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UNITED STATES ATOMIC ENERGY COMMISSION

IN THE MATTER OF:

METROPOLITAN EDISON COMPANY, et al.

(Three Mile Island Nuclear Station,
Unit 1)

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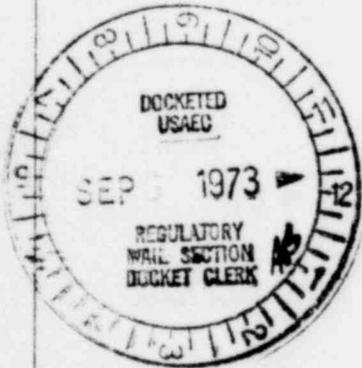
Docket No. 50-289

POOR ORIGINAL

Place - Harrisburg, Pennsylvania

Date - Tuesday, 28 August 1973

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UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

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 5 METROPOLITAN EDISON COMPANY, et al. : Docket No. 50-289
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 6 (Three Mile Island Nuclear Station, :
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House of Representatives
 Main Capitol Building
 Room 140
 North Third Street
 Harrisburg, Pennsylvania

Tuesday, 28 August 1973

Hearing in the above-entitled matter was convened.
 pursuant to notice, at 10:00 a.m.

BEFORE:

CHARLES HASKINS, Esq., Chairman, Atomic Safety and Licensing Board.

MR. STANLEY LIVINGSTON, Member.

DR. JOHN LYMAN, Member.

RALPH S. DECKER, Alternate member.

APPEARANCES:

GEORGE F. TROWBRIDGE and ERNEST L. BLAKE, Esq., Shaw,
 Pittman, Potts & Trowbridge, 910 17th Street, N. W.
 Washington, D. C.; on behalf of Applicant.

JOSEPH GALLO, Esq., U. S. Atomic Energy Commission,
 Washington, D. C.; on behalf of the Regulatory Staff.

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1 THEODORE A. ADLER, Esq., Pennsylvania Department of
2 Justice, Harrisburg, Pennsylvania 17120; on behalf of
Intervenor, Commonwealth of Pennsylvania.

3 LAWRENCE SAGER, Esq., 45 High Street, Pottstown,
4 Pennsylvania 19464; on behalf of Intervenor, Citizens
for a Safe Environment and Environmental Coalition on
5 Nuclear Power.
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P R O C E E D I N G S

CHAIRMAN HASKINS: The hearing will be in order.

The Board requests that there be no smoking in this room during the course of this hearing. This is the second Prehearing Conference in a proceeding involving an application by three utilities, Metropolitan Edison Company, Jersey Central Power and Light Company, and Pennsylvania Electric Company, for a license to operate the Three Mile Island Nuclear Station, Unit 1, a pressurized water reactor located in Londonderry Township, Dauphin County, Pennsylvania.

A construction permit, CPPR-40, was issued on May 18, 1968. The record will show that this conference is convened at 10:00 a.m., August 28, 1973, in the Majority Caucus Room, House of Representatives, Main Capitol Building, Harrisburg, Pennsylvania, pursuant to notice dated August 15, 1973. 38 Federal Register 2251.

The Atomic Safety and Licensing Board designated to conduct the hearing is the same Board that sat here in May and consists of on my right, Dr. M. Stanley Livingston, a nuclear physicist, and on my left, Dr. John R. Lyman, an oceanographer, and I am Charles A. Haskins, an attorney here in Washington, D.C.

Mr. Ralph S. Decker, the alternate technical member of the Board, is also present. The Commission has directed that the hearing should consider two distinct matters: One, whether in considering those matters covered by Appendix D-10, CFR 50,

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1 the Provisional Construction Permit should be continued, modified,
2 or appropriately conditioned to protect environmental values,
3 and I emphasize that only environmental issues are concerned
4 in that first matter.

5 Two, whether a facility operating license should be
6 issued. For the benefit of members of the public who may be here
7 this morning, I should point out that the purpose of the prehearing
8 conference is for the Board to consider, along with lawyers for
9 the parties, such matters as clarification of issues, scheduling
10 hearing dates, identification of witnesses, and the like.

11 The evidentiary hearing which follows at a date later
12 to be announced will receive testimony from witnesses, afford
13 an opportunity for cross-examination, and make a complete record
14 upon which the decision by the Board in this case will ultimately
15 be based. At that time, also, the Board will entertain communi-
16 cations by persons who wish to make limited appearances, although
17 as far as the Board is now aware, there have been no requests to
18 make a limited appearance in this proceeding.

19 I shall now call on counsel for the parties to identify
20 themselves for the record. First, the Applicant, Metropolitan
21 Edison Company, Jersey Central Power and Light Company, Pennsyl-
22 vania Electric Company.

23 MR. TROWBRIDGE: Mr. Chairman, my name is George F.
24 Trowbridge. I am a member of the Washington law firm of Shaw,
25 Pittman, Potts and Trowbridge, and I have previously filed an

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1 appearance. With me on my right from my office is Mr. Ernest
2 L. Blake.

3 CHAIRMAN HASKINS: Thank you. The Regulatory Staff?

4 MR. GALLO: Joseph Gallo, Office of General Counsel,
5 AEC, Washington, D. C. I am representing Regulatory Staff
6 today.

7 CHAIRMAN HASKINS: Mr. Gallo, we are pleased to have
8 you with us. We understand there has been a conflict in the
9 counsel representing the Regulatory Staff, and a conflict in
10 their schedules. The Joint Intervenors?

11 MR. SAGER: Lawrence Sager, representing the Citizens
12 for a Safe Environment and the Environmental Coalition on Nuclear
13 Power. My address is 45 High Street, Pottstown, Pennsylvania.

14 CHAIRMAN HASKINS: Commonwealth of Pennsylvania?

15 MR. ADLER: I am Theodore Adler, Deputy Attorney
16 General, representing the Commonwealth of Pennsylvania, Depart-
17 ment of Justice, Harrisburg, Pennsylvania. With me is Thomas
18 Gerusky, Office of Radiological Health, Department of Environ-
19 mental Resources.

20 CHAIRMAN HASKINS: Are there any other counsel in
21 the room who purport to represent parties in this case? I hear
22 no answer. Are there any persons here this morning who desire
23 to make a limited appearance at the evidentiary hearing to follow?
24 I hear no answer.

25 MR. GALLO: Mr. Chairman?

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CHAIRMAN HASKINS: Yes, Mr. Gallo.

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3 a continuation of this proceeding. The basis for my motion is
4 that the Board's ruling with respect to the Staff's motion to
5 postpone this proceeding came down on Friday of last week. The
6 Regulatory Staff is not represented today by counsel who is
7 prepared to proceed. I happen to be an assistant Chief Hearing
8 Counsel. We have 30 cases in my section, 7 trial lawyers, and as
9 the Board knows, the two trial lawyers assigned to this case
10 are unavailable today. According to the Board's order that set
11 down this date of hearing, the order is dated August 15, and
12 we are supposed to take up a number of matters, including the
13 Intervenor's conditions, identification of witnesses, and so
14 forth.

15 I am not prepared to deal in detail on these issues
16 today, and I don't think it would be appropriate to continue,
17 because the Regulatory Staff would not have appropriate repre-
18 sentation if I were to continue. Therefore, I request a
19 continuance.

20 CHAIRMAN HASKINS: We hear your motion, and I will
21 ask for responses from other parties. Do you have in mind
22 a date certain when you ask for a continuance, or is your
23 motion addressed to a date to be subsequently set?

24 MR. GALLO: Mr. Chairman, I have in mind a date
25 certain, namely September 10th, or any other date. I have come

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1 armed today with a number of dates that the Regulatory
2 Counsel for the Regulatory Staff will be available. Should
3 either the Counsel for any of the parties or the Board itself
4 find one of these dates in conflict, I am in a position to move
5 some other date convenient to the parties.

6 CHAIRMAN HASKINS: Very well. We have the motion
7 by the counsel for the Regulatory Staff. Mr. Trowbridge, do you
8 care to respond?

9 MR. TROWBRIDGE: Yes, Mr. Chairman. Let me start
10 by saying that I think the Chairman at least is aware of the
11 extensive telephone calls and efforts that have been made to
12 select a date that could accommodate everyone. On our part, we
13 have indicated, and I have personally held open three or four
14 dates in August, and it unfortunately turned out that the dates
15 which were agreeable to all the parties could not be met by
16 the Board and the Board was unable to accommodate a hearing on
17 any of the dates suggested by the parties.

18 There was then discussions as to whether or not
19 the prehearing should be postponed until the week, perhaps,
20 of the 10th of September. It was my view as expressed in numerous
21 conversations with the counsel of the AEC Staff and in conver-
22 sations constituting a conference call between Staff Counsel
23 and the Chairman and myself that I did not wish to see a two
24 week postponement of the proceeding.

25 I had in mind several things, Mr. Chairman.

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1 It seems to me that the business to be accomplished
2 today has been in considerable measure simplified by meetings
3 which Staff Counsel and I have had with Mr. Sager, to a point
4 where we have reached agreement on a number of matters, some of
5 which have been reduced to stipulation, not yet signed by AEC
6 Counsel.

7 We have reduced to really only two the contentions
8 that we, out of the ten revised contentions submitted by
9 intervenors, there were only two contentions that were -- and still
10 are -- in dispute.

11 They seem to me quite manageable in scope. Our
12 position on them was made known in meetings with the Staff Counsel
13 and with Mr. Sager, and it did not seem to me a Herculean task
14 for whoever AEC counsel -- for whatever AEC counsel -- might
15 take the place of Mr. Wilchins or Mr. Olson, to come with a
16 staff position on that, particularly as they could have had
17 the advice and thinking of Mr. Wilchins and Mr. Olson made
18 available to them in Washington.

19 My reason for not wanting to slip another two weeks
20 are two-fold. One, I am particularly interested in getting
21 a ruling on the contentions because we have got to prepare
22 testimony. Particularly in one of the contentions under
23 consideration, the scope of the testimony we have prepared would
24 have been, or could be large, and it would depend on the Board's
25 ruling.

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1 It does take time to do a proper job in preparation
2 for a hearing, and this is the time we are trying to seek. The
3 ot her -- my other reason -- for wishing to have the Prehearing
4 take place as promptly as possible, was that I intend at this
5 Prehearing Conference to renew a suggestion I made at the
6 earlier Prehearing Conference. I am going to propose to the
7 Board that because of a slippage in the completion of the AEC's
8 Staff Safety Review, I am going to renew my suggestion that
9 the environmental phase of the hearing proceed as soon as possible,
10 and that the radiological phase come on completion of the AEC
11 Staff's review, which I understand will be when the supplement
12 to the Staff's Safety Evaluation Report has been issued, perhaps
13 in early October.

14 It seems to me quite possible and quite manageable
15 to conduct the environmental phase of the hearing. The sup-
16 plement of the evaluation will have no bearing on the environ-
17 mental issues. This Board has an independent responsibility
18 to conduct the environmental review, and reach environmental
19 decisions.

20 MR. GALLO: Mr. Chairman, what does this argument have
21 to do with my motion?

22 CHAIRMAN HASKINS: Mr. Gallo, please be patient.
23 We are trying to establish whether any purpose will be served
24 in continuing this Prehearing Conference in accordance with
25 your motion.

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1 MR. GALLO: I apologize, Mr. Chairman.

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2 MR. TROWBRIDGE: I would like to get it established,
3 if the Board agrees, that we will proceed with the environmental
4 phase of the hearing, hopefully toward the end of September.
5 This is my second reason for feeling that the Prehearing Conference
6 should go on and not wait until September 10th or later before
7 these decisions are made.

8 CHAIRMAN HASKINS: Mr. Trowbridge, you spoke of
9 contentions which at the present time are ten in number, and
10 if I understand you, you indicated that eight were more or less
11 agreed to, and two were the number to be discussed this morning.

12 MR. TROWBRIDGE: That is correct.

13 CHAIRMAN HASKINS: You talked about a stipulation,
14 perhaps, an inchoate stipulation. Does that stipulation apply
15 to the eight issues?

16 MR. TROWBRIDGE: No, Mr. Chairman.

17 CHAIRMAN HASKINS: I don't want to get into the
18 stipulation at this moment, because this argument relates only
19 to the motion. If the stipulation involves something else, we
20 will get to that later.

21 MR. TROWBRIDGE: Mr. Chairman, I plan to express
22 my no objection to eight of the contentions, one with a slight
23 qualification. As we discussed them one by one, we do not
24 have a written stipulation on this matter. We do have an
25 understanding, and it is known which contentions I am going to

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1 object to, and those which I am not.

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2 CHAIRMAN HASKINS: Do we correctly understand that you
3 and the Intervenors are more or less in agreement on eight
4 contentions subject to a qualification, which you will express
5 if you get an opportunity to do so?

6 MR. TROWBRIDGE: That is correct.

7 CHAIRMAN HASKINS: As far as the Regulatory Staff
8 is concerned, I believe you said they had not signed a stipula-
9 tion. Do you have any indication to them as to their agreement
10 or not with these?

11 MR. TROWBRIDGE: Without getting into the substance
12 of this, Mr. Chairman, just so we are clear, let me explain.
13 There are two stipulations, two written stipulations. One of
14 them has to do with the withdrawal of the original 70 contentions
15 in this proceeding. The other has to do with procedural
16 matters, the introduction of documents that -- it is agreed by all
17 parties that the final Environmental Statement may be introduced
18 in evidence in the proceeding without any more formality than
19 offering it to the Board, for instance.

20 These are the two stipulations that were reviewed
21 by Mr. Sager, Mr. Wilchins, and also myself a week or so ago.
22 So far as I know, they are both in a form satisfactory to all
23 parties. Those are the stipulations that I was talking about.
24 Over and above that, we have discussed the contentions, the
25 ten revised contentions. I indicated at that time, a week ago,

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1 and I indicated it again this morning, to Mr. Sager, the two
2 that I would oppose. I think my understanding of the Staff's
3 position and Mr. Wilchin's position was that he would agree on
4 the eight contentions that I would agree to. I don't know what
5 his decision would be for certain on the two I oppose.

6 CHAIRMAN HASKINS: Mr. Sager, do you care to speak
7 to Mr. Gallo's motion?

8 MR. SAGER: Would you just like me to speak to
9 the motion, or do you want me to also speak to Mr. Trowbridge's
10 remarks?

11 CHAIRMAN HASKINS: Well, I am asking you to speak
12 to the motion. If you think it is relevant to make some comments
13 on the issues, in order to aid the Board in deciding whether
14 to grant the motion, let your judgment decide, and if you wander
15 too far afield, the Board will endeavor to bring you back.

16 MR. SAGER: I have no objection to Mr. Gallo's
17 motion. I think that justice will be better served in the
18 interests of the proceeding, it would be better served if the
19 matter is continued. There are stipulations that have been
20 reviewed and gone over concerning documents and so forth, that
21 I understand cannot be submitted at this particular point because
22 of the Staff Counsel that are handling the hearing process
23 have to be Regulatory Staff not being present.

24 In that regard, I believe that while some business
25 can be accomplished, the only business that would be able to

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1 be accomplished, pursuant at least to the agreement of the parties
2 concerning stipulation and expediting the proceeding in that
3 respect.

4 I strongly object to any splitting of the hearing
5 process here into an environmental and into a radiological pro-
6 ceeding stage. My understanding of the law and the Calvert
7 Cliffs decision and the National Environmental Policy Act is
8 that the environmental stage cannot really be split into the
9 radiological stage and that the environmental report and impact
10 statement must follow all the way through the proceedings.

11 I think it would be a duplicity of effort in many
12 regards if we were to split proceedings, and I don't believe
13 that it would expedite the matter. I believe that it would
14 complicate the picture and as a matter of fact I think that
15 it might be detrimental and prejudicial to the interests of the
16 clients that I serve.

17 With regard to the contentions, if the matter -- if
18 we are to continue with the proceeding at this point -- I
19 understand that the parties again as to two particular contentions
20 do have positions to state. I do not want to speak for Mr.
21 Gallo, but I am not sure whether, again, we can properly present
22 all sides and facets of the positions of all parties here,
23 because I am not too sure Mr. Gallo can speak for the Regulatory
24 Staff as to their respective positions regarding those contentions
25 that might, or have been indicated to be, matters that are in

Al 1 1 dispute as to certain issues raised in the contentions themselves.

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3 In that regard, Mr. Chairman, I believe that there
4 is great merit in Mr. Gallo's request for a continuance at this
5 point, although if it is deemed necessary, we are ready to pro-
ceed in accordance with the desires of the Board.

6 CHAIRMAN HASKINS: Thank you, Mr. Sager.

7 The Board announced at the outset ---

8 MR. GALLO: Mr. Chairman.

9 CHAIRMAN HASKINS: Just a minute, Mr. Gallo. The
10 Board announced that there will be no smoking in the room during
11 the course of the hearing, and perhaps people have come in since
12 that time. I reiterate at at this time. Mr. Gallo, you will be
13 heard in due course.

14 Commonwealth of Pennsylvania?

15 MR. ADLER: While I have no objection to Mr. Gallo's
16 motion, I would like to supplement something Mr. Gallo addressed
17 himself to. On Friday, I received a call from the Chairman
18 informing me that the Prehearing Conference would be held this
19 Tuesday. This was the first official notice I received. Neither
20 I nor anyone else from the Commonwealth ever received a written
21 notice from the Board or from any other branch of the AEC setting
22 a time and ate for these hearings.

23 While the Commonwealth is not a party to these
24 proceedings under Section 10 CFR 2.714, we are participating
25 in our special capacity as provided for under 2.715 C, and

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1 as such would appreciate consideration commensurate with that
2 given other participants in this proceeding. A two-day notice
3 is to say the least prejudicial to the rights of the Commonwealth
4 in this proceeding.

5 In addition, it is prejudicial to those members of
6 the general public who have an interest in these proceedings.
7 While it is acknowledged that this is only a Prehearing Con-
8 ference, at which no evidence will be adduced, the right of the
9 public to be present at all proceedings before this board should
10 not be infringed. An announcement only two days before the
11 hearing makes it difficult for those people to attend. As such,
12 I request in the future the Board provide adequate notice for
13 all proceedings of this nature.

14 And I would appreciate written communication of any
15 and all orders of this Board. With respect to Mr. Trowbridge's
16 suggestion that the hearings be segmented into environmental
17 and radiological phases, I support Mr. Sager's statement, and
18 I further feel that any segmenting of these hearings would
19 seriously undermine the continuity and total beneficial effects
20 of this hearing, or of an evidentiary hearing.

21 I feel the hearing should be segmented in this nature
22 only when the most time pressing circumstances are present.
23 I don't feel this is the case here, and as such, I feel that
24 any segmentation would damage the effectiveness of these
25 hearings.

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1 CHAIRMAN HASKINS: Mr. Adler, when you say you did not
2 receive notice of this Prehearing Conference, are you saying
3 you did not receive a copy of the notice the Board issued on
4 August 15th, which was published in 38 Federal Register 22251?

5 MR. ADLER: That is right.

6 CHAIRMAN HASKINS: I deeply regret that. As you
7 probably know, the Board does not perform a distribution
8 function. We file our Order with the Public Proceedings Branch,
9 and it is hopefully duly served on all parties and on all
10 persons who have requested to be advised of hearings in these
11 licensing proceedings. I do not have a copy of the certificate
12 of service with me of that particular order, but the Board will
13 certainly make your point known to the Public Proceedings
14 Branch when we return to Washington.

15 We regret that you did not have the notice that the
16 Board contemplated, namely, approximately two weeks. Mr. Gallo,
17 I was going to call upon you for further comments, but you were
18 about to make one anyway. Will you do so?

19 MR. GALLO: Thank you, Mr. Chairman.

20 I would like to make three points. First of all,
21 Mr. Trowbridge points out that in his view, getting prepared
22 for this Prehearing would not have been, to use his words,
23 a herculean task. I would like to point out for this record
24 and for the Board and all parties' information that in our
25 section we have approximately thirty cases, which include a

Al 1 1 half dozen that are going to litigation right now. Our seven
eba 15 2 lawyers are assigned to these cases. I have a supervisory
3 capacity for a ll these cases.

4 The Beaver Valley case is in the middle of litigation.
5 We are attempting to arrive at a stipulation there under very
6 difficult circumstances with members of Mr. Trowbridge's firm,
7 I might add, who are participating in that effort. The Cook case
8 is getting close to winding down into a major litigation involving
9 Businessmen for Public Interest and other Midwest Intervenors.

10 We are handling that case. We have just completed
11 the handling of the orders that were issued with the nine BWR's.
12 I am sure you have read in the trade press with respect to the
13 orders that the Regulatory Staff issued as an administrative
14 function derating nine BWR's. Our legal staff handled that.
15 We have before us a novel and difficult appeal filed by Mr.
16 Harold Green on behalf of the Intervenors in Maine Yankee. We
17 are working on that reply. Mr. Luten, the Board Chairman,
18 in one case, has set that case down for hearing on the 17th of
19 September.

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20 I am lead trial counsel on that case. Normally, a
21 supervisor does not assume that role, but again because of our
22 short handedness and our lack of experienced lawyers, I am forced
23 to do that. In this instance, the Staff is trying to establish
24 a regular routine, a continuity of lawyers for the case. Our
25 lawyers are no longer to be considered as fungible items.

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Mr. Wilchins and Mr. Olson have been assigned to this case. They know the case. They met with Mr. Sager on a number of occasions. They have built up a relationship with counsel for the Applicant, for the State, with Mr. Sager. They know what these stipulations are about. It is fundamental, I think, that they represent the Staff in the finalization of these cases.

Secondly, Mr. Chairman, I strongly object to the Board giving any weight to the representations of Mr. Trowbridge as to what the Staff position is. The Staff simply is not accustomed to having its interests represented by Applicant's counsel.

It is as simple as that. Thirdly, Mr. Trowbridge seems to feel there is some need to rush this case along. I am told that the fuel load date is April, 1974, a day, a week, two weeks here or there seems to me not to really make much difference, especially if you look at the progress that has been made in this case by the negotiations between Mr. Wilchins and Mr. Olson vis-a-vis the Intervenors' and the Applicants' counsel. They have taken complex contentions numbering better than fifty, and reduced them to something less than ten.

I call that real progress. Mr. Chairman, I renew my motion.

CHAIRMAN HASKINS: Mr. Trowbridge, do you have anything further to add?

MR. TROWBRIDGE: Mr. Chairman, it is difficult to add much without identifying the contentions that you referred to,

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1 and getting out of the argument about them. I still maintain
2 that it is important and not that much of a Staff problem to
3 deal with the resolutions of the contentions in this proceeding.

4 I am disappointed that documents which -- whatever
5 Mr. Gallo says about my representing the Staff's position -- it
6 is nevertheless clearly my understanding that we were going
7 to come to this Prehearing with two stipulations, both of which
8 had been worked out in advance, and it was a matter of typing.
9 We agreed to type one, and the AEC Staff Counsel was going to
10 type the other. I have the impression that Mr. Gallo has not
11 sat down with Mr. Wilchins or Mr. Olson to find out whether or
12 not there were stipulations, and whether or not they were in
13 agreement on them.

14 I think this would have been a very small step to
15 take, and as it stands now, Mr. Gallo has not talked to Mr.
16 Wilchins about them, and so be it. We will have to take them
17 home and send them in to the Board.

18 But I don't think that it would have been much of a
19 step for Mr. Wilchin to convey to Mr. Gallo that there were
20 in fact two stipulations which the parties had agreed upon
21 at the meeting a week ago Monday night. As to the question of
22 a divided hearing on environmental and radiological, this is
23 one of the questions I would like to have resolved today, and
24 which I am prepared to talk further on. I have seen, as I am
25 sure Mr. Gallo has, a number of split proceedings, that worked

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1 very well, and I do not understand where the prejudice lies.

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2 I think what we are going to have to do, if we are to get to the
3 merits of this motion, is to go down and see which contentions
4 present a problem.

5 I don't think the basic split of environmental and
6 radiological in itself presents that much of a problem.

7 CHAIRMAN HASKINS: Thank you, Mr. Trowbridge.

8 Mr. Sager, anything further on Mr. Gallo's motion?

9 MR. SAGER: No.

10 CHAIRMAN HASKINS: The Commonwealth?

11 MR. ADLER: No, Mr. Chairman.

12 CHAIRMAN HASKINS: The Board will shortly recess
13 and consider the motion in the light of the responses of the
14 other parties. Obviously it is a threshold procedural step
15 which must be faced. Before doing so, I will ask my colleagues
16 if they have any comments on this. Dr. Livingston?

17 MR. LIVINGSTON: No, not until we have had a chance
18 to discuss it among us.

19 CHAIRMAN HASKINS: Dr. Lyman?

20 DR. LYMAN: Nothing at this time, Mr. Chairman.

21 MR. TROWBRIDGE: Mr. Chairman, may I say one thing
22 that came up during our last conference? You asked me whether
23 there had been any change on the fuel loading date on this
24 matter, since the Prehearing Conference that is. We indicated
25 at that time that the targeted fuel loading date was February 1st.

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1 As I understand it, the targeted fuel loading
2 date is now March. We filed, as I understand it, -- I think
3 every month with the AEC regional office, our construction
4 completion project. The latest filing indicates March,
5 rather than February. I don't know where the April 1st date
6 comes from.

7 CHAIRMAN HASKINS: I beg your pardon. I did not
8 understand that last.

9 MR. TROWBRIDGE: I don't know where the April date
10 Mr. Gallo mentioned, -- I don't know where that comes from.
11 I am saying our latest projection is March.

12 MR. GALLO: I have to yield to Mr. Trowbridge's
13 superior knowledge in this case.

14 CHAIRMAN HASKINS: Very well. The Board will take
15 a recess for ten minutes.

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16 (Recess)

17 CHAIRMAN HASKINS: The hearing will now resume.
18 The Board has heard and considered the motion by Mr. Gallo,
19 counsel for the Regulatory Staff, that there be a continuance
20 of this Prehearing Conference to another date, either September
21 10th or some future date convenient to the Board and to all
22 parties.

23 The motion will be denied. The Board regrets that
24 Mr. Wilchins, who is the Regulatory Staff counsel assigned to
25 this case, and who has been working informally with counsel for

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1 the Applicants, and counsel for the Intervenor, is unable
2 to be present today, and also that Mr. Olson, who represented
3 the Regulatory Staff at the last Prehearing Conference is like-
4 wise unable to be present today. The Board is further mindful
5 of the many demands made upon all of the lawyers for the
6 Regulatory Staff in other proceedings.

7 Therefore, we shall continue with this Prehearing
8 Conference. I would point out that the Commission encourages
9 the informality of such proceedings. It attempts to reach
10 agreement insofar as it can be done at prehearing conferences,
11 and of course to the extent it cannot be done there becomes
12 a point when it behooves the Board to resolve the conflicts and
13 frame the contentions to allow, disallow, or reword the
14 contentions put forward by the parties in light of the discussions
15 heard at the Prehearing Conference.

16 It may well be that we will not conclude all the
17 business we had contemplated for today. It may well be that
18 it will be necessary to call a second -- call a third Prehearing
19 Conference. The last Prehearing Conference, as you recall,
20 was on May 24, over three months ago. We are now entering the
21 fourth month of this proceeding, and no date for a hearing has
22 yet been set.

23 I therefore suggest we proceed with the contentions
24 of the Intervenor and the Board is prepared to discuss them
25 one by one. I would say that had it not been for the motion,

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1 I would have called for opening statements, which I will do
2 now, although perhaps some of that ground has been covered in
3 remarks already made by counsel.

4 I would also say that the Board received informally
5 from Mr. Sager a document which purports to be a revision of
6 the ten paragraphs of contentions earlier filed on July 19th.
7 I will later call on Mr. Sager to identify the differences, if
8 he can readily do so, and if not, the Board will take another
9 recess to study the revision.

10 Mr. Trowbridge?

11 MR. GALLO: Excuse me, Mr. Chairman.

12 CHAIRMAN HASKINS: I think Mr. Gallo is eager to
13 speak, and since we have just ruled on his motion, I will ask
14 him to go ahead.

15 MR. GALLO: I appreciate the patience of the Board,
16 Mr. Chairman, and it is with some reluctance that I pursue this
17 matter, but I feel constrained to make a second motion. At
18 this time, Mr. Chairman, I would like to move that this Licensing
19 Board void ab initio this Prehearing Conference on the grounds
20 that the procedures in establishing these Prehearing Conferences
21 violate the Administrative Procedures Act as set forth in
22 U. S. Code annotated Title 5, Section 554, and some specifics,
23 subsection (B), "in fixing the time and place of hearings, due
24 regard shall be had for the convenient and necessity of the
25 parties or their representatives."

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1 I now move from the Administrative Procedures Act
2 to our own rules, Appendix A, of Part 2 in 10 CFR which repeats
3 approximately the same language, Appendix A Roman I, Subparagraph
4 B, "In fixing the time and place of any conference including
5 Prehearing Conferences of any adjourned session of the evidentiary
6 hearing due regard shall be had for the convenience and necessity
7 of the parties. Petitioner for leave to intervene or such
8 persons, as well as the Board Members."

9 My grounds and supporting facts for the motion are
10 two. First, the record presentation made by Assistant Attorney
11 General for the Commonwealth of Pennsylvania in terms of his lack
12 of notice and the problems that his office had with notification
13 of this Prehearing Conference.

POOR ORIGINAL

14 Secondly, my second ground is, I think that it is
15 the situation of establishing Prehearing Conferences ought to be
16 done by any Atomic Safety and Licensing Board through a joint
17 conference call involving all parties, including states
18 participating under 2.715 C. That was not done in this case.
19 The Staff's motion dated August 15th indicates that the original
20 date for this date of August 28th was established through a
21 conference call between the Intervenors, Applicants' counsel
22 and the Board, but did not include the Regulatory Staff.

23 I am sorry I do not have a brief on this point so I
24 could be more helpful to the Board, but I do find in notes one
25 pertinent case on this point indicating that in the case of

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1 Burnham Trucking Company versus the United States found in 216
 2 Federal Supplement 561, and the indication here is that the
 3 provision that provides for hearings with due regard for the
 4 convenience and necessity of the parties means that its
 5 scheduling and application for hearing, the convenience of all
 6 persons concerned including the Applicant, the agents and the
 7 opposing shippers, and that is the facts of that case, must be
 8 accorded due recognition.

9 I submit, Mr. Chairman, in this instance neither the
 10 Commonwealth of Pennsylvania nor the Regulatory Staff was accorded
 11 due recognition in establishing this present Prehearing Conference
 12 date. I ask for favorable consideration of my motion to void
 13 this Prehearing Conference ab initio.

14 CHAIRMAN HASKINS: Mr. Gallo, did the Burnham case
 15 involve a Prehearing Conference?

16 MR. GALLO: The best I can tell, it did not, but I
 17 see no distinction under the law between hearings and prehearing
 18 conference. I look to Appendix A of our Rules, which say,
 19 "The time and place for setting any conference, including pre-
 20 hearing conference, due regard," and so forth, "shall be given."

21 I must apologize to the Board for not having a brief
 22 to present to the Board on the Burnham case.

23 CHAIRMAN HASKINS: We have heard Mr. Gallo's motion.
 24 Mr. Trowbridge?

25 MR. TROWBRIDGE: Mr. Chairman, there is a slight
 correction. I believe it is correct that the Board contacted

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1 Intervenor's counsel and myself prior to issuing the Notice
2 of Prehearing on August 28th. It was not a conference call.
3 I think, Mr. Chairman, that the Board is the only one who can
4 speak, in the end, as to whether it gave due consideration to the
5 convenience of the parties. I can only say that the Board, to
6 my knowledge at least, was aware that there was a conflict in the
7 staff counsel's schedule when the August 28th date was ordered,
8 if for no other reason that I so informed them of it myself.

9 Certainly the Board has given consideration to
10 Staff's motion to reschedule the August 28th date, and the
11 August 28th schedule and that motion were the subject of a
12 conference call which included Mr. Wilchins and myself, during
13 which, however, the Board indicated that they had not been able
14 to get in contact with Mr. Sager to include him in the conference
15 call.

16 CHAIRMAN HASKINS: I may say with respect to that
17 conference call, Mr. Trowbridge, do you have the date of that
18 before you?

19 MR. ADLER: I believe it was last Thursday evening.

20 CHAIRMAN HASKINS: I believe it was Thursday,
21 August 23rd, the Chairman would like to state that after
22 concluding the conversation with you and Mr. Wilchins, he then
23 called Mr. Sager. Mr. Sager expressed the position that he
24 would acquiesce to a continuance of the prehearing from August
25 28th to a subsequent date. So I do not believe there is any

Al 1 1 inference that the Intervenors were not -- were not consulted.

Reba 25 2 MR. SAGER: I think the Intervenors were notified.

3 CHAIRMAN HASKINS: Mr. Sager, do you care to speak
4 to Mr. Gallo's second motion?

5 MR. SAGER: No, I have no comment.

6 CHAIRMAN HASKINS: Commonwealth of Pennsylvania.

7 MR. ADLER: What I said earlier again goes to the
8 heart of Mr. Gallo's motion. I would also say that the Common-
9 wealth has never been party to any of these conference calls.
10 We have never been called, or invited to be part of these
11 conference calls. I have never received any information that
12 the conference calls were even taking place until they had already
13 taken place.

14 As such, I have to support Mr. Gallo's motion.

15 CHAIRMAN HASKINS: Thank you.

16 MR. GALLO: Mr. Chairman, I would like to add one
17 remark to explain further how I feel that the Staff has not
18 been given due recognition. I refer specifically to the
19 second paragraph of our motion filed with this Board on the 15th
20 of August. In that second paragraph, it is indicated that
21 after discussions with counsel for the Applicant and the Inter-
22 venors, the August 28th date was established. Whatever the
23 reasons are, the Staff was not consulted at that time.

24 Now with that foundation, I would like to point out
25 to the Board this, that initially when everybody sits around

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1 the table, or the phone, as it might be, everybody is on equal
2 footing in terms of establishing a reasonable date to hold the
3 Prehearing Conference or hearing.

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4 Once the Board rules, the party not being able to
5 participate in the first instance, namely the Regulatory Staff,
6 now faces a burden to overcome a ruling of the Board that has
7 already been established, instead of being on equal footing
8 with all parties, the Staff now has to show why that date should
9 be changed.

10 It is a significant difference, Mr. Chairman, and
11 that is what happened in this case, and that bottoms my request
12 for this motion.

13 CHAIRMAN HASKINS: Very well. . Are there any further
14 comments by any party on Mr. Gallo's motion, which is now pending
15 before this Board?

16 (Pause)

17 CHAIRMAN HASKINS: Mr. Gallo, the Board has heard your
18 second motion in which you asked that the Board void this
19 second prehearing conference ab initio on the grounds of lack
20 of proper notice.

21 MR. GALLO: Mr. Chairman, I am sorry. Not proper
22 notice, but lack of consideration for the interests of all
23 parties. I am sorry I interrupted you.

24 CHAIRMAN HASKINS: I am glad you did, because I
25 thought your argument was that there was not proper notice

according to the Administrative Procedures Act and according

Al 1 1 to Appendix A of the Commission's regulations. If I have mis-
aba 27 2 understood you, please clarify the point.

3 MR. GALLO: I surely will, Mr. Chairman. I am
4 looking now at Appendix A. The language I am talking about had
5 nothing to do with notice. Obviously, the Board's order
6 establishing the 28th as a prehearing conference date which was
7 issued on the 15th, the Staff has no quarrel with in terms of
8 the notice being adequate.

POOR ORIGINAL

9 It is the question of as the APA provides in our
10 own rules provide that in fixing a time and place due regard
11 shall be had for the convenience and necessity of the parties.
12 Petitioners for leave to intervene, or representatives of such
13 persons, as well as the Board Members, and it is on that point
14 that the Staff believes the Board has not given due regard to the
15 convenience and necessity of the parties in fixing this time and
16 place for this Prehearing Conference.

17 The parties being the Regulatory Staff themselves,
18 for the reasons I have explained, and the Commonwealth of
19 Pennsylvania, for the reasons the Assistant Attorney General
20 has explained.

21 CHAIRMAN HASKINS: Pennsylvania may speak for
22 itself. My understanding of their argument was that they had
23 not had sufficient notice. I didn't realize that they were
24 making an argument with regard to convenience, and I will ask
25 Mr. Adler to comment on that in a minute.

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1 But then perhaps I may restate the Board's under-
 2 standing of your motion, namely, the reason you wish to have this
 3 Prehearing Conference voided ab initio relates not to lack of
 4 proper notice, or lack of adequate notice, but because of lack
 5 on the Board's part of due regard to the convenience and
 6 necessity of the parties, and in particular the counsel for the
 7 Regulatory Staff.

8 MR. GALLO: Well, the Regulatory Staff as represented
 9 by counsel, yes, sir, that is correct.

10 CHAIRMAN HASKINS: Thank you. Mr. Adler?

11 MR. ADLER: I think the failure of notice clearly
 12 indicates what Mr. Gallo has characterized, the lack of considera-
 13 tion or disregard. I think that the failure of notice indicates
 14 to the Commonwealth that they have been inadequately considered,
 15 and for all practical purposes disregarded.

16 MR. GALLO: Mr. Chairman, I think the distinction
 17 here is that apparently the Commonwealth did not receive the
 18 notice of prehearing, which of course the Staff did. As far as
 19 the Staff's situation is concerned, I reiterate that the
 20 establishment of this date on August 14th without participation
 21 by the Staff put the Staff in a position of an uphill climb to
 22 get the date changed which we were unsuccessful on. That, I
 23 am arguing, constitutes the lack of due consideration for the
 24 convenience and necessity of the Regulatory Staff.

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CHAIRMAN HASKINS: The Board has received Mr. Gallo's

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1 second motion as previously characterized, and the motion will
2 be denied.

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3 Mr. Gallo, I would like to proceed accordingly to
4 have opening statements from the parties, and I don't mean
5 to be facetious, but if you have other procedure motions in
6 mind, perhaps you had better bring them forward at this time.

7 MR. GALLO: I beg your pardon, Mr. Chairman. I
8 didn't hear you.

9 CHAIRMAN HASKINS: I said I am about to call on
10 parties to make opening statements. If you have other procedural
11 motions which should come before that part of this Prehearing
12 Conference, I call upon you now to make them.

13 MR. GALLO: Thank you, Mr. Chairman. I appreciate
14 the consideration. Indeed I do have one last motion. In light
15 of the Board's ruling I would request the Board to recess this
16 Prehearing Conference and I stress the word "recess". I move the
17 Board to recess this Prehearing Conference and to refer the legal
18 issue I have just raised for a prompt ruling to the Atomic
19 Safety and Licensing Appeal Board.

20 The authority for such action is found in 2.730
21 Subparagraph F of 10 CFR part 2, which provides "when in the
22 judgment of a presiding officer prompt decision is necessary
23 to prevent detriment to the public interest or unusual delay,
24 the presiding officer may refer the ruling promptly to the
25 Commission and notify the parties" et cetera, et cetera.

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My argument on the basis -- is to provide a foundation

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to the detriment of the public interest and unnecessary delay
3 and expense, is this, that if the Staff is right that the APA
4 has been violated in establishing this particular Prehearing
5 Conference, and any action taken here as a consequence is also
6 void, and rather than to attempt to reach agreement on con-
7 tentions and set schedules and whatever other business might be
8 done here, I think it would be the proper course to recess
9 and refer this to the Appeal Board for a prompt decision.

10 Thank you.

11 Mr. Trowbridge, the citation is 2.730, Subparagraph

12 F.

13 CHAIRMAN HASKINS: The Board will next call upon the
14 Applicants to respond to the motion of the Regulatory Staff.
15 If Mr. Trowbridge needs some minutes to read the regulation,
16 the Board will indulge him.

17 MR. TROWBRIDGE: I would like a minute or two, Mr.
18 Chairman.

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19 (Pause)

20 MR. TROWBRIDGE: Mr. Chairman, I will address myself
21 to Section 2730(F), which starts off with, and I think this is
22 the basic proposition of the regulation, "That no interlocutory
23 appeal may be taken to the Commission for a ruling of the
24 presiding officer." That is the basic rule of procedure.

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There is, however, provision that only in the judgment of the

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1 presiding officer, and this is a discretionary matter with
2 this Board, whether or not to refer a ruling to the Commission
3 or to the Appeal Board for review. This is a discretion to be
4 exercised by the presiding officer or by this Board only when
5 it finds that prompt decision is necessary to prevent detriment
6 to the public interest or unusual delay or expense, and I do
7 not -- I have missed something in Mr. Gallo's argument as to
8 where the detriment to the public interest or unusual delay
9 or expense is involved in proceeding with the ruling as it stands.

10 I simply do not see these ingredients involved in the
11 Board's ruling.

12 CHAIRMAN HASKINS: Mr. Sager, do you have any
13 comment?

14 MR. SAGER: Yes. I believe that this Board should
15 certify this question to the Appeal Board under Section 2.30
16 (F), for the following reasons: I believe that there will be
17 unnecessary delay and the public interest will be prejudiced
18 by proceeding further in this matter without the opportunity
19 of the Staff Members that have been so instrumental in this
20 proceeding up to date, especially with reference to proposed
21 stipulations and procedures as to matters of importance and
22 relevance in this case, I believe that there would be undue
23 delay if it is later found that because of a lack of notice or
24 opportunity to participate, certain procedures were developed
25 that would later affect the positions of the parties.

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1 Furthermore, with due respect to the Board, I believe
2 that where the question is one of the judgment of the presiding
3 officer, I believe that it is only proper and appropriate
4 there be an appellate review, and I believe that in this case
5 that review certainly should be had through the Appeal Board.

6 The question and the issue as I understand it is
7 whether under these circumstances the appropriate judgment of
8 the Board should not be reversed, and that the Staff and the
9 other members of the public who represent the public, namely
10 the Commonwealth, be given an opportunity fully to participate
11 in the proceeding at a date and a time convenient to all parties,
12 when all representatives will be present.

13 I believe that that judgment should necessarily
14 be reviewed because it is a very, very important question con-
15 cerning the due processes and rights of all citizens, and the
16 public interest in that regard is certainly involved, and we,
17 too, would join in the motion to certify this question to the
18 Appeal Board.

19 MR. TROWBRIDGE: Mr. Chairman, through all of this,
20 I have not heard ---

21 CHAIRMAN HASKINS: Mr. Trowbridge, I am going to
22 stop you for just a minute. I would like to hear from the
23 Commonwealth, and we can go around again. Mr. Adler?

24 MR. ADLER: I endorse what Mr. Gallo and Mr. Sager
25 are saying, and I would like to add that I think this is an

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1 important matter to consider, because I think the Appeal Board
2 should determine what constitutes adequate consideration with
3 respect to notice in a proceeding of this kind. I would support
4 Mr. Gallo's motion to certify to the Appeals Board.

5 CHAIRMAN HASKINS: Thank you. Mr. Trowbridge?

6 MR. TROWBRIDGE: Let me make clear, Mr. Chairman,
7 Mr. Gallo's motion involved two ingredients, one of which has
8 not been -- one of which has not been discussed. The first
9 ingredient was to recess this Prehearing Conference. The second
10 ingredient was to certify the question to the Board, the Appeals
11 Board. Obviously, the effects of a recess would undo the other
12 two rulings the Board has already made on a continuation of this
13 hearing.

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14 I have not heard the identification of where this
15 prejudice lies in proceeding with the Board's ruling without
16 an appellate review. We are here, in my view, to accomplish
17 some rather limited objectives. The main one, as far as
18 I am concerned, is on the ruling, the Board ruling on two
19 contentions which have been available to the parties for sometime,
20 and which grow out of contentions which have been available
21 now for approximately one year.

22 I think it is quite in order for the Board to
23 proceed with rulings on these two contentions, and I don't think
24 that either deficiencies in notice to the state or the fact that
25 Mr. Gallo has now had to replace Mr. Wilchins makes this a matter

Al 1 1 of such transcending importance as to require this Board to
eba 34 2 ask for a ruling, or a review of its ruling, on a procedural
3 item.

4 MR. GALLO: Mr. Chairman?

5 CHAIRMAN HASKINS: Mr. Gallo.

6 MR. GALLO: I would like to make two or three
7 remarks. First I have noticed that my brethren have referred
8 to certification. In the term of the art, I don't think certifi-
9 cation is appropriate here. Under the Commission's rules,
10 if the Board refuses to rule on a motion, it may certify the
11 matter for further review. On the other hand, if the Board
12 rules, as it has done in this case, it may then in its discretion
13 under 2.730(F) refer the matter. So we are dealing here with
14 a reference, rather than a certification.

15 Now 2.730, Subparagraph (F), mentions the Commission,
16 makes reference to the Commission. For the Board's information,
17 that paragraph has been provided for in the Rules of Practice
18 so that the Appeal Board in the first instance can make that
19 ruling, and that is found, the authority for that statement is
20 found in 2.785, Subparagraph (B); which quite clearly indicates
21 that it is the Appeal Board which is vested with the authority
22 to exercise the functions as provided for in 2.730.

23 Finally, Mr. Chairman, Mr. Trowbridge, I think,
24 misses the point here. If the Board were to refer this matter
25 and still hold this Prehearing Conference, it would moot the

Al 1 1 whole purpose of my reference. I think if the Board rules
ca 35 2 favorably, it has no alternative except to recess the Prehearing
3 Conference. Mr. Trowbridge talks about contentions we have had
4 for a year. Mr. Sager just put on my desk a paper entitled
5 "Revised Contentions." I assume if I had the year's background
6 on this, I could figure this out quickly.

7 This is why it is so important that Regulatory Staff
8 Counsel be here.

9 MR. TROWBRIDGE: Mr. Chairman, I now wish to comment
10 further on Mr. Gallo's new set of revised contentions. I am
11 afraid I don't know whether Mr. Gallo talked with Mr. Wilchins
12 and Mr. Olson or whether he didn't, or whether he decided
13 he would not so that he could come to this proceeding unarmed
14 with any knowledge of what has been going on.

15 MR. GALLO: Mr. Chairman, I object to that. We
16 have tried to conduct this thing. We have differing points of
17 view, and there is no need for insult in this proceeding. I
18 object to that.

19 MR. TROWBRIDGE: This is not an insult.

20 MR. GALLO: I would like a ruling and I would like
21 his remarks stricken from the record, Mr. Chairman.

22 CHAIRMAN HASKINS: Now, gentlemen, we are not
23 here to speculate on what conferences have taken place between
24 one counsel and another counsel representing one party. Mr.
25 Trowbridge, you have earlier alluded to the opportunity for

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1 consultation. Mr. Gallo has referred to the great press of the
2 Regulatory Staff Counsel's business in other hearings, the fact
3 that he has only seven attorneys available to try cases and
4 the like.

5 I don't think any useful purpose will be served in
6 disposing of this matter to say any more on that subject. If
7 you have any further comments, please go ahead within those
8 general guidelines.

9 MR. TROWBRIDGE: Mr. Chairman, the Board has made
10 a ruling, and Staff Counsel wishes essentially to undo the
11 ruling, not by just having the ruling referred to the Appeal
12 Board for review, which I think is an unnecessary item, but
13 accompanied by a motion to recess this Prehearing Conference.

14 I don't see that the recessing of this Prehearing
15 Conference is in any sense necessary to a review of the ruling
16 if the Board were to decide that the matter warranted a referral
17 to the Appeal Board.

18 CHAIRMAN HASKINS: Mr. Sager?

19 MR. SAGER: Mr. Chairman, I am concerned for the
20 Intervenor's position in the event that we go ahead here. As
21 I fully understand, the Staff cannot participate in any
22 stipulation or any agreements that we established with Mr.
23 Wilchins and Mr. Olson before, because Mr. Gallo does not know
24 about them, nor is he prepared at this point to present their
25 position.

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1 Therefore, I am concerned about our preparation on
 2 the Intervenor's side in presenting the revised contentions,
 3 and the disposition that might be had by this Board when all
 4 parties do not agree as to the particulars of the contentions
 5 involved.

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6 Indeed, I think the Intervenor's position might
 7 well be prejudiced by the Board not fully being apprised of the
 8 Staff's position concerning all contentions in that respect,
 9 and the agreements that we have had so that our issues, our
 10 contentions, our rights, are preserved on this record. Without
 11 that, Mr. Chairman, as I indicated before, I see great difficulty
 12 in proceeding with this Prehearing Conference, and I am very
 13 much concerned for the rights of my clients, and possible
 14 prejudice to my client's rights, because all positions are not
 15 fully and properly reflected on this record.

16 I do not believe that it is appropriate or proper
 17 that I state for the record what I believe the Staff had
 18 agreed to and understood, and acknowledged, nor do I believe
 19 that it would be proper for the Applicant to do so, and I
 20 understand that there is nobody on behalf of the Staff here
 21 that can do that.

22 I foresee great difficulty then and possible
 23 prejudice to my client's position in that respect.

24 CHAIRMAN HASKINS: Thank you.

25 Mr. Sager?

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1 We have heard the motion, and we have heard comments
2 from the parties. We have heard further argument in favor of
3 the motion, and we have heard further comments. The Board is
4 prepared to rule on Mr. Gallo's third motion.

5 Certainly the Regulatory Staff is fully within its
6 rights to move that this Board refer any issue to the Commission
7 or to the Appeal Board if it falls within the ambit of Section
8 2.730(F) and indeed if this motion were to be granted, it would
9 follow of necessity that a recess would have to be declared at
10 this moment.

11 How long it would take for the Appeal Board to process
12 this interlocutory appeal would be a matter of conjecture,
13 but surely it might well run to the 10th. of September, in which
14 case the appeal might become moot.

15 In any event, the Board denies Mr. Gallo's third
16 motion.

17 Mr. Trowbridge, do you have an opening statement?

18 MR. TROWBRIDGE: No, Mr. Chairman, I have no planned
19 opening statement. I was going to say that -- well, let me
20 say this. I came to this Prehearing hoping for the resolution
21 of -- well, that we would accomplish three matters. One, the
22 introduction of stipulations, which is no longer possible.

23 I hope these can be, however, reviewed by AEC
24 staff counsel, and submitted to the Board in writing after
25 this Prehearing Conference.

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1 The second item, as the Board is already well aware
2 of, is the disposition of the ten revised contentions, and
3 the last item will be the question of scheduling of the hearing
4 and whether or not we have a separate environmental hearing.
5 I would suggest that we proceed, Mr. Chairman, with Mr. Sager's
6 identification of the revisions in the document that you have
7 in the revised contentions and to the consideration of those
8 contentions one by one.

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1 CHAIRMAN HASKINS: Mr. Sager, do you have any further
2 remarks to make at this time?

3 MR. SAGER: No.

4 CHAIRMAN HASKINS: Mr. Adler?

5 MR. ADLER: Yes, I just have two remarks. In the first
6 place, I would just like to note again that I feel the rights of
7 the Commonwealth have been prejudiced in this matter due to the
8 lack of notice.

9 Secondly, If we are going to sit here today and discuss
10 these revised contentions --

11 CHAIRMAN HASKINS: Just a minute, Mr. Adler. The
12 revised contentions, what is the date of your revised contentions?

13 MR. ADLER: Mr. Sager's revised contentions, July.

14 CHAIRMAN HASKINS: July 19?

15 MR. ADLER: Revised contentions of July 19.

16 CHAIRMAN HASKINS: Very well. Some of these contentions
17 I have seen for the first time this morning, and it is going to
18 be difficult for me to adequately comment on them. I would just
19 like to have that noted so that for future discussion, my
20 comments are going to have to be limited.

21 Mr. Sager, if you wish time for a conference, we will
22 declare a recess. Otherwise, I would like to continue with the
23 hearing.

24 MR. SAGER: I believe that we concluded what we were
25 discussing. Thank you.

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1 CHAIRMAN HASKINS: Mr. Adler, I have a copy of the
2 revised contentions dated July 19, 1973 from the office of Sager
3 and Sager, and it is accompanied by a certificate of service in
4 which it states that it has been served upon persons on the
5 attached services, and that certificate is signed July 19, 1973
6 by Lawrence Sager, and on that service list, I find the name of
7 Mr. Frank R. Clokey, special assistant attorney general.

8 So, I assume that Mr. Sager made due effort to
9 serve it on the Commonwealth, and if it didn't reach you, I regret
10 the failure of communication.

11 MR. ADLER: Right. I understand that, and we have had
12 some failures here, but I just wanted to point this out to the
13 Board that this is the first time I have seen this, this morning.

14 CHAIRMAN HASKINS: Very well.

15 The Board has in mind going through the revised
16 contentions, seriatim, with a view toward determining whether
17 they are environmental in nature, whether they constitute health
18 and safety issues, or perhaps equally important, to clarify precisely
19 ly what the contentions mean.

20 Counsel for the intervenors tabled a piece of paper
21 this morning which bears no date, and which is entitled "Revised
22 Contentions." Mr. Gallo says he has not had opportunity to
23 study them, the Board certainly has not, either.

24 MR. SAGER: Mr. Chairman, may I explain what that
25 paper reflects in order to expedite possible consideration?

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1 CHAIRMAN HASKINS: Please do so, Mr. Sager.

2 MR. SAGER: I believe it was Monday, August 20, that
3 the staff, Mr. Wilchins, Mr. Olson, Mr. Trowbridge and Mr. Blake
4 met with me, in preparation for the prehearing conference of
5 today, and we went through the revised contentions that we filed
6 on July 19 that has been referred to.

7 In an effort to obtain certain agreement, the parties
8 there came up with a certain additional wording as to each
9 contention -- well, shouldn't say as to each contention, because
10 from my notes, it reflects Contentions 3, 5, 6, 7, and 10.

11 Instead of going through and reading the wording, as
12 I intended to do, the additional wording as to each contention
13 so that everybody could write it down on that July -- on those
14 revised, July 19 contentions that we had filed, we thought it
15 would be better, and by that I mean the Applicant and the Staff,
16 we felt it would be better if we retyped everything so that
17 there would be the full wording that was discussed at that
18 particular meeting.

19 In that respect, Mr. Chairman, and Members of the
20 Board, the revised contentions of July 19 are what is before
21 the Board with the additional addendums in order to effectuate
22 what we thought were the agreements that we could present to
23 the Board today concerning those revised contentions, and I
24 understand we cannot now proceed with those agreements.

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25 Now, the intervenor does have a problem with a certain

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dh4 1 statement that you have made, Mr. Chairman, and I don't want to
2 get a false impression.

3 Then, if I may, I would like to know why we are
4 categorizing environmental and safety and radiological issues.
5 Is it for the purpose of splitting the hearings?

6 CHAIRMAN HASKINS: Well, Mr. Sager, as I said at the
7 outset, there are two issues before this Board. One concerns
8 the construction permit and the second concerns the operating
9 license. These issues were denominated by the Commission in
10 its original order initiating this proceeding. In that order,
11 they set aside the construction permit or any modification thereof
12 as involving solely environmental issues.

13 MR. SAGER: Yes.

14 CHAIRMAN HASKINS: So there is a natural division of
15 the issues before this Board into two parts. Now, it may well
16 be that an environmental issue pertinent to the construction
17 permit is equally pertinent to the operating license. I think
18 we will develop that as we go along.

19 I think before we get to that point, we must decide
20 what the contentions are and have them phrased in a specific
21 and understandable manner.

22 MR. SAGER: In that respect, it is the intervenor's
23 position that all the environmental contentions do apply to both
24 the construction facet, but more importantly, to the operating
25 license issues, and all the environmental issues do; then, equally

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1 apply to the question as to whether the operating license
2 should be granted as well as the radiological and safety
3 issues, and it is in that framework that our contentions have
4 been set forth.

5 CHAIRMAN HASKINS: We understand your position fully,
6 and you will certainly be entitled to argue as we go through
7 these as to whether one is purely environmental health and
8 safety, or a mixture of both, and I am sure the other parties
9 will have positions on those issues as well.

10 MR. GALLO: Mr. Chairman?

POOR ORIGINAL

11 CHAIRMAN HASKINS: Yes, Mr. Gallo.

12 MR. GALLO: I wonder if I could clarify the posture
13 of the regulatory staff since we are proceeding with the
14 prehearing conference.

15 Mr. Trowbridge's insinuations to the contrary
16 notwithstanding, I have talked to Mr. Wilchins and Mr. Olson.
17 To the extent I can, I will participate and try to contribute
18 to this proceeding. Where I believe I have reached an element
19 that my unfamiliarity with the case is such that I don't
20 believe it would be appropriate on my client's behalf to offer
21 a viewpoint, I will ask the Board's indulgence to allow the
22 staff to permit its position on that issue in writing.

23 With that, I am prepared to proceed, Mr. Chairman.

24 CHAIRMAN HASKINS: Thank you, Mr. Gallo. That is
25 a very helpful attitude. Many of these problems are matters of

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1 wording which any lawyer with your AEC experience can overcome
2 without great preparation. Some of them are matters of syntax
3 that require no technical or legal training at all.

4 MR. GALLO: I am not sure but that you give me more
5 credit than I deserve, Mr. Chairman.

6 MR. SAGER: Shall I proceed with the contentions?

7 CHAIRMAN HASKINS: I think the Board will proceed with
8 the contentions and perhaps have a comment on each one and then
9 ask various questions and then ask you, Mr. Sager, to speak, and
10 we will also hear comments from the other parties.

11 Let me ask you this: Will it be possible for you to
12 tell the hearing what the differences are when you come to
13 Contention 3 as between your July 19 submission and your
14 present document?

15 MR. SAGER: Yes, Mr. Chairman.

POOR ORIGINAL

16 CHAIRMAN HASKINS: Let me ask you further, when you
17 say you made some changes, are these editorial in nature, or
18 are there substantive changes, or have you purported to add
19 additional contentions to your original list?

20 MR. SAGER: I guess Mr. Trowbridge can characterize
21 it as well as I can, to the point that I might not present it
22 properly, I would ask him to also reflect upon the question,
23 if possible.

24 Not all the wording is mine. Some of it is to clarify
25 the meaning of the contention, and much of it is to limit the

dh7

1 contention in scope where applicable, and some of it is to make
2 the intention more particular.

3 CHAIRMAN HASKINS: When you say not all the wording is
4 yours, Mr. Sager, I would point out that you have signed the
5 document. Perhaps suggestions have been made by the applicants
6 or the other parties, but I assume in presenting a signed copy
7 to the Board, you adopt the language that appears above your
8 signature.

9 MR. SAGER: Certainly, with the understanding, also,
10 that my adopting some of the words that there would not be any
11 objection to the contention.

12 CHAIRMAN HASKINS: We understand.

13 Mr. Trowbridge, are you prepared to proceed with
14 these contentions at this stage?

15 MR. TROWBRIDGE: Yes, Mr. Chairman.

16 CHAIRMAN HASKINS: We will look at Contention Number 1,
17 which deals with fuel densification, and I might say that the
18 Board, in reviewing these contentions found that although they
19 are characterized as contentions, they aren't contentions as
20 we understand 2.14.

21 In other words, many of them are declarative
22 statements, rather than placing a question in issue with
23 arguments to be had on both sides. With that introduction,
24 Mr. Sager, do you care to say anything about Contention Number 2?

25 MR. SAGER: There has not been any revision in the

1 wording of the contention. I did not understand it to be an
2 objectionable contention by the Staff and by the Applicant.

3 CHAIRMAN HASKINS: Mr. Trowbridge?

4 MR. TROWBRIDGE: Mr. Chairman, we do not object to
5 Contention 1. I would like to say one or two things which I
6 think will bear on other contentions. In the first place, in
7 considering the contentions, my primary concern, apart from
8 eliminating matters which I do not think belong within the scope
9 of this hearing, has been to see that I had a contention on which
10 I could reasonably prepare testimony, where I had some bound to
11 it, and where there was enough specificity to the contention that
12 I thought we could compare adequately, without undue burden, for
13 the hearing.

14 Now, I recognize -- I would like to make one point.
15 I pointed out to Mr. Sager that some of the contentions are
16 worded somewhat differently than the contentions I am used to.
17 I will take the first sentence, "The facility should not be
18 operated at levels which would cause unsafe conditions as a
19 result of fuel densification."

20 The way I read that, it is that it is a contention
21 that this facility is operated at the levels proposed, that it
22 would cause unsafe conditions as a result of fuel densification.
23 That is a translation I have had to make with respect to many
24 sentences. It would be true with respect to the second and third
25 sentences in that contention.

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1 It is a contention by implication, if you like, that
2 we do not meet the stated objectives for adequate protection of
3 the public health and safety in this instance.

4 I don't have trouble preparing material on that
5 subject simply because the sentences are declaratory rather than
6 -- with the implication that we do not or may not meet these cri-
7 teria or objectives, and I therefore interpose no objection to
8 the contentions based on the form of the statements.

9 CHAIRMAN HASKINS: Mr. Gallo?

10 MR. GALLO: Mr. Chairman, in my discussions with Mr.
11 Wilchins, it is my understanding that a number of discussions
12 were had informally among the parties. The Regulatory Staff
13 had made available to Mr. Sager a number of technical members of
14 the Staff to discuss various issues raised by Mr. Sager in his
15 original petition to intervene.

16 As a result of those discussions, certain contentions
17 were dropped. Others were not pursued for whatever the reasons.
18 It is my understanding that as a result of those negotiations,
19 these ten contentions represent the final synthesis, a sort of
20 quid pro quo for the discussions.

21 Based on that, I am informed by Mr. Wilchins that the
22 staff has no objection to Contention Number 1. We are prepared
23 to litigate it, and under these circumstances, we don't believe
24 that any arguments about meeting the test under 2.714 is approp-
25 riate in this case.

dh10

1 CHAIRMAN HASKINS: Thank you.

2 Mr. Adler?

3 MR. ADLER: I have no comments on this contention.

4 CHAIRMAN HASKINS: I would like to ask the parties
5 whether or not this is a health and safety issue.

6 Mr. Sager?

7 MR. SAGER: Well, it has health and safety and
8 environmental aspects to it. The monitoring certainly has an
9 environmental aspect to it. The question of the radiological
10 effluents that might come from the effects of the fuel densifi-
11 cation problem are certainly health and safety issues from the
12 radiological standpoint.

13 CHAIRMAN HASKINS: Mr. Trowbridge?

14 MR. TROWBRIDGE: Mr. Chairman, I had read this as
15 clearly a health and safety issue in which fuel densification
16 has normally been associated with.

17 The suggestion with respect to the monitoring aspect
18 of this has to do with the environmental -- it leaves me somewhat
19 perplexed. I think Mr. Sager may have in mind a different
20 notion than I do of what the effects of fuel densification
21 might be, but if it is his contention that fuel densification
22 could lead to radiation releases during the operation of the
23 plant, if that is what he means by adequate monitoring facilities
24 to detect any effect of densification, he would seem to be
25 making an environmental contention as well.

dh11

1 CHAIRMAN HASKINS: Mr. Gallo, do you have anything
2 on this?

3 MR. GALLO: Mr. Chairman, I think the contention is
4 clearly radiological health and safety. The fuel densification
5 question has arisen in that arena. Indeed, it is discussed in
6 the Staff's safety evaluation report, or will be in this case.
7 I am not sure what the circumstances are, whether the matter
8 has been addressed as yet or whether it is still an open item.

9 With respect to a monitoring aspect, perhaps Mr.
10 Sager misstated himself. I am sure what that sentence is
11 referring to is the in-core monitoring that is required of
12 any reactor, so that certain heat spikes can be detected.

13 These heat spikes and their effects tell us whether
14 or not the effects of densification are occurring. Obviously,
15 if some radiation escapes as a result of this, the radiological
16 monitoring program outside the facility would then come into play.

17 As I read the last sentences, it is essentially raising
18 the question of adequate in-core monitoring for the facility.

19 MR. TROWBRIDGE: Mr. Chairman, this is the way we
20 had read the contentions up until this very moment.

21 CHAIRMAN HASKINS: Mr. Sager, do you want to say any-
22 thing more on that point?

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23 MR. SAGER: Mr. Gallo is correct in his statements.
24 In conferring with my colleagues, the monitoring that we are
25 concerned about is mainly in-core monitoring.

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1 CHAIRMAN HASKINS: Are you prepared to say that this
2 Number 1 is then a health and safety issue?

3 MR. SAGER: A health and safety issue, yes. I said
4 that before. I would think the environmental aspects are not
5 there, and we are just concerned about the in-core monitoring.

6 CHAIRMAN HASKINS: Mr. Adler, while Mr. Sager is
7 conferring, do you have any comment further on Number 1?

8 MR. ADLER: It appears to us from reading this that
9 this would be a health and safety contention.

10 CHAIRMAN HASKINS: Mr. Sager, the point I was
11 endeavoring to elicit from you is whether this is health and
12 safety only, or whether you still believe there is an environ-
13 mental issue in this Number 1.

POOR ORIGINAL

14 MR. SAGER: This comes out to the dilemma that we
15 indicated before when you try to separate them. That contention
16 is concerned about densification and monitoring in-core towards
17 densification. We certainly, if you have densification and
18 as a result you have greater radiological releases that affect
19 the health and safety, it certainly has an environmental
20 consequence.

21 As to the consequence, we deal with that in other
22 contentions, and therefore we are prepared to say that the health
23 and safety aspect is directly related to, in this contention,
24 only to that degree. We do feel this type of review does point
25 up the fact that you can't demarcate the health and safety and

dh13

1 radiological issues and the environmental effects.

2 CHAIRMAN HASKINS: Very well. Thank you.

3 Shall we proceed to Contention Number 2?

4 Mr. Sager, do you care to say anything on that one?

5 MR. SAGER: This is a health and safety issue, again
6 in the context of what I just said before, and I know it indicates
7 no differences in wording from the July 19 presentation, and my
8 notes further indicate no objection from other parties.

9 CHAIRMAN HASKINS: Mr. Trowbridge?

10 MR. TROWBRIDGE: Mr. Chairman, we have no objection
11 to this contention, and we regard it as a health and safety
12 contention.

13 CHAIRMAN HASKINS: Mr. Gallo?

POOR ORIGINAL

14 MR. GALLO: Mr. Chairman, it is my understanding
15 that the staff has no objection to the contention, and we are
16 prepared to litigate it. I believe this is one contention that
17 is not subject to division into radiological areas or into
18 environmental areas.

19 Clearly, in this case, the question of an airplane
20 striking the Three Mile Island facility and its consequences
21 have been considered, as I understand it, a design basis
22 accident. That is clearly a health and safety question.

23 On the other hand, Section 6 of the final environmental
24 statement invariably discusses nine classes of accidents, including
25 design basis accidents and their consequences, and those conse-

dh14

1 quences are factored to the extent appropriate in the cost-
2 benefit balance. We are talking about the same accident, the
3 same situation. So I am unable to put it in one category or the
4 other.

5 We have to call this a mixed radiological and health
6 and safety question.

7 CHAIRMAN HASKINS: Mr. Adler?

POOR ORIGINAL

8 MR. ADLER: I have to agree with Mr. Gallo's contention.

9 CHAIRMAN HASKINS: I might say that when the Board
10 discussed this issue, it appeared to us that there were two
11 issues embraced in this paragraph 2. One is whether the plant
12 is sufficiently hardened to withstand an aircraft accident,
13 and the impact of an aircraft accident, and, two, whether a
14 step should be taken in this licensing proceeding by the Applicants
15 or in conditions imposed by the Board or otherwise to deflect
16 aircraft from flying over the Three Mile Island plant.

17 MR. SAGER: That is the purpose.

18 CHAIRMAN HASKINS: Thank you.

19 We turn to Number 3, and, Mr. Sager, you say you have
20 changes in that. Can you indicate to the Board and the other
21 parties what those changes are?

22 MR. SAGER: At the end of the first sentence of
23 Paragraph 3, there was added the words, "for which the Applicant
24 has regulatory responsibility."

25 The second sentence is added, the words are added,

dh15 1 "such" after the phrase "with reference to" and before "transportation of the fuel." So it reads "particularly with respect to such transportation of fuel and waste materials," et cetera.

4 DR. LYMAN: In the third line, the word "for" has been dropped. Is that intentional?

6 MR. SAGER: Yes, I believe it was. No, excuse me. I don't believe it is. I am sorry.

POOR ORIGINAL

8 CHAIRMAN HASKINS: Mr. Sager, I am not sure whether I followed you as to whether this is health and safety or environmental, or both. Perhaps you spoke to that.

11 MR. SAGER: I think it is a mixture of both, in that from the cost-benefit analysis you have, the problem of the cost of disposal of the waste and transportation from the facility and on-site, and the sabotage, and cost-benefit. It definitely is a health and safety issue with reference to scoring the facility itself in the transportation at the facility and from the facility.

18 CHAIRMAN HASKINS: Mr. Trowbridge?

19 MR. TROWBRIDGE: Mr. Chairman, we had no objection to Contention 3 as reworded. As phrased, it seemed to us a health and safety issue.

22 CHAIRMAN HASKINS: I beg your pardon? I didn't hear you.

24 MR. TROWBRIDGE: It seemed to us to be a health and safety issue only.

dh16

1 CHAIRMAN HASKINS: Thank you.

2 MR. TROWBRIDGE: Although when we get to Contention
3 5, it is less clear than it was whether similar discussion of
4 transportation of fuel and waste products was intended to be
5 environmental in terms of cost-benefit.

6 Contention 3, leaving aside Contention 5 for the moment,
7 we had taken it to be a health and safety issue.

8 CHAIRMAN HASKINS: Mr. Gallo?

9 MR. GALLO: The staff has no objection to Contention 3,
10 and we are prepared to litigate it, and we feel it is a health
11 and safety contention.

POOR ORIGINAL

12 MR. TROWBRIDGE: Mr. Chairman, I failed to make one
13 further observation about Contention 3. . Contention 3 deals in
14 part with the security, industrial security plan for the site.
15 As is customary in AEC licensing proceedings, the security plan,
16 for rather obvious reasons, is not made a public document. It
17 is filed with the AEC, and it would in part defeat the purposes
18 of an industrial security plan if it were made generally available
19 to people who might want to sabotage the plant.

20 Therefore, it is filed under separate arrangement
21 with the AEC, in which it does not go into the public document
22 room.

23 Up to this point, Intervenors have not had an oppor-
24 tunity to review that plan. I might have wished that it could have
25 been accomplished during the period of discovery, but I am not

dh17

1 but we are nevertheless prepared, and have reached an independent
2 stand with Mr. Sager that we will make available at the plant
3 site or at the offices of the company for inspection, a copy of
4 the plan under a suitable protective agreement between us and
5 Intervenor, with the understanding that this will happen
6 reasonably soon so that we could not know whether the contentions,
7 whether he wishes to continue his contentions or not, and also
8 so that the plan is reviewed before the hearing and we don't
9 take hearing time out in some in camera session to review it
10 at that time.

11 So with the qualification that it is our understanding
12 that Intervenor will, within the time schedule we have agreed
13 upon with them, send their representative to review the plan,
14 we have no objection.

POOR ORIGINAL

15 CHAIRMAN HASKINS: Mr. Sager, do you have anything
16 to add to Mr. Trowbridge's remarks?

17 MR. SAGER: It should be noted that the Intervenor
18 have signed such an agreement as well as the Applicant, and
19 arrangements are being made, and I think the first step was taken
20 this morning as to establishing a date and time and place for
21 that review.

22 CHAIRMAN HASKINS: Do I understand that you would
23 contemplate reviewing the plan prior to the hearing and that
24 as a result of that review, your contentions might change or
25 drop out. Is that a possibility?

1 MR. SAGER: Yes. It was our understanding that
2 after the plan concerning sabotage was reviewed, that we would
3 be in contact with the Applicant and the Staff and with the
4 Commonwealth, setting forth our position more fully.

5 CHAIRMAN HASKINS: Very well.

6 Mr. Adler, do you have anything on this point?

7 MR. ADLER: I have nothing to add other than to say
8 that we support Mr. Sager's characterization of this contention
9 as being health and safety and also having some characteristics
10 of an environmental concern.

11 CHAIRMAN HASKINS: Gentlemen. I want to say that we
12 are approaching a possible luncheon break, and I would like to
13 ask the parties what their wishes might be in that connection.
14 The Board was thinking of going on 'til 12:30, and then recessing
15 at that point.

16 Are there any comments?

POOR ORIGINAL

17 MR. SAGER: If there is a possibility of having the
18 hearing and all the business of the hearing concluded by, say,
19 1:30 or so, by going straight through, we would favor going
20 straight through.

21 CHAIRMAN HASKINS: Mr. Trowbridge? Do you care to
22 comment?

23 MR. TROWBRIDGE: I would share Mr. Sager's sentiments
24 if I thought we were going to get through at 1:30. I am looking
25 forward to Contentions 7 and 10, and I am not sure it is going

dh19

1 to happen that fast.

POOR ORIGINAL

2 MR. TROWBRIDGE: Mr. Gallo?

3 MR. GALLO: I would support Mr. Sager to press on
4 through, or in the alternative that we set a later lunch date.
5 Possibly at that time I can assure the Board that I have spent
6 better than two years in Harrisburg trying a case three
7 buildings from here, and eating lunch at 12:30 is very difficult
8 in Harrisburg in terms of getting served.

9 CHAIRMAN HASKINS: I think that difficulty is not
10 confined to Harrisburg. I suggest we go ahead for a while and
11 see how we come out, then.

12 Mr. Gallo, the Board would like to ask you a question
13 with respect to the second part of Contention 3, which talks
14 about transportation of fuel and waste to and from the facility.
15 Do you have a view as to whether that is properly an issue before
16 this Licensing Board?

17 I say that having in mind an ongoing rulemaking
18 proceeding which deals with transportation of fuel into plants
19 and transportation of wastes out of plants.

20 MR. SAGER: May I interject to clarify at this
21 particular point?

22 CHAIRMAN HASKINS: Yes, Mr. Sager.

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23 MR. SAGER: The Intervenors' point with respect to
24 the two facilities is that it would be the point -- we have
25 discussed that with the Staff and the Applicant -- that that

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1 would be the point to which the fuel cell delivered, most likely
2 to the situs of the facility.

3 As to the "from," we are concerned about the waste
4 products onsite at the facility, and the problem of the
5 Applicant which we understand is within their jurisdiction to
6 then be chargeable with transportation to the reprocessing plant
7 or whatever the waste products are going to go to the next
8 licensee. That is the scope of the contention in that respect.

9 MR. GALLO: Mr. Chairman, in response to your question,
10 I am afraid we have reached that point that I thought we might.
11 In my discussions with Mr. Wilchins, the staff had no objection
12 to this element of the contention.

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13 Clearly, this element of the transportation to and
14 from the manufacturer and so forth are outside the fuel cycle
15 situation and the fuel cycle rulemaking hearings. I am afraid
16 I must confess I am not clear what the scope is of the trans-
17 portation rulemaking hearing and I would request that I be
18 permitted to answer that question in writing to the Board.

19 CHAIRMAN HASKINS: Well, you certainly may, and my
20 question was not limited to Three Mile Island, if it applies
21 to other plants.

22 MR. GALLO: I must confess that this is the first
23 time I have seen this particular contention framed this way.

24 MR. SAGER: There was a similar contention in June
25 of this year, as I understand it, at Peach Bottom.

dh21

1 MR. GALLO: That is one of the proceedings I was not
2 in, so that explains that.

3 CHAIRMAN HASKINS: I don't expect to settle the issue
4 this morning, but I think there is a jurisdictional issue that
5 the Board will have to deal with, and we would welcome a further
6 written input from the Staff or anybody else on that point.

7 Let us turn now to Contention Number 4, Mr. Sager.

8 MR. SAGER: Both health and safety and environmental,
9 and again, as I understand, there is no objection to that
10 contention. There was no revision in the language.

11 CHAIRMAN HASKINS: Mr. Trowbridge?

12 MR. TROWBRIDGE: Mr. Chairman, we have no objection
13 to Contention 4. Excuse me, Mr. Chairman.

14 (Pause.)

15 MR. TROWBRIDGE: Mr. Chairman?

POOR ORIGINAL

16 CHAIRMAN HASKINS: Yes.

17 MR. TROWBRIDGE: As worded, certainly the last --
18 while this is primarily in our view a health and safety question,
19 the last sentence does introduce a question as to whether the
20 factoring of the costs and other aspects of the emergency plan
21 into the cost-benefit evaluation, according to environmental
22 review, so it is to that degree a mixed contention.

23 (CHAIRMAN TROWBRIDGE: Mr. Gallo?

24 MR. GALLO: Staff has no objection to this contention.

25 It is prepared to litigate it. The first two sentences, I believe,

dh22

1 raise health and safety questions. The last sentence is
2 an environmental question.

3 CHAIRMAN HASKINS: Mr. Adler?

4 MR. ADLER: The Commonwealth endorses Mr. Sager's
5 characterizations.

6 CHAIRMAN HASKINS: We come now to Contention Number 5,
7 and Mr. Trowbridge, did I understand from an earlier statement
8 of yours that you would have some difficulty with this contention?

9 MR. TROWBRIDGE: I think I might have misspoken
10 myself, Mr. Chairman, at one point, using 5 instead of 7, referring
11 to 5 and meaning 7, but I corrected myself at the time, I think.

12 With the wording changes that have been made, I
13 am not sure they are yet identified in Contention 5, we have
14 no objection.

15 CHAIRMAN HASKINS: Well, in order to clarify that,
16 the two contentions which you do have problems with are, then,
17 Numbers 7 and 10?

18 MR. TROWBRIDGE: That's correct.

POOR ORIGINAL

19 CHAIRMAN HASKINS: Mr. Sager, on 5, would you point
20 out to the Board and the other parties, or the parties, what
21 changes have been made or you are proposing to make?

22 MR. SAGER: Yes. On the third line of Contention
23 Number 5 of the July submittal, the words "most profitable" were
24 used to replace the words "exact," and so forth. So, from the
25 comma in the third line, it reads, "the Applicant must set forth

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1 the most probable routes, instead of the exact routes."

2 At the end of the contention, instead of a period
3 after "satisfies", there is a comma with the addition "to the
4 extent that such transportation is within the Applicant's
5 responsibility."

6 Now, when we discussed Contention Number 5, we
7 recognized that there was an overlap to some degree as Mr.
8 Trowbridge had stated before it refers to, with respect to
9 Contention Number 3. We felt for purposes of clarification that
10 we would not try to consolidate those particulars at this point
11 in that they are not in all respects current in the points that
12 are raised.

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13 Now, further, in order to deal with the jurisdictional
14 problem and the transportation-waste product cycle, which is
15 the subject of national hearings, the words, "to the extent that
16 such transportation is within the Applicant's responsibility"
17 were added with the recognition that we are concerned here with
18 what is happening at this particular plant, what would happen
19 under the terms of the proposed operating licenses for this
20 particular plant, and what rights, duties, obligations, et
21 cetera, would necessarily follow.

22 There was the extensive discussion as to what rights
23 an operating license would give the Applicant at this point, and
24 it was our position that the operating license under the rules
25 and regulations would effectively give the Applicant, without

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1 anything more from what we knew, the right to eventuate such
2 a pattern for disposal and transportation of waste materials
3 from that particular plant.

4 Again, I believe that with the added wording, that
5 there was no objection to this contention.

6 CHAIRMAN HASKINS: Coming back to my basic question,
7 will you characterize this as health and safety, or environmental?

8 MR. SAGER: Health and safety and environmental.
9 As far as the protective measures, it concerns health and safety
10 issues. As far as the environmental impact we discussed, of
11 course, it concerns environmental concerns.

12 CHAIRMAN HASKINS: Thank you. Mr. Trowbridge?

13 MR. TROWBRIDGE: I have already indicated we have
14 no objection as reworded, and I just understood Mr. Sager, if
15 I heard him correctly, he characterized the first sentence as
16 environmental and the second as health and safety. I would so
17 read them.

18 CHAIRMAN HASKINS: Mr. Gallo.

19 Excuse me, have you finished?

20 MR. TROWBRIDGE: Yes.

21 CHAIRMAN HASKINS: Mr. Gallo.

22 MR. GALLO: The Staff has no objection to Contention
23 5, and to show my evenhandedness, I agree with Mr. Trowbridge's
24 characterization of health and safety and environmental matters.

25 CHAIRMAN HASKINS: Mr. Adler?

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1 MR. ADLER: We have nothing to add.

2 CHAIRMAN HASKINS: The Board has now considered five
3 of the ten contentions. This seems to be a suitable breaking
4 point. We shall not break for lunch, but we shall have a brief
5 recess and return at 12:30.

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6 (Recess.)

7 CHAIRMAN HASKINS: The hearing will now resume. We
8 have come to Contention 6. Mr. Sager?

9 MR. TROWBRIDGE: Mr. Chairman, may I back up for
10 a moment?

11 CHAIRMAN HASKINS: Yes, Mr. Trowbridge.

12 With respect to the contentions dealing with transpor-
13 tation of fuel and waste, the Board suggested there might be
14 a jurisdictional problem, as I understood it, because of the
15 rulemaking proceeding going on with respect to fuel transportation
16 and its environmental impact, but the notice of that rulemaking
17 hearing in Docket RM 50-4, expressly provides -- I have the
18 notice itself here, not the Federal Register copy.

19 The notice was dated January 26, 1973, and I am sorry
20 I cannot supply the date or page reference for the Federal
21 Register version. But in the notice, the third from last
22 paragraph of the notice states, "Nothing herein shall be construed
23 as affecting the validity of the above-described holding by the
24 Appeal Board in the Vermont Yankee proceeding during the course
25 of this rulemaking proceeding and shall continue in effect unless

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1 and until modifications by promulgation of regulations or other
2 Commission action."

3 Now, the Vermont Yankee holding, as described in this
4 notice, is as follows: "The Commission's atomic and safety
5 licensing appeal board has held that an environmental statement
6 for nuclear power reactors should consider environmental effects
7 of the radiated nuclear fuel from the facility which is the
8 subject of the action and transportation of low level level wastes
9 and high level wastes other than irradiated fuel from the facility
10 to depositories."

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11 Now, it seems to me that the notice of the rulemaking
12 hearing clearly preserved the Vermont Yankee ruling that
13 transportation of fuel to and from the site, or fuel and waste
14 is a proper subject for environmental impact considerations
15 in individual licensing proceedings, and will remain so at least
16 until there is a disposition of the rulemaking hearing or some
17 other regulation adopted by the Commission.

18 CHAIRMAN HASKINS: Therefore, in summary, your
19 position is that transportation of fuel and waste to and from the
20 Three Mile Island plant is properly an issue to be litigated
21 in this case?

22 MR. TROWBRIDGE: The environmental impacts of it.
23 We are talking about contentions that have to do with environ-
24 mental effects. My answer is yes.

25 CHAIRMAN HASKINS: Is there any further comment on

POOR ORIGINAL

dh27

1 that point?

2 Very well, Contention 6, Mr. Sager.

3 MR. SAGER: The first sentence, the last word was
4 originally "operable." It was changed to "operated." The
5 first word of the second sentence was changed from "if" to "it."
6 I understand with these language changes that there was no
7 objection to the contention, and I see it as environmental, an
8 environmental contention with reference to the environmental
9 impact of fogging and the icing, the hazardous impact that
10 might come from fogging and icing as well as the chlorination
11 problem. I see it as a health and safety issue with reference
12 to the question of probability of the airplane accident.

13 CHAIRMAN HASKINS: Mr. Trowbridge?

14 MR. TROWBRIDGE: First, Mr. Chairman, on the contention,
15 I would like to say that I am reading sentence one, and I
16 believe Mr. Sager will confirm the understanding. The first
17 sentence refers to "if and at such times as," words to that
18 effect. That is the way we are reading the contention. I do
19 not -- I have not -- considered this as anything but an environ-
20 mental contention.

21 The hazard here, the reference to aircraft and
22 vehicular traffic. It may be that in the other contentions
23 relating to the probabilities of aircraft crashes and effects of
24 aircraft crashes and the degree to which the plant, as you say,
25 is hardened against them, one could work in, but I have not read

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1 it into any contention so far, the suggestion that the towers
2 are going to create a fog which in turn bears on the probability
3 of an aircraft accident on the plant.

4 That is not a contention which I could reasonably
5 have derived from Contention 6 or any previous contention.

6 CHAIRMAN HASKINS: First off, Mr. Sager, do you accept
7 the suggested amendment of Mr. Trowbridge in the second line?

8 MR. SAGER: That was the understanding of the language.

9 CHAIRMAN HASKINS: All right. Mr. Gallo?

10 MR. GALLO: Excuse me, Mr. Chairman. Staff has no
11 objection to the contention and we are prepared to litigate it.
12 I had viewed the contention, reading it today, as purely an
13 environmental contention. The question of creating hazards
14 as a result of fog to vehicular traffic and aircraft traffic,
15 while a shifty question, is not a radiological health and safety
16 question.

17 If it is intended to go further, as Mr. Trowbridge
18 has intimated, that the fog bears as a factor in calculating
19 probabilities for determining whether or not an aircraft will
20 crash into the plant, I would like to get that clarified at
21 this time.

22 CHAIRMAN HASKINS: All right. We will return to this
23 in a moment.

24 Mr. Adler?

POOR ORIGINAL

25 MR. ADLER: I have nothing to add.

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1 CHAIRMAN HASKINS: Mr. Sager, do you have in mind Mr.
2 Gallo's question?

3 MR. SAGER: Yes, does fog factor in the probability of
4 an airplane accident? That was the question, I believe. Yes,
5 certainly that is the reason why I said it is a health and safety
6 issue to that degree.

7 CHAIRMAN HASKINS: I think in these proceedings,
8 we normally consider health and safety as relating to radiological
9 hazards. Now, obviously an aircraft accident is a safety matter,
10 but I am not sure that it is a radiological safety matter.

11 MR. SAGER: I understand that one of the design basis
12 accidents that they were considering on the construction of the
13 plant was that.

14 MR. GALLO: Mr. Chairman, perhaps I could elucidate.
15 I am not sure we may not be creating another contention here,
16 but my understanding of what Mr. Sager is driving at is if
17 this reactor had once-through cooling, then query of the
18 probabilities of an airplane crashing into the reactor under
19 Contention Number 2 are different, than, because this reactor
20 has a cooling tower and thereby potentially at least, contributes
21 fog which may or may not interfere with aircraft, will that fog
22 be a contributing factor to effect or lessen those probabilities?

23 If the answer is yes, and the probability we are
24 talking about is crashing into the reactor, we now get into a
25 radiological health and safety question. It is in this context.

dh30

1 MR. TROWBRIDGE: Mr. Chairman, I wonder if there isn't
2 a fairly simple resolution of this. If Mr. Sager wishes to
3 pursue the thought that there will be -- the contention that
4 there will be fogging and that the fogging would affect the
5 aircraft and increase the probability of an aircraft crash or
6 particularly of a 707 or greater crash, I am wondering if we
7 just can't leave it that this can be brought up in connection with
8 Contention Number 2, and you may advance any thesis for feeling
9 that the probabilities have not been adequately assessed, but
10 do so under Contention 2.

11 MR. SAGER: Fine.

12 MR. TROWBRIDGE: Which would then leave Contention 6,
13 I think, strictly an environmental contention.

14 CHAIRMAN HASKINS: Mr. Adler?

15 MR. ADLER: I am looking at it.

16 CHAIRMAN HASKINS: Mr. Gallo?

17 MR. GALLO: Mr. Chairman, I am not sure we haven't
18 reached that point where really trial counsel, at this point,
19 should not judge the adequacy or inadequacy of that, because
20 it raises a new thought.

21 Mr. Trowbridge's objection strikes me as imminently
22 sensible, and therefore I will agree to it in this instance.

23 CHAIRMAN HASKINS: Thank you. Unless I hear violent
24 objection, I am going to suggest we move to Contention Number 8,
25 and we will revert to Contention Number 7 in due course.

dh31

1 MR. TROWBRIDGE: I have no objection to moving on
2 to Contention 8.

3 CHAIRMAN HASKINS: Mr. Sager?

4 MR. SAGER: This was no change in the language. This
5 is a health and safety issue, and I don't believe there was any
6 objection to the contention.

7 CHAIRMAN HASKINS: I understand you say it is a health
8 and safety issue?

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9 MR. SAGER: Health and safety, because the contention
10 reads that it has not been constructed for the probable maximum
11 flood, and concerning that respect as to the adequate protection
12 in the event of the flooding. Certainly flooding is an environ-
13 mental issue to the extent that it happens, and the possible
14 effect of the flooding. We are dealing with the containment
15 of the radiological effluents and their effect, what might
16 happen in the event of a flood.

17 MR. TROWBRIDGE: We have no objection, and we agree
18 that it is a health and safety contention.

19 CHAIRMAN HASKINS: Mr. Gallo?

20 MR. GALLO: The Staff agrees and is ready to litigate if

21 CHAIRMAN HASKINS: Mr. Adler?

22 MR. ADLER: We have nothing to add.

23 CHAIRMAN HASKINS: The Board would like to go back to
24 Contention Number 6. We want to ask a question or two by way of
25 clarification.

dh32

1 Dr. Livingston?

2 DR. LIVINGSTON: I would like to have it a little bit
3 more clearly explained, the significance of minimizing chlorination
4 Does it mean that the cooling tower, the cooling system, the
5 cooling system using a cooling tower, does by its nature minimize
6 chlorination, or is there some other meaning of the word
7 "minimize chlorination"?

8 MR. SAGER: We understand that the efficiency of the
9 cooling tower is directly related to -- I shouldn't use the
10 words "directly related" -- it is related to the use of
11 chlorine or chlorine compound substances in order to make the
12 cooling towers work efficiently. **POOR ORIGINAL**

13 The contention deals with the amount of chlorine
14 that is going to be used in order to have the cooling towers
15 work efficiently and the resultant effect of chlorination into
16 the river waters. I believe that it was the original report
17 that indicated .03 parts per million of chlorine into the waters,
18 and now the Applicant says that it would meet the standard of
19 .02 parts per million, and the standard has recently been
20 changed from .01 parts per million.

21 The purport of the contention is that A, is the cooling
22 tower designed so that it would operate efficiently with these
23 higher standards, and, B, is it, or can it meet the chlorination
24 levels accordingly that the Staff and the other regulatory
25 agencies say that the Applicant must abide by?

dh33

1 DR. LIVINGSTON: In other words, it has to do with
2 the chlorine being eliminated into the river water, and is not
3 really connected with fog or ice, except it is the efficiency
4 of the cooling tower that is involved, is that it?

5 MR. SAGER: That's correct.

6 DR. LIVINGSTON: Thank you.

7 CHAIRMAN HASKINS: Are there any other comments on
8 that point?

9 Very well. Number 9, Mr. Sager?

10 MR. SAGER: I don't believe there is any change in
11 the language there. I view this contention as a health and
12 safety contention. I don't believe there is any objection to
13 the contention.

14 CHAIRMAN HASKINS: I think the Board has a question
15 on the meaning of this, but we will hear from the other parties
16 first. Mr. Trowbridge?

17 MR. TROWBRIDGE: Mr. Chairman, we have no objection
18 to the contention and consider it to be a health and safety
19 issue.

20 CHAIRMAN HASKINS: Mr. Gallo?

21 MR. GALLO: Staff has no objection to the contention
22 and we are prepared to litigate it, and we believe it is a
23 health and safety issue.

24 CHAIRMAN HASKINS: Mr. Adler?

25 MR. ADLER: The Commonwealth has nothing to add.

dh34

1 DR. LIVINGSTON: May I ask a question here. Does
2 this have reference to an incident that has occurred in the past
3 during a construction period that I may be personally not
4 acquainted with?

5 MR. SAGER: Yes. It was found that the pouring of
6 portions of the containment was improperly done where there
7 were what I would characterize, and maybe an exception will be
8 taken, as mammoth voids, big enough that a human being could
9 fit into it, if you could gain access to it. But there were
10 voids in the concrete pouring.

11 As a result, the history that the containment had
12 to be re-poured, and that has been the subject of much review
13 by the Staff and the ACRS.

14 It is contended that the quality assurance with
15 reference to the repouring and the initial pouring is still
16 subject to question, and it has not been properly done as well
17 as the repouring itself.

18 DR. LIVINGSTON: I understand. Thank you.

19 MR. GALLO: Mr. Chairman?

20 CHAIRMAN HASKINS: Yes. Mr. Gallo.

21 MR. GALLO: My understanding, and I would like to
22 get clarification, is that the contention also includes the
23 question raised by the ACRS in its letter to the Commission
24 Chairman of August 14. I am thinking specifically of the first
25 paragraph on Page 3, which questions the adequacy of certain

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1 steel-bearing plates inside the container.

2 MR. SAGER: There is no question on that.

3 MR. GALLO: No?

4 MR. TROWBRIDGE: May I speak to this? In the first
5 place, this has to do with the containment pouring and the ring
6 girder, and I would agree with Mr. Gallo that the question
7 raised by the ACRS letter is encompassed within this contention.
8 Your description of the ACRS concern is not in the bearing plates
9 themselves. It is the question of whether or not there was some
10 recession of the bearing plates and whether that would indicate
11 anything about the sufficiency of the concrete.

12 But apart from -- I would agree with you that the
13 paragraph you refer to is within the scope of this contention.

14 MR. GALLO: Thank you.

15 MR. TROWBRIDGE: May I, just so we don't believe the
16 record that these were voids large enough to put people in,
17 that is not our view. There is no question that in the area of
18 the ring girder pour, there were significant voids and the
19 cement had to be removed and repoured.

20 CHAIRMAN HASKINS: Mr. Sager, in the last few words
21 of your Contention 9, you say that the concrete pouring does
22 not meet quality assurance standards, and quality assurance
23 is sort of a word of art.

24 Whose quality assurance standards are you talking
25 about?

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1 MR. SAGER: Well, it is under the regulations, the
2 various standards that must be met are set forth and we are
3 concerned about the quality assurance under the -- I believe it
4 is the ASME that would have certain guides on it as well as the
5 Staff's guides and regulatory guides as well as the best
6 quality assurances, the ASEM standards, and the ACI, the American
7 Concrete Institute, standards, as well as those quality assurance
8 standards that are normally applicable to the pouring of concrete
9 for a nuclear reactor.

10 CHAIRMAN HASKINS: Did you say, "ASTM"? Will you
11 explain what that is, please?

12 MR. SAGER: The American Society for Testing and
13 Materials. I believe there are quality control procedures for
14 the pouring of concrete.

15 Metropolitan Edison has made available to us, as well
16 as other documents, the United Engineers and Constructors, Inc.,
17 quality control procedure, and they set forth the various
18 references that they use for quality assurance boundaries, and,
19 for example, the American Society of Testing and Materials has
20 used, the Concrete Institute construction specifications and
21 so forth.

22 CHAIRMAN HASKINS: Are these standards imposed by
23 the Atomic Energy Commission?

24 MR. SAGER: I believe that Part 50 refers to the
25 standards that are necessary.

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1 CHAIRMAN HASKINS: I don't want to belabor this
2 point. Perhaps we are talking about semantics, but I think
3 what you are saying is generally acceptable construction standards.
4 Is that what you are saying?

5 MR. SAGER: In essence, I believe that is what it is,
6 yes.

7 CHAIRMAN HASKINS: All right. **POOR ORIGINAL**
8 Now, Mr. Trowbridge, I haven't forgotten Contention
9 Number 7.

10 MR. TROWBRIDGE: If you wish to continue in the vein
11 you have been by deferring argument to the end, Contention 10
12 actually has a number of subpieces to it, and we are not objecting
13 to Contention 10 in its entirety, and I would be glad to single
14 out the two elements of Contention 10 to which we do object
15 and then you may wish to --

16 CHAIRMAN HASKINS: I understand that. The one I
17 called for was Number 7, but if there is some reason for taking
18 10 up first --

19 MR. TROWBRIDGE: No, no. I was asking you if you
20 wanted to finish with those portions of 10 which are not in
21 controversy between us. I am glad to go back to 7.

22 CHAIRMAN HASKINS: Do you wish to speak to it, or
23 shall we ask Mr. Sager to?

24 MR. TROWBRIDGE: Let Mr. Sager, because he has made
25 the changes.

dh38

1 CHAIRMAN HASKINS: All right, Mr. Sager.

2 Number 7.

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3 MR. SAGER: The changes that were made in the handouts
4 that I presented today reflect the addition of words after
5 "liquid effluents" on the fourth line of Contention 7. Those
6 words are "such as a cryogenic system on the stack, or a higher
7 stack to release discharges to reduce low-level radiation."

8 Now, also, there were words added in the eighth line.
9 It read before "is too conservative," and that was changed to
10 read, "are not sufficiently conservative."

11 Now, in our discussion with the Applicant and the
12 Staff, it was our contention that the facility does not have the
13 latest and most up to date state-of-the-art hardware available
14 to reduce the low-level radiation.

15 Now, we get to a point where from what I understand,
16 the Applicant's position was specifically what is the hardware
17 that should be on the facility that is not.

18 We indicated that we could name two at this particular
19 point that should be considered as not having reviewed in order
20 to lower the radiation releases, and those are language such
21 as the cryogenic system on the stack or a higher stack to
22 release discharges.

23 Now, I also indicated to the Applicant and his staff
24 that between our meeting and today, I would try to have my
25 colleagues see whether I could not make that language more

1 encompassing, in particular, and more limiting as to any other
2 hardware that we are concerned with, and I am able to buy the
3 information that my colleagues give.

4 Thus, we are concerned with three things, that the
5 cryogenic system on the stack, the possibility of the higher
6 stack releases, and the third thing which is not set forth in
7 the language is the condenser vacuum pump ejectors which are
8 also known as the condensor vacuum pump exhausts.

9 MR. TROWBRIDGE: May I ask for clarification?

10 CHAIRMAN HASKINS: Please do.

11 MR. TROWBRIDGE: Did I understand Mr. Sager to
12 say, and if so, I am going to request a recess to see if we
13 can't agree on language here, that he was wishing, or he
14 was prepared, rather, at this point to not only add a system,
15 but to limit the contention to the systems enumerated?

16 MR. SAGER: That's correct.

POOR ORIGINAL

17 MR. TROWBRIDGE: In that case, Mr. Chairman, I would
18 suggest that we could spend a profitable five or ten minutes
19 in the reworking of this.

20 CHAIRMAN HASKINS: Well, I think that may be a valid
21 suggestion, and perhaps during the luncheon recess, the parties
22 may get together.

23 MR. TROWBRIDGE: If this occurred, Mr. Chairman, there
24 also will be no further objection.

25 CHAIRMAN HASKINS: I am not sure I understand the

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1 antecedent of this. If what occurred?

2 MR. TROWBRIDGE: If we were able to arrive at not
3 a, say, such as "list," but a list of systems.

4 CHAIRMAN HASKINS: Which is all inclusive?

5 MR. TROWBRIDGE: Yes, which is the list we will be
6 talking about.

7 CHAIRMAN HASKINS: Right.

8 DR. LYMAN: Would your revision include spelling
9 the word "effluent" with an "e" instead of an "a"?

10 MR. SAGER: Yes.

11 MR. GALLO: Maybe it is right the way it is. Are
12 we going to recess, Mr. Chairman? Can't we just delete "such as"
13 and keep the rest?

14 MR. TROWDRIDGE: I listened to the final part, and I
15 wasn't sure we have a -- I am not quite sure yet what they would
16 have us put on the exhaust. So it does seem to me a few minutes'
17 discussion would be proper.

18 CHAIRMAN HASKINS: Gentlemen, we have a problem of
19 working out language with Contention 7, and we have a Contention
20 10? Arguments that are due on that. It occurs to the Board
21 that it would be fruitful to recess for lunch at this time,
22 and during the recess, we would ask the Applicant and the
23 Intervenors to work on language of Number 7 with such assistance
24 or cooperation as the other parties may care to or can give.

25 We will therefore recess until 2:15.

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(Whereupon, at 1:17 p.m., the hearing was recessed
until 2:15 p.m., this same day.)

Buff Take 3 1
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AFTERNOON SESSION

2:20 p.m.

3 CHAIRMAN HASKINS: The hearing will now resume.

4 Just before the recess we were discussing conten -
5 tion No. 7, and Mr. Trowbridge and Mr. Sager were perhaps going to
6 agree on some language which they would submit to us
7 this afternoon.

8 Mr. Sager.

9 MR. SAGER: Yes.

10 The first sentence should read as follows:

11 "The low level radiation effluents of the
12 facility are not as slow as practicable in that
13 the facility does not have the latest and most up-
14 to-date state of the art available Rad-Waste
15 system for both gaseous and liquid effluents to
16 reduce low level radiation."

17 MR. TROWBRIDGE: Mr. Chairman, can I suggest that we
18 all mark up our copies as we go through here?

19 MR. SAGER: -- striking some of the language
20 there, and adding "In that," after the word
21 "radiation."

22 One or more of the following should be
23 added: "Cryogenic radioactive waste gas treatment
24 system."--

25 MR. TROWBRIDGE: A little slower, please. I am

R2

1 sorry.

2 CHAIRMAN HASKINS: A little slower. We are all
3 taking it down as we read it.

4 MR. SAGER: "Cryogenic radioactive waste
5 bas treatment system" or (B) "Higher stack for
6 release of radioactive gases" or (c) "Treatment of
7 condense or vacuum pump discharge."

8 Now, that is the difference in the language change
9 and as to the third sentence, it is understood that two
10 problems that we are dealing with are these.

11 First would involve whether the calculations of
12 the low level radioactive effluents meet the criteria and
13 standards of the AEC and secondly, whether or not the radiation
14 through the counter pathway is not as low as practicable in that
15 one or more of the three systems that we have stated above should
16 not be added to make the low-level radiation releases lower.

17 I understand with those conditions and with that un-
18 derstanding concerning the scope of the contention that
19 there is not an objection from the applicant--

20 CHAIRMAN HASKINS: The applicant may speak to
21 that in just a minute.

22 Earlier, you had suggested in the second sentence
23 striking the words "is to" in front of "conservative," and
24 substituting "are not sufficiently." Does that change
25 still hold?

R3

1 MR.SAGER: Yes.

2 MR. TROWBRIDGE: You should have that change,
3 Mr. Chairman, already.

4 CHAIRMAN HASKINS: I have the change. That is why
5 I was able to speak to it, but I was not still sure whether that
6 was viable this afternoon.

7 Does that conclude your presentation for now,
8 Mr. Sager?

9 MR. SAGER: Yes.

10 CHAIRMAN HASKINS: All right.

11 Mr.Trowbridge.

12 MR. TROWBRIDGE: There is no further objection
13 to the contention.

14 CHAIRMAN HASKINS: Mr. Gallo, have you had a
15 chance to focus on this reworded contention?

16 MR. GALLO: Yes, I have during the luncheon
17 recess, Mr. Chairman, and I believe I can say that on
18 behalf of the staff we have no objection to contention No. 7
19 as revised.

20 CHAIRMAN HASKINS: The Commonwealth of Pennsylvania.

21 MR. ADLER: The Commonwealth has no objection.

22 CHAIRMAN HASKINS: Very well. Let us now turn to
23 Contention No. 10.

24 Mr. Sager.

25 MR. SAGER: The change in language is found on the

R4

1 third from the last line of the submission of
2 July of this year wherein the words "directly or indirectly"
3 have been deleted and replaced by "appraised reasonably, directly
4 related."

5 That is an environmental contention. I understand
6 that there is objection to parts of that contention.

7 MR. LIVINGSTON: Could I ask a question on the
8 wording.

9 The word "established," on the 7th line, if we
10 moved that up to follow the words in the line above, "has not
11 been established or included in the cost analysis," does that
12 have the same meaning?

13 It would have a lot more meaning to me.

14 MR. SAGER: The 7th line of the original submittal,
15 or as of the handout today?

16 MR. LIVINGSTON: Of the original.

17 The word "established" comes after a clause and
18 it does not seem to tie into anything.

19 For purposes of grammar, I would understand the
20 thing better if I could move the word "established" up following
21 the words "has not been established or included in the
22 cost analysis."

23 It has the same meaning.

24 MR. SAGER: Yes. Fine.

25 MR. LIVINGSTON: All right, fine.

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1 CHAIRMAN HASKINS: Mr. Trowbridge?

2 MR. TROWBRIDGE: Mr. Chairman, I object to
3 Contention 10 (g) to two elements of the contention, one of
4 which is in turn subdivided into two additional ones. I
5 think the best way for me to explain my objection is that
6 I think there should be deleted from the contention in
7 the version handed out to you this morning words beginning
8 on the end of the second line with the word "the" and ending
9 on the fourth line with the word "included."

10 So that I would delete the phrase "The cost of
11 governmental subsidies for technology and insurance have
12 not been included."

POOR ORIGINAL

13 My other deletion would start with lines
14 further down. I would delete the words "The health cost
15 from low-level radiation has not been included."

16 Now, let me talk to these, if I may.

17 In turn, taking the first one, the cost of
18 governmental subsidies, the first element of that is govern-
19 mental subsidies for technology, and it is my understanding
20 in this regard that this contention relates primarily to
21 past government expenditures in support of the
22 development of nuclear power.

23 I would remind the Board, in fact, that direct
24 subsidies of individual power plants such as this one
25 are prohibited by the Atomic Energy Act in the absence of

R6

1 special Congressional authority and no such authorization
2 exists for subsidies to this project.

3 The past governmental contribution to the
4 development of atomic energy, directly and indirectly relating
5 to the development of nuclear power are real. There is no
6 question of their contribution to the development of
7 commercially feasible nuclear power, but in my view they are
8 what are sometimes referred to as "sunk" costs, and they should
9 not now be considered in the cost-benefit analysis of projects
10 subsequent to the occurrence of these government expenditures.

11 It seems to me self-evident, although I am not
12 aware of any prior occasions for the Commission and its licens-
13 ing board and the appeal board to have considered the matter.

14 However, I would point out by analogy that regulatory
15 Guide 4.2 which contains guidance to applicants for the
16 development of environmental reports does specify that in
17 the case of environmental reports for operating licenses,
18 only the cost of completing a plant, not the costs already
19 incurred in construction of the plant prior to the report, need
20 be considered in arriving at a cost-benefit balance.

21 Here, again, these are sunken costs which have
22 already been incurred, and it seems to me to follow a fortiori
23 that the cost of earlier government programs need not be
24 considered.

25 As to the alleged insurance subsidy, it is my

R7

1 understanding that intervenors, which to develop testimony on
2 the extent to which under the Price- Anderson Act, the
3 government indemnity agreement and the ultimate limitation
4 of liability amounts to a subsidy as compared, perhaps to
5 the approximately \$100,000 a year which this project will
6 pay the AEC, in indemnities.

7 The Price-Anderson Act represents established law,
8 and Congressional policy which can not be altered in this
9 proceeding, and I submit that speculative testimony and argu-
10 ment as to whether or not a subsidy is involved goes far beyond
11 the reasonable scope of a NEPA review.

12 Coming now to the health costs from low level
13 radiation which intervenors contend should have been included
14 for a complete environmental review--it is my understanding
15 that intervenors are not satisfied with environmental reports
16 and environmental statements which estimate both individual
17 and population doses for effluent releases.

18 They want those documents, excuse me --to discuss
19 further the health effects and costs of those low-level
20 radiation doses, this is, of course, at odds with AEC prac-
21 tice and the preparation of environmental statements and
22 regulatory guide 4.2 which provides guidelines for the
23 development of environmental reports and calls for and stops
24 with dose estimates.

25 I think the intervenors' contention ignores very

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8 1 sensible reasons why dose estimates are a proper stopping
2 point for individual licensing proceedings. In fact this is
3 because the health costs have already been considered, setting
4 releases and dose limits in AEC limitations and rule-
5 making proceedings.

6 Thus part 20 as initially adopted and in some
7 subsequent amendments including the amendment which put in
8 effect the qualitative as low as practicable requirement pres-
9 ently in effect, were expressly explained in statements of
10 consideration which accompanied these issuances to reflect the
11 standards built up over many years by the National Committee on
12 Radiation Protection and the International Committee on
13 Radiation Protection in reports which very clearly did address
14 themselves to the health risks of low-level radiation and which
15 made specific projections of both somatic and genetic energy
16 upon the assumption of dose effects.

17 The same observation is true of the presently-
18 proposed amendments to Part 20, I.E., the proposed appendix I,
19 intended to fix numerical values as low as practicable
20 releases.

21 The testimony on the health risks--testimony on health
22 risks, has been included already in these appendices I,
23 Rulemaking hearings and I have no doubt, and I am sure
24 Mr. Gallo could respond to this, that when the hearings resume,
25 as is expected in the not too distant future, that this

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1 testimony will be supplemented by the recent National Academy
2 of Sciences Report which goes extensively into the subject of
3 health costs and the assessment of them even to some extent
4 in dollar terms.

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5 I submit that it is in these rule-making
6 proceedings applicable generically to all light water reactors,
7 and not in redundant individual licensing proceedings, that
8 these health effects are properly developed.

9 That is my comment, Mr. Chairman.

10 CHAIRMAN HASKINS: Thank you.

11 Mr. Gallo, do you wish to say anything to this
12 issue?

13 MR. GALLO: Mr. Chairman, we have reached the
14 contention that I wish to request the indulgence of the Board
15 to submit a staff position in writing upon. The staff objects
16 in part to this contention and does not object to the
17 balance of it.

18 My understanding is that our objections run to
19 the same phrases that Mr. Trowbridge identified, namely,
20 "The cost of governmental subsidies for technology and insur-
21 ance." And also the phrase further down that talks about
22 the adverse economic costs resulting from limitations.

23 I would request that the staff be permitted to
24 submit its position in writing within a reasonable time,
25 say a week's time from today, to provide for the Board its

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1 view. I listened to Mr. Trowbridge's argument with interest
2 on the first issue, the request for government subsidies. I
3 am not sure we really focused in on the real legal reason
4 why in his objection this is objectionable.

5 The same goes with the other area I have
6 identified, the adverse economic costs resulting from limi-
7 tation.

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8 With that request, I would like to move on and address
9 myself to the point that Mr. Trowbridge has also raised, the
10 health costs from low-level radiation.

11 As I understand the contention, the intervenors
12 are in essence saying the --the "method in the
13 final environmental statement, that the health costs," with
14 quotes around that, reflected in that document are either not
15 sufficient or in their view have not been reflected at all.

16 Mr. Trowbridge refers to the regulatory Guide 4.2,
17 and other guidances to the methodology for filling out or
18 for guidance to applicants to draft their own environmental
19 report which is furnished as part of their application to the
20 AEC.

21 Mr. Chairman, this is the second or third proceed-
22 ing in the last month that I have been in, where the regulatory
23 guidance has been used as an instrument to attack an Intervenor
24 contention.

25 Now, the regulatory guide is not a law and is not to

R11

1 be accorded the force and effect of law.

2 It is exactly what it says it is. It is guidance.
3 As a matter of fact, there is a disclaimer at the front of
4 these guides which indicate they are nothing more than that,
5 and, while it is a convenient vehicle for the staff to give
6 instructions to applicants, I do not believe it has any relevant
7 bearing to a legal determination as at the time as to the
8 adequacy or inadequacy of a particular contention.

9 Turning to the question that Mr. Trowbridge raised
10 whether or not dose estimates, which I agree are included in
11 the final environmental statement, whether or not dose
12 estimates are the proper stopping point, I do not read the
13 contention as raising the issue of whether or not the
14 underlying basis for Part 20 and its health effects are
15 good or bad.

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16 I simply read the contention as saying "Whatever those
17 effects are, they have not been factored into the environmental
18 statement cost-benefit balance, and they should be," and I
19 say that indeed, they should be.

20 The staff thinks they have been. The Intervenors
21 disagree. There is an issue for litigation.

22 I reiterate my request to be permitted to submit
23 in writing the staff's position on the balance of the objec-
24 tions to the contentions, Mr. Chairman.

25 CHAIRMAN HASKINS: Thank you, Mr. Gallo. Your

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1 remarks, I think, are very helpful to the Board.

2 MR. SAGER: May I respond?

3 CHAIRMAN HASKINS: Yes, please do, Mr.Sager.

4 MR. SAGER: I start out with an observation that,
5 although maybe the staff believes that the health costs have
6 been factored into the analysis of the NEPA review, the
7 environmental impact, I observe from Mr.Trowbridge's statements
8 that obviously the applicant feels that the determination of the
9 level of both radiation effluent was the stopping point, and
10 thoe costs were not factored in.

11 Indeed, if Mr.Gallo, if, as he has indicated,
12 our contention that the stopping point is not determining
13 what the level of the low-level radiation erruent is, whether
14 part 20 has been met, nor do we agree with Mr.Trowbridge's
15 statement that the fact that the determinations have
16 been made under the lowest practicable standards on the radio-
17 logical side, that one now is limited under an NEPA review to
18 go into the effects of the low-level radiation releases and
19 the health costs, whatever they might be.

20 Now, I believe that this is a very, very
21 important concern that requires analysis, and we contend
22 that that analysis has not been done or properly made.

23 With regard to the insurance question, in our
24 discussion with the staff and Mr. Trowbridge last Monday, a
25 little over a week ago, we indicated that the insurance

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1 question that we are concerned about is again in the framework
2 of the cost-benefit analysis as to what portion, what aspect
3 in determining the balances should necessarily--you have the
4 insurance risk.

5 What are the probability studies with regard to
6 that. Indeed, what are the limitations in dollars and
7 cents that the Price-Anderson Act might place upon the appli-
8 cant as to the actual costs for a possible catastrophe? That
9 should be factored in, too, but what the public might have
10 to suffer without any compensation in the event that there
11 might be the catastrophic accident that has been studied in
12 various WASH reports, that should be factored in, too.

13 It is that insurance analysis that is directly
14 or indirectly determined by the Price-Anderson Act that
15 affects directly this particular plant. We are not asking
16 for any other plant. Those costs that we are ready to proffer
17 testimony on, and the relationship to this particular plant
18 and the moneys that are involved--that is what we wish to
19 consider.

20 Now, as to the technology, it is not our contention
21 that those sunk costs of the previous governmental technology
22 and experimentation and so on that eventually gave rise
23 to this development of reactor to generator electricity we
24 are concerned with. We are concerned, however, with the on-
25 going governmental involvement with plants of this sort and

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14 1 how much the public has to bear directly as a result of this
2 particular plant's being proposed for operation.

3 Now, those costs include the administrative costs, the
4 additional health and safety costs involved in evaluation of
5 emergency plant studies, regulation of the institution, both
6 on the state and the federal side. Those are costs that are
7 directly related to this particular plant and are also
8 costs that should be analyzed in accordance with the NEPA
9 requirements in order to balance the cost-benefits and
10 to see whether, indeed, the environmental impact of this
11 particular plant, together with the costs, are such that the
12 plant should or should not be operated.

13 CHAIRMAN HASKINS: Mr. Sager, do I correctly under-
14 stand that you think an element of cost should be that pro-
15 portion of the AEC budget, for example, which is used in
16 licensing the Three Mile Island Station here?

17 MR. SAGER: Just as to this particular plant, yes.

18 CHAIRMAN HASKINS: That is what we are talking
19 about, and also the cost of the Public Utilities Commission
20 of the Commonwealth of Pennsylvania, in so far as they place
21 manpower and resources on the licensing process for this
22 plant.

23 MR. SAGER: No, because the Public Utilities
24 Commission by state law only regulates the rate, and
25 does not have any effect whatsoever with regard to
these matters that we are talking about.

15

1 CHAIRMAN HASKINS: Well, what about other state
2 bodies from whom the applicants require Pennsylvania licenses?

3 MR. SAGER: Yes, those costs are matters that are
4 directly related to the operation of this particular plant.
5 Without them, we would not have the operation of this particu-
6 lar plant.

7 CHAIRMAN HASKINS: I have another question as to
8 the language of your contention 10.

9 You talk about the cost of containment repowering
10 not having been established or included, and then you say
11 "The adverse economic costs resulting from limitations is
12 reasonably directly related to development in the area of
13 the facility."

14 MR. SAGER: Yes.

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15 CHAIRMAN HASKINS: Could you give us an example of
16 what you mean by "adverse economic costs"?

17 MR. SAGER: This was also discussed at the meeting,
18 and I believe it is probably one reason why there is not an
19 objection, because I clarified it further in our meeting.

20 That is, the development costs in the area where,
21 indeed, the low population zone that has been created
22 around the plant will most likely continue to be developed
23 as a low-population zone and only because of possible zoning
24 restrictions or regulations that relate directly to the
25 facility being sited at this given point, but also because

1 of the psychological effects of the plant in the development
2 of the communities nearby and the land nearby.

3 As in other facilities where similar contentions
4 have been raised, it can be shown, and it would be shown
5 that the development of the land in that area really is a lower
6 density than normally would be developed because of the
7 situs of the plant.

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8 These are, again, limitations on the surrounding
9 area and they have a direct economic cost to the surrounding
10 area because of the limitations that are placed upon land
11 use because of the mere presence of the plant, of the
12 facility, and it is directly related to it.

13 CHAIRMAN HASKINS; I understand what you mean
14 and now, how would we go about getting these costs?

15 Do you expect the applicant to make an estimate?
16 Would you expect the staff to do it as part of their
17 environmental report? Would you expect them to produce
18 testimony as a basis on which the Board could make it in
19 modifying the final environmental statement?

20 MR. SAGER: As has been done in other facilities,
21 it is shown by a study of the planning in the area without
22 the facility present in similar and comparable areas of
23 that environment.

24 What has been the normal trend, that is, in
25 pattern of development. It is further shown as to what have

17
1 been the trends with a facility located there.

2 Now, planners have already gone into this analysis
3 in other facilities, adverse costs have been shown, and
4 this type of testimony is not speculative. It can be actually
5 reviewed and established. We state that the NEPA review
6 is inadequate because it does not give any consideration
7 whatsoever to these costs.

8 CHAIRMAN HASKINS: Well, I understand what you
9 are getting at, I think, with respect to the costs, and I
10 also believe I understand you to say there is information
11 available from planning studies or whatsoever. I donot think
12 you fully answered the question, "How do we factor in this
13 cost element which you say is missing?"

14 "How do we factor it into this licensing
15 proceeding"?

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16 MR. SAGER: Our contention is that you certainly can-
17 not factor it in until they present it-- and that they should
18 present it.

19 Second of all, in my cost-benefit analysis of the
20 National Environmental Policy Act, it is a consideration that
21 must be given weight to in consideration of balancing the
22 adverse effects as opposed to the benefits of the proposed
23 plant.

24 The law, as set forth--it is being developed and
25 has been stated in various ways, including the Calvert

R18

1 Cliff's decision and so forth. I think it is a legal question
2 you are asking me as to how do you balance the costs.

3 CHAIRMAN HASKINS: No, I am not asking you how you
4 balance it. I am asking you how you get that cost, or those
5 cost estimates before the Board so the Board can consider
6 it in weighing the balance of the many other factors.

7 MR. SAGER: That is precisely the contention. The
8 contention that they have failed to bring those costs here.
9 I have given you an example of how they have done it in
10 another facility.

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11 For example, in the Limerick facility, when the
12 Atomic Energy Commission sanctioned the situs, they went
13 ahead and went on, to Lower Potts Grove Township, and
14 asked Lower Potts Grove Township to rezone the area in the
15 Township that was called the low population zone so that the
16 density would be a low population, because of the facility
17 being there.

18 Now, the change in the land-use patterns certainly
19 affects the land value, or values, because we all know the
20 use of land relates to the economics and the price and value
21 of land.

22 Now, I am suggesting in stating that this happens
23 with all facilities because, indeed, in order to keep those
24 zones and those areas around the facility's low population,
25 you will necessarily have the consequential low-density

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1 use patterns developing, and which do develop, either by
2 direct fiat or by the type of development that people are
3 willing to have around these facilities, because of the
4 psychological or other reasons.

5 Nevertheless, because there are going to be
6 low density, it has a direct bearing on land value and land
7 use which has an economic reality to it.

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1 CHAIRMAN HASKINS: I don't want to pursue this too
2 much longer. You kept saying "They haven't done this, they
3 haven't presented it," and I am trying to find out the ante-
4 cedent of "they".

5 MR. SAGER: The applicant.

6 CHAIRMAN HASKINS: The Staff or the Applicant or both?

7 MR. SAGER: The Applicant and the Staff are charged
8 with the NEPA review, and we are stating both.

9 CHAIRMAN HASKINS: This is a deficiency in their
10 presentation for their license application, is that your
11 position?

12 MR. SAGER: Yes.

13 CHAIRMAN HASKINS: And the data available with
14 respect to planning, with respect to land use, with respect
15 to possible rezoning, you say is available and should be
16 before this Board and has not yet been presented?

17 Do I understand you correctly?

18 MR. SAGER: That is right.

19 CHAIRMAN HASKINS: Also, as far as the Intervenor's
20 presentation was concerned, would you contemplate presenting
21 evidence on that issue as intervenors?

22 MR. SAGER: At this particular point, I believe our
23 position is that they have not fulfilled the NEPA requirements.
24 I do not believe that at this time we anticipate submitting
25 testimony and evidence because of our limited financial and

1 technical resources.

2 CHAIRMAN HASKINS: Thank you, Mr. Sager.

3 Mr. Gallo?

4 MR. GALLO: Well, based on that clarification, I am
5 not sure that any further contribution by me would be in
6 order or would be necessary.

7 I was going to enumerate how the staff might in its
8 litigation of this contention with those factors that are indeed
9 made a part of the case, how we would handle it, and through
10 that process maybe explain to the Board what it is trying to
11 get at.

12 CHAIRMAN HASKINS: Well, we would welcome your
13 explanation, if you would care to give it.

14 MR. GALLO: All right.

15 Mr. Chairman, it seems to me that in the final
16 environmental statement, we have a section which deals with
17 cost-benefit analyses. I think at the outset that if that
18 cost-benefit analysis is inadequate, and I underscore "if",
19 it is really a staff responsibility. It is the federal
20 agency having the responsibility for taking the main or federal
21 action that is going to have a significant impact on the
22 quality of the environment there that is charged with the
23 responsibility of developing and utilizing an environmental
24 impact statement.

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1 we would propose to offer as a witness that expert who pre-
2 pared the section on cost-benefit analysis for the final
3 environmental statement. He would be prepared to explain
4 either how these factors in contention 10 are dealt with
5 adequately in the cost-benefit analysis as it currently
6 reads, or in the alternative, he would be prepared to explain
7 why it is appropriate not to include such factors.

8 Mr. Sager could attack the credibility of the item
9 through cross examination, or rebuttal with direct testimony.
10 If he is successful, then the staff would be confronted with
11 putting on rebuttal testimony which would -- which I would
12 prepare, or repair, any error that was deemed to be
13 appropriate, such as the planning information he talks about
14 for the low population zone.

15 If the staff failed to do that, then the board is
16 confronted with a question of whether or not the environmental
17 statement, as a matter of law, is inadequate, and if it finds
18 it is, the operating license could not be granted in this
19 case.

20 That is all I see the issue to be, to be
21 treated in litigation.

22 CHAIRMAN HASKINS: Thank you, Mr. Gallo.

23 Mr. Trowbridge, do you have anything you wish to add
24 to this discussion at this point?

25 MR. TROWBRIDGE: Just one or two observations, Mr.

1 Chairman.

2 We may, I think, be involved in a semantic question
3 as to whether the health costs are factored into the staff's
4 final environmental statement. In my view, they are
5 factored into the statement simply by virtue of the dose
6 estimates in the health cost considerations that have been
7 developed in connection with the development of AEC's
8 radiation and release guides. I don't know whether Mr. Gallo
9 meant more than that or not. I am not aware that numerical
10 health costs are repeated in the final environmental
11 statement for this project as compared to being reflected in
12 the various rule making proceedings that have gone with
13 Part 28 and amendments.

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14 I would agree quickly with Mr. Gallo on the legal
15 effect of AEC regulatory guides. They are not -- a regulatory
16 guide is not an attack on the law of the land or an agency
17 regulation. Nevertheless, the regulatory guide can be
18 mentioned, it seems to me, in this context. These are matters
19 which the Staff and the Commission -- to which they have given
20 considerable thought, and they reflect this, and I think they
21 are relevant in at least this respect.

22 I am still puzzled about the cost of governmental
23 subsidies for technology. I now understand that Mr. Sager
24 does not mean to be talking about what I thought this was
25 talking about, namely, sunk costs as to the support of nuclear

1 power. He is talking about something else, but not something
2 that I could have connected with the word "subsidy for
3 technology."

4 We are talking about administrative costs. I would not
5 have know, nor do I think would the AEC staff have known, that
6 we were expected to develop testimony on , or respond to testi-
7 mony on administrative costs, or the costs of planning or
8 mounting an emergency plan.

9 These are the only things I got out of the explanation
10 of what was included, and they don't seem to me to be
11 properly described by the context.

12 Those are the only comments I will make, Mr.
13 Chairman.

14 CHAIRMAN HASKINS: In discussing insurance, you
15 mentioned a figure, and as I recall, it was \$100,000 a year.

16 MR. TROWBRIDGE: This is very easily computed. The
17 Atomic Energy Act describes the fee as \$40 per thousand -- \$40
18 per megawatt of thermal capacity. This is somewhat over
19 1500 thermal capacity, and that is \$100,000 a year.

20 CHAIRMAN HASKINS: I just wanted an approximate
21 figure. This is a cost, is it not, to the applicant?

22 MR. TROWBRIDGE: Yes, it is a cost reflected in our
23 estimated operating costs. We included in that the cost of
24 insurance, which was private liability and property dam
25 insurance, plus government indemnity.

1 CHAIRMAN HASKINS: Is it an environmental cost or an
2 operating cost that goes into the computation of rate?

3 MR. TROWBRIDGE: In this sense, that we have the cost
4 of producing electricity by means of this plant versus other
5 alternative methods of production. Mr. Sager's last contention
6 under Item 10, there is discussion in an environmental
7 report of alternative means of generation and the cost of this,
8 and in connection with nuclear power plants, where we are
9 talking about the cost of generation, we are talking about
10 the fixed charges, and operating costs, and in the latter
11 case, these include, among other things, insurance premiums
12 and indemnity fees.

13 Now, I am speaking from -- well, Mr. Chairman, let
14 me say that I was talking to my general experience with
15 final environmental statements as well as environmental
16 reports. I am going to have to check to see to what extent
17 we dealt with this in those documents. We have submitted
18 to the Commission an application, a five-year projection of
19 the cost of operating the plant, which included the fixed
20 charges and the operating and maintenance costs, and within
21 that figure is included the insurance and indemnity fees.

22 Beyond that, I will have to check.

23 CHAIRMAN HASKINS: I don't want to pursue it beyond
24 that at this point, Mr. Trowbridge. I just had an impression
25 that in your discussion of alternatives that would have been

1 a figure that would have been cranked in when you compared this
2 plant to a coal-operated plant or an oil-operated plant, or
3 some other source of energy.

4 MR. TROWBRIDGE: I am not quite sure what is in that
5 document that you have there.

6 CHAIRMAN HASKINS: We know what the document is. I
7 am not asking you to tell me what is in the document. This is
8 the final environmental statement for Three Mile Island. I
9 think we have pursued this far enough, and I don't want to
10 take any more of your time on it.

11 Mr. Adler, I don't think we called on you yet, on
12 Issue 10.

13 Do you care to add anything?

14 MR. ADLER: No.

15 CHAIRMAN HASKINS: Thank you.

16 Mr. Sager, do you want to say anything further?

17 MR. SAGER: Yes, sir.

18 Mr. Trowbridge is right. As to the word "technology,"
19 I thought that we discussed that and my recollection might be
20 wrong in that regard.

21 I think that technolgy should be -- possibly it should
22 read "The cost of administration and regulation by governmental
23 agencies and insurance costs have not been fully analyzed
24 or included."

25 Possibly that would meet much of the objection.

1 MR. GALLO: How is that to read, now?

2 MR. SAGER: It is not complete in that the costs of
3 administration and regulation by governmental agencies and
4 the insurance costs have not been fully analyzed or included.

5 MR. TROWBRIDGE: What did you put in there?

6 MR. SAGER: "Fully analyzed or included."

7 It is precisely that problem about the alternative
8 insurance cost, or alternative facility and the insurance
9 costs that are related thereto as opposed to the full in-
10 surance cost for this facility that is an aspect of that
11 particular issue, that being fully analyzed and reviewed, and
12 the full cost in that respect being included in the environmental
13 review.

14 CHAIRMAN HASKINS: Very well. We have heard
15 considerable discussion about Contention 10 as amended several
16 times, and obviously, it will be up to the Board to decide
17 whether the contention or parts thereof are appropriately
18 in issue in this case.

19 As Mr. Gallo has indicated, he is not fully pre-
20 pared to give staff comments on this contention today, and
21 an opportunity will be afforded the regulatory staff within
22 a short space of time to add additional comments.

23 On this one particular issue.

24 MR. GALLO: Mr. Chairman, this contention plus the
25 question that you asked us with respect to the second
sentence in Contention 3, I think I deferred on that one, too.

1 That is the so-called "jurisdictional question," to use the
2 board's words. Would that be appropriate?

3 CHAIRMAN HASKINS: That is right.

4 MR. GALLO: Those two areas, yes.

5 I would like to request five working days, if
6 that is appropriate.

7 CHAIRMAN HASKINS: I don't think the board will
8 pass on it from the bench, but we will be glad to entertain
9 your proposed schedule and have comments from the other
10 parties. You ask for five working days from today?

11 MR. GALLO: Yes.

12 CHAIRMAN HASKINS: And you would propose to make
13 a comment on the jurisdictional question of transportation
14 of fuel and waste? And make such other comments or
15 reframing or objections or whatever you wish to call it,
16 with respect to contention number 10

17 MR. GALLO: That is correct, Mr. Chairman.

18 CHAIRMAN HASKINS: Mr. Trowbridge, do you have any
19 objection?

20 MR. TROWBRIDGE: I have no objection.

21 CHAIRMAN HASKINS: Mr. Sager?

22 MR. SAGER: I have no objection.

23 MR. ADLER: No objection.

24 CHAIRMAN HASKINS: None at all.
25

1 The next question would be, Mr. Gallo, whether the
2 other parties should or would have an opportunity to comment
3 on a written submission by the regulatory staff on these
4 points.

5 MR. GALLO: Certainly, I have no objection to
6 affording them that opportunity.

7 CHAIRMAN HASKINS: Mr. Trowbridge, would you like
8 to comment on the staff's written submission? If so, how long
9 would you want?

10 MR. TROWBRIDGE: Mr. Chairman, we are obviously
11 getting, we are coming, or backing into, again, the question
12 as to whether or not we are -- we are here talking about com-
13 ments on environmental issues. Let me put it this way:
14 I would forego the opportunity to comment in writing on the
15 staff's submittal, if, before we are through, there is a
16 decision of the board in favor of proceeding with the
17 environmental hearing.

18 CHAIRMAN HASKINS: All right. Mr. Sager, would
19 you expect an opportunity to comment on the staff's papers?

20 MR. SAGER: If necessary, I would like five working
21 days. That would include a holiday.

22 CHAIRMAN HASKINS: Mr. Adler?

23 MR. ADLER: Although it is not likely that the
24 Commonwealth will have any comments, but I would like to reserve
25 that opportunity.

11

1 MR. TROWBRIDGE: In that event, Mr. Chairman, if
2 the five days is going to exist, I would like to take
3 advantage of it.

4 CHAIRMAN HASKINS: The best thing, of course, would
5 be for the parties to sit down together and agree to a
6 contention or agree to just agree. In other words, have a
7 contention which the intervenors would submit as their final
8 offer and which might be subject to two proposals or a brief
9 proposal.

10 The Board will consider that and endeavor to work
11 out a speedy and appropriate means of disposing of it.

12 MR. TROWBRIDGE: Contention 10 has been orally
13 revised, and I should now be looking at new words, the
14 ones you just gave us, Mr. Sager.

15 MR. SAGER: Yes.

16 Mr. Chairman, I think that if I may, while we are
17 talking about the contentions, with reference to 10 con-
18 tentions, a stipulation of counsel has been prepared pursuant
19 to agreement.

20 Mr. Trowbridge and I signed the stipulation and
21 have agreed to it. Our understanding was that Mr. Wilson
22 was also agreeable to that stipulation. I recognize that the
23 staff is not ready to enter into the stipulation in the
24 absence of Mr. Wilchins. I believe, however, that the record
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1 at this particular point should reflect that a stipulation
2 has been proposed which states the intervenor's position,
3 that the 10 contentions that we are dealing with here have been
4 presented, on that the other contentions in the original
5 petition to intervenor will not be pursued subject to a
6 favorable decision from the third circuit court of
7 appeals concerning our requests for financial and technical
8 assistance.

9 Intervenor withdraw those contentions subject
10 to the board's approval without prejudice to a future motion
11 by the intervenors to pursue those contentions, or revisions
12 and amendments thereof pending a favorable outcome of the
13 third circuit court of appeals proceeding.

14 Now, we had hoped to make that stipulation of
15 record so that our rights are fully preserved in that regard,
16 and I would hope that the staff would so note its position with
17 regard to the stipulation, and if possible, at this point, per-
18 haps Mr. Trowbridge could note on the record the applicant's
19 position with regard to the stipulation.

20 CHAIRMAN HASKINS: Do you care to make any comments
21 on that, Mr. Trowbridge?

22 MR. TROWBRIDGE: Mr. Chairman, I would have no
23 objection to including at this point in the record of the
24 proceeding a transcription of the stipulation with the record
25 to show that the stipulation has been signed by counsel for

1 the applicant and counsel for the intervenor, and with the
2 hope that the record might further indicate that AEC counsel
3 would advise the board that sometime after Mr. Gallo's return
4 to Washington, that AEC counsel has or has not signed
5 the stipulation.

6 CHAIRMAN HASKINS: Well, I will be glad to hear
7 from Mr. Gallo on this, but I doubt if the board would
8 look favorably upon receiving a stipulation that isn't
9 signed by all parties. It seems to me the most practicable
10 way of dealing with the matter would be to submit the
11 stipulation to the regulatory staff through Mr. Wilchins, if
12 he is the appropriate attorney, and let him sign it, if that
13 is his disposition, and then it can be filed with the board
14 accompanied by any motion any of the parties care to make.

15 MR. GALLO: Mr. Chairman, I do have copies of the
16 stipualtions that were furnished to me today. The stipulation
17 does purport, I believe, and indicate the train of thought
18 elicited by Mr. Sager. I will carry this back to Washington
19 and give it to Mr. Wilchins and if it is as represented by
20 the other parties, in accordance with his understanding, we
21 will sign it and file it with the board, and with copies to
22 all parties.

23 CHAIRMAN HASKINS: Very well. Does that take
24 care of that point, Mr. Sager?

25 MR. SAGER: Yes.

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1 CHAIRMAN HASKINS: Now, the Board has some observa-
2 tions and questions to make with respect to future scheduling,
3 but before we get to that, and putting aside for the moment
4 any matter of splitting the hearings into environmental on
5 the one hand and health and safety on the other, are there
6 any other matters the parties would like to address themselves
7 to? That is, before we go into scheduling?

8 I hear no response.

9 I think it is premature for the board to decide
10 whether it would be useful or not to have two separate
11 hearings, particularly since these contentions, as presented
12 to us, do not clearly fall into two categories of health and
13 safety on the one hand and environmental on the other, but
14 rather, they appear to be permeated, almost all of them, at
15 least according to intervenors -- other counsel might not
16 agree, and the board may not agree -- appear to be
17 permeated with environmental issues.

18 It might be very difficult to try two purely
19 environmental issues and then recess the hearings and then
20 go and try some issues which are mixed health and safety and
21 environmental.

22 But those are our preliminary views, and they are
23 subject to further consideration, particularly as we study
24 the contentions in the light of the discussions that have
25 taken place this morning.

1 I would like to talk, if we can, while we are all
2 here, about a possible hearing schedule.

3 Now, it was proposed to me that the parties had
4 at one time met and talked in terms of September 24, 25 and
5 26, and the second week in October, and perhaps events have
6 overtaken this proposal.

7 MR. SAGER: Events have overtaken that proposal.

8 CHAIRMAN HASKINS: Therefore, perhaps we should
9 begin again with a new proposal for a set of dates. I am
10 going to ask Mr. Gallo to lead off this discussion and see
11 if he has a proposal that we could all agree to.

12 MR. GALLO: Mr. Chairman, I did come prepared
13 in this instance. I have here a motion for scheduling
14 that has been prepared by Messrs. Wilchins and Olson, and
15 the motion is dated today, and will not need to be presented
16 orally. However, I would like to pass out copies to the
17 board and all the parties at this time and indicate that service
18 to date is being made on the rest of the people on the ser-
19 vice list who are not present here, and would offer this
20 motion for the purpose of consideration by the parties and
21 the board for the hearing dates set therein and the balance
22 of the schedule, plus the discussion as to why those dates
23 are pertinent and appropriate to this proceeding.

24 CHAIRMAN HASKINS: The Board would be very happy
25

1 to receive the motion as the basis for discussion.

2 MR. GALLO: I will give one copy to the reporter.

3 THE REPORTER: Thank you.

4 CHAIRMAN HASKINS: Let me say for the record,
5 there will be a brief interval to enable the board to
6 study the motion and also the parties. I understand the
7 parties, the applicant and the intervenors and the Commonwealth
8 have not yet seen the motion until this instant.

9 MR. GALLO: That is correct.

10 (Recess.)

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11 CHAIRMAN HASKINS: A brief interval having been
12 permitted to allow the parties to examine the regulatory
13 staff's motion for scheduling, the hearing will now
14 resume and the board will call upon the parties for their
15 reactions to it.

16 Mr. Trowbridge, have you had an opportunity to
17 study the motion, and are you prepared to respond?

18 MR. TROWBRIDGE: Yes, Mr. Chairman. I think I
19 have digested it, and I am prepared to respond to it.

20 In essence, this is a motion not to get on with the
21 hearing process until sometime after the issuance of a supple-
22 ment to the staff's safety evaluation report, and the schedule
23 proposed is one that is geared to the staff's expectation on
24 the issuance of the safety evaluation report.

25 I submit that we ought to get on -- well, first,

1 let me make the observation that the staff safety evaluation
2 report supplement deals with a limited and manageable number
3 of items, and I would accede with the proposition that we
4 do not complete the hearing process on matters covered here
5 until the supplement has been issued. I do not see why it
6 is not possible to proceed with other matters involved in
7 this hearing. This could be done, and I am prepared to
8 provide somewhat, or revise somewhat my previously expressed
9 thinking that we get ahead with the environmental phase.
10 There has been some objection to that on the ground that
11 environmental and radiological are at times intertwined, and
12 I can see one or two, at least, contentions where you might
13 be involved.

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14 Let's take the contention on the emergency plan,
15 which has both a radiological and environmental cost aspect
16 to it. I can conceive that it would be disadvantageous to
17 break that one up into two pieces. You might have to have the
18 same witnesses to come back to discuss both cases, and there
19 might be a more confused record than otherwise.

20 But I do not see why it is not possible to get on
21 with everything in this proceeding that is not affected by
22 the supplement to the staff's safety evaluation report,
23 which will, I think, defer only a few of the issues in
24 this proceeding. We can get onto, or on with those issues
25 which are not affected by the staff's safety evaluation

1 report and we can get on with the board's independent evalua-
2 tion apart from the issues raised by the parties of the
3 environmental effects of the plant.

4 I think we should get on with everything we can
5 get on with. I think the experience in the proceeding,
6 you know, is that it is necessary to accomplish what can be
7 accomplished. You can't -- to decide that everything has to be
8 in place before anything is done in the way of a hearing
9 seems to me to be placing a considerable risk on the
10 completion of the hearing process and decision within the time
11 which I think everybody has expressed his interest in having issue
12 resolved, namely, when this plant is ready to go into
13 operation, that there be decisions for or against its
14 operation and for or against the conditions or limitations
15 on its operation.

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16 I would urge this board to set a schedule in which
17 we proceed with all issues not affected by the staff's safety
18 evaluation report, plus any matters which the board itself wishes
19 to go further into on the environmental side in fulfillment of
20 its responsibilities.

21 I would think that a hearing beginning toward the
22 end of September, as I previously suggested, could and should
23 take place.

24 CHAIRMAN HASKINS: Mr. Sager?

25 MR. SAGER: I think that the scheduling of the

1 hearing in November is more realistic as to the practicalities
2 of the various problems here, you don't foresee in light of the
3 staffs position, giving written statements to the board and
4 these -- the necessary time for response thereto, a clarifica-
5 tion of all issues and necessary stipulations being filed
6 for this record until sometime in the coming weeks. I think it
7 is cutting time short to consider proceeding with the
8 hearing at the end of September at this point, under this
9 state of the situation.

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10 Necessarily, what the Board decides concerning
11 certain contentions will affect the preparation for the
12 hearing. We have already made provisions today to go ahead
13 and look at some of these plans, and I think it is putting
14 an onerous obligation on the part of the applicant to have all
15 its testimony ready for certain hearings to be started and
16 commenced at the end of September, and preparation for all the
17 particulars.

18 CHAIRMAN HASKINS: Let me interrupt you. I don't
19 think you need to speak for the onerous burden on the
20 applicant.

21 MR. SAGER: Intervenors, I meant to say.

22 CHAIRMAN HASKINS: I beg your pardon. Go ahead.

23 MR. SAGER: The fact that the safety analysis
24 report is not ready further raises problems. We have a
25 meeting scheduled with technical experts concerning certain

1 issues, and again, that cuts down the time for preparation,
2 and that, too, is in the future.

3 We believe that the proposal by the staff is
4 more realistic. I think there has been quite a showing of
5 -- on our part, on the intervenor's part, that we -- when we
6 get down to the hearing process, we want to, if possible, to
7 go through the whole procedure.

8 We respectfully suggest at some time in
9 November would be preferable, feeling the matter can be
10 completed during the month of November at the latest --
11 or December, at the latest.

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12 A fueling date in March, or more realistically,
13 in April or May, we feel that there won't be any real
14 pressure on the parties in meeting the possible time limits
15 here.

16 Furthermore, there is a very good possibility that
17 the third circuit court of appeals argument will be held
18 sometime during the month of September or October. That will
19 give us greater direction as to where we stand with regard
20 to the whole hearing process.

21 I think that just pressuring this is not being
22 realistic, to have hearings here scheduled before the month
23 of November. The precise dates involved, I would ask leave
24 to respond formally as to those dates, once I have had the
25 opportunity to review my calendar.

1 CHAIRMAN HASKINS: Mr. Adler?

2 MR. ADLER: At the present time, the November 5 to
3 November 9 dates appear satisfactory to the Commonwealth.
4 I would like to add that I don't feel Mr. Trowbridge has given
5 any strong reason, unless the time constraints present in
6 this proceeding are extremely limited, there is no reason to
7 experience the difficulties that are outlined by Mr.
8 Trowbridge, such as a duplication of witnesses, a disjunctive
9 record, and an apparent difficulty in defining which
10 conditions are safety and which are environmental. I don't
11 feel any time restraints of that magnitude are present here.

12 In addition, I would like to add that there are
13 other proceedings before other safety and licensing boards
14 which have been tentatively scheduled for late September
15 and early October, which could very well conflict with this
16 proceeding. These other proceedings, the Commonwealth is a
17 party to, and as such, I would have to participate in the other
18 proceedings, also.

19 CHAIRMAN HASKINS: Obviously, the board will take
20 into account conflicts of other proceedings in Pennsylvania,
21 and we would not contemplate holding a hearing at the same
22 date they are holding a hearing at Newbold Island or
23 elsewhere.

24 MR. ADLER: I understand that, Mr. Chairman, but
25 talking about late September or early October, I can't see

1 how we could schedule a hearing prior to the Newbold Island
2 dates, which is late September and early October.

3 CHAIRMAN HASKINS: Obviously, we are not going
4 to set a date for the hearing today. The purpose for this
5 discussion, I am sure that Mr. Gallo's intention, too, was
6 to focus on a block of time we -- when we could have the
7 hearing. When it -- whether it be the first week in
8 November, as the regulatory staff suggests, or whether it
9 be late September or early October, as applicant suggests,
10 the board will take these matters and these comments under
11 advisement and certainly, before we fix a precise date,
12 regardless of which month it may be in, we will communicate
13 with all parties to endeavor to resolve conflicts well in
14 advance of the specific date for a hearing.

15 Do you want to say anything more, Mr. Gallo,
16 in light of this discussion?

17 MR. GALLO: I might make two observations, Mr.
18 Chairman. I think that Mr. Trowbridge's suggestion that
19 we get on with those aspects of the case that don't involve
20 the safety evaluation supplement really is not very
21 persuasive for this reason: the motion points out on page
22 2 the safety evaluation supplement will touch on four of the
23 10 contentions. I don't feel we have a big enough case here that
24 we need to try issues in a hasty manner in terms of getting in
25 behind us. I think secondly, I am not sure what experience

1 Mr. Trowbridge is referring to, but it has been my experience
2 certainly in the last year that once the parties have ironed
3 out their procedural problems to get down to the merits of
4 a particular contention that, indeed, they move rather
5 quickly. I think all parties here have indicated that at
6 the outside, if we started in November, that the hearing might
7 go the full month or part of that month. Certainly nobody
8 is intimating beyond lapping into early December. If that
9 were the case, I do believe we have given Mr. Trowbridge's
10 March fuel loading date, and under the rules, it is 30
11 days, and the normal time under the rules for initial
12 decision is 30 days, I think there is ample time within that
13 framework.

14 Thank you.

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15 CHAIRMAN HASKINS: Mr. Gallo, on the matter of the
16 supplement to the safety evaluation, we were told it would
17 be out approximately September 3, and then I was told by some
18 member of your staff that it would be the first week in
19 October, and I notice in the motion here it talks about the
20 second week in October. Is that the best estimate you can give
21 us today?

22 MR. GALLO: I can state for the board that the
23 project manager is targeting for approximately October 9, give
24 or take a few days. As the motion indicates on page 3, the
25 schedule is really contingent upon two things. I'm afraid

1 that the motion only indicates the first, that is, there is an
2 assumption that the information that is yet outstanding for the
3 resolution of these items will be submitted by the applicant
4 in a satisfactory form so that -- and will be satisfactorily
5 complete -- so that there will not be a further exchange or
6 requests for information. If that happens, then the October
7 9 date stands a chance of slipping more.

8 The second is that at -- the analysis that is submitted
9 indicates no problems and the staff agrees. If the analysis
10 submitted indicates a problem, for example, the question is
11 raised by the ACRS on the third page of their August 14
12 letter, then it may be even further delayed for that reason.

13 So the October 9 to October 15 date is really
14 an optimum target for the issuance of the supplement.

15 CHAIRMAN HASKINS: Mr. Trowbridge, do you wish to
16 add anything?

17 MR. TROWBRIDGE: Yes, Mr. Chairman.

18 Let me express some puzzlement here.

19 At the last meeting -- last prehearing conference,
20 we were talking about a hearing in September or early
21 October. This was the schedule which Mr. Olson was
22 addressing himself to at that hearing, that prehearing. It
23 was the schedule which Mr. Sager was talking about when he
24 indicated at page 64 of the prehearing transcript that
25 in view of his schedule, he would prefer a September hearing

1 to an October hearing, and in which he said it is the intervenor's
2 position to get a resolution of the problem in question as to
3 whether the unit should be operable or not as quickly as
4 possible. It was the September and October schedule that was
5 under discussion when Mr. Adler indicated that, at page 85
6 of the transcript, that both September and October were
7 suitable to the Commonwealth, and he said, "We could just
8 hope the matter could be expedited quickly."

9 The only thing that has happened since then is
10 a slippage in the schedule for the staff supplement to the
11 staff safety evaluation, and I think that only matters
12 covered by that safety evaluation supplement should be
13 allowed to slip so far as the hearing is concerned.

14 I think, Mr. Chairman, from a great period of
15 observation and participation in these proceedings, it is
16 not quite fair to say that the Murphy law always governs,
17 but it is certainly true in a large number of proceedings,
18 the unexpected happens. That is, Mr. Gallo has pointed out
19 procedural matters frequently delay, that there are procedural
20 matters in many proceedings that arise in the course of the
21 evidentiary portion of the hearing.

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I think, as all of the parties have indicated, there is a large public interest involved in making sure that this proceeding is concluded on a schedule which allows the Board to resolve issues on the merits prior to the scheduled operation of the plant, and I think the public interest requires that the hearing be held on such a schedule as to allow for interruptions for whatever reason in its conclusion and to get done what can be done, and that in my view is most of the business of the hearing prior to the safety evaluation supplement.

11 MR. GALLO: Mr. Chairman, I have to make two points.
12 Mr. Trowbridge has indicated that the staff safety evaluation
13 report has "slipped", I believe was the term he used. The fact
14 of the matter is that it hasn't slipped. The prehearing con-
15 ference that Mr. Trowbridge refers to took place in May. I
16 believe it was May 14.

17 CHAIRMAN HASKINS: May 24.

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18 MR. GALLO: May 24 of this year. We didn't have a
19 letter from the ACRS which is dated August 14, which raises
20 the question of the containment question. We were optimistic
21 at that time we would be able to resolve the fuel densification
22 analysis and put that one to bed.

23 The fact of the matter is that this reactor is a
24 B&W reactor. The vendor is Babcock & Wilcox. The fact of the
25 matter is that that vendor has not submitted a satisfactory

km 2 1 gap conductance model which bears on the fuel densification
2 question, and if Mr. Trowbridge wants a hearing, perhaps his
3 clients can spur their vendor into submitting a satisfactory
4 model like other vendors have so that maybe we can close out
5 that issue.

6 The same thing goes for the emergency plan. It has
7 been my experience that with respect to emergency plans, this
8 is one of the most vexing areas that the staff is confronted
9 with in terms of getting a satisfactory plan in dealing with
10 applicants. These are the reasons that the supplement is still
11 outstanding. It is not because the staff has in any way been
12 lax in prosecuting its review of this particular application.

13 MR. TROWBRIDGE: Mr. Chairman, I did not say and
14 I did not mean to imply a lack on the part of the staff. That
15 was Mr. Gallo's reaction. I said there had been a slippage in
16 the schedule. That has occurred. I don't care where the
17 slippage has occurred, through whose fault or through nobody's
18 fault, we still have the same interest in concluding this
19 proceeding on a schedule which allows the resolution of the
20 issues in the proceeding without necessarily holding up the
21 plan, or without running any substantial risk that that will
22 happen.

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23 CHAIRMAN HASKINS: I believe there have been some
24 procedural slippages, without attributing the fault to any
25 particular person. That seems to be the nature of these hearings,

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1 whether it is the final environmental statement, which never
 2 seems to come out on the date that we told it is going to
 3 come out, or whether it be a supplement to the safety evaluation.

4 As far as citing statements that were made in the
 5 prehearing conference here three months ago, I am sure those
 6 were the best opinions of the counsel who spoke at that time,
 7 but I think many of the things that were said by all of the
 8 parties have been overtaken by events, so I do not believe
 9 that is particularly controlling as to what we do from here on.

10 I think the Board has heard with reasonable
 11 fullness the positions of the parties on the scheduling, and
 12 we will take it under advisement as to the time, blocking out
 13 appeals of time, after which we have reached a decisions on
 14 that in the light of all the considerations that all of you
 15 have raised.

16 We then will come down to the precise date of the
 17 week. But even if the Board were disposed to rule that the
 18 first week in November is absolutely the most desirable time
 19 for a hearing, it is certainly not prepared to do it this
 20 afternoon. Again, we would not fix on November 5 as opposed
 21 to November 6 or October 3. This would be subject to negoti-
 22 ation and full consultation with all the parties, hopefully,
 23 well in advance, having in mind other conflicts.

24 Mr. Adler spoke of other cases that are being tried.
 25 Well, I think every lawyer in this room has some other cases,

km 4 1 and the technical members of this panel and the alternate
2 members, we have other cases, too, so it is not just that we
3 have all of September and all of October available for this.

4 Mr. Sager, did you want to add something?

5 MR. SAGER: I would like the record to also reflect
6 the fact that page 79 of the prehearing conference gives the
7 best assumption from the applicant that the fuel loading date
8 would be February 1, 1974. That has gone back a month at this
9 point, at least.

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10 CHAIRMAN HASKINS: Well, Mr. Trowbridge spoke to that
11 point earlier, and I think we heard what he had to say on it.

12 Is there any further business that can be disposed
13 of profitably or discussed profitably this afternoon? Mr.
14 Trowbridge, do you have anything further to bring out?

15 MR. TROWBRIDGE: No, Mr. Chairman. I hope I have
16 made it clear that I have provided my suggestion for division
17 along the lines environmental versus health and safety into
18 a division along the lines of the matters which are going to
19 have to be waiting on the supplemental, the supplemental to
20 the staff's safety evaluation report, versus those matters that
21 could be dealt with at an earlier, and are not affected by
22 that.

23 So, the extent of that proposal, I hope I have
24 eliminated uneasiness about sorting out of environmental versus
25 radiological contentions, or whether a particular context deals

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km 5 1 with both.

2 CHAIRMAN HASKINS: In other words, if I understand
3 you, you are suggesting there might be some of these issues --

4 MR. TROWBRIDGE: Whether they are radiological or
5 environmental or both, we can go ahead and get at the airplane
6 crash and at the fogging and at a number of things, and I don't
7 need to worry whether we are environmental, at least for
8 purposes of preparation of testimony.

9 We don't need to worry about a fine line at this
10 point between the two. I would think that there would be some
11 matters, obviously fuel densification is one, that I am -- I
12 take it as an inevitable conclusion we cannot wind it up until
13 the staff has completed its safety evaluation report, and no
14 matter for what reason, whether B&W's schedule or otherwise.

15 CHAIRMAN HASKINS: Thank you.

16 Mr. Sager, anything further?

17 MR. SAGER: Only that Mr. Kepler has indicated to
18 me that he would like to make a limited appearance.

19 CHAIRMAN HASKINS: In this proceeding?

20 MR. SAGER: Yes.

21 CHAIRMAN HASKINS: Very well. The record will show
22 that you have made the request on behalf of him, and when we
23 get to the evidentiary hearing, he will be afforded an oppor-
24 tunity.

25 MR. SAGER: Chauncey Kepler.

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1 MR. TROWBRIDGE: Might we have a further identifi-
2 cation of Mr. Kepler?

3 MR. SAGER: He is here, and he can speak for
4 himself.

5 CHAIRMAN HASKINS: I don't think today is the day
6 for Mr. Kepler to speak for himself.

7 MR. TROWBRIDGE: Mr. Chairman, I would like to ask
8 this question to Mr. Kepler. Is he a member of either of the
9 intervening organizations.

10 CHAIRMAN HASKINS: Well, I don't know that we have
11 reached that question today. I am sure when he gets to appear
12 and make a statement, that we can have him identified. He
13 might just say where he resides, Mr. Sager.

14 MR. KEPLER: I am --

15 CHAIRMAN HASKINS: I am sorry. You are not making
16 your statement today.

17 MR. SAGER: In York, Pennsylvania.

18 CHAIRMAN HASKINS: Adler, do you have anything to
19 add?

20 MR. ADLER: No, I have nothing to add.

21 CHAIRMAN HASKINS: I think that concludes the
22 business of the prehearing conference. Mr. Gallo, the Board
23 wants to express its appreciation to you for coming up here and
24 participating so ably. I think you have spoken on nine issues,
25 and have responded well in this prehearing.

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The prehearing conference will now be adjourned.

(Whereupon, at 4:15 p.m., the prehearing conference was
adjourned.)

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