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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:
HOUSTON LIGHTING & POWER COMPANY)
)
(Allens Creek Nuclear Generating) Docket No. 50-466
Station, Unit 1))

SPECIAL PREHEARING CONFERENCE

POOR ORIGINAL

Houston, Texas

Place - 15 October 1979

701 - 861

Date -

Pages

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of: :

HOUSTON LIGHTING & POWER COMPANY : Docket No. 50-466

(Allens Creek Nuclear Generating :
Station, Unit 1) :

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

POOR ORIGINAL

Monday, 15 October 1979

Prehearing conference in the above-entitled
matter was convened, pursuant to notice, 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 & Botts,
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Houston, Texas 77002

JACK NEWMAN, Esq.,
ROBERT H. CHLP, Esq.,
Lawrence Newman, Reiss, Anselmi & Toll
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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
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On behalf of the Regulatory Staff:

STEPHEN M. SOHINKI, Esq.,
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Office of Executive Legal Director,
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On behalf of Intervenor Texas Public Interest Research
Group (PIRG):

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Intervenors pro se:

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P R O C E E D I N G S

CHAIRMAN WOLFE: Good morning.

Pursuant to our order of August 6th, 1979 published in the Federal Register on August 14th, 1979 at 44 Federal Register 47653, the special prehearing conference is now in session.

As you're all aware, the Houston Lighting and Power Company has applied to the Nuclear Regulatory Commission for a construction permit to construct the Allens Creek Nuclear Generating Station Unit 1. This Atomic Safety and Licensing Board has been authorized to determine whether or not this construction permit should be issued after we consider the evidence on the health and safety and environmental matters.

To my left is Dr. E. L. Cheatum, a part time technical member of the Atomic Safety and Licensing Board panel as of 1972. He retired as Director of the Institute of Natural Resources, University of Georgia in 1977.

To my right is Mr. Gustave Linenberger, a full time technical member of the Atomic Safety and Licensing Board panel as of 1972. He is a nuclear physicist and engineer.

I am Sheldon Wolfe, Chairman of this Board. I'm a full time legal member of the Atomic Safety and Licensing Board panel. For over eighteen years I was a trial attorney in the United States Department of Justice in

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1 Washington, D.C. Since January of 1976 I have been a legal
2 member of the panel.

3 Starting to my left, at the first table, would
4 counsel and/or representatives of the parties introduce
5 themselves?

6 MR. COPELAND: Good morning, Mr. Chairman,
7 members of the Board.

8 With the permission of the Board I will remain
9 seated so that I can use this microphone.

10 My name is Greg Copeland. I'm an attorney for
11 the law firm of Baker and Botts here in Houston, Texas.
12 With me this morning as co-counsel are Mr. Jack Newman and
13 Mr. Bob Culp and Mr. Lave Raskin of the firm of Lowenstein,
14 Newman, Reis, Axelrod and Tull from Washington, D.C.

15 We're here this morning on behalf of the Houston
16 Lighting and Power Company.

17 CHAIRMAN WOLFE: The next table, please.

18 MR. DOHERTY: I'm John F. Doherty. I'm pleased
19 to meet you again. I'm a party intervenor.

20 MR. SCOTT: I'm James Scott. I represent
21 TexPIRG.

22 MR. LOWERRE: I'm Rick Lowerre with the Texas
23 Attorney General's office.

24 MR. SCHENKI: Good morning, Mr. Chairman, members
25 of the Board.

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My name is Stephen Schinki. I'm employed by the Office of the Executive Legal Director of the Nuclear Regulatory Commission, and I represent the Commission's technical staff in this proceeding.

Seated to my right is Ms. Colleen Woodhead of the same office.

To her right is Mr. Richard Froelich, the Environmental Project Manager for the Allens Creek application. And seated to Mr. Froelich's right is Mr. Calvin Moon, the Licensing Project Manager for this application.

CHAIRMAN WOLFE: Dr. Cheatum is the environmental scientist member of this Board.

Mr. Scott.

MR. SCOTT: There are some other parties not sitting up at the front table.

CHAIRMAN WOLFE: Who else has been admitted as a party, if they will step forward and sit at this other table. It will be very helpful.

Will you people please identify yourselves?

DR. MARRACK: D. Marrack.

CHAIRMAN WOLFE: Thank you.

Next, please.

MS. MCCOCKLE: Brenda A. McCockle.

CHAIRMAN WOLFE: Thank you.

MS. HINDERSTEIN: Carro Hinderstein.

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CHAIRMAN WOLFE: Thank you.

We have many matters to consider before the conclusion of this special prehearing conference on Friday of this week.

As you also are aware, we, the Board, are a federal adjudicatory board created by Congress, and the conduct of this proceeding, as all other proceedings of this board, are prescribed by the NPC Rules of Practice, reflected in 10 Code of Federal Regulations Part 2.

The audience is cautioned that it must remain silent during the course of these proceedings. We expect that the parties and/or the petitioners for leave to intervene to whom we pose questions will answer directly and to the point, and that any oral argument allowed during the course of this proceeding on contentions will be direct and relevant.

And I would further request that there be no smoking in the conference room.

Now as a preliminary matter, Mrs. Karen Stade in a June 25th, 1979 letter, and Mr. and Mrs. Bruce Palmiter, requested leave to withdraw their petitions for leave to intervene, and these requests are granted. However these people, these individuals, if they so desire, may make limited appearance statements at a time and place to be subsequently noticed.

Now prior to our order ruling upon intervention

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1 petitions dated February 9, 1979, many individuals sent in
2 letters requesting to make oral or written limited appearance
3 statements pursuant to our Rules of Practice.

4 While we are not receiving limited appearance
5 statements at this special prehearing conference, such
6 individuals will be notified when they may make these state-
7 ments. In other words, notification will be given so that
8 they can make these statements at subsequent prehearing
9 conferences or at the beginning of the evidentiary hearing.

10 As we've indicated before, a person requesting to
11 make a limited appearance statement is not a party. His
12 statement is not evidence, nor is it considered as such.
13 Thus a limited appearance statement can serve an important
14 purpose in alerting the Board as to the existence of an
15 important issue and the Board may direct the parties to present
16 evidence on that issue.

17 Now, since our order of February 9, 1979,
18 numerous individuals have sent in one or more letter which
19 we have deemed to be requests for making limited appearance
20 statements. We have so concluded that these individuals are
21 requesting to make limited appearance statements because of
22 one or more of the following reasons:

23 The first reason is the letters requested to be
24 treated as such or on their face appear to be requests to
25 make limited appearance statements.

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1 The second reason the letters could not be
 2 considered by the Board as being petitions for leave to inter-
 3 vene because they had not been filed by July 13, 1979, the
 4 due date set in the Supplemental Notice of Intervention Pro-
 5 cedures dated June 12, 1979 and published at 14 Federal
 6 Register 35052 on June 13, 1979.

7 The third reason the letters could not be con-
 8 sidered as petitions for leave to intervene since the writers
 9 thereof did not state therein that they had failed to file
 10 petitions for leave to intervene pursuant to the Board's
 11 notices of May 31 and September 11, 1978 because of the
 12 restrictions on permissible contentions contained in those
 13 notices. Such a statement was specifically required by a
 14 Supplementary Notice of Intervention Procedures dated June 12,
 15 1979.

16 Indeed, at least one of the writers of letters,
 17 Kathryn Otzie, I believe, stated that she had not been
 18 inhibited from filing a petition earlier because of the
 19 restrictions in our notices of May 31 and September 11, 1978.

20 The fourth reason and, in any event, most of the
 21 letters -- even if, for argument's sake, they could be deemed
 22 to be petitions for leave to intervene -- were not supplemented
 23 by a list of contentions by the due date of September 14, 1979
 24 as directed in our order scheduling the special prehearing
 25 conference dated August 6, 1979, and published on August 14,

POOR ORIGINAL

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1 1979 at 44 Federal Register 47653.

2 Now, some of the letters, however, were supple-
3 mented by a list of contentions but they did not state that
4 the writers had failed to file petitions pursuant to the
5 notices of May 31 and September 11, 1978 because of the
6 restrictions on permissible contentions contained in those two
7 notices.

8 Now the following individuals are deemed to be
9 and are ruled to be persons requesting to make limited
10 appearance statements. After I've called off the names of
11 these individuals, any of these named individuals who believes
12 he or she should be considered as a petitioner for leave to
13 intervene, shall rise and ask the Board to reconsider.

14 I will read off the names of these people that
15 we deem and rule to be individuals requesting to make
16 limited appearance statements.

17 The first is J. Michael Ancarrow.

18 The second Alma Arrazolo.

19 The third, Mr. and Mrs. John Atkinson.

20 Next, Mrs. Fern Barnes.

21 Next, John and Jeanette Beverage.

22 Barbara Blatt.

23 Janice Blue.

24 Laura Brode.

25 Stephanie Brown.

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wrb/agb4

1 Earl Bruner. I believe it is B-r-u-n-e-r.

2 Then there is Dorothy Carrick. Now Ms. Carrick,
3 I would underscore, is one of those individuals who in her
4 letter or letters to the Board did not state that she had
5 failed to file petitions for leave to intervene pursuant to
6 the Board's notices of May 31 and September 11, '78 because
7 of the restrictions on permissible contentions contained in
8 those notices.

9 Next is Billy Carr.

10 James Chilcoat.

11 Alphonso Cipada.

12 Mrs. W. S. Cleaves.

13 Gabriella Cosgriff.

14 Then we have Elinor Cumings, and she falls
15 into the same category as Ms. Carrick.

16 Then we have Abraham Davidson.

17 Gail De Gregori.

18 Dick Day.

19 Nancy L. Durham.

20 Then we have Stephen Doggett, and he falls into
21 the same category as Ms. Carrick and Ms. Cumings.

22 Then we have Robert R. Edgar.

23 Vesta Eickman.

24 T.E. Elder.

25 Dana Erichson.

POOR ORIGINAL

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1 Pat Erichson.

2 E.R. Filley and others.

3 Helen Foley.

4 Mary Fuller.

5 William R. Funderburke, Sr.

6 Barbara Gino.

7 Albert Gonzales.

8 Then we have Robin Griffith, who falls, once
9 again, into the same category as Ms. Carrick, Ms. Cunnings
10 and Mr. Doggett.

11 Next is Margaret Curasich.

12 Leonj Hanson.

13 Mr. and Mrs. Ben Hoddle.

14 R.D. Hoffman.

15 Kathryn Hooker.

16 Phil J. Jones.

17 Sandra, I believe it is J-u-n-g or J-u-n-e.

18 Mr. Doherty?

19 MR. DOHERTY: Could you speak a little more
20 slowly? We're trying to get these down.

21 CHAIRMAN WOLFE: All right.

22 Have you been getting them up to now?

23 MR. DOHERTY: Yes, I belisee, so far, yes, sir.

24 CHAIRMAN WOLFE: All right.

25 The last was Sandra J-u-n-g or J-u-n-e.

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Barbara Karkaki.

Robert Kuehm, K-u-e-h-m.

Rachel Weinred-Kuehm.

Mr. and Mrs. Andrew Ladner.

Laura Lewis.

Israel Lopez.

POOR ORIGINAL

Jean Lotz, L-o-t-z.

Mr. and Mrs. Roy Loyless, L-o-y-l-e-s-s.

Mr. and Mrs. B.M. Mayer.

Susan McGuire.

Dr. and Mrs. Nicholas Michaels.

Steve Mills.

Cathy Mohnke, M-o-h-n-k-e.

Eugene Mueller, M-u-e-l-l-e-r.

Kathryn Otto.

Then we have Frances Pavlovic, and she falls
into the same category as Ms. Carrick, Ms. Cummings, Mr. Doggett
and Mrs. Griffith.

Virginia Lacy Perrenod.

John D. Pittman, Sr.

Albert Richert, Jr.

Gene Robertson.

James H. Robinson.

Dorothy J. Ryan.

Mr. and Mrs. Larry Scott upon their own behalf

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wrb/agb7

1 and on behalf of Mr. and Mrs. Robert Edgar, Don McFarland and
2 Charles Fuller.

3 Patricia L. Streilein, S-t-r-e-i-l-e-i-n. Miss
4 Streilein falls into the same category as Ms. Carrick, Ms.
5 Cumings Mr. Doggett, Ms. Griffiths, Ms. Pavlovic.

6 Then there is Marshall C. Tindall, Sr.

7 Alan Vomackn.

8 Bonnie Wallace.

9 MR. SOHINKI: Excuse me, Mr. Chairman. I was
10 informed by one of the people in the back of the room that
11 they're having trouble hearing you.

12 CHAIRMAN WOLFE: All right.

13 The last one was Bonnie Wallace.

14 D.B. Waller.

15 Tanya Watkins.

16 Donald D. Weaver.

17 Jane Weaver.

18 Excuse me, as to Donald Weaver, he falls into
19 the same category as Ms. Carrick, Ms. Cumings, Mr. Doggett,
20 Mrs. Griffith, Ms. Pavlovic and Ms. Streilein.

21 I would also add that Robert Edgar also falls
22 into that category.

23 We then have Jeffrey West and we have S.W.
24 Woodward.

25 Now, as I said earlier, do any one of these

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individuals I have named wish to come forward to this table here and be seated one-by-one and give reasons why we should reconsider and rule that they are petitioners for leave to intervene instead of being individuals requesting to make limited appearance statements.

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1 It would be helpful if we could proceed in alpha-
2 betical order. However, as you will.

3 Would you identify yourself, please?

4 MR. DOGGETT: I am Stephen Doggett.

5 CHAIRMAN WOLFE: One moment, please, Mr. Doggett.

6 (Pause.)

7 Mr. Doggett, the Board seemed to -- well, not
8 seemed to, did have difficulty. There seemed to be some
9 conflict -- and I take it upon reviewing your letter you have
10 seen the conflict. Namely, in the last paragraph at page one
11 of your letter dated July 17, 1979, you say:

12 "I have not previously intervened,
13 one, because I was initially not aware of the
14 intervention procedures as set out in prior
15 Federal Register notices and, two, because prior
16 intervention notices stated that petitions should
17 be limited to addressing changes made in the plans
18 for the proposed facility or information not pre-
19 viously available."

20 Well, could you explain the apparent conflict or
21 discrepancy there?

22 MR. SOHINKI: Excuse me, Mr. Chairman. The people
23 in the back of the room have informed me that they are still
24 having trouble hearing you.

25 (Pause.)

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1 CHAIRMAN WOLFE: Can you hear me now?

2 I will read Mr. Doggett's paragraph in which there
3 seemed to be a conflict or discrepancy in his letter of July 17,
4 1979. It reads:

5 "I have not previously intervened,
6 one, because I was initially not aware of the
7 intervention procedures as set out in prior
8 Federal Register notices and, two, because prior
9 intervention notices stated that petitions should
10 be limited to addressing changes made in the plans
11 for the proposed facility or information not
12 previously available."

13 Mr. Doggett?

14 MR. DOGGETT: I think I can clarify my letter.

15 Initially, I was not aware of the notices. Prior
16 to the -- I did become of the notices, however, prior to the
17 deadline for attempting to intervene.

18 But it was my understanding that any attempt to
19 intervene at that time would be limited to any new issues that
20 would be raised strictly because the plans had been changed,
21 that is, reduced to one plan as opposed to two. Therefore,
22 I felt like any issues that I would have wanted to raise would
23 have been issues that probably would have applied to the initial
24 plan as opposed to just the changes that had been made by
25 reason of the fact that HL&P decided to build just one structure.

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wrb/agb3

1 Therefore, I decided that it would be a waste of my time to
2 attempt to intervene.

POOR ORIGINAL

3 MR. COPELAND: Mr. Chairman, I don't know whether
4 it's appropriate for me to interject at this point or not,
5 but I have been somewhat confused by that statement as to the
6 exact dates that are being referenced when Mr. Doggett said
7 that he did not know about the notice until the time to inter-
8 vene came about. Is he speaking of the time to intervene that
9 was set forth in the June 18 notice? I believe that might
10 help clear matters up.

11 CHAIRMAN WOLFE: June 18 what year?

12 MR. COPELAND: This year.

13 MR. DOGGETT: Okay. The notice -- as I understand
14 it, I'm not clear on this. I did read through the Register
15 and tried to read all the notices. As I understand it, there
16 was an original notice and then there was a corrected notice.
17 And then finally there was a third corrected notice.

18 CHAIRMAN WOLFE: There was a notice of May 31, 1978,
19 and then there was a corrected notice of intervention pro-
20 cedures dated September 11, 1978.

21 Now, it's those two notices that you were or were
22 not aware of?

23 MR. DOGGETT: I cannot give you specific dates.
24 But if my memory serves correctly, I was not aware of the
25 May 11 notice, the initial notice.

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CHAIRMAN WOLFE: May 31.

MR. DOGGETT: The May 31 notice.

I did become aware of the second notice.

CHAIRMAN WOLFE: Of September 11?

MR. DOGGETT: Of September 11 prior to the deadline for submitting a petition.

CHAIRMAN WOLFE: And that would have been October 11, before October 11.

MR. DOGGETT: Right.

But on reading that notice, I felt that any issue I wanted to raise would have been foreclosed by the limitation that we had to limit our issues to any issue that would have been raised by the change in plans by the reduction in the proposed size of the plant. Therefore, I decided to not even attempt to intervene.

Subsequent to that, I read in the newspaper about the last notice and decided to go ahead and try to intervene based on the wording of the last notice.

CHAIRMAN WOLFE: Will you do agree that as written your letter is somewhat confusing?

MR. DOGGETT: Yes, sir, I do. And I agree that my initial statement is also confusing.

But without being specific as to the date that I made these decisions, I can say that I did read one of the first two notices and I do recall that my feeling at the time

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1 was well it's hopeless the way that's worded, that all the
2 main decisions have already been made and that I didn't think
3 that I could pick out any little particular thing because of
4 the changes in plans that would allow me to intervene.

5 MR. COPELAND: Mr. Chairman, excuse me, sir. I
6 wonder if it might be helpful to clarify when it was that
7 Mr. Doggett made that decision about the September 11 notice
8 and exactly what the time frame was for that decision process.

9 CHAIRMAN WOLFE: Well I think Mr. Doggett has
10 made a satisfactory explanation to the Board's mind and,
11 therefore, Mr. Doggett, we will reconsider. And we treat your
12 letter of July 17, 1979 as being a petition for leave to
13 intervene.

14 And a little bit later, hopefully today or
15 certainly before Friday, we hope to reach you among other
16 petitioners for leave to intervene and hear your oral argument
17 in refutation or in rebuttal to Applicant and Staff's objections
18 to your list of contentions which were submitted -- well it's
19 undated, but it was served on the Board on September 18, 1979.

20 All right, Mr. Doggett.

21 MR. DOGGETT: Thank you, Mr. Chairman.

22 There is something I think I should bring to the
23 Board's attention at this time. I am an attorney licensed to
24 practice by the Supreme Court of Texas. And I have been asked
25 by quite a few of these people who are attempting to intervene

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1 to represent them at this hearing. I have not filed as yet
2 a notice of appearance with the Board. I do have a typed
3 notice of appearance which I have not signed and there is no
4 place for me to sign it, but it does list the people who have
5 asked me to represent them in this proceeding.

6 CHAIRMAN WOLFE: Could you give us a copy? Do you
7 have a copy of that, Mr. Doggett?

8 MR. DOGGETT: Yes, sir.

9 CHAIRMAN WOLFE: And we're very pleased that
10 various individuals have secured a counsel or if they make the
11 effort to have one representative, one individual represent
12 them. That makes it much easier for the Board and for everyone
13 involved to have a focal point for making oral argument, a
14 focal point -- I'm sorry, you're not hearing?

15 As I was saying, I was pleased and will be pleased
16 if various individuals do secure counsel or, if they don't
17 secure counsel to represent a group of them, we do appreciate
18 if various individuals will get together and agree to have a
19 single representative represent a group of individuals. This
20 makes it easier for the Board, it makes it easier for everyone
21 concerned. We have a focal point for oral argument, we have
22 a focal point for the presentation of evidence, the focal
23 point for cross-examination and a focal point for the sub-
24 mission of written proposed findings of fact and conclusions
25 and briefs.

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1 Mr. Doggett, are the individuals on this notice of
2 appearance list, informal as that may be at this point, are
3 they at this time present, do you know?

4 MR. DOGGETT: Some are present, some are not.
5 And I do not know which are here and which are not.

6 There are two separate lists.

7 CHAIRMAN WOLFE: Why have two separate informal
8 lists been handed up to us at this time?

9 MR. DOGGETT: The reason one list was prepared
10 was that I had initially intended to represent one of those
11 groups. This weekend I learned that an attorney that had
12 intended to be present to represent one of the other groups
13 may not be able to be present for the entire proceedings.
14 Therefore, I agreed to represent those individuals when that
15 attorney cannot be present.

16 DR. CHEATUM: Which list is that?

17 MR. DOGGETT: I'll have to look and tell you.

18 CHAIRMAN WOLFE: As to the list for which you are
19 substituting as counsel, Mr. Doggett, is the actual counsel
20 in the room at this time?

21 MR. DOGGETT: That would be Clarence West, I
22 believe, and I do not know whether he is present.

23 CHAIRMAN WOLFE: Is Mr. West present?

24 (No response.)

25 Mr. West agreed, I take it, to your serving as

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1 substitute counsel?

2 MR. DOGGETT: Yes, sir.

3 CHAIRMAN WOLFE: And I take it his clients are
4 as well?

5 MR. DOGGETT: Yes, sir. This was at their request.

6 MR. SOHINKI: Excuse me, Mr. Chairman. Is the
7 list short enough so that you can possibly read it for the
8 benefit of the other counsel so we know who Mr. Doggett is
9 representing?

10 CHAIRMAN WOLFE: All right, I'll read the list.

11 We have been informally advised at this point
12 that Mr. Doggett is representing Elinor P. Culings.

13 He's representing himself.

14 He's representing Robin Griffith.

15 He's representing Kathryn Otto.

16 He's representing Frances Pavlovic.

17 And he's representing Patricia Streilein.

18 We are informally advised also that he's acting
19 as substitute counsel for Mr. Clarence West, who represents
20 J. Morgan Bishop.

21 Margaret Bishop.

22 Dorothy Carrick.

23 Carolyn Conn, C-o-n-n.

24 Nancy L. Durham.

25 Judith Durgin.

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Peter Durgin.

Leotis Johnston.

Rosemary Lemmer.

Donald Weaver.

Connie Wilson.

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1 MR. DOGGETT: I would like to apologize to the
2 Board and the other attorneys for the late notice. A lot of
3 this was as a result of developments over the weekend, so I
4 was unable to give the Board and the other counsel prior
5 notice of this.

6 CHAIRMAN WOLFE: You mean subsequent notice.

7 Does this present a problem to counsel and the
8 other parties?

9 MR. COPELAND: I don't believe we have any problems,
10 Mr. Chairman. I guess we're to assume from that that Mr.
11 Doggett will be speaking for all these people throughout the
12 course of this prehearing conference?

13 CHAIRMAN WOLFE: That is correct, is it not, Mr.
14 Doggett?

15 MR. DOGGETT: No, sir.

16 MR. COPELAND: Then I do, yes, sir, have a
17 problem with that.

18 CHAIRMAN WOLFE: Would you explain your answer, Mr.
19 Doggett? What do you mean?

20 MR. DOGGETT: For instance, on this particular
21 issue, as to the reason for failing to intervene on a prior
22 date, I feel that it would be better if the individuals
23 themselves were able to explain to the Board why they did not
24 intervene at a prior date.

25 Unfortunately, I have been unable to meet with most

1 of these people on an extensive basis, and I simply would not
2 be able to advise the Board why they did not intervene.

3 Moreover, as to the discussion of contentions I am
4 a solo practitioner of law. I run a business. I have been
5 unable to meet on an extensive basis with most of these people.
6 And I feel that it would save a great deal of time if the
7 people were able to defend, themselves, their own contentions
8 and make their own arguments.

9 Now, I will make every effort during the course of
10 this week to meet with these individuals and attempt to get
11 enough information to do what the Board asks. But at this
12 point, today, now, I am simply -- I simply do not have enough
13 information to be able to say that I could speak for all these
14 individuals.

15 There is a problem involved with some of these
16 individuals who are not here today because they were unable
17 to get permission from their employers to leave work. That
18 was one of the reasons I had requested in an earlier letter
19 that we hold some night sessions.

20 But if I am ordered to speak on behalf of some of
21 these individuals, I will simply have to say that I do not
22 know why they failed to intervene, and I do not know what
23 information they had to back up their contentions.

24 CHAIRMAN WOLFE: I take it that it is the intent
25 of both you and of the persons that you actually represent

1222 026

1 that certainly after this special prehearing conference you
2 will take full control over their cases and fully represent
3 them, is that correct?

4 MR. DOGGETT: As to the first list, that is certainly
5 correct. As to the second list, which I am substituting as
6 counsel for Mr. West, at this time I cannot give you an answer.

7 It may be that an arrangement will be worked out
8 that it will apply also to the second group of people for which
9 I am substituting as counsel.

10 CHAIRMAN WOLFE: Well, this does, indeed, present
11 a problem.

12 We have, as you know, set aside five full days for
13 a consideration and resolution of various matters. We will
14 proceed on course and hopefully the various people will come
15 forward.

16 If they, for whatever reason -- for example, are
17 unable to leave their work, I'm sorry that they didn't obtain
18 your services earlier so that you, in turn, would have been
19 able to make representations on their behalf, particularly on
20 the questions that we are going to direct to various people
21 during the course of this special prehearing conference.

22 It does present a problem. At all times this Board
23 has been trying to fairly expedite this proceeding. We seem
24 to have had for some time now several sets of train cars on
25 individual tracks, and we've been trying to couple all these

1222 027

1 various cars so that we can have a good proceeding and a
2 consolidated proceeding.

3 But this seems to be not obtainable, so all I can
4 do at this point, since we have not been fairly notified that
5 you had not had enough time to acquaint yourself in order to
6 be able to speak for those people whom you do represent, I'm
7 afraid we'll just have to proceed.

8 I would suggest, if you can, that you call those of
9 your clients who are not here and ask them to make every
10 effort to get here.

11 MR. LINENBERGER: Mr. Doggett, a point of clarifica-
12 tion. It's not clear to this member of the Board just
13 precisely what you are saying.

14 Let's talk about this week and then the future,
15 and keep those separate.

16 Now, I gather your point is, with respect to this
17 week and the arguments that will result in a determination of
18 whether any of the people on your list attain party status,
19 this phase, this week's phase of the proceedings, you're not
20 in a position to perhaps speak for all the people on this
21 list, is that correct?

22 MR. DOGGETT: Not today. I think there is a very
23 good chance, given the opportunity, that sometime during this
24 week I will be in a position to do what the Board asks. And
25 on that point I would ask that if there is an individual who

1222 028

1 is not here, and about whom I do not have information, I
2 would ask that the Board defer the proceedings as to that
3 party until, say, the next day, to give me an opportunity to
4 attempt to meet with them and get the information that the
5 Board seeks.

6 MR. LINENBERGER: All right, sir. But once party
7 status has been determined for the individuals on your list
8 and we move into the evidentiary hearing, is it your position
9 and your understanding that you will then speak for those
10 people with respect to their contentions? And is that your
11 intent?

12 MR. DOGGETT: I had not planned to do it in that
13 manner. I feel that simply because I am representing and
14 advising an individual does not require me to give, in effect,
15 testimony on their behalf.

16 CHAIRMAN WOLFE: That's not what Mr. Linenberger
17 meant, not to give testimony, but if one of your clients is
18 admitted as a party and has three contentions that are
19 admitted as issues in controversy, is it your present intent,
20 and is it your understanding with your clients, that you will
21 direct -- that you will present witnesses on their behalf
22 and/or cross-examine other witnesses during the course of the
23 proceeding, and ultimately to submit proposed findings of
24 fact and conclusions of law?

25 MR. DOGGETT: Yes, sir.

wel 6

1 CHAIRMAN WOLFE: That is your intent, and that is
2 your understanding with your clients?

3 MR. DOGGETT: Yes, sir.

POOR ORIGINAL

4 CHAIRMAN WOLFE: All right.

5 MR. COPELAND: Mr. Chairman, there is, of course,
6 a novel question here. I've never been presented with this
7 kind of problem, where a lawyer is representing somebody he's
8 not really representing, and it's going to leave the record
9 very, very confused.

10 I would suggest -- and this is just a suggestion,
11 I don't try to tell this Board how to run the proceeding --
12 but we would have no objection to giving Mr. Doggett the
13 rest of the day to go out and try to line up his, what
14 appears to be, clients and to come back in here tomorrow and
15 tell us exactly who it is he represents, and whether he has
16 been retained by them as an attorney.

17 I think the rules are very clear on that point.
18 The rules say that a person -- this is 2.713 -- a person may
19 appear in an adjudication on his own behalf or by an attorney
20 at law with standing and admitted to practice before any
21 court of the United States.

22 I don't think there is an and/or situation. I
23 think you either appear on your own behalf or through an
24 attorney.

25 Perhaps if we give Mr. Doggett the rest of the day

1222 030

1 to work on this problem it would help clarify the matters and
2 we can proceed with other parties, other than those that are
3 on the two lists that he provided to the Board.

4 And I think he should make it clear what his
5 representation status is with respect to those people for
6 which he is appearing as a substitute counsel. As an attorney,
7 I've never heard of any such concept, and that leaves me very
8 disturbed. I think that ought to be cleared up. I think that
9 if Mr. Doggett is going to appear as an attorney for these
10 people, on their behalf, then they should be bound by his
11 representation. He should represent to this Board that he has
12 the authority to speak for them, and he definitely should file
13 a notice of appearance, listing all the people that he
14 represents.

15 MR. SCOTT: Mr. Chairman, as a matter of clarifica-
16 tion, I think one of the problems here may be some of these
17 individuals, I believe, are concerned with whether or not
18 they're going to lose any chance of party status just because
19 they're not here today. That's one question.

20 The other question is whether or not their
21 contentions as submitted will be held to be sufficient to
22 give them party status.

23 To me, that's two separate questions.

24 It seems to me that with Mr. Doggett being here
25 and saying what he has, and explaining that he has at least

1 made the appearance for these people who have agreed to let
2 him represent them, for that purpose -- now I don't understand,
3 in fact, why anybody should lose status and have to drop out
4 of the proceedings because --

5 MR. COPELAND: That's not even an issue right not,
6 Mr. Scott. We haven't even gotten to that point.

7 MR. SCOTT: I don't understand why there is any
8 reason for people to be limited intervenors just because they
9 don't show up at a hearing. But in assuming that that is your
10 ruling, I would say that if Mr. Doggett is here and is
11 representing them, and they can't be given limited intervenor
12 status at this time just because they're not here, I grant
13 you there seems to be a problem about explaining their
14 contentions. But these people have already submitted
15 contentions. That just means you'd have to rule without the
16 help of their additional clarifications they might give. It
17 doesn't mean that they are at this time moot as parties.
18 That's not my understanding.

19 MR. SOHINKI: Mr. Chairman, I want to make clear
20 that we certainly did not understand anything the Chair said
21 to indicate that any of these people were being rejected at
22 this time as intervenors in this proceeding.

23 One of the purposes of this conference -- and
24 probably the most important purpose -- is to give these
25 individuals an opportunity to respond to any objections made

wei 9

1 by the Staff and Applicant to their contentions.

2 In the Staff's view, the only so-called penalty
3 that these people will pay for not being here today is that
4 they would not have the opportunity to respond to the objections,
5 and that they would be implicitly relying on the Board to make
6 rulings on their contentions without the benefit of any
7 additional oral argument.

8 But we certainly don't understand the Chair to be
9 saying that any of these people will be deprived of party
10 status simply by virtue of the fact that they're not here
11 today.

12 I might also add that the Staff is dismayed that
13 Mr. Doggett is not prepared to make argument with regard to
14 these contentions, and while we would have no objection to
15 providing him an additional day to contact his clients and to
16 ascertain, (1) why they failed to comply previously, or make
17 some representation with regard to the two original notices,
18 and (2) to gain from them any additional information which
19 he might present to the Board in regard to any of their
20 contentions, that would be fine with us. But we certainly
21 don't want to be put in a Catch-22 situation, where, number
22 one, Mr. Doggett is not prepared to make argument on behalf
23 of his clients, and, number two, his clients can't be here
24 to make arguments on their own behalf.

25 CHAIRMAN WOLFE: Yes. Well, perhaps we're being

1222 033

wel 10

1 a little bit premature here.

POOR ORIGINAL

2 All we're doing at this point is for the Board
3 to indicate and rule, as it has done. Just to clarify the air
4 here so the people know where they stand and the parties know
5 where they stand, we have ruled that we have received
6 communications from various people, and we have treated those
7 communications as being requests for leave to make limited
8 appearance statements.

9 Now, we have identified these individuals, and
10 we've asked for them to come up individually and to explain
11 to the Board why we should consider them as being petitioners
12 for leave to intervene.

13 Now, we're only at that stage at this point, no
14 farther. Later on we're going to call on Mr. Doherty, Mr.
15 Scott, Dr. Marrack, Mr. Potthoff . . . and one other
16 individual . . . and Mr. and Mrs. Framson. So we're going
17 to call upon them to make oral argument upon their
18 contentions in rebuttal to Staff and Applicant's objections
19 to the admissibility of their contentions.

20 Thereafter, we are going to call on those people
21 who filed petitions for leave to intervene in a timely manner;
22 namely, on or before July 18, 1979, and also timely filed
23 lists of contentions on or before September 14, 1979.

24 And I'm sorry I have to make this so complicated,
25 but this is complicated. There were some petitioners for

1222 034

1 leave to intervene who at the time they timely filed on July
2 18 included in their petition for leave to intervene one or
3 more contentions. And we will hear those people as well.

4 Now, we're only at the first stage here, and I'm
5 asking those people whose names we have read off and said that
6 the Board has ruled that we are merely treating them as
7 individuals seeking to make limited appearance statements, and
8 we're asking those people to come forward and tell us why
9 we should consider them as, for example, being something more
10 than limited appearance requestors and that, indeed, we should
11 treat them as petitioners for leave to intervene.

12 I am merely doing this to clear the air.

13 Now, except for those people that I named in that
14 alphabetical list that I read off, and said, for example, as
15 to Ms. Carrick and the others who fell in her category, none
16 of the other people on that list, and not in the category of
17 Ms. Carrick, simply did not file contentions by September 14,
18 1979. But out of wanting to hear from anyone who wanted to
19 speak, I said come forward and speak.

20 But they're going to have a huge hurdle to
21 overcome. First of all, if they didn't file their intervening
22 petition on or before July 18, they have a tremendous hurdle
23 to overcome. They even have a worse hurdle to overcome if
24 they didn't file contentions by September 14.

25 So I don't think we're trying to put all the cars

1222 035

wel 12

1 on the same track, that we need to be confused or concerned
2 about the present status of things.

3 We do note, Mr. Doggett -- and you might use your
4 pencil there -- we do notice that you represent to us that
5 you do represent Ms. Elinor Cumings?

6 MR. DOGGETT: Yes, sir.

POOR ORIGINAL

7 CHAIRMAN WOLFE: Put her name down, please, on your
8 pad.

9 MR. DOGGETT: I have already written it down, sir.

10 CHAIRMAN WOLFE: All right.

11 (The Board conferring.)

12 Now, certainly as to the people on your list that
13 you state you are actually representing, of those people there
14 is Ms. Cumings, Mrs. Robert Griffith, Ms. Frances Pavlovic,
15 and Ms. Patricia Streilein, whom we do wish to have appear.
16 Either today or no later than tomorrow you should be in a
17 position to tell us why, in their petitions for leave to
18 intervene, they failed to state that they failed to file
19 petitions for leave to intervene pursuant to the Board's
20 notices of May 31 and September of 1978 because of the
21 restrictions on permissible contentions contained in those
22 notices.

23 It's as to those people that we named that we want
24 your representation, either sometime today or by no later than
25 tomorrow, that they explain why, when they filed their

1222 036

1 petitions for leave to intervene by July 18 they didn't put
2 that wording in those petitions for leave to intervene.

3 Do you understand me?

4 MR. DOGGETT: Yes, sir.

5 CHAIRMAN WOLFE: All right.

6 MR. DOGGETT: Some of those people are here, today.
7 I guess the best way to handle it is have them come up and
8 tell you why.

9 I know Ms. Griffith is here. I don't know if any
10 of the others are here.

11 CHAIRMAN WOLFE: Why don't you step aside, then,
12 Mr. Doggett, and we will go down the list as best we can and
13 find out what these people have to say.

14 MS. GRIFFITH: My name is Robin Griffith. I live
15 in the Rosenberg-Almond area.

16 We plan to live there for a good while to come.

17 CHAIRMAN WOLFE: Yes, Ms. Griffith. One moment,
18 please.

19 (The Board conferring.)

20 Ms. Griffith, do you have a copy of your petition
21 for leave to intervene dated July 17, 1979? Do you have a
22 copy of that?

23 MS. GRIFFITH: At home, not with me.

24 CHAIRMAN WOLFE: A copy is being handed to you of
25 your letter.

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1222 037

1 (Document handed to Ms. Griffith.)

2 Now, in our supplementary notice of intervention
3 procedures, Ms. Griffith, dated June 12, 1979, we required
4 that petitioners for leave to intervene should state in their
5 letters if that be the fact that they failed to file petitions
6 for leave to intervene pursuant to our notices of May 31st
7 and September 11, 1978 because of the restrictions on
8 permissible contentions required by those notices.

2.371
9 Now we specifically required that. But your letter
10 of July 17 does not so state. Why not?

11 MS. GRIFFITH: I wasn't aware that it was needed
12 in a letter until I had gotten with some other people --
13 Mr. Doggett, and so in my second letter, I did write it in.

14 CHAIRMAN WOLFE: In your second letter?

15 MS. GRIFFITH: Yes, dated September 14.

16 CHAIRMAN WOLFE: All right, Ms. Griffith. With
17 that explanation, then, we will proceed to treat you as a
18 petitioner for leave to intervene and later on we will hear
19 your oral argument for the contentions set forth in your letter
20 of September 14.

21 Thank you.

22 MS. GRIFFITH: Thank you.

23 MS. PAVLOVIC: I'm Frances Pavlovic.

24 CHAIRMAN WOLFE: Yes, proceed.

25 MS. PAVLOVIC: Well my problem was the first thing

1
2 I knew about the whole thing was a couple of years ago I read
3 about TexPIRG's suit, some news item in the paper. And I
4 thought well that sounds like a good thing, you know. And
5 then I read -- and all my information has come from the paper
6 is my problem -- and there was two different announcements,
7 one said you should put in a statement and have say 20 copies
8 and all that and the other one just said just write a letter.

9 So I thought the simplest thing to do was write a
10 letter and that's why I took that approach. I wanted to
11 intervene as a full intervenor because I felt I had the time
12 to do research, but I just didn't know any of the technical
13 aspects of what it meant, the difference between being an
14 intervenor and the difference between being someone who would
15 make a limited appearance.

16 CHAIRMAN WOLFE: Well you did, I take it,
17 Ms. Pavlovic, read our Supplementary Notice of Intervention
18 Procedures dated June 12, 1979?

19 MS. PAVLOVIC: The only things I read that were offi-
20 cial were after I had written my letter on the 18th. And the
21 other things, the other information I got was strictly from
22 local newspapers that were weeklies that just happened to have
23 these news items in them. So I don't know what you're
24 referring to.

25 CHAIRMAN WOLFE: Does anyone have a copy of the
Supplementary Notice of Intervention Procedures dated

wel/agb2

1 June 12, 1979?

2 (Document handed to the Board.)

3 CHAIRMAN WOLFE: Ms. Pavlovic, I'm handing to you
4 a document, a piece of paper which is the Board's Supplementary
5 Notice of Intervention Procedures dated --

6 MR. SCHINKI: Mr. Chairman, I believe that was
7 published in the Federal Register on June 18. I believe the
8 order was dated June 12 but it was published in the Register
9 on June 18.

10 CHAIRMAN WOLFE: Yes. Our order or supplemental
11 notice was dated June 12 and was published in the Federal
12 Register on June 18, 1979. And I'm handing it to you, and
13 there's a checkmark that I've placed in pencil and little
14 asterisks and it reads:

15 "Accordingly any person (other than
16 those persons and organizations which file
17 petitions for leave to intervene pursuant to the
18 above notices of May 31st and September 11, 1978)
19 who did not file a petition pursuant to those
20 notices because of restrictions on permissible
21 contentions contained therein and who wishes to
22 intervene as a party to this proceeding must file
23 a petition for leave to intervene in accordance
24 with the provisions of 10 CFR 2.714."

25 This is the important point now, Ms. Pavlovic.

1222 040

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1 "Such person shall state that he failed
2 to file a petition for leave to intervene pursuant
3 to the Board's notices of May 31st and September 11,
4 1978 because of the restrictions on permissible
5 contentions contained in those notices."

6 (Document handed to Ms. Pavlovic.)

7 MS. PAVLOVIC: Am I supposed to respond to this?

8 CHAIRMAN WOLFE: Well let me get at it this way:
9 Did you read that federal notice as published on June 18, 1979
10 prior to the time you wrote your letter of July 16, 1979 to
11 the Board?

12 MS. PAVLOVIC: I did not read this official thing
13 because I didn't know what the Federal Register was and I
14 just read -- all I know is I saw this in the paper, it must
15 have been quoted from there, one of the items that I read.
16 Then this other item seemed to say well, you know, you don't
17 have to do that complicated thing, you can just do this simple
18 thing, and I thought it amounted to the same thing, that maybe
19 they were just making it easier for people to intervene and I
20 just thought that well that sounds like the thing to do.

21 I even asked a friend the day I was going to send
22 my letter Do you have your 20 copies ready? And I thought
23 she was going to send -- she said Nobody told me you have to
24 have 20 copies. And I said Oh well if you don't think you have
25 to have 20 copies you must not, because I thought she knew it.

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1 all, you know, and I just went ahead and didn't send 20
2 copies.

3 CHAIRMAN WOLFE: Well we're not talking about the
4 20 copies at this point, we're just talking about the fact
5 that your letter of July 16, 1979 does not reflect what we
6 required you to state in that letter.

7 MS. PAVLOVIC: I just don't understand what it means,
8 you know, anyway about this restrictive....

9 CHAIRMAN WOLFE: Well now the newspaper article
10 that you read, Ms. Pavlovic, did that newspaper article pick
11 up that portion of the supplementary notice that's contained?

12 MS. PAVLOVIC: Yes, it did, but I just don't under-
13 stand about why -- you know, the wording to me is so obscure
14 I just can't understand the sentence, I really can't. I just
15 don't know whether I agree with, you know, whether that
16 applies to me or not, the way I think. I just wanted to be
17 sure to intervene, if possible.

18 MR. COPELAND: Mr. Wolfe, could this be resolved
19 by asking the lady a very simple question, what is set forth
20 in the notice and ask her if she had originally wanted to
21 intervene under the earlier notices and decided not to do so
22 because of the restrictions? I think that might put an end
23 to this.

24 CHAIRMAN WOLFE: All right.

25 Setting it up for you that way then, Ms. Pavlovic,

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1 on May 31st of 1978, more than a year ago, the Board issued
2 a Notice of Intervention Procedures and, after more or less
3 detailing the past history of this case, we directed that anyone
4 who is interested in petitioning for leave to intervene must
5 file a petition for leave to intervene. And I believe in that
6 notice we also stated that the scope of any contentions which
7 would be submitted thereafter would be limited to changes in
8 design of the plant.

9 Thereafter in our notice of September 11, we
10 issued a corrected Notice of Intervention Procedures and
11 amended our earlier notice and stated that anyone petitioning
12 for leave to intervene would -- must ultimately submit
13 contentions, but that such contentions would be limited, first,
14 to changes in design plans and secondly would be limited
15 to new evidence or new information that had only become
16 available since December of 1975.

17 Now we issued those two notices and ultimately
18 in our order of February 9th, 1979, we admitted some petitioners
19 for leave to intervene and admitted some of their contentions.
20 Other we denied because they were based on old evidence,
21 something that the Intervenors should have presented to the
22 Board some time before that.

23 The Appeal Board ultimately, in a decision of
24 April 4, 1979, said that these notices, to the extent that
25 they had set those two limitations on contentions, were

1222 043

1 improper. That the notices themselves were all right, but
2 that these two limitations should be removed and, accordingly,
3 were deleted from the earlier notices.

4 So, what with this holding of the Appeal Board --
5 and we so advised in the supplementary notice as to inter-
6 vention procedures, dated June 18 -- we advised that it would
7 be in the public interest to issue this supplementary notice
8 of intervention procedures to people who might have been
9 dissuaded by our earlier improper limitations. But in
10 extending that invitation to various petitioners for leave
11 to intervene to intervene, we said we can only do this if you
12 can state to us that you are now filing petitions for leave
13 to intervene because you had been dissuaded from filing
14 earlier because of the improper limitations in our earlier
15 orders.

16 So what we're inquiring from you is, we want to
17 make certain you are in compliance with our order. You can
18 tell us that you were dissuaded, you were inhibited, you were
19 chilled by our improper limitations in the two previous
20 orders, and that's why you proceeded to file your petition for
21 leave to intervene. That's one thing.

22 If you weren't aware of these prior limitations,
23 so tell us. So let us know.

24 MS. PAVLOVIC: The only thing I knew about the
25 prior limitations is the fact that I just glanced through one

1 item about some kind of a -- I thought it was a suit that was
2 brought by TEXPIRG objecting to the conditions under which
3 people could intervene sometime in the past, I suppose it was
4 in '78. Would that be germane to this? Is that the same
5 thing that we're talking about?

6 CHAIRMAN WOLFE: Well, you just keep on talking.
7 We're --

8 MS. PAVLOVIC: Well, I just want -- you know, I'll
9 be glad to, if you think I can add anything to the discussion.

10 I found one thing I'd like to bring up in the
11 intervention, but, you know, I can give my evidence to someone
12 else, for that matter, I guess.

13 CHAIRMAN WOLFE: No, you can't do that. The time
14 for submission of contentions is past. You can, of course,
15 bring it to our attention by way of a limited appearance
16 statement at a subsequent prehearing conference. You can
17 make a statement and state what your contention is.

18 MS. PAVLOVIC: Well, all this correspondence, you
19 know, that just said to clarify whether I wanted to be a
20 full intervenor or not, so I just wrote a letter saying I
21 hereby clarify that I did want to be a full intervenor, and
22 I went right ahead as if I were going to be one.

23 CHAIRMAN WOLFE: Yes, I understand that.

24 MS. PAVLOVIC: I don't know what I'm supposed to
25 do this morning.

1222 045

1 CHAIRMAN WOLFE: I know it's difficult, and we
2 try to bend over backwards the best we can, particularly with
3 people representing themselves. But there are certain
4 requirements that have to be met.

5 MR. SCOTT: Mr. Wolfe, I hope this is proper. This
6 is just an observation.

7 Without going into the merits of whether or not the
8 restrictions that we've been talking about are proper at this
9 time or not, we have heard testimony today to indicate that
10 we do not have a horde of intervenors, that we've got only
11 it looks like a very few people. Most of them are probably
12 going to be represented by one person.

13 I would ask you to look into the possibility of
14 using your discretion, which I think you've got this time, to
15 forget -- if you want to call it that -- or change your mind,
16 about these restrictions you've been talking about, just in
17 the interest of speeding up the proceeding and encouraging
18 public participation.

19 I don't see that there's any delay or hardship on
20 anybody to do that, if you'd just think about it.

21 (The Board conferring.)

22 CHAIRMAN WOLFE: All right.

23 The Board has conferred, and we have determined,
24 Ms. Pavlovic -- and we appreciate your coming today and writing
25 to us -- but when we issue an order, we don't issue it lightly.

1222 046

1 We expect that people will understand it and if not, to advise
2 us in a timely manner, or to contact, for example, the Staff
3 as to what the meaning is of a particular procedure.

4 More important, we don't understand your statement
5 that you weren't aware of our supplementary notice of inter-
6 vention procedures being published in the Federal Register.
7 The Supreme Court, in Federal Crop Insurance Company versus
8 Marrill, 332 U.S. 380, at pages 384 and 385, stated that, just
9 as everyone is charged with the knowledge of the United States
10 statutes at large, Congress has provided that the appearance
11 of rules and regulations in the Federal Register gives legal
12 notice of their contents.

13 In that particular case the Supreme Court held that,
14 accordingly, the regulations of the particular agency involved
15 were binding on all who sought to come within that agency's
16 acts, regardless of actual knowledge of what is in the
17 regulations or the hardship resulting from innocent ignorance.

18 And then again, in a subsequent District Court case,
19 Buckner Trucking, Inc. versus United States et al, 354 Federal
20 Supplement, 1210 and 1219, 1973, the District Court stated:

21 "It is well established, both by statute and
22 judicial precedents, that publication in the Federal
23 Register is legally deemed notice to all interested
24 persons."

25 We appreciate your efforts and your time in coming

1 here, but you simply have not complied with our supplementary
2 notice. Accordingly, we can only treat your letter as being
3 a request to make a limited appearance. We welcome your
4 coming back at a subsequent time when notification is being
5 given, and making either an oral or handing to the Board a
6 written statement on what you state are your new contentions.

7 Thank you, Ms. Pavlovic.

8 MR. SCHENKI: Mr. Chairman, I'd just like to make
9 clear for the record, with regard to the Board's point about
10 contacting the Staff and clarifying the Commission's procedures
11 that the Staff did send to each of the over 60 persons who
12 expressed a desire to participate in the proceeding, copies
13 of the Rules of Practice, and with specific regard to Ms.
14 Pavlovic, in a letter dated August 1, 1979, signed by Ms.
15 Woodhead, Ms. Pavlovic was sent a copy of the Rules of
16 Practice, as well as made aware that if she had any questions
17 with regard to the forms of participation in Commission
18 proceedings, that she should contact either Ms. Woodhead or
19 myself.

20 So that we made every effort, and in some cases
21 petitioners have called us for clarification of procedures.
22 But the Staff has made every effort, as it has in the past,
23 to cooperate in clearing up any ambiguities with regard to
24 the Commission's Rules of Practice.

25 CHAIRMAN WOLFE: Yes. We've seen copies of your

1 letters sent to various people, Mr. Sohinki, and we've been
2 pleased that the Staff has made that effort to contact these
3 various people and sent to them copies of the Rules of
4 Practice, and made it known that the Staff would be helpful
5 if called upon.

6 All right.

POOR ORIGINAL

7 MR. DOGGETT: May I make a response to the Board's
8 ruling as to Ms. Pavlovic?

9 CHAIRMAN WOLFE: Well, we've made our ruling now,
10 Mr. Doggett. We've given Ms. Pavlovic a chance to come
11 forward, and gave her an opportunity, really, to ask us to
12 reconsider our ruling. We've heard her out. I think that is
13 sufficient.

14 MR. DOGGETT: As her counsel I would like to
15 object to the Board's ruling, on the grounds that the notice --
16 all notices, despite the prior court decisions, that all the
17 notices in this particular case denied these persons fair
18 notice of these proceedings and, therefore, denied them due
19 process.

20 Most laymen do not even know the Federal Register
21 exists, much less read it. This lady became aware of these
22 proceedings through public newspaper accounts, and as soon as
23 she learned that it was possible for a layman to intervene,
24 she made every effort to comply with the Board's rules as she
25 understood them.

1222 049

1 CHAIRMAN WOLFE: YES, Mr. Doggett. I've allowed
2 you to go this far. Apparently, once again, you are not
3 acquainted with our rules of practice.

4 After this special prehearing conference the Board
5 will enter an order indicating what has transpired at this
6 special prehearing conference. In that order we will note
7 that Ms. Pavlovic's petition for leave to intervene was
8 denied for the stated reasons, and we will indicate in that
9 order that, pursuant to our rules, within 10 days after that
10 order has been issued, that Ms. Pavlovic may appeal our ruling
11 to the Appeal Board.

12 So there's no point in your arguing with us now.

13 MR. DOGGETT: No, sir, I don't intend to attempt
14 to change your mind. I merely want to make clear on the
15 record that we object to the Board's ruling.

16 CHAIRMAN WOLFE: You don't have to do that, any
17 more than you have to take exception to our rulings. That's
18 simply not done. Our rules provide that if you disagree with
19 our ruling on admission or non-admission of Ms. Pavlovic, you
20 may appeal to the Appeal Board.

21 MR. DOGGETT: Thank you.

22 MS. WOODHEAD: Mr. Chairman, I think the Board has
23 explained very completely to the people here the background
24 of the various notices of opportunity to intervene. I'd like
25 to just propose two questions the Board might like to

1 consider to ask directly to each person in this particular
2 category. That might make it simpler for them to answer and
3 to understand.

4 My first question would be: Were you aware of the
5 May 1978 notice of opportunity to intervene? Well, I guess
6 we should correct that to say May or September of 1978, notices
7 of opportunity to intervene. And, of course, if they are
8 not aware, then, of course, that answer is clear.

9 If they were aware, the answer to that is yes,
10 then the second question would be: Did you consider filing
11 a petition for leave to intervene, but were inhibited because
12 of the restrictions?

13 I think that might be easier, and make it in
14 simpler language.

15 MR. COPELAND: I think that's a good question,
16 Mr. Chairman, but I think it has to be clarified, to put
17 "at that time" after each question. They had to be aware of
18 the notices at that time, and decided at that time.

19 MR. DOHERTY: Mr. Chairman, along with that, I
20 think we should make it clear that awareness does not mean
21 that they have to have read the notices.

22 CHAIRMAN WOLFE: Mr. Doherty, please, you
23 represent only yourself, and we will hear argument from you
24 when it involves your interests. You are not representing
25 anyone at this point. We made a ruling as to Ms. Pavlovic,

POOR ORIGINAL

1 and we will not encumber this proceeding with argument by
2 representatives or counsel who do not represent a person
3 involved.

4 Now, we will not hear oral argument at all on
5 that, Mr. Doherty.

6 MR. DOHERTY: I want to be clear --

7 CHAIRMAN WOLFE: We will not hear argument at all.
8 We will hear from the individual person that wishes to
9 become a petitioner for leave to intervene. If such a person
10 has counsel, we will hear from that counsel, or we will hear
11 from the person herself or himself.

12 But we will not hear from the people. That's it.

13 MR. DOHERTY: Thank you.

14 MR. SCOTT: Chairman Wolfe, I'm not so sure what
15 you've just said -- if you're saying that the other parties
16 in this proceeding cannot do as Ms. Woodhead just did and as
17 the Applicant's counsel has just done several times today,
18 but the rest of the counsel can't speak, offer comments, or
19 suggestions, then your ruling is wrong. I don't think you
20 meant that.

21 I'd like for you to clarify that.

22 CHAIRMAN WOLFE: I think on the individual case,
23 when we have a person that testifies, or that takes the stand
24 here, and is arguing for his or her admission as a petitioner
25 for leave to intervene, that is between the Board and that

1222 052

POOR ORIGINAL

1 person.

2 Now, we're not accepting any oral argument from
3 anyone else except that person or her counsel or his counsel
4 or representative. That's all that I'm saying. And what I
5 understand the Staff and Applicant to have been doing -- I
6 don't understand that they've been opposing the individual
7 that, for example, Ms. Pavlovic -- I understand that this is
8 what Mr. Doherty was going to proceed to do, to argue on her
9 behalf as to why she should be admitted.

10 MR. DOHERTY: No, no.

11 CHAIRMAN WOLFE: Then I misunderstood you, Mr.
12 Doherty. Maybe I misunderstood you.

13 MR. DOHERTY: I gave my message to the Staff and --

14 CHAIRMAN WOLFE: State what you have to state.

15 MR. DOHERTY: All right. I feel that it's
16 important for the person not to feel -- in question -- that
17 they had to have read the notice. That is, you can hear of
18 a notice. Also, the Federal Register is fairly inaccessible,
19 but word gets around. So that that should not come down that
20 way.

21 Now, I spoke to Ms. Woodhead a moment ago, and
22 she felt that the case before, that that was clear, that that
23 was not relevant. But for the future, I was concerned about
24 that, not about the individual you have just seen. That was
25 all I had in mind. That was why I was so excited.

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1 CHAIRMAN WOLFE: What person are you speaking of?
2 MR. DOHERTY: Ms. Pavlovic.
3 CHAIRMAN WOLFE: Yes.
4 MR. DOHERTY: But just that in the future, when a
5 person is questioned, that they do not get the implication
6 that they must have read the Federal Register.
7 CHAIRMAN WOLFE: Well, if they got their information
8 from somewhere else, and do put in their letters that they
9 were inhibited, even though they hadn't read the Federal
10 Register, that's in compliance with the order.
11 But she said that she had not read the Federal
12 Register at all, and indicated that whatever she had read,
13 or whatever she had heard, that she didn't understand it. So
14 then there's just no point in going forward with that at all.
15 MR. DOHERTY: Yes. I was speaking to the future,
16 to the next persons.
17 CHAIRMAN WOLFE: Well, we'll just have to wait and
18 hear what they have to say, Mr. Doherty. That's why we're
19 here, and I don't know why we're taking up this time.
20 MR. DOHERTY: I think it's all clear now. Thank
21 you very much.
22 Yes, sir, your name?
23 MR. MUELLER: Eugene Mueller.
24 CHAIRMAN WOLFE: Would you step down, sir, just for
25 a few minutes? We want to ask someone else to speak.

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1 Ms. Patricia Strielein, is she here?

2 MR. DOGGETT: She is not here, Mr. Chairman. She
3 recently became editor of a local newspaper and advised me this
4 morning that she could not be here today and did not think she
5 could be here tomorrow but would be able to attend on Wednesday.

6 I am prepared to meet with her tonight to attempt
7 to find out why she didn't intervene previously and present
8 that information to the Board and possibly even find out the
9 information by phone at the next opportunity and present the
10 information to the Board.

11 CHAIRMAN WOLFE: All right. Thank you.

12 Would the individual who came up before please
13 come back?

14 Would you identify yourself?

15 MR. MUELLER: Eugene Mueller, M-u-e-l-l-e-r.

16 CHAIRMAN WOLFE: Yes, Mr. Mueller.

17 MR. MUELLER: I would like to have the Board to
18 grant me my petition for leave to intervene.

19 CHAIRMAN WOLFE: Would you speak a little louder,
20 please, people are having difficulty hearing me and I don't
21 hear you, so we're in the same boat. Go ahead.

22 MR. MUELLER: I would like to ask the Board to
23 grant me the petition for leave to intervene because I failed
24 to file an intervention before 1979 due to the fact that they
25 limited the scope of intervention to changes in plant design,

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wrb/agb2

1 so they narrowed the field down. So that's the reason I didn't
2 file it.

3 But I did file -- I don't know, it was June or July,
4 I don't recall the specific date --

5 CHAIRMAN WOLFE: You filed something on July 10,
6 1979.

7 MR. MUELLER: I got a reply from Mr. -- I don't know
8 if I pronounce his name right -- Mr. Schinki that he thought
9 of specifying the Commission to ask for specifics, I didn't
10 specify anything at that time. I didn't write any specific
11 contentions. So I wrote it, you know, for the Board or the
12 Commission to ask about it, but I never received any. So I
13 did file before 15 days prior to the special prehearing con-
14 ference. And I have been notified that they have received it.

15 So I would like to get that status because I
16 live in Fort Bend County and I will be affected by the plant.

17 I think it's a very serious matter, and as a citizen
18 who supports those people who are building it and what have
19 you, I feel the full burden of the cost. So I feel I have the
20 right to participate in the proceedings.

21 CHAIRMAN WOLFE: Yes.

22 Mr. Mueller, let me ask you this:

23 As I understand what you've told us, first of all,
24 it is that you had been aware of the limitations in our earlier
25 notices of May 31 and September 11, 1978.

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wrb/agb3

1 MR. MUELLER: Yes.

2 CHAIRMAN WOLFE: Because of those restrictions,
3 you simply did not file at the time called for filing in those
4 two notices, is that correct?

5 MR. MUELLER: I didn't hear you quite clearly at
6 this time.

7 CHAIRMAN WOLFE: All right. I'm trying to para-
8 phrase what you said so we can understand one another.

9 MR. MUELLER: The reason I --

10 CHAIRMAN WOLFE: Wait just a moment.

11 If I understand what you're saying, you did not
12 file a petition for leave to intervene after our notices of
13 May 31 and September 11, 1978.

14 MR. MUELLER: That's right.

15 CHAIRMAN WOLFE: -- because the restrictions in
16 there --

17 MR. MUELLER: That's right.

18 CHAIRMAN WOLFE: -- were not to your satisfaction
19 so you didn't file at that time?

20 MR. MUELLER: That's right.

21 CHAIRMAN WOLFE: All right. So you decided then
22 that you would file --

23 MR. MUELLER: That's right because --

24 CHAIRMAN WOLFE: -- on July 10.

25 Now why didn't you advise us in that letter that

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wrb/agb4

1 you had not filed under the notices of May 31 and September 11?

2 MR. MUELLER: Well I didn't thought it was that
3 important to put a notice, because the Appeal Board reversed
4 the ruling, you know, prior, you know, that -- setting the
5 limitation, lifting the limitations. I thought, you know, that
6 was understood, you know.

7 CHAIRMAN WOLFE: But the Appeal Board said it was
8 interested in having the public intervene or being permitted
9 to intervene if they could indicate that they had been pre-
10 cluded or inhibited by our earlier notice.

11 Well, let me ask you another question, Mr. Mueller.

12 I notice that you set out your contentions in a
13 letter dated September 25, 1979, is that correct?

14 MR. MUELLER: That's right.

15 CHAIRMAN WOLFE: Now under our order scheduling
16 this special prehearing conference dated August 6, 1979 --
17 in our order scheduling this special prehearing conference
18 dated August 6, 1979 and which was published on August 14
19 in the Federal Register, we told all persons who had filed
20 petitions for leave to intervene on or before July 18 that
21 they had until September 14 within which to file contentions.

22 MR. MUELLER: Yes, I understand.

23 CHAIRMAN WOLFE: Your letter listing contentions
24 is dated 11 days later.

25 MR. MUELLER: That's right. It is.

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wrb/agb5

1 CHAIRMAN WOLFE: What good cause do you have to
2 indicate to the Board why you didn't file in a timely manner?

3 MR. MUELLER: Well I wasn't available, for one
4 thing, you know, I'm a working man, you know, I don't have time,
5 you know, to -- I don't have full-time, you know, after looking
6 after these procedures, you know.

7 And to my understanding it was that I have before
8 the first of October, 15 days prior, you know, to the special
9 prehearings, you know, I should be able to do it, you know.
10 So I just -- my time is very limited, you know, and --

11 CHAIRMAN WOLFE: Where did you have that under-
12 standing that you had up until 15 days before the special
13 prehearing conference? Who told you that?

14 MR. MUELLER: Well I talked to some friends and
15 they told me, you know, that, you know, that was -- as I under-
16 stand, that was understood -- that was the procedures at that
17 time, you know.

18 CHAIRMAN WOLFE: Did your friends tell you that
19 the Board's special prehearing conference notice of August 6
20 had set September 14 as the due date for the filing of
21 contentions? Did they tell you that, or did they tell you
22 that they thought the Board was wrong on that?

23 MR. MUELLER: Well I cannot argue on that point,
24 you know, because --

25 CHAIRMAN WOLFE: I'm not asking you to argue, I'm

1222 059

POOR ORIGINAL

wrb/agb6

1 trying to understand your thinking.

2 MR. MUELLER: I didn't hear that, that is, you know,
3 I didn't notice or I didn't get the information, let me put it
4 this way.

5 CHAIRMAN WOLFE: But you were told by your friends
6 that you could file up to 15 days before the --

7 MR. MUELLER: Prior to the prehearings.

8 CHAIRMAN WOLFE: Did you read the rules on that?

9 MR. MUELLER: No, I did not read the rules on it,
10 no.

11 CHAIRMAN WOLFE: Did Staff send the Rules of
12 Practice to Mr. Mueller?

13 MR. SOHINKI: I would have to check whatever
14 communications -- if we responded to the July 3rd letter,
15 Mr. Chairman. We did. I don't have our response in front of
16 me.

17 (The Board conferring.)

18 CHAIRMAN WOLFE: The Board has conferred,
19 Mr. Mueller, and our order of August 6 which scheduled this
20 special prehearing conference was very clear. It was published
21 in the Federal Register and we cannot make an exception. Our
22 rules are to be followed. The Supreme Court has spoken on
23 publications in the Federal Register being notification as to
24 all persons.

25 Accordingly, we will only treat your petition for

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wrb/agb7

1 leave to intervene and the contention now as being a request
2 for a limited appearance statement. And subsequently, at any
3 prehearing conference or at the beginning of the hearing, you
4 may make an oral or a written statement on your contentions.

5 Thank you.

6 MR. MUELLER: Thank you.

7 MR. SCOTT: Mr. Chairman.

8 CHAIRMAN WOLFE: Yes.

9 MR. SCOTT: As a matter of clarification, which
10 rule were you referring to that changed the rule allowing at
11 least 15 days prior to a prehearing conference to submit
12 contentions?

13 CHAIRMAN WOLFE: The rule 10 CFR Section 2.711(a).
14 That provides that, upon good cause, the Board may change
15 time dates, and we proceeded to do so. More recently, the
16 Appeal Board -- it's in their order of SEptember 19, 1979,
17 ALAB 564. And they saw -- I'm sorry, I gave you the wrong
18 Appeal Board decision, it was the Appeal Board decision of
19 October 1, 1979 in ALAB 563, wherein the Board said the
20 procedure, for example, in setting a different due date for
21 the filing of contentions, the Appeal Board said:

22 "Although such procedure, if not speci-
23 fically sanction by the Rules of Practice, we have
24 no essential difficulty with it."

25 So we changed the due date from 15 days before

1222 061

wrb/agh8

1 the special prehearing conference to a different date, and
2 that's because there were many intervenors, potential inter-
3 venors, and we wanted to give all concerns sufficient time to
4 review what was being submitted and to be prepared for this
5 special prehearing conference.

6 All right. Yes, Ma'am?

POOR ORIGINAL

7 MS. OTTO: I am Kathryn Otto, and you know from
8 my letter why I failed to intervene earlier.

9 CHAIRMAN WOLFE: You are Ms. O-t-t-o?

10 MS. OTTO: O-t-t-o, that's right, not Oattie.

11 CHAIRMAN WOLFE: Thank you.

12 Ms. Otto, you submitted your petition for leave
13 to intervene on July 13 and followed that up with a letter
14 of September 13, 1979, isn't that correct?

15 MS.-OTTO: September 13 was where I -- instead of
16 saying I failed to intervene because of restrictions, I told
17 you the story of why I failed to intervene earlier.

18 CHAIRMAN WOLFE: Yes.

19 MS. OTTO: And I understand about the rules, and
20 I think I understand you gave two rulings from the Supreme
21 Court to the woman before that, well, the Federal Register is
22 the way that you get information so people and that interested
23 parties need to read it. I think that is what the ruling was.

24 Well a year and a half ago, because I was unaware
25 that there was a nuclear power plant being proposed, we just

1222 062

wrb/agb9

1 moved into the area then. I wasn't an interested party because
2 I wouldn't read the Federal Register unless I had a reason.

3 And at that point I felt the new power plant was
4 going to be coal or water generated, so at that point I was not
5 an interested party. I was happy to have it because the new
6 lake would provide recreational facility and our property
7 value would go up.

8 So at that point that was fine, I wasn't an
9 interested party, so there was no need to read the Federal
10 Register.

11 CHAIRMAN WOLFE: Because you thought it was a
12 coal plant?

13 MS. OTTO: A water generated. When the talk of
14 the power plant -- when we were talking with neighbors or
15 whatever nuclear was never mentioned and the big lake was
16 being built and we just assumed well it's going to be water
17 generated, all this water. They're going to build this
18 big lake to generate the electricity. And there was no need
19 to read the Federal Register.

20 And I didn't find out until this spring.

21 CHAIRMAN WOLFE: You felt no need to look in
22 the Federal Register or try to make yourself -- keep yourself
23 aware because, as you say, at that time you just thought that
24 a coal plant was being considered?

25 MS. OTTO: Or water. Water generated. Not nuclear,

wrb/agbl0

1 I mean, nuclear never entered into any discussions. So I wasn't
2 worried or concerned about it.

3 So I was wondering how -- I didn't know what your
4 ruling was on that or if you could reconsider in that case.

5 (The Board conferring.)

6 CHAIRMAN WOLFE: Ms. Otto, we have given considera-
7 tion to your statement and, as with Ms. Pavlovic, we feel that
8 publication in the Federal Register is notification to all,
9 and that the mere fact that someone told you that this was
10 going to be a coal generated plant or a hydroelectric plant
11 we can't accept. And therefore, we will treat your letter not
12 as a petition for leave to intervene and we rule instead that
13 it's a request to make a limited appearance statement.

14 As I indicated, if you so desire at a later time,
15 you may make a limited appearance statement at a prehearing
16 conference or at the hearing.

17 Thank you.

18 MS. OTTO: Thank you.

19 CHAIRMAN WOLFE: Is there anyone else now in the
20 audience whose names we have read off who wishes to come forward
21 and ask us to reconsider our ruling wherein we have treated
22 their letters as being petitions for leave to intervene as
23 being merely requests to make limited appearance statements?

24 Yes? Your name, please?

25 MS. WEINREB-KEUHM: Rachel Weinreb-Keuhn.

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1 CHAIRMAN WOLFE: Yes. We have a document headed
2 Petition for Leave to Intervene, and it was dated July 10,
3 1979.

4 The question we have is -- the reason I must
5 explain as to why we treated that as merely a request to make
6 a limited appearance statement was because, among the reasons
7 we gave earlier, you simply didn't file a supplemental list of
8 contentions before September 14.

9 Will you address why you want us to reconsider
10 treating you as a limited appearance request?

11 MS. WEINREB-KEUHM: There are several reasons,
12 the first of which is that I'm not aware -- I'm not a lawyer,
13 nor do I have any legal training. And until the third week
14 of September, I was not aware of the difference between a
15 petition as an intervenor and it took me several weeks of
16 really going over the documents and talking with people to
17 understand the differences.

18 I'm a student and I also work. And I just simply
19 didn't have time to understand everything and get all my data
20 together to file a contention in time.

21 Also, I was confused about the time at which I
22 needed to file a contention, whether it was September 14,
23 as it was stated in your letters, or as was given in the
24 Federal Code of Regulations, 15 days before the hearings were
25 to start.

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wrb/agbl2

1 MR. COPELAND: Mr. Chairman.

2 CHAIRMAN WOLFE: Yes.

3 MR. COPELAND: Pardon me for interrupting. I
4 noticed that Ms. Keuhm was one of the people who signed one
5 of these form notices. And it seems obvious to me that somebody
6 prepared the notice for her and the other parties, and I
7 thought the Board might be curious as to why she didn't get
8 in touch with the same people who gave her the form notice to
9 find out what the time limitations were for filing contentions.

10 (The Board conferring.)

11 CHAIRMAN WOLFE: Well the Board has conferred,
12 Ms. Keuhm, and we're very sympathetic with people who are not
13 represented by counsel. But we must proceed. We are a
14 society that is governed by rules and practices. We have
15 courtroom procedures and we have administrative procedures.
16 And if we just don't follow those procedures, we're just not
17 going to have deliberate consideration given to important
18 matters.

19 Once again, our notice -- once again, we must
20 state that our order scheduling this special prehearing
21 conference of August 6, 1979 was published in the Federal
22 Register, and this was and should have been legal notice to
23 you that your list of contentions had to be filed by
24 September 14. And you just haven't done it. And we must
25 proceed promptly.

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wrb/agbl3

1 So we deny the request for reconsideration and
2 will treat your letter as being a request to make a limited
3 appearance statement which you may do, if you desire, at any
4 subsequent prehearing conference or at the beginning of the
5 evidentiary hearing.

6 Thank you.

7 Is there anyone else from the audience who is
8 prepared to address the Board?

9 (No response.)

10 Mr. Doggett?

11 MR. DOGGETT: Mr. Chairman, as to Ms. Cumins, she
12 was unable to be here today, she works as a staff member at
13 the Richmond State School, which is a facility for mentally
14 retarded persons. It's extremely difficult for her to get off
15 work. But as with Ms. Strielein, I will attempt to contact
16 her and furnish the Board with the necessary information as
17 soon as possible.

18 There are some persons on the list wherein I am
19 appearing as substitute counsel, and while I personally do not
20 have information as to why they did not intervene, I believe
21 Ms. Bishop has some information along those lines if the Board
22 would care to hear from her. This would be regarding Donald
23 Weaver and Dorothy Carrick.

24 MR. COPELAND: Mr. Chairman, may I interject here?
25 I'm a little bit confused as to exactly what it is that

1222 067

wrb/agbl4

1 Mr. Doggett is proposing. We have representations from both
2 his clients and from the people that he mentioned. And, as a
3 lawyer, I don't understand now Mr. Doggett proposes to come in
4 here and testify about clarifying his clients' representations.

5 As I said this morning, I was more than willing
6 to give Mr. Doggett a chance to confer with his clients and
7 see what they wanted to do about him representing them. I
8 think he admitted earlier this morning that he could not speak
9 for his clients on the question of why they did what they did,
10 that's something that could come only from them. And I'm a
11 little bit perplexed as to exactly what it is he's proposing
12 to do.

13 MR. DOGGETT: May I respond?

14 It was my impression earlier that I was requested
15 or a position was being taken that I should make such a
16 statement. And now it seems that, when I propose to do that,
17 that's being objected to.

18 MR. CLEVELAND: I believe the record is very clear
19 on what I said this morning, Mr. Doggett.

20 (The Board conferring.)

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2 CHAIRMAN WOLFE: Mr. Doggett, did you say
3 Mr. Bishop, Mr. J. Morgan Bishop, was in the conference room
4 now or not?

5 MR. DOGGETT: I believe he's here.

6 CHAIRMAN WOLFE: Mr. Bishop, are you here? -- Oh,
7 I see, it is Mrs. Bishop.

8 Thank you.

POOR ORIGINAL

9 Well, let me call off certain names here and
10 we'll see how we proceed.

11 Is Ms. Dorothy Carrick here?

12 MR. DOGGETT: No.

13 CHAIRMAN WOLFE: And you have advised that
14 Ms. Cumings is not here, so there is no sense in calling off
15 her name.

16 And you indicated Ms. Streilein is not here.

17 MR. DOGGETT: That's correct.

18 CHAIRMAN WOLFE: And how about Mr. Donald Weaver;
19 is he here?

20 (No response)

21 Well, so that there will be no surprise, here's
22 what the Board ultimately was going to do. We were going,
23 ultimately, to proceed to hear, as I've indicated, to hear
24 the oral argument of Mr. Doherty, Mr. Scott for TexPIRG, Mr. and
25 Mrs. Robert Framson, and then oral argument from Dr. Marrack
and from Mr. Potthoff on their, on some of their outstanding

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WRB/wb2

1 contentions.

2 Thereafter we were going to hear oral argument
3 from certain people after we had secured clarification from
4 some of them as to, for example, why they hadn't put in their
5 petitions for leave to intervene because they had been
6 inhibited by prior restrictive notices of May 31st and
7 September 11th.

8 Once we have gotten that squared away and got
9 satisfactory answers, we were going, then, to advise the fol-
10 lowing parties -- not the following parties but the follow-
11 ing individuals that we would hear oral argument on their
12 contentions. So I will read off alphabetically the names of
13 these people. They are:

14 Bryan Baker,

15 J. Morgan Bishop

16 Dorothy Carrick

17 Carolina Conn

18 Elinor Cumings

19 Stephen A. Doggett

20 We have a question we wanted to put to Mr. Robert
21 R. Edgar, but we will put him on this list for now and,
22 hopefully, we will hear something from him, that he will be
23 in attendance so we can ask him a question or two.

24 Robin Griffith

25 Leotis Johnston

POOR ORIGINAL

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WRB/wb3

Rosemary Lemmer

Charles Perez

W. Matthew Perrenod

James Piepmeier

William Scheussler

Patricia Streilein

Glen Van Slyke

We will also have some preliminary questions to ask Mr. Van Slyke.

Dr. Marlene Warner

Honorable Rob Waters

Donald Weaver

Mrs. Connie Wilson.

So that you will all know the direction we are going to take, we will proceed after we have heard from the initial five parties that I've named, namely, the Framsons, Mr. Scott, Mr. Doherty, Mr. Potthoff and Dr. Marrack. We will call upon these individuals and indicate if, for example, after Ms. Carrick satisfies us on our questioning we will then proceed to allow her, as well as these other people, to orally argue in refutation to the staff's and applicants objections. In other words, we will-- As to most of these we have already determined that they are to be considered as petitioners for leave to intervene. And we will then proceed to hear oral argument on their contentions.

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WRB/wb4

So that's the best notification I can make at this time. It's gotten confusing again. And I trust the people involved will show themselves and argue what has to be argued. And I hope there is no further confusion.

Mr. Scott?

MR. SCOTT: Mr. Chairman, just to expedite things, and also to make it easier for some of the people whose names you just read off to be able, in fact, to be here to do the thing you suggested, TexPIRG is willing to let people interrupt our defense of our contentions. We have got some fifty contentions and it may very well take two days to get through our explanation. I know personally of several people here that have to go to work this afternoon. And I would like for you to be willing to consider hearing those people, take them before TexPIRG and in the middle of TexPIRG's testimony, and things like that.

CHAIRMAN WOLFE: Mr. Doherty.

MR. DOHERTY: Yes. And I'm in agreement with Mr. Scott and in a somewhat similar situation, as a convenience to these other people.

CHAIRMAN WOLFE: All right. We'll have this as an understanding, then, that people who do come in subsequently will be aware of the accommodation made by you two. Very good.

All right.

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WRB/wb5

MR. DOGGETT: Mr. Chairman, may I have clarification.

Your ruling with respect to the parties about whom I am to give additional information to the Board, is it your ruling that they must appear in person for questioning, or that I may simply seek this information and furnish it to the Board?

CHAIRMAN WOLFE: I will take advice from counsel and/or representatives of the parties on that point.

The question is, Should the Board merely take -- the question outstanding is whether Mr. Doggett should merely represent to the Board on behalf of his clients as to whether they had been aware of the Federal Register notice requiring that they had to put in their petitions for leave to intervene in substance but they had been chilled by prior limitations in our orders of May 31st and September 11th, 1978, and explain whatever they can explain as to why they didn't put that in their petitions for leave to intervene.

Do you all agree that Mr. Doggett should be allowed to represent on behalf of his clients what their explanation is, or do you think that the client in person should make that sort of explanation?

MR. SOHINKI: Mr. Chairman, for the staff, I think not only should Mr. Doggett represent his clients in that regard, but I think if he is going to be their attorney

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POOR ORIGINAL

WRB/wb6

then he has to represent them in that regard both for the purposes of answering the Board's question with regard to the prior notices and with regard to argument on their contentions.

So I think if he is going to represent Ms. Carrick, Ms. Cumings, Ms. Streilein and Mr. Weaver that it should be consistent, that he should represent them both for purposes of answering any questions with regard to prior restrictions and for purposes of oral argument. I don't think we should be splitting up the argument, having his clients make representations in one area and he make representations in another area. I think things are going to get very complicated if we start doing that.

CHAIRMAN WOLFE: All right.

Mr. Doherty.

MR. DOHERTY: I think in view of the fact that other persons have been permitted to be petitioners for leave to intervene simply on their writing, that that should be sufficient.

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CHAIRMAN WOLFE: Where do you want us to go with the statement, Mr. Doherty?

MR. DOHERTY: There's a shortage of time, and it would appear to me that a written statement delivered here by Mr. Doggett would seem to be sufficient. And that's really all I meant. I don't know how to handle the verbal kinds of

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WRB/wb7

things. But it seems to me that a written statement by any person on that list saying that they were affected negatively by the earlier notice, that that should be sufficient, since that was sufficient for persons who are now petitioners to intervene.

CHAIRMAN WOLFE: Any other comment?

MR. COPELAND: I'm in agreement with the staff. The statement Mr. Doherty just made was complete nonsense. The people he's talking about have already filed statements. The only question to them, whether transmitted directly by them or through Mr. Doggett, is in clarification as to why they did not meet the Board's requirements.

I think Mr. Sohinki is right: if Mr. Doggett is going to be here as their attorney, he ought to be here for all purposes, including argument on contentions.

My statement this morning was, I was willing to give Mr. Doggett another day to find out exactly whether his clients wanted him to represent them or not represent them. I think we've been very clear and we're very consistent on that point.

CHAIRMAN WOLFE: Well we'll just have to proceed as best we can.

Mr. Doggett, as of now we're expecting your informal indication to us that you are representing certain clients, and we would trust that by the time you get back to us

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WRB/wb8

1 tomorrow you will have firmed up and gotten a formal under-
2 standing with your clients that indeed you are their counsel.

3 Further, you had best get back to us with regard
4 to your relationship to Mr. Clarence West and firm that up for
5 us.

6 Thirdly, on this other matter, in light of
7 advice from the parties, it will be sufficient if you orally
8 represent to this Board, and exhaustively discuss, why
9 certain of these people that you represent failed to comply
10 with all requirements set forth in our prior orders, or
11 specifically why they didn't assert in their petitions for
12 leave to intervene that in substance they had been chilled
13 by prior limitations in orders of May 31st and September 11th
14 1978.

15 All right.

16 MR. DOGGETT: Yes, sir.

POOR ORIGINAL

17 CHAIRMAN WOLFE: And pursuant to Mr. Scott's
18 recommendation, I hope the word is spread throughout, that
19 whenever any one of these people is in the audience that
20 they may feel free to request to present their oral argument
21 at any time.

22 MR. POTTHOFF: Mr. Chairman, my name is F. H.
23 Potthoff, III. I would like the Board to let me present any
24 testimony it wants to hear from me in the morning hours,
25 since I have to work in the afternoon. And I was just wondering

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POOR ORIGINAL

WRB/wb9

1 if that is at all possible?

2 CHAIRMAN WOLFE: Yes. This afternoon, hopefully
3 this afternoon we'll get around to oral argument beginning
4 with Mr. Doherty. So in the morning if you will make yourself
5 known to be here, pursuant to an understanding with Mr. Doherty
6 you may make your oral argument first.

7 MR. POTTHOFF: All right. Well I'll do it like
8 that, then.

9 CHAIRMAN WOLFE: Yes. We'll start at nine-thirty
10 in the morning.

11 MR. POTTHOFF: All right. Thanks a lot, sir.

12 CHAIRMAN WOLFE: We will recess at this time and
13 reconvene at one-thirty.

14 (Whereupon, at 12:20 p.m., the hearing in the
15 above-entitled matter was recessed, to reconvene at
16 1:30 p.m., the same day.)

17 End Bloom
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AFTERNOON SESSION

(1:30 p.m.)

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CHAIRMAN WOLFE: All right, the conference is reconvened.

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MR. SOHINKI: Mr. Chairman, I just wanted to note for the record, the Board had a question previously as to whether Mr. Mueller had received a copy of Part 2 of the Commission's regulations, and I have located a letter dated July 23rd, 1979 signed by me to Mr. Mueller and several other individuals and they, in fact, received copies of the Rules of Practice.

CHAIRMAN WOLFE: We've also received letters from the following: Dr. Jill Yelderman, who sent us a letter dated April 25, 1979; a letter from Nan Wharton, who sent us a letter dated July 4th, '79 and a letter from Gregory J. Keenan, a letter dated July 12, 1979. Are any of those three individuals in the audience today?

(No response.)

CHAIRMAN WOLFE: Let the record reflect that no one indicated that they were any of the three people named. Each of these three individuals stated in their letters that they desired to intervene or to be "full" intervenors. They did not file contentions. And we're aware that not only were they denied admission as parties in our order ruling on intervention petitions of February 9, 1975, but they failed to appeal our

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POOR ORIGINAL

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1 order to the Appeal Board.

2 Moreover, they didn't show good cause for failing
3 to file in a timely manner and discuss the four factors in
4 10 CFR Section 2.714 either after the Appeal Board decision
5 in ALAB 535 on April 4, 1979, or after the Appeal Board
6 decision in ALAB 539 on April 23rd, 1979 wherein the Appeal
7 Board stated that ALAB 535 merely deleted the improper limita-
8 tions but that the balance of the notices of May 31st and
9 September 11, 1978 remained valid.

10 We also noted that our Supplementary Notice of
11 Intervention Procedures of June 12, 1979 expressly precluded
12 any person from filing a petition for leave to intervene who
13 had filed a petition for leave to intervene pursuant to our
14 earlier notices of May 31st and September 11, 1978.

15 If these individuals had been in attendance today,
16 as they were notified, we would have proceeded to make inquiry
17 and ask them questions about what they had submitted to us
18 and expressions from them as to why they sent their letters,
19 what they wanted us to do with their letters, what treatment,
20 what status were they requesting to have.

21 Absent their appearance here today, as they were
22 notified we were having special prehearing conference today,
23 we can only treat their letters and so rule them to be letters
24 requesting leave to make limited appearance statements, and
25 certainly they may make such statements orally or in writing

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1 at subsequent prehearing conferences or at the beginning of
2 the hearing.

3 We have also received a letter dated July 13, 1979,
4 from J. Claude Bramaecker. He stated that he desired to be
5 a -- quote -- full party --close quote, and listed one
6 contention.

7 Unlike the other three individuals that I spoke of
8 just a moment ago, he did appeal from our order of February 9,
9 1979, denying his admission as a party, and the Appeal Board
10 sustained the Board in its decision of April 4, 1979. In
11 other words, in ALAB-535. Moreover, he did not show good cause
12 for failing to file in a timely manner and discuss the four
13 factors in Section 2.714 of our rules of practice, and he
14 didn't discuss showing good cause from those four factors
15 either after the Appeal Board issued its ALAB-535 on April 4,
16 and he did not discuss these factors after the Appeal Board
17 decision in ALAB-539 on April 23, 1979, where, as I have
18 indicated before, the Appeal Board stated that our ALAB-535 --
19 or stated that its own decision in ALAB-535 merely deleted
20 the improper limitations, but that the balance of the notices
21 of May 3 and September 11, 1978 remained valid.

22 Finally, we note that our supplementary notice of
23 intervention procedures of June 12 expressly precluded any
24 person from filing a petition for leave to intervene who had
25 filed a petition for leave to intervene pursuant to our notices

1 of May 31 and September 11, 1978.

2 Is Mr. Bremaecker in the audience today?

3 MR. SOHINKI: Mr. Chairman, he was here this
4 morning. I don't see him in the audience now.

5 CHAIRMAN WOLFE: Does anybody know where Mr.
6 Bremaecker is, or if he is planning to attend this afternoon,
7 or any subsequent session of this prehearing conference?

8 MR. SCOTT: Sir, I don't have any of those details.
9 I know that Mr. Bremaecker is a Professor of Geology at
10 Rice University, and he's got a very sick wife who has cancer.
11 So it's difficult for him to stay in one place very long.

12 CHAIRMAN WOLFE: Well, for now, recognizing that
13 he may have good cause for not being here, for now, in light
14 of his absence we will simply have to rule that we merely
15 consider his letter as being a request to make a limited
16 appearance statement. And if this afternoon or during the
17 next four days Mr. Bremaecker appears and makes his presence
18 known, of course we will give consideration to whatever he
19 has to say as to why his letter should be treated as anything
20 more than just as a request for a limited appearance statement.

21 As I say, his letter is dated July 13, 1979, but
22 he doesn't show us good cause why he didn't file it at least
23 shortly after the issuance of ALAB-539 on April 23, 1979
24 wherein, as I have stated, the Appeal Board indicated that
25 our notices of May 31 and September 11, 1978, remained valid on

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1 the deletions of the improper limitations.

2 All right. We will now proceed to give considera-
3 tion to oral arguments.

4 I understand, Mr. Copeland, that you are willing
5 to enter into certain stipulations at this point, is that
6 correct?

7 MR. COPELAND: Yes, Mr. Chairman.

8 As I understand it, we are now ready to proceed with
9 the arguments by Mr. Doherty, is that correct?

10 CHAIRMAN WOLFE: That's correct.

11 MR. COPELAND: All right, sir.

12 Since we filed our responses to Mr. Doherty's
13 contentions, we have received the Staff responses to his
14 contentions. We spent quite a bit of time in the last part of
15 this week, this past week, and worked quite a bit on it this
16 weekend, and we have concluded that in the spirit of trying
17 to expedite this proceeding, we are willing to make certain
18 stipulations with respect to some of Mr. Doherty's contentions
19 in light of the responses that we received by the Staff.

20 I believe that our responses speak for themselves
21 insofar as we may have previously agreed to certain of his
22 contentions. With respect to the Staff's filing, or after
23 getting the Staff's filing, we turned up seven, I believe,
24 contentions, which the Staff had agreed constituted a
25 permissible contention.

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1 While we certainly don't agree with the substance
2 of any of those contentions, and still disagree in many
3 respects with the question of whether they are litigable con-
4 tentions, in an effort to expedite this proceeding and try to
5 get the proceeding moving, we are willing to agree with the
6 Staff on the following contentions -- and I will read them if
7 you're ready, sir.

8 MR. DOHERTY: One moment, please.

9 CHAIRMAN WOLFE: Just a moment, Mr. Doherty.

10 (Pause.)

11 MR. DOHERTY: Mr. Copeland, it would help me if you
12 would give them presumably by the numbers that I filed in my
13 original. That would help me a great deal, sir, if you would
14 give the number, and not just the subject.

15 MR. COPELAND: I intended to do both, Mr. Doherty.

16 MR. DOHERTY: Thank you.

17 MR. SOHINKI: Mr. Chairman, I've been advised by
18 a member of the audience that they are still having trouble
19 hearing you in the back.

20 CHAIRMAN WOLFE: All right. Mr. Copeland?

21 MR. COPELAND: We would agree that amended
22 contention number 20 dealing with BWR-6 gap conductance is
23 an admissible contention.

24 Amended contention 26, dealing with stud bolt
25 quality assurance and integrity.

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1 Contention 30, dealing with the power transmission
2 grid vulnerability.

3 Contention 40, dealing with accident releases
4 exceeding Part 100.

5 Contention 41 --

POOR ORIGINAL

6 CHAIRMAN WOLFE: Hold it just a moment. Accident
7 releases -- what?

8 MR. COPELAND: -- exceeding Part 100.

9 I don't mean to be trying to capsulize the
10 contention, other than to give you some brief reference to
11 the subject.

12 The next one is Contention 41, dealing with water
13 level indicators.

14 DR. CHEATUM: All right. We're at 40, 41, and --

15 MR. COPELAND: That's as far as I've gotten.

16 DR. CHEATUM: Oh, all right. Go ahead.

17 MR. COPELAND: If you're ready, the next one is
18 43, dealing with cleaning of stainless steel components.

19 And the final one is Contention 44, dealing with
20 pipe cracking initiated by the phenomenon of water hammer.

21 Now, as to these, these are contentions which we
22 had originally opposed, which the Staff said were admissible
23 contentions, and we are now agreeing with the Staff in order
24 to expedite this matter.

25 There would thus be no reason for Mr. Doherty, of

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1 course, to address these.

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2 We would also ask that the Board rule immediately
3 on the admissibility of these contentions, and permit us to
4 begin discovery. We think that that's in the spirit of our
5 effort to try and expedite this matter, so that as soon as
6 we leave this prehearing conference it would be understood
7 that we could initiate discovery upon those items.

8 Finally I might add, Mr. Chairman, that we have
9 had a large number of contentions in this case, and for the
10 convenience of our side Mr. Newman and I have split up the
11 responsibility for trying to handle some of this, and he is
12 going to address Mr. Doherty's contentions.

13 CHAIRMAN WOLFE: Is this in accord with your
14 understanding, Mr. Sohinki? These are all contentions that
15 the Staff supported admissibility?

16 MS. WOODHEAD: Mr. Chairman, I will be handling
17 Mr. Doherty's contentions.

18 Staff has more that the Staff supported, but I
19 think that Mr. Copeland's statement just covered those that
20 the Applicant formerly opposed.

21 I wonder if we could go through the numerical list
22 of all the contentions supported by Staff and Applicant, and
23 eliminate those from oral argument? I don't think we've
24 identified that list.

25 Could I go down the numbers that the Staff supports,

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1 and I assume that that will be the entire list? Am I under-
2 standing you correctly?

3 MR. COPELAND: I think that's correct. We'll check
4 you as we go through them.

5 CHAIRMAN WOLFE: Would it be better if, informally
6 and off the record, you and Staff and Mr. Doherty could get
7 together and agree on what has been stipulated to and help
8 Mr. Doherty to delete those from his list of contentions that
9 he wants to argue on?

10 MR. COPELAND: That would be fine, Mr. Chairman.

11 MS. WOODHEAD: Fine.

12 CHAIRMAN WOLFE: Why don't we do that, and you could
13 advise the Board when we reconvene just exactly what is
14 stipulated.

15 How long do you think you'll need for this?

16 MS. WOODHEAD: Five minutes would be plenty.

17 MR. COPELAND: I don't think it will take that
18 long.

19 CHAIRMAN WOLFE: All right, we'll have a five-
20 minute recess.

21 (Recess.)

22 CHAIRMAN WOLFE: All right, we're in session again.

23 Ms. Woodhead, do you have that list, or Mr.
24 Copeland?

25 MS. WOODHEAD: Yes. Shall I read the Board

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1 the numerical list that we agreed on?

2 CHAIRMAN WOLFE: Yes.

POOR ORIGINAL

3 MS. WOODHEAD: Contentions 10; 13; 14; 17; amended
4 20; contention 25, the first part -- pardon me, the second
5 part, dealing with fuel failure detection; amended 26;
6 contention 30; contention 31, in part; 32; 40; 41; 43; and
7 44.

8 DR. CHEATUM: 32 and then what?

9 MS. WOODHEAD: 32; 40; 41; 43; 44.

10 CHAIRMAN WOLFE: All right. Mr. Doherty, do you
11 have those down?

12 MR. DOHERTY: Yes, I do, Mr. Wolfe. Yes.

13 CHAIRMAN WOLFE: All right. Now, Mr. Copeland,
14 you suggested that since there has been stipulation, that we
15 not only admit these contentions, but that we also at this
16 time set into motion discovery.

17 Why don't we wait and see how we're going, and
18 as the last matter of business, as indicated in our August 6
19 order where we said we would get around to discussing discovery,
20 why don't we wait until that point, and then you bring it up
21 again. All right?

22 MR. COPELAND: That's fine, Mr. Chairman. I just
23 wanted to reinforce the idea that our willingness to stipulate
24 at this point is founded in part upon our desire to get this
25 proceeding moving, because we feel very strongly about the

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1 start of discovery, without having to wait for a final order
2 by the Board following this prehearing conference.

3 CHAIRMAN WOLFE: All right.

4 With that behind us, then, Mr. Doherty, we will now
5 proceed to hear your oral argument upon your contentions as
6 to which there has been no agreement or stipulation, which
7 remain outstanding.

8 Will you identify, now, each one as you address it?
9 We're trying to save time, so where possible if you could just
10 give a short statement of what your contention is, preferably,
11 if you can, in a single sentence. Obviously the contention
12 speaks for itself, but if you could summarize it in one
13 sentence, and then proceed directly to refute what Applicant
14 and/or Staff's objections are, that would be fine.

15 All right, Mr. Doherty.

16 MR. DOHERTY: All right.

17 The first contention is Contention number 4, which
18 the ALAB-535 permitted to be essentially amended, and to go
19 through this hearing. It was in a September 14, 1979 amended
20 version that I wished to go ahead.

21 The first sentence says:

22 "Intervenor contends Applicant should be required
23 to maintain flexibility of design in the Allens Creek
24 Nuclear Generation Station so that design changes
25 required by resolution of the anticipated transient

1 without scam generic issue can be incorporated."

2 I enumerated why, and listed the changes below.

3 Does that identify it sufficiently?

4 CHAIRMAN WOLFE: This was in your September 14th
5 submission?

6 MR. DOHERTY: Yes. There were four amended
7 contentions filed September 14th.

8 CHAIRMAN WOLFE: Yes. All right.

9 Now, this first one you're speaking of is which one?

10 MR. DOHERTY: That's the --

11 CHAIRMAN WOLFE: This is really a re-amended
12 contention 4, isn't it?

13 MR. DOHERTY: Yes, I believe that's right, Yes.

14 CHAIRMAN WOLFE: Okay.

15 MR. DOHERTY: Now, you want me to go ahead and
16 just answer the Applicant's and the Staff's objections as I
17 perceive them? Is that right? Or you want to hear the
18 objections?

19 CHAIRMAN WOLFE: Let's put it this way:
20 I'm trying to simplify this as much as possible.

21 Where Applicant's and Staff's objections are the
22 same, just treat them as the same and go ahead with your
23 argument. Where they're different, all right, treat them
24 separately.

25 MR. DOHERTY: I may have a hard time.

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1 CHAIRMAN WOLFE: If you agree with Staff and
2 Applicant, you might just say, "I have no comment, or I have
3 no argument." Anything else, go ahead.

4 MR. DOHERTY: Okay.

5 The Staff's major statement as to why they shouldn't
6 be admitted is that the Applicant has committed to the design
7 changes, whereas I have tried to focus it in terms of how
8 can the Applicant commit to a solution that hasn't been
9 arrived at.

10 The Staff also states that the Intervenor assumes
11 that the Applicant has progressed to greater design status
12 than necessary at the construction permit stage. On that
13 point, on the listing of design -- well, at places where I
14 feel flexibility must be maintained, I've made it fairly
15 clear, I think, in the first four, but I detected in the
16 Staff's objection that they wanted something that said
17 something more solid about the design.

18 For instance, at number (e), that design changes
19 in fuel rod cladding, which in the event of an ATWS may impede
20 core cooling by distorting the core can be expected to be
21 accommodated in the design. By that, I meant to reduce
22 swelling would include changes in the materials of the fuel
23 rod cladding, or changes in the thickness of the fuel rod.

24 In number (f), which begins at the bottom of that
25 page, that measures to prevent deformation of reactor coolant

1222 090

1 pressure boundary components can be expected to be incorporated
2 in the design, I meant by that changes in the materials to
3 reduce thermal expansion.

4 In (g), that design changes in the safety valve
5 discharge lines and quencher design leading to and within the
6 pressure suppression pool be designed to avoid destructive
7 vibrations, and still be able to be accommodated in the ACNGS
8 final design. By that, I meant the design would have to
9 incorporate additional supports and snubbing.

10 Number (h), current design could be expected to
11 accommodate changes necessary to achieve cold shutdown
12 subsequent to any ATWS at full power, with no credit for any
13 control rods inserted. That meant increased pump capacity to
14 emergency core cooling system, and that meant some changes in
15 the size of the auxiliary building.

16 I contend the design cannot accommodate the ATWS
17 mitigating changes shown in NUREG-0460, which is the last
18 statement on this rather long issue, I think going on nine
19 years, between vendors and the Commission.

20 I'm certain I haven't stated all the objections
21 they have, but that's what I have in my notes to start with.
22 Perhaps they could add others, or would like to work on these
23 some, and give their views.

24 Is that . . .

25 CHAIRMAN WOLFE: Well, you're going to have to

1 decide the meets and bounds of your own arguments, Mr. Doherty,
2 I can't advise you.

3 Have you finished now with amended contention 4?
4 To your mind have you met Staff's argument or arguments?
5 You're on your own.

6 MR. DOHERTY: Well, Staff has contended, I believe,
7 that the contention is a challenge to the Regulations. In
8 one part, part (h), I think there's that possibility.

9 But what I'm attempting to do is to make it
10 possible for the wisdom of the Commission on its decision on
11 the ATWS generic issue to be applicable to Allens Creek, and
12 that Allens Creek not miss them.

13 I don't think everything listed here is covered
14 by a design criteria or a regulation. So on that basis I'm
15 urging that the contention be admitted, and I am now through.

16 CHAIRMAN WOLFE: All right, proceed to your next
17 contention.

18 MR. DOHERTY: On the numbering of this, there's a
19 small problem.

20 It was called number 9 on the original, and it
21 was not amended. So it's on page 2 of the May 25th
22 submittal. However, there's already a number 9 according to
23 the Applicant's count, so I think we'll have to put a star by
24 the 9 anyway. There is a number 9 that was admitted. That's
25 my error. There could be some confusion if this gets involved

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with another contention that's the same number, when you --

CHAIRMAN WOLFE: Hold on just a second.

MR. DOHERTY: Surely.

(Pause.)

POOR ORIGINAL

MR. NEWMAN: Mr. Chairman, I just wanted to clarify for the record, do you anticipate having Applicant and Staff respond, or have an opportunity to respond to each contention? And if so, is that to be done at the end of each contention, or at the very end? We're just not sure of the procedure that you are contemplating.

CHAIRMAN WOLFE: The Appeal Board did not decide that particular problem for us.

(Laughter.)

I don't know. Perhaps you're more conversant with the Federal Rules of Civil Procedure, I think 12(b), as to what is provided, as, for example, when we make the analogy of what we have here to a motion to dismiss. Under Federal Rules of Civil Procedure, the movant, obviously, moves to dismiss. The moved-against party has the opportunity to respond. And now you're asking for leave for the movant --

MR. NEWMAN: I guess I'm inquiring as to your --

CHAIRMAN WOLFE: I'm inquiring as to what your understanding of the Federal Rules of Civil Procedure 12(b) is, under which, I take it, we're operating. And under Federal Rules of Civil Procedure 12(b), are you entitled to a

POOR ORIGINAL

1 final argument?

2 MR. NEWMAN: Rather than rely on any particular
3 interpretation of 12(b), the thing I'm primarily concerned
4 about is that in the course of argument the Intervenor will
5 shift the basis for contentions, or change the contentions, so
6 that it is essentially a new one. And that was one of the
7 things which the Appeal Board expressed concern about.

8 It's primarily for that purpose -- we really don't
9 propose to belabor the argument on each and every contention.
10 We think that our position and the Staff's position are both
11 well stated in writing. It's really primarily to reserve --

12 CHAIRMAN WOLFE: So we don't even reach 12(b)?

13 MR. NEWMAN: I don't reach 12(b) right now.

14 (Laughter.)

15 CHAIRMAN WOLFE: But what you're stating has
16 raised a bit of concern. Obviously, I would hope -- and you've
17 stated that certainly Applicant has been following the
18 argument of Mr. Doherty, and I take it you're indicating that
19 Mr. Doherty is perhaps going beyond rebuttal argument and
20 possibly raising yet further amended contentions.

21 Is that what you're saying?

22 MR. NEWMAN: That's the nature of the concern. At
23 the moment I have no basis for it, because I don't think that
24 Mr. Doherty has done so yet.

25 CHAIRMAN WOLFE: Oh, well, I'm sure Mr. Doherty

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1 would not do that.

2 (Laughter.)

3 May I be assured, Mr. Doherty?

4 But I would hope that Applicant and Staff, if they
5 do see that Mr. Doherty inadvertently goes beyond the oral
6 argument and attempts to insert some refinement to what he
7 already has in writing as a contention, that Applicant and/or
8 Staff would bring my attention to it, and I would immediately
9 rule -- which should prove as a surprise to no one, that this
10 is improper.

11 So, all right, you have no problem with 12(b), or
12 the absence of 12(b), Mr. Schinki? Or, excuse me -- Ms.
13 Woodhead?

14 MS. WOODHEAD: No, the Staff did not participate,
15 and we don't even need to discuss 12(b).

16 CHAIRMAN WOLFE: Mr. Scott?

17 MR. SCOTT: Mr. Chairman, because I have recently
18 been involved in a Federal Court case since 12(b) has come up,
19 I would like to add that, first of all, in response to your
20 question, that the Applicant would have, in fact, the right
21 to respond. And after that, Mr. Doherty would have a right to
22 respond to that. And that should be the end of it.

23 But my understanding of the Appeal Board's
24 memorandum is that this hearing is not to reach that point.
25 That's to be something for later on in the proceeding. At

1222 095

1 this point we don't even have to -- you know, Mr. Doherty's
2 burden is even less than what it would take to keep a
3 contention in front of the Board; namely, that there is some
4 factual dispute. At this point, as I read the Appeal Board
5 memorandum, you're all getting ready to decide whether or not
6 he has a valid contention. You essentially only have to
7 consider whether or not he has specified the basis for a
8 possible factual dispute later on.

9 I think Mr. Doherty's burden at this point, given
10 the literal interpretation, is very light, even less than that
11 it takes to dismiss one later on under a motion to dismiss or
12 motion for summary judgment.

13 CHAIRMAN WOLFE: I'm not going to pass any
14 judgment, or make a pre-judgment on how far Mr. Doherty has
15 to go.

16 I would suspect that he should go as far as he
17 thinks it necessary, and that this should be his own
18 conclusion. Mr. Doherty, you're the one that's seeking
19 admission. Now, if you don't proceed well enough along the
20 road, you may find that your contentions are not admitted.

21 So I would argue as best and as vociferously and
22 as meritoriously as you can, and don't rely on who has the
23 burden of proof and the burden of persuasion, all right?

24 MR. DOHERTY: All right.

25 Mr. Sohinki got my attention while that discussion

1 was going on, and wanted me to give Mr. Bryan Baker just a
2 minute, and it's quite all right with myself. I think it
3 could be taken care of in just a second.

4 MR. BAKER: I'd just like to request --

5 CHAIRMAN WOLFE: One moment, please.

6 (Pause.)

7 We have a lot of paper up here, Mr. Baker.

8 MR. BAKER: I know about the paper.

9 CHAIRMAN WOLFE: All right, we'll take Mr. Bryan
10 Baker. Is that correct, sir?

11 MR. BAKER: Yes, sir.

12 CHAIRMAN WOLFE: We'll take Mr. Bryan Baker out of
13 turn.

14 MR. BAKER: My request was that I be allowed to
15 leave here and come back at 9:30 in the morning. It doesn't
16 look like you'll get to me today, and I need some more time
17 to work on my contention anyway. If I can just leave now,
18 without losing my privilege to speak at some point.

19 CHAIRMAN WOLFE: Fine. We'll expect you in the
20 morning, then. Just bring it to our attention that you're
21 here, and you will be permitted to make oral argument.

22 MR. BAKER: Thank you, sir.

23 CHAIRMAN WOLFE: Go ahead, Mr. Doherty.

24 MR. DOHERTY: The next contention is number 9, star.
25 Its basic content is in the first sentence. It's on page 2 of

1 the May 25th submission.

2 Intervenor contends Applicant's safety system
3 contains many non safety grade equipment items. It's opposed
4 by Staff and Applicant, mainly on the basis of lack of
5 factual evidence; secondarily, on the basis of being the type
6 of systems that can be essentially accounted for, or such
7 decisions can be made at the operating license stage.

8 CHAIRMAN WOLFE: Let me insert there, there was
9 some question as to how that should be treated. The Board
10 has decided to treat that contention 9 as being Contention 9(f)
11 (a). So it will be so considered.

12 MR. DOHERTY: All right.

13 The response of both Staff and Applicant I have
14 essentially found irresistible. However, I want to interject,
15 I have located what I think, instead of what are many
16 non safety grade equipment items, two items which I contend
17 fit this contention.

18 The items are the control rod drives and the
19 hydraulic control units, which are described as safety Class-2
20 On page 3.919 of the PSAR. And as a basis for this, I
21 argue that the Regulatory Guide 1.29 would specify that those
22 systems be of safety Class-1, and the part of Regulatory
23 Guide 1.29 is called Part C-1.m. That's what I'm using as
24 a basis of being aware that Regulatory Guides are not a
25 finality, but they are arguing that because they do represent

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significant inquiry by the Commission on these different problems, that they do give a basis for a contention, although they do not establish an absolute necessity for an Applicant to meet them.

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MS. WOODHEAD: Mr. Chairman, could I clarify?

I think Mr. Doherty is giving more bases for his petition than we have seen before. I was under the impression that was just oral argument on the petition he had previously submitted.

Am I mistaken?

POOR ORIGINAL

CHAIRMAN WOLFE: Is Ms. Woodhead's comment well taken, Mr. Doherty, that you are expanding the bases now; is that correct; for this contention?

MR. DOHERTY: The first sentence of the contention remains the same.

I probably am, in one sense, adding a basis. On the other hand, I subtracted a great deal of the items. I don't know where that leaves it.

CHAIRMAN WOLFE: If it is additional bases, then it may not be so argued. You are to argue on the basis of your contentions as they are now.

MR. DOHERTY: I see.

CHAIRMAN WOLFE: --and to respond directly to applicant and/or staff's specific objections to the contentions as they are now.

So, with that in mind, I will treat Ms. Woodhead's objection as a motion to strike. And that portion of your oral argument is stricken with regard to the additional bases.

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MR. SCOTT: Mr. Chairman, it's my understanding that well past this proceeding, namely, at the special re-hearing conferences but actual prehearing conferences that even at that late date it is possible to change contentions, rework contentions, consolidate contentions, reword contentions, all that sort of thing. And if that is true, it seems to me like today ought to be more in the spirit of having the Board understand what the literal issue is supposed to be, even if it hasn't been thoroughly explained or even if there has been some change, some slight change in direction.

CHAIRMAN WOLFE: I'm not sure your question is well taken. Perhaps you don't understand.

A special prehearing conference is to do exactly what we're doing, to explore the contentions and see which one of them is admissible as an issue in controversy.

After special prehearing conferences the Boards, this Board will issue an order ultimately ruling on which of, for example, Mr. Doherty's contentions is admissible. Thereafter we do proceed to prehearing conferences and the contentions, whichever they might be, say, of Mr. Doherty's which have been admitted, are then subject to discussion on, say, consolidation with other contentions.

For example, if we haven't already ruled on consolidation, requests are made by parties -- which Mr. Doherty is -- for leave to amend such a contention. That

POOR ORIGINAL

WRB/wb3

1 is permissible.

2 Now we have to look at what we're doing right
3 now. And he must address the arguments of applicant and the
4 staff. And, if he doesn't address them well enough, Applicant
5 and the staff will prevail and the contention won't be ad-
6 mitted. If it is admitted, then under subsequent prehearing
7 conferences that contention that is admitted may be subject
8 to amendment.

9 I'm not going to rule anything on that now.
10 We'll just have to see what the motion is, what the request
11 is.

12 Am I answering your perplexity?

13 MR. SCOTT: It would seem-- The logic I presented
14 to you is, if it is possible to amend it later, why not
15 earlier? It would seem to be less of a burden to amend it
16 early than later.

17 CHAIRMAN WOLFE: Well it may very well depend on
18 what he says now as to whether a contention is admitted. If
19 it's not admitted then we go to prehearing conference and he
20 can't amend that contention because it hasn't been admitted.

21 We're talking about now the admissibility of
22 contentions. I don't see why it is so hard to understand,
23 Mr. Scott. I can see some cause for your confusion. But I
24 don't see what your problem is. And I can't go any farther
25 in explaining. You'll just have to live with it, or check

1222 102

WRB/wb4

1 with the staff or the applicant or somebody, some counsel,
2 and clarify that in your own mind.

3 All right, Mr. Doherty.

4 MR. DOHERTY: On expanding the basis, I take it
5 the staff means use of Regulatory Guide 1.29. Is that
6 correct?

7 MS. WOODHEAD: Pardon me?

8 MR. DOHERTY: A moment ago you spoke of expanding
9 the basis. I take it you mean the use of Regulatory Guide
10 1.29; is that true?

11 MS. WOODHEAD: Well, my understanding was that
12 you were adding to your written pleading rather than just
13 arguing the written pleading in front of us.

14 MR. DOHERTY: In terms of arguing a different
15 basis, it seems that's one of the bases.

16 MS. WOODHEAD: Yes, that was one of them.

17 MR. DOHERTY: And there may be a second and
18 there may not. I'm not certain. I've argued in the conten-
19 tion that the control rod drive units should be seismic
20 Class 1. And I pointed out the chart -- not the one listed
21 here on page 2 but one I located since, subsequently, which
22 indicates that it is Safety Class 2.

23 Now I don't know if citing that chart was
24 expanding the basis or not, nor am I certain that in the
25 instance of hydraulic control units we have a basis sitting

POOR ORIGINAL

WRB/wb5

1 there but uncited, because the rule-- I'm a little confused.

2 MR. NEWMAN: Mr. Chairman, I believe that the
3 essential shifting of basis here may very well be from
4 Mr. Doherty's initial reliance on the question of what equip-
5 ment should be in what safety grade category to a question
6 of what seismic category it should be in. I think he has at
7 least implicitly shifted ground for his contention.

8 CHAIRMAN WOLFE: Isn't that so, Mr. Doherty?

9 MR. DOHERTY: There is mention of seismic
10 category here, to my knowledge.

11 MR. NEWMAN: I think that's exactly what
12 Mr. Doherty stated a moment ago.

13 MR. DOHERTY: Well I didn't use those terms, sir.
14 There is no attempt to use the seismic classification here.
15 Seismic classification is part of the safety class, I believe,
16 but I don't believe it is all of it.

17 I do not mean to speak to seismic alone.

18 MR. NEWMAN: Mr. Chairman, it may perhaps just
19 clarify matters:-- Mr. Doherty has relied on Reg Guide 1.29
20 which does deal with seismic classification on its face.
21 And I really don't understand how he can argue both sides of
22 that street.

23 MR. DOHERTY: Reg Guide 1.29 I think has been
24 stricken from here. A moment ago the Board ruled tht I
25 could not use 1.29.

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WRB/wb6

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Is that correct, sir?

CHAIRMAN WOLFE: I thought you were giving--
You adverted to that Reg Guide.

MR. DOHERTY: Yes, sir, that's correct, I did.

CHAIRMAN WOLFE: --as a basis for expanding
your contention. And I ruled, I thought, that that was
improper, and I granted Ms. Woodhead's motion to strike.

MR. DOHERTY: Yes.

CHAIRMAN WOLFE: So, once again, what I'm telling
you is, you can only address your arguments in direct rebuttal
to the objections of either applicant or staff. You cannot
expand the scope of your present-- of your contention as
presently worded.

MR. DOHERTY: Yes.

CHAIRMAN WOLFE: Now, with that in mind.

MR. LINENBERGER: Well, with that in mind,
Mr. Doherty, the Board must respectfully indicate to you
that if you are not calling upon seismic classification of
these various pieces of equipment, but safety classification,
in what way do you, eliminating arguments based on Reg Guide
1.29, in what way do you take issue with applicant's and
staff's responses to your Contention 9A? We're still not
clear what issue you take with applicant's and staff's
responses, as long as you do not bring in the seismic considera-
tions.

WRB/wb7

1 s the thrust of Contention 9A that you personal-
2 ly feel that the NRC has improperly classified certain parts
3 of the plant as safety Class 2 when you feel they should be
4 Safety Class 1? Is that the principal thrust of your con-
5 tention?

6 MR. DOHERTY: No. I would never just say that.

7 MR. LINENBERGER: Then please explain to the
8 Board again how it is that you cannot -- that you see a
9 challenge to the admissibility of this contention in the
10 responses made by the applicant and the staff. Can you lead
11 us through it one more time, please?

12 MR. DOHERTY: As the contention is before you,
13 the staff argued lack of factual basis. I think they
14 referred specifically to, about the fourth line down,
15 Applicant's Table 3.10-1 as being misidentified by the inter-
16 venor; which I accept.

17 However, the contention-- That essentially
18 creates a contention with no support.

19 What I have brought forth here -- and this was a
20 bit of a surprise to me that things progressed this way.
21 But I'm not complaining. I brought forth a table which I
22 cited, in the PSAR, which is not contended in this contention.
23 I also cited the regulatory guide.

24 Now does that get us that far? I have the
25 feeling we are still going to take this in steps.

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WRB/wb8

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CHAIRMAN WOLFE: All right. Have you finished your argument, then? If so, you may proceed to your next contention.

MR. DOHERTY: Only that-- All right. Fine. I'm finished.

No. 10 is on page 2, actually the same page as Contention 9A.

MS. WOODHEAD: Mr. Chairman,--

MR. CHEATUM: There is a stipulation on 10 with agreement by staff and applicant that it's okay. So there's nothing to argue about there; right?

MR. DOHERTY: That's my understanding.

No. 11 is an amended contention which I'm trying to locate now. If anyone has the amended part in front of him it will probably speed things up.

MR. LINENBERGER: Mr. Doherty, in your September 14th, '79 submittal you amended Contention 11. Now I don't know whether there was an amendment between the May date and the September date. But at least there was an amendment to 11.

MR. DOHERTY: Yes, sir; that's good.

Contention No. 11: "Intervenor--" Do we all have the amended version now?

CHAIRMAN WOLFE: Go ahead. We'll let you know.

MR. DOHERTY: No. 11: "Intervenor contends

1222 107

WRB/wb9

1 dangers of a spent fuel pool loss of water accident
2 are not addressed by applicant in terms of effects
3 on health and environment of such an accident occur-
4 ring in either the containment building or the fuel
5 handling building."

6 The staff's reply to this cited it as a Class IX
7 accident, and under the interim rule against consideration of
8 Class IX accidents by the licensing boards felt it should be
9 excluded, under the Offshore Power rule.

10 I'm contending it should be admissible under
11 the Shoreham rule, for the following reasons:

12 The residual heat removal system will be used
13 in parallel with the fuel pool cooling system to remove
14 abnormal heat loads and also during refueling. This parallel
15 system will only be available when the reactor is in cold
16 shutdown, hence the likelihood of a loss of water accident is
17 greater.

18 Also, the application calls for a larger --
19 that is, greater -- spent fuel capacity in a nuclear plant,
20 the largest of any that I know of of the BWR fuel type.

21 The applicant, I feel, misunderstood my use of
22 NUREG 0649 in the contention as a basis. I would not try to
23 support that contention with that NUREG.

24 On Class IX accidents you could also argue that
25 there have been Class IX accidents, that Three Mile Island

1222 108

WRB/wb10 1

was a Class IX accident, basing this on the idea that--

2 Excuse me.

POOR ORIGINAL

3 A Class IX accident does not have to involve
4 severe consequences, but, rather, it involves successive
5 failures of systems such that the estimates of the chances
6 of that happening come under question.

7 Now in this particular instance in order for,
8 as I have postulated this, in order for a loss of water
9 accident to occur there have to be a meltdown of the reactor
10 itself such that the crew had to abandon the device. Now,
11 of course, that's a Class IX accident right there.

12 Although I had originally thought I could
13 argue that there was really even no calculation as to the
14 possibilities of a spent fuel loss of water accident, the only
15 way I can see it would happen would be if the crew had to
16 leave. In other words, while there could be other problems
17 with the spent fuel pool, as long as people can be there it
18 seems as if they could keep water in the thing.

19 End LE

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1 LF wrb/agbl

2 Additionally, this interim policy -- let's let
3 this go, I'll skip that.

4 6.310

5 So what I'm contending is that even though it is a
6 Class IX accident as the Staff has replied and the Applicant,
7 I believe, has replied that it's admissible under those special
8 considerations under the Shoreham Rule for consideration at
9 this construction license.

10 MR. LINENBERGER: Is that the conclusion of your
11 rebuttal to the Applicant and the Staff's responses?

12 MR. DOHERTY: Yes, sir.

13 MR. LINENBERGER: Well a couple of points in
14 clarification for us, Mr. Doherty:

15 First off, did you explain to the Board and
16 perhaps even to Applicant and Staff your interpretation of the
17 Shoreham Rule and how it impacts the bases you provided for
18 this spent fuel pool malfunction contention? In other words,
19 what does the Shoreham Rule tell you that is pertinent here
20 for the basis you have provided?

21 MR. DOHERTY: It tells me that the Licensing Board
22 need not consider a scenario which involves Class IX accidents
23 unless some type of special showing particular to the reactor
24 or reactor system is shown.

25 MR. LINENBERGER: Very good, sir. I'm glad to see
your understanding and mine is the same.

The next point is, where does that lead us? In

1222 110

wrb/aqb2

1 other words, where is that special showing that the Shoreham
2 Rule requires a threshold in order to proceed with a Class IX
3 discussion, what is your special showing of particular cir-
4 cumstances here that supports the basis for your contention's
5 admissibility, I missed that.

6 MR. DOHERTY: The application calls for a larger
7 spent fuel pool in the nuclear power plant than of any in
8 construction right now.

9 MR. LINENBERGER: Oh, but sir, I think you
10 progressed from the head of the snake to the tail. The special
11 showing that the Shoreham Rule addresses itself to is a showing
12 that would justify consideration of some aspect of a Class IX
13 event, it has nothing to do with size and design of spent fuel
14 pools.

15 Now, if I understand you correctly, you have used
16 the "Shoreham Rule" to justify your further using a Class IX
17 accident at Allens Creek to further justify submitting a
18 contention about the failure of a large spent fuel pool.

19 Now you cannot use the Shoreham rule -- pardon me,
20 you cannot use the size of the spent fuel pool as a special
21 circumstance for basing your contention on a Class IX event.
22 So I have to fault the logic chain here that you are using.

23 Now secondly you advised us that the Three Mile 2
24 event was a Class IX event. I really don't know, I'm just
25 not aware that that judgment has been officially made by the

1222 111

wrb/agb3

1 Commission or even unofficially made by the Commission. Can
2 you enlighten us on that one, please, sir?

3 MR. DOHERTY: I contend that the Three Mile Island
4 involved -- let me try to use the wording here -- successive
5 failures of safety systems which would not be expected to fail
6 -- I mean, it would be so unlikely that -- In other words,
7 the very unlikely, the almost impossible occurred there and the
8 Class IX accident is based on the idea that it is just too
9 remote, it couldn't happen, something like that.

10 MR. LINENBERGER: So, sir, what you're saying is
11 it is your personal judgment that Three Mile 2 is a Class IX
12 event, you're not quoting any other official judgment?

13 MR. DOHERTY: Yes.

14 There is one more thing. I also in trying to do
15 this, and this may be subject to the same ruling, attempted
16 to tie in the spent fuel pool loss of water accident with the
17 way I have understood the PSAR that the residual heat removal
18 system will be used in parallel with the fuel pool cooling
19 system to remove abnormal heat loads and also the regular
20 cooling.

21 I further contend, however, this parallel system
22 will only be available when the reactor is in cold shutdown,
23 hence the likelihood of a loss of water accident is greater.

24 MR. LINENBERGER: This line of supporting dis-
25 cussion is completely divorced from the Class IX in the shading

1222 112

wrb/agb4

1 event you were talking about a few minutes earlier, is that
2 correct? You're just saying that under the normal course of
3 operating mode of the proposed facility that there may be
4 circumstances wherein the fuel storage pool will find itself
5 starved for water, say?

6 MR. DOHERTY: I don't submit this as a strong piece
7 of evidence.

8 MR. LINENBERGER: Well we're not looking for
9 evidence here, of course, because that comes --

10 MR. DOHERTY: As a strong basis.

11 MR. LINENBERGER: Thank you.

12 CHAIRMAN WOLFE: All right, sir, will you proceed?

13 MR. DOHERTY: All right. Number 12, which was
14 amended and is in the August 7 amendments on the second page --

15 MR. LINENBERGER: Let us catch up with you here
16 a minute, if you please, sir.

17 MR. DOHERTY: Surely. I need the time, too.

18 (Pause.)

19 MR. LINENBERGER: We're with you.

20 MR. DOHERTY: One of the difficulties raised to
21 this by Staff is what I described as uranium dust which was an
22 error. That use of that occurs at the very bottom of the
23 contention, on page -- excuse me, on that page, just before
24 the notice of service. And the correct reference is hardly
25 any more descriptive.

1222 113

wrb/agb5

1 What I really meant was crud, which is described
2 as a problem. I'm not certain if you're familiar with such a
3 term or not. If you aren't, then there's no need to go through
4 this.

5 MR. LINENBERGER: We are familiar.

6 MR. DOHERTY: You don't feel a need to go through
7 it?

8 MR. LINENBERGER: Not with the definition of crud.

9 MR. DOHERTY: And not to prove its existence?
10 The Staff seems to have said they can't figure out what it is,
11 and that's what I meant. A GE topical report referred to it as--
12 in discussing the effects of crud buildup reactivity in a
13 reactor. So I'm trying to establish that it does exist.

14 MR. LINENBERGER: Pardon me, sir, but --

15 MS. WOODHEAD: Would you like me to object?

16 MR. LINENBERGER: Not yet. I would just say that
17 I think I'm having trouble finding a reference to that report
18 in the previous statement of the bases for your contention.
19 And so if you're kind of throwing it to us here, fine, we're
20 glad you have some more ammunition, but the door has already
21 been closed on the ammunition right now for this --

22 MR. SCOTT: Mr. Chairman.

23 (The Board conferring.)

24 CHAIRMAN WOLFE: Yes, Mr. Scott?

25 MR. SCOTT: It was my understanding that your

1222 114

wrb/agb6

1 previous ruling was that Mr. Doherty couldn't change his
2 contention. I didn't understand you to say that he couldn't
3 supply additional bases than what he had written down previously.
4 I thought that was the whole basis for this proceeding was
5 to let him make firmer his contention.

6 The bases are a considerable hurdle in these things.
7 I don't think you prejudiced that. I hope you didn't say
8 he cannot supply additional bases if they are government
9 documents.

10 MR. LINENBERGER: Perhaps I didn't say it very
11 well, Mr. Scott, but changing from uranium dust to crud to me
12 is a change in the contention. They come about from completely
13 different mechanisms, they act in different ways, they originate
14 under different circumstances. So I see it as a change, and
15 if I didn't say it clearly, my apologies.

16 MR. SOHINKI: Mr. Chairman, I would like to add
17 that I understood the Board's ruling to be that, not only was
18 Mr. Doherty prohibited from changing the thrust of the con-
19 tention, but that he was in fact prohibited at this time from
20 adding additional bases to the contention.

21 Now I certainly have no objection if Mr. Doherty
22 has a new contention based on something other than he already
23 presented for him to file it and attempt to justify it under
24 2.714 why he filed it late. But I don't think that the
25 Applicant or the Staff should be forced at this prehearing

wrb/agb7

1 conference to hit a moving target. We have a filing before us
2 and I don't think we should be required to respond to additional
3 bases that we haven't heard before.

4 CHAIRMAN WOLFE: Can you give us an example of
5 what you consider to be a bases and a shifting of bases? Do
6 you have some sort of an example in mind?

7 MS. WOODHEAD: Mr. Chairman, if I could answer
8 that question, I could illustrate from what Mr. Doherty has
9 just done. In his amended Contention 11, which was the second
10 time that we had addressed the same subject, he indicated that
11 this "uranium dust" was a factor at issue. And the Staff
12 had no idea what uranium dust was and so stated in its response.
13 And Mr. Doherty just got through presenting some document here
14 to the Board, reading from some document unknown to the Staff,
15 to identify uranium dust as being crud.

16 This is changing the written contention that
17 Mr. Doherty filed through the mail to which we responded. It
18 is broadening the basis of his statement in his contention
19 that we have never seen or heard before.

20 CHAIRMAN WOLFE: Well now you're not saying, Ms.
21 Woodhead, if Mr. Doherty's contention was directed toward
22 uranium dust and on oral argument he proceeded and continued
23 to address uranium dust, you're not contending it would be
24 improper for him to say Well in my additional -- in my sub-
25 mission on uranium dust, I only cited NUREG X,Y,Z, but now X

wrb/agb8

1 Wish to also cite NUREG 1,2,3. Are you saying that is per-
2 missible or are you saying that is impermissible?

3 MS. WOODHEAD: I'm saying that is impermissible
4 because one NUREG document might be entirely irrelevant to his
5 contention whereas another NUREG document might be relevant to
6 his contention. But we have not memorized all NUREG documents
7 so it would require an additional response from the Applicant
8 and the Staff if he brings up new bases to support his con-
9 tention at this time. We're not prepared to research it.

10 (The Board conferring.)

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MR. NEWMAN: May I just address the question that you previously addressed to Ms. Woodhead?

I think the issue may be in a bit more gray area than Ms. Woodhead's response would have allowed.

I believe that while Mr. Doherty is pursuing, for example, the question of uranium dust -- whatever that material is -- if he has other material that in fact supports the existence of this material called "uranium dust" there should not be an objection if he is continuing to pursue the same subject matter.

The difficulty that we have here is that he has shifted from anything which would have clued in either the applicant or the staff as to his intention. He now talks about crud. We're all familiar, I think, with that technical term of the reactor, and there is certainly no way to extrapolate to that from the concept of uranium dust.

I want to add one further thing. I think it is in line with what Mr. Whinki said before.

The Appeal Board's recent discussion about this proceeding, or this intended proceeding, which did suggest the desirability of additional oral argument, did indicate that the Board as a matter of its discretion could undertake to consider new bases or changed contentions. I believe, however, that it is the burden of the intervenor in such a circumstance to demonstrate that the Board's discretion should so be

WRB/wb2

1 applied. I have heard nothing from Mr. Doherty that would
2 suggest that.

3 Moreover, I would suggest that in such a circum-
4 stance where he does seek an exercise of the Board's discre-
5 tion to shift the basis or to raise new contentions, that it
6 is only in the interest of fairness that that material be
7 set forth in writing and that the parties have an opportunity
8 to respond.

9 I just want to clarify the position on what
10 Mr. Doherty can and cannot do.

11 CHAIRMAN WOLFE: Well there's no question in
12 the Board's mind. Certainly, as indicated, the Appeal Board
13 in ALAB-565 of October 1st, 1979, at Footnote 11, indicated
14 in substance that during the course of this special prehearing
15 conference substantive alterations of contentions, as
16 distinguished from arguments in support of the existing con-
17 tention, can be done only with the leave of the Board. That
18 is a matter within its discretion.

19 Now, I don't know that we -- and I hope the Board
20 would not rule that you cannot shift your arguments. You
21 certainly may shift arguments in the course of defending your
22 contention against objection. But you may not change the
23 scope or nature of the contention.

24 Now the Appeal Board said that's within our
25 discretion. Hopefully we won't have to meet that question of

WRB/wb3

1 using our discretion, because we're asking you to keep your-
2 self within the metes and bounds of your contention. Don't
3 stray beyond that. You can change your arguments without
4 leave of the Board, but you cannot change the scope of the
5 contention.

POOR ORIGINAL

6 All right?

7 I don't think we have any problem there,
8 Mr. Scott. I don't think anyone misunderstands that.

9 MR. SCOTT: The only thing that--

10 CHAIRMAN WOLFE: I thought on the initial con-
11 tention that we got into, I thought that the objection I
12 guess from applicant was that there was a shifting of the
13 basis of the contention. And I thought that the wording,
14 "basis of the contention," meant that the contention itself,
15 the wording of the contention, the scope of the contention,
16 was being changed. And this we won't allow.

17 MR. SCOTT: Your Honor, I agree with that. I
18 think the problem may be that really when you're talking of
19 dust and crud you're talking about the same thing. It may
20 be that some people aren't familiar with the terminology.

21 CHAIRMAN WOLFE: I don't think Mr. Linenberger
22 would agree that there is any similitude between uranium
23 dust and crud.

24 MR. LINENBERGER: Does this call for a technical
25 opinion here?

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POOR ORIGINAL

WRB/wb4

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(Laughter)

Uranium dust and crud are not the same thing. Uranium dust may, under some circumstances, be an element of crud, but in most cases it isn't.

The term "crud" in time long precedes the availability of uranium dust to get into control mechanisms and other sensitive devices.

So, Mr. Scott, I'm afraid the Board has to take exception to your definition of "crud" being synonymous with uranium dust.

CHAIRMAN WOLFE: Well I'm sure we are clear now on the record what Mr. Doherty or any other party or petitioner for leave to intervene can argue about in arguing on his contentions.

All right, Mr. Doherty.

MR. DOHERTY: On that point, we will have to leave Part B(2) of Contention No. 12 as is. That's at the very foot of that page which I think you still have before you. It simply was not a typing error, it was an error of mine. There may be no synonymousness between crud and dust in a reactor but there is in some peoples' everyday walking-down-the-street mind, from what happened. And I did not attempt to try to do anything more than simply change two things that I thought were synonymous, as Mr. Scott said a moment ago.

1222 121

WRB/wb5 1

For want of a nail a horse was lost.

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That's all I have on No. 12 on the Rod control and information system, so we can proceed, I believe, to No. 15, which is in the first page of the August 20th submission of amendments.

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I'm sorry; I should have said at first that it was amended.

7.120

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This contention read: "The intervenor

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contends health and safety interests are inadequately protected because the industry standard power excursion theory is inadequate to represent the increase in heat energy due to the rapid increase in the activity in a design basis power excursion accident."

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The staff responded there was an inadequate basis by saying that the G.E. Document NEDO 10527 method will be used, and that that will guarantee that in the event of any of these power excursion accidents that the enthalpy will be less than 280 calories per gram.

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I have a contention accepted arguing that 280 calories per gram is not sufficiently high.

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In addition, the staff. . .

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I have a note here which I can't seem to follow very well about a study by Burkhofer, which I believe would be violating the rule we have been so fruitfully a moment ago. So

1222 122

POOR ORIGINAL

WRB/wb6

1 I will not do that.

2 In fact, the only other reply I have to the lack
3 of basis, which I believe is the only statement-- All that
4 says on page 54 of the SER. . . essentially what that does is
5 reinforce the 280 calories per gram peak fuel enthalpy
6 standard.

7 It appears almost, although I argued the contention,
8 there was no way to argue, because the gentleman who said --
9 the staff -- there's no basis. There's no way to argue you
10 have a basis without submitting some basis. And that's
11 expanding the basis and not allowed. So at this point I--

12 MR. NEWMAN: Mr. Chairman, I don't believe that
13 statement should be allowed to stand in the record. I think
14 that the Chair, Mr. Linenberger expressed accurately what the
15 view of the Board was with respect to receiving additional
16 material. And I believe that that is not an accurate state-
17 ment of the Board's position.

18 I think what we have here, in reality, is truly
19 a change in the nature of the contention. I think the quarrel
20 here is with the heat deposition standard rather than the--

21 MR. DOHERTY: With what standard, please?

22 MR. NEWMAN: The 280 calories per gram standard.

23 MR. LINENBERGER: Well, at any rate, Mr. Doherty,
24 you have presented your contention, amended it, and the
25 applicant and the staff both would have its admissibility

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WRB/wb7

1 denied. I take it you are standing on your defense of that
2 contention as submitted; is that correct?

3 MR. DOHERTY: Yes. I argue simply that I have
4 provided the basis, it seems to me.

5 I'm repeating myself, but it seems to me at this
6 moment the way the rule seems to be going, whether they come
7 from the Appeal Board or directly from you, there is certainly
8 no way to admit new basis, to state the basis for an inter-
9 venor for a contention. So that all an intervenor can do when
10 staff and applicant object "Lack of basis," is say, "Oh, yes
11 there is."

12 Maybe a person can get into the details of it,
13 of why--

14 CHAIRMAN WOLFE: Well, you're invited to give any
15 bases you can. We have never said that you could not, in
16 argument today, provide bases. What we just said was that
17 you could not expand, change the scope of contentions.

18 So I don't know why you're saying what you're
19 saying, Mr. Doherty.

20 It may be difficult for you to state bases.
21 In which case conceivably your contention will be denied if
22 you haven't set forth the bases with reasonable specificity.
23 And you're not going to be gotten off the hook by saying
24 there may be times when you can't give the bases.

25 If you can't give the bases then we are very well

WRB/wb8

1 likely to determine that you are unable to support, or whatever,
2 your contention. So it lies with you, and solely with you,
3 and not with anyone else, on bases. You have to provide that.
4 And you can't tell the Board, Well it's there but I'm not
5 going to give it, or I can't give it. If it's there you
6 will give it and we will understand, or if it is not there
7 and you haven't given it then we don't understand what is the
8 bases.

9 MR. DOHERTY: With all respect, a moment ago
10 Ms. Woodhead raised the objection about expanding the bases.
11 I was under the impression that that was supported.

12 MR. SCOTT: Mr. Chairman, I think Mr. Doherty's
13 confusion is that Ms. Woodhead did in fact object to that.
14 But I never did hear you uphold her objection. I think
15 Mr. Doherty must have thought just because the NRC staff
16 objected that you had upheld it. But I agree with you: I
17 don't think you said that.

18 Mr. Doherty can supply any new bases he wants to
19 as long as he doesn't change the scope of the contention.

20 CHAIRMAN WOLFE: That's my understanding of the
21 Board's own ruling.

22 I don't understand what your problem is,
23 Mr. Doherty. I understand it may be difficult, Mr. Doherty,
24 when you're arguing contentions to focus on that and at all
25 times listen to the Board. But that is indeed what the Board

1222 125

WRB/wb9

1 said. You can provide bases, you can amend the bases during
2 the course of an argument, but you cannot change the scope of
3 the contention or the pleading.

4 MR. LINENBERGER: And explicitly, to make sure
5 that I did not mislead you with regard to Contention 15, I
6 have made no observation that was intended to imply that we
7 did not feel that you lacked bases in which you submitted.
8 I was only asking you if you are standing on those arguments.

9 MR. DOHERTY: And I replied to that positively.

10 MR. LINENBERGER: That's the way we understood
11 it.

12 MR. DOHERTY: Thank you very much, Mr. Scott
13 and Mr. Chairman.

14 CHAIRMAN WOLFE: If there is any doubt, perhaps
15 I misspoke myself right from the very beginning. But I'll
16 make it clear now and we will rule on your argument on the
17 basis that you may change bases for your argument but you
18 may not change your contentions. That's flat out, so there
19 is no misunderstanding what the Board's ruling is.

20 All right, Mr. Doherty.

21 MR. DOHERTY: All right, then. There being no
22 objection I would like to proceed to No. 16, which was
23 amended and is in the August 20th contentions, which I believe
24 is the same group.

25 The staff argued that, among other things, that

1222 126

WRB/wb10 1

2 it was vague. I take it particularly at the beginning it
3 was vague. I've attempted to cure the vagueness. I would
4 request an opportunity to treat it as a more clarified con-
5 tention, and request that it be judged if that has changed
6 it or not such that if it has gone outside the rules that
7 we have and that I understand now. Because the first
8 sentence is long and vague and did lead to-- It should be
9 clarified.

7.255

10 CHAIRMAN WOLFE: Well we'll just have to listen
11 to what you have to say to determine whether it be a change
12 in the scope of the contention or whether you're just explain-
13 ing something within the four corners of the contention
14 that otherwise might not be understood upon the first reading
15 of the contention.

16 Sogo ahead. There might be an objection, in
17 which case we'll have to rule on it.

18 MR. DOHERTY: "Intervenor alleges that appli-
19 cant has not considered steam blanketing of fuel
20 rods," --and here's where I prefer to make the change
21 in the wording.

22 "a phenomenon where transfer of heat on a boiling
23 hot surface is interefered with by trapped steam
24 between the cool water mass and the fuel rods them-
25 selves. This prevents coolant function, resulting
in excessive fissioning, hot spots on the fuel rods

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WRB/wb11

1 and consequent fuel melt."

2 That last part is back in the original part,
3 starting with "resulting."

4 CHAIRMAN WOLFE: Go ahead. I hear no objection.

5 MR. DOHERTY: All right.

6 Now the basis I've argued was the Fermi reactor
7 incident, and what was objected to was there was insufficient
8 similarity between Fermi, since it was a sodium cooled
9 reactor, and, of course, ACNGS is not.

10 What I submit is, any coolant will act this way
11 with itself in a gaseous state. So that the fact that it
12 was sodium cooled doesn't make that much difference.

13 The other basis is more local. It's simply
14 that if you observe beads of water -- if you observe a hot
15 skillet you will see that beads of water roll around, instead
16 of boiling on that surface.

17 That's my answer to No. 16.

18 CHAIRMAN WOLFE: All right.

19 We'll have a ten-minute recess at this time.

20 (Recess)

21 End 2A

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1222 128

2B wrb/agbl

1 CHAIRMAN WOLFE: All right, the conference again
2 is in session.

3 MR. NEWMAN: Mr. Chairman, before we leave
4 Contention 16, I believe that we have here an instance of
5 where we may be straying off the reservation with the changed
6 underpinning for the contention.

7 Initially, we were talking about steam blanketing
8 on the basis that the phenomenon would occur as a result of
9 blockage in the pathway of the coolant, and we cited, the
10 intervenors cited the Fermi experience and has now quite
11 clearly withdrawn the Fermi experience.

12 And he appears to me to be describing not a steam
13 blanketing phenomenon but, rather, a film boiling phenomenon,
14 and I would point out that that is covered in the ECCS regula-
15 tions 10 CFR Part 50 Appendix K, Section C5.

16 CHAIRMAN WOLFE: I missed that. You said
17 Mr. Doherty was departing from steam trapping to what?

18 MR. NEWMAN: From steam blanketing to the question
19 of film boiling.

20 MR. LINENBERGER: Mr. Newman, this member of the
21 Board, at any rate, would like to ask Mr. Doherty for clari-
22 fication here, because I personally did not hear him back off
23 from the, or understand him to be backing off from the Fermi
24 experience with respect to flow blockage. I guess I really
25 did not hear in his rephrasing of the first long sentence of

wrb/agb2

1 his contention a transition from nucleate boiling to film
2 boiling, but maybe that was what he was doing. So I think I
3 heard differently than you did.

4 So I would like to ask Mr. Doherty to repeat, if
5 you would.

6 MR. DOHERTY: Yes. I have not abandoned the
7 Fermi aspect of the contention, and there is no effort being
8 made to talk about film boiling.

9 MR. NEWMAN: I perhaps misunderstood what
10 Mr. Doherty was saying and, if so, I stand corrected. He
11 apparently is relying on the information submitted in writing
12 to the Board to which we have responded.

13 CHAIRMAN WOLFE: All right, Mr. Doherty.

14 MR. DOHERTY: On Number 17, there has been a
15 stipulation but I have a question. The Applicant argued that
16 the contention belonged with TexPIRG's, with a TexPIRG
17 contention. I have Number 6 down, but I don't have TexPIRG's
18 contentions with me. A complete stipulation of the Staff's
19 position would be that it be an independent contention.

20 MR. NEWMAN: We so stipulate.

21 MR. DOHERTY: All right. Fine.

22 That brings us to Number 13, which is on page
23 seven of the May 25 submission of contentions which was
24 concerned about in the event of main steam line valve trip or
25 turbine trips and SCRAM failure, the proposed plant would have

wrb/agb3

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1 a PEA if the recirculation pumps could not be tripped rapidly.

2 I have decided that I will not pursue this con-
3 tention and there is no requirement that the Board go further
4 on it. I see it drawing a large X.

5 CHAIRMAN WOLFE: All right. Your request to
6 withdraw Contention 18 is granted.

7 MR. DOHERTY: Number 19, as I've understood the
8 argument of the Applicant, they are essentially saying they are
9 submitting a new type -- well let me get to that in a minute
10 here. I'm sorry.

11 All right. That's on -- in the August 10, 1979
12 submission of amended contentions. It's on the second page
13 on the back.

14 On that one, I have only a question. One of the
15 difficulties has been that I have not been able to reach or
16 get to see Amendment 50 which covers what I think is called
17 a fast SCRAM system, the term for this.

18 The original problem with control rod drive system
19 collett retainer tubes was cracking, and it has been blamed
20 on the type of stainless steel used. I will pursue the
21 contention if, in fact, applicants -- excuse me, collett
22 retainer tubes are still of 304 stainless steel. However,
23 there have certainly been -- perhaps your technical people
24 can help you with that -- they certainly have been made avail-
25 able for -- General Electric boiling water reactor collett

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retainer tubes made of different material. And if that material
 is in use, I see no point in arguing the contention.

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MR. NEWMAN: Mr. Chairman, I suggest that after I've had a chance to confer with the technical people I'll be able to respond to that, so let's just put that off for the moment.

MR. DOWNEY: Number 20 is stipulated.

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The next contention is Number 21, which was amended and is in the August 20 submission of amended contentions which -- well, on page two of that August 20th group.

One of the Staff's objections was that the point kinetics model has conservatism in it which -- well do you want me to read the first sentence or two? I think I should.

"This intervenor contends that the resolution of the issue of the amount of reactivity inserted by the collapsed voids during overpressure transient being generically investigated by the NRC will result in derating of the proposed plant output. To the extent this his environmental interests would have suffered less harm by having Applicant construct a plant either using a different fuel such as coal or a pressurized plant which produced as much power as the proposed plant."

All right. The Staff objected against the original statement which is on page eight of the first submission of contentions. They referred to Section 4322 of the SER

wel/ayb2

1 Supplement Number Two as containing language that would indicate
2 that the contention is without basis.

3 I would like to submit that the basis for the
4 contention is as I put it down here plus three other basis
5 points. One is from Richard E. Webb, Hazards of Atomic Power
6 Plants. I'll read just a paragraph:

7 "The most trusted theory of reactor
8 dynamics predicts large cores will exhibit neutronic effects
9 called space-time kinetic effects, which will cause
10 much stronger power excursions than have been
11 predicted by the small core theory called point
12 kinetics."

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13 There are two articles which I feel support my
14 position. The author is J.B. Yasinsky, Y-a-s-i-n-s-k-y,
15 both published in Nuclear Science and Engineering, the first
16 in 1965 called "Some Numerical Experiments Concerning Space
17 Time Reactor Kinetics Behavior;" the second, in 1970 called
18 "On the Use of Point Kinetics for the Analysis of Rod Ejection
19 Accidents."

20 The Staff also pointed out that the intervenor
21 had made some assumptions. What I am saying is that there is
22 an unresolved issue of reactor stability dynamics behavior
23 cited on page 47 of the SER in Section 4322 and that that is a
24 litigable issue because deviating based on the above would bring
25 less energy for the same environmental cost and hence offset the

POOR ORIGINAL

wel/agb3

1 cost-benefit conclusions of the FES, and violate NEPA.

2 In another objection, the Staff objected under
3 10 CFR 50.35(a) the contention can be considered at the
4 operating license stage. However, my reading of the River
5 Bend decision, Gulf States Utilities 6 NRC, is that the
6 findings under 10 CFR 50.35(a) permits a Board finding that
7 the Applicant may start construction but it's not a basis for
8 exclusion of an issue by the intervenor.

9 I'm sorry to have taken so long, I got twisted
10 around in paperwork but I'm ready now for....

11 (The Board conferring.)

12 MR. LINENBERGER: Mr. Doherty, the Board is not
13 clear which of the following two things you are saying:
14 One, that the potential adverse implications of void collapse
15 is likely to lead to some undesirable event with respect to the
16 reactor operation or that anticipation of undesirable impacts
17 of void collapse is likely to lead, at operating time, a
18 derating of the reactor to avoid this kind of undesirable
19 impact; which of the two are you saying?

20 MR. DOHERTY: Number two.

21 MR. LINENBERGER: Thank you, sir. I think we
22 can proceed.

23 MR. DOHERTY: Contention Number 22 is an amended
24 contention. It's contained on the first page of the August 7
25 submission of amendments. Contention Number Two, first sentence

1222 135

wel/agb4

1 reads -- Contention 22, first sentence reads:

2 "Intervenor contends the control rods
3 may develop cracking in the blade in core..." meaning
4 as a place, "... which hold the neutron absorbing boron
5 carbide."

6 I think it might be wise to read a little more.

7 "Since the centermost rods are subject
8 to the greatest neutron absorbing requirement,
9 these may crack severally, resulting in an amount
10 of boron carbide greater than the highest rod worth
11 being dispersed in the coolant, resulting in
12 inability to shut down."

13 Both Staff and Applicant opposed.

14 The last sentence I think Staff opposed this in
15 part on vagueness, and I'd like to try to modify the last
16 sentence so that it is clear. And that's on that first page
17 of the submission.

18 I'd like to just strike out the fairly long phrase
19 "is a danger to intervenors' safety interests," and replace
20 it with "are effected by control rod blade cracking with loss
21 of neutron absorbing material."

22 CHAIRMAN WOLFE: There being no objection, continue.

23 MR. DOHERTY: I was certain there was a chance of
24 that.

25 CHAIRMAN WOLFE: I hear none, so proceed,

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POOR ORIGINAL

wel/agh6

1 Mr. Doherty.

2 MR. NEWMAN: Mr. Chairman, I'm afraid I -- it
3 appears to me that there's an amendment or a change in the
4 contention. Could Mr. Doherty just give us a word more of
5 explanation as to the significance of the last change he
6 proposes?

7 MR. DOHERTY: I don't think the sentence makes
8 sense unless the change is made, and I don't think it makes
9 grammatical English and I'm not certain it does now, because
10 it's a very complicated sentence. It's one of the troubles
11 with my education.

12 You have the new wording, first of all, sir.
13 Do you? Let's check that out. Let's be certain we're both
14 talking about the same thing.

15 MR. NEWMAN: I have the wording from your contention
16 of August 7th, 1979. I'm looking at the last phrase of that
17 contention, is that correct?

18 MR. DOHERTY: Yes, beginning with "is a danger."
19 Now to the period in that line, I'd like to simply cross that
20 out and I've written some new language to insert in there.
21 Did you get that language?

22 MR. NEWMAN: Perhaps you'd better repeat it.

23 MR. DOHERTY: Okay. "--are effected by
24 control rod blade cracking with loss of neutron
25 absorbing material."

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POOR ORIGINAL

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MR. NEWMAN: In addition to clarifying that, Mr. Doherty, is that meant to underline the economic interests which you have stressed in your earlier version of this pleading?

MR. DOHERTY: Not economic interest, I don't believe I have an economic interest other than environmental-economic interplay. Is that what you mean?

MR. NEWMAN: As I understand your pleading the first time you submitted that contention, the essential basis was that there would be an effect on your economic interest. As I read your amendment on August 7th, it would appear to be switched to assert a health environmental interest. And I guess that this form of contention has changed so many times that I'm not clear any longer as to the nature of the interest which you feel will be affected by the occurrence of this phenomenon.

MR. DOHERTY: The nature of the interest is a health interest involved in having a reactor which cannot be shut down totally and severe environmental consequences brought on by having to use another type of plant to replace the incompletely shut down nuclear plant.

MR. NEWMAN: Do you have any response to the argument initially made by the Regulatory Staff with respect to the technical basis of your contention? That's in the Staff's response of June 27. It seems to me that that's the heart of

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wel/agb8

1 the matter. Staff's identified an essential technical vulner-
2 ability and the contention rides or doesn't ride on the basis
3 of whether you can establish that the Staff is right or wrong
4 in their assertion with respect to your contention.

5 MR. DOHERTY: I'd like to direct a question to the
6 chair.

7 That seems to change the way we're running the
8 procedure when he does that. Now he's essentially saying what
9 -- now he's using a Staff objection. The way we've been
10 doing was as you kindly said to me Go to it. Now I've been
11 corrected. That changes our proceedings, I believe. I don't
12 know what you --

13 MR. NEWMAN: The purpose of my inquiry basically,
14 Mr. Chairman, was to find out whether or not we're dealing
15 here at the bottom with economic interests or health and
16 safety interests.

17 CHAIRMAN WOLFE: I thought Mr. Doherty's answer
18 was that it's environmental. But to the extent that there's
19 interplay between environment and safety, I don't think he
20 said at any time that he's basing his argument merely on
21 economics.

22 Isn't that correct, Mr. Doherty?

23 MR. DOHERTY: Yes, although he does have a basis
24 for saying so because I believe the original contention did
25 have something about economics.

1222 139

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MR. NEWMAN: That is my concern.

MR. DOHERTY: But this is amended.

MR. NEWMAN: And I think that without stating an objection I believe that the Staff's basic objection, the technical basis of this contention has not been answered in this response, and I leave the record at that.

MR. DOHERTY: He leaves the record at that point so I guess that sort of motts what I said a moment ago about the proceeding changing. Actually he's filed an objection, or he's stated an objection there.

CHAIRMAN WOLFE: I don't think so, I think he's indicated something that you haven't responded to and whether you like it or not the Board may well pick up on this.

MR. DOHERTY: Oh yes, but --

CHAIRMAN WOLFE: So perhaps you shouldn't be so concerned about the methodology of the Applicants going outside the ground rules here. Maybe you shouldn't be so concerned about that but rather just have you adequately addressed all arguments in opposition to your contention.

MR. DOHERTY: Well I certainly don't feel that I've had a chance to do that yet, but I do feel that what has happened is a change fundamentally. And it's a change from having the intervenor simply give his answers to the objections of the Staff and Applicant as the intervenor perceives them and instead we're having --

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2 CHAIRMAN WOLFE: All right. All right. This is
3 how Mr. Doherty feels, Mr. Newman, now you don't have to alert
4 him any more as to something that might have slipped through
5 the cracks, he's saying that he's going to handle his own
6 argument the way he wants to handle it.

POOR ORIGINAL

7 All right, Mr. Doherty.

8 MR. DOHERTY: That was my understanding of what
9 you wanted me to do.

10 CHAIRMAN WOLFE: All right. Proceed.

11 MR. DOHERTY: All right. Thank you.

12 The Staff also raised the fact that the Three Mile
13 Island Plant failed to achieve cold shutdown was due to melting
14 and not due to cracking, which I feel is not truly important.
15 The fact is in either case the sheaths lost their integrity in
16 some way and that, therefore, there is a basis for going into
17 the contention of a possibility of the sheaths losing integrity
18 and losing boron absorbent. Of course, they've also put in
19 two reactor units that have experienced the problem of
20 cracking to give it a firmer basis. Those are in the con-
21 tention.

22 I would like to assert that I intended that it
23 would be realized that the damage would be large enough --
24 would be equal or greater than -- well I'm having trouble
25 with my wording here -- the damage would be as large as or
equal to the damage created when a single control rod of

1222 141

wel/agbl1

1 maximum worth is stuck out of the reactor and all the others
2 are inserted.

3 MR. NEWMAN: Mr. Chairman, I'm sorry, I missed
4 that. What are you quoting from now, Mr. Doherty?

5 MR. DOHERTY: My notes.

6 MR. NEWMAN: I'm sorry. I thought you were quoting
7 some authority.

8 MR. DOHERTY: No.

9 There is either a rule or a specification that
10 in considering control rod -- in considering getting a rod to
11 cold shutdown, the reactor must be able to achieve cold shut-
12 down with one control rod of maximum worth, which might
13 mean the control rod stuck out. That is, it could get to
14 cold shutdown with one rod out.

15 Now this contention won't make much sense unless
16 that amount of material is lost essentially in absorbing --
17 unless the amount of boron lost equals that, or otherwise
18 the specifications would still mean you could get to cold
19 shutdown.

20 So the assertion has to be made -- I believe I'm
21 correct in saying it's a specification at this point. At
22 least it may sound familiar to the Board.

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POOR ORIGINAL

1222 142

1 There was also objection raised by the Applicant,
2 which is a part of the earlier problem of having a bifurcated
3 hearing, of having this hearing and having that one a year ago,
4 and having had original notice and a later notice, which we
5 haven't dealt with very much here. And I got a little
6 confusing here.

7 The Applicant seemed to be saying that there was
8 nothing new in here, which essentially meant relying, I think,
9 on ALAB-535, or the Board order after ALAB-535, that the
10 contentions submitted by a person such as myself had to be
11 somehow related to material that could not have been raised
12 because of the new evidence rule.

13 And I just would point out that the Drasden Unit
14 1 reactor incident, which is quite old, 1960, and that would
15 be enough to keep the contention -- did not justify admitting
16 the contention a year ago, because it would have been
17 contaminated by old evidence.

18 MR. NEWMAN: Mr. Chairman, I think there's an
19 argument over nothing. We don't have an objection based on
20 timeliness. It's not in any of our pleadings.

21 MR. DOHERTY: Well, there's nothing lost by what
22 I've said.

23 CHAIRMAN WOLFE: Go ahead, Mr. Doherty.

24 MR. DOHERTY: I'm ready to proceed to the next
25 contention.

wel 2

1 On number 23, on Staff's response, it's clear that
2 because the overpressure transient will cause power to exceed
3 102 percent -- well, I'm sorry -- number 23 is on . . . number
4 23 was an amended contention. I'm having difficulty locating
5 it.

6 (Pause.)

7 Oh, here it is.

8 It's on page . . . it's on the July 24th submission.
9 Staff and Applicant filed objections in opposition to both the
10 amended contention and the original contention.

11 Now, because the pressure transient will cause the
12 power to exceed 102 percent of the design power level.
13 Intervenor concedes this contention is a challenge to 10 CFR
14 50, Appendix K.

15 However, Intervenor will avail himself to file a
16 special circumstances under 10 CFR 2.758 with an appropriate
17 2.714 supporting statement. What I mean by that is until you
18 receive some type of special circumstances arrangement, you
19 need not rule on this as it is, because this Intervenor
20 agrees that it is a challenge to 10 CFR 50, Appendix K,
21 because it's clear the conditions there would bring it over
22 102 percent of power, and the requirements are that it only
23 be able to sustain 102 percent under that section.

24 MR. LINENBERGER: Are you saying, then, sir, that
25 you're giving the Board notice that the monkey is on your

1222 144

1 back to do or not do something about this further, but as it
 2 currently stands you, yourself, recognize that no showing of
 3 special circumstance has been made?

4 MR. DOHERTY: Yes. It's certainly clear I know I
 5 have not done that, and that's it.

6 MR. LINENBERGER: Thank you.

POOR ORIGINAL

7 MR. DOHERTY: Contention number 24.

8 CHAIRMAN WOLFE: When will you be filing such a
 9 petition for waiver or exception under Section 2.758?

10 MR. DOHERTY: As promptly as possible. I don't
 11 have a fixed date.

12 CHAIRMAN WOLFE: All right.

13 Go ahead, Mr. Doherty.

14 MR. DOHERTY: Contention number 24 is an amended
 15 contention. It was amended on July 24 on the submission of
 16 amended contentions, which is the same as we were just
 17 momentarily considering.

18 I'll read a short part of it:

19 "In the event of a control rod drop accident,
 20 Intervenor's held its safety interests are inadequately
 21 protected because the Applicant relies on NEDC-10527,
 22 which shows that the reactivity increase potential for
 23 the accident is 2.5 percent, which, according to
 24 NEDC-10527 will produce a power excursion with a peak
 25 energy yield less than 280 calories per gram of fuel."

wel 4

1 All right. On this, I'd like to point out that
2 in the PSAR, page 15.1-76, which is Section 15.138.3, there's
3 an excellent description of the rod drop. The analysis
4 assumes that the rod pattern control system is operational,
5 and my understanding is they now have a rod control and
6 information system, I guess it's called, which is slightly
7 different, in that that system will limit the rod drop worth
8 to 1 percent.

9 This is not the worst possible accident for
10 a rod drop if the RCIC is assumed to function.

11 The Applicant submitted pages from one of the
12 evidence cited in the contention, that of the PSAR from the
13 Montague Nuclear Plant. They submitted that to me. However,
14 I think they misunderstood what I was saying.

15 They thought I meant the Montague PSAR contained
16 something that would indicate a danger to the public. It
17 actually shows only calculations that don't show that.

18 Again, I'm going to refer to Richard Webb's
19 book, called "Accident Hazards of Atomic Power Plants." He
20 stated on page 77:

21 "In the design basis control rod drop accident
22 for BWRs, the reactivity worth of the dropped control
23 rod, that is, the reactivity increased potential, was
24 formerly assumed to be 2.5 percent, which was
25 calculated to produce a power excursion with a peak

1222 146

1 energy yield less than 280 calories per gram."

2 Now, NEDO-10527 showed the safety limit to be
3 greatly exceeded and as a result the control rod worth
4 assumption for the design base rod drop accident was reduced
5 to 1.4.

6 However, there was no change to the reactivity
7 worth potential of the control rods.

8 And that's my submission.

POOR ORIGINAL

9 Contention 25 is going to cause some difficulty.
10 It's on page 10. It's not amended. It's on page 10 of the
11 original submission.

12 Staff and Applicant's responses are both on page
13 11 of their original responses to this group of contentions
14 that went out the first deadline. This is the contention that
15 was broken into two parts.

16 I believe I may need some help here.

17 One part of it was --- one part was accepted, and
18 one part not.

19 MR. NEWMAN: Mr. Chairman, perhaps it would simplify
20 things if I explained what the Applicant's position is on
21 that.

22 We have reviewed the Staff's pleading on that
23 contention, and agree with the Staff position, that the
24 question which the Staff finds as suitable for litigation is
25 the one to which we also stipulate.

1222 147

1 MR. DOHERTY: The second part is the part I
2 believe that you stipulated to.

3 All right. Mr. Newman, according to page 11 of the
4 Staff's response, the last paragraph, do you stipulate to
5 that?

6 MR. NEWMAN: Are we reading the words, the Staff
7 supports this part of the contention . . . let me back up.

8 The second issue raised here concerns inadequate
9 fuel failure detection, which issue was raised in NUREG-0401,
10 cited by the Intervenor, and which should indicate damage from
11 blocked assemblies as a safeguard to such occurrence. Staff
12 supports this part of the contention, and so forth.

13 That is the portion of the Staff's response to
14 which we stipulate.

15 MR. DOHERTY: All right.

16 Now, I'd like to call your attention to page 11
17 of your response, which says:

18 "To the extent Intervenor contends that the
19 design basis flow blockage accident should assume
20 more than one blocked fuel assembly, Applicant agrees
21 that this contention meets the minimum requirements
22 for presenting a litigable issue."

23 MR. NEWMAN: The truth of the matter is that I
24 think we were being somewhat generous at the time, because of
25 our inability to understand your contention. I think that the

POOR ORIGINAL

1222 148

1 Staff has identified with better precision the nature of the
2 issue that should be litigated, and it is that position to
3 which we stipulate, withdrawing all other representations with
4 respect to that contention.

5 MR. DOHERTY: So then you do not agree that to the
6 extent Intervenor contends that the design base flow block
7 accident should assume more than one blocked fuel assembly,
8 that that meets the requirements for presenting a litigable
9 issue? Is that right? Now that your position has changed?

10 MR. NEWMAN: I think our position is just as I
11 explained it a moment ago. I probably accurately set it
12 forth.

13 MR. DOHERTY: Well, you mentioned something about
14 generosity, and I gather perhaps I'm having difficulty
15 fathoming my writing, but I have a statement here . . . it
16 appears to me that you stipulated to the first part, which
17 Staff did not stipulate to, and then here this morning
18 stipulated to the second part, which Staff did stipulate to.

19 MR. NEWMAN: Mr. Chairman, is there a question
20 pending?

21 CHAIRMAN WOLFE: Well, I'm trying to fathom whether
22 there is agreement or disagreement over the first part of
23 contention 25. I'm not certain at this point.

24 I'm full well aware that this morning the Staff
25 and Applicant concurred in stipulating as to the second part.

1 of this contention. I'm not at all certain about what
2 disposition, if any, has been made of the first part.

3 So, with that outstanding, --

4 MR. NEWMAN: Mr. Chairman, just to crystallize
5 Our position, we are opposing the first part of the
6 contention, stipulating instead to the second portion of
7 the contention, which we believe more clearly raises a
8 litigable issue.

9 CHAIRMAN WOLFE: Now Mr. Doherty, to the extent
10 that you're arguing that it's your understanding from
11 whatever appears in Applicant's submission, that they did
12 agree to the first part, if that's what you think, that's
13 what you think.

14 But I think Mr. Newman was trying to explain to
15 you --

16 MR. DOHERTY: I'm certain he was. But it appears
17 to me from the plain language on the face of page 11 that
18 the Applicant stipulated to part (a) -- on the Applicant's
19 response -- to the May 25th submission.

20 MR. NEWMAN: Mr. Chairman, perhaps I should just
21 say that we felt that somewhere in that contention was
22 something that was litigable. We think that the Staff has
23 more precisely identified that matter than we have. Therefore,
24 we are adopting the Staff position and withdrawing the
25 language of our earlier position.

1 CHAIRMAN WOLFE: So both Staff and Applicant, then,
2 I take it, take now the position that there are two parts to
3 Contention 25.

4 Is that correct?

5 MR. NEWMAN: There would appear to be two parts.

6 CHAIRMAN WOLFE: Now, do you disagree or agree
7 with that, that there are two parts?

8 MR. DOHERTY: I believe there are two parts, and
9 my disagreement is that I believe they stipulated to both
10 parts. One part they never answered. One part they did, by
11 stipulating.

12 CHAIRMAN WOLFE: All right. Now, what about the
13 Staff, Mr. Doherty? Does the Staff agree that the entire
14 contention 25 is admissible?

15 MR. DOHERTY: No.

16 CHAIRMAN WOLFE: They agreed only that the second
17 part was admissible.

18 MR. DOHERTY: That's right.

19 CHAIRMAN WOLFE: Then you still have to answer
20 the Staff's objection to part 1, whatever Applicant had to
21 say.

22 MR. DOHERTY: That's right.

23 CHAIRMAN WOLFE: Well, let's get on with it and
24 discuss that, the second part.

25 MR. DOHERTY: I do have a question before we go

POOR ORIGINAL

1 ahead:

2 Can Applicant withdraw the stipulation?

3 CHAIRMAN WOLFE: Well, we don't get to that point.
4 Just answer what Staff has to say about its objection to the
5 second part.

6 MR. DOHERTY: Staff says nothing about the second
7 part, so there's no -- at this moment I have nothing to
8 answer, I argue, from the Staff. That the Staff has no
9 objection to both parts of 25. The Staff states there is no
10 design basis accident for blocked assemblies, and I agree with
11 that. However, there is a postulated accident in NUREG-0401
12 on page 22. So this, I feel, answers the charge or whatever
13 that this is speculative. If it's considered in this document,
14 there must be some basis for the possibility of the accident;
15 I presume the Nuclear Regulatory Commission research does
16 not take off on tangents. You know what I mean.

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17 I would like to submit that the Fermi accident is
18 unlikely to repeat itself. It was not conceived of prior to
19 its occurrence. No one ever thought of it, either. And that
20 the Intervenor does not have to do more than point out there
21 are many parts . . . well, I haven't really answered that
22 very well, because apparently the Staff has the objection
23 that there was no similarity between the Fermi plant -- or,
24 pardon me -- insufficient similarity between the Fermi plant
25 and Allens Creek. The fact that there was no conception of

1 the Fermi accident, that is, no one ever thought that
2 someone would weld a piece down at the bottom -- you know
3 the story, I guess -- that that means that they're going to
4 grasp out similarities here. It's just very difficult, or
5 almost meaningless.

6 I think that all I have to do is point out that
7 there are many parts in the reactor that have some possibility,
8 and that's what I've done in the contention, have some
9 possibility of suffering damage and becoming loosened and
10 blocking fuel rods. That is, the fact of their existence
11 precludes that they not necessarily stay where they're
12 supposed to.

13 I would also argue that as a basis for that is
14 there is a device included with most of the modern reactor
15 systems called a loose parts monitor, which must be there for
16 good reason, to detect loosened materials, which may either
17 be worn out material or corroded material -- without being
18 disparaging to anyone. In other words, the loose parts
19 monitor is there for a reason, so if such things can work
20 loose, if there's a need -- for example, on that so-called
21 poison spargers have endured a good deal of damage and wear
22 and are likely candidates for becoming dispersed pieces in
23 the coolant material.

24 I failed to include on the list nine lines from
25 the top one material that I think -- or one situation that I

wel 12

1 think would contribute to the accident in Part I of the
2 contention, which does not involve loose parts, and that
3 would be a mis-positioned control rod. However, conceivably,
4 from the way this hearing has moved, that might be considered
5 changing the contention. I can certainly see where it might
6 be too much, and I'd appreciate counsel ruling on that, just
7 so I'd know where I'm at.

8 CHAIRMAN WOLFE: This is an addition to what now?
9 You've added what?

10 MR. DOHERTY: Yes. I attempted to list possible
11 materials that might -- or possible parts that might work
12 loose and contribute to a flow blockage accident, and I
13 listed, starting at about page 13 -- or, pardon me -- line 13,
14 intermediary spaces, channel blocked portions. I would like
15 to insert more on this mispositioned control rod, which I
16 speculate that the preliminary ruling decided that that
17 couldn't be done. I think a mispositioned control rod would
18 cause the same damage, but perhaps it's just too late.

19 CHAIRMAN WOLFE: Any objection?

20 MR. NEWMAN: I have no objection, Mr. Chairman.
21 Of course, that shouldn't be construed as agreeing on the
22 merits of the contention. It's simply one more among the
23 components which he believes could cause a flow blockage.
24 I think the contention is as defective as it was before, even
25 with the addition.

1222 154

POOR ORIGINAL

1 CHAIRMAN WOLFE: Staff?

2 MS. WOODHEAD: No objection.

3 CHAIRMAN WOLFE: As I understand it, there is no
4 objection from either Staff or Applicant to the insertion of
5 that wording in your contention.

6 MR. DOHERTY: I did detect a slight reservation
7 on the part of the Applicant about that.

8 MR. NEWMAN: I'm sorry, Mr. Chairman, I didn't
9 hear your last remark.

10 CHAIRMAN WOLFE: I was advising Mr. Doherty that
11 neither Applicant nor Staff had any objection to the
12 insertion of his proposed wording into the contention. I am
13 going to add that it's my understanding that they do not
14 agree, however, with the admissibility of the contention, even
15 with the additional inserted wording.

16 So that is the position of those two parties, Mr.
17 Doherty.

18 MR. DOHERTY: All right. Thank you.

19 Number 26. We are stipulated on that.

20 Number 27 is on page 11 of the original submission.
21 It's not amended.

22 I'll read the first sentence.

23 CHAIRMAN WOLFE: Is that necessary?

24 MR. DOHERTY: It was sort of requested in the
25 beginning.

1222 155

1 CHAIRMAN WOLFE: Well, I asked you to make a short
2 statement, but --

3 MR. DOHERTY: Well, it's a long one, basically.

4 Basically, it was contended that the pedestal
5 concrete may be weakened by heat from a power excursion
6 accident or loss of coolant accident, with consequent results
7 to Intervenor's health and safety through the reactor being
8 moved, or due to thermal damage to the pedestal.

9 Now, I'm not going to do anything on this
10 contention. I'm not going to offer any defense of it. I'm
11 just going to leave it and go to 28.

12 All right. Number 28 is on page 2 of the July 31st
13 submission of amended contentions, the last one.

14 Both Staff and Applicant have opposed the admission
15 of the contention. The Staff has said that the accident is
16 essentially precluded, that the control rod could not eject
17 due to the system breaking loose from the reactor where it
18 joins the reactor.

19 They've said that this cannot happen, because there
20 are what are called control rod drop housing supports, and
21 they are shown in the PSAR, Figure 4.51.

22 However, Applicant in his response -- or, pardon
23 me -- Applicant in its response doesn't mention that this
24 Intervenor is really basically in the dark. Do they have them
25 or do they not, is the question I'd like answered. The

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1 accident itself seems to have been by the Staff pretty much
 2 said to be impossible -- by the Applicant said to be pretty
 3 much impossible.

4 However, I would point out in defense of that
 5 that it was analyzed as an accident worthy of analysis in
 6 the Rasmussen report, and I guess it's Volume I, page . . .
 7 well, I don't know the citing system for the Rasmussen report,
 8 but I'd like to . . . I guess it's just 1:223,245.

9 Now, the Rasmussen report -- well, the Applicant's
 10 description of why the drive housing cannot fail is that the
 11 drive housing cannot fail at the attachment weld. They
 12 describe in the PSAR the amount of strength in the materials
 13 and so forth. It is of Type 3 or 4 stainless steel, which
 14 showed cracking in collet retainer tubes in the control rod
 15 drive system.

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1 So they're contending it can't happen, I gather.
2 I don't at this point know for certain that they have. These
3 support structures, which appear to be simply metal restrain-
4 ers, are very close, at least three inches from the control
5 rod housing, on the bottom of the reactor, such that if this
6 were driven down it would create a leak, but the rods would
7 stay enough in position clearly to prevent tremendous reactiv-
8 ity insertion.

9 That again might be one of the contentions,
10 like No. 19, that perhaps your technical people could help
11 with.

12 MR. NEWMAN: I don't think so. No. 19 were
13 going to give some additional information on. And as to this
14 one, I think your contention is defective.

15 MR. DOHERTY: I would like to ask the Board how
16 long they intend to stay today, until what time?

17 CHAIRMAN WOLFE: It's now about ten minutes to
18 five. How much longer would it take for you to complete
19 your argument, do you think, Mr. Doherty?

20 MR. DOHERTY: Well I'm sure you don't have in
21 mind staying as late as it probably would take.

22 CHAIRMAN WOLFE: Will you tell us how late?

23 MR. DOHERTY: I think a good couple of more
24 hours here. And I'm physically exhausted.

25 CHAIRMAN WOLFE: Yes. All right.

1222 158

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1 MR. DOHERTY: Perhaps there is some other
2 business that could be done.

3 CHAIRMAN WOLFE: No. We'll adjourn until
4 nine-thirty in the morning and pick up with your next
5 contention.

6 MR. DOHERTY: No. 29, if you want to check our
7 progress.

8 CHAIRMAN WOLFE: Very well. We'll recess until
9 nine-thirty in the morning.

10 (Whereupon, at 4:50 p.m., the hearing in the
11 above-entitled matter was recessed, to reconvene at
12 9:30 a.m., Tuesday, 16 October 1979, in Houston,
13 Texas.)

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1222 159