

CR#8047

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UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

In the matter of:

WISCONSIN PUBLIC SERVICE CORPORATION
WISCONSIN POWER AND LIGHT COMPANY

AND

MADISON GAS AND ELECTRIC COMPANY

(Kewaunee Nuclear Power Plant)

Docket No. 50-305

Suite 720, 1111 20th Street, N. W.
Washington, C. C.

Wednesday, 10 January 1973

The prehearing conference was convened, pursuant
to notice, at 9 a.m.

BEFORE:

MR. JOHN B. FARMAKIDES, Chairman, Atomic Safety
and Licensing Board.

DR. WILLIAM MARTIN, Member.

MR. FREDERICK J. SHON, Member.

MR. HUGH K. CLARK, Alternate Chairman.

APPEARANCES:

(As heretofore noted.)

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P R O C E E D I N G S

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CHAIRMAN FARMAKIDES: Good morning, Ladies and

Gentlemen. The hearing will now be in order. The record will

show that this prehearing conference began at 9:30, in the
VanGuard Building, 1111 - 20th Street, N. W., Washington, D. C.

This is the second prehearing conference in pre-
paration for the evidentiary hearing to consider the application
filed under Section 104(b) of the Atomic Energy Act by the
Wisconsin Public Service Corporation, the Wisconsin Power and
Light Company, and the Madison Gas and Electric Company, whom
we will henceforth call the Applicants, for a Facility Operating
License which would authorize the operation of a pressurized
water reactor identified as the Kewaunee Power Plant at a
steady power level up to a maximum of 1650 megawatts thermal
in Kewaunee County, Wisconsin.

We have had one prehearing conference in this case
and this is the second one prior to commencing the evidentiary
hearing on a scheduled date of January 30, 1973. We have
previously identified the Board. On my left is Frederick J.
Shon, on my right is Dr. William Martin, and my name is John
Farmakides.

I would like to ask the parties this morning -- I
see some faces here that I have not seen before -- I would like
to have the parties identify themselves for the record. For
the Applicant?

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1 MR. CHARNOFF: Sir, my name is Gerald Charnoff. I am
2 a partner in the law firm of Shaw, Pittman, Potts and Trowbridge
3 at 910 - 17th Street, N. W., Washington, D. C. On my left is
4 my partner, Mr. Bruce Churchill of the same law firm. Sitting
5 across the table from me is Mr. Stephen Keane, of the law firm
6 of Foley and Lardner in Milwaukee, and on my right is Mr. Carl
7 Giesler, who is the Superintendent of Nuclear Power for the
8 Applicant, Wisconsin Public Service Corporation.

9 CHAIRMAN FARMAKIDES: Thank you. For the Staff?

10 MR. RENFROW: Thank you, Mr. Chairman. My name is
11 Rex Renfrow. On my left is Mr. Joseph Gallo, on my right is
12 Mr. Perry Seiffert, and further to my right is Mr. Geoffrey
13 Gitner. Mr. Gallo, Mr. Seiffert and myself represent the
14 Regulatory Staff in this case. Mr. Gitner is here today only
15 for the purposes of the prehearing conference.

16 CHAIRMAN FARMAKIDES: Thank you. For the Joint In-
17 tervenors?

18 MR. VOLLEN: Thank you, Mr. Chairman. My name is
19 Robert J. Vollen. I am a lawyer in Chicago with offices at
20 109 North Dearborn Street. Here is Mr. David Dinsmore Comey
21 who is the Director of Environmental Research of BPI, one of
22 the intervenors in this proceeding.

23 CHAIRMAN FARMAKIDES: Thank you. Insofar as the
24 Board is concerned, there are three major topics for discussion
25 today. One relates to the contentions, of course. A second

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1 relates to the objections voiced by the Intervenor to the
2 portion of the Order of December 4th of the Board. A third
3 relates to the scheduling.

4 What we thought we would do -- it is up to the parties
5 to advise the Board how they feel, too -- is to go in sequence,
6 discuss the contentions, those that the Board wishes to have
7 discussed. We have gone over the contentions, all of them. Some
8 of them, of course, have appeared earlier in the initial version.

9 We would like, however, some clarification with
10 respect to a number of them. We would like to have those con-
11 tentions discussed. We will then go to the issue of paragraph
12 4, and we would like to have that discussed by the parties. Then
13 I guess the last issue is the scheduling. In view of one and
14 two, we can better I think schedule the remaining actions that
15 have to be accomplished prior to the evidentiary hearing, and
16 perhaps in view of the number of contentions, the parties might
17 consider seriously the issue of whether we should postpone the
18 evidentiary hearing for perhaps one week to give the Board
19 additional time to consider the contentions.

20

21 MR. VOLLEN: Mr. Chairman?

22 CHAIRMAN FARMAKIDES: I will hear discussion on how
23 that sounds to the parties. Did you have something, Mr. Vollen?

24 MR. VOLLEN: I did, Mr. Chairman, with respect to the

25 first of those topics, that is, the discussion of the contentions.

1 I have prepared a short document, one principal
2 purpose of which I hope has not been rendered academic, and that
3 is, to advise the Board formally of the withdrawal of those
4 contentions that were contained in the stipulation. I understand
5 that Mr. Renfrow talked to you orally about this document, and
6 among other things, formally withdrew those contentions.

7 CHAIRMAN FARMAKIDES: Which document are you talking
8 about, sir?

9 MR. VOLLEN: The one I now have in my hand that
10 I would like to submit to the Board.

11 CHAIRMAN FARMAKIDES: It has not been submitted
12 before?

13 MR. VOLLEN: That is right, sir.

14 CHAIRMAN FARMAKIDES: That is good.

15 MR. VOLLEN: May I do that at this time, Mr. Chairman?

16 CHAIRMAN FARMAKIDES: Yes, you may.

17 MR. VOLLEN: May the record further show that I am
18 serving copies on counsel for the Applicant and counsel for the
19 Staff.

20 MR. RENFROW: Mr. Chairman?

21 CHAIRMAN FARMAKIDES: Mr. Renfrow.

22 MR. RENFROW: Contention 338 is one of the conten-
23 tions which was not correctly included in the piece of paper
24 which we submitted to the Board earlier in the week.

25 CHAIRMAN FARMAKIDES: Now wait a minute. What piece

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#1 1 of paper? Let's identify these things, Mr. Renfrow. What
Reba 5 2 date?

3 MR. RENFROW: The document dated 1-5-73, entitled
4 "Stipulation With Regard to Matters of Controversy and Con-
5 tentions." The Regulatory Staff, in typing up its portion of
6 this document, erred in typing contention 3.3.8. Mr. Vollen has
7 pointed this out in the piece of paper he has now filed to the
8 Board. I have the contention retyped in its correct form on
9 a single sheet of paper which I would like to have passed out
10 to the Board so they may just include that within the stipulation
11 to replace Contention 338 that they now have.

12 CHAIRMAN FARMAKIDES: 3.3.8?

13 MR. RENFROW: Yes, sir.

14 CHAIRMAN FARMAKIDES: You may do that. Are there
15 any objections?

16 MR. VOLLEN: No.

17 CHAIRMAN FARMAKIDES: I would like the record to
18 show that Dr. Hugh Clark, the Alternate Chairman, has just
19 joined us. I am glad to see you, Mr. Clark.

20 You can see that -- at least it is rather obvious
21 to the Board, that there has been significant action by the
22 parties, and we are pleased to see it -- towards resolving some
23 of the issues between them.

24 However, it is also obvious to the Board that much
25 of this information has come in the last two or three days, and

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1 for the Board to rule responsibly with respect to the Conten-
2 tions, we are going to need more time, Gentlemen.

3 In order for us to rule, we know most of the Con-
4 tentions, we have already gone over them. We have gone over the
5 second set. Now evidently the second set has been modified
6 further and yes, we did receive the telephone call from Mr.
7 Renfrow, representing all parties, advising us of those that have
8 been withdrawn.

9 The Board has now the job of going back and integrating
10 all the contentions to see that they in fact fit and that there
11 are no duplications. This is going to take some time. What does
12 this mean? It means that we can't rule really before next week.

13 In order then for the parties to know which contentions
14 are in the case insofar as the Board is concerned, we would feel
15 that it would be reasonable to postpone the evidentiary hearing.
16 How long? One day, two days, three days? I will hear discussion
17 on that.

18 It may be better to postpone it for one week. It
19 depends on how soon the parties can react to the Contentions
20 that the Board admits for purposes of the case.

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1 MR. RENFROW: Mr. Farmakides?

2 CHAIRMAN FARMAKIDES: Yes.

3 MR. RENFROW: Perhaps your first suggestion of
4 going through the contentions and then going to paragraph 4
5 before we talk about the schedule might be the best to do.
6 That will give the parties a chance to think about it and
7 maybe come to some agreement between themselves, as to whether
8 an appropriate schedule -- what it would be in view of the
9 Board's need to review the petitions in their entirety.

10 CHAIRMAN FARMAKIDES: Thank you, Mr. Renfrow.
11 That's correct. The reason I am mentioning it now is for you
12 to begin to think about it. I think it is wise that we go
13 through those contentions which the Board needs clarification
14 on, and then let's discuss paragraph 4, then we will get
15 back to the schedule.

16 Okay. Let's turn to the contentions submitted by
17 the Joint Intervenors. What we are going to do is ask for
18 discussion, clarification, if you will, with respect to only
19 some of the contentions. We feel relatively certain with
20 respect to others. Some we feel clearly can be acted on, and
21 others we feel cannot be acted on without further clarification.

22 What we might do is go through each one in turn.
23 I might first mention the total number of contentions that we
24 want to discuss, and then we will go back through each in
25 turn.

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1 Now for the convenience of the parties, let me state
2 them. 3.3.3, 3.3.5.1, 3.3.6.3, 3.3.7.1, 3.3.8, 3.4.3.1,
3 3.6.1.1, 3.6.2, 3.7.1, 3.12.3, 3.14.2.2, 3.17.1, 4.4.3,
4 4.5.2, 4.6.1, 4.7.2, 4.15.1, 4.16.3, 5.4-C, 6.1.1, 6.2,
5 6.7.4-C.

6 Now there is one other clarifying matter that I
7 want to raise now, and I would like to ask Mr. Vollen to talk
8 to this point. Some of your contentions, Mr. Vollen,
9 evidently are in the nature of preambles to other contentions.
10 At least you have voiced them as contentions. But you don't --
11 I don't fully understand them. For example, the relationship
12 between contention 3.3 and 3.3.1, or any of the others that
13 follow. You state that it is merely introductory. However,
14 you state it as a contention. Now do you mean to include this
15 as a separate contention on which there will be some showing
16 made?

17 MR. VOLLEN: In general I think the specific answer
18 to your specific question is no, that those introductory
19 paragraphs were written just as that, to put the specific
20 contentions into context so that the Commission and the Board
21 would be apprised of that particular aspect of the noncompliance
22 of the particular aspect of the safety of the plant that we
23 were concerned about.

24 Does that answer your question?

25 CHAIRMAN FARMAKIDES: Not fully. You say in general.

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1 Now what is the qualification? What is the exception?

2 MR. VOLLEN: I just don't have all of those in
3 mind. As far as I am aware, as I sit here now --

4 CHAIRMAN FARMAKIDES: They are all like that.
5 They all have an introductory statement which you identify as
6 a contention. The Board is faced with the problem, do you
7 mean this as a contention or are you really merely introducing
8 the contentions that follow? We think it is the latter, but
9 we just don't know.

10 MR. VOLLEN: It is the latter, Mr. Chairman.

11 CHAIRMAN FARMAKIDES: It is the latter. All right.
12 These introductory contentions then that you have voiced as
13 contentions are not in fact then to be considered by the Board
14 as the contentions. They are introductory to the contentions?

15 MR. VOLLEN: That's right.

16 CHAIRMAN FARMAKIDES: Okay.

17 MR. VOLLEN: That introduction could as well have
18 been typed preceding each of the contentions in that section.

19 CHAIRMAN FARMAKIDES: Fine. All right. Now let's
20 go to 3.3.3. That is the first one that the Board wishes to
21 request discussion on. I think Mr. Shon had some questions
22 on this.

23 MR. SHON: The main --

24 MR. CHARNOFF: Excuse me, sir.

25 CHAIRMAN FARMAKIDES: Yes.

1 MR. CHARNOFF: I think it would be helpful,
2 considering the number of items, if we might each take a
3 moment to reread that particular contention under inquiry
4 before we proceed with the discussion.

5 CHAIRMAN FARMAKIDES: That is a good idea. Let's
6 do that.

7 MR. SHON: Fine.

8 CHAIRMAN FARMAKIDES: Incidentally, to the
9 procedure of this, we don't want a long dissertation. We
10 just want concise answers to the questions the Board raises
11 so we can clarify the contentions.

12 Let's proceed now.

13 MR. SHON: The point that I would like some
14 clarification on, I would pose the question actually to the
15 Intervenors and the Staff jointly -- it is the sentence, "It
16 has been admitted by the Regulatory Staff" --

17 CHAIRMAN FARMAKIDES: The bottom third of the page.

18 MR. SHON: -- "that flow blockages and embrittlement are not
19 implicitly or explicitly part of the interim acceptance criteria for ECCS, and
20 in order to determine whether an individual plant complies with the interim
21 acceptance criteria, further calculations taking flow blockage and embrittle-
22 ment into consideration must be made in order to ensure that the core
23 retains a geometry amenable to cooling."

24 Now the fact that the core must retain a geometry
25 amenable to cooling is specifically part of the criteria.

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1 The transient must be terminated before that -- before any
2 dead relation of this sort occurs. Does the Staff indeed
3 admit that you have to make separate calculations and include
4 the fact that the geometry might change? I thought they did
5 not. You allege that they do? Do they?

6 MR. VOLLEN: In what is commonly referred to as the
7 ECCS rulemaking proceedings, being AEC Docket RM50-1, on
8 January 28, 1972, at page 699, Mr. -- Dr., excuse me --
9 Steven Hanauer testified, and I quote, "Conformance with
10 criteria 1 and 2 can usually be determined directly from
11 the calculations, whereas additional information may be
12 required to show conformance with criteria 3 and 3."

13 And it is criteria 3 that deals with core geometry.

14 MR. RENFROW: If I may respond, Mr. Chairman, I
15 believe that that was taken out of the rulemaking hearing.
16 However, it is the Staff's position, and I believe that
17 position is backed up by the decision in Indian Point 2 --
18 the number is A-LAB-46-- that the Appeals Court ruled there
19 that flow blockage need not be considered on a case-by-case
20 basis.

21 It is not explicitly set out in the criteria or the
22 model. It is not explicitly noted there that certain things
23 must be done, but it is implicitly referred as the Appeal
24 Board decision, and says that this has to be taken care of under
25 the criteria.

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1 The Staff direct testimony at Section 2.4.2.1 of
2 the ECCS rulemaking hearing explicitly directed its attention
3 to this subject. The embrittlement was discussed in
4 Section 2.2, cladding temperature in 2.3, metal water reaction
5 in the same section. The supplemental testimony in Chapter 20,
6 flow blockage, was addressed. Chapter 18 of the supplemental
7 testimony, embrittlement and post blowdown loads were also
8 discussed. There were many, many references in the ECCS
9 proceeding going directly to this point.

10 The answer to the question is: The Staff's position
11 is, number one, it is excluded by the Indian Point A-LAB-46
12 decision; and two, yes, it is covered by the interim
13 acceptance criteria and thus is not appropriate, an appropriate
14 matter to be heard in this proceeding.

15 MR. SHON: Then the statement here, "The Staff
16 admits that this is not explicitly or implicitly covered by
17 the criteria," is not correct? You do not agree with this?

18 MR. RENFROW: No, sir, I believe that statement was
19 made as Mr. Vollen refers to Dr. Hanauer's testimony. I
20 think this can be made by himself, this interpretation. How-
21 ever, as I stated, it is not explicitly directed to itself
22 in the criteria.

23 MR. SHON: But it is implicit?

24 MR. RENFROW: Yes.

25 MR. SHON: That is what bothered me most, implicitly.

1 Okay.

2 CHAIRMAN FARMAKIDES: The next one we need to
3 clarify further -- did the Applicant want to say anything
4 about that? Not that the question was directed to you, but
5 if you feel there is anything you can contribute --

6 MR. CHARNOFF: It is our view that this is a
7 challenge to the criteria. It is our understanding that if
8 anything, the substance of the entire testimony by the
9 gentleman from Oak Ridge at the ECCS hearing was concerned
10 directly with the whole question of embrittlement and the
11 extent to which that is or is not adequately recognized by
12 the criteria. That is an issue in that particular hearing.
13 The substance of our position is that that is inherent in
14 the criteria.

15 CHAIRMAN FARMAKIDES: Thank you.

16 Anything further on this matter?

17 All right, let's go to 3.3.5.1.

18 MR. SHON: Have we had time to look at this yet?

19 CHAIRMAN FARMAKIDES: Have you read it yet? It
20 shouldn't take too much time. I am sure you have all gone over
21 this time and time again.

22 MR. RENFROW: I am afraid that is the case.

23 MR. SHON: It certainly appears that way. The
24 contention appears to require three separate failures to produce
25 an undesirable situation, a clearly undesirable situation. I

1 would like to hear the Staff and the Intervenor also discuss
2 the relationship between this, the ACRS worries on anticipated
3 transients without SCRAM and the possibilities of common
4 mode failure.

5 CHAIRMAN FARMAKIDES: You can time sometime to
6 consult, if you want.

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MR. VOLLEN: Mr. Farmakides?

CHAIRMAN FARMAKIDES: Mr. Vollen?

MR. VOLLEN: In lieu of consulting, or perhaps
in addition to consulting, I would like to request the Board's
permission to permit Mr. Comey, the Director of Environmental
Research for BPI, one of my clients, to respond to that question.

CHAIRMAN FARMAKIDES: Surely.

MR. VOLLEN: Thank you, sir.

CHAIRMAN FARMAKIDES: Mr. Comey, are you prepared --
wait a minute, I'm sorry. Are you all finished, Mr. Renfrow?
Would you like additional time? All right, Mr. Comey.

MR. COMEY: I'm to go first?

CHAIRMAN FARMAKIDES: It doesn't matter. I think
it would be a good idea if you would.

MR. COMEY: I think that the intervenors are contending
that this is an accident that ought to be analyzed because
valves do stick, there have been instances reported quite
frequently, as a matter of fact, in abnormal occurrence reports,
of reactors with delayed SCRAMs or control rods failing to
insert when tripped.

Also, we would like to point out that in the
final safety analysis report for this plant, under the locked
rotor accident section, the applicant does analyze for not
only a locked rotor but assumes that for the purposes of
analysis that the pressurizer release valves do not open.

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1 So they in effect have analyzed for two out of the three
2 incidents that we mentioned in this context. They have also,
3 in a Westinghouse development related to the ACRS's concern
4 about anticipated transients without the SCRAM, analyzed for
5 the case in which you have a locked rotor and the reactor
6 does not trip. In that case, the pressurizer relief
7 valves are assumed to open.

8 We think that in view of the gravity of this
9 accident one must analyze all three.

10 MR. SHON: However, do you carry this process? I
11 mean, you have analyzed for one failure, for a second failure,
12 for a third failure. I can perhaps, given a few minutes,
13 think of a 4th or a 5th failure, all fairly low probability.
14 What would you feel is an adequate measure of however this
15 process may be carried or must be carried, to what measure
16 of probability, to what number of failures, or what?

17 Did you have any sort of measure you can give me?

18 MR. COMEY: I think I have answered that implicitly
19 by the fact that this is the only one of this type that we
20 have placed into contention. We did review possibilities of
21 combinations of other types of accidents. We discussed
22 it with the staff, the staff -- they can speak for themselves,
23 but I think generally they felt that certainly if one postulates
24 that every single piece of safeguard equipment does fail, then
25 you will have a very serious accident on your hand.

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1 It was our position after looking at the various
2 combinations that this one in particular was one that worried
3 us and we felt an analysis should be done.

4 MR. SHON: Mr. Renfrow?

5 CHAIRMAN FARMAKIDES: Mr. Renfrow?

6 MR. RENFROW: The accidents^s to be analyzed by
7 the staff and I guess first of all by the applicant have
8 been formulated throughout the years and are now listed in
9 the standard format to applicants' final safety analysis reports.

10 The criteria for the analysis of this accident is
11 the single failure criterion, single failure criterion, which
12 is spelled out in the introduction of Appendix A to Part 50
13 under the definition failure as to single failure. It does
14 not -- it requires an applicant to analyze for accidents
15 as to the single failure criteria.

16 This particular contention is concerned with the
17 design criterias 12, 13, and 20. What the intervenors in
18 this particular contention are asking the staff to do is to,
19 one, analyze for a locked rotor. We have done that. Two,
20 they are asking us to not only analyze for a locked rotor,
21 but for three or four reactor trips to fail simultaneously,
22 which gets us to at last, which as you know, the ACRS is
23 concerned about.

24 The staff has selected the last as it applies to
25 Kewaunee. On top of all this, they are now asking us to also

dh4 1 consider that at the same time, the other two events happened,
2 we have four pressurized relief valves failing totally. Now
3 there are two power operated valves and two code safety
4 valves. Giving us four pressurized relief valves.

5 At one time the intervenors are asking us to
6 analyze for an accident at which at one time all of this gear
7 fails: We think that is a serious violation of the single
8 failure criterion and we don't think the staff is required
9 by the applicant to analyze for this accident.

10 We can add, as you pointed out, another and another.
11 Nor is there, Mr. Chairman, any reasonable explanatory words
12 in this to explain to the staff why this might be a credible
13 event. There is the mere statement that we should analyze
14 for all three of these because if we don't, this is what
15 is going to happen.

16 The single failure criterion is a directional
17 ending to the regulations. If the intervenors wish to contend
18 that this contention should be heard -- and I can suggest to
19 this Board that the path to take is 2.758, and not the path
20 which is taken here -- I think common model failure, Dr. Martin,
21 in this instance, is not applicable to the particular conten-
22 tions expressed herein.

23 Common mode failure is something that of course
24 the staff is concerned about.

25 MR. SHON: In other words, in effect, you see, no

1 common mode in it?

2 MR. RENFROW: As I understand common mode in this
3 contention, no, sir.

4 CHAIRMAN FARMAKIDES: Mr. Charnoff, did you have
5 any thoughts here, sir?

6 MR. CHARNOFF: I don't think I could add to what
7 Mr. Renflow stated, Mr. Chairman.

8 CHAIRMAN FARMAKIDES: All right. Mr. Vollen?

9 MR. VOLLEN: I would like to respond briefly, if
10 I may. In the first place, the counsel for the staff has said
11 that in his view, this is a challenge to the single failure
12 criterion. In your view, there is no thing such as the single
13 failure criterion. There is in Appendix A to Part 50 a
14 definition of the term "single failure."

15 I think it is clear from the discussions that have
16 gone on between and among the parties that the staff and the
17 intervenors have a different view as to what that definition
18 means, Point Number One.

19 Point Number Two, if I heard Mr. Renfrow correctly,
20 What he was saying was that the staff has analyzed for the
21 32 events described in this contention, and the staff doesn't
22 belief it necessary as a safety precaution to analyze for
23 all three events happening together. That may be a
24 reasonable argument on the merits. That may turn out to be
25 the type of evidence or, to the position that the staff will

1 take. It seems to me at this point the question only is
2 whether that question as to whether or not the Staff should
3 require an applicant to analyze for those three events is
4 something this Board ought to consider on the evidence rather
5 than coming to the conclusion as to what the answer to it is
6 right now.

7 CHAIRMAN FARMAKIDES: All right. I think that is
8 sufficient on this one.

9 The next one is 3.3.6.3. Mr. Shon?

10 MR. SHON: Do you want to take a moment or two to
11 look at it? This is something I wanted to talk to the
12 Intervenor and the Applicant on. The Staff may also have
13 something to say on the matter. 3.3.6.3. It refers to the
14 selector switch interlock. The contention asserts that no
15 single failure analysis has been made of this system. The
16 Applicant in their reply to the Intervenor said that such had
17 and they referred to page 6.2-8 in the FSAR, and that says in
18 one paragraph also that such a single failure analysis has been
19 made. Has it or hasn't it?

20 MR. RENFROW: I believe that the Applicant has now
21 before it, or is in the process of submitting to the Staff
22 an answer to a specific question involving this system as it
23 is stated here. It may have been analyzed by the Applicant
24 and has not been analyzed to the Staff's satisfaction, nor have
25 we received the answer from them and analyzed it. When that is

1 done, at that point the Staff can then take a position on it.
2 We have not yet done that, nor have we okayed this particular
3 item as it now stands.

4 MR. SHON: I see.

5 MR. CHARNOFF: Mr. Chairman --

6 CHAIRMAN FARMAKIDES: Did you have a comment, Mr.
7 Vollen?

8 MR. VOLLEN: I had only a parenthetical comment.
9 That is, I would like to point out an apparent inconsistency
10 between my remarks and the last contention we discussed,
11 namely that in our view there is no single failure criterion,
12 and the statement in this contention that we don't believe that
13 the system described in 3.3.6.3 meets the single failure criterion
14 That apparent inconsistency can be resolved by my saying that
15 what we really meant in 3.3.6.3 is that it does not meet the
16 Staff's definition of the single failure criterion as they
17 use that term.

18 CHAIRMAN FARMAKIDES: Mr. Charnoff?

19 MR. CHARNOFF: There seems to be some misunderstanding-
20 ing of fact. At the meetings last week, of course, we were
21 given this contention, 3.3.6.3, and to the best of everybody's
22 recollection, the status report filed with the stipulation was
23 accurate.

24 Following that meeting, however, this indicates
25 the difficulty with doing things in a hurry. It turns out,

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1 as Mr. Shon has noted from our document that was filed
2 yesterday morning with yourself and last evening with the
3 parties, that in fact the FSAR does reflect the fact that
4 the Applicant at least performed a single failure analysis.
5 We are not aware, as Mr. Renfrow has just stated -- we are
6 not aware of any question being asked of the Applicant with
7 respect to the adequacy of that single failure analysis.
8 I think there was some misunderstanding last week, Mr.
9 Renfrow, with regard to the status of this matter. To the best
10 of our recollection, we have not been asked any question
11 about the statements made in the FSAR, and to the best of our
12 knowledge, we owe no one any information on this matter.

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1 CHAIRMAN FARMAKIDES: Look, this is a good point
2 to state that as this discussion continues, the parties may
3 well note items in the contentions that they can all talk to
4 each other about again. There is no reason for your negotia-
5 tions to stop merely because we are beginning to focus on
6 these contentions; that we intend to rule on these contentions.

7 There may well be room for further refinement of
8 the contentions and possibly further stipulation. Anything
9 further, Mr. Charnoff?

10 MR. CHARNOFF: No, sir. It seems to me that we
11 badly need some clarification as to what the situation is
12 among the three parties.

13 I agree with you, there is no reason to halt any
14 discussions and it is not our intention to do that, at all.
15 However, part of the problem of moving with as many contentions
16 as we had to move last week, is that we ran into this kind of
17 a problem with everybody's recollection, and at the moment,
18 our position is (a), that the analysis has been made, and (b),
19 as far as the contention itself is concerned; we are not aware
20 of any particular problem with that coming from the intervenor.

21 Without making any speeches on it, as is evident
22 from the papers that we stand on, our position is clearly that
23 for a contention to be heard, there must be an adequate basis
24 by this time.

25 CHAIRMAN FARMAKIDES: Mr. Renfrow, anything further

1 to clarify this particular point?

2 MR. RENFROW: Yes, Mr. Chairman.

3 I will not take issue with Mr. Charnoff. Certainly,
4 they know what they have submitted, and have not. However,
5 I would reiterate that the staff has not completed its analysis
6 on the submission on this question. We still have it under
7 review inhouse.

8 CHAIRMAN FARMAKIDES: Okay. Let us go to the next
9 contention, unless there is something more to be said on this
10 one.

11 Our next contention is 3.3.7.1.

12 MR. SHON: Do you want some time to read it?

13 MR. CHARNOFF: Please.

14 MR. SHON: All right.

15 MR. GALLO: Mr. Chairman?

16 CHAIRMAN FARMAKIDES: Yes, sir, Mr. Gallo?

17 MR. GALLO: While the parties are reading the
18 contention, might I suggest Mr. Shon raise his voice a little.

19 MR. SHON: Sure.

20 MR. CHARNOFF: For the benefit of the reporter, Mr.
21 Renfrow used a term before, twice in his answer, called ATWOS.
22 and I don't know how you spell that. I suggest you spell it
23 a-t-w-s.

24 MR. SHON: a-t-w-o-s.

25 MR. CHARNOFF: Anticipated transient without SCRAM.

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1 MR. SHON: People have been writing it the other
2 way so it is pronounceable, I think.

3 CHAIRMAN FARMAKIDES: We will leave it up to the
4 reporter.

5 MR. SHON: When I used the term, I used it spelled
6 out, anticipated transient without SCRAM, for that very reason.

7 CHAIRMAN FARMAKIDES: including an "O"?

8 MR. SHON: No, I used the words, rather than the
9 acronym.

10 CHAIRMAN FARMAKIDES: For purposes of the hearing,
11 let us put the "O" in there. Let us proceed.

12 Mr. Renfrow?

13 MR. SHON: Can I be heard now, back there? Is
14 that better?

15 I would like a little discussion particularly on
16 the part of Mr. Rnefrow or the staff of the exact way in which
17 this particular point is addressed in the interim criteria.

18 It appears to me that it is addressed, perhaps,
19 by a sort of benign neglect. It seems not to be directly
20 addressed in the criteria, to me, and I wanted to know the
21 extent to which and the reasoning through which one arrives at
22 this as a challenge to the criteria.

23 MR. RENFROW: I am afraid, Mr. Shon, that this is
24 another one of those areas in which the interim acceptance
25 criteria does not speak directly to steam-generator tube failure.

1 MR. SHON: That is true.

2 MR. RENFROW: At the ECCS hearing, RM-50-1, which
3 we have spoken of before, however, the fact that this event
4 was considered incredible by the Staff and therefore, not
5 addressed specifically in the criteria, and the reasons why
6 were debated extensively.

7 For example, Dr. Hanauer, of the Staff, discussed
8 transcript pages 2334 through 2337. Mr. Rosen discussed the
9 transcript at 8543, Mr. Moore discussed it at the transcript
10 page 14828.

11 This was a matter of controversy at the hearing
12 itself as to whether or not, or why this was not specifically
13 included within the interim acceptance criteria.

14 Second of all, as a result of this, and other
15 criteria, this is not a design requirement. It has been testi-
16 fied that the Staff considers it not a credible event.

17 I would again refer you to A-LAB-46, the Indian
18 Point decision, which again states that these matters are not
19 the proper subject of a hearing in a licensing proceeding.
20 I would again suggest 2.758.

21 MR. SHON: All right, except for the fact that the
22 intervenor has mentioned Mr. Brockett's paper at this latest
23 ANS conference which, incidentally -- copies of that paper are
24 not really available.

25 MR. RENFROW: I would be glad to supply the Board

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1 if this is a contention.

2 MR. SHON: I would like one.

3 MR. RENFROW: I will be glad to supply it. I hope
4 it is not.

5 MR. SHON: One might, on the face of the contention
6 assume that this represents later data that might not have
7 been considered.

8 MR. RENFROW: I don't believe so, Mr. Chairman.
9 The Brockett report as I understand it, was discussed at the
10 hearing. This has been Mr. Brockett's position. This was a
11 position that was raised, talked about, and reasons, pros and
12 cons, whys, and why nots, at the hearing, as the steam-generator
13 tube failure.

14 Again, I would reiterate in Indian Point, specifi-
15 cally, the fact that there is a Brockett paper on steam
16 generator tubes, does not go to the fact, under the memoranda
17 of why it is applicable to this plant, which is one of the
18 criteria for considering this subject at a licensing hearing.

19 That was the proper subject of the ECCS proceeding
20 and was, in fact, taken up at that proceeding.

21 CHAIRMAN FARMAKIDES: Mr. Vollen?

22 MR. VOLLEN: Thank you, Mr. Chairman. Whether or
23 not the subject of steam generator tube ruptures was discussed
24 or talked about at the ECCS hearing, there was an order entered
25 in that proceeding.

1 This is Docket No. RM-50-1. There was an order
2 on February 29, 1972, by the Hearing Board in that case. I
3 will read just two sentences which are in the last paragraph
4 of that order.

5 It says, "This hearing will not concern itself with
6 peripheral matters which are covered by other commission
7 criteria. These include, but are not limited to such items
8 as postulated failure of steam generator tubes due to a
9 LOCA ...," and I won't finish the sentence.

10 It goes on and covers certain other items as well.
11 It may have been discussed at that hearing but it seems to
12 be a clear statement by the Board in that proceeding that it
13 won't be ruled on. If it cannot be ruled upon there, if it
14 cannot be considered, and have a decision made there, and it
15 cannot be done here, it seems to me that we are in the very
16 untenable situation of having a potential safety problem with
17 this plant that cannot be the subject matter of litigation,
18 or the subject matter of a ruling by a Board of the Atomic
19 Energy Commission that the plant cannot operate safely in
20 light of this phenomena.

21 CHAIRMAN FARMAKIDES: Mr. Charnoff?

22 MR. CHARNOFF: Our first position on this is that
23 we think that the reference to the Brockett papers does not
24 provide a sufficient basis for this, because our examination
25 of the Brockett paper does not indicate that Dr. Brockett or

1 Mr. Brockett said anything about the likelihood of the occur-
2 rence of a steam generator tube rupture coincident with a LOCA.

3 It seems to us that the basis has to be provided
4 for that. Secondly, we submit that the LOCA that has to be
5 considered may very well be a rupture of a steam generator
6 tube, but certainly nowhere does the AEC require an evaluation
7 of two coincident LOCAs, if you will; one involving a rupture
8 of one pipe at one place, and one involving a rupture of a
9 pipe in another place.

10 That second pipe may, or may not be the steam gener-
11 ator tube. In any event, if we are talking about coincidence
12 of breaks, here, we are talking about an order of magnitude
13 change in the nature of safety evaluations and LOCA evaluations.

14 Thirdly, we would submit to you that the -- clearly,
15 we believe that the ECCS evaluation models do not require the
16 postulation of a steam generator tube rupture.

17 We could see that and state that, but in its very
18 concession, it immediately suggests that implicit in that
19 evaluation model is that you won't have it because obviously
20 if you were to have that coincident with the other break, then
21 you have an accident that is very different in character.

22 MR. SHON: I take it this is also your position and
23 that of the Staff, that there is no foreseeable -- readily,
24 foreseeable change of events in which a LOCA, say a cold-leg
25 break could occasion a steam tube rupture, is that right? A

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1 steam generator tube rupture? Okay?

2 MR. RENFROW: That is the Staff's position.

3 At this time, I would also like to suggest with Mr.
4 Vollen and Mr. Charnoff's approval, that I could supply the
5 Board with copies of the Brockett paper if they would like it.

6 MR. SHON: Yes.

7 MR. RENFROW: I would like -- that way the conten-
8 tion, itself, could be evaluated, and the Brockett paper, in
9 our opinion does only speak to effects and not to the proba-
10 bilities of such an occurrence.

11 CHAIRMAN FARMAKIDES: Do you have any objection to
12 that, Mr. Charnoff?

13 MR. CHARNOFF: No, sir.

14 CHAIRMAN FARMAKIDES: Any objection, Mr. Vollen?

15 MR. VOLLEN: We have no objection to that, Mr.
16 Chairman.

17 CHAIRMAN FARMAKIDES: The Board would be pleased
18 to have that paper.

19 Do you have it with you, now?

20 MR. RENFROW: No.

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1 CHAIRMAN FARMAKIDES: Can you do that today or
2 tomorrow?

3 MR. RENFROW: I will make a call to the Staff and
4 have it sent down to H Street on the next available shuttle.

5 CHAIRMAN FARMAKIDES: I would appreciate that.

6 MR. SHON: That reference in the ECCS hearings that
7 you read us in part, Mr. Vollen --

8 MR. VOLLEN: Yes, sir.

9 MR. SHON: Would you read that again? Tell me
10 what the reference is again, please.

11 MR. VOLLEN: This is the Board order -- it is a
12 document in the Docket RM50-1, the document is entitled
13 "Board Order Re Schedule and Scope." It is dated February 29,
14 1972. It is an order by the Hearing Board. Would you like
15 me to read that last paragraph again?

16 MR. SHON: No.

17 MR. VOLLEN: The paragraph I read from was the last
18 paragraph of the order.

19 CHAIRMAN FARMAKIDES: Okay. Anything further
20 on 3.3.7.1?

21 MR. SHON: No.

22 CHAIRMAN FARMAKIDES: Okay. All right, let's go
23 to 3.3.8.

24 MR. VOLLEN: Mr. Chairman, I might point out that
25 this was the contention in which there were typographical

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1 errors and the revised version was given to you in the paper
2 I filed and by Mr. Renfrow this morning.

3 CHAIRMAN FARMAKIDES: Right.

4 MR. SHON: If everyone has had a chance to look
5 at it, am I right in assuming that the chief difference
6 between the earlier version and the version that we were given
7 this morning is that the earlier one says, "Applicant has failed
8 to consider," and this one says, "The Staff has not adequately
9 reviewed"? Is that right?

10 MR. VOLLEN: That change in the first line, Mr.
11 Shon. I can give you the other changes, if you like, from the
12 version that you had previously seen.

13 MR. SHON: Would you, please?

14 MR. VOLLEN: There are only two other changes.

15 In the fourth line from the bottom, where it says,
16 "Calculated in the FSAR."

17 MR. SHON: Right.

18 MR. VOLLEN: That has been changed to "reviewed
19 by the Staff."

20 MR. SHON: I see.

21 MR. VOLLEN: The last phrase in the document,
22 "total ignored in Applicant's application" has been changed
23 to "inadequately analyzed by the Staff."

24 MR. SHON: In other words, these are all merely
25 changes to make the thing self-consistent or internally

1 consistent.

2 MR. VOLLEN: And with the facts.

3 CHAIRMAN FARMAKIDES: Have you-all reviewed it?

4 MR. CHARNOFF: Yes, sir.

5 MR. SHON: The contention centers around
6 small pipe breaks, and whether or not they have been properly
7 analyzed. The FSAR does address itself to small pipe breaks.
8 Am I to take it from this that the Staff feels that these
9 small breaks have been analyzed to the extent required by
10 the interim criteria? Is this the Staff's position?

11 MR. RENFROW: In a nut shell, yes, sir. The
12 interim acceptance criteria was speaking to the size of pipe.
13 Again, it is not implicitly or explicitly -- I can use the
14 word "explicitly" in for small pipes. However, by implicit
15 statement in the statement put forth in the interim acceptance
16 policy in the IPS Part 3, there is a reference to the W-7422-L.
17 That discusses small breaks. The Applicants were required
18 to discuss small breaks. The Staff analyzed that discussion,
19 and came to the conclusions set forth in the safety evaluation.

20 In addition, the small break model is specifically
21 described in answer to Dr. Knuth's questions to Westinghouse
22 of 69-72 in Section 3, page 56 of the ECCS hearing.

23 A question was put into the record as to small
24 breaks. We have analyzed the submission as we were required
25 to do under the interim acceptance criteria for small breaks.

1 The point on both of these contentions that I would like to
2 make to you, to reiterate, is that the Board may in essence,
3 as Mr. Vollen cites, exclude specifically things like steam
4 generator tubes. The reason they excluded it was not that
5 they were part of the criteria, but they were not appropriate
6 for discussion based on the Staff's analysis. They were
7 specifically excluded by the Staff, based on their knowledge
8 and discussions of the interim acceptance criteria. The
9 Intervenor in that case had the opportunity, and in fact did
10 so argue to the Board that it should be considered as part
11 of the criteria. The Board rejected that argument. That is
12 implicit in the criteria that those items and items like the
13 small breaks are a part of that criteria, and in fact we
14 require in this case, and the Applicant has done an analysis
15 of small breaks. We have reviewed that analysis.

16 Therefore I think in summary, our position is as
17 stated in our status report to you, that this is a challenge
18 and not appropriate for this procedure.

19 CHAIRMAN FARMAKIDES: Mr. Vollen, did you have any
20 further comments?

21 MR. VOLLEN: Just that, Mr. Chairman, if I under-
22 stand Mr. Renfrow correctly, he and I have a different
23 reading and a different interpretation on the order of the
24 the Board in the ECCS proceeding. That order didn't say
25 that they shouldn't be considered because they don't have

1 anything to do with ECCS. It said they are peripheral to
2 this hearing, referring to the ECCS hearing. If they are
3 peripheral to that hearing, it seems to us they ought to be
4 considered in this hearing regarding the licensing of this
5 plant.

6 CHAIRMAN FARMAKIDES: Mr. Charnoff?

7 MR. CHARNOFF: Apart from -- I won't get back
8 into the steam generator tube question. My comments before
9 applied to that. But with specific regard to contention
10 3.3.8, which is now under discussion, apart from whether or not
11 it is or is not a challenge to the criteria, it is our position
12 that it is, this contention illustrates as well as any what
13 we mean by a lack of adequate basis and why the Commission
14 has directed that after appropriate discovery, Intervenors have
15 to define and substantiate their contentions. All we have
16 here is a contention that says, "It has not been adequately
17 reviewed." We have no idea why it is inadequately reviewed,
18 how it is inadequately reviewed, what they mean by the
19 inadequacy of the review, other than to say there was no
20 analysis of small breaks.

21 There was an analysis made of small breaks. We
22 submit that this illustrates why a number of these contentions
23 must be rejected at this point in time for lack of basis.

24 CHAIRMAN FARMAKIDES: Did you attempt, Mr. Charnoff,
25 in discovery at all to find out what the basis was for this

1 contention?

2 MR. CHARNOFF: Mr. Chairman, we have had an
3 informal process of discovery. We have asked for bases of
4 each of the contentions. Your order asked for the bases of
5 the contentions to be presented to the parties by the Inter-
6 venors in the December 4 order by December 11. We did engage
7 in discussion on these matters. We didn't even get an effort
8 by the Intervenorors to explain the bases for most of these
9 contentions. The papers that were filed the week of December
10 11, which comprised about 10 of the contentions, or maybe 20,
11 at least on paper made an effort to say that the basis for this
12 contention is such and such. For the remainder of the conten-
13 tions there wasn't even that kind of a gesture, sir.

14 The answer to your question is the whole process
15 was to provide information to the Intervenorors and to ask for
16 bases. We got nothing, sir.

17 CHAIRMAN FARMAKIDES: Mr. Vollen, your response,
18 sir.

19 MR. VOLLEN: Yes, sir. As to whether or not the
20 Intervenorors -- and I use quotes around the word "basis" --
21 gave a basis for contentions to the Applicants and to the
22 Staff, I think it is unfortunately a problem that Mr.
23 Charnoff and I have a different recollection. It is true that
24 some of the contentions have written in them the words "the
25 basis for this contention." That is not part of the

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1 contention. It is our effort to informally and in good
2 faith carry on the process which I, at the outset of this
3 proceeding, had hoped could be carried out. Even as to
4 those where a written statement that the basis for this
5 contention is a certain situation, during the meetings of
6 January 2 to 4, and in prior conversations, we orally
7 explained to the Applicants and to the Staff what our concerns
8 were, why we were concerned about this particular aspect of
9 the plant, so that the simple answer factually is that Mr.
10 Charnoff and I disagree.

11 We did discuss our concerns, our bases, with
12 quotes around it, for these contentions, some orally, some
13 in writing. I think that Mr. Charnoff has raised a broader
14 question when he talks about this Board's order of December 4,
15 and also the whole question of basis.

16 With respect to the order of December 4, it is true
17 that that has a paragraph in it that says that by December 11,
18 I believe the date was, Intervenors will provide a written
19 statement of their contentions and the bases therefor. That
20 order, Mr. Chairman, was entered as a result of an agreement
21 among counsel for the parties. I agreed on behalf of
22 Intervenors to provide that information to the Applicants,
23 not because I was stating that legally it was necessary that
24 we provide a basis in writing or any other way to the
25 Applicants, but because it was part of a good-faith effort

1 to try and resolve many of these questions between ourselves.
2 It now gets turned around on me, as I understand it, and it
3 is claimed that I have somehow agreed that the legal -- the
4 status of the law is that I must provide a basis for conten-
5 tions. I don't think it can be said that that is the fact
6 on the basis of the December 4 order.

7 As to whether or not a basis has to be provided
8 at all, let me stop myself short and ask the Chairman and
9 the Board whether they want to hear argument and statements
10 of position on this question.

11 CHAIRMAN FARMAKIDES: There is no doubt we want to.
12 Let's clarify one point, however. That prehearing conference
13 order, which we will discuss on another point later, has
14 paragraph 3, which included the schedule agreed to by the
15 parties. Now the Board accepted that schedule. You all
16 presented that schedule to the Board. We accepted it. Once
17 we had accepted it and issued an order, that was our order.
18 That was our direction to the parties. The fact that you had
19 all agreed preliminarily to the order is great. That is a
20 very responsible method of proceeding. Once we accepted --
21 just like a stipulation. I don't much care that you people
22 have entered into a stipulation until the Board has accepted
23 that stipulation. The same thing with this concept. Once
24 we have accepted it, it becomes an order of the Board. I want
25 that to be very clear.

1 So as an order of the Board, it is the Board's
2 direction thereafter.

3 Now, to this other question, which is beginning
4 to bother me now -- I am beginning to see that there is a
5 difference of opinion as to what -- I know there is a
6 difference of opinion as to what it means, but I would like
7 very much -- I think the time would be very properly spent
8 if we were to discuss what each of the parties means by --
9 maybe I am not phrasing the point broadly enough -- but I
10 would start with this format, what does "lack adequate basis"
11 mean with respect to a contention? Who would like to go first?

12 MR. RENFROW: Mr. Chairman, can we have a five-
13 minute break before we start? I would like to organize my
14 thoughts and read Mr. Charnoff's submission.

15 CHAIRMAN FARMAKIDES: Let's take a 10-minute
16 break and let's open the doors. It is very warm in here.
17 Please, no smoking in here. It is very suffocating. Thank
18 you.

19 (Recess.)

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6 Reba 1

1 CHAIRMAN FARMAKIDES: Let's start. We are talking
2 about the term, "the lack of basis", or "the lack of adequate
3 basis." Mr. Charnoff, can you state for the record what your
4 definition of this term is? Or you can broaden the issue if
5 you wish, in order to make it more helpful to the Board.

6 MR. CHARNOFF: Mr. Chairman, we have discussed this
7 subject somewhat specifically in the document entitled, "Appli-
8 cants' Arguments With Respect to Intervenors' Radiological
9 and Environmental Contentions", which was filed with the Board
10 the first thing yesterday morning and with the other parties
11 late yesterday afternoon.

12 I would refer you to the first dozen or so pages
13 introducing the discussion of each of the Contentions. In
14 addition to that, though, I would like to highlight basically
15 just a few points. The Commission's regulations have been
16 evolving as you know over the years. The old Section 2.714,
17 which provided for the admission or consideration of petitions
18 for leave to intervene and for a hearing require that all
19 Contentions should be stated with reasonable specificity. That
20 provision has subsequently been modified in the new restructured
21 regulations to make it clear that the Commission is interested
22 in the Contentions that come in with the petition being supported
23 with some basis, including an affidavit in connection with
24 that.

Now in this particular proceeding because of the

6 1 coincidence of the publication of the proposed Rules and the
Reba 2 2 time for filing the petition for leave to intervene, the Com-
3 mission Order which set this matter down for hearing said,
4 "We will skip by the affidavit procedure but nevertheless we
5 would use appropriate prehearing procedures for getting at those
6 matters which would ordinarily be subject to that requirement
7 of a basis."

8 The term "basis" is indeed a troublesome one. It is
9 certainly not a terribly clear one. I would submit to you that
10 there has been, in addition to the older Commission Regulations
11 -- there have been a number of Commission decisions, in addi-
12 tion, that shed some light on this matter.

13 For example, the Pilgrim Atomic Safety and Licensing
14 Appeal Board Decision, which is referenced in our paper of
15 yesterday, specifically indicated that contentions that have
16 no apparent basis should be rejected. The Indian Point 2
17 Decision by the Atomic Energy Commission, which is also refer-
18 enced in here, talked about contentions having some substance,
19 some prima facie validity, something to indicate that we are
20 dealing more than either with a frivolous allegation or an un-
21 supported allegation or simply an uninformed concern.

22 The Commission is interested as it should be in the
23 determination that its public hearings are not to be useless
24 endeavors but rather to get at issues at which there may very
25 well be some substantive areas for disagreement.

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Reba 3

1 Thus the Commission has as a result been tightening
2 up its regulations with respect to a petition for leave to
3 intervene and has definitely used the term "basis" in that set
4 of regulations. The Commission has said in the Point Beach
5 Appeal Board Decision of August, 1971, and in subsequent de-
6 cisions, that an operating license hearing where there is no
7 mandatory requirement for hearing but where a hearing is held
8 simply because there has been a request for such a hearing by
9 an Intervenor -- that such a hearing is not to be a de novo
10 review of the Application.

11 We are to be dealing with specific matters of
12 interest. Thus, the Commission now has said up until this point
13 that a petition for leave to intervene should have specific
14 contentions, it ought to have some basis, and the boards are
15 not to consider contentions that have no apparent basis, and
16 don't have any substance or prima facie basis to them.

17 We are even further along in the proceeding, I would
18 submit, than the consideration of what an adequate basis for
19 consideration of a petition for leave to intervene. We are now
20 at a point in the proceeding where there has been a petition,
21 it has been granted, we have had months of discovery, we have
22 had no limitations that I know of on the discovery process.

23 The Intervenors have had free rein through our files,
24 for example, to look for matters to support whatever it is that
25 concerned them. We have had an agreement by the parties that

6 1 we would have some basis for concern.

Reba 4

2 But the point that we are at is specifically dealt
3 with in the Commission's statement of considerations which
4 was published on July 28, 1972, and while it is under the
5 section entitled, "Intervention", the Commission went on to say
6 that "the opening up of the process as described above," re-
7 ferring to the discovery and the availability of AEC documents
8 as well as discovery from Intervenors, "implies that Intervenors
9 should have correlative responsibilities to help define and
10 substantiate matters that they seek to put in issue, and after
11 they have had an opportunity to avail themselves of the infor-
12 mation that would then be open to them."

13 "The definition of the matters in controversy is widely
14 recognized to be the keystone to the efficient progress of the
15 contested proceeding. In order to put a matter in issue, it
16 will not be sufficient merely to make an unsupported allegation."

17 That tells me, sir, that at this point in the process
18 which is exactly the point we are at in this hearing, that while
19 we are not looking for an evidentiary presentation at this point
20 to support a contention, we are at least looking for some
21 showing that demonstrates that there is some substance to the
22 contentions.

23 Now what does that mean? That does mean, it seems
24 to me, that one has to show that there is some authoritative
25 basis for the concern, that there is some documentary basis

6 1 for the concern, and that it is directly related to this
Reba 5 2 particular plant at issue.

3 We have not received that kind of information in this
4 particular proceeding. We are at a point where we simply have
5 a number of general statements. We have had lots of discussions.
6 We have had a number of observations made by Mr. Vollen and
7 by Mr. Comey. We really don't have anything that says that there
8 is really any substance to any of these concerns, other than the
9 question, whether it may be formed or -- well formed or badly
10 formed by Mr. Comey and Mr. Vollen -- we have no idea at this
11 point whether there is really any substance to any of these
12 contentions.

13 We have no idea what the nature of that contention
14 is in terms of whether anybody could even come forward anywhere
15 close to presenting a prima facie basis. Thus what we are after
16 is whether or not we are going to have a process, where well
17 intentioned people may raise all sorts of questions and we go
18 through a long, extended process, or whether in fact the
19 Commission's directives to the licensing boards and its own
20 announcements as to what its process is all about are going to
21 be observed.

22 The question is, do we have a defined and substan-
23 tiated concern? If we do, we are perfectly willing to litigate
24 those matters. The interesting thing, Mr. Chairman, is that if
25 one retreats from the field of battle of a public hearing, the

6 1 fact is that the Applicants and the Intervenors as well as the
Reba 6 2 Staff are all in this game on a good faith basis.

3 We intend to run a safe plant. They want us to
4 run a safe plant and the Staff wants us to run a safe plant.
5 But my goodness, our whole area of inquiry, and we have said
6 this at our meetings, is that if you really have something, tell
7 us about it. We want to fix it now. And this has really been
8 the good faith nature of the discussion on our behalf and we
9 have reiterated that time and again.

10 We are interested sincerely in finding out if there
11 is anything wrong with the plant, so that it can be remedied at
12 this stage. Therefore, this concept of "basis" is something
13 we are terribly interested in, apart from its legal requirements.
14 Therefore, we had our ears open and our eyes open looking for
15 it.

16 At this point in time I have to submit to you that
17 we have had no showing of substance to the contentions. We have
18 had questions but we have had no showing that there is any
19 substantive basis for it. It is something less than an eviden-
20 tiary showing, but it is something more, I submit, than an un-
21 supported allegation or an unsupported concern.

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1 CHAIRMAN FARMAKIDES: How would you compare it to
2 a showing for a pleading in the federal rules?

3 MR. CHARNOFF: I think it is more than the initial
4 pleading requirement for a federal rule. I would submit to
5 you that for a federal rule, to the extent I am familiar
6 with it, one doesn't have to show very much to start a pro-
7 cess. I think, then, one has the process for motions for
8 dismissal on the basis of pleadings, where there are no
9 material issues of fact. We have that still to come in this
10 particular process. I think, however, that the Commission,
11 with good reason, has said, "Gentlemen, before we begin this
12 expensive, time-consuming process, we want to be sure that
13 the process is going to be concerned with matters of sub-
14 stance." Therefore, I submit to you that I think the
15 Commission has asked for more than what the federal rules
16 contemplate in a basic pleading.

17 CHAIRMAN FARMAKIDES: Thank you. Mr. Vollen?

18 MR. VOLLEN: Thank you, Mr. Chairman. I think
19 that the important issue that is now being presented to the
20 Board in one way, in a very important way, has really been
21 resolved already by the Atomic Energy Commission in this
22 proceeding. In opposition to our petition to intervene,
23 Applicants asserted that that petition to intervene should
24 not be granted unless we show the basis, whatever that means.
25 The Commission rejected that decision, and said the matter

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1 of limitation and defining of issues should be left to the
2 Board, not on the question of whether there was a basis or
3 not. I think that that is probably sufficient to resolve the
4 question. I will, nevertheless, go on and address myself
5 to Mr. Charnoff's statements and to the question of what
6 basis means in the event that this Board does not come to
7 the conclusion that the Commission itself has already decided
8 the matter in its September 29 order.

9 In listening to Mr. Charnoff's remarks, I don't
10 think I heard an answer to the question of what does "basis"
11 mean. He said it was something more than this, and something
12 more than that, but he didn't say what it was. I think that
13 is perhaps the real problem, is talking about what basis
14 means. I think we have to remember where we are in this
15 proceeding. This is not, in my mind, an evidentiary proceed-
16 ing, and when Mr. Charnoff says that the decision as to
17 whether or not there is a basis is something less than an
18 evidentiary showing, but something more than an allegation,
19 when he says that there should be documents to support it,
20 well, I don't know what else that can be except an evidentiary
21 showing of some kind.

22 Whether it is by way of documents introduced by
23 affidavit, whether it is by reference to testimony in other
24 places, it is an evidentiary showing he is talking about.
25 In my mind, the question we are confronted with here is

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1 whether a contention is legally sufficient, and I'll answer
2 your question about the comparison of the federal rules by
3 saying that I think that we are in a situation here where we
4 are very close to no pleading. I think the question of
5 whether a contention should be litigated, not the answer as
6 to what the result of that contention is, is whether a
7 contention puts the other parties on reasonable notice so that
8 they know what the concern of Intervenor is about the plant
9 and they know how to respond to it. Now if in fact -- you
10 see, if that is the test, if in fact there is no basis for
11 that contention, there is a means that the rules provide
12 to deal with that after the contention is determined to be
13 litigated by this Board.

14 If in fact there is no basis for it, the
15 Applicants then have the right to employ a procedure very
16 similar to summary judgment in the federal courts, a motion
17 for summary disposition, I believe, and they can show there
18 is no basis for it and if Intervenor at that time can't
19 show a basis, it is disposed of that way. That is not the
20 threshold question of whether or not it can be litigated.
21 And in my mind, that question, the only question as to
22 whether it can be litigated is whether it is sufficient to put
23 the other parties on notice as to what the concern of the
24 Intervenor is about the plant, so that they can adequately
25 prepare the evidence for the Board to determine whether or not

4mil 1 that is a justifiable concern or not. Mr. Charnoff said that
2 in our meetings as part of the process, the Applicant said,
3 "If the Intervenors really have something, they should tell
4 Applicants about it because Applicants are concerned, as
5 Intervenors are, and the Staff are, with having a safe plant."
6 I think that's right. I think that's right. The problem is
7 that we did tell them what our concerns are and they dis-
8 agreed that our concerns were justified.

9 I think that is precisely what this Board is
10 here to do, to resolve whether our concerns are justified
11 or not justified. I don't know how else we can do it.
12 Are we supposed to have some kind of mini-trial at the outset
13 to show what the evidence is? Are we supposed to have to
14 satisfy Applicants or their counsel by an initial evidentiary
15 showing, then come to the Board? It seems to me neither of
16 those procedures make any sense.

17 The Commission itself, in a memorandum and order
18 dated December 26, 1972, in the matter of Point Beach nuclear
19 plant Unit No. 1, determined or made a determination with
20 respect to petitions to intervene in that proceeding. In a
21 footnote on page 2 of that opinion, the Commission said,
22 "Applicant's motion to require showing of interest
23 superfluous in view of the requirements of 10 CFR Section
24 2714 is hereby denied."

25 We agree with the Staff that the question of whether

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1 allegations have a proper scientific or technical basis, goes
2 not to proper intervention, but rather to the merits of the
3 license. And that is precisely our position, what the
4 Commission said, whether or not there is a basis, an
5 evidentiary, factual basis for a contention, goes to the merits
6 of the license, goes to the ultimate decision that this
7 Board and then the Commission must make. It does not go to
8 the question of whether or not a contention can be litigated,
9 in our view.

10 Thank you.

11 CHAIRMAN FARMAKIDES: Mr. Renfrow?

12 MR. RENFROW: Thank you, Mr. Chairman. Once
13 again, as the Staff has found itself in all of our meetings
14 prior to the prehearing -- we find ourselves somewhat in the
15 middle of the two arguments. Let me first address myself
16 at the beginning to 2.714. This case is not governed by the
17 2.714 requirement, as the Commission so stated.

18 This is the intervention at which the Commission
19 sets forth what is required, that is the part that says not
20 only must interest be shown, but a basis be shown for an
21 affidavit.

22 The Commission, in granting this petition, said
23 that the old rules of 2.714 were applicable, not just as to
24 affidavits, but as to the intervention, what is required.
25 It then put before this Board the question of which issues

6mil 1 should be litigated. I think that is the place to start.
2 Now, to the degree that Mr. Charnoff cites in his brief or
3 whatever you wish to call it, the Pilgrim case, that the Board
4 can require some kind of basis -- the Staff does not disagree
5 with that. To the extent that the Applicants cite Indian
6 Point 2 for requiring a prima facie case, the Staff disagrees.
7 Not only do we disagree, we disagree entirely. Indian Point
8 2 decision, that goes to pressure vessel failure, and is a
9 question before this Board.

10 There are circumstances under which a prima facie
11 showing must be made. Indian Point 2 goes to one of those
12 questions. It is not a case that goes to contentions before
13 the Board to be put into issue. I submit to this Board that
14 that case as cited does not stand for the proposition for
15 which it is stated.

16 Second, Mr. Chairman, the Pilgrim decision, again
17 we do not disagree with that. However, the degree of basis
18 required and the definition of basis as set forth in the
19 Pilgrim decision -- we cannot agree with Mr. Charnoff that a
20 prima facie basis must be shown. We do not agree that no
21 basis can be shown. The explanation, I think, is that Mr.
22 Charnoff's argument, as the old song that I'm sure some of us
23 have heard about, "It is the wrong time and the wrong place."
24 Mr. Charnoff's motion at this time to deny on the merits of
25 a prima facie case comes to summary disposition, as Mr.

7mil 1 Vollen pointed out. This is provided in the rules, at which
2 point, for the first time in this case, as under the federal
3 rules, this Board can throw out issues which there is no
4 controversy as to facts on.

5 That motion can be filed; Mr. Vollen must answer
6 it. If this Board says there is no controversy as to the
7 facts, the issue is thrown out. That is not the question
8 before this Board at this time. The Applicant has come
9 before this Board and asked for a license. The Intervenors
10 have said, "No, we don't believe a license should be granted
11 until certain matters are discussed and litigated and this
12 Board has to decide them."

13 The Commission has, in the Staff's opinion, stated
14 that unlike the federal rules where a general denial can be
15 made to the party asking the court for something, the
16 Commission has said, "What you must do is state to us with
17 specificity, not a general denial that it should be denied,
18 but state with some specific matters which you believe
19 should be litigated with what I will call an explanatory
20 basis, a why."

21 That does not require documentation, evidence, it
22 requires an understanding of the parties and Board as to the
23 exact point that the Intervenors wish to have litigated.
24 I think I can point this out by referring you to three
25 separate contentions: Contention 4.6.1. That contention

8mil 1 states that changes in design documents from the
2 design of safety items have been made continually without
3 precautions to insure that all working documents have been
4 made consistent. That, to the Staff, is not a valid
5 contention. What documents, what design safety items, where,
6 what are we talking about? That contention is clearly to me
7 under the Pilgrim decision, a contention which this Board
8 in its discretion may deny as not being specific enough with a
9 wide explanatory basis.

10 Now -- and the Staff, and the Applicant there,
11 have said there is no basis. Let me refer you to Contention
12 3.13.2.1. That contention states that "Certain requirements
13 of the design criteria are not made because cable trays pass
14 above a steam line."

15 The basis for that is Mr. Comey's inspection of
16 the plant. The Staff feels that that is a matter that should
17 be placed into controversy. If the tray is there, it is
18 in violation of the criteria. That is a matter to be
19 litigated.

20 The Applicants say that is no basis. I disagree.

21 Now, let me go to the final category which we
22 believe is 4.17.5. There, the Intervenors cite Applicants'
23 documents to support their contention. The Staff says it
24 should be into controversy. The Applicant says it has no
25 basis. In essence, they are saying the documents don't say

9mil 1 what the Intervenor's say they say. That is a matter to be
2 litigated before this Board, what those documents say. The
3 Intervenor's and the Staff's opinion have gone further than
4 required in this case, in the Staff's opinion.

5 But still the Applicant says no basis. The
6 Commission does not and cannot require a prima facie case
7 before the matter can be placed into controversy, Mr.
8 Chairman. This is a matter to be clearly litigated.

9 To sum up the Staff's position, it is that the
10 basis requirement set forth by Pilgrim that the Board can
11 reject contentions goes not to a prima facie base, not to no
12 basis, but to an explanatory basis. So that this Board and
13 the parties can understand the contention and the whys of
14 the Intervenor's position, and it should be litigated.

7 15 Thank you, Mr. Chairman.
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1 CHAIRMAN FARMAKIDES: Can we conclude that the
2 definition of a lack of adequate basis varies with each con-
3 tention, or may vary with each contention? I think that is
4 the only thing that we can conclude from our discussion.
5 Do all three parties agree with that?

6 MR. VOLLEN: I don't think I understand it, Mr.
7 Chairman.

8 CHAIRMAN FARMAKIDES: In other words, the test or
9 the definition of what is a lack of adequate basis depends on
10 the contention. The reason for the statement, I cite the
11 statement made by Mr. Renfrow, 4.6.1, which is a very short
12 contention, also broadly stated, but purportedly it raises a
13 fact that might be in issue.

14 The thought comes to mind, can we state that a
15 contention determines the definition of lack of basis?

16 MR. RENFROW: To give Mr. Vollen an opportunity to
17 think, the Staff agrees with the Chairman. The basis must
18 go to a judgment on each contention.

19 However, the general understanding as to what basis
20 means, once that is established, is then applicable on a broad
21 scale to each contention.

22 MR. GALLO: Mr. Chairman, may I add to that?

23 CHAIRMAN FARMAKIDES: Yes, Mr. Gallo.

24 MR. GALLO: I think, Mr. Chairman, that there is
25 in the Staff's view, an objective and a subjective test. If

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1 the contention is a bare allegation, then objectively, it
2 fails right on its face, to provide any basis, and there should
3 be no quarrel with respect to the disposition of that con-
4 tention.

5 On the other hand, if it purports to provide some
6 sort of explanation attempting to show why the intervenor
7 believes this contention to be valid, then that raises a sub-
8 jective test as to whether or not that explanation meets some
9 threshold of adequacy.

10 CHAIRMAN FARMAKIDES: Mr. Charnoff?

11 MR. CHARNOFF: First of all, I would generally agree
12 with your observation. I want to be sure that the record is
13 quite clear. Mr. Renfrow argues with my position, arguing that
14 I said that there must be a prima facie showing and there need
15 not be any.

16 I was very careful to say it is less than a prima
17 facie showing. I would think that fits directly with your
18 observation.

19 CHAIRMAN FARMAKIDES: What you were doing, Mr.
20 Charnoff, was bracketing the definition, rather than pin-
21 pointing it?

22 MR. CHARNOFF: That is correct. I want to emphasize
23 that most of Mr. Renfrow's observations go, if they go at all
24 on the merits, to the question of what an adequate petition
25 to intervene may be.

1 I want to emphasize that we are well beyond that in
2 this case. We are in exactly the case that that quote I
3 read to you from the Commission's statement, applies to;
4 namely, after discover, what happens?

5 The Commission has clearly stated that it will not
6 be enough -- in order to put a matter at issue, it will not
7 be sufficient merely to make an unsupported allegation. There
8 must be support. Support has to be with reason. Support has
9 to be with something that shows there is some substance.

10 Now, Mr. Renfrow made an interesting observation.
11 He referred you to 3.13.2.2, and said there is a case where
12 Mr. Comey went, and he saw at the plant that there was a cable
13 near the steamline, and he said, therefore, that is of concern.

14 The interesting thing is, Mr. Renfrow then went on
15 to say, and I said that the applicants were saying that is not
16 adequate basis.

17 The interesting thing is that the stipulation shows
18 we have agreed to litigate that contention. Mr. Comey was
19 there. He saw the proximity of the two particular matters,
20 and we went ahead and said we would litigate it.

21 What we are looking for is support, gentlemen. We
22 are not looking for evidence, we are not looking for prima
23 facie case, but we are looking for support that there is
24 something real, and of substance in this case.

25 CHAIRMAN FARMAKIDES: Did you have anything further,

1 Mr. Vollen?

2 MR. VOLLEN: Yes, I did, Mr. Chairman.

3 CHAIRMAN FARMAKIDES: All right.

4 MR. VOLLEN: If there is some requirement for some
5 kind of basis, and if it means something more than a written
6 statement of a concern about the plant such as we have put
7 forth in this contention, when it is less than a prima facie
8 showing, and if so, how much less?

9 I frankly do not understand how this Board can
10 determine whether or not that basis has been provided with
11 respect to the contentions now before you in this case. We
12 have discussed both in writing, and orally with the applicants
13 and the Staff, what our concerns are.

14 Mr. Comey is here. If the Board thinks that a basis
15 is required, Mr. Comey will take the witness stand, and tell
16 the Board in a hearing whether it is a nonevidentiary hearing
17 or an evidentiary hearing; I wouldn't know -- but will tell
18 the Board why intervenors have the concerns that we have
19 articulated in this petition -- in these contentions now before
20 you.

21 CHAIRMAN FARMAKIDES: Mr. Vollen. let me first of
22 all cite what I said earlier, and that is, the Board has no
23 problem with some of these contentions.

24 By that, I mean, we are sure that we are either
25 going to deny or admit on the basis of the contentions as

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1 presented. The Board does have problems with other conten-
2 tions which, to us, need clarification.

3 During the course of clarifying these additional
4 contentions, this issue of what is adequate basis arises. I
5 wanted the record to reflect the fact that the parties do
6 disagree. The Board is going to resolve it so far as I am
7 concerned. We will resolve the problem. We are going to
8 resolve it in the sense of admitting or rejecting the contentions
9 posed.

10 So, I don't see the problem here, except I wanted
11 to be certain that we have your viewpoints so we can consider
12 your viewpoints in resolving the issue.

13 They have been very helpful viewpoints. I do think
14 that the one observation that I made, which is rather important
15 at least in my opinion, is that this definition of what is
16 basis with respect to a contention, varies with contentions.
17 If I were to say, for example, as someone said earlier, that
18 the applicant has not done something which he is required to
19 do, period -- the applicant has not done something which he is
20 required to do -- which is primarily a factual question -- to
21 my mind, that is an adequate contention.

22 Certainly it is an adequate pleading under the
23 Federal rules. Then, getting to this idea, what more do you
24 need in a contention. I think possibly, you might need some-
25 thing more than a blank pleading.

1 How much more? I don't know. How much more depends
2 on the contention involved. Anyway, I think we have discussed
3 this enough, unless there is anything further to be said to
4 clarify that particular issue, we can put it to rest, now.

5 Mr. Renfrow?

6 MR. RENFROW: I would like to make a clarification.
7 I spoke to 3.13.2.1, which the applicant asserts lacks
8 adequate basis.

9 Of course, it is interesting to note that the next
10 contention, which is 3.13.2.2, which there is no statement
11 that Mr. Comey has seen this, the applicant agrees to litigate
12 it. However, I would like to point out that I am speaking to
13 3.13.2.1.

14 CHAIRMAN FARMAKIDES: Right. Okay, let us go on,
15 now.

16 I think we have concluded 3.3.8.

17 MR. SHON: I think that is the next one on the list.

18 CHAIRMAN FARMAKIDES: We are discussing 3.3.8.

19 MR. SHON: I think that is "9." We have concluded
20 the other, haven't we?

21 DR. MARTIN: I have it checked off.

22 CHAIRMAN FARMAKIDES: We are now on 3.4.3.1. That
23 is 3.4.3.1.

24 Mr. Shon, does everyone have this located? This is
25 a long one, we will give you a little time to look at it.

1 MR. SHON: It is a long one, yes.

2 CHAIRMAN FARMAKIDES: Okay.

3 MR. SHON: I would like to have the Staff, Mr.
4 Renfrow, address itself to whether or not this contention,
5 although it has been raised in connection with the failure
6 of a pressure vessel, could not also be read as a contention
7 that the pressure vessel simply doesn't meet applicable
8 standards?

9 I realize that Appendix G is only proposed. It
10 is not actually in force. But, it appears to raise the ques-
11 tion as to whether this pressure vessel does meet Appendix G,
12 and I would like you to address yourself to that, and to the
13 question of whether when the commission said don't look at
14 rupture of pressure vessels, they meant, don't look at those
15 that meet Appendix G?

16 Do you see what I mean?

17 MR. RENFROW: Yes, sir, Mr. Chairman. I think,
18 Mr. Shon, I can answer that, shortly.

19 It is the Staff position that the Indian Point II
20 Commission, memoranda and order -- I will give you the data --

21 MR. SHON: October 26th, I think.

22 MR. RENFROW: October 26, 1972 -- that is written
23 in conjunction with the Appeal Board Order, numbered A-LAB-71.
24 I believe it is the Staff's position that, as with the interim
25 acceptance criteria, if the contention challenges whether or

1 not the pressure vessel, itself, meets the standards set forth
2 in the regulation, this would be a viable contention.

3 On the other hand, if the question is whether or
4 not we must look at the rupture of the vessel in this case,
5 and the Staff submits to this Board that the prima facie
6 showing cited in Footnote Five, on page four, of the Commission's
7 memoranda and order of October 26, must be complied with,
8 and that this has not been done.

9 MR. SHON: Would you say that again?

10 MR. RENFROW: If the contention is read to go to
11 rupture of the pressure vessel, that the memoranda and order
12 of the Indian Point II that we referred to would require as
13 shown in Footnote Five, on page four, a prima facie basis for
14 that contention to be allowed.

15 Staff submits to this Board that this does not meet
16 a prima facie showing as to that question.

17 MR. SHON: I see. I think I understand what you
18 are saying. You are saying that if the thrust of the
19 contention is to the pressure vessel, not meeting Appendix G,
20 it would be an allowable contention.

21 But, if the thrust of the contention is that the
22 pressure vessel might fail, then, absent a prima facie showing
23 that there is something special about this vessel that will
24 make it fail, and you feel no such prima facie showing
25 exists here, the contentions should not be allowed, is that

1 correct?

2 MR. RENFROW: Yes.

3 MR. SHON: Okay.

4 MR. RENFROW: Let me reiterate, it is not only as
5 the memoranda shows, the one Appendix G, which is proposed.
6 There are a number of items listed.

7 MR. SHON: Yes.

8 MR. RENFROW: In the memoranda and order, whether
9 or not this pressure vessel complies with those criteria,
10 once again, that is the way the contention is looked at.
11 Naturally, the Staff would say that is a litigable contention.

12 MR. SHON: The contention does say they feel there
13 is reasonable doubt that it meets ASME Pressure Code 3 in
14 Appendix 1 of that code, and so on.

15 MR. RENFROW: That is true.

16 MR. GALLO: Could I have a minute, please?

17 I would like to consult with my colleagues and
18 respond to one of Mr. Shon's questions?

19 CHAIRMAN FARMAKIDES: Mr. Gallo, yes.

20 MR. RENFROW: Thank you. I would like to reiterate
21 for the Board, that the Staff's position as set forth in the
22 Status Report, is that this is not a challenge to compliance,
23 but is a challenge to the regulations, themselves, and thus
24 must come under Indian Point II.

25 CHAIRMAN FARMAKIDES: Mr. Vollen, did you have either

1 a response or further clarification?

2 MR. VOLLEN: Well, at a minimum, I would like to
3 point out there is a typographical error in this contention.

4 MR. SHON: We know about that.

5 MR. VOLLEN: Okay. Well, maybe just for the record,
6 I will state it is the third line from the bottom, the first
7 letter should be a "G," rather than a "C."

8 MR. SHON: Yes.

9 MR. VOLLEN: Beyond that, it is our position that
10 this contention -- in the first place, the challenge is to
11 the conformity of this pressure vessel to the code, to the
12 criterion, and if it is read as challenging the pressure
13 vessel, itself, in our view there is a perfectly adequate
14 showing, under the footnote in Indian Point -- in the Press
15 Commission's order in Indian Point.

16 CHAIRMAN FARMAKIDES: Mr. Charnoff?

17 MR. CHARNOFF: Our position, again, is stated in
18 the document we filed yesterday. I would like to point out
19 however, that (a) I would agree, that to the extent it appears
20 to be a challenge to whether or not we need to meet more than
21 the regulations provided in 50.55-A, then, of course, the Indian
22 Point Unit II Commission decision, with regard to a prima
23 facie showing by the intervenors, would be required.

24 That showing would have to show the unique circum-
25 stances here that would justify that position. But, with

1 regard to the specific observation that this may be a challenge
2 to whether we meet the 50.55-A requirements, Mr. Shon has
3 indeed read correctly from the statement that intervenors
4 allege there is reasonable doubt that it meets it.

5 But, let us look beyond that to what supports that
6 proposition. The very next sentence says that there is a
7 question as to the N stamp. The interesting thing is that if
8 one looks at 50.55-A(a)(2), the fact is that no N stamp is
9 required for rack vessels under the regulations.

10 The fact, however, is in this case, we do have
11 an N stamp but the regulations specifically say no N stamp is
12 required. The next one which deals with the fracture-toughness
13 data, and refers to Appendix G, as Mr. Shon correctly indicated,
14 that is only a proposed regulation.

15 But, let us even examine the proposed regulation.
16 When it was published in the Federal Register, on July 3, 1971,
17 the proposed regulation says, "With regard to fracture-tough-
18 ness requirements, which it is proposing, 'sub h,' fracture
19 toughness requirements, for construction permits issued on or
20 after January 1, 1971, we must meet the provisions of Appendix
21 G."

22 This construction permit issue goes well before
23 that particular date. Even if it were not proposed and it
24 were in effect, it would not apply to us. So that, if these --
25 if this is the basis for the allegation that we are not meeting

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1 50.55-A, then, it seems to me, I submit, sir, that there
2 really is nothing to go forward on.

3 Furthermore, the third item that the intervenors
4 rely upon is the fact that there is an ongoing program at
5 Oak Ridge National Laboratory, called "The Heavy Section Steel
6 Technology Program," and because that is ongoing, therefore,
7 they suggest, that there may be some problems with this.

8 But, I would point out that the Commission's
9 decision of October 26th in Indian Point II, where they dealt
10 with the matter of law as to the extent to which rack vessel
11 questions can be treated in public hearings, specifically
12 acknowledged the fact that there is an ongoing HST Program
13 and, notwithstanding that, they are going ahead and licensing
14 these plants.

15 I would refer you to page two of that decision.
16 It was issued October 26th, where the Commission says,
17 "Pursuant to its research and development responsibilities,
18 the Commission has examined the subject of vessel integrity
19 and continues to do so in an effort to assure the most plant
20 safety, Footnote Two."

21 And, Footnote Two refers specifically to the Heavy
22 Section Steel Technology Program.

23 Clearly, it seems to me, the fact that there is an
24 ongoing research program, as there should be in any area
25 where a regulatory agency is going to be vigilant in carrying

1 its responsibilities, is not in and of itself, sufficient to
2 suggest that there is anything wrong with the present
3 situation.

4 Certainly, there is nothing in that kind of allega-
5 tion to suggest that we don't meet the codes in 50.55-A.
6 Therefore, we think the contention should be rejected.

7 CHAIRMAN FARMAKIDES: Anything further that needs
8 to be said?

9 Let us go to the next one.

10 This is 3.6.1.1.

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1 MR. RENFROW: Mr. Chairman?

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2 CHAIRMAN FARMAKIDES: Yes.

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3 MR. RENFROW: Before we begin this the Staff would
4 like to change the status. We now state this should be an issue
5 to be placed in controversy.

6 CHAIRMAN FARMAKIDES: 3.6.1.1?

7 MR. RENFROW: Yes.

8 CHAIRMAN FARMAKIDES: In other words, to correct
9 this or modify it, you would move that -- or rather, you would
10 request that the status paragraph be changed by deleting the
11 words, "and the Staff" from line 1 of that status paragraph,
12 and adding it to line 3 of that paragraph, after the word "In-
13 tervenors"?

14 MR. RENFROW: That would be fine, Mr. Chairman.

15 CHAIRMAN FARMAKIDES: All right, we will change it
16 accordingly.

17 MR. RENFROW: I believe you can find the code number
18 G, Answer, which would fit that perfectly, Mr. Chairman. We will
19 change our Answer to a G.

20 CHAIRMAN FARMAKIDES: We saw those codes.

21 MR. SHON: We were aware of what they were but we
22 made no effort to crack them.

23 CHAIRMAN FARMAKIDES: Now that we are talking about
24 cryptography, here, what is meant by the suffix K on some of
25 these contentions? Is there a meaning?

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Reba 2

1 MR. COMEY: I would be happy to answer that, Mr.
2 Chairman.

3 CHAIRMAN FARMAKIDES: Out of curiosity. Is it some-
4 thing that we should be aware of?

5 MR. COMEY: No, as a matter of fact. There was a
6 request that somehow got lost in the shuffle to remove those
7 K's. It was our position at the time of the original filing
8 of this contention since the Notice of Hearing on two other
9 plants came out simultaneously, some we would want to combine.

10 CHAIRMAN FARMAKIDES: You can discard that?

11 MR. COMEY: Yes.

12 MR. CHARNOFF: I think it might be helpful to inter-
13 ject a comment on that, Mr. Chairman, since I am involved in
14 some of those other cases. The petitions filed by the Inter-
15 venors on this case are identical essentially to the petitions
16 in two other cases except where there was a suffix added, the
17 intention apparently to say this one apparently really belongs
18 to Kewaunee, whereas the others belong to all three.

19 MR. COMEY: I would like to respond to that. That is
20 not correct.

21 CHAIRMAN FARMAKIDES: Yes?

22 MR. COMEY: I know that because I prepared the
23 Petitions to Intervene, and it simply is not the case.

24 CHAIRMAN FARMAKIDES: All right. Let's -- Mr. Renfrow,
25 we have changed the status.

1 MR. RENFROW: Thank you.

2 CHAIRMAN FARMAKIDES: All right. Now, question?

3 MR. SHON: One minor question to begin with. In the
4 sentence starting, "on the Kewaunee reactor", about three lines
5 down in that sentence there is a word, "g-u-a-d-r-a-n-t", which
6 I think is misspelled. Am I right in assuming it is misspelled?

7 MR. CHARNOFF: That should be quadrant.

8 MR. SHON: That is what I thought.

9 CHAIRMAN FARMAKIDES: Mr. Vollen, is that right?
10 That should be quadrant, we think, but we want this up to you.

11 MR. VOLLEN: Yes.

12 CHAIRMAN FARMAKIDES: It is quadrant, all right.

13 MR. SHON: Now, you state as a basis for this con-
14 tention that the basis is the ARCS letter for the V. C. Summers
15 Plant. I would like you to elaborate the reasoning, starting
16 with the statement in that letter that you feel is pertinent.

17 MR. VOLLEN: I would like to back up just a little
18 bit in answering your question. That is to say that as set
19 forth in the document that I filed today, the last sentence
20 in contention 3.6.1.1 was not written because the Intervenors
21 felt that there was any obligation upon them to demonstrate
22 to the Board that there was a basis.

23 That last sentence is in there pursuant to the
24 agreement of the parties and the December 4th prehearing
25 conference order as part of an informal submission ---

Reba 3

#10 1 CHAIRMAN FARMAKIDES: Excuse me, gentlemen, there
Reba 4 2 is too much talking. We can't hear the comments.

3 MR. VOLLEN: -- as part of an informal submission,
4 exchange of information and ideas, between Intervenor, Appli-
5 cants, and the Staff. In the hurry to type the stipulation,
6 that last sentence and similar types of sentences in other
7 contentions were left in. Having made that statement, I am now
8 prepared to answer -- or I will ask Mr. Comey to answer your
9 question more explicitly.

10 CHAIRMAN FARMAKIDES: Mr. Comey, you may answer
11 this question, please.

12 MR. COMEY: First of all, the V. C. Summers letter
13 states that the ACRS' concern -- feels that the V. C. Summers
14 plant should retain the capability of installing fixed detectors.
15 Actually there is quite a bit more of a basis to this contention
16 than just that including the internal memoranda of the AEC staff.

17 I would be happy to provide you with copies of that.

18 MR. SHON: It is my understanding from the paper
19 you people -- the Applicant filed yesterday -- that you do
20 indeed retain this capability or you allege that you do.

21 MR. CHARNOFF: We do allege that we do. The ACRS
22 letter simply said that, "although the Applicant does not
23 propose to install a fixed in-core flux monitoring system" --
24 this is Summers' -- he stated that "it would be possible to
25 install such a system. The committee believes this capability

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1 should be retained."

2 The interesting thing is, we did ask for basis,
3 and what did we get? A reference to this letter. Now we are
4 told there are internal AEC documents that they would be glad
5 to make available. This is the difficulty we have had with
6 this process, Mr. Chairman.

7 CHAIRMAN FARMAKIDES: Okay.

8 MR. CHARNOFF: We submit that this is no basis.

9 CHAIRMAN FARMAKIDES: Mr. Renfrow or Mr. Gallo,
10 could you please clarify this for us further, and also state if
11 you can or if you will why you have changed your status?

12 MR. GALLO: Yes, Mr. Chairman. First, to address
13 myself to the ACRS letter, we do not believe that the ACRS
14 letter provides any basis at all for this contention with respect
15 to the Kewaunee plant.

16 We believe that the statement in the ACRS letter rele-
17 vant to the Summers plant goes to that plant and is no way con-
18 strued to apply generically. But to move on to why we have
19 changed our position, implementing the test that was articulated
20 by Mr. Renfrow with respect to our belief as to what is ade-
21 quate basis, we believe that the first paragraph of contention
22 3.6.1.1 contains the kind of explanation that makes a sufficient
23 showing as to why the Intervenor believes that there is a valid
24 basis and a reason for his contention.

25 Given that situation we have changed our position.

Reba 5

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Reba 6

1 CHAIRMAN FARMAKIDES: Okay. Anything further,
2 gentlemen? Mr. Charnoff? Mr. Vollen?

3 MR. CHARNOFF: Our position remains as stated, sir.

4 CHAIRMAN FARMAKIDES: All right.

5 MR. VOLLEN: We would like to respond to Mr. Gallo's
6 comment.

7 CHAIRMAN FARMAKIDES: All right.

8 MR. VOLLEN: His comment about this problem, relating
9 to the Summers plant, on December 18, 1972, the Advisory
10 Committee on Reactor Safeguards sent a letter to the Chairman
11 of the Atomic Energy Commission, the caption of which is, "Status
12 of Generic Items Relating to Light Water Reactors." Attached
13 to that is a document entitled, "Generic Items", on page 3 of
14 which is a caption, "Group 2, Resolution Pending", and item 6 on
15 that page is, "Fixed In-Core Detectors on High Powered PWR's."
16 Some information is available, is what they say. I think it is
17 not correct to state that this problem does not relate to
18 Kewaunee.

19 MR. GALLO: Mr. Chairman.

20 CHAIRMAN FARMAKIDES: Yes.

21 MR. GALLO: My quick answer to that is apparently
22 Mr. Vollen is now referring to a different document, and I was
23 addressing myself to the Summers ACRS Report.

24 CHAIRMAN FARMAKIDES: Is that right?

25 MR. VOLLEN: Yes, sir. That is a different letter.

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Reba 7

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CHAIRMAN FARMAKIDES: All right, what Mr. Gallo is

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addressing is the ACRS Summers letter on the plant.

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Anything further?

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1 MR. SHON: May I ask a question?

2 CHAIRMAN FARMAKIDES: Yes.

3 MR. SHON: We are to assume that what you say is
4 the basis on this is in error, and that is not really the
5 whole basis?

6 MR. VOLLEN: That is quite true, Mr. Shon, and
7 indeed I would like to be very clear that that is true with
8 respect to all of these contentions. We did not write these
9 and write a basis in them, a factual evidentiary basis, in
10 order to satisfy any legal standard of evidentiary showing,
11 of factual showing. If that is the requirement and if the
12 Board so rules, we will be pleased to offer such evidence at
13 an appropriate time.

14 CHAIRMAN FARMAKIDES: Mr. Vollen, it should be
15 very clear to you at this time that some of these contentions
16 are already in the record. The Applicant has agreed to it
17 and the Staff has. The rest of these that are not already in
18 the record, the Board will undoubtedly admit some and will
19 undoubtedly deny some. There is no doubt about it. We think
20 we have adequate basis to do so.

21 Let's continue with clarifying the contentions
22 that we are in doubt over. 3.6.2.

23 MR. SHON: This is a very, I think, brief question
24 that one can answer directly, and I am looking for answers
25 both from Mr. Vollen and from Mr. Charnoff. What

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1 instrumentation do you, the Intervenors, view as being the
2 instrumentation to detect fuel element failure, and what
3 does the Applicant view as being subsumed in this general
4 heading, something that is going to detect fuel element
5 failure?

6 MR. COMEY: Are you talking about the instrumenta-
7 tion that is presently on the plant?

8 MR. SHON: Yes, presently designed on the plant.

9 MR. COMEY: It is essentially some ion chambers in
10 the let-down line.

11 MR. SHON: Fine. I wanted to make sure that you
12 were both referring to these. Is this what the Applicant --

13 MR. CHARNOFF: That is what we said in our paper
14 yesterday, yes, sir.

15 MR. SHON: Thank you.

16 CHAIRMAN FARMAKIDES: All right, the next one.

17 Mr. Renfrow, anything on this point?

18 MR. RENFROW: No.

19 CHAIRMAN FARMAKIDES: Let's go to 3.7.1.

20 MR. VOLLEN: May I add one brief comment?

21 CHAIRMAN FARMAKIDES: On what, 3.6.2? All right.

22 MR. VOLLEN: Yes, sir. That contention as submitted
23 in this stipulation to the Board does not say anything about
24 a basis, does not have a basis sentence. The very same ACRS
25 letter of December 18, 1972 refers to this instrumentation

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1 to detect fuel -- that is in there, too. I want to emphasize
2 my point that we did not attempt to show a documentary basis
3 for each contention.

4 CHAIRMAN FARMAKIDES: 3.7.1.

5 MR. RENFROW: Mr. Chairman?

6 CHAIRMAN FARMAKIDES: Mr. Renfrow?

7 MR. RENFROW: Before we begin on this one, the
8 document submitted by the Intervenors to the Board this
9 morning withdraws the second sentence of that contention.
10 The Staff had originally objected to that contention. As
11 a result of that withdrawal and the status of that conten-
12 tion, the status will be changed and the second complete
13 sentence in the status should be deleted to indicate that the
14 Staff agrees that the contention should be placed in issue
15 as a matter in controversy.

16 CHAIRMAN FARMAKIDES: Mr. Charnoff?

17 MR. CHARNOFF: I would like to read whatever it
18 is that the Intervenors handed out this morning.

19 CHAIRMAN FARMAKIDES: The second sentence, as I
20 understand it -- Mr. Vollen, you have withdrawn the second
21 sentence of this contention, 3.7.1?

22 MR. VOLLEN: That's correct, Mr. Chairman. For
23 clarification, Mr. Renfrow, in addition to withdrawing the
24 second sentence of the status, in the next sentence, is it not
25 true that the words "the remainder of" should be deleted?

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1 MR. RENFROW: I would say we could make that
2 a G answer, that would be fine.

3 MR. KEANE: What part of your letter has the
4 reference to the 3.7.1?

5 MR. CHARNOFF: Page 3.

6 CHAIRMAN FARMAKIDES: Are we having difficulty
7 locating it?

8 MR. CHARNOFF: I understand, I just wanted to see
9 what had been submitted this morning. I hadn't had a chance
10 to read it. Our position, Mr. Chairman, is that this
11 illustrates as well as anything does what we mean by an
12 unsupported contention. It is not particularized, if you
13 will. If the Commission still retains its concept of
14 particularizing matters in controversy, which is what it
15 required in the Commission's orders in Point Beach and Pilgrim
16 and in its new regulations which followed those orders, all
17 we have is a statement that "hydrogen" will be produced in
18 larger quantities, the methods proposed by the Applicant to
19 control will result in unacceptable radiation exposure."

20 If that is particularized and tells me exactly
21 what is wrong with our system, then I am Houdini, because it
22 doesn't tell me that. It is not even adequate no-pleading if
23 one was to use the criterion that was used by Mr. Vollen.

24 It seems to me if the Commission's concept of
25 rejecting unsupported allegations applies anywhere, it

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1 applies specifically and directly to this kind of contention.

2 CHAIRMAN FARMAKIDES: Anything further, gentlemen,
3 on this point? Anything to clarify?

4 MR. RENFROW: I believe our position is clear, Mr.
5 Chairman.

6 CHAIRMAN FARMAKIDES: Mr. Vollen?

7 MR. VOLLEN: Nothing more, Mr. Chairman.

8 CHAIRMAN FARMAKIDES: Let's go to the next one,
9 3.12.3. The Board is going to observe that we will not defer
10 judgment on any of these contentions. We want that to be
11 very clear. Even though the -- reading from the status
12 paragraph, second sentence, "Applicants and the Staff would
13 prefer to defer judgment on this contention," we want to be
14 very clear that the parties understand that we will not defer
15 judgment. We will decide all of the contentions, in or out;
16 in view of that, is there anything to be said by the
17 Applicant or the Staff?

18 MR. RENFROW: In that case, Mr. Chairman, for 3.12.3,
19 and the other contentions, if they are open items on the
20 Staff, the Staff will agree that they should be litigated.

21 MR. CHARNOFF: We --

22 CHAIRMAN FARMAKIDES: Let me understand you, Mr.
23 Renfrow. Would you restate what you just said, sir?

24 MR. RENFROW: Certainly, Mr. Chairman. There are
25 a number of areas in which the Staff has not completed its

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1 analysis, which goes directly to the contention as raised.
2 In this case, it is 3.12.3, the compartments, the analysis
3 of pressure within those compartments. The Staff's position
4 is that if the item is open and before the Staff for analysis
5 at this time, then the matter is an issue which should be
6 placed into controversy.

7 CHAIRMAN FARMAKIDES: All right.

8 MR. CHARNOFF: May I speak to that?

9 CHAIRMAN FARMAKIDES: Yes, Mr. Charnoff.

10 MR. CHARNOFF: Our position is that the contention
11 lacks basis. Our reason for suggesting that it might be
12 deferred is, as indicated in our argument paper, we received
13 further questions from the Staff, dated December 26th. We
14 hope to have answers to that by the end of next week. What
15 we meant by deferral is that after that goes in, to the extent
16 the Intervenors wish to modify, amend, delete, or otherwise
17 revise the contention based upon good cause and the new
18 information, that would be acceptable as a matter of principle
19 to us. We think on its face the Commission -- the contention
20 should be rejected for lack of basis, but I do have to
21 observe with regard to Mr. Renfrow's last statement a funda-
22 mental disagreement. The Commission's regulations
23 contemplate the initiation of public hearings well before
24 perhaps completion of the Staff review. The whole concept of
25 the new restructured rules is that the application gets filed,

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1 the public hearing process commences.

2 It seems to me that the Board and the Commission
3 must ultimately recognize that there is a fundamental
4 distinction between the Commission's staff's ongoing
5 regulatory responsibility to monitor, review, approve or
6 disapprove changes in the plant, or consider new information
7 or new problems, distinguish that responsibility from what
8 goes on at a public hearing.

9 At a public hearing one litigates, especially
10 at the operating license stage, the matters put into
11 controversy, if they qualify as matters in controversy subject
12 to your judgment on adequacy of basis and everything else.
13 Then indeed they are then matters of controversy.

14 The very fact, however, that the Staff happens
15 to have a matter under continuing review or under separate
16 review does not in itself qualify anything for consideration
17 at a public hearing. The licensing boards are charged with
18 ruling on the matters in controversy and based upon those
19 rulings, the director of regulations, taking into account
20 the rest of his staff's functions, will then make the
21 ultimate safety finding. There is nothing in the regulations
22 to support the proposition advanced by Mr. Renfrow, that if
23 the Staff has a matter under review, it is equal immediately
24 to a matter in controversy. I would reject that very strongly,
25 sir.

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1 CHAIRMAN FARMAKIDES: Mr. Vollen, do you have
2 anything on this one?

3 MR. VOLLEN: Yes, sir. This is, I think, one of
4 those unsupported contentions, in quotes, made by Intervenors
5 which after it was first presented to Applicants and the Staff,
6 led the Staff to make a further analysis, or request a
7 further analysis of a problem at the plant.

8 The problem I have with Mr. Charnoff's statement in
9 the status about deferring this, I don't know what that means.
10 Certainly it is true, if the Staff analyzes the information
11 submitted by Applicant --

12 CHAIRMAN FARMAKIDES: Mr. Vollen, we have already
13 said we are not going to defer it. We are going to rule on it.

14 MR. VOLLEN: Thank you, sir.

15 CHAIRMAN FARMAKIDES: I want to be very clear to
16 the parties. I didn't want any misunderstandings. We are
17 not going to defer. It doesn't matter what the Applicant
18 or the Staff meant by defer.

19 MR. RENFROW: Mr. Chairman, may I clarify my
20 position as stated to Mr. Charnoff? It is not that any
21 item under review is automatically a subject for a hearing.
22 However, when an Intervenor raises a contingent which the
23 Staff has not at that point set forth a position on, I don't
24 think the Commission contemplates that the Staff would say it
25 has no basis since the Staff is not yet in a position to speak

2mil 1 to it. Thank you.

2 CHAIRMAN FARMAKIDES: All right. 3.14.2.2. No,
3 beg your pardon. We have another one that we have omitted
4 that we would like to have clarified. 3.12.4. I am sorry.
5 We had not mentioned this earlier as one of the contentions
6 that we wanted to have discussion on, so we will give you
7 some additional time to review it.

8 MR. SHON: Have we had a chance to look at this?

9 CHAIRMAN FARMAKIDES: Okay, gentlemen? Mr. Shon?
10 My question on this is primarily to the Staff, anyway. I
11 know that the Staff said nothing about whether or not this is
12 a challenge to the interim criteria or seems to say -- not
13 to address itself to that point. Would you do so?

14 MR. RENFROW: Certainly, Mr. Shon. The contention
15 appears under the 3.12 series. The 3.12 series is begun by
16 a statement that the Intervenors content that criterion 50
17 has not been met. That is the containment design basis.
18 The Staff's position, I guess, is that this is a matter to be
19 litigated in a limited area. I would refer this Board to
20 the decision of the Atomic Safety and Licensing Appeal Board
21 in the Pilgrim decision.

22 First of all, the question under review contains
23 both ECCS and pressure.

24 MR. SHON: Yes.

25 MR. RENFROW: However, as that Board stated in

3mil 1 footnote 71, to the extent that this is a challenge to the
2 ECCS criteria, it cannot be included in a licensing hearing.
3 However, criterion 50 of Part 50 requires a containment
4 pressure analysis be done. To the extent that this contention
5 challenges the meaning of that criteria and does not refer
6 to ECCS, we believe this would be a valid contention. Our
7 position is but rested by the fact that 3.12 is premised by a
8 challenge to the criterion 50 in the introductory portion
9 which the Chairman spoke to Mr. Vollen about at the beginning
10 of the session.

11 I believe the Staff's position is in agreement
12 with the Appeal Board decision in the Pilgrim case.

13 CHAIRMAN FARMAKIDES: Just to clarify it further,
14 Mr. Renfrow, in view of our earlier observation that the
15 Board will not defer ruling, how does that change the status
16 here? Does this mean that you now are suggesting that this
17 contention be litigated?

18 MR. RENFROW: To the extent that it is a challenge
19 to criterion 50 and to the extent -- to that extent, yes, sir.

20 CHAIRMAN FARMAKIDES: All right.

21 MR. RENFROW: To the extent that it is a challenge
22 to ECCS, we would oppose, as a challenge to the criteria.

23 CHAIRMAN FARMAKIDES: Mr. Vollen?

24 MR. VOLLEN: We do not believe that this contention
25 is a challenge to the interim acceptance criterion. We

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1 believe that the question is the plant's conformity to criterion
2 50 and should be litigated.

3 CHAIRMAN FARMAKIDES: You are saying, sir, as I
4 understand you, that you did not intend this to be a challenge
5 to the criteria?

6 MR. VOLLEN: That is quite right.

7 CHAIRMAN FARMAKIDES: All right, Mr. Charnoff?

8 MR. CHARNOFF: I must say, Mr. Chairman, that the
9 Pilgrim Appeal Board footnote did not rule directly on
10 whether that contention -- such a contention would or would
11 not be accepted. What it did suggest is that if an Intervenor
12 says he is challenging Part 50, Appendix A, with the
13 criterion 50, then it can be raised before the Licensing
14 Board.

15 I have to submit to you that if it means what Mr.
16 Renfrow suggests it means, and perhaps that is what the
17 words suggest, then the Commission is in this never-never
18 land of suggesting that one cannot challenge the use of the
19 ANS 511 decay heat standard in the ECCS criteria, because that
20 is part of the criteria for calculating the heat and pressure
21 transient. However, if the same mechanism or formula is used
22 in determining compliance with some other criterion, it is
23 now challengeable. That to me is simply an end run around
24 the first proposition.

25 There is no logic whatsoever to putting this game

5mil 1 of safety reviews in different boxes on some academic basis
2 and saying here it is challengeable and it is not.

3 Now if you properly categorize this with some
4 magic pleading words, you are in. Otherwise, you are out.
5 The question that you and the Commission has to decide is
6 whether in licensing cases, those elements of the interim
7 acceptance criteria are challengeable or are not. If you
8 suggest that it is challengeable because somebody has put a
9 magic box top on it, then it seems to me that that is not
10 consistent with the other rulings the Commission is making
11 which is saying, "Let's challenge the interim acceptance
12 criteria only within the rulemaking procedure."

13 CHAIRMAN FARMAKIDES: Mr. Renfrow?

14 MR. RENFROW: Thank you. I believe Mr. Charnoff
15 just made my case. That was the exact case before the Pilgrim
16 Appeal Board. Madison Company had used the same calculation
17 and formula in the ANS standard to calculate ECCS as they did
18 to calculate containment pressure under 16 and 50. They
19 then came before the Board and said to the Board, "Board,
20 you can't rule on this because this equation is contained
21 in the ECCS criteria."

22 The pleadings before the Appeal Board in that
23 decision point that out clearly. Certainly the Staff's
24 position in that case points that out clearly. That was the
25 exact position. The Appeal Board then said, "We agree with the

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1 Regulatory Staff." There are situations where if the
2 Applicant happens to use the same formulas to calculate
3 pressure under 16 and 50, as they do to calculate ECCS and
4 Intervenor come in with a basis to challenge the basis for
5 compliance, then it is a perfectly valid contention. I am
6 not saying just because the Intervenor say they want to
7 talk about it that they can. Again, they have to meet the
8 first level test. Once they do that, certainly it is going to
9 be a thorny issue for the Board to go into containment
10 pressure in 50 and stay out of ECCS.

11 But to me the Board's position is to take those hard
12 positions and make them workable, and for the parties to make
13 them workable, too. Just because it gets a little thorny
14 doesn't mean we should back off from them.

15 MR. RENFROW: Mr. Chairman?

16 CHAIRMAN FARMAKIDES: Yes.

17 MR. RENFROW: One other clarification for the
18 record and the parties. Contention 3.3.2.1 is virtually
19 identical to 3.12.1.4. That is in the second paragraph.
20 The reason for this contention is that the 3.3 series is the
21 challenge. The 3.12 series is a challenge to criterion 50.
22 The review of those two contentions will, I think, place and
23 define the issue before the Board.

24 MR. SHON: As I understand it, it is your -- you say
that the decision in the Pilgrim case suggests that one can

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1 challenge the use of a formula, let us say, in one application,
2 even though that formula might be applicable under the
3 interim criteria to the ECCS calculation and not challengeable
4 as -- since it is a part of the ECCS interim criteria.

5 MR. RENFROW: Yes, sir.

6 MR. SHON: Other than by challenging the criteria
7 themselves. However, one could challenge the use of the same
8 formula to calculate a different parameter, is that right?

9 MR. RENFROW: To meet a criteria.

10 MR. SHON: Meet another criteria.

11 MR. RENFROW: That is the Staff's position.

12 MR. CHARNOFF: I would like to just add that I think
13 Mr. Renfrow is clearly right. The parallel between those
14 ~~and numbers~~ numbers is striking and the 3:12 is conceded by all parties,
15 including the Intervenors, to be a challenge to the criteria,
16 interim criteria. I am not against having thorny issues,
17 if that is Mr. Renfrow's proposal that we ought to have thorny
18 issues. But I do submit there ought to be some logic and
19 coherence to this. The name of the game is not labeling
20 the contingent.

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1 CHAIRMAN FARMAKIDES: Anything further?

2 Let's go on to 3.14.2.2.

3 MR. VOLLEN: Mr. Chairman, not on that specific
4 contention, but along the same lines of clarification that you
5 asked Mr. Renfrow when we first started talking about that
6 contention, I would like to ask a question.

7 Mr. Renfrow, is the staff now saying that with
8 regard to each of the contentions, submitted in the
9 stipulations, with the status reports that the staff wants
10 to refer judgment, by reason of the Board's indication that
11 it will not refer judgment, that the staff on each of those
12 contentions is taking the position that it should be
13 litigated?

14 CHAIRMAN FARMAKIDES: That is what I heard him say
15 earlier, Mr. Vollen.

16 I assume that unless it is changed sometime in
17 the record we will proceed on that basis.

18 MR. RENFROW: After lunch we will give you a
19 rundown. We have these by categories, a specific reference
20 to our changes, we can give you that.

21 CHAIRMAN FARMAKIDES: Let's go on to 3.13.2.2.
22 While you are all reviewing it, we have another roughly 12
23 and we think we can continue until 12:30, then take a break for
24 lunch, and I am sure we will finish in good time this after-
25 noon.

1 MR. SHON: Have you had enough time to look at
2 2.14.2.2?

3 This is another one which seems to me to hinge on
4 more than one simultaneous failure, and I would like to know
5 what the staff's position is as regards how many
6 simultaneous failures you would assume here.

7 Obviously you feel that the question is one more
8 failure than you need. The intervenor feels that it is
9 about right. Could you address yourselves to that, both the
10 staff and the intervenors? The staff first, perhaps.

11 MR. RENFROW: Yes, sir. Once again, the staff,
12 as in the previous answer to the same failure criterion,
13 believes this is a challenge to the single failure criterion.
14 This is criteria 17. The staff's position is that the
15 accident to be analyzed is that if one does, if one generator
16 or goes out, one complete train of safeguard features goes out.
17 The applicant is required to analyze accidents with that
18 consideration, that one complete train is out due to some
19 single failure, i.e., the failure of a diesel generator.

20 Now, second of all, the staff then requires two
21 diesel generators and two separate trains. That way if there
22 is a single failure meeting the criteria, there is a second
23 system to take over.

24 All accidents are analyzed with only one system
25 working. To require the use of a third diesel generator as

1 set forth in the contention leads to the requirement of a
2 fourth diesel generator and a fifth.

3 In sum, the staff's position is that it is one too
4 many.

5 MR. SHON: Mr. Vollen?

6 MR. VOLLEN: As I said previously, we think there
7 is a substantial question to be resolved as to whether there
8 is in fact a single failure criterion, and if not, what the
9 single failure definition in the Commission's regulations
10 means.

11 Beyond that, I think that there is an appropriate
12 issue to litigate as to whether the staff's judgment just
13 articulated by Mr. Renfrow is in fact an appropriate
14 judgment.

15 We disagree with the judgment the staff has made.
16 Our position is that the Board should resolve who is right.

17 CHAIRMAN FARMAKIDES: Right. Mr. Charnoff?

18 MR. CHARNOFF: I would just refer the Board to
19 criterion 17 which specifically in its second paragraph
20 refers to the required assumption of a single failure.

21 CHAIRMAN FARMAKIDES: Okay; 3.17.1.

22 MR. RENFROW: Mr. Chairman.

23 CHAIRMAN FARMAKIDES: Mr. Renfrow.

24 MR. RENFROW: Before we begin discussing this con-
25 tention, I would like at this time to supply to the parties

1 who already have copies of this document, but I wish to make
2 it available in this proceeding, copies of the technical
3 report on densification of light water fuels which was
4 issued November 14th.

5 The staff's testimony as applicable to Kewaunee
6 will be based upon this report. Therefore, while the parties
7 have it, BPI through their part, the Board I am sure in other
8 proceedings, and the Board and the applicant, I would like
9 for the record to distribute this to all the parties so they
10 have it.

11 MR. SHON: The only real question here is, is there
12 anything extremely recent on fuel densification that would
13 tend to answer the question; is that an admissible contention?

14 MR. RENFROW: There are a number of new items that
15 have come in under review, Westinghouse and separate vendors
16 are applying the AEC with verification documents.

17 However, Mr. Shon, the problem is that the fuel
18 densification problem as it relates to Kewaunee must be
19 specifically addressed. The staff will address that question
20 in its testimony.

21 However, we have not yet completed our analysis and
22 therefore this is another one of those issues where if the
23 Board must rule, the staff position would be that we should
24 litigate.

25 MR. SHON: Fine.

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1 MR. CHARNOFF: I would like to be clear that my
2 position is explicitly stated in our argument on contention
3 317.1, where I take note of the fact that the same contention
4 says, "At the same time, don't license this plant, but in the
5 meantime, there ought to be an analysis based upon some
6 conservative assumptions posed by the intervenors without any
7 basis therefor."

8 I don't think this is a contention.

9 CHAIRMAN FARMAKIDES: Mr. Vollen, did you have
10 any comments?

11 MR. VOLLEN: No, Mr. Chairman.

12 CHAIRMAN FARMAKIDES: All right, 4.4.3.

13 I would like to hear from the intervenors first.
14 Can you clarify the status report?

15 MR. VOLLEN: The same status report, Mr. Chairman,
16 applies I think to all or virtually all of the contentions
17 that were in the 4. series in the stipulation submitted to the
18 Board.

19 The most dramatic change in the status of that
20 whole series is reflected in the document filed today with-
21 drawing a very large number of those contentions.

22 In short, we have had an opportunity to do more
23 reviewing of the documentation that we have on quality
24 assurance since we were in Washington last week and as the
25 result of that review we have determined to withdraw a large

1 number of them.

2 With respect to those that are remaining, including
3 4.4.3, our position is that they should be litigated. We
4 are prepared to give further clarification of what it is
5 physically about the plant that the contention is dealing
6 with. We can do that either orally today or we can do that
7 in writing.

8 CHAIRMAN FARMAKIDES: Do it right now, sir, if
9 you will.

10 MR. VOLLEN: Okay, I will ask Mr. Comey to do that.

11 MR. COMEY: Mr. Chairman, I wonder if we might
12 defer that until after lunch. I have three full notebooks
13 here.

14 CHAIRMAN FARMAKIDES: We will defer this one to after
15 lunch, because it is a little unfair. This is the first one
16 we have asked you to clarify in great detail. We will come
17 back to 4.4.3 and we will go 4.5.2.

18 MR. RENFROW: All of the 4. series deals with this
19 problem, Mr. Chairman.

20 CHAIRMAN FARMAKIDES: I see.

21 My colleagues have made a reasonable suggestion,
22 that maybe rather than waiting until 12:30, we break for
23 lunch now and then we can reconvene after lunch and begin with
24 4.4.3 and continue and conclude.

25 It is 12:15. In the downtown area it is very

1 difficult to get into a restaurant at this time. We have to
2 allot ourselves about an hour and 15 minutes, an hour and a
3 half. What do you suggest? One-thirty?

4 MR. RENFROW: Fine.

5 MR. VOLLEN: May I suggest your later suggestion of
6 an hour and a half? Not only do we have a luncheon problem
7 but we would like Mr. Comey to review these documents.

8 CHAIRMAN FARMAKIDES: Well, make it 1:45.

9 MR. VOLLEN: Thank you.

10 (Whereupon, at 12:15 p.m., the hearing was
11 recessed, to reconvene at 1:45 p.m., this same day.)

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End 13

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AFTERNOON SESSION

(1:45)

CHAIRMAN FARMAKIDES: Gentlemen, are we prepared to move on to 4.4.3? Mr. Vollen, you were beginning to clarify this contention for us, or I think you were suggesting Dr. Comey would do it.

MR. VOLLEN: Yes, sir.

MR. CHARNOFF: Can I clarify Dr. Comey's status? Is he a doctor or a mister?

MR. COMEY: I am a mister.

MR. CHARNOFF: That is what I thought.

CHAIRMAN FARMAKIDES: I'm sorry.

MR. VOLLEN: Mr. Comey is, Mr. Chairman.

MR. CHARNOFF: I inadvertently gave Mr. Ford a doctorate last week in oral argument. I don't want Mr. Comey to share that same status.

CHAIRMAN FARMAKIDES: Are you prepared, sir?

MR. VOLLEN: Excuse me.

MR. COMEY: 4.4.3 Mr. Vollen will do.

CHAIRMAN FARMAKIDES: All right. Then we are also going to ask 4.5.2, 4.6.1, 4.7.2, 4.15.1, and 4.16.3. These are all related.

MR. VOLLEN: On 4.4.3, Mr. Chairman, it is our position that the piping and the reactor pressure vessel in the Kewaunee plant ought to be required to meet the currently

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1 applicable code as adopted in the Atomic Energy Commission
2 regulations. Presumably, the codes are changed from time
3 to time to reflect improvements in the technology and increased
4 knowledge about the safe operation and the safe design and
5 fabrication of this equipment in the plant, and if there is
6 a safer way to do it, then, the fact that a reactor pressure
7 vessel was commenced into fabrication at an earlier time ought
8 to be a sufficient reason for it not to meet the currently
9 most safe approved code.

10 That is our essential position in that contention.
11 There is another problem involved in this contention, and that
12 is, as we understand it, the reactor pressure vessel was not
13 designed to the code in effect as of the time the order for
14 the reactor pressure vessel was placed.

15 I believe that the A lab decision in Indian Point
16 permits that. We don't think it is a proper standard, but this
17 vessel, as far as we know, does not even meet that standard.
18 We think the question of what code this reactor pressure
19 vessel in the primary piping was built to and which one it
20 should be required to be built to ought to be litigated.

21 CHAIRMAN FARMAKIDES: What do you intend to show,
22 sir?

23 MR. VOLLEN: We intend -- we expect that the
24 evidence will show that the date upon which this vessel was
25 ordered, the code in effect on that date, and that there is

dh3 1 a different code in effect now, and that vessel does not meet
2 that code. Therefore, the Board cannot determine that the
3 pressure vessel is safe.

4 ALTERNATE MEMBER: Is it your contention that all pressure
5 vessels built before the codes were established are unsafe?

6 MR. VOLLEN: Unless they can be shown to be safe
7 notwithstanding their failure to meet the currently approved
8 code.

9 ALTERNATE MEMBER: Isn't it your duty to show
10 where they are unsafe?

11 MR. VOLLEN: I don't think so, Mr. Clark.

12 MR. VOLLEN: Mr. Clark, I don't think the duty is
13 upon the intervenors. I think the duties to show a safe
14 operation, a safe plant, is upon the applicants and the
15 Commission must find the plant is safe to be operated before
16 it can be listed.

17 MR. CLARK: Isn't that the duty of the regulatory
18 staff?

19 MR. VOLLEN: I believe it is the duty of the
20 Atomic Energy Commission. That is the body that licenses
21 the plant. I think the statute is quite clear that throughout
22 the statute, the burden is made manifest that the Commission
23 must take into account the public health and safety and must
24 find that a plant will be in conformity with the public health
25 and safety before that plant can be licensed to operate.

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1 MR. CLARK: How do you assume that could be done?
2 What procedure would you suggest?

3 MR. VOLLEN: With respect to what, Mr. Clark?

4 MR. CLARK: With respect to this pressure vessel.

5 MR. VOLLEN: I think that if in fact this
6 pressure vessel is safe, notwithstanding the fact that it
7 does not meet ~~the~~ currently in-effect code, I think the Board
8 must find, based on evidence, that in whatever respects this
9 reactor pressure vessel fails to meet the code, those are
10 thought aspects that go to the safety of the reactor pressure
11 vessel. If in fact this reactor pressure vessel has
12 characteristics which would not be permitted under the new
13 code and the new code would impose different characteristics
14 which would make it more safe, then the vessel must be
15 altered to conform to that code.

16 MR. CLARK: Thank you.

17 MR. SHON: Mr. Vollen, 50.55a says under Section C,
18 pressure vessels for construction permits issued before
19 January 1st, 1971. That does include this one, doesn't it?

20 MR. CHARNOFF: Oh, yes.

21 MR. VOLLEN: I believe it does.

22 MR. SHON: "Shall meet the requirements for Class A
23 vessels set forth in Section 3 of the "code" of the applicable
24 code cases in effect on the date of order of the vessel."

25 Do you content it doesn't meet the code that was

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1 in effect on the date of order of the vessel, that there was
2 no code in effect on the date of order of the vessel, or that
3 it met that code and doesn't meet later codes?

4 MR. VOLLEN: Frankly, there is some lack of clarity
5 as to the facts in my mind. But it is my understanding that
6 this reactor pressure vessel was ordered in 1967, that it
7 was built and supposed to conform to the 1968 code. That was
8 a code not in effect on the date it was ordered.

9 MR. SHON: A later one.

10 MR. VOLLEN: Yes.

11 MR. SHON: Presumably a more stringent one.

12 MR. VOLLEN: That is the presumption, that when
13 the code is changed, it is because it is new stringent,
14 because new technology has permitted changes. If we are
15 going to look at specific language in Part 50, it does not
16 say that the applicant may choose any code in effect after
17 the date of order. It says the code in effect on the date
18 of the order.

19 If we are going to go to some code other than the
20 one in effect on the date of order, I suggest that the code
21 we ought to go to is the most current one, which, based on
22 the same presumption we just engaged in, is presumably the
23 most safe one.

24 CHAIRMAN FARMAKIDES: Mr. Vollen, in your contingent
25 you say when no applicable code existed.

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1 MR. SHON: Yes. That doesn't seem to jibe with
2 what you just said.

3 CHAIRMAN FARMAKIDES: This caused us problems. We
4 are going over this contention specifically. There is an
5 ambiguity here. There is a question as to basis, of course.
6 We want this clarified.

7 MR. VOLLEN: When it was written and said "No
8 applicable code," it was our impression, and there is now some
9 doubt as to the correctness of that impression, that there
10 was no code in effect prior to the 1968 code. Since writing
11 this contention, we have learned -- it appears to be the
12 case that there was a 1965 code which would have been the
13 code in effect on the date of the order.

14 But this development, as we understand it, was not
15 built to that '65 code. It was supposed to be built to the '68
16 code which was not in effect on the date the vessel was
17 ordered.

18 CHAIRMAN FARMAKIDES: Of course, your contention
19 doesn't say that.

20 MR. VOLLEN: I think that's right. I think that's
21 right.

22 MR. CLARK: Is it your further contention that if
23 it met the '68 code, it would not meet the '65 code?

24 MR. VOLLEN: No, it is our -- as I sit here now,
25 I don't know the difference between those codes.

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1 MR. CLARK: You have said a few minutes ago that
2 each successive code was more stringent.

3 MR. VOLLEN: That is a presumption we made.

4 MR. CLARK: If it met the '68 code, then, if you
5 follow that presumption, wouldn't you a fortiori, or I, decide
6 that it did meet the '65 code?

7 MR. VOLLEN: Based on that presumption, I would,
8 yes, and also I would say that having gone to the '68 code,
9 there is no reason in safety or in public health and safety
10 to stop at the '68 code, but rather to go on to the current
11 code, and meet that one which, based on that same presumption,
12 is a more safe code and based on that same presumption, would
13 mean that the vessel had satisfied the '65 and the '68 codes?

14 MR. SHON: However, if it satisfied the '68 code
15 and a fortiori, satisfied the '65 code which was the code
16 in effect at the time, it would conform to the regulations,
17 wouldn't it?

18 MR. VOLLEN: If there was a finding that it conformed
19 to the '65 code, based upon that language that you read,
20 that's right.

21 CHAIRMAN FARMAKIDES: One more thought, Mr. Vollen.
22 What showing do you intend to make with respect to whether
23 or not it meets the current code?

24 MR. VOLLEN: By showing --

25 CHAIRMAN FARMAKIDES: What proof do you intend to

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1 offer, or evidence?

2 MR. VOLLEN: I intend to ask the applicant and
3 the staff whether or not it meets the current code in effect.

4 CHAIRMAN FARMAKIDES: In other words, there will
5 be no direct testimony on this? There will be cross?

6 MR. VOLLEN: As of this time, we do not have
7 any direct planned on this issue. Any direct from witnesses
8 other than applicant or staff witnesses, that is.

9 CHAIRMAN FARMAKIDES: Okay.

10 MR. RENFROW: Mr. Chairman?

11 CHAIRMAN FARMAKIDES: Mr. Renfrow?

12 MR. RENFROW: Thank you. If I might direct the
13 Board's attention to the by now in this case famous Indiana
14 Point Unit 2 decision of the Commission at Page 5, the
15 code to which pressure vessels must be built is spoke to
16 explicitly. I would point out to your attention further
17 specifically, Footnote 6 on that page, which says that
18 50.55a(a)(c)(1) says "They shall conform to the code, code
19 cases and addenda in effect on the date of the order of the
20 vessel." And it says, "They may conform to the subsequent
21 codes."

22 The Commission in this order, perhaps this is the
23 answer to the question at least in the staff's opinion, states
24 on Footnote 6, "We intimate no views on the merits of this
25 case which is not now before the Commission."

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1 Therefore, I think perhaps before we get to any
2 factual issue, if this Board rules that this is a contention,
3 that the first question is a purely legal question. That is,
4 which code must this vessel conform to, based upon this opinion.
5 Until Mr. Vollen satisfies that, even if he establishes a
6 basis first to get there, I think he must then satisfy this
7 decision before we get to any questions to the staff or the
8 applicant.

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1 CHAIRMAN FARMAKIDES: That is a good question,
2 Mr. Vollen. Do you have an answer, sir, at this time?

3 MR. VOLLEN: I would be prepared to agree with
4 Mr. Renfrow that the initial question is the legal one,
5 what code must this vessel conform to. And then assuming the
6 factual question thereafter, whatever the code the Board
7 decides it must conform to, does it in fact conform to that
8 code.

9 CHAIRMAN FARMAKIDES: But with respect to the
10 factual issue, you will pursue resolution of that through
11 cross only, through no direct?

12 MR. VOLLEN: As of the present time, that is our
13 intention.

14 MR. RENFROW: May I reiterate --

15 CHAIRMAN FARMAKIDES: Mr. Renfrow?

16 MR. RENFROW: Let me reiterate one more thing.
17 Before we get to the legal issue, since Mr. Vollen agrees
18 with me, we have to have a basis in which to put this into
19 contention to get to the legal point.

20 Thank you.

21 CHAIRMAN FARMAKIDES: Mr. Charnoff?

22 MR. CHARNOFF: I think there are a number of issues
23 here, one of which is, one could ask what code do we have
24 to comply with. I am not sure it needs much more than a
25 few seconds look at 50.55(c)(1) which states the requirement

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1 that it be a code in effect at the time. We simply have to
2 determine then was it the '65 code or the '68 code. I would
3 also point out that the same section Mr. Shon read from,
4 55(c)(1) contains a final sentence which expresses exactly what
5 the gentlemen of the Board were saying with regard to the
6 fact that each successive code may be more stringent and
7 therefore it says indeed that the pressure vessels may meet
8 the requirements set forth in codes, code cases and addenda
9 which have become effective after the date of the vessel
10 ordered.

11 We also submit that 55(c)(2) is specifically
12 establishing the requirements for permits issued after January
13 1, 1971, so that to the extent Mr. Vollen is suggesting that
14 we ought to meet some current code, whatever the word "current"
15 means, presumably the most recent code, he in effect is
16 challenging 50.55(a)(c) (1) and (2), and insofar as that is
17 concerned, he has to meet the requirements of Section 2.578
18 with regard to challenges to regulations, and then wholly
19 beyond that is the Indian Point decision, that if he is suggest-
20 ing that those codes are not adequate for this particular case,
21 he has to show why it is not adequate for this particular case,
22 and he has to come up -- even Mr. Renfrow would agree with
23 me -- with a prima facie case to demonstrate that.

24 CHAIRMAN FARMAKIDES: Anything further, Mr.
25 Vollen?

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1 MR. VOLLEN: No.

2 CHAIRMAN FARMAKIDES: Mr. Renfrow?

3 MR. RENFROW: No.

4 CHAIRMAN FARMAKIDES: The next one is 4.5. That is
5 4.5.2.

6 MR. COMEY: Mr. Chairman, during the lunch hour, I
7 reviewed the various documents of Applicant and the Directorate
8 of Regulatory Operations, to give some examples of either
9 instances or particular pieces of equipment that fall under
10 this, and the next four contentions that the Board has asked
11 questions on.

12 CHAIRMAN FARMAKIDES: You are addressing the next --
13 you are addressing 4.5.2, 4.6.1, 4.7.2, and 4.16.1?

14 MR. CHARNOFF: One at a time.

15 MR. COMEY: Yes. My problem is that on 4.5.2, I
16 was unable to find the specific documents I was looking for.
17 So I'm afraid on that all I can say is that I am not prepared
18 to cite specific documents for that one. If you wish, we
19 can move on to 4.6.1.

20 MR. SHON: My question is, what the basis is.

21 CHAIRMAN FARMAKIDES: All right.

22 MR. SHON: Can you give us any clarification of the
23 basis for this?

24 MR. COMEY: Yes, there were some instances where
25 people signed a document as inspector and it later turned out

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1 that it wasn't their signature. Someone else had signed for
2 them. In a number of cases the signatures had been typed in
3 rather than personally typed, and there was no indication that
4 the person --

5 CHAIRMAN FARMAKIDES: In other words, in this case
6 you would present a direct case, Mr. Vollen, with that
7 documentation that Mr. Comey has reference to?

8 MR. VOLLEN: When you say the direct case, we could
9 present a direct case. It might be through witnesses that
10 have either been produced by the Applicant or the Staff or
11 subpoenaed by us to testify. That is, neither Mr. Comey nor
12 myself was physically present and could testify, you know --
13 we have no person other than an employee of the Applicant
14 or the Staff that could testify to the events that occurred.

15 CHAIRMAN FARMAKIDES: You have factual information
16 here that you are going to --

17 MR. VOLLEN: Elicit, yes, sir.

18 CHAIRMAN FARMAKIDES: Mr. Renfrow?

19 MR. RENFROW: Thank you, Mr. Chairman.

20 Just for clarification, I think it would be helpful
21 to point out to the Board that the documents to which Mr.
22 Comey is now referring were supplied by the Staff and/or
23 the Applicant to Mr. Comey and Mr. Vollen under our informal
24 discovery procedures. They are not documents which BPI itself
25 has gathered or witnesses that they would present; it is our

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1 own documents.

2 CHAIRMAN FARMAKIDES: Yes.

3 MR. RENFROW: They are using them.

4 CHAIRMAN FARMAKIDES: Mr. Charnoff?

5 MR. CHARNOFF: We are unable to even talk
6 intelligently to this kind of subject, Mr. Chairman. The
7 lack of basis as of right now doesn't even provide adequate
8 notice as to what we are talking about.

9 CHAIRMAN FARMAKIDES: Are you aware of the
10 documentation, Mr. Comey is --

11 MR. CHARNOFF: We have turned over documentation.
12 I am not aware of the documents Mr. Comey is alleging suggests
13 any kind of support for this.

14 CHAIRMAN FARMAKIDES: Have the parties discussed
15 this contention, 4.5.2?

16 MR. CHARNOFF: No, sir. Mr. Comey was unprepared
17 to do that last week.

18 CHAIRMAN FARMAKIDES: Anything further, Mr. Vollen?

19 MR. VOLLEN: No, sir.

20 CHAIRMAN FARMAKIDES: Mr. Renfrow?

21 MR. RENFROW: No, sir.

22 CHAIRMAN FARMAKIDES: Mr. Charnoff?

23 MR. CHARNOFF: We would point out on a matter
24 like this, Mr. Chairman, that we did agree at the end of
25 last week to waive any requirements with regard to timing as to

1 those matters that we at least had talked about even up until
2 January 4. We did not, however, waive any requirements with
3 regard to lateness, with regard to matters such as the instant
4 one.

5 MR. SHON: You do assert, Mr. Comey, though, that
6 you have in your possession documents which show irregularities
7 of one kind or another in the sign-off procedure?

8 MR. COMEY: Very definitely.

9 MR. SHON: For certain items of equipment that are
10 pertinent to safety, right?

11 MR. COMEY: The problem I have is with the phrase
12 "pertinent to safety." If you mean was it a component on
13 the system designated as the engineered safeguards system,
14 I am not absolutely positive. I do know that these were
15 matters that the regional inspector from the Division of
16 Compliance was concerned about, noted. It is in these inspec-
17 tion reports as items of noncompliance or nonconformance.

18 MR. SHON: Okay.

19 MR. CHARNOFF: May I make an observation?

20 I can't comment, obviously, until we see the
21 specific document at issue. However, to the extent the
22 documents referred to include what we call our deviation
23 reports, and I am not sure whether Mr. Comey is including
24 those within the category --

MR. COMEY: No.

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1 MR. CHARNOFF: I would point out that it is very
2 normal in any kind of QA program to pick up deviations and
3 have a remedy. The very fact that one at one time sees
4 something and reports it, which then is subsequently disposed
5 of, is insufficient in my judgment to suggest that therefore
6 there is a contention.

7 MR. RENFROW: Mr. Chairman, I would like to reply
8 to that. It seems to me right to the point on basis. He
9 may disagree with it, but the document is there, it is a
10 matter for summary disposition and/or to litigate, and this
11 Board to decide. If the document is there, it has a basis
12 and should go forward.

13 Thank you.

14 CHAIRMAN FARMAKIDES: Thank you, Mr. Renfrow. 4.6.1.

15 MR. COMEY: I would refer to a compliance division
16 report that bears the code number "Southwest 71/1." I will
17 read just one or two sentences from it.

18 CHAIRMAN FARMAKIDES: You don't have to at this
19 point. But you do have, then, documentary material which
20 I assume will be part of your proof?

21 MR. COMEY: Yes, sir. There is quite a few of
22 them.

23 CHAIRMAN FARMAKIDES: Do you intend to have a direct
24 case here of your own, or are you going to go through the
25 Applicants or the Staff?

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1 MR. VOLLEN: Again the documents Mr. Comey is
2 referring to are documents that we received either from the
3 Staff or from the Applicant or both, and we need to call
4 witnesses from one or both of those organizations to sponsor
5 the documents and to testify with respect to the facts reported
6 therein.

7 CHAIRMAN FARMAKIDES: How are you going to do that,
8 sir?

9 MR. VOLLEN: How am I going to do that?

10 CHAIRMAN FARMAKIDES: Yes.

11 MR. VOLLEN: Well, when we are preparing the case
12 for trial, I will ask opposing counsel if they will produce
13 certain witnesses, and if they will not, I will ask the Board
14 to issue a subpoena with respect to those witnesses.

15 CHAIRMAN FARMAKIDES: Okay. I just wanted to know.
16 I was leading up to that. If we are going to have any subpoenas
17 here, I want to be sure that you people understand you prepare
18 them in toto, I want the return of service to show the tender,
19 the whole bit. All that I want to do is to sign it. Okay.

20 Mr. Renfrow, anything on 4.6.1?

21 MR. RENFROW: No, sir. But I would like to remind
22 the Intervenors and the Board, speaking of subpoenas, that
23 there is a rule as to AEC personnel within the regulations of
24 Part 2 and perhaps it would save us all time and argument as
25 to subpoenas if everybody made themselves very familiar with

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1 that rule.

2 CHAIRMAN FARMAKIDES: That's correct. Thank you,
3 Mr. Renfrow.

4 Mr. Charnoff, do you have anything on 4.6.1, sir?

5 MR. CHARNOFF: Yes, sir. It seems to me that --
6 I don't know whether the Board will or will not admit this
7 kind of contention, but in terms of the time available, I
8 would think it would be helpful to the parties if we did permit
9 Mr. Comey to identify at least the documents without even
10 necessarily reading them that he plans to use.

11 CHAIRMAN FARMAKIDES: That is a fair request.

12 MR. CHARNOFF: So we can look at those documents.

13 CHAIRMAN FARMAKIDES: That is a fair suggestion.

14 Mr. Comey, would you please identify the documents
15 you were going to mention a moment ago on 4.6.1?

16 MR. COMEY: Yes. In addition to the one that I
17 mentioned, I should mention --

18 MR. KEANE: What was that again?

19 CHAIRMAN FARMAKIDES: Would you restate those again,
20 please?

21 MR. COMEY: Southwest 71/1.

22 MR. CHARNOFF: Page 8.

23 MR. COMEY: Page 8. Second paragraph on the reactor
24 coolant piping.

25 Next is R072-12.

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MR. CHARNOFF: Still on 4.6.1?

MR. COMEY: Yes, sir.

MR. CHARNOFF: I am sorry.

MR. COMEY: RO72-12, paragraph I of page 8.

CO Report 71-04, page 14, paragraph 13 and paragraph 15.

February 16, 1972 letter of Boyce Greer, regional director, Compliance Division, a noncompliance letter. I will refer you to the entire letter. That is to Wisconsin Public Service.

CO Report 71-04, paragraph 12. CO71-003, page 6, paragraph A, paragraph B. And October 20, 1971 letter of Boyce Greer, noncompliance, page 3, paragraph 3, page 4, paragraph 5.

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Reba 1

1 CHAIRMAN FARMAKIDES: Okay. Anything further on
2 4.6.1? Let's go to 4.7.2. Mr. Vollen, do you intend to intro-
3 duce any documentation with respect to this contention?

4 MR. VOLLEN: Any documentation? Yes, sir. Again,
5 I don't want that answer to be misleading. Again, the documen-
6 tation that we have with respect to this contention is in the
7 same category, namely, it came either from the Applicant or
8 the Staff.

9 CHAIRMAN FARMAKIDES: Can you identify it, sir?

10 MR. VOLLEN: David?

11 MR. COMEY: A letter from Boyce Greer of October
12 20, 1971, enclosure, paragraph 1. In addition, Applicant's
13 Document Al348, item number 10.

14 MR. CHARNOFF: Could you repeat that, please?

15 MR. COMEY: Applicant's Document Al348, number 10.
16 That is August -- July 13, 1972.

17 MR. CHARNOFF: Item number 10.

18 MR. COMEY: Item number 10. CO7203, page 13, para-
19 graph 14. CO71-002, page 2, under "Enforcement Action" and
20 unresolved items with respect to valve body wall thickness
21 measurements. And RO72-12, page 8, paragraph in the middle of
22 the page marked "Valve Body Wall Thickness Measurement."

23 CHAIRMAN FARMAKIDES: Any comments, Mr. Renfrow?

24 MR. RENFROW: I have a qualifying comment.

25 MR. VOLLEN: May I interrupt ---

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Reba 2

1 MR. RENFROW: Certainly.

2 MR. VOLLEN: I wanted to make one comment after
3 Mr. Comey finished identifying the documents. It is that I
4 don't want the record to leave any state of ambiguity. You
5 asked that we identify the documents. That is what Mr. Comey
6 did. I am not prepared to say, however, that those will be
7 the only documents or the only evidence that would be introduced
8 at the trial if this contention is determined to be litigated
9 by the Board.

10 CHAIRMAN FARMAKIDES: Yes. Mr. Renfrow?

11 MR. RENFROW: Thank you, Mr. Chairman. I would like
12 to inquire whether or not we can have some clarification on all
13 of these; CO and RO reports are for the WPS Kewaunee plant?

14 I furnished to the intervenors copies of numerous
15 compliance and regulatory operations reports relating to several
16 different plants.

17 CHAIRMAN FARMAKIDES: That is a fair question. Mr.
18 Vollen?

19 MR. COMEY: They all relate to Kewaunee.

20 CHAIRMAN FARMAKIDES: Anything else, Mr. Renfrow?

21 MR. RENFROW: No.

22 CHAIRMAN FARMAKIDES: Mr. Charnoff?

23 MR. CHARNOFF: Not now, sir.

24 CHAIRMAN FARMAKIDES: Sir?

25 MR. CHARNOFF: Nothing now, sir.

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Reba 3

1 CHAIRMAN FARMAKIDES: Okay. Let's go on to 4.15.11.

2 MR. COMEY: 4.15.11.

3 CHAIRMAN FARMAKIDES: 4.15.1. Again Mr. Vollen,
4 here could you expand further on what this contention means,
5 including what you intend to show, what documentation or other
6 evidence you might place into the record?

7 MR. VOLLEN: May Mr. Comey respond?

8 CHAIRMAN FARMAKIDES: Yes, Mr. Comey.

9 MR. COMEY: Well, they would be the sort of documents
10 that I am prepared to itemize now.

11 CHAIRMAN FARMAKIDES: Could you read those, sir?

12 MR. COMEY: Yes, October 20, 1971, non-compliance
13 letter from Boyce Greer, Regional Director, USAEC Compliance
14 Division, Region 3. Enclosure, paragraph 2 on two class 1 pumps.
15 In addition, July 27, 1971 letter from Boyce Greer, non-compliance
16 -- well, the entire letter. That is Compliance Division Report
17 CO-71.003, page 5, paragraph E, paragraph G. Compliance Division
18 Report CO71-04, page 13, paragraph 13, and RO Report 72-11,
19 Enforcement Action, non-compliance paragraph A.

20 CHAIRMAN FARMAKIDES: Mr. Charnoff, did you have
21 any response, comments, or other viewpoints?

22 MR. CHARNOFF: Without having examined these documents
23 at this point, no, sir.

24 CHAIRMAN FARMAKIDES: Mr. Renfrow?

25 MR. RENFROW: Not without seeing the documents,

16 1 Mr. Chairman.

Reba 4 2 CHAIRMAN FARMAKIDES: Let's go to 4.16.3. Now here
3 the Board would also like some definitions as to what the
4 Intervenor means by adequate records, by failures, malfunctions.
5 We need clarification on this one as to what did you intend
6 to show here as well as what do you mean by this contention.

7 MR. COMEY: Again, these are Compliance Division
8 Reports. The problem was basically installation of equipment
9 that was not in accordance -- it was non-conforming equipment.
10 It did not either have the proper documentation or it was known
11 to not conform.

12 It was installed. Applicant explained to the AEC
13 that it did so merely in order to be able to test certain systems
14 in the plant, that there was no intention of ever operating
15 the plant with this equipment in place. However, when the
16 inspector looked at the procedures, there were no written
17 procedures or any indications that this equipment would have
18 in fact been taken out.

19 CHAIRMAN FARMAKIDES: Can you cite those documents,
20 sir?

21 MR. COMEY: CO Report 71-003, paragraph G.

22 MR. CHARNOFF: What page is that?

23 MR. COMEY: I am sorry, page 5. And there are other
24 documents, but I didn't find them at lunch. I am not sure I
25 have all of my Q-A documents with me today. This was the

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Reba 5

1 general nature of the problem. There were inadequate procedures
2 for handling the situation. The Applicant said he interpreted
3 the Q-A requirements as one thing and the inspectors had a
4 different opinion.

5 CHAIRMAN FARMAKIDES: Anything further, Mr. Comey?

6 MR. COMEY: That is all.

7 CHAIRMAN FARMAKIDES: What do you mean, sir, by
8 adequate records here?

9 MR. COMEY: I would mean by "adequate records", records
10 sufficient to determine that any -- first of all, that if an
11 item is non-conforming, that it is known to be non-conforming
12 and that there is no problem with deciding on the basis of the
13 documentation.

14 CHAIRMAN FARMAKIDES: All right.

15 MR. COMEY: Secondly if for some reason it has been
16 installed, that there are adequate procedures to maintain a
17 non-compliance status with respect to that, either through tagging
18 or through quality control cards, insuring that there is a punch
19 list to make that -- make sure that is taken out of the plant
20 prior to any operation.

21 CHAIRMAN FARMAKIDES: Okay. Anything, Mr. Charnoff?

22 MR. CHARNOFF: Not at this time, sir.

23 CHAIRMAN FARMAKIDES: Mr. Renfrow?

24 MR. RENFROW: Not until I have a chance to review
25 the documents, Mr. Chairman.

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Reba 6

1 CHAIRMAN FARMAKIDES: All right, let's go to 5.4-K.

2 MR. SHON: I had a question for the Staff in par-
3 ticular on this particular point, especially the sentence starting
4 "several of Applicant's proposed reactor operators have been
5 permitted to substitute course work", and there is an implication
6 there that the Applicant may be proposing or may have proposed
7 people as reactor operators whose experience and background do
8 not qualify them as such.

9 I wondered what implications this has for the
10 Staff's reactor operators or licensing program. Would you let
11 this happen? Is this the sort of thing one would expect?

12 MR. RENFROW: I think the nub of the problem is that
13 the Intervenors are stating that we have done so. We are stating
14 before the plant can operate these operators will be licensed
15 under AEC procedures and will be required to be qualified
16 operators.

17 That is the point to be litigated.

18 CHAIRMAN FARMAKIDES: We are not exactly certain
19 what the point to be litigated is and we are trying to determine
20 it.

21 MR. RENFROW: The point I believe is this: As Mr.
22 Shon stated there are certain requirements for reactor operators
23 stated forth in the regulations before a man can be qualified
24 to operate a machine, he has to meet these qualifications.

25 It is the Staff's analysis upon looking at the

16 1 programs and procedures and the men qualified that they are
Reba 7 2 qualified to operate it. From our discussions with the Inter-
3 venors it is my understanding it is their contention that they
4 are not qualified under the Regulations to operate this plant.

5 Thus the issue at controversy is whether they qualify
6 under our Regulations.

7 MR. SHON: Have there been any operators licensed
8 for Kewaunee yet?

9 MR. RENFROW: I don't know. If you will give me just
10 a second I can check.

11 MR. CHARNOFF: They have not yet taken the part 55
12 test.

13 MR. SHON: They haven't?

14 CHAIRMAN FARMAKIDES: We have the answer.

15 MR. RENFROW: Can I hear the answer?

16 MR. CHARNOFF: I said that the test itself has not
17 yet been administered under Part 55.

18 MR. RENFROW: It is our understanding thought that
19 there are some operators there who have qualified by previous
20 experience as operating, to operate. We may be mistaken. As
21 Mr. Charnoff says, there are others who are in training and
22 the regulations will be required to be met.

23 CHAIRMAN FARMAKIDES: Mr. Vollen, what do you intend
24 to show here?

25 MR. VOLLEN: We intend to show that if the proposed

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Reba 8

1 operators of this plant are not qualified, that that creates
2 a substantial question as to whether this plant can be operated
3 safely.

4 CHAIRMAN FARMAKIDES: That is not what I mean. I am
5 talking about in terms of what type of evidence, what kind of
6 evidence, are you going to present?

7 MR. VOLLEN: As of now we would plan to elicit infor-
8 mation as to who the proposed operators are and what their
9 qualifications and experience in operating large reactors is.

10 MR. SHON: More to the point, what reason do you have
11 for believing that these reactor operators will be under-
12 qualified when in point of fact they have not even been tested
13 or licensed yet, and the Commission's procedure for testing
14 and licensing operators is a well established procedure?

15 MR. VOLLEN: May I have just a moment, please?

16 I am informed, Mr. Shon, that as of the present time
17 we have seen documentation which suggests that the Applicant has
18 been having a problem locating qualified personnel to qualify as
19 operators of this reactor.

20 CHAIRMAN FARMAKIDES: Anything further, Mr. Renfrow?

21 Mr. Charnoff?

22 MR. CHARNOFF: Not on this point. I think this
23 simply underscores our whole discussion of basis of this morning,
24 Mr. Chairman.

25 CHAIRMAN FARMAKIDES: I would like to have a

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Reba 9

1 discussion on this one. This is very close, in my own personal
2 mind -- I am not talking for the Board now. I would like to
3 hear more about this. Mr. Vollen, give me more information,
4 please. What is it that you are going to bring into the
5 evidence to prove your contentions, sir?

6 MR. VOLLEN: That in part, Mr. Farmakides, I think is
7 a loaded question.

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1 CHAIRMAN FARMAKIDES: Look, this is a prehearing
2 conference and I have to get from you more clarification on
3 what this means.

4 You are the party that drafted this so I need it
5 from you, primarily.

6 MR. VOLLEN: I don't mind answering.

7 I was just the way the question was framed in terms
8 of to prove my contention. I am not at all sure that the
9 Intervenor's have to prove their contentions.

10 I think this is possibly going to be the topic of
11 discussion later on in this prehearing conference although
12 I would be pleased to discuss it now if you like.

13 We think that the evidence which will be elicited
14 with respect to this contention ought to be -- and we will make
15 every effort to elicit it -- who the operators are, what their
16 experience is, what training they have had, and whether they
17 are people who are qualified to run a reactor of this size.

18 When that evidence is in, the parties, I presume,
19 will argue to the Board their respective positions as to
20 whether these operators are qualified people and should be
21 permitted to operate the reactor if it is licensed, or that
22 they are not qualified, and, therefore, these people cannot --
23 this plant cannot satisfactorily be operated with these
24 operators.

25 CHAIRMAN FARMAKIDES: Assuming they are all qualified

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1 under the regulations cited earlier as qualified by AEC?

2 MR. SHON: Do you intend to address yourself to each
3 and every individual operator and his background and qualifi-
4 cations? And what would the Staff say to the idea that this
5 Board must pass on whether or not a man is licensable?

6 CHAIRMAN FARMAKIDES: This contention raises serious
7 issues to us that we want to be sure you understand.

8 MR. VOLLEN: Excuse me just a moment.

9 The answer to your question, Mr. Shon, is no, we
10 do not intend to litigate about each individual operator. There
11 are some operators who it appears, based upon their qualifica-
12 tions, do have the experience running large nuclear power
13 reactors.

14 There are others who don't have that experience and
15 we have a question as to whether they are, in fact, qualified
16 or should be permitted to run this reactor, whether this
17 reactor should be licensed with them as potential operators.

18 MR. SHON: You intend then to address yourself to
19 the qualifications of certain individuals, however, certain
20 individual licensed operators, and intend to address yourself
21 to the question of whether these operators should or should
22 not be allowed to run this plant?

23 MR. VOLLEN: No, sir, I think the other way to
24 state it -- maybe it gets to the same point -- is that we
25 intend to address ourselves to the question of whether or not

ln3 1 this plant should be licensed with these individuals as
2 proposed operators of it or as potential or actual operators.

3 MR. SHON: Whether or not they are licensed?
4 Whether or not they obtain operators' licenses?

5 MR. VOLLEN: Yes, sir.

6 CHAIRMAN FARMAKIDES: Okay, that is clear.

7 Mr. Charnoff, Mr. Renfrow?

8 MR. RENFROW: I believe Mr. Shon had asked two
9 questions to me.

10 First of all, the Staff is not requesting that you
11 pass on whether or not each individual operator is licensable.
12 That is another section of the Code. I would suspect if the
13 number of the problem be known, that the Regulatory Staff's
14 motion for summary disposition on that, if that test has been
15 taken so far, would be to include the results of that test
16 before this Board.

17 However, it is the Staff's opinion that one of the
18 findings at least in a case where the Board is required to make
19 all the findings for issuance of an operating license, of which
20 this is not one -- one is that the Applicant is technically
21 qualified.

22 This goes to whether or not the people he has running
23 a reactor are qualified to run it. That seems to me to be a
24 valid issue. It is not whether or not they are licensable per
25 se, Mr. Shon, but whether or not they are technically qualified.

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1 Does that answer your question?

2 CHAIRMAN FARMAKIDES: Okay.

3 Mr. Charnoff?

4 MR. SHON: I do have one more question.

5 CHAIRMAN FARMAKIDES: Excuse me.

6 MR. SHON: It is a little difficult for me to
7 conceive of a person who would be licensable but not technically
8 qualified or technically qualified -- perhaps technically
9 qualified but not licensable or something. You made a
10 distinction that eludes me.

11 MR. RENFROW: I don't think it was a distinction,
12 Mr. Shon.

13 I think that for once I was getting into the
14 evidence which I said should not be done here, and that is
15 that my motion for summary disposition in my opinion, showing
16 that they were licensed under AEC procedures, would present
17 this Board with a case where they could dismiss it on the
18 merits at that time.

19 However, the question to be decided here is whether
20 or not this is in issue as a matter to litigate. I think it
21 is a litigatable matter as to whether or not WPS has the
22 people that are licensable or licensed to run a reactor.

23 If they have them, I think that disposes of the
24 question.

25 CHAIRMAN FARMAKIDES: Mr. Charnoff, did you have

ln5 1 any thoughts here?

2 MR. CHARNOFF: I hate to keep pushing the same record
3 button, sir, but if this isn't a de novo review of the technical
4 qualifications of the Applicant, I don't know what it is. All
5 we have is a statement that we do not have technically qualified
6 people.

7 I am going to ask at the hearing whether you do or
8 not. It seems to me that is not an admissible contention and
9 lacks adequate basis.

10 CHAIRMAN FARMAKIDES: Anything further on 5.4-k?

11 MR. RENFROW: Mr. Chairman?

12 CHAIRMAN FARMAKIDES: Mr. Renfrow?

13 MR. RENFROW: I have nothing further.

14 However, if the record would show, I now have
15 copies of the Brockett paper before we get to the environmental
16 matters. I will give those to the Board and the alternate,
17 with the parties' permission.

18 CHAIRMAN FARMAKIDES: Thank you very much.

19 Anything more on 5.4-k?

20 MR. COMEY: Mr. Shon, I would just like to respond
21 to a question that you asked Mr. Renfrow about: Is it possible
22 to have a technically qualified person who is not a reactor
23 operator. Obviously anyone --

24 MR. SHON: I'm sorry --

25 MR. COMEY: But vice versa I do know of instances

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1 where the Compliance Division has found licensed reactor
2 operators not to be technically qualified on certain matters.

3 In other words, they have found that they have been
4 operating a reactor in a certain fashion that the Compliance
5 Division finds is reprehensible and upon further inquiry it is
6 because the man doesn't understand certain features of the
7 reactor.

8 CHAIRMAN FARMAKIDES: Do you have any such instances
9 in this case?

10 MR. COMEY: No, sir, they haven't run the reactor
11 yet.

12 But, based on the summary statement of qualifications
13 that appears in an amendment to the Final Safety Analysis
14 Report, I suspect that there may be several people who would
15 not be technically qualified to operate this plant.

16 CHAIRMAN FARMAKIDES: Okay, let's go to 6.1.1.

17 Now, I had difficulties with this particular
18 contention because of its very prolix charge. It seemed as
19 thought the contention was a treatise more than a pleading,
20 if you will.

21 Mr. Vollen, what is your contention, sir, and can
22 you focus on it, on this roughly six pages that we have here?

23 MR. VOLLEN: Mr. Comey will respond, Mr. Chairman.

24 MR. COMEY: Mr. Chairman, in the Point Beach case,
25 we had some similar contentions which were quite numerous, and

ln7 1 the Board asked us to make it all into one contention. In
2 this case, following that guideline, that is what we did here.

3 CHAIRMAN FARMAKIDES: I am not clear, sir.

4 MR. COMEY: The Board said, really you are making a
5 lot of individual contentions about the state of the Lake and the
6 hydrology and monology of it.

7 Since that all goes to the question of the ecosystem
8 of the Lake and what the effect of the plant would be on it,
9 why don't you just take the first 28 paragraphs and make one
10 contention out of it.

11 CHAIRMAN FARMAKIDES: Let's be more detailed then.

12 On Contention 6.1.1 it appears to me that you have
13 two contentions, one stated in paragraph 1, more or less,
14 and one stated in the last paragraph.

15 Now, is that true, sir?

16 Are those two contentions related through the body
17 to the material presented between those contentions?

18 MR. COMEY: I suppose that is a fair reading of
19 that, that the first and last paragraphs state the contentions
20 and perhaps really what the other paragraphs are are the bases
21 for the contentions.

22 CHAIRMAN FARMAKIDES: All right.

23 MR. COMEY: I don't think we are asking this Board
24 to find that the number of diatoms in the Lake is in fact such
25 and such. That was never our intention.

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1 CHAIRMAN FARMAKIDES: Actually you have two
2 contentions here, and the next question goes to the last
3 paragraph.

4 I would like to hear discussion from all the parties
5 as to that last paragraph -- of course to the entire contention,
6 6.1.1. But in addition, I would like to have discussion on
7 that last paragraph, and the authority of the Board, the juris-
8 diction of the Board, if you will, to consider that last
9 paragraph.

10 Mr. Vollen?

11 MR. COMEY: Mr. Chairman?

12 CHAIRMAN FARMAKIDES: Yes, sir, Mr. Comey.

13 MR. COMEY: I will be happy to try and explicate
14 that.

15 CHAIRMAN FARMAKIDES: Fine.

16 MR. COMEY: I think our position is that when you
17 have a lake as opposed, say, to a river with plants dis-
18 charging into it, that is a somewhat different situation than,
19 say, discharging into the ocean or a river.

20 CHAIRMAN FARMAKIDES: Yes.

21 MR. COMEY: In this particular case the Kewaunee
22 plant is 4.5 miles from Point Beach. There are other nuclear
23 plants about to go into operation, two very large units at
24 Zion.

I think it is our position that you cannot judge what

ln9 1 the effect of this plant will be on the Lake without considering
2 also what the cumulative effect of those other plants -- at
3 least those that are within the range of effect --

4 CHAIRMAN FARMAKIDES: What would that be, sir?

5 MR. COMEY: Argonne has done some very preliminary
6 studies and under certain circumstances, it is possible that
7 the Plume can extend many tens of miles when it hugs the
8 shore.

9 I think really what you are talking about is the
10 situation in which you have to judge this plume, what it
11 contributes to -- let's say if it is going south -- the plume
12 from the Point Beach plant, plus the plume at Manitowoc.

13 CHAIRMAN FARMAKIDES: You are talking two additional
14 plumes, roughly, with this plume?

15 MR. COMEY: I am not in a position to say definitively
16 what it is. There is really no definitive data at this point.

17 CHAIRMAN FARMAKIDES: You are in a position of knowing
18 what your contention says. Your contention has to have some
19 specificity so we understand it. We are trying now to determine
20 what your contention, in fact, says so we can act on it.

21 It hardly needs to be repeated that the more specific
22 it is and the better the Board understands it, the better
23 possibility that we will admit it. If we don't understand the
24 contention and don't think it has any basis -- that is what
25 we are trying to determine now.

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1 MR. COMEY: I don't think you can just consider the
2 Kewaunee discharge by itself. I think you have to take into
3 account at least Point Each 1 and 2, and I am not sure, other
4 than perhaps the generating station at Sheboygan, whether there
5 is another major power plant within an area that could be
6 expected to be affected.

7 CHAIRMAN FARMAKIDES: Okay.

8 Now, what authority do you think this Board has to
9 make that determination, Mr. Vollen?

10 MR. VOLLEN: I think, Mr. Chairman, this Board and
11 the Atomic Energy Commission are charged with the duty of
12 evaluating and weighing the cost and benefits of this plant
13 and the impact on the environment.

14 The environment upon which this plant will be having
15 an impact is in part Lake Michigan, not Lake Michigan in some
16 abstract contention of where it was 20 years ago or 50 years
17 ago or 100 years ago, but Lake Michigan as it is now and we can
18 reasonably foresee that it will be.

19 And I think to say that this Board and the Commission
20 cannot look at other phenomenon affecting the Lake, most
21 particularly other nuclear power plants affecting the Lake, is
22 totally unrealistic.

end 17

1 CHAIRMAN FARMAKIDES: Mr. Charnoff?

2 MR. CHARNOFF: Mr. Chairman, first with regard to
3 the so-called first contention in 6.1.1, I would point out
4 of course that it refers to a Lake Michigan enforcement
5 conference recommendation adopted, so-called, by the
6 Administrator of the U.S. Environmental Protection Agency on
7 May 21, 1971. That position, as you may know, was modified
8 somewhat in September of 1972.

9 Secondly --

10 CHAIRMAN FARMAKIDES: How so, Mr. Charnoff?

11 MR. CHARNOFF: Well, the Environmental Protection
12 Agency held a conference in September and in November of
13 this year, of 1972, that is, and they indicated that what
14 they were going to do was initiate a series of studies with
15 regard to Lake Michigan.

16 As a matter of fact, Mr. Comey has been appointed
17 to serve on a panel which is formulating some of those
18 studies to be conducted by utilities over three, four, or a
19 five-year period.

20 In the meantime, the Environmental Protection
21 Agency, which was given responsibility under the 1972 Water
22 Quality legislation to issue discharge permits, would issue
23 discharge permits; however, they would do so only for three
24 years, I believe it was, or four years, so they would then be
25 able to evaluate the results of the studies.

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1 In other words, they had dropped their -- EPA at
2 least had dropped a recommendation that there be a prior
3 commitment to adopt a closed cycle coolant system in exchange
4 for a permit.

5 Now then, with regard to the last paragraph, I
6 would indicate that I think what you were after was a
7 discussion of the effect of the 1972 Water Quality legislation
8 on the authority of the Atomic Energy Commission to require
9 the licensed applicant to change an open cycle cooling system
10 to a closed cycle cooling system, or to make any other changes
11 in effect which effect discharges into bodies such as the lake

12 It is our understanding of that Act that while it
13 seems to me it does not necessarily result in the most
14 efficient type of use of manpower, that that Act does suggest
15 that the agency such as the Atomic Energy Commission retain
16 its authority to conduct cost-benefiting analyses or
17 evaluations of environmental effects, including effects on
18 water discharges, insofar as the entire project is concerned,
19 and then you would take that cost benefit determination into
20 account when you determined whether to issue the license
21 at all, but that you no longer have any authority -- the
22 Atomic Energy Commission no longer has any authority -- to
23 compel as a condition of the license or in any other way --
24 to compel the adoption of a change in a cooling system.

25 Therefore, it may well be much ado about nothing,

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1 but Congress in its infinite wisdom seems to have legislated
2 perhaps a number of practices that may be much ado about
3 nothing and this may be just one of them.

4 So, it seems to me you do have jurisdiction to
5 consider on a cost benefit basis if in this proceeding there
6 is a contention related to it with basis -- you do and the
7 Atomic Energy Commission has jurisdiction to consider on a
8 cost benefit basis the environmental effect of open cycle
9 cooling insofar as it will affect your overall decision of
10 whether to grant the license or not.

11 I would point out with regard to the somewhat --
12 with regard to the effort by Mr. Comey to talk about the
13 nature of the problem insofar as the interplay with Point
14 Beach and other nearby facilities and with regard to whatever
15 it was that the Licensing Board first of all in Point Beach
16 concluded in an initial decision as we have indicated, that
17 there was really inadequate bases put forth by the inter-
18 venors in that case for this whole series of contentions.

19 The applicants in that case decided in the
20 interests of getting on with the case to go ahead in any
21 event and the Licensing Board finally concluded in that
22 decision that there was no bases offered by the intervenors
23 even after the evidence was in, to support the conclusions.

24 I would point out the intervenors are precisely
25 the same as the intervenors in this case with the sole

1 exception that Sierra Club was a designated intervenor in that
2 case and is not here.

3 We do have the Isaac Walton League here.

4 But Mr. Comey was the principal participant for the
5 intervenors in that case. In addition, Mr. Comey and the
6 intervenors in that case did try to introduce the problem of
7 interactions between Kewaunee and Point Beach, and the
8 Licensing Board specifically made some findings on that
9 matter, on page 78 of that initial decision, where the
10 Licensing Board found, "It is extremely unlikely that the
11 plume from the Kewaunee plant about five miles to the north
12 of Point Beach and not yet completed for operation would join
13 the Point Beach plume because of the distance involved."

14 Footnoted in '64, it says, "Because the plume s
15 are directed by wind and wind-induced lake current, the plume
16 from the two plants will travel in the same direction and are
17 therefore unlikely to meet."

18 Mr. Comey and some of the other witnesses -- Mr.
19 Comey did not testify as a witness, but some of Mr. Comey's
20 witnesses and his attorney did try to make something of the
21 fact that at one time the Argonne Laboratory researchers found
22 a plume which extended about three miles or so down the shore-
23 line in the opposite direction, I might point out, from
24 Kewaunee, and suggested that if that were to continue, there
25 might be some interaction and the testimony from Argonne was

1 that that is a most unlikely and incredible event. It was a
2 one-time type of thing. It might occur again. It is not
3 likely to occur with any frequency and even if it should
4 occur as pointed out by the footnote, the tendency of the wind
5 to move that plume in the same direction from both plants would
6 be the same so the plumes would not interact.

7 I would submit, gentlemen, that with regard to
8 some of these environmental contentions which are so
9 essentially similar to the Point Beach case, and where the
10 intervenors were unable to muster a case, in effect, be
11 considered very carefully when one determines whether we go
12 through the exercise again and again.

13 CHAIRMAN FARMAKIDES: Mr. Renfrow?

14 MR. RENFROW: Mr. Seiffert will ask a question,
15 answer the question, Mr. Chairman.

16 MR. SEIFFERT: On behalf of the regulatory staff,
17 Mr. Chairman, I will try to organize what has become a
18 reasonably unmanageable response, now, to our original
19 question.

20 First of all, I would endorse Mr. Charnoff's remarks
21 on behalf of the applicant about some of the findings of the
22 Appeal Board in Point Beach.

23 MR. CHARNOFF: Licensing Board.

24 MR. SEIFFERT: Licensing Board. But I would point
25 out that this Licensing Board does not have the benefit of

1 that evidence before it, that this Board can rule and
2 certainly must rule independently on the evidence that will
3 be presented to it, and is certainly not bound by whatever
4 went on in the Point Beach case except of course Appeal
5 Board decisions where as a matter of law you must be bound.
6

7 As a matter of fact, I don't think the applicant
8 needs to get very deeply into the facts of that case or
9 where the plume might float. The evidence is not before us
10 now. That case, for fact, is not important to this Board in
11 the judgment of the staff.

12 Now, as far as considering the effects of the
13 plume in the Point Beach case, it is the position of the
14 regulatory staff that the plume from the Point Beach case
15 should be considered with Kewaunee.

16 Indeed that is done in the final environmental
17 statement. We have no problem with that.

18 On the third point, which is contention 6.1.1,
19 the position of the regulatory staff is stated to be that we
20 think this as a contention has sufficient basis. Perhaps I
21 should clarify that to mean that we regard this as a contention
22 insofar as it supports the following contentions.

23 It essentially says as the Board has pointed out,
24 the applicant shouldn't be allowed to use open cycle cooling.
25 And then it lists about five pages of history of the lakes
including Lake Erie and then it concludes, therefore the

1 applicant should not use it.

2 Insofar as it supports other contentions, the staff
3 has no objection to it. It is a little more than an
4 introductory paragraph but it is a little less than the
5 contention standing on its own and judgment of the staff.

6 In fact, if for some reason the rest of the
7 contention should be stricken or withdrawn, we do not think
8 this is a contention which would stand on its own.

9 MR. CHARNOFF: May I briefly comment? I was not
10 suggesting that this Board is at all bound by the findings
11 of the Licensing Board in the other case.

12 But I do want to refer you to one factor. What we
13 were talking about are bases for contentions and under-
14 standings of the contentions -- when we asked the intervenors
15 the bases for the contentions, they submitted the following
16 illuminating statement: "The basis for these contentions which
17 were set forth in the original petition to intervene of July
18 24, 1972, may be found in the transcript of docket 50-301,
19 which is the Point Beach case."

20 CHAIRMAN FARMAKIDES: Look, Mr. Charnoff, you
21 made your point. I understand what it is. I didn't really --
22 I accept the staff's additional comments, fine. We didn't
23 really need them. We understand the position.

24 I am interested, however, in what the staff has
25 just said with respect to my earlier observation that actually

1 contention 6.1.1 can be condensed to the first paragraph and
2 the last paragraph.

3 Are you also saying that if we were to do that and
4 to strike all the other material, which I did not suggest,
5 that the two contentions then would have no basis?

6 MR. SEIFFERT: Mr. Chairman, it is the position of
7 the staff that if this contention, 6.1.1, had removed from
8 it all of the history, that the mere beginning and closing
9 paragraphs about open and closed cycle cooling on their own
10 lacked adequate basis and should not be considered as a
11 matter of controversy in this case.

12 CHAIRMAN FARMAKIDES: All right. Then assuming
13 that the basis is here, and it is all the additional material,
14 how about the staff's position with respect to the first para-
15 graph?

16 MR. SEIFFERT: Could I have a moment, Mr. Chairman?

17 CHAIRMAN FARMAKIDES: Yes.

18 MR. SEIFFERT: Mr. Chairman.

19 CHAIRMAN FARMAKIDES: Yes.

20 MR. SEIFFERT: Regulatory staff is ready with its
21 brief answer. The position of the staff is that this
22 contention -- the staff does not feel it matters very much
23 whether it is in or out. We think it is introductory in the
24 sense that it is explained by other contentions. Certainly
25 most of the other contentions or many of them treat the

1 effects of heat on biota and other functions of the lake.

2 That is already considered and presumably it is
3 inferred from those contentions that the intervenor is
4 concerned about open cycle cooling.

5 The position of the staff is it is up to the Board
6 to decide and we think the Board can decide whether or not
7 open or closed cycle cooling is proper. This contention on
8 its own, standing by itself, we don't think has any basis.
9 But we don't honestly care whether it is in or out, since it
10 is explained and has a basis in a sense in the other
11 contentions.

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1 CHAIRMAN FARMAKIDES: How about the last paragraph?

2 MR. SEIFFERT: Mr. Chairman, the position of
3 the Staff is that the last paragraph brings up an issue that we
4 think should be treated about the effect of the Point Beach
5 plume on the Kewaunee Plant, at least.

6 CHAIRMAN FARMAKIDES: Of course, the Staff has
7 included --

8 MR. SEIFFERT: We have treated that in the Final
9 Environmental Statement.

10 CHAIRMAN FARMAKIDES: But here this paragraph
11 says, "And all other nuclear plants," not only Point Beach.
12 In the discussion I had earlier with Mr. Comey, he, I think,
13 modified this slightly to include the plumes of roughly three
14 plants. It is still far more than you have done in the
15 Final Environmental Statement.

16 MR. SEIFFERT: The position of the Staff, Mr.
17 Chairman, is if there are other plants and it can be argued
18 that their plumes interact, then those plumes should be
19 considered just as the Point Beach plume has been.

20 CHAIRMAN FARMAKIDES: All right.

21 Okay, Mr. Vollen?

22 MR. VOLLEN: I would like --

23 CHAIRMAN FARMAKIDES: Do you have any thoughts
24 especially with respect to the points just raised by the
25 Staff, which I think are good points, and going further to

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1 the thought that as the Board reads 6.1.1, much of what it
2 contains is introductory, and you do include most of your
3 points in 6.2 through -- 6.3.1 through 6.6.2. Therefore, what
4 does contention 6.1.1 do for your case and why is it necessary?

5 MR. VOLLEN: I think what it does for our case is
6 it puts it all together, so to speak. It is a more general,
7 broad-scoped contention that talks about the state of the
8 lake. Mr. Comey has told you the reason why it was done. I
9 think as a legal matter, we could delete everything between
10 the first and the last paragraphs. I suspect we would then be
11 confronted with an opposition to it on the grounds that it
12 wasn't specific enough or that it had no basis. We seem to
13 be subject to attack when we say too much or when we say too
14 little. I am not sure what the middle ground is. But Mr.
15 Comey has said, and our position is that your analysis was
16 an accurate one. It is really the first and the second para-
17 graph.

18 CHAIRMAN FARMAKIDES: The second paragraph --

19 MR. VOLLEN: Last paragraph.

20 CHAIRMAN FARMAKIDES: As modified a little bit by --
21 let's delete that. As modified by Mr. Comey? I am very
22 unclear as to what that last paragraph now consists of.

23 MR. VOLLEN: When you say "modified by Mr. Comey,"
24 I think he was expressing his current views as to where he
25 thinks the evidence would come out.

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1 CHAIRMAN FARMAKIDES: Look, Mr. Vollen, let's be
2 very clear. The function of this Board is to pass upon
3 the contentions, sir, and these contentions will be formulated
4 with this Board's input.

5 MR. VOLLEN: I understand that.

6 CHAIRMAN FARMAKIDES: I want to be very clear. What
7 is being said today is very germane to what this Board will
8 permit. It isn't only the thoughts of Mr. Comey that are
9 important here. I have taken Mr. Comey's comments at face
10 value.

11 MR. VOLLEN: As well you should.

12 CHAIRMAN FARMAKIDES: Fine. Let's be very clear
13 about that.

14 MR. VOLLEN: They were intended that way.

15 CHAIRMAN FARMAKIDES: Let's proceed with that in
16 mind.

17 MR. VOLLEN: But just as when we listed the docu-
18 ments that we were talking about in connection with the
19 four point series -- and I tried to make very clear that we
20 were not at that point limiting the evidence that would be
21 put in on the specific contention. I want to make clear that
22 Mr. Comey's remarks with regard to the number of other plants
23 that ought to be taken into account when considering the state
24 of Lake Michigan and the effect of this plant on Lake
25 Michigan ought not now to be limited to any particular named

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1 plant or plants.

2 CHAIRMAN FARMAKIDES: Are you saying then, sir,
3 that you are going to introduce evidence or some type of
4 evidence with respect to all the plants, all the factors on
5 Lake Michigan that might interact with this plant? That is
6 what you said in your contention. I am saying that is unclear.

7 MR. VOLLEN: What I am saying, Mr. Chairman, is
8 that when the evidence comes in, this Board should consider
9 which of the other plants, if any, are relevant, the effects
10 of those other plants. But we cannot now sit here in the
11 absence of the evidence, at least I can't, and tell you that
12 this plant should be considered and that plant shouldn't.

13 CHAIRMAN FARMAKIDES: How do you expect this Board
14 to know what your contention is unless we understand it? And
15 if you are just telling me right now -- if I understand you
16 correctly, you are saying to me that this contention is as
17 broad as whatever final evidence you might adduce or deduce.
18 And I am saying no. I am saying I want to know what
19 your contention is. I am not saying that you have to prove
20 your contention, but I do want to know what your pleading is,
21 sir.

22 MR. VOLLEN: What you are really asking me, Mr.
23 Farmakides, is what is my evidence.

24 CHAIRMAN FARMAKIDES: I am asking you what is your
25 pleading. I don't know what your pleading is with that last

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1 paragraph. I don't know if you are pleading the interaction
2 of two plumes, three plumes, 10 plumes. Are you talking
3 about fossil fuels? You are saying all other nuclear plants,
4 but what are we all talking about here? I want to know
5 specifically what your pleading is.

6 MR. VOLLEN: Our pleading is specific and it says
7 "all other nuclear plants." Now whether the evidence will
8 come down and modify it at that point and say it is only two
9 or three or four other plants, I cannot now tell you what the
10 evidence will be on that. But it seems to me that is a
11 question of what the evidence is rather than a question of
12 what the pleading is.

13 CHAIRMAN FARMAKIDES: Let's take this from another
14 point. If I were to ask you for trial briefs before the hearing,
15 what would you give me, sir? What would you give me with respect
16 to this contention 6.1.1? That is my point, Mr. Vollen. I
17 have to know.

18 MR. VOLLEN: With respect to what the facts would
19 be.

20 CHAIRMAN FARMAKIDES: Yes. If I'm sitting up here
21 and having you people come out with your witnesses and your
22 testimony, and I haven't the faintest, foggiest notion of
23 where you are going, I have failed greatly with respect to
24 discharging my responsibility. I have to know what you
25 people have in mind, which way you are going, how you are going

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1 to make your positions clear.

2 MR.VOLLEN: I just don't understand why there is
3 a problem with respect to this particular contention. What
4 we have said is that when you look at the discharge from
5 this plant, you must look at other nuclear plants as well,
6 all other nuclear plants as well. That is the state of the
7 contention. Now if at the time the evidence comes in, it
8 doesn't support that position, that indeed a plant on the
9 other side of the lake has no consequence in conjunction with
10 this particular plant, then it doesn't have to be looked at.

11 But, you know, it just doesn't seem to me that this
12 contention leaves any problem with regard to the kinds of
13 concerns you are expressing.

14 CHAIRMAN FARMAKIDES: The Board is having problems,
15 Mr. Vollen. You may not have any problem because you drafted
16 it, but we are having a problem.

17 Secondly, I asked you all, for example, what is
18 the authority that you cite -- what authority do you feel
19 this -- this Board has been designated to hear the license
20 application with respect to the Kewaunee Power Plant. Okay.
21 We appreciate your contention. Let me be very clear on that.
22 This is one of the contentions that we wanted further discus-
23 sion on, not because we were clear on denying it. We are not
24 at all clear on denying it, and not because we are clear on
25 admitting it. We are not at all clear on admitting it. We

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1 really are concerned which way to go on this. So I asked
2 for discussion. You have given me no clarification on really
3 what is it that you are contending here. I am not really
4 looking at the basis so much, Mr. Vollen. I think you have a
5 hell of a lot of basis here in all these four pages. I am
6 looking at specifically what is it that you are contending.
7 And I am not clear. A moment ago I thought I was clear from
8 what Mr. Comey said, and he said in effect, as I understood
9 him, to consider this, this plant, for example, and its
10 interaction, the synergistic effect, if you will, with the
11 other plumes it may have some relation to. I think there
12 were two other plumes. That, to me, was a lot more clear with
13 respect to the meters, the parameters, the bounds of this
14 contention.

15 But as it is presently worded, I am not clear.

16 MR. VOLLEN: Can we have a moment, please?

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1 MR. COMEY: Mr. Chairman, perhaps what is
2 bothering the Board is a feeling that somehow through this
3 contention we are going to try and litigate every plant
4 around the lake. That is not at all what we intended to
5 mean.

6 I was just discussing with Mr. Vollen --

7 CHAIRMAN FARMAKIDES: That is partly our concern,
8 sir.

9 MR. COMEY: A hypothetical example.

10 CHAIRMAN FARMAKIDES: And the other concern is that
11 really we don't want this evidentiary hearing to become
12 another discovery session. Discovery is concluded, so far
13 as we are concerned.

14 We think, we hope, we expect that you all
15 know your case.

16 MR. COMEY: We will come back to that. I think
17 the thing that we want to avoid precluding is that we would
18 determine, say, that the service water pumps and the condenser
19 pumps are doing such and such to the zooplankton in this
20 area of the lake.

21 Now, if that is a significant percentage of the
22 total zooplankton in the lake, I think we would want to
23 discuss what the effect is of the other plants in the -- the
24 sum total cumulative effect of nuclear plants with respect
25 to the zooplankton.

1 CHAIRMAN FARMAKIDES: Mr. Comey and Mr. Vollen, I
2 assume that you are both together on this. Now, what you
3 have just said to me indicates that you do have a case
4 to present.

5 In other words, the concept of your case, the struc-
6 ture of your case, is complete. Your discovery is complete.

7 Is that correct?

8 MR. VOLLEN: With respect to this contention, it
9 is, yes, sir.

10 CHAIRMAN FARMAKIDES: It is?

11 Well, then, how many plants are we talking about?
12 If your concept and your structure of this particular conten-
13 tion is complete, if we were, again, suggesting a trial brief
14 for this contention, how many -- what are we talking about
15 here?

16 Are we talking about one nuclear plant interacting
17 with a second, or one nuclear plant interaction with a second,
18 third, and fourth?

19 MR. COMEY: I think with respect to given parameters,
20 we can perhaps identify that we are probably talking
21 no more than just the Point Beach plant. I am thinking
22 there particularly of the thermal plume. With respect to
23 other parameters, unclear.

24 CHAIRMAN FARMAKIDES: No, wait a minute. I thought
25 that we were now clear.

1 What was that last phrase? Understood with respect
2 to other parameters, it is unclear?

3 MR. COMEY: Mr. Chairman, I am simply saying the
4 effects of an open cycle cooling discharge are not
5 just thermal.

6 CHAIRMAN FARMAKIDES: Yes.

7 MR. COMEY: There are all sorts of damages which
8 are done to aquatic biota across several parameters. The
9 zooplankton is an example I gave you. They get entrained,
10 go through the pumps, and they are mascerated, et cetera.

11 With respect to that, I think more than just Point
12 Beach may have to be considered.

13 CHAIRMAN FARMAKIDES: When you say "more than
14 Point Beach," what do you mean?

15 MR. COMEY: More than just -- there may be other
16 plants besides Point Beach which would enter into a judgment
17 of the overall effect given that parameter.

18 CHAIRMAN FARMAKIDES: You will determine that based
19 on cross? Or do you already have testimony that you are
20 going to submit?

21 Mr. Vollen?

22 MR. VOLLEN: I think the reason Mr. Comey and
23 I are having difficulty answering your questions and are
24 hesitant to answer them, is we have not, in preparation for
25 this prehearing conference, reviewed all of the evidence

1 and precisely what it will be and where it will come out.

2 We are here to talk about contentions which we under0
3 stand to be a question of whether as a matter of law, it was
4 sufficient to come in, not talk about what the particular
5 evidence is, and what it will show. So we have not done the
6 preparation that I think would be required to answer the
7 questions you are asking.

8 MR. COMEY: Mr. Chairman, your difficulty is with
9 respect to the scope of this contention?

10 CHAIRMAN FARMAKIDES: Yes, sir.

11 MR. VOLLEN: As a factual matter? Let me respond
12 to this.

13 You asked about the jurisdictional basis?

14 CHAIRMAN FARMAKIDES: Yes.

15 I asked that, too. That was something else, again.

16 But the scope of the contention as you framed it is
17 something that concerns the Board.

18 Now, I don't mean to belabor it. I think I now
19 understand more clearly what you all had in mind, and we can
20 proceed, I think, to the next one.

21 Do you have anything more?

22 MR. SHON: No.

23 CHAIRMAN FARMAKIDES: Bill?

24 DR. MARTIN: No.

25 CHAIRMAN FARMAKIDES: Any comments, Mr. Charnoff?

1 Mr. Renfrow?

2 MR. CHARNOFF: We are as confused as you are
3 as to what was intended and certainly that will affect our
4 ability to prepare testimony, I must say. This has been my
5 general concern with bases and everything else with this case.

6 Let me just make one quick correction:

7 The contention does speak about this plant and
8 all other nuclear plants. That was reiterated and
9 restated again by Mr. Vollen. Mr. Comey, for his part, however,
10 said what he had in mind was Point Beach and possibly the
11 Sheboygan plant.

12 The Sheboygan plant is about 40 miles away and
13 is a fossil plant, so I am not even sure at this moment
14 whether Mr. Vollen and Mr. Comey are together in terms of
15 explaining this particular contention, and it leaves us a
16 little bit confused.

17 CHAIRMAN FARMAKIDES: Mr. Renfrow?

18 MR. RENFROW: Mr. Seiffert?

19 MR. SEIFFERT: Staff has nothing else to
20 say, Mr. Chairman.

21 CHAIRMAN FARMAKIDES: Let's go to 6.2.

22 MR. VOLLEN: May I ask a question, Mr. Chairman?

23 CHAIRMAN FARMAKIDES: Yes, Mr. Vollen.

24 MR. VOLLEN: Would you like any further comments on
25 really two questions, that is: the legal jurisdiction for

1 for this Board to consider this plant together with other
2 plants, and, also, my response to Mr. Charnoff's observations
3 about the 1972 amendments --

4 CHAIRMAN FARMAKIDES: Can you do it now?

5 MR. VOLLEN: Yes, I can, very briefly.

6 CHAIRMAN FARMAKIDES: Delighted.

7 MR. VOLLEN: As a legal matter, that is the juris-
8 diction of this board to consider these matters, I think it
9 is clear -- I can't give you a particular section, but
10 from the statute, from NEPA, the National Environmental
11 Policy Act of 1969, from this Commission's regulations, and
12 from the Court of Appeals decision in the Calvert Cliffs case.
13 I think you are required to consider the impact of a plant
14 on the environment.

15 With respect to Mr. Charnoff's observations about
16 the 1972 amendments, I think what he said was that this
17 Board can consider water quality in making its cost-benefit
18 analysis as it is required to under NEPA, but that it can't
19 do anything after it makes that analysis with respect to
20 whether the plant can operate with once-through cooling,
21 open cycle cooling, or not.

22 I don't think that's right. I think this Board
23 can consider the effects of open cycle cooling and that
24 this Board can condition a license based upon its cost-
25 benefit analysis of the impact of the plant on the

1 environment.

2 CHAIRMAN FARMAKIDES: Okay.

3 Let's go on to 6.2.

4 Yes?

5 MR. SEIFFERT: Mr. Chairman, I would like to say
6 that the Staff agrees with Mr. Vollen insofar as he says that
7 the Board may consider open versus closed cycle cooling.
8 Both the National Environmental Policy Act and the Commission's
9 regulations at Appendix D of Part 50 contemplate that signi-
10 ficant environmental effects should be considered.

11 If there is a significant environmental effect of
12 open or closed cycle cooling, this Board can consider
13 those issues.

14 CHAIRMAN FARMAKIDES: Thank you, sir.

15 MR. CHARNOFF: May I get a clarification of that?

16 CHAIRMAN FARMAKIDES: Yes.

17 MR. CHARNOFF: I think I said too the Board can
18 consider it in the general context of cost-benefitting the
19 entire plant. What I am anxious to understand is: Is it
20 the Staff's position that a licensing board in -- an AEC
21 licensing case may grant a license conditioned upon that
22 plant adopting a closed cycle cooling system, in light of
23 Section 57(c)(2) of the new Water Quality Amendments?

24 MR. SEIFFERT: Mr. Chairman, in order to maintain
25 the proper decorum, I would like to ask, instad of responding

1 to Mr. Charnoff, whether you would like an answer to the
2 question.

3 CHAIRMAN FARMAKIDES: Yes, I would.

4 Section what?

5 MR. RENFROW: Let me answer that, Mr. Chairman.

6 The answer to the question is that the Staff's
7 position is that the regulations as they are now set forth
8 in Appendix D are the regulations this Board is required to
9 follow. Two, as to the requirement of Section 511 of
10 the new act, AEC, EPA and CEQ -- excuse me-- the Environmental
11 Protection Agency, the Atomic Energy Commission and the
12 Council on Environmental Quality are now in the process of
13 setting up regulations by which the three individual govern-
14 mental bodies can handle these issues in a timely, forward-
15 looking fashion.

16 Until such time as that decision is made, the AEC
17 Staff's position is that Appendix D is still in effect and
18 that the notice of hearing at which this Board must make
19 findings on the matters of controversy is what is required
20 of this Board.

21 CHAIRMAN FARMAKIDES: Does that fully answer your
22 question, Mr. Charnoff?

23 MR. CHARNOFF: That is a little bit clearer than
24 anything we have been able to get from the Staff for several
25 months. But I must also say I have been aware now for about

1 90 ;days that those meetings are going on with EPA and CEQ
2 and we are looking forward with interest to those
3 regulations.

4 CHAIRMAN FARMAKIDES: All right.

5 Off the record.

6 (Discussion off the record.)

7 CHAIRMAN FARMAKIDES: We will take a five-minute
8 recess.

9 (Recess.)

10 CHAIRMAN FARMAKIDES: Gentlemen, come to order,
11 please.

12 Thank you, Mr. Charnoff.

13 Did you have something to say, Mr. Renfrow?
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1 CHAIRMAN FARMAKIDES: Let's proceed, contention 6.2.
2 Let me just introduce this contention from the point of view
3 of the Board. Again here, as in 6.1.1, we think the contention
4 is spelled out in the first sentence in the last paragraph. The
5 rest of the material is basis for or introductory of. Mr. Vollen,
6 is that right, sir?

7 MR. VOLLEN: Mr. Comey?

8 MR. COMEY: Again, I think you have gotten right to
9 the heart of it.

10 CHAIRMAN FARMAKIDES: Okay. Now Dr. Martin has a
11 question to ask with respect to the last paragraph. It is very
12 similar to what I was pursuing in the earlier 6.1.1 question
13 involving all nuclear plants in Michigan.

14 Dr. Martin?

15 DR. MARTIN: Looking again, I see that the last
16 paragraph, the last sentence -- they are the same thing. What
17 I am concerned about is the implication that synergistic effects
18 of heat discharge from the Applicant's plant are to be considered
19 together with pollutants being discharged in the beach water
20 zone by sources other than the Applicant's plant.

21 I would be interested in hearing to what extent
22 you are thinking about consideration of other sources of pollu-
23 tants.

24 MR. COMEY: I will be very specific on that, Mr. Martin.
25 For example, if you have zinc and you have copper being discharged

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Reba 2

1 by facilities initially, heat added to that has a very distinct
2 effect on fish which I am sure you are well aware of. To be
3 even more specific, last summer the City of Green Bay had a
4 terrible taste of the problems.

5 Their intake is not on Green Bay, it is at Rostock,
6 very close to Applicant's plant. The limited evidence right
7 now is that that seems to have been an effect coming down from
8 Green Bay, in other words the waters that come past the Kewaunee
9 plant and the Point Beach plant bringing down certain fungi and
10 various other algae plumes, and if in fact those pass through
11 the Kewaunee plant, that may synergistically affect those pol-
12 lutants in such a way that you will see significant adverse
13 effects.

14 DR. MARTIN: Well, consideration of the difference
15 between the action of a pollution in warm water versus cold
16 water does not concern me as much as the implication that we
17 should be concerned with the source of these other pollutants,
18 not simply with the fact that they are present.

19 MR. COMEY: I don't think that the last sentence in
20 that says that you should be concerned with the source. It says
21 that you should be concerned about the effects of the heat
22 together with pollutants being discharged into the beach waters.

23 DR. MARTIN: Regardless of their source?

24 MR. COMEY: Regardless of their source.

25 Yes.

21

1 DR. MARTIN: That is what I was after.

Reba 3

2 CHAIRMAN FARMAKIDES: By beach water zone, however,
3 we are talking about -- there with respect to the area around the
4 Kewaunee plant?

5 MR. COMEY: Yes, sir.

6 CHAIRMAN FARMAKIDES: How much of that area?

7 MR. COMEY: I think that the answer to that is two-
8 fold. First of all, the amount of area that is entrained by
9 the plant's intake, because that is the source of the water
10 that goes through the plant, plus on the outfall, the area that
11 the plant reaches above ambient.

12 MR. SHON: I think, Mr. Comey, we are running
13 aground on the same reef that we ran on in the previous question
14 in that we are saying, as the Board to you now, you have had
15 discovery. You have had some time to look this over. You now
16 say you want to look at all nuclear plants, or perhaps all
17 other sources in the lake, and apparently without any limit as
18 to distance, number, or anything like that. And yet if your
19 case is essentially prepared as of now, it seems you should be
20 able to state now the extent to which you want to consider other
21 sources, what these other sources would be.

22 Do you intend to discover more -- run down more leads
23 as you go on?

24 MR. COMEY: I don't think so, Mr. Shon. We have
25 quite complete files at BPI of the industrial and other

21 1 discharges into the lake. We probably know, as a matter of
Reba 4 2 fact, more than anybody else on that particular subject.

3 MR. SHON: Can you set any kind of limits at all?

4 MR. COMEY: Frankly we have not sat down and gone
5 through that mass of data.

6 MR. VOLLEN: I think moreover, Mr. Shon, if I may,
7 this is a different kind of concern. I think, if I can emphasize
8 and perhaps paraphrase what Mr. Comey said a few moments ago,
9 the area we are concerned with is that area which is defined
10 by this plant.

11 What we are saying is that whatever the area from
12 which this plant takes water and whatever the area into which
13 this plant discharges water, this Board ought to consider the
14 pollutants that are in that area or those two areas, to the
15 extent that they are different, regardless of the source from
16 which those pollutants come.

17 That is, those are phenomenon, pollutants that are
18 in the water, that water. It really is a defined area, defined
19 by this plant, if you will.

20 MR. COMEY: To use a technical term, we are looking
21 at the near field and far field effects of both the intake
22 and the discharge.

23 CHAIRMAN FARMAKIDES: Getting back, however, to the
24 point that we made earlier, and I don't mean to be argumentative,
25 but just for purposes of clarifying this thing, what you have

21 1 just now told us, Mr. Comey and Mr. Vollen, does not appear
Reba 5 2 in your contentions.

3 You see, the parameter that you have just now enun-
4 ciated with respect to what defines this plant does not appear
5 in your contentions. This is the kind of parameter we are
6 talking about. This is the kind of parameter we are talking
7 about in 6.1.1. I am not too sure that we finally got the
8 answer from you.

9 I think the Board has an idea of what the parameters
10 should be and I think probably what will happen -- and this
11 I don't know -- but we are disposed to possibly remember
12 formating these contentions. But absent your clear delineation
13 of what your contention is, you don't leave us much recourse.
14 Otherwise we have no parameters on what we are talking about.

15 MR. VOLLEN: I don't want to be argumentative either,
16 Mr. Chairman, but I guess it is a question of each of us finding
17 different ways and different words to say the same thing. I
18 think this particular contention does, by itself, define the
19 area that we are talking about.

20 The last several lines of that talk about the heat
21 proposed to be discharged from Applicant's plant. It seems to
22 me that is ---

23 CHAIRMAN FARMAKIDES: Together with pollutants being
24 discharged into the beach water zone, Mr. Vollen. What does
25 beach water zone mean? It could mean the entire periphery of

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1 Lake Michigan.

Reba 6

2 MR. SEIFFERT: Mr. Chairman ---

3 CHAIRMAN FARMAKIDES: And it does.

4 MR. SEIFFERT: If I may interrupt, Regulatory Staff
5 had the same problem with the contentions, that it appears
6 that the Board did, as the position of the Regulatory Staff
7 appears in our status paragraph, we think this contention can
8 be litigated as a proper issue for the hearing except for the
9 last paragraph, and we are talking now just really about the
10 last three lines, because the contain words like "we should
11 consider pollutants being discharged into the zone." We object
12 to that.

13 We should consider and the FAS does consider the
14 quality of the lake and if there are pollutants, that the
15 pollutants are in the lake. We don't care where they came from
16 so much or who discharged them, we consider the lake quality.

17 Insofar as Mr. Vollen is calrifying his contentions
18 to say that we should consider what is in the lake, fine, we have
19 no problem with that. But when he is talking about discharging
20 into the zone and who does it, we do not believe that is a proper
21 issue for this hearing.

22 DR. MARTIN: All right, is it fair to say, now,
23 that in both of these contentions, 6.1.1 and 6.2, that the area
24 of concern is not the whole of Lake Michigan but of some more
25 limited area close to the proposed site?

21

Reba 7

1 MR. COMEY: If you are talking about a geographical
2 area where noticeable effects are likely to be found, the answer
3 is yes, it will be a very finite subset of the total volume and
4 surface of the lake. If you are asking, for me to say ---

5 CHAIRMAN FARMAKIDES: Go ahead, clarify.

6 MR. COMEY: That the biological impact of the lake
7 as a whole is going to be insignificant as a result of changes
8 in the lake, in the area around the plant, neither you nor I
9 nor anyone else can say really what that is going to be.

10 DR. MARTIN: I don't recall having said anything that
11 would suggest that question to you.

12 CHAIRMAN FARMAKIDES: Your contention really goes to
13 your former observation?

14 MR. COMEY: Right.

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1 CHAIRMAN FARMAKIDES: Okay.

2 The last one, 6.7.4c.

3 Dr. Martin would like some clarification.

4 DR. MARTIN: What I really want is a disucssion
5 and clarification or distinction from the Staff and from the
6 Applicant's to explain to me why they consider this contention
7 to be lacking adequate basis to be placed in controversy.

8 MR. SEIFFERT: Dr. Martin, the position of the
9 Regulatory Staff is that although this contention does take
10 nearly a page, we again are concerned about the fact that
11 although we consider that it is proper to look at the lake as
12 it is now, we think this contention considers the lake in the
13 future, and sources that are discharging into it.

14 It uses the words such as "quantities of chemicals
15 which Applicant plans to discharge can not be considered in
16 isolation" and "chemicals which lake Michigan currently
17 receives."

18 Again, the position of the Staff is we should con-
19 sider the water quality of the lake as it is, and we do this,
20 and we haven't got any basis to determine what it might be in
21 the future, or who is discharging so that the lake is currently
22 receiving chemicals.

23 We don't think there is any basis for the contention
24 as stated in this way.

25 CHAIRMAN FARMAKIDES: Mr. Charnoff, any comments,

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1 sir?

2 MR. CHARNOFF: On the question of why is there --
3 to what extent -- what is the basis for my statement that there
4 is an inadequate basis, I guess when I read -- I don't know
5 whether the two million pounds per year is a correct number,
6 but let's assume it is.

7 I take these a sentence at a time, sir. The first
8 or second sentence says that "The discharge of two million
9 pounds per year of dissolved solids is clearly an unacceptable
10 additional burden to the lake."

11 I would ask where in this contention does it say
12 why, how, or in what way.

13 The next question. "The best technology must be
14 required as a condition of any operating license."

15 Why, how, and in what way?

16 "Because Lake Michigan continues to experience a
17 continuing linear increase in total dissolved solids
18 concentration, Applicant's proposal of the discharge at 65
19 ppm above normal background represents a single degradation
20 action equivalent to more than 200 years of advanced industrial
21 activity in this area."

22 How is that calculated, and what is the significance
23 of it? What is he trying to tell us.

24 "Petitioner contends that Applicant's proposed
25 average discharge rate of 20 ppm's above background in the

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1 plume would guarantee almost immediate degradation of this
2 area of the lake to a level that would not otherwise be
3 reached until the year 2040."

4 What is the basis for that kind of statement? On
5 what authority do we know that that is going to degrade that
6 lake in any way? So when

7 So, when I say what is the basis, sir, all I have
8 is a number of contentions grouped under one number. They are
9 all allegations, but the foundation for any of this, a sug-
10 gestion that there is any authoritative basis for this kind of
11 judgment, nothing.

12 When you ask, gentlemen, what is it that the
13 Intervenors are trying to allege, just consider for a moment
14 what it is that we as the parties have to put in in the way of
15 testimony as responses to these kinds of things.

16 Then you really understand why we are saying that
17 the Commission was really right when it said it doesn't want
18 unsupported allegations, it wants some basis, because it wants
19 to get on with this process.

20 CHAIRMAN FARMAKIDES: Yes, but as I read you, Mr.
21 Charnoff, you are saying, in effect, that you want all the
22 evidence right at this point in time.

23 MR. CHARNOFF: I don't want all the evidence, and
24 I don't want it in an evidentiary way, I want somebody to tell
25 us what this is.

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1 We were going through an informal process of
2 discovery, we were asking for the basis. What did we get?
3 Please see the Point Beach transcript. If that is the basis
4 for this, I submit to you it is an inadequate basis.

5 We have to prepare for a case, and that is all we
6 got in response to the question.

7 CHAIRMAN FARMAKIDES: Why didn't I have a motion
8 before the Board with respect to that discovery issue?

9 MR. CHARNOFF: We were proceeding informally, and
10 the effort was made to arrive at a consensus, or a stipulation
11 as to what we could agree upon and what we don't know.

12 You now have our position, sir. Our position is
13 these contentions should be struck for lack of basis. That
14 is what we put before you.

15 We were proceeding in that informal way pursuant
16 to our joint stipulation.

17 We also understand that the Commission meant it
18 when they said that at that time discovery is finished,
19 Intervenor had to substantiate and define their contentions.
20 That may not be true.

21 CHAIRMAN FARMAKIDES: Any thing further, Mr. Vollen?

22 MR. VOLLEN: On this contention, I think we have
23 argued our positions. I think I heard Mr. Charnoff saying that
24 he disagrees with us. I think the Board ought to decide who
25 is right.

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1 CHAIRMAN FARMAKIDES: Anything more on this?

2 DR. MARTIN: No.

3 CHAIRMAN FARMAKIDES: Okay, this concludes all of
4 the discussion that the Board wanted with respect to the
5 contentions on which we were not clear.

6 Let's now proceed to a discussion of the Intervenor's
7 objections to Paragraph 4 of the prehearing conference order
8 of the Board, dated December 4, 1972.

9 MR. VOLLEN: Mr. Chairman, may I bring up one
10 matter prior to that?

11 CHAIRMAN FARMAKIDES: All right.

12 MR. VOLLEN: I think this is the appropriate time,
13 because we are departing from the subject of contentions, and
14 this relates to that.

15 CHAIRMAN FARMAKIDES: All right, sir.

16 MR. VOLLEN: My comments are directed to the
17 document entitled "Applicant's Arguments with respect to
18 Intervenor's Radiological and Environmental Contentions," and
19 a letter dated January 9, 1973, to which is attached a document
20 entitled "Supplement to Applicant's Arguments with respect to
21 Intervenor's Radiological and Environmental Contentions."

22 These documents have been adverted to several times
23 during the course of the prehearing conference today. I would
24 like to state that I recieved these documents for the first
25 time at approximately 10 minutes after 11:00 p.m. last night.

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1 They are lengthy, to say the least.

2 The first document I referred to is some 70 pages in
3 length, with a number of lengthy appendices attached to it.

4 The second document is a shorter document.

5 I have had a chance to look at these documents only
6 very cursorily. I have not had a chance to read them or to
7 study them.

8 My limited opportunity to review them has led me
9 to the conclusion that, at least in some respects, some of the
10 things said in these documents raise, in my mind, a substantial
11 question as to the ethical propriety of the things that were
12 said in these documents by counsel for the Applicant.

13 For that reason, I would request that the Board give
14 me an opportunity to respond in writing to these documents.

15 CHAIRMAN FARMAKIDES: Can you be more specific, Mr.
16 Vollen? Is that a serious charge?

17 MR. VOLLEN: Yes, sir.

18 The first document I referred to --

19 CHAIRMAN FARMAKIDES: Which document?

20 MR. VOLLEN: Applicant's arguments.

21 Again, I have read only very quickly, Mr.
22 Farmakides.

23 CHAIRMAN FARMAKIDES: Let me be very clear. The
24 Board has not yet read this document. We only received it
25 yesterday. We were primarily concerned with reviewing all of

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1 the contentions plus the modifications. I just don't have any
2 background with respect to this document.

3 MR. VOLLEN: One of the reasons I raised the question
4 was I thought I heard Mr. Shon advert to it several times.

5 MR. SHON: I did.

6 CHAIRMAN FARMAKIDES: He has read it.

7 MR. SHON: But not in detail or in depth, but I have
8 looked at some selected passgaes in this document.

9 CHAIRMAN FARMAKIDES: I was speaking about myself.
10 I have not read this yet.

11 MR. VOLLEN: I am in essentially the same state
12 that Mr. Shon is.

13 MR. SHON: I looked in general only at things that
14 other documents referred me to.

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1 CHAIRMAN FARMAKIDES: Proceed, Mr. Vollen.

2 MR. VOLLEN: Well, the two specific things that
3 caught my attention as I looked through this document very
4 quickly were: references to Intervenor's position in this
5 case based upon, assertedly, things that were said during the
6 informal meetings that were discussed -- that occurred between
7 January 2nd and January 4th of this year.

8 That is to say, these Applicants are making a legal
9 argument to knock down a legal position they ascribe to me
10 without finding my legal argument in any document, in any formal
11 kind of proceeding. But without affidavits, they say that
12 Intervenor took a certain position during these meetings. I
13 don't think that is proper.

14 Secondly, and more specifically, one of the appendices
15 to this document entitled "Applicants' Arguments" has attached
16 to it verbatim copies of certain documents which the Inter-
17 venors submitted to the Applicant and to the Staff as part of
18 this informal discovery process in an effort to amicably agree
19 upon what contingents are to be litigated.

20 Those documents were submitted by me to Counsel for
21 the Applicant with an explicit statement that they were being
22 submitted to Applicants and the Staff for the purpose I have
23 just described, our informal discovery. My transmittal letter
24 specifically said:

25 "These documents are not to be submitted

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1 to the Licensing Board or used for any other purpose."

2 Without any prior conversation with me, without stat-
3 ing to me that they intended to do this, without asking my
4 position on it, without presenting a motion to the Board,
5 they nevertheless presented these documents to the Board. I
6 am concerned about such conduct, Mr. Chairman.

7 CHAIRMAN FARMAKIDES: Mr. Charnoff?

8 MR. CHARNOFF: Mr. Chairman, you were shaking your
9 head when you asked how come I did not make any complaint
10 with regard to lack of discovery responses by the Intervenor,
11 suggesting possibly that you think I should have filed some-
12 thing in the last day or two with regard to that matter. I
13 don't know what the shrug meant.

14 We have proceeded in an order in the proceeding
15 here suggested initially by the Staff, and I was perfectly
16 willing to give it a try, to informally conduct all of our
17 business among the parties, to informally make available all the
18 information that the Intervenor wanted, to informally conduct
19 discovery, so we would be able to arrive in a timely fashion to
20 a definition of the matters in controversy and the bases for
21 those matters in controversy, so we would be prepared to go
22 ahead with the case.

23 We had a schedule that we set out, as you will
24 recall, which was embodied in your order of December 4th,
25 1972. That schedule would have allowed an interval of about

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1 12 days, as I recall it, between the completion of the last
2 set of meetings wherein the parties would agree upon a stipu-
3 lation as to what is in issue and a stipulation as to what we
4 could not agree upon, so that we could submit that to you so
5 you would be able to consider these matters.

6 If you'll recall, we had a telephone call in which
7 we were all a party to with you, followed by a letter from
8 myself. The Intervenors had asked for a delay in the schedule.
9 They had developed during the week of December 11th, some-
10 where between 10 and 20 contentions and bases for them, and
11 they said, "Well, we could not get together and arrive at all
12 of the stipulations in a timely way," and they wanted to have
13 a delay until the first week of January.

14 We had asked whether or not it could be put off just
15 one week. It was decided the Intervenors said they needed that
16 time, and as a matter of fact, they would submit continuing
17 submittals to us and to the Regulatory Staff of their further
18 contentions so that we would be able to meet intelligently
19 during the week of January 2nd through 4th.

20 We didn't get any continuing submittals between
21 that meeting -- those series of contentions we got. We walked
22 in on January 2nd and we had a whole series of new or revised or
23 restated contentions. The people involved in that meeting,
24 including the Intervenors, literally broke their backs for
25 three days trying to make some sense out of that particular

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1 process, and to develop a paper which would be informative to
2 the Board on Friday, as was required by the Board order.

3 The paper specifically indicated the status of the
4 particular contentions. The paper indicated that on most of the
5 contentions there was disagreement by the parties as to
6 whether or not that contention should be admitted into con-
7 troversy.

8 We, therefore, concluded that it was appropriate in
9 terms of the very short time schedule available to continue to
10 break our backs and get a piece of paper into the Board that
11 explains our objections to those contentions we did object to.
12 We did that.

13 We submitted as an attachment to the paper, sir,
14 the contentions offered by the Board -- this is what Mr. Vollen
15 -- offered by the Intervenor -- this is what Mr. Vollen is
16 complaining about. The contentions of course are identical
17 to those in the stipulation except to the extent they may be
18 reworded, plus what we considered to be the bases on which
19 they are offered.

20 There is nothing particularly confidential about
21 bases, this is what the whole name of the game is about, as
22 far as we are concerned.

23 Now from the very beginning of this proceeding he
24 has objected to me about the extent to which I would be send-
25 ing communications to the Board that we were exchanging among

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1 ourselves. I said I would be sensitive to Mr. Vollen's
2 problem, but I did feel that about the status of the case, and
3 the nature of disagreements, that I would not commit to never
4 filing copies with the Board of any of its papers.

5 That was the understanding that we had. It seems to
6 me that the fact that he says "Don't send this to the Board"
7 when all it contains are the contentions we're talking about
8 and the bases is something that was in the nature of his general
9 request of "Don't tell the Board what is going on."

10 Now I cannot, representing this client, go through
11 an informal discovery process which brings us right up to the
12 pre-hearing conference and work and work with the Intervenor
13 and the Regulatory Staff to arrive at a basis so I could under-
14 stand that contention and find that I don't get that basis,
15 and then come in to a Licensing Board and find that I am perhaps
16 being criticized because I didn't file a motion with the Board
17 saying I did not get the information I wanted.

18 We can't have it both ways. If we were to file things
19 formally and have them formally, I'm prepared to proceed in
20 cases like that. But if we are going to be pushed up until the
21 deadline and then we don't get the information and then the
22 Licensing Board said, "Well, you didn't get the basis but you
23 didn't ask for a discovery," then it seems to me somebody is
24 being unfair.

25 Now the fact with regard to any allegations that there

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1 is anything unethical, I have to reject that one, Mr. Chairman.
2 All we attached respect contentions and statements of bases
3 of contentions. There is nothing in that that is particularly
4 illicit, illegal, or private, or anything of the sort. I
5 would reject that.

6 Now with regard to the extent to which we may have
7 characterized Intervenor's statement, and we did that in a
8 few places in here, he is free to quarrel with that. What
9 we did was, in an effort to shortcircuit this process a little
10 bit, we gave it to you. The Intervenor's are free to receive
11 this, and comment on it to you today.

12 The fact that he got it at ten after eleven last
13 night was simply his plane schedule. We informed him we were
14 filing it with you and it was available for him. He said,
15 "Leave it at my hotel." We did that.

16 As far as I am concerned, he is free to criticize
17 anything that is in here and the Board can make judgments on it.
18 But it was not unethical.

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1 MR. RENFROW: Please, Mr. Chairman. The process
2 that the parties have gone through, I think, has been a very
3 helpful one. I believe to a large extent we have specified
4 contentions on the good will of all sides, through each side
5 working together. I think both the Applicant and the Staff and
6 the Intervenors have a better understanding of the case.

7 To that extent, I think this process has worked
8 very well. As to the paper being filed, I will state to this
9 Board that I have not read it. I do know that working
10 informally, there are comments made. Each lawyer must make his
11 own decision.

12 However, from the Staff's point of view, any informal
13 conference at which the attorneys are talking, discussing the
14 case, I do not consider those to be relevant facts to be put
15 before the Board without the express permission of any party.
16 I have heard countless lawyers argue about that point,
17 hearings go up because informal conferences were reported when
18 they should not have been.

19 I would like to state for the Board, to the extent
20 that that has taken place, I do not agree with that practice.
21 Second of all, as to Appendix C, I would like to suggest that
22 it be stricken from this paper for two reasons:

23 One, not only does it include the contentions, but
24 it includes the Staff's preliminary answers that were made to
25 the Intervenors to provide them with some detail so that we

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1 could then meet and discuss. Those are not, in my opinion,
2 and were not intended to be put before this Board as answers
3 to any contentions. They were for the information of the
4 Intervenor as were many of the contentions that were placed
5 to us until we reached the final words.

6 I would not like to see this go much further. I
7 think the issue is before the Board, that it can be corrected.
8 Perhaps the parties among themselves can reach an agreement
9 as to informal conferences that will not be broken.

10 However, I would suggest to this Board that Appendix
11 C be deleted from this paper and that both Mr. Vollen and
12 myself have an opportunity to answer it.

13 CHAIRMAN FARMAKIDES: I am sorry this has arisen,
14 because very frankly, apart from the friendly nudging of
15 the parties in order to sharpen the contentions, in order
16 for us to join issue more clearly, I have admired the work --
17 the whole Board has -- admired the work of all the lawyers
18 in this case. We think it is one of the best professional
19 jobs we have seen. That something like this should arise now
20 is very unfortunate. I don't know that it is as potentially
21 serious as some might suggest. The Board does permit the
22 Intervenor and the Staff to file replies to the Applicant's
23 arguments.

24 In addition, I would like to meet with Mr.
25 Charnoff, Mr. Renfrow, and Mr. Vollen, immediately after

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1 the hearing today.

2 I would make one further and last observation, and
3 will drop it, unless there is anything further that needs to
4 be said. That is, this informal procedure, in my opinion,
5 has been successful, largely successful. There are some
6 potential flaws. I think they can be worked out. It is a
7 question of the time element beginning to grind on people.
8 I think we have to be more flexible and lighten it. If
9 the time schedule is too strenuous, let's change it. We are
10 not going to prejudice any party by reason of the requirement
11 of time. We certainly want to expedite this case as much as
12 possible, but not to the point that it really damages in any
13 sense any party's case.

14 Now, again, unless I hear something that has to be
15 said now, I want to drop the matter. I want to see Mr. Vollen,
16 Mr. Renfrow, and Mr. Charnoff later.

17 Is there anything else?

18 MR. VOLLEN: No, sir.

19 CHAIRMAN FARMAKIDES: Related to contentions?

20 MR. VOLLEN: In light of the Board's ruling, I have
21 nothing further to say.

22 MR. RENFROW: No, Mr. Chairman.

23 CHAIRMAN FARMAKIDES: Fine. Let's then go to the
24 argument that was requested in the objections filed by the
25 Joint Intervenors relating to paragraph 4.

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1 Mr. Vollen, in your objection, dated December
2 12, 1972, you request that the Board vacate that portion of
3 the order relating to paragraph 4 and that we permit either
4 by written brief or by oral argument or by both a discussion.

5 What we had done, I think we had a telephone
6 conversation among all of the parties with respect to this,
7 and I had indicated, I think it was sometime around December
8 the 19th or 20th, that we would definitely permit oral argu-
9 ment on this point at this prehearing conference. We certainly
10 will hear that.

11 I think what we will do -- previously during one of
12 the breaks, I asked Mr. Vollen and Mr. Charnoff -- I don't
13 believe Mr. Renfrow was in the room -- about how much time
14 would be necessary, and we estimate between five and 10
15 minutes.

16 Mr. Renfrow, is that about right for you, sir?

17 MR. RENFROW: At the maximum.

18 CHAIRMAN FARMAKIDES: All right, fine.

19 Mr. Vollen, you can proceed, and then I'll hear
20 from Mr. Charnoff, and then I'll hear lastly from Mr. Renfrow.

21 MR. VOLLEN: Thank you, Mr. Chairman.

22 CHAIRMAN FARMAKIDES: Forgive me. The question
23 that we raise is in response to your question earlier this
24 morning, Mr. Vollen, is paragraph 4 of the order of the Board
25 dated December 4, 1972.

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1 MR. VOLLEN: Before I get into my argument, let me
2 try and clarify in my own mind and perhaps in the Board's
3 mind and the minds of counsel for the parties what it is
4 we are arguing.

5 The document I filed on December 12 said that
6 the order, the prehearing conference order, insofar as it
7 required Intervenors to file direct written testimony on the
8 same date as Applicant and the Staff, should be vacated. In
9 order that the parties present their position on the question
10 of whether or not Intervenors should be so required.

11 What I am not clear on now is whether you want me
12 to direct my remarks to the latter point, namely whether or
13 not Intervenors should be so required or whether I should
14 first direct my remarks in support of an argument that that
15 question should be considered.

16 CHAIRMAN FARMAKIDES: Just to be very clear, for
17 purposes of a discussion, that particular paragraph was
18 discussed with all the parties on December 4th, 1972. That
19 was the very day we issued it. I think I had called -- I
20 know I had -- I had called all the parties, and I had discussed
21 that I was putting that paragraph in. I said at that time
22 that this was an action of the Board in order for the Board
23 to be apprised of the direct testimony of all the parties. I
24 wanted all the parties to file their direct testimony on the
25 same date. The direct of the Applicant with respect to the

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1 burden he has to make, the direct of the Staff with respect
2 to its direct case, the direct of the Intervenor with respect
3 to his contentions was what I referred to.

4 Now with that as background, if you want to
5 expand the issue, you may. I am primarily concerned about
6 the issue of requiring all of the parties to submit their
7 direct on the same date prior to the evidentiary hearing.

8 MR. VOLLEN: Fine. That is what I will be pleased
9 to direct myself to, Mr. Chairman. In your articulation of
10 the issue just now, I think you used the kinds of words that
11 are quite relevant to it. That is "burden" and "obligation
12 of parties." I think implicit in a decision as to whether
13 or not Intervenor are required to file direct testimony
14 at the same time as the Applicants and the Staff is the question
15 of whether there is some burden upon the Intervenor in a case
16 like this.

17 We know, I think, clearly that the burden of proof
18 in this case is on the Applicants. The regulations of the
19 Atomic Energy Commission so state. The Administrative
20 Procedure Act so states. I believe counsel for the Applicant
21 has so stated at the last prehearing conference. There can be
22 no question that the burden of proof as an evidentiary matter
23 is upon the Applicant.

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Reba 1

1 I think that has to be the case. As I indicated
2 before, in response to Mr. Clark's question, the statute is
3 replete -- by statute, I am now referring to the Atomic Energy
4 Act of 1954 as amended -- is replete with obligations on the
5 Atomic Energy Commission to make findings with respect to the
6 protection and the adequacy of protection for the public health
7 and safety of the public. Now, that thread, that thought,
8 runs through several sections of the statute.

9 The Applicants come here asking the Atomic Energy
10 Commission to give them a very important right, or to grant
11 them a very important privilege, that which Congress has decided
12 only the Atomic Energy Commission can give, and that which
13 Congress has decided is totally involved with the public interest
14 in this country.

15 It seems to me not unreasonable -- and the statute
16 has so dictated -- that the applicants have the burden of
17 demonstrating that in order to have that privilege of running
18 a nuclear reactor, they satisfy the Atomic Energy Commission
19 and the Atomic Energy Commission finds that the running of that
20 nuclear energy plant will be consistent with the public health
21 and safety.

22 It being clear that the burden, to establish the
23 safety of this plant on the applicant -- because if they don't
24 satisfy that burden it seems to me that the Board cannot
25 find that the plant will be safe and the plant cannot be licensed

25 1 -- the question is whether short of that burden of proof, another
Reba 2 2 party and particularly the Intervenor have any burden of going
3 forward, any burden of presentation of evidence, any type of
4 evidentiary burden.

5 My answer to that question, as you might expect, is
6 no. There is no such burden on the Intervenor. I find no
7 references in the statute or the regulations to the imposition
8 of such a burden on Intervenor. Quite the contrary. As I
9 said, I find a burden of proof on the Applicants, and in my
10 understanding of normal legal proceedings, when a party has
11 the burden of proof with respect to any matter in controversy,
12 unless there is something to the contrary, that same party also
13 has the burden of going forward.

14 Now to require the Intervenor to file direct written
15 testimony at the same time that the Applicants and the Staff are
16 filing direct testimony is to require us -- require the Inter-
17 venor to show something before we have seen what the evidence
18 will be of the Applicants and the Staff.

19 That something must be the burden of going forward
20 that implicitly has been imposed upon us with regard -- by reason
21 of an order saying we have to file testimony at the same time.
22 In our view, the Intervenor, since they do not have a burden,
23 are entitled and ought not to be required to present their
24 evidence, whether in the form of written testimony or orally,
25 until such time as the Applicants and the Staff have presented

25 1 their evidence so that the Intervenor can then determine
Reba 3 2 whether any additional evidence on their part is necessary or
3 desirable.

4 It may well be that with respect to any particular
5 piece of evidence on any particular issue the Intervenor might
6 well reach the conclusion that no evidence is required, because
7 we would take the position that the applicant has not sustained
8 its burden of proof and that on that issue, we would argue that
9 the Board cannot make a finding in favor of the Applicants.

10 Now I recognize that when I say the Intervenor
11 ought to have no burden of going forward, and have no burden
12 of proof, that it sounds very much like an argument that the
13 Intervenor are entitled to come into a public proceeding like
14 this and raise question about the plant without having to prove
15 anything.

16 Well, I think the reason it sounds very much like
17 that is because that essentially is our position. This is a
18 public proceeding in which a private company is asking for
19 a very important privilege from the United States Government,
20 from the Atomic Energy Commission, a privilege which involves,
21 I think we can all agree, significant hazards and concerns.

22 Congress is concerned about the public health and
23 safety. That is obvious throughout the statute. If the
24 questions we have raised by way of contentions are of no moment
25 whatsoever, they are easily disposed of.

25 1 There is a procedure for summary disposition. They
Reba 4 2 can easily be answered. If the questions are of moment, if there
3 is a cause for concern and the Applicant cannot easily dispose
4 of them with evidence, then I think the fact that we have been
5 given the right simply to come in and ask questions and make
6 them prove that their plant is safe is a procedure that is well
7 founded, because indeed, we have no private right that we are
8 concerned about.

9 It is the public interest and the general health and
10 safety that we are concerned about with these plants. For that
11 reason it makes perfectly good sense to me, and I think Congress
12 contemplated that such a procedure could be utilized that
13 public proceeding where the applicant has the burden of proof.

14 Finally, there is a body of law which I think has some
15 applicability here, which in general stands for the proposition
16 that a court or an administrative agency can properly impose
17 the burden of going forward as well as the burden of proof upon
18 the party who peculiarly has the knowledge within his or her
19 position.

20 Never, I think, was a proposition of law more
21 applicable than it is here. We do not have as public interest
22 intervenors a staff of many, the facilities, the time, the
23 money to gather expert witnesses, to prepare lengthy, involved,
24 direct testimony in advance.

I think we should be permitted to be in the position.

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Reba 5

1 of having the Applicants put in their case to demonstrate the
2 safety of their plant with regard to the questions we have
3 raised about it, and thereafter, if we determine that our own
4 direct evidence is appropriate, to present it at that time.

5 In sum, Mr. Chairman and Members of the Board, because
6 there is no burden of proof upon the Intervenor in a proceeding
7 like this, and because there is no burden of going forward
8 whatsoever, it is our position that it is wholly inappropriate
9 to require Intervenor to present their evidence prior to the
10 time that -- or at the same time as Applicants and the staff.

11 Thank you.

12 CHAIRMAN FARMAKIDES: Thank you, Mr. Vollen. Mr.
13 Charnoff?

14 MR. CHARNOFF: Mr. Chairman, on December 12th the
15 Intervenor filed a motion objecting to paragraph 4; and in
16 response to that, on December 19th, the Applicants filed a reply
17 to that motion and we would hope that you would consider all
18 of the argument stated therein which pertain in part at least
19 to some of the arguments now made by Mr. Vollen in connection
20 with this matter.

21 I would point out preliminarily that in that argument,
22 Mr. Vollen argued in paragraph 4, page 4 of his paper, that
23 one of his complaints was that apart from the question or
24 respective burdens of proof, the paragraph places an undue and
25 unreasonable burden on Intervenor in preparation for the hearing.

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Reba 6

1 And he discussed why this would be very difficult,
2 a very difficult burden for them to assume. I would simply
3 assume that we are not in a construction permit case where there
4 is a mandatory hearing, we are in an operating license case
5 where the hearing would not be held but for the contentions
6 put forward by the Intervenor, and that hearings involve certain
7 burdens on a lot of people.

8 It is a concept of it being difficult to put forward
9 any direct testimony at this time -- that is a little difficult
10 for me to understand. Let's examine the question of burden of
11 proof.

12 First I would suggest that under the 2.732, the
13 regulations say that unless otherwise ordered by the Presiding
14 Officer, the Applicant or the proponent of the order has the
15 burden of proof. I am perfectly satisfied that in a construction
16 permit case where the licensing boards make the mandatory or the
17 required findings, the ultimate findings with regard to whether
18 a plant is safe or not, that the applicant certainly in that
19 situation was the burden of proof, since it is a mandatory
20 hearing, and the board totally independent of the participation
21 by Intervenor, has obligations to review the record.

22 In that case I would advise my clients that they also
23 have the burden of going forward. I think the situation is
24 a lot more problematical in an operating license case, particularly
25 where the hearing is held only at the request of the Intervenor,

25 1 and the licensing board is not to make the ultimate safety
Reba 7 2 findings required by statute but is rather to make only those
3 subordinate findings with regard to the matters placed in con-
4 troversy by the Intervenors.

5 Since the Board is not making the ultimate findings
6 Mr. Vollen's argument, as stated a few moments ago, is that we
7 must demonstrate that the plant is safe. That is not really
8 not so with respect to the hearing.

9 We don't have to demonstrate in this hearing that
10 the plant is safe. In this hearing we have to demonstrate that
11 the matters put into controversy are either without foundation,
12 wrong, or don't otherwise affect that ultimate finding. But if
13 the issues are quite limited as they may be in certain opera-
14 ting license cases and the issue is not is the plant safe
15 in its final analysis, then I am not sure we have to make that
16 demonstration.

17 Given the absence of a requirement to make demon-
18 strations with regard to ultimate safety issues, I would submit
19 to you that there is a fundamental question as to whether we
20 even have the burden of proof in an operating license case.
21 But even assuming that the Applicants do have the burden of
22 proof in an operating license proceeding, there is, as Mr.
23 Vollen and the Board Members and the record, the distinction
24 between the burden of going forward and the burden of proof
25 or the burden of persuasion.

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Reba 8

1 It seems to me that what we have been at some areas
2 of disagreement on all along is the fundamental question of
3 an intervenor who comes in and says -- to be ludicrous, the sun
4 is going to fall on my plant and therefore that will be unsafe --
5 that is specific, he explains in some way the way that the sun
6 is going to fall on such and such a day and land on my plant --
7 suddenly the Applicant has the burden of proof that won't happen.
8 It seems to me given that type of far out situation, that the
9 idea of the Applicant's having to have the burden of going
10 forward as well as the burden of proof is somewhat unreasonable,
11 and as I suggested at the last prehearing conference, we don't
12 know any other jurisprudence situation where a trial or a
13 hearing is involved at the request of party A and party A then
14 simply sits back and says, "Party B, you have the burden of
15 going forward as well as the burden of proof."

16 We are not aware of any. If there are any, we
17 wish to be enlightened. We think that violates all fundamental
18 jurisprudence rules. What does the burden of going forward
19 really mean, Mr. Chairman? It seems to me that the burden of
20 going forward as distinguished from the burden of proof is that
21 if a party who has that burden of going forward can't meet
22 that burden, that particular matter in controversy that he has
23 the burden on should simply be dropped.

24 Fundamentally it strikes me that that is not an
25 unreasonable proposition when the matters in controversy are

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Reba 9

1 placed into controversy by the Intervenor, to move something
2 forward with. I would point out that it is not unusual to
3 distinguish between burden of proof and burden of going forward.

4 I would point out that now Chief Justice Burger, in the
5 famous Office of Communications of the United Church of Christ
6 vs. the Federal Communications Commission, in 1969, when he was
7 then sitting on the D. C. Court of Appeals, wrote that the public
8 Intervenor in an FCC proceeding, where admittedly the statute
9 is a little different in terms of the whole question of basis --
10 he wrote, "the public intervenor was to have the burden of going
11 forward with evidence in the first instance. From that point
12 on, the responsibility shifts to the agency to pursue its
13 prosecutorial or regulatory functions."

14 So there is a distinction that is fairly made. I
15 submit to you that the parallel between that type of situation
16 and the case we are involved with in an operating license case
17 is so striking that the concept of having an intervenor go forward
18 to demonstrate that he has something in the way of contentions
19 that he wishes is not without precedent and is really just ele-
20 mentary fairness.

21 But setting aside the issue of the burden of going
22 forward, the issue in your ruling, paragraph 4, was, do all
23 the parties have to put their direct testimony in at the same
24 time? I would submit to you that if I am right, and I think I
25 am, the Intervenor has the burden of going, and my basic

25 1 proposition would be that the Intervenor should put the
Reba 10 2 basic testimony in writing first, followed by the direct testi-
3 mony in writing by the regulatory staff, and the Applicant.

4 We, however, in the interests of compressing the
5 schedule, and assuming when we made the suggestion, frankly,
6 that we would have an adequate basis, i.e., an adequate under-
7 standing of what is behind the contentions so that we would be
8 able to prepare our testimony -- I suggested that we have all
9 the parties file their written direct testimony at the same
10 time.

11 And while I am not at all aware of how the Board
12 will come out on our arguments on basis or the contentions,
13 for the time being we are still prepared to feel that way.
14 That question, sir, is independent really of the burden of
15 going forward. All we want the parties to do is put their
16 direct testimony in ahead of time, so the board members and
17 each of the other parties will be aware of what that direct
18 testimony is all about, and there will be no surprises.

19 We can then argue whose witnesses go on first, and
20 who gets croaked first. With respect to that very narrow
21 question of filing testimony, I can only read to you from the
22 Commission's estimate with regard to its new rules.

23 "The use of advance written testimony by all parties
24 is now required by amendment of Section 2743. It can be
25 expected to expedite the hearing process as well as to provide

25 1 other benefits. Counsel and their technical advisors can
Reba 11 2 examine the material before hearing and be prepared to cross-
3 examine without delay."

4 Now it seems to me that the Commission has really
5 addressed the fundamental question of putting direct testimony
6 in in writing ahead of the hearing. It has not in that par-
7 ticular paragraph addressed whether one party should put it
8 in first or second but certainly has said direct testimony in
9 technical matters involved in these cases are appropriate for
10 submission in writing ahead of time.

11 That is the issue. Mr. Vollen's argument in his
12 motion of December 12th focussed exclusively on the old regula-
13 tions, and totally ignored the Commission regulations which
14 were published this summer and which are applicable, certainly
15 to this case.

16 Therefore on the narrow question of the appropriateness
17 of your paragraph 4, it seems to me that it is in total conform-
18 ity with the Commission's statement of policy.

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1 CHAIRMAN FARMAKIDES: Mr. Renfrow?

2 Thank you, Mr. Charnoff.

3 Mr. Renfrow?

4 MR. RENFROW: Thank you, Mr. Chairman.

5 I might begin by stating that the CP and the OL
6 cases are both set forth in the statute as requiring hearings.
7 The regulation now states that in OL, there is no mandatory
8 hearing, that it is only when the Intervenor himself comes in
9 and asks questions that a hearing is held.

10 However, it is not the Intervenor that invokes
11 the hearing, it is the Applicant himself coming before the
12 Board, asking and requesting a license to operate a plant.
13 He must face a CP hearing according to the regulations. He
14 may not have to have an OL hearing, may. But it is still his
15 request.

16 Therefore I think it is clear that the burden of
17 proof is on this Applicant, since he is the one requesting the
18 license. The Director of Regulations may make the findings
19 on the regulations, but he must make them consistent with what
20 this Board finds on contested issues.

21 As to the burden of going forward, it has always
22 been my impression under federal law and in Federal Court
23 practice that the burden of going forward does not shift
24 until the party with the burden of proof makes a prima facie
25 case. As I understand it, there is not a prima facie case

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1 made before this Board.

2 Now, to address myself directly to the question,
3 it is the Staff's position that all parties are required to
4 file written testimony. I would refer this Board to Section
5 2.743 of Part 50, which states, among other things, that
6 each party shall serve copies of its proposed written testimony
7 on each other party at least five days in advance of the
8 session of the hearing at which the testimony is to be heard.
9 Now this is to be done unless otherwise ordered by the
10 presiding officer on the basis of objections presented.

11 The Commission's rules have been enacted in
12 accordance with several other administrative agencies. The
13 sources on filing written testimony before the hearing
14 state that it contributes to the hearing going forward, each
15 of the parties in a technical area, including the Board,
16 has an opportunity to look at each other's evidence, to be
17 prepared to go forward.

18 I do not think whoever has the burden of proof is
19 denied due process. The line of cases supporting this
20 reasoning all support that this is a proper way to go
21 provided that certain restraints are built in. These
22 restraints are certainly a matter of the Atomic Energy
23 Commission regulations. The opportunity for cross-examination
24 is there for this party.

25 Under other administrative agencies, like the ICC,

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1 there is no opportunity for cross-examination, it is just
2 written testimony filed. In this case, there will be the
3 opportunity for cross.

4 In addition, I might state that it is perfectly
5 reasonable for the parties to ask and the Board to order that
6 within a length of time after direct is filed, each party
7 may then file his rebuttal testimony. I would submit to this
8 Board that this should be done so that when the direct cases
9 are through, if there is no summary judgment granted at the
10 end of the direct case, and thus if the Intervenor put on
11 their case, that we are ready to go forward with rebuttal,
12 since we have agreed to a continuous hearing. This seems to
13 me to relieve Mr. Vollen's question.

14 He would have the right, naturally, to go back,
15 look at our direct testimony, and file rebuttal, as would the
16 Applicant and the Staff.

17 Third of all, I would suggest to this Board that
18 the administrative procedure conference itself has suggested
19 that boards and agencies move in this direction to file
20 written testimony, balancing between the rights of the
21 parties and the prejudice and the need to expedite the hearings
22 and have the opportunity to review technical details.

23 I think the section of the Atomic Energy Act
24 does this. I think it provides full protection for the
Intervenor, the Applicant, and the Staff. The fact that the

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1 Staff requests that all parties be required to file written
2 testimony should not lead any party or the Board to come
3 forward that the Staff's position is that the Intervenors are
4 required to file written testimony.

5 As Mr. Charnoff says, the fundamental jurisprudence
6 question, which I don't guess has been answered yet as to
7 burden of proof -- the burden of proof, if it is with the
8 Applicant, does not require that the Intervenor file testimony
9 or have a case. As in any other court case, he may make his
10 case through cross-examination of the Applicant and the Staff
11 and their witnesses.

12 However, in fairness to all the other parties, the
13 Intervenor should be required to file their testimony with
14 all the parties so we all have an opportunity to see what is
15 in the testimony, what is there, what we will need to cross-
16 examine.

17 I would suggest finally to the Board that the
18 rebuttal suggestion that I make be adopted or at least
19 considered when the Board issues its order.

20 CHAIRMAN FARMAKIDES: Mr. Renfrow, the Board is now
21 confused. You seem to be arguing completely contrary to the
22 paper presented on the 20th of December of '72 by the Staff,
23 in which you said that you have no objection to vacating
24 paragraph 4.

MR. RENFROW: Mr. Charnoff asked me that question.

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1 The sum of that was, Mr. Chairman, perhaps not artfully put,
2 that the Staff had no objection to the Board vacating the order
3 and allowing oral argument on this question. I believe in
4 the last paragraph I said that that is without regard to
5 the merits of the issue, i.e., the Staff felt that the
6 Intervenor should be allowed the opportunity to present its
7 views to this Board.

8 CHAIRMAN FARMAKIDES: Okay. Thank you. Anything
9 further?

10 Go ahead, Mr. Vollen.

11 MR. VOLLEN: I would like a very brief rebuttal,
12 Mr. Chairman. Mr. Charnoff brought up the document he
13 filed in reply to my motion, and I want to just make one
14 reference to that. In that document, on page 5 and 6,
15 Applicant's cite and quote from the case of Power Reactor
16 Development Company versus International Union, a 1961
17 decision of the United States Supreme Court.

18 That decision, in my view, has absolutely nothing
19 to do with the issue before this Board now. That case was
20 concerned with the question of whether the Atomic Energy
21 Commission needed to make the same kind of safety findings
22 at the construction permit stage as they have to make at the
23 operating license stage. It didn't go to burden of proof.

24 The language quoted on page 5, I believe, is quoted
25 really out of context, but beyond that, of course, it doesn't

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1 talk about how the Intervenor have to make a showing.

2 Secondly, Mr. Charnoff, in his oral argument
3 referred to Office of Communications of the Church of
4 Christ versus FCC. The citation to that case is 425 F 2nd,
5 543. It is a decision of the Court of Appeals for the
6 D.C. Circuit in 1969. Mr. Charnoff and I, I think, agree
7 in one respect: The statute involved there was quite
8 different from the Atomic Energy Act which we are dealing
9 with, and moreover, the Intervenor in that case conceded that
10 they had the burden of going forward. I don't see how it
11 can cast any light on the problem here.

12 Thirdly, I have some disagreement, I think, with
13 the proposition that this hearing is being held only
14 because Intervenor asked for it, on two levels:

15 A, I agree with Mr. Renfrow, that obviously it
16 was the Applicants that started the whole proceeding going.
17 They are here asking for a license to operate that plant.
18 But even beyond that, as I read Section 189 of the Atomic
19 Energy Act, it provides that in the absence of a request by
20 Intervenor, the Commission may issue an operating license
21 without holding a hearing where there has been a hearing on
22 the construction permit. It does not say that the Commission
23 shall issue an operating license without a hearing. It says
24 it may. In other words, to speculate what the Commission
25 would have done in the absence of petitions to intervene, I

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1 think, cannot be done. That is intended to put into context
2 and raise a question as to whether this hearing is being held
3 only because the Intervenors have asked for it.

4 CHAIRMAN FARMAKIDES: Wasn't that in the notice of
5 hearing?

6 MR. VOLLEN: I don't think so. I have read it over
7 again this morning, Mr. Farmakides, and it isn't very clear.
8 It is not to me a very clear statement by the Commission
9 that it will issue a license without a hearing, unless someone
10 asks for a hearing.

11 Certainly the statute does not require it not to
12 have a hearing, if there are no Intervenors. But I don't
13 read the notice of consideration in this case as saying that
14 the Commission will forego a hearing if there are no Inter-
15 venors. I certainly want to be brief. I smile, because in a
16 way we are back to the question that you wanted to rule on at
17 the first prehearing conference, that is, whether the old
18 rules apply or whether the new rules apply. And my position
19 at that time was we ought to wait until an issue is presented.
20 I think we are there. But this is not really very dramatic,
21 because both old Section 2.473, which talked about necessity
22 or desirable, and new Section 2.473, which talks about
23 direct testimony in the absence of objection, contemplate
24 that this Board has some discretion, has a decision to make,
25 as to whether or not to require it.

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1 But more importantly, and let me just finish my
2 prior thought, if there is a difference with regard to the
3 result that this Board would reach under the old or
4 the new rule, we would clearly argue that the old rule
5 applies because to apply the new rule after this proceeding
6 had started would substantially prejudice us.

7 But whether you read old Section 2.743 or the new
8 one as being applicable, I think neither of those sections
9 require this Board, even if it determines to require written
10 testimony, that all the parties file it at the same time. So
11 I think we have to remember there are really two issues here,
12 whether Intervenors have to file written testimony at all,
13 and whether Intervenors have to file written testimony at
14 the same time as Applicants and the Staff.

15 On the second question, we feel strongly that
16 because we have no burden, we should not be required to file
17 at the same time.

18 On the first question, we really think in light of
19 the interest we seek to serve, in light of our financial
20 condition, in light of the time that we have to prepare this
21 case for hearing, we ought not to be required to file written
22 testimony.

23 I quite agree with Mr. Charnoff, that hearings
24 such as this put burdens on a lot of people. I think the
25 Applicants, I think the Board, I think the Staff, the Intervenors

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1 all have a substantial burden. All I can say is it seems
2 to me that a nuclear power plant that has not been determined
3 to be safe because of some procedural mechanism or burdens
4 of going forward imposes a pretty substantial burden on all
5 of us as well.

6 Thank you.

7 CHAIRMAN FARMAKIDES: Thank you. Anything further,
8 Mr. Charnoff?

9 MR. CHARNOFF: Just very briefly, I don't have any
10 doubt that the Atomic Energy Commission, but for the petitions,
11 would have -- would not have held a hearing on this case.
12 They have not held a hearing on their own discretion since
13 the D. C. operating license case in 1963, I believe it was.

14 Secondly, in page 2 of the memorandum and order
15 accompanying the notice of hearing, it says in consideration of
16 the filings, referring to the petitions and the responses to
17 that, "We conclude that a hearing on Applicant's request for
18 an operating license should be held and that Petitioners BPI
19 and POWER should be admitted as Intervenors."

20 With regard to which rules are applicable or not,
21 in a recent Commission decision involving a case having
22 similar timing situations, namely where the notice of hearing
23 was published before the effective date of the new regulation,
24 that is the Monticello decision of the Commission, dated
25 December 20, 1973, wherein they ordered a hearing -- December

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1 20, 1972, wherein they ordered a hearing on the Monticello
2 Plant, it is stated in footnote 1, "We agree with the Staff
3 that the adequacy of the petitions should be judged by
4 the rules in effect at the time the notice appeared in the
5 Federal Register," referring to 2.174. "The remainder of
6 this proceeding, under the guidance of an Atomic Safety
7 Licensing Board, will be conducted in accordance with the
8 Commission's restructured rules of practice." So CFR Part 2,
9 effective August 28, 1972 -- we are talking about something
10 clearly unrelated to the petition to intervene. We are talk-
11 ing about the conduct of this proceeding. There is no
12 question that that is precisely what the Commission had in
13 mind in our own case wherein, on page 3 of the memorandum
14 and order, they reminded the Board and the parties about the
15 significant amendments to the rules of practices and these
16 should be applied as appropriate when the context so indicates.

17 They have now indicated in the Monticello case what
18 you do in a situation like this. It seems to me that one
19 ought not to ignore the fact that in a very recent case
20 involving Point Beach with the same Intervenor, we had
21 many statements about all the testimony that was coming in
22 from these Intervenor, Mr. Chairman, and when the pudding
23 was put on the fire, the testimony wasn't there, with minor
24 exceptions.

CHAIRMAN FARMAKIDES: Mr. Renfrow?

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1 MR. RENFROW: I might refer --

2 CHAIRMAN FARMAKIDES: Do you have anything
3 further?

4 MR. RENFROW: I might refer the Board to Chapter
5 14, Section 16, of Davis on Administrative Law, as to
6 written presentations. Other than that, I have no comment.

7 CHAIRMAN FARMAKIDES: Okay. We have given this a
8 lot of thought and we want to now talk again among the
9 Board with respect to the arguments that have been posed.
10 They are good arguments. So let's recess for about 15
11 minutes. We will recess until 5:00 o'clock. Then we will
12 reconvene and I hope that the Board will have a ruling at
13 that time, and thereafter I would like the parties to begin
14 to think in terms of a discussion on the schedule. You-all
15 might think about it during the recess, and we will be back
16 in here at 5:00 o'clock.

17 MR. VOLLEN: Mr. Chairman, before we recess, one
18 question. Before discussing this issue, I think you ruled
19 that the Staff and Intervenors would have the right to file
20 a written response to Applicants.

21 CHAIRMAN FARMAKIDES: Yes.

22 MR. VOLLEN: Do you want to set a date?

23 CHAIRMAN FARMAKIDES: I would like to set that as
24 part of the schedule.

25 MR. VOLLEN: Fine, sir. Thank you.

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CHAIRMAN FARMAKIDES: I think that is the best way.

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(Recess.)

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CHAIRMAN FARMAKIDES: Gentlemen, let's proceed. We have given the matter, as we said earlier, very serious and careful consideration, and the Board concludes that while it is true that this paragraph four did not represent action completed by the parties at the prehearing conference, nevertheless, since the Board was issuing the prehearing conference order for other purposes, this additional separate paragraph was included in order to give all the parties as early a notice as possible of the intent of the Board to have the direct testimony of the parties available to each other and, just as importantly, available to the Board before the start of the evidentiary hearing in order to best expedite this proceeding.

In the case of the Joint Intervenors, this would amount to the filing of their direct testimony, which they intend to introduce, supporting their contentions. It doesn't preclude the Joint Intervenors from presenting additional direct testimony based on whatever develops during cross-examination.

It appears to the Board that the issue posed as critical by the Joint Intervenors is whether their due process is being violated by this requirement established by the Board. We have given the entire record, both written and oral, very careful consideration, and on this basis we do not agree with the Joint Intervenors. We believe that their

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1 due process is not being violated, for a number of reasons.
2 First, this is an operating license proceeding established
3 because of the contentions filed by the Joint Intervenors.

4 Two, the Joint Intervenors have had full notice
5 and ample access to the major portion of the Applicants'
6 direct case for a number of months past.

7 Three, the discovery between the parties has been
8 proceeding over these many past weeks.

9 Four, apparently, based on such information, and
10 on the fruits of discovery, the Joint Intervenors have filed
11 a number of pleadings or contentions which the Board has
12 assumed are not frivolous. We presume that these contentions
13 have some basis which will be expressed in the direct case
14 of the Intervenors.

15 Five, the submission of this direct testimony,
16 going to their contentions as filed by the Joint Intervenors,
17 does not preclude them from presenting additional direct
18 based on whatever develops in cross-examination.

19 Accordingly, for these reasons, it is the order
20 of this Board that the direct testimony of the parties be
21 filed within 15 days following the issuance of this order.
22 If not so filed, then such direct testimony will not be received
23 later into evidence absent a good cause shown. Our ruling
24 herein will be incorporated in the prehearing conference order
25 which this Board will issue at the close of the session today,

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1 and we hope to do so within the next week.

2 MR. CHARNOFF: Sir, just on timing, you said 15
3 days from the date of this order.

4 CHAIRMAN FARMAKIDES: Of the order that will be
5 issued, the prehearing conference order that will be issued,
6 15 days from that date.

7 MR. CHARNOFF: Fine.

8 CHAIRMAN FARMAKIDES: Gentlemen, let's proceed.
9 I want to talk to the schedule. I'm sorry that we cannot
10 make the decision that we would have liked to make with
11 respect to each of the contentions. I think we can state
12 that the Board is predisposed to grant a number of the conten-
13 tions that we have seen brought before us. We hope to give
14 this additional thought, in view of the record today, and in
15 view of the other comments made, and we hope again to issue
16 our ruling with respect to all of the contentions within a
17 week's time.

18 Now, the Board is open to suggestions on the sche-
19 dule. It seems to us, in view of this additional material,
20 in view of the action we have taken with respect to the direct
21 testimony, and in view of some of the contentions that appear
22 to us will consume time to both prepare for and to hear, that
23 our date of January 30 is slightly early. The Board is
24 prepared to proceed on that date if the parties so wish, but
25 it might be advisable for all of us to think in terms of a

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1 schedule that gives us all a little more time to plan for
2 the evidentiary hearings, so once we start, we hopefully
3 proceed at a faster rate. I am open to comment.

4 Mr. Charnoff?

5 MR. CHARNOFF: Sir, I would suggest that we adopt
6 the old schedule adjusted simply to reflect the adjustment
7 made in light of your just-made statement. In the first
8 case, we will presumably have a decision from the Board with
9 regard to contentions, by the 16th or 17th, Tuesday or Wednesday
10 of next week. The testimony thereafter would be due --
11 written direct testimony on, I guess, the 30th or 31st of
12 January.

13 Now, if we simply make an adjustment to reflect
14 that, and to include the time periods we have allowed our-
15 selves before, which was previously, I think it was the
16 22nd, the date for testimony to precede the hearing which was
17 to start on the 30th, which was on the order of eight days,
18 that if we were to plan on starting the hearing, assuming
19 the Board puts out its order on the 16th or 17th -- if we were
20 to start our hearing on the 7th of February --

21 CHAIRMAN FARMAKIDES: The Board would find that to
22 be acceptable for an additional reason, which I would like
23 to place on the record. The Atomic Safety and Licensing
24 Board panel is having its first meeting on the 5th and 6th
25 of February. This is the very first one that I will ever

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1 have attended, and also for my colleagues here. We would
2 like to attend that session. If per chance we do start on
3 the 7th, this would allow us the opportunity of attending
4 that session on the 5th and 6th.

5 There is something else that comes to mind.
6 If we start on the 7th, we can start perhaps in Kewaunee,
7 with the thought that -- and I have expressed this to each of
8 you informally -- the thought that we can move to a spot that
9 is more readily accessible to all the parties the week
10 thereafter. So possibly we can meet in Kewaunee commencing
11 the 7th, and the following week we can meet either in Green
12 Bay or in Milwaukee. I leave this to the parties. The
13 problem that I have seen is the flight schedules in and out,
14 and the transportation -- in and out to Green Bay, and the
15 travel from Green Bay to Kewaunee. In the middle of winter,
16 I dare say we are going to have some interruptions if we seek
17 to hold the hearing in Kewaunee for the entire period of time,
18 especially since there are very few accommodations in Kewaunee,
19 and that most of us will have to be living in Green Bay, and
20 commuting to Kewaunee.

21 Mr. Renfrow or Mr. Vollen? May I ask your
22 thoughts, Mr. Vollen, on the schedule and on the location?

23 MR. VOLLEN: Well, with regard to the schedule,
24 I have no problems. That is agreeable to us. With regard
25 to the location, we share your concerns. I guess our position

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1 would be that to start in Kewaunee that first week, as you
2 suggest, would be appropriate, and to then move to Milwaukee,
3 we think would be appropriate as well.

4 CHAIRMAN FARMAKIDES: Milwaukee has far better
5 connections than Green Bay, and better accommodations.

6 MR. VOLLEN: Yes.

7 CHAIRMAN FARMAKIDES: All right, let's hear the
8 other --

9 MR. VOLLEN: I might make one more comment, really
10 in the way of a question.

11 CHAIRMAN FARMAKIDES: I'm sorry.

12 MR. VOLLEN: I keep coming back to this. I don't
13 want to have it get lost in the shuffle. That is the date
14 for Intervenors and Staff to file a response to
15 Applicants' documents.

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1 CHAIRMAN FARMAKIDES: I'm sorry.

2 MR. VOLLEN: You have indicated you want to rule
3 next week. Obviously you want our response prior to that time.
4 Might I suggest or request that we file a response which I am
5 confident will be substantially shorter than Applicant's argu-
6 ments by Monday?

7 CHAIRMAN FARMAKIDES: I would be most happy if you
8 would. I was going to give you until Tuesday. We would work
9 Tuesday evening and Wednesday to be sure-- Monday would be
10 great.

11 MR. VOLLEN: Okay. But when I say "file," I think
12 I mean mail from Chicago.

13 CHAIRMAN FARMAKIDES: Let's mail it airmail, not
14 special delivery, and I'm sure we will get it on Tuesday. We
15 have been very fortunate recently getting good delivery on air-
16 mail. Once you put special delivery on there, you have problems.

17 MR. CHARNOFF: Let me suggest if Mr. Vollen would
18 deliver his package to an airport in Chicago, we would arrange
19 from my office to meet it at National Airport and we'll deliver
20 it to you.

21 CHAIRMAN FARMAKIDES: Well, look, I would very much
22 appreciate it if you all could get together with Mr. Renfrow
23 and expedite the mailing of these documents to the Board.

24 MR. CHARNOFF: You want it in your hands by Tuesday?

25 CHAIRMAN FARMAKIDES: We will wait for it. We will

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1 definitely wait for it.

2 MR. VOLLEN: We will do it.

3 CHAIRMAN FARMAKIDES: We hope however if it is filed
4 on Monday we will get it on Tuesday. Now if there is some-
5 thing along the very constructive suggestion made by
6 Mr. Charnoff, I think you should explore it. I won't hold you
7 to it but if you can do this, it will be appreciated.

8 MR. VOLLEN: We will be glad to explore it.

9 CHAIRMAN FARMAKIDES: Is that suitable with you,
10 Mr. Renfrow?

11 MR. RENFROW: Yes, sir.

12 I would like to point out --

13 CHAIRMAN FARMAKIDES: First of all with respect to
14 our response --

15 MR. RENFROW: With respect to my response that would
16 be fine with us. The Staff must, of course, read this document
17 in order to determine whether or not we feel a response should
18 be made. We will indicate to the Board if we are not going
19 to make a response so you will not be waiting for a piece of
20 paper which will not arrive.

21 CHAIRMAN FARMAKIDES: All right.

22 Now how about the schedule?

23 MR. RENFROW: The schedule, Mr. Chairman, is fine.
24 I would suggest that if the Board's order is the 17th, that
25 testimony be filed --

1 CHAIRMAN FARMAKIDES: Let's be realistic. If we get
2 responses on Tuesday, which is the 16th --

3 MR. RENFROW: I will have my response to you by
4 Monday.

5 CHAIRMAN FARMAKIDES: I don't think I'll have
6 Mr. Vollen's by Monday. I will probably have it on Tuesday
7 or Wednesday morning at the latest. That means we will have
8 to have Wednesday to work up the order.

9 MR. CHARNOFF: If he'll put it on an airplane
10 Monday --

11 MR. RENFROW: Can we have two or three minutes and
12 let the three of us get together? We may be able to solve this
13 in three minutes.

14 MR. CHARNOFF: Could we go off the record?

15 (Discussion off the record.)

16 CHAIRMAN FARMAKIDES: Back on the record.

17 Thank you, gentlemen. That was a very constructive
18 suggestion. The way we have left it is that the Applicant
19 will make an effort to pick up the document from the Inter-
20 venors and transport it to D. C. and transport it to the Board
21 on hopefully Monday evening or at the latest, Tuesday.

22 Okay, fine, gentlemen.

23 Now, Mr. Renfrow, let's go back to the schedule.
24 What we have done is essentially suggested that the evidentiary
25 hearing now begin on February 7th.

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1 MR. RENFROW: That would be fine. Testimony would
2 then be due, I take it, one the-- Fifteen days,
3 Mr. Chairman, gives me a problem in preparing. I would suggest
4 that possibly I, with of course the other parties' approval --
5 that the 29th or 30th, instead of the 15 days, providing
6 the order comes out the 17th, be the day for direct testimony
7 to be filed.

8 That would then give the parties eight days to go
9 through the testimony in order to prepare the first part of
10 cross-examination, et cetera.

11 Also, we have the problem of summary disposition
12 motions which were -- which we have agreed to before would
13 be served on the first day of the hearing if not before, which
14 is another day we need to get in.

15 I would just throw those out as to a realistic
16 schedule.

17 MR. CHARNOFF: We would be glad to meet the 29th
18 date for filing testimony provided the Board's order is out
19 by the 17th.

20 CHAIRMAN FARMAKIDES: Or the 30th. That cranks
21 immediately a proviso in there.

22 Now if we were to make it 15 days from the day of
23 issuance and assuming it was issued the 17th, then the 15th
24 day expires on the 31st.

25 MR. CHARNOFF: That's correct.

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1 CHAIRMAN FARMAKIDES: We are really talking about one
2 day. There is always a chance that this thing may slip, we
3 may not get the material until Tuesday, or else the Board
4 may become deadlocked on a matter and not be able to resolve
5 it until Thursday, the 18th. I think we are going to hold to
6 that 15-day period.

7 MR. RENFROW: That will be fine, Mr. Chairman.
8 However, that puts the Regulatory Staff in a somewhat cumber-
9 some position as to motions for summary disposition and, I
10 suppose, the Intervenor and the Applicant.

11 That gives us four working days, providing no travel
12 to get to Kewaunee, to prepare our motions for summary dis-
13 position. If we file on the 31st, that does not count any days
14 for mailing nor for preparation.

15 CHAIRMAN FARMAKIDES: Do you want to postpone the
16 session until the 12th of February?

17 MR. CLARK: Do you people work on the 12th? That is
18 Lincoln's Birthday.

19 CHAIRMAN FARMAKIDES: That is a holiday.

20 MR. SEIFFERT: The 19th is a holiday.

21 CHAIRMAN FARMAKIDES: Yes, the 12th is a working
22 day. All right. How about the 12th?

23 MR. CLARK: That gives us time to get there. I was
24 worried about leaving the Board meeting on the 6th and being
25 there on the 7th. That is pretty tight.

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1 CHAIRMAN FARMAKIDES: Yes.

2 How is the 12th?

3 MR. CHARNOFF: We would like to get started early,
4 sir. If we could get in a good five days that week-- I think
5 we had agreed to talk in terms of a four-day-week type
6 hearing but if we could put in five days that week and get
7 off to a good start on the 12th, I think we would accept that.

8 CHAIRMAN FARMAKIDES: The thing that I find attrac-
9 tive about the 7th is that ordinarily, limited appearances and
10 the public come to the first couple of days, and after that, it
11 has been the experience of myself and I understand a couple
12 of other gentlemen in the room that the public doesn't attend
13 these hearings.

14 So I thought we would be able to meet in Kewaunee
15 say the 7th and 8th, and maybe the 9th also, and then adjourn
16 to Milwaukee or Green Bay from then on.

17 MR. CHARNOFF: I would suggest that the first set of
18 hearings ought to be in Kewaunee, whether it is the 7th or the
19 12th, and if we were to--

20 Because of the inflexibility here that may be built
21 in by time deadlines and the uncertainty as to whether the
22 Board will in the first instance get its decision out on the
23 17th, I would suggest that-- Let's meet the 12th, meet up in
24 Kewaunee. We have no indication -- I haven't, at least -- at
25 this time of any substantial limited appearances.

1 Do you?

2 MR. RENFROW: No, I do not.

3 CHAIRMAN FARMAKIDES: I thought there were two.
4 They aren't substantial, but there are two, aren't there?

5 MR. CHARNOFF: And if we would meet on the 12th and
6 get a good five days up in that lovely country, in Kewaunee,
7 that would probably set everybody up for a meeting the follow-
8 ing week in Green Bay.

9 CHAIRMAN FARMAKIDES: In Green Bay?

10 DR. MARTIN: Or Milwaukee.

11 CHAIRMAN FARMAKIDES: I think that should be added.

12 MR. CHARNOFF: You heard me correctly, sir.

13 CHAIRMAN FARMAKIDES: I'm really not very happy on
14 starting the 12th. I would much rather start on the 7th. We
15 have already slipped one week and now we're slipping more.

16 MR. CHARNOFF: We personally prefer the 7th as well.

17 CHAIRMAN FARMAKIDES: I would like to start on the
18 7th. I don't want to inconvenience the Staff.

19 MR. RENFROW: The Staff will be ready to go on the
20 7th. However, I point out to the Board the fact that the
21 summary disposition motions which I think both the Applicant
22 and the Staff has indicated to this Board are going to be
23 filed in this case-- If you can make some arrangements for
24 us to file them at some other time, that would be fine.

25 I do not think that this Board wants to go forward

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1 at a time when the motions are sloppily prepared, which has
2 not been done in this case as of yet.

3 CHAIRMAN FARMAKIDES: All right, and let me also
4 make a point. I'm talking for myself now.

5 I would be very careful about granting a motion for
6 summary disposition at that point in time, --

7 MR. RENFROW: I recognize that is a very great burden
8 for the party going forward to meet, Mr. Chairman.

9 CHAIRMAN FARMAKIDES: -- because of the fact of the
10 time and the other points that I have tried to make through-
11 out the session on this morning and this afternoon. But I'm
12 speaking not for the Board, only for myself.

13 MR. RENFROW: I understand that, Mr. Chairman.

14 CHAIRMAN FARMAKIDES: I think we should go on the
15 7th. I think it will be in Kewaunee. We will try to arrange
16 for a spot.

17 I'm very pleased to know that Mr. Renfrow called,
18 in conjunction with Mr. Vollen and Mr. Charnoff, to advise us
19 that the Kewaunee County Courthouse, I think, is available
20 to us. So we will ask our proceedings people to make arrange-
21 ments.

22 Now there is some other thought that we should have
23 four-day work weeks. I would like to hear further discussion
24 on that.

25 Mr. Charnoff?

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1 MR. CHARNOFF: May I suggest, on the scheduled
2 items, sir, that in terms of the testimony being filed on the
3 30th or 31st, that the parties arrange -- and we will provide
4 the same sort of cooperation we have talked about for the paper
5 to be filed next week -- for airplane delivery from our part --
6 on our part to the Intervenor on the 30th or 31st, and we will
7 arrange for it, rather than just deposit in the mail on the
8 30th or 31st -- we will arrange for delivery of our testimony
9 and the Staff's testimony to Chicago, and in return, we would
10 appreciate if the Intervenor would cooperate with our people
11 in Chicago who could arrange to pick up their testimony and fly
12 it in to ourselves and the Board members on the
13 30th and 31st.

14 That will thereby allow everybody a week to review the
15 testimony, rather than just waiting -- if we just deposited
16 it in the mail on the 31st, since we have dropped the
17 socialized postal system in this country. I am not sure
18 we have done much better.

19 CHAIRMAN FARMAKIDES: There is something else that
20 comes to mind and I am beginning to realize that this is probably
21 the wrong procedure of reaching a successful conclusion to a
22 schedule. The call by the Staff for rebuttal. Look, I wonder
23 if it wouldn't be best to ask the parties to meet on a
24 conference call, for example, or meet immediately after -- I
25 would like, still, to continue my initial thought of meeting

1 with Mr. Vollen, Mr. Renfrow, and Mr. CHarnoff. I wonder
2 if it wouldn't be best for the parties to set up a proposed
3 schedule and let the Board have it by next Monday or Tuesday,
4 including a proposed time for rebuttal, if you can agree on it.

5 If you cannot agree on the rebuttal, so state to me.

6 I am not going to call for rebuttal if you all do not agree.

7 I think it would be helpful for rebuttal.

8 MR. CHARNOFF: You are not going to call for rebuttal
9 in writing.

10 CHAIRMAN FARMAKIDES: A rebuttal in writing. In
11 other words, crank that into your schedule. I think this
12 might well meet some of the problem posed by Mr. Vollen. I know
13 it would be helpful to the Board as well. Would you like to pro-
14 ceed this way, rather than me going through the process right
15 now of trying to balance out all of the interests of the
16 group here?

17 MR. CHARNOFF: On the issue of rebuttal, sir, I think
18 we could all judge that issue a lot more sensibly after we see
19 the direct testimony, for one thing. I would suggest that that
20 issue simply be tabled until then.

21 MR. RENFROW: Let me suggest, Mr. Chairman, that we have
22 pretty well agreed to the schedule. I would be willing to go
23 with the 7th, the 31st and the 7th, and on the 7th we will
24 file a motion for summary disposition before the Board as was
25 stated in the previous agreement. Mr. Vollen would then have

1 the same time to respond to those as we set it up before. I
2 would suggest that the parties agree to this. We will talk
3 among ourselves later in the week as to rebuttal testimony,
4 get back to you only on that subject, that you then issue
5 an order setting forth that schedule, cranking in the summary
6 disposition and the time allotted. Mr. Vollen from the last
7 conference that we had, and that we are about through.

8 MR. CHARNOFF: I would concur with that.

9 MR. VOLLEN: Does that suggest, Mr. Renfrow,
10 presume that I don't have the right to make a motion for summary
11 disposition?

12 MR. RENFROW: If I stated that, I certainly over-
13 stepped my bounds, Mr. Vollen. I believe at the start --

14 CHAIRMAN FARMAKIDES: Do you agree with Mr. Renfrow's
15 suggestion?

16 MR. VOLLEN: I have no problem with it, Mr. Chairman.

17 CHAIRMAN FARMAKIDES: I think it makes good sense
18 and the Board would be very pleased if -- since the parties
19 all agree, I think the Board also goes along with it. If we
20 find that February 7th is too difficult to meet, we can change
21 it. But right at this point in time, I think we will go
22 with February 7th.

23 MR. VOLLEN: Was there an answer, Mr. Chairman,
24 to our inquiry about the four-day work weeks?

25 CHAIRMAN FARMAKIDES: Not yet. That is the next

1 point. I think this is a good idea. It permits all of the
2 parties to get back to the offices one day to discharge matters
3 that have to be taken care of other than this case. I would
4 like to hear from the parties?

5 MR. VOLLEN: I think that is a good idea.

6 MR. CHARNOFF: I have no objection. We have
7 talked among ourselves and agreed that four days would make
8 sense. What we had suggested was Monday, Tuesday, Wednesday,
9 and Thursday.

10 CHAIRMAN FARMAKIDES: Mr. Renfrow?

11 MR. RENFROW: I concur on that agreement.

12 CHAIRMAN FARMAKIDES: Mr. Vollen.

13 MR. VOLLEN: Yes, sir.

14 CHAIRMAN FARMAKIDES: You do too. So the thought
15 of the group -- I think we discussed this at the telephone
16 conference we had. I think it is a good idea and the Board
17 certainly accepts it. So that means, then, that -- how about
18 Friday, the 9th? Since we are not meeting on Monday and
19 Tuesday, we will meet on that Friday?

20 MR. CHARNOFF: I think we should, sir.

21 MR. RENFROW: I might suggest that we might adjourn
22 early that day to provide for travel schedules out at Green Bay
23 and I suggest we come to that bridge on the 9th with the under-
24 standing that the Staff, at least, is going to expect some kind
25 of early adjournment.

1 CHAIRMAN FARMAKIDES: Gentlemen, anything else that
2 has to be brought up now?

3 Again, we hope to issue our order by next
4 Wednesday. It may well be out on Thursday morning, but
5 we should have it all finished by Wednesday. We would like
6 to get it out on Wednesday. We will make an effort to send
7 it airmail to Mr. Vollen, and we will put it on the shuttle
8 to the Staff, and I guess we will have to just send it regular
9 to you.

10 MR. CHARNOFF: If your office will call my office that
11 it is out, we will arrange to pick that up too.

12 CHAIRMAN FARMAKIDES: All right, fine. Is there
13 anything else, gentlemen?

14 We will adjourn this prehearing conference and
15 reconvene on the 7th of February, in accordance with the
16 order that will be issued. We will also -- I believe --
17 we will also issue an order sometime tomorrow or Friday,
18 probably, giving notice of the evidentiary hearing in
19 Kewaunee for the 7th of February, and the location. We will
20 have to wait until we get the location before we can issue the
21 order. Thank you very much.

22 (Whereupon, at 5:45 p.m., the prehearing was
23 adjourned.)

24

25