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UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the matter of:

SPECIAL PREHEARING CONFERENCE,
METROPOLITAN EDISON COMPANY
(THREE MILE ISLAND, UNIT 1)

POOR ORIGINAL

Place: Harrisburg, Pennsylvania

Date: February 13, 1980

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 In the Matter of: :
5 SPECIAL PREHEARING CONFERENCE, :
6 METROPOLITAN EDISON COMPANY :
7 (THREE MILE ISLAND, UNIT 1) :
8 -----X

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10 Hearing Room No. 2
11 Pennsylvania Public
12 Utility Commission
13 North Office Building,
14 Capital complex
15 Commonwealth Ave. and North St.
16 Harrisburg, Pennsylvania
17
18 Thursday, February 13, 1980

19 The special prehearing conference was held, pursuant
20 to notice, at 9:00 a.m., Mr. Ivan Smith, Chairman, presiding.

1 APPEARANCES:

2 On behalf of Metropolitan Edison:

3 George F. Trowbridge, Esq.
4 Ernest L. Blake, Jr.
5 Robert E. Zahler

6 On behalf of ANGRY:

7 John Bowers, Esq.

8 On behalf of Chesapeake Energy Alliance:

9 Robert Q. Pollard

10 On behalf of Commonwealth of Pennsylvania:

11 Karin W. Carter, Esq.

12 On behalf of Consumer Advocate:

13 Jerome Blask

14 On behalf of ECNP:

15 Dr. Chauncey Kepford
16 Dr. Judith Johnsrud

17 On behalf of NRC Staff:

18 James R. Tourtellotte, Esq.

19 On behalf of Mr. Marvin I. Lewis:

20 Ms. Barley

21 On behalf of Newberry Township:

22 Patricia A. Smith

23 On behalf of PANE:

24 Mr. Konkle

25 On behalf of Utility Commission:

John A. Levin

1 On behalf of TMIA:

2 Theodore A. Adler, Esq.

3 On behalf of UCS:

4 Ellyn R. Weiss, Esq.

5 Mr. Norman Aamodt

6 Ms. Margorie M. Aamodt

7 Mr. Steven C. Sholly

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P R O C E E D I N G S

CHAIRMAN SMITH: Almost everybody is here. It is five minutes after the announced starting time.

Miss Reporter, are you reporting now?

COURT REPORTER: Yes.

CHAIRMAN SMITH: Before we begin, may we have another familiarization round of the persons attending the proceeding?

Mr. Tourtellotte, who's representing the staff?

MR. TOURTELLOTTE: I will represent staff.

CHAIRMAN SMITH: I see.

Dr. Kepford is introduced here.

DR. KEPFORD. Environmental --

Dr. Judith Johnsrud will be joining me.

CHAIRMAN SMITH: Mr. Sholly --

MR. ADLER: I'm Ted Adler, representing Three Mile Island Alert.

CHAIRMAN SMITH: Okay.

MS. WEISS: Ellyn Weiss, representing the Union of Concerned Scientists.

MR. POLLARD: Robert Q. Pollard representing Chesapeake Energy Alliance.

MS. CARTER: Karin Carter representing the Commonwealth of Pennsylvania.

MR. TROWBRIDGE: George F. Trowbridge representing the licensee. With me, Mr. Blake on my left, Mr. Robert Zahler,

1 on my right.

2 MS. SMITH: Patricia Smith, Newberry Township.

3 MR. BROOKS: Stephen Brooks, ANGRY.

4 MR. KONKLE: Don Konkle, PANE.

5 MS. BARLEY: Point of information. Mr. Lewis isn't
6 here today, but --

7 CHAIRMAN SMITH: You're Ms. Barley?

8 MS. BARLEY: Right.

9 CHAIRMAN SMITH: Yes, Ms. Barley, there is a problem
10 under our rules --

11 MS. BARLEY: That is what I wanted to know.

12 CHAIRMAN SMITH: -- however, we -- I am sure we can
13 work around it some way for the purpose of your taking Mr.
14 Lewis' place.

15 Those who are parties to the proceeding, I believe
16 we're going to have to from time-to-time come to the table,
17 so, could you move to the front row and I'll ask anybody who
18 is in the front row who is not a participant in the proceeding,
19 if they will allow the parties to have enough room.

20 Mr. Konkle?

21 MR. KONKLE: Konkle.

22 CHAIRMAN SMITH: How do you spell your name?

23 MR. KONKLE: K-o-n-k-l-e.

24 CHAIRMAN SMITH: Mrs. Aamodt is not here.

25 Who is representing ANGRY?

1 MR. BROOKS: I am.
2

3 CHAIRMAN SMITH: Will you spell your name, sir?
4

5 MR. BROOKS: S-t-e-p-h-e-n B-r-o-o-k-s.
6

7 CHAIRMAN SMITH: Consumer Advocate is not represented?
8

9 Dauphin County is not represented, and there's no
10 representative from the Utilities Commission?
11

12 Before we begin the business of the hearing, I would
13 like, as is our custom to report the accumulation of ex parte
14 communications since the last time we met.
15

16 Shortly after the first special prehearing conference
17 order was filed, Mr. Sholly called me to seek clarification of
18 the order on page 66 which directs the parties to consider
19 consolidation no less than 10 days before the next prehearing
20 conference, that following discovery. He wanted to know
21 if there would be advanced warning when conference is scheduled,
22 and I assured him there would be.
23

24 Is there anything else? I don't have my notes on that
25 conversation with Mr. Sholly. Did I leave anything out that
should be on the record? There was the general purpose --
26

27 MR. SHOLLY: I believe that was all.
28

29 CHAIRMAN SMITH: Mr. Widaff and Mr. Adler's firm called
30 approximately two weeks ago to seek clarification as to whether,
31 under our discovery rules, the intervenors had a right to
32 take the depositions of persons who are not parties to the
33 proceeding.
34

35 After checking the language of the rule, I called him
36

1 back and told him the clear language of the rule is that he
2 could.

3 I've already reported ex parte communications with the
4 licensee and the staff concerning the need for this prehearing
5 conference. That was referred to in our order setting this
6 prehearing conference.

7 Is there any general business anybody wishes to or
8 needs to raise before we begin the business of the prehearing
9 conference?

10 MR. POLLARD: Do we have an agenda at this point?

11 CHAIRMAN SMITH: Yes, sir. It's a very crude one.

12 MR. POLLARD: I beg your pardon.

13 CHAIRMAN SMITH: The agenda was worked up informally
14 and I'll read it into the record, informally.

15 The first item of the business of the agenda will be --
16 we'll call upon the NRC staff and counsel for Metropolitan
17 Edison to give us a current report on the status of the prepara-
18 tion of their papers, and any change in the anticipated schedule
19 proceeding.

20 Next item will be clarification and need for discovery
21 rulings. Clarification and need for any possible change in
22 discovery schedules, specifically the possibility referred to
23 in order of notice of this conference, that is, the need to
24 extend the time to make discovery requests. Along that line,
25 we will necessarily discuss licensee's objections to Mr.

Sholley's filings, recent filings.

Next item, no. 3, will be discussing generally, and perhaps in particular, the debate between the staff and the Union of Concerned Scientists on the range of discovery and the vast response. We'll discuss, if time permits, Union of Concerned Scientists' most recent notice for reconsideration of UCS contention, 1620, and along that line, one of the things that we had hoped to accomplish today would be to go to whatever pending motions are simple enough to dispose of without the need for detailed replies, and could perhaps be disposed of by discussion here.

We will also, item no. 5, discuss the staff's response to the Board's directive to file a report on the Class 9 issue, and that report was filed on January 31st. We will make a report on PANE's motion on intervenor financing. Let's do it right now while we mentioning it.

That motion urged us to quickly move the matter -- certify the matter to the Commission, along with any recommendations we have for intervenor funding. The Board has decided in principle upon a certification to the Commission on the issue of psychological stress, and we now have a working draft. We hope that the certification will be made next week.

Also, along that line, when we discussed intervenor funding at the special prehearing conference last November, I mentioned the fact that the appropriations bills for the Nuclear Regulatory Commission and the Department of Energy and

1 other agencies related to the environment, provided that no
2 funds were appropriated for intervenor funding in NRC. There's
3 now a Comptroller General's report to the Commission, dated
4 January 25, 1980, and, let me read the digest -- it will be,
5 I am sure, helpful.

6 Digest No. 1, Nuclear Regulatory Commission may use
7 appropriated funds to provide assistance to intervenors in its
8 proceedings if it determines that participation of parties
9 can reasonably be expected to contribute substantially to
10 full and fair determination of the issues before it, and if
11 intervenor is indigent or otherwise unable to finance its
12 own participation.

13 Two, the Nuclear Regulatory Commission may use Fiscal
14 Year 1980 funds to provide financial assistance to intervenors
15 in proceedings despite Appropriations Committee statement, "That
16 no funds are being provided for this purpose.

17 "Limitations on spending contained in Committee reports
18 are not binding on the agency unless expressly stated in Approp-
19 priations Act," and that is signed by the Comptroller General
20 personally, General Statz, the Comptroller General of the
21 United States.

22 There would then be no need to respond to PANE's motion.
23 I think PANE's -- it was in the form of a motion, and I don't
24 believe that the staff or the licensee is required to respond
25 to that. I think that we have satisfactorily disposed of

1 the motion.

2 Mr. Pollard --

3 MR. POLLARD: Yes.

4 CHAIRMAN SMITH: I'm still going through the agenda.

5 We will discuss TMIA's motion to adopt Mr. Sholly's
6 contention 16 if we have time.

7 We are going to discuss two related subjects, and that
8 is the pattern of filing responses, upon response, upon response,
9 evidently without end, and the practice which is developing
10 to move for reconsideration with new bases for contention. So,
11 we are going to discuss pros, and particular the cons of those
12 practices.

13 If we have time, we may ask Newberry -- who's possibly not
14 here; we're going to ask Newberry's intervenor's counsel some
15 questions about his recent filings. I understand he may be
16 here. We were also going to ask Mrs. Aamodt, and perhaps Mr.
17 Pollard some questions about their filings.

18 We may not have time. The Board indicated, that if
19 necessary, the proceeding would be prehearing conference, but
20 continued until tomorrow. That won't be possible. We will
21 conclude the business today, whatever value that may have to you.

22 We also have on the agenda, if we reach it, discussion
23 of the second part of licensee's objection to Mr. Sholly's
24 interrogatories.

25 And, then, if we have even more time, which I doubt,

1 we will glean the filings and see if there is any other simple
2 type business that we can dispose of.

3 Now, before we proceed, is there any business that
4 should come to our attention before we proceed?

xx 5 MR. ROBERT Q. POLLARD: I have a motion which I pre-
6 pared to have copies of on a number of issues, some of which
7 are larger and some smaller, from the latent issue of the
8 funding in reference to a couple of issues, which, to some
9 extent, which you have addressed, but I think there are some
10 arguments --

11 CHAIRMAN SMITH: Okay. Would you quickly summarize
12 those that have not been addressed?

13 MR. ROBERT Q. POLLARD: The one that hasn't been
14 addressed is -- I was aware of this thing about the Fiscal
15 Year budget, but the question of the ability to participate
16 in the proceeding, basically, without funding of CEA, that
17 is basically the thing that hasn't been explicitly addressed.
18 As it becomes clear, the scope of the proceedings -- I think
19 realistically looking at it, the hearings may last six months,
20 once they get going.

21 CHAIRMAN SMITH: Were you planning to make a motion,
22 sir?

23 MR. ROBERT Q. POLLARD: Well, there's a motion in
24 here, I'm reconsidering --

25 CHAIRMAN SMITH: You don't believe that our discussion

1 of the issue disposes of your motion?

2 MR. ROBERT Q. POLLARD: I think it may do that. Yes,
3 I think it may do that.

4 CHAIRMAN SMITH: Anything else we haven't --

5 MR. ROBERT Q. POLLARD: Yes, there is a question of
6 the CEA contentions 2(b), 2(c), 2(d), and 3, which were the
7 ones that were deferred for possible revision.

8 CHAIRMAN SMITH: I did want to ask you about that.

9 MR. ROBERT Q. POLLARD: I have got interrogatories
10 on that.

11 CHAIRMAN SMITH: You have some troubles there? We'll
12 put those down on the agenda for later on.

13 MR. ROBERT Q. POLLARD: The other thing is a minor
14 thing, but something to look at in suggestion concerning
15 labeling of documents to simplify filing. I've come up with
16 the proposals, some good ideas that I think might be useful.

17 CHAIRMAN SMITH: Yes.

18 MR. ROBERT Q. POLLARD: And I guess the other is a
19 broad sort of general issue on the -- well, there's a thing on
20 the discovery time which I -- it's going to be dealt with, but
21 the other broad issue of the whole question of the limitation
22 of resources, et cetera, time problems as they impinge on
23 the ability to develop a full record in referencing the modified,
24 adjudicatory procedures, and the requests for boards to
25 certify problems to the Commission needed guidance.

1 CHAIRMAN SMITH: That was a summary of your --

2 MR. POLLARD: A summary. I have the copies. I also
3 have other filings here which draft intentions for the --

4 CHAIRMAN SMITH: I would hope that your written
5 motion, at the end of our conference, that we have disposed of
6 the points made in your motion, that you don't then require
7 us to sit down and quote your motions anew, modified to the
8 points that we have not disposed of.

9 MR. POLLARD: Right.

10 Should I distribute them?

11 CHAIRMAN SMITH: No, hold onto it. We'll see what
12 happens when we get there.

13 DR. KEPFORD: Mr. Chairman, I believe ECNP also has
14 an outstanding motion and contention before the Board.

15 CHAIRMAN SMITH: That's right.

16 DR. KEPFORD: Will it be discussed at all?

17 CHAIRMAN SMITH: Perhaps, I don't know, whether we'll
18 have a chance to get to it.

19 You, sir?

20 MR. BLASK: Yes, sir, my name is Jerome Blask, and I
21 just wanted to state for the record that the Office of
22 Consumer Advocate is represented at the special prehearing
23 conference.

24 CHAIRMAN SMITH: Okay, was I wrong when I said --
25 were you here when I said you were not represented?

26 MR. BLASK: No, I wasn't here.

1 MR. TROWBRIDGE: Mr. Chairman, may I add very quickly --

2 CHAIRMAN SMITH: Mr. Trowbridge.

3 MR. TROWBRIDGE: One, Mr. Chairman, I would like to
4 point out that intervenors are not, in many cases, making
5 service of documents on all of the parties as required by
6 the Commission's regulations. I think this is particularly
7 true of interrogatories and answers to interrogatories.

8 In view of the fact, for example, that some intervenors
9 be permitted to adopt the contentions of other intervenors,
10 and because of their general interest in what is going on in
11 the proceeding, I think that the Board should reaffirm the
12 requirement of the regulations that interrogatories and other
13 documents, motions, be filed on all parties of this proceed-
14 ing. Where intervenors have taken advantage of our offer to
15 reproduce and mail, we have seen to it that all parties are
16 served, but that takes care of only a small fraction of the
17 documents that have been filed to date.

18 Mr. Trowbridge, his comments are probably more bene-
19 ficial to the intervenors even than to the licensee, because
20 it is important that intervenors be aware what the others
21 are doing so that they can coordinate their efforts and we
22 certainly endorse his views.

23 MR. POLLARD: Was it not my understanding in reference
24 to this, that if we serve the six copies as we had discussed
25 at the last conference, that the Documents Section would

serve copies to the other parties?

CHAIRMAN SMITH: That was my understanding.

MR. TROWBRIDGE: That was not agreeable to the Board, and that is why we made the offer to mail to all parties.

CHAIRMAN SMITH: My understanding was when the offer was made by the licensee that then it would be necessary for the rules to be complied with with respect to the number of copies for the parties. But there was one exception that hasn't been discussed, and it was a point raised by Mr. Sholly, as I recall, that the intervenors, among themselves, might agree to relieve each other of the burden of service. That would be an area to explore, but that is the only exception that I can recall.

MS. WEISS: Mr. Chairman, my understanding was that it was our option to either avail ourselves of the offer made by the staff, that is, that Docketing and Service would serve the other intervenors if we would serve the initial six copies, and, of course, that includes the copy to the licensee and the copies to the Board, and that's what I've been doing on a regular basis, and I know that Docketing and Service is filing on the rest of the intervenors.

CHAIRMAN SMITH: That's correct, they do do it. But I have no memory of suspending the rules; my memory was to the contrary that when the licensee made the offer, the discussion ended at that point, with the limited exception that I talked to. I see that there's confusion there, but

13 MR. POLLARD: Sir, I'm depending upon memory.

1 My understanding is that the original operative
2 of six filings was not withdrawn, otherwise I would have con-
3 tinued the discussion because you offered Met Ed is of no
4 value to me being in Baltimore. It is not worth driving
5 either to Washington or to Middletown to file.

6 CHAIRMAN SMITH: We've heard these arguments many
7 times --

8 MR. POLLARD: I thought it was resolved last time.

9 CHAIRMAN SMITH: I just disagree with you, that's
10 all. I have no record support for it at the moment. It's
11 just simply a matter of memory.

12 Mr. Adler?

13 MR. ADLER: Mr. Smith, are you saying then that if
14 we do not avail ourselves of Met Ed's offer to have them
15 reproduce the necessary copies, that it is our obligation
16 to serve all the parties, not just the six names?

17 MS. WEISS: I don't see how that could be since
18 the licensee is getting his copy, dock is getting their
19 copy, you're getting your copies. They don't, it seems to
20 me have any standing to argue if the other intervenors are
21 getting theirs a week later from Docketing and Service. None
22 of the intervenors are objecting to that.

23 MR. POLLARD: Mr. Chairman, it's not clear to me
24 that they are getting Docketing and Service. Our only interest

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1 in this is that we do not later on in this proceeding
2 have some intervenor wish a delay or other interference in
3 the proceeding because he didn't see the interrogatory.

4 CHAIRMAN SMITH: Mr. Levin.

5 MR. LEVIN: Mr. Chairman, I might note that while
6 I have not been receiving interrogatories, however, anyone
7 that i've asked for copies has been very helpful and sent them
8 off right away.

9 CHAIRMAN SMITH: Before you arrived, Mr. Levin, I
10 had made an observation in that the utilities, the Utility
11 Commission was not represented. I see that it is now repre-
12 sented. You certainly can find room at the table, if you
13 prefer, or move up to the front row.

14 MR. LEVIN: All right.

15 > CHAIRMAN SMITH: There was an order, as Dr. Little
16 reminds me, issued by the Board before this special prehearing
17 conference which stated in effect that we observe that not
18 even the Board was being served with motions to it, and that
19 that we had a strong interest in letters addressed to us,
20 and there was a lag as much a week and two weeks, in some
21 instances, so we did issue an interim order saying at the
22 very minimal, until we could address the issue at the special
23 prehearing conference, the Board, the Secretary, the staff,
24 and the licensee must be served. That was an interim order.
25 It is still my memory that at the special prehearing conference
 we'd change it. However, that doesn't end it. If you are

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1 asserting now that we shoudp reconsider, that actual practice
2 has proved to be burdensome, and, as a matter of fact it
3 appears that it has been, okay, then let's reconsider, but
4 I'm confident my memory --

5 MR. LEVIN: Not only that, Chairman Smith, but
6 when we do serve all the intervenors, we inevitably get an
7 additional copy from the Docketing Section which takes time
8 to sort through duplicate copies. We have it stacked in
9 documents from this proceeding anyway. It just makes it
10 that much more difficult.

11 CHAIRMAN SMITH: Is it the general view of the
12 intervenors that they do not wish to be served the copies
13 of discovery requests upon other parties?

14 MS. WEISS: No, I --

15 CHAIRMAN SMITH: Directly, except by the secretary?

16 MS. WEISS: Yes.

17 CHAIRMAN SMITH: I see nothing to the contrary.
18 Is it also the general view of the intervenors that the time
19 lag inherent in that procedure would not be prejudicial?

20 That seems to be, by its silence, the sentiment,
21 so you tink that perhaps, Mr. Trowbridge, that at least as
22 far as the interrogatories are concerned that any violence
23 is being done to our proceeding by allowing the -- to serve
24 them?

25 MR. TROWBRIDGE: Not at all, just as long as we

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1 don't hear complaints later on that people didn't get inter-
2 rogatories, and are, therefore, handicapped.

3 CHAIRMAN SMITH: I think your concerns are clearly
4 stated and they have been recorded, and I think that all the
5 parties understand the significance of the adjustment to the
6 ruling.

7 You are reporting, are you?

8 COURT REPORTER: Yes.

9 (Laughter.)

10 Mr. Trowbridge: Mr. Chairman, another very quick
11 announcement.

12 We have kept our discovery room open from, I think
13 it is 12:00 noon to 8:00 p.m., and at other hours when requested.
14 The actual use of the discovery room has been in the daytime --

15 CHAIRMAN SMITH: I wonder if just for a moment,
16 I might interrupt you?

17 Gentlemen of the media -- sir, from Channel 27 --

18 (Discussion off the record.)

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Pg. 1 1 MR. TROWBRIDGE: Our discovery room has not been
2 used in the evening, it has been used in the day time; in
3 fact, we have had to open it on request in the mornings from
4 here on out and we will put out a notice issue of this.

5 The discovery room will be open in daylight hours
6 in normal working hours, as a matter of course, not in the
7 evenings only upon special request in advance.

8 CHAIRMAN SMITH: Any other preliminary business?

9 Yes, sir.

10 MR. BOWERS: John Bowers, from ANGRY.

11 CHAIRMAN SMITH: Yes, sir.

12 MR. BOWERS: I ask to clarification; when you say
13 daylight hours, you mean regular working hours or--

14 MR. TROWBRIDGE: I mean 9:00 to 5:00.

15 MR. BOWERS: Thank you.

16 CHAIRMAN SMITH: Any other preliminary business?

17 Then we will move to the first agenda item and ask
18 Mr. Tourtellotte if he will give us a current report with
19 respect to the status of the Safety Evaluation Report; for
20 that matter we would want whatever progress is being made on
21 the Environmental Impact Appraisal.

22 I may have taken you by surprise, there.

23 MR. TOURTELLOTTE: Yes, you did.

24 CHAIRMAN SMITH: So, we will come back to that,
25 if necessary. But, I think, that you anticipated the report

1 on Safety Evaluations.

2 MR. TOURTELLOTTE: There has been significant
3 delays, everyone is certainly aware by now. In the issuance
4 of the Safety Evaluation Report, we originally expected the
5 full SER to issue in early January, and what we issued in
6 early January was a status report which in some part addressed
7 "outstanding issues". And in part, simply outline how we
8 would address the other remaining issues in the future.

9 The Staff is busy reviewing submissions of the
10 applicant and various stages of review, some stages of
11 requesting new information, evaluations information that has
12 already been submitted. And we will probably not come up
13 with a document that resolves substantially major issues
14 until about April the 15th and this poses a question as to
15 what impact it might have on the overall hearing schedule;
16 I think, it will probably depend on whether the Board, and
17 perhaps the agreement of the parties should look upon pro-
18 ceeding with the issues on a discrete issue by issue basis
19 where major areas are resolved by the SER or whether we are
20 going to simply wait until the majority of all of the out-
21 standing items in the August 9 Order are resolved in the SER.

22 Assuming the latter, that is that we proceed only
23 after the major portion of the SER is completed, I have a
24 schedule which, I myself, came up with that may or may not
25 be helpful in terms of discussion.

1 I have the Evaluation Suprlement issued April the
2 15, 1980--

3 CHAIRMAN SMITH: Excuse me. This will be a
4 supplement for the status report filed in January.

5 MR. TOURTELLOTTE: Yes.

6 CHAIRMAN SMITH: And not the--

7 MR. TOURTELLOTTE: It is a supplement, but it is--
8 we view the so-called status report as an SER, but it is an
9 SER which does not have the substantial number of items
10 resolved that are required in our view to cause the 30 day
11 discovery to run, set out by the Board.

12 Consequently, we will have that kind of document
13 on April 15 and 30 days after that, according to Board's
14 order, the discovery would be completed on that evaluation.
15 And then that would take it up to May 15, 1980. Then we would
16 have motions for summary disposition, 30 days after that.
17 That takes it to June 16--

18 MR. TROWBRIDGE: Could you take it little bit
19 slower? Could you go a little bit slower so that we could
20 get it down?

21 MR. TOURTELLOTTE: Responses to motions for
22 summary disposition would be due 20 days later, July 7, 1980.
23 Our final pre-hearing conference would also be held simul-
24 taneously with the response to the motion for summary dis-
25 position on July 7.

1 CHAIRMAN SMITH: That anticipates an instantaneous
2 ruling by the Board on motion for summary disposition.

3 MR. TOURTELLOTTE: No. That is the responses to
4 the summary disposition and the pre-hearing conference would
5 be held on the same day. Responses would be due; then we
6 would be able to argue the positions--

7 MS. WEISS: If we get it on the same day?

8 MR. POLLARD: We need time to read it.

9 CHAIRMAN SMITH: Excuse me, Mr. Tourtellotte.

10 MR. TOURTELLOTTE: Yes. Well, the pre-hearing
11 conference order would issue 20 days after that.

12 CHAIRMAN SMITH: That pre-hearing conference order,
13 of course, we would have 20 days for the parties to respond
14 to summary disposition, that answers your point that you were
15 about to make, Ms. Weiss, Mr. Pollard; doesn't it?

16 MS. WEISS: Oh, yes, I was just concerned about
17 having--what the responses for a few days before the oral
18 argument.

19 CHAIRMAN SMITH: Yes. That is what we are concerned
20 about.

21 MS. WEISS: Yes.

22 MR. TOURTELLOTTE: Well, of course, minor adjustments
23 can be made. Basically, this schedule was derived to see
24 where we are going and how we come out. I think minor ad-
25 justments can be made in the schedule and it is not done to

1 to affect the overall outcome.

2 But, a pre-hearing conference order would issue
3 20 days later, which would be August the 6.

4 CHAIRMAN SMITH: This is the pre-hearing conference
5 order anticipated under 2.762.

6 MR. TOURTELLOTTE: Yes.

7 CHAIRMAN SMITH: Which would be--the final re-
8 finement of the issues would be included in that pre-hearing
9 conference order.

10 MR. TOURTELLOTTE: Yes. Okay, I think that is
11 2.752.

12 CHAIRMAN SMITH: 2.752.

13 MR. TOURTELLOTTE: 52.

14 In 20 days--I'm sorry. 15 days after that written
15 testimony would be filed after the pre-hearing conference
16 order. Then the hearing would start 60 days after that.
17 That starts the hearing--I am sorry. The hearing would
18 start--the written testimony would be filed in 15 days and
19 the hearing would start.

20 MR. KEPFORD: Do you have dates for those?

21 MR. TOURTELLOTTE: 10 days later. August the 21
22 and--

23 MR. KEPFORD: For the filing?

24 MR. TOURTELLOTTE: Yes, filing the written
25 testimony.

1 MR. KEPFORD: And when does the hearing begin?

2 MR. TOURTELLOTTE: Well, the hearing should start
3 about 10 days after that; which would be August 31. We
4 made no attempt, incidentally, to reconcile this with the
5 calendar, so to the extent that it would fall on Sunday or
6 Saturday, that would have to be adjusted as well.

7 CHAIRMAN SMITH: Your earlier remarks about the
8 supplement to the status report, suggested that there would
9 be significant supplements that even.

10 MR. TOURTELLOTTE: There might be some supplements,
11 but as to the extent of those supplements, how significant
12 they are, we can't right now.

13 CHAIRMAN SMITH: In any event, your recommended
14 schedule does not provide for the need for any discovery
15 on supplements to the supplement?

16 MR. TOURTELLOTTE: No.

17 CHAIRMAN SMITH: And there won't be (any document
18 called SER) Safety Evaluation Report?

19 MR. TOURTELLOTTE: What we will have is the docu-
20 ment which was originally called a status report on the
21 safety evaluation and its supplements. A rose by any other
22 name is an SER, I guess.

23 I'm not sure whether that's a mixed metaphor or
24 just a bad choice of words.

25 MS. SWARTZ: It's ridiculous.

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1 MR. TOURTELLOTTE: It may be ridiculous --

2 CHAIRMAN SMITH: Or maybe both or all of them.

3 MR. TOURTELLOTTE: All of the above.

4 I would also say that this indicates a preceeding
5 on the whole set of issues, the whole range of issues or
6 close to the whole range of issues that are set out in the
7 August 9th order.

8 Now, if the Board should choose to proceed on
9 discrete issues such as emergency planning, waste management,
10 separation,management capability, financial capability,
11 pick some one or two items which might be resolved at an
12 earlier date and take those items in turn and proceed to
13 hearing on an item-by-item basis, then this schedule is not
14 the schedule we would be looking at. We would be looking at
15 something else, and because I don't really know whether that
16 sort of idea would be entertained by the Board -- I didn't
17 work out a schedule on that.

18 However, as the Board can see, and as the parties
19 can see, there is a considerable delay in the overall hearing,
20 which was originally supposed to start the 21st of this
21 month.

22 CHAIRMAN SMITH: Do you have any -- does the staff
23 have any problems with its SER which depends upon the
24 licensee's responding or any additional information? Does
25 the staff have control over this schedule? You had indicated

1 in your letter that there had been some slip because staff
2 was waiting for information from the licensee?

3 MR. TOURTELLOTTE: I think there are probably
4 a number of reasons why there has been some delay and that
5 is certainly one of them but it is no the only reason, nor
6 is it necessarily the controlling reason.

7 To some extent, the process of making a safety
8 evaluation requires that the applicant present certain informa-
9 tion in the first instance to us telling us how they are
10 going to resolve each of the problems that we have set out
11 for them, or in this case, were set out by the order of the
12 Board.

13 They submit information, supposedly, to solve that
14 problem, and sometimes when the staff looks at information
15 they will be in a position of either accepting it right off
16 through their evaluation or, two, requiring modifications
17 of some sort, and that modification may also require a
18 round of questions, that is, it would cause further inquiry
19 into how a problem is going to be resolved.

20 Another thing that could happen, is that they
21 might reject it entirely and ask them to start over.

22 In addition to these things, we have the prpblem,
23 we have had the problem of manpower and resources, and
24 there are several projects going on and if all the people
25 who have been involved in the process have done everything

1 that they can to move it along, we still have had that prob-
2 lem. Hopefully, that problem is resolved, now.

3 CHAIRMAN SMITH: One of the reasons that I asked
4 that question was that I note that the staff continues to
5 send letters to Met Ed, but apparently seeking information
6 which would be used in such a report. As a matter of fact,
7 last week, perhaps a half dozen such letters that indicated
8 that there was a substantial amount of information still --

9 MR. TOURTELLOTTE: Yes, that is correct. And it
10 comes from this sort of exchange that goes on on a continuing
11 basis. It's not at all unusual on this or any other case,
12 because what you have is basically a problem-solving technique
13 where one party is providing its solution, another party is
14 evaluating those solutions, and then trying to determine whether
15 the solution provided is adequate altogether or if additional
16 supplemental information is required before they can resolve,
17 that is the second party can resolve, it in their own minds.

18 So, we have that kind of exchange that goes on
19 regularly. In this case, the exchange is still going on,
20 although I can't say right offhand exactly what issues is
21 involved.

22 CHAIRMAN SMITH: Mr. Trowbridge?

23 MR. TROWBRIDGE: Mr. Chairman, the licensee is
24 appalled at the schedule even in terms of the interval between
25 the SER and the hearing. What we are talking about is

the commencement of a hearing not 180 days after the Commission's August 9 order, as contemplated by the target schedule, Commission -- there's something more in the nature of 380 days.

Our differences with the staff on the schedule will be primarily to areas, 1) the allowance of some 50, in my view, virtually useless days for summary disposition. I would cut that out entirely.

Secondly, our major differences is whether we should start the hearing when we have major segments, discrete, ready to proceed.

Mr. Chairman, I've written some notes, and I think in the interest of a clear record and something the Board will have, I would actually like to read from my notes though that's not very lawyer-like.

Licensee proposal on hearing schedules starts with a simple fact of life. Staff is not prepared to go to hearing until the stated report has been converted to an SER. Our proposed schedule is, therefore, geared to the issuance of an SER. We do not think it necessary, however, for the SER to be complete in all areas before it is issued. It should be issued as soon as important areas, such as emergency plans, plant modifications are ready for hearing, even if other parts of the SER say, "Financial qualifications are not ready and require SER supplements.

1 Further, portions of the SER should be considered
2 ready for hearing even if there remain a few open items.

3 There will be more than enough work for everyone involved in
4 hearings, and providing testimony on those short- and long-
5 term staff recommendations which have been resolved, and on
6 related intervenor contentions.

7 Our proposal for the commencement of hearings
8 is as follows: 1) upon the issuance of an SER, the Board
9 would schedule a prehearing conference, approximately 20 days
10 after the issuance of the SER and would tentatively schedule
11 the commencement of hearings about 60 days after the
12 issuance of the SER. Prior to the prehearing conference,
13 -- that is prior to the prehearing conference, 20 days after
14 the issuance of the SER. The licensee would file with the
15 Board and all parties its proposal, based on the degree of
16 completeness of the initial SER.

17 As to the subject matters to be covered in the
18 hearing, and the sequence in which they would be taken up,
19 including intervenor contentions relating to those subject
20 matters.

21 Licensee presently visualizes that the subject
22 matters would be grouped in accordance with the major sections
23 of the SER.

24 In addition, licensee would propose a tentative
25 schedule of hearings sessions at which the different subject

1 matters would be considered.

2 To the extent licensee proposal would be made to
3 the Board and parties after consultation with the NRC staff.

4 Third, at the prehearing conference, the Board would
5 comment and argument on licensee's proposal. It would there-
6 after issue its ruling on the subject matter to be covered in
7 the initial hearing. The sequence in which the subject matter
8 would be addressed, and tentative schedule for hearing sessions.

9 Some adjustments in the schedule for hearing
10 sessions, would, of course, inevitably occur. The establishment
11 of tentative hearing sessions is primarily for the purpose
12 of setting the timetable for the filing of prepared testi-
13 mony.

14 Fourth, the Board would also use the prehearing
15 conference to listen to and rule on any objections by any
16 party to discovery request which had been made based on
17 new information in the SER.

18 Mr. Tourtellotte indicated that as the Board's
19 orders already provided that there would be 30 days in which
20 to complete discovery on new information in the SER, we
21 visualize that 15 days of that 30 should be allowed for
22 requests, the remaining 15 days for answers, since we have
23 scheduled the prehearing conference 20 days after the issuance
24 of the SER, there would be time to cope with objections,
25 if any, to discovery requests.

Finally, written testimony on each of the subject matters scheduled for hearing by the Board would be filed 10 days in advance of the hearing session tentatively set by the Board for such subject matter.

CHAIRMAN SMITH: One thing that stands out in your proposal, you propose to eliminate the summary disposition procedure.

MR. TROWBRIDGE: I think it's entirely within the Board's discretion to eliminate that as a device. It is, essentially, in my view and limited experience with summary disposition, a rather useless effort. It takes about as much time as it does to prepare testimony, or perhaps more to get up summary disposition requests, and respond to summary disposition requests, and in the end, the request is going to be denied.

If there are any factual matters in dispute, the premise is that there be no fact. I cannot conceive among us and the intervenors, and the staff, that we arrive at a point where there are no factual matters in dispute, making it reasonable to resolve issues in this proceeding by summary disposition.

I would go straight to testimony. If it turns out there are no facts in dispute, it's going to be a short piece of hearing to get that established, and thereafter, legal argument as to what the significance of the facts is.

1 CHAIRMAN SMITH: I've never known an intervenor to
2 file a motion for summary disposition.

3 Ms. Weiss, are you familiar with any such instance?

4 MS. WEISS: No, I'm not, although I had anticipated
5 filing one in this case, as we discussed earlier on the
6 question of the staff's analysis of design basis accidents.

7 CHAIRMAN SMITH: Anyone else wish to comment on
8 the scheduling?

9 MR. SHOLLY: I had anticipated a possible summary
10 disposition, but if the licensee's willing to dispense with
11 it, it's fine with me.

12 CHAIRMAN SMITH: Ms. Weiss.

13 MS. WEISS: I just have a couple of things to say.

14 Of course, this is the first time that we've seen
15 these proposals, and I really haven't had the opportunity to
16 look at them in any great detail, but we would strongly
17 oppose going ahead with hearings before the major portion
18 of the SER is completed. For a couple of reasons. First,
19 what I see happening if we're waiting for the SER to be com-
20 plete^d, but we're going forward on other issues. Intervenors
21 would be doing discovery and preparing for trial on issues at
22 the same time they would be going to trial on other issues,
23 and that burden, it seems to me, would be impossible, and I
24 also think it would just create havoc and confusion in the
25 proceedings, and in any case, the critical path, as it were,

1 is the completion of the major portion of the SER, in other
2 words, there are major portions of the parties that have to
3 depend on that. I don't see that you really gain much
4 time by starting the other one before that.

5 On the schedule itself, I don't have any real
6 problems with what the staff has proposed except for the
7 point we have already mentioned, that is it doesn't give us
8 time to look at summary dispositions responses before
9 it contemplates an oral argument on the day the responses are
10 received.

11 But other than that, it seems to be, to me to be,
12 relative reasonable. I regret that what I had anticipated
13 when the Commission attached that model schedule or whatever
14 you care to call it, to the original August 9th order is
15 coming to pass, and that is, that although it was prepared
16 with no understanding of how the case would develop, obviously,
17 without anticipation to the exigency to this case. It sort
18 of sitting there like a sort of Damocles above us.

19 I would simply urge that the rights of all the
20 parties be cut off in any way because that schedule doesn't
21 match up with the realities and I feel confident that Board
22 wouldn't allow that to happen.

23 The licensee schedule doesn't provide time, as I
24 see it, any reasonable amount of time, for discovery after
25 the SER is completed. I would just hope that all the
 intervenors have, I think, been keeping admirably well to the

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the time schedules thus far, and we would simply ask, as a general principle, that our right not fall because of matters beyond our control, may be dragging the overall schedule of the case.

CHAIRMAN SMITH: Anybody else on the subject?

MR. TROWBRIDGE: Mr. Chairman, may I respond to what Ms. Weiss has just said?

Speaking for the UCS contentions, as presently allowed, I visualize a hearing session -- I do not visualize breaking hearing sessions into very small segments. I would visualize a session of the hearing when staff had an SER which largely covered the area of analysis and modification of plant design and related matters, that would be one hearing and it would encompass every UCS contention.

She would not be preparing testimony and having to be at a hearing at the same time.

As to the remark about discovery -- licensee's schedule for discovery after the SER is inadequate. That is the schedule the Board already set down, 30 days for completion of discovery on new matters, after the issuance of the SER. I don't know why we're raising a new question on that.

CHAIRMAN SMITH: I wasn't able to note your proposed schedule carefully, but I do think you cut that 30 days down to 20.

MR. TROWBRIDGE: No. Motion of discovery is to be

1 a new existence, a new matter in the SER, I'm talking about
2 after edition. Discoveries to be complete within 30 days.
3 I would divide the 30 days in half. Fifteen days for the
4 preparation of discovery request, and 15 days for response.
5 That makes 30 days. The 20 days that I talked about are pre-
6 hearing conference that I urged would be scheduled 20 days
7 after the issuance of the SER, and one of the items that
8 could be considered at that would be any objection to discovery
9 request which would have been received within the first 15
days.

10 CHAIRMAN SMITH: Oh, I see.

11 MR. ADLER: Mr. Chairman, if I might say
12 something. I don't want to upset your agenda since you do
13 intend to get on with discovery, but we do have a motion
14 pending to extend the discovery period to approximately May
15 15th, for all issues, not simply those new matters raised
16 in the SER; that would mesh quite nicely, we feel, with the
17 NRC's proposed schedule that all discovery, conceivably,
18 they intend to do matter be completed on May 15th. It would
19 not at all be consistent with what Mr. Trowbridge has pro-
20 posed.

21 When we get to that point in the agenda, I will
22 go into more detail on why we insist on an extension.

23 CHAIRMAN SMITH: That motion has been denied.

24 MR. LEVIN: We have not gotten any --

25 CHAIRMAN SMITH: Well, I guess we didn't state it

as expressly as we should, but setting this prehearing conference to discuss discovery schedules disposes of your motion, as we stated in the order setting this prehearing conference.

MR. ADLER: That was not my understanding at all, Mr. Chairman.

I assumed that the purpose of this meeting was to discuss that motion that you were, by that order, indicating that you had initially decided to extend the period of response 30 days, but that you were not ruling on the period to -- you were not ruling on the discovery period formally, that you were going to hear argument today on that motion.

CHAIRMAN SMITH: As a practical matter, it doesn't matter, but our order -- which I can't find -- here it is, stated that, "This order extending discovery deadline is on the Board's own initiative, but it also disposes of TMI's motion to extend the time, complete discovery dated January 28, 1980. No response to TMI's motion is required."

I just wanted to clarify the record for no particular point, because there's no practical difference.

MR. ADLER: That was not our understanding.

CHAIRMAN SMITH: How could you possibly understand that language differently?

MR. ADLER: Well, apparently the conversation that you had with my partner indicated something different. The information I got was that there was going to be some additional consideration on extending the discovery period.

1 Now, there may have been a breakdown in communica-
2 tions there, but the point is that it is impossible for the
3 reasons that I would have hoped to discuss today for us
4 to complete our discovery within the timeframe set forth by
5 the Board. There is no reason --

6 CHAIRMAN SMITH: Now, we are going to discuss in
7 the next agenda item the need to adjust the discovery period.

8 MR. ADLER: Maybe that's where the misunderstanding
9 is then. That's what my understanding of this meeting, of
10 this hearing, was to talk about adjusting discovery schedules.
11 Now, maybe we're just arguing semantics. We had the motion
12 to adjust the schedule for all practical purposes.

13 CHAIRMAN SMITH: I see no problem.

14 MR. ADLER: Okay.

15 CHAIRMAN SMITH: Mr. Pollard.

16 MR. POLLARD: Responding to Mr. Trowbridge's comment
17 about that opportunity to prehearing conference to respond
18 to objections to discovery, what he doesn't do by putting it,
19 squeezing it in so tight, he doesn't deal with possible
20 objections to response to discovery, which as we seen already
21 has been a problem and may be a problem. I could see that
22 -- if we've got some problem with that, that's really going
23 to jam up the time.

24 Also the question of where the, filing written
25 testimony comes into his schedule, I don't see.

MR. TROWBRIDGE: I did -- I called for written -- I called for the Board to determine in the end, after the prehearing conference, a schedule or, perhaps, some sessions of hearings, and to set a schedule for them. And my proposal was that written testimony be filed 10 days ahead of the session scheduled by the Board at which the subject matter would be considered.

MR. POLLARD: In respect to that aspect, I think the idea of having some kind of overall schedule whereby we're dealing with certain sets of contentions so that -- for example, you know, I think this could happen within the staff's schedule, that we wouldn't have to file all our written testimony at the same time. If we filed it prior to the hearing, that would give us time to stagger our work a little more effectively, and I think that would be a good idea. I'd be supportive of that. I somehow feel that licensee's schedule is trying to squeeze everything out.

MS. WEISS: Mr. Chairman, I would just like to suggest, in hopes of avoiding the continuous problem of failing to meet schedules, which were overoptimistic at the time that they were made, that we set deadlines only for those events that we can reasonably anticipate at this point, in other words, I don't think it makes any sense to set a hearing date today because there's no chance that we'd meet it on the button, and it just -- what it does is shift the burden to those who, through no fault of their own, have to

1 to object to that schedule. It makes them look as if they're
2 doing something to hold this hearing up, when they may not be.

3 So, just in general, I'd like to suggest that we
4 go easy on establishing a long-range schedule.

5 CHAIRMAN SMITH: Any other comments on this?

6 MR. TROWBRIDGE: Yes, Mr. Chairman, I have to say
7 I have a feeling of Alice in Wonderland. There is a plant
8 out there, like a lot of other plants that are operating,
9 that is down, and that early decision, one way or the other,
10 should be made as to whether or not this plant is going to
11 restart, and that means an expeditious hearing.

12 The Commission called for an expeditious hearing
13 in its August 9 order. It set out a target schedule. It
14 enjoined this Board to proceed as expeditiously as possible
15 with the conduct of a fair and full hearing, and it asked the
16 Board to set a schedule as soon as practicable and then
17 try to keep with it.

18 Now, that there's a total ignoring here of the
19 situation in which this plant finds itself and the orders
20 which the Commission has directed to the Board.

21 CHAIRMAN SMITH: Anything further on this subject?

22 DR. KEPFORD: Yes, Mr. Chairman, I'd like to
23 say a couple of things.

24 In regard to expediting the proceeding, if truly
25 counsel for the suspended licensee is that interested in

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1 expediting the proceeding, it could take a number of steps
2 in that direction, none the least of which would be asking
3 reasonable interrogatories, as opposed to all-inclusive
4 interrogatories.

5 I notice that the interrogatories addressed by
6 the licensee for the ECNP, and other intervenors also, makes
7 some outrageous demands which include, in effect, the canvassing
8 of the entire membership of the organization to determine
9 the stand of each and every individual on each and every
10 issue. It seems to me that asking that kind of a question
11 is not at all expediting the proceeding, at all, quite the
12 contrary, it seems to me it's for no other purpose than
13 frustrating.

14 CHAIRMAN SMITH: Mr. Sholly.

15 MR. SHOLLY: There seems like there's a number of
16 factors here at work lengthening this whole proceeding. I
17 think that to characterize the intervenors as somehow at the
18 root of all this is grossly mistaken. There's been quite a
19 bit of delay having to do with the SER, all the information
20 that's required for that, and I think that's been the primary
21 source of delay.

22 Secondarily to that, is continuous and repeated
23 objections. It seems that everytime an intervenor files
24 something, it's objected to on this minuscule and insignificant
25 basis necessitating a response from the intervenor to try

1 and defend their position. I'm sure this will be brought
2 up later.

3 CHAIRMAN SMITH: That's general subject matter,
4 later on, Mr. Sholly.

5 MR. SHOLLY: I just wanted to make it clear --

6 CHAIRMAN SMITH: We are sensitive to your complaint.

7 Mr. Levin?

8 MR. LEVIN: I'd like to call the Board's attention
9 to a meeting of the Commissioners of the Nuclear Regulatory
10 Commission. I am sure the Board is aware that the Com-
11 missioners have expressed a special interest in the manage-
12 ment aspect of this proceeding, and although from the discus-
13 sion at that hearing in Washington, it appeared that an
14 order will be coming out from the Commission to specify
15 special treatment of that issue. None has come out as of
16 yet. I still do expect the order to come out from the
17 Commissioners soon.

18 It appears to be the desire of the Commissioners
19 that the management issue be handled first. Now, a number of
20 changes in management structure have been announced by the
21 licensee, actually the licensee's parent, GPU, and the
22 situation is fluid at the present time.

23 I simply call this to the attention of the Board
24 so that if we do set a schedule at this prehearing conference,
25 we take the apparent desire of the Commissioners into

consideration.

1 CHAIRMAN SMITH: While you are on the subject, are
2 you aware of any activities in the Utility Commission of
3 Pennsylvania that might delay consideration of financial
4 qualification?

5 MR. LEVIN: I believe that financial qualifications
6 can be considered at any point in time. There are a number
7 of assumptions that have to be made when considering financial
8 qualifications. The fact that there are pending proceedings
9 of this Commission is certainly no bar to the Licensing
10 Board's consideration of financial issues in this proceeding.

11 Now, I call the Board's attention to the action of
12 the Public Utility Commission last Friday granting the
13 licensee a nine mill increase for fuel costs pending the
14 resolution of certain rate matters that are still ongoing.
15 This was, as I state, the order of the Commissioners which
16 I will make available to the Board. This was an order that
17 the licensee would be not prejudiced by failure to meet
18 debt obligations during pendency of oral proceedings. However,
19 whether the ultimate rate proceedings are resolved in
20 licensee's favor or not, it is certainly possible to consider
21 the financial matters simply factoring in appropriate assump-
22 tions. The assumptions are going to be subject to debate,
23 whether revenues will be at one level or another will cer-
24 tainly be in issue.

25 Without going into specifics, to some extent,

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financial qualifications depend upon your view in the future. I don't think anyone has the 100 percent record of predicting the future.

In view of these considerations, I think the answer to your question is that the Board may consider the financial qualifications without waiting for the Pennsylvania Public Utility Commission to resolve rate matters that are presently pending.

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MR. TOURTELLOTTE: In association with some of what Mr. Levin said, I want to bring to the attention of parties that there is going to be a Commission meeting tomorrow, and perhaps the matter of management capability will be discussed. I say, "perhaps," it was questionable as to whether it would or would not at the time that I left, and I have not been able to get confirmation one way or the other. I may not get confirmation until the last minute, and I wanted the parties to be aware of the fact that there is potentially a meeting on management capability tomorrow.

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CHAIRMAN SMITH: So, with this information, I think we can move on now to the initiating problem for this pre-hearing conference, that is the need for changes in the discovery schedule. We observed in our prehearing conference order -- it seems that at least 30 days can be afforded responses to discovery without disturbing the overall schedule. Though we have not addressed the need to provide for additional time for making initial discovery requests. I think we will

1 go to the intervenors on this subject and the participating
2 Government agencies.

3 Beginning with you Mr. Carter, do you have anything
4 to recommend to the Board.

5 MS. CARTER: No, I don't think we have any proposals.

6 MR. POLLARD: I would like to see the discovery
7 extended as long as reasonable. I don't see any particular
8 problem with extending it through May 15th, 30 days after
9 SER. Certainly, at a minimum, I think it should be -- I
10 think we've got plenty of time between then. I don't think
11 very much is going to be happening, and I think, hopefully,
12 if through the discovery process we can hike getting the
13 information we need and getting clear position on everything
14 before, we can save time during the hearings. So, I'd like
15 to see the discovery be extended, say, ideally, up through
16 May 15th.

17 CHAIRMAN SMITH: I would hope that people would
18 discuss the request for extension of discovery time, not in
19 terms of what would be ideal, but in terms of actual need, too.

20 MR. POLLARD: Okay. Well, I know, because this is
21 my first proceedings, I just felt very uncomfortable, that's
22 all, knowing how to go into the process of discovery and I
23 know that I've got a lot of work, more to do, I handed my
24 first set of interrogatories to the staff which, you know, I
25 feel, fairly okay about, but I've got quite a bit more work to

1 do, so just from very practical needs, you know, of CEA, I
2 would like to see -- I feel that, you know, again, I don't
3 want to harp an issue from my -- that the whole question of
4 some kind of flexibility should be given to the fact that
5 there are intervenors who don't have previous experience in
6 this, and this whole process takes some kind of getting the
7 feel of, and now having seen interrogatories and discoveries,
8 I feel comfortable about what I'm doing now.

9 MS. WEISS: Mr. Chairman, as you know, we had
10 formerly raised this to the Board --

11 CHAIRMAN SMITH: Yes.

12 MS. WEISS: -- in our motion to compel, because
13 USC timed our discovery, filed it early, in order to allow
14 us time within the original schedule to file followup ques-
15 tions based on the answers.

16 As of this point, we have answers to some of our
17 interrogatories from the licensee, we have essentially
18 a vanishingly small number of responses to our interrogatories
19 of the staff. There's a dispute which has arisen between
20 us and the staff, which I gather you want to discuss as the
21 next agenda item.

22 We've been completely frustrated. Took a lot of
23 time and energy to write those discovery requests, and, thus
24 far, all it's gotten us is another bunch of time and energy
25 required to write a motion to compel.

1 It would be malprejudice to any party in this case
2 if the discovery period was extended until 30 days after the
3 issuance of the SER on all issues. I don't see that it serves
4 any purpose to say that at this point you can only file
5 discovery on some things and not on other things, because it
6 just creates a whole new set of issues that we have to argue
7 by motion. There's no prejudice to any party, it won't delay
8 the proceeding in any way if the discovery schedule is extended
9 on all issues until 30 days after the filing of the SER.

10 There's an enormous amount of material in this case.
11 More than I think I've seen in any other case that I've been
12 involved in. I think it speaks well for all the parties
13 that they've kept as well as they have to the schedule at
14 this point. But events have overtaken us, and it would
15 seriously prejudice us if discovery were cut off at this
16 point, and it wouldn't prejudice any other party if it
17 were extended as we suggest.

18 CHAIRMAN SMITH: You, of course, stated specifically
19 in your motion to compel that you had anticipated an addi-
20 tional round of discovery based upon those responses?

21 MS. WEISS: That is right.

22 CHAIRMAN SMITH: Of course, you identified the
23 problem?

24 MS. WEISS: Failure to get any answers, even within
25 the period is met, we couldn't file any, or we couldn't file

any followup answers.

CHAIRMAN SMITH: Mr. Adler?

MR. ADLER: Mr. Smith, like Mr. Trowbridge earlier, we had a statement that we prepared which we feel would give this court some idea, a brief statement of what we've been doing and what we've been going through in trying to complete discovery.

We began our discovery on December 10th, '79 before this Board even issued its order, because we wanted to be as prompt as possible. At the outset, let me say, that the licensee's counsel and the NRC, they've been cooperative and they've been timely in filing their responses.

However, what we had learned after having submitted five sets of interrogatories to the licensee, is that while their responses are timely, the responses are not necessarily complete and responsive.

For example, on December 10th, we sent our first set of interrogatories. The licensee responded in part on December the 19th and they filed a supplement to those responses on January 7th. In addition, they responded to a second set of interrogatories on January 7th. Now, in these interrogatories, we were dealing with the questions maintenance, management competence, repair, quality assurance, et cetera.

In these interrogatories, we inquired about the maintenance records, job tickets, and individuals employed by

1 the utility who engaged in maintenance and repair work.

2 In response to the inquiry concerning job tickets,
3 the licensee stated that there was 60,000 job tickets, and
4 that they would be made available upon request.

5 Naturally, we requested that some of the tickets
6 be made available so that we could examine them. But what the
7 licensee has failed to reveal, and which we have discovered since
8 that time, was the existence of computer summaries of these
9 job tickets, categorized by components, as well as computer
10 summaries by maintenance, such as utility maintenance,
11 mechanical maintenance, electrical maintenance, et cetera.

12 Only after spending much time in reviewing these
13 individually-written work tickets did we discover that this
14 computer summary existed.

15 We also requested the time records of employees
16 involved in maintenance and repair because some of the argu-
17 ments has been that employees at Met Ed have been worked long
18 hours, beyond the levels of human endurance.

19 Now, it's important that we had these records
20 because of these allegations. When we requested them, the
21 licensee stated that there were over 100,000 such sheets,
22 and that if we wanted to examine them, we would have to go
23 to Reading to do it.

24 Well, we did this. An attorney and law clerk went
25 to Reading to examine these time sheets. When they arrived

1 at Met Ed's offices in Reading, they were confronted with boxes
2 and boxes of time records, not unexpected.

3 After two hours of reviewing these and realizing
4 what an overwhelming task it was, employees of the licensee,
5 at their office there, volunteered that there was computerized
6 weekly and monthly summaries on microfish which could be made
7 available.

8 Now, naturally, the process of reviewing these
9 documents would have been made much easier if the licensee
10 had advised us initially of the existence of these computer
11 records. Nevertheless, the licensee and its counsel takes
12 the position that it need only identify documents and their
13 location in responses to many of the interrogatories.

14 With respect to such things as timesheets, they have
15 indicated that in order to pull additional information
16 concerning these times sheets from the computer, and to get
17 us a printout, a new computer program would have to be
18 developed, and the licensee states that it does not have to
19 do this. Well, that may well be, but this type of response
20 we feel is a two-edged sword. If the licensee responds in
21 a fashion which requires the intervenors to take more and more
22 time to review the information made available and to adequately
23 prepare for this hearing, then we feel that we're entitled to
24 that time.

25 Now, we don't feel our discovery request, including
the taking of depositions, which we have noticed are

1 frivolous. They are not frivolous, and they have not been
2 filed for the purpose of delaying these proceedings, rather
jn-26 3 it is essential that if this Board intends to pursue the
4 management contention, which it's been expressly directed to
5 do so by the Commission, and that if we are to properly to
6 pursue our contention dealing with management, the present and
7 former employees who worked in the areas of maintenance,
8 repair, quality assurance, must be questioned. Information
9 bearing upon the procedures employed by the licensee in deal-
10 ing with maintenance, repair, and quality assurance must
11 be made available. And we must have the time to properly
12 review the documents made available and to properly decode
13 the individuals who have information bearing upon the documents
14 we've reviewed.

15 In order to expedite things, we have agreed to a
16 schedule of depositions that the licensee requested which
17 requires us to take depositions all day. We took five
18 depositions yesterday, almost continuously. It's a hardship
19 and a burden upon us. We're a small law firm, relatively so,
20 and we are not in a position to assign six, seven, eight
21 lawyers to monitor these meetings as the licensee can.

22 Nevertheless we are willing to go out to Three
23 Mile Island, and to take the depositions out there, but we
24 feel that the 30-day extension that this Board has proposed
25 just makes it totally impossible for us to complete our

1 discovery.

2 In normal civil proceedings, discovery on matters as
3 complex as that before this Board would continue for months
4 and probably years. To initially limit discovery to 60 days
5 is almost ludicrous.

6 In addition, because of the responses licensee has
7 filed, it's becoming apparent that the licensee and its
8 attorneys view this proceeding as a contested civil proceed-
9 ing, thus their responses to our interrogatories are as
10 narrowly defined as conceivably possible, in order to
11 respond to the interrogatory but to give us as little
12 information as possible.

13 You know, as a lawyer, I appreciate what you are
14 doing in protecting their client's interest to the best of
15 their ability, however, if the licensee intends to view this
16 proceeding as contested civil one -- for example as an anti-
17 trust case or like a products liability case, then discovery
18 applicable to those types of proceedings should be considered.

19 In a complex antitrust case where thousands and
20 thousands of pages of documents have to be reviewed, it is
21 expected that discovery may take years. In complex product
22 liability cases, where machinery and components and the main-
23 tenance of those types of machinery and components are at
24 issue, it is also expected that discovery will take months
25 if not years.

1 We feel the matter presently before this Board
2 combines the elements of both of these types of proceedings.

3 Furthermore, the lives of 600,000 people are
4 intimately intertwined with how this Board rules and how this
5 proceeding is conducted.

6 CHAIRMAN SMITH: Excuse me, Mr. Adler, this is an
7 area where I'm sure -- I think I know where you're going
8 and you're just going to waste valuable time, and we don't
9 have a lot.

10 MR. ADLER: Well, I only have a short -- I'm almost
11 finished up, Mr. Chairman.

12 We feel that it would not be in the interest of
13 the individuals in TMIA to have a schedule which this Board
14 has proposed.

15 Now, our contention no. 5, which has to date
16 prompted the most discovery, deals with the area of manage-
17 ment competence. It's an issue of credibility. The
18 licensee will ultimately come before this Board, and say, "Yes,
19 we may have made mistakes in the past, but we're not going to
20 do it again, we've changed our management structure, and
21 we're going to be good boys from here on out."

22 Well, there's no way we can challenge that statement
23 unless the credibility of those individuals making it is
24 tested in an adversary proceeding.

25 As I said earlier, the area of management competence

1 has been specifically directed to be considered by this
2 Board, and, in addition, the area of maintenance and repair
3 was specifically mentioned in the Chief Counsel's report to
4 the Kemeny Commission as an area that needed investigation
5 but which the Commission did not have adequate funding to deal
6 with.

7 Now, we've asked for a discovery period --

8 CHAIRMAN SMITH: The Kemeny Commission did not have
9 adequate funding to do it.

10 MR. ADLER: That is right, that is what was stated.

11 Now, we've asked to extend the discovery three
12 months. We think this will be enough. Quite frankly, we just
13 don't know, because we don't know what we're going to discover
14 in the next couple of months. Plus, the licensee's recom-
15 mended restart plan which we've been getting inserts for,
16 has proved an administrative nightmare for our office.
17 We continually get the wrong inserts. There are missing
18 pages, and we receive inadequate instructions as to which
19 pages are to be removed and which are to be replaced. If the
20 goal of that is to deprive the intervenors of an adequate
21 report, we feel that goal's being met. This coupled with
22 the licensee's narrow response as to our request for
23 information, we feel, mandate that the Board grant some
24 extension. We would propose a three-month extension of time
25 to complete discovery.

THE CHAIRMAN: Mr. Sholly, I'd ask that the comments

1 not be cumulative as we progress, please, Mr. Sholly.

2 MR. SHOLLY: I'll be very brief.

3 I have, to date, filed two sets of interrogatories
4 with the licensee. The first set, I received a call from
5 Mr. Zahler for a two-week extension, which trying to negotiate
6 in good faith, and so forth, I agreed to. The date for that
7 rolled around, and I received nothing. Two days later, I
8 called Mr. Zahler for an explanation. Well, they've taken
9 the wording in the Board's order to say that they don't have
10 to respond until March 17th, which totally deprives me of
11 any chance for followup request, and also extremely and
12 excruciatingly limits any time I have to evaluate their
13 responses and prepare testimony.

14 It seems to me that they're doing everything they
15 can to drag this thing out, and, as Mr. Adler said, file
16 as narrow a response as they can, and give up as little informa-
17 tion as they can. If they want this proceeding expedited,
18 that's the wrong way to go about it.

19 CHAIRMAN SMITH: While we on that subject, the order
20 extending the response time did, indeed, permit responses
21 to be filed as late as March 16th, but it also requested
22 that the time set forth in the rules be adhered to, if possible.

23 MR. TROWBRIDGE: I thoroughly understand that.

24 CHAIRMAN SMITH: And I would assume that Mr.
25 Zahler's response was that the time in the rules, with

1 ordinary diligence, possible.

2 MR. ZAHLER: Mr. Chairman, if I might say, I think
3 Mr. Sholly will confirm me on this, that his recollection
4 of the conversation is not entirely accurate. I did state
5 to him that we were not going to be able to met the February
6 6th date, given the large number of interrogatories we got
7 from a lot of parties. That we were diligently working on
8 it; that we intended to respond to it as soon as possible,
9 and I expected that in the next week or two, but we under-
10 stood your order to extend, if necessary, up to March 17th,
11 as time to respond.

12 I did not tell Mr. Sholly that he would get our
13 responses on the 17th.

14 MR. SHOLLY: That was not my understanding.

15 CHAIRMAN SMITH: Whatever it was, we have an understand-
16 ing now.

17 MR. SHOLLY: The point that I would like to make is
18 that if I had basically stuck to my guns, and said, "No, you
19 can't have it, a delay," I would have had my answers by
20 now. I would have been able to file response interrogatories.
21 By trying to be reasonable, what I've been confronted with
22 is delay.

23 CHAIRMAN SMITH: Dr. Kepford.

24 DR. KEPFORD: With regard to discovery upon --
25 first off, with regard to schedule, I think it should -- I will

1 agree with all the previous intervenors, it should be extended
2 liberally.

3 My experience with discovery from the NRC staff
4 in this proceeding to date is that it is a very hollow exercise.
5 I gave NRC staff counsel, Marcia Mulkey, a couple of lists
6 as I've described in a recent filing on November 14th. To
7 date, I have received seven items out of about three dozen
8 which were requested, in what, three months. We are totally
9 frustrated in that line. We have not yet been able to draft
10 interrogatories since we have gotten no discovery material.

11 Being, essentially, 100 miles from the TMI discovery
12 room, you are, in essence, precluded from discovery upon
13 the suspended licensee.

14 CHAIRMAN SMITH: I want to ask you about that point.
15 It crops up frequently. Your petition to intervene, you
16 asserted that there were members of ECNP living in close
17 proximity to TMI.

18 DR. KEPFORD: That's right.

19 CHAIRMAN SMITH: Indeed, that was not challenged
20 by any of the parties. It was accepted, and it was looked
21 at by the Board as a showing of interest. Now, when your
22 group has elected to be represented by persons living 100
23 miles away, isn't there a strong effort required on the part
24 of ECNP to accommodate the realities of the proceeding? You
25 have members who live close. Can't they be of any help to you?

1 DR. KEPFORD: In my opinion, the vast majority
2 work for a living in that area, and do not either the time
3 or the expertise to spend in that document room. In principal,
4 the Penn State Library would be a help, but the vast majority
5 of documents there (Final Safety Analysis Report for TMI-I)
6 is in the Penn State Library on microfish, however, the copy
7 that's there on microfish is the one with no amendments
8 whatsoever.

9 CHAIRMAN SMITH: This wasn't my question about the
10 Penn State Library. My question was about, the hearing is
11 here, the cause of action is here, you're in this hearing
12 because of people who live here, and your complaint is constantly
13 that you are far away, and I'm saying is that what efforts
14 have you made to accommodate the realities of the case. Here
15 is where the facility is, here is where the information is,
16 and here is where the cause of action is. And your answer is:
17 "By and large," I think you said, "that your members --"

18 DR. KEPFORD: My answer is, first off, the members
19 who live here do not have the time or expertise to go after
20 the materials we're after.

21 CHAIRMAN SMITH: None of it?

22 DR. KEPFORD: What?

23 CHAIRMAN SMITH: None of it?

24 DR. KEPFORD: I am sorry, Mr. Chairman, I have not
25 canvassed the entire membership of ECNP.

CHAIRMAN SMITH: So then it is true, you have not

1 explored that possibility?

2 I'm trying to be helpful. You may assess that I
3 am not be helpful, but, perhaps, we're going to give you
4 some ideas of how your problems can be addressed.

5 DR. KEPFORD: Well, let's look at the rest of them.

6 First off, it's two hours each way by car.

7 CHAIRMAN SMITH: To where?

8 DR. KEPFORD: State College.

9 CHAIRMAN SMITH: You don't want to talk about the
10 members around TMI. If you don't want to, we'll move on.

11 DR. KEPFORD: Mr. Chairman, the logistics of getting
12 information, getting the right information, communication,
13 transportation, and so on, simply make a nightmare of trying
14 to get a piece of information from them. We have no
15 assurance when we ask for a piece of information that we're
16 going to get it; we don't know where to look ourselves.

17 CHAIRMAN SMITH: Let's establish one thing. You
18 wish to stop talking about the availability of using members
19 that live in the vicinity of TMI. Now, if that's the case,
20 we'll move on.

21 DR. JOHNSRUD: Mr. Chairman, I have tried to do
22 this with members of our organization and we have not found
23 that it was workable. The information that came back was
24 not pinpointed as to what we wanted, the necessary dates,
25 citations were not accompanying. These are, indeed, people

1 who are affected, who do, indeed, live in this area, even the
2 few --

3 CHAIRMAN SMITH: Who are members of your group.

4 DR. JOHNSRUD: Yes.

5 Even those who do have any time to devote really
6 don't have the background to be able to be of assistance to
7 us. It takes half a day to get here and home, and that, of
8 course, and extremely commitment for us to be able to come
9 down to use this room which now is not available --

10 CHAIRMAN SMITH: Yes, I understand that point. My
11 point is different. My point is you listed residences of
12 many members who live in this area in your petition.

13 DR. KEPFORD: That is correct.

14 CHAIRMAN SMITH: And these are people who belong
15 to the organization, specializing in nuclear power, and you're
16 saying now that none of the people have been able to have time
17 or the expertise to help you in your discovery?

18 DR. KEPFORD: That's correct.

19 We have not yet had a chance -- I have some hand-
20 written interrogatories which I was in the process of drafting
21 a month and a half ago for the staff and applicant, but
22 we have not had the freedom from other filings with more
23 pressing dates to get them finalized.

24 Lastly, we have the interrogatories from the
25 suspended licensee to ECNP, which are all-inclusive; to a

1 extend autobiographical in nature, and I would certainly con-
2 cur with what Mr. Adler was saying, that it seems rather
3 incongruous that counsel for the suspended licensee wants to
4 accelerate this proceeding as much as possible and at the
5 same time tries to hamstring as much as possible participa-
6 tion by the intervenors.

7 I simply don't understand what's going on. Well,
8 maybe I do, but I don't think the public interest is being
9 served with this attitude.

10 Thank you, Mr. Chairman.

11 CHAIRMAN SMITH: Ms. Smith, do you have a comment
12 to make for Newberry?

13 MS. SMITH: Yes, sir. Attorney Cunningham does
14 request retraction. His suggestion would be May 16th.

15 CHAIRMAN SMITH: Ms. Barley, are you aware of
16 Mrs. Lewis' promise with respect to discovery?

17 MC BARLEY: Yes, I am very well aware of that.

18 For example, number one, I am supposed to be helping,
19 and I am trying like hell to help, but this moot question is
20 probably totally out of order, but is there some way I can
21 get on a limited distribution list of whatever communications
22 between the Board and the Mr. Lewis, the licensee and Mr. Lewis,
23 the staff and Mr. Lewis, so that -- I got his licensee
24 responses to the first set of interrogatories. They said,
25 "All documents in reference in the discovery reading room

1 or will be placed there shortly." He lives 90 miles away.
2 He has a full-time job and is on different shifts. I have
3 a full-time job. I can get there, but it's very hard --

4 CHAIRMAN SMITH: Stop for a moment. Maybe we can
5 shortcut the process. Do you have any objections to adding
6 Ms. Barley to the service list? To your service list? She
7 would, after all, have clearly been qualified as an intervenor
8 had she -- as a matter of fact, she can still file a petition.

9 MR. TROWBRIDGE: Is the Chairman's list on matters
10 between us and Mr. Lewis. That is, Mr. Lewis, as you recall,
11 is a very limited participant.

12 CHAIRMAN SMITH: I understand.

13 MR. TROWBRIDGE: For the moment, really trying to
14 clarify what I'm being asked. To put Ms. Barley on the
15 mailing list of matters between us and Mr. Lewis?

16 MS. BARLEY: Between Mr. Lewis and the staff.

17 MR. TROWBRIDGE: Am I being asked to --

18 CHAIRMAN SMITH: The Board has no problem, we can
19 simply add Barley to the Secretary's service list, but we
20 can't add it to yours nor the staff's. I am simply asking
21 if, in the interest of accelerating Mr. Lewis' discovery
22 problems, would you object to adding Ms. Barley?

23 MR. TROWBRIDGE: And I'm seeking clarification --
24 matters in which involve communications to and from Mr. Lewis,
25 that is, if we have a discovery request to Mr. Lewis, we put

1 Ms. Barley on?

2 CHAIRMAN SMITH: Is that what you're asking for?

3 MS. BARLEY: Right. Whatever the communications
4 between Mr. Lewis and licensee, could I please also have a
5 copy of it?

6 MR. TROWBRIDGE: I have no problem with that. I
7 don't think you meant to add Ms. Barley to the list for all
8 documents in the entire proceeding.

9 CHAIRMAN SMITH: Sure; thank you.

10 Mr. Tourtellotte, could you accommodate that inter-
11 venor in that fashion?

12 MR. TOURTELLOTTE: Yes.

13 CHAIRMAN SMITH: Okay. Have you concluded your
14 points then?

15 MS. BARLEY: My address?

16 MR. TOURTELLOTTE: We have your address already,
17 thank you.

18 MS. BARLEY: Okay. that was sort of a side issue.

19 I talked to Mr. Lewis, and I would say he concurs
20 with Mr. Adler, Dr. Kepford, in that -- Newberry also --
21 in that he would like an extension for response and request
22 for the three months this seems to be --

23 CHAIRMAN SMITH: And it's your understanding that
24 he needs one?

25 MS. BARLEY: Oh, yes, because the same problem he's
having, responses from licensee, is the reference to documents

that may or may not be in the discovery reading room. The semantics, in which the diagrams are always illegible. That was the same problems the rest of us have. We don't have time; we don't have money; we have a long distance to travel, and it would be helpful, very helpful, if we could get it extended.

CHAIRMAN SMITH: Mr. Konkle, do you have a comment?

MR. KONKLE: Yes, we would also like an extension of the discovery period for a similar but different reason, in that we still haven't been officially admitted as an intervenor. Naturally, we haven't had any time for discovery yet at all.

CHAIRMAN SMITH: You have a completely different problem.

MR. KONKLE: Correct, but we would still like an extension.

CHAIRMAN SMITH: Yes, sir, Mr. Bowers.

MR. BOWERS: Sir, ANGRY filed interrogatories on the Commonwealth of Pennsylvania, the licensee and the staff on approximately January 21st. The time for response for those interrogatories, all three sets of them, under the rules of this Commission has expired, and I am not aware at least of any attempt on the part of either of those three parties to contact me for the purpose of requesting an extension of that time.

In light of that, I was anticipating and hoping

1 to have an opportunity to file the second set of interrogatories
2 based on the answers to the first set. And it looks like
3 I'm going to be unable to do that if the Board adheres to
4 its February 16th deadline for filing requests for inter-
5 rogatories.

6 CHAIRMAN SMITH: As to your advice--

7 MR. BOWERS: I would simply request at a minimum
8 that the opportunities to submit interrogatories be extended
9 at least by the amount of time that the party to whom the
10 interrogatories are being addressed has been in default
11 on previous requests for interrogatories. I mean this would
12 be the minimum request time.

13 CHAIRMAN SMITH: For the first part of your
14 request, I infer that you may not be aware that the blanket
15 extension of time afforded parties by order of February 1st
16 to respond.

17 MR. BOWERS: I understand that.

18 CHAIRMAN SMITH: Do you still believe that some of
19 the people are in default and you are --

20 MR. BOWERS: I mean, nobody's contacted me. I am
21 not aware of what problems may exist with respect to the
22 providing of the answers to the interrogatories. It doesn't
23 seem to me that your order exempts anyone from making a
24 diligent effort to file their interrogatory answers.

25 CHAIRMAN SMITH: You've answered my question. You

1
are aware, I understand.

2
MR. BOWERS: Yes, I am aware.

3
As a general matter, I would simply point out that
4
the volume of new information that is becoming available on
5
a continuing basis is extremely difficult to absorb, for
6
instance, the Rogovin Commission report, both volumes of one,
7
and the voluminous volume two, was just recently made avail-
8
able in the local public document room within the last 10
9
days. We're in the process of reviewing that.

10
In light of that additional fact, we seek in the
11
abesence of any showing of prejudice to any party, no reason
12
why the discovery period shouldn't be extended along lines
13
suggested by Ms. Weiss, mainly, to the end of the period
14
for which discoveries are appropriate with respect to the
15
SER.

16
CHAIRMAN SMITH: Ms. Aamodt? We noted your absence
17
at the beginning of the proceeding, and I have just noted
18
now that you are here.

19
MS. AAMODT: I am sorry, Mr. Smith, I seem to have
20
many personal problems, like a furnace wasn't working this
21
morning and I had to get a repairman before I left.

22
CHAIRMAN SMITH: Are you aware of what we're talking
23
about?

24
MS. AAMODT: Yes, I am very aware of what you are
25
talking about, and we are keeping abreast of reading what you

1 send us, but the amount of information is voluminous, and we,
2 of course, are not experienced in that we really feel as
3 though we're getting comfortable with reading what you send
4 us, and with the proceedings.

5 Of course, we're not asking that proceedings wait
6 for our education in the area, but we do need time -- we've
7 attempted not to be argumentative or irresponsible in anything
8 we've done, and we were hoping that we can add something to
9 this hearing.

10 CHAIRMAN SMITH: Have you submitted any discovery
11 requests.

12 MS. AAMODT: We have submitted no discovery requests.

13 CHAIRMAN SMITH: Do you intend to?

14 MS. AAMODT: We do. We have them prepared now,
15 and I had hoped to bring them with me today, but I didn't
16 have time to complete typing and reproducing them last night.

17 We are being being held up by no agriculture report.
18 I discovered about 10 or 12 days ago that the Department of
19 Agriculture emergency plan was on limited-access basis,
20 and I called the licensee. and they responded and would try
21 to get them for me, if there was one in existence, and I
22 still haven't heard anything since that time. So, that is
23 holding us up on asking questions, but we prepared it anyway.
24 We won't send it in, but we were hoping to make them respond
25 more responsible, in light of that plan, if there actually is
one.

1 No one seems to know whether there is an actual
2 Agricultural emergency plan, although the plant is located
3 in an agricultural area.

4 CHAIRMAN SMITH: I think that's a matter you could
5 probably take up -- you've identified the problem which Dr.
6 Little has also been interested in. Dr. Little and the Board
7 here, so you don't have to describe it to us any further.

8 MS. AAMODT: All right.

9 CHAIRMAN SMITH: You can proceed and ask about it.

10 I just want to move now on the question of the need
11 for additional discovery.

12 MS. AAMODT: We definitely need additional time.
13 I feel as though we have spent all of our extra time and
14 some of the time we should have been spending on other
15 matters in trying to participate in this, and I would feel
16 very frustrated if we were prevented from truly participating
17 by cutoff of discovery both in questions and responses.

18 CHAIRMAN SMITH: Mr. Levin, you don't have any
19 discovery problems that I'm aware of, do you, sir?

20 MR. LEVIN: We have some interrogatories outstanding
21 to the licensee, we haven't received responses yet. We were
22 being hopeful, however.

23 [Laughter.]

24 CHAIRMAN SMITH: Mr. Blask?

25 MR. BLASK: Consumer Advocate has nothing to add

1 to this discussion.

2 CHAIRMAN SMITH: Have we covered each of the
3 intervenors on this subject matter, Mr. Bowers?

4 MR. BOWERS: Let me just make one additional comment.

5 We read newspaper accounts within the last week
6 of the substantial revision of at least the emergency plan
7 for York County, that is presently taking place in the
8 current negotiations between the county and the Commonwealth
9 of Pennsylvania. That information suggests to us that the
10 emergency plan, as set forth in the -- at least for York
11 County -- as set forth in the licensee's emergency plan is
12 going to be substantially different from the one that we have
13 in force, the one that the licensee has submitted to us, and
14 it seems to me that it would be grossly inappropriate if
15 we were not to have an opportunity to interpose additional
16 interrogatories responsive to this new, revised emergency
17 plan whenever it becomes available.

18 CHAIRMAN SMITH: Mr. Pollard, do you have anything
19 new to offer?

20 MR. POLLARD: It's related to the availability of
21 documents, namely, the Rogovin Report, Volume II, and/or III,
22 we haven't received. You haven't either? What's the status?
23 I'm not clear what more reports there's supposed to be.

24 MS. WEISS: It's 1500 pages long and they'll give
25 it to you if you pay \$175. That's the latest word I have.

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MR. POLLARD: Are you trying to get it -- I mean are you going to get it.

I understood the licensee had it. I don't know if we're supposed to have 30 days from when it came out or, you know -- we got the package with Rogovin and the human factors in terms of sequences, et cetera. I don't know -- it's volume I and I don't know what the status is.

DR. JORDAN: Volume II, I believe, is the staff's formula. I think Mr. Tourtellotte, perhaps, explained the situation.

MR. TOURTELLOTTE: I'm sorry, the question --

DR. JORDAN: Where does volume II stand. He claims he has not had a chance to see volume II. It is my understanding that volume II exists in draft form, in the form of a batch of reports. Is it in the document room?

MR. TOURTELLOTEE: Not that I know of.

DR. JORDAN: I can report that volume II of the Rogovin Commission Report is available in the local public document room in the City of York. I can't speak for any other --

MR. POLLARD: Are we going to get this in the foreseeable future?

DR. JORDAN: It was my understanding the draft would be put together in a matter of a month, and perhaps the staff can add to that. It is not out yet in the final

1
2 form. It is just the only existing draft that was sent to
various document rooms.
3

4 MR. POLLARD: The only other questions is is there
any way to get a summary of it like a table of contents so
at least we'd know, you know, how much energy's worth trying
to dig into it. Maybe a table of contents?
5

6 DR. JORDAN: Mr. Tourtellotte?
7

8 MR. TOURTELLOTTE: You may well know, Dr. Jordan,
the Rogovin Report is an independent report. We don't really
9 have any control over that. I can inquire as to what the
status is going to be and what the availability is going to be,
10 but before the Rogovin Report was actually published, even
11 staff did not have access to it, so I don't really know
12 what the future portends.
13

14 I will check into it though.
15

16 MR. TROWBRIDGE: Mr. Chairman?
17

18 CHAIRMAN SMITH: Mr. Trowbridge.
19

20 MR. TROWBRIDGE: In regard to the Rogovin Report,
I don't know whether it's already there or not, but if not,
21 we will make available in the discovery reading room a full
set of the Rogovin Reports, Volumes I and II, three part,
1600-page document.
22

end 23 jn

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24

25

TAPE 4

Page 1

1 MS. AAMODT : Mr. Chairman, is it
2 asking too much of the Board to have cut the deadlines, set
3 in writing and sent to us? I missed the deadline for the
4 revised versions of contentions. I checked with the NRC
5 after I missed it, and I found that it had only been men-
6 tioned, Page 8 of the transcript, on November 14 and then
7 not again until December 19, and it would have been already
8 too late.

9 CHAIRMAN SMITH: Well, Mrs. Aamodt, if we have
10 time during this pre-hearing conference, I hope to have
11 an opportunity to discuss with intervenors who have been
12 filing papers late, their responsibility to remain informed
13 as to what is happening in the proceeding. But, I think,
14 it is somewhat disgre... now. We have business--

15 MS. AAMODT: I am sorry.

16 CHAIRMAN SMITH: You will have whatever, as you
17 did in our other pre-hearing conference order, you will have
18 our orders in writing, yes, indeed.

19 MS. AAMODT: I understood, Mr. Smith, I do not
20 mean to be argumentive, but I understood from speaking from
21 Mr. Gray, that the NRC, that there was no mention of the
22 revised emergency contention; the deadline for that in
23 writing until December 19--

24 CHAIRMAN SMITH: Ms. Aamodt, perhaps a disgression
25 would be appropriate since you have raised it. It was indeed

1 agreed upon and described by the Board at the special
2 pre-hearing conference that Mr. Aamodt was present and
3 participated fully, pointed out that you have intervened
4 here as a family and Mr. Aamodt certainly demonstrated his
5 excellent capability of understanding what was happening
6 and representing the family. Furthermore, it was indeed
7 in the special pre-hearing conference order, specifically,
8 and one must infer that you had not read that very important
9 document, otherwise you would have been aware of it when
10 you filed late. Furthermore, don't we have to make an
11 inference that you certainly knew that you did not know the
12 date for the filing of an emergency planning and you have
13 not demonstrated that you have made any effort during the
14 relevant period to find out when it was. There was an
15 obligation, it seems to implore as we discussed it, assuming
16 that you had overlooked those two pieces of information, to
17 at least have a larger curiosity, as to when these important
18 issues were to be addressed by you.

19 MR. AAMODT: Well, I am sorry about that. I was
20 aware of the other things, but we are human beings and I
21 just--I am not saying that we were totally--I am certain
22 they should have called some other intervenor, perhaps and
23 check these schedules. I just was not aware that our
24 emergency plans had to be revised not having been an inter-
25 venor before.

1 CHAIRMAN SMITH: Certainly. I am raising this
2 point with regret and we have total sympathy with problems
3 that you have or trying to operate a farm, a business, a
4 family and everything else, but I am raising this point
5 to emphasize to you and to other intervenors that when you
6 undertake the important responsibility of trying to make
7 a contribution to the record, these are important responsibil-
8 ities and you have to give them a very high priority.
9 Otherwise, you demonstrate that you do not have the ability
10 or the capacity to make a contribution to the record which
11 might interfere with your standing as an intervenor.
12 Because in the last analyst you are not only interested in
13 your interest in the proceeding but the public interest
14 in the proceeding, too.

15 MS. ASMODT: Mr. Smith, I take your comment very
16 much to heart, but I did not make the request in any way to
17 be argumentive or to say that you were wrong, or--

18 CHAIRMAN SMITH: Exactly. You made that very
19 graciously, you made that point in your request to be con-
20 sidered late, notwithstanding the fact that you recognized
21 it that you were late and that was a gracious move. And
22 I am not being critical. I am trying to bring your attention
23 as a new intervenor, not only our attitude but the tradition-
24 al attitude of the Commission toward persons who undertake
25 to intervene. When you ask to intervene and you are given

1 that status, you at the same time, agree to remain informed
2 as to what is happening in your case and to make a contribu-
3 tion. And, please do not regard it as personal criticism.
4 I know that your contribution is burdensome to you, and we
5 are aware that you are trying to make a contribution with
6 no rewards, immediate rewards, and we appreciate that. But
7 you do have to be aware of your responsibilities.

8 MS. AAMODT: Well, I take your comments very
9 much to heart. It was just a suggestion that it would be
10 practical in writing and--

11 CHAIRMAN SMITH: It will be in writing.

12 MS. AAMODT: Well, I am sorry that I did not
13 notice it.

14 CHAIRMAN SMITH: You should pay very close
15 attention to all the Board's orders.

16 MR. POLLARD: I was wondering whether it would be
17 appropriate now because we dealing the same to talk about
18 my--those most are the planning contentions of mine.

19 CHAIRMAN SMITH: I think not. I did digress--

20 MR. POLLARD: Okay.

21 CHAIRMAN SMITH: Presume to lecture; I hope it did
22 not sound like a lecture, but it is an important issue.

23 MR. POLLARD: One point of clarification on this.
24 Presuming that we are going to have a decision today on the
25 discovery schedule.

1 CHAIRMAN SMITH: I doubt it.

2 MR. POLLARD: The only--

3 CHAIRMAN SMITH: You will have--there is an
4 excellent possibility that you will have relief over on
5 the February 16 deadline.

6 MR. POLLARD: Okay. At least so that we are not
7 sort of hanging. That is my concern.

8 CHAIRMAN SMITH: You will probably get that with
9 another lecture.

10 MR. TOURTELLOTTE: Mr. Chairman, have you finished
11 with the intervenors on this issue?

12 CHAIRMAN SMITH: Yes, we have.

13 MR. TOURTELLOTTE: Could we have the benefit of
14 the applicants--

15 MR. TROWBRIDGE: Jim, I have proposed--I have
16 some notes, Mr. Chairman, discovery schedule.

17 I was going to propose, however, a five or ten
18 minute recess.

19 CHAIRMAN SMITH: Clay.

20 (Whereupon, a five minute

21 recess was taken at 11 o'clock)

22 (Whereupon, the proceedings

23 came to order at 11:15 o'clock)

24 CHAIRMAN SMITH: May we proceed now?

25 Mr. Trowbridge?

1 MR. TROWBRIDGE: Gentlemen, I am going, again,
2 essentially read the set notes and I will follow that if I
3 may by some comment on intervenor remarks.

The first pre-hearing conference order required discovery to be completed within 60 days, by February 16. This included all discovery except for an additional 30 day discovery period based on new information in the SER.

Further, as explained by the Board during the first pre-hearing conference, this meant the discovery request must be filed on a schedule which would leave time for responses and the basis of the times alot for responses in NRC regulations would then be 60 days.

By memorandum, in order, dated February 1, the
Board extended the time for response to the discovery request
to March 17 to the extent that such extention proved
necessary after excersize of ordinary diligence to respond
within the usual Regulatory time. The Board did not in that
order, extend the time for discovery request, the possibility
of such an extention, is as we understand it, as declared to
the case, one of the subjects to be discussed today.

21 It is licensees position and that is with two
22 exceptions. There should be no extention of the time for
23 the discovery schedule request. One, is the 30 day period
24 for discovery on new information in the SER, for which the
Board has already provided. The other has to due with

1 follow-on discovery.

2 Licensee recognizes that some intervenors, includ-
3 ing UCS and Sholly, may have counted on follow-on discovery
4 based on answers to their initial interrogatories. We think
5 it reasonable to allow such intervenors a period of 10 days
6 after the mailing of responses to all of their initial
7 interrogatories, in which to serve follow-on interrogatories.

8 Two restrictions on follow-on interrogatories
9 should however, be made clear. First, they must generally,
10 be followed-on. In the sense that the follow-on inter-
11 rogatory must be both related to and justified by the
12 response to the original interrogatory. Second, the
13 privilege of follow-on interrogatories, should be limited
14 to those initial interrogatories which were filed on a
15 schedule which would have permitted both the follow-on
16 interrogatories to be filed and the responses thereto to
17 have been completed within the 60 day period. Allowing--

18 CHAIRMAN SMITH: I am sorry, Mr. Trowbridge.
19 Could you go back over that last though again, please.

20 MR. TROWBRIDGE: Right. Second, the privilege
21 of follow-on interrogatories, should be limited to
22 those initial interrogatories which were filed on a schedule,
23 in other words, earlier enough which would have permitted
24 both the follow-on interrogatories to be filed and the
25 responses thereto to have been completed within the 60 day

1 discovery period.

2 CHAIRMAN SMITH: And there you are referring to
3 the arguments set forth in the licensee's response to
4 Mr. Sholly's interrogatories which you said they were late
5 and that they were not filed in time to help them to
6 respond to within the time originally established for
7 additional discovery. Is that--

8 MR. TROWBRIDGE: I am not sure. Let me see
9 if that--answers the questions; if it doesn't, we will try
10 it again.

11 On this basis, the only initial interrogatory
12 which would qualify for follow-on discovery, are the first
13 set of interrogatories filed by UCS and Sholly and some of
14 the early interrogatories filed by TMI-A. Does that--

15 CHAIRMAN SMITH: I understand.

16 MR. TROWBRIDGE: With respect to discovery on
17 new information in the SER, we urge the Board to establish
18 now the ground rule that all the discovery request must be
19 made within the first 15 days and all responses in the 15 days
20 thereafter. That is the suggestion that I made earlier.

21 The suggestion has been made, the argument has
22 been made, because the SER has skipped in schedule, the
23 time for discovery request should be extended. In our
24 view the opposite is true.

25 The slippage in the SER means instead that both

1 licensee and the NRC must be free to devote all of their
2 efforts to catch even up with the original schedule to the
3 extent possible.

4 When the Commission was considering this August 9
5 Order, it was informed by the NRC Staff that the SER might
6 be issued as early as December 1, 1979. By the time the
7 first pre-hearing conference, this date had slipped to
8 January 1, 1980 and has now slipped much further.

9 If the Board is to adhere to the Commission, it
10 is best desired to expedite this hearing, it should do all
11 it can to avoid further slippage in the SER schedule by
12 not allowing additional and unplanned discovery to interfere
13 with the completion of the SER.

14 All of the parties have known since the Commission's
15 August 9 Order, that the Commission's target schedule
16 allowed only 60 days for discovery, that was known at least
17 since the first pre-hearing conference order that 60 days
18 was provided by this Board. It was incumbent upon all
19 immediate intervenors to both pay theirs and time their
20 discovery request to this period. They should not be allowed
21 to exasperate the unfortunate delays which have occurred and
22 preparing an SER by the imposition to further discovery
23 burdens on licensee under staff and I might add on exactly
24 that same people, for the most part who would be required to
25 work on the SER and our imput to it.

I have a few comments to make on the intervenor
remarks. First, I think it comes very badly for an inter-
venor to have made absolutely no use of discovery to date to
be talking about extention of time. I include in this
category four intervenors: Newberry, CEA, Aamodt, and
ECNP.

CHAIRMAN SMITH: Excuse me. Well, never mind,
we will come back to it later.

MR. TROWBRIDGE: Looking at my incomplete notes,
Mr. Adler told me we had computer printouts and work orders
on--computer printouts of work orders and I think worker
hours, which we did not tell him about. I am not going to
debate matter, because this is not a matter of personal
knowledge to me, simply to say that my understanding is
different. The interrogatory asks for the original
time sheets and it asks for the originals records of hours.
These we provided in and we volunteered in the process
to get that there were computer printouts as well.

ECNP included in its remark the complaint that we
had filed extensive interrogatories on ECNP. I would remind
ECNP and other parties and the Board, that a great many
contentions that were allowed in this proceeding on the
assumption that the further basis emphasis would be provided
through the process of discovery. We have attempted to do
that and that has been the main thrust of our discovery

1 request and there is no way in which this would have been
2 forthcoming from the intervenors without our asking for it.

3 Finally, I would like to respond to ANGRY's
4 complaint about the delay and in response to interrogatories,
5 which responses are indeed being worked on. First, ANGRY
6 made the point that they had in mind, follow-up discovery.
7 I would point out that they simply did not file their
8 interrogatory request on a schedule which would allow us
9 the Regulatory time for replying and then still leave,
10 within the 60 day period, time for a second round of dis-
11 covery. I would also like to mention, with respect to
12 ANGRY, that we filed interrogatories on ANGRY three days
13 before they filed them on us and we have no communication
14 from or response from ANGRY from those interrogatories.

15 That completes my statement, Mr. Chairman.

16 CHAIRMAN SMITH: Mr. Trowbridge, you made one
17 point that discovery, itself, because of the need to put
18 personnel on responses is resulting . Jealy, has that been
19 the case, is that one of the reasons why licensee has
20 reported to the Board today that with the exercise of
21 ordinary diligence it could not--it had to possibly use the
22 entire of extention of time that provided to the Board? I
23 note that the licensee, itself, is the same, that with
24 ordinary diligence it cannot respond in a regulatory time
25 to certain discovery request.

1 MR. TROWBRIDGE: That is correct. And had we
2 not prior to the Board's order, had extention agreed upon
3 by other parties, we would have had to come to the Board
4 for relief. UCS, for example, and Mr. Sholly have been
5 accomodated now. In their respect to UCS now, we have
6 as his wife pointed out, we have filed--I will say answers
7 to the majority of their interrogatories and it is a matter
8 now of mechanics before the rest as a tightening in the
9 affidavit that the rest--Sholly's are not quite that close
10 partly because, Mr. Chairman, while we reviewed some of the
11 proposed responses to Mr. Sholly, we did not regard them as
12 sufficiently responsive. We have sent them back. But we
13 are working on them.

14 CHAIRMAN SMITH: If it were not for your view
15 that working on extended discovery, detracts from the--
16 your Staff, needed to prepare for the litigation in it, in
17 fact, perhaps even to prepare to the restart, would you have
18 objection to discovery--extention of discovery; if it did
19 not delay the proceeding? I mean is that the only reason
20 for objecting to--providing more discovery time?

21 MR. TROWBRIDGE: That is my primary reason,
22
23 Mr. Chairman. It is not my only reason. I have never been
24 in a proceeding in which, for whatever reason, intervenor
interested or not, favor, extention of time. We are--let me
take Three Mile Island alert.

1 Three Mile Island has already made three efforts
2 in motions to the Board to delay this proceeding. First was
3 on October 10, 1979 when TMIA quandered a request for a delay
4 by several months in the filing and rulings on contentions.

5 A second TMI request on November 2, 1979 to stay
6 all proceedings pending action by the Pennsylvania PUC in
7 its show-cause proceeding.

8 And the latest on January 28, 1980 a motion to
9 extend discovery schedule for three months. This leaves
10 out most of the recent motion, at this late date adopt
11 Sholly contentions and start discovery on them after the
12 discovery period set by the Board has closed.

13 I feel a necessity to resist extention of time
14 which simply wrote the process and invite more extention
15 in time, but you are correct, Mr. Chairman, my immediate
16 concern is with the effort needed to get on with the SER and
17 to respond to Staff questions and second sets of questions
18 and to work out, to get the SER in a position to proceed
19 with this here. And, as I mentioned, there are people who
20 would be here today for the company, if they were not back
21 home working on further responses related to the SER.

22 MR. ADLER: Mr. Chairman, I feel compelled to
23 at least respond just to the implication that the motions
24 we have been filing in the past have been for the purposes
25 of delaying this proceeding and indicates some kind of

1 pattern. Each motion we have filed has been based upon
2 a separate factual circumstance. The first motion we filed
3 was to delay the proceedings until Kennedy Report and the
4 other reports were issued. This Board denied that motion.
5 The second motion was filed in the wake of the PUC's
6 decision asking MET ED to show cause why it should not be
7 terminated as an operating utility in Pennsylvania. A
8 separate set of facts. This third request is based upon
9 discovery and the information we received since December 10
10 and we reject totally any implication on the part of
11 Mr. Trowbridge that we were attempting to delay this pro-
12 ceeding for other than meritorious reasons.

13 CHAIRMAN SMITH: Mr. Sholly?

14 MR. SHOLLY: There seems to be another alternative
15 here which perhaps you are alluding to, but I am not sure,
16 and that is that perhaps it would be advantageous to all
17 parties concerned to suspend discovery at some near-term
18 point and permit the Staff and the licensee to get on with
19 the work of getting the SER out, establishing some period
20 of time, perhaps 30 days or whatever seems to be reasonable
21 to everyone, to again pick discovery and complete it. This
22 would have a couple advantages. One the SER could come
23 out at the earliest possible date and you could move on with
24 the proceeding. Secondly, it would allow intervenors, the
25 Staff, the licensee, to prepare any interrogatories in that

1 intervene time which they care to ask, they could be filed
2 right away. And we could all get cracking on the answers.
3 I think that is a possibility which we could perhaps explore;
4 it could be an extradicted manner of handling things.

5 CHAIRMAN SMITH: That is somewhat built-in to the
6 relief we afforded in our order proceeding this conference.
7 It was intended that we had in mind a catch-up period.

8 MR. TROWBRIDGE: May I respond to that, however?

9 CHAIRMAN SMITH: Yes, sir.

10 MR. TROWBRIDGE: I am interested in getting SER
11 out as early as possible. That is not a goal in itself; that
12 is so that we can get on with the hearing. Just to add
13 after the SER out, a further period for discovery resumably
14 before we get to the hearing, accomplishes nothing from
15 our standpoint.

16 CHAIRMAN SMITH: Mr. Pollard.

17 MR. POLLARD: Yes, but we already have 30 days
18 discovery after the SER.

19 MR. TROWBRIDGE: You have a 30 day to discovery
20 based on new information and SER and I think--I am hoping
21 that will be carefully observed. There is a lot of infor-
22 mation in the restart report and a million other documents
23 that you have now which would not justify--this is not an
24 automatic 30 days--I think I forgot before. It is for new
25 information in the SER.

1 MR. POLLARD: But it--that does not make to com-
2 plete if I was interrupted. That 30 days will be needed
3 anyhow for discovery. The point would be, as Mr. Sholly
4 is saying, you allow that SER time to be moved up by sus-
5 pending discovery and then we would still only have 30 days
6 at that point in discovery. But, that discovery would not
7 then have to be limited to what was in the SER.

8 MR. TROWBRIDGE: Mr. Chairman, there is so much
9 that you can cram into 30 days. If we are going to cram
10 not just new information on discovery dates on SER, but
11 every discovery request, and we have what nine intervenors
12 that are going to file discovery request that are not,
13 should in my view have already been filed, and do it all in
14 30 days; that is physically impossible.

15 MS. WEISS: Mr. Chairman, I just want to point
16 out when you rule on this that--I would like you to keep
17 in mind that UCS has asked both the Staff and the licensee
18 for their position on each of our interrogatories. As of
19 the answers that we have gotten from both are that
20 they do not yet have positions on our interrogatories and
21 they cannot answer that question.

22 That suggest to me that perhaps discovery was
23 started too early, perhaps there is some merit to this
24 argument about suspending. I do not really care whether we
25 suspend or not, but it certainly indicates that we ought to

afforded a reasonable amount of time from the time that they do have positions on our contentions.

CHAIRMAN SMITH: I think that is implicit in--

MR. TROWBRIDGE: I am sorry, Mr. Chairman. I got distracted; somebody handed me a message and it turns out to be for Mr. Tourtellotte. Would you--could I impose on--

MS. WEISS: Would you like me to repeat?

CHAIRMAN SMITH: Yes, would you please.

MS. WEISS: The point was that we have asked both the licensee and the Staff to give us their positions on each of our contentions. Their response has been from both parties thus far, that they do not yet have positions on the UCS contention. That indicates to me that discovery was perhaps started too early, I do not think that it matters that is water under the bridge. But, in any case, to say to draw artificial lines that you cannot--you can only follow discovery now, if you followed it before a magic date two months ago, it seems to me to exhaust form over substance in a manner which ultimately--its got the prejudice the way this record looks, and the extent to which the hearing when we ever get to it can proceed in an expeditious way.

CHAIRMAN SMITH: I was--you did not restate--

MS. WEISS: Well, I never got to the last part there.

1 MR. TROWBRIDGE: Mr. Chairman, I--

2 CHAIRMAN SMITH: You still do not know what her
3 point was.

4 MR. TROWBRIDGE: I am sorry. I thought that was
5 it; I thought I just heard it. Go ahead.

6 MS. WEISS: The point is that we just ought to
7 have discovery extended until 30 days after the SER, without
8 artificial lines drawn about who is entitled to that based
9 on whether or not they filed their first before or after
10 our magic date.

11 CHAIRMAN SMITH: All right.

12 MR. TROWBRIDGE: Because we--

13 MS. WEISS: Because we obviously started it too
14 early since I cannot even get responses from licensee and
15 the Staff to what their positions are in our interrogatories.
16 That is months after--I mean to our contentions.

17 MR. TROWBRIDGE: Let me speak to you because, I
18 think it is perfectly apparent from the answers to inter-
19 rogatories you have gotten so far and that we show you all
20 our basic position on your contention is quite clear from
21 the answers that you got. Your request for a statement of
22 our position as you will recall was accompanied by--are
23 there any dissenters from this? Have you ever taken a
24 different position? This we can do when we have prepared
25 testimony and know it precisely. That is when that kind

1 of answer is possible. Right now, it is not possible to
2 answer your sub set of questions on our positions without
end susan 1 preparing testimony.
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4 CHAIRMAN SMITH: Please, only--

5 MR. TROWBRIDGE: And, I do not have any witnesses.

6 CHAIRMAN SMITH: Please, only new comments on this
7 subject. I think it has been debated quite thoroughly.

8 Dr. Kepler?

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DR. KEPFORD: Yes, if the licensee is really strapped for time the way they say, then perhaps they should consider the time spent in drafting, for instance, 43 pages of interrogatories for ECNP. Now, they seem content that to offer that UCS should be satisfied knowing their general position.

A comparable retort would be that from the intervenors' point of view, our general position has been made known by the filing of our contentions, and the licensee should be happy with that, yet instead, we have 42 pages of "identify all knowledge by all persons, each and every fact on each and every phrase in virtually each and every contention."

Now, there's two sides to this argument, and I think this should be heard. Mr. Trowbridge is trying to set a double standard whereby Met Ed can get by with as little as possible and demand the moon, and 100 hours a day in answering these ridiculous questions or the equal amount of time in objecting to all of the silly questions.

I don't see how they can have it both ways.

Thank you.

CHAIRMAN SMITH: New comments, please, nothing --

MR. POLLARD: One question. Has the staff addressed the -- should they?

CHAIRMAN SMITH: I don't think the staff has addressed the particular proposal by Mr. Trowbridge yet. Do

1 you have a comment on that?

2 MR. TOURTELLOTTE: We haven't addressed discovery
3 generally. I think there's one thing we may be overlooking,
4 I don't know how it really impacts on the total picture of
5 discovery, but there were two proposals about how we were
6 going to proceed, and it seems to me that that may have some
7 bearing upon discovery, whether we're going to proceed on
8 a discrete issue or group of issues-type basis or whether
9 we're going to wait until the whole thing comes out, and take
10 all nine issues or all of the issues of the August 9th order.
11 That's number one.

12 Number two, is I haven't directly heard it pointed
13 out, perhaps because it's more within my knowledge than most
14 other people, that sort of the reason we're in the position
15 we're in right now is that discovery has existed up to now,
16 and has delayed to some extent the submittals that we have
17 received from the licensee, so what we get into is a kind of
18 pernicious thing, perhaps, where the licensee has not made
19 the submittals that are required, therefore, the staff can't
20 do the analysis required, therefore, the SER is not coming
21 out, therefore, we have a delay, therefore, why not have more
22 discovery, and when we have more discovery additional sub-
23 mittals will not be in on time, and the staff will be further
24 delayed, and so on, into the night.

25 So there is a real problem there, it seems to me,
as to how we handle discovery and at the same time assure

1 that the resources that both licensee has and the staff has
2 are also available to address the safety issues that are
3 raised by the August 9 order on a more direct fashion.

4 CHAIRMAN SMITH: Anything more on this topic?

5 Ms. Aamodt?

6 MS. AAMODT: I want to say in the beginning that
7 I have other things that I would like to do in 1980, so I'm
8 not, you know, in any way wishing to extend this any further.
9 This has been an excruciating experience in many respects, but
10 I was not aware, having no legal counsel, that discovery meant
11 interrogatories and response within 50 days.

12 CHAIRMAN SMITH: Well, Ms. Aamodt, well, here again,
13 you simply have not done your homework. You have to pay close
14 attention to what Board rules in these cases, otherwise you
15 cannot possibly participate in a matter which will make a
16 contribution. The Board made that very clear.

17 MS. AAMODT: Well, I've attempted, I have read what
18 I think -- but you must realize, Mr. Smith, that the informa-
19 tion that we get is voluminous, and I have read all the orders
20 that come from you. I read everything that comes from the
21 Board. I have not read every single booklet that is sent me
22 every --

23 CHAIRMAN SMITH: If you've read everything that has
24 come from the Board then you will know that we issued an
25 order requiring that discovery be completed, and that was

1 particular at the prehearing conference, but it is just
2 another indication, Ms. Aamodt, you apparently are very busy
3 and have not had the time to thoroughly examine what the Board
4 has ruled in this case, and you just simply have to do that
5 if you're going to participate.

6 MS. AAMODT: I think it was a misunderstanding in
7 communications, really. I really didn't intend to misunder-
8 stand what you were saying.

9 CHAIRMAN SMITH: I understand it is not an intentional
10 misunderstanding.

11 MS. AAMODT: But, Mr. Smith, I haven't had responses
12 that come very quickly to things I have written. The
13 licensee objected, and I feel as though I have been held up
14 by this misunderstanding about the emergency contention after
15 we felt they weren't revised, after we realized that perhaps
16 we should have revised them. Then we thought maybe ours
17 didn't need revision in that we did not hear from anyone.
18 Then Mr. Trowbridge wrote and said that ours should all
19 be discarded, our emergency contention, because we had
20 revised them. Then we immediately set out working on this
21 when we had started to do our interrogatories, so we set those
22 aside, started to revise our emergency contention, only to
23 get a letter from NRC saying that our emergency contentions
24 needed no revision, should all be accepted.

25 Then I got a call from your office, Mr. Smith,

1 saying that discovery -- then we were working very rapidly
2 and we were almost at the final stages on our interrogatories
3 -- we got a question and called saying that there would be
4 a meeting here today to increase the time of discovery. So,
5 I felt, "Now we'll go back and pick up some of these points
6 on an earlier contention we were trying to get in so that
7 we could work on those, because the discovery will be made
8 interrogatories, we would make them more responsible and
9 save your time and our time in not having to go back and forth
10 and back and forth. Our intention is not at all to keep
11 this up, but --

12 CHAIRMAN SMITH: Believe me, I have no question about
13 your good intentions. But you have advised the Board over
14 and over again that you are a very busy person with a new
15 business, with a farm to run, a family to run, and Christmas
16 responsibilities, and we're beginning to perceive that you
17 may be too busy to carry your responsibilities as an
18 intervenor, and that is unfortunate because I think you can
19 make a contribution.

20 MS. AAMODT: Well, Mr. Chairman, I really feel as
21 though it comes down to misunderstanding about the deadline
22 emergency plan, and if I am wrong, but Mr. Gray of the NRC
23 did tell me that there was no time, other than that page 8,
24 and I was not here at that time. I was here later to beat
25 that deadline, but that deadline was not in my notebook when

1 I got home, then I couldn't have known. And I feel as though
2 we got -- and I'm asking leniency in our general case, and
3 not as the licensee says that our work should now be thrown
4 out.

5 Also, I don't want to seem repetitious, but I
6 do want to say that the agricultural plan not being there
7 again, how can I make interrogatories?

8 CHAIRMAN SMITH: Dr. Little is going to discuss
9 this.

10 I didn't want to digress to take up your case
11 particularly but since you have proscribed your problem, I
12 would like to explain to you the Board's consideration in
13 trying view your emergency response plan.

14 The problems that we have faced.

15 First, as it happened, you did not understand
16 the deadline, as I mentioned before, we cannot see that you
17 made any effort to ascertain what you must have known was
18 a deadline sometime. There had to be a deadline sometime in
19 the proceeding for the filing of these revised contentions.

20 But, nevertheless, we received your late file.
21 And we looked at the contentions, and we compare them and we
22 see no changes from your original emergency planning con-
23 tentions, so the licensee makes a response which seems to have
24 appealed to the Board, that with respect to your contention
25 No. 4, I believe, that you had not addressed the licensee's
revised emergency plan.

1 Dr. Little, in particular, and the Board in its
2 session go to the licensee's reference, which I don't happen
3 to have at hand right now, and, indeed, that seems to be the
4 case, that you have not addressed the revised plan. You
5 have, apparently, as far as we could tell, not been aware of
6 the revised plan.

7 So, the licensee rules that before we have a chance
8 to rule on your emergency planning contentions. What happens,
9 here comes a 10-page file where, for the first time, for the
10 first time, Ms. Aamodt, you are telling us, on January 31st,
11 by this time, six weeks late, the basis for your revised
12 emergency planning contentions.

We just can't do business that way. We will completely collapse if we allow people over and over again, if they get turned down one time to add new ideas, new thoughts, new bases. You did not really justify your revised contentions, if then, I haven't studied them, the Board hasn't considered them, until January 31st, 1980. And now, where are we? You have raised completely new information in your filing of January 31, 1980, which the licensee and staff have had no opportunity to address.

Now, up until this moment, the Board had no reason
to believe that you were even aware of the licensee's revised
emergency plan. Now, can't you conceive, Ms. Aamodt, that
the Board could have received more help from you on your

concerns in emergency response?

We had no guidance. We had very little information from you.

MS. AAMODT: I am sorry, Mr. Smith, but I think we were really in need of legal counsel.

CHAIRMAN SMITH: Yes.

MS. AAMODT: I think our rights were jeopardized from not having it, but I think we've attempted to protect our rights by going ahead even if at this late date in explaining that. But I think that we were aware of the emergency plan, we did read the emergency plan. We attempted to explain in our letter --

CHAIRMAN SMITH: Which letter is this now?

MS. AAMODT: I don't know exactly.

CHAIRMAN SMITH: January 31st, 1980, which we received the 2nd of February.

MS. AAMODT: Where we object to the licensee's interpretation of revision in contention four.

CHAIRMAN SMITH: But that was the first time that you gave any information whatever on which we could even infer that you had even read the revised emergency plan.

MS. AAMODT: I think that we referred -- I remember looking up your reference, one was in Las Vegas and he he those pages with him, and I finally found where he had pulled them out of the report and I remember typing in reference, so I don't know why --

1 CHAIRMAN SMITH: I may have overstated, Ms. Aamodt,
2 there may have been a reference to revised plan, but there
3 was no indication in your filing that you had considered the
4 revision in the plan.

5 MS. AAMODT: I honestly don't understand it.

6 CHAIRMAN SMITH: I am just trying to explain to you
7 that the Board has spent much time, much time, trying to
8 understand your position, trying to understand what the
9 Aamodt family

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until January 31, 1980, which is quite late. We can't devote the time; we have many contentions and many intervenors and many serious problems. We can't look at each intervenor over and over and over again. Intervenors have to make their point timely and well; you can't make your point in a skeletal fashion and then embellish it as you hear objections to it which we will come to later

Again, I seem to be lecturing, but I'm trying to stress the point that we have viewed your intervention with a great deal of sympathy and with a great deal of interest in the contribution that you can make; that you have made it very difficult for us to bring you into the proceeding in a productive way.

MRS. AAMODT: Mr. Smith, I'm totally at a loss, really, because I really thought that the whole idea was to simply flush out our ideas as we went along. I didn't think, originally, that we had to be specific. I thought that that was the idea of the proceeding, was to add to the skeleton until we had something that we could recognize.

CHAIRMAN SMITH: But, on a schedule.

MRS. AAMODT: Yes, but I do think I explained to you, Mr. Smith, my reasons, though.

CHAIRMAN SMITH: Dr. Little has pointed out a consideration. Mrs. Aamodt, we don't question the sincerity of the Aamodt family in intervening here; we don't question that it is

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a sacrifice, both financial and convenience; and your motives
are important in this process that we have people like you.
But, frankly, I think that you just need help; you need help.
You don't have a -- you're perhaps too remote from the other
intervenors who seem to have captured the sense of the discovery
process somewhat -- I mean the intervention process somewhat
better.

Could we recommend that you maybe seek help of some
of the intervenors; there are many very qualified skillful
people participating in this case and you might want to spend
some time with them and ask questions and don't let things
go that you have doubts about: find out the answers. The
Board has been trying very hard to get your contribution to
this proceeding, but you have to give us more help.

MRS. AAMODT: I really feel as though, you know, we
did that in our January 31 letter --

CHAIRMAN SMITH: Yes, but it is so late; it is so late.
It is almost at the end of the proceeding.

MRS. AAMODT: I am sort of at a loss, though, to
understand how we would hold up the proceedings by having
answers to those.

CHAIRMAN SMITH: Now, this is another matter which we
haven't arrived at. I'm pointing out to you that after every-
body has debated your contentions; after the Board has spent
a long time considering your contentions; after the Staff filed

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1 papers; after the licensee filed papers and everybody has
2 worked very hard on your contentions, for the first time, you
3 come in with a basis for us to give serious consideration to
4 your emergency planning contentions. It is just too late.
5 I'm not making a ruling that it is too late; I'm telling you
6 that it is a very inefficient process for everybody to debate
7 your contentions and then have you finally make them at the
8 very end. And not only that, it is just, frankly, against
9 the rules of the Commission.

10 But, I don't want to pursue -- make you feel bad; I
11 hope I'm not. I'm spending a lot of time on this because we
12 want you to be able to participate and make a contribution
13 and I'm trying to identify problems that you have and possible
14 solutions.

15 MRS. AAMODT: Mr. Smith, if we could be excused from
16 the fact that we had the problem illness and the holidays and
17 so forth and the misunderstanding on the basis that we are
18 coming faithfully and we are seeking help; can you allow that
19 we go forth in good faith from this time on?

20 CHAIRMAN SMITH: You know, we certainly have to take into
21 account your good intentions, but you cannot ask us to give
22 you what we have no power to give. We cannot take away the
23 due process rights of the licensee and that may not be among
24 intervenors a popular thought, but it is our responsibility
25 and we just cannot because we like you change the rules to

1 accomodate your personal problems to any great extent.

2 MRS. AAMODT: Well, we wouldn't want you to on our
3 expense, but I really felt as though we weren't really
4 jeopardizing the onward going of the hearing in any way. We
5 read the whole SER report only to find out that that was not
6 to be included in our interrogatories. That sort of thing,
7 you know, is kind of hindering to us.

8 CHAIRMAN SMITH: I realize that your burden as an inter-
9 venor is a great one; we realize that.

10 MRS. AAMODT: I think it is for all the intervenors
11 and the licensee is saying it is for him. I don't know how
12 many lawyers they have --

13 CHAIRMAN SMITH: There is no question, Mrs. Aamodt,
14 that intervening in this proceeding is a great burden; I mean,
15 it is a big burden. But, it is one that we can only relieve
16 you of to a certain extent.

17 MR. Pollard.

18 MR. POLLARD: I have just a brief comment. I think
19 that it is important because I think other people have ex-
20 perienced it, too. I think it's not just a personal problem,
21 but to realize that it is a structural problem. I think
22 recommendations from Rogovin and Kemeny concerning the
23 opposite public counsel address this need. And, I feel in
24 terms, again, in the spirit of the modified adjudicatory pro-
25 cedures that that awareness of that in the minds of some of the

1 intervenors, this process can be difficult for a novice
2 intervenor for really knowing what's going on. It is something
3 that really does jeopardize the proceedings, as far as we see
4 it. That perspective is very important; it is not just a
5 personal matter.

6 CHAIRMAN SMITH: Yes. It is not a question of the
7 fact that the Board is not aware that some intervenors do not
8 have experience and do not have the experience to fall right
9 into stride; we know that.

10 MR. POLLARD: That's my point. My point is not that
11 the intervenors don't have the experience; the NRC doesn't
12 have the capability of dealing with them as it is set up.

13 CHAIRMAN SMITH: All right, but that's another matter.

14 MR. ADLER: Mr. Chairman, can I make one -- before
15 you go to the NRC on their comment on the discovery.

16 There is one element that hasn't been discussed as
17 a reason for extending the discovery period: it only applies
18 to TMIA and that's the taking of depositions. We are the only
19 ones that have noticed anyone for depositions to my knowledge
20 and it deals basically with the management contention. It is
21 important that these depositions be taken because we don't
22 believe that this Board can do the job it was directed to do
23 by the Commission by just talking to the senior vice-presidents
24 from Metropolitan Edison; you have to talk to the men who work
25 at the plant, the present workers and the former workers, be-

cause for the utility executives to get up here and say, we
are going to do everything right, you have to see how it has
been implemented. It is essential to us that we continue to
take the depositions of present employees and former em-
ployees of Metropolitan Edison. It is taking us time to track
down some of the former employees. The licensee has given us
the last known addresses, but 90 percent of the coorespondance
we have sent to these last known addresses have been returned
to us; addressee unknown, no forwarding address, forwarding
address has expired. So, we have had to go out and try to
track these people down. We have sent people to the last
known address, talking to neighbors. We have to have this
time to track these people down, because a lot of these
people left in the wake of the accident: a lot of these
people left making statements that they had concerns concern-
ing the operation of the plant. We have to talk to these
people.

And, I think this Board wants to know what these
people have to say, because you are not going to get the kind
of information you need to deal with the management compe-
tence question raised by the Commission by talking to the
executives of the power plant. For that reason, I think this
is another basis why we have to have this extra time, we
should not suspend the discovery period; I can't concur with
what has been suggested by some of the other intervenors that

it be suspended until after the SER: we need this time. Why should we sit around twiddling our thumbs? We want this time to continue the process to get this information, and I think that's an additional reason why we feel that the discovery schedule should be altered.

CHAIRMAN SMITH: Thank you.

Now, is there anything further on this point?

Ms. Barley?

MS. BARLEY: I'm not being cute; I'm not being dumb. I'm here because I'm trying to learn.

Now, I know Mr. Lewis' situation and the rest of the intervenors situations is that absolutely all the work, all the typing, filing, mailing, putting the stamps on the envelopes is done personally by those people. It is a burden, and I'm sure that you are aware of that and probably appreciate it.

However, I hear licensee saying that it is a burden on them, and I wonder if it truly is or have they got some help?

I have to say this, I really object to the statement in the Order saying that it was sort of the intervenors fault that the SER was delayed because we submitted discovery --

CHAIRMAN SMITH: Ms. Barley, I think that you have misperceived the Order. I think you didn't understand it; we didn't say that

1 MS. BARLEY: No, I said -- the Board didn't say
2 that; this was your phone conversation with the counsel for
3 the licensee.

4 And, I kind of -- I don't kind of, I do object to
5 that.

6 CHAIRMAN SMITH: Okay. Anything -- Mr. Levin?

7 MR. LEVIN: As a participant in another regulatory
8 agency's process, I appreciate the peculiar problems of an
9 administrative agency in attempting to deal with complex
10 problems which have been entrusted to it by the legislature
11 or in this case by Congress.

12 I think that virtually all that I know and all that
13 most of the intervenors and the different Regulatory Commission
14 Staff know about the accident has come directly from the
15 licensees, the employees, the contractors; and much of what
16 the intervenors and myself know has come out of the published
17 reports from the Nuclear Regulatory Commission Kemeny Commis-
18 sion and the most recent report of the Nuclear Regulatory
19 Commission.

20 The purpose of discovery is first to define the
21 issues; and secondly, the narrow the issues. I agree that this
22 subject is among the most complex that is dealt with in an
adversary hearing. And, in view of the complex nature of the
23 issues and the basic data that is required to make hearings
24 meaningful in any respect other than simply token & wear-

1 ances by witnesses who testify to the conclusionary statements.

2 It would be desireable to take into account the
3 complex nature of data in this hearing and allow some additional
4 al time for discovery to clarify the issues.

5 CHAIRMAN SMITH: All right. Has the Staff concluded
6 its comments on discovery scheduling?

7 MR. TOURTELLOTTE: Yes.

8 DR. JORDAN: May I ask a question of the Staff?

9 The Staff has been able to reply to many of the
10 interrogatories and I'm thinking particularly of the ones
11 which we are going to discuss later by UCS, and this undoubtedly
12 is due to that fact that they have not yet been able to address
13 all the issues, the mandatory issues, and to that point that
14 they have arrived at a final conclusion, therefore, as it
15 evidenced by the fact that the -- they have not been ablt to
16 complete the SER.

17 Now, I guess my question of you is really, does it
18 help -- is there any point, really, in a certain sense of
19 UCS and other intervenors, sending interrogatories to the
20 Staff at this time, since the Staff is not in a position to
21 answer it and until they get the SER out.

22 Now, there are a few cases in which the Staff claims
23 that they have evaluated and, for example, I believe you said
24 that in the case of emergency plans, you are all set and every-
25 thing's under control. But, for the most part, it seems to me,

1 that your position now is, that you do not -- you are not able
2 to evaluate all of the restart report; you have not received --
3 made up your position and so, therefore, the question to this,
4 is there any point, really, in having UCS and other people
5 sending interrogatories to you at this time?

6 MR. TOURTELLOTTE: Well, I would hope that we didn't
7 get too many more, but I think to answer your question, I
8 would point out that probably by the end of the first week
9 in March we will have all of the interrogatories that can
10 be answered substantially answered at that time.

11 Now, there are some interrogatories which I don't
12 believe we will necessarily be able to answer until we have
13 formulated our testimony, because the interrogatory goes to
14 the specific question of what position are you going to take
15 in a case. And the simple fact of the matter is because
16 of priorities, we won't know precisely what the position is
17 until we get all of the information in from the licensee and
18 have evaluated that and taking a position, perhaps, in our
19 written testimony, which is the first time it will be really
20 consummated will be after it is administratively reviewed and
21 approved and printed.

22 DR. JORDAN: Are you saying, then, as of March the
23 1st, that you will be able to have answered the first round
24 of interrogatories?

25 MR. TOURTELLOTTE: We believe that we will -- well,

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1 let me back up a moment. I think, as best I recall, we have
2 answered substantially all of the interrogatories of almost
3 everybody else that have been submitted to us to date. The
4 UCS interrogatories are some 212 in number, a much larger
5 number than we received from anyone else; and there are certain
6 of those that we could address earlier and we did our best to
7 do that. Some that we will be able to address by the end of
8 the first week of March and some that we feel are objectionable
9 we will never address, unless we are directed otherwise, and
10 some which we will address; but they really won't be addressed
11 until we get around to filing our testimony, because they
12 are not really covered in either the SER analysis or any other
13 analysis that we have already made.

14 CHAIRMAN SMITH: Okay.

15 Now, that leads right into the next -- are we done
16 with the general subject of discovery schedule? This would
17 probably be a good time for a break; the next item would be
18 UCS's motion to compell on the Staff's responses.

19 MS. WEISS: I'd just as soon go before -- since
20 Mr. Tourtellotte has essentially given his position, unless
21 the Board has strong feelings, I'd just as soon go before
22 lunch with our position.

23 CHAIRMAN SMITH: I think that we are more oriented
24 to the subject matter now and maybe it would be better to pro-
25 ceed.

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1 Before we do that, however, perhaps we can save some
2 debate and ask the Staff to clarify exactly what it has in
3 mind as far as responses to UCS's discovery in particular and
4 discovery in general. We have received the Staff's first
5 response -- we'll use UCS as an example -- Staff's first re-
6 sponse to UCS's discovery request is that this information will
7 be made available in the testimony. And, you certainly got
8 our attention when you said that.

9 But, then it was followed up quite soon by a
10 supplemental response which clarified that, I thought, was
11 that it will be made available as soon as it can be made
12 available and in supplemental testimony. Then, we go to
13 the Staff's response to UCS's motion to compel and I think that
14 the general theme of it is that the Staff is going to respond
15 to discovery when it is able to, as soon as it is able to.
16 But, there are certain aspects of the Staff's response which
17 brings that into doubt.

18 And, Mr. Tourtellotte, I hope that you can remove
19 the doubts that we have. I'm going to Page 3 of your re-
20 sponse to UCS's contention. In the final paragraph you state,
21 it should be understood, however, that various Staff positions
22 currently remained undeveloped. These positions, therefore,
23 have yet to be written, reviewed administratively, and print-
24 ed for publication.

25 Now, standing alone, one could infer that this infor-

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1 mation will be provided, but not until it has been printed for
2 publication.

3 Did I misunderstand that?

4 MR. TOURTELLOTTE: Well, I'm not sure that the words,
5 printed for publication, mean the same thing to you as, per-
6 haps, they mean to me. What I mean is until a position is
7 reviewed administratively and approved, it cannot be put in
8 a final form for being turned over to UCS. I don't mean
9 printed for publication in the sense that we are going to go
10 out a manufacture a book and go through the necessary steps
11 that we would ordinarily do to print a book: that's not the
12 idea. The idea is that as soon as we have all of the admin-
13 istrative things done and the final typographical errors have
14 been corrected and small editorial changes have been made,
15 then that answer will be made available.

16 CHAIRMAN SMITH: It may be that printing it for
17 publication may be the most efficient way to get the responses
18 to the intervenor as soon as possible, but my question is: if
19 the administrative review has been completed and printing of
20 a NUREG or a supplement or whatever it may be, is to be deferred
21 where that information would ordinarily appear, is it the
22 intention of the Staff to respond, nevertheless, to the
23 interrogatories?

24 MR. TOURTELLOTTE: If I understand the question, I
25 believe it is our intended purpose.

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1 We are going to communicate our position as soon as
2 we can communicate that position to UCS or to any other inter-
3 venor: that's what it means. We don't mean to say that we
4 are going to decide on an administrative basis and editorialize
5 some piece of paper and then hold it for a week or two weeks
6 to have it printed: that's not the idea. The idea is that
7 until we have done the editing and printing of it, we can't
8 provide it. We can't provide rough copies of what our
9 answers -- rough drafts of what our answers are going to be.

10 MS. WEISS: I don't think that the Staff has yet
11 answered whether their present undertaking is to respond to
12 these requests before the testimony is filed. That is the
13 central question here: do I have to wait for the testimony
14 to be filed to see the answers to the interrogatories, all
15 interrogatories?

16 MR. TOURTELLOTTE: The answer to that is no, because
17 all the interrogatories will not -- all of the interrogatories
18 are not covered by that particular problem.

19 There will be some interrogatories which we can
20 answer within the next three weeks and we will answer within
21 the next three weeks. There are some interrogatories which
22 by reason of the question, we will provide them to you as soon
23 as we have the answers. Now --

24 MS. WEISS: And that won't be until the testimony
25 is filed.

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1 MR. TOURTELLOTTE: In some cases that may be; I can't
2 tell you in every case when it will be, whether it will be or
3 it won't be. In some cases we might have answers which we
4 will ultimately use in our supplemental testimony that will
5 be prepared and will be ready before our total supplemental
6 testimony is prepared; in that case, we will provide the answers
7 ahead of the supplemental testimony.

8 But, there may be some, on the other hand, which will
9 not be finalized until we finalize the supplemental testimony.

10 CHAIRMAN SMITH: Mr. Pollard, this issue has been
11 very finely drawn between Ms. Weiss and the Staff and unless
12 you really think that you can make a contribution --

13 MR. POLLARD: I think I can.

14 CHAIRMAN SMITH: Okay.

15 MR. POLLARD: May I be very brief?

16 CHAIRMAN SMITH: Very brief.

17 MR. POLLARD: Okay. It's a question of whether
18 there would be a value in filing a draft response specifying
19 that it is as such, with the advantage, then, that if UCS
20 gets to respond with interrogatories to that, the final report
21 of, you know, of the NRC's position may be greatly improved.

22 CHAIRMAN SMITH: Well, why don't you work with
23 Ms. Weiss.

24 MR. POLLARD: It's a question of whether
25 Mr. Tourtellotte would serve -- provide a draft.

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1 CHAIRMAN SMITH: Okay, I think that Ms. Weiss would
2 probably do better if her line of thought isn't interrupted
3 and you are sitting right next to her and I'm sure that you
4 can communicate.

5 Ms. Weiss.

6 MS. WEISS: Thank you, Mr. Chairman.

7 I'm very glad you asked the question. I thought
8 I understood the answer; now, I know I understand the answer.
9 The Staff's position to be that as to some questions and how
10 many questions and to which questions, presumably we are not
11 to know until the time comes. We won't get an answer until
12 we see it in testimony and I find that little comfort indeed.

13 CHAIRMAN SMITH: You perceive a due process problem
14 then in that approach.

15 MS. WEISS: Why absolutely. Discovery is a matter
16 of right and it is not up to a party to say, wait until you
17 get our testimony.

18 If we said to you in response to the discovery
19 request, wait until you get our testimony, you would come down
20 like a ton of bricks and we would deserve it.

21 CHAIRMAN SMITH: But, no, Ms. Weiss, this point is,
22 which is not been -- the practicalities and the mechanics of
23 it has not been addressed, and his point is that it may very
24 well be that the answers to some interrogatories or discovery
25 requests, the answer may not exist to be provided until the

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written testimony is filed. And, then, what do we do?

MS. WEISS: That may be on very narrow grounds.

CHAIRMAN SMITH: That's the grounds that I think should be --

MS. WEISS: But, they have not responded on a point-by-point basis to the interrogatories and said, for that reason, we can't respond to this one. They very broadly said, we'll see you when we file our testimony.

CHAIRMAN SMITH: Well, that was in the first response to interrogatories, but I think the Staff is going to -- I don't want to argue for the Staff, but I thought we would get this laid out, positively remove any doubt, there is basis for doubt, Ms. Weiss. But, haven't they now made it clear that you are going to get responses to interrogatories and other discovery requests as soon as it can be made available to you?

MS. WEISS: To the contrary, Mr. Chairman.

Let me tell you why I think that: I feel, now, like a little animal with a trap slamming shut. I suppose I should have seen it coming, but that's not much comfort at this point. And, I'll tell you why I say that; we filed these interrogatories pursuant to the Staff's undertaking that it would abide, essentially, by the same discovery rules as all other parties. Now in this latest filing, their response to our motion to compel, the Staff says, no, we want to be bound by the -- by 2.720, the special interrogatory provisions that

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1 apply to the Staff, and you should have gone to the Board and
2 had them -- what that suggests to me is that they will answer
3 what they feel like answering; what they don't feel like
4 answering, they are going to stand on this other --

5 CHAIRMAN SMITH: We are going to get into that; we
6 are going to get into your motion to compel and the par-
7 ricular objections to it and the general objections to it.

8 Right now, I simply want to establish one place in
9 the record where it cannot be doubted, if that is possible,
10 that the Staff has committed itself to responding to dis-
11 covery as soon as it is practically possible to do so.

12 Now, isn't that where we are right now?

13 MR. TOURTELLOTTE: Yes.

14 CHAIRMAN SMITH: That part -- can we conclude the
15 debate on that?

16 MS. WEISS: Well, I'll accept that that's what
17 Mr. Tourtellotte says; I won't accept -- that is not accept-
18 able as a resolution of the issue to me, because the Staff
19 reserves to itself the right to come back and say, you didn't
20 submit these to the Board and have them make a ruling --

21 CHAIRMAN SMITH: Exactly.

22 MS. WEISS: So, it's not acceptable to me.

23 CHAIRMAN SMITH: But, at least with respect to one
24 part of the debate, it is now decided, is it not, that the
25 Staff will produce responses to interrogatories as soon as

6-19

they can?

If that has been established, then we can move on to other points; that's all we have, and I think it's a senior member of the opposite executive legal director tells us that, and that is the rule of this case and the Board accepts that.

MS. WEISS: Well, Mr. Chairman, let me just try and turn it around and ask you what this Board would do if the intervenors said, we'll respond as soon as we can; we won't know our position until we write our testimony?

CHAIRMAN SMITH: We are going to come to that now. I'm trying to resolve your debate one point at a time.

Now, let's move on to the next point. Do you agree that this aspect of it has been resolved?

MS. WEISS: I agree that the Staff just said that it will resp ^t as soon as it can; I do not agree that that's acceptable to me.

CHAIRMAN SMITH: But, you don't believe it. All right; it's not acceptable. Now, we are going to move to why it's not acceptable. But, now we've established, without doubt, the Staff's position and . . . of your motion to compel has now been rendered moot, because you complain that they don't give it to you as soon as it is available; you complain that they are artificially deferring responses until it is convenient in written testimony.

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1 MS. WEISS: Well, let me --

2 CHAIRMAN SMITH: We're going to get to whether that
3 is an adequate -- we are going to come to that, right now
4 if you're ready.

5 MS. WEISS: Well, what I asked for, Mr. Chairman,
6 was not simply the general response that, we'll get back to
7 you as soon as we can, but on a contention-by-contention basis
8 an explanation of what it was, what information, precisely, is
9 lacking which does not permit the Staff in its opinion to
10 furnish an answer.

11 So, I do not believe that even that renders -- that
12 certainly what he said doesn't render that part of the motion
13 moot.

14 CHAIRMAN SMITH: No, I didn't suggest it did. But,
15 that was an important part of your motion to compel and I
16 think that that part of the motion, I think, you probably
17 should be satisfied with it.

18 But, now we'll go to the adequacy of doing it as
19 soon as possible and the specific objections.

20 MS. WEISS: Well, I have already alluded to the fact
21 that in its response to our motion to compel, the Staff seems
22 to take the position that it can, at its will, invoke those
23 special protections of 10CFR Section 2.720; that is the higher
24 standard for discovery requests which applies on the rules to
25 the Staff. We want to make the argument that the Staff has

6-21

1 waived that; that by their conduct in accepting the interrog-
2 atories and partially answering the interrogatories, they've
3 waived any right to insist that we submit them to the Board
4 previous to -- and get us a special permission to submit
5 them to the Staff.

6 CHAIRMAN SMITH: I think that they not only have --
7 aside from the fact whether they have waived it or not, but
8 they have said that they don't insist upon it; haven't they?
9 Didn't I read that in their response?

10 MR. TOURTELLOTTE: I'm sorry, Mr. Chairman, I didn't
11 hear what you said.

12 CHAIRMAN SMITH: Does not the Staff in its response
13 to the motion to compel say that its arguments about submitting
14 the interrogatories to the presiding officer are made, but
15 you don't depend upon them? Give me a moment to look --

16 MR. TOURTELLOTTE: But, what we say is that the
17 regulations prescribe the method for obtaining discovery
18 from the Staff and that method precludes the necessity of a
19 motion to compel by reason of the fact that had it been
20 followed, then the directive to follow the interrogatories
21 would come from the Board initially and the Board need not
22 issue an Order to compel itself, or to compel the Staff after
23 it has already compelled the Staff.

24 And, but, then what we go on to say is, but even
25 had that procedure been followed, the result would not have

6-22

1 been any different, because we made a good faith effort to
2 provide the answers as soon as we could and we are continuing
3 to do so.

4 CHAIRMAN SMITH: So, they raise the objection, but
5 they don't depend upon it.

6 MS. WEISS: Well, let me tell you why it's important
7 for us at this point, for this Board to formalize this; either
8 to order them -- to issue an Order for a motion to compel or
9 if it -- and I don't really see the terribly much practical
10 difference to it -- or order the Staff persuant to the pro-
11 visions of 2.720 to respond to these interrogatories, because
12 we are not willing to rely on the Staff's whim.

13 As I perceive their position, if they feel like
14 answering an interrogatory, fully, they'll answer an inter-
15 rogatory. If they don't feel like it, if they have problems
16 with it, they consider themselves able, at any point in this
17 process, to interpose an objection based on 2.720.

18 We feel we need more protection then that.

19 CHAIRMAN SMITH: Okay. Let's see if we can get some
20 comfort and assurance from the Staff on this point.

21 Could you elaborate on your position? You do seem
22 to me to be saying that they didn't follow the right procedure
23 but in any event, you are going to respond and you have been
24 trying to respond -- attempt to answer each question in good
25 faith, using the information it had available to it at the

6-23

time, I'm quoting from your letter.

Now, will that be the guiding principle for the Staff?

MR. TOURTELLOTTE: Yes, and we don't intend to be whimsical about refusing to answer anything. We intend to answer every interrogatory that is submitted to us as fully as we can and as soon as we can; provided that they are not objectionable and I'm not talking about objectionable because they failed to follow the regulations on how you get interrogatories to the Staff through the Board. That argument is made in this case simply because we are talking about a motion to compel. And, in my view, there is no need for a motion to compel in the first place. I am not going to continue to use this as a method for not answering the interrogatories because we intend to answer every interrogatory.

And, the simple fact, as we pointed out in our pleading, the result would not have been any different; we would still be sitting here today with the same interrogatories that we have answered, answered and those that we are going to answer in the next three weeks we will answer in the next three weeks.

CHAIRMAN SMITH: Would you then accept, both counsel for UCS and the Staff, then accept the Board making your commitment an Order in this proceeding?

MR. TOURTELLOTTE: Yes. Let me qualify this in some

6-24

1 way. There are some questions in here which are objectionable
2 and we have reasons why we stated those objections. And,
3 we wouldn't waive those objections.

4 But, for those interrogatories that we have no
5 objection to, we have no problem with that coming from the
6 Board to us to answer those and to answer them with dispatch
7 and diligence that we can muster. We would be happy to do
8 that because we are going to do it anyway.

9 CHAIRMAN SMITH: Was that satisfactory, Ms. Weiss?

10 MS. WEISS: That's satisfactory, Mr. Chairman.

11 CHAIRMAN SMITH: It's the Order. So, now I think
12 we have made some progress.

13 Are you satisfied up to now?

14 MS. WEISS: Well, I'm not sure -- until I see -- I
15 am certainly satisfied that the Staff has said that it will
16 not object to his Board issuing an Order. One of our major
17 objectives here was to get an enforceable Order so we didn't
18 have to worry some place down the pike not being able to
19 enforce getting answers to interrogatories.

20 So, that's very important and I think we have made
21 major progress. But, of course, the content of that Order is
22 a question which we have yet to address.

23 CHAIRMAN SMITH: Well, it's going to refer to the
24 transcript and his commitment was extremely precise and
25 definite, I thought. They are going to respond to interrog-

6-25

1 atories and discovery requests as soon as they can and they
2 are not -- except those which are specifically objected to
3 and that is now the Order of the Board.

4 MS. WEISS: Okay.

5 Well, there are two others that are general issues
6 I think that we have asked to be covered by an Order and one,
7 I have already touched on; that is that as to those questions
8 which the Staff simply asserts that it cannot respond to at
9 this time. We've asked the Board to order that we get some
10 more explanation of why it is that can't be responded to at
11 this time. I think we are entitled to that under previous
12 decisions of the Commission of what's required under dis-
13 covery. We would ask you to order that.

14 Now, I'm not looking for anything very formal, but
15 I'm looking for some understanding from the Staff what infor-
16 mation they have, what information they lack; exactly why it
17 is -- why they can't answer interrogatories at this time,
18 why they believe they will be able to answer it at a later
19 time. I think that will help us in our work

20 CHAIRMAN SMITH: Now, you mention in your motion to
21 compel, that informal conferences with the Staff were not
22 successful. Has there been any informal effort along the line
23 that you're requesting an Order on now?

24 MS. WEISS: Well, I -- after I received that first
25 response, after peeling myself off the ceiling, I called the

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1 Staff and asked if there was any way we could work this out
2 short of my having to file a motion to compel, because those
3 aren't nice things to have to argue before the Board.

4 And, the response that I got was that their staffing
5 problems were the primary barrier to getting an answer and
6 they could not see that they could agree to providing us with
7 any more than they had already provided us because of manpower
8 problems, and that's why we're here before you today.

9 CHAIRMAN SMITH: Mr. Tourtellotte, do you have a
10 comment on that point?

11 MR. TOURTELLOTTE: Her conversation was with me and
12 that is essentially what I told her.

13 CHAIRMAN SMITH: Now, she's seeking an Order which
14 would require you to provide more information in detail about
15 the problems that you referred to, is that what your -- and
16 my question was, if we haven't propounded it, is, isn't this
17 an area for formal discussion between you? I mean, that's a
18 difficult Order to frame; it's a difficult Order to enforce
19 and it is going to just add to the problem if it is necessary
20 because they are going to have to stop doing the work and then
21 explain why they are not doing their work.

22 MR. TOURTELLOTTE: We already have a fairly good
23 understanding of which interrogatories, outstanding, we will
24 be able to answer by the end of the first week in March, which
25 ones we will not be able to answer.

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I can either informally or perhaps to some extent can explain when we submit our next round of answers why we're not submitting answers to those others and give some prognosis as to when the answers will be forthcoming.

DR. JORDAN: It seems to me as though the Staff does now, in view of the more recent commitment that you have now made, that the Staff should go back and look at every one of the UCS interrogatories and answer in the manner in which you say you now will answer. Maybe you could say, we can't do it now; we will try to do it in such-in-such a date.

Shouldn't you go back and look at every one of them?

MR. TOURTELLOTTE: We already have and for instance, just to take, for example, contention number 1 in the first 13 contentions, or the first 13 interrogatories that deal with contention 1. We know that we can answer 1 through 8, and 11, and that we know that we probably will not be able to answer 9, 10, 12, and 1^

Now, I don't have the precise reasons as to why we can't and even what I've been saying today in three weeks, they may not be the case. But, at the end of that time, what we would do is answer as many of those relating to contention 1 as we could; those that are going to continue to be outstanding, we will try to explain why we are not answering and also provide a schedule of when we might answer them.

MS. WEISS: It sounds to me as if we can work some-

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1 thing out on the basis of that representation.

2 CHAIRMAN SMITH: Now, we have specific objections
3 which have to be debated. Now, I'm wondering about the
4 specific objections, that it may not be possible to get on
5 with business that affects all of the intervenors and for your
6 specific objections to be addressed in Washington.

7 MS. WEISS: That's fine. You know, Mr. Chairman,
8 I just wanted to point out that we have, of course, at great
9 length, answered the original objections and that response to
10 the motion to compel contains no discussion of the merits of
11 those specific objections.

12 Now, whether you want, you know, more argument on
13 tha'. from me today, I think we were pretty clear in our
14 written filings and there haven't been any responses to it
15 from the Staff.

16 CHAIRMAN SMITH: Well, we were prepared to take up
17 the objections -- to the specific objections, we were prepared.
18 But, there's going to be very wasteful of the time of the
19 other intervenors and -- but, we wanted to discuss your
20 objections which had implications to all the other intervenors
21 which I think we have done. I think we have established,
22 pretty much, the Staff's position.

23 Does any intervenor object to UCS and the Staff
24 meeting in Bethesda to work out the objections between them,
25 with the commitment that we will not permit a discussion of

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1 procedures -- I have to be careful about this commitment,
2 because we are going to be talking about some pretty important
3 subjects on the specific objections -- with the commitment
4 that intervenors who feel that their rights have been prejudiced
5 by not being there will have an opportunity to comment on the
6 results of the prehearing conference.

7 Would that be satisfactory to the intervenors?

8 You have a concern, Dr. Kepford?

9 DR. KEPPORD: I have a question as to whether or not
10 this procedure including the original Order given by you some
11 minutes ago will be of general applicability for this pro-
12 ceeding or, for instance, what I see is objections by ECNP to
13 the applicant -- suspended licensee's interrogatories?

14 CHAIRMAN SMITH: I'm sorry.

15 DR. KEPFORD: Would the same type of procedure be
16 available to us to sit down together and try to work out the
17 objections?

18 CHAIRMAN SMITH: Well, that certainly is yes. We
19 would prefer that. In fact, we encourage it and I do feel
20 that this -- I can understand, Ms. Weiss, I reacted rather
21 strongly, too, when we saw the response that you received.

22 But, I do feel that the Board should not have been
23 bothered with this; that this should have been worked out
24 between the parties and we urge it. And, as a matter of fact,
25 it may be that when we arrive at the prehearing conference

7-2

1 in Bethesda, that you will work out your other problems, too,
2 at least part of them.

3 But, yes, you should negotiate.

4 MS. WEISS: Well, I think there's still a chance that
5 the Staff is going to yield to the obvious rightness of my
6 arguments on the relevant objections.

7 CHAIRMAN SMITH: All right. Then we will go on to
8 business of general interest and we will reconvene --

9 MR. TOURTELLOTTE: Mr. Chairman, before you -- are
10 going to adjourn for noon; is that it?

11 CHAIRMAN SMITH: I was just wondering -- we'll come
12 back to when we reconvene to bring up UCS's -- your specific
13 objections to UCS's discovery request. We'll come back to
14 that. We may be able to set the time now.

15 MR. TOURTELLOTTE: That will be fine. There was one
16 announcement that I wanted to make before we break for
17 lunch, that's all, that has to do with --

18 CHAIRMAN SMITH: One thing before we leave the
19 subject; the record should indicate that no intervenor
20 objected to the procedure that we recommended that the specific
21 objections be considered at the prehearing conference in
22 Bethesda.

23 MR. BOWERS: Mr. Chairman?

24 CHAIRMAN SMITH: Mr. Bowers.

25 MR. BOWERS: Could I simply ask how the substance of

7-3

1 that proceeding will be communicated to the other intervenors
2 to give them an opportunity to comment --

3 CHAIRMAN SMITH: We will, of course, make rulings
4 and of course, the transcript will reflect what happened there.

5 But, we will issue an Order as a result of the con-
6 ference.

7 DR. KEPFORD: Mr. Chairman, will this be a formal
8 prehearing conference?

9 CHAIRMAN SMITH: Yes, it will be a continuation of
10 this prehearing conference for the limited purpose of re-
11 solving these objections.

12 We do adopt the general policy that discovery
13 among the parties is the business of every party; but, where
14 we have a specific dispute, to ease some of the burden on
15 UCS, the Staff and the Board will get at it and we see no
16 reason why we can't proceed in this matter and of course,
17 everybody is welcome to come, it's just that it will be in
18 Bethesda.

19 DR. KEPFORD: That I understand; I don't think we
20 have any objections as long as whatever decisions come out
21 are of general applicability.

22 CHAIRMAN SMITH: Well, that may not be possible,
23 because we are going to be dealing with specific UCS discovery
24 requests and as a matter of fact, that is contrary to what
25 we had in mind because we don't want to have a session of a

7-4

1 prehearing conference which all intervenors cannot easily
2 attend and come out with decisions of general applicability.

3 You see the problem. I mean, we wish to limit it
4 to the concerns solely between the Staff and UCS.

5 MR. TOURTELLOTTE: My understanding, Mr. Chairman,
6 is that the reason we are not going to discuss it here and
7 now is because it doesn't have any more than specific
8 applicability between the Staff and UCS and the licensee.

9 CHAIRMAN SMITH: That's right.

10 MR. TOURTELLOTTE: If it had a general applicability
11 we would be discussing it here and now.

12 CHAIRMAN SMITH: That's right. And see, we want to
13 get on to business that does have general interest of all
14 the intervenors.

15 DR. KEPFORD: That I realize, understand, and
16 appreciate. But, my problem is, for instance, the Order
17 which you first propounded moments ago, saying that the Staff
18 can answer interrogatories when they are prepared. Even
19 though that has to do with the dispute between UCS and the
20 Staff, it certainly is a position that would have general
21 applicability to the intervenors as far as answering inter-
22 rogatories go.

23 CHAIRMAN SMITH: I guess I didn't make it clear.

24 I think we have resolved all of the dispute between
25 UCS and the Staff and you've received a commitment, I believe,

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1 from Mr. Tourtellotte that their commitments to UCS, the
2 general ones about their policy on responding to discovery is
3 their general policy applicable to all intervenors.

4 Now, we are going to move into a very limited
5 consideration and that is specific objections to specific
6 discovery requests by UCS.

7 DR. KEPFORD: Okay. My point there in the general
8 applicability was that if, for instance, ECNP has a parallel
9 objection; will whatever decision that comes out of this
10 prehearing conference, be applicable to a parallel specific,
11 or a similiar specific objection?

12 CHAIRMAN SMITH: No, it won't. Except this: if you
13 demonstate a parallel circumstance, I would think that you
14 could probably anticipate a parallel ruling.

15 DR. KEPFORD: Fine. That answers my question.

16 CHAIRMAN SMITH: Also, don't forget, we will give
17 an opportunity for intervenors to object to the Order that
18 comes out of there if they preceive that we have transgressed
19 our rights in that process, okay?

20 DR. KEPFORD: Fine. I'm satisfied. Thank you.

21 MR. TOURTELLOTTE: Mr. Chairman, the meeting that
22 I mentioned earlier on management capability before the
23 Commission will take place tomorrow at 3:30 at the H Street
24 office in the Commission Room; it's for the benefit of the
25 intervenors who are here.

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1 MR. ADLER: Mr. Tourtellotte, is that the same place
2 that the last meeting took place?

3 MR. TOURTELLOTTE: Yes.

4 MR. ADLER: Was that the top floor? What was the
5 address?

6 MR. TOURTELLOTTE: 1717 H Street, Washington.

7 CHAIRMAN SMITH: We don't attend those sessions. If
8 anybody here learns that we are relieved of that issue, I
9 would be pleased to know about it.

10 MS. WEISS: I think they are going to give you more;
11 they aren't going to take anything away. That's how the
12 trip seems to be going.

13 CHAIRMAN SMITH: Okay. We have a rather heavy agenda
14 and what is the least amount of time that we can have for
15 lunch? Do you think 45 minutes would be enough? Let's return
16 here at 25 minutes until 2.

17 (Whereupon, the conference was recessed for lunch.)

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