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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

METROPOLITAN EDISON COMPANY,
et al.

(Three Mile Island Unit 1)

Docket No. 50-289
(Restart)

Place - Harrisburg, Pennsylvania

Date - 9 November 1979

Pages 284 - 555

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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6 (Three Mile Island Unit 1) :
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The Forum, Education Building,
Commonwealth Avenue and Walnut Street,
Harrisburg, Pennsylvania.

Friday, 9 November 1979

Special prehearing conference in the above-
entitled matter was resumed, pursuant to adjournment, at
9:00 a.m.

BEFORE:

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

DR. WALTER H. JORDAN, Member.

DR. LINDA W. LITTLE, Member.

Also present on behalf of the Board:

LAWRENCE BRENNER, Esq.,
Special Counsel to the Board

MS. DORIS MORAN,
Clerk to the Board

1422 002

1 APPEARANCES:

2 On behalf of the Licensee, Metropolitan Edison Company:

3 GEORGE F. TROWBRIDGE, Esq.,
4 ERNEST BLAKE, Esq.,
5 ROBERT ZAHLER, Esq.,
6 Shaw, Pittman, Potts and Trowbridge,
7 1800 M Street, N.W.,
8 Washington, D.C.

9 On behalf of the Commonwealth of Pennsylvania:

10 KARIN W. CARTER, Esq.,
11 Assistant Attorney General,
12 505 Executive House,
13 Harrisburg, Pennsylvania.14 On behalf of the Consumer Advocate, Commonwealth of
15 Pennsylvania:16 JEROME BLASK, Esq.,
17 Assistant Consumer Advocate,
18 Department of Justice,
19 Strawberry Square, 14th Floor,
20 Harrisburg, Pennsylvania.21 On behalf of the Pennsylvania Public Utilities
22 Commission:23 JOHN LEVIN, Esq.,
24 Pennsylvania Public Utilities Commission,
25 P.O. Box 3265,
Harrisburg, Pennsylvania.On behalf of the Environmental Coalition on Nuclear
Power:DR. CHAUNCEY KEFFORD,
DR. JUDITH JOENSRUD,
433 Orlando Avenue,
State College, Pennsylvania.

On behalf of Chesapeake Energy Alliance:

ROBERT Q. POLLARD, Esq.,
609 Montpelier Street,
Baltimore, Maryland.

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On behalf of PANE:

WILLIAM JORDAN, Esq.,
Sheldon, Harmon, Roisman & Weiss
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On behalf of Union of Concerned Scientists:

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1725 I Street, N.W.,
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On behalf of Newberry Township TMI Steering Committee:

PATRICIA A. SMITH,
Box 52, R.D. 1,
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On behalf of ANGRY:

JOHN BOWERS, Esq.,
R.D. 7, Box 388,
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DANIEL M. PELL, Esq.,
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HOLLY KECK,
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GAIL BRADFORD

On behalf of Three Mile Island Alert:

THEODORE A. ADLER, Esq.,
Widoff, Reager, Selkowitz & Adler,
P.O. Box 1547,
Harrisburg, Pennsylvania.

1422 004

1 On behalf of the Regulatory Staff:

2 JAMES TOURTELLOTT, Esq.,
3 MARCIA E. MULKEY, Esq.,
4 DANIEL SWANSON, Esq.,
5 LISA SINGER, Esq.,
6 LUCY SWARTZ, Esq.,
Office of Executive Legal Director,
United States Nuclear Regulatory Commission,
Washington, D.C.

7 Petitioners for leave to intervene pro se:

8 JANE LEE,
9 R.D. 3; Box 3521,
Etters, Pennsylvania.

10 NORMAN ARMODT,
11 R.D. 5,
Coatesville, Pennsylvania.

12 MARVIN LEWIS,
13 6504 Bradford Terrace,
Philadelphia, Pennsylvania.

14 STEVEN C. SHOLLY,
15 304 South Market Street,
Mechanicsville, Pennsylvania.

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P R O C E E D I N G S

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CHAIRMAN SMITH: Good morning, ladies and gentlemen.

Mrs. Moran passed out a list of documents. That is a list of the draft reports of the Kemeny Commission's staff and for some reason it found its way into the Atomic Safety and Licensing Board Panel offices. I don't know if that list has been distributed but I thought that it would be something that the Petitioners and parties in this proceeding would be interested in, but you should bear in mind that as I understand it, that list is of draft reports and not final reports and we do not have access to the reports. It is simply the list.

With respect to Contention Number 11 of the Union of Concerned Scientists and Part 5.44, the Board recommends for your reading the matter of Vermont Yankee Nuclear Power Corp., Vermont Yankee Nuclear Power Station, CLI 74-40, SAC809, November 7, 1974.

MR. KEPFORD: Excuse me, Mr. Chairman. Do you have an ALAB number for that?

CHAIRMAN SMITH: That is not an ALAB. It's CLI 74-40. The reports are in this library and that will be available. As a matter of fact the actual case is right here, and if you can borrow this book for the day, during recesses you can take a look at it.

1 Mr. Brenner recommends the second to last para-
2 graph might have bearing upon inconsistent hydrogen generation
3 assumptions.

4 As we concluded yesterday's business there was a
5 possibility of I believe a report from Mr. Tourtelotte.

6 Were you going to report on the matter to us,
7 Mr. Tourtelotte, about the possibility of a rule-making?

8 MR. TOURTELLOTTE: Yes.

9 CHAIRMAN SMITH: Would you prefer to do that now
10 or later?

11 MR. TOURTELLOTTE: We can do that now, but I would
12 like to ask a preliminary question.

13 In the event that we do not finish today do you
14 anticipate going on tomorrow?

15 CHAIRMAN SMITH: All right, this is a good time to
16 raise that.

17 We know that the room is theoretically available
18 tomorrow although it would be apparently an inconvenience. The
19 members of the Board are also available tomorrow, but we are
20 also aware that the parties were told -- they were not given
21 notice that the proceeding would last through tomorrow, so I
22 would ask for an expression of opinion as to the possibility
23 of going over tomorrow.

24 Is there anybody who simply cannot make it if we
25 have to go over tomorrow?

1 (No response.)

2 There is no one then who cannot make it.

3 Would it be preferable, as it is to the Board, to
4 go late tonight and finish up rather than-- I see a general
5 consensus that that would be the case.

6 MS. WEISS: We would not be able to go beyond
7 about 6:15 because the last flight to Washington is seven
8 o'clock, so I would have to leave before that, but that might
9 be a possibility.

10 CHAIRMAN SMITH: Okay. I would certainly hope
11 what we'd be done by then.

12 Along that line, general due process and
13 Commission practice requires that Petitioners be given an
14 opportunity to address objections to their contentions but
15 there is no real requirement that replies to those responses
16 be made by those opposing the contention. What has been
17 happening is that the Licensee and the Staff have been res-
18 ponding to the Petitioners' response to the objections to the
19 petitions, which is fine.

20 We want to assure you that if you just simply wish
21 to rest upon what you previously stated that we will not deem
22 your silence to be agreement with the responses to the objec-
23 tions and we will also carefully reread what you previously
24 said about a particular contention before we rule.

25 So there really is no need to restate your original

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1 objections. However, if you feel new matter has been raised
2 that we should know about, don't be deterred from bringing it
3 up.

4 MR. REPFORD: Mr. Chairman, --

5 CHAIRMAN SMITH: Before we go into anything else,
6 Mr. Tourtelotte was cut off in mid-report, I believe here.

7 Did you want to talk about that problem or do
8 you want to bring it up later?

9 MR. TOURTELLOTTE: I can talk about it any time
10 you want. If you want to do preliminary matters before you
11 get to that, fine; whichever way you want to go.

12 CHAIRMAN SMITH: Are there other preliminary
13 matters?

14 MR. TROWBRIDGE: I have several preliminary
15 matters, Mr. Chairman.

16 We have here the Executive Order behind the
17 President's letter of May 16th on funding of public partici-
18 pation. I would ask that this Executive Order be copied
19 into the record as the letter has already been copied into
20 the record, but I would call two things to the attention of
21 the Board about this Executive Order.

22 One, that it deals with regulations, not with
23 licensing;

24 Two, that by its own terms it is not addressed to
25 and excludes the independent regulatory agencies of the

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government.

CHAIRMAN SMITH: If there are no objections, the Executive Order will be bound into the transcript.

(The document follows.)

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EXECUTIVE ORDERS

Sec. 2. Section 9.6 of the Civil Service Rule IX (5 CFR 9.6) is amended by adding a new subsection (e) as follows:

"(e) The Commission shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Limited Executive Assignment."

Sec. 4. Section 9.20 of Civil Service Rule IX (5 CFR 9.20) is amended by adding a new subsection (f) as follows:

"(f) The Commission shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Noncareer Executive Assignment."

JERRY CARTER

THE WHITE HOUSE

March 7, 1978

No. 12044

Mar. 23, 1978, 43 F.R. 12661

IMPROVING GOVERNMENT REGULATIONS

As President of the United States of America, I direct each Executive Agency to adopt procedures to improve existing and future regulations.

Section 1. Policy. Regulations shall be as simple and clear as possible. They shall achieve legislative goals effectively and efficiently. They shall not impose unnecessary burdens on the economy, on individuals on public or private organizations, or on State and local governments.

To achieve these objectives, regulations shall be developed through a process which ensures that:

- (a) the need for and purposes of the regulation are clearly established;
- (b) heads of agencies and policy officials exercise effective oversight;
- (c) opportunity exists for early participation and comment by other Federal agencies, State and local governments, businesses, organizations and individual members of the public;
- (d) meaningful alternatives are considered and analyzed before the regulation is issued; and
- (e) compliance costs, paperwork and other burdens on the public are minimized.

Sec. 2. Reform of the Process for Developing Significant Regulations. Agencies shall review and revise their procedures for developing regulations to be consistent with the policies of this Order and in a manner that minimizes paperwork.

Agencies' procedures should fit their own needs but, at a minimum, these procedures shall include the following:

- (a) **Semiannual Agenda of Regulations.** To give the public adequate notice, agencies shall publish at least semiannually an agenda of significant regulations under development or review. On the first Monday in October, each agency shall publish in the FEDERAL REGISTER a schedule showing the times during the coming fiscal year when the agency's semiannual agenda will be published. Supplements to the agenda may be published at other times during the year if necessary, but the semiannual agendas shall be as complete as possible. The head of each agency shall approve the agenda before it is published. At a minimum, each published agenda shall describe the regulations being considered by the agency, the need for and the

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EXECUTIVE ORDERS

legal basis for the action being taken, and the status of regulations previously listed on the agenda.

Each item on the agenda shall also include the name and telephone number of a knowledgeable agency official and, if possible, state whether or not a regulatory analysis will be required. The agenda shall also include existing regulations scheduled to be reviewed in accordance with Section 4 of this Order.

- (b) **Agency Head Oversight.** Before an agency proceeds to develop significant new regulations, the agency head shall have reviewed the issues to be considered, the alternative approaches to be explored, a tentative plan for obtaining public comment, and target dates for completion of steps in the development of the regulation.
- (c) **Opportunity for Public Participation.** Agencies shall give the public an early and meaningful opportunity to participate in the development of agency regulations. They shall consider a variety of ways to provide this opportunity, including (1) publishing an advance notice of proposed rulemaking; (2) holding open conferences or public hearings; (3) sending notices of proposed regulations to publications likely to be read by those affected; and (4) notifying interested parties directly. Agencies shall give the public at least 60 days to comment on proposed significant regulations. In the few instances where agencies determine this is not possible, the regulation shall be accompanied by a brief statement of the reasons for a shorter time period.
- (d) **Approval of Significant Regulations.** The head of each agency, or the designated official with statutory responsibility, shall approve significant regulations before they are published for public comment in the FEDERAL REGISTER. At a minimum, this official should determine that:
 - (1) the proposed regulation is needed;
 - (2) the direct and indirect effects of the regulation have been adequately considered;
 - (3) alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;
 - (4) public comments have been considered and an adequate response has been prepared;
 - (5) the regulation is written in plain English and is understandable to those who must comply with it;
 - (6) an estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;
 - (7) the name, address and telephone number of a knowledgeable agency official is included in the publication; and
 - (8) a plan for evaluating the regulation after its issuance has been developed.
- (e) **Criteria for Determining Significant Regulations.** Agencies shall establish criteria for identifying which regulations are significant. Agencies shall consider among other things: (1) the type and number of individuals, businesses, organizations, State and local governments affected; (2) the compliance and reporting requirements likely to be involved; (3) direct and indirect effects of the regulation including the effect on competition; and (4) the relationship of the regulations to those of other programs and agencies. Regulations that do not meet an agency's criteria for determining significance shall be accompanied by a statement to that effect at the time the regulation is proposed.

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Sec. 3. Regulatory Analysis. Some of the regulations identified as significant may have major economic consequences for the general economy, for individual industries, geographical regions or levels of government. For these regulations, agencies shall prepare a regulatory analysis. Such an analysis shall involve a careful examination of alternative approaches early in the decision-making process.

Sec. 5.
(a)

The following requirements shall govern the preparation of regulatory analyses:

(a) Criteria. Agency heads shall establish criteria for determining which regulations require regulatory analyses. The criteria established shall:

- (1) ensure that regulatory analyses are performed for all regulations which will result in (a) an annual effect on the economy of \$100 million or more; or (b) a major increase in costs or prices for individual industries, levels of government or geographic regions; and
- (2) provide that in the agency head's discretion, regulatory analysis may be completed on any proposed regulation.

(b)
(c)

(b) Procedures. Agency heads shall establish procedures for developing the regulatory analysis and obtaining public comment:

- (1) Each regulatory analysis shall contain a succinct statement of the problem; a description of the major alternative ways of dealing with the problems that were considered by the agency; an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the others.
- (2) Agencies shall include in their public notice of proposed rules an explanation of the regulatory approach that has been selected or is favored and a short description of the other alternatives considered. A statement of how the public may obtain a copy of the draft regulatory analysis shall also be included.
- (3) Agencies shall prepare a final regulatory analysis to be made available when the final regulations are published.

Sec. 6.
(a)
(b)

Regulatory analyses shall not be required in rulemaking proceedings pending at the time this Order is issued if an Economic Impact Statement has already been prepared in accordance with Executive Orders 11821 and 11949.

Sec. 4. Review of Existing Regulations. Agencies shall periodically review their existing regulations to determine whether they are achieving the policy goals of this Order. This review will follow the same procedural steps outlined for the development of new regulations.

In selecting regulations to be reviewed, agencies shall consider such criteria as:

- (a) the continued need for the regulation;
- (b) the type and number of complaints or suggestions received;
- (c) the burdens imposed on those directly or indirectly affected by the regulations;
- (d) the need to simplify or clarify language;
- (e) the need to eliminate overlapping and duplicative regulations; and
- (f) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the regulation.

Sec. 7.
Agency re-
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Agencies shall develop their selection criteria and a listing of possible regulations for initial review. The criteria and listing shall be published for comment as required in Section 5. Subsequently, regulations selected for review shall be included in the semiannual agency agendas.

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EXECUTIVE ORDERS

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Sec. 5. Implementation.

- (a) Each agency shall review its existing process for developing regulations and revise it as needed to comply with this Order. Within 60 days after the issuance of the Order, each agency shall prepare a draft report outlining (1) a brief description of its process for developing regulations and the changes that have been made to comply with this Order; (2) its proposed criteria for defining significant agency regulations; (3) its proposed criteria for identifying which regulations require regulatory analysis; and (4) its proposed criteria for selecting existing regulations to be reviewed and a list of regulations that the agency will consider for its initial review. This report shall be published in the FEDERAL REGISTER for public comment. A copy of this report shall be sent to the Office of Management and Budget.
- (b) After receiving public comment, agencies shall submit their revised report to the Office of Management and Budget for approval before final publication in the FEDERAL REGISTER.
- (c) The Office of Management and Budget shall assure the effective implementation of this Order. OMB shall report at least semiannually to the President on the effectiveness of the Order and agency compliance with its provisions. By May 1, 1980, OMB shall recommend to the President whether or not there is a continued need for the Order and any further steps or actions necessary to achieve its purposes.

Sec. 6. Coverage.

- (a) As used in this Order, the term regulation means both rules and regulations issued by agencies including those which establish conditions for financial assistance. Closely related sets of regulations shall be considered together.
- (b) This Order does not apply to:
 - (1) regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557);
 - (2) regulations issued with respect to a military or foreign affairs function of the United States;
 - (3) matters related to agency management or personnel;
 - (4) regulations related to Federal Government procurement;
 - (5) regulations issued by the independent regulatory agencies; or
 - (6) regulations that are issued in response to an emergency or which are governed by short-term statutory or judicial deadlines. In these cases, the agency shall publish in the FEDERAL REGISTER a statement of the reasons why it is impracticable or contrary to the public interest for the agency to follow the procedures of this Order. Such a statement shall include the name of the policy official responsible for this determination.

Sec. 7. This Order is intended to improve the quality of Executive Agency regulatory practices. It is not intended to create delay in the process or provide new grounds for judicial review. Nothing in this Order shall be considered to supersede existing statutory obligations governing rulemaking.

Sec. 8. Unless extended, this Executive Order expires on June 30, 1980.

JIMMY CARTER

THE WHITE HOUSE,
March 23, 1978.

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1 CHAIRMAN SMITH: Are there other preliminary
2 matters?

3 MR. TROWBRIDGE: Yes, Mr. Chairman.

4 Secondly, this has somewhat to do with the list
5 you just passed out. I don't know how many of the Inter-
6 venors have copies of the President's Commission Report, and
7 I'm going to suggest that the Staff undertake to distribute
8 that report to Intervenorers who have not received it.

9 I am aware of the fact that you cannot go down
10 and get copies of the report with pretty numbers on it; they're
11 all gone. But it's a reproduceable document and I'm going to
12 suggest that.

13 For our part, we will have in our Discovery
14 Reading Room not only a copy of the President's Commission's
15 Report but of all the Staff reports behind it.

16 CHAIRMAN SMITH: Did the Petitioners get copies
17 of the Kemeny Commission's Report? Our order had provided
18 for prompt dissemination of that report.

19 Mr. Tourtellotte, was that overlooked?

20 MS. MULKEY: Mr. Chairman, we have not yet our-
21 selves as individuals gotten copies of the report, and there
22 is some lag in the Office of the Executive Legal Director in
23 distributing them internally. As soon as it is feasible we'll
24 attempt to prepare a copy of the report, the one-inch report,
25 for individuals.

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1 We are also going to provide in the local Public
2 Document Room, we hope by next week, copies of the Draft
3 Staff Reports as well.

4 CHAIRMAN SMITH: Thank you.

5 MR. TROWBRIDGE: Mr. Chairman, two other matters
6 to be fitted in at the Board's wishes.

7 I wish to comment further on 50.44 and what we
8 would have the Board do about it and secondly, I would like
9 an opportunity to address the arguments, many new arguments,
10 some of them rather improvised arguments on what this Board
11 should do about Class IX accidents.

12 CHAIRMAN SMITH: Well, let's take that up after
13 preliminary matters.

14 MR. TROWBRIDGE: Very well, sir. I just wanted
15 the Board to know that I wish to speak to those subjects.

16 CHAIRMAN SMITH: Are there any other preliminary
17 matters?

18 MR. JORDAN: Your Honor, I am Bill Jordan.
19 Ms. Sheldon will not be able to be here today. I will be
20 representing PANE and have entered an appearance.

21 CHAIRMAN SMITH: Thank you. You are welcome.

22 MR. KEPFORD: Mr. Chairman, with me, as I men-
23 tioned yesterday, is Dr. Judith Johnsrud, assisting me. She
24 is co-director of the Environmental Coalition on Nuclear
25 Power.

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1 CHAIRMAN SMITH: We are pleased to see you.

2 MS. SMITH: My name is Patricia Smith, and I'm
3 representing Newberry Township.

4 CHAIRMAN SMITH: You're entitled to a seat at the
5 table until Mr. Cunningham gets here.

6 Patricia A. Smith has indicated that she will be
7 representing the Newberry Petitioners. She is one of the
8 Newberry Petitioners. She's a member of that committee and
9 as such, under the Commission practices she is authorized to
10 represent them even though she is not an attorney.

11 We have also Mr. Cunningham's notice of appearance.

12 The notice of agency is not necessary, Ms. Smith.

13 We'll just return it to you to simplify the record.

14 Thank you.

15 Dr. Kepford.

16 DR. KEPFORD: Yes. With regard to the appendices
17 more or less to the Kemeny Commission Report, it is my under-
18 standing from having talked with the Kemeny Commission, some
19 of the Kemeny Commission staff last Friday that there are 28
20 or 29 of these reports, not necessarily the 16 or so that are
21 listed here.

22 CHAIRMAN SMITH: I counted more than that. But
23 all I can say, sir, is I just happened to see those and I
24 said Aha, this is going to be of interest to the people in
25 this case, and I took a copy and there it is. I don't touch

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1 for it or anything else.

2 DR. KEPFORD: Okay.

3 CHAIRMAN SMITH: Any other preliminary matters?

4 (No response.)

5 Mr. Tourtellotte, are you prepared to proceed?

6 MR. TOURTELLOTTE: Well, I think the question was
7 asked yesterday about what the Staff intended to do about
8 hydrogen control in the future. I don't particularly mind
9 discussing it. I would point out that Mr. Trowbridge, I
10 believe, indicated that he also might want to discuss the
11 matter, and I would prefer to discuss it after him if he wants
12 to discuss it.

13 MR. TROWBRIDGE: I'd be happy to do that.

14 CHAIRMAN SMITH: All right, let's go in this
15 sequence. Let's discuss the hydrogen control contention.
16 Then Ms. Weiss had indicated the possibility that she would
17 readdress her Class IX contention. We'll see if she wants
18 to do that. If she doesn't, then we'll hear what you have to
19 say on that contention.

20 MR. TROWBRIDGE: Thank you, Mr. Chairman.

21 Mr. Chairman, on the hydrogen control, I was really
22 quite taken aback yesterday by the suggestion I understood
23 the Chairman to be making, that we were hiding behind a
24 Commission regulation.

25 CHAIRMAN SMITH: Well, now --

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et 10

1 MR. TROWBRIDGE: Let me explain, Mr. Chairman.

2 Looking at the Commission's August 9th order,
3 among other things it calls for -- the Staff recommendations
4 call for compliance with the Category A items of NUREG-0578
5 prior to restart, and the Category B items as soon as prac-
6 ticable, as nearly as I can recall the language.

7 And the reference is as set forth in Table B-1
8 which is at the tail end of NUREG-0578.

9 If you look at Table B-1 you will find that most
10 of the items have opposite them the Category A or Category
11 B. If you look at the items that have to do with hydrogen
12 control, these include the possible inerting of BWR reactors
13 as well as recombiners for PWRs and you will find nothing but
14 an asterisk. The asterisk refers to a footnote and what the
15 footnote says is "Implementation schedules will be established
16 by the Commission in the course of the immediately effective
17 rule-making. The Task Force recommends that the rule-making
18 process be initiated promptly."

19 I think there are references also in the text
20 of the document to rule-making in this period.

21 We took this to mean and we still take this to
22 mean that the Commission intended that the question of the
23 hydrogen recombiners or other forms of hydrogen control would
24 be taken up by rule-making, that it was not one of the items
25 that this Board was instructed to function on, and it is an

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where Three Mile Island would be treated like the rest of the world on the same implementation schedule as the rest of the world.

And I see no reason in the world why it should be different than that.

Now going on from that, I think the conclusion that we drew from NUREG-9578 is now reinforced by the Final Report of the Lessons Learned Task Force which is NUREG-9585 and which I have only just obtained a copy of. I don't know whether the Board has a copy of the Final Report of Lessons Learned or not.

CHAIRMAN SMITH: Yes, we received a copy Tuesday and we have not had a chance to do more than ponder the system of number organization.

MR. TROWBRIDGE: We have not managed in our office to receive a copy, either with our TMI hat or any other hat on. And frankly, Mr. Chairman, I did not know that the document had been issued and I borrowed Mr. Tourtellotte's copy for this purpose.

1 b file

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1 If the Board will look at page 3-6...

2 CHAIRMAN SMITH: We don't have it. -- I'm sorry;
3 Dr. Jordan tells me that we do have a copy.

4 MR. TROWBRIDGE: I'm going to refer the Board
5 to page 3-6 and then to page A-14, beginning at the bottom
6 of 14 and continuing on on A-15. And, in summary, what this
7 says is that this task force has recommended that the Com-
8 mission institute promptly a rulemaking proceeding which,
9 among other things, will consider what, if anything, should
10 be done in the way of design features to mitigate the con-
11 sequences of either a core melt or severe damage.

12 And on page 3-6 the staff makes it very clear
13 that the question of hydrogen control should be included in
14 that rulemaking process.

15 MR. SHOLLY: Mr. Chairman, I don't know whether
16 you would want me to now, but I would also like to address
17 this matter inasmuch as it relates to one of my contentions.

18 CHAIRMAN SMITH: All right. I think this would
19 be a good time.

20 MR. SHOLLY: To the best of my knowledge that
21 rulemaking proceeding has not as yet commenced. Is that the
22 case? Does anybody know for sure?

23 CHAIRMAN SMITH: Mr. Tourtellotte is going to
24 give us a report on that.

25 MR. SHOLLY: We'll assume for the time being that

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1 it has not.

2 In trying to advance my contention I cannot
3 count on that rulemaking hearing to commence at any given
4 time, so I am forced to stick with my contention and advance
5 it even though I know that this rulemaking hearing is coming.

6 Secondly, I cannot depend on the results of that
7 rulemaking hearing being available and being in force prior
8 to restart.

9 So, you know, I will take whatever steps I have
10 to to pursue this contention, in spite of the fact that
11 rulemaking is going to be instituted.

12 CHAIRMAN SMITH: Mr. Tourtellotte, do you want to
13 defer making your report? Do you want to come back to it?

14 It seems like our debate is hung up on whether
15 there's going to be a rulemaking; if so, when, and will it
16 solve the problem? And, in the absence of a report, I think
17 we're stalled here.

18 MR. TOURTELLOTTE: I can address that. I can
19 give you the status.

20 DR. JORDAN: Mr. Trowbridge, you addressed the
21 document NUREG 0378, I believe, and its effect on this hearing.

22 MR. TROWBRIDGE: 0578, Dr. Jordan.

23 DR. JORDAN: Thank you.

24 Now that document does refer to pressurized
25 water reactors and the requirements of Lessons Learned as

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WRB/v03

1 they're applied to pressurized water reactors in general.

2 Now does that mean that in your opinion TMI-1
3 is no different than any of the others? The mere fact that
4 it was located alongside TMI-2, operated by the same people,
5 and so on, the same design, makes it still no different
6 than any of the others?

7 I think there is a real difference there that
8 must be considered.

9 MR. TROWBRIDGE: I think with respect to hydrogen
10 control or recombiners I would say it is, to the best of
11 my technical knowledge, no different than other PWRs,
12 certainly no different than other B&W PWRs.

13 DR. JORDAN: Is it your contention, then, that
14 in spite of the fact that TMI-2 experienced large generations
15 of hydrogen, that this will not be addressed by the applicant
16 or the staff in TMI-1, that there will be no provisions made
17 in TMI-1 for more than 5 percent hydrogen generation?

18 MR. TROWBRIDGE: There will be no provisions
19 made for more than 5 percent hydrogen.

20 Let me explain.

21 I mentioned yesterday, and I've learned a little
22 bit more about it since, that we do plan -- and I think this
23 plan is already reflected in the Restart Report, in one or
24 another amendment, 1 through 4, there will be a recombiner.
25 The purpose it would serve, perhaps incidentally, would be to

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enl 1 recombine hydrogen generated by a rather small per ce of
2 metal-water reaction. That is not its primary function.

3 Its primary function is to concern itself in the
4 event of an accident with the possibility that -- the expecta-
5 tion, I guess, that a certain amount of hydrogen would be
6 generated by what I understand is the radiolytic decomposition
7 of the water in the containment, and its primary purpose
8 would be to prevent a buildup from that source.

9 CHAIRMAN SMITH: Yes. Very well then.

10 MR. TROWBRIDGE: And we have described that in
11 the Restart Report, just to give a full picture of what it is
12 we're proposing to do, whether or not required by the Lessons
13 Learned or other requirements.

14 With respect I think to the broader answer to
15 your question, I think our basic answer is that we are doing
16 a number of things, some of them on our own, some of them
17 will meet Staff recommendations, the objective of which will
18 be to prevent a condition under which significant hydrogen
19 generation would occur.

20 MS. WEISS: Mr. Chairman, before you leave that
21 topic, I have just one comment if it would be appropriate at
22 this point.

23 CHAIRMAN SMITH: Yes. We're still waiting for
24 Mr. Tourtellotte to drop his shoe, so to speak.

25 MS. WIESS: Why don't we do that?

sb2

1 MR. TOURTELLOTT: Is it all right if I drop a
2 boot instead?

3 The situation is fairly much as Mr. Trowbridge
4 described it in terms of the question of hydrogen control
5 being a matter that has been recommended for rule-making to
6 the Commission and that is apparent at the citations which
7 Mr. Trowbridge made.

8 Very specifically on A-14, that report says that:

9 "The Task Force recommends that the
10 Commission issue within three months a Notice of
11 Intent to Conduct Rule-Making to solicit comments
12 on the issues and facts relating to the considera-
13 tion of design features to mitigate accidents that
14 would result in (a) core melt and (b), severe core
15 damage but not substantial melting.

16 "Specific areas for comments should in-
17 clude but are not limited to the following:"

18 Item 6 is:

19 "What is the expected effectiveness and
20 performance of suggested means of reducing the con-
21 sequences of events in which severe damage or sub-
22 stantial melting of the core occurs, in particular
23 systems control, filtered venting of the containment
24 and for preventing the uncontrolled combustion of
25 hydrogen."

1422 025

1 There is a very specific recommendation.

2 Now there has been, to my knowledge, and I checked
3 just a few minutes before we came into the hearing, there has
4 been no intent of rule-making filed by the Commission.

5 So this poses a problem for the Board, it seems
6 to me, which is a problem that might reoccur throughout the
7 proceeding and one which the Board might want to give careful
8 consideration on exactly how it's going to treat these matters.

9 That is, it seems to me that what we have here
10 is a situation where reviews are being made concurrently with
11 the conducting of this hearing and those reviews are going to
12 result in recommendations. Some of those recommendations may
13 be rule-making and they may deal with subject matters that
14 potentially are included within the framework of this hearing,
15 or might be included in the framework of this hearing. And
16 certainly the ones that might be are the ones that are more
17 critical.

18 I don't know exactly what kind of advice I would
19 give you in how to handle this matter. I myself believe that
20 you could follow the rule in NRDC versus NRC, 547 Fed.2d 633,
21 which was a D. C. Circuit case in 1976. And that case says
22 that we may abstain from considering issues that are currently
23 or are expected to become subjects of a rule-making. And the
24 emphasis is on the latter.

25 Since we now have no intent of rule-making filed,

1 the question then is does the Board feel that it would be
2 advantageous and efficient, it seems to me, to conduct a
3 hearing or start to conduct a hearing which deal with a
4 subject that may become a rule-making matter?

5 I don't know how to advise you. As I say, I do
6 believe the Board has the other option and that is again as
7 I say, because you have this special relationship with the
8 Commission in this case, I think you might want to consider
9 the possibility of certifying that question to the Commission
10 to ask them whether they would like for you to consider that
11 matter in this hearing or not.

12 MR. TROWBRIDGE. Mr. Chairman, may I comment very
13 briefly?

14 It does not seem to me that we are here faced with
15 a question one would face in the normal licensing proceeding
16 as to whether to take up a licensing matter which is or is
17 about to be or may be the subject of rule-making. That is
18 not the principal line of my resistance here.

19 The principal line of my resistance goes to what
20 is the scope of this Board's responsibilities, what did the
21 Commission ask it to do, charge it with? And I'm suggesting
22 strongly that the Commission did not charge it with respon-
23 sibility to resolve the hydrogen control.

24 The Commission said in essence that is a separate
25 subject which is not among the items which the Board has to

1 consider.

2 MR. SHOLLY: Mr. Chairman, would you request
3 Mr. Trowbridge to please point to where in the Commission's
4 order it says specifically not to consider hydrogen?

5 CHAIRMAN SMITH: He has detailed the sequence of
6 documents on which he arrives at that conclusion.

7 You are free to answer, Mr. Trowbridge, if you
8 want, but you don't have to repeat your earlier explanation.

9 MR. TROWBRIDGE: Let me make it very short for
10 Mr. Sholly.

11 Mr. Sholly, I derive my conclusion primarily from
12 the fact that among the short-term and long-term recommendations
13 that are to be considered as issues in this proceeding, these
14 are Category A and Category B items listed in Table 1 of the
15 first Lessons Learned Report.

16 If you look at Table B-1 you will find that items
17 having to do with hydrogen control are neither Category A nor
18 Category B. They are asterisked items which have a footnote
19 referring to their resolution by rule-making.

20 MR. SHOLLY: Yes, sir, I realize that. But those
21 items have not been proposed for rule-making and will be
22 pursued during the course of this hearing if so permitted by
23 the Board.

24 CHAIRMAN SMITH: We are becoming repetitious.

25 MR. TROWBRIDGE: Mr. Chairman, I'm not going to

1 re-argue the scope argument. I think it is clear on its face
2 that if there is any technical issue that is raised by the
3 TMI-2 accident, that's it. I just want to point out to the
4 Board that there's a grave danger in suspending this issue
5 on the hope that the Commission may go into rule-making two,
6 three, four, five months down the line, and that is that once
7 this issue has been raised in this proceeding, this record
8 can't be closed, you can't go to a final decision until it's
9 resolved, either in the rule-making forum or in the adjudi-
10 catory forum. I think we ought to bear that in mind.

11 I think it's a question of your discretion and
12 that ought to bear heavily on it.

13 MR. TOURTELLOTT: Mr. Chairman, one important
14 point I think I left out a while ago is while I indicated
15 that this was a recommendation that had been made by the
16 Staff, that there are two other factors. One is that the
17 Director of NRR and the ACRS are presently considering this
18 matter and the Director of NRR will make a recommendation to
19 the Commission next month, in December, so that gives you an
20 idea of what time frame we're moving in.

21 CHAIRMAN SMITH: Is there anything inconsistent
22 with the Board recognizing that the rule-making, the proposed
23 rule-making procedure may have a bearing upon the decision
24 in this case, but also recognizing that it might not, it
25 might not control, and permitting such a contention to be

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1 received into evidence so that discovery may proceed, and
2 then defer our decision until we know what's happening?

3 Speaking for myself, I have a great deal of diffi-
4 culty of resolving the fact of our presence here today with
5 the suggestion that the most significant thing that happened
6 at TMI-2 is outside of our jurisdiction. I mean I can listen to
7 all the papers and all the arguments and everything else but
8 what we are here to talk about is is TMI-1 going to be safe
9 to run, and this was a big problem at TMI-2.

10 And I just have a philosophical difficulty in
11 walking away from that problem.

12 MR. TOURTELLOTTE: Mr. Chairman, would it be
13 beneficial, do you think, to reserve ruling on this subject?

14 CHAIRMAN SMITH: We're not ruling. I expressed a
15 personal opinion.

16 MR. TOURTELLOTTE: I understand. I assume that
17 what we're doing is we're engaging in discussion of this but
18 that the Board would be ruling within five days.

19 CHAIRMAN SMITH: We won't be ruling within five
20 days.

21 MR. TOURTELLOTTE: At whatever time the Board
22 issues its final....I was thinking perhaps this might be an
23 issue, because of its importance and because of its unique-
24 ness, that the Board may wish to have resubmitted on the
25 issue, and then that would aid it in arriving at its conclu-
sion.

1 CHAIRMAN SMITH: I think that might be a very
2 good suggestion, because where we are right now is -- notwith-
3 standing your very responsible advice to the Board as to what
4 our options may be -- we're still faced with what appears to
5 be the official position of the NRC Staff that this is not an
6 appropriate contention for litigation in this proceeding.

7 MR. TOURTELLOTTE: I don't believe that that is
8 our position.

9 CHAIRMAN SMITH: That's the way I read -- apparent-
10 ly misread your objection to that contention.

11 MR. TOURTELLOTTE: No.

12 Our position is that the method in which the
13 contention is stated and the lack of complying with the rules
14 makes it unlitigable right now. But I don't -- I think that
15 it potentially could be litigable in this case, but it depends
16 on a couple of things:

17 I think really does the Commission want us to
18 litigate this, with the idea that there is a rulemaking that
19 has been suggested to them; and the other is if we're going
20 to litigate it it seems -- you know, I may agree, I may dis-
21 agree with the rules, but the rules are the rules. And I
22 don't want to exclude anything on a technical basis, and yet
23 on the other hand I can't just simply fall down and die because
24 I think the rule is wrong, or the rule is not perhaps applied.

25 And I can't do anybody else's work for them. So

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1 that's the position that we were put in.

2 I don't suggest that we could not perhaps liti-
3 gate hydrogen control in this case if it's brought into the
4 case properly.

5 I also believe -- and I would want to reemphasize
6 that I believe the Staff is taking a very responsible approach
7 to the whole business of hydrogen control, whether it's in
8 this hearing or outside of the hearing.

9 CHAIRMAN SMITH: And I hope our remark was not to
10 suggest to the contrary.

11 As a matter of fact, we were being critical, I
12 observed, in that immediate context, that we recognized that
13 the Staff is independently working on this problem.

14 DR. KEPFORD: Mr. Chairman?

15 CHAIRMAN SMITH: Yes.

16 DR. KEPFORD: I don't think right now that we can
17 say that we have the expectation of a rulemaking hearing, a
18 generic rulemaking hearing. We have the promise of a recommend-
19 ation of one.

20 So I think -- And, of course, the Commissioners
21 themselves ultimately have to make this decision. If we say
22 we have an expectation of a rulemaking hearing, we're guess-
23 ing that they're going to go along with it, and that's spec-
24 ulation. I don't think we're at that point.

25 Ultimately, of course, the burden of proof

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1 concerning this hydrogen control business rests with the Staff
2 and Applicant. But going back to the rulemaking hearing,
3 many of the participants here, and the intervenors, would
4 probably like to participate in that.

5 But on April 28, 1979, the Commission accepted a
6 set of rules to govern generic rulemaking proceedings --

7 CHAIRMAN SMITH: What was the modifier of rule-
8 making proceedings?

9 DR. KEFFORD: Except that a set of rules for
10 generic rulemaking --

11 CHAIRMAN SMITH: Oh, generic.

12 DR. KEFFORD: -- and this set of rules would, in
13 my opinion, totally exclude most of the intervenors in this
14 proceeding because they are so extraordinarily burdensome
15 for small groups.

16 So those of us who are most affected by this issue
17 would be cut out, and it would seem to me that this is the
18 place to solve it, because it might be years before the
19 Commission gets around to doing anything on it.

20 I use the entire waste disposal problem still
21 unresolved as an example. This has been going on for years
22 now and the problem still hasn't been solved.

23 CHAIRMAN SMITH: Thank you.

24 MR. POLLARD: Mr. Chairman, on a point of classifica-
25 tion of what appears to be the Staff's position, I think it

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1 would be helpful to look at their response to Mr. Sholly's
2 contention 11, which is somewhat different from -- that's
3 on page 9 of their response, where they basically acknowledge
4 that he has approached the level of discussion appropriate
5 for 2.7583 and state that they would not object to Mr. Sholly's
6 amending his contention to make the kind of showing contemplated
7 ed by 2.7583, and they make no reference to rulemaking there.

8 CHAIRMAN SMITH: We're headed toward a -- I
9 would predict throughout the day that we're headed toward this
10 problem as you put on, Mr. Tourtellotte, in several respects.
11 And it's not going to be an easy answer to certify it back up
12 to the Commission; they're very busy. And we have to impart
13 some logic into the order of notice for hearing.

14 Certainly we're aware of the lessons learned.
15 They were aware of all of the documents. They nevertheless
16 seem to be giving this Board a great deal of discretion on
17 how we approach our final decision.

18 And we're going to view the order, erring, if we
19 do, on the side of safety.

20 I don't know what new can be said on this particular
21 ar issue.

22 MR. BOWERS: Mr. Chairman?

23 CHAIRMAN SMITH: Yes, sir.

24 MR. BOWERS: I would simply like to stress ANGRY's
25 strenuous objection to the Licensee's position that this

1 matter not be considered, and the Staff's statement a moment
2 ago that the Board follow the rule in the court decision
3 which would mean that you would abstain from considering the
4 decision simply by virtue of the fact that I think the NRC
5 Commission's order clearly mandates you to address it for the
6 simple reason that it said that. It gave you the issue to
7 address as to whether or not the measures specified in that
8 order were sufficient to allow this plant to reopen without
9 endangering the public health and safety.

10 And if any issue was raised at these proceedings
11 which calls that into question, then it seems to me this Board
12 is bound to address it.

13 And the issue of hydrogen recombining --

14 CHAIRMAN SMITH: This is the essential argument
15 that has been made.

16 I would look now for new arguments or else the
17 opportunity to move on to another subject.

18 We have some new faces this morning.

19 You weren't here yesterday, were you, sir?

20 MR. BOWERS: No, I was not.

21 CHAIRMAN SMITH: Would you introduce yourself,
22 please?

23 MR. BOWERS: Yes, sir.

24 My name is John Bowers.

25 CHAIRMAN SMITH: And you're representing ANCRV?

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mp 6 1 MR. BOWERS: Yes, sir, that's correct.

2 CHAIRMAN SMITH: And do you have somebody with
3 you?

4 MR. BOWERS: Yes.

5 This is Gail Bradford sitting next to me.

6 CHAIRMAN SMITH: And you're also representing
7 ANGRY?

8 MS. BRADFORD: Yes.

9 CHAIRMAN SMITH: How do you do.

10 MR. TOURTELLOTTE: Mr. Chairman, just two quick
11 points:

12 One is that we have litigated hydrogen control
13 before in the Commission, and that was in the Vermont Yankee
14 case, and I litigated it, as a matter of fact.

15 And they also make reference in there to rule-
16 making for hydrogen control.

17 The second thing is would you like for us to brief
18 this issue, or do you want to rule on that later?

19 (The Board conferring.)

20 CHAIRMAN SMITH: Mr. Tourtellotte, and Mr. Trowbridge,
21 as we understand the state of the law to be, outside of the
22 Lessons Learned report and the Commission's order, that a
23 presiding officer may in his discretion defer litigating a
24 matter when there is an impending rulemaking; but by no means
25 does the law require a presiding officer to defer litigating

1 an issue because there is the possibility of a rulemaking in
2 the future.

3 Now if we're correct in that understanding you
4 needn't do anything. If you think there's other things we
5 should know about and you want to brief us on it, that's fine,
6 you're welcome to, and we'll give you that opportunity.

7 MR. KEFFORD: Mr. Chairman, is this for all
8 parties?

9 CHAIRMAN SMITH: Certainly. If they submit a
10 brief you would have an opportunity to respond to it, yes.
11 Absolutely. That will always -- I don't want to say always,
12 but that is the general rule.

13 MR. TOURTELLOTT: Mr. Chairman, might I suggest
14 that because of the application of the law in a broader sense
15 than just to the singular issue of hydrogen control that the
16 subject of our brief would be the effect of pending or
17 proposed rulemaking upon the issues of the TMI restart. That
18 would perhaps include Class 9 accidents as well, if that's
19 satisfactory.

20 CHAIRMAN SMITH: It would be a general brief on?

21 MR. TOURTELLOTT: The effects of pending or
22 proposed rulemaking upon the issues for restart of TMI 1.

23 CHAIRMAN SMITH: I think such a brief might well
24 be helpful.

25 MR. TROWBRIDGE: Mr. Chairman, I object to the

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1 framing -- I have no objection to Mr. Tourtellotte submitting
2 a brief on that subject, but if by that he has meant to
3 define what the issue is about, may I repeat once more that
4 in my view we are talking about a subject which the Commission
5 has not had this Board undertake, it is not within the scope
6 of its functions.

7 And I do not get to the question, the effect of
8 rulemaking or pending rulemaking until after that.

9 CHAIRMAN SMITH: Well, you pointed to a pending
10 rulemaking in your objection to that contention.

11 I'm missing something.

12 MR. CROWBRIDGE: No, I did point to a pending
13 rulemaking, as the Board itself said the sensitivities of the
14 Board were, I could have stopped with the sentence:

15 "This challenges an existing Commission
16 regulation."

17 I think it was incumbent upon me to point out,
18 A, -- several things:

19 One, that we are putting in a recombiner to some
20 extent; B, that there is a promised rulemaking on this subject.
21 And I think that makes the answer more palatable. But the
22 answer is correct without the condition, the explanation.

23 (The Board conferring.)

24 MS. WEISS: Mr. Chairman?

25 CHAIRMAN SMITH: Ms. Weiss.

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1 MS. WEISS: I just wanted to point out that
2 Mr. Trowbridge's objections to UCS contention 11 say nothing
3 whatsoever about scope, but go entirely to the objection on
4 the ground that it attacks an existing Commission regulation.

5 I suppose I recognize he's got an opportunity to
6 raise a new objection, but we've heard that today for the
7 first time, and I think the fact that it was not thought up
8 until late in the day --

9 CHAIRMAN SMITH: No, he made that clear yesterday,
10 I believe.

11 MS. WEISS: -- I believe that indicates the
12 strength of the argument.

13 MR. TROWBRIDGE: I'd like to comment.

14 The Board can look for itself to our Licensee's
15 response to contention number 11, and I suggest Ms. Weiss do
16 so.

17 CHAIRMAN SMITH: And I think you made your
18 position on that clear yesterday too. I don't feel they were
19 surprised or misled.

20 Now, Mr. Tourtellotte, the Board does feel that
21 advice from the Staff on the effect of rulemaking upon this
22 proceeding would be helpful, and I would expect that the
23 sequence of briefing would be Staff, followed by Licensee's
24 addressing the Staff's brief -- and this is just a suggestion.
25 I welcome counter-suggestions -- followed by briefings of

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1 intervenors.

2 Here we have almost the reverse order of what is
3 usual.

4 Do you think that would be a fair approach, Mr.
5 Trowbridge?

6 MR. TROWBRIDGE: I have no objection to that.

7 CHAIRMAN SMITH: Mr. Tourtellotte? Anyone?

8 MR. TOURTELLOTTE: No objection.

9 DR. KEPFORD: Mr. Chairman?

10 CHAIRMAN SMITH: Yes, sir.

11 DR. KEPFORD: Speaking for ECNP, I would object.
12 I think this issue is clearly litigable and must be litigated
13 now, and that the briefs are totally unnecessary and are
14 nothing more than an impediment to the intervenors in the
15 process of prosecuting or preparing their cases.

16 CHAIRMAN SMITH: Well, there's a substantial dis-
17 agreement with you, and you just are stuck with that.

18 DR. KEPFORD: No, I'm aware of that.

19 Also it's my understanding -- Well, I think the
20 case cited by Mr. Tourtellotte earlier, NRDC versus NRC,
21 there is the statement that absent effective generic rule-
22 making proceedings settling problems, they are to be handled
23 in individual reactor licenses.

24 CHAIRMAN SMITH: This Board is in the position
25 where the Staff has suggested they might have advice to us

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no 11 1 which will be helpful in resolving issues in this case.

2 We believe that we have stated generally what
3 the law is, but at the same time we think advice can be
4 helpful. And we don't know what it is, so how could we rule.

5 But you're overlooking one point.

6 I understand that it might be burdensome for you
7 to respond to a brief. Those are burdens that you have assum-
8 ed when you came into the case. I know you're very busy in
9 this case.

10 However any penalty for delay because of these
11 briefs ultimately rests upon the Licensee, and they have more
12 reason to object than you do, and they are acquiescing to it.
13 And I think your objection is relatively less important.

14 DR. KEPFORD: This fundamental objection was
15 raised earlier in the licensing of TMI 2, and the reason
16 we're here today is because it was passed aside, and that
17 proceeding has bloomed now into --

18 CHAIRMAN SMITH: What was passed aside?

19 DR. KEPFORD: The deferring of problems, the
20 unresolved --

21 CHAIRMAN SMITH: Nobody has suggested in the
22 slightest, Mr. Kepford, deferring problems. You have gone
23 off on a complete tangent.

24 We're asking for information, guidance, from the
25 parties, not deferring problems. As a matter of fact, our

1 purpose is exactly to the contrary.

2 DR. KEPFORD: Fine.

3 CHAIRMAN SMITH: It should be evident to anybody
4 who listened to this discussion.

5 Now let's go on to the next.

6 What do you wish to do now?

7 MS. WEISS: Oh, it's perfectly fine with me to go
8 along with that schedule.

9 MR. TROWBRIDGE: A point of clarification:

10 It's my understanding that this brief is concern-
11 ed with the hydrogen control question, and that does not mean
12 that the Board would defer all rulings on other contentions,
13 on matters pending in a briefing. I would take a different
14 view if --

15 CHAIRMAN SMITH: If I understand, Mr. Tourtellotte
16 is going to counsel the Board or the Staff is going to
17 counsel the Board on the potential effect of all rulemakings
18 upon this adjudication.

19 It may very well be that while they're preparing
20 this brief the Board might just decide to go ahead anyway, I
21 don't know. I don't view this entire problem as something
22 that is -- if we make an error that we can't correct the error
23 later. I mean, we can say we're going to start these conten-
24 tions, and if we learn information about rulemaking we'll
25 say Whoops, rulemaking might solve it, I don't know.

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1 I simply can't see how anybody is going to be
2 harmed by the Board being fully informed.

3 MR. TROWBRIDGE: Mr. Chairman, you're right.

4 I simply wish to express the hope that the Board
5 would proceed to act on as many contentions as it felt it
6 possibly could, particularly those not affected by the ques-
7 tion of a pending rulemaking.

8 CHAIRMAN SMITH: What time do you think that you
9 want to have your briefs in, Mr. Tourtelotte?

10 MR. TOURTELLOTTE: Well, were it not for the
11 limited appearances, we could do it much quicker, I think.
12 But the 21st, that would be a week from next Wednesday; is
13 that too late? If it is we'll do our best -- we'll do our
14 best to get it out as soon as we can, and no later than the
15 21st.

16 If the 21st is on the other hand too late for the
17 Board, just tell me. We'll reestablish our goals.

18 CHAIRMAN SMITH: I am somewhat concerned about
19 needless delay.

20 MR. TOURTELLOTTE: Next Friday? Is that better?
21 That's obviously better, but....

22 (Laughter.)

23 Is it good enough?

24 CHAIRMAN SMITH: We can't really do any hard work
25 on these contentions until the week following next week. So

1 that would seem to be adequate.

2 Now perhaps you can do something else. Perhaps
3 you can, as we come back up here on other occasions, could
4 you perhaps arrange an informal conference among the Staff
5 and the licensees and intervenors as to generally speaking
6 what you're going to say to us so that the time that they
7 are required to respond may be cut down?

8 There would be no time for that, would there,
9 considering next week's schedule.

10 MR. TOURTELLOTTE: I don't really see how we could
11 do that.

12 CHAIRMAN SMITH: That's not a practical suggestion.

13 All right. If they file such a brief next
14 Friday, what would you think would be appropriate for
15 response?

16 MR. TROWBRIDGE: Mr. Chairman, I would think the
17 following Friday.

18 CHAIRMAN SMITH: And then the following Friday,
19 then, for the intervenors seems to be the pattern that --

20 MS. WEISS: I'd be willing to take a shot at
21 responding to the Staff on the same date, and then if I feel
22 any further reply is necessary I would let you know, to the
23 Licensee.

24 CHAIRMAN SMITH: All right.

25 I think that may be a logical approach because --

1422 044

1 Would the petitioners object to just everyone addressing the
2 Staff's brief, including the Licensee, on the succeeding
3 Friday?

4 MR. KEFFORD: Yes, we would object, because
5 including mail time, delivery time, that gives us a couple of
6 days at most to even look at the Applicant's brief, for
7 instance, before ours is due.

8 CHAIRMAN SMITH: Under our proposal you don't have
9 to look at the Applicant's, you respond to the Staff.

10 MR. POLLARD: Even to get the Staff's brief --

11 CHAIRMAN SMITH: It will be handed to you on
12 Friday.

13 MR. POLLARD: If we're here.

14 CHAIRMAN SMITH: Well, you have obligations;
15 you're just going to have to work. I mean, it's going to be
16 a long and difficult hearing.

17 MR. POLLARD: Okay.

18 But are we required to be present next week?

19 CHAIRMAN SMITH: No, you're not.

20 MR. POLLARD: We'll be counting on getting it in
21 the mail, which may be Tuesday.

22 MR. FOURTELLOTTE: We'll hand-deliver it.

23 MR. POLLARD: Okay.

24 MR. BOWERS: Mr. Chairman, that arrangement is
25 acceptable to us. But we would expressly reserve the right to

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1 respond to any new issues that are raised in the Licensee's
2 response.

3 CHAIRMAN SMITH: The Board is not going to get
4 bogged down on legal briefings on an issue which I think is
5 relatively simple. I think we simply will make a ruling that
6 the Staff can counsel us in a brief next Friday on the effect
7 of pending regulations, and anybody who wishes to respond
8 to it can respond by the following Friday.

9 It is not a complicated issue. The points of view
10 have been made several times today, and I don't think any-
11 thing new is going to come out of it. So I don't want to be
12 bogged down any further on it.

13 We will have that schedule, Friday and Friday.
14 It's not a big deal.

3.330 15 Now we're ready. We're ready to proceed to your
16 Class 9 contention.

17 MS. WEISS: Yes.

18 I hope I didn't fail to pick up a signal from the
19 Board yesterday. The Chairman suggested some language that
20 might be added to contention 13 --

21 CHAIRMAN SMITH: Not language, concept.

22 MS. WEISS: I thought that it was very appropriate.
23 I didn't realize you wanted to hear from me on that this
24 morning. But I've taken a look at it since you indicated --

25 CHAIRMAN SMITH: I'm not asking you to. I thought

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1 you indicated last night that you might want to be heard
2 further on it today.

3 MS. WEISS: Oh.

4 Maybe it would just be appropriate for me to say
5 that I will be attempting to add some clarifying language
6 along the lines of the Chairman's suggestion, and I'll do
7 that, I'll address that just as soon as I get back to the
8 office the beginning part of next week, so that the contention
9 will conform in everybody's understanding to the argument that
10 I made yesterday.

11 And what I intend to do is to add probably just
12 a sentence or a clause which states quite clearly that what
13 we are challenging is the Staff's method of analyzing acci-
14 dents and classifying design basis events in this case. And
15 I'll work on some exact language when I get back to the office,
16 if that's acceptable to the Board.

17 CHAIRMAN SMITH: The Staff and Licensee will of
18 course want an opportunity to respond to that.

19 Is that correct, gentlemen?

20 MR. TROWBRIDGE: Yes.

21 MR. TOURTELLOTTE: Yes.

22 CHAIRMAN SMITH: And what time would you want to
23 respond to that?

24 MR. TROWBRIDGE: I'm sorry, when are we going to
25 get it? I missed something.

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1 CHAIRMAN SMITH: Ms. Weiss was soon going to
2 propose an amendment to her Class 3 contention. And how much
3 time after she gives it to you do you think you will need to
4 respond to it?

5 MR. TROWBRIDGE: Mr. Chairman, my trouble is I
6 have to take account of next week's limited appearance schedule.
7 I would regard it as a disservice to the company and an af-
8 front to the Board not to be here for that.

9 CHAIRMAN SMITH: Yes, I appreciate that.

10 However you have an array of very competent
11 counsel with you and many more back at the ranch.

12 (Laughter.)

13 I think that could be addressed quickly.

14 MR. TROWBRIDGE: I think it could be addressed
15 quickly. I do hope to see it before it leaves the office.

16 CHAIRMAN SMITH: Well, five days after delivery.

17 MR. TROWBRIDGE: That's no problem.

18 CHAIRMAN SMITH: It's just a few lines on a single
19 contention. You've worked much harder than that and faster
20 than that so far.

21 Five days after delivery.

22 MR. TROWBRIDGE: That's no problem.

23 CHAIRMAN SMITH: And if you need more time -- In
24 any of our rulings if a situation arises that demonstrates
25 that you were too generous in your time, you'll just have to

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1 ask for it.

2 MR. TROWBRIDGE: Five days is no problem.

3 Ms. Weiss has been very accomodating in allowing
4 us to pick up copies, depending on the mail, as have most but
5 not all intervenors. And so five days is not a problem.

6 CHAIRMAN SMITH: Okay.

7 Now it seems -- I think we've exhausted discussion
8 on UCS Class 9 contention.

9 MR. TROWBRIDGE: Mr. Chairman, I did hope to --
10 since I'm going to be answering Ms. Weiss's amended conten-
11 tion, I will take no more time of the Board now to cover
12 what I'm going to say in my response to it.

13 CHAIRMAN SMITH: Oh, that's right, you had asked
14 for that opportunity.

15 MR. TROWBRIDGE: I had asked, but I'm perfectly
16 prepared to take care of it in our answer.

17 CHAIRMAN SMITH: All right.

18 Ms. Weiss.

19 MS. WEISS: Mr. Chairman, I wonder if you could
20 give me just five minutes before I launch into this again.

21 CHAIRMAN SMITH: A five minute break?

22 MS. WEISS: Yes.

23 CHAIRMAN SMITH: Okay.

24 MS. WEISS: Thank you, I really appreciate that.

25 CHAIRMAN SMITH: All right.

(Recess.)

end
M. WELCH:
W. WELCH
fiws (10)

1422 049

1 CAHIRMAN SMITH: Take your seats, please, ladies
2 and gentlemen.

3 Mr. Pollard, you raised a point that reminded me
4 I overlooked making an announcement this morning. You're
5 exactly right about the limited appearances.

6 The Board had intended to announce that in the
7 session next week where the public has an opportunity to make
8 limited appearance statements, even though it is technically
9 under the Commission's rules an extension of the Special Pre-
10 hearing Conference, a Petitioner who feels it burdensome to
11 attend that may be assured that the Board will not make any
12 rulings or transact any business which they would have to be
13 there to defend against.

14 The point was about the delivery of the brief.
15 It is simply a convenience that they had it to us at that
16 time, and of course it will not be considered or debated in
17 your absence. So any Petitioner who doesn't want to come
18 to that session-- I hope I'm not overlooking a sleeper or
19 something that might come up that might prejudice you, but I
20 just can't see anything that would happen that would require
21 a Petitioner's presence at that session.

22 We will not bring up any procedural business or
23 any substantive issues. We will try to explain, as we stated
24 in the notice, to limited appearors and members of the public
25 what we're doing, but that is explanatory and is not a ruling.

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1 In any event, the transcript of that will be avail-
2 able and if we have somehow lulled you into staying away to
3 your detriment, everybody will be given an opportunity to
4 seek redress.

5 Any problems with that? Any questions?

6 MR. POLLARD: The only comment I have, Mr. Chairman,
7 is the only possible rulings that might be made would be
8 concerning the length of the statements and things like that,
9 that the limited appearance people might be able to make.

10 CHAIRMAN SMITH: Oh, yes, that's correct. We will
11 have to control the limited appearances.

12 I'm talking about the business of the Special
13 Prehearing Conference which was referred to in this agenda
14 and the notice and the rules.

15 MR. POLLARD: Thank you.

16 CHAIRMAN SMITH: Does anybody have any problems
17 with that, or any questions about that?

18 Of course you're very welcome to attend.

19 Mr. Levin.

20 MR. LEVIN: Mr. Chairman, I will not be at that
21 conference. Someone from my office will be.

22 I believe that Mr. Tourtellotte also will be un-
23 able to attend as well, and there may be several other indi-
24 viduals. I have an NRC conference in Chicago going on, so
25 I'm going to rely on that.

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CHAIRMAN SMITH: I just can't see how anything could arise that would require your attention that you wouldn't have a later opportunity to address, based on the transcript.

MR. LEVIN: Very good. Thank you.

CHAIRMAN SMITH: Ms. Weiss.

MS. WEISS: Thank you, Mr. Chairman.

I believe we're at Contention 14 which raises the issue of systems interaction; that is, the capacity of systems and components not classified non-safety-related which could have an adverse effect on the integrity of the core.

The nub of the contention is that UCS calls upon the Licensee and the Staff to identify all such systems and components which can either cause or aggravate an accident, or can be called upon to mitigate an accident, and to classify those as components important to safety which are then covered by all the Commission's regulations relative to safety-grade design criteria.

We have included in the contention really by way of explanation a rather lengthy quote from the Lessons Learned Report which describes the issue I think quite well, and we would subscribe to that description of the issue, and I won't burden the record by reading that in now.

The objections by the Licensee only, I might add -- this is another one to which the Staff does not object --

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1 I read as being essentially the same as what you referred to
2 yesterday as the Licensee's syllogism. It's a scope objec-
3 tion to the contention, and I think there is also some objec-
4 tion on the grounds of vagueness, if I recall. They essen-
5 tially say that we have not identified all of the non-
6 safety systems which might be called upon to mitigate an
7 accident or which could cause or aggravate one.

8 We've given two examples and those are the same
9 two examples which the Staff has given throughout the Lessons
10 Learned Report; that is, the condensate polisher system and
11 the pressurizer power-operated relief valve, both of which are
12 non-safety-related components and both of which played a sub-
13 stantial part in the causing or aggravating of the accident.

4 331 14 I would just point out that the essence of the
15 contention is to call upon the Licensee and the Staff to
16 identify all such other systems which might have similar
17 effects. In fact, it is our understanding that the Licensees
18 are in the process of so doing in response to -- that the
19 Staff is engaged in an endeavor with Licensees to solve the
20 problem, and our contention basically is that it has got to
21 be resolved prior to the operation of TMI-1.

22 I don't really think there is any need to go into
23 it in any greater detail unless there are any questions from
24 the Board.

25 CHAIRMAN SMITH: Mr. Trowbridge?

1422 053

1 MR. TROWBRIDGE: Mr. Chairman, in line with your
2 earlier comment, our response is there and can be read by
3 the Board. I'm sure the Board will take note of our argu-
4 ments on earlier contentions equally applicable to this one,
5 and I will say nothing more.

6 CHAIRMAN SMITH: Will you proceed, Ms. Weiss?

7 MS. WEISS: Yes.

8 Contention 15, UCS contends that the various
9 short- and long-term measures identified by the Staff ought
10 all to be resolved prior to operation of TMI-1. I think
11 that is a short, concise, and accurate description of the con-
12 tention.

13 The Licensee has not objected. The Staff has
14 objected. I read the Staff's objection as essentially mis-
15 understanding the contention as being broader than it was
16 intended to be.

17 Each of our individual, technical issues, our
18 other technical contentions we think ought to be resolved
19 prior to the operation of TMI-1. Now this contention is in-
20 tended to cover all the issues which are raised by the Staff
21 which have not been independently challenged by us. We simply
22 wish to extend the principle that all of those short- and
23 long-term issues ought to be resolved prior to operation of
24 TMI-1, and I think the Licensee has interpreted that correctly.

25 CHAIRMAN SMITH: Mr. Tourtellotte.

1 MR. TOURTELLOTTE: With that explanation we have
2 no objection.

3 CHAIRMAN SMITH: Ms. Weiss.

4 If you want us to generate some additional debate
5 between your contentions so that your throat will last longer
6 we will. I see you're having difficulty.

7 MS. WEISS: No, this is fine. I like this moving
8 right along.

9 Contention 16 is the second of the three that
10 involve the Class 9 concept or the concept of accidents
11 beyond the design basis, and both the Staff and the Licensee
12 object essentially on-- Well, the Staff objects on the same
13 grounds to which it objected to Contention 11.

14 I would like to make it clear that in our view
15 this raises a very different issue than Contention 11.

16 CHAIRMAN SMITH: Wait a minute. 13.

17 MS. WEISS: 13. Thank you for the correction. Yes.

18 Contention 16 goes to emergency planning. All
19 emergency planning beyond the LPE I think it's quite clear
20 is a recognition of the residual risks of accidents beyond
21 the design basis events; otherwise there would be no need
22 for emergency planning beyond the LPE.

23 I think it is clear that the Staff has recognized
24 this for some time.

25 The point of difference between UCS and the Staff,

1 and I'm not sure where the Licensee stands on the merits -- I
2 suspect they haven't made up their mind yet and they are
3 waiting to see what the Staff requires of them.

4 The difference between UCS and the Staff is how
5 far beyond the design basis, the maximum design basis event
6 is it appropriate to draw the line for emergency planning
7 purposes.

8 USC claims that as a matter of policy and regula-
9 tory philosophy, emergency planning ought to be based on a
0 consideration of the worst case event, and we have described
1 that as a core melt with a breach of containment.

2 The Staff, as represented in the joint EPA-NRC
3 document which is referenced in the Staff's response, has
4 drawn two lines, one at 10 miles, one at 50 miles, for what
5 they call Emergency Planning Zones. And the Commission has
6 at least indicated its acceptance of that, at least on an
7 interim basis.

8 Those Emergency Planning Zones, the document makes
9 clear, are based on a consideration of some events beyond the
0 design basis. It's not clear to me what that is, but it is
1 clear on the face of the document that it involves a considera-
2 tion of some Class 9 accident.

3 And UCS' contention is that it ought to be the
4 worst case Class 9 accident and there is not sufficient justi-
5 fication of the Staff's position for limiting it to what they

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1 have limited it to.

2 Licensee's objection is somewhat different. They
3 raise the argument we've heard earlier today that this is an
4 issue covered by an NRC policy statement. It's not clear to
5 me whether they are thereby arguing that we're challenging a
6 rule or challenging a policy.

7 I would just note for the record that a policy
8 statement does not rise to the level of a rule. The District
9 of Columbia Circuit in the case of Minnesota against NRC,
10 oh, about three months ago decided that there are two ways
11 to make administrative law, by adjudication and by rule-
12 making, and that it is not open to the agency to do it by fiat,
13 by issuance of a policy statement.

14 MR. TROWBRIDGE: Mr. Chairman, may I point out
15 that this policy statement is the product of a proposal put
16 out for comment and extensive comment was received, and then
17 the Commission adopted the policy statement.

18 I see no difference between it and a regulation,
19 certainly in terms of whether the Commission has issued
20 instructions to the Staff and to this Board, how to handle --
21 what to encompass within emergency planning.

22 CHAIRMAN SMITH: Mr. Tourtellotte.

23 MR. TOURTELLOTTE: We have no other items to offer
24 than what we answered.

25 DR. JORDAN: The first sentence of your contention

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1 is not entirely clear but I think perhaps you cleared it up
2 when you say "show the inadequacy of NRC emergency planning
3 requirements." I took that to mean the present emergency
4 planning requirements.

5 Now there will be, in response to the Lessons
6 Learned Report, a revised plan by the Applicant and by the
7 Staff and the question will be at that time, are those plans
8 adequate? And so I think you should indeed address those
9 plans and if you feel they are inadequate, then we will want
10 to hear why you think they are inadequate.

11 But I would say in a sense we are waiting to see
12 what the Applicant and the Staff propose so it is a bit
13 premature, but nevertheless the idea of the contention to my
14 mind is surely one that has to be litigated in this-- Some
15 contention along those lines we are going to listen to.

16 MS. WEISS: Thank you.

17 MS. CARTER: At this time the Commonwealth of
18 Pennsylvania would like to make a brief statement about the
19 scope of emergency planning contentions, and we choose this
20 one to start with because it's the first emergency planning
21 contention that does not confine itself specifically to the
22 emergency plan of the Applicant or Licensee or the NRC.

23 We of course intend as the Commonwealth to present
24 evidence at the evidentiary hearing on at least the State's
25 role and possibly local government role in emergency planning,

1 but at this time, having seen the contention and having seen
2 the Board's order -- the Commission's order, I'm sorry, we
3 are unable to discern to what extent this Board has the legal
4 authority to and can or should be investigating the adequacy
5 of state and local plans per se, and consequently we don't
6 know what witnesses to call and what to tell them about the
7 scope of their prepared testimony.

8 I would put these questions, and they are questions
9 not objections because whatever the scope is, we stand ready
0 to submit testimony on it. And we have testified at length
1 before every investigating commission on TMI so far, so we
2 don't have any objection to any of these contentions. But
3 these are questions for clarification, to assist us in pre-
4 paring our case.

5 The two questions are first the legal question:
6 Does this Board have have the legal authority to hear evi-
7 dence on aspects of state and local emergency plans which are
8 not within the control of the Licensee or the NRC, and factor
9 that evidence into a decision on the restart of TMI-1?

10 The reason I raise this question is because it has
11 been a policy of the NRC not to require concurrence, its
12 concurrence in state and local emergency plans as a pre-
13 condition to licensing. Now this policy has come under a
14 great deal of criticism. The Kemeny Commission in its report
15 recommended that licensing be conditioned upon the approval

1 by the Federal Emergency Management Agency, not the NRC.

2 The U. S. Senate in July passed a bill imposing
3 a requirement that the NRC approve state and local emergency
4 plans before a license can be issued.

5 And the Commission's August 9th order doesn't shed
6 much light on it because it only speaks in terms of ordering
7 the Licensee to do certain things about planning.

8 So we're kind of left in the dark as to what the
9 NRC, this Board, the Commission thinks its legal authority
10 is to investigate the adequacy of state and local emergency
11 plans per se.

12 Another way of putting this question is suppose
13 this Board finds that the Licensee's emergency plan and the
14 NRC activities on emergency planning are adequate but that
15 state and local emergency plans in some way are inadequate.
16 Would that --

17 CHAIRMAN SMITH: How could that ever happen, as
18 a matter of logic? I mean how could it ever happen that the
19 total of the Licensee's plans, the Staff plans and the state's
20 plans, no matter how adequate or inadequate, given adequacy
21 of the first two plans, how could the sum be inadequacy?

22 MS. CARTER: I see. So you are saying that within
23 the investigation of the Licensee's plan is included all the
24 investigation of state and local emergency plans and in other
25 words you are saying that the license is conditioned upon

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1 an approval of state and local emergency plans?

2 CHAIRMAN SMITH: Oh, no, I'm not making any ruling
3 at all. I was just asking-- I think perhaps I misunderstood.

4 If we should find that the revised NUREG-1101 is
5 adequate, what is there about a state plan that would affect
6 our decision?

7 MS. CARTER: Suppose you had local government
8 agencies, perhaps a volunteer fire department company, or some
9 other local government officials coming to the witness stand
10 and saying, "Well, yes, this is our plan but we are unwilling
11 to put it into effect. We're not going to be here and
12 evacuate these people when the time comes. We're simply not
13 going to do it. We're going to be the first ones out of town."

14 Okay? Suppose that happens. Is this Board
15 legally authorized to factor that information into its deci-
16 sion on the restart of Unit 1?

17 CHAIRMAN SMITH: We have overriding responsibility
18 to determine, in the context of this case as I read it, whether
19 the emergency preparedness plan anticipated in the Staff's
20 Regulatory Guide 1101 is sufficient to assure public health
21 and safety.

22 I don't know, it would seem to me if somebody
23 comes to us and says they're going to rely upon state emergency
24 vehicles and we're not going to be around, that is directly
25 relevant.

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1 MS. CARTER: Okay. I think that does answer my
2 question.

3 In other words, Reg. Guide 1.101, which I under-
4 stand has been revised --

5 CHAIRMAN SMITH: It's being revised.

6 MS. CARTER: I think there was a copy in my mail
7 this morning of the Revised Reg. Guide 1.101. Yes, I think
8 that is the Revision.

9 CHAIRMAN SMITH: And as you recall, we mentioned
10 earlier yesterday that we are assuming that the Commission
11 is referring to not only Reg. Guide 1.101 but to revisions
12 of it in our consideration.

13 MS. CARTER: Well, you know, your answer to that
14 question sounds very much to me like it gives state and local
15 governments a veto over licensing of nuclear power plants,
16 which I don't think they perceived to have had before.

17 There have been several cases, three cases in
18 particular, Northern States, Pacific Legal Foundation, and
19 U. S. versus City of New York, which have tended to establish
20 the notion that there is total federal preemption in the area
21 of nuclear power plant licensing, and I think your statement
22 is leading me to believe that that is no longer true.

23 CHAIRMAN SMITH: No, I'm not giving you a con-
24 sidered statement and I'm not giving you a ruling of the
25 Board, and I think a distinction would have to be made as to

1 what is our-- I have nothing to say about preemption.

2 But, however, as far as this Board is concerned,
3 we cannot delegate the responsibility to the state to deter-
4 mine whether the emergency plan is adequate. I see no
5 barrier to take, as a factual matter, into account the
6 actuality of the state situation as evidence.

7 MS. CARTER: Could you repeat that, please?

8 You see no bearing to take into account the factual state of--

9 CHAIRMAN SMITH: I see no impediment.

10 MS. CARTER: I just didn't hear the words.

11 CHAIRMAN SMITH: I'm a little bit worried that--

12 MS. CARTER: I just didn't hear your word.

13 CHAIRMAN SMITH: I see no impediment to this
14 Board to consider the reality of the situation in determining
15 the adequacy of the emergency preparedness plans. If the
16 reality includes what the state will do or will not do, so
17 be it.

18 I'm afraid I'm missing something.

19 MS. CARTER: No, you have answered my question.

20 Thank you.

21 CHAIRMAN SMITH: But I still for some reason feel
22 very uncomfortable that I gave away the store or something.

23 (Laughter.)

24 MS. WEISS: It's because you're used to doing the
25 questioning instead of the answering.

DR. JORDAN: I think it is apparent that the Applicant's plan when issued will include the states, counties, or whatever else is involved. That involvement is an important part of the Applicant's plan, and that will be up for consideration in this hearing.

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1 CHAIRMAN SMITH: Have you concluded, Ms. Carter?

2 MS. CARTER: Yes, I have.

3 CHAIRMAN SMITH: Thank you.

4 Does anybody want to address the dialogue?

5 MR. TROWBRIDGE: No, I don't want to address
6 the dialogue. I understood Ms. Carter to say there were
7 two questions. I only heard one, and I'm looking for another.

8 MS. CARTER: I'm sorry. The second question,
9 which you also answered, would have been: Assuming that that
10 legal authority exists, to what extent, if any, are you going
11 to go beyond what the Commission said in its August 9th
12 order about its directives to the licensee for short and
13 long term actions on emergency planning? And your answer
14 indicated to me that although there is some ambiguity,
15 particularly on the long term actions, where it says extend
16 the capability out to ten miles, that you are interpreting
17 the Commission's order very broadly to include just about
18 everything that state and local governments do with respect
19 to emergency planning out to ten miles at least.

20 CHAIRMAN SMITH: Ms. Carter, what might be
21 helpful now to the Board is if you could explain what was
22 the basis for your doubts about the reach of our authority
23 to take evidence on this subject.

24 MS. CARTER: Well, my doubts were based, first
25 of all, upon the issue of historical pre-emption in the area

1 of nuclear power plant licensing, and also on the long-standing
2 NRC policy of not conditioning licenses upon its approval --
3 or concurrence, rather, in state and local emergency plans.
4 And although this is not the process of concurrence it looks
5 very much like it when, in an individual licensing proceeding
6 or restart proceeding, you're saying there has to be some
7 approval at least by the Commission, or by the NRC Licensing
8 board of state and local emergency plans. And also because
9 there have been these recommendations, legislative action
10 and so forth, attempting to impose such a requirement;
11 which implied to me that there was not such a requirement
12 already or else they wouldn't have felt it necessary to pass
13 such legislation.

14 CHAIRMAN SMITH: We are viewing it more as an
15 evidentiary matter.

16 Is that sufficient for that contention?

17 MS. WEISS: Yes.

18 CHAIRMAN SMITH: Are we done with this contention?

19 Will you proceed, Ms. Weiss?

20 MR. TROWBRIDGE: Could I pick up on one point?

21 I think the point is well taken with respect to
22 this joint NRC-EPA task force which the Commission has now
23 endorsed. Ms. Weiss made the point that while the staff
24 built its emergency planning zones around an assortment of
25 accidents, some of them with greater consequences, the

WRB / 1 Part 100 accidents, the Joint Task Force report does not in
2 fact enumerate what accidents the Commission did consider.
3 It in essence says the EPA-NRC Joint Task Force considered
4 what they considered to be a suitable mix and range of acci-
5 dents.

6 We have made the statement in our response that
7 those accidents do not --that the staff considered, do not
8 include a core meltdown accompanied by a breach of contain-
9 ment. We have made that statement partly on information
0 and our belief from our exposure to the staff and partly
1 because it seems evident to us that at ten miles one is not
2 probably going to meet the EPA guidelines, protective action
3 guidelines with a simultaneous core melt and breach of con-
4 tainment. And, therefore, it is partly an inference that
5 the report could not have considered that.

6 I do think it would be helpful if the Board
7 were to ask the staff, which I would hope could at least
8 answer this question as to what was considered by the Task
9 Force in the way of accidents, ask the staff for confirma-
0 tion that the accidents it considered in arriving at their
1 EPZs did not include the simultaneous core melt and breach
2 of containment.

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13 CHAIRMAN SMITH: Are you asking for this informa-
14 tion now, sir?

15 MR. TROWBRIDGE: I would like it now because

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1 I think probably the staff can answer it now. If that's not
2 the case, then I'd like the answer as soon as possible.

3 MR. TOURTELLOTT: Precisely what is the ques-
4 tion?

5 MR. TROWBRIDGE: Let me restate the question.

6 The Joint Task Force says, the report says that
7 it arrived at the 10 and 50 mile EPZs by considering a
8 spectrum of accidents. Those may not be the precise words
9 but that's my best recollection of the words. It never says
0 just what that spectrum is.

1 I'm not asking for the moment to please give
2 me the entire spectrum, but I am asking for confirmation that
3 the spectrum of accidents which the Task Force looked at in
4 arriving at the EPZs did not include a simultaneous core
5 melt and breach of containment.

6 MR. TOURTELLOTT: I believe that's correct.

7 Perhaps I should check it to be absolutely
8 certain. But that's my understanding, it did not.

9 DR. JORDAN: I think that that will be apparent
10 when we see the final statement, or the Reg Guide, when we
11 see the applicant's final plans with respect to it. And I
12 think it is very likely that, inasmuch as it does not, the
13 intervenors may say "Therefore the plans are inadequate,"
14 and will so argue.

15 We rather expect to hear such arguments; this is

WRI/wb5

1 a mandated issue. And we are going to hear the plans and
2 we are going to rule on the adequacy.

3 MR. TROWBRIDGE: Very well, Dr. Jordan.

4 May I simply add for the information of the
5 Board, this is one of the instances where we will not draw
6 a distinction between short term and long term; we will
7 present a plan which has the 10 mile limit prior to restart
8 not after restart.

9 CHAIRMAN SMITH: Ms. Weiss.

10 MS. WEISS: I'll go on to Contention 17.

11 Contention 17 gives two examples of the way in
12 which problems classified as generic safety problems -- and
13 I'm sure that the Board is familiar with the definition of
14 the term -- were directly involved in the Three Mile Island
15 accident. These are safety problems that have been under
16 study by the Board -- by the NRC staff for years and haven't
17 been resolved.

18 The two precise examples that we give you are
19 interaction between non-safety and safety systems. I won't
20 discuss that again because that happens to be the subject of
21 the contention which I argued just a few moments ago.

22 The second example that we give of one of the
23 generic unresolved safety problems is the Task A-24, Qualifi-
24 cation of Class IE Safety Related Equipment. And in specifics
25 we also discussed that yesterday. And, just to recap, that

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W13/wb6

1 was the problem involved with the pressurizer level indicators
2 failing in the environment of the accident.

3 Those are two of the generic unresolved safety
4 problems that we know now were directly involved in the
5 TMI-2 accident.

6 What UCS calls upon the licensee and the staff
7 to do is essentially go through the same inquiry and the
8 same analysis that is now required before a new plant can get
9 an operating license with respect to the generic unresolved
10 safety problems. And we reference for you the Appeal Board
11 decision in the North Anna case, ALAB-491, of 1973, which
12 requires that prior to the issuance of an operating license
13 the staff and licensee must demonstrate that with respect
14 to each applicable unresolved safety problem, it either has
15 been resolved on a plant-specific basis for the plant in
16 question or provide some independent justification why that
17 plant ought to be allowed to go in operation pending resolu-
18 tion of the safety problem.

19 That inquiry was never done for Three Mile
20 Island Unit 1 because it was licensed prior to the time of
21 this Appeal Board decision, and I don't think that any party
22 has ever raised the issue, and might not even have been aware
23 at the time of the existence of the unresolved safety problem.

24 We think the accident, in a nutshell, demonstrates
25 that it is inappropriate to allow this plant to continue in

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WFB/wb7

1 operation when you know that there are a number of unresolved
2 safety problems related to it, on the hope that another
3 accident won't occur which involves another one of those
4 unresolved safety problems. And we think really it is in-
5 cumbent upon this Board to require resolution of those
6 safety problems in the way that didn't occur before this
7 plant went into operation.

8 DR. JORDAN: Ms. Weiss, it seems to me that now
9 you are making an exception to your previous scope; that the
10 scope as you had understood it dealt with those items which
11 were related to the accident at TMI-2.

12 You are saying now, I believe, that all unresolved
13 safety items, whether they were related directly to the TMI-2
14 accident or not, need to be litigated in this hearing.

15 Is this not a change from your previous position?

16 MS. WEISS: I don't view it as such. I think
17 there is a clear nexus between this contention and the
18 accident, in the same sense that I was arguing yesterday on
19 some of the other contentions that we can't sit back and
20 wait for each unresolved safety problem to be involved in
21 another accident; that what is illuminated by the TMI-2
22 accident is the fact that these unresolved safety problems
23 can cause accidents, and that there is no basis for allowing
24 operation pending their resolution.

25 We have given you two specifics. I don't know if

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WRB/wb8

1 we could give you more at this time. I suspect during the
2 course of this proceeding and during discovery we'll be
3 dealing with many more of the specific unresolved safety
4 problems.

5 But one of the difficulties with trying to --
6 with the argument that we ought to be cut off now with the
7 two examples that we're able to give you, is that we don't
8 even know as of this time which were directly involved in
9 the accident.

10 DR. JORDAN: I think that so far as my own
11 personal feeling is, so far as you relating unresolved
12 safety equations -- and I'm not ruling that the two you
13 have cited necessarily do, but I would suspect there's a
14 high probability that those indeed are involved -- therefore
15 that those generic issues are indeed involved in TMI-2 and,
16 therefore, go into TMI-1.

17 Now I would think it would be improper to cut
18 you off at this time and say you can't come up with others
19 just because you haven't got them now. On the other hand,
20 it is not apparent to us that anywhere in the Commission's
21 order that we are allowed to go into consideration of all
22 unresolved safety issues. And I think that it would be
23 incumbent upon you to point out where indeed the order does
24 tell us to do so, if that is the case.

25 If, on the other hand, as I say, you are keeping

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WRB/wb9

1 your options open only to the TMI-2 related issues, then I
2 have less problem with it.

3 MS. WEISS: I think we intended to raise the
4 broader question. And I must say I tend to think I'd have
5 an easy time convincing the Board of this. But we think
6 it terribly important. And if we had to point to specific
7 language in the order we would point to the language that
8 tells this Board to rule on whether the measures are neces-
9 sary and sufficient. And we would say to the extent that
10 the other unresolved safety problems aren't at least
11 assessed by the staff and the licensee that the measures
12 aren't necessary and sufficient.

13 DR. JORDAN: Okay.

14 CHAIRMAN SMITH: You apparently have a fall-
15 back position which is--

16 MS. WEISS: Yes. I think you have fairly
17 characterized the alternative position, which is a fall-
18 back position, which is that any resolved safety problem
19 which is not now apparent to have been involved in the
20 accident but which becomes apparent down the road ought to be
21 assessed.

22 CHAIRMAN SMITH: Mr. Trowbridge.

23 MR. TROWBRIDGE: Mr. Chairman, I will stand
24 by our response.

25 I would like, however, to add my endorsement

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WRB/wb10

1 of the staff response. And with one comment.

2 The staff suggested that if this contention were
3 reduced to the particular issues enumerated in the contention,
4 the staff would have no problem. My short comment on that is
5 that, looking at Contention 5 and Contention 7 it seems to me
6 we already have contentions which cover the enumerated items.
7 And I don't think there is any necessity to repeat them in
8 a revision of Contention 17.

9 CHAIRMAN SMITH: Mr. Tourtellotte.

10 MR. TOURTELLOTTE: Similarly, I don't have a
11 great deal to add. I do agree, and I was going to point out
12 myself that the two items which we alluded to have already
13 been set out by UCS in previous contentions. And also I
14 think there is some reference to those general items
15 insofar as IE safety-related equipment in Contention 12
16 and interaction between non-safety and safety systems in
17 Contention 14.

18 Moreover, I would like to say that the staff
19 believes that there should be a real nexus. That nexus has
20 not been established. And, by analogy, what UCS is suggest-
21 ing is that, for instance, an operator, a person had something
22 to do with the events at TMI-2, and what they're suggesting
23 is that we should go out and examine 200 million people to
24 determine whether they're qualified to operate a nuclear
25 plant, when in fact that isn't relevant to this particular

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WRB/wb11

1 plant. We're only interested in the operators at this parti-
2 cular plant.

3 You can't attack on a generic basis the opera-
4 tions of the plant without some specification and a nexus
5 between the actual event and the generic issue.

6 CHAIRMAN SMITH: Ms. Weiss, this contention
7 bears somewhat upon the scope of the proceeding and the
8 differences, if any, between this proceeding and a proceeding
9 for an initial operating license.

10 As we ruled before on the request of TMIA, we
11 view it as a suspension proceeding. In looking over the
12 Commission's order, there wasn't an awful lot of guidance;
13 except that they did refer to the fact that it was a suspen-
14 sion proceeding.

15 But there was one other thing that I did note,
16 and that is that in one instance the Commissioners, on page 14,
17 stated that, in the incomplete paragraph, the last phrase
18 in the paragraph at the top of page 14, "...that the licensee
19 satisfies the financial qualification criteria imposed on an
20 applicant for an operation license," and in that instance,
21 and only in that instance, could I identify where the Com-
22 mission specified operating license requirements.

23 So what I'm getting at is, the North Anna and
24 other considerations were initial operating licenses, as the
25 staff points out, initial operating license considerations.

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2 It seems to me that, taking the Commission's order in its
3 entirety, that we are specifically not an operating license
4 Board. And by bringing all of these North Anna unresolved
5 generic safety items into it right now without some specific
6 nexus to TMI-2, you are putting us into an operating license
7 Board posture.

8 The fact that the North Anna reasoning has not
9 been applied to this case makes it no different than any
10 other operating cases in which the Appeal Board allowed
11 to continue in operation without bringing up the unresolved
12 safety -- unresolved generic safety issues. They just said--
13 As a matter of fact, even after the River Bend decision in
14 which this was first raised, and they said the staff should
15 do it, even after that the Appeal Board allowed to pass
16 without criticism new construction permits which did not
17 address that. And I think that the clear intent of taking
18 together River Bend and North Anna is that this should be
19 the situation hereafter.

20 Those are just my rather unstructured thoughts
21 on it.

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le ebl 1 MS. WEISS: Well, I didn't mean to suggest a
2 mechanistic analysis as may have been inferred. I did not
3 mean to suggest that that precedent is binding on this Board.
4 I meant to suggest that fact that the Appeal Board has ordered
5 that no operating licenses should now be issued without that
6 sort of analysis indicates the importance of the issues,
7 and not to suggest that that precedent was binding directly on
8 you because I certainly agree we don't have an operating
9 license proceeding here. I don't agree we have an enforce-
10 ment proceeding.

11 We have some sort of sui generis thing going on
12 here. But I certainly wouldn't argue that that's binding.

13 We meant to suggest that there is a nexus to
14 the Three Mile Island 2 accident inasmuch as that accident
15 showed the folly of failing to face up to the existence of
16 these unresolved safety problems until they caused other
17 accidents, the potential for them to be involved in causing
18 or aggravating serious accidents.

19 That's why we think it's incumbent upon this Board
20 to go beyond just the few that were specifically involved.

21 CHAIRMAN SMITH: This is your general argument.

22 MS. WEISS: Yes.

23 CHAIRMAN SMITH: I understand.

24 MR. POLLARD: Can I just respond, I think in
25 relation to Mr. Tourtellotte's what I thought was a totally

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1 inappropriate analogy of examining 200 million people. I
2 think the appropriate analogy would be saying only examining
3 those operators, those particular operators who made the
4 mistake, rather than saying that the class of operators could
5 make such mistakes. I think that would be the appropriate
6 analogy.

7 CHAIRMAN SMITH: Would you go on to your next
8 contention, please?

9 MS. WEISS: Contention Number 18 involves
10 basically the same principles and the same differences I think
11 between and among the parties as Contention 17. In Contention
12 18 we specify one Regulatory Guide which had not been applied
13 to Three Mile Island Unit 2 and it's the Regulatory Guide we
14 discussed yesterday, and that is Reg. Guide 1.47, which
15 requires an automatic indication of a deliberate disabling of
16 a safety system.

17 We claim that what needs to be done at this stage
18 prior to authorization of resumption of operation is an analy-
19 sis of which Regulatory Guides need to be backfitted to TMI
20 Unit 1.

21 I would note that one of the major of the Kemeny
22 Commission recommendations is to backfit developing safety
23 criteria and there has been much appearing in Nucleonics
24 Week articles in the past two months to the effect that the
25 Commission has under consideration a policy that would mandate

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1 backfitting in the absence of specific and narrow exemptions.

2 It is our position that the absence of a backfit
3 policy leading directly to the failure to backfit developing
4 safety criteria has been identified as one of the major
5 Lessons Learned from TMI-2 and one which you ought to be
6 correcting at this stage prior to resumption of the TMI-1.

7 CHAIRMAN SMITH: What would really be helpful to
8 me is when you approach the same general philosophy through
9 different doors, if you would point out if there are any
10 difference from one to the next.

11 As I see your argument on 10 it's identical to
12 your argument on 17, except you're talking about something --
13 you know, you're talking about a different approach to it.

14 MS. WEISS: I will certainly agree that philo-
15 sophically our position remains consistent, but I would urge
16 upon you that the particular nexus in each case to be drawn
17 rests on different facts, and we may consider some stronger
18 than others.

19 CHAIRMAN SMITH: That's exactly my point. You
20 might save yourself some effort because I think we thoroughly
21 understand the philosophy now, but point out the differences
22 and the different nexi.

23 MS. WEISS: In that connection, before I go on --
24 and I was just about to leave that contention, let me refer
25 you to Section 3.4 on page 19 of the Lessons Learned Report

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1 which I think I'll just quote a bit from to draw the nexus
2 for you.

3 "One significant issue that will be
4 addressed is that of backfit, that is the method of
5 determining the need for new regulations and imple-
6 menting these requirements in a timely manner on
7 reactors already under construction or in operation."

8 And our contention is that that has to be done
9 here now.

10 CHAIRMAN SMITH: All right.

11 MS. WEISS: Contention 19 has to do with fire
12 protection --

13 CHAIRMAN SMITH: We didn't give people an oppor-
14 tunity to respond to your comments.

15 Mr. Trowbridge.

16 MR. TROWBRIDGE: I think we just got read a quote
17 from a document and it went by me so fast I wasn't able to
18 pick up the document.

19 Could you say again, Ms. Weiss, what it is you
20 were quoting from, and where?

21 MS. WEISS: It's in the Lessons Learned Report
22 on page 19, Section 3.4, the language beginning:

23 "One significant issue that will be
24 addressed is that of backfit...."

25 MR. TROWBRIDGE: This is part of the future work

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1 of the Lessons Learned Task Force.

2 Mr. Chairman, I have no further comment on 18.

3 CHAIRMAN SMITH: Mr. Tourtellotte.

4 MR. TOURTELLOTTE: We have nothing to offer.

5 CHAIRMAN SMITH: MS. Weiss, also may I suggest
6 that it is helpful when we have a generous amount of time to
7 resummarize the contention but I think now the pace is moving
8 so that you may cut that short. We don't need quite as much.
9 I can see now that at the pace we're going at we are simply
10 not going to finish today.

11 MS. WEISS: I'm almost done.

12 CHAIRMAN SMITH: Okay.

13 MS. WEISS: Contention 19. With the Board's
14 permission I would like to have Mr. Pollard, Mr. Robert
15 Pollard, the nuclear safety engineer with the Union of
16 Concerned Scientists, speak to that one.

17 CHAIRMAN SMITH: All right.

18 Mr. Pollard, everyone I am sure has noticed that
19 there is a potential for confusion between you and Robert Q.
20 Pollard representing CEA. Could you suggest to us a modifica-
21 tion of your name?

22 MR. ROBERT D. POLLARD: I would prefer to use my
23 name and perhaps the middle initial, D, will be distinguish-
24 able from Q.

25 CHAIRMAN SMITH: All right.

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1 MR. ROBERT D. POLLARD: I believe the arguments
2 Ms. Weiss has advanced for our general comments on the Board's
3 responsibility to assure reactor safety also apply to this
4 contention, but I think here we can draw a stronger nexus
5 to the particular accident sequence.

6 In the course of the accident it was obvious that
7 we had inadequate cooling of the core. It may be argued
8 that this was because of a loss-of-coolant accident rather
9 than a normal shutdown, but the Staff has already determined
10 that the fire protection for the normal shutdown cooling
11 systems in this plant needs modification.

12 The emergency cooling systems are used, especially
13 the low pressure systems, for shutdown cooling capability.

14 The very same equipment functions only in a different manner
15 in its source of water. So our contention here would deal
16 with the adequacy of the cooling systems to prevent meltdown
17 of the core as occurred at Three Mile Island Unit 2, and we
18 would contend that the fire protection for those systems is
19 inadequate.

20 Beyond that, part of the Restart Report deals with
21 ways in which we are going to improve the capability for
22 shutdown cooling at Three Mile Island. Specifically the
23 pressurizer heaters will have to be installed in a way
24 that they are now classified as safety related.

25 In Amendment 1 to the Restart Report the Applicant

eb7 1 references the use of Regulatory Guide 1.75 which deals with
2 physical separation of safety-related equipment which is one
3 of the principal considerations in dealing with fire protec-
4 tion. Therefore, I think that the contention is applicable
5 directly to the accident and to the Applicant's proposals to
6 correct the deficiency which contributed to the accident.

7 DR. JORDAN: Let me see if I understand Mr. Robert
8 D. Pollard's statement in establishing a nexus between TMI-2
9 and TMI-1.

10 You are saying I gather that the emergency core
11 cooling equipment in case of a fire would not operate properly
12 in case there was a fire in that portion of the plant. Are
13 you claiming that it doesn't meet, say, IEEE 273 requirements
14 for diversity of cable paths, or didn't respond to the Browns
15 Ferry fire in changing things to meet more recent Commission
16 requirements?

17 MR. ROBERT D. POLLARD: Correct, except the
18 reference is IEEE 279.

19 DR. JORDAN: I see. So you claim that TMI-1 and
20 of course 2 was inadequate in that they did not meet that?

21 MR. ROBERT D. POLLARD: That's correct.

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1 CHAIRMAN SMITH: Mr. Trowbridge?

2 MR. TROWBRIDGE: Mr. Chairman, Mr. Pollard's
3 explanation of the highly tenuous connection between this
4 contention and the accident at Three Mile Island 2 does
5 nothing to change our response to the contention.

6 However I would like to take this opportunity to
7 advise the Board -- which may not be necessary -- that there
8 are and have been some matters, as is normal, pending between
9 the Licensee and the NRC Staff, licensing matters which have
10 nothing to do with the Three Mile Island accident but in which
11 life goes on.

12 There is indeed -- not as a result of the Three
13 Mile Island accident or having anything to do with it --
14 there is indeed a Staff conclusion that they would like to
15 see some modifications in the safety systems to implement
16 an alternate shutdown system. This grows out, the Staff
17 requirement, the one we are responding to, grows out of a
18 general review by the Commission for all licensees of fire
19 protection as a product of part of the Browns Ferry incident.
20 And as a result many licensees, including TMI, have found
21 areas where upgrading of the fire protection system was in
22 order.

23 And, as I say, this is something that is going on.
24 We intend to continue to deal with the Staff. We expect to
25 have to satisfy the Staff on this particular Staff conclusion,

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1 and we'll do so.

2 Now that's not the only item that we will be
3 handling with the Staff outside the scope of this proceeding,
4 and I want the Board to be very clear that we will be continu-
5 ing to do business with the Staff on other matters. For
6 example, at Three Mile Island 1, at a number of other PWRs
7 -- and having nothing to do with the Three Mile Island acci-
8 dent -- there are some pipe cracks.

9 As I understand the pipe cracks they are associated
10 with piping systems where stagnated borated water has been
11 existent, and this has resulted in what I understand to be
12 some stress corrosion cracking.

13 Three Mile Island 1 is going at the task of
14 thoroughly investigating and where necessary remedying this
15 cracking problem, as are other licensees, and we'll expect
16 to satisfy the Staff on that score. But it's not a TMI 2
17 accident related matter, and it's not one which we regard as
18 within the scope of this proceeding in any way.

19 But there are such continuing licensing matters.

20 CHAIRMAN SMITH: Mr. Tourtellotte?

21 MR. TOURTELLOTE: Well, my immediate question
22 that I ask myself in trying to follow where the nexus is is
23 where was the fire in the TMI 2 incident? And there was no
24 fire. And I see no nexus.

25 And the nexus that is offered by UCS it seems to

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1 me is at best tangential, and is so remote that I think it
2 places the question of fire protection beyond the purview of
3 this Board.

4 I would also add that the Staff is considering a
5 fire protection plan and that my current understanding of how
6 we are progressing is that the review of that will be completed
7 prior to the hearing. Nevertheless it does not fall with the
8 scope of the hearing.

9 CHAIRMAN SMITH: Mr. Tourtellotte, in the Staff's
10 response to UCS contention 19 you seem to have slipped back
11 to the more restrictive view of the scope of the hearing.
12 I don't hold you to having had studied language in each
13 instance, but you're speaking there of related to the
14 suspension of operations rather than as I would expect to the
15 situation in general at TMI 2 and the events of March and
16 April.

17 MR. TOURTELLOTTE: Well, I guess our understanding
18 of the words "suspension of operation" necessarily includes
19 the occurrence of the TMI 2 event.

20 CHAIRMAN SMITH: Okay.

21 MR. TOURTELLOTTE: That is, the suspension would
22 not have occurred at TMI 2--

23 CHAIRMAN SMITH: You're not referring, then, to
24 the -- you're not referring to the same bases of suspension
25 referred to by the Licensee in its view of the scope?

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1 MR. TOURTELLOTTE: No.

2 CHAIRMAN SMITH: Okay.

3 MR. TROWBRIDGE: Mr. Chairman, I do understand
4 that the Staff concurs in the proposition that this proceeding
5 is concerned only with the bases for suspension. The point of
6 difference is it takes a broader view of what the bases for
7 suspension are than the Licensee.

8 MR. TOURTELLOTTE: That's accurate, that's an
9 accurate representation of our position.

10 CHAIRMAN SMITH: Are you going to take 22?

11 MR. ROBERT D. POLLARD: No.

12 I would like to briefly comment on Mr. Trowbridge
13 and Mr. Tourtellotte's response. Perhaps I'll go in reverse
14 order.

15 Mr. Tourtellotte asked where was the fire at
16 Three Mile Island Unit 2; other than the explosion of the
17 hydrogen, I don't know of any fire and I'm not arguing that
18 a fire was what resulted in the disabling of the safety
19 systems at TMI Unit 2.

20 But perhaps I can use an analogy.

21 We know that the auxiliary feedwater system was
22 disabled by closing two valves, and we have a contention
23 dealing with Reg Guide 1.47 that there ought to be an indica-
24 tion system to tell the operator when safety systems are out
25 of service.

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1 I do not think I would be or the public would be
2 or this Board would be happy with an indication system just
3 for those two valves. We ought to have a way of indicating
4 whenever the safety system is taken out of service deliberately
5 for whatever reason.

6 To go back to this contention, the accident at
7 Three Mile Island, a contributing factor to it was the dis-
8 abling of the emergency core cooling systems as well as
9 other safety systems. One other way that those safety
10 systems can be disabled -- and I think we can prove it -- is
11 by fire.

12 I do not think that the public health and safety
13 would be adequately protected if we go back into operation
14 with another way the very same systems could be disabled.
15 That's the first point.

16 With respect to Mr. Trowbridge's statements that
17 normal matters continue to be before the Staff all the time,
18 I would agree. But the normal matter before the Staff with
19 regard to fire deals solely with fire protection for shutdown
20 cooling systems.

21 I think we will be able to prove by the Staff
22 testimony that they do not require fire protection for other
23 safety systems, such as emergency core cooling, containment
24 spray, containment isolation, on the grounds that that's
25 beyond the design basis.

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1 So my point is that our fire protection contention
2 goes beyond the scope of the normal matters that Mr. Trowbridge
3 refers to that are ongoing between Met Ed and the Staff with
4 regard to fire protection.

5 MR. AAMODT: Mr. Chairman.

6 CHAIRMAN SMITH: Mr. Aamodt.

7 MR. AAMODT: Might I make just a brief observation.

8 Section 1 of the order says that this proceeding
9 should give priority to consideration of those issues which
10 are related directly to suspension of operation. That clear-
11 ly says we're not limited to.

12 CHAIRMAN SMITH: It says -- there's a lot that
13 happened this morning before you arrived --

14 MR. AAMODT: That was discussed.

15 CHAIRMAN SMITH: Not this particularly, but the
16 scope of various contentions.

17 MR. AAMODT: I'm sure of that, sir.

18 I wanted to make that point here because it was so
19 clearly stated and unchallenged by both the Licensee and NRC
20 that we weren't limited to, and the order clearly says that
21 we are not limited to, that we are to give priority to. And
22 that's a clear distinction that's very important to us as we
23 proceed with our contentions.

24 CHAIRMAN SMITH: All right.

25 MS. WEISS: Contention 20, Mr. Chairman?

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1 CHAIRMAN SMITH: Yes.

2 MS. WEISS: It is the last UCS contention, and
3 the last one that involves the concept of an accident beyond
4 the design basis. It's a NEPA contention, intended to be
5 phrased as a classic NEPA contention.

6 You had indicated your desire to argue NEPA issues
7 at some particular time, I understood you to say yesterday.
8 If you want to have an argument on NEPA all at once, I think
9 that wouldn't be a bad idea. I can either defer my discussion
10 of this contention until that time or I'll go ahead with it
11 now, whichever is the Board's pleasure.

12 (The Board conferring.)

13 CHAIRMAN SMITH: Ms. Weiss, both the Licensee and
14 the Staff presented general briefs on the NEPA issue, and
15 these briefs were -- I was somewhat surprised to have received
16 them at that time, but they did relate to specific contentions
17 and they were appropriate.

18 We regard the applicability of NEPA and the need
19 for an environmental impact statement to be very largely a
20 legal issue, which raises the point that intervenors have a
21 sufficient opportunity to address the briefs filed by the
22 Staff and the Licensee on that issue.

23 MS. WEISS: For me, I can say I certainly did not.
24 I mean, I was amazed by the length of those briefs. And I
25 didn't realize -- and they specifically addressed the

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1 psychological distress issue --

2 CHAIRMAN SMITH: No.

3 MS. WEISS: I was going to say -- I was referred
4 in the Staff's answer to my contention back to those briefs.

5 CHAIRMAN SMITH: Yes.

6 MS. WEISS: If the Board is suggesting that the
7 way to go about this might be to give me an opportunity to
8 reply in writing rather than take your time here, that's
9 perfectly fine with me.

10 CHAIRMAN SMITH: Well, my general impression --
11 I'm not saying that those briefs weren't appropriate, they
12 were appropriate. I'm just saying that I was surprised, and
13 perhaps others were, that it was discussed so thoroughly at
14 that particular time.

15 So it may very well be appropriate to provide an
16 opportunity for reply briefs, since we're going to be having
17 further briefing anyway on the issue.

18 DR. JORDAN: I am convinced that this is an
19 important issue, that whether there should be a revised
20 impact statement issued in this connection is a fundamental
21 issue, and I was not entirely convinced that the -- although
22 I have not had a chance to study them, but it occurs to me,
23 as Ms. Weiss suggested, that the Staff's brief was aimed
24 largely at psychological issues. And I think that there is
25 a broader question: Are there any impacts as a result of the

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1 TMI 2 accident, does that call into question any impacts
2 that were not considered in the final environmental statement?

3 Is there no need for a revised FES if the Staff
4 and the Applicant believe that they have addressed this
5 adequately in the briefs; if they have then they can choose
6 to rest on those, in spite of my question, as I say, which
7 was only raised because I just barely had a chance to glance
8 at them.

9 If they're content to rest on that, then I would
10 think it would be well for Ms. Weiss and any others to respond
11 to those briefs. But if the Staff and Applicant believe that
12 it should be addressed in broader terms, then I think they
13 should say so now and perhaps have a schedule set up for the
14 submission of briefs.

15 MR. SHOLLY: Mr. Chairman?

16 CHAIRMAN SMITH: Mr. Sholly.

17 MR. SHOLLY: There's a complicating factor regard-
18 ing environmental impact statements here because both Unit 1
19 and Unit 2 were considered together in the Final Environmental
20 Impact Statement.

21 I'm not too clear as to whether we are to continue
22 to follow that or not. If we are to continue the impact --
23 consider the impact of Unit 1 and Unit 2 as a unity, as a
24 whole, then there is a considerable bit of information such
25 that it has to be revised.

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1 DR. JORDAN: No, I think we are now concerned
2 with a federal action, and the federal action proposed is
3 the restart of TMI 1, and therefore the brief should be with
4 respect to that.

5 MR. ADLER: Mr. Chairman, you mentioned a briefing
6 schedule.

7 TMIA of course has raised the environmental impact
8 statement contention, and we would want to reply to the briefs
9 that have been filed. But since UCS has finished its conten-
10 tions, if we're talking about briefing schedules, I wanted to
11 perhaps suggest a change in the agenda.

12 There were a number of items that have been
13 reserved for after all of the contentions have been presented
14 which have a general applicability. Since it appears that
15 we're going to go very late tonight, and there may be conten-
16 tions finished and some intervenors may find it necessary to
17 leave -- I think Ms. Weiss indicated that she has to catch a
18 plane -- would it be possible for us to address the general
19 issues now, perhaps before lunch, and then get on with the
20 contentions.

21 That way people who have to leave would be able to
22 leave and not be prejudiced.

23 CHAIRMAN SMITH: That might be a worthwhile --
24 Let's finish this particular contention first, and we'll talk
25 about briefing schedules, and then maybe after lunch let's

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1 address your proposal, if that's all right.

2 MR. POLLARD: Mr. Chairman, Chesapeake Energy
3 Alliance also has an EIS contention, and I would request,
4 although I'm not objecting to briefs being submitted, that we
5 would have the opportunity to address orally for the record
6 here, so that that gives us -- that relieves us somewhat of
7 the burden that is substantially oppressive, of preparing
8 written briefs, that we have some opportunity to address it
9 for the record here.

10 CHAIRMAN SMITH: All right.

11 (The Board conferring.)

12 DR. JORDAN: I did raise the question a little
13 bit ago about -- to the Applicant and the Staff and I guess
14 I would like to hear their answers.

15 Do they plan to file any more briefs in this
16 hearing concerning the need for a final environmental impact
17 statement on the restart of TMI 1, or are they going to rest
18 on their present one? And will the Staff be filing a
19 negative impact statement?

20 MS. MULKEY: Mr. Trowbridge, do you want to
21 answer those?

22 MR. TROWBRIDGE: Well, I'll answer for us.

23 We have filed a brief specifically on the question
24 of the preparation of an FES, and that is all we intend to do.

25 But we would reserve, I think, as others do, the

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1 right, without necessarily expecting that we would exercise
2 it, to reply to new matters in other briefs.

3 CHAIRMAN SMITH: The Staff?

4 MS. MULKEY: The Staff regards our brief on
5 psychological distress issues to contain our argument on the
6 nature of the federal action and the nature of the law.

7 There is one matter which is not discussed there.
8 It's just discussed a little bit in our answer to the conten-
9 tion, which is our intention to conduct an environmental
10 impact appraisal of this action as we understand it.

11 Whether there would be a negative declaration
12 would depend on I assure the results of that appraisal. In
13 the event that our analysis -- it's undertaken, as believe,
14 purely discretionally, this action, as we understand it. If
15 it reveals significant environmental impacts presumably we
16 would then issue either an environmental statement or a
17 supplement to the earlier environmental statement.

18 Otherwise we would issue a negative declaration.

19 I don't know if that's a sufficiently complete
20 answer.

21 We do not anticipate further briefing this ques-
22 tion. We do believe our brief on psychological distress
23 issues contains our full analysis of the NEPA picture for this
24 action.

25 CHAIRMAN SMITH: Was that point made in your brief?

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MS. MULKEY: Which point?

CHAIRMAN SMITH: Your plans.

I remember reading about the plans for the environmental impact appraisal, but this is the first time I've heard that there is even a remote possibility that the Staff may consider an environmental impact statement.

MS. MULKEY: There is nothing in our brief on psychological distress issues which announces our intent to discretionally undertake an environmental impact appraisal.

We do state in answer to several contentions --

CHAIRMAN SMITH: That where I got it. Okay.

MS. MULKEY: We do not go into what seems to us the obvious results of such an appraisal, which is: it depends on what your appraisal tells you as to where you go from there.

And I merely meant to state that, and to state nothing regarding the likely technical outcome of that analysis.

(The Board conferring.)

CHAIRMAN SMITH: Could you give us some guidance, Ms. Mulkey, on what type of -- the time that is going to be involved in your environmental impact appraisal?

MS. MULKEY: Before I do that, I want to make it clear that our understanding of the federal action involved is different from what I understood Dr. Jordan to say, and we

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1 have characterized it with considerable precision in our brief.

2 We expect to undertake an appraisal of the federal
3 action involved, as we understand it, and to have completed
4 that appraisal in the same general time frame that we hope to
5 have completed our safety review. If I had to pick a date,
6 I would pick January.

7 CHAIRMAN SMITH: Okay.

8 MR. POLLARD: Mr. Chairman, I think one question
9 is very relevant to this environmental impact appraisal, it's
10 what the scope is going to be. Is it going to review
11 psychological distress, is it going to review the adequacy
12 of the existing environmental impact statement, is it going
13 to review alternatives, changes in projection, for example,
14 of the electricity needs for the area, et cetera.

15 Will also there be an opportunity -- Will it have
16 the status of some kind of formal document which the Board
17 will require for the Staff that would provide for comments and
18 reevaluation, et cetera?

19 CHAIRMAN SMITH: You've identified some problems.

20 MR. KEFFORD: Mr. Chairman, may I elaborate?

21 CHAIRMAN SMITH: Mr. Kefford, yes.

22 MR. KEFFORD: There also appears to be a growing
23 Staff tendency to go somewhat deeper into this world of
24 Class 9 accidents. Perhaps that would also be an appropriate
25 consideration for this appraisal or whatever it is.

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1 CHAIRMAN SMITH: Is there anything further on the
2 environmental impact statements?

3 MS. WEISS: I take it that the result of this is
4 that both the Staff and the Licensee are standing on what
5 they've already filed, and we now will have an opportunity
6 to file in writing?

7 CHAIRMAN SMITH: Yes, you're going to have an
8 opportunity to file briefs, why there should be and the
9 scope and everything else of an environmental impact state-
10 ment.

11 Mr. Crowbridge said that they don't intend to
12 answer, but they might have to. And I would assume that the
13 Staff, if they recognize a new problem, might want to address
14 it too.

15 MS. WEISS: Now I also would assume that we could
16 request an oral argument after the filing of those briefs, and
17 it would be in the Board's discretion to allow it?

18 CHAIRMAN SMITH: You can always request it; you
19 just feel free to --

20 MS. WEISS: Just suggesting that that might be a
21 way to cut some big chunk out of today, but....

22 CHAIRMAN SMITH: Sure.

23 All right. Now are we done with environmental
24 impact statements?

25 MR. JORDAN: Sir, could I make one point?

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1 PANE always viewed the psychological distress
2 issue, as I think Met Ed did, which is that there are two
3 separable issues. One is whether psychological distress is
4 cognizable under NEPA; the other is whether an EIS is required.
5 And because the Staff argued some on the EIS requirement, we
6 very briefly responded to it in our reply brief.

7 We would intend to file a reply in that issue in
8 addition to what we've already done.

9 CHAIRMAN SMITH: Very good.

10 I would like for you to bear in mind in your
11 briefs that as a contention, as a simple contention, should
12 there be an EIS or should there not be one, that's not really
13 a contention. You can't prove or disprove that. So be more
14 practical in your approach to it.

15 MR. POLLARD: My question that I had brought up
16 was to raise the issue, but also to elicit information from
17 the Staff as to what they intended as to the scope. It would
18 be helpful in terms of our response of what would be necessary
19 to challenge, to contest.

20 Obviously the extent to which we're satisfied by
21 the scope of their appraisal and the opportunities that would
22 be provided for responding, et cetera, et cetera, this might
23 impact how we would prepare our brief.

24 CHAIRMAN SMITH: You're suggesting something to
25 me. Much of this dialogue or this discussion here is very

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1 helpful to the Board.

2 But I would hope that during the course of
3 discovery and the prehearing procedures that there would be
4 exchanges of information informally among the parties.

5 As a matter of fact, if you'll note the Commission's
6 order and notice of hearing, there should be free access to
7 the intervenors on what the Staff's position shall be. And I
8 know that you're just going to disgorge all sorts of informa-
9 tion when they ask appropriate questions.

10 And this may be helpful to the point that you're
11 raising.

12 Why don't you just call them up?

13 MR. POLLARD: My only concern was that it be on
14 the record, their response.

15 CHAIRMAN SMITH: Well, then it could be put on the
16 record when you feel it's appropriate.

17 I do think that informal discussions are going
18 to be more efficient and more productive. You're going to
19 have more time, more leisure, more opportunity to consider.
20 We're always going to be short of time in formal sessions.

21 Ms. Weiss, I have a question about contention 20.
22 I would have read this contention, if I had read it carelessly,
23 that you were asserting that the construction permit and the
24 operating license depended at least in significant part upon
25 the Reactor Safety Study, WASH-1400. And I don't see any

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apb18 1 basis for that. In fact, I think that probably is not true,
2 but I don't know.

3 Is that your contention?

4 MS. WEISS: No.

5 The contention is that NEPA requires at this point,
6 post-TMI, consideration of the consequences of accidents beyond
7 the design basis. And we went into that legal argument, and
8 it involves some factual disposition, at some length yesterday.

9 Now the purpose of referencing WASH-1400 is that
10 UCS perceives that to be the only technical justification
11 which the NRC Staff had for its policy of refusing to consider
12 accidents beyond the design basis under NEPA. And the argu-
13 ment we were making was that at least it specifically -- at
14 least its probability figures have been specifically discredit-
15 ed by the Commission, so that no longer forms the basis for
16 a policy which seeks to exclude major reactor accidents on the
17 basis of probability.

18 And it's meant to be additional ammunition, in
19 addition to the fact that we had an accident at TMI 2 beyond
20 the design basis. This is meant to consider -- to state the
21 theoretical technical basis which the Commission had for its
22 probability judgments has been discredited by the Commission
23 itself.

24 So it's really part of the explanation and basis
25 for the contention rather than a part of the contention itself.

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1 CHAIRMAN SMITH: Neither the Applicant nor the
2 Staff addressed that point. I thought it might be helpful
3 if -- Is your silence acquiescence to her claim that the only
4 justification that there was for -- Well, you know what the
5 problem is. You may address it or you may not, it's up to
6 you.

7 MS. MULKEY: The substantial body of Commission
8 case law on consideration of Class 9 accidents in NEPA
9 analysis does relate to analyses of the credibility. It is
10 not my understanding that WASH-1400 is the sole or even
11 primary basis for that conclusion.

12 CHAIRMAN SMITH: Is it any basis?

13 MS. MULKEY: I do not believe so.

14 CHAIRMAN SMITH: Now there was a study in the
15 Commission, a mandatory study at the Commission to identify
16 any case which in any material part depended upon WASH-1400.

17 MS. MULKEY: Exactly, and it's with reference to
18 that that I say that I do not believe there is any link.

19 In any event, I am confident that that body of
20 Commission case law which grew up around the question of
21 considering under NEPA as a matter of credibility is not
22 reliant in any important way on this study per se.

23 (The Board conferring.)

24 MS. WEISS: I think, Mr. Chairman, that what we're
25 getting into may relate to matters of proof, and we will be

mpb20 1 calling upon the Staff in the course of the rest of this
2 proceeding to show us what other technical bases they have
3 for that conclusion if they intend to stand on that conclu-
4 sion.

5 So I think we're discussing prematurely matters
6 of proof.

7 CHAIRMAN SMITH: All right.

b7 8 Well, have you concluded now your contentions,
9 Ms. Weiss?

10 MS. WEISS: Yes, I have.

11 CHAIRMAN SMITH: All right.

12 It's obvious that we won't finish the business
13 schedule for this special prehearing conference today, so so
14 that people may have a maximum opportunity to plan, should we
15 proceed to a session tomorrow?

16 The consensus seems to be yes.

17 MR. ADLER: Mr. Chairman, it depends on whether
18 you intend to take these generalized matters out of order.
19 I'm just speaking for myself. I know that I am fourth on
20 the list. I may very well be done today. I cannot be here
21 tomorrow.

22 CHAIRMAN SMITH: Okay.

23 Who shares that problem?

24 (Show of hands.)

25 I think that that might be a fair thing to do, and

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then those who want to leave can leave.

We'll address it again first thing after lunch.

We'll return at one-thirty.

(Whereupon, at 12:00 noon, the hearing in the above-entitled matter was recessed, to reconvene at 1:30 p.m., this same day.)

end
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AFTERNOON SESSION

(1:30 p.m.)

2
3 CHAIRMAN SMITH: Ladies and gentlemen, may we
4 begin.

5 The Board during the lunch hour considered the
6 possibility of reversing our normal procedure to allow those
7 who can complete their business to be free from tomorrow's
8 session. And we think it's a good idea.

9 What we'll do is, those petitioners who wish
10 to be excused for tomorrow first address their contentions
11 and then we'll take up the agenda items which pertain to
12 the remaining business other than contentions, and then go
13 back to the contentions.

14 So I think perhaps TMI Alert would be the most
15 logical to lead off. Do you agree?

16 MR. ADLER: That's fine.

17 CHAIRMAN SMITH: Well you may, then.

18 MS. LEE: Mr. Chairman.

19 CHAIRMAN SMITH: Ms. Lee.

20 MS. LEE: Mr. Chairman, I don't know if I'm
21 out of order, but there was something that was discussed
22 earlier that I'm very concerned about, and I don't know if
23 you're going to bring this up again for discussion, and, if
24 you are not, I would like to take this opportunity now to
25 interject my own personal opinion, because it does surround

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1 my contentions. And that has to do with the staff's
2 environmental impact appraisal.

3 Just briefly, without being redundant and without
4 taking a lot of time, this is a source of deep concern to me.
5 It does surround my contentions. And I find in dealing with
6 bureaucracies we do get bogged down in terminology and we
7 don't deal with the depth. Specifically what I have in mind
8 is, Is there to be an environmental impact appraisal of
9 human beings, psychological, physiological, and the animal
10 and wildlife as well as the fauna, the flora, etc.? I want
11 to know from the staff if the staff can respond at this
12 time to what extent and to what depth are they prepared to
13 go.

14 The reason I ask this is, after discussions
15 with entomologists, with pathologists and geneticists, they
16 state that we have no parallel to go on to make a comparison
17 as to what is now occurring in deference to what the situation
18 was prior to the opening of the plant.

19 I hope I'm not out of order, Mr. Chairman.

20 CHAIRMAN SMITH: Certainly not. That would be
21 a continuation of our previous discussion. I thought we had
22 completed it.

23 Ms. Mulkey, do you care to address Ms. Lee's
24 concerns?

25 MS. MULKEY: We expect to analyze any environ-

WF /wb3

1 mental impacts which we discover or can find which are
2 associated with the federal action involved here and which
3 have not already been analyzed in association with operation
4 of this facility; with the exception that we expect to get
5 guidance from the Commission in the area of psychological
6 distress and probably in the area of the consequences of
7 Class 9 accidents.

8 I don't know if that's an adequate answer to
9 Ms. Lee or not.

10 We do not expect to analyze environmental im-
11 pacts associated with the operation of this facility which
12 our analysis reveals have been thoroughly investigated in
13 the original Final Environmental Statement associated with
14 operation of this facility.

15 MS. LEE: Can you be more specific? Are you
16 going to look into psychological distress? Are you going
17 to look into the problems that are now being encountered
18 by farmers within the TMI area?

19 I'm specifically stressing this because for six
20 years I have tried to get the attention of the NRC, of my
21 representatives, and I specifically filed a petition with
22 this Commission for the purpose of getting that information
23 before the Board so that something like we're discussing
24 now could be done. I don't know what the cause is: I'm not
25 stating that here. All I want to know is, What are the

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W B/wb4

1 specific intentions of the Board? I think we need to clarify
2 this, even though it is taking time.

3 MS. MULKEY: If Ms. Lee will submit to the NRC
4 staff information which she has available we will take it
5 into account to the extent appropriate in our appraisal.

6 MS. LEE: I don't think you're responding
7 adequately to what I'm saying.

8 I would like to see the staff-- We're dealing
9 with a whole different situation here. It's all new. If
10 we had done this before the licensing of Unit 1 in depth
11 we wouldn't be confronted -- or, at least if we were, we
12 would have the information that we now need to make a compari-
13 son through an aptomology study. We dont have that in-
14 formation.

15 I think before there is a relicensing or re-
16 opening of a plant that we need an in depth study. And I
17 think we need to respond not just for information that you're
18 aware of, we need to do an in depth study, period, of the
19 entire area.

20 MS. MULKEY: I'm afraid I can't provide any
21 more extended response than I already have.

22 DR. KEPFORD: Mr. Chairman, could I elaborate
23 on the depth here?

24 CHAIRMAN SMITH: Please do.

25 DR. KEPFORD: The original FES for TMI-1 and 2

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1 was based on the assumption that if whatever releases there
2 are meet 10 CFR Part 20 and Appendix I standards, and so on,
3 that everything will be all right.

4 There were indeed studies done of local flora,
5 local fauna, and so on, on TMI-2 and, to a certain extent,
6 in the river and the surrounding area. But to the best of
7 my knowledge there has been no investigation -- there was
8 at that time no investigation whatsoever of the breeding
9 success, for instance, of local farm animals.

10 What has been occurring in that area, to the
11 best of my knowledge, ever since TMI-1 opened in the im-
12 mediate area -- and I've heard this from a number of
13 sources -- is that local farmers have had very serious
14 problems with the breeding success--

15 CHAIRMAN SMITH: Isn't this one of your con-
16 tentions?

17 DR. KEPFORD: I'm trying to elaborate--

18 CHAIRMAN SMITH: Is it one of your contentions?

19 DR. KEPFORD: Yes. But I'm trying to add a
20 little background to--

21 CHAIRMAN SMITH: Can't it wait until we come to
22 your contentions?

23 DR. KEPFORD: Yes, it can. But it deals with
24 the environmental assessment, or whatever it is. And I'm
25 trying to lay a little background.

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PB/wb6

1 What Ms. Lee said was that there was no back-
2 ground to study, and I'm elaborating on it. There was none
3 of the animals.

4 CHAIRMAN SMITH: I think we all understand that
5 point.

6 DR. KEPFORD: Okay.

7 The point is that problems are being -- have
8 been realized since the operation began of TMI-1 in that
9 area. And simply relying on the assumption that releases
10 meet 10 CFR Part 20, or whatever, doesn't solve any problems
11 at all.

12 CHAIRMAN SMITH: You're going to be given an
13 opportunity to brief this, Mr. Kepford. If there's no
14 particular reason why it should be addressed right now at
15 this moment I think that you could give it more deliberate
16 consideration in your brief.

17 DR. KEPFORD: I guess I would like to see the
18 NRC do something other than wait for people to bring it to
19 their attention fifty times before they get into action.
20 I think perhaps the NRC should be out doing some looking on
21 its own.

22 Thank you .

23 CHAIRMAN SMITH: Now are you done, Ms. Lee?

24 MS. LEE: Yes, sir. Thank you.

25 CHAIRMAN SMITH: TMI Alert, I recommend now you

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1 take up your contentions.

2 MR. ADLER: Mr. Chairman, part of my suggestion
3 was that it was two-fold, not only that I go out of order
4 but also that we consider some of the generalized matters
5 which you were going to reserve until the very end, which
6 I presume would be tomorrow.

7 CHAIRMAN SMITH: No.

8 MR. ADLER: You're talking about the end of
9 today?

10 CHAIRMAN SMITH: First we will take those
11 contentions of those Petitioners who wish to be excused for
12 tomorrow and we'll consider those contentions and then we'll
13 go to the generalized matter yet today.

14 MR. ADLER: Fine. Thank you.

15 MR. POLLARD: Mr. Chairman, can we get some
16 indication of how many contentions, in other words, whether
17 that is feasible that we can do all of that?

18 CHAIRMAN SMITH: Well, by a show of hands,
19 which Petitioners wish to have their contentions addressed
20 this afternoon so they may be relieved from appearing to-
21 morrow?

22 (Show of hands.)

23 I think it's feasible.

24 MR. ADLER: For the benefit of the Board and
25 everyone here, I'm going to use the Licensee's response to

e 2 1 our contentions as I go through them. The Licensee has
2 repeated our contention and then has filed his response and
3 I think rather than restate the contention, everyone can
4 see what it involves.

5 The NRC's response to our contentions are
6 basically the same as the Licensee's response. Their objec-
7 tions are basically the same, with a few minor variations.

8 I'm going to take Contention Number 1 and Con-
9 tention Number 2 together because the Licensee objects to
10 them on the same grounds, basically that they're a challenge
11 to the Commission regulation, 10 CFR 50, Sections 2-A and
12 2-B-1.

13 Pursuant to 10 CFR 50, Appendix I, 2-A, the
14 regulation provides that radioactive material released from
15 each nuclear reactor shall not result in an annual dose
16 commitment from liquid effluents for any individual in an
17 unrestricted area from all pathways of exposure in excess of
18 3 millirems to the total body or 10 millirems to any organ.

19 Pursuant to Appendix I, Section 2-B-1, it is
20 provided that the Licensee must also provide reasonable
21 assurance that the calculated annual total quantity of all
22 radioactive material above background to be released from
23 each reactor to the atmosphere will not result in an estimated
24 annual air dose from gaseous effluents at any location near
25 ground level which could be occupied by individuals in

1 unrestricted areas in excess of 10 millirads for gamma
2 radiation or 20 millirads for beta radiation.

3 The Licensee relies upon the use of the word
4 "each" in both sections to argue that only consideration of
5 releases from TMI-1 can be considered by this Board. Apparent-
6 ly the Licensee feels that under this regulation, the re-
7 leases that have occurred as a result of the accident and the
8 releases that will occur during decontamination cannot be the
9 subject of consideration by this Board.

10 Now admittedly the regulations do use the word
11 "each" but it is submitted that this interpretation, the
12 Licensee's interpretation lies in the real meaning of the
13 regulation, namely, to limit releases to people living near
14 a reactor or, in this case, reactors.

15 To yield to the Licensee's interpretation we
16 feel will result in this Board abandoning the prime directive,
17 so to speak, of the Commission, namely to see that TMI-1 is
18 not restarted unless its restart will not further aggravate
19 the health problems of the people of this area.

20 We know that the population around TMI was ex-
21 posed to releases of radioactive material as a result of the
22 accident and that this exposure was on a scale previously
23 thought to be impossible. The consequences of this exposure
24 are still being studied. Nevertheless, even the most con-
25 servative estimates calculate that some people will ultimately

1 become ill and die as a result of the radioactive releases
2 into the environment during and after the accident.

3 Now what the future holds is unclear. As I
4 stated yesterday, this is an ever-changing scenario and I
5 understand that yesterday Robert Arnold of Metropolitan
6 Edison announced that unless the Licensee was permitted to
7 vent the krypton gas located or locked in the containment
8 building, unless they were allowed to vent this into the
9 atmosphere, unplanned large releases of the gas will occur.

10 Now we feel that the decontamination plan pro-
11 posed by the Licensee and how the NRC intends to deal with
12 that decontamination plan and what probable radioactive re-
13 leases will result from that decontamination are considera-
14 tions this Board must deal with.

15 Now the Licensee says that all decontamination
16 will be done in accordance with NRC directives and will be
17 done in accordance with the regulations of the NRC, but
18 presently there has been no comprehensive plan to decontaminate
19 Unit Number 2. The NRC, who I've been told is a party like
20 anyone else, has not approved any comprehensive decontamina-
21 tion plan. Rather, they are segmenting their approach and
22 taking it step by step, not really knowing what the conse-
23 quences of these different approaches such as the EPICOR-II
24 system will have on the environment.

25 Now it is submitted that in view of this we

5 1 feel that the contention is as precise as it can be.
2 Naturally there is some speculation in it.

3 Furthermore, we feel that the releases of radia-
4 tion which occurred as a result of the accident must be
5 considered when determining the cumulative health effects of
6 reopening TMI-1.

7 It is submitted that these contentions, both 1
8 and 2, do relate to discharges into the water. We submit
9 that these contentions do not constitute an attack on the
10 Commission regulations but, rather, seek to allow this Board
11 to apply the regulations in a manner that will further the
12 regulatory purpose and will further the purpose of the Com-
13 mission's order, namely, the protection of the health and
14 safety of the people living in this area.

15 Now to this extent we believe the two contentions
16 are entirely appropriate.

17 CHAIRMAN SMITH: Mr. Trowbridge.

18 MR. TROWBRIDGE: Mr. Chairman, we're dealing
19 with several points on the question of whether we correctly
20 read this regulation as applying to each reactor. I don't
21 think I need to remind the Board, certainly not Dr. Jordan
22 on the Board who presided over the Appendix I proceedings,
23 that one of the major issues of the Appendix I proceeding
24 was whether releases would be controlled on a site basis or
25 a per-reactor basis, and the answer by the Commission was on

1 a per-reactor basis. And our interpretation is well founded
2 in the proceeding and in the long opinion of the Commission
3 that accompanied the issuance of Appendix I.

4 The suggestion that-- It is correct that TMI-2
5 will be closely controlled. It is also correct that not all
6 of the decontamination plans or recovery plans have been
7 formulated or approved in detail. There is nothing in the
8 world to suggest that they won't be done in accordance with
9 the Commission regulations. And I submit that the releases
10 from Three Mile Island-1 will have exactly the effect -- the
11 consequences; that is, from those releases; the consequences
12 to the public as far as TMI-1 is concerned will be exactly
13 the same whether they're zero or some releases from TMI-2.

14 I would like to add that I think whether or not
15 that was a correct characterization of the newspaper accounts
16 of Mr. Arnold's statement, I don't know. I'm quite confident
17 that it was not a correct version of what Mr. Arnold in
18 fact said.

19 CHAIRMAN SMITH: Mr. Tourtellotte.

20 MR. TOURTELLOTTE: Mr. Chairman, the only ad-
21 ditional item that we have to offer is on Contention 1 --
22 Contentions 1 and 2, but we believe that probably the appli-
23 cant's analysis that brings these contentions within
24 Appendix I is a little better approach than ours which puts
25 it under Part 20. In either event, we believe it is unaccept-

1 able in this hearing.

2 CHAIRMAN SMITH: Mr. Adler.

3 MR. ADLER: I didn't know Dr. Jordan participated
4 in the drafting of the Appendix I regulations.

5 DR. JORDAN: Perhaps I should explain.

6 I was not involved in the draft of the regula-
7 tion. There was a rulemaking hearing. I was a member of
8 the Board that conducted the hearing. The hearing minutes
9 and all the papers were then given to the Commission and the
10 Commission drafted the regulation as a result of the hearing.
11 I was not involved in the writing of the regulation of
12 Appendix I.

13 MR. ADLER: Thank you.

14 First of all let me just respond quickly to the
15 characterization that I may not have stated what Mr. Arnold
16 said. I base it on what I heard as a newspaper account and
17 a radio account of Mr. Arnold's statement yesterday, that
18 unless they do receive approval to vent the krypton gas
19 over the next months and years slowly that there will be, as
20 a result of the disapproval of this approach it may very well
21 result in large scale releases of krypton gas into the
22 environment.

23 MR. TROWBRIDGE: That's a considerable change
24 from the statement as originally stated.

25 MR. ADLER: I don't detect any difference. And,

1 if there is, I apologize for it.

2 MR. TROWBRIDGE: The difference was the word
3 "may" and "will."

4 MR. ADLER: Secondly, I don't see how it is
5 possible for this Board to ignore the cumulative effects
6 of the release of radiation into the environment as a result
7 of the accident. There have been studies done, even the
8 most conservative studies done by, I guess HEW. People will
9 die as a result of the accident. It may not be for twenty
10 years, but maybe one or two people. Perhaps that's insignifi-
11 cant unless those one or two people happen to be your father
12 or your child.

13 But if this plant is reopened there is going to
14 be additional radiation released into the environment. I
15 don't think there's anyone here that can argue that radiation
16 and its effects are not cumulative in nature. And to ignore
17 the source of the greatest amount of radiation affecting the
18 people of this area I think goes flat against the Commission's
19 order that there must be assurances that if TMI is restarted
20 the health and safety of the people of this area will not be
21 affected.

22 If it is reopened and if this contention is
23 accepted we intend to show that the releases from TMI, coupled
24 with the releases from the accident, and, as we go along and
25 see additional releases into the environment during

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1 decontamination, some releases are going to occur. Whether
2 they are controlled releases or uncontrolled releases,
3 the effect is the same: radiation goes into the environment,
4 and that these effects have to be considered.

5 Mr. there has been no plan. Mr. Arnold has
6 proposed venting, a controlled release. I don't know whether
7 that's going to occur. I don't know whether that approach
8 is going to be approved by the NRC, and I don't know what
9 effect that's going to have on the people living in this
10 area. But this Board should be concerned with what that
11 effect is going to be. And I think this Board is given a
12 mandate in that these circumstances, the circumstances
13 surrounding Three Mile Island are unique.

14 The basis for not attacking regulations is
15 that if the regulations are ignored there may be a ruling
16 that would have an effect across the country. That's not
17 going to happen here. We have a unique situation. We have a
18 reactor sitting there with hundreds of thousands of gallons
19 of contaminated water. What's going to happen to it? What's
20 going to happen to the water? No one knows.

21 But yet we're being told that we can only con-
22 sider releases of radiation in the context of TMI-1 as if
23 TMI-2 never existed. And I don't think that was the Com-
24 mission's intent when it issued the order to this Board.

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CHAIRMAN SMITH: Mr. Adler, with respect to these contentions and the other contentions, I would prefer if you would make all of your arguments in the first instance rather than having a second cycle of argument and re-argument.

5

MR. ADLER: I apologize. I thought you wanted a rebuttal and I apologize, Mr. Chairman.

7

CHAIRMAN SMITH: Well, I want you to have full opportunity to express yourself. I am merely talking about the organization of it. Make your complete argument at the beginning and in your rebuttal only address those matters which were not covered by your first argument, purely as a matter of organization.

13

MR. ADLER: Very well, sir.

14

CHAIRMAN SMITH: With that in mind, have you finished your argument on this?

16

MR. ADLER: Yes.

17

CHAIRMAN SMITH: Mr. Trowbridge, anything additional?

19

MR. TROWBRIDGE: No, sir.

20

CHAIRMAN SMITH: Mr. Tourtellotte?

21

MR. TOURTELLOTTE: No.

22

CHAIRMAN SMITH: Mr. Adler.

23

24

25

MR. ADLER: Next I will take Contentions 3 and 4 together since the Licensee has characterized them both as psychological contentions and have objected to them on the

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1 same grounds that they've objected to the other psychological
2 contentions raised in these proceedings.

3 Now to the extent that these contentions are
4 psychological, they are psychological because they touch upon
5 a common psychological syndrome commonly referred to as the
6 fight-or-flight syndrome. I suppose you could say that Con-
7 tention 3 basically notes that if TMI-1 is reopened, people
8 will leave the area, people will refuse to relocate in the
9 area.

10 And Contention 4 basically says that if people
11 have no choice and are forced to remain in the area that they
12 will fight the reopening by whatever means each individual
13 feels is appropriate to his particular circumstance.

14 Now it is our position that as psychological
15 contentions they are cognizable under both NEPA and the Atomic
16 Energy Act and in this sense, we would endorse the argument
17 set forth in the brief submitted by PANE on the psychological
18 distress contention.

19 However, there is another side to these two con-
20 tentions. Contention 3 we believe argues that if flight
21 should occur, so to speak, that the economic costs of this
22 flight will be substantial. The absence of business reloca-
23 tion into the area, businesses choosing to leave the area,
24 people choosing to give up their jobs, all will have tangible
25 economic consequences and economic costs. These must be

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1 factored into the decision of this Board.

2 Furthermore, there will be health costs for those
3 people who want to flee and who in effect in their own minds
4 have fled but are helpless to leave the area. In effect they
5 have mentally fled but physically remain. If this occurs and
6 when this occurs, severe mental health consequences result
7 and these health costs and these social costs must also be
8 considered in determining whether those costs exceed the costs
9 of not reopening TMI-1.

10 Now as to Contention 4, it talks about civil
11 disruption. Let me say that when the words "security" and
12 "sabotage" were mentioned yesterday, I was told that some
13 people in this room were visibly put off by it, that there is
14 some indication that this kind of talk about sabotage was
15 taboo. Well, we don't feel it is.

16 We can't say precisely what will occur if TMI-1
17 is reopened but we are saying that this Board must be abso-
18 lutely satisfied that Unit 2, with its hundred's of thousand's
19 of gallons of highly radioactive water must be secured and
20 capable of being secured, and that the costs of this security
21 do not outweigh the cost of decommissioning TMI-1.

22 Now we feel that the possibility of civil interrup-
23 tion is very real. If TMI reopens it will provide the focal
24 point for people from all over the country to come to this
25 area, and these people will come to Middletown and these

1 people may not be law-abiding as the members of TMIA or as
2 the members of the Intervenor in this proceeding are.

3 And if the Licensee and the local authorities
4 are unable to secure the Island in the wake of demonstrations
5 of who knows how many thousands-- We know what is happening
6 in New England, we know the number of people that have been
7 demonstrating there. Well, those demonstrations we feel will
8 pale when compared to what may occur if TMI-1 is reopened.

9 And we are scared about that. There have been
10 breaches of security already at TMI-2. When you have 10,
11 20, 30,000 people descending in the area, and I will assume
12 non-violent disobedience, how do you secure that Island and
13 what costs are involved.

14 The question is can the Island be secured, and if
15 it can't be secured, then TMI-1 should not be reopened. Can
16 the local authorities deal with this problem? Can the state
17 deal with the problem? And even if it can, what are the costs?

18 All of these things we feel are proper subjects.
19 Apart from the psychological, just simply from a cost stand-
20 point, it is our position that they are cognizable from that
21 standpoint alone as well as being cognizable as psychological
22 contentions.

23 CHAIRMAN SMITH: Mr. Trowbridge.

24 MR. TROWBRIDGE: Mr. Chairman, we have dealt in
25 our brief, and I believe the Staff has done so also, with not

eb51 only the fears and apprehensions which may accompany the re-
2 start of TMI-1 but with secondary effects which may flow from
3 them. I see no point in further argument at this point.

4 CHAIRMAN SMITH: Mr. Tourtellotte.

5 MS. SMITH: Mr. Chairman, am I allowed to speak
6 on behalf of my group?

7 CHAIRMAN SMITH: Will you give Mr. Tourtellotte
8 an opportunity? You were not here. We are not generally
9 calling upon individuals, individual Petitioners, to join in
10 this argument, unless you have a point which you think is
11 particularly important and has not otherwise been covered.

12 Of course you have contentions which are similar
13 to this, and we'll be calling upon you to address your con-
14 tentions, too, in order.

15 If you think perhaps it is more efficient we can
16 take you in, but let Mr. Tourtellotte finish and then you
17 think about what you want to do.

18 Mr. Tourtellotte.

19 MR. TOURTELLOTTE: The arguments afforded by
20 Counsel raise no new points that we feel were not covered in
21 our brief and so we have nothing to say.

22 CHAIRMAN SMITH: I have a little bit of a problem
23 with this and that is it is being addressed as if it is
24 nothing except a psychological distress issue with secondary
25 effects, but I view it almost as secondarily a psychological

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1 distress issue and primarily as a straight-out allegation
2 that there's going to be a danger to the operation of the
3 plant based upon civil disruption which-- I don't know if
4 that is what the Commission had in mind when it said it
5 would control the issue of psychological distress.

6 Here is a specific allegation. Don't forget the
7 Commission's reservation was based upon a non-physical,
8 psychological effect, and this contention to me seems to be
9 markedly different. Here is an actual prediction of some
10 physical result because of psychological reasons.

11 Mr. Adler, would you propose to actually submit
12 evidence along the line of your argument?

13 MR. ADLER: The Staff and the Licensee discussed
14 that briefly. When we met prior to these Prehearing Con-
15 ferences and we were discussing these contentions the question
16 was raised, what evidence do you have?

17 My response was two-fold. Number one, it is
18 abundantly clear that this is what is going to occur. I think
19 everyone knows that.

20 CHAIRMAN SMITH: Can we make findings on that?

21 MR. ADLER: In a court of law you can't review
22 that. But there has been concern expressed, and again I base
23 this on newspaper reports by the State Police. The State
24 Police admittedly have been conducting surveillance because
25 of their fears, and I assume justifiably so, that there may

1 be demonstrations and there may be acts of sabotage related
2 to TMI-2.

3 And if we were allowed to have this contention
4 in we would of course get our evidence together, but we
5 don't feel at this time we have to submit our evidence. We
6 have to know whether this contention will be accepted. If
7 it is accepted we would of course intend to prove it.

8 CHAIRMAN SMITH: Okay. That was my question.

9 Do you view this as an Atomic Energy Act conten-
10 tion or a NEPA contention?

11 MR. ADLER: I think it is both. I think it's
12 both. It involves itself around the safe operations of a
13 nuclear reactor. Naturally NEPA would be the effect on the
14 environment, socio-economic effects, et cetera.

15 And I think under the Atomic Energy Act the
16 Commission has the responsibility to only license reactors
17 that can be operated safely.

18 CHAIRMAN SMITH: Any further discussion?

19 MR. TOURTELLOTTE: Let me ask the question:

20 Is the issue raised here security? Is that what
21 we're talking about?

22 CHAIRMAN SMITH: That's what it seems to me to
23 be.

24 MR. ADLER: That's exactly right.

25 MR. TOURTELLOTTE: Well, I guess I don't understand

1 the precise attack on the security plan for the Three Mile
2 Island Units then. It isn't in the contention. It seems to
3 me that it is not clearly stated in that way.

4 If there is indeed some suggestion that what is
5 sought to be litigated here is the security plan or the
6 adequacy of the plan to deal with civil disruption, then I
7 think that's the way the contention ought to be stated and
8 then maybe we should have another shot at whether we agree
9 or disagree.

10 CHAIRMAN SMITH: Well, I read it to be a conten-
11 tion that predicted that there would be an assault upon the
12 security of TMI-2 which would have an effect upon the opera-
13 tion of TMI-1, and that is because of the psychological
14 impact.

15 I did not read this at all to be within the
16 Commission's order and notice of hearing on psychological
17 impact issues. I just didn't think it belonged there at all.
18 I thought it was a security contention.

19 Of course you recognized that in your brief when
20 you raised the point of lack of basis for disruption.

21 The Commission's order on psychological issues
22 begins:

23 "While real substantial concern
24 attaches to issues such as psychological distress
25 and others arising from the continuing impact of

eb9 1 aspects of the Three Mile Island accident unre-
2 lated directly to exposure to radiation on the part
3 of citizens living near the plant...."

4 Now that is their view of how psychological come
5 into this case.

6 I read this contention to be entirely outside the
7 scope of the Commission's comments there. I read that to
8 be that there is a danger that the security of TMI-2 is
9 threatened because of psychological problems and the threat
10 to TMI-2, unless resolved, should prohibit the operation of
11 TMI-1. It's an entirely different effect.

12 MR. ADLER: In effect, Mr. Chairman, it's a threat
13 to the Island itself and that includes Unit 1 and Unit 2
14 together.

15 CHAIRMAN SMITH: And it brings it into our juris-
16 diction because it affects Unit 1.

17 MR. ADLER: That's right.

18 CHAIRMAN SMITH: And that is your contention.

19 MS. SMITH: Mr. Chairman?

20 (The Board conferring.)

21 CHAIRMAN SMITH: Did I understand also a part of
22 your contention is -- the reason for your contention is
23 you're not concerned about a physical threat to TMI-2 which
24 would affect in turn TMI-1, but you're concerned about the
25 effect on the community of -- directly from civil disruption?

1 MR. ADLER: What we envision occurring or-- Well,
2 what may occur is a threat to the Island by civil disruption
3 and this involves the breach of security of Unit 1, it in-
4 volves the breach of security of Unit 2.

5 Now if Unit 2's security is breached it is in a
6 much more dangerous state than Unit 1 is.

7 CHAIRMAN SMITH: I understand that.

8 MR. ADLER: This is part of the concern.

9 CHAIRMAN SMITH: Okay, that answers the question.

10 MR. TOURELLOTTE: Mr. Chairman, we view that
11 explanation as posing an entirely different contention than
12 any that we have known about up to this moment. I don't know
13 what we can do about it, but I'm not really in a position to
14 argue it right at this moment.

15 Mr. Chairman, this is the first time I have heard
16 or seen anybody bring up the issue of security of TMI Unit
17 Number 1.

18 MR. POLLARD: Mr. Chairman, a point of information.

19 I was at the negotiations sessions with TMIA
20 and the NRC Staff and this was clearly dealt with directly in
21 that negotiation session. Dan Swanson and Mr. Joe Gray of
22 Mr. Tourtelotte's staff were present and the security issue
23 was clearly defined and identified.

24 I think any clear reading of Contention Number 4
25 sees that it directly involves a security issue. One perhaps

1 could be critical and say the word "security" -- that the last
2 sentence might say that security of the institution is not
3 adequate, but I think it is very clear from a reading of
4 the contention that that is what is referred to.

5 CHAIRMAN SMITH: Mr. Trowbridge?

6 MR. TROWBRIDGE: Mr. Chairman, let me echo what
7 Mr. Troutellotte has said, and let us look at the wording of
8 the contention. It talks about many people coming to
9 Middletown --

10 CHAIRMAN SMITH: Okay.

11 MR. TROWBRIDGE: -- to keep Unit 1 closed by both
12 violent and non-violent means. As a result -- and this is
13 where the complaint is -- civil disruption will occur in the
14 area surrounding the plant. Local and state authorities are
15 not presently equipped to deal with the type of civil dis-
16 ruption that may very well occur.

17 I cannot read into this contention a contention
18 that the security of TMI-1 or TMI-2 is going to be breached
19 and if that is the contention I think we had better start
20 over again.

21 MR. ADLER: Mr. Chairman, if it would save time,
22 instead of arguing it here I would rewrite the contention,
23 amend the contention to provide for what has been stated
24 today. If that will make Mr. Trowbridge and the Staff happier,
25 that's fine, I will do that.

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e 12 1 I don't see the effect being any different be-
2 cause what I'm saying today is the contention-- Now I assume
3 that will affect their response. That's what I'm being told,
4 that they're not in a position to respond because they didn't
5 anticipate that contention to mean what I said it meant.

6 CHAIRMAN SMITH: If this is, as it seems to be,
7 a purely security contention it would be admissible whether
8 or not the Commissioners approve psychological distress
9 issues in this proceeding.

10 Mr. Adler has offered to give the Licensee and
11 the Staff another opportunity to address and refine it. I
12 think that's an appropriate course of action. Why don't you
13 get together on it?

14 DR. KEPFORD: Mr. Chairman, I would like to point
15 out that in the ECNP filing of June 29, 1979, this subject,
16 this very subject was discussed.

17 MR. TROWBRIDGE: When we get to Mr. Kepford's
18 contentions let's talk about them.

19 DR. KEPFORD: It's irrelevant to me whether we
20 talk about it now. It's going to take the same amount of time

21 CHAIRMAN SMITH: Let's take your statement,
22 Mr. Kepford. What in the world do we do with it? What do we
23 do with the statement that you made?

24 DR. KEPFORD: Would you care for me to read from
25 out filing?

1 CHAIRMAN SMITH: But what do I do with the fact
2 that you may have made that statement?

3 DR. KEPFORD: What I'm saying is I really don't
4 think Mr. Tourtellotte's comment that this is the first time
5 they've ever heard of a security contention --

6 CHAIRMAN SMITH: That's your point. I see.

7 MR. TROWBRIDGE: That's not a correct statement
8 of what I or Mr. Tourtellotte said. We are reading this
9 contention, what this contention says, and we do not find a
10 breach of security of Unit 1 or 2 in it.

11 CHAIRMAN SMITH: But even so, where do we go in
12 that direction? The point is it is now clear that Mr. Adler
13 intends and intended for that to be a security contention.
14 It was not perceived as such by the Licensee and the Staff.
15 Now what do we do about it?

16 MR. TROWBRIDGE: I think what we do about it is
17 Mr. Adler rewrites it so that it says what he thinks it means.

18 MR. ADLER: I think that's what I had suggested
19 a few moments ago.

20 CHAIRMAN SMITH: That's right. That's where we
21 were before this last round, so let's do it. Let's get to-
22 gether. The three of you get together and rewrite the con-
23 tention so that it means what you intend for it to mean and
24 that it is understood to mean it as a part of the negotiating
25 session.

1 Is that satisfactory?

2 MR. ADLER: That's fine with me.

3 MR. TROWBRIDGE: It does not follow that we will
4 then accept the contention.

5 CHAIRMAN SMITH: No, it doesn't. I understand
6 that, but at least that will be the most efficient way that
7 I can envision for you to have an opportunity to go directly
8 to the issue.

9 MR. TROWBRIDGE: This 's fine, Mr. Chairman.
10 This is a useful process to get a contention to say clearly
11 what it was intanded to say, and then we can take our posi-
12 tions and perhaps we can do taht without bothering the Board
13 further.

14 CHAIRMAN SMITH: The Board demended a very, very
15 great amount of work out of both the Licensee and the Staff
16 in a very short period of time and I'm really surprised that
17 there have not been more misunderstandings, but here's one
18 and we'll just correct it.

19 Ms. Smith, did you want to comment now?

20 MS. SMITH: I have a paper to speak on behalf of
21 our group -- right? -- the one I showed you. So I am allowed
22 to speak?

23 CHAIRMAN SMITH: Oh, yes. However, I want to
24 point out that the time to discuss your contentions has not
25 yet come up. And if you have something to say now it should

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1 be limited directly to the issue that we're discussing right
2 now.

3 MS. SMITH: It is.

4 CHAIRMAN SMITH: All right.

5 MR. TROWBRIDGE: Mr. Chairman, I think there is
6 some error. As I understand it, Newberry-- Did we not
7 dispose of Newberry's contentions yesterday?

8 CHAIRMAN SMITH: Well, that's exactly right. I'm
9 glad you reminded me.

10 There was a discussion of Newberry's contentions
11 and we made a preliminary ruling on the emergency plans. We
12 accepted-- We gave them an opportunity on the psychological
13 distress. Frankly, I am still very confused about what we
14 did yesterday, I mean the results of what we did yesterday,
15 what they are.

16 However, if you have a point you want to make on
17 this narrow issue, just make it, no matter what.

18 MS. SMITH: I do. It is one statement in con-
19 nection with what Mr. Adler said. If it is irrelevant, just
20 scratch it.

21 CHAIRMAN SMITH: Just make it.

22 MS. SMITH: We have citizens. I work with them
23 and talk with them. They have said they will do exactly
24 what he said, what he is saying, and I fear for the security
25 of the Island.

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abi 1 CHAIRMAN SMITH: Okay.

2 DR. KEPFORD: Mr. Chairman, can I get to the point
3 I was trying to make?

4 CHAIRMAN SMITH: All right.

5 DR. KEPFORD: I think what Mr. Adler is talking
6 about is that the security of the Island is threatened because
7 of the psychological stress in the area. I do not think they
8 can be separated. It's one and the same.

9 CHAIRMAN SMITH: That's right. Exactly.

10 I really think that we-- Every argument has now
11 been made at least three or four times.

12 MS. LEE: Mr. Chairman, for one second. I would
13 like to give you just a point of information; that's all.

14 CHAIRMAN SMITH: I'm sorry, we can't accept
15 information at this time. We can accept contentions but we
16 can't take evidence. Do you understand the difference?

17 MS. LEE: It has to do with WMIA, it doesn't have
18 to do with my contentions. Okay? It has to do with --

19 CHAIRMAN SMITH: Just make your statement.

20 MS. LEE: All right. You can strike it out if you
21 like.

22 Number one, I spoke to Mr. Arnold, vice president
23 of Met Ed who informed us publicly at a public hearing in
24 Londonderry Township that Met Ed has increased its security
25 by 60 percent now. I have the specific date at home. I did

1 not plan to enter this before the Board.

2 CHAIRMAN SMITH: Now that's factual, you see.

3 MS. LEE: It is a fact.

4 CHAIRMAN SMITH: Let me explain my process.

5 MS. LEE: You're not allowed to do that?

6 CHAIRMAN SMITH: If the contention is accepted
7 as suitable for litigation, then is when we address whether
8 the contention is true or not, and that is when the facts or
9 the information you speak of will come into play.

10 MS. LEE: That is not my contention. I am re-
11 lating that to what TMIA is doing to substantiate the claim
12 that he is making, and that is that at the latter part of
13 the past month or the first of this month -- I have the date
14 at home -- foreign visitors made a visit to this country,
15 went on Three Mile Island, went up to the fence --

16 CHAIRMAN SMITH: Ms. Lee --

17 MS. LEE: -- and were never stopped. That's the
18 point I want to make.

19 CHAIRMAN SMITH: Ms. Lee, I just want to make this
20 point for the benefit of all the Petitioners.

21 There hasn't really been a problem throughout
22 this conference. This is not the time to argue the facts of
23 contentions. The time to argue facts of contentions is after
24 you know what the facts are, and you don't know what the
25 facts are by reading newspapers. You learn them by discovery,

1 by deliberate consideration, and there will be a time in this
2 proceeding when we will be able to get the facts together
3 and present them in an organized fashion.

4 But we don't argue the facts of contentions at
5 this phase.

6 MS. LEE: Yes, Mr. Chairman, I understand what
7 you're saying and I appreciate your position and as I say,
8 I'm not quoting from newspapers.

9 CHAIRMAN SMITH: Thank you.

10 So on your own you'll get together and try to
11 work out the language of that contention.

12 MR. ADLER: No problem.

13 CHAIRMAN SMITH: Proceed, Mr. Adler.

14 MR. ADLER: Might I proceed, Mr. Chairman?

15 CHAIRMAN SMITH: Yes, sir.

16 MR. ADLER: Contention Number 5 has not been
17 objected to by either the Licensee or the Staff, and I will
18 accede to their desires in this respect.

19 MR. TROWBRIDGE: You will accede?

20 MR. ADLER: I will accede to your response and
21 accept it.

22 MR. TROWBRIDGE: Mr. Chairman, let me say that
23 the Staff response is somewhat different than mine. There was
24 called to my attention an oversight in my own reading of the
25 contention. The last sentence talks about the permit

1 revocation of the license.

2 I think the Staff correctly observed that that
3 is not within the scope of this proceeding, and I would join
4 the Staff in objecting only to that aspect.

5 CHAIRMAN SMITH: Well, the only problem is he
6 said the Licensee when he really meant the Staff. That's the
7 only problem. It doesn't need any discussion.

8 MR. ADLER: The point of the hearing is to re-
9 start TMI. I agree that that's the purpose of the hearing.

10 Now Contention Number 6 has been objected to and
11 accepted in various parts and to be quite honest with you,
12 I'm somewhat puzzled by the Licensee's response to the con-
13 tention. They note the Commission's August 9th order re-
14 quires the Licensee to demonstrate its financial qualifica-
15 tions only to the extent relevant to its ability to operate
16 TMI-1 safely.

17 Now we believe that it is axiomatic that any
18 present and proposed changes in any requirements that will
19 cost money, any regulatory changes that may result in ex-
20 penditures of money will have an effect on the safe operation
21 of TMI-1 if the utility doesn't have the money to comply.

22 We feel it is the Licensee's responsibility to
23 provide reasonable assurances that it has the financial
24 capability to comply with all changes that the Commission --
25 all changes in regulations that the Commission may adopt as

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ek10 1 a result of the various Commission reports, studies, et
 2 cetera, and we feel that their inability -- that any inability
 3 to comply with these regulations will affect the safe opera-
 4 tion of TMI-1.

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1 And we feel that paragraph one of our contention
2 demands the Licensee demonstrate its financial qualifications
3 by providing such evidence.

4 The Licensee also apparently objects to what I'll
5 call part one of paragraph one, which contends that the
6 Licensee does not have the financial capability to comply with
7 technical changes that may result from the investigation of the
8 TMI 2 accident.

9 But the Licensee goes on to say that they would
10 not object to the contention to the extent that the Board
11 limits the contention to Licensee's financial capability to
12 comply with technical changes and mandated design changes
13 which may be imposed -- quote -- "in this proceeding" -- end
14 quote -- as a result of the accident in Unit 2.

15 I suppose that is the distinction that the utility
16 is making, that all they have to do is show that they have the
17 financial responsibility to comply with technical changes
18 that may result from this proceeding, but not elsewhere.
19 And I don't quite understand the response, because if they
20 are mandated technical changes no matter where they come
21 from it's my understanding that the utility would have to
22 comply.

23 Now it's also our position that the Licensee must
24 demonstrate its financial standing and its ability to obtain
25 credit to finance changes, and must demonstrate its viability

1 pb2

1 as a company.

2 Now I don't think there's anyone here who doesn't
3 know that Metropolitan Edison is having financial problems.
4 What the results of those problems will be we just don't know.
5 But I think it's important that before this Commission decides
6 to restart the nuclear reactor they determine that Metropolitan
7 Edison is a viable utility from a financial standpoint.

8 Now our contention may be -- I think the Licensee
9 has argued that how can they respond to design changes and
10 changes in regulations that have not been made yet. They're
11 arguing that it's speculative; they can't answer something
12 that hasn't been done.

13 But in the problem we have -- and I'll admit that
14 it's somewhat speculative -- but the problem is not of our own
15 making, but it is, rather, the making of the Commission and
16 this Board simply because the failure to await the outcome
17 of the Kemeny Commission and await any actions that may be
18 taken on that report, and to await the Rogovin study and to
19 await all these other studies and actions that may be taken,
20 we just don't know what those actions will be. But there will
21 be actions taken. And those actions will cost money.

22 Granted they're speculative, but what are we
23 supposed to do? Fold up our tent and say there aren't going
24 to be any costly changes mandated? That's just not the case.

25 Now we're told that while we can amend as we go

1 along, as things occur we can amend and we can demand
2 financial proof or proof of financial responsibility to meet
3 these changes, well, that's simply not satisfactory to us.
4 But we're locked into this situation.

5 So I have a suggestion:

6 That the Licensee accept all the changes recommend-
7 ed by the Kemeny Commission and assume that all the changes
8 will be put into effect, and prove that they have the
9 financial capability to comply with all of the recommended
10 changes. And if they aren't put into effect, then, fine,
11 that's one up for the utility.

12 But we've got all those recommendations at least
13 from the Kemeny Commission. I don't know when the Rogovin
14 study is going to be done, but at least we have the recommend-
15 ation from the Kemeny Commission.

16 So perhaps that would lend a little objectivity
17 to the proceeding. That would eliminate the speculative
18 nature of it. But we have no other choice.

19 We do feel, however, that the financial viability
20 of this company is at issue, and to that extent the contention
21 has to be considered by this Board and I think obviously must
22 be considered under the clear meaning of the Commission's
23 order.

24 CHAIRMAN SMITH: Do you intend to respond to that?

25 MR. TROWBRIDGE: Yes, Mr. Chairman.

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CHAIRMAN SMITH: All right.

Go ahead, please.

MR. TROWBRIDGE: Mr. Chairman, Mr. Adler has by his own statement indicated our difficulty with this. In suggesting that this contention be limited to requirements coming out of this proceeding, we didn't have some jurisdictional notion, we had the notion that we would know what we were talking about, and the breadth of the contention, which, incidentally, is not only concerned with changes demanded as a result of the accident at Unit 2 but any other mandated design changes in this plant, which is not even related to TMI 2.

As to Mr. Adler's suggestion why don't we bracket and assume the worst, that we're going to have to meet every one of the Kemeny Commission recommendations, I ask Mr. Adler now to please identify for me a Kemeny Commission recommendation which has to do with, say, design changes in this plant that we are supposed to meet.

You are making an assumption that the Kemeny Commission has a lot of recommendations about what this plant ought to do, and I'd ask you to identify one.

MR. ADLER: If I can respond?

Mr. Trowbridge, I think we've splitting hairs. I used the Kemeny Commission because that's the only report out.

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1 MR. TROWBRIDGE: Well, it was your suggestion to
2 use that, and I'm asking you: Can you identify a single
3 change in this plant that that report would require?

4 MR. ADLER: I'm sorry --

5 CHAIRMAN SMITH: Gentlemen --

6 MR. ADLER: -- I haven't committed it to memory --

7 CHAIRMAN SMITH: The difficulty I think is the
8 entire debate is not being very productive.

9 The entire issue of financial qualifications as
10 set forth in the Commission's order is a little bit confusing
11 to me, and I can see why it may have been difficult to come
12 up with a meeting of the minds on how such a contention should
13 be drafted.

14 But first we have on page seven, we have what
15 seems to me to be a mandatory issue that this Board must
16 consider, even if not raised by a petitioner, an intervenor,
17 a requirement that the Licensee shall demonstrate his financial
18 qualifications to the extent necessary to operate TMI 1 safely.

19 So even if Mr. Adler's clients had not raised
20 that contention, I think that this Board probably would be
21 receiving evidence on it.

22 Then would it not be the case that Mr. Adler
23 could use the very same information he's speaking of to
24 attack the case required to be put on by the Licensee?

25 Moreover we have on page 14, we have another

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1 problem, and that is somewhere along the line the Licensee
2 must satisfy the financial criteria imposed upon an applicant
3 for an operating license.

4 And then finally we have the special requirements
5 on page 12, that a party must clearly indicate why the Licensee's
6 financial condition might undermine the Licensee's ability
7 to operate the plant safely.

8 Mr. Levin?

9 MR. LEVIN: Mr. Chairman, we're a participant
10 and therefore have no contentions. We support generally
11 contentions having to do with financial qualifications.

12 I would refer the Board's attention to Part 50,
13 Appendix C, where provisions for financial qualifications of
14 licensees are set out. And there's adequate authority for
15 this Board to consider those qualifications, notwithstanding
16 the Commission's order.

17 I might also point out that it's a fair reading
18 from this contention that the relevance asserted in the
19 contention of the financial qualification issue is that if
20 the Licensee does not have the necessary financial qualifica-
21 tions of a Nuclear Regulatory Commission licensee, then the
22 public health and safety cannot be protected, which appears
23 to be a reasonable assumption considering the vast scope and
24 nature of the protections that must be afforded the public
25 by a licensee of a nuclear power plant. It requires a

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1 considerable amount of money and staff to run a nuclear
2 power plant and also to observe all of the necessary pre-
3 cautions and regulations required by the Nuclear Regulatory
4 Commission.

5 I don't think I need to go much further than that.

6 I think that the contention is valid on its face
7 and fully complies with the order and notice of hearing.

8 CHAIRMAN SMITH: All right.

9 Would you please not restate any arguments which
10 have already been made, Mr. Cohen, when you address the issue.

11 MR. COHEN: Yes, Mr. Chairman.

12 I think that what I want to address very briefly
13 is the comment by the Staff, although the Staff, if we were
14 going in order, I thought would go first. That would be fine
15 too.

16 The Staff raises the question of whether one can
17 show the nexus between the financial qualifications condition
18 of the company and the ability to safely operate TMI 1, and
19 they say that has to be established.

20 I think that what Mr. Adler is saying, what
21 Mr. Levin has said and what I feel an obligation to under-
22 score because that's why we are present in this case is that
23 it is a fundamental issue that is so basic in terms of the
24 safe operation of the plant that it's hard to understand how
25 you go further to establish the nexus.

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1 The nexus is if you don't have the money you
2 cannot operate the plant safely. If you don't have a safe
3 plant, the plant cannot operate. That's the nexus.

4 CHAIRMAN SMITH: Would you look at the bottom of
5 page 12 and tell me what that means?

6 You see, we're going to be viewing -- as I read
7 the order, we're going to be reviewing a mandatory showing
8 by the Licensee that they have the money to operate the plant.

9 Second, we're going to give intervenors an
10 opportunity to raise specific contentions, and if they do
11 they have to do it in the manner at the bottom of page 12.

12 And then, third, the final one which I brought to
13 everyone's attention is at the top of page 14, where the
14 Director of Nuclear Reactor Regulation will have to certify
15 to the Commissioners that they meet the basic operating
16 license criteria.

17 MR. LEVIN: Mr. Chairman, I don't want to --

18 CHAIRMAN SMITH: You see a general discussion of
19 the subject matter that money is relevant to the issue isn't
20 helpful. What we need is specific advice as to how we
21 approach these various requirements.

22 MR. COHEN: Well, Mr. Chairman, I think what makes
23 the whole question of what happens at the proceedings. I
24 believe that it's incumbent upon Mr. Adler in raising the
25 contention, upon the Consumer Advocate and the Public Utility

1 Commission to supply that information after the period of
2 discovery at the time of the hearings that are taking place.

3 Now if you're saying how can we then put dollar
4 price tags on what the changes are, what the short term
5 actions would require, the long term actions, that's an obliga-
6 tion --

7 CHAIRMAN SMITH: I'm not saying that.

8 I'm saying we already know, this Board already
9 knows that there's a mandatory issue dealing with financial
10 qualifications. WE already know that. We don't have to be
11 persuaded on that.

12 Now we have a problem down here on the bottom of
13 page 12, and Mr. Adler has his contention.

14 MR. LEVIN: Mr. Chairman, I think what I stated
15 was that the contention in and of itself can be read to
16 satisfy that phrase at the bottom of page 12.

17 CHAIRMAN SMITH: This is what I'm --

18 MR. LEVIN: I believe that a fair reading indi-
19 cates that a degraded financial condition could directly
20 affect the operation of the plant.

21 CHAIRMAN SMITH: And he's saying --

22 MR. LEVIN: And I don't know how much farther
23 you need to go or how much more discussion you need to have
24 on the issue to arrive at that conclusion.

25 CHAIRMAN SMITH: Mr. Tourtelotte, did you want to

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1 comment?

2 MR. TOURTELLOTTE: Well, I guess our position is
3 fairly well stated. I don't know that it's worth elaborating
4 on.

5 We still do not see that a reasonable nexus has
6 been established as required at the bottom of page 12 in the
7 Commission's order. And even though the matter of financial
8 qualifications may come out during the course of the hearing
9 for the Board's consideration and the Board to make recommend-
10 ations to the Commission, nevertheless the requirement at the
11 bottom of page 12 says that any party who wishes to partici-
12 pate in a consideration or deliberation of that financial
13 qualifications issue must meet a certain requirement.

14 And the kind of ipsey-dixik statement to support
15 a conclusion that financial qualifications should be litigated
16 by one party is not enough.

17 MR. ADLER: Mr. Chairman?

18 DR. JORDAN: May I interrupt first?

19 Mr. Tourtellotte, I believe in your reply it was
20 your opinion that such matters could be handled by interro-
21 gatories, and otherwise the contention was acceptable.

22 I guess I now ask Mr. Trowbridge, does he believe
23 the same thing, or does he believe the contention ought to be
24 rewritten as of this time?

25 MR. TOURTELLOTTE: Dr. Jordan, I don't believe

1 that's what our answer says.

2 What it says is that there are certain matters
3 that are raised in the contention. The general subject matter
4 raised, financial qualifications, is a litigable issue,
5 that certain items that are referred to in the contention we
6 feel are vague and uncertain and we feel that those items
7 through the discovery process could be clarified.

8 However the bottom line -- and actually the last
9 sentence in our answer, which is the bottom line -- is that
10 the reasonable nexus has not been established and it should
11 be established before this party is allowed to litigate this
12 issue.

13 MR. ADLER: Could I respond to everything that's
14 been said about our contention?

15 Mr. Chairman, the decisions of the Board and the
16 decisions of the Commission have in effect hamstrung us. I
17 don't know what they've done to the other intervenors. But --

18 CHAIRMAN SMITH: Would you please put it in the
19 context of the contention?

20 MR. ADLER: One of the major objections of the
21 Licensee is that a portion of the contention is speculative
22 in that it anticipates changes occurring and we say they
23 can't afford to do these changes, and the changes will have
24 a direct impact on the safe operation of TMI 1.

25 Now we don't know what those changes are.

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1 CHAIRMAN SMITH: Now didn't you say this before?
2 Are you afraid that we didn't hear it or we won't read it in
3 the transcript? Didn't you say this before?

4 I don't want to frustrate you in making your argu-
5 ment, but we have to move on. We have to address these
6 contentions. We have many more.

7 And if you said it before -- as I recall you did,
8 and it's in the transcript and we will certainly read it --
9 please don't say it again.

10 MR. ADLER: The nexus that the NRC is looking for
11 is that if the company cannot --

12 CHAIRMAN SMITH: Now was I wrong? Did you say it
13 before or not? If it's a new point, tell me.

14 MR. ADLER: Obviously I must not have if the
15 Commission does not see the nexus.

16 The Commission has said that I have not shown a
17 connection between financial conditions and the operation of
18 TMI.

19 CHAIRMAN SMITH: And you disagree with them.

20 MR. ADLER: I disagree with them, because a company
21 that doesn't have the financial capabilities to operate a
22 plant can't operate a plant safely.

23 CHAIRMAN SMITH: Now, Mr. Adler, I don't want to
24 impede you in making your full argument. And there are
25 going to be times during this hearing when I'm going to accuse

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1 people of repeating when in fact they won't be repeating; I
2 will not understand what they're saying.

3 So you should feel free to say 'No, that's not
4 my point, that's a different point'. But it sounded to me
5 as if you were making the same argument, an identical argu-
6 ment all over again.

7 MR. ADLER: Well, the problem I've had is that
8 there seems to be -- and it's not just my problem -- the
9 Board has an understanding of what one of the intervenors has
10 said but the Licensee has an entirely different understanding
11 and the Staff has a third understanding.

12 CHAIRMAN SMITH: You don't know what the Board's
13 understanding is.

14 MR. ADLER: Well, okay. That's probably correct.

15 But I saw it when the contentions of UCS were being
16 discussed, there was clear misunderstanding. And I don't
17 know, I don't have any suggestion of how to remedy that, but
18 I have to respond to the Licensee and the Staff.

19 The Board may very well view it as repetitious
20 because they understand.

21 CHAIRMAN SMITH: Well, it's possible.

22 And I think that there's an urge which you have
23 to fight. I'm sure you're not going to get your adversaries
24 to admit right flat in the middle of your argument that
25 you've convinced them.

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(Laughter.)

MR. ADLER: Maybe next week.

All right.

Contention 7 has not been objected to --

CHAIRMAN SMITH: Mr. Adler, just a minute, please.

(The Board conferring.)

CHAIRMAN SMITH: The Board was observing -- which may be of assistance to you, Mr. Adler -- that a contention is usually attacked because it doesn't say enough. I think maybe you got into some trouble with your contention when you went beyond the essentials of it, and then got into the problem of PJM grid.

We view number one under contention six that it's coming pretty close to what the Commission had in mind on the bottom of page 12.

MR. ADLER: Fine.

CHAIRMAN SMITH: Do you want to move on? Is there anything further on this contention?

MR. ADLER: Nothing further on this one, Mr. Chairman.

Contention number 7 I don't think has been objected to by the licensee, unless I'm in error.

CHAIRMAN SMITH: I think that -- no, nobody opposes that one.

MR. ADLER: And contention number 3 is the NEPA

upbl5 1 count, and we will brief that contention.

2 CHAIRMAN SMITH: Okay.

3 MR. ADLER: And so that ends our presentation.

4 CHAIRMAN SMITH: Okay.

5 Let's see. It's almost three o'clock, and we
6 have -- we're really putting pressure on you, Mr. Aamodt.
7 That's why I've been impatient with others, so that you'll
8 have plenty of time.

9 MR. AAMODT: No problem at all.

10 CHAIRMAN SMITH: Okay, Mr. Aamodt.

11 MR. AAMODT: Our first contention is objected to
12 on the basis that we haven't shown how this contention relates
13 to Unit 2, the accident at Unit 2. That perception on the
14 part of the Licensee surprises me in view of the fact that the
15 Licensee demonstrated the need -- at least his perceived need
16 for psychological testing in NUREG 0600, ii-33, item 14.4,
17 where during the course of the interview sessions limited
18 observations were made by the investigators to note any
19 readily apparent health or emotional instability, obvious
20 aberrant behavior problems of the Licensee's operating staff
21 -- and I won't go ahead and read the balance.

22 But as a result of that one of four people were
23 found worthy of discharge.

24 Obviously psychological considerations relevant
25 to the operating personnel are ---

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MR. TROWBRIDGE: May I break in?

Did you cite 0600?

MR. AAMODT: Yes, sir, the investigation into the accident.

MR. TROWBRIDGE: Thank you.

MR. AAMODT: It's there.

Four people were judged to possibly have psychological problems associated -- that is, among those people who were associated with the accident, One of the four, according to that, was judged apparently subjected to dismissal and left of his own volition so that they didn't have to dismiss him.

But it seems to me that if after the accident you started running psychological tests, it seems awfully difficult for me to see why we should not contend that you should do that.

CHAIRMAN SMITH: All right.

Now that has a fundamental logic, and it is a problem that has plagued lawyers ever since there have been lawyers.

Sometimes a person does something that the person is not required to do, and the public interest requires that they not be penalized for doing something which they're not required to do if it furthers the public interest.

Do you understand my point?

MR. AAMODT: Yes, sir, I can appreciate that.

1 CHAIRMAN SMITH: So you cannot use a voluntary
mpb17 2 effort by someone to improve a situation as evidence that
3 it is needed. That in itself is a supersimplification.

4 MR. ARMODT: I understand that.

5 CHAIRMAN SMITH: I just wanted to put you on that
6 line of reasoning.

7 MR. LEVIN: Mr. Chairman, are we applying general
8 principles of court law to this proceeding?

9 CHAIRMAN SMITH: No. I'm just saying -- no, I'm
10 certainly not saying that. And I'm sure that when I said it
11 was a supersimplification you could hardly agree with me.

12 I'm just saying that in the general course --

13 MR. LEVIN: The reason I asked the question is
14 because I'm still trying to define in my own mind what the
15 meaning of nexus is.

16 It's a -- how much of a relationship does the act
17 or mission that is sought to be brought into these proceedings,
18 what precise kind of relationship is required before there is
19 a finding of nexus, if we're going to use that as a rule for
20 the adoption or rejections of contentions?

21 CHAIRMAN SMITH: What rule? Nexus rule?

22 MR. LEVIN: That's right.

23 CHAIRMAN SMITH: Well, my point wasn't about nexus.
24 He made the point that because the Licensee
25 undertook to do something that was in itself proof that it

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1 needed to be done, and I'm just saying as a matter of general
2 public policy that that ain't always the case.

3 A person who is penalized every time he tries to
4 make an improvement in the world will stop trying to make
5 improvements.

6 You cannot go from the fact of making a safety
7 improvement to the conclusion that the safety improvement was
8 in fact needed in each instance.

9 I really am sort of sorry I raised it.

10 MR. ADLER: Mr. Chairman, I'm not contending that
11 the fact that they did it proves the need, but I am suggesting
12 that they thought it was a pretty good idea.

13 MR. POLLARD: Mr. Chairman, isn't the fact not
14 that they did it, but that they found one of the operators
15 responsible for the accident --

16 CHAIRMAN SMITH: I wasn't addressing that part.

17 MR. RAMODT: That's a matter of record.

18 But I would also like to suggest --

19 CHAIRMAN SMITH: Mr. Trowbridge.

20 MR. TROWBRIDGE: Yes, I think this is important.

21 If Mr. Ramodt believes his contention to state
22 that there was one of the operators or employees of Met Ed
23 connected with the accident who was discharged, then I think
24 he'd better change that allegation because that's not correct.

25 MR. RAMODT: That's not it.

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1 CHAIRMAN SMITH: There is another point that has
2 arisen here which I think should be clarified for Mr. Amodt.

3 The Staff says -- you say that plant operators
4 and management should have a program of psychological testing
5 and counseling, and you go on, and the Staff says no, there's
6 no link to accident causes.

7 Well, that's a factual addressing of the conten-
8 tion.

9 MR. AMODT: Yes.

10 CHAIRMAN SMITH: And that's wrong, they're wrong
11 there.

12 You see, the test is assuming your contention is
13 true, should it be litigated, providing it has some basis.

14 MR. AMODT: Well, if you will inform me --

15 CHAIRMAN SMITH: And that is why I raised it here.

16 MR. AMODT: I appreciate this very much.

17 CHAIRMAN SMITH: You don't have to prove the
18 contentions.

19 MR. AMODT: All I have to prove is it's something
20 we ought to look at, right?

21 CHAIRMAN SMITH: You have to prove that there's
22 a reasonable basis and that there is a relationship to the
23 issues in the case.

24 MR. AMODT: Yes.

25 CHAIRMAN SMITH: But you don't have to prove the

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1 facts.

2 MR. AAMODT: I appreciate that.

3 Then the other point that I'd like to make --

4 CHAIRMAN SMITH: Nor are you permitted to at this
5 time.

6 MR. AAMODT: I appreciate that if for no other
7 reason than we don't make it last too long.

8 Another point that I would like to make, though,
9 in support of our contention is on page 3 of the order as a
10 result of a preliminary review of the Three Mile Island Unit 2
11 accident chronology the NRC Staff initially identified several
12 human errors.

13 Now I wish my wife were here because this is her
14 area and not mine. She's in experimental psychology with her
15 specialty in learning.

16 And human errors result from several causes:

17 There are errors made because we didn't know that
18 two and two added up to four, and there are errors made
19 because we perceived something wrong, and perceptual errors
20 relate to psychological issues that I think are very important
21 in running a plant.

22 And for that reason we feel that if that plant is
23 going to operate in such a manner that the public health and
24 safety is not jeopardized, there should be psychological test-
25 ing routinely of the people who operate the plant.

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POOR ORIGINAL

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And then we would like to add one other point to support our contention, or another part of the contention. It's more than psychological testing that we're concerned about here.

We're also concerned about such things as substance abuse because in this day there is a great deal of aberrant behavior that results from young people smoking pot and various things of that sort, and I think we're all agreed this plant would not be in safe hands if the operator happened to be smoking pot or taking some other form of dope while he was on duty.

I think that our contention here is worthy of litigation.

CHAIRMAN SMITH: Anything further on this contention?

MR. TOURTELLOTT: Could we have that citation out of 0600 again?

MR. RAMODT: Yes, sir.

It's one-one or ii, pages 33 and 34. It starts on the bottom of 33 and goes up on to 34.

Then all of the other items I have relative to that fall more in the line of proof, like the effects of Surry where there were psychological problems and so on.

CHAIRMAN SMITH: Is there anything further?

(No response.)

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All right.

Would you move on, then, please?

MR. AAMODT: All right, sir.

Item three I don't think I have to address, do I, since we're speaking only -- being more specific; is that a fair statement?

Shall I skip over it? I gather that contention three has been accepted.

CHAIRMAN SMITH: It may very well be. You just have me in a moment of disorientation here.

(The Board conferring.)

CHAIRMAN SMITH: Yes, the plant has been served.

MR. TROWBRIDGE: Mr. Chairman, I would like to speak to contention three because the Staff and we have given somewhat different answers.

This is as good a time to raise the question that's going to come up in connection with a number of contentions.

We recognize in contention three that Mr. Aamodt and other intervenors simply do not now have enough information about the monitoring program to be more specific in their contentions, and we have a very specific puzzle to cope with that:

Admit the contention now but require its amendment and resubmission at a point after that information has

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1 been supplied to Mr. Aamodt.

2 That sets a day certain when we will see what,
3 having seen our monitoring plan, one or more intervenors
4 thinks is inadequate about it. It sets a day when the Board
5 is in business and will rule on the adequacy of the contention
6 in the light of the information which has been provided.

7 CHAIRMAN SMITH: Okay.

8 MR. TROWBRIDGE: The Staff approach is somewhat
9 different. The Staff approach is let's go through a period
10 of discovery -- and it's not clear how long this period is
11 going to be, how the discovery and format ends up with bring-
12 ing to the attention of the Board a more specific contention.

13 I think there needs to be a mechanism under which
14 where the Board feels that more time for one reason or another
15 should be allowed for the development of specificity, that
16 there needs to be a very definite process by which the parties
17 come back to the Board and say 'Now we have read the materials
18 now we have' -- even if you take the Staff approach -- 'now
19 we have done our discovery and here is our more specific
20 contention'.

21 MR. AAMODT: I'd like to comment, make one comment
22 relative to contention three, though, that perhaps falls in
23 the category of discovery.

24 I'd like you to know one of our primary concerns
25 relative to this, and that is item three of contention three,

ph24 1 defining danger to health and safety as a function of distance,
2 direction and time.

3 Now we're not asking here for anyone to take any
4 action beyond accidents relative to definition, knowing
5 what's going on, and that's just to highlight my thought here.
6 I'm sorry I don't have a better text than this, and I'm sure
7 it's not absolutely accurate, but the gist is accurate.

8 And this is a copy of that much heralded recorded
9 conversation in Washington shortly after the accident, where
10 Mr. Hendrie says:

11 "Harold, what you've got is an oblong
12 plume headed out. Where is it now would you
13 guess?"

14 In response, Mr. Gilinsky says:

15 "What's the wind speed, do you have any
16 idea?"

17 To which Denton replies:

18 "I don't have the weather report handy."

19 Pardon my laughing, but it is hilarious.

20 "Somebody ought to get it."

21 And my point is, as we will discuss later on, so
22 this is not inappropriate when it is based to a later conten-
23 tion, we are unique in this room, I believe, in that our farm
24 is located nearly centrally relative to Salem, Limerick,
25 Burwick, Three Mile Island and Peachbottom. And it would be

mpb25 1 awfully nice if one day the wind could blow in a direction
2 where we were quite sure that there were no accidental releases
3 coming over us.

4 MR. TROWDRIDGE: Mr. Chairman, the contention has
5 been allowed as far as the Staff and we are concerned. The
6 Staff and we are at odds on how to produce the greater
7 specificity, and that's all I think needs discussion now, not
8 a further justification of the contention.

9 MR. AAMODT: Mr. Chairman C--

10 CHAIRMAN SMITH: I think he has a point.

11 MR. AAMODT: Yes, he does.

12 But the reason this is particularly important
13 is that the numbers relative to exposures are demonstrated to
14 the public to be quite low because the dosages are averaged
15 over large groups, where in fact the dosages actually
16 occurred to very small groups.

17 And this business about knowing where the radia-
18 tion is going is very important in determining individual
19 safety.

20 CHAIRMAN SMITH: Okay.

21 Do you agree that there is a need or desirability
22 for greater specificity?

23 MR. AAMODT: Yes, I do, sir.

24 CHAIRMAN SMITH: Then is there any dispute?

25 MR. AAMODT: No, sir.

apb26 1

CHAIRMAN SMITH: We have plenty of items --

2

MR. AAMODT: I thought it would be helpful insofar

3

as their response to what should be done.

4

CHAIRMAN SMITH: Were it not a question of time --

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MR. AAMODT: Okay, sir, I'll hurry.

6

CHAIRMAN SMITH: -- it would be a different matter.

7

MR. AAMODT: Now item five --

8

MR. FOURTELLOTTE: Mr. Chairman, were we going

9

to address what Mr. Trowbridge brought out, the question of

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whether we use a specific....

11

Let me say that what the Staff said was not

12

intended, I guess, with any great amount of precision. We

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assumed that there would be a period of time after, soon

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after this prehearing conference that discovery would start,

15

and we did not mean to indicate that we thought the full

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scope of discovery should be had before a contention should

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be finalized.

18

Indeed we would disagree with that point because

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then we would be put in a position where we couldn't discover

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on the true contentions.

21

What we do believe is that a reasonable amount of

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time should be established -- and perhaps I should say we

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might agree, I don't know what that period of time is, maybe

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30 days, but necessarily I believe given the general schedule

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of the Commission, and if we come close to following that,

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pb27 1 part of that time is going to be during discovery.

2 CHAIRMAN SMITH: Are you talking about this
3 particular contention?

4 MR. TOURTELLOTTE: Yes.

5 CHAIRMAN SMITH: All right.

6 Have those been the subject of negotiations?

7 MR. TOURTELLOTTE: The contentions?

8 CHAIRMAN SMITH: No, the specificity and the plan
9 for making them more specific.

10 I mean, is it necessary for us to do this now?
11 Cannot the three of you get together and work out something
12 reasonable on a schedule for specificity?

13 MR. TOURTELLOTTE: Well, this is an issue I think
14 which affects just not the three of us, but it affects most
15 of the other intervenors as well.

16 CHAIRMAN SMITH: Yes.

17 MR. TOURTELLOTTE: And certainly, Mr. Chairman,
18 we'd be happy to try to get together with the other inter-
19 venors and try to work it out if you'd rather we do that.

20 On the other hand, looking at the way the
21 schedule is set up, we thought perhaps it might be a good
22 idea just to set a day certain.

23 CHAIRMAN SMITH: Okay. I understand.

24 MR. SHOLLY: Mr. Chairman?

25 CHAIRMAN SMITH: Mr. Sholly.

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1 MR. SHOLLY: I find myself in the same boat with
2 Mr. Amodt on this issue.

3 The Staff is apparently proposing 30 days, and
4 it's entirely possible that the relevant part of the restart
5 report won't be available in that 30 day period.

6 CHAIRMAN SMITH: Well, it could very well be that
7 there will be 30 days and you will need a request for an
8 extension.

9 MR. TROWBRIDGE: Our proposal was 30 days.

10 MR. POLLARD: It seems to me this business we're
11 dealing with now is kind of general procedures as far as
12 discovery, et cetera, and I think it would be better to defer
13 it until after we finish with these other things. It's not
14 specific to contentions.

15 This is just the first contention of this nature
16 we've encountered.

17 MR. AMODT: Mr. Chairman, from my own perspective, if
18 I'm sure we have the assurance from the Board that we'll have
19 adequate time to respond to questions, if we have that then
20 there's no reason to pursue it further.

21 CHAIRMAN SMITH: Well, I can't -- we can't assure
22 you --

23 MR. AMODT: Reasonable time.

24 CHAIRMAN SMITH: You can be assured that we will
25 try to afford you what we think is reasonable.

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MR. AAMODT: I won't ask for more than that.

MR. TOURTELLOTTE: Mr. Chairman, before we go on, I wanted to invite the Board's attention to one other matter.

Mr. Aamodt cited 0600 in support of his first contention, pages I-1-34, and I would simply ask the Board to look at page I-1-34, at the last paragraph --

MR. AAMODT: No, I think we've got something wrong here, I'm sorry.

MR. TOURTELLOTTE: -- at the last paragraph under 1.4.4, which reaches exactly the opposite conclusion of what is contended in the first contention. That is, that neither health nor psychological condition of the operational staff had anything to do with the accident.

MR. AAMODT: Mr. Chairman, I don't think that conclusion bears on the validity of the contention. I suppose that it's only reasonable to assume that after the plant had been running for some time most of the people were probably psychologically reasonably fit.

But my contention only is that the need exists to assure that the people who operate plants are psychologically in good shape.

Now relative to item five, I'm pleased to note that I don't have to prove my contention.

I would like to -- I gather from your comment, Mr. Chairman, that what you're really saying is you'd like

1 to know what we have in mind rather than the proof of what we
2 have in mind.

3 CHAIRMAN SMITH: Yes, what is a reasonable basis
4 for a contention. It's not a precise thing; you just simply
5 cannot sit back and imagine a list of contentions that you
6 might want to throw in.

7 MR. AAMODT: Yes, sir.

8 CHAIRMAN SMITH: There has to be a basis for it.

9 MR. AAMODT: Yes, sir.

10 CHAIRMAN SMITH: But that's far short of proof for
11 you contention.

12 MR. AAMODT: Yes.

13 The point that I'd like to make relative to item
14 five, the item is larger -- that is, our concern is larger
15 than animals as property --

16 MR. TROWERIDGE: Mr. Chairman, item five has been
17 accepted by all parties without reservation.

18 Can we move on?

19 MR. AAMODT: Okay, that's fine.

20 CHAIRMAN SMITH: The Staff is not satisfied with
21 it entirely. The Staff would limit it to pathways to humans
22 or animals as property, and Mr. Aamodt says no, but his
23 interest is greater than animals as property.

24 MR. AAMODT: The point is.

25 And as a specific case what I have in mind is

npb31 1 when my family left for Maryland during the incident, we have
2 a farm and fortunately the time of year was such that we could
3 leave the animals, but still we had to go out and put a lot
4 of hay in the racks and all that sort of thing to make sure
5 they had some food.

6 That left us in the position, perhaps somewhat
7 uniquely in this group, we could empathize with the dairy
8 farmer who might be in a similar situation or a more severe
9 situation closer to the plant, where -- if you leave a cow
10 for a day or two, a dairy cow, and don't milk it, it has
11 mastitis, and you've got sick cows. And that's a concern that
12 relates -- and therefore the farmer is likely to stay, and
13 his life will be risked if there isn't a way to get the
14 animals out.

15 So I think that should be considered.

16 MR. TOURELLOTTE: We don't have any objection
17 with that explanation.

18 CHAIRMAN SMITH: Okay.

19 MR. ARMODT: Now item six.

20 What we're primarily concerned with here is the
21 flow of information to the public, and the key line is -- quote
22 -- "adequate protection and monitoring capability is not
23 presently planned to assess or predict risk to health and
24 safety of persons in the path of plumes" -- close quote --
25 which may not be the most appropriate word -- quote -- "nor is

pb32

1 a mechanism available to inform them of the danger to which
2 they would be exposed" -- close quote.

3 I think this issue ought to be, if it isn't, cen-
4 tral to our meeting here if we're concerned about the health
5 and safety of the people. We experienced the Unit 2 event
6 where, for example -- well, I won't go into details, but in
7 any event people stood and just simply did not know what the
8 hazard was.

9 Some people, as demonstrated in the recorded
10 statements that I alluded to earlier in Washington, some
11 people actually did have their lives risked by a passage of
12 radiation to which they were exposed about which they knew
13 nothing.

14 I think if there is a unique deficiency in every-
15 thing that has proceeded so far in the address to the startup
16 of Unit 2 as it relates to the accident at Unit 2, it's the
17 flow of pertinent information to the public.

18 DR. JORDAN: Mr. Ramodt, you said in your conten-
19 tion that the present emergency plans do not provide adequate
20 information, and I think perhaps the Staff and others would
21 agree with you --

22 MR. RAMODT: Yes, sir.

23 DR. JORDAN: -- because there are going to be some
24 new plans. There's new Staff criteria.

25 And the Applicant is going to be presenting new

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1 plans.

2 Now, then, I think what we will be interested in
3 is your position after those plans come out. If you are
4 contending that those plans as they come out are not adequate,
5 then you should address that.

6 MR. AAMODT: I appreciate the opportunity to do
7 that.

8 Now item eight I understand is outside of the scope
9 of the hearings entirely.

10 I would like to make one comment relative to that
11 or ask the Board whether or not the thought is valid that in
12 view of the fact that waste material can't be transported out
13 of the state there is a new hazard that impacts on the people
14 of the Commonwealth, and us, therefore, because somehow we
15 have to get rid of that stuff here instead of someplace else.

16 CHAIRMAN SMITH: What stuff?

17 MR. AAMODT: The low level waste material.

18 CHAIRMAN SMITH: From 2?

19 MR. AAMODT: 1 and 2.

20 I mean, as I understand it, we're not allowed to
21 go over into Ohio, we can't go to South Carolina, we can't
22 go to conventional dumping places for this kind of waste.

23 And I may very well not be adequately informed,
24 but surely it is true that our options for disposal are not
25 as great as they used to be.

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MR. KEFFORD: A point of order, Mr. Chairman:
Didn't you skip contention seven?

MR. AAMODT: Oh, yes we did.

MR. TOURTELLOTT: Mr. Aamodt skipped it.

CHAIRMAN SMITH: Yes.

My three-hole punch punched right through number
seven.

(Laughter.)

That's a poor way to determine issues in a proceed-
ing.

(Laughter.)

MR. AAMODT: I'm deeply offended.

(Laughter.)

But in any event, I only have that comment rela-
tive to eight and I won't pursue that further, if that's
acceptable.

Now item seven is --

CHAIRMAN SMITH: Excuse me, Mr. Aamodt.

MR. AAMODT: Yes.

(The Board conferring.)

CHAIRMAN SMITH: We have some troubles about your
last statement.

Could you review your last point about the closing
down of the depositories in the other states?

MR. AAMODT: Yes.

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pb3;

1 I have to preface that by saying I'm not nearly
2 as knowledgeable as I should be, all right, or as I might be.

3 But from what I've read in the newspapers, to
4 which there has to be some truth, the Commonwealth has at
5 least fewer places outside of the state which can serve as
6 repositories for its nuclear waste --

7 CHAIRMAN SMITH: For which nuclear waste?

8 MR. AAMODT: Whatever waste comes out of these
9 plants that has to be disposed of somewhere.

10 CHAIRMAN SMITH: I don't want to be unfair and put
11 words in your mouth which may end up as a contention you do
12 not intend --

13 MR. AAMODT: It might please me. But go ahead.

14 CHAIRMAN SMITH: Well, it's not fair to the parties
15 opposing you.

16 MR. AAMODT: Yes.

17 CHAIRMAN SMITH: But is it your contention that
18 the inability to dispose of waste at TMI 2 will cause a build-
19 up of the waste on the island and affect the safe operation
20 of TMI 1? Is that your point?

21 MR. AAMODT: That, and slightly broader, the island
22 or our immediate environs somewhere.

23 You see, since our farm was one of the optional
24 sites for Limerick, we're quite sensitive to that.

25 CHAIRMAN SMITH: All right.

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1 MR. TROWBRIDGE: Mr. Chairman, I may have mis-
2 understood Mr. Aamodt. I thought Mr. Aamodt did wish to
3 make a comment, but that he essentially had abandoned conten-
4 tion number eight.

5 Am I mistaken?

6 CHAIRMAN SMITH: Well, that's what I thought too.
7 But then I thought he said, well, he wouldn't be abandoning
8 it if -- and that's when I lost track.

9 MR. AAMODT: That's right.

10 What I asked was the opportunity to make one state-
11 ment relative to it.

12 Now what I'm doing -- you know, I understand --
13 somewhere around between one and two in the morning I read
14 a statement somewhere and I couldn't find it this morning,
15 that said that the Board is encouraged to be informal, and I
16 don't remember where in the world I found that --

17 CHAIRMAN SMITH: That's right.

18 MR. AAMODT: That's the most helpful line I've
19 read so far, and I'm pleading for that informality.

20 CHAIRMAN SMITH: I don't want you to abandon a
21 contention because the Applicant and the Staff persuaded you,
22 perhaps incorrectly, that it's outside the scope of the hear-
23 ing.

24 I want you to look at item five on page six.

25 MR. PELL: Mr. Chairman, item five, page six of

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npb37

1 what?

2 CHAIRMAN SMITH: The order of notice of hearing.

3 MR. AAMODT: Oh, that's right. Thank you. I

4 appreciate that.

5 Well, my comment was the last plea to have it

6 allowed, and I appreciate the help on that.

7 (Laughter.)

8 MR. TOURTELLOTTE: The question is, Mr. Chairman,

9 is it dropped or is it not dropped?

10 CHAIRMAN SMITH: Now that I've brought this to
11 your attention, is the contention dropped or is it not dropped?

12 MR. AAMODT: It is not.

13 CHAIRMAN SMITH: All right.

14 Now let's see how close it comes to that issue.

15 MR. AAMODT: Shall I move to seven now, Mr.

16 Chairman, or --

17 CHAIRMAN SMITH: No, you can let it rest. I think
18 we've discussed the issue as far as I'm concerned.19 Does contention number eight fall within short
20 term item five on the bottom of page six and the top of page
21 seven? And I think that's how it should be addressed by the
22 licensees and the Staff.23 MR. POLLARD: Is it my understanding that it is
24 implied to read the management of radwaste from Three Mile
25 Island?

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MR. AAMODT: No.

MS. WEISS: Do you think maybe a brief recess would be helpful? We might be able to --

CHAIRMAN SMITH: We have so little time, and Mr. Aamodt is going to be denied the chance to participate in the other business if we don't move right along.

MS. WEISS: I just thought I might want to say a few words to Mr. Aamodt, but I can do it afterwards.

MR. AAMODT: I hate to say it, but perhaps we'll all be here Monday.

CHAIRMAN SMITH: If there's nothing new that can be said about it, there's no use saying it.

I just wondered what the relationship between your contention was and that statement on item number five.

MR. AAMODT: You know, all the time during this reading I skipped over that, and I appreciate it. I just heard somewhere that that was outside the scope.

CHAIRMAN SMITH: But really, if this was not what you had in mind --

MR. AAMODT: That is precisely what I had in mind. And, you see, we start with:

"And the acceptability of radwaste has altered since the accident."

The States of South Carolina and Washington refuse to accept it, and the State of Ohio; these are the

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pb3)

1 things that I commented about.

2 So what I'm saying is the options available are
3 limited and therefore it's more difficult for Met Ed to get
4 rid of it.

5 CHAIRMAN SMITH: Which could have its relationship
6 to the safe operation of TMI 1.

7 MR. AAMODT: Oh, absolutely.

8 CHAIRMAN SMITH: And now would you like to address
9 that contention, Mr. Trowbridge?

10 MR. TROWBRIDGE: Mr. Chairman, I'm afraid I need
11 a moment to think about it.

12 I was fairly oriented in my discussion about it
13 earlier which talked about waste disposal --

14 CHAIRMAN SMITH: It's not really fair to call
15 upon you right now to address it, and you can have time,
16 because this was not obvious.

17 MR. TROWBRIDGE: NO, sir.

18 CHAIRMAN SMITH: But I think it was reasonably
19 included.

20 Would you like to address it now, Mr. Tourtellotte?

21 MR. TOURTELLOTTE: It's fine with me, although
22 I observe the explanation is somewhat like the shifting sands
23 of the desert.

24 Nevertheless I'm going to assume that the last
25 statement is what Mr. Aamodt wants to do, is to litigate item

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five in the Commission's order on pages six and seven, and if that's what he means by contention eight, then the Staff has no objection to his litigating that.

MR. AAMODT: That's right.

The only difficulty is we didn't know that's what it was.

MR. TOURTELLOTT: If he were talking about ultimate waste disposal for all nuclear power plants all over the United States, I would have trouble.

MR. AAMODT: Oh, no, we never had that in mind.

CHAIRMAN SMITH: I think there just was a failure of communication.

Let's take a five minute break.

(Recess.)

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1 CHAIRMAN SMITH: Ladies and gentlemen, may we
2 proceed, please?

3 We have confirmed the availability of this room
4 for tomorrow. We will begin tomorrow at 8:00 a.m., and the
5 snack bar will be closed.

6 Mr. Aamodt?

7 MR. AAMODT: Mr. Chairman, obviously Contention
8 7 is what I was referring to earlier about living in a central
9 point relative to the several reactors that either are in
10 operation or planned to be in operation around us. This
11 clearly relates to the FES, does it not?

12 Both the Licensee and the NRC have said that this
13 is outside the scope, but at this point I would appreciate
14 it if you would tell me to what extent I can address the issue
15 of an FES because I have some things I would like very much
16 to respond to, particularly relevant to what Mr. Trowbridge
17 sent in the mail to us as it relates to several of my conten-
18 tions.

19 CHAIRMAN SMITH: Were you present when we dis-
20 cussed the briefing schedule on the need for an Environmental
21 Impact Statement? We're going to have briefs on the issue.

22 MR. AAMODT: Yes, that was while I was here, that
23 there are going to be briefs filed on an environmental impact
24 study, yes.

25 CHAIRMAN SMITH: Does that satisfy your-- Is your

2 1 question somewhat different than that?

2 MR. AAMODT: Do you think it might be-- My
3 answer to that is Yes, I believe it is.

4 But would it be a more appropriate course for us
5 to file a brief, or to simply state the things that we're
6 concerned about that relate to an FES?

7 Now let me warn you before you answer that that
8 items 7, to some extent 8, and 11 all, in our judgment, relate
9 to an FES.

10 (The board conferring.)

11 MR. TROWBRIDGE: Would you repeat those numbers,
12 please?

13 MR. AAMODT: 7, to some extent 8, 9 -- I forgot
14 that before -- and 11.

15 CHAIRMAN SMITH: Mr. Aamodt, if you want to send
16 a brief in we'll read it, but in all fairness you may want
17 to spend your time more productively.

18 Looking at Contention 7 we're not ruling but we
19 are portending what our ruling might very well be, that this
20 might raise a very interesting contention in the construction
21 permit stage of TMI-1 and maybe the operating license stage
22 of TMI-1, but it does not have sufficient relationship to
23 the issues of the suspension. We predict the contention is
24 not going to survive.

25 So brief us if you wish, but you have an up-hill

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1 battle going, I believe.

2 Now we could go back and consider it more but I
3 thought you wanted some help on it.

4 MR. AAMODT: Yes, I think if we do become in-
5 volved in any way in an FES then we could argue that more.
6 The point at this time that I would appreciate making to the
7 Board is only that as you consider the health and safety
8 aspects of any plant anywhere, which is really what we're
9 talking about here today in large measure, the implications
10 relate that way in the long terms I think, but in any event
11 what I'm concerned about here is that we are in an awfully
12 unique place with those plants all around us, and somehow
13 you folks should be cognizant of that hazard that we share
14 with the people around us there.

15 CHAIRMAN SMITH: That isn't a basis on which we
16 are cautioning you that we may not-- It's the relationship
17 to the order and notice of hearing of the Commission which
18 is the only authority we have. Outside that order and notice
19 of hearing we have no more authority than you do.

20 MR. AAMODT: I appreciate that and I will leave
21 Item 7.

22 Let me just add, we are free to file a brief if
23 it should so develop that we --

24 CHAIRMAN SMITH: Yes, and we'll read it.

25 Now the others, of course, we have already

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1 discussed.

2 MR. AAMODT: Now on 9 I would like to make one
3 point relative to --

4 CHAIRMAN SMITH: Of course if you file it, then
5 the parties will have the opportunity to respond to it.

6 MR. AAMODT: Oh, my, yes.

7 CHAIRMAN SMITH: You understand that?

8 MR. AAMODT: Yes.

9 Item 9. I would only like to make a comment that
10 supports this not being psychological as such.

11 The sum and substance of this argument is one
12 which says that operating from a position of the use of in-
13 tellect, observing the things around, one would make a
14 conscious, unemotional judgment that one should avoid these
15 things, avoid the area where we are, what we're doing.

16 As an example our farm has produced for a number
17 of years products grown without herbicides and pesticides
18 and we've had a pretty substantial number of people who would
19 buy that food because it was "clean" -- quote -- food. Since
20 Three Mile Island, boy, they just haven't come around. That's
21 not very emotional; it's an intelligent judgment on their part.

22 CHAIRMAN SMITH: That's real. That's a real
23 effect.

24 MR. AAMODT: Yes, it is.

25 CHAIRMAN SMITH: It's an economic effect.

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5 1 MR. AAMODT: That is not psychological. And both
2 the Licensee and NRC contend that this was psychological in
3 nature and it is not.

4 CHAIRMAN SMITH: Well, one trouble I have with your
5 version of the contention is you don't mention anything about
6 your economic interest in that contention.

7 MR. AAMODT: Yes, I think we were obsessed with
8 the expression health and safety. We considered-- I guess
9 if you have ever operated a farm you are in perilous times
10 most of the time financially so I guess we considered our
11 financial aspect under the word "safety."

12 (Laughter.)

13 And that is not a joke, Mr. Chairman. It's really
14 the way we look at it.

15 CHAIRMAN SMITH: Any response, Mr. Trowbridge?

16 MR. TROWBRIDGE: No question, Mr. Chairman, that
17 economic effects may be real. However, we are dealing with
18 a problem similar to problems raised by other contentions.
19 These are deemed secondary effects of the psychological dis-
20 tress or simply apprehensions. They are not Mr. Aamodt's
21 apprehensions. They appear to be the apprehensions of their
22 customers and the economic effects on Mr. Aamodt result from
23 those apprehensions.

24 MR. AAMODT: Mr. Chairman, I would quarrel with
25 that. What we're saying is that my wife and I are responding

1 to the perceptions of our customers and we are responding in
2 an intelligent, unemotional, non-psychological manner.

3 MR. TROWBRIDGE: I don't think psychological is
4 synonymous with psychotic. It simply means, however arrived
5 at, it is a mental state, whether through emotion, through
6 reasoning or otherwise.

7 MR. AAMODT: I would suggest that's an awfully
8 broad interpretation.

9 CHAIRMAN SMITH: Ms. Mulkey.

10 MS. MULKEY: While I do not desire to respond to
11 this contention we have elsewhere addressed our view of
12 impacts associated with the operations which are indirect or
13 not felt by the physical environment, and we would expect as
14 this contention is now characterized as raising those issues,
15 that you would look to our discussion, primarily in Section
16 II.B.1 of our brief which deals with that kind of impact.

17 MR. POLLARD: Mr. Chairman, may I just take up the
18 question whether or not this economic impact is
19 something that would be properly within the scope of an
20 Environmental Impact Statement or an Environmental Impact
21 Appraisal?

22 MR. AAMODT: I have nothing else, Mr. Chairman, on
23 Item 9.

24 Item 10 I personally view with great interest, if
25 you'll bear with me for a minute and just let me find out

1 what everybody said about it.

2 (Pause.)

3 I think that page 6, 3-D, provides some of what
4 you may call nexus. It's beyond the scope of this or any
5 other NRC adjudicatory proceeding.

6 The way I read page 6 --

7 CHAIRMAN SMITH: Where on page 6 are you?

8 MR. RAMODT: 3-D.

9 "Assess the relationship of state and
10 local plans to the licensee plan so as to assure
11 the capability to take emergency action."

12 We're not quarrelling with-- Here I'm not sug-
13 gesting even that the NRC, the Licensee, the counties, the
14 towns won't develop suitable plans. What I am concerned about
15 again if you'll forgive me, the source.

16 It's this kind of thing again from the trans-
17 cripts, from what Messrs. Kennedy and everybody else was
18 saying that day in Washington, talking about the press re-
19 lease.

20 Mr. Ahearna says, "Well, Dick, we've been sitting
21 here for the longest time, telling them everything is fine.
22 It's a real struggle with what to do. There is none of that
23 flavor here and I realize you are counterbalancing."

24 I think that if there is a single element that
25 could be perceived by the public to be present in our

8 1 proceedings that would give them confidence and that would
2 help this whole thing it's that everybody felt we were all
3 telling the truth.

4 CHAIRMAN SMITH: Mr. Aamodt, since the Special
5 Prehearing Conference has begun you've learned a little bit
6 more about who we are and what the issues are about. Do you
7 still advance that contention in the same form, exactly the
8 way it is? You don't truly think that this Board can impose
9 criminal penalties on people, do you?

10 MR. AAMODT: No, sir, I don't. But what I do
11 suggest, sir, is that the Board can recommend that that be a
12 requisite to opening.

13 CHAIRMAN SMITH: So that would be the relief you
14 would seek?

15 MR. AAMODT: Yes, sir.

16 CHAIRMAN SMITH: A recommendation by this Board
17 that they be subject to criminal prosecution for speaking
18 falsely?

19 MR. AAMODT: Mr. Chairman, the basis for that is
20 only that there has been so much evidence, not legally evi-
21 dence, suggesting that there aren't adequate constraints on
22 people to tell the truth relative to nuclear power and what
23 is essential to my family being safe is that the truth is
24 spoken.

25 CHAIRMAN SMITH: Mr. Aamodt, when I cut you off

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9 1 when you get on that line it does not mean that we are making
2 light of your concerns and why you state them.

3 MR. AAMODT: I realize that.

4 CHAIRMAN SMITH: All these things relate to our
5 jurisdiction and what we have the power to do.

6 MR. AAMODT: Yes.

7 CHAIRMAN SMITH: I can't envision what kind of
8 hearing would encompass evidence along that line. We
9 would have people come in apparently and say, "The Licensee
10 has the burden."

11 And they come in and say "We'll tell you the
12 truth."

13 And you're going to say, "Well, no, you're not."

14 And then you make your recommendation.

15 MR. AAMODT: May I give you a recommendation of
16 one piece of what I guess would be evidence, very short,
17 that would demonstrate?

18 CHAIRMAN SMITH: If you are going to point to
19 something in the past that you believe is a false statement,
20 it's not going to really help you, but go ahead and do it,
21 but I don't see how it's going to help you.

22 MR. AAMODT: Well, let me just say that there
23 were false statements to which we were exposed, so the ques-
24 tion is what do we do about this?

25 In view of this Item D that I cited, to assure

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1 the capability to take emergency actions, it does seem to me
2 that my contention is valid. I'm contending that it is not
3 possible to assure the capability to take emergency actions
4 unless there is something new factored in.

5 And my contention relative to what that new thing
6 should be is one of the few constraints on human behavior
7 that causes people to do what they're supposed to. I don't
8 speed because I get a fine. If there wasn't a fine or the
9 loss of a license I would speed.

10 CHAIRMAN SMITH: We understand all of that. This
11 becomes so philosophical that --

12 MR. AAMODT: Just tell me no and I'll stop.

13 CHAIRMAN SMITH: You always have to keep in mind
14 how does this relate to the three members of the Board and
15 what we're allowed to do, and how would we go about it if we
16 were allowed to do it.

17 MR. AAMODT: Well, let me say in response to the
18 comments of the Licensee and the NRC that I feel that this
19 contention is within the scope of the hearings. As I pointed
20 out in Item 3-D, I think it clearly falls within the scope.

21 I concede it's awfully hard to figure out what in
22 the world to do with it.

23 CHAIRMAN SMITH: Mr. Trowbridge, do you have any
24 response?

25 MR. TROWBRIDGE: No response.

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eh1 1 CHAIRMAN SMITH: Ms. Mulkey.

2 MS. MULKEY: No response.

3 DR. KEPFORD: Mr. Chairman, ECNP has a contention
4 along this line, and if it would please you, I would like to
5 speak to the subject at the present time.

6 CHAIRMAN SMITH: Well, we are rapidly running out
7 of time for Mr. Adler and Mr. Aamodt to wind up their business.
8 Do you want to do that at their expense, Mr. Kepford?

9 DR. KEPFORD: It would seem to me it would be more
10 up to them.

11 MR. AAMODT: Let me get through Item 11. --

12 CHAIRMAN SMITH: All right.

13 MR. AAMODT: -- if I might.

14 There is another avenue to handle these, the NRC
15 says, and the Licensee says much the same thing but that it
16 sure is beyond the scope of the hearing.

17 I don't frankly, Mr. Chairman, know the most
18 appropriate way to respond to these. What I would like to
19 suggest, though, if I might, is that surely Contention 11
20 would relate to an argument for an FES and in support of that,
21 I would cite Section XI, page 12 and 13.

22 DR. JORDAN: Would you wait just a minute, please?

23 (Pause.)

24 MR. AAMODT: Incidentally, Item 12 we won't discuss.

25 CHAIRMAN SMITH: You can address the responses to--

012 1 MR. AAMODT: What I'm suggesting here is relative
2 to an FES, that basis number one for Item 11 runs something
3 like this:

4 Mr. Trowbridge sent us a statement, a brief, on
5 the preparation of an FES and he cited 40 CFR 1502.9.C.1.ii,
6 that there can be a Supplement to a pre-existing FES if there
7 are significant new circumstances or information relative to
8 environmental concerns bearing on the proposed action.

9 I would like to suggest that there is at least
0 a large body of evidence that suggests that.

11 Then also in the FES itself, those tables I said.
12 Well, there are a whole bunch of tables that aren't nearly
13 close to what's happening there and so it seems to me there's
14 a basis for an FES.

12. 50 15 But again I don't know the properness of this,
16 but another reason I had for putting that in was the statement
17 received by all of us from the Public Utility Commission
18 where, on pages 2 and 5 -- I won't read it -- essentially the
19 Public Utility Commission said one of the reasons they're
20 here is to find out what they should do. And I think that
21 basis number one clearly should be heard by the PUC.

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1 3/wbl 1 CHAIRMAN SMITH: Do you have any response,
2 Mr. Trowbridge?

3 MR. TROWBRIDGE: No response, Mr. Chairman.

4 CHAIRMAN SMITH: If you weren't finished,
5 conclude, please.

6 MR. AAMODT: I was about to address Item 2.

7 CHAIRMAN SMITH: No matter what the basis for it,
8 your contention assumes we have the power to permanently
9 revoke the license. And you could have the strongest argu-
10 ment for the revocation of that license that could ever be
11 created, and we only have the authority which was given to
12 us by the Commissioners, which is to -- I don't want to
13 restate it: it's as a suspension proceeding.

14 It's my view that we do not have the authority
15 to permanently revoke this license. No matter what evidence
16 is produced at this hearing, we don't have that authority.

17 MR. AAMODT: Yes, sir.

18 MR. SHOLLY: Mr. Chairman.

19 MR. AAMODT: You do have authority to say, No
20 it can't be reissued, though? --that it can't restart?

21 CHAIRMAN SMITH: Yes. We have that authority
22 to receive evidence, and if the evidence is that it cannot
23 be restarted within the terms and conditions that the Com-
24 mission has laid out, that's exactly right. I think the
25 distinction is very great.

WI 'wb2 1 MR. AAMODT: Yes, it is.

2 CHAIRMAN SMITH: Here you're asking for permanent
3 revocation. And we don't have that authority, so you can
4 debate it all you want.

5 MR. AAMODT: Yes, sir. I won't debate it.

6 CHAIRMAN SMITH: So you have to remember these
7 things, Petitioners.

8 Let's assume that you persuade us, against fact,
9 that we do have authority that we don't. You'd just be
10 wasting your time anyway, because we can't do anything we
11 don't have authority to do. So if you succeed in making us
12 believe we have this authority and we don't, and you put on
13 this evidence and you go to all this work and we don't have
14 it, you have availed yourself nothing.

15 MR. AAMODT: I appreciate that. I appreciate
16 the opportunity to have Item 11 at least in the record
17 because perhaps later I'll be able to do something with it.

18 MR. SHOLLY: Mr. Chairman.

19 MR. BOWERS: I don't want to go into an area
20 that is inappropriate. But you just raised a question with
21 regard to the scope of the hearing, and I would very much
22 like some clarification.

23 CHAIRMAN SMITH: We have debated the scope
24 of the hearing a great deal.

25 Were you here yesterday?

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1 MR. BOWERS: No, sir, I wasn't. That's why I

2 am--

3 CHAIRMAN SMITH: I'm going to have to refer you
4 to the transcript.

5 Would you briefly state what you want to state
6 about it? Just tell me what you're going to talk about.

7 MR. BOWERS: I'm simply reacting to your state-
8 ment that the Board's mandate is to determine whether or
9 not TMI-1 can be restarted under the terms and conditions
10 set forth in the Commission's order. My reading of the order
11 is that your mandate goes beyond that. And that's what I
12 wanted clarification on.

13 CHAIRMAN SMITH: Well, would you point to where
14 you believe that that's the case?

15 MR. BOWERS: My reading of that order is that it
16 says that those terms and conditions have to be evaluated to
17 see if they are necessary and sufficient to guarantee that
18 that plant can be operated without injuring the public health
19 and safety. In other words, we will present evidence--

20 CHAIRMAN SMITH: We discussed "necessary and
21 sufficient" for hours and hours. We've discussed that already.
22 We're already cognizant of the fact that we may look at
23 whether the short term and long term actions are necessary
24 and are sufficient and should be required. We're very much
25 aware of those issues.

1 MR. BOWERS: Thank you very much. You under-
2 stand my questioning your previous statement?

3 CHAIRMAN SMITH: Yes. And even before the
4 petitioners pointed it out to us we knew about it.

5 MR. SHOLLY: Mr. Chairman, I think, along with
6 Mr. Bowers, I had a slightly different perception of the
7 authority of the Board. In other words, what you are saying
8 is that the most negative thing that could happen, in speaking
9 from the reference of the licensee now, looking at it from
10 the licensee's point of view, the most negative thing that
11 this Board could do would be to recommend the continued
12 suspension of the license?

13 CHAIRMAN SMITH: That's what I believe is the
14 limit of our authority.

15 Now wait a minute. In the initial decision
16 it could very well be that we could go outside our authority
17 and make some recommendations. But that has no more force
18 than if you made the recommendations.

19 MR. SHOLLY: I understand. In other words, the
20 decision to revoke would have to come from the Commission.

21 CHAIRMAN SMITH: Exactly right.

22 MR. SHOLLY: Thank you.

23 MR. PELL: I think ANGRU would like to go on
24 the record as stating that our opinion of what the order says
25 as to what this Board's authority is does not accord with the

1 Chair's position. We would like it to be so noted.

2 CHAIRMAN SMITH: Thank you.

3 MR. AAMODT: Mr. Chairman, if I might: there
4 was a result that I hoped to come out of this hearing
5 relative to Contention 11. And let me short-cut all the
6 reasoning and that sort of stuff and simply state it; and
7 that is: What's so wrong, in my judgment, about the release
8 of radioactive materials from the plant which could take
9 some child's or somebody's life is that which is different
10 about it and coal or something else. And I guess a good
11 example would be the tobacco industry. The farmers grow
12 tobacco and sell it because there's a warning on the label
13 that says precisely what the hazard is. And I would hope that
14 the Board would make an effort, however it can appropriately
15 do it, if it can, to help the American people know both
16 sides of the question of nuclear power and its safety
17 generally. Because all of us get in our bills every month
18 the statement that says how great it is. And nobody has the
19 money to give the other side. Whereas in the case of tobacco
20 there was nobody to give the other side except the Federal
21 Government. And this is a legitimate role of government.

22 Now where in the world we go to get that done
23 I don't know. But I do know that you could be a beginning
24 place for us.

25 CHAIRMAN SMITH: I can understand, Mr. Aamodt,

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1 the frustration the petitioners and members of the public
2 have when they come before a Board like this, only to be
3 told that we can't do what they want us to do. And it would
4 be a fraud if we pretended like we could and we can't.

5 MR. AAMODT: I realize that.

6 What I'm asking, sir, is that you might at least
7 put in the record some recommendation to the effect that the
8 American public should be knowledgeable relative to nuclear
9 power as it is relative to tobacco.

10 CHAIRMAN SMITH: Thank you .

11 It's now ten after four and we have just enough
12 time left, I believe, to take up the other procedural
13 matters so that Mr. Adler and Mr. Aamodt and anybody else
14 who doesn't want to come tomorrow can participate.

15 So if it is all right with the parties let's
16 proceed on.

17 Did I cut you off, Mr. Trowbridge or Ms. Mulkey
18 or Mr. Aamodt?

19 MR. TROWBRIDGE: No, Mr. Chairman.

20 MR. AAMODT: Mr. Chairman, I would like to ask
21 that in the procedural matters that we particularly address
22 consolidation before we leave. I think perhaps we have the
23 greatest interest in that.

24 CHAIRMAN SMITH: Okay. I think we'll have time
25 to address everything.

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1 MR. PELL: Mr. Chairman, at this point if it
2 is proper I would like also to include on the agenda the
3 matter of intervenor financing.

4 I understand that the Board has made some rulings
5 However we have not at this point had an opportunity to make
6 statements on the record concerning the need for intervenor
7 financing and how it may affect our ability to prosecute our
8 case, our individual cases.

9 I understand there may not be any time to do that
10 today, but I would like that placed on the agenda.

11 CHAIRMAN SMITH: Are there any comments on that
12 proposal?

13 MR. TROWBRIDGE: I suggest we comment on that in
14 the morning and get on with the business that the Board so
15 badly needs to accomplish.

16 MR. PELL: I would respond to that, Mr. Trow-
17 bridge, by saying that this is the business of the Board.

18 MR. TROWBRIDGE: I'm not saying it isn't the
19 business of the Board. But there are several members who are
20 going to leave here, and the Board is anxious to resolve some
21 procedural questions before they do.

22 MR. PELL: Mr. Trowbridge, all I asked was that
23 it be put on the agenda.

24 CHAIRMAN SMITH: Mr. Pell, you are out of order.
25 Normally we have an informal procedure. It is

1 relatively harmless to perhaps go straight across the table,
2 usually. But now, because of the tenor of the exchange,
3 I'm going to insist that anything you wish to say, that
4 you direct it to the Board.

5 MR. PELL: Well, Mr. Chairman, I would be
6 interested in how Mr. Trowbridge takes the position that he
7 may directly address the Board at whatever time he pleases.

8 CHAIRMAN SMITH: I didn't hear him say that.
9 We'll take this up tomorrow. You'll have full
0 opportunity.

1 MR. PELL: Thank you. That's all I requested.

2 (The Board conferring)

3 CHAIRMAN SMITH: As it turns out, consolidation
4 is the first item on the agenda that we have following con-
5 tention discussion. And as a beginning place, it is sug-
6 gested that the discussion of consolidation be centered
7 around the proposal advanced by the licensee in the letter of
8 November 2nd, 1979, which in essence refers to the lead
9 counsel concept of consolidating presentations in an adjudica-
10 tive proceeding.

11 No particularly logical sequence of approach
12 occurs to me, so we will just start down the table beginning
13 first with the Consumer Advocate and then the Utility Com-
14 mission, and I think that is almost the ideal place to center
15 the discussion, because I think there's an excellent

1 opportunity, with your similar responsibilities, to con-
2 solidate a portion, in the lead counsel concept, of your
3 presentation.

4 So may I have your comments upon that, gentle-
5 men, and would you address the issue?

6 Mr. Cohen is gone, I see.

7 MR. LEVIN: Mr. Chairman, we spoke with Mr. Cohen
8 earlier, and I believe Mr. Cohen indicated in his statement
9 the results of that conversation.

0 In order better to understand the situation
1 that we're faced with let me explain briefly what the
2 Consumer Advocate's office is, and--

3 CHAIRMAN SMITH: I think he has made a good
4 explanation of the Consumer Advocate. And now we're not
5 talking about consolidating you as a party; we're talking
6 about assigning a lead counsel to an issue.

7 Proceed, Mr. Levin.

8 MR. LEVIN: Because of our status as a sister
9 agency with our responsibilities to hear certain matters in
0 the record, it is in our view impossible for us to consult
1 with counsel for the Consumer Advocate who appears as a
2 party before the Pennsylvania Public Utility Commission on a
3 number of issues. It would simply be inappropriate, and it
4 would be unfair to the other parties in those proceedings.

5 As I have stated before, we will generally be

1 /wb:1 unable to take a position before the Nuclear Regulatory
2 Commission. We do intend, however, to assist in the full
3 development of the record on certain specified issues which
4 we have outlined earlier. Those are the financial and
5 managerial issues.

6
7 Now we believe that the Board is quite able to
8 make up its mind on those issues with all the other assistance
9 that's available here after full consideration of the record.
10 And our interest is to insure that the record is full.

11 Since we are an administrative agency and we
12 do have other proceedings that could be affected by the
13 participation of the Consumer Advocate we simply would be in
14 an extremely uncomfortable position both legally and practical-
15 ly speaking by coordinating our presentation or cross-
16 examination.

17 I understand your concern, and it's a concern
18 that we share in our own proceedings when we have a multipli-
19 city of parties. I have seen rate cases with more than
20 twenty parties that have been conducted very expeditiously
21 with cooperation among the parties. But I simply represent
22 to you, sir, that it would be impossible for us to consolidate.

23 CHAIRMAN SMITH: I think that point had been
24 made before, and I had overlooked it. And I think it's an
25 excellent point and I'm glad you reminded us.

Mr. Kepford?

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W /wbl 1 MR. LEVIN: If there is anything further you
2 would like me to discuss I would be glad to do so.

3 CHAIRMAN SMITH: As you wish.

4 MR. LEVIN: Thank you for giving me the oppor-
5 tunity.

6 MR. KEPFORD: In my mind consolidation in the
7 form of assignment or voluntary selection of lead counsel
8 would deprive parties of their rights in this proceeding.
9 Plus, it would go a long, long way toward curtailing the
10 development of a full and open record.

11 Personally, I have tried to assist an attorney
12 in cross-examination before ASLBs as a person with a techni-
13 cal background. This was at PeachBottom Units 2 and 3
14 operating license proceeding. I found it didn't work very
15 well.

16 I have also sat on the other side of the fence
17 and engaged in cross-examination with the assistance of
18 Dr. Johnrud sitting to my left. This was the TMI-2 operating
19 license proceeding. It didn't work there either because it
20 was very, very disruptive in both cases for the individual
21 undergoing cross-examination to be interrupted with the sug-
22 gestion of a question. It simply destroys the train of
23 thought and you don't get the question asked which is sug-
24 gested to you and you don't get the question asked which was
25 on your mind. It's very disruptive.

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I think there are a lot of individuals in this proceeding who have demonstrated so far that they are very well prepared to do their homework, that they have done their homework, that they are competent to undergo -- to undertake cross-examination, and that in a case of this importance it's absolutely necessary that they be given this opportunity.

The Board has demonstrated, to my mind, that it has the capability of paying attention to what's going on and keeping its eye on the ball so as to avoid repetition. And it seems to me that that would be a very proper function for the Board if that is perceived to be a problem.

CHAIRMAN SMITH: That's a good point.

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1 CHAIRMAN SMITH: Now that's a good point.

2 MR. KEPFORD: Everyone undergoes cross-examination.

3
4 However I think the problems created by repetition
5 would be very, very small when weighed against the problems
6 created by insufficient cross-examination.

7 I'm speaking again as a citizen intervenor who's
8 been involved in these proceedings for many years, and
9 having been involved certainly in the TMI 2 licensing proceed-
0 ing, it's really heartbreaking to get involved in one of
1 these things when you've done your homework and you've estab-
2 lished your points but you're unable to bring forth the
3 proper witnesses because you don't have funding.

4 That's going on here and will undoubtedly go on
5 because in my mind when that day comes that there will be a
6 fair hearing before an Atomic Safety and Licensing Board --
7 and by "fair" I mean --

8 CHAIRMAN SMITH: Now, Mr. Kepford, we have a lot
9 of business to conduct and that doesn't relate to consolida-
0 tion.

1 MR. KEPFORD: It most certainly does.

2 CHAIRMAN SMITH: Well, get to consolidation.

3 MR. KEPFORD: A lot of people here are laboring
4 under various burdens. This is just one of them.

5 The fact that people can come into a proceeding
6 like this fully prepared to cross-examine virtually any witness

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1 but being unable to put forth witnesses of their own and to
2 have their right, then, to cross-examine curtailed to me is
3 -- it's unspeakable.

4 CHAIRMAN SMITH: Now I think you've raised a good
5 point. I think you've raised the central point that may be
6 involved. And as the parties consider the merits of consoli-
7 dation, bear this in mind.

8 As I would envision a smoothly working lead
9 counsel plan -- and I can understand that that can be very
0 difficult -- there would be, at the least there would be --
1 say, for example, if you were designated as lead counsel or
2 lead petitioner or lead intervenor, I mean, on a particular
3 issue which you have demonstrated competence in, and Mr.
4 Pollard of CEA also wishes to participate in that cross-
5 examination, he could consult with you well in advance and
6 make his wishes known. You could work out a plan, and then
7 you could proceed with an orderly cross-examination.

8 If there are areas of interest where Mr. Pollard
9 differs from you, then he would be free to conduct his own
0 cross-examination.

1 Compare that with everyone coming in completely
2 prepared for their own cross-examination. Then at random we
3 point to one of the petitioners -- and it could be the most
4 inartful, unskilled person in the room who just butchers up
5 the cross-examination horribly from your point of view. You

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1 will not be permitted cumulative cross-examination, repetitious
2 cross-examination.

3 If it is cross-examination which is produced on
4 the record on the point being cross-examined, you can't just
5 start from zero again with a new cross-examination.

6 We have the right and the authority to insist that
7 your cross-examination build upon the cross-examination which
8 was produced before. So just bear that for a problem in mind.

9 MR. KEPFORD: Of course. This is why I brought
0 the subject up.

1 One of the main functions of the Board is to
2 prevent repetitive cross-examination. This is what I said.
3 And I agree, I have no argument at all.

4 CHAIRMAN SMITH: And are you aware of the problem
5 I pointed out --

6 MR. KEPFORD: I'm not sure it's a problem. But
7 I do see in the example you gave, for instance, of Mr. Pollard
8 sitting here, what you are doing is curtailing to a certain
9 extent -- Well, I don't really know what we're talking about
10 here as far as consolidation goes.

11 Now you put forth one idea. I wasn't at all
12 aware that that's what we were talking about. I thought if
13 we had a lead counsel that he would do the cross-examination,
14 period.

15 Now you're suggesting that perhaps if I don't

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1 get all the questions asked that Mr. Pollard wants asked,
2 that he can pick it up. I don't see as that's --

3 CHAIRMAN SMITH: Much different.

4 Now my thought would be that there would be a
5 responsibility among those petitioners who have an interest
6 in a particular contention to cooperate with each other
7 for the principal cross-examination where their interests are
8 parallel, represented by the person best able, the most
9 knowledgeable --

0 MR. KEPFORD: Well, how do we determine that?
1 We have no way of really determining that unless we prepare
2 exams --

3 CHAIRMAN SMITH: So you're saying it's impractical

4 MR. KEPFORD: I'm saying it's impossible.

5 CHAIRMAN SMITH: I just want you to balance that
6 against what would be a chaotic situation when you come walk-
7 ing in with a beautiful plan of cross-examination and lots of
8 surprises and somebody beats you to the punch on those ques-
9 tions and blows it for you.

10 MR. KEPFORD: Then you cross the question out and
11 go on to the next one.

12 CHAIRMAN SMITH: Okay. All right.

13 MR. KEPFORD: That's an insignificant problem.

14 What in effect you would be asking us to do is
15 simply shoulder another burden by requiring us to get together

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mpbE

1 and spend hours and hours of time we don't have preparing
2 this, whereas we can be preparing on our own individually.

3 And I really do think that we're capable as
4 intelligent and responsible people -- that's why we're here,
5 after all, we feel a responsibility and I think we have the
6 intelligence -- to realize when a question has been asked
7 and respond accordingly.

8 Above and beyond that you have the authority
9 under the Commission's rules to curtail repetitious cross-
10 examination. And I think Mr. Cohen's point -- excuse me --
11 Mr. Levin's point that proceedings can take place with a
12 large number of independent petitioners should weigh heavily
13 in your decision.

14 CHAIRMAN SMITH: I didn't understand his point
15 to be exactly that.

16 I think Mr. Levin's point was that he has seen
17 consolidation work successfully.

18 Was that part of your point, sir?

19 MR. LEVIN: No, Mr. Chairman, we rarely use
20 consolidation in our proceedings, perhaps because they're
21 somewhat more limited in scope.

22 But generally we have found consolidation, except
23 in rare instances, to be more trouble than it's worth. But
24 we use it occasionally.

25 This is our own experience. Of course this is

1422 208

pb6

1 mainly in rate cases where certain classic and defined issues
2 are litigated again and again.

3 CHAIRMAN SMITH: Ms. Smith?

4 MS. SMITH: We've discussed this problem in our
5 group because we knew the question would arise.

6 Our feelings are every group here is unique in
7 some fashion, not just us. 70 percent of the population in
8 our township lies within a five mile radius, which makes us
9 special due to the psychological trauma.

0 Also in our area we're located between Harrisburg
1 and York. We have a lot of transient people from out of
2 state. They're selling their homes every two years or so on
3 an average. Therefore we have -- I think property values are
4 in our contentions.

5 We feel we might have a problem maybe others
6 don't have as strongly. Those are the two specific things
7 we've discussed.

8 We'd rather not. We will work with PANE on the
9 psychological issue if they will have us, and I know they will.

10 CHAIRMAN SMITH: Thank you.

11 Mr. Pollard?

12 MR. POLLARD: Yes.

13 Mr. Chairman, I see there is a question of getting
14 a clear understanding. I think your description of how you
15 perceive the lead counsel process to work was helpful.

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mpb

1 I think in terms of the reference to the Licensee's
2 proposed breakdown of issues, I think it's much too broad.
3 For example, say, the analyses and modifications of plant
4 design, there's different aspects of that.

5 For example, contention number 12 on Class 9, I
6 could see working with other intervenors raising Class 9 issues,
7 and again I think the point Dr. Kepford brought up about the
8 financial resources, the problems there in terms of the
9 communication with each other are problematic.

10 I think ideally we might be able to be more
11 efficient, I think we could be more efficient if we could
12 work that out. But there is that real -- You know, if we
13 had the financial resources to be able to meet with each
14 other, I could see very easily, then, a two day session,
15 another two day session could be devoted to working out the
16 details of how this breakdown should take place in a way
17 that would be -- you know, that would do justice to the
18 specific contentions being raised.

19 As I say, the type of consideration -- the emergency
20 plans could form five mile radius groups. The considerations
21 are somewhat different from when we're talking about a
22 broader range of emergency plans. We're getting into consi er-
23 ably different implications.

24 CHAIRMAN SMITH: Okay.

25 I think he started to restate the point.

wpb3

1 MR. POLLARD: Okay.

2 CHAIRMAN SMITH: Let me try another possibility
3 then as the discussion continues.

4 What if the Board were to favor an informal lead
5 party concept, and we were to say on issues of plant design
6 that would be Ms. Weiss who is going to have the first crack
7 or the last crack or the best opportunity at cross-examination
8 and other parties are urged to help her and feed into her,
9 but still reserve their own right to supplement cross-
0 examination on issues of psychological stress, if that is here
1 and we would indicate that Ms. Sheldon was going to lead off
2 or have the best chance at cross-examination and others would
3 have to take their chances on following up.

4 Do you think that approach might be helpful if we
5 indicate in advance where we feel the best opportunity to
6 represent a particular point of view should be afforded?

7 I'm afraid I haven't stated that very well. Of
8 course, I haven't really thought it out very well. But it
9 would be just an indication in advance where we feel a more
0 productive approach is going to result.

1 Mr. Levin?

2 MR. LEVIN: Mr. Chairman, this is exactly how we
3 go about doing things. However it's not done by the presiding
4 officer. It's generally done between the parties.

5 The parties will agree beforehand on the order of

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mpb.]

1 cross-examination. And to some extent it's facilitated
2 because the members of the Public Utility Bar are known to
3 each other, so they are able to adequately assess each
4 other's positions.

5 However, your suggestion tracks very closely to
6 what we do.

7 MR. POLLARD: I think one of the things that
8 would be, you know -- I think the principle -- I don't have
9 any objection. I think the mechanism for facilitating that
0 to happen, whether it be by the intervenors themselves or in
1 conjunction with recommendations from the Board as far as
2 how we might address that, I don't feel too uncomfortable.

3 I feel there are a couple of particular problems.
4 One is the burden either on Chesapeake Energy Alliance or on
5 the other intervenor groups of having to take into account --
6 having to be responsible for the presentation of other issues
7 that do not directly relate to their perception of the conten-
8 tion, their strategy for addressing the contention.

9 And -- Let me see. The other thing too would be
0 the right to present witnesses where you're not the lead
1 counsel, and also to be sure that the provisions didn't
2 restrain, didn't, for example, mean that -- Suppose for some
3 reason Chesapeake Energy Alliance was not designated as the
4 lead counsel for any issue, that we'd still have the right to
5 participate fully in the proceedings and not have our basic

pbl

1 right to cross-examine be abridged.

2 MR. KEPFORD: Can I --

3 CHAIRMAN SMITH: After everybody's had an oppor-
4 tunity to make a comment. We are running out of time, Mr.
5 Kepford. And you spoke at length on it. After everybody's
6 had an opportunity I'll call upon you again.

7 MR. JORDAN: Mr. Chairman --

8 CHAIRMAN SMITH: Mr. Kepford. Mr. Kepford.

9 I want the record to show that Mr. Kepford in a
0 gesture of annoyance and anger at the Board slammed his button
1 on his microphone.

2 I admonish you, sir, not to do that.

3 Furthermore --

4 MR. KEPFORD: Mr. Chairman, I would like to point
5 out --

6 CHAIRMAN SMITH: Is that correct, Mr. Kepford?

7 MR. KEPFORD: Yes, it is.

8 I would like to point out that Mr. Levin spoke
9 twice on this subject --

0 CHAIRMAN SMITH: All right --

1 MR. KEPFORD: -- and the subject has been --

2 CHAIRMAN SMITH: Mr. Kepford, I told you I will
3 call on you again.

4 MR. KEPFORD: -- reframed.

5 CHAIRMAN SMITH: I ask you please to be silent

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pbl

now.

All right, Mr. Kepford, you have done it again. Have you or have you not?

MR. KEPFORD: Have I or have I not done what?

CHAIRMAN SMITH: Have you not slammed the button of your microphone in a gesture of annoyance and exasperation over the Board?

MR. KEPFORD: It's the second time --

CHAIRMAN SMITH: Have I understood --

MR. KEPFORD: Absolutely not.

CHAIRMAN SMITH: All right. Thank you.

MR. JORDAN: Mr. Chairman, it seems to me to a degree we're talking about two different things.

One, we're talking about forced consolidation among the parties; and the other, we're talking about how to create the best record. And PANE's position really is that, as has been stated, each party is unique, every intervenor has his own particular interest, its own issues and its own status. And it's important not to deny them their rights, not to limit them unless it is necessary to do so for some reason. And I don't think it's -- we see the necessity yet.

And we shouldn't take that kind of a drastic step until the necessity is there.

Now the point I think that's really very important is it's in the Board's interest -- and believe me, it is

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equally in our interest -- to have a good record, because we have a good case to prove. And so it is in our interest and we intend to do it, to get together and to work together to produce -- creating our cases and putting them together.

It seems to me that perhaps you touched on the approach in talking of informal consolidation. But I think the point is you should rely on us to do that.

CHAIRMAN SMITH: Okay.

MR. JORDAN: Because that is what we need to do to make a good case.

CHAIRMAN SMITH: That certainly would be the ideal way, Mr. Jordan.

MR. JORDAN: And the point has been made, of course, that if we get into repetitive cross-examination or something of that sort, you have every authority you need to control the case.

CHAIRMAN SMITH: Ms. Weiss?

MS. WEISS: Mr. Chairman, nobody has directly addressed the Licensee's plan for consolidation which of course is much broader than anything we've discussed. I'm not going to do it because I perceive the drift of the discussion from the Board, at least, to suggest that that's not a real possibility.

We would like to note a strenuous objection to that lest it be inferred that failure to argue directly on

pbl

that represents agreement with it.

My experience, as the other parties who have been involved in these before, is that we will certainly be closely consulting with people whose contentions are the same as ours to prevent conflict, and I think to prevent precisely the problem which you outlined, which is a real problem. And I think that that informal lead party notion that you put forward is really worth thinking about, and I intend to think about it. I think that may be very useful.

And I would be certainly willing to discuss with the other parties if we could come up with an informal lead party on contentions where there is substantial overlap and then present that to you.

I will take it upon myself to initiate those discussions on my contentions.

I would just simply like to say that the extent to which this Board imposes obligations on lead counsel, those can be extremely onerous, particularly when we're talking about ordering them to do all of the discovery, to arrange all the cross-examination --

CHAIRMAN SMITH: In the absence of our authority to somehow fund --

MS. WEISS: My point precisely.

CHAIRMAN SMITH: -- lead counsel, I think it would make very great difficulties, make too many demands.

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1 And I really wasn't going too far in that direction.

2 MS. WEISS: My point precisely.

3 I have nothing further.

4 CHAIRMAN SMITH: Ms. Lee.

5 MS. LEE: Thank you, Mr. Chairman.

6 I have no personal objections to consolidation.
7 I think most of us anticipated this. I think your point is
8 well taken.

9 I do have some reservations, and that is that the
0 Board make certain that the intervenors do have due process
1 and that their contentions, however similar, and yet perhaps
2 deviating in some way on one given subject, is not lost in
3 the consolidation.

4 I should also like to request from the Board at a
5 later time to direct something to their attention that caused
6 me to have no personal objections to the consolidation. It
7 is not pertinent to what we're talking about now, but it is
8 pertinent to procedure.

9 CHAIRMAN SMITH: If it could be raised tomorrow
0 it certainly would be better.

1 MS. LEE: Yes, that would be fine.

2 Thank you very much. That's all I have to say.

3 CHAIRMAN SMITH: Mr. Aamodt?

4 MR. AAMODT: I like the voluntary system very
5 much. I also would like to go on the record strenuously

pb15

1 opposing any of the parties involved here trying to, as
2 Met Ed did, the Licensee did, trying to direct how this
3 thing goes.

4 I would, though, very much appreciate on the
5 Board's part if they would help us. I gather -- it appears
6 that the flavor of this thing is we're all going to go along
7 with the voluntary consolidation procedure. But I wonder,
8 not being familiar with this, if there isn't something in
9 the way you're going to structure the hearing that it would
0 be helpful for us to know.

1 You might suggest to us some areas of consolida-
2 tion that we might consider that would be helpful.

3 CHAIRMAN SMITH: This is one of the problems that
4 we noted when the final contentions came in. When we begin
5 to try to compare them and see where they were the same, quite
6 surprisingly there was not a great deal of overlap, which
7 immediately raised a lot of questions on consolidation right
8 at the very beginning. And we're sensitive to that fact.

9 MR. AAMODT: I was wondering, though, for procedur-
10 al reasons, if some might be grouped and handled a little
11 more expeditiously; even though we did it separately at least
12 we know they're coming as a group, so we could, you know,
13 move it along that way.

14
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18
PB/ 1 1 Obviously I don't know what I'm talking about
2 and if you could add something else to make it easier.

3 CHAIRMAN SMITH: There has to be some order of
4 proceeding. And this is going to be very difficult to try to
5 come up with a logical one and a fair one. And we're going
6 to depend very much upon the parties to announce: Well,
7 we've consulted and we're going to proceed this way.

8 This approach would be very useful.

9 Otherwise we're going to try to approach each
10 issue as we can.

11 I can't be of any more help than that.

12 MR. AAMODT: Are you not going to structure an
13 order in which the various items are going to be heard,
14 yourself? Would that be a Board responsibility?

15 CHAIRMAN SMITH: We will say what the contentions
16 are.

17 MR. AAMODT: And in what order they will be
18 heard?

19 CHAIRMAN SMITH: There's going to be another
20 Special Prehearing Conference, and then sometimes there are
21 problems of witness availability and things of that nature
22 that the Board has already considered. And we want to have a
23 proceeding in which issues rather than parties are taken up.

24 MR. AAMODT: And that's the point. Therefore I
25 thought-- Obviously in our situation, the more lead time we

MPI b2

1 have the more effectively and efficiently we can respond,
2 particularly relative to witnesses and gathering information
3 we need, and all that.

4 So if you could provide us with a schedule,
5 so to speak, of what's going to be done and when, it might be
6 awfully helpful.

7 CHAIRMAN SMITH: Sometimes in a regular construc-
8 tion permit proceeding when there aren't a lot of intervenors
9 they work it all out and they tell us what they want before
0 the proceeding. That isn't going to happen here. So we're
1 going to have to take a greater control on the order of
2 presenting the case.

3 But I can't help you on how we're going to do it.

4 MR. ARMODT: I know you can't. But you will
5 inform us early on so that we can cooperate?

6 CHAIRMAN SMITH: We'll certainly try to, yes.

7 First you'll know what the contentions are
8 early--

9 MR. ARMODT: Right.

10 CHAIRMAN SMITH: In fact we're going to give you
11 some help tonight on that.

12 Then as soon as we can we will try to indicate
13 the order in which we're going to consider them. And we may
14 take advice. We always want advice.

15 MR. ARMODT: Yes. And I think that cuts both

MI 'wb3 1 ways. I think we would like very much to get what advice
2 we can be given, too. I mean, you might have some percep-
3 tions that would help us really, just so long as we're not
4 forced to put people together. I think that's what we're
5 worrying about.

6 CHAIRMAN SMITH: Well, of course, the Commission
7 rules specifically, although it does provide for consolida-
8 tion of parties it specifically says you can't do it to the
9 detriment of the rights of others.

10 MR. AAMODT: I know, I read that.

11 CHAIRMAN SMITH: And, of course, we're very
12 sensitive to these problems.

13 The next time we start on a discussion like this
14 we'll start at that end so there will be a little bit more
15 fairness.

16 Mr. Lewis.

17 MR. LEWIS: I don't know how worthwhile my com-
18 ments are, because I may be out of the hearing with my con-
19 tentions.

20 CHAIRMAN SMITH: I would appreciate it if you
21 would, just in view of the time, just add what has not yet
22 been mentioned.

23 MR. LEWIS: First of all, I want to agree with
24 UCS. My funds are very limited. If I am consolidated and I
25 have to pay part of an attorney's fee, I'm out. It's simple

MPI b4

1 enough.

2 The second thing: I would object strenuously
3 to consolidation where any uniqueness exists, or unique
4 part exists. I think that would be 2.715(a), of course.
5 My funds are limited. I plan to build my entire case, if
6 allowed, strictly on direct and redirect, because I just
7 don't have the funds to start bringing in witnesses,
8 and what-have-you, and arguing down NRC witnesses.

9 So a lot of this is not going to affect me too
10 greatly.

11 Lastly, I am negotiating right now trying to
12 get -- request another intervenor to see that one of my
13 contentions fits in with one of his contentions. I admit
14 he's strapped right now. But, if possible, I'll at least
15 be down one contention and somebody else may accept that,
16 and maybe that'll be helpful so far as consolidation, I hope.

17 I have to be able to show a lot of technical --
18 some technical and other background to get him to accept it.

19 CHAIRMAN SMITH: ANGRY:

20 MR. BOWERS: Yes, sir.

21 To be as brief as possible, we would also like
22 to record our objection to the plan for consolidation proposed
23 by the licensee. We feel the categories set out by him are
24 far too broad, and that to whatever extent consolidation is --
25 whatever form consolidation does take, the categories should

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MF wb5

1 be broken down to a much greater extent than they are.

2 We do see certain problems in the area of
3 practicability which have to do with geographic location,
4 travel time, the cost of long distance phone calls, and
5 we would hope that those kinds of factors would be taken into
6 account.

7 We would also like to have the petitioners, the
8 intervenors themselves involved to the maximum extent possi-
9 ble in the development of a consolidation plan. That might
10 perhaps take the form of the Board issuing a proposed pro-
11 visional consolidation plan and then allowing an opportunity
12 for intervenors to submit comments on them before coming up
13 with a final plan.

14 CHAIRMAN SMITH: If we do that it's going to take
15 some time for us to first look at contentions and then rule
16 on them, get them out in an order, and then turn to consolida-
17 tion. In the meantime, one of the advantages of consolidation
18 is more efficient discovery, which we haven't discussed.
19 In the meantime everyone is doing his own discovery.

20 I would urge, now that we're thinking about it,
21 that anybody who wishes to cooperate begin cooperating right
22 at the very beginning, to increase your efficiency. Because
23 it would be some time before the Board would be able to
24 really get on top of that problem.

25 MR. BOWERS: I think my sense or my feeling of

PB/11

1 what the other intervenors have said is that there is a great
2 deal of desire and willingness to coordinate our resources,
3 for obvious reasons. I mean, we have very limited resources,
4 and if we tried to go out and hire expert witnesses in all
5 of the areas that we cover with duplicate testimony that's
6 being provided by other intervenors, it would be a waste of
7 resources.

8 The final point I would like to make is that
9 whatever plan the Board comes up with, I would strongly urge
10 that there be incorporated within that plan a provision for
11 deviation on a showing of good cause.

12 CHAIRMAN SMITH: This is virtually true of
13 every order that the Board issues.

14 MR. BOWERS: I think in this particular plan,
15 because it deals with such sensitive issues of, you know,
16 due process rights, that the maximum flexibility possible
17 should be built into it.

18 CHAIRMAN SMITH: Thank you .

19 Mr. Sholly.

20 MR. SHOLLY: I guess, you know, fundamentally
21 from a philosophical point of view I'm opposed to consolida-
22 tion. But I can see the practicality of the situation
23 requiring it to some extent.

24 There are a number of disadvantages to it that
25 I think I should point out. There is certainly going to be

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ME wb7

1 an inability on the part of one intervenor to adequately
2 present evidence, to cross-examine, to make proposed find-
3 ings, to make motions, and so forth, related to another
4 intervenor's contentions. And it's going to be extremely
5 difficult from a monetary point of view, also.

6 There are certainly, I think, going to be
7 problems if-- Just for an example, say Ms. Weiss is given the
8 lead responsibility for one of my contentions. Well there
9 she is being funded by the Union of Concerned Scientists and
10 having to advance my contentions without any compensation
11 whatsoever. It would certainly leave doubts in my mind as
12 to whether she's going to do an adequate job of it; not
13 through any personal knowledge of Ms. Weiss, but just, you
14 know, deriving from the money problem.

15 Also, as I think you pointed out, there is very
16 little overlap in the contentions. And, in addition to some
17 obvious differences, there are subtle differences between
18 contentions which may on the surface appear to be similar
19 but having basic fundamental differences.

20 For example, I would point out that a contention
21 dealing with hydrogen generation: the contention that I have
22 and the contention that the Union of Concerns Scientists
23 has appear probably on the surface to be very similar. But,
24 from what I can gather, they are shooting for a consideration
25 of 100 percent hydrogen generation, and that's not my thrust

MI wb8

1 at all.

2 CHAIRMAN SMITH: Okay.

3 MR. SHOLLY: Okay.

4 I think there's a distinct disadvantage to
5 attempting to decide on consolidation at this point in the
6 hearing.

7 I have a proposal that I'd like to throw out for
8 discussion and I'd like everyone to think about it, if they
9 would.

10 I would propose postponing consolidation until
11 after discovery. After discovery intervenors will enter
12 into negotiations regarding consolidation and present a
13 proposal to the Board at the prehearing conference, or at a
14 special prehearing conference if that would be necessary,
15 and that failing acceptance of the intervenors' joint
16 proposal, or a modification of that proposal as a result of
17 discussions in that conference, then the intervenors will
18 consolidate along the lines suggested by the licensee, al-
19 though not specifically within the groupings as proposed.

20 I would see a number of advantages to that.
21 The various intervening groups would have a chance to obtain
22 information to begin developing how they want to present
23 their case. And I think at the point discovery is over we
24 will all have a good idea of the solidity of our cases. And
25 I think at that point we'll better be able to decide who can

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present the best arguments on the case and who should be
the lead counsel for any particular contention.

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CHAIRMAN SMITH: Mr. Adler?

MR. ADLER: I don't have much to add to the discussion, only a question, and that's concerning this informal lead counsel approach that I guess the Board has mentioned.

Would this be the kind of approach we could opt in and opt out?

CHAIRMAN SMITH: Mr. Adler, it really wasn't very well thought through at all. It just was an idea that the board could begin providing a beginning point for voluntary cooperation on particular issues, and we hadn't thought it out.

As a matter of fact, we hadn't discussed it; I just made it up.

MR. ADLER: Well, it's intriguing, and I'll think about it.

We've already had discussions with some intervenors concerning at least working together on certain contentions. And if there is any consolidation it would have to be voluntary. That's our feeling, for the simple reason that it always seems to occur in these proceedings -- and I've been involved in a couple before. But the citizen intervenors get consolidated.

And you have three intervenors from the State and the Licensee is by himself and the Staff is by himself,

npb:

1 and they clump all the citizen intervenors together, and I
2 don't think we want that in this case. I think we want it
3 to be strictly voluntary.

4 And I don't think it will be a substantial burden
5 on the Board to handle it in this manner.

6 CHAIRMAN SMITH: All right.

7 Ms. Carter? You may not even have an interest in
8 this.

9 MS. CARTER: I was just going to say the same
0 thing, given the fact that we don't even intend to do any
1 cross-examination on the financial capability issue, there
2 really isn't much for us to consolidate with the others
3 from governmental agencies.

4 CHAIRMAN SMITH: Mr. Tourtellotte, do you wish to
5 address a point?

6 MR. TOURTELLOTTE: Was Mr. Trowbridge going to
7 speak to it?

8 (Laughter.)

9 CHAIRMAN SMITH: Mr. Trowbridge, I guess it does
0 go back to you. I was going in a certain direction, physical
1 direction, and not a functional direction.

2 MR. TOURTELLOTTE: I'd like to clean up better if
3 I can.

4 (Laughter.)

5 MR. TROWBRIDGE: I thought I made the first move

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npb:

1 already.

2 CHAIRMAN SMITH: We do have a lot of business
3 yet to transact.

4 MR. TROWBRIDGE: If you'll give me just a minute,
5 Mr. Chairman, I will proceed next, if it's the Board's
6 pleasure.

7 DR. JOHNSRUD: Mr. Chairman, during this moment
8 I think we've encountered one of the first difficulties with
9 the proceeding.

0 This is Dr. Johnsrud speaking.

1 I've had a couple of points that I had hoped
2 Dr. Kepford would include in his discussion that I might
3 like to add, with your permission.

4 CHAIRMAN SMITH: I didn't hear the last sentence
5 of Mr. Trowbridge.

6 DR. JOHNSRUD: I'm sorry. I thought he said if
7 he could just take a moment to get his thoughts together.

8 MR. TROWBRIDGE: That is what I said.

9 CHAIRMAN SMITH: All right.

0 Then we did agree to call then upon Mr. Kepford.
1 And you're speaking on that point?

2 DR. JOHNSRUD: No, I'm not as to what he had in
3 mind, but some additional points that he did not raise that
4 I had jotted down for him.

5 CHAIRMAN SMITH: Okay.

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apb

1 But I really have to insist now on brevity.
2 Otherwise we're going to have some business -- we have to
3 close down here at six. We're going to have business that
4 isn't completed.

5 DR. JOHNSRUD: Yes.

6 I want to reemphasize the enormous distance and
7 travel time --

8 CHAIRMAN SMITH: Don't reemphasize what we heard
9 the first time.

0 DR. JOHNSRUD: -- in conjunction with the fact
1 that a number of these parties are people who work a full day
2 at other jobs --

3 CHAIRMAN SMITH: That's a good point.

4 DR. JOHNSRUD: -- and therefore have weekends at
5 best available, for example, five hours to Washington, five
6 hours back.

7 Then in addition, in your concept of a voluntary
8 lead party but opportunities for additional cross-examination
9 from other parties, I would hope that there would also be an
0 opportunity given for additional briefings.

1 Some of us may express ourselves far better orally
2 in cross-examination on our feet; some others may do a far
3 better job of briefing.

4 I'm sure that the Applicant -- the suspended
5 Licensee, that is, has attorneys doing each.

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nph

1 CHAIRMAN SMITH: Now you're not on consolidation
2 now.

3 DR. JOHNSRUD: Yes, I'm speaking of this in terms
4 of the paperwork that will accompany the actual cross-
5 examination in the evidentiary hearing and will follow it.

6 CHAIRMAN SMITH: I see.

7 DR. JOHNSRUD: I sense the consolidation under
8 a lead party would put the full burden of all the paperwork
9 in addition to the oral cross-examination potentially on a
0 single attorney, which would be a tremendous burden and
1 really exclude the other parties from their contention.

2 I'm asking I think that there be an opportunity
3 for effective inputs on the part of those parties raising
4 the contentions and, where possible, all parties to each
5 contention that's handled here.

6 CHAIRMAN SMITH: Mr. Kepford, did you want to
7 make your point now?

8 MR. KEPFORD: Yes, I had one question I wanted to
9 ask the Board, and that was quite simply:

0 As you modified this lead counsel bit, I suddenly
1 wanted to ask the question: Are you going to limit cross-
2 examination to just those who have advanced a particular
3 contention?

4 For instance, if we talk about evacuation, can
5 only those parties, then, who have asked --

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1 CHAIRMAN SMITH: We're not going to make that
2 ruling in a vacuum. We're going to give it more thought.
3 We're going to go back to the appeal board's Prairie Island
4 decision and read those again. We're going to look at what
5 the Commission said about expedition and the control of cross-
6 examination, and then we will decide.

7 MR. KEPFORD: Can I add one point?

8 CHAIRMAN SMITH: Yes, sir.

9 MR. KEPFORD: One of the issues unresolved from
0 the TMI 2 hearing stemmed from the inclusion into that hear-
1 ing of a subject which was not advanced by any of the inter-
2 venors, and that had to do with the environmental effects,
3 comparative environmental effects of the nuclear fuel cycle
4 and the coal fuel cycle.

5 From that came to revelation to the Commission
6 that indeed radioactivity did exist, and radon-222 must be
7 considered in licensing nuclear power plants, the point being
8 that it was not raised by the intervenors but shown by the
9 intervenors that the Commission had in effect outlawed the
0 laws of physics.

1 CHAIRMAN SMITH: Mr. Kepford, I'm sorry, I just
2 can't see any relevance between that and consolidation.
3 And I'll take the blame for not recognizing it.

4 MR. KEPFORD: This is the point you raised.

5 CHAIRMAN SMITH: Well, I'll take the blame for not

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recognizing my point too.

You're really going to have to give me a better explanation. It's been a long day.

DR. JORDAN: Please go ahead because I don't understand what you were saying, how that has anything to do with consolidation, Dr. Kepford.

MR. KEPFORD: It seemed to me what you were getting at with your proposed form of consolidation, an informal consolidation on an issue was that of those parties who had advanced contentions on a particular subject, somebody would somehow be chosen to do the lead cross-examination on that issue with the other parties being left, as it were, to pick up the pieces.

CHAIRMAN SMITH: Yes.

MR. KEPFORD: While I don't particularly object to that procedure -- that's probably what will happen anyway -- but my question is:

Does that exclude cross-examination by parties who did not advance that question?

CHAIRMAN SMITH: And I told you that we weren't going to rule upon that.

But then you made another point about the fuel cycle which --

MR. KEPFORD: The point was there that had that rule been in effect the Commission would still be, in my

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opinion, licensing power plants under a fraudulent rule.

CHAIRMAN SMITH: Thank you. I understand.

What you're pointing out are the practical benefits of one limited cross-examination.

MR. KEPFORD: No.

CHAIRMAN SMITH: Well, could you explain it to us tomorrow, because we really want to get these people on their way, and we'll listen to you on it tomorrow.

Please, if you don't have anything new and important on consolidation or even if you do, maybe we can take it up tomorrow after these people have a chance to participate in other important things.

MR. LEVIN: On behalf of Mr. Trowbridge -- I can see he's fidgeting a bit.

CHAIRMAN SMITH: You'll have to get used to that.

(Laughter.)

MR. LEVIN: He only asked for a minute, and it's been about four so far. I'm sorry to fidget too, with all due respect.

CHAIRMAN SMITH: Thank you, Mr. Levin.

Mr. Trowbridge, are you ready to speak now?

MR. TROWBRIDGE: Yes, Mr. Chairman.

I think it's been clear to Licensee for some time that consolidation of parties as such was not a feasible alternative.

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1 CHAIRMAN SMITH: If I were you my feelings would
2 be hurt in response to your suggestion.

3 MR. TROWBRIDGE: Pardon?

4 CHAIRMAN SMITH: I said if I were you I would
5 have hurt feelings on the response to your suggestion. It
6 just didn't go over with the other parties.

7 MR. TROWBRIDGE: NO, Mr. Chairman.

8 I'm glad to have heard the discussion because it
9 has, whether on our issues or some subdivision or some other
0 arrangement of issues, it has produced some consensus that
1 maybe the lead counsel or the cooperation or even the
2 organization of testimony may be along issue lines.

3 The last thing I want to ask of this Board is
4 forced consolidation of anyone, whether by issue or by party.
5 I would regard that as unworkable and self-defeating, and we
6 would run into more trouble and delay than it could possibly
7 be worth.

8 I do not even ask this Board to develop an
9 elaborate plan of possible consolidation; having listened to
0 everyone around the room I have some disappointments. There
1 has been a limited response, it seems to me, to the Board's
2 memorandum and order asking intervenors to among themselves
3 discuss this issue.

4 I think --

5 MR. SHOLLY: Mr. Chairman, if I may? This is very

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important, and it relates directly to what Mr. Trowbridge is saying.

MR. TROWBRIDGE: May I finish, please? You will have an opportunity after I have said this.

CHAIRMAN SMITH: I'm sure Mr. Sholly --

MR. SHOLLY: I would not interrupt, sir, if I did not have a very good reason.

CHAIRMAN SMITH: We have an extremely strong rule, even when you want to chip in and help -- which I suspect that you want to do -- but it will be chaos if we do not allow a speaker to make his point.

MR. SHOLLY: I'm sorry.

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MR. TROWBRIDGE: I do have an appreciation, however, that several of the Petitioners or Interveners have indeed thought about this subject.

I have a disappointment that the thinking has not progressed and I see no chance of consolidation progressing to the point where it's going to do much good in the area of discovery. That had been one of my hopes, something the Board had remarked on. I've given up on the likelihood that consolidation can be reached.

Therefore, of all the points that I've heard suggested here Mr. Sholly comes the closest to having stated by you what should now be done which is to proceed with discovery and let's see what can be done among the parties, primarily voluntarily, but a genuine effort by the parties to sit down and talk to each other and to see what voluntarily can be arranged at that time.

CHAIRMAN SMITH: Mr. Sholly, now the Board is faced with a decision. Either we deny Mr. Aamodt an opportunity to participate in important things which will affect their participation --

MR. SHOLLY: I would like to be heard.

CHAIRMAN SMITH: It will have to be brief.

MR. SHOLLY: I just want to point out to Mr. Trowbridge and to the Board and the Staff that a number of Interveners, sometimes as many as eight to ten, did in fact

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1 enter into negotiations regarding consolidation and were not
2 able to come to any conclusion. This took place on three
3 separate occasions, so we have not been operating in a
4 vacuum with regard to consolidation. We have met and tried.

5 CHAIRMAN SMITH: I'm glad you raised that point,
6 and I'm glad the record shows that. It certainly does demon-
7 strate the attitude that we were hoping for.

8 MR. TROWBRIDGE: My apologies for my mistake. It
9 simply was not apparent to me, Mr. Sholly, in the circular
10 go-round.

11 MR. BOWERS: Mr. Chairman, one further very brief
12 proposal of mine is I would urge this Board to give con-
13 sideration to the possibility of proposing consolidation
14 between the Licensee and the Staff with respect to issues as
15 to which there is no disagreement between those two parties.

16 CHAIRMAN SMITH: Absolutely not. No, that's over-
17 ruled.

18 When we have time I will discuss it further with
19 you. It's a very fundamental point that you raised here.

20 MR. BOWERS: I didn't make the proposal frivolously.

21 CHAIRMAN SMITH: I know you didn't. I know.

22 Okay, Mr. Tourtelotte, do you want to talk about
23 consolidation?

24 MR. TOURTELLOTTE: Well, perhaps there are a few
25 point I hope might help the Board in its consideration, points

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1 that were raised along the way to which there seemed to be no
2 answers, or difficult answers.

3 It seems to me that there are a few things that
4 can be said about consolidation, and I realize that there is
5 the disadvantage of the loss of control, but there are also
6 the advantages that the parties are allowed or can then
7 specialize and focus in on key areas and thereby present a
8 better case for themselves.

9 There is also the matter of conservation of re-
10 sources which is an important advantage for them.

11 I think in the final analysis, though, that PANE
12 hit on the right idea and that is that the real objective
13 should be to develop a record and, moreover, my position is
14 that the objective really should be to develop the best record
15 possible and not simply be desirous of personally engaging
16 in litigation as lead counsel on the record.

17 It seems to me there is some question about what
18 about the compensation of the person who is so-called lead
19 attorney on some given issue. I don't really see that that
20 is a particularly difficult problem because assume for a
21 moment that we have a counsel who is lead counsel on evacuation
22 planning. That lead counsel wants to make the very best case
23 possible for his client. It doesn't make any difference that
24 someone else assists him in making that case for his client.
25 The fact is his client is paying him a given amount of money

eb 4 1 and is expecting the best case possible to be put forward.

2 If someone else is assisting there are actually
3 benefits that that counsel and that client receive from the
4 other person helping them out, participating in that cross-
5 examination. It is not a total burden for that counsel to
6 actually represent someone else.

7 So I think that the business of compensation, if
8 viewed in that light, sort of disappears.

9 Another item that was raised by the PAME brief
10 was they seemed to be concerned about the fact that certain
11 interests may not be shared among certain of the Intervenor,
12 and the only thing you can answer to that is in those cases,
13 consolidation would not take place, so that isn't really an
14 issue either.

15 Finally, I would like to say that I think the
16 informal lead idea is a good one, but that it is one which
17 would also envision really top-notch work on preparing cross-
18 examination before you ever get to the hearing.

19 I heard Mr. Kepford say that one of the difficult
20 things about having somebody else participate with you in
21 cross-examination is that someone else is always suggesting
22 questions and so forth, that this is very disrupting. That
23 really isn't the way that one prepares cross-examination. I
24 don't want to instruct the Board on how that's done, but it
25 may be of benefit to some of the Intervenor, those who are

eb 5 1 particularly pro se Intervenor, to meet with some of the
2 other Intervenor who have counsel and understand that one
3 prepares cross-examination long before you get to the hearing
4 and in so understanding that I think they might realize
5 that there is some benefit to consolidation.

6 I also would agree that-- I really don't have any
7 objection to Mr. Sholly's proposal of waiting until the end
8 of discovery although actually I think the key and focal point
9 there is to have some date certain, perhaps after discovery
10 has started some time, but some date certain out in the
11 future, and that can even be before discovery is completely
12 over, when the Intervenor would meet and discuss consolida-
13 tion.

14 CHAIRMAN SMITH: That would be a contribution the
15 Board could make as a target for the Intervenor.

16 MR. TOURTELLOTTE: Yes.

17 CHAIRMAN SMITH: Okay.

18 We have completed discussion on consolidation.
19 Now we come to discovery. I do think we're going to make it
20 as far as our time today.

21 First, normally as far as discovery is concerned,
22 normally discovery begins after a time in which the Board
23 issues its prehearing conference order in which they say
24 what contentions are adopted, and then we authorize discovery.

25 As I read the rules, and I haven't read it for

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1 this particular purpose and I may be wrong, but discovery can
2 begin any time after this Special Prehearing Conference.

3 So it is our intention to say that discovery can
4 begin as soon as this Special Prehearing Conference is over,
5 not the one next week with the limited appearances but this
6 phase.

7 There's a lot of work that many people can do
8 before there is a final ruling on contentions with some risk,
9 but I think there's an area that is relatively risk-free and
10 that is where there have been no objections to contentions
11 and the Board hasn't indicated to the contrary, I think you
12 can make a reasonable assumption that that contention is
13 going to end up and that the person asserting that contention
14 is an Intervenor, and I think that will probably give you
15 enough to work on from Day One, just that alone, at least
16 for most petitioners.

17 So we will authorize, absent objections, we will
18 authorize discovery to begin as soon as possible at the end
19 of this Special Prehearing Conference along those lines.

20 Now bearing in mind that much of discovery will
21 simply be looking in the Reading Room and the Discovery
22 Room, parties are under no restraints to gamble a bit and
23 make discovery on contentions that aren't opposed and we
24 haven't ruled on yet, but you do it at your risk because you
25 may waste your time.

1 And then of course there are mandatory issues
2 and I think those mandatory issues are set out pretty clearly
3 and I see no reason why discovery can't productively begin
4 on the mandatory issues immediately.

5 So the point is we are going to need more time
6 than we had originally thought and which the Commission's
7 schedule anticipated to study these contentions. They are
8 much more complicated than any hearing I have ever been in,
9 and it is going to take us so much time that we don't want
10 to wait until then to begin discovery.

11 So discovery will begin at the end of this
12 Special Prehearing Conference, unless we hear objections which
13 convince us to change our mind.

14 Mr. Trowbridge.

15 MR. TROWBRIDGE: Mr. Chairman, I have some diffi-
16 culty knowing whether to object or not until we complete
17 the discussion on time limits.

5.120 18 If I have understood the question and if one
19 abided by the Commission's normal timetable I could get
20 tomorrow or Monday a set of interrogatories, a long set of
21 of interrogatories dealing with every contention to which I
22 had objected.

23 My time for responding to those would occur before
24 the Board had ruled on the contentions, and I think some
25 allowance must be made for that problem.

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1 CHAIRMAN SMITH: That's exactly right. If the
2 purposes of our ruling are ignored, there are certainly going
3 to be problems and we'll have to deal with them when they
4 arise. We'll just change our ruling.

5 But I think we've described a way by which
6 Petitioners can begin to prepare for their case without wait-
7 ing for our order.

8 MR. TROWBRIDGE: Well, of course we had already
9 indicated our willingness to respond, at least where we had
10 not objected to the contentions.

11 CHAIRMAN SMITH: And we took that into account
12 when --

13 MR. TROWBRIDGE: I'll go along with the Board's
14 proposition, hoping that we don't forget the question of
15 the timetable here before we're through on discovery.

16 CHAIRMAN SMITH: On the other hand, Mr. Trowbridge,
17 if you have the slightest hesitation about our proposal, we
18 could simply delay the proceeding until we do get our Special
19 Prehearing Conference order out and begin discovery in the --

20 MR. TROWBRIDGE: No, I had a minimum suggestion
21 that where objection has not been made to a contention, let's
22 get started. That seems to me to be an absolute minimum.

23 I am prepared to go along with the Board's rule
24 with the understanding that the Board may hear from me if
25 I have a very elaborate or burdensome discovery request on an

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eb9 1 issue which I don't think belongs in the proceeding, and I
144 2 would like a little time until the Board decides.

3 CHAIRMAN SMITH: I would think if an Intervenor
4 takes advantage of what we say and begins to work on elaborate
5 interrogatories that that might be risking a great deal of
6 wasted effort. We had in mind the fact that there is going
7 to be unusually available in this case Discovery Rooms and
8 Reading Rooms and that there is no reason why those can't be
9 used without delay.

10 But I think it would be a big risk to put a lot
11 of effort into interrogatories or at least to serve interroga-
12 tories before we can get our Special Prehearing Conference
13 order out.

14 I have down here some things to explain about
15 discovery, but I see we have discussed this and we have a
16 group of Petitioners here who are amazingly sophisticated
17 in Commission proceedings, but let's just cover one thing
18 that is sometimes overlooked.

19 Discovery of course is recognized by everyone
20 to provide -- to discover evidence, and that's the traditional
21 thing but there are also other purposes for discovery which
22 sometimes pro se Intervenor's are surprised to learn about.
23 I don't think anybody here will be surprised, but let's men-
24 tion it, and that is the Licensee or the Staff or any party
25 who opposes another party has the right to learn what the

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1 other party's position is, and that is one of the important
2 parts of discovery.

3 So when you get inquiries along that line, expect
4 it.

5 The discovery rules are very complicated. I have
6 been reading them for many years and I have to read them over
7 again every time a problem comes up. However, you have to be
8 familiar with them. They require a lot of work. They are
9 Sections 2.740 to 2.742 of the Rules of Practice. And we
10 just have to expect you to comply with them and to understand
11 them.

12 This will come up more often in connection with
13 discovery probably than at other times. It is important that
14 time limits be complied with, and so far in this case I think
15 everyone has complied with the time limits, but Intervenors
16 should understand that they cannot simply -- that it would
17 be at great risk to ignore a deadline. Do not ignore a dead-
18 line. You may find a ruling has been made before your point
19 of view can be taken into account and you're going to be
20 stuck with it.

21 If you ignore a deadline it is going to be at
22 your risk. You don't have to. If you have a problem so that
23 you can't meet a deadline, you can always ask for an extension
24 and explain why, but don't ignore it. Talk to us about dead-
25 lines before you let one pass. Say something about it. I

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1 can't stress that too strongly.

2 We can discuss housekeeping matters when we have
3 more time.

4 There is one thing that we did have down here and
5 that is what provisions might be available to give relief
6 to fundless Intervenors on the number of copies of papers
7 to be served. The Licensee has made a recommendation which
8 I believe would involve -- what? -- five or six copies?

9 Could we just have a general consensus by a show
10 of hands if that seems to be satisfactory to Intervenors?

11 (No response.)

12 It doesn't seem to be satisfactory.

13 DR. KEPFORD: What was the question?

14 CHAIRMAN SMITH: Maybe I missed this.

15 On the letter of November 2nd from Mr. Trowbridge
16 to the Board, we told the Licensee that they would have to
17 address means by which a reliable and affordable system of
18 duplication of papers, filings, and other communication
19 methods can be established, and the Licensee has come up with
20 some five different recommendations.

21 One of them is at a minimum, intervening parties
22 should serve their papers and documents on the Licensing
23 Board, Counsel for the NRC Staff, Counsel for the Licensee,
24 and one copy on the Secretary, Docketing and Service Section.
25 And that was what I had intended to seek a general consensus

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eb12 1 on if that seemed to be reasonable and if parties will comply
2 with that as a minimum.

3 DR. KEPFORD: I don't have any problem with it
4 except to the extent that it adds delay in receipt of docu-
5 ments to the Intervenor and responses are then put off
6 appropriately.

7 CHAIRMAN SMITH: Yes, that is exactly the other
8 side of that coin.

9 But what would you propose then?

10 DR. KEPFORD: Well, if that's taken into
11 account I don't have any problem with it at all. I think it's
12 great.

13 CHAIRMAN SMITH: Well, I'm sure Mr. Trowbridge
14 must have thought about that when he proposed it.

15 MR. TROWBRIDGE: Mr. Chairman, we have continued
16 to think about this. I have a supplemental, optional proposal
17 which may be attractive to some Intervenor. It won't fully
18 solve the problem.

19 When I prepared this list of suggestions we sat
20 in the office and we considered the question as to whether
21 we would take on the responsibility and expense when we
22 received filings of duplicating and distributing to all Inter-
23 venors.

24 We concluded, one, we did not want the responsi-
25 bility for any snafus, and there will be some sooner or later

eb13 1 in that process, and secondly, it wasn't very useful in that
2 mail from Dr. Kepford takes normally four days. By the time
3 we reproduce this and return it to other Intervenor's it's
4 kind of late.

5 We do have a suggestion which will be of some
6 assistance to certain of the Intervenor's in the room that
7 would help with their problem of duplication which seems to
8 be a particular problem for Intervenor's. If this is accepted
9 by the Board, I will be more specific about time and places
10 and people in a supplementary communication.

11 But generally if Intervenor's will deliver to our
12 office in Washington or to a designated spot in Middletown,
13 probably our Discovery Reading Room, we will reproduce and
14 return the document -- that is, we will reproduce the necessary
15 number of documents to make a full filing in accordance with
16 the regulations, though I would ask to be relieved of the 20
17 copies to the Secretary of the Commission, and let the
18 Commission do that, but at least for the other parties and the
19 Board.

2c 20 We would essentially guarantee that material
21 delivered to us for delivery -- for reproduction one day could
22 be picked up at the end of the next working day. We would
23 expect, however, that in most cases where an Intervenor con-
24 tacted the named individual who will appear in that letter
25 that arrangements could normally be made to come and sit in

eb14 1 the lobby for 15 minutes and we will -- and you can wait for
2 it, but that would take advance arranging.

5.265 3 We are prepared to do that, to take that burden
4 of duplicating for those who request it and take advantage
5 of it.

6 MR. PELL: Mr. Chairman, on behalf of ANGRY I
7 would like to say that we appreciate that offer sincerely,
8 and we understand that the full discussion of the matter of
9 funding is to be taken up tomorrow, but if I might just
10 briefly:

11 The issue of reproduction of the number of filings
12 which must be made is integrally related to Intervenor funding
13 and I would like to note that on the record. Obviously we
14 would not ask-- ANGRY did file a motion with the Board re-
15 questing exemption from the filing requirements contained in
16 the Code of Federal Regulations.

17 Obviously ANGRY and no other Intervenor would
18 have to do that and the obvious other issues of expert testi-
19 mony if we did have adequate funding.

20 I think Mr. Trowbridge's offer is generous and
21 we may avail ourselves of that if we have to. It is certainly
22 not the best alternative. The best alternative is to have
23 Intervenor funding which would enable us to meet the filing
24 requirements and would not involve delaying the proceedings.

25 Thank you.

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1 MR. POLLARD: Mr. Chairman, I feel, you know,
2 good. I appreciate the offer. I think there is a problem
3 of the actual delivery of the documents, whether it has to be
4 by mail -- whether it has to be in person or whether it could
5 be by mail. If it's in person that creates a problem in
6 terms of driving to Washington. If it can be done by mail
7 I feel very comfortable with it.

8 MR. TROWBRIDGE: I'm sorry, my attention was
9 momentarily distracted.

10 CHAIRMAN SMITH: Mr. Pollard said your suggestion
11 would be quite helpful, but he lives in Baltimore and if it
12 could be handled by mail it might be more useful to him, your
13 offer.

14 MR. TROWBRIDGE: Handled in both directions by
15 mail? That is we would receive from Mr. Pollard by mail and
16 give them back by mail? As a practical matter that means
17 Mr. Pollard is going to have to be awfully forehanded in the
18 preparation of documents, and I don't know what mailing time
19 we should allow between us and Baltimore. It's not totally
20 consistent between us and Baltimore.

21 CHAIRMAN SMITH: That, however, will be
22 Mr. Pollard's problem, it would seem.

23 MR. TROWBRIDGE: Yes, I would be willing to extent
24 to Mr. Pollard that if we got the document one day we would
25 get it out -- we would reproduce it and get it out by the close

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1 of the next working day. Mr. Pollard would then-- It would
2 be his risk whether or not he got it back in time to meet
3 the deadlines for mailing.

4 CHAIRMAN SMITH: Well, at any rate the offer is
5 there and the parties may or may not take advantage of it
6 as it fits their needs.

7 MR. POLLARD: I guess I have a question of clari-
8 fication on the timeliness of what is the specific date,
9 the service date that is relevant?

10 In other words if I, for example, send a copy
11 to the NRC, Docketing or whatever, that was received by a
12 certain date, would that be the established time?

13 CHAIRMAN SMITH: I don't know.

14 MR. POLLARD: There are lots of things that need
15 to be thought about.

16 CHAIRMAN SMITH: Before we leave this subject
17 I want to point out a problem that came up.

18 At the beginning the Notice of Hearing said serve
19 on NRC Staff and Counsel for Licensee, so Petitioners served
20 those people and only those people. Even though you were
21 directing motions to the Board we didn't get them. We didn't
22 get motions directed to us. So we said don't forget the
23 Board and the Secretary.

24 So some Intervenors said All right, the Board and
25 the Secretary, but dropped the Counsel for Licensee and the

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1 Staff. We meant all of those people, and this is the minimum
2 The NRC Staff, Counsel for Licensee, the Secretary, Docketing
3 and Service, and it is going to have to be all three Board
4 members. That's the absolute minimum for any paper because
5 otherwise I have to get it and remail it to the other Board
6 members and that's time we can't afford to lose.

7 Now that's six. Now we have to have those.

8 MS. WEISS: Would the Secretary of the Commission
9 then distribute the papers to the Intervenor?

10 CHAIRMAN SMITH: Yes.

11 MR. TROWBRIDGE: Mr. Chairman, --

12 CHAIRMAN SMITH: We would certainly appreciate
13 full service as envisioned by the rules, but you can't do
14 any less than that. I mean you have to have the Board know
15 what you're moving, otherwise your motion loses some of its
16 force.

17 DR. JOHNSRUD: Mr. Chairman, may we then assume
18 that there will be adequate time provided for response in
19 every case, given the five days? We do have a problem.
20 State College is a good hundred miles from the Middletown
21 Reading Room and much farther from Washington. We can't
22 deliver by hand.

23 CHAIRMAN SMITH: I realize that.

24 DR. JOHNSRUD: And we would like to be assured
25 that there will be full opportunity given for response to all

abl3 1 motions and other papers where appropriate following whatever
2 date they are sent out from whoever is doing the sending,
3 either the Secretary of the Commission or Mr. Trowbridge.

4 MR. TROWBRIDGE: Mr. Chairman, I'm not sure
5 whether --

6 CHAIRMAN SMITH: I understand your point.

7 MR. TROWBRIDGE: Mr. Chairman, I'm not sure
8 whether I correctly understood. Mr. Blake is afraid that I
9 have not made clear what I had intended by my offer.

10 I did not mean by my offer that anybody would
11 have an extension in the time -- in the date by which papers
12 were supposed to be filed. I meant that if there were fore-
13 handed enough they could come to our office and be assured
14 of at least 24 hour -- or at least one working day reproduction
15 service if they wished the reproduction service or could come
16 to the Discovery Reading Room for the same purpose and pick
17 up their materials.

18 But I did not mean by that process to extend any
19 date by which a filing was due in the mail.

20 MR. JORDAN: Mr. Chairman, may I very briefly
21 summarize what I am hearing?

22 One, that we have the opportunity from Metropolitan
23 Edison if we are able to avail ourselves of it to get copies
24 made;

25 Two, that I gather from what you said a moment

eb19 1 ago that once we serve your basic six, the Secretary of the
2 Commission will then serve the remaining Intervenor and also
3 take care of the normal 20 copies?

4 CHAIRMAN SMITH: That's right.

5 MR. JORDAN: So we're talking about, even if we
6 go to them, all we have to do is get six in effect? Is that
7 right?

8 CHAIRMAN SMITH: Well, now, look, if you go to
9 them let's do it right.

10 MR. JORDAN: Okay, that's fine. That's fine with
11 us. If we go to them we'll do it right. If we go to you
12 we'll do six. That's fine. Thank you.

72 13 MS. MULKEY: Mr. Chairman, it will be necessary
14 that the Secretary know which of the documents they receive,
6.190 15 and should they be served. So some mechanism for that will --

16 CHAIRMAN SMITH: That's an excellent point. And
17 perhaps it's going to have to be a cover letter saying this
18 is a filing in this case, the Restart Proceeding should be
19 served.

20 MR. TROWBRIDGE: I assume that a service list
21 will accompany every filing, and the Secretary can tell from
22 that service list whether others have been served or not.

23 CHAIRMAN SMITH: I don't know whether that would
24 be the case or not. If the six-document procedure is being
25 followed, the service list would contain six people. Then

1 the six people would be reserved and nobody else. The
2 Secretary maintains the service list.

3 MR. TROWBRIDGE: I'm saying if there is a service
4 list the Secretary can tell by inspection who has been served
5 and who does not need further service.

6 CHAIRMAN SMITH: I see. Then it doesn't have to
7 be duplicated. Yes, but those duplicate copies are necessary
8 to the Board because then we know when they were received by
9 the Secretary and when they were served, and when responses
10 are due. Well, we need two copies anyway. I can usually not
11 find one of them and that gives me a double chance.

12 (Laughter.)

13 DR. JOHNSRUD: One other question, Mr. Chairman,
14 before we totally leave the whole discovery area.

15 The Commission is in the process of establishing
16 a Public Document Room locally at Penn State University
17 Library. May we assume then that the documents relevant to
18 this case will be there as well as in the Local Public Document
19 Room here in Harrisburg?

20 CHAIRMAN SMITH: Didn't you receive a communication
21 on that?

22 DR. JOHNSRUD: I don't believe I did. Dr. Kepford
23 might have seen it, but I didn't, no.

24 MS. MULKEY: We did pass out a report on document
25 availability, and that is incorrect. There will not be a
public document room in State College.

eb21

1 DR. JOHNSRUD: I spoke with the Director of
2 Documents Distribution on Friday who assured me that would be
3 the case for the TMI-2 proceeding, and Susquehanna 1 and 2
4 in which we're also involved. So I think I'm asking
5 Mr. Chairman for a clarification, if that could not also be
6 the case for TMI-1?

7 CHAIRMAN SMITH: Who told you so?

8 DR. JOHNSRUD: The Director of the Division of
9 Technical Documents Distribution, Mr. Steven Scott.

10 CHAIRMAN SMITH: And specifically what is it that
11 you want?

12 DR. JOHNSRUD: That the Local Public Documents
13 Room at the Pennsylvania State University Library be extended
14 to include the document relevant to this case.

15 CHAIRMAN SMITH: You already have Susquehanna
16 and TMI-2?

17 DR. JOHNSRUD: Yes, sir.

18 CHAIRMAN SMITH: Do you think we have the authority
19 to order that?

20 DR. JOHNSRUD: It was, to my understanding,
21 ordered with respect to Susquehanna by the Atomic Safety and
22 Licensing Board just recently, yes. There is a Public Document
23 Room in Wilkes-Barre for that case but the Board ordered that
24 there be a second one at the Penn State Library.

25 CHAIRMAN SMITH: So that's a motion you're making?

1 Well, first you want to find out if it is the case. If not,
2 you move that it be the case.

3 DR. JOHNSRUD: Yes, sir.

4 MR. POLLARD: Mr. Chairman, if that motion could
5 apply to Baltimore also?

6 MS. MULKEY: Mr. Chairman, it is definitely not
7 the case that either of those locations is presently or
8 planned to be a Local Public Document Room for this proceeding.
9 We have carefully considered the prospect of locating addi-
10 tional Local Public Document Room and have reported the
11 results of our efforts.

12 We do intend to provide the record in this pro-
13 ceeding, that is to say the hearing record, in both of those
14 locations.

15 CHAIRMAN SMITH: The chief of the Public Document
16 Room Services is attending these proceedings and although
17 she is a member of the NRC Staff, she's a member of the
18 Administrator's staff and not the litigative staff, so we
19 regard her as more on the order of the Secretary. Contacts
20 being ex parte, she knows nothing about the issues, and she's
21 been trying very hard to make the documents in this adjudi-
22 cation available.

23 So what I propose we do is talk to her about these
24 problems and see what can be done, and we'll have to put it
25 back to the Staff, too.

eb23

1 But I really question our authority to simply
2 order the opening of LPDRs wherever they might be convenient.

3 I really question our authority to order any of
4 them really, but we will explore it.

5 DR. KEPFORD: Mr. Chairman, are we still talking
6 about discovery?

7 CHAIRMAN SMITH: Yes, sir.

8 DR. KEPFORD: I'd like to bring up one subject
9 which I don't think has been raised yet, and that is-- Well,
10 to a certain extent it was raised by Mr. Trowbridge.

11 This business of interrogatories which can be
12 filed on Intervenors is one which is very, very troubling to
13 me because in a recent proceeding --

14 CHAIRMAN SMITH: Susquehanna. We know.

15 DR. KEPFORD: Yes. In my opinion the privilege
16 has been grossly abused by Counsel for the Applicant in that
17 proceeding, with the wonderful acquiescence of the Licensing
18 Board to the extent that, for instance, ECNP has been totally
19 unable to not only file a brief on psychological stress, we
20 haven't even had a chance to do the research yet.

21 We have advised the Board of this and the Board
22 hasn't made any acknowledgement --

23 CHAIRMAN SMITH: Which Board?

24 DR. KEPFORD: In Susquehanna.

25 (Continuing) -- that the problem exists.

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1 So what I feel the problem is is that the Applicant
2 has it within its capability of simply driving an Intervenor
3 out of a proceeding by heaping discovery requests upon them,
4 and I would like the record to show at this point that I
5 think that is, if nothing else, a dirty rotten trick,
6 especially when one considers that the Intervenors don't get
7 funded in this proceeding.

8 The Commission policy appears to be not only do
9 you not fund Intervenors, you allow any and every burden to
10 be heaped upon them, and I think this is patently unfair.

11 MR. TROWBRIDGE: Mr. Chairman, I know nothing
12 about the discovery in Susquehanna; although our office does
13 handle the Susquehanna application, I personally am not
14 involved in it, and I'm not prepared to comment in any respect
15 on that, other than to note that where discovery is unreason-
16 able or unduly burdensome, there are provisions for relief
17 under the discovery rules.

18 But I would simply ask Dr. Kepford throughout
19 the TMI-2 operating license proceedings, which was a fairly
20 long affair, how many discovery requests did you get from me?

21 CHAIRMAN SMITH: Well, let's don't talk about that.
22 It's preliminary, it's anticipatory, it probably may never
23 come up. If it does you do have relief.

24 I know that Mr. Trowbridge is aware of the poten-
25 tial for delay in the proceeding. If he dumps a lot of

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eb25

1 interrogatories upon you that aren't needed, I know that he
2 would know the consequences.

3 But we have enough problems that are right now
4 before us other than to borrow those down the road.

5 Mr. Levin.

6 MR. LEVIN: Am I correct that we still have to
7 discuss the various Document Rooms and also a site visit
8 before we adjourn tonight?

9 CHAIRMAN SMITH: There is one thing before we
10 leave, the size and margins of filings are not trivial matters,
11 they're important. I'm always reminded, Mr. Amodt, that
12 your paper simply doesn't fit into our files, and ANGRY's.
13 Therefore, while it may seem a trivial thing, when the Xerox
14 machine won't take it, when nothing takes it --

15 MR. AMODT: We worried about that after the fact.
16 It happened to be the paper we had laying around at the time,
17 and that's what we typed on.

18 CHAIRMAN SMITH: It wasn't ANGRY, I'm sorry, it
19 was TMIA. They first began to file their papers in legal
20 size. They have corrected that. But it creates a problem for
21 everybody.

22 MR. AMODT: We won't do it again.

23 CHAIRMAN SMITH: And the margins are also important
24 because the papers have to be bound, and if you bind them into
25 a book and you can't read what it is, then there's a problem.

1422 262

eb26

1 So at least that aspect of the filing rules are important.

2 MR. SHOLLY: Before we leave the issue of dis-
3 covery there are two more things which are important to me at
4 least, and I think perhaps to some of the other intervenors.

5 As far as I know this concept of a Discovery
6 Reading Room is new and while it doesn't necessarily pose
7 any problem for me, I note that Mr. Pollard, for instance,
8 lives in Baltimore, Dr. Kefford and Dr. Johnson live in
9 State College, and that's going to present a considerable
10 problem for them.

11 In addition I note that the cost of copying in
12 the Licensee's Discovery Room is 10 cents and I consider that
13 to be unnecessarily high. For instance in the state library
14 here in the Public Document Room it's a nickel, and I don't
15 see any reason for the 10-cent copying fee unless there is
16 some specific reason that the Licensee has.

17 Another problem I have is with the hours
18 specifically of the Local Public Document Room. They're not
19 conducive to someone such as myself who works a full-time
20 job, 8:00 to 4:30, and the hours are generally 8:00 to 5:00.
21 Now there are a few hours on Tuesday evening and a few
22 hours Saturday morning, but that's not conducive to me being
23 able to compile a sufficiently strong case in order to prove
24 the points that I raise in my contentions. Eight hours a
25 week is not a great deal of time to have available at your

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Public Document Room to present your case. It's a severe
restriction on me personally.

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2D WR /wbl 1 MS. WEISS: Mr. Chairman, on discovery, I'll
2 make just a few points very briefly.

3 It's not a sufficient answer to our discovery
4 request to refer us to a public document room in Harrisburg,
5 because we're in Washington. I'm not asking that a public
6 document room or a discovery reading room be set up in
7 Washington. But I think an exception has to be made for
8 Washington counsel to that rule. And we'll have to receive
9 copies of documents that we request or have them made
10 available in Washington.

11 CHAIRMAN SMITH: Is that anticipated in the
12 discovery rule?

13 MS. WEISS: The proposal that the licensee-

14 CHAIRMAN SMITH: As I understand the discovery
15 rules, the most the rules would permit you would be to go
16 to their office and inspect and copy.

17 MS. WEISS: That's in Washington, and that would
18 be fine with me.

19 CHAIRMAN SMITH: You mean Shaw, Pittman's office
20 in Washington.

21 MS. WEISS: Shaw, Pittman's office in Washington,
22 that's what I understand.

23 MR. TROWBRIDGE: Mr. Chairman, the discovery
24 reading room is Mr. Blake's pride and joy, his own initiative,
25 and he will speak to all the questions that have been raised

WRE:wb2

1 with respect to it, and to our notice, and to the ground
2 rules for its use.

3 MS. WEISS: May I continue on a few other
4 points?

5 Nobody has spoken to this, but I would like to
6 suggest a termination of the discovery period at 30 days
7 after the filing of the Safety Evaluation Report. A 60-day
8 time limit at this point, it seems to me, is totally out of
9 phase with reality. We know there is going to be significant
10 discovery on the SER: there always is. And I've never been
11 in a case where discovery has been extended after the filing
12 of the SER.

13 There are also certain things which we'll need
14 which I anticipate being able to work out with the licensee.
15 But a basic document like the PSAR I don't think we'll be
16 able to share with the fourteen other intervenors. We're
17 going to need our own copy. I anticipate we'll be able to
18 work that out. But I want to put it on record that we're
19 going to be requesting that.

20 CHAIRMAN SMITH: Is there going to be a PSAR?

21 MS. WEISS: We're going to want the PSAR for the
22 the PSAR for the operating license for TMI-1.

23 MR. TROWBRIDGE: There'll be a copy in the
24 discovery reading room.

25 MS. WEISS: And I'm saying it's not sufficient to

1422 266

WRL/wb3

refer us to the discovery reading room in Harrisburg.

DR. JOHNSRUD: May I suggest, Mr. Chairman,
that--

MR. TROWBRIDGE: This happens to be a document,
Mr. Chairman, that also exists in our office. And where
that happens to be the case we're not going to tell her
to go up to Harrisburg. It's quite a different question of
whether we must bring things to our office that are not now
there.

CHAIRMAN SMITH: Anything further, Ms. Weiss?
You're not asking for a ruling from us now,
are you?

MS. WEISS: No. I just wanted to note objections
where I had them to what I see to be the proposal on the
table and suggest a proper time for terminating discovery.

CHAIRMAN SMITH: Thank you.

MS. WEISS: And if you will excuse me.

CHAIRMAN SMITH: Yes.

MS. WEISS: Thank you very much.

CHAIRMAN SMITH: Mr. Blake was going to address,
I believe-- Were you trying to get our attention, Mr. Blake?

MR. BLAKE: No, Mr. Chairman. I am ready to
respond to suggestions Ms. Weiss or other have, or problems
they may have with our suggestion.

CHAIRMAN SMITH: Mr. Pollard.

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WRB wb4

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MR. POLLARD: I'm very concerned about the discovery reading room. I can see, particularly where it involves discovery that doesn't involve a large amount of paper, I would say that the provision by mail -- I'm not familiar with proceedings: I've never been involved: so I don't know on who this normally -- the burden of paying for the copies comes. --or falls. But certainly I see that if there is information that is in Harrisburg it makes a lot more sense, even if I have to pay for it, that that be mailed to me, rather than I having to drive up to Middletown, inspect it, get it copied there, and drive back to Baltimore. It is a burden. And, again, given the whole -- you know -- energy situation and the gasoline situation, I feel it would be very substantially burdensome, particularly, say, since I, too, have a full time job that I have to be responsible for.

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DR. JOHNSRUD: Mr. Chairman, in this regard also may I make a suggestion?

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In some instances the staff has made documents available to the intervenors on a temporary basis, as, for example, transcripts of proceedings in which they are involved, in order that they may copy them at their own facilities and then return those documents.

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It would be immensely beneficial, I think, for such a procedure perhaps to evolve, rather than to force

WFI/wb5

1 intervenors into large distances to travel. It's an immense
 2 burden of time as well, as Mr. Pollard points out, of
 3 gasoline, and money.

4 CHAIRMAN SMITH: The York LPDR is open from 8:30
 5 to 11:30 p.m., Monday through Thursday.

6 Is that helpful to you, Mr. Sholly? You had
 7 raised a question about the hours. And there is one in York.
 8 This is in a staff report on document availability which was
 9 filed yesterday, which was circulated yesterday. Perhaps
 10 you haven't seen it yet.

11 MR. SHOLLY: I was aware of that. It's more
 12 helpful in terms of hours, but not particularly in terms of
 13 distance.

14 CHAIRMAN SMITH: These public document rooms
 15 are not owned or controlled by the Nuclear Regulatory Com-
 16 mission.

17 MR. SHOLLY: Yes, sir, I'm aware of that. But
 18 it does constitute a problem, nonetheless.

19 CHAIRMAN SMITH: Well I'm stymied. I don't know
 20 what to do.

21 MS. MULKEY: Mr. Chairman, we have made extensive
 22 efforts to deal with the problems associated with the
 23 availability of local public documents rooms.

24 CHAIRMAN SMITH: I know this is a very unusual
 25 job that has been accomplished here. And it's a good job.

WRB/wb6

1 MS. MULKEY: Considerable credit goes to
2 Ms. Souder who has been responsible for that.

3 CHAIRMAN SMITH: Do we have anything further?

4 MR. ADLER: Mr. Chairman, I assume we're winding
5 up with discovery. I just want to question: Are we going to
6 touch on briefing schedules?

7 CHAIRMAN SMITH: I don't think we'll be able to
8 do that tonight.

9 MR. ADLER: Okay. Will I be advised? I won't
10 be here tomorrow. Will I be advised when the briefs are
11 needed? I'm talking about the--

12 CHAIRMAN SMITH: Do you think it is possible to
13 agree upon briefing schedules now, tonight? Does anybody
14 think it's possible?

15 Would somebody propose one, throw it out on the
16 floor for consideration?

17 You raised it, Mr. Adler.

18 MR. ADLER: We can respond-- Of course we'd like
19 as much time as possible. We can respond in ten days to the
20 contention with a brief. I mean, file a reply brief if that
21 would--

22 CHAIRMAN SMITH: What particular brief are you
23 speaking of now?

24 MR. ADLER: We were going to respond to the
25 objections raised by the licensees and the staff to our con-

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WRJ/wb7

1 tention that an environmental impact statements needs to be
2 filed. We had agreed that we would respond by filing a reply
3 brief, since the staff and the licensees have filed briefs.
4 So we suggest that we could file a brief ten days from
5 Monday, if that would be acceptable to the licensees and the
6 staff.

7 CHAIRMAN SMITH: That seems to be reasonable.
8 I see no objections to that. So let's let that be the
9 ruling of the Board.

10 MR. ADLER: What about the transcript of today's
11 proceeding? Do we have to pay for that? The rules don't
12 provide-- I know the rules provide for us to obtain a copy
13 we have to pay for it.

14 CHAIRMAN SMITH: This is another problem that
15 the Board doesn't have much authority to do much about.

16 During the course of the hearing there are
17 transcripts here. My transcript, for example, you can borrow.

18 One of the things we're going to discuss is what
19 to do about this transcript problem, and we just didn't get
20 to it. But, in the meantime, if you want your own personal
21 copy of the transcript I know of no other way for you to get
22 it except to buy it.

23 MR. ADLER: Let me ask you this: Will a copy of
24 the transcript be in the public document room here in
25 Harrisburg? Is that normal procedure?

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WRE 'wb8

1 CHAIRMAN SMITH: I understand that they will be,
2 in this instance.

3 MS. MULKEY: We have several locations where
4 the transcript will be available. However in all of those
5 locations it's available on a delayed basis. It's about ten
6 days before it gets into them.

7 We are exploring the prospect of purchasing
8 from the Reporter a single rush copy which would be available
9 here in the Harrisburg LPDR. We have not completed that but
10 we are exploring an attempt to make available in this LPDR
11 the same sort of overnight service that persons purchasing a
12 copy can receive.

13 MR. POLLARD: Mr. Chairman, a clarification on
14 this. The 10-day turn-around time for these proceedings,
15 Do you have to ask, and then ten days from then it's there
16 and it'll stay there and then it'll go back again?

17 MS. MULKEY: It takes about ten days to get it
18 there. It will stay there throughout the course of the
19 proceedings, at least through the final order of the Commis-
20 sion.

21 DR. JOHNSRUD: Mr. Chairman, could I revert to
22 my earlier proposal in this case as well? In the Susquehanna
23 proceeding the Board has directed the staff to make available
24 in a local public document room the transcript in a manner
25 that it may be removed for short periods of time by the

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1 intervenors, who in turn may have access to inexpensive
2 copying rather than the commercial ten cents a page, which
3 really is prohibitive for unfunded people.

4 CHAIRMAN SMITH: Well, one of the items that I
5 had hoped to get done on this was a thorough discussion of
6 these various things, and we just don't have time to do it
7 tonight.

8 MR. BLAKE: Are we going to tomorrow explore in
9 more detail and solve the various problems about the discovery
10 room and the ten cents and all of that?

11 CHAIRMAN SMITH: The first thing we have to do
12 tomorrow is to get through the contentions. That is the
13 primary function tomorrow, I think. It's a priority thing
14 for the Board to do.

15 Then, time permitting, we can explore more on
16 the discovery room problem --

17 MR. POLLARD: Mr. Chairman --

18 CHAIRMAN SMITH: -- and the communication problem.

19 MR. POLLARD: There's one important thing which
20 hasn't been addressed: the time table. You talk about
21 beginning the discovery immediately. I have no problem with
22 that.

23 But I think it would be very confusing if there's
24 a lot of different schedules. And I think that the time table
25 for the final discovery should be after all of those things

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are in. So in other words, we can get moving on business that we need to, but then would not be penalized, not have to deal with all the different schedules for different discovery.

Since the relevant issue is that all discovery is completed by a given date, then the time table should reflect that interest and not impose time tables that put 30 day limits, for example, which are there for the sake of having a 30 day limit rather than for the sake of being able to -- of expediting the proceedings and having things completed by a certain date.

CHAIRMAN SMITH: As you know, the Commission has given a proposed schedule, and we feel that we should make a strong effort to follow it.

The Commission made it clear that we're free to depart from it where necessary, but I think there has to be a demonstration that the Commission schedule was unrealistic before we depart from it.

MR. POLLARD: Sir, my point was there is no point, for example, in establishing an earlier schedule for completion of discovery on those contentions that are not objected to now, those contentions that the Board does not rule on until 10 or 15 days from now, for example.

CHAIRMAN SMITH: Is that pointless, you believe?

MR. POLLARD: I don't see any advantage in

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speeding up discovery for those as long as the discovery is completed by a certain date.

MR. SHOLLY: Mr. Chairman, what I think he's driving at is the 60 day period for discovery is still going to end 60 days from the publication of the order of the Board.

CHAIRMAN SMITH: I see what your point is.

The slippage, the extra time that it has taken for us to address these contentions will be added to the schedule. I'm just saying that this is an extra --

MR. SHOLLY: It will still be 60 days from the publication of the order for the final end of discovery?

CHAIRMAN SMITH: At least 60. I would say 60 because that's what the Commission said. But we haven't really focused on 60, but I would say 60, yes.

MR. TOURTELLOTTÉ: Mr. Chairman, I would add that I think it was envisioned an SER which would issue on December the 1st, and the SER will not issue until January.

I'm inclined to agree with UCS again, whether they like it or not, in that perhaps it would be a good idea to have discovery in 30 days after the issuance of the SER.

CHAIRMAN SMITH: Do you think it was oversight on the part of the Office of General Counsel, who prepared this schedule, that they didn't refer to the SER and they didn't refer to summary disposition?

MR. TOURTELLOTTÉ: I think both of those are

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1 oversights, yes, definitely an oversight in not mentioning
2 summary disposition.

3 CHAIRMAN SMITH: Mr. Adler, Mr. Ramodt, do you
4 have any further business?

5 MR. RAMODT: Only if you think there's anything
6 we ought to know before we leave.

7 CHAIRMAN SMITH: I can't think of anything.
8 But don't rely upon that.

9 MR. RAMODT: Thank you, sir.

10 CHAIRMAN SMITH: We will be discussing in your
11 absence arrangements for a site visit. We'll be advising
12 Licensee that a site visit is very desirable and as far as
13 we're concerned necessary, and then we'll hear what they have
14 to say about it. That will be tomorrow.

15 And it is our idea that arrangements have to
16 be made to provide for at least one individual from each
17 intervening group. We'll hear what they say about that.

18 MR. TROWBRIDGE: Mr. Chairman, a real quickie:
19 one, a comment on Mr. Tourtelotte's last statement.

20 I agree it is a convention and probably desir-
21 able to have a period of discovery after the SER, but in my
22 experience it had been confined to new material in the SER,
23 not just an automatic extension of time.

24 Secondly, Mr. Adler and I both owe the Board
25 something yet in terms of the revision of one of his

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1 contentions. I would hope that Mr. Adler could stay a few
2 minutes; if not, I will try to arrange to meet him even before
3 eight o'clock in the morning.

4 MR. ADLER: I can stay as late as we need tonight
5 and we'll work something out on that one contention.

6 CHAIRMAN SMITH: All right.

7 MR. TOURTELLOTT: I would agree with Mr.
8 Trowbridge's representation. Perhaps I was a little too
9 broad, those issues in the SER which are new matters.

10 CHAIRMAN SMITH: We were discussing only from
11 the point of view of time and not the scope.

12 I think we are concluded for tonight, so we'll
13 adjourn until eight a.m. tomorrow morning.

14 (Whereupon, at 6:05 p.m., the hearing in the
15 above-entitled matter was adjourned, to reconvene
16 at 8:00 a.m., the following day.)

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