

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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 In the Matter of: :
 :
 PENNSYLVANIA POWER & :
 : Docket No. 50-387, 50-388
 LIGHT COMPANY, ET AL. :
 :
 (SUSQUEHANNA) :
 :
 -----X

Courtroom No. 2
 U.S. Federal Building and
 Courthouse
 197 South Main Street
 Wilkes-Barre, Pennsylvania

Thursday, March 20, 1980

The prehearing conference was held, pursuant to
 notice, for presentation of the above-entitled matter, at
 9:30 a.m., Chairman Charles Bechhoefer, presiding.

BEFORE:

Dr. Oscar Paris

On behalf of the NRC Staff:

JAMES M. CUTCHIN, IV
 ROY P. LESSY, JR.

On behalf of Pennsylvania Power & Light Company and
 Allegheny Electric Cooperative:

JAY SILBERG BRIAN A. SNAPP, ATTORNEY
 MATTHEW DIAZ

On behalf of Environmental Coalition on Nuclear Power:

DR. JUDITH JOHNSRUD

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Docket No. 50-587, 50-388

Courtroom No. 2
 U.S. Federal Building and
 Courthouse
 197 South Main Street
 Wilkes-Barre, Pennsylvania

Friday, March 21, 1980

The Prehearing conference was held, pursuant to
 notice, for presentation of the above-entitled matter, at
 9:00 a.m., Chairman Charles Bechhoefer, presiding.

BEFORE:

Dr. Oscar Paris

On behalf of the NRC Staff:

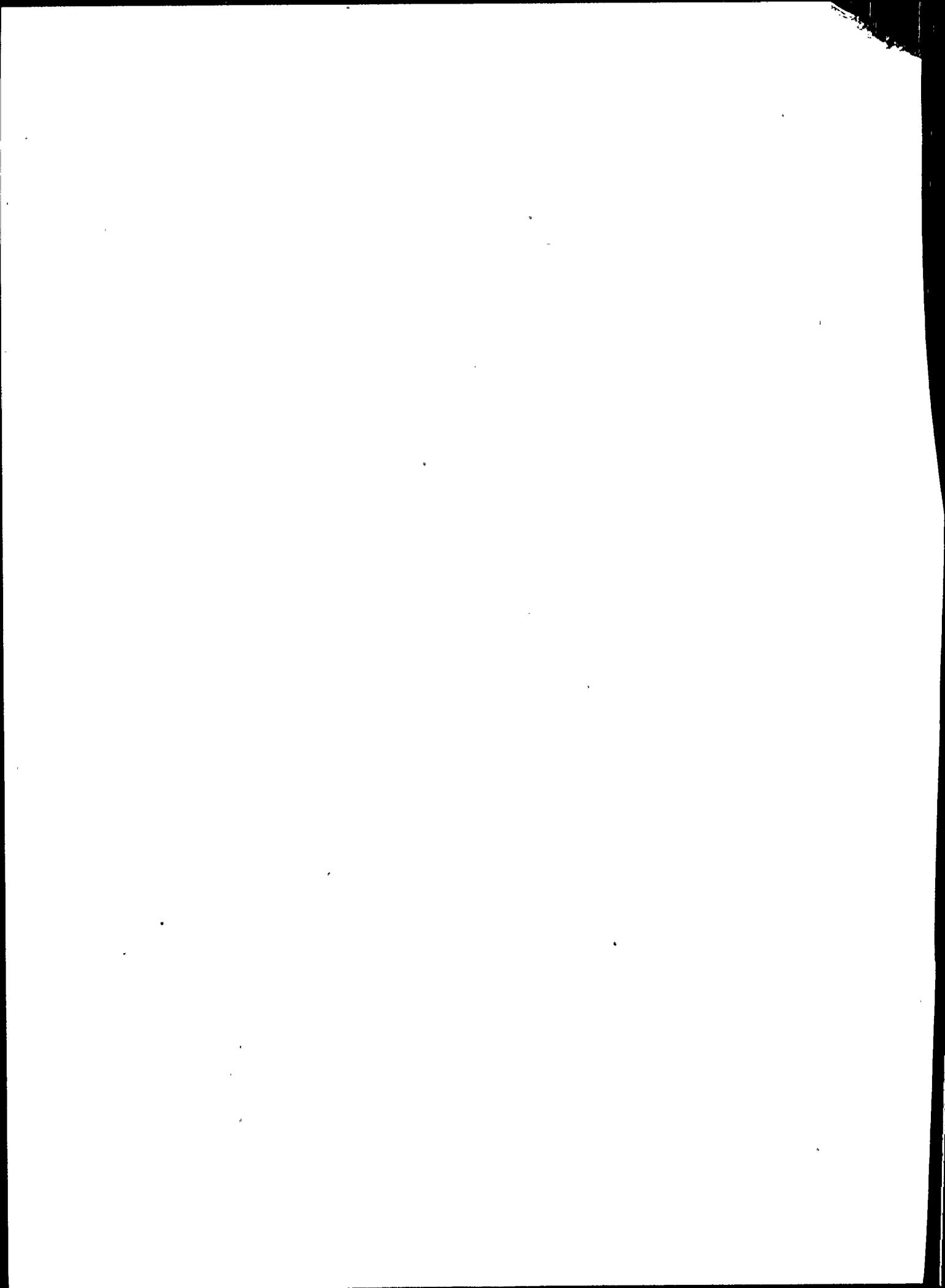
JAMES M. CUTCHIN, IV
 ROY P. LESSY, JR.

On behalf of Pennsylvania Power & Light Company and
 Alleghent Electric Cooperative:

JAY SILBERG . BRIAN A. SNAPP, ATTORNEY
 MATTHEW DIAZ

On behalf of Citizens Against Nuclear Danger:

MR. THOMAS HALLIGAN



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MR. JAMES PERKINS

On behalf of Citizens Against Nuclear Danger:

MR. THOMAS HALLIGAN

On behalf of Susquehanna Environmental Advocates:

MR. JOHN J. ROBINSON

MR. GERRY SCHULTZ

MR. CHRIS MILLER

On behalf of the Commonwealth of Pennsylvania:

MR. WILLIAM DORNSIFE

MR. ALBERT VOGEL

P R O C E E D I N G S

TAPE 1 1

2 gentlemen. This Prehearing conference is the second such
 3 conference to be held in this proceeding, which concerns the
 4 application of Pennsylvania Power and Light Company and
 5 Allegheny Electric Cooperative for operating licenses for
 6 the Susquehanna Steam Electric Station, Units One and Two.

7 We plan to take limited appearance statements after
 8 we get through the business of the conference. Now, we have
 9 left a sign-up sheet on the table way off on the right. There
 10 is a list of people who have written in and if your name is
 11 on that list you do not have to sign up and you can just see
 12 if your name is on the list. I have tried to get everybody
 13 who has written in since the last prehearing conference.

14 DR. JOHNSRUD: Mr. Bechhoefer?

15 CHAIRMAN BECHHOEFER: Yes.

16 DR. JOHNSRUD: Excuse me for interrupting you, sir.
 17 I cannot hear you. I am not sure that the mike is on and if
 18 it is, it is not projecting well.

19 CHAIRMAN BECHHOEFER: Well, I will try and talk
 20 louder. I think the mike just goes to the reporter here; I
 21 tend to mumble.

22 DR. JOHNSRUD: I tend to be going deaf.

23 CHAIRMAN BECHHOEFER: Well, all I have said so far,
 24 is that there is a limited appearance sign-up sheet over on
 25 the table and if the names of the people are not on the type-

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written list, and they want to make a statement, they should sign up.

To introduce, again, the members of the licensing Board, to my right is Dr. Oscar Paris, an Environmental Scientist. My name is Charles Bechhoefer, and I am attorney and Chairman of the Board. Dr. Paris and myself are both full-time members of the Commissions Atomic Safety and Licensing Panel. We regret that the third member of the Board, Mr. Glen Bright, cannot be here today.

After the conference had been announced, Mr. Bright had a serious accident and has been hospitalized since that time. He, hopefully, will be back sometime late in April. In his absense, the Board will be sitting in a quarum as authorized by 10CFR Section 2.721D.

For the reporters benefit, we will now ask the representatives of the various parties, to identify themselves. Why don't we go from left to right.

MR. HALLIGAN: Thomas Halligan, Citizens Against Nuclear Danger, Citizens Intervenor.

DR. JOHNSRUD: Judith Johnsrud, Co-director of Environmental Coalition on Nuclear Power and I am accompanied by Mr. James Perkins, who assisted me at an earlier stage with the responses to interrogatories.

Dr. Kepford is unable to be with us today. He is out of the state, as had been previously arranged.



1 MR. CUTCHIN: Mr. Chairman, I am James M. Cutchin, IV.
2 To my immediate right is Mr. Roy P Lessy, Jr. We represent
3 the NRC Staff.

4 MR. SILBERG: Mr. Chairman, I am Jay Silberg, of
5 the law firm Shaw, Pittman, Potts, and Trowbridge in
6 Washington, D.C., representing the applicants, Pennsylvania
7 Power and Light Company and Allegheny Electric Cooperative.

8 With me here today are Mat Diaz, the same law firm
9 and Brian Snapp of Pennsylvania Power and Light Company.

10 CHAIRMAN BECHHOEFER: Mr. Schultz?

11 MR. ROBINSON: I am John J. Robinson, Jr. and I
12 am an attorney with Susquehanna Environmental Advocates.

13 MR. SCHULTZ: I am Gerry Schultz, with SEA.

14 MR. MILLER: Chris Miller with SEA.

15 MR. DORNSIFE: I am William Dornsife, with the
16 Commonwealth of Pennsylvania.

17 MR. VOGEL: I am Albert Vogel, Assistant Attorney
18 General of the Commonwealth. I put appearances in yesterday,
19 I sent the Documents into Washington; I wanted to make an
20 appearance today.

21 MR. HALLIGAN: Mr. Chairman, I would like the
22 Commonwealth or someone to present a verbatim statement of
23 the notice of appearance by the officer from the Commonwealth.
24 This is relevant to the agenda, the proposed agenda. I
25 would like to know precisely what department he is

1 representing. Would you clarify your--what you put in
2 writing, could you tell us orally.

3 MR. VOGEL: Yes. I represent the Department of
4 Environmental Resources and unfortunately, I did not bring
5 a notice of appearance with me, but they are in the mail, they
6 were mailed yesterday. I am prepared to prove that I am the
7 Assistant Attorney General this morning.

8 CHAIRMAN BECHHOEFER: We will accept your word for
9 it. I believe the representative of your department has
10 previously made an appearance. Did not Miss Carter--

11 MR. VOGEL: Yes, that is right.

12 CHAIRMAN BECHHOEFER: She made an appearance earlier
13 in this proceeding.

14 MR. VOGEL Yes. I will sort of be taking her
15 place because she is involved with the TMI proceedings,
16 as far as this proceeding is concerned.

17 CHAIRMAN BECHHOEFER: Okay. This prehearing
18 conference was called in order to consider three motions
19 filed by the applicants on February 4.

20 These are motions, one, to dismiss CAND from the
21 proceeding; two, to restrict participation of ECNP with
22 respect to certain of its contentions; and three, to restrict
23 the participation of SEA with respect to one of its conten-
24 tions.

25 We issued the notice for this conference on

1 February 22, 1980 and it was published in the Federal Register
2 on February 28, 1980, at 45 Federal Register 13239. In that
3 notice we mentioned that we called the conference because of
4 the severe sanctions which the applicants were requesting.
5 Perhaps a better term would have been, the Draconian (?).
6 Anyway, we indicated that the scheduling would also be
7 discussed, and we left the door open for other matters.

8 Contrary to the impresssion which ECNP seemed to
9 have gotten, we were not intending to surprise anybody by
10 bringing up subjects of which you were not aware of.
11 Several intervenors have, in fact, requested that certain
12 other matters be discussed, and we will do so during the
13 course of the conference.

14 DR. JOHNSRUD: Mr. Chairman?

15 CHAIRMAN BECHHOEFER: Yes.

16 DR. JOHNSRUD: Our response with respect to the,
17 quote, other matters, unquote, was simply that we did want to
18 know what other matters we expected to be dicussed. I
19 gather that if you had the filing from at least one other
20 party, that you wanted to discuss and I had no idea what the
21 other matter might refer to.

22 CHAIRMAN BECHHOEFER: Yes. I would have hoped that
23 you would have received both. I think, SEA, at least, I
24 know filed a document requesting certain other matters be
25 discussed and we are going to discuss them and I thing CAND



1 had one or two matters if I recall. No one else has filed
 2 anything, so those are the only matters we are going to talk
 3 about.

4 MR. HALLIGAN: I beg your pardon, sir. Since
 5 Citizens Against Nuclear Danger filed an agenda, proposed
 6 agenda, dated March 12, 1980,

7 CHAIRMAN BECHHOEFER: Yes. I think I said that I
 8 mentioned that. I believe you did also. I know that SEA
 9 wanted six specific items to be talked about and I think we
 10 received yours a few days later, but we had gotten that also.

11 Now, in our memorandum of February 26, 1980, we
 12 posed a legal question to the parties and permitted briefs
 13 to be filed if desired. No briefs were filed specifically
 14 on that question. What we were asking is in effect whether
 15 the relief sought by the applicants against ECN² and SEA
 16 is a legal option which is even open to us. We gave certain
 17 assumptions such as that there has been a default in discovery
 18 obligations.

19 Now, we wish to assure everybody that we have not
 20 made a decision as to default. We were putting this up as a
 21 hypothetical legal question. The matter of default is one
 22 of the reasons that we are hear today to talk about.

23 But if a default, the worse case is assumed and we
 24 can nevertheless cannot grant the release sought. The
 25 question before us might be quite simple to answer. The

1 applicant, of course, is the proponent of their motion, must
2 justify the relief which they are seeking or justify our
3 ability to grant it.

4 Now, one more preliminary matter. On Monday, we
5 received from ECNP a document which indicated that the
6 holding of the prehearing conference, today, posed a
7 tremendous inconvenience for that group. In these circum-
8 stances, I wish ECNP had told us earlier because perhaps we
9 could have done something about it shortly after receipt of
10 the notice of setting the conference. If we had been told,
11 perhaps, we could have changed the date. It is part in cause
12 by the dates the rooms are available and that sort of thing
13 and we did not find out about this until Tuesday.

14 Understand, I am not trying to criticize, I just
15 want to put on the record why I made some phone calls to
16 various people.

17 DR. JOHNSRUD: And I would like to add for the
18 record, Mr. Chairman, that ECNP was unable to respond
19 immediately after receipt of the document, in consequence
20 of my having been out of town. I assume by the time I got
21 back, that it was far enough along to arrangements, that
22 there was no point in trying to have the change made. We
23 have made arrangements for one of the representatives to be
24 here at as I indicated in this filing, a fairly substantial
25 inconvenience and I do want the record to note that this



1 filing was simply to assure that that point was on the record,
2 it was this filing of March 14 was also designed to respond
3 to your February 26 memo.

4 CHAIRMAN BECHHOEFER: Right. I realize that. I
5 also want the record to reflect that the Board is not going
6 out of its way to make things inconvenient for the parties
7 and if we are told about the inconvenience, perhaps we can
8 do something about it.

9 We also have found it very difficult to get in
10 touch with various parties by phone and therefore, it is
11 really impossible to check whether a given date is inconveni-
12 ent or convenient with some of the parties, so the better
13 course, we thought, was to set it and then if anybody had
14 any strong objections, to perhaps reset it if necessary.

15 In any event, because of that inconvenience, I
16 tried to set up a conference call on Monday, to see if some
17 accommodation could be worked out and I had in mind selecting,
18 permitting ECNP to select a time--any time on Thursday, that
19 type of thing or possibly to postpone the argument until
20 Friday. ECNP could not be reached on Monday so I called the
21 various parties, the ones that I could reach and told them
22 that I was going to try to contact everybody to see if
23 some accommodations could be worked out.

24 I did, in fact, reach Ms. Johnsrud, I guess on,
25 Tuesday morning.



DR. JOHNSRUD: That is correct.

CHAIRMAN BECHHOEFER: And I tried as late as 11 o'clock on Monday night, then I got tired, but in any event we talked purely about scheduling and I just want the record to reflect that conversation so that it is clear that there has been no ex party contacts on any matter in issue.

I know that Ms. Johnsrud had also told me then that she might be a little late on Thursday, but since she is not, we welcome her here early.

Before we start the motions, is there any other preliminary matters that anyone would like to raise?

MR. HALLIGAN: Just a one simple statement, sir.

The Citizens Against Nuclear Dangers stated in on the responce to March 12 to your order of the February 22 and memorandum of February 26 the following statement:

It is the opinion of the Citizens, that the agenda prepared by the Licensing Board, is too restrictive, bias, and it jeopardizes due process. The Citizens strenuously object to that published format. We reinterate that. We are here testifying under protest on a variety of Constitution al ground and procedural questions which are extremely ambiguous and we will raise those questions during the debate.

CHAIRMAN BECHHOEFER: Well, I am afraid that we set the agenda by specifying certain motions that we would talk

1 about them and then we left the door open to talk about other
2 things that the parties wish to talk about. So, I do not
3 thing that we made it too restrictive. All you had to do was
4 tell us and we will talk about various matters that you
5 want to have raised.

6 MR. HALLIGAN: Well, we listed six items, I believe

7 CHAIRMAN BECHHOEFER: Well, we will talk about these
8 things later on, we want to talk about the motions first.

9 MR. HALLIGAN: I think it should be in reverse. I
10 think it is more relevant that we talk about these other
11 issues first about our grievances as to why this whole
12 episode occurred in this sequence. In other words, we are
13 being charged with default in default of any reasons. In
14 other words, our motions for protective orders have been
15 denied and there has been no explanation in many cases. The
16 SEA is involved here and all of the four--three of the four
17 intervenors are agreed here, and one of the explanations
18 should be brought out in the record before any consideration
19 is made at all of these motions which we think are arbitrary
20 and unfair.

21 CHAIRMAN BECHHOEFER: You will have a chance to say
22 that when we talk about the motions. That bears on what we
23 do with the motions, perhaps.

24 MR. HALLIGAN: In other words, you are denying a
25 hearing or our side of the story first.



1 CHAIRMAN BECHHOEFER: We are denying hearing these
 2 matters first. We will hear those either in conjunction with
 3 your--with the motion against CAND or some of them do not
 4 relate to that and we will talk about that also. But, first
 5 we want to hear about the motion.

6 DR. JOHNSRUD: Mr. Chairman?

7 CHAIRMAN BECHHOEFER: Pardon.

8 DR. JOHNSRUD: Excuse me. In its March 14 filing
 9 to the Board, ECNP does raise two motions which pertain to
 10 the applicants motion. At what point do you wish to consider
 11 those? On Page 2 the motion state, toward the later half of
 12 the page, the ECNP intervenors, therefore now move that the
 13 Board omit consideration and oral argument on these two
 14 hypothetical questions, that is, for the ones identified in
 15 the February 26 memorandum. And the second motion, at the
 16 bottom of the page, states in the absence of any legal
 17 citation in or of other substance to the applicant's motion,
 18 to prohibit the intervening parties from litigation of their
 19 own contentions and in the absence of default by ECNP and in
 20 view of ECNP's proper in time to response to the applicant's
 21 improper motion.

22 These ECNP's intervenors move the Board to cancel
 23 oral argument on the applicant's motion pertaining to ECNP
 24 and to deny it forthwith. I would extend that to the other
 25 parties, with respect to these other motions.

1 MR. HALLIGAN: The Citizens support these motions,
2 Mr. Chairman.

3 CHAIRMAN BECHHOEFER: I think we will deny both
4 of these motions. Maybe the three of them will deny all
5 three of them. We have decided that we cannot reach a decision
6 without oral argument, or ask them some questions, at
7 least, about all the parties. We cannot reach a decision
8 without oral argument. This is why we have scheduled the
9 oral argument.

10 MR. HALLIGAN: Is there a citation in your rules
11 that makes that legal that you can put aside a motion--

12 CHAIRMAN BECHHOEFER: The Board has full authority
13 that--

14 MR. HALLIGAN: --on this matter at hand. Can you
15 cite for us--

16 CHAIRMAN BECHHOEFER: I do not think that I have to
17 but there is a provision which allows us to hold oral
18 argument.

19 MR. HALLIGAN: I think it is important that we know
20 what that is.

21 CHAIRMAN BECHHOEFER: Even if there is not, we are
22 allowed to take any actions we need to require information
23 to enable us to decide.

24 MR. SILBERG: Mr. Chairman, I really think that
25 we are straying far afield, but if Mr. Halligan needs a



1 citation, he can refer to 2.71AB which directs the Board
2 to take any actions necessary to regulate the course of the
3 hearing and the conduct of the participants. I would request
4 that we get on with the matters at hand.

5 CHAIRMAN BECHHOEFER: Well, it also says 217H,
6 which says that we can hold conferences before, during the
7 hearing for settlements, simplification of the issues, or
8 any other proper purpose. Deciding motions is a proper
9 purpose.

10 MR. CUTCHIN: Mr. Chairman, under 2730 motions, it
11 specifically states under 2730-D that provides for oral
12 arguments. They normally will not be held unless directed
13 by the presiding officer and the presiding officer in this
14 instance has directed that he wants to hear oral argument on
15 the motions.

16 MR. HALLIGAN: But another motion has been filed and
17 you have not given a reason as to why you denied that motion,
18 just now.

19 CHAIRMAN BECHHOEFER: We denied the motion because
20 we want to hear oral argument on these motions, on the
21 applicant's motions, before we decide what we want to do
22 with them.

23 MR. HALLIGAN: Well, so the record will show, we
24 are not responding to these questions under protest because
25 we feel that this is a violation of due process. The



1 Citizens are objecting to this format.

2 CHAIRMAN BECHHOEFER: Well, your objections is
3 noted, feel free.

4 We would like to begin first what we consider the
5 simplest of the motions, and that is the one against SEA
6 and in connection with that, we would suggest that the
7 applicant, as the proponent of the motion, be heard first and
8 then we will hear from SEA but this will involve the
9 question of relief we can grant also and the other parties
10 may wish to make a statement as to that. The legal extent
11 of our authority to grant the relief requested, so I guess
12 we will begin with Mr. Silberg and then we will hear from
13 whoever of the SEA, Mr. Schultz or whoever who speaks for
14 SEA on this and then Staff, and then if other parties have
15 comments on that. But insofar as the legal questions
16 concerned, we will hear the applicants first, I guess.

17 And, by the way, since we viewed them as intertwine,
18 the question of whether SEA is entitled to a protective
19 order should also be part of the same discussion, and they
20 have filed such a motion.

21 MR. SILBERG: Thank you, Mr. Chairman. I will not
22 attempt to go back, at this time at least, and reconstruct
23 the entire history of the discovery proceedings that we have
24 been struggling with since May of 1979. But suffice it to
25 say, the Board's last order directed that the interrogatory



1 responses be filed on January 18, 1980 on certain interroga-
2 tories relating to environmental contentions with responses
3 by SEA.

4 SEA sponsored three of the pending environmental
5 contentions. Contention One which deals with health effects
6 with uranium mining and milling, Contention Three which deals
7 with uranium supply and Contention Four which deals with the
8 power. On our review of the responses by SEA, we determined
9 that SEA had made a good faith attempt to respond to
10 interrogatories on Contentions Three and Four and we ask
11 for no relief with respect to those interrogatory responses.

12 However, we did note that SEA had not, we believe,
13 properly responded to our interrogatories on Contention One.
14 We had asked a series of questions which we designed to
15 elicit the bases for SEA's initial position on this issue.
16 SEA's answer, did we say that they had no information which
17 would be a proper response to the discovery questions.

18 It did, however, object to the interrogatories
19 on a blanket basis, merely saying that they were, quote, op-
20 pressive, unduly burdensome, and constitute harrassment,
21 quote. In fact, on Contention One there were nine
22 interrogatories which SEA could have answered either by
23 identifying the information which they had or by merely
24 stating that they had no information. They stated the
25 later, they stated that they had no information to provide us.



1 We would, of course, accept that answer. They did not
2 accept that, in fact, in their more recent filings on
3 February 19, SEA indicated that, in fact, it would answer the
4 interrogatories on Contention One if their objection had been
5 denied.

6 Now, the Board has said on many occasions that
7 objections to interrogatories have to be specific, they
8 cannot be across the Board statement, that we do not want
9 to answer them, or that it is a lot of work, or that it is
10 burdensome. Discovery is a burden on the parties, applicants
11 suffer that burden we provided discovery responses within
12 the one month deadline which expired June 29, 1979. And it
13 does take some effort to provide discovery responses. We
14 recognize that; the Commission recognizes that; the Courts
15 recognize that. However, that burden does not excuse a
16 party from providing the responses. It is only when that
17 burden becomes undue or oppressive that the rules of the
18 Commission and the precedence of the Courts allow that
19 protection to be given.

20 SEA had not indicated why there is any, quote, undue
21 burden, unquote, they have merely said in essence it is a lot
22 of work to answer them. We think that that is an inappro-
23 priate response. We believe that having since May 25, 1979
24 to prepare answers to these questions, that there has been
25 fairly adequate time and therefore we had asked the



1 Board to enclose sanctions which it had previously directed
2 plus additional relief.

3 Now, in its early orders--earlier orders, the
4 Licensing Board stated that if a party did not provide
5 appropriate responses to discovery, they would not be
6 allowed to introduce direct testimony on that contention.
7 We believe that that relief is clearly appropriate in this
8 case. However, as we have stated in our motion of
9 February 4, we do not think that that goes far enough.
10 As the Board knows and as the intervenors have stated on
11 many occasions that typically the intervenors make their
12 case in these hearings not by direct testimony but by
13 cross examination. The party is not planning to introduce any
14 direct testimony imposing a sanction on that party which says
15 well, you cannot impose direct testimony, there is no
16 sanction at all. Therefore, given the time that has
17 past, the time that these intervenors have had to respond
18 to the nine interrogatories on Contention One, we believe
19 that additional relief be granted to us. Now that relief,
20 we believe, should be to prohibit those intervenors from
21 participating in cross examination on that issue and on that
22 issue alone. We do not request that the intervenors be
23 excluded from participating on the other issues or in the
24 hearing in general. They have made a good faith to answer
25 these interrogatories, on Contentions Three and Four, however



1 we believe that they did not make such an attempt on
2 Contention One. We do believe that additional relief is
3 appropriate. As to the Board's authority to grant that
4 relief--

5 CHAIRMAN BECHHOEFER: That is what I was going to
6 ask you about. Isn't it a little anomolous to say, well,
7 they can cross examine on anybody else's contention that they
8 did not sponsor, but they cannot cross examine on their own
9 contention and then to carry it even further it is a little
10 anomolous to say that other people could cross examine
11 their contention, they can. It is two sides of the same
12 question.

13 MR. SILBERG: Yes. The Commission on the
14 Prairie Island decision, since you cited in your order--

15 CHAIRMAN BECHHOEFER: Right.

16 MR. SILBERG: --has said as a matter of general
17 practice, intervenors are allowed to cross examine on their
18 contentions and the contentions of any other party. That is,
19 as the Commission said, the matter of general practice.

20 When one reads the Prairie Island decisions and
21 when one looks at the references which the Commission has
22 cited, the Commission is relying on their general rules of
23 running hearings on the general court precedence on the
24 utility of cross examination. It was not dealing with the case
25 in which sanctions were being imposed on the party.



1 The provision of the Commission's regulations
2 which we are relying on, which we relied on in our motion
3 for sanctions in Section 2.707 of the Commission's regulations.
4 Not--surprisingly, the Commission on the Prairie Island
5 decision did not refer to that Section at all.

6 When one looks at that provision, it says, when
7 failure of a party to answer to file an answer or to comply
8 with any discovery order, the presiding officer may make any
9 orders that it feels are just, including without further
10 notice find the facts as to the matters regarding which the
11 order was made in accordance with the claim of the party
12 obtaining the order and enter such order that may be
13 appropriate. That Section clearly gives the Licensing Board
14 wide authority to set up appropriate sanctions under the
15 circumstances in the case.

16 The Commission's Prairie Island decisions did
17 not deal with the sanctions situation at all. They did not
18 cite that Section, they did not deal with the case in which
19 the party had failed to answer discovery.

20 There is however an Appeal Board case in which the
21 Commission did apply that Section, Section 2.707 and did
22 limit cross examination by a party who failed to comply with
23 an order of the Board. That case is Northern Indiana Public
24 Service Company, the Bailey Generator Station, A Lab 224,
25 August 29, 1974 and it is reported in Volume 8AEC of Page 244.

1 And in that case, during the hearing, an intervenor
2 had been seeking to obtain discovery documents from the NRC
3 Staff. Those documents were provided during the hearing
4 process. The intervenor objected to going ahead of cross
5 examining witnesses that were being sponsored by the applicant
6 and the Staff because it had not had adequate time to review
7 those documents or to develop testimony based on those
8 documents or to follow-up the information provided by those
9 documents.

10 The Licensing Board in Bailey ordered that the
11 hearing should proceed as scheduled. That the intervenor--
12 that the witnesses would be put on but that the intervenor
13 would have the right to bring those witnesses back at a later
14 time and to cross examine them after the intervenor had time
15 to review those documents.

16 Instead of taking advantage of that, the intervenor
17 walked out of the hearing room and did not participate in
18 the hearing on those issues. The intervenor later raised
19 objection that he had been denied his opportunity to cross
20 examine those witnesses. The Appeal Board in A Lab 224 said
21 that the order of the Licensing Board, barring cross
22 examination by those intervenors was an appropriate use of
23 the sanctions authority under 2.707. They had failed to
24 adhere to an order of the Licensing Board; the Licensing
25 Board properly applied a sanction which, in that case, was



1 limitation on the right of cross examination. The intervenor
 2 was not thrown out of the hearing, was not barred from
 3 participating in other issues, but his cross examinations
 4 was limited. That decision was issued prior to the Prairie
 5 Island decisions, however, that decision--

6 CHAIRMAN BECHHOEFER: Was not that a waiver, though?

7 MR. SILBERG: A waiver?

8 CHAIRMAN BECHHOEFER: Was not that in effect a
 9 waiver? Did not the Licensing Board say that you could come
 10 back or cross examine at a later date? Was not that
 11 essentially equivalent to an intervenor giving up a right
 12 of cross examination that he had?

13 MR. SILBERG: If one reads the decision, it was
 14 clear that the Licensing Board viewed it as a default. That
 15 is a failure to adhere to the requirements laid down by the
 16 Licensing Board's order. The Licensing Board was very clear
 17 in saying that if you do not participate you will not get
 18 the right of cross examination. If you do participate, we
 19 will call the witnesses back. They did not waive a right,
 20 they failed to adhere to a requirement laid down on them
 21 by the Licensing Board, a requirement that the Licensing
 22 Board deemed necessary for the proper conduct of the hearing.
 23 We are in a very--

24 CHAIRMAN BECHHOEFER: Does this--just the Licensing
 25 Board setting the framework for cross examination and then the

1 intervenor not accepting that framework so that therefore
2 they lost the right. Is not that a little bit different
3 from saying that because you have not done something, assuming
4 they are in default of discovery; is not that a little
5 different from saying because this happened way in advance
6 the hearing, you should not cross examine at all?

7 MR. SILBERG: Well, there are two separate
8 questions. One is what is an appropriate sanction and two
9 is the Commission as the Licensing Board entitled under its
10 rules to limit cross examination. The Bailey case clearly
11 shows that the second answer--the second question is answered
12 affirmatively. That under 2.707 notwithstanding the general
13 rule in Commission proceedings that intervenors are entitled
14 to cross examine on other parties contentions that limitation
15 on cross examination is an appropriate sanction.

16 Now the Bailey situation is obviously a factual
17 situation which we are not dealing here. But that goes to
18 the question of whether a position of that sanction was
19 appropriate. We have to look at the factual situation here.
20 Is limitation of cross examination an appropriate sanction
21 under the facts of this case. We believe it is for the
22 reasons that we said before. The Licensing Board has set
23 out a sanction which is limitation on submission on direct
24 testimony. As we have pointed out, that we believe is no
25 sanction at all in the majority of cases dealing with



1 intervenors. Therefore, if--

2 CHAIRMAN BECHHOEFER: What is the purpose--what do
3 you think the purpose of our sanction was in setting out in
4 our October 30 order? You said no direct case--

5 MR. SILBERG: I would hesitate to second guess what
6 the Board has in mind but sanctions have really two purposes.
7 Without going into the question of the penal aspect of a
8 sanction. That if a party does something wrong, then it
9 should suffer some measure of penalty. I do not think that
10 we have to reach that because sanctions also have a very
11 important deterrent effect and that includes sanctions involv-
12 ing limitations of cross examination. And the Supreme Court
13 has relied on that deterrent effect in cases where parties
14 have been complete thrown out of a proceeding for failure to
15 comply with discovery. In the National Hockey League versus
16 Metropolitan Hockey League Case.

17 So the question is, is that an appropriate sanction
18 here? As far as the deterrent question, we believe that it is
19 very important that this Licensing Board assure that its
20 authority to run this proceeding is maintained. It is very
21 important that this proceeding be run in a fair manner, in an
22 expeditious manner, and that that fairness be applied to all
23 parties. Intervenors are entitled to fairness, of course.
24 But the applicants are entitled to fairness as well. We
25 believe that if Licensing Boards are not adhered to, and if



1 that failure of adherence is not somehow recognized, that
2 there is the likelihood that things from this proceeding
3 in the future and in other proceedings, it will become
4 increasingly difficult for Licensing Boards to run fair and
5 expeditious proceedings and we think that there are those
6 two purposes behind sanctions. I cannot read the Licensing
7 Board's mind, I think both of them are involved here. I
8 would impress upon you the need to impose appropriate
9 sanctions, so that this proceeding does remain on track
10 so that we do not get bogged down on side issues, so we can
11 get onto litigating the issues which we are faced with, so
12 we can ventilate those questions, and get a determination
13 by this Licensing Board. That is the reason why I think
14 sanctions is appropriate. If we are ever to get through
15 this process and get to the merits of these issues, we have
16 to have a process that exists and is operated under the rules
17 of the Commission. And we believe that the impositions of
18 sanctions in a case like that will serve that function.

19 CHAIRMAN BECHHOEFER: Then, in turn, was not the
20 Commissioner of the Appeal Board or both in Prairie Island
21 talking about though the ability of an intervenor to assist
22 in building an adequate record?

23 MR. SILBERG: Well, that is clearly true, but--

24 CHAIRMAN BECHHOEFER: When do cross examinations
25 by an intervenor on its own contention clearly lead to that?



1 And if it did not, we could always cut off cross examination
 2 at that time. When it gets to be non-productive, obviously,
 3 we have cut it off. Would not we have a better record if an
 4 intervenor is allowed to ask questions on its contention,
 5 even though it may have defaulted--

6 MR. SILBERG: Therefore if you drop that rationale,
 7 however, what you are saying is that no sanctions are ever
 8 appropriate. Clearly the Board has the authority to throw
 9 an intervenor out completely. We have cited numerous cases
 10 in our prior pleadings in which Licencing Boards have thrown
 11 intervenors out of proceedings prepared to comply with the
 12 discovery process.

13 CHAIRMAN BECHHOEFER: Right.

14 MR. SILBERG: If you can throw an intervenor out
 15 completely, you are certainly limiting his participation to
 16 develop the contentions that he has put into the record. If
 17 you can do that you can certainly limit his participation to
 18 lesser degree. If all that you are saying is the only penalty
 19 that the Licensing Board can impose is the total expulsion
 20 of a party, and we cannot impose a lesser penalty, then it
 21 seems we are met--the rules do not make any sense, if that
 22 is how they are interpreted.

23 CHAIRMAN BECHHOEFER: Well, the lesser penalty
 24 that we had in mind was the direct--in terms of a direct and
 25 that was designed to avoid surprise to the other parties



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would have to beat that direct case.

MR. SILBERG: Well, the Licensing Board has, of course, the authority to determine what is an appropriate sanction and that is clearly within your discretion. However, there are other problems with assuming that the only way to avoid surprise is to exclude the possibility of direct. Our interest are hurt just as much by surprise on cross examination. One of the purposes of discovery as the Board has recognized is so that we can understand exactly the information which the intervenors have to support their contentions. There are, after all, the intervenor's contentions. They brought them before this Licensing Board and they said let us litigate these issues. All we are trying to find out is what information do you have to support that issue. That information can be used in both in direct testimony by the intervenors and on cross examination.

If we are to go into the hearing and have the intervenors suddenly come in with a lot of information which they use as the basis for cross examination. We are just as hurt by that surprise as we are by surprise under direct testimony. That the Board has in its orders said, well we will give the applicants and the Staff ample opportunity to respond to new information raised on cross examination by intervenors that you did not learn about because we did not allow discovery. However, that is a significant penalty to



1 the applicants and the Staff. Our interest in this pro-
2 ceeding is an expeditious resolution. If we have to wait
3 everytime some new document is waved in our face so we can
4 go back and research that document or even read it, we are
5 delaying the hearing. We have to take the choice at that
6 point of going ahead inadequately prepared or delaying the
7 hearing, and it is clearly in our interest not to delay the
8 hearing. So what you are doing is giving us a Hobson's (?)
9 choice of either delaying the hearing or not being as well
10 prepared to respond to cross examination as we would in the
11 discovery process work.



1 1 CHAIRMAN BECHHOEFFER: There is something else I
2 want to ask you. When SEA says, SEA does not have paid
3 scientists or staff, or access to volunteer scientists who
4 would be capable of answering these questions concerning
5 radon 222, why isn't that answer, why isn't that a statement
6 that we have no information at this time?

7 MR. SILBERG: If, indeed, they had no information,
8 as I said at the start, that would be an adequate answer.
9 We in turn --

10 CHAIRMAN BECHHOEFER: Well, why don't they say that?
11 I mean is --

12 MR. SILBERG: Well, I don't believe it does and
13 if you look at their filing of January 29 -- I am sorry, of
14 February 19, where they say, "If we are ordered to answer
15 the interrogatories we will make a good faith effort to
16 answer some of them." If you look on page 2 of that filing,
17 entitled "Motion of Intervener SEA in Opposition to Applic-
18 ants Motion of February 4, 1980," the bottom of the page,
19 it says, "SEA, even by PP&L's admission, has made good faith
20 answer -- effort to answer some interrogatories," as I
21 started out in my discussion by acknowledging.

22
23 It then goes on to say, "SEA will make a similar
24 effort to answer the interrogatories on contentions one and
25 two if the Board denies these motions for Protective

2 1 Order." If, infact, they had no information one would think
2 they would have said it there.

3 CHAIRMAN BECHHOEFER: Well, sometimes --

4 MR. SILBERG: It is possible and perhaps we can get
5 a clarification. As I said at the beginning, if they have
6 no information that is an acceptable answer. We did not
7 read their response as saying we have no information. We can
8 interpret that response all the way into --

9 CHAIRMAN BECHHOEFER: I sort of interpreted it as
10 saying that and I think the staff interpreted it that way
11 to.

12 MR. SILBERG: Well, perhaps the best way -- perhaps
13 the best way is to ask counsel for SEA whether they have
14 some information to respond to those interrogatories.

15 CHAIRMAN BECHHOEFER: Just wait; we will. I take it
16 you did not read it as saying that?

17 MR. SILBERG: We clearly did not because as we said
18 in other cases, for instance, in our response to ECNP's
19 answers to our contention 18, we interpret that answer as
20 saying we have no information. We then received a reply
21 from ECNP which says, don't tell us we have no information.
22 Disregard that interpretation; that is not what we are saying.
23 I don't know. We interpreted that to say, yes they have
24 information but it was a burden to answer it.

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CHAIRMAN BECHHOEFER: Right. Now, I might say when

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we get to ECNP's motion, I am going to ask you some questions about whether some of your questions on contention one are capable of being answered at this time, but I will not do that at this stage because I think ENCP is the primary party interested there. But we will get back to that. I mean as to whether there has been any assessment of radon at all which they can answer with regard. But I think I will wait until we get to ECNP before I pose those questions because I think it is more appropriate in line with their answers.

MR. SILBERG: I finished my response if you have no further questions.

CHAIRMAN BECHHOEFER: Right. No, I have no further questions at this time. I think we will hear from SEA.

MR. SCHULTZ: Mr. Chairman, first of all I am not counsel for SEA. I am merely a member of the organization representing the interveners here.

Our contention is quite simple. We think that the applicants motion for sanctions is premature at this time. We have filed with the answers to certain interrogatories, we filed a motion for a Protective Order pursuant to 10 CFR 2.740(c) for interrogatories on contention number one. We have not received a ruling from the Board on that motion and until such time as we do receive an Order, we think it

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1 is inappropriate for the applicants to move for any sanctions
2 in that regard.

3 Our motion was specific. We do say that we don't
4 have the necessary resources, financial or otherwise in
5 which to answer those interrogatories and we would ask for
6 a ruling from the Board before the Board would take any --
7 would impose any sanctions upon us.

8 CHAIRMAN BECHHOEFER: Well, my real question is, in
9 order to grant a Protective Order against answering, you
10 would have to show that it was -- not that you didn't have
11 the resources to answer, but that it was inappropriate to
12 answer the particular question or questions. And that you
13 really haven't done.

14 But if you have said, this is one of the things
15 I want to find out, if you have said that up to the time
16 of your answer you had not been able to prepare, or didn't
17 have information to answer the particular questions, that
18 is a perfectly satisfactory answer. You don't need a Pro-
19 tective Order. As long as that is truthful, that is adequate.

20 And if in the future you get some information
21 then you have to advise the other parties. There is a
22 requirement for updating, supplementing answers. But if you
23 haven't got information at a particular time, then say so.
24 That is a perfectly satisfactory answer and you don't need
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a Protective Order.

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MR. SCHULTZ: If I could respond to that, Mr. Chairman? We discussed, you know, the kind of answer to file. One of the reasons we hesitated just to say that we didn't have the information was that, you know, we took it to mean then we would be admitting there was some information and PPNL could come back and say, well you didn't have the information then, but you have to give us the information now, you know, two or three months later.

The reason we raised the Protective Order, pursuant to 2.740(c), the way I read it, it says, to protect a party from annoyance, embarrassment, oppression or undue burden or expense. We think it would be undue burden or expense to require us to answer these question.

We describe each aspect in which you contend the assessment of the quantity of radon 222 to be released during the fuel cycle for the Susquehanna facility is inadequate. What quantities of radon 222 do you contend will be released during the fuel cycle for the Susquehanna facility?

For each step in the fuel cycle for the Susquehanna facility specify the quantities of radon 222 that you contend to be released.

CHAIRMAN BECHHOEFER: I realize that, but if you don't know it at this time, all you can say is we don't know at this time. That doesn't preclude you from --



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MR. SILBERG: What we did was raise the motion for a Protective Order for that reason. Now, if the Board denies our motions, as we said in our filing of February 19th, we think the Board should give us time to answer. And if our answer is that we don't know, then that is what our answer will be.

Now, I would also like to say that, you know, the delay, any delay that has taken place so far is not the responsibility of the interveners, but the responsibility of the Government in preparing the final environmental impact statement and, you know, to talk about PP&L wants to get on with an expeditious hearing. I am sure they do, but it is not our fault that the hearing has not proceeded more rapidly.

CHAIRMAN BECHHOEFFER: Okay. Do you have anything further to add and then we will hear from the staff if you haven't?

MR. SILBERG: I think we would like to go on record as saying, you know, we think that these proposed sanctions and -- well, to back up a step, you know, we do think your memorandum was a little misleading. You know, when you talked about default or when you cited the cases and talked about default because we, you know, we don't consider that there has been a ruling if there has been a default.



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CHAIRMAN BECHHOEFER: There hasn't been.

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MR. SILBERG: I know. So that was kind of premature we thought. But we, you know, it is our position that we think there should be a full discussion of each one of these contentions and we think, you know the sanctions proposed by PPNL are inappropriate.

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We don't think that they have made any case, even given our lack of access to the Atomic Safety and Licensing Board reports, that the denial of the right to cross examine, as well as the denial of the right to direct case is an inappropriate sanction in this case.

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We have made an effort to answer the interrogatories and as we have stated we made a good faith effort to answer three and four. We do want a clarification from the Board on the remaining interrogatories, but we think that, you know, PPNL's proposal for these sanctions is much too harsh.

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We think PPNL, for some reason, wants to eliminate or limit public input into these hearings so they can rush ahead and get a license.

MR. SCHULTZ: Mr. Chairman, could I just make one comment in response to the discussion? The motion for Protective Order, which SEA indicates, described in our January 18 filing, indicates that they weren't saying clearly that they had no information. But I think it is important to



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note that that Protective Order is exactly the kind of blanket, across the board, non specific Protective Order which the Board on several occasions very explicitly in its Order has said it is inadequate. I think if we are going to take the position ow that we are first going to start ruling on these kinds of blanket requests for Protective Orders that have been made on a number of occasions, starting in July, we are not advancing the process.

CHAIRMAN BECHHOEFER: Well, let me ask you--

MR. SCHULTZ: If they had specific objections to be made, they should have been made on January 18.

CHAIRMAN BECHHOEFER: Let me ask you one thing. If we would forget some of the past history and it were found that, for instance, SEA could provide a full answer to the extent an answer is appropriate, we may discuss it a little later, say within 30 days, I don't know what the current scheduling is going to be. I am going to ask about it. But if they agree to come up in a particular period of time with full answers, would you feel seriously prejudiced by accepting that as of whatever the date we fix would be?

MR. SCHULTZ: Well, I think the lack of answers has already hurt us in our ability to prepare testimony with our witnesses. My concern in giving yet another extension, remembering that we have had an extension from June 29 to

9 1 September 12, to December 14, to January 18, now if we
2 extend for another month and we get answers which may or may
3 not be adequate, and we start another round on what is the
4 appropriate sanction for failure to answer these discoveries,
5 we are never going to get to the end of this road. But that
6 is my concern with it.

7 CHAIRMAN BECHHOEFER: Well, I keep reminding that
8 our concern is that the record be as full and complete as
9 we can. And as long as these issues are in litigation, we
10 do not want to keep any relevant material, evidence, out of
11 the record.

12 MR. SCHULTZ: But that is a very different question
13 from assuring adequate discipline in the process to assure
14 that it doesn't breakdown on its own weight.

15 CHAIRMAN BECHHOEFER: Well, I am not so sure that
16 it is.

17 MR. SCHULTZ: And we have been coming very close
18 to that, unfortunately.

19 MR. SILBERG: Oh, that is not true.

20 CHAIRMAN BECHHOEFER: Well, I think there has been
21 some misunderstanding. I do think that technically the
22 motion for Protective Order that we have before us is
23 probably -- technically I say again it is not adequate. But
24 that doesn't mean we shouldn't either -- or not grant it, but
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at least grant an extension of time. It might have been much more appropriate, to ask for a further extension of time.

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I know you asked once for six months and we gave you something less than six months, but I would imagine that six month period is almost up now.

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MR. SCHULTZ: The six month period has already expired.

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CHAIRMAN BECHHOEFER: Whatever.

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MR. SCHULTZ: The request for 180 days was as of September 12, 1979. We are now beyond six months even from that point in time.

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CHAIRMAN BECHHOEFER: Well, be that as it may.

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MR. SILBERG: Well, even Mr. Silberg knows that if you get the six months then, and you have six months to work with, if you don't have the six months then you don't start counting the six months and say, well I am going to pretend I have the six months.

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CHAIRMAN BECHHOEFER: We gave you less than six months, but we gave you some. Be that as it may, we would be inclined, I think, we will hear more about scheduling later, but we would be inclined to, if we got full good faith commitments to answer, we would be inclined to accept that if it is within the time frame that would not delay the going to hearing, whatever will be ready to go to hearing.

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11 1 And that I think we will find out about later. Well, we
2 are not ruling now, but maybe Mr. Cutchin would want to make
3 some comments on it.

4 MR.CUTCHIN: Well, Mr. Chairman, if we are addressing
5 specifically the SEA motion at this time --

6 CHAIRMAN BECHHOEFER: The SEA motion, plus the
7 general legal question. I don't know that we will repeat
8 the legal question because I think we will want to hear
9 from Ms. Johnsrud and anybody else who wants to comment on
10 the general legal question.

11 DR. JOHNSRUD: Excuse me. At the beginning of this
12 discussion, as I recall, you did not state that specific
13 legal question. And the discussion has proceeded on the
14 basis of SEA's further request for Protective Order and
15 a fairly vague referencing of the entire issue which does,
16 indeed, pertain the other parties.

17 CHAIRMAN BECHHOEFER: Yes. Well, the legal question
18 referred to the general issue that we specified on that
19 memorandum, whether we could, whether we legally could
20 grant the relief requested, whether we could cut down on
21 somebody's right to cross examine on the basis of a default
22 in discovery, assuming there is a default and we are not
23 denying there is. Because, again, if we say -- if the
24 answer to that is no, then it wouldn't have mattered if
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12 1 anybody had filed a piece of paper or not. As long as they
2 stay in the proceeding they can cross examine if the answer
3 to that question is no.

4 DR. JOHNSRUD: But it is only that portion of the
5 applicant's motion that is directed towards SEA and ECNP
6 that you are now considering when you say the legal question?

7 CHAIRMAN BECHHOEFER: That is correct. We are
8 considering the motion against SEA on its merits also, but
9 as part of it we have got to resolve the first question also,
10 I think, because otherwise the answer is just, well forget
11 about the motion; we can't grant it. Then we don't have to
12 sit here and determine whether anything is adequate or not
13 adequate.

14 So anyway, Mr. Cutchin, do you want to -- well, I
15 will hear from you later.

16 MR. CUTCHIN: I just wanted to be sure that it was
17 clear as to what we are addressing. As the staff stated
18 rather plainly in its pleading, we think that with respect
19 to the position of the prohibition of cross examination as
20 to SEA in this particular instance, I think it is not
21 supported by the factual situation we find ourselves in
22 because as we said, of the apparent lack of knowledge, again
23 it was not clearly stated.

24 But I would like to address the whole general
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13 1 question of the legal issue. The staff is also of the view
2 that in Northern States Power the Commission was addressing,
3 and the Appeal Board, was addressing prohibition of cross
4 examination as a matter of general procedure.

5 And, of course, under the circumstances in which
6 we find ourselves at present in this case we have had
7 some constraints which the Board in its discretion has
8 chosen to impose. And that is that the Board, no matter
9 whether the responses to interrogatories which were designed
10 to obtain a bases for contentions were answered or not, no
11 contentions would be dismissed from this proceeding absent
12 showings required under 2749. And when one is placed in that
13 box it puts a little different light on the situation because
14 non responses to contentions designed to determine whether
15 there are, indeed, specific bases for contentions, we should
16 have gotten over that hurdle obviously earlier in the game
17 because as we pointed out, the purpose of that basis require-
18 ment is to help assure that the hearing process, number one,
19 is not improperly invoked. You get into a bootstrap situation
20 and to help assure that the other parties are put on notice
21 of the issues that they must meet, and to assure that the
22 process is invoked solely for the resolution of concrete,
23 not some vague generalization of issues.

24 Now, it is very clear that a Board, under appropriate
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141 circumstances has great powers to limit cross examination.
2 Even in Northern States there was a requirement that the
3 participant, though he did not raise the contention, in order
4 to be able to participate via cross examination in its
5 litigation must have a discernable interest in the issue.

6 Of course, the Board would not allow cumulative
7 or repetitious cross examination and --

8 CHAIRMAN BECHHOEFER: I think the interest require-
9 ment grew out of the NRC rules, specific provision --

10 MR. CUTCHIN: Right. And the propose would be that
11 in order to have raised the contention to begin with, he
12 would have had to have a discernable interest and, of course,
13 a party if he had good reasons could attempt to amend his
14 contentions in order to be able to put on some sort of an
15 affirmative showing, relieve of the Board, and of course
16 would have to overcome the various timeliness hurdles and
17 would have to show that it was highly likely that he would
18 be making some contribution to the record.

19 The difficulty here, and I don't want to get too
20 general, is that when you allow a party to sit back there
21 is this problem of surprise. And, of course, the Supreme
22 Court has upheld, as was pointed out by the applicant, dis-
23 missal of a party who does not disclose evidence in his
24 possession on the assumption that his failure to disclose
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is an indication that there is a total lack of merit to his claim.

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And I think the same view could be taken here that when interrogatories designed to obtain from an intervener the basis for his contention, the bases for his contention, come back and say either we have no knowledge or you get no response, which implies the same thing, the appropriate sanction would have been dismissal of that contention as to that intervener.

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Now, you still have the problem that if the contention was raised by more than one intervener, until you get non-responses from all of them, you are unable to throw out the contention as to the whole case. But it would seem logical that one could throw out that contention with respect to that one intervener.

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In other words, deny him participation in that issue in toto as an appropriate sanction for his admission that he has nothing to contribute, if you will. Because by not responding to interrogatories designed to see if he has information, which he must disclose if he has it, it becomes patently obvious that if he has no information he has nothing to contribute.

Again, let me summarize by saying that with respect to SEA and its response to contention one, the staff took



16 1 the position that since it couldn't be moved in light of
2 the Board's position, relative to dismissal of contentions,
3 that the contention be dismissed, that he certainly should --
4 that SEA should certainly be prohibited from introducing
5 direct evidence. But that the determination as to whether
6 SEA should be allowed to cross examine on that contention
7 would more appropriately await the occurrence of a situation
8 at hearing wherein SEA, as a basis for its cross examination,
9 sought to use documents or information that it should have
10 disclosed and did not, and then therefore should perhaps
11 be denied cross examination there. But for again the ruling
12 the Board has made in advance and, as was addressed by the
13 applicant, that if this sort of surprise occurs staff and/or
14 applicant will be given ample opportunity to review whatever
15 documents these are and develop their arguments.

16 The staff will state strongly also that it believes
17 that this contributes to delay of the hearing, or potentially
18 contributes to delay of the hearing.

19 CHAIRMAN BECHHOEFER: Let me ask you one question.
20 Now if we should think that what SEA was really saying was
21 that we don't have any information now, but we can develop
22 it, would you say that we should not allow them to develop
23 it and provide answers as long as it doesn't delay the
24 initiation of the hearing?
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1 MR.CUTCHIN: Well, Mr. Chairman, one has to go back
2 to what steps must an intervener take to be properly admitted
3 to a hearing. The time in the process is established for the
4 disclosure of bases for contentions. And, again, I have to
5 keep harping on the point that most, if not all, of these
6 interrogatories, at least on the part of the staff, were
7 designed to get greater specificity of the bases for conten-
8 tions.

9 If they are unable to make specific statements or
10 bases in order to define concrete issues for resolution, they
11 did not in reality satisfy the first step in the process.
12 And it may well turn out that if in response to all of the
13 interrogatories that were asked of all of the interveners
14 collectively, there were no responses, it would be obvious
15 that perhaps the hearing process were improvidently invoked.

16 CHAIRMAN BECHHOEFER: Well, let me ask you this.
17 We have an issue on the effect of radon releases.

18 MR. CUTCHIN: Yes.

19 CHAIRMAN BECHHOEFER: And that happens to be the
20 one involved here. Now, at least one of the parties has
21 said that the reason we raise the issue is the Commission's
22 decision of pulling it out of Table S-3.

23 MR. CUTCHIN: But that doesn't automatically invoke
24 a hearing process if it were the only contention that
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1 survived.

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CHAIRMAN BECHHOEFER: Well what I am saying is the contention happens to be the releases of radon and the health effects have not been adequately analyzed.

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MR. CUTCHIN: That may well --

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CHAIRMAN BECHHOEFER: Isn't it a reasonable basis for that, the fact that the Commission recognized that it didn't have a figure that it should go in S-3, or that the figure that was in it was wrong? Doesn't that -- isn't that perforce a statement of why the thing hasn't been adequately analyzed?

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MR. CUTCHIN: Not unless one goes the extra step and says that therefore when that figure is included it will cause the cost benefit balance to tilt so greatly --

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CHAIRMAN BECHHOEFER: How do you know?

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MR. CUTCHIN: --that the operating license --

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CHAIRMAN BECHHOEFER: But how do you know?

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MR. CUTCHIN: That is the totality of the contention that must be raised because the bottom line is what has to be decided.

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CHAIRMAN BECHHOEFER: Yes, but I realize that. But at this stage how do you know? How do you know how much it is? It might -- maybe 74.5 Curies won't tip it and maybe 150,000 will. But how do you know? Should the interveners

19 1 be required to say how much you have to have released to
2 tilt it, or should they be allowed to look at an adequate
3 analysis first and then they can say whether that is adequate
4 or not. Isn't that the time to --

5 MR. CUTCHIN: No. I think an intervener should be
6 required to state his assumption as to what the correct
7 value is and why.

8 CHAIRMAN BECHHOEFER: Why do they have to have
9 any assumption as to what the correct value is. Why isn't
10 it enough to say what is there is inadequate?

11 MR. CUTCHIN: Because the Commission has not, as
12 a matter of general course, lifted all of the various
13 licenses outstanding which do not have included therein
14 appropriate numbers for this and because it is not obvious
15 that the Commission intended that this sort of thing alone
16 should be the basis for a Licensing Board assuming superv-
17 isory responsibility over the staff's carrying out its
18 function. And it is a bootstrapping situation wherein if
19 that were the only issue to be raised and an intervener
20 didn't take a position, staff has taken a position as to
21 what the number ought to be, it has done so in numerous
22 hearings, and unless there is a challenge to that number
23 and an attempt to show its insufficiency, you don't have
24 a concrete issue that is available for resolution.
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1 CHAIRMAN BECHHOEFER: Well, for instance, do these
2 interveners, let's take SEA on this one, do they have
3 before them what the position is? I personally don't have
4 before what the position of the staff is except to the
5 draft environmental statement. Now, is that going to be
6 the final position, or is the FES going to change it?

7 MR. CUTCHIN: I could not, of my own knowledge, say
8 at the moment that --

9 CHAIRMAN BECHHOEFER: Should they be required to
10 analyze? What should they be required to analyze, what is
11 in the DES, what the applicant sends in? Well, the applicant
12 sent in a cross reference to Table S-3 --

13 MR. CUTCHIN: Which does not contain that number.

14 CHAIRMAN BECHHOEFER: -- two years ago, cross refer-
15 ence. And that is the only thing in the, -- So as far as
16 these interveners are concerned in this proceeding, and I am
17 not talking about other proceedings, all they have before
18 them is what the applicant is sending in and what is in or
19 not in Table S-3.

20 So what I am saying is, at this stage is it
21 reasonable for them to answer anything about their basis
22 for radon releases until the Commission has come out with
23 something final they can comment on?

24 MR. CUTCHIN: When will it be reasonable, Mr. Chairman,
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in the view of the Board?

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CHAIRMAN BECHHOEFER: Will it be in the FES? I assume what you have in the DES will either be carried over or changed or something comparable.

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MR. CUTCHIN: But in order to raise something that comes out in the FES, there is a so-called new information requirement.

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CHAIRMAN BECHHOEFER: Oh, I --

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MR. CUTCHIN: And unless that information was generated totally by the staff and therefore would fall under a new information flag, it must be presumed that the information is available and that an intervener, had they chosen, had as much access to it as anyone else if it were in the public record. They could have done their own development of the case.

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I don't think the process was ever intended to allow someone to raise an unsubstantiated and unsubstantiated claim and thereby bootstrap their way into the process for purposes of exercising supervision over the Commission's carrying out of its function. That is the duty of the Commission and the Boards.

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And, of course, any time that the staff presumed for instance that the hearing process had not been invoked at this early stage, and the staff had gone forward and had

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1 issued a license having found that this hole had been adeq-
2 uately plugged and it still gets reviewed or is reviewable
3 by the Commission if they are not satisfied with that.

4 Now, we are getting off into a very hypothetical
5 and theoretical discussion.

6 CHAIRMAN BECHHOEFER: I realize that. But what I
7 was trying to establish is when there hasn't been a staff
8 final analysis put into the record.

9 MR. CUTCHIN: But that is always the case.

10 CHAIRMAN BECHHOEFER: Usually you assume that for
11 an intervener to raise a contention, they can go to the
12 public document room and look at the applicant's submission
13 and then they can tell what is wrong with it. These inter-
14 veners have looked at the applicant's submission, presumably,
15 and they have said radon has not been adequately assessed.

16 And you look in that, I mean, there is about a
17 half a paragraph, I have got it right here as a matter of
18 fact, someplace here.

19 It is the whole field cycle. It incorporates
20 by reference S-3, an old Table S-3 by the way, but I assume
21 it will be amended, and then they raise a contention saying
22 radon hasn't been adequately assessed. They cite the Comm-
23 ission's decision which says that that 74 number isn't
24 right. Isn't that enough?
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MR. CUTCHIN: But at what point in time must that intervener come forward with his specifics as to why the number that eventually gets --

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CHAIRMAN BECHHOEFER: Maybe it is never. Maybe it is never. Maybe it is if no further information is coming from the applicant or staff, we grant summary disposition to the intervener on that issue. It hasn't been adequately assessed.

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MR. SILBERG: Excuse me. But there is further information and that information is in the draft environmental impact statement.

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CHAIRMAN BECHHOEFER: Well, that what I was trying to say. If the draft environmental impact statement is going to be the final Commission position on it, maybe they should comment on that.

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MR. CUTCHIN: Whether it is or is not.

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CHAIRMAN BECHHOEFER: I might say that ECNP's answers to the staff's interrogatories came out before the DES was speculated. I don't know about the precise dates, but they obviously --

MR. CUTCHIN: We are on the SEA motion now I thought.

CHAIRMAN BECHHOEFER: We are. I realize that. But I am still going over it because they gave some specific examples, but it is the same contention.

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MR. CUTCHIN: Well, I am trying to be sure that the record is clear as to what we are speaking about.

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CHAIRMAN BECHHOEFER: Right, right. But should the interveners be requested then to answer what is wrong with what is in the DES, or is it going to be superseded in another month by something different, and isn't that a wasted effort?

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MR. CUTCHIN: Well, maybe or maybe not but there is a provision that interveners are not entitled to await the publication of the staff's SER or its DES in order to make discovery.

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CHAIRMAN BECHHOEFER: Well, I recognize that. But what I am saying is in terms of their contention, which they are asking questions about, I think a full answer would have been there is no assessment of radon. And since radon is released you have got to have one.

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MR. CUTCHIN: But that is not -- of course you are getting to the merits of the situation then.

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CHAIRMAN BECHHOEFER: That is the merits, but I am just trying to say, and I realize you contend that their SEA's answer has been adequate for --

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MR. CUTCHIN: I am saying it is apparent that they have no knowledge--

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CHAIRMAN BECHHOEFFER: Right, right.

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1 MR. CUTCHIN: -- because of their statement that it
2 would take time to develop such knowledge. Therefore I assume
3 that they are saying, or at least implying, that they
4 presently have no knowledge.

5 CHAIRMAN BECHHOEFER: Yes. And given the state of
6 facts in the record isn't that adequate for now and shouldn't
7 they even be allowed to present a direct case if within a
8 certain period of time they --

9 MR. CUTCHIN: Well, when does one draw the lines so
10 the staff and the applicant have an opportunity to identify
11 and meet whatever challenge it is that the intervener wishes
12 to raise, or must they sit back and wait until the hearing
13 and be prepared to take on all comers on whatever claim they
14 make?

15 CHAIRMAN BECHHOEFER: Well, I think the interveners
16 have to have some sort of an analysis to criticize before
17 they can be held to be in any default.

18 MR. CUTCHIN: But then you are giving them an
19 opportunity to become supervisors of rather than participants
20 in the resolution of concrete issues.

21 MR. SCHULTZ: SEA would be glad to make their own
22 analysis if the NRC would grant us sufficient funds to do
23 our own analysis, just like they are doing their own
24 analysis.
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1 CHAIRMAN BECHHOEFER: Yes. Well, we don't have any
2 authority about funds, so that --

3 MR. CUTCHIN: However, Mr. Chairman, SEA has to date
4 demonstrated no expertise whatsoever to make or participate
5 in such an analysis.

6 MR. SCHULTZ: If we did, would you grant us funds?
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8 DR. JOHNSRUD: Mr. Chairman, has the staff served on
9 SEA or the other parties that have a radon contention the
10 staff testimonies pertaining to this issue that were submitted
11 in proceedings, the consolidated proceedings approximately
12 a month ago, in order for these parties even to have consid-
13 eration of what is now the revised latest staff position on
14 radon?

15 MR. CUTCHIN: Mr. Chairman, the answer to that is
16 clearly no. I am not able to say whether or not it is
17 available in the public document room. I presume that it is
18 and therefore the staff has made all of the disclosure that
19 is required of it.

20 CHAIRMAN BECHHOEFER: Well, we have already held
21 that having something in the wash in the public document
22 room isn't good enough.

23 MR. CUTCHIN: Well, I didn't realize you had held
24 that, Mr. Chairman, because I would --

25 CHAIRMAN BECHHOEFER: Yes. We said that. Well, we



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1 urged, I guess we should have even held, we said that
2 something -- if it is going to be in the public document
3 room it has got to be in the one in Wilkes-Barre for anybody-

4 MR. CUTCHIN: I did not even realize that the Board
5 had said that anything had to be anyplace, Mr. Chairman.

6 CHAIRMAN BECHHOEFER: Well, the October 30th order --

7 MR. CUTCHIN: Urged the staff and said that when
8 the staff was stating that something was indeed in the public
9 document room in Wilkesbarre in response to a discovery
10 request, that it had a duty to assure that it was there.

11 CHAIRMAN BECHHOEFER: Well, we said a little more
12 than that, I think. But I had intended to say that we -- I
13 can't remember if we encouraged or urged, or --

14 MR. CUTCHIN: I believe the word was urged.

15 CHAIRMAN BECHHOEFER: But I am not sure we have
16 the authority to direct in that regard, but we --

17 MR. CUTCHIN: And the staff has the responded to
18 a number of the Board's directives in that.

19 CHAIRMAN BECHHOEFER: I have noticed that.

20 MR. CUTCHIN: And has nothing at the moment to add
21 to that.

22 CHAIRMAN BECHHOEFER: Right, right. We will ask
23 more about that later. But be that as it may --

24 MR. CUTCHIN: But the staff's position as to the
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1 SEA motion is that the staff does support, as it stated in its
2 pleading, the denial of a direct case for the reasons the
3 staff gave. And does not support, at the moment, the impos-
4 ition of the sanction prohibiting cross examination on that
5 particular contention.

6 CHAIRMAN BECHHOEFER: Would you oppose an extension
7 of above a certain period of time, say 30 days? That is
8 arbitrary at this stage.

9 MR. CUTCHIN: Well, Mr. Chairman, I think --

10 CHAIRMAN BECHHOEFER: I don't know what the timing --

11 MR. CUTCHIN: -- sometimes we must get some consist-
12 ency in the process in that these interrogatories were
13 served, as was pointed out, last May. The first time period
14 ran out in June. It was extended again and it has been
15 extended again, and it has been extended again to no apparent
16 good purpose. And in order for the staff, certainly, and the
17 applicant has said likewise, to be able to assemble witnesses
18 and focus those witnesses attention on concrete issues to
19 be addressed in addition to the general report of the staff's
20 evaluation of the overall application, requires an establish-
21 ment of a deadline for whatever it is that is going on now,
22 loosely termed discovery and it can't be two weeks before
23 the deadline for submission of testimony or 60 days in ad-
24 vance of the start of the hearing.
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29 1 We are building in more and more delay into the
2 process on the supposition that there is going to be further
3 delay in publishing staff documents.

4 Now, as the Board is well aware, there is no
5 requirement that a hearing not begin even prior to the
6 staff's publication of its safety evaluation report. It is
7 only that the staff would not put on its case. It wouldn't
8 be very productive, perhaps.

9 CHAIRMAN BECHHOEFER: Would you have us start the
10 environmental area before your FES issues?

11 MR. CUTCHIN: I think it would not accomplish a
12 great deal, but all I am trying to emphasize is that the
13 staff needs time to prepare additional testimony, if necess-
14 ary --

15 CHAIRMAN BECHHOEFER: Oh, I realize that.

16 MR. CUTCHIN: -- on specific concrete issues. And at
17 some point in time those issues must be defined.

18 CHAIRMAN BECHHOEFER: Well, once we got it -- get
19 a better date for a hearing, I would certainly agree that
20 we have to set more strict dates. Maybe we will be able to
21 reach approximate dates today. I don't know. I am going to
22 ask you later on.

23 MR. CUTCHIN: We will have some fairly, maybe smaller
24 ball parks than we have been operating in.

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30 1 CHAIRMAN BECHHOEFER: Yes. Because if we could set
2 that we would have -- we have tried to set -- some of the
3 times we have set have been fairly arbitrary because of
4 just picking dates out of the air almost. If we have a date
5 to shoot for it is a lot easier to set specific dates and
6 give parties --.

7 MR. CUTCHIN: Will it help the Board? It would take
8 10 seconds to give you the ball park number now as to when
9 the staff expects to be --

10 DR. JOHNSRUD: Mr. Chairman, could we not continue
11 our discussion of the motion at hand? The other parties, I
12 think, do have some things they would like to add before
13 we ramble aimlessly and lose track of the issues that have
14 been raised. I certainly would like to respond to some points
15 that have been made by Mr. Cutchin, at least, prior to the
16 discussion more fully of almost precisely the same issues
17 with respect to the ECNP situation.

18 CHAIRMAN BECHHOEFER: Right, right.

19 DR. JOHNSRUD: But we are getting so far afield
20 that we will lose track of the points that have been made
21 that need to be responded to on the record. Could we hold
22 scheduling until later?

23 CHAIRMAN BECHHOEFER: I think what we will do is --
24 Do you have anything further on this?
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MR. CUTCHIN: Nothing further on the motion, Mr.

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Chairman.

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CHAIRMAN BECHHOEFER: I think what we will do is

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go on to Ms. Johnsrud first and then we will hear from Mr.

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Halligan and then maybe after we get done talking about the

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SEA motion we will take a break for scheduling, maybe for

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other things. Ms. Johnsrud why don't you -- you or Mr.

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Halligan can take your pick as to who wants to go first.

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MR. HALLIGAN: There is one item, Mr. Chairman, on

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contention one. The citizens full intended to answer the

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specific interrogatories of the applicant. However, on our

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discovery request of May 22nd, item number 15, we asked this

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one item and it was denied and therefore, because we did

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not get this information, we could not answer and I will

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just quote what we requested.

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CHAIRMAN BECHHOEFER: We are talking about SEA's

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motion.

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MR. HALLIGAN: Well, it has to do with the radon.

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CHAIRMAN BECHHOEFER: Well, that is okay. We will

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get -- when we talk about the one against you we will talk

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about that. I don't want to get into any specifics on yours.

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MR. HALLIGAN: Well, the general contention was

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that all the applicants were not answering their questions

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and we want to point out that we couldn't answer without

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this information.

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CHAIRMAN BECHHOEFER: I will ask you these things when we get to your -- I don't want to get into anything specific.

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MR. HALLIGAN: Yes sir.

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CHAIRMAN BECHHOEFER: But if you want to talk about the general relief.

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MR. HALLIGAN: This is specific to contention number one though.

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CHAIRMAN BECHHOEFER: We are only talking about that insofar as it related to SEA's motion. But we are talking about some of the general, the general authority for us to cut off cross examination.

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MR. HALLIGAN: I want it clearly understood that we intended to respond to their discovery, but we were unable to because we were denied --

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CHAIRMAN BECHHOEFER: Well, we will hear about that and that is one of the things that I wanted to find out. Ms. Johnsrud?

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DR. JOHNSRUD: Mr. Chairman, we are dealing here with a problem that is cumulative in its effects upon the intervening parties that goes to the purpose of the hearing which is to resolve questions relating to the environmental effects and the safety of the plant. You, yourself, said about

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1 a half an hour ago, I hope I am quoting you more or less
2 accurately, we do not want to keep pertinent information off
3 the record.

4 CHAIRMAN BECHHOEFER: That sounds about right.

5 DR. JOHNSRUD: Good.

6 MR. CUTCHIN: Nor does the staff.

7 DR. JOHNSRUD: Excuse me. It is certainly not the
8 purpose of the Board to be throwing out contentions. It is,
9 in fact, since the Board has admitted these contentions as
10 issues it considers important enough for litigation, it is
11 important for the Board to be as supportive of getting a
12 full record on those contentions as is possible.

13 CHAIRMAN BECHHOEFER: We have already held that we
14 will not throw out any of the contentions for default.

15 DR. JOHNSRUD: Yes.

16 CHAIRMAN BECHHOEFER: We would require at the very
17 least what you have to file for a summary disposition motion
18 which is affidavits. That would be the minimum we would
19 require.

20 DR. JOHNSRUD: I am responding in part to Mr.
21 Cutchin's suggestion that unless the interveners, SEA, have
22 provided specific information in response to the interro-
23 gatories, that therefore they have nothing to discuss, to
24 litigate and in the absence of a response that satisfies
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1 the applicant or satisfies the staff, they should be dropped
2 from that contention and the contention should be dropped.

3 Now, that is perhaps a paraphrase of what we were
4 saying. And that is precisely the problem that I think SEA
5 and certainly ECNP have had in attempting to respond to the
6 interrogatories that were served on us. Namely, on the one
7 hand we have been give, SEA has been given, an enormous
8 number of interrogatories that ask for an enormous amount
9 of information but at each step only a very short time
10 period in which to respond to everything all at once.

11 MR. CUTCHIN: Mr. Chairman --

12 DR. JOHNSRUD: Excuse me. Could I continue without
13 interruption?

14 CHAIRMAN BECHHOEFER: Let her finish.

15 DR. JOHNSRUD: It is very easy to get thrown off
16 ones track.

17 MR. CUTCHIN: What are we arguing, Mr. Chairman?
18 Are we arguing the SEA motion or are we arguing generalities?
19 I thought we were focusing on the SEA motion.
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21 DR. JOHNSRUD: Mr. Chairman - -

22 CHAIRMAN BECHHOEFER: SEA, plus the generalities
23 of the type of relief we can grant. I don't want to get
24 into specifics on your particular interrogatory at this
25 stage. We are going to get to them later.



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1 DR. JOHNSRUD: I am not talking about the specifics
2 of our interrogatories. But what I am talking about is the
3 nature of those interrogatories that have been served on these
4 parties and I might add that Mr. Cutchin's interruption did
5 throw off the train of thought that I was trying to develop.
6 And I would ask you, Mr. Chairman, to please ask him to
7 refrain from interrupting me. I have refrained from interr-
8 upting him. May I have that courtesy, sir?

9 CHAIRMAN BECHHOEFER: Yes. You should finish your
10 statement.

11 DR. JOHNSRUD: Yes. The interveners had been asked for
12 large amounts of information in a large chunk. That is to
13 say all of the interrogatories initially through those early
14 months to be answered within a short period of time, a month
15 and then another months extension. But that other months
16 extension coming only after the interveners had had to go
17 through an additional filing in order to get the Board to
18 give them an extension.

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20 In other words, at each stage of this proceeding
21 SEA and ECNP and the other interveners have been subjected
22 so a kind of scale of back and forth sliding deadlines and
23 uncertainties such that it simply wasn't possible to get
24 down to the job of going after the information, both to
25 develop the intervener's own contentions and to respond to

36 1 the discovery requests.

2 Now, let me go back to the very beginning of this
3 process in which the Board, in its March 6th prehearing
4 conference order, accepted a series of contentions that had
5 been submitted by these parties. Some of them were consolid-
6 ated together in ways that no longer represented the initial
7 filing by these parties.

8 In other NRC proceedings with which I am familiar,
9 and I believe in all proceedings when a Board makes its
10 decision to accept a contention, it is doing so on the
11 basis of first a statement of a contention of an issue that
12 is litigatable, and secondly on the basis that sufficient
13 bases or a specificity have been provided by the interveners
14 in order for the Board to accept a contention in the first
15 place for litigation.

16 Now as I went back through the March 6th order I
17 did not find any requirements that the interveners further
18 elaborate their bases for the contentions.

19 CHAIRMAN BECHHOEFER: That would normally not be
20 in such an order. It is just in the rules.

21 DR. JOHNSRUD: As a matter of fact, sir, that has
22 been specified by the order in the Three Mile Island One
23 restart proceedings. And it seems -- it had, as I recall,
24 also been done in other proceedings.
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2 So that I think that we, as interveners, had a
3 reasonable assumption that the bases had been sufficiently
4 laid in the first place for you to have accepted these
5 contentions. Now we are being told by the applicant and by
6 the staff that we have to provide underlying information
7 responding to interrogatories that are so unfocused and so
8 general and so broad, and so numerous, as to essentially ask
9 each of us to, I guess we put it, to write an autobiography
10 when, for instance, we are supposed to identify conversations,
11 consultants, correspondance, or any other type of commun-
12 ications with one or more individuals used in answering
13 each and every one of the interrogatories put to the inter-
14 veners by the applicant to identify such individuals, all
15 of them, by name, address, educational/professional background,
16 occupation, institutional affiliations, the nature of each
17 communication with each such individual, when it occurred,
18 identifying all other individuals involved, describe the
19 information received from each such individual and explain
20 how it provides a basis for your answer.

21 Well now, sir, that is patently impossible for
22 each of the numerous interrogatories that SEA and ECNP
23 wrote and the other interveners received.

24 Now you have put us in kind of a circular bind
25 here in which you say, on the one hand, it is necessary

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to respond to the interrogatories because if not then you have shown that there is no sufficient knowledge on the part of this intervener to be able to litigate the contention and, therefore, the intervener will not be allowed to do so.

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If we do respond in this great depth it clearly can't be done for all of these numerous interrogatories within the short one month time periods that have been allowed at each stage in the proceeding.

MR. CUTCHIN: Dr. Johnsrud, the regulations specifically say that an intervener is not required to undertake an extensive research program in order to answer interrogatories. If you don't have the information you can say, I do not have the information and that is adequate.

DR. JOHNSRUD: And fine. We are happy to do that so long as we are not then, at some other stage down the line, entirely prohibited from any meaningful input at the evidentiary hearing stage.

Now I fully sympathize with the applicant and staff in wanting to have some notion of what to prepare for. The interveners in these proceedings have asked for a number of discovery items. They have not received the bulk of them because they have been told by staff that those items are available in the public documents room in

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Washington, D.C. and, on the other hand, the applicant has been granted a Protective Order by this Board. So that the interveners then are left without the information that they need, both for the development of their contentions and for the development of meaningful cross examination.

We are in a situation in which, you know, not only can we not have it both ways, but we don't seem to be able to have it either way in order to make that very contribution of significance to the Board that we want to make.

DR. PARIS : For the record, the staff was -- I mean the applicant was granted a Protective Order with respect to certain of the intervener's interrogatories because there was no response from the interveners to the staff's motion -- to the applicant's motion requesting relief.

DR. JOHNSRUD: As I recall the time period of that, Mr. Paris, I am a little unhappy about that having been accomplished as it was because as I recall, the correspondence on that arrived, again, at a time when these interveners, who don't have secretaries to answer the mail and call them up everyday, every time some filing comes in, and the lack of a response was due to the fact that in that brief time period for response we didn't have, we didn't know that that

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1 was occurring.

2 If I recall correctly, that is way back last
3 spring, and I would add that last spring, at least for the
4 ECNP interveners, and I think this speaks for the others
5 as well, was a fairly traumatic time in Pennsylvania, a
6 rather busy time certainly for us.

7 Now that aside, indeed you are correct. And let
8 me point you to your Order of October 30th on discovery
9 motions, discovery two I think it was termed, at pages 16
10 and 17. At the bottom of 16 there is a reference to precisely
11 what you are mentioning here. namely, and I quote, "In
12 discovery memo one we granted the Protective Orders requested
13 by the applicants, but not on their merit. We did so
14 because of the failure of CAND and ECNP to respond to the
15 applicant's objections."

16 Then you go on, "Although the dichotomy which we
17 have just portrayed may be consistent with the rules of
18 practice, the result it reaches is patently unfair to the
19 interveners. Pursuant to our --"

20 CHAIRMAN BECHHOEFER: Ms. Johnsrud, I think that --

21 DR. JOHNSRUD: Excuse me. Could I finish the next
22 sentence, which is the point I am getting to?

23 CHAIRMAN BECHHOEFER: Yes.

24 DR. JOHNSRUD: --"Pursuant to our authority to
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41 1 issue, quote, "any Order which justice requires," unquote,
2 to protect a party from, quote, "undue burden," unquote, we
3 are correcting this unfairness."

4 CHAIRMAN BECHHOEFER: This is what I wanted to
5 comment on. That sentence related to --

6 DR. JOHNSRUD: What sentence did that correct, Mr.
7 Bechhoefer, could you tell us please?

8 CHAIRMAN BECHHOEFER: Yes. That sentence related
9 specifically to the interrogatories directed to interveners
10 which inquired about other parties contentions and the
11 concomitant refusal of the applicants to answer interro-
12 gatories that interveners asked on other interveners content-
13 ions. And we thought that was unfair so we corrected them.

14 MR. HALLIGAN: In what way unfair, sir? This pertains
15 precisely to our contentions and our problem here. I don't
16 understand that.

17 CHAIRMAN BECHHOEFER: We corrected that by not
18 requiring you to answer questions about other people's
19 interrogatories.

20 MR. HALLIGAN: We don't understand that. It wasn't
21 clarified at that point. This is the first I have heard of
22 this.

23 CHAIRMAN BECHHOEFER: Well if you read it, that is
24 what it says.
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MR. HALLIGAN: Not this particular statement which she just quoted.

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CHAIRMAN BECHHOEFER: Oh, yes it does.

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MR. HALLIGAN: I don't believe -- well, I will check that later. But could you -- is it -- what matter or what motion has to be prepared to rescind that Protective Order? That was premature, it was unfair, and it was not understood properly. That is the root cause of all of the problems here.

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You automatically gave Protective Order to the power company so that they would not have to present evidence for us which was the basis for our answers. Therefore, we could not answer so we are now subject to their motions for a dismissal. That Protective Order is the root cause of all of the problems here in all of these proceedings for the past several months.

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So I would try to move this Board to rescind that Protective Order on the applicant and/or staff because it was unfair, it was premature and it was not properly handled. We did not object to it because we didn't know how to object. We didn't understand what the ramifications of that would be further on. Now we know.

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CHAIRMAN BECHHOEFER: We gave you a second chance.

MR. HALLIGAN: Pardon?

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CHAIRMAN BECHHOEFER: We gave you a second chance.

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MR. HALLIGAN: I disagree because I don't understand.

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CHAIRMAN BECHHOEFER: Well, I am telling you we gave you a second chance and we gave it to you --

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MR. HALLIGAN: And I am asking you now to rescind that Protective Order in fairness and in a reasonable way so that we can proceed and get these documents so we can answer interrogatories. You are obstructing the proceedings by maintaining that Protective Order.

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CHAIRMAN BECHHOEFER: I am going to ask you exactly what documents you need for each interrogatory.

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MR. HALLIGAN: Well, I started to read the one on--

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CHAIRMAN BECHHOEFER: I don't want to hear about it now. But when we talk about yours that is one of the things that I am going to ask you.

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MR. HALLIGAN: Do you want an example?

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CHAIRMAN BECHHOEFER: I don't want an example at all. I want to know-- I am going to want to know the documents that you didn't receive that would relate to the particular contentions we are talking about, which are the environmental ones, not the safety ones.

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MR. HALLIGAN: Right. Do you want that in writing?

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CHAIRMAN BECHHOEFER: I want you to tell me that later today when we get to it.



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MR. HALLIGAN: Okay.

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CHAIRMAN BECHHOEFER: It doesn't have to be in writing because I want it on the record.

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MR. HALLIGAN: Okay.

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DR. JOHNSRUD: If I could add just one --

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CHAIRMAN BECHHOEFER: Right.

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DR. JOHNSRUD: -- one or a few other things. I do not want my argument here, with respect to the SEA motion, to be -- to preclude my giving a full explanation of our responses to the applicant's motion with respect to ECNP.

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CHAIRMAN BECHHOEFER: With respect to the particular, the particular interrogatories it will not.

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DR. JOHNSRUD: No. I mean with respect to the arguments that I am making here concerning SEA's.

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CHAIRMAN BECHHOEFFER: Well, I don't think we want to hear the same arguments over again.

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DR. JOHNSRUD: They may be interspersed or woven into some other things that I do want to say that will have additional points and additional purposes.

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CHAIRMAN BECHHOEFER: Okay.

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DR. JOHNSRUD: And I hope, Mr. Chairman, since I am responding here to what is in one sense a very general matter that I don't want to let go at this stage, and then be precluded from responding to later on, but I don't want

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that to be used against the development of my full arguments later.

CHAIRMAN BECHHOEFER: Right. Do you have any opinion on whether we even have the legal authority to cut off the interveners right of cross examination or are you not familiar enough with the Prairie Island decision to comment on it?

DR. JOHNSRUD: Well, Mr. Chairman --

CHAIRMAN BECHHOEFER: I don't know whether you --

DR. JOHNSRUD: Prairie Island or no Prairie Island, it is the responsibility of the Commission, through its Licensing Boards, to resolve issues that are in controversy and to protect the health and safety of the public. There is a fundamental obligation on the part of the Commission to deal with issues which you, as a Board, have thought significant enough to include in this proceeding.

Now, in order for you to do that these public interest interveners have come forward, have raised issues, that you deem to be significant and presumably, since they were bright enough to think them up, they are probably going to be bright enough to help you out in coming to a proper resolution to developing a full record.

And I would submit to you, sir, that in view of what I think we are all privately calling the disaster,



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1 fiasco, I am not sure whether we have called it that public-
2 ly or not, it will be in the NRC's interests to have the
3 fullest possible contribution from SEA and the other
4 interveners on all of these matters that are in contention.

5 Now that means not only cross examination of
6 witnesses, but the presentation of direct evidence as well.
7 And both of those issues are what I understood we were to
8 be arguing about today; not just the second aspect that
9 almost takes the first as a given, namely that the Board
10 intends to deny the opportunity for these interveners to
11 present direct evidence. That is to say that --

12 CHAIRMAN BECHHOEFER: We would have to find that
13 you defaulted before that, before we -- before that was
14 the case.

15 DR. JOHNSRUD: Exactly. And that is precisely the --
16 as I said in the March 14th filing the impression that the
17 February 26th memorandum gives, namely that we are put into
18 a situation, these interveners are put into a situation, of
19 having to argue from a kind of accusation of default which
20 is thoroughly unwarranted. There should be no question
21 whatsoever about cross examination.

22 There should be no question either about the
23 presentation of direct evidence in that SEA and ECNP did
24 respond to the applicants and the staff's interrogatories.
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They did respond in a timely manner. They have used in the interim before the final exhaustion of all of the appeals to this Board, they had used that time in order to make the arguments as to why they shouldn't have to respond. But they did, both of these parties.

And therefore what is involved here is the presentation of direct evidence by these parties and the applicant's motion has no legal grounds there. He has cited, the applicant has cited, no legal cases in his motion. He has given us none today.

CHAIRMAN BECHHOEFER: They cited our order, which said that advances were not properly filed and parties could not present --

DR. JOHNSRUD: There is the next of the cruxes of the problem, what constitutes a proper response.

CHAIRMAN BECHHOEFER: Yes. We are going to decide that.

DR. JOHNSRUD: That is the question that we have raised for you specifically. It is very clear that SEA could write volumes on radon. And that the applicant would still be in a position to say, in a lordly manner, no we don't accept you. We don't accept your answers; they are not adequate. And SEA could spend the rest of its eternity responding again, and again and again.



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The Board gave directives to all of these parties in the August 24th Order as to what constituted a proper response. And these parties have responded within the context that the Board set forth for us. There has been no other context provided.

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The applicant gave us no specifications, nor did the staff, any of us, as to what constituted a proper adequate, sufficient, deficient, inadequate, wrong, or any other descriptive adjective, response.

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Now what that says in turn is that the staff and the applicant call the tune. And I am certain, Mr. Bechhoefer, from previous orders and memoranda from this Board that you don't want that to occur. Therefore, we think it is very clear that the applicant's motion has no legal basis with respect to SEA or for that matter ECNP.

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CHAIRMAN BECHHOEFER: Do any of the parties have anything further to say on either the SEA motion or the general question? Otherwise we are going to take a short break and we will come back. I think the reporter has been at it for a long time and --

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MR. SILBER: Mr. Chairman, I would like to make a few --

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CHAIRMAN BECHHOEFER: But let's make it limited to the SEA motion or the general question that we were

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talking about. The motion against SEA, I should say.

MR. SILBERG: I think when we were talking about our motion on ECNP I will have some comments on ECNP's characterization of their compliance with discovery.

But with regard to the discussion right now, I think it is important, and Mrs. Johnsrud was saying, that certainly the interveners are bright enough to help develop a full record and certainly the SEA could, I think the language was, write volumes on radon.

Well if that in fact is the case it seems to me that they could have answered the interrogatories. Mrs. Johnsrud said, well what characterizes an adequate reponse and are we or the staff, the people who determine adequacy, certainly not the Licensing Board, has to determine what is an adequate response.

But what kind of a response did we ask? Well, I guess we wanted an answer to the question rather than a statement that said, we don't want to answer the question. And that is the kind of responses we have gotten on the interrogatories that are involved here.

We have had a motion for Protective Order. I think the SEA has said, no we didn't answer, we didn't say we have no information. I think the ECNP position is basically the same. What is an adequate response? Well, just answer the

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1 question. We have said that some of the answers, on content-
2 ions three and four were adequate. It doesn't take a lot
3 to answer questions. Some are yes/no questions. Some are
4 if you have a number give us the number. What is the basis
5 for the document of that number. It is not very difficult,
6 but it is the Board that has to determine ultimately who
7 has the -- whether the question has been adequately answered.

8 As to citations in our motion, none were needed.
9 They are certainly within context of the citations that
10 the Commissions regulations that are there and if ECNP
11 was listening I have provided citations in my earlier
12 discussion.

13 DR. JOHNSRUD: Other than Prairie Island?

14 MR. SILBERG: If you were listening you would have
15 heard citations to other regulations and other decisions.

16 DR. JOHNSRUD: Baily?

17 CHAIRMAN BECHHOEFER: Baily.

18 DR. JOHNSRUD: Anything else?

19 MR. SILBERG: U.S. Supreme Court cases, Commission
20 regulations.

21 DR. JOHNSRUD: What Supreme Court cases? I didn't
22 hear any specification, Mr. Chairman.

23 MR. SILBERG: National Hockey League v Metropolitan
24 Hockey League. It is a Supreme Court decision. If you would
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51 1 like the citation I can give it to you later or right now.
2 427 U.S.639 decided in 1976.

3 DR. JOHNSRUD: Mr. Chairman?

4 CHAIRMAN BECHHOEFER: Due to the coughing in the
5 room it was not possible to hear Mr. Silberg's belated
6 citation to a Supreme Court case.

7 MR. SILBERG: 427 U.S. --

8 DR. JOHNSRUD: It is still not possible. I am sorry,
9 Mr. Silberg.

10 MR. SILBERG: 427 U.S. 639 decided June 30, 1976.

11 DR. JOHNSRUD: In view of the fact, Mr. Chairman,
12 that suddenly a citation has appeared, it certainly is a
13 matter that we interveners without counsel are not familiar
14 with. I would hope that you will give us an opportunity to
15 make a response if it seems appropriate, in writing, subse-
16 quent to this prehearing conference.

17 CHAIRMAN BECHHOEFER: Am I not right that that case
18 just says that we can dismiss somebody for default in
19 discovery?

20 MR. SILBERG: That is what I was talking about before.

21 CHAIRMAN BECHHOEFER: Right. I can't remember
22 exactly --

23 MR. SILBERG: It also talks about the deterrent
24 effect that I believe I cited in that case in my discussion
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when we were discussing the two purposes of sanctions; one is the penal effect and the other is the deterrent effect.

DR. JOHNSRUD: Since the purposes of the applicant appear quite clearly to be to deter any effective participation of the intervener in this proceeding, it seems to me that it would be most appropriate for you to give us an opportunity to respond to that, Mr. Chairman.

MR. SILBERG: Mr. Chairman, the opportunity was given by your February 22 and 26 orders to prepare argument which could have been provided here today --

DR. JOHNSRUD: But, Mr. Chairman, we are without legal counsel.

MR. SILBERG: Excuse me, Mrs. Johnsrud, if you would avoid interrupting me the way you asked me not to interrupt you.

DR. JOHNSRUD: I apologize, Mr. Silberg.

MR. SILBERG: I don't think any purpose would be served by yet another round of pleadings. I think we have been going through rounds of pleading since June of last year. I think it is time to get a decision, whatever that decision may be.

DR. JOHNSRUD: Mr. Chairman, what has just occurred here is precisely the surprise element that the Board and the parties want to avoid when we get to the evidentiary



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1 hearing. Here, on a legal matter, Mr. Silberg has filed
2 a motion that will, if I may use the loaded term, gag the
3 interveners from effective participation in the proceeding.

4 He gave no legal citation as a basis for the
5 motion. Now, surprise, we are given a citation here in the
6 hearing room. The intervening parties are without counsel
7 and cannot be expected, reasonably, to be familiar with
8 this citation and surely then in the interest of fairness
9 either the Board will disregard that citation as an adequate
10 basis for any decision making, or will give the uncounseled
11 parties an opportunity to respond. And I would so ask.

12 MR. HALLIGAN: The citizens second that motion, sir.
13 We would like a written description of these citations in
14 a memorandum so we can respond in writing because we are
15 involved in this as well. This is, in fact, a surprise
16 placed upon us.

17 MR. CUTCHIN: Mr. Chairman?

18 CHAIRMAN BECHHOEFER: What?

19 MR. CUTCHIN: I would like the opportunity now or
20 later to address the characterization of the ECNP responses
21 to staff interrogatories and whether or not the staff did
22 or did not point to specific inadequacies in those
23 responses in asking for Board motions to compel, et cetera,
24 and the Board, of course, chose rather than addressing each
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54 1 of those matters separately to take an overview, but in
2 doing so pointed out very clearly in its orders that
3 technically each of those responses could be found to be
4 inadequate and improper responses to discovery requests in
5 giving each of the interveners yet another turn to try
6 to cure those defects. And it is still not clear and that is
7 one reason we are here today, is whether interveners have
8 indeed met that burden.

9 DR. JOHNSRUD: Mr. Chairman, here we go again.

10 CHAIRMAN BECHHOEFER: Well, we are going to get
11 into specifics later.

12 DR. JOHNSRUD: Please. This is a very important
13 point because, again, the staff counsel is raising that the
14 option must be given to certain parties to ask endlessly
15 for information to reject no matter what is given and
16 reject again, and reask, and yet those parties that have
17 no funds, no staff, no research capabilities, no counsel,
18 are put on the receiving end of endless demands. And it
19 appears, and it must surely be evident to the Board and to
20 the Commission and to the Kemeny Commission and to the
21 Rogovin Commission, that these are improper uses of the
22 discovery process. That they are designed not to elicit
23 the information that the staff and applicant say the need
24 about issues with which we are reasonably sure they are at
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1 least as familiar and probably far more so than any public
2 interest intervener, but rather they are indeed what the
3 interveners have pled from the beginning, a form of harassment
4 through the manipulation of procedural aspects of the
5 licensing process.

6 And they therefore do not serve the public interest
7 which is making that plant as safe and as environmentally
8 benign as it is possible for it to be.

9 Therefore, we would like to get on with being able
10 to prepare our issues. We would like to have the opportunity
11 to make our case to contribute to your decision making
12 process rather than having to waste our time and your time
13 in this endless wrangling over issues that really we believe
14 were improperly raised in the first place.

15 DR. PARIS : Dr. Johnsrud, as you develop your
16 information in the days to come, is it your plan to provide
17 the applicant and staff with the new information that you
18 come up with so that they can prepare their case in
19 response to that?

20 DR. JOHNSRUD: Mr. Paris, we have so stated in our
21 earlier filings. We have also stated, again and again that
22 we are pleased to answer the questions but we would like to
23 have an adequate time to do it. And it is this cumulative
24 overloading of the capabilities of public interest interven-
25 ers that have made it an impossibility.



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2 In other NRC proceedings interveners are asked
3 reasonable pointed, clear, purposeful questions, not tell us
4 everybody you have ever talked to and every document you
5 have ever read pertaining to this issue that you have raised.
6 And that is the kind of interrogatory that we have been
7 given here. Or it is the other kind of interrogatory is,
8 give us extremely sophisticated computations that will
9 establish something that the NRC, in its wisdom, for 30
10 years, and its predecessor, have not been able to establish,
11 namely how much radon and what are the health effects of it.

12 Now, I think -- I hope I have said enough to
13 clarify for this record that we are dealing here with a
14 general issue concerning the capability of an intervener
15 to make a positive contribution to the purpose of the
16 hearing. And that what SEA is asking, CAND is asking, and
17 ECNP are asking, is the opportunity to be able to do that
18 rather than to be blocked by these misuses of the rules
19 on the books. And we believe that that is precisely what is
20 happening and we believe further, on this general question,
21 that that is going to be a precedent that effectively rules
22 out any public participation in the processes of licensing
23 nuclear power plants in the future.

24 Now, having said all of that I want to add one
25 final thing which is, that I have gone into certain matters

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about this general motion, but there are many more things that I would want to say specifically directed to the applicant's motion against ECNP.

CHAIRMAN BECHHOEFER: Of course.

DR. JOHNSRUD: And I presume that my access to saying them is not going to be cut off in having responded to this general question at this time.

CHAIRMAN BECHHOEFER: And I have a lot of questions on that too.

DR. PARIS: Dr. Johnsrud, you are an experienced intervener in NRC proceedings.

DR. JOHNSRUD: In one manner.

DR. PARIS: In one manner? What do you mean?

DR. JOHNSRUD: I have never conducted any oral argument.

DR. PARIS: Well, but you have had experience in other NRC proceedings so that you are able to compare other proceedings with this proceeding, is that correct?

DR. JOHNSRUD: To some degree, Mr. Paris.

DR. PARIS: Okay. Do I understand you to be telling us that the interrogatories that ECNP is receiving in this proceeding are unreasonable compared to the interrogatories that NRC -- that ECNP has received in other proceedings? Is that the intent of your --



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1 DR. JOHNSRUD: That is most certainly the case and
2 I would add, Mr. Paris, that the same law firm in the TMI
3 one restart proceedings is loading interveners,
4 including ECNP, with comparable numbers of interrogatories
5 designed to curtail the effective participation of those
6 parties in the proceedings.

7 We think it is unfair, we think it is wrong. We
8 have never before encountered the discourtesy and the
9 disinclination on the part of the staff to be of assistance
10 in the provision of documents that we have encountered in
11 this proceeding. And it says to us, while the accident at
12 TMI is still going on, that the NRC has not taken to heart
13 in the slightest the recommendations of any of the Commiss-
14 ions that have looked at the processes of the regulatory
15 agency. And I think that-if, if I may speak very bluntly,
16 I think it is disgraceful.

17 DR. PARIS: Are you saying also that the staff is
18 being more uncooperative in this case than it has been or
19 is being in other cases?

20 DR. JOHNSRUD: I most certainly am saying so.

21 MR. CUTCHIN: Mr. Chairman, I have sat here and
22 listened to these characterizations and I guess I am
23 compelled to beseech this Board to take some control of
24 this process and recognize that motions have been made in
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59 1 the past, responses to those motions have been made, and
2 the Board, in an attempt to get the parties back together,
3 has stayed out of the detailed rulings on individual
4 interrogatories and the like. And it is not apparent to me
5 from the Board's orders that at any time the Board has viewed
6 the types of interrogatories that were being asked to be
7 improper. Because had the Board so viewed them, the approp-
8 riate action would have been to issue a Protective Order
9 denying the parties seeking the answers, those answers.

10 That has not been done. And I think now to -- let's
11 be realistic about it. Much of what is being said here
12 today is being said as much for the benefit of the general
13 public as for this Board.

14 DR. JOHNSRUD: I object to his statement.

15 MR. CUTCHIN: Interruption, Mr. Chairman.

16 MR. SILBERG: Let the man finish his statement.

17 DR. JOHNSRUD: I think that it is appropriate to
18 object in --

19 MR. CUTCHIN: Mr. Chairman, would you give me the
20 courtesy?

21 CHAIRMAN BECHHOEFER: Well, wait until Mr. Cutchin
22 is through and then you can have your say, although we
23 wanted to take a break fairly shortly.

24 MR. CUTCHIN: I think some things need to be said,
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60 1 Mr. Chairman. It is that we are sitting here and it is being
2 allowed that the interveners, paint staff and applicant with
3 a black brush. And I think that is a misstatement of fact. It
4 is not in keeping with the purposes of the Commission's
5 rules and regulations which no one has been able to point
6 out that either the staff or the applicant have departed from
7 in their approach to seeking information in order to prepare
8 its case, or their case. And I would beseech the Board to
9 make that clear for the record.

10 I think we will do everything we can as time goes
11 along, but I think to have these statements made without
12 challenge is not proper.

13 CHAIRMAN BECHHOEFER: Well, I know the Board did
14 feel at one point the staff was being much more restrictive
15 in this case than in many other cases. We said so in our
16 October 30th order.

17 MR. CUTCHIN: We certainly did, Mr. Chairman, but
18 the regulations were not being followed.

19 CHAIRMAN BECHHOEFER: We fully realize that the
20 regulations were being complied with. We did suggest that
21 in other cases many more documents have been provided to
22 interveners.

23 MR. CUTCHIN: That is correct.

24 CHAIRMAN BECHHOEFER: And I see some documents have
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now been provided. We tried to step in a little bit there because we know from our other experience that in other cases the staff has supplied lengthy documents -- numerous documents I should say.--

MR. CUTCHIN: And the staff has done so here.

CHAIRMAN BECHHOEFER: -- to various interveners, including to Dr. Keford in certain other cases, because --

DR. JOHNSRUD: That is true, Mr. Chairman.

CHAIRMAN BECHHOEFER: And we had urged the staff to do the same here. Now, whether they have done it to the same degree, I don't know. I know that you have been sent some additional documents since our October 30th order.

MR. CUTCHIN: And there is no evidence that one of those documents has been consulted and utilized in responding or attempting to respond to questions.

DR. JOHNSRUD: Mr. Chairman, our position with respect to everything that has occurred from September onward with respect to ENCP's situation has been set forth in our previous filings. And I would hope and expect that the Board will turn to those as it deals with these questions.

CHAIRMAN BECHHOEFER: As soon as we get through with our break, we are going to come back to the motions against you.

DR. JOHNSRUD: I do want to voice an objection to

62 1 Mr.Cutchin's inference and his implication that I am playing
2 to, what did he say, press, or gallery, or public. I think
3 that is most improper on the part of counsel. And it is
4 certainly not my intent.

5 MR. CUTCHIN: I will give Ms. Johnsrud the last
6 word.

7 CHAIRMAN BECHHOEFER: Okay. Why don't we take a
8 15 minute break. Let's take a break for about 12 and then
9 we will come back for another half hour or so before lunch.

10 (Whereupon, a brief recess was taken.)

11 MR. CUTCHIN: Mr. Chairman, I spoke with both
12 the environmental project manager and the licensing people
13 on the safety side, first about the planned schedule for
14 issuance of first the supplement to the DES to address
15 the Pond-Hill reservoir and that no is anticipated to be
16 issued by the end of this month, which would be around
17 the 31st of March or first of April.

18 After the comment period expires, then the staff
19 would expect to issue the FES approximately 60 to 75 days
20 later, which would make it somewhere around the middle of
21 June of so. Now that is the current best, I hate to even say
22 estimate, but I think it is better than a guesstimate. There
23 is reason to believe that that schedule will not slip on
24 the order of months anymore. It may slip a week or two, but
25 not much.



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1 CHAIRMAN BECHHOEFER: Let me ask you, is there
2 anything in the FES that will be in the FES that is holding
3 up issuance other than the -- this reservoir matter?

4 MR. CUTCHIN: That actually would not have had to
5 hold it up, but it was thought that better than putting
6 out a two piece FES as well as a two piece DES, it would
7 make it easier to handle and deal with if they put out
8 the DES supplement and then folded the whole matter into
9 the FES. But to my knowledge there is nothing else that --
10 other than the fact that the labs are, you know, taking the
11 usual time to complete some of their work. But I don't know
12 of anything else that will be in the FES, or what indeed is
13 holding it up.

14 CHAIRMAN BECHHOEFER: But that would be that if
15 we go along with the time that we said for the various
16 parties to identify their witnesses as 60 days before the
17 hearing, and you have to have some time to look over the
18 FES, that means a hearing not before say mid September.

19 MR. CUTCHIN: Probably.

20 CHAIRMAN BECHHOEFER: Given the fact that the first
21 week in September that I will be at the beach.

22 MR. CUTCHIN: Well, I would hesitate to change my
23 plans now on the basis of that, Mr. Chairman.

24 As to the safety evaluation, as the Board may be
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64 1 aware, the visit by the Workload Forecast Committee, or
2 whatever it is they call themselves these days, that was
3 to have taken place back in February some time was postponed
4 and is actually supposed to be taking place today and
5 tomorrow.

6 The purpose of that visit is to assess the status
7 of construction of the plan so that the staff can get a
8 better handle on how long they think before the applicant
9 would be able to use an operating license if one were
10 ultimately issued. And therefore they can better assess
11 the schedule on which they have to complete the safety
12 evaluation and publish those documents. So I cannot speak
13 to the schedule as to the safety evaluation right now, but
14 as soon as that information comes back and is digested I
15 will write a letter to the Board with copies to the parties
16 giving you --

17 CHAIRMAN BECHHOEFER: I assume that it will follow
18 by sometime the FES issuance in any event?

19 MR. CUTCHIN: Quite sometime, I expect, Mr.
20 Chairman.

21 CHAIRMAN BECHHOEFER: Because our original plan
22 was to have the environmental hearings first, and I assume
23 that is still a reasonable proposition to base our schedule
24 on?
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MR. CUTCHIN: It is probably a desirable proposition, Mr. Chairman, if indeed it is anticipated that we could at least go forward with some useful hearings.

CHAIRMAN BECHHOEFER: We had also anticipated that any discovery connected with the safety contentions would occur after our environmental hearing. So that I assume there will be sufficient time to accommodate that?

MR. CUTCHIN: I can't address that, Mr. Chairman, other than to say that last time we put out scheduling information on the SER it looked to be as if the earliest that it could be published might be very late in this year, and I think there is reason to believe that it will probably be even later, but I couldn't give you an accurate number until after this information comes back. So I would not anticipate its being published until very late in this year at the earliest.

DR. PARIS: Mr. Cutchin, can I ask you something about that Forecast Committee that is down there now? They don't concern -- is it my understanding that they do not concern themselves with construction defects?

MR. CUTCHIN: Their purpose, as I understand it, Mr. Chairman, is just to assess the status of construction for purpose of scheduling the staff's workload.

MR. HALLIGAN: That is not correct, sir. I have

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1 a document right here, if you want to examine it, that is
2 going to deal with long range trouble areas and safety
3 related matters.

4 MR. CUTCHIN: As they might impact on construction.
5 That is my understanding, Mr. Chairman. I do not know to
6 the document to which the gentleman at the end of the table
7 is seeking to refer. But it is my understanding, in response
8 to your question, that the purpose of that Committee is
9 purely to assess the status of construction for purposes
10 of factoring it in to the staff's assignment of priorities
11 for its various tasks.

12 MR. HALLIGAN: Well, you said two different things.
13 On February 1st, or thereafter, the meeting was rescheduled
14 there by that group and they are to correct, or to check
15 on the status, of course, but it has to do with potential
16 critical problem areas in the advance control room electrical
17 bulk containment and a whole list of other items. They want
18 to determine, apparently, the potential or real problem
19 areas that will arise, or may arise as a result of tests on
20 or off the premises, overseas and other test sites and so
21 on.

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23 But it is a safety test or inspection that they
24 are doing.

25 MR. CUTCHIN: Can he identify the document?

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MR. HALLIGAN: I am not sure of the date because it was dated February 1st, and then another one was sent out marking the schedule.

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MR. CUTCHIN: From whom to whom?

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MR. HALLIGAN: It is from Mr. Parr, Chief of Light Water Reactors, Branch three, subject meeting with PP&L to discuss the construction at the brewery and the purpose is the construction schedule, but on the inside it refers a little more to potential for future problem areas.

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MR. CUTCHIN: But I believe, again, Mr. Chairman, since he identifies Mr. Parr as the drafter, or at least signer of the document that that would be critical problems as they might impact on the construction schedule. Many inspections for constructions defects, if any and the like, would be made out of the Office of Inspection and Enforcement. There may well be Inspection and Enforcement people at the site and there may be some assigned to that Committee. But the prime purpose of that Committee is to assess schedules and impact on schedules.

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MR. HALLIGAN: Mr. Cutchin, did they issue studies or reports or findings which will go into the document room or into the document itself?

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MR. CUTCHIN: They would issue schedules. And what they find out would have an effect on the schedule that is

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1 ultimately published.

2 MR. HALLIGAN: Will we have access to their reports
3 when they are published?

4 MR. CUTCHIN: I don't know whether they will be
5 written reports. I mean, what they will do is assess.

6 MR. HALLIGAN: You see, this bears on our contentions
7 obviously. The contentions we have raised --

8 MR. CUTCHIN: I assume that anything that they issue
9 in the way of documentation will be made available in the
10 various documents.

11 MR. HALLIGAN: Could we interview them today or
12 tomorrow at some time, to find out precisely what they are
13 going to do?

14 CHAIRMAN BECHHOEFER: We haven't seen this before,
15 but you can pass it around.

16 MR. CUTCHIN: Since it is not an evidentiary hearing,
17 Mr. Chairman, that is our best representation of our
18 understanding of the purpose of that group and what will
19 result from their efforts.

20 CHAIRMAN BECHHOEFER: Am I correct that that group
21 does not include any of the environmental people? It looks
22 like for the results of any study there would be safety
23 related things.

24 MR. CUTCHIN: Do they name individuals in that letter,
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Mr. Chairman, as to who will accompany them?

CHAIRMAN BECHHOEFER: Probably they do.

DR. PARIS: The thrust of that appears to be as you stated towards schedules.

MR. CUTCHIN: That is my understanding.

DR. PARIS: It says that problems might come up, how they would effect scheduling, not how they would be resolved.

MR. CUTCHIN: That is correct. That is my understanding. And it is for the purpose of assigning priorities to various tasks that the staff has before it. Whose application gets processed first or what.

MR. HALLIGAN: I believe two of the date have gone there, Mr. Chairman, because of unresolved or unsatisfactory answers filed by the PP&L Engineering Division that certain things were not resolved to the satisfication of the NRC Safety Department, and they are sending out their own field representatives to check out why and where and so forth that there have been shortcomings.

CHAIRMAN BECHHOEFER: Well those are safety issues. They don't bear on what we are talking about in terms of interrogatories or hearings. We are talking about environmental hearings now exclusively.

MR. HALLIGAN: Well, the piping might have to do with

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the discharge of water into the river.

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MR. SILBERG: Mr. Chairman, can we get off this subject and get back to the matter at hand?

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CHAIRMAN BECHHOEFER: No, I don't think that those things will have any bearing at all, and they don't excuse anybody answering interrogatories. But be that as it may, let's get back to the ECN - - the motions against ECNP.

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Oh, I did want to note first because th ECNP has mentioned this and so has CAND, but concerning the documentation. We did say that where the staff declines to produce relevant documents on the basis of their availability at a public document room, the staff should assure that the documents are present in the local public document room and not only at the Washington location.

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I wanted to inquire whether you had done that or whether you had misunderstood our order?

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MR. CUTCHIN: Mr. Chairman, the staff, to the best of my knowledge, has not relied on the fact that a particular document is in the local public document room.

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CHAIRMAN BECHHOEFER: No. I said to the extent that you relied on -- our order says that if you rely on it as being in any public document room, make sure it is in the local one.

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MR. CUTCHIN: The staff should and we have addressed

71 1 ourselves, I thought --

2 CHAIRMAN BECHHOEFER: Pardon. I wasn't sure whether
3 you relied on there being certain of the documents in the
4 public document room. But to the extent they are, we think
5 they should be in the Wilkesbarre one.

6 MR. CUTCHIN: And we understood the Board's belief,
7 desire, and so on.

8 CHAIRMAN BECHHOEFER: Okay. So I just wanted to
9 find out whether -- if you had, that is my only question.

10 MR. CUTCHIN: I do not know right off the top of
11 my head, Mr. Chairman, because I have not looked back at
12 that list.

13 CHAIRMAN BECHHOEFFER: Right.

14 MR. CUTCHIN: But I think, again, going back to the
15 realities of the situation, if indeed any party has not
16 appropriately complied with a directive, request, or order
17 or the Board in the view of another party, that other party
18 has a responsibility to point that fact out and have it
19 ruled upon. It is not always the duty of the individual
20 who makes a good faith effort to respond to a directive,
21 request, or what have you, to certify that he has done so.

22 CHAIRMAN BECHHOEFER: Oh, I realize that. But
23 ECNP, Dr. Johnsurd has pointed out that some documents, and
24 I am not quite sure which ones --
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1 MR. CUTCHIN: I am not either, Mr. Chairman.

2 CHAIRMAN BECHHOEFER: -- but have not been made
3 available to her and I just wondered whether any of those
4 documents that have been relied on as being in the public
5 document room were not in Wilkes-Barre. You said you don't
6 know but --

7 MR. CUTCHIN: I do not know, Mr. Chairman, but I
8 would like to make -- ask for clarification. I have never
9 construed the Board to be ordering the staff to do anything.
10 It was an urging, a request --

11 CHAIRMAN BECHHOEFER: Well, it was an urging and
12 we are saying that you should do it.

13 MR. CUTCHIN: Right.

14 CHAIRMAN BECHHOEFER: But we think the intervener
15 should have this.

16 MR. CUTCHIN: The staff has made every effort to
17 comply with the Board's request. I am unable to say that
18 we have gone back over that list and in each and every
19 instance created a duplicate in Wilkes-Barre of the list
20 of documents in the main public document room. I highly
21 doubt that that is the case. The purpose of the local
22 public document room is limited. And the public -- not a
23 public document room, I guess, but the Pennsylvania State
24 University Library has access to Government documents.
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There was some correspondance between Dr. Johnsrud and Steve Scott of the Commission in which he made some requests and I had understood was to put someone from the Pennsylvania State University Library in contact and they were to work out whatever problems they had. I do not know whether that has been done, but having heard nothing further I assumed that that was going along smoothly.

DR. JOHNSRUD: Mr. Chairman, I think that Mr. Cutchin is making a point that is quite reasonable with respect to the checking back on his part to ascertain whether or not everything has been done as it should be.

When I last consulted with the Librarians at the Penn State documents room, they indicated that they had received some materials, primarily in microfesh, I believe was the comment.

Very frankly I have been sufficiently swamped not to have had time to go over and compare against the original discovery list with everything that is and is not on microfesh or otherwise at Penn State.

We had checked previously, however, and had found that a number of the documents that were needed were not available.

Now, Dr. Kepford has specifics of information concerning which documents have been received from the staff

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1 and which have not. I do not have that information with me
2 today. And, again, I would be glad to provide that to you
3 and to staff.

4 CHAIRMAN BECHHOEFER: Well, what we really want to
5 know is whether you need anything -- I won't say to answer
6 because some of the questions I think you have answered. But
7 whether your further development needs certain documents
8 that you haven't been able to get --

9 DR. JOHNSRUD: I would need to consult with Dr.
10 Kepfer about that.

11 CHAIRMAN BECHHOEFER: Yes. The only list we have
12 is 16 that the staff sent you and they sent you a list of
13 those.

14 MR. CUTCHIN: There was 16 and then there were ano-
15 ther five.

16 CHAIRMAN BECHHOEFER: We have those and we have
17 checked those off and most of those were on your original
18 list, but there still are some others that aren't --

19 DR. JOHNSRUD: We have had difficulty with the
20 receipt of documents of late. Perhaps the whole Commission
21 system of provision is breaking down in the post TMI
22 situation. But we have been assured by staff, in another
23 proceeding, that documents have been sent when in fact they
24 have not been received. We have found in at least one other
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75 1 instance, I believe, that staff had indeed directed the mail
2 room to get them out and they didn't go or they got lost
3 somewhere.

4 In the generic proceeding on radioactive waste
5 we have not yet received even the bibliography from the
6 staff in order to know what to begin researching and yet
7 we are less than a month away from the receipt of the
8 principle, the sole document to be provided by the Government.

9 I realize that there is a problem in that regard.
10 And I will be happy to clarify, to the extent that I can,
11 with respect to what is still outstanding that we don't
12 have access too.

13 MR. CUTCHIN: It may well be, Mr. Chairman, that
14 many of the -- I have no idea, but some of the documents that
15 are going to ECNP in connection with the Three Mile hearings
16 are duplicates of requests that are here. There are also
17 numerous documents, I might remind the Board, on those
18 requests that are non NRC documents. They are not new
19 regs and the like. And, of course, we may or may not have
20 copies of those and are under no duty to make them available,
21 although we have offered to do so to the extent that we
22 have them.

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24 DR. JOHNSRUD: Mr. Chairman that, as a matter of
25 fact, does raise a very difficult issue we are finding with

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1 the generic radioactive waste proceeding and that is just
2 as we are told here that documents will be available in
3 Wilkesbarre or in Washington, D.C., similarly we are being
4 told in that proceeding that documents are available at
5 Oakridge or Battell Northwest, which is not terribly helpful
6 for those of us on the eastern seaboard.

7 There is a clear preclusion of opportunity to
8 examine documents if they are located only some hundreds of
9 miles away and there is then consequently a clear impossibility
10 for interveners in some instances to produce the kinds
11 of materials that are then -- responses that are then
12 demanded.

13 I repeat again, there is a circularity of impossibilities
14 that are built into this procedural matter.

15 CHAIRMAN BECHHOEFER: Well, some of these things
16 are, perhaps, almost inevitable. I don't know whether any-
17 thing can be done about some of the problems of document
18 production.

19 MR. SILBERG: A quick response to that, Mr. Chairman,
20 is the Board's order says that if you don't have the answer
21 you say so. You can't obviously answer an interrogatory
22 based on a document you don't have and no one is asking
23 that that be done.

24 DR. JOHNSRUD: And the quick response to that is,
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and the next step is that you are told that you don't have anything to contribute and therefore you can't litigate the issue.

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CHAIRMAN BECHHOEFER: Well, not necessarily.

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DR. JOHNSRUD: I know it is silly.

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CHAIRMAN BECHHOEFER: No, not necessarily.

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DR. JOHNSRUD: But that is exactly what is being

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suggested.

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CHAIRMAN BECHHOEFER: No, not necessarily. I think

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what was being suggested, not necessarily with regard to

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yours, is that if you don't at least say that you don't

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have the document to answer this question it is not enough

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to just say nothing or to say, well all this is is harassment

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or something like that. I am not saying you said that, but

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I think one of the things that is clearly being said is

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that you have to give a reason for not answering a particular

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one.

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And not having the information is a reason. We

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have said that a couple of times.

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DR. JOHNSRUD: Well, does saying that then preclude

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us from using information?

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CHAIRMAN BECHHOEFER: Well, that is what we are

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ruling on. We haven't ruled that. We haven't ruled that.

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You have got a request before us. One of your questions is

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whether your answers have been adequate and that is one of the things we want to get into.

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Getting into your motion, I guess we ought to hear if -- first Mr. Silberg should probably lead off on that.

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DR. JOHNSRUD: Mr. Chairman, I am sorry, I don't want to interrupt.

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CHAIRMAN BECHHOEFER: Before we get into a statement and --

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DR. JOHNSRUD: Before he does begin, I think something was left undecided from the discussion before the break concerning Mr. Cutchin's reference to the Supreme Court decisions. Was that Silberg's?

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CHAIRMAN BECHHOEFER: That was Mr. Silberg's.

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DR. JOHNSRUD: That was Mr. Silberg's, I am sorry.

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CHAIRMAN BECHHOEFER: We are going to leave that one undecided. You may not need to have reference to that or not. That deals with whether we have authority to kick you out and nobody is asking for your group to be kicked out, so I am not sure that you really have to respond to that or not.

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DR. JOHNSRUD: Thank you.

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CHAIRMAN BECHHOEFER: Why don't we let Mr. Silberg make any comments he wants to make with respect to ECNP and then we will hear any further general answers. We may want

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to get into some specifics, although I have some questions of Mr. Silberg, but why don't you start out.

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MR. SILBERG: I really have nothing to add except one point, which I think bears in mind. And that is, you have heard the arguments about harassment from CAND, ECNP and SEA and I think it has to be borne in mind that there is one other intervener in this proceeding, Colleen Marsh and 11 other individuals and they did submit answers to interrogatories and we accepted those.

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And they probably have even fewer resources than ECNP does. Certainly ECNP which has participated in three construction permits, three operating license proceedings --

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MR. HALLIGAN: That is a presumption, sir.

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MR. SILBERG: Excuse me, Mr. Halligan. Many NRC rulemaking proceedings, perhaps three TMI accident related proceedings and this one, ought to be able to do at least as well as the Marsh interveners.

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MR. HALLIGAN: Mr. Chairman, that is a presumption that he has no foundation to make because he cannot verify that or validate it.

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CHAIRMAN BECHHOEFER: Well that is --

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MR. HALLIGAN: I know, but he made that on the record and we can't concur with that presumption. It is not a fact.

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DR. JOHNSRUD: It might also be pointed out that because we are trying to participate for the protection of people farther down the same river, we are heavily loaded.

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DR. JOHNSRUD: Mr. Chairman!

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MR. SILBERG: Excuse me, Ms. Johnsrud. ECNP is actively participating in this proceeding, actively participating in TMI One restart proceeding, is actively participating in the NRC generic rulemaking of waste confidence and only this week failed to participate in yet another proceeding involving TMI Two.

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I think a party has an obligation not to over-extend themselves or itself and that party, by over-extending itself, is not entitled to use their workload as a reason for inability to perform the requirements which the NRC rules impose on parties. And I think it is very important that we not allow that to happen in this proceeding.

If, indeed, ECNP has been so busy as they said that from September to December they had less than one full day

81 1 to devote to the substantive preparation for this proceeding,
2 then it would seem to me that an appropriate approach would
3 be for them not to enter into yet another proceeding and
4 this is -- but this is what they are doing.

5 I think we ought to keep that in mind when we
6 discuss the question of whether or not too great a burden
7 is being imposed on them.

8 DR. JOHNSRUD: Mr. Chairman, ECNP is a statewide
9 organization. Its members live in all parts of the Susquehanna
10 basin. ECNP could hardly be held responsible for the occur-
11 ence of the accident at Three Mile Island which took place
12 roughly six months after this proceeding began.

13 Certainly, we have an obligation to our members
14 in Pennsylvania to attempt to protect them from, you will
15 forgive my saying it, the failure of the Licensing Board
16 in the TMI Two proceeding, the Appeal Board and the Commission
17 to have prevented that accident from taking place, as was
18 their obligation.

19 We can hardly be held responsible for that accident.
20 and we certainly should not be blamed and criticized for
21 partaking in the proceedings that have resulted from it
22 from the accident to try to protect our members who are
23 living with the constant hazard of that damaged reactor that
24 results from the failure of the Commission and that applicant,
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1 that suspended licensee and its law firm.

2 CHAIRMAN BECHHOEFER: I think we already held that
3 while we certainly can take those circumstances into account,
4 the involvement in other proceedings doesn't free you, per
5 se, of obligations in this proceeding. But then, again, it
6 doesn't mean that we can't take it into account, particularly
7 if it is not going to invoke any delay in this proceeding.
8 And most of -- all of our previous orders have attempted to
9 balance interest in that way.

10 Now it appears again that there has been further,
11 some further delay and this we can take into account; delay
12 in this proceeding, I mean. Certainly that would permit
13 us to take counter obligations in other proceedings into
14 account in evaluating what answers have to be provided and
15 that kind of thing.

16 I am just saying that we can take this into account.
17 We can't use it to excuse. And, again, I am not saying you
18 failed to answer either. I want to ask Mr. Silberg about
19 a few of those things.

20 DR. JOHNSRUD: Well, let's address this for a
21 second. The staff has just informed us that there will be
22 yet another delay and if staff can't provide an explanation
23 for that delay and yet the staff's request that the proceed-
24 ing be delayed --
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CHAIRMAN BECHHOEFER: Well, we can almost take official notice that everything the Commission is doing is delayed.

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DR. JOHNSRUD: Exactly, sir. And therefore it seems very strange to us, the interveners, that we have been placed on such short lead time dangling, with the dangling of a month by month extension of time, none of which has been adequate to give us the bulk of time that we had originally requested in order to answer the total number of interrogatories, having asked to have that number, that unreasonable number reduced and having been refused that request. And here we are in a proceeding that is being dragged out, not by the interveners whatsoever, who have in a Board order it is suggested to delay the proceeding and that is simply not true. The delays have come from the applicant and from staff.

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CHAIRMAN BECHHOEFER: Again, I take issue. Our Board order did not imply to any reasonable reader that anybody had delayed the proceeding. And did not attempt to say so or intend to say so and I don't think any fair reading of what we said, said that.

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DR. JOHNSRUD: I would hope that is the case, Mr. Chairman.

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CHAIRMAN BECHHOEFER: It certainly wasn't intended,

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1 at least with regard to your participation where this is true.
2 So anyway --

3 DR. PARIS: Also --

4 CHAIRMAN BECHHOEFER: Go ahead.

5 DR. PARIS: Also, Dr. Johnsrud, with respect to the
6 current series of deadlines which have been pushed back one
7 by one, you were given relief on well over half of the
8 interrogatories. I think staff estimated 70 percent. So you
9 were given some substantial relief for the present purposes.

10 DR. JOHNSRUD: Only for the environmental portion.
11 The obligation to answer all of those safety related inter-
12 rogatories remains on us sometime in the future, does it not?
13 I would be happy to think that it doesn't.

14 CHAIRMAN BECHHOEFER: Yes, it does but at least not
15 until after the environmental hearing. We have said that, I
16 think.

17 DR. PARIS: It is not something you have to worry
18 about right now.

19 DR. JOHNSRUD: I am sorry, could I have a little
20 clarification? You are saying that responses to interroga-
21 tories on the safety related issues will not be required until
22 after the environmental hearings?

23 CHAIRMAN BECHHOEFER: Well, we have said that already.
24 We held that a schedule will be established after the
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1 environmental hearings took place.

2 MR. CUTCHIN: But you would also urge that if one
3 had spare time on their hands and wished to do so, they
4 could answer.

5 CHAIRMAN BECHHOEFER: That is correct. We said we
6 might have to make the time sort of short at that point, not
7 knowing when the safety evaluations will come out. But if
8 the safety evaluation is still along in the future, you
9 will have a lot of time at that time to answer. We have
10 already very clearly made it that you don't have to even --
11 if you have spare time you should be working on those others,
12 but if you don't you are not under any obligation and you
13 are not being penalized for not doing it.

14 DR. JOHNSRUD: We do not have spare time to work on
15 them and I wish to heaven. I could see any spare time ahead,
16 as I am sure the other interveners in this proceeding feel
17 the same. But I would ask then, are you saying that following
18 the environmental hearing, one of those days down the line,
19 we are going to get a notification that we have only a very
20 short period of time to respond to all of the outstanding
21 safety interrogatories?

22 CHAIRMAN BECHHOEFER: I don't know how short or
23 long it will be. I am sure at the environmental hearings I
24 will ask what the schedule is for safety and we will set a
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86 1 schedule with that in mind. But it sounds like it is likely
2 to be another six months at least after that.

3 MR. CUTCHIN: That is not very long in light of
4 what has happened in this case to date.

5 CHAIRMAN BECHHOEFER: No. But I am saying that if
6 we allow another two or three months after the environmental
7 hearings for discovery, of course you have obligations with
8 respect to proposed findings and that type of thing also,
9 but we also intend to allow sufficient time to do that.

10 DR. JOHNSRUD: Mr. Chairman, just one final comment,
11 I hope, on this aspect of the discussion. I am very troubled
12 by the comments of staff and applicant that indicate that
13 the public interest interveners just ought to stay out of
14 these proceedings if they can't handle the kitchen tempera-
15 tures.

16 In the Three Mile Island Unit One restart proceed-
17 ings the same law firm for the suspended Licensee in that
18 proceeding suggested with respect to evacuation planning
19 and emergency response that we had been derelict in our
20 obligations by not participating in that proceeding at the
21 generic stage. And indeed had we been able to, had we
22 felt we could take it on, we certainly would have because
23 we did consider it and do consider it an absolutely vital
24 aspect of reactor safety, public safety. And I am very
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1 troubled that given the ongoing nature of the accident down
2 the river, and the involvement of this organization in
3 attempting to protect the wellbeing of its members, that
4 there is a sort of suggestion being placed on the record
5 here that we just ought to pull back and shouldn't overload
6 ourselves and don't have any business trying to engage in
7 these proceedings whatsoever.

8 And I would like for the record to reflect that
9 we entered this whole unpleasant licensing process in the
10 first place out of a sense of obligation to the citizens
11 of Pennsylvania who are members of our organization and our
12 general concern about the public health and safety. And I
13 think it is most inappropriate for other parties, those
14 parties who are proponents of the order to suggest that we
15 curtail our efforts of public health and safety protection.

16 MR. CUTCHIN: Mr. Chairman, I would like the record
17 to show that staff is not yet a proponent of an operating
18 license having not yet completed its review.

19 MR. HALLIGAN: Has not the staff, however, supported
20 the environmental impact statement which, in fact, is the
21 document which will be used for a basis for determining if
22 a license will be given? You have given an approval.

23 MR. CUTCHIN: Unfortunately, Mr. Chairman, those
24 words are boiler plate words that appear in a draft document
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1 and do not become operative, so to speak, if that term may
2 be used, until after the final environmental statement.

3 MR. HALLIGAN: Then it should be stricken from the
4 document then. It shouldn't be --

5 CHAIRMAN BECHHOEFER: That document is not part
6 of any record. We are not building any record. You have got
7 a document to comment on is all that the staff has issued.

8 MR. HALLIGAN: It is the basis for some of our
9 answers as to the contentions.

10 CHAIRMAN BECHHOEFER: But I might say that whether
11 or not the final environmental statement recommends that
12 from an environmental standpoint a plant should be allowed
13 to operate, you still have to have a safety evaluation
14 report that also says that from a safety standpoint the
15 plant has been built correctly and that it can be operated
16 safely to summarize.

17 MR. CUTCHIN: I just wanted the record to show that
18 the staff is not yet a proponent.

19 CHAIRMAN BECHHOEFER: There are two separate aspects.
20 The staff has an environmental section and a safety analysis
21 section and you get two separate recommendations.

22 MR. HALLIGAN: But did they not approve the
23 environmental?
24

25 CHAIRMAN BECHHOEFER: And all this says is that from

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an environmental standpoint the staff thinks it can be allowed to operate, from an environmental standpoint. Then at a later time you will have to have the same thing from a safety standpoint.

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They are separate documents and right now all of the staff document is just in draft form and it is just a draft out for comment.

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MR. HALLIGAN: It is a culmination of all of the studies they have done over a period of years, however. It is the final -- it will be the final document.

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CHAIRMAN BECHHOEFER: The final document will say what it is going to say and that will be the staff position.

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MR. HALLIGAN: And we challenge it at various points and places and that is where the contentions are. We are -- in other words, we have to get information.

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CHAIRMAN BECHHOEFER: And we can modify this environmental statement. Our decision --

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MR. HALLIGAN: Our basis for our grievance, Mr. Chairman, they refused to give us information pertinent to that environmental impact statement. They refused to give us --

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CHAIRMAN BECHHOEFER: I am going to give you a chance to tell me what information that you asked for that they refused to give you and I want to see whether that is so or not.

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MR. HALLIGAN: All right.

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CHAIRMAN BECHHOEFER: Because your motions have only mentioned safety information. They have not mentioned anything that had anything to do with the environmental. I might say that now and when you are asked the question you should come up with specific examples.

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MR. HALLIGAN: Yes sir.

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CHAIRMAN BECHHOEFER: What you have come up with so would be relevant to the safety hearing, but not to the environmental hearing.

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MR. HALLIGAN: All right. We will clarify that.

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CHAIRMAN BECHHOEFER: Yes. Okay. Let's proceed. I wanted to ask -- I wanted to just start out with the interrogatories on contention one.

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Describe each aspect of which you contend the assessment of the quantity of radon 222 to be released during the fuel cycle is inadequate.

We get as an answer, there is no number in Table S-3. Now, what is wrong with that for an answer?

MR. SILBERG: What is wrong with that as I pointed out in the attachment to my February 4 order -- really do not know that I have much to add to what I have said before -- is that the Staff has --

CHAIRMAN BECHHOEFER: Well, you said it was irrelevant and I am asking why it is irrelevant.

MR. SILBERG: Because the Staff has put on the record its current estimate of the amount of radon releases and that information is in the draft of the Environmental Impact Statement.

CHAIRMAN BECHHOEFER: Well, is it that clear that that is -- I think they have got a right to rely on your case; don't they?

Let me read from Section 5.9 of the Environmental Report, the latest version which is dated pretty far back but it is the latest one we have got.

MR. SILBERG: Well, I can shorten that: that merely references Table S-3. I agree.

CHAIRMAN BECHHOEFER: Okay. Now, why is S-3



1 irrelavent then?

2 You are relying on S-3; why can't they rely on
3 S-3 for their answer? Why isn't that a perfectly adequate
4 answer?

5 MR. SILBERG: Because there is more in the record
6 than Table S-3 and then in our Environmental Report.

7 CHAIRMAN BECHHOEFER: Well, it wasn't when you
8 asked your question.

9 MR. SILBERG: Excuse me?

10 CHAIRMAN BECHHOEFER: It wasn't when you asked
11 your question.

12 MR. SILBERG: But there was when they answered
13 it.

14 CHAIRMAN BECHHOEFER: Well, I am not so sure
15 they have to be held to analyzing at every last given
16 minute. Is the DES -- what do they have to answer?

17 MR. SILBERG: I'm sorry?

18 CHAIRMAN BECHHOEFER: I thought they could
19 analyze what is in your case.

20 MR. SILBERG: But, they did not reference our
21 case in here; there is nothing in their answer that
22 referenced the applicant's Environmental Report.

23 CHAIRMAN BECHHOEFER: Well, what they said is
24 that there has been no adequate -- there is no adequate
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analysis in S-3. You referred to S-3 and that seems to me to be a 100 percent answer to your question.

MR. SILBERG: If that were the end of what is on the record; but it is not. The DES --

CHAIRMAN BECHHOEFER: That other thing did not even get served on them until --

MR. SILBERG: June.

CHAIRMAN BECHHOEFER: Well, it got served in June.

MR. SILBERG: And, their answers were due at the end of June; they answered it in January of this year and they ignored it.

It seems to me that that is to say merely that there is nothing in Table S-3 is an inadequate answer.

CHAIRMAN BECHHOEFER: Well, in terms of a final assessment, do they have to look at -- what drafts do they have to look up? Shouldn't they be, at least, entitled to some party's final statement of what is the effects of radon before they have to analyze it?

MR. SILBERG: That would say we never make any judgment ever because things can always change; Table S-3 can change.

CHAIRMAN BECHHOEFER: Yes, but they have to have some final document, some document that purports to be

1 final; don't they?

2 MR. SILBERG: They have to have some document.
3 My question says --

4 CHAIRMAN BECHHOEFER: This is purely a draft --
5 the Draft Environmental Statement is no more than that.
6 And, they also have referred, in general, to Chauncey
7 Kepford's testimony -

8 MR. SILBERG: Well, they did not in answer to
9 this interrogatory.

10 CHAIRMAN BECHHOEFER: Well, yes, they did.

11 MR. SILBERG: No, they did not; not in answer to
12 1A-1. They did in answer to 1A-2 --

13 CHAIRMAN BECHHOEFER: It says that they referred
14 to Kepford's comments on NUREG 0511. I have not read
15 those, because I do not have those; but they refer to
16 them.

17 Now, I do not know that what Dr. Kepford said
18 there, but they did refer to it.

19 MR. SILBERG: Well, then I do not know when
20 they say -- that references in a paragraph that says they
21 have asked for certain information. And, we asked a certain
22 specific question. I do not know whether that comment goes
23 to, "We have asked for certain information; see Kepford's
24 comments on NUREG 0511." Or whether that is meant to

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1 answer the question and whether somehow each aspect in
2 which the assessment of radon quantities is included in
3 Kepford's comments on 0511; you know, it is just so un-
4 specific if that is what their answer is. They certainly
5 could have been somewhat more revealing --

6 CHAIRMAN BECHHOEFER: Well, possibly somewhat
7 more specificity would be desirable, but if they had a
8 little more time, maybe they could be more specific.

9 What I am trying to suggest, perhaps, is that
10 could there be some sort of a time set up which would be
11 fairly convenient to both ECNP, if they want to specify
12 further; or should they, in fact, even be allowed to wait
13 for the FES analysis or what analysis should they come up --
14 they do not have to go out and analyze every analysis of
15 radon releases. They should be pinpointed and asked what
16 is wrong with a particular one. And, if they said that
17 something is wrong with the DES, you could say, well, we
18 are not even going to rely on what is in the DES anyway;
19 we are going to rely on something else. Then they have
20 got to go back and do it again.

21 Well, at some point, they have got to know what
22 they are commenting on or what they are being asked for.

23 MR. SILBERG: Well, I really think that is turn-
24 ing the question around. It is their contention; they have
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1 said that we have not adequately analyzed radon --

2 CHAIRMAN BECHHOEFER: Yes, and they say, why?

3 MR. SILBERG: They have to tell us what is in-
4 adequate.

5 CHAIRMAN BECHHOEFER: They did.

6 MR. SILBERG: They have not done that.

7 CHAIRMAN BECHHOEFER: They did; they said, there
8 is no analysis. They did. That is exactly -- we have
9 referred to S-3 and they have said there is no analysis
10 in S-3.

11 And, I just do not know what more is required.
12 I might say the Board pretty much thinks that that question
13 has been adequately answered as of the present time.

14 DR. JOHNSRUD: Mr. Chairman, may I have a little
15 clarification of the direction that you are taking this?

16 It was my understanding that we were to be pre-
17 pared -- and the only thing that the order specified was
18 that we be prepared to discuss the motions --

19 CHAIRMAN BECHHOEFER: Well, that is what we are
20 talking about.

21 DR. JOHNSRUD: Yes. And, I am a little troubled
22 at the high degree of specificity here that indicates that
23 you are going to go through each interrogatory in great
24 detail --

25 CHAIRMAN BECHHOEFER: Well, I want to find out



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if you are in default.

And, obviously, from what I have said, I do not think you are in default on Number 1, on 1A-1.

DR. JOHNSRUD: It was not my impression that your order indicated that we were in shadow of default, as I understand it to be defined in 2.707.

CHAIRMAN BECHHOEFER: In order to rule on their motion

DR. JOHNSRUD: Well, I am really a little puzzled.

CHAIRMAN BECHHOEFER: Yes. In order to rule on their motion, unless we decide that they cannot get the relief at all, we have to decide whether you are in default.

They are claiming that you are in default; and therefore, we should grant certian relief. And, in order to rule on it, we have got to decide whether you are in default.

DR. JOHNSRUD: They are saying that our answers to certain interrogatories were inadequate?

CHAIRMAN BECHHOEFER: Right. And, I am trying to question them on that. My question is, why wasn't the answer which I read or referred to, which is right from my summary as I have put them all on a chart here; my question was, why wasn't that answer perfectly adequate?



1 DR. JOHNSRUD: Well, Mr. Chairman, excuse me;
2 could we turn to 2.707 and perhaps you could help me here.

3 My reading of the definition of default or
4 rather what the regulation says is, "on failure of a party
5 to file an answer or pleading within the time prescribed
6 in this part or as specified in the notice of hearing or
7 pleading, to appear at a hearing or pre-hearing conference
8 to comply with any pre-hearing order entered pursuant to
9 2.751A or 2.752, or to comply with any discovery order
10 entered by the presiding officer --

11 CHAIRMAN BECHHOEFER: Yes, well, that is what is
12 involved.

13 DR. JOHNSRUD: Well, I thought --

14 CHAIRMAN BECHHOEFER: We are trying to see
15 whether you properly answered the interrogatory because
16 we directed you to properly answer by January 18.

17 The question is whether you did.

18 DR. JOHNSRUD: All right. Then that raises my
19 second point: since you are starting into these on an
20 interrogatory-by-interrogatory basis --

21 CHAIRMAN BECHHOEFER: I am not sure I am going
22 to go through all of them.

23 DR. JOHNSRUD: Okay. I have, frankly, great
24 difficulty keeping all the points that I would like to make
25



1 in response to a lengthy presentation by the other parties
2 in mind; will I be able to respond as we go along with
3 respect to each of these; or wait and have to go clear back
4 over the whole shooting match?

5 CHAIRMAN BECHHOEFER: No, you are going to be --
6 we will let you do it on an interrogatory basis. But,
7 we are just solving the first one so far.

8 What I am trying to figure out is why they are
9 claiming that what you have already said, which I think I
10 have interpreted correctly, is not enough, given what
11 you had available at the time. And, why doesn't it per-
12 fectly correspond to what your contention is, also, is
13 that there has not been an adequate assessment of these,
14 of radon releases.

15 DR. JOHNSRUD: In which case I would just say
16 that I do hope that the Board is understanding of the fact
17 that we are not accustomed to writing legal language as
18 lawyers write it; and therefore, that perhaps when I say,
19 "see Kepford's comments on NUREG 0511," I am saying to
20 the applicant, see Kepford's comments on NUREG 0511, but
21 perhaps a lawyer would have said, in order to respond pro-
22 perly to the description of each aspect in which we con-
23 tend and so forth, the applicant is directed to see --

24 CHAIRMAN BECHHOEFER: We are not holding you --
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1 DR. JOHNSRUD: I am just trying to say that these
2 answers in here were answers that attempted to be re-
3 sponsive as we hve indicated in our subsequent response to
4 the applicant's motion. And, as we have said a number of
5 time today; and if the niceties of the language are in-
6 adequate, then surely we can dispense with a statement-by-
7 statement analysis going through all of this.

8 MR. SILBERG: Well, my problem with that comment
9 is that the first paragraph of their answer says, "ECNP
10 has no additional specific information to submit at this
11 time."

12 CHAIRMAN BECHHOEFER: Okay; well, why isn't that
13 enough? Again, why is that in default? You are asking us
14 to impose sanctions for default and I am trying to figure
15 out why there is a default.

16 MR. SILBERG: Because --

17 CHAIRMAN BECHHOEFER: I think the answer is a
18 complete answer, particularly with the reference to S-3.

19 MR. SILBERG: Well, I respectfully disagree; but
20 we know, as Dr. Kepford has stated on numerous occasions,
21 that he considers himself knowledgeable on radon issues
22 and he has testified and cross-examined on those issues
23 several times.

24 CHAIRMAN BECHHOEFER: Right. And, to some extent
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1 there has been a cross-reference to his testimony.

2 Obviously, they are going to plan to rely on
3 that --

4 MR. SILBERG: But, to say that the only defect
5 with the assessment is that there is a blank in a partic-
6 ular regulation; and then to say they have no further
7 information, given Dr. Kepford's knowledge and the fact
8 that he says he has been studying radon for many years,
9 it seems to me to be a rather incomplete answer to a
10 fairly simple question.

11 CHAIRMAN BECHHOEFER: Well, but do they have
12 to tell you again why 74.5 curies is wrong, when once
13 the Commission has already said it is wrong? Isn't that
14 a waste of paper, really, for them?

15 MR. SILBERG: --But, the only -- well, the other
16 part is that there is an assessment and they have not
17 identified any inadequacies with that assessment.

18 CHAIRMAN BECHHOEFER: Well, maybe they should
19 do so in the future, but I do not think -- maybe they
20 should do so if they find out that that is the assessment
21 that they are going to be asked to answer in this pro-
22 ceeding.

23 If they could be pretty sure that what is in the
24 Draft Environmental Statement is what is going to be in
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1 the Staff's final Environmental Statement or something like
2 that, then I think they could answer. But, I think that
3 maybe they should be given a further opportunity to do so.

4 Now, I do not know; that is my --

5 MR. SILBERG: Well, I have to leave that up to
6 you, obviously. I think our position is --

7 CHAIRMAN BECHHOEFER: I would like to ask
8 Dr. Johnsrud, are you aware -- have you looked at the
9 particular analysis in the Draft Environmental Statement?
10 And, I cannot tell you whether it is the same as in pre-
11 vious proceedings or not, but some place we have it here.

12 DR. JOHNSRUD: Well, I cannot give you any com-
13 parative answer there.

14 DR. PARIS: It is on Page 4-25.

15 DR. JOHNSRUD: I do not have the document with
16 me.

17 CHAIRMAN BECHHOEFER: What I am wondering is --

18 DR. PARIS: Do you have access to this document,
19 the Draft Environmental Statement?

20 DR. JOHNSRUD: What is the date on it?

21 DR. PARIS: June, 1979; NUREG 0564.

22 MR. CUTCHIN: A copy was served on all parties
23 in this proceeding.

24 DR. JOHNSRUD: I am quite sure it is sitting on
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the shelf and it is at home; it is not with me.

DR. PARIS: Well, make a note that the Staff's radon analysis begins on Page 4-25.

DR. JOHNSRUD: Would you give me the NUREG number again, I am sorry.

DR. PARIS: NUREG 0564. My records show it was served on June 29 --

DR. JOHNSRUD: It is on the shelf; it is not with me.

MR. LESSY: Is there a pending question from Dr. Paris to --

DR. PARIS: No.

CHAIRMAN BECHHOEFER: Well, my basic question is if the -- what sort of a burden would it be to answer the particular questions asked, to the extent you can, based on the analysis -- on the particular analysis that appears in the draft Statement?

Now, I do not know how that relates to the analysis that has appeared in the Perkin's or TMI cases, but I presume it is similiar.

Is this going to be the one that is fairly -- will this be close to the one in the final?

MR. CUTCHIN: I presume so, Mr. Chairman; I cannot state from my knowledge whether it will or will not be.

1 There are, I am sure, amendments being made to certain
2 aspects of that analysis, especially with respect to
3 evolution of radon from tailings piles and the like; those
4 numbers seem to change fairly frequently.

5 However, since you have asked, if the contention
6 is that there is no number in the Table, does the supply-
7 ing of a number at some point in time in the matter or
8 does the process start at that point and then the intervenor
9 gets the opportunity to say, that number is also inadequate
10 and then says, because? It would seem to me that if
11 intervenor is able to contribute to the record in a mean-
12 ingful manner as ^{to} what is an appropriate number to
13 go in that Table, they are just as able today or six months
14 ago as they will be some months from now when the number
15 is supplied.

16 That is the problem that the Staff is having,
17 also, with the Board's analysis of what is an adequate
18 response, because the purpose of discovery is to disclose
19 to the other parties your case. And, if the answer is,
20 I have no case, then that is the end of the problem.

21 CHAIRMAN BECHHOEFER: But, I think their answer
22 in the past has been the numbers that have been established
23 are inadequate because they fail to take account of the
24 releases from certain -i
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MR. CUTCHIN: But, their case must be --

CHAIRMAN BECHHOEFER: But, they do not have to necessarily know what the releases are -- it must be much more difficult to find out what they are than to know that they occur.

MR. SILBERG: But, they ought to say what is wrong as opposed to just, well, there is no number in the regulation.

DR. JOHNSRUD: Well, Mr. Chairman --

CHAIRMAN BECHHOEFER: Well, they have to have something at which to shoot at. They have supplied a fair answer in terms of your case, which your case is the Environmental Report, incorporating a version of S-3 as to which has been amended to take out the only number for radon.

MR. CUTCHIN: But, the purpose of discovery, Mr. Chairman, is not for the intervenor to point out to the applicant or to the Staff for that matter, what the applicant or the Staff's case is. The purpose of discovery is for the intervenor to point out his case and the basis, therefore, so that the other parties may meet that claim; and it is for the resolution of concrete specific issues and we are nowhere close to that.

DR. JOHNSRUD: Mr. Chairman, the contention as



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it was reworded by the Board reads, "the quantity of radon 222 which will be released during the fuel cycle required for the Susquehanna facility has not been but should be adequately assessed."

MR. SILBERG: And, what we are trying to do is find out what is inadequate about the assessment.

DR. JOHNSRUD: I have directed --

CHAIRMAN BECHHOEFER: Well, she said, no assessment.

MR. SILBERG: That is not what is says.

CHAIRMAN BECHHOEFER: That is what is inadequate about it; there has not been one. That is why as far as that one is concerned, I think she has answered as of the present time. As of what is -- and if she could be sure that the draft one is either going to be close or is going to be the final one, perhaps, she should comment further on what is in the Draft Environmental Statement.

But, I do not know whether we -- she should be asked to do that now or wait until the FES comes out.

MR. CUTCHIN: And that is an open-ended, never-ending process, Mr. Chairman.

CHAIRMAN BECHHOEFER: But at some point, there has to be something specific which somebody can comment on.

MR. CUTCHIN: But, that is a different arena,



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Mr. Chairman. Anyone -- be he intervenor or no -- may comment on an environmental statement.

There is no requirement that one be a participant in a proceeding to make a comment on an environmental statement. I thought there was a requirement that in order to participate --

CHAIRMAN BECHHOEFER: No, that's true; but, you have to have a proposal to comment on. And unless she is told that what -- if she was asked the question, in what way is the analysis in the DES deficient, I think she could have answered that much easier than she can answer the question, which was is the assessment. Because the assessment is Table S-3 and was the only thing referred to; it is the only thing in this record other than the DES, now.

MR. CUTCHIN: But, the intervenor is not limited to what is in this record or what has been published by the Staff or the applicant in order to make their position as to what is or is not inadequate.

CHAIRMAN BECHHOEFER: But, to answer Interrogatory 1A-1 of the applicant, at least, all she had to say is what she did say; that what you are relying on, Table S-3, is missing an assessment. That is what is wrong with it; there is no assessment.



7-18

1 I think that answered that -- what I am saying
2 is that the Board, at least, thinks that that question
3 has been answered as of the information available to
4 Dr. Johnsrud at this time, with the exception, perhaps,
5 of this Draft Environmental Statement analysis. And,
6 if that were an appropriate starting point then maybe
7 then you could say in what ways Dr. Kepford's analysis
8 would differ from this and that kind of thing could be
9 pointed out.

10 I think she has to know what she is trying to
11 answer; she cannot be asked questions about -- on just an
12 undefined assessment and it is reasonable to assume that
13 when the applicant asked about what is wrong with the
14 assessment, they mean what is wrong with their assessment.
15 And, she has answered that.

16 So, I will hear from you, but I think you are
17 winning.

18 DR. JOHNSRUD: Well, that is not what I am going
19 to address. It is sort of a procedural thing now; could
20 you advise me, please, in the protection of our due process,
21 whatever it is, if I failed to respond to arguments that
22 are made by the other two parties in this contention,
23 interrogatory-by-interrogatory excursion that we have
24 engaged upon, will I then find that ECNP is in the same
25

1 position that we were placed in with respect to the pro-
 2 tective order that was given to the applicant in consequence
 3 of our failing to respond to a filing way back in the
 4 Spring?

5 In other words, do I have to balance at every
 6 single point? You have said, I think the intervenors have
 7 made their -- have responded satisfactorily to this inter-
 8 rogatory; let's move on, which I think is a marvelous idea.
 9 But at the same time, am I then leaving an unprotected
 10 record which subsequently may have to be submitted to an
 11 Appeal Board or to the Commission or to a court without
 12 having made my arguments on our side by having taken you
 13 at your word, as it were, or having interpreted what you
 14 may be saying here as being an adequate protection of our
 15 interests?

16 And, I ask this out of my ignorance of the
 17 niceties of the legal point.

18 CHAIRMAN BECHHOEFER: Yes, our particular rulings,
 19 of course, are eventually subject to appeal, although not
 20 until the end of the proceeding.

21 MR. SILBERG: I think the real question goes to
 22 what the purpose of oral argument is and I guess the best
 23 explanation of that is --

24 CHAIRMAN BECHHOEFER: Could I hear from you,
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Mr. Chairman, please.

CHAIRMAN BECHHOEFER: Our purpose was to first see if we could get the parties a little bit closer together. Now, we think some of the questions have been answered.

But, we do recognize and I think you do, too, that some -- the supplementation is require and before we go to hearing, we are going to have to have more. And, what I would really like the parties -- in fact, I was going suggest this before we break for lunch, particularly in something like this contention 1, 1A, particularly -- cannot the parties get together and decide then at some point you will give your views on one analysis, saying whether it is either wrong or right and why. That doesn't necessarily mean you have to have figures about radon releases at each stage, but if you told them what was wrong with a particular analysis at some stage, you did not count the proper number of years, you did not figure out -- there are a lot of reasons why an analysis could be wrong.

It is our impression that if you told them what was wrong with a particular analysis, it might be the one here on the DES or it might be a later one, I am just wondering whether you couldn't get together and agree on something that you could reach some sort of an accommodation



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1 on so we would not have to issue an order on a contention-
2 by-contention basis.

3 We are going to get to one contention which I
4 do not think you have answered at all and maybe you do not
5 realize it, but there is one contention that I do not think
6 has been answered at all; there are some words on the paper,
7 but they are not in the same ballpark as the contention.
8 I am going to ask for a further response on that one.

9 DR. JOHNSRUD: I recall, Mr. Chairman, there is
10 at least one --

11 CHAIRMAN BECHHOEFER: It is the one that relates
12 to releases from the reactor itself, rather than from the
13 fuel cycle. That one, I do not think you have analyzed
14 and I will mention what I think you should be analyzing --

15 MR. SILBERG: We would be happy to try to sit
16 down and see if we could reach a common understanding.

17 CHAIRMAN BECHHOEFER: This is what I was wonder-
18 ing; if you could reach an agreement where you could get
19 further answers to specific things and you could, perhaps,
20 agree on a -- I do not want to set any arbitrary times --
21 everytime that we have set, previously, has been one that
22 the Board thinks might be reasonable but we do not know
23 either what your case preparation involves or what your
24 other obligations are. We have to sort of look at the
25

1 calender and any date is about as good as any other date
2 and we just pick -- in all cases we have allowed much
3 more time than the NRC rules, publishes a minimum type of
4 thing.

5 DR. JOHNSRUD: I would need to discuss this, of
6 course, with Dr. Kepford, who is not able to be here today.

7 MR. SILBERG: That is one of the problems we have.
8 What we are trying to avoid is this endless postponement
9 of a resolution on the question. I would prefer, you know,
10 it would serve my purposes just as well if we had no
11 oral argument, let the Board decide, if you think the
12 answers are adequate, fine; if you think they are not
13 adequate, fine. But, give us a decision, tell us when
14 something has to be done and let's get this process over
15 with.

16 CHAIRMAN BECHHOEFER: Well, what we would like
17 to find out is when the parties, without considering it
18 to be undo harrassment, could get answers, updated answers.
19 And, that is one of the things we would like to -- because,
20 I cannot set a date, unless I set a date and somebody
21 could then move to change it; maybe that is the thing
22 to do. I cannot predict; I can throw a pin in the wall
23 and see what part of the calender I hit.

24 MR. SILBERG: Well, except it is the obligation
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of the Board to set schedules; schedules by their nature are always going to be somewhat arbitrary. I think the intervenors are going to want as much time as you will give them and we are going to want a much shorter period of time. I do not think you are going to get an agreement on that.

CHAIRMAN BECHHOEFER: Okay. What we would like is meaningful information, eventually before we go to hearing; we would like --

DR. JOHNSRUD: It is not the intervenors who are responsible for the hearing now being delayed until the Autumn --

CHAIRMAN BECHHOEFER: I recognize that.

DR. JOHNSRUD: -- and I am very distressed at the implication ^{at} at the other end of that table that we are postponing.

CHAIRMAN BECHHOEFER: Now, what I would like to avoid, though --

DR. JOHNSRUD: Now, I would be happy to talk with Dr. Kepford; he cannot be reached until tonight and in fact, well, that is another matter.

CHAIRMAN BECHHOEFER: Are you going to be around tomorrow or not, because it looks like we are probably going to be meeting tomorrow morning anyway --

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DR. JOHNSRUD: As I indicated to you, I have already broken a responsibility to be here today and there was not an indication --

CHAIRMAN BECHHOEFER: Is it possible to reach Dr. Kepford at all during the day and find out something about his schedule or --

DR. JOHNSRUD: He is in transit.

CHAIRMAN BECHHOEFER: Well, then --

DR. JOHNSRUD: He would probably be quite pleased to sit down and thrash-out some of these things and get -- again, you will forgive me for saying so -- get this applicant off our backs so that we can get this proceeding over and done with which is what we intervenors have asked the Board to expedite.

And, we certainly do not want to continue to be placed in the position of making good faith responses and then being told that they do not satisfy some undefined standard that the applicant chooses, after the fact, to apply without specifying just exactly what it is that the applicant seems to need to know.

So, I think that it might very well benefit all of us if rather than having to argue our way through every one of these contentions, if it could be done in that informal manner.

CHAIRMAN BECHHOEFER: Well, we would much prefer



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1 that it be done that way.

2 Well, I think we will probably have to proceed;
3 I would like for you to settle it informally. Maybe you
4 could talk it over during the lunch hour and see if some --
5 even if you cannot reach a precise date, you could give
6 some idea of -- you are not going to have to answer all
7 the questions, obviously; I think some of them you have
8 answered.

9 But, I do think that at some point, you have
10 got to come up with an analysis, for instances, on radon
11 releases..

12 DR. JOHNSRUD: Well, we are sort of thinking that
13 that Staff had better come up with --

14 CHAIRMAN BECHHOEFER: Well, yes; but, what I
15 am saying is maybe the Staff has come up with it. There
16 seems to be a claim that one in the Draft Environmental
17 Statement, which runs a number of pages, is their analysis.

18 DR. JOHNSRUD: Then, they had better supply us
19 with an update since there are now new figures.

20 CHAIRMAN BECHHOEFER: Well, they said they -- well
21 that will be --

22 DR. PARIS: You at least have this to shoot at.

23 CHAIRMAN BECHHOEFER: Yes. And, if you shoot
24 at that and then they change it, you can then update yours
25

1 without giving full answers anymore.

2 DR. JOHNSRUD: Well, now, I think that that
3 question turns right around back on to us: are we going
4 to have to re-answer and re-answer and re-respond every-
5 time the NRC Staff discovers that they have forgotten
6 another 60 percent of the radon that is going to be re-
7 leases from underground uranium mines or something of
8 that nature?

9 It is a burden on the Board; it is a burden on
10 the parties; and it is not serving the end of the proceed-
11 ing.

12 MR. SILBERG: Well, if ECNP could tell us what
13 their assessment is of radon, that would answer it.

14 DR. JOHNSRUD: It is not our obligation, Mr. Chair-
15 man, to assess radon.

16 CHAIRMAN BECHHOEFER: No, I do not -- they have
17 said that.

18 MR. SILBERG: Well, it is not a party's obliga-
19 tion --

20 CHAIRMAN BECHHOEFER: Well, they do not have to
21 have an assessment; they can assess --

22 MR. SILBERG: They do not; however, if they do,
23 they ought to tell us about it. That is all we are asking
24 for.

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DR. JOHNSRUD: We have referenced Dr. Kepford's various testimony, Mr. Chairman.

CHAIRMAN BECHHOEFER: Dr. Kepford has stated in other proceedings where he thinks that the releases have been not adequately assessed because they have not been included at all.

Now, I cannot tell you about numbers, because I do not know whether he is predicting numbers or assessing numbers or not. But, I think he has said that certain things omit vital considerations. I know he has got the -- there is the quesiton about how many years do you figure the effects and that is a matter of record. And, I would think, although I have not read the cross-references that you have mentioned; but, I cannot tell you -- I might add that one of them is supposed to be only seven pages long. If in that seven pages is an answer to the questions asked, it should be accepted as such.

MR. SILBERG: Well, the seven pages was the direct testimony in Perkins; however, there were several hundred pages of further testimony on the record --

CHAIRMAN BECHHOEFER: Right, but I think the reference was to the direct testimony; but it was not clear from the beginning, I must say.

MR. SILBERG: Our problem there is in Perkins,



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1 Dr. Kepford testified that he does not necessarily agree
2 with any of the figures; that he only uses them for
3 illustrative purposes, as I cite on Page 2 of the attach-
4 ment.

5 So, I do not know what their numbers are. They
6 could just tell --

7 CHAIRMAN BECHHOEFER: They may have no numbers.

8 DR. JOHNSRUD: Mr. Chairman, I believe that
9 perhaps Mr. Silberg is not familiar with the difference
10 between the Kepford testimony in Docket 50-320, which
11 is what I referenced in response to 1A-2, and that it is,
12 indeed, Dr. Kepford's testimony in the Three Mile Island
13 proceeding, not the Perkins proceeding, as the seven page
14 testimony.

15 DR. PARIS: Does that differ from Dr. Kepford's
16 testimony in Perkins?

17 DR. JOHNSRUD: I am trying to think what all is
18 in that deposition; I have not --

19 DR. PARIS: Well, if you cannot answer that, let
20 me ask you this --

21 DR. JOHNSRUD: There was supplemental material
22 in Perkins.

23 DR. PARIS: Do you expect to introduce into this
24 proceeding some testimony from Dr. Kepford?
25



1 DR. JOHNSRUD: I would expect in view of the fact
2 of his continued participation in the ongoing radon pro-
3 ceedings that the answer to that is yes, that it would be
4 to the benefit of the Board, particularly in view of the
5 footnote to 51.20 E that is to Table S-3 that indicates
6 that this is, indeed, an issue that is available for
7 litigation in other reactor license proceedings.

8 I would think that he would have some things
9 to say to this Board that should, indeed, in the absense
10 of a number in S-3 being taken into consideration in this
11 proceeding.

12 DR. PARIS: Would it be the testimony that was
13 given in Perkins or in TMI?

14 DR. JOHNSRUD: I would expect in view of that
15 more recent proceedings relating to radon that there would
16 be supplemental material as well. I am not in a position
17 to guarantee what Dr. Kepford will and will not do.

18 CHAIRMAN BECHHOEFER: Let me ask one question:
19 does this document -- I cannot remember if it does or
20 not --does it include anything on health effects as such
21 or is it purely releases?

22 MR. CUTCHIN: I do not right offhand know, Mr.
23 Chairman; I believe it includes health effects --

24 MR. SILBERG: It does include health effects.
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CHAIRMAN BECHHOEFER: It does?

DR. PARIS: Before we break for lunch, I would like to make a statement about the DES for Staff,

I think that Staff should express the values in the DES for Susquehanna in terms of the two 1,135 megawatt electric units at Susquehanna rather than just leaving it in terms of a 1,000 megawatt electric, hypothetical reactor.

MR. CUTCHIN: Your comment is noted, Dr. Paris.

CHAIRMAN BECHHOEFER: Your testimony, rather necessarily -- we are not asking you to revise the DES or anything like that.

MR. CUTCHIN: Mr. Chairman, I would like -- who determines what goes in one's testimony?

DR. PARIS: My purpose is that I think that the intervenors and the public should be able to look at values based on Susquehanna and not just a reference reactor here.

MR. CUTCHIN: What is the purpose of that testimony, Mr. Chairman, if it is not for the purpose of supporting a cross-benefit balance and if it turns out that, indeed, whatever that number be, whether it be for 1032 or 1,000, the bottom line is it is still insignificant and therefore, has no impact on the outcome -- this is



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a hypothetical -- what is to be gained by sharpening the pencil, other than an expenditure of Staff time and effort?

DR. PARIS: I think the Staff should do it rather than I should have to do it for the final decision.

MR. CUTCHIN: Your comment is noted, Dr. Paris.

CHAIRMAN BECHHOEFER: I think at this stage before we break for lunch, we hope the parties would agree on something in terms of further responses which would not involve any consideration of whether there has been a default in the past or not, but further, additional responses to the types of things we have talked about.

If so -- I know you cannot and will not be able to agree on a particular time, but maybe you could agree that some timeframe will be worked out or something like that.

DR. JOHNSRUD: Mr. Chairman, can you give us some notion of what sort of timeframe you have in mind; that is, are you speaking about next --

CHAIRMAN BECHHOEFER: Well, the only timeframe I have in mind is that, from what I have been told, we are going to be ready to go to hearing in September, mid-September.

DR. JOHNSRUD: So, we would all like to get it off our backs pretty quickly.

CHAIRMAN BECHHOEFER: And, we should have -- every-



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7-32

1 thing should be developed, the party's cases should be
2 pretty well developed about 60 days before that. They do
3 not have to have every word down, but the Board had put
4 that 60-day limit or 60-day time period at the suggestion
5 of the Staff, actually. That is just for identification
6 of witnesses and documents and that kind of thing without
7 the exact testimony or anything like that.

8 So, that by mid-July, you will have to have some
9 idea of what your case is and some time before that, I
10 would think that since follow-up discovery -- it would
11 have to be some time before mid-July. But, there is
12 still a lot of time between now and July --

13 DR. JOHNSRUD: My question really referred to
14 the next 48 hours or the next two weeks or the next month;
15 I think you have given a notion --

16 CHAIRMAN BECHHOEFER: Well, that is completion
17 of discovery. I would hope that the parties could make
18 some sort of an agreement and I will say that we do not
19 think, intentionally or not, we do not think that you
20 have answered the questions on Contention 2, which is your
21 contention, but you referred to S-3 and S-3 has nothing
22 to do with Contention 2 at all.

23 I think some sort of an analysis on Contention --
24 Contention 2 deals with Appendix I, really, the releases
25



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1 from the reactor assuming the applicant complies with
2 Appendix I; the health effects of those releases. And,
3 your answer there really referred to S-3 and S-3 has
4 nothing to do with releases from the reactor.

5 There is a long statement in the Environmental
6 Report, which I have a copy of which gives what they say
7 the releases will be. At some point, you should identify
8 why these very specific figures, what health effects they
9 will produce: that is what your contention says.

10 DR. JOHNSRUD: Okay, under that --

11 CHAIRMAN BECHHOEFER: So, that is Section 5.2
12 of the Environmental Report.

13 DR. JOHNSRUD: Do I hear from you, Mr. Chairman,
14 that the thrust of this is that you are willing for us
15 to proceeding with this--and sharpen the responses and make
16 them more responsive to --

17 CHAIRMAN BECHHOEFER: That is the thrust; but,
18 in sufficient time so that the parties have enough time
19 to prepare their cases for hearing, because we want the
20 record to be adequate.

21 We think you should have a sufficient chance to
22 prepare, but -- and, it may be that you would prefer a --
23 sort of a timeframe where you do not have to come in with
24 all your answers at once; that you will do certain things
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first and then you will work on certain other things. There are a lot of ways that it could be worked out to help parties, because if you answer on one or two and then one or two later, maybe the applicants can start preparing on the first two.

DR. JOHNSRUD: Hindsight being such a wonderful devise, it might have helped had we started this process and had the applicant been willing for it to proceed in that matter.

CHAIRMAN BECHHOEFER: Well, I cannot say that every order we issued turned out the way we expected it to and things happen.

So, anyway, why don't we break for lunch and --

DR. JOHNSRUD: Mr. Chairman, will there be further opportunity -- I have a number of things that I want to say. I have not really had an opportunity to respond.

CHAIRMAN BECHHOEFER: Oh, yes; we have not finished. We have not finished your contentions yet --

MR. HALLIGAN: After that, Mr. Chairman, when will the limited appearance speakers be allowed -- there are several in the room now who want to know what time they would be allowed to testify.

CHAIRMAN BECHHOEFER: I have no idea. We might



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1 have to carry it over until tomorrow, but I want to finish
2 we had assumed that we might have been finished earlier,
3 but it has progressed a little slower than we --

4 MR. HALLIGAN: Well, the Citizens would not
5 object to a second day of hearings, in fact, we recommend
6 that that be --

7 CHAIRMAN BECHHOEFER: Well, that would be for
8 limited appearances only, I guess.

9 I do not think we will need to carry on; we are
10 hoping we finish the parties before the end of the day.

11 MR. HALLIGAN: Well, I believe these people
12 want to speak this afternoon, though. They came a distance;
13 I do not believe they will be able to be here tomorrow.

14 CHAIRMAN BECHHOEFER: I think there are some
15 real problems with some of the other lawyers who are here,
16 also. I do not know whether they could stay through until
17 I know there are problems getting out of here after 1 o'clock
18 tomorrow and the Board does not have those problems, but
19 I know some of the parties do; we drove.

20 DR. JOHNSRUD: Well, Mr. Chairman, I cannot be
21 here tomorrow; so I would hope that --

22 CHAIRMAN BECHHOEFER: Right. Well, clearly, we
23 will be through with yours and I hope we are through with
24 all the parties.
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Let's break and let's allow an hour and 15 minutes, 2:40.

(Whereupon, the conference was recessed at 1:25 p.m. for lunch break.)

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A F T E R N O O N S E S S I O N

CHAIRMAN BECHHOEFER: By any chance, have the parties been able to agree on anything?

DR. JOHNSRUD: I think, Mr. Chairman, that it --

CHAIRMAN BECHHOEFER: If not, we will just continue with, certainly, your contentions.

DR. JOHNSRUD: Mr. Silberg seems willing to join us in an effort to iron out remaining areas of uncertainty. I am not sure whether you would like to spend a little time giving us an indication of those responses where the Board feels that there are deficiencies --

CHAIRMAN BECHHOEFER: Well, we could do that; but, basically, discovery, if the parties could work out a satisfactory solution, that is all right with us, because we will ask on the record any specific questions we have.

As I mentioned, we thought your answer to, on Contention 2 was not adequate and that it should have analyzed this Section 5.2 of the Environmental Report which is -- you are welcome to borrow my copy if you want to look at it to see what it looks like -- this is just a Xerox of something that is in the Environmental Report.

I want to make sure you have that, too --

DR. JOHNSRUD: I am sure we do.

CHAIRMAN BECHHOEFER: But, that to us is the



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1 applicant's analysis of releases from the plant and that
2 should be the basis, the foundation of Contention 2 should
3 be that rather than Table S-3.

4 DR. JOHNSRUD: Yes. I thought that I had also
5 with me the original contentions that had been filed
6 and I had hoped to be able to go over and compare theirs
7 during lunch; but, that did not get accomplished.

8 So, I am willing for us, certainly, to go back
9 over Contention 2 and work that one over again.

10 CHAIRMAN BECHHOEFER: Yes. And, I have one other
11 let's see --

12 Now, on Contention, I guess it is 3-1, we wonder-
13 ed whether this --

14 DR. JOHNSRUD: I would expect that we can --

15 CHAIRMAN BECHHOEFER: I am looking for a piece
16 of paper.

17 We were wondering on Contention 3, would it save
18 trouble if you could all just agree that this requirement
19 of natural uranium which the applicant has set forth,
20 14,700 metric tons, would be acceptable, because if you
21 could all agree to that as a starting point for figuring
22 the amount of uranium needed, it would seem to me to
23 save a lot of people a lot of time. We thought we could
24 speed things up if you would -- and, let me pass out just
25



1 copies of this original page.

2 If you all could just accept this and anybody
3 who agreed -- if you could just accept the figure stated
4 as a requirement -- it has nothing to do with availability --
5 that might be a starting point for answering questions.

6 If you said you agreed with it as a starting
7 point, I think it would solve a lot of things. I am going
8 to do the same thing in connection with the contention
9 dealing with need for power; I think you had a formula
10 which you had to work in a figure. Now, there is a state-
11 ment here in the Environmental Report about what their
12 installed capacity as of March '78 is and if you all would
13 take that as a starting point, that would solve things --
14 that would not maybe solve things, but it would make more
15 specific -- let me pass out these, too.

16 What we were hoping is that if you could use
17 some of things as a starting point or else say you dis-
18 agree with them, if there is a plant that you know about
19 that they have not listed -- I do not know if this is the
20 most recent list on file; but, in answering interrogatories
21 certain things like that can be used as a starting point.

22 We thought that it would cut through some of the
23 paper work.

24 DR. JOHNSRUD: I think, Mr. Chairman, that it
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1 would make -- these two items would make very reasonable
2 starting points and we would certainly pursue both of them.

3 CHAIRMAN BECHHOEFER: Right, okay. Well, in
4 reaching, trying to reach an agreement, I think, if you
5 could on certain basic starting points like that, it might
6 help all the parties who are interested in those conten-
7 tions.

8 DR. JOHNSRUD: And, these are for us to be able
9 to check back subsequently through the record and are on
10 ECNP Contention 3-1 from -- let's see, this is Section
11 5.7.3.1, uranium fuel, with respect to the 14,700 metric
12 tons --

13 CHAIRMAN BECHHOEFER: Yes. Now, if you agree
14 with that, if you have any reason why you do not agree
15 with it, well, you should say so. But, if you agree with
16 it, you do not have to go on to any lengthy description
17 about it.

18 DR. JOHNSRUD: If we then find we have a reason
19 to disagree we will so inform you.

20 CHAIRMAN BECHHOEFER: Right. And, we thought
21 that would make it easier for some of the questions to be
22 answered.

23 DR. JOHNSRUD: And, the second document is the
24 applicant's installed capacity as of March, 1978, Table 1.1-8.
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CHAIRMAN BECHHOEFER: That is correct.

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DR. JOHNSRUD: Thank you.

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CHAIRMAN BECHHOEFER: And that, at least, is the latest version that we have in our personal copies and so I assume that is the latest available. But, I assume that you would be satisfied if they would use these figures as, at least, a starting point for their --

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MR. SILBERG: We would certainly have no objection to their adopting the information in our Environmental Report.

CHAIRMAN BECHHOEFER: Right.

DR. JOHNSRUD: That is not what we have said, of course.

CHAIRMAN BECHHOEFER: No, well, not the analysis, but as a starting point for information. You have essentially said on facilities that they know what their facilities are; well, I am trying to get both parties to agree that these are the facilities, unless you know something different. If you know of a plant they have not listed, please, you know --

DR. JOHNSRUD: We will let you know.

CHAIRMAN BECHHOEFER: -- let us know and let the parties know.

I wanted to ask some questions, Dr. Johnsrud,



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1 about the Contentions 1-A and 1-B. In our March 6 order,
2 we allowed you to challenge the amount only of radon and
3 we did that on the basis of S-3. Well, in reading your
4 answers to interrogatories, although I do not know that
5 you have explicitly said so, it seems that you wanted to
6 challenge not only the health effects, but also the
7 amount of technetium 99; is that -- am I reading you correct-
8 ly or not? Because the Board -- the decision we rendered
9 in March, because of a change in Commission regulations,
10 is no longer accurate as to technetium.

11 If you wanted and if you were interested in say-
12 ing that they have not adequately assessed the amounts
13 of technetium, what you said in your contention, we ruled
14 it out because we said it was in S-3. Well, now it has
15 been taken out of S-3 and we would allow you to put that
16 back in if you so desire. In fact, we have already written
17 a contention which --

18 DR. JOHNSRUD: You just happen to have a copy
19 for us?

20 CHAIRMAN BECHHOEFER: We just happen to have a
21 copy of it. In view of the change, our decision in March
22 would not have been accurate today. Anytime after the
23 August issuance of S-3, we could not have said that
24 technetium was included in S-3.
25



1 DR. PARIS: The revision that he is talking
2 about does not show in the Blue Book; it has come out since
3 then. We rule technetium out on the basis of what is in
4 the Blue Book.

5 But since then, the Commission revised the foot-
6 notes to S-3.

7 CHAIRMAN BECHHOEFER: Last August, I think it
8 was.

9 DR. PARIS: Technetium can now be litigated.

10 DR. JOHNSRUD: For health effects as well as --

11 CHAIRMAN BECHHOEFER: Well, health effects, you
12 could really litigate anything for health effects. But,
13 for amounts as well as health effects, the amounts were
14 specified in S-3 until last August and we felt it was
15 incumbent upon us to at least let you know and let me
16 pass this around. I realize that we may have been pre-
17 sumptuous in rewriting contentions, but I think all the
18 parties -- in answering further interrogatories we were
19 wondering whether you wouldn't rather have your contention
20 read this way and I might say that the -- where we say,
21 quantity of technetium 99 which will be released from
22 waste management or reprocessing activities; that is the
23 precise language that now appears in the footnote to S-3,
24 the new footnote to S-3. This is rewritten to correspond
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8-12

1 exactly with the wording of the new S-3.

2 My question is: does ECNP, I know you did in
3 your original contention, and do you still wish to litigate
4 both the amount and the health effects of technetium 99?
5 Because if so, we would amend the contention to read this
6 way. Because of our prior ruling, which has been super-
7 seded by NRC change in regulations.

8 DR. JOHNSRUD: I think, under the circumstances,
9 Mr. Chairman, we most assuredly would want to include
10 technetium 99.

11 CHAIRMAN BECHHOEFER: Right. We read your
12 additional contention as saying that and we only ruled it
13 out because of S-3.

14 DR. JOHNSRUD: Yes.

15 CHAIRMAN BECHHOEFER: So, this was the amendment,
16 I think last August, and some of your answers to interrog-
17 atories have seemed to be stated both in terms of health
18 effects and amounts; but, right now there is no amount
19 for technetium in S-3.

20 I would also like to get the reaction of the
21 applicant and the Staff to this proposed change, other
22 than the fact that we are not required to rewrite conten-
23 tions; but, I do think it is fair when intervenors may not
24 have access to all of the latest rule changes that we at
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least advise these people.

Would either the applicant or the Staff have any objection to the rewording of Contention 1 as specified here?

MR. SILBERG: I am not sure it necessarily follows that the intervenors do not have access to the latest rule changes or are unaware of these changes.

DR. JOHNSRUD: I can assure you that these intervenors do not have access to the latest rule changes, Mr. Chairman.

MR. SILBERG: This did deal with a change in the regulations that are involved in radon and I would assume that Dr. Kepford would have been aware of this. In fact, I would be highly surprised if you were not, since this change took place some eight or nine months ago; I would think under the normal course of events, it is up to an intervenor to decide whether some new development warrants change in his contentions.

CHAIRMAN BECHHOEFER: Well, I am just not sure that ECNP, at least, was aware of it or aware of what the meaning of the change was, because it was sort of buried in a footnote and it was not -- I do not know how much publicity it was given.

DR. JOHNSRUD: This is, in fact, am I not correct,



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largely a restoration of contentions that we had already filed.

CHAIRMAN BECHHOEFER: Well, you had a number of isotopes listed and the others are still covered under S-3 and the ones that you had -- we figured that since you had listed technetium as one that you wanted to litigate the amount as well as health effects and we said you could not, I think that it is incumbent upon us to tell you that you are allowed under the regulations now to do it.

And, we are not forcing you to do it, but we were sort of anticipating. So, unless I hear strong objections, we will amend the contention to read the way --

MR. CUTCHIN: Could I make a suggestion, Mr. Chairman, since you are revising Contention 1, not ever knowing from day one what it added to the contention in the second paragraph to include the words that they have been both misrepresented and underestimated.

I think the key is that if they are underestimated that has some impact.

DR. JOHNSRUD: Mr. Chairman?

CHAIRMAN BECHHOEFER: This represented --

MR. CUTCHIN: I am not even sure they are represented in any Staff document.

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1 DR. JOHNSRUD: We would prefer to retain the
2 language as it is now.

3 CHAIRMAN BECHHOEFER: Yes. That is their lang-
4 uage. I tried not to change the wording of the contention
5 except to shift up into the first part the one isotope
6 that has now been added by the Commission.

7 And, I think in answering any questions, you
8 could, wherever they ask about radon, you could --

9 MR. CUTCHIN: We could ask how it has been mis-
10 represented.

11 CHAIRMAN BECHHOEFER: Well, you could -- of course,
12 I was going to ask you and I will ask you right now: do
13 you intend in the FES to put something in on technetium
14 like you have in the DES concerning the releases?

15 MR. CUTCHIN: Mr. Chairman, I will say again, I
16 cannot speak to what the Staff does and does not intend
17 to do. I presume that if they have included information
18 in the DES they will include at least that much or if
19 necessary more to --

20 CHAIRMAN BECHHOEFER: Well, the DES was issued
21 before the Commission acted on technetium.

22 MR. CUTCHIN: If it is not there, I presume it
23 will be in the FES; if it is not, I presume we will have
24 to cure that defect.

25 CHAIRMAN BECHHOEFER: Well, the Board was intereted



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in having some sort of an analysis in the record about the effect, since the Commission has left it open now.

MR. CUTCHIN: It will be in the record, I feel certain, since it is now a contention in the proceeding and I presume that we will have time to get it included in the FES since, as I understand it, it is like a couple of months away and I will carry this back to the Staff and make every effort to assure that it is.

DR. PARIS: You can always argue that it does not have to be.

MR. CUTCHIN: I think that would be to no avail since the Commission has volunteered its inclusion.

CHAIRMAN BECHHOEFER: Yes. The Commission came down with this new footnote --

MR. CUTCHIN: I am well aware, Mr. Chairman.

CHAIRMAN BECHHOEFER: Yes.

DR. PARIS: While Mr. Bechhoefer is checking his notes here, Mr. Silberg, did Dr. Johnsrud represent you adequately with regard to what you two are going to do?

MR. SILBERG: Well, I am not sure. Let me first give you my caveats.

I have developed and gone over with Dr. Johnsrud some dates which I think set the reference for any additional

1 extention of time on discovery for ECNP. Working back-
2 wards from the September, mid-September hearing which the
3 Board seems to have adopted, backing out 60 days for
4 identifying witnesses and the substance of their testimony;
5 then going back a month before that for answers to second
6 round discoveries and a month before that for time to
7 develop answers to second round discovery. And, then two
8 weeks before that, to receive answers to first round dis-
9 coveries which would enable you to develop second round
10 discovery questions. That would require that no later than
11 May 1, first round discovery be complete, otherwise, you
12 cannot get there from here.

13 So, I am not sure there is a lot of leeday in
14 terms of three, four, five months additional discovery
15 time, if discovery is going to have any role whatsoever in
16 this process.

17 As far as the specific interrogatories which
18 we think need to be answered, my own preference -- and I
19 have discussed this with Dr. Johnsrud -- would be for the
20 Board to promptly issue an order saying, we think further
21 answers on the following interrogatories are appropriate.
22 Hopefully, that an order which need not have a lot of
23 explanation, but just perhaps a supplementary order could
24 follow giving your reasons. But, just to put out in the
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1 next couple days, almost, a listing of the following
2 interrogatories should be, should have supplementary
3 answers or should have initial answers on the kind of
4 schedule that I have laid out.

5 I am afraid that if we sit down next Tuesday,
6 which is the earliest possible date that Dr. Kepford would
7 be available or Dr. Johnsrud to have a conference call,
8 to discuss which interrogatories and how they ought to be
9 framed that we are running a great risk of eating into
10 the time that the intervenors would have to develop these
11 answers.

12 Furthermore, I understand that Staff counsel is
13 unavailable next Tuesday. There is still the problem of
14 what to do with the intervenors responses to Staff inter-
15 rogatories which are also the subject of motions.

16 I really think that the most expeditious way
17 to proceed at this time would be for the Board to say,
18 okay, we are going to make a decision; it may not please
19 the applicants, it may not please the Staff, it may not
20 please the intervenors; but here it is and let's just go
21 from there. We will all know where we stand; we will not
22 spend another week, two weeks, three weeks determining
23 what interrogatories to answer, which ones not to answer.

24 Let's get this process underway. I am really con-
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cerned that if we try to agree amongst all the parties on all the outstanding discovery, it is going to be the end of April before all that is wrapped up and then we will first have to spend additional time developing the answers.

If the Board directs us to try to work something out, of course, we are going to do that. I still think that that is the most expeditious way to get on with the processes at this time. I think we have a feeling for what areas the Board would like additional answers to; I think that the intervenors ought to have that same feeling by now.

Perhaps the Board, on the record now, could do yet more guidance on specific interrogatories and either issue an order on the record this afternoon or put out a one-page piece of paper early next week saying, these are the ones and this is the schedule; let's get on with it.

DR. JOHNSRUD: Mr. Chairman, it was my impression that that was almost precisely what you had just been doing.

CHAIRMAN BECHHOEFER: Yes. I think we have gone over pretty much what we think should be answered in the way of further answers. I have not gone by every subpart, but I think in the general context, I felt we had covered pretty much, in terms of your interrogatories, the

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ECNP ones, anyway -- well, we could issue a very short order, but I think it will not do much more than we have done here.

DR. JOHNSRUD: Mr. Chairman, could you clarify for me -- we would expect after a conference call with the applicant's counsel that ECNP would come to agreements about some few specific areas where focused bits of information are yet to be provided. And, emerge from the same conference call with an area or a realm of general satisfaction between the parties with respect to the interrogatory responses being okay to go ahead for litigation.

Is that an accurate understanding of what you are saying?

CHAIRMAN BECHHOEFER: Well, if you could do that. I do not even see why we would have to give any further guidance. I would think you people on the telephone, a conference call, could agree on something --

DR. JOHNSRUD: Well, I guess, perhaps, I am wondering then, are we likely to find ourselves if the applicant who has not specified any particularities of what constitutes an adequate response, still wants a re-re-answer. Are we likely to face yet another motion from the applicant that we be restricted from presenting direct evidence in cross-examination or is it one or the other?



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CHAIRMAN BECHHOEFER: I cannot tell you what the applicant will file. We are not inclined to --

DR. JOHNSRUD: Well, I guess I am asking will you then allow yet another round of this internmentable discovery confusion to go on?

CHAIRMAN BECHHOEFER: Well, if you give whatever information you have on these subjects and as far as discovery is concerned, that is all you have to give.

Now, they have to have enough to know whether your contention should be dismissed or not --

MR. SILBERG: Mr. Chairman, perhaps I can describe a little bit of the problem that I find myself in.

Take a sample interrogatory: the Contention 3 said, talked about the known and assured reserves of uranium are going to be inadequate for Susquehanna and all the reactors. And, we asked a simple question: what do you contend is the quantity of, quote, known and assured reserves of uranium, the language used in the contention?

And the answer that came back is that that number is being assessed in the Nuray (?) program, which is a DOE program. And, my objection to that is, did they agree with the Nuray program results? Which version of the Nuray program, if the Nuray program is not now complete? Are they saying, we do not know?

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1 If they do not know what the known and assured
2 reserves are, say so. That is the kind of problem that
3 we have.

4 Another example: Interrogatory 3.3; what do
5 you content is the quantity of uranium resources in the
6 United States? Again, an issue very -- an easy question
7 to answer. Either we know the answer or we do not know.
8 Their answer was, see data available in the open literature
9 from NRC and Department of Energy.

10 What information in the open record? There is
11 a lot of information in the open record. Do they know --
12 do they have a specific knowledge or number that they
13 will agree with? Or do they say, we do not know what
14 the answer is; or, we disagree with the NRC and the DOE
15 numbers or we agree with some and disagree with others and
16 these are the ones that we disagree with.

17 That is the problem that I find myself in and
18 that is why I am afraid that if we go through this, we
19 are going to wind up a month from now where we are today.
20 I do not want to go through another round of this. I do
21 not derive a lot of pleasure or satisfaction from fights
22 on discovery matters. This is clearly a side issue on
23 the merits, but we do need this kind of information to
24 prepare.
25



1 You know, it would seem fairly easy if they
2 were appropriate, which I think they clearly are, either
3 the intervenors have the information and they tell us
4 what it is, or they do not have the information and tell
5 us that they do not have it.

6 DR. JOHNSRUD: Mr. Chairman, from the beginning
7 of this entire hassle, these intervenors have said an
8 insufficient quantity of time to respond had been provided.
9 And, here again, we had an instance in which going off
10 to do the library research to provide all of the biblio-
11 graphic citations, simply was not possible for us during
12 that month between the December 6 order and the January 18
13 deadline.

14 CHAIRMAN BECHHOEFER: Now, how about before May 1;
15 would you have enough time?

16 DR. JOHNSRUD: I think before May 1, that it is
17 reasonable that ECNP will be able to provide a bit of
18 specificity that might satisfy Mr. Silberg.

19 However, I do not want us to be subjected to
20 going through that exercise only to have him come back and
21 say, oh, well, we are still not satisfied; tell us more.
22 Because, he could do that endlessly and in that process,
23 we have no opportunity to move as we want to do with pre-
24 paration of the case. We want to present direct evidence
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if we can. And, we certainly want to be prepared for cross-examination on these issues.

Now, as we have material that supplements by that May 1 deadline, I should think there would be no great difficulty in getting it to him.

CHAIRMAN BECHHOEFER: I am not sure that our issuing a further order then specifying is going to really help. I think that --

MR. SILBERG: I think we have to tell us which contention, which interrogatories you think they have adequately responded to which need not be further supplemented and then maybe the converse is that all others --

CHAIRMAN BECHHOEFER: Well, I think a lot of the adequate answers are adequate in terms of at the time maybe they did not have the information.

MR. SILBERG: I have always, you know, we agree that those are perfectly appropriate responses.

CHAIRMAN BECHHOEFER: So, it is hard for us to say that those things do not need to be supplemented. Those do need to be supplemented, but as far as considering any sanctions, it certainly would be inappropriate.

That is what we are trying to differentiate between. Many of the answers which we consider adequate may not be adequate on the merits in terms of going to hear-



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1 ing; but it may well be adequate in terms of what they
2 have at a given point in time. That is one of the things
3 we were trying to differentiate between.

4 I think intervenor which has used a good faith
5 effort to answer the questions should not be penalized
6 even though some of the answers may not be as technically

7 MR. SILBERG: And, we said with regard to the
8 answers to Contention 4, interrogatories on Contention 4,
9 that we thought they had made a good faith effort and
10 supplied, you know, reasonable information. And, clearly,
11 if I --

12 CHAIRMAN BECHHOEFER: Well, I realize that.

13 MR. SILBERG: But, if you look at the answers to
14 Contentions 1, 2, and 3, you really do not get any infor-
15 mation out of -- the answers were not --

16 CHAIRMAN BECHHOEFER: Well, you found out about
17 technetium among other things. We found out about it. I
18 know that they have problems with the health effects;
19 now, they have not defined them too much and that has to
20 be developed.

21 But, they mentioned technetium in response to
22 1-B.

23 DR. PARIS: Well, would it help you, Mr. Silberg,
24 if we issued an order early next week indicating which
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one of these contentions we think -- or which one of these have been adequately answered?

MR. SILBERG: Yes. And, the others need to be supplemented by a date certain.



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1 MR. SILBERG: I think the Board has to, I think it's the
2 obligation of the Board to set schedules in this matter. And
3 I respectfully suggest that the only way we can move this
4 forward is if there are dates which we all say are going to be
5 arbitrary, one way or the other, we would obviously have been
6 better served in our preparing the case if we had had all this
7 information months ago.

8 The Intervenors would be better served if they had
9 another six months to prepare the answers.

10 But somewhere the Board has to say, "Here's a date,
11 and we think this is an appropriate date." And it's within
12 your discretion to set the date.

13 CHAIRMAN BECHHOEFER: I realize that. I wanted
14 to try -- well, May first seems reasonable to us. But I
15 won't say that if we got a particular motion, particularly if
16 it's not for all the answers but maybe some of them, we would
17 be allowed further extensions if you just can't make it.

18 But May first would seem to be pretty reasonable,
19 as a pretty final date for supplying answers. But if you
20 can't get them all, you should let us know in advance.

21 Maybe we might say May first, and a couple of them
22 you can have till May 15th; but we'll give you by May first
23 whatever we've got done -- and that kind of thing.

24 DR. JOHNSRUD: All right, Mr. Chairman. ECNP will
25 attempt to comply with what we understand to be your



1 directive.

2 CHAIRMAN BECHHOEFER: Right.

3 Now where we pick in connection with wood, I suppose
4 there's some sort of an analysis of the Staff's statement of
5 the DES two or three pages on radon, and actually the health
6 effects appear, I think, on page 4-27 -- 26, 27, and 28 I
7 guess. But one of the major pages, 4-27.

8 If we can take that as the current assessment of
9 effects of radon, the only one I could see in our record. If
10 you have any objections to that or disagree with that, you
11 should tell -- if you haven't figured out precise numbers,
12 you could say we haven't yet figured out the precise numbers,
13 but we think there are mistakes made in these areas. There
14 are a certain number of years specified, and you may not
15 agree with those, but I think you could say that you don't
16 agree with them.

17 And there's certain releases specified, certain
18 population dose commitments specified; and you could say
19 which, if any, you disagree with.

20 Or if you're in the process of doing some calcula-
21 tions and haven't finished them, you can say that.

22 But at some point by May first we're getting a lot
23 closer to dates when you'll have to start preparing your
24 testimony; but if we really are going to hearing in, in mid-
25 September, which I hope we can do, that's a reasonable

1 schedule for that.

2 DR. JOHNSRUD: Mr. Chairman, I feel that what you're
3 suggesting here is quite reasonable.

4 I would add one factor: we are indeed, as you well
5 know, involved in TMI several proceedings. If at some point
6 toward May 1, when I would presume you will have much of what
7 remains to be responded to finished, we find ourselves
8 suddenly facing going to hearing in one or another of those
9 other proceedings, I would hope that would be a reasonable
10 basis for asking for asking for a further extension, as
11 needed.

12 CHAIRMAN BECHHOEFER: Well, it, it might, it might
13 well be; but you'd have to ask us. Don't, don't just let it
14 slip by. That's the point. Let us know. It'll take one
15 paragraph to tell us.

16 And we would hope that if you'd did that, that you
17 could supply proportions of answers to enable the other
18 parties to develop their cases as soon as they can.

19 We would hope that, you know, you would prepare one
20 answer and maybe not before May first, but as soon, but
21 certainly if you found yourself delayed -- and I know you're
22 going to have proposed findings to prepare for radon, the
23 radon case.

24 DR. JOHNSRUD: Yes, there are proposed findings
25 there; and there, of course, have not yet been health effect

1 hearings on radon.

2 CHAIRMAN BECHHOEFER: Right. And although
3 presumably you could perhaps use some of your testimony there
4 as answers to some of these questions and as developed in
5 your testimony in our case, too, because I assume the answers
6 are fairly similar, although they're not, not identical.

7 MR. SILBERG: Mr. Chairman, some of this discussion
8 is a little troublesome, because already we're talking about
9 delays beyond May 1.

10 DR. JOHNSRUD: For reasonable showing.

11 CHAIRMAN BECHHOEFER: Well, if they have reasonable,
12 good reasons, I mean that doesn't necessarily have to be
13 second- and third-round discovery. There should be, but in
14 terms of reasonableness --

15 MR. SILBERG: Well, in terms of reasonableness, I
16 hope we'll bear in mind the discovery schedule that we've
17 already had in this proceeding.

18 CHAIRMAN BECHHOEFER: I realize that, but -- and
19 it's dragged on much longer than I think it should have, but
20 I also know that, that it's difficult for an Intervenor
21 particularly to prepare a lot of these things. And I don't
22 think that they've had material which they can respond to.

23 I'm not sure they can even respond as to technicia.
24 They, they can --

25 MR. SILBERG: Well, if they have no answers, we've



1 always said that's an adequate answer.

2 CHAIRMAN BECHHOEFER: Yes. I mean -- yes.

3 DR. JOHNSRUD: Mr. Chairman, I want to be
4 absolutely sure that it's clear that our position on that
5 kind of answer that Mr. Silberg has just given, is that we
6 certainly don't want to make responses that are then going to
7 preclude us from participating on these contentions that we've
8 raised, on the kind of ground that was mentioned much, much
9 earlier today, that, well, they haven't been able to provide
10 any information, so therefore they have nothing to litigate.

11 Now, if we have that assurance, it's much easier to
12 respond to some of these things without feeling that we're
13 cutting ourselves out by complying.

14 CHAIRMAN BECHHOEFER: No, what may happen is that
15 somebody will file a motion for summary disposition with some
16 affidavits. And then you might have to come back with some
17 other affidavits --

18 DR. JOHNSRUD: Precisely, which is more paperwork
19 that I should think we all want to avoid -- which is, again,
20 more paperwork that I think we all want to avoid.

21 CHAIRMAN BECHHOEFER: -- to show that there's a
22 fact at issue.

23 Pardon?

24 Yes. Some of these issues I'm not positive are too
25 suitable for summary disposition. Others may well be, however.



1 And I'm not sure -- we don't always get summary
2 disposition motions for every issue, either, because where
3 there are outstanding factual issues, they have, they should
4 go to hearing, whether or not people agree with the fact.

5 (Brief conference.)

6 CHAIRMAN BECHHOEFER: Yes, well, that's what I'm
7 going to ask next.

8 Now, the next thing I want to --

9 MR. SILBERG: Mr. Chairman, just so, just so there's
10 no misunderstanding: we do intend to file summary disposition
11 motions. It may be that that's more paperwork; that's also
12 part of the process.

13 CHAIRMAN BECHHOEFER: Right.

14 Well, no, I'm not saying you can't; but there
15 appear to be a couple of issues which may not be appropriate
16 for it and just offhand, irrespective of whether the Inter-
17 venors come up with any information.

18 MR. SILBERG: Would you like to tell us ahead of
19 time, so we can avoid filing summary disposition on those?

20 CHAIRMAN BECHHOEFER: Well, I think that there are
21 no proceeding thus far that I know of have analyzed the, the,
22 either the amounts or the health effects of technetium.

23 MR. SILBERG: That doesn't mean that it's not
24 appropriate for summary disposition, however.

25 CHAIRMAN BECHHOEFER: We, we -- it may not. But



1 I, I think you get an expert saying that a given release over
2 a period of time doesn't have any effect and, or a significant
3 effect.

4 I'm not sure that of that type of issue summary
5 disposition -- if there are other experts who disagree,
6 whether or not they --

7 MR. SILBERG: Well, that goes to the question of
8 whether there are countervailing affidavits that put into
9 question an issue of material fact.

10 CHAIRMAN BECHHOEFER: Well, not necessarily, because
11 I don't -- because we don't know that the Intervenors would
12 have countervailing affidavits. Maybe they will. I'm not
13 saying they will or won't. But there seem to be certain
14 issues like that, that --

15 MR. SILBERG: There are others that will, no, not
16 put in one -- we were not planning to do it on technetium.

17 CHAIRMAN BECHHOEFER: And I can warn you that in
18 the safety hearing, unless things change a lot, the Board
19 won't grant summary disposition of the evacuation plan.

20 MR. SILBERG: That doesn't surprise me.

21 CHAIRMAN BECHHOEFER: So, I mean, I don't care what
22 the motions say. But that's not an issue now.

23 DR. JOHNSRUD: Mr. Chairman.

24 CHAIRMAN BECHHOEFER: Yes.

25 DR. JOHNSRUD: I am troubled by the, again the



1 expression of intent on the part of the Applicant in this
2 proceeding to try to dispose of every issue that -- or
3 virtually every issue that has been raised in contention.
4 Without having to, to bring in evidence on the merits of the
5 contention, to use procedural mechanisms in such a way as to
6 prevent this Board from having and developing a full record
7 on issues that the Board has seen fit to consider worth
8 litigating.

9 MR. SILBERG: Summary litigation is a presentation
10 of evidence.

11 CHAIRMAN BECHHOEFER: Yes, there are affidavits.
12 That's where we had said we will not dismiss any contentions
13 for default, but we want at least the affidavits of various
14 experts; and if there are no countering affidavits, it might
15 well be suitable for summary disposition.

16 If the Board, --if the Board looks through the
17 affidavits and sees that there's some holes or open gaps or
18 something, then we won't dismiss it. But --

19 DR. JOHNSRUD: This in turn, of course --

20 CHAIRMAN BECHHOEFER: I can imagine some conten-
21 tions that are in issue that might, might be subject to
22 summary disposition. There are others that probably wouldn't
23 be.

24 DR. JOHNSRUD: This does, of course, bring back
25 that great disparity between the parties in terms of ability



1 to produce the paperwork and the affidavits and obtain and
2 pay the experts. And so on. And so on -- that result from
3 the unfunded condition of the public interest representatives
4 in this proceeding.

5 And here again, another round is being thrown up as
6 a barrier to getting to a full evidentiary hearing on the
7 issues.

8 CHAIRMAN BECHHOEFER: Right. Well, I -- the rules
9 afford every party a right to file. We can't cut that off.

10 Unless we are satisfied that the affidavits on their
11 face present an overwhelming case for the Applicant's or
12 Staff's position as the case may be, we would grant such a
13 motion, because we have to be satisfied on our own that public
14 health and safety or the environment is adequately taken care
15 of.

16 So unless we're convinced from the affidavits that
17 there's nothing at all in the issue, we would not grant such a
18 motion.

19 But there, there are some that I can foresee that we
20 would grant, if there were no factual disputes indicated.

21 If there's any dispute as to fact, we can't grant a
22 motion. We, you don't grant summary disposition motions
23 where there's any dispute of fact. So if somebody files an
24 affidavit which says that such-and-such -- like on radon
25 releases: if somebody comes in with an affidavit for the



1 Applicant saying that the radon releases are going to be "x,"
2 whatever they may be, and you or Dr. Kepford files an affa-
3 davit saying "No, there won't be x; that's enough; that
4 creates a question of fact." We haven't got the right to
5 determine which is right.

6 We have to determine that there's a dispute of fact.

7 And the whole meaning of summary disposition is,
8 where there's no dispute of fact on a question, there's
9 theoretically no reason to go to a hearing on it, so that this
10 is sort of basic to lawyers. But this is how these things
11 work.

12 And I, in most of the cases I've been in so far,
13 there have been summary disposition motions filed. And some
14 have been granted, and some haven't. So --

15 Mr. Halligan, do you have something?

16 MR. HALLIGAN: --Yes. When you make such decisions on
17 the, on this matter of whether or not you will allow
18 intentions to be removed from the record perhaps in the near
19 future, are you going to be guided primarily by precedents
20 that have been set in the past?

21 Or are you going to be guided primarily by the more
22 enlightened position of the Commissioners and the post-TMI
23 attitude at NRC? At least we're told that the public has a
24 right to know and a right to be heard, and a right to raise
25 these issues.



1 In other words, in all these filings and papers
2 mostly that've been filed in this case, references have been
3 made to legal precedents that existed or occurred before the
4 accident at TMI. It's been since then that there has been a
5 lot of proposed changes made at the highest levels of Govern-
6 ment, and we --

7 Does the licensing boards get any of this?

8 Does it filter down?

9 Is this, will this leave you to make decisions?

10 Or are we simply going to fall back to a pre-TMI
11 dogma, which is obviously, did not allow citizens to raise
12 issues properly.

13 CHAIRMAN BECHHOEFER: No. Issues could always be
14 raised. And the way we resolve issues is we, we take it,
15 count the information relative to those issues.

16 I might say, TMI has nothing at all to do with most
17 of the environmental issues that are --

18 MR. HALLIGAN: Oh, yes, it does.

19 CHAIRMAN BECHHOEFER: Oh, no, it doesn't. And I'm,
20 I've already held that. And TMI has nothing at all to do with
21 most of the environmental issues in contention.

22 MR. HALLIGAN: We're in the same air space and the
23 same river system, 65 miles away.

24 CHAIRMAN BECHHOEFER: Well, then, you'll, you --
25 I'm saying it's irrelevant.



1 MR. HALLIGAN: I disagree. That's very relevant.

2 CHAIRMAN BECHHOEFER: Almost as a matter of law.

3 But Three Mile Island has a lot to do with the safety issues,
4 has a lot to do with the treatment of accidents; and we've
5 allowed a contention on at least the Three Mile Island
6 accident. We allowed SEA's contention on that -- in part.

7 Well, insofar as it relates to TMI, we did.

8 MR. HALLIGAN: You misunderstood what I meant.

9 But your decision, the mentality of a licensing
10 board in making a decision would be influenced more by a new
11 enlightened Commissioners' attitudes as they have been spoken
12 to the Congress of the United States, where they said that
13 they have changed; they want to open up the proceedings.
14 They want full disclosure, they want full public input and so
15 forth.

16 I believe that that should be the guideline for the
17 licensing boards, nationwide, and especially in the --

18 DR. PARIS: Mr. Halligan, let me answer you this
19 way:

20 Based on NRC practice and precedent, we would have
21 kicked you out of this proceeding a long time ago. The fact
22 that you are still here reflects the part of the post-TMI
23 thinking.

24 Okay?

25 MR. HALLIGAN: I don't concur with that. But you

1 said it.

2 CHAIRMAN BECHHOEFER: I think that, I think that's
3 an accurate reflection; but we have gone out of our way to
4 enable Intervenors which have, who have legitimate concerns
5 to express those concerns and to present a case on that.

6 But there's a way of doing that, and there's --

7 MR. HALLIGAN: Will I have time to present my case
8 this afternoon?

9 CHAIRMAN BECHHOEFER: Yes, you will.

10 MR. HALLIGAN: Thank you.

11 CHAIRMAN BECHHOEFER: I hope we're almost to you.
12 But we have to finish the ECNP thing.

13 I think that we basically finished with, with ECNP,
14 the motions against ECNP, except for the Staff's motion and --

15 DR. JOHNSRUD: Mr. Chairman, I don't feel that I
16 have been able to speak to what I understood to be the real
17 substance of that motion. And I do have some comments that I
18 would like to be certain are on the record.

19 May I present them now? Or --

20 All right, fine.

21 I'll abbreviate them on the basis of having spoken
22 at fairly substantial length with respect to the comparable
23 motion for SEA, and I do hope that I will keep any repetition
24 to a minimum.

25 Frequently, I suspect, what might start out sounding

1 as repetitious is intended to go someplace else. So I'll hope
2 that I will have the courtesy of the Board to complete my
3 points. I, I have observed in other proceedings that very
4 frequently the interruption with a question, which I'm sure
5 may be pertinent at a particular moment rather than later,
6 does have a tendency to throw one off the track and one never
7 gets back to finish, to complete a point that may be of very
8 great significance.

9 And therefore, since I really am not experienced at
10 doing this at all, I'll ask your indulgence.

11 And I'd add one, one other introductory point here
12 to what I'd like to say about the motion as a whole and its
13 position relative to the entire discovery process thus far
14 and the significance in this proceeding, that the December 6
15 order of the Board denying certain ECNP requests contains some
16 language that is very troubling to us.

17 I recall specifically the term "disrespectful." And
18 here I, I really would like to add a few points to the record
19 that may, may pertain to language that is used in the proceed-
20 ing, by these Intervenors and others, and how we view that
21 language, as compared with interpretations that apparently
22 have been placed by others.

23 As has been said frequently, we are deeply involved
24 with Three Mile Island. And I think it must be said that we
25 Pennsylvanians believe that the Nuclear Regulatory Commission



1 has shown a deep disrespect for the people of the Susquehanna
2 Valley, in that it permitted that reactor to go on line despite
3 the lack of completion of the issues that were before the
4 licensing board, the appeal board, the Commissioners, and the
5 U.S. Court of Appeals, causing the accident to occur.

6 What is disrespectful in the minds of one person may
7 be minor compared with another kind of disrespect. And
8 therefore, I will ask the indulgence of this Board and of the
9 Commissioners ultimately in a manner that your superior, Mr.
10 Bradford, has described very well in his speech last summer,
11 I believe it was, on nuclear power: was it pushed? or did it
12 jump? -- having to do with the uses of the procedures of an
13 NRC licensing process in ways that indeed do drive Intervenors
14 to the margin of distraction, in temperance of language, what
15 perhaps a Board member who has not directly experienced the
16 events of the past year in Pennsylvania might be led to
17 consider contemptuous conduct.

18 And of course, that last term is related to the
19 language that has been proposed for a change in the rules of
20 practice with respect to appearances before the, before the
21 boards.

22 We don't mean that at all.

23 And I, I certainly want a clear understanding that
24 if, indeed, these Intervenors did not have the deepest respect
25 for the judicial process and the rule of law, we wouldn't be



1 knocking our heads against the very substantial wall to
2 justice that we really frankly consider the Commission to have
3 been throughout its history.

4 Now, having said all that, I want to proceed to
5 some specifics about this motion that's still standing before
6 you. And I say these following things within a context of
7 appreciation of the discussion that we've had thus far, with
8 respect to specifics of the interrogatories.

9 But I, I believe very deeply that there is an
10 extremely important principle of representation of the public
11 interest in the adjudicative proceedings at stake here.

12 Now, this Applicant has submitted a request for
13 punitive sanctions. We believe that to be wholly unwarranted
14 by the facts that are on the record thus far with respect to
15 our participation. I have detailed the background from the
16 point of view of these Intervenor's in the filing of March 14th
17 to the NRC commissioners, entitled "Request to the NRC
18 Commissioners for Expedited Consideration of Actions of an
19 Atomic Safety and Licensing Board and Other Matters," which I
20 believe you have received.

21 And I'd like to incorporate the background there
22 that details the course of the proceeding from our point of
23 view with this record, rather than going through the
24 description yet again. I think we are all familiar with the
25 problems over the last several months.



1 ECNP believes that the Applicant's motion should be
2 denied; that ECNP and others should, in fact, be more than
3 fully encouraged by the Board to make the maximum contribution
4 to this proceeding, and to do so with minimum obligations
5 imposed upon us as public interest voluntary intervenors.

6 The fact of the case that we believe is correct is
7 that ECNP has responded as fully as we could in the time
8 available to us and the resources available to us -- have done
9 so in good faith -- to the discovery requests of both the
10 Staff and the Applicant -- has done so timely, and has done so
11 within the Board's guidelines in both the August 24th and
12 October 30th orders.

13 In Appendix A of Part 2, Section 4 on discovery,
14 Subsection A -- does state clearly: "In no event should the
15 parties be permitted to use discovery procedures to conduct a
16 fishing expedition or to delay the proceeding."

17 And we intervenors have felt that the vagueness,
18 the unfocused nature of the Applicant's excessive number of
19 interrogatories throughout this proceeding has been precisely
20 a fishing kind of expedition, and that it was not designed to
21 elicit the information so much as it was simply to tie us up.

22 If punitive sanctions are to be imposed in this
23 proceeding, we would urge the Board to disqualify counsel for
24 the Applicant for the misuse of the discovery procedure as a
25 rather transparent and, we feel, vindictive effort to remove



1 these intervenors from having any effective participation in
2 this license proceeding, to do so, in a word, by procedural
3 suffocation.

4 We would even like to ask this Board to require the
5 Applicant to seek a different law firm. And we say that so
6 because this firm is indeed the same firm to be found in the
7 TMI-2 proceeding in which Dr. Kepford's efforts as both legal
8 representative and sole witness has brought such discomfort to
9 the nuclear industry and the Nuclear Regulatory Commission, it
10 being that proceeding and, as we're all well aware, his
11 testimony that appears to have precipitated the Commission's
12 decision to vacate the radon number from Table S-3 in early
13 March of 1978.

14 Now, the purpose of these proceedings surely is not
15 to exercise the Board's authority to penalize us, any of us;
16 it is, instead, to examine and to resolve with a full and
17 complete record all issues raised by intervenors, issues that
18 you've admitted in controversy.

19 And we repeat that public participation can only
20 assist the Commission positively, in its deliberations on
21 those issues.

22 10-CFR.732 tells us that the burden of proof lies
23 squarely with the proponents of the licensing of Susquehanna.
24 To my knowledge, the Board has not shifted that burden of
25 proof to these intervenors; and it is our belief that the

1 bulk of interrogatories, the breadth of information that the
2 Applicant has indicated it needs in order to understand what
3 our few contentions are about -- does, in fact, accomplish a
4 shifting of that burden, and improperly so.

5 To us it then appears that the Applicant is simply
6 attempting to circumvent a full adjudicated airing of the
7 issues in controversy by this motion. And in turn, we
8 believe that the Applicant is therefore showing that he is not
9 qualified to operate a nuclear power plant, is not willing to
10 see that the issues that are in question are properly
11 examined, and a full complete record with adverse information
12 on it has been built.

13 The Applicant has a requirement to make known any
14 adverse data. The Applicant has not done so.

15 That burden has, in fact, been put upon the inter-
16 venors, who have raised these issues.

17 The Applicant and Staff, it is our belief, know full
18 well that the answers that have been provided are more than
19 adequate to the need, to the purpose of discovery, are better
20 than they probably should have had any reason to expect, on
21 the whole. They certainly are far more responsive than any
22 answers that we intervenors -- or documents on the whole that
23 we intervenors have been able to obtain from either of those
24 parties.

25 It's our feeling -- in fact, we would conclude that



1 both the Applicant and Staff are therefore attempting to use
2 perhaps the fact that the Board has not examined these issues
3 in any great depth nor has heard evidence on them, as a way
4 around the Board, to avoid the compilation of a full multi-
5 sided record.

6 It seems to us that perhaps they're afraid to
7 confront the issues on the merits.

8 And such an applicant, we believe, should not be
9 entrusted with the operation of a nuclear power plant, and
10 most particularly should not be entrusted with the operation
11 of a nuclear power plant in the Susquehanna Valley, 65 miles
12 from TMI.

13 (Pause.)

14 Let me give a brief summary of a few points from the
15 the legal side.

16 First, that the Atomic Energy Act requires that all
17 NRC proceedings be designed to protect the public health and
18 safety. I believe that's sections 102 and 103, but I might
19 need to recheck my numbers.

20 Case law under NEPA, starting with Calvert Cliffs,
21 demonstrates that the burden of proof can't be placed on
22 intervenors, cannot be intervenors, but must reside with the
23 proponent of the action -- here, the Applicant and, in our
24 view, the Staff as well.

25 Further, this is not a truly adversary proceeding,



1 but rather an adjudicative one, in which the requirement to
2 examine all aspects of the issues lies with the Commission,
3 also under Calvert Cliffs.

4 We're here in part, after all, because of the fail-
5 ings that have occurred at TMI; and we're going to be here a
6 long time, I strongly suspect, because of those failings,
7 especially in the safety realm.

8 When the NRC was formed in 1974, the Congressional
9 intent under the Energy Reorganization Act was to lessen the
10 former AEC's advocacy of nuclear power by introducing a more
11 objective approach to licensing.

12 The manner in which the Staff has conducted itself
13 shows to us that it is not capable, without active citizen
14 participation, capable of producing such an unbiased record.
15 And I would point here to the TMI-2 operating license proceed-
16 ing.

17 That the Staff -- that the Commission, therefore,
18 does not have available a record that reflects an objective
19 statement of the facts, in the absence of participation of
20 public interest intervenors.

21 Because the Staff has failed in its responsibility
22 to objective and full facts, and because the Applicant has
23 failed to present damaging information unfavorable to its
24 licensing proposal, as it is required to do -- again, as I
25 recall, under 10-CFR-51.20-D -- it's crucial here that these

1 citizen groups be allowed to participate fully, not just to
 2 raise contentions and then have to sit in the back row under
 3 a gag order or even be prevented from contributing direct
 4 evidence to the proceeding.

5 If the Board is to have that full record, given the
 6 good faith efforts of these intervenors, then it has to have
 7 more than just the testimonies of witnesses for the Staff or
 8 the Applicant, in order to come to a balanced, reasonable,
 9 and proper decision.

10 The standard, therefore, for deciding if citizens
 11 have made a good-faith showing, or effort, to comply with
 12 discovery is, and ought to be, far less restrictive and far
 13 easier to meet than would normally be the case in a strictly
 14 adversary legal proceeding. And in any event these inter-
 15 venors would say that we have complied fully and completely
 16 and within the time and resource constraints under which we
 17 suffer and have, on the whole, with the exceptions we've been
 18 discussing today, met the standard described by the Board.

19 Most compelling of all after TMI, the Board should
 20 err on the side of the citizen intervenors in every possible
 21 way, because we believe TMI has shown definitively the failure
 22 of the NRC's licensing process.

23 In addition to these comments, I would like to add a
 24 few more; and I'll be done, I promise you, in a very short
 25 time. And I appreciate your -- courtesy.

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End Tape 9

2/23/81
 see tape 11



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1 DR. JOHNSRUD: Those to the Kemeny Commission
2 report the President's Commission on the accident at Three
3 Mile Island which concludes at page 56,

4 "With its present organization, staff and attitudes
5 the NRC is unable to fulfill its responsibility for providing
6 an acceptable level of safety for nuclear power plants."

7 We have been forced to conclude that this applicant
8 motion is designed to render impotent these intervenors who
9 I believe have proven their competence at revealing the
10 incompetence of the staff and licensing board in the TMI-2
11 proceeding and here, after the Kemeny Report, we feel that
12 the NRC is not improving its ability to provide an acceptable
13 level of safety if indeed, public interest intervenors are
14 to be curtailed in their participation from either giving
15 direct evidence or cross examination.

16 We do not believe that the staff is evidencing
17 changes for the better in organization staff and attitudes
18 by the techniques that have been employed in the months
19 since that accident began. Techniques that we believe are
20 designed for checkmating our participation. Similarly,
21 the NRC Commission Special Inquiry Group, the Rogovin group,
22 has observed at pages 92 and 93 and I quote:

23 "Unless fundamental changes are made in the way
24 commercial reactors are built, operated and regulated in
25 this country, similar accidents, perhaps with the potentially



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1 serious consequences to public health and safety that were
2 only narrowly averted at TMI are likely to recur. It is
3 less we forget, an inherently dangerous activity that
4 Congress has authorized the NRC to license...and, skipping
5 a bit of the verbage, the Rogovin group continues, in our
6 view, if a firm commitment is not made promptly to bring
7 about these changes, that is to say changes in the approach
8 of licensing, we will be exposing the public to a needlessly
9 high level of risk."

10 Again, I would emphasize that these intervenors
11 believe there has been no evidence in the post-TMI period.
12 That the Board or the other parties in this proceeding have
13 initiated the slightest change in the direction of greater
14 safety or other reforms with respect to the intervenor
15 participation which in turn might lessen that "needlessly
16 high level of risk."

17 Certainly, penalizing public spirited and volunteer
18 intervenors for not having the comparatively infinite resources
19 of the applicant, the staff and the board only in our minds
20 confirms the findings of the President's Commission and
21 the Special Inquiry Group and silencing of critics by means
22 of procedural harassment is not going to improve the quality
23 of the NRC license proceedings nor will it improve the
24 public safety, which is what we are really about.

25 In the 1971 Calvert Cliffs decision, the court has



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10-3

1 plainly said and I quote,
2 "It is moreover unrealistic to assume that there
3 will always be an intervenor with the information, energy
4 and money required to challenge a staff recommendation
5 which ignores environmental costs. NEPA establishes environ-
6 mental protection as an integral part of the Atomic Energy
7 Commission, now Nuclear Regulatory Commission's basic
8 mandate. The primary responsibility for fulfilling that
9 mandate lies with the Commission. Its responsibility is
10 not simply to sit back like an umpire and resolve advisory
11 contentions at the hearing stage. Rather, it must itself
12 take the initiative of considering environmental values
13 at every distinctive and comprehensive stage of the process
14 beyond the staff's evaluation and recommendation."

15 Certainly, the purpose of our public interest
16 groups interventions in this proceeding has been to assist
17 the board in doing precisely that. To curtail that partici-
18 pation certainly can have no effect other than the contrary.

19 Furthermore, the accompanying footnote in
20 Calvert Cliffs states,

21 "In recent years, the courts have become
22 increasingly strict in requiring that federal agencies live
23 up to their mandates to consider the public interest. They
24 have become increasingly impatient with agencies which
25 attempt to avoid or dilute their statutorily imposed role



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10-4

1 as protectors of public interest values beyond the narrow
2 concerns of industries being regulated." It has been a
3 decade since Calvert Cliffs, we would hope that we are not
4 headed in the opposite direction.

5 In your committee for a safe environment 1975, in
6 which these intervenors also participated, the U.S. Court
7 of Appeals for the District of Columbia Circuit stated at
8 note 13:

9 "We note however, that it would be unrealistic to
10 expect public interest litigants to underwrite the expense
11 of mounting the kind of preparation and presentation of
12 evidence that is ordinarily required in this type of case."

13 So the words of the Court in these instances
14 are quite clear. The obligation to conduct full and fair
15 proceedings lies squarely with the commission. The public
16 interest litigant cannot be expected by the agency to have
17 the capabilities of the more favored parties but then has
18 the agency the authority to penalize them for not having
19 those capabilities by rendering rulings which would
20 effectively exclude their active and meaningful participation.

21 And I will conclude by taking us back to Prairie
22 Island wherein the Commission found it both a proper inter-
23 pretation of the Commission regulations and a vital ingredient
24 to open and full consideration of licensing issues.

25 Where the Commission found,



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1 "By undertaking this review on our own initiative,
2 we wish to underscore the fundamental importance of meaning-
3 ful public participation in our adjudicatory process. Such
4 participation performed in the public interest is a vital
5 ingredient in the open and full consideration of licensing
6 issues and in establishing public confidence in the sound
7 discharge of the important duties which have been entrusted
8 to us, that is the Commission."

9 It would be, I think we must all agree, outrageous
10 for these intervenors to be prohibited from cross examination
11 on the issues that they have raised. In view of the fact
12 that the Board would be severely hampered in coming to a
13 reasonable balanced decision, it would be equally outrageous
14 for these public interest intervenors to be prohibited from
15 giving direct evidence on the contentions that they have
16 raised.

17 I expect now that I have finished, I'll think of
18 some more things that I would like to add to that.

19 CHAIRMAN BECHHOEFER: I'd like to ask now, is the...
20 I'm going to ask whether the applicants or staff have any
21 comments on Dr. Johnsrud's statement but I also want to
22 ask the staff about in terms of answers to your interrogatories,
23 is the supplementation that we have been talking about
24 sufficient plus what they answered in the applicant's
25 interrogatories, is that sufficient to answer the staff



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10-6

1 or not, I have not analyzed quite as closely. I did have
2 one problem with the staff's response which I guess I over-
3 looked earlier and that is that I don't have any objection
4 to Dr. Johnsrud relying on something that Dr. Kepford
5 stated at the interrogatory stage in that we don't have a
6 best evidence rule for interrogatories.

7 MR. CUTCHIN: I'm not sure I am aware of that
8 to which you refer.

9 CHAIRMAN BECHHOEFER: Well, the staff had objected
10 to some answers on the ground that Dr. Kepford wasn't
11 under oath. Dr. Johnsrud was under oath or affirmation and
12 she said she was relying on Dr. Kepford and to that extent,
13 I think we would accept that so even though the staff a
14 long time ago objected to some of the answers on the basis
15 of not being signed by Dr. Kepford...

16 MR. CUTCHIN: I believe that has been cured by
17 an affidavit from Dr. Johnsrud.

18 CHAIRMAN BECHHOEFER: Yes, well perhaps.

19 MR. CUTCHIN: I don't see the relevance to the
20 motion at hand, is my problem.

21 CHAIRMAN BECHHOEFER: No. But in terms of
22 supplementing the answers to your interrogatories also, I
23 don't think that part of it has to be done any more. I
24 didn't know...originally, you had I think probably legitimately
25 made the point but I think it has been cured and I just want



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1 to make sure that you were not relying on that.

2 MR. CUTCHIN: Not...

3 CHAIRMAN BECHHOEFER: We're trying to figure out
4 now what...we've pointed out some of the things that were
5 supplements to the applicant's interrogatories. I see not
6 too much more to add with respect to the staffs but maybe
7 I missed something in view of answers to your that you don't
8 think were adequate.

9 MR. CUTCHIN: Well, Mr. Chairman. We had addressed
10 the adequacy or non-adequacy of ECNP responses to our
11 interrogatories in a motion before the Board issued its
12 October 30 discovery order 2. As we plainly pointed out in
13 our response to the applicant's motion to prohibit direct
14 examination, the Board in that particular ruling, upon which
15 I assumed we could rely, found those responses to be improper
16 and since ECNP in its latest response has said they have
17 nothing further to add, I further presume that those interroga-
18 tory responses are still inadequate in the eyes of the Board,
19 is my problem.

20 CHAIRMAN BECHHOEFER: Well, my question is to what
21 extent did their answers to the applicants' interrogatories
22 in effect, give you the information which would adequately
23 answer yours.

24 MR. CUTCHIN: Only to the extent...

25 CHAIRMAN BECHHOEFER: Dual paperwork is something

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1 I would like to avoid.

2 MR. CUTCHIN: I agree Mr. Chairman that we are not
3 at all interested in creating more useless paper or useless
4 records but only in those instances where it can be presumed
5 that where they have no information they are saying that
6 they have no information can I glean from their responses
7 to applicants' interrogatories that we could presume the
8 same answer would apply to the staffs' interrogatories. That
9 I must say is something I have not had a chance to go over
10 in complete detail to be able to give you an interrogatory
11 by interrogatory breakdown as to which are adequate and
12 which are not. I'm at somewhat of a disadvantage in that
13 I presume I could assume that the state of the record was
14 as it existed and that the rulings of the Board would indeed
15 stand for what they stood for and that was that the state
16 of the responses to the staffs' interrogatories was that the
17 ECNP responses were inadequate.

18 CHAIRMAN BECHHOEFER: Well, to some extent that is
19 right but I was just wondering whether the...there is some
20 more information that they gave to the applicants.

21 MR. CUTCHIN: The burden there, Mr. Chairman, I
22 believe in the normal course of events is where one party
23 has in its belief responded and given information in its
24 responses to another party, it has an obligation in its
25 responses to the second party to say see so and so.



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1 CHAIRMAN BECHHOEFER: Yes. Well, if the representa-
2 tive were a lawyer, she might have known that; and I don't
3 know whether --

4 MR. CUTCHIN: That is a much overused cliché, Mr.
5 Chairman. These intervenors are nowhere near as inexperienced
6 as one seems to like to presume. They have, as has been
7 pointed out on this record today, been participating in these
8 proceedings or similar proceedings for many, many years.

9 DR. JOHNSRUD: They haven't been able to halt a
10 reactor yet.

11 MR. LESSY: We're going to ask that you not inter-
12 rupt now, madam, because you asked that Mr. Cutchin, and we
13 sat here for a half hour while you talked, and he's in the
14 middle of a sentence.

15 DR. JOHNSRUD: That's true. I apologize, Mr.
16 Cutchin. But I hope I'll have a chance to answer that point.

17 CHAIRMAN BECHHOEFER: The only thing I was trying to
18 figure out was whether some of the, some of the additional
19 supplementation of the answers to your interrogatories --

20 MR. CUTCHIN: We will go back and take a look, Mr.
21 Chairman. I'm not sure of how much it's worth. But we'll go
22 back and look.

23 CHAIRMAN BECHHOEFER: Maybe not, because we are, we
24 are going to suggest an analysis of that, of your portion of,
25 for instance, of the DES and radon; and to some extent, that'll



1 when we we get that, that'll cure -- hopefully, that'll cure
2 some of your objections.

3 MR. CUTCHIN: I presume, Mr. Chairman, that I will
4 have to live with that; but I have the same problems that have
5 been expressed here at quite some length today. And that is
6 that we don't have very much help in being able to know where
7 to start preparing our case.

8 We have asked interrogatories aimed primarily at, to
9 the purpose of getting bases for intentions; and in my view,
10 we have very little so far.

11 As to the cross-examination portion, our position is
12 similar to what it was on the response to the SEA dismissal
13 motion; and that is that we believe for similar reasons that
14 cross-examination at this point should not be prohibited. But
15 we do believe that there is more than adequate basis for
16 prohibiting direct testimony on the contentions involved.

17 (Pause.)

18 DR. JOHNSRUD: Mr. Chairman, in, in this regard, I
19 may have missed something in the August 24th order or else-
20 where, but I do seem to recall that was unclear as to
21 which of the Staff's objections to our discovery responses the
22 Board was asking us to respond to again.

23 And as I recall the Board's several orders, there
24 has not been a clarification of precisely which of those
25 discovery responses the Board wished us to reanswer, nor was



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1 there a specification, as I recall, that ECNP was to respond
2 to everything that the NRC staff objected to.

3 CHAIRMAN BECHHOEFER: I guess we did break that down.

4 DR. JOHNSRUD: No. And it, it left us with the,
5 the uncertainty as to whether we were simply to start all
6 over with every one of their requests or whether there were
7 one or two or three, to be supplemented.

8 And having asked that question of the Board in a
9 subsequent filing, and not having received an answer, we were
10 in a position to respond in our January 18th filing as we did.

11 MR. CUTCHIN: Mr. Chairman, may I add further: ECNP
12 filed a motion for a protective order which was ruled upon
13 sometime in December -- December 6th, I believe -- the one
14 that extended the date for responses to January 18th, in which
15 they asked for protective orders against having to respond to
16 certain interrogatories.

17 The Staff addressed those objections.

18 The Board ruled that they were inadequate and told
19 them to respond by January the 18th, and their response on
20 January 18th is, we have nothing further to add.

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1 CHAIRMAN BECHHOEFER: The Board, we, we thought we
2 might as well tell you what we're going to do with both ECNP,
3 the motions against ECNP and SEA.

4 As those motions are worded, we are going to deny
5 them; but we are going to require that some of the further
6 supplementation that we've been trying to discuss today. And
7 I think we'll set, I guess, April 30th as the date? or May 1st?
8 something -- May 1st as the date for responses. But we, in
9 view of Dr. Kepford's unavailability now -- well, I think we
10 will expect responses by May 1, but there may be possible
11 extensions for good cause shown. But I don't want anybody to
12 rely on their being -- because May 1 does seem reasonable in
13 terms of a mid-September hearing schedule.

14 I would also, the Board is going to also deny the
15 motion against SEA. We are going to consider that as of the
16 time you answered you said you didn't have any information on
17 the one contention, but we'll allow you to supplement your
18 answers by May 1st also.

19 If you want to analyze the radon release portion of
20 the Staff's draft environmental statement by then, you are
21 welcome to do so. And you will not be prohibited from
22 presenting any direct case on it as a result.

23 MR. SCHULTZ: To clear the record, does that mean
24 our motion for a protective order is denied?

25 CHAIRMAN BECHHOEFER: Well, it's moot, really. It's,

1 we're saying that you adequately answered in terms of, you
2 don't need a protective order, because you adequately answered
3 by saying at the moment you didn't have any information. But
4 we're also saying that if by May 1st you want to give informa-
5 tion, if you want to put in an analysis of radon, you're
6 welcome to do so -- in effect, answer the questions or to the
7 extent you can; you may not be able to answer every part of
8 the question.

9 MR. SILBERG: I presume that means that if they
10 have information as of May 1, they should provide it.

11 CHAIRMAN BECHHOEFER: If they have information as
12 of May 1, you should provide it. What you have. We're not
13 telling you to go out and get anything, but the parties have
14 to develop, have some, some basis to develop their cases.

15 They will have to present testimony to meet any
16 point that you want to raise, and they'll have to know
17 exactly what you're raising.

18 MR. ROBINSON: Then we're under the obligation to
19 provide the Applicant with information as it comes into our
20 hands, is that correct?

21 CHAIRMAN BECHHOEFER: Well, I'm saying by May 1st.
22 I don't know that you have to do it before then. If you get
23 new information after May 1st, you have to supplement. But
24 we'll give you to May 1st to provide really a basic response
25 to that question, which you gave but all it said was that we



1 have no information as of the moment. We're not penalizing
2 you at all for saying that, and we're not -- and by May 1 you
3 should tell them what information you have, and particularly
4 if you're going to, if you want to present a direct case,
5 we're going to allow you to cross-examine on that, on that
6 contention, as well as the others.

7 MR. ROBINSON: Mr. Chairman, will we be provided
8 with a ruling on our motion for a protective order?

9 CHAIRMAN BECHHOEFER: Well, we are going to issue
10 an order; but it's going to be denied as moot, on the grounds
11 you don't need. You don't need a protective order, because
12 we've said as of the date you answered, you answered adequate-
13 ly.

14 MR. SILBERG: What they're telling you is that they
15 didn't say that they didn't say that they have no information.
16 They never -- as I understand what you're saying, you never
17 said you have no information as of the date you answered.

18 CHAIRMAN BECHHOEFER: Well, we are going to --

19 DR. PARIS: If you get any information in the
20 future, you've got to, you've got to --

21 CHAIRMAN BECHHOEFER: We are not penalizing you for
22 the, whatever answer you gave.

23 MR. SILBERG: Then, then the motion is denied for
24 the protective order.

25 DR. PARIS: Yes.



1 CHAIRMAN BECHHOEFER: Well, it's denied; but you're
2 not being penalized for not having a protective order, either.

3 We're saying by May 1st, tell the applicants any
4 information you have. If you have none by then, you could
5 say so. But at some point you have to tell them what
6 information you have if you want to present a direct case.
7 Otherwise, they can't prepare for it.

8 MR. SILBERG: Mr. Chairman, I assume your order
9 means also, if they have information now, that has to be
10 provided as well, in addition to information that they --

11 CHAIRMAN BECHHOEFER: By May 1.

12 MR. SILBERG: Yes.

13 CHAIRMAN BECHHOEFER: By May 1. They should --

14 MR. SILBERG: In addition to information that they
15 may --

16 MR. SCHULTZ: Yes, we grasp that.

17 (Laughter.)

18 MR. SILBERG: Just wanted to make sure that was
19 clear.

20 CHAIRMAN BECHHOEFER: We think you should provide
21 all the information you have on that Contention 1. And if
22 you don't want to present a direct case, I suppose you don't
23 have to provide anything. We're going to allow you to cross-
24 examine. But direct case means your own witnesses and et
25 cetera: your own documents, your own witnesses.



1 MR. SILBERG: Mr. Chairman, I would object to that
2 ruling.

3 CHAIRMAN BECHHOEFER: Well, object. Feel free.

4 MR. SILBERG: There's nothing in the regulations
5 which says that you only have to supply information if you're
6 going to provide, if you're going to put on a direct case.

7 CHAIRMAN BECHHOEFER: No, we have made that ruling,
8 because you have refused to answer interrogatories about other
9 people's contentions.

10 MR. SILBERG: No, this is their contention.

11 CHAIRMAN BECHHOEFER: Well, but --

12 MR. SILBERG: They're saying, and what you've just
13 said --

14 CHAIRMAN BECHHOEFER: If they're not going to
15 present a direct case, it doesn't matter whose contention it
16 is. They, they, they, you should provide them, the applicants
17 with whatever information you have by May 1. And if you don't
18 have any, just tell them. We're not going to stop you from
19 cross-examining either.

20 Of course, we're going to limit cross-examination to
21 you know, similar subjects. We're not going to allow all four
22 parties to ask the same questions.

23 But -- and you can decide among yourselves who's
24 going to lead off on a particular contention. And if that
25 party doesn't ask some questions you want asked, you're going



1 to, you'll be free to ask. But we're going, if you ask the
2 same question, we may rule it out.

3 MR. SILBERG: Mr. Chairman, could I just clarify
4 this?

5 CHAIRMAN BECHHOEFER: Yes.

6 MR. SILBERG: Are you saying for a contention which
7 a party sponsors, they do not have to answer discovery unless
8 they're going to put on a direct case? Is that what you said?

9 So I, I really would strongly object to that.
10 There's no possible foundation for that kind of a ruling
11 anywhere in the rules of the -- or a Commission precedent.

12 MR. CUTCHIN: The Staff would also object, Mr.
13 Chairman, on the ground that if a party wishes to put on no
14 direct case, since clearly he will have the opportunity to
15 cross-examine whether he sponsored the contention or not; he
16 will also have the opportunity to file findings of fact,
17 conclusions of law, and take exceptions to the initial
18 decision.

19 But the appropriate posture for such a party to take
20 is to withdraw his sponsorship of that contention. It makes
21 the record very clear that he has no intent of putting on a
22 direct case. He is prohibited from doing so. And there's no
23 problem as to this wishy-washiness.

24 CHAIRMAN BECHHOEFER: Right. Well, if you, if you
25 provide all the information you have, then you can still

1 consider it your contention, whether you present a direct case
2 or not.

3 If you don't, if you want to not give any information
4 or don't have any information, you can so state. If you want
5 to withdraw on a particular contention, you will still be
6 allowed to cross-examine on that contention.

7 MR. CUTCHIN: The point is, he gives up no right
8 other than the putting on a direct case by withdrawing his
9 contention, if he fully participates. And I'm not sure that's
10 clearly understood.

11 CHAIRMAN BECHHOEFER: That's correct. That's
12 correct.

13 MR. CUTCHIN: I'm not sure that's clearly under-
14 stood.

15 CHAIRMAN BECHHOEFER: No, that's correct. That's
16 really what I was referring to. You retain the right to, as
17 long as you stay a party, you retain the right to cross-
18 examine everybody's contentions, as well as your own.

19 DR. JOHNSRUD: Have I just heard it said that if SEA
20 does not provide information on radon in response to the
21 interrogatory, that it will automatically be limited only to
22 cross-examining? That it will --

23 CHAIRMAN BECHHOEFER: I didn't hear you.

24 SPEAKER: Can't hear you.

25 DR. JOHNSRUD: I'm sorry. If SEA does not provide

1 information in response to the interrogatories, if it says
2 instead, "We have no information to provide," it will be
3 restricted, prohibited from giving direct evidence, and
4 limited only to cross-examination?

5 CHAIRMAN BECHHOEFER: Well, if they have no -- well,
6 that, that's correct, because if you, before, unless they
7 acquire it later -- if they say, "We have no information at
8 this time," and they acquire it later, I suppose they can
9 still present a direct case based on that. But --

10 DR. JOHNSRUD: If they say they have no information
11 "at this time."

12 CHAIRMAN BECHHOEFER: Then they can't present a
13 direct case, like putting on their witnesses -- "at this time"
14 meaning as of May 1st, which is getting to be the, pretty
15 close to the time when parties have to have that information
16 in order to prepare a direct case against, against or in
17 support of, because I don't know what the Staff's position'll
18 be, for instance.

19 MR. CUTCHIN: Mr. Chairman, I would remind the Board
20 and the parties for the record of something that the Board
21 clearly pointed out in its earlier order.

22 In order for one to make the statement that he has
23 no information, one presumes that that is a truthful statement.

24 CHAIRMAN BECHHOEFER: That's correct. That's
25 correct.

1 MR. CUTCHIN: It's not just a ploy for purposes of
2 delaying disclosure until some later, more convenient date.

3 CHAIRMAN BECHHOEFER: No, that's certainly correct.
4 If you have no information, you can say so. But it has to be
5 truthful. And then any later information you get, you
6 supplement. But otherwise, there has to be some basis for
7 other parties to prepare their direct cases, so that if by
8 May 1st you wish to withdraw from the contention you will
9 still be allowed to cross-examine and present proposed
10 findings. But you won't be permitted to present a direct
11 case, and applicants then will know what to prepare for.

12 By contrary, if you do have some information, be it
13 further completely developed or not, just state what it is.
14 And say, "This is all we've done now, and we're still further"
15 and then you won't be precluded from submitting a direct case.

16 (Brief conference.)

17 CHAIRMAN BECHHOEFER: I, I think we've --

18 MR. CUTCHIN: Could I ask one more question, Mr.
19 Chairman?

20 Since it seems that they're being given all sorts
21 of license to postpone their development of information, can
22 it be presumed by Staff and Applicant that the parties are
23 under a duty to be diligent in their development of informa-
24 tion if they intend to do so, rather than letting five-one
25 come and then it will be extended for another period and



1 another period, absent the showing of any more good cause than
2 has been necessary to date.

3 DR. PARIS: We will be very hard nosed.

4 MR. CATCHIN: That's been said in the last three
5 orders, Mr. Chairman.

6 CHAIRMAN BECHHOEFER: Yes.

7 Well, the closer we get to an actual hearing date --

8 MR. SCHULTZ: Isn't it sort of a moot point, Mr.
9 Catchin? I mean, you're going to have the hearings; and then
10 prior to the hearings we're going to have to present, you know,
11 the case that, that we are going to present at the hearings.

12 So your posturing right now doesn't really mean
13 anything, does it?

14 MR. CATCHIN: The purpose, Mr. Chairman, is that the
15 parties are entitled to disclosure of the other party's case;
16 and we are getting nothing close to that in this proceeding.

17 CHAIRMAN BECHHOEFER: Well, it's certainly correct --
18 Mr. Catchin is certainly correct under our rules --

19 MR. SCHULTZ: That's what I just said: that before
20 the hearing, the case will have to -- you know, list of
21 witnesses, the list of proposed testimony -- I mean that's --

22 CHAIRMAN BECHHOEFER: Right. But this has to be
23 done somewhat before the last time when the testimony comes in,
24 because it really -- you can't prepare direct. So -- and
25 we're going to have simultaneous filings of, of direct



1 testimony before the 21-day period for filing direct testimony
2 is all parties, and it makes it difficult if you have to then
3 plan your rebuttals. And it's easier if, if all the parties
4 know what the other parties are going to put on.

5 In any case, May 1st is going to be -- I will have to
6 look at a calendar and see that May 1st isn't a weekend.

7 MR. SILBERG: It is not a weekend. I believe it's a
8 Thursday.

9 CHAIRMAN BECHHOEFER: Oh.

10 But May 1st seems reasonable for at least the parties
11 to have some idea as a basis of first-round discovery this is,
12 what essentially are you contending?

13 I think by that time some further elaboration is in
14 order, to the extent you have it; and again, I put that caveat
15 in.

16 (Brief conference.)

17 At this point I want to talk about scheduling for
18 this conference. I wanted to find out how many people here
19 wanted to make limited appearance statements can't come
20 tomorrow? Because we only have a half-hour left, and I don't
21 think we can even finish the CAND thing in half an hour.

22 And what I'm wondering is if there'd be strong
23 objections to carrying CAND's to first thing in the morning,
24 and starting like 9:00 o'clock rather than 9:30.

25 MR. CUTCHIN: With the expectation that we would be

1 out of here by 11:00 to 11:30, Mr. Chairman: no objection.

2 It depends on the obligation of counsel to remain for
3 limited-appearance on, in the view of the Board.

4 Why could we not start much sooner? Like 8:00
5 o'clock.

6 MR. HALLIGAN: That's rather difficult. I am with
7 the feasible time, but I don't believe 8:00 is --

8 MR. CUTCHIN: The local parties drive home in 15
9 minutes; others will take hours to get there.

10 CHAIRMAN BECHHOEFER: Well --

11 SPEAKER: Berwick is not within 15 minutes, I don't
12 think.

13 DR. PARIS: Well, I wouldn't have any objection to
14 8:30. It means we got to get up awful early.

15 How many of the people who raised their hands
16 absolutely cannot come back tomorrow?

17 We have to be out of this building, we have to be out
18 of the doors of this building by 5:00 o'clock.

19 CHAIRMAN BECHHOEFER: And we don't have any choice.

20 MR. SILBERG: Then I suggest we start right now on
21 limited appearances --

22 CHAIRMAN BECHHOEFER: Okay. Let's -- we will --

23 MR. SILBERG: Talk quickly.

24 CHAIRMAN BECHHOEFER: I don't think we have anything
25 further of the ECNP or SEA motions. And so let's -- wait'll I

1 get my list here.

2 DR. PARIS: Let's don't spend time --

3 CHAIRMAN BECHHOEFER: Well --

4 DR. PARIS: Just let them come up and introduce
5 themselves.

6 CHAIRMAN BECHHOEFER: Yes, I think the people who are
7 on the -- if you know that you're on the list, and also they're
8 other people who can't get back, I'd like to take the people on
9 the list first.

10 I might add we are going to take limited appearances
11 at other prehearing conferences and at the evidentiary hearing.

12 And in response to several requests, we are going to
13 try to set up either evening or Saturday hours for that, at
14 least one session, later in the proceeding, not this time.

15 So --

16 MR. ROBINSON: A point of clarification. A limited
17 appearance today does not preclude one from making a limited
18 appearance at a future proceeding, does it?

19 MR. CUTCHIN: I think one gets one bite at the apple,
20 Mr. Chairman.

21 CHAIRMAN BECHHOEFER: Well, strictly, one usually
22 just gets once. There are, there's a lot of leeway. I'm not
23 sure that we would enforce one. We would not, we would hope
24 that people don't get up and repeat what they've said.

25 We also do not want a member of an intervening group

1 to make a statement on an issue in controversy, unless they
2 disagree with what their group has to say, because a member of
3 an intervening group's point of view should be set forth by
4 that group as part of the hearing. And we can't, we really
5 couldn't take cognizance of statements not under oath on an
6 issue that's in controversy, as long as they're being presented
7 by the same party that has raised the -- or who is involved in
8 the issue.

9 So, for members of the particular groups, we will not
10 accept limited-appearance statements on matters that their
11 groups have raised.

12 MR. HALLIGAN: One final point, Mr. Chairman: did
13 you say it was, could it be 9:00 o'clock when we begin on
14 Citizens case or -- are they limited-appearance people who
15 want to talk early as to tomorrow morning? Or -- I'm not sure
16 what -- I mean I think --

17 DR. PARIS: You can be here at 9:00?

18 MR. HALLIGAN: Yes, sir.

19 DR. PARIS: We'll start with you at 9:00.

20 CHAIRMAN BECHHOEFER: Well, I don't know. But I know
21 we don't have time this afternoon. That was --

22 MR. HALLIGAN: Well, I would also ask the Chair to
23 invite the Pennsylvania Department of Environmental Resources
24 to make statements, a position on their activities as far as
25 the licensing or regulating of their role in this licensing



1 or regulating of their role in this licensing proceeding. I
2 would -- could you ask them to present a, a statement for the
3 record as to what they've been doing involved in the Berwick
4 proceeding to date.

5 We feel that this is very important to our case and
6 to the --

7 DR. PARIŞ: Mr. Halligan, you are going to be here
8 in the morning, and right now you're taking time that some
9 people -- they're going to cut out some people.

10 MR. HALLIGAN: Well, these gentlemen may not be back
11 tomorrow unless they're invited.

12 CHAIRMAN BECHHOEFER: Yes, I think it's up to the,
13 the -- it's up to the -- they're admitted as interested States;
14 and we can't tell them to make a statement. They, they are
15 welcome to, to make a statement if they want. But we're not
16 going to tell them to.

17 MR. VOGEL: I'll make a general statement:

18 As far as we're concerned right now, we have a
19 limited amount of personnel to commit to TMI. And we have the
20 same problem you do; it's difficult for us to get up here. I'm
21 not a nuclear attorney; I'm not a specialist on it. I came up
22 here because I was concerned about the motions being made today.
23 I wanted to make sure that the full participation rights of the
24 intervenors were maintained. And I feel that --

25 MR. HALLIGAN: You'd better be here tomorrow then.

1 Much of my statements will revolve around the DER and the
2 documentation from the Commonwealth.

3 MR. VOGEL: Well, one problem you may be having in
4 the documentation you have, is just a shortage of personnel
5 to respond to your request.

6 Now, if you want to address those concerns to me
7 individually, I'll try to supplement any request you have,
8 within our means.

9 MR. DORNSIFE: Well, if you were here and present,
10 we could probably respond to the questions of the Chair --
11 that's what I meant.

12 A representative of the State, I believe, should be
13 here; but however --

14 MR. HALLIGAN: We have other commitments, too.

15 CHAIRMAN BECHHOEFER: We can't compel the representa-
16 tive of the State, particularly if it's not their, if they're
17 not talking about their contention or anything like that, they
18 don't have any contentions. But if they're not, we can't
19 compel them to be here.

20 MR. DORNSIFE: We think they should, however; but go
21 ahead with the other --

22 CHAIRMAN BECHHOEFER: And -- but they certainly are
23 welcome. And we invite them. . But we aren't going to compel
24 them to be.

25 MR. VOGEL: Well, I just do want to point to the

1 Citizens that there is a shortage of personnel to deal with
2 these problems. We're looking for a nuclear attorney right
3 now. We're looking for another nuclear engineer. And you
4 know, those decisions aren't made by me; and I can't really
5 make any statements about them, other to say that I know we're
6 having shortages and we're trying to do something about them.

7 MR. HALLIGAN: But the Applicants and the Staff will
8 not know how to respond to some of the statements we'll make
9 here, because there was interrogatories -- there was discovery
10 placed on the State, and we did not receive the answers; and
11 therefore, we couldn't respond to their interrogatories and
12 say, "This is a problem."

13 We are in a position where a motion is to dismiss us,
14 and some of the information we were supposed to get from the
15 State is not forthcoming.

16 CHAIRMAN BECHHOEFER: Mr. Halligan, we'll hear you
17 tomorrow; and we'll have to hear what documents you need.

18 MR. HALLIGAN: All right.

19 CHAIRMAN BECHHOEFER: And we'll have to hear what
20 documents you say you need.

21 MR. HALLIGAN: Right.

22 MR. DORNSIFE: We'll be glad to give you whatever we
23 can.

24 DR. JOHNSRUD: Mr. Chairman, I just wanted the record
25 to reflect apologies, certainly on my behalf, for the



1 inconvenience to the limited-appearance participants who've had
2 to sit here all day.

3 Our sincere apologies to them.

4 CHAIRMAN BECHHOEFER: I have the same regrets, but we
5 had thought we would get to the limited appearances right after
6 lunch. Didn't work out that way.

7 We invite really whoever wants to lead off may. I, I
8 have a list; but I didn't think I would read the list until
9 tomorrow, so that the people who couldn't get here would have
10 a chance to be heard today. So --

11 MS. THOMPSON: I wish to have a clarification: does
12 it mean that if I do indeed speak today I will not be able to
13 speak at the hearing?

14 I am speaking today only to the question before us,
15 the motion being presented here. I am not speaking on other
16 issues.

17 (Brief conference.)

18 CHAIRMAN BECHHOEFER: No, the Board thinks that --
19 particularly if you're talking about what we specifically are
20 dealing with today, we will not preclude you from making a
21 later statement on some other subject. We don't want to hear
22 the same thing over and over and over again. And it's in the
23 record, and we will read the whole record, so that we will not
24 preclude people from making additional statements.

25 MS. THOMPSON: Where do I --

1 DR. PARIS: Would you come up here so the reporter
2 can hear you?

3 (Pause.)

4 CHAIRMAN BECHHOEFER: And identify your name; if you
5 represent an organization, say so.

6 MS. THOMPSON: My name is Florence Thompson.

7 CHAIRMAN BECHHOEFER: And I might also say, if -- I
8 think it's a good idea to put your address in the record also.

9 MS. THOMPSON: 730 East Second Street, Bloomsburg,
10 Pennsylvania.

11 I am here to request that the Atomic Safety and
12 Licensing Board deny PP&L's three motions that ask for the
13 dismissal of Citizens against Nuclear Danger from the
14 licensing procedure and the limiting of participation by the
15 Environmental Coalition on Nuclear Power and Susquehanna
16 Environmental Advocates with respect to certain contentions.

17 There are several reasons why my request deserves
18 serious consideration:

19 One, the intervenors must, of necessity, speak for
20 all the citizens who are opposed to the licensing of the plant,
21 since the intervenors are the only ones with legal standing in
22 the licensing procedure. To deny them their full day in court
23 is to deny due process to them, and to all the plant opponents
24 whom they represent.

25 Two, the NRC's Special Inquiry Group, chaired by

1 attorney Mitchell Rogovin, has concluded that the licensing
2 procedure is a, quote, "sham," unquote. At the point when
3 citizens are allowed to enter the licensing hearings, the
4 report states, quote, "the staff and the utility applicant are
5 on the same side . . . because their differences have already
6 by resolved," unquote.

7 This would seem to be the case, indeed: public
8 participation is mere window dressing -- something that must
9 be gotten through, however painfully, so that the NRC can go
10 about its real business, that of approving the nuclear power
11 plant operating license.

12 I urge the Atomic Safety and Licensing Board staff to
13 look long and hard at its mind set in this matter, and to
14 listen, with truly open minds, to each and every contention
15 raised by the intervenors.

16 Three, utilities are not infallible. Utilities have
17 told us nuclear power would be too cheap to meter; utilities
18 have told us to go all electric, because electricity has always
19 gone down in price; utilities have told us electricity demand
20 would always got up 6 percent a year, making it necessary to
21 build more and more plants.

22 In fact, PP&L told us that there would be brownouts
23 by 1981 if the nuclear plant under discussion were not built.
24 PP&L has been wrong. Maybe it's time to listen to John Q.
25 Public -- to the consumer of the electricity, to the resident

1 who will live near the plant. Maybe there's truth to be found
2 in what the common folk say. Certainly, they would have to try
3 real hard to have as poor a batting average as PP&L.

4 Let's listen to them. Let's put aside all the fancy
5 legal maneuvering that PP&L is much more financially able to
6 engage in than the intervenors, and listen to every last thing
7 the intervenors have to say. I know that I, and others like
8 me, have for seven or eight years requested PP&L to reconsider,
9 to give careful attention to converting the nuclear power plant
10 to a coal/solar/garbage combination. Even PP&L might concede
11 now that that would have been the right thing to do then.

12 I am convinced that, even now, such a conversion
13 would result in economic, environmental, and emotional benefits
14 to everyone involved: consumer, resident, and PP&L itself.

15 I wish also to request that consideration be given to
16 making copies of all the documents involved in this licensing
17 procedure available at the Federal document depository at
18 Bloomsburg State College. Having them available only in
19 Wilkes-Barre imposes an undue hardship on the residents nearest
20 the plant.

21 It is also a hardship for the residents most affected
22 to have to travel to Wilkes-Barre to participate, however
23 briefly, in the proceedings. I urge consideration of moving
24 the proceedings to Berwick or to the Columbia County Court-
25 house, Bloomsburg.

1 Thank you.

2 CHAIRMAN BECHHOEFER: Ms. Thompson, could you give
3 that to the reporter?

4 MS. THOMPSON: Yes.

5 CHAIRMAN BECHHOEFER: It will assure that an exact
6 duplication of what you said gets into the record.

7 (Pause.)

8 Next volunteer?

9 (Pause.)

10 Are you on this list here or not?

11 MS. BREI: I'm 15 on the list.

12 CHAIRMAN BECHHOEFER: Okay.

13 MS. BREI: As a mother of five young children, I
14 traveled three hours today to express my concern that citizen
15 intervenor groups be able to fully participate in the nuclear
16 power plant licensing procedure and also to express my objec-
17 tion to the operation of the Berwick plant.

18 I feel that the locating and operation of a nuclear
19 power plant near anyone's home is a serious enough situation
20 that any person should be able to question it and have a say in
21 the matter.

22 The fact that several concerned citizen groups are
23 intervening into the licensing of the PP&L nuclear reactors
24 near Berwick gives me as a citizen some feeling of security
25 that the safety and appropriateness of the nuclear plant is

1 being given attention. Further, I have gotten well acquainted
2 with one group in particular; that's the Environmental Coalition
3 on Nuclear Power -- by attending meetings, receiving publica-
4 tions, and talking with members -- and find the group to be
5 extremely honest, informed, dedicated to pursuing the truth,
6 and committed to resolving disagreements with the nuclear
7 industry in a legal and peaceful manner.

8 I feel a significant degree of protection from the
9 fact that this group is participating in the atomic licensing
10 procedure.

11 Unfortunately, my feeling of security diminishes when
12 I hear absurd extensive interrogations with which the utility
13 company has chosen to harass citizens and force them out of the
14 critical dialogues of the licensing process.

15 This whole situation tells me that the utility must
16 have something very bad to hide from the public about their
17 nuclear reactor, or that it must be extremely important finan-
18 cially to the utility that the nuclear plant go on line, and
19 that the utility will go to any length to keep the truth from
20 reaching the public.

21 I think it's especially important to encourage
22 concerned citizens groups in the Berwick area to participate
23 fully in the licensing process, because rather than in a highly
24 populated urban area, the region is less populated and less
25 centralized and may have to work harder to protect individuals



1 within the area. What I am saying is that I believe that no
2 one should be forced to live with the dangers of a nuclear
3 power plant. If the reactor at Berwick can't be safely put in
4 New York City it should not be put in a less populated place
5 either. People around Berwick have just as much right to good
6 health and thrifty utility rates as their urban friends.

7 From reading documents and quotations from the NRC, I
8 am aware that our safety from the nuclear fuel cycle is
9 definitely not assured by any governmental regulating body.
10 The less concerned citizens participate, the less safety we
11 will have. And after reading the Brookhaven report and the
12 summary of the Heidelberg report, I feel my family's health and
13 our soil and our food supply may be irreversibly jeopardized by
14 the nuclear fuel cycle.

15 So -- as for the reactor at Berwick, I am against it
16 being licensed and operated. With billions of dollars put out
17 for the nuclear power plant, anyone can see that PP&L is
18 fighting for its economic life to get the reactor on line. It
19 is hard to blame the utility for not wanting to go broke, and
20 I am sure that they did not know the decision to build the
21 reactor would be a poor decision.

22 And yet a mistake must be faced.

23 We are learning more about the dangers of the
24 nuclear fuel cycle every day. We cannot chance the health of
25 local citizens and the contamination of our food and water



1 supply or the welfare of the utility's economic situation.

2 I believe the reactor at Berwick is not needed, will
3 increase utility rates, and would provide for a large area an
4 unnecessary health hazard over which the citizens would have no
5 control.

6 CHAIRMAN BECHHOEFER: Thank you, Ms. Brei.

7 (Applause.)

8 CHAIRMAN BECHHOEFER: Ms. Brei, can you give that to
9 the reporter?

10 (Brief conference.)

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11 MR. ELIOT: Charles P. Eliot, junior, 113 North
12 Rankin Street.

13 Despite the failure of personnel, mechanical failure,
14 faulty construction, and procedural foul-ups, there was not a
15 single life lost at Three Mile Island accident. As far as I
16 have heard, there has not been a life lost at any nuclear
17 power installation as the result of plant failure.

18 I'm sure the record of other forms of generating
19 electricity:

20 Coal, thousands of fatalities.

21 Gas, thousands of fatalities.

22 Oil, thousands of fatalities.

23 Hydro, thousands of fatalities.

24 Windmills, numerous.

25 Sun power, some.

1 Now consider some of the other dangerous conditions
2 which we encounter:

3 Bathtubs, thousands of fatalities. Should we
4 eliminate them?

5 Hunting, thousands of fatalities. Should we
6 eliminate them?

7 Boating, thousands of fatalities. Should we cut
8 them out?

9 Automobiles, thousands of fatalities. Should we
10 eliminate them?

11 Airplanes, thousands -- and trucks, thousands of
12 fatalities. Should we eliminate them?

13 Airplanes, thousands of fatalities. Should we
14 eliminate them?

15 Nuclear energy plants up to the present have an
16 enviable safety record compared to the above.

17 There could be some future potential danger. There
18 could also be danger to you in attending this meeting. You
19 might have slipped on the steps leading into this building and
20 had a fatal accident..

21 Activities of Antinuclear groups is delaying
22 construction and forcing the building cost to escalate, which
23 means eventually higher cost for electricity, which directly
24 affects the livelihood of the elderly, who are mainly dependent
25 on fixed incomes.



1 I would much rather see the energy of the anti-
2 nuclear groups engage in some activity such as standard weight
3 for trucks of approximately 73,300 pounds nationally, which
4 would save lives and roads. Within the last week I have had a
5 niece and her 21-year daughter killed as a result of a tractor
6 trailer hitting their car from the rear. I speak with some
7 feeling about the better control of trucks.

8 Thank you for the opportunity to allow me to express
9 my views.

10 DR. PARIS: Thank you.

11 CHAIRMAN BECHHOEFER: Thank you.

12 Before we get to the next limited-appearance request,
13 I have one request of the applicants, which I forgot to mention
14 earlier. In connection with -- and I wanted to do this while
15 Dr. Johnsrud was still here. In connection with ECNP's
16 contention 18, the Applicant seemed to rely on the amendments
17 number 4 and 5 to the construction permit environmental report.

18 Well, without -- we're not sure that anybody has
19 access. I know the Board, without going way out of its way
20 down to the Philips Building doesn't have access to that at
21 this stage.

22 Could the -- this may be a discovery request on the
23 part of the Board, but the Board would like copies of the
24 particular amendments which your environmental report, section
25 5-5 of your operating license environmental reports, says you're

1 relying on those two sections.

2 The Staff's draft environmental statement also says
3 that the assessment in those sections is adequate.

4 Well, the Board has no way of telling what that
5 assessment was. I'm not sure that the parties have had a
6 chance to know what that assessment was. That's on herbicides
7 and that kind of thing.

8 MR. SILBERG: Those amendments, of course, would not
9 deal with contention, which is the use of the presently pro-
10 posed herbicides, since at the time that, time those amendments
11 were prepared the then-approved herbicide was still being
12 planned.

13 I don't think that those amendments go to that
14 contention; but of course we'll be happy to supply you with
15 copies.

16 CHAIRMAN BECHHOEFER: Well, what I was trying to find
17 out is what, what should they --

18 There was some dispute between ECNP's answer and
19 your, your statement that they said they didn't have any
20 information.

21 MR. SILBERG: As I understand it --

22 CHAIRMAN BECHHOEFER: I don't, we don't know what the
23 information is; and what I don't know is whether that analysis
24 includes an evaluation of anything other than 245-T.

25 MR. SILBERG: I don't believe that it does.

1 CHAIRMAN BECHHOEFER: We don't know that.

2 (Brief conference.)

3 MR. SILBERG: I don't believe that amendments 4 and 5
4 include an analysis other than 245-T.

5 The dispute between ECNP and ourselves did not go to
6 any information that was in amendments 4 and 5. We inter-
7 preted their response to say they had no information in answer
8 to the interrogatories.

9 They said, "Oh, no, you can't say we have no informa-
10 tion. Read what we said."

11 And we never could quite determine what they had
12 said. I think in private conversations with ECNP, Dr. Kepford
13 indicated to me that they really had not had an opportunity to
14 do any work on the substitute herbicides that we're now
15 proposing to use, but that they didn't again want to be
16 excluded from litigating the contention because they hadn't
17 done their homework.

18 CHAIRMAN BECHHOEFER: Well, that's what I was trying
19 to figure out: if any substitute herbicides had been proposed.

20 As far as we can see, we don't have anything in --

21 MR. SILBERG: Oh, yes, and -- well, we have proposed,
22 we have proposed them. And there's, there are letters on the
23 file and the part -- and we supplied the names and information
24 to ECNP in our discovery requests. They have the --

25 CHAIRMAN BECHHOEFER: Oh, I see. We were looking

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1 through our records and saw nothing that would indicate what a
2 substitute would be.

3 MR. SILBERG: I believe if you look at our answers to
4 ECNP's interrogatories, you will find information on the four --
5 let me see if I can quickly find it for you.

6 DR. PARIS: Well, you can just give us the date.

7 MR. SILBERG: Well, they're all filed on June 29.

8 CHAIRMAN BECHHOEFER: Okay, we'll find it. We must
9 have missed it. I was trying to figure out what, what was the
10 current proposal.

11 MR. SILBERG: Yes, if you look at our answer to ECNP
12 Discovery Request 6, it's on pages 3, 4, 5, and 6 of our June 26
13 answers to ECNP discovery, you'll find the herbicides listed;
14 and there are also some exhibits which we supplied directly to
15 ECNP of contract, sample contracts used in our herbicide and
16 physical clearance programs.

17 I don't believe we transmitted copies of those
18 documents.

19 CHAIRMAN BECHHOEFER: Yes. Oh, I remember getting
20 the cover letters; and I wasn't sure what, what was in there.
21 Okay.

22 MR. SILBERG: If you wish those contracts, we'll of
23 course be happy to send you copies of them.

24 CHAIRMAN BECHHOEFER: Well, I was -- we were -- I
25 don't really care. But we were trying to figure out which,



1 which interrogatories they're going to have to supplement.
2 And -- whether there as any adequate information on which they
3 could -- whether they knew what herbicides they were supposed
4 to talk about.

5 MR. SILBERG: Oh, yes. And we had earlier put in a
6 letter to the record, several months earlier, after the EPA
7 had acted, in which we identified to the Staff the substitute
8 herbicides that we were planning to use.

9 That's been on the record for over a year now.

10 CHAIRMAN BECHHOEFER: I don't think we got it, but
11 that's all right.

12 Okay.

13 MR. AMORY: My name is James Amory, A-m-o-r-y; I'm
14 a farmer from Raysville, R-a-y-s-v-i-l-l-e, in Bradford County.

15 This is the first hearing of this kind that I've ever
16 been at. And I thought I would take the time to talk about how
17 the process that I've seen here affects me as a member of the
18 public.

19 And it seems to me that there's really two purposes
20 for this whole hearing procedure. One is to assure the safety
21 of the plant; and two is to persuade the public that the plant
22 is safe. I would say that all parties have an interest in the
23 first of those. Everyone wants to see a safe plant.

24 I would say that industry and the Nuclear Regulatory
25 Commission especially have an interest in two, in persuading



1 the public that this is, that they aren't being threatened,
2 that they won't be threatened by the building of this plant.

3 I mentioned those purposes because it seems to me
4 that they lead to the real reasons for there being intervenors.
5 And the real reason is because there is a need in these pro-
6 cedures for independent review of the planning that goes into
7 these plants.

8 The problem certainly is that industry has started at
9 least with all the information about, that may affect the
10 safety of these plants. And the intervenors have been in the
11 position of trying to find out what that information is and
12 criticize it, more or less as a gadfly.

13 The hearing procedure is not a debate to decide if
14 the intervenors would make better plant managers of nuclear
15 plants than the industry. The intervenors have a particular
16 role to play, and I feel very strongly that they should not be
17 foreclosed from playing that role.

18 Their contention seems to be that all of these
19 interrogatories, which I understand -- how many interrogatories
20 actually are there?

21 MR. CUTCHIN: A hundred and fifty.

22 DR. JOHNSRUD: Twenty-seven hundred.

23 (Laughter.)

24 MR. AMORY: Well, there's an even split.

25 (Pause.)



1 MR. AMORY: The question has been raised here about
 2 harassment. And it seems to me that the Board must take great
 3 pains to see that harassment is not carried out, because it
 4 limits the ability of the intervenors to do their job; that
 5 limits the safety of the plant; and it particularly persuades
 6 the public, or somebody like myself who is appearing, that,
 7 that the system is rigged and that we are not going to have a
 8 safe plant.

9 And that is particularly damaging, it seems to me, to
 10 industry.

11 The presence of the intervenors is the best guarantee
 12 that we have that there, that the plant will be safe, and that
 13 the public can be persuaded that the plant is safe, however
 14 uncomfortable all these proceedings are.

15 Getting around to the question of the interrogatories,
 16 it seems to me that the Board has an absolute requirement that
 17 it decide when interrogatories are harassment and when they
 18 aren't.

19 And my understanding of an interrogatory is that, the
 20 purpose of it is to avoid something called "surprise," is that
 21 right?

22 MR. SILBERG: One of the purposes.

23 MR. AMORY: Well, it would seem to me to be sensible
 24 for the Board to question a given interrogatory as to whether
 25 it would, as to whether the answer to it could afford a

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1 : surprise to the, to the industry or not. And I think that the
2 Board should also err on the side of allowing the intervenors
3 to have some surprises, because after all the industry has got
4 to get used to dealing with surprises and have in mind --

5 (Laughter.)

6 MR. AMORY: -- have in mind that hydrogen bubble at
7 Three Mile Island, which they were not given even two days to
8 deal with that surprise.

9 One of the problems that the -- it seems to me that
10 the intervenors are entitled to some kind of guidelines from
11 the Board as to what interrogatories they have to answer and
12 what not, and you are not giving those guidelines. You are
13 leaving them with their 150 or 2,700, whichever it is, questions
14 to, to answer. And then, after they've made an effort on that,
15 then you seem to be, you're willing to give a decision as to
16 whether that answer is a proper answer or not.

17 I think that that is limiting and hampering the
18 proper role of the intervenors.

19 I may say as a member of the public I was very
20 disappointed in the hearings. I'm not persuaded that we're
21 going to get a safe plant out of this. And I think that I
22 have to lay most of that not on industry, not on the inter-
23 venors, who are playing their proper cat-and-dog role, because
24 that's, that's what it really is, but on the Board, which is
25 not issuing the kind of guidelines that would allow the



1 proceedings to go forward and would not unduly overload the
2 intervenors in the exercise of their duty.

3 I also feel that one of the reasons why these
4 intervenors haven't responded to the interrogatories is that
5 they fear that their answers are going to be used against them
6 in some way and that if you could give them some guidelines as
7 to what sort of answers are going to be used against them and
8 what aren't, that they would be in a better position to answer
9 interrogatories.

10 If indeed interrogatories from industry to the
11 intervenors are even needed, to assure the safety of the plant
12 and persuade the public that the plant will be safe -- in all
13 of these matters it seems to me to make sense to go back to the
14 purposes of these hearings to assure the safety of the plant
15 and persuade the public.

16 And having a good debate may or may not fulfill those
17 purposes.

18 The point is to get the intervenors and industry
19 playing their proper role. And in this I think that the Board
20 has really fallen down.

21 And I, as a member of the public, first hearing I've
22 been at, I'm very disappointed.

23 Thank you.

24 (Applause.)

25 CHAIRMAN BECHHOEFER: Thank you, Mr. Amory.

1 DR. LARMI: My name is Oliver J. Larimi, Ph.D., RD 4,
2 Bloomsburg.

3 I have two quick comments. The first is that, given
4 the motions that are before the Appeals Board today, I get the
5 impression that Mr. Silberg would rather litigate with house-
6 wives than with lawyers and Ph.D.'s. And I am surprised and
7 distressed at this at least appearance. And I hope that this
8 does not reflect the change in management that has occurred in
9 PP&L, when Jack Busby stepped down and Robert Campbell took
10 over.

11 PP&L has developed a reputation for being a utility
12 that has met fairly its critics in open forums, and I hope that
13 this motion by Mr. Silberg does not indicate that the change at
14 the very top of the corporation.

15 My second point is that if full participation by the
16 public is not allowed in presenting direct testimony as well as
17 in cross-examination, then those who say that the legal process
18 is a sham, is a fraud, it is just window dressing -- gives
19 ammunition to those who wish to pursue their concerns about
20 nuclear power in nonlegal ways.

21 And I would urge the Board to consider that when the
22 public perceives that the legal process is unresponsive, and
23 when people are allowed to play legal games and get issues
24 dismissed on technicalities, that the public becomes
25 impatient with the legal process and the public seeks to



1 express themselves in nonlegal ways. And I think that the
2 Environmental Coalition and the other intervenors are express-
3 ing their faith in the, the process by going through; and if
4 they are cut off, then those on the other side who said, "This
5 is just a waste of time; you're spinning your wheels," that
6 they will just be given more ammunition.

7 So with that, I'd like to close.

8 Thank you.

9 DR. PARIS: Thank you, Dr. Larmi. How do you spell
10 your last name, sir?

11 (Applause.)

12 DR. LARMI: L-a-r-m-i.

13 DR. PARIS: Thank you.

14 (Brief conference.)

15 MS. CRUMLEY: I'm Jean Crumley, and I'm here from the
16 Harrisburg area; and I have an awful lot of experience in
17 digging and delving in NRC records and other records. And I
18 tried to have the ECNP and also the PANE, which is "pane" and
19 it's People Against Nuclear Energy in Middletown and that
20 general area.

21 And we are going to do our darndest to put pressure
22 on the Commission, which already has an ability but not a
23 willingness to fund intervenors. And there was a Mr., an
24 attorney, Royceman, who testified quite at length with refer-
25 ence to Johnsrud and Kepford very favorably and pointed out



1 that they did an awfully good job without any support other
2 than little scraggly contributions from us individual people.

3 And, and he said -- and I truly believe -- that if,
4 well, he said an awful lot of things. And I was going to say
5 an awful lot of other things. But I think this is a very
6 important point:

7 That if, if an intervenor were properly funded and
8 could hire his experts and present a case that there would be
9 a very good chance there would be no further licensing of
10 nuclear plants with all the facts and facts and figures and
11 all the new information that's come forth.

12 I'd like to say that I may be an example of a stressed
13 person. I saw myself on tv one evening when Judith Johnsrud
14 was talking, and I was extremely painfully aware of the fact
15 that she was really calming down her facts for the people of
16 Middletown, so that they would be aware that they were, you
17 know, still in danger but not scare them to death. And I was
18 aware that it was a real terrible thing to talk about.

19 And I saw myself on tv, and I really looked stressed.
20 I was kind of rocking back and forth, and I said, "Oh, golly,
21 you know, that's me. And I'm not, I'm really relatively
22 intelligent. And I don't even live that near it."

23 And so I'd like to say that with this group PANE now
24 trying to get, just to get the psychological contention
25 acknowledged is to me an insult to the people. But if, if we



1 don't get it, then I think that also is an insult to the people.
2 And I, I feel that it's going to be a terrible strain; but it's
3 going to be something that the people of that five-mile area
4 and other, a little further maybe if they're, if they're
5 generous with their, allow it some contention -- that they will
6 submit themselves to cross-examination on very personal health
7 and psychological elements, which I think is a disgrace.

8 And I was at the Middletown meeting last night. I
9 went, and I had gone down to the NRC headquarters in Middletown.
10 And I got this -- I'm getting very excited here.

11 Anyway, I'm normally calm and cool.

12 But this is a report of a special task force on the
13 Three Mile Island cleanup. And throughout it, this particular
14 task force points out that not only MedEd is remiss, but NRC
15 itself is remiss in, in many respects.

16 And that's something that's terribly important,
17 because if you can't trust the NRC then, you know, where are
18 we going to be? Because apparently the DOE is very, has its
19 own problems. I mean, this is just our problem down there:
20 that we, we, we feel very much still in danger. And we at
21 first thought we could trust NRC to get this thing started;
22 and we feel that they're remiss in not being more expeditious
23 in their own action.

24 And here on page IV-9: "what is the relative
25 priority of clean-up for the NRC and the lives at sea? Due to



1 financial difficulties, Mr. Robert Arnold said that cleanup of
2 TMI-2 is fourth priority. GPU has placed the head of TMI-2
3 cleanup in their list of priorities: Number one, maintenance
4 of a safe condition at TMI-2," which is all well and good, and
5 I hope that it's true.

6 And then, of all things, the second priority is
7 "preparations for restart of TMI-1." And I went to the ACRS
8 hearing which was the first that was held in Middletown, I guess
9 the only one, when MedEd was presenting their plans; and I have
10 followed that, and I have read an awful lot of ACRS. And I
11 just felt at the time that it was a terrible waste of MedEd's
12 time, money, and effort and foolish of the NRC to even think of
13 having restarted with that monster of TMI-2.

14 'Okay, that's the second priority.

15 And then third was refueling and restart of the
16 Oyster Creek plant, which is in New Jersey. Then there are
17 other details of that.

18 It is the task force. This is the NRC saying, or a
19 panel of NRC people saying, that NRC has also placed a low
20 priority on TMI-2 cleanup, relative to review of operating
21 plants, developing and implementing the TMI action plan and
22 taking action on near-term operating licenses. A very limited
23 staff has been assigned to the TMI support group, both at
24 headquarters and on-site. Temporary assignments of staff
25 continue to be made to the on-site group, which has a permanent



1 core group of only -- excuse me -- three to four professionals.

2 Although the Commission itself has not specifically
3 placed a lower priority on reaching decisions for the TMI-2
4 cleanup activities, the Commission's lack of ensuring that
5 definitive cleanup criteria are established and the need for
6 the Commission to approve of all activities which could provide
7 releases has led to the Staff's construction that the Commis-
8 sion considers this to be a low-priority activity.

9 That's not very heartening. And I'm all for an
10 awful lot more of intervening. And I wish I had -- I halfway
11 wish I had become an intervenor. And I'm trying my best to
12 support people who are intervenors down there.

13 And I do thank you for staying a little past time,
14 but I did come a long way. And I wanted to say this, because
15 it's terribly important.

16 CHAIRMAN BECHHOEFER: Thank you.

17 MS. CRUMLEY: I also would like to say that I
18 certainly endorse the Kemeny Commission and
19 the Rogovin I have read and read and read. I have tired. I
20 have been tired, but not bored by reading it.

21 I, I, I wish that the Kemeny Commission background
22 reports were in a whole lot of libraries, so that other people
23 could read what went into the finished reports. And I'd like
24 to read some more in the Rogovin background. And I, I, I did
25 not properly identify myself, I guess:



1 But I'm Jean Crumley --

2 CHAIRMAN BECHHOEFER: Yes, we have your, we have --

3 MS. CRUMLEY: I know, but I don't say where I'm from.
4 Anyway, I'm from Summerdale, which is on the west shore of the
5 Susquehanna River.

6 But the way I really got involved is that I'm a
7 summer cottage resident of Beach Island, which is just west of
8 Three Mile Island. And we have a well-founded concern about
9 our health, due to the routine releases.

10 And I will finish on that note.

11 CHAIRMAN BECHHOEFER: Thank you, Ms. Crumley.

12 (Applause.)

13 (Brief conference.)

14 CHAIRMAN BECHHOEFER: Could you speak up a little
15 bit? I can't hear you.

16 MS. SHIVELY: Good afternoon. My name is Vita
17 Shively, and I am here to address you on behalf of my husband,
18 Robert, and myself. He is unable to be here because of his
19 work commitment. Our mailing address is P.O. Box 145, Stocker-
20 town, Pennsylvania.

21 I would like to thank you for the opportunity to
22 speak at this licensing hearing.

23 We are life-long residents of Pennsylvania. We live
24 within approximately 55 miles of the Berwick plant.

25 First, we would like to address the motions which



1 the Applicant, Pennsylvania Power & Light, has made, which if
2 granted would result in the dismissal of Citizens Against
3 Nuclear Dangers (CAND) from this proceeding and would limit
4 the participation of the Environmental Coalition on Nuclear
5 Power (ECNP) and Susquehanna Environmental Advocates (SEA) with
6 respect to certain issues.

7 We have long been aware of the dangers of nuclear
8 power through extensive reading, attending various meetings
9 and lectures, et cetera. We also have been aware of the need
10 for public input into the licensing of a nuclear power plant.
11 To this end, we feel that it's irresponsible to limit or to
12 dismiss meaningful public participation from this important
13 proceeding.

14 In the case of ECNP, as one example, they have made
15 many important contributions concerning the safe operation of
16 nuclear power plants, a few of which are --

17 Establishment of the policy of requiring coolings
18 towers on inland water bodies, as in the 1974 Peach Bottom
19 case.

20 Requirement of additional iodine hold-up systems,
21 in the 1973 Three Mile Island Unit I case.

22 And they forced the NRC to vacate the radon number,
23 74.5 curies, from the standard S-3 table, summary of the
24 environmental effect on the nuclear fuel cycle, and to admit
25 under oath that the total number of curies attributable to



1 Radon 222 will amount to billions of curies, premature deaths,
2 per annual fuel requirement per reactor. This is now currently
3 in litigation.

4 We would also to quote briefly from the Rogovin
5 report the following, from page 143:

6 "Nonetheless, intervenors have made an important
7 impact on safety in some instances -- sometimes as a catalyst
8 in the prehearing stage of proceedings, sometimes by forcing
9 more thorough review of an issue or improved review proceedings
10 on a reluctant agency. More important, the promotion of
11 effective citizen participation is a necessary goal of the
12 regulatory system, appropriately demanded by the public."

13 We urge this board to deny the motions of the
14 Applicants in this licensing proceeding.

15 We are deeply affected by the accident at Metropoli-
16 tan Edison's Three Mile Island Unit II one year ago, and we do
17 not wish to ever see this come to pass again.

18 We recognize that Pennsylvania Power and Light has
19 invested a great deal of their time and their resources into
20 building this plant, which will not be directly providing
21 electrical service to their own customers. It is a well-known
22 fact that PP&L presently has a great deal of excess generating
23 capabilities without this plant coming on line.

24 Due to the fact that the plants are scheduled to come
25 on line within the next few years, we recognize the pressure on



1 the Board to grant new licensing as requested.

2 But we think that the safety, health, and economic
3 well-being of the residents of the area immediately surround-
4 ing the plant should have a much greater meaning than the
5 investment that PP&L has made in this plant. Life is more
6 sacred than the increased profits that PP&L will realize.

7 We are opposed to PP&L building this plant. We hope
8 that this request will not fall on deaf ears, as such requests
9 have in the past.

10 Our position on nuclear power is a total commitment
11 for us. We do not believe that it is a viable option to solve
12 our energy needs now or for any time in the future.

13 Thank you.

14 (Applause.)

15 CHAIRMAN BECHHOEFER: Thank you, Ms. Shively.

16 (Continued applause.)

17 CHAIRMAN BECHHOEFER: I don't know. Our time,
18 theoretically, has run up. But if those who are here, I
19 suppose until they actually kick us out, you might as well
20 come up here.

21 MR. MITCHELL: John Mitchell.

22 The people of eastern Pennsylvania don't deserve
23 another nuclear nightmare in their backyards. Three Mile
24 Island was and is enough. There remain one million gallons of
25 highly radioactive water at Three Mile Island, and the NRC



1 itself has reported that it still has no systematic cleanup
2 plan devised or put underway there that will bring that place
3 finally to a cold shutdown.

4 Berwick is a stone's throw from TMI, sits on the
5 same river, and is surrounded by quiet productive farm communi-
6 ties that now fear that their family's home, land, food, and
7 water will be contaminated again. I say "again" because it is
8 not unreasonable to assume that the massive releases from TMI
9 last spring went as the winds would direct them. And for a
10 good part of that crisis period the people and land east and
11 north of Three Mile Island was the downwind benefactor of the
12 nuclear industry's worst reported blunder.

13 The sad, even terrifying truth about the nuclear
14 industry is that there is not one nuclear power plant operating
15 in this country today that has an unblemished safety record.
16 Reports of accidents, unexpected radiation releases, have
17 become a daily occurrence now; and we still have the industry
18 telling us that nuclear power is the way to go.

19 In view of this consistent record of safety violations,
20 emissions that have a repeated damaging effect on the environ-
21 ment and the people of this country by virtually every nuclear
22 power plant in this country, it is hard, very hard, to believe
23 things will be any different at the Berwick plant if it is
24 allowed to go on line.

25 There is also the fundamental question of democratic



1 process and why it has been so abused or ignored by the power
2 companies in their zeal to manufacture nuclear electricity.

3 The people of this region were not given any
4 opportunity whatever to decide if they wanted this monster.
5 And this apparently is, or has been, a national truth. If the
6 people of a community do not want their electricity to be
7 produced in such a crude and hazardous manner, they should
8 have the opportunity to say so at the polls.

9 And if they say no to nuclear power, then that should
10 settle the matter.

11 But with atomic power, as with all-too-many other
12 corporate decisions in this country, what the people want and
13 what ultimately is best for them is not given the slightest
14 consideration.

15 Less than one year after the worse nuclear accident
16 this country has ever experienced, the most this public is
17 given is a chance to try to have our voices heard at a highly
18 technical and procedural hearing that are alien to us. Our
19 interests are human, not legal. We're not motivated by profit
20 but by a desire for the preservation of our lives, the lives
21 of our children, of our land, of our watershed, and our communi-
22 ties.

23 Please give us the power we need and deserve to
24 protect our own futures.

25 Finally, please know that there have been reports



1 from laborers and construction workers who are building the
2 Berwick plant of widespread bungling on the job out there.
3 I myself have had a worker there tell me that the place is a
4 mess of shoddy workmanship, mistakes, delays, and going back
5 and going over already-done work. This is before, we are told,
6 the plant is on line.

7 We have little more to go on than these reports; but
8 in view of the history of the nuclear industry, they sound
9 much more credible than anything told to us by company repre-
10 sentatives or spokesmen.

11 Please save our region and our people from the further
12 ravages of nuclear insanity. Do not grant PP&L a license for
13 the Berwick nuclear facility.

14 (Applause.)

15 CHAIRMAN BECHHOEFER: Is there anyone else who can't
16 come back tomorrow?

17 (Pause.)

18 CHAIRMAN BECHHOEFER: Okay. Go ahead.

19 MS. TATE: I'm Nancy Tate; I live at 349 Main Street,
20 in Freemansburg, Pennsylvania. And I work for an organization
21 in the Bethlehem area called Lehigh Pocono Committee of Concern.

22 I just want to raise one question, and I want to make
23 one brief comment. I don't have written notes on this.

24 But as I've observed the hearings today, I've been
25 very concerned at the questioning of the motivations and the



1 capability of the various intervenors, on the part of the PP&L
2 attorneys and the NRC Staff attorneys.

3 I think it must be very hard, possibly for the Board,
4 to understand what it has been like in Pennsylvania since the
5 accident at Three Mile Island, especially in the case of the
6 people representing the Environmental Coalition on Nuclear
7 Power. These people have been called on repeatedly by many of
8 us across the state. They are not just representing the
9 concerns of people in formal hearings, but they're called on
10 because of their expertise to explain nuclear power at educa-
11 tional forums. They were called on repeatedly, all hours of
12 the day and night, around the time of that accident. And we
13 have strained their lives very seriously, and I hope you'll
14 keep that in mind as these hearings proceed. And they're still
15 being called on repeatedly and have been a very valuable
16 resource to all of us.

17 The other thing that I want to raise is that it's at
18 least an hour and a half drive for people from our area to come
19 to hearings in this, in Wilkes-Barre. And the Allentown-
20 Bethlehem area is one of the larger metropolitan areas in the
21 PP&L service area. And your proposal to have, or possibility
22 for having, hearings in the evening or on a Saturday would be
23 very helpful to us; but also it would be quite helpful if you
24 could schedule a hearing in the Bethlehem-Allentown area.

25 (Applause.)



1 CHAIRMAN BECHHOEFER: Now, is there anyone else who
2 can't get back tomorrow morning?

3 Because if not -- before we adjourn, I had one more
4 question to ask Dr. Johnsrud:

5 The page 9 of your response to the Applicant's
6 motion seems to leave off in midstream, and I wondered whether
7 there was anything missing or whether that was, whether we
8 missed anything.

9 DR. JOHNSRUD: If you'll give me a second, Mr.
10 Chairman, among the --

11 (Pause.)

12 -- filings here. This is the February 18th?

13 CHAIRMAN BECHHOEFER: Yes.

14 DR. PARIS: Bottom of page 9, the sentence doesn't
15 have a completion.

16 (Pause.)

17 CHAIRMAN BECHHOEFER: And we wanted to know --

18 DR. JOHNSRUD: As I recall that motion -- or this
19 response at that point, I suspect that our volunteer typist
20 had a slight blackout.

21 (Laughter.)

22 As well she might.

23 CHAIRMAN BECHHOEFER: If we're missing any important
24 information, could you get it to us?

25 If there was anything drastic that was left out,



1 that, that's still relevant to anything that's still open --

2 DR. JOHNSRUD: I suspect that the conclusion of that
3 sentence was within the time allotted. There may have been
4 additional sentences that were missed.

5 CHAIRMAN BECHHOEFER: Well, what I was more worried
6 about was whether there might have been a whole page left out.

7 DR. JOHNSRUD: Well, now I'm worried too, Mr.
8 Chairman.

9 CHAIRMAN BECHHOEFER: But be that as it may, I'll
10 call your attention to it. And if there's anything relevant
11 to what we still have to rule on, you might want to send it
12 in.

13 DR. JOHNSRUD: Yes. Thank you. If I find when I
14 get back to the original, I'll see if there were additional
15 sentences that were omitted from it. But I suspect --

16 CHAIRMAN BECHHOEFER: Or, or at least whether there's
17 some things that we ought to know about. Right.

18 DR. JOHNSRUD: Yes. If it's important, I'll
19 certainly be in touch with you. Thank you for calling it to
20 my attention.

21 DR. PARIS: Mr. Schultz.

22 MR. SCHULTZ: I just wanted to ask, Mr. Bechhoefer:
23 if we raised a couple on this specific thing, will they be
24 dealt with in original order? or tomorrow morning? or --

25 CHAIRMAN BECHHOEFER: Oh, will you be here tomorrow



1 morning? I had forgotten --

2 MR. SCHULTZ: If I can be dealt with.

3 CHAIRMAN BECHHOEFER: Pardon?

4 MR. SCHULTZ: If I can be dealt with tomorrow
5 morning.

6 CHAIRMAN BECHHOEFER: Yes, we'll deal.

7 One of the things I really want to discuss is the
8 availability of the NRC reports. I know you raised that, and
9 I want to talk that over.

10 So, yes, we will.

11 I tried to get done everything that involved your
12 position.

13 DR. JOHNSRUD: Will there be any, any aspects of
14 the additional questions that Mr. Schultz has raised that
15 would possibly prejudice ECNP's position if we are not able
16 to be here tomorrow, which unfortunately we are not.

17 CHAIRMAN BECHHOEFER: No, I -- we won't, we won't
18 make any rulings that will prejudice your position. But some
19 of the matters he's raised we may want to talk about. Our
20 rulings will not prejudice your position on what he has
21 raised, certainly.

22 DR. PARIS: If the Applicant moves to dismiss you
23 tomorrow, we'll deny the motion.

24 DR. JOHNSRUD: I'm not sure what to answer to that,
25 Mr. Paris.



1 SPEAKER FROM AUDIENCE: What is the schedule for
2 tomorrow, please?

3 CHAIRMAN BECHHOEFER: Tomorrow we will begin at
4 9:00 o'clock. We will start with -- well, I think we'll start
5 with the CAND matters, and then we'll go on to any of the
6 left-over matters, particularly the ones that SEA raised.
7 I think you had five or six items specifically, that you
8 wanted -- some of them, I have to check, may have been dealt
9 with. But to the extent they're not -- and then we'll hear
10 further limited appearances.

11 I think that we've covered everything then.

12 DR. JOHNSRUD: One final point:

13 There have been references today by a number of us
14 to the Rogovin report and the Kemeny Commission reports and
15 their recommendations with respect to the licensing process
16 in particular. And in view -- particularly of Mr. Amory's
17 comments concerning confidence on the part of the public in
18 the process, ECNP wonders if it might not be possible for the
19 Board, in its subsequent orders and memoranda, where applicable,
20 to specify the ways in which those recommendations for improv-
21 ing the process are actually being carried out.

22 I think this might go quite a distance to not allay
23 any fears on the part of the public, but rather to substanti-
24 ate that the Board, that the ASLB in general, is actually
25 progressing in the directions that the Commissioners have



1 expressed their concern to see the licensing process go and in
2 the directions that both Kemeny and Rogovin reports have
3 recommended.

4 (Brief conference.)

5 CHAIRMAN BECHHOEFER: Well, to some, to an extent we
6 can, we will. Some of those recommendations, as you know, are
7 way beyond our authority. They are recommendations that the
8 Commission be reorganized and that kind of thing, so I don't
9 think we can do much about that.

10 DR. JOHNSRUD: No, but there are a number of areas
11 that touch quite particularly on your authorities.

12 CHAIRMAN BECHHOEFER: Well, certainly in areas where
13 the Commission itself has asked licensing boards to be alert
14 to matters raised by TMI and to bring those matters to the
15 Commission's attention, we fully expect to do that. That'd
16 be particularly at the safety hearings, or in connection with
17 the safety hearings.

18 MR. CUTCHIN: Mr. Chairman, might I add that not
19 only are there some things beyond the purview of the Board,
20 there are some that the Commission even feels are beyond its
21 ability right now, may have to seek legislation to enact.

22 But beyond that, the Staff has prepared, at least in
23 draft form, a document of some several inches thick that is
24 called "Task Action Plans" that supposedly spell out how the
25 Staff intends to assure that those of the recommendations that



1 are able to be carried out are going to be.

2 And I was of the impression -- maybe I'm wrong --
3 but those documents were available to Dr. Johnsrud in the TMI
4 restart proceeding --

5 DR. JOHNSRUD: It may be that Dr. Kepford has them.
6 However, that does not speak to what I'm asking, Mr. Chairman.

7 That merely addresses how the Staff intends to do
8 something.

End Tape 11

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TAPE 13-1
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2 I am asking the Board to assist the
3 public in knowing how the Board has done something. What the
4 policies were prior to TMI and how they have changed since TMI
5 and the recommendations. And that is quite different from
6 the Staff's listing of good intentions.

7 CHAIRMAN BECHHOEFER: Well, certainly the Board
8 as in--it is really an extension of something that started
9 a year or two ago, but the Board is going to look at the
10 so-called generic outstanding issues and even if they are
11 not raised as contentions, we are going to look at them and
12 if we decide that they are not adequately resolved to our
13 satisfaction, we are going to look into them. Those will
14 be mostly--or all, I guess, in connection with the safety
15 hearings. But, there are safety issues which the Board is
16 going to insist or resolve to its satisfaction, whether or
17 not they have been raised as issues by parties.

18 DR. PARIS: Do I, Dr. Johnsrud,--do I understand
19 you correctly, you are asking us to identify actions or
20 decisions that we make now, that we would not have made
21 post--a pre TMI; is that correct?

22 DR. JOHNSRUD: That would be one aspect of it, yes,
23 Mr. Paris.

24 Or, perhaps, I should say in conjunction with
25 decisions that you make now, to clarify for the public,
really more than intervenors, than I think those of us who are



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1 somewhat acquainted with the process, would be able to identi-
 2 fy, at least, some of these changes. But to clarify for the
 3 public, how you would have responded prior to the accident
 4 and what the difference is now and why it is different now?

5 CHAIRMAN BECHHOEFER: All right. I think that is
 6 a very useful suggestion because I do know that Boards are
 7 deciding things very differently now and it might be helpful if
 8 these different decisions were in some way flagged. We are
 9 certainly going to try and do that to the extent that these
 10 items can be readily identified, but I also want to add that
 11 I have never considered myself as one of the more restrictive
 12 Chairmen in terms of looking at issues and I find myself
 13 fairly inclined to look into a lot of things were I think
 14 there are open questions, but, I do not know. We will
 15 identify things differently, but I will not tell you that I
 16 would not have been somewhat more liberal on issues than
 17 some of the other Chairmen would have been, on occasions.

18 So, I think my--our order of March 6, even that
 19 emphasized a willingness to look at more issues than would
 20 necessarily have had to have been looked at, concerning the
 21 regulations strictly and we did our best to stretch each
 22 issue into one that could be litigated where there was some
 23 question. And, well why we have not pointed that out, it is
 24 true that we did it.

25 DR. JOHNSRUD: I do not mean this, by the way, in



1 a self-serving manner.

2 CHAIRMAN BECHHOEFER: Well, I am just trying to say
3 that my general attitude is that the Commission always should
4 have done somewhat more than it did on the case. So, I
5 guess, with that--

6 MS. BUSH: Can I ask you one question; it will be
7 very short. Will you tell me what purpose the statements
8 serves, that we may make here; what becomes of it? Do they
9 go into a dead, quiet record, there? Are they ever read
10 again? Are we just talking to each other here?

11 CHAIRMAN BECHHOEFER: No. It goes into the ;13 :
12 official record--transcript. And if there are questions
13 that we think that the parties to the proceedings should
14 answer, or should answer--questions that should be answered
15 before a Licensing Board, and we will ask them to do that.

16 And some of the matters--

17 MS. BUSH: You mean when we are making statements,
18 we should be asking questions in these statements?

19 CHAIRMAN BECHHOEFER: No, no. We will ask the
20 parties to answer certain questions. Some of the matters that
21 have been raised, like today, are already issues in this
22 proceeding and the parties are going to address those.

23 MR. BUSH: Okay.

24 CHAIRMAN BECHHOEFER: For instance, the question of
25 whether the power from the plant is needed, is an issue in



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controversary, and several of the witnesses made that statement that it was not and that is one of the things that we are going to decide. But if there should be other things that are raised that parties have not raised, and we are not aware of, we will also ask the parties to look into that.

MS. BUSH: Is someone going to look at those statements and look and search for new ideas or opinions or problems?

CHAIRMAN BECHHOEFER: Well, if--

DR. PARIS: If anything is brought up by a limited appearance statement, which is new and different and we think is important with regard to protecting the public health and safety and or allthe environment, we will make a point of seeing that that is raised as a Board question.

MS. BUSH: And that is done by this Board, then?

DR. PARIS: If anything--

CHAIRMAN BECHHOEFER: That is correct.

DR. PARIS: --comes up that we think is that important, we will see to it that it is explored.

MS. BUSH: Thank you.

DR. PARIS: And there have been hearings called just on the basis of limited appearance statements in the past, so they are not ignored.

CHAIRMAN BECHHOEFER: Right. One of the Boards that I am a Chairman of called one, and that was the only

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issue that we heard and we resolved it.

With that, I think, we will adjourn until
9 o'clock tomorrow morning.

(Whereupon, the prehearing
conference was adjourned at
5:35 p.m.)



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