

1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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 4 In the matter of: :
 5 METROPOLITAN EDISON COMPANY, : Docket No. 50-289
 et al. : (Restart)
 6 :
 (Three Mile Island Unit 1) :
 7 -----+

8 The Forum, Education Building,
 9 Commonwealth Avenue and Walnut Street,
 Harrisburg, Pennsylvania.

10 Saturday, 10 November 1979.

11 Special prehearing conference in the above-entitled
 12 matter was resumed, pursuant to adjournment, at 8:00 a.m.

13 BEFORE:

14 IVAN W. SMITH, Esq., Chairman,
 Atomic Safety and Licensing Board.

15 DR. WALTER H. JORDAN, Member.

16 DR. LINDA W. LITTLE, Member.

17 APPEARANCES:

18 GEORGE F. TROWBRIDGE, Esq., ERNEST BLAKE, Esq., and
 19 ROBERT ZAHLER, Esq., Shaw, Pittman, Potts & Trowbridge,
 1800 M Street, N.W., Washington, D.C.; for Applicant

20 KARIN W. CARTER, Esq., Assistant Attorney General,
 21 505 Executive House, Harrisburg, Pennsylvania; for
 the Commonwealth of Pennsylvania

22 JEROME BLASK, Esq., Assistant Consumer Advocate, Department
 23 of Justice, Strawberry Square, Harrisburg, Pennsylvania;
 on behalf of the Consumer Advocate.

24 JOHN LEVIN, Esq., P.O. Box 3265, Harrisburg, Pennsylvania;
 25 on behalf of Pennsylvania Public Utilities Commission.

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 WR Room/wbl
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 SATURDAY
 PREMIUM

WRB/wb

1 DR. CHAUNCEY KEPFORD and DR. JUDITH JOHNSRUD, 433 Orlando
2 Avenue, State College, Pennsylvania; on behalf of ECNP

3 ROBERT Q. POLLARD, 609 Montpelier Street, Baltimore,
4 Maryland; on behalf of CEA

5 WILLIAM JORDAN, Esq., Sheldon, Harmon, Roisman & Weiss,
6 1725 I Street, N.W., Washington, D.C.; on behalf of PANE.

7 JORDAN D. CUNNINGHAM, Esq. Fox, Farr & Cunningham,
8 2320 N. 2nd Street, Harrisburg, Pennsylvania; and
9 PATRICIA A. SMITH, Box 52, R.D. 9, Ethers, Pennsylvania;
10 for Newberry Township TMI Steering Committee.

11 JOHN BOWERS, Esq., R.D. 7, Box 388, York, Pennsylvania, and
12 GAIL BRADFORD; on behalf of ANGRY

13 JAMES TOURTELLOTTE, Esq. and MARCIA E. MULKEY, Esq., Office
14 of Executive Legal Director, U.S. Nuclear Regulatory
15 Commission, Washington, D.C.; for the Regulatory Staff.

16 JANE LEE, R.D. 2, Box 3521, Ethers, Pennsylvania,
17 Petitioner for leave to intervene pro se.

18 MARVIN LEWIS, 6504 Bradford Terrace, Philadelphia, Penna.;
19 Petitioner for leave to intervene pro se.

20 STEVEN C. SHOLLY, 304 So. Market Street, Mechanicsville,
21 Pennsylvania; Petitioner for leave to intervene pro se.

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P R O C E E D I N G S

CHAIRMAN SMITH: Good morning, ladies and gentlemen.

Where parties are represented by more than one representative, the rule is that only one representative speak on a particular issue.

Yesterday counsel for ANGRY tried to introduce the subject of Intervenor funding with respect to one of the issues we were discussing. I said you just can't do it today, raise it tomorrow. I don't believe he's here, is he?

MR. BOWERS: No, sir, he's not at the present time but we'd certainly like to have that issue addressed, though.

CHAIRMAN SMITH: Well, just let me remind you that we have twice ruled on the issue, and unless you intend to raise a new argument our previous ruling will remain.

MR. BOWERS: I don't think we have any new grounds to raise on that issue. However, I feel it might be appropriate to have a general discussion on the matter with respect to positions other people may have. I think it would be useful to ventilate the issue in some way or other.

CHAIRMAN SMITH: But this has been done. I think-- Yes, you were not here for this.

MR. BOWERS: Was this said on Thursday?

DR. JORDAN: It's in the transcript, yes.

CHAIRMAN SMITH: So I think you missed your

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1 opportunity.

2 MR. BOWERS: It's not something that I was ex-
3 pecting to get a favorable response to.

4 CHAIRMAN SMITH: Are there any other preliminary
5 matters before we begin with Mr. Sholly's contentions?

6 MR. TROWBRIDGE: Very briefly, Mr. Chairman, even
7 with the three o'clock adjournment I would hope that we would
8 get back to the matter of discovery procedure, solely for
9 the reason that discovery is going to begin immediately
10 after this. If that does not occur we will operate until
11 otherwise instructed by the Board in accordance with our pro-
12 posal on the Discovery Reading Room.

13 CHAIRMAN SMITH: We didn't have a chance to address,
14 particularly as the Commonwealth has requested us to, the
15 accuracy of your offer on the Reading Room. We'll come to
16 that.

17 Any other preliminary matters?

18 (No response.)

19 Yesterday when we felt that we had plenty of time,
20 people were rather generous in repeating arguments that were
21 made by others. Today I'm going to stress particularly that
22 it simply isn't necessary, and make a particular request that
23 repeating arguments made by others, just put aside that
24 temptation so we can get through with the business today.

25 All right. Mr. Sholly, are you prepared, sir?

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1 MR. SHOLLY: Yes, sir.

2 My first contention is objected to in part by
3 Licensee as being outside the scope of the hearing, and I
4 think that issue has already been belabored. I would just
5 repeat that I feel it is within the scope of the hearing
6 because the second part follows directly from the first part
7 and if the first part is accepted then the second part I
8 can't understand the objection to on the basis of being out-
9 side the scope of the hearing.

10 Unless there is need for further discussion on
11 that I would prefer to go on.

12 CHAIRMAN SMITH: Do you wish to address it, sir,
13 Mr. Trowbridge?

14 MR. TROWBRIDGE: I'm sorry, I don't want to spend
15 a lot of time on this but I simply do not understand the
16 second part follows from the first part. I'm not sure what
17 parts we're talking about.

18 MR. SHOLLY: Very well. If you'll refer to the
19 basis discussion for Contention Number 1, I believe this is
20 my lowest basis discussion and I attempted to go to great
21 lengths to explain why non-compliance with 10 CFR 20.105
22 and 106, and also Appendix I, 10 CFR Part 50 follow from
23 problems with containment isolation.

24 The fact that the containment was not isolated
25 on diverse signals resulted in a great deal of radioactive

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1 water being pumped to the auxiliary building from which
2 radiation was subsequently released in rather prodigious
3 quantities. The Licensee has admitted to ten million curies
4 in NUREG-0600 and as far as I know, that's rather unprece-
5 dented, especially in the short timeframe we're talking
6 about in which six million curies were released within the
7 first 31 hours.

8 If the containment had been isolated on high
9 radiation this would not have occurred and consequently, the
10 violations or apparent violations as pointed out in NUREG-
11 0600 of 20.105, 20.106 and Appendix I of Part 50 would not
12 have occurred.

13 So it follows directly from that lack of isola-
14 tion on diverse signals that radiation that caused those
15 violations would have been contained within the containment
16 and would not have escaped.

17 MR. TROWBRIDGE: Mr. Chairman, I'm sorry, I did
18 not need that recitation of the accident sequence. Our
19 objection in part-- We have no problem with the containment
20 isolation element in this contention. The contention appears
21 however to refer to other aspects of containment design
22 which we don't understand.

23 We don't know what Mr. Sholly is driving at and
24 we do not see the connection with the basis for suspension
25 or the TMI-1 accident or whatever.

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1 MR. SHOLLY: Well, Licensee has objected to
2 Paragraph 2, which I assume begins with the phrase, "It
3 is further contended that as a result of the design and
4 construction...." and ends with a discussion of backfitting
5 prior to restart.

6 Now it is my contention that as a result of failure
7 of diverse containment isolation to exist, as a direct
8 result of that, radiation releases exceeded Part 20 and Part
9 30 guidelines which I've already cited and that, under the
10 backfitting requirements of 50.109, the Commission can order
11 backfitting when a substantial additional protection of public
12 health and safety is afforded, and I'm so contending.

13 MR. TROWBRIDGE: I'm not trying to debate the
14 merits of this. I've asked a simple question I think. What
15 is it that you want to talk about with respect to containment
16 design other than containment isolation?

17 MR. SHOLLY: That is the sole basis for this, the
18 containment isolation procedures. I mentioned nothing else
19 with respect to containment design, only the basis for which
20 the containment is isolated.

21 I am contending that previous situations under
22 which it was isolated were not adequate.

23 MR. TROWBRIDGE: If that is the scope of the con-
24 tention we have no problems.

25 MR. SHOLLY: All right, fine.

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1 If there's no further discussion, Contention
 2 Number 2 is not objected to, as I understand it, by the
 3 licensee. He does say that:

4 "Assuming this contention is limited
 5 to considering the specific aspect of the reactor
 6 violent pressure boundary..."

7 which he fairly described as relief and safety valves, that
 8 he would have no objection, and that is the thrust of the
 9 contention, dealing with the relief and safety valves only.

10 I have no problem with his characterization of
 11 the contention.

12 Contention Number 3 was objected to in part by
 13 the NRC Staff, and I can understand their objection. I intend
 14 at the earliest possible opportunity to submit a modification
 15 to the last paragraph of the contention which will specify
 16 those issues which were in my basic discussion.

17 CHAIRMAN SMITH: When you submit that modification,
 18 could you, in advance, run it through counsel for the Staff
 19 and Mr. Trenchbridge and see if it can be submitted in an agree-
 20 able form?

21 MR. SCOLLY: I can run it through right now. I
 22 have a very good idea of what I want it to be and in fact, if
 23 this is satisfactory, I'll stand by it.

24 CHAIRMAN SMITH: You want to do it now?

25 MR. SCOLLY: I can.

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1 CHAIRMAN SMITH: Okay.

2 MR. SHOLLY: I haven't had a chance to put it in
3 writing and get it sent out.

4 CHAIRMAN SMITH: Give it a try and if it doesn't
5 work, maybe you can do it during an intermission.

6 MR. SHOLLY: Very well.

7 Contention 6, the last paragraph or the last sen-
8 tence as it stands right now says:

9 "It is further contended that the short-
10 term actions identified in the Commission's order
11 and notice of hearing dated 9 August 1979 are
12 insufficient to provide the requisite reasonable
13 assurance of operation without endangering public
14 health and safety."

15 I would replace that with the following:

16 "It is further contended that the short-
17 term actions identified in the Commission's order
18 and notice of hearing dated 9 August 1979 are
19 insufficient to provide the requisite reasonable
20 assurance of operation without endangering public
21 health and safety because these short-term actions
22 do not include the following items:

23 "A. --"

24 CHAIRMAN SMITH: Wait a minute. Would you slow
25 down?

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1 MR. SHOLLY: Okay. Well, these are directly from
2 my basis discussion. I'm simply placing them up within the
3 body of the contention.

4 CHAIRMAN SMITH: So then you're going to start
5 back up with A, B, C, and D?

6 MR. SHOLLY: Yes, sir.

7 CHAIRMAN SMITH: So I draw an arrow from "because"
8 up to A.

9 MR. SHOLLY: I discussed-- Well, here I'll go
10 through them and then we'll talk about them.

11 CHAIRMAN SMITH: Okay.

12 MR. SHOLLY: "A" is a requirement for a failure
13 mode and effects analysis of the integrated control system
14 to be submitted to the NRC Staff for review and approval.

15 CHAIRMAN SMITH: Well, wait a minute. I guess I
16 didn't understand.

17 MR. SHOLLY: That's the only one which is not in
18 that listing in the basis. It's described immediately
19 before that listing.

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20 CHAIRMAN SMITH: All right.

21 MR. SHOLLY: The remaining four are on that list.

22 B is a completion of instrumentation installation
23 for detection of inadequate core cooling.

24 C, completion of installation of hydrogen gas
25 control penetrations of the containment.

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1 D, review of the basis for recombiner use.

2 And E, completion of installation of a high-range
3 radioactive effluent monitor system.

4 Those are the five issues which I raised in my
5 basis discussion.

6 MR. TROWBRIDGE: Mr. Chairman, I would be satisfied
7 with the record as it now stands, showing that this has been
8 Mr. Sholly's intent by the last sentence to refer only to the
9 items that he just referred to.

10 (The Board conferring.)

11 MR. SHOLLY: Mr. Chairman, I have this typed out
12 if that would help to clarify it.

13 MR. TROWBRIDGE: I would be very happy to have it
14 copied into the record.

15 CHAIRMAN SMITH: My error is I depended upon
16 Licenses's statement of the Petitioner's contention and in
17 this instance that was a mistake.

18 MR. TROWBRIDGE: Mr. Chairman, we repeat only the
19 contention and not the basis.

20 CHAIRMAN SMITH: Sometimes --

21 MR. TOURELLOTTIS: Mr. Chairman, you may be con-
22 fusing the Licenses's submittal on page 5. They have Con-
23 tention 5, and then they have A through E. They do not have
24 Contention 6 in there.

25 MR. TROWBRIDGE: We do not have Contention 6 in

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our --

CHAIRMAN SMITH: No, it's there.

MR. TROWBRIDGE: At the bottom of page 5 and on to page 6.

MR. TOURTELLOTTE: Oh, I'm sorry.

DR. LITTLE: Licensee's version begins on the bottom of page 5 and continues on to the top of page 6. The portion that Mr. Sholly is referring to is in his statement of his contentions, after which, for each contention, he has stated the basis for that contention and has them listed.

Correct?

MR. SHOLLY: Yes. The five items which I propose to include in the body of the contention are now in the basis discussion.

MR. TOURTELLOTTE: With that explanation, the Staff has no objection, Mr. Chairman.

MR. SHOLLY: Are we prepared to move on?

CHAIRMAN SMITH: Yes, sir.

MR. SHOLLY: As I understand it there is no objection to Contention 7.

8 and 9 were objected to in part by the Licensee, and this is with respect to revised plans for emergency planning and radiation monitoring.

I accept the Licensee's proposal to revise these contentions later, with a proviso that I would have a 30-day

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1 period to review the final plan as submitted by the Licensee
2 and that there would be a sufficient period for discovery
3 following that.

4 The Licensee proposes that at some point in the
5 discovery period to continue with these submittals and as
6 far as I'm concerned from my point of view, the responsi-
7 bility for delay in submitting these revisions rests with
8 the Licensee and not with myself, and that any penalty for
9 delay should be borne by the Licensee.

10 In other words the 60-day discovery period on
11 those specific items should continue uninterrupted once the
12 final plan has been submitted and a period of time that is
13 best for review. I don't see any reason why I should be
14 limited to 30 days or 15 days for discovery on those parti-
15 cular issues.

16 CHAIRMAN SMITH: You would propose an additional
17 60-day discovery period beginning with -- when?

18 MR. SHOLLY: After the final submittal by the
19 Licensee on those issues only.

20 CHAIRMAN SMITH: However, that would have the
21 effect of delaying the proceeding in all respects.

22 MR. SHOLLY: Sir, as I would see it, the proceeding
23 will go on, dealing with those items which have been agreed
24 to and which have been accepted, with the exception of these
25 items, and the Licensee has objected to other Intervenor's

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1 contentions in the same respect, and that only those items
2 be delayed.

3 I can't see how that is going to delay the pro-
4 ceeding because the proceedings could go on on many other
5 issues.

6 CHAIRMAN SMITH: I understand your logic, with one
7 exception. The 60-day or whatever discovery period is
8 allowed takes into account that discovery must proceed on a
9 multitude of issues and when the issues remaining subject to
10 discovery are narrowed down to a few, I would think a con-
11 centrated effort would not necessarily require the same
12 amount of time.

13 MR. SHOLLY: I understand that.

14 CHAIRMAN SMITH: But I think your point is some-
15 thing reasonable should be provided, but I don't think it's
16 possible to say flatly that you should be permitted 60 days
17 from the date that the paper is submitted.

18 MR. SHOLLY: I'm willing to go along with a lesser
19 time but would require enough time to come up with inter-
20 rogatories and requests for documents and have those ful-
21 filled and have time to review them.

22 CHAIRMAN SMITH: Well, let's hear what the other
23 parties say.

24 MR. TROWBRIDGE: I'm puzzled, Mr. Chairman. I
25 think we're talking about two different matters. One is a

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1 date at which Licensee thinks that this contention should be
2 made more specific, and that we had proposed in our sug-
3 gested procedures be 30 days from receipt from us of the
4 emergency plan which I believe Mr. Sholly now has received
5 through the mail.

6 Discovery schedules are an entirely different
7 matter, and we have not begun the discussion of discovery
8 schedules yet.

9 DR. JORDAN: Excuse me. Did I understand you
10 to say Dr. Sholly has received the Licensee's emergency plan?

11 MR. TROWBRIDGE: Yes, I thought I explained that,
12 Dr. Jordan, that we have sent-- That was the eight-inch
13 to one-foot set of documents that were referred to the other
14 day, consisting of a description of our functions in con-
15 nection with the emergency, and the state and county plans.

16 Now these may, as we explained, go through some
17 further revision after the Staff review of them, in which
18 event we will mail out amendments as they occur to what we
19 have submitted.

20 We also said that we were going to supply the
21 Board with copies of this.

22 MR. SHOLLY: Mr. Chairman, if I may, if it will be
23 acceptable to proceed on the assumption that the submittal
24 with regard to emergency planning is substantially the
25 submittal which will take place, I can go ahead with that.

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Now if in a further revision that is substantially altered, I would hope that there would be provision for us to be lulled by contentions in those respects.

CHAIRMAN STANTON: Yes, I think your problem has just disappeared on you, particularly in light of the discussion we had about the slippage in the SBA. On the discovery period with respect to substantial changes later, there's no point in us making rulings or even comments on each individual problem because there is always that problem.

On any issue where major changes come in later some adjustment has to be made so parties parties an opportunity to address them.

MR. SROZNY: That would be acceptable then. Thank you.

I do propose to revise Contention 8 and 9 then at a later date, consistent with the licensee's suggestions.

Contention Number 11 brings us back to the issue of licensee participation and control level. I'll try to be as brief as possible.

I do intend, although I have not so far, I do intend right now to invoke 10 CFR 2.133. I do intend to make a ruling that the rule should be suspended in the interim until the end of 1978. I will get the technical matters and will be discussed hopefully by the beginning of the winter if not as soon as possible.

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1 CHAIRMAN SMITH: Do you think you can file a joint
2 motion with the Union of Concerned Scientists? Do you think
3 that might be feasible?

4 MR. SHOLLY: I would hope so, if we can make
5 contact during the week and iron out the specifics of it.

6 CHAIRMAN SMITH: Ms. Weiss has indicated that she
7 intends to file such a motion. Let's see, we have no
8 representative at all of UCS here today, do we?

9 MR. SHOLLY: I will attempt to make contact with
10 them and iron out the specifics of it.

11 CHAIRMAN SMITH: All right.

12 MR. SHOLLY: I think it is worthwhile to attempt
13 to litigate it, even in the face of a possible rule-making
14 hearing. And I think if that issue does come up, at that
15 time then it would be appropriate for the Board to make a
16 ruling on it, and not before.

17 CHAIRMAN SMITH: Very good.

18 We have already indicated that one way or the
19 other, this issue will be addressed in this proceeding. Let's
20 take up right now the limitation on 2.758 as it relates to
21 initial licensing proceedings.

22 Can the Staff and Applicant tell us whether they
23 would intend to oppose such a petition on that count alone?

24 MR. SHOLLY: Mr. Chairman, if I may?

25 CHAIRMAN SMITH: Yes.

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1 MR. SHOLLY: One of the counsel from ANGRY pointed
2 this out the other day. I believe 2.100 or perhaps the
3 scope of the proceeding indicated that this part follows
4 with suspensions and relocations and not only with respect
5 to initial licensing. And I would think that that would
6 include 2.758 within the scope of this proceeding.

7 CHAIRMAN SMITH: I understand that argument.
8 However, there is language in the section which seems to be
9 inconsistent with it, --

10 MR. SHOLLY: Yes, sir.

11 CHAIRMAN SMITH: -- and I thought if we could --

12 MR. SHOLLY: Fine.

13 CHAIRMAN SMITH: -- dispose of that problem it
14 would be much easier.

15 MR. TROWBRIDGE: Applicant would not object on
16 those grounds.

17 CHAIRMAN SMITH: Mr. Tourtellotte?

18 MR. TOURTELLOTTE: I'm not sure what grounds we
19 are talking about.

20 CHAIRMAN SMITH: I'm at a loss here because I
21 don't have my rules with me.

22 MR. SHOLLY: Well, 2.758, Section B, says:

23 "A party to an adjudicatory proceeding
24 involving initial licensing subject to this part
25 may petition."

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1 MR. TOURTELLOTT: Well, Mr. Chairman, if
2 Mr. Sholly and you see us make a case under 2.753, I would
3 not anticipate that the Staff would oppose litigating the
4 hydrogen control issue.

5 Is that the question?

6 CHAIRMAN SMITH: Yes, based upon the limiting
7 language of 2.753, I think that's a reasonable position.

8 MR. TOURTELLOTT: No, I would not do that.

9 MR. SHOLLY: I'll move on to Contention Number 12.

10 Needless to say, both the Staff and the Licensee
11 object to Contention Number 12. This deals with the NEPA
12 review. It also mentions psychological distress.

13 I would be restating my case to say that I think
14 that both psychological distress should fall within the
15 review of -- within the purview of a NEPA review and that
16 an Environmental Impact Statement on the action is necessary.
17 I want to make a distinction:

18 I'm not contending that an Environmental Impact
19 Statement is necessary on the suspension issue; I am con-
20 tending that the result of the Board's decision is going to
21 be a major federal action, in the light of the consequences
22 of the accident and considering the unusual nature of this
23 proceeding, that the Board's decision will constitute a
24 major federal action.

25 Now the Staff has proposed to do an Environmental

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1 Appraisal and it may very well be as a result of that that
2 they will require an Environmental Impact Statement. But
3 being a careful litigant, I cannot count on that so I am
4 contending that it is necessary.

5 CHAIRMAN SMITH: You intend to brief that,
6 Mr. Sholly?

7 MR. SHOLLY: To the best of my ability, yes, sir.

8 CHAIRMAN SMITH: I hope that you will address the
9 distinction you just made which, although I thought I under-
10 stood it, I'm not real sure that I do. Will you explain
11 that very carefully when you brief it?

12 MR. SHOLLY: Yes, sir.

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MR. SHOLLY: If there's no further discussion on contention 12, I can move on to contention 13.

Contention 13 deals with the computer at Unit 1. The Licensee objected to the admission of this contention as being outside the scope of the proceedings. Needless to say, I disagree, for the reason that the computer at Unit 1 played a fairly fundamental role in the ability of the operators to control the plant and get information about the reactor during the course of the Unit 2 accident.

The Kemeny Commission, I'm not sure --

(Power outage.)

DR. JORDAN: Mr. Sholly, we understand what the contention is. We have only the Licensee I believe objecting, and on relatively the same grounds that he has objected to on previous ones. And if that's his position, we understand it and we don't need any more argument on either side.

MR. SHOLLY: Fine.

I would say that it is very closely related, there is a clear nexus between the accident and --

DR. JORDAN: We understand your position and the Licensee's.

CHRISTIAN SMITH: I think when the power went out somehow it turned off all of the mikes, and they have to be turned back on.

(Pause.)

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1 DR. JORDAN: We've got it.

2 MR. SHOLLY: Contention number 14, then, is not
3 objected to by the NRC Staff. But they do indicate that they
4 expect that the current managerial administrative capabilities
5 would be further defined during the process of discovery, and
6 I'm willing to go along with that.

7 I'll provide as much specificity as I can during
8 the course of discovery.

9 CHAIRMAN SMITH: All right.

10 MR. SHOLLY: If the Staff is still unclear about
11 some of the examples I used, I can very quickly summarize why
12 I feel those are related to managerial capabilities.

13 MR. TOURTELLOUSE: I think we'd be better just
14 to wait until we get into discovery.

15 MR. SHOLLY: Fine.

16 CHAIRMAN SMITH: Okay.

17 Well, Mr. Sholly, I want to commend you for the
18 efficiency with which you were able to address a great number
19 of very complicated contentions. Your efficiency of language
20 has really been more helpful than more expanded arguments
21 because our attention can center on it. And it was an
22 excellent presentation.

23 MR. SHOLLY: Thank you.

24 CHAIRMAN SMITH: Is there any reason to depart
25 from the procedure we had announced? We have ANGRY up next.

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1 (No response.)

2 All right. We'll just proceed with ANGRY's
3 contentions, then.

4 MR. BOWERS: With respect to contention number
5 one, neither the Licensee nor the Staff was able to perceive
6 any difference in substance between contention number one and
7 contention number two.

8 Our intent in setting forth contention number
9 one was to highlight and to isolate the question of the
10 significance of the effect of any showing that might be made
11 by us or by other parties of the inadequacy of emergency plans
12 of either the Licensee or state and local governments.

13 And I was, quite frankly, anticipating a response
14 on the part of the Licensee and the Staff to testing or
15 opposing this contention on the grounds that either it
16 conflicts with established NRC regulations or that it's the
17 subject of a proposed rulemaking, which it is.

18 However, if the Licensee and the Staff are
19 disinclined to oppose this contention on such grounds, that's
20 perfectly all right with me. I would interpret such an
21 inclination as constituting a confession on their part that
22 the effect of such a showing of inadequacy of emergency plans
23 would in fact result in the effects that I have set forth
24 in contention one, and I would urge that interpretation on the
25 licensing Board.

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1 CHAIRMAN SMITH: Mr. Trowbridge?

2 MR. TROWBRIDGE: I'm sorry, may I have a moment,
3 Mr. Chairman? I'm trying to catch up very quickly not only
4 with our response, but with the Staff's.

5 (Pause.)

6 Mr. Chairman, I don't think I have any argument
7 to advance beyond our response to the contention. I would
8 have the Board note that we did object, as did the Staff,
9 to subsection C of contention two.

10 I would have the Board note also that we, as
11 we have with other intervenors, have suggested a more specific
12 -- revise a more specific update of the contention on emergency
13 plans after ANGRY has had an opportunity to review the
14 material that they've received.

15 I also think the Staff's suggestion that sub-
16 section F on the monitoring program, our monitoring program
17 would have been better as an accepted contention. I would
18 have preferred that, but I don't make it a great -- I don't
19 make an issue of it.

20 CHAIRMAN SMITH: I think I'm missing a point here.

21 What inference do you wish us to draw from the
22 Applicant on the Licensee's failure to attack it on the
23 grounds of a proposed rulemaking?

24 MR. BOWERS: Well, so far as I know, the conten-
25 tion that we have set forth in contention one has never been

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mpb.

1 accepted in a previous proceeding by the licensee or by the
2 NRC Staff. It's certainly never been applied here in the
3 State of Pennsylvania where we have five or six operating
4 nuclear power plants without a state emergency plan that has
5 the concurrence of the Nuclear Regulatory Commission.

6 So it seems to me that this contention is
7 breaking new ground. And if it's not going to be opposed,
8 then it's fine with me.

9 That's the interpretation that I would urge
10 upon this Board.

11 CHAIRMAN SMITH: Are you saying being opposed
12 as far as being suitable for litigation, or opposed on the
13 merits?

14 MR. BOWERS: In both respects.

15 I mean, at this point obviously we're address-
16 ing the question of whether it's suitable for litigation,
17 and that's the principal focus of the inquiry at the present
18 time, and it has not been opposed on that ground. And I
19 simply want to reinforce that.

20 CHAIRMAN SMITH: I just wonder if we might not
21 even, though, have a contention here which may not even be
22 opposed on the merits.

23 I mean, is it possible that contention one is
24 accepted that it has a correct statement of law in this
25 proceeding?

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1 MR. TOURTELLOTT: Mr. Chairman, I think this
2 general -- as I understand the explanation, I think the
3 general question was addressed yesterday when the Commonwealth
4 asked the question about whether this Board was going to look
5 into the adequacy of state and local governmental plans, as
6 well as the plan of the Licensee.

7 As I recall, your answer was to the effect that
8 we actually look only to the Licensee, and naturally their
9 plan is going to have to inferentially include the plans of
10 state and local governments.

11 And to the extent that that is the case, we will
12 be looking into them.

13 What I understand ANGRY to be saying is, though,
14 that they want to litigate the state and local plans, and the
15 state and local plans have never been litigated in a proceed-
16 ing before.

17 CHAIRMAN SMITH: Well, that's fine. But this
18 contention doesn't say that.

19 Contention one says the effective emergency
20 plans are necessary.

21 Does anybody challenge that statement?

22 MR. TOURTELLOTT: We don't disagree with that.

23 CHAIRMAN SMITH: Do you, sir? Do you challenge
24 the statement in contention one? Is that statement true?

25 MR. FROWBRIDGE: Mr. Chairman, I do not challenge

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1 the statement insofar as you have read it.

2 You will note that the end of the statement is
3 preconditioned to the restart of TMI 1. And I took that
4 as indicating ANGRY's intention to quarrel with the
5 Commission's August 9th order insofar as it seemed to leave
6 room for short term and long term action on emergency planning.

7 I've already informed the Board, however, that
8 we intend to, insofar as the Commission put the ten mile
9 instance into the long range or longer term recommended
10 requirements, I've already informed the Board that we plan
11 to include the ten mile radius in our initial plan, and
12 therefore even with the added words "prior to restart", we
13 have no objection to this.

14 CHAIRMAN SMITH: You don't have any objections
15 to the contention?

16 MR. TROWBRIDGE: We don't have any objection, or
17 to the statement.

18 CHAIRMAN SMITH: Then why cannot this Board rule
19 the ANGRY right now prevails on contention number one?

20 You already won that case.

21 MR. BOWERS: Mr. Chairman, I would simply like
22 to respond to Mr. Trowbridge.

23 I would note that, one, this contention inter-
24 preted along the lines that Mr. Trowbridge has just outlined

25 CHAIRMAN SMITH: That's exactly why I'm raising

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the question.

MR. BOWERS: -- because our quarrel with the NRC order goes beyond simply just the distinction between short term and long term actions.

In our judgment the NRC order fails to require the implementation of effective and adequate emergency response plans. In other respects --

CHAIRMAN SMITH: Then that contention should say that, but it doesn't.

You see, that contention does not raise any issue that I see can be litigated, because everyone agrees with it.

MR. BOWERS: Well that's fine. I'm happy to hear that. This was not something that was anticipated by us when we drafted this contention.

As far as I'm concerned, as I said, we're breaking new ground. This contention has never been accepted in a licensing proceeding that I'm aware of.

And if the licensee and the Staff are willing to accept that point, that's fine, I'm perfectly happy with that.

MR. TOURTELLOTTE: Mr. Chairman, the way I read that, in every case where we litigate emergency planning, we have accepted that contention.

MR. BOWERS: I don't see how Mr. Tourtelotte

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1 can say that on the grounds of what I've just said. I mean,
2 Pennsylvania has five or six operating nuclear power plants
3 without, even up to the present time, there being a state
4 emergency plan that has NRC concurrence.

5 Now how could this contention have been litigated
6 if that's the case?

7 MR. TOURTELLOTTE: The reason I say what I say
8 is because the wording of the contention -- I'm basing my
9 response on the wording of the contention, not upon what is
10 represented that that wording means.

11 CHAIRMAN SMITH: Are we going to have a witness
12 come up here and say:

13 "The development and effectuation of
14 an adequate and effective emergency response
15 plan by the Licensee and by state and local
16 government units are necessary for the public
17 health and safety to be adequate protected
18 and therefore should be made a precondition
19 prior to the restart of TMI 1."

20 Is any witness going to say that?

21 DR. LITTLE: You're considering one and two
22 together when you're making these defenses, right? Or are
23 you just talking about contention one, or are you talking
24 about contentions one and two together?

25 MR. BOWERS: I'm simply addressing myself to

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contention number one at the present time.

DR. LITTLE: Okay.

CHAIRMAN SMITH: You have won this contention, as I understand it.

Is that correct, Mr. Trowbridge? Has he prevailed on this contention already?

MR. TROWBRIDGE: I don't know as he's prevailed on this contention. He has made a statement of law or a requirement -- whatever you want -- and I'm not arguing with it.

But that is not normally a contention. This is why we grouped one and two together. We would not see contention number one as a contention. We see number one followed by number two as expressing some points of disagreement which can be litigated in this proceeding.

CHAIRMAN SMITH: Well, I think that's a reasonable approach. But it's been pointed out now that he intends this to be a contention which stands alone.

MR. TROWBRIDGE: And my position is if forced as a position that I don't disagree with the statement, but I think it is not a proper contention and it should be eliminated.

CHAIRMAN SMITH: If the parties don't have any problem with that contention, there's no use in me beating it to death. I just don't see any witnesses addressing that

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1 contention separately.

2 MR. BOWERS: I would expect that any objections
3 would be objections as a matter of law, as opposed to an
4 evidentiary question.

5 CHAIRMAN SMITH: And there are no objections.

6 MR. BOWERS: And as far as I can tell, there are
7 none at this point.

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1 CHAIRMAN SMITH: Proceed.

2 MR. BOWERS: The only objection that has been
3 raised with respect to Contention Number 2 is to Section C
4 of that contention. With respect to Section C I am simply
5 going to try and shortcircuit the nature of that objection
6 on the part of the Licensee and of the Staff, that the basis
7 of their objection is simply the requirement as set forth
8 in the NRC order that their emergency planning capability
9 extended to a distance of only 10 miles is sufficient in
10 order for them to have an emergency planning capability that
11 provides reasonable assurance that TMI-1 can be operated
12 without endangering the public health and safety.

13 That provision presumably is based on the analysis
14 in NUREG-0396 and I would just like to comment on that very
15 briefly.

16 Mr. Tourtellotte yesterday indicated, erroneously
17 in my opinion, that NUREG-0396 does not deal with the question
18 of the possibility of core meltdown with breach of contain-
19 ment. I would call the Board's attention to page 1-6 of
20 NUREG-0396 which explicitly says :

21 "The upper range of core melt accidents
22 is categorized as those in which the containment
23 catastrophically fails and releases large quanti-
24 ties of radioactive material directly to the at-
25 mosphere."

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1 So that particular event was indeed included with-
2 in the analysis contained in NUREG-0396.

3 The problem with NUREG-0396 is simply that the
4 analysis is based upon the probability statistics con-
5 tained in WASH-1400, the Reactor Safety Study, and 0396 is
6 an extremely anomalous document because they acknowledge that
7 the probability estimates -- and I'm quoting from the foot-
8 note on page 1-8:

9 "The context of emergency planning has
10 been thoroughly examined. It is recognized that
11 there is a large range of uncertainties in these
12 numbers."

13 That is to say the probability statistics in WASH-
14 1400. But despite the fact that they admit there are these
15 uncertainties, they go ahead and factor them into their
16 analysis. And that 10-mile limit that 0396 comes up with
17 is based upon the probability statistics that have been dis-
18 credited and repudiated by the Commission.

19 Therefore, our conclusion is that the 10-mile
20 limit set forth in 0396 and set forth in the NRC order and
21 which is relied upon by both the Licensee and the Staff is
22 devoid of any logical or technical basis.

23 MR. TROWBRIDGE: Mr. Chairman, I do not have,
24 unfortunately, with me a copy of 0396. Going from
25 memory, the statement that was just read, quoted from 0396

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1 is I think quote quite out of context. It does not support
2 the proposition which Mr. Bowers cited, nor do I find in
3 0396 any indication -- and this is again from memory -- that
4 the Staff used a probabilistic approach in determining the
5 10-mile limit.

6 I do not think that can be supported. I don't
7 think it's worth further argument here. We can have it at
8 the hearing, but I don't want to let the statements go un-
9 challenged.

10 CHAIRMAN SMITH: If we can have the argument at
11 the hearing then you will accept it as a contention?

12 MR. TROWBRIDGE: Mr. Chairman, I have --

13 CHAIRMAN SMITH: At least the basis, at least,
14 for discovery perhaps?

15 MR. TROWBRIDGE: I think for discovery, no problem.
16 I refer to the fact that the Commission has very recently
17 come out with the Policy Statement endorsing the emergency
18 planning zones, and that study, joint EPA and NRC Task Force
19 study, in particular I think the Board may be bound by that.

20 CHAIRMAN SMITH: Well, I wonder if we are bound
21 by it today or if there isn't room, which there seems to be,
22 for further exploration of this contention.

23 MR. TROWBRIDGE: I'm not having a problem. I
24 don't know what the discovery is about but I'm not resisting
25 all discovery on this subject. I would have to see a

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1 particular question to know whether I had any particular
2 objections.

3 CHAIRMAN SMITH: Did you want to comment,
4 Mr. Tourtellotte?

5 MR. TOURTELLOTTE: No, I think not.

6 CHAIRMAN SMITH: Okay.

7 MR. BOWERS: With respect to Contention Number 3,
8 Subsections A and B are self-explanatory. We do expect to
9 submit revised and amended contentions with respect to -- or
10 at least we reserve the right to submit revised and amended
11 contentions with respect to the emergency response plan for
12 the State of Pennsylvania as well as the Licensee's emer-
13 gency response plan, which I would add we have not received
14 yet. I'm not sure what the problem is.

15 The York Post Office has been downgraded to a
16 substation status so we may be not getting stuff as promptly
17 as we normally do, but we haven't received it as yet.

18 However, with respect to Subsection C, the
19 Licensee also suggests that we submit revised and amended
20 contentions. I see no basis for doing so unless the Licensee
21 has in some way or another managed to contact the emergency
22 planning personnel in York County and --

23 MR. TROWBRIDGE: When you get your package it will
24 include the York County evacuation plan.

25 MR. BOWERS: I assume that that evacuation plan

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1 will be identical to the one that we have analyzed and
2 criticized in our contention.

3 MR. TROWBRIDGE: I have no idea whether that's
4 correct or not.

5 MR. BOWERS: Pardon me?

6 MR. TROWBRIDGE: I have no idea whether that's
7 correct or not.

8 MR. BOWERS: If there are differences in what you
9 submit to us from what we analyzed less than a month ago,
10 then certainly we'll amend our contention to take that into
11 account, but I certainly don't expect that to be the case.

12 CHAIRMAN SMITH: Okay.

13 MR. BOWERS: With respect to Contention Number 4--

14 MR. TROWBRIDGE: Excuse me a second.

15 Mr. Chairman, may I note that as indicated by the
16 nature of our response, this should have been one of our
17 asterisked contentions. We left out the asterisk.

18 DR. JORDAN: I think the Staff did have some
19 objection to the contention.

20 MR. BOWERS: They didn't set forth any in their
21 response.

22 DR. JORDAN: Are we talking about Contention 3?

23 MR. BOWERS: No, sir. I thought you were referring
24 to Contention Number 3.

25 DR. JORDAN: I was referring to Contention 3, and

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1 it seems to me I read on page 15 of the Staff that they
2 claim that Contentions C-A and B do not identify issues in
3 controversy, so that apparently they do object.

4 MR. BOWERS: I mean I don't know how to respond
5 to that.

6 DR. JORDAN: I'm only asking the Staff.

7 Do you wish to maintain that position or do you
8 have any further argument?

9 MR. TOURTELLOTTE: No further argument.

10 CHAIRMAN SMITH: Very well.

11 MR. BOWERS: With respect to Contention Number 4,
12 the Licensee has no objection.

13 The Staff suggests that we provide greater
14 specificity regarding specific management capabilities which
15 should be present, or what characteristics of management
16 capabilities are inadequate. And then they go on to make a
17 rather surprising statement that I am at a loss to understand,
18 and they say:

19 "We perceive no clear link offered by
20 ANGRY between the events described in Sections A
21 through C and the issue of management capability."

22 In our judgment, any nuclear power plant operator
23 that commits errors of the magnitude listed in Subsections A
24 through C has no right to operate a nuclear power plant,
25 and it seriously calls into question, by their own terms, the

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1 management capability of this company.

2 CHAIRMAN SMITH: Would you call your position
3 where perhaps a gas issue logatur? We don't know what caused
4 it as far as management is concerned, but the events are
5 such that there has to be some defect and it's up to you to
6 come forward and explain that there wasn't?

7 Do you think that the events were of such a magni-
8 tude that the burden has shifted now upon the Licensee to
9 demonstrate that the management was not defective?

10 MR. BOWERS: Yes, sir. We would contend that we
11 have made a prima facie case.

12 CHAIRMAN SMITH: The events themselves require a
13 showing that the management -- however the management was
14 involved?

15 MR. BOWERS: Yes, sir, we do contend that the
16 burden would shift in that respect.

17 DR. JOHNSON: Does the Staff wish to continue to
18 object, or do they now see the connection, the nexus?

19 MR. TOWNSEND: Well, I believe we stated that
20 we don't object to the admissibility of it in any event. We
21 were simply making an observation. I assume that-- This is
22 the first time I've run into gas issue in a nuclear proceed-
23 ing but we understand.

24 CHAIRMAN SMITH: Okay.
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that I feel Licensee should be required to address.

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CHAIRMAN SMITH: All right, so it's a new conten-

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tion.

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MR. BOWERS: It falls within the category of

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management capability. It's an additional aspect of manage-

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ment capability that the Licensee should be required to

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address.

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CHAIRMAN SMITH: After we hear from you would you

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be changing your contention?

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MR. BOWERS: We would be changing it only to the

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extent of adding another subparagraph.

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CHAIRMAN SMITH: All right. What's the subpara-

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graph?

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MR. BOWERS: Well, let me simply read --

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CHAIRMAN SMITH: Give us the subparagraph and then

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support it.

17

MR. BOWERS: Well, the subparagraph basically

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constitutes an item of testimony provided by Mr. Denton to

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Senator Hart's Subcommittee. There is an area of concern

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that he raised with respect to the Licensee's management

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capability.

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CHAIRMAN SMITH: Is it going to be Mr. Denton's

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contention?

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MR. BOWERS: It's going to be our contention.

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CHAIRMAN SMITH: Well, state your contention.

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that I feel licensees should be required to address.

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2 CHAIRMAN SMITH: All right, so it's a new conten-
3 tion.

4 MR. BOWERS: It falls within the category of
5 management capability. It's an additional aspect of manage-
6 ment capability that the licensees should be required to
7 address.

8 CHAIRMAN SMITH: After we hear from you would you
9 be changing your contention?

10 MR. BOWERS: We would be changing it only to the
11 extent of adding another subparagraph.

12 CHAIRMAN SMITH: All right. What's the subpara-
13 graph?

14 MR. BOWERS: Well, let me simply read --

15 CHAIRMAN SMITH: Give us the subparagraph and then
16 support it.

17 MR. BOWERS: Well, the subparagraph basically
18 constitutes an item of testimony provided by Mr. Denton to
19 Senator Hart's Subcommittee. There is an area of concern
20 that he raised with respect to the licensees's management
21 capability.

22 CHAIRMAN SMITH: Is it going to be Mr. Denton's
23 contention?

24 MR. BOWERS: It's going to be our contention.

25 CHAIRMAN SMITH: Well, state your contention.

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eb2 1 MR. BOWERS: The contention is that there is a
2 serious question as to the Licensee's diagnostic and analysis
3 work from the information that was coming in to project
4 possible scenarios -- I'm sorry, I'm trying to phrase the
5 contention from the language in the testimony, and I'm not
6 having much success.

7 What Mr. Denton is saying is that the Licensee's
8 capabilities to engage in diagnostic and analysis work on
9 the information that was being provided him far exceeded the
10 Licensee's management capability and the amount of talent
11 he had available at the time of the accident.

12 CHAIRMAN SMITH: Okay. That is --

13 MR. BOWERS: That is the substance of the addi-
14 tional basis that we would add to that contention.

15 CHAIRMAN SMITH: That would be Item D on Contem-
16 tion 4?

17 MR. BOWERS: Yes, sir, that's correct.

18 CHAIRMAN SMITH: Mr. Trowbridge.

19 MR. TROWBRIDGE: Mr. Chairman, I'm prepared to
20 stipulate that if ANGRY can produce proper evidence on this
21 subject and if it bears on management capability it can be
22 brought under the contention as it now stands, and it needs
23 no amendment.

24 And that does not include reading statements of
25 Mr. Denton appearing in the Hart transcript. We intend that

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ab3 1 it be evidence in the usual form.

2 MR. BOWERS: Of course.

3 CHAIRMAN SMITH: Hasn't his amendment-- Rather
4 than enlarge on the contention, hasn't he added additional
5 specificity which is usually what the Licensee and the Staff
6 are seeking in the contentions?

7 MR. TROWBRIDGE: I'm glad to have this, to be put
8 on notice of this, Mr. Chairman. It all helps, and maybe it
9 will avoid some discovery --

10 CHAIRMAN SMITH: Okay.

11 MR. TROWBRIDGE: -- on our part.

12 CHAIRMAN SMITH: We would regard then your amend-
13 ment as Subparagraph D of Contention 4.

14 Mr. Tourtelotte.

15 MR. TOURTELLETTE: We have no objection.

16 CHAIRMAN SMITH: Okay.

17 MR. BOWERS: The final thing I would simply like to
18 add in regard to Contention Number 4 is that I understand
19 the Kenney Commission Report also addresses the question of
20 management capability and ends we --

21 CHAIRMAN SMITH: You have already prevailed on
22 management capability.

23 MR. BOWERS: Well, I am simply reserving the right
24 to add additional matters of evidentiary support, based upon
25 information that becomes available to me.

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1 CHAIRMAN SMITH: Do you understand what the proce-
2 dure is here? Now we're trying to decide what issues are
3 going to be litigated. We're not litigating them, we're
4 deciding which issues are going to be litigated. And every-
5 body has agreed so far, yes, you can litigate this.

6 MR. BOWERS: Okay.

7 DR. JORDAN: You don't have to bring up your right
8 to add new changes as new material comes. It's in, the way
9 that we work. You don't have to do that.

10 CHAIRMAN SMITH: We've made this ruling many times,
11 and for the benefit of everybody, when new material comes up,
12 new circumstances come up, then you will have an opportunity
13 to address them. You don't have to make the argument in
14 each instance.

15 MR. BOWERS: Fine.

16 Contention Number 5 concerns a number of design
17 modifications that we propose be required as a condition to
18 restart.

19 Subsection A concerns hydrogen recombining capa-
20 bility, which is an issue that we've discussed at length
21 so I'm not going to go into it any further.

22 CHAIRMAN SMITH: That's fine. Thank you.

23 Do you intend to join in the motion that is in the
24 works now with Mr. Sholly and UCS?

25 MR. BOWERS: Yes, we would be more than prepared to

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1 do so.

2 Subsection B is self-explanatory and is not ob-
3 jected to.

4 The Licensee objects to Subsection C and D in
5 regard to their purported lack of specificity.

6 How specifically in regard to Subsection C, the
7 Licensee indicates that he is unable to locate the basis for
8 Subsection C, and I would call the Licensee's and the Board's
9 attention to page 3-11 of NUREC-0560 where it states as
10 follows: --

11 CHAIRMAN SMITH: Just a minute. What NUREC did
12 you say?

13 MR. BOWERS: 0560, which states as follows:

14 "Human factors engineering...."

15 CHAIRMAN SMITH: What's the title of 0560?

16 MR. BOWERS: It's entitled "Staff Report on
17 the Generic Assessment of Feedwater Transients in Pressurized
18 Water Reactors Designed by Babcock and Wilcox." It was
19 issued last May.

20 CHAIRMAN SMITH: Thank you.

21 DR. JORDAN: Yes, we're familiar with it.

22 CHAIRMAN SMITH: We simply don't have it here at
23 the present.

24 MR. BOWERS: I understand.

25 Well, I would like to read into the record these

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1 two sentences --

2 CHAIRMAN SMITH: Please.

3 MR. BOWERS: -- which Licensee was unable to
4 locate. It says:

5 "Human factors engineering has not been
6 sufficiently emphasize in the design and layout of
7 the control rooms. The location of instruments
8 and controls in many power plants often increases
9 the likelihood of operator error or at least im-
10 pedes the operator in efficiently carrying out the
11 normal, abnormal and emergency actions required of
12 him."

13 MR. TROWBRIDGE: Mr. Chairman, might I borrow a
14 copy of 0360?

15 CHAIRMAN SMITH: Not from me.

16 (Laughter.)

17 (Document handed to Mr. Trowbridge.)

18 MR. TROWBRIDGE: Mr. Chairman, with the understand-
19 ing that ANGRY intends to refer to the last paragraph under
20 that heading, "Findings," on page 9-11 in support of this
21 subcontention, with that understanding, Licensee has no
22 objection.

23 I would like to explain that what the subconten-
24 tion said was:

25 "...analysis and implementations of

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1 modifications in the design and layout of the TMI
2 control room as recommended in NUREG-0560."

3 There are lots and lots of recommendations in
4 0560, and this is not one of them. But there is a sentence
5 or two in the findings that I'm perfectly willing to accept
6 as a basis for the contention.

7 DR. KERFORD: Mr. Chairman, UCNF has a contention
8 which discusses this very same subject. Perhaps for ease
9 in reading this record it might be advantageous for me to
10 enter my arguments on the subject matter and dispense with
11 them later.

12 MR. TROWERIDGE: I don't think there are any
13 arguments left.

14 DR. JORDAN: We don't have any problems with the
15 contention as it stands, so I think we'd better just wait.

16 MR. BOWERS: Is there anything further on this
17 subject?

18 CHAIRMAN SMITH: I think that's it.

19 MR. SCHWELLOTTE: Mr. Chairman, as a point for
20 the record, the Staff simply stated we had no objection to
21 Contention 5. There was a slight error there because of
22 Paragraph A, which has already been addressed and I don't want
23 to address it any further, but we would amend our original
24 answer to read that we would object to Paragraph A, which I
25 understand Mr. Bowers is going to address with the other

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1 parties on the hydrogen control.

2 CHAIRMAN SMITH: All right.

3 Now D still has to be discussed.

4 MR. BOWERS: Yes, sir.

5 As long as Mr. Tourtellotte has raised this ques-
6 tion with respect to Paragraph A I would simply like to say
7 that I am not satisfied and ANGRY is not satisfied that
8 merely complying with Section 0578 in terms of submitting
9 petitions for exemption of the application under the
10 presently-existing regulation dealing with hydrogen recom-
11 bining capability is adequate to deal with the issues that
12 were raised in this case with respect to that question.

13 Once again we would argue that hydrogen recom-
14 bining capability which may in fact go beyond the capability
15 that is presently required by NRC regulations may in fact
16 be necessary in order to provide the necessary and sufficient
17 assurance that this plant can be operated without endangering
18 the public health and safety.

19 CHAIRMAN SMITH: Well, isn't that exactly the
20 point of filing your petition under 0578? Isn't that exactly
21 what you're seeking to establish?

22 MR. BOWERS: Yes, sir, that's certainly one of
23 the contentions that we'd be making in the petition, but
24 we're saying that this Board may also have to address that
25 question, outside of whatever the outcome of that proceeding

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1 may be in terms of carrying out its mandate under the NRC's
2 rules.

3 CHAIRMAN SMITH: I think maybe you'd better go
4 back and look at 0578 before you argue any further. The
5 whole idea of 9578 is to permit this Board to go beyond the
6 present regulations because of the facts of this case.

7 MR. BOWERS: What I would suggest to you is that
8 the NRC August 9th order already provides you with the
9 authority to do so.

10 MR. TOURTELLOTTE: Excuse me, Mr. Chairman.

11 CHAIRMAN SMITH: Yes?

12 MR. TOURTELLOTTE: A correction for the record.
13 I think you're reciting the NUREG number and the number you
14 want to refer to is the regulation number.

15 CHAIRMAN SMITH: Yes, I was referring to the por-
16 tion of the regulation.

17 MR. BOWERS: Yes, I understood what you were....

18 CHAIRMAN SMITH: Now you want to argue that we
19 already have this authority?

20 MR. BOWERS: Given the language of the NRC order,
21 yes.

22 CHAIRMAN SMITH: Well, there was so much argument
23 on that point --

24 MR. BOWERS: I understand.

25 CHAIRMAN SMITH: -- I don't remember if that

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1 particular point was-- Well, I know it was raised in a
2 general way, but do you have any specific reason other than
3 what was earlier discussed why you think that is the case?

4 Are you saying it's unnecessary to go to the
5 Commission? Now can you add to the argument?

6 MR. BOWERS: No, sir, I'm saying that it's a
7 procedure that should be followed, and I mean there are a
8 couple of parties, and we'd be glad to join them, who have
9 indicated their intention to do so.

10 But I'm saying this Board has the authority to
11 address this issue.

12 CHAIRMAN SMITH: If we already have the authority,
13 then we're not going to certify it to the Commission, and
14 if you think we have that authority, for reasons other than
15 have already been discussed, say what it is. Then you can
16 short-circuit the whole thing and save yourself a lot of
17 trouble.

18 MR. BOWERS: I understand that. I mean the way
19 attorneys work is they take a number of avenues of approach
20 to the resolution of a particular issue.

21 CHAIRMAN SMITH: Yes.

22 MR. BOWERS: In case one doesn't work out they
23 can fall back on the other.

24 But I'm suggesting that the language of the NRC
25 order which requires you --

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1 CHAIRMAN SMITH: Yes?

2 MR. BOWERS: -- to come up with a recommendation
3 that will provide the necessary -- that will set out a means
4 by which this plant can be restarted, if any, --

5 CHAIRMAN SMITH: Right.

6 MR. BOWERS: -- that is necessary and sufficient
7 to provide reasonable assurance that this plant can be
8 restarted without endangering the public health and safety,
9 that language gives you the authority, in my opinion, to
10 address this issue outside of the procedure that's set forth
11 in NRC regulations.

12 CHAIRMAN SMITH: That was the point that was made
13 in the debate yesterday.

14 MR. BOWERS: Yes.

15 CHAIRMAN SMITH: Okay. Thank you.

16 MR. BOWERS: Was that question resolved, or are
17 you simply going to lead me to the transcript?

18 DR. JORDAN: It was argued. We hear, we under-
19 stand the arguments. We will look at them.

20 MR. BOWERS: You will deal with them. Okay. Thank
21 you.

22 With respect to Subsection D, I am not aware of
23 any way that we could change the language in there to make it
24 more specific so as to satisfy the Licensee's objection to
25 it. It is a design modification that has been proposed in

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eb12

1 studies that have been done of the problems connected with
2 the accident at TMI-2 and therefore I feel it is a relevant
3 contention to be included at this time in our contentions.

4 DR. JORDAN: We think that that can be handled
5 if there is any lack of specificity in interrogatories.

6 MR. BOWERS: All right.

7 DR. JORDAN: There's no problem.

8 MR. BOWERS: Fine.

9 With respect to Contention Number 6, the Licensee
10 and the Staff object to it on grounds that are similar to
11 grounds for objections to similar types of contentions made
12 by the Union of Concerned Scientists.

13 I would simply very briefly respond that these
14 are also matters that have been discussed somewhat at length
15 in connection with the UCS contentions.

16 CHAIRMAN SMITH: Yes, they have.

17 MR. BOWERS: I would simply say that the question
18 of multiple or combinations of human and mechanical failure
19 does, it seems to me, go to the basis of what the nuclear
20 power plant design has been up to the present time.

21 Questions were raised in NUREG-0578 as being a
22 subject for long-term consideration without giving any indi-
23 cation of when these studies would be performed, or at what
24 point they would have some kind of concrete effect on nuclear
25 power plant licensing, or whatever.

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1 I think it is a serious concern that needs to be
2 addressed at the present time rather than in the normal
3 process of NRC administrative decision-making, and it seems
4 to me that that is something that should be addressed in the
5 content of this proceeding.

6 Just to quote Mr. Danton again in his testimony
7 before Senator Hart, he says:

8 "There are certain combinations of
9 events and failures which are outside our envelope
10 so we didn't look at those."

11 It seems to me that the TMI-2 accident graphically
12 demonstrates the folly of not having done so, and that I
13 for one, and ANGRY wishes to see that this deficiency is
14 corrected before this particular power plant is allowed to
15 restart.

16 CHAIRMAN SISKIN: Okay.

17 Is there any response?

18 MR. BOWERS: I would also say, Mr. Chairman, we
19 have given one concrete example in our contention of a design
20 analysis that failed to take into account the consideration
21 which, if it had been taken into account, would have sub-
22 stantially ameliorated the consequences of the accident last
23 March.

24 MR. PROBERTIDGE: Mr. Chairman, I can't, I don't
25 think, do better than our response or, for that matter, the

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1 Staff's response. I simply do not know how to start with a
2 contention that asserts that all safety-related systems must
3 be analyzed and modified to take account of hypothetical
4 accident scenarios reflecting all conceivable combinations
5 of human and mechanical failures. I don't know where to
6 start, and I object to his contention.

7 We need something in the nature of what it is
8 in the way of modification or analysis that Intervenor would
9 have us do.

10 CHAIRMAN SMITH: Mr. Tourtellotte.

11 MR. TOURTELLOTTE: I have nothing to add to the
12 arguments already made.

13 CHAIRMAN SMITH: Okay.

14 MR. BOWERS: I would just like to conclude very
15 briefly --

16 CHAIRMAN SMITH: I beg your pardon?

17 MR. BOWERS: I would like to make one concluding
18 remark.

19 CHAIRMAN SMITH: On Contention 6?

20 MR. BOWERS: Yes, sir.

21 CHAIRMAN SMITH: This is your last contention, so
22 the advice is late. You are supposed to make all of your
23 arguments at one time so that they can all be responded to.

24 GO ahead and make your statement.

25 MR. BOWERS: Well, it is not in the nature of a

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1 argument as much as it is-- It's in the nature of a response
2 to what has been said.

3 CHAIRMAN SMITH: Okay.

4 MR. BOWERS: It seems to me that the NRC is deal-
5 ing with this question and for some reason the Licensee and
6 those members of the NRC Staff who are located here, who
7 are situated here in this room, object to dealing with this
8 question and questions similarly related to it in the con-
9 text of this proceeding.

10 And it seems to me that if this question is being
11 dealt with in some way or another then it's not too vague
12 or it's not too unspecific to be dealt with in the context
13 of this proceeding, and that it deserves to be raised and
14 dealt with right here in this room.

15 DR. JORDAN: We understand that this is a very
16 complex issue. The Licensee's position I think has been made
17 fairly clear in his briefing on all of the contentions to-
18 gether, so that we understand the Licensee's objection by
19 referring back to his general briefing.

20 Now I don't remember now that the Staff also has
21 a place in the transcript. They did not supply a general
22 briefing, I believe, as to why they believe that safety
23 systems, outside of those that, say, failed in TMI-2, and
24 we might talk about, say, hydrogen control-- no, not hydrogen
25 control -- iodine control systems. Mr. Pollard, Robert D.

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eb18

1 Pollard mentioned some. Has the Staff addressed that?

2 I presume that is the Staff's objection to this
3 contention, is that it was not related closely enough to
4 TMI-2.

5 Am I correct in saying that, and can the Staff
6 identify for me now their argument on this so that I don't
7 have to ask them to repeat it now?

8 MR. TOURTELLOTTIE: Well, I think that our position
9 is essentially the same as the Licensee's and that is that
10 the contention is too broad and too vague for us to identify
11 what it is that's necessary to litigate.

12 In our review of the TMI incident I think it goes
13 without saying that we're looking at the entire picture and
14 we're not going to look at just the TMI-2 events themselves,
15 we're going to look at other safety systems. But you can't
16 make a contention like all safety related systems at TMI-1
17 must be subjected to thorough analysis. What's safety? What
18 are all safety systems?

19 We've got to come in with some kind of an answer,
20 if this is going to be the contention we've got to identify
21 a witness and we've got to tell them we want you to address
22 this problem.

23 We can't address problems that are that broadly
24 stated, and that's what our answer says.

25 CHAIRMAN SMITH: Very well.

End 5

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1 MR. SOWERS: Does the Board understand MURRY's
2 position as to his name with this particular contention?

3 DR. JOHNSON: Apparently it's not a matter of
4 name that's troubling the Staff at the moment. Their problem
5 is that say the contention is just so broad and so vague
6 that they don't know how to address a reply and to bring in
7 witnesses.

8 MR. SHOLLY: Mr. Chairman?

9 CHAIRMAN SMITH: Mr. Sholly.

10 MR. SHOLLY: I think perhaps I have a solution to
11 this. Would it not be acceptable to provisionally accept
12 the contention provided later the specificity is provided
13 as later discovery proceeds?

14 MR. GOURMELLOTT: I do not agree that that's the
15 way to go at all. I mean we have to know at this stage in
16 the proceeding what the contentions are going to be so we
17 know what kind of discovery to conduct. And one cannot
18 develop contentions or should not be in a position of develop-
19 ing a contention which is poorly stated in the first instance
20 through discovery, although as a natural consequence of
21 discovery, if new matters are discovered that might precipi-
22 tate a new contention, then that's a different situation, but
23 it also allows generation of a new contention under an
24 entirely different concept.

25 We don't believe our general rules and procedures

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1 allow us to come in with some vaguely worded all-encompassing
2 allegation and say 'Well, we'll whittle that down 30 days
3 before we go to hearing'.

4 MR. BOWERS: I don't think Mr. Tourtellotte is
5 being fair in his characterization of this contention. I
6 have cited one specific example from an NRC document. I've
7 directed the Board's attention to NUREG-0578, in which the
8 NRC Staff indicate its concern with this issue and its
9 intention to deal with it in some kind of concrete way.

10 I don't think they would have indicated that if
11 they felt that it was too vague or lacked sufficient speci-
12 ficity for them to come to terms with it.

13 I'm suggesting if it is possible to come to terms
14 with it within the parameters set forth in NUREG-0578 that
15 it's possible to come to terms with it within the context of
16 this proceeding and to be litigated in this proceeding.

17 DR. LITTLE: I think the question relates to
18 the use of terms like "all conceivable combinations of human
19 and mechanical failures", and I think we probably all have
20 seen the cartoon that came out in the paper at the time of
21 Skylab:

22 What if Skylab broke up, a piece fell on a
23 passing DC-10, which crashed into TMI 2, which threw some-
24 thing out that ignited a passing Pinto. That's conceivable.
25 That's a conceivable combination of human and mechanical

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mpb2 1 failures. So it would fall under this category of "all".
2 It makes it include everything in the world.

3 MR. BOWERS: Yes, ma'am.

4 I would be willing to agree that we perhaps may
5 have slightly overstated the scope of our contention.

6 We're asking that this concern be addressed.
7 And if the particular language that we've chosen is an
8 impediment, we're certainly willing to modify it.

9 I mean, we feel that the Licenses and the Staff
10 are simply being resistant to this thing unnecessarily. And
11 if the language that we've chosen, "all conceivable" is the
12 problem, we'll say "reasonably conceivable".

13 In some way we want this problem addressed,
14 and it can be addressed and we feel it needs to be addressed
15 right here.

ca 16 CHAIRMAN SMITH: This is the same problem that
17 existed in many of the Union of Concerned Scientists' conten-
18 tions, and the Board has discussed at great length means by
19 which we can put our arms around some reasonable limitation
20 to getting into this problem. We've discussed certain ideas.

21 Nothing today has been particularly helpful to us.

22 I agree, I wouldn't know how to approach that
23 contention either. I just wouldn't know how to do it.

24 MR. BOWERS: Well, sir, as Mr. Sholly indicated,
25 I'm hoping that this is an issue that can be further flushed

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mpb3

1 out in the course of this proceeding.

2 I'm sympathetic to Mr. Trowbridge's and Mr.
3 Tourtellotte's difficulties with it at this point. But as I
4 say, I think it does raise an issue that is litigable in
5 principle. I think it does need to be flushed out and put
6 into more concrete perspective.

7 We're prepared to entertain efforts in that
8 direction.

9 CHAIRMAN SMITH: But even for discovery, even
10 for discovery I wouldn't know to let you permit discovery on
11 it, let you begin discovery on it.

12 I mean, you have raised a contention here which
13 has no bounds whatever, I can't see any bounds to it at all
14 so long as you assert them to relate to safety systems at
15 TMI, and I think we need better guidance from you.

16 MR. BOWERS: Well, as I said, given the time
17 limitations and the expertise limitations that we were operat-
18 ing under we framed this contention in as specific a way as
19 we possibly could, and I think that we've given one concrete
20 example and we've indicated the Regulatory document, the
21 NUREG 0578, where this specific issue was addressed as being
22 relevant and as having a close nexus with the accident at
23 TMI 2.

24 And it seems to me that at this stage of the
25 proceeding that should be sufficient.

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abl 1 DR. JORDAN: You see, we understand what you said
2 in the first part. In the first paragraph it was rather
3 specific. The Applicant could perhaps know, and I'm not
4 putting words in his mouth, I hope, but there's a chance
5 anyhow that he could start addressing interrogatories,
6 preparing for that part. If you stopped there I can see
7 that the objection of specificity -- they couldn't raise it.

8 But when you go on to the second paragraph and say
9 "all safety-related items" it is just so general that they
10 just don't know where to start. If you say you can't see
11 how you can possibly make it more specific....

12 MR. BOWERS: All I can say is this is a subject
13 that we do have an intention to address in some way or
14 another through discovery. However, I don't think the bur-
15 den is entirely upon us to come up with the very specific
16 combinations of events and scenarios that we want the Licensee
17 to respond to.

18 I mean what we're saying is that there's a real
19 generic difficulty here in the way these nuclear power plants
20 have been designed and in some way those generic defects and
21 difficulties have to be addressed.

22 I mean the TMI-2 accident gave rise to them.

23 CHAIRMAN SMITH: Yes.

24 DR. JORDAN: There are lots and lots of generic
25 difficulties. There are problems in many, many nuclear

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eb2

1 plants. Not all of them have been addressed. But which?
2 It seems like you must give us something as to which generic
3 difficulties you're talking about, and there has to be some
4 nexus with TMI-2.

5 I'm sympathetic but I'm very, very puzzled as to
6 what you're trying to do.

7 MR. BOWERS: Well, the best I can do, sir, is to
8 refer you to the section at 0578 where this very issue is
9 discussed, and as I say, I think it is capable of being
10 addressed from a technological and administrative standpoint
11 or else it wouldn't be in there.

12 The timetable that they've set forth is something
13 that we would like to have shortened and condensed and
14 included within the context of this proceeding.

15 DR. JORDAN: All right.

16 (The Board conferring.)

17 CHAIRMAN SMITH: We think that the debate
18 specifically as you have raised it, unless it has been raised
19 in related arguments by others, has exhausted the subject,
20 so I think we just have to move on. We will give very care-
21 ful attention to what you've said, and to your citations
22 and see if we can't explore innovative ways in which we can
23 satisfy some of these concerns, but I'm not sure that we're
going to be able to.

MR. BOWERS: All right.

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Dr. Kepford I believe is next on the list,
TMR having addressed their contentions yesterday.

Would you like to have a short recess, Dr. Kepford,
before we proceed?

DR. KEPFORD: Sure.

CHAIRMAN SMITH: Let's take five minutes.

(Recess)

CHAIRMAN SMITH: Ladies and gentlemen, let's
proceed.

Are you ready, Dr. Kepford?

DR. KEPFORD: Yes.

CHAIRMAN SMITH: Before you begin with your
contentions, as we understand, your contentions are in two
sets. You incorporated your contentions of October 5th into
your contentions of -- not incorporated, but both filings
constitute your contentions, one of October 22nd and one of
October 5th.

DR. KEPFORD: Correct.

CHAIRMAN SMITH: What we propose to do for
efficiency and to avoid confusion would be to begin number-
ing your contentions of October 5th with-- Let's see: you
had nine contentions on October 22nd, so we will number your
Contention No. 1 of October 5th as No. 10.

Excuse me; I'm afraid my numbering is wrong here.

You have contentions numbered through 9 on

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WRE/wb2

1 October 22nd.

2 DR. KEPFORD: That's correct.

3 Mr. Chairman, if it's all right, I would like to
4 go through these in the order as spelled out by the applicant.

5 CHAIRMAN SMITH: We're still trying to number
6 your contentions so we'll know which ones you're talking
7 about.

8 Your filing of October 22nd has ten contentions.
9 The applicant, however, addresses nine. So your contentions
10 of October 5th will then begin with 11, then 12, through 22.

11 Any problem with that?

12 DR. KEPFORD: No, sir.

13 Mr. Chairman, while we're on this subject, I
14 would like to note that in our filing of October 22nd, 1979
15 there is a rather serious set of typographical errors.

16 On page 7 the first full paragraph beginning
17 about the middle, there's a sentence that begins "In addition
18 to the hazard of gaseous and liquid releases. . ."

19 DR. JORDAN: I'm sorry; I was having trouble
20 finding it. Would you state it again, please?

21 DR. KEPFORD: Page 7 of the October 22nd filing,
22 the first full paragraph beginning "Three Mile Island Unit 2."

23 DR. JORDAN: Yes.

24 DR. KEPFORD: In about the middle of that para-
25 graph there is a sentence which begins, "In addition to the

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WRE/WBS

1 hazard..." Okay? That sentence, through the end of that
2 contention, does not belong in Contention 7, it goes at the
3 end of Contention 5.

4 MR. FOURTELLOTT: You're in Contention 7 of
5 the October 22nd filing? Is that right, Mr. Chairman?

6 CHAIRMAN SMITH: That's as I understand it.

7 DR. KEPPORD: That's correct.

8 The beginning sentence is "The Three Mile Island
9 Unit 2 plant..."

10 MR. FOURTELLOTT: Okay, we've got it now.
11 Thank you.

12 DR. KEPPORD: Okay.

13 Again, following the procedure, Contention 1A
14 is not objected to by the staff. It is objected to at least
15 in part by the applicant on the basis of this scope problem
16 which, it seems to me, was argued rather thoroughly.

17 Would you prefer, Mr. chairman, that I not get
18 into the scope problem?

19 DR. JORDAN: I think the argument has been
20 thoroughly aired; unless Mr. Frowbridge disagrees. I think
21 you can continue.

22 MR. FROWBRIDGE: I do not disagree. I think
23 the Board fully understands our position.

24 DR. KEPPORD: Thank you. I will not say anything
25 further, then, with regard to Contention 1A.

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WRB/wt4

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1B I see no objection to.

1C is--

DR. JORDAN: Excuse me. On 1B just what is the contention there?

DR. KEPFORD: 1B?

DR. JORDAN: Yes.

DR. KEPFORD: This goes to the problem of the sensitivity of a B&W reactor to--

DR. JORDAN: It seems to me it's a statement. And I don't see a contention. --is my problem. It seems to me you're making statements of fact. And I don't know what you are saying-- Is something inadequate in the design

DR. KEPFORD: Yes. The last sentence. The low water volume deficiency means that problems that arise during the course of an accident are magnified, amplified, and so on, by the low water volume of the RCS, the reactor cooling system.

DR. JORDAN: I see. So what you're really saying is that the design is deficient in that respect?

DR. KEPFORD: It's a fundamental design problem, yes.

DR. JORDAN: All right. Then I understand. Go ahead.

DR. KEPFORD: Contention 1C is a scope argument. Contention 1D--

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WRB/wb5

1 CHAIRMAN SMITH: Wait a minute. It's more than
2 scope.

3 MR. TROWERIDGE: It is a scope argument in a
4 sense. But it's a little different than the scope argument
5 that went to IA. This is, however, an example of the kind of
6 contention we went over with UCS. There were at least three
7 UCS contentions that had, in our view, defects similar to
8 this one, where we start off talking, and we're prepared to
9 talk about the contention to the extent it challenges the
10 method used to indicate the closure of the electromatic
11 relief valves.

12 We object to the contention to the extent it leaps
13 from there to "all pertinent components" and all necessary
14 and correct parameters. These kinds of words leave this
15 contention so wide open that we are unable to deal with it.

16 DR. KEPFORD: Mr. Chairman, I disagree completely
17 with that. The contention is rather tightly limited. And
18 I point you to the third line up from the bottom, the word
19 "reasonably." We're talking here about a finite number of
20 systems, a limited number of systems. It's clearly not a
21 wide-open contention. And as we have already discussed in
22 this proceeding, the word "reasonably" is a commonly used
23 word, certainly in the licensing of nuclear power plants,
24 "giving reasonable assurances of the protection of the health
25 and safety of the public," and so on.

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WRB/wb6

1 I'm merely asking that the same recognition for
2 meaning of the word "reasonably" be ascribed here.

3 It's not a watch hunt, we're not shooting bats
4 at night; we're simply asking that not only a direct recurrence
5 of the TMI-2 accident be prevented but that similar accidents
6 of a rather limited scope and nature also be prevented by
7 simply insuring that the plant is wired to deliver to the
8 control room operators the information the operators need to
9 make decisions. And that was clearly not the case with the
10 electromatic relief valve or power operated relief valve,
11 or whatever. The signal was misleading.

12 Now I don't really feel as though it's the
13 burden of the intervenors to go through the designs of the
14 plant and identify every single safety related signal and
15 then trace through the wiring diagrams of the plant and see
16 how they're wired. We don't have that expertise. That exper-
17 tise does lie with the applicant.

18 And I think this contention is reasonably bounded.

19 DR. JORDAN: Dr. Kepford, there will be changes
20 made. I believe the applicant, although I haven't seen it, is
21 proposing changes in the wiring of the relief valves and such
22 things as he believes will fix up the TMI-1 so as to prevent
23 a TMI-2 accident.

24 Now, then, if you were to say "I don't believe the
25 applicant's proposals are adequate," then I would think that

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WFB/wb7 1 surely he can understand and I can understand exactly what
2 you're after.

3 But if you're saying that all the safety systems
4 are inadequate, then it is hard, again, as we were talking a
5 few minutes ago, then it's very difficult to say just what
6 the problem is.

7 The first part of your contention is easy to
8 follow; yes, indeed, it is specific. But I think it's just
9 the last part where the trouble begins.

10 And I guess I would ask you, is it your conten-
11 tion that the applicant's fixes are inadequate, or do you
12 want to go beyond that?

13 DR. KEPFORD: As I understand the applicant's
14 fixes -- and I may very well be wrong -- and I'll put this
15 in my own words: they correspond to little more than going
16 through the accident sequence, identifying the problem, and
17 putting a Band-aid on that problem to ensure that it won't
18 happen again.

19 DR. JORDAN: Then you would say that the applicant's
20 fix is--

21 DR. KEPFORD: It's totally inadequate.

22 DR. JORDAN: That I can understand and I believe
23 the applicant can, too.

24 Would that be your contention? Would that be
25 accepted as what you mean by this contention?

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WRB/wb8

1 DR. KEPFORD: Surely.

2 DR. JORDAN: Would the applicant accept that?

3 MR. TROWBRIDGE: No, Dr. Jordan. It is not only
4 a question of specificity here. Until I know what items
5 Dr. Kepford proposes to talk about in this hearing, and until
6 the Board knows, I do not see how the Board will solve the
7 problem of either -- or sexes between the TMI-2 accident,
8 assuming the Board takes as broad a view of the scope of the
9 proceeding as that, and what Dr. Kepford wants to talk about.

10 DR. JORDAN: Then you're disagreeing now with--
11 it would be, with the contention as being made more specific,
12 now your disagreement would be the scope; is that correct?

13 MR. TROWBRIDGE: We have said in our answer
14 essentially two things. And these are separate considerations.
15 Let me read:

16 "Without any indication from ECNP as
17 to which pertinent components of the control system
18 it's concerned about, licensee cannot even begin
19 to defend against such a charge."

20 DR. JORDAN: This is why I was trying to limit
21 this contention to the applicant's fixes that he is proposing
22 to do with respect to these relief valves and the signals
23 therefrom.

24 MR. TROWBRIDGE: Then I think, Dr. Jordan, if
25 I now understand you, which I didn't the first time, I'm not

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NR2/wb9

1 sure we're all on the same wavelength.

2 DR. JORDAN: That may very well be. But I under-
3 stood Dr. Kepford was--

4 MR. TROWBRIDGE: In Dr. Kepford's contention,
5 the fixes we were proposing for the relief valves--

6 DR. JORDAN: And the systems associated therewith.

7 MR. TROWBRIDGE: If it was his contention that
8 we had applied a Band-aid to that system and that it needed
9 more than a Band-aid I would have no problem.

10 DR. JORDAN: That's what I thought.

11 MR. TROWBRIDGE: But I don't think that's what
12 Dr. Kepford was saying. I think Dr. Kepford is saying that
13 if we apply a Band-aid that we have only addressed--

14 DR. JORDAN: Would you please, then, let
15 Dr. Kepford answer, Does he agree with my narrowed contention?
16 I thought I understood that he did. And therefore that did
17 give adequate specificity for you to deal with.

18 DR. KEPFORD: I thought I did, too. But now I
19 don't.

20 DR. JORDAN: Very well. Then if you don't we'll
21 go on.

22 DR. KEPFORD: I don't think I understood what you
23 were laying out.

24 DR. JORDAN: That's very possible.

25 DR. KEPFORD: I don't think putting more Band-aids

POOR ORIGINAL

1423 355

WRB/wb10

1 on that particular system is going to solve any problems.

2 DR. JORDAN: Very well.

3 DR. KEPFORD: What I'm saying is, there are other
4 control systems. There are, for instance, the starting
5 capacitors for the reactor coolant pumps. Now I understand,
6 I have been told, that there were severe concerns with regard
7 to those, that they wouldn't withstand a radiation environ-
8 ment, they might fail. And at some point in time the plant
9 may be -- it may be impossible to start the main coolant
10 pumps because of the fact that they were being -- the starting
11 capacitors were being degraded by the radiation environment.

12 Now this is another problem that is not necessarily
13 addressed by putting the Band-aids, as I call them, on the
14 electromatic relief valve system. This is another identifi-
15 able system which should be upgraded to protect what we know
16 is a real environment.

17 It seems to me that this contention is reasonably
18 limited to control systems that might be affected by an
19 accident environment.

20 CHAIRMAN SMITH: could you give us an example of
21 a control system that is outside of the scope of your con-
22 tention?

23 DR. KEPFORD: First off, the contention is
24 limited, as you just pointed out, by the words "control
25 system." I'm not talking about every system in the plant.

POOR ORIGINAL

,1423 356

WELLS

1 The automatic hoses, for instance, that wash down the floors,
2 if there are such. I'm talking about safety control systems.
3 That in itself limits the--

4 CHAIRMAN SMITH: All safety control systems?

5 DR. JORDAN: I'm sorry, Dr. Keppford, usually when
6 we say the control system in this plant I think we refer to
7 the integrated control system. Is that what you're talking
8 about? It didn't seem to be from your example.

9 DR. KEPFORD: The integrated control system, as
10 I understand it, is more or less operated automatically from
11 the plant computer and does not necessarily require human
12 intervention. Is that correct?

13 Personally, I have a very healthy distrust of
14 computers.

15 DR. JORDAN: We are trying to understand what the
16 limits on the contention are, and I think that's the applicant's
17 main problem.

18 Now I gather the staff has no problem with
19 specificity on this one. They didn't mention any. Is this
20 true?

21 MR. FOURNELLOTTE: I guess our problem is not so
22 much the way we word it as the way it's interpreted by its
23 author. And we are not as certain about that contention as we
24 were before.

25 May I give my understanding, my impression of what

POOR ORIGINAL

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WRB/wb12

1 ECNP is saying?

2 It seems to me they are saying -- and I may be
3 wrong, and hopefully will be corrected -- they're saying that
4 the contention is limited to the scope of the fixes proposed
5 by the licensee and the adequacy of those fixes to provide
6 reasonable assurance of safety.

7 On the other hand, they are saying that other
8 systems must be addressed; that is, it's not the adequacy
9 of doing what is proposed to be done, but, rather, the in-
10 adequacy of not addressing other systems.

11 And we also hear that it isn't all systems, it's
12 just some systems.

13 Then it seems like I also hear that exactly what
14 those systems are ECNP is not suggesting but feels it is the
15 responsibility of the staff or the licensee or both to analyze
16 and come up with an analysis for and provide fixes for.

17 That's the way I understand it. And what gives
18 me a problem is the latter part of that, that the systems are
19 really unidentified systems, and we're supposed to address
20 systems that are unidentified which they don't know about
21 but which we should know about, but then we really don't know
22 what to address.

23 CHAIRMAN SMITH: Well doesn't he, then, sort of
24 take his chance on whatever the staff produces in the analysis
25 of it, if it he is leaving it to the staff to determine which

POOR ORIGINAL

1423 358

WRB/wb13 1 is comparable, reasonable and pertinent? I don't see how
2 you can complain.

3 DR. JORDAN: I don't think Dr. Kepford is willing
4 to leave it to the staff. That is exactly what I was trying
5 to do when Dr. Kepford says, No, you have to go into the whole
6 system.

7 DR. KEPFORD: No, I didn't say that either. I
8 really think it would be worth everybody's while to read the
9 last sentence in the contention.

10 CHAIRMAN SMITH: The last sentence is a truism.

11 DR. KEPFORD: The last sentence in my reading of
12 this contention puts the limits on what we're looking for,
13 what we intend to litigate in this proceeding.

14 What we want to insure is that the control room
15 operators get adequate signals in the control room that
16 safety related steps throughout the course of an event are
17 accurately relayed. The fact that the step has been taken
18 when commanded-- well, for instance, when this electromatic
19 relief valve... It's one example of that class, a piece of
20 misinformation that the operators got at TMI-2. And what this
21 contention does is say that is a class of problems, it's not
22 one single isolated solitary problem which can be looked at in
23 a vacuum, it's a class of problems, misinformation being given
24 to the control room operators. It's a finite problem. And
25 it's bounded in a number of ways in this contention.

POOR ORIGINAL

1423 359

WRE/wb14

1 DR. JORDAN: That's right. But I presume that that
2 class of problems are those at least the applicant thinks
3 belong in that class of problems where he's going to propose
4 changes and fixes. The staff is also going to look at it, and
5 there's going to be a class of problems where they feel
6 there is inadequacy, and they're going to propose changes
7 and fixes for.

8 If your contention is that those proposed changes
9 and fixes are not adequate, then that's fine, we understand.

10 But, as I say, what you say goes way beyond
11 that and does not limit it to those systems. And we need to
12 know what other systems you are talking about.

13 DR. KEPPORD: Well I can assume what the applicant
14 is talking about. I don't know what other fixes the staff
15 is proposing. So I really can't identify the difference
16 between what I'm suggesting and what the staff wants the dis-
17 cussion limited to.

18 DR. JORDAN: Well there will be a--

19 DR. KEPPORD: It will come out in the SER.

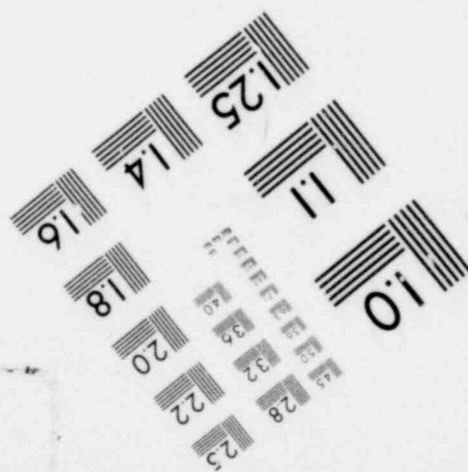
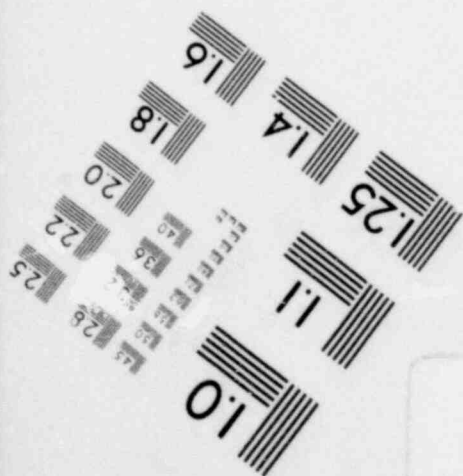
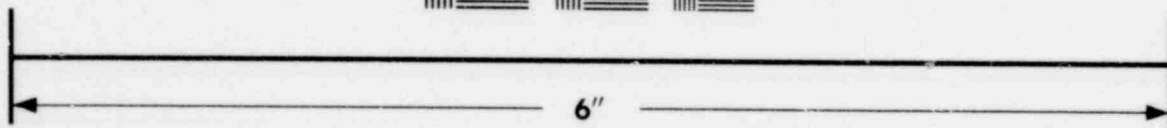
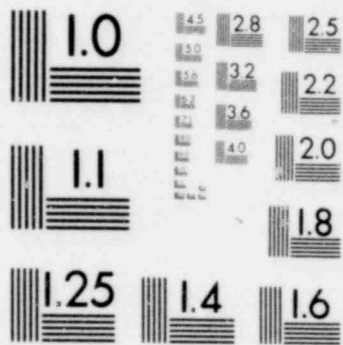
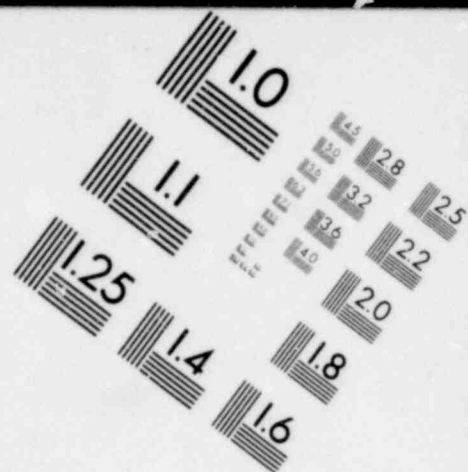
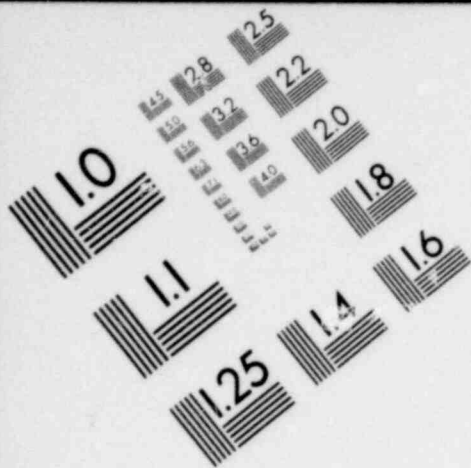
20 DR. JORDAN: That's right. And if you want to
21 reserve, say, that the proposals suggested by the staff in
22 the SER are not adequate, then that I could understand.
23 But if it needs to be broader than that then it needs to be
24 defined more explicitly.

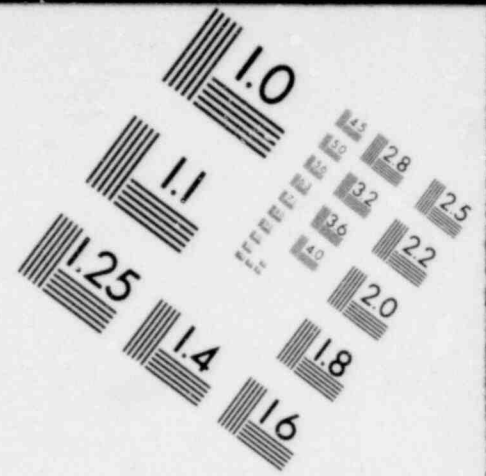
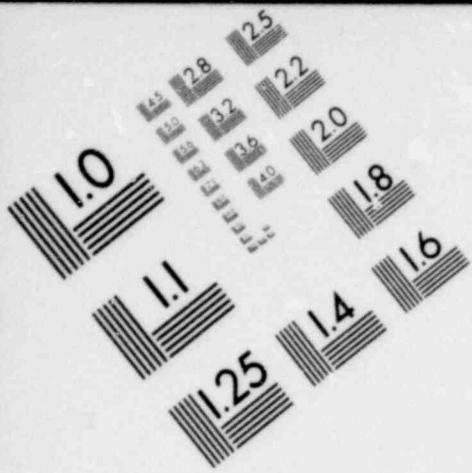
25 MR. SHOLEY: Mr. Chairman, it would seem, in the

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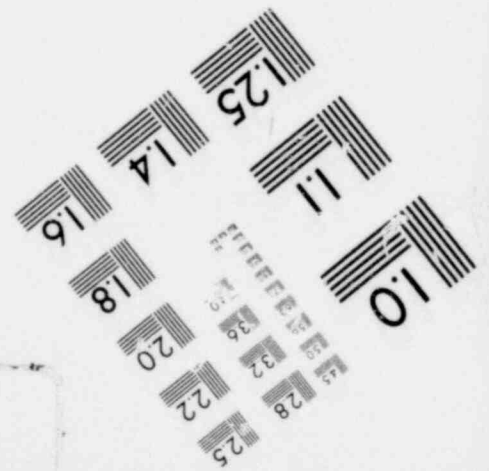
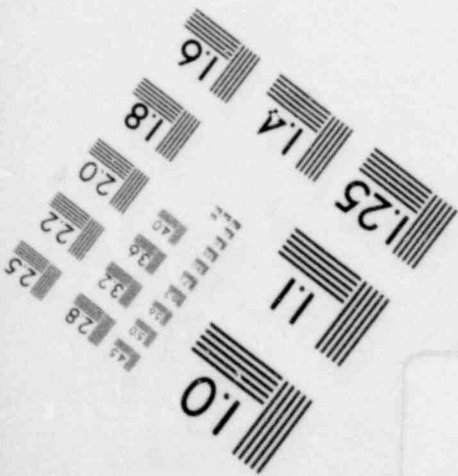
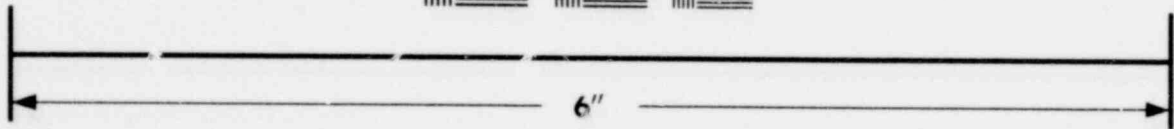
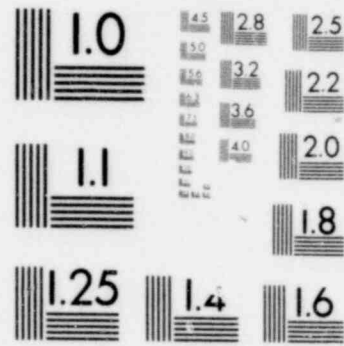
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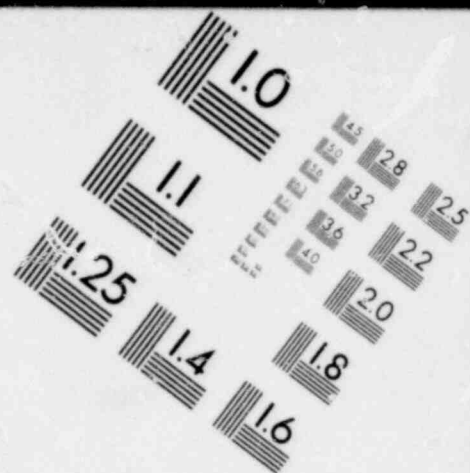
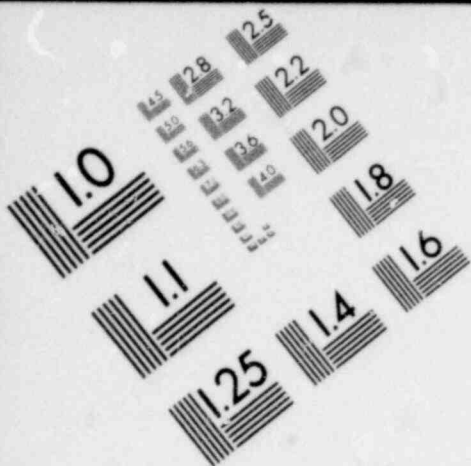
IMAGE EVALUATION
TEST TARGET (MT-3)



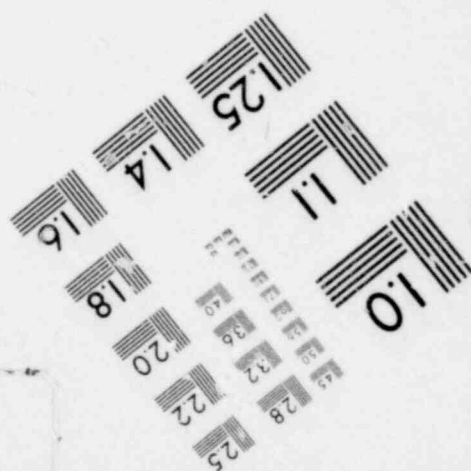
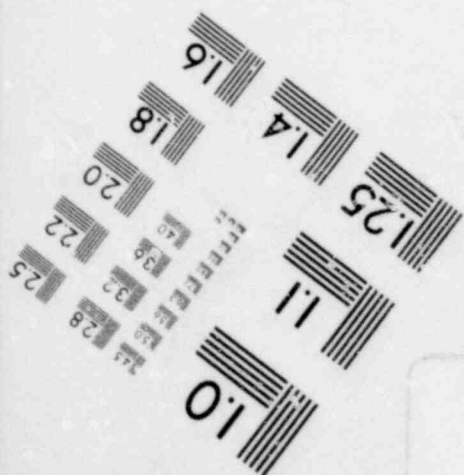
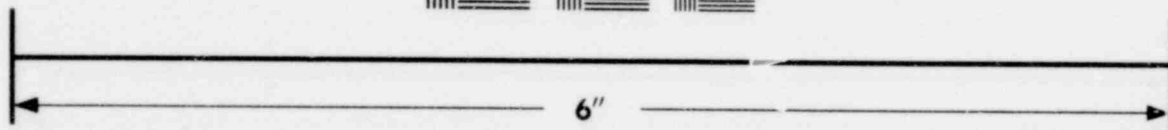
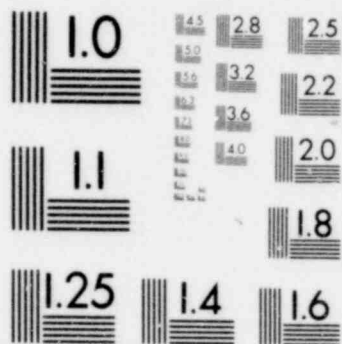


**IMAGE EVALUATION
TEST TARGET (MT-3)**





**IMAGE EVALUATION
TEST TARGET (MT-3)**



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last sentence in the contention that we're talking about that
 RCMP has, in my mind, rather narrowly defined it as dealing
 with the control system of the reactor.

Now if we can't agree or if the Staff and the
 Licensee can't agree what constitutes the control system of
 the reactor, then we're in real trouble.

DR. JORDAN: I guess, Mr. Sholly, I'm a little bit
 surprised because I know you are brooding on it in the system.
 Now by the "control system" ordinarily the Staff and the
 Applicant, when they say the "control system," they do know
 exactly what they mean, the integrated control-system, but
 that by no means includes all of the controls in the plant.

There are many, many controls, some of which are
 safety-related and the majority of which are not safety-
 related. This contention includes, apparently, all of them.

DR. KEPPORD: No, in no way, shape, or form does
 it. I don't understand how that can be read into it. We're
 talking about all pertinent components of the control system,
 and I don't particularly mean it to be the integrated control
 system.

I'd be talking about-- What I intend is functions
 from the control room that are safety-related that might
 reasonably be expected to be used during the course of an
 accident, event, transient, whatever you want to call it.

CHAIRMAN SMITH: Any accident?

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DR. KEPFORD: Well, now, if you bring up any accident you're going to get back into the Class 9 problem, and I intend to address that. Do you want to talk about that now?

CHAIRMAN SMITH: No, I just want to understand what this contention is.

I can hardly quarrel with this contention except--

DR. KEPFORD: Personally, I have a difficult time seeing what the argument is.

CHAIRMAN SMITH: Except you are leaving entirely up to the Board and the Staff and the Applicant to decide what is comparable, what is pertinent, and no one can quarrel with those words.

DR. KEPFORD: Also "reasonably."

CHAIRMAN SMITH: "Reasonably." You have defined the perfect contention.

DR. KEPFORD: Fine. Then let's litigate it.

CHAIRMAN SMITH: But you're going to take your chances on how it's litigated the way you have it defined.

DR. KEPFORD: Perhaps, Mr. Chairman, when the SER comes out, through the process of discovery we can narrow down what we're talking about.

MR. TROWBRIDGE: Mr. Chairman, it's exactly part of my concern. We're not just talking about what is going to be the scope of testimony some months from now. We're

eb3

1 talking about a discovery process, and I'm trying to visualize
2 what it is that's going to land on my desk in a week or two
3 that says give me all the information on the performance
4 capability of every pertinent component of a control system.

5 DR. KEPFORD: Wrong.

6 MR. TROWBRIDGE: Much of this may have been done.
7 It's been done in the FSAR. It's been done before. We're
8 not talking about a new license, a plant that has not been
9 through a licensing review.

10 CHAIRMAN SMITH: Is your difficulty, Dr. Kepford,
11 that you are now not in a position, because of lack of
12 discovery, to say what is pertinent and what is comparable?

13 DR. KEPFORD: That, and the fact that the SER
14 hasn't come out. But we are not asking solely for the per-
15 formance capability. The subject of this contention is not
16 the performance capability of all instruments, monitoring
17 devices, and whatever.

18 The contention is solely concerned with the fact
19 that the control room instruments register the function that
20 is called for when called for, and that it's not the case
21 with the electronic relief valve and that is simply brought
22 up as an example.

23 We're not talking about performance capability;
24 we're talking about the adequacy of the signals the operator
25 gets when he commands something to do something, and we're

eb4

1 talking about it in a safety-related system.

2 CHAIRMAN SMITH: Are you talking about-- I asked
3 you this and then you say No, but I always come to the con-
4 clusion that you define "comparable, pertinent and reasonable"
5 to be the control components of all safety-related equipment.

6 DR. KEPFORD: To the extent that they are wired
7 to give the control room operator --

8 CHAIRMAN SMITH: All of them?

9 DR. KEPFORD: Within the limits of this conten-
10 tion, information that the function he commands has been in
11 fact carried out.

12 CHAIRMAN SMITH: Of all safety-related control
13 components?

14 DR. KEPFORD: Within the limitations of this
15 contention.

16 CHAIRMAN SMITH: Well, that is --

17 MR. POLLARD: Mr. Chairman, --

18 CHAIRMAN SMITH: It is a complete circle.

19 MR. POLLARD: Mr. Chairman, I think one point came
20 out there that I'm right and correct in understanding the
21 reference to the control room panel, that it's those systems
22 which are recorded, that light up or actuate the control room,
23 the control panel, that those performance standards be satis-
24 fied.

25 Am I right?

1424 004

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1 DR. JORDAN: No, the contention doesn't limit
2 itself to the control room panel.

3 I don't see any point, really, Mr. Chairman, in
4 going on. The arguments have become circular, and we under-
5 stand them.

6 CHAIRMAN SMITH: I don't think it's possible to
7 understand them any more.

8 MR. POLLARD: Dr. Kepford indicated to me that he
9 does agree that the control room panel -- would be comfort-
10 able with the control room panel definition limitation. Does
11 that make it acceptable?

12 CHAIRMAN SMITH: We're not in a position to say what's
13 acceptable and what isn't acceptable now. All we can do is
14 to go through and look and see what the arguments have been.

15 DR. JORDAN: I would like to try just one more.

16 You keep coming back to "within the scope of the
17 contention," and assuming that we have narrowed it as it has
18 become narrower and narrower, it's going to be "control room
19 component" and then it comes down to "the control room panel."
20 That's how narrow we are now.

21 Now with that limitation, are you referring then
22 to all safety-related systems?

23 DR. KEPFORD: Yes.

24 CHAIRMAN SMITH: All right. You have now answered
25 my question. How does it need to be qualified?

1 DR. KEPFORD: I think it does. To the extent
2 that the proper information is related to the control room
3 operator, that indeed the requested function or whatever has
4 been carried out.

5 CHAIRMAN SMITH: Now I understand your contention.

6 DR. KEPFORD: Thank you.

7 AS I understand Contention 1-D, the only objection
8 has to do with the reference to Class 9 accidents.

9 I'm sorry, had we finished 1-C?

10 DR. JORDAN: I thought it was 1-C that we've been
11 talking about. Am I wrong?

12 DR. KEPFORD: You're correct.

13 DR. JORDAN: Okay, we go on to 1-D.

14 DR. KEPFORD: 1-D. It seems to me the argument
15 here gets us into the Class 9 world. Is that not correct?

16 MR. TROWBRIDGE: That is not a full statement of
17 the Licensee's objection.

18 DR. KEPFORD: The other aspect is, as I understand
19 it, a scope problem.

20 MR. TROWBRIDGE: Precisely the same problem we
21 had with 1-C, unidentified monitoring instruments.

22 DR. JORDAN: Excuse me just a moment while I read
23 the Licensee's response. It's been some time.

24 (Pause.)

25 I guess my problem now is largely with the Licensee's

1424 006

1 to read from zero to infinity, so to speak.

2 But there should be some instruments which in
3 essence do read from zero to infinity, so that no matter --
4 during an emergency there will be at least some instruments
5 that are on-scale so that the amount of radiation, the amount
6 of radioactivity during the emergency can be measured.

7 Now it may be that Dr. Kepford will not accept
8 my narrowing of the contention. So I guess I had better first
9 turn to Dr. Kepford and see if he would, and then turn to the
10 Licensee again.

11 DR. KEPFORD: I agree to the extent that you
12 talked about radiation. I think your suggestion of scratching
13 the word "all" at the end of the -- at the beginning of the
14 last sentence in the first paragraph is a good idea.

15 We're not pursuing the quantity of water which
16 may flow through the sanitary facilities of Met Ed. We are
17 really talking about the important safety related monitoring
18 instruments. Some are mentioned here. I didn't really feel
19 it necessary at the time I drafted this contention to exhaust-
20 ively analyze the plant design and pick out every single
21 instrument that I thought should be.

22 I do point out in this contention that these
23 issues were raised five years ago, five and a half years ago.

24 DR. JORDAN: The issue has been raised more
25 recently in connection with the TMI 2 accident, of course.

WRS/tpcd

DR. NEFFORD: That's correct.

DR. JORDAN: Therefore I feel that a contention along those lines should be in this hearing.

Now does the licensee believe that the contention, as I would say by understanding of it, is specific enough -- reserving on scope -- is it specific enough now for the licensee to address?

MR. FROWERIDGE: Dr. Jordan, I must apologize. I wasn't able to follow well enough. May I ask you to restate your narrower --

CHAIRMAN SMITH: I'm sorry to interrupt, but I think now is the time where the specific language we are discussing should be nailed down. And as I understand it, the final sentence in the first paragraph now reads:

"...important safety related monitoring instruments."

Not "all monitoring instruments."

It now reads:

"...the important safety related monitoring instruments."

DR. NEFFORD: I have no problem with that language.

CHAIRMAN SMITH: That's your language.

DR. NEFFORD: It's partially Dr. Jordan's language, as I recall.

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CHAIRMAN SMITH: So the last sentence begins --

DR. NEFFORD: It's correct as you read it.

I would also like to acknowledge there are certain physical limitations here. I don't really expect the NRC is going to come up with too many thermocouples that are going to withstand fuel-melting conditions, for instance.

CHAIRMAN SMITH: I had interrupted Mr. Trowbridge. I felt he should have some concrete language to discuss.

(Pause.)

MR. TROWBRIDGE: Mr. Chairman, I'm still having trouble. Let me see if I can explain it.

If this were to read the complete range of possible core cooling or radiation monitoring -- or radiation conditions, I would begin -- I would essentially say I would not have a problem with that.

But I've got a contention that talks about monitoring the complete range of possible conditions. And it seems to me the important safety related -- there are a great many conditions in that plant, and the monitoring of them is safety related. And I regard that as far too broad a contention to accept.

DR. JORDAN: Very well, we understand the Licensee's position.

And I believe the Staff does not have any objections. I believe the argument is adequate for us to

make a decision.

POOR ORIGINAL

MR. TOURNELLOTTE: That's correct.

I would have one question.

Are the same words, "important safety related" to be substituted for the word "all" in the last sentence of the last paragraph as well, the one that starts:

"All radiation monitoring equipment must be capable..."

DR. REFFORD: I think these were the words suggested by Dr. Jordan, and I have no problem with them.

DR. JORDAN: We changed that "all".

MR. TOURNELLOTTE: You were talking about the "all" in the last sentence of the first paragraph. I was wondering if those same words applied to the "all" in the last sentence of the second paragraph?

DR. JORDAN: I think --

DR. REFFORD: Yes.

DR. JORDAN: I think we can go on to the next contention.

DR. REFFORD: I-E, I'm not sure I thoroughly understand whether or not there is an objection to it or not. If there is, I'd really like to hear it. If there isn't, perhaps we should move on.

MR. FROWBRIDGE: Are you talking about whether the licensee objects or not? It seems to me our response is

POOR ORIGINAL

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greater consequences. And these are two differences.

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Now if these two differences could be incorporat-

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ed into USS contention 3 then I would have no problem.

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1 DR. JORDAN: That, I guess, probably that's the
2 best I can expect.

3 (The Board conferring.)

4 CHAIRMAN SMITH: There simply is no use going
5 through the same debate on every contention. It falls in the
6 same pattern.

7 You come up with a specific and then you say 'then
8 also everything else'. And the arguments are the same, the
9 responses are the same. The only thing that changes it the --
10 well nothing really does change conceptually. So I think we
11 should just proceed on the basis of the written responses.

12 We don't seem to be adding much in the oral debate
13 -- well, we made some progress on the previous contention, I
14 recognize.

15 DR. KEPFORD: Contention 1-F, then, is a related
16 contention.

17 Mr. Chairman, much of my problem with this entire
18 subject -- and this is why I'd like to talk about it and get
19 it over with -- goes back to Class 9 accidents and the philo-
20 sophical problems related there.

21 It seems to me that in my mind we keep coming
22 back to that problem, and I would like to get it over with
23 once and for all.

24 DR. JORDAN: Let's go to your Class 9 contention,
25 then, at once.

1424 012

mpb2

1 DR. KEPFORD: All right.

2 Class 9 accidents are --

3 DR. JORDAN: Which one is this.

4 DR. KEPFORD: -- in a number of contentions.

5 Number 4, for instance, in the October 5 filing.

6 CHAIRMAN SMITH: Now wait a minute.

7 That one is now, then, 14.

8 DR. KEPFORD: That would be contention 14, that's
9 correct.

10 Mr. Chairman, going back to the original Brookhaven
11 report, WASH-740, the problem of credible and incredible acci-
12 dents has been discussed at length. And to the best of my
13 knowledge there has not been and has never been a factual
14 determination of this credibility problem, credibility divid-
15 ing line.

16 The authors of WASH-740 stated very clearly that
17 there were accidents for which it would be foolhardy in the
18 extreme to calculate probabilities.

19 Furthermore if one should do so absolutely no
20 weight whatsoever should be given to accident probabilities
21 because they were considered to be simply unknowable numbers.

22 MR. TROWBRIDGE: Mr. Chairman, may I interrupt for
23 a simple inquiry as to which contention we are talking about?
24 Are we listening to a lecture on Class 9 or are we relating
25 this to a contention?

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1 DR. KEPFORD: M. Chairman, I thought we had moved
2 to contention 4 of the October 5 filing, or contention 14.

3 DR. JORDAN: I think that's correct. And I believe
4 he is stressing that contention.

5 MR. TROWBRIDGE: Let me catch up with that please.

6 (Pause.)

7 MR. TROWBRIDGE: Excuse me, Dr. Kepford. I am now
8 caught up.

9 DR. KEPFORD: Thank you.

10 The authors of the Brookhaven report then relied on
11 the belief of knowledgeable individuals to assume that there
12 was a class of accidents which could be considered incredible,
13 that is, of sufficient low probability such that one need not
14 talk about consequences.

15 This philosophy was apparently adopted by the
16 Atomic Energy Commission in its licensing proceedings and has
17 been, as I would like to put it, an article of faith ever since
18 then, that this group of accidents as a group simply cannot
19 happen because, I repeat, the probability is too low.

20 The TMI 2 accident showed that that fundamental
21 belief was incorrect. The Applicant would have us believe
22 that all that has happened by the TMI 2 accident is that it
23 has been shown that that one particular Class 9 accident is
24 now known to be credible, and that all others are incredible.

25 I think that argument leads immediately to

1424 014

mpb4

1 sill'ness.

2 I would like to elaborate slightly there:

3 Suppose upon his return to Spain, Magellan was
4 told by the Queen that he has not established that the world
5 is round, but that only along the path that he followed was
6 the world round, everywhere else was flat.

7 To me that's the position that the Applicant is
8 putting us in. The Staff's position is slightly broader:

9 They might acknowledge a strip 50 miles wide on
10 each side of where Magellan went that the earth is round;
11 everywhere else it's still flat.

12 There is a fundamental fallacy here. Mr.
13 Tourtellotte earlier said that the Staff was indeed going to
14 -- and please correct me if I'm wrong, Mr. Tourtellotte --
15 expand its investigation into accidents and redefine what
16 were some incredible accidents into credible accidents and
17 make them design basis accidents.

18 MR. TOURTELLOTTE: That is not what I said.

19 DR. KEPFORD: I take it it was words to that effect.
20 We don't have transcripts yet so we can't --

21 MR. TOURTELLOTTE: It wasn't even words to that
22 effect.

23 DR. KEPFORD: Well, if you would care to correct me
24 I would appreciate it.

25 MR. TOURTELLOTTE: What I said was in a hypothetical

mpb5

1 way, that if we were to take a Class 9 accident and examine
2 that and determine that there was a reasonable enough probabilit-
3 . ity that it would occur, that it should be included in the
4 design of the plant; it would, and we ordered it to be so, and
5 it was included in the design of the plant, then it would then
6 become a Class 8 accident by definition.

7 DR. KEPFORD: Fine.

8 MR. TOURTELLOTT: But that's theoretically, and
9 that's not to indicate that in fact any such action has been
10 undertaken in this or any other case.

11 DR. KEPFORD: Fine. I accept your explanation and
12 appreciate it. Thank you.

13 Mr. Chairman, the Staff is still relying on this
14 fundamental belief which has been shown by the TMI 2 accident
15 to be incorrect, and that is that it is possible to attach
16 some level of probability to reactor accidents.

17 I would like to refer you to read a couple of
18 lines from a letter from Dr. Clifford Beck, who was the
19 chairman of the original WASH-740 Brookhaven Report Committee,
20 who also chaired the 1964-1965 revision of WASH-740. And it's
21 from the papers in the revised WASH-740 file in the Public
22 Document Room. It's paper number 144. It's a letter from
23 Dr. Clifford Beck to Congressman Chet Hallfield of the Joint
24 Committee on Atomic Energy.

25 He is discussing the problem of large reactor

1424 116

mpb6

1 accidents. I'm quoting:

2 "The difficulty is there is no objective
3 quantitative means of assuring that all paths
4 leading to catastrophe have been recognized and
5 safeguarded, or that the safeguards will in every
6 case function as intended when needed. Herein
7 is encountered the most baffling and insoluble
8 enigma existing in our technology. It is in
9 principle easy and straightforward to calculate
10 the potential damages that might be realized
11 under postulated accident conditions. There
12 is not even in principle an objective and quan-
13 titative method of calculating probability or
14 improbability of accidents or the likelihood
15 that potential hazards will or will not be real-
16 ized."

17 Mr. Chairman, I submit that nothing, nothing
18 whatsoever has appeared since those words were written in
19 May of 1965 to cast any doubt whatsoever on their validity.
20 Thus, even having the Staff's possibility of dividing up this
21 realm of Class 9 accidents into subsets, say Class 9A, 9B,
22 9C and so on in the order of some arbitrarily assigned level
23 of probability and then perhaps redefining, for instance,
24 Class 9A into Class 8 design basis accidents is wholly arbi-
25 trary and has no factual justification at all.

1424 017

mpb7

1 The problem is there has been created by the
2 Atomic Energy Commission, and followed up by the Nuclear
3 Regulatory Commission, an incredible void in the study of
4 reactor accidents. And it has been created by this funda-
5 mental belief that these improbable accidents cannot occur, the
6 class of accidents cannot occur. Again, that fundamental
7 belief no longer exists. It must be accepted as false.

8 And now we're faced with the burden of either having
9 to live with these plants with an unknown, totally known, an
10 very possibly unknown level of safety, and it's a bit frighten-
11 ing.

12 The void exists because the NRC Staff has simply
13 not done its job. The dividing line between these accidents
14 is not based on objectives, it's based on beliefs. And this
15 is one of those things which has been effectively excluded
16 from this kind of a proceeding, because that has not been the
17 subject of contention.

18 We had that problem in the TMI 2 proceedings with
19 the aircraft crash accident. Here we had a definable accident,
20 an externally propagated event, if you want to call it, which
21 led by the admission of all parties to unacceptable consequenc-
22 es.

23 MR. TROWBRIDGE: That's an incorrect statement.

24 DR. KEPFORD: As I recall --

25 CHAIRMAN SMITH: Mr. Trowbridge, please don't

mpb8

1 interrupt Dr. Kepford. You'll have an opportunity.

2 MR. TROWBRIDGE: I'm sorry, Mr. Chairman.

3 DR. KEPFORD: As I recall the TMI 2 proceedings,
4 in response to a Board question by Mr. Gus Linenberger of that
5 Board, the contention in effect stated that in the event of a
6 crash larger than design basis aircraft in that plant, the
7 contention, rather, in the event of a crash of a larger than
8 design basis aircraft into the plant, unacceptable consequences
9 would fall therefrom, and it's my recollection in response to
10 a question by Mr. Linenberger of the Board that all parties
11 agreed that that was a correct statement of fact.

12 It's very easily checkable in the TMI 2 proceed-
13 ings. It's around page 520 of that proceeding, I don't
14 remember the exact page, but it's around there.

15 Of course, that issue has not yet been resolved,
16 and it rests again on the assumption of new probability, only
17 this way it's calculated by some series of mathematical models
18 which in effect take the place of carrying out the experiment.

19 But the idea of demanding that the intervenors
20 identify particular accident sequences that can be litigated
21 that is Class 9 is utterly ridiculous. In our discussions
22 with the Staff and the Applicant on contentions we have a
23 discussion of this subject which I alluded to a couple of days
24 ago and which I would like to complete today.

25 It was suggested that in order to give the Staff

mpb9

1 and Applicant something to litigate that ECNP suggested an
2 accident scenario. The problem is, of course, there are
3 possibly thousands, possibly tens of thousands, possibly
4 millions of accident scenarios.

5 The response of the Staff and Applicant could very
6 well be that any scenario we put forward is of too low a
7 probability to be considered, which is one way out. The other
8 way out is that secondly it's nothing more than a hypothetical
9 suggestion anyway and, as was stated by the Chairman of the
10 Board in the TMI 2 hearings, discussions of hypotheticals
11 carry no weight in the decision.

12 So we are cut off at the pass. We are denied our
13 function. The NRC refuses to do its job, and we are denied
14 the route to do their job for them.

15 (The Board conferring.)

16 CHAIRMAN SMITH: Dr. Kepford, how long do you plan
17 to stay on this subject?

18 DR. KEPFORD: Not very long, Mr. Chairman.

19 CHAIRMAN SMITH: Could you give me an estimate, sir?

20 DR. KEPFORD: No more than five minutes.

21 CHAIRMAN SMITH: Thank you.

22 DR. KEPFORD: Probably more like one.

23 CHAIRMAN SMITH: Thank you.

24 DR. KEPFORD: I do appreciate your patience.

25 Thank you.

mpbl0

1 In effect what has been happening over the course
2 of the licensing procedures and licensing history of nuclear
3 power plants is that the burden of proof of reactor safety
4 has been shifted from the Commission, from analysis by the
5 Commission, from research undertaken by the Commission, and
6 the solution of problems by the Commission, to the position
7 where research has been deferred, postponed essentially in-
8 definitely into the future to solve the fundamental problems
9 of reactor safety, that safety has been made a matter of declar-
10 ation, edict, Commission rules and whatever.

11 And I'd like to point to the response of the
12 Licensee to contention seven, which concerns ECCS. This is
13 page 20 of the Licensee's comments:

14 "It is clear that 10 CFR 50.36
15 addresses design requirements and not opera-
16 tional characteristics."

17 In the real world this is really, in my opinion,
18 nothing more than licensing models and hoping that nuclear
19 power plants then follow the characteristics of the model.
20 And what we are ultimately left in, the shape we are ultimate-
21 ly left in is that nuclear reactor safety will be determined
22 by experimentation, and the experimentation constitutes the
23 licensing and operation of nuclear power plants which brought
24 us to TMI 2.

25 Mr. Chairman, I think that pretty much concludes

mpb11

1 my discussion of Class 9 accidents. Thank you.

2 DR. JORDAN: In the discussion of contention 14,
3 does either the Licensee or the Staff wish to expand on their
4 replies?

5 MR. TROWBRIDGE: Mr. Chairman, I think I would
6 perhaps add something on the basis of what Dr. Kepford has
7 been saying. I think Dr. Kepford put the estimate at tens
8 of thousands or perhaps more -- correct me if I'm wrong --
9 possible Class 9 scenarios.

10 Is it the intent of -- I put it to the Board to
11 ask of Dr. Kepford whether it is the intent of his contention
12 that the Applicant and the Staff go through all conceivable
13 scenarios of accidents equating or attaching to them, as I
14 read this contention, the risk of the event and the conse-
15 quences of each of the events?

16 I have no idea where one would stop or start in
17 this process, or where Dr. Kepford would have us begin or
18 stop in the process.

19 (The Board conferring.)

20 CHAIRMAN SMITH: Mr. Trowbridge, had you completed
21 your remarks?

22 MR. TROWBRIDGE: Yes.

23 MR. TOURTELLOTTE: Mr. Chairman, a couple of points.

24 One is I believe we will address this item in our
25 brief, and certainly Mr. Kepford will have an opportunity to

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1 respond to whatever items we bring up there.

2 The second thing I think I want to mention in pass-
3 ing is one that I have mentioned before, and that is that we
4 must have a scenario for a Class 9 accident. And in that regard
5 I would like to point out to the Board that even if we were
6 in a situation where Class 9 accidents were litigable in
7 every other licensing proceeding and if the Commission were to
8 establish a rule that we could litigate Class 9 accidents in
9 every licensing proceeding, there would still be in this pro-
10 ceeding, because of our definition of scope which I believe
11 UCS and a large portion of the intervenors agreed with in this
12 case there would have to be a clear and close analogue between
13 the scenario proposed and the TMI 2 incident to bring it within
14 the scope of the special proceedings.

15 And that is even more the reason why in this case
16 the scenario needs to be proposed by the individual proposing
17 a contention on Class 9 incidents.

18 That's all I have to say about Class 9, but I do
19 want to touch on two other items.

20 The Staff has restrained itself while Dr. Kepford
21 has on numerous occasions mentioned what is outstanding as an
22 item to be litigated in TMI 2, and we believe this is in-
23 appropriate to bring up during the discussion. It is not
24 relevant. It will not exact any reliable appropriate evidence
25 during the course of the events, and simply takes up time

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1 unnecessarily in the conduct of these proceedings.

2 Moreover a good deal of what Dr. Kepford said was
3 not directed toward the legal issue of whether Class 9 acci-
4 dents are or are not litigable, but was broad rhetoric, an
5 attack upon the Nuclear Regulatory Commission.

6 There is no question in anyone's mind that Dr.
7 Kepford does not like the Nuclear Regulatory Commission nor
8 the way it operates its business. But we don't believe that
9 this kind of rhetoric adds to these proceedings either, and we
10 would request that the Board direct Dr. Kepford in the future
11 to confine his remarks to the issues at hand.

12 CHAIRMAN SMITH: Do you want to proceed to your
13 next contention?

14 DR. KEPFORD: May I respond to those comments very
15 briefly?

16 CHAIRMAN SMITH: He said nothing that requires a
17 response. He made a motion and we didn't act on it.

18 All right, make your response. We really want to
19 give you the maximum range of expression on this, Dr. Kepford.
20 But you do understand the problem that we have.

21 DR. KEPFORD: I do.

22 Counsel for the Staff would have us define a
23 particular scenario. I went through why that's an impossibil-
24 ity. That in essence locks the public into the position where
25 we have to go through every Class 9 accident that can happen

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1 in order to determine that they will happen, and this, I
2 submit, is a totally unacceptable scenario.

3 Having gone through it once and having been in the
4 area, I say the American people deserve far better than that
5 kind of experimentation.

6 Now, Mr. Chairman, we were at contention 1-E or
7 -F, as I recall.

8 DR. JORDAN: I think we've finished with -E and
9 will now be ready to go on to 1-F.

10 Proceed, Dr. Kepford.

11 DR. KEPFORD: My support of this contention would
12 rest with that given for the previous contentions which dis-
13 cussed safety related equipment and non-safety related equip-
14 ment and their ability to withstand accident conditions and the
15 hostile environments of accidents.

16 And with regard to the specificity, to the extent
17 that there is no specificity in this question, I rely on my
18 discussion of the Class 9 accidents. The specificity belongs
19 in the lap of the Nuclear Regulatory Commission.

20 CHAIRMAN SMITH: Now can't we make that same state-
21 ment each time?

22 DR. KEPFORD: Yes.

23 CHAIRMAN SMITH: Okay. That's your point, yes.

24 DR. KEPFORD: Yes.

25 I also see a scope problem in the Applicant's

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1 response to question 1-F. And we'll end there.

#8

2 CHAIRMAN SMITH: Any response?

3 MR. TROWBRIDGE: Yes, Mr. Chairman.

4 I'm not going to repeat the specificity problem.
5 We could do it with each of these contentions.

6 Instead I'm going to address the Staff response
7 to this contention because it's going to come up here and in
8 other places.

9 The Staff in this particular case decided not to
10 worry about -- it wasn't adequately specific, but we could get
11 to specificity through the discovery process, and that to me
12 is not a sound way to go at it.

c9

13 The Staff has taken this position not to this, but
14 to other contentions we will be coming to. We think --

15 MR. TOURTELLOTTE: Excuse me, Mr. Chairman.

16 In order to perhaps save time, I would invite
17 the Board and Mr. Trowbridge's attention to the fact that
18 yesterday we acknowledged that perhaps we lacked the precision
19 in designating that these items would be subject to being
20 developed in discovery, and that we agreed with Mr. Trowbridge
21 that a date certain should be set.

22 But simply in writing our answers this way we
23 envisioned that that date would be some time after this pre-
24 hearing conference and discovery would be well underway. We
25 have no objection to a date certain being set in agreement

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1 with Mr. Trowbridge.

2 MR. TROWBRIDGE: That takes care of, Mr. Chairman,
3 of at least half of my problem.

4 The other half, of course, is that in the meantime
5 discovery is a two-way street. It is not just a question of
6 our conducting discovery to find out what the contentions are
7 about, but it's being the subject of discovery on a front so
8 broad that we don't know where to begin and end, where proper
9 discovery begins and ends.

10 However, I think the most important -- perhaps
11 we'll have to live with that problem. The most important
12 thing is that there come a date when these contentions are
13 made more specific and we know what we're dealing with at the
14 hearing, and that it be through revised contentions with the
15 Board presiding over the determination in the light of the
16 information available to everybody whether they are reasonably
17 specific.

18 DR. JORDAN: We understand the arguments.

19 You can go ahead, Mr. Kepford, to your next
20 contention.

21 DR. KEPFORD: Contention 1-C. I believe the
22 objection stated by the Staff and Applicant to that contention
23 is reasonable, and I think under the wording of the Atomic
24 Energy Act and what we have requested there, more than
25 reasonable assurance, clearly goes beyond the Act.

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1 So I would have no objection to the scratching of
2 the two words "more than" or "substantially more than" in this
3 contention.

4 CHAIRMAN SMITH: Fine.

5 DR. KEPFORD: Contention 1-H brings us to an
6 unusual problem, one that we haven't faced, and that is no
7 objection by the Applicant and objection by the Staff.

8 MR. TOURTELLOTTE: We don't have any objection to
9 that.

10 CHAIRMAN SMITH: Okay, fine.

11 DR. KEPFORD: Fine.

12 Contention 1-I, control room interface, has no
13 basis and so on. Here I would like to read some abstracted
14 comments from a report into the record, and then describe where
15 the comments come from and what the report is, with your
16 permission, Mr. Chairman. This will be brief.

17 CHAIRMAN SMITH: Is it going to relate to the
18 objections?

19 DR. KEPFORD: It's going to add bases to the
20 contention.

21 CHAIRMAN SMITH: They didn't object based upon
22 bases, did they?

23 DR. KEPFORD: "Licensee objects that it does
24 not have specificity and a reasonable basis."

25 CHAIRMAN SMITH: All right.

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1 Concerning control rooms and the interface between
2 human beings, this study revealed a variety of errors. De-
3 signers have made little attempt to conserve space. The de-
4 signs maximize the distances the operator has to walk. Atten-
5 tion to primary panels must be diverted during both normal and
6 emergency operations. Control room illumination was generally
7 inadequate.

8 The most serious and universal problem observed
9 with meters is the lack of meter coding to allow the operator
10 to readily differentiate between normal, marginal, and out-of-
11 limits segments of the meter rule. When an emergency occurs,
12 the indicators and blaring horns overload the operator. Lack
13 of attention to control and display coding practices invites
14 error, especially in times of stress.

15 I will now quote a speech:

16 "This study was not by a public interest
17 research group, the NRDC or the GAO. It was pre-
18 pared for the Electric Power Research Institute,
19 EPRI. Its impact, certainly for backfit, was mini-
20 mal. I have not found any large amount of pressure
21 from the nuclear industry for control room improve-
22 ments, nor have I found sweeping concern on the part
23 of the Nuclear Regulatory Commission Staff."

24 The report in question is entitled "Human Factors:

25 A Review of Nuclear Power Plant Control Room Design - EPRI

eb2

1 NP-309, November 1976," and the speech is from Commissioner
2 John F. Ahearne, U. S. Nuclear Regulatory Commission, July 24,
3 1979.

4 Mr. Chairman, I think there are far more than ade-
5 quate bases for this contention contained in that report, of
6 which we do not have a copy.

9.070

7 (The Board conferring.)

8 MR. TROWBRIDGE: Mr. Chairman, I think I can save
9 the Board a little time here. We will relinquish our objection
10 to this contention and instead adopt the Staff position that
11 as we go along we try to get a better definition before the
12 Board as to what the complaints about the arrangement in the
13 control room are as they may have been altered. It's in our
14 Restart Report.

15 DR. JORDAN: Good. Thank you. We believe that the
16 basis seems to be adequate, and there is something lacking in
17 specificity and if that can be cured, then fine.

18 Let's go on to the next contention.

19 DR. KEPFORD: The next contention is Contention 2.
20 It is partially objected to by the Applicant, as I understand
21 it, and the Applicant suggests that we have an opportunity to
22 rephrase this contention upon receipt and review of the Appli-
23 cant's evacuation plan.

24 I have looked over that evacuation plan and I haven't
25 seen anything in it which would alter anything in this

eb3 1 contention. I have not reviewed it thoroughly.

2 I think it would be instructive, Mr. Chairman, if all
3 the parties in this proceeding were provided with a copy of
4 the transcripts of the TMI-2 proceeding whereby many days were
5 spent discussing emergency preparedness, the emergency plans
6 that existed in 1977 concurrent with the licensing proceeding
7 and the associated discussions, to sort of get our feet wet
8 with what the problems are with paper plans in the absence of
9 realistic problems. And realistic problems were revealed by
10 the TMI-2 accident.

11 And I think here for the first time ever is a
12 calibration point for the promises of the ability to evacuate,
13 given an emergency plan, the occurrence of an accident, and the
14 following more or less utter failure. And I would like to add
15 one more thing here:

16 In my opinion, from what I've been able to under-
17 stand of the TMI-2 accident, this was a most unusual accident
18 in that there was a considerable passage of time between the
19 initiation of the accident and the realization by authorities
20 that --

21 DR. JORDAN: Dr. Kepford, may I interrupt?

22 It seems to me that you are not arguing to the point
23 the basis for your contention. The acceptability that there
24 should be a contention on the adequacy of emergency plans
25 has already been said. The only problem apparently, and it's

eb4 9.120 1 chiefly the Applicant's problem, is with specificity, and I
2 think that that's the only thing you need to address.

3 As you say, there is a new emergency plan proposed
4 by the Applicant, and if it is your contention that those plans
5 are not adequate, then fine, that in itself makes it a good
6 contention. But as the contention reads, the Applicant had
7 some problems with specificity, and I think that's perhaps the
8 only thing we have left to resolve.

9 So I would suggest that we do confine it to the
10 problem of specificity. The basis is satisfactory.

11 DR. KEPFORD: Are you suggesting then that I go into
12 specificity now, or does this await the --

13 DR. JORDAN: The Licensee has responded to this
14 contention by suggesting that the contention be revised and
15 submitted after receipt of the updated emergency plan. Now you
16 say you have already seen the updated emergency plan.

17 DR. KEPFORD: I skimmed over it, yes. I have re-
18 ceived it and I have skimmed over it.

19 DR. JORDAN: And your contention then would be that
20 the plans are not adequate as the Licensee proposes?

21 DR. KEPFORD: That's correct. We have been dealt
22 one set of plans already.

23 DR. JORDAN: Now the Licensee may ask-- I will turn
24 then to Mr. Trowbridge:

25 Do you need more information as to how it is

eb5

1 inadequate?

2 MR. TROWBRIDGE: Yes, Mr. Chairman -- Dr. Jordan.

3 'I can do this the hard way with the discovery that Dr. Kepford
4 is so concerned about, or we can get a voluntary effort on the
5 part of Dr. Kepford to read those plans and suggest what it
6 is in those -- what he finds inadequate in them.

7 But it is inconceivable to me that Dr. Kepford could
8 not contribute more to what we should be talking about --

9 DR. JORDAN: Dr. Kepford has just now had a chance
10 to receive these plans. He hasn't had a chance really to study
11 them, and I would also suggest, if Dr. Kepford is willing to
12 look over these plans, to take some time and then if he can,
13 make his contention more specific it would save time in the
14 process of questioning back and forth.

15 If on the other hand he says he cannot make it more
16 specific even after seeing the plans, then I leave that to him.

17 DR. KEPFORD: I can give one very general and very
18 fundamental objection to this plan and that is it appears to
19 me -- two objections.

20 It appears to me that in devising this plan, the
21 Applicant has retreated from the plans that were used in TMI-2
22 to the extent that there will be the accident, the proposed
23 kinds of accidents will be allowed to advance further and
24 radiological consequences accrue to the public further than --

25 CHAIRMAN SMITH: Let me interrupt for the moment to

eb6 1 make sure we're being productive.

2 Are you now making a contention specific in this
3 respect, or are you arguing the merits of the emergency plan?
4 What is your immediate goal right now?

5 DR. KEPFORD: To add specificity to this contention.

6 CHAIRMAN SMITH: Okay. But as you have observed,
7 you have just received it and you haven't had a chance to study
8 it, and now is this going to be your specificity or are you
9 going to take advantage of the-- Why not take advantage of
10 the opportunity afforded to you to study it and make it specific?

11 DR. KEPFORD: Fine. That I will do, Mr. Chairman.

12 CHAIRMAN SMITH: We are now up to Number 3. I don't
13 think that one requires very much debate.

14 DR. KEPFORD: No. I will go on to Number 4.

15 It appears that with Number 4 we have a scope prob-
16 lem. The Staff does not object to the basic thrust. Here we
17 go again, the Staff wants to lead us down the garden path of
18 getting the Intervenors to propose accident scenarios so they
19 can be ruled hypothetical.

20 The Applicant suggests that such analyses have never
21 been a part of the Commission's safety reviews. I submit that
22 that is a fundamental problem, as I mentioned earlier, with the
23 safety reviews of the Commission. They should be broadened
24 enormously.

25 I don't see any point in going beyond that,

eb7

1 Mr. Chairman.

2 CHAIRMAN SMITH: Mr. Trowbridge.

3 MR. TROWBRIDGE: Mr. Chairman, that doesn't help me
4 very much. The contention is that both the Staff and we fully
5 evaluate the range of possible consequences-- I'm talking about
6 the first part of this contention -- of an accident such as
7 the TMI "if." And now we start in with a lot of hypotheticals:
8 The reactor operators had been less skillful. I don't know,
9 less skillful in what respect?

10 If the accident had taken -- or there had been a
11 core meltdown?

12 What is the purpose to be served by putting the
13 Applicant and the Staff through the examination and full
14 evaluation of the range of possible consequences of these varia-
15 tions on the accident? Perhaps if I understood what was to be
16 gained, what this Board would get out of it, I could better
17 address the contention.

18 At this point, as we have said in part among other
19 things in our answer, it is unclear to us what purpose would
20 be served.

21 CHAIRMAN SMITH: Mr. Trowbridge, aren't you in
22 essence restating your written response?

23 MR. TROWBRIDGE: I am indeed, sir, except I think I
24 am emphasizing one element of the response.

25 CHAIRMAN SMITH: Again, as much extra time as we

eb8

1 have allotted we're using up very rapidly. I urge people to
2 rely upon their written responses where those are adequate.
3 If they're not adequate we will take all the time we need.

4 You have completed; isn't that right, Mr. Trowbridge?
5 I'm not sure if I interrupted you or not.

6 MR. TROWBRIDGE: I think my repetitive remarks were,
7 I'm afraid, prompted by the fact that the Staff has taken the
8 position apparently that they would accept that they should do
9 an analysis of credible variations of the events at TMI. I
10 don't know what they meant by that.

11 DR. KEPFORD: I would hope if the Staff does that
12 that the Staff comes up with an explanation of how the dividing
13 line is drawn between credible variations and incredible varia-
14 tions.

15 Other than that, I see nothing more to be gained by
16 flogging this contention, Mr. Chairman.

17 CHAIRMAN SMITH: Mr. Tourtellotte or Ms. Mulkey?

18 MS. MULKEY: With the exception that our agreeing
19 that this contention is litigable does not necessarily imply
20 that we expect to undertake such an analysis, I have nothing
21 to add to what we've said in our brief.

22 CHAIRMAN SMITH: Okay.

23 Dr. Kepford, do you want to continue?

24 DR. KEPFORD: Content on 5 is objected to on the
25 basis of, at least among other things, an attack on the

eb9

1 Commission's regulations. I don't see this as an attack on the
2 Commission's regulations at all, and I would like to quote
3 from a memo dated May 9th from D. F. Bunch, Director, Program
4 Support, NRR, to D. V. Vassallo, Assistant Director for Light
5 Water Reactor Projects, Division of Project Management, NRR:

6 "10 CFR Part 100 requires that the assumed
7 fission project release used for site suitability
8 criteria calculations should be on that 'would result
9 in potential hazards not exceeded by those from the
10 accident considered credible.' The TMI-2 release of
11 13 million curies of xenon-133 is substantially greater
12 than that which was estimated as the maximum credible
13 release by the Staff in its review of the OL for
14 TMI-2 and it's probably larger than that which would
15 be predicted to occur in any of the site suitability
16 analyses for plants reviewed by the Staff in the last
17 decade."

18 If indeed the release of this 13 million curies
19 from TMI-2, Mr. Chairman, does go beyond the limits as they
20 were of 10 CFR Part 100, then it would certainly appear to me
21 that on that basis alone it can be assumed that the public has
22 received its once-in-a-lifetime dose of 25 rem to the whole
23 body as specified in 10 CFR Part 100.11....

24 Anyway, it's Footnote 2-- Oh, yes, Part 100-A-1,
25 Footnote 2.

eb10

1 CHAIRMAN SMITH: What you're doing now is you're
2 pointing out to us how this is a situation different than the
3 regulation?

4 KEPFORD: What I'm saying is in no way am I
5 at looking the regulations.

6 CHAIRMAN SMITH: I see.

7 DR. KEPFORD: What I'm saying is that it appears
8 certainly as though the releases from TMI-2 exceeded the site
9 suitability criteria for TMI-2, and my argument is that as a
10 result of that, there is no justification whatsoever for any
11 more exposure whatsoever to the people in this area from TMI-1
12 or TMI-2.

13 CHAIRMAN SMITH: Haven't we had a lot of argument
14 already on this point?

15 DR. KEPFORD: I don't think anybody has mentioned
16 the site suitability criteria.

17 MR. TROWBRIDGE: Mr. Chairman, we have had a lot of
18 argument, and I would like to borrow from Dr. Kepford the letter
19 he read from for a moment.

20 DR. KEPFORD: Sure.

21 Perhaps, Mr. Chairman, it would be appropriate to
22 identify further this document. It was a July 2, 1979, "For
23 Distribution" notification. There's a series of memos attached
24 to it. The subject is "Board Notification, TMI-2 Releases
25 (BN-79-23)."

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eb11

1 (Handing document to Mr. Trowbridge.)

2 MR. TROWBRIDGE: Mr. Chairman, why doesn't the pro-
3 ceeding go on and let me come back to this if I feel it neces-
4 sary?

5 DR. KEPFORD: As a point of clarification,
6 Mr. Chairman, it seems to me that as has been the procedure in
7 this proceeding, that once an issue has been passed it's more
8 or less closed. Perhaps now would be a good time to break for
9 lunch to stay on the track.

10 DR. JORDAN: Have we finished arguments on this
11 contention?

12 DR. KEPFORD: Apparently Mr. Trowbridge is unpre-
13 pared.

14 MR. TROWBRIDGE: Mr. Chairman, I wish to read care-
15 fully this letter.

16 CHAIRMAN SMITH: I think it is time for us to
17 realistically address the fact that we are not going to com-
18 plete the discussion of contentions this afternoon, today, and
19 I wonder if anybody might have any practical proposals on what
20 we can do about it. We simply cannot stay-- Well, it would
21 be pointless to stay over.

22 Mr. Lewis?

23 MR. LEWIS: I'm willing to cut my total time down to
24 20 minutes, period.

25 CHAIRMAN SMITH: That's what is occurring to me,

eb12

1 if perhaps we might not go to those with relatively short
2 presentations and let them go ahead of Dr. Kepford, and then we
3 can, at some other time, approach his problems in a more
4 deliberate fashion, and in the meantime, other people will have
5 relieved themselves of their problems.

6 DR. KEPFORD: Mr. Chairman, I have no objection
7 whatsoever with what you suggest. I would like to point out
8 that I don't see myself proposing terribly much argument for
9 most of the rest of my contentions.

10 CHAIRMAN SMITH: Well, Mr. Trowbridge has also taken
11 a lot of time in debating your contentions and I assume he is
12 going to continue, so we have to account for that, too.

13 DR. KEPFORD: I realize that, Mr. Chairman.

14 CHAIRMAN SMITH: I wonder, Dr. Kepford, if we don't
15 conclude, I just wonder if it might be possible for a Special
16 Session of this Conference to address solely your contentions
17 at a time soon-- Could you come to Washington perhaps? Would
18 it be possible for you to come to Washington for that purpose,
19 to the offices in Bethesda? I realize the burden.

20 The practicality of that is we control space there
21 and we have a very difficult time getting space here. It's as
22 much work to get space as it is to conduct the Conference.

23 DR. KEPFORD: Well, I realize that, Mr. Chairman.
24 That brings us back to this problem of financial support for
25 intervenors. It's withheld by the Commission on one hand, yet

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eb13

1 there appears to be no hesitation to applying the most amazing
2 series of burdens to them.

3 CHAIRMAN SMITH: Dr. Kepford, you can argue that and
4 boy, you can so easily persuade me about it, but it's not going
.. 5 to avail you of anything. As a matter of fact, I could add
6 some arguments on your behalf.

7 MR. POLLARD: Mr. Chairman, for this particular pro-
8 ceeding, given the total cost involved, would it not be less
9 expensive to pay his fare to Washington?

10 CHAIRMAN SMITH: I don't question that. You know,
11 I'm almost at the point where I'll pay it myself.

12 (Laughter.)

13 I don't question that. These things are raised over
14 and over again. They're obviously correct, obviously correct,
15 but I don't have any money.

16 DR. JOHNSRUD: Neither do we.

17 CHAIRMAN SMITH: I know, but what shall I do with
18 that fact? There's no question about it, we're asking you, for
19 the convenience of the Board, to come to us. And I can't pay
20 you, and it is an injustice, and I admit it. So what can I do
21 about it? I don't have any money to pay you.

22 MR. POLLARD: Mr. Chairman, would you have the money
23 to pay all of the Board to move up to State College?

24 CHAIRMAN SMITH: That's exactly right.

25 MR. POLLARD: Isn't there some way that a ticket can

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eb14

1 be bought out of one of the NRC Staff's funds?

2 CHAIRMAN SMITH: Your logic is unassailable. I can't
3 quarrel with it. If you can devise a way in which we can work
4 that out I would like to know about it, but I simply don't know
5 how to do it.

6 DR. KEPFORD: Mr. Chairman, I would appreciate then
7 some guidance in this matter because I was at the TMI-1 pro-
8 ceeding in 1973 where I think this issue of financial aid to
9 Intervenors was first broached under NEPA. The Environmental
10 Coalition has been rattling this issue under the Commission's
11 nose ever since then, and we still find ourselves being slapped
12 around, heaped with abuse, and heaped with burdens which-- And
13 I wonder what it takes to communicate with the Commission that
14 there is a problem, that the hearings are stacked as a result
15 of this, and there is no possibility of a fair hearing.

16 CHAIRMAN SMITH: Dr. Kepford, perhaps your problem--
17 Well, we all know what your problem is, but you are raising
18 your complaint to the wrong forum. I have my own philosophy
19 on it, and my philosophy is that at the very minimum -- and this
20 is a personal philosophy of mine -- at a very minimum, this
21 Board should be able to pay the expenses which would accelerate
22 the course of the hearing and could save money in the long run.

23 I mean if I could give you a plane ticket to
24 Washington we could save many times the cost of that plane
25 ticket. This is my own personal philosophy, and I have no

eb15

1 control over it.

2 DR. KEPFORD: I suspect then, Mr. Chairman, the
3 appropriate thing to do would be to certify this question --

4 CHAIRMAN SMITH: We have already ruled on that.
5 Nothing new has been argued. But I'm not going to digress in
6 this Prehearing Conference. If you can't come to Washington,
7 that's fine. I understand.

8 MS. CARTER: Mr. Chairman, it seems to me that it
9 might be possible to get some space somewhere here in Harrisburg
10 in the next week. Let me say that it doesn't appear that we
11 need as much space as we've got here.

12 CHAIRMAN SMITH: That's exactly right.

13 MS. CARTER: There are many more participants than
14 there is audience. Perhaps it would ease your administrative
15 burden a little bit in finding space if you went through --
16 maybe not -- if you went through with the federal bureaucracy
17 in the courthouse, the Federal Court Building.

18 CHAIRMAN SMITH: Ms. Carter, we have been turned down
19 by almost everybody on space, and this, thanks to the inter-
20 cession of the Pennsylvania TMI Commission and your recommenda-
21 tions, we did get this. I suppose there are others but even
22 if there are others, this Board is very, very busy with the
23 issues in this case and here we are.

24 Last night we debated endlessly papers, how to file
25 papers, and now we talk about space. And we want to have some

eb16

1 time to talk about contentions.

2 MR. POLLARD: Mr. Chairman, could we discuss the
3 matter informally over lunch, or after this meeting, and not
4 take up this time?

5 CHAIRMAN SMITH: I think that's a good point. We
6 have digressed.

7 Let's break for lunch. Do you think 45 minutes
8 would be sufficient today?

9 DR. KEPFORD: One more word, Mr. Chairman. I'll be
10 here for at least part of the Prehearing Conference public
11 limited appearances next week.

12 CHAIRMAN SMITH: That's true, but we assured people
13 that they would not have to be present at that to protect their
14 interests. I don't know if this is going to be a breach of
15 that assurance or not. You have to consider it.

16 DR. KEPFORD: I would be here and I would be willing
17 to sit down with you, Counsel for the Staff and the Applicant.

18 CHAIRMAN SMITH: You mean before that session?

19 DR. KEPFORD: Before or after, whenever. I'm not
20 sure which session I'll be here before.

21 CHAIRMAN SMITH: That's worthwhile exploring. It
22 certainly is.

23 MR. JORDAN: Would I go to one further point and
24 that is what remains of any procedural discussion like discovery,
25 it occurs to me we might deal with anything of that sort in

eb17

1 writing.

2 CHAIRMAN SMITH: I'm afraid it's going to boil down
3 to this. I was hoping we could avoid it, but we'll just have
4 to worry about it when it comes up.

5 In the meantime, the thing I'm concerned about is
6 our highest priority, to allow those Petitioners who have not
7 reached their contentions an opportunity to do so.

8 Mr. Lewis and Ms. Lee have even a greater problem.
9 There has to be a priority.

10 MR. LEVIN: Mr. Chairman, if you can direct me to
11 your scheduling person, the Pennsylvania Public Utility Com-
12 mission has some hearing rooms. I don't know if they'd be
13 adequate for our use, but I'm willing to assist in any way I
14 can.

15 We were approached before this Prehearing Conference
16 was scheduled in The Forum for hearing space and we did offer
17 Hearing Room Number 1. However, they took these quarters.
18 That Hearing Room Number 1 may be available, subject to other
19 commitments.

20 CHAIRMAN SMITH: You mean you had offered that in
21 this instance?

22 MR. LEVIN: Yes, indeed.

23 CHAIRMAN SMITH: That slipped through the cracks
24 somewhere along the line I believe.

25 MR. LEVIN: I guess it did.

eb18

1 CHAIRMAN SMITH: Perhaps because we didn't feel it
2 was large enough.

3 MR. LEVIN: I think that was the consideration.
4 Also there was some expectation that we'd have a larger crowd
5 for the Prehearing Conference than we had.

6 CHAIRMAN SMITH: All right, then you may have the
7 key to our problem there, if that might be available now.

8 MR. LEVIN: All I need to find out is who your
9 scheduling person is and talk to him.

10 CHAIRMAN SMITH: Is 45 minutes adequate?

11 All right, we'll come back at one o'clock.

12 (Whereupon, at 12:05 p.m., the Special Prehearing
13 Conference was recessed to reconvene at 1:00 p.m. the
14 same day.)
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AFTERNOON SESSION

MADELON
10 b1

(1:00 p.m.)

1
2
3 CHAIRMAN SMITH: May we proceed, please?

4 Off the record we had a discussion with Mr. Levin
5 as to the availability of hearing space on Wednesday, and the
6 Board has decided that an addition day is going to be necessary
7 to complete this special prehearing conference, and it will be
8 Wednesday of the coming week.

9 There will be space somewhere available at the
10 Pennsylvania Utilities Commission, but the exact room isn't
11 known yet, so we will report there on Wednesday.

12 And, Mr. Levin, could you recommend to us a
13 specific place that we should report to to find out where we
14 can go from there?

15 MR. LEVIN: Yes, sir.

16 The Pennsylvania Public Utility Commission is
17 located on the ground floor in the North Office Building,
18 which is about five minute's walk from here in the direction
19 of the Capital. It's the north flanking building, the building
20 that flanks the Capital.

21 CHAIRMAN SMITH: And then what room should we --
22 oh, excuse me.

23 MR. LEVIN: All right.

24 And the hearing rooms are located on the end of the
25 building closest to us, that is closest to the eastern end to

mpb2

1 -- the eastern end of the building, I guess it is. I will
2 try to obtain hearing room number one, which is a large hearing
3 room.

4 Now if you get lost all you have to do is ask for
5 hearing room number one, North Office Building, and it's the
6 only one in Harrisburg.

7 I'm informed that that's where the TMI 1 proceed-
8 ings took place. I guess you're referring to the Licensing.

9 DR. JOHNSRUD: Right.

10 MR. LEVIN: And it's a very nice room, it's wood
11 paneled like this one is. And I hope that we can get that one.

12 If not, I'll post a notice on the door. And if
13 worse comes to worse, I'll notify the Board and as many of the
14 parties as I can get hold of beforehand where else we can go.
15 Otherwise I'll just post a notice on the door.

16 CHAIRMAN SMITH: Okay, that's fine.

17 MS. MULKEY: Mr. Chairman, the NRC Staff has
18 presently scheduled and has sent out a notice for that day
19 for our meeting with the Licensee to discuss open items of
20 the safety review. And of course all participants have been
21 being invited to these meetings. I don't know the extent to
22 which they've been taking advance of that and to the extent to
23 which that might pose a problem.

24 I am informed that rescheduling that meeting within
25 a day or two or three is not readily easily done.

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1 CHAIRMAN SMITH: It may very well be that not all
2 of the counsel for NRC Staff will be able to make that session.

3 I want you to bear in mind when we are so arbitrary
4 that our rules don't really provide for responses by the
5 Licensee and NRC Staff when the intervenor responds to objec-
6 tions.

7 MS. MULKEY: Well, I didn't mean to express a con-
8 cern about NRC Staff attending both meetings. I only meant
9 the Board to know that other participants who wish to attend
10 meetings of that sort and have been doing so would be
11 unable to.

12 CHAIRMAN SMITH: These participants?

13 MS. MULKEY: That's correct.

14 CHAIRMAN SMITH: Is there anybody who was going
15 to attend that meeting that will, because of this schedule, be
16 unable to?

17 (No response.)

18 MS. MULKEY: Very good.

19 CHAIRMAN SMITH: So I don't see a problem.

20 MR. SHOLLY: Mr. Chairman, what time will we be
21 meeting?

22 CHAIRMAN SMITH: Nine.

23 MR. SHOLLY: Nine.

24 MR. POLLARD: Mr. Chairman, will it be other busi-
25 ness besides the presentation of these contentions?

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1 CHAIRMAN SMITH: Well, you see, there will be the
2 same business which had been scheduled for today. That is why
3 I feel comfortable in rescheduling this in the absence of the
4 petitioners who weren't here. And they're going to be invited,
5 of course, and informed that we're having this meeting, but
6 this is simply an extension of today's proceeding.

7 MR. POLLARD: Okay.

8 The problem is, if there's other substantive busi-
9 ness -- I had first understood before lunch it was just ECNP.
10 I think it's a different matter if there's other business,
11 because those people who stayed now who may probably not be
12 able, such as myself, to be present --

13 CHAIRMAN SMITH: Okay, you can't come. So you
14 can't come on Wednesday?

15 MR. POLLARD: Yes, I don't believe I can. In sub-
16 stance, I think it does pose an undue burden if substantive
17 matters are going to be imposed.

18 CHAIRMAN SMITH: Well, we have a more immediate
19 problem: your contentions.

20 MR. POLLARD: Yes, I realize that. Hopefully that
21 can be addressed today.

22 CHAIRMAN SMITH: I'm not aware of any more substan-
23 tive problems.

24 MR. POLLARD: Well, there was the question of the
25 clarification of the discovery.

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1 CHAIRMAN SMITH: Yes, that's right. I regard that
2 as procedural.

3 MR. POLLARD: Well, okay, procedural, then. I
4 consider procedural in substance to be --

5 CHAIRMAN SMITH: The only thing I can say is if
6 that happens -- and that probably will be one of the items
7 covered, and I can't help it. I mean you'll just have to --
8 we'll try to accomodate you in any reasonable way we can.
9 But this is going to come up throughout this proceeding. There
10 will be many days when not everybody can make it, but we're
11 just going to have to proceed sometimes nevertheless, depend-
12 ing upon the circumstances.

13 MR. POLLARD: Then I would just like to make it a
14 matter of record that I think these kind of arrangements
15 prejudice the hearings and prejudice the ability to particularly
16 give the aforesaid matters, the financial and other burdens
17 under which the intervenors are suffering --

18 CHAIRMAN SMITH: Well, do you have a counterproposal
19 as to how we might proceed and move this hearing along?

20 MR. SHOLLY: Mr. Chairman?

21 CHAIRMAN SMITH: Mr. Sholly.

22 MR. SHOLLY: I don't know what problems we might
23 run into; what time Saturday are the limited appearance state-
24 ments scheduled for?

25 CHAIRMAN SMITH: Nine.

mpb6

1 MR. SHOLLY: Perhaps we could go sometime Saturday
2 afternoon, if that's more --

3 CHAIRMAN SMITH: That's not a reliable prediction,
4 though, because we don't know what the other end of Saturday
5 are going to be.

6 MR. SHOLLY: Ture.

7 CHAIRMAN SMITH: This business has to be taken care
8 of. It is not unusual for an adjudicative proceeding to, once
9 it begins, to adjourn and adjourn and adjourn, and that's one
10 of the responsibilities.

11 It's difficult, I realize, and I'm very sympathetic
12 to your point.

13 MR. POLLARD: It does it does introduce new evi-
14 dence and new matters concerning the financial matter I think.

15 CHAIRMAN SMITH: The what?

16 MR. POLLARD: I think it does introduce new issues
17 and new additional considerations concerning the reimbursement
18 of or making financial provisions for --

19 CHAIRMAN SMITH: The fact that we're scheduling this
20 Wednesday?

21 MR. POLLARD: Yes. Specific --

22 CHAIRMAN SMITH: This is going to be a recurring
23 problem throughout this hearing and every hearing I know about.

24 MR. POLLARD: That's why we want funding.

25 CHAIRMAN SMITH: I know you believe that funding is

mpb7

1 necessary.

2 Does everybody believe funding is necessary?

3 (Show of hands.)

4 MR. LEVIN: Let the Reporter indicate that there
5 was a show of hands.

6 (Laughter.)

7 CHAIRMAN SMITH: And this is exactly, as Dr. Little
8 is pointing out to us, this is exactly what we're trying to
9 accomplish. This is exactly what we're trying to accomplish.
10 We're trying to relieve a burden.

11 You see, we can have a continuation of this special
12 prehearing conference in Washington. It would be within our
13 authority. It might be more convenient to you. But we're
14 trying to make it the most convenient for unfunded intervenors,
15 otherwise we wouldn't be quite that much concerned about it.

16 MR. POLLARD: I would just have the record add that
17 the Board also indicated the recognition of the problem.

18 CHAIRMAN SMITH: Yes, right, no doubt.

19 Now another reason we have worked it out that way
20 -- Look, if you object, go ahead, make an objection. Just
21 don't complain; make your specific objection and then you may
22 have to live with the ruling.

23 MR. POLLARD: For the record, I will object to the
24 establishment of the continuation of this hearing at a time
25 without adequate notice to make preparations for intervenors

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1 to be present as not available.

2 CHAIRMAN SMITH: Now shall we then proceed to take
3 you out of order to accomodate you, which seems to me to be
4 inconsistent entirely with your objection?

5 If I grant your motion we will discontinue with
6 Dr. Kepford, and we won't even get to you.

7 MR. POLLARD: Sir, that was not my intent.

8 CHAIRMAN SMITH: I didn't think it was.

9 Now you just make a motion. You tell us exactly
10 what you want us to do, just don't complain. When you make a
11 motion you state what relief you want; you just say what we
12 should do, and I will grant it or deny it.

13 MR. POLLARD: Okay.

14 The motion that the continuation of these hearings
15 be established at the time -- I don't know how to say it
16 exactly.

17 CHAIRMAN SMITH: All right.

18 In that event, your motion is denied.

19 Now I propose that we continue the contention that
20 Dr. Kepford was working on, and then we got to the other
21 intervenors -- assuming that you wish to -- and then see what
22 happens then.

23 DR. KEPFORD: Mr. Chairman, as I recall because
24 apparently I had raised an issue concerning the site suitability
25 criteria violation, which was totally new to Mr. Trowbridge.

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1 And he has had the memo from which I quoted, with the associated
2 memos, over the lunch period. And I guess it's up to him now.

3 CHAIRMAN SMITH: Mr. Trowbridge?

4 MR. TROWBRIDGE: Mr. Chairman, it was not new to
5 Mr. Trowbridge, it was simply that -- and I'm sure the reading
6 of it bears me out -- that the memo does not support in any way
7 the statements made by Dr. Kepford.

8 This is a memorandum which points out that the
9 actual releases of xenon -- and I stress of xenon -- in the
10 Three Mile Island 2 accident were in excess of the amounts
11 used for calculating offsite doses for purposes of determining
12 site suitability under Part 100.

13 I have no reason whatsoever -- I don't know what
14 releases of xenon were considered in that exercise. I have no
15 reason to doubt -- and I strongly suspect that this letter is
16 correct -- they were considerably less than the xenon releases
17 which actually occurred at Three Mile Island 2.

18 But to jump from there, as Dr. Kepford did, to
19 all of a sudden we have now exceeded Part 100 once-in-a-lifetime
20 permissible doses is ridiculous, and Dr. Kepford knows it.

21 The controlling calculation for every nuclear
22 power plant that I know anything about -- certainly for PWRs
23 -- is the iodine dose, not the xenon doses. Xenon is a mirror
24 contributor.

25 And we certainly do not have in the Three Mile

mpk10

1 Island accident significant iodine releases. We come nowhere
2 near in personal doses to the 25 manrem or 300 thyroid -- not
3 manrem -- the 25 whole body rem or 300 thyroid rem at the site
4 boundary, or the similar equivalent doses, in Part 100 at the
5 edge of the Low Population Zone.

6 And it is entirely misleading to suggest that the
7 TMI 2 accident subjected people to more than Part 100 doses.

8 CHAIRMAN SMITH: Would you like to respond?

9 DR. KEPFORD: Yes.

10 I'm really amazed. From the FSAR filed by Met Ed
11 in the licensing of TMI Unit 2, in Chapter 15 are discussed
12 the design basis accidents. The maximum release of xenon-133
13 in a design basis accident is 88,000 curies.

14 From that accident, as I recall, the dose at the
15 edge of the Low Population Zone for 30 day residents after the
16 release would be 320 millirem.

17 By simple extrapolation --

18 MR. TROWBRIDGE: From xenon --

19 DR. KEPFORD: May I continue uninterrupted, please.

20 -- 88,000 curies of xenon leads to a 320 millirem
21 exposure.

22 When account is taken for the mix of gases in the
23 design basis accident, and when that release of 88,000 curies
24 is scaled up to the 13 million curies referred to in the memo,
25 one comes up with, by my calculations, a whole body dose at

mpb11

1 the edge of the Low Population Zone -- this is two miles from
2 the plant, now, not at the edge of the exclusion zone -- a
3 dose, whole body, of about 27 rem.

4 For the maximum exposed individual, a two hour
5 exposure, if the 13 million curies came in a puff release,
6 again design basis accident calculations, it would be on the
7 order of 175 rem.

8 There we are.

9 DR. JORDAN: Well, it seems to me that the dis-
10 cussion of the exact amount of doses received by the residents
11 in the neighborhood is certainly subject to argument, and I
12 think there are plenty of documents that one can refer to
13 with respect to the TMI 2 accident.

14 One can make a determination on this:

15 I don't think that the number itself is important.
16 Certainly the accident did expose people in the neighborhood
17 to more than they were expected to get during a year's period
18 of time from the operation of TMI 2.

19 Now I believe it is Mr. Kepford's contention that
20 therefore TMI 1 should not be allowed to operate because it
21 would put radiation doses in addition to those which are
22 already high. Now it seems to me that the essence of Mr.
23 Kepford's contention is that there should be an analysis of
24 this dose that should be considered. And, as stated in his
25 last sentence of the contention:

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1 "The residents of the Susquehanna Valley
2 will then be exposed to radiation for which they
3 receive no commensurate benefit from radiation
4 that was not expected to be released."

5 So I believe that the essence is that there should
6 be -- it should be taken into account. There should be a
7 cost-benefit balance which should be done in a final environ-
8 mental statement.

9 And I believe it is Mr. Kepford's contention that
10 there should be such a final environmental statement.

11 Now it appears to me that this should be part of the
12 brief, that there should be an environmental statement, that
13 those doses should be taken into account.

14 DR. KEPFORD: That's part of the contention, Dr.
15 Jordan. I think it goes farther than that.

16 DR. JORDAN: What else do you contend?

17 DR. KEPFORD: Unfortunately I'm going to have to
18 dig it out. I got confused and I put....

19 CHAIRMAN SMITH: Try to be specific as to what the
20 contention is.

21 DR. KEPFORD: We're on Contention 5? 5.

22 (Pause.)

23 Mr. Chairman, I really think the guts of my argu-
24 ment is that the radiation releases have exceeded 10 CFR
25 Part 100 criteria, and as a result there's no justification

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1 whatsoever -- that the once-in-a-lifetime doses have been
2 exceeded for those individuals and there's no legal justifica-
3 tion under the Atomic Energy Act or any other statute for
4 further irradiating that population.

5 DR. JORDAN: I see. And therefore TMI 1 should
6 not be allowed to restart.

7 DR. KEPFORD: That is correct.

8 Furthermore, there should be no exposures from
9 TMI 2 since the site criteria have been violated.

10 DR. JORDAN: Okay. Very well. I believe the
11 Board does understand the contention and the responses thereto,
12 and that we should pass on now to others.

13 CHAIRMAN SMITH: Are we done with this contention?

14 Ms. Lee, is it convenient for you to return?
15 Knowing that you are the petitioner living closest, I wonder
16 if it is convenient for you to return Wednesday? Would you be
17 here Wednesday? Will you be here Wednesday in any event?

18 MS. LEE: Yes, sir, I could.

19 But since you have directed a question to me, I
20 wonder if I might prevail upon you for just a moment? I'm
21 not going to make a speech or anything. I have something
22 specific in mind as far as my position.

23 CHAIRMAN SMITH: All right.

24 MS. LEE: I would respectfully request the Board
25 to allow Dr. Kepford to offer his revised contention 16

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1 before I make my submission. It doesn't make any difference
2 to me when I do it, but it's important that a decision be made
3 on the revised contention of Dr. Kepford's contention 16, and
4 then I can very quickly, say in five minutes, dispense with
5 whatever I have to do. It will be the shortest one. Nor do
6 I feel that there will be any questions on the part of the
7 legal counsel, Staff or the Licensee.

8 CHAIRMAN SMITH: Okay.

9 My question is solely: should we assure Mr. Pollard
10 an opportunity to complete today and Mr. Lewis, and take you
11 at the end. Is that all right with you?

12 MS. LEE: That will be fine. And Wednesday will
13 be fine, it doesn't make any difference to me.

14 CHAIRMAN SMITH: Fine.

15 DR. KEPFORD: I have no objection whatsoever, Mr.
16 Chairman.

17 CHAIRMAN SMITH: Fine.

18 MR. LEWIS: Mr. Chairman?

19 CHAIRMAN SMITH: Mr. Lewis?

20 MR. LEWIS: If it would be convenient to you, I'll
21 present my stuff on Wednesday and my arguments on Wednesday.

22 CHAIRMAN SMITH: Well, then, that gives Mr. Pollard,
23 then, to address his contentions, and it should work out all
24 right.

25 MR. JORDAN: Mr. Chairman, Mr. Pollard has

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1 graciously granted me the opportunity to go to PANE's conten-
2 tions, and that will take about two seconds.

3 We have argued our psychological contention.

4 CHAIRMAN SMITH: Oh, I had overlooked the fact
5 that you had your --

6 MR. JORDAN: We come after him. I think we argued
7 the psychological contention on Thursday.

8 CHAIRMAN SMITH: Yes, I had thought that you had
9 also argued your emergency --

10 MR. JORDAN: I was just going to get to that.

11 The second contention is, if you will, a social
12 effects contention tied to psychological. That depends on
13 the first one. The third contention is emergency planning,
14 and I think we have discussed that. And we intend to work,
15 well, with all of the intervenors on that issue, but we intend
16 specifically to be working at least with Newberry Township
17 and we'll be intending to meet the kind of deadline that we
18 talked about with respect to them.

19 So that does it. And that's a pretty short present-
20 ation.

21 One further point. I would like to if we could
22 have an inventory of the procedural matters that we have left,
23 which I think is discovering timing. And with that, I think
24 I'd like to leave, because I think that's it.

25 CHAIRMAN SMITH: Yes, we have the discovery

mpbl6

1 scheduling, and we still have some problem with public docu-
2 ment rooms and service that weren't thoroughly aired. These
3 are mechanical problems that you may not even be particularly
4 interested in.

5 I don't think PANE will be interested in it because
6 you have access to everything with your offices in Washington.

7 MR. JORDAN: I think that's right, Your Honor.

8 CHAIRMAN SMITH: So if that's --

9 MR. JORDAN: If we have anything else to say on
10 anything further we'll address it in writing. Otherwise that's
11 it.

12 MR. CUNNINGHAM: Mr. Chairman, is it safe to assume
13 that the procedural issues will be discussed on Wednesday, then,
14 after all of the contentions have been taken care of?

15 CHAIRMAN SMITH: I think it might depend upon how
16 soon we -- Did you want to leave now? Was that your --

17 MR. CUNNINGHAM: Well, I'm just trying to get a
18 feel from the Board whether that -- assuming that Mr. Pollard's
19 contentions won't take that long, when specifically the subject
20 of discovery is going to be discussed today?

21 CHAIRMAN SMITH: Well then we would, in my view,
22 go to the pleasure of the parties at that point. We could get
23 a consensus and see which is most convenient for the most.

24 MR. CUNNINGHAM: That's fine.

25 CHAIRMAN SMITH: Okay.

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Mr. Jordan, I see you're leaving. Could I prevail upon you to advise Ms. Weiss as to the schedule --.

MR. JORDAN: Oh, yes, sir.

CHAIRMAN SMITH: -- and Ms. Sheldon?

MR. JORDAN: Yes, sir.

CHAIRMAN SMITH: Thank you.

MR. JORDAN: Thank you.

MR. POLLARD: My first contention addresses the environmental impact statement. I want to only make a brief statement on this because I hope to be able to have the time to prepare a brief on this matter. There are a few points I would like to clarify.

One is in relation to NRC Staff's response on the matter of the consideration of whether these proceedings involve a suspension proceeding.

Ms. Mulkey indicated to me informally that she is concerned -- the NRC is concerned that we not set any precedent for requiring that suspension proceedings include an EIS, and I have no such intent.

The consideration is that these proceedings are a special type of proceedings that go over and above the normal suspension proceedings, and that in view of that and in view of the events surrounding TMI 2 that gave rise to them, they create a special situation that is essentially a sui generis type of proceedings, so that a decision on this matter would

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1 not be affecting the general question as to whether enforcement
2 decisions, proceedings, per se, need have an FES. .

3 In a similar vein, now, the Staff has indicated
4 they plan an environmental impact appraisal. To the extent that
5 this impact appraisal covers the scope of an environmental
6 impact statement and also complies in basic form with the
7 procedures, requirements of an EIS, including the opportunity
8 for comment and review, that could indeed be a satisfactory
9 resolution of the matter. If -- in other words, that the EIA,
10 the environmental impact appraisal, be of a form equivalent
11 to an EIS, that could satisfy the issue.

12 In other words, it's not to establish precedent
13 on the enforcement proceedings. Okay. .

14 And again, to the extent that the Board takes it
15 upon itself to consider this environmental impact appraisal
16 as part of these proceedings -- in other words, doesn't con-
17 sider the discretionary action of the Staff as leaving a
18 discretionary issue as to whether this needs to be reviewed.
19 Okay.

20 There are a number of specific issues involved in
21 the environmental impact statement that I think are important
22 to address that address the adequacy of the existing environ-
23 mental impact statement. Those include, and not necessarily
24 in an order of priority, the consideration of alternative
25 energy sources including specifically, primarily, the complete

mpb19

1 absence of any consideration of conservation as an energy
2 source to replace the need.

3 The extent of conservation, the energy available
4 from conservation is enormous, and I don't need to go into
5 the discussion of that. But I think that's a major defect.
6 I think the reevaluation of the projected energy requirements
7 for the area in light of what has been a substantially lessened
8 increase in energy consumption than that projected creates a
9 need for reevaluation of the overall energy context, electrical
10 energy context.

11 I think too there's another defect in the environ-
12 mental impact statement in that no consideration is given -- in
13 my summary review to date of the EIS -- I had requested this
14 at the time of the negotiation session some two weeks or so
15 ago and Joe Gray, the NRC Counsel, had promised to send --
16 and did indeed forward to me shortly after that -- the EIS.
17 However it took about ten days or so to get to me, and I
18 received it on Tuesday.

19 On my summary review, I detect no reference to
20 the environmental impact of the fuel cycle, particularly the
21 mining and milling operation that would be required by the
22 implementation of TMI 1 and the environmental impact therefrom,
23 including but not limited to the impact of the radon releases,
24 the technetium 99 and the impact also on the -- what most
25 likely will be the native American lands from where most of

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1 this uranium is taken.

2 So that I think is a serious defect in the exist-
3 ing EIS.

4 DR. JORDAN: These things will be in your brief, of
5 course, if you submit a brief.

6 MR. POLLARD: Yes, sir.

7 Okay. Those are the main issues on that.

8 The other reference on page 28 of the counsels'
9 response to that, the significant new circumstances bearing
10 on the proposed action or its impacts -- this is in relation
11 to continuation proceedings of federal action involving
12 continuation of existing actions. Okay.

13 I believe that covers the basic response on the
14 EIS contention number one.

15 CHAIRMAN SMITH: Is there any reply?

16 Mr. Trowbridge?

17 MR. TROWBRIDGE: None, Mr. Chairman.

18 CHAIRMAN SMITH: Ms. Mulkey?

19 MS. MULKEY: No, Mr. Chairman.

20 CHAIRMAN SMITH: Okay.

21 MR. POLLARD: Okay.

22 In contention two, dealing with the adequacy of
23 emergency preparations, there are three -- four separate
24 sections, and Licensee objects to the contention in its
25 entirety, and the Staff objects primarily to the contention --

mpb21

1 to the first part, 2A.

2 Licensee's objection is based on the consideration
3 of the fact that 2A makes reference to a core meltdown and
4 breach of containment accident at TMI 1 and the need for
5 adequate preparation for such a contingency.

6 Basically this contention is very similar to that
7 of UCS's contention on the evacuation -- the adequacy of
8 evacuation plans. And I guess I particularly want to make
9 reference to the nexus question, whether adequate nexus;
10 namely the fact that the credibility of an accident at TMI 1
11 of a scope as large as that at TMI 2, and also the fact too
12 that the possibility that the TMI 2 accident could have
13 involved a hydrogen explosion that would have involved breach
14 of containment and core meltdown.

15 Okay.

16 The last part of it, of that section 2A, addresses
17 the situation -- makes reference to the situation that's been
18 discussed at length, and that I would hold off on the --
19 until discussion of my contention 12, which addresses the
20 general discussion request for requirements concerning the
21 analysis of those type of accidents.

22 But this is only the assertion that the necessary
23 analysis has not been conducted, and therefore the guarantee
24 -- the need exists to be prepared for such contingencies.

25 Contention 2B addresses the adequacy of the

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emergency medical facilities. And Licensee does not -- I mean
counsel for the Staff does not object to a properly framed
contention alleging the inadequacy of the medical facilities
to deal with radioactively contaminated victims. And to the
extent that such a contention be included -- I'm concerned
that such a contention that addresses the adequacy of the
medical facilities be included and that they do not be
excluded purely because of the connection with the core melt-
down breach of containment.

This is a serious matter that was brought to my
attention by Congressman McCulsky, who became aware shortly
after the March 28th accident of the gross inadequacy of
medical facilities to deal with contaminated victims.

I don't think any further discussion of the core
meltdown breach of containment accident is required for that.
And I would be willing to separate, if necessary, contention
2B from 2A so that the matter of the adequacy of the medical
facilities could be addressed.

DR. JORDAN: I don't think it's necessary to re-
number. We will consider them --

MR. POLLARD: Okay; just that it not be knocked
out as one.

In a similar vein, the question of 2C arises.
Again, Licensee -- Staff -- I'm sorry for the confusion --
There sometimes seems a basis for it, but I won't elaborate

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1 on that -- between NRC and Licensee.

2 However the NRC does not object to the substance
3 of this contention and notes that the phrase at the outset
4 "emergency measures" is confusing.

5 I want to point out that the contention ends
6 making specific reference to the -- such measures including
7 but not limited to substantially greater shielded auxiliary
8 storage tanks at the facility.

9 Again with this matter, as with the 2C, I think
10 the question of adequate protection against dumping of radio-
11 active materials into the Susquehanna is an essential matter
12 to be considered on its own, independent of the question of
13 the core meltdown issue.

14 2D addresses an issue that's basically the same
15 as Aamodt contention number five, and, again, in response to
16 the Staff's response on this, it does primarily refer to the
17 care of the animals, but that linkage with the farmers is
18 also there implied in it, as the Aamodts made clear with theirs.

19 CHAIRMAN SMITH: Is there a response?

20 MR. POLLARD: I was just going to say since the
21 Licensee only responded in totality, would they have a
22 specific response to the separate consideration of B, C and D?

23 MR. TROWBRIDGE: I think Mr. Pollard is quite
24 right. I've read B, C and D intending to talk about the
25 core melt breach of containment situation. To the extent they

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1 are not dependent on that, I don't think I have objection.

2 If CEA wishes these contentions to be considered
3 for lesser emergencies, so be it.

4 MS. MULKEY: I wish only to add that it is not
5 clear from our response, and we do object to 2C and 2D to
6 the extent they would be linked to the consequences of core-
7 melt and breach of containment.

8 DR. JORDAN: Well, it's --

9 MR. POLLARD: I understood that despite the omission.

10 DR. JORDAN: It seems to me that if CEA has looked
11 at or will look at the plans for -- the emergency plans of the
12 Applicant, if those plans do not in their opinion adequately
13 protect the public, then they have a right to point out in
14 what ways those are adequate. And we will surely be hear-
15 ing from them and other intervenors and the Board on this
16 matter.

17 So I don't think we need to spend more time on it.

18 MR. POLLARD: Contention number three:

19 "Licensee" -- asterisks -- with the appropriate
20 meaning of that --

21 "would reference the revision with
22 specificity on receipt of their monitoring
23 plan."

24 And basically the Staff's response is the same,
25 so I don't feel there's any need to elaborate on that, unless

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1 Staff or Licensee has any additional response.

2 MR. TROWBRIDGE: No.

3 DR. JORDAN: I think we can go ahead with that one,
4 that one there's no problem.

5 MR. POLLARD: Okay.

6 Contention four, the response of both Staff and
7 Licensee I think are helpful in reframing this in a way that
8 would convey the intent. Licensee suggests that I challenge
9 the Licensee's offsite monitorings are untruthful. It was not
10 so much that as saying that, okay, reference to the inadequacy
11 of some of the failures of some of the monitoring devices, but
12 more specifically that the Licensee has lost credibility in the
13 eyes of the public and the public is -- on the basis of other
14 actions associated with the accident, including withholding
15 of information from the NRC, et cetera, and the public, so that
16 Licensee does not have the credibility, requisite credibility
17 that the public can remain confident that information that
18 monitoring data analyzed and released by Licensee is accurate.

19 So in response, however, I did not intend an
20 attack on 10 CFR 20.201, and I think if I framed the conten-
21 tion in requiring the Licensee to contract with a competent
22 independent monitoring agency to monitor offsite radiation
23 that this would accomplish the intent.

24 The original -- okay. That would basically be the
25 intent again. I would make clear it was not an attack on the

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1 inaccuracy, per se, of the monitoring methods, but the public's
2 lack of credibility and the public's right to information that
3 it feels it can trust.

c11

4 MR. TROWBRIDGE: Mr. Chairman, I appreciate the
5 clarification of the contention. I would, in addition to the
6 response we have given, I would like to associate myself with
7 the Staff response which made a point which I missed, which
8 is that Appendix E to the Commission's Regulations, Part 50,
9 specifically calls for monitoring either by a Licensee or by
10 an arrangement of the Licensee.

#10

11 CHAIRMAN SMITH: So what does that mean?

12 MR. TROWBRIDGE: That means in essence that it is
13 an attack on the existing Commission regulation.

14 MR. POLLARD: As I understood it, if I'm asking
15 that the Licensee contract with an independent monitoring
16 agency, that is providing that the Licensee shall cause to
17 be made, and since Appendix E does not prohibit -- since it
18 allows they may control but does not prohibit such control, it
19 would also appear that it does not prohibit that the control
20 is not maintained by Licensee.

21 MR. TROWBRIDGE: No, it permits the Licensee to
22 do either.

23 DR. LITTLE: Mr. Pollard, you're making the case
24 that in this instance that there is reason to say that with
25 Metropolitan Edison there should be an independent monitoring

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1 agency, that this is a special instance?

2 MR. POLLARD: This is a special instance.

3 DR. LITTLE: That's the point you were trying to
4 make?

5 MR. POLLARD: This is a special instance and I
6 think that one way is to do a poll of the people in this area
7 as to whether if it was restarted, you know, you could intro-
8 duce such evidence, you know, that I think you would find
9 that the Licensee would not be believed.

10 DR. JORDAN: Then will the situation not be this:
11 That you will look carefully at the Licensee's proposed
12 monitoring program in the case of emergency. If that program
13 to you appears inadequate you will challenge it partly on the
14 basis that it was -- did not perhaps have an independent
15 agency, but it might be for other reasons too.

16 MR. POLLARD: Yes, I think that's true.

17 DR. JORDAN: Then I don't -- as being one of the
18 mandatory issues, I think that's a pretty good basis for
19 considering it.

20 I think we can go ahead.

21 MR. POLLARD: I guess the only question is whether
22 Licensee is suggesting that in order to deny Licensee the
23 option of controlling its own monitoring, that that would be
24 an attack on regulations which require, 2.758(B), et cetera.

25 DR. JORDAN: We'll worry about that when we come

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1 to it.

2 MR. POLLARD: Okay.

3 Okay, contention five. Okay.

4 Except for the parenthetical reference to the
5 breach of containment and meltdown, which Licensee notes,
6 Licensee has no objection. And also, that's basically true
7 that, while Staff doesn't make that exception, I presume they
8 intended to.

9 And the other aspect of the discussion of matters
10 related to TMI 2, we do not seek to litigate those matters in
11 these proceedings. We're involved in those elsewhere, and so
12 that's not -- we realize we would be in the wrong forum there.

13 end
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In Contention 6, the licensee does not object.

2 The staff raises an objection primarily concerning the wording
3 "posing potentially severe conflicts."

4 I'd be happy to amend this to make specific refer-
5 ence to the availability of adequate water storage capability
6 and possible site evacuation requirements.

7 Let me say, it could include but not necessarily
8 be limited to those possible bases of conflict.

9 DR. JORDAN: Would that take care of the staff
10 objection?

11 MS. MULKEY: I think it possibly would, at least
12 with the opportunity to explore the "not necessarily limited
13 to" phrase through discovery, and perhaps have it specified as
14 to the date at which specificity is to be put in other conten-
15 tions.

16 DR. JORDAN: Good. Let's move on to No. 7.

17 MR. POLLARD: There is no objection to No. 7,
18 so I can move right on beyond that.

19 Contention 8 concerning the managerial capability.
20 The licensee objects because of the inadequacy of the -- or
21 the lack of specificity of statements regarding licensee's
22 management capability.

23 I could add, I think, the parenthetical reference
24 to -- I was trying to save time and paper in terms of making
25 a parenthetical reference rather than repeating. I could
repeat them. I could raise the ipsi dixit issues raised by

WRB/wb2

1 ANGRY. I feel they are sufficiently adequate.

2 If required to do so, I could amend to put those
3 in. I could also add the matter of the management's with-
4 holding of information from the NRC. I'm sure I could add a
5 lot of matters. But I feel that basically it would not really
6 be necessary.

7 The license also objects to the matter of including
8 the ability to repair the damage that they have allowed to
9 happen as being not a reasonable requirement to demonstrate
10 the competence of management.

11 On that matter, you know -- and, again, I'm not
12 quite sure, the way I understand the Board, and you can maybe
13 correct me if I'm wrong; if there's a particular element in
14 the contention that's unsatisfactory for some reason, that
15 that section can be stricken without striking the entire
16 contention.

17 Am I correct in that?

18 CHAIRMAN SMITH: Generally a Board would view it
19 that way. If we looked at a contention that we felt was essen-
20 tially accurate except for part of it, we might just strike
21 the part we felt was insufficient.

22 But there are certain risks attendant to that if
23 you leave it to the Board to redraft your contention. You
24 might not like it.

25 MR. POLLARD: Yes, I understand.

1424 076

WRB/wb3

1 DR. JORDAN: Here again, the management has
2 presumably submitted a plan for revised management of the
3 facility, and we are going to be litigating this matter: Is
4 that management plan adequate? And if that is your contention
5 that it is not adequate, it seems to me that that would be suf-
6 ficient.

7 MR. POLLARD: To my knowledge I haven't received
8 such a plan.

9 CHAIRMAN SMITH: Could you tell me how your con-
10 tention differs from the mandatory issue No. 6? I've been
11 reading them back and forth, and it seems to me that--

12 MR. POLLARD: I'm not really sure that it does
13 differ in substance. The reference to the cleanup of TMI-2
14 is the difference. I don't think it's necessary. I could
15 withdraw it.

16 The other aspect, which is the last sentence, both
17 the licensee and the staff object to, is the question of show-
18 ing cause as to why the operating license should not be sus-
19 pended. And I meant to put "revoked permanently" as having
20 allowed the 3/28 accident.

21 While I think that that probably properly should
22 be deleted, it should be taken up in a different forum.

23 CHAIRMAN SMITH: Does that worry you? Does that
24 mean it's going to kill your whole contention?

25 MR. POLLARD: It doesn't worry me if there's--

WRB/wb4

1 CHAIRMAN SMITH: That's the type of thing you
2 should not worry about, at least in this particular instance.

3 MR. POLLARD: Okay.

4 CHAIRMAN SMITH: You're beginning to think like a
5 lawyer now, Mr. Pollard. And that's not really a compliment,
6 it's just an observation.

7 MR. POLLARD: An occupational hazard.

8 (Laughter)

9 Is there any response from licensee or staff?

10 MR. TROWBRIDGE: Mr. Chairman, we did object to
11 this. It's partly my personal reaction to the "for example"
12 technique used in contentions. That doesn't tell me what's
13 coming next.

14 I'm going to withdraw my objection. But let
15 Mr. Pollard be aware that I will attempt through discovery to
16 get some of what I find lacking in the contention.

17 CHAIRMAN SMITH: Contention 9.

18 MR. POLLARD: It deals with the adequacy of the
19 financial resources of the licensee. And it mentions the lack
20 of specificity required by the Commission. The licensee brings
21 that up.

22 I think a number of-- Licensee states that this
23 contention lacks the specificity required by the Commission.

24 DR. JORDAN: He's referring to the contention.

25 MR. POLLARD: Right; rather than the basis for it.

WRB/wb5

1 I lack the specific financial information at the
2 moment as to what the licensee has in the way of pending
3 PUC proceedings involving the possible substantial financial
4 impact to the licensee. I'm aware of numerous reports by
5 licensee or by GPU of impending or possible bankruptcy of
6 Metropolitan Edison, and I feel like in those conditions those
7 are sufficiently adequate bases for believing that the manage-
8 ment hasn't -- the licensee hasn't adequate resources to operate
9 TMI safely.

10 CHAIRMAN SMITH: Mr. Pollard, I would like to
11 interrupt your discussion of the contention here to inquire
12 of the staff and licensee whether any thought has been given
13 to the possibility of incorporating the relevant proceedings
14 before the Pennsylvania Public Utilities Commission on the
15 issue of financial qualifications into this proceeding?

16 I'm not saying, or suggesting in the slightest
17 that we would be bound by it or anything, but there may be a
18 certain degree of efficiency which could be involved there.

19 I see Mr. Trowbridge shaking his head.

20 MR. TROWBRIDGE: Mr. Chairman, in part you appall
21 me. We have a fair TMI-1 and 2 overload in the office already
22 without my having to become to that degree familiar with the
23 PUC proceeding, which is fortunately being handled by other
24 counsel.

25 CHAIRMAN SMITH: All right. Well I think that

WRB/wb6

1 pretty much puts that to rest.

2 MS. MULKEY: Mr. Chairman, we have gotten far
3 enough to determine that we will probably seek to get that
4 information so the staff can take it into account in its
5 review to the extent that the timing makes that feasible;
6 at any rate, to seek information from the PUC to assist us in
7 our review, whether it be the record or some other -- or
8 whatever other information would be available during the time
9 frame involved.

10 We do not now plan to delay our review as a result
11 of that.

12 CHAIRMAN SMITH: Well my point was, we certainly
13 cannot delegate to the Utilities Commission the responsibility
14 to decide this issue for us. But it seems to me there -s
15 going to be a great deal of expertise expended in that pro-
16 ceeding on this very issue. And I am of a thrifty nature: I
17 hate to see it go to waste when perhaps it could be brought
18 into this case and could save parties a lot of effort.

19 MR. TROWBRIDGE: Mr. Chairman, my firm prediction
20 is that you're talking about sorting out a truckload or
21 two of material, and the chore of determining which belongs
22 in this record would be.... I don't mean that the PUC decision
23 isn't important, that some of the data presented in the PUC
24 decision would not be important, and, most of all, the decision
25 of the PUC is absolutely critical.by not trying to make

WRB/wb7

1 their record part of ours.

2 CHAIRMAN SMITH: My instinct is that it would per-
3 haps be more trouble than it would be worth. But I just did
4 want to inquire if any thought had been given to that.

5 MR. POLLARD: Mr. Chairman, I would certainly
6 support that. I think it would be interesting, because in
7 those proceedings the licensee will be attempting to show how
8 little money it has, and I think it will--

9 CHAIRMAN SMITH: No; I understand there are some
10 parallel issues over there. I'm talking about the Utilities
11 Commission's show cause order. --I mean show cause proceeding.

12 MR. POLLARD: Okay.

13 CHAIRMAN SMITH: Go ahead.

14 MR. POLLARD: There's another aspect on Contention
15 9 which relates to the licensee's, requesting the licensee
16 to demonstrate the financial capability to withstand another
17 accident, an accident at TMI-1 commensurate to that at TMI-2.
18 And the licensee objects to this as an attack on the Com-
19 mission regulations.

20 I would point out in reference to this that the
21 Kemeny Commission in Recommendation 7, page 64, recommends
22 that,

23 "The agency should be directed to in-
24 clude as part of its licensing requirements, plans
25 for the mitigation of the consequences of accidents,

WRB/wb8

1 including the cleanup and recovery of the contaminated
2 plant. The agency should be directed to review
3 existing licensees and set deadlines...." etc.

4 So that this would seem to me to be some basis for
5 requesting that the licensee -- that those plans should in-
6 clude financial plans and capabilities. And I think the
7 reference there is the prospect of starting up TMI-1, having
8 another accident and then having Met Ed incapable of respond-
9 ing financially, with adequate resources, to clean it up.
10 It's a horrifying thought.

11 Again, whether this would require a petition
12 under 2.758(b) -- it may. And, if so, I would be prepared
13 to try to draft such a petition, provided reasonable time
14 was available.

15 CHAIRMAN SMITH: Wouldn't you also have a problem
16 with the scope of the order and notice of hearing?

17 MR. POLLARD: Oh, insofar as it relates to operat-
18 ing TMI-1 safety?

19 CHAIRMAN SMITH: Yes. There are three places
20 where financial qualifications are mentioned.

21 MR. POLLARD I'd have to review that.

22 CHAIRMAN SMITH: Pages 7, 12 and 14.

23 MR. POLLARD: Again, I would request that the Board
24 be prepared to drop that last sentence -- I believe it is the
25 last sentence -- to the extent it would jeopardize their con-

WRB/wb9

1 sideration of the contention.

2 Okay. Contention 10, basically, in the way I have
3 formulated it-- Okay. Contention 1. to address the defect
4 in the environmental impact statement of lack of consideration
5 of the environmental impact of the mining and milling opera-
6 tions, and, also, I think the other aspects of this could
7 reasonably be considered in that EIS. I neglected to mention
8 in reference to Contention 1 consideration of Item C here.
9 And I think this is a serious matter that, to my knowledge,
10 has not been considered. The possibility of the loss of
11 uranium of this magnitude of what I understand to be approxi-
12 mately 240 pounds is something that cannot be separated from
13 the requirement of the -- of an operating plant to have uranium
14 fuel pass through all elements of the fuel cycle. So I think
15 this should rightfully be considered in the environmental
16 impact statement. --or appraisal.

17 I think if I formulate it in this way I suspect
18 staff and licensee will have no particular response. So I'll
19 essentially withdraw it and place it under Contention 1.

20 MR. TROWBRIDGE: Under Contention 1?

21 MR. POLLARD: Right.

22 MR. TROWBRIDGE: You would get the same response
23 as you got to Contention 1.

24 MR. POLLARD: Yes.

25 Contention No. 11 addresses basically the situation

WRB/wb10

1 that we're all faced with here, of dealing with immense
2 amounts of information. And to my perception, the extent of
3 the information is such that it just about becomes unreason-
4 able to believe that everything within these proceedings can
5 be fully digested and absorbed; that essentially we are at a
6 state where the decision has to be made not on any single
7 individual, individuals, or small group of individuals being
8 able to comprehend all the material at all-- And there is
9 so much information. Everything has to rely on second-hand,
10 third-hand, hearsay information, basically testimony, as to
11 what is contained in all these documents.

12 I think there is also a reference too, in here,
13 implicit of the particular burden that the matter in terms
14 of the adequacy -- the impact of this information overload
15 on the ability of the public interest, health and safety
16 intervenors to be able to adequately address all the informa-
17 tion and issues involved in proceedings.

18 I think this represents basically-- And I think
19 the Kemeny Commission makes recommendations to this effect;
20 that a branch of the NRC which is essentially an ally of the
21 public interest intervenors and who has its main task to
22 prosecute the safety and health issues, would they be able to
23 help support, provide far greater administrative and effective
24 support for public interest intervenors.

25 I think the Kemeny Commission also addresses this

WRB/wdl1

1 issue somewhat in its first recommendations concerning the
2 Nuclear Regulatory Commission. The references to the NRC--

3 I'm quoting here:

4 "The NRC does not possess the organi-
5 zational and management capabilities necessary for
6 the effective pursuit of safety goals."

7 CHAIRMAN SMITH: Do you think we have the authority
8 to do that?

9 MR. POLLARD: To consider this?

10 CHAIRMAN SMITH: To adopt the recommendation in
11 Contention 11?

12 MR. POLLARD: I think it would probably involve
13 certification to the Commission, or some such. I don't know
14 that there is-- I think basically, though, I would mention
15 specifically in elaborating on this before finishing that the
16 impact, to basically point to the essence of it, the impact
17 of this information overload is specifically to have the
18 effect of prejudicing the ability of the Commission and its
19 subparts to adequately address safety and health related
20 issues.

21 As we see, basically it's the same analogy with
22 the actual mechanical level of the plant's operation. So
23 the small breaks in information within the system can have
24 substantial implications in terms of what effect that has on
25 other aspects of the proceeding.

WRB/wb12

1 Licensee is basically correct, I think, in com-
2 menting that it appears to be an attack on the entire scheme
3 of NRC regulation, and I think they may even go beyond that
4 and say that the matter is not capable of regulation. However
5 I don't think it's essential that that be included. It's
6 possible we could find a way to get beyond paperwork and all
7 this incredible-- You don't need to be reminded of it, but it
8 is clearly burdensome in practice and also creates a very clear
9 problems in terms of being able to get to the essence of
10 what we need to know.

11 CHAIRMAN SMITH: All right, Mr. Pollard. Continue.

12 MR. POLLARD: I think basically that's all that I
13 want to say on this matter.

14 I think the question of what I'm basically asking
15 for is a thorough review of the regulatory procedure, with
16 specific reference to this issue. And I do feel it is some-
17 thing that I think is necessary to insure that all the stuff
18 going through is really being able to be digested.

19 CHAIRMAN SMITH: I think you made that clear.
20 Any response to that?

21 MR. TROWBRIDGE: No response.

22 MS. MULKEY: No response.

23 CHAIRMAN SMITH: The last one you have to worry
24 about is 12.

25 MR. POLLARD: Okay. 12 basically is an issue that

WRB/wb13

1 has been discussed in a number of other contentions. I don't
2 particularly believe that my wording of it is any better or
3 clearer than any of the others. But I would like to state
4 some arguments, and I think possibly with an eye to restating
5 this or reformulating this in a way that may address the issue
6 that others have sought to address.

7 CHAIRMAN SMITH: Well, now, you mean you want to
8 restate the arguments that others have--

9 MR. POLLARD: No; I don't want to restate the argu-
10 ments. I want to formulate it in a way that is more specific,
11 that is more clearly defined. I have a reference here to
12 50 CFR Appendix A which addresses this issue to some extent.

13 I think one of the problems that has been addressed
14 is the lack of specificity in the requests. Basically the
15 issue is that the safety analysis, accident analysis, has
16 been inadequate in that it has basically been concerned with
17 a single system or single issue breakdown as opposed to evaluat-
18 ing multiple simultaneous, or near simultaneous breakdown of
19 different systems. And I think what has been asked for has
20 been some general reviews, the need for some kind of accident
21 analysis which evaluates multiple occurrences of system --
22 breakdowns in different systems.

23 I would make reference here to, as I mentioned,
24 10 CFR Part 50 Appendix A, page 50-26 of that section, in
25 which it states,

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WRB/wb14

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"The development of the General Design Criteria is not yet complete. Some of the definitions need further amplification. Some of the specific design requirements for structures, systems, and components" -- I'm omitting a few words to save time. -- "have not as yet been suitably defined. Their omission does not relieve the applicant from considering these matters in the design of a specific facility and satisfying the necessary safety requirements.

These matters include,

"(2) consideration of redundancy and diversity requirements for fluid systems important to safety," and some elaboration on that which I think is pertinent.

"(4) Consideration of the possibility of systematic non-random concurrent failures of redundant elements in the design and protection systems and reactivity control systems."

I think this is really the heart of it, the consideration of the possibility of systematic non-random concurrent failures of redundant elements.

Basically the way I would propose that the safety analysis, accident analysis, be conducted is by consideration -- is in terms of consideration of all those factors, those, one

WRB/wb15

1 could I guess put it, Class 1 through Class 8 accidents occur-
2 ring individually, that the combination of those, a simultane-
3 ous occurrence of any two or more of those, be considered.
4 Because this is basically the issue, that there has been a
5 linear way of looking at a single breakdown rather than look-
6 ing at what is probably a much more realistic situation and
7 also a very critical situation, and the situation that hap-
8 pened at TMI-2: a multiple system breakdown.

9 I think that's the nature of the accident analysis
10 that I believe the other intervenors with these types of con-
11 tentions have been looking for. And I think that is more
12 specific than some of the other formulations. And maybe
13 without going further on this point I would entertain ques-
14 tions for clarification from the Board on my formulation of
15 this, and see whether they see this as any more specific.

16 DR. JORDAN: Well I don't feel that I should neces-
17 sarily try to firm up the contention. I can see that the
18 licensee and, I believe, the staff have problems, partly with
19 specificity, that it's not something they could get their
20 hands on.

21 You refer to the General Design Criteria. The
22 General Design Criteria require that failures of systems be
23 considered. However you're saying it doesn't require that
24 multiple failures of many systems be considered simultaneously.
25 And I believe you state accurately the situation.

WRB/wb16

1 Now, if you could point to instances where the
2 design of TMI-1 fails to meet the General Design Criteria, of
3 course that would be very specific and there'd be no problem
4 at all with your contention, particularly if it's in the area
5 of small break LOCA such as they had at TMI-2, or if you can
6 say that there are failures which are much more probable and
7 could point to failures which are much more probable than the
8 staff has assumed in the past, that would certainly be
9 adequate. But just to say that there are failures, that
10 multiple failures are possible:-- everyone knows it's possible:
11 it happened at TMI, in the TMI-2 accident, of course.

12 Now is it probable that there will also be
13 failures in TMI-1, multiple failures leading to accidents?
14 No one can guarantee, of course, that there won't. The only
15 hope is they can make that probability so low that they become
16 not significant, or not expose the public to a real danger.

17 Now if somehow or other the applicant fails to do
18 this in his redesign, and anyone can point out where the re-
19 design of TMI-1 is wide open and it's probable that such
20 accidents will happen, then this Board wants to know exactly
21 that.

22 I guess I can't help but be sympathetic with the
23 staff and the applicant and say that the contention is so
24 broad that they don't know where to get started. And this has
25 been the same problem with some of the other contentions.

WRB/wbl7

1 MR. SHOLLY: Mr. Chairman, I raised this issue
2 before, pointing to similar phrasing in the introduction to
3 Appendix A, and I think pointing to specific violations of the
4 General Design Criteria in this case is impossible because
5 what we're dealing with are situations for which General Design
6 Criteria have not been developed.

7 In the introduction to the General Design Criteria
8 it specifically says the fact that those have not yet been
9 developed does not relieve the applicant of the responsibility
10 to consider them.

11 I think what Mr. Pollard's contention is advancing
12 is the fact that those have not been considered, especially
13 systematic non-random concurrent failures in safety systems.
14 And I think there has been a general admission that those have
15 not been considered. And if there is anything we have learned
16 from the Unit 2 accident it's that those concurrent failures
17 must be considered.

18 It was this tunnel vision of considering one
19 failure only that got us here in the first place. And I think
20 that's what he's driving.

21 DR. JORDAN: I think so, too. But we need to know
22 wherein has the applicant failed to make these considerations.

23 MR. SHOLLY: Everywhere. That's the problem.

24 MR. POLLARD: Dr. Jordan, I think my contention --
25 our contention: I believe it is basically a collective

WRB/wb18

1 contention that we all share, and I think we all see the
2 importance of it and are frustrated with the question of how
3 we can formulate it in a way that's acceptable.

4 I think there seems to be an acknowledgement-- I
5 think, however, in terms of your questions, what I see -- what
6 we're saying in the contention is that absent a systematic
7 accident analysis of multiple system failures we don't have
8 the requisite assurance.

9 Now obviously any such accident is still open to
10 questions as to accuracy of probability estimates, etc. But
11 I think a systematic accident analysis of multiple system
12 failures is the question. Then the parameters bounding that
13 I think need to be defined. But that is essentially it.

14 I think the Kemeny Commission addresses this on
15 page 24 -- no; on page 63, in Recommendation 4, (b) goes to,

16 "The agency should be directed to employ
17 a broader definition of matters relating to safety
18 and other safety emphases."

19 Section (c)(1),

20 "A systems engineering examination of
21 overall plant performance, including interaction
22 among major systems, and increased attention to
23 the possibility of multiple failures."

24 I feel that that problem must be acknowledge and
25 addressed in these proceedings. And whatever it takes to

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WRB/wb19

1 define the parameters of that examination is a problem that
2 we're encountering.

3 I think if we could get some kind of consensus
4 that that is the problem and that the definition of the para-
5 meters is the problem, then it might be an important step
6 toward resolving the admissibility of the issue.

7 DR. JORDAN: Yes. But as Dr. Kepford pointed out
8 this morning, there has been an analysis, a systematic analysis
9 of multiple system failures. It's called WASH-1400. And it's
10 not the lack of an analysis, but, rather, I think, a question
11 as to whether the analysis has included all -- has put its
12 fingers on the right things. And this we need help in, surely.

13 I think Dr. Kepford says since you can't go
14 through everything you shouldn't license the plant; which is
15 his conclusion. I don't necessarily adopt that conclusion.
16 But we cannot go one-by-one through all of the various chains
17 in the WASH-1400, neither could we be assured that all the
18 chains in WASH-1400 are necessarily inclusive. And it's obvi-
19 ous that at least one of the chains in WASH-1400 did not have
20 the probabilities attached to it.

21 Now what can we do about finding if there are
22 others that anyone here perceives in which the numbers are in
23 error in WASH-1400, and we should have them pointed out.

24 Now do you want to address my statement?

25 MR. POLLARD: I guess it's more than a question of

12.460

WRB/wb20

1 sort of evaluating the numbers. Somehow that has to be done.

2 Also, again, I haven't read WASH-1400 and I don't
3 know what estimates in there particularly include operator
4 error, human behavior, too. It's not just a question of
5 system breakdown and mechanical failure, but obviously operator
6 error is the major component that has to be addressed.

7 DR. JORDAN: It certainly does. And if the
8 applicant has not addressed operator error adequately then
9 he's going to be directed to look into this again. If he does
10 not address operator error adequately, then it's a matter of
11 grave concern to us.

12 Mr. Sholly has always been helpful when the Board
13 seems to have a problem, so we're going to call on Mr. Sholly
14 at the moment.

15 MR. SHOLLY: I don't know how helpful this is
16 going to be, but it seems if by some mechanism we don't come
17 to grips with this issue then the probability that another
18 Class 9 accident is going to be created by systematic, non-
19 random concurrent failures is unity. That has already been
20 proven. We've got to come to grips with this.

21 Now I'm not sure right now how to do it but I'm
22 going to be working on, you can be assured of that.

23 DR. JORDAN: If the probability is unity then of
24 course the system is wrong. But if the probability is 5×10^{-5}
25 as Mr. Rasmussen says, when you add them all up together then

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WRB/wb21

1 it certainly seems like we're talking in the right ballpark.

2 But, as I say, it may be that Mr. Rasmussen and
3 that group made a goof and left things out; and, if so, they
4 need to be identified. And if you're saying that there should
5 be another thorough WASH-1400 study undertaken by the staff,
6 I couldn't agree more. I do agree. If you're saying it's
7 possible that they have made a goof, that we have failed to
8 look at something and that there could be an accident in
9 TMI-2, I can't help but agree.

10 We frequently hear it stated that experts always
11 say that there can never be an accident in these places.
12 Well the experts do not state that, as you well know,
13 Mr. Sholly. So what our job here is, is to make sure as we
14 possibly can that the fixed put on to TMI-1 will be adequate
15 to protect the health and safety of the problem; and by that
16 I mean, reduce the probabilities down to the place where in
17 general people will say it's reasonable. You cannot make it
18 zero, and we know that.

19 MR. SHOLLY: You seem to be implying that it's
20 terribly difficult to construct scenarios where systematic
21 failures could result in severe consequences, and I just
22 say that --

23 DR. JORDAN: It's not at all difficult.
24 Mr. Rasmussen concocted a thousand of them.

25 MR. SHOLLY: I have come up with six that are more

1424 095

WRB/wb22

1 severe than Unit 2, and they are very close analogs to Unit 2.

2 DR. JORDAN: I can do that, too.

3 CHAIRMAN SMITH: Wait a minute now.

4 DR. JORDAN: You say you have half a dozen close
5 analogs which you think are much more likely than, say, the
6 Rasmussen Report. If that's the case, then you've got a con-
7 tention, that here is the way you believe the accident can
8 occur, the probabilities are much higher than has been esti-
9 mated by the staff -- and I would say by "estimated by the
10 staff," we look at those numbers in WASH-1400. If you say
11 they've goofed on that then let's hear about it, by all means,
12 Mr. Sholly.

13 MR. SHOLLY: I'm working on a contertion relating
14 to that right now.

15 DR. JORDAN: Very well. We invite you to make
16 such a contention. The UCS and Mr. Pollard are also invited--
17 The UCS is not here today. But Mr. Pollard here is also
18 invited. This is what we have to have. You just can't say
19 "It's inadequate. The staff hasn't done a good job." That
20 isn't enough for us.

21 Dr. Kepford? Please don't make it long.

22 DR. KEPFORD: Thank you, Dr. Jordan.

23 First off, I didn't make any particular reference
24 to WASH-1400, as I recall.

25 DR. JORDAN: No, you did not. You just said there

1424 096

WRB/wb23

1 were lots of ways, and I agreed, and point out to you that
2 WASH-1400 agrees with you. There are lots of ways to have a
3 Class 9 accident.

4 DR. KEPFORD: And of course they haven't touched
5 on this -- well, the entire realm of sabotage, which I think
6 due to the psychological conditions of the public in this
7 area makes TMI-1 or 2 or both the most probable plants in the
8 world for an attempt.

9 DR. JORDAN: Very well. This may be one of your
10 contentions. Bring it in as a contention.

11 DR. KEPFORD: It is. And I really would like to
12 quote you the last paragraph on page 24 of the Kemeny Commission
13 report.

14 "Overview. We have an overwhelming con-
15 cern about some of the reports we have seen so far.
16 While many of the proposed fixes seem perfectly ap-
17 propriate, they do not come to grips with what we
18 consider to be the basic problem. We have stated
19 that fundamental changes must occur in organizations,
20 procedures and, above all, the attitudes of people.
21 No amount of technical fixes will cure this underly-
22 ing problem. There have been many recommendations
23 for greater safety for nuclear power plants which
24 have had limited impact. What we consider crucial
25 is whether the proposed improvements are carried

WRB/wb24

1 out by the same organizations (unchanged) with
2 the same kind of practices and the same kind of
3 attitudes that were prevalent before the accident,
4 prior to the accident. As long as the proposed im-
5 provements are carried out in a business-as-usual
6 atmosphere the fundamental changes necessitated by
7 the accident at Three Mile Island cannot be
8 realized."

9 Dr. Jordan, what I feel you are doing is locking
10 us in to business-as-usual.

11 DR. JORDAN: Dr. Kepford, please. We are not in
12 any way disagreeing with the Kemeny report. We also feel
13 that there are fundamental changes that are needed in attitudes
14 and other things. We couldn't agree more. And we expect
15 to find those changes in attitudes in this restart of TMI-1
16 If they are not there, then it should be denied.

17 Now, then, it's not my job here to go through and
18 find them all. I need your help, too.

19 DR. KEPFORD: Dr. Jordan, my point is -- and we
20 have a contention on this subject, too -- you're locking us
21 into the business-as-usual solution, which is, as I described
22 earlier: we propose the scenario, the staff shoots it down
23 because it's of too low a probability to consider, or it's
24 hypothetical and should be given no weight in the licensing
25 proceeding. That's the business-as-usual scenario. And I

WRB/wb25

1 think that is wrong.

2 DR. JORDAN: Very well.

3 Dr. Kepford, you say the staff has shot down
4 because the probabilities were -- they claimed the probabili-
5 ties were low. That's not their job. If you believe that
6 there is a scenario in which the probabilities are high, then
7 you should let us know about that. And we invite you to do
8 so.

9 Now you pointed out this morning that the scenario
10 of the airplane was not given adequate consideration in any
11 other licensing. Now that is not a matter of our concern
12 right here at the moment. But presumably that was one scenario
13 that was considered. And I don't know what the outcome was.
14 I presume they decided that the probabilities were small.
15 Now you don't agree with the answer, but that's what litiga-
16 tion is about.

17 DR. KEPFORD: That's still in litigation, Dr. Jordan.

18 DR. JORDAN: I expect so.

19 DR. KEPFORD: That's one of the two unresolved
20 issues left over from TMI-2. I again refer you to page 11
21 of the Kemeny Commission overview, the first full paragraph
22 where they state:--

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(The Board conferring.)

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CHAIRMAN SMITH: Unless the subject can directly

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pertain to the scope of the Board's authority in this case, I

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believe there has been discussed all that can be discussed. I

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don't see any other opportunity for productivity on it. You

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must bring it in as we discussed, future contentions and this

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one. You have to start talking about what we can do, what we

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can do, and you simply don't talk about that.

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You talk about what the industry should be like but

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not what this three-member Board can do. Now when you don't

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do that then you're not helping us

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DR. KEPFORD: Are you addressing me?

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CHAIRMAN SMITH: I'm addressing all the Petitioners

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who wish to raise this.

15

DR. KEPFORD: I would love to answer that question.

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CHAIRMAN SMITH: Not now. We're going to talk about

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this contention and the general recommendations that you're

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making to us, that we redesign the nuclear industry, isn't

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going to help us. Maybe you're going to convince us; I don't

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know. Assume you do. Until you tell us how this Board can do

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what you want us to do, you're wasting everybody's time.

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DR. KEPFORD: Mr. Chairman, you have asked --

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CHAIRMAN SMITH: Mr. Kepford, be quiet.

24

We're talking about this contention. You'll have an

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opportunity later.

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1 Will you proceed?

2 MR. POLLARD: I think what I would suggest that we
3 can do right now, we acknowledge it's a problem, we acknowledge
4 it's related to the accident at TMI-2, and that I think has a
5 bearing on this proceeding.

6 I think, for example, Mr. Sholly is talking about
7 drawing up specific scenarios. There is a problem around that
8 in --

9 CHAIRMAN SMITH: We've heard this.

10 MR. POLLARD: Let me suggest that --

11 CHAIRMAN SMITH: Please be new.

12 MR. POLLARD: This is new. This is suggesting that
13 the Board take this issue into consideration and establish some
14 way that this can be systematically addressed and evaluated
15 during the proceedings.

16 CHAIRMAN SMITH: We have repeatedly assured you that
17 we will consider your points of view, and if we say it 30 more
18 times we can give you no greater assurance.

19 MR. POLLARD: I'm not just saying consideration in
20 relation to the acceptance of certain contentions but that this
21 Board take it upon itself to -- whether it is, for example, to
22 convene some conference or whatever of the various parties to
23 address this, to try to come up with a way that it can be
24 addressed, contended appropriately.

25 I think that's a real --

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CHAIRMAN SMITH: That's your recommendation?

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MR. POLLARD: Yes.

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CHAIRMAN SMITH: Thank you.

4

Any response to Contention 12?

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MR. TROWBRIDGE: Yes, Mr. Chairman. I'll try to

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keep it very brief, and I'll start with the very last recommen-

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dation by Mr. Pollard.

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It starts with a premise which I think this Board

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needs to think very, very carefully about. Mr. Pollard is

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correct that a number of Intervenors around this table feel

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and feel very sincerely that the system needs to be changed,

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the approach to accident analysis needs to be changed, the

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industry approach and the regulatory approach.

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I think the difficulty indicates that this is not

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an easy or short job but the premise behind Mr. Pollard's

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request, his latest request as well as others, is that somehow

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this Board should sit on TMI-2 while the whole process is re-

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done and while every other reactor in the country continues to

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operate.

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CHAIRMAN SMITH: Now I think we've concluded,

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Mr. Pollard, there being no objection to 13?

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MR. POLLARD: Does the Staff have any comment?

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MS. MULKEY: I believe it would be useful to state

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that while the NRC Staff is deeply concerned about the whole

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area of accident analysis, that it remains our view that

1 consideration of accident analysis in this proceeding must be
2 limited to analysis which bears some sort of nexus. We define
3 a clear and close analogue to the accident and the bases for
4 suspension of this reactor.

5 MR. POLLARD: May I have one final, very brief
6 response?

7 What Licensee raises I think is exactly what we are
8 asking, that TMI-1, I would not not 2, be sat on until this
9 issue -- be held hostage until this issue is resolved.

10 CHAIRMAN SMITH: That isn't new. That statement has
11 been made at least six times; I know it has to be at least
12 that many times. Don't assume that we don't hear you. We do
13 hear you.

14 Then I think we have concluded your contentions.

15 MR. POLLARD: Yes.

16 CHAIRMAN SMITH: Thank you.

17 Mr. Lewis, would you prefer to have your presentation
18 on Wednesday?

19 MR. LEWIS: Yes.

20 I believe Ms. Lee has a difficult time --

21 MS. LEE: No, I'm coming back Wednesday.

22 CHAIRMAN SMITH: Now we discussed yesterday the
23 possibility that six papers, three to the Board, one to the
24 Licensee, one to the Staff, and one to the Secretary at a mini-
25 mum should be filed, and we let it go at that.

eb5 1 Then we began spending quite a bit of time after
2 the hearing talking about that, and we learned that during the
3 course of the Prehearing, this Prehearing session, that some-
4 times there would be a delay of as much as ten days or two
5 weeks from the time that a Petitioner's paper was dated until
6 the time it was date-stamped by the Secretary.

7 So we're going to send the Licensee and the Staff
8 back to the drawing table to come up with something better and
9 take this burden from us. We're wasting too much time. Relieve
10 us of this burden. Figure out how to handle this problem. And
11 that's a direction.

12 MR. TROWBRIDGE: Mr. Chairman, does that direction
13 include not only what we recommended but our supplemental
14 suggestions for aiding in the reproduction?

15 Mr. Chairman, let me say this --

16 CHAIRMAN SMITH: Can't you try again? Can't you do
17 better than that?

18 MR. TROWBRIDGE: Mr. Chairman, I have to say this
19 because I'm genuinely puzzled at the moment about what you would
20 have us and the Staff do.

21 We have a maximum delay, to my knowledge, -- it's
22 Dr. Kepford's case where he filed a document on time and it
23 took four days to get to us. We didn't take a chance on the
24 mail because time was so short on this; we sent messengers
25 around to pick up from everybody who would give us a copy

eb6 1 which, incidentally, did not include Dr. Kepford.

2 I certainly agree with you, Mr. Chairman, that there
3 is a long time if what you're going to count on is from the
4 date of filing, when they're supposed to be filing and when
5 the Public Document Service sends it out.

6 Our proposal, as you will recall, was that many
7 documents had to be filed on everybody. Motions would have to
8 be filed on anybody affected by the motion. Testimony would
9 have to be filed on everybody. The only place where we tried
10 really to draw back on the direct mailing was in the area of
11 interrogatories, essentially interrogatory requests to us, not
12 by us. We will distribute any requests we make to everybody
13 even if they are addressed to a single person, as the rules
14 contemplate.

15 But I think if you will look more carefully at our
16 proposal, it did not count on getting to the Public Document
17 Room or the Docketing and Service Section and then from there
18 back to somebody who needed it.

19 CHAIRMAN SMITH: I understand that. However, it
20 didn't take into account that-- It made a fundamental assump-
21 tion that all the papers filed by Intervenors were needed
22 solely by the Board, the Licensee and the Staff.

23 MR. TROWBRIDGE: No, sir, it did not. It did make
24 the assumption that interrogatory requests need not be re-
25 ceived that quickly by all the other Intervenors if an Intervenor

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1 chose not to, but documents that we felt would affect the
2 interest or require some action by any other party would indeed
3 be served on that party. If our suggestion on that was not
4 clear --

5 CHAIRMAN SMITH: The difficulty is that it takes --
6 I'll concede that there is strong evidence here that I don't
7 understand your proposal, but I know this, that before this
8 Special Prehearing Conference I spent a lot of time at the xerox
9 machine and the stapling machine and the collating machine to
10 make sure that the Petitioners got papers that they should have
11 received to begin with, and I'm too busy for that and I'm tired
12 of being a clerk in this case. And if there is going to be
13 delay because of it, it's going to be at the expense of the
14 Licensee.

15 MR. TROWBRIDGE: Mr. Smith, I am prepared to at
16 least offer you one other suggestion, that everybody mail
17 precisely in accordance with the regulations, and we still have
18 outstanding our offer to reproduce for people on the basis I
19 said yesterday. I am perfectly happy with that.

20 I think that's going to be a burden for some Inter-
21 venors and I'm not sure when they're serving-- I really ques-
22 tion the sense of the rule of the Commission. The Commission's
23 Rules of Practice say that when one party files an interroga-
24 tory or an answer to an interrogatory, he must file his
25 interrogatory request or his answer on every other party and

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1 the Board. I think it's a senseless rule myself, and I was
2 trying to suggest to the Board that it could cut back sensibly
3 on the requirements of the --

4 CHAIRMAN SMITH: It's not interrogatories that I'm
5 concerned about. I'm concerned about other motions that affect
6 potentially all the parties. I'm concerned about a very, very
7 complicated procedure which is poorly understood by the Peti-
8 tioners.

9 MR. TROWBRIDGE: In that case, Mr. Chairman, I will
10 repeat my -- I would point out that we would have had everybody
11 who files a motion file it on everybody affected by the motion,
12 but I believe there is room for misjudgments on that score
13 and I will go back to the simple proposal: Everybody files in
14 accordance with the regulations.

15 We will do what we have offered to do and help out
16 in reproduction.

17 CHAIRMAN SMITH: The more we think about it the more
18 it looks like the requirement is going to have to be that at
19 least one representative from every Intervenor be served with
20 a paper that is filed even by unfunded Intervenors. Otherwise
21 we face the potential of pointless ten-day to two-week delay
22 on the most trivial motion.

23 So that would mean then we would have approximately
24 a total of -- I never really have counted how many of us are
25 here, but there's approximately 15 plus five, which would mean

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eb9 1 you would have to come up with 20 copies.

2 Mr. Levin.

3 MR. LEVIN: Mr. Chairman, if possible I would suggest
4 we discuss these filing matters off the record. It would save
5 a lot of the parties a great deal of expense, if possible.

6 CHAIRMAN SMITH: You mean because of buying the
7 transcript?

8 MR. LEVIN: That's correct.

9 CHAIRMAN SMITH: Does anybody object to going off
10 the record?

11 MR. POLLARD: I'm not sure what the advantage is. I
12 think some of the discussion may be very relevant and points
13 may be raised that --

14 CHAIRMAN SMITH: I think that possibly we could go
15 off the record, and summarize if need be statements made.

16 MR. POLLARD: For example, things that relate to
17 undue burden, et cetera.

18 CHAIRMAN SMITH: You have to understand this, --

19 MR. POLLARD: However, that wasn't --

20 CHIARMAN SMITH: You have to understand this, that
21 what the Board is trying to do is we've spent a lot of time and
22 a lot of effort to try to figure out some way to relieve the
23 burden of unfunded Intervenors. We don't really have to do
24 that. The rules are there and we can say comply with the rules,
25 but we want to explore it.

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eb10 1 MR. POLLARD: Mr. Chairman, I have a novel sugges-
2 tion that I think hasn't been introduced before. I think it's
3 a thing you brought up, the question of the burden on the
4 Licensee, we could delay and things like that.

5 One suggestion that I think -- which is not so much
6 a decision you would make or the Licensee would make would be
7 if the Licensee offers to copy our documents, what about the
8 question of Licensee paying -- reimbursing Intervenors for
9 copying documents --

10 MR. TROWBRIDGE: The answer is no.

11 MR. POLLARD: --and possibly funding Intervenors?

12 I think that there is a real issue here --

13 CHAIRMAN SMITH: We can't order that.

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14 MR. POLLARD: I know you can't. If Licensee refuses
15 to consider --

16 MR. TROWBRIDGE: Licensee refuses to consider it.

17 MR. POLLARD: I don't see the difference between
18 reimbursing for copying from doing it themselves, but I feel
19 that, you know, it does get right down to that issue. It adds
20 far more additional meat also to the question of the financial
21 funding of Intervenors.

22 It's fundamentally related to --

23 CHAIRMAN SMITH: But they've refused.

24 MR. SHOLLY: Mr. Chairman, if I may, it may reduce
25 the burden on the Intervenors considerably if we can come to

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1 some sort of informal agreement not to serve each other with
2 certain types of documents, and we have not had an opportunity
3 to discuss that yet because we've spent a great deal of time
4 discussing consolidation. It's certainly a possibility.

5 CHAIRMAN SMITH: That's an idea. Now if that can be
6 done, we are very eager to explore those methods. If we don't,
7 the Board is sitting here with this problem:

8 A motion is filed, we receive it on Day Three. Two
9 weeks later the Secretary indicates that he has served it, and
10 then there comes a time for response and the time for response
11 plus three days we receive it, but ten more days the Secretary
12 indicates that he has served it.

13 It just won't work that way.

14 Now I understand, Mr. Trowbridge, that you do not
15 intend to get that result but that leaves a judgment then up
16 to each Intervenor to determine who is affected by the motion.
17 And if you can work it out, we will accommodate the Intervenors
18 on reducing that burden so long as it satisfies due process
19 to each Intervenors. That's the problem, you see.

20 MR. TROWBRIDGE: Mr. Chairman, I think you'll note
21 that if I recall correctly, even our suggestion for cutting
22 down on the numbers of interrogatories served was accompanied
23 with the proviso that other Intervenors agree not to be served,
24 waive their right for service under the present regulations.

25 CHAIRMAN SMITH: This suggests something to me right

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1 now.

2 Would it be offensive to the Intervenors if we were
3 to appoint a temporary chairman of the Intervenor -- have an
4 Intervenors' committee who would be responsible for getting
5 together with Intervenors and perhaps them selecting their own
6 organization to make joint recommendations to us that will
7 assure due process among you all, and get some system of organi-
8 zation? Does that sound like a good idea?

9 Mr. Lewis?

10 MR. LEWIS: I feel that that would put a great burden
11 on the chairman. Furthermore, I already have an understanding
12 with a couple -- several of the Intervenors that I don't have
13 to send copies to them in order to reduce my costs.

14 CHAIRMAN SMITH: That's not going to work on an
15 individual basis. There has to be some organization that the
16 Board knows about and approves. Otherwise it's going to be
17 chaotic.

18 Does anybody object to that plan?

19 DR. KEPFORD: Yes, Mr. Chairman. I object. It seems
20 to me that there is very little that can be done here except
21 to heap more burdens on the Intervenors.

22 CHAIRMAN SMITH: I can solve your problem quite
23 simply, Dr. Kepford. Just comply with the rules.

24 I'm offering an opportunity for you to explore ways
25 by which the rules don't have to be complied with.

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eb13 1 I think we've run out of time. I see no interest in
2 my proposal so --

3 MR. POLLARD: Mr. Chairman, I think the sense of the
4 Intervenors' providing some kind of joint response is a good
5 one. I think we've got to think in terms of, you know,
6 concrete specifications, you know, what kind of time frame
7 we're talking about responding to.

8 CHAIRMAN SMITH: The central issue --

9 MR. POLLARD: I'm not uncomfortable --

10 CHAIRMAN SMITH: The central issue is here: How
11 can we relieve Dr. Kepford of a burden, at the same time assur-
12 ing due process to all the other Intervenors? How can we do
13 that? That is what we're trying to do.

14 We are not trying to impose a burden, we are trying
15 to relieve you of a burden and at the same time assure that
16 other Intervenors have due process.

17 MR. SHOLLY: Mr. Chairman, --

18 CHAIRMAN SMITH: That's the goal. That's the direc-
19 tion.

20 MR. SHOLLY: Mr. Chairman, --

21 I don't care, go ahead.

22 DR. KEPFORD: Mr. Chairman, a few minutes ago you
23 in effect ordered the Licensee and Staff to get together to
24 solve this problem, did you not?

25 CHAIRMAN SMITH: And I think they refused.

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1 MR. TROWBRIDGE: I certainly did not refuse it but
2 I simply made quickly the suggestion that would come from me
3 that if the Board isn't satisfied with what it's got, I have
4 only one other solution for it, and that's the one I gave you.

5 MR. SHOLLY: Mr. Chairman, I recognize the offer
6 made by the Licensee is a good one, and I think perhaps we
7 can arrive at some sort of a synthesis. I made the suggestion
8 earlier that if Intervenor could agree not to serve one another
9 papers in a timely fashion, perhaps we could synthesize that
10 with the Licensee's offer to provide copies. The Licensee could
11 provide the copies and we could serve each other at our leisure.

12 We can serve the Board, the Licensee, the NRC Staff
13 and Docketing and Services in a timely fashion and serve one
14 another at our leisure.

15 CHAIRMAN SMITH: That's the direction. My problem
16 is I have no right to impose that upon you, but you certainly
17 have the right to work it out. You've identified it exactly.

18 Mr. Lewis.

19 MR. LEWIS: I think under the rules you do have the
20 right. There is a suspension of rules in there. But what I
21 wanted to mention was something completely different.

22 On Wednesday I may have a little difficulty getting
23 here at 9:00 a.m. I will be here in the morning. Is that all
24 right?

25 CHAIRMAN SMITH: Sure, that's fine, Mr. Lewis.

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I think we have no further business today. We will adjourn then until Wednesday at Hearing Room Number 1 in the North Building.

(Whereupon, at 3:00 p.m., the Special Prehearing Conference was recessed to reconvene at 9:00 a.m., Wednesday, November 14, 1979, in Hearing Room Number 1, the North Building, Harrisburgh, Pennsylvania.)

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