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# NUCLEAR REGULATORY COMMISSION

## IN THE MATTER OF:

COMMONWEALTH EDISON COMPANY

(Dresden Units 2 and 3) and  
Quad-Cities Units 1 and 2)

Place - Chicago, Illinois

Date - Thursday, 1 February 1979

Pages 1-90

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NATIONWIDE COVERAGE - DAILY

## UNITED STATES OF AMERICA

## NUCLEAR REGULATORY COMMISSION

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In the matter of:                   :  
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COMMONWEALTH EDISON COMPANY    :  
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(Dresden Units 2 and 3 and       :  
Quad-Cities Units 1 and 2)       :  
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Docket Nos: 50-237  
50-249  
50-254  
50-265

Room 2525  
U. S. Courthouse and Federal  
Building  
219 South Dearborn Street,  
Chicago, Illinois

Thursday, 1 February 1979

A special prehearing conference in the above  
entitled matter was convened, pursuant to notice, at 10:00  
a.m.,

## BEFORE:

GARY MILHOLLIN, Esq., Chairman, Atomic Safety and  
Licensing Board

DR. QUENTIN J. STOBBER, Member

MRS. ELIZABETH B. JOHNSON, Member

## APPEARANCES:

JOHN W. ROWE, Esq., and ALAN P. BIELAWSKI, Esq.,  
Isham, Lincoln and Beale, One First National Plaza,  
Chicago, Illinois 60603, appearing on behalf of  
the Applicant.

RICHARD J. GODDARD, Esq., STEVEN C. GOLDBERG, Esq.,  
and GUY H. CUNNINGHAM, III, Esq., appearing on behalf  
of NRC Regulatory Staff.

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WASHINGTON, D.C. 20001

1 APPEARANCES: (Continued)

2 ANTHONY ROISMAN, Esq., appearing on behalf of Natural  
3 Resources Defense Council and Citizens for a Better  
Environment.

4 SUSAN SEKULER, Esq., Assistant Attorney General, State  
5 of Illinois, 188 W. Randolph, Suite 2315,  
6 Chicago, Illinois, 60601, appearing on behalf of  
the State of Illinois.

C O N T E N T SLIMITED APPEARANCE STATEMENTS:PAGE

Edward Gogol, on behalf of  
The Bailly Alliance

8

Marilyn Shineflug, on behalf of  
DeKalb Area Alliance for Responsible  
Energy (DAARE)

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P R O C E E D I N G S

CHAIRMAN MILHOLLIN: Ladies and gentlemen, this special prehearing conference is now called to order.

This is a special prehearing conference held by the Atomic Safety and Licensing Board, Nuclear Regulatory Commission, under the authority of Section 2.751(a) of Title 10 of the Code of Federal Regulations. It is being held today, Thursday, February 1, 1979 in Room 2525 of the United States Courthouse and Federal Building, 219 South Dearborn Street, Chicago, Illinois, pursuant to an order of this Atomic Safety and Licensing Board designated to rule upon petitions for leave to intervene in the matter of Commonwealth Edison Company, Dresden Station Units 2 and 3 and Quad Cities Station Units 1 and 2, Docket Numbers 50-237, 50-249, 50-254 and 50-265.

This Board was designated on September 28, 1978 by the Chairman of the Atomic Safety and Licensing Board Panel, pursuant to the regulations of the Commission, in particular, 10 CFR 2.105.

The proceeding was initiated by the Commonwealth Edison Company, which holds a license to use and operate the Dresden Nuclear Power Station, Units 2 and 3, and the Quad Cities Nuclear Power Station, Units 1 and 2.

The Licensee has proposed an amendment to its license which would permit the Licensee to store spent fuel

1 from any of the units at the two stations, including  
2 Dresden Unit Number 1, in the spent fuel storage pools of  
3 Units 2 and 3 of the Dresden facility and Units 1 and 2 of  
4 the Quad Cities facility.

5 The details of these proposals are contained in  
6 the Licensee's application for amendment dated May 11, 1978.  
7 A notice of the proposed amendment was published in the  
8 Federal Register on August 22, 1978, Volume 43, page 37245.  
9 The notice stated that any person whose interests may be  
10 affected by the amendment could file a request for a hearing  
11 in the form of a petition for leave to intervene. The  
12 petitioner is required to set forth the interest of the  
13 petitioner and how that interest might be affected by the  
14 issuance of the amendment.

15 The petitioner is also required to file, not later  
16 than 15 days before this conference, the specific contentions  
17 which the petitioner seeks to have litigated.

18 A petitioner who fails to file at least one  
19 acceptable contention cannot be admitted as a party to the  
20 proceeding.

21 The Board has received the following petitions  
22 for leave to intervene:

23 First, the State of Illinois, under 10 CFR 2.714  
24 and 10 CFR 2.715(c); second, the Natural Resources Defense  
25 Council and Citizens for a Better Environment, under

1 10 CFR 2.714.

2 Responses to these petitions have been filed by  
3 the Licensee and by the Staff of the Nuclear Regulatory  
4 Commission.

5 I will now introduce the members of the Board.

6 On my left is Mrs. Elizabeth B. Johnson, of the  
7 Nuclear Division of Union Carbide Corporation at Oak Ridge,  
8 Tennessee. Mrs. Johnson is a physicist, and she will serve  
9 as the Board specialist in nuclear engineering.

10 On my right is Dr. Quentin J. Stober. Dr. Stober  
11 is a Professor of Environmental Sciences at the University  
12 of Washington, and he will serve as the environmental  
13 specialist on the Board.

14 I am Gary Milhollin. I am a Professor at the  
15 University of Wisconsin Law School, and I am admitted to  
16 practice before the Courts of the District of Columbia.

17 I will now ask the counsel here to introduce  
18 themselves. According to the record, in the proceeding the  
19 Licensee is represented by Mr. John Rowe, Mr. Michael Miller  
20 and Mr. Philip Steptoe. Would you gentlemen please intro-  
21 duce yourselves?

22 MR. ROWE: My name is John W. Rowe. Today with  
23 me is Alan P. Bielawski. We are with the firm of Isham,  
24 Lincoln and Beale, and together we represent the Applicant,  
25 Commonwealth Edison Company.

1 CHAIRMAN MILHOLLIN: According to the record, Mr.  
2 Richard J. Goddard and Mr. Steven C. Goldberg have appeared  
3 on behalf of the NRC Staff. Would you please introduce  
4 yourselves?

5 MR. GOODARD: I am Mr. Goddard, for the Staff.  
6 On my right is Mr. Goldberg, my co-counsel.

7 Also with me at counsel table today is Mr. Roby  
8 Bevan, the Project Manager for this docket.

9 CHAIRMAN MILHOLLIN: According to the record,  
10 Mr. Anthony Roisman has appeared on behalf of the Natural  
11 Resources Defense Council and Citizens for a Better Environ-  
12 ment. Mr. Roisman, would you please introduce yourself to  
13 the Board?

14 MR. ROISMAN: Yes. My name is Anthony Roisman.  
15 I'm a staff attorney with the Natural Resources Defense  
16 Council, and I'm representing the Natural Resources Defense  
17 Council and Citizens for a Better Environment.

18 CHAIRMAN MILHOLLIN: According to the record,  
19 Ms. Susan Sekuler and Mr. Russell R. Eggar have entered  
20 appearances on behalf of the State of Illinois. Is the  
21 State of Illinois present?

22 MS. SEKULER: Yes, sir. I am Susan H. Sekuler.  
23 I am Assistant Attorney General for the State of Illinois,  
24 and I am here representing the State of Illinois today.

25 CHAIRMAN MILHOLLIN: The purpose of this special



1 prehearing conference is to consider petitions to intervene,  
2 which we will do today.

3 A second purpose is to work with the petitioners  
4 to identify the important issues in the proceeding.

5 A third purpose is to establish a schedule for  
6 further action in the proceeding.

7 Before moving to a discussion of these items, I  
8 would like to ask whether anyone has any preliminary remarks  
9 concerning the agenda which should come to the Board's  
10 attention at this time.

11 VOICE FROM THE AUDIENCE: Yes. My name is  
12 Edward Gogol. I have represented the Bailly Alliance, and  
13 myself, plus at least one other person here, would like an  
14 opportunity to make public comments on the application for  
15 spent fuel shipment today during the hearing, and if  
16 possible, rather early, because we have time constraints.

17 CHAIRMAN MILHOLLIN: How many persons here would  
18 like to make limited appearances?

19 (Show of hands.)

20 Three?

21 MR. ROWE: Mr. Chairman, subject to the pleasure  
22 of the Board, the Applicant would have no objection to  
23 hearing a limited number of limited appearances at this  
24 time. If it's going to be more than three or four, we would  
25 ask that the remainder be deferred until after the formal

1 proceedings on the agenda.

2 But we have no objection to hearing the three  
3 people who have identified themselves at any time.

4 MR. GODDARD: The Staff is amenable to that.

5 CHAIRMAN MILHOLLIN: I'd like to ask the people  
6 who have requested the opportunity to make limited appearances  
7 to state how long you think it would take to make your  
8 statements. Could you make your statements within five  
9 minutes?

10 MR. GOGOL: Yes.

11 CHAIRMAN MILHOLLIN: Five minutes apiece?

12 MR. GOGOL: Or less.

13 CHAIRMAN MILHOLLIN: All right. You may proceed.

14 MR. GODDARD: Staff would request that any parties  
15 making limited appearance statements please approach the  
16 Board and use the microphone.

17 CHAIRMAN MILHOLLIN: Yes, you can make your  
18 appearance from right here.

19 LIMITED APPEARANCE STATEMENT OF EDWARD GOGOL,  
20 ON BEHALF OF THE BAILLY ALLIANCE, 711 S. DEARBORN,  
21 ROOM 548, CHICAGO, ILLINOIS 60605.

22 MR. GOGOL: My name is Edward Gogol. I am a  
23 member of the Bailly Alliance, which is a citizens anti-  
24 nuclear group with a large number of members in Northern  
25 Indiana and Northeastern Illinois, and we strongly oppose

1 Commonwealth Edison's request to ship spent fuel from their  
2 Quad Cities nuclear plant to their Dresden nuclear plant.

3 There are large numbers of severe safety problems  
4 involved in shipping nuclear spent fuel to and fro.

5 There are problems of fire, that casks have not  
6 been designed and have not been tested to withstand the very  
7 high temperatures that can result if one of the shipments  
8 were to collide with, say, a tank truck containing any one of  
9 a large number of common industrial chemicals.

10 There are problems whereby the seals on the  
11 shipments may leak, and the cooling water may leak out. And  
12 then many of the fissionable materials, in particular the  
13 strontium and cesium, would volatilize and leak out of the  
14 casks the same way that the cooling water did.

15 There are many other accident problems.

16 Now, storing spent fuel at the reactor sites is  
17 not the solution, either. Commonwealth Edison is asking  
18 for permission to transship spent fuel, because they know  
19 that sooner or later they will run out of storage space at  
20 the Quad Cities nuclear plant, and unless they either expand  
21 that space or ship the fuel somewhere else, they will have  
22 to shut it down.

23 Now, leaving spent fuel at the Quad Cities nuclear  
24 plant is not acceptable, either, because it greatly  
25 increases the damage that can result from a catastrophic

1 accident at a nuclear plant, and we know from a number of  
2 experiences that catastrophic accidents at nuclear plants  
3 can happen.

4 We know from the 1975 fire at the Browns Ferry  
5 reactor that a disaster could happen.

6 We know from the recently discovered leaks at  
7 the Duane Arnold plant in Palo, Iowa, that disasters can  
8 happen.

9 And we know from the Nuclear Regulatory Commission's  
10 own Lewis Report, which thoroughly discredited the Rasmussen  
11 Report, together with a number of other independent  
12 scientists which have discredited the Rasmussen Report, that  
13 any probability calculations that say that the chances of  
14 a nuclear plant disaster happening are one in a billion are  
15 just meaningless numbers.

16 Now, I am aware that your job as Commissioners  
17 here is not to determine whether nuclear power is good or  
18 bad, or whether the plant should be shut down, but simply  
19 to rule on the limited legal issue of whether or not that  
20 spent fuel should be transshipped.

21 I assert that you must look beyond this limited  
22 legal responsibility. You must cease to say that we are  
23 simply doing our duty, and look at the overall ethical  
24 implications of continuing to pursue an energy policy which  
25 will continue to produce huge amounts of deadly radioactive

1 wastes, which nobody knows what to do with, and which are  
2 leaking into the environment already.

3 Just about a week ago we heard that shipments of  
4 so-called low-level wastes from another of Commonwealth  
5 Edison's nuclear plants down to Barnwell, South Carolina,  
6 where a truck fell apart and some barrels spilled off, and  
7 we were told that there weren't any leaks, there was no  
8 damage. We don't know. If there had been, it is very  
9 likely that something like that would have been hushed up.

10 There have been many other examples of near  
11 misses, leaks.

12 Plutonium stays dangerous for half a million  
13 years, and a millionth of a gram is more than sufficient to  
14 cause lung cancer. Yet every single one of Commonwealth  
15 Edison's reactors produce about 500 pounds of this deadly  
16 material every year.

17 This is not a substance that we have a right to  
18 leave to our children or their children or their children,  
19 and I, therefore, ask that you rule that Commonwealth Edison  
20 not be allowed to ship spent fuel from the Quad Cities  
21 plant to the Dresden plant, in the hope that when  
22 Commonwealth Edison runs out of storage space they will be  
23 forced to shut down that nuclear plant, and that you make  
24 some sort of statement to that effect.

25 Thank you.

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1 CHAIRMAN MILHOLLIN: All right. You may proceed.  
2 LIMITED APPEARANCE STATEMENT OF MARILYN SHINEFLUG,  
3 ON BEHALF OF THE DEKALB AREA ALLIANCE FOR  
4 RESPONSIBLE ENERGY (DAARE) P.O. BOX 261,  
5 DEKALB, ILLINOIS 60115.

6 MS. SHINEFLUG: My name is Marilyn Shineflug, and  
7 I'm with the DeKalb Area Alliance for Responsible Energy.

8 I have a written statement which I can submit  
9 entitled, "Recommendation to Deny Transshipment of Spent  
10 Fuel Between Quad-Cities and Dresden."

11 Members of DAARE believe the proposed amendments  
12 to Commonwealth Edison's operating licenses to permit  
13 transshipment and storage of spent fuel between the Quad-  
14 Cities and Dresden Stations should be denied. Our reasons  
15 are as follows:

16 1. Granting of these amendments will give the  
17 appearance of a solution to the problem of what to do with  
18 excess spent fuel rods which are piling up across the nation  
19 at a rate of 150 tons a month. The government estimates  
20 there will be 10,000 tons of spent fuel by 1985.

21 Despite claims to the contrary, there is no  
22 solution to the long-term safe storage of this high-level  
23 radioactive waste. Past NRC rulings state that this long-  
24 term disposal problem is a separate issue, and need not  
25 have a bearing in individual licensing procedures. However,

1 if the NRC is to earn the public's trust it should deal  
2 realistically with the entire problem.

3 Thus, amendments to permit transshipment should  
4 be denied, as they will merely postpone the day when long-  
5 term disposal must be faced directly.

6 2. Transshipment will greatly increase the  
7 number of spent fuel shipments on our highways. Even though  
8 shipping casks have been tested by Sandia Laboratories,  
9 other experts feel that accidents could happen.

10 According to Dr. Larry Shappert, in a fire or  
11 collision it would be possible for a gasket or valve to be  
12 damaged and allow the cooling water to leak out. Or a  
13 worker could fail to properly close the cask after loading  
14 it. The water loss could allow the rods to heat up and  
15 the pressure to build up inside the cask. If the temperature  
16 were to rise above 1253° Fahrenheit the cesium would vaporize  
17 and escape through the cask in the same opening used by the  
18 water.

19 In addition, many chemicals transported on the  
20 highways burn at temperatures which exceed the standard test  
21 fire of 1475°. For example, propane. Even Sandia  
22 Laboratories estimates that a major release of spent fuel  
23 or high-level waste in New York City could claim 4000 lives  
24 and cost \$2 billion in cleanup and damages. According to  
25 Dr. Leonard Solon, Director of New York City's Bureau of

1 Radiation Control a one-percent release of the contents of  
2 a cask -- just a one-percent release -- would cause hundreds  
3 of thousands of deaths -- "...a public health disaster of  
4 the first magnitude."

5 3. Commonwealth Edison has no contract for  
6 disposal or even removal of spent fuel from these reactors,  
7 or the pools beside the reactors. If the public wisely  
8 decides to reject the building of more away-from-reactor  
9 sites, and if no long-term solution to the disposal problem  
10 is devised, who will be liable? Can we count on the utility  
11 to maintain the site in a secure fashion for hundreds, if  
12 not thousands, of years?

13 Denial of these proposed amendments will protect  
14 local residents from even greater hazards than they already  
15 must contend with.

16 Members of DAARE believe that the best way to  
17 deal with radioactive waste is to stop producing it. We  
18 hope the NRC will utilize this opportunity -- right now,  
19 right here, today -- to gain the public's trust in their  
20 awesome responsibility to regulate nuclear power.

21 Thank you.

22 CHAIRMAN MILHOLLIN: Thank you very much.

23 VOICE FROM THE AUDIENCE: May I reserve comments  
24 until the end of the meeting?

25 CHAIRMAN MILHOLLIN: The question was, can you



1 reserve your comments until the end of the meeting, and  
2 the answer is, yes, you may.

3 The purpose of this special prehearing conference  
4 is to consider petitions to intervene, as I have already  
5 said.

6 Having heard from two parties who have made  
7 limited appearances, we will now take up the specific items  
8 which are before us.

9 The State of Illinois has requested to be  
10 admitted to the proceeding as an interested State under  
11 10 CFR 2.715. That request is hereby granted.

12 The State of Illinois also requested admission as  
13 a party under 10 CFR 2.714, so its contentions will be  
14 discussed today.

15 Section 2.714 requires that a petitioner show  
16 an interest which may be affected by the proceeding. Both  
17 the Licensee and the NRC Staff have agreed that the State  
18 of Illinois has satisfied this requirement, but the Licensee  
19 and the Staff have not agreed that NRDC and CBE have  
20 satisfied it.

21 The same section, Section 2.714, requires that a  
22 petitioner set forth his contentions and the basis for his  
23 contentions with reasonable specificity.

24 NRDC and CBE have filed nine contentions. The  
25 State of Illinois has incorporated these nine contentions

1 by reference in its contentions, with the exception of  
2 Contention 3.B.

3 The State of Illinois has also filed additional  
4 contentions.

5 Both the Licensee and the NRC Staff object to  
6 some of the contentions filed by NRDC and CBE, and to some  
7 of the contentions filed by the State of Illinois.

8 The Board prefers first to address the question of  
9 standing by NRDC and CBE, and after we discuss that we can  
10 take up the contentions in sequence.

11 First, the Board understands from the papers  
12 already filed that the Licensee has agreed that both NRDC  
13 and CBE have adequately identified at least one member whose  
14 interests may be affected by the proposed action. That is  
15 correct, is it not? It is the Board's understanding that  
16 you have so stipulated.

17 MR. ROWE: Yes, Mr. Chairman, as so narrowly  
18 stated. We reserved our objection to the admission of  
19 NRDC and CBE on the grounds that they have not shown that  
20 any such member has authorized them to act in their behalf.

21 CHAIRMAN MILHOLLIN: Yes, the Board is aware that  
22 you have not agreed on that particular issue.

23 The Staff was unable to join in the stipulation,  
24 and the Board would like to ask the Staff why it was unable  
25 to join in the stipulation?

1 MR. GODDARD: Mr. Chairman, upon review of the  
2 cases, both Federal and NRC precedent, the Staff will not  
3 waiver from the position that it is essential to an inter-  
4 vention that the name and specified interest of at least one  
5 individual named party be put forth on behalf of the  
6 organization which seeks to represent such party or parties.

7 CHAIRMAN MILHOLLIN: The question of whether such  
8 a person exists is a factual question, isn't it?

9 MR. GODDARD: Yes, it is.

10 CHAIRMAN MILHOLLIN: Can't you stipulate to the  
11 existence of the person in question?

12 MR. GODDARD: The Staff would be willing to  
13 accept NRDC's representation -- and when I say NRDC, I  
14 include CBE -- their representation that certain members of  
15 those organizations do live within what is freely referred  
16 to as the geographical zone of interest in NRC proceedings,  
17 as set forth in the stipulation between the Applicant and  
18 NRDC.

19 The Staff would not, however, concede that such  
20 parties have authorized NRDC to represent them, nor would  
21 the Staff concede that such parties, merely by living within  
22 the geographical zone of general interest, have such  
23 specified interest as to enable them to intervene and bring  
24 into play the cumbersome process of administrative  
25 litigation.

1 CHAIRMAN MILHOLLIN: Can we talk about that for  
2 a second?

3 So you would agree, then, to stipulate as to the  
4 factual question as to whether there are members who do live  
5 within the area, or not?

6 MR. GODDARD: I would certainly accept Mr.  
7 Roisman's representation that NRDC has members living at the  
8 point specified in the stipulation. The Staff certainly does  
9 not care to dispute that fact.

10 CHAIRMAN MILHOLLIN: So you don't dispute the  
11 factual question relating . . . well, if we could rephrase  
12 the factual question as follows:

13 Does the petitioner have members who live in  
14 the zone of interest?

15 -- you are prepared to stipulate --

16 MR. GODDARD: So limited, yes.

17 CHAIRMAN MILHOLLIN: That such members do exist  
18 and live in that area?

19 MR. GODDARD: The Staff would so accept the  
20 representation of NRDC.

21 CHAIRMAN MILHOLLIN: Okay. Well, if you accept  
22 that, then we still have the question of authorization to  
23 decide, do we not?

24 MR. GODDARD: Yes, sir. But more than that, I  
25 feel we also have the question of the specified interests of

1 these persons. Mere residence within the geographical zone,  
2 not of an operating reactor where the potential might be  
3 greater as far as impacts upon the lives and activities of  
4 these persons, but, rather, in the case of any shipment which  
5 is not far removed, in fact, from the shipments of fuel from  
6 the Dresden facility to the storage repository which occurred  
7 in the past, under the Part 50 license granted that facility,  
8 we feel that a showing of specified interest, as set forth  
9 in 2.714, must exist and must be shown on the record.

10 CHAIRMAN MILHOLLIN: How would you propose that  
11 that showing be made?

12 MR. GODDARD: Well --

13 CHAIRMAN MILHOLLIN: You don't accept the  
14 proposition that simple residence is a showing of interest?

15 MR. GODDARD: I don't think it carries the weight  
16 in a transshipment case that it might carry in a case, for  
17 instance, of an operating license for a nuclear reactor.

18 CHAIRMAN MILHOLLIN: Yes, I was going to ask you:  
19 Isn't it normally the position of the Staff that someone who  
20 does live within the proximity of a reactor automatically  
21 has an interest? Or aren't there decisions to that effect?

22 MR. GODDARD: There are decisions to the contrary.  
23 I believe one was the opinion recently handed down by the  
24 Licensing Board in the North Anna 1 and 2 Spent Fuel Pool  
25 case. However, I'm not sure of the current status of that

1 case. I believe it was reversed on appeal, but I don't know  
2 if the reversal extends to that portion of the opinion.

3 CHAIRMAN MILHOLLIN: Hasn't the Appeal Board said  
4 that where you show a member in the vicinity, that's  
5 adequate?

6 MR. GODDARD: It would probably be true as to a  
7 reactor, where you have a constant opportunity, if you will,  
8 albeit NRC Staff does not take the position that such risk  
9 is likely or is credible, at least, or outweighs the utility  
10 of operating the reactor, but where there's a constant  
11 exposure, as opposed to the exposure from a random and  
12 infrequent transshipment of spent fuel, the case could  
13 probably be made that most of the population of the United  
14 States lives within proximity of the routes over which high  
15 or low level radioactive wastes, properly contained and  
16 transported, would pass at some time in the future.

17 CHAIRMAN MILHOLLIN: I'm just trying to clarify  
18 what your position is. Is it your position, then, that  
19 someone who lives along the transportation route would not  
20 have an interest?

21 MR. GODDARD: I would think that a showing of a  
22 specific interest or a particularized risk must be shown.

23 I think the Licensing Board ruling on the  
24 Oconee-McGuire transshipment case might have some bearing  
25 on this question. That order was served on the Board by me

1 approximately two weeks ago.

2 CHAIRMAN MILHOLLIN: What would you consider to be  
3 an adequate allegation? Or is it your position no such  
4 allegation could be made?

5 MR. GODDARD: Well, the NRC Staff doesn't usually  
6 sit down and work out allegations for intervenors.

7 CHAIRMAN MILHOLLIN: I realize that.

8 MR. GODDARD: We'd like to hear a particularized  
9 allegation and be faced with the opportunity to pass judgment  
10 upon it.

11 CHAIRMAN MILHOLLIN: So your position is that  
12 no particularized allegation exists in the record now, and  
13 that's the reason you won't join in the stipulation?

14 MR. GODDARD: That is part of the . . . yes, that  
15 is the Staff position.

16 CHAIRMAN MILHOLLIN: So the Staff position is  
17 that there is no articulated statement of the interest by  
18 the members, and that's why you won't join in the stipulation?

19 MR. GODDARD: Of a specific interest which might  
20 be examined as it affects a particular identified member.

21 In short, the Staff has balanced the alleged --  
22 and what we consider to be somewhat fanciful -- harms that  
23 are threatened to a single member of each of these organiza-  
24 tions who might be unwilling to come forward and place their  
25 name in the case and say, "I am seriously concerned, and I

1 want to become part of this litigation, and I want NRDC to  
2 represent me."

3 Now, we would feel that that is a small price to  
4 pay if one is to invoke the administrative process at this  
5 stage. I think that in order to place these matters in  
6 litigation there should be at least one person who is willing  
7 to come forward and take the responsibility for such action.

8 We do not feel that the general blanket authoriza-  
9 tion claimed by Mr. Roisman for his accompanying NRDC member-  
10 ship is sufficient to constitute an authorization to commence  
11 specific litigation on behalf of a named party or parties.

12 CHAIRMAN MILHOLLIN: I don't want to prolong this  
13 discussion too much, but I'd like to ask you one more  
14 question:

15 The Board has the impression that the Board must  
16 decide the authorization question, and the Board is prepared  
17 to decide it. The Board's impression is that if you insist  
18 the Board will also decide the question of whether -- well,  
19 the Board will also decide the question of whether an  
20 interest has been articulated, which is the second issue,  
21 isn't it?

22 MR. GODDARD: Yes, it is.

23 CHAIRMAN MILHOLLIN: There's a third issue. It  
24 seems these issues are separable. We have three issues:

25 First, the authorization issue; second, we have the



1 question of whether an interest has been articulated; and,  
2 third, we have the issue of whether the members, in fact,  
3 exist and do live in the place which is contended.

4 It seems to the Board if you're willing to stipu-  
5 late that the members exist and do live in that area, that  
6 the Board does not have to decide issue number three. Would  
7 you agree with that?

8 MR. GODDARD: That is correct. However, further  
9 inquiry might be required as to the location of those members  
10 in regard to specific proximity, for instance, to the  
11 routing. The fact that someone lives within a particular  
12 town might constitute mere yards or several miles, perhaps,  
13 from the actual routing.

14 CHAIRMAN MILHOLLIN: Again, that's a factual  
15 question, and I assume that you don't want a -- you're not  
16 prepared to insist on a hearing on that factual question,  
17 are you, or not?

18 MR. GODDARD: Not on that, at this point.

19 CHAIRMAN MILHOLLIN: Well, if we could stipulate  
20 that the members live at a location identified on the map  
21 which is part of the stipulation, then the Board could decide  
22 whether the record contains an articulation of interest by  
23 those members.

24 MR. GODDARD: The Staff would so stipulate, sir.

25 CHAIRMAN MILHOLLIN: Very well.

1 MR. GODDARD: At this time, sir, I would like to  
2 introduce, on behalf of the Staff, Mr. Guy H. Cunningham, III,  
3 who is also an attorney for NRC Staff.

4 MR. CUNNINGHAM: I apologize for the late arrival,  
5 Mr. Chairman.

6 CHAIRMAN MILHOLLIN: The record will reflect that  
7 there is an agreement among the three parties that the  
8 location of the members of the petitioner, NRDC and CBE, is  
9 as represented on the map attached to the stipulation  
10 between the Licensee and the Intervenor.

11 The Board is under the impression that the question  
12 of authorization is now in the posture of a pure question of  
13 law, which the parties have briefed, and which is ready for  
14 disposition by the Board.

15 MR. ROISMAN: Mr. Chairman, I do not agree that  
16 it's a pure question of law. It's a pure question of law if  
17 we win. It's a question of fact if we do not.

18 CHAIRMAN MILHOLLIN: Yes, I'm aware of that  
19 position. I should say the Board is aware of that position.

20 Perhaps we could follow that up. I take it that  
21 NRDC's position is that an evidentiary hearing would be  
22 required. You so contended in Oconee, did you not?

23 MR. ROISMAN: Yes, Mr. Chairman, that's correct.  
24 Our position -- it's very difficult to say, depending on how  
25 the Board views the issue. But if the Board questions

1 whether existence of a membership relationship has an implicit  
2 authorization for the litigation, then we would want to bring  
3 our membership directors for both of the organizations to  
4 establish that, if it's not adequately established by the  
5 papers.

6 If the Board says irrespective of the implicit  
7 authorization there's a question of absolute authorization,  
8 we would want to bring to the Board evidence to further  
9 substantiate the affidavits regarding the harrassment  
10 potential of making that a requirement imposed against us.

11 I might add, by the way, that I have spoken to  
12 the author of the affidavit recently that most directly  
13 addresses the question of harrassment. His final report has  
14 now been completed and is at the printers, and unfortunately  
15 will not be available for a couple of weeks. But at least  
16 if the Board should decide that the factual issues on  
17 harrassment need further development within a reasonable  
18 period of time, and the Board would establish a period on  
19 that, we would be prepared to introduce Mr. Bossong and his  
20 report.

21 CHAIRMAN MILHOLLIN: Thank you.

22 The question of intervention by discretion was  
23 also pursued in the Oconee case -- I guess it should be  
24 referred to as the Oconee-McGuire case. It wasn't mentioned,  
25 or at least it wasn't developed in the papers now on record

1 in this proceeding.

2 First of all, I'd like to ask whether NRDC wishes  
3 to have this Board consider this basis for intervention?

4 MR. ROISMAN: Yes, we do, Mr. Chairman, and I'm  
5 sorry if -- as you know, by filing papers in both of the  
6 cases, we may have been unfair to this Board, since you are  
7 coming second on the issues. That question is developed in  
8 the papers that we filed in the Oconee case, and, as you  
9 know, the Board addressed that question in its order, and  
10 we addressed it in some detail in our objections to that  
11 order, copies of which were sent to the Board last week.  
12 I'm not sure whether you've received them.

13 CHAIRMAN MILHOLLIN: Yes, we have received those  
14 papers.

15 Does either the Licensee or the Staff object to  
16 this basis for intervention in this proceeding? Licensee?

17 MR. ROWE: Mr. Chairman, we don't think there has  
18 been any attempt to make the appropriate showing, and on  
19 that basis we would object. We would have very little  
20 question that NRDC or CBE could make such showing, given  
21 the timeliness of their appearance. But we think that the  
22 procedures have to be followed.

23 MR. GODDARD: The Staff would oppose a request  
24 by NRDC for discretionary intervention coming at this late  
25 date in the proceeding, inasmuch as they have filed

1 numerous pleadings and participated in numerous conference  
2 calls regarding the question of standing for intervention as  
3 a matter of right, without surfacing the discretionary  
4 intervention issue until this time.

5 Moreover, the Staff would also question the  
6 effectiveness of NRDC's contribution to this proceeding as  
7 the issues are framed at this time.

8 CHAIRMAN MILHOLLIN: The Staff did not oppose the  
9 discretionary intervention by the NRDC in the Oconee case,  
10 is that right?

11 MR. GODDARD: That is correct. As the issue was  
12 joined there, the Staff did not oppose discretionary inter-  
13 vention. The Staff in this case, in light of the posture of  
14 this case, and the fact that those contentions have, in effect,  
15 been adopted by another party to this case who is ably  
16 represented by counsel, would cause the Staff to definitely  
17 oppose NRDC's admission on the basis of discretionary  
18 intervention at this time.

19 MR. CUNNINGHAM: Mr. Chairman, if I may supplement  
20 that, the principal reason that the Staff opposes discretion-  
21 ary intervention in this case is that we believe we're  
22 correct on the standing requirements for intervention as a  
23 right that identification of a member is required. NRDC  
24 has certainly done that in many cases in the past. We  
25 believe in a case where a party undoubtedly has standing, but

1 refuses to demonstrate it, discretionary intervention is not  
2 appropriate.

3 CHAIRMAN MILHOLLIN: It is rather difficult for the  
4 Board to dispose of this question without -- well, an  
5 agreement, that either the filings in the Oconee case will be  
6 used by the Board as the basis for its decision, or supple-  
7 mental filings on this point.

8 Mr. Roisman, would you like to respond to that?

9 MR. ROISMAN: Yes, Mr. Chairman.

10 First of all, we would prefer to have the issue of  
11 standing as a right resolved first. We think that it's a  
12 higher level of standing, which we believe we're entitled to.

13 We have no objection to the Board's using the  
14 papers in the Oconee-McGuire case, where we've laid out the  
15 basis for discretionary intervention, which I might add was  
16 raised sua sponte by the Regulatory Staff in that case. And  
17 we have put on the record in that proceeding, and are willing  
18 to rely, unless the Board wishes more, on what we said in  
19 that proceeding and the papers that we filed last week on  
20 objections to the Board's order in that case put it together  
21 fairly succinctly in the back several pages of that memoran-  
22 dum.

23 CHAIRMAN MILHOLLIN: Excuse me, Mr. Roisman. By  
24 the papers you filed in that proceeding, you mean the  
25 showings that you made in that case concerning discretionary

1 intervention?

2 MR. ROISMAN: Yes. But we feel that they are more  
3 than adequately summarized, and would simply direct the  
4 Board's attention to the one document which we served on the  
5 Board on the 26th of January, namely, our objections to the  
6 supplemental prehearing conference order of the Board in the  
7 Oconee-McGuire case.

8 On the back pages of that filing, starting on page  
9 5, through 7, we've set out the reasons why we believe that  
10 we would meet the discretionary intervention rule.

11 I might add that Mr. Cunningham is either aware of  
12 some cases that I'm not aware of in which NRDC was a party or--  
13 well, I'm not aware of any NRDC case where we've ever  
14 disclosed the name of a member, nor am I aware of any  
15 Citizens for a Better Environment intervention where they  
16 ever disclosed the name of a member with respect to inter-  
17 vention. I believe this is the first time we've ever been  
18 asked to to so -- this, and Oconee-McGuire.

19 CHAIRMAN MILHOLLIN: So the answer to my question  
20 is that you're prepared to have us resolve the issue of  
21 discretion by intervention on the documents we now have in  
22 this case?

23 MR. ROISMAN: Yes, that's correct. I would add  
24 that, in addition to that, in one place attached to -- I  
25 believe it's our petition for leave to intervene, is a

1 curriculum vitae of Dr. Thomas Cochran, who is one of our  
2 technical people. If it's not attached to that paper . . .  
3 which it's not . . . well, I can advise the Board of where  
4 that is, without taking up time at the moment. It's in the  
5 record, I just have to identify for you where it is in the  
6 record.

7 CHAIRMAN MILHOLLIN: If it's in the record of the  
8 papers filed in this case, we can find it, Mr. Roisman.

9 Have you submitted adequate information on the  
10 other technical expert?

11 MR. ROISMAN: On Dr. Tamplin we have not submitted  
12 a curriculum vitae, but, again, we were not -- if any of the  
13 parties question whether Dr. Tamplin is an expert on the  
14 question of low-level radiation safeguards, I would be more  
15 than happy to provide that.

16 What we have done is referenced to the Board the  
17 dockets of the Commission in which Drs. Tamplin and Cochran  
18 have submitted extensive reports to support petitions filed  
19 with the Agency on those subjects. If the curriculum vitae  
20 would be helpful, I have no problem with sending a copy.

21 CHAIRMAN MILHOLLIN: Do the other parties object  
22 to having the record supplemented by an additional curriculum  
23 vitae on Dr. Tamplin?

24 MR. ROWE: No objection, Mr. Chairman, on behalf  
25 of the Applicant. We would not object to the Board deciding



1 that discretionary intervention question upon the basis of  
2 the papers that it has been supplied and from the additional  
3 documents.

4 We would request that the Board take into consider-  
5 ation the fact that the State of Illinois is an active party  
6 in this proceeding, and it would seem that little is added  
7 by the redundancy. But our overall position is that the  
8 various aspects of this standing and participation matter have  
9 been thoroughly argued, and there would be little benefit  
10 from any cumulative procedures at this time. We think this  
11 is a matter that ought to be resolved, and that the proceed-  
12 ing ought to go forward.

13 MR. GODDARD: The Staff would not oppose the  
14 submission of the curriculum vitae on Dr. Tamplin, nor would  
15 the Staff oppose the use by the Board of the Ocone-McGuire  
16 docket filings in arriving at the decision.

17 However, the Staff would emphasize, as did the  
18 Applicant, that the State of Illinois is a participant in  
19 this proceeding. They have adopted these contentions. And  
20 the time considerations of this case, in light of the fact  
21 that this issue of standing has been briefed extensively over  
22 the last several months, would perhaps militate more harshly  
23 against admission of NRDC in this proceeding than in the  
24 Ocone-McGuire case.

25 CHAIRMAN MILHOLLIN: Thank you. From the papers

1 filed thus far all parties agree to accept Contention 9, is  
2 that correct?

3 MR. ROWE: (Nodding affirmatively.)

4 CHAIRMAN MILHOLLIN: Very well.

5 According to the papers there is a stipulation  
6 on the part of the Staff, the Licensee and the State of  
7 Illinois which provides that the State of Illinois withdraws  
8 its Contentions 10, 11, 12, 14, 15 and 17, and in place of  
9 these contentions proposes Revised Contention 10, accepted  
10 by the Staff and Licensee as an issue in controversy.

11 So Revised Contention 10 of Illinois has been  
12 accepted as an issue in controversy, is that correct?

13 MR. ROWE: That's correct, Mr. Chairman.

14 CHAIRMAN MILHOLLIN: The stipulation further  
15 provides that the parties agree that language should be  
16 added to Contention 3.C, but it is not clear to the Board  
17 whether the Staff and the Licensee agree that that contention  
18 should be admitted as an issue in controversy.

19 Is Contention 3.C the same as Contention 9?

20 MS. SEKULER: No, sir. I believe in papers filed  
21 by the Staff there was a suggestion that 3 and 9 might be  
22 consolidated, is that correct? However, they have not been  
23 so consolidated at this time.

24 The additional language added to 3.C was --  
25 instead of having 17 specified as it had been, we went

1 through 17 and took the kernel of 17, which was to bring to  
2 the Board's attention knowledge of the other proceeding  
3 regarding the expansion of spent fuel storage at Dresden,  
4 and put that in the alternative section. However, it has  
5 not at this time been consolidated.

6 CHAIRMAN MILHOLLIN: Very well.

7 MR. ROISMAN: Mr. Chairman, we responded to the  
8 Staff -- I'm sorry -- the Applicant, raising the question  
9 that our Contention 3.C. was essentially the same as  
10 Contention 9, articulated differently, and that they be  
11 combined. We have no problem with that, and would have no  
12 problem with having Contention 3 expanded by making  
13 Contention C. have what is in Contention 9, or taking C.  
14 out of Contention 3 and putting it in 9.

15 My guess is that putting 9 in 3 makes more sense,  
16 since they all deal with alternatives to the proposed action.

17 CHAIRMAN MILHOLLIN: The Board would simply like  
18 to have clarified the question of whether anyone objects  
19 to 3.C. as it's now written.

20 MR. ROISMAN: We haven't changed it from our  
21 original. Only Illinois did. This may have created some  
22 confusion.

23 MR. GOLDBERG: Mr. Chairman, as Mr. Roisman  
24 indicated, in our response to NRDC/CBE's statement of  
25 contentions we indicated that Contention 3.C. seemed to

1 duplicate the essence of Contention 9 and recommended their  
2 consolidation, with the additional language proposed in the  
3 stipulation involving the State of Illinois, the Licensee  
4 and the Staff. We would urge that that language be incorpor-  
5 ated in 3.C., to be further incorporated in Contention 9.  
6 That would be acceptable.

7 CHAIRMAN MILHOLLIN: Very well.

8 So the Board understands that Contention 3.C. is  
9 acceptable with the additional language added by the stipula-  
10 tion.

11 MR. ROISMAN: We would not object to adding that  
12 identical language to our Contention 3.C., so that we and  
13 Illinois have the same Contentions 1 through 9, except that  
14 Illinois drops Contention 3 and we retain it.

15 CHAIRMAN MILHOLLIN: Very well.

16 MR. ROWE: Mr. Chairman, we have no objection,  
17 and certainly appreciate Mr. Roisman's last statement.

18 We would think that the remaining procedures with  
19 respect to these matters would be enhanced if Contention 3  
20 and Contention 9 were consolidated, so it would not appear  
21 that we were going in two different directions.

22 But we have no objection.

23 MR. ROISMAN: Mr. Chairman, the only comment I  
24 have about combining them is that 3 relates to the question  
25 of alternatives, which presupposes a need for some action.

1       Contention 9, on the other hand, depending upon what  
2       eventually happens with the Dresden compaction and the Quad-  
3       Cities compaction requests, represents the question of  
4       whether there's any need for any action at all.

5               Just so long as it's clear that our position  
6       would be, if the Dresden and Quad-Cities compaction approvals  
7       came through, that this proceeding should be dismissed for  
8       lack of any preliminary showing that there was any need to  
9       take the action whatsoever.

10              CHAIRMAN MILHOLLIN: So I gather, then, that if  
11       the contentions remain separate, no one objects to either  
12       contention?

13              MR. ROWE: (Nodding affirmatively.)

14              CHAIRMAN MILHOLLIN: There may be some objection  
15       to combining them, as you stated.

16              MR. GOLDBERG: Mr. Chairman, I think that our  
17       position would be that if the matters are to be admitted  
18       that are set forth in Contention 3.C. and Contention 9,  
19       that they be consolidated and not considered independently  
20       as framed in the Statement of Contentions filed by NRDC/CBE.

21              CHAIRMAN MILHOLLIN: So it's your position that  
22       you only agree to the Contention 3.C. if it's combined, and  
23       otherwise you object?

24              MR. GOLDBERG: At this juncture, yes, given the  
25       balance of the Staff's response on Contention 3 generally,

1 on alternatives.

2 CHAIRMAN MILHOLLIN: So you don't object to 3.C.  
3 if it's independent, but you object if --

4 MR. GOLDBERG: I don't object if it's consolidated  
5 with Contention 9. We preserve the position we stated  
6 generally with respect to the subject of alternatives  
7 presented in Contention 3.C., should NRDC/CBE like to  
8 preserve it as an alternative contention.

9 CHAIRMAN MILHOLLIN: So Contention 3.C. not  
10 combined is not acceptable to you?

11 MR. GOLDBERG: Not at this time.

12 CHAIRMAN MILHOLLIN: Very well.

13 The Board members have questions concerning  
14 various of the contentions which are disputed. For conven-  
15 ience we will take up the contentions one at a time,  
16 numerically, and the Board members will address their  
17 questions to the various parties on these contentions.

18 MR. ROISMAN: Mr. Chairman, if it were not  
19 jurisdictional I would not raise it at all, but as you  
20 remember in our conference call of December, I raised the  
21 question -- and I believe Mr. Rowe confirmed -- on the  
22 basis of a recent decision that there's some question of  
23 the Board's jurisdiction to go beyond a single contention's  
24 admissibility for purposes of intervention, absent some  
25 allegation of additional authority.

1 Unless I've missed it in my papers, I've not seen  
2 the Board's authority expanded -- and I'm in favor of that  
3 happening, but I don't want to see the case flawed by the  
4 absence of that at this time.

5 Has the Board gotten an additional grant of  
6 jurisdiction?

7 CHAIRMAN MILHOLLIN: Not at this time, Mr.  
8 Roisman. I take it that you're insisting that we obtain an  
9 authorization from the Chairman of the Panel in order to  
10 make sure that we have the authority to decide the rest of  
11 the contentions?

12 MR. ROISMAN: Yes, that's correct.

13 CHAIRMAN MILHOLLIN: Thank you. We understand  
14 your point.

15 Are there any other statements before we begin  
16 to take up the contentions?

17 (No response.)

18 Very well.

19 (The Board conferring.)

20 DR. STOBBER: Mr. Goddard, I have a question which  
21 seems to relate to the Staff's responses on several  
22 contentions, and it would be this:

23 You seem to have not committed yourself or  
24 decided whether or not an environmental impact statement or  
25 an environmental impact assessment is going to be required.

1 I guess the first question would be:

2 Have you decided which would be required? And  
3 then I would like a little bit of elaboration on what the  
4 difference is between the two statements.

5 MR. GODDARD: Fine, sir.

6 As any questions of the Board will relate to  
7 Contentions 1 through 9, Mr. Goldberg generally will handle  
8 them. However, with regard to your particular question the  
9 Staff has not at this point reached a determination as to  
10 whether an EIS will be required, or whether the EIA, a  
11 negative declaration of impacts, will issue in this case.

12 As you well know, in the Oconee-McGuire case a  
13 decision was made that the impacts were negligible and an  
14 environmental impact appraisal issued. My assumptions at  
15 this time are not relevant to the matter before the Board.  
16 I think it will probably be determined within the next month  
17 or two months as to either the issuance of an EIA or the  
18 determination to prepare an EIS.

19 The EIS would be a recognition of more significant  
20 impacts, giving rise to a more elaborate statement, of  
21 course, opening up the right to public comment on that  
22 document.

23 DR. STOBBER: Does that mean that you have Staff  
24 specialists who are trying to assess the situation at this  
25 time? I mean technical experts, who are trying to determine



1 which of the two would be appropriate? Or does it mean that  
2 you haven't initiated that kind of an investigation at this  
3 time?

4 MR. GODDARD: No, sir. Our technical reviewers,  
5 both on the safety aspects side and on the environmental  
6 aspects side, are engaged in their review of all aspects of  
7 the application at this time.

8 As each of those individual inputs come in, they  
9 are managed by the Project Manager on the case, Mr. Bevan,  
10 and the determination will be made on the receipt of all  
11 individual inputs as to whether or not this action is deemed  
12 significant for purposes of issuance of an EIS.

13 DR. STOBBER: And you estimate . . . what time would  
14 this come together and allow you to make a decision?

15 MR. GODDARD: March 1 is nominally the Staff  
16 docket date on this, realizing that there may be pitfalls  
17 along the way in the administrative process. March 1 is a  
18 realistic target date.

19 CHAIRMAN MILHOLLIN: Mr. Goddard, when do you  
20 think it would be appropriate for us to decide Contention 2?

21 MR. GODDARD: I'm sorry? I didn't hear the last  
22 part.

23 CHAIRMAN MILHOLLIN: When do you think it would  
24 be appropriate for us to resolve Contention 2?

25 CHAIRMAN MILHOLLIN: The Staff's position would

1 be that, in light of the nature of the contention, we would  
2 not oppose your resolving the issue in favor of its  
3 admission, should you find it admissible on all other grounds.  
4 If that were the case, we feel that issuance of the  
5 appropriate documents would then serve as an easy means  
6 for disposition of that contention by Applicant and by Staff.

7 CHAIRMAN MILHOLLIN: Thank you.

8 Does Applicant concur in Staff's position on  
9 Contention 2?

10 MR. ROWE: Yes, Mr. Chairman.

11 CHAIRMAN MILHOLLIN: Very well. Thank you.

12 (The Board conferring.)

13 With respect to Contention 3, the Board would like  
14 to address a question to Mr. Roisman, or to the State of  
15 Illinois.

16 Part of Contention 3 is not clear to the Board.  
17 The Board is not certain it understands what you mean when  
18 you say, "last on, first off."

19 MR. ROISMAN: Okay. The normal method of  
20 operating nuclear plants is to baseload them, which means  
21 that they run all the time unless there is a reduction in  
22 the absolute baseload requirements of the utility. Even  
23 then, the nuclear plants tend to be the first ones that are  
24 turned on, and the last ones that are turned off. The more  
25 they run, the more spent fuel they generate. The more

1 spent fuel they generate, the more they need to consider what  
2 to do with it -- transship it, store it on site, send it to  
3 Morris, reprocess it -- what have you.

4 An alternative is to run the nuclear plant as a  
5 last on, first off alternative, thus reducing the amount of  
6 spent fuel that is generated, and reduce the nature of the  
7 problem created by the absence of a nuclear waste disposal  
8 solution at this time. We need to do something with the  
9 spent fuel while we're waiting for such a solution to come  
10 along.

11 That's all we meant by the contention.

12 DR. STOBBER: Mr. Roisman, are you suggesting that  
13 they operate a nuclear plant as a peaking resource, rather  
14 than as a baseload resource?

15 MR. ROISMAN: Not in the normal sense of the  
16 word peaking, we are not. We realize that unless there are  
17 some changes made in the way the plants operate -- you can  
18 take them off peak very fast, but you can't put them on  
19 peak very fast. But, rather, that in the range of the  
20 limitations of the way a nuclear plant operates, you not  
21 use it as your first-on baseload capacity, but as a minimum,  
22 as your last-on baseload capacity, where the startup time  
23 for the plant would enable you to know a day or two in  
24 advance, or whatever you need for startup, that that plant  
25 is going to be needed and then turn it on, rather than

1 having it run all the time.

2 DR. STOBBER: So you're saying that rather than  
3 operate it as a peaking plant to meet hourly needs, you would  
4 operate it as a sort of a modified peaking plant, to meet  
5 seasonal needs?

6 MR. ROISMAN: Yes, or . . . I'm not familiar  
7 with -- and discovery would be necessary for me to answer  
8 this -- it might be that the load factor for the Commonwealth  
9 system is such that even within the season there would be  
10 periods during which you could say we could keep these plants  
11 off line and not have to worry that we'll need them on such  
12 short notice that we would not have time to turn them on at  
13 all.

14 For instance, you might use peaking capacity more  
15 often -- real peaking capacity -- and obviate the need to  
16 turn on the nuclear plant.

17 Those would be options which only discovery would  
18 enable us to explore. But that would certainly be a  
19 possibility, and I don't want to rule it out.

20 CHAIRMAN MILHOLLIN: Thank you, Mr. Roisman.

21 Concerning Contention 5, the Board has a question  
22 for Mr. Roisman. Oh, excuse me. There was a question on  
23 Contention 4 that I temporarily overlooked.

24 DR. STOBBER: Mr. Roisman, I'm trying to understand  
25 your Contention 4. Would you describe to the Board what you

1 mean by using the term, "ALARA," which refers to as-low-as-  
2 reasonably-achievable, in the context of what you mean by  
3 Contention 4?

4 MR. ROISMAN: Yes.

5 Our position is that in evaluating the limits on  
6 exposures to workers working at the facilities, one of the  
7 considerations is to limit those exposures to as low as  
8 reasonably achievable.

9 Now, admittedly, in the more common parlance,  
10 that could mean a particular technique used by the worker  
11 to fix something in the plant. You'd use the one that would  
12 produce the lowest radiation exposures to that worker, to  
13 the extent that the balancing that ALARA considers appropriate  
14 had been done.

15 Now, we're looking at it in what is admittedly  
16 a grosser sense, and that is, if you do not require that the  
17 spent fuel be handled for transportation, shipping off site,  
18 and then rehandling at the other end, that the total  
19 exposures can be reduced. And that, therefore, one reason  
20 for keeping the facility's spent fuel at the site, even in  
21 an additional pool at the site, is the reduction of  
22 exposures to the workers as a result of doing that. And,  
23 of course, the workers would also include the workers on  
24 the truck itself.

25 CHAIRMAN MILHOLLIN: Could I follow up that

1 question?

2 MR. ROISMAN: Mr. Chairman, would it be all right  
3 if we sit?

4 CHAIRMAN MILHOLLIN: Surely.

5 MR. ROISMAN: I feel like the Duke of York.

6 CHAIRMAN MILHOLLIN: One of the responses to your  
7 Contention -- I think it was the Staff's response -- stated  
8 that the exposures would be within the limits prescribed  
9 by applicable regulations.

10 Is it your position that the requirement of as-low-  
11 as-reasonably-achievable is a requirement in addition to the  
12 requirements of the regulations for emissions?

13 MR. ROISMAN: It is my understanding that the  
14 Commission has made the regulations with regard to worker  
15 exposure to include ALARA. That is, that the maximum  
16 exposure limits allowed in 10 CFR Part 20 are maximums,  
17 consistent with the ALARA principle. Nothing, not even  
18 ALARA, can be used to go above those standards.

19 CHAIRMAN MILHOLLIN: Yes.

20 MR. ROISMAN: But merely meeting the standards,  
21 and never looking at the ALARA consideration, would also  
22 be illegal under the regulations, and the Commission contends  
23 that in each case a showing be made that the levels that  
24 will be reached will be as low as reasonably achievable.

25 CHAIRMAN MILHOLLIN: Even though they would be

1 within --

2 MR. ROISMAN: Even though they're clearly within  
3 the Part 20 limits, yes.

4 CHAIRMAN MILHOLLIN: That's the Staff's under-  
5 standing of the applicable law?

6 MR. GOLDBERG: Mr. Chairman, could I have a  
7 moment?

8 (Pause.)

9 Mr. Chairman, it is the Staff's understanding  
10 that with respect to permissible dose commitments in  
11 restricted areas, that in addition to meeting the Part 20  
12 limitations there is a provision in the regulations that  
13 would suggest that efforts should be made to take into  
14 account the state of technology in an effort to arrive at  
15 exposures that are as low as reasonably achievable.

16 We construe this position in the context of this  
17 contention to relate to the discrete proposal that we have  
18 before us. That is, that every effort will be undertaken  
19 to comply with the regulations regarding this discrete  
20 proposal.

21 As I understand the position of NRDC/CBE, they  
22 are suggesting that as-low-as-reasonably-achievable could be  
23 achieved by some means other than this action, and would  
24 suggest not taking this action would obviously have that  
25 effect. We feel that is, obviously, clear.

1           So that we view this contention as seeming to  
2 suggest that there are alternatives which could have reduced  
3 occupational exposure, and, if so, it would be our position  
4 that the consideration of those alternatives must necessarily  
5 await completion of the Staff's review as to whether or not  
6 this is an action that requires preparation of an impact  
7 statement, so that the full spectrum of reasonable alterna-  
8 tives must be considered under the law.

9           CHAIRMAN MILHOLLIN: My question was whether you  
10 agreed that the ALARA requirement is a requirement in  
11 addition to the general requirements for emissions in the  
12 regulations. I take it that your answer to that is yes?

13           MR. GOLDBERG: Yes, Mr. Chairman. And I would  
14 look at 10 CFR Section 2.1.C. for a discussion of this  
15 application, in Part 20.

16           CHAIRMAN MILHOLLIN: Very well. So your position  
17 would be that the standard of as-low-as-reasonably-achievable  
18 must be met by the Licensee?

19           MR. GOLDBERG: In this specific action, yes.

20           CHAIRMAN MILHOLLIN: Very well.

21           MR. ROISMAN: Mr. Chairman, may I just say, since  
22 that's a somewhat new line or tack the Staff is taking, I  
23 think it is totally indefensible to dilute the as-low-as-  
24 reasonably-achievable requirement by saying that that safety  
25 requirement does not include looking at alternative ways of



1 achieving the same goal, but only at alternative ways of  
2 doing the same specific proposed action.

3 In our judgment, if an Applicant came in and  
4 proposed that it was going to expose 100 workers to 5 rems  
5 a year by running them down some long corridor for the  
6 purpose of inspecting something, it would be perfectly  
7 permissible for the Commission, under the ALARA statement,  
8 to say we will require you either, number one, to put a  
9 remote sensor in -- which would not be the proposed action  
10 of running a worker down the corridor -- or, number two,  
11 to operate the reactor in such a way that it is not necessary  
12 for you to have to check on that so frequently that there  
13 will be a 5-rem exposure to these 100 workers who were doing  
14 the checking.

15 I don't see any reasonable basis in the legislative  
16 or administrative history of the ALARA standard to suggest  
17 that it's not perfectly permissible to come in and say we  
18 can get the same goal that was attempted to be gotten by  
19 the proposed action and do it with lower worker exposures,  
20 within the technology and the cost-benefits work out  
21 appropriately, and never have to worry about whether NEPA  
22 impact statement requirements would be made applicable to  
23 the action.

24 In addition, as I'm sure the Board is aware,  
25 Section 102.2E of NEPA applies the requirement to look at

1 alternative ways of conducting actions, even when no  
2 environmental impact statement is required. And there are  
3 quite a number of cases that have held that that obligation  
4 to look at alternatives, even absent the preparation of an  
5 impact statement, is applicable to federal agencies.

6 CHAIRMAN MILHOLLIN: Thank you, Mr. Roisman.

7 (The Board conferring.)

8 DR. STOBBER: Mr. Roisman, on Contention 5 would  
9 it be a fair statement if I characterized the gist of your  
10 contention to say essentially that what you're trying to  
11 say here is that if the utility dispensed with the capability  
12 for discharging one full core at the Dresden plant, then  
13 no shipping between Dresden and Quad-Cities would be  
14 required?

15 MR. ROISMAN: No. Assuming for the moment that  
16 the only answer to a buildup of spent fuel beyond the  
17 storage capabilities at the reactor was shipment, it would  
18 still be possible that by eliminating the one core  
19 discharge at a future date you could postulate a need for  
20 transshipment.

21 Our position here relates to when that need might  
22 arise.

23 Perhaps I should explain the thing in a larger  
24 context:

25 We have the Federal Government now attempting to

1 develop a mechanism for solving the permanent disposal of  
2 nuclear waste problem. And depending upon which government  
3 expert you talk to, or which utility expert you talk to, the  
4 solution may be in hand, with the facility available in  
5 1985, 1988, 1990, 1993, 2000 -- what have you.

6 In the meantime, the government is also proposing  
7 in a draft impact statement out by the Department of Energy  
8 that a storage option for spent fuel in the interim,  
9 presupposing that all the spent fuel that has reason to be  
10 generated will be generated, is to build away-from-reactor  
11 storage facilities. And the date on which that might  
12 happen again varies -- 1983, 1985 -- what have you.

13 Transshipment, we believe, is admittedly a  
14 stop-gap measure, waiting for either one of those deadlines  
15 to be reached, either the building of the away-from-reactor  
16 storage capability, or the solution of the nuclear waste  
17 problem and a permanent repository availability.

18 Anything that postpones the date on which you  
19 have to begin transshipment at all may make it unnecessary  
20 to ever do it, depending upon your answer to the question:  
21 Is the away-from-reactor storage the right answer, or should  
22 we wait for the permanent disposal? And, of course, also  
23 your answer to what about the availability of at-reactor  
24 storage, and what about the substantial reduction of the  
25 production of spent fuel by the reactors?

1           So Contention 5 was designed to take out of the  
2 equation the one-core discharge capability, which effectively  
3 adds three additional years to the urgency of the problem.  
4 Or else to have an applicant come in and demonstrate that  
5 there are really important benefits to retaining the one-  
6 core discharge and having that imposed as a condition in  
7 its license.

8           We felt whip-sawed by the contention. It was  
9 used to prove the need for immediate action, but was not  
10 used as a licensing condition, so no one knew that they  
11 would actually abide by it.

12           And our reference to the conduct of utilities in  
13 5.B. was a way of demonstrating that at least by action in  
14 the industry, of course approved by the NRC, it would appear  
15 that keeping a one-core discharge capability was not  
16 considered either important for safety or environmental  
17 reasons.

18           And that is the thrust of the contention. It  
19 would not eliminate the need for some action on spent fuel  
20 if the plants kept running and you just stretched the time  
21 out long enough.

22           CHAIRMAN MILHOLLIN: Mr. Roisman, another  
23 question for you. We seem to have a lot of questions for  
24 you today.

25           MR. ROISMAN: I'm glad to answer them.

1 CHAIRMAN MILHOLLIN: You assumed that a cost-  
2 benefit analysis would be necessary on the question of  
3 whether to ship or to sacrifice full-core discharge capabil-  
4 ity, to a certain extent. Is that correct or not? Or is  
5 that a mischaracterization of your contention?

6 MR. ROISMAN: Well, either it would be imposed as  
7 a safety condition, in which case no cost-benefit analysis  
8 would be required, or --

9 CHAIRMAN MILHOLLIN: I'm speaking of the duty  
10 of this Board in this action. Is it your position that we  
11 must conduct a cost-benefit analysis on the question of the  
12 extent to which sacrifice of full core discharge capability  
13 makes it unnecessary to ship? That's the question.

14 MR. ROISMAN: No.

15 Like so many of these contentions, there are  
16 several permutations and commutations.

17 If the Board were to conclude that, as a matter  
18 of safety, a one-core discharge capability were required,  
19 then there would be no need to do a cost-benefit analysis.  
20 And unless ALARA were used as the safety handle for making  
21 that safety decision there would be no cost-benefit. If it  
22 were ALARA, there is an implicit cost-benefit balance on  
23 that safety consideration.

24 So that would be one basis.

25 The second basis would be, if the Board determined

1 that there was no apparent reason for a one-core discharge  
2 capability at all, that is, neither an environmental nor a  
3 health nor a safety benefit, to it, and simply said, we will  
4 simply disregard the Applicant's asserted need for a one-core  
5 discharge capability in assessing the need for spent fuel  
6 storage capability, that would be the second way in which  
7 you would not need to do a cost-benefit analysis.

8 We are not proposing that a one-core discharge  
9 capability requirement be imposed.

10 The third, and the only way in which the cost-  
11 benefit would come up, is if the Board saw enough enough  
12 benefit to keeping a one-core discharge capability and the  
13 Applicant or Staff asked you to include it as a factor in  
14 the determination of the need for the problem. It wasn't  
15 big enough to be a safety consideration, but it might be  
16 imposed as an environmental condition. Then you'd have to  
17 do a cost-benefit analysis to decide whether it should be  
18 imposed as an environmental condition.

19 If you concluded that it should not, then it  
20 shouldn't be counted in determining what the need for spent  
21 fuel discharge capabilities are for these plants.

22 Did I clarify it, or confuse it?

23 CHAIRMAN MILHOLLIN: Thank you, Mr. Roisman.

24 (The Board conferring.)

25 Mr. Roisman, I'm sorry, but we're going to have

1 to pursue this another step.

2 MR. ROISMAN: All right.

3 CHAIRMAN MILHOLLIN: The Board would like to know  
4 whether, in your contention, you assert the fact that  
5 sacrificing full-core discharge capability would reduce or  
6 eliminate the need to ship?

7 MR. ROISMAN: We assert that not retaining one-core  
8 discharge capability would reduce the need to ship, and under  
9 some assumptions eliminate it.

10 CHAIRMAN MILHOLLIN: You make that as a factual  
11 assertion in this contention? You would have us construe  
12 this contention to make that factual assertion?

13 MR. ROISMAN: Yes.

14 Let me just be clear that one factual assertion  
15 we do not make is that the one-core discharge capability  
16 requirement is either necessary or unnecessary, and that's  
17 simply because our scientists have not analyzed the problem  
18 enough for us to take a position on that question.

19 CHAIRMAN MILHOLLIN: The Board understands that.

20 Do the other parties agree it's fair at this time  
21 to so construe that contention?

22 MR. ROWE: Yes, Mr. Chairman. It's our position,  
23 however, that this contention is something which appears  
24 very complex and many-headed when looked at simply on one  
25 page, but that when the Staff's environmental impact

1 appraisal is completed -- or statement, whichever they choose  
2 to prepare -- and when there are some additional facts  
3 available from the Applicant, resolution of this matter would  
4 prove to be, in fact, quite simple.

5 So the reason we did not object to this is that  
6 we think in a naked way it poses some interesting legal  
7 problems, but they'll all turn out to be evanescent when some  
8 facts are provided.

9 So we would prefer to address it at a later date.

10 CHAIRMAN MILHOLLIN: Thank you.

11 MR. GOLDBERG: Mr. Chairman, the Staff has no  
12 objection to the Board's construing the contention as last  
13 stated by Mr. Roisman.

14 However, it feels that if that is to be the  
15 construction, it appears to be a component, again, of Mr.  
16 Roisman's Contention 9, that there is no need, and this is  
17 one factor which would so demonstrate.

18 The Staff would urge its consideration in that  
19 context, if at all. Otherwise, the Staff reserves the  
20 position taken in its written statement in response to the  
21 contention as originally framed.

22 CHAIRMAN MILHOLLIN: So the Staff agrees to the  
23 fairness of the Board's considering it in the formulation  
24 we've just heard, but still opposes the admission of the  
25 contention as an issue in controversy?



1 MR. GOLDBERG: As construed here today, the Staff  
2 feels it could be a component of Contention 9, which calls  
3 into question the need for taking a particular action which,  
4 in the Staff's view, is a legitimate matter to be placed in  
5 controversy under the Commission's notice of intent to  
6 prepare a generic impact statement on spent fuel management  
7 of September, 1975, I believe.

8 CHAIRMAN MILHOLLIN: So you would agree that --

9 MR. GOLDBERG: In that context, we would not  
10 oppose its consideration.

11 CHAIRMAN MILHOLLIN: Very well. Thank you.

12 MR. ROISMAN: Mr. Chairman, I'm somewhat  
13 concerned that the Board is assuming that my answer to the  
14 last question, which was:

15 Can the contention be construed to say this?  
16 meant:

17 Can it be construed to say this and no more than  
18 this?

19 -- particularly as you asked the question of the Applicant  
20 and the Staff.

21 We would argue that if the Board should hold that  
22 the one-core discharge capability need would be used as part  
23 of the evaluation for the need of the facility transshipment  
24 occurring, that then the Board should write into the license  
25 conditions a requirement that one-core discharge capability

1 be preserved at all -- I believe it's five -- reactors  
2 involved.

3 And that's one reason why combining it with  
4 Contention 9 might get confusing, because then you'd have  
5 within a "need" contention this additional fact.

6 CHAIRMAN MILHOLLIN: Very well.

7 In the Board's view, Contention 6 presents a  
8 rather . . . well, complicated legal question. Perhaps  
9 it's idle to take it up at this time.

10 I would like to ask the Staff whether the Staff  
11 believes that this subject matter is appropriate for a  
12 licensing action, or consideration of this subject matter is  
13 appropriate for a licensing action?

14 MR. GOLDBERG: Could I ask the Board a clarifying  
15 question?

16 What general subject matter, in what context,  
17 and what particular substance of the contention are you --

18 CHAIRMAN MILHOLLIN: I'm referring to the  
19 contention that -- well, first, the contention asserts or  
20 implies that there's an obligation to disclose information  
21 on the question of whether, on the subject of sabotage,  
22 hijacking, and so forth, the contention first asserts that  
23 there's an obligation to disclose information sufficient to  
24 determine whether the shipment will be vulnerable.

25 Is it your position that that's wrong, that there

1 is no obligation to disclose information?

2 MR. GOLDBERG: The Staff position is that Part  
3 73 of its regulations specifically exempt spent fuel of the  
4 character that is to be transshipped from the physical  
5 protection requirements of that provision, --

6 CHAIRMAN MILHOLLIN: The Board is aware of that.

7 MR. GOLDBERG: -- and believes that the genesis  
8 of that exemption stems in part from the licensing provisions  
9 in Part 71, and referenced DOT regulations which govern the  
10 type of cask and procedures that must be involved, and  
11 believes that given compliance with those provisions, the  
12 transshipment is almost self regulating insofar as it has  
13 any vulnerability to sabotage, diversion, or other malevolent  
14 acts.

15 CHAIRMAN MILHOLLIN: Your position, as a factual  
16 position, is that in fact the shipments will be virtually  
17 immune? Or is your position that legally such considerations  
18 aren't appropriate?

19 Which is your position?

20 MR. GOLDBERG: Our position is that as a matter  
21 of law the Commission has seen fit to exempt transportations  
22 of this kind from its physical protection requirements.

23 CHAIRMAN MILHOLLIN: What about licensing require-  
24 ments, or licensing actions? Has the Commission exempted  
25 this from licensing actions? That's my question.

1           This is a licensing action, and the issue is  
2 whether the Commission has anywhere declared that we should  
3 not consider these matters in a licensing action?

4           MR. GOLDBERG: Could I have a moment, please?

5           (Pause.)

6           Mr. Chairman, the best I can answer it is that  
7 in the Staff's view the specific exemption governing what  
8 security provisions must be required would apply to any  
9 licensing actions in which circumstances of transshipment of  
10 or transportation of spent fuel would arise, and, therefore,  
11 would state that, as a matter of law, given the Commission's  
12 regulations, that is not an area that is appropriate for  
13 consideration in this proceeding.

14           We further rely on the additional remarks govern-  
15 ing this particular contention that we set forth in our  
16 written response. We feel there are several grounds for  
17 opposing the admission of this contention as framed at this  
18 time.

19           CHAIRMAN MILHOLLIN: Let me ask you this:

20           Isn't it conceivable, at least, that there could  
21 be types of shipment which would not, say, merit physical  
22 protection but which, nevertheless, would be sufficiently  
23 hazardous so that licensing conditions should be imposed?

24           Could you imagine such a case?

25           MR. GOLDBERG: Mr. Chairman, I'm really reluctant

1 to . . . may I have a moment, please?

2 (Pause.)

3 MR. ROWE: Mr. Chairman, might we respond to this  
4 question as well?

5 CHAIRMAN MILHOLLIN: Yes, you're free to respond  
6 to these questions as well. At least, that's the Board's  
7 impression.

8 MR. ROWE: We would like to have a chance to  
9 orally respond to these matters.

10 CHAIRMAN MILHOLLIN: Very well. Would the Staff  
11 agree to let the Licensee respond now, while you're  
12 conferring? Would that be agreeable to the Staff?

13 MR. GOLDBERG: Yes, Mr. Chairman.

14 CHAIRMAN MILHOLLIN: Would the Licensee care to  
15 respond now, while the Staff is conferring?

16 MR. ROWE: Thank you. My colleague, Mr. Bielawski,  
17 will address this.

18 MR. BIELAWSKI: Mr. Chairman, we believe that  
19 inherent in Section 73.6 the Commission has essentially  
20 looked at the danger which might be posed by sabotage or  
21 theft of spent nuclear material in transit, and has  
22 determined that essentially there is no such threat.

23 Therefore, we are essentially stating that there  
24 are no factual conditions for this Board to determine with  
25 respect to the danger caused by potential sabotage in these

1 proceedings.

2 If the petitioners would like to raise additional  
3 special circumstances which might show that the Board should  
4 consider this matter, we believe that this should only be  
5 done under Section 2.758 and we will essentially have to  
6 wait for any action which petitioners would take with  
7 respect to trying to show the special circumstances.

8 We feel that petitioners should have, prior to  
9 this date, attempted to implement the provisions of 2.758  
10 because this contention is so clearly a challenge to the  
11 the underlying policies.

12 CHAIRMAN MILHOLLIN: Very well. Thank you.

13 Is Staff ready with its response?

14 MR. GOLDBERG: We'll respond. Could you please  
15 repeat the question?

16 CHAIRMAN MILHOLLIN: The question is whether you  
17 can imagine a case in which the Commission would decide, or  
18 the Commission has decided, not to insist upon physical  
19 protection requirements, but in this same case we're  
20 imagining there could be a risk of whatever nature adequate  
21 to require the imposition of licensing conditions?

22 Of course that question implies that the  
23 Commission may not have decided this issue when it made its  
24 decision on physical protection. The Commission may have  
25 intended to leave this kind of question to individual

1 licensing proceedings with the expectation that if a risk  
2 were demonstrated in an individual proceeding that licensing  
3 conditions could respond to it.

4 What I'm suggesting is that the Commission may  
5 have refrained from including this type of activity in its  
6 physical protection requirements because it assumed that  
7 licensing boards would respond to allegations that some  
8 danger might exist, albeit insufficient to warrant physical  
9 protection.

10 MR. GOLDBERG: It would seem, then, that it would  
11 be incumbent upon someone seeking to raise that question to  
12 show what special circumstances may exist in an individual  
13 proceeding which would warrant considerations of what  
14 additional measures, if any, should be imposed above and  
15 beyond those that exist by various regulations, both promul-  
16 gated by the NRC and DOT, to cover the transportation of  
17 nuclear materials.

18 CHAIRMAN MILHOLLIN: But you would agree that as  
19 a matter of law there could be such a case?

20 MR. GOLDBERG: I'm not sure I would agree as a  
21 matter of law or as a matter of fact that --

22 CHAIRMAN MILHOLLIN: Or as a matter of Commission  
23 policy, shall we say?

24 MR. GOLDBERG: Let me say candidly that I have  
25 made an effort to try to discern what considerations underlie

1 the Commission's exemption in 73.6, and could find none that  
2 shed any light on the underlying rationale.

3 My statements earlier, that it appeared to be  
4 implicit that there were no physical protection provisions  
5 that were to be applied beyond those specified, I would say  
6 that if we're presented with a contention that really raises  
7 a factual allegation of some discernible danger of sabotage,  
8 diversion or other acts that perhaps should be considered  
9 here, we would be willing to consider that contention. We  
10 just don't feel we have it here. We feel that the over-  
11 whelming body of Commission publications have expressed the  
12 opinion that spent fuel in transit is not an attractive  
13 target and, in fact is, as I said earlier, almost self regulat-  
14 ing, at least from a safeguards point of view.

15 CHAIRMAN MILHOLLIN: Thank you very much.

16 MR. ROWE: Mr. Chairman?

17 CHAIRMAN MILHOLLIN: We have one more question  
18 on this subject from a Board member.

19 MRS. JOHNSON: At the risk of taking consideration  
20 of contentions out of order, but I think this is related to  
21 the discussion at this time, is it not true that -- or is  
22 it true -- that shipments of special nuclear material must  
23 be licensed under 10 CFR 74?

24 MR. GOLDBERG: And would spent fuel shipment come  
25 under this license, as a licensing action by the Commission?



1 MR. GODDARD: Excuse me. We're having trouble  
2 hearing you here because of the noise in the room.

3 MR. GOLDBERG: Your question is whether it will  
4 be a part of any authorization to transship fuel, or whether  
5 it will be the subject of a separate license to a shipper or  
6 other carrier, or --

7 MRS. JOHNSON: My question is intended to be  
8 rather general, and not specific. But is it a requirement  
9 of the regulations that the shipment of special nuclear  
10 material be licensed under Part 71?

11 MR. GOLDBERG: That is my understanding.

12 MRS. JOHNSON: And does not spent fuel come under  
13 the licensing requirements of Part 71?

14 MR. GOLDBERG: It is a form of special nuclear  
15 material, yes.

16 MRS. JOHNSON: This is what I wanted to understand.

17 MR. ROWE: Mr. Chairman, Part 73 represents a  
18 comprehensive review by the Commission of security require-  
19 ments, and in the course of that comprehensive review they  
20 chose to impose certain requirements on nuclear power  
21 plants, certain requirements on reprocessing plants, and  
22 certain requirements upon shipments of special nuclear  
23 materials.

24 They chose to specifically exempt matters such  
25 as spent fuel because of radiation level and other reasons.

1 That choice to specifically exempt these shipments would be  
2 rendered absolutely meaningless by saying that in spite of  
3 the comprehensive review any licensing proceeding can now  
4 wander into the appropriateness of safeguards for such ship-  
5 ments.

6 If there is any factual circumstance where such an  
7 investigation is warranted, it requires the procedures for  
8 waiving 73.6 which are set forth in 2.758.

9 With all due respect, this licensing board is  
10 simply not free to go beyond a regulation that's as clear  
11 as this one.

12 Thank you, Mr. Chairman.

13 MS. SEKULER: Mr. Chairman, may I ask a question?

14 CHAIRMAN MILHOLLIN: Yes.

15 MS. SEKULER: I think, as was indicated by your  
16 question to the Staff --

17 CHAIRMAN MILHOLLIN: Excuse me. Can you hear?

18 MS. SEKULER: As was indicated by your questions  
19 to the Staff, Contention 6 and also Revised Contention 11,  
20 which deals with some additional issues do not specifically  
21 intend to bring shipments of spent fuel necessarily under  
22 the rubric of Section 73.

23 However, we do maintain that some security plans  
24 may indeed be warranted, and 73.1, Sub-section (b)(4) gives  
25 this Commission the authority, this Board the authority,

1 to look into such problems to see whether or not security  
2 plans are warranted and to have such security plans issued  
3 if necessary, even though they may not be within the specific  
4 rubric of 73 requiring such things as armed guards or having  
5 the shipment followed by two people in a car, surveillance --  
6 whatever the other particular regulations are.

7         Additionally, I think that we can produce eviden-  
8 tiary--factual evidence, to show that some of the presumed,  
9 though not in the regulations, intent of the Commission at  
10 the time that they put into the regulation 73.6(b) the  
11 exemption for certain types of special nuclear material  
12 which can be interpreted as spent fuel, that there is some  
13 question now as to those assumptions and we could show  
14 evidence to that effect.

15         I believe you even have in your record at this  
16 point two information reports-- One was for June 14, 1978,  
17 another November 9, 1978 -- indicating some question about  
18 whether spent fuel should not be included.

19         Additionally, I would bring to your attention the  
20 Part 70 proposed rulemaking that was issued by the Nuclear  
21 Regulatory Commission on September 1, 1970 which asked for  
22 comments on the topic of general license requirements for  
23 any person who possesses special nuclear material in transit.

24         This is not a Part 73 proposed rulemaking. It  
25 comes under Part 70. I have copies if you would like. And

1 I think this indicates once again that 73 is not the exclusive  
2 means by which security may be regulated by the Commission..

3 CHAIRMAN MILHOLLIN: Thank you.

4 MR. ROISMAN: Mr. Chairman, may I just add one  
5 thing?

6 Mr. Rowe's point about the applicability of  
7 Section 2.758, in general when the Commission passes a  
8 regulation it either says in the regulation, this is the  
9 definitive word and we are satisfied with the regulation as  
10 is, and if you think you have a special circumstance you  
11 have to follow this other elaborate procedure that we've  
12 set out where we shift the burden to you to make a showing,  
13 which then the Board refers to us for, in effect, amending  
14 the regulation.

15 But when Part 73 was enacted, the section that  
16 Ms. Sekuler directed your attention to, 2.731(b)(4),  
17 specifically reserves to the Commission -- and, of course,  
18 this Board is acting as an arm of the Commission -- the  
19 right to impose additional security requirements beyond  
20 those specified in Part 73.

21 We believe that that was an accurate admission  
22 by the Commission that the knowledge of the safeguard risks  
23 associated with any special nuclear material, whether it's  
24 spent fuel or otherwise, is such that they do not want to  
25 foreclose a Board from having an inquiry, and that we need

1 not go to 2.758, that we are not burdened with that  
2 requirement, that at least as a minimum an applicant must  
3 produce their case insofar as they describe what they're going  
4 to do.

5 We don't know by anything in the record so far  
6 precisely how the spent fuel is going to be safeguarded as  
7 it moves along the highway. And while all the attention that  
8 the Staff has given as to the risk that someone is going to  
9 go in and steal one of these multi-ton casks, the sabotage  
10 risk of somebody deliberately going in and blowing it up is  
11 totally ignored. And there's nothing about that risk that's  
12 even addressed in Part 73.

13 Now, we don't think the Commission was persuaded  
14 when they passed Part 73 that we are absolutely right, that  
15 there is a serious sabotage risk in shipping spent fuel,  
16 but we think they left the door open for that issue to be  
17 presented in a case at least as far as we and the State of  
18 Illinois have presented it, which is to say that we want to  
19 see something on this question.

20 I don't think that requires us to go to 2.758 at  
21 all.

22 CHAIRMAN MILHOLLIN: Thank you, Mr. Roisman.

23 MR. GOLDBERG: Mr. Chairman, may I just make one  
24 final comment on this?

25 CHAIRMAN MILHOLLIN: Yes.

1 MR. GOLDBERG: I am advised by the Project Manager  
2 for this particular licensing activity that the Licensee  
3 already possesses a Part 71 license to transport spent fuel  
4 for its Dresden facility.

5 So the only real distinction now would be its  
6 destination, at least insofar as the transit route goes.

7 I would further say that given the observations of  
8 counsel for the State that I feel more confident that this  
9 appears to represent a challenge to the regulatory scheme  
10 governing safeguards of special nuclear material transporta-  
11 tion, specifically Section 73.6(b).

12 CHAIRMAN MILHOLLIN: Thank you.

13 (The Board conferring.)

14 The Board has a question concerning Contention 8  
15 which it will address generally to the parties. Perhaps  
16 the question should be addressed to Mr. Roisman.

17 The contention mentions standards for considera-  
18 tion of proposed spent fuel handling prior to the completion  
19 of the GEIS on spent fuel handling.

20 Could you, Mr. Roisman, elaborate briefly on what  
21 the standards are and where they may be found?

22 MR. ROISMAN: Yes, Mr. Chairman. The standards  
23 are contained in the Commission's Statement of Policy  
24 published in 1975 in reference to the filing by the Natural  
25 Resources Defense Council. Our request asked that they not

1 allow any interim storage measures to be taken until an  
2 impact statement was completed.

3 They said, we will reject that request although we  
4 will agree to prepare this generic impact statement. And then  
5 they delegated in that proceeding to each individual Board  
6 the responsibility for balancing and weighing the factors  
7 which they, themselves, looked at in rejecting the request  
8 that we made across the board.

9 Now, the statement of policy appears and is cited  
10 on page 3 of our response to objections to contentions. It  
11 appears at 40 Federal Register, beginning at page 42801.

12 CHAIRMAN MILHOLLIN: Excuse me, Mr. Roisman. Are  
13 you reading from your filing?

14 MR. ROISMAN: Yes.

15 CHAIRMAN MILHOLLIN: You're reading a citation  
16 from your filing?

17 MR. ROISMAN: Yes. It's at the top of page 3 of  
18 the filing that we made last Friday, our response to the  
19 Applicant's and Staff's objections to contentions.

20 CHAIRMAN MILHOLLIN: Thank you, Mr. Roisman.

21 MR. ROISMAN: I don't know if that statement has  
22 been published anywhere else. I'm not aware of it.

23 CHAIRMAN MILHOLLIN: Thank you.

24 MR. GOLDBERG: Mr. Chairman, I hate to be inter-  
25 rupting, but the Staff would appreciate an opportunity to

1 remark on Mr. Roisman's statement.

2 CHAIRMAN MILHOLLIN: Mr. Roisman simply indicated  
3 where the material could be found.

4 MR. GOLDBERG: Can I tell you the nature of my --  
5 make an offer of proof?

6 (Laughter.)

7 CHAIRMAN MILHOLLIN: Very well. If it's brief,  
8 please.

9 MR. GOLDBERG: It will be brief.

10 Mr. Roisman's reference to the Commission's  
11 policy statement in connection with its declaration of intent  
12 to prepare a generic impact statement delegates to the Staff,  
13 and not the Board, the responsibility for weighing in  
14 individual actions initiated for the purpose of alleviating  
15 spent fuel storage capacity, the responsibility to decide  
16 whether the Commission's general consideration of those  
17 factors which led it to the conclusion that interim action  
18 should not be deferred pending a completion of the statement  
19 is inapplicable in individual cases.

20 It would be the position of the Staff that unless  
21 one of those matters are directly put in controversy that the  
22 Staff will consider it in its environmental document, but  
23 it's not automatically a matter in issue, unless one of those  
24 factors is placed directly in issue by another party.

25 CHAIRMAN MILHOLLIN: You're not suggesting that



1 the Commission indicated that the Board should not consider  
2 those factors if they are put in issue properly by an  
3 appropriate contention?

4 MR. GOLDBERG: That's correct.

5 CHAIRMAN MILHOLLIN: All right. Thank you.

6 We have now succeeded in discussing all of the  
7 contentions put forth by NRDC, I believe, except Contention  
8 9 on which there is general agreement.

9 So we will now move to the contentions of the  
10 State of Illinois.

11 Perhaps it would be appropriate for the Board to  
12 announce its intentions concerning lunch, since it's 12:00  
13 o'clock. The Board proposes that we make an effort to  
14 finish by 1:00. Hearing no objection, the Board will persist  
15 in this direction.

16 The Board's understanding is that Revised  
17 Contention 11 is disputed, and Contentions 13 and 16 are  
18 disputed. Is that correct?

19 MS. SEKULER: That's correct.

20 MR. ROWE: Yes, Mr. Chairman.

21 CHAIRMAN MILHOLLIN: I would like to address a  
22 question to the Staff:

23 Does the Staff object to only Part A of Contention  
24 13, or does the Staff object to all of Contention 13?

25 MR. GODDARD: As we indicated on the first page

1 of our original, we are not supporting anything. We did not  
2 specifically object, and will preserve our rights there.

3 We object at this point to Part A of Contention 13  
4 in that this is not a request under Part 71. The Staff is  
5 of the opinion that many of the substantive requirements  
6 placed upon applicants for Part 71 licenses would apply in  
7 this case, insofar as they have a bearing on certain safety  
8 factors. So --

9 CHAIRMAN MILHOLLIN: Excuse me, can I interrupt  
10 you a second?

11 MR. GODDARD: You may.

12 CHAIRMAN MILHOLLIN: Your statement, then,  
13 indicates that the requirements in Part 71 -- substantive  
14 requirements -- would apply to this licensing action under  
15 Part 50?

16 MR. GODDARD: Any with significant safety conse-  
17 quences. Many of the procedural requirements we feel would  
18 not be applicable there.

19 CHAIRMAN MILHOLLIN: So your answer to my question  
20 as to whether you object to the rest of the contention, is  
21 no, you do not object to the rest of the contention now?

22 MR. GODDARD: Except to the degree that they  
23 have furnished information. Illinois' contention is phrased  
24 somewhat in the nature of a discovery request or an allega-  
25 tion of insufficient information. Insofar as that information

1 can be gleaned from the application or any supporting docu-  
2 ments we then feel that such a contention is either objected  
3 to at this time or would be subject to disposition by summary  
4 disposition or other forms on showing that that information  
5 has been furnished on the docket.

6 CHAIRMAN MILHOLLIN: The Board would like to know  
7 whether you object to it now or not?

8 MR. GODDARD: If I may have a moment.

9 (Pause.)

10 MR. ROWE: Mr. Chairman, might I interject while  
11 the Staff is conferring?

12 CHAIRMAN MILHOLLIN: Yes, you may, Mr. Rowe.

13 MR. ROWE: The Applicant believes that Part 71 is  
14 very clear. We have a general license to ship, and nothing  
15 more is needed to ship. We must do so according to that  
16 general license, in a licensed container for spent fuel.

17 The licensing of the container is a separate  
18 proceeding. It is not part of this proceeding. At the  
19 moment we have a licensed container. The relevant decisions  
20 have been made, and all of the material in Contention 13 goes  
21 to the licensing of the package or the container.

22 That cannot be considered in this proceeding, and  
23 we are not asking for a license under Part 71 in this proceed-  
24 ing.

25 CHAIRMAN MILHOLLIN: The Board understands that,

1 Mr. Rowe. Is it your position that the other requirements  
2 of Part 71 don't apply? I'm speaking of the requirements  
3 separate from the requirements of the package, a certain  
4 package, which you say that you have.

5 Aren't there requirements in Part 71 which don't  
6 relate to packaging specifically which might also apply to  
7 this action?

8 MR. ROWE: The ones set forth in the contention,  
9 Mr. Chairman, relate to packaging. I believe that's a  
10 fairly complete description of what's at issue here.

11 CHAIRMAN MILHOLLIN: The C. part of Contention 13  
12 refers to method of transport.

13 MR. ROWE: The C. part states:

14 "Licenses or license amendments shall include  
15 each proposed packaging design and method of transport."

16 It's an agglomeration.

17 CHAIRMAN MILHOLLIN: Yes, you're right.

18 So your position is that the license you hold for  
19 packaging comprehends the issues which are set forth in  
20 Contention 13?

21 MR. ROWE: That's correct, Mr. Chairman. Yes.

22 CHAIRMAN MILHOLLIN: Has the Staff decided whether  
23 it objects to the balance of that contention?

24 MR. GODDARD: It would object on the basis of  
25 the fact that all these matters fall within the ambit of the

1 Part 71 license already issued to Applicant for purposes of  
2 shipment.

3 CHAIRMAN MILHOLLIN: So the Board is to understand  
4 that you object not only to Part A, but to the entire  
5 contention. The Board thought your filing was somewhat  
6 ambiguous on that point, because we were unable to tell  
7 whether you objected only to Part A of Contention 13, or  
8 whether you objected to the entire contention.

9 MR. GODDARD: At the time we objected to A.  
10 However, we have received further information from the  
11 Applicant since that time, and we are satisfied that every-  
12 thing which is set forth in the contention is already covered  
13 by the Applicant's existing license.

14 CHAIRMAN MILHOLLIN: So your position now, for  
15 the record, is that you object to the entire contention.

16 MR. GODDARD: To the proposed Contention 13, yes.

17 MS. SEKULER: Mr. Chairman, may I make a statement  
18 at this time?

19 At the time that this contention was written, the  
20 application in itself had no information regarding the Part  
21 71 requirements. Obviously, the Staff had some need for that  
22 information, because they asked questions. And now that  
23 they've gotten the answers -- which I haven't seen -- they  
24 have decided that it falls within the ambit of the existing  
25 license. I would protest using this type of method to

1 determine when and where contentions will be objected to,  
2 without allowing the counsel for the petitioners to at least  
3 have some access to information upon which to base our  
4 contentions.

5 Further, in regard to the statement that the  
6 Part 71 license which already is in Commonwealth Edison's  
7 possession obviates the need for any other Part 71 licensing,  
8 the State of Illinois believes that that one single cask  
9 is not going to be sufficient for the transshipment procedure  
10 and that, therefore, there will be an additional licensing  
11 proceeding and that, rather than having a subsequent  
12 licensing proceeding for another cask, either rail or truck  
13 since we don't know what the method of transport is that will  
14 be used, that it would be economical to treat both issues  
15 in this proceeding.

16 MR. ROWE: Mr. Chairman, first, we supplied the  
17 Attorney General with the relevant license.

18 With respect to the second point, it is our  
19 choice what proceedings to attempt to ask to be combined.  
20 At the moment we have a license. It may be that if we need  
21 additional casks, we will buy additional casks that are  
22 already licensed.

23 In any case, we haven't chosen to do so.

24 This is not the time, and nothing economical will  
25 be achieved by attempting to combine this proceeding, which

1 relates to storage of spent fuel generated at one reactor at  
2 another, with some purely hypothetical proceeding concerning  
3 the licensing of a purely hypothetical cask.

4 CHAIRMAN MILHOLLIN: Thank you, Mr. Rowe.

5 I'd like to ask one more question of the Staff  
6 concerning this contention.

7 The contention, as I read it, makes factual  
8 assertions concerning the adequacy of the application. I  
9 assume that the reason for not opposing it originally was  
10 that the Staff thought those factual assertions had some  
11 merit, although I have no way to know that.

12 Does the Staff now feel, or does the Staff agree,  
13 that these are still factual assertions?

14 MR. GODDARD: Yes, they are factual assertions.

15 CHAIRMAN MILHOLLIN: And from just a purely legal  
16 point of view, are they in the posture of acceptable  
17 contentions if we assume the facts which they allege are  
18 true, as we must do, must we not? We must assume that the  
19 facts alleged by the contentions are true for purposes of  
20 deciding whether to admit them in the case. If you assume  
21 the facts alleged in the contention are true, then either  
22 you must agree to admit the contention, or you must take  
23 the position that the facts alleged are irrelevant or, for  
24 some reason, are inappropriate for us to consider.

25 MR. CUNNINGHAM: Mr. Chairman, I think the point

1 is that the Staff believes that these assertions are  
2 irrelevant. In our view, this licensing action is one to  
3 store at Plant "A" spent fuel which is generated at Plant "B".  
4 That is the actual authority that's requested.

5 The authority to ship, we believe, already resides  
6 with the Licensee by virtue of the Part 71 license.

7 Therefore, these contentions -- these issues, these  
8 factual assertions -- have been resolved in connection with  
9 the Part 71 license and need not be resolved again, and are,  
10 in fact, irrelevant to this proceeding.

11 MR. ROISMAN: Excuse me, Mr. Chairman, but  
12 doesn't that raise a factual question, which is what the  
13 State of Illinois is asking to have the Board resolve? We  
14 understand the Staff thinks that's a factual question, we  
15 understand the Applicant thinks that's a factual question.  
16 We understand the State of Illinois thinks it's not.

17 The only way to resolve it is to put on the  
18 record -- which is not on the record -- the exact license.

19 I think what underlies it is an effort by the  
20 Applicant and the Staff to segment one action into discrete  
21 portions that they feel they can handle more easily. But,  
22 of course, NEPA tells us that wouldn't be permissible, nor  
23 is there anything about the Atomic Energy Act that I think  
24 will allow that to be permissible.

25 The State of Illinois' contention has to do with,



1 is there assurance of adequate protection with regard to  
2 this transportation, given the nature of what's being  
3 proposed here. And it's not an answer to say, all we want  
4 to do is put it over in Dresden.

5 If they've got some machine that can get it over  
6 there without having it transported, then they might have a  
7 legal basis to say, we don't have anything here to argue  
8 about.

9 But given that we know it's going to move along  
10 the ground some way, we think that there is a legitimate,  
11 at least factual issue which can be resolved now. It may  
12 be subject to summary disposition under 2.749, but nobody  
13 has filed that yet.

14 MR. ROWE: Mr. Chairman, there is no factual  
15 issue here whatsoever. We supplied the cask license through  
16 the course of discovery. However, the legal posture is that  
17 Part 71 gives us, as licensees of the nuclear power plant,  
18 a general license to ship materials if we do so in a licensed  
19 container. We don't have to prove at this time that we have  
20 a licensed container. We can ship if we have one, and we  
21 can't ship if we don't.

22 It's that simple. There's no factual issue about  
23 the type or scope or ambit of the license. We supplied that  
24 simply through discovery.

25 Now, by virtue of this there is no deprivation to

1 either of the intervenors of an opportunity to look at the  
2 impacts of transportation. We've conceded and stipulated  
3 that Contention 10, and that the good portion of NRDC's  
4 contention could be admitted. There's plenty of room there  
5 to look into the impacts of transportation. The Staff is  
6 doing so in reaching its determination with respect to an  
7 environmental impact appraisal.

8 What we object to is a contention which is legally  
9 wrong on its face. We are not attempting to preclude a full  
10 analysis of what's going on here.

11 CHAIRMAN MILHOLLIN: Thank you, Mr. Rowe.

12 As I understand Mr. Roisman's point, his point is  
13 that if it's true legally that these matters are comprehended  
14 by your license, then, of course, they would be irrelevant.  
15 I understand him to say that perhaps it's a mixed question of  
16 fact and law as to what your license covers, and that would  
17 be a subject which should be inquired into.

18 I understand his position to be that. Is that  
19 how you understand his position?

20 MR. ROWE: I think that is how I understand his  
21 position. And our response is that that position is simply  
22 wrong.

23 We either can ship if we have an appropriate  
24 licensed package, or we cannot. We have one. We may get  
25 others. We could take the package we have now and chop it

1 up into small pieces, and buy four more. We would be  
2 entirely within our legal rights pursuant to the general  
3 license under Part 71 to do so.

4 CHAIRMAN MILHOLLIN: So your position is that the  
5 scope of your license is self evident?

6 MR. ROWE: No, it's that the scope of the license  
7 we currently possess is actually irrelevant.

8 The point is we're simply asking permission to  
9 take the fuel from one reactor and to store it somewhere  
10 else. We already have permission to ship and to transport,  
11 if and when we have a suitable licensed cask. We happen to  
12 have one now. We may have different ones in the future.  
13 But they have to be licensed, and that is legally a separate  
14 proceeding.

15 Now, we have not attempted to preclude any kind  
16 of comprehensive NEPA review. We've stipulated Contention  
17 10 can go in.

18 All these allegations in this contention about  
19 what our application should have contained are simply wrong.

20 CHAIRMAN MILHOLLIN: Thank you, Mr. Rowe.

21 Does Staff have anything further on this point?

22 MR. GODDARD: Not at this time, Mr. Chairman.

23 Mr. Roisman, the Board has another question for  
24 you.

25 MR. ROISMAN: I thought we were out of my

1 contentions.

2 CHAIRMAN MILHOLLIN: Well, we agreed, off the  
3 record, to come back to one of yours if we had time.

4 MR. ROISMAN: Okay. If I'd known that, I would  
5 have talked longer on Ms. Sekuler's.

6 CHAIRMAN MILHOLLIN: We made an arbitrary decision  
7 that we had enough time, so we decided to come back.

8 Contention 7 mentions, or implies, that there is  
9 a requirement that additional emergency planning be done.  
10 Would you address the question of whether there is such a  
11 requirement, and generally inform us as to what you mean by  
12 the words, "additional planning?"

13 MR. ROISMAN: Okay.

14 Let me say, in Contention 7, particularly Part B,  
15 that is based upon not having seen anything on emergency  
16 planning. Our position would be that there are emergency  
17 planning considerations associated with the off-site movement  
18 of spent fuel.

19 When we use the words, "additional emergency  
20 planning," we mean beyond what we are aware exists on the  
21 site. But in this application, we would have expected the  
22 Applicant to have provided information on the emergency  
23 planning for the transportation aspect of the movement of  
24 the spent fuel. And that's the part that we are focusing  
25 on. In other words, we are not trying to raise the adequacy

1 of the emergency planning for the Dresden or Quad-Cities units  
2 or the activity that takes place within their boundaries,  
3 although the Petitioner, CBE, has challenged that. But we  
4 are not challenging it in this proceeding.

5 In this proceeding we are trying to find out what  
6 emergency planning measures will be taken for the transporta-  
7 tion segment.

8 CHAIRMAN MILHOLLIN: As distinguished from loading  
9 and unloading?

10 MR. ROISMAN: As distinguished from what happens  
11 when you are within the borders of the property owned by the  
12 Applicant. And it, I admit, is vague because there isn't  
13 anything in the record that tells us that.

14 As you know, this application is a little odd.  
15 I'm somewhat surprised that the Staff accepted it for filing.  
16 It consists of a letter saying that something we told you we  
17 were going to do several years ago, we have now decided we  
18 want to do.

19 But when we go back to what they said several  
20 years ago, we don't get any more light on it.

21 I would have thought the Staff would have required,  
22 before accepting the application, at least a reference to  
23 all of these different areas that you would normally file  
24 with an application -- emergency planning, security plans,  
25 and the like. That is not in existence here.

1 CHAIRMAN MILHOLLIN: So your position is that  
2 emergency planning is required, or consideration of it is  
3 required?

4 MR. ROISMAN: Is required with respect to the  
5 transportation segment of the spent fuel.

6 CHAIRMAN MILHOLLIN: And, second, your response  
7 would be that when you refer to the word "additional," or  
8 when you use the word, "additional," you refer to the portion  
9 of the activity between the zones of the reactors?

10 MR. ROISMAN: That's correct.

11 CHAIRMAN MILHOLLIN: Would any other party like  
12 to make any additional remarks on this contention?

13 MR. ROWE: No, Mr. Chairman.

14 MR. GOLDBERG: No, Mr. Chairman.

15 MS. SEKULER: Mr. Chairman, may I just make a  
16 correction with reference to Contention 13, please?

17 In Contention 13 I believe we refer to Part 71  
18 Appendix F, and that should be Part 71, Appendix E.

19 CHAIRMAN MILHOLLIN: That's in --

20 MS. SEKULER: That's on page 13 of our memorandum.  
21 Contention 13 would be in B, and that should read Appendix E.  
22 That's the quality assurance section.

23 CHAIRMAN MILHOLLIN: Thank you.

24 We have now reached the end of our discussion  
25 of the contentions. It might be appropriate to discuss or

1 to inquire into possible discovery schedules.

2 Have the parties discussed the possible schedules  
3 among themselves?

4 MR. ROWE: Mr. Chairman, we have for some time  
5 generally made documents available to Intervenorors upon  
6 request. There has been one deposition which related to  
7 several other proceedings as well as this one.

8 We are prepared, in general, to proceed with  
9 discovery immediately. We have not discussed with either  
10 of the Intervenorors a termination date for discovery yet.

11 The one qualification I would put on all this is  
12 that the Company's security plans are documents which have  
13 a high level of confidentiality, and this confidentiality  
14 is important to their effectiveness. And we certainly would  
15 not disclose documents of that nature in the absence of a  
16 definitive ruling on Contentions 6 and 11.

17 But short of that, I think that we are prepared  
18 to proceed fully and openly, and basically at the pleasure  
19 of the Intervenorors, with discovery.

20 CHAIRMAN MILHOLLIN: Would anyone care to suggest  
21 a time for closing discovery?

22 MR. ROISMAN: Mr. Chairman, let me just say that  
23 from our perspective we have not yet -- although Mr. Rowe  
24 is right, to the extent that we have indicated any interest  
25 in documents they have been provided to us informally, but

1 we have not yet really put any substantial effort into  
2 looking at the question of discovery, since until we know  
3 whether we are going to be admitted as a party we felt that  
4 that might not be a fruitful use of our time.

5 We would like to consider that our discovery  
6 schedule begins formally when and if the Board rules that  
7 we have met the standing requirements, or are otherwise  
8 admitted as a party.

9 Insofar as the end of discovery is concerned,  
10 I think it's very difficult to know that. I mean a very  
11 willing applicant who discloses in the form of responses to  
12 interrogatories, as well as documents, openly everything  
13 in their possession, and a Staff that does the same,  
14 doesn't make it necessary to have several rounds of discovery.  
15 And those who are more recalcitrant do.

16 It's very difficult to know, until we put the  
17 questions to them, precisely when that's going to be.

18 We know that the Staff is not anticipating an  
19 EIS or an EIA for at least some period of time. As I  
20 understood it, it's not until March 1 that they will tell  
21 us which it's going to be. Now, maybe that's going to be  
22 simultaneous with its publication, but certainly sometime  
23 after that.

24 I would note on the record that we have information  
25 that appears to suggest that there isn't any big rush here,



1 and I would like to at least have a schedule set that would  
2 allow one round of discovery and provide that further rounds  
3 of discovery would be permitted if a party is able to demon-  
4 strate that they weren't getting very responsive answers.

5 And I say doing it that way because it is so  
6 difficult to argue from a prior interrogatory or document  
7 production that it wasn't complete to the extent that a party  
8 should be directed to answer it more. It's often easier  
9 simply to take what you have and reframe the question to  
10 get the rest of what you want.

11 But setting the outer deadline now I think is  
12 going to be difficult. If we were forced to give you a date,  
13 we would want it to be no less than six months from now, just  
14 to cover those contingencies.

15 CHAIRMAN MILHOLLIN: Mr. Roisman, I take it you  
16 would not object to beginning discovery immediately upon  
17 the decision of the Board concerning the question of  
18 standing, whether you are admitted?

19 MR. ROISMAN: That's right. The commencement  
20 we're prepared to do as soon as we have that ruling from  
21 the Board.

22 CHAIRMAN MILHOLLIN: You would prefer, then, for  
23 the closing date of discovery not to be set at this time?

24 MR. ROISMAN: If possible, yes.

25 CHAIRMAN MILHOLLIN: Is that agreeable to the

1 other parties?

2 MR. ROWE: Mr. Chairman, I would suggest that the  
3 Board declare that the discovery would terminate within some  
4 period, such as two weeks, after the issuance of the Staff's  
5 safety evaluation and environmental impact appraisal,  
6 negative declaration, whatever the document is, and that in  
7 the event any party feels that more time is necessary that  
8 you would consider it on a showing of good cause.

9 But I do not think that discovery should be left  
10 completely open-ended with vague suggestions of periods  
11 such as six months.

12 CHAIRMAN MILHOLLIN: Thank you, Mr. Rowe.

13 Staff?

14 MR. GODDARD: Staff would concur in the position  
15 of Applicant, and would suggest that discovery between  
16 Applicant, Intervenors, State of Illinois and Staff commence  
17 at once.

18 CHAIRMAN MILHOLLIN: Very well.

19 The Board will, then, set the date for close of  
20 discovery at three weeks after the date of publication of  
21 the Staff's documents, with the understanding that if it's  
22 necessary to extend that period that a motion would be in  
23 order to extend it.

24 MS. SEKULER: May I have a clarification, please?

25 If these two documents are issued on different

1 dates, I presume that would be three weeks after the later  
2 document?

3 CHAIRMAN MILHOLLIN: Yes.

4 MR. ROISMAN: And by the close of discovery, you  
5 mean the last questions or requests or depositions, or the  
6 like, and not the last answers?

7 CHAIRMAN MILHOLLIN: The last request, yes.

8 MR. ROISMAN: Would the Board indicate whether  
9 requests for admissions will be treated as discovery  
10 requests, or whether they will be treated as some other type  
11 of request? We usually use them following discovery, once  
12 we know what the issues are. But I would like to know the  
13 Board's --

14 CHAIRMAN MILHOLLIN: You mean for purposes of  
15 closing discovery?

16 MR. ROISMAN: Yes. If we wanted to make a list  
17 of requests for admissions of the Applicant and the Staff,  
18 would we be required to do that within the three weeks after  
19 the last document, or would we be able to wait to get the  
20 answers to the last discovery requests and then have a  
21 period of time after that to make requests for admissions?

22 CHAIRMAN MILHOLLIN: Do the parties have any  
23 feelings about this?

24 MR. ROWE: Mr. Chairman, we would have no  
25 objection to there being a limited number of requests to

1 admit allowed. If it turns into a vehicle to, in effect,  
2 expand interrogatories, we would object at the time.

3 But within the bounds of Mr. Roisman's statement,  
4 I have no objection.

5 MR. GODDARD: Staff has no objection.

6 CHAIRMAN MILHOLLIN: Very well. So we will  
7 declare that we don't interpret requests for admissions to  
8 be discovery for the purpose of the closing date.

9 Does any party or petitioner have anything  
10 further at this time?

11 (No response.)

12 We have one request for a limited appearance  
13 which we have not yet entertained.

14 Do you still wish to make your limited appearance?

15 VOICE FROM THE AUDIENCE: In view of the matters  
16 that have come up today, I have nothing to say.

17 CHAIRMAN MILHOLLIN: Very well.

18 This special prehearing conference is, with  
19 thanks to the parties and petitioners for their efforts to  
20 clarify the issues, hereby adjourned.

21 (Whereupon, at 12:35 p.m., the special prehearing  
22 conference was adjourned.)