was
24 November 5th, 1992, and it was involving the spurious
25 reopening of a main turbin stop valve and two governor

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 valves during shutdown of Unit 1.

2 And they state, this is a quote, "The lack of
3 early full identification of the underlying safety issues in
4 this case indicated a low level of safety awareness and a
5 less than fully penetrating technical review of precursor
6 events. The inspectors stated to the licensee that this
7 situation was a good example where a thoughtful review of
8 the relevant AR's could have revealed an ongoing plant issue
9 which could have been addressed and fixed before it became
10 self-revealing," end quote. And they talk about events that
11 happened previously that they didn't learn from.

12 JUDGE SHON: Thank you. I think that it's my
13 question you were responding to at the beginning.

14 MS. ZAMEK: Oh, I'm sorry.

15 JUDGE BECHHOEFER: Is that all of the sort of
16 general statements on Contention I that you have? Because
17 we'll get into some of the specifics paragraph by paragraph
18 almost.

19 MS. ZAMEK: Okay.

20 JUDGE BECHHOEFER: Mr. Repka, anything you want to
21 at least make a general statement as to -- I have one thing
22 I wanted to ask concerning this. You've discussed SALP
23 ratings and you've placed a lot of emphasis in maintenance
24 and surveillance on Level 2. Now, Level 2 is just no better
25 than average. It's intermediate. And I wonder why you've

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 stressed that. One I can see, and one is superior,
2 according to the staff. Two is just they're doing what they
3 should do, a normal inspection after it and all that kind of
4 stuff comes out, too.

5 MR. REPKA: There's a number of things I want to
6 respond to.

7 JUDGE BECHHOEFER: I don't know what your point
8 was. And I'd also like to ask you, on the maintenance area,
9 the record I have here, which is -- I did a little quick
10 research, I looked at a document called NUREG 1214, which
11 lists SALP ratings for years past and the maintenance area
12 Diablo Canyon used to be one, now there are two, and if you
13 project things, does that go through and then unsatisfactory
14 or don't you do it that way?

15 MR. REPKA: Clearly that's an --

16 JUDGE BECHHOEFER: I'm saying, do you draw a line
17 that way? Or how do you look at these things? You used to
18 be 1, now you're 2 on that.

19 MR. REPKA: I mean, the petitioners have left me
20 with a number of things to address, and you've asked me some
21 questions.

22 JUDGE BECHHOEFER: I realize that. I realize
23 that.

24 MR. REPKA: First on the SALP, I think you start
25 from an erroneous proposition when you say Category 2 is no

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 better than average. Category 2 is defined by the SALP
2 program itself as good performance. It's performance in
3 excess of what's necessary. It's performance better than a
4 mere regulatory compliance. A Category 2 I don't think you
5 can shrug off and say Category 2 is -- you know, that's just
6 doing what you're supposed to do, because by definition it's
7 doing more than you're supposed to do. That's the
8 definition of a Category 2.

9 We put a lot of focus -- we try to find -- the
10 basic point here, and what we're hearing more of this
11 morning is -- I think it's the petitioners who are losing
12 the forest for the trees. The system, the process that's in
13 place, the normal licensee reporting system, the NRC's
14 inspection enforcement program is intended to provide, A,
15 licensee self-analysis of what's going on at the plant and
16 self-correction, Number 2, NRC enforcement and inspection
17 overview to ensure that we maintain regulatory compliance,
18 and that process does work as proven -- these are the
19 examples that prove the rule that process does work.

20 But the NRC's precedence show -- and I think the
21 legal standards are not ones of absolute perfection.
22 They're ones of reasonable pursuing of safety. Yes, we
23 would like to achieve absolute perfection and make no
24 personnel errors, but that's not always possible, and the
25 fact is, none of these events are safety significant, and

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 we've tried to find the big picture performance programmatic
2 indicator.

3 JUDGE BECHHOEFER: Conclusory? I mean, isn't that
4 one view, but not the only view?

5 MR. REPKA: Well, I think that's -- the fact is
6 under the NRC's requirements and the NRC's case law, when
7 you talk about a program such as a maintenance program or a
8 quality assurance program, individual isolated events are
9 not events that could lead to any relief in an NRC
10 proceeding absent some indication of a programmatic problem,
11 and if you look at the program at Diablo Canyon, you look at
12 what the NRC has said about it, it's completely at odds with
13 what the petitioners would have you believe.

14 A Category 2 SALP rating does mean something. It
15 does mean the program is working. If the program was as bad
16 as what's presented here, if root causes were not being
17 corrected, if we were being dilatory consistently across the
18 board, believe me, the NRC Staff would not rate this a
19 Category 2 plant in maintenance. Inspection report 9222
20 which we've cited in our papers very plainly says, and I'll
21 quote it again, "Normal maintenance and surveillance
22 activities observed by the inspectors appear to be well
23 thought out and deficiencies properly dispositioned.
24 Licensee's operations and maintenance personnel appear
25 professional and dedicated in accomplishing their work.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 Training of license to nonlicensed operations personnel
2 appear to have been well timed."

3 In my experience, and I think the experience of
4 all those around me, the NRC Staff and the NRC inspectors
5 don't give accolades in their inspection reports lightly.
6 They're not known for -- I think the petitioners this
7 morning suggested that these kind of things are all kind of
8 boiler plate and they're in all inspection reports. That
9 simply is not the case. The NRC does not tell a licensee
10 it's doing a good job, its program is functioning
11 effectively if that's not the case. No good regulator would
12 do that.

13 JUDGE BECHHOEFER: Right, but wasn't that just a
14 listing of strengths; that if you go to the next paragraph,
15 they found some weaknesses, too? They're both --

16 MR. REPKA: The point is, the strengths are the
17 overall program. The weakness is maybe an individual event
18 an individual slipup. And --

19 JUDGE BECHHOEFER: Well, are you saying that if
20 you have enough of the latter, you aren't overlooking the
21 problematic indications? If you have enough slipups --

22 MR. REPKA: There are no findings here that say
23 the program has a generic problem. There are no findings
24 here that says there is something wrong with the program or
25 the way it's being implemented.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: No, we have a claim, though --

2 MR. REPKA: If you had enough --

3 JUDGE BECHHOEFER: -- because of the number of
4 individual problems there is a weakness and that there is a
5 problem. The claim is being made that there is a problem.

6 JUDGE SHON: Yes. And Mr. Repka --

7 JUDGE BECHHOEFER: And we have to look all of them
8 together.

9 JUDGE SHON: That was one in a few minutes to come
10 up with a couple of places where the staff had said things
11 like management isn't giving this enough attention. Now,
12 that's scarcely a simple incidence of one slip. If
13 management doesn't give a program enough attention, that's
14 pretty eventful.

15 MR. REPKA: I think you're making a broad
16 conclusion here. You're looking at these incidents -- we're
17 seeing a lot of mixing of apples and oranges. This morning
18 we started talking about the chain fall incident and the
19 crane. Those were personnel errors, admittedly. They're
20 not maintenance related. They weren't originally cited as
21 maintenance violations. Some of the incidents involving the
22 timeliness of engineering assessments and quality assurance
23 evaluations, again, those are not maintenance issues per se,
24 so it's an artificial bumping up of the numbers by mixing
25 the findings and incidents related to various disparate

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 elements of the plant into one category.

2 Again, we hear this morning about the September
3 1991 SALP report. I want to again focus on the big picture
4 of what the NRC said. In the cover letter, it says the SALP
5 report found your overall performance to be very good, in
6 some cases superior, and clearly directed towards safe
7 facility operation. And then it goes on to talk about some
8 specific strong performance areas, including plant
9 operations, which was the Category 1 I alluded to earlier.

10 JUDGE BECHHOEFER: Right.

11 MR. REPKA: I think we have to focus -- if we're
12 looking for the basis of a contention here, we have to focus
13 on the big picture, not the minutia, that simply demonstrate
14 the system that's in place works.

15 JUDGE SHON: But Mr. Repka, again what we have
16 what appears to be the exact sort of dispute that is to be
17 resolved by hearings or by submissions and motions for
18 summary disposition or something like that. Miss Zamek says
19 they said you aren't giving enough management attention,
20 you're not doing that, and you say, "Well, that was for
21 different kinds of things that have mixed apples and oranges
22 and we're really doing very well." Isn't that exactly what
23 this process is meant to sort out? Doesn't that go to the
24 merits rather than to the admissibility?

25 MR. REPKA: I think historically that may have

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 been the case. I don't think that's the case now. the
2 Commission revised its threshold standards to specifically
3 eliminate that scenario. All of what we're talking about
4 here is based on publicly available records, publicly
5 available documents, documents that speak for themselves.
6 This Board can look at those documents just the same as I
7 can or the petitioners can, and we can see on their face
8 what is really going on here. We can see what the scope of
9 those findings are. We can compare them to the programmatic
10 findings, and the Commission threshold standard for
11 Commission contentions is a finding of general issue in
12 dispute. And I would submit that all of these things -- and
13 we could stipulate that these inspection reports and these
14 inspection findings exist and they are what the NRC Staff
15 has found, but they simply do not add up, taken together, to
16 a programmatic weakness.

17 JUDGE KLINE: But isn't that a judgment on the
18 merits? That's the part that I would like further
19 explanation on, because as I understand it, you would seek a
20 finding of fact that no adverse inference could be drawn
21 from these reports, and the Mothers for Peace would seek a
22 finding of fact that such an adverse inference could be
23 drawn, and that certain regulatory consequences would then
24 flow from one finding or the other, but isn't this really a
25 finding of fact that would emerge from a hearing, not to be

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 taken into account at the contention admission stage?

2 MR. REPKA: No. It's a finding of the basis
3 required by the Commission for an admissible contention.
4 The basis must be a genuine issue in dispute, one that could
5 entitle the petitioner to relief in the proceeding. That's
6 the essence, that's a direct paraphrase of the new rule.
7 And that requires that you look at these findings and
8 requires -- you know, it requires a basis for a contention,
9 and we submit that there simply is no such basis.

10 JUDGE BECHHOEFER: Miss Hodgden, do you have
11 anything to say about contention? Generally, Contention I
12 we may get to specific --

13 MS. HODGDON: Generally, Contention I. I'm not
14 sure that -- yes. I will address it generally to the extent
15 that it was addressed generally, and that is the staff
16 objects --

17 JUDGE BECHHOEFER: I do have one question.

18 MS. HODGDON: Yes. What happened to the three
19 lines at the bottom of page 12 and the top of page 13? Is
20 that your question?

21 JUDGE BECHHOEFER: No.

22 MS. HODGDON: No.

23 JUDGE KLINE: That's another one.

24 JUDGE BECHHOEFER: That's another one. We haven't
25 gotten to those details.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 The staff, as far as I can see, and I searched,
2 didn't say one word about SALP ratings one way or the other,
3 and my question is, should SALP ratings even been looked at
4 by a board? And I say this having looked at them in some
5 proceedings in the past, but shouldn't we be looking at SALP
6 ratings one way or the other?

7 MS. HODGDON: Well, I could say something funny
8 and say that the reason that the contention was admitted in
9 Vermont Yankee was because the licensee relied on SALP to
10 its detriment. So I don't know. Of course, the SALP has a
11 reason for being, and it's very useful. But, however, it
12 results in just exactly what's going on here; that the
13 petitioner says, "It says here weaknesses," and the licensee
14 says, "It says here strengths," and so it does say both of
15 those things. And I don't know that a factual issue is
16 really joined there, because those are all judgements which
17 the NRC understands, and I think the licensee does, too.

18 Our response does not address SALP. That is true.
19 We do not. And so we don't -- our basis -- our judgment of
20 the admissibility of Contention I is not based on SALP
21 reports. Our feeling, our judgment is that Contention I
22 does not raise a genuine issue of material fact that's
23 cognizable in this proceeding. Beyond that, it probably
24 wouldn't be admissible even under the old standard, because
25 it lacks basis and specificity.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 When you look closely at the inspection reports,
2 et cetera, and the LER's that the petitioner relies on, you
3 see that all of those things taken in context don't
4 represent what the petitioner says that they represent.
5 Therefore, I would object to the intervenor's coming in here
6 today -- the petitioners, rather -- excuse me -- coming in
7 here today and wanting to introduce more inspection reports,
8 notice of violation which we're not prepared on, because I
9 brought everything that they identified.

10 JUDGE BECHHOEFER: I got a lot of them to the
11 extent they fit in my briefcase.

12 MS. HODGDON: Well, I have everything on certain
13 subject matters, but these other ones, I think that if I
14 looked at them closely, I would see that those two are
15 things that are taken out of context or they're not on the
16 subject matter that they purport to be on, and so we don't
17 have the opportunity to do that here. And I don't think
18 that the Board should entertain anything beyond the
19 petitioner's original basis. If they did, then certainly
20 the staff and the licensee would be entitled to file a reply
21 in writing to what they have sought to introduce here today.
22 It goes far beyond the responses.

23 JUDGE KLINE: But the admission of a contention at
24 this stage is still a procedure matter, not a factual, and
25 the fact that you disagree with them on whether these

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 inspection reports show anything significant or not, isn't
2 that a factual dis --

3 MS. HODGDON: No, it's not. And in fact, I don't
4 disagree with them about the significance. I disagree with
5 their characterization and with their reliance as a basis.
6 For example, they use an enforcement conference where
7 certain people said certain things. That enforcement
8 conference was geared toward an enforcement action, which
9 did not take place. Therefore, what anybody said there
10 can't be relied on for the fact that this was a maintenance
11 problem or a surveillance problem. In addition, this was
12 identified in an LER which they don't tell us about, and so
13 when you look at this in context, you see that it's not at
14 all what the petitioner makes it out to be, and so I think
15 that their basis has to be looked at in context. I mean,
16 what --

17 JUDGE BECHHOEFER: Well, isn't that, too, an
18 evidentiary question, though?

19 MS. HODGDON: No, it's not. It's a problem of
20 basis. They don't have a basis, because their basis, when
21 seen in context, disappears. That is not an evidentiary
22 matter. That is a matter of their not raising a genuine
23 issue or of their mischaracterizing documents, their
24 unwillingness to look at a document. They're willing to go
25 through what we have seen here this morning, they comb

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 through and they look for certain key words, weakness and
2 words like that, and then -- and they think that all adds up
3 to something, but it's not additive, because they're not
4 about the same subject matter. They don't necessarily --
5 they don't look at the resolution of the problem. And I
6 just think that, no -- I mean, what it is is a lack of
7 basis. It's not an evidentiary matter.

8 JUDGE SHON: Miss Hodgdon, what I understand, I
9 think what you're, in effect, saying is that the petitioners
10 have combed through certain staff documents, have picked
11 only the bad parts and not looked at the overall conclusion
12 of those documents, and that when we assess whether or not a
13 genuine issue of fact exists, we should look at the overall
14 conclusion of the document rather than simply at the bad
15 parts or simply at the good parts since all documents have
16 both of these things? Is that --

17 MS. HODGDON: Yes. My point is that the staff
18 brief tries to show these bases in context. I think it's
19 proper for the Board to assess these bases that were
20 originally offered in the context in which they should be
21 seen. And that should be the Board's task here.

22 JUDGE SHON: Then the only way we could really
23 accomplish this is to look individually at each of the
24 documents, LER's, conference reports, inspection reports,
25 and so on that the staff or the applicant has produced and

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 try to assess whether the overall import of each document is
2 as the intervenor -- as the petitioners say it will be or as
3 the staff and the licensee say it will be? Is that the way
4 we're supposed to proceed, do you think?

5 MS. HODGDON: Well, the way you characterize it,
6 it sounds like an onerous chore. And in fact, it was an
7 onerous chore of finding some of the documents, because they
8 weren't properly identified, but we found the documents, we
9 read the documents, and we tried to provide a context, and I
10 think that our assessment of them is fair, but certainly the
11 Board may look at these documents itself and see what it
12 thinks of the basis in the context in which it appears,
13 which is not the way the petitioner has offered it. So,
14 yes, I don't know that you have to read every word on these
15 subjects, but certainly if an issue is raised and it's been
16 closed out, then it certainly is appropriate to look at
17 where it was closed out and not just look at this issue that
18 was raised as if it were still a living issue. So, yes. I
19 --

20 JUDGE SHON: And you also say that the staff has
21 looked at least at all the documents that were cited that
22 you could get a hold of that were mentioned in the original
23 supplement to the petition, although there seem to be some
24 others that have come up at this point.

25 MS. HODGDON: We object to those. We object --

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE SHON: And you object to our taking any
2 notice of those whatever, and after you have analyzed them,
3 you have found that there is none -- that there are none of
4 them that show any reason for further investigation or in
5 every case the document's overall conclusion was: effect
6 favorable to the licensee; is that right?

7 MS. HODGDON: I don't believe that notices of
8 violation are favorable to the licensee. I mean, but I do
9 believe that these things were not of major safety
10 significance. These were category 4 and 5 -- I mean, yes.
11 Levels -- severity levels of 4 and 5 which are of lesser
12 significance. These violations that the Mothers -- that the
13 petitioners sought to introduce. So I think that some of
14 them certainly have some significance. Some of them might
15 even have minor safety significance. They have whatever
16 significance we say they had in our responses, because that
17 is where we looked at them and offered them in context. I
18 think that Contention I lacks a basis in that it doesn't
19 show anything about Diablo Canyon that is unusual with
20 regard to surveillance and maintenance that would cause it
21 not to be able to get it's CP recaptured that it's applied
22 for.

23 JUDGE SHON: In other words, although some of them
24 may have resulted in notices of violations, these were all
25 Category 3 or 4?

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3350

1 MS. HODGDON: They were 4 or 5. They were not 3.

2 JUDGE SHON: 4 or 5. No 3's. And that Category 4
3 and 4 violations are not the sort of thing that would lead
4 one to deny a license or refuse to extend a license or to do
5 anything to cause the plant to suspend operations; is that
6 right?

7 MS. HODGDON: That is correct up to a certain
8 point. I should say that even a Category 3 violation would
9 not involve the denial of a license. But what we're talking
10 about is what the petitioner put in here originally, and
11 what the petitioner put in here doesn't amount to much, and
12 that's what we say in our response.

13 JUDGE SHON: At least it doesn't amount to enough
14 to justify the relief they have asked?

15 MS. HODGDON: That is correct.

16 JUDGE KLINE: As I understand it, there is no
17 dispute that these violations took place and that they were
18 closed out in some sense to at least the regulator's
19 satisfaction, but what the NRC Staff has used in the past in
20 its enforcement practice, a practice called accumulation or
21 something -- I've forgotten the exact words.

22 MS. HODGDON: Oh, you mean you add up a number of
23 small ones and you get --

24 JUDGE KLINE: Add up the small ones and you get to
25 a higher severity level penalty, and what it appears to me

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 is that the Mothers for Peace are attempting to do something
2 similar. That is, they're not disputing that an individual
3 violation occurred and that it was closed out. They're
4 saying that collectively they have more significance than
5 any do individually.

6 Now, whether that's true or not, we don't know
7 now, but isn't that enough to get past the threshold of
8 admission such that we can -- even if it turns out later to
9 be false, even if it turns out later that you're right, that
10 it doesn't add up to anything?

11 MS. HODGDON: No.

12 JUDGE KLINE: What is it in the current
13 regulations for admission of contentions that says we can
14 decide that on priority? All they have to do is make an
15 evidentiary presentation. They're not inviting a rebuttal
16 at this time of their presentation. They're just -- all
17 they really have to show is that they did their homework.

18 MS. HODGDON: But my point is that they did not,
19 and even if they had, that they lack the expertise to be
20 able to read these documents, which has been clearly
21 evidenced by what they put in here this morning and what
22 they put in there, and so I think that to litigate such a
23 contention even would be an exercise in futility. There's
24 no issue raised here, there's no basis given, and there's
25 just nothing to connect what the petitioner has said here to

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 operation under the recaptured time. Nothing.

2 JUDGE KLINE: Is there no demonstration in your
3 mind of maintenance deficiencies that could lead to a denial
4 of a recapture amendment? Is this a -- I mean, what I'm
5 trying to get at is whether we're being advised to adopt
6 principles that would in general prohibit any inquiries.
7 There isn't an opportunity for hearing granted after all.

8 MS. HODGDON: Yes. I think contrary to what the
9 licensee believes, that this is purely administrative. I do
10 believe that the staff does look to certain matters, but
11 I'll go into that on another contention later, but I do
12 believe that there is a possibility of having a contention,
13 an admissible contention, on this subject matter on a
14 showing of some specific -- I mean, with -- a contention
15 that has an adequate basis showing something programmatic, a
16 specific problem with a specific plant. I do think it might
17 be possible to admit a contention on a CP recapture. Surely
18 there must be, because, I mean, the Commission does allow
19 intervention in these proceedings, although it sort of
20 alludes us about what that contention might be. My point is
21 that this Contention I just doesn't make it and wouldn't
22 make it even under the old standard for contentions, because
23 it lacks a basis.

24 JUDGE BECHHOEFER: Do you think this is
25 different -- and I realize the rules were different, but the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 -- my recollection -- this wasn't my case, but I heard at
2 least that the staff opposed the contention that was
3 admitted for Vermont Yankee. Now, that's what I've been
4 told, at least.

5 MS. HODGDON: Well, it was my case, so --

6 JUDGE BECHHOEFER: But it was --

7 MS. HODGDON: So you're going to blame me for
8 this.

9 Well, the staff felt that in that case, as I said,
10 a lot of reliance was placed on a SALP report there, and the
11 staff did argue that the petitioner didn't understand what
12 was meant by weakness. This is a term of art. And that is
13 true. I mean, the petitioner -- nevertheless, the
14 petitioner stated in Vermont did manage to get this
15 contention and the contention was admitted. It never went
16 to hearing, and the case was settled as you mentioned
17 earlier, Judge Bechhoefer.

18 MR. REPKA: Judge Bechhoefer, with your leave,
19 could I respond to a couple points?

20 JUDGE BECHHOEFER: Certainly.

21 MR. REPKA: The first thing I think Judge Kline
22 was getting at is the concern is the Board doesn't feel it
23 can make an evidentiary finding, and I just want to
24 reiterate that the Board doesn't have to take what's
25 presented by a petitioner uncritically. A board has to -- I

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 think it's incumbent and required to look at what's
2 presented to make sure that it fairly adds up to the
3 contention that's -- the conclusion that's proffered, and we
4 think that that's not the case here. I think if you really
5 look, if you get down into the level of looking at these
6 specific, isolated findings, you find that they really just
7 don't support that.

8 But even more broadly, I think there's again the
9 basic legal proposition that individual violations,
10 individual licensee event reports, et cetera, et cetera,
11 just don't add up to the kind of relief that the petitioner
12 seemed to be asking, and I think that the Board is not
13 required to go through an evidentiary hearing to make that
14 determination. I think that it speaks for itself quite
15 loudly.

16 And again, you just again have to look at this
17 whole issue in context to the fact that this plant has been
18 put on the NRC's best performers list and that's a very
19 exclusive list, and I think that it just sheds incredible
20 perspective on the whole thing.

21 JUDGE KLINE: Is it your view that even if a
22 demonstration of some sort of maintenance deficiency as a
23 pattern were to be made, that even if that were to take
24 place, that no relief could be granted, i.e., that the
25 extension period could not be denied or conditioned?

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 MR. REPKA: The extension period clearly could not
2 be conditioned -- I mean, could not be denied based on that.
3 As far as a pattern of maintenance, I think you have to look
4 at the evidence again and see does the evidence really
5 support that? And I don't think it does here. I don't
6 think what's offered doesn't even remotely suggest that
7 conclusion.

8 I think if you look at the whole pattern issue,
9 the NRC Staff clearly has not come to that conclusion. They
10 have not said that anything more or anything different needs
11 to be done about maintenance, and I don't think there's any
12 basis for this Board to conclude now or following an
13 evidentiary hearing that some further condition needs to be
14 put on the license. I just don't see that as a realistic
15 possibility.

16 JUDGE KLINE: It may not turn out to be that as a
17 matter of fact, but the -- but is it somehow ruled out in
18 principle that that is to say can we decide now that no such
19 relief could be granted?

20 MR. REPKA: I think if a condition -- if a --
21 assuming number one, the maintenance issue, were within the
22 scope of the proceeding, an argument we haven't addressed
23 here this morning and one which I'm not concluding here, we
24 continue to believe that maintenance implementation issues
25 are really NRC inspection, enforcement, 10 CFR 2.206 issues.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 But even saying that's not the case for the sake of
2 argument, if you had an admissible contention, it is
3 possible, theoretically, that -- and the evidence later
4 supported it, then, yes, you could come up with a condition
5 on a maintenance program that something more could be done.
6 But we're not there. We're simply not there here.

7 JUDGE KLINE: But then we're not at a situation
8 where we can rule out a contention on the basis that no
9 relief could be granted?

10 MR. REPKA: No relief could be granted based on
11 the basis presented here.

12 JUDGE KLINE: Okay.

13 MS. VON RUDEN: Could I speak to our expertise in
14 reviewing the documents, please.

15 JUDGE BECHHOEFER: Please do.

16 MS. VON RUDEN: I'm speaking to Staff. And when
17 we originally -- and as you can see, we're a small group
18 that's not employed during every day. We went to the
19 library. We did start out with the license event report.
20 They were overwhelming to us in volume. There were so many.
21 So we just made the decision, due to the really short time
22 and very small staff, we're talking three, four people,
23 sporadically to just access the document basically for
24 violations. It's not that there isn't a history in the
25 license of the reports as well that could show a pattern.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 It's the time limitation. It's not that we were too
2 ignorant to read all the documents. It's that time limited
3 us to basically trying to find these things that the NRC had
4 considered a violation. And that is why our documents are
5 limited and our research. Not because we weren't aware that
6 there weren't other sources.

7 MS. CULVER: Can I add a little bit to that?

8 JUDGE BECHHOEFER: Please.

9 MS. CULVER: We obviously are working with some
10 handicaps that PG&E and NRC Staff do not share, and I think
11 it's important for us for you to understand what some of
12 those are, and June has just outlined some. After we were
13 informed that our public document room was hooked up to the
14 new dock system so that we could have access to the document
15 room in Washington, we thought that that was wonderful, only
16 to discover that the only person who knew how to use it
17 retired at the beginning of October, just about the time we
18 really needed him. So there's another person trying to use
19 it, but she's often not there and she's also told us that we
20 can't use it after 2:00 p.m. Well, we have jobs and
21 families, and it's very, very difficult under those
22 conditions. Now, I'm not sure that's true, because someone
23 in Washington said that other intervenors actually use it in
24 the evening, but she said and we've been told in our
25 document room that the computer in Washington closes down at

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 2:00 o'clock our time. It's often busy when you do get onto
2 it.

3 JUDGE BECHHOEFER: That's not true.

4 MS. CULVER: That's not true?

5 JUDGE BECHHOEFER: I thought it was open 24 hours
6 a day. I've used it after hours. I've never stayed that
7 late to know, but seven or eight o'clock, it's still
8 working. In fact, it's easier to get to than at two
9 o'clock.

10 MS. CULVER: Perhaps you could talk to the
11 librarian over here who thinks that she can't use it and,
12 therefore, she can't help us use it. We haven't been able
13 to go to Washington to get trained to use it after 2:00 p.m.

14 JUDGE BECHHOEFER: There are many who don't like
15 the way new documents work, so I might say all of these
16 things I have here came from new documents, but it wasn't
17 that easy to get them.

18 MS. CULVER: It's been a real struggle to get
19 access to everything we might need access to, and that's why
20 Jill has prepared the document she tried to give you,
21 because for us to try to continue to gather information is
22 ongoing. I mean, the deadline came and went, but we had
23 more things that we were trying to get a hold of.

24 Let's see. A couple of other details, the latest
25 document in the public document room here is dated 10/30/92,

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 and the PDR does not have the current CFR public health
2 regulations. And that's not the only document we found
3 missing, by the way, but that's certainly one that we needed
4 to give you some sense --

5 JUDGE BECHHOEFER: New documents are supposed to
6 be updated to within a day or two of whatever date you're
7 looking at. Whether that's always the case, I don't know.
8 But, theoretically, it's supposed to be.

9 MS. CULVER: You could give Jill a scholarship to
10 send her to Washington because you've used that.

11 JUDGE BECHHOEFER: I have taken a couple of
12 courses on how to do new documents, and it isn't that easy.

13 JUDGE KLINE: But the rebuttal arguments that you
14 heard this morning really don't address the notion that you
15 haven't come forward with enough inspection reports. The
16 real issue is what do they mean, and one of the arguments is
17 that internally the documents contain statements that don't
18 support what you're saying about them. In other words, if
19 the document says, "Hey, this was a Level 4 violation, it's
20 now all closed out to the satisfaction of staff," why is
21 there additional significance to be attributed to it? I
22 mean, it came to life, it got addressed, and it got put to
23 bed. Why is that not adequate in your view? That's the
24 thing you're going to have to try to address to us.

25 MS. ZAMEK: By the sheer number and repetitiveness

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 of them have produced a pattern that I've identified just
2 with the CFCU's, for instance, is one. Well, they were
3 violated for that -- they received violations for that, but
4 then, you know, a month later there's another problem with
5 it, et cetera, et cetera, et cetera. They keep recurring,
6 like I said. They don't go to the root causes to find their
7 problems. They find a missing bolt, oh, they just put the
8 new bolt back in. They're, well, they took care of that
9 problem, but they really didn't, because the bolt came out
10 for some other reason that they didn't look to, and that's
11 our contention.

12 JUDGE KLINE: Let me ask the Mothers for Peace,
13 one of the arguments that was pressed this morning is if you
14 take a specific document and in one paragraph it says these
15 fellows are rascals and in the final conclusion it says but
16 after all, they're doing all right, and so the document
17 appears to contain contradictory statements, can we rely on
18 it, in your view, as a basis for an admission of a
19 contention when the document itself doesn't really support
20 unambiguously what you're claiming for?

21 MS. ZAMEK: I think when you get enough of those
22 comments like I've been reading that it adds up to, yes, you
23 can use that as a basis for a contention. I don't know if
24 it's appropriate to say right now, but maybe I'm feeling a
25 little attacked, but, you know, I've heard comments that we

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 don't know what weaknesses mean and we don't know how to
2 read these documents, but I'm not a lawyer and I'm not a
3 nuclear physicist, but I am an intelligent woman, and I've
4 read these documents and I understand the documents, and I
5 was really impressed with how well they're written so that
6 people like myself can understand them, and where, you know,
7 previous to this I wouldn't have had the foggiest notion
8 what things were, they really explained the process of these
9 events and what happens first, and I think I do have a good
10 understanding, and I could see the significance of some of
11 these events. You know, and I always -- I see -- read these
12 comments about this problem, this problem, this problem, but
13 overall you say but overall its adequate. Well, you know, I
14 weigh them, too, and I look and see, but they said this, and
15 that didn't sound very adequate, so --

16 JUDGE KLINE: Is it your intention, then, if the
17 contention were admitted, to make an evidentiary
18 presentation showing not just individual deficiencies, but
19 something that would support an inference of a pattern of
20 deficiencies?

21 MS. ZAMEK: I can't say for sure what we would do,
22 but I would think that we would get enough of these together
23 to show a pattern, that we would have enough time where we
24 could organize these and show a pattern even more so than we
25 have.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: I have a question, one or two
2 questions, actually, I'd like to ask the applicant.
3 Concerning one of the citations was to the enforcement
4 conference which was said, and the way I read Appendix C, I
5 guess it is, enforcement conferences are not normally held
6 for Level 4 violations, but -- and I'm quoting now, "they
7 may be scheduled if increased management attention is
8 warranted," end quote. That's right from Appendix C.

9 Now, did someone on the staff at least decide that
10 maybe increased management attention to the matters talked
11 about at the enforcement conference was warranted in order
12 to schedule a conference at all?

13 MR. REPKA: Obviously, to schedule a conference at
14 all, the NRC was considering the significance of an
15 individual event and had not yet made up its mind as to what
16 severity level to assign and what observations -- what
17 lessons are to be learned from the matter that was the
18 subject of the enforcement conference.

19 As I understand it, an enforcement conference is
20 not a preordained thing. The NRC does not know what
21 enforcement action is going to come out of it until after
22 the conference. That is the licensee's opportunity to
23 present what happened and its views on the significance of
24 that.

25 I just frankly don't think you can take comments

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 from an enforcement conference and say that somehow that
2 has meaning here and that -- I mean, the enforcement
3 conference -- the results of the enforcement conference
4 are the important thing.

5 JUDGE BECHHOEFER: Well, the statements are made
6 under oath, are they not?

7 MR. REPKA: The statements are not made under oath
8 but, of course, any statement to the NRC is made to be true
9 and accurate in all material respects so, I mean, that's a
10 given. And in fact, the statements, I'm sure, were accurate
11 representations of what the individuals involved believe.
12 But those are -- again, are not necessarily related to
13 maintenance.

14 I think the particular ones we're talking about
15 here as we pointed out in our papers really was not a
16 maintenance matter. That's number one. And number two, you
17 again have to look at the significance to the context of an
18 enforcement conference. The object of an enforcement
19 conference is to be self-critical, to be self-analytical, to
20 show that you understand the root cause of the incident
21 that's being discussed, and to show that you're correcting
22 it, so in a sense those are statements against interests
23 that are now being used against us when the reality is that
24 the NRC decided it was not a safety significant violation
25 and that we've taken corrective actions to address whatever

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 in fact occurred.

2 One other point. The enforcement conference was a
3 good example in which initially the issue was operability of
4 the equipment, and after reviewing the licensee's
5 presentation and the follow-up submittal on operability, the
6 NRC determined that operability was not in fact an issue and
7 didn't issue a violation of technical specifications, so
8 yes --

9 JUDGE BECHHOEFER: Well, was there not in fact a
10 maintenance problem that they did find there?

11 MR. REPKA: There was a maintenance problem.
12 There was a failure to use --

13 JUDGE BECHHOEFER: Well, isn't that what these
14 people were talking about, the maintenance problems and
15 problem and the --

16 MR. REPKA: Yes. But it is one operation
17 violation, a -- I mean, there is not a plant in this country
18 that does not have a, quote, pattern of violations and
19 inspection findings. That's, quite frankly, the nature of
20 the beast, and violations do occur, but, you know, this one
21 does not have programmatic significance, and taken all
22 together, what's been offered does not add up to a pattern.

23 JUDGE BECHHOEFER: Does anyone -- I'm not sure we
24 need to go into every single allegation in Contention I, but
25 is there any comments on any specific allegation that the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 Mothers for Peace would like to -- because we're just trying
2 to debate whether -- how useful it would be to go over each
3 paragraph separately or not. We've heard quite a bit about
4 your general thrust, which is what we were trying to get.

5 MS. BECKER: I have a comment to Judge Kline's
6 question about our going on with this proceeding if our
7 contention was admitted. We have already contacted expert
8 witnesses and sent them copies of our contentions, PG&E's
9 responses and the NRC's responses, so we don't intend to
10 only represent ourselves if a contention is allowed. We
11 have expert witnesses who would come forth, so it wouldn't
12 just be us bringing up more information. And then I have
13 two procedural questions.

14 JUDGE BECHHOEFER: Are any of those witnesses --
15 do you have their names that you'd like to provide or --

16 MS. BECKER: Not at the moment, but they do --
17 they have testified in other NRC proceedings. They are
18 people who are qualified to be expert witnesses and have
19 been qualified by the NRC in the past.

20 And, secondly, I have two procedural questions
21 about this evening's public comment period.

22 JUDGE BECHHOEFER: Yes.

23 MS. BECKER: In the past with NRC and PUC
24 proceedings that have been held in San Luis Obispo, there's
25 been a sign-up table in the back so --

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: I left a sheet of yellow paper.

2 JUDGE SHON: It's in the front today.

3 MS. BECKER: Well, gee, no wonder nobody saw it.

4 JUDGE BECHHOEFER: I'm sorry. I should have
5 mentioned that. I put a yellow sheet of paper, and that's
6 about as good as any.

7 MS. BECKER: If there could be one of these other
8 tiny, little tables out in the hallway that said "Sign-up
9 sheet," I think people would know that it existed, because
10 we realized that -- we received a fax that members of a
11 group called Citizens for Adequate Energy, which is a group
12 --

13 JUDGE BECHHOEFER: We received those fax --

14 MS. BECKER: -- that it obviously opposed what
15 we're here for will be here to speak, and we want to make
16 sure that there's other people who will be able to sign up.
17 And secondly --

18 JUDGE BECHHOEFER: Well, we're going to make an
19 attempt to hear everybody.

20 MS. BECKER: Good luck.

21 JUDGE BECHHOEFER: Whether there will be enough
22 time or not, I don't know, but we will not do it necessarily
23 just for people from a single group, but we'll try to mix it
24 up a little bit and, if necessary, we might even be back
25 here tomorrow for the same purpose, but I'm not sure.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MS. BECKER: If additional parties want to file
2 to the service list, can that be done today? Is there a
3 forum --

4 JUDGE BECHHOEFER: Well, a service list, that's a
5 problem. I don't think parties normally can get put on a
6 service list, at least in terms of obligations of the
7 party's here to serve them.

8 Occasionally, we have allowed certain groups to be
9 put on the service list. We put -- we did put on the
10 service list two groups. One, I think, is the Public
11 Utility Commission, and another was another group I have
12 back here someplace when they wrote in and requested it,
13 but I don't think we would do that as an unlimited.

14 MS. BECKER: There's a Ratepayers Advocate Group
15 that's interested in this that represent ratepayers, and
16 they wanted to be added to the service list. I will ask
17 them to write on their own stationery to you? Is that the
18 procedure?

19 MR. REPKA: Judge Bechhoefer, from our
20 perspective --

21 JUDGE BECHHOEFER: There was one group that wrote
22 in that I permitted, and the Public Utility Commission wrote
23 in for two people, and I told the secretary to put two
24 names, but one address, on the list and just send one copy,
25 but the --

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MR. REPKA: We have no objection to adding
2 courtesy copies to our service list in the proceeding.
3 That's not in issue here. As far as our technical service
4 list, the documents, the NRC, LER's, things like that, the
5 petitioners are already on that list, and I believe the
6 group in the Bay Area is, also, so we would certainly add to
7 our version of the service list.

8 MS. BECKER: Maybe I'll just speak to PG&E and
9 make sure it's the same group. That's fine.

10 JUDGE BECHHOEFER: Right. For that kind of thing,
11 you know -- but parties most often just have to serve other
12 parties, plus documents for the secretary and that kind of
13 thing. But we don't want to require parties to have too
14 much added expense. Because if 3 groups wrote in and they
15 were all on the service list, I don't know -- technically, I
16 guess our secretary would have to serve them. Now, in the
17 past -- and I don't know if this is the case now -- people
18 who -- I think it probably isn't the case now. People would
19 be mailed a copy of the final decision on the service list.
20 I don't even think that happens now. It gets put in the
21 public document. It has nothing to do with -- I mean,
22 parties get mailed copies of any findings -- any decisions
23 we make, but I'm not sure that everybody who signs up for an
24 appearance statement tonight is going to get a copy of
25 whatever our decision is except to the public documents, but

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 technically, I'm just not sure how some of these things
2 work. I know the Commission has had to cut back for expense
3 reasons. Everybody's budget is under fire these days.

4 MS. ZAMEK: Could I -- I'm sorry.

5 JUDGE BECHHOEFER: Anyway, are there further
6 comments on anything in Contention I?

7 MS. ZAMEK: I do --

8 JUDGE BECHHOEFER: I think we're going to break
9 for lunch after that.

10 MS. ZAMEK: I do have one comment, and it has to
11 do with really semantics. In Contention --

12 JUDGE BECHHOEFER: This is just I.

13 MS. ZAMEK: Pardon?

14 JUDGE BECHHOEFER: This is just Contention I.

15 MS. ZAMEK: Right. In Contention I on --

16 JUDGE BECHHOEFER: Because we'll get to the others
17 after lunch.

18 MS. ZAMEK: On page 7, it was written, the Mothers
19 for Peace wrote, in fact, "NRC has repeatedly cited PG&E for
20 slow response to maintenance problems," and et cetera. And
21 it received a great deal of criticism, because two LER's
22 were cited and, of course, that wasn't NRC criticizing them,
23 and it was really a matter of semantics. It should have
24 been more like evidence shows repeated slow response, et
25 cetera, et cetera, but -- and then again, I've used that --

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 criticized by the NRC when I used an LER, so -- but I still
2 -- and so that kind of -- that evidence was kind of thrown
3 out by the NRC Staff because of that error, when in
4 actuality that evidence, I think the crux of the evidence is
5 still pertinent. And whether it was an LER or a notice of
6 violation or inspection report, whatever it is, if it shows
7 that there is a problem, I think that it should be
8 considered.

9 JUDGE BECHHOEFER: And, of course, the LER is the
10 applicant's --

11 MS. ZAMEK: PG&E, right, but it's still better
12 when they admit that there's a problem. It still, I think,
13 can be admitted for evidence; isn't that true?

14 MR. REPKA: But I would point out that some of
15 these LER's were voluntary LER's, and if the LER didn't
16 result in an NRC inspection -- or enforcement action, that's
17 just a further indication of the lack of significance of
18 what was involved.

19 JUDGE BECHHOEFER: Purely technically on that same
20 page, I think the inspection that you referred to should
21 have been March 17th through April 27 technically, but --
22 May 12 is the day the letter was written.

23 MS. ZAMEK: Oh, and I'm supposed to put the whole
24 --

25 JUDGE BECHHOEFER: I'm just --

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MS. ZAMEK: And I noticed, too, there were two
2 mistakes in one LER number was wrong, one inspection report
3 number was wrong. That was a typo.

4 JUDGE BECHHOEFER: There was one other one where
5 the date was ten days off, which makes a big difference if
6 you use new documents.

7 MS. HODGDON: It was August the -- they said
8 August the 3rd. It should have been the 13th.

9 JUDGE BECHHOEFER: Right.

10 MS. ZAMEK: Sorry.

11 JUDGE BECHHOEFER: And if you use the new
12 documents, that's crucial, because you plug in a date and
13 you plug in a docket number, and theoretically it all will
14 come up, but --

15 MS. HODGDON: There was another one where they
16 said '91 -- '92 and it should have said '91.

17 MS. ZAMEK: I caught that.

18 MS. HODGDON: If I could speak, I don't want to
19 interrupt, but as long as we're making corrections here,
20 just to make these comprehensible, in the Staff's response
21 on page 13 where there's a superscript 7. That's wrong, of
22 course. Somehow or other, it got up there. It should
23 be -- instead of where it is on the third line on page 13,
24 it should be at the third line under "Containment fan cooler
25 units" at the end of that sentence. That first sentence, it

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 should say, "is an enforcement conference report superscript
2 7," because footnote 7 goes to that and not to the -- where
3 it's indicated.

4 Also, there are three or four lines missing
5 between 12 and 13, but I won't bother to put those in,
6 because they're just a characterization of the petitioner's
7 pleading, and I just don't want to take up everybody's time
8 with that. The 7 is important, because you can't understand
9 it without that. It's wrong. The other thing is just not
10 important, so I'll skip over that.

11 JUDGE BECHHOEFER: Okay. Is there anything else
12 on Contention I? Because I think we'll adjourn, then, for
13 lunch and come back and start with Contention II.

14 Okay. Off the record.

15 (Whereupon, at 12:29 p.m., the prehearing was
16 recessed for lunch to reconvene at 1:30 p.m. this same day.)

17

18

19

20

21

22

23

24

25

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

AFTERNOON SESSION

(1:48 p.m.)

JUDGE BECHHOEFER: Back on the record.

I guess we'll now proceed to Contention Roman II.

And ask the Mothers for Peace whether they have any additional statements they wish to make.

One question I have, though, is to what extent -- and in your statement you could respond to this. To what extent do these matters list incidents or the events listed relate to the maintenance program which is mentioned in the last paragraph of the contention? And, of course, we spent a long time talking earlier about that maintenance, but I wanted to see how much of this could be related to the maintenance program which is apparently the conclusory paragraph of the contention.

So in addressing this contention, you may wish to talk about that, too.

MS. ZAMEK: Okay. I'll do that now while I remember. Where I say "Maintenance program must rely on experienced, qualified workers"? Is that what you're referring to?

JUDGE BECHHOEFER: Yes. And to what extent do any of these examples involve either the maintenance program or something related to the maintenance program? That's what I was trying to figure out.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MS. ZAMEK: Right. I think primarily this
2 contention just referred to personnel errors, because even
3 though they have plans in place for maintenance and
4 surveillance and all these programs that they have, this
5 contention shows -- the evidence contention shows that
6 oftentimes these procedures aren't followed, which is what
7 gets them into so much trouble, and despite corrective
8 measures where they have, you know, training programs and
9 get talked to, they repeat these errors. Maybe not the same
10 people, but other members, and these things just keep
11 happening.

12 I know on one of the contentions, this fellow
13 wasn't going to follow it because he thought he would save
14 time, and he ended up with this chemical mist. There's just
15 numerous examples of sloppy work, and the way it ties in is
16 it negatively affects the maintenance program. That's how
17 it ties in.

18 If you ask if I want to say anything else, of
19 course, I have a lot more evidence that I could quote a few
20 more, if that's allowed, I'd like to say more -- I have some
21 SALP report comments, et cetera.

22 JUDGE BECHHOEFER: Yes. In terms of not accepting
23 a contention, you probably should not mention anything that
24 wasn't mentioned earlier.

25 MS. ZAMEK: In the original contention?

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: Well, in the version that we're
2 ruling on. The --

3 MS. ZAMEK: Okay

4 JUDGE BECHHOEFER: The October, I think it was.

5 MS. HODGDON: 26th.

6 JUDGE BECHHOEFER: October 26th, I guess --
7 anyway, that's the statement that everybody's had a chance
8 to comment on.

9 MS. ZAMEK: Okay.

10 JUDGE BECHHOEFER: -- and respond to, so --

11 MS. ZAMEK: Okay. Well, I would like to say that
12 I know that the NRC Staff commented that our -- that, again,
13 our cites were also isolated incidents that inevitably
14 occur, et cetera, et cetera, and I really believe there's no
15 basis for that claim, because we have shown that there are
16 personnel problems and that they're recurring and that
17 they're pervasive, and the high number of them show that
18 this is something that's persisted. Well, it has persisted.
19 It's persisted in the past and will continue in the future,
20 and that corrective measures have been ineffective. And
21 does anybody else want to add anything on that?

22 Okay.

23 JUDGE BECHHOEFER: Is the major focus of your
24 problems or worries about personnel, the maintenance
25 program, or other areas as well? Because you seem to have

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 tied it to the maintenance program, and that could be useful
2 or -- I mean, it could be supplementary to what you said in
3 Contention I or it could be something broader, and there may
4 be differing bases for considering it in those context.

5 Jill, my interest in the personnel performance is
6 the trend of personnel errors reflects a degradation of safe
7 operation at the plant, because had they made mistakes, the
8 operation of the plant suffers oftentimes. And we're
9 interested in safe operation, of course.

10 MS. BECKER: I believe in addition, Judge
11 Bechhoefer, that the possible lack of trained personnel in
12 the future when you're adding 13 to 15 years of life on to
13 this plant, could be at issue. We read a number of
14 documents. Unfortunately, they're newspaper articles, but
15 indicating that people -- new people going into the nuclear
16 industry are bringing fewer and fewer and the availability
17 of trained personnel when you're adding on to a lifetime of
18 a plant could become a problem in those later years.

19 JUDGE BECHHOEFER: Well, do you have any
20 indication, for instance, that if they did not have
21 adequately trained personnel, staff would just shut down the
22 operation for reasons of that sort?

23 MS. BECKER: Do I have any information to the
24 contrary?

25 JUDGE BECHHOEFER: Right.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MS. BECKER: No. No, I don't.

2 MS. ZAMEK: Well, there are some cases cited here
3 that show that they use untrained, uncertified workers for
4 jobs that they shouldn't be doing. You know, they just
5 grab -- it's like they just grab somebody and say, "Here, do
6 this," and that's been the problem in some of the instances.

7 JUDGE BECHHOEFER: Okay. Mr. --

8 MR. REPKA: A number of comments, first, I think
9 on the personnel area there's a fundamental legal issue
10 regarding the scope of the proceeding. The technical
11 qualifications of the licensee were in issue in the original
12 licensing of the plant. And we do not believe that it
13 should be in issue here again. The fact is, this is not a
14 new license. It's not in the initial licensing proceeding.
15 So I don't think we can just leap, as I said earlier today,
16 into a conclusion that everything that might have been
17 admissible as a subject matter in the initial licensing case
18 would again be admissible here, so technical qualifications
19 are in no way changed by the amendment at issue. There's no
20 change to our training programs. No change to our ability
21 to manage and address personnel errors. It's simply outside
22 the scope of this proceeding.

23 JUDGE BECHHOEFER: Well, are you saying that if
24 the examples were to show that personnel were rather
25 routinely unqualified to do what they were supposed to do

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 and there were many personnel errors, that that can't be
2 taken into account in determining whether you should have
3 another 10 or 15 years or 12 or 15 years? Is that what
4 you're telling me?

5 MR. REPKA: That's precisely what I'm saying. And
6 it's not that it won't be taken into account. It's not in
7 the jurisdiction of this Board. The NRC Staff ultimately
8 will issue this amendment. It's the NRC Staff who has to
9 make that call. It's an implementation issue. It's one
10 that they will address in their review. It would not be
11 ignored. But it's outside the scope of the amendment;
12 therefore, it's fundamentally outside the scope of this
13 proceeding. That's point number one, the basic legal point.
14 I don't think we can just set aside in looking at this issue
15 or any of the issues.

16 The second point is, is we're talking more
17 about --

18 JUDGE BECHHOEFER: Well, are you also saying that
19 2.206 is the sole remedy for issues of this type? Because I
20 believe there's considerable authority in the past saying
21 2.206 -- even though 2.206 may be available, it doesn't
22 preclude a contention in a licensing context. In many cases
23 where it was done where a contention could have been
24 admitted either way. Of course, there's no judicial or even
25 Commission review of the 2.206 determination. That's solely

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 a staff operation now with very limited exceptions for --

2 MR. REPKA: I'm saying that 2.206 is the available
3 forum just like it is for any implementation operational
4 issue after the initial license is issued. That's the case.
5 Now, it's not 2.206 that says -- it's not the availability
6 of 2.206 that determines the jurisdiction of this Board one
7 way or the other. The fact is, 2.206 is an available forum.
8 What determines the jurisdiction of this Board is the
9 amendment.

10 JUDGE BECHHOEFER: Well, is it even a forum? I
11 mean, 2.206 doesn't offer anything in the way of hearing
12 rights.

13 MR. REPKA: Well, there are many, many things that
14 go on in the operation of a nuclear power plant that are not
15 subject to hearing rights. That's the fundamental tenor of
16 the Atomic Energy Act. The hearing rights available are
17 defined by section 189 and they're triggered by certain
18 licensing events, and in this case, broadly speaking, it's
19 an amendment, but it is the scope of that amendment that
20 defines the hearing rights. And this amendment does nothing
21 regarding technical qualifications, it does nothing
22 regarding training, and it does nothing regarding personnel
23 errors. That's the fundamental legal point, point number
24 one.

25 The second point is we're hearing more individual

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 isolated occurrences, isolated events. The petitioners
2 again talk about large numbers and pervasiveness and
3 qualitative terminology of the like. And there's simply no
4 basis for that. If there was such a pattern, if there was
5 such a pervasive pattern, the NRC Staff would have said so,
6 but in contrast to that, the NRC Staff has said this is a
7 Category 1, excellent plant in plant operations. This is
8 one of the five best operated nuclear plants in the country.
9 It's simply inconceivable to me or to the company that such
10 a pervasive pattern could exist and the NRC Staff could find
11 that this is in fact one of the elite, one of the few
12 nuclear plants in the country worthy of a commendation.

13 If a few isolated events, personnel errors --
14 personnel errors occur everywhere. The plant is designed to
15 accommodate a certain amount of personnel errors. All of
16 the personnel errors at issue here have been determined to
17 be insignificant. They've been corrected, they are being
18 addressed, problematically and otherwise.

19 JUDGE BECHHOFFER: Again --

20 MR. REPKA: If I could just complete my thought

21 JUDGE BECHHOEFER: Okay.

22 MR. REPKA: If four or five events could establish
23 hearing rights in this context for one of the few best
24 plants in the country, there would be hearing rights in
25 every single case of this type, and I think that's a result

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 --

2 JUDGE BECHHOEFER: Well, is that not the case?

3 MR. REPKA: That is not the case.

4 JUDGE BECHHOEFER: There have only been two that
5 have been challenged. A hearing doesn't take place unless
6 somebody asks for a hearing. And that hasn't happened, but
7 that's fortuitous.

8 MR. REPKA: I submit that that could not be the
9 case. I mean, there's simply no basis for that, and it
10 would mock the Commission's new revised thresholds on
11 admissibility of contentions.

12 JUDGE BECHHOEFER: Well, to me, if enough
13 personnel errors would be pointed out that and each one of
14 those is a basis for -- or a portion of the basis for the
15 contention, and if enough of them occur, maybe the plant
16 should not be continued. Maybe the operation of the plant
17 should not be continued. Maybe -- that to me is an
18 evidentiary question. I'm not saying that you could tell by
19 looking at them that they're, per se, trivial.

20 MR. REPKA: Two answers to that.

21 JUDGE BECHHOEFER: You can't look at each one of
22 these and say, "Oh, that's per se, it's trivial," and you
23 get another one, that's trivial. At some point there's a
24 breaking point when it isn't trivial.

25 MR. REPKA: Well, there's two answers to that.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 One, it's fundamentally outside the scope of the proceeding,
2 again, because there's no change here.

3 JUDGE BECHHOEFER: Well, the scope of the
4 proceeding is essentially going to be what we say it is,
5 because there isn't much precedent. There are some general
6 guidelines.

7 MR. REPKA: My opinion is that it should be
8 outside the scope of the procedure.

9 And number two is that even though you could
10 hypothetically say there is some number which it would arise
11 to a problem, we definitely have not reached that here in
12 light of the evidence that's been offered, in light of the
13 status of the plant, in light of all the other objective
14 indicia of performance that we've talked about this morning.
15 That's a basis -- as a basic threshold argument on
16 admissibility of contentions, it just simply has not come to
17 that point.

18 Now, I'm not even willing to concede that there is
19 some number of personnel errors that would rise to the
20 admissibility of a contention, but I don't think we need to
21 reach that. We're just not even close to that in this
22 context, the context of this plant.

23 MS. ZAMEK: Can I make one comment here? My
24 understanding is that the scope of this proceeding is to
25 find out whether Diablo Canyon Nuclear Power Plant can

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 operate safely in the years of the recapture period, and so
2 it seems to me that any issue that questions that would be
3 admissible. That's how I understood it.

4 JUDGE BECHHOEFER: I'm not sure it's not a little
5 more limited. Certainly issues which have been resolved or
6 which were open for resolution earlier, certainly, absent
7 new information, those probably would not be, but without
8 coming to any definite conclusion on the subject, but if
9 something is based on new information or new events, then,
10 of course, everything -- I won't say whether what you cited
11 is enough or not enough, but everything you've cited is
12 beyond the period they could have been taken into account
13 earlier. So whether that changes anything or not would be
14 up for us to decide to determine that contention.

15 Certainly a reiteration of what was already
16 decided would probably not be permissible in a proceeding
17 like this. Again, we haven't made any definite conclusions
18 here, so --

19 JUDGE SHON: I'm going to ask Mr. -- Mr. Repka,
20 I'd like you to focus your attention on the paragraph from
21 page 16 to 17 of the supplemental petition, starting
22 "Furthermore, as the plant ages."

23 It seems to me that this is quite a different kind
24 of argument from what we've heard so far. This is the sort
25 of thing that says, look, in 25 years or so, just about the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 time this thing is in effect, the extension would be in
2 effect, you're going to be even shorter of good people than
3 you are now. Now, doesn't that seem to be exactly the kind
4 of contention, if it's at all supported -- I recognize that
5 they've only cited a newspaper article in effect. But
6 doesn't that seem to be exactly the kind of contention that
7 we should be considering because it says look, this is the
8 time period in which you are going to extend the license and
9 it's a time period in which you are going to get even
10 shorter of good people?

11 MR. REPKA: I agree at the threshold with the
12 concept that any contention clearly has to relate to the
13 time period in issue here. There has to be a nexus. And
14 this is the kind of concern that does have a nexus to the
15 time period.

16 But going beyond that, I would say first that
17 again this is an issue down the road that is really an issue
18 for the NRC Staff to monitor compliance and to monitor
19 continued technical qualifications of the licensee during
20 the licensed period. That is the basic function of the
21 inspection and enforcement program is once a license issues,
22 to make sure that the licensee continues to comply with its
23 obligations under the license.

24 So I'm saying, number one, that concern is really
25 a Staff concern to be monitored and, of course, the licensee

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 concerned.

2 And number two, it completely fails -- even if you
3 get beyond that, it completely fails for a lack of basis.
4 It's a speculative kind of argument. There's no -- nothing
5 asserted to the fact that if we did not have qualified
6 people, that we would continue to operate. The fact is, the
7 company recognizes it needs qualified people to -- qualified
8 and trained people to run a nuclear power plant, and that's
9 a truism, and there's no basis to believe we would act
10 otherwise.

11 JUDGE SHON: Well, I think your first objection to
12 it, that is, the notion that in effect the staff is watching
13 and won't let anything happen could be used to vitiate
14 anything. I mean, even if they had come up with the fact
15 that the "statisfracistat" always fails in 15 years, you'd
16 say, well, this staff is watching and it doesn't matter,
17 because even if it fails, we'll take care of it then, having
18 come in so early for your -- with your application, you can
19 always say, "Oh, by that time we'll have taken care of it,"
20 couldn't you?

21 MR. REPKA: It doesn't matter when we came in,
22 because in either event, it's a matter for the Staff. It's
23 a post-licensing kind of issue. It's a post-licensing --
24 the initial license for this plant is the operating license,
25 and everything that transpires after that point is subject

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 to NRC Staff inspection and enforcement. And this is not a
2 repeat of the initial licensing proceeding, and I -- it's
3 just a fundamental scope of the proceeding issue.

4 JUDGE SHON: But if this is true and that
5 everything is always being watched perfectly well, then
6 could there be any conceivable sort of contention that one
7 could propound that would suggest trouble in a few years
8 because one could always say, "Oh, no, we'll catch it"?

9 MR. REPKA: Well, I think we'd know it if we see
10 it. I don't think we have seen it yet. I go back to what
11 the commissioner said in the license renewal rule. They
12 limited a hearing in a license renewal context to a very
13 limited context to age related degradation unique to the
14 renewal period and to unique and new environmental issues to
15 the fact that the operation would go beyond what was
16 previously analyzed. There's nothing in there about
17 personnel errors. There's nothing in there about
18 maintenance practices or hazardous materials and other kinds
19 of things. It's not conceivable to me that the Commission
20 would require a much more broad hearing on an amendment that
21 simply conforms the license to the initial design basis of
22 the plant than it does on license renewal that goes beyond
23 the design basis. It's a fundamental disconnect. I don't
24 think any of this stuff should be subject to a hearing here.

25 JUDGE BECHHOEFER: Well, the Commission didn't do

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 what you said for this kind of proceeding in the question -
2 not whether they required it, but whether they would permit
3 it given the current rules, and having not taken steps to
4 reduce the scope of these hearings as they have done for
5 renewals, aren't we left with what otherwise would have been
6 the scope of --

7 JUDGE SHON: It seems as if, Mr. Repka, you've
8 told us now that the Commission was silent on how early you
9 could or could not come in in this matter, but spoke on it
10 for licensing renewal, and we can't assume that there's any
11 parallel. When it comes around to this matter, you say,
12 well, you know, they're silent on it and spoke on licensing
13 renewal and we ought to take that as a paragon, as a model.

14 MR. REPKA: Well, I think it is a model. I think
15 it's an analogy, and clearly there's no precedent on the
16 point of what the scope of this proceeding is, but it's a
17 matter of what the Commission should permit, and it simply
18 makes no sense to allow a complete new licensing hearing at
19 the CP recapture stage on all of the issues that were
20 previously subject to hearing or that are routine
21 implementation matters. It simply makes no sense.

22 JUDGE KLINE: No. I think it's clear that the
23 licensing scheme does not contemplate open-ended hearing
24 opportunities. That is to say, after the initial operating
25 license is granted, there clearly is no opportunity -- no

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 remaining opportunity to scrutinize that operation in a
2 hearing, say on a year-to-year basis or on a continuing
3 basis, but isn't the fact that when the Commission opens the
4 door, creates an opportunity for hearing, that it's entitled
5 to some deference; that is, it's entitled to some respect
6 respect. It is not just an empty opportunity.

7 Now, I understand the argument of nexus, i.e., to
8 the extended period. But why -- I don't understand why,
9 given that there is no a priori Commission policy or rule
10 that precludes it why any issue that has such a nexus to the
11 extension period -- not to the common operations in the
12 existing licensing period, but if it has a nexus to the
13 extended period and an opportunity for hearing is granted,
14 that creates the opportunity to scrutinize that period that
15 otherwise doesn't exist. It opened the door. And why --
16 and I don't understand how we can, under your theory, treat
17 this opportunity with respect if there doesn't appear to be
18 anything that we can scrutinize in that period under your
19 theory.

20 MR. REPKA: Well, I think we've said --

21 JUDGE KLINE: Given that we have an operating
22 license.

23 MR. REPKA: I think we said this morning or just
24 now that the issue of the availability in the year 2025 of
25 qualified personnel -- that's an issue that has nexus but

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 it's lacking in basis.

2 It's really the fundamental scope of the
3 amendment, and the fact that this plant has been designed
4 and analyzed for 40 years of operation, and the fact that
5 the amendment doesn't change anything. If nothing's being
6 changed about the operation of the plant, then what is there
7 that is subject to litigation? It would have to be
8 something that's unique to the period that's involved, and
9 the petitioners just haven't offered anything along those
10 lines.

11 JUDGE KLINE: But is there any alternative
12 opportunity to even try to make a case for something
13 happening in the extension period other than by scrutinizing
14 current operation? That is, even if there was no remedy in
15 current operations, how is it possible even in principle to
16 exercise an opportunity for a hearing if it can't take
17 account of current operations as are relevant to future
18 operations?

19 MR. REPKA: Again, you have to assume that the
20 scope of the proceeding would allow that, and I'm not going
21 to concede that it would. But, number two, that's a basis
22 issue --

23 JUDGE KLINE: Yes.

24 MR. REPKA: And yes, current operations could form
25 the basis, but the fact is, the petitioners haven't shown

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 it.

2 JUDGE KLINE: Okay.

3 MR. REPKA: They've shown us a few isolated
4 incidents in contrast to the facts that the NRC Staff -- the
5 authors of the same documents that they've alluded to have
6 not found any such problem.

7 JUDGE KLINE: I understand your argument that in
8 fact it hasn't been accomplished, but at least in principle
9 do you agree that if any basis is to be shown for future
10 operations, it sort of has to come from experience from
11 what's happening now?

12 MR. REPKA: I think, again, if you assume it's
13 within the scope of the proceeding --

14 JUDGE KLINE: Yes.

15 MR. REPKA: -- yes, of course, it has to come from
16 current operations, and this is precisely why we refer you
17 to our Category 1 excellent ratings for plant operations.

18 JUDGE KLINE: Sure. Okay.

19 JUDGE BECHHOEFER: Miss Hodgdon. Comments on II?

20 MS. HODGDON: I believe we've said everything that
21 we want to say about this contention in our response and
22 that we don't have anything to add on Contention II.

23 JUDGE BECHHOEFER: Any further comments on II?
24 Because we're about to go on to III.

25 MS. VON RUDEN: I have a question.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: Pardon me?

2 MS. VON RUDEN: I have one quick question.

3 I wanted to ask the utility -- I know that they
4 have a drug program for their employees and I know they have
5 an employee -- I believe they call it that employee
6 enhancement program. My question is, were these mandated or
7 did these programs grow out of personnel problems that
8 demanded that you have programs?

9 MR. REPKA: I don't understand the basis or the
10 relevance of the question. I think if there's a question
11 about procedure, bring it up after the hearing, and we'll be
12 glad to talk about it.

13 MS. VON RUDEN: Not relevant, huh? Okay.

14 MS. ZAMEK: I was wondering if anybody had the
15 SALP -- if you had the SALP report you're referring to,
16 because I was looking at mine and I didn't see a category
17 for a number for the personnel.

18 MR. REPKA: I'm referring here to plant
19 operations. The basic category for how well the plant is
20 operated.

21 MS. ZAMEK: I see, because then there's also one
22 for maintenance and surveillance which is two, improving, it
23 says.

24 MR. REPKA: Yes. We talked about that earlier
25 this morning.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: Someplace around here I had a
2 chart this showed the SALP ratings pretty far back since
3 when they started operation, but --

4 MS. ZAMEK: Well, perhaps I could read from that
5 SALP report since it's rather enlightening.

6 JUDGE BECHHOEFER: No. This is not a SALP report.
7 This is a summary of numbers. I was just looking for it. I
8 wrote out the NUREG number earlier, but --

9 This is taken from something called NUREG 1214,
10 1214, revision 10, August '92. All it is is the summary of
11 various reactors, Diablo in particular, but what the SALP
12 rating for various areas have been. I don't know if you
13 have any problem in these areas. I've been referring to it.
14 It's just a summary of numbers.

15 MR. REPKA: Okay. We don't need to see that.

16 JUDGE BECHHOEFER: Pardon?

17 MR. REPKA: We don't really need to see that right
18 now.

19 JUDGE BECHHOEFER: I mean, I have no -- but it
20 doesn't say anything about reasons. This is just a summary,
21 listing of what the ratings for every reactor are. I've
22 Xeroxed out the Diablo Canyon one. The reference is new
23 NUREG 1214, N-U-R-E-G, dash, 1214. Most of the public
24 document rooms would have copies of that, but I'm not sure
25 if this one would or not. And this is revision 10. They

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 come out every year or so.

2 All right. In anybody wants to look this over
3 later, they're welcome to. It's just -- it doesn't say very
4 much except a summary of numbers that have actually occurred
5 plus the introduction which says what it is.

6 I guess we'll go on to number III. This is the
7 one on fraudulently certified components.

8 Now, on this one, we want any further statements
9 first from the Mothers for Peace, but the applicants have
10 raised the question that they caught the only one of these
11 that involved them and successfully brought that to the
12 attention, I guess, to the Staff, but also the other
13 authorities. And that the people, I guess, eventually
14 were convicted of -- it's my impression at least, and that
15 was the only one occasion that was pointed to that
16 specifically related to Diablo, and my question is, what's
17 wrong with the program that they have that could cause us
18 perhaps to accept a contention on the subject? In
19 addressing this, you may wish to -- because it is a general
20 problem, but specifically for Diablo, why is it a problem --
21 why is it a specific problem for Diablo?

22 MS. ZAMEK: I agree that it's a problem for
23 everybody. And the contention is more than just fraudulent
24 parts. It's more like how to detect that and also how to
25 acquire quality parts, because the industry is facing more

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 and more problems with that issue. And I know that there
2 was more than one -- all of those ones that I cited the
3 information from the -- the information notices from the
4 NRC, I believe those all affect Diablo Canyon Nuclear Power
5 Plant, because a lot of these they don't know they have in
6 there. They've already installed them unknowingly. It's
7 just that as we discover these, you know, there's
8 information notices that are put out, but there may be a lot
9 of them in that they don't ever know about. That's one way.

10 Now, I'm trying to find one -- I know they
11 mentioned here about their program, because the could be
12 contention is also about their program and how they protect
13 against fraudulent parts, and one common inspection, 91-39,
14 where they had concerns about the three years' time lapse
15 between, you know, between contacting their quality vendors
16 and they were concerned about that, but I think the most
17 serious one was the sixth emergency generator. They had a
18 serious problem with their audit system where they should
19 have identified it in 1989, and yet they procured a sixth
20 emergency generator, I believe it was, in 1992. And they
21 have to now verify that it is okay, and I know that's come
22 up several times, and with all this going on, I haven't seen
23 that there's -- that they've done a very good job. They got
24 a lot of criticism for that one. They went a couple years
25 without noticing that.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 I did find, also, in my reading they have this
2 vibration of loose parts monitoring equipment, and they
3 didn't fix it since 1987, because they couldn't find a
4 replacement part. So they just -- it just didn't work.

5 And in April 1992, there was a management meeting
6 discussing the quality assurance procurement audit process
7 because of that sixth emergency diesel generator, and they
8 raised questions about the QA, ability to identify
9 significant problems in it. So what I would like is
10 assurance that they have resolved this problem that they
11 have there in their procurement process.

12 I also noticed a sheer pinion key on
13 September 16th, 1991. The key material was considered
14 outdated but still acceptable according to the vendor, but
15 they were having problems with it. It's in the plant.
16 Whether it's been identified yet or not, it gradually does
17 become identified.

18 JUDGE BECHHOEFER: Mr. Repka?

19 MR. REPKA: To say that the industry and PG&E are
20 concerned about procurement of quality parts and the
21 detection of fraudulent parts is simply a truism. The fact
22 of the matter is we are and we devote substantial attention
23 to precisely that issue. There's just no basis here to show
24 that there's a concern with the programs in place at Diablo
25 Canyon and there's no specificity to the contention to state

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 what that concern might be. It's simply speculative and
2 untrue. Again, we're hearing where maybe an isolated
3 incident or some specific problem which I can't respond to
4 because we haven't heard all these before --

5 JUDGE BECHHOEFER: The four they mentioned or I
6 think they mentioned are in there.

7 MR. REPKA: Well, let me refer to my own
8 inspection report here, NRC inspection report that they have
9 not referred to. It's IR 91-201, dated July 22nd, 1991.
10 This was documentation of NRC Staff general assessment of
11 procurement and commercial grade dedication programs at
12 Diablo Canyon. I quote page 10 where the NRC Staff
13 concluded the receipt inspection programs to detect, report,
14 and disposition of fraudulent parts appeared adequate. At
15 page 14, the NRC Staff concluded PG&E's achievements in the
16 area of review and implementation of NUMARC, that's the
17 Nuclear Utility Management and Resources Counsel,
18 comprehensive procurement initiatives was excellent and the
19 quality, experience level, altitude, dedication of its
20 personnel was evident. The cover letter to that same
21 inspection report. The program, if properly implemented,
22 should provide adequate control over the commercial grade
23 procurement process. This is a fairly recent programmatic
24 NRC inspection, and I think this belies any individual kinds
25 of problems that the petitioners might cite, and absent

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 that, there's simply no basis and specificity for a
2 contention here.

3 JUDGE BECHHOEFER: Well, the basis in specificity
4 would be the specific incidents that they list.

5 MR. REPKA: Well, specificity requires more than a
6 list of specific incidents. It requires a concern. A
7 statement that something about the program is not working,
8 there has been no such statement. And, number two, there
9 would have to, of course, be a basis for that statement, and
10 there's no basis for that statement. Again, you have to
11 draw the nexus to that period, and the only way to do that
12 is to find the period of the recapture, and the only way to
13 do that is to show some programmatic problem, and that
14 clearly has not been done.

15 Again, we're just reciting a truism that this a
16 concern to the industry and PG&E, and yes, it is.

17 MS. ZAMEK: Well, how do you respond to their
18 comments the inspection identified that you did not conduct
19 your activities for procurement of your sixth emergency
20 generator in a manner to ensure procurement of a product
21 which fully met your quality requirements? Further, you had
22 several opportunities to identify and correct the
23 procurement deficiencies. For example, you audited the
24 generator supplier in 1989, identified problems; however,
25 you issued the purchase order prior to the audit report

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 being issued and prior to the supplier being placed on
2 you're qualified supplier's list. You failed to properly
3 resolved a poorly implemented commercial degradation
4 program, and your resolution of a nonconformance report
5 regarding inadequate supply audits which was closed in 1990
6 failed to include the 1989 audit in its scope of corrective
7 action.

8 In addition, the inspection identified that when
9 you did recognize the problems with the 1989 audit, your
10 proposed corrective actions to result the problem were too
11 limited in scope and did not address the potential for
12 similar deficiencies in other audits performed during the
13 same time period. It seems to me very specific that what
14 we're saying is that the audit and the procurement process
15 is not working a hundred percent. And what we want is, we
16 want to be assured that we're not going to encounter more
17 danger from this in the years of the recapture.

18 MR. REPKA: Again, one specific incident that has
19 been addressed and resolved. It does not and cannot indict
20 an entire program. One found by the NRC Staff again
21 completely lacks basis.

22 JUDGE BECHHOEFER: Miss Hodgdon, do you have
23 comments on number III? Additional comments on III?

24 MS. HODGDON: It's a very short comment. We
25 didn't devote much space to this in our response, and we

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 won't devote much time to it here. Most of the allegations
2 made by the petitioner as a basis for this contention have
3 nothing to do with Diablo Canyon, and some of them don't
4 have anything to do with fraudulent parts, and the only
5 thing this Staff could clearly identify as having to do with
6 Diablo Canyon and fraudulent parts were the information
7 notices which were mentioned earlier where it was the
8 utility who identified the fraudulent parts and brought
9 about this action which ended up as we recite here that it
10 did, with the perpetrators being identified and et cetera.

11 So we just don't see any connection at all between
12 Diablo Canyon and fraudulent parts. So this is a totally
13 baseless contention.

14 JUDGE BECHHOEFER: What about the references to -
15 - well, inspection report 9209, and there's another one that
16 says 9239, but I think it should be 9139.

17 MS. HODGDON: I believe that's 9139.

18 JUDGE BECHHOEFER: Yes. I say -- that's --

19 MS. HODGDON: Well, the trouble with that is that
20 in the statement of contention, they're talking about
21 fraudulent and counterfeit parts, and they sort of wander
22 off into other areas here, and I don't think that the diesel
23 generator problem is about counterfeit or fraudulent parts.
24 I mean, that's all of the record. It's a different kind of
25 a concern. It doesn't really support that contention. It

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 might support something, but that's not what it supports.

2 MS. ZAMEK: I thought I stated earlier that it was
3 more than just fraudulent parts; that we were concerned with
4 the procurement of quality parts. And in that follow-up
5 meeting to the original one, the management meeting I
6 referred to in 19 -- it was April 21st, 1992, there's a
7 quote from Mr. Martin. He noted that QA had missed
8 opportunities to follow up on problems and had not been able
9 to develop the initiative to identify for themselves areas
10 of concern before they become problems. He stated that the
11 QA function appears fragmented and ill-defined.

12 MS. HODGDON: Judge Bechhoefer, would you ask
13 Miss Zamek to identify the document she's reading from? I
14 don't believe that was offered on this contention.

15 MS. ZAMEK: No, it wasn't. This was on a
16 follow-up item that I have. But --

17 JUDGE BECHHOEFER: I don't think we can expect any
18 parties to analyze it if you don't mark pages.

19 Well, does the Staff view the comments in
20 inspection report 9209 which were cited on pages 21 and 22
21 of their statement? Even though that particular thing may
22 have been resolved and closed down, does the Staff not view
23 that problem with at least some interest? Or that
24 observation by inspectors, I guess it would be.

25 MS. HODGDON: I believe I already stated, but I

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 believe it's quite clear that the utility has had problems
2 with the sixth generator. I don't believe that they relate
3 to fraudulent or counterfeit parts. I think that -- well,
4 that's just it. There's just no connection between those,
5 and so now the petitioner's trying to stretch this
6 contention to raise that. I'm not quite sure what the
7 subject matter is, but it's certainly not fraudulent parts.

8 Yes, of course the Staff is concerned about it and
9 expressed its concern in several different ways, and of
10 course there was something about this diesel generator that
11 was offered in support of Contention I. The Staff has
12 addressed it several times, but it just doesn't have
13 anything to do with this subject matter. That was my point.

14 JUDGE SHON: Is there not some slight nexus to
15 the notion of fraudulent parts or parts that may not be up
16 to snuff, replacement parts, in the portion of that report
17 regarding the diesel generators that says: you failed to
18 properly resolve an important draft audit finding involving
19 a poorly-implemented commercial degradation program and your
20 resolution of a nonconformance report regarding inadequate
21 supplier audits which is closed 1990, failed to include the
22 1989 audit in its scope of corrective action? Doesn't it
23 suggest that if their commercial degradation program is not
24 up to snuff and if their audits of suppliers are inadequate,
25 they might well be sitting ducks for fake parts of one kind

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 or another?

2 MS. HODGDON: I suppose that there might be an
3 inference that that was a possibility, but certainly I would
4 say that even that is a stretch.

5 MR. REPKA: Judge, if I could help, I point out
6 this is a Level 4 violation, which is, by definition, in the
7 enforcement policy a matter of concern to the NRC, and a
8 matter which they say really could be only serious concern
9 if it's left uncorrected, and there's no implication here
10 that this incident wasn't corrected.

11 But on the facts of the matter, what happened was
12 we had an audit finding that the team leader believed had
13 been addressed, and he considered the matter closed, so what
14 was really going on was a documentation problem. Not an
15 actual factual problem. So completely lacking in safety
16 significance, and again, I think you just cannot focus too
17 narrowly on these issues. Even if you assume it's true, it
18 doesn't add up to a genuine issue that would entitle
19 petitioner or relief.

20 JUDGE BECHHOEFER: Okay. Let's go on to number
21 IV. Providing everyone's had their comments on III, let's
22 go on to IV, then, which is, I guess, age-related
23 degradation of structures. Any further comments or
24 statements on that, on that one? This is for the Mothers of
25 Peace. Do they want to amplify their statements?

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MS. ZAMEK: Pardon?

2 JUDGE BECHHOEFER: I said, do you have any further
3 statements on your number IV, which is age-related
4 degradation?

5 MS. ZAMEK: I think the only thing, as Rochelle
6 Becker pointed out earlier, was the seismic slant to it, and
7 was that Diablo Canyon is unique in the aging category
8 because of the active earthquake fault a mile and a half
9 offshore, so as these component systems age, nobody really
10 knows what's going to happen to them in the event of an
11 earthquake.

12 JUDGE BECHHOEFER: Well, the claim is made that
13 these components were all analyzed for a 40-year operating
14 life earlier, and my question is, why wasn't that good
15 enough?

16 MS. BECKER: Judge Bechhoefer, may I respond?

17 JUDGE BECHHOEFER: Yes.

18 MS. BECKER: It was never litigated what the
19 effect of age-related plants could be in case of an
20 earthquake, so an earthquake could happen with parts that
21 were brand-new, relatively new, within the first few years
22 of operation, and they perhaps would not be brittle, they
23 would perhaps not be as corrosive, but you have to remember
24 that many of these parts --

25 JUDGE BECHHOEFER: Didn't they assume that these

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 parts would last 40 years when they analyzed them or not? I
2 mean --

3 MS. ZAMEK: But we're looking at something like 55
4 years.

5 MS. BECKER: Yeah. We're not looking at 40 years
6 any longer. We're looking at 40 years plus.

7 MR. REPKA: That's not true.

8 JUDGE BECHHOEFER: Well, the allegation from the
9 applicants is that these parts were all analyzed in terms of
10 40 years of service life, operating life. The authorization
11 then was given for 40 years of operation.

12 MS. BECKER: Well, many of these components have
13 been out there since the late '60s and early '70s, which
14 would make it much longer than 40 years. They've been
15 sitting out there a real long time.

16 JUDGE BECHHOEFER: Well, operating, actually.

17 MS. BECKER: Right. Well, actually, they have
18 been running tests through part of those components that
19 were sitting out there for that length of time. There's
20 been salt water and salt air corrosion during that period of
21 time, so there has been some degradation to many of the
22 components out at that plant since the late '60s and early
23 '70s. And in addition to that, we're not sure whether or
24 not this new information that will continue to arise about
25 earthquakes in California might be quite relevant to

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3900

1 age-related degradation.

2 When we went through the long-term seismic
3 program, the Mothers of Peace participated in it and read
4 volumes of documents about it, and we never litigated the
5 fact -- the contention of any information on what a
6 different type of earthquake, a new type of earthquake, a
7 different type of movement in earthquake, a different type
8 of ground acceleration could do to plants that have been
9 aging for a great length of time, and a 15-year extension
10 was not considered at that time.

11 JUDGE BECHHOEFER: Well, the claim that's made is
12 that 40 years of operation was considered, and that's what
13 we're trying to balance. We --

14 MS. BECKER: Well, PG&E was granted a license in
15 1984 and 1985 to 40 years from date of construction. The
16 laws were past passed in '82.

17 JUDGE BECHHOEFER: Yes. But their claim was that
18 the components were analyzed for 40 years of operation.

19 MS. BECKER: That's PG&E's claim, that's correct.

20 JUDGE BECHHOEFER: I'm saying we're trying to --

21 MS. BECKER: There are certainly seismologists in
22 the state of California, among them many seismologists who
23 work for the United States Geological Survey who vehemently
24 disagree with that opinion.

25 JUDGE BECHHOEFER: Right, but was the question if

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 it was open for consideration way back then. I'm not sure
2 it's again open. That's the question I'm raising, the
3 applicant is raising. I haven't reached any decision.
4 We're just trying to see various sides of the question.

5 MS. BECKER: An extension was never considered at
6 that time. An extension of their --

7 JUDGE BECHHOEFER: They're saying 40 years of
8 operation was, even though it wasn't authorized. They're
9 saying 40 years of operation was considered in analyzing the
10 issue, and I haven't looked through the documents to find
11 out whether that's accurate or not, but I'm just taking what
12 their statements are.

13 MS. CULVER: But if you have a component that was
14 purchased and property brought on site in 1969, that means
15 it was 15 years old when the plant was licensed and began
16 operating and then they started counting 1 to 40.

17 JUDGE KLINE: I understand you're alleging some
18 sort of shelf life disintegration.

19 MS. CULVER: Yes.

20 JUDGE KLINE: Exclusive of service.

21 Do you have specific examples now -- now we get to
22 the issue of basis. Do we have examples or something that
23 you can point us to to say yeah, here was some degradation
24 that occurred outside of actual service? And this is the
25 kind of basis that would be helpful at this point.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MS. BECKER: Unfortunately, we didn't have time to
2 find that. We contacted several experts who were concerned
3 about this issue, also, when they read our contentions and
4 PG&E's response and gave us some leads on how to find some
5 of this information. Unfortunately, the leads had to find
6 it included using our public document system. It was not
7 available, and the person who could access the new dock
8 system was not available because the rain made her house
9 leak. I mean, they're silly little excuses and we're really
10 sorry that they are, because we wish we could come here with
11 all this information in hand, but we can't, but there are --

12 JUDGE KLINE: We understand you don't have to make
13 a case today. The only issue is whether there's a threshold
14 basis.

15 The other question I would like to ask is, are you
16 asserting to us that something knew about earthquakes has
17 been discovered since the last licensing?

18 MS. BECKER: Absolutely.

19 MS. CULVER: Yeah.

20 JUDGE KLINE: I mean, tell us about that. What is
21 your understanding of what new information there is about
22 earthquakes?

23 MS. BECKER: Okay. Since the long-term seismic
24 program was -- I'll have to put this in quotes, "resolved,"
25 because we don't really feel that it's resolved, this past

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 year, we've had several new earthquakes in California that
2 have been very surprising to the United States Geological
3 Survey, both in where they are and how they move, and the
4 information that can be extrapolated from those earthquakes
5 is still being studied, and that's information that we don't
6 have at this juncture.

7 JUDGE BECHHOEFER: And would they exceed the
8 decide bathe earthquake for which this plant was designed?

9 MS. CULVER: Well, the main controversy is about
10 what kind of motion the Hosgri fault is going to -- how it's
11 going to move in an earthquake, and PG&E has concluded in
12 their long-term seismic program just as they have all along,
13 that the motion -- the movement will be almost completely
14 horizontal, and they need to conclude that, because if they
15 agree with some of the USGS scientists that there will be a
16 lot of thrusting, a large thrust component, then the plant
17 is not designed to withstand that.

18 MS. HODGDON: Judge Bechhoefer, may I ask a
19 question? Why are we considering seismicity on Contention
20 IV which doesn't take it up?

21 JUDGE BECHHOEFER: Because they seemed to say that
22 the program there, the aging, had more importance.

23 MS. HODGDON: Well, I don't see that.

24 JUDGE BECHHOEFER: Well, I don't see it in the
25 papers, either.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MR. REPKA: I agree with Miss Hodgdon. This is a
2 newly filed contention with no showing of good cause
3 effectively, but beyond that it has no basis.

4 MS. HODGDON: If we discuss it now, then are we
5 going to discuss it again or are we going to skip over it
6 when we get to the seismic contentions? That was merely my
7 question. I don't see it has anything to do with this
8 contention. There's just nothing in there about
9 earthquakes.

10 MS. BECKER: Well, we may not have written it in
11 aging. But we believe it affects every contention that
12 we've written.

13 JUDGE BECHHOEFER: I guess you should wait
14 until --

15 MS. BECKER: Okay.

16 MS. ZAMEK: There was something in the -- let me
17 find it.

18 JUDGE SHON: I'd like to take a little look at the
19 list that you have starting on page 26 of your -- well, we
20 can start on 24, but as I see it, there's a list on page 24
21 of things that could age, and in effect it just includes a
22 list of everything. It doesn't give any reason to assume,
23 for example, that pipes were thin before they were installed
24 or anything like that or after they're installed, but
25 starting on page 26, you give several apparent examples of

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 age degradation.

2 Now, as I understand it, one of the things you're
3 saying is that in effect age degradation starts when a
4 component is manufactured and maybe when it's delivered to
5 the site, but shelf life considerations and things like that
6 make it so that 40 years is 40 years from then; not 40 years
7 from when it started operating; is that right? And I just
8 wanted to look at each one of these things and see whether
9 that's true of these examples that you've given which are
10 the really well-founded examples, the simple list of
11 components it would be awfully difficult for us to speculate
12 on.

13 So you start with the first one. It says it's
14 been identified by NRC as a reactor with anticipated vessel
15 embrittlement.

16 Now, so far as I know, this is on page 26, it's
17 about ten lines from the bottom. So far as I know, reactor
18 pressure vessel embrittlement is due to fast neutron
19 radiation, and that couldn't have started when the vessel is
20 delivered, so that one probably isn't the sort of beast.

21 The next one is leakage occurred from the chemical
22 quality control system diaphragm valve, and it was traced to
23 thermally-induced premature degradation of the valve dying
24 off. Well, it seems unlikely that a valve would thermally
25 degrade before it was installed.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 The next one is corrosion was discovered on some
2 piping. That one seems to me as if it may be something that
3 could happen when the piping was standing around, and there
4 has been some damage cracking to the wells on the steam
5 generator feedwater nozzle pipes. Well, that ones sort of a
6 wash. I don't know whether that one happened during shelf
7 life or not. But it seems of the bunch here, there's only
8 about one that looks as if it could happen at any time other
9 than in operation. Is this not right?

10 MS. ZAMEK: Yes. On page 12, I know it's in
11 maintenance, but there's corrosion on the DFO supply piping.
12 The root cause was degradation of the DFO piping, cold, hard
13 coating, which exposed the pipe to standing water, salt
14 water, and an air environment. I think that's more what we
15 were concerned about, that it's sitting right there on the
16 cliffs of the ocean, and a lot of the materials that are
17 exposed are being damaged.

18 JUDGE SHON: Oh, yes. I see.

19 MR. REPKA: We believe, Judge Shon, that's the
20 same LER, the same issue.

21 JUDGE SHON: You what?

22 MR. REPKA: That's the same LER. That's the same
23 issue.

24 JUDGE SHON: I see. That's involved in the
25 degradation of the --

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MR. REPKA: DFO piping.

2 JUDGE SHON: Yes. Okay.

3 MS. ZAMEK: It explains it.

4 JUDGE SHON: So it's really the same thing twice.
5 It's not two separate instances.

6 MR. REPKA: Correct.

7 MS. ZAMEK: In one instance 'I was talking to the
8 inspection procedure that didn't identify this in this case,
9 the fact that it's happening.

10 The point of the aging contention was that aging
11 is already taking place. It operated eight years, only
12 eight years, and there's already evidence of it. And it
13 will just increase.

14 JUDGE SHON: Thank you. That's all I had.

15 MS. ZAMEK: I would like to comment on
16 Commissioner Roger's speech. The NRC Staff, I think,
17 misinterpreted the significance of it, which was that the
18 traditional ways of viewing nuclear power plant safety are
19 not adequate when it comes to aging because aging compounds
20 the threat of an accident in ways not previously
21 anticipated. The fact that Commissioner Rogers expressed
22 optimism about the way aging would be handled in the future
23 doesn't alter the basic problem or the need to address aging
24 in this particular proceeding. I don't believe that the
25 traditional maintenance and surveillance programs are going

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 to catch all the stuff that's happening with these aging
2 parts.

3 JUDGE SHON: Only to catch things that happen to
4 parts as they age? Is that not the purpose of the --

5 MS. ZAMEK: Well, perhaps it's supposed to. But
6 the contention is that the maintenance and surveillance is
7 not working effectively. The personnel's not following
8 directions effectively and operating effectively. Compound
9 that with aging, we have problems at the plant.

10 JUDGE BECHHOEFER: Well, are you really saying
11 that this one example which you mentioned leaked twice, if
12 we accepted a contention, we'd probably only consider it
13 once, so you're saying this is really part of Contention I
14 more than this one? I mean --

15 We're not likely to consider it --

16 MS. ZAMEK: It's very difficult to separate them
17 all.

18 JUDGE BECHHOEFER: Yes. They seem to --

19 MS. ZAMEK: They all affect each other.

20 JUDGE BECHHOEFER: They seem to have some
21 relationships.

22 MS. ZAMEK: Uh-huh.

23 JUDGE BECHHOEFER: To the extent we accept the
24 contention, I think we would require that the subject be
25 heard only once in the context of --

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE SHON: You might hear it only once, but you
2 might accept it as a basis for more than one contention.

3 JUDGE BECHHOEFER: Yes. I guess that's true.
4 Right.

5 Let's see. Does Staff have any comments on this
6 one?

7 MS. HODGDON: No. Except that I don't understand
8 the point about Commissioner Rogers' speech. Commissioner
9 Rogers' speech was about ways to handle aging, and therefore
10 to complain about the Staff's representation of what the
11 speech says, I have it right here. I just looked it over.
12 It says that he's a little concerned about common mode
13 failure, particularly with regard to steam generator tubes,
14 and then he goes on and says what can be done about that. I
15 just don't see how in the world that supports this
16 contention. I just can't understand it.

17 MR. REPKA: Let me follow up by saying that that's
18 true. That just states the obvious concern that things wear
19 out, and that's what maintenance and surveillance is all
20 about. Aging is a bit of a term of art, and it relates to
21 equipment beyond the 40-year statutory lifetime, and that
22 seemed to be the thrust of this contention originally. It
23 seems like it's altering this morning -- or this afternoon.
24 But in either event, there's simply no basis for the
25 contention.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: Well, there's a basis, but
2 whether it's a legitimate basis --

3 MR. REPKA: Sufficient basis.

4 JUDGE SHON: I think I take issue with the notion
5 that aging relates only to something beyond the 40-year
6 projected lifetime. Surely Yankee Row sort of aged itself
7 out of existence or it became too expensive to prove that it
8 hadn't and it didn't last 40 years.

9 MR. REPKA: Well, clearly in the sense that aging
10 means that things degrade, things wear out, embrittlement
11 occurs, yes, that exists throughout the lifetime of a plant,
12 and that's why you have maintenance and surveillance
13 programs. That's why you have the requirements related to
14 embrittlement and pressurized thermal shot, and this
15 amendment doesn't change any of those things. Diablo Canyon
16 will continue to comply with those requirements.

17 To cite one incident where something wore out or
18 showed signs of degradation is simply stating the obvious,
19 really.

20 JUDGE BECHHOEFER: I'm not sure I specifically
21 called on you for this contention. If you have any other
22 comments besides answering questions, you're welcome to make
23 them, too. I guess I sort of skipped from the --

24 MR. REPKA: That's why I butted in. But no,
25 have nothing --

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: I didn't mean to exclude you,
2 and if you have further comments, please make them.

3 MR. REPKA: I have nothing further.

4 JUDGE BECHHOEFER: Okay.

5 MS. BECKER: Judge Bechhoefer, before we go on to
6 the next contention, one of the experts that we contacted
7 had told us that some of the Westinghouse parts such as
8 pumps and valves had been shipped out during the late '60s
9 and early '70s and had been subject to this corrosion since
10 that time, salt water and air, testing with salt water
11 through the components. We tried to find the original
12 contracts from Westinghouse to see if they were guaranteed
13 from date shipped or date of operation.

14 The understanding of many of these people was it
15 was guaranteed from date of shipment, which was the late
16 '60s and early '70s. Unfortunately, it was impossible to
17 find those documents, but we do believe that they exist and
18 we would like to have the opportunity to present them to
19 this licensing board if this contention is allowed.

20 MR. REPKA: Clearly, that's speculative, but
21 beyond that, it --

22 JUDGE BECHHOEFER: Well, it would be a late filed
23 contention subject to whatever the rules are for late filed
24 contentions as well. But -- or if it was a significant
25 change in the contention that was submitted. But --

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MR. REPKA: It's clear we don't admit contentions
2 in order to pursue theories and discovery.

3 JUDGE SHON: I think you make a good point,
4 though. I know when I buy a kitchen mixer or something
5 that's guaranteed for a year, it's for a year from the date
6 I bought it. Not from the year from the date I started to
7 use it. I'm not sure that's really significant, but I'm
8 just --

9 MS. BECKER: I'm not sure if my mixer's
10 radioactive.

11 JUDGE SHON: I can't go back three years later and
12 say, "Oh, I didn't start to use it until last year."

13 JUDGE BECHHOEFER: Well, let's get to number
14 Roman V.

15 JUDGE SHON: Yes.

16 JUDGE BECHHOEFER: That's the thermal lag
17 contention.

18 Now, thermal lag as such I can bet was not
19 litigated earlier, but the question is whether that kind of
20 thing is litigable in this proceeding, and so -- this kind
21 of proceeding, I should say, and I'd like to hear some
22 further comments from Mothers for Peace on this as well as
23 anything else you want to address on what's been said about
24 thermal lag so far.

25 MS. ZAMEK: Here I go.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 We got a lot of static about the NIRS study, but
2 although there was not a NIRS study that the report
3 erroneously supposed, it was based on NRC documents and it
4 did raise the question of thermal lag, thermal lag
5 susceptibility to earthquakes which were here seismic again.

6 JUDGE BECHHOEFER: Well, is there any such study
7 as such?

8 MS. ZAMEK: There is no such study --

9 JUDGE BECHHOEFER: The Staff suggested if there
10 was, you should have handed it to us today.

11 MS. ZAMEK: No. We also found out even before we
12 received the NRC Staff response that that was a mistake in
13 that newspaper article, that there is no study that's been
14 produced. There's a contention that thermal lag has some
15 problems in earthquakes but it has not been proven, I guess,
16 yet. But nonetheless, earthquakes do cause fires, and
17 that's a known, and thermal lag is a problem and it's
18 combustible and it is on -- even though it is not on the
19 cable trays, we were corrected from PG&E, it is on the
20 conduits effective safe shutdown circuits. That's my
21 understanding. The compensatory measures that they've
22 installed, the human rovers and sprinkler systems we've
23 shown where they seem unreliable, and what --

24 JUDGE BECHHOEFER: Yes. I believe you've
25 demonstrated some examples of missed fire watches. That

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 kind of thing troubles me a little bit, but that's going to
2 be the solution to the problem.

3 MS. ZAMEK: Well, we don't believe that the
4 problem's been dealt with adequately, and the idea of giving
5 them an extra 15 years without resolving even this issue
6 seems a little inappropriate.

7 June would like to speak.

8 MS. VON RUDEN: I have to admit I was another one
9 that was very concerned about the fire watchers. Do you
10 have fire watchers -- I'm quoting one of your inspectors --
11 watching the fire watchers to see if they do their job?
12 Because this is a real serious issue, and human error is
13 usually the cause of a catastrophic event. I know in one of
14 their fire prevention -- or dealing with fire out there, for
15 instance, personally that was a -- the fire workers doing a
16 controlled burn had protection suits, but the man on the
17 tractor, for instance, did not have a suit, and it could
18 have been a horrible thing. And people missing fire
19 watching, falling asleep or whatever, to me is no comfort,
20 and to me this is an interim solution, and to extend a
21 license on into when I don't expect to be around almost by
22 having roving fire watchers is -- to me, it's not strong
23 enough. I think it's a valid contention that until they
24 come up with a solution or prove that thermal lag has failed
25 every test so far, I believe that it is a valid contention.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: Mr. Repka?

2 MR. REPKA: Several points. First, this
3 contention clearly fails the test of nexus to the recapture
4 period. It's a present-day issue. It's an issue that is
5 really a non-issue for Diablo Canyon, but it has no tie to
6 the recapture period at all. So clearly it's not
7 admissible.

8 JUDGE BECHHOEFER: Well, do you have any solution
9 to the problem that it will take effect before the recapture
10 period?

11 MR. REPKA: That's my second point. In effect,
12 the issue is effectively resolved right now for Diablo
13 Canyon based on the existing technical specification
14 authority to implement compensatory measures, and based on
15 the NRC Staff's bulletins and generic letters on this
16 subject, they've allowed certain compensatory measures, and
17 those measures have been taken and they've been accepted for
18 Diablo Canyon by the NRC Staff.

19 JUDGE BECHHOEFER: Now, are you saying that that
20 interim solution in itself is not subject to challenge when
21 you get a proceeding such as this?

22 MR. REPKA: That's correct.

23 JUDGE BECHHOEFER: This seems -- I think you heard
24 the description earlier of 2.206's solution when there is no
25 other proceeding, but when another proceeding occurs and

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 opens the door, then 2.206 doesn't rule out using the other
2 proceeding for resolving any particular issue. That's my
3 understanding of some earlier cases.

4 MR. REPKA: 2.206 would not rule out the
5 applicability --

6 JUDGE BECHHOEFER: The fact they could bring it
7 under 2.206.

8 MR. REPKA: It wouldn't rule out it's
9 applicability in the other proceeding if it was
10 fundamentally within the scope of that other proceeding, and
11 it's not, because of the nexus requirement to the recapture
12 period. So the answer is no. All --

13 JUDGE BECHHOEFER: Isn't your application to just
14 continue what you have into the recapture period in which
15 case, absent some other solution, it will last throughout
16 the rest of the life of the plant?

17 MR. REPKA: It's clearly speculative to say what's
18 out there right now to address thermal lag is what will be
19 there many years down the road, but the fact is --

20 JUDGE BECHHOEFER: Well, isn't it speculative to
21 say what's out there now isn't going to be used?

22 MR. REPKA: What's out there now is perfectly
23 acceptable and has been accepted by the license and by the
24 NRC Staff, so again there's no basis for all the various
25 concerns of seismic effects and fires.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: What about the missed watches?
2 That's the thing that doesn't sound too good to me. How
3 many watches can you miss?

4 MR. REPKA: Well, clearly no missed watches are a
5 good thing, but let's back up again to first principles in
6 the fire protection program. The compensatory measures for
7 thermal lag are related -- include much more than just fire
8 watches. Thermal lag is only installed in very limited
9 areas in the Diablo Canyon plant, but in those areas,
10 they're very low fire loads, meaning there are few, if any,
11 combustible materials that could cause a fire. The concept
12 that earthquakes could cause a fire is completely irrelevant
13 if the plant is designed to sustain those earthquakes, which
14 it is and, number two, if there's nothing there that could
15 create a fire. In addition, in many of the areas, there's
16 automatic fire detection capability.

17 JUDGE BECHHOEFER: I take it your inspectors don't
18 use cameras to find things.

19 MR. REPKA: No, they didn't -- they do not.
20 But there's automatic detection capability, in some areas
21 there's automatic suppression capability. There has been
22 analysis in other areas of the exact fire loads, and
23 where thermal lag is installed it may not meet the full
24 one-hour or three-hour that it was originally expected to
25 meet, but it far exceeds what's the actual fire load that

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 exists. We're talking about fire loads in areas of the
2 maximum credible fire being 13 minutes or 15 minutes. So
3 thermal lag is more than adequate to address those kinds of
4 things.

5 But in that con- --

6 JUDGE BECHHOEFER: But isn't that evidentiary?
7 Isn't that a question of evidence?

8 MR. REPKA: Well, I think I feel that like I have
9 to respond to that given the nature of the concern, but the
10 point is there really is no basis for such a concern, and to
11 bring an issue and say this is an operational issue out
12 there that the licensee and the NRC has raised and,
13 therefore, I am concerned because such-and-such could happen
14 is simply not enough for a contention, because there's no
15 support for that, and a mere concern, a mere speculation
16 does not meet the Commission's threshold requirements for
17 contentions historically or now under the revised rules.
18 And I would underscore on this issue that the plant is
19 currently in compliance with his license and all NRC
20 requirements.

21 MS. ZAMEK: May I make a statement here or a
22 question or whatever it is?

23 JUDGE BECHHOEFER: Yes. Well -- go ahead.

24 MS. ZAMEK: I'm curious to know in a moment what
25 he has to say about that fact that thermal lag is

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 combustible itself. And also, I noticed in a letter -- I
2 don't know what's happened with it, but in a letter,
3 September 28th, this year, to the NRC in response to an NRC
4 bulletin 9201, they have asked to replace the continuous
5 fire watch -- additionally -- okay. PG&E has proposed using
6 a portable detection system in conjunction with an hourly
7 fire watch to replace the continuous fire watch. This PDS,
8 they call it, will be used in installing a permanent fire
9 detection system, and PG&E acknowledged that the PDS will
10 not comply with requirements provided in NEPA 2 and has
11 added an hourly fire patrol. So it sounds like things --
12 they don't even want to do the fire watches. I don't know
13 what this supportable detection system is, but I was
14 concerned about it when I read that, and I don't know how
15 the NRC responded to it.

16 MR. REPKA: The Commissioner says that the
17 measures taken are completely consistent with the license
18 with what the Staff requirements on thermal lag have been
19 and have been accepted by the NRC. And in our papers we
20 cited the NRC correspondence where they accepted our
21 response to bulletin 9201, Supplement 1, accepting our
22 methods for providing protection and prevention of fires.

23 JUDGE BECHHOEFER: I have here a notice 9246 which
24 seems to supplement some of these earlier statements. It's
25 June 23rd of this year.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MR. REPKA: I believe you're referring to an
2 information notice.

3 JUDGE BECHHOEFER: Yes.

4 MR. REPKA: And there have been several of those
5 on thermal lags.

6 JUDGE BECHHOEFER: Yes.

7 MR. REPKA: It's Bulletin 9201 and it's
8 Supplement 1 --

9 JUDGE BECHHOEFER: Right.

10 MR. REPKA: -- are the two documents in which the
11 NRC requests a licensee's response and a description of
12 where they have thermal lag and what compensatory measures
13 are undertaken.

14 JUDGE BECHHOEFER: I have it here.

15 Well, Miss Hodgdon, do you have --

16 MS. HODGDON: Yes. I have several observations.
17 One, Miss Zamek said they didn't know what the NRC's
18 response was to PG&E's response to Supplement 1 to the
19 bulletin. I think both the licensing and the Staff
20 mentioned the NRC's response in their responses to this
21 contention, but apparently we didn't make ourselves clear,
22 so I'll be happy to read from that response. This is
23 response to PG&E's response to --

24 MS. ZAMEK: Well, I'm referring to the PDS
25 situation.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MS. HODGDON: That's it.

2 MS. ZAMEK: Okay.

3 MS. HODGDON: It says, "We have reviewed your
4 letter dated September 28th, 1992, submitted in response to
5 NRC Bulletin 9201, Supplement 1. By utilizing a
6 self-contained, portable fire detection system in
7 conjunction with an hourly fire patrol and administrative
8 controls, we conclude that the intent of your technical
9 protection prevention without reducing --" I missed a line
10 -- "the intent of your technical specifications is still
11 met. We find your selected method of providing fire
12 protection prevention without reducing the effectiveness of
13 your fire protection capability to be acceptable."

14 So the Staff said it was okay.

15 MS. ZAMEK: And where was I supposed to find that
16 letter?

17 MS. HODGDON: Excuse me? This is a Staff letter
18 dated October --

19 MS. ZAMEK: I thought maybe you were referring to
20 something in your response.

21 MS. HODGDON: Yes. I did refer to it, and Staff
22 refers to it in the response, as we try to put the
23 allegations about thermal lag in context, and we recite what
24 happened. They issued a bulletin. PG&E responded. They
25 issued a supplement. PG&E responded. And then finally, if

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 I can find the place, the Staff said -- and I'm on 31. I
2 think it must be on 32. On September 28th, PG&E responded.
3 On October 27th, 1992, Harry Rude, Senior Project Manager,
4 NRC, responded to Mr. Rueger's letter indicating that its
5 review of PG&E's response led the NRC Staff to conclude that
6 the intent, et cetera, what I just read --

7 MS. ZAMEK: But there's nothing in there about
8 the --

9 MS. HODGDON: It doesn't -- no. It does not --

10 MS. ZAMEK: -- about the PDS? So it's not like I
11 missed something?

12 MS. HODGDON: It's not specifically the PDS, but
13 they found the response okay. And then --

14 MS. ZAMEK: I understand, but I question it
15 because even when it says here it doesn't meet NEPA 72
16 requirements.

17 MS. HODGDON: In addition, I would say that the
18 petitioner stated that thermal lag had failed every test so
19 far and, of course, that isn't true. The bulletins recite
20 that thermal lag didn't meet certain tests, and other tests
21 were indeterminate and so forth. But in any event,
22 thermal lag has been found to provide protection against
23 fires. And the fact that it will burn at 1,400 degrees
24 Fahrenheit is not an indication that it's not an effective
25 fire retardant material. I don't want to speculate as to

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 how the NRC will come out on this, but I will say that there
2 was a meeting, a public meeting, held on November the 13th,
3 1992, on the status of the Staff's actions in regard to the
4 thermal lag concern and that the Staff indicated there that
5 they would have the generic letter that the petitioner NIRS,
6 was petitioning to have issued, they'd have that letter
7 ready in two weeks. They in fact -- the Staff in fact
8 submitted it to the Commission in the second paper dated
9 November the 30th, which has to be held for ten days, so it
10 will be made public on Monday.

11 In any event, this is a generic problem which
12 would seem to be of short-term -- a short-term problem that
13 will be resolved long before the period in question. It
14 doesn't seem to have any applicability to Diablo Canyon.
15 Their installations are very limited. And they don't have
16 any of the installations that are of concern.

17 As regards the fire watches, Mr. Repka stated
18 that -- with regard to the few missed fire watches, that --
19 we stated one part of the proposition. The other part was
20 that the fire watches at Diablo Canyon don't necessarily
21 relate to -- they're not necessarily compensatory because of
22 the failure of thermal lag, because they always had fire
23 watches which were for other purposes, and so a missed fire
24 watch is not necessarily related to thermal lag in any way.

25 JUDGE BECHHOEFER: I think the missed fire watches

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 are being cited for the fact that if you're relying on the
2 fire watches generally you better watch out because some of
3 them are going to be missed, and I realize that they
4 probably didn't relate to thermal lag.

5 MS. HODGDON: Well, Mr. Repka stated half that
6 reason. He said that they had other things besides fire
7 watches, and I said they had fire watches other than
8 thermal lag fire watches, so -- and it's really quite
9 complicated.

10 MR. REPKA: And the third thing is, you have to
11 keep in mind the sheer number of fire watches we're talking
12 about, so a few missed fire watches does have to be looked
13 at in context.

14 JUDGE BECHHOEFER: There's another question,
15 however: Is that not evidentiary? I mean, do we say we do
16 our fair fire watches, miss two or three, when you start
17 missing 20 or 30 or 50? At some point your remedial steps
18 are not working.

19 MR. REPKA: First, the contention is outside the
20 scope of the proceeding.

21 JUDGE BECHHOEFER: And I -- whether it is or not,
22 I'm not sure it is.

23 MR. REPKA: Second, a few missed fire watches does
24 not constitute a basis to say that there's no adequate
25 protection against thermal lag when you consider the number

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 of fire watches involved around the plant and the lack of
2 correlation to thermal lag installations and, two, all of
3 the other compensatory measures in place to address fire --
4 thermal lag and, three, all the other measures in place to
5 address Appendix R, the fire protection program, so this
6 licensing board does have to take a thoughtful look at
7 what's offered as a basis for a contention and say can that
8 possibly add up to relief in this proceeding? I can't
9 imagine that a few missed fire watches would lead to A, a
10 denial of an operating license extension and, B, any
11 condition on that -- what could the condition be? We're
12 already required to do the fire watches and, of course, we
13 take that obligation seriously.

14 JUDGE BECHHOEFER: Well, maybe additional
15 accounting for when you do or don't do a fire watch. Can
16 you check with somebody -- have a fire czar maybe on a
17 throne up there.

18 MR. REPKA: The basic point is we can't just say
19 that's an evidentiary matter. There has to be some
20 thoughtful look at the context and some perspective given
21 for what's offered. I think in our papers we cited a
22 Vermont Yankee decision not related to CP recapture that
23 specifically -- which the appeal board specifically made
24 that point.

25 JUDGE BECHHOEFER: I think that was one of my

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 cases.

2 MR. REPKA: I wasn't going to mention that.

3 JUDGE BECHHOEFER: Anything more on the thermal
4 lag contention?

5 MS. ZAMEK: I just have one more note on that.

6 JUDGE BECHHOEFER: Okay.

7 MS. ZAMEK: And that's the -- to say that it may
8 be moot by the time we get to the recapture period is
9 irrelevant, because we don't know that, and I can cite the
10 problem with waste storage which we'll soon get to as an
11 example that's not been resolved. Nobody has an answer to
12 that yet, and we don't know what's going to happen with
13 thermal lag. I think it is important and that the
14 contention should be admissible.

15 JUDGE BECHHOEFER: Let's go on to Contention VI,
16 dealing with hazardous materials. Mothers for Peace have
17 any further -- let me turn to it first. Storing and
18 handling hazardous material. Do you have any further
19 comments on --

20 MS. ZAMEK: Yes

21 JUDGE BECHHOEFER: That --

22 MS. ZAMEK: Of course.

23 JUDGE BECHHOEFER: If so, now is your chance.

24 MS. ZAMEK: First I'd like to acknowledge that I
25 realize that the Mothers for Peace cannot speak for the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 employees in this particular contention when we cite
2 problems that affect employee -- personnel hazard. I
3 understand that we cannot, you know, speak for them. That's
4 not allowed here.

5 JUDGE BECHHOEFER: Unless your membership includes
6 them.

7 MS. ZAMEK: Right, and they'd get fired, so we
8 cannot do that.

9 So the purpose of the contention is twofold: One
10 is to show the sloppy work that's going on there, the
11 directions that are not followed and, of course, this ties
12 in with personnel error in the maintenance and surveillance
13 programs. And that seems very severe where signs weren't
14 posted and chemicals weren't posted in the RCA room. All
15 those chemicals that weren't labeled. Nobody knew what they
16 were. That was really an example of poor workmanship. And
17 the second part of it, what I found particularly disturbing
18 was that these spray bottles and all these chemicals that
19 are sitting around weren't marked. There was a comment by
20 an NRC inspector inferring that these chemicals could
21 inadvertently be used somewhere where they shouldn't be and
22 cause some problems with the integrity of some safety
23 system. Let's see. It says the inspectors expressed
24 concern about the wide availability of materials with
25 potentially detrimental properties to corrosion-resistant

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W. Suite 300
Washington, D. C. 20006
(202) 293-3950

1 alloys that were found in the RCA, and, of course, I suspect
2 that these could be used in places where they shouldn't be
3 and corrode metals that are of great concern.

4 MR. REPKA: Well, what concerns me here and
5 particularly on this issue is the broad characterization of
6 sloppy work that goes on there. That simply is not true.
7 There is one inspection report cited. To broadly
8 characterize that as the sloppy work going on at the plant
9 is just flat -- there's no basis, and it's irresponsible.

10 Let's put that into perspective again, and I'll go
11 back to the SALP reports again. The most recent SALP rating
12 for Diablo Canyon is in the radiological controls area, the
13 area relevant to this contention, was a Category 1 rating.
14 The previous two SALP ratings were also Category 1 ratings.
15 I just object to the broad characterization and believe it's
16 unfounded and the contention is completely lacking in basis.

17 Beyond that, the incident cited is a routine
18 operational matter. That really has no bearing on the
19 amendment at issue. I'll stop there.

20 MS. ZAMEK: I think on page 34, on June 1987,
21 PG&E'S quality assurance group identified that consumable
22 material issue were not informed through report NRC. The
23 report remained open for two years before it was finally
24 closed in September of 1989. I think this problem is
25 longstanding.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MR. REPKA: One incident.

2 MS. ZAMEK: That makes two. I can find more.

3 JUDGE BECHHOEFER: Miss Hodgdon?

4 MS. HODGDON: The Staff doesn't have very much to
5 add to what it says in its response. As the petitioner
6 acknowledges, they don't represent the workers on site, and
7 beyond that, beyond this having the possibility of affecting
8 anybody else, it's so highly speculative it's completely
9 baseless, and so we oppose the contention as being lacking
10 in basis, and beyond their not having -- not representing
11 the workers. For both of those reasons.

12 JUDGE KLINE: Do the Mothers for Peace suggest
13 that any hazard whatever from these material flow as a
14 direct result of that the amendment under consideration?

15 MS. ZAMEK: I think I -- it just tied into the
16 personnel. Maybe that's where it should have been more
17 appropriately put as problems with personnel error.

18 JUDGE KLINE: But you realize that's something you
19 can't really can't do is represent the personnel.

20 MS. ZAMEK: Yes. I understand.

21 Another thing that occurred to me is they allow
22 school children to go out to the plant. There's this marine
23 lab out there. I haven't been out there myself. And they
24 go down to the cove. And I understand that where they keep
25 this, where -- all these hazardous wastes in a building is

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 fairly close to the marine lab, and I know that there's
2 spills that go on out there occasionally, and I was told
3 that it's two stones' throw away, so in that respect, it
4 might affect the children.

5 JUDGE KLINE: This is the one that creates the
6 question of whether relief could be granted, but -- by an
7 NRC board. That if there was a toxic material that created
8 a toxic hazard to children, somebody might have a
9 jurisdiction over that, but can an NRC board that has
10 jurisdiction over reactor safety or radiological hazards,
11 could it do so? That's the question I guess that's in my
12 mind, and I appreciate hearing from you or anybody that
13 wants to comment on that.

14 MR. REPKA: The contention as drafted really
15 addressed radiological materials, and -- I mean, school
16 children do not go into radiological areas. I can assure
17 the Board of that fact.

18 JUDGE KLINE: The contention as drafted refers to
19 hazardous materials, some of which include oil, acetone,
20 acetic acid and other such things. Is there any
21 jurisdiction on this Board over such material?

22 MR. REPKA: Judge Kline, two points: First, the
23 contention that the basis does go into some toxic materials
24 but the actual statement of the contention does not, but
25 beyond that, hazardous materials other than radiological

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 materials are permitted by the State of California and are
2 not within the jurisdiction of this Board.

3 JUDGE KLINE: Okay.

4 MS. BECKER: Is it possible that they might be
5 under the jurisdiction of this Board under NEPA regulations?

6 MR. REPKA: No.

7 JUDGE SHON: The only nexus I could see would be
8 that if this Board did deny an extension of a license, then
9 at least to the period of the extension they probably
10 wouldn't handle these waste materials that way just as a
11 result of not doing anything.

12 MR. REPKA: Just to amplify, the National
13 Environmental Policy Act does not create substantive
14 jurisdiction.

15 JUDGE BECHHOEFER: I don't see anything --

16 JUDGE KLINE: Are you looking at Contention VII in
17 your response or VI?

18 JUDGE BECHHOEFER: We're six talking about VI.

19 MR. REPKA: I thought I was, too.

20 JUDGE BECHHOEFER: We're talking about
21 radiological materials in VI as such.

22 MS. HODGDON: I think he was talking about the
23 RCA, the radiologically controlled area, and so he was --
24 which is where these materials were, these hazardous
25 materials.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 JUDGE KLINE: The contention or the text of the
2 contention specifically mentions a number of chemicals that
3 I don't see are radiological hazards per se. Manville
4 Expandoflash, clover lathing compound, et cetera. And on
5 the following page, it references to acetone, acetic acid.

6 Do we have any jurisdiction whatever to regulate
7 these materials?

8 MR. REPKA: No. But I think where I was coming
9 from is the inspection report cited the notice of violation
10 that was the specific -- the NRC inspection report that was
11 the basis went to labeling of containers of NRC licensed
12 materials and posting of several radiation areas, and that's
13 why we interpreted the thrust of this contention as being
14 radiation.

15 JUDGE KLINE: Let me ask the Mothers for Peace.
16 If there was a connection between nonradiological hazards
17 and a radiological hazard, there might be some basis for
18 jurisdiction. Have you alleged or do you think you have
19 seen such a connection?

20 MS. ZAMEK: Between?

21 JUDGE KLINE: Between a nonradiological hazardous
22 material and some radiological hazard at the plant or some
23 structural problem at the plant.

24 MS. ZAMEK: The only way is what I stated already
25 about the wide availability of materials that are not marked

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 with detrimental properties to corrosion-resistant alloys.
2 I can see using them and corroding some safety-related
3 equipment which would -- which could then cause a
4 radioactive problem.

5 JUDGE KLINE: Have you uncovered any basis or
6 evidence that that --

7 MS. ZAMEK: No. Just a supposition from an NRC
8 inspector.

9 JUDGE KLINE: Okay.

10 JUDGE BECHHOEFER: I guess it's time to go to
11 number VII. This is the problem with radioactive waste
12 storage. Is this high level or low level or --

13 MS. VON RUDEN: It's spent fuel.

14 JUDGE BECHHOEFER: Spent fuel, okay.

15 MS. VON RUDEN: Item 5.3.4 of PG&E's application
16 for recapture time or license extension, whichever you wish
17 to call it. Jill is going to seem like an expert when you
18 hear me. I'm very folksy, but I must share with you that
19 the discussion previously of not representing employees in
20 truth legally you might say that legally, but my interest in
21 this request to intervene came about from a call from an
22 employee of PG&E, because I do answer the Mothers for Peace
23 phone. If I could tape these calls, it would be wonderful.
24 Ethically, we never have, and we assure the people we don't.
25 She said there was great concern about the storage of the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 fuel.

2 Another phone call I have received was from a
3 retired engineer that helped construct the liner, had said
4 that it cracked many times during construction and had to be
5 repaired during its initial construction. I've been
6 interested in this issue. I spoke to the -- what was it
7 called? State Pollution Control board in Sacramento many
8 years ago on this when the reracking was being proposed, and
9 they were seeking to have state bond funding for that. I
10 was told this would be very quick because it's generic and
11 you will throw me out instantly. I hope not. I hope you
12 will listen.

13 JUDGE BECHHOEFER: Well, I might say the rule is
14 not the generic issue to be considered, but you've got to
15 relate them to the plant specifically.

16 MS. VON RUDEN: Now I'll get into the application
17 itself. As I said, that I don't need to repeat, just lists
18 some solutions for spent fuel, neither of which was
19 addressed by -- in responses by the NRC and PG&E, and one is
20 the repository at Yucca Mountain, and the other is the
21 monitored retrievable storage. They did not address either
22 of these solutions, but rather both referred to the ruling
23 that they are allowed to store spent nuclear fuel for 30
24 years after expiration of license on or off site.

25 I believe that initially I gave enough proof that

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 these other solutions, the MRS and the Yucca Mountain, no
2 one knows. They are indefinite, they are unknown. It's an
3 irresponsible -- irresponsible on the part of the utility, I
4 think, to list them as the solution for spent fuel for the
5 extension of the license.

6 I have a report that I got from the geologist,
7 Carl Johnson, administrator of technical programs for the
8 state of Nevada at the Nevada state project office, which is
9 the entity that was permitted to oversee work done there for
10 the state. He reviewed the earthquake near the Yucca
11 Mountain site, for example, the earthquake of 5.6 magnitude
12 on June 29th was a previously uncharted fault. There were a
13 thousand aftershocks, observations of rocks were dislodged,
14 the project geologist for the DOE says in his newspaper
15 interview they haven't moved for 10,000 years or something.
16 Mr. Johnson did not find that. There were changes in ground
17 water levels. There was one million dollars damage done to
18 the field operations building, located four miles from the
19 epicenter, showing really the nonintegrity of concrete. And
20 I am leading up to a point here. The walls cracked the full
21 height, the outer walls. The interior walls cracked.
22 Windows broke. Furniture was toppled and so forth. He also
23 specifically lists seven points of evidence in an affidavit
24 giving the opinion that Yucca Mountain should be
25 disqualified. On November 14th a letter from Governor

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 Miller to the Secretary of Energy documents evidence
2 supporting Mr. Johnson's opinion -- I can give you
3 copies of that, and has a report with it that details the
4 imperfections of this site.

5 On the monitored retrievable storage solution,
6 which they did not address as well, but was in their
7 original application, one of the other -- I believe it was
8 worded there may possibly be MRC5N which was a good way to
9 word it, because that was the truth. If you research it, it
10 steps to this site would take years and years and there has
11 not been one proposed where litigation was not initiated by
12 the people in the area or in the state.

13 So then we're left with our -- my questions on --
14 they have this 30-year permission, but what are they going
15 to do with it? Where is it going? We have no idea. They
16 have no idea. This is not their fault. They are caught in
17 a quagmire, the Federal Government that has broken contract
18 after contract. The spent fuel from the Manhattan project
19 is scattered in 25 states yet; it is not in a permanent
20 repository. Their options are very, very limited.

21 I have a little bit of a discrepancy, also, in the
22 year they give in their application. They cite the year
23 2007, and I have -- as of yesterday, I guess refueling
24 information request on Unit 1 and Unit 2. It says projected
25 date of the last refueling that can be discharged to spent

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 fuel pool assumes a present licensed capacity to the year
2 2006, which I'm sure that they correspond to for me that is
3 a year's difference.

4 So my questions are what are their plans for the
5 30 years or whatever that they need to store fuel on site
6 without any guarantee at all that they can take it away?
7 They have some choices, tiering is a choice people have
8 used. I have been advised by a physicist tiering in a very,
9 very highly seismic area would be folly and, also, tiering
10 isn't the best solution because of the levels of the water
11 over the rods. Dry cast storage on site, would that be
12 advisable in a highly seismic zone? I believe that would
13 have to be discussed, so I think they're really, really
14 limited.

15 The burden of proof of safety for us lies with
16 them. They have to, as far as I'm concerned, according to
17 -- what is it? CFR 102.732, page 83, they have to guarantee
18 us that we're going to be safe with this fuel. They have
19 spoken to the issue that the Humboldt plant is irrelevant.
20 To me the fact that a corporation has a prime example of
21 failure sitting there since '76, leaking into the
22 environment, granted they pump it out and have remedies and
23 it's guarded. In reviewing the Vermont case, I know this
24 point was ignored, but really the unlimited forever and ever
25 use of land that can't be used for anything probably ever

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 again exists already with PG&E's direction at Humboldt.
2 They can assure me on paper that this liner is different. I
3 can't believe and I don't think anyone else can believe that
4 a severe earthquake would not damage a one-fourth and
5 one-eighth-inch thick, 11-gauge, steel liner, and as far as
6 -- I don't care how thick you put the concrete around it.
7 That's not a reassurance. It's not going to be contained
8 and we're going to have the same kind of mess -- and even if
9 this doesn't happen, what we're going to have and what we
10 never planned on having, and what PG&E must live in terror
11 of having, is a permanent waste dump at Diablo that they
12 will be financially and responsible for the health and
13 safety of the people in this county for the duration of
14 time. So I feel this is a contention that's valid.

15 I don't think that any portion of the plant here,
16 any problem at the plant here, can be labeled generic,
17 because the earth moves here, and the cliffs crumble I think
18 it's three inches a year, and I don't know if you read the
19 Nassau article of the video of the Landers earthquake where
20 it showed sections of earth moving as large as a football
21 field in a circular motion and roads bending.

22 We have technology emerging every day that will
23 give us new information and new help, and to add 15 years on
24 to create more of this waste when really no one -- the
25 Administrative Law Judge in the case in Minnesota before the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 Public Utilities Commission, Alan Kline, in his summary,
2 states that of all the experts that testified when there
3 would actually be a repository for this stuff is never, and
4 that they were restricted in the amount of years they could
5 dry cast there because that was his feeling. I certainly
6 concur with his feeling. I think that we, in this county,
7 are doomed to a storage facility that PG&E was not promised
8 by the government and we were not promised by PG&E. Thank
9 you.

10 JUDGE BECHHOEFER: Well, has your advance of this
11 contention taken into account the section of the regulations
12 which says essentially that -- I think it says that we can't
13 look at anything for -- at least for the period of 30 years
14 beyond exploration of the license or extended licenses.

15 MS. VON RUDEN: Could I respond to that a little
16 bit?

17 JUDGE BECHHOEFER: There's a specific provision
18 which seems to --

19 MS. VON RUDEN: Yes, I know. And they cited it.

20 JUDGE BECHHOEFER: Whether or not we would have
21 necessarily agree with it, we're stuck with it, so --

22 MS. VON RUDEN: Well, could we then address -- it
23 seems we've sat here all day and listened to the
24 commendations of PG&E as being very relevant, and in their
25 application as well or in their response and they weren't

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 documented.

2 JUDGE BECHHOEFER: Well, we did not say -- we
3 didn't say they were.

4 MS. VAN RUDEN: Okay.

5 JUDGE BECHHOEFER: We heard --

6 MS. VON RUDEN: We heard them --

7 JUDGE BECHHOEFER: We haven't ruled yet on
8 anything.

9 MS. VON RUDEN: If they're relevant, then their
10 failure should be relevant, and the portion of that
11 contention regarding their failure at Humboldt that is an
12 example of management judgment seems it should apply to this
13 case, and that is not part of the 30-year storage
14 permission.

15 That is a separate part of the contention that
16 could be accepted. It is up to them to show proof that they
17 can keep us safe with that fuel line or some system. They
18 need to offer some system, I would think. I don't think
19 they can hide behind the 30-year ruling.

20 JUDGE BECHHOEFER: Well, it is a regulation.

21 MS. VON RUDEN: I know it is. I was warned you
22 would throw me out in five minutes. I realize that.

23 JUDGE BECHHOEFER: Whether anyone else does or
24 not, it's there.

25 MS. VON RUDEN: But that's what I have to say.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: Okay. Mr. Repka?

2 MR. REPKA: The contention is inadmissible. With
3 respect to the long-term storage issue that's clearly marred
4 by the waste confidence rule and by the Vermont Yankee
5 precedent, also, with respect to the current storage at
6 Diablo Canyon, that issue is outside the scope of the
7 proceeding.

8 The current storage has been reviewed and approved
9 in other contexts, including the seismic design of that
10 storage and, you know it's simply outside the scope of this
11 proceeding. The amendment doesn't change it in any way.
12 With respect to --

13 JUDGE BECHHOEFER: Well, would the amendment
14 result in the creation of more spent fuel than you could now
15 store?

16 MR. REPKA: My last point.

17 JUDGE BECHHOEFER: Maybe that is something
18 connected.

19 MR. REPKA: With respect to the cumulative amount
20 of waste, that issue is really already addressed in the
21 existing -- the original environmental review for the plant.
22 That assumed 40 years of operation and 40 years of spent
23 fuel and 40 years of radiological impacts

24 MS. VON RUDEN: But you run out the year 2007,
25 which is not your 40 years that you're recapturing.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MR. REPKA: Which is less than 40 years. The
2 fact is, the current storage to the year 2008, I believe it
3 is, has been reviewed and approved in another licensing
4 review in another license amendment.

5 With respect to any additional storage capacity,
6 we might need to go beyond that to fulfill the complete
7 40-year operating license. That's simply not relevant here,
8 also, because we haven't proposed any such amendment to give
9 us that authorization to store fuel at this point. And at
10 the point in which we are ready to propose an alternative,
11 we will need license authorized to do so, and we'll do what
12 is appropriate at the time.

13 MS. CULVER: So knowing that you're going to
14 produce additional years of spent fuel than you have the
15 capacity to store, you're simply saying that it's not
16 relevant how it's stored? Does the law support that? Is
17 that what you're saying? That you will apply when the time
18 comes that you run out of space for monitored retrievable
19 storage or whatever and the NRC will say okay, you can do
20 that, too?

21 MR. REPKA: We can only speculate as to what would
22 happen and what form that storage might take and what the
23 NRC might say about it. It's simply not an issue here.

24 MS. VON RUDEN: Why was it addressed in the
25 application? I'm sorry.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MR. REPKA: Beyond that, all I can say is that
2 PG&E expects the DOA to live up to its contractual
3 obligations. The progress is being made at the Yucca
4 Mountain and we're not here to license Yucca Mountain or
5 monitor a retrievable storage facility.

6 MS. VON RUDEN: But you are here to explain your
7 item on your application where you list two vague,
8 open-ended where most experts say the year 2025 will be the
9 earliest.

10 Do you not have to, in your application, deal with
11 spent fuel during the period of time of recapture? Legally?
12 I don't know that. You do not have to speak to that
13 legally.

14 MR. REPKA: The waste competence rule does not
15 require -- stipulates that we do not have to address the
16 long-term storage issue.

17 MS. ZAMEK: What about the short-term? Have they
18 addressed the short-term?

19 JUDGE BECHHOEFER: Miss Hodgdon, do you have any
20 comments on this one?

21 MS. HODGDON: No. I think we've said everything
22 we have to say in our response.

23 JUDGE BECHHOEFER: Okay. Let's go on to number
24 VIII, which is an emergency preparedness contention. And
25 it's my understanding at least that the only thing we could

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 look at on an emergency preparedness program is whether it's
2 so called -- I think the words are fundamental flaw or
3 something like that.

4 Are you saying that there's a fundamental flaw,
5 and if so, based on what? That's my question to any of you
6 who are going to address this one.

7 MS. ZAMEK: Yes. We're saying that the plan is
8 inadequate and that the numerous problems that we've cited
9 in our contention show a fundamental flaw. PG&E says that
10 they're not changing anything that includes the plan, and so
11 it will, therefore, remain inadequate during the years of
12 the recapture.

13 Mr. Repka used the SALP scores, and I noticed that
14 for emergency preparedness they, at one time, got a rating
15 of one, but since then, it's last rating went down to two,
16 and their comments were during that period of time they
17 identified numerous weaknesses in emergency preparedness
18 that revealed the problems to be chronic and longstanding.
19 The Board noted that problems from past assessment periods
20 resurfaced again, resulting in five repeat findings during
21 the October 1990 exercise. The licensee did not have a
22 corrective action program fully effective in preventing the
23 occurrence of issues identified during drills, exercises,
24 and NRC inspections.

25 I know the overall ratings of everything. They

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 always say it's adequate. But we disagree with that, that
2 statement, and for simple reasons like this they make a list
3 that's in our contentions. What do we do with the children
4 in an after-school day care? I know at my children's school
5 they have a little after-school program. They have no means
6 of evacuating these children. Buses don't run then. And
7 that's the kind of -- that's an example of something they've
8 not resolved. And I can't imagine extending the plant at
9 Diablo an extra 15 years without resolving some of these
10 problems.

11 Rochelle?

12 MS. BECKER: In addition, in section 5.4, exposure
13 from releases during postulated accidents, PG&E has chosen
14 to discuss when one of the four parameters of 10 CFR 100.(4)
15 population growth. They site studies based on speculation
16 by the California Department of Finance projections through
17 2025. While there may not be an incredibly large population
18 growth at present, urban flight is a new phenomenon in
19 California and must be taken seriously as our yet relatively
20 pristine communities continues to be impacted from
21 Californians seeking refuge from inner city problems and
22 Easterners seeking refuge from the cold winters and humid
23 summers.

24 In addition, with increasing population and
25 current budget cuts in this state and county personnel are

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 constantly being reduced, and budgets stretched to just
2 maintain daily services. If a major emergency was added the
3 result might be quite different from those originally
4 expected in our paper plan. In fact, as mentioned in
5 Contention IX, the nuclear plant at Turkey Point had an
6 approved NRC, FEMA, and Florida State emergency plan in
7 place that considered earthquake -- or hurricanes. Excuse
8 me.

9 However, when Hurricane Andrew came ashore to use
10 an old quote, the paper plan was not worth the paper it was
11 printed on. In fact the Turkey Point plan had many, quote,
12 "fundamental flaws."

13 The other criteria in 10 CFR 100 are, one, type of
14 accidents postulated; two, the radioactivity release
15 calculated for each accident; and three, the assumed
16 meteorological conditions are mentioned in PG&E's original
17 application, but not in PG&E's response. It is the San Luis
18 Obispo Mothers for Peace belief that these criteria are
19 directly related to emergency preparedness. While the NRC
20 in the past has not seen fit to consider a simultaneous
21 earthquake that could trigger a radioactive release at
22 Diablo Canyon Nuclear Power Plant, the San Luis Obispo
23 Mothers for Peace can only hope that this Atomic Safety
24 Licensing Board will some day see the logic in these
25 concerns.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 For instance, at Turkey Point the fire protection
2 was going. They had lost off-site power. There were no
3 radios, lights, and people could not put gas in their cars.

4 The pumps worked with electricity. They lost
5 communication for over an hour. They lost 10,000 customers
6 because they were left homeless. They had a spare parts
7 building such as PG&E's worth \$10 million with an \$80
8 million inventory, and they're still looking for the parts.

9 Hurricane Andrew at Turkey Point, they had two
10 hours, if not longer, to know that a hurricane was going to
11 come ashore. In California we don't have any warning
12 whatsoever if there's going to be an earthquake. The NRC
13 has decided in the past and hopefully will not continue to
14 decide that we cannot consider a simultaneous earthquake
15 that can trigger an accident at a nuclear power plant or a
16 simultaneous earthquake and an accident in this community in
17 which bridges are out, communications are out, and there is
18 no communication between the plant and the site. If we are
19 given an additional 13 to 15 years, we have an additional 13
20 to 15 years to worry about an earthquake that could cause
21 this type of accident.

22 JUDGE BECHHOEFER: Well, are we, this Board, not
23 bound by the previous Commission ruling? Wouldn't it have
24 to be the Commission that changed its mind?

25 MS. BECKER: Absolutely.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: Rather than us? I mean --

2 MS. BECKER: Absolutely, but I believe this Board
3 could recommend to the Commission, especially after
4 Hurricane Andrew, that they rethink this position.

5 JUDGE BECHHOEFER: Mr. Repka?

6 MR. REPKA: I think what we've just heard is a
7 combination of Contentions VIII and IX, so I'll take them
8 one at a time briefly.

9 Contention VIII, the emergency preparedness
10 general contention, as I call it, there really is a
11 requirement in order to litigate that in any NRC proceeding,
12 much less this one, of a finding of a fundamental flaw. We
13 agree with the NRC staff on that point and we agree with the
14 Board, and there's no basis for such a finding. In fact, in
15 the last two emergency exercises referenced by petitioners,
16 FEMA and the NRC have concluded that Diablo Canyon is in
17 compliance with the emergency planning requirements.

18 With respect to the second contention, which is
19 the earthquake emergency plan and contention, Contention IX,
20 based on Hurricane Andrew, as we said in our papers, this
21 issue has been litigated and is barred here by collateral
22 estoppel. It has been to the Federal Courts and there
23 really is nothing more to be said on the issue.

24 MS. BECKER: I was actually speaking only to
25 Contention VII. Hurricanes are just part of emergency

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 preparedness. But I do have separate items on the next
2 contention.

3 JUDGE BECHHOEFER: Well, Miss Hodgdon, do you want
4 to talk at least on VIII? I guess we'll go around again on
5 IX, but --

6 MS. HODGDON: Well, VIII, I agree with Mr. Repka,
7 VIII concerns emergency preparedness generally and IX
8 concerns the earthquake and the allegation that hurricanes
9 in Florida had something to do with emergency planning and
10 earthquakes in California.

11 So I think that IX has been addressed, but as
12 regards Contention VIII --

13 JUDGE BECHHOEFER: Well, you're welcome to address
14 them both if you want.

15 MS. HODGDON: Well, I think I'll go ahead and
16 address them both.

17 JUDGE BECHHOEFER: Yes.

18 MS. HODGDON: As regards Contention VIII, as the
19 Staff pointed out, that there's no obligation even of a
20 fundamental flaw here and in fact there is none. There's no
21 basis for this contention.

22 As regards IX, that's been litigated. It'
23 collateral estoppel. It's res judicata. The Commission has
24 long taken this position from the time of the San Onofre
25 decision which was followed in their various decisions on

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 this matter. It just can't be litigated here. That's all
2 that.

3 JUDGE BECHHOEFER: Okay. Do you all have
4 something further on IV? They sort of got combined
5 together.

6 MS. BECKER: Yes.

7 JUDGE BECHHOEFER: But you had something more to
8 say on IX?

9 MS. BECKER: I do. The San Luis Obispo Mothers
10 for Peace are not here to relitigate the position that
11 PG&E's emergency plan should account for the potential
12 impact for an earthquake that could either cause -- be
13 caused or occurred coincidentally with an accident at the
14 nuclear power plant.

15 We are here because we live near this nuclear
16 plant, and we are asking this licensing Board to consider
17 new seismic information that continues to demonstrate the
18 uncertainty surrounding the nature and ground acceleration
19 of earthquakes in California. We are in no way asking to
20 relitigate an old issue. There has never been a discussion
21 nor a ruling on whether Diablo Canyon's design construction,
22 redesign and reconstruction would guarantee that this
23 nuclear plant, largely built in the late '60s and early '70s
24 and subject since then to salt water and salt air erosion,
25 could withstand a 7.7 magnitude earthquake if allowed to

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 operate for an additional 13 to 15 years. There has never
2 been litigation on the effects of an earthquake regarding
3 aging or fraudulent parts or thermal lag. It was PG&E who
4 applied for this extension and we are responding to their
5 assertion that -- quote, "that the proposed changes do not
6 involve significant hazard considerations.

7 The San Luis Obispo --

8 JUDGE BECHHOEFER: Well, we haven't quite gotten
9 to that part yet. That's still another contention.

10 MS. BECKER: Well, we consider that a hazard. An
11 earthquake. It's kind of hard not to consider it one.

12 The San Luis Obispo Mothers for Peace believes
13 that allowing PG&E to operate a nuclear plant that sits two
14 and a half miles from a major active earthquake fault for an
15 additional 13 to 15 years does indeed involve significant
16 hazard considerations. For PG&E to boldly state that there
17 are no new issues to review and no environmental impacts on
18 the public's health and safety is pure conjecture.

19 The NRC Staff in their argument that Contention X
20 is not admissible -- I guess that's probably IX -- is not
21 admissible reminds this licensing Board that quoted the
22 staff's proposed determination of no significant hazards
23 consideration may not be occurred in an adjudicatory
24 proceeding as 10 CFR, section 5058(B) specifically states.
25 No petition or other requests for review or hearing on the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 staff's significant hazards consideration determination will
2 be entertained by the Commission. The Staff's determination
3 is final, subject only to Commission's discretion on its own
4 initiative to review the determination. And what we are
5 asking is that this licensing Board look seriously at this
6 issue and recommend to the Commission that they do rehear
7 it.

8 JUDGE KLINE: Was that response addressing
9 Contention IX or was that a generalized --

10 JUDGE BECHHOEFER: Or X? Or X. We were still on
11 IX.

12 MS. BECKER: What was IX? Sorry.

13 JUDGE BECHHOEFER: Nine was emergency planning.

14 MS. BECKER: Emergency preparedness.

15 JUDGE BECHHOEFER: That's what I thought we were
16 going back to you for.

17 MS. BECKER: Oops, sorry. That was IX. Not X.

18 JUDGE KLINE: That response was for IX

19 MS. BECKER: Right. Because X is justification.

20 JUDGE BECHHOEFER: Maybe we should take a quick
21 break.

22 MR. REPKA: Well, if I could respond to that.

23 I heard three things in there. One was Contention
24 IX as drafted, the issue of emergency preparedness and
25 earthquakes. That issue is barred by collateral estoppel,

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 res judicata. With respect to an issue of new seismic data
2 that I think I heard in there, that is a new issue, it's not
3 one of the drafted contentions, and there's been no basis
4 offered for such a contention. And the third thing I heard
5 in there was what I thought of as Contention X and no --

6 JUDGE BECHHOEFER: If we get to X, let's hold that
7 until --

8 MR. REPKA: It's a short answer. 5058(B)6, end of
9 story.

10 JUDGE BECHHOEFER: Why don't we take quick break.

11 JUDGE SHON: I think one of the difficulties --
12 just one moment. The Mothers for Peace doesn't see. --
13 well, it's just that the Mothers for Peace doesn't seem to
14 be talking about the same thing as the Staff and the
15 applicant -- or the licensee are in Contention X. Their
16 title for the contention would be different, I believe.
17 Just look at it over the break and see whether your title is
18 the same as theirs, would you?

19 MS. BECKER: Okay. Because mine's justification.

20 (Recess taken.)

21 JUDGE BECHHOEFER: Okay. Back on the record.

22 The next contention is this number X, and this one
23 I have some legal problems with, and I wanted to ask whether
24 Mothers for Peace was trying to raise a question falling
25 within the so-called no significant hazards finding that the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 Commission has proposed, has an issue to propose findings is
2 my understanding.

3 Let me ask the Staff whether that's still in the
4 proposed stage, that no significant hazards finding.

5 MS. HODGDON: Do you mean to ask whether the
6 Staff has made a final finding and --

7 JUDGE BECHHOEFER: Whether the Commission or the
8 Staff has made a final finding, yes, in this case.

9 MS. HODGDON: No. The Staff hasn't done that yet.

10 JUDGE BECHHOEFER: Okay. I just wanted to find
11 out the status of that.

12 MS. HODGDON: If that contention is related solely
13 to no significant hazards, we are -- we don't understand how
14 we, meaning this Board, can consider it, because there's the
15 specific statement that it's beyond our jurisdiction in the
16 rules, and we're sort of stuck with that. We would be
17 prepared, however, to certainly request that the Staff
18 consider this contention as another comment received in
19 response to the request for public comment on the proposed
20 finding. We would certainly do that. And the Staff could
21 consider this as part of its consideration of no significant
22 hazard.

23 MS. HODGDON: The Staff will consider all of the
24 contentions, Judge Bechhoefer.

25 JUDGE BECHHOEFER: I see. But this one in

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 particular.

2 MS. HODGDON: This one, too.

3 JUDGE BECHHOEFER: I think it's beyond our
4 jurisdiction and the Staff is the only one that can do
5 anything about that.

6 JUDGE SHON: I guess one just sort of refer
7 the others, doesn't it?

8 MS. HODGDON: It seems to be a summary sort of,
9 but the Staff will address it, certainly.

10 JUDGE BECHHOEFER: It seems to focus on the no
11 significant hazards.

12 MS. ZAMEK: I don't understand -- in the Federal
13 Register where it asks those questions --

14 JUDGE BECHHOEFER: Yes.

15 MS. ZAMEK: -- that's what we were responding to.

16 JUDGE BECHHOEFER: Yes.

17 MS. ZAMEK: And why is it that we can't do that?

18 JUDGE BECHHOEFER: Because there is a section of
19 the rules. I think it's 5058 --

20 JUDGE SHON: I think the short answer is yes, you
21 can respond to that simply by responding to the Commission,
22 but this particular Board does not have jurisdiction to -

23 MS. ZAMEK: Now, has it already been determined by
24 the Commission that it's a no significant hazards amendment?
25 Has that been determined already?

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 JUDGE SHON: No. Miss Hodgdon just told us that.

2 MS. ZAMEK: I just wanted to clarify that.

3 JUDGE BECHHOEFER: That's the question I asked.

4 MS. ZAMEK: Okay.

5 JUDGE SHON: And she says your comment will be
6 considered.

7 JUDGE BECHHOEFER: Let me read this. This is
8 section 5058(V)6. It says, "No petition or other request
9 for review of or hearing on the Staff's significant hazards
10 consideration determination will be entertained by the
11 Commission. The Staff's determination is final subject only
12 to the Commission's discretion on its own initiative to
13 review the determination."

14 But I might say that, I think, deprives us of any
15 jurisdiction to consider the matter, to consider that
16 particular contention, and we have actually requested the
17 Staff to take that contention, at least, into account in
18 making its recommendation.

19 I might note, also, that the notice for
20 opportunity of hearing in this proceeding noted -- and while
21 it's not in the rule itself, I don't think, the Commission
22 itself, I think, has to make the finding in a situation of
23 this sort where a request for a hearing has been filed. I
24 think that is in so many -- yes. Well, the -- let me read
25 from the notice of opportunity for hearing in this case.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 It's not in the rules, but it says, "If a hearing is
2 requested, the Commission will make a final determination on
3 the issue of no significant hazards consideration."

4 MS. HODGDON: Agreed.

5 JUDGE BECHHOEFER: I think that means the
6 Commissioners.

7 MS. HODGDON: No, it doesn't. The Commission has
8 delegated that function to the Staff. That may be
9 confusing, but I'm quite clear on that. The Commission has
10 delegated that function to the Staff. It means the Staff.

11 MS. CULVER: So the Commission can't review that?

12 MS. HODGDON: No. The Commission can review it,
13 but the Commission has delegated that function to the Staff.
14 The Staff will make a final finding and the Commission will
15 look at it if it so -- if it -- it has the discretion to
16 look at it if it wishes.

17 JUDGE BECHHOEFER: Well, it was my understanding
18 -- and when it says, "The Commission will make the final,"
19 that means Commission as distinguished from Staff making it
20 where there's no request for a hearing, because otherwise
21 the state of the -- if a hearing is requested would be
22 irrelevant. The Staff always makes -- then that statement
23 in the notice of opportunity will be irrelevant.

24 MS. HODGDON: No. That's not -- no. No. That's
25 not the way it is. You don't make a final finding unless

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 there's a request for a hearing, and that's why it reads
2 that way.

3 JUDGE BECHHOEFER: I see. Okay.

4 MS. HODGDON: Where there's no request for a
5 hearing, a final finding need not be made.

6 JUDGE BECHHOEFER: I guess that's true, because
7 nobody would be opposing it.

8 MS. HODGDON: That's right. That's it.

9 JUDGE BECHHOEFER: Well, in any event, I had read
10 this to be the Commissioners, but maybe it isn't.

11 In any case, the Staff -- we've asked the Staff to
12 make sure your Contention X is included in their review
13 since we don't -- that's the only contention we're going to
14 rule on, and we're going to say we don't have jurisdiction
15 on that one, and I don't think there's any -- whether it has
16 merit or not, we can't rule on it.

17 Well, let's turn to the last of the contentions
18 Let me get back here to the contentions. It's number XI.

19 Now, as I understand the regulations in part 51,
20 with respect to EIS's, there are certain types of action
21 where an EIS is required. There are other types of actions
22 where an EIS never must issue. And then there's a much
23 larger category where an environmental assessment must
24 issue, and the environmental assessment then decides whether
25 to go the EIS route or to just issue the assessment alone.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street. N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 let me ask the -- the Staff, I take it, has not yet issued
2 an assessment in this case; is that correct?

3 MS. HODGDON: No. I think we plan to very
4 shortly.

5 JUDGE BECHHOEFER: Yes. But as of this date --

6 MS. HODGDON: No, we have not yet.

7 JUDGE BECHHOEFER: Right.

8 Now, my question is, this is not one of the types
9 of action which you listed specifically for EIS's. That
10 being the case, I wondered what the Mothers for Peace --
11 what your intentions were about litigating this contention.
12 I think it would be -- we certainly I don't think could do
13 anything until the Staff issues its assessment.

14 Now, I leave open the question whether -- after
15 that occurs, whether a further contention could be accepted
16 on a late-find basis, but with part of the justification
17 being the assessment had been issued late. The Commission
18 sometimes set forth that as over proceeding.

19 But the question is, I'd like to find out whether
20 the Mothers for Peace interprets our rules differently, for
21 instance, on requiring an EIS.

22 MS. BECKER: I think we do.

23 JUDGE BECHHOEFER: Because if so, I'd like to --

24 MS. BECKER: You can correct us if we're wrong,
25 but I think that we do in our reading of the citations that

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 were in PG&E's response. What we originally responded to
2 was the justification section on PG&E's original application
3 and the NEPA issues that we find involved there.

4 PG&E asserts on page 4 of its application, quote,
5 "The results (of the Diablo final environmental statement
6 and addendum and the environmental report and its
7 supplement) indicated that no additional significant
8 environmental impacts beyond those originally addressed are
9 involved with 40-year operation," close quote.

10 On page 10 of its response to the San Luis Obispo
11 Mothers for Peace petition, PG&E states, quote, "Petitioner
12 has not explained with requisite specificity and basis why
13 the proposed amendment is is a 'major federal action'
14 significantly affecting the quality of the human
15 environment."

16 PG&E has chosen to cite 10 CFR 5120(A) and (B) to
17 convince this Board that the NRC Staff is not required to
18 prepare an EIS assessing the environmental impact
19 for their proposed amendment for license extension.

20 After reading and rereading this code, the San
21 Luis Obispo Mothers for Peace are convinced that an EIS is
22 in fact required. According to 5020 (A), licensing and
23 regulatory actions requiring an environmental impact
24 statement shall meet at least one of the following criteria
25 One, the proposed action is a major federal action

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 significantly affecting the quality of the human environment
2 and, two, the proposed action involves a matter which the
3 Commission, in an exercise of its discretion, has determined
4 should be covered by an environmental impact statement.

5 From the standpoint of the residents living within
6 15 miles of this nuclear plant, a license extension which
7 adds 13 to 15 years of additional life to a nuclear plant
8 largely built and constructed in the late '60s and early
9 '70s, sited two and a half miles from a major active
10 earthquake fault with aging components that have been
11 subject to environmental degradation from salt water and air
12 -- salt air exposure is indeed a matter that could
13 significantly affect the quality of the human environment.

14 Furthermore, we strongly believe that this
15 distinguishes PG&E's request for extension of its license
16 for Diablo Canyon Nuclear Plant from other plants that may
17 have received, quote, "what is generally referred to as a CP
18 recapture action."

19 Additionally, PG&E arresting use that, quote,
20 "amendment of an operating license to recapture" -- that's
21 in quotes -- the construction period and allow plant
22 operation for a full 40-year term is not specified in 10 CFR
23 5120 (B).

24 "From the San Luis Obispo Mothers for Peace
25 reading of that code, discretion is left to the Commission

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 regarding, two, issuance or renewal of a full power or
2 design capacity license to operate a nuclear power plant --
3 nuclear power reactor," end quote. We strongly believe that
4 for the above-stated reasons our statement meets 5150(A) and
5 (B) and requests that this licensing Board recommend that
6 the Commission use their discretion to require an EIS in the
7 current PG&E request for license extension. Regarding
8 PG&E's response to the need for power in PG&E's original
9 application they stated on page 2 -- this is all under their
10 justification, so I just through it all in together -- that,
11 quote, "It is prudent and beneficial to keep this reliable
12 source of power in operation especially in light of the
13 projected growth of California's electricity demand. Not
14 only is this pure conjecture on the part of the utility, but
15 PG&E's own response, they themselves argue, that, quote,
16 "Need for power is not admissible. The San Luis Obispo
17 Mothers for Peace believe that the language of the NEPA
18 requirement is such that unless the Commission determines
19 otherwise, the Atomic Safety and Licensing Board has the
20 authority to decide this need -- if this argument is
21 warranted. Indeed, circumstances have changed in California
22 since PG&E's construction permit and operating license was
23 granted, and this is exactly the type of situation that NEPA
24 would require an agency to look into."

25 Finally, if it is admissible for the San Luis

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 Obispo Mothers for Peace to discuss the -- if it's
2 inadmissible -- excuse me. I'll start over. Finally, if it
3 is inadmissible for the San Luis Obispo Mothers for Peace to
4 discuss California's need for power, and we do not believe
5 this to be the case, that it is only proper that PG&E not be
6 allowed to bolster its application before this
7 licensingBoard with any, quote, "need for power arguments."

8 In addition, today we have a representative from
9 the California Public Utilities Commission who also argues
10 against PG&E's justification on need for power, cost
11 benefits, and other answers that they have given to, quote,
12 "things as far as cost savings of the Diablo Canyon Nuclear
13 Power Plant. PG&E indicates that Diablo Canyon is expected
14 to be cost competitive with new power plants in the year
15 2008 and beyond and that granting the recapture will, quote,
16 "reduce future electric rates." However, PG&E has not
17 presented any datas to support this contention. Again, they
18 state Diablo Canyon is expected to be significantly more
19 expensive than the cost of replacement power through the
20 year 2016.

21 Furthermore, prices for Diablo's generation after
22 2016 have not been set by the California Public Utilities
23 Commission. During the portion of the recapture period
24 where Diablo Canyon's prices are known 2008 to 2016,
25 operation of Diablo Canyon will increase ratepayer costs by

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 billions of dollars.

2 In addition, the California Public Utilities
3 Commission, the California Energy Commission and PG&E itself
4 have all expressed concerns regarding commitments to
5 resources in advance of need. Future technologies may be
6 much less expensive than currently available resources.

7 However, in this instance, PG&E is seeking in
8 its -- I'm having a hard time talking. I'm thirsty -- an
9 extension for Diablo Canyon more than 15 years before its
10 existing license expires. PG&E also errs in its assertion
11 that the base load operation of Diablo Canyon is beneficial
12 to its ratepayers. In fact, PG&E itself has complained of
13 an excess of base load resources and asserted a need for far
14 greater operational flexibility.

15 PG&E wants to require all new generation which
16 would be operating during the period of the recapture to be
17 dispatchable by the utility. Excess base load generation
18 causes PG&E to have too many resources operating at times of
19 low system demand. This limits the ability of PG&E to take
20 advantage of low-cost, spot energy purchases. It is also
21 causes operating problems because of the need to have some
22 units available to follow load. Replacing Diablo Canyon
23 with resources which have greater operational flexibility
24 would resolve these problems, lowering ratepayer costs.
25 However, current PG&E resource plans indicate that the

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 majority of new demand needs will be met by conservation,
2 which PG&E leads the nation in, and other demands side
3 management programs as well as spot purchases. Resources is
4 not a detriment to PG&E ratepayers. If they have lower
5 costs than Diablo Canyon and provide greater operation
6 flexibility.

7 PG&E asserts that granting a recapture will
8 significantly reduce air emissions. PG&E assumes that
9 Diablo Canyon will be replaced by 100 percent gas fired
10 generation. As mentioned above, current resource plans
11 indicate that the majority of new resources will be
12 designed, something, side management. When geothermal and
13 spot purchases. Not gas fired. Little, if any, increase in
14 air emissions would occur if Diablo Canyon were replaced by
15 will by these resources. The high cost of Diablo Canyon
16 outweighs any air emission benefits it may have compared to
17 other options.

18 PG&E has not shown that there will be more jobs
19 and tax revenues from continuing to operate Diablo Canyon
20 from building and operating replacement resources. In
21 addition, the rate increase that would result from granting
22 the recapture will have a negative impact on the state and
23 local economy. If Diablo Canyon is just one cent kilowatt
24 hour more expensive than other options, PG&E'S rates will
25 increase by over \$140 million annually. Over the recapture

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 period, Diablo Canyon is expected to increase PG&E rates by
2 billions of dollars. PG&E's rates are already 35 percent
3 above the national average.

4 PG&E has not provided the NRC with the information
5 needed to accurately assess justification for the license
6 amendment. In particular, PG&E's application relies on the
7 four benefits listed below as justification for extending
8 their operating license for Diablo Canyon. Cost savings,
9 need for base load generation, air emission reductions,
10 state and local benefits.

11 As discussed above, none of these benefits are
12 expected to occur nor has PG&E presented any evidence to
13 support its claims. Quite the opposite will occur.
14 Extending the operation of Diablo Canyon is expected to
15 increase PG&E's rates.

16 One of the conditions under NEPA is that you
17 discuss alternatives to power sources, and PG&E is not a
18 cheap alternative.

19 JUDGE BECHHOEFER: That's only if you have to
20 issue an EIS.

21 MS. BECKER: Right. So I think this Board needs
22 to know the full story, and I don't think PG&E's given the
23 full story. We do have a representative from the PUC here
24 today if you'd like to ask him any questions.

25 JUDGE BECHHOEFER: Well, this isn't an evidentiary

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 hearing, so I guess that wouldn't be too appropriate. I'm
2 going to ask you, though, just conceptually, is the plant
3 not going to be written off in the initial period of
4 operation so that their depreciation would be essentially zero
5 for the nuclear? Maybe I should ask the applicant that.

6 MR. REPKA: Number one, I don't think that's an
7 issue before the Board, but --

8 JUDGE BECHHOEFER: Well, I didn't say it was, but
9 in terms of lower costs. You advertised lower costs.

10 MR. REPKA: Depreciation is -- it's not based on
11 the CP standards -- or the CP recaptured.

12 Rates under the rate structure for the plant, the
13 rates are not based on depreciation. It really is not an
14 issue germane to the proceeding of the Board.

15 MS. BECKER: Unfortunately, PG&E brought it up.

16 JUDGE BECHHOEFER: Now, the EIS issue we can't
17 consider, but the remaining part I'm not sure that we can
18 consider all aspects of that.

19 MR. REPKA: Let me address those --

20 JUDGE BECHHOEFER: But in terms of the fact that
21 there were representations made that would lower costs. I
22 was just wondering if that was because of no more
23 depreciation during the recapture period.

24 MR. REPKA: Frankly, I'm not prepared to comment
25 on that right now.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: That in itself would not be an
2 issue, but just as background, it might be.

3 MR. REPKA: On the need for power issue, I would
4 reiterate it's not an issue before the Board. The letter
5 that the petitioners are reading from is not representative
6 of the opinion of the California Public Utilities
7 Commission.

8 The petitioners do not represent the Commission,
9 and it really is not a matter before the Board, and I don't
10 think it's something that Board needs to address.

11 On the prior issue on the EIS, the fact is an EIS
12 is not required for this amendment. The NRC Staff routinely
13 issues CP recapture amendments with environmental
14 assessment.

15 That was the precedent in the Vermont Yankee case
16 on CP recapture in which an EIS contention would be not
17 admissible. The fact is the original licensing review for
18 the plant was based on 40 years of operation. The
19 environmental effects were based on 40 years, so nothing in
20 this amendment -- there's nothing in this amendment that's
21 not enveloped by the original environmental review.

22 I understand the distinctions we made earlier
23 between what was authorized and what was approved. What was
24 analyzed and reviewed. But the fact is the environmental
25 report and the environmental state were based on 40-year

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 presumption, and it had to be that way, because the
2 application was for a 40-year license and there was no
3 reason to expect or at least hypothetically an operating
4 license could have issued at any point thereafter, so it
5 could have been the -- the original license could have been
6 for 38, 39 years, whatever, even under the old method of
7 calculating the date for expiration of the license.

8 JUDGE BECHHOEFER: Is there any significance to
9 the fact that there are certain changes, some of which you
10 have advanced in terms of population? You've provided some
11 new estimates or new figures in your application, and would
12 that change things perhaps?

13 MR. REPKA: Well, those are the kinds of things
14 not we're obligated to put into our environmental report,
15 and the Staff will look at in an environmental assessment.
16 The fact that they're there and the Staff may or may not
17 address it in the environmental assessment does not support
18 the proposition that an EIS is required. It simply doesn't
19 follow.

20 JUDGE BECHHOEFER: Well, would it support maybe
21 not at this stage, but at the time the Staff issues its
22 environmental assessment, would not this type of thing
23 warrant perhaps a late file contention saying you were
24 wrong, Staff; there should be an EIS? Would not that be
25 admissible assuming the proceeding is going on for any other

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 reason?

2 MR. REPKA: It would be admissible with the
3 requisite basis and specificity, of course, and in addition
4 to that, of course, it would have to meet the new threshold
5 standard for contentions.

6 The mere fact that there may have been changes in
7 demographics does not lead to the conclusion that there
8 should be an EIS or even a change in the conclusion of the
9 original environmental statement. Changes over time were
10 anticipated and expected. The environmental report in this
11 amendment is more along the lines of a progress report. Are
12 we within that envelope? And I don't believe there's any
13 basis to believe that we're not.

14 JUDGE BECHHOEFER: Right. But all I was trying to
15 establish is if we should not decide that until the Staff
16 issues its EA, it would be presumptuous to accept any
17 contention at all concerning an EIS, but after that time,
18 there would be adequate specificity or adequate basis,
19 perhaps a contention might be warranted. Maybe not
20 meritorious, but at least warranted.

21 MR. REPKA: I think the Commission's rules are
22 clear. We can't rule out the possibility of delay file
23 contention on a new Staff review document and environmental
24 assessment, but I say that with the added caution that the
25 information in the environmental report is available at this

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 time. The environmental assessment will speak for itself,
2 and there will remain the requirements of good cause and for
3 a late file contention and for basis --

4 JUDGE BECHHOEFER: That's true, and I think the
5 Commission when it issued its new contention rules said that
6 contentions first could be filed under the -- based on what
7 the applicant submitted -- must be filed, but could be
8 amended upon showing good cause, and et cetera, upon later
9 submission of Staff documents. I think that is one thing
10 the Commission pointed to.

11 MR. REPKA: I do not disagree with it.

12 JUDGE BECHHOEFER: Right. I'm just paraphrasing.
13 I'm not -- in fact, I have the statement here if you want
14 to -- I don't think there's any disagreement on what they
15 said. So that one we won't rule on now, but it may be that
16 we may find it to be premature until after the Staff issues
17 its assessment one way or the other. And of course if the
18 Staff, in its assessment, decided to issue an environmental
19 impact statement, your contention would be moot. If they
20 didn't decide, then you'd have to decide whether there's
21 sufficient grounds to contest the Staff's assessment.

22 I presume that the Mothers for Peace would be sent
23 a copy of the Staff's assessment; is that correct? Or at
24 least informed that it's been issued.

25 MS. HODGDON: Yes. That's correct.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 JUDGE BECHHOEFER: So we can look at it in the
2 public document room.

3 MS. HODGDON: Yes. That's correct. Yes.
4 However, I -- is it --

5 JUDGE BECHHOEFER: We would like to hear from you,
6 too, on this one.

7 MS. HODGDON: If it's my turn. It's Staff's turn?

8 JUDGE BECHHOEFER: Yes. I guess so. Did you have
9 anything?

10 MR. REPKA: I would just reiterate that even when
11 an environmental assessment comes out, need for power will
12 be precluded by the Commission's regulations, so with that,
13 I'll turn over to the NRC Staff.

14 MS. HODGDON: The need for power issue is
15 certainly not admissible here.

16 With regard to the environmental impact
17 statement, the allegation, the Board in Vermont Yankee held
18 that such a contention was not admissible because you had to
19 say what the risk was and what would cause an environmental
20 impact -- what would result in the need for an environmental
21 impact statement in a situation where one is not required
22 otherwise and not mutually issued, and they mentioned but
23 some 50 or 60 of these amendments have been issued and Staff
24 never has found a need to issue an environmental impact
25 statement. They've always gone with an environment

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 environmental assessment.

2 But the thing that I'm saying here is I don't
3 think that the Board should hold this contention in abeyance
4 waiting for the staff's environmental assessment. I do not
5 believe that this contention is admissible.

6 Certainly the -- whatever the Staff does with
7 regard to its environmental obligations, the petitioner can
8 file a late filed contention at that time and, of course,
9 there would be good cause to the extent that there is good
10 cause for the filing. I don't think that the Board should
11 hold this contention in abeyance if it's ruling on the
12 others.

13 MS. BECKER: May we speak to that?

14 JUDGE BECHHOEFER: Yes.

15 MS. BECKER: This is an issue that PG&E brought up
16 in its original application, and our fear is that there's
17 really no hurry for this. The 13 to 15 years is down the
18 road, and our fear is that after we have Staff's ruling and
19 appeals and everything else and you've already made your
20 decision to try to bring this back again, it's going to be a
21 whole lot tougher for us than waiting for the Staff's
22 decision, getting that out of the way, and then going on
23 with our contentions. We've just found this to be the case
24 in the past. You know, we'll put you off until later and
25 then later comes around and everything else is a foregone

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 conclusion.

2 We didn't bring this up. PG&E brought this up.
3 We responded to it in a timely basis. We put as much
4 information as we could into it. We believe that it's a
5 valid issue. We believe that it is something that's needed
6 to go along with the rest of the contentions and the rest of
7 the ruling before this licensing Board that it should be
8 something that has been taken care of before everything else
9 is heard.

10 MR. REPKA: I would like to respond to that.

11 JUDGE BECHHOEFER: Yes.

12 MR. REPKA: I think I can accept the proposition
13 that the Board should rule on the contention as stated which
14 is that there should be an EIS, and that contention can be
15 ruled on based on the precedents and based on the showings
16 that have been made. That, of course, would not prejudice
17 later rights to file a late filed contention based on new
18 information. But there's no reason this Board can't rule on
19 the contention as stated, which seems to be a fairly bald
20 assertion that there needs to be an EIS.

21 JUDGE BECHHOEFER: I guess we've finished all the
22 contentions.

23 MS. ZAMEK: Oh, wait. Wait, I'm holding my place
24 here.

25 JUDGE BECHHOEFER: Okay.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MS. ZAMEK: Can I add something?

2 On CFR 5195(A), there's a part that says --

3 JUDGE BECHHOEFER: Hold on. Let me get it.

4 MS. ZAMEK: Okay.

5 JUDGE BECHHOEFER: Okay.

6 MS. ZAMEK: About halfway down on that first
7 column. "Unless otherwise determined by the Commission, a
8 supplement on the operation of a nuclear power reactor will
9 not include discussion of need for power or alternative
10 energy sources or alternative sites or of any aspect of the
11 storage of spent fuel for the nuclear power reactor within
12 the scope of the generic determination," blah, blah, blah,
13 but it seems to me unless otherwise determined by the
14 Commission, so it seems like you could do it. The
15 Commission could consider these issues. Am I right?

16 JUDGE BECHHOEFER: I think the Commission -- as
17 such, the Commission certainly could. I'm not sure we can
18 or not.

19 MS. ZAMEK: Okay.

20 JUDGE BECHHOEFER: But when we consider this
21 contention, this is one of the things we'll look at.

22 MS. ZAMEK: And --

23 JUDGE BECHHOEFER: Because often when it says the
24 Commission, it doesn't mean this part of the Commission.

25 MS. ZAMEK: Right. I understand.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters

1612 K. Street, N.W., Suite 300

Washington, D. C. 20006

(202) 293-3950

1 Do you -- I'm looking for my NEPA stuff. Are you
2 allowed to consider the economic issue under NEPA? Because
3 the meaning is -- is it cost effective to operate this plant
4 in these extended years?

5 JUDGE BECHHOEFER: I think the answer to that
6 inquiry is a little bit complicated, because if economic
7 issues are related to the environment in some way --

8 MS. ZAMEK: Well, it said that under --

9 JUDGE BECHHOEFER: -- then possibly we could
10 consider them. But purely economic issues I don't think we
11 can. That's why we're not going to rule from the bench on
12 this contention. We've got a lot to look at.

13 MS. ZAMEK: Because under NEPA 43332, under (B),
14 they talk about -- let's see, identifying and develop
15 methods and procedures, et cetera. It says, "Given
16 appropriate consideration in decision making along with
17 economic and technical considerations," because I know some
18 people were discussing earlier the economics of operating a
19 power plant has not shown a good history, and I have numbers
20 here. The cost of steam generator tube repair is
21 substantial. San Onofre spent -- in 1980, spent \$68 million
22 on sleeving 6,500 tubes. Surry plant in 1979 spent 367
23 million replacing their steam generators. Portland General
24 Electric Company voted in '92 to close their plant in 1985,
25 15 years before its license expires, rather than spend 200

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 million to replace steam tubes. 30 of the 111 U.S. nuclear
2 plants share similar Westinghouse Electric Company design
3 like -- as Diablo has, and eight have replaced their steam
4 generators because of corrosion. Five plant owners have
5 sued Westinghouse, and earlier this year Yankee Row decided
6 against reopening their reactor because of the steel rack
7 containment vessel was brittle.

8 Southern California Edison announced in January of
9 1992 that it would shut down its 23-year-old Unit 1 in two
10 years rather than pay 25 million to bring it up to current
11 standards, and that was licensed until 2004, so if you can
12 bring in -- and the point is we don't believe it's
13 economical to run a nuclear power plant any longer.
14 Certainly not past the year 2000 -- or it's current.
15 Whatever, two whatever, 2008.

16 MR. REPKA: And that really is not an issue before
17 this Board in any way.

18 MS. ZAMEK: Well, I thought it might be through
19 NEPA; that they could consider it.

20 MR. REPKA: Well, we disagree with that.

21 JUDGE BECHHOEFER: I don't think we're going to
22 rule on the bench on this contention anyway, but --

23 MS. ZAMEK: I wanted just for information, who
24 prepares the environmental assessment?

25 JUDGE BECHHOEFER: The NRC Staff. I can't tell

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 you the name of the people.

2 MS. ZAMEK: Right, but do they get the information
3 from the utility? I don't know how that operates.

4 JUDGE BECHHOEFER: Well, maybe Miss Hodgdon can
5 comment. I don't like to say where they get their
6 information from.

7 MS. ZAMEK: I want to know, also, who determines
8 whether an EIS is warranted after the --

9 JUDGE BECHHOEFER: Well, the Staff will reach that
10 conclusion in its assessment as they are required to do, but
11 who does it, I can't really tell you.

12 MS. HODGDON: The director. It would be NRR, it
13 would be Dr. Murley.

14 MR. REPKA: The discussion now is getting a little
15 off the point.

16 MS. HODGDON: According to the regulations -- yes.
17 Yes. Well, that's who prepares. But the licensee puts in
18 his application and environmental report which could be
19 supplemented by other information. That's the basis of the
20 environmental assessment. Part of it is generic.

21 JUDGE BECHHOEFER: Okay. As we've finished all
22 the contentions now, we have decided that if we should -- it
23 would be not too appropriate at this stage to talk about
24 future scheduling and discovery, but we will convene -- if
25 we should decide to accept any of the contentions, we will

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 try to convene a telephone conference call to talk about
2 discovery that might follow. I think it would be better to
3 do that than to try to come up with hypothetical schedules,
4 and the number of contentions accepted might determine in
5 part what the length of the discovery is.

6 There would be an awful lot of matters that I
7 don't think we can come to grips with now without having
8 reached a decision on any of the contentions, whether
9 they're admissible or not. So unless I hear something to
10 the contrary from the parties, I -- petitioner or parties, I
11 don't think we can make an intelligent ruling, at least on
12 discovery, but certainly if we allow any contentions in in
13 an order which we will issue, and I can't give you any
14 particular schedule on that. Well -- some of these are very
15 complicated, and we will get through them as quickly as we
16 can. As I said, we are going to rule that the Mothers have
17 standing and we will spell that out in some detail.

18 We will also rule on contentions and thereafter
19 will have some sort of a -- if necessary, we'll have a
20 telephone conference call at which all the parties will have
21 to be represented. And we'll discuss discovery schedules to
22 the extent appropriate. So --

23 MR. REPKA: That's acceptable to PG&E.

24 JUDGE BECHHOEFER: Is that acceptable to the
25 Mothers?

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 MS. ZAMEK: That's agreeable.

2 MS. BECKER: Uh-huh.

3 JUDGE BECHHOEFER: We really can't tell until we
4 know how many contentions, if any, but how many contentions
5 they're in. The NRC discovery rules might be okay for one
6 contention or maybe they're not even enough for one
7 contention or maybe they're too much, but the number that
8 are accepted and their complexity would determine in part
9 the length of discovery and that type of thing. So we will
10 convene a telephone conference call for that, try find other
11 time when everybody's available. Various cities in the
12 country; sometimes it's not too easy.

13 Does the Staff approve of that approach?

14 MS. HODGDON: Yes.

15 JUDGE BECHHOEFER: Not to touch discovery at this
16 stage but to --

17 MS. HODGDON: Yes. Yes, Judge Bechhoefer. The
18 Staff approves of that approach.

19 JUDGE BECHHOEFER: Okay. Is there anything else
20 that any of the parties or petitioner wishes us to consider?

21 MS. BECKER: I just have a question. Is there any
22 closing arguments or submittals that are going to be coming
23 to you?

24 JUDGE BECHHOEFER: Not --

25 MS. BECKER: We haven't received things in a very

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 timely basis, so we kind of like to know if people are going
2 to be saying anything so we know they're coming.

3 JUDGE BECHHOEFER: No. We're not going to invite
4 any further responses. We're going to try to rule on what
5 we have before us, including what we heard today, and that
6 will take a few days for the transcripts and that type of
7 thing, so -- but I think we'll be finished with everything
8 that we were going to talk about except, of course, for the
9 limited appearance statements which will start tonight and
10 go from 7:00 to -- we had said 9:00. I'm not sure when
11 they'll close the place up. If they run a little late, we
12 might stay a little late. We understand there are quite a
13 few requests that we've received. We've apparently got
14 about 40 or 50 requests. If everybody gets five minutes,
15 it's going to run over two hours.

16 We've also decided that although we stated that we
17 would resume for limited appearances, only if we resume for
18 other reasons, we have decided that we will -- if there are
19 further people present tonight who can't make their
20 statement, we'll come back at nine clock and hear further
21 statements. It appears we will not have anything
22 substantive to decide, so that part of the conference we're
23 going to close right now. But we will come back at nine in
24 the morning, and if people are there, at least, who wish to
25 make statements, we will hear the statements at that time.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 I think given the number of people who we have heard want to
2 make statements, that we do not like to cut people off if we
3 can help it.

4 MS. HODGDON: Judge Bechhoefer, may I ask a
5 question? What time would you conclude tomorrow, then, the
6 limited appearances? Just go tomorrow morning or --

7 JUDGE BECHHOEFER: Pardon?

8 MS. HODGDON: You won't go into the afternoon
9 tomorrow?

10 JUDGE BECHHOEFER: No. We will not do that. In
11 fact, we and all the parties and petitioner are invited, I
12 guess, on a site tour, and that would start right after the
13 session, and I hope -- would hope it would start in the
14 morning.

15 One moment. Yes.

16 UNIDENTIFIED WOMAN: Mr. Chairman, can you take
17 any statements tonight from those of us that are from out of
18 town, from Santa Barbara?

19 JUDGE BECHHOEFER: Well, we are going to take
20 statements tonight from 7:00 to 9:00.

21 UNIDENTIFIED WOMAN: I just got here, so I wasn't
22 clear on it.

23 JUDGE BECHHOEFER: But I said we've gotten over 50
24 requests already, and I don't think those requests are going
25 to fit in the two-hour period that we are going to delegate.

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

1 But certainly for people who are here tonight who say they
2 can't come back tomorrow morning, we would make every effort
3 to hear those people.

4 UNIDENTIFIED WOMAN: Thank you.

5 JUDGE BECHHOEFER: But make known -- in fact, I'll
6 try to remember to ask people if there are any here tonight
7 who could get back tomorrow morning, because it appears that
8 by the time we quit, even if we run 58 minutes late, we've
9 been told the place should close up by 9:30, so that means
10 we got to allow a few minutes for people to leave, so --

11 MS. CULVER: Actually, there's no reason to get
12 out at 9:30. The City Council goes to midnight frequently
13 in this room.

14 JUDGE BECHHOEFER: We were told by people who
15 asked that they like to shut the place up. We'll be back at
16 seven o'clock for that purpose, and that that will continue
17 tomorrow if it appears there are many, many, many people who
18 wish to make a statement. But the substantive portion is
19 now closed. We'll come out with an order as soon as we can.

20 (The hearing was concluded at 5:15 p.m.)

21
22
23
24
25

ANN RILEY & ASSOCIATES, Ltd.

Court Reporters
1612 K. Street, N.W., Suite 300
Washington, D. C. 20006
(202) 293-3950

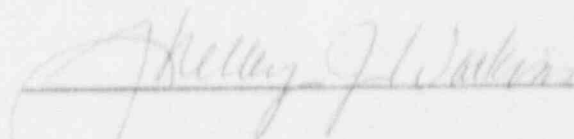
REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

in the matter of:

NAME OF PROCEEDING: DIABLO CANYON UNITS 1 & 2
DOCKET NUMBER: 50-275/323-OLA-2
PLACE OF PROCEEDING: SAN LUIS OBISPO, CALIFORNIA

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.



Official Reporter
Ann Riley & Associates, Ltd.