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NUCLEAR REGULATORY COMMISSION

POOR ORIGINAL

IN THE MATTER OF:
HOUSTON LIGHTING & POWER COMPANY
(Allens Creek Nuclear Generating
Station, Unit 1)

SPECIAL PREHEARING CONFERENCE

Docket No. 50-466

Houston, Texas

Place - Thursday, 13 October 1979 1314 - 1500
Date - Pages

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the matter of:

HOUSTON LIGHTING & POWER COMPANY

(Allens Creek Nuclear Generating Station, Unit 1)

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Tanglewood Room,
Holiday Inn, Medical Center,
7601 So. Main Street,
Houston, Texas.

POOR ORIGINAL

Thursday, 18 October 1979

Prehearing conference in the above-entitled
matter was reconvened, pursuant to adjournment, at 9:30 a.m.

BEFORE:

SHELDON J. WOLFE, Esq., Chairman,
Atomic Safety and Licensing Board.

GUSTAVE A. LINENBERGER, Member.

DR. E. LEONARD CHEATUM, Member.

APPEARANCES:

On behalf of Applicant, Houston Lighting & Power
Company:

J. GREGORY COPELAND, Esq.,
Baker and Botts,
One Shell Plaza,
Houston, Texas 77002

JACK NEWMAN, Esq.,
ROBERT H. CULP, Esq.,
Lowenstein, Newman, Reis, Axelrad & Toll,
1025 Connecticut Avenue, N.W.,
Washington, D. C. 20037.

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On behalf of the State of Texas:

RICHARD LOWERRE, Esq.,
Assistant Attorney General for the State of
Texas,
P.O. Box 12548,
Capitol Station,
Austin, Texas 78711.

On behalf of the Regulatory Staff:

STEPHEN M. SOHINKI, Esq.,
COLLEEN P. WOODHEAD, Esq.,
Office of Executive Legal Director,
United States Nuclear Regulatory Commission,
Washington, D. C. 20555.

On behalf of Texas Public Interest Research
Group (PIRG)

JAMES SCOTT, Jr., Esq.,
8302 Albacore,
Houston, Texas 77074

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P R O C E E D I N G S

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CHAIRMAN WOLFE: The conference is again in session.

Mr. Doherty.

MR. DOHERTY: I have a small item I just want to get on.

Yesterday on Contention Number 35, Mr. Newman asked that I give him additional material on that, plus the citation. And I have that this morning.

It's Volume 1, Number 10 of NUREG 0030. And I can just hand it over to him.

(Handing document to Mr. Newman.)

Thank you, Mr. Wolfe.

CHAIRMAN WOLFE: Mr. Sohinki.

MR. SOHINKI: I just wanted to mention for the record, Mr. Chairman, that I have just handed to the Board prior to beginning this morning's session copies of a letter dated October 10, 1979 which has been served on all the parties to this proceeding, as well as all parties in all pending construction permit proceedings. The subject of the letter is Follow-up Actions Resulting from NRC Staff Reviews Regarding the Three Mile Island Unit 2 accident.

I wanted to mention for the record that we do have a very limited number of additional copies of that letter should any of the petitioners wish to have a copy.

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CHAIRMAN WOLFE: Off the record.

(Discussion off the record.)

CHAIRMAN WOLFE: On the record.

We have been advised that, and it is our understanding, that left for oral argument on their contentions, or remaining contentions, are Mr. Scott for TexPIRG and Mr. Schuessler.

We also, to our knowledge, understand that Mr. Doggett will return sometime this afternoon and fill us in on the balance of his oral argument with relationship to the individuals who he is representing.

Is there anyone in the audience who is a petitioner for leave to intervene who wishes to make an argument in rebuttal to the Staff's and the Applicant's objections to his or her contention.

MR. VAN SLYKE: My name is Glen Van Slyke, I'm a petitioner. And following Mr. Schuessler's presentation I would like to briefly make oral argument in rebuttal to the Staff and Applicant's responses to my petition.

CHAIRMAN WOLFE: All right. Thank you.

Mr. Doherty.

MR. DOHERTY: Yesterday Mr. Perez was here at 6:00 and indicated to me that he was ready pretty much, but we were excused for supper and so forth. I'm certain he wants to present, in terms of the numbers you have left

POOR ORIGINAL

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web/agb3

1 -- he's left. He is not here, but I expect him here today.

2 His name is Perez, P-e-r-e-z.

3 CHAIRMAN WOLFE: Yes. Thank you, Mr. Doherty.

4 MR. DOHERTY: He has a single contention.

5 CHAIRMAN WOLFE: Thank you. I know this is
6 voluntary on your part but I wish, when people come forward,
7 that that would also notify the Board at that time of their
8 presence. We're trying to schedule these oral arguments.

9 All right.

10 So we have also Mr. Van Slyke and Mr. Perez.

11 Does anyone have any knowledge of the other
12 petitioners for leave to intervene who have not appeared and
13 have indicated informally to someone other than the Board
14 that they do wish to present an oral argument?

15 (No response.)

16 CHAIRMAN WOLFE: There being no response, I
17 take it none have so advised anyone informally to that effect.

18 All right. So that we can get this scheduling
19 down, the gentleman before me now is Mr. Schuessler. Is
20 that correct?

21 Have you made some sort of an arrangement with
22 Mr. Scott that Mr. Schuessler may present his oral argument
23 first?

24 This is all right, Mr. Scott?

25 MR. SCOTT: Yes, it is.

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wrb/agt4

1 CHAIRMAN WOLFE: All right.

2 All right, Mr. Schuessler. If you were unaware,
3 I will make you aware of the ground rules for your presentation,
4 sir.

5 We would appreciate it if you would give just a
6 summary statement, possibly one sentence if possible, to in
7 summary form indicate the thrust of each of your contentions.
8 That is more or less to advise the audience of the contents
9 of your respective contentions. Thereafter you should direct
10 your oral argument to rebutting the objections by Staff
11 and/or Applicant to your respective contentions. This will
12 be of great assistance to the Board.

13 All right. Your full name again, Mr. Schuessler,
14 for the record?

15 MR. SCHUESSLER: My full name is William J.
16 Schuessler, and I will do my best to do as you've asked, sir.
17 I do feel a little like a fish out of water, it's not quite
18 my thing, I'm rather nervous and I'm not used to public
19 appearances. I'm neither an engineer nor an attorney. So
20 I'll do the best I can.

21 My approach to this thing may seem a little
22 unorthodox, I think, to these people and to the Board because
23 I didn't realize actually as a layman just how technical and
24 complicated and -- you know, I've learned a lot in just
25 observing this thing this week. And I've come to think that

wrb/agb5

1 perhaps I'm approaching this from a little different point
2 of view.

3 I'm doing as I think the rules and regulations
4 state. I'm somewhat taken aback by the response from the
5 Staff here in qualifying these rules. As I read them, any
6 persons whose interests may be affected -- and I abridge
7 somewhat -- "by the proceeding and who desires to participate
8 as a party shall file a written petition."

9 I did that.

10 Then, in order to comply with the rules after
11 I got this from the NRC here, it says that:

12 "It shall be considered the nature of
13 the petitioner's right under the act to be made
14 a party to the proceeding, the nature and extent
15 of the petitioner's property, financial and other
16 interest in the proceeding, possible effect of any
17 order which may be entered into the proceeding
18 on a petitioner's interest.

19 I took those at very superficial perhaps face
20 value, thinking that I would be here to protect my interests
21 to that extent.

22 Then I find that there were some special rules
23 or something here that came into play that seemed to change
24 the ballgame on me.

25 CHAIRMAN WOLFE: Mr. Schuessler, let me advise

wrb/agb6

1 you so that you don't go to any great extent on that point.
2 The Board has no problem with your interest and/or standing,
3 so what we're asking you to do today is to present oral
4 argument on your contentions.

5 MR. SCHUESSLER: The only point I was trying to
6 get at, sir, was that I've learned since then that these things
7 have to be related to environment and safety. The safety,
8 I can see, applies to me, you know, my safety. But the environ-
9 ment may be interpreted a little differently. Anyway, I'll
10 get into them.

11 The Applicant responds to a number of my
12 petitions, one, two, three, four, five and eight, in one
13 paragraph, I think. The Staff addresses them individually.

14 As far as the Applicant's response is concerned,
15 they state that they consider them vague, unsupported
16 assertions. And to that, all I can say is that's a rather
17 general dismissal of them.

18 They may be very vague in context of the practical
19 aspects to the engineer or the attorney. From my point of
20 view, I don't think they're the least bit vague. they have
21 set out my interests in the construction of Allens Creek
22 and how they affect those interests, I think.

23 Now to get into the Staff's --

24 CHAIRMAN WOLFE: Well let me interrupt there,
25 Mr. Schuessler. Our Rules of Practice do require you to set

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wrb/agb7

1 our your contentions--setting forth the bases for your con-
2 tention with reasonable specificity. Now if you're satisfied
3 that you have set forth each and every one of your contentions
4 with reasonable specificity, why that's that. But we would
5 advise you that you do have to set forth bases.

6 Now if that's the objection of Staff or of
7 Applicant, the Board will have to obviously consider whether
8 you've complied with that rule.

9 Now we are here to hear your oral argument.
10 If you're satisfied that you can do no better, than we'll
11 just have to consider each and every one of your contentions
12 as to whether you have set forth bases in support of your
13 contentions with reasonable specificity.

14 I am just advising you now. You can proceed
15 to provide additional bases or if you are satisfied that
16 you've done the best you can, why that's up to you.

17 MR. SCHUESSLER: That's what I was going to try
18 to do. But it seemed a little difficult to address them
19 individually, since they were responded to by the Applicant
20 in a group.

21 The Staff, as I said, addresses them individually
22 and I think we'll get at them through the Staff's objections.

23 MR. LINTENBERGER: Mr. Schuessler, in an attempt
24 to further assist you in organizing your thoughts here, the
25 term basis or bases may have a questionable meaning in the

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wrb/agb8

1 minds of some people. And to ease your burden here, the thing
2 we're interested in is not that you support the facts of any
3 of your allegations, we're not asking you to prove why what
4 you have alleged is true but only to support why it is reason-
5 able that the issue you have raised should be heard in a
6 proceeding such as this. So you don't have the burden today
7 of justifying the allegation that you made in each contention,
8 but only why you think it ought to be considered.

9 MR. SCHUESSLER: All right, sir.

10 MR. COPELAND: Before he proceeds, Mr. Chairman,
11 I think in fairness to Mr. Schuessler that I ought to tell him
12 that I think he may have not gone far enough in understanding
13 our objection.

14 Our objection to all of your contentions, sir,
15 was that it appeared to us that you were dissatisfied with
16 the Commission's regulations. I know this is very difficult,
17 Mr. Schuessler, and I can appreciate your difficulty, sir.

18 But we have evaluated the effects of releases
19 on people like yourself, sir, who would be living near the
20 plant. And both we and the Staff have determined that those
21 releases would not harm you in any way, sir, and that we are
22 within the Commission's guidelines and regulations.

23 And we, sir, construe your contentions as being
24 a challenge to the Commission's regulations. And without
25 some basis for that challenge, some reason to challenge those

wrb/agb9

1 regulations, that is our problem, sir.

2 Now I wanted to stop you before you got too far
3 into your argument so you were sure that you knew what we
4 were saying.

5 MR. SCHUESSLER: We haven't gotten far along.
6 I've tried to add myself further along here, I've done some
7 preparation. I think I get more specific -- I think partly
8 what I'm trying to say is these contentions are not good
9 contentions as stated. This came largely, or solely really
10 due to my ignorance of what was really required here.

11 If we proceed -- I don't want to take any more
12 time than necessary, and I do have preparation to go into the
13 contentions and objections more specifically here. I'm just
14 trying to lay a little groundwork, so to speak, so we are in
15 -- so that we understand one another.

16 CHAIRMAN WOLFE: All right, Mr. Schuessler,
17 go ahead.

18 MR. SCHUESSLER: But as I say, a careful reading
19 of the contentions, I feel, does in fact relate to the environ-
20 mental impact, my environment, in other words, that might
21 result from the construction of Allens Creek.

22 And this is precisely what would reduce the value
23 of my home and my property in the eyes of a prospective buyer.
24 In the first contention, that's one of the things that I state,
25 I forgot to give a summary there.

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Number one, I was trying to address the problem that I see as Allens Creek would affect the value of my property. My feeling is, despite all of the work that the Applicant and the Staff and the surveys and things that have taken place, my contention simply boils down to the likelihood that should I attempt to sell my property, my home, or rent it, that the proximity of this plant would be a factor. If I were in the position of buying that house today, knowing that plant were going on-line, I'd give it serious consideration.

CHAIRMAN WOLFE: We understand your contention now.

MR. SCHUSSLER: The basis would be solely, I think -- my sources which are almost 100 percent what I read in the newspaper -- that is the trend. The basis would be the safety record of nuclear energy, the near-misses, the events that have occurred despite the best efforts of the technical people to build these plants safety.

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CHAIRMAN WOLFE: Now would you address the objections of applicant or staff to that contention?

MR. SCHUESSLER: Yes, sir.

I have learned that the rule is, although it is not covered in the regular rules here, that these things have to be related to environment. I would say, sir, that this is related to my environment. I consider my home my environment.

Indeed, checking the dictionary, I find the dictionary, too, defines "home" as: "The family environment to which one is emotionally attached; the normal environment." That's from Webster's Third New International Dictionary published in 1965.

And any damage to my home, despite the-- Again I am led to fear from the history of the nuclear energy industry that an accident will occur. They seem to be occurring daily.

That's the basis for my feeling on that, on that contention there, sir.

On Contention No. 2, this has to do with weather activity bringing radiation to my home.

The staff does not deny that radiation from the plant would reach my home in minutes. From the use of the words "resulting from operation of the facility" I would understand the staff assumes that my contention concerns

WRBwb2

1 itself with normal radiation emissions only. The words used
2 in the contention, "any radioactive material," are meant to
3 include all possible radioactivity emissions, including those
4 not necessarily resulting from operation of the facility
5 but would include those ranging from trivial incidents to
6 serious loss of cooling accidents.

7 I feel the staff is considering the normal emis-
8 sions. My fear is not that so much as the accident, the
9 unplanned.

10 The staff is correct in observing that I have not
11 reviewed the supplement to the SER prepared for this applica-
12 tion. I did not have one. I think I did finally receive
13 one this morning. So there was no way I could have reviewed
14 this. Again I apologize for working from a complete state of
15 ignorance here. But there's nothing I can do about it.

16 I was unable to get some-- I think I had my wife
17 call and request those, and I was informed they were at the
18 library; which seemed reasonable at the time. But, speaking
19 of time, I just don't have time to get to the library.

20 So I must accept the statement that meteorological
21 and specifically the worst meteorological conditions have
22 been accounted for in calculating doses resulting from opera-
23 tion of the proposed facility. But this does not address
24 the primary element of my contention, which is the worst
25 possible radioactivity conditions, which would very likely be

WRB/wb3

1 quickly brought to my home and environs by even normal
2 meteorological conditions.

3 The distinction that I'm trying to make here is
4 that, if I understand the language of the staff in their
5 response they tell me that the worst possible meteorological
6 conditions have been surveyed and considered. And it is not
7 the worst possible meteorological conditions I'm concerned
8 with; my concern is with the worst possible radiation con-
9 ditions.

10 On Contentions 3, 4 and 5, these generally are
11 concerned with the release of radioactive material, No. 3.
12 No. 4, these releases of radioactive material possibly denying
13 me the use of my property, and possible health damage from
14 such radiation.

15 Again, my sole basis is not a technical one; my
16 basis is what I know through the media of what can happen.

17 In looking upon the history of the nuclear industry,
18 a relatively young one, I have just had the growing feeling
19 that one of these really catastrophic things is just in the
20 wings waiting to happen, we don't know where. My fear is
21 that it could be at Allens Creek.

22 If that did occur and the winds were right -- or
23 wrong -- I would stand to lose everything I own. These are
24 my personal financial interests.

25 The staff correctly notes that I have not

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1 challenged its analysis of a spectrum of accidents which are
2 contained in Section 7 of the FES, November 1974 and the
3 FES Supplement, Section S.7. And, again, I did not have
4 these volumes, so I'm not in a position to have challenged
5 them directly.

6 The staff's conclusion is: "The environmental
7 risks due to the postulated radiological accidents are
8 exceedingly small." If "environmental risks" means risking
9 my home and environs, then I consider that an unacceptable
10 risk.

11 Any risk must be balanced any possible gain, I
12 believe. I see no possible gain to balance against the
13 possible loss of my home or my environment.

14 The staff also refers to a Class IX accident.
15 Again I have to confess my ignorance. That's a term I was
16 not at all familiar with.

17 MR. SOHINKI: Mr. Schuessler, I just wanted to
18 make you aware that the term "Class IX accident" is a term
19 of art. But I think, if I understand you correctly, that it
20 is what you were referring to as a catastrophic accident.

21 MR. SCHUESSLER: I've come to that conclusion;
22 yes, sir; that a Class IX, I guess-- Is that on a scale of
23 10, perhaps?

24 MR. SOHINKI: No, that's on a scale of 9.

25 MR. SCHUESSLER: Okay.

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2 At any rate, the staff refers to a Class IX ac-
3 cident in its response to Bishop Contention No. 1. That
4 response seemed to say that the Commission has adopted a
5 policy which requires "special circumstances" before con-
6 sidering the question of a Class IX accident, which I assume
7 would be an accident of the most serious sort.

8 A review of the history, as I've said already, of
9 nuclear energy will show very frequent accidents, most perhaps
10 of a less serious nature, but enough potentially very serious
11 types, which indicates to me that a serious accident may be
12 just waiting to occur.

13 Commission rules limit my involvement here to my
14 specific interests. Again, I'm troubled, you might say,
15 because so often in going into these things I find my way
16 blocked by rules, special rules that seem to -- I'm sure
17 they're not necessarily intended for that purpose, but they
18 do accomplish to cut off what seem to be obvious routes to
19 problems; you know.

20 So the term "special circumstances" troubles me.

21 I have tried to prepare some things here and I
22 will try to stick with them without digressing.

23 Commission rules limit my involvement here only
24 to my specific interests. Your rules seem designed to deny
25 me a fair opportunity to protect those interests as best I
can.

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1 Again, in the staff response to Contention 5 I
2 have apparently failed to show the existence of special
3 circumstance in order to challenge Commission regulations.
4 My concern is solely what effect Allens Creek will have only
5 on my home.

6 (Pause)

7 I'm having trouble even reading my own writing
8 here.

9 (Pause)

10 MR. SCHINKI: Mr. Schuessler, you did receive a
11 copy of the rules of practice which we sent you, did you not,
12 sir?

13 MR. SCHUESSLER: This here? (Indicating)

14 MR. SOHINKI: Yes.

15 MR. SCHUESSLER: Yes.

16 MR. SOHINKI: I think if you will check under
17 Section 2.758 the term "special circumstances" as we used it
18 in response to Contention 5 is explained.

19 MR. SCHUESSLER: 2.758? I will do that. Not at
20 the moment.

21 Thank you, sir.

22 Now, Contention 6 is also similar to Contention 14,
23 and it involves the impossibility of the evacuation of the
24 population in the event of a Class IX accident, I guess.

25 The applicant refers to two false premises: No. 1,

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1 that all emergency plans must be in place prior to issuance
2 of a construction permit, and, Two, that evacuation of Houston
3 is required by existing or proposed emergency plans.

4 I know we have rules and we have regulations, and
5 these things must be governed here.--I mean they must be used
6 to govern. You simply can't do things without knowing where
7 you're trying get to.

8 But I am concerned very often in listening to
9 these proceedings, and, just in general -- I get the impres-
10 sion today that so many people are concerned not with really
11 getting a job done but merely to get past the rules. And
12 that's what I've come to think of as this thing here. The
13 rules are there for a purpose, it seems to me. And the basic
14 purpose of doing this job right seems to be lost in just try-
15 ing to meet the rules and get past them.

16 And, again, the basis for that would be the media,
17 my sole source of expertise.

18 What really got my attention to this and got my
19 dander up, so to speak, was an article in the Houston Post
20 which appeared on August 19th of this year. The Post addres-
21 sed itself to the problem that exists in this area, in Houston
22 I guess the fastest growing city in the country from what I
23 hear and read, of evacuation. And Houston simply does not
24 have one.

25 The problem that's posed in the story here was

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1 that of the dropping of a nuclear bomb. But evacuation for
2 a hurricane or a nuclear plant disaster nearby, I think the
3 problem would not be a whole lot different.

4 But very briefly -- I sure don't intend to read
5 all of this -- but the big thing here is the top headline
6 which reads: "Evacuation? Forget it, say City and County."
7 There are a couple of gentlemen quoted in here as saying We
8 have evacuation every day. It's called rush hour and it
9 just doesn't work, it's terrible.

10 So again without taking any more time from the
11 proceedings than is warranted on this, this is really I think
12 my basis for my contention that, regardless of the rules, I
13 feel whether these things are in place either before the
14 issuing of a construction permit or an operating permit, this
15 story here seems to tell me in either case that this cannot
16 be accomplished, it's just virtually impossible to move the
17 population of this community to safety if the need occurred.

18 I can see the situation where, if an accident
19 happened in the wee hours of the morning when I'm at home
20 sleeping, there's no way in the world I would even be notified
21 of a serious need to get the heck out of there.

22 MR. COPELAND: Mr. Schuessler, sir, you live near
23 the plant, is that correct? You don't live in Houston?

24 MR. SCHUESSLER: I live in Southwest Houston.

25 But enough of that. That's the basis for my

wrb/agb2

1 thing.

2 Even the local conditions -- in Contention 14,
3 which is a similar contention, I go into it a little more
4 specifically -- by the time I wrote that I had become a little
5 more knowledgeable of these things and tried to get a little
6 bit more specific. And I think it was generally after this
7 thing here -- fortified my original fears.

8 MR. LINENBERGER: A point of interest here,
9 Mr. Schuessler. You indicated that if something were to
10 occur during the nighttime, your sleeping hours, there would
11 be no way you could know it would happen.

12 It just makes me inquire, irrespective of this
13 plant, is there -- so far as you know, is there a Civil
14 Defense warning system in your area that sounds off if --

15 MR. SCHUESSLER: No, sir, I think there's a
16 siren on the County Building downtown is the only thing that
17 I know of that goes off at noon, if it still does, I know
18 it did at one time.

19 MR. LINENBERGER: But nothing that you in your
20 neighborhood --

21 MR. SCHUESSLER: No, sir, that's what concerns
22 me. If it occurs in the night, you're not listening to
23 the radio or television, there is no way they could inform
24 virtually the entire population for the need to get up and
25 leave.

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wrb/agb3 1 MR. LINENBERGER: Thank you.

2 MR. SCHUESSLER: And in that regard the media,
3 television, the newspapers, too, have recently done things.

4 The concern here on that incidentally does not
5 relate to the nuclear danger, but you gentlemen are not from
6 this area, the hurricanes are what are really the concern here
7 in that respect.

8 But just in the last few days one of the TV
9 channels did a thing on this very subject, and Civil Defense
10 seems to be in something of a shambles in this respect.

11 The problem is that there seems to be physically
12 no way to go with the Gulf on one side and, in this case, the
13 plant on the other, you're just caught right in the middle.

14 So that's the basis for my concern there.

15 In the same regard, and a more recent thing here
16 if I may present this, in the Post of July 28 there's a little
17 article, "Emergency Planning for N Accidents Hit":

18 "Emergency planning for coping with
19 nuclear accidents is chaotic and inadequate at
20 all levels, despite lessons learned from the
21 Three Mile Island accident a new Congressional
22 report concludes."

23 I think that's doubly appropriate here.

24 This is out of the Post of October 16. This is
25 a quote on the President's Special Committee or something

wrb/agb4

1 investigating Three Mile Island. Member Merritt, one of 12
2 members named to the commission said:

3 "The Commission will suggest that a
4 law be enacted requiring detailed evacuation plans
5 for the area around nuclear power plants."

6 She said:

7 "The commission will propose changes
8 in the Federal Nuclear Regulatory Commission to
9 make more safety conscious -- to make it more
10 safety conscious..

11 "The report of the commission,
12 led by.....," well, then it goes on.

13 The significance of that is it would seem to me
14 then if this does occur that if requirements are passed and
15 made necessary in order to build a plant, taking the situation
16 that really exists right here, I doubt that the building of
17 the plant could even meet these standards simply because it
18 seems to be an unsolvable problem.

19 Again in regard to Contention 6 and the related
20 14 the Staff recommends rejection of this contention for
21 reasons discussed in response to Doggett Contention 5 which,
22 in turn, refers to the reasons discussed in Bishop Contention
23 1.

24 Accordingly and in the interest of time, I
25 would like to refer the Commission to the appropriate arguments

wrb/agh 5

1 of both Doggett and Bishop to support this contention, if I
2 may. I think you would find it useful.

3 Contention Number 7 is in regard to radiation
4 exposure from waste storage. The Staff correctly recognizes
5 my concern over the fact that no solution has been found for
6 the serious problem of nuclear waste disposal.

7 I must point out, however, that my contention
8 clearly and specifically addresses the problem of long-term
9 storage of radioactive waste on the Allens Creek site. This
10 contention considers the hazards related to the storage and
11 possible transport of radioactive waste at this facility and
12 how it may affect my interests.

13 Again I've learned during the course of trying
14 to become an Intervenor here that the question of disposal
15 of nuclear waste is kind of out of bounds, that we cannot
16 discuss that. It's a side point, I'm not sure -- I do disagree
17 with that.

18 But this contention really has nothing directly
19 to do with the disposal of waste, it comes from the fact that
20 there is no solution to that problem, consequently this waste
21 will be stored and must be stored either on the site or
22 nearby.

23 And it's reasonable for the layman to conclude
24 that, since there is such a hassle at the present time over
25 what to do with this, where to put it -- and more and more

wrb/acb

1 states and localities are rejecting the storage of nuclear
2 waste -- so obviously it's a very hazardous thing to have
3 around.

4 And if this plant is built and produces this
5 and it's got to stay there, then it seems to me that this is
6 something that's going to concern me. The only answer to that,
7 of course, would be to postpone the building of this plant
8 until some resolution is made to that problem.

9 MR. LINENBERGER: Well if it's of any assistance
10 to you, sir, let me assure you that the subject of the safety
11 of the storage of spent fuel at the Allens Creek site is not an
12 out-of-bounds subject. The only part that's out of bounds
13 has to do with long-term storage somewhere else. That is
14 being dealt with separately and does not come under our
15 jurisdiction. But the safety of spent fuel stored at Allens
16 Creek is a fair topic of concern and consideration in this
17 proceeding.

18 MR. COPELAND: Dr. Linenberger, I was going to say
19 in advance of what you just said, sir, that we construed this
20 contention as being related to either disposal or long-term
21 storage. Both we and the Staff referred back to our responses
22 on Ms. Carrick's contention as being an answer to this contention
23 as well.

24 And I think that Mr. Schuessler would be well
25 advised to know that we have addressed it in both parts, and

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wrb/agh7

1 that if he wishes to address our arguments, he should do so
2 at this time.

POOR ORIGINAL

3 MR. SCHUESSLER: Well I must confess I did not go
4 clear back into Carrick's -- the reference there, as I recall,
5 what grabbed me here was -- the Staff response says:

6 "Like several other petitioners,
7 Mr. Schuessler is concerned that there has not
8 been yet found a satisfactory solution to the
9 problem of long-term waste disposal."

10 That's the only point I was trying to make here,
11 that this was not concerned with that, that my concern was
12 with storage at Allens Creek.

13 The Applicant, in regard to Contention 7, states
14 that I seek to raise a question of disposal of high-level
15 radioactive waste. Again, I apologize if that is qualified
16 by the --

17 MR. COPELAND: Sir, maybe you could just state
18 then what your contention is and refer it back to our responses
19 to Ms. Carrick, if you wish. How would you address the same
20 points we made in response to --

21 MR. SCHUESSLER: Well the point is I felt that
22 to leave that go unanswered -- the feeling again, to quote
23 from the Applicant's thing:

24 "Contention 7 seeks to raise the
25 question of disposal of high-level radioactive

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wrb/agb8

waste."

1
2 Again by this time I'm aware that the question
3 of radioactive waste is not relevant to this hearing. And
4 again I wanted simply to make the point that this contention
5 has to do with storage on the site, sir.

6 MR. COPELAND: Sir, let me just make it very
7 clear what I'm saying, because I know it's difficult and I
8 know it's hard to follow.

9 Your contention as it's written says that you're
10 concerned with radioactive waste disposal, and you even talk
11 about transportation of the waste to some other site. Now
12 I think it is a fair characterization for us to have construed
13 your contention that way. I'm not trying to cut you off,
14 however, from saying that you're concerned with long-term
15 disposal on-site -- long-term storage on-site.

16 But I would point out to you, sir, that in our
17 answer we referred you back to our answer to Ms. Carrick
18 who had raised the question in both ways.

19 And I'm saying to you, sir, if you wish to change
20 your contention now to a contention that is one of challenging
21 the analysis on the long-term storage at the site, then I
22 think it is best for you to be put on notice that that question
23 has been analyzed quite extensively in the Staff's documents,
24 as we pointed out in response to Ms. Carrick. And if you feel
25 there is some defect in that analysis, I think it is incumbent

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wrb/agb9 1 upon you at this time to say what that defect is.

2 MR. SCHUESSLER: Well again I did not have the
3 analysis to go over, and I confess that I really cannot
4 challenge it.

5 If I can take just a moment to read exactly what
6 I wrote here, I know -- my concern, as I, say, was not with
7 the overall problem.....

8 (Pause.)

POOR ORIGINAL

9 Okay. Suffice to say, I agree with you, sir,
10 the way this is written, it is not what I intended. My
11 intent was to address the storage of on-site waste.

12 MR. SOHINKI: Mr. Chairman, I don't know whether
13 the Board wishes me to do it, but I could make a very brief
14 response, to the extent we haven't already addressed that
15 particular concern. I could make a very brief response to it.

16 CHAIRMAN WOLFE: A brief response to what, now.

17 MR. SOHINKI: Well to the extent that Mr. Schuessler
18 has expressed a concern that we haven't already addressed, and
19 I'm not sure that he has, but if he's concerned about on-site
20 storage, I have a very brief response that I could make with
21 regard to analysis that's been done on on-site storage which
22 he may not be familiar with.

23 CHAIRMAN WOLFE: All right.

24 MR. SOHINKI: For purposes of analyzing the
25 effects of normal operation -- in terms of normal operation

wrb/agb10

1 of the spent fuel pool, Mr. Schuessler, in Section 5 of the
2 FES and FES Supplement we analyzed the doses resulting from
3 operation of the facility and compared those to the criteria
4 in 10 CFR Part 50 Appendix I, which sets forth dose limits
5 which are permissible under the Commission's regulations.
6 Those dose calculations include doses from spent fuel pool
7 operations.

8 In terms of accidents, in Section 7 of both the
9 FES and the FES Supplement, a fuel handling accident was also
10 analyzed in terms of radiological impact.

11 So that the Staff has analyzed both normal
12 operating releases and accidental releases from the spent
13 fuel pool.

14 MR. SCHUESSLER: I'll have to read that to really
15 understand it. But thank you.

16 At any rate, my primary concern was that Contention
17 Number 7 might very well be dismissed as being out of bounds
18 in addressing the waste issue only which it was not intended
19 to be, but I will admit that the way it's written that certainly
20 could be understood to be.

21 Contention Number 8 regards radiation exposure
22 at low levels. The Staff states that I contend that any
23 release of radioactivity is unacceptable because of the possi-
24 bility of cell injury -- the possibility of cell injury -- and
25 genetic defects.

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wrb/agbll

1 The contention refers only to possible release
2 of radioactivity, not possible cell damage. I learned this
3 week that these apparently minor differences seem to be very
4 important, and I'm going to try to play the game that way,
5 so to speak.

6 This is a significant difference, though. The
7 possibility of cell damage, as Staff says, I would refute on
8 the basis of testimony I found in a book here of testimony at
9 a federal trial. Let me just read the words here, it'll go a
10 lot quicker.

11 The possibility of cell injury and genetic
12 defects I find unacceptable. The contention refers only to
13 possible release of radioactivity, not possible cell damage.
14 In my contention, I am careful to state the injury from mere
15 radiation is definite. This is based on testimony of
16 Dr. John W. Goffman, M.D., Ph.D., in testimony at a hearing
17 on October 2, 1978 in the Nashville United States District
18 Court. And if I might quote -- or if that would be useful,
19 I have the booklet here and I could quote testimony, it is
20 only two or three paragraphs that I refer to.

21 May I do that, sir? The reference is found in a
22 book called Shutdown.

23 MR. COPELAND: Mr. Chairman, I'm not objecting to
24 this gentleman reading this quote or whatever he's going to do,
25 but I really don't see how it's relevant at this point to

wrb/agbl2

1 Staff's and Applicant's response to this contention. The
2 Staff and the Applicant accepted the contention as being an
3 allegation that releases would cause cell damage.

4 I think that our point was that the Commission's
5 regulations set limits on releases. We're going to meet those
6 limits and Mr. Schuessler has not challenged that in any
7 way.

8 And absent such a challenge to the Commission's
9 regulations, or a demonstration that we won't comply with the
10 Commission's regulations, there is not much to the contention.
11 I think he knows in his own mind what he is doing, but I
12 think he is really off on the wrong trail.

13 CHAIRMAN WOLFE: As I understand your contention,
14 Mr. Schuessler, your contention is in substance that you are
15 concerned about even the slightest irradiation, even though
16 it falls well within the Commission's ceiling or standard for
17 such emissions, is that correct?

18 MR. SCHUESSLER: Yes, sir. I think that covers it
19 very well. The point I was making here is the Staff response
20 seemed to say that my contention discusses possible cell damage.
21 The cell damage, from what this expert here says, is certain
22 if there is radiation, there is a degree of cell damage.
23 That's the primary thing. I would like to say there's no
24 question about it, based on that testimony.

25 But I would not insist on reading that, this maybe

wrb/agb 13 1

is a faulty -- you know, a poor thing to do. I assume that --

2

CHAIRMAN WOLFE: Let me interrupt there, Mr.

3

Schuessler. Just tell us, the thrust of that testimony is to

4

the effect that even small amounts of radiation, well within

5

Nuclear Regulatory Commission standards, are still dangerous

6

to one's health and safety, is that the thrust of it?

7

MR. SCHUESSLER: Yes, sir.

8

CHAIRMAN WOLFE: I don't think there is necessity

9

then for you to read that. We will understand your argument

10

to that effect.

11

MR. SCHUESSLER: All right, sir.

12

It follows then assuming --

13

MR. LINENBERGER: One moment, please.

14

(The Board conferring.)

15

MR. LINENBERGER: Mr. Schuessler, in an attempt

16

to fully understand what you're getting at and prevent your

17

becoming a victim of some of the arbitrary constraints of

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rules that guide us sometimes, let me ask you a couple of

19

questions here:

20

Are you aware of the fact that the so-called

21

National Environmental Policy Act requires, among other things,

22

that the Applicant for a construction permit for a nuclear

23

power plant be required to make a, what's called in an

24

environmental context, a balancing of the cost or the impacts

25

from that plant against the benefits that would derive from that

wrb/agbl4

1 plant?

2 MR. SCHUESSLER: I think generally yes, sir,
3 I'm aware of that idea, yes, sir.

4 MR. LINENBERGER: In any way, do you feel that
5 your Contention 8 lies within that context or, in your mind,
6 is it health and safety?

7 MR. SCHUESSLER: I would say it's related, yes,
8 sir, we're in the same area.

9 MR. LINENBERGER: I guess the question we have
10 is what do you see as the bases, the reasons why this conten-
11 tion should be heard in the context of that area of considera-
12 tion, the balancing of benefits and costs with respect to the
13 plant?

14 MR. SCHUESSLER: Well my logic or my thinking is,
15 I think -- could be stated this way. I'm restricted here,
16 I believe, to coming before this Board and getting involved
17 in this issue, and I'm restricted very tightly. I think, to
18 defending my interests.

19 The environmental energy requirements that you
20 just referred to do not address my interests, they address
21 this problem or this question in a very broad and general way.

22 And I guess I'm arguing with them at least to
23 the extent that, as you say, this requires the Applicant to
24 make a survey to balance the pluses and minuses. And as I
25 said earlier, there's a risk involved.

wrb/ab15

1 And my logic is if there is any radiation at all,
2 according to this doctor -- this scientist's testimony, even
3 the slightest radiation does as a matter of fact damage
4 cellular structure or damage cells and changes them; that there
5 is, I think, what I have heard referred to as general normal
6 low-level radiation or something, you know, in regard to these
7 plants which the experts and the engineers and technicians
8 find acceptable. I do not find these acceptable.

9 And since I'm required to address myself only
10 to my narrow interests here than that's all that I shall
11 address. I simply am saying that regardless of whether this
12 plant meets these other standards, that they in turn do not
13 address my particular interests, they address the general
14 thing here. And I find it difficult to find anything to
15 balance against my interests here.

16 If I were faced, perhaps, with the prospect of
17 doing without electricity because this plant were not built,
18 then I'd have something to balance against it. Balanced against
19 having this plant here are all the things that I find
20 very negative which, perhaps, I shouldn't even go into here.
21 But as far as my narrow interests are concerned, this is a
22 no-win situation, no matter how well the rules are complied
23 with. That's my contention, sir.

24 DR. CHEATUM: May I make a comment here to see if
25 I understand Mr. Schuessler and understand the problem of

wrb/agb16

1 the Applicant and the Staff and this Board.

2 The substance of what you're saying is that you
 3 do not believe the standards which have been set by the
 4 Commission for limits on radioactive releases from the stand-
 5 point of health and so forth, you do not believe that those
 6 are sufficiently restrictive to guide your health and safety,
 7 is that true?

8 MR. SCHUESSLER: Yes, sir, I think so.

9 DR. CHEATUM: Okay.

10 We must admit that this is not the forum for
 11 this contention, because we have no authority -- this Board
 12 has no authority to set standards with respect, or changes
 13 in the standards which have already been established by the
 14 Commission. This Board can only satisfy itself that the
 15 Applicant in this case or any case, through his design of his
 16 plant and his safety systems to protect the integrity of
 17 safety in the plant, meet all the requirements of standards,
 18 rules and regulations which have been established by the
 19 Commission. So it is really futile to contest the standards
 20 before this Board.

21 That's the way it is.

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 24
 25

1 The Commission and the Congress are the bodies
2 which these matters basically are settled in, not this
3 Licensing Board.

4 So this is just a point that I wanted to make, and
5 to be sure that you understand the limitations of this Board
6 in relation to this contention.

7 MR. SCHUESSLER: Yes, sir, I think I appreciate
8 that.

9 I can see the problem here. I can see where, you
10 know, rules have to be rather general.

11 My problem is simply that I'm not allowed to be
12 that general. If I'm going to make a point and look after
13 my interests, I have to be specific. And these rules, to be
14 fair, should be equally specific, but they're not.

15 And I believe that's just the point I want to make.

16 But, in summary, the real point here is that if
17 there is radiation, my point is simply that there is no
18 question that there will be cell damage. The results of that
19 damage may not ever appear. Chances are if it does, it may
20 appear in 20, 30 or 40 years hence, based on this information
21 that I have.

22 Therefore, any radiation is not desirable.

23 Contention number 9 relates to how -- or that
24 Alleas Creek harms my financial interests. I believe this
25 contention clearly relates to my financial interests, as

1 provided in Rule 2.174, titled "Intervention." The basic
2 rules here.

3 I believe it is a ~~case~~ which is litigable in
4 this matter for the same reasons set forth in the oral
5 arguments of Petitioner Bryan Baker in support of his
6 contention number 1.

7 I realize, in observing yesterday, that there is
8 some disagreement as to whether this is appropriate or not,
9 for me to do this. I would not dwell on it. This is what
10 I put down yesterday morning, in trying to finish up my
11 preparation for this thing prior to that time, and I would
12 not insist upon that.

13 But my thinking is simply that this is information
14 that relates to my contention that I would trust the Board
15 would take into account, regardless of whether I am the
16 source of that or whether I present it, or what.

17 But I think that the overall period would be
18 useful. It's more of a reference, I guess.

19 MR. COPELAND: I have a real problem with that,
20 Mr. Chairman, in this particular instance, because Mr.
21 Baker never at any time argued Mr. Schuessler's personal
22 financial interests.

23 His two contentions, as I recall, were related
24 to HLEP's ability to finance the plant and errors in our
25 projections on capacity. And without some specific reference

1 by Mr. Schuessler in the context of what part of Mr. Baker's
 2 arguments he's relying on, I think this is very difficult to
 3 figure out, what he's talking about.

4 CHAIRMAN WOLFE: We got into this area yesterday,
 5 Mr. Schuessler, and ultimately the Board ruled that if a
 6 petitioner for leave to intervene did rely upon a prior
 7 intervenor's bases in support of a prior intervenor's
 8 contention, if a subsequent petitioner did so rely he could
 9 not just do it generally and incorporate by reference, is
 10 what Mr. Copeland is getting at.

11 If there is something in Mr. Baker's presentation
 12 to this Board, you must on your own specify exactly what it
 13 is, what statement -- or sentence, for that matter -- that
 14 you're relying on in Mr. Baker's presentation.

15 Would you do that?

16 MR. SCHUESSLER: Well, not having it as a matter
 17 of record, I could not. I listened to a large part of it,
 18 and I felt at the time, is all I can say in absolute truth,
 19 that he was arguing my case, that he was proving my point;
 20 my point being, sir, that --

21 CHAIRMAN WOLFE: Well, is there anything that --
 22 over and above what you've told us today -- that you
 23 specifically want us to understand as also being your
 24 argument? Anything that you haven't covered, now, today?

25 MR. SCHUESSLER: All I could do, sir, would be to

1 explain my intent, what I was trying to get at in this
2 contention, if that would be permissible.

3 CHAIRMAN WOLFE: Well, we're not so interested in
4 that, in your intent, as your fully exhausting your oral
5 argument on the bases for the contention, and anything you
6 want to add to that or anything that you wish to add in
7 rebuttal to Applicant's or Staff's objections to your
8 contention. Anything at all. You will have free rein.

9 MR. SCHUESSLER: Well, let me just read the
10 responses quickly, here, and see. When I wrote that, I
11 thought that to be sufficient.

12 (Pause.)

13 Okay, in the Applicant's response it says I raise
14 a question flowing from petitioner's economic interests as a
15 ratepayer of the Applicant, a matter not cognizable under
16 NRC rules and precedent.

17 Well, again, I've run into some rules here that
18 I have no knowledge of.

19 To sum it up, I think if Allens Creek were not
20 built . . .

21 (Mr. Baker handing notes to Mr. Schuessler.)

22 (Mr. Baker conferring with Mr. Schuessler.)

23 Yes. This is the point that he reminded me of
24 here, that I really had overlooked. It's not a new point to
25 me, and I neglected to raise it earlier. That is that in

1 the Staff's response they state that for these and . . .

2 (Pause.)

3 MR. SOHINKI: Just to save time, Mr. Schuessler,
4 our response was essentially the same as the Applicant's
5 to this contention.

6 MR. SCHUESSLER: Yes. Somewhere in here, what
7 really got me on to it and led me to believe that it would
8 be acceptable was -- and I completely overlooked it here
9 this morning -- is a reference in here by either Staff or
10 the Applicant, in either this contention or another similar
11 contention, where the words are, I think, "for these reasons
12 and those cited in response to Mr. Baker's contention number
13 1..." --

14 MR. COPELAND: Sir, you are -- that is nowhere
15 in the response by either the Applicant or the Staff.

16 MR. SCHUESSLER: I beg your pardon, sir?

17 (Mr. Baker conferring with Mr. Schuessler.)

18 MR. COPELAND: The Staff's statement concludes
19 that it believes there is no basis upon which to admit this
20 contention as an issue in controversy. That is their
21 response to your contention number 9.

22 MR. SCHUESSLER: Right. It's a double reference.
23 It's a step procedure, right. They refer me to Mr. Doggett,
24 and then Mr. Doggett in turn --

25 MR. COPELAND: No, sir, they do not. I'm sorry, I

1 hate to interrupt you, Mr. Schuessler, but I think if you
 2 would quit trying to read the notes that Mr. Baker hands
 3 you and just say what it is that you're trying to say, I
 4 think you'd do much better, sir. He's getting you very
 5 mixed up, because he's giving you some bad information.

6 MR. SCHUESSLER: Well, sir, this is not based
 7 on what Mr. Baker just gave me. It reminded me of it, but
 8 it's not based upon that solely.

9 CHAIRMAN WOLFE: Maybe the Board can help you,
 10 Mr. Schuessler.

11 What's the problem? You don't find Staff's
 12 response to your contention, or objection to your contention?

13 (Pause.)

14 MR. SCHUESSLER: Okay.

15 Contention 13 is similar to this. I'm sorry to
 16 jump ahead there, but this is where it comes from.

17 MR. COPELAND: I object, your Honor, there is
 18 nothing whatsoever similar to contention 13 in contention 9.
 19 They're just entirely different contentions.

20 Contention 9 is a statement as to this gentleman's
 21 interests from an economic standpoint, from his standpoint as
 22 a ratepayer.

23 CHAIRMAN WOLFE: Yes. Let me try to assist you,
 24 Mr. Schuessler.

25 I think it's clear from your contention 9 that

1 you're stating -- or that you're concerned about, as a
2 ratepayer, that due to the tremendous cost of the proposed
3 plant that you will have to pay unnecessarily high electric
4 rates.

5 That's it, purely and simply, isn't it?

6 MR. SCHUESSLER: Basically, yes, sir.

7 CHAIRMAN WOLFE: All right.

8 Now, would you address the Staff's objection to
9 this contention? They cite several Appeal Board cases,
10 meaning the NRC Appeal Board, for the proposition, or the
11 decision that economic interests of a ratepayer does not
12 fall within the zone of interests protected either by the
13 Atomic Energy Act or the National Environmental Policy Act.

14 Do you want to address that, or can you address
15 that?

16 MR. SCHUESSLER: Well, if that's simply the
17 ruling thing, then it simply does not take care of my
18 personal interests.

19 Once again I'm restricted to dealing with my
20 interests, and it's another instance that is very discouraging
21 to come in here and find that somebody has just got a rule.

22 I understand the rule. I have no quarrel with
23 the rule. That does not directly bear on the question of
24 whether Allens Creek or any other nuclear power plant should
25 be built. But it does -- the building of this plant does

1 affect my interests. And in this regard the present setup
2 is -- and again, listening to the media, my source of
3 information, I am led to the inescapable conclusion that
4 when H&P pleads that they need to have higher profits in
5 order to attract investment from the investment community
6 or this plant will not be built, what they are saying is,
7 in effect, that I've got to kick in to their fund to build
8 this plant. And I don't feel I need this plant.

9 Therefore, if they're allowed to build this plant
10 they will need this money, and it will be passed through to
11 me and put on my electric bill.

12 That is my financial interest. And I think that's
13 what I'm supposed to be allowed to come down here to
14 discuss and have considered. And that's really where I'm
15 at.

16 CHAIRMAN WOLFE: Yes, sir.

17 We're not ruling on the admissibility of the
18 contention today. We will hear your argument. We're just
19 trying to assist you in formulating what you're attempting
20 to state in your contention.

21 All right. You may proceed.

22 MR. SCHUESSLER: And as far as citing Mr. Baker's
23 testimony, I would still say that these two issues -- or that
24 this has a very definite bearing on my contention 9. I
25 think if it were considered, it would be of help.

wel 9

1 Now, Contention 10 considers interconnections as
2 an alternative to Allens Creek Nuclear Generating Station.

3 Now, the notion for that comes again from the
4 media. This is not a novel notion I have come up with.

5 Here's an article in the Houston Post of September
6 30 -- fairly recent:

7 "HL&P faces tight situation. Increased demand on
8 generating capacity is straining reserve."

9 And they quote a former member of the Public
10 Utilities Commission here, who says that they, HL&P, "...had
11 better be out seeking other sources to buy electricity. I
12 don't know of any utility that is that close to reserve
13 capacity as HL&P."

14 "HL&P confirms talks on plant. Houston Lighting
15 & Power confirmed Tuesday it is negotiating to buy a
16 coal-fired generating plant near Athens."

17 And here's one of 9-27:

18 "Texas Utilities Company, which has excess
19 generating capacity that a utilities consultant says
20 costs ratepayers \$60 million a year, is trying to
21 sell surplus power ..."

22 MR. COPELAND: Excuse me, Mr. Schuessler. Is it
23 your argument that we are not connected with the Texas
24 Utilities Company? Is that your argument?

25 MR. SCHUESSLER: Not specifically, no, sir. I'm

1 not knowledgeable enough of the affairs of HL&P or anybody
2 to be that specific.

3 But --

4 MR. COPELAND: So you don't even know who we're
5 interconnected with now, is that correct? You have no idea
6 who the companies are that we're interconnected with?

7 MR. SCHUESSLER: No, sir. I can't say that I'm
8 expert or really familiar with what your interconnections are.

9 I have been under the opinion from news articles
10 from some considerable time back that caused me to conclude
11 that HL&P, for purposes of staying out of the interstate
12 price controls, resisted or refused to interconnect with
13 other people. I think this came about during the time of
14 the big blackout in New York, and the question of whether
15 it could happen here.

16 And I think, indeed, we did have a brownout or
17 something after that.

18 But the question came up at that time, and as I
19 recall it at that time -- whether it's changed or not --
20 but my impression was that HL&P did not have these inter-
21 connections. But I think HL&P stated at that time in
22 response to the question, that a brownout or a blackout
23 could not happen here, despite the fact that they were
24 relatively independent from out-of-state utilities.

25 MR. COPELAND: Sir, I don't understand the

wa1 11

1 relevance of your argument about the Texas Utilities Company,
2 unless you're contending that we're not interconnected for
3 purposes of your contention.

4 MR. SCHUESSLER: My contention, I think, could be
5 summed up to say that interconnects that do not exist would
6 be a feasible alternative to explore, which might very well
7 reduce or eliminate the need for the building of a nuclear
8 plant near Houston.

9 MR. COPELAND: Sir, with whom . . . well, I
10 suppose that you're going to address the questions that we
11 raised in our objection to this contention, if that's your
12 contention.

13 MR. SCHUESSLER: Yes, sir, I have some notes in
14 response, and I'll get to them, and we'll get through this
15 contention.

16 MR. COPELAND: Thank you.

17 MR. SCHUESSLER: In response to Applicant's
18 comments, I would point out that Contention 10 intends
19 primarily to state that amounts of power needed by Applicant
20 may be readily available from other utilities in this area.
21 Adequate appraisal of these possible alternatives may
22 reveal that Allens Creek is not needed.

23 It does not intend to go into intent or motive
24 of the negotiations mentioned. The companies mentioned were
25 merely meant to suggest possible sources for the purchase

1 of power.

2 Again, I can't actually do the work for you, and
3 I don't know -- I'm not familiar, I'm not the engineer, I'm
4 not the expert. I am merely trying to see that this
5 alternative is given consideration as a possible alternative.

6 MR. LINENBERGER: Mr. Schuessler, on that point
7 of the examples you've given of companies that might be
8 brought into such an intertie with HL&P, the last sentence
9 of the first paragraph of your contention 10 identifies
10 these example companies as companies -- quote -- that have
11 power to sell to HL&P -- end of quote.

12 Now, that's a significant point, and we're not
13 asking you to discuss the merits of your contention here.
14 But do you have a basis for believing that companies such
15 as the ones you have identified here have enough excess,
16 unneeded power that they would, indeed, be happy to sell it
17 to Allens Creek if they have such a high reserve that they
18 can turn loose of that much energy to replace the Allens
19 Creek plant?

20 I say, do you have a basis for this? I don't
21 want to know what it is. I don't want you to argue that,
22 if it's so. But do you really have a reason for believing
23 that it is so?

24 MR. SCHUESSLER: I think that the names came up
25 in a news article that had to do with the negotiations or

1 something that was going on here. But that would be the
2 only source.

3 As I say, I have no first-hand knowledge of excess
4 power they have.

5 MR. LINENBERGER: Right.

6 Now, see, there are more than one reason for
7 wanting to consider or not consider an intertie. The
8 availability of surplus energy is not always the overriding
9 reason here. Reliability of the grid, for example, might
10 be a reason for wanting to see an intertie, which does not
11 mean that the companies that HL&P would tie into would
12 necessarily have excess energy that would obviate the need
13 for the plant.

14 So, all I'm saying is, when you read these
15 articles, kind of look for the kind of thing that supports
16 your argument. Their arguments for an intertie may have
17 had nothing to do with surplus energy availability.

18 And if this contention, for example, is admitted
19 and the Staff has, I think, not objected to its admission,
20 prepare yourself along that line, to get at your thrust.
21 The intertie accomplishes nothing that will serve you,
22 unless it's a means for bringing a block of surplus energy
23 that's not going to be needed anywhere else, into your
24 community.

25 So I'm offering you this as guidance for the

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1 future here, if --

2 MR. SCHUESSLER: Yes, sir, I appreciate that.

end WEL 1 3 Thank you.

4 To go on to Contention number 11, this concerns
5 the possibility of coal or lignite as an alternate power
6 source.

7 Again, I can claim no expertise in these matters.
8 But all these energy sources have problems. Coal and lignite
9 too have problems.

10 Again, according to news stories -- and there's
11 been quite a lot written, this has been quite a hassle -- the
12 question of bringing coal or lignite in from the west, or
13 something, the pipeline slurry question, and all this has
14 been given broad coverage in the newspapers.

15 I try to be reasonably informed, but not
16 technically expert.

17 We are told in the area of energy sources that
18 we are sitting on -- you know -- an almost unlimited supply
19 of coal. The only reason it is not being used as a viable
20 alternative is because of the environmental problems.

21 MR. COPELAND: Excuse me, Mr. Chairman. I must
22 object. This argument is going far, far afield.

23 Mr. Schuessler's contention was specific, in that
24 he is alleging that our analysis of the coal versus nuclear
25 comparison is somehow inadequate, because we failed to take

1 into consideration advances in the technology of scrubbers.

2 We pointed out in our response that our analysis
3 did not rely upon, in any way, the cost of scrubbers,
4 because we assumed for purposes of the analysis that we were
5 using western low-sulfur coal. That's our answer. We don't
6 understand what Mr. Schuessler is now going into, and I
7 respectfully request that the Board ask the gentleman to
8 address his comments to our comment.

9 CHAIRMAN WOLFE: Mr. Schuessler, we understand
10 your contention. Would you now proceed just to address
11 Applicant's and/or Staff's objections to your contention?

12 MR. SCHUESSLER: Okay. The contention provides
13 one example of the progress that's been made and is being
14 made. Efforts are being made in the use of coal and lignite,
15 in solving the environmental problems.

16 Much of this has occurred, I think, since the
17 original planning for Allens Creek.

18 MR. COPELAND: Sir, your contention, as I read
19 it, is not an argument about the environmental differences.
20 It's an argument relating to the cost comparison. And if
21 it's construed as being an argument relating to the
22 environmental comparison, then I think you'd best address
23 yourself to what the Staff has said in response to your
24 contention, which is that you have done nothing to criticize,
25 or in any way suggest, that their analysis on environmental

1 matters is wrong. And I gather from other comments you've
2 made here this morning that you haven't even read that
3 analysis.

4 MR. SOHINKI: Mr. Chairman, I would like to know
5 whether Mr. Schuessler has examined the Staff analysis.

6 MR. SCHUESSLER: YES, sir.

7 MR. SOHINKI: Then you're aware, for example,
8 with specific regard to scrubbers, that this discussion in
9 Appendix D of the Supplement to the FES considers the use
10 of scrubbers?

11 MR. SCHUESSLER: No, I can't say I'm aware of
12 it. I have not seen that, sir.

13 MR. SOHINKI: No, what I was asking you before,
14 Mr. Schuessler, was not whether you had read our response,
15 but whether you had read the Final Environmental Statement
16 that was prepared in connection with this application.

17 MR. SCHUESSLER: No.

18 MR. SOHINKI: Thank you.

19 CHAIRMAN WOLFE: At this time, Mr. Schuessler,
20 then, you are unable to respond to Staff's objections to
21 your contention?

22 (Pause.)

23 MR. SCHUESSLER: No, sir. I'll just let that
24 contention stand as written, sir.

25 CHAIRMAN WOLFE: All right.

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(Pause.)

1
2 MR. SCHUESSLER: Contention number 12, again, is
3 getting into a rather technical area, but figures that I've
4 been able to come up with seem to add up, in regards to the
5 alternate available power sources which might preclude the
6 need for Allens Creek.

7 On the basis of those figures, for what they're
8 worth, they strongly suggest that the size of Allens Creek
9 perhaps could be reduced if it's not completely eliminated.

10 As I said earlier, the question of balance comes
11 in, and balanced against all other considerations, environ-
12 mental costs, and so forth, I would like to see maximum
13 consideration given to alternative power sources.

14 Again, I'll let that contention stand as it is.

15 MR. COPELAND: Mr. Chairman, this may be
16 inappropriate, but since we wrote our response I have
17 discovered something that we really should have noted for
18 the Board's own edification in our response. And if it's
19 appropriate I would like to just point out that at page
20 S11-8 of the Supplement to the Final Environmental Impact
21 Statement the Staff notes that Section S.3.3.2 of their
22 analysis has been revised to incorporate the Applicant's
23 plans to purchase 500 megawatts from the City of Austin in
24 1980 and 1981.

25 Now, had I remembered that that was in there when

wel 13

1 I wrote this response, I would have put it in there. And
2 I think to make a complete record, it should be noted to
3 the Board.

4 MR. SCHUESSLER: Contention 13, Applicant's
5 financial integrity.

6 This contention is similar to my contention number
7 9, we were on awhile ago, which got us into the Baker thing.

8 MR. COPELAND: I respectfully disagree, sir, with
9 that characterization. They are in no way similar, in my
10 reading.

11 MR. SCHUESSLER: Well, they're similar in that
12 HLSP is financially unable to do this without my contributing
13 to the capitalization. That's the similarity. And it's
14 closely enough related, I think, to be a litigable issue for
15 the same reasons, again, set forth in the arguments of Bryan
16 Baker.

17 This is the instance, incidentally, where we have
18 that step, the relationship.

19 MR. COPELAND: Sir, again, I would ask that you
20 identify specifically those portions of Mr. Baker's arguments,
21 if you can, that you're relying on. Because I don't think
22 that his contention is the same as yours.

23 MR. SCHUESSLER: They are specific in that -- I
24 don't know that his response to Staff and Applicant on his
25 Contention 1 are all that lengthy. I don't think we're

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1 talking about -- it's a fairly confined part of the record.

2 CHAIRMAN WOLFE: Nevertheless, it's been our
3 ruling that you do have to pinpoint what you are specifically
4 relying on.

5 MR. SCHUESSLER: There's no way I can do that,
6 sir. I don't have that testimony.

7 (Pause.)

8 Again, for the record, I would say that I do
9 believe that this would be an appropriate thing, since the
10 Staff states in response to my contention:

11 "For these reasons and those further developed
12 in response to Baker Contention 1, the Staff believes
13 that there is no basis upon which to admit this
14 contention as an issue in controversy."

15 Now, the Staff has referred to Baker Contention 1.
16 I think it's entirely appropriate for me, in turn, to
17 refer to Mr. Baker's response to Staff.

18 (Pause.)

19 CHAIRMAN WOLFE: Well, I would note in your
20 suggestion indicating that Staff somehow or another adverted
21 back to the Baker contention, they were merely adverting
22 back to their own response.

23 Now, do you find something difficult or in error
24 there, in Staff's doing that?

25 MR. SCHUESSLER: No, sir. My point is simply that

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1 in response --

2 CHAIRMAN WOLFE: They were merely adverting back
3 to their own response. They weren't adverting back to
4 someone else's response. I think that distinguishes what
5 we request you to do from what Staff has done here. There
6 is that distinction.

7 MR. SCHUESSLER: I see a direct relationship
8 there, that I think should be considered. It's up to you
9 to make the decision, of course. But I make that point.

10 CHAIRMAN WOLFE: All right.

11 MR. SCHUESSLER: Contention 14. Again, that was
12 closely related to 6. I believe I can say that the
13 applicant and Staff and I would agree that that is ground
14 that is pretty well already covered.

15 Contention number 15 -- and my last one -- concerns
16 aesthetic impact.

17 While I have not seen a nuclear energy facility
18 first-hand, I am not unfamiliar with their general appearance,
19 and I believe I would recognize one on sight.

20 I believe their general appearance to be
21 displeasing, and even ugly. I don't doubt that any real
22 estate -- I doubt, rather, that any real estate developer
23 is planning a development overlooking scenic Allens Creek
24 Generating Station.

25 This contention is raised for reasons that in

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1 trying to get a picture of the function and the purpose of
2 these hearings, these types of hearings, and the responsibil-
3 ity of the Nuclear Regulatory Commission and the Atomic
4 Energy Commission, the question arose in my mind as to how
5 many applications for construction and operation of nuclear
6 plants have been rejected?

7 Through hearsay it's my understanding that there's
8 only one that has ever been rejected. I may stand corrected
9 on that. I have no reliable source. But the reason for
10 that was aesthetic reasons.

11 So I was hopeful that if my understanding of that
12 is correct, that the aesthetics of this thing are significant
13 and important enough to constitute the only grounds for
14 ever rejecting an application, that perhaps they would be
15 given full consideration in this matter.

16 This is not intended to be at all facetious, or
17 anything.

18 CHAIRMAN WOLFE: Yes.

19 Mr. Schuessler, do you have any response to the
20 Staff's and/or Applicant's objections to your contention?

21 MR. SCHUESSLER: Well, let's see . . . what did
22 the applicant say in this hyperbole, or something . . .

23 MR. SCHINKI: I'd like to ask Mr. Schuessler
24 whether he's read the analysis that was referenced in
25 either the Staff's or Applicant's --

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MR. SCHUESSLER: No, sir.

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Once again, I had no opportunity, not possessing those. And I would have to think too, really, not having read it, just from experience here, I would have to think that my approach to this question and that of the Applicant and Staff, might be from two entirely different directions. I don't know.

8

9

MR. SCHINKI: You did say you had never seen a nuclear plant personally, Mr. Schuessler?

10

11

MR. SCHUESSLER: Not first-hand, no, sir. But I think we're all familiar with their general appearance.

12

13

14

CHAIRMAN WOLFE: All right, Mr. Schuessler.

Is there anything more that you would like to add?

15

16

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MR. SCHUESSLER: Just a general observation, sir.

As I say, I come here as a layman. I'm attempting to protect my interests as I believe the regulations provide, not as an expert, either legal or technical.

19

20

21

I'd like to think that I need not be an expert.

I don't think I have to go through medical school to know if I'm sick.

22

23

I don't think I should have to be a lawyer to understand what justice is.

24

25

And I don't think I need to be an expert in the field of nuclear energy to recognize that nuclear energy

1218 058

1 presents many, many problems that concern me greatly. And
2 progress in solving some of these problems seems to be
3 moving very slowly, if at all.

4 And I come here simply concerned about the whole
5 program. But, again, I'm restricted. I cannot raise an
6 issue about proliferation of nuclear energy. I've got to
7 be restricted to this plant, which is another handicap.

8 Basically, my concern is with the entire program
9 and where it's going.

10 Thank you.

11 CHAIRMAN WOLFE: Thank you, Mr. Schuessler.

12 We'll have a 10-minute recess. Meantime, would
13 Mr. VanSlyke and Mr. Scott get together and decide who is
14 going to accommodate whom in going first?

15 (Mr. Scott pointing to Mr. VanSlyke.)

16 I take it that you, Mr. VanSlyke, will proceed
17 first. All right.

18 (Recess.)

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CHAIRMAN WOLFE: All right, the conference

2 is resumed.

3 Mr. Doherty advised that he had something to add.

4 I'm not aware of what it was, but we'll hear from him.

5 Yes, Mr. Doherty.

6 MR. DOHERTY: With regard to Contention Number 19,

7 I don't think you need to hunt for it -- of my original sub-

8 mission. I have been advised by HL&P technical staff that the

9 material which they are going to construct the collett retainer

10 tubes of the control rod system is a material called ASTM 3511CF.

11 And on the basis of a letter in NUREG 0479, pages

12 51 and 52 from Mr. Yppilite to Mr. Sherwood of General Electric,

13 I'm going to stipulate that the contention is no longer valid

14 because that material is one recommended in that contention

15 as a way of combating cracking in the collett retainer tubes

16 of a control rod system.

17 So at that point Number 19, the Board need not

18 consider it. And I appreciate the Applicant's cooperation

19 on getting that information and so forth, it takes practically

20 a dictionary to figure out what a metal is now.

21 MR. COPELAND: Excuse me, Mr. Chairman, I need

22 to check with my technical people and see if that got r

23 transmitted correctly.

24 MR. NEWMAN: Mr. Doherty, I don't believe that

25 changes the conclusion reached on Contention 19 but I'm not

1218 060

wel/aqb2

1 sure you had the exact designation correctly. It's ASTM-851
2 Grade CF-3, also described as ASME-SA351 Grade C5-3.

3 MR. DOHERTY: You mean CF-3 or C5-3?

4 MR. NEWMAN: I'm sorry, CF-3.

5 MR. DOHERTY: All right. But I talked with
6 Mr. White who has assured me that these two materials are the
7 same. So apparently we were seeing a sort of abbreviated
8 version of those numbers in one of my research items, so I'm
9 convinced that the retainer tubes will be of a material that's
10 recommended at this point as a fix on the collet retainer
11 tubes. So at this point I do not feel that there's any point
12 in having the Board consider it any more and I note your
13 agreement.

14 MR. NEWMAN: Yes. I think that's right.

15 CHAIRMAN WOLFE: All right, then, your Contention
16 19 as amended is withdrawn, is that correct?

17 MR. DOHERTY: That is correct. Thank you.

18 CHAIRMAN WOLFE: All right. Now, just so that
19 we can proceed with scheduling, we are now going to hear from
20 Mr. Van Slyke.

21 I understand that there is a Mr. Perez. Is he
22 in the audience?

23 MR. VAN SLYKE: I spoke with Mr. Perez earlier
24 this morning, Mr. Chairman, he indicated that he would be
25 here this afternoon, I believe.

1218 061

wel/agb3

1 Also, I've heard from Dr. Marlene Warner, who
2 does intend -- would like an opportunity for oral argument
3 but I don't believe she will be here today, I believe she will
4 be here tomorrow.

5 CHAIRMAN WOLFE: Tomorrow morning?

6 MR. VAN SLYKE: Yes.

7 CHAIRMAN WOLFE: Well, let everyone be advised,
8 as our order indicated we would proceed through 5:00 p.m.
9 tomorrow evening, if necessary. So everyone is on notice that
10 they should be in this conference room and available prior
11 to termination time. And we would trust that they come in
12 as soon as possible, advise the Board that they do wish to
13 make oral argument so that, in turn, we can make arrangements
14 with the other individuals who certainly are entitled to be
15 heard as well.

16 Yes, Mr. Doherty.

17 MR. DOHERTY: For the benefit of scheduling,
18 Mr. Perez indicated to me that he would be here at 1:00.

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1 CHAIRMAN WOLFE: You're Mr. Van Slyke?

2 MR. VAN SLYKE: Correct.

3 CHAIRMAN WOLFE: Mr. Van Slyke, we have some
4 problem with the question of your interest and/or standing.
5 Staff and applicant have raised certain objections to not
6 only your standing and/or interest but to your contentions
7 as well.

8 Would you address both the objections to your
9 interest and the objection to your standing?

10 MR. VAN SLYKE: Yes.

11 I would first like to address the NRC staff's
12 response to my contentions and, following that, I think I
13 would like to address the applicant's response, which is
14 basically similar.

15 CHAIRMAN WOLFE: Would you please address first,
16 or perhaps you have indicated you would, your interest and/or
17 standing, and then go to your contentions, if you would?

18 MR. VAN SLYKE: Objections to my interest and/or
19 standing?

20 CHAIRMAN WOLFE: Yes.

21 MR. VAN SLYKE: Okay.

22 The NRC staff's response to my petition I believe
23 concedes that I do lie within the geographic zone of interest,
24 or I reside within the geographic zone of interest. I be-
25 lieve I stated in my petition that I reside about forty-five

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miles from the site of the Allens Creek plant. And I stated further several other allegations of standing which don't need to be repeated.

I believe the objection is directed specifically to my interest. The NRC staff's response states that,

"Mr. Van Slyke makes clear that his interest in this proceeding is chiefly as a vehicle for complaining about alleged harrassment and political spying, and for determining whether there will be threats posed to his civil liberties by issuance of the proposed construction permit."

I would state additionally -- and I would refer the Board to my Contention No. 2, and I guess it is subparagraph (f) in which I also objected to the potential for an unwarranted violent response to peaceful civil disobedience or protest at the site of the -- at the construction site of this plant.

MR. LINENBERGER: Excuse me, sir. But can you identify what page of your submittal?

MR. VAN SLYKE: Page 9 of my petition, Contention 2(f).

MR. LINENBERGER: Excuse me, Mr. Chairman. Are we discussing his standing or his contentions?

MR. VAN SLYKE: We're discussing my interest, I believe, as one of the elements of my standing. And I think

WRB/wb3

1 I need to point out preliminarily that I get the impression
2 from reading the staff's responses that the concept of civil
3 liberties is somewhat a vague concept; that, as the Board
4 has noted in the National Lawyers Guild petition to inter-
5 vene earlier, which was denied, that this is the wrong forum
6 to raise civil liberties issues.

7 What I would like to make more specific is, my
8 interest is not a vague interest directed toward civil
9 liberties, it is an interest that's directed toward my health
10 and safety and toward the health and safety of the public,
11 which I believe are regulated and protected by both the
12 Atomic Energy Act and by the National Environmental Protection
13 Act. And I think that some of the acts which I have detailed
14 in my contentions, particularly political detention, use of
15 unlawful force against people who peacefully oppose the use of
16 nuclear power whether at the construction site or in other
17 forums in which the protest is directed against this construc-
18 tion site, do risk -- run the significant risk of injury to
19 their interest and their safety and health. And I have
20 attached numerous exhibits to document those contentions.

21 So that I would argue that my contentions are not
22 the same vague contentions that were addressed in the Barnwell
23 case, in particular; it's not a vague fear that I have. But
24 I would argue that the activities to which I am objecting
25 here are activities which do have a direct and injurious impact

1218 065

WRB/wb4

1 on the safety and health of the public.

2 I would also remind the Board that this concept
3 has been, I guess by way of explanation, to some extent
4 confirmed in the Karen Silkwood case in Oklahoma, in which
5 the verdict in the Silkwood case did not deal with Karen
6 Silkwood's death but it dealt with injuries to her civil
7 liberties, it dealt with issues of mental anguish which are
8 common in personal injury lawsuits. And the damages awarded
9 there were for, primarily for a conspiracy to deprive her of
10 her civil liberties, not for her death. So that I think
11 those are real interests that are protected by the Atomic
12 Energy Act and by the Environmental Protection Act.

13 MR. COPELAND: Sir, I suggest if you've got any
14 basis for a lawsuit that you file your lawsuit. We'll deal
15 with you there.

16 MR. VAN SLYKE: I'm not suggesting a basis for a
17 lawsuit. I'm trying to draw an analogy by way of--

18 MR. COPELAND: It's a lousy analogy. If you have
19 a lawsuit, file it. We'll deal with you there. This case
20 has nothing to do with Karen Silkwood.

21 CHAIRMAN WOLFE: May I have the reading back of
22 Mr. Copeland's statement, please?

23 (Whereupon the Reporter read from the record
24 as requested.)

25 CHAIRMAN WOLFE: Mr. Copeland, I have to address

WRB/wb5

1 your argument once again. I think I had to tell you once
2 about your comments with regard, I think it was to Mr. Baker
3 or Mr. Bishop. But we don't wish to hear assessments of any
4 individual's or any counsel's arguments. That's for the
5 Board to decide.

6 If you wish to address a question to someone
7 presenting oral argument, present your question without
8 embellishment.

9 MR. COPELAND: You're quite right, Mr. Chairman.
10 I did comment on his argument. And that was improper, and I
11 apologize for doing so.

12 I do regret my statement, but I do believe if
13 he argues that he has a basis for a lawsuit that that is
14 inappropriate and it's going beyond the scope of his con-
15 tention in this case.

16 CHAIRMAN WOLFE: All right.

17 Had you finished, Mr. Copeland, with your ques-
18 tioning of Mr. Van Slyke?

19 MR. COPELAND: Well, you know, Mr. chairman, I
20 don't know if it's appropriate or not, but I think there's a
21 very real question whether this gentleman has any right to be
22 here now under the Board's notice of intervention of June 18th.
23 He has filed and signed a form, as I understand it, and maybe
24 I'm reading the wrong form, which we have questioned in our
25 filings. There is-- I think the Board is familiar with that

WRB/wb6

1 form. There have been a number of parties that have signed
2 that form. And we raised a question as to whether that form
3 was a sufficient basis for satisfying the June 18 notice.

4 And, in particular, with respect to Mr. Van Slyke,
5 I have great difficulty understanding his late filing, since
6 he was in fact an attorney with the National Lawyers Guild
7 when they filed in this case back last fall, and we heard
8 argument and we heard the petition of the National Lawyers
9 Guild, and I think the Board knows and recalls that these
10 were exactly the same contentions that were presented by the
11 National Lawyers Guild. And I think there is a very
12 serious question here as to how Mr. Van Slyke has now come in
13 with a late filed petition, having been the attorney for
14 a party who previously attempted to intervene under the
15 Board's prior notices of May and September of 1978.

16 CHAIRMAN WOLFE: Well, we'll take one thing at a
17 time.

18 You say late filing. You don't mean that
19 Mr. Van Slyke filed after the due date of July 18th?

20 MR. COPELAND: No, sir.

21 CHAIRMAN WOLFE: By late filing you mean, what?

22 MR. COPELAND: Let me back up.

23 The National Lawyers Guild intervened pursuant to
24 the May and September notices of 1978, raising exactly the
25 same contentions that Mr. Van Slyke is raising here. How

WRB/wb7

1 Mr. Van Slyke can then come forward and say that he failed
2 to file a petition to intervene on his own behalf raising
3 exactly the same contentions because of the restrictions in
4 those notices leaves me completely at sea, Mr. Chairman.

5 CHAIRMAN WOLFE: All right.

6 Will you answer that, Mr. Van Slyke?

7 MR. VAN SLYKE: Yes.

8 First I would like to correct a misstatement.

9 I'm not an attorney. Mr. Allen Vomacka was the attorney for
10 the Lawyers Guild, and still is the attorney for the National
11 Lawyers Guild in this proceeding. And it's my understanding
12 that he has requested to make a limited appearance statement
13 in this proceeding subsequent to the denial of the Lawyers
14 Guild's petition to intervene.

15 I was going to respond to this matter later on,
16 but perhaps I can do it now.

17 MR. COPELAND: Sir, just for clarification, were
18 you a member of the National Lawyers Guild?

19 MR. VAN SLYKE: Yes, I was. As a matter of fact
20 I was the Freedom of Information Act coordinator for the
21 National Lawyers Guild at that time.

22 MR. COPELAND: All right, sir.

23 Whether he was an attorney or not is still ir-
24 relevant to the point.

25 MR. VAN SLYKE: I think the other point I would

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WRB/wb8

1 like to make is: there were, I believe, nine contentions
2 raised by the National Lawyers Guild in their petition to
3 intervene. I have raised three contentions in my petition
4 to intervene, which are not identical to those contentions
5 raised by the National Lawyers Guild. And I don't see how
6 they could be construed as such.

7 I would further say that any individual who
8 timely filed his petition in this proceeding pursuant to the
9 Board's order, as I have in this proceeding, should be
10 considered on an equal basis with any other individual who
11 filed his petition, regardless of the organization he may or
12 may not be a member of. And I think it is illogical to sug-
13 gest that I am in some way bound by a prior determination as
14 to the National Lawyers Guild merely because I am a member
15 of the National Lawyers Guild if I desire to intervene in
16 this proceeding as an individual.

17 MR. COPELAND: Sir, I think-- I should direct
18 my comment to the Board.

19 I think, Mr. Chairman, that the question is, How
20 is it that a member of the National Lawyers Guild at the time
21 that their petition was filed can now come before this Board
22 and say that he was inhibited from intervention, and raising
23 exactly the same contentions that his organization raised
24 pursuant to the very notices that he now claims he was
25 inhibited by? That's the question.

NRB/wb9

1 CHAIRMAN WOLFE: Why don't we ask that question
2 of Mr. Van Slyke?

3 MR. VAN SLYKE: Yes.

4 CHAIRMAN WOLFE: The question I would address to
5 you, or series of questions:

6 You were aware that the National Lawyers Guild
7 had filed a petition for leave to intervene and contentions
8 pursuant at least to our notice of September 11th, 1978; is
9 that correct?

10 MR. VAN SLYKE: Yes, I was.

11 CHAIRMAN WOLFE: You were aware.

12 Well, why didn't you, then, file a petition for
13 leave to intervene separate and distinct from that petition
14 for leave to intervene filed by the National Lawyers Guild
15 which had been filed pursuant to either our notices of
16 May 31st and/or September 11th, 1978?

17 MR. VAN SLYKE: Because it was my understanding
18 at that time that the only contentions which could be raised
19 in this proceeding were contentions htat addressed design
20 changes in the Allens Creek unit from the original two-unit
21 station to the present one-unit station.

22 CHAIRMAN WOLFE: I see.

23 MR. SCHINKI: Mr. Chairman, that's true with
24 regard to the May 31st notice, but not with regard to the
25 September 11th notice.

1218 071

WRB/wb10

1 CHAIRMAN WOLFE: Were you aware that the
2 September 11th notice, September 11, 1978, also expanded the
3 scope of the contentions to not only include design changes
4 but also was extended to include any new information or
5 evidence that had developed since November 1975?

6 MR. VAN SLYKE: Yes, I was aware of that. I was
7 not aware of any new evidence at that time which had
8 developed since December of 1975.

9 CHAIRMAN WOLFE: And so because in light of both
10 of those notices and the limitations therein, you decided
11 not to file pursuant -- to file a petition for leave to
12 intervene pursuant to those two notices; is that correct?

13 MR. VAN SLYKE: That's correct.

14 MR. COPELAND: On that point, Mr. Chairman, I
15 would point out that the petition filed by the National
16 Lawyers Guild, or in a pleading filed by them on November 17,
17 1978 they have several attachments, all of which presumably
18 fall into the category of what they consider to be new evi-
19 dence. They have dates on them. There's an article,
20 Exhibit 2, an article dated May 1973; there's an article
21 dated February 24th, 1976. I can't read the date on the next
22 one. All of which suggests that the Guild itself felt that
23 they had sufficient basis for intervening at that time.

24 I think the record is very unclear as to how
25 Mr. Van Slyke, as a member of a group that did intervene, and

POOR ORIGINAL

WRE/wb11 1

2 who was an officer, or who had some special function with
3 that group, felt like he personally could not raise the same
4 issues then that he is now raising because his group raised
5 those issues.

6 I just don't understand how he can possibly sit
7 here and make the argument that he was somehow inhibited
8 from raising the same issues that his group raised when he
9 was a member of that group and was active in running the
10 group. By his own admission he was the Freedom of Information
11 Act coordinator for the group. And, in fact, one of the
12 exhibits to the petition I mentioned references his name as
13 being the Freedom of Information Act coordinator.

14 CHAIRMAN WOLFE: Are you saying, Mr. Copeland --
15 I'm trying to grab what you're saying. You're saying that
16 the National Lawyers Guild when it filed its petition for
17 leave to intervene and its contentions, did not feel that it
18 was bound -- and, indeed, was not bound -- by the limitations
19 in our orders of May 31st and September 11th, 1978; is that
20 what you're saying?

21 MR. COPELAND: It's obviously true, sir, because--

22 CHAIRMAN WOLFE: I just wanted to get that clear.

23 So you're suggesting, or asking Mr. Van Slyke to
24 explain why, since he was aware that the organization of
25 which you were an officer or member didn't feel it was restric-
ed by those limitations, why did you feel you were restricted

1218 073

WRB/wb12

1 MR. VAN SLYKE: Well I can say that the sum total
2 of the National Lawyers Guild knowledge at that time was not
3 even of my knowledge. And in fact I wrote a letter, a
4 Freedom of Information Act request letter, at Mr. Vomacka's
5 request, to determine if the National Lawyers Guild could
6 find additional documents to support its petition.

7 As to the National Lawyers Guild knowledge of new
8 evidence at that time, since they're a party to -- pardon me;
9 a limited appearance, I guess intervenor, in this proceeding
10 and they're represented by Mr. Vomacka, I think that they
11 would be the proper party to answer that question.

12 I told you what I knew as of the time those
13 notices appeared and as of the time the deadlines for filing
14 the petition were filed.

15 CHAIRMAN WOLFE: Any other questions to be
16 directed to Mr. Van Slyke regarding interest and/or standing,
17 or-- It's up to you, if you think you have answered all the
18 objections, the written objections, you may proceed to your
19 contentions.

20 Go ahead.

21 MR. VAN SLYKE: A further clarification I would
22 like to make as to my interest or standing is: I think the
23 contention that I mentioned earlier, Contention 2(f) on
24 page 9 of my petition, objects to the use, or the risk of the
25 use of deadly force. And I consider that a threat to the health

wrb/agbl
flwswbl2

1 or safety of the public. So that I think it differentiates
2 my petition from the interest advanced by the American Civil
3 Liberties Union in the Barnwell case.

4 MR. COPELAND: Sir, I would just point out that
5 in the document which I mentioned the National Lawyers Guild
6 argued that the attachments to this petition constituted new
7 information and quoted from one of them saying that:

8 "The government will seek to prevent
9 nuclear theft and sabotage by watching groups
10 thought likely to carry out such actions."

11 I think unless Mr. Van Slyke demonstrates to this
12 Board that he had absolutely no role whatsoever in making
13 the decision on behalf of the Lawyers Guild to intervene,
14 knew nothing about the petition itself, that he is bound by
15 that petition, being an officer of that organization.

16 CHAIRMAN WOLFE: Would you like to address that
17 line of argument, Mr. Van Slyke?

18 MR. VAN SLYKE: Yes, I would.

19 CHAIRMAN WOLFE: Go ahead.

20 MR. VAN SLYKE: Frankly, I'm a little nonplussed
21 by that argument. I don't see how the concept of standing
22 can be used to deny standing to an individual who's a member
23 of an organization which organization alleges standing to
24 represent its members is subsequently denied standing in a
25 proceeding. And an individual who brings his own petition

wrb/agb2

1 raise new contentions which are not identical to those
2 raised by the organization can be excluded from the proceeding
3 solely because an organization of which he's a member at one
4 time filed a pleading in this proceeding at an earlier stage.

5 MR. SOHINKI: I'm wondering whether -- since
6 Mr. Van Slyke made representations with regard to authorization
7 to represent the organization, whether that doesn't include --

8 CHAIRMAN WOLFE: You mean Mr. Vomacka?

9 MR. SOHINKI: Mr. Vomacka--whether that doesn't
10 include Mr. Van Slyke as a member of the organization.

11 MR. VAN SLYKE: I think it certainly does as to
12 contentions that were raised by the National Lawyers Guild
13 last year. But I'm talking about the three contentions that
14 are in the petition of Glen Van Slyke today and I thought
15 we were to address those.

16 MR. COPELAND: They are absolutely no different
17 in scope.

18 MR. SOHINKI: In any case, Mr. Chairman, I think
19 that the interest which Mr. Van Slyke has clarified -- to
20 the extent he has clarified them this morning -- are all
21 subsumed under the category of civil liberties, and the
22 Staff believes that its response would not change after
23 hearing Mr. Van Slyke's additional comments. We don't think
24 those interests come within the zone of interest protected
25 by the Atomic Energy Act.

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wrb/agb3

1 CHAIRMAN WOLFE: While you're here, we will
2 proceed. We, as I've indicated, have reservations on the
3 question of standing and/or interest. You're here. We will
4 proceed now to hear your contentions. We will rule ultimately
5 in an order upon your interest, if we find that you do have
6 interest, and standing, and we will proceed to consider
7 whether or not your contentions are admissible.

8 All right, Mr. Van Slyke.

9 MR. VAN SLYKE: Thank you.

10 As to Contention 1, the NRC Staff's response
11 indicated that the contention is totally speculative with
12 regard to its allegations of perceived possible responses to
13 peaceful protest.

14 Of course we all profit with the benefit of
15 hindsight, but I didn't have the events of the weekend of
16 October 6 at the Seabrook Nuclear Power Plant site to
17 attach as an exhibit to my petition at the time that I
18 filed it.

19 MR. COPELAND: I object to this line of argument,
20 it has nothing to do with Houston Lighting and Power Company.

21 MR. VAN SLYKE: What I was trying to --

22 MR. COPELAND: We don't own the Seabrook Plant,
23 for your information.

24 MR. VAN SLYKE: I think what I was trying to
25 demonstrate by the attachments to my petition is a pattern

wrb/agb4

1 or practice in the utility industry in this country.

2 MR. COPELAND: I object to that characterization
3 unless you establish a basis for a pattern by Houston
4 Lighting and Power Company of doing something in that regard.

5 MR. VAN SLYKE: Well I thought I was given an
6 opportunity to make oral argument here in the proceeding today.
7 If you'd like to respond to my oral argument in another
8 pleading before the Board rules, why --

9 CHAIRMAN WOLFE: I don't know whether you under-
10 stand the ground rules, Mr. Van Slyke. What we would like
11 you to do is to in a very succinct short manner, perhaps in
12 a sentence, to set forth the thrust of each of your contentions.
13 This is more to advise the audience of what your contention
14 is because actually we, the Board and the other parties,
15 have obviously your contentions before them.

16 So after summarizing your contention, then proceed
17 to rebut, if you wish, any objections by Staff and/or
18 Applicant.

19 All right.

20 MR. VAN SLYKE: Right.

21 CHAIRMAN WOLFE: All right, now the first
22 contention is what?

23 MR. VAN SLYKE: My first contention is not that
24 the regulations are inadequately defined on the term
25 "industrial sabotage," as both the NRC Staff and the Applicant

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wrb/agb5

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have argued, my contention is that the Applicant's security plan inadequately defines the term "industrial sabotage" or the proper response to industrial sabotage so as to insure that the on-site physical protection system and security organization will respond in a proper manner to any peaceful legal protest at the site of this construction site.

My objection is not that the regulations are too vague, but that the Applicant's security plan is too vague and contains no guidelines by which we can judge whether the response to any such gathering will be appropriate.

MR. SOHINKI: So you are withdrawing your contention insofar as it complains about the description of -- in 10 CFR Section 73.55(a) (1)?

MR. VAN SLYKE: No, I'm not, because my complaint is not about the definition in 10 CFR 73.55(a) (1).

MR. SOHINKI: The plain language is: "Such a description" -- referring to the description in the regulations --

MR. VAN SLYKE: What I'm objecting to is the fact that the Applicant's security plan has not defined what in fact the term "industrial sabotage" indicates or how the Applicant attempts to identify incidents of industrial sabotage so that those incidents will be dealt with in a different manner than a peaceful legal protest.

MR. COPELAND: Is it your contention, sir, that a

wrb/agb6

1 peaceful legal protest is industrial sabotage for the purposes
2 of 73.55(a)?

3 MR. VAN SLYKE: No, my contention is a peaceful
4 protest is not industrial sabotage, however, the Applicant's
5 security plan provides no guidelines by which we can dis-
6 tinguish -- or by which its security personnel can distinguish
7 industrial sabotage from a peaceful legal protest at the
8 construction site.

9 MR. COPELAND: Have you read the statutes of
10 the State of Texas that govern that?

11 MR. VAN SLYKE: Pardon?

12 MR. COPELAND: Do you know what the law of the
13 State of Texas is, sir?

14 MR. VAN SLYKE: Which statute are you referring to?

15 MR. COPELAND: The laws of the State of Texas
16 that cover peaceful protest. Both we and you, sir, are bound
17 by those laws.

18 MR. VAN SLYKE: Well I'm not directing my
19 objection to unlawful protest, I'm directing my objection to
20 lawful protests, which would not fall within the purview
21 of the criminal statutes of the State of Texas.

22 MR. COPELAND: Are you alleging, sir, that we
23 would violate the laws of the State of Texas or the Atomic
24 Energy Act or the Commission's regulations pursuant thereto,
25 is that your allegation?

wrb/agh7

1 MR. VAN SLYKE: No, I'm contending that the
2 Applicant's security plan is inadequate for the Board to
3 make a judgment as to whether the Applicant can distinguish
4 an act of industrial sabotage, which should be prevented and
5 which the thrust of the Atomic Energy Act is designed to
6 prevent, whether the Applicant's security personnel can
7 distinguish an incident like that from a lawful protest that
8 might occur at the construction site during the time this
9 plant is being built and before the final security plan is
10 ever filed for the operating license, at that stage of the
11 proceeding.

12 Going on to Contention 2, I'm contending that
13 the Applicant's security plan for compliance with the physical
14 security organization's requirements of 10 CFR is not
15 adequate to insure that security personnel for the Applicant
16 will not engage in illegal surveillance and intelligence
17 gathering against individuals and organizations merely because
18 they are opposed to the construction of Allens Creek Plant,
19 including myself and other members of the Mockingbird
20 Alliance.

21 MR. LINENBERGER: Sir, on that point I have some
22 confusion here.

23 There are, separate and apart from what the
24 NRC regulations say, legal -- within the framework of the
25 State of Texas and the county and the cite and so forth,

wrb/agb8

1 legal restraints that would prevent the personnel of any
2 organization from engaging in illegal surveillance and intelli-
3 gence gathering, to use the words of your contention.

4 Now is it the thrust of your contention that the
5 laws of the state, county and community are not going to be --
6 are not adequate in that respect and therefore you're looking
7 to the adequacy of the Commission's regulations to protect
8 you in that respect?

9 MR. VAN SLYKE: My contention --

10 MR. LINENBERGER: Sir, I intentionally phrased
11 that question so you could give a yes or no answer.

12 MR. VAN SLYKE: Is it my contention that the laws
13 are not adequate?

14 MR. LINENBERGER: With respect to illegal -- with
15 respect to illegal surveillance.

16 MR. VAN SLYKE: No, that's not my contention.

17 MR. LINENBERGER: That's not your contention.

18 MR. VAN SLYKE: No. However, my contention is
19 that the potential for violations of the law which may be
20 difficult to detect because of the nature of the activities
21 about which we are complaining and because of the documenta-
22 tion that I've attached which indicates that members of the
23 law enforcement community may be involved in these same
24 operations themselves, that that is a proper subject of inquiry
25 before this Licensing Board.

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wrb/ agb9

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2 Also that these illegal acts -- or the potential
3 for illegal acts may not be brought to the attention of law
4 enforcement authorities because of the security apparatus
5 around the Allens Creek Nuclear Generating Station. These
6 acts would not necessarily be committed on Main Street at
7 high noon.

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8 As to Contention 3 -- well, summing up, I guess,
9 my discussion about violations of Texas statutes in
10 Contention 2 and my concern about the potential for those
11 violations, I would point out that there are also laws in the
12 State of Texas which prevent, for instance, pollution of Texas
13 water resources -- we have a water resources code here.
14 However, it is also the function of the Board to determine
15 to what extent this plant will perform in conformance with
16 those statutes. And I think it should also be the function
17 of this Board to determine to what extent this plant will be
18 able to function in compliance with whatever statutes might
19 prevent illegal surveillance and harassment. And I don't
20 think that's an unfair analogy.

21 There are overlapping jurisdictional laws in the
22 licensing of any nuclear power plant, but the fact that another
23 agency might have regulations to prevent infringement of
24 those laws doesn't preclude this Board from considering that
25 possibility.

MR. COPELAND: Mr. Chairman, for fear of treading

wrt/agblo

1 on mischaracterization of the petitioner's argument, I must
2 point out that he is simply wrong about this Commission's
3 authority to enforce the water laws of the State of Texas.
4 Likewise, by analogy, he is therefore wrong about the
5 authority of this Board to enforce the criminal statutes of
6 the State of Texas.

7
8 Again, sir, if you have a violation that you
9 claim has occurred, I suggest you take it to the District
10 Attorney's office and we'll deal with it there.

11 MR. VAN SLYKE: Well I'm not suggesting that the
12 Board enforce the criminal laws of the State of Texas, I am
13 merely suggesting that the Board consider the standards of
14 conduct or the legal standards by which this plant should
15 be measured.

16 And I notice that in the application for this
17 plant, for instance, there's a certificate from the Fish
18 and Wildlife Commission that says we've examined this plant
19 and we've determined that it complies with all the applicable
20 Texas statutes that govern fish and wildlife matters.

21 And I think it is interesting and it is laudable
22 that the Board was concerned with the Applicant's compliance
23 with those laws, and I hope it will also be concerned with
24 the Applicant's compliance with the United States Constitution.
25 And I think that's the thrust of my Contention 2.

Contention 3, I think the Applicant and the

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wrb/agbil

1 Staff have both correctly pointed out that the safeguards
2 contingency plan will not be required to be filed, the final
3 safeguards contingency plan, until the operating licensing
4 stage of this proceeding. And that in fact....If I could go
5 to my contention here, perhaps I could point out the part
6 of that contention to which I objected.

7 Yes, I objected to the inadequacy of the Appli-
8 cant's plans for complying with the license safeguards
9 contingency plans which are not required to be filed until
10 the operating license stage of this proceeding.

11 However, I would ask that the Board consider
12 the inadequacy of the Applicant's preliminary analysis and
13 evaluation of the design and performance of the security
14 system of this facility.

15 And I think that my reference to the license
16 safeguards contingency plans would also include the industrial
17 security plan which has already been submitted by the Appli-
18 cant in the Preliminary Safety Analysis Reports and sub-
19 sequent reports.

20 And I feel that the NRC's response to those
21 plans is inadequate. I feel that, for instance, in the
22 Safety Evaluation Report that was published in March, 1979
23 at Part 13.5, Industrial Security, I think that the mere
24 assertion that:

25 "The Applicant has provided a general

1218 085

wrb/agbl2

1 description of the plans for protection against
2 accidents and acts of industrial sabotage. The
3 Applicant has demonstrated a general understanding
4 of the regulations....," and those are the two sentences
5 upon which the NRC concludes:

6 "We conclude that the Applicant's
7 arrangements for protection of the plant against
8 acts of sabotage are directed toward meeting the
9 requirements and are satisfactory for this stage
10 of the licensing process."

11 Well I must say I disagree with that conclusion
12 and I think the plan should be a little more specific at this
13 stage of the licensing process because I do anticipate a
14 lot of problems during the construction of this plant, given
15 the history of nuclear power plants around the country.

16 Lastly, I would like to say that I also contest
17 the NRC and the Applicant's objections to my being granted
18 discretionary status as an Intervenor in this proceeding.

19 I think, without running down the laundry list
20 of considerations that need to be considered, I think the
21 items of standing that I demonstrated in my petition show
22 that although it may be that this is the wrong forum for my
23 concerns with civil liberties to be aired in -- and I'm not
24 conceding that -- I think that I've raised concerns beyond
25 mere civil liberties, I've raised concerns that do affect

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wrb/agbl3

1 safety and health.

2 And I'd like an opportunity to more specifically
3 particularize those contentions. I'd like an opportunity
4 for those concerns to be represented in this proceeding.
5 And to my knowledge, no other petitioner has raised these
6 issues in this proceeding and I think it would be beneficial
7 to the Board to have my participation as an Intervenor in
8 this proceeding so that those issues can be considered,
9 Because I think that no other Intervenor has raised contentions
10 about these concerns.

11 MR. COPELAND: I beg to differ, sir. Your
12 organization did and they were thrown out.

13 MR. LINENBERGER: Mr. Van Slyke, I really want
14 to understand as fully as possible, especially with respect
15 to your Contentions 1 and 2, the thrust of them and so I
16 need to ask you something here.

17 I can read Contentions 1 and 2 -- and believe me,
18 I'm trying to develop an understanding, not to be critical
19 or unfair or anything -- but I can read Contentions 1 and 2
20 to say that you would like this Board to assure itself that
21 the Applicant will do everything possible to protect the
22 rights of peaceful demonstrators, peaceful and legal demon-
23 strators so that they can prevent the Applicant from doing
24 his job.

25 Now that's admittedly an unfair characterization --

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wrb/agbl4

1 maybe it is, maybe it isn't -- but that's a reading I can
2 make from the thrust of your first two contentions. You want
3 to be sure that peaceful demonstrators are not interfered
4 with the way industrial saboteurs are so that by virtue of
5 their being allowed to demonstrate they can prevent the
6 Applicant from building the plant.

7 Well I don't know whether he's going to build
8 the plant or not, I don't know whether we're going to let him.
9 That's beside the point. I have to look at the thrust of
10 your contentions.

11 Now have I characterized it properly or not?
12 And, if not, explain why or how.

13 MR. VAN SLYKE: Well I think what I'm trying to
14 ask the Board to do -- I can see that there is very little
15 motivation for the Applicant to be concerned about the safety,
16 health and civil liberties of people who are peacefully
17 opposing the construction of their plant. I mean, this is an
18 economic equation.

19 But I would hope that the Board, as an agency of
20 the Federal Government which is charged with protecting all
21 the citizens of the United States and, particularly, the
22 citizens in this area, would be concerned that the Applicant's
23 security plan is inadequate in certain respects in that it's
24 inadequate to warn the security personnel of the Applicant
25 at which point the line has been crossed at which a violent

1218 088

wtb/agbl5

1 response is in order.

2 I think there are no safeguards, there are no
3 standards, there are no guidelines set in the security plan
4 to tell security personnel of the Applicant This is what you
5 do when this happens. There seems to be no guidelines by
6 which to guide the people's conduct whatsoever, and I think
7 that's what I'm concerned about. I'd like to see some
8 concrete guidelines to make sure that the use of force will
9 not be unwarranted.

10 MR. LINENBERGER: Okay. Thank you, sir, that
11 helps.

12 CHAIRMAN WOLFE: Anything else?

13 (No response.)

14 I noted -- This is not directed to you, Mr.
15 Van Slyke but directed to present parties and any future
16 parties -- that when a party files a motion, say, for an
17 extension of time, that should be a separate motion. It
18 should not be incorporated into or made a part of any other
19 pleading.

20 I'm not being critical, you're not a lawyer,
21 Mr. Van Slyke, but I do want to point that out. You did,
22 at the beginning of your supplement to your petition, indicate
23 that you wanted -- or you indicated what -- you were critical,
24 I take it, of the Board's order and said that you had a right
25 to file up until 15 days before the holding of the special

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1 prehearing conferences.

2 MR. VAN SLYKE: I did appreciate the NRC Staff
3 treated that as a motion, but it should properly have been
4 formed as a separate -- filed as a separate motion.

5 CHAIRMAN WOLFE: When the Board receives
6 submissions, unless it is alerted -- unless something alerts
7 them to the fact that it is also in the form of a motion, we
8 don't act on it. We didn't treat this, then, as a motion.

9 In any event, it is denied orally because it has
10 been mooted in that, in the first place, you didn't file
11 anything anyway by September 30 and, secondly, it was mooted
12 by the Appeal Board's decision in ALAB 565 of October 1, 1979.

13 So that's that.

14 Anything more?

15 ; (No response.)

16 CHAIRMAN WOLFE: All right. Thank you, Mr.
17 Van Slyke.

18 It's now 12:30, we'll recess until 1:30.

19 I understand Mr. Perez is going to be here at
20 1:00. I trust he will recognize that we're still in session
21 and, in any event, if anyone sees him tell him we'll be back
22 here at 1:30.

23 (Whereupon, at 12:30 p.m., the hearing in the
24 above-entitled matter was recessed, to reconvene
25 at 1:30 p.m., this same day.)

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A F T E R N O O N S E S S I O N

(1:40 p.m.)

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3 CHAIRMAN WOLFE: Mr. Scott, would you come forward,
4 please?

5 MR. SCOTT: Okay, Scott is ready for TEXPIRG.

6 As has been earlier mentioned, many of TEXPIRG's
7 contentions have been dropped and stipulated to.

8 So as I mentioned yesterday, to briefly mention
9 some considerations that I think apply to many of these
10 contentions, in order to try to expedite this, one of the
11 things that has been raised is whether or not a contention
12 can be dropped because it could have been raised at some
13 earlier -- as a result of some earlier order, like the May
14 or September -- October -- I forget the exact dates.

15 CHAIRMAN WOLFE: Are there any such objections
16 to one or more of your contentions?

17 MR. SCOTT: Yes, there were.

18 CHAIRMAN WOLFE: All right.

19 MR. SCOTT: And wherever possible I will try to
20 explain that, within those rules.

21 I just want to make it clear that I think that
22 there's really no -- that it's improper legally to have to
23 go through that process. I think that at this proceeding
24 there's no harm to anybody. There's no imposition, because
25 of other parties being allowed to raise things, or people

1 who were somehow involved earlier not to be able to raise
2 them.

3 That's within your discretion, and I think to not
4 allow that would be an abuse of your discretion. I won't
5 expound upon that more.

6 Secondly, objections that keep being raised by
7 both Staff and Applicant to these contentions is that they
8 keep saying, "What's your basis for that statement?"

9 If you go further and give a basis for that, then
10 they say, "What's your basis for that?"

11 And the end result of that type of lawyerly
12 triology, basically, is to have to prove your case at this
13 stage.

14 And, as you earlier properly explained, this is
15 not the point to prove your case. It's only the place to
16 provide reasonable specificity so that the Board, the
17 Applicant and the Staff can know what you're talking about.

18 Once the case is proven that much -- I mean,
19 there's no need to go any further.

20 I think the Appeal Board in their recent memorandum
21 essentially stated that, in that they talked that at some
22 point still further down the road there'd be chances for
23 summary judgment after discovery and whatever.

24 And that at this point all that had to be explained
25 was that there was an understanding of what the issue was, and

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1 that it was not relying on the face of the issue.

2 Thirdly -- well, actually, it's actually a
3 continuation of the second one here -- I would refer you to
4 the United States Nuclear Regulatory Commission Staff
5 Practice and Procedures Digest, in which, on this issue, page
6 37, in the Vermont Yankee Nuclear Power Corporation versus
7 NRDC case, April 3, 1978, it's stated that the court held
8 it was incumbent upon intervenors who wished to participate
9 to structure their participation so that it is meaningful, so
10 that it alerts the agency to intervenor's position --

11 MR. NEWMAN: Mr. Chairman, excuse me for inter-
12 jecting at this point.

13 I know of no objection to anything that Mr. Scott
14 has said or is planning to say that warrants this type of
15 legal argument at this point.

16 I think that when the matters which are of concern
17 to him as a matter of law arise, should they arise, that's
18 the point at which to have legal argument.

19 Right now we're engaged in an abstract discussion
20 of legal principles totally unrelated to any specific
21 contention.

22 MR. SCOTT: In response, I'd only say that -- as
23 I've already said -- that I'm trying to explain, in order to
24 save time and not have to repeat this every time it's been
25 mentioned. It's been mentioned over and over on these

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1 contentions, and --

2 CHAIRMAN WOLFE: All right, Mr. Scott. You may
3 reply, but these are objections that Mr. Scott is meeting
4 now in a general way without having to go through them
5 contention by contention.

6 All right, with the understanding that all these
7 arguments are addressed to specific objections, if you're
8 just generalizing at this point, it's allowed.

9 Go ahead.

10 MR. SCOTT: Good.

11 In fact, the next sentence says that:

12 "The Court found NRC's use of a threshold test
13 requiring intervenors to make a showing sufficient to
14 require reasonable minds to inquire further to be well
15 within the Agency's discretion."

16 And I state that because it is another Appeal
17 Court decision that stated that not even the threshold test
18 had to be made.

19 One further point that's mentioned many times is
20 that the 1975 partial initial decision had considered this
21 issue, and so you're foreclosed from raising it.

22 That's only a partially correct statement, and
23 I'm sure you all know this. But the Appeal Board decision
24 described it in terms of it was reasonable to prevent
25 relitigation of issues that had in fact been thoroughly

1 considered and findings had been found and listed in the
2 partial initial decision.

3 And that's a two-step process. They inquired
4 even in a later sentence -- do you have that decision?

5 In any case, the document will speak for itself.

6 There's another sentence that states that facts
7 that were not thoroughly considered -- you know -- could
8 definitely be re-raised.

9 And even decisions -- issues that were thoroughly
10 considered in part of the partial initial decision can still
11 be raised if based upon new evidence and changes in the plant
12 design.

13 MR. SOHINKI: Are you implying, Mr. Scott, that
14 the Board did not give thorough consideration to its site
15 suitability findings?

16 MR. SCOTT: To some of them, yes.

17 Okay, if nobody has any further questions at this
18 point, it might be -- otherwise, I'll proceed into my
19 contentions.

20 CHAIRMAN WOLFE: May I interrupt just one moment,
21 Mr. Scott?

22 Mr. Doherty, do you happen to have Dr. Warner's
23 phone number? Do you know her personally, or does anyone
24 know her personally, in the audience?

25 I would appreciate it if someone from Applicant or

1 Staff, or if one of the petitioners or parties knows where
2 she can be contacted, if she could be called and --

3 MR. SCOTT: Sir, I do have a phone number of
4 where she works, and I'll give this to . . .

5 CHAIRMAN WOLFE: Would you mind calling her, Mr.
6 Baker, and --

7 MR. BAKER: I'll call her, yes.

8 CHAIRMAN WOLFE: Well, just a moment. I want to
9 tell you what to tell her.

10 Would you tell her that we are continuing until
11 5:00 this evening, and if at all possible -- would you
12 advise her that we would like her to be here at 9:30 in the
13 morning, so that we could hear her oral argument? Because
14 it may well be that by mid-morning we will have no other
15 business, no other oral arguments, to conduct, and we may
16 just conclude the special prehearing conference.

17 So we suggest strongly that she be here at 9:30
18 in the morning, at the latest. Would you do that?

19 MR. SOHINKI: Mr. Chairman, I was going to say
20 that if it appeared -- and it may appear -- that we could
21 finish this evening, I certainly would have no objection to
22 going a little later than 5:00 o'clock in order to save --

23 CHAIRMAN WOLFE: All right. Would you put the
24 question to her this way, then, Mr. Baker? Would you first
25 ask her if she can make it this evening by 5:00 o'clock,

1 before 5:00? If she cannot, we certainly expect to see her
2 at 9:30 a.m. in the morning. Ask her if she can make it at
3 5:00. If she can't, then say most certainly the Board
4 expects her to be here by 9:30 in the morning.

5 Would you do that? I'd appreciate that.

6 MR. BAKER: Yes, sir.

7 CHAIRMAN WOLFE: Thank you.

8 MR. SOHINKI: I raised that especially in view of
9 the fact that she only has a single contention.

10 CHAIRMAN WOLFE: Yes. Thank you.

11 Sorry to interrupt, Mr. Scott. Go right ahead.

12 MR. SCOTT: No problem.

13 The reference that I mentioned earlier as to a
14 basis for dropping contentions at this point is, in a memo
15 that I just mentioned to you in the Appeal Board of October
16 1, 1979, at the bottom of page 9, states:

17 "Of course, if the contention is inherently
18 lacking in merit or has some other facial deficiency,
19 it can be dismissed now."

20 And as a further just general overriding -- in
21 fact, probably the guiding light, the purpose of these type
22 of proceedings, namely, construction permit proceedings for
23 nuclear power plants, is Section 2239 of 42 U. S. Code 2239,
24 in which, as you know, if anyone asks for a -- I mean you
25 have to have public hearings for construction permit

1 proceedings, whether or not any people want to participate.
 2 And further it states,

3 "The Commission shall..."

4 there's no "may" --

5 "...grant a hearing upon the request of any
 6 person..."

7 not some people --

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8 "...whose interests may be affected by the proceeding,
 9 and shall admit any such person as a party to such
 10 proceeding."

11 That's awfully strong words, I believe, to
 12 indicate the guideline that the rules and regulations and
 13 the Boards should use in deciding whether or not and what
 14 standards to hold petitioners to, to intervene.

15 Now, as to Contention AA4, which was original
 16 Contention 26 rewritten, it is in summary fashion described--

17 CHAIRMAN WOLFE: Which one was that, now?

18 MR. SCOTT: AA4.

19 CHAIRMAN WOLFE: AA4?

20 MR. SCOTT: Yes, amended additional number 4.

21 (The Board conferring.)

22 MR. SCOTT: Is anyone having difficulty in
 23 finding it?

24 CHAIRMAN WOLFE: Go right ahead.

25 MR. SCOTT: Okay. I think the first sentence,

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1 in summary fashion, describes the contention:

2 "Applicant is not financially qualified to
3 construct Allens Creek."

4 Financially qualified is as described within the
5 rules and regulations. In particular, Section 50.33(f) of
6 10 CFR, describes -- and, once again, I'm not reading
7 exactly -- I can -- somebody wants me to -- it states that
8 the Applicant has to show that it has the money to comply
9 with all the Nuclear Regulatory Commission regulations.

10 Further, that they have the money to cover the
11 estimated construction costs and fuel cycle costs.

12 So that's . . . and also this would be considered
13 to some extent in the just general overriding purpose of
14 the Atomic Energy Act and NEPA as to whether or not they
15 will be able to protect the public health and safety and
16 the environment.

17 Essentially, it's been objected that the Staff
18 has done an update that I suppose obviously we had not
19 read. It turns out I got the contention from that update,
20 if I remember correctly.

21 In any case, I had read the prior information,
22 Section 20 of the Safety Evaluation Report, and, in summary
23 fashion, I believe the information contained therein is
24 grossly inaccurate.

25 As some examples, if you'll look at -- in order

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1 to spread things, I won't read things from it, I'll just give
 2 you the citations, and if somebody wants them read directly,
 3 I'll do that.

4 Page 20-6, Table 20.1, does not in any way account--
 5 and this is in the Second Supplement, updated version -- does
 6 not in any way account for the increased cost of the South
 7 Texas plant, both those that have been known about for over
 8 a year now, and those that were announced -- the cost
 9 increases that were announced roughly four months ago and
 10 last month.

11 In the last three months there's been an announced
 12 additional \$300 million cost overrun as compared to what
 13 was announced three months prior -- approximately three
 14 months prior.

15 MR. NEWMAN: Mr. Chairman, as a point of
 16 clarification -- because I am unable to understand the
 17 contention without the citation -- can you identify for me
 18 the figure in Table 20.1 which you contend is inaccurate
 19 because of the increase in cost in the STP project?

20 MR. SCOTT: Well, it would be most of them, but...

21 (Pause.)

22 Well, for example, look at 20.5, and you can see
 23 what the headings are, showing which years are under which
 24 lines, and on 20.6 there are construction expenditures for
 25 1979 which shows that construction expenditures for nuclear

1 power plant to be 238 millions of dollars. And the subject
 2 means Allens Creek Nuclear Power Plant would have expended
 3 \$161 million.

4 It's very hard for me to believe that a power
 5 plant that don't have a construction license is expending
 6 approximately two-thirds of the total amount being spent
 7 on nuclear power plant construction for HL&P, when we know
 8 that they're constructing two units of comparable size at
 9 the South Texas location.

10 MR. NEWMAN: I'm not sure I understand, Mr. Scott,
 11 how that relates to the South Texas project.

12 Could you show me the number that's affected and
 13 some basis for indicating that the number is wrong, based
 14 upon the construction expenditure pattern at STP?

15 MR. SCOTT: Were you asking me a question then?

16 MR. NEWMAN: I'm sorry. If you didn't hear, I'll
 17 repeat it.

18 I asked for you to -- you referred me to page
 19 20-6 and Table 20.1, and you asked me to look under the
 20 column that reflects 1979 expenditures. And then you
 21 described certain numbers as being wrong because of
 22 expenditures necessary in the South Texas project.

23 And I was wondering if, for the benefit of our
 24 understanding of your contention, if you could identify the
 25 number which you allege is wrong, and some basis for why

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you believe it's wrong.

MR. SCOTT: I thought I'd just done that.

In fact, I thought I'd mentioned the numbers.

I am not at this point contesting that there's \$238 million being spent on nuclear power plants for construction, but I am contesting that Allens Creek had \$161 million spent on it in 1979; namely, that's where I got the approximately two-thirds, 161 over the total of 238, and 161 millions of dollars percent.

And those same -- that same sort of logic follows for later years, going up to years 1985.

Now, this chart does not account for the recently announced -- not even recently -- it's the last year or two -- cost overruns and expected times of completion of the South Texas Project.

MR. NEWMAN: What I am asking you to do, if you're able to, is to identify the number that you believe is in error and some basis for it.

I'm not asking you to prove a case. Just--

MR. SCOTT: Well, the Public Utility Commission's testimony -- this was last month, in Austin, H&EP announced that they -- that their construction work in progress for South Texas was over \$300 million.

MR. NEWMAN: That, as I understand it, is the total construction expenditure to date.

1 Can you identify for me -- I hate to keep coming
2 back to it, but we really have to find out what is the
3 basis of the contention, not to prove it -- which number
4 do you allege is wrong in the chart? And if so, just state
5 a basis for it.

6 MR. SCOTT: I am saying, in summary fashion, that
7 most of those numbers on this chart are wrong. At least
8 under the heading of construction expenditures. And I've
9 already given you the basis for those. I don't see any
10 point in reading all the numbers on that page. I'm basically
11 saying they're all wrong.

12 MR. NEWMAN: I guess we'll just have to leave
13 the record as it stands, Mr. Chairman.

14 I am unable, and I don't believe the Board is
15 able, to determine from what's been said the nature of Mr.
16 Scott's assertion with respect to financial qualifications.

17 He's pointed us to a chart. He's suggested we
18 look at it. But he hasn't identified for me, at least,
19 in what manner that chart is incorrect.

20 I'm not saying there may not be a basis for it.
21 I'm simply saying that he hasn't expressed it.

22 MR. SCOTT: Is there any confusion on any of the
23 Board Members' mind?

24 I want to keep pursuing it until you're convinced.

25 CHAIRMAN WOLFE: Well, you're in charge of your

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1 own argument, Mr. Scott.

2 MR. SCOTT: I also don't want to pursue it if
3 you already understand it.

4 CHAIRMAN WOLFE: That's your judgment. If you
5 think Mr. Newman doesn't understand your argument or what
6 you said -- you're arguing to the Board, but you have to
7 satisfy the questions put to you by counsel, too.

8 I'm not about to tell you that you're over a
9 certain hurdle. You have to make that determination yourself.
10 We will determine, ultimately, whether you've hurdled it.

11 MR. SCOTT: Let me make two points on that.

12 First of all, I was informed during all these
13 words that were flying around that the \$300 million figure
14 that I mentioned for South Texas that was mentioned at the
15 recent Public Utilities Commission hearings in Austin, Texas,
16 that I mentioned the term \$300 million, and supposedly the
17 Applicant says that was the total expenditures to date, when
18 in fact it was not. It was the expenditures this last year.

19 MR. NEWMAN: I'm sorry. What I said, I believe,
20 is that that was total construction work in progress.

21 MR. SCOTT: Okay.

22

23

24

25

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1 MR. SCOTT: To rebut that, it's just come to my
2 attention that that figure is really over some \$500 million,
3 not \$300 million for total construction work in progress.

4 Also I'm willing -- you gentlemen can read
5 page 20.6 and what I'm saying will be obvious to you. I don't
6 think I have to pursue that any further.

7 MR. SOHINKI: It's still not obvious to the Staff
8 what the basis for his contention that the numbers were wrong.

9 MR. SCOTT: Okay. For example -- this ought to
10 make it clear -- it has been announced that South Texas,
11 I mean that the Allens Creek facility will not be completed
12 until 1987. Okay? And yet we show that as of 1985, only
13 \$28 million will be spent and none is shown for 1986 or 1987.
14 Now I somehow have to believe that if the plant is not completed
15 somebody's working on it and money's being spent.

16 MR. SOHINKI: I understood what you said. I
17 don't understand how it impacts on the Applicant's financial
18 qualifications to construct the facility.

19 MR. SCOTT: This is just evidence, some evidence
20 to prove the total point. It just shows that the numbers used
21 indicate lower expenditures than, in fact, would have to be
22 spent.

23 MR. SOHINKI: I still don't understand how that
24 impacts on financial qualifications.

25 MR. NEWMAN: Let us assume that the cost is

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1 30 percent higher or 60 percent higher. How does that relate
2 to your ultimate conclusion that the Applicant's financially
3 unqualified, what's the nexus between those two statements?

4 Because financial qualifications is obviously a
5 combined consideration of a number of matters, the money market
6 and things of that nature, and I just don't understand how one
7 can pick out one number, even if he's correct, or double that
8 number and relate that to an ultimate conclusion that the
9 Applicant is not financially qualified.

10 MR. SCOTT: First of all, Applicant said that
11 as I explained earlier before I started -- and I will try
12 to expedite things instead of proving my case today, I was
13 going to mention some evidence, enough to get interested people
14 to inquire further. I think I've done that, but I am also
15 planning on presenting a lot more. And, you know, I can pursue
16 this at length. It's obviously --

17 CHAIRMAN WOLFE: If you pursued it at length,
18 ultimately would you answer what is troubling Staff and
19 Applicant, namely that these figures, even if assumed to be
20 erroneous, do not give any indication at all that the Applicant
21 would not be able to afford to construct Allens Creek.

22 Now, do you have to go through everything that
23 you intend to say or are you going to reach that right now
24 and give us the basis?

25 MR. SCOTT: I can give the shorthand basis right

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1 now.

2 CHAIRMAN WOLFE: All right. Good.

3 MR. SCOTT: Basically other things that I was
4 going to mention, you know, go to prove that point or to
5 indicate further evidence of that point -- I'm not proving
6 my point today -- namely, on page 20.7, the next page, there
7 are assumptions which the Staff used to come to their conclu-
8 sion that the Applicant was financially qualified, in there
9 they assumed long-term interest rates, on line three,
10 8.76 percent, short-term debt interest rate of 6.25 percent.
11 If I remember right, the prime interest rate now is about
12 15 percent.

13 MR. NEWMAN: Isn't that for new borrowing? This
14 relates to the Applicant's debt equity structure with respect
15 to sunk capital. He hasn't embedded that.

16 CHAIRMAN WOLFE: For example, Mr. Scott, everyone's
17 affected by inflation, right? Everyone is affected by higher
18 interest rates. What can you tell us to indicate that
19 Applicant will be even more significantly disadvantaged by
20 the effects of inflation and the higher interest rates which
21 would ultimately result, as I understand what you're trying
22 to say, that it will be unable to construct -- or if it's
23 able to construct the plant, that it will not be as, I take it,
24 as careful in constructing it well.

25 Now what's the bottom line to this, why won't

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1 they be able to meet their obligation?

2 MR. SCOTT: Well as I said before, since I'm
3 not proving the case today, all I can do is keep giving you
4 more evidence to that point.

5 But recently it was announced other utilities
6 who are strong financially--as I would admit this Applicant
7 is, compared to most utilities, a fairly strong utility--other
8 strong utilities have announced that they are considering going
9 to coal-fired plants to replace previously announced nuclear
10 plants.

11 This Applicant has made testimony in front of
12 the Texas Public Utility Commission in the last couple of
13 weeks indicating that if they don't get the rate increase
14 that they're asking for they just won't be able to proceed with
15 the construction of these plants, nuclear and non-nuclear,
16 that they say they've got to build. That's an admission
17 against interest which would win my case right there.

18 Maybe I should add the further step that the
19 Public Utility Commission staff has indicated that they think
20 the Applicant should not receive even half of what they've
21 asked for in the way of a rate increase. In fact, I believe
22 it was about a third that they should get.

23 Instead of counting 100 percent of the
24 construction work in process, the Staff is recommending --
25 the PUC Board has not yet ruled for next year and the year

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1 after -- You see, I can't prove my case because it hasn't
2 happened yet.

3 All I'm saying is the analysis that has been
4 by the Staff to prove their case is wrong, so it's a subject
5 of further consideration. That, in summary fashion, is my
6 basis for this contention.

7 MR. NEWMAN: Mr. Scott, again I have to inquire,
8 you have referred now to testimony of the Applicant and positions
9 of the Staff and the PUC. Do you have -- can you identify for
10 the Board even when that testimony was given, who gave it --
11 can you furnish a reference, sir, that the Applicant may at
12 least have an opportunity to review the material and likewise
13 the Board, should that be necessary? Who was the witness?

14 MR. SCOTT: Mr. Chairman, I can answer that in a
15 somewhat convoluted way by asking my expert here -- I'd
16 appreciate your using the rules, if you can, to just let him
17 answer directly in order to save time.

18 MR. JOHNSON: I'm Clarence Johnson.

19 Since I did attend the Utility Commission
20 hearings not this last week but the week before that, since
21 TexPIRG is a party in those hearings also, I would state that
22 the testimony of Mr. Ledbetter and Mr. Meyer of HL&P would
23 tend to be substantiation for the statement he made about
24 Houston Lighting and Power's --

25 MR. COPELAND: No, sir. Mr. Johnson, Mr. Scott

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1 said very specifically that Mr. Ledbetter or somebody said
2 that if we did not get the requested rate relief in all forms
3 requested that we could not afford to carry forward and build
4 Allens Creek. Now did Mr. Ledbetter say that specifically,
5 sir?

6 MR. JOHNSON: Well I'd say --

7 MR. COPELAND: The answer is no, isn't it,
8 MR. Johnson.

9 MR. JOHNSON: I would prefer to be able to
10 explain, if I can, that is, Mr. Ledbetter, as in in all utility
11 rate hearings, has to talk in terms of what can be done in order
12 to preserve the financial integrity of the company. And that,
13 of course, is the issue that is before the Utility Commission.

14 They were stating that this construction program
15 for HL&P -- which is exceptionally large for a utility
16 company -- that construction work in progress was needed at
17 the level they had deemed in order to maintain their financial
18 integrity. And they deemed that amount to be 100 percent.

19 I believe, subject to check later, I believe that
20 Mr. Koon, for the Public
21 Utility Commission Staff was the witness with regard to the
22 amount of construction work in progress that needed to be
23 included.

24 MR. NEWMAN: Mr. Johnson, was that the position
25 of the Texas Public Utilities Commission?

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1 MR. JOHNSON: No, he stated that was not the
2 case, that's the position of the Public Utility Commission
3 Staff.

4 MR. NEWMAN: So we're not saying any judgment
5 of the Texas PUC.

6 MR. JOHNSON: Since they have not ruled yet,
7 that would be impossible.

8 MR. NEWMAN: Right.

9 CHAIRMAN WOLFE: No other questions?

10 Mr. Linenberger?

11 MR. LINENBERGER: Well I just wanted to
12 understand the identification here. You identified this as
13 additional amended Contention Number 4. You indicated that,
14 I believe, that it was similar to, or else equivalent to or
15 related to original Contention 26, is that correct?

16 MR. SCOTT: Additional Contention 26, meaning
17 Number 26 on our last 50 that we filed at one time in response
18 to the --

19 MR. LINENBERGER: Okay, additional Contention 26,
20 right.

21 Now then comes the question does this replace
22 additional Contention 26?

23 MR. SCOTT: Yes.

24 MR. LINENBERGER: So we're withdrawing additional
25 Contention 26.

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1 MR. SCOTT: Yes.

2 MR. LINENBERGER: Thank you.

3 MR. SOHINKI: Mr. Chairman, I have a report on
4 Mrs. Warner. And if I indicate anything inaccurately, I'm
5 sure Mr. Baker --

6 CHAIRMAN WOLFE: Well why don't we let Mr. Baker
7 give the report?

8 MR. BAKER: Dr. Warner says she'll try to be
9 here this afternoon. She has classes to teach all morning
10 tomorrow and will not be able to make it tomorrow. If she
11 makes it by 5:00, it'll be very close to 5:00. I told her
12 you might go on beyond 5:00 if she can be here after 5:00
13 and she said she'd notify you, Mr. Wolfe, or Mr. Sohinki
14 through the Holiday Inn desk as soon as possible.

15 CHAIRMAN WOLFE: Well we plan to adjourn at
16 5:00. Did you so tell her?

17 MR. BAKER: I told her that's what you wanted to
18 do is have her appear by 5:00. She said she'll try and make
19 it by 5:00.

20 CHAIRMAN WOLFE: All right. Thank you.

21 MR. BAKER: I should also point out she said
22 she's having difficulty, she has a busy week this week and it's
23 hard for her to make it.

24 MR. LINENBERGER: As we go through, Mr. Scott,
25 wherever you come to a contention that replaces one prior

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1 worded version, if you can let us know whether the prior one
2 is withdrawn this will help us with the structuring of our
3 order on these contentions.

4 MR. SCOTT: I think that'll be the case in every
5 case where --

6 MR. LINENBERGER: Well, but please make a point
7 in identifying what it replaces. Thank you.

8 MR. COPELAND: Sir, I think I have a list of
9 those that we went over when Mr. Scott and I were working on
10 the stipulations.

11 MR. LINENBERGER: We know which ones you stipulated
12 to.

13 MR. COPELAND: No, sir, what I'm saying is I
14 double-checked with Mr. Scott for that very purpose in going
15 through and talking about the stipulations and I have a list
16 of the so-called additional contentions that he dropped as a
17 result of his amended amended contentions, or his amended
18 additional contentions.

19 MR. LINENBERGER: I think you read that into the
20 record as I --

21 MR. COPELAND: No, I'm talking about the additional
22 contentions that were dropped by Mr. Scott as a result of his
23 additional amended --

24 MR. LINENBERGER: That came into the record
25 earlier this week, I have them listed in my notes. I have a

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1 list of contentions that were dropped.

2 MR. COPELAND: No, there are two things, sir.

3 One is -- what I read was the ones that Mr. Scott has agreed
4 to drop as a result of the stipulations which we've reached.

5 MR. LINENBERGER: Oh, thank you. I see. That's
6 the list I have here.

7 MR. COPELAND: That's the list you have. What
8 I was saying was that I have a list of those contentions that
9 were dropped as a result of his later amendment.

10 CHAIRMAN WOLFE: Would you care to read those
11 into the record?

12 MR. COPELAND: All right, sir. That's additional
13 Contention 2, additional Contention 3, additional Contention --

14 MR. SCOTT: Excuse me, I just want to make
15 sure so I can check this, what are you reading in now?

16 MR. COPELAND: Additional Contention 2 --

17 MR. SCOTT: No, what's the list mean?

18 MR. COPELAND: These are the ones, Jim, that
19 fall out as a result of your additional amended Contentions
20 1 through 6. These are your so-called additional contentions
21 that were subsumed by the later amendments.

22 MR. SCOTT: Okay.

23 MR. COPELAND: I have additional Contention 2,
24 3, 6, 8, 16, 25, 26 and 42.

25 CHAIRMAN WOLFE: How would you categorize these,

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1 Mr. Scott, in your words? Do you agree that these should be
2 withdrawn -- or you have agreed that these should be withdrawn
3 in light of stipulations arrived at with Applicant, is that
4 correct?

5 MR. SCOTT: In fact, I could go further. I've
6 tried to be careful--and I've written down several columns of
7 Contentions here, one meaning staff has accepted, another that
8 Applicant has accepted, others TexPIRG has agreed to drop
9 in agreement with Applicant, combined contentions and our last
10 list meaning contentions that are now left.

11 (Laughter.)

12 CHAIRMAN WOLFE: Well --

13 MR. COPELAND: I think that the numbers I
14 read off are clearly stated on the face of pleading, I don't
15 think you'll have any trouble figuring that out.

16 CHAIRMAN WOLFE: All right. Fine. Go ahead,
17 Mr. Scott.

18 MR. SCOTT: Okay. Since, as you earlier stated,
19 you're not going to tell me when you're satisfied, I will
20 continue on with a little more indications that this Applicant
21 is not financially qualified to build this facility.

22 Very recently, October 13th, General Public
23 Utilities has announced there's a real and distinct possibility
24 they're going to go bankrupt because of this Three Mile
25 Island accident.

wel/ab12

1 There's no need for -- This Applicant could have
2 an accident, too, and that possibility is not figured into
3 the calculations to show that they will be, in fact,
4 financially --

5 MR. NEWMAN: You're suggesting that a proper
6 financial analysis would include provision for the complete
7 destruction of the Allens Creek reactor?

8 MR. SCOTT: I didn't say that.

9 MR. NEWMAN: Then in what way is the Applicant
10 not qualified financially? What's the relevance of the GPU
11 situation to Allens Creek as we know it today?

12 MR. SCOTT: When this study was done, meaning
13 Supplement 2 to the Safety Evaluation Report, Three Mile Island
14 had not yet happened.

15 I maintain, at least this is what the newspapers
16 tell me, we have a new world now, things have changed, we have
17 to admit that big accidents can happen. Utilities are --
18 banks, in fact, are weighing that in their consideration of
19 whether or not to loan money and at what rates to utilities --
20 I kind of hate going into all this stuff because I assume
21 -- I'd like you to just take judicial notice of all that,
22 I assume you already know all that.

23 To make it maybe a little more concrete, I will
24 read what the Applicant's witness at the Public Utility
25 Commission hearing recently has said, this is witness Mr. Sherwin:

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"From the point of view of cost of capital, there are several aspects to the consequences of Three Mile Island. Number one, it has raised the cost of equity capital of companies that are engaged in nuclear generation of power and it is unlikely that investors' concerns can be allayed in the foreseeable future.

"Number two, it will probably raise the cost of debt for those companies that are now engaged in nuclear generation or are constructing nuclear plants. It is not yet possible to quantify that impact.

"Number three, it has created an increased awareness that an accident causing the outage of a plant may necessitate the purchase of power from neighboring utilities at an increased level of cost that may not be automatically passed on to customers.

"Even if the adverse effects of the recent nuclear accident on the cost of capital may be ultimately overcome through appropriate regulatory and governmental action, the increased awareness of the impact of physical risk on financial viability resulting solely from the concentration of capital is likely to have long-lasting upward

wel/agbl4

pressure on the cost of capital."

In that regard --

MR. NEWMAN: Mr. Scott, did Mr. Sherwin, the witness, conclude that therefore the company would be financially unqualified to construct the Allens Creek plant?

MR. SCOTT: I'm not sure what he determined.

MR. NEWMAN: Did he say that? You have the testimony in front of you.

MR. SCOTT: I'm not reading that testimony.

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MR. NEWMAN: What are you reading, then?

MR. SCOTT: I'm reading part of that testimony.

MR. NEWMAN: Have you read the entire thing?

MR. SCOTT: I have.

MR. NEWMAN: You have?

MR. SCOTT: Yes.

MR. NEWMAN: And did Mr. Sherwin conclude anything with respect to the ability of Houston Lighting and Power to finance the Allens Creek station?

MR. SCOTT: No.

MR. NEWMAN: Did he say we couldn't?

MR. SCOTT: Mr. Johnson tells me he can answer that for you.

MR. JOHNSON: When I cross-examined him on the point of whether or not fears of the Three Mile Island accident were rational or irrational he said fears of the accident were rational in the minds of investors, however it was not irrational continue building nuclear power plants. I think his conclusion is that these factors have been raised as reasons why additional rate relief was needed.

MR. NEWMAN: I have no other questions on that score, Mr. Chairman.

MR. SCHINKY: Did I understand Mr. Scott to say he was going to continue talking under the Board was convinced he was right?

WRB/wb2

1 MR. SCOTT: No, until I was convinced the Board
2 was convinced.

3 CHAIRMAN WOLFE: You're not going to get any
4 indication from us whether we're convinced on this point
5 or not. What I'm saying is you have to make up your mind to
6 that, Mr. Scott.

7 MR. SCOTT: Since I want to zealously defend
8 my client I want to give you all the evidence I've got.

9 CHAIRMAN WOLFE: I'm not asking for all the evi-
10 dence you've got. All I'm asking from you is--

11 MR. SCOTT: --all the bases I have.

12 CHAIRMAN WOLFE: Yes.

13 MR. SCOTT: I might note that since this analysis
14 was performed by the staff, and since the information
15 that was sent to the staff for this analysis was done, there
16 have been numerous, in fact almost daily new stories concerning
17 construction problems at the South Texas facility. I'm not
18 raising that to talk about at this point, to talk about the
19 competence of the people to do engineering, but to point to
20 the fact that all those problems are leading to increased
21 costs, which is going to impact adversely upon the capability
22 of this applicant to build Allens Creek properly, as I've
23 earlier described it.

24 MR. SOHINKI: Mr. Scott, you are planning on
25 getting at some time in the course of your discussion to the

WRB/wb3

1 crox of the staff's objection to the contention, aren't you?

2 MR. SCOTT: I think I've already done that.

3 MR. SOHINKI: You understand that the staff
4 recognizes in the Safety Evaluation that conditions change?

5 MR. SCOTT: Yes, we recognize that.

6 MR. SOHINKI: And that financing plans will
7 change from time to time in order to meet changing conditions?

8 MR. SCOTT: Sure.

9 MR. SOHINKI: So what I'm waiting for is to hear
10 the basis for your conclusion that the applicant's financing
11 plan is not capable of changing to meet changing conditions.

12 MR. SCOTT: The fact that the staff makes
13 grandmother statements, apple pie statements, that conditions
14 will change, that does nothing to affect your analysis, the
15 NRC staff's analysis nor the objections, the things that I
16 have raised.

17 Proving this point will be reserved to further
18 proceedings. We have shown the, I believe we have shown a
19 basis for indicating that perhaps, maybe this applicant will
20 not be financially qualified to build this facility. Much
21 of its prior experience indicates that.

22 MR. SOHINKI: Mr. Chairman, the only thing I
23 would say in response to that is, the Staff's evaluation
24 incorporates Commission precedent which clearly recognizes
25 that financing a nuclear facility is a matter that goes on

WRB/wb4

1 over the course of a number of years, and that conditions
 2 change and financing plans change in order to cope with
 3 conditions over that period of years.

4 I haven't heard a single sentence from Mr. Scott
 5 which would cast any doubt on the ability of the applicant's
 6 financing plan to cope with changing economic conditions.

7 MR. NEWMAN: I would add to that, Mr. Chairman,
 8 that in terms of the financing--

9 CHAIRMAN WOLFE: I would seem, Mr. Newman, that
 10 by this time if you think Mr. Scott hasn't made his point
 11 it would be in your best interests not to pursue it. You
 12 keep pursuing it and he gives you more bases.

13 We're listening. Go ahead. Continue your
 14 questioning. I'm not going to call a halt to it.

15 MR. NEWMAN: I withdraw the question,
 16 Mr. Chairman.

17 MR. SCOTT: Further I will state that this analysis
 18 that we've been talking about on page 20-5, Table 20-1, the
 19 Second Supplement to the Safety Evaluation Report, assumes,
 20 indicates far into the future, namely, 1985, that applicant
 21 will generate only about a fifth, in fact 133 million dollars
 22 from external sources, namely, preferred stock, long term
 23 debt, notes payable, contributions from parent net, and other
 24 funds, and that they would have internally generated funds of
 25 some 575 million dollars for 1985.

WRB/wb6

1 Their experience in 1977-78 indicates that only
2 36 percent of their funds were internally generated, as opposed
3 to staff's assumption, not only for 1985 but for other years,
4 as you can see on that chart yourself, instead of being only
5 like a third, instead of it being like three-fourths or four-
6 fifths internally generated, would only be, in 77-78, 36 percent
7 internally generated, which means they've got to go out to the
8 cold cruel financial world and borrow money. And I don't have
9 to explain to you what the interests rates are and where they
10 are projected on going.

11 The bottom line is, the analysis to come to the
12 staff's conclusion is erroneous.

13 CHAIRMAN WOLFE: All right. You may proceed to
14 your next contention.

15 MR. SCOTT: I will go on to Contention, I call it
16 AA5, Amended Additional Contention No. 5. That was Amended
17 Contention No. 3. Additional Contention No. 3, the one I call
18 No. 3, the one everybody else wants to call Additional Con-
19 tention No. 3 has been dropped. It is now Amended Additional
20 Contention No. 5.

21 I think, once again, a short summary of this
22 contention is succinctly described in the first sentence of the
23 contention.

24 "The Partial Initial Decision did not
25 examine the water temperature of the Allen Creek

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1 cooling lake and the effects upon game fish in
2 depth or with accuracy."

3 I think bound up in that statement is the fact
4 that we are contesting the adequacy of not only the Partial
5 Initial Decision determination, but also the present analysis
6 of water temperature and, in particular, its vertical distri-
7 bution of temperature within the cooling lake because that
8 analysis has not changed since the Partial Initial Decision --
9 there has still not been any study or consideration of the
10 vertical temperature distribution effects.

11 Essentially Staff's arguments seem to go to the
12 fact that -- they dispute the facts on that issue. And once
13 I give some basis for that, that point can be discussed later.

14 Applicant basically says Hey that was basically
15 considered in the Partial Initial Decision. And as I've already
16 stated, once I've given you a basis for that we can get into
17 the facts later during discovery and motions for summary
18 judgment and finally on the hearing on the merits.

19 I'll also try to show you why I feel that the
20 Partial Initial Decision did not consider that sufficiently.
21 And I could do that right now: they didn't consider it at all
22 so you can't have considered it sufficiently.

23 By that I don't mean to say you didn't consider
24 at all temperature effects in the lake, you did. I feel
25 insufficiently, but you did some. There was just no

wrb/ab2

1 consideration of the vertical distribution of temperature
2 effects.

3 And they were -- On top of all that we've got the
4 fact that instead of having two units and a certain sized lake
5 we now have one unit and a different sized lake. So it can
6 be argued there is a change in plant design and whatever,
7 you could turn the argument right around on me and say why
8 didn't you raise it last October? You know, there has got to
9 be an end to those kind of arguments sometime. Let's look
10 at the facts and try to decide what's best for the health
11 and safety and the environment.

12 I'll now provide you with some bases.

13 Not only did they not consider it, but it has
14 a considerable effect upon the fish and other life that would
15 be in the lake.

16 You should know that as the temperature of the
17 water increases, the amount of dissolved oxygen in it is
18 going to decrease. And, you know, fish breath oxygen just
19 like everybody else and they die if they don't get enough
20 of it. And that happens fairly frequently, both naturally and
21 in artificial lakes.

22 I might add I've got some personal background
23 in this sort of thing: my father is a, he thinks, nationally-
24 known bass fisherman. I would say known throughout Arkansas.
25 And my mother ties fishing tackle. And I was essentially raised

wrb/agb3

1 in a boat fishing, so I feel that I can qualify as an expert
2 on where fish like to live and how they grow and prosper and
3 when they'll bite and that sort of thing.

4 MR. SOHINKI: Could the chair direct Mr. Scott
5 to go to the Staff's and Applicant's objections to this
6 contention? I appreciate the information about his family
7 tree, it's very interesting and I'll be glad to talk to him
8 about it during a recess.

9 CHAIRMAN WOLFE: How about it, Mr. Scott?

10 MR. SCOTT: Fine.

11 I thought I was leading into that when I dis-
12 cussed or mentioned the fact that hot water doesn't hold as
13 much dissolved oxygen. It turns out that fish need at least
14 five milligrams per liter dissolved oxygen to thrive and
15 prosper, and they need --

16 CHAIRMAN WOLFE: You are now addressing an
17 objection by the Staff or Applicant?

18 MR. SCOTT: In the general sense. They have
19 claimed that this was all sufficiently considered previously.
20 And I am giving you facts to show that any conclusion that
21 vertical distribution of temperature effects was sufficiently
22 considered is not true.

23 CHAIRMAN WOLFE: What you're stating now are facts
24 that were either not presented to the Board or considered by
25 the Board which resulted in their findings, is that correct?

wrb/agb4

1 MR. SCOTT: I can say that that's true also
2 because I happen to have read the complete transcript of --
3 not only have I read the complete Partial Initial Decision,
4 I've read the complete transcript of your two-day hearing in
5 Wallis in 1975 and all the testimony that was submitted. And
6 that is not there.

7 MR. SOHINKI: Mr. Chairman, I think we could
8 cut through this if we just find out whether Mr. Scott has a
9 basis to believe there will be thermal stratification in the
10 cooling lake.

11 MR. SCOTT: Fine.

12 The short simple answer is all the other -- I say
13 all, all that I have looked at -- other local lakes exhibit
14 that phenomenon, that is, stratification of oxygen and tem-
15 perature in the vertical direction in the water in the lake.

16 MR. NEWMAN: May I ask, Mr. Chairman, if there is
17 a citation of authority to that or whether these were investi-
18 gations actually performed by Mr. Scott and reported somewhere?
19 Are there documented observations supporting your statement,
20 Mr. Scott?

21 MR. SCOTT: I'm getting to those. I'm trying to
22 let people know where I'm going by telling you.

23 MR. NEWMAN: Proceed on.

24 MR. SCOTT: In particular, in the performance
25 report as required by the Federal Fisheries and Fishery

wrb/agb5

1 Restoration Act published April 1, 1976, for those who are
2 interested in new and old information, on page 26 of that
3 report it discusses the water quality data in Lake Livingston
4 and it has two charts, one depth and the second chart dissolved
5 oxygen.

6 And in that it starts off dissolved oxygen at
7 the surface is 5.7 milligrams per liter. And at one meter it's
8 5.2 milligrams per liter. And it immediately drops at the two
9 meter mark to 4.3 milligrams per liter. And it goes on and
10 drops down to 4 milligrams per liter. And there's a drastic
11 dropoff between the one and two meter mark.

12 And the fishery experts, the EPA, everybody says
13 that you've got to have at least 5 milligrams per liter of
14 oxygen or your fish are in grave problems. They certainly
15 won't reproduce and many of them will die at those levels.

16 And in particular, the EPA water quality criteria
17 for water published July 1976 lists criteria for all sorts
18 of things affecting water: lead, hardness, dissolved oxygen
19 and whatnot, and describes minimum concentration of dissolved
20 oxygen to maintain good fish populations is 5 milligrams per
21 liter.

22 MR. SOHINKI: Can I ask you, Mr. Scott, whether
23 what you have just said about dissolved oxygen at one meter
24 has anything to do with thermal stratification?

25 MR. SCOTT: Yes.

wrb/agb6

1 MR. SOHINKI: What does it have to do with thermal
2 stratification?

3 MR. SCOTT: As I indicated --

4 MR. SOHINKI: Your contention does deal with
5 temperature distribution, thermal stratification.

6 MR. SCOTT: And the effects that that has upon
7 the wildlife. And one of those effects is the effect of the
8 amount of oxygen. If you don't have the oxygen, the fish die
9 even if the water is not too hot to kill them.

10 DR. NEWMAN: Is the study you're quoting from
11 and looking at, Mr. Scott, a study in a lake which has a
12 vertical thermal stratification? Do you know?

13 MR. SCOTT: This lake, which is Lake Livingston --

14 MR. NEWMAN: Is it a heat loaded lake?

15 MR. SCOTT: I'm not sure.

16 MR. NEWMAN: Is there a power plant on it?

17 MR. SCOTT: I don't know that either. It does
18 not have -- it is not very heavily affected with power plants,
19 I know that, it's a fairly large lake.

20 MR. NEWMAN: Well if it's a lake which doesn't
21 have a heat loaded discharge into it, what's the relevance of
22 that data to the Allens Creek plant?

23 MR. SCOTT: The relevance is that all of the lakes
24 that I've looked at in South Texas have this phenomenon of
25 thermal stratification at certain times of the year.

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MR. NEWMAN: I want you to tell us what lakes have the thermal stratification. You've not mentioned any yet. The one you're look at, you just told me you didn't know whether it had thermal stratification or not.

MR. SCOTT: This data that I'm reading will show that.

MR. NEWMAN: That's dissolved oxygen. Mr. Schinkl has already told you that you're quoting from material that deals with stratification with respect to oxygen supply and not with respect to thermal loadings.

MR. SCOTT: Uh-huh. The temperature of the water will be warmer at the top and cooler as you drop down in the lake. That's a physical phenomenon, with the exception of when you get freezing it turns to ice.

MR. NEWMAN: You understand that both the Applicant and the Staff have explicitly stated that thermal stratification will not be a phenomenon in the Allens Creek lake?

MR. SCOTT: That's a wrong statement.

MR. NEWMAN: Now all we have to know is why you believe that's wrong. Some documentation, some rational basis.

MR. SCOTT: All the lakes in the same area that this one is going to be located that I've looked at exhibit that phenomenon. That is a sufficient basis to raise the

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question as to whether or not this one is.

I've read clearly all the evidence you all presented and you made the -- how do you normally describe it -- the bald statement that it didn't exist.

MR. SOHINKI: Mr. Scott, do you know of one lake that is as shallow as the Allens Creek cooling lake that exhibits thermal stratification?

MR. SCOTT: Well you have to understand that nearly all lakes go from zero depth to a certain maximum depth. It's not relevant to talk about the depth at a particular point. The important point is to know the depth at the point the measurements were made at.

MR. LINENBERGER: It would be helpful to the Board, Mr. Scott, if you could answer Staff Counsel's question.

MR. SCOTT: Well I think that answer is at this point we have shown thermal stratification, dissolved oxygen problems at a depth of only less than two meters. That's roughly six foot.

MR. LINENBERGER: The lake at its deepest part was only two meters deep?

MR. SCOTT: No, no, I'm not saying that. I don't know how deep the lake was at its deepest point.

MR. LINENBERGER: All right. Well it would help the Board if you could answer Staff Counsel's question.

MR. SCOTT: I think the answer would be yes, that

wrb/agb9

1 these lakes at the point these measurements were made exhibited
2 that phenomenon at a more shallow depth.

3 MR. SOHINKI: You see the problem with that,
4 Mr. Scott, is that the three examples you cited in your
5 contention: the Blue Hills Reservoir is 67 feet deep, Lake
6 Livingston is 71 feet deep, Lake Conroe is 59 feet deep,
7 the Allens Creek cooling lake at its maximum is 18 feet deep.

8 Now I'd like to know whether you know of any lake
9 that is similar to the Allens Creek lake in depth that
10 exhibits thermal stratification. If not, I see no basis for
11 your contention.

12 MR. SCOTT: That argument can't be used to keep
13 out a contention. I don't have to prove my case today, that's
14 the whole point. I can't go around measuring all the lakes
15 and, in fact, an Intervenor can't be required to come up with
16 that kind of data at this point.

17 MR. SOHINKI: You are using as a basis --

18 MR. SCOTT: Maybe this will answer your question.

19 MR. SOHINKI: I doubt it, but go ahead.

20 MR. SCOTT: I think it will.

21 I don't have the title of this document with me,
22 but it's a book out of the Houston -- the University of
23 Houston library talking about the interaction of temperature
24 and aquatic life, the thermal characteristics of lakes, the
25 carrying capacities, whatever that magic biological word is

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1 to describe fisheries, it's one of those books.

2 On page 78 it describes what -- I'm fully aware
3 what you're trying to get to, namely, wind-induced mixing
4 stratification forms and with the less dense water remaining
5 on the surface, since the wind-induced mixing forces are
6 sufficient to circulate water only in the upper few meters,
7 the lake is characterized by three distinct zones.

8 Surface zone: the surface zone is relatively
9 warm and extends vertically over only a small portion of the
10 total depth of the lake or pond. The second zone is a
11 thermocline, characterized by rapidly dropping temperatures
12 with increasing depth.

13 That's the boundary zone. And then it goes on.

14 The point is the Applicant and the Staff have
15 tried to argue that because this lake is relatively shallow
16 compared to some other lakes, that wind will cause mixing
17 to depths of six meters.

18 I've made a lot more showing than they have
19 that it won't extend that deep. So, you know, I have raised
20 a sufficient point to put this question in controversy to be
21 decided later.

22 CHAIRMAN WOLFE: All right.

23 We'll have a 10 minute recess.

24 (Recess.)

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CHAIRMAN WOLFE: All right, Mr. Scott.

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MR. SCOTT: I'd like to make just one further comment on the lake temperature problems. People can properly object if it is not all that revelent. But basically I have notes here of a meeting between EPA and the applicant and NRC officials concerning this problem.

The statement is made,

"Due to lack of funds the lake will be surveyed only at eight-year intervals."

My understanding of "survey" meaning survey to see how the fish population is doing in its mix of various species of fish, and whatever.

I'd say that that is not a terribly adequate program to see whether or not myself or applicant is correct in our analysis of what's going to happen to the fish.

I think the point is, we had better decide now and get it done correctly instead of having to wait eight years to check to see.

CHAIRMAN WOLFE: All right.

DR. CHEATUM: Mr. Scott, before you go on to your next contention, are you familiar with the studies which have been made by the applicants on the behavior of the projected Allens Creek cooling lake in response to temperature, wind action, and the flow of water through the plant back into the lake, considering its depth, considering

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WRB/wb2

1 temperatures throughout the year, and the conclusions of
2 that study which indicated that there would be a top-to-bottom
3 mixing almost continually through that lake. So far as
4 temperature is concerned there would be no stratification,
5 and so far as oxygen is concerned the dissolved oxygen
6 obviously would be also mixed thoroughly from top to bottom.

7 Now are you familiar with those studies?

8 MR. SCOTT: I have read, I assume it is those
9 studies. I have read essentially the things you've said, yes.
10 I can't remember where I read them.

11 DR. CHEATUM: All right.

12 Now you have not indicated to this Board the
13 inadequacies, wherein those studies were inadequate as a basis
14 for arriving at the conclusion that there would be no signifi-
15 cant stratification in temperature or oxygen forming in that
16 lake.

17 MR. SCOTT: I'm not sure we're talking about the
18 same studies. But the reading I did essentially said those
19 same things. They gave no basis for the claim that you would
20 have the uniform mixing of temperature and dissolved oxygen
21 other than to say it was a long, low, wide, flat lake, and
22 that there would be sufficient mixing due to the wind, the
23 friction of the wind on the surface of the lake. That's kind
24 of a bald statement. They didn't make any references, there
25 was no proof, no computer calculations or anything.

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WRB/wb3

1 MR. NEWMAN: Mr. Chairman, that's a downright
2 misrepresentation of the record. The Environmental Supple-
3 ment, page SH-129 discusses the vertical stratification
4 phenomenon, references the model used to analyze it, and
5 a study as well with respect to transient cooling pond
6 behavior. All of it is in the Environmental Report Supple-
7 ment at that page.

8 I wouldn't want the Board to be misled on the
9 record.

10 MR. SCOTT: I don't have that document in front
11 of me. I don't know that that's what I was reading. I think
12 it must have been.

13 DR. CHEATUM: In other words, you're not prepared
14 at this time to present a challenge to those findings?

15 MR. SCOTT: I already have presented a challenge.

16 MR. NEWMAN: Mr. Chairman, I would also like the
17 record to reflect that this is not anything that I'm pulling
18 out at the last moment. We informed Mr. Scott of these facts
19 together with the references on September 28th. So this is
20 nothing that, you know, that we have sprung on him during the
21 course of this prehearing conference. I believe it's the
22 second time we've argued it.

23 MR. SCOTT: September 28th of what year?

24 MR. NEWMAN: 1979.

25 Have you read our response to your contention, to

POOR ORIGINAL

WRB/wb4

1 your AA5?

2 MR. SCOTT: Yes.

3 MR. NEWMAN: Well you'll find the reference there.

4 MR. SCOTT: As I said, I think I've already
5 rebutted or raised a sufficient basis to put that point in
6 dispute.7 CHAIRMAN WOLFE: All right. Continue with your
8 next contention, then, Mr. Scott.9 MR. SCOTT: That would be Contention, I call it
10 No. 1. I think you may call it Additional Contention 1. It
11 relates to adequacy of the Environmental Impact Statement,
12 in particular, I guess, to the Final Environmental Statement,
13 including its final supplements.14 I think-- I don't want anyone to infer from what
15 I'm going to say that I'm not lending heavy weight to this
16 Contention No. 1. Because, in fact, I believe it is probably
17 the best and most important contention that I've raised in
18 the whole proceeding. But I also think that the contention as
19 written pretty much explains itself, the contention as written
20 pretty much explains itself.21 CHAIRMAN WOLFE: All right. Then do you want to
22 proceed, then, directly to --23 MR. SCOTT: I would like to add a few comments.
24 For example, unless there is some indication I should, I don't
25 want to read into the record all these cases I made reference

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1 to. I'm assuming you will read those. And that sort of thing

2 This contention really, the first part of, the
3 segmented environmental impact statement part, boils down to
4 this phenomenon of making a study assuming there's going to
5 be one unit and studying to some degree those effects. And
6 yet it's admitted -- if someone disputes that, I'll prove
7 it -- that this lake is designed, after it has been shrunk
8 in size, for two units, at least two units, not one.

9 So we have the problem here of, you know, not
10 looking at reality. We're claiming that there is only -- this
11 environmental impact statement only has to consider one unit
12 for some purposes, but for other purposes we're letting it
13 speak for two units, and, in reality, considering the ease
14 in changing the size of that lake, to handle four units instead
15 of two, namely by just making a slight extension on one side
16 and breaking some other barriers that are built in the lake,
17 making it capable of handling four units. And I think the
18 cases that I have listed there indicate when there is
19 expected to be a particular plan of development the total
20 plan has to be considered. You cannot segment it up.

21 Some of these cases relate to such things as
22 the Interstate Highway Program and studying effects only upon
23 certain segments of the highway and things like that.
24 That's just not allowed.

25 I would think that there is some-- In contesting

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2 the point it really comes down to a matter of reasonableness
3 in all these cases. There is some question in my mind
4 whether I can win in the Appeals Court on forcing you to
5 consider the effects of four units. But you've got to con-
6 sider the effects of two, certainly, since you know the lake
7 is designed for two. It's taking -- it's destroying farm-
8 land because it's big enough to handle two units. You know,
9 if you're only talking about one unit, if you're only going
10 to build one unit, then you have to design for one unit.
11 Otherwise the environmental impact statement, the alternative
12 ways of doing things are just not properly considered.

13 I guess just to show that I'm not the only person
14 that has thought of this phenomenon, at the back of the
15 Final Supplement to the Final Environmental Statement are a
16 couple of letters from the U.S. Department of Interior,
17 page S.E-3. They make the statement,

18 "Although only one 1200 Mw unit is
19 proposed for the power plant, the cooling lake
20 described is designed to handle twice the proposed
21 plant capacity. The feasibility of a smaller,
22 modified impoundment should therefore be
discussed."

23 It hasn't been.

24 MR. SOHINKI: That has nothing to do with your
25 contention, Mr. Scott. Your contention is that it's a legal

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WRB/wb7

1 requirement to discuss two units in the Environmental Impact
2 Statement. That letter has nothing to do with that point.

3 MR. SCOTT: I believe it does.

4 On page S.E-5, in the second letter, the U.S.
5 Department of Interior makes the comment that,

6 "Although the applicant has prepared
7 an environmental assessment for one 1200 Mw unit
8 there are strong indications that the site can,
9 and will be used for another 1200 Mw unit with
10 little modification of the proposed facilities.
11 The extent of the project development is an import-
12 ant consideration in assessing cumulative effects
13 on fish and wildlife resources. We believe the
14 applicant should either provide the additional
15 data needed to evaluate a two-unit power station
16 or redesign the cooling pond to accommodate the
17 cooling requirements of one 1200 Mw unit."

18 I think that, leastways, is one of the things
19 that has gone wrong by allowing this Environmental Impact
20 Statement to be segmented. This is additional support, in
21 my view; unless someone disagrees.

22 CHAIRMAN WOLPE: Any other statements?

23 (No response)

24 All right.

25 MR. SCOTT: Part 2 of that same contention relates

WRB/wb8

1 to "EXPIRG's claim that alternatives are not sufficiently
2 considered in the Environmental Impact Statement. And
3 essentially the staff has agreed to that to the extent that --
4 not only the staff, but the NRC has: we've had the Seabrook
5 decision that has caused -- it's not the original prior law
6 that indicated that, but the Seabrook decision has caused the
7 staff to do a further alternative site analysis. That analysis
8 is still not in any impact statement that I've seen. Still,
9 so far as I know, it has not been given any agency comment
10 and review, all of which is required.

11 I've heard rumors that while I was gone that
12 somebody had made the statement that there was going to be
13 another supplement to the Environmental Impact Statement that
14 is going to do these things, namely, get agency comment and
15 review.

16 I'm glad to hear that. But it doesn't eliminate
17 my contention or my concerns. It helps to alleviate them.
18 It does solve some of those problems.

19 Basically, Section 102(2)(c) of NEPA requires that
20 a detailed statement on alternatives sufficient to permit
21 a reasoned choice of alternatives, so far as environmental
22 aspects are concerned, is required as part of the Environ-
23 mental Impact Statement.

24 Secondly, Section 102(2)(E) of the National
25 Environmental Policy Act states -- you know, this is law: it's

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1 not even a regulation:

2 "An agency must study, develop and
3 describe appropriate alternatives."

4 It goes on to--

5 MR. NEWMAN: Mr. Chairman, I think this is truly
6 a digression into purely speculative matters.

7 Mr. Scott's contention, TexPIRG's contention,
8 relates to the question of whether or not, in evaluating
9 alternative sites, the staff took account of the possibility
10 of a core meltdown. The other portion of his contention
11 relates to a barge site.

12 I see no reason to have a general discussion
13 about the proper scope of an alternative study under NEPA.
14 We have a particularized contention to which particularized
15 answers have been given. And I thought his purpose in appear-
16 ing was to answer our objections.

17 MR. SCOTT: I'll be glad to do that.

18 The answer is: Applicant's attorney has misread
19 my contention. My contention is described in the first
20 sentence,

21 "Alternatives to the proposed action
22 have not been properly nor sufficiently described
23 as required by NEPA and its associated court
24 decisions."

25 And then I go on to describe, as a basis, two of the things

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1 that are not considered. I've not limited my contention by
2 giving part of the basis for it.

3 MR. SOHINKI: I beg to differ, Mr. Chairman. I
4 think when Mr. Scott uses the words "in particular" that
5 we're entitled to assume that those are the aspects which he
6 deems to have been inadequately discussed in the EIS, and
7 only those.

8 It doesn't say "for example," it says "in
9 particular."

10 And while the staff does have a supplement to
11 the Final Environmental Statement coming out with regard to
12 alternative sites, I can assure Mr. Scott that it will not
13 contain any analysis of a comparison of core melt consequences
14 among those alternative sites.

15 MR. SCOTT: It may still be defective.

16 Well I stand on what I said. That contention is
17 written as a generalized contention, one that is quite
18 regulatory accepted in essentially those words in NRC
19 proceedings.

20 This afternoon it would be difficult for me to go
21 run up all of the NRC instances where I found that contention
22 listed. It's another one of these lawyerly games that is
23 regularly played. It's being played again here.

24 MR. SOHINKI: It seems to me, Mr. Scott, you're
25 the one who's playing the game. I think I'm entitled to rely

WRB/wbl

1 on the plain English on the page. The plain English says
2 "in particular" these are the aspects of the alternative
3 site analysis in which your concern lies.

4 I don't think the staff should have to keep
5 trying to hit a moving target. We're presented with a
6 contention on the page and we're entitled to assume that
7 that's your contention.

8 CHAIRMAN WOLFE: And I must advise, Mr. Scott,
9 that this is the way we read your contention, as well, as a
10 particularization of these three deficiencies.

11 MR. SCOTT: I can't hear you.

12 CHAIRMAN WOLFE: We read your contention as the
13 staff read your contention, that you had particularized what
14 you deemed to be the deficiencies in the FES; no more, no
15 less.

16 MR. SCOTT: I can't say anything about that.
17 I'm sorry people interpreted it that way.

18 I maintain that the first sentence doesn't say --

19 CHAIRMAN WOLFE: We can read the English language
20 now. And we read it that way. And that's the way we're
21 going to interpret it, because that's the way it reads.

22 Now your effort to expand it is now too late.

23 MR. SCOTT: Well, I'm sorry that's the view you're
24 taking, because, you know, that tends to end up letting bases,
25 some bases that are given for a contention, be used to limit

HRB/wbl2 1

2 the scope of that contention when in fact you know that
3 point is not supposed to be reached until all the bases
4 are to be presented even later.

5 CHAIRMAN WOLFE: You may give the basis for your
6 contention, but what we're telling you is you may give ad-
7 ditional bases, but as we read your contention it was parti-
8 cularized as to these three deficiencies in the FES.

9 MR. SCOTT: Oh, you're-- I think we're talking
10 about two separate things.

11 CHAIRMAN WOLFE: I don't know.

12 MR. SCOTT: You talk about three. You talk about
13 the fact that I have listed Points 1, 2 and 3, meaning 1
14 being segmentation, 2 alternatives, and 3 relegation of
15 studies to later times. To that extent I'm willing to agree
16 that that's the three points I'm using to assert the
17 Environmental Impact Statement is insufficient.

18 But on the alternatives question, that was meant
19 as all alternatives, not just those two.

20 CHAIRMAN WOLFE: No, it doesn't say that. You
21 said "in particular," and then you listed under your subpart 2--
22 You said "In particular, the FES does not sufficiently con-
23 sider alternative sites, effects on the people in the Houston
24 area, the core melt, etc., nor alternative ways to transport
25 the pressure vessel, period."

MR. SCOTT: Well, even interpreted that way--

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2 CHAIRMAN WOLFE: All right. You must interpret
3 it that way, because that's the way it's written, and that's
4 the way the Board has read it. And you're not being fair to
5 those people who wish to rebut what you're presenting as a
6 contention when you proceed to expand the scope of the
7 contention. You have limited it to those three segments,
8 or three particulars.

9 Now address yourself to staff's comments or to
10 applicant's comments on your contention.

11 MR. SCOTT: Well, Mr. Chairman--

12 CHAIRMAN WOLFE: Look, Mr. Scott, I don't want to
13 have to argue with you. I've told you how we want you to
14 proceed. Now proceed.

15 MR. SCOTT: I'm trying to understand.

16 CHAIRMAN WOLFE: I don't think that I'm confusing
17 anything at all. I'm being very direct in what I've asked
18 you to do, how we understand the contention. I don't think
19 there's any room for argument on that at all.

20 MR. SCOTT: You keep mentioning the word "three,"
21 and I don't see three descriptions, three bases given under-
22 neath the Alternatives section. So I'm assuming when you
23 say "three" you're talking about the three big groupings
24 that I have--

25 MR. LINENBERGER: Mr. Scott, excuse me. But you
seem to have a continuing confusion despite the Chairman's

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explanation.

2

Let me have a go at it.

3

4

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6

The three things that are being referred to reside in the second paragraph of your Contention A1, and, more particularly, in the second sentence of that paragraph in which you say,

7

8

9

"In partiucular, the FES does not sufficiently consider..." And then you list three things.

10

11

12

13

That's where the three are: alternative sites, as the Chairman read; effects on the people of Houston, as the Chairman read, ways to transport the pressure vessel reactor, as the Chairman read. Those are the three things.

14

MR. SCOTT: Okay.

15

16

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18

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MR. LINENBERGER: You particularized those. They are not bases, those are the three ways in particular you said the FES is deficient. That is the context in which we interpreted your contention, and that's the only way we're going to interpret it.

20

21

For you to defend it in any other context is not helping us or you.

22

23

24

25

MR. SCOTT: Okay. You're right about that. I thought I had listed only two things, that someone else had mentioned two. And so when you mentioned three I thought the other three was what you were talking about. Okay.

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2 I'm sorry about that interpretation, but it
3 doesn't really restrict the contention as a whole, because any
4 one of those three as a basis would be sufficient.

5 CHAIRMAN WOLFE: Are you musing now, or is this
6 for the record?

7 MR. SCOTT: For the record.

8 CHAIRMAN WOLFE: All right.

9 MR. SCOTT: In particular, without limiting myself
10 to what I say this time--

11 CHAIRMAN WOLFE: May I have that again?

12 MR. SCOTT: "In particular," I started off the
13 sentence with "in particular," and because you interpreted
14 "in particular" up there, meaning I can't expand it, I was
15 just going to say that I want to be able to expand what I
16 was going to say.

17 In particular, talking about some of the responses
18 applicant or staff, one, has said, that this contention is
19 asking that the same level of detail of studying alternative
20 sites be applied to each of the alternative sites as was
21 applied to the applicant's proposed site. I didn't say that.
22 I don't require that. I don't demand that. I just demand
23 that increased, considerably more detail has to be shown
24 in the Environmental Impact Statement than is shown. In
25 fact that has already been admitted to by the fact that the
staff has in fact done additional studies since the EIS was

1 written.

2 I'm also not saying, as someone claimed, that
3 Class IX accidents had to be considered. I claim that, you
4 know, a Class IX accident is an accident that in reality is
5 not going to happen; the occurrence of that would be so rare
6 as to not need to be considered.

7 My description of core melt and steam explosions
8 does not refer to Class IX accidents. I maintain that those
9 are not Class IX accidents, that those are accidents that
10 reasonably can be expected to occur. There has been many
11 studies of those type of accidents, and some studies of the
12 consequences of those type of things.

13 And if it couldn't have happened nobody would have
14 been able to dream up or foresee that it might happen.
15 You know, there are physical principles that would allow
16 that to happen. And during the Three Mile Island accident
17 I saw, and I think the general public saw, people around me
18 have explained to me that they saw in the actions of
19 Mr. Denton and some of the later released conversations of
20 the Nuclear Regulatory Commissioners themselves, they were
21 afraid it was going to happen at Three Mile Island. And they
22 can't be afraid of something that's not going to happen.

23 On that point, we don't have to wait for the
24 Nuclear Regulatory Commission nor Congress nor anyone else
25 to define what a Class IX accident is and whether or not that's

WRB/wb17

1 going to change. You know, as new information becomes
2 available that is factored in to decide what has got a
3 reasonable probability of happening. You don't have to wait
4 for a rulemaking to decide that.

8.150

5 Okay.

6 Going on to the third part of that contention
7 which relates to the phenomenon of relegating difficult parts
8 of the Environmental Impact Statement to further study, once
9 again I think as written it explains itself.

10 Once again, I'm not limiting my interpretation
11 of what that was meant to be. You know, the contention is
12 in the first sentence. The bases given later on are not
13 meant to limit that contention.

14 The basis is essentially, as listed, court
15 decisions, court decisions. It specified in particular
16 cases further study had to be done and that it had to be in
17 the Environmental Impact Statement, you couldn't relegate it
18 to the future.

19 In particular, Environmental Defense Fund versus
20 Corps of Engineers at 492 Fed. 2d 1123, page 1130. The
21 statement is made,

22 "The environmental impact statement
23 must be a self-contained document and must stand
24 the test alone."

25 That is also stated at page 728 of the

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Environmental Law of Mr. Rogers.

2 Other cases: Natural Resources Defense Council
3 versus Norton, 458 Fed 2d. 827, states that

4 "Later argument cannot satisfy
5 an initially defective EIS."

6 Greene County versus Federal Power Commission at
7 455 Fed 2d. 412, states,

8 "The testimony of staff cannot satisfy
9 that requirement."

10 NRDC versus Morton, 337 Fed Sup. 170 states that,

11 "Later supplements to the environmental
12 impact statement cannot satisfy NEPA."

13 And, of course, the lasdt one is the one that
14 is directly applicable to-- apparently the announcement
15 was made yesterday. That's why I say even if in the sum
16 total parts we've got an EIS, until it is bound up in one unit
17 and passed around to the agencies for comment and-review
18 it still hasn't satisfied the law.

19 I think you understand the reasoning for that;
20 that is, the environmental impact statement is a planning
21 document. This is not some artificial process that we go
22 through to comply with some law; this is something that is
23 supposed to be used to make sure the environmental impact
24 of any project is as small as possible. And you can't do that
25 by using studies to justify what has already been decided.

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Further, in Brooks versus Volpe, 350 Fed Sup. 269

2 it is stated that,

3 "The detailed study required by
4 Section 102(2)C of NEPA must flow from research."

5 And in particular, someone asked, Well what studies
6 needed further study? --you know, what aspects of the
7 environmental impact statement needed further study? And I
8 draw your attention to statements at page -- we're talking
9 now about the Final Supplement to the Final Environmental
10 Impact Statement, page S.5-13. The staff says,

11 "Gas bubble disease effects are not
12 sufficiently understood to make a decision."

13 MR. NEWMAN: Sir, what were you reading
14 from? I missed that. Do you have the page number for that?

15 MR. SCOTT: Yes. Page S.5-13.

16 MR. NEWMAN: Thank you.

17 MR. SCOTT: Do you want to see the exact words?

18 MR. NEWMAN: I can find it.

19 MR. SCOTT: Okay.

20 A short version of that is that the staff says
21 the effects of gas bubble disease is not sufficiently under-
22 stood at this facility.

23 At page S.5-16 the same statement is made as to
24 the chlorine discharge effects.

25 At page S.5-20 a similar statement is made con-

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1 cerning heavy metals.

2 At page S.5-12, temperature effects it says have
3 not been adequate addressed.

4 At page S.8-13, effects of conservation. It says,

5 "Insufficient information is known."

6 I'm not limiting myself to those. That's things
7 I found in less than five minutes without--

8 MR. NEWMAN: Is it my understanding of your--
9 Strike that.

10 Are we to understand from your position that
11 before a project can proceed every environmental detail in
12 respect to every economic -- every environmental impact must
13 be discussed and resolved?

14 MR. SCOTT: No, I'm not saying that. I don't
15 think that would be reasonable.

16 MR. NEWMAN: Beg pardon?

17 MR. SCOTT: I'm not saying that. I don't think
18 that would be reasonable.

19 MR. NEWMAN: So there's a rule of reason, then;
20 right?

21 MR. SCOTT: Absolutely.

22 MR. NEWMAN: I guess the question is whether or
23 not when you leave three or four spots open, or a dozen
24 spots open, when you talk about three or four impacts in a
25 ten-year construction project, your question is whether or not

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1 it's reasonable for some of those to lay over for a while;
2 is that it? Are you suggesting this is unusual, that this
3 is something that NEPA doesn't contemplate?

4 What is your problem?

5 MR. SCOTT: I'm saying this environmental impact
6 statement-- I don't think NEPA goes to this. But the
7 Environmental Report that you submitted to the NRC, while
8 I don't think that's covered by NEPA, requires much more
9 detail, more information, many more answers than you have
10 given. And I'm not going to fall into the trap of agreeing
11 to your first statement by saying everything has to be
12 finally determined such that there's absolutely no contro-
13 versy. That would be unreasonable. There is no limit to the
14 knowledge that can be gained.

15 As I think a clear way of illustrating the point
16 I'm trying to make, something on the order of four or five
17 pages are in this environmental impact -- something of the
18 order of twenty or thirty pages, counting all the charts,
19 and only a page or two, not counting graphs and charts,
20 relate to the temperature effects of this nuclear power plant
21 on the waters of the U.S.

22 In contradistinction to that, I just got through
23 reading parts of an environmental impact statement relating
24 to the nuclear Power plant in upstate New York, and they had
25 two complete thick volumes on just that point. And that

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should give you an illustration of what can be done, and I think should be done, and I'm confident is required or they wouldn't have done it up there.

MR. SCHINKI: Mr. Scott, are you saying the environmental impacts of one project are the same as the environmental impacts of another project and, therefore, as much detail has to be discussed on every aspect of every project in the same degree?

MR. SCOTT: No, I wouldn't say that.

MR. SCHINKI: That was the implication of your last statement.

MR. SCOTT: Well it wasn't meant to be. The statement was that they have to do much more than they have done. In fact I have looked at-- And by "they" I don't mean any of us to get personal as to individuals, but I have looked at a lot of environmental impact statements on nuclear power plants, and I so far haven't found one as lacking as this one that was produced in the time frame like within the last five years. Not that thickness is a total measure of the depth of one these things. And, in fact, that's one of my complaints: people get drowned with words in a lot of these things. But it's also one of the thinnest ones I've ever seen.

MR. SCHINKI: That's exactly why you have the opportunity to raise contentions alleging inadequacies

WRB/wb23

1 in the analysis, Mr. Scott. And to the extent you can do
2 that, supply the basis for your allegations, this Board will
3 consider those allegations.

4 MR. SCOTT: Exactly. And I think you've hit upon
5 the reason for the phenomenon I've just been discussing.

6 Texas has historically had very few environmental-
7 ists, and the few we've had weremt willing to, or not
8 able to contest these things. Whereas in New York,
9 California, and some other places I know, they've had a long
10 history of these things being contested. And the staff
11 takes care of their expected contentions to be raised
12 later.

13 CHAIRMAN WOLFE: I must say at this point the
14 Board is not particularly persuaded by what's being said in
15 oral argument.

16 MR. SCOTT: I agree.

17 CHAIRMAN WOLFE: If anybody wants to go out and
18 playing-pong they may, but not here.

19 Let's get down and get to the discussion argument
20 directed to the objections, and stop this.

21 MR. SCOTT: All right.

22 CHAIRMAN WOLFE: All right, Mr. Scott.

23 MR. SCOTT: Okay.

24 I think that covers Contention No. 1.

25 The next contention is Contention No. 4, relating

WRB/wb24

1 to the use of once-through cooling at this facility. And
2 there's another contention here that's somewhat related,
3 but I guess I won't try to combine the two.

4 Essentially this contention, as written, becomes
5 a legal question. And the legal question essentially is
6 whether or not Section 316 of the Federal Clean Water Act
7 would allow a once-through cooling system at Aliens Creek
8 that has been designated not a cooling pond but a cooling lake.
9 And I think you probably understand the important distinction
10 there; namely, if it's a cooling lake we've got to worry
11 about the effects upon the little fishies. And the question
12 is whether or not, with this heat being discharged, it will
13 affect the protection and propagation of the balanced
14 indigenous population of shellfish, fish and wildlife on
15 that body of water.

16 I understand the argument is that: Well I'm sorry,
17 Mr. Scott, but that's not our problem, that's EPA's problem,
18 they've already given the permit.

19 Well, I disagree, for two major reasons: No. 1,
20 NRC is the lead agency for this environmental impact state-
21 ment, so they, and only they, are responsible for the environ-
22 mental impact statement, so that they have to consider the
23 effects, they have to decide whether or not the requirements
24 of Section 316 are going to be met. They may not have to
25 talk in terms of saying it's Section 316 of the Federal Clean

WRB/wb25 1 Water Act, but they have to decide whether or not it's going
2 to affect the protection and propagation of fish. And, if
3 anything, they have admitted that it will. And I say, Well,
4 so what?

5 EPA has already issued a permit. And I would say
6 that if you look on page 14 of 14 of that permit the EPA
7 issued, Permit No. TX 0056014, at the very last of that
8 permit, at the bottom of page 14 of 14, under "Other
9 requirements" is the following statement:

10 "As a provision of this permit the
11 applicant is subject to the requirements of
12 Public Law 92-500, Section 316(b),"

13 which says, Okay, we've given you a permit, but you still
14 have to show that the heat discharged into this facility will
15 not affect the protection and propagation of the balanced
16 indigenous population of shellfish, fish and wildlife in and
17 on that body of water.

18 So the issue is not dead. It has to be considered
19 in the Environmental Impact Statement.

20 CHAIRMAN WOLFE: Considered by whom?

21 MR. SCOTT: The Nuclear Regulatory Commission,
22 the NRC.

23 CHAIRMAN WOLFE: Is that what it says in the
24 permit?

25 MR. SCOTT: No. The permit says that the lake --

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2 the permit is subject to the requirements of that section of
3 the Clean Water Act. In other words, it is not -- they have
4 not approved it as to that point yet, it's still an open
5 question.

6 MR. COPELAND: That's just wrong, Mr. Scott.
7 That is a complete mischaracterization of the permit.

8 MR. SCOTT: The words stand for themselves. I'll
9 let people decide that.

10 MR. COPELAND: What your allegation amounts to,
11 then, is that the permit is illegal and that the EPA has
12 issued an illegal permit; is that correct?

13 MR. SCOTT: EPA is waiting for you-all to prove
14 to them and the NRC that that can be met.

15 Further, assuming that no contest can be made of
16 EPA's permit, and assuming EPA has finally decided the
17 question of whether or not the provisions of Section 316(b)
18 have been met, this agency still has, as part of its prepara-
19 tion of a sufficient environmental impact statement, has to
20 consider whether or not -- they have to consider all the
21 effects upon health and welfare of the public and the
22 environment, and that part of the effects on the environment
23 have not been sufficiently considered.

24 MR. NEWMAN: You're back now to your old argument,
25 which is about the effect of thermal discharge, and in some
cases it was chlorine, and so forth. All these things are

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1 factored in by the NRC staff when they write the environmental
2 statement.

3 I can only construe what you're saying as a
4 collateral attack on the 402 permit, because the NRC has
5 fulfilled the NRC's responsibility as that responsibility was
6 delineated in the Seabrook proceeding.

7 MR. SOHINKI: It seems to me, Mr. Chairman, that
8 Mr. Scott has really digressed from the crux of his conten-
9 tion, which is that, in the last sentence: to the extent
10 that EPA has not set appropriate water quality limits to
11 protect fish, the NRC has to do it.

12 Our response to that is simple: We don't have
13 the jurisdiction to do that. And I haven't heard anything
14 from Mr. Scott that would negate that. Perhaps he should
15 review the Yellow Creek decision and then come back and talk
16 to us.

17 MR. SCOTT: They have just misconstrued my
18 contention.

19 MR. SOHINKI: I read it almost verbatim.

20 MR. SCOTT: I wrote it, and I read it, too. I
21 certainly know what is in my mind.

22 CHAIRMAN WOLFE: If you're satisfied with your
23 argument, Mr. Scott, proceed to your next contention.

24 MR. BOGGETT: Mr. Chairman, Mr. Scott has agreed
25 to allow me to interrupt his presentation. Do I have the

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Board's permission?

CHAIRMAN WOLFE: Yes. All right.

MR. DOGGETT: This concerns the issue of my adopting as bases for arguments those bases advanced by certain other persons who are attempting to intervene.

I have discussed this with Staff Counsel Woodhead and with Mr. Copeland, counsel for applicant, and I believe we have reached a tentative agreement on this matter which will solve the problem that had come up yesterday.

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1 In lieu of Doggett Contention 4 and Cumings
2 Contention 1, there will be a substitution of Baker Contention 1
3 and the arguments which he advanced in support of his contention.
4 That argument is given on transcript pages 870 to 888.

5 On Cumings Contention 3 --

6 MR. COPELAND: Excuse me a minute, Mr. Doggett,
7 I want the Board to understand clearly what is going on here.

8 CHAIRMAN WOLFE: Thank you. It would be most
9 helpful.

10 MR. COPELAND: Mr. Doggett is withdrawing his own
11 Contention 4 and Ms. Cumings Contention 1 and adopting
12 Mr. Baker's Contention as his own and as Ms. Cumings', Baker
13 Contention 1 and, therefore, is adopting all of Mr. Baker's
14 arguments in support of that contention.

15 I want the Board to know that I explained to
16 Mr. Doggett my own belief that Mr. Baker's contention has a
17 serious legal defect in it, and he said he was willing to ride
18 or fall with that contention as it's written rather than his
19 own contention.

20 So on that understanding, although I think there
21 is some problem with shifting contentions back and forth
22 like this, I'm willing to overlook that problem with that
23 representation.

24 CHAIRMAN WOLFE: Anything further, Mr. Doggett?

25 MR. DOGGETT: On Cumings Contention 3, which is

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basically a concern about health effects through the liquid pathway, we would like to adopt as bases the arguments advanced by Mr. Bishop on his Contention 12 where he discusses contamination of an aquifer through lake seepage.

Cumings Contention 3 is concerned with, as is Bishop Contention 12 are both concerned with possible contamination through water wells. In addition, Cumings Contention 3 is concerned with contamination of the Brazos River, which Bishop Contention 12 is not concerned with. However, we would argue that the same arguments which Mr. Bishop made on his Contention 12 support Cumings Contention 3 insofar as it concerns contamination of the Brazos River.

It is my understanding that Applicant does not agree with that analysis. However, we simply make that -- take that position and allow it to stand as it is.

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1 Bishop Contention 12 is discussed on the transcript
2 at pages 900 to page 1010.

3 MR. LINENBERGER: Well, Mr. Doggett, what you've
4 just said indicates how you would apply underpinnings to the
5 part of Cumings Contention 3 that relates to Brazos River
6 contamination, as I understand it.

7 But what do you propose with respect to the other
8 part of Cumings Contention 3 relating to aquifer contamination,
9 or is that going to stand as is, or as was?

10 MR. COPELAND: I think that's backward, Dr.
11 Linenberger.

12 MR. LINENBERGER: Do I have it the wrong way?

13 MR. COPELAND: As I understand it, what Mr. Doggett
14 wants to do -- that is, with respect to that part of Ms.
15 Cumings contention that speaks to contamination of water
16 wells, he wishes to adopt that portion of Mr. Bishop's
17 argument cited at the transcript in support of that part of
18 her contention.

19 The part of the contention related to seepage into
20 the Brazos River, he recognizes is unsupported by any
21 argument made by Mr. Bishop. But he is arguing that you can
22 extrapolate from his arguments to support the remainder of
23 her contention.

24 Is that correct?

25 MR. DOGGETT: That's basically correct.

1 MR. COPELAND: Of course we would disagree with
2 that.

3 MR. SOHINKI: As would the Staff.

4 MR. DOGGETT: On Doggett Contention 1, which is
5 a discussion of alternative energy resources, included in
6 that discussion is a comparison of coal versus nuclear.
7 And Conn Contention 1 is a contention concerning coal versus
8 nuclear.

9 We would like to adopt as a bases for Doggett
10 Contention 1 and Conn Contention 1, the bases arguments made
11 by Mr. Bishop on his Contention 14, which is also a coal
12 versus nuclear contention.

13 Bishop's discussion of his contention 14 begins
14 on transcript page 1018 and ends on page 1024.

15 If there are no problems with that, I'll proceed
16 to the following one.

17 MR. COPELAND: I understand.

18 MR. DOGGETT: Lemmer Contention 1, Streilein
19 Contention 2 and Weaver Contention 3, demographic calculations.
20 These are the same concerns that are expressed by Mr. Bishop
21 in his Contentions 1, 2 and 3. And to the extent that these
22 items basically address the same issue, we would like to
23 adopt as bases for Lemmer Contention 1, Streilein Contention
24 2 and Weaver Contention 3 the bases arguments advanced by
25 Mr. Bishop for his Contentions 1, 2 and 3.

1 It's my understanding that the Bishop Contentions
2 1, 2 and 3 are actually being consolidated and treated as
3 one contention.

4 The discussion of Bishop Contention 1 is on pages
5 907 to page 918 of the transcript.

6 His discussion of his Contention 2 is on pages
7 934 to 938 of the transcript.

8 And his discussion of his Contention 3 is on
9 pages 944 to 952 of the transcript.

10 In addition, on page 956 of the transcript there
11 is a discussion about the consolidation of his first three
12 contentions into one contention.

13 MR. SOHINKI: Which three contentions, now, were
14 you talking about? Lemmer Contention 1 --

15 MR. DOGGETT: Lemmer 1, Strellein 2 and Weaver 3.

16 Now, Weaver, as I understand it, it was decided
17 yesterday, would be treated as only making a limited
18 appearance. And I'm only throwing his contention in in
19 the event that the Board might reconsider that decision.

20 MR. SOHINKI: Could we go off the record for a
21 minute?

22 CHAIRMAN WOLFE: . . .

23 (Discussion off the record.)

24 CHAIRMAN WOLFE: Back on the record.

25 Is that all, Mr. Doggett?

1 MR. DOGGETT: I would like at this time to
2 furnish the Board with my properly drawn notice of
3 appearance.

4 CHAIRMAN WOLFE: All right. You will file the
5 necessary number of copies, obviously, with the Docketing
6 Section in Washington.

7 All right.

8 Off the record.

9 (Discussion off the record.)

10 CHAIRMAN WOLFE: Back on the record.

11 I understand that Mr. Scott kindly has stated to
12 Mr. Perez that Mr. Perez can proceed in his place at this
13 time.

14 MR. SCOTT: Could I make just one last finishing
15 statement, and then I'll be through with that Contention
16 Number 47

17 CHAIRMAN WOLFE: All right. And then we'll
18 hear from Mr. Perez.

19 MR. SCOTT: Basically, I have a document here
20 entitled "Interagency 316A Technical Guidance Manual, Guide
21 for Thermal Effects Sections of Nuclear Facilities Environ-
22 mental Impact Statement." This is dated May 1, 1977.

23 It would require impact statement studies to
24 show -- well, a basis for denial, that's of a 316 permit,
25 exists if important fish or wildlife are thermally excluded

1 from the use of the habitat.

2 And I think the information supplied shows -- in
3 the environmental impact statement -- that many of the game
4 fish would be excluded from huge parts of the lake.

5 Secondly, this document states that a properly
6 prepared impact statement would have --

7 MR. COPELAND: Sir, what's the relevance of this?
8 We have a permit from the EPA.

9 MR. SCOTT: I've already explained the relevance.
10 The relevance is what a properly prepared environmental
11 impact statement would have in it.

12 That is, secondly, --

13 MR. COPELAND: Sir, you're reading from a
14 document that was cause for preparation of an impact statement
15 related to a 316A permit, as I understand it. Is that
16 correct?

17 MR. SCOTT: This was jointly prepared by the
18 Nuclear Regulatory Commission and EPA.

19 MR. COPELAND: What's the name of the document?

20 MR. SCOTT: "Interagency 316A Technical Guidance
21 Manual and Guide for Thermal Effects Section of Nuclear
22 Facilities Environmental Impact Statements."

23 As I understand it, this is a nuclear facility
24 environmental impact statement.

25 CHAIRMAN WOLFE: And why are you reading from it?

1 MR. SCOTT: So I don't misquote it.

2 (Laughter.)

3 CHAIRMAN WOLFE: I mean what are you attempting
4 to establish by reading from it?

5 MR. SCOTT: That this environmental impact
6 statement is defective.

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7 It further states:

8 "For isotherm plots required vertical temperature
9 profiles along the plume centerline extending to the
10 bottom of the water body at 2°C. intervals to within
11 1°C. of ambient is required."

12 That finishes my Contention number 4.

13 CHAIRMAN WOLFE: All right.

14 All right, Mr. Perez.

15 MR. PEREZ: My name is Charles Perez.

16 CHAIRMAN WOLFE: Now, I don't know whether you're
17 aware of the ground rules.

18 The ground rules here are that you have submitted
19 contentions -- or a contention.

20 MR. PEREZ: A contention.

21 CHAIRMAN WOLFE: Yes. And the ground rule is that
22 you will summarize what your contention is about, and then
23 directly proceed to argue in response to the Staff and/or
24 the Applicant's objections to your contention.

25 All right?

1 MR. PEREZ: Yes.

2 CHAIRMAN WOLFE: Go right ahead.

3 MR. PEREZ: I contend that the drywell area of
4 the containment structure should be pressure tested beyond
5 the design limits.

6 My reasons for this contention are that --

7 MR. NEWMAN: Mr. Chairman, I'm going to interrupt,
8 because I do not find that contention anywhere in what Mr.
9 Perez has written. I find no statement which suggests that
10 the drywell should be tested to a pressure in excess of its
11 design limit. That's exactly what he's asserting.

12 I can't find it. And I defy him to find it.

13 MR. PEREZ: Can I continue?

14 I just had limited information, not being a full
15 intervenor. So I had to rely upon things that I could find
16 coming across through the public library here in Houston.
17 And I don't have the most up to date information, but I
18 have done some more in-depth study since I sent in my
19 original contention, to reinforce --

20 CHAIRMAN WOLFE: Well, one of the rules here, Mr.
21 Perez, is that you cannot expand or assert a new contention.

22 MR. PEREZ: It's not actually a new contention,
23 so much, sir, it's just to reinforce it.

24 (The Board conferring.)

25 MR. LINENBERGER: Mr. Perez, just getting to that

wel 8

1 point which you were making in describing your contention,
2 let's go to the sentence beginning at the bottom of the page
3 of your September 20th submittal.

4 I don't know what date you actually mailed it, but
5 my copy has a September 20 stamp on it.

6 MR. PEREZ: It was mailed in advance of that.

7 MR. LINENBERGER: Right. I'm sure it was,
8 because it doesn't get docketed until it's sat around for
9 awhile.

10 But would you read that sentence that begins at
11 the bottom of that page, please, sir, beginning with the
12 words, "This accident..."

13 MR. PEREZ: Okay.

14 "This accident may already have occurred in 1971..."

15 MR. LINENBERGER: No, sir. Excuse me. There's
16 a paragraph at the bottom of the page of your latest
17 submittal that begins, "This accident type and its accumulated
18 damages..."

19 I think you may be looking at the earlier one.

20 MR. PEREZ: Oh, I see. Yes, sir. Okay.

21 "This accident type and its accumulated damages
22 from heat and pressure shock are not sufficiently
23 dealt with by structural integrity testing of the
24 drywell area at design pressure."

25 MR. LINENBERGER: Okay. Now, you explicitly say

1 there, "at design pressure."

2 Now, were you just earlier saying that it should
3 be tested at greater than design pressure?

4 MR. PEREZ: Well, the reason that I contend that
5 is to take into account the heat that would be generated by
6 means of a main steam line break in a loss-of-coolant
7 accident.

8 MR. LINENBERGER: Excuse me, sir. I'm not
9 asking the reason why; I'm asking, in what you just said
10 a little while ago, did you change the wording of what you
11 said in here? Did you change the wording to say it should
12 be at greater than design pressure, as you told us about
13 it in your own words a few minutes ago?

14 MR. PEREZ: The testing?

15 MR. LINENBERGER: Yes.

16 MR. PEREZ: Yes, sir, I did.

17 MR. LINENBERGER: Well, now, you see, that's the
18 problem we're having here, with whether or not you may have
19 changed your contention.

20 Do you think the contention needs to be changed
21 to say "at greater than design pressure," or do you think
22 the contention is okay the way it reads, "testing at design
23 pressure?"

24 Because that is what you submitted to us, and
25 we're kind of bound to live with that, rather than to let

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1 you come in and say, "Well, for these and these reasons,
2 it ought to read differently."

3 MR. PEREZ: Well, I think it's just a matter of
4 interpretation.

5 MR. LINENBERGER: Okay. Why don't you sort of
6 explain that to us now.

7 MR. PEREZ: All right.

8 When I'm saying that it's not sufficiently dealt
9 with by structural integrity testing of the drywell area at
10 design pressure, I'm just meaning that testing at design
11 pressure, which I think is about 34 psi, is not sufficiently
12 taking into account excess pressure and heat in combination
13 with each other that would be generated by a main steam line
14 break caused in a loss-of-coolant accident.

15 MR. LINENBERGER: Now I understand what you're
16 saying.

17 MR. PEREZ: Yes, sir.

18 MR. LINENBERGER: And you're saying the best
19 that will be done under the reference plan of the Applicant
20 will be to test at design pressure, and you think that's
21 inadequate, it ought to be tested at higher pressure.

22 Is that --

23 MR. PEREZ: Yes, sir, exactly.

24 MR. LINENBERGER: Now I understand. Thank you.

25 MR. PEREZ: Thank you.

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1 MR. LINENBERGER: Now, I don't know how this helps
2 satisfy Mr. Newman, or --

3 MR. NEWMAN: I believe the contention is changed.
4 I think initially the discussion related -- the contention
5 related to a temperature transient of some type. But now
6 it appears to be a question of overpressurization of the
7 drywell.

8 And, Mr. Linenberger, I think in view of the
9 hour and so forth, I think we just ought to let Mr. Perez
10 go on and hear what's on his mind.

11 MR. PEREZ: Okay. Thank you.

12 I feel that because this is a new design, the
13 Mark III, and there aren't any that I know of so far
14 operating -- there are two more under construction similar
15 in design in the United States -- that it's necessary to
16 take as many safeguards and precautions as possible to
17 guarantee that this design is as safe as possible, to
18 guarantee the safety of the populace.

19 I've also, in studying more recent information
20 that I've come across, have brought reinforcement to my
21 contention; that hydrogen could be released into the
22 drywell region during a loss-of-coolant accident if the
23 fuel rods were partially uncovered, causing oxidizing of
24 the zirconium cladding --

25 MR. NEWMAN: Mr. Chairman, I'm going to object,

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1 and -- I was willing, I think, to accede to a reasonable
2 explication by Mr. Perez of his position. But now we're in
3 the middle of loss-of-coolant accidents, hydrogen generation,
4 oxidation of fuel -- we have gone far, far away from the
5 contention that the drywell should be tested at something
6 in excess of design pressure.

7 That's the nature of his contention. He has to
8 explain why it should be tested at more than its design
9 pressure.

10 As I read this gentleman's contention, he's
11 cited by way of example experience of overpressurization at
12 two other plants that have absolutely no relationship to
13 the Allens Creek plant.

14 MR. PEREZ: At that time I did not realize the
15 extreme differences in design between the Dresden plant and
16 Allens Creek.

17 I'm not an expert in this field, being paid a
18 salary to work on this. I'm just an individual doing this
19 in my spare time. And as such, as a concerned citizen, I
20 feel like I have the right to bring up new information to
21 reinforce my contention.

22 MR. NEWMAN: You have the right to bring new
23 information to support your contention, but not to change
24 your contention.

25 MR. PEREZ: That's not changing my contention.

wel 13

1 It's just more reinforcement. If you would let me complete
 2 my observations from my studies, you might have a more
 3 clear picture of it.

4 Because of Three Mile Island we know now that the
 5 zirconium cladding, when it overheats, can oxidize, releasing
 6 hydrogen, which would immediately go into the drywell under
 7 a loss-of-coolant accident. And if this hydrogen were to
 8 ignite, it would pressurize the drywell instantly beyond
 9 its design limits.

10 This is very critical, because the drywell in the
 11 Mark III containment, the proper functioning of the pressure
 12 suppression system during a loss-of-coolant accident depends
 13 upon the drywell to divert the steam released to the
 14 suppression pool, because of the fact that the containment
 15 structure has a design limit of half of the drywell design
 16 limit. So it's approximately 15 psi. And if there were any
 17 leaks, like for instance where the piping goes through the
 18 drywell wall, for instance, the main steam line piping, then
 19 it could pressurize the containment structure to way beyond
 20 its limit.

21 MR. NEWMAN: Mr. Chairman, do I understand now
 22 that we're switching to the containment pressure question, as
 23 opposed to the drywell pressure contention?

24 MR. PEREZ: I'm not changing my contention. What
 25 I'm doing is just showing that --

wel 14

1 MR. NEWMAN: What you're doing --

2 MR. PEREZ: -- the drywell is a weak link in the
3 design, then it could cause a chain reaction in other areas
4 of the structure.

5 And this is why I'm bringing up the containment,
6 is just because I want to reinforce how critical it is that
7 the drywell be pressure tested to a point that it eliminates
8 any doubts of potential leaks, or any chances of the
9 structure cracking.

10 Since this is a new design which has not been
11 operated anywhere in this country, anywhere in the world that
12 I know of so far, the Mark III Type 6.

13 There are potential mechanisms by which steam
14 can bypass the suppression pool of the Mark III containment
15 design. Since the drywell is a reinforced concrete structure,
16 the potential exists for cracking of the --

17 MR. NEWMAN: Mr. Chairman, I'm going to have to
18 interrupt.

19 There are ground rules here, and I think you've
20 set them up.

21 We have made certain objections. So has the
22 Staff. Mr. Perez is here to answer the opposition or
23 objections of the Applicant and the Staff.

24 Instead, what he's doing is sort of ad hoc
25 creating a new contention as he goes along. And we're going

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to have a record here that is going to be impossible to decipher.

(The Board conferring.)

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CHAIRMAN WOLFE: The Board has been conferring, Mr. Perez.

C10

We will deem and consider that your oral argument to date, to this point, has been providing bases for your contention as written and as submitted to us under the docketing date of September 20th.

We are not considering it as, nor will we consider it, as a new contention.

You may proceed now on the basis solely of what is in your petition, and address yourself now to the objections by Staff and/or Applicant to your contention.

MR. PEREZ: Yes, sir.

MR. LINENBERGER: Do you have those objections before you there, the objections of the Applicant and the Staff?

MR. PEREZ: I have them in my backpack here.

MR. LINENBERGER: Because that's what we're going to hold you to, now. So you may want to get them in front of you.

MR. PEREZ: Okay. Excuse me, while I get them.

(Pause.)

MR. PEREZ: There's a line here that says that

1 I don't provide -- it says:

2 "However, he provides no basis for his assertion
3 that the thermal and seismic effects which he postulates
4 will not be adequately accounted for in such testing."

5 I thought the reason for these hearings was so
6 that I could provide the basis for my assertions. Am I
7 wrong on that assumption?

8 CHAIRMAN WOLFE: You are wrong in that assumption.
9 You have to give bases or a basis for your contention with
10 reasonable specificity at this time, so that we can
11 determine whether or not it is an admissible contention.

12 MR. PEREZ: I see.

13 (The Board conferring.)

14 MR. LINENBERGER: Mr. Perez, do you think, in
15 your preceding remarks regarding your contention, that you
16 have supplied the bases required to support your contention?

17 MR. PEREZ: Partially, but not completely.

18 Because --

19 MR. LINENBERGER: Well, you've gotten into an
20 awful lot of technical areas that don't directly relate to
21 your contention, and that was the basis for Applicant's
22 counsel's objection awhile ago.

23 You go into some relatively unrelated peripheral
24 areas, and it's hard to see how they support your contention.
25 That's why we're trying to get you to narrow down, focus

wel 17

1 right on, what you submitted in writing, and what is the
2 reason you think it ought to be considered.

3 MR. PEREZ: Okay.

4 Well, in looking through information that I can
5 find, which is quite limited to the point that I'm involved
6 in this intervention, I was studying some material from the
7 Safety . . . let's see, what was it? . . . the SER, for
8 the Perry Nuclear Power Plant, which is very similar in
9 design to the Allens Creek proposed facility. And I found
10 that they were requiring structural integrity testing at
11 115 percent of design pressure, as well as what was
12 initially being required by the Staff for the Applicant.

13 MR. NEWMAN: Is that drywell pressure or
14 containment pressure?

15 MR. PEREZ: No, this is drywell, 115 percent of
16 design pressure for the drywell.

17 And that was in my original petition to intervene
18 back in July. I was quoting from the Preliminary Safety
19 Analysis Report, which was in the Houston Public Library.
20 And that's where my original contention grew from.

21 And I was just wondering why the Staff has
22 accepted Houston Lighting & Power's -- or the Applicant's,
23 should I say -- their appeal in testing it to design
24 pressure in the drywell region, when at the Perry Nuclear
25 Power Plant they are requiring them to test it at 115 percent

1 of design pressure, as they originally requested the
2 Applicant to do for Allens Creek.

3 I wondered why there was that change here, why
4 there was a reduction of the requirement.

5 MR. LINENBERGER: I think that's a logical
6 wonderment, you've expressed here.

7 Now perhaps you could go on to some of the other
8 points that Applicant and Staff have made. For example, the
9 question -- I guess both Applicant and Staff questioned
10 your reference to the Dresden facility as to its applicabil-
11 ity to Allens Creek.

12 Do you have any comments on that objection?

13 MR. PEREZ: Excuse me, I don't quite understand
14 that, sir.

15 I had mentioned the Dresden case because of the
16 fact that there had been an accident -- this was in '71 --
17 at Commonwealth Edison's Dresden-2 and 3 plant, where an
18 accidental pressurization of the drywell created a temperature
19 transient which destroyed most of the core monitoring
20 cables, and may well have damaged the foundations in the
21 drywell area of these reactor vessels.

22 At the time I wasn't as familiar with the design
23 differences between the Type -- I mean the Mark II, which
24 the Dresden facility is, and -- I think is what it is -- and
25 the Mark III, which is the Allens Creek facility.

1 But the fact is that when there was a temperature
2 transient that was sufficient to damage the core monitoring,
3 it could just as well have damaged the foundation of the
4 drywell, since the drywell area for the Mark III has a lot
5 more concrete and less steel than the drywell region in
6 either the Mark I or Mark II, as far as the support structure
7 is concerned for the core.

8 MR. LINENBERGER: So that's the basis on which the
9 incident at Dresden causes you to worry about the Allens
10 Creek design?

11 MR. PEREZ: Yes, sir.

12 MR. LINENBERGER: Okay.

13 MR. NEWMAN: Can you explain the relationship of
14 that event at Dresden to Allens Creek? In what basic respects
15 were the drywells similar?

16 MR. PEREZ: Well --

17 MR. NEWMAN: Do they have the same relief valves?

18 MR. PEREZ: Well, the relief valves in the Dresden
19 facility go directly into the drywell. But in the Mark III
20 design, which is the Allens Creek design, they go directly
21 into the suppression pool, as designed.

22 Now, what is the important thing to consider is
23 the fact that if there's a main steam line break, which is
24 something considered by General Electric to be valid, that
25 it could happen, then that would pressurize the drywell

wel 20

1 region to the maximum pressure that they expect it to take.

2 So it is a valid concern.

3 MR. NEWMAN: Can you explain the relationship
4 between the main steam line accident at the Dresden facility--
5 can you explain to me how a main steam line event at a plant
6 like Dresden --

7 MR. PEREZ: Well, it was a safety release valve,
8 from what I understood, that stuck open --

9 MR. NEWMAN: What you're talking about is a
10 large collection of different things, it seems to me --

11 MR. PEREZ: Well, I don't have access to the
12 material that you do, or that intervenors do, and so I'm
13 trying to base my contention upon what is available to me
14 as a petitioner to intervene.

15 And I think this should be kept in mind during
16 these hearings, that people who are petitioning to intervene
17 do not have access to material that you, and that the Board
18 and the Staff have access to.

19 MR. NEWMAN: I want to take exception to that.
20 There is every document in this case at the Houston Public
21 Library -- or the major documents are.

22 Have you been to the Houston Public Library and
23 examined --

24 MR. PEREZ: Sure I have, that's where I got my
25 information from.

wel 21

1 MR. NEWMAN: You examined the Allens Creek PSAR?

2 MR. PEREZ: Yes. Yes, that's where I came across
3 my original petition for leave to intervene information, in
4 fact, was in going through those large documents, to come
5 across this.

6 Now, there are some things that are not contained
7 in there that I might be able to get once I'm accepted as
8 an intervenor through interrogatories or something of that
9 sort, that would definitely get me much more reinforcement
10 for my contention.

11 For instance, the basic design of the drywell
12 facility.

13 CHAIRMAN WOLFE: Anything else?

14 Have you finished now, Mr. Perez?

15 MR. PEREZ: If there are no more questions.

16 CHAIRMAN WOLFE: Well, I take it there are no
17 other questions. Thank you very much.

18 MR. LINENBERGER: Mr. Perez, this is not a
19 question, but just as one who's gotten caught up in things
20 like this before, let me alert you to the fact that engineers
21 specify different types of pressures for all sorts of
22 different reasons, and there are generally good reasons.
23 But they can confuse one.

24 Design pressure may mean something to the
25 engineer who is specifying how big an event a tank -- how big

1 a pressure a tank must hold that's designed to hold 50 pounds.

2 Testing at 110 percent of design pressure to the
3 engineer who did a stress analysis on that metal in that
4 tank, may mean testing it to 175 pounds, because it was
5 160 pounds at which the metal was supposed to fail.

6 So as you do your research work, be sure you
7 understand what people mean when they're talking about
8 design pressures in various contexts. They're frequently
9 quite different.

10 MR. PEREZ: Well, why is it that -- excuse me if
11 I continue on here for a minute -- but why is it that at
12 the Perry --

13 MR. LINENBERGER: No, sir, I'm not relating this
14 to Perry, I'm just cautioning you, as you do your research,
15 to pin down what it is people are talking about when they
16 mention design pressures or test pressures or yield
17 pressures or failure pressures. Pin it down, and make sure
18 you understand it.

19 MR. PEREZ: But I was wondering why it was that
20 at Perry they still are insisting on testing at 115 percent?

21 MR. LINENBERGER: I was not getting to the Perry
22 thing.

23 MR. PEREZ: I just wondered why there's that
24 discrepancy between Allens Creek and Perry, if there's --

25 MR. LINENBERGER: I don't know that there is one.

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1 So, please, I cannot discuss Perry. I was trying
2 to help you in your future research.

3 CHAIRMAN WOLFE: All right. Thank you, Mr.
4 Perez.

5 We'll have a five-minute recess.

6 (Recess.)

7 CHAIRMAN WOLFE: Would you give your name, please?

8 DR. WARNER: Yes. I'm Marlene Warner.

9 CHAIRMAN WOLFE: Dr. Warner, Mr. Scott has kindly
10 stated that you may proceed, and he will orally argue again
11 later.

12 We've received your petition for leave to
13 intervene of July 9, and also your contention submitted on
14 August 19.

15 I did have one question: Do you have here the
16 July 9 letter, in front of you?

17 DR. WARNER: No, I don't have it in front of me.

18 I think I brought a copy of it with me. Would
19 you want to read --

20 CHAIRMAN WOLFE: Applicant's counsel is handing
21 you a copy.

22 (Document handed to Dr. Warner.)

23 CHAIRMAN WOLFE: In your second paragraph there,
24 Doctor, you stated:

25 "Prior restrictions against speaking out on

end 7

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1 nuclear power have prevented me from registering my opinion."

2 What prior restrictions are you speaking of?

3 DR. WARNER: I believe there was a previous
4 deadline in the Commission as far as speaking out.

5 The other thing was I had had in mind discussing
6 low-level effects of radiation, and I had not received a
7 copy of a federal proceeding.

8 The major difference, though, was that there had
9 been a previous deadline, was my understanding, after which--

10 CHAIRMAN WOLFE: Previous deadline?

11 DR. WARNER: For filing objections. And that
12 that deadline had passed, and I had not been able to receive
13 a copy of "The Effects of Low-Level Radiation" from the
14 Congressional hearings until after the deadline had passed.

15 That was my impression.

16 (The Board conferring.)

17 MR. COPELAND: Do I understand the lady to be
18 saying that she wanted to challenge the Commission's
19 regulations on low-level waste, and that she understands that
20 the deadline for challenging those regulations had passed?

21 Is that your --

22 DR. WARNER: Yes, that's the case.

23 CHAIRMAN WOLFE: And how did you happen to submit
24 your letter on July 9th, instead of on June 15th, or June
25 1st? Why July 9? Why that particular day, Dr. Warner?

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DR. WARNER: I have no idea, sir. There was no particular significance. I was aware of the next deadline, and I now forget when that was. I was aware that the proceedings had been reopened, and that there was a new deadline, and I forget now the exact date. But the date was in July sometime.

And I was attempting to file my contention before what I understood to be a reopening of the possibility of filing of a contention.

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CHAIRMAN WOLFE: Were you aware that we had issued orders dated May 31, 1978 and September 11, 1978 relating to scope of contentions that petitioners for leave to intervene could address? Were you aware of those orders?

DR. WARNER: I was not aware of the first one you mentioned, but I believe I was aware of the second time you mentioned.

CHAIRMAN WOLFE: And why didn't you file -- I take it you just didn't file this particular petition not because of anything that was in the September 11, 1978 order but, as you indicated, because --

MR. COPELAND: As I understand, she indicated because she wished to challenge the Commission's regulations on low-level waste.

DR. WARNER: That's right, and I did not have the proceedings of the Congressional investigation that would give me the evidence which I needed to present.

I'm aware of these effects because I do research in this area, but I did not have effective documentation because I did not have the Congressional proceedings.

I was aware that such an event had occurred because, since I work with chemical carcinogens and I'm concerned with safety in the laboratory, I knew that there were proceedings in effect that related -- restrictions of my own practices. We also use radiation. And I did not have a copy

wrb/agb2

1 of the report in time to be informed by it to file with your
2 group.

3 The Congressional hearings were held earlier
4 but I did not have a copy of the report and was unable to
5 obtain a copy of the printed proceedings.

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6 MR. COPELAND: Can I ask you this, Dr. Warner,
7 was it your understanding that the September 18 notice related
8 to a generic proceeding going on before the Commission with
9 respect to low-level waste?

10 DR. WARNER: I'm confused on my dates.

11 MR. COPELAND: September, 1978.

12 DR. WARNER: No, I thought it related to building
13 this particular reactor, but that the specific matters that
14 would involve me or my interests -- at least the area that I
15 felt I could speak about --

16 MR. COPELAND: Which was the effect of radiation
17 releases?

18 DR. WARNER: The effect of low-level radiation
19 release on the uptake of that radiation into the food chain.

20 MR. COPELAND: Okay.

21 Then I'm having trouble, Mr. Chairman, how she
22 felt like the September 18 notice prevented her from raising
23 a question regarding the Commission's rules on low-level
24 releases.

25 DR. WARNER: At that time I did not have a copy

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1 of the Congressional proceedings on low-level radiation. I
2 was aware that there had been a Congressional inquiry and that
3 a variety of expert evidence had been presented at that time
4 and that this would be relevant to dose levels and their
5 interaction with human beings and with animals. But the
6 proceedings of that conference were not available.

7 CHAIRMAN WOLFE: We issued an order dated
8 June 12, 1979 and therein we indicated that we can only
9 entertain petitions for leave to intervene filed by those
10 individuals who had been dissuaded from filing pursuant to
11 our earlier Notices of Intervention Procedures dated May 31
12 and September 11, 1978 if indeed those persons who had been
13 aware of those two notices had been dissuaded from filing
14 because of restrictions, unwarranted restrictions in those two
15 notices.

16 Now you don't qualify at all in that it would
17 appear you should have filed something pursuant to the May 31
18 or September 11 notices of 1978, or at least you weren't
19 chilled by anything in those notices. You would agree with
20 that?

21 DR. WARNER: No, I don't agree with that.

22 CHAIRMAN WOLFE: All right. Tell me why.

23 DR. WARNER: I don't agree with that because
24 I did not have proper information to present, I didn't have
25 the scientific facts, which I realized would become available,

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1 but they were not available to me and I wished to present facts
2 where facts were available. If I don't have facts then surely
3 you're not going to be interested in what I have to say.

4 CHAIRMAN WOLFE: But you don't qualify under our
5 order of June 12, 1979.

6 DR. WARNER: Well I feel that I do, sir.

7 CHAIRMAN WOLFE: Well you haven't even read, I
8 take it, our order of June 12, 1979.

9 DR. WARNER: I've read a great many things between
10 then and this time, and you obviously have a copy of the order
11 there. Do you --

12 CHAIRMAN WOLFE: Would you like to read it?

13 DR. WARNER: Yes, I would.

14 (Document handed to Dr. Warner.)

15 MR. NEWMAN: Mr. Chairman, let's see if I can
16 help -- I'm sorry, Dr. Warner, did you wish to say something?

17 DR. WARNER: I was simply asking for assistance
18 because this does not look like what I saw.

19 CHAIRMAN WOLFE: This does not look like what?

20 DR. WARNER: This does not look like the specific
21 information that I had earlier.

22 MR. NEWMAN: Mr. Chairman, may I try to help
23 Dr. Warner in this situation?

24 I don't--from what I gather from her presentation,
25 she is not alleging that she is in the category of those

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1 persons who were chilled by the May and September '78 notices.

2 I think what she is saying is that her petition
3 -- she's trying to justify to the Board a non-timely filing.
4 And her explanation for that non-timely filing is that she
5 did not have on hand certain data.

6 Am I correct, Dr. Warner?

7 DR. WARNER: That's correct.

8 MR. NEWMAN: I think what we have here is a
9 situation where obviously a late petitioner has an extra-
10 ordinarily heavy burden and must explicate for the record her
11 position with respect to the five factors to be made in
12 considering non-timely petitions.

13 I think the burden is especially great in view
14 of the fact that the ultimate aim of the intervention, should
15 that be allowed, would be to challenge the Commission's
16 regulations, a matter which would be unusual, although not
17 impossible.

18 So I think her burdens are enormous but I think
19 that she is undertaking to meet those burdens.

20 CHAIRMAN WOLFE: Dr. Warner --

21 (The Board conferring.)

22 CHAIRMAN WOLFE: Dr. Warner, you have argued in
23 an effort to show good cause for failure to file this
24 petition for leave to intervene on time.

25 Your position then, Mr. Newman, I take it, is

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1 the petition, to have been filed on time, should have been
2 filed when?

3 MR. NEWMAN: Mr. Chairman, the petition in this
4 situation would have had to have been filed at the time of
5 the initial proceedings in the matter, so it is obviously
6 years late.

7 It may be, Mr. Chairman, that she might have
8 found new information and new evidence -- you see, I don't
9 know what her material is -- which would have justified a
10 filing under the September 11, '78 order. But it's my impres-
11 sion that she was not chilled by that order.

12 And so I guess she has been untimely to the
13 extent of, at least of not having filed -- giving her the
14 benefit of the doubt -- in response to the September 11
15 order, September 11, '78.

16 DR. WARNER: There was not evidence available
17 at the time of your September '78 --

18 MR. NEWMAN: I think what we're back to, Mr.
19 Chairman, is the fact that it is a non-timely filing for which
20 Dr. Warner may wish to present justification. And I think,
21 as I said before, that her burden is enormous, particularly
22 in light of the issue that she wishes to raise with the Board.

23 DR. WARNER: You mentioned your interpretation of
24 my issue which was that I was arguing with the levels that had
25 been set. I'm not arguing with the levels that have been set,

wrb/gb7

1 I think those are an independent issue.

2 The matter is which set of federal regulations
3 was applied in the initial consideration, whereas if the
4 Committee looked at the federal environmental regulations and
5 applied that set of federal laws to the proceedings, I believe
6 that they simply applied a different set of federal laws.
7 And here we probably have two sets of regulations, one with
8 finite limits and the other with zero limits.

9 CHAIRMAN WOLFE: We can't hear you, Doctor.

10 DR. WARNER: I'm sorry.

11 MR. COPELAND: Is that your contention, Doctor,
12 that the late clause of the 1958 Delaney --

13 DR. WARNER: Yes, my conclusion is the Delaney
14 clause is the set of federal regulations that should apply
15 here rather than the NRC limits and that these predated the
16 NRC limits and that they are relevant because of recent
17 information that we now have.

18 MR. NEWMAN: I think now that the situation is
19 becoming more tenuous because this is now a late petition
20 which seeks to argue as a matter of law which regulations are
21 applicable to the plant. It's a legal question that Dr. Warner
22 is presenting, at least as I interpret her statement. And it
23 would seem to be somewhat unusual for a late petitioner to
24 be able to justify an intervention on that basis.

25 MR. SOHINKI: Mr. Chairman, I wanted to know from

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1 Dr. Warner whether she says by the statement in her filing
2 that the Commission's recommendations are inadequate to protect
3 the public health and safety.

4 DR. WARNER: Yes, this is the reason for my taking
5 my time as an individual member of the public, I feel that my
6 health and safety and my family's health and safety -- by
7 what I now know from information on low levels of radioactivity
8 from this Congressional hearing, from other information sources
9 -- that my health and safety, my family's health and safety
10 will not be protected by the levels that the Commission has
11 set.

12 MR. SOHINKI: Do you understand the Staff's
13 response to your contention, Dr. Warner?

14 DR. WARNER: No, I don't entirely.

15 MR. SOHINKI: Our response basically is that
16 there is a forum to address the type of concern that you want
17 to address, that forum is not before this Licensing Board.
18 The forum is to file a petition for rulemaking with the
19 Commission to change those regulations which you believe are
20 inadequate.

21 DR. WARNER: I don't understand, though, that the
22 regulations need to be changed when there is already a federal
23 law that has been in effect for 20 years which covers them
24 and that's why I don't see filing a separate petition because
25 there's along standing law. And again, since it was filed

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by a different agency, I felt that perhaps your agency had not been aware of it. But there is a law, you know, I didn't see filing to change a law when there already is one in existence.

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MR. NEWMAN: Mr. Chairman, I think we have come full circle around back now to what we've got here is a legal question, namely, whether the Delaney clause, in effect, pre-emptively regulates the area of radioactive emissions, rather than the regulations of the Atomic Energy Commission.

DR. WARNER: Well I didn't bring up radioactive emissions, sir. It's the matter of transfer to the food chain, whether this can occur and whether it does occur. And this is a matter for documentation on whether-- Okay; I'm sorry.

CHAIRMAN WOLFE: I just don't understand why you offer as good cause for not filing earlier--

DR. WARNER: I'm not offering--

CHAIRMAN WOLFE: Hold on now. Just a moment.

(Continuing) --that you have just gotten some results, or whatever, from a Congressional hearing. I don't know what that has to do with your position that this Delaney clause should be the governing statute.

Now if that was, and is your position, you could certainly have brought this to the attention of the Commission back in 1974 when there was the initial notice of hearing issued as to the application for this license. Isn't that so?

DR. WARNER: No. Because the basis for my filing is my interest in my well being and the well being of my

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1 family. I have filed only for this reactor which is near
2 me, which concerns me.

3 Frankly, I guess I'm just not--

4 CHAIRMAN WOLFE: Well it was going to be near you
5 back in 1974. You were residing in this area in 1974, weren't
6 you?

7 DR. WARNER: Yes, sir, I was.

8 CHAIRMAN WOLFE: So why didn't you bring up the
9 Delaney issue in 1974?

10 DR. WARNER: In 1974 it was my opinion that the
11 effects-- In my own mind and my own convictions, which is
12 the reason why I'm here today, it was my feeling that there
13 was not sufficient evidence for significant human biological
14 effects of low levels of irradiation of the type that, from
15 your report, are scheduled for emission from the plant, that
16 there is no reason to feel that I would be damaged by these
17 levels. Although the Delaney amendments existed, I had no
18 reason to feel that I would be damage or my children could
19 be damaged by low level emissions. And since that time there
20 has been a great deal of evidence, and increasing amounts
21 of evidence have accumulated with time, and increasing amounts
22 of evidence, the kinds of effects that have been reported
23 and documented had convinced me that indeed I, as an individual,
24 could be affected. And that was why I took action.

25 MR. COPELAND: Dr. Warner, I know you're not a

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1 lawyer--

2 DR. WARNER: No.

3 MR. COPELAND: But would you agree that if the
4 Delaney clause should have been applied as a legal matter to
5 this plant now that it should have been applied as a legal
6 matter to this plant in 1974? Either we're supposed to comply
7 with the law or not; isn't that correct, Ma'am?

8 Will you agree with that? We are either supposed
9 to-- We are supposed to comply with the law at all times;
10 is that not correct?

11 DR. WARNER: Well you say "the" law. In this
12 case I recognize there is more than one federal regulation.

13 MR. COPELAND: No, Ma'am, you're contending the
14 Delaney clause applies to us.

15 DR. WARNER: I contend it applies now.

16 MR. COPELAND: And that it would have applied in
17 1974, would it not?

18 DR. WARNER: It would have applied if we had the
19 information that we have now. In 1974 less was known about
20 transfer of radionuclides to food.

21 MR. COPELAND: That's not my question, Dr. Warner.
22 I know you're not a lawyer.

23 You're not telling this Board, are you, that a
24 law--

25 DR. WARNER: Okay. The Delaney clause would have

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1 applied then; except we didn't know that emissions were
2 getting into food. I would not have known in 1974 that if
3 my children drank milk that had come from cattle that had
4 grazed in an area that had had I-131. . . At least I
5 wasn't aware in 1974 that there was good evidence, I was not
6 aware in 1974 that there would have been: I don't know that
7 there was. The papers that I have have been published since
8 that time that have documented that: the results of the
9 Hiroshima studies on increased breast cancer came out only
10 after 1974

11 If the Delaney clause applies, it applies to food.
12 And the evidence for transfer to food was not good in 1974.
13 It was not as substantial as it is now.

14 CHAIRMAN WOLFE: Let me ask you this, Doctor:

15 Supposing you are admitted as a party, what do
16 you want this Board to do, and what do you plan to do if you
17 are admitted as a party? Are you going to, say, file a
18 motion or a request asking this Board, as a matter of law,
19 to conclude that the Delaney clause, the statutes of the Food
20 Drug and Cosmetic Act are applicable and that we should only
21 apply the provisions of that statute, rather than apply
22 NRC rules and regulations? Do you plan to file such a
23 motion? Is that the extent that you want to participate?

24 DR. WARNER: At this preliminary hearing I can't
25 really say what the content of a motion that I would file in

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1 the future would be. As an individual--

2 CHAIRMAN WOLFE: Well I want to know how you're
3 going to participate in this proceeding.

4 DR. WARNER: Regardless of what regulations are
5 applied, as an individual concerned with my own health I
6 would like to be assured that I will not be ingesting I-131
7 in particular as a radionuclide in my food, that my children
8 will not have I-131 in their milk, and that the other -- and
9 that this is something we will not be taking in with our
10 food. Because I'm convinced from the recent and progressive
11 information that I have read that this would indeed endanger
12 our health, our future health and wellbeing.

13 CHAIRMAN WOLFE: So what I take it, then, you are
14 saying is that regardless of motions or anything else, what
15 you intend to do is to present evidence to establish that
16 these emissions, to whatever degree, are harmful to your
17 health and safety; is that correct?

18 DR. WARNER: Yes, that's right.

19 CHAIRMAN WOLFE: And you are not relying on the
20 Food and Drug Act, or whatever -- the Food, Drug and Cosmetic
21 Act to establish that?

22 DR. WARNER: That doesn't establish that these
23 are necessarily hazardous. It establishes a level. The
24 regulation of the level is a different matter. But I am
25 concerned because of the provision in the Act that insures

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1 that I should not be exposed to carcinogens in my food,
2 because even very small levels of these are hazardous,
3 that they will not be in my food or my children's milk.

4 MR. COPELAND: Chairman Wolfe, I think the lady's
5 writing is very specific in that she says that no level of
6 emission is safe, as I read it, and that the Food and Drug
7 Act prevents any, what she calls carcinogens from getting into
8 the food system.

9 Is that correct?

10 DR. WARNER: From getting into the food system.
11 What you do is--

12 MR. COPELAND: You want zero Iodine-131; is that
13 what you're saying?

14 DR. WARNER: In food. I'm not saying as an
15 emission. How emissions are processed, how they are handled
16 is something that I'm not qualified to judge. But as an
17 individual, I don't want to eat it.

18 MR. COPELAND: You want none; is that right? And
19 to the extent that these Commission regulations permit any,
20 you contend that they should not be applied but, rather, the
21 Delaney clause of the Food and Drug Act should be applied; is
22 that correct? because it prohibits any?

23 DR. WARNER: Yes.

24 (The Board conferring.)

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1 CHAIRMAN WOLFE: Mr. Sohinki, what regulation
2 were you referring to which would provide recourse for
3 Dr. Warner, the rulemaking?

4 MR. SOHINKI: I believe that's in our response
5 to the contention. 10 CFR Section 2.802.

6 CHAIRMAN WOLFE: By virtue of your explanation
7 which is now on the record, Doctor, what you are seeking to
8 do is to present a legal question to this Board that the
9 Food, Drug and Cosmetic Act is pre-emptive, and that our
10 rules and regulations would not prevail insofar as protecting
11 you against radioactivity and ingestion via the food chain.
12 This most certainly would not be within our jurisdiction
13 to resolve. This is a matter-- Since we are given authority
14 by Congress, we have only been authorized to, as Board
15 members, to consider whether or not a construction permit
16 should be issued after taking into account the various
17 regulations and standards of the Commission.

18 You're asking us to void, really, our rules or
19 to ignore our regulations and, instead, find that the Food,
20 Drug and Cosmetic Act applies under certain circumstances.
21 As to this, we have no jurisdiction, and, accordingly, we
22 would have to reject and deny your petition for leave to
23 intervene.

24 And, secondly, we, under 2.758, cannot proceed
25 with any challenge -- cannot grant, or cannot allow any

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1 petitioner for leave to intervene -- and we do not deem that
2 you have presented any special circumstances under our
3 Section 2.758 which would prompt us to consider such a
4 petition which would challenge our rules and regulations.

5 Therefore, as staff points out, your sole recourse
6 is under 10 CFR 2.802, which is entitled "Petition for
7 Rulemaking," in which it states, among other things, that

8 "Any interested person may petition
9 the Commission to issue, amend, or rescind any
10 regulation."

11 So you can proceed directly to the Commission
12 itself and petition them that the regulations regarding
13 radioactive emissions are improper or they don't provide
14 you and your family sufficient protection, and that you wish
15 they would, instead, adopt regulations, or amendments like
16 those in the Food, Drug and Cosmetic Act.

17 So I regret that we must deny your petition for
18 leave to intervene. We will issue, ultimately, a written
19 order to that effect. And from the date of that written
20 order, if you disagree, you may petition, file an appeal to
21 our Appeals Board and if they agree with you they will
22 reverse us and admit you as a party, or they may sustain this
23 Licensing Board. But you will be on the service list, and
24 from the date of service of our written order you may, if
25 you choose, appeal from our denial of your petition for leave

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1 to intervene.

2 Thank you very much.

3 DR. WARNER: Thank you, sir.

4 CHAIRMAN WOLFE: Excuse me; Member Cheatum has
5 advised me that if you don't appeal to the Appeal Board
6 that obviously you may come back and make a limited appear-
7 ance statement, or if the Appeal Board sustains us, once
8 again you're welcome to come back and make an oral or a
9 written statement. And that means that you just come back
10 and state to the Board your views on the application of the
11 Food, Drug and Cosmetic Act and why you think that its
12 standards should be adopted instead of --

13 DR. WARNER: I don't think they should be adopted.
14 I think they already apply

15 CHAIRMAN WOLFE: --or that they already apply.
16 And you may make any written statement you wish to in that
17 regard. Such a statement is not evidence. You are not a
18 party. You don't have to appear except at one time to make
19 your written statement. And it merely serves to -- limited
20 appearance statements merely serve to alert the Board to
21 any possible issues that such a person might have in mind.

22 Thank you very much.

23 DR. WARNER: Thank you, sir.

24 CHAIRMAN WOLFE: Mr. Scott, how much more time
25 do you think you will have, plus considering the interruptions

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1 that you have experienced?

2 MR. SCOTT: I believe that I ought to -- this is
3 not a promise -- be able to finish by twelve-thirty or one,
4 that time frame, tomorrow.

5 CHAIRMAN WOLFE: You mean starting at nine-
6 thirty and proceeding until twelve-thirty?

7 MR. SCOTT: Yes.

8 CHAIRMAN WOLFE: All right. We'll recess, then,
9 until nine-thirty.

10 I am only aware that Mr. Scott is the only person
11 to make oral argument on his contentions. The Board has not
12 heard from anyone else. So we will proceed from nine-thirty
13 and to the conclusion of Mr. Scott's oral argument, and if
14 no one appears at or before that time we will conclude this
15 special prehearing conference.

16 MR. SOHINKI: I don't know how the other parties
17 feel about this, but the staff would be willing to start a
18 little earlier tomorrow morning.

19 MR. NEWMAN: We would certainly be happy to do
20 that, Mr. Chairman. I think that might help to assure
21 everybody's timely departure. Because it has been my experi-
22 ence in the past that these things run on considerably
23 longer than the parties anticipate.

24 CHAIRMAN WOLFE: Yes.

25 Mr. Scott, what would be your earliest time?

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MR. SCOTT: I think, as you've noticed, I've been coming in other mornings, I have difficulty getting here before nine-thirty. Basically I've got to deliver some children to certain places at certain times.

CHAIRMAN WOLFE: All right. We will stay with the time of nine-thirty.

(Whereupon, at 5:40 p.m., the hearing in the above-entitled matter was recessed, to reconvene at 9:30 a.m., the following day.)

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