

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

DOCKETED

USNRC

APR -5 P2:18

ADJUTANT GENERAL AFF

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

**Case No.:**

**Work Order No.:** ASB-300-733

**LOCATION:** Rockville, MD

**DATE:** Wednesday, March 31, 1999

**PAGES:** 283 - 329

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of: :

TELEPHONE CONFERENCE :

YANKEE ATOMIC ELECTRIC COMPANY :

(YANKEE NUCLEAR POWER STATION) :

- - - - - X

U.S. Nuclear Regulatory Commission

TWFN 3rd Floor B51

11545 Rockville Pike

Rockville, MD

Wednesday, March 31, 1999

The above-entitled matter came on for telephone  
conference, pursuant to notice, at 10:04 a.m.

APPEARANCES:

On behalf of the Licensing Board:

CHARLES BECHHOEFER, Chairman

THOMS MURPHY

TOM ELLERMAN

LEE DEWEY

On Behalf of the Licensee:

THOMAS DIGNAN

ROBERT GAD

ROPES & GRAY

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Washington, D.C. 20036  
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1 APPEARANCES: [Continued]

2 On Behalf of the Intervenor, New England Coalition on  
3 Nuclear Pollution (NECNP):

4 JONATHAN M. BLOCK

5 On Behalf of the Citizens Awareness Network (CAN):

6 DEBORAH KATZ

7 On Behalf of the Franklin Regional Council of Governments  
8 (FRCOG):

9 SAMUEL LOVEJOY

10 On behalf of the Nuclear Regulatory Commission:

11 ANN HODGDON

12 MARY ZOBLER

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

[10:04 a.m.]

CHAIRMAN BECHHOEFER: Good morning ladies and gentlemen. Is every -- I want to check who is on the line, at the moment, and I'll guess I'll read from those, who are supposed to be here.

First, from the licensee, Mr. Dignan or Gad or both?

MR. GAD: Good morning, Judge Bechhoefer. Both of us are here in Bonn, and we have you loud and clear.

CHAIRMAN BECHHOEFER: Okay. Is Mr. Block on?

MR. BLOCK: Yes, Your Honor. I'm here in Vermont.

CHAIRMAN BECHHOEFER: Okay. Ms. Katz?

MR. BLOCK: She doesn't appear to be here, Your Honor.

CHAIRMAN BECHHOEFER: Does anybody know whether she planned on being here?

MR. BLOCK: Yes. She had called me yesterday and said she did.

MR. GAD: For what it's worth, Your Honor, we were unable to get long distance service from Boston to Washington. There's some sort of a problem. We had this problem last night. I'm actually coming in via our T-1 into our D.C. exchange. Did you have trouble, Don?

THE SPEAKER: No, I got a direct connection.

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1 CHAIRMAN BECHHOEFER: And what about Mr. Lovejoy  
2 or Laipson?

3 MR. LOVEJOY: Good morning, Your Honor. I'm up  
4 here in Greenfield.

5 CHAIRMAN BECHHOEFER: Okay. And I take it you  
6 were able to get in?

7 MR. LOVEJOY: I have a second line here and,  
8 actually, it's the fax machine and it's still eating paper.  
9 But, when it opens, I mean, I can try calling Debbie from  
10 here and see whether -- you know, what exactly is going on.  
11 When I called that number you gave us, I had no idea what it  
12 meant to use a password bridge and I just sort of intuited  
13 that I would key in a number and wait and everything worked.  
14 Debbie may not be quite so intuitive about this phone thing,  
15 that would be my guess.

16 MR. GAD: Oh, Jonathan, if you could figure it  
17 out, she can.

18 MR. LOVEJOY: I guess she can, but both she and I  
19 occasionally have problems with machines going into  
20 rebellion against us. It's the red eye streak in us, you  
21 know.

22 CHAIRMAN BECHHOEFER: And the other person, who  
23 spoke -- who I understand was going to be on, is Mr. Davis  
24 from the Greenfield Recorder.

25 MR. BLOCK: We don't seem to have him either, Your

1 Honor.

2 CHAIRMAN BECHHOEFER: He had requested to our  
3 public affairs office that he be included. I guess I called  
4 you all about that and everybody I talked to had no  
5 objection. So, I said it was okay. But, he has to call in,  
6 in order to --

7 JUDGE MURPHY: Yeah.

8 CHAIRMAN BECHHOEFER: How about the staff? Ann  
9 Hodgdon or the other staff members, are you on?

10 MS. HODGDON: Yes. I have a number of people with  
11 me. Would you like me to identify them?

12 CHAIRMAN BECHHOEFER: Yes.

13 MS. HODGDON: Okay. I'm Ann Hodgdon from the NRC  
14 staff, and with me is Marianne Zobler, who is also NRC staff  
15 counsel; and I, also, have Larry Pittiglio; and --

16 MR. BLOCK: Could you spell that?

17 MS. HODGDON: P-I-t-t-I-g-l-I-o.

18 MR. BLOCK: P-I-t-t-I-g-l-I-o.

19 MS. HODGDON: Okay?

20 MR. BLOCK: Yeah.

21 MS. HODGDON: And I have Mark Fairtile,  
22 F-a-I-r-t-I-l-e; and I have Mike Masnik, M-a-s-n-I-k.

23 MR. BLOCK: Great; thank you.

24 MR. GAD: We're all outnumbered.

25 [Laughter.]

1 CHAIRMAN BECHHOEFER: And here, we have myself,  
2 Judge Murphy, and Judge Ellerman.

3 JUDGE MURPHY: No, we don't.

4 CHAIRMAN BECHHOEFER: Oh, Judge Ellerman, he's in  
5 North Carolina. Are you on, Tom?

6 JUDGE MURPHY: I'm going to leave and see if I can  
7 get Katz and Ellerman on.

8 CHAIRMAN BECHHOEFER: Okay. Okay, time out for a  
9 moment. Judge Murphy is going to go out and see if he can  
10 get Judge Ellerman. And I know Judge Ellerman is there,  
11 because we were talking to him a few minutes ago, so --

12 MR. GAD: The lady that I spoke with at --

13 THE SPEAKER: Here comes someone.

14 MS. KATZ: Hi.

15 CHAIRMAN BECHHOEFER: Hello?

16 MS. KATZ: Hello?

17 MR. BLOCK: Identify yourself, please.

18 MS. KATZ: This is Deborah Katz from the Citizens  
19 Awareness Network.

20 CHAIRMAN BECHHOEFER: Okay.

21 MR. BLOCK: Welcome aboard.

22 CHAIRMAN BECHHOEFER: Okay, we're still trying to  
23 get one other -- Judge Ellerman is not on yet, so we're  
24 trying to get him on. Everybody else is here. And as I  
25 said, Mr. Richie Davis had inquired and I had said last

1 night to our public affairs that he could come on. But,  
2 he's not here either, apparently.

3 MR. BLOCK: Your Honor, I just got a message from  
4 the Greenfield Reporter that they are attempting to call in  
5 and so far haven't been able to get a circuit to get in.

6 CHAIRMAN BECHHOEFER: Oh, okay.

7 MR. BLOCK: They are trying.

8 CHAIRMAN BECHHOEFER: Okay. We'll wait a minute.  
9 So, we're sorry it didn't go through all immediately, but --

10 [Pause.]

11 MR. BLOCK: Did we get Judge Ellerman on?

12 CHAIRMAN BECHHOEFER: Not yet. We're trying.  
13 We're not sure why. I know he's at his home, because we  
14 talked to him about 15 or 20 minutes ago.

15 MR. LOVEJOY: He might be looking through the  
16 video phone hookup.

17 MR. GAD: Just for chance, if there's a motion in  
18 support of moving the venue to North Carolina, I'm inclined  
19 to support it.

20 [Laughter.]

21 [Pause.]

22 JUDGE MURPHY: Judge Ellerman?

23 JUDGE ELLERMAN: Yes, I'm here.

24 JUDGE MURPHY: Great. I think we've got everybody  
25 now.



1 CHAIRMAN BECHHOEFER: Well, the Reporter didn't  
2 make it, yet; but if he gets on, so be it. I might say this  
3 conference -- telephone conference is being recorded. There  
4 will be a transcript available.

5 The major purpose of this call was to set some  
6 schedules for the proceeding for discovery, that type of  
7 thing. But, in addition, we may say a few words about -- we  
8 received a motion by fax and I think everybody did receive  
9 this from the licensee. And we were considering -- we think  
10 we should perhaps have substantive responses, unless people  
11 are prepared to address it all today, but substantive  
12 responses would probably be desirable -- written responses,  
13 I should say. And we were going to include in our  
14 scheduling a scheduling for filing that.

15 But, to start -- is someone else trying to get on  
16 now?

17 MR. DAVIS: Yes, this is Richey Davis calling from  
18 the Reporter.

19 CHAIRMAN BECHHOEFER: Oh, okay. Yes, well, we  
20 expected you.

21 MR. DAVIS: I had some trouble getting through.

22 CHAIRMAN BECHHOEFER: You haven't heard very much  
23 yet. We've identified ourselves, but --

24 MR. DAVIS: Oh, okay.

25 CHAIRMAN BECHHOEFER: I mean, you haven't missed

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1 much, I should say.

2 MR. DAVIS: It was just a lot of trouble coming  
3 through.

4 CHAIRMAN BECHHOEFER: Yeah, you weren't the only  
5 one, who had some trouble getting through. I had said that  
6 we're here to set schedules for the rest of the proceeding  
7 and we, also, think we'll include in the schedule time for  
8 response, at least, to the motion that we got yesterday, I  
9 guess it was, by fax, and I -- but everybody -- all the  
10 parties have received that.

11 And the motion, itself -- should we talk about the  
12 motion? Okay, are the staff and the other parties prepared,  
13 at this time, to respond to that motion or should we set a  
14 schedule?

15 MS. HODGDON: The staff would prefer to respond in  
16 writing.

17 CHAIRMAN BECHHOEFER: Right.

18 MS. HODGDON: This is Ann Hodgdon.

19 CHAIRMAN BECHHOEFER: Right; right, right.

20 MR. LOVEJOY: Mr. Lovejoy, Your Honor. I agree  
21 with staff. It would be -- we would appreciate time to  
22 answer in writing.

23 CHAIRMAN BECHHOEFER: Okay. Well, as part of our  
24 schedule then, we will include some dates. In fact, we were  
25 thinking for the date of response, if the parties could get

1 something in our hands -- this is fairly short, but tell us  
2 if it's too short -- by close of business Friday, April 9.

3 MS. ZOBLER: That's next Friday. Not this Friday,  
4 but the following Friday?

5 CHAIRMAN BECHHOEFER: That's correct. That will  
6 be in our hands, but it could be faxed or --

7 MS. ZOBLER: Okay.

8 CHAIRMAN BECHHOEFER: -- e-mailed, for that  
9 matter.

10 MR. BLOCK: I'm going to try to e-mail it, at this  
11 point, if other people are. I don't know how difficult that  
12 would be for all of us. But, if people are willing to give  
13 it an experiment, you know, I think it may be worth trying.

14 MR. LOVEJOY: Absolutely, keeping Melissa out of  
15 the way.

16 CHAIRMAN BECHHOEFER: Yeah.

17 MS. HODGDON: I agree.

18 CHAIRMAN BECHHOEFER: Well, I understand that you  
19 have to be using Word for it to really -- now, I don't know  
20 whether you all use Word or not; most of us don't, at the  
21 office, at least.

22 MR. LOVEJOY: I do, so I guess I -- that's why  
23 now, I'm agreeable to it. Before, it was more difficult. I  
24 don't know how -- what the situation is at Ropes & Gray, but  
25 maybe you guys could give us some idea. I mean, would it be

1 reasonable to try sending files to you and see if this will  
2 work?

3 MR. GAD: Historically, the lesson has been that  
4 they're not bad as courtesies, but they are not reliable as  
5 the obligation fulfilling filing.

6 MR. BLOCK: I hear you; okay.

7 MR. GAD: And incompatibilities, system failures,  
8 the fact that you're e-mail from Vermont to Boston could go  
9 via Denmark or, for that matter, Siberia, and a whole bunch  
10 of other reasons. So, I think it's not a bad thing to  
11 experiment with, but I think that the fax followed by the  
12 paper ought to be the filing of record --

13 MR. BLOCK: Right.

14 MR. GAD: -- of which that's going to glitch out  
15 and then have problems.

16 MR. BLOCK: Let me ask, I think what would be  
17 useful --

18 CHAIRMAN BECHHOEFER: I might say that when we say  
19 "in our hands," we would certainly accept the fax for that  
20 purpose anyway. And if you put a paper copy in the mail --

21 MR. BLOCK: Great.

22 CHAIRMAN BECHHOEFER: -- that's better. But --

23 MR. BLOCK: We would do that. But, Judge, to try  
24 the -- to try an experiment with the e-mail, if people could  
25 send each other their addresses by fax, just write your

1 e-mail address on a fax sheet and send it to the other  
2 parties, and then we would be able to assemble them and try  
3 them. But the other thing that's useful is to know what  
4 word processing program you use. And the key there is, I  
5 can write a motion and then save it on my desktop, so to  
6 speak, in any number of different kinds of programs. And  
7 then if that is sent as an attached file, theoretically, you  
8 should be able to open it much more easily than if I send  
9 you a Microsoft Word file and your program has to struggle  
10 opening that.

11 MR. GAD: The common denominator, John, is that  
12 it's Word Perfect 5.1.

13 MR. BLOCK: Word Perfect 5.0?

14 MR. GAD: 5.1.

15 MR. BLOCK: 5.1; okay, fine.

16 MR. GAD: One of the difficulties with this idea,  
17 however, is that when you try to do what you just announced,  
18 number one, your program will not do it faithfully; and  
19 number two, it's going to change formats.

20 MR. BLOCK: I agree that there are those problems  
21 and I do agree with you, Bob, that this is just to see if we  
22 can communicate that way, because it would help, you know,  
23 speed up things, especially when we get to sending messages  
24 back and forth in discovery. But, I agree that there are a  
25 lot of limitations. So, maybe the thing to do would be to

1 ask the Judge here to get a consensus as to whether we  
2 should spend any time doing this or not, and, if not, I  
3 certainly would let this go by the boards.

4 JUDGE MURPHY: This is Judge Murphy. We've had  
5 quite a bit of experience with receiving filings by e-mail  
6 in other cases, and, generally, it works as Mr. Gad  
7 explained, and that is that the e-mail copy basically  
8 fulfills the copy that should be in by the deadline set by  
9 the Board or by the presiding officer, and then allows the  
10 parties to put the paper copy in the mail, at the same time.  
11 That's worked out fairly well.

12 We use Word Perfect 8 in our offices, and we have  
13 had no problem with translating other word processing  
14 programs. As Mr. Gad says, you don't get all of the format,  
15 but you get most of the words and it gives us an opportunity  
16 to start working on this case basically five days earlier  
17 than you would, if you waited for the paper copy. So, an  
18 e-mail courtesy copy or a faxed courtesy copy by the close  
19 of business of the date that we set would be very helpful to  
20 us. I suspect it would be to the parties, too.

21 CHAIRMAN BECHHOEFER: Okay. Is that April 9 date  
22 that I mentioned satisfactory?

23 MR. BLOCK: Satisfactory to us, Your Honor.

24 MS. KATZ: Yes, it's satisfactory to us.

25 MR. LOVEJOY: Satisfactory to us, Your Honor.

1 Thank you.

2 MS. HODGDON: It's satisfactory to the staff.

3 MR. GAD: I don't think I get a vote.

4 [Laughter.]

5 CHAIRMAN BECHHOEFER: Okay. Now, to go on to the  
6 schedules for the proceeding, generally. We were thinking  
7 that discovery -- formal discovery will start today or  
8 tomorrow. And we were thinking that about roughly 60 days  
9 would be sufficient for everything.

10 And I might say, Lee Dewey, the counsel to the  
11 panel, has just walked in the door and is now here, as well.

12 We were thinking 60 days would be reasonable and  
13 sufficient for discovery, and it would take into account the  
14 Commission's desire to speed up cases, that type of thing.  
15 Would that be satisfactory, then, to all the parties? And I  
16 don't think the difference in discovery would matter much,  
17 whether the contention four was in or out, the timing of  
18 discovery. So --

19 MR. BLOCK: Well, from our point of view, in my  
20 coalition -- this is Jon Block -- we had been hoping for a  
21 longer period of discovery. In fact, what we contemplated  
22 was approximately 120 days and we felt that a 60-day period  
23 is rather truncated and that given the nature of the  
24 material, our experience the last time we had discovery, and  
25 it was limited to 30 days in a single matter, was that it

1 was hardly enough time to really began to assimilate the  
2 material and to get into any dept with it.

3 I can't see having four contentions and be able to  
4 get the amount of material necessary and deal with it. I  
5 don't know how CAN views this or Franklin County, but I just  
6 see it as a practical matter, that if you have an initial  
7 set of questions and then you have to follow up on some of  
8 them because they're objections or they're not answered,  
9 that you might be able to get a round-and-a-half or almost  
10 two in a 60-day period, but that would be about it.

11 And here, I just don't see how we could get  
12 through it all, in that period of time. I don't see it as  
13 being a realistic approach to deal with this really fairly.

14 MS. KATZ: This is Deb Katz from CAN. We concur  
15 with Jon Block on this, Your Honor. We're really concerned  
16 that we won't have enough time to go over the material or  
17 have our expert go over the material and allow us to go in  
18 depth into the issues, which concern the clean-up of this  
19 side. So, we believe that the process, in fact, should be  
20 longer, as well.

21 MR. LOVEJOY: Your Honor, this is Sam Lovejoy from  
22 Franklin Region. And I would concur with the two  
23 interveners, because among other things, our application for  
24 some financing to assist us was rejected and we are purely  
25 operating on a volunteer basis. And I think our ability to



1 digest, in order to assist the process, everything that's  
2 going to be involved with discovery, 60 days is on the  
3 impossible scale. And if this is going to work in some  
4 smooth manner, where everybody is sort of on the same page,  
5 I think a little bit longer might save, in the long run,  
6 putting a little more emphasis on the beginning and making  
7 it digestible and logical than waiting a long time -- and  
8 doing it in a short period of time and then spinning our  
9 wheels with objections and all kinds of things through the  
10 process.

11 MR. BLOCK: Your Honor, Jon Block. I wanted to  
12 add something to what I said that may be of help, too. In  
13 the hearing process, we had gone into the absence of an EA  
14 and the staff indicated that one was going to be  
15 forthcoming. I really feel pretty strong, looking at those  
16 four contentions, that they really would -- it would be  
17 extremely helpful to have that material and would certainly  
18 end up giving -- given that you indicated that, you know, it  
19 would be possible to raise contentions after that came out,  
20 based on what's there, and perhaps end up, depending on how  
21 late it was in this process, with a whole reopening or new  
22 set of contentions coming up.

23 It would seem to me efficient, from the point of  
24 view of the panel, the staff, the licensee, and certainly  
25 ourselves, to try to get a handle on when that's going to

1 come out and allow, in our schedule, a reasonable period of  
2 time to have that; reevaluate what discovery we've had, in  
3 light of what's in it; and be able to move on that, so that  
4 we wouldn't end up having, in a sense, a proceeding after a  
5 proceeding or two successive proceedings. And I throw that  
6 out, because I think it would be helpful in trying to  
7 structure a schedule that will satisfy everybody's needs and  
8 be efficient.

9 CHAIRMAN BECHHOEFER: Ms. Hodgdon, does staff have  
10 any idea or do any of the staff people, who are on the line,  
11 have any idea about the schedule for the assessment?

12 MS. HODGDON: I know exactly when it's going to  
13 be, because the project manager, Mr. Fairtile, has just  
14 written me a note. So, that's the answer, the issuance is  
15 apparently imminent and I --

16 CHAIRMAN BECHHOEFER: Imminent now, you mean?

17 MR. FAIRTILE: It's ready to go into the register.

18 CHAIRMAN BECHHOEFER: Oh, okay.

19 MR. HODGDON: That was Mr. Fairtile, who just  
20 spoke. Issuance is expected quite shortly.

21 MR. GAD: Your Honor, would you like to hear from  
22 Yankee?

23 CHAIRMAN BECHHOEFER: Yes, we would.

24 MR. GAD: I think, Your Honor, 120 days would be  
25 way too long for this type of proceeding for the contentions

1 that are presently admitted, and I don't think you've  
2 fashioned a discovery schedule with respect to what might  
3 may be later. I think it's -- in response to Mr. Block's  
4 observation about the last case, that the last case was, in  
5 essence, an implementation case; that is to say, the  
6 material that --

7 CHAIRMAN BECHHOEFER: Could you speak a little  
8 louder?

9 MR. GAD: The last case was essentially an  
10 implementation case. And during that, CAN requested and  
11 received a bunch of very detailed data about what was  
12 actually happening in the field and how many person rems it  
13 involved. I remind everyone that this case is not about  
14 implementation, it's only about a plant. And putting aside  
15 for the moment what contention four might mean, the other  
16 three admitted contentions are quite contained.

17 The basic design standard, I think, for a  
18 discovery schedule is that it should allow for, in essence,  
19 two rounds of discovery; i.e., ask questions or seek  
20 documents, get a response, and then if you think one is  
21 necessary, ask a follow-on. Now, the discovery schedule,  
22 that is to say the number of days, is the day for the last  
23 request. So, the amount of time is to -- from today, to  
24 write your first request, get the responses, which are  
25 normally due in 10 days, take a look at them, and then write

1 your second round requests.

2 And I submit to Your Honor that a 45-day period is  
3 more than adequate for two rounds of discovery, with the  
4 stipulation that it would be enlarged on a day-for-day  
5 basis, if -- and I don't expect this to happen, but it's  
6 possible -- if Yankee needs an enlargement of the time to  
7 respond. So a 45-day schedule, assuming that we get our  
8 things in during the time that the rules provide, and if we  
9 need x extra days, then you would add x to the period of  
10 time for follow-on discovery, and that way you get your two  
11 rounds in. And I submit to Your Honor that that is the  
12 design -- that ought to be the design criterion for a  
13 discovery schedule.

14 MR. BLOCK: Well, from my point of view, that's  
15 very convenient to you, that you're the one that triggers  
16 whether any extra time is involved for getting information.  
17 As far as we're concerned, we would like to see the  
18 beginning of this be a period of informal discovery and to  
19 begin with, to ask the judges to direct the staff, if  
20 they're going to agree to participate in such a thing, to  
21 put together packets that provide all the material that  
22 they've assembled to use the judgment that they made in the  
23 forthcoming EA and all of the material that they used to  
24 make their judgment in the finding of no significant hazards  
25 consideration for this project. And that would give us a

1 good baseline.

2 As far as your facility goes, we would really like  
3 to talk about getting some kind of permission to work with  
4 you, to get some people that we select to go on site, and  
5 use some of the new x-ray technology they're using in  
6 archeology to check out some burial areas -- potential  
7 burial areas, and maybe get some probe sampling done, get  
8 some equipment in there to do it, and really get to the  
9 bottom of whether there's anything buried there and exactly  
10 where it is, what it is, and what the hydro-geologic flows  
11 would be going through that area.

12 So, those are the kind of concerns that we have.  
13 I don't know what concerns Franklin County or Debbie might  
14 have, in that way. But, we might begin by structuring an  
15 informal discovery period that would allow us to get at some  
16 of the information about the history of spills, leaks, and  
17 the existence of on-site burial. Those are the things that  
18 really do interest us, in being able to adequately deal with  
19 the contentions that we have on board now.

20 MR. GAD: Your Honor, may I make an observation?

21 CHAIRMAN BECHHOEFER: Yes.

22 MR. GAD: The last round, I think, has illustrated  
23 an issue that the Board is going to have to confront.  
24 Discovery, by definition, is limited to the admitted  
25 contentions. The notion that we should have an extensive

1 exploration of what the staff or anyone else might have  
2 done, with respect to there are no significant hazards  
3 finding, demonstrates a desire to do discovery that's not  
4 within the scope. Likewise, with respect to the EA, which  
5 hasn't even been published yet, there will be no discovery  
6 on the EA, unless and until it's published and a contention  
7 has been propounded and admitted on.

8 And finally, it seems to me that the concept is  
9 out there that discovery amounts to going on site and doing  
10 some sort of implementation review or implementation  
11 verification or implementation duplication. And once again,  
12 that does not go back to the admitted contentions, all of  
13 which go to the adequacy of the plan -- statement of the  
14 plan. So, I think that the divergence of a coefficient here  
15 derives from the fact that we may be operating off different  
16 formulas.

17 MS. KATZ: This is Deb Katz from CAN. I want to  
18 support what Jon Block has said and, also, support the idea  
19 of informal discovery, which we had, in fact, in the  
20 Yankee-Rowe case. We are concerned with the judgments that  
21 were made for both the environmental assessments and the no  
22 significant hazards. And I think they, in fact, pertain to  
23 the issues that are on the table that we're looking at.

24 And the issue, I don't think it's just an  
25 implementation, but we need an understanding of how Yankee

1 intends to look for the leaks and spills and what has taken  
2 place, that may be, in fact, undocumented, an important  
3 issue to us and want clarification of that, in terms of  
4 understanding their process.

5 MR. GAD: Once again, Your Honor, if you -- the  
6 aspiration of being helpful, I would remind the Board on  
7 page 28 of the slip opinion -- I don't have the published  
8 one -- the slip opinion of CLI 98-21, the Commission ruled  
9 "the staff has no significant consideration determination  
10 and issues pertaining to it," that was a quote, Out of  
11 Bounds.

12 Finally, the idea that one probes the methodology  
13 at the LPP level of methodology statement, by going on the  
14 site and using equipment, I think is a false premise.

15 MR. BLOCK: Jon Block here. What they ruled Out  
16 of Bounds was raising contentions about or questioning the  
17 determination. We're not questioning the determination. We  
18 just felt that in order to try to get through this  
19 expeditiously, if the Board and all of the parties were able  
20 to have in front of them what the staff used and assembled  
21 to make its determination, then it would put us in the  
22 position perhaps to say, gee, we're wrong. And I'm just  
23 offering things, by way of informal discovery, that could be  
24 yielded up by the staff; cooperation that we could get from  
25 your people, in getting to look at, you know, various UORs

1 and radiation incident reports and any spill document, any  
2 documentation on burial, that, you know, might get rid of us  
3 very quickly.

4 I'm trying to be reasonable and try to offer a  
5 methodology that would, in fact, allow for a rapid  
6 determination of the cause before us. So, that's where my  
7 suggestions are coming from; certainly not to question the  
8 staff's determination, but rather to look for any kind of  
9 helpful baseline that it would provide to us, in dealing  
10 with the contentions, which I would agree deal with the  
11 methodology. But the way you can question a methodology is  
12 by independently verifying whether the subject matter is, in  
13 fact, there or not. And that's where we're coming from.

14 MS. KATZ: We think it's really important to get  
15 documentation on it, so -- this is Deb Katz. And, you know,  
16 Yankee acknowledged in a 1966 report, over 441,500 gallons,  
17 you know, of water had gone through the ion exchange pit,  
18 down into the ground. And this is an example of what we're  
19 concerned about, in terms of the groundwater on-site and  
20 off, in terms of how that site might be contaminated. And  
21 we feel getting information on that and getting Yankee's  
22 documentation of that is an essential part of understanding  
23 the kind of clean-up that can take place to protect our  
24 community.

25 MR. GAD: Once again, Your Honor, I think the



1 lines -- the issue is fairly squarely -- the issue is fairly  
2 squarely -- this is hard to say fast -- the issue is fairly  
3 clearly presented. What is proposed here is discovery, with  
4 respect to implementation data, on site data, and the like.  
5 That really is, I think, not within the scope of the  
6 admitted contention.

7 And the discovery is limited to the admitted  
8 contentions. I go back to the original assertion that you  
9 design this thing, so that it has the opportunity for one  
10 round of discovery and one round of follow-up, if the  
11 responses to the initial discovery are thought inadequate.  
12 And assuming that Yankee is in a position to respond within  
13 the time that the rules provide, then 45 days is ample to  
14 achieve that objective.

15 MS. HODGDON: For the staff --

16 CHAIRMAN BECHHOEFER: Yeah, I was going to just  
17 ask what's the staff's view.

18 MS. HODGDON: -- I think it's about time that the  
19 staff spoke regarding this matter.

20 CHAIRMAN BECHHOEFER: Right.

21 MS. HODGDON: Generally, the discovery rules are  
22 in Part 2, production of NRC records and documents,  
23 discovery in the proceeding, and Mr. Gad is correct in  
24 saying that discovery must be limited to admitted  
25 contentions. Beyond that, I recommend not just the

1 regulations, but the policy statement that the Commission  
2 put out in September of 1998, I think that's CLI 98-12,  
3 which just reiterates a number of matters regarding  
4 expedition in these proceedings and what's appropriate and  
5 what's not. And in there, it said that the Board should  
6 only allow -- should allow only a single round of discovery  
7 regarding admitted contentions related to the SER or the  
8 SES. And the discovery, respective to each of these  
9 documents, should commence shortly after its issuance.

10 So, that's -- I believe that informal discovery --  
11 my understanding of it may be somewhat different. But, if  
12 the scope is changed by the informality, then we would have  
13 to oppose informality of discovery. I mean, it seems to me  
14 that the discovery, as contemplated by the Commission's  
15 rules, have to be limited to the admitted contentions.

16 MR. BLOCK: Can the panel issue subpoenas?

17 CHAIRMAN BECHHOEFER: Yes, we can.

18 MR. BLOCK: It can. Well, good, I -- and I think  
19 a good approach would be that we'll set up some depositions  
20 of the staff people involved and maybe we can get our  
21 information that way. And maybe that would be the most  
22 expeditious way to do it.

23 As for your quotation on a single round, not  
24 having the opinion in front of me, my experience now tells  
25 me, without it in front of me, without having the policy

1 statement here, unless the Board wants to rule on this, I'm  
2 not going to take your word for the representation of what's  
3 in it. And, you know, are they talking about a single round  
4 on each of those documents? On both of the documents? I'd  
5 have to see it.

6 And, also, just because they say it, doesn't mean  
7 that it's due process reasonable. I'm still bent out of  
8 shape about the way this whole thing commenced --

9 MS. HODGDON: May I --

10 MR. BLOCK: -- beginning with the public meeting,  
11 where my people weren't given an adequate opportunity to  
12 have the documents in hand. Even before they made their  
13 filing requesting a hearing, they didn't have basic  
14 documents in hand. So, that's where we're coming from right  
15 now.

16 MS. HODGDON: May I remind Mr. Block, Your Honor,  
17 that the staff public meeting is not a matter before this  
18 Board and never was.

19 CHAIRMAN BECHHOEFER: I think we held that  
20 specifically --

21 MS. HODGDON: That the Commission --

22 CHAIRMAN BECHHOEFER: -- in the report of the  
23 Commission.

24 MS. HODGDON: Mr. Block is wasting our time with  
25 -- by continuing this argument, and, further, that he has an

1 obligation to read the Commission's regulations. I would be  
2 happy to fax him a copy of this policy statement and to  
3 point out to him that this Board is bound by that policy  
4 statement.

5 MR. LOVEJOY: Your Honor, this is Mr. Lovejoy. If  
6 I could just jump in here for a quick second?

7 CHAIRMAN BECHHOEFER: I might say the policy  
8 statement is just that, a policy statement. It isn't a  
9 regulation as such, but it provides some guidance about how  
10 we ought to be interpreting requirements for a hearing.

11 There's one aspect of it that I am already likely  
12 to follow, unless I can be convinced otherwise, and that is  
13 not to have summary disposition motions. The Commission has  
14 much came out against that and I sort of agree with it. It  
15 usually doesn't accomplish much for the amount of time it  
16 takes. So, we would probably not include anything for  
17 summary disposition.

18 MS. HODGDON: Judge Bechhoefer, staff again, could  
19 I speak to that?

20 CHAIRMAN BECHHOEFER: Yes.

21 MS. HODGDON: Mr. Block is apparently not familiar  
22 with the policy statement. I would like to read what the  
23 policy statement says, regarding summary disposition. It  
24 says, "Board should forego the use of motions for summary  
25 disposition, except if in a written finding, that such a

1 motion would likely substantially reduce the number of  
2 issues to be decided or otherwise expedite the proceeding."  
3 And I would represent that I just read from the policy  
4 statement.

5 CHAIRMAN BECHHOEFER: Right. Yeah, that's  
6 correct. That's what I had in mind. I don't have it in  
7 front of me now, but that's what I was speaking about.

8 MR. BLOCK: Could you read the quote about the  
9 discovery periods, Ann, as long as you have it in front of  
10 you?

11 MS. HODGDON: Discovery management is two columns.  
12 I'm not going to read the whole thing. But, I will re-read  
13 what I read before, if that's what the request is, with the  
14 Board's permission. It says, "The Board should allow only a  
15 single round of discovery regarding embedded contentions  
16 related to the SER or the SES, and the discovery with  
17 respect to each document should commence shortly after its  
18 issuance."

19 MR. BLOCK: But does that -- Judge, could the  
20 panel explain whether that would apply in this case? Are we  
21 dealing here with the SER or the SES?

22 CHAIRMAN BECHHOEFER: Well, environmental  
23 assessment is similar in nature.

24 MS. HODGDON: Judge Bechhoefer, would you like the  
25 staff to address that?

1 CHAIRMAN BECHHOEFER: Yes, yes, why don't you.

2 MS. HODGDON: I would just recapitulate my  
3 understanding of what the rules are regarding this. The  
4 interveners -- the petitioners can't very well put in  
5 contention on the SER and the SES, because those documents  
6 will not generally have been issued at the time of the  
7 hearing conference. And so those contentions are considered  
8 to be late filed and have to meet the requirements for the  
9 late filed contentions, except that, generally, there will  
10 be good cause in the documents not having been issued at the  
11 time. However, to the extent that there's nothing new in  
12 them, they're not available for contentions. In other  
13 words, if the environmental assessment merely reechoes  
14 whatever the environmental report says, then the contention  
15 should have been on the environmental report. That would be  
16 also true for the SER, that -- in other words, it could be  
17 that there might not even be material for new contentions on  
18 the staff's documents, but it could also be that there might  
19 be. But, in any event, the petitioners, or interveners, in  
20 this case, are -- may file on those documents.

21 JUDGE MURPHY: Ms. Hodgdon, this is Judge Murphy.  
22 Is the SER going to be issued simultaneous with the EA and  
23 the Federal Register notice?

24 MS. HODGDON: No, it's not -- can't be  
25 simultaneous. It would have to follow it by at least a day.

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1 But -- the EA has to proceed the SE by at least, I should  
2 say. But, in any event, it appears that the environmental  
3 assessment will be available in three or four working days  
4 and that the SE will not be out until the end of April.

5 JUDGE MURPHY: Okay, thank you.

6 MR. BLOCK: I guess, Judge -- Jon Block here --  
7 that that didn't really answer my question, because it  
8 sounded from what Ms. Hodgdon was saying, that this policy  
9 statement would be applying to those circumstances where  
10 expedition would make sense, where you already had a  
11 proceeding going on and then additional late file  
12 contentions would be applied to the production of SER and  
13 SES after you have already started. And you wouldn't want  
14 to have a whole group of rounds of discovery, when you would  
15 be limited, as she pointed out, to things that were new in  
16 those documents. And so, I don't see how this sheds any  
17 light on the issue of how much time we should structure, at  
18 this point, in the onset of discovery on these four  
19 contentions; rather, it seems to be addressed to a different  
20 set of circumstances, where it might make sense to introduce  
21 some expedition.

22 I know that a recent rule that had been filed  
23 dealing with, I think it's fuel proceedings, it might be the  
24 fuel facilities and fuel pools, and you may know the section  
25 better than I, but that talks of expedited discovery, in

1 terms of the 60 day period, as I understand it. So, it  
2 would seem to me that here, you know, 60 days would be an  
3 extremely truncated period of time.

4 MS. HODGDON: I was speaking to the general issue  
5 of discovery against the staff. And I think I was  
6 specifically responding to some kind of an idea that  
7 subpoenas against the staff witnesses might be issued, and  
8 the staff hadn't even put out its documents. And all I was  
9 saying was that certainly, the regulations and the policy  
10 statement don't contemplate that.

11 MR. BLOCK: Well, I would object to the use of the  
12 word "against," you know. It's just a question of  
13 compelling evidence. I don't see it as being for or against  
14 anybody, just to obtain evidence for the proceeding.

15 MS. HODGDON: Subpoenas -- I'm sorry, subpoenas to  
16 the staff. Did I mis-speak? I meant to subpoena the staff,  
17 and I certainly meant no good flavor; subpoenas for the  
18 testimony of staff witnesses.

19 MR. BLOCK: Thank you.

20 MS. ZOBLER: Your Honor, this is Mary Zobler, with  
21 the staff. I just wanted to put on the record, if it wasn't  
22 clear, that we would not disagree with a 60-day discovery  
23 period. And all the discussion we're having now just leads  
24 me to suggest that maybe a period of informal discovery  
25 wouldn't be very effective, in light of the disagreements we



1 already are having. I think a more formal process, at  
2 least, provides a mechanism where if true discovery disputes  
3 actually exist, after they've been formally written down, we  
4 can then have a procedure where the Board could resolve  
5 those discovery disputes.

6 MS. HODGDON: I'm sorry, I may have failed to  
7 speak to that. Actually, the staff was going to ask for a  
8 shorter period of discovery or was going to suggest it. So,  
9 60 days is certainly as much as the staff would think was  
10 appropriate, in this instance. So, that would be the case.

11 Also, I would point out that the staff, because it  
12 represents -- is a public agency, that we are required --  
13 all of our documents are public and, therefore, our SERs,  
14 our SESSs, and our environmental assessments attached to  
15 those documents are relevant to their preparation, or at  
16 least, if it's obvious, and we try to make them as user  
17 friendly as possible. So, I mean, I think that we  
18 contemplate very little discovery -- I don't want to use the  
19 word "against" again -- but very little discovery addressed  
20 to the staff, because the staff is required by law to make  
21 public its documentation.

22 I suppose that that all comes out to saying, you  
23 won't need as much discovery against the staff and it would  
24 be to no avail that you won't get much out of the staff,  
25 because everything will be in the documents.

1 MS. ZOBLER: Also, the staff is willing, at the  
2 time that the EA is actually finalized and forwarded to the  
3 Federal Register, to provide directly to the intervenors  
4 copies of the EA.

5 MR. GAD: And the licensee?

6 MS. ZOBLER: And the licensee, of course.

7 MR. LOVEJOY: Your Honor, this is Mr. Lovejoy. I  
8 would just like to make a short comment, that somehow I  
9 think we're sort of losing the forest for the trees here.  
10 We're really -- I don't think it is the policy -- belief of  
11 the Commission that you strip the judges panel of their own  
12 discretion. We're talking about the public health and  
13 safety of the public. We're talking about a kind of unusual  
14 proceeding. This is the first commercial nuclear plant to  
15 be decommissioned. I think the public is looking for a  
16 wholesome process here. And I think to truncate it is  
17 simply a huge mistake, in that if, in the course of  
18 discovery, it looks like it can be quickened, perhaps that  
19 is something that should be entertained. Perhaps, also, in  
20 reverse, if it looks like discovery should be extended,  
21 maybe that should be entertained.

22 But, I think to start with the notion that, you  
23 know, it's 30, 45, 60 days -- perhaps I could suggest that  
24 we would go along with 60 days, once the SER is sent out; or  
25 that a period of informal discovery occur once the EA is

1 filed and then we discuss whether it should be 45, 60, 90,  
2 120 days. But to start at the beginning with two citizens  
3 groups and a governmental entity with no money, other than  
4 volunteer assistance, to try and review all of this stuff,  
5 and I do imagine it's going to be a lot of material, to be  
6 able to digest it so that the hearing process perhaps will  
7 be run efficiently, is a huge mistake.

8 MR. GAD: May I make an observation?

9 CHAIRMAN BECHHOEFER: Yes.

10 MR. GAD: I hope this will be helpful, though I  
11 guess I must confess to some doubts up front. A good deal  
12 of the discussion in the last few minutes, I think is  
13 utterly irrelevant to the issue that is in front of Your  
14 Honor. What I believe the agenda item appropriately to be  
15 is the discovery period that ought to be attached to the  
16 admitted contentions, the ones that are before us now. What  
17 might happen down the pike with respect to the environmental  
18 assessment or the safety evaluation report is immaterial to  
19 that question. Whether or not an intervenor has sufficient  
20 funds in that intervenor's view is immaterial. Whether this  
21 is the first contested proceeding of this agency or about  
22 the one millionth contested proceeding of this agency all  
23 subject to the same rule is irrelevant.

24 The notion is: what ought the discovery period be  
25 for the contentions that have been admitted. On that point,

1 I submit to you that the design criterion is, as I said  
2 earlier, enough time for an initial round of discovery,  
3 follow-on round of discovery. Forty-five days is more than  
4 adequate. And if we slide, then it will slide day-for-day.

5 MR. BLOCK: Hello?

6 MS. HODGDON: Staff, again. The staff does not --

7 MR. GAD: I heard a bunch of people talking at  
8 once. Is somebody missing?

9 MS. HODGDON: I'm sorry, I stopped, because I  
10 heard the judges talking. So, I would just like to say that  
11 the staff agreed with Mr. Gad, regarding what this round of  
12 discovery is about. And perhaps I wasn't too clear in  
13 saying that discovery to the staff was on if documents,  
14 which have not yet been issued and, therefore, this -- I  
15 mean, there may or may not be such, depending on whether  
16 contentions on the staff's document are admitted. But, I  
17 suppose I was really talking about whether that could be  
18 concurrent, in such an event. But, nevertheless, we don't  
19 need to address that today; that's correct.

20 MR. GAD: I keep hearing clicks. Am I still  
21 connected?

22 MR. BLOCK: I was asking the same thing myself,  
23 Bob.

24 MR. HODGDON: Did we lose the Board?

25 CHAIRMAN BECHHOEFER: No. We're on, but we want

1 to discuss this, because we would like to reach a decision  
2 today. It will be published in an order later on. But, we  
3 would like discovery to start and we have to approve it  
4 before it does.

5 MR. GAD: I think the clicks we were hearing was  
6 when Your Honor went on mute. I'm sorry.

7 CHAIRMAN BECHHOEFER: Yeah.

8 MR. BLOCK: Your Honor?

9 CHAIRMAN BECHHOEFER: Yes.

10 MR. BLOCK: Would it be reasonable to have the  
11 discovery period begin after the filing deadline of next  
12 Friday, that is it would start the following Monday?

13 MS. KATZ: That would help.

14 MR. LOVEJOY: Just to clarify, Jon, you're  
15 speaking about the filing dealing of April 9th?

16 MR. BLOCK: Correct.

17 CHAIRMAN BECHHOEFER: That's just on the motion.

18 MR. BLOCK: Right. And I'm suggesting that  
19 discovery should start with service on Monday.

20 MR. GAD: Forty-five days running from Monday?

21 MR. BLOCK: Yeah -- well, no. I'm not acceding to  
22 your 45 days. I'm waiting to hear what the Board has to  
23 say. But, I'm saying that whatever it is, given that we --  
24 the three parties, who would be answering your motion, all  
25 acceded to what the Judge characterized as a short time for

1 an answer, that it's reasonable that we not be formulating  
2 discovery at the same time.

3 MS. KATZ: We agree. It would be really hard --

4 CHAIRMAN BECHHOEFER: I'm going to go off for a  
5 moment.

6 [Discussion off the record.]

7 CHAIRMAN BECHHOEFER: Okay, we're back on. We  
8 have figured out a tentative schedule. The only thing we'll  
9 have to ask Judge Ellerman, would you be available the week  
10 of August 16th through 23rd for a hearing?

11 JUDGE ELLERMAN: Would I be available the week of  
12 August 16th?

13 MR. GAD: Bob Gad, here. I will not be available  
14 for that week.

15 CHAIRMAN BECHHOEFER: Because, we've got a lot of  
16 weeks that are -- yeah.

17 JUDGE MURPHY: Okay. Find out when he is going to  
18 be available.

19 CHAIRMAN BECHHOEFER: Well, when could you --  
20 because, we were -- what we were going to propose -- in  
21 fact, we've decided that there should be the 60-day period,  
22 but that shouldn't start until April 9. And we calculated  
23 that would end June 11, which is a Friday. And then, we  
24 would have contemplated testimony -- prepared testimony  
25 filed by -- well, for the August date, it would be July

1 30th, but depending on hearing availability of people  
2 available.

3 MR. GAD: You said the week August 16 to 23,  
4 correct?

5 CHAIRMAN BECHHOEFER: Yeah.

6 MS. ZOBLER: I wouldn't be available that week.

7 THE SPEAKER: That week is NG for me.

8 CHAIRMAN BECHHOEFER: Okay.

9 MR. GAD: Your Honor?

10 CHAIRMAN BECHHOEFER: Pardon?

11 MR. GAD: Let me make one -- I'm sorry, Bob Gad,  
12 Yankee. If I may, let me make one observation that may  
13 counsel towards doing this step-by-step, starting with  
14 discovery and not necessarily fixing yet --

15 MR. LOVEJOY: Mr. Gad, please speak up. I can't  
16 hear him.

17 MR. GAD: Okay. I think that's in your phone  
18 line, but I'll try.

19 MR. LOVEJOY: You're doing better.

20 CHAIRMAN BECHHOEFER: You have to get closer to  
21 the phone, I think, Mr. Gad.

22 MR. GAD: Okay. I am fully aware of the  
23 Commission's most recent policy statement and its  
24 observations with respect to summary disposition motions. I  
25 might observe that the universe of such motions includes

1 those that are sometimes called surgical strike motions and  
2 those that are sometimes called carpet bombing motions. And  
3 I think that the Commission's observations were directed to  
4 the latter. But, I'll tell you up front, that it is part of  
5 our contemplation, following the close of discovery, and  
6 given the nature of at least admitted contentions one  
7 through three, that they will be quite ripe for a summary  
8 disposition motion that will, in fact, be not only  
9 consistent with the Commission's rules, but with the policy  
10 statement, which does not exclude all such motions, but only  
11 says that people ought to be a little discriminating about  
12 them.

13 So, I guess what I'm going to suggest is if we set  
14 the discovery schedule now and maybe wait a couple of days  
15 after the close of discovery. The notion of setting dates  
16 for the filing of pre-filed testimony and evidentiary  
17 hearings might be a little premature.

18 And I sort of got sidetracked. I am out, Your  
19 Honors, the week -- that week that includes the 21st, all  
20 right, so that's the week of the 16th, as you mentioned. I  
21 could be available the following week, except, of course,  
22 I'll be out of the office that prior week and so you sort of  
23 don't like to hit the ground running.

24 MR. BLOCK: Well, I'm available the week that the  
25 Court is describing, but I'm not available the following



1 week.

2 MS. HODGDON: I'm not available the following week

3 --

4 CHAIRMAN BECHHOEFER: We're going to go off --

5 MS. HODGDON: -- mostly, I'm not available.

6 MR. LOVEJOY: Your Honor, this is Mr. Lovejoy. If  
7 I could just like may one tactical suggestion. It was just  
8 pointed out to me that the Franklin County courthouse has no  
9 air conditioning and does not expect to have it until next  
10 year, at the earliest. And so if there's going to be a  
11 hearing in a public location, either we ought to think about  
12 the courthouse in September and not August, which is a  
13 nightmare, I can personally testify to; or that the hearing  
14 would have to be moved to another public location.

15 MR. FAIRTILE: This is Mark Fairtile. I think the  
16 meetings in the courthouse in the summertime in the evening,  
17 I don't know if the Board would contemplate an evening  
18 session, but it's comfortable enough.

19 MR. LOVEJOY: That's true in the evening.

20 MR. GAD: Again, I didn't mean to make a major  
21 destruction. If Your Honor wants to set a deadline for a  
22 hearing and then back up to pre-file testimony, I think the  
23 hearing should begin the week right after Labor Day, as a  
24 practical matter. The last couple of weeks in August  
25 probably have all sorts of problems and I'm afraid I had to

1 identify one of them.

2 MS. ZOBLER: We would agree with that.

3 MR. BLOCK: We would also.

4 MR. LOVEJOY: Absolutely.

5 MS. HODGDON: I suppose the staff should say that  
6 it agrees also. But, actually, no matter when the hearing  
7 is scheduled, the staff will be there.

8 [Laughter.]

9 JUDGE ELLERMAN: This is Judge Ellerman. I'm  
10 going to have to leave this conversation, as a result of a  
11 prior commitment. Chuck, let me give you my schedule, as  
12 you make these arrangements.

13 CHAIRMAN BECHHOEFER: Okay.

14 JUDGE ELLERMAN: I can make any arrangements  
15 needed to meet any date in August. In September, I am  
16 unavailable the 16th through the 25th. I can, again,  
17 rearrange my schedule to accommodate any other time.

18 JUDGE MURPHY: Okay, thanks.

19 JUDGE ELLERMAN: I'll be leaving this conversation  
20 now. Thank you.

21 MR. BLOCK: Good day, Judge.

22 CHAIRMAN BECHHOEFER: Okay.

23 [Pause.]

24 CHAIRMAN BECHHOEFER: Okay. Well, we'll  
25 tentatively set -- the earliest we can do in September is

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1 the last week, I think it is. What are those dates -- the  
2 27th through the 30th and through October 1st. So, we'll  
3 tentatively set that and then 15 days earlier, the prepared  
4 testimony would be filed. And we might make that a little  
5 bit more, because it would be helpful to the Board to be  
6 able to look at it, have it -- at least have it in our hands  
7 15 days before the hearing starts. So, what date is that?

8 MR. GAD: That would be, Your Honor, about -- Your  
9 Honor, that would work out to be the 12th, which is a  
10 Sunday. So, you might want to back that up to 8th, 9th, or  
11 10th, Wednesday through Friday.

12 JUDGE MURPHY: Let's make it the 10th.

13 CHAIRMAN BECHHOEFER: Yeah, 10th of September for  
14 the prepared testimony.

15 MR. GAD: Fine.

16 MS. HODGDON: Good.

17 MR. LOVEJOY: Your Honor, this is Mr. Lovejoy.  
18 Might I ask a question? Since the hearing date has slipped  
19 backwards a month, that perhaps if I could just suggest that  
20 a 60-day discovery period not be set in stone, but be  
21 somewhat flexible, based on the results of the 60-day  
22 period.

23 CHAIRMAN BECHHOEFER: Well, it's technically more  
24 than 60 days, because we're not starting it until April 9th.

25 MR. LOVEJOY: No, I recognize that.

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1 CHAIRMAN BECHHOEFER: And so preparation for  
2 discovery can start anytime. As far as we're concerned, you  
3 all can start informal discovery earlier, if you choose.  
4 But, the formal discovery period will start April 9th and go  
5 for 60 days. I think that's consistent with the  
6 Commission's views. I don't think we should allow any more  
7 than that. So --

8 [Pause.]

9 CHAIRMAN BECHHOEFER: Okay. I guess that's the  
10 official schedule for the moment. But, we would note that  
11 if the licensee seeks summary disposition, they should file  
12 beforehand. And after discovery is complete, a motion  
13 explaining why it would be desirable, why the issues are  
14 amenable to summary disposition. And that would be in full,  
15 too, because I don't want to have to find that certain facts  
16 are not in dispute and certain others maybe and, therefore,  
17 a small portion of the contention is out or in, as the case  
18 may be. And I don't think that process is appropriate and  
19 it takes a lot of manpower, a lot of work to do it. And I  
20 don't think the interveners would have the -- necessarily  
21 would have the manpower to handle both that and the  
22 preparation of their testimony. So, that's why I'm very  
23 much inclined against it. But if the applicant wishes to  
24 file a motion seeking it, and if it would be able to dispose  
25 of everything in the case, then perhaps we would consider

1 it. But, we're very much inclined to not allow it.

2 MR. GAD: Message received, Your Honor.

3 CHAIRMAN BECHHOEFER: And I might say that the  
4 date -- the proposed hearing date would again fall back, if  
5 we have to work on -- summary disposition can take about six  
6 weeks to give it a fair treatment and to give everybody a  
7 chance to respond, etc.

8 MR. GAD: Your Honor, that sort of depends on what  
9 the issue is.

10 CHAIRMAN BECHHOEFER: Well, everybody still has x  
11 days to respond and have to prepare affidavits and all that  
12 kind of stuff. It's -- and the Board has to have some time  
13 to prepare a decision. So, anyway, we would reiterate,  
14 however, that we would encourage settlement of these  
15 contentions and we think that -- we said so before and I  
16 still think it may be a possibility. So, think about that,  
17 too.

18 JUDGE MURPHY: Silence.

19 CHAIRMAN BECHHOEFER: Silence.

20 MR. GAD: No, that's -- I think it was probably  
21 Judge Murphy, but whoever made the observation, don't  
22 misjudge it. The fact of the matter is, Your Honors, there  
23 have been discussions and I assume that they will continue.  
24 But, you have to understand that when you have gaps as large  
25 as you have heard bits of this morning, that process takes a

1 little bit of work, if it's going to succeed at all, and  
2 often it doesn't.

3 JUDGE MURPHY: We understand that and all we're  
4 doing is encouraging you to continue.

5 MR. GAD: Actually, one of the great facilitators  
6 of settlement is issue narrowing that sometimes arises out  
7 of the summary judgment or summary disposition process.

8 MR. BLOCK: I was speaking for my clients in the  
9 discussions I've had with the executive committee of the  
10 Board. It's reasonable to provide assurances to the other  
11 parties and the licensee and the staff and the panel that,  
12 you know, we wouldn't stop seeking possible settlement and  
13 wouldn't stop discussing any reasonable proposals right up  
14 to before trial, if that's the way it works out. And I  
15 agree with Mr. Gad, sometimes whatever it takes to narrow  
16 the issues is what's necessary to arrive at a reasonable  
17 settlement. So, we continue to be open and we'll try to  
18 remain open, as long as things are reasonable.

19 CHAIRMAN BECHHOEFER: Okay. Probably, at least  
20 immediately before the hearing, we'll have another  
21 pre-hearing conference. But, only -- in person one, only to  
22 tell people how to mark their documents and that type of  
23 thing.

24 MS. HODGDON: Okay.

25 MR. BLOCK: Judge, might I ask another question?

1 If in the course of discover we run into some difficulties  
2 and have to seek motions to compel, is it the Board's  
3 judgment in advance that there would be no arguments on  
4 these; they would be simply on written submissions? Or how  
5 would we deal with that?

6 CHAIRMAN BECHHOEFER: No. We'll have to see  
7 what's involved. We might convene in a conference call,  
8 such as this, to handle that.

9 MR. BLOCK: Thank you.

10 CHAIRMAN BECHHOEFER: It just depends on what's  
11 involved.

12 MR. BLOCK: Okay, thank you. I just wanted to  
13 have some sense, because for us, I know it's the same for  
14 Debbie and I don't know how Sam would handle this at all,  
15 but for me, dealing with my clients, it's a budgeting issue.  
16 And I'm not asking for any special consideration for that,  
17 but just an advanced understanding of whether, you know, we  
18 might need to go down to D.C. or not, so that I can prepare  
19 my clients for the economic shock involved in adding that to  
20 our budget.

21 CHAIRMAN BECHHOEFER: Well, we would normally do  
22 that by telephone. We wouldn't usually require you to come  
23 to D.C.

24 MR. BLOCK: Okay.

25 CHAIRMAN BECHHOEFER: So, we would convene in a

1 conference like we are doing now.

2 MR. BLOCK: Great.

3 CHAIRMAN BECHHOEFER: Anything further that  
4 anybody wishes to raise? Otherwise, have a nice day.

5 MR. LOVEJOY: Thank you, very much, Your Honor.

6 MS. KATZ: Okay, bye.

7 CHAIRMAN BECHHOEFER: We will issue an order  
8 confirming the schedule, as soon as we can. We'll also, as  
9 soon as we get the responses to the motion before us now,  
10 the licensee's motion, we'll rule on that, as soon as we  
11 can, as well.

12 So, we enjoyed speaking with you today.

13 [Whereupon, at 11:26 a.m., the conference was  
14 concluded.]

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings  
before the United States Nuclear Regulatory Commission in  
the matter of:

NAME OF PROCEEDING:        YANKEE ATOMIC ELECTRIC COMPANY  
                                 (YANKEE NUCLEAR POWER STATION)  
                                 TELEPHONE CONFERENCE

CASE NUMBER:

PLACE OF PROCEEDING:        Rockville, MD

were held as herein appears, and that this is the original  
transcript thereof for the file of the United States Nuclear  
Regulatory Commission taken by me and thereafter reduced to  
typewriting by me or under the direction of the court  
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accurate record of the foregoing proceedings.

  
Jon Hundley

Official Reporter

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