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OFFICIAL TRANSCRIPT OF PROCEEDINGS

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

OFFICE OF GENERAL COUNSEL
ADJUDICATIONS STAFF

Title: YANKEE ATOMIC ELECTRIC
COMPANY (YANKEE NUCLEAR
POWER STATION)
PREHEARING CONFERENCE

Case No: 50-029-LA-R

ASLBP No: 98-736-01-LA-R

Work Order No.: ASB-300-644

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DATE: Wednesday, January 27, 1999

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1025 Connecticut Avenue, NW, Suite 1014
Washington, D.C. 20036
(202) 842-0034

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of: :
YANKEE ATOMIC ELECTRIC COMPANY : Docket No. 50-029-LA-R
(Yankee Nuclear Power Station) : ASLBP No. 98-736-01-LA-R
Prehearing Conference :

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Grand Jury Room
Franklin County Courthouse
425 Main Street
Greenfield, MA

Wednesday, January 27, 1999

The above-entitled matter came on for prehearing
conference, pursuant to notice, at 9:04 a.m.

BEFORE:

THE HONORABLE CHARLES BECHHOEFER, Judge
THE HONORABLE THOMAS D. MURPHY, Judge
THE HONORABLE THOMAS S. ELLEMAN, Judge

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Washington, D.C. 20036
(202) 842-0034

1 APPEARANCES:

2 On Behalf of the Licensee:

3 ROBERT K. GAD, III, Esquire

4 THOMAS G. DIGNAN, JR., Esquire

5 Ropes & Gray

6 One International Place

7 Boston, MA 02110-2624

8

9 On Behalf of the Nuclear Regulatory Commission:

10 ANN P. HODGDON, Esquire

11 MARIAN L. ZOBLER, Esquire

12 STEPHANIE R. MARTZ, Esquire

13 Office of General Counsel

14 U.S. Nuclear Regulatory Commission

15 Washington, DC 20555

16

17 On Behalf of New England Coalition on Nuclear Pollution:

18 JONATHAN M. BLOCK, Esquire

19 94 Main Street, P.O. Box 566

20 Putney, VT 05346-0566

21

22 On Behalf of Franklin Regional Council of Governments:

23 SAMUEL HOLDEN LOVEJOY, Esquire

24 P.O. Box 66

25 Turners Falls, MA 01376

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Washington, D.C. 20036
(202) 842-0034

1 APPEARANCES: [Continued]

2 On Behalf of Citizens Awareness Network:

3 DEBORAH B. KATZ

4 P.O. Box 83

5 Shelburne Falls, MA 01370

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P R O C E E D I N G S

[9:04 a.m.]

1
2
3 JUDGE BECHHOEFER: Good morning, ladies and
4 gentlemen. We are here for the second day of this
5 prehearing conference. Do any of the petitioners or parties
6 wish to raise any preliminary matters before we start?

7 MR. LOVEJOY: Your Honor, I would just like to,
8 because I didn't get a chance yesterday, to go on record as
9 thanking Yankee Atomic and the NRC Staff for, as they
10 phrased it, not opposing our appearance here today and
11 yesterday and participating in the proceedings. It has been
12 a year of struggling with the paperwork to try and get some
13 sort of governmental recognition and I appreciate that.

14 Secondly, I just wanted to go on record as
15 reserving any objections or any rights I had under a minor
16 complaint about service. Unfortunately we were faxed the
17 Staff's response 10 minutes after the office closed Monday
18 afternoon at 4:37 and so I didn't get any of the Staff
19 response until the following morning, which is yesterday
20 morning, so I just -- it was an unfortunate circumstance
21 that it came in so very, very late -- so I just wanted to
22 thank everybody and appreciate it.

23 JUDGE BECHHOEFER: Did you serve the Board before
24 you served the other parties, because our filing was dated
25 December 30, and theirs apparently was dated quite a bit

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1 later?

2 MR. LOVEJOY: I couldn't answer without checking.
3 I'm sorry, Your Honor. I believe we met the filing deadline
4 and that was what we were trying to do. Of course, we did
5 have the predicament that the filing deadline happened the
6 day after the New Year's long weekend, so I couldn't answer
7 that. I believe the staff or the planning board actually
8 did the filings. I can't remember. I can get an answer for
9 you.

10 JUDGE BECHHOEFER: I see. Well, that's okay. I
11 just wondered why ours was dated December 30th and I think
12 it was faxed to us that day, as I recall.

13 MR. LOVEJOY: I couldn't answer you.

14 MS. HODGDON: Judge Bechhoefer, ours is also dated
15 December 30th, but the fact is it was served on the 4th and
16 it indicates therein that it was served on the 4th.

17 I have the envelope here which the mail room gave
18 me.

19 JUDGE BECHHOEFER: Oh, I am not doubting you.

20 MS. HODGDON: It shows that it was mailed on the
21 4th -- I mean there's no mystery about it. It was -- it is
22 dated the 30th but the service shows that it was the 4th and
23 it -- the envelope shows that it was in fact the 4th, and of
24 course there's no deadline that was applicable to this, but
25 insofar as he might be mentioning the contentions, which was

1 the 5th it certainly was timely. I mean there's no
2 timeliness concern anyway.

3 JUDGE BECHHOEFER: Right. No, I am aware of that
4 and I am not doubting anything, but I just wondered why -- I
5 know we got it by fax, I think.

6 MR. LOVEJOY: We were making an effort, Your
7 Honor, to have you served prior to New Year's.

8 MS. HODGDON: The certificate of service shows the
9 4th and as far as that goes, our response would have been
10 due on the 25th of January --

11 JUDGE BECHHOEFER: Right.

12 MS. HODGDON: -- which it was filed --

13 JUDGE BECHHOEFER: Oh, I'm aware of that. I am
14 aware of the --

15 MS. HODGDON: It was filed on the 25th.

16 JUDGE BECHHOEFER: Right. No, I am aware of that.

17 MS. HODGDON: So it seems to me there is no issue
18 regarding this matter.

19 JUDGE BECHHOEFER: Right.

20 MS. HODGDON: Regarding the timeliness of it, that
21 is.

22 JUDGE BECHHOEFER: Right. Well, he raised it,
23 so -- well, in any event we consider it timely and we'll get
24 to consider it later on today, I imagine.

25 Why don't we then get into the Citizens Awareness

1 Network contentions. Ms. Katz.

2 MS. KATZ: Thank you.

3 JUDGE BECHHOEFER: You're on.

4 MS. KATZ: I want to thank you for allowing us to
5 present today. I am a little nervous. It was much easier
6 having Jon Block start yesterday. He is a very good
7 counsellor and so my starting -- you will excuse me if I am
8 a little awkward.

9 A lot of what was raised, a lot of what we raised
10 yesterday I really believe answers a number of the issues
11 that were raised in the contention. I don't think they need
12 to be gone over. I mean I want to expedite time for all of
13 us. We don't need to go through the whole process.

14 I think there are certain things that would be
15 important to touch that were not fully dealt with and that
16 raised concerns for us.

17 The first thing I wanted to address is Yankee
18 Atomic's and the Staff's pleading to refuse our contentions
19 because we don't meet the standard, and we believe this is
20 unjust. We believe that in a certain way this is an
21 elevation of form over substance and that in fact a lot of
22 what we raise are really serious issues and we believe that
23 it may have been more difficult to read our contentions than
24 to read a lawyer's contentions, but we believe we get our
25 point across and that the issues there are very relevant to

1 how the site will be left.

2 I mean our experience in fact has been not only at
3 Yankee Rowe but in fact throughout New England that the NRC
4 routinely and regularly shepherds its licensees through all
5 sorts of procedures and processes without any problem doing
6 that and that this issue that there is sort of a two-tiered
7 system, that there are lawyers and then there are ordinary
8 people like me, sort of second-rate and unable to perform,
9 we think is a really dangerous precedent in terms of
10 democracy.

11 I think we have relevant information to add to
12 this process and that the idea that Yankee raises that we
13 have a choice about whether we employ a lawyer I think is a
14 lack of understanding on their part that we come from a poor
15 rural community and that the ability to at any point raise
16 \$25,000-\$30,000 for legal counsel isn't necessarily within
17 our means. We have done it at times in the past and we just
18 can't do it each time, so that we are asking the Board to
19 take that into consideration in terms of any limitations
20 that we had in our contentions.

21 Unless there is any response -- do you want -- I
22 can go on in terms of the different issues.

23 JUDGE BECHHOEFER: I think that would be the thing
24 to do.

25 MS. KATZ: In terms of --

1 JUDGE BECHHOEFER: We'll hear comments, I'm sure,
2 which will include those, on that subject, when we get to
3 each of the contentions.

4 MS. KATZ: Okay.

5 JUDGE BECHHOEFER: We did ask --

6 MS. KATZ: I am going to try --

7 JUDGE BECHHOEFER: I said yesterday I think we did
8 ask you to try to determine which ones -- which contentions
9 were in essence the same or similar to the NECNP
10 contentions, which by the way your organization has
11 joined --

12 MS. KATZ: Yes.

13 JUDGE BECHHOEFER: -- so we consider them sort of
14 more or less joint contentions.

15 MS. KATZ: Good.

16 JUDGE BECHHOEFER: And to the extent that your
17 contention on a given subject is pure duplicate at least in
18 substance, then we probably should merge it with the NECNP
19 contention and either, you know, we don't know whether we'll
20 accept or not accept certain contentions, but it would be
21 preferable for efficiency if nothing else to join like
22 contentions.

23 MS. KATZ: We are in agreement and for efficiency
24 what I just want to raise is certain issues that were not
25 covered by New England Coalition that are in our contentions

1 that are parts of our contentions, so that I have pages
2 listed and references to talk about so that what I want to
3 begin with was on page 3.

4 I mean we have concerns about the migration of
5 tritium under the site and through the groundwater and the
6 issues of doing a groundwater analysis. I mean we do not
7 see in the LTP adequate addressing of this issue and in
8 Yankee's FSAR, which is incorporated into the
9 decommissioning plan at 306.1, the Environmental
10 Radiological Statute, it talks about that in 1965 tritium
11 was detected in Sherman's Spring. The presence of tritium
12 was attributed to the migration of tritium from the ion
13 exchange pit into the groundwater. At the present time, the
14 tritium concentration is significantly below the
15 Environmental Protection Agency community water system
16 limit. In addition, the water from Sherman's Spring as well
17 as the Deerfield River into which it flows is not used for
18 human consumption.

19 Now we have concerns with this in terms of the
20 extent of tritium in the groundwater and how far it's
21 travelled. This has been going on for 25 years or 24 years.
22 The issues of how it may have affected the groundwater and
23 how far it's gone are very serious to our community, and
24 although Yankee is saying, well, at this point it is below
25 EPA drinking water standards, we don't know that it was

1 always below EPA drinking water standards, and we don't know
2 how far it migrated and when Yankee says it is not for human
3 consumption, we disagree with this.

4 You know, our children swim in that river. We
5 fish that river. In fact, houses are adjacent to that river
6 and so -- in fact, some of the wells and there are schools
7 adjacent to that. It is not clear how the groundwater could
8 travel and affect people's wells or the fact that tritium
9 could in fact be taken in through ingestion and the effects
10 of what would happen through that process.

11 I mean tritium is classified, is not being
12 reclassified as a dangerous envirotxin. It's very
13 controversial at this point. There are scientists who in
14 fact feel that it should be reclassified as falling between
15 an alpha and a beta emitter because it is so potent, and the
16 issues of how this could have affected our community are
17 very serious to us.

18 JUDGE MURPHY: Ms. Katz -- Ms. Katz, just a
19 second, please. You are confusing me and let's not get off
20 with me being confused so early in the morning.

21 MS. KATZ: Okay.

22 JUDGE MURPHY: Are we talking now about your
23 Contention Number 1 on page 2, site release?

24 MS. KATZ: Yes. It is in the site release. It is
25 on page 3 to 4 where it says "the migration of tritium from

1 the ion exchange pit to the Deerfield River raises serious
2 concerns about the migration of tritium throughout the
3 groundwater and offsite."

4 JUDGE MURPHY: Okay.

5 MS. KATZ: That is what -- I'm sorry.

6 So that we are concerned and we do not see in the
7 LTP the issue fully addressed.

8 We are also concerned about the issues of
9 agriculture. This is a farming community. The fact that
10 tritium could get into the groundwater, could be taken up by
11 vegetation, which in fact we are concerned may have
12 happened, the fact that it would then make its way into the
13 crops, that it would be ingested, all of these are a pathway
14 we believe needs to be investigated as part of any site
15 remediation in release of the site.

16 That's basically in the first contention, what we
17 are concerned about that wasn't addressed in terms of what
18 New England Coalition brought up.

19 JUDGE ELLEMAN: Ms. Katz, we have heard, on this
20 issue we've heard the Licensee say that they will calculate
21 a total effective dose equivalent that stays below the 15
22 millirem per year limit they have committed to.

23 In order for them to do that, they have to
24 consider the processes you are discussing. They have to
25 consider the internal exposure resulting from ingestion or

1 inhalation of radioisotopes.

2 I gather that is not sufficient assurance to you.
3 What in addition would satisfy you that that will be done
4 properly?

5 MS. KATZ: I think it needs to be incorporated
6 into the License Termination Plan in more specificity, that
7 in fact they will investigate the effluent pathways and the
8 contamination pathways for tritium in terms of the migration
9 into the Deerfield River and that these will be included in
10 any estimates and calculations that are made, and that these
11 documents are made public, so that we can have some assurity
12 that this is taking place.

13 I mean they may in fact be doing it, but we have
14 no way of knowing that that is happening, and, you know, the
15 issues -- one of the things -- I am not sure it is at this
16 site but later, I mean Yankee raises well why do we want to
17 know about historical amounts of tritium, you know? And
18 that in fact is involved with the health consequences in our
19 community and the issues of the synergistic effects of
20 tritium and dioxin, and if the ion exchange pit has in fact
21 been leaking for over 20 years into our river and our
22 children have swam in it, then these issues are really of
23 vital concern to us in terms of what has been going on for
24 20 years that we have not had access to information on.
25 That is why it is so important that this be clarified and

1 put in the public record about what will take place.

2 We can't undo the past, that they had a leak, and
3 they didn't do it on purpose, but its effects may have had
4 serious consequences on us.

5 JUDGE MURPHY: Let me just make sure -- are you
6 saying then the measurements that Yankee has made or will
7 make are inadequate?

8 MS. KATZ: We are concerned that they may be
9 inadequate. If Yankee is saying that the river is not used
10 for human consumption, that they are not thinking of the
11 fact that our children swim in it routinely, that people
12 fish from the river, that agricultural land is adjacent to
13 it, that there appears to be a pathway that they are not
14 including.

15 JUDGE MURPHY: So you are saying then that they
16 have not included this in their calculations of the total
17 effective dose equivalent?

18 MS. KATZ: The data in terms of this is not public
19 and so we have no way of knowing whether it has been
20 included. We want it included and what we are raising is
21 that it needs to be included. From the way it's written it
22 does not appear that certain pathways for tritium have been
23 included in terms of this process or will be.

24 JUDGE MURPHY: So they are not part of the plan?

25 MS. KATZ: We do not see it as part of the plan --

1 and that's part of the issue of doing the well tests. They
2 have done certain testing of wells where they have found
3 concentrations of tritium which they talk about not being
4 above EPA standards for drinking water at this point, but
5 that doesn't mean that in those test wells that it wasn't at
6 one point above the EPA standard. This is 20 years later
7 and it is now at -- I think one of the wells is 6,000
8 microcuries per liter -- now, 24 years later.

9 The issues are about those effects and we want to
10 ensure that that is calculated in. I mean Yankee has taken
11 the stance that remediating the river and taking out what is
12 in there not only is not cost effective but has the
13 potential to raise the silt and raise more contamination in
14 the process, and we accept that, but we want to make sure
15 that there is some guarantee that we are protected in terms
16 of what is in that river.

17 JUDGE BECHHOEFER: So you would like the LTP to be
18 amended to include investigation of these pathways --

19 MS. KATZ: Yes.

20 JUDGE BECHHOEFER: -- at least?

21 MS. KATZ: Yes, and the investigation of
22 groundwater. I mean if the tritium is in the groundwater
23 and it's gone to Sherman Pond, offsite, then the issue that
24 there -- it may have gone further than that. There may be
25 other sources how it has branched out and we believe those

1 need to be investigated and we need that these documents be
2 made public.

3 I mean part of it is because we are operating in a
4 system in which we don't know what the Licensee has done.
5 It makes it harder. They may have already done this work
6 but because this information isn't public, we don't know,
7 and we just want to ensure that it is done, that there is
8 some guarantee.

9 JUDGE MURPHY: Would you go to page 6 of your
10 contentions? In the first full paragraph, starting down
11 about the fifth line, "CAN believes that the calculations
12 Yankee uses to justify limited cleanup would leave the
13 community with a site that has higher levels of
14 radioactivity than allowable under NRC EPA and State of
15 Massachusetts standards" and then it goes on and then, down
16 several sentences, it says "We cannot believe that the
17 intention of the Commission or the EPA or the State of
18 Massachusetts was to allow Yankee to manipulate its figures
19 and undermine the 15 millirem standard."

20 Now what figures is it and what calculations is it
21 that you are talking about?

22 MS. KATZ: Well, what we are talking about is what
23 we addressed yesterday, which was the issue of in terms of
24 being the 15 millirem standard to use the person in this as
25 an adult male weighing over 200 pounds who is on the site

1 eight hours a day, 55 percent of the time inside and one
2 percent of the time gardening. That is what we were
3 referring to there.

4 JUDGE MURPHY: Ms. Katz, that issue did come up
5 yesterday and you probably heard it -- it came up repeatedly
6 last evening. If the Licensee had elected to use as their
7 reference individual an adult that lived on the site, stayed
8 there 24 hours a day, and spent most of their time indoors,
9 would that be a satisfactory assumption from your
10 perspective?

11 MS. KATZ: I think that if we look at the average
12 of the critical group then what needs to happen is we relate
13 to children in terms of it. There may be some mean age of
14 the child you take, so that it is not the most vulnerable of
15 the baby, but I think we have to think in terms of children
16 being on the site. It is not enough that it focuses on
17 adults. It needs to focus on the most vulnerable group and
18 we believe that that group is children, and they are
19 outdoors much more than adults. My children were, at least.
20 They are constantly -- they are close to the ground. They
21 are playing in the ground all the time. They are engaged in
22 activities that would be normal activities on that site and
23 if the rule is going to relate to normal life in some way,
24 if it is going to have relevancy, then we believe it needs
25 to be relevant to this community.

1 Maybe if it was in Washington there's a lot of
2 concrete around, it wouldn't -- you know -- you wouldn't be
3 so concerned with them playing in the dirt but the reality
4 is here that --

5 JUDGE MURPHY: Getting hit by cars.

6 MS. KATZ: Yes, you would be worried about getting
7 hit by cars, but they wouldn't be radioactive.

8 JUDGE ELLEMAN: Yes. On that concern, the
9 Licensee or the public staff may want to correct me on this,
10 but it is my impression that the Licensee is in a bit of a
11 bind to do what you request because all of the data that had
12 been generated for allowed body burdens of radioisotopes,
13 excretion rates from particular organs, these are the data
14 that are required to make the kind of calculation you want.

15 These data are generated for adults. There are
16 not, to my knowledge, any comparable data for children, and
17 so I think they don't have a technical basis for making the
18 kind of calculation that you would like to have made.

19 Now if others want to comment on that, I would
20 welcome what you say, but I think it is a rather -- the
21 database is not there to allow what you would like.

22 MS. KATZ: In terms of --

23 JUDGE MURPHY: I think we ought to drop that.

24 MS. KATZ: In terms of Mr. Resnikoff, he in fact
25 has stated that there are and that this has to -- if you see

1 FRG Number 13 attached I think to New England Coalition's
2 pleading, there is an issue that is raised about the NRC in
3 fact taking account of children in terms of calculations.

4 JUDGE ELLEMAN: Okay. We'll take a look at --

5 MS. KATZ: So that we believe in fact -- we
6 believe that this makes common sense and that, you know,
7 those regulations should be looked at and in fact the issue
8 is if the regulations don't meet the most vulnerable then
9 there are ways in which the regulations may need to be
10 revised, but at this point we are talking about the
11 interpretation of the regulations.

12 We also think the regulations should be revised.

13 JUDGE BECHHOEFER: Are you aware of any
14 regulation, and I use that term precisely, regulation that
15 requires that an adult 200 pound male be used?

16 MS. KATZ: No.

17 JUDGE BECHHOEFER: Regulation now, not even guide
18 or anything else?

19 MS. KATZ: No.

20 JUDGE BECHHOEFER: I am going to ask the same
21 question to the Staff and Licensee so --

22 MS. KATZ: Okay. What I wanted to do was go to
23 page 7, which is under Soil Remediation --

24 JUDGE MURPHY: Excuse me. Let's just finish up
25 on --

1 MS. KATZ: Oh, I'm sorry --

2 JUDGE MURPHY: -- if you don't mind. It would be
3 much more helpful to us to finish up one issue at a time.

4 MS. KATZ: Right.

5 JUDGE MURPHY: And have it on the record one issue
6 at a time. Is that okay?

7 MS. KATZ: Yes. I thought you were done with the
8 questioning, that's all.

9 JUDGE MURPHY: We are with you, but now we are
10 going to have to hear the other parties.

11 MS. KATZ: You've got to hear from the other guys.

12 JUDGE BECHHOEFER: Would this be all you have to
13 say about your Contention 1?

14 MS. KATZ: Yes -- I mean we felt we covered a lot
15 of this yesterday --

16 JUDGE BECHHOEFER: Right, right, I understand.

17 MS. KATZ: -- and that to go over it does not make
18 sense and we don't need to take up people's time with it.
19 It was thoroughly addressed.

20 JUDGE BECHHOEFER: All right. Mr. Gad or --

21 MR. GAD: Good morning, Your Honor. I'm sorry you
22 have to listen to me, but I know that people don't like the
23 fact that we have rules on how you plead things when you get
24 into a formal adjudication but in fact, as the Commission
25 has held in amending them, they serve a purpose, and I think

1 that frankly what the discussion thus far this morning
2 illustrates is what that purpose is and what the vice is,
3 frankly, if you don't adhere to the rules.

4 Now as originally framed, CAN Contention A-1 was
5 exactly the same contention that was offered at the standing
6 aspect of this hearing and what the Commission said was
7 inadmissible -- same substance, same words, same
8 typographical error, same rounding errors. All right? It
9 was just the copy key used over again.

10 Now this morning we have heard that within this
11 same contention are a whole bunch of other things, some of
12 which are as amorphously stated as, and I quote, "We are
13 concerned that they may be inadequate"

14 It almost doesn't matter what the subject is.

15 You cannot under 2.714 admit or proffer a
16 contention in terms of "We are concerned that they may be
17 inadequate" -- whatever it relates to. You simply can't
18 deal with it in an adjudicatory context.

19 Third point --

20 JUDGE BECHHOEFER: Well, should she have said
21 "They are inadequate" --

22 MR. GAD: Your Honor, the contention must identify
23 a specific assertion of law or fact that is capable of being
24 tested in a trial context.

25 If someone says the light was green when the car

1 went through, someone says the light was red when the car
2 went through, we now how to try that stuff. We don't know
3 how to try, and I quote, "We are concerned that they may be
4 inadequate."

5 That is a speculation. That is a call for
6 discovery. That is a call for education. That is a call
7 for clarification. That is not a litigable contention in an
8 adjudicatory context, and, you know, for better or for
9 worse, that is the context we are in. I didn't dictate it.
10 Yankee didn't dictate it. The rules dictated it.

11 When we are in that context you have to play in
12 that context and that is the point that we were making.

13 One other observation, if I may. Contention 1 as
14 explicated this morning seems to also include a notion that
15 we must either develop a historical record for historical
16 purposes or that we must examine offsite areas for their
17 present implications. To be honest with you, it was a
18 little bit confusing to me which of those is advocated, but
19 the fact of the matter is that what we are here about is the
20 criteria for the release of the site. By definition, the
21 site is releasable if its onsite burden meets a standard.

22 That standard is reasonably rigorous and as we
23 went through yesterday, you must assess the impact of the
24 onsite radiological burden through multiple pathways, but
25 the site release criteria does not take into account, the

1 equation does not recognize offsite inventories, so to the
2 extent that I heard that that is now in the equation of
3 1(a), frankly it is beyond the scope of the site release
4 criteria whether they are SDMP criteria or 1402 criteria.

5 JUDGE BECHHOEFER: Well, would not a pretty
6 specific contention be that tritium has been found onsite.
7 The LTP doesn't adequately indicate how tritium will be
8 dealt with onsite -- the contention says that to me.

9 MR. GAD: If that is a quote, no, it would not be
10 acceptable.

11 JUDGE BECHHOEFER: It is not a quote. I am not
12 quoting from anything.

13 MR. GAD: I understand, but if you are saying to
14 me write down these words on the pad over there and would
15 that be an admissible contention, the answer is no, because
16 of your use of the word "adequately."

17 JUDGE BECHHOEFER: And it says where -- it says
18 where the tritium has been located.

19 MR. GAD: That is not the issue. The issue is in
20 order to make a litigable contention in an adjudicatory
21 context, you can't say it's not adequate. You have to say
22 why it doesn't meet the rules.

23 Now putting aside that problem, you can't -- you
24 have to deal with the fact that we are dealing with a
25 written plan. This plan says what you are going to do for

1 the assessment of the onsite radiological inventory
2 including that -- that it is susceptible to groundwater
3 transport mechanisms.

4 It also happens to include, and perhaps this is
5 where people get confused, it happens to include some
6 preliminary data. We are only here about the plan, we are
7 not here to assess the data, but there are -- if you take a
8 look at page 2.6 et seq. in the plan, and the table
9 immediately after that, you will see that significant
10 analyses of groundwater implications are ongoing. So, in
11 the face of that, no, you can't walk in and say it is
12 inadequate, you have to say it is inadequate because. You
13 really have to say what it is that must be added to plan
14 with sufficient specification so that someone could say,
15 yes, I agree, and now that is capable of being implemented.
16 That is not here.

17 JUDGE BECHHOEFER: Well, I think Ms. Katz has
18 mentioned a few things that should be added to the plan.
19 She just did it now.

20 MR. GAD: And I guess I must have flinched, Your
21 Honor, because I didn't hear any that were specific, other
22 than we want more, we want to know what the history is, and
23 we want to know what is going on off-site. Those are
24 inadmissible.

25 Now, one other thing I think bears illumination.

1 JUDGE BECHHOEFER: Well, I am not -- I wouldn't
2 necessarily agree that those are inadmissible if they bear
3 on on-site cleanup.

4 MR. GAD: By definition, Your Honor, if you assume
5 that there was a brick of -- and this is an assumption, I
6 hope the record will reflect -- but there was a brick of
7 tritium 10 miles off-site it cannot bear on on-site cleanup.

8 JUDGE BECHHOEFER: No, but I thought the tritium
9 was found on-site.

10 MR. GAD: There is.

11 JUDGE BECHHOEFER: And that is what she is talking
12 about.

13 MR. GAD: And that is being evaluated, and no one
14 has yet said that there is anything inadequate with any
15 specificity. No one has ever said there is anything
16 inadequate with the evaluation, detection evaluation and
17 remediation, if such be required of any nuclide that is
18 found on-site, including tritium.

19 Now, just so that we are clear, okay, the Yankee
20 license termination plan imposes upon itself some site
21 release criteria that are not contained in the regulations,
22 that are more constrictive than the regulations. One of
23 them we are all very conscious of and that is the 15 versus
24 the 25. Another one happens to be that this LTP assumes for
25 itself a site release criterion that the EPA criteria for

1 drinking water will be met with respect to on-site sources.

2 I point out this observation to show, number one,
3 the depth of Yankee's commitment here, but, number two, that
4 doesn't have to be there. And if one comes in with a
5 voluntary undertaking, you can't reject the acceptability of
6 an LTP because the voluntary undertaking isn't acceptable to
7 you. Frankly, if it turns out that someone has come in and
8 voluntarily accepted a more constrictive standard and people
9 aren't happy with it, then the solution for that is we will
10 get rid of it.

11 I don't know if I have responded to Your Honor's
12 question.

13 JUDGE BECHHOEFER: Well, not completely. Because
14 if the claim is that because of the discovery of, say,
15 tritium, you are not going to make 15, even though you say
16 you are going to.

17 MR. GAD: That is an implementation issue, Your
18 Honor.

19 JUDGE BECHHOEFER: Well, that is not an
20 implementation issue.

21 MR. GAD: The plan --

22 JUDGE BECHHOEFER: By definition, I mean you can
23 call anything implementation, or you can call anything plan,
24 and I can juggle it around so that every issue is both, but
25 -- and the significant matter is if the LTP defines certain

1 methodology, and if it isn't good enough, then that can be
2 amended.

3 MR. GAD: Your Honor, --

4 JUDGE BECHHOEFER: That is what I am talking
5 about. And it could be based on predictions of future
6 results, because all of this stuff is predictions of what is
7 going to happen in the future.

8 MR. GAD: The LTP is not a prediction of what is
9 going to happen in the future, Your Honor. The LTP is a
10 commitment that we will do the inventory, run it through the
11 program, and if the number doesn't come out at or below 15
12 millirem TEDE, then we will go out and remediate until it
13 does. The LTP is a commitment that the groundwater on-site
14 will meet the EPA drinking water standards, and if it
15 doesn't, then it will be remediated until it does. There is
16 nothing predictive about that at all. It is a site release
17 criterion. It is, if you will, the test level at which you
18 pass the test versus where you fail the test.

19 If Your Honor wants to hypothesize, as I think
20 Your Honor did, and I may have misheard, --

21 JUDGE BECHHOEFER: I did. No, I did.

22 MR. GAD: That someone comes in here and says that
23 that site is so dirty they will never make that criterion,
24 then the proof is in the pudding. You either do or you
25 don't. But that is not an LTP issue. The Commission has

1 said that the LTP is about the site release criteria and the
2 means by which you will demonstrate that you have complied
3 with them.

4 JUDGE BECHHOEFER: Well, the means are what we are
5 talking about, I think.

6 MR. GAD: That's -- and that is the testing for
7 --of the on-site inventory versus the dose assessment
8 mechanism versus the 15 or 25 millirem TEDE. It is
9 basically numbers.

10 JUDGE MURPHY: And I gather, though, that that is
11 what she is concerned about, is going from the numbers to
12 the release criteria.

13 MR. GAD: Well, if you are back to the -- what I
14 consider the main part of Contention Number 1, -- I once
15 thought it was only part of Contention Number 1, but I was
16 probably wrong, -- this is the same old argument that says
17 that if you satisfy the five microrad per hour average 10
18 microrad per hour peak, and that is all you do --

19 JUDGE MURPHY: That is not what I am getting at.
20 I understand that issue well. What I don't understand is, I
21 think she is saying that you take a sample of soil and you
22 determine the amount of radioactivity in that soil, and
23 then, on the basis of that, using some model, you calculate
24 what the annual dose would be.

25 MR. GAD: TEDE, yes.

1 JUDGE MURPHY: TEDE from that sample. And what
2 she is saying, I think I heard her say, is she doesn't
3 think, or she does not accept the model that gets you from
4 the amount of radioactivity in that gram of soil to the
5 TEDE.

6 MR. GAD: The dose assessment model.

7 JUDGE MURPHY: Yes.

8 MR. GAD: Well, assuming that one wanted to say
9 that the dose assessment model was incorrect, all right, and
10 this is not a political question based on value judgment,
11 this is a technical question, there is a right answer to it.
12 So if someone wants to say that the equation by which one
13 gets --

14 JUDGE MURPHY: Excuse me. But she is saying that
15 there may be more than one answer to it. I think.

16 MR. GAD: Well, as Your Honor has defined the
17 question, there oughtn't to be, because --

18 JUDGE MURPHY: No, it depends on what the model
19 says.

20 MR. GAD: The issue is if you take a stipulated
21 set of givens, --

22 JUDGE MURPHY: Yes.

23 MR. GAD: -- run it through an equation, all
24 right.

25 JUDGE MURPHY: Yes.

1 MR. GAD: You come out with an answer that either
2 is or is not properly in the units of the criterion.

3 JUDGE MURPHY: Yes, exactly.

4 MR. GAD: All right. So then it becomes a
5 question of whether or not someone says the equation is the
6 correct way of getting from the givens to the -- all right,
7 two problems. Number one, I believe that the equation has
8 in fact been given to us.

9 JUDGE MURPHY: Is that part of the regulation?

10 MR. GAD: It is part of the NUREG structure, the
11 RESRAD structure, the NUREG-1500 structure, all of which
12 were -- and I have said this before, and someday someone
13 will either agree with me or disagree with me, but when the
14 Commission promulgated the TEDE site release criterion, they
15 referred to this approach. There is an earlier study in
16 there that they quote from at great length. At one point I
17 believe they quote from -- there is an appendix, and I can't
18 remember the name of it, but we cited it in our materials,
19 at least in the standing side and perhaps also on this side.

20 But there is a part in the back of this study
21 where the author of the study says let's understand
22 something here, we are not talking about bounding cases. We
23 are not writing the kind of criterion that you use, for
24 instance, under Part 20 for the site boundary criterion,
25 which is the most affected individual. He says we are doing

1 this on the basis of an average. And then he defines what
2 he is talking about, this is the median person. Some will
3 be a little bit over here, some will be a little bit over
4 here. This is our unit, if you will.

5 Now, if we want to protect -- and since we are
6 dealing with a fixed source term, all right, the fact that
7 some are going to get more and some are going to get less is
8 a function of factors we can't doing anything about. So the
9 real question is we could define it in terms of most
10 affected person, you would have one value over here. We
11 could define it in terms of the median person, we would have
12 one value over here. We could define it terms of the median
13 child. You could define it in terms of the median lawyer
14 who is under six feet, always one of my favorite, all right,
15 but they are different units of the same thing. They can be
16 calibrated to one another. This is how the Commission did
17 it, and, therefore, I think it was prescribed.

18 Prescinding from that, if, in fact, we were back
19 to the legislative phase of deciding what the standard ought
20 to be rather than deciding whether or not it is going to
21 -- we have a plan for demonstrating that we meet it, anyone
22 who wants to come in and say that the equation is wrong,
23 that it doesn't adequately get from the input givens to the
24 desired output units has to say why. All right.

25 For instance, a valid contention might be, if we

1 were at that stage, that you have missed -- that you have
2 missed pathway X. And you take a look at your equation and
3 you say, well, I have gone shine dose, I have got
4 inhalation, but, oops, I missed agricultural intake.

5 JUDGE MURPHY: And isn't she saying, well, you
6 missed the lawyer that is under six foot?

7 MR. GAD: No, because the lawyer that is under six
8 foot, Your Honor, is covered by the average person standard.

9 JUDGE MURPHY: I see.

10 MR. GAD: It is just a unit.

11 JUDGE MURPHY: Is the child --

12 MR. GAD: Yes, Your Honor.

13 JUDGE MURPHY: -- covered by the average person
14 standard also?

15 MR. GAD: Absolutely.

16 JUDGE MURPHY: Okay.

17 JUDGE BECHHOEFER: And you say that is prescribed
18 by rule, or is this a NUREG or a Reg. Guide, essentially?

19 MR. GAD: It is, Your Honor, the studies that the
20 Commission referred to when it promulgated the TEDE standard
21 in 1402.

22 JUDGE BECHHOEFER: Is that the standard --

23 MR. GAD: There is a long Federal -- there is a
24 long Federal -- boy, I am having trouble this morning.
25 There is a long exegesis in the Federal Register explaining

1 what the study is, how they got -- I'm sorry, what the
2 standard is, how they got there, and what the concepts are
3 that they draw from these input documents. Now, that is
4 legislative history. That tells you what the legislation
5 means. And if it does tell you what the legislation means,
6 then it is every bit as much of the prescriptive law as the
7 words of the legislation itself. Yes, indeed.

8 MR. DIGNAN: Your Honor, may I be indulged?

9 JUDGE BECHHOEFER: Yes.

10 MR. DIGNAN: I have listed with interest to this
11 colloquy because, I guess with the exception of the board, I
12 go back as far in this business as anybody. I am even a
13 veteran of the old ECCS wars. And if now CAN is saying that
14 it is the model we are attacking, then what they are
15 attacking is RESRAD. RESRAD is the model we are using. I
16 understand it to be quite accepted in the scientific
17 community. And I think my Brother Gad has made a good point
18 when he says if you are going to attack a model in an NRC
19 proceeding, you must attack specifically with a contention
20 that delineates where you say the model is wrong.

21 In the old days of the ECCS, there were always
22 arguments, I remember, about whether the model has
23 improperly split downcomers, and that sort of thing, in
24 order to show the results one was getting on the cooling
25 side.

1 At a minimum, the new regulations of the
2 Commission must require that in a model case. I mean if any
3 of you Judges have sat through a model case, I have sat
4 through one, they are terribly complex, they are terribly
5 expert-driven, and they must be driven by an expert saying
6 this is where I say the model is improperly constructed.
7 You cannot, under the Commission rules, wander into the
8 hearing room and say I don't believe the model.

9 Now, whether that model is part of the Reg., which
10 I happen to agree with Brother Gad it is, when you trace the
11 history out, but even if you should conclude, no, it is not
12 yet part of the Reg., it is a model. It is a computer
13 model, and if you are going to attack it, the minimum that
14 is required under the regulations as they stand today is
15 that somebody, some expert with expertise comes in and says
16 this is where the model goes wrong, and this is why I think
17 it is that place. And if we don't, we are on an open-ended
18 discussion which will be of great interest to mathematical
19 experts, which will be a mile over my head, but it will
20 serve us nothing, which is part of the problem of the CAN
21 contentions.

22 I was quite moved by Dr. Elleman last night when
23 he addressed the audience, but the problem we have got here
24 is a lot of these contentions being brought by well-meaning
25 people, concerned people, are being brought in the wrong

1 forum. They really belong in the Congress, at least at the
2 Commission level, and probably in the Congress. Maybe
3 Congress should not have allowed nuclear power, but as the
4 Supreme Court said, they did. And there is a limited amount
5 any of us can do here. And one of the things we could do is
6 correct a bad model if somebody brings in a specific
7 contention and says to this board and to the parties, this
8 is where this model was wrong, it has to be corrected in
9 order to have a correct TEDE evaluation. But absent that, I
10 respectfully suggest there is no contention that the
11 Commission will allow this board to hear in that area.

12 JUDGE BECHHOEFER: Well, isn't the failure of the
13 model to explicitly include, say, women and children, is not
14 that not the defect that they have both, both NECNP and
15 Citizens Awareness Network, haven't they both pointed to
16 that in one context or another?

17 MR. DIGNAN: But the problem with that, Your
18 Honor, is that the model does, in the sense that it takes a
19 reference person. Now, if I could run public relations for
20 the international agencies that set these things up, I would
21 have picked child, you know, because then I wouldn't have
22 this problem. But you have got to have some reference
23 point, and it really doesn't make much difference in the big
24 swing whether the reference point is 250 pound me, or a
25 little smaller Brother Gad, or it is a child. You have got

1 to have a reference point off which you work. And,
2 presumably, you could set this thing as child rem, set it at
3 a higher number than 25 and move on from there. It doesn't
4 make any difference what the reference point is as long as
5 there is one.

6 JUDGE BECHHOEFER: Well, what I was driving at is
7 if you set the reference point -- if child were to be used,
8 and, theoretically, at one point the Commission said it was
9 being conservative and adopting many things for conservative
10 reasons, because they didn't know everything, and so they
11 acted conservatively to bound the likely range of products
12 that would come out. My question is, unless it is required
13 that the model use a standard adult male, and I am not sure
14 a statement of considerations is good enough, but that is
15 another question, but unless that is required, why wouldn't
16 we be free to say, in doing your modeling, use a child?

17 MR. GAD: Let me try a very short answer to that
18 question, Your Honor.

19 [Pause.]

20 MR. GAD: May I try and answer that question?

21 JUDGE BECHHOEFER: Yes. Yes.

22 MR. GAD: If you elected to say that the model
23 units ought to refer to, let's call it the average child,
24 just to create a phrase, now you have to associate a number
25 with that.

1 JUDGE BECHHOEFER: Well, take the same numbers as
2 you got for --

3 MR. GAD: You can't, that's the rub.

4 JUDGE BECHHOEFER: Why can't you?

5 MR. GAD: Because the Commission's 25 was based on
6 the reference that they used, and, therefore, what you would
7 have to do is to calibrate your average child standard to
8 the standard that was used to impose the 25 -- let's just
9 call the 25. Twenty-five to the average man, let's assume
10 hypothetically, represents 28 to the average child. So if
11 you want to call it average child instead of average man,
12 you are going to have to raise the number from 25 to 28 so
13 that they end up being the same thing that the Commission
14 promulgated. That's why.

15 This is all about units. If we convert the speed
16 limit from miles per hour to kilometers per hour, we can't
17 still call it 55. That is all that is involved here. Your
18 Honor?

19 JUDGE ELLEMAN: Yes. Mr. Gad, and I would address
20 this also to Mr. Dignan, we have been talking --

21 MR. GAD: I am happy to sit down.

22 JUDGE ELLEMAN: Well, I will let both of you
23 decide. We have talking about errors in model, and we do
24 hear in the contentions, challenges to a model.

25 MR. GAD: May I close the shade?

1 JUDGE ELLEMAN: Oh, please, yes. We have done
2 this to you twice now, haven't we, in two days.

3 But what I hear also in the contentions is that
4 the licensee is silent on the questions. It is not so much
5 that the methodology is incorrect, but that the methodology
6 that is to be pursued is unknown. Now, do the two of you
7 feel that if we take the license termination plan, and take
8 all of the NUREG documents that are referenced, and if we
9 compiled all of that to go through in a sequence, that it
10 defines a pattern of conduct and it defines a progression of
11 activities that any reasonable person can discern as being
12 the plan the licensee is going to pursue? I'm sorry, that
13 came out more complicated than --

14 MR. GAD: No, I understand the question. My
15 grimaces were at two points. First, when you threw in a
16 reasonable man, okay, because I think we would have to go
17 into a long recess perhaps to detect and locate someone that
18 everyone would agree meets that standard. I think the
19 answer to your question is as follows, yes, with a
20 qualification. And the qualification is that the license
21 termination plan is supposed to be a testable obligation.
22 All right. It is not exactly like a hypothesis in
23 scientific terms, but it is like the protocol for going out
24 and doing a study. I don't think that it needs to be, wants
25 to be, or ought to be, or, within the limits of Xerography,

1 could be down to the nth level of detail.

2 JUDGE ELLEMAN: I understand and I would not ask
3 for that, but --

4 MR. GAD: I understood Your Honor's question to
5 be, should the LTP, read in the context in which it is
6 published, all right, which is a very technical one, and it
7 includes some of the NUREGs, it also includes the technology
8 and the models such as RESRAD, should it -- should you find
9 it to be an undertaking to which Yankee can be tested at the
10 end? Yes. That is our objective. If you don't, there is
11 something wrong with it.

12 JUDGE ELLEMAN: And the pattern they are to pursue
13 in reaching the end, is that also assumed part of it?

14 MR. GAD: The syllogism by which they get to their
15 conclusion is -- we believe is in the LTP, supposed to be in
16 the LTP. If it isn't in the LTP, then it needs to be fixed.

17 JUDGE ELLEMAN: Okay. Thank you.

18 MR. GAD: Your Honor.

19 JUDGE MURPHY: Do you have any more comments on
20 that?

21 MR. GAD: No, I'm sorry, I thought you were going
22 to ask me a question.

23 JUDGE BECHHOEFER: Let's go to the staff. Staff,
24 whoever is going to handle these.

25 MS. HODGDON: Yes. I believe we are talking about

1 two things, (1) tritium, and (2) the average member of the
2 critical group. And so with regard to tritium, the staff's
3 number -- CAN's Contention 8 is also -- raises the same
4 tritium concern and the staff addressed it there. As
5 regards to all these speculations about what a good
6 contention about tritium would be, the problem that the
7 staff had with CAN's contention, as it expressed -- as it is
8 expressed there in the staff's answer, is that it is
9 historic. And with regard to Judge Elleman's question about
10 what is the problem, if -- because Yankee is required to, or
11 says they will calculate the TEDE, the T-E-D-E-, that stays
12 below 15, doesn't that take care of the problem?

13 And certainly it does with regard to the historic
14 tritium. In our answer we say that it is well below, even
15 at this time, it is well below the EPA drinking water
16 standard. And so concerns about swimming and things like
17 that are certainly less than concerns about a drinking water
18 standard, because the EPA, like us, sets a standard that is
19 a maximum, it is not a worst case, but I mean you really
20 might drink the water, and so if you swallow it in the
21 river, it is the same thing.

22 So we don't really have anything more to say about
23 tritium because it is all over our pleading and the answers
24 to tritium wherever it is raised.

25 With regard to the various questions about the

1 average member of the critical group, yesterday I mentioned
2 the proposed rule, new Subpart E to Part 20, which appeared
3 in the Federal Register on August 22nd, 1994, and I don't
4 have the cite at hand, but I cited it yesterday, and I am
5 sure that was -- I hope that people might have read it. And
6 then also the final rule, and the statement that the
7 Commission made on adopting that rule, which I believe is
8 July 21st, 1997. And there the Commission explained what it
9 was doing and it said what it was doing with regard to some
10 comments about using women and children instead of the
11 average man. I must say that it didn't go into great detail
12 about why -- I mean the average -- not the average man, the
13 average member -- well, the reference man is actually the
14 proper citation, which Judge Elleman asked some questions
15 about just now. Reference man, why do you use reference
16 man?

17 The Commission didn't go into great detail about
18 that, I think, because they assumed that everybody knew it.
19 But, in any event, everything that has been raised here was
20 addressed there in the context of the rule. The summary on
21 the final rule, of course, does not include everything
22 because there are two NUREG documents that are referenced
23 there, which includes all of the comments, and that is all
24 in there if you want to read it.

25 But all I can tell you is that reference man is --

1 I think it is based on ICRP-74 and the comments were that we
2 should have used, the Commission should have used perhaps a
3 newer model, or that it should have used women and children,
4 but the thing about reference man is that all of his
5 documentation is there. He is 70 -- he is 70 what -- he
6 weighs 70 kilograms, which is 154 pounds with my -- I don't
7 know. Mr. Gad, I think is a mathematician. Is that right?
8 Seventy times 2, it is 2.2 i the conversion factor, so -- to
9 get to pounds, which is much less than the 200 and 250
10 pounds he weighed yesterday, so he is somewhat smaller than
11 he is represented as being.

12 JUDGE BECHHOEFER: Do you have any explanation for
13 this drastic loss of weight in one day?

14 MS. HODGDON: No, this is CAN's reference man, I
15 am talking about the one that the NRC used.

16 MR. GAD: The late hour last night.

17 MS. HODGDON: Yes, late hours. He is -- he weighs
18 70 kilograms. I am just doing this from memory, I think he
19 is 170 centimeters tall. And we know about how much skin he
20 has, and we know everything about him. And if you look at
21 any health physics handbook, you will see about five or six
22 pages there, which will give you a column for this man over
23 here, reference man, and next to it will be a column for
24 women, and next to it will be a column for children of a
25 certain age, maybe five, and then for newborns, and the only

1 thing that is filled out is men, and the women are not
2 filled out all the way. And so as Mr. Gad says, you would
3 have to calculate that, and it would be a difficult
4 calculation. You would have to calculate all of that. And
5 so the reason we use this model is that it is only model
6 there is.

7 And so with regard to the other questions about
8 these various NUREGs and these computer codes and so forth,
9 I have read all of these things myself, insofar as they
10 exist in prose, I think, at least I have scanned them, and I
11 find that a lot of things that exist in code are not really
12 explained as well as the layman might like in prose.

13 For example, the residential farm scenario, which
14 is said to be the most conservative scenario because you
15 have got the reference man living there with his wife and
16 children, and he is the average member of the critical
17 group, and he does certain things. He raises the
18 vegetables, he waters them with the contaminated water, to
19 the extent that it is still contaminated. He eats the
20 vegetables and so forth. So that is supposed to be the most
21 conservative scenario, and I think that -- and that is why
22 Yankee used it.

23 You could use a different one which is the
24 building occupation scenario, where he goes -- you know,
25 they rehab those buildings, somebody uses them for an

1 industry. People work there eight hours a day. That is a
2 much less conservative scenario. These things are all
3 calculated using the computer codes and the prose
4 descriptions of them are not enough to answer every possible
5 question, but, yet, they are generally there.

6 MS. HODGDON: I could tell you a lot more about
7 reference, ma'am, but I won't. I will just say that is the
8 reason that the Commission uses this concept, and that is
9 the reason that it's recognized in the international
10 community. That is what health physicists go to.

11 I am not a health physicist, and I just can tell
12 you that I looked at these charts and it was obvious to me
13 certain things, why they adopted them. Whether there are
14 other things out there, I do not know, but I do know that
15 the Commission didn't adopt them, and it explains why it
16 didn't adopt them in its final rule.

17 JUDGE ELLEMAN: I think you said that the scenario
18 of the farmer is the most conservative scenario. Is that
19 the same as saying that if the licensee adopted the kinds of
20 delivering patterns that CAN and NECNP proposed that you
21 would come out with lower, not higher, projected doses for a
22 site?

23 MS. HODGDON: We really don't know. I mean, I
24 don't know. But all I do know is that what the Commission
25 said in CLI-98-21 is that that would be a worst-case

1 scenario and that worst-case scenarios weren't appropriate
2 in this area in this discussion, that it was not appropriate
3 to use a worst-case scenario, because the scenario was
4 conservative enough to do the job, and that's what they
5 wanted. That there's no value in doing worst case.

6 JUDGE BECHHOEFER: Mr. Block, I know you haven't
7 joined these contentions, but do you wish to comment at all?

8 MR. BLOCK: Yes, Your Honor. I hope the Court
9 will forgive me. I'm getting sick, and I'm a bit difficult
10 to hear.

11 First I would ask Ms. Hodgdon to provide a
12 citation to the part of the final rulemaking where the
13 Commission definitively describes their choice of reference
14 man. Do you have that citation available?

15 MS. HODGDON: May I answer the question?

16 JUDGE BECHHOEFER: Yes.

17 MS. HODGDON: The staff does not -- the rulemaking
18 does not use the word "reference man," to my recollection.

19 MR. BLOCK: It doesn't to mine either. That's why
20 I asked for a citation.

21 MS. HODGDON: The average member of the critical
22 group -- I believe I said the Commission thought --

23 MR. BLOCK: I have to object. I just asked for a
24 citation, not to give a --

25 JUDGE BECHHOEFER: Well, let her answer the

1 question.

2 MS. HODGDON: Let me answer the question, since it
3 was asked and since the Board has agreed that I can answer
4 it.

5 I started out by saying that they don't use the
6 term "reference man," that they thought everybody knew that.
7 In fact, they did. They thought everybody knew that. And
8 so that's why they don't use it. But they do reference the
9 documents on which they base it, and they do reject the idea
10 of women and children. And I didn't say anything that -- I
11 didn't misrepresent the final rule. It's as I said it was.
12 And I addressed it yesterday the same way.

13 MR. BLOCK: Well, I think it is a
14 misrepresentation, having read it and all of the three
15 volumes of comments and the generic study, and I would say
16 that when you go to the section that deals with the choice
17 of scenario, what's discussed is ICRP-60, and if you go to
18 that set of standards, you will find a means of dealing with
19 children. So the fact is that the staff is aware that the
20 means is available, and there isn't a definitive rejection.
21 All there is is a discussion of a variety of approaches, and
22 a recommendation that a conservative approach be adopted.
23 And I think that it's unreasonable to press the notion that
24 there's a definitive rejection when it's not there.

25 And also when you offer the information that

1 something exists at a specific place, you should at least be
2 able to provide it or offer to provide it. And I don't see
3 it. I read through that material too. And I'm at pains to
4 be able to find anything like what you're describing.

5 However, you will find in the section that deals
6 on residential scenarios and other scenarios discussion of
7 the ICRP-60 standard, which includes women and children.

8 MS. HODGDON: Excuse me, if I may answer the
9 question again, if it is a question.

10 JUDGE BECHHOEFER: Yes.

11 MS. HODGDON: I don't believe I said that it
12 didn't include women and children. In fact, I specifically
13 said that it did.

14 JUDGE BECHHOEFER: Does it exclude women and
15 children?

16 MS. HODGDON: In including them it does not
17 exclude them.

18 JUDGE BECHHOEFER: Mr. Lovejoy, do you have
19 comments?

20 MR. LOVEJOY: Your Honor, I just have two very
21 short comments. It's just the hope the Franklin Region
22 would have that perhaps we would like to reference the
23 average worker once the site is released fishing at lunch
24 and catching an average fish and eating it and feeling safe
25 in that activity.

1 As a more specific comment, which actually
2 overlaps with one of our contentions, which maybe we can
3 deal with now partly, to the extent that the staff --

4 JUDGE BECHHOEFER: Let's wait on your contentions
5 till we get to yours and --

6 MR. LOVEJOY: I think the question is if you read
7 the LTP, what seemed to be missing from our experience and
8 to the extent the staff that reviewed it could be looked at
9 as experts, and maybe that's a question that can be raised
10 later, I don't know, there seemed to be no reference to
11 random sampling, which is sort of the other way to test the
12 computer model.

13 And so one of our main worries is that there's a
14 way to test the model that's in the LTP, the model that's
15 being used in some independent fashion. And we don't know
16 exactly how to institute that, and so we're simply looking
17 for a way to test the model. We have no way of doing that
18 except to find an expert that could help us do that. At
19 this time we don't have that. So we're just urging that a
20 way be found to test the model, and the only suggestion we
21 had was some sort of way of backchecking by using random
22 analysis.

23 JUDGE BECHHOEFER: Mr. Lovejoy, let me just ask
24 you one thing. Did you use the term "average worker"? I
25 assume that doesn't include women and children -- well,

1 children anyway.

2 MR. LOVEJOY: Well, I would hope that it would
3 include pregnant women. It could easily include children
4 cleaning up a 2,000-acre site, you know, or, you know,
5 mowing the lawn, et cetera. I don't know what's going on
6 there.

7 The main concern we have with regard to site
8 release is simply that attention be paid that once the site
9 is released, that it be the safest, cleanest site possible,
10 and to the extent a model is being used which is not
11 testable or hasn't been tested, we're concerned. And one
12 way to test it would be random sampling to test the results
13 of the model.

14 So to the extent our staff review was an expert
15 review, I'm simply requesting that there be some way to do
16 random sampling backup to the computer modeling being used.
17 That's the extent of the comments I think I can make.

18 JUDGE BECHHOEFER: Ms. Katz, do you have rebuttal?

19 MS. KATZ: I just want to respond that what we're
20 concerned with is the application. We believe that it's
21 open in terms of who is the average member of the critical
22 group, and we believe that a conservative position on that
23 needs to be taken, and that this is about application and
24 interpretation, not that we're creating a whole new rule.

25 JUDGE BECHHOEFER: Would you like to, now that

1 you're there, go on to number 2?

2 MS. KATZ: Okay.

3 JUDGE BECHHOEFER: Well, the next one.

4 MS. KATZ: Under our second contention, which was
5 about soil remediation, there's a reference to it on page 7,
6 but specifically on page 11, the first paragraph, we talk
7 about during the early component-removal project at Rowe,
8 large numbers of hot particles were released during the
9 underwater cutting of the million-curie baffle. Because
10 these hot particles contaminated workers, over 110, and
11 migrated throughout the site, a thorough and independent
12 review of affected and unaffected areas should be undertaken
13 to ascertain the extent of the hot-particle contamination
14 onsite and in the surrounding property. And our concern is
15 that the license termination plan does not clarify that this
16 will take place.

17 There are two things that I would also like to
18 mention in this in a recent NRC Information Notice 97-36,
19 unplanned intakes by workers of transuranic airborne
20 radioactive materials and external exposure due to
21 inadequate control of work. This was in Information Notice
22 97-36, US NRC.

23 One of the things that's talked about in fact is
24 the uptake of transuranics, and it states: For reactor
25 facilities that have experienced fuel defects, experience

1 has shown that long after the defective fuel has been
2 removed, significant alpha contamination may remain in
3 general inaccessible locations such as the FTC and equipment
4 drains and sumps and other refueling areas. Even minor
5 disturbance of the contaminated surface can result in the
6 release of alpha-emitting radionuclides whose DACs are
7 orders of magnitude more restrictive and limiting at much
8 lower concentration compared with the normal beta-emitting
9 and gamma-emitting isotopes usually encountered in reactor
10 plant environments. Additionally, alpha contamination may
11 be incorporated into a contamination corrosion layer on the
12 interior surface of the system components that carry primary
13 fluids or steam. Surveys for loose surface contamination
14 may not identify the fixed alpha contamination, but abrasive
15 work, grinding, or welding may result in alpha-emitting
16 airborne radioactive materials. This latter characteristic
17 may be particularly important at reactor facilities during
18 decommissioning.

19 We wanted to add that in terms of the issue of in
20 fact calculating for alpha and the lack of that in the
21 license termination plan and in Yankee's FSAR incorporating
22 the D plan at 306.2 in fact -- starts at 306.1 -- systems in
23 contact with main coolant have been contaminated with
24 activated corrosion products and fuel residue. In 1977
25 Yankee began converting from stainless steel clad fuel

1 Zircaloy to Zircaloy clad fuel. Following conversion, fuel
2 clad failures began occurring. Most of the failures were
3 minor failures of clad integrity releasing iodines and other
4 fission gases into the main coolant. However, during cycle
5 14, 16, and 18, several peripheral fuel rods failed, and as
6 a result of damage caused by water jetting from the core
7 baffle spacer plates, these fuel failures were sufficient to
8 cause contamination of the reactor vessel and the main
9 coolant system with fuel residue. Baffle jetting damage was
10 eliminated by the addition of spacer plugs at the bottom of
11 the core baffle spacer plates and modifying fuel assembly
12 designs. No significant fuel failures occurred after the
13 modifications were implemented.

14 And so that is in fact where we're concerned the
15 plutonium came from, that in fact this is a reference to
16 contamination in the reactor vessel and the main coolant
17 system. And that's part of our concern in terms of
18 plutonium being calculated in this, and also our concern
19 that during the cutting up of systems that there may have
20 been particles that were released in this process that we
21 feel need to be accounted for.

22 JUDGE ELLEMAN: Ms. Katz, I'm probably repeating
23 myself here, and I apologize, but I believe what I hear from
24 you is not so much opposition to what the licensee is going
25 to do, but concern that it is not completely clear what they

1 are going to do.

2 MS. KATZ: Yes.

3 JUDGE ELLEMAN: Okay.

4 MS. KATZ: They may be doing that. I would
5 appreciate that they're doing it, but we want to make sure
6 that that's happening. The issue of hot particles on the
7 site and the potential for them to leave the site is of
8 great concern to our community. We don't want anyone
9 exposed.

10 JUDGE MURPHY: That it?

11 MS. KATZ: Yes.

12 JUDGE BECHHOEFER: Mr. Gad.

13 MR. GAD: Once again, Your Honor, we seem to have
14 an awful lot mixed into one contention. As we read
15 Contention A(2), it contained a request that this Board
16 impose civil liability on Yankee for past acts. It
17 requested that this Board order additional studies done by
18 collateral third parties. It has a recitation that I think
19 reflects some confusion or misunderstanding about how the
20 ALARA calculation was done. This is the mean-life issue.
21 And I don't hear about any of that this morning. I don't
22 know whether it's withdrawn or what.

23 JUDGE MURPHY: Excuse me. Can I just make a
24 comment?

25 We did ask her just to limit her discussion to

1 things that weren't discussed yesterday.

2 MR. GAD: All right. If we may, we'll stand on
3 what we wrote with respect to those issues.

4 If Contention A(2) is now a contention about --
5 I'm not exactly sure what. Let me try this response. I
6 suppose it's a contention about the classification scheme.

7 The notion that there are parts of the site that
8 aren't going to be looked at at all is simply contrary on
9 its face with the LTP. Now as the Commission guidance
10 instructs, the first thing you do is to take a look at
11 history, and you decide which parts of the site are most
12 likely to contain the sorts of things that you want to find,
13 and which parts are less likely.

14 The initial screens are different. The screen in
15 the likely affected area is much tougher than the screen in
16 the likely unaffected area, and the function of the screen
17 in the unaffected area is to test whether or not your
18 classification, your initial classification, stands.

19 Now if you take a look at Figure 5.1 on page A-48
20 of the LTP, which is part of the final status survey
21 report --

22 JUDGE MURPHY: Okay.

23 MR. GAD: There is here a flow diagram that
24 illustrates the process, bearing in mind that we start with
25 our initial classification, bear in mind that we've divided

1 everything up into survey units, and you have to actually go
2 through the whole drill separately for each survey unit. A
3 survey unit could be a piece of the ground, it could be a
4 piece of a building, it could be a piece of machinery. But
5 you see that we do our sweeps, we do our scans, we take our
6 data, okay? We calculate the survey unit mean and standard
7 deviation, third box down. And we compare that with the
8 reclassification criteria.

9 Now, there are in essence three possibilities. If
10 your number is in the bottom segment, then you pass. If
11 your number is in the top segment, then you go directly to
12 remediation. And if your number is in the middle, then you
13 reclassify and go back to the more rigorous testing protocol
14 and go through the process again.

15 So that's what we're doing. The classification
16 criteria and the reclassification criteria are set forth in
17 the LTP.

18 Now, it is entirely possible, at least in the
19 theoretical world, that Yankee is imperfect. It is entirely
20 possible that something got missed. But anyone who wants to
21 say that we missed something has to say what we missed, and
22 that's what's missing from a contention which I gather A(2)
23 now includes. It says you've got to do more.

24 We don't now how to respond until you tell us what
25 it is.

1 JUDGE BECHHOEFER: Ms. Hodgdon or whoever.

2 MS. HODGDON: Ms. Zabler.

3 MS. ZOBLER: Just to add a few more thoughts on
4 the subject of offsite releases and historical data. To the
5 extent that CAN is seeking to hold Yankee liable for any
6 damage it may have caused offsite, as we said in our
7 pleading that's beyond the scope of the NRC to require.
8 There are other means to seek that kind of redress.

9 Going back to really the requirements of the NRC's
10 contention rules, I think this illustrates some of the
11 problems and why you have such requirements. It's hard to
12 respond to these kind of vague assertions about the hot
13 particles unless there's a reference to it in the LTP.
14 Where should this have been considered? Why is what Yankee
15 is offering not satisfactory? Which is why the staff
16 requests and points out where CAN's filing in that regard
17 was deficient. It is fair to request to know what it is
18 that CAN wants, what their problem is with the LTP, so that
19 we could frankly provide responses and certainly makes for
20 -- if there is a hearing, it makes for it to be more
21 efficient and more effective.

22 Other than that, I have nothing more to add.

23 JUDGE BECHHOEFER: Any comments, Mr. Block?

24 MR. BLOCK: No, Your Honor. Thank you.

25 JUDGE BECHHOEFER: Mr. Lovejoy?

1 MR. LOVEJOY: I pass. Thank you.

2 JUDGE BECHHOEFER: Ms. Katz.

3 MS. KATZ: I just want to say that much of what we
4 had in this contention was dealt with yesterday, and so I
5 just want to reiterate that what I just wanted to focus on
6 was information related to the issues of the hot particles
7 and the plutonium which was raised yesterday, and what I was
8 attempting to do was just add to whatever wasn't fully
9 discussed yesterday rather than going through the whole
10 proces again.

11 Is it possible for us to have a five-minute break
12 at this point?

13 JUDGE BECHHOEFER: Yes.

14 MS. KATZ: We want to get some papers out of the
15 car for the process.

16 JUDGE MURPHY: Come back at 20 minutes of the
17 hour.

18 [Recess.]

19 JUDGE BECHHOEFER: Back on the record.

20 During the break, the Board and I imagine all of
21 the parties and petitioners were served with a memorandum
22 from Dr. Resnikoff to Mr. Block, and I just wanted to note
23 for the record that we had all received it, and we assume
24 all the parties and participants have received that
25 memorandum. It concerns the update of Part 61, which was

1 referenced yesterday.

2 So I just thought I'd note for the record that we
3 got it, and I presume all the other parties have got it as
4 well.

5 Now we're going to number 3. Ms. Katz, I guess
6 we're up to number 3.

7 MS. KATZ: Okay. I know the decision was that the
8 issues that are in terms of the irradiated fuel storage
9 plants that Yankee has are outside of what we can deal with.
10 I just wanted to make one thing clear in a certain way for
11 the record, so it's under 3 and it's on page 16.

12 Under NRC regulations, the Agency is responsible
13 for the greater-than-Class-C waste and any ALARA
14 considerations that could result in the unnecessary exposure
15 of workers during transfer and casking of this waste and
16 other irradiated material in the fuel pool. In section 1.4,
17 Yankee acknowledges there are 21 canisters of
18 greater-than-Class-C waste. The greater-than-Class-C waste
19 will require transfer out of the pool. Although there is no
20 current disposition for the greater-than-Class-C waste, the
21 LTP does not reflect this.

22 What we want to express is our being confounded by
23 what we feel is NRC's abdication of their responsibility and
24 accountability in terms of providing a way for citizens to
25 participate in terms of fuel issues, that the

1 greater-than-Class-C waste is not necessarily the
2 responsibility of the DOE. And I go into it in what I say,
3 I understand we're not necessarily going to deal with it
4 here, but I just want to acknowledge that we really
5 experience this as a schizophrenic situation in which parts
6 of what's in the fuel pool are really accountable to the
7 NRC, but all of it is not dealt with or whether the fuel
8 pool remains.

9 And we want to make clear that we think the
10 removal of the fuel pool by Yankee, which is one of its
11 options, and probably the option it will take, raises
12 serious health and safety concerns for our community, is
13 experimental and controversial, and although no one here can
14 deal with it, these issues will deeply affect our community
15 in the future.

16 And it may be that in a court of law we will have
17 to get some decision on who is accountable and when. But we
18 certainly think that the issues of the greater-than-Class-C
19 raise questions about whether NRC is still responsible and
20 that it should in fact be part of site remediation rather
21 than the high-level waste which at least in the last
22 licensing board hearing we went through we were told was the
23 purview of the DOE. And that was why we couldn't discuss it
24 there. And it wasn't ripe.

25 So it's just to put it into the record in terms of

1 our concerns. I'm not necessarily expecting a response.

2 JUDGE BECHHOEFER: As we said yesterday, we'll
3 mention this in the decision, and the reason why we can't
4 consider the contention, and to the extent it gets up to the
5 Commission and later to the court, that will create the
6 record that you need if you wish to challenge it in court or
7 challenge it before the Commission.

8 So, do any of the other parties or participants
9 have any comments on this? Otherwise we won't do it.

10 MR. GAD: Stand on what we wrote, Your Honor.

11 JUDGE BECHHOEFER: Pardon?

12 MR. GAD: We will stand on what we wrote.

13 JUDGE BECHHOEFER: Right.

14 MS. MARTZ: Staff has no further comments.

15 JUDGE BECHHOEFER: Okay. Mr. Lovejoy?

16 MR. LOVEJOY: Nothing further.

17 JUDGE BECHHOEFER: Go on to number 4, I guess.

18 MS. KATZ: Okay. What I wanted to turn to was
19 number 6, Contention 6, Waste Issues, on page 20.

20 JUDGE BECHHOEFER: Oh, okay.

21 JUDGE MURPHY: You don't want to discuss 4 either?

22 MS. KATZ: I felt that it was dealt with
23 yesterday, that we don't need to go over it, and that it
24 makes it easier for everyone if we don't go through it
25 again. I felt it was ably handled and for everyone's time

1 considerations.

2 JUDGE ELLEMAN: And is that true for number 5
3 also?

4 MS. KATZ: Yes. Yes.

5 JUDGE ELLEMAN: Okay.

6 MS. KATZ: So I'm just trying to pick the
7 points --

8 JUDGE MURPHY: Good.

9 MS. KATZ: That I felt that we had other issues
10 that were not raised by New England Coalition in terms of
11 their issues. So that's what I'm just trying to focus on
12 for brevity this morning.

13 So what I am saying is those issues in those
14 contentions I believe were handled yesterday by the
15 contentions that were raised by New England Coalition and in
16 our responses to those contentions.

17 Under Waste Issues, CAN contends that an
18 environmental assessment, an EIS, is required due to the
19 existence of both documented and undocumented contamination
20 on the Yankee Rowe site. The study is necessary to
21 determine the source's extent and the potential for plumes
22 of contamination, including tritium, under the surface of
23 the soil if the site is to be released for unrestricted use.
24 CAN believes that the EIS is necessary given the
25 controversial and experimental nature of the project and the

1 fact that this is the first decommissioning under the new
2 regulations. Many of these regulations remain in draft form
3 at this point.

4 I would like to -- in fact the EPA made a
5 statement yesterday, last night, and in there, in a letter
6 to the Chairman, Judge Bechhoefer, they stated -- this is in
7 Yankee Atomic Electric Company Termination Plan docket,
8 50-029-LA, and this is from John DeVillas, regional
9 administrator of the EPA. What the EPA says on page 3 in
10 the second paragraph is:

11 Especially in the case of Yankee Rowe, which was
12 the first commercial plant to come off line and be
13 decommissioned, we are surprised that without much current
14 environmental information, NRC issued an environmental
15 assessment finding of no significant impact and relied to a
16 great degree upon an outdated 1988 generic EIS which
17 contains no site-specific information in approving the
18 decommissioning plan.

19 MS. KATZ: We recognize that the NRC changed
20 its regulations after CAN versus NRC in which
21 decommissioning was no longer a major federal action and so
22 did not require NEPA compliance.

23 Part of why I'm raising this here is that we
24 object and may, in fact, yet have to return to court over
25 this issue since we believe -- in fact, the court found that

1 decommissioning was a major federal action, and that it did
2 require NEPA compliance. And we believe that the NRC not
3 meeting this standard is arbitrary, and we believe that
4 since this is in fact the first decommissioning of a major
5 reactor, that in fact this environmental impact study is
6 necessary to understand the site and the changes that have
7 taken place to the site.

8 JUDGE BECHHOEFER: Are you saying you or your
9 organization disagrees with the generic EIS that the
10 Commission approved?

11 MS. KATZ: Yes. We believe there should be a
12 site-specific environmental study done of this site.

13 JUDGE BECHHOEFER: Do you know whether -- it was
14 my impression, and I don't have it in front of me, that
15 where there are major differences, they could be raised
16 perhaps. That's my understanding of it, maybe I'm wrong,
17 and other parties could comment.

18 MS. KATZ: We're not disagreeing with the guides,
19 but we believe that a specific EIS should be done of this
20 site to understand the contamination that has taken place
21 and how it has migrated on the site, as well as what changes
22 have taken place in the site itself since the original
23 assessments were done.

24 JUDGE BECHHOEFER: Okay. Mr. Gad?

25 MR. GAD: Your Honor, I'm prepared to stand on

1 what we wrote as a NEPA contention. This contention
2 misapprehends what NEPA is and where it attaches. As
3 applied to an LTP, this contention is contrary to the
4 Commission's dictate that the Commission intends to rely
5 upon the GEIS in the absence of some specific showing that
6 the site is different from -- that is to say not bounded by
7 -- the conclusions of the GEIS.

8 JUDGE BECHHOEFER: Yes. That was the question I
9 thought I just asked. Is the Yankee Rowe site within the
10 bounds of the GEIS?

11 MR. GAD: So the decommissioning plan and the LTP
12 concludes and there's been no specific contention of how the
13 GEIS would have to be amended in order to extend to the
14 Yankee site. That would have to be the nature of the
15 contention, and then, of course, you would deal with it not
16 by disapproving the LTP, but by amending the -- or
17 supplementing the GEIS in the hearing record.

18 JUDGE BECHHOEFER: Staff?

19 MS. HODGDON: Ms. Martz will address this
20 contention.

21 JUDGE BECHHOEFER: Okay.

22 MS. MARTZ: An environmental assessment was done
23 as part of the decommissioning plan. I have it here. It's
24 dated December 14th, 1994. And the staff is doing an
25 environmental assessment related to the approval or if there

1 is an approval of the LTP. So there is -- I mean, we are
2 complying with NEPA, we are doing an environmental
3 assessment, which is what the Commission directed in its
4 statements of consideration as part of the decommissioning
5 rule, that approval of the LTP should be treated as a
6 license amendment, and therefore -- I'm quoting directly
7 from the statements of consideration -- an environmental
8 assessment or impact statement would be required at the time
9 the license is amended.

10 So at this time, the plans are to do an
11 environmental assessment if the LTP is approved.

12 JUDGE BECHHOEFER: Well, isn't it part of the
13 approval process for us to review an assessment?

14 MR. GAD: No.

15 JUDGE BECHHOEFER: I mean, --

16 MS. MARTZ: I mean, we're doing an EA. There is
17 no categorical exclusion not to do an environmental
18 assessment.

19 JUDGE BECHHOEFER: Right, but doesn't the
20 assessment have to be one of the things that's reviewable by
21 people seeking to create contentions based on environmental
22 matters?

23 MS. ZOBLER: Well, Your Honor, if I may, the staff
24 or the NRC did issue the generic environmental impact
25 statement.

1 JUDGE BECHHOEFER: Right. And this is where it's
2 supposed to -- the assertion is that it doesn't properly
3 apply to the current site.

4 MS. ZOBLER: I understand. It goes back to the
5 whole problem with CAN's assertion, is that they assert
6 these statements without any kind of demonstration or
7 support that such is necessary.

8 [Pause.]

9 JUDGE BECHHOEFER: Ms. Martz, why isn't the
10 alleged groundwater contamination relevant to both the
11 environmental assessment and as to whether that should be
12 reviewable by other parties or members of the public.

13 MS. ZOBLER: Because, Your Honor, we do have the
14 generic environmental impact statement.

15 JUDGE BECHHOEFER: Well, they're saying it doesn't
16 apply for one reason, the groundwater contamination. Now --

17 MS. ZOBLER: Excuse me.

18 [Pause.]

19 MS. ZOBLER: Okay. Excuse me, Your Honor.

20 The generic environmental impact statement
21 contains an envelope of impacts, and as long as Yankee stays
22 within that envelope, the impacts are adequately addressed
23 in the GEIS.

24 JUDGE BECHHOEFER: And is the full extent of --
25 I'm just using one instance -- the groundwater

1 contamination, is that within the bounds of the GEIS?

2 MR. GAD: May I respond to Your Honor's question?

3 JUDGE BECHHOEFER: Yes, you may.

4 MR. GAD: I think we have an apple and an orange
5 situation here, okay? We are not asking the NRC to
6 authorize the full extent of the groundwater contamination;
7 therefore, there is no federal action that will authorize --
8 and I'm putting quotes around Your Honor's term -- the full
9 extent of the groundwater termination.

10 The federal actions that are before the house are,
11 number one, has Yankee adopted the dictated site release
12 criterion, and number two, does it have a plan for
13 demonstrating that it has met them?

14 Now, by definition, the only environmental impacts
15 of that decision are the environmental impacts of meeting
16 the site release criteria, and that's what the Commission
17 meant when it said: The Commission intends to rely upon the
18 GEIS to satisfy its obligations under the National
19 Environmental Policy Act regarding individual
20 decommissioning decisions that meet the 25 milliseverts per
21 year (25 millirem per year) criterion for unrestricted use.
22 The Commission will still initiate an environmental
23 assessment regarding any particular site for which a
24 categorical exclusion is not applicable to determine if the
25 generic analysis encompasses the range of environmental

1 impacts at that site.

2 By definition, you're talking about sites that are
3 not going to be released for unrestricted use.

4 Now, the answer to Your Honor's question was -- is
5 the EA that the staff does not something that this board
6 should pass upon? The answer to that is a categorical no.
7 This board should resolve admitted contentions and this
8 board should decide if a contention meets the standards for
9 admission.

10 Under the rules, the LTP is required to update the
11 environmental statement in the de-plan. The de-plan is
12 required to update the EIS that was done for Yankee. Both
13 of these were done, and any one who wants to come in with a
14 contention that says NEPA requires more is required to come
15 in and say with litigable specificity that this
16 environmental report is inadequate because it does not
17 consider X impacts that will remain after the LTP has been
18 implemented. The ground water that Your Honor is talking
19 about are off-site impacts.

20 MR. BLOCK: Might I just answer that?

21 JUDGE BECHHOEFER: Mr. Block, yes.

22 MR. BLOCK: As long as Mr. Gad is speaking for the
23 staff, I'm going to help Ms. Katz here for a minute.

24 How can that possibly be the case? How could they
25 ever frame a contention in this hearing when the staff is

1 saying here that that EA hasn't been prepared yet relative
2 to the LTP? And if that's the case, then we don't know
3 exactly what they're going to cover, and it may just be
4 another stamp of approval, but even if it is, the ability to
5 challenge only exists when the document comes into existence
6 and is put before the public. Otherwise, NEPA is patently
7 violated in about 16 fundamental ways under NEPA
8 jurisprudence.

9 The whole idea of it is to see what the federal
10 agency is going to do before there is a commitment of
11 resources, and in here, the regulatory resources have been
12 found by the First Circuit to make this a major federal
13 action, not in pieces, but as a whole. And just because
14 there happens to be a segmentation of the plant doesn't mean
15 that if there's going to be another EIA issuing, it
16 shouldn't be out here now. Else, what will happen is it
17 will come out and there will be no opportunity for the
18 public to do anything. There will be no hearing right, no
19 intervention right.

20 JUDGE BECHHOEFER: I think what Mr. Gad perhaps
21 was referring to is not the environmental assessment that's
22 ongoing, but the -- I guess the environmental report is the
23 technical name, whatever Yankee Rowe is required to submit,
24 the update to the environmental report, which I understand
25 is of record.

1 MR. BLOCK: I'm well aware of that report, Your
2 Honor, and what I'm referring to is his response
3 supplementing what the staff said when the staff has just
4 admitted to this board that an EA is being prepared on the
5 LTP and it hasn't come out yet. How could we be expected to
6 offer a contention relative to their findings when their
7 findings are not yet available to the public and haven't
8 been available for a reasonable period of time, such as 30
9 days available in the local public document room?

10 JUDGE BECHHOEFER: Well, I think the standard
11 basically would be you would be permitted to offer a
12 contention in this proceeding but following issuance of the
13 staff's assessment, and we would continue the proceeding,
14 and if you weren't in on any other contention, it would be a
15 late-filed contention but the factors governing late-filed
16 contentions could be balanced in your favor merely because
17 of the lack of information previously.

18 MR. BLOCK: Thank you for clarifying that for Ms.
19 Katz.

20 JUDGE BECHHOEFER: But again, the material -- if
21 it's in the environmental report that's been filed already,
22 then you couldn't use the late-filed excuse for that.
23 That's just my basic recollection. I'm not reading from the
24 regulations. But I think it's --

25 MR. GAD: It is of assistance, Your Honor. The

1 specific situation -- excuse me.

2 [Pause.]

3 JUDGE BECHHOEFER: I was just conferring with my
4 colleague, but that is my recollection, and there are
5 various cases, some of them pretty ancient -- I don't know
6 if they were AEC or NRC cases -- but saying that you can't
7 rely on the failure of the -- you have to take the -- we
8 can't speed up the issuance of the assessment, but when the
9 assessment comes out, we can allow different information
10 that appears therein to be used by intervenors to assert, at
11 least, contentions. And I can't give you off the top of my
12 head those cases, but there are several of them, I think,
13 and I think they came back probably almost in the '70s, but
14 maybe the '80s. I'm not sure. I know Jim Kelly was the
15 chief judge on one of those case.

16 So in any event, I can't give it to you off the
17 top of my head. So who's --

18 MR. GAD: Your Honor, if it would help, the
19 citation you're looking for is 10 CFR 2.714(b)(iii), about
20 halfway down the page, and I quote: On issues arising under
21 the National Environmental Policy Act, the petitioner shall
22 file contentions based on the applicant's environmental
23 report. End of quote.

24 JUDGE BECHHOEFER: Right. But I was referring to
25 the additional case law which says that after the staff

1 performs its assessment -- and I don't believe that this is
2 one of the actions that's a so-called categorical exclusion.
3 The staff is doing the appropriate review and performing an
4 assessment. But after that issues, I think parties are
5 allowed to raise issues arising from that assessment.

6 MR. GAD: Well, actually, that's addressed in the
7 rule too, Your Honor, but it's tomorrow's problem. For
8 today, if you want to propound a NEPA contention, you have
9 to address it to the environmental report, and in this
10 context, you have to point out why the environmental
11 report's conclusion of the relationship to the GEIS is in
12 some specific respect erroneous.

13 [Pause.]

14 JUDGE BECHHOEFER: Mr. Lovejoy, any comments on
15 this?

16 MR. LOVEJOY: No, thank you, Your Honor.

17 JUDGE BECHHOEFER: Ms. Katz, any rebuttal on this
18 one?

19 MS. KATZ: The one thing I want -- I mean, the
20 issue of why we wanted an environmental impact study, why we
21 feel it's necessary instead of just an NRC response is that
22 if that's done, it would be a full-blown study that would,
23 in fact, give off-site impacts. There is an acknowledgement
24 that there is contamination in the Deerfield River that has
25 migrated because of the leak from the ion exchange pit that

1 took place.

2 We are concerned about what has migrated off-site.
3 We don't have any assurance that the environmental
4 assessment that will be done by the staff or that's being
5 done by Yankee is going to go beyond the border. And that's
6 one of our concerns in this, is how this will affect not
7 just on-site, but off-site.

8 We also -- they're not necessarily going to check
9 for soil movement or the flow of the --

10 JUDGE BECHHOEFER: Well, have you studied the
11 environmental report by Yankee that already deals with
12 whatever -- what they think is necessary?

13 MS. KATZ: We believe that it's old and it's an
14 old reference that's used rather than one that is up to date
15 at this point.

16 [Pause.]

17 JUDGE BECHHOEFER: I just wanted to mention, and I
18 assume this is the case, that when the assessment is
19 complete, the staff will serve it on all the parties?

20 MS. ZOBLER: We can do that, Your Honor.

21 JUDGE BECHHOEFER: The petitioner's parties --

22 MS. ZOBLER: Certainly. Certainly provide them a
23 copy.

24 JUDGE BECHHOEFER: Yes. And do you have any
25 schedules, more or less? Do you know about what the

1 progress of that is? I'm not trying to confine you to any
2 schedule, but --

3 MR. FAIRTILE: Roughly two to three months.

4 JUDGE BECHHOEFER: Okay.

5 I guess now we're up to number seven.

6 MS. KATZ: Okay. I realized in terms of -- I
7 believe that the issues in number 7 were already covered, so
8 I have only one more point to make. I had missed something
9 actually. I think it's in number -- contention number 2,
10 and I'm sorry. Yes. It's on page 12. If we could go back
11 to contention number 2. I'm sorry for leaving this out.
12 And it's in the first paragraph.

13 In NRC inspection report 50-29/9803, it states
14 that Yankee will apply a zero Cesium 137 background for
15 disturbed soil areas. The report further states, it is
16 expected that this will apply to soil beneath the asphalt in
17 affected areas. And CAN is requesting that this claim
18 that's made in the inspection report be incorporated into
19 the LTP for Cesium 137 and Cobalt 60 in order to assure that
20 Yankee is committing to follow that standard.

21 So we are just asking because we saw it in the
22 inspection report, but it wasn't in the LTP as far as we
23 could see. We are just asking that that be incorporated
24 into the LTP to make it clear that that's the standard that
25 Yankee is using.

1 JUDGE BECHHOEFER: Well, back to seven, there are
2 assertions, at least, concerning the -- well, your words now
3 -- the illegal handing of rad waste.

4 MS. KATZ: Right.

5 JUDGE BECHHOEFER: Is that not something a little
6 different from what has been raised earlier and --

7 MS. KATZ: One of the things --

8 JUDGE BECHHOEFER: I would like you to explain it
9 if it is.

10 MS. KATZ: Right. One of the things I wanted
11 actually to make a correction on, because in terms of
12 finding the GAO report, which, in fact, dealt with the
13 issues of the fact that licensees were allowed to bury waste
14 on site before '81 and not document it, then I wanted to
15 revise that, because, in fact, Yankee was legally allowed to
16 do that. It may be shocking to us, but they were allowed to
17 do it. It was of great concern to us.

18 In fact, the issue in this for us was that this is
19 undocumented and that this is part of the process which
20 makes site cleanup I'm sure very hard for Yankee, but also
21 really confounding for us, that since the NRC did not
22 require until 1981 that they documented what they buried on
23 site or moved around, then the issue is that -- and Yankee
24 in fact acknowledges in their own records that there's
25 undocumented fill that's moved around, that not everything

1 would easily be found, and that's of concern to us in terms
2 of how that process will take place.

3 JUDGE BECHHOEFER: Well, are you making any
4 recommendations as to how that process should take place to
5 discover any of these undocumented -- well --

6 MS. KATZ: One of the concerns we raised is that,
7 in fact, the idea of going only six inches down in the soil
8 is one of the concerns. Since in the GAO report, what they
9 talk about is burial at four feet, then the issue of doing
10 test wells that are deep enough to potentially uncover
11 buried material is important to us. That's part of the
12 issue of, in fact, doing that kind of testing and doing
13 enough testing to assure that there hasn't been waste buried
14 on site, or if there is, that it will be remediated.

15 JUDGE BECHHOEFER: Do you have any further
16 comments on that one other than --

17 MS. KATZ: I mean, I think it was covered
18 yesterday. It was raised, the GAO report was raised, the
19 issue of doing the test so that -- in terms of digging deep
20 enough to find what's there until you come up, you know,
21 without contamination is one of the issues for us. I mean,
22 all of this ties into trying to locate the contamination to
23 assure our community that it's not left behind. And I
24 acknowledge this may be a really hard job, but we're raising
25 it because we didn't feel it was completely addressed in

1 terms of the LTP. In some ways, it's part of doing an
2 environmental impact study, would be to try to ascertain
3 where some of the contamination might be.

4 JUDGE BECHHOEFER: Well, as we heard before, at
5 least a study or an assessment is being done.

6 MS. KATZ: Right. And that may help -- that may,
7 in fact, help clarify those issues.

8 JUDGE BECHHOEFER: Right.

9 Mr. Gad?

10 MR. GAD: Your Honors --

11 JUDGE BECHHOEFER: Here we hear that a few deeper
12 holes might well solve the problem.

13 MR. DIGNAN: I didn't understand that.

14 MR. GAD: Hang on, Tom.

15 JUDGE BECHHOEFER: Well, that's what I heard, and
16 --

17 MR. DIGNAN: Well, I want to be sure of what I did
18 hear, if I might. Is it their contention that we haven't
19 dug below 15 centimeters?

20 MS. KATZ: No, I'm not saying -- in fact, in terms
21 of the information we saw through discovery, that you have;
22 that we feel there need to be enough diggings below to
23 assure that any contamination that may have been
24 undocumented and buried on-site can be found before the site
25 is released, and that there is a whole protocol and

1 mythology that lays -- methodology that lays out how that
2 would take place. That's what we are concerned with.

3 JUDGE BECHHOEFER: Okay. Mr. Gad or Dignan?

4 MR. GAD: Your Honors, I'm a little bit mystified.
5 I thought the contention A(7) was another NEPA contention.
6 That's at least how it's written or at least how we
7 interpreted it. It is, of course, subject to the same
8 requirements for a NEPA contention and it fails to meet them
9 for the same reasons that A(6) did.

10 JUDGE BECHHOEFER: Well, we're not viewing it as
11 primarily as a NEPA contention, but as a site safety
12 contention more or less --

13 MR. GAD: Well --

14 JUDGE BECHHOEFER: -- with a NEPA addition which
15 will be handled the way we discussed earlier for NEPA
16 matters.

17 MR. GAD: I guess, Your Honor, one of the problems
18 I have with that approach to life is that the aspiration of
19 the 1989 amendments to the rules of practice were that we
20 weren't supposed to be treating contentions as primarily
21 here or primarily there. It's got to be one thing or
22 another.

23 Now, if what you're telling me is that this is a
24 reiteration yesterday of a contention with respect to the
25 adequacy of the LTP's assessment of subsurface soil, then I

1 think we've -- once again, pardon the expression -- plowed
2 that ground already. That's not what the paper says. I
3 don't know. I mean, I guess part of the problem, Your
4 Honor, is that if you can read a piece of paper one way and
5 I can read it another way, that's QED that it doesn't meet
6 2714(b).

7 JUDGE BECHHOEFER: Staff. Ms. Hodgdon or Martz.
8 Whichever of you wants to handle this.

9 MS. ZOBLER: It does get confusing.

10 JUDGE BECHHOEFER: Well, I am not quite sure how
11 you have divided it, so.

12 MS. ZOBLER: Right. I mean the staff sort of took
13 these statements and tried to respond to them that way, as
14 our response demonstrated, and I won't go into it. We
15 looked at it as involving this assertion of illegal handling
16 of radioactive waste, and that is how we responded to it.
17 This GAO report was never referenced in any of the written
18 filings, and so there was no opportunity to respond to it,
19 so --

20 JUDGE BECHHOEFER: Right. Well, they now say it
21 wasn't illegal. They have changed that wording.

22 MS. ZOBLER: That's correct.

23 JUDGE BECHHOEFER: Legal but unfortunate.

24 MS. ZOBLER: Then I will just -- I will stand by
25 our response in the written filing, how, again, CAN fails to

1 read the LTP in the entire context, as we discussed
2 yesterday, did not read the entire report -- or the LTP,
3 excuse me, about what surveys that Yankee has done and how
4 their assertions here were related to the LTP -- and
5 failures in the LTP.

6 JUDGE BECHHOEFER: Right.

7 MS. ZOBLER: Excuse me.

8 JUDGE BECHHOEFER: Thank you. Let's see, Mr.
9 Block, anything on this one?

10 MR. BLOCK: No. I think Ms. Katz can handle the
11 rebuttal. Thank you.

12 JUDGE BECHHOEFER: Okay. Mr. Lovejoy?

13 MR. LOVEJOY: No, thank you.

14 JUDGE BECHHOEFER: Okay. Any rebuttal?

15 MS. KATZ: The only thing may be that -- the fact
16 is that there is a material dispute in terms of this, that
17 going to a hearing would, in fact, resolve in terms of
18 dealing with it, since there is confusion about how each
19 side sees it, or conflict.

20 [Pause.]

21 JUDGE ELLEMAN: We are having a little
22 disagreement among ourselves here, Mr. Gad, and it relates
23 to the point on page 12 that Ms. Katz pointed out a few
24 moments ago, in which CAN requests that the information in
25 the NRC report be included as a part of the commitment the

1 licensee makes for the LTP. And I guess we are not clear as
2 to whether the licensee is going to follow that report or is
3 not committing to that inclusion.

4 MR. GAD: May I respectfully suggest that that is
5 not the question, Your Honor. The report is a report of
6 events, all right. Someone went out and said, how are you
7 handling this? And Yankee said what we are going to do is
8 essentially write it off, that is to say, we are going to
9 write off any credit for non-plant-related sources of this
10 item. And that is a perfectly valid way of conservatively
11 shorthanding the calculation, but it is not a commitment to
12 do that if it turns out that it is necessary to chase
13 further precision.

14 JUDGE ELLEMAN: Okay. I think what I heard you
15 say is you are going to include all cesium-137 as
16 plant-generated, that that is --

17 MR. GAD: Oh, absolutely.

18 JUDGE ELLEMAN: Okay.

19 MR. GAD: The issue that we are talking about here
20 has nothing to do with scoring all of the plant-related
21 material. It is a question of -- very much like the ALARA
22 analysis, eschew taking credit, quote-unquote, for certain
23 things because it wasn't necessary in order to satisfy
24 yourself that you hadn't gotten to the right result. Well,
25 here you may have, if you wanted to be precise about how

1 much of item X was plant-related and how much was not, you
2 have a finite amount of work to do.

3 It may turn out that you are so far below the site
4 release criterion that, even if you took ownership of all of
5 it, without going that extra step, you still meet it, and at
6 that point there is no validity, there is not utility in
7 going one step further.

8 JUDGE ELLEMAN: Certainly. That's correct.

9 MR. GAD: Now, the NRC report is not a commitment,
10 it is not an order, it is not anything else, it simply
11 reports that at this point in time, that is what the
12 licensee plans to do. And that's true. But it is not a
13 commitment and it shouldn't be a commitment.

14 JUDGE ELLEMAN: No, but -- okay. But you are, in
15 your analysis, at least in the first iteration of that,
16 going to accept this zero cesium-137 background. You will
17 take claim for all the cesium-137 found.

18 MR. GAD: That is the present intention, Your
19 Honor.

20 JUDGE ELLEMAN: Okay. And so that covers the
21 first part of Ms. Katz's statement. The second part is that
22 that same expectation is going to apply to the soil beneath
23 the asphalt in affected areas.

24 MR. GAD: I am sorry, I have got to get to where
25 you are.

1 JUDGE ELLEMAN: It is on page 12 in that first
2 paragraph.

3 MR. DIGNAN: Your Honor, may I cut through this a
4 little bit?

5 JUDGE ELLEMAN: Sure, please. I will, on behalf
6 of Yankee, commit -- commit on the record that Yankee will
7 apply a zero Cs-137 background for disturbed soil areas.
8 And will apply it in addition to the asphalt in the affected
9 areas?

10 MR. DIGNAN: Yes.

11 JUDGE ELLEMAN: Thank you, sir.

12 MR. DIGNAN: I had the advantage that my Brother
13 Gad didn't have of having the management's ear.

14 JUDGE ELLEMAN: That always helps.

15 MR. DIGNAN: Always helps.

16 MR. GAD: Because he is taller.

17 JUDGE BECHHOEFER: Well, let's go on to Number 8,
18 I guess, which is, I guess, the last one.

19 MS. KATZ: Yes. I believe that Number 8 was
20 already covered in what I have talked about and that we
21 don't need to go through it again. It is in terms of
22 tritium contamination and the issues that relate to NEPA and
23 in terms of understanding how it may have affected the
24 groundwater, so I think those issues have been covered. And
25 so I feel that I have added to what I presented yesterday,

1 and I want to thank the Licensing Board for hearing our
2 contentions.

3 [Pause.]

4 JUDGE BECHHOEFER: Mr. Lovejoy, I guess it is your
5 turn now. It is my understanding that nobody else has
6 objected to the county or the Franklin -- the Group's
7 admission as an interested municipality or county, or
8 whatever it is, interested government body, and that is at
9 least the way I read it. If a hearing is authorized, if we
10 approve at least one other contention, your organization
11 will be included as an interested entity, I can tell you
12 that right now, and we should proceed to your contentions.
13 And, again, to the extent they are covered by other
14 contentions, you may wish to just recognize that, where the
15 substance is, in effect, covered by others.

16 MR. LOVEJOY: Thank you, Your Honor.

17 JUDGE BECHHOEFER: That you will be participate in
18 the litigation of any of the contentions that get let in.
19 If any, right. I mean we haven't decided on any of them
20 yet, but --

21 MR. LOVEJOY: I understand. I appreciate the
22 board's giving us the ability to speak. To use Mr. Block's
23 term, we will defer to the wisdom of the board in terms of
24 perhaps merging and maybe using some of the wording in our
25 contentions to expand perhaps some of the contentions that

1 might be reviewable in the future.

2 What I would like to do is just take all seven
3 contentions and simply lump them into essentially three very
4 short comments. The first one is, with regard to Contention
5 1, this is a repeat of questions about fuel storage, and we
6 understand the position of everybody and would just like to
7 request that some sort of ruling be issued in plain English
8 so that people can understand why fuel storage isn't a part
9 of this proceedings, and that might help the citizens of the
10 Franklin Region.

11 The other two broad issues I would just simply say
12 is on-site and off-site, and I believe with regard to
13 on-site, I would again renew my average worker, it could
14 well be a pregnant woman. Franklin region has very little
15 industrial space. One of our interests is in economic
16 development. We would like to feel confident that is the
17 town of Rowe, or the Franklin region were promoting sale of
18 industrial property, that it could be done with the utmost
19 confidence, and so our concern is really that the site be as
20 clean as possible and, to that extent, we raise contentions
21 with regard to the cleanliness and the site release
22 criteria, the site and the manner in which it was done. And
23 that is why we brought up the notion of random sampling as a
24 way to test any models being used.

25 In terms of off-site, we have gotten comments with

1 regard to testing of fish, testing of sediment. One of the
2 biggest economic bases of Franklin County is tourism, so
3 with regard to the river, I would like to propose the
4 average tourist as a way to view use of the Deerfield River.
5 And I sort of say that only partly tongue-in-cheek. I think
6 we are referring to some releases, some releases in the past
7 historically, perhaps releases with regard to cleanup and
8 perhaps irradiated sediments, and, obviously, the fish. So
9 our second concern is off-site in that we focus on the river
10 as something that has a great impact on Franklin region.

11 And, finally, we are thrilled to hear that there
12 will be an environmental assessment done and that we will
13 have an opportunity to speak on it. I guess part of our
14 involvement here really revolved around an effort to come up
15 with what we kept referring to as an independent study, an
16 independent review of the LTP, and what we are learning by
17 joining this process is that it is not really -- it is not
18 part of the process that way, it is sort of an independent
19 questioning rather than an independent sort of third party
20 study. And to that extent, again, we would like to thank
21 you for letting us participate, and we eagerly awaiting your
22 rulings. Thank you very much.

23 [Pause.]

24 JUDGE BECHHOEFER: Do other -- let's see, Mr. Gad,
25 any comments on Mr. Lovejoy's presentation?

1 MR. GAD: Yes, Your Honor, with respect to the
2 Council of Governments' proposals for additional contentions
3 if a hearing is otherwise ordered, we are prepared to stand
4 on our written response.

5 JUDGE BECHHOEFER: All right. Ms. Hodgdon or
6 other staff?

7 MS. HODGDON: I am not entirely sure that I
8 followed everything that was said, but just a couple of
9 points. Insofar as Mr. Lovejoy talked about his second
10 concern and said that the site might well be used for
11 business, of course, as we have already discussed, the
12 business scenario has a much lesser impact because the
13 persons working there, whatever sex they might be, are
14 working there only eight hours a day, and so that is a less
15 conservative scenario than the one that was chosen by
16 Yankee, the residential farm, which we have already said is
17 the most, so --

18 JUDGE BECHHOEFER: It might be nine if they are
19 CWS people.

20 MS. HODGDON: Excuse me. Well, that's right. But
21 we will worry about their week and not about their day, and
22 so they are going to come out the same. So I don't know.
23 We are getting into a very fine calculation if we are going
24 to go to the difference between working eight hours a day,
25 and nine hours a day, and so forth.

1 But, in any event, the average tourist, that point
2 has already been raised by CAN about the people rafting down
3 the river and that, of course, is a much, as I say, lesser
4 included offense, or whatever. It much less of a use
5 because the average tourist is there only occasionally.

6 And so, having said that, I would like to offer
7 the Federal Register sites that I was asked for before by
8 Mr. Block, and I think I have already given them, but I will
9 anyway, again. The proposed rule is at 59 Federal Register
10 43200 and the critical group, average member of the critical
11 group concept is given at 43218, and then the final rule,
12 which we have cited to several times, it is 62 Federal
13 Register 39058 and the average member of the critical group
14 is discussed there at 39058 -- whatever, I think I have got
15 -- 39068 is -- 67 and 68 is the proper cite, 39067 and 68.
16 And it is explained there, the Commission did take into
17 account ICRP recommendations, FRG recommendations, and
18 everything else, and found them to be consistent, as they
19 said.

20 And if I said that they specifically rejected
21 women and children, which I think that I was quoted as
22 saying, I certainly didn't intend to. They specifically
23 considered women and children, but not as the average member
24 and not as the standard. I don't think I have said anything
25 inconsistent, I certainly hope not, but that is what the

1 Commission did. So I hope I didn't leave any other
2 questions unanswered.

3 As regards Mr. -- we stand on what we filed in
4 response to his motion. And as change today, we just added
5 those few comments that those were lesser uses of the site.
6 Thank you.

7 JUDGE BECHHOEFER: Thank you. Mr. Block, any
8 comments, or Ms. Katz? Take your pick as to order.

9 MR. BLOCK: Yes. I think it would be helpful for
10 the board to clarify for Mr. Lovejoy what he can and can't
11 do. And I would hope that when you issue your ruling on the
12 preliminary matters that you will make it clearer. He spoke
13 of contentions, and here I would have to agree with Mr. Gad,
14 I think there continues to be a confusion and that it should
15 be clarified as to exactly what the Council may expect to be
16 able to do, because I think they may not have a clear
17 understanding yet of what their role might be. And if I am
18 confused, I would ask you to clarify my confusion here.

19 That's all at this point. Thank you.

20 JUDGE BECHHOEFER: Ms. Katz.

21 [Pause.]

22 JUDGE BECHHOEFER: I might comment, Mr. Lovejoy,
23 that, in essence, your group will be able to just do about
24 everything that any other party will do.

25 MR. LOVEJOY: Thank you, Your Honor. I think --

1 JUDGE BECHHOEFER: It may not be considered a
2 party for purposes of appeal to the Court of Appeals, I am
3 not sure. I am not sure there any definitive rulings on
4 that. But as far as going from here to the Commission, you
5 will be considered as any other party.

6 MR. LOVEJOY: Thank you, Your Honor. We were
7 confused and Mr. Block is correct in the sense that we
8 weren't -- we weren't positive that we could file what are
9 referred to as contentions due to the fact that we don't
10 feel like we are here, quote-unquote, opposing anything. We
11 wanted to raise certain particular points that were of high
12 impact to the Franklin region only, and are not here,
13 therefore, in an oppositional role.

14 JUDGE BECHHOEFER: Right.

15 MR. LOVEJOY: So in that kind of funny,
16 confusing --

17 JUDGE BECHHOEFER: Interested governmental parties
18 are not required to take a position. They are --

19 MR. LOVEJOY: Correct. And that's why we were
20 thrilled to be in that capacity.

21 JUDGE BECHHOEFER: Right.

22 MR. LOVEJOY: Thank you. I wondered if there was
23 not any comments, whether I could just address the idea of
24 funding.

25 JUDGE BECHHOEFER: Yes. Well, you have raised it.

1 I am not sure we can do much about it, but you may raise it
2 anyway.

3 MR. LOVEJOY: Okay. Well, just in the last three
4 weeks the Department of Energy actually created a \$6 million
5 fund against which citizens groups and private organizations
6 could draw against to assist them in analyzing the deep
7 radioactive waste storage facility out west. And this is a
8 precedent-setting case. I know that the NRC is looking to
9 the utilities and the nuclear owners to help fund their
10 review activities. I think that some creative mechanisms
11 maybe could be developed.

12 Obviously, we don't want to repeat -- reinvent the
13 wheel or repeat experts when there are already experts
14 there, but I think as the process goes on, if the board
15 could at least maintain a certain open attitude to the idea
16 that perhaps a unique issue or a set of issues could be
17 related to each of the parties, that perhaps there might be
18 a place where an expert from the Franklin region could well
19 elucidate matters. And so I would just request that you
20 keep an open mind rather than rejecting out of hand the
21 notion that a minor amount of funding might go a great deal
22 to bring confidence to the process and to your decision, and
23 we would appreciate that. Thank you.

24 [Pause.]

25 JUDGE BECHHOEFER: Mr. Block.

1 MR. BLOCK: Judge, I just happen to have the rule
2 that Ann Hodgdon refers to, and I have gone to the pages
3 that she cites, and I would like to copy them and make them
4 available to the board, because I don't think that they say
5 what she, even in her modified way, represented that they
6 say, and I think the board should see this.

7 JUDGE MURPHY: Which pages are you talking about?

8 MR. BLOCK: I am talking about 62 Federal Register
9 39057, July 21st, 1997, pages 39067 through 39068, which, by
10 the way, ends indicating that the ICRP recommends that such
11 analysis should consider exposure to individuals
12 representative of those expected to receive the highest
13 dose, using cautious by reasonable assumptions.

14 This approach has been adopted by the proposed FRG
15 and is consistent with the recommendations of the National
16 Academy of Sciences on the Yucca Mountain standards. It
17 doesn't speak of men, women or children, it speaks only of
18 conservative scenarios for the most exposed average
19 individual, depending on the scenario. And I think it is
20 pretty clear that that is what is there.

21 And I think that that means it is a question of
22 how the staff is deciding to apply this rule, not what the
23 Commission definitively said about limitations about the
24 rule reference to some 70 kilogram, six foot or five foot
25 seven male. And I think that, you know, if the board wants

1 those pages, I would be pleased to get to a copier and bring
2 them back for you.

3 JUDGE BECHHOEFER: We can get them.

4 JUDGE MURPHY: We have our own.

5 MR. BLOCK: You have your own copy?

6 JUDGE BECHHOEFER: Not with us. Not with -- oh,
7 you have got it.

8 JUDGE MURPHY: I have got it right here.

9 JUDGE BECHHOEFER: Oh, okay. I'm sorry.

10 MR. BLOCK: Thanks very much then.

11 JUDGE BECHHOEFER: I didn't have it with me, but I
12 have it.

13 JUDGE MURPHY: We have it and we have access to
14 it.

15 MR. BLOCK: Thank you, sir.

16 JUDGE BECHHOEFER: Also, the other one, 59, which
17 I haven't read lately. I believe that we have basically
18 finished what we came up here for. I would note that to the
19 extent we actually approve contentions, we will probably
20 then convene a telephone conference in order to work out
21 discovery schedules, that type of thing. There is no
22 discovery until we actually approve a contention. So -- if
23 we approve. If we should approve, we will try to convene a
24 telephone conference to establish relevant schedules.

25 [Pause.]

1 JUDGE BECHHOEFER: I guess we have nothing
2 further. We will do our best to come up with a decision in
3 a reasonable time, a decision on the contentions, et cetera.
4 We will do our best.

5 And with that, I guess that's -- Mr. Block, do you
6 have something further?

7 MR. BLOCK: Yes. Mr. Shadis apparently had
8 provided some information last night, and he seemed to think
9 that it was going to come under consideration today.

10 JUDGE BECHHOEFER: Yes.

11 MR. BLOCK: And that the board would have some
12 opportunity for him to address them concerning the material
13 we submitted.

14 [Pause.]

15 MS. HODGDON: Judge Bechhoefer, may the staff ask
16 a question?

17 JUDGE BECHHOEFER: Yes.

18 MS. HODGDON: Was -- were these filings that Mr.
19 -- were they, in fact, filings? I mean were they filed in
20 this proceeding? Is there a certificate of service? Did a
21 copy go -- or is this our only copy?

22 JUDGE BECHHOEFER: Well, I inquired and everybody
23 seemed to -- when I inquired earlier, everybody seemed to
24 have received, all the parties at least, seem to have
25 received copies.

1 MS. HODGDON: Could we ask Mr. Shadis?

2 JUDGE BECHHOEFER: Yes, you may. My inquiry was
3 whether we should establish some sort of a schedule for a
4 response.

5 MS. HODGDON: Yes. I'm sorry, I thought the
6 question was whether we were going to address it here. So
7 my question was, was this filed? I mean --

8 JUDGE BECHHOEFER: Well, I am not sure if it was
9 filed with the Secretary or not. It was distributed to the
10 parties here. Yeah, it will have to be filed in Washington for
11 it to be an official document.

12 MR. SHADIS: I am just moving up here to hear you
13 better.

14 JUDGE BECHHOEFER: Yes. It will have to be filed
15 with the Secretary eventually for it to be an official
16 document. And then the parties, I am sure will, if it is
17 considered a petition to intervene, it will be considered as
18 a late-filed petition, because, by definition, it is late,
19 and there are standards for considering those matters. And
20 you would also have -- I haven't read these thoroughly.
21 Whether you have enough in there to demonstrate whether or
22 not your group would have standing or not, I am not sure.

23 Maine is a reasonable distance away and there
24 would have to be some documentation as to why you have or
25 haven't standing to participate here, as distinguished from

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1 working with one of the other groups that have already filed
2 timely petitions and are -- where their contentions are
3 under consideration. And to the extent that yours may, to
4 some extent, overlap their contentions, it would be unlikely
5 that we would accept differing wording for what amounts to
6 the same claims. So you may wish to consider whether you
7 would offer your assistance to the other groups here as a
8 possibility.

9 MR. SHADIS: May I address the board briefly?

10 JUDGE BECHHOEFER: Yes, you may.

11 MR. SHADIS: There are essentially two pieces of
12 correspondence. One is the petition for standing as an
13 interested party and, indeed, we will be glad to file that
14 with the Secretary and your solution, Your Honor, that we
15 might participate with one of the other organizations is
16 certainly a possibility.

17 The other item here -- oh, and let me just clarify
18 that we wanted to participate as an interested party in
19 order to have ready access to the -- whatever discovery
20 materials were produced, not to intervene and have discovery
21 rights and so on. So, it may be that if the other parties
22 don't find it a great inconvenience, and would be willing to
23 add us to their service list, as well as if the Court would
24 put us on their service list, it probably would resolve any
25 need for us to look for standing, because we would then have

1 access to that material, and I presume that we could comment
2 through the other organizations that are intervenors.

3 That might resolve that part of the issue, that
4 particular petition. The other piece of correspondence is
5 entitled "A Request for Panel Affirmative Action on
6 Contentions" and really what we were attempting to do here
7 was to offer comment in the order for this hearing, and
8 there was an invitation that the public, anyone in fact,
9 could provide written comment, and this piece of
10 correspondence is intended to be that comment, but rather
11 than empty air comment we were asking for specific action
12 from this panel, and that is the restoration of one of the
13 aspects in the New England Coalition's initial filing, and
14 that aspect, referring to the necessity to do extensive
15 environmental assessment of work at the site, which is
16 something slightly different than a review of documentation
17 as NRC would do it down in Washington.

18 We have information at hand, Your Honor, about
19 changes in that site, about hydrogeological studies that
20 were done which indicate instability of the soils at that
21 site. On top of the fact that there are radiological
22 considerations there is major deconstruction, ordinary
23 non-radiological deconstruction, going on at the site now
24 which could affect the flow and the accumulation of
25 radionuclides later, so -- and our argument here is that it

1 is very important that that site work be done before further
2 damage is done.

3 So really what this item is here is a comment on,
4 as it was invited in the order, and we are asking that the
5 panel consider reinstating that contention or some portion
6 of it that was cited in the memorandum and order from the
7 Commission -- CLI-98, is it? -- and so that is the gist of
8 that.

9 I just wanted to try to clarify that there really
10 are two kinds of documents here -- the one is indeed a
11 petition for standing, and we will file that with the
12 Secretary. The other is simply a comment, but a comment
13 asking for action. Thank you.

14 JUDGE BECHHOEFER: Right. Well, your comment of
15 course is in the nature of a limited appearance statement,
16 which we -- like we heard last night.

17 MR. SHADIS: That's correct.

18 JUDGE BECHHOEFER: And we can take that into
19 account as long -- as all the others.

20 MR. SHADIS: Thank you and I appreciate it, and I
21 wonder if the panel might be willing to poll the parties to
22 see if the proposition that we be added to the service list
23 in order to resolve any question of applying for standing,
24 I* wonder if the panel would be able to -- willing to poll
25 the parties to see if they would agree to that.

1 [Discussion off the record.]

2 JUDGE BECHHOEFER: Would either Yankee or the
3 Staff have objection or -- and the Intervenors as well have
4 objection to adding this group to the service list, and then
5 without entertaining even the request for standing, because
6 I personally would have some question as to whether a group
7 from, essentially from Maine would have standing, but aside
8 from that --

9 MR. SHADIS: Before polling, Your Honor, may I
10 just -- just one statement of clarification.

11 We filed this petition outlining some reasons why
12 we might have standing as an interested party, fully
13 understanding that they were at the edge of or even over the
14 edge of the rules governing standing and what we were really
15 hoping to do here was to push that envelope for
16 acknowledging what might be essentially new grounds for
17 standing, so that is the level we are functioning at so if
18 it were indeed filed and it were rejected, we would
19 certainly understand, but that is the level that we were
20 pushing to.

21 The New England -- just permitting, if you
22 would -- New England is small geographically. When Western
23 states think about New England I don't know what they see,
24 but we are hardly the size of any standard Western states.
25 It is not far from one end of this area to another, and yet

1 we have four reactors under decommissioning, and the
2 community, the social structure of New England is such that
3 we do communicate and share information and in a large sense
4 we also share in the economic benefit of being viewed as a
5 clean, pristine environment. It's part of the way that we
6 are able to sell our products and draw tourists to us.

7 We share all that in common, so we were intending
8 in this petition to present that in part as an argument.
9 One, precedent that we would be facing this situation at
10 Maine Yankee very shortly, and we are deeply involved in
11 that decommissioning, and two, that we do share an awful lot
12 in common. We are New Englanders, if you will, as a breed
13 and so we have that commonality of interest.

14 JUDGE BECHHOEFER: How far away is your closest
15 community from the Yankee Rowe site?

16 MR. SHADIS: From Yankee Rowe?

17 JUDGE BECHHOEFER: Well, from the site that we are
18 talking about.

19 MR. SHADIS: Yes. When you say closest community,
20 you mean the closest member?

21 JUDGE BECHHOEFER: Yes, yes.

22 MR. SHADIS: We do have members in Massachusetts
23 and some down in this western end of Massachusetts and I
24 could not give you addresses but we would not be intending
25 to gain standing representing them in the manner which is

1 usually done. We would be attempting to gain standing on a
2 much broader interpretation of what interest is than simply
3 having a member who could be affected by a flying piece of
4 reactor.

5 What we are looking at is the way in which all of
6 us are affected by the processes that take place at these
7 plants, so it is a little bit different and to get to the
8 number that you asked for, we are about 200 miles away.

9 JUDGE BECHHOEFER: I see.

10 MR. SHADIS: Thank you.

11 JUDGE BECHHOEFER: Thank you.

12 JUDGE MURPHY: We are not going to resolve this
13 question now.

14 MR. SHADIS: Certainly.

15 JUDGE MURPHY: What you need to do is file your
16 petition and get it --

17 JUDGE BECHHOEFER: Well, I am trying to avoid --

18 JUDGE MURPHY: -- reviewed.

19 JUDGE BECHHOEFER: Yes, but I would like to avoid
20 that if I can by --

21 MR. SHADIS: You may avoid that -- either way, it
22 at the pleasure -- excuse me. Either way at the pleasure of
23 the panel, if the panel would like to entertain exploring
24 this notion of standing --

25 JUDGE MURPHY: You have asked for two things. You

1 have asked for the possibility of getting standing and you
2 have also asked to get on the service list.

3 JUDGE BECHHOEFER: That's an alternative.

4 MR. SHADIS: It's an alternative.

5 JUDGE MURPHY: Only as the alternative --

6 JUDGE BECHHOEFER: Well, to standing, yes.

7 JUDGE MURPHY: You said you wanted to push the
8 envelope about standing.

9 MR. SHADIS: Well, we would like to do that.

10 JUDGE MURPHY: Well, the way to do that is to file
11 your petition.

12 MR. SHADIS: I see.

13 JUDGE MURPHY: The other, the other business about
14 getting involved and getting on the service list, you can
15 ask the people in this room if they are willing to include
16 you.

17 MR. SHADIS: Thank you.

18 JUDGE MURPHY: Otherwise you have to wait till you
19 get on standing.

20 MR. SHADIS: Thank you, Your Honor.

21 [Discussion off the record.]

22 JUDGE BECHHOEFER: Let me just ask the other
23 parties whether they would object to adding this group to
24 the service, their service list.

25 MR. LOVEJOY: We have no objection.

1 MS. KATZ: CAN has no objections.

2 MR. BLOCK: New England Coalition has no
3 objection.

4 MR. GAD: Yankee would decline, Your Honor.

5 JUDGE BECHHOEFER: Would what?

6 MR. GAD: We object.

7 JUDGE BECHHOEFER: Oh, okay.

8 [Laughter.]

9 JUDGE BECHHOEFER: The Staff?

10 MS. HODGDON: The Staff has a problem with this,
11 and that is in this day of electronic filings and
12 requirements for fax filings and so forth, the addition of a
13 requirement to furnish somebody with a copy -- I mean that
14 is why we maintain the LPDRs and besides which, as I
15 understand it, Mr. Shadis represented in his limited
16 appearance last night that he is a member of NECNP and so it
17 would seem to us to be, seem to the Staff to be appropriate
18 that they provide him with such copies.

19 I think he already said this morning that he
20 wasn't trying to come into this proceeding as a
21 representative of Friends of the Coast but on his own, and
22 that being the case it seems to me that his being a member
23 of NECNP that he is -- to the extent that NECNP is in, then
24 he is in, and they could make arrangements for copies.

25 I don't know. It may be possible that we could

1 mail him some things, although I just don't think we want to
2 get into a requirement that we accommodate another party as
3 we have been asked --

4 JUDGE BECHHOEFER: No, we would not consider them
5 a party.

6 MS. HODGDON: -- I mean as we have asked to
7 accommodate another entity, another group, make another
8 electronic filing, another facsimile and so forth. I mean
9 it gets fairly hectic as it is, so I think the answer at
10 this time would have to be no, we are not enthusiastic about
11 it either.

12 JUDGE BECHHOEFER: Thank you.

13 [Discussion off the record.]

14 JUDGE BECHHOEFER: I guess we can't get unanimous
15 consent, sir --

16 MR. SHADIS: Thank you, Your Honor.

17 JUDGE BECHHOEFER: -- so you ought to file what
18 you want to file.

19 MR. SHADIS: Thank you. I appreciate the effort.
20 Just to clarify one point, I am an employee of the New
21 England Coalition, but I am here representing Friends of the
22 Coast.

23 I am also on Maine Yankee Atomic Power Company's
24 Community Advisory Panel. That company is owned wholly or
25 in part by the same companies that own Yankee Nuclear Power

1 Station so you might also say I am here representing them.

2 MR. DIGNAN: Well, then you are in conflict of
3 interest.

4 MR. SHADIS: I am afraid so.

5 [Laughter.]

6 MR. SHADIS: You could resolve it by simply
7 copying my office the document. Thank you.

8 JUDGE BECHHOEFER: Well, if you decide that you
9 are satisfied with reading NECNP's copies, which maybe you
10 will be able to, that may satisfy you, but if not you will
11 have to file and explicitly seek standing and the other
12 matters and the parties will all have a chance to comment
13 and we will eventually rule when we get everything in.

14 MR. SHADIS: Thank you. At a distance of 200
15 miles, it is a little bit difficult to read what they get,
16 but we will file and I do appreciate the court's
17 consideration. I thank you.

18 MR. DIGNAN: Your Honor, may I respectfully
19 inquire -- there will be another filing and that will
20 trigger the response dates? I am just confused now. Papers
21 have been passed to the Board. One could argue that the
22 10-day response period started to run when that happened, or
23 will it happen, will it run when we receive the --

24 JUDGE BECHHOEFER: No, I think it will run from
25 whatever date he --

1 MR. DIGNAN: Makes a second filing?

2 JUDGE BECHHOEFER: Makes a second filing plus five
3 days, I think it is, for mailing.

4 MR. DIGNAN: Thank you, Your Honor. I just wanted
5 to clarify that for the record.

6 You have to add --

7 MR. SHADIS: -- attorney notice was not signed.

8 JUDGE BECHHOEFER: No, it will be filed whenever
9 it's filed. We don't consider it as being filed yet and
10 then the response time will -- as set forth in the rules,
11 unless people think they need more or less -- well, less you
12 can always do it. More -- you'll have to ask but we will
13 consider the filing date whenever it is postmarked, I guess,
14 to go to the Secretary, and then, as I say, you add your 10
15 days, a little more for the Staff I guess -- five days for
16 mailing too, so those are the standard rules and they will
17 govern.

18 Is there anything further that anyone wishes to
19 raise before we adjourn?

20 [No response.]

21 JUDGE BECHHOEFER: I might say we have enjoyed
22 being here. We have appreciated the active participation of
23 all of you people as well as other members of the community
24 who were here last night, and we will do our best to get out
25 a decision in a reasonable time, so we are adjourned.

1 [Whereupon, at 12:10 p.m., the meeting was
2 concluded.]
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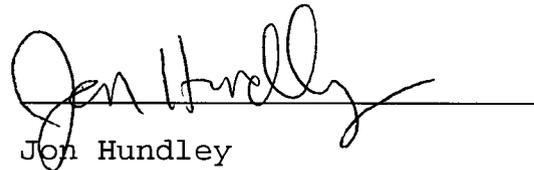
NAME OF PROCEEDING: YANKEE ATOMIC ELECTRIC
COMPANY (YANKEE NUCLEAR
POWER STATION
PREHEARING CONFERENCE

CASE NUMBER: 50-029-LA-R

ASLBP No. 98-736-01-LA-R

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