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APPEARANCES: (Continued)

BRUCE W. CHURCHILL
JAY E. SILBERG
STEVEN E. KEANE
On behalf of the Applicant.

ROBERT J. VOLLEN
On behalf of the Intervenors.

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P R O C E E D I N G S

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2 CHAIRMAN FARMAKIDES: The hearing will be in
3 order.

4 Yesterday we promised you we would rule on the
5 motion of the Staff dated February 2, 1973, with respect to
6 the scheduling. That motion was supported by the Applicant
7 and objected to by the Intervenor. We have taken the motion
8 as it was amended orally and first on the motion to allow
9 witnesses for the regulatory staff to place their direct
10 testimony in the record at one time for purposes of voir dire,
11 and with the understanding that a witness will later be avail-
12 able when needed, the Board thinks this is a reasonable
13 request, especially since, of course, all the witnesses are
14 those of the Staff and the Applicant, and it will be granted.
15 The Applicant also may use this procedure if it desires.

16 The Board also grants the motion to schedule the
17 hearings on a contention by contention basis with the
18 Applicant's testimony first, then cross by all the parties,
19 then the Staff's testimony, with cross by all the parties,
20 then the Intervenors' testimony with cross by all the
21 parties.

22 We have used this procedure in the past and it
23 seems to work very well, and we think it will work well here.
24 However, with respect to the third motion, it is clear to the
25 Board that the Intervenors have relied on a method of proceeding

1-2 WSad

1 that is customarily used in going first with the health and
2 safety, and then with environmental, and they are frank to
3 admit that they are not prepared to proceed first on the
4 environmental.

5 Considering the factors argued by the parties,
6 we concluded that this motion be denied, except, however,
7 as it relates to the need for power, Contention 6.10.1.,
8 6.10.2., and 6.11 through 6.11.3.

9 As we understand it, these contentions will
10 require witnesses from the Federal Power Commission who have
11 asked to testify during the week of February 13. We will
12 honor this request and we will take these contentions first.
13 I believe that the Intervenors with respect to these limited
14 contentions will have ample time to prepare.

15 Since the witnesses to be called are those of the
16 Applicant and the Staff, I am going to leave it to the
17 Applicant and the Staff to decide the scheduling of the health
18 and safety issues, and the scheduling of the environmental
19 issues. I think they should both consult with the Intervenor
20 and I think his desires should be accepted insofar as possible.
21 But I think since the witnesses are those, as I said earlier,
22 of the Staff and the Applicant, I will look to them to supply
23 the Board with a scheduling of the health and safety issues
24 first, and then the environmental issues second. That com-
25 pletes the ruling on the motion of February 2 as amended.

End 1

TR:ps:2-1

1 Now, as we said earlier, we are going to proceed
2 at a pace that will hopefully complete the motion for
3 summary disposition this week. I hope we can finish them
4 today, if not today, they should be finished tomorrow.

5 Now let's proceed, then, with respect to
6 contention 3.3.6.3. We would like to have the Intervenor
7 proceed, we would like to have him answer the facts,
8 the material fact in issue as proposed by the Applicant,
9 then we will go onto the next one.

10 MR. VOLLEN: As I understood it, Mr. Chairman,
11 we were supposed to assert all of the grounds upon which
12 we think the motion for summary disposition ought to be
13 denied.

14 CHAIRMAN FARMAKIDES: You made that yesterday,
15 sir. I think that all that needs to be done this morning
16 with respect to the first one is your argument with
17 respect to the facts proposed by the Applicant.

18 MR. VOLLEN: Okay, Mr. Chairman.

19 Mr. Comey?

20 MR. COMEY: Applicant has two statements of
21 material facts listed at Page A-1 of his attachment A.
22 No. 1 is true insofar as it states that a single failure
23 analysis has been performed.

24 No. 2 is essentially a statement of conclusions
25 that I am unable to say whether it is true or not, because I

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1 only received the analysis on Monday. I have not had
2 the opportunity to review it. The Staff's testimony at
3 Page 1 of Dominic Tondi's testimony on the boric acid
4 system indicates: "The Staff has been concerned about
5 the capability of the system's circuitry to meet our
6 single failure criterion due to the complicated interplay
7 of sensors and valve operators."

8 And then at Page 2, it states that: "On
9 January 26, 1973, the Staff met with representatives of
10 the Applicant to discuss proposed revisions to the circuitry."

11 Consequently, until I have completed my review,
12 I cannot take a position with respect to fact No. 2.

13 CHAIRMAN FARMAKIDES: All right. Mr. Churchill,
14 anything further on this one?

15 MR. CHURCHILL: No, sir.

16 CHAIRMAN FARMAKIDES: The Staff, anything
17 further on this one, Mr. Seiffert?

18 MR. SEIFFERT: No, Mr. Chairman.

19 CHAIRMAN FARMAKIDES: Let's proceed to 3.3.9.
20 We discussed it yesterday, we will simply ask now the
21 Intervenor to respond to the facts posed by the Applicant
22 first, then the facts posed by the Staff.

23 MR. VOLLEN: Mr. Chairman, I would just like
24 the record to note that when we respond to these statements
25 in the document called "Statement of Material Facts,"

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1 we do not want to be in the position of having conceded
2 that they are in fact facts, because by and large we
3 claim, particularly in the Applicant's statement, that
4 these are conclusions and not facts. To avoid burdening
5 the record with that statement every time, I would like
6 to note it on the record.

7 CHAIRMAN FARMAKIDES: All right, that is in
8 the judgement of the Board, and we will decide whether
9 they are facts or conclusions later.

10 Excuse me, off the record.

11 (Discussion had off the record.)

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1 CHAIRMAN FARMAKIDES: Back on the record.
2 Mr. Vollen or Mr. Comey.

3 MR. COMEY: With respect to Fact No. 1 under
4 Contention 3.3.9, in Applicant's Attachment A, the first
5 sentence of that material fact can either be adjudged to
6 be true or not. It states an intention to do something
7 in the future, and I simply cannot say whether in fact it
8 will be true.

9 The second sentence I consider to be false.
10 It states that there is no non-source for any accumulation
11 of debris after the flushing and testing. I would indicate
12 there are all sorts of possible ways. Two hard hats
13 thrown in there could easily do the job.

14 CHAIRMAN FARMAKIDES: Are you going to seek to
15 elicit testimony, sir, from the witnesses on cross on that
16 point?

17 MR. COMEY: Yes. We will attempt to cross-
18 examine Mr. Crocker with respect to this.

19 CHAIRMAN FARMAKIDES: Okay. Thank you.
20 The next one, No. 2.

21 MR. COMEY: No. 2 is true insofar as it refers
22 to pressure and thermal stresses. However, the conclusion
23 that it is not subject to corrosive elements is true only
24 if it is in fact fabricated from stainless steel in
25 accordance with AINISB 31.1, because if it is not stainless

1 steel, the boric acid will corrode it.

2 CHAIRMAN FARMAKIDES: Okay.

3 MR. COMEY: No. 3 is true.

4 No. 4 we consider to be false. It says there
5 is no credible mechanism by which the piping from the
6 RWST can fail for the reason that we stated yesterday.

7 It lies in a trench with a grating over it.
8 I can think of several credible mechanisms, such as
9 a heavy piece of equipment going through the grating and
10 damaging the piping.

11 Now, we go to the staff at page 11 of the
12 staff's statement of material fact, No. A at the bottom of
13 the page is true.

14 B I cannot say whether it is true, because at
15 the present time it is my understanding the RWST has not
16 been filled, and I know of no indication as to what the
17 boric acid concentration actually is.

18 MR. SEIFFERT: Mr. Chairman, the regulatory
19 staff would like to make an objection at this time.

20 In order to expedite the proceedings we would
21 like to call the attention of the Board to the fact that a
22 motion for summary judgment, summary disposition is only
23 to determine what the facts are in dispute and not to get
24 into the merits of whether or not a fact is true.

25 Yesterday we did agree to allow Mr. Comey to

1 help articulate the facts which might show that a certain
2 issue we have claimed should not be considered is in fact
3 in dispute.

4 We did not agree to let Mr. Comey state whether
5 he thinks a certain fact is true or false.

6 CHAIRMAN FARMAKIDES: I don't really think that
7 is so germane, Mr. Seiffert.

8 Look, this is not a jury trial. I think we
9 can fully acknowledge Mr. Comey is attempting to show
10 details with respect to a particular fact as he agrees or
11 disagrees with it.

12 I agree with you in a sense that he is going
13 a little too far, but insofar as he is going too far we
14 can disregard it.

15 I would just as soon have the information. I
16 want to know, as the parties do, what facts are going to
17 be controverted and what facts are really in dispute so we
18 can expedite the hearing.

19 MR. SEIFFERT: Mr. Chairman, the regulatory
20 staff agrees that it is helpful to have Mr. Comey get into
21 this detail, but the regulatory staff would like to
22 reserve its objection to Mr. Comey's competence to state
23 on the record whether these facts are true or false.

24 CHAIRMAN FARMAKIDES: I think that is contrary
25 to your agreement then with respect to the motion for

1 summary disposition.

2 MR. SEIFFERT: No, Mr. Chairman.

3 CHAIRMAN FARMAKIDES: How do you distinguish
4 it, sir?

5 MR. SEIFFERT: Pardon me?

6 CHAIRMAN FARMAKIDES: How do you distinguish
7 it, sir?

8 MR. SEIFFERT: We agree there is a fine line
9 between helping him articulate whether or not there is a
10 dispute on an issue and having him state on the record
11 that such-and-such a fact is true. We agree there is a
12 fine line, but we--

13 CHAIRMAN FARMAKIDES: But this is only for the
14 motion for summary disposition. It doesn't go to the
15 evidence of the case.

16 MR. SEIFFERT: That's correct, Mr. Chairman,
17 but someone making a statement on the record about the
18 truth or falsity of a technical issue should be competent
19 to testify. We are just reserving our objection.

20 We appreciate the remarks insofar as it tries
21 to show what the intervenor is trying to show.

22 MR. VOLLEN: Mr. Chairman, I am utterly con-
23 fused. Yesterday the staff in what you described as an
24 eloquent plea by Mr. Renfrow took a position that it would
25 not be sufficient for the intervenors to respond to these

1 material statement of facts with simply a yes or no
2 answer, and we had to explain what we think the facts are
3 and what we think would be elicited.

4 As I understand it now, Mr. Seiffert is taking
5 objection to that proceeding. We would like clarification
6 from the staff or really from the Board as to what it is
7 you would like us to do in response to these motions.

8 CHAIRMAN FARMAKIDES: I think the objection
9 will be overruled. We will continue the way we are going.
10 Let's continue. B.

11 MR. COMEY: On B I would state that it is a
12 future fact.

13 CHAIRMAN FARMAKIDES: All right. C.

14 MR. COMEY: By "future fact," I mean that it is
15 neither true nor false at the present time.

16 C is true.

17 D is true.

18 E is true insofar as it states that these
19 tanks and piping and valves associated with the
20 emergency cooling system were designed to Class 1 seismic
21 standards.

22 What the statement does not mention is whether
23 they were so fabricated.

24 And in F--

25 CHAIRMAN FARMAKIDES: Excuse me. Hold that.
Okay.

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1 MR. COMEY: And we would cross examine Mr.
2 Crocker to determine whether or not they were fabricated.

3 On F, the statement insofar as it addresses itself
4 to the 16-inch pipe which is at issue is true. The reference
5 to the 12-inch pipe to the containment spray pumps is totally
6 irrelevant to the contention, and it is true that the 16-inch
7 pipe which employs borated water to two high head safety
8 injection pumps and to the two low head reat removable pumps --

9 CHAIRMAN FARMAKIDES: When you say irrelevant,
10 do you dispute it, sir?

11 MR. COMEY: I do not dispute it, but it has
12 absolutely no bearing on the contention and I think it is
13 misleading to say there are two pipes when, in fact, there
14 is one.

15 CHAIRMAN FARMAKIDES: Okay.

16 MR. COMEY: G is true. H like B above is a
17 future fact, the promise that it will be cleaned.

18 CHAIRMAN FARMAKIDES: Let me ask the Staff at
19 this point, what was the thought of the Staff with respect to
20 H? There are quite a number of facts like this.

21 MR. RENFROW: Mr. Chairman, Fact H states clearly
22 and it will be so testified to that in the pre-operational
23 program, the testing program is set forth in the requirement
24 for this plant, the RWST system itself will be completely
25 cleaned and flushed prior to any operation of the plant.

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1 That is set forth as part of the pre-operating procedures in
2 this case.

3 Once that is accomplished and the RWST system and
4 the tank itself is closed off except for a vent to the
5 environment, it is the Staff's position that there are no
6 foreign objects which can get into that tank which may block
7 a pipe. That is the basis for this statement, it's in the
8 record as far as setting forth the pre-operational testing.

9 CHAIRMAN FARMAKIDES: Okay.

10 MR. COMEY: Mr. Chairman, in that record we
11 propose to cross examine Mr. Crocker with respect to the
12 difficulties actually occurring that the cleaning had been
13 done, such as, is a man going to crawl down that 16-inch pipe.

14 CHAIRMAN FARMAKIDES: I?

15 MR. COMEY: I. We believe that it is false insofar
16 as it states that there is no known source that may block the
17 line. This Statement I says that H above is true, and that B
18 above is true and it has, in fact, been fabricated from stain-
19 less steel.

20 CHAIRMAN FARMAKIDES: How are you going to pursue
21 that, sir; through Mr. Crocker?

22 MR. COMEY: Yes, sir.

23 CHAIRMAN FARMAKIDES: J?

24 MR. COMEY: Well, before asking Mr. Vollen to
25 discuss the legal conclusory aspects of this, I would like to

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1 point out that that page -- well, he will handle that. At
2 Page 5 of the Staff's testimony there is discussion with respect
3 to the single failure criterion. We believe this is false be-
4 cause of the fact that the pipe does lie in a trench, and also
5 because of the unique situation here; this plant having one of
6 these pipes, whereas, for example Zion had three such pipes.
7 In other words, I think one factor in dispute is whether or
8 not this plant, having a single pipe, meets the general
9 practice in addition to the single failure criterion. And we
10 intend to elicit that from Mr. Crocker.

11 MR. VOLLEN: I would just like to add with
12 respect to Sub-Paragraph J, Mr. Chairman, that that sentence
13 seems to us to be clearly a legal conclusion. It states that
14 the system is not required to meet the single failure criteria
15 set forth in 10-C of Appendix A. We think whether you call
16 that a legal fact or a conclusion is the determination the
17 Board is required to make, as to whether or not the system is
18 required to meet the single failure criterion, indeed as Mr.
19 Crocker points out in his affidavit, the definition of a single
20 failure is presently under development.

21 CHAIRMAN FARMAKIDES: Okay. Anything further?

22 All right, 3.3.10.

23 MR. CHURCHILL: Mr. Chairman?

24 CHAIRMAN FARMAKIDES: Yes, Mr. Churchill.

25 MR. CHURCHILL: I would hope that I wouldn't have

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1 to come in on any of these, but I wonder if I could just make
2 a brief comment on this one, sir.

3 CHAIRMAN FARMAKIDES: Which one is that?

4 MR. CHURCHILL: The one we just finished.

5 CHAIRMAN FARMAKIDES: 3.3.9?

6 MR. CHURCHILL: Yes. As far as the first sentence
7 Mr. Comey says he doesn't know whether it is true or not be-
8 cause it's in the future. I would just remind the parties
9 that the purpose of this hearing is to ultimately set forth
10 facts that will enable the AEC to make a determination that
11 the plant will operate. Obviously the hearing is being held
12 now before the plant is operating, and testimony to the
13 extent that certain actions will be done before operation or
14 that the plant will be operated in a certain way is certainly
15 valid testimony in a hearing of this type.

16 Just because it is a future argument is not
17 sufficient if he does not set forth or he has not set --
18 identified any affirmative facts that he will expect to
19 elicit through testimony with respect to why we would not be
20 cleaning, flushing and testing upon completion of construction.

21 It is not sufficient, sir, to say that he
22 intends to show on cross examination of our witnesses that
23 maybe what we have said in our affidavits is wrong. He has to
24 come forth with an affirmative fact and tell us.

25 The same comments are true for the second sentence

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1 in No. 1. He has to come forth with an affirmative fact for
2 showing why there is a known source of debris that could
3 accumulate, and the facts of our affidavit would show this is
4 a sealed system, and it will be tested to show there is no
5 debris.

6 No. 2, he says it is true as far as thermal and
7 stress is concerned, but he is not admitting as to corrosive
8 elements because he says it will not be subject to corrosive
9 attacks unless the piping is not made of stainless steel.
10 He has not said that he is going to come forward and elicit
11 the affirmative facts through testimony that it is not made
12 of stainless steel.

13 He must make an allegation to the Board that this
14 is a fact that he intends to elicit in testimony, that it is
15 not made of stainless steel. He, in fact, knows it is made of
16 stainless steel.

17 No. 3 he says is true.

18 No. 4, he says there is no credible mechanism
19 by which the piping can fail. Again he has to come forth
20 showing a fact why he thinks there is a credible mechanism.
21 Don't forget, this Fact 4 is supported by testimony under
22 affidavit which explains in detail why this fact is true and
23 why there is no credible mechanism.

24 CHAIRMAN FARMAKIDES: Mr. Vollen?

25 MR. VOLLEN: No. 1, Mr. Chairman, I take serious

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1 exception to Mr. Churchill accusing Mr. Comey of making
2 statements that he knows not to be true. I think Mr. Churchill
3 has no basis for that statement, and I take it personally and
4 I would request that further statements along that line not
5 be made, and that that would be retracted.

6 No. 2, I think Mr. Churchill has really very
7 clearly, not quite explicitly, but implicitly made our point.
8 He said that this kind of testimony as to future events is to
9 be expected in a hearing of this kind. The point is, Mr.
10 Chairman, we are not now at the hearing, we are on the issue
11 of whether or not summary disposition without a hearing should
12 be granted in favor of Applicants on this contention.

13 And the only question is whether there can be a
14 genuine issue of material fact assuming that the Applicants
15 have appropriately supported their burden of showing that.

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1 Taking a specific example, Mr. Churchill says
2 it is not enough for Intervenors to say that we intend
3 to elicit on cross examination facts as to whether or not
4 the pipe is made of stainless steel.

5 He says that we have to state to the Board
6 that we intend to elicit the fact that the pipe is not
7 made of stainless steel.

8 I respectfully submit that that is an incorrect
9 interpretation of the law and of the burden on the parties.

10 The Applicant has the burden of proof with
11 respect to every issue in this proceeding. They are the
12 proponent of the order requested that they be given an
13 operating license.

14 If the state of the record turns out, for
15 example, and as a hypothetical, that we have not established
16 to the Board's satisfaction that the pipe is not made of
17 stainless steel, but the record also turns out that the
18 Applicant has not established to the Board's satisfaction,
19 as a matter of fact, that the pipe is made of stainless
20 steel, then I submit to you that the Applicant has failed
21 in its burden of proof.

22 So we need not, I submit, establish an affirmative
23 fact that the pipe is made of stainless steel.

24 CHAIRMAN FARMAKIDES: Mr. Seiffert, you wanted
25 to say something, sir?

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1 MR. SEIFFERT: Yes, Mr. Chairman.

2 In brief response to Mr. Vollen's remarks about
3 an issue like whether the pipe is made of stainless steel,
4 Mr. Crocker submitted an affidavit which states that it is
5 made of stainless steel. If the Intervenor's care to try
6 to show that it is not made of stainless steel, we would
7 expect some sort of evidence.

8 Generally, Mr. Chairman, we have some further
9 comments. The Regulatory Staff feels that the process
10 this morning as to the first two contentions has been
11 very helpful in aiding the Staff and the Applicant in
12 understanding the nature of the Intervenor's inner objections.

13 CHAIRMAN FARMAKIDES: And far more important,
14 Mr. Seiffert, in aiding the Board.

15 MR. SEIFFERT: Yes.

16 CHAIRMAN FARMAKIDES: Yes. I think the proceeding
17 should continue, frankly, and as you very correctly point out--
18 look, if there is a problem with respect to whether or not
19 it is stainless steel, I want that clarified. It will be
20 clarified at the hearing.

21 Now, yes, the Applicant has the burden of proof,
22 but he is saying that he has shown his burden. He has met
23 it by prima facie case. If he has not, then let's clarify
24 it, and that's what the Intervenor is going to be doing.

25 MR. SEIFFERT: One item further from the Regulatory

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1 Staff. We might suggest that the process could be made
2 even more helpful even in addition to understanding just
3 what facts the Intervenor suggests are in dispute, but
4 if we have some understanding about what he intends to use to
5 show it is not.

6 For example, if on the basis of all the
7 discovery provided the Intervenor can say that he intends
8 to introduce documents or statements, we would like to know
9 that.

10 If the Intervenor intends to rely on Mr.
11 Comey's knowledge, we would like to explain our previous
12 objection. We would like Mr. Comey to continue, but if
13 the Intervenor intends to rely on Mr. Comey's knowledge
14 later, we may object later.

15 Finally, if the Intervenor intends on the mere
16 hope of contradicting the testimony which we have submitted
17 into evidence, we will make an objection based on the
18 Orvis versus Brickman case, which we called to the Board's
19 attention yesterday.

20 In summary, then, Mr. Chairman, the process
21 is helpful. We hope it will continue this way to the
22 Board and to the parties, and we will not raise our
23 objection about Mr. Comey or our objection about the
24 Orvis case each time.

25 We just want to note to the Board and to the

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1 parties that we will perhaps want to make these objections
2 at a later time.

3 CHAIRMAN FARMAKIDES: Mr. Vollen.

4 MR. VOLLEN: One moment. I am still confused
5 as to what the Staff wants, Mr. Chairman. I suppose they
6 would like to have my notes that I prepare in trial
7 preparation as well. I suppose they would like a lot
8 of things.

9 We understood that if we state the facts that
10 we think are in dispute and how we intend to show that,
11 whether through cross examination or whether through
12 calling another witness, that that was sufficient for
13 purposes of this motion. I don't understand what it is
14 Mr. Seiffert wants.

15 MR. RENFROW: I will clarify that, Mr. Chairman.
16 We have an affidavit by Mr. Crocker. We say he is an
17 expert. We have submitted his qualifications. I do not
18 mind Mr. Comey, he has been in our conversations, he has
19 been very helpful in this exercise, but if at this time
20 the only piece of evidence that the Intervenors have is
21 Mr. Comey's say so that something is or is not, or may or
22 may not be, and they have no documentation, they do not
23 rely on conversations with the Staff, they have none of
24 the pieces of paper we have submitted, then, yes, I have
25 problems with an issue of material fact becoming an issue,

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1 when I have Mr. Crocker's affidavit.

2 I do not even have Mr. Comey's qualifications.
3 That is the point we are making. If they are relying
4 solely on Mr. Comey's qualifications as to certain material
5 facts in issue, this Board and Mr. Vollen should be apprised
6 now that I am going to strenuously object to it.

7 On the other hand, if it is Mr. Comey explaining
8 what he has understood from the Staff, his conversations
9 with Mr. Crocker, and that he intends to bring these out
10 on cross, I am satisfied. I would like that delineation.

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1 CHAIRMAN FARMAKIDES: I really don't see the
2 distinction, Mr. Renfrow. I think Mr. Comey has been very
3 clear. He said he is going to bring this out through Mr.
4 Crocker's cross-examination.

5 MR. RENFROW: That is true, Mr. Chairman. He
6 has not said that as to each and every one, and the
7 objection stands there, Mr. Chairman.

8 It is a very clear delineation. Mr. Crocker
9 under affidavit has set forth certain facts. He has been
10 qualified by affidavit to make those statements.

11 Now, Mr. Comey is now making statements and he
12 is attempting to explain, and I believe it does help the
13 Board, because certainly I will agree with Mr. Vollen, it
14 is very difficult for me to speak in technical terms to the
15 area that Mr. Comey speaks and explains and states that he
16 is going to cross-examine Mr. Crocker, based on documents
17 or conversations he has had. The staff has no objection
18 to that. That is the process by which we agreed to work.
19 We think that will work.

20 On the other hand, if it is not based on
21 documents, conversations with the staff, but purely on Mr.
22 Comey's own knowledge or own sayso, then until we have a
23 qualification set forth as to these issues the staff will
24 have objections to those facts that he attempts to put
25 into issue. Does that clarify it to the Board?

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1 CHAIRMAN FARMAKIDES: The position is clear.
2 I'm not sure the Board agrees with you, but your position
3 is clear, Mr. Renfrow.

4 MR. RENFROW: I often have found myself in that
5 position before this Board, Mr. Chairman. It's not a new
6 experience.

7 MR. CHURCHILL: Mr. Chairman.

8 CHAIRMAN FARMAKIDES: I think Mr. Vollen was
9 up. Mr. Vollen.

10 MR. VOLLEN: Well, again I want to express our
11 frustration about what we understood the process to be, and
12 about the staff's continually objecting to our attempting
13 to fulfill what we understood to be the obligation that was
14 imposed upon us by the Board.

15 I might say that Mr. Seiffert observed that
16 there could be no question of fact because the pipe in issue,
17 contention in 3.3.9 was supported by an affidavit by Mr.
18 Crocker that that pipe is made of stainless steel.

19 I suggest again what Mr. Crocker's affidavit,
20 and I do not find a statement that the pipe is made of
21 stainless steel. The applicant's testimony does suggest that
22 it was fabricated of stainless steel.

23 CHAIRMAN FARMAKIDES: Look at contention
24 3.3.9, page 3. This is in the testimony.

25 MR. KEANE: That is the applicant's testimony,

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1 Mr. Chairman.

2 MR. VOLLEN: That is the applicant's testimony,

3 Mr. Chairman.

4 MR. SEIFFERT: Mr. Chairman, excuse me. The
5 regulatory staff is in error. Mr. Crocker's testimony
6 does not claim that the pipe is made of stainless steel.

7 MR. VOLLEN: If Mr. Renfrow's problem is, Mr.
8 Chairman, that Mr. Comey's statements here in attempting
9 to fulfill the requirement that we understand the Board
10 imposed upon is to be taken at the end of this case as
11 part of the evidence, and that the Board is going to
12 consider that in weighing the evidence of any issue, we
13 do not believe that Mr. Renfrow has any concern. Mr.
14 Comey is not making these statements as part of the
15 evidence.

16 He has not been sworn here, he is not a witness
17 here, he is a technical person on behalf of the intervenors
18 who is helping to try to fill the obligations the Board
19 has imposed.

20 CHAIRMAN FARMKIDES: That is not Mr. Renfrow's
21 point, Mr. Vollen, not that I care to state it, Mr. Renfrow,
22 but if you will allow me for just a minute.

23 Mr. Renfrow's point is that the facts as
24 proposed by the staff to Mr. Crocker are now being
25 controverted by the intervenor through Mr. Comey, and he

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1 is saying that insofar as Mr. Comey has some basis for
2 controverting the facts proposed by the staff, then fine.

3 But if he has no basis, except his personal
4 knowledge, Mr. Renfrow objects.

5 Mr. Renfrow, is that a paraphrasing of your
6 position, sir?

7 MR. RENFROW: If I could change the word
8 "personal knowledge," Mr. Chairman, because once again,
9 Mr. Comey may see personal knowledge to his conversations
10 with the staff, and I would not have any problem with that.
11 It is when only Mr. Comey relies only on his own expertise
12 in this area to put a fact into issue that expertise has
13 not been established. That is what I have objection
14 to.

15 CHAIRMAN FARMAKIDES: Okay.

16 MR. RENFROW: Only that.

17 CHAIRMAN FARMAKIDES: In other words, we will
18 change the word "personal" to "expert" knowledge?

19 MR. RENFROW: That's right.

20 CHAIRMAN FARMAKIDES: Mr. Vollen, that is
21 really the objection voiced by Mr. Renfrow.

22 MR. VOLLEN: I don't understand that that is
23 what we are doing. I think with respect to each "fact"
24 asserted in these statements of material facts that we
25 have said we dispute Mr. Comey as indicated the matter in

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1 which we would intend to elicit, not his personal
2 expertise, but to elicit evidence raising a question as
3 to whether that is the fact or not, and I thought that
4 was precisely what the Board wanted us to do.

5 CHAIRMAN FARMAKIDES: Look, we have heard
6 enough. I'm sorry, Mr. Churchill, yes, you had a point?

7 MR. CHURCHILL: I do want to say one thing.
8 Applicants don't really care in this case whether or not
9 we have to prove it is stainless steel. We can easily do
10 that. We have it right here on our affidavit.

11 CHAIRMAN FARMAKIDES: Yes.

12 MR. CHURCHILL: But it is right on point as
13 to the method we are proceeding with, and I would like to
14 try to get it cleared up so we understand.

15 We have said in our affidavit that it is made
16 of stainless steel. That is the basis for this No. 2.
17 It is not subject to corrosive elements. Now, Mr. Comey
18 stands up and says if it is made of stainless steel, okay.
19 If it is not, not okay.

20 In other words, he is saying I want to find
21 out on cross-examination whether or not it is made of
22 stainless steel, and I think it is my understanding that
23 you are going to do it through cross-examination. You
24 haven't said my witness, but I assume Mr. Crocker.

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2 Now, I think the law is clear and Mr. Renfrow
3 can back me up, that he has to do more than say, "I will,
4 on cross examination, make the witness whoswore to this
5 testimony say just the opposite. I will try to get him
6 to change his testimony, something might come up, I will
7 change his testimony." That is not the purpose here,
8 he has to say something more.

9 They have not made the affirmative allegation
10 that it is not made of stainless steel and I did not say
11 that he did. I did not say anything that Mr. Comey said
12 is in error. That is the point, they did not make the
13 affirmative allegation. They have to make an affirmative
14 allegation that they will elicit through cross or otherwise
15 a certain fact.

16 CHAIRMAN FARMAKIDES: All right, Mr. Vollen.

17 MR. VOLLEN: That simply isn't true. We don't
18 have to establish any fact. The burden is on the
19 Applicant. I know what the problem is, I suggest that the
20 problem is that both the Applicant and the Staff are having
21 second thoughts about the agreement that was made as to
22 the manner in which responses to summary disposition can be
23 made. They had agreed that the statement as to what we
24 believe would be shown and by what person would be sufficient
25 to respond. Now they are having trouble with that because
they don't want Mr. Comey saying it, or they don't know how --

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1 I think, Mr. Chairman, the way to resolve Applicant's
2 concern and Staff's concern is to go the way I suggested
3 when we first started talking about that. Let's take
4 depositions of these people, and then we will find out if
5 there is a genuine issue of fact. That is what I think
6 the other parties are suggesting here, they are not
7 satisfied with an informal oral statement as to what
8 facts we think are in dispute and through what person we
9 think we could put them in dispute.

10 CHAIRMAN FARMAKIDES: That is enough. We have
11 heard sufficient argument, and we are going to proceed just
12 as we are now proceeding.

13 While we agree that the Applicant had the burden
14 of proof, we also have said, Mr. Vollen, that you too have
15 a burden and we told you what your burden was. We are
16 now beginning to implement that burden.

17 So long as there is a contention in which there
18 is a material fact in issue, we want to hear it. We are
19 now weaning those facts that are not in controversy, so
20 let's proceed.

21 MR. COMBY: With respect to --

22 CHAIRMAN FARMAKIDES: We are on 3.3.10.

23 MR. VOLLEN: Now, on this one, Mr. Chairman,
24 this is one of those I believe that we did not respond
25 to at all yesterday and for that reason, based on comments

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1 you made, I understand that we ought to argue all of the
2 reasons why we believe the motion for summary disposition
3 ought to be denied.

4 The first reason is --

5 CHAIRMAN FARMAKIDES: Now this motion appears --
6 in fact appears on the Applicant's motion for summary
7 disposition.

8 MR. VOLLEN: I understand the Staff has not
9 moved for summary disposition on this contention.

10 This motion of the Applicant ought to be denied
11 because the affidavit provided in support of this motion
12 does not affirmatively show that the affiant is competent
13 to testify to the matters stated therein. The proposed
14 affiant in support of this motion is Mr. Ehrenpreis,
15 and as we argued yesterday, his affidavit does not affirmatively
16 show that he is competent to testify to the matters stated
17 therein. Indeed, his affidavit does not state that he
18 has personal knowledge of any of the facts stated therein
19 and for purposes of saving time on the record at this point,
20 I would like to state that the Intervenor's oppose the
21 granting of any motion for summary disposition by either
22 the Applicant or the Staff for the reason that none of the
23 affidavits offered in support of any of these motions state
24 that the witnesses have personal knowledge of the facts
25 stated in their affidavits.

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1 That seems to me, Mr. Chairman, to be an
2 elemental requirement of an affidavit affirmatively showing
3 that the affiant is competent to testify to the matters
4 in his affidavit. For them to offer an affidavit which
5 has, "The facts stated therein are true to the best of
6 the knowledge and belief of the affiant," does not satisfy
7 the obligation on a party seeking summary disposition.
8 So on that ground, we insist all motions of both the
9 Applicant and the Staff be denied.

10 Turning back now, Mr. Chairman, --

11 CHAIRMAN FARMAKIDES: In other words, that
12 is a separate motion that you raise with respect to all
13 the points raised by the Applicant and the Staff in their
14 motion for summary disposition?

15 MR. VOLLEN: It is not a motion I raise,
16 Mr. Chairman, it is a ground, a legal ground upon which
17 I state that neither the Applicant nor the Staff are
18 entitled to summary judgement with respect to any contention.
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1 CHAIRMAN FARMAKIDES: All right.

2 MR. VOLLEN: And I think, therefore, I need
3 not repeat that now for each separate motion that they
4 have made.

5 Specifically back now to contention 3.3.10,
6 Mr. Chairman, the affidavit of applicant by Mr. Ehrenpreis
7 does not satisfy the other requirement of Section 2.749B,
8 namely, the affidavit does not set forth such facts as
9 would be admissible in evidence.

10 The applicant's proposed testimony on this
11 contention which has been converted into an affidavit by
12 reference, starts out in the first sentence by stating
13 that: "The reactor and its internals have been carefully
14 and systematically designed to preclude the occurrence of
15 loose parts in the reactor coolant system." That is a
16 completely conclusory statement, there is no foundation
17 for it, it doesn't describe what the design is to preclude
18 that occurrence. And further in the affidavit in the last
19 sentence of the first paragraph, it does not state any way
20 at all in which the complete redesign of the core barrel
21 and thermal shield designs have been accomplished.

22 This affidavit would simply leave the Board
23 with the statement from a person without personal knowledge
24 of the facts that the contention is true. That is not
25 sufficient, that is not fact, Mr. Chairman.

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1 Similarly, the last sentence of the second
2 paragraph of this affidavit states that: "Proven success
3 of the modified design for Selni and Sena has provided
4 confidence in the present design of the Kewaunee
5 equipment."

6 Such a statement is not admissible testimony,
7 Mr. Chairman, without some basis, without some facts
8 supporting it.

9 The second sentence on the next paragraph,
10 which is Page No. 5, states, "The design of all other
11 componenets exposed to reactor coolants in the reactor
12 coolant system has also been reviewed and verified as
13 suitable for this service."

14 It doesn't say by whom it was reviewed, it
15 doesn't say by whom it was certified. The Board, I take
16 it, is simply to take the statement that it is suitable
17 for this service and therefore the Board has no function
18 to perform if this affidavit consists of admissible testi-
19 mony. It does not consist of admissible testimony.

20 The next sentence says, "Detailed analysis
21 has been performed." It doesn't tell you, the members of
22 the Board in an evidentiarily admissible way what it is,
23 whether it is a detailed analysis. It's simply a
24 conclusion, Mr. Chairman.

25 The next paragraph purports to paraphrase the

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1 Kewaunee FASR--

2 CHAIRMAN FARMAKIDES: You don't have to go
3 into any more detail, Mr. Vollen, on this.

4 How about the material facts that you intend
5 to elicit in your cross-examination, sir?

6 MR. VOLLEN: Mr. Chairman, with all due
7 respect, I am a little bit confused by your statement
8 that I don't have to go through this any more. Does that
9 mean that the Board is convinced this affidavit does not
10 consist of admissible testimony? You see, I have a legal
11 argument to make.

12 CHAIRMAN FARMAKIDES: I told you yesterday
13 twice, I am not going to do it again, this will be the
14 last time. I have told you on each of these I am going to
15 ask you what material issue of facts you attempt to
16 elicit. It may or may not be anything here, I want to
17 know if you have something in addition, sir, or not.

18 MR. VOLLEN: Mr. Chairman, we intend to fulfill
19 that request, I certainly do. But you also told me that
20 it would be best for me to make my legal argument as well
21 as the factual response, my legal arguments as to why the
22 applicant should not be granted summary disposition. I am
23 in the process of doing that.

24 CHAIRMAN FARMAKIDES: Well, I think that you
25 are being redundant in the sense that the points you made

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1 don't have to be repeated time and time again, Mr. Vollen.

2 MR. VOLLEN: Well, I appreciate that, and I
3 certainly realize it's taking a long time to do that.
4 On the other hand, Mr. Chairman, these people have put in
5 what purports to be an affidavit of testimony. I think it
6 should not be considered by this Board.

7 CHAIRMAN FARMAKIDES: And you have given us,
8 Mr. Vollen, you have given us several examples of the
9 point. Now fine, we can take those examples, we don't have
10 to go any further than that. We can read this as well as
11 you and we can make our judgment as to whether or not these
12 are facts or conclusions as well as you. We don't have to
13 go through this entire time-consuming problem on each of
14 these.

15 MR. VOLLEN: I wish we didn't have to, Mr.
16 Chairman.

17 CHAIRMAN FARMAKIDES: So long as you set forth
18 an example or two so we understand your position and your
19 point is made, you don't have to go into great depth as
20 to your points.

21 MR. VOLLEN: Well, are you ordering me not to,
22 Mr. Chairman?

23 My problem is, with all due respect, I don't
24 want to clutter this record.

25 CHAIRMAN FARMAKIDES: That is my problem, Mr.

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1 Vollen.

2 MR. VOLLEN: I understand that, but I certainly
3 don't want me to be in the position of not having made an
4 argument, of not having objected to particular language in
5 this, and then my not having a record preserved.

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1 reason Applicant has made it is that they have focused on
2 two of the examples that I gave in the contention, namely,
3 the SENA reactor and the SELNI reactor which had thermal
4 shields that were bolted together. But the statement as it
5 stands is not true and I can prove through Mr. Vetter that
6 there were loose parts in the Palisades reactor, and I can
7 prove through Mr. Knight that there have been other instances
8 of loose parts in reactors.

9 And secondly, with respect to the second material
10 fact, if Applicant is willing to add the word "some" to the
11 line second from the last, that this pre-operational testing
12 provides "some" assurance against the occurrence, I would say
13 that it is true. But if they are not willing to do that, I
14 think I can show through Mr. Knight that in itself is not
15 sufficient to guarantee there will be no loose parts in the
16 reactor.

17 CHAIRMAN FARMAKIDES: Does the Applicant wish to
18 change its fact No. 2 of 3.3.10 as suggested by Mr. Comey?

19 MR. CHURCHILL: No, sir.

20 CHAIRMAN FARMAKIDES: All right.

21 MR. VOLLEN: One further point, Mr. Chairman.
22 We further object to the granting of Applicant's motion on
23 Contention 3.3.10 on the grounds that the two statements in
24 Attachment A are not statements of fact, they are not sworn to
25 by any witnesses and they are conclusory.

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CHAIRMAN FARMAKIDES: For the last several
2 minutes, Mr. Vollen, you have been repeating the same arguments
3 going to the fact that the Applicant has submitted conclusions
4 rather than facts. That is the point I am making, once
5 you have made that point, there is no need to go into plethora
6 of facts to support it.

7 MR. VOLLEN: I have made the legal argument that
8 the affidavit consists of conclusion and not facts.

9 CHAIRMAN FARMAKIDES: And you have shown us --

10 MR. VOLLEN: And I am seeking to demonstrate the
11 respect in which that proposition applies to a particular
12 affidavit. If you are saying to me that I shouldn't do that
13 with respect to each application of that proposition of the
14 affidavit, then I certainly won't do it, Mr. Chairman.

15 CHAIRMAN FARMAKIDES: No, I want you to do it,
16 at least so that we have one example to support your point
17 with respect to each. But I don't need five examples or ten.

18 MR. VOLLEN: I see.

19 CHAIRMAN FARMAKIDES: So now getting back again
20 to my question, what is the material issue of fact that you
21 intend to elicit during cross?

22 MR. COMEY: Applicants' statement No. 1 is,
23 "Previous designs which resulted in loose parts in the reactor
24 coolant system have been corrected in the Kewaunee design."
25 I would have to adjudge that statement is false. I think the

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1 I might say, Mr. Chairman, for clarification
2 of the record, that in responding to these particular
3 statements pursuant to the Board's direction, when Mr.
4 Comey uses the word "true" or the word "false," I think
5 that that is correctly interpreted as being a statement
6 by him that Intervenors do not dispute a statement or that
7 we do dispute a statement.

8 CHAIRMAN FARMAKIDES: Yes. We have taken it
9 that way. Anything further on 3.3.10?

10 MR. CHURCHILL: Mr. Chairman, he has talked
11 about affidavits. I don't want to bring this up every time,
12 but I assume he is saying this is a concurring objection.
13 Could I make a few comments on it?

14 CHAIRMAN FARMAKIDES: Well, look, how often
15 are we going to be going through this process? Are you
16 going to say anything new now?

17 MR. CHURCHILL: What I am going to say is that
18 I would be very much upset if this whole process were
19 wasted because of a determination that all of our affidavits,
20 all of the Staff's were defective. I don't believe they are.
21 They certainly aren't. These people are thoroughly familiar
22 with the plant, and they are experts, and if that is the
23 case, I would go so far as to offer to correct them.
24 Some of the people are in the audience now. All you have
25 to do is stand up, swear them in, and I will ask them, if

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1 that is a problem. I don't want it to be, and I would like
2 to correct it if it is.

3 CHAIRMAN FARMAKIDES: Let's be clear. The
4 rule very clearly says you may or may not file affidavits.
5 The Board isn't going to rely merely on the technicality
6 of the affidavits.

7 It is going to rely as to the substance of
8 material facts and what the Intervenor intends to show.
9 So let's proceed.

10 MR. CHURCHILL: All right.

11 CHAIRMAN FARMAKIDES: Insofar as I am saying
12 that the technical requirements of the affidavits, will
13 be one factor that the Board will consider in its decision
14 with respect to the motion. All right, let's continue.
15 Mr. Churchill.

16 MR. CHURCHILL: Yes, sir. I have just one more
17 point. Where he talks about fact versus conclusion, I think
18 that is a very difficult line to draw. I think that it
19 was probably impossible not to have what he would call
20 conclusions in trying to attempt to --

21 CHAIRMAN FARMAKIDES: Mr. Churchill, the ultimate
22 resolution of that problem will be with the Board. We
23 understand the problem and it is a difficult line, but
24 that is the decision that we are going to make.

25 MR. CHURCHILL: Yes, sir, but could I add one thing?

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1 These are experts, and as experts he has not challenged
2 the expert qualifications of these people.

3 He said incompetence lies in the fact that
4 nothing says that they have personal knowledge. They are
5 experts and as experts they are entitled to venture
6 opinions, and many of these, sir, can be read in just
7 that light, as opinions.

8 CHAIRMAN FARMAKIDES: Okay. 3.3.11.

9 MR. VOLLEN: The Intervenors object and
10 oppose to the granting of Applicant's motion of summary
11 disposition with regard to this contention on the grounds,
12 first of all, that the affidavit of Mr. Ehrenpreis offered
13 in support of it does not affirmatively show that the
14 affiant is competent to testify to the matters stated
15 therein for the reasons that I argued yesterday with respect
16 to the affidavit of Mr. Ehrenpreis.

17 Secondly, we believe this motion should be
18 denied on the ground that the affidavit does not set forth
19 such facts as would be admissable in evidence.

20 For example, in accordance with the Chairman's
21 instructions to me, the opening sentence of the affidavit
22 on contention 3.3.11 states that the Kewaunee reactor
23 internals have been subjected to vigorous vibration
24 studies which assure that they are not vulnerable to
25 failure from vibration induced damage.

1 If that is an admissable statement fo fact,
2 then I think the Board has no function here.

3 It seems to be that an affidavit to be
4 admissable has to state what those studies are, and how
5 it assures that they are not vulnerable to failure.

6 A similar example of the inadmissability
7 of the testimony in this affidavit occurs on the next
8 page, which is numbered nine, and particularly the second
9 sentence which refers to a comparison of the Kewaunee
10 Plant and the Tagami Plant and states that the design
11 and fabrication of the two plants are such that the
12 internal vibration characteristics of the two, including
13 vibrational response in terms of both frequency and
14 amplitude are sufficiently similar to allow the comparison.

15 I don't understand from that how this Board can
16 conclude whether or not the two plants are sufficiently
17 similar. It seems to me there must be a foundation for
18 that statement to be admissable, a foundation demonstrating
19 the respects in which the two plants have similarities,
20 so that the Board can conclude whether a comparison between
21 them is a viable one.

22 Intervenors further oppose the granting of
23 the motion for summary disposition with respect to
24 contention 3.3.11 on the ground that the three paragraphs
25 in Applicant's Attachment A do not consist of relevant

7-a-5 1 admissable facts in this proceeding. They are not sworn
2 to, they are conclusory and they are therefore inappropriate.

3 I am now going to ask Mr .Corney to respond to
4 those "statements of fact" as I understand the Board
5 wants, but I want to make the observation that indeed I am
6 making technical legal argument why these motions should not
7 be granted.

8 Applicants and the Staff have chosen a technical
9 legal vehicle with which to dispose of this case without
10 having a trial. If they want to go a technical route,
11 Mr. Chairman, they ought to comply with the technicalities.

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1 MR. COMEY: With respect to paragraph 1 of
2 Applicant's Attachment A we dispute the statement there.

3 CHAIRMAN FARMAKIDES: You mean that paragraph
4 relating to 3.3.11, right?

5 MR. COMEY: Yes, Paragraph 1. At the bottom of
6 Page A2 and top of Page A3, the prototype reactor is not
7 identified. I assume that they are referring either to
8 Tagami or to Point Beach 1, and we believe that Mr. Knight
9 will agree that the Point Beach 1 data are not sufficient
10 to prove that the core internals will not be vulnerable to
11 vibration-induced damage, and we believe that Mr. Knight
12 will also prove that there is reasonable doubt as to whether
13 the Tagami analyses can be used on the Kewaunee reactor.

14 Number 2, Mr. Knight will testify that the
15 statement of these preopted tests will show that the
16 internals can safely sustain an infinite number of loading
17 cycles in service is not a true statement.

18 In fact, Mr. Knight's prepared testimony on
19 page 3 already indicates that he would make a statement
20 denying that it will sustain an infinite number of loading
21 cycles in service.

22 No. 3, we consider to be in dispute, and Mr.
23 Knight will say so inasmuch as the plants of equivalent
24 design are only two, Tagami which has operated for something
25 over two years, and Point Beach 1 which was operated for

1 slightly over two years.

2 Two years of experience each on two reactors
3 is not sufficient to sustain that this plant will operate
4 for 40 years without any vibrational problems.

5 CHAIRMAN FARMAKIDES: Mr. Vollen, do you have
6 any other material fact that you intend to elicit during
7 cross?

8 MR. COMEY: Yes.

9 CHAIRMAN FARMAKIDES: Or Mr. Comey. I'm sorry.

10 MR. COMEY: With respect to 3.3.10 and 3.3.11,
11 Mr. Chairman, we intend to bring out on cross of Mr.
12 Knight that the Advisory Committee on Reactor Safeguards has
13 been for many years urging the nuclear industry to
14 develop these methods of monitoring for loose parts and
15 for vibration for internals, that in fact virtually every
16 ACRS reactor on every pressurized water reactor contains
17 a statement urging that the staff do continue the develop-
18 ment on this. We intend to show this through Mr. Knight.
19 In fact, the staff has not done this, and in fact the
20 nuclear industry has made no meaningful effort to develop
21 these.

22 CHAIRMAN FARMAKIDES: Anything further, Mr.
23 Churchill?

24 MR. CHURCHILL: No, sir.

25 CHAIRMAN FARMAKIDES: Mr. Seiffert?

1 MR. SEIFFERT: No, sir.

2 CHAIRMAN FARMAKIDES: All right. Proceed.

3 3.6.1.1.

4 MR. VOLLEN: You want the intervenors to
5 state their opposition to the motion?

6 CHAIRMAN FARMAKIDES: Yes. 3.6.1.1.

7 MR. VOLLEN: I beg your pardon. Intervenors
8 maintain that the applicant's motion for summary
9 disposition with respect to this contention ought to be
10 denied.

11 The affidavit offered in support of it by
12 Mr. Ehrenpreis and for the reasons that I have previously
13 argued, and it is clear that that affidavit does not
14 show affirmatively that the affiant is competent to
15 testify to the matters stated therein.

16 Secondly, we think the motion should be
17 denied on the ground that the affidavit does not set
18 forth such facts as would be admissible in evidence as
19 is required by the rule.

20 CHAIRMAN FARMAKIDES: Mr. Vollen, insofar as
21 these objections that you voiced are common to all of them,
22 once you indicate they are common to all of them you
23 need not restate them. I'm sorry if I gave you that
24 impression.

25 MR. VOLLEN: That was the impression you gave

1 me yesterday, Mr. Chairman.

2 CHAIRMAN FARMAKIDES: No, no. I was suggesting
3 if they were common to all of them, they need not be
4 restated, once you have stated these objections are
5 common to all.

6 The problem that I had was that some of your
7 objections varied from others. I wasn't able to follow
8 which in fact changed from the previous objection, and
9 insofar as that is concerned, if they vary from any
10 previous objection, yes, I want you to state it. But if
11 they are the same objection common to all contentions, one
12 time around is fine.

13 MR. VOLLEN: All right. Let me get on the
14 record then some of the common ones.

15 I mentioned objection to the granting of any
16 of these motions on the ground that none of the affidavits
17 state that the affiants have personal knowledge.

18 CHAIRMAN FARMAKIDES: You make that with
19 respect to all of the applicant's affidavits?

20 MR. VOLLEN: I do, and the staff's.

21 CHAIRMAN FARMAKIDES: And the staff's?

22 MR. VOLLEN: Yes, sir. We further object to
23 all of the applicant's motions for summary disposition on
24 the ground that the statements contained in their
25 attachment A do not in fact contain admissible relevant

1 facts. They are not sworn to and they are conclusory.

2 We oppose the granting of the evidence that
3 the motions for summary disposition on I think virtually
4 every contention on the ground that the affidavits do
5 not set forth such facts as would be admissible in evidence.

6 Now, that is a common ground for our opposing
7 the motion, Mr. Chairman, but if I understand it with
8 respect to each you want me to give an example or two of
9 the respect in which it does not contain admissible evi-
10 dence?

11 CHAIRMAN FARMAKIDES: Yes, that's right.

12 MR. VOLLEN: Very well, sir.

13 With respect to contention 3.6.1.1, the
14 affidavit offered by applicant states in the last sentence
15 on page 14 that the number and location of the thimbles
16 have been chosen to assure measurement of local to
17 average power peaking factors to an accuracy of better
18 than 5%, but while the preceding sentence states that
19 the number of the thimbles--it does not state the
20 location and, therefore, the Board is left with having to
21 rely on the assurance of the affiant that the location is
22 such as to assure measurement. That is conclusory and
23 is not admissible, Mr. Chairman.

24 On page 16, the last full paragraph on the
25 page which starts, "Detailed analysis," and goes on to say

1 that such detailed analysis is confirmed by a specific
2 azimuthal Xenon oscillation tested by H. B. Robinson,
3 demonstrates that it will not occur spontaneously in the
4 Kewaunee reactor. There is no explanation of what that
5 azimuthal Xenon oscillation is, and there is no basis for
6 the conclusion that anything happened at H. B. Robinson
7 that is relevant as to what is happening at the Kewaunee
8 reactor.

9 I take it, Mr. Chairman, that you would like
10 us to respond to the statement to Attachment A?

11 CHAIRMAN FARMAKIDES: Yes, sir.

12 MR. COMEY: With respect to paragraph 1 on
13 Applicant's Page A4, the first sentence is true.

14 The second sentence is not true. We expect
15 to cross-examine Mr. Dunenfeld to show that is not true
16 that a movable detector can show its location as
17 accurately as a fixed detector.

18 Paragraph 2 is true in the following sense--

19 CHAIRMAN FARMAKIDES: Are you saying 2 or 3?

20 MR. COMMEY: No, Paragraph 2. I was talking
21 about Paragraph 1 before. I said the first sentence was
22 true and the second sentence of that paragraph was false.
23 We dispute it.

24 With respect to Paragraph 2 it is true that it
25 is not part of the reactor protection system. What we

1 dispute is that we think it ought to be. We believe,
2 secondly, that the frequency with which the in-core
3 detection system will be operated is not sufficient to
4 assure you have knowledge of what is going on inside of the
5 core.

6 CHAIRMAN FARMAKIDES: What do you think it
7 ought to be?

8 MR. COMEY: Essentially they are using in-core
9 detection merely to do power maps within the core. They
10 are not doing this to ascertain such items as hot channel
11 factors or peaking factors, et cetera, and they are logging
12 this data merely to have fuel burn-up calculations made,
13 et cetera.

14 They are not interested in taking the in-core
15 data and using it as part of the reactor protection system.

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1 Paragraph 3, we dispute. We do not think that
2 these minor in-core detectors of the movable variety have
3 adequate sensitivity.

4 CHAIRMAN FARMAKIDES: How are you going to show
5 that, sir?

6 MR. COMEY: Through Mr. Dunenfeld.

7 Four states that the out-of-core nuclear instrumen-
8 tation system continuously supplies the necessary information
9 for control of core power distribution within established
10 safe limits.

11 We intend, through Mr. Dunenfeld, to establish
12 that really five, six and seven go to the truth of four, that
13 if the center control rod is improperly inserted in the core,
14 that you will not be able through the out-of-core detectors
15 to detect this simply because this is essentially a
16 symmetrical disturbance that doesn't show up on your quadrant
17 to average power tilts.

18 With respect to Azimuthal Xenon, with respect to
19 Paragraph 5 I was going to say that that is in dispute in that
20 I do not believe it is true. I would like to change that
21 to say that at the present time I do not have sufficient
22 information to know whether or not five is, in fact, the case,
23 and I would propose under cross examination to ascertain that.

24 With respect to six, that is in dispute. They
25 claim that the primary means of detection of improperly

8A-2

1 positioned control rods is the rod position indicator, not
2 the in-core monitoring system. We intend to show through
3 Mr. Dunenfeld that rod position indicator systems are not
4 always reliable, the sanonofra experience is an example of
5 that.

6 With respect to seven, again we dispute that it
7 has been shown that this reactor core is stable against
8 Azimuthal Xenon Oscillations. Reference was made earlier to
9 the H. B. Robinson plant. The H. B. Robinson plant has a
10 different core with different peaking factors and different
11 designs than the Kewaunee core, and there is no guarantee of
12 stability against Azimuthal Xenon.

13 No. 8 states that incomplete boron mixing does
14 not occur to the degree that it would significantly affect
15 power distributions. I am unable to state whether that is
16 true or not. I intend to ascertain on cross of Mr. Dunenfeld
17 whether or not the affect on power distribution is, in fact,
18 significant. If it isn't, then that statement will have shown
19 to be true.

20 CHAIRMAN FARMAKIDES: . What other material issues
21 of fact, sir, do you intend to elicit during cross, and I take
22 it here that you are going to be primarily concerned on this
23 contention with Mr. Dunenfeld?

24 MR. COMEY: Yes. We intend to show that the
25 Advisory Committee on Reactor Safeguards has been urging that

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1 this core instrumentation be installed in reactors with a
2 high power density of this class of reactor, and there are,
3 in fact, several reactors that have committed to in-core
4 fixed instrumentation. And for that reason and others which
5 we will show through Mr. Dunenfeld, we believe in addition to
6 having moving in-core instrumentation, that the Kewaunee
7 plant should install the additional data retrieval equipment
8 in order to provide this as part of the reactor protection
9 system.

10 CHAIRMAN FARMAKIDES: Okay, thank you.

11 Mr. Churchill?

12 MR. CHURCHILL: Four brief points. Mr. Vollen
13 talked about how Attachment A is not sworn and under oath, it
14 contains statement of facts called for in the rule that does
15 not require an affidavit, that is to be backed up by the
16 affidavit.

17 He keeps saying that the testimony in the
18 affidavits is not admissible, it's the word "admissible" I
19 would like to comment on.

20 It certainly is admissible, these are experts,
21 they can make statements like that. The weight, of course
22 the Board will decide upon.

23 To quote one of his examples, "The number and
24 location of the thimbles have been chosen to show measurement
25 of local power for peaking factors to an average of five

8A-4

1 percent."

2 Certainly an expert can make the statement like
3 that. We can't attach the FSAR and all the other things to
4 it, obviously.

5 Point No. 3, this raises a new issue on a couple
6 of points Mr. Comey has talked about, things that I consider
7 outside the scope of his basic contention. And if you look
8 at No. -- our statement No. 2, his statement, I believe was
9 that the in-core should be used for this type of monitoring.
10 It's not enough to rely on the ex-cores. In other words,
11 what he is really saying is that the ex-core system which is
12 used for things he wishes the ex-core to be used for is in-
13 sufficient. He has never said that in his contention the
14 out-of-core system is not in contention here. That same
15 comment goes with the rod protection indicator systems.

16 He says that they are inadequate to determine
17 whether you have rods, mislocated rods or banks of rods,
18 particularly the center rod. He has never alleged that in
19 in his contention, that our rod position indicator system is
20 inadequate. This process is used to narrow down and find out
21 what the issues are. We would have to strenuously object if
22 it was used to widen the issues, in any way.

23 The fourth point, on Numbers 5 and 8, Mr. Comey
24 says he doesn't know, he will have to find out on cross
25 examination. I would just like to reiterate that that is

8A-5

1 not sufficient for this type of motion.

2 CHAIRMAN FARMAKIDES: Mr. Vollen?

3 MR. VOLLEN: I would like simply, Mr. Chairman,
4 to underscore Mr. Churchill's concessions, admissions that
5 Attachment A is not sworn to and, therefore, ought not to be
6 considered as part of the evidence to sustain or offer to
7 sustain Applicant's motions for summary disposition. And
8 Mr. Churchill's second concession that the FSAR is not in
9 evidence for purposes of considering the summary disposition.

10 CHAIRMAN FARMAKIDES: Anything further, Mr.
11 Seiffert?

12 MR. SEIFFERT: No, sir.

13 CHAIRMAN FARMAKIDES: All right, the next one is
14 3.6.2. Now this is one in which both the Applicant and the
15 Staff submitted positions.

16 Mr. Vollen, do you wish to take the Applicant
17 first?

18 MR. VOLLEN: We object to the granting of the
19 motion on the grounds previously stated. The examples of the
20 inadmissibility of the testimony contained in the affidavit
21 of Mr. Ehrenpreis are the last sentence of the second paragraph
22 which reads: "In fact, the basis of the technical speci-
23 fications for determining conformance to the reactor coolant
24 activity limit is the requirement for a regular sampling and
25 activity schedule." The statement is inadmissible because it

8A-6

1 is based on the technical aspect at this time, which on the
2 motion for summary disposition are not in evidence in this
3 proceeding.

4 The next sentence, which is the last sentence of
5 that affidavit consists of an ultimate conclusion that a
6 monitoring system of faster response or greater sensitivity
7 is not required for safe operation of the Kewaunee plant.
8 We submit that that is the conclusion, whether it is correct
9 or not, this Board has to reach, not that Mr. Ehrenpreis is
10 permitted to testify to.

End 8A

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P b-1:ps 1 CHAIRMAN FARMAKIDES: Mr. Comey?

2 MR. COMEY: On the Applicant's two statements
3 of fact on contention 3.3.6.2, we believe that No. 1 is
4 true. It is not in dispute.

5 No. 2 is not really a fact, it simply is a
6 conclusion: "A monitoring system of faster response or
7 greater sensitivity is not required for safe operation of
8 the Kewaunee Plant." For reasons which I think I can show
9 in more details with respect to the Staff statement on this,
10 we dispute that and we think that we can dispute that
11 through Mr. Crocker's testimony.

12 MR. KEANE: Through whom?

13 CHAIRMAN FARMAKIDES: Mr. Crocker's testimony.

14 MR. COMEY: Turning now to the Staff --

15 MR. SEIFFERT: Mr. Chairman, excuse me,
16 we would like to call the Board's attention to a possible
17 error in one of the Staff's issues of fact. We had a
18 previous typographical error which was corrected as to
19 most copies. I call your attention to 14, Fact F, "The
20 postulated rupture of a steam generator tube."
21 The Staff wanted to be sure that everyone's copy reads
22 similarly.

23 CHAIRMAN FARMAKIDES: Well, the third line
24 of that reads that, "The consequences of postulated rupture
25 of a steam generator tube."

8-b-2

1 MR. SEIFFERT: Correct, and continuing on
2 to line four, too.

3 CHAIRMAN FARMAKIDES: All right, that is
4 the way our's reads.

5 MR. VOLLEN: Excuse me, Mr. Chairman, I am
6 afraid that that is not going to be clear in the record
7 because I don't think you read the whole thing, the
8 complete third line as it's been changed.

9 MR. SEIFFERT: Let me read all of Fact F
10 for the record.

11 CHAIRMAN FARMAKIDES: All right, fine.

12 MR. SEIFFERT: The correct Fact F should state:

13 "However, the technical specifications require
14 that the plant be shut down whenever the primary coolant
15 activity is such that the consequences of a postulated
16 rupture of a steam generator tube would result in a dose
17 of .5 rem at the site boundary."

18 CHAIRMAN FARMAKIDES: That is what we have
19 on our copy.

20 Mr. Vollen?

21 MR. VOLLEN: That is what we have on our copy.

22 CHAIRMAN FARMAKIDES: Mr. Churchill?

23 MR. CHURCHILL: Yes, sir.

24 MR. SEIFFERT: Thank you.

25 MR. COMEY: Turning now to the Staff's

2-b-3 1 statement of material facts, Page 13, Paragraph A is not
2 in dispute.

3 B is not in dispute; Paragraph C is not in
4 dispute. Paragraph D is in dispute in that at Applicant's
5 testimony Page 18, they admit that the time delay is up
6 to three minutes. The Staff states that it is approximately
7 one minute.

8 Paragraph E is not in dispute; Paragraph F is
9 in dispute, and I would like to explain why and how I
10 think through cross of Mr. Crocker I can show this.

11 Paragraph F, in effect, goes to the consequences
12 of a contamination of a secondary coolant of the plant by
13 steam generator tube leakage with off-site boundary dose
14 consequences, if in fact the secondary site has to be
15 vented directly to the environment. The concern we have
16 is not with respect to operating the reactor with a certain
17 percentage of fuel for certain level of contamination
18 of the primary coolant. What we are concerned about is
19 gross fuel failure, and I believe that that is what
20 the advisory committee on reactor safeguards is concerned
21 with.

22 I would like to quote Mr. Crocker's testimony
23 in which he states: "The AEC and the Advisory Committee
24 on Reactor Safeguards have been urging the nuclear industry
25 to develop a system with a rapid response time which is

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1 capable of discriminating against normal activity in the
2 primary system and which can tell not only which fuel
3 elements have failed, but the severity of the failure."

4 It is our contention that a three--minute
5 delay in detecting gross fuel failure could allow a situation
6 to develop within a reactor in which the gross fuel failure
7 could have severe accident consequences. And that is why
8 we feel that the present Geiger-Mueller counter in the
9 letdown line is not sufficient as stated.

10 CHAIRMAN FARMAKIDES: What is it, sir, do
11 you have any other material issue of fact that you intend
12 to elicit during cross?

13 MR. COMEY: We would also intend to, through
14 cross of Mr. Crocker, show that once again the nuclear
15 industry has not been making a full-fledged effort to
16 develop fast fuel failure monitoring devices, that the
17 research has been going on at a very slow rate.

18 CHAIRMAN FARMAKIDES: Anything further,
19 sir? Mr. Churchill?

20 MR. CHURCHILL: Do you wish us to respond
21 every time he says something we think is outside the scope
22 of the contention? I am not sure I can pick them up when
23 he is saying it.

24 CHAIRMAN FARMAKIDES: If you think they are
25 outside the scope of the contention, yes, you should state it.

1 The Board has been following this too.

2 MR. CHURCHILL: I wouldn't want to waive any
3 rights later.

4 CHAIRMAN FARMAKIDES: If you think it's
5 without the boundary of the contention, state it, yes.

6 MR. CHURCHILL: That last one certainly is, sir,
7 about the process of development of such a system in the
8 nuclear industry. That is certainly not within the
9 contention.

10 CHAIRMAN FARMAKIDES: Anything else, Mr. Churchill?

11 MR. CHURCHILL: No, sir.

12 CHAIRMAN FARMAKIDES: All right, Mr. Seiffert?

13 MR. SEIFFERT: Mr. Chairman, it might help
14 simply the record further if we can address Mr. Comey's
15 final facts that he judges to be in issue. Mr. Comey
16 says that, "The Atomic Energy Commission and the Advisory
17 Committee on Reactor Safeguards have been urging the
18 nuclear industry to develop a system with rapid response
19 time which is capable of discriminating against normal
20 activity in the primary system and which can tell not
21 only which fuel elements have failed, but the severity
22 of the failure." I am reading now from Mr. Crocker's
23 testimony. As to this contention, the Regulatory Staff
24 would agree and that fact need not be in dispute if the
25 intervenors have no objection, to simply the record.

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1 CHAIRMAN FARMAKIDES: Well, that is interesting.
2 Actually, Mr. Reporter, would you read back, please, the
3 ultimate issue as stated by Mr. Comey that he is going to
4 elicit during cross?

5 MR. VOLLEN: Mr. Chairman, for the record we
6 object to that characterization of Mr. Comey's statement.

7 CHAIRMAN FARMAKIDES: Why is that, Mr. Vollen?

8 MR. VOLLEN: You called it the ultimate issue
9 that he intends to elicit. I think his answer was in
10 response to your question as to whether there were any other
11 matters.

12 CHAIRMAN FARMAKIDES: I am sorry, let's use
13 your words. I didn't mean to put any words in your mouth.

14 MR. VOLLEN: I meant only to use the words you
15 used the first time, Mr. Chairman.

16 CHAIRMAN FARMAKIDES: Can you read that, Mr.
17 Reporter?

18 THE COURT REPORTER: "It is our contention that
19 a three-minute delay in detecting gross fuel failure
20 could allow a situation to develop within a reactor in
21 which the gross fuel failure could have severe accident
22 consequences, and that is why we feel that the present
23 Geiger-Mueller counter in the let down line is not
24 sufficient as stated.

25 "We would also intend to, through cross of

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1 Mr. Crocker show that once again the nuclear industry has
2 not been making a full-fledged effort to develop fast
3 fuel failure monitoring devices, that the research has
4 been going on at a very slow rate."

5 CHAIRMAN FARMAKIDES: It's this latter state-
6 ment, Mr. Seiffert, that you had reference to?

7 MR. SEIFFERT: No, Mr. Chairman. Perhaps the
8 intervenors can help me find where in the record, after we
9 got through with the facts A through F of the Commission,
10 Mr. Comey said in addition he would like to show that the
11 Commission and the ACRS have been using rapid response
12 time which shows how many rods might have failed, and
13 show the severity, something to that effect.

14 MR. VOLLEN: I think, Mr. Chairman, if I can
15 offer some help, Mr. Comey did read and quote a paragraph
16 from the affidavit of Mr. Crocker. Now I think what the
17 staff is saying is that they are prepared to stipulate
18 that their affidavit the witness made is correct.

19 MR. SEIFFERT: That's correct. It's not a
20 material issue in fact, Mr. Chairman, and insofar as it
21 clarifies the record, we will need to state it, Mr. Comey
22 need not show it.

23 CHAIRMAN FARMAKIDES: Oh, fine. I misunder-
24 stood what you had in mind.

25 MR. SEIFFERT: After that, Mr. Comey stated

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1 that the nuclear industry had been doing little in
2 research in this issue. We object to that, that is out
3 side of the scope of this hearing. Mr. Comey said he
4 wanted to show that.

5 MR. CHURCHILL: Mr. Chairman, is it clear if I
6 don't go over all this it's not that I don't have any
7 objections, I think my objections are pretty general--

8 CHAIRMAN FARMAKIDES: If you have already
9 voiced your objections as a general objection, the Board
10 will receive them as a general objection. If they are
11 specific objections, then I think you should voice them as
12 specific objections, Mr. Churchill.

13 MR. CHURCHILL: All right.

14 MR. VOLLEN: Mr. Chairman?

15 CHAIRMAN FARMAKIDES: Yes, Mr. Vollen?

16 MR. VOLLEN: One final point in reply to both
17 Mr. Churchill and Mr. Seiffert. The proposition which I
18 believe they have both made is outside the scope of the
19 contention is a proposition based upon the proposed testi-
20 mony with respect to that contention offered by the staff.
21 I don't hear anybody moving to strike the staff's testimony
22 with respect to that.

23 CHAIRMAN FARMAKIDES: Okay, anything more on
24 3.6.2?

25 Let's go on to 3.11.2

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1 MR. VOLLEN: The intervenors object to the
2 granting of the applicant's motion for summary disposition
3 of this contention on all the grounds previously stated.
4 The affidavit offer by applicants in support of this
5 motion is not one that we have referred to before, it's
6 the affidavit of Max M. Delong. On its fact, that
7 affidavit clearly fails to show affirmatively that the
8 affiant is competent to testify to the matters stated
9 therein.

10 The only thing that one might even consider
11 in making that judgment as to whether it shows it is
12 the sentence that says, "I have also been involved in the
13 preparation of a broad range of material for the Kewaunee
14 nuclear plant FSAR." That clearly does not show he is
15 competent to testify as to matters in his affidavit.

16 With respect to the inadmissibility or
17 examples of the inadmissibility of the affidavit of Mr.
18 Delong in support of applicant's motion, I would point out
19 that in the middle of page 20 a sentence appears with
20 regard to the heat transfer coefficient, followed by the
21 sentence that this is discussed in more detail in FSAR,
22 and gives a section number. That document is not in
23 evidence and any statement as to what is in it is inad-
24 missible in connection with these motions for summary
25 disposition.

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Similarly--well, that is the only example I will give at this time, Mr. Chairman.

1 MR. COMEY: Staying with applicant's statements
2 of material fact, we dispute No. 1, which states that heat
3 transfer coefficients are both derived from well-established
4 experimental data. We dispute that. We believe that we
5 can show that both through Mr. Crocker and Mr. Delong.

6 The data used were from Tagami. Tagami never
7 studied a vessel, anything like the size of this vessel.

8 Secondly, on No. 2, it states that additional
9 conservatisms in applicant's analysis of positive pressure
10 duration in the annulus after a postulated LOCA are sure
11 that the four-minute value is conservative.

12 We believe that we can bring out through cross
13 of Mr. Crocker that there has been a continuing history
14 within the Commission of argument over whether or not
15 these values are conservative and that for an identical
16 plant, namely Perry Island, a different analysis was
17 performed and different assumptions were used.

18 Secondly, now turning to the staff's
19 statements with respect to this contention, A is not in
20 dispute.

21 CHAIRMAN FARMAKIDES: Excuse me, Mr. Comey.
22 Hold on just a minute.

23 Mr. Comey, continue, sir.

24 MR. COMEY: With respect to Paragraph B of
25 the staff's statement, that is in dispute. It states that

1 the safety injection signal automatically starts to 100%
2 capacity fan filter systems, et cetera. This is a
3 prototype system. It's untested. We think that Mr.
4 Crocker on cross will state that it is a prototype un-
5 tested system, therefore, that statement is in dispute.

6 With respect to Paragraph C--

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

9 MR. COMEY: Through Mr. Crocker.

10 Mr. Voilen reminded me that what I mean by a
11 prototype is this is the first of its kind by this
12 architect engineer.

13 MR. SEIFFERT: Mr. Chairman, the Board will
14 agree this is a prototype and this is the first time the
15 system has been used, to simplify the record. You can
16 take that fact out as a fact being in issue.

17 CHAIRMAN FARMAKIDES: You mean the staff will
18 agree, sir?

19 MR. SEIFFERT: Pardon me? The regulatory staff
20 will agree it is a prototype system. I don't necessarily
21 agree with the rest of Mr. Comey's suggestion of what he
22 intends to prove.

23 MR. COMEY: If the staff in paragraph C is
24 willing to amend it by stating at the beginning, writing
25 the one word "successful" to the word "operation of the

1 SBVS," then I will agree that that is a true statement.
2 If not--

3 CHAIRMAN FARMAKIDES: Does the staff so
4 agree?

5 MR. SEIFFERT: Yes, Mr. Chairman, the staff
6 will add "successful" before "operation" in our fact C.
7 Excuse me a moment.

8 CHAIRMAN FARMAKIDES: Let's be precise then.
9 Please again identify exactly where you are putting the
10 word "successful."

11 MR. SEIFFERT: Okay, Mr. Chairman. I have one
12 other addition which the staff will suggest to our Fact
13 14-C.

14 I would now like to read, first the changes,
15 then I will read the entire fact so everyone understands.

16 We would like to add "successful" before
17 "operation," and then add "single train" just before the
18 capital letters "SBVS," for shield building ventilation
19 system.

20 I would like to read now, Mr. Chairman, how
21 this fact will read as amended.

22 It will be slightly different than I just
23 noticed, with a couple of "as" "ands" and "the's."

24 We would now like to suggest that the fact
25 not in issue is "successful operation of a single train of

1 the shield building ventilation system, SBVS, will pull
2 the annulus down to a negative pressure relative to the
3 auxiliary building special ventilation zone into the
4 atmosphere."

5 CHAIRMAN FARMAKIDES: Mr. Vollen, Mr. Comey?

6 MR. VOLLEN: I think the answer is, Mr.
7 Chairman, we would have to consider that one for a while.

8 Mr. Comey had considered it as it was
9 originally there and proposed the addition of the word
10 "successful." and he has not considered--

11 CHAIRMAN FARMAKIDES: Let's come back to this
12 later on in the day.

13 MR. COMEY: Paragraph D is true.

14 Paragraph E is in dispute in that the first
15 sentence can be confirmed by reference to standard texts
16 on heat transfer.

17 Standard texts on heat transfer essentially
18 deal with metal vessels of a size in the order of
19 magnitude smaller than what we are talking about here.

20 We would dispute that you could find any
21 reference in the standard literature that would apply to
22 a vessel this size. Mr. Delong would so testify.

23 With respect to F, the statement is true if
24 one assumes that everything works the way it is supposed
25 to. If it does not, then it would be in dispute.

1 CHAIRMAN FARMAKIDES: What does that mean, Mr.
2 Comey?

3 MR. COMEY: It says that it will return to
4 zero relative pressure at 3.8 minutes following a loss of
5 coolant accident. That assumes that the system works.
6 In other words, the statement as it stands is a conclusion
7 which assumes the hypothetical.

8 CHAIRMAN FARMAKIDES: You are saying that you
9 do not agree with it then?

10 MR. COMEY: Because of Paragraph B and Paragraph
11 E we would dispute F.

12 CHAIRMAN FARMAKIDES: To whom, sir?

13 MR. COMEY: To Mr. Delong and to Mr. Crocker.

14 Paragraph G is not in dispute.

15 Paragraph H is not in dispute.

16 Paragraph I is not in dispute.

17 Paragraph J is not in dispute.

18 CHAIRMAN FARMAKIDES: Is there any other
19 material issue of fact, sir, that you intend to elicit
20 through your cross-examination?

21 MR. COMEY: No, sir.

22 CHAIRMAN FARMAKIDES: Mr. Churchill?

23 MR. CHURCHILL: Just to make it clear on the
24 record, our responses before with respect to the competence
25 of our witnesses to testify on affidavit I think go across

1 the board to all of these affidavits.

2 The same remarks with respect to conclusions
3 versus facts and the admissibility, if you will, of the
4 opinion of these experts also goes, and with respect to the
5 particular example he mentioned here, talking about a
6 section of the FSAR, he is certainly entitled to
7 incorporate by reference to his testimony a section, and
8 he is certainly competent to say that is true.

9 With respect to the two points of applicant's
10 stated facts, we would just like to comment that in both
11 cases we think Mr. Comey has done nothing more than said
12 the opposite of what is stated there and he will attempt
13 to elicit support of his opposite statement through cross.
14 He has done this a number of times. I haven't said
15 anything. I stated my blanket objections to that type of
16 procedure on this type of motion, and I don't want to have
17 to stand up every time and say that. Perhaps I shouldn't
18 have to. I will if the Board desires.

19 CHAIRMAN FARMAKIDES: No, that is a general
20 objection, sir, and we have heard it.

21 MR. CHURCHILL: Very well.

22 CHAIRMAN FARMAKIDES: Mr. Renfrow.

23 MR. RENFROW: I would like some clarification,
24 and I can receive it perhaps from the Board or Mr. Comey,
25 however the Board desires.

1 Referring to E on page 17, if I understand
2 Mr. Comey's statement correctly he says that there is no
3 standard reference on heat transfer for a vessel this
4 large, is that the disputed fact in issue, Mr. Chairman?

5 CHAIRMAN FARMAKIDES: Mr. Comey, can you
6 answer that?

7 MR. COMEY: If they are making the claim that
8 you can open up a standard reference work and find an
9 equation which that reference work says is good for any
10 vessel of any size I would dispute that they can in fact
11 do that.

12 I would further dispute that if they do look
13 up in a reference book and they find such a coefficient
14 and equation and they then attempt to apply it to a vessel
15 this size, they are misapplying it. They are using the
16 wrong non-conservative equation.

17 CHAIRMAN FARMAKIDES: Okay. Mr. Renfrow, there
18 is Mr. Comey's position. Is there anything more?

19 MR. RENFROW: I believe I understand that.

20 CHAIRMAN FARMAKIDES: Anything further on
21 3.11.2? Let's take a recess until 11:40.

22 (A short recess was had.)
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CHAIRMAN FARMAKIDES: We are on 3.11.3. Mr.

2 Vollen.

3 MR. VOLLEN: Mr. Chairman, during the recess
4 the thought occurred to me, which I hope does not lend more
5 confusion to the process we are now engaged in, but I will
6 mention it taking that risk.

7 CHAIRMAN FARMAKIDES: I am not sure that we all
8 agree that we are engaged in a confusing process, sir. I
9 think we are beginning to move a little faster, and I think
10 the process is a valuable one.

11 MR. VOLLEN: I don't dispute its value, Mr.
12 Chairman.

13 The thought that occurred to me is with respect
14 to some of the statements contained in the statement of
15 material facts submitted by Applicant and the Staff stating
16 that we do not dispute those facts. The problem may be when
17 this gets to be sorted out and when the Board gets real ready
18 to rule on the motions for summary disposition that the same
19 facts may not have been put in by the Applicant and by the
20 Staff. So that while the Intervenors may not have disputed
21 a particular fact put in by the Staff, that leaves open a
22 question as to what, if any, position Applicant has on it,
23 whether or not that will be a problem.

24 CHAIRMAN FARMAKIDES: I expect the parties can
25 raise that problem if there is one. I don't see it as a problem,

9B-2

1 Mr. Vollen, but if there is a problem, I am sure the parties
2 can represent themselves.

3 Something else came to me during this moment that
4 you were just speaking. Would it be more convenient for the
5 parties if we were simply to ask you to go through all of the
6 facts presented by the Staff and presented by the Applicant
7 and indicate which you agree to and which are in dispute, and
8 then go back to those that are in dispute? Would that reduce
9 the time?

10 MR. SEIFFERT: No.

11 MR. VOLLEN: I shouldn't think so, Mr. Chairman.

12 CHAIRMAN FARMAKIDES: All right.

13 MR. VOLLEN: It might make the record harder to
14 use.

15 CHAIRMAN FARMAKIDES: Let's go on then. 3.11.3.

16 MR. VOLLEN: Intervenors oppose the granting of
17 the motions of Applicant and the Staff for summary disposition
18 on these contentions on all of the grounds previously stated.

19 The affidavit offered by Applicants in support of
20 this one is by Mr. Solen, and I respectfully submit that that
21 affidavit does not affirmatively show that he is competent to
22 testify to the facts set forth in his affidavit.

23 As examples of the inadmissibility of the statements
24 in his affidavit, I would refer to the last sentence of the
25 first paragraph of his affidavit which is numbered Page 23 which

9B-3

1 reads, "The dual containment system provides an extremely
2 effective means of collection and filtration of fission
3 products following a postulate, LOCA to significantly reduce
4 post-accident dosage outside the containment."

5 He says it is an extremely effective means. I
6 submit that that is conclusory. He doesn't tell us how that
7 works. He doesn't tell us why. He doesn't provide the Board
8 any facts upon which to base a determination as to whether that
9 is indeed the fact.

10 Similarly the first sentence of the third para-
11 graph on that same page states, "An extremely thorough and
12 conservative analysis of potential leak pads leads to the
13 highly conservative assumption that after negative pressure
14 is attained in the annulus 11 percent of the leakage from the
15 containment vessel could bypass the annulus."

16 Those kinds of words such as "extremely thorough"
17 and "conservative" and "highly conservative assumption" are
18 patently conclusory and without foundation and not admissible.

19 MR. COMEY: With respect to the Staff's, we have
20 already gone through that under 3.11.2, because the Staff's
21 statements of fact are put in for both 3.11.2 and 3.11.3.

22 For the Applicant on 3.11.3 we dispute the first
23 paragraph that the negative pressure would occur in three
24 minutes and we would propose to establish this with Mr.
25 Crocker.

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1 The second paragraph is not in dispute.

2 The third paragraph is in dispute.

3 We would propose to establish through Mr. Crocker
4 that an analysis which shows that during negative pressure
5 three percent of the containment leakage would bypass the
6 annulus is not a conservative analysis.

7 With respect to four, continuous operation of
8 the shield building ventilation system is not necessary to
9 assure that off-site doses will be well within the 10 CFR
10 Part 100 Guidelines. That is disputed and we will establish
11 through cross examination of Mr. Crocker that at the Waterford
12 plant they are continuously operating the shield building
13 ventilation system as a conservative means of lowering the
14 off-site doses.

15 CHAIRMAN FARMAKIDES: You said the Waterford
16 plant?

17 MR. COMEY: Yes, sir.

End 9B

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1 CHAIRMAN FARMAKIDES: And why would that be
2 relative to this plant?

3 MR. COMEY: For the reason that it increases
4 -- I am sorry, decreases, the site boundary does as we
5 recommend in our contention. We think that is the proper
6 approach here, and if someone says you can't do it,
7 which the Applicant in effect has said, we say, "Yes,
8 you can do it," they are doing it at Waterford.

9 CHAIRMAN FARMAKIDES: Okay, anything else, sir?

10 MR. COMEY: No, that's all.

11 CHAIRMAN FARMAKIDES: Do you have any
12 material fact that you intend to elicit during cross
13 examination, other than those stated here?

14 MR. VOLLEN: Mr. Chairman, for the record,
15 we feel that that question that you have just posed,
16 I think with respect to everyone of the contentions,
17 is an inappropriate question in connection with the response
18 to a motion for summary disposition.

19 CHAIRMAN FARMAKIDES: Why?

20 MR. VOLLEN: We would like the record to note
21 our objection.

22 CHAIRMAN FARMAKIDES: I would like to know why,
23 sir?

24 MR. VOLLEN: Because, Mr. Chairman, the question
25 here is whether there is a genuine issue as to a material

10-a-2

1 fact asserted by the Applicant or the Staff. They have
2 asserted material facts, you have asked us to state whether
3 we think there is a genuine issue as to any material fact
4 that they have stated are not in issue. To go beyond that --
5 well, that is the point which it seems to me the record
6 is made as to whether or not summary disposition should
7 be granted.

8 To go beyond that and to require Intervenor
9 to set forth, as it were, their cross examination of
10 witnesses, it seems to me is not pertinent to summary
11 disposition.

12 CHAIRMAN FARMAKIDES: I would like to hear
13 also from other parties on that point, then the Board
14 will answer.

15 Mr. Churchill?

16 MR. CHURCHILL: Just briefly. Section 2.749A
17 states, "There shall be annexed to such answer," and that
18 refers to the answer by the Intervenor to this motion,
19 "A separate short and concise statement of the material
20 facts to which it is contended that there exists a genuine
21 issue to be heard. It's not simply a denial, of course,
22 it's a statement of facts to speed up this process. As we
23 all know, we agreed to waive the formality of writing an
24 affidavit for them and the language which was agreed to on
25 the conference telephone call between the parties and the

10-a-3
1 Board reads as follows:

2 "In response to the motion for summary disposition,
3 any party can state orally on the record what facts they
4 believe could be established and through what person, to
5 create a genuine material issue of fact."

6 CHAIRMAN FARMAKIDES: Mr. Seiffert?

7 MR. SEIFFERT: Mr. Chairman, the Regulatory
8 Staff agrees with the Board it would be helpful to find
9 out whether or not the Intervenor has further material
10 facts it intends to elicit in hearing. The Intervenor
11 has made a petition to intervene, the Staff has attempted
12 to respond to it in order to simplify the issues by stating
13 our facts. If there are other facts to be brought out,
14 the Regulatory Staff needs to know in order to prepare.

15 In that respect, Mr. Chairman, we agree with
16 the Board that these facts should be stated in time for
17 an orderly hearing.

18 CHAIRMAN FARMAKIDES: Mr. Vollen?

19 MR. VOLLEN: I quite understand why Mr. Seiffert
20 said it would be helpful for him to know what it is that we
21 intend to ask on cross examination.

22 CHAIRMAN FARMAKIDES: That is not the reason,
23 Mr. Seiffert's reason is not the reason the Board is asking.

24 MR. VOLLEN: Well, I might also say that with
25 respect to Mr. Churchill's observation, the statement he

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1 read, the agreement among the parties and the Board was
2 that in response to motions for summary disposition, a
3 party may state the issues claimed not to be in issue
4 that they believe are in issue.

5 CHAIRMAN FARMAKIDES: Mr. Vollen, the
6 motions for summary disposition that are the heart of
7 the contention, of course, and if the Board agrees to the
8 motion, that contention is no longer in the hearing process.

9 Now what we are doing is giving you really an
10 opportunity, should the facts proposed in the motion for
11 summary disposition by the Applicant or by the Staff be
12 insufficient to support the summary disposition, we are
13 giving you the opportunity of adding a material fact that
14 you feel is pertinent to your contention. If the motions
15 are sufficient to support their motions for summary
16 disposition which would effectively then deny your
17 contention, we are giving you the opportunity of submitting
18 an additional fact that you think is a proper material issue
19 of fact and controversy.

20 Secondly, Mr. Vollen, I told you before I thought
21 you had a burden, and that burden is that I do not want a
22 frivolous contention period. I think this is the proper
23 place to find out if you have a frivolous contention,
24 and I am seeking to note that from your answers to our
25 questions with respect to is there a material of fact or an

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2 issue of fact that is intended by you to developed through
3 cross examination.

4 Now that goes to the motion for summary
5 disposition as well as to whether or not your contention
6 is going to be considered by this Board as frivolous.

7 We have permitted you to make your case on
8 cross examination, so to speak, but not with respect to
9 a frivolous contention and this has been voiced before.
10 So let's pursue this further and continue with 3.12.2,
11 I think is the next one.

12 MR. COMEY: Mr. Chairman, there is a question
13 pending which I would like to answer.

14 CHAIRMAN FARMAKIDES: Yes, sir.

15 On 3.11.37

16 MR. COMEY: Yes. You asked me if there was
17 another material fact.

18 CHAIRMAN FARMAKIDES: I am sorry, exactly.

19 MR. COMEY: Yes, it goes to Applicant's statement
20 No. 2 which we have said is not in dispute as it stands,
21 however, it is very artfully phrased, and we would want to
22 dispute whether or not it would be the type of mixing which
23 in other statements and testimony of the Applicant he has
24 said.

25 CHAIRMAN FARMAKIDES: All right.

MR. COMEY: He has said it would be reduced by
a little bit or a lot.

1 CHAIRMAN FARMAKIDES: Mr. Churchill?

2 MR. CHURCHILL: Mr. Chairman, again we believe
3 in his response to these, he is merely contradicting what
4 we have said here. I would like to point out with respect
5 to No. 3, he said that he would like to contest 3%, our
6 figure of 3%.

7 We have stated for purposes of our analysis,
8 we used 11%. Perhaps we should have avoided even mention-
9 ing percent, but I think it's irrelevant. But we have
10 stated 11%, and I don't think he is going to dispute the
11 11%.

12 CHAIRMAN FARMAKIDES: Do you want to change it
13 to reflect 11%, instead of 3?

14 Would you dispute 11, Mr. Comey?

15 MR. COMEY: I don't know at this point.

16 CHAIRMAN FARMAKIDES: Well, then let's leave
17 it as it is.

18 MR. CHURCHILL: On No. 4, I would just like to
19 pick out the point that you raised, that our statement is
20 simply it will be well below Part 100, whether Waterford
21 will or will not use a continuous operation of this system
22 once they get built in the future, is irrelevant as to
23 whether this will or will not be below Part 100 dose
24 guidelines.

25 CHAIRMAN FARMAKIDES: Anything further from

1 the staff?

2 MR. RENFROW: May we have one moment, Mr.
3 Chairman?

4 CHAIRMAN FARMAKIDES: Yes.

5 (Staff confers.)

6 MR. RENFROW: We have nothing further, Mr.
7 Chairman.

8 CHAIRMAN FARMAKIDES: All right, 3.12.2.
9 This is one where both the staff and the applicant have
10 submitted material facts, Mr. Vollen.

11 MR. VOLLEN: Yes, sir. Mr. Chairman, the
12 intervenors oppose the granting of the license by
13 applicant and staff for summary disposition on this
14 contingent on all of the grounds previously stated.
15 The affidavit would--which applicants offer in support of
16 this contention is by Shinn Inouye. That affidavit states
17 that he is responsible for the structural engineering for
18 the Kewaunee plant. It does not state that he has
19 personal knowledge of the containment of the structures in
20 it, nor does it in any way define what his duties as
21 being responsible for structural engineering include.

22 The affidavit fails to affirmatively show that
23 the affiant is competent to testify in matters stated
24 therein. The examples of the inadmissibility of the matter
25 in the affidavit are that it, on page 28, states that,

1 "Dimensions physically measured during construction to
2 determine conformance to specifications and drawings,"
3 but it doesn't state that there were any physical
4 measurements in the as-built condition. It doesn't tell
5 us what stage of construction these determinations, these
6 measurements were made. The conclusions therefore are
7 not supported factually.

8 With respect to the examples of the conclu-
9 sory and thereafter an inadmissible statement offered by
10 the staff in support of its affidavit--in support of this
11 motion, the second paragraph says, "Neither the staff nor
12 regulatory operations people have made physical measure-
13 ments of the size of the containment shell. However,
14 inasmuch as:

15 No. 1, it was designed and constructed by a
16 reputable firm," and they don't tell us who that reputable
17 firm was or why they consider it to be reputable; and
18 "2, it's as-complete size matches with the other structures
19 of the Kewaunee plant; and

20 3, in the absence of documented contradictory
21 evidence, it is safe to assume that the nominal as-built
22 dimensions of the vessel are as designed and detailed on
23 the plan drawings."

24 I think on the face of that affidavit, it is
25 clear that the nominal as-built dimensions of the building

1 are as designed, and I don't think that is an admissible
2 statement of fact upon which this Board can make a
3 determination.

4 CHAIRMAN FARMAKIDES: Mr. Comey?

5 MR. COMEY: The applicant has placed only one
6 statement as a matter of fact with regard to this
7 contention. It reads in its totality as follows:

8 "The net free volume inside the containment
9 vessel is conservatively calculated to be 1,306,996
10 cubic feet." We will be able to establish through the
11 testimony of Messrs. Hollingshouse and Inouye that that
12 is not a conservative calculation, and in fact--

13 CHAIRMAN FARMAKIDES: In other words, you have
14 a different calculation?

15 MR. COMEY: Not only a different calculation,
16 but in their calculation they have purposely left out
17 equipment which occupies significant volumes.

18 Turning now to the staff, the staff has a
19 number of statements with respect to this contention,
20 Paragraph A of which is not in dispute, Paragraph B of
21 which is not in dispute, Paragraph C of which is not in
22 dispute.

23 Paragraph D has two sentences, the first
24 sentence is, "The plant was designed and constructed by a
25 reputable firm." Intervenors dispute that. We think that

1 is for the Board to decide as to the close of this record
2 We believe the die will be cast on that.

3 With respect to the second sentence, "The
4 primary containment building as constructed matches the
5 other structures of the plant," I don't know what that
6 sentence means, therefore, I cannot say whether it's in
7 dispute or not.

8 CHAIRMAN FARMAKIDES: Are you saying, Mr.
9 Comey, that through cross you are going to show that the
10 plant was designed and constructed by a firm that was not
11 reputable?

12 MR. COMEY: I think when the testimony of Messrs.
13 Hollingshouse and Inouye come in with respect to what has
14 been done with respect to this contention, that will cast
15 doubt on whether or not this firm is reputable and is
16 acting in the public interest.

17 CHAIRMAN FARMAKIDES: The next paragraph, sir?

18 MR. COMEY: Paragraph E is in dispute.

19 I know now this was calculated by the staff,
20 I have recalculated it myself, the figure is in error, this
21 exact figure is in error.

22 Paragraph F--

23 CHAIRMAN FARMAKIDES: You would establish that
24 through whom, sir?

25 MR. COMEY: Through the cross of Mr. Crocker.

1 I mean we will have him do his calculations, we will ask
2 him to recalculate it using our measurement.

3 CHAIRMAN FARMAKIDES: All right, F?
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1 MR. COMEY: Paragraph F is in dispute, both
2 through Mr. Cocker and Mr. Hollingshaus we can show that
3 more volume should have been deducted for equipment than the
4 71,300 feet.

5 Paragraph G is, therefore, in dispute, because
6 Paragraph G is a net free volume subtracted from Paragraph E
7 and Paragraph F.

8 CHAIRMAN FARMAKIDES: Any response, for the
9 Applicant?

10 MR. CHURCHILL: Yes, sir. Just one comment on
11 our single one. He said that he expects to show through cross
12 examination of Mr. Hollingshaus and Inouye that significant
13 equipment has purposely been omitted thereby decreasing, I
14 presume, the net free volume of the containment. This is the
15 closest that we have come to eliciting the type of affirmative
16 facts that we are looking for, and I wonder, in view of the
17 fact that the contention really reads, "We have over-estimated
18 our containment by 20 percent of the net free volume", which
19 is a lot of volume inside that enormous containment, I wonder
20 if we could ask the Intervenors to give us an idea of the
21 type of equipment which would occupy 20 percent of the volume
22 that he intends to elicit from the witnesses. It would be
23 helpful to us, we can't imagine what it would be.

24 Now I think if they are to set forth affirmative
25 facts, this is not --

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1 CHAIRMAN FARMAKIDES: Mr. Vollen, do you want to
2 give that information?

3 MR. VOLLEN: If they want to put the witness
4 on the stand, Mr. Chairman, we will cross examine him.

5 MR. CHURCHILL: We are not talking about cross
6 examination or testimony; he is going to explain the facts he
7 intends to elicit.

8 CHAIRMAN FARMAKIDES: Mr. Vollen, the Board will
9 not require you to reply to the question posed by Mr. Churchill;
10 however, it would be very helpful to this Board, and I am sure
11 to the parties, if you would give generally an idea of how you
12 reached your calculation that differs by 20 percent.

13 MR. VOLLEN: May I have a moment, Mr. Chairman?

14 CHAIRMAN FARMAKIDES: Yes.

15 MR. COMEY: Mr. Chairman, our figure of 20 percent
16 was essentially based on an estimate of those items of equip-
17 ment in those areas of the plant which cannot be considered
18 part of the net free volume during a transient of the locii
19 that occupy rather considerable amounts of volumes. We have
20 checked over --

21 CHAIRMAN FARMAKIDES: Could you tell us, sir,
22 what you have in mind just generally?

23 MR. COMEY: Yes. For example, none of the
24 ducting for the containment perch system or for the containment
25 cooling system have been included. None of the coolers or

10-C-3 1 other equipment has been put in, all of these are very large
2 items of equipment.

3 Do I need to draw why this is important?

4 CHAIRMAN FARMAKIDES: You don't need to; if
5 you want to, Mr. Vollen can advise you on that.

6 MR. COMEY: I think perhaps for the public --

7 CHAIRMAN FARMAKIDES: The Applicant has
8 indicated that he is in a quandry with respect to exactly
9 how you calculated your figures. I told you we would not
10 order you to respond, but if you want to be helpful to the
11 Applicant, you may do so.

12 MR. COMEY: If the net free volume in the
13 containment is less than calculated, then in the event of
14 a loss of coolant accident or any other accident which
15 increases the pressure inside of the containment, using
16 Boyles' Law that pressure and volume and temperature are all
17 in relation to each other, if the volume is smaller, the
18 pressure will be higher and, therefore, the pressure may be
19 higher than the design limits of this vessel.

20 CHAIRMAN FARMAKIDES: Okay. Anything else,
21 Mr. Churchill?

22 MR. CHURCHILL: No, sir.

23 CHAIRMAN FARMAKIDES: Mr. Seiffert, Mr. Renfrow?

24 MR. RENFROW: Thank you. I would like to point
25 out one thing. Paragraph D, "The primary containment as

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1 constructed matches the other structures of the plant," seems
2 to me to be a very obvious statement. You have a building
3 and you have two pipes that go in, you have two drawings, one
4 for containment and one for auxiliary. If one goes in and
5 builds one building larger than the other, the pipe holes
6 don't match up and that is the reason the statement is in
7 there.

8 The two buildings are the same, the pipes all
9 match up, and anybody that has seen that plant will recognize
10 the engineering efforts that went into it. It's a very simple
11 fact, the two buildings match, the pipes match.

12 MR. COMEY: Based on that explanation, we would
13 accept the second statement as not being in dispute.

14 CHAIRMAN FARMAKIDES: You mean the second sentence?

End 10

15 MR. COMEY: The second sentence, yes, sir.
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1 CHAIRMAN FARMKIDES: Did I proceed to ask you on
2 3.12.2, Mr. Comey, if you have any material issue of fact
3 which you intend to elicit here during cross other than
4 facts stated by Applicant or Staff?

5 MR. VOLLEN: Mr. Chairman, may I have a
6 continuing objection to that question by you?

7 CHAIRMAN FARMKIDES: Yes.

8 MR. VOLLEN: Thank you.

9 MR. COMEY: I don't believe so. May I just make
10 a comment?

11 You see, I prepared today just the material
12 facts that the Applicant has set forth, and the Staff has
13 set forth. I did not go back and look at the materials that
14 we have received on discovery, et cetera, and my own con-
15 tentions. If I had known this question was going to be asked
16 I could immediately tell you whether or not we did or did not
17 have these. To the extent that I know of those I will give
18 them to you.

19 CHAIRMAN FARMKIDES: All right.

20 MR. COMEY: But I hope you will understand that
21 maybe tomorrow I may have to say, "Well, with regard to such
22 and such a contention there was something that we would like
23 to establish."

24 CHAIRMAN FARMKIDES: I don't want to keep getting
25 on this all the time. The fact is clear to me that your

11-2

1 contentions have been submitted for some time, and that you
2 knew how you were going to pursue them after the discovery
3 was completed. I would feel that this question of whether
4 or not you have any material issue of fact that you are going
5 to elicit during cross, the answer to that question goes to
6 the issue of this motion for summary disposition.

7 Let's continue. Next point, 3.12.3.

8 Forgive me, it's 12:15. Let's take a luncheon
9 recess. Let's reconvene at 1:15.

10 (Thereupon, at 12:15 o'clock, P.M., a
11 luncheon recess was had until 1:15
12 o'clock, P.M.)

13 End 11
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AFTERNOON SESSION

(1:15 p.m.)

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3 CHAIRMAN FARMAKIDES: All right, let's continue.
4 We were on 3.12.3. We finished that one, didn't we, 3.12.3,
5 or did we start that?

6 MR. CHURCHILL: We started it.

7 CHAIRMAN FARMAKIDES: All right, we finished
8 3.12.2, and we are just beginning 3.12.3. Mr. Vollen?

9 MR. VOLLEN: Mr. Chairman, The Intervenors
10 oppose the Applicant's motion for summary disposition
11 in connection with this contention for all the reasons
12 previously given.

13 As examples of the inadmissability of the
14 testimony in the affidavit offered by Applicant in support
15 of this motion, we would point out the very first sentence
16 of the affidavit, which does nothing but refer to FSAR,
17 which, as we have noted before is not in evidence in
18 connection with these motions for summary disposition.

19 Similarly, the second sentence which reads,
20 "Time dependent equations of conservation of mass, energy
21 and momentum were used in the re-analysis," and the
22 affidavit does not give any foundation for that statement,
23 does not describe what the equations are. And the Board,
24 therefore, cannot determine the validity of the statement.

25 CHAIRMAN FARMAKIDES: Mr. Comey?

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1 MR. COMEY: With respect to both of the
2 statements set forth on Page A-8 of the Applicant's
3 Attachment A with regard to this contention, we dispute
4 them. We propose to do this via the testimony of Mr.
5 Hollingshaus, Small, Murphy, F. H. Lin, M. T. Lin, Mr.
6 Hollmier and Mr. Lainas of the Regulatory Staff. We
7 believe that the design limit of 25 PSI will be exceeded.
8 The Applicant has already admitted in one of his pieces
9 of paper that the design pressure has now been calculated
10 to be in excess of 27 PSI, and we believe that on cross
11 of these gentlemen we can show that the figures will be
12 higher than that.

13 CHAIRMAN FARMAKIDES: Did you say higher
14 than that, Mr. Comey?

15 MR. COMEY: Yes.

16 CHAIRMAN FARMAKIDES: Did you have any other
17 material issue of fact, sir, that you intend to elicit
18 through cross examination?

19 MR. COMEY: Well, as part of proving this, we
20 will prove the chronology of events, what happened to the
21 plant if these analyses were done and what the management
22 reaction was.

23 CHAIRMAN FARMAKIDES: Mr. Churchill?

24 MR. CHURCHILL: My standard objection to his
25 objections hold. With respect to his statement on our

12-3

1 affidavit again, this man can certainly incorporate by
2 reference certain specific paragraphs of the FSAR into
3 his testimony if he so desires. We talked about time
4 dependent equations of conservation of mass, energy and
5 momentum, those are the equations, sir, that is the
6 definition of the equations.

7 With respect to item No. 1, our statement is
8 that the design pressure exceeds the differential pressures
9 that will be caused. It says nothing about 25 PSI. Our
10 Amendment No. 25 talks about the analysis of the compartment
11 pressure and the containment pressure and the expected
12 pressure transient due to the various postulated accidents,
13 and it clearly shows the pressures exceed design pressures
14 of the structures.

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CHAIRMAN FARMAKIDES: Anything further?

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MR. SEIFFERT: No, Mr. Chairman.

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CHAIRMAN FARMAKIDES: Next one. 3.12.5.

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MR. VOLLEN: The intervenors oppose granting of applicant's motion for summary disposition of this contention, Mr. Chairman, on all of the grounds previously asserted.

8

As to the question of whether the affidavit offered by applicants in support of its motion in connection with this contention affirmatively shows that the witness is competent to testify to the facts stated therein, and would point out that the affidavit of Mr. Frank M. Bordelon offered by applicant does not make mention of the words "Kewaunee nuclear power plant."

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There is no effort, there is no indication whatsoever to show that this witness has any knowledge whatsoever of the subject matter of this proceeding.

18

As examples of the inadmissibility of the material concerned in the affidavit I would point to the last sentence of the first paragraph which states that the analysis shows that the conservatively calculated peak containment pressure is less than the design containment pressure. That statement is without foundation, and it is wholly conclusory and it does not give the Board the factual support for it to enable it to determine whether

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1 or not that statement is true or not.

2 CHAIRMAN FARMAKIDES: Mr. Comey.

3 MR. COMEY: The staff has made no motion on
4 this contention. The applicant has made one paragraph
5 statement which we consider to be in dispute.

6 We believe that through Messrs. Hollingshouse
7 M. T. Lin, F. H. Lin of Pioneer and Mr. Murphy of
8 Westinghouse and Mr. Linus of the regulatory staff we
9 can establish the following:

10 The design limit of this containment vessel
11 is 46 psig. Applicant in its latest testimony has given
12 a graph that indicates that the pressure transient in the
13 event of a steam enbrake inside of the containment is
14 slightly under 46 psig.

15 We think that in itself is a lack of margin.
16 However, we have reason to believe that the staff has done
17 analysis which indicates that the actual pressure in the
18 containment is 60 psig.

19 CHAIRMAN FARMAKIDES: When you say "reason to
20 believe," sir, what do you mean?

21 MR. COMEY: We have heard, and there is an
22 article in Nucleonics Week this week which goes to this,
23 that the staff has done such a calculation and there was
24 in fact a meeting between the applicants and the staff
25 some time last summer in which this was discussed.

1 CHAIRMAN FARMAKIDES: And you are going to
2 show this through whom?

3 MR. COMEY: We are going to show this through
4 the cross-examination of Mr. Linus.

5 MR. RENFROW: Can I have a clarification?

6 CHAIRMAN FARMAKIDES: Mr. Renfrow.

7 MR. RENFROW: Nucleonics Week said the staff
8 has done a calculation showing 60 psig? Is that the
9 relationship to the Nucbonics?

10 MR. COMEY: No, I am just showing that other
11 people other than myself know about this.

12 Secondly, we believe that cross-examination of
13 Mr. M. T. Lin and Mr. F. H. Lin would indicate that
14 Pioneer has done a study which shows that the pressure
15 transient is 51 psig.

16 CHAIRMAN FARMAKIDES: And you have reasonable
17 basis to believe that?

18 MR. COMEY: Yes, sir.

19 CHAIRMAN FARMAKIDES: And you are going to
20 show it through whom?

21 MR. COMEY: Messrs. Lin and Hollingshouse.

22 CHAIRMAN FARMAKIDES: All right. Do you have
23 any other material fact that you intend to elicit during
24 cross-examination on this contention?

25 MR. COMEY: No.

1 CHAIRMAN FARMAKIDES: Mr. Applicant?

2 MR. CHURCHILL: No.

3 CHAIRMAN FARMAKIDES: Mr. Staff?

4 MR. SEIFFERT: No, Mr. Chairman.

5 CHAIRMAN FARMAKIDES: Let's go to the next
6 one, 3.13.2.1. The applicant filed a motion here. Mr.
7 Vollen.

8 MR. VOLLEN: Mr. Chairman, the applicant has
9 filed one motion, two paragraphs of supposed statements
10 of fact covering contentions 3.13.2.1, 3.16.2 and 3.
11 Well, it says 3.13.6.3. I think Mr. Churchill indicated
12 that was a typo and should be 3.16.3.

13 MR. CHURCHILL: That's right.

14 CHAIRMAN FARMAKIDES: Can we take all three
15 at one time?

16 MR. VOLLEN: I would suggest so.

17 CHAIRMAN FARMAKIDES: Fine. Let's do that.
18 So we are talking about 3.13.2.1, 3.16.2 and 3.16.3?

19 MR. VOLLEN: I think, Mr. Chairman, that we
20 finally reached some contentions that the applicant and
21 the intervenors agreed that there is no genuine issue as
22 to any material fact. It is these three contentions which
23 are the subject matter of intervenor's motion for summary
24 disposition.

25 It seems to me that the undisputed facts with

1 respect to these contentions are that the plant as
2 presently designed and as presently built does not meet
3 the criteria of the Atomic Energy Commission.

4 CHAIRMAN FARMAKIDES: Don't argue your motion,
5 sir. Insofar as this motion is concerned, limit yourself
6 to that consideration.

7 MR. VOLLEN: Well, I find that very difficult
8 to do, because they are opposite sides of the same coin,
9 but I will endeavor, Mr. Chairman.

10 CHAIRMAN FARMAKIDES: In other words, I just
11 don't want to duplicate your argument now and later on
12 when your motion comes up.

13 So what I am thinking of here is let's still
14 consider the motion of the applicant with respect to these
15 three, and insofar as you are saying now, as I understood
16 you, that you agree with the position of the applicant--

17 MR. VOLLEN: I agree with the position of the
18 applicant that there is no genuine issue of material fact,
19 because his affidavit states that the plant is being
20 redesigned with respect to this contention. I do not
21 dispute that.

22 CHAIRMAN FARMAKIDES: Right.

23 MR. VOLLEN: We dispute that he is entitled to
24 a decision as a matter of law.

25 CHAIRMAN FARMAKIDES: Yes.

1 MR. VOLLEN: We claim that we are entitled to
2 a decision on that subject matter.

3 Now, when I say we do not dispute the facts,
4 we certainly do dispute the facts contained in applicant's
5 Attachment A, but the facts to the extent that they are
6 facts contained in their proposed affidavit, we don't
7 think are admissible by way of supporting their motion.
8 We think they come in by way of admission.

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14-1 TR ad 1 CHAIRMAN FARMAKIDES: Mr. Vollen, I am confused.

2 I thought when you first began your argument you said that
3 here are three contentions where you and the Applicant agreed.
4 And what did you mean by that, sir?

5 MR. VOLLEN: I meant by that that we, the
6 Intervenors and the Applicants agreed that the plant as
7 presently designed and constructed does not meet the AEC
8 criteria.

9 When I said that we do not agree, we are not in
10 a position to agree with the Statement 1 in Attachment A
11 with respect to these contentions, that the Applicant will
12 comply with AEC criteria for analyzing high energy pipe
13 ruptures. The Staff hasn't finished its analysis of that
14 yet, nor have we.

15 Secondly, we are not in a position to agree with
16 Paragraph 2 that compliance with the criteria will assure
17 that all protection and safeguard systems -- let me amend
18 that second statement, Mr. Chairman. Paragraph 2 of the
19 Applicant's statement says that compliance with the criteria
20 will assure that the protection and safeguard systems needed
21 will be available.

22 CHAIRMAN FARMAKIDES: Insofar as these two,
23 then --

24 MR. VOLLEN: If they demonstrate compliance with
25 the criteria, we are not attacking the criteria, but Paragraph

1 1 says they will comply. We don't agree with that, we don't
2 know if that is the fact because we don't know what the
3 attempt to comply is.

4 In response to their motion, Mr. Chairman, if
5 an affidavit which says there will be a redesign of the
6 plant and the plant will be safe is a sufficient basis to
7 grant a motion for summary disposition, then I respectfully
8 submit there is no such thing as a hearing.

9 Because I am sure that the Applicant will be
10 prepared to make an affidavit that the plant will be safe
11 in every respect whatsoever, but we can't rely -- this
12 Board would have no function if such affidavits would
13 summarily dispose of contentions with respect to the public
14 health and safety of a nuclear power plant.

15 CHAIRMAN FARMAKIDES: Mr. Comey, did you want
16 to add the two facts specifically?

17 MR. COMEY: No, sir, Mr. Vollen stated them.

18 CHAIRMAN FARMAKIDES: Do you have any other
19 material issue of fact that you intend to elicit?

20 MR. COMEY: No, sir.

21 CHAIRMAN FARMAKIDES: Of course, you are going
22 to develop this in your own motion for summary disposition?

23 MR. VOLLEN: We are, sir.

24 CHAIRMAN FARMAKIDES: Mr. Applicant?

25 MR. CHURCHILL: Yes, sir, I think the point of

1 contention is Paragraph No. 1 which simply says that
2 Applicant will comply with AEC criteria for steam line
3 breaks. Mr. Vollen keeps saying that we are going to re-
4 design our plant and we will redesign our plant, and he
5 says that he and the Applicants are in agreement that the
6 plant has not been redesigned, but will be redesigned.

7 That is not true. The plant is redesigned,
8 I would refer the Board's attention to Amendment 24 which
9 is our official response to these latest steam line criteria.
10 That contains the new design criteria for the plant that is
11 currently under evaluation right now by the Staff, as we
12 understand it.

13 So we are not just standing here saying we intend
14 some time in the future to design a plant that meets criteria.
15 It is in the FSAR, sir, and that is the main difference
16 between what he is saying and what I am saying and why we are
17 not in agreement.

18 CHAIRMAN FARMAKIDES: Mr. Vollen?

19 MR. VOLLEN: I believe, Mr. Chairman, that the
20 Amendment 24 on the FSAR was the document handed to us
21 yesterday by Mr. Churchill. I know what their testimony says.
22 Their testimony says, and I quote Figure 24, "The Applicants
23 have analyzed the plant in light of the new criteria and are
24 presently making design modifications as called for by the
25 criteria. See FSAR Amendment 24, January 26, 1973." They

1 wrote that, Mr. Chairman, I didn't.

2 CHAIRMAN FARMAKIDES: All right. Anything
3 further? Mr. Seiffert?

4 MR. SEIFFERT: Mr. Chairman, the Regulatory
5 Staff would like to state they believe there is a material
6 fact and issue. The Applicant has submitted an amendment
7 saying he complies with the criteria and the Staff is review-
8 ing that amendment, so we think there is an issue here.

9 CHAIRMAN FARMAKIDES: Anything further?

10 MR. VOLLEN: Mr. Chairman?

11 CHAIRMAN FARMAKIDES: Mr. Vollen.

12 MR. VOLLEN: The Applicant, in connection with
13 all of its motions for summary disposition filed an additional
14 piece of paper called Attachment C, as I understand it. I
15 think what the Applicant is saying is these are additional
16 grounds for the granting of their motion which they think are
17 legal grounds.

18 Did you want response to those at this time, or
19 will that be considered separately?

20 One of the paragraphs in that Attachment C goes
21 to these contentions that we are presently discussing.

22 Mr. Chairman, I am not urging that be considered
23 at this time, I simply wanted to point the Board's attention
24 to it to determine what procedure you would like to employ.

25 CHAIRMAN FARMAKIDES: The Board does not need

1 any further clarification on these contentions as might be
2 reflected in Attachment C.

3 Yes, Mr. Churchill?

4 MR. CHURCHILL: Mr. Chairman, the Attachment C
5 motions really cover, I think maybe five contentions. They
6 differ a little bit from the rest in that they are a motion
7 for summary disposition as a matter of law of an entire
8 contention, whereas everything else is setting forth a series
9 of facts which we are going down through.

10 I don't think I have anything more to add to what
11 is already in there. I would not like the Intervenors to be
12 deprived of an opportunity to answer this, which I would
13 assume they would be entitled to do orally in accordance with
14 our previous agreements.

15 CHAIRMAN FARMAKIDES: Yes, that is their
16 decision to make insofar as I am concerned, the Board
17 doesn't need any further clarification on this unless Mr.
18 Vollen, you propose to do so.

19 MR. VOLLEN: I don't propose to offer clari-
20 fication, I propose to offer opposition.

21 CHAIRMAN FARMAKIDES: You may do so now, if you
22 like.

23 MR. VOLLEN: Of the three things that we have
24 been discussing most recently, this Attachment C goes to only
25 one of them, that is 3.13.2.1, and I think what the Applicants

1 have said here is that the contention should be dismissed
2 because General Design Criteria 20, 1967 and General Design
3 Criteria 22, 1971 have not been violated.

4 I think the Applicants' argument misses the
5 point of the contention. The contention is that where you
6 have one of the two cable trays in a perilous position, it
7 violates not the criteria they are citing here, but the
8 single failure criteria.

9 In effect, what Applicants are saying, if you
10 have two redundant systems, it doesn't make any difference
11 how perilous the risk is to one of these redundant systems
12 because you have another one. We submit that that cannot be
13 the intent of the single failure criteria because the logic
14 of their position would be as long as you have two redundant
15 systems, you need not take any concern for either of them,
16 which could leave you having no redundant systems.

17 So we say with regard to any particular system,
18 whether it is redundant or not, that system must be designed
19 and constructed in such a way so that it, standing alone,
20 is so designed and constructed as to not present any undue
21 risk or failure.

22 MR. SILBERG: Mr. Chairman, may I reply to that
23 for the Applicant?

24 I think Mr. Vollen's argument is quite an
25 interesting one, and I would call the Board's attention to

1 the first sentence in Contention 3.13.2.1, and I will read
2 that:

3 "Reactor protection system circuitry and safe-
4 guard system cable trays in the auxiliary building are
5 located close to a main steam line and do not fulfill the
6 requirements set forth in the AEC's General Design Criteria
7 22 (1971) and the General Design Criteria 20 (1967)."

8 Nowhere in Contention 3.13.2.1 is there any
9 mention of single failure criteria. If Intervenors are
10 now arguing that they should be entitled to rephrase their
11 contentions to submit some new contentions, I would submit
12 to the Board that they are about eight months too late for
13 that.

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1 CHAIRMAN FARMAKIDES: Mr. Vollen, do you want
2 to respond to that?

3 MR. VOLLEN: We think, Mr. Chairman, that implicit
4 within this contention and implicit within the requirement
5 that a plant be designed and manufactured to meet the
6 criteria as a requirement that it meet the single-failure
7 criteria, and that the facts of the contention ought to be
8 permitted to stand.

9 CHAIRMAN FARMAKIDES: Anything further?

10 MR. SILBERG: Yes, I would just like to mention
11 that contentions under even the Commission's old regulations,
12 which these contentions are supposed to be filed under
13 are supposed to be set forth in reasonably specific detail,
14 and I don't think the Board is entitled to look for things
15 which may be implicit or hidden within the general overall
16 framework of 100 contentions to try to define the intent
17 of the intervenors.

18 CHAIRMAN FARMAKIDES: Anything further?

19 Let's continue. 3.13.2.2.

20 MR. VOLLEN: The intervenors oppose both the
21 Applicant's and the Staff's motion for summary disposition
22 of this contention on all of the grounds previously
23 asserted.

24 The Applicants offer the affidavit of Mr.
25 Cooper in support of their position with respect to this

15-a-2 1 contention, and I would say, Mr. Chairman, that the affidavit
2 of Mr. Cooper is perhaps the only affidavit offered by
3 Applicants in support of any of their motions of summary
4 disposition that comes at all reasonably close to meeting
5 the requirement of Section 2.749, that an affidavit shows
6 the competency of the witness to testify to the facts
7 stated in it.

8 Mr. Cooper describes his responsibilities
9 and describes the responsibility that he has had with
10 respect to the Kewaunee Nuclear Power Plant, even though
11 it comes close, and Intervenor's still maintain it is
12 deficient, because it fails to state that he has personal
13 knowledge of the facts in his affidavit.

14 The examples of the inadmissibility of the
15 matters set forth in Mr. Cooper's affidavit include the
16 statement in the middle paragraph of that affidavit which
17 is numbered Page 43, that the trays for safeguard
18 trains (orange and green trays) are everywhere separated
19 by three-foot horizontal and vertical distances except in
20 the cable spreading room (relay room) where such distances
21 are impossible.

22 There is no indication whatsoever of why the
23 conclusion that such distances are impossible in the cable
24 spreading room is a valid conclusion. No statement of facts
25 whatsoever, Mr. Chairman.

15-a-3

1 Similarly, the last sentence of that affidavit
2 concludes by saying that the separation criteria used in
3 the design and the construction of the Kewaunee Plant
4 provides sufficient isolation between the redundant
5 systems.

6 That is a determination for the Board to make
7 whether there is sufficient isolation, not a conclusion to
8 which a witness ought to be permitted to testify.

9 With respect to the Staff's motion for summary
10 disposition in connection with this contention we do not
11 believe that the affidavit offered of Mr. Tondi satisfies
12 the requirement of affirmatively showing that he is competent
13 to testify to the matters set forth therein. He does not
14 state that he has personal knowledge of the matters he is
15 testifying to.

16 MR. COMEY: The Applicant has one paragraph
17 stating a material fact. On this Intervenor disputes this
18 and intend to show through the testimony of Mr. Tondi that
19 the physical separation in the cable spreading room and
20 other areas of the plant is such that there are credible
21 mechanisms that would result in loss of both the redundant
22 channels.

23 Mr. Tondi stated in his testimony that the
24 cable separation criterion for the relay room is not as
25 conservative as would be required in today's construction

15-a-4
1 permit application.

2 With respect to the Staff's statements, in
3 this contention, Paragraph A, it is not in dispute.

4 Paragraph B-1 is not in dispute.

5 Paragraph B-2 is not in dispute.

6 Paragraph B-3 is in dispute. Mr. Tondi will
7 testify that the identification of routing to this sure
8 group separation is not as yet sufficient.

9 With respect to B-4, that is not in dispute.

10 B-5 is not in dispute.

11 B-6 is a future fact on which we can take
12 no position. It is a phrase in the future tenses.

13 B-7 is true as stated. Our position is that it
14 is not a sufficient separation.

15 B-8 ---

16 CHAIRMAN FARMAKIDES: Forgive me, I did not
17 understand your position on 7. It is true as stated?

18 MR. COMEY: It is true as stated.

19 What we are saying with respect to that is
20 that such a separation is not sufficient to protect against
21 a failure.

22 CHAIRMAN FARMAKIDES: But you do admit to the
23 statement made?

24 MR. COMEY: He is stating they are one foot
25 apart and we are saying that is not good enough, and that

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doesn't meet the intent of the criterion.

CHAIRMAN FARMAKIDES: And how are you going to show that, sir?

MR. COMEY: Through Mr. Tondi's testimony.

15b11

CHAIRMAN FARMAKIDES: All right. B-8.

2 MR. COMEY: Right. B-8, this paragraph is
3 true. States factual matter. Again our position is that
4 this is not sufficient protection. We dispute that this
5 physical fact meets the criterion.

6 CHAIRMAN FARMAKIDES: And you are going to
7 show that through whom?

8 MR. COMEY: Mr. Tondi.

9 B-9 is a future fact. It says that the
10 barriers will be protected and we cannot dispute that.

11 CHAIRMAN FARMAKIDES: How about the first
12 sentence?

13 MR. COMEY: I have toured the plant. I have
14 seen no such barriers. I cannot take a position that they
15 may not now have provided that. I have seen no barriers
16 myself.

17 CHAIRMAN FARMAKIDES: Are you going to dispute
18 that then, Mr. Comey?

19 MR. COMEY: I would like to reserve on that
20 until I get a chance to look at their latest submission to
21 the staff on this.

22 CHAIRMAN FARMAKIDES: All right. B-10.

23 MR. COMEY: B-10 again is a future fact. It
24 says they will not be permitted to cross over to another
25 group. We feel that doesn't state a material fact.

15B2

1 And on B-11, the statement of fact is to our
2 knowledge correct. Our position is that 6 inches of air
3 space is not sufficient separation and does not meet the
4 intent of the criterion.

5 CHAIRMAN FARMAKIDES: All right. You are
6 going to show that through whom?

7 MR. COMEY: Through Mr. Tondi.

8 CHAIRMAN FARMAKIDES: Do you have any other
9 material fact that you intend to elicit through cross?

10 MR. COMEY: Well, in cross-examination of Mr.
11 Tondi we will ask him about how it was that he discovered
12 all of these deficiencies and what applicant's position
13 was with respect to changing them, et cetera.

14 CHAIRMAN FARMAKIDES: Mr. Applicant.

15 MR. CHURCHILL: No comment, sir, other than
16 to note that I don't think there is a latest submittal, or
17 at least a late submittal on I believe it was Point 9,
18 was it? The first sentence in 9, where barriers are
19 provided were mutually redundant trays across. There may
20 have been some submittal in something last summer. We
21 can't quite identify it, but this is not a subject of a
22 recent amendment or one in which another amendment is
23 forthcoming. So there really is nothing to wait for and
24 no reason to reserve judgment.

25 CHAIRMAN FARMAKIDES: Okay. Staff.

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1 MR. SEIFFERT: Mr. Chairman, we would just
2 like to renew our objection we stated this morning and
3 yesterday based on the Orvis case. Here is an example
4 where our testimony is identical with the statement which
5 you suggest is not in issue.

6 We suggest as to two items Mr. Comey just
7 mentioned, our B-3 on page 20 and our B-7 on page 21.

8 Mr. Comey says to B-3, "Although our facts
9 show the routing is identified to insure group separation."
10 Mr. Comey will show that the routing is not sufficient.
11 He will show this through cross-examination.

12 Mr. Tondi's testimony has exactly the same
13 words we have stated in our statement of fact and he
14 goes on to say, "This criterion would be acceptable for
15 present PSR applications."

16 Similarly on our No. 7 Mr. Comey said he would
17 show on cross-examination that wasn't enough.

18 Mr. Tondi stated again, "This criterion would
19 be acceptable for present PSR applications."

20 Therefore, Mr. Chairman, Mr. Comey has the
21 mere hope of contradicting Mr. McCarthy's testimony.

22 We suggest under the Orvis case doctrine that
23 would not be sufficient to defeat our motion for summary
24 judgment on this point.

25 MR. COMEY: Mr. Chairman, in conversations with

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1 Mr. Tondi I have discussed these points with him. M r.
2 Tondi will testify as to what I said.

3 CHAIRMAN FARMAKIDES: That is more than a
4 hope, Mr. Seiffert. That is a statement.

5 MR. SEIFFERT: Pardon me?

6 CHAIRMAN FARMAKIDES: That is more than a
7 hope, sir, as to what Mr. Tondi is going to testify.
8 That is a statement from the intervenors as to what he
9 will testify.

10 MR. RENFROW: The regulatory staff will accept
11 that if that is Mr. Comey's statement, that he talked to
12 Mr. Tondi and Mr. Tondi told him that.

13 CHAIRMAN FARMAKIDES: Accept or except?

14 MR. RENFROW: Accept.

15 CHAIRMAN FARMAKIDES: I'm sorry, Mr. Renfrow,
16 I didn't hear it properly.

17 It's difficult hearing in here, and frankly
18 I think yesterday someone said that we should raise our
19 voices, and I can see people in the back of the room
20 straining to hear. Okay, fine.

21 Anything further, Mr. Churchill?

22 MR. CHURCHILL: No, sir.
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CHAIRMAN FARMAKIDES: All right, 3.14.2.1.

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MR. VOLLEN: The Intervenors would oppose

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the Applicant's and the Staff's motion for summary

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disposition in connection with this contention, Mr. Chairman,

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for all of the reasons previously stated.

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I have previously stated our objection to the

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competency of both the Cooper affidavit offered by Applicant

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and the Crocker affidavit offered by the Staff. The

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examples of the inadmissability of material in the Applicant's

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affidavit include the first sentence, which is totally

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reliant on the FSAR, a document not in evidence and

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therefore not properly considered by the Board in connection

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with motions for summary disposition.

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The third sentence of that one paragraph

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affidavit states that, "Applicants have conservatively

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factored adequate margins into their calculations."

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That is a conclusion without foundation, without any

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factual basis for the Board to determine whether it is a

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reasonable or appropriate conclusion to reach.

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The Crocker affidavit offered by the Staff in

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connection with their motion for summary disposition of

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this contention states, and I quote from Page 3, "The

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overall conservatism of the estimated loads is a matter

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of judgement at this time, since the loads are based upon

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motor power requirements taken from manufacturers' test data

16 a-2 1 and handbooks with efficiency factors applied." He then
2 goes on and states in his judgement, "The Applicant's
3 estimates are realistic, but as noted previously, the
4 actual loads will be determined by test during the
5 pre-operational testing programs so that prior to licensing,
6 we will have verification of the adequacy of the machines."
7 I take it the "we" he is referring to is the Regulatory
8 Staff.

9 In our view, Mr. Chairman, it is the Board
10 that must have verification of the adequacy of the machines
11 and reach the conclusions that they are adequate.
12 We think this contention must be litigated.

13 CHAIRMAN FARMAKIDES: Mr. Comey?

14 MR. COMEY: Applicant has a two-sentence
15 paragraph on this contention. The first sentence of that
16 paragraph states that: "The 30 minute rating of each
17 diesel generator is 3050 kilowatts." That statement is
18 true. However, it is inapplicable.

19 The second sentence is that the maximum automatic
20 sequence loading for the first 30 minutes is 2737 kilowatts.
21 We intend to show on cross examination of Mr. Cooper that
22 the load is greater than that.

23 CHAIRMAN FARMAKIDES: Significantly greater?

24 MR. COMEY: Significantly greater; as a
25 matter of fact, when safety guide No. 9 came out and

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1 became apparent that these diesel generators would not be
2 able to take the load that the figures of the Applicant would
3 change the amendment.

4 Now with respect to the Staff, contentions
5 3.14.2.1, statement A is not in dispute, statement B is
6 not in dispute, statement C is not in dispute, statement D
7 is in dispute since that is identical with the statement
8 I just discussed in the Applicant's statement, I won't
9 repeat myself. And Mr. Vollen has already discussed --

10 CHAIRMAN FARMAKIDES: Excuse me, Mr. Comey,
11 the Staff has a different point in the sentence than the
12 Applicant has.

13 MR. COMEY: The maximum automatic loading on
14 each machine is equivalent to 2737 kw.

15 CHAIRMAN FARMAKIDES: Whereas the Applicant was
16 talking about the maximum automatic sequence loading for
17 the first 30 minutes.

18 MR. COMEY: The same thing, it's the same thing.
19 They are talking about the same thing.

20 CHAIRMAN FARMAKIDES: All right, you are going
21 to show it through Mr. Cooper?

22 MR. COMEY: Yes, sir. And with respect to
23 E, that essentially is what Mr. Vollen pointed out by
24 Mr. Crocker's testimony, it's a matter of judgement at this
25 time. We dispute that the load figures are conservative.

16-a-4

1 MR. RENFROW: Our contention says conservative.
2 I think we better go back and read the two sentences
3 again, Mr. Comey, in E.

4 MR. COMEY: In E?

5 I am sorry, Mr. Renfrow, I don't --

6 CHAIRMAN FARMAKIDES: Let's not continue this.
7 What is your point, Mr. Renfrow?

8 MR. RENFROW: Essentially two facts are set
9 out, Mr. Chairman. No. 1 that the load figures signed
10 above are taken from manufacturers' test data with efficiency
11 factors applied.

12 Now Mr. Vollen has stated as a matter of law
13 that the Staff cannot then state and get by with the
14 contention that the pre-op testing proceduzes will assure
15 that these are not exceeded, that the Board will find that
16 they are not exceeded based on facts. I would submit to
17 the Chairman that under the Atomic Energy Commission
18 notice of hearing in this case and rules of practice
19 that is not quite the law. This Board may, indeed,
20 find that this plant can operate provided only that the
21 pre-operational test program insures that the load factors
22 here are correct, and that no license can issue until that
23 is done. However, I do submit to this Board that this Board
24 could do that, it's within its jurisdiction and it does not
25 have to wait until the plant has all the pre-op test programs

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1 done on it before it can make a decision.

2 The Staff has set forth the facts as to where
3 the load figures -- where they are from, what action we
4 will take. These are stated facts. As I understand it,
5 maybe that is perhaps the way the Intervenor wish to leave
6 it, that the assurance by pre-op testing as a matter of law
7 cannot be taken away from the Board, however, the Staff
8 strongly disagrees with that statement as it was stated
9 to the Board.

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1 CHAIRMAN FARMAKIDES: We will ask Mr. Vollen
2 first to respond, then, Mr. Comey, you can clarify the factual
3 issue.

4 MR. VOLLEN: I think Mr. Renfrow took one clause
5 out of Mr. Crocker's affidavit that I read, but did not take
6 the preceding clause in which Mr. Crocker had said that,
7 "In my judgment," referring to Mr. Crocker's, "the Applicants'
8 estimates are realistic."

9 That judgment, we submit, ought not to be made by
10 Mr. Crocker in the final analysis, but ought to be made by this
11 Board.

12 Until the Board determines whether those
13 estimates are realistic, it seems to me that the Board
14 cannot order or permit the issuance of a license depending
15 upon the Staff verifying certain things during pre-operational
16 testing.

17 CHAIRMAN FARMAKIDES: Mr. Comey, you had some
18 additional material that you wanted to state?

19 MR. COMEY: Well, Statement E does not state
20 what the Regulatory Staff will do if, in fact, pre-op
21 testing shows that the maximum loadings are well over the
22 capability of the machines.

23 CHAIRMAN FARMAKIDES: But, Mr. Comey, look,
24 the Regulatory Staff has made two statements and the question
25 here is do you admit or deny them? If you admit them, all

16B-2

1 right, if you deny them, why?

2 MR. COMEY: You see, I don't understand what
3 they mean by, "Will assure the maximum loadings are within
4 the capability of the machines."

5 CHAIRMAN FARMAKIDES: Could you clarify that,
6 Mr. Seiffert or Mr. Renfrow?

7 MR. RENFROW: Certainly. The pre-operational
8 testing program will get these figures, the maximum loads
9 will be determined, we will be able to know exactly how many
10 kilowatts. As the first sentence says, these limits are
11 based on motor power requirements taken from manufacturers'
12 test data and handbooks with efficiency factors applied.
13 That is what we have today before this plant will be allowed
14 to operate in the pre-operational testing program, they are
15 going to have to kick them on and measure it exactly.

16 Those are two statements of fact, neither of which
17 can be admitted or denied.

18 I am sure Mr. Vollen would not let me take Mr.
19 Comey's statement, that would be a conclusion by the Staff.
20 These happen to be two facts that we say are they or are they
21 not material facts in issue. That's all we are stating in
22 this document.

23 CHAIRMAN FARMAKIDES: Did you understand that,
24 Mr. Comey?

25 MR. COMEY: Well, I am still troubled. Do these

16B-3 1 facts mean anything? I mean, what is the Staff going to do
2 if the loadings are greater? I have got to know that, I mean,
3 that is the essence of the dispute.

4 Are they going to come up with a new criterion
5 to cover a situation like this so this plant will not have to
6 change any of the loads?

7 CHAIRMAN FARMAKIDES: Okay. Anything further?

8 The next one, 3.17.1.

9 MR. VOLLEN: The Intervenors oppose the
10 Applicant's motion for summary disposition of the contention
11 on all of the grounds previously stated.

12 The Applicant offers apparently a joint affidavit
13 as -- in support of its motion as to this contention without
14 getting to the question, because we don't have to reach it,
15 of whether two people can testify whether a panel of some
16 type is a permitted procedure. I don't think an affidavit
17 which is not attributable to any person, any one person can
18 be said to meet the requirements of 2.749 that an affidavit
19 affirmatively show that the Affiant, singular, is competent
20 to testify to the matters set forth therein.

21 Moreover, even if such a joint affidavit were
22 permitted, neither Mr. McFarlane or Mr. Cermak in their
23 affidavits state that they have any personal knowledge about
24 the Kewaunee plant or any personal knowledge of the matters
25 set forth in their joint affidavit.

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1 The affidavit, the examples of the inadmissible
2 statements in the affidavit include the whole first paragraph,
3 which states but does not make part of the record for this
4 evidentiary hearing or in support of this motion for summary
5 disposition, that an analysis evaluating effects of fuel
6 densification on the Kewaunee plant has been done.

7 The analysis shows that the Kewaunee nuclear
8 power plant can be safely operated at a 100 percent rate of
9 power. If that is a sufficient evidentiary showing to allow
10 this Board to grant summary disposition in favor of the
11 Applicant, then it seems to me that the Applicant could make
12 such a conclusory statement with regard to any contention,
13 and avoid a hearing.

14 CHAIRMAN FARMAKIDES: Mr. Comey?

15 MR. COMEY: With respect to Applicant's Statement
16 No. 1, relative to this contention, this is in dispute. We
17 do believe that the methods set forth in Section 4 of the
18 Technical Report on Densification of Light Water Reactors is
19 not a conservative method of doing this for densification of
20 fuel.

21 We think Mr. Crutchfield will testify to that,
22 and we may have a further witness on that, a former Westing-
23 house employee named Mr. Forshier. Only last night were we
24 able to discuss this, it's not clear at this time whether or
25 not he will testify on this matter, but we will let the Board

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1 know as soon as that has been pinned down.

2 CHAIRMAN FARMAKIDES: Is this one of the
3 witnesses of the Applicant?

4 MR. COMEY: No, sir.

5 CHAIRMAN FARMAKIDES: Witness of the Staff?

6 MR. COMEY: No, he is a Westinghouse man.

7 MR. KEANE: What is his name?

8 MR. COMEY: Forshier. I think he just left
9 Westinghouse, I don't mean just a minute ago.

10 CHAIRMAN FARMAKIDES: Okay. How about Paragraph 2,
11 Mr. Comey?

12 MR. COMEY: Mr. Chairman, I cannot judge whether
13 or not Applicant's analyses submitted to the AEC under date
14 of January 16, 1973 do, in fact, use a model consistent with
15 those guidelines. Westinghouse offered those to us with the
16 claim of proprietary -- well, the Applicant -- I have not
17 reviewed those documents. As a matter of fact, I do not
18 believe we have those documents in our possession.

19 MR. VOLLEN: Well, I am not sure if we do or
20 we don't, Mr. Chairman. I believe that the analysis referred
21 to in this Paragraph 2 of the Applicant is the subject matter
22 of some correspondence between Mr. Charnoff, one of the
23 attorneys for the Applicant, and myself.

24 I think indeed it is the subject matter of one of
25 the documents that Mr. Churchill mentioned yesterday. Perhaps

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1 before I go on, I can ask Mr. Churchill whether that is right
2 before we discuss this matter any further.

3 Is the analysis referred to in Paragraph 2 the
4 document that Mr. Charnoff and I have -- one of the documents
5 we have corresponded about and you referred to yesterday?

6 MR. CHURCHILL: It is.

7 MR. VOLLEN: It is, okay. Well, what happened,
8 Mr. Chairman, is that Mr. Charnoff sent by mail to me some
9 documents, and there was some confusion as to what those docu-
10 ments were supposed to be, I think the same confusion that
11 Mr. Farmakides, you had when you had two documents marked
12 "Point Beach." There was some correspondence back and forth;
13 the upshot of it was, I think Mr. Charnoff has now explained
14 to me what the documents are supposed to be.

15 I say I think that because Mr. Churchill delivered
16 to me yesterday morning a letter covering this subject, and
17 quite frankly I had a chance only to glance at it since that
18 time.

19 As I say, I think I now understand what document
20 it is the Applicants are submitting to us. They submitted
21 them to us saying they were proprietary. I said that in our
22 view, these documents could not, because of their subject
23 matter and the public health and safety issue with which they
24 deal, could not and should not be considered proprietary, but
25 that I and Mr. Coney would not look at them until such time as

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1 the Applicant had an opportunity to present to the Board a
2 motion for a protective order, and the ruling as to whether
3 or not these documents are entitled to proprietary treatment.

4 That, Mr. Chairman, continues to be the state of
5 the matter.

6 CHAIRMAN FARMAKIDES: Okay, thank you. Mr.
7 Comey, do you have any other material issue fact that you
8 intend to solicit during the cross?

9 MR. COMEY: Yes, sir. Our contention goes to
10 the state of the knowledge of fuel densification. We intend
11 to explore all of the matters set forth in the contention,
12 including such matters as why Westinghouse did not inform the
13 Commission of the Beznau problem for over nine months in which
14 knowledge of fuel densification known to Westinghouse was not
15 revealed to the Atomic Energy Commission, so that the Staff
16 was unable to begin any analysis of fuel densification problems
17 until it cropped up on an American reactor.

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1 MR. CHURCHILL: Mr. Chairman, please.

2 CHAIRMAN FARMAKIDES: Mr. Churchill.

3 MR. CHURCHILL: I have to point this out as
4 something that is clearly outside the scope of his
5 contention.

6 He mentioned something about this, and that
7 isn't even the subject of anything that could be remotely
8 connected with this hearing.

9 The statement here is that the staff's methods
10 provide a conservative method for evaluating the effects
11 of fuel densification. That is a statement we have made.

12 He is saying that he is going to somehow show
13 that it doesn't.

14 I would simply refer the Board to his con-
15 tentions where he quotes that report all over the place and
16 says that we should in fact be making analyses in accordance
17 with it!

18 Most important, I would just like to remind
19 everybody again, without having to repeat it for each
20 contention, that for number one, all he has said is that
21 he will turn that around and hope to make the applicant's
22 own witnesses contradict what they have said. That's all
23 he has done. It is not sufficient.

24 With respect to the proprietary information,
25 I am not sure whether that question is up yet before the

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1 Board or not, but it does deserve some comment.

2 CHAIRMAN FARMAKIDES: That question is not for
3 the Board, sir.

4 MR. CHURCHILL: I want to make sure that this
5 is not going to delay the hearing in any way, because
6 they refuse to look at something that is proprietary, and
7 in so doing I want to make sure that it is well understood
8 that there is nothing in the regulations that require a
9 protective order from the Board on a proprietary document
10 before they, the intervenors, have to look at a document
11 which we offer to them under a protective agreement which
12 they have signed.

13 Now, I can go into that in more detail if you
14 want. But I do not want this to become a stumbling block
15 in the hearing later on when three weeks from now they
16 cannot proceed because they say they have not read what we
17 have submitted as part of our application.

18 MR. VOLLEN: Is there anything in the
19 Commission's regulations insofar as I am aware that require
20 parties to a proceeding to accept documents and to agree
21 to treat those documents in any kind of proprietary
22 manner.

23 Promptly upon receipt of them I notified I
24 think the next day or perhaps the same day by return mail
25 counsel that we did not intend to look at them, because

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1 we did not believe they were proprietary or could be
2 treated proprietarily, and they ought to if they so
3 desire to apply to the Board for an order, and to my
4 knowledge they have not done so.

5 CHAIRMAN FARMAKIDES: Did you have anything,
6 Mr. Comey?

7 MR. COMEY: Yes. I would like to point out
8 that Mr. Churchill has corrected my comments about the
9 Beznau problem, that they do not go to Paragraph 2 to this
10 statements of material fact in issue, but they do go to
11 the very first two extensions of my contention. The
12 applicant and the staff do not have enough
13 information on fuel densification to justify licensing the
14 Kewaunee plant at the present. No license should be issued
15 until the mechanism of densification is adequately under-
16 stood and parametric studies have been performed, et
17 cetera, and one of the things that I wish to prove through
18 cross of Mr. Crutchfield and Mr. Forshier is that one of
19 the reasons the staff does not have an adequate understand-
20 ing of this is that Westinghouse in fact would have this
21 information.

22 Now, on the subject of proprietary, I perhaps
23 can assist the Board by pointing out some facts with
24 respect to--

25 CHAIRMAN FARMAKIDES: I think Mr. Vollen has

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1 discussed that.

2 Okay, fine, anything more?

3 MR. CHURCHILL: Yes.

4 CHAIRMAN FARMAKIDES: Mr. Churchill.

5 MR. CHURCHILL: A point of clarification.

6 I'm sorry, I did not understand who Mr. Crutchfield was.

7 Is he a staff witness?

8 MR. VOLLEN: He is a staff witness.

9 MR. CRUTCHFIELD: And Mr. Forshier?

10 CHAIRMAN FARMAKIDES: He is with Westinghouse

11 He was recently with Westinghouse, I understand.

12 MR. VOLLEN: He may be added to our witness

13 list. We will notify you as soon as we--

14 MR. CRUTCHFIELD: He may be added? You have
15 not informed us of the staff.

16 CHAIRMAN FARMAKIDES: You will later have an
17 opportunity to object to that, sir. Let's go to 3.18.

18 MR. VOLLEN: Intervenors oppose the granting
19 of both the applicant's and the staff's motion for
20 summary disposition with respect to this contention for
21 all of the reasons previously given, Mr. Chairman.

22 The affidavit of Mr. Geesler offered by the
23 applicant does not affirmatively show that he is competent
24 to testify to the matters set forth in that affidavit.

25 As examples of the inadmissibility of the

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1 matters set forth in the affidavit offered by applicant
2 I believe that virtually every sentence in that affidavit
3 amounts to either a statement of a legal conclusion as to
4 what the general design criteria provide or require or a
5 statement as to what is in the technical specifications,
6 none of which are in evidence or properly before this
7 Board in connection with the motions for summary disposition

8 Similarly the affidavit offered by the staff
9 contains inadmissible material.

10 For example, the paraphrasing of material
11 supposedly in the technical specifications.

12 MR. COMEY: If the applicant has one paragraph
13 stating that the relevant section of the plant's
14 technical specifications comply with the design criteria
15 in 4i. Testing of an alternate component required by
16 Section 3.3 assures that the component will properly per-
17 form if required to do so.

18 With regard to the first sentence of the
19 statement it is true. We would dispute that the second is
20 true.

21 We will show this through testimony of Mr.
22 Tondi, and we will also show that the single failure
23 definition is not complied with by this Section 3.3 of the
24 technical specifications.

25 CHAIRMAN FARMAKIDES: Is that all, sir?

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MR. COMEY: That's all, yes.

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CHAIRMAN FARMAKIDES: How about the staff?

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Page 23.

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MR. COMEY: A is not in dispute.

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B. is not in dispute.

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C is not in dispute.

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F is in dispute.

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CHAIRMAN FARMAKIDES: What about D?

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MR. COMEY: I'm sorry. D is in dispute. I

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wrote F next to it.

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CHAIRMAN FARMAKIDES: We won't ask you what

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that means.

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All right, what are you going to show on D?

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17-b-1:ps 1 MR. COMEY: When one safeguard train is down
2 one must assume that the single failure criterion applies
3 to the other one, and, therefore, if a single failure
4 occurs in the supposedly operative train, then you have
5 absolutely no safeguard equipment.

6 CHAIRMAN FARMAKIDES: You are going to show
7 this through whom, sir?

8 MR. COMEY: Mr. Tondi.

9 CHAIRMAN FARMAKIDES: Is there any other
10 material issue of facts, sir, that you would intend to
11 elicit during cross examination?

12 MR. COMEY: Yes. We will elicit information
13 about the reliability studies having to do with permitting
14 this amount of downtime on equipment.

15 CHAIRMAN FARMAKIDES: Okay. Thank you.
16 Mr. Applicant?

17 MR. CHURCHILL: I just want to remind the
18 Board and the Intervenors this is also the subject of a
19 Part C motion and our motion for summary dismissal as a
20 matter of law. This is contained in Page C-2 in
21 Attachment C of our motion. I think that everything is
22 there. I don't have to reiterate this orally.

23 However, I would like to point out to the
24 extent that it relates to the argument Mr. Comey just made
25 we are talking about general design criterion 21, which

17-b-3 1 you the Intervenor wanted Mr. Tondi as a witness I identified
2 the contentions about which we would want him to testify,
3 and that 3.18 was one of them.

4 MR. RENFROW: That may be an error, because it
5 was my understanding from my notes the two that you asked
6 for, and then you said three the other day, and probably
7 I should have checked with you, but the two that you
8 requested were the two Mr. Tondi has testified to, single
9 failure of the boric acid tank, which I believe was 3.3.6.3,
10 and the second was the cable trays.

11 CHAIRMAN FARMAKIDES: You two can figure that
12 out later between you. Anything more on 3.18?

13 MR. VOLLEN: Well, I would just like to respond
14 very briefly to Mr. Churchill's attachment C and point out
15 that the contention does claim that it would be a violation
16 of the single-failure criterion in the event that an
17 accident happened while one of these pieces of equipment
18 was out for maintenance or repair.

19 CHAIRMAN FARMAKIDES: Okay.

20 MR. COMEY: Mr. Chairman, there is one other
21 material fact that we will elicit from Mr. Tondi, and that
22 is that the Regulatory Staff does not have at the present
23 time any criteria for writing technical specifications,
24 that they have been under development for a long, long time,
25 and that there is serious disagreement within the Commission's

17-b-4 1 Regulatory Staff on certain items more specifically this.

2 CHAIRMAN FARMAKIDES: How does that relate to
3 your contention, sir?

4 MR. COMEY: That this is a technical specifica-
5 tion, 3.3 for this plant and, therefore, one of the reasons
6 that it is difficult to judge this particular permissive
7 operation is that there are no Commission criteria for
8 technical specifications to judge it by. It was supposed
9 to have been done several years ago and they have not been
10 completed.

11 In other words, Mr. Renfrow argues that it is
12 the general design criteria that covers this. We take a
13 different view.

14 CHAIRMAN FARMAKIDES: Anything else on
15 3.1.8?

16 MR. CHURCHILL: No, sir.

17 CHAIRMAN FARMAKIDES: 4.5.2. Mr. Vollen.

18 MR. VOLLEN: The Intervenors oppose the
19 Applicant's motion for summary disposition of this contention
20 on all the grounds previously stated, Mr. Chairman.

21 The affidavit offered by Applicants is that
22 of Mr. Ramsset, and that affidavit does not affirmatively
23 show that he is competent to testify to the matters set
24 forth in his affidavit.

25 The closest it comes is describing his background

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1 as including from 1968 the fact that apparently up to and
2 including the present time quality assurance supervisor
3 of the Kewaunee Nuclear Power Plant.

4 The fact that somebody has a title does not
5 make them qualified to testify with respect to matters.

6 There is no indication here of what he has
7 done, of what his duties as quality assurance supervisor
8 include, or that he has versatile knowledge of the facts
9 supposedly set forth in his affidavit.

10 The examples of the inadmissible material in
11 his affidavit with respect to contention 4.5.2 include the
12 first sentence, which is a conclusory observation that the
13 Kewaunee Quality Assurance Manual has been prepared to meet
14 the intent of regulations in Appendix D, 10-C of Part R50.

15 It goes on and lists other very conclusory
16 kinds of things without any facts, without any foundation
17 for that.

18 The statement of material facts contained in
19 Applicant's Attachment A, which they claim is a genuine
20 issue, a material fact as to which there is no genuine
21 issue appears to me to be just what Mr. Churchill has been
22 accusing Interveners of doing all day.

23 It seems to me he has taken the contention,
24 turned it around and put a negative in front of it and said
25 that's the whole answer to the whole ball game. I don't think

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1 he can have it both ways.

2 CHAIRMAN FARMKIDES: Anything further?

3 MR. COMEY: No.

4 CHAIRMAN FARMKIDES: Mr. Comey, do you
5 intend to elicit any additional material issue of fact
6 through your cross?

7 MR. COMEY: Yes, sir. I think on all of these
8 we have already identified to the Board the material facts.

9 CHAIRMAN FARMKIDES: With respect to 4.5.2?

10 MR. COMEY: Yes. We earlier indicated which
11 of those were. We gave citations.

12 CHAIRMAN FARMKIDES: Mr. Churchill?

13 MR. CHURCHILL: To my knowledge I see no
14 correspondence or nothing on the record where intervenors
15 have indicated anything to the Board about a basis of
16 facts or anything relating to 4.5.2.

17 CHAIRMAN FARMKIDES: I agree, Mr. Churchill.
18 Mr. Vollen, the Board agrees with Mr. Churchill's
19 observation here.

20 MR. VOLLEN: May I have just a moment,
21 Mr. Chairman?

22 CHAIRMAN FARMKIDES: Yes.

23 Let's take a 10-minute recess.
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1 CHAIRMAN FARMAKIDES: Let's proceed, Mr. Vollen.

2 MR. VOLLEN: The transcript of the prehearing
3 conference held in Washington, D.C. on January 10, 1973
4 reflects that at that time we were not prepared to identify
5 specific documents in connection with contention 4.5.2.
6 I told counsel for the other parties that after we re-
7 turned to Chicago and had an opportunity to review the
8 documents, I would notify them of the documents we were
9 relying on in connection with that contention. As you
10 may recall, Mr. Chairman, in connection with other
11 contingents in the 4-point series, Mr. Comey orally on the
12 record referred to particular documents.

13 My notes reflect that on January 29, 1973 in
14 a telephone conversation with Mr. Renfrow, I gave him the
15 numbers of three documents in connection with that
16 contention, being documents A-2244, A-2227 and A-2264.

17 My notes further reflect that I requested Mr.
18 Renfrow to pass those numbers on to Mr. Churchill, and that
19 he agreed to do so.

20 CHAIRMAN FARMAKIDES: Now how are you going to
21 use those documents, Mr. Vollen?

22 MR. VOLLEN: In the same way, Mr. Chairman, we
23 intend to use the other documents identified by Mr. Comey
24 in connection with the other contingents in the 4-point
25 series.

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1 CHAIRMAN FARMAKIDES: How are you going to
2 produce the documents?

3 MR. VOLLEN: Well, I don't know, sir, they
4 were going to introduce the documents themselves into
5 evidence. We may use them to cross-examine the witness
6 offered by the applicant or the staff on that subject.

7 CHAIRMAN FARMAKIDES: Any comment, Mr.
8 Churchill?

9 MR. CHURCHILL: Yes, sir. I think we did get
10 this straightened out over the recess. The documents --
11 I think that is not a sufficient answer just to say that
12 he plans to use documents which he has distributed to the
13 parties. I would like to know what the material facts are
14 that he wishes to raise, just exchanging the documents, I
15 can't see it.

16 The Board doesn't have these documents, sir,
17 and the Board doesn't know these facts. You are in the
18 dark, and I think I, with the documents, am in the dark.

19 I would like to, going on to a different
20 subject, Mr. Vollen stated about how I can't have it both
21 ways and all I am doing is stating the negative of his
22 contentions. Well, sir, that is what this hearing is
23 all about. He is making the contention, we produce
24 testimony in effect denying the contention. That testimony
25 forms the basis of our -- it forms the support for our

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1 statement that what he is alleging did not in fact happen.
2 That is what we have today, that is what we are trying to
3 do.

4 We then make our motion and he has to come
5 forward with an affirmative motion of material fact,
6 which he has to bring in.

7 MR. RENFROW: Let me confirm that Mr. Vollen
8 did call me on the 29th of January on the documents.
9 There may be some misunderstanding as to another conten-
10 tion we will get to as to whether I properly conveyed
11 that contention to Mr. Churchill. But as to this
12 particular contention, I did get document numbers and
13 relay the information to Mr. Churchill on the 29th of
14 January.

15 MR. CHURCHILL: That is correct.

16 MR. RENFROW: However, as with Mr. Churchill
17 and with the QA contentions themselves, at the time of the
18 prehearing conference, Mr. Comey did in fact identify
19 certain documents for us he used as a basis at that time
20 to meet the burden that was then upon him to provide the
21 parties with the specificity and explanatory basis to
22 begin his participation in the hearing. Well we are far
23 past that stage now, Mr. Chairman, we are now at the stage
24 that we are speaking of facts that are in issue.

25 I do not think, as does Mr. Churchill, that

1 the documents themselves and the reference to them is
2 enough for him to overcome the burden under 2.749.

3 CHAIRMAN FARMAKIDES: Mr. Vollen, I agree this
4 was one of the problems that the Board had with your
5 response to our Paragraph 11, Point A. And we knew, of
6 course, that you had the documents and we would like to be
7 advised what are the material facts that you intend to
8 elicit using those documents through, I imagine cross-
9 examination?

10 MR. VOLLEN: We cannot do that right now, Mr.
11 Chairman, with respect to those documents. Mr. Comey
12 informs me that we do have those documents in Kewaunee
13 with us, they are located in boxes along with many other
14 documents we have to dig those out, we would then be
15 prepared to answer your question.

16 CHAIRMAN FARMAKIDES: All right, you might do
17 so tomorrow morning, then, with respect to all the 4
18 series that you had identified as documents.

19 Let's go to 4.6.1.

20 MR. VOLLEN: The intervenors oppose the
21 applicant's motion for summary disposition of this
22 contingent for all of the reasons previously asserted.
23 The examples of the inadmissibility of the affidavit offered
24 by applicant to sustain their obligation, if they are
25 entitled to summary dispositions to demonstrate there is

1 no genuine issue as to any material fact by admissible
2 evidence, include the opening paragraph which describes a
3 form but does not present the form to the Board
4 for its review or consideration.

5 So therefore, it seems to me a clear violation
6 of the best evidence rule. If they are saying this form
7 meets the concern they are expressing, they ought to
8 present the form to the Board.

9 CHAIRMAN FARMAKIDES: Mr. Comey?

10 MR. VOLLEN: I thought I had understood you
11 to say, Mr. Chairman, that you wanted us to describe the
12 facts that you think will be elicited based on the docu-
13 ments we have previously referred to tomorrow.

14 CHAIRMAN FARMAKIDES: Yes.

15 MR. VOLLEN: In connection with all of the
16 4-point contingents.

17 CHAIRMAN FARMAKIDES: Yes.

18 MR. VOLLEN: That being true, I would suggest
19 Mr. Comey could more appropriately respond tomorrow.

20 CHAIRMAN FARMAKIDES: Fine. Mr. Churchill, do
21 you want to hold this over until tomorrow?

22 MR. CHURCHILL: Yes, sir.

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18 B-1 TRad 1

CHAIRMAN FARMAKIDES: 4.7.2.

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MR. VOLLEN: May I suggest, Mr. Chairman, in light of your wanting to complete the four point contention series tomorrow, that we --

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CHAIRMAN FARMAKIDES: How many more in this series would you have documents on?

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MR. VOLLEN: I think all of them, with the exception, excuse me, sir, of 4.19.1.

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CHAIRMAN FARMAKIDES: Let's take that one, 4.19.1. In other words, we will commence tomorrow morning with the four point series, except for 4.19.1.

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MR. VOLLEN: The Intervenor's oppose the Applicants' motion for summary disposition of Contention 4.19.1. The affidavit offered by Applicant in support of that contention amounts, it seems to me, to a legal argument on the contention and indeed, the Applicant has made such a legal argument in its Attachment C. The affidavit, therefore, does not constitute admissible evidence in support of the motion.

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With respect to Applicants' legal argument that the 1971 General Design Criteria do not apply to the Kewaunee plant, we would briefly respond to that, that the Kewaunee plant FSAR was submitted less than a month before the publication of the General Design Criteria and the introduction to those criteria does not, as we read them, preclude the

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1 application of those criteria to the Kewaunee plant, or a
2 plant in its posture at the time they were promulgated.

3 Indeed, we think there may well be an admission
4 to that effect by reason of the Applicants' statement that the
5 Regulatory Staff has stated in Section 3.1 of the safety
6 evaluation that the technical review did assist the plant
7 against the 1971 General Design Criteria. Now, in effect,
8 and we are satisfied that the plant design generally conforms
9 to the intent of these criteria, we see no reason ---

10 CHAIRMAN FARMAKIDES: Where are you, Mr. Vollen?

11 MR. VOLLEN: I am reading from Page 59, Mr.
12 Chairman, of the Applicants' proposed testimony.

13 CHAIRMAN FARMAKIDES: There seems to be a
14 contradiction between C-5 and Page 59, as to what the
15 Regulatory Staff did, in fact, state.

16 MR. CHURCHILL: We are checking that right now,
17 sir. We have a copy of the safety analysis report -- the
18 safety evaluation. The word "general" is correct, it should
19 be inserted before the word "conforms."

20 MR. VOLLEN: Mr. Chairman, I am confused, what
21 was the C-5 you referred to?

22 CHAIRMAN FARMAKIDES: His Appendix C, Mr. Vollen,
23 Page 5. That is his legal argument.

24 MR. VOLLEN: Yes, I find it now. I was reading
25 from ---

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1 CHAIRMAN FARMAKIDES: All right, so the word
2 "general" should be inserted immediately before "conforms"
3 at that point, and that is on Page C-5, the penultimate line
4 in the first full complete paragraph.

5 All right.

6 MR. VOLLEN: And so, Mr. Chairman, the Inter-
7 venors see no reason in law or in fact why the Kewaunee
8 plant should not conform to the 1971 General Design Criteria.

9 CHAIRMAN FARMAKIDES: Do you intend to elicit,
10 sir, as to a material issue of fact through cross?

11 MR. VOLLEN: No, Mr. Chairman, I think the
12 status of the record is that the plant does not conform
13 except generally to the intent, and that being so, I think the
14 issue is -- the legality would be as to whether or not it is
15 required to conform.

16 CHAIRMAN FARMAKIDES: Based on what you suggest
17 is an admission?

18 MR. VOLLEN: Yes, sir.

19 CHAIRMAN FARMAKIDES: I assume the Applicant
20 is going to argue it's not an admission.

21 MR. VOLLEN: I assume the Applicant is going to
22 argue that -- well, I believe the Applicant has argued that
23 as a matter of law this plant need not conform to these
24 criteria.

25 CHAIRMAN FARMAKIDES: All right, let's hear the

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1 Applicant. Mr. Churchill?

2 MR. CHURCHILL: Yes, sir. Contention 4.19.1,
3 as I see it, really sets forth two points. The first point
4 which starts at the first of the contention says, "The plant
5 has not been constructed in compliance with design criteria
6 promulgated by the AEC." However, the statement here, and
7 again I guess I am talking about both of my arguments here
8 together because they fit best that way, our statement of
9 fact on Page A-15 says that, "The plant has indeed been
10 designed and constructed in accordance with design criteria
11 which have been accepted and approved by the Atomic Energy
12 Commission."

13 The reason for that is in Paragraph 2-C of the
14 construction permit, which is in my argument but which I will
15 read:

16 "This construction permit authorizes the Applicant
17 to construct the facility described in the application and the
18 hearing record in accordance with the principal architectural
19 and engineering criteria set forth therein."

20 This is signed by Peter A Morris, Division of
21 Reactor Licensing. This construction permit is dated August
22 6, 1968.

23 That clearly constitutes a set of design criteria
24 which has been approved by the AEC that takes care of their
25 first point.

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1 Their second point is that the Applicant was not
2 required to resubmit his final safety analysis report to show
3 compliance with the official design criteria. By that, I
4 believe he means the current design criteria now in Appendix A
5 to Part 50.

6 This was originally published February 20, 1971
7 and was amended on July 20, 1971.

8 Our argument in Attachment C goes into the
9 regulations in some detail and explains exactly why the
10 Applicants are not required to resubmit an evaluation of our
11 design against these new criteria.

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1 I don't think I have to repeat that now,
2 it's probably best set forth right in there.

3 The fact that the Staff has indeed looked at
4 it against the criteria is gratuitous. We liked that.

5 We like to think that we do conform to the
6 present criteria, and the Staff indeed said we do,
7 but that is now a legal requirement.

8 CHAIRMAN FARMAKIDES: I come back, Mr. Vollen,
9 then. What material issue of fact do you intend to
10 elicit during your cross on this contention?

11 MR. VOLLEN: May I have a moment, Mr. Chairman?

12 Mr. Chairman, thank you for the time.

13 CHAIRMAN FARMAKIDES: Mr. Vollen.

14 MR. VOLLEN: In the event that the Board rules
15 that this plant must conform to the 71 general design
16 criteria, we would in connection with this contention
17 demonstrate that this plant does not in fact conform to
18 those criterion, elicit the same facts that we believe can
19 be elicited in connection with contention 3.13.2.2, which
20 deals with the general design criterion.

21 CHAIRMAN FARMAKIDES: Through whom, sir?

22 MR. VOLLEN: I beg your pardon? Through the
23 witnesses we identified in connection --

24 CHAIRMAN FARMAKIDES: The same?

25 MR. VOLLEN: Yes, sir, it would be the same

19--2 1 facts on both of those contentions, sir.

2 CHAIRMAN FARMAKIDES: Mr. Churchill.

3 MR. CHURCHILL: I will object to that, sir.

4 The contention does not set forth any
5 specific specs or specific criteria which it says the
6 plant does not meet.

7 It really sets forth a legal question, and
8 says that the Applicant was not required to resubmit his
9 application with an analysis against the criteria.

10 I think the legal question would dispose of it.

11 I would not like to mix this contention up with
12 the other one. Let's handle that business with the
13 other contention and take care of this one right here.

14 CHAIRMAN FARMAKIDES: You have any notes,
15 Mr. Renfrow?

16 MR. RENFROW: Just a short note, Mr. Chairman.
17 I do believe that this is a contention which is subject to
18 a motion for summary disposition as to law. I think the
19 fact that 3.13.2.2 is referred to, it should be noted
20 that when the Board goes back and looks at that, 3.13.2.2
21 specs about cable separation, there is a design criteria
22 set forth for that, but the criteria set out in Mr.
23 Tondi's testimony are not design criteria for plants them-
24 selves set out in Appendix A.

25 They are criteria that have been developed

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1 within the staff, that is why they were set forth.

2 Second of all, I would like to direct the
3 Board's attention to 10-CFR, 53.4 which was amended when
4 Appendix A came in.

5 That part of the regulations states what is
6 required by an Applicant submitting a PSAR, Preliminary
7 Safety Analysis Report.

8 This report had already been submitted, a
9 PSAR and had a CP long before that.

10 As you will note within the words itself,
11 it says that, and I quote, Appendix A, "Plants for which
12 construction permits have been issued and provides guidance
13 to Applicants for construction permits." i.e., The Commission
14 in adopting the new guidelines was merely codified, put
15 in one place, supplementing regulations for plants that
16 were now coming in with PSAR's.

17 There is no requirement in 50.34 that any plant
18 that had already submitted or was not the FSAR stage be
19 required to submit an FSAR or another PSAR to the new
20 Appendix A design criteria.

21 CHAIRMAN FARMAKIDES: Anything further?

22 Next one, 6.3.1.

23 MR. CHURCHILL: Mr. Chairman.

24 CHAIRMAN FARMAKIDES: Mr. Churchill. I'm sorry.

25 MR. CHURCHILL: Before we proceed I would like

1 to raise a point with respect to contention 4.4.3, which
2 is one of the ones we agreed to defer until tomorrow.
3 I beg your pardon, sir, this is one you had a special
4 condition on and you wouldn't bring that up yet anyway.

5 My problem was we didn't submit testimony on
6 it because we thought that the intervenors had not complied
7 with the prerequisite condition that they advise us of which
8 regulations, and which codes for the pressure vessel and
9 the piping were in effect and which they say we did not
10 comply with.

11 Our transcontinental communications system
12 seems to have been broken down again, because I understand
13 Mr. Vollen did advise Mr. Renfrow and Mr. Renfrow and I
14 have not been able to figure out where the information
15 went astray.

16 In my cover letter transmitting the testimony
17 I have a special paragraph noting that I have no testimony
18 on that, because intervenors did not advise us of the
19 information which I would need before I would have to
20 submit testimony on it.

21 I would endeavor if this is in issue to attempt
22 to get some testimony in as soon as possible, if I can be
23 sure exactly what the information is that he transmitted
24 to Rex which may or may not have gotten to me.

25 CHAIRMAN FARMAKIDES: Let's clarify it,

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1 Mr. Renfrow. Could you help us here?

2 MR. RENFROW: Mr. Chairman, once again I
3 was the conduit for the information. I believe it was
4 called to me on the 29th of January with the other
5 information. Somehow or other either Mr. Churchill in
6 his haste to get out testimony did not communicate together.
7 The information I received was that if I can use these
8 words, the current codes were applicable, that is the
9 most recent code. The current codes are the ones that
10 the Interveners contend are applicable to the Kewaunee
11 Plant.

12 CHAIRMAN FARMAKIDES: You are nodding, Mr. Vollen.

13 MR. VOLLEN: That is the information I conveyed
14 to Mr. Renfrow.

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1 CHAIRMAN FARMAKIDES: Mr. Churchill, can you
2 respond with any information?

3 MR. CHURCHILL: May I ask when this information
4 was conveyed to Mr. Renfrow?

5 CHAIRMAN FARMAKIDES: The 29th. Mr. Renfrow
6 said the 29th.

7 MR. CHURCHILL: That probably would not have
8 been time for me to develop testimony on it anyway.

9 CHAIRMAN FARMAKIDES: Well, I don't have any
10 problem there.

11 MR. CHURCHILL: I would be glad to develop
12 testimony for it.

13 CHAIRMAN FARMAKIDES: I think it would be
14 advisable.

15 MR. CHURCHILL: All right.

16 MR. FARMAKIDES: It's going to cause some
17 problem. Let's hold that until after we finish all of
18 our work here and then Mr. Churchill and Mr. Renfrow and
19 Mr. Vollen will discuss it.

20 Let's go on. 6.3.1.

21 MR. RENFROW: I'm sorry, Mr. Chairman.

22 CHAIRMAN FARMAKIDES: 6.3.1.

23 MR. RENFROW: I have got 5.4.

24 CHAIRMAN FARMAKIDES: No, that is one of the
25 conditions. At the very beginning we said that those

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1 contentions which had been admitted subject to limitation
2 would be discussed at the end. So we are on 6.3.1.

3 MR. VOLLEN: Mr. Chairman, as I believe I
4 indicated in conference with you and counsel for the
5 other parties after the luncheon recess, the intervenors
6 having been told about what it was the Board wanted us to
7 do yesterday, worked late into the night last night and we
8 completed our preparation to respond to the contentions in
9 the 3-point series, the 4-point series and the 5-point
10 series. We are not prepared to start with the 5-point
11 series.

12 CHAIRMAN FARMAKIDES: Then what we will do is
13 go to the contentions that we have admitted subject to
14 limitation and we will finish all the 6-point tomorrow
15 morning.

16 Mr. Vollen, this really means in effect that
17 this hearing is going to be delayed by reason of the fact
18 that you are not prepared to discuss these motions
19 for summary disposition. That disturbs the Board, sir.

20 I would like to hear your explanation?

21 MR. VOLLEN: I am not sure that it needs to
22 be delayed, Mr. Chairman. I have a suggestion as to how
23 that can be handled. But the explanation as to why we are
24 not prepared to proceed today is essentially the same as
25 the explanation I offered yesterday as to why we were not

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1 prepared to proceed yesterday with respect to the 3-point
2 series contentions, that is, as we understand it, the
3 ground rules as to what responses the Board wanted and
4 what the Board would accept by way of a response to a
5 motion for summary disposition were changed on us yester-
6 day. They were changed from what I had understood the
7 agreement of the parties was with respect to the way
8 responses could be made.

9 The other reason why we are unable to fully
10 respond today and why we were unable to fully respond
11 yesterday is because for the first time Tuesday morning
12 we saw some several hundred pages of motions for summary
13 disposition filed by the applicant and filed by the staff

14 From the time we saw them until yesterday
15 when we started arguing we prepared as much as we could,
16 but we had to travel four hours from Chicago to Kewaunee.

17 Last night as soon as the hearing was over
18 we spent from then until late into the night trying to
19 prepare an adequate response to the contentions that we
20 have discussed here today.

21 I said that I didn't think it necessarily had
22 to delay the hearing.

23 Let me suggest, Mr. Chairman, that as long as
24 the Board has ordered that the radiological contentions,
25 the public health and safety contentions will be litigated

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1 in this case prior to the environmental contentions, with
2 the exception of those dealing with need for power, that
3 it might be appropriate to defer argument from responses
4 to and rulings on the motions for summary disposition with
5 respect to the environmental contentions until after the
6 hearing on the public health and safety issues, because
7 during that time in addition to litigating the case on the
8 radiological issues we could be preparing the case with
9 respect to the environmental motions for summary
10 disposition. I think there would then not be any time
11 lag involved.

12 CHAIRMAN FARMAKIDES: Any other comments from
13 the parties?

14 MR. CHURCHILL: Yes, sir. There has been no
15 ground rules switched, Mr. Chairman. That just simply is
16 not true.

17 There has been a ground rule switch, it has
18 been toward laxity. It has been very clear what a
19 response to a motion for summary disposition is supposed
20 to consist of, not only in the regulations but in the
21 conference call among the parties with the Chairman.
22 That is not a problem.

23 As far as his only seeing these for the first
24 time early Tuesday morning, I would remind the intervenors
25 that this is nothing more than just synopsis, summaries of

1 the testimony which in fact are our affidavits which have
2 been filed previously.

3 Thirdly, sir, this is their case, these are
4 their contentions. That testimony was developed by us in
5 an attempt to counter and meet their contentions.

6 I do not see how they can say that they are
7 not ready to proceed.

8 CHAIRMAN FARMAKIDES: Mr. Renfrow.

9 MR. RENFROW: I will just endorse Mr.
10 Churchill's statement, Mr. Chairman.

11 CHAIRMAN FARMAKIDES: Are there any motions
12 to be filed by the applicant or the staff with respect to
13 the preparation of the intervenor?

14 MR. RENFROW: Mr. Chairman, the schedule for
15 this case has not been the easiest one to live with, as
16 the Board well knows. The staff's preparation of testi-
17 mony meant working in the small hours of the morning.
18 As a result of all those factors the staff is not going to
19 move or make any motions at this time. However, once
20 again we would request the parties to endeavor by Friday
21 evening to be finished with summary dispositions so that
22 the Board can rule and we can move forward with the case.

23 I would also say, Mr. Chairman, at this time
24 that the staff itself when it comes to testimony will
25 wish to move forward and at that time we may file whatever

1 motions are appropriate, but at this time of the schedule
2 we have been working we will not file a motion.

3 CHAIRMAN FARMAKIDES: All right. We are
4 going to take the series 3, 4 and 5 that were met
5 conditionally today, and then we will go back to the 6
6 series tomorrow with the thought that the intervenor will
7 be prepared to complete them hopefully tomorrow. Excuse
8 me.

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1 CHAIRMAN FARMAKIDES: I think we would profitably
2 use the remaining time today to complete those contentions,
3 and then I think this may be a very good time, then, to use
4 the remaining time and go to the Intervenor's motions for
5 summary disposition, which we haven't discussed yet.

6 So look, we have got a good hour and a half,
7 possibly two hours, and I think we may be able to profitably
8 more forward and complete what you have just said.

9 Let's go back to 3.4.3.1.

10 MR. VOLLEN: The Intervenor's oppose the Applicant's
11 motion for summary disposition in connection with this
12 application for all of the reasons previously asserted.

13 The examples of the inadmissibility of the
14 material contained in the affidavit offered by Applicant
15 consists of the first paragraph of that affidavit,
16 which is a legal conclusion as to the requirements of
17 10CFR and the last full paragraph on Page 12 of the
18 Applicant's proposed testimony, the first sentence of which
19 reads, "Manufacturers deviation reports that were issued
20 by Combustion Engineering, Inc., were reviewed and approved
21 by Westinghouse and appropriate dispositions were taken on
22 all of the reports."

23 That, Mr. Chairman, strikes me as being purely
24 conclusory with no foundation or factual support, and is
25 inadmissible.

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1 CHAIRMAN FARMAKIDES: Mr. Comey?

2 MR. COMEY: Applicant, on Pages A-3 and A-4.
3 have four statements, the first of which is in dispute.
4 We believe that through the testimony of Mr. Vetter it
5 will show that the pressure vessel does not meet all the
6 requirements of the AFME Boiler and Pressure Code.

7 No. 2 is a statement which is a future fact,
8 it's a statement the Applicant will adhere to the operating
9 conditions.

10 With respect to Paragraph 3, through Mr. Vetter
11 we can establish that the most reasonable question as to
12 whether or not the issuance -- of the reactor was in fact
13 valid because of the problem of documentation with respect
14 to testing on the pressure vessel and with respect to No. 4,
15 through Mr. Vetter we can establish that there is no
16 adequate documentation to indicate that the vessel when at
17 Babcock and Wilcox and Combustion Engineering, did meet
18 all of the equipment specifications.

19 CHAIRMAN FARMAKIDES: Thank you. Is there any
20 other material issue of fact that you intend to elicit
21 during the cross examination?

22 MR. COMEY: Yes. That is the Regulatory Staff
23 did not inspect any documentation on this vessel prior to
24 its being shipped from Combustion Engineering.

25 CHAIRMAN FARMAKIDES: And how will you show that,

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1 sir?

2 MR. COMEY: Through the introduction of a
3 document that states that is the case. A document of
4 the Regulatory Staff.

5 CHAIRMAN FARMAKIDES: Mr. Vollen, how do you
6 intend to introduce that document?

7 MR. VOLLEN: I would have to confer with
8 Mr. Comey before I could answer that, because I cannot,
9 in my own mind right now, identify the particular document.

10 Mr. Chairman, until I have an opportunity to
11 consider that particular document further and look at it
12 and discuss it further with Mr. Comey, I am not prepared
13 to say whether we would actually offer the document itself
14 into evidence or use it as the basis for cross examination.

15 CHAIRMAN FARMAKIDES: Mr. Seiffert?

16 MR. SEIFFERT: May I ask whether or not the
17 intervenors have stated they can identify the document?

18 CHAIRMAN FARMAKIDES: Mr. Comey knows the
19 document, Mr. Vollen needs it in order to refresh his
20 recollection.

21 Mr. Comey, did you have the document during
22 the prehearing, sir?

23 MR. COMEY: That is when we gave you a reference
24 to it.

25 MR. CHURCHILL: Mr. Chairman, I have no reference

0-a-4 1 to such a document. My recollection of the prehearing
2 conference, any reference to documents dealt only with
3 some four point series, the quality assurance areas.
4 My notes show no document, I would very much like to have
5 it identified for me, any document to be used.

6 MR. COMEY: I am sorry, I misspoke. It was
7 provided to the Applicant during the exchange in Chicago,
8 at which time we were giving to the Applicant the "Basis
9 for our contentions."

10 MR. CHURCHILL: We have lots of papers, sir,
11 and my records may get mixed up, but I have been trying to
12 keep fairly close track of that.

13 MR. SEIFFERT: Mr. Chairman, I think we are
14 coming close to hitting the issue. Can we ask Mr. Comey to
15 identify the document?

16 CHAIRMAN FARMAKIDES: The thing is this, we
17 have got to postpone this until Mr. Vollen has looked at it.
18 Now this is something we will have to ask you to do tonight,
19 Mr. Vollen, so you can tell us in the morning.

20 MR. VOLLEN: We will do the best we can.

21 CHAIRMAN FARMAKIDES: Do you have the document
22 with you, Mr. Comey?

23 MR. COMEY: It's in some boxes in Kewaunee.

24 CHAIRMAN FARMAKIDES: All right, you will identify
25 tomorrow morning and tell us, Mr. Vollen, what it is.

20-a-5 1 3.7.1 -- I am sorry, anything else on 3.4.3.1?

2 MR. CHURCHILL: No, sir.

3 CHAIRMAN FARMAKIDES: All right, 3.7.1.

4 MR. VOLLEN: Mr. Chairman, the Intervenors
5 are prepared to withdraw that contention.

6 CHAIRMAN FARMAKIDES: All right, 3.7.1, it is
7 withdrawn.

8 3.12.4.

9 MR. VOLLEN: Mr. Chairman, the Applicant's
10 motion -- I withdraw that -- not their motion but their
11 affidavit in support of their motion with respect to this
12 contention is joined together with their affidavit in
13 support of their motions on 3.12.4.1 and 3.12.4.2.1.

14 CHAIRMAN FARMAKIDES: Do you want to consider
15 the entire 3 series?

16 MR. VOLLEN: Well, not the entire 3 series,
17 but the 3 contentions I mentioned.

18 CHAIRMAN FARMAKIDES: Yes, I am sorry.

19 MR. VOLLEN: For that reason, I will state our
20 objection to the granting of that motion of theirs with
21 respect to all three of those contentions on all of the grounds
22 previously asserted.

23 With respect to the affidavit offered in support
24 of that motion, the examples of the inadmissibility of the
25 material contained therein includes the first sentence,

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which does nothing more than refer to the FSAR.

CHAIRMAN FARMAKIDES: What sentence, sir?

MR. VOLLEN: The first sentence.

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CHAIRMAN FARMAKIDES: Of what?

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MR. VOLLEN: The Applicants' affidavit which is proposed testimony, numbered Page 34 which is nothing more than a reference to the FSAR, which as I have previously noted is not in evidence and which may not properly be considered by the Board in connection with the motion for summary disposition.

On Page 35 in the last paragraph on that page, which is not a full paragraph, it starts on that page, the second sentence refers to data reported by many experimenters without any identification as to who those experimenters are or what their qualifications are. That is just another example of the conclusory kind of material without foundations that the Applicants have offered to support motions for summary disposition.

CHAIRMAN FARMAKIDES: Mr. Comey?

MR. COMEY: With respect to 3.12.4, that is not in dispute. We don't think that the ANS 5.1 decay heat standard is independently confirmed, and through Mr. Lainas, we believe that we can show that the standard is not conservative, that an additional factor must be added to it in order to represent the actual amount of stored thermal energy in the fuel.

CHAIRMAN FARMAKIDES: Okay, how about 3. --- do you have any other material issue of fact that you intend to elicit?

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MR. COMEY: No.

CHAIRMAN FARMAKIDES: On this cross examination.

Incidentally, I have been asking you the same question each and every time; I have been using different words, and I don't want to indicate that the question differs in any extent, it's the same question.

All right. 3.12.4.1.

MR. COMEY: With respect to Paragraph 1 of the Applicants' statement, we intend to show that the value of 93 watts for -- that should read for the integral between zero and 2,000 degrees Centigrade for uranium dioxide is not a best estimate value. A best estimate value is 81, or some figure in the low 80's with respect to Paragraph 2.

CHAIRMAN FARMAKIDES: You are going to show that through who, sir? Mr. Lainas?

MR. COMEY: Mr. Lainas. And perhaps Mr. Bordelantz, who is the Applicants' witness in that matter.

CHAIRMAN FARMAKIDES: All right.

MR. COMEY: With respect to Paragraph 2, that is not in issue; however, if as a part of that the Applicant intends to or is in any way incorporating by reference some gap H value, unless he uses 524 watts per centimeter per foot per btu, or whatever squared, we would be prepared to dispute that. This arose in the Point Beach proceeding, and to the extent that they are trying to use the Point Beach

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1 testimony, that may become a matter in dispute. But as it
2 stands, we would not dispute Paragraph 2.

3 CHAIRMAN FARMAKIDES: Can you clarify that,
4 Mr. Churchill?

5 MR. CHURCHILL: I can't clarify that right now.
6 You mean as to the particular value we used? Could I, after
7 the next break?

8 CHAIRMAN FARMAKIDES: Mr. Reporter, would you
9 restate the offer made by Mr. Comey?

10 (Record read.)

11 CHAIRMAN FARMAKIDES: Off the record.

12 (Discussion had off the record.)

13 CHAIRMAN FARMAKIDES: Back on the record.

14 All right, Mr. Applicant, with respect to what
15 the observation of Mr. Comey is, could you comment on it?

16 MR. CHURCHILL: Yes, sir. We will endeavor
17 to determine what that number is, and report to the Board
18 tomorrow morning.

19 CHAIRMAN FARMAKIDES: All right, the next
20 paragraph, 3?

21 MR. COMEY: Paragraph 3 is not in dispute.

22 MR. CHURCHILL: I am sorry, sir, I did not hear
23 that.

24 MR. COMEY: It's not in dispute.

25 CHAIRMAN FARMAKIDES: Paragraph 3 is not in

COB-4

1 dispute. All right.

2 Let's go to 3.12.4.2.1, Mr. Comey. I think we
3 are still on it.

4 MR. CHURCHILL: Mr. Chairman, should I wait
5 until we finish these three? I did have one question I
6 wanted to ask.

7 CHAIRMAN FARMAKIDES: No, let Mr. -- you mean
8 with respect to this last one?

9 MR. CHURCHILL: Well, actually it was with respect
10 to 3.12.4.

11 CHAIRMAN FARMAKIDES: Oh, fine, let's go back.
12 I am sorry I went too fast, let's go back to 3.12.4.

13 MR. CHURCHILL: Mr. Comey said, I believe he
14 said this is not -- the ANS 5.1 decay heat curve was not
15 conservative and it was because of a factor that was not added.

16 Could I inquire what factor that would be? That
17 would be informative to us in preparing our case.

18 CHAIRMAN FARMAKIDES: Mr. Comey, could you be
19 helpful on that?

20 MR. COMEY: Well, essentially ANS 5.1 as it has
21 been used up until recently does not incorporate neutron
22 absorption, certain types of coupling systematics and the
23 problem of several generations of coupled progeny in fission
24 products. The ANS Committee that is responsible for producing
25 that code now has agreed that that code does not take

2-B-5

1 cognizance, and is revising the code, the new code has not
2 been put out as yet, the special Sub-Committee responsible
3 for that had a meeting in Los Angeles on July 23, 1972. If
4 you want, I can check with the ANS in Hinsdale to find out
5 when that is expected. But as of now, the ANS itself leaves
6 that code in limbo.

7 MR. CHURCHILL: I think in his response, he is
8 simply contradicting what we have said. We have said that
9 Shuer has confirmed the code using England's method. As a
10 matter of fact, which includes the effect of neutron absorp-
11 tion, coupling systematics and several coupled progeny. And
12 I think that he has to do more than simply assert that he
13 will get our own witnesses to contradict themselves.

14 CHAIRMAN FARMAKIDES: Okay, let's go to 3. --
15 did you have anything on 3.12.4.1, Mr. Churchill, before we
16 go to the next one?

17 MR. CHURCHILL: No, sir.

18 CHAIRMAN FARMAKIDES: All right, let's go to
19 3.12.4.2.1.

20 MR. COMEY: The statement there is in dispute.
21 We will show through the testimony of Messrs. Hollingshaus,
22 F. H. Lin, M. T. Lin of Pioneer and E. T. Murphy of Westing-
23 house, that the safety injection water which is carried into
24 the steam generators and superheated will raise the contain-
25 ment pressure in excess of the 46 pounds per square inch gauge.

20-B-6

1 That is the design.

2 CHAIRMAN FARMAKIDES: Do you intend to elicit
3 any other material issue fact?

4 MR. COMEY: No, sir.

5 CHAIRMAN FARMAKIDES: Anything more on this
6 3.12.4.2.1?

7 MR. CHURCHILL: No, sir.

8 CHAIRMAN FARMAKIDES: Let's go on to 4.4.3.

9 MR. VOLLEN: As I understand it, Mr. Chairman,
10 the Applicant has not taken the position that there is no
11 genuine issue as to any material facts on this one. They
12 haven't moved for summary disposition as a matter of law
13 representing that Intervenors have not furnished the informa-
14 tion required by the Board's pre-hearing conference that are
15 to be furnished.

16 I think this is the matter Mr. Churchill adverted
17 to before, that we have, in fact, furnished that information,
18 or we did furnish that information.

19 CHAIRMAN FARMAKIDES: Mr. Churchill?

20 MR. CHURCHILL: When I work on the testimony
21 for this, I would like to reconsider this motion in Appendix
22 C, the motion on summary disposition on the entire thing. I
23 am not prepared right now to withdraw it or say anything.

24 CHAIRMAN FARMAKIDES: You may do it.

25 Anything else on 4.4.3? Let's hold this until

20B-7

1 this has been redone.

2 All right, 5.4. Excuse me, Mr. Churchill, how
3 soon will you be ready on 4.4.3?

4 MR. CHURCHILL: You mean to supply testimony,
5 sir?

6 CHAIRMAN FARMAKIDES: Yes.

7 MR. CHURCHILL: I would like to try to have it
8 for you first thing in the morning.

9 CHAIRMAN FARMAKIDES: 5.4.

10 MR. VOLLEN: The Intervenors oppose the motions
11 of both the Applicant and the Staff for summary disposition of
12 this contention, Mr. Chairman, on the grounds previously
13 stated.

14 Examples of the inadmissibility of material set
15 forth by the Applicant, affidavit in support of his motion,
16 I would refer to the first sentence of the second paragraph
17 of the affidavit which is nothing more than a legal conclusion
18 as to what 10CFR Part 55 requires in the Affiant's view.

End 20

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1 And as another example of the legal inadmis-
2 sibility of the material in the affidavit, I would refer
3 to the first sentence of the last paragraph of the
4 affidavit which states, "Each of the seven candidates for
5 'hot' operator licenses has had many years of experience
6 in power plant operation and has undergone extensive
7 nuclear training."

8 That conclusory statement is without founda-
9 tion. There are no facts to support it and it is, there-
10 fore, inadmissible and ought not to be relied upon by the
11 Board in determining the motion for summary disposition.

12 MR. COMEY: With respect to both the
13 applicant's statements, we are unable to make a determina-
14 tion about them because they are future statements. They
15 say they will pass tests and they will do this. We have
16 no way of judging that.

17 CHAIRMAN FARMAKIDES: All right.

18 MR. COMEY: With respect to the staff's
19 statement, Statement A is true, is not in dispute.

20 Statement B is not in dispute, as it stands.

21 However, the statement seems to have the clear
22 implication that the assistant plant superintendent is
23 in fact a qualified person. That we think is in dispute.

24 The testimony of Mr. Crocker indicates that
25 this gentleman, although he has had 12 years of experience

21a2

1 on steam plants has only had 10 months of nuclear ex-
2 perience at the Walt's Mill and Saxon facilities, neither
3 of which are commercial power reactors, and he has attended
4 a six-weeks' design lecture series.

5 CHAIRMAN FARMAKIDES: So you are saying that
6 you would admit 19-B if the reference to the assistant
7 plant superintendent does not go to his qualifications?

8 MR. COMEY: That's correct, sir.

9 CHAIRMAN FARMAKIDES: Mr. Renfrow, the staff,
10 would you clarify 19-B?

11 MR. RENFROW: I believe, Mr. Chairman, 19-B
12 is clarified in D.

13 CHAIRMAN FARMAKIDES: In other words, you don't
14 care to change or to qualify your 19-B at all?

15 MR. RENFROW: No, sir. 19-B states who reports
16 to who within the system. It does not state that anybody
17 is qualified until you get to D.

18 CHAIRMAN FARMAKIDES: Is that sufficient, Mr.
19 Vollen?

20 It seems to me that Mr. Renfrow's point is
21 his qualifications are in B and not in D.

22 MR. VOLLEN: With that understanding the
23 intervenors did not dispute B.

24 CHAIRMAN FARMAKIDES: All right. C.

25 MR. COMEY: I guess it's a statement that is

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1 not in dispute, although what it means by the purport of
2 it I am unable to understand. It simply says he will be
3 a technical adviser. It doesn't say what he does.

4 CHAIRMAN FARMAKIDES: How about D?

5 MR. COMEY: With respect to D, if they do in
6 fact pass the senior reactor operator's license they
7 will have them, but the point is, again like the
8 assistant plant superintendent, the plant superintendent
9 has had 20 years of experience in various positions within
10 applicant's organization according to Mr. Crocker's
11 testimony. He has attended a Westinghouse six-week
12 design lecture series course for Kewaunee and he is
13 participating in the on-site training program. We don't
14 think that is sufficient prerequisite experience to be
15 running a nuclear power plant.

16 So we would agree that if he passes his
17 senior reactor operator's license, but we will dispute that
18 he is qualified to run the plant.

19 CHAIRMAN FARMAKIDES: All right. And you are
20 going to show this through what or through whom?

21 MR. COMEY: We will show through testimony of
22 Mr. Crocker, sir.

23 CHAIRMAN FARMAKIDES: E.

24 MR. COMEY: E is not in dispute, assuming they
25 pass the tests.

21a5

1 CHAIRMAN FARMAKIDES: F.

2 MR. COMEY: May I have a moment, sir?

3 CHAIRMAN FARMAKIDES: Yes.

4 MR. COMEY: With respect to Paragraph F we
5 would agree that the first sentence is not in dispute.
6 However, with respect to the second sentence which states
7 that these requirements specifically permit substitution
8 of course work for actual work experience, it is our
9 position that is not in itself a commission regulation.

10 CHAIRMAN FARMAKIDES: What I am doing is
11 looking at the Board's Order that talks to limitation on
12 5.4.

13 Is it your position that--I will withdraw that.

14 MR. COMEY: With respect to G, there is no
15 dispute, and with respect to H there is no dispute.

16 CHAIRMAN FARMAKIDES: All right. Mr.
17 Applicant.

18 MR. CHURCHILL: With respect to F and with
19 respect to D, as I read the Board's Order--

20 CHAIRMAN FARMAKIDES: With respect to what?
21 I beg your pardon now.

22 MR. CHURCHILL: With respect to D and F that
23 he just went through--

24 CHAIRMAN FARMAKIDES: All right. Fine.

25 MR. CHURCHILL: Of the staff's facts.

21a6

1 CHAIRMAN FARMAKIDES: Of the staff's facts.

2 All right.

3 MR. CHURCHILL: Those, I believe, are the two
4 that we may not have conceded to.

5 As I read your Order for 5.4 this contention
6 is limited to whether the operators meet the criteria for
7 reactor operator set forth in the pertinent regulations.
8 Could we ask which regulations they are asserting are not
9 being met?

10 CHAIRMAN FARMAKIDES: Yes.

11 MR. CHURCHILL: That is what is puzzling us.

12 CHAIRMAN FARMAKIDES: That is a reasonable
13 request. Mr. Comey, can you assist us?

14 MR. COMEY: I believe that the pertinent parts
15 are 10 CFR 55. I don't have my full 10 CFR here, sir.

16 MR. RENFROW: I will be happy to provide Mr.
17 Comey with a part of the rules.

18 MR. CHURCHILL: I believe Part 55 is the part
19 on reactor operator training, but it is the specific
20 criteria or requirement within there that we are interested
21 in.

22 MR. COMEY: I'm sorry, Mr. Renfrow, but you
23 don't have Part 55 in your notebook.

24 MR. SILBERG: We will supply Mr. Comey with a
25 copy.

21a7

1 MR. VOLLEN: Mr. Chairman, may we have until
2 tomorrow morning to respond to Mr. Churchill's question?

3 CHAIRMAN FARMAKIDES: Yes, Mr. Vollen. We
4 will hold off on 5.4 and you can respond in the morning.
5 Let's get back to the motion for summary disposition.

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21-b-1PS 1 MR. SEIFFERT: Mr. Chairman, excuse me.

2 We suggest there is one issue that is still up in the air.

3 CHAIRMAN FARMAKIDES: Which one is that?

4 MR. SEIFFERT: As to contention 3.11.2,
5 one of the facts the Staff alleges that was not in issue
6 is No. 14-C, and that appears on Page 17 of the Staff's
7 statement of facts. 16, excuse me. Mr. Comey suggested
8 an amendment to that and the Staff agreed to make the
9 amendment and Mr. Comey wanted some more time to determine
10 whether or not that is a fact not in dispute.

11 CHAIRMAN FARMAKIDES: That's correct.

12 MR. SEIFFERT: After we added some words to it.

13 CHAIRMAN FARMAKIDES: That's correct. I think
14 you would add the word "successful."

15 MR. SEIFFERT: "Successful operation of the
16 single train."

17 CHAIRMAN FARMAKIDES: Mr. Comey.

18 MR. COMEY: I am afraid by adding "single train,"
19 he put it back in the realm of dispute.

20 CHAIRMAN FARMAKIDES: All right. How are you
21 going to proceed then, sir, with respect to that 14-C,
22 I'm sorry, it's contention 3.11.2C.

23 A better means of identifying
24 it is Paragraph 14-C on Page 16 of the Staff's statement of
25 material facts.

21-b-2

1 MR. COMEY: We would endeavor to prove that
2 through the testimony of Mr. Delong.

3 MR. RENFROW: I got Mr. Delong. What are we
4 attempting to prove through Mr. Delong?

5 MR. COMEY: That one single train is not in
6 itself sufficient to pull the annulus down through the
7 negative pressure relative to the auxiliary building.

8 CHAIRMAN FARMAKIDES: I am not clear, Mr. Comey.

9 MR. RENFROW: Mr. Chairman, we offered a
10 suggestion. Mr. Comey has rejected it. With clarification
11 the sentence will now read as it always read, "Operation
12 of the SBVS will pull the annulus down to the negative
13 pressure."

14 CHAIRMAN FARMAKIDES: That's what I understood,
15 Mr. Comey.

16 MR. VOLLEN: We understood that the staff
17 was amending that statement.

18 CHAIRMAN FARMAKIDES: No, they were suggesting
19 it as an amendment to see if you would accept it.

20 MR. COMEY: The answer is I do not.
21 If they merely will add "successful operation" to that
22 I will accept it as a statement not in dispute.

23 CHAIRMAN FARMAKIDES: All right, fine.
24 They choose not to do that, so my question then to you, sir,
25 with respect to 14-C, as is presently set forth, how are you

21-b-3

1 going to proceed? What is it you are going to show?

2 MR. COMEY: I'm sorry. You have lost me.

3 Are we talking about the original version?

4 CHAIRMAN FARMAKIDES: Yes.

5 MR. COMEY: As if no one had done anything from
6 the Regulatory Staff?

7 MR. SEIFFERT: Yes.

8 MR. COMEY: We would dispute it as it stands.

9 CHAIRMAN FARMAKIDES: Then what would you show?

10 MR. VOLLEN: As it originally stood.

11 MR. COMEY: We intend to show that if the
12 SBVS does not function at the efficiencies which are claimed
13 by the Staff, then in fact it will not pull the annulus
14 down to a negative pressure relative to the auxiliary
15 building special ventilation zone.

16 CHAIRMAN FARMAKIDES: Then you will show this
17 through who, sir?

18 MR. COMEY: Mr. DeLong.

19 CHAIRMAN FARMAKIDES: Any other points before
20 we get to the Intervenor's motion? I'm sorry, anything
21 else, gentlemen, on this particular point? The Staff?

22 MR. SEIFFERT: No, Mr. Chairman.

23 MR. RENFROW: Not after that answer.

24 CHAIRMAN FARMAKIDES: We have before us the
25 Intervenor's motion for summary disposition dated February

21-b-4

1 3, 1973. As we have done with the other two motions,
2 one by the Applicant and one by the Staff, first we will
3 ask the proponent, do you care to say anything more, sir,
4 with respect to your motion?

5 MR. VOLLEN: Just very briefly, Mr. Chairman.
6 I think it is set forth there in writing. It's our position
7 that summary disposition in this matter in the form of a
8 decision by this Board and an order that the application for
9 an operating license be denied, because on the current
10 state of the record these Applicants for a license have
11 taken the position that the plant has to be redesigned to
12 meet the design criteria.

13 The design criteria themselves, the introduction
14 to Appendix A provides that the design criteria establish
15 the necessary design fabrication construction and so on
16 important to safety.

17 That is -- and this is still from the intro-
18 duction -- structure systems and components that provide
19 reasonable assurance that the facility can be operated
20 without undue rest to the health and safety of the public.
21 That last phrase, Mr. Chairman, is one of the findings that
22 needs to be made before a license can be issued to this
23 Applicant.

24 In short, the Commission itself has defined
25 the phrase "Undue rest to the health and safety of the

21-b-5

1 public" as requiring compliance with the design criteria.

2 Applicants do not meet the design criteria.
3 They are redesigning the plant and this application must
4 be denied.

5 If they do redesign the plant and if that
6 redesign turns out to be satisfactory to the Regulatory
7 Staff, that, seems to me, is the time to come back to the
8 Commission and ask for an application for an operating
9 license, not at a time when they don't have a plant.

10 Thank you, Mr. Chairman.

11 CHAIRMAN FARMAKIDES: Response, Mr. Applicant?

12 MR. CHURCHILL: Yes, sir. First, in just a
13 general response to Mr. Vollen's comment. He was reading,
14 I believe, from Appendix A to Part 50. He said the
15 application must contain the design criteria.

16 Aside from the fact that what he was reading
17 from really is in reference to a preliminary safety
18 analysis report, which is filed at the time of the construction
19 permit and not the FSAR, aside from that it said design
20 criteria, and, sir, our application does include the
21 design criteria. His own motion on Page 2 says that he
22 is contending that the design -- this is on the top of
23 Page 2 of his motion -- does not adequately protect against
24 all of the potential consequences of ruptures of lines,
25 etc. Our design does contain it.

21c1

1 The latest submittal was Amendment 24, which
2 we specifically addressed this very problem to. The
3 problem of potential postulated steam line breaks.

4 Mr. Vollen in his motion then goes on to say
5 that the problem is that we will not therefore be able
6 to satisfy what are generally known as the ultimate safety
7 issues. I'm looking now at the bottom of Page 2 of his
8 motion, where he is quoting, and he is quoting I believe
9 from the notice of hearing, where he says, "Whether the
10 facility will operate." It doesn't say whether the
11 facility is operating or can now operate, but it is whether
12 the facility will operate.

13 I go on to the next ultimate safety finding
14 that he quotes, and it says, "Whether there is reasonable
15 assurance that the activities authorized by the operating
16 license can be conducted."

17 The next one, "Whether the issuance of the
18 license will be inimical to the health and safety of the
19 public."

20 There is no requirement that we have to wait
21 until the last "i" is dotted and the last "t" is crossed
22 before we can hold our hearing. That is impossible.

23 The next point which is even more significant,
24 is that what Mr. Vollen is quoting from are the ultimate
25 safety issues which this Board does not find.

21c2

1 I will refer to page 3 of the notice of
2 hearing. I would refer you to Section 2.760A of the
3 Commission's Rules of Practice. I would refer to Section
4 2.104C of the Commission's Rules of Practice.

5 I would refer you to the statement of
6 consideration in the Federal Register of July 28, 1972,
7 which accompanied many major revisions to the
8 Commission's Rules of Practice.

9 On pages 15128 and 15129 of the Federal
10 Register. All of these state very clearly that this
11 Board decides the matters based in controversy by the
12 parties. It does not decide the ultimate safety issues
13 set forth by intervenors in their motion.

14 That I think disposes of the motion. But I
15 would add one further observation about the motion. As I
16 understand it what intervenors would have us do is all but
17 pack up and go home, postpone the hearing until these
18 design modifications have physically been made to the plant,
19 when we come back and proceed with all 73 issues. It makes
20 no sense.

21 There is no requirements in the Commission
22 regulations that we do it that way. It would not be in
23 the best interest of the public.

24 We respectfully submit, sir, that intervenor's
25 motion for summary disposition be denied for the reasons I

21c3 1 have just stated, sir.

2 CHAIRMAN FARMAKIDES: Did you want to respond
3 Mr. Vollen?

4 MR. VOLLEN: I did, Mr. Chairman.

5 CHAIRMAN FARMAKIDES: Surely.

6 MR. VOLLEN: The intervenor's motion does not
7 argue that each bolt must be thoroughly tightened on the
8 plant before applicants can come in and ask this
9 Commission through this Board for a license to operate the
10 plant.

11 Indeed, the Commission's regulations in
12 Section 50.57A1 talk about the issuance of a license,
13 when construction of the facility has been substantially
14 completed.

15 It doesn't say when design has been sub-
16 stantially completed. We have a case here where we don't
17 even reach the question of whether construction is
18 completed, because design isn't even completed.

19 We are here, Mr. Chairman, to go to trial on
20 the state of the record as it exists now.

21 The applicants have offered testimony which
22 states that they are presently redesigning the plant. I
23 think our motion raises a very fundamental question of
24 when can applicants come in and ask this Atomic Energy
25 Commission to say that their plant can be operated so as to

21c4

1 give reasonable assurance to protection of public health
2 and safety. Can they do that at the time when they
3 haven't even designed the plant? Or at a time when they
4 have submitted a design of a plant to the Atomic Energy
5 Commission Regulatory Staff which hasn't voted it up or
6 voted it down, hasn't passed on it yet?

7 Can this Board be expected to conduct a
8 hearing and make a determination?

9 I respectfully submit that Mr. Churchill's
10 argument which in effect is that this Board does not
11 have jurisdiction, does not have the authority to deny the
12 application is quite wrong. This Board has the authority.
13 This Board has the application before it. This Board has
14 the authority to do what the Commission could do in
15 connection with that application, Mr. Chairman. There is
16 no genuine issue as to any material fact as to the status
17 of this plant. This plant is being redesigned. They
18 don't know what it is going to look like, because the
19 staff may consider their analysis and may suggest further
20 design, further modification.

21 At what point will we have a plant that they
22 want to operate. We don't have one now.

23

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22A-TRad

1 We would ask, Mr. Chairman, the application be
2 denied. When they have a plant they want to operate and the
3 Staff is satisfied with it, that is the time to come back and
4 ask this Board for a hearing.

5 I can't possibly see, were we to go on trial
6 right this moment on this issue, they would offer, I presume,
7 the evidence that they have proffered. That evidence says
8 that the plant is being redesigned. I can't see how the Board
9 could possibly make a finding or direct the Director of the
10 Regulatory Operations to make a finding; other than that, the
11 plant cannot be operated with reasonable assurance to protect
12 the public health and safety. Because by definition, it
13 doesn't meet the criteria there.

14 We ask that it be denied in accordance with our
15 request for summary disposition.

16 MR. CHURCHILL: Sir, may I clarify a point?

17 CHAIRMAN FARMAKIDES: Yes, Mr. Churchill.

18 MR. CHURCHILL: He talks about a plant being
19 redesigned and why don't we come back when we have a plant
20 that we know what it's going to look like.

21 The plant is not being demolished and rebuilt,
22 there are some fairly minor design changes, in some cases
23 they result in protection being put between steam pipes and
24 equipment and this tyoe of thing, and rerouting of pipes.
25 It is all set forth in Amendment 24.

22A-2

1 Again, he is suggesting that the design isn't
2 in. Sir, it is in, I submit these applications are evaluated
3 by the AEC on the basis of design. I submit also that
4 operating licenses are typically issued with the condition
5 that upon the finding of the Division of Compliance that
6 design has at least been completed, and in accordance with
7 this design, it can be issued an operating license.

8 CHAIRMAN FARMAKIDES: Let's hear from the Staff,
9 Mr. Vollen, you will have a chance again.

10 MR. SEIFFERT: Mr. Chairman, the Staff argues
11 that we are talking now about a motion for summary disposition
12 of the Intervenor. The Staff contends that the motion for
13 summary disposition, the Commission has criteria for plants
14 and the Intervenor says it doesn't meet it. The Applicant
15 has submitted that it does, that is an issue of fact which
16 alone is enough to defeat the motion for summary disposition.

17 The Staff is reviewing it, but there is clearly an
18 issue here which defeats the motion for summary disposition.

19 MR. VOLLEN: I think Mr. Churchill said that
20 licenses are customarily issued subject to conditions about
21 completion of constructing or testing. He didn't say that a
22 license is customarily issued conditioned upon satisfactory
23 redesign and construction of plant.

24 I think from what I know of Commission practice,
25 that kind of license gets issued at the construction permit

22A-3

1 stage, and because the plant isn't built yet, because it is
2 a long time in the future, because technology is advancing
3 and is changing, construction permits get issued which permit
4 changes and modifications in the design.

5 But where there is a situation where we are not
6 at the construction permit stage now, where this plant wants
7 to operate, how can a condition be imposed that a license
8 will be issued subject to satisfactory completion of design of
9 the plant? That would amount to a complete abrogation of the
10 responsibilities and the duties of this Board to pass upon
11 the safety of this plant.

12 Again, Mr. Churchill makes the statement that the
13 redesign is completed. Well, if he wants to testify, I
14 suppose he ought to be sworn as a witness and be subjected
15 to cross examination. I rely, Mr. Chairman, on the statement
16 in the proposed testimony which has now become an affidavit
17 of the Applicants, and they state that Applicants have
18 analyzed the plant in light of the new criteria and are
19 presently making design modifications as called for by the
20 criteria.

21 Making design modifications, that testimony, as
22 I understand it, was submitted under date of January 30, and
23 they refer to FSAR Amendment 24 dated January 26, 1973. So
24 after that amendment, they are still describing that as
25 presently making design modifications.

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1 On this state of the record, Mr. Chairman, we
2 ask that our motion be granted.

3 MR. CHURCHILL: I guess I do have to clarify one
4 thing, perhaps that is a little ambiguous in our testimony.
5 It reads, "The Applicants have analyzed the plant in light
6 of the new criteria and are presently making design modifica-
7 tions as called for by the criteria." I do not mean to
8 testify, but I am informed that this means the Applicants
9 are now making the changes in the plant described in the
10 design modifications. I think it can be read that way.

11 CHAIRMAN FARMAKIDES: What is your support for
12 that, sir?

13 MR. CHURCHILL: Amendment 24. Amendment 24 does
14 contain the modified design criteria for the plant. I am
15 informed that the plant right now is physically in the
16 process of having the design changes made on it.

17 CHAIRMAN FARMAKIDES: Mr. Renfrow?

18 MR. RENFROW: Thank you, Mr. Farmakides. Once
19 again, we are talking about a motion for summary disposition.
20 The Intervenor's have contended, I think, that one thing that
21 the design meet the criteria for steam lines has not been done
22 by the Applicant, nor analyzed by the Commission. And now it
23 seems to me that the Applicant has now stated on this record
24 that pursuant to Amendment 24, he thinks he meets the
25 Commission's criteria.

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1 Now if the Intervenor wants to say he doesn't
2 meet those, that is still a litigatable issue. There is an
3 issue of fact in controversy here, and that is whether or
4 not this Amendment meets those designs, the design criteria
5 set forth by the Commission. If this Board, after it is
6 litigated, finds it does not, then naturally perhaps Mr. Vollen
7 can move at that time. But at this time, there is a material
8 issue of fact involved, and that is that the Applicant says
9 he has made the design and this design meets the criteria and
10 they are modifying the plant. That is a material issue of
11 fact and controversy, Mr. Chairman. He has cited Amendment
12 24.

13 CHAIRMAN FARMAKIDES: Mr. Vollen, anything else?

14 MR. VOLLEN: Only, Mr. Chairman, that -- no,
15 nothing further.

16 CHAIRMAN FARMAKIDES: Anything else?

17 MR. CHURCHILL: No.

18 CHAIRMAN FARMAKIDES: Okay. It's roughly
19 4:30, we still have roughly half of the contentions to -- I
20 am sorry, half of the -- yes, half of the contentions to
21 consider. As I said earlier, I would like to complete the
22 motions for summary disposition this week. Perhaps we should
23 begin to think in terms of a Saturday morning session here,
24 as much as the Board dislikes to ask the parties to appear on
25 a Saturday morning. It's becoming appazent to me that unless

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1 we get through with these motions for summary disposition,
2 we are going to be going into next week.

3 The other suggestion offered by the Intervenor,
4 which is also a good one, is that we get through as many
5 of these as we possibly can tomorrow, and then start with
6 the evidentiary hearing on the radiological issues next week.
7 The problem with that motion -- I am sorry, the problem with
8 that suggestion is that we are not sure -- the Board is not
9 sure at this time how many of these contentions will continue
10 to remain in the case. I would hate to start litigation on a
11 contention, and find that for one reason or another, it's no
12 longer in the case.

13 Therefore, I come back to my initial thought and
14 that is, I am looking for suggestions from the parties as to
15 how we can expedite the consideration of these additional
16 contentions so we can complete them by tomorrow.

17 Mr. Vollen?

18 End 22 A
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22-b-1:PS 1 MR. VOLLEN: May I respond to your request
2 for suggestions by way of expanding on my earlier
3 suggestion as to scheduling, Mr. Chairman?

4 With the exception of the environmental
5 contentions, I believe the only contentions with respect
6 to which the Board needs to hear arguments are the 4 point
7 contentions plus several specific points on several
8 other contentions. I would submit to the Board that that
9 can be accomplished rather early in the day tomorrow.
10 I would then suggest, in conformity with the Chairman's
11 suggestion at the first day of the hearing that you
12 intend to rule promptly on the motions for summary
13 disposition, that you would then have had presented to you
14 all of the party's positions on motions for summary
15 disposition with respect to the radiological, the public
16 health and safety in the case. So you might have tomorrow
17 before the end of the day, if I am right, that the four
18 point series can be argued rather expeditiously, to consider
19 and rule tomorrow before we all leave Kewaunee for the
20 weekend which of the public health and safety issues are
21 to be litigated, and to which you are going to grant
22 disposition.

23 Therefore, we could begin testimony next week
24 on the public health and safety, knowing what issues are
25 out and what issues are in. And after the public health and

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1 safety issues have been litigated, we could then turn to
2 the matter of the disposition of environmental contentions.

3 CHAIRMAN FARMAKIDES: Mr. Renfrow?

4 MR. VOLLEN: Excuse me, if I might, Mr. Renfrow,
5 take one moment of your time. With the exception, the
6 Board indicated earlier the need for the power contentions
7 which you indicated you would hear next week.

8 MR. RENFROW: I would object to that, Mr.
9 Chairman. The summary disposition motion is a relatively
10 new motion for the AEC. I feel, especially in light of
11 the day of argument plus yesterday, the vast amount of
12 information given to this Board that the parties should be
13 able to go home tonight, get their work done, come in
14 with an expedited schedule and finish half of the
15 contentions tomorrow, then give the Board an opportunity
16 over the weekend and over our day off on Monday to go
17 and thoroughly review the record and the submissions
18 by the experts and then rule on that.

19 It will not hold the hearing up, since the
20 need for power witnesses will begin, according to your
21 order Tuesday morning, I will have them here. That will
22 also give me the opportunity after you rule to provide
23 for my witnesses which need to be here later in the week
24 to come. If I were to request that we start at 9:00 o'clock
25 in the morning and plan to continue until we finish the

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1 environmental contentions.

2 MR. CHURCHILL: May I?

3 MR. FARMAKIDES: Mr. Churchill?

4 MR. CHURCHILL: I would adopt Mr. Renfrow's
5 suggestions. I very much would like to get through the
6 entire motion for summary disposition. One practical reason
7 is that all the time the radiological hearing is going on,
8 I would very much like to have Applicant's witnesses for
9 environmental know what issues are in and what aren't.
10 I think that we can finish tomorrow. I think it took us
11 a long time of wheel spinning this morning to find out what
12 we wanted and what we are trying to do, but we did settle
13 down. We also got out of the way a lot of miscellaneous
14 items, such as the items you had modifications on, Mr.
15 Vollen's motion, and it may be that we can go through
16 rather rapidly.

17 And as to a suggestion of a Saturday session,
18 it might make more sense to proceed, as Mr. Renfrow
19 said, at 9:00 o'clock and run right through possibly even
20 into Friday evening. Then the worst that will come to
21 us is that we will have to fly back on Saturday. I would
22 hope that would not happen, but that would avoid a
23 Saturday session.

24 Then the Board would have the weekend to rule
25 on that and we would all have the weekend at home to start

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1 preparing for the evidentiary hearing.

2 CHAIRMAN FARMAKIDES: Mr. Vollen, you had
3 something else to say?

4 MR. VOLLEN: Yes, sir. I was going to say that
5 the inherent inefficiency in Mr. Renfrow's suggestion is
6 that tomorrow he wants to argue motions for summary
7 disposition with respect to the need for power issues,
8 and without knowing what the Board is going to do with
9 respect to those motions, he wants to bring his witnesses
10 here Tuesday. He may not need witnesses, the Applicant had
11 moved for summary disposition of those contentions.

12 With respect to Mr. Churchill's observation
13 that he would like all the summary dispositions motions,
14 including the environmental disposed of because his
15 witnesses would want to know which environmental issues
16 are in or out, I am sure there would be some interest
17 among everybody in that. Everybody has interest in what
18 the Board's ruling is going to be, but in fact the
19 witnesses have written their testimony already and it's
20 all there. I don't know how dramatic the need can be,
21 it seems to me, Mr. Chairman, if it is as all possible
22 for us to finish the argument on summary disposition
23 motions with respect to the four point series and power
24 contentions tomorrow, if it is all possible for the Board
25 during the rest of the day to consider the rest of the

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1 arguments and rule before we leave Kewaunee for the
2 weekend. Then next week we can proceed to trial on the
3 public health and safety issues, assuming the Board does
4 not summarily dispose of all of them and it would be a much
5 more sensible way to go.

6 MR. CHURCHILL: Maybe I could add one more thing.
7 There is another practical reason, we do have our momentum
8 up, we have our thoughts established. If we have to go
9 to the radiological and stop and come back to this, it
10 will take us awhile to get going and also at that time you
11 will have to stop in order to decide how you are going to
12 decide.

13 CHAIRMAN FARMAKIDES: Thank you, Mr. Churchill.

14 The Board is inclined to finish the motions
15 for summary disposition first. As we said earlier today
16 when we found that you were not able to proceed, Mr. Vollen.
17 I think one point Mr. Churchill says is quite true, I
18 don't think it's going to take us as long tomorrow to go
19 through the contentions as it has today. The groundwork
20 is laid, and I think we are proceeding more smoothly.
21 I believe that we can finish these tomorrow, and I would
22 like to do so.

23 And I would like to say one more thing. The Board
24 will endeavor over the weekend to resolve issues and perhaps
25 Monday morning, we can get on a conference call and we can

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1 tell the three parties at that time what the decision of
2 the Board is via a conference call. Then for the record,
3 we will read it into the record when we commence Tuesday.

4 I think tomorrow we should be prepared to
5 complete all of the contentions, and I think I would like
6 to go into an evening session if need be or into a Saturday
7 morning session if need be. An evening session might be
8 better, but if not an evening session, we will do a
9 Saturday morning session.

10 Now is there anything else that we need to
11 discuss now? It's roughly 4:30, we will adjourn until
12 tomorrow morning at 9:00 o'clock in this room.

13 (At 4:38 p.m., the hearing was adjourned to
14 reconvene at 9:00 o'clock a.m., Friday, 9 February 1973.)

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