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2 UNITED STATES
3 NUCLEAR REGULATORY COMMISSION
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6 In the Matter of: :

7 TEXAS UTILITIES GENERATING :
8 COMPANY (Comanche Peak) :

Docket No. 50-445 & 50-446

9 -----x

10 U.S. Federal Courthouse
11 10th and Lamar Streets
12 Fort Worth, Texas 76102

Tuesday, April 30, 1980

13 The Nuclear Regulatory Commission Licensing
14 Board convened at 9:30 o'clock a.m., in Fort Worth,
15 Texas, Elizabeth S. Bowers, Esq., Chairman of the Board,
16 presiding.

17
18 PRESENT:

19 ELIZABETH S. BOWERS, Esq.

20 DR. FORREST J. REMICK

21 DR. RICHARD COLE
22
23
24
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A P P E A R A N C E S

Nicholas S. Reynolds, Esq.,
Debevoise and Liberman, Esqs.,
Washington, D. C.

Marjorie Ulman Rothschild, Esq.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D. C.

Mr. Geoffrey M. Gay
West Texas Legal Services
406 W. T. Waggoner Building
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Fort Worth, Texas 76102

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President, CASE
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Mr. Richard L. Fouke,
CFUR
1668B Carter Drive
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LMB

P R O C E E D I N G S

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2 CHAIRMAN BOWERS: We were just told Judge Belew's
3 policy for the use of this courtroom.

4 No smoking, no drinks of any kind except water
5 and no T.V. cameras and no tape recorders except, of course,
6 for the official reporter.

7 Now, originally he said that he wanted everyone
8 to keep his or her jacket on and then we go the word that
9 if it got warm then it was permitted to remove the jacket.

10 And we are very concerned that we honor his
11 rules in this proceeding.

12 Now, first I'll introduce the Board and then
13 we'll call for appearance of parties. I'm Elizabeth Bowers,
14 I'm a mem -- you're cupping your -- can you hear me?

15 Okay.

16 We need to speak into it then. I'm Elizabeth
17 Bowers and I'm a member of the Kansas Bar and I have been
18 involved in Federal administrative hearings for a number of
19 years. This is my 29th year. Approximately half of that
20 time was at government trial counsel and the last half as
21 a presiding officer in several different programs under
22 different titles.

23 I've been a full-time member of the Atomic Safety
24 and Licensing Board Panel for the last eight years and on
25 my right is Dr. Forrest Remick. Dr. Remick is Assistant
Vice President for Research and Graduate Studies at

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2 Pennsylvania State University. He's Director of Inter-
3 College Research Programs and Facilities. Dr. Remick
4 received his -- the total education at Pennsylvania State
5 University except one year at Oak Ridge School of Reactor
6 Technology.

7 He has had a long and distinguished career at
8 Pennsylvania State and had an exciting two years, 1965-67
9 as Chief of the Training Section, Department of Technical
10 Assistant, International Atomic Enrgy Agency, Vienna,
11 Austria.

12 He's a member of a number of nuclear societies
13 and also the Oregon University Association Board of
14 Trustees.

15 On my left, Dr. Richard Cole, is an Environmental
16 Specialist and a permanent member of the Atomic Safety and
17 Licensing Board Panel. He holds an undergraduate degree
18 in Civil Engineering from Drexel University and advanced
19 degrees in Environmental sciences from -- and Engineering
20 from MIT and the University of North Carolina at Chapel
21 Hill.

22 Between 1955 and 1962, Dr. Cole worked for the
23 Division of Sanitary Engineering of the Pennsylvania
24 Department of Health, there being involved in water supply
25 and polution control programs for Southeast Pennsylvania.

From 1962 to 1973, he was at the University of

1
2 North Carolina where he was a member of the Graduate School
3 Faculty in Environmental Sciences and Engineering. During
4 this period, Dr. Cole spent four years in Guatemala
5 assisting the University of San Carlos. Set up a masters
6 degree program in Sanitary Engineering for Central
7 American.

8 Just prior to joining the Atomic Safety and
9 Licensing Board Panel in August 1973, Dr. Cole was Director
10 of the International Program in Sanitary Engineering Design.

11 He's a registered professional engineer licensed
12 to practice in Pennsylvania and Maryland and holds a rank
13 of Diplomat in the American Academy of Environmental
14 Engineers. He's also active in the American Society of
15 Civil Engineers, the American Waterworks Association, The
16 Water Pollution Control Federation, The Inter-American
Association of Sanitary Engineering.

17 Dr. Cole has written numerous articles in the
18 field of water and waste water treatment, unit processes,
19 water quality control programs and international training
20 in Environmental Engineering.

21 Now, on the 19th of March, this Board issued an
22 order for a pre-hearing conference and since it's brief,
23 I will read it.

24 There will be a pre-hearing conference commencing
25 at 9:30 local time on April the 30th at the U. S. Federal

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2 Courthouse, 10th and Lamar Street, Fort Worth, Texas. The
3 conference will be continued the next day if necessary.

4 The purpose of the conference is for the Board
5 to hear the position of the parties on those contentions
6 that have not yet been ruled on by the Board.

7 We will also hear oral argument as to whether it's
8 appropriate to refine the language of the quality assurance
9 contention admitted by the Board.

10 The parties have been meeting and have had
11 telephone conference calls discussing the various
12 contentions. Apparently agreement has been reached on some
13 of the contentions but has not been reached on others.

14 The parties are on notice that they must submit
15 to the Board not later than 20 days prior to the pre-hearing
16 conference a complete report on their position on each
17 contention. Identifying those on which agreement was or
18 was not reached.

19 The Board's consideration will not be limited to
20 those contentions in dispute but will encompass all
21 contentions.

22 So let me call now for appearance of the parties.
23 Is the applicant present?

24 MR. REYNOLDS: Mrs. Bowers, I'm Nicholas S.
25 Reynolds, with the law firm of Debevoise and Liberman in
Washington, D.C., I've provided the reporter with our

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2 address. On my right is my associate, Bill -- William A.
3 Horin of my firm and Spencer C. Relyea of the Dallas law
4 firm of Warsham, Foresite and Samples. We are appearing
5 here today on behalf of the applicates.

6 CHAIRMAN BOWERS: Thank you, Mr. Reynolds.

7 The microphones are not only for a P.A. system for
8 this room but they're also tied into the recording system
9 and I think there would be a better result if you would
10 remain seated and closer to the microphone.

11 Is the NRC Staff present?

12 MRS. ROTHSCCHILD: Yes, Mrs. Bowers, my name is
13 Marjorie Rothschild, I am appearing today as counsel for
14 the Nuclear Regulatory Commission Staff. On my left is
15 Stuart A. Treby, who is Assistant Chief Hearing Counsel,
16 Office of the Executive Legal Director, Nuclear Regulatory
17 Commission and on Mr. Treby's left is Spottswood Burwell,
18 who is the Project Manager for the Camanchi Peak Nuclear --
19 excuse me, Steam Electric Station and also appearing with
20 me today is Sherwin E. Turk, who is also counsel for the
21 Nuclear Regulatory Commission Staff. I think Mr. Turk is
22 just being seated.

23 CHAIRMAN BOWERS: Thank you.

24 And now we'll go to the intervening parties. Is
25 ACORN present?

MR. GAY: Mrs. Bowers, my name is Groffrey Gay

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2 and I'm with West Texas Legal Services here in Fort Worth
3 and I represent intervening party ACORN.

4 CHAIRMAN BOWERS: And is CASE present?

5 MRS. ELLIS: Yes, Mrs. Bowers, I'm Juanita Ellis,
6 President of CASE and with me is Marshall Gilmore who is
7 a member of CASE. He is also an attorney but he is not
8 representing case in these hearings, he's here as a member.

9 CHAIRMAN BOWERS: And is CFUR present?

10 MR. FOUKE: Yes, Mrs. Bowers, I'm Richard Fouke,
11 and I'm representing CFUR and on my right is Robert Utz,
12 who is also a representative of CFUR.

13 CHAIRMAN BOWERS: Thank you.

14 Is the State of Texas present?

15 Well, we -- the record will show no response.

16 We've stated in our order the purpose of this
17 pre-hearing conference and we did receive from all the
18 parties the filings that we requested.

19 What we would like to do and there's a lot of
20 ground to cover, is to take each parties contentions and
21 go down through them one by one and just because we happen
22 to start in our private discussions with CFUR, we'd like
23 to begin with CFUR this morning.

24 But let me check and see if there are any
25 preliminary matters before we start.

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2 MRS. ROTHSCCHILD: Yes, the Nuclear Regulatory
3 Commission Staff has a brief statement we would like to
4 make.

5 We are aware of a recent decision of the NRC
6 Appeal Board in Allen's Creek A Lab 590, which was dated
7 April 22, 1980. It was issued obviously after the NRC
8 Staff filed its report on April 10th. The Staff would just
9 like to bring this decision to the attention of the Board
10 and the other parties.

11 We think that the decision is -- it's a belated
12 statement of the Appeal Board's view as to what is necessary
13 to constitute an admissible contention which is, you know,
14 obviously very relevant to what we are considering now.

15 The Staff doesn't believe that it changes the
16 law. I think it merely confirms the general principles
17 which the Staff discussed in its report. But it does -- it
18 is important because it provides an example of how the
19 Appeal Board applies those principles in considering whether
20 a contention is admissible and the Staff has extra copies
21 of this decision here today. We would like to distribute
22 them to the other parties and the Board if necessary and if
23 it's deemed necessary we would believe that perhaps a very
24 short recess be allowed just to provide a short time to
25 review the decision. I'm not sure whether other parties
have had that opportunity.

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2 CHAIRMAN BOWERS: Have you given copies to the
3 other parties?

4 MRS. ROTHSCHILD: Not yet, we just had extra
5 copies made. We have them here right now.

6 CHAIRMAN BOWERS: Well, they probably don't know
7 what their position is on the need for time or a recess
8 until they have a chance to glance at it anyway.

9 MRS. ROTHSCHILD: Okay.

10 Well, can we then make -- distribute them?

11 CHAIRMAN BOWERS: Fine.

12 MRS. ROTHSCHILD: Okay.

13 MR. GILMORE: Madam Chairman.

14 CHAIRMAN BOWERS: Mr. Gilmore.

15 MR. GILMORE: May I address you? While she's
16 passing those out I wanted to ask as a point of order more
17 or less, we have certain interveners which have more than
18 one member here. Is there going to be a procedural
19 requirement restricting the member from speaking for the --
20 the group on a position and how would this work in this
21 proceeding today?

22 CHAIRMAN BOWERS: Well, our interest, of course,
23 is an orderly proceeding and we have no problem with you
24 dividing up the contentions. One person taking certain
25 ones and another taking others. But if both of you in duet
are handling one contention, we may not have an orderly

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2 proceeding.

3 MR. GILMORE: Thank you.

4 The second point I wanted to ask. We had a
5 motion -- CASE had a motion to consider one of our
6 contentions first before proceeding with the other
7 contentions of interveners. We were -- are willing to
8 waive that motion to consider that first but I would ask
9 I -- since I am -- was prepared to present our argument on
10 our contention eight that if we begin to run out of time
11 before the end of today, whatever time the Board decides
12 that we should recess today, I do have an appeal to argue
13 tomorrow in the Court of Civil Appeals and will be unable
14 to be here and if I might ask to take it order sometime
15 later on this afternoon if it looks like we're going to
16 run out of time. I just don't know what the time sequence
is going to be.

17 If I might ask that. I'm not -- I'm not asking
18 you to take it first today, I'm asking that if we're going
19 to run out of time and this hearing is going to go on to
20 tomorrow and we haven't gotten to our contention number
21 eight, if I might ask to interject that argument on behalf
22 of CASE.

23 MR. REYNOLDS: Mrs. Bowers, the applicants have
24 no objection to accommodating Mr. Gilmore.

25 CHAIRMAN BOWERS: And the Staff?

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2 MRS. ROTHSCHILD: The Staff has no objection
3 either.

4 MR. GILMORE: Thank you.

5 CHAIRMAN BOWERS: And Mr. Gay?

6 MR. GAY: No objection.

7 CHAIRMAN BOWERS: Mr. Fouke?

8 MR. FOUKE: No objection.

9 CHAIRMAN BOWERS: Fine. And we will plan to do
10 that Mr. Gilmore.

11 MR. GILMORE: Thank you.

12 MR. REYNOLDS: Mrs. Bowers, we've received copies
13 of A Lab 590 and it's a 32 page opinion. I think it would
14 take 10 or 15 minutes for us to read it and understand it
15 before we should proceed since apparently it does reflect
16 on the relevant law which will govern this aspect of the
17 proceeding.

18 CHAIRMAN BOWERS: What about the other parties.

19 VOICE: I'd like 15 minutes.

20 MRS. ELLIS: Yes, at least 15.

21 CHAIRMAN BOWERS: We have one copy among the
22 Board, do you have two more?

23 MRS. ROTHSCHILD: We have one more.

24 CHAIRMAN BOWERS: Well, we'll recess then until
25 10:00 o'clock.

The parties have had an opportunity as well as

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2 the Board to review and to consider this decision. So what
3 does the Staff propose? Our idea is to simply get a
4 position statement from each party on the Appeal Board
5 decision.

6 MRS. ROTHSCCHILD: Well, if you want the Staff
7 to begin first, the Staff's position is that in considering
8 the example that this Appeal Board decision provides as to
9 what constitutes an admissible contention, the Staff in
10 applying I guess the principles here and the holding to
11 the parties -- the interveners filings particularly their
12 April 10, 1980 filing, we have changed our position on
13 certain of the contentions that we had previously stated
14 we did not think were admissible and we would be prepared
15 -- we have not changed our position that certain of those
16 contentions or we support admission of certain of those
17 contentions and we would be prepared to discuss the particu-
lar contentions as they come up.

18 CHAIRMAN BOWERS: Mr. Reynolds, we'd like to
19 proceed into the contentions of CFUR, do you have any
20 comment on the Appeal Board decision?

21 MR. REYNOLDS: Yes, just a brief comment. It
22 seems to me upon reading the decision that the decision adds
23 nothing to the law and standards previously -- by the
24 Appeal Board for governing intervention petitions.

25 They refer in a footnote on page 12 to the Peach

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2 Bottom decision which we discuss at length in our pleadings.
3 They affirm the rationale of Peach Bottom and we agree with
4 that.

5 We don't disagree with any of the legal standards
6 set forth by the Appeal Board. In short, we don't think it
7 changes anything and the positions we've taken with regard
8 to these contentions here today are -- remain our
9 positions.

10 Just a few factual notes in the decision which
11 I think are worth mentioning. First of all, the Appeal
12 Board notes that the intervener there was a layman and
13 pursuant to previous decisions by the Commission layman are
14 afforded some greater leeway in draftmanship than are people
15 skilled in litigation.

16 If you apply that standard to the interveners
17 here before you today, you will find that all three of
18 these interveners are quite well skilled in litigation. It
19 seems to be an advocacy and in Mr. Gay's case, of course,
20 he is an attorney and Mr. Gilmore is an attorney as well.

21 Secondly, the -- the contention which was denied
22 in Allen's Creek served to reject the intervention petition
23 in toto in that case. I think in that context the Appeal
24 Board more closely scrutinized it and found that in the
25 total situation given the fact that this person was a layman
and that the rejection of this contention served to reject

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2 his entire intervention petition, that they were perhaps
3 more willing to find a basis and specificity in the wording
4 of his -- in the wording of his contention.

5 Lastly, I would note that the contention raised
6 in that case, that is the Marine Biomass was a reasonable
7 alternative to the Allen's Creek Nuclear Plant was not
8 considered by the staff in its FES supplement.

9 The Staff had not considered at all the issue
10 raised by the intervener in that case and I think that's
11 very significant in going to whether or not the contention
12 should be granted and I think it swayed the Appeal Board
13 in that regard.

14 CHAIRMAN BOWERS: Mr. Gay.

15 MR. GAY: Madam Chairman, I'm still not sure I
16 understand what a Biomass form is but I am quite sure that
17 this opinion from the Allen's Creek Plant adds greater
18 specificity to some arguments that I made in my response to
19 the Board's request for a statement of position. Namely
20 that we are at this point in time at the assertion stage
21 of the proceeding and that is it not imperative and not
22 incumbant upon intervers at the proceeding to supply
23 factual support for the contentions and assertions that they
24 are offering to the Board.

25 I think that the opinion from Allen's Creek goes
quite well to state that it is whether quite beside the

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2 point as to whether or not any factual evidence has been
3 offered. And I think that we must look to the plain
4 language of the contentions themselves and whether or not
5 there is any reasonable justification offered in the bases
6 and not whether there is any factual support.

7 To ask why the intervener has not supplied
8 information as to where the applicant went wrong is an
9 entirely inappropriate request. Judgements are to be left
10 at a later stage of the proceeding. Judgements as to
11 whether or not that particular contention is meritorious
12 and I think that all of us in reading this particular
13 contention could find that that is perhaps not meritorious.

14 But I think that as the Board indicated in Allen's
15 Creek, that's -- that's best left for some later point
16 in the proceeding irrespective of what our -- what our
17 comment and gut level reactions may be to that particular
18 contention.

19 I think that it goes well to support the
20 contentions of all the interveners in this proceeding.

21 CHAIRMAN BOWERS: Mr. Gilmore.

22 MR. GILMORE: In short I concur with and
23 reiterate Geoffrey's statements. Also in short I concur
24 with the majority opinion. But in long, however, I would
25 like to address myself to the issue brought up by Nick
concerning the abundant help by learned counsel to CASE.

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2 I'm a private lawyer in private practice struggl-
3 ing to feed my family and consequently have been able to
4 put in very little time on this case. I'm not familiar
5 with all the issues involved and that's why I was
6 specifically pointing out that I might address myself to
7 that one contention.

8 I am familiar somewhat with some of the pleadings
9 but the -- the ruling concerning the preparation of -- of
10 documents by a layman still goes for this intervener case.
11 Although Juanita has -- has just about gotten her degree
12 in doing this, nevertheless, it needs to be pointed out
13 that -- that there's is another lawyer that's helped out
14 from time to time, Mr. Don Hamner, over in Dallas and he's
15 unable to be here today. But Don and I have by no means
16 put in the time on this. It's been laypersons, members of
17 CASE who have done the -- the majority of the work. We've
18 merely maybe given them a couple of pointers over the
19 telephone as much as we know and I nor Mr. Hamner are
20 primarily administrative attorneys.

21 So I'd also like to point out that this has been
22 a recurring problem in earlier stages of the attempt to
23 negotiate settlements on the or restipulations on the
24 contentions and Nick discussing with -- thinking that the
25 attorneys were attorneys for it and simply Mrs. Ellis has
been the lead member, layperson representing CASE and that's

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2 still the way it is and I'd like to ask that you apply that
3 standand to our pleadings.

4 MRS. ELLIS: I'd certainly appreciate it too.

5 CHAIRMAN BOWERS: Mr. Fouke, for CFUR.

6 MR. FOUKE: In the case of CFUR, we don't really
7 have a lawyer which we can consult. Everyone of us are
8 lay people. Myself I happen to be in a unique position to
9 be able to intervene in that I'm working on a dissertation
10 in a hurry and a number of the people in the group are in
11 a similar position.

12 And of course, I think this does apply to our
13 situation as well.

14 CHAIRMAN BOWERS: We would like to proceed with
15 CFUR and we want to make it clear that the reason we are
16 here is to give all parties an opportunity to give us any
17 information they have that's relevant and material inaddi-
18 tion to the written filings that will help us get the
19 whole picture on each contention.

20 Now, we will not be ruling on contentions at
21 this proceeding. We may have questions of the parties on
22 some of the contentions but we do want to have the
23 opportunity to hear from each one of you any matter, any-
24 thing that you think has not been explained or is not
25 covered in your written filings, we would ask you as a
matter of time more than anything not to read verbatim

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2 from what you've already filed. We do have those matters
3 in front of us and you can call our attention to a
4 particular thing. But it just won't serve a useful purpose
5 to read verbatim from the filings.

6 MRS. ELLIS: Madam Chairman.

7 CHAIRMAN BOWERS: Yeah.

8 MRS. ELLIS: There's one other item which I -- I
9 believe we should address probably at this time and that's
10 regarding a motion of CASE on April 21st to compel the
11 applicant to supply his April 10th position on the
12 contentions.

13 I wanted to state for the record that this was
14 received on April 22nd, 12 days after the time it was
15 proported to be filed and the postage we made -- we weighed
16 the mailing, the postage, although the package was marked
17 first class on the label, the postage for it was third
18 class postage.

19 Now, we don't want to belabor the point
20 unnecessarily here but we do object very strenuously to
21 being put in the position of not having adequate time to
22 respond under the rules of practice and procedure to the
23 applicants filing in a timely manner. And we would like
24 that precautions be taken in the future and that this
25 Board so instruct the applicant and all parties for that
matter to try their very best to see that these mailings

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2 are made in a timely manner.

3 MR. REYNOLDS: May I respond.

4 It seemed to be illogical that CASE would file
5 that motion. If CASE hadn't received a document which we
6 served on them and duly certified as served, they simply
7 had to call someone at Texas Utilities in Dallas, someone
8 at Texas Utilities Council in Dallas or call me in
9 Washington. We would have been more than happy to provide
10 them with another copy of the pleading which we duly mailed
11 and certified.

12 We have not heard from ACORN or CFUR that they
13 did not receive their document. I assure you that they
14 were mailed at the same time with the same postage first
15 class.

16 Now, if the mail system fouled the thing up which
17 they're inclined to do on occasion, that certainly isn't
18 our fault. It's very simple in this proceeding if we
19 communicate with each other to minimize inconveniences
20 caused by situations such as vagaries of the mail and we
21 would encourage CASE to simply get on the telephone with
22 the applicant the next time something like this arises.

23 MRS. ELLIS: May I address that.

24 I would -- I would like to point out that one of
25 the reasons for filing this motion rather than doing as
the applicant has suggested is that had we done so on the

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2 record it would have appeared that we had received it in a
3 timely manner which we did not.

4 Further, we were precluded because of that from
5 being able to respond according to the rules within 10 days
6 after it was supposed to have been filed. We did not even
7 receive it within 10 days.

8 Further, as I have stated, I weighed the package,
9 I have the envelope which has \$1.18 on it which by the way
10 was done with a postage meter rather than a stamp from the
11 post office and in that regard the proper postage would have
12 been \$1.97 for a first class mailing of that weight.

13 Further, I checked with the postal authorities
14 and was informed that first class mail would normally take
15 three days from Washington to Dallas to be delivered to us.
16 Third class normally would take about six days. The most
17 that we have ever waited for a third class mailing from
18 Washington was nine days in a previous instance and
19 although the post office admitted that there were problems
20 from time to time with this, the odds against all three
21 packages arriving within one day of one another as is the
22 instance -- well, the wording that the postal person I was
23 talking with said that as far as it being missent by the
24 post office or so forth, there was no way.

25 MR. REYNOLDS: May we avoid wasting more time
with this ridiculous discussion and get on with the

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2 pre-hearing conference.

3 CHAIRMAN BOWERS: Well, we would like to go on to
4 other matters but we do want to caution all parties to be
5 very careful of the mailings and make sure you have the
6 proper postage and no problems in getting them in the right
7 box at the right time.

8 And also if you're aware that you're expecting
9 something and you don't get it, why either let the party
10 involved know or let the Board know.

11 Now, as you know, Mrs. Ellis, as soon as we got
12 your motion my secretary called you on April 24th and
13 found by that time you had received the filing.

14 MRS. ELLIS: Right. And she indicated that we
15 would be allowed to address any answer that we wanted to.
16 I believe that in the interest of time that we can do that
17 as we get into each contention if that's all right.

18 CHAIRMAN BOWERS: Well, and I understand too that
19 you mentioned to her that you wanted to make a statement
20 on the record today about the problem.

21 MRS. ELLIS: Right.

22 CHAIRMAN BOWERS: Now, we'd like to go to CFUR.

23 MR. FOUKE: Do you wish to just take this up first
24 contention and then --

25 CHAIRMAN BOWER: Right down the row, beginning
with contention one.

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2 MR. FOUKE: Well, as you know, contention one
3 talks about the requirement that the applicant demonstrate
4 their technical qualifications and that because Westinghouse
5 has prepared part of the FSAR they have failed to make this
6 demonstration.

7 The applicant, my understanding of the reading
8 of their objection to this or the Staff does, my understand-
9 ing is they do support this argument or contention. The
10 applicant, however, disagrees and makes the statement that
11 CFUR has not provided any support for the broad allegation
12 that the use of information from Westinghouse in the
13 preparation of the FSAR indicates the applicant is not
14 technically qualified.

15 CFUR's position is --
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1 MR. FOUCK: -- that to the essence of CFUR's
2 contention is that in the order -- in order to find the
3 applicants are qualified to operate Comanche Peak the FSAR
4 must be prepared and supported in toto by the applicant.
5 And this is a fictitious statement of our contention. We
6 don't really make that contention.

7 CHAIRMAN BOWERS: Mr. Nichols.

8 MR. REYNOLDS: Mr. Reynolds.

9 CHAIRMAN BOWERS: Oh, I'm sorry. Mr. Reynolds.

10 MR. REYNOLDS: We won't belabor the points in our
11 pleadings -- written pleadings. Our answer filed on May 10 --
12 April 10 sets forth our position generally on this contention.
13 It suffices to say that final safety analysis reports are
14 commonly prepared by vendors and architect engineers under the
15 general authority and control and direction of applicants.
16 It's a common occurrence. It's not unusual that it was done
17 here. And certainly it does not provide any basis to support
18 this contention.

19 CHAIRMAN BOWERS: Mrs. Rothschild.

20 MRS. ROTHSCCHILD: As the Staff stated in its April 10
21 filing, we supported admission of the contention on the grounds
22 that it's stated with sufficient specificity that the other --
23 that the Staff can understand the concern that's stated there,
24 and that also stated with sufficient specificity is the basis,
25 or reason, for the concern. And we think that in view of that

1 that the contention meets the test for admissibility.

2 CHAIRMAN BOWERS: Well, the Board has no questions
3 on this contention, so we will go on to 2-A.

4 MR. REYNOLDS: Mrs. Bowers, before we go on may I
5 make just one comment.

6 CHAIRMAN BOWERS: Well --

7 MR. REYNOLDS: It relates in general to what we are
8 doing here today, and I wish to clarify it for the record and
9 for the members of the public here and the press that -- that
10 discussions and allegations by the intervenors today have no
11 demonstrated basis; in fact, no truth in fact. They are
12 merely allegations at this stage. And that the proceeding will
13 in its next stage deal with the merits of the contentions.
14 And I don't want to mislead the public into believing that
15 what is being said here today has any truth in fact.

16 CHAIRMAN BOWERS: Mr. Fouke, I should -- well --

17 MRS. ROTHSCHILD: Excuse me. I was just going to
18 state that, you know, it's also the Staff's position that all
19 we are considering today is -- is whether the contentions
20 meet the tests for admissibility. And when the Staff, you
21 know, states that it supports admission that -- that's all it's
22 stating that it meets the test for admissibility, and we are
23 not getting into the merits. The Staff does not mean to state
24 by that that it agrees with the contention. And we would
25 want to clarify that.

GT 2/3

1 CHAIRMAN BOWERS: That's the Board's position on
2 this matter.

3 Mr. Fouke, I didn't give you an opportunity. Do
4 you want to respond to the position of Mr. Reynolds or
5 Mrs. Fairchild (sic) on your Contention 1?

6 MR. FOUKE: No, ma'am.

7 CHAIRMAN BOWERS: Fine.

8 Well, then, we'll go on to 2-A.

9 MR. FOUKE: On Contention 2-A the -- it addresses
10 the problem as CFUR sees it of the construction of the
11 computer codes used in the FSAR. And basically we're saying
12 that one or more of the reports used in the construction of
13 the computer codes have not been suitably verified and
14 formally accepted.

15 And then in our original submission we listed 16
16 reports, and in our latest report we listed 17 in addition to
17 that 16.

18 And we also pointed out that there has been problems
19 in the past because of inadequate review of -- of computer
20 codes; in particular, the VEPCO Surry-2 Unit, which eventually
21 resulted in the required shutdown of five units.

22 And we also point out this is the first AE job for --
23 architect/engineer job for Gibson-Howell.

24 The Staff talked in their opposition to this
25 contention that they had submitted some letters to us which

1 covered ten codes which -- of the original 10. And one
2 of those addressed ECCS, and one of them addressed the
3 Think-4 Code. But along with the Think-4 Code they did not
4 include qualifications for its use which was in an enclosure,
5 so we don't -- we are not able to make any particular sense
6 out of that.

7 And of course because we are saying that this is
8 one or more codes when we mention -- 43 codes; is it?

9 A VOICE: 33.

10 MR. FOUKE: 33 codes. That doesn't address the
11 total issue. So, we don't feel that's a -- would negate this
12 particular contention.

13 And then further the staff says that there's no
14 basis for concluding that the Staff will fail to perform
15 the review. But we don't think it's our responsibility to
16 provide proof that they won't perform a review. We're
17 pointing out that at this point in time they have not
18 performed a review. And we feel that it's the responsibility
19 of the Staff to demonstrate that they have formally reviewed
20 these things and are to assure the health and safety of the
21 public.

22 The only thing in the record at this time is the
23 applicant's allegations. And as we originally pointed out
24 in the past there has been problems with the review.

25 Next, the Staff takes issue basically that we have

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1 not put anything in the record to say that it is invalid.
2 It appears to me that what the Staff is doing is taking issue
3 with the word "invalid," and yet they stipulated to the
4 wording of a contention, and I -- we had a discussion as to
5 what the intent of the -- the contention was, and I -- there
6 was certainly no objection brought up earlier than this.

7 This gets them to the point that we are not lawyers
8 and -- and I'm not expert in playing with words, and we have
9 stipulated to a set of contentions. But if the -- we feel
10 that if in light of this hearing, the Board determines that
11 a contention does not properly reflect our concern, we certainly
12 would have no objection to the Board changing the wording of
13 the contention.

14 CHAIRMAN BOWERS: Have you concluded?

15 MR. FOUKE: No.

16 I'd like to point out that no where does the Staff
17 challenge verification portion of CFUR's contention. In
18 fact, they really do not address it in their objection and
19 neither does the applicant.

20 And we would like to bring to the Board's attention
21 that one of the Loft test's being conducted in Idaho, the
22 fourth test concerning small breaks according to an NRC
23 press release, indicates the precise conditions of the test
24 differ somewhat from those predicted and would indicate that
25 verification of codes similar -- applicable codes for CFUR --

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1 I mean for SPSES should be investigated.

2 As far as I know the applicant's arguments parellel
3 those of the Staff.

4 That does conclude my --

5 CHAIRMAN BOWERS: Mr. Reynolds.

6 MR. REYNOLDS: In the first place, Mrs. Bowers,
7 let me inquire of the Board as to whether or not you have
8 granted the Staff's motion for approval of the stipulation
9 between the applicant's staff and CFUR?

10 CHAIRMAN BOWERS: We haven't yet ruled on it.

11 MR. REYNOLDS: Okay.

12 Let me just point out for the Board's edification
13 that in paragraph 8 of that stipulation we all agree and state
14 that nothing contained in this stipulation shall be deemed
15 an admission by the Staff or the applicants of the merit of
16 any contention or the validity of any allegation of fact or
17 law stated in any contention.

18 Mr. Fouke apparently would imply from the stipula-
19 tion that we are not permitted to challenge the wording --
20 the meaning of the words of the contentions stipulated to.
21 That is not the purpose of the stipulation. In my mind the
22 stipulation was to draft CFUR's contentions in language
23 which is understandable by the parties. It implies nothing
24 more than that. It implies nothing with regard to our views
25 on the merits of the contention.

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1 Secondly, I would like to object very strenuously
2 and ask the Board to caution the parties in the future to
3 avoid the tendency of CFUR to submit pleadings after deadlines
4 and amend bases stated to support contentions.

5 The regulations require that 15 days before the
6 first prehearing conference the contentions and bases, there-
7 fore be stated. In this recent filing of CFUR dated April 10,
8 CFUR took the opportunity, which is not permitted by the
9 regulations, to substantially amend its basis for this con-
10 tention and for others.

11 And that simply isn't playing by the rules, and
12 I don't think that CFUR should be permitted to do that, and
13 we ask the Board to caution CFUR not to -- caution CFUR to
14 comply with the regulations.

15 We don't think that the supplementary basis stated
16 in that April 10 pleading should be considered here. But
17 even if it is, we believe that no basis has been stated for
18 the contention basis that would qualify it for admission as
19 a contention in this proceeding.

20 The Staff has either approved or has under review --
21 under review the computer codes which have been used for
22 the construction of Comanche Peak. There's nothing raised in
23 this contention which is litigable in this proceeding, and
24 we think the contention should be denied.

25 CHAIRMAN BOWERS: Mrs. Rothschild.

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1 MRS. ROTHSCILD: I would first like to state that
2 as far as Mr. Reynold's request for -- that the Board caution
3 CFUR and other parties as to what is considered to be amending,
4 the basis for contention is that the Staff doesn't entirely
5 agree with that. We perceive that the -- that the purpose of
6 the filings, including this -- the latest one was to state
7 the party's position and if some clarification is provided to
8 state that position, then -- then the Staff has no objection
9 to the parties doing so.

10 So, I guess we do not agree that CFUR has necessarily
11 amended its basis. We do recognize that the rules are very
12 specific as to time limits on amending contentions and the
13 language of a contention, but -- but we think stating or
14 restating the reason for the contention is -- which is what
15 is being done here, is not similarly prescribed.

16 As far as Staff's position on this contention, in
17 considering what CFUR has filed, including its -- its April 10
18 report, we feel that now in looking at that that the contention
19 is admissible although we had originally had some objections
20 to its admissibility, but we feel that it, you know, meets
21 the requirements for admissibility. It states the concern
22 with a reasonable specificity and -- and states the reason
23 for the contention also with some specificity.

24 So, the Staff would -- has changed it's position.
25 We -- we now support admission of the contention.

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1 CHAIRMAN BOWERS: The Board recognizes since our
2 prehearing last May the 22nd, that the parties have been
3 meeting and discussing the language, and the basis, and the --
4 and the possibility of admissibility, and all of those things
5 concerning the contentions. Now, our purpose here today is to
6 get a full picture of just exactly what the contentions are
7 from each party and then subsequent to this prehearing
8 conference we will issue an order, and we will rule on the
9 contention and the language of the contention, and of course,
10 give the basis for admission or rejection.

11 So, we do feel that the parties up until now have
12 been in a climate of change and evolution as far as the
13 development of contentions and the basis therefore.

14 So, we'd like to go on.

15 Do you have any response to the applicant and the
16 Staff on your Contention 2-A.

17 MR. FOUKE: I have a comment about the applicant's
18 comment. If you review the history of this particular pro-
19 ceeding I think it was very shortly after Three Mile Island
20 happened we were required to put in our contentions, or at
21 least what turned out to be our contentions.

22 CFUR was -- at the time they made this filing was
23 not even aware that you were supposed to have a contention
24 followed by a bases, if you recall from past experience. And --
25 now, applicant appears to be taking the position that what was

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1 done at this time should not be in any manner or way
2 supplemented.

3 But the applicant and the Staff certainly supplement's
4 their position with everything that's happened over the past
5 year. And I think it would be patently unfair for any of the
6 parties not to be able to have the same --

7 MR. REYNOLDS: Mrs. Bowers, the applicant --

8 MR. FOUKE: -- opportunity.

9 CHAIRMAN BOWERS: Just a minute.

10 MR. REYNOLDS: Excuse me.

11 The applicant is not suggesting that intervenors
12 don't have the opportunity to file pleadings, contentions,
13 bases after the deadline set forth in the regulations. The
14 regulations contemplate late filings and set forth the
15 procedure governing late filings. All we request is that
16 intervenors comply with the regulations with regard to late
17 filings. We recognize they have the opportunity to raise
18 contentions after the deadline.

19 CHAIRMAN BOWERS: We would like to go on to 2-B
20 please.

21 Do you have a question?

22 Oh, just a minute.

23 MR. COLE: Mr. Fouke, you mentioned 16 plus 33 codes.

24 MR. FOUKE: No, sir. It was --

25 MR. COLE: 16 plus 17 for a total of 33.

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1 MR. FOUKE: Right.

2 MR. COLE: In -- in what documents do those codes
3 appear? I have your filing that -- of 4/10/80, which on
4 page 4 and 5 and 6 lists 22. Where -- where did we get the
5 16 plus 17 documents?

6 MR. FOUKE: These were the 17 mutually exclusive
7 on the second. Some of those are repeated from the first.

8 MR. COLE: All right, sir.

9 MR. FOUKE: And that's where the 17 comes from.

10 MR. COLE: Just a brief question about this -- this
11 contention. Have you given any thought to how the -- the
12 applicant or the Staff might respond to this? How -- how
13 might it be litigated?

14 MR. FOUKE: I should anticipate that the Staff
15 would provide proof that indeed they have formally reviewed
16 this. And then I submit the cross-examination of that
17 verification.

18 MR. COLE: On each of the 33?

19 MR. FOUKE: Just on the pertinent ones if indeed
20 the formal review describes the verification satisfactorily
21 we would not make a point of it.

22 MR. COLE: All right, sir. Thank you.

23 CHAIRMAN BOWERS: We would like to go on then to the
24 next contention.

25 MR. FOUKE: The Contention 2-B addresses what CFUR

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1 perceives to be the necessity to modify the computer codes
2 used in accident sequences so that they can accept the para-
3 meters reflected in the sequence of events at Three Mile Island.

4 And then to verify the modification to run the
5 Three Mile Island accident with the particular sequence that
6 happened to see that it would predict consequences which
7 actually happened at Three Mile Island, and then to use those
8 computer codes to predict what will happen under realistic
9 conditions at Comanche Peak.

10 And I'd like to point out, and I'm sure you --
11 you are aware that -- I think I'm on the wrong page here.
12 If you'd -- and in particular CFUR does not content that a
13 particular accident sequence which happened at TMI-2 would
14 happen necessarily at Comanche Peak. Indeed if -- if
15 appropriate actions have been taken to prevent the accident
16 from happening, but the object of -- of modifying the code
17 so that it could take care of the parameters, and we've
18 talked a lot about what parameters we are talking about.
19 That is, maintenance error, operator error, and equipment
20 failure of the secondary type which would be as described in
21 our submittal; as well as the capability of calculating the
22 amount of hydrogen, and what effects that hydrogen might
23 have on the system.

24 My understanding of the Staff's arguments is that
25 in opposition to this is that CPSES is Westinghouse rather

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1 than Babcock and Wilcox and that CFUR has not presented
2 evidence that there is an exodus, meaning a link between
3 the two situations. I -- I found that rather astounding in
4 view of the fact that in other areas the Staff actually --
5 certainly it was not in other actions of the NRC Staff, they
6 have not considered this to be the case. It's -- and are
7 quite obvious to them that they have had to take steps con-
8 cerning Westinghouse reactors as well as Babcock and Wilcox.

9 And even then when you look at the contention as
10 written, we talked about maintenance error, operator error,
11 and certainly these are not unique to Babcock and Wilcox.

12 And then further we talk about PORV valve, and we
13 have introduced in here that a PORV valve did fail in Bezno,
14 Switzerland. And that furthermore the Westinghouse, even
15 though required by the regulations, failed to report this to
16 the NRC. So, we don't think that has much merit.

17 And when the Staff makes the statement concerning
18 CFUR's contention saying that the TMI -- well, I'll leave
19 that. I'm not sure what the Staff is referring to to tell
20 you the truth.

21 And CFUR furthermore takes the position that the
22 TMI accident actually offers an opportunity to test computer
23 codes for any -- any pressurized water reactor, and that
24 the success of being able to predict these events should
25 increase confidence in the reliability of the codes and

1 conversely the inability for the codes to predict these
2 consequences would question the advisability of using the
3 codes, and we feel that if this opportunity is passed up by
4 the regulatory process that the regulators will not have used
5 every means available to insure the health and safety of the
6 public.

7 My understanding of the applicant's arguments is
8 that they are parallel to the Staff except to interject that
9 this subject is about to be considered in a Commission
10 rule-making proceeding and should not therefore be considered
11 in this proceeding.

12 And it seems contradictory to CFUR for the
13 applicant and the Staff to first argue there's no merit
14 and then to point out that there's about to be a rule making
15 proceeding.

16 But other than that -- in addition to that, the
17 fact that it is the opinion of the applicant that these
18 are about to be subject of rule making proceedings does not
19 seem to be -- to CFUR to be sufficient until it -- until
20 such time those rule makings have actually been announced.
21 We don't feel that it should have an effect on this hearing.

22 CHAIRMAN BOWERS: Have you concluded?

23 MR. FOUKE: Yes.

24 CHAIRMAN BOWERS: All right.

25 Mr. Reynolds.

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1 MR. REYNOLDS: Mrs. Bowers, the issues before this
2 Board must be limited to those issues which are relevant to
3 the proceeding; which are within the Board's jurisdiction,
4 and which are raised pursuant to or with regard to NRC
5 regulations.

6 The issues cannot be based upon allegations that
7 NRC regulations are inadequate generally, or that the
8 intervenors have their own approaches to the way Atomic
9 energy should be regulated in this country.

10 In short, the scope of the -- the proceeding is
11 derived from the requirements of NRC regulations and not by
12 the requirements of certain individuals or small groups which
13 would seek to vindicate their own personal value preferences.

14 This proposed contention is one which would challenge
15 the NRC's way of regulating Atomic energy. CFUR would have
16 the Staff alter the way it has evaluated the TMI accident and
17 implemented regulations or developed -- is in the processing
18 of developing regulations to take into account the scenerio
19 that happened at TMI.

20 I think that out of Mr. Fouke's mouth he has
21 confirmed that there is no basis for this contention for you
22 have just heard him state that he does not contend that the
23 TMI accident could happen at Comanche Peak.

24 Once he abandons that contention the entire basis for
25 this contention disappears.

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2 MR. REYNOLDS: -- evaluating the hydrogen
3 explosion scenario and the Commission is evaluating that
4 and pursuant to the case law at that stage, that is
5 sufficient for this Board to treat it as being in rule
6 making or being considered for rule making.

7 We can identify that SEKI document for you if
8 you'd like.

9 DR. COLE: I think I know the document you're
10 talking about but that was specific with respect to -- to
11 hydrogen generation. Is it your contention that that is
12 directly related to the TMI incident as we all know it?

13 MR. REYNOLDS: Yes, it is.

14 DR. COLE: All right.

15 Thank you.

16 MR. REYNOLDS: I believe that the derivation of
17 that SEKI document is the TMI Staff Review.

18 DR. COLE: Yes, but my point is is that going to
19 deal only with hydrogen generation or is it going to deal
20 with the sequence of events at TMI and -- and the
21 corrective measures that are associated with -- with the
22 problems were --

23 MR. REYNOLDS: Our understanding is --

24 DR. COLE: -- arose?

25 MR. REYNOLDS: -- it's going to deal with
hydrogen generation.

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2 DR. COLE: So then that particular rule making
3 might not apply to this particular contention?

4 MR. REYNOLDS: It might apply in part.

5 DR. COLE: All right, sir.

6 Thank you.

7 CHAIRMAN BOWERS: Mrs. Rothschild.

8 MRS. ROTHSCCHILD: The Staff has stated its
9 position in its April 10th document which is that we oppose
10 the admission of the contention and we will rest on that
11 but I would like to make a few brief points.

12 First of all, we don't agree that -- that, you
13 know, that the subject purportedly covered by the contention
14 is barred from an individual licensing proceeding on the
15 grounds that it is the subject of a rule making. I believe
16 at -- at most all we have, even with reference to hydrogen
17 explosion sequence, is a paper from the Staff to the
18 Commission and I don't think we have a Commission ruling
19 or decision indicating that it is going to consider even
20 that subject in the rule making.

21 So I guess we would say that it's premature to
22 say that even that subject is barred from consideration on
23 the grounds that it -- in rule making we have no notice
24 of advance rule making.

25 But as far as the Staff's, you know, grounds for
opposing the contention, it's stated in our April 10th

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document and we just don't feel that there's an adequate basis stated for the concern and that is still our position.

CHAIRMAN BOWERS: Fr. Fouke.

MR. FOUKE: At this particular time CFUR is not taking a position on whether or not a TMI type accident could happen at Camanchi Peak. The object of -- of this contention is to encourage the Board to require the applicant to actually modify computer codes to insure that whatever actions have been taken by the applicant will insure that a TMI accident will not happen at Camanchi Peak.

The object -- our object is -- is to -- is to try to do as much as possible and we feel that it's only proper that if you're going to have a computer code which -- and there are many of them used in the FSAR, if you're going to have a computer code which is supposed to predict the consequences of accidents, then you should have sufficient -- well, when you have an accident that happens, you should have the capability of being able to put those parameters on a computer code and the computer codes used in the FSAR do not have this capability.

And we referred in our report to -- to an interview held by the people with the Rogovin Report where the operators at TMI actually made the statements that a hydrogen explosion which happened at TMI they considered it

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2 to be impossible and they actually quoted the reason why
3 they thought it was impossible because of all the regulatory
4 -- you look at everything that happens to the regulatory
5 porcess, you look at the final safety analysis report and
6 -- and these things can't happen.

7 So they didn't do anything about it for two days
8 and I think this needs to be corrected.

9 MR. REYNOLDS: Mrs. Bowers, may I make one
10 comment so that the Board is not misled by what I said
11 earlier.

12 Let me read the discussion from the SEKI document
13 which I referred to, which is SEKI 80-107. The accident
14 at Three Mile Island involved a large amount of metal water
15 reaction in the core with resulting hydrogen generation well
16 in excess of amounts specified in 10CFR5044 of the
Commission's regulations.

17 A rule making proceeding on the subject matter of
18 degraded cores and hydrogen management is under considera-
19 tion by the Commission.

20 This proceeding was suggest in Item IIB8 of the
21 NRC action plans developed as a result of the TMI accident
22 new reg 0660.

23 MR. FOUKE: The fact that this was suggested by
24 the NRC Staff seems to me to be far from a substitute. The
25 NRC Staff has suggested an awful lot and in some of our

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later contentions I think we'll be talking about what the NRC Staff has suggested with reference to anticipated transients without scram for some eleven years.

MR. REYNOLDS: It's really not relevant to this contention, Mrs. Bowers.

DR. REMICK: Mr. Fouke, I have a question on the object of your contention. Am I correct in characterizing the thrust of the intention to be that you feel that the codes utilized in the design of the Camanchi Peak reactors, analyzing the transient and accident scenarios, should be capable of handling small breaks followed by subsequent mechanical failures and operator error.

Is that the thrust of the contention?

MR. FOUKE: It should be able -- any code which is -- is used for the purpose of either insuring that an accident will not happen or predicting what an accident -- what the consequences of a particular accident sequence are, should have the capability for handling those parameters actually experienced at TMI which include maintenance -- maintenance error as well as operator error. And also the closing of valves for instance, the failure of electricity to relay so that the relay remains in its -- in one position, things of this nature.

Secondary failure of mechanical devices because the probability of failure in the secondary mode is much

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2 higher than in the primary mode.

3 DR. REMICK: When you say maintenance areas do you
4 mean that a valve might be left open when it should be
5 closed or the valve might fail when you expect it to be
6 operating or a relay might fail, is this what you mean by
7 maintenance errors?

8 MR. FOUKE: No, by maintenance errors I mean that
9 the personnel in maintenance performed their intended
10 function improperly at TMI. For example, they left the
11 valves closed -- the feedwater valves and then too my
12 understanding is that the -- when they were cleaning rozin
13 is the actual initiating event for the TMI accident.

14 And it's things of this nature that I'm talking
15 about on operator error -- I mean maintenance error. When
16 -- when we talk about equipment failure it would be in that
17 particular category and I recognize that you have a single
18 failure criterion and I, you know, the fact that single
19 failure criterion does not rule out operator error or
20 maintenance error. And they're not -- at least to my
21 knowledge it doesn't.

22 DR. REMICK: Was it my understanding then that
23 what you're saying is that the codes the analyzed the
24 reactor transients following operator error, equipment
25 failure, maintenance errors, they should be capable of
following the transient in the plant or the accident in the

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2 plant?

3 MR. FOUKE: I'm saying that if you -- like in
4 Section 15 I think it is of the FSAR they have accident
5 sequences which are estimated for the use of computer codes
6 to predict what the consequence of these accident sequences
7 would be. And I'm saying that those accident sequences
8 should have the capability for handling the parameters which
9 were so very important in the TMI sequence.

10 Whether or not the operator reacted over a certain
11 period of time, whether or not a valve failed to close and
12 to find out what the consequences of these things are. As
13 there's an awful lot of supposition in that -- in that --
14 the codes as written in the FSAR right now.

15 DR. REMICK: But you are not necessarily insisting
16 that those analyses be in the FSAR but the codes be capable
17 of handling analysis of that type of accident and the
18 consequences. Am I correct?

19 MR. FOUKE: Yes, sir.

20 And sufficient information be provided so that
21 whatever parameters are plugged in at the FSAR stage are --
22 are -- are -- are realistic parameters, not just
23 assumptions.

24 That operators have been trained, that you have
25 procedures that are in front of them that they can get to
quickly, they have lights which indicate things correctly,

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at least in a majority of cases, that -- what kind of reaction time you can expect, what kind of decision making you can expect in very severe stress circumstances, that type of thing.

DR. REMICK: Thank you.

CHAIRMAN BOWERS: Who would like to go on to the next contention please?

MR. FOUKE: Contention 3A, CFUR's position is that some accident sequences which heretofore have been considered to have probabilities so low as to be considered incredible should now be considered to be credible and evaluated in the regulatory process.

In essence CFUR's argument is that some accidents which heretofore have been considered to be Class 9 accidents can now be shown to have a probability high enough to be classified Class 8 accidents and should be evaluated in the FSAR and the EIS.

We have quite a lot of things that we bring up in the latest report and won't try to go into those except that again we talk about maintenance error and equipment failure of the secondary type and operator error.

We point out that the PWR3 accident sequence as described in WASH 1400 in particular needs to be addressed and that although WASH 1400 estimates this probability to be 2×10 of the 6th, 2×10 of the minus 6th, the Lewis

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2 Committee refutes the actual numbers used in the WASH 1400
3 and we argue that there needs to be confidence level
4 established in order to arrive at what would be considered
5 to be a conservative estimate of -- of the probability of
6 that particular failure.

7 And we think that utilizing what was experienced
8 at TMI in less than 400 reactor or less than 500 reactor
9 years and the situation with the containment over pressure,
10 that it can be shown that there is enough question about the
11 probability of that event that it should be considered to
12 be a credible event and therefore evaluated.

13 We further bring up the possibility of tornado
14 actions completely destroying all so called non-safety
15 functions at Camanchi Peak at the time when both power --
16 both reactors operating full power.

17 And those are the two accident sequences which
18 we feel should be evaluated.

19 The Commission in its statement on risk assessment
20 and the reactor safety study report in light of the risk
21 assessment review group report dated January 18, 1979,
22 actually states that they support the extended use of
23 probalistic risk assessment and regulatory decision making.

24 I think the Staff in their answer refers to their
25 opinion that the WASH 1400 has not been used in making the
decision of what is a credible or a non or an incredible

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accident.

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CFUR really doesn't agree with this in that the reactor safety study came to the conclusion that accident sequences not heretofore considered to be credible did have very low probability of occurrence and so WASH 1400 was considered as a buttress to the position that the Commission had taken or the NRC Staff Boards regarding the proper classification of Class 9 accidents.

Regarding putting those particular accidents in the Class 9 category and because WASH 1400 came up with probability numbers which looked good, it had no effect on the rule making process.

But had WASH 1400 come up with smaller -- with -- with higher probability numbers, it would have had a dramatic effect on the determination of what is a credible and an incredible accident.

So in that sense I think that WASH 1400 had a great impact on past rule making processes. What Seefer is challenging is the fact that at -- in view of the Lewis Report, that buttress doesn't exist and we are further making the contention that on particular sequence looked at does -- is questionable as to whether it should be considered to be an incredible accident any longer.

Again, the applicant points out that it is his opinion that this is about to become the subject of a

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general rule making by the Commission even though he takes the position that there's no merit to the argument.

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About to be does not seem to me to be sufficient reason to ignore this in this proceeding.

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That's all, thank you.

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DR. COLE: Mr. Fouke, is it your contention that the Three Mile Island event was -- is properly described as a PWR3?

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MR. FOUKE: I think the -- I think there could be some arguments whether it's a PWR2 or 3 but I -- the sequence of events which were taking place at Three Mile Island most probably was 30 to 60 minutes away from a core melt as described in the Rogovin Report and it had not yet over pressured the containment so I suppose it would more probably fall PWR2. But --

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DR. COLE: Well, I don't -- I thought all of the -- the sequences 1 through 9, I believe there are, described in WASH 1400, I thought all of them involved core melt.

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MR. FOUKE: At one time or another they do.

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DR. COLE: So how can you say that it was a PWR2 or a PWR3?

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MR. FOUKE: You can't. If you -- except that you can categorize them by whether it was a small -- small break or whether it was a large small break.

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And I think the PWR2 is categorized as a large small break and indeed if there was a 4 inch --

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DR. COLE: So -- so you're saying that we were so close to that that we really ought to be considering that as -- in our consideration of accidents?

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MR. FOUKE: In consideration of the probability of an accident, this is an accident which progressed to within 30 to 60 minutes of core melt according to the Rogovin Report.

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DR. COLE: All right, sir.

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Thank you.

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MR. FOUKE: And it happened in -- in between 400 to 500 reactor years.

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DR. COLE: Excuse me.

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Go on, Mr. Reynolds.

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MR. REYNOLDS: This is another contention where Seefer is telling the Commission you're doing it wrong, do it my way.

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This Board is governed by Commission regulations, policy and pertinent legal precedent with regard to this contention.

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Simply stated the contention seeks to have the Board evaluate Class 9 accident scenarios in the context of this proceeding.

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The annex to Appendix D of Part 50 sets forth the

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description of the 9 classes of accidents. And the Commission's policy is confirmed most recently in the OPS case by the Appeal Board is clear that in individual licensing proceedings Class 9 accidents should not be considered.

Until the Commission speaks further on that policy this Board is bound by it. It's that simple.

CHAIRMAN BOWERS: Have you concluded?

MR. REYNOLDS: Yes, I have.

CHAIRMAN BOWERS: Mrs. Rothschild.

MRS. ROTHSCCHILD: Staff has stated its position opposing admission of this contention in its report. We rest on that although I'd like to make a couple of additional points.

I reiterate first of all that the Commission -- as we state on page 14 of our report, the Commission has long since before WASH 1400 taken the position that the consequences of so called Class 9 accidents need not be discussed and this policy has been upheld by the Court.

I would like and we cite the decision of the Appeal Board in off shore power systems and the Commission decision in off shore power systems, I would like to add that in a even more recent case which although we don't cite it in reference to this contention, we do cite it on page 48 in reference to our position on I believe it's

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CASE's contention seeking to litigate Class 9 accidents.

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The decision I'm referring to was of the Commission in Black Fox and that decision which is cited on page 48 reiterates what the Commission's policy is and there are also two recent Appeal Board decisions again making clear exactly what the Commission's policy is with respect to consideration of Class 9 accidents for land base reactors in individual licensing proceedings.

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The first Appeal Board decision that I'm referring to is Public Service Electric and Gas Company, Salem Nuclear Generating Station Unit One, that is A Lab 588, April 1, 1980. In that decision on page 9 it is stated clearly that the Commission has ruled in unmistakable terms that the existing policy on Class 9 accidents was not displaced in off shore power and would not be displaced pending generic consideration of Class 9 accident situations in policy development and rule making.

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And as I am further quoting, the Commission went on to explain that it had envisioned that the Staff would bring an individual case to the Commission for decision only when the Staff believed that such consideration was necessary appropriate prior to policy development.

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And I would conclude also quoting that as the Appeal Board stated in this decision, it's well settled. The Commission has reserved for itself the right to decide

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whether the consequences of Class 9 accidents at land base reactors are to be considered in any given case.

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So I think we have -- it is very clear that it's entirely the Staff's responsibility to apprise the Commission whether such accidents should be addressed on individual cases. And I think that that policy cannot be changed just in this individual proceeding.

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And I would also like to cite another recent Appeal Board decision which was also in Black Fox rendered after the Commission's decision in Black Fox. The Appeal Board decision is A Lab 587, March 28, 1980.

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I bring these two cases up just to reiterate that that -- that the precedent is clear and it's up to date and for the reasons stated in the Staff position and as further explained here we do oppose admission of this contention. It cannot be considered here.

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1 The CEQ has had some correspondence with the NRC in regards to
2 this particular matter, and would it be applicable to the
3 environmental impact statement. It's my understanding further
4 that the NRC Staff has prepared a position paper that Harold
5 Denton presented to the Commission regarding whether or not
6 class 9 accident should be evaluated in the EIS, and they took
7 a positive stance, that they should.

8 This was brought before the NRC Commission. The NRC
9 Commission unanimously agreed that it should be done, and failed
10 to act only in that they wanted Harold Denton to report back to
11 them which reactors would be affected and how; and that Denton
12 has indicated that every operating licensed reactor would be
13 required to do this -- that is, evaluate class 9 accidents in the
14 environmental impact statement -- and that the one point of
15 discussion is whether or not they should not -- applicants who
16 are constructing reactors should not immediately start doing
17 this, so that there will not be any unpleasant surprises later
18 on.

18 And we feel this is pertinent to these proceedings.
19 But of course, CFUR basically wants to point out that these
20 arguments we don't feel necessarily address CFUR's contention.
21 CFUR's contention is that there are accident sequences which
22 have been improperly classified as class 9 accidents.

23 MS. ROTHCHILD: Madame Chairman, I would like to make
24 a couple of points. First, about what was just stated about the
25 Council Environmental Quality, CEQ, letter to the Commission and

1 the Staff's view, and that letter represents no more than the
2 views of another government agency to the Commission about what
3 CEQ believes the Commission should do with respect to considera-
4 tion of class 9 accidents at land based reactors. The Commission
5 is rethinking the policy, and as far as the proposal from
6 Harold Denton, homage is up to the Commission, as we have
7 stated, to decide what its policy will be as far as consideration
8 of class 9 accidents goes. And that proposal from Harold Denton
9 is before the Commission, and it's up to the Commission to decide.

10 MR. FOUKE: It is CFUR's understanding that Harold
11 Denton is supposed to make his second appearance before the
12 Commission this week. And we would encourage the Board to
13 determine the outcome of this before they make a decision, in
14 regard to class 9 accidents. But again, I want to re-emphasize
15 that CFUR's contention is basically that there are some
16 accident sequences which have been improperly classified as
17 class 9, and need to be considered not only in EIS, but the
18 FSAR.

19 DR. COLE: Mr. Fouke, the two particular accidents
20 that you think should be considered are the PWR 3, and you
21 described a tornado. What is your contention on that? What about
22 a tornado?

23 MR. FOUKE: Because of the frequency of tornadoes in
24 this area, and that most of the nonsafety, so-called classified
25 nonsafety portions of Commanche Peak are not built to withstand
full impact of tornado, I think it would be wise that it can be

1 shown that an accident sequence which would cause these systems
2 to be completely and totally malfunctioning. For example, the
3 turbine would first be affected and cause missiles which would do
4 even greater damage than tornado-generated missiles; thereby
5 isolating, so to speak, the class 1 structures from the outside
6 world, including the --

7 DR. COLE: So it's not your contention that the class
8 1 structures are not properly designed to withstand a tornado.

9 MR. FOUKE: That is a separate contention of ours.

10 DR. COLE: You talked about class 9 accidents and
11 I'm certain of what those accidents that are described as class 9
12 really should be class 8.

13 MR. FOUKE: YES, sir.

14 DR. COLE: I've got a problem with differences between
15 classes, in particularly 9 and others. The most common defini-
16 tion of class 9 is something that is beyond the design basis
17 accident. And there have been other things associated with that,
18 and probability has been associated with it, and it's been
19 written in many different ways. I think probably the most
20 common definition of class 9 is any accident that is over and
21 above the design basis accident.

22 If we considered that to be our definition of class
23 9, as any accident scenario or accident that is above the design
24 basis accident, how then might we describe class 9 accidents?
25 You say they're now -- they should be class 8. They should be

1 included as the design basis? Is that what you're saying, sir?

2 MR. FOUKE: I'm saying -- well, number 1, I'm not sure
3 that I would agree with your interpretation of a class 9 accident.
4 My reading of the regulations --

5 DR. COLE: You might give me yours, sir.

6 MR. FOUKE: My reading of the regulations is that
7 credible accidents should be considered, incredible accidents
8 should not. And in a mathematical sense, as to whether or not
9 an accident is credible or incredible, it is logical to me that
10 this would be on a probability basis. The Commission has never --
11 to my knowledge -- has never said this is a particular number,
12 but only rational thinking would say that at some point there
13 you -- it's a direct correlation between the probability of the
14 accident happening. So I'm not -- either design elements should
15 be introduced in order to keep the accident from happening, or
16 else mitigating -- something to mitigate the consequences of the
17 accident need to be -- I mean, not necessarily design. You could
18 mitigate -- if there's actions which can be taken to mitigate
19 the consequences of the accident, of course, that also should be
20 done.

21 DR. COLE: Sir, Mrs. Rothchild was describing certain
22 actions of the Staff and the Commission with respect to class 9
23 accidents. And we have some guidance from the appeal board and
24 from the Commission on how we should handle class 9 accidents.
25 In view of what Mrs. Rothchild said about the Commission looking

1 at this issue, how do you think we as a board would be able to
2 get around the appeal board's guidance as to how we're supposed to
3 handle it?

4 MR. FOUKE: Well, my position is that everything which
5 has been said regarding class 9 accidents is fine, except that
6 we're not addressing class 9 accidents per se. I think there is
7 -- I think everybody on the board would agree that there has been
8 much difficulty in actually defining what a class 9 accident is.
9 And for that reason I was trying to --

10 DR. COLE: I think the Commission is looking at that
11 one too.

12 MR. FOUKE: YES. Now, many people seem to refer to
13 a class 9 accident as one which has large consequences. But in
14 the context in which I've been talking, and my contention about
15 this is in talking about probabilities and probabilities only,
16 indeed, there are a lot of small consequence accidents which
17 have equally ridiculous probability as a nuclear explosion in
18 a nuclear power plant. But -- so I think -- I've been referring
19 to the class 9 only as an aid in talking about whether an accident
20 is credible or incredible. So I've been trying to emphasize the
21 probability. And our position is that PWR 3 and tornado is not
22 an incredible accident.

22 DR. COLE: All right, sir. Thank you.

23 DR. REMICK: Mrs. Rothchild, you described Commission
24 policy as recently elucidated by the Commission and the appeal
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1 board on class 9. Does the Staff in any way differentiate
2 in looking at class 9 accidents from the standpoint of preparing
3 environmental reports and environmental impact statements, versus
4 safety issue in a particular proceeding under circumstances of
5 a particular site and so forth? Do you in any way differentiate,
6 or do you find the Commission on class 9, their entire policy as
7 is stated in with Black Fox or Salem ruling they made?

8 MS. ROTHCHILD: If you wait just a minute, I think I
9 can answer your question.

10 DR. REMICK: All right.

11 MS. ROTHCHILD: The Staff isn't aware of any distinction,
12 although we will further check this to confirm that.

13 DR. COLE: Thank you.

14 DR. REMICK: I'm a little confused, in your pleading you
15 talked about alternative 2. And in the stipulation alternative
16 2 is stated. Would you elaborate a little bit on CFUR's view on
17 alternative 2 versus alternative 1?

18 MR. FOUKE: Alternative 2 is the contention to reflect
19 CFUR's concerns. And the actual difference between the two is
20 that there is on the second line of the contention, there is a
21 comma that says, "in part," and there is the addition of the
22 words, "such as." And the "in part" qualifies the findings of
23 WASH 1400; the "such as" says "such as those of the Lewis
24 Committee." The history of this is, when we had a conference --
25 I think it was on July 17 last year, which was the only conference

1 we've had concerning arriving at stipulations -- that basically
2 was a verbal conference. And I was describing to the Staff
3 what our concerns were, and they encouraged us to write it down
4 and they acted as the people who would write it down. They went
5 to Washington D.C. and typed this up in a reasonable length of
6 time and sent it back to us. And as soon as we saw it we
7 recognized that the qualifying words should be in there.

8 And we notified the NRC of this by telephone. And they
9 agreed to the changes, and eventually even informed us that the
10 applicant had agreed to the changes. And in a letter to CFUR
11 later, the first of this year when they sent the stipulation,
12 they explained that although they had agreed to the change, now
13 they were changing their position about this whole matter.
14 And we just -- we had no intention at any time of basing our total
15 argument on WASH 1400 and the Lewis Committee, at no time. And so
16 alternative -- is it 2? Alternative 2 is the only wording which
17 would be acceptable to CFUR.

18 DR. REMICK: Thank you. I don't believe the Staff and
19 the applicant addressed alternative 2 in their responses. Would
20 you care to do so?

21 MR. REYNOLDS: Alternative 2, in our view, is simply
22 an attempt by CFUR to keep the door open so that it can later
23 come in and add whatever it chooses to add. We thought that the
24 language in alternative 1 tied them to some purported basis. We
25 believe that the contention should be rejected because of lack of

1 specificity and supporting basis. But we wanted the board to
2 have before it the alternative language so that the board could
3 see for itself whether the alternative 2 language was too general
4 and too openended to meet any specificity requirements. But we
5 would emphasize that we think the contention is without basis
6 and should be rejected.

7 MS. ROTHCHILD: The Staff's position is that the
8 language which CFUR insists on in alternative 2 is impermissibly
9 vague, and we do not find that language to be acceptable.

10 DR. REMICK: Thank you.

11 MR. FOUKE: I would like to respond to those. I can
12 understand how the Staff and the applicant would like to have
13 CFUR put on its total case right here and supply them with all
14 the reports and everything, which they would expect to see. I
15 think it goes beyond the requirements of admissibility of
16 contentions.

17 MS. ROTHCHILD: Madame Chairman, Staff would just like
18 to state in response to CFUR's comments, we are not seeking from
19 CFUR that it provide to us, or anybody else, documentary evidence
20 or put on "its whole case." But we do feel that a contention has
21 to be sufficiently specific, and that the other parties know what
22 they are to address. We have to have a contention that is bounded.
23 And in our view, the language that CFUR insists on makes this
24 contention vague and unbounded. And that is our objection; not
25 that we want CFUR to "put on their case." We just want a

1 contention that's specific, and that's not so broad and
2 unbounded that the other parties don't know what they're to
3 address.

4 MR. FOUKE: I would like to point out, Madame Chairman,
5 that the wording as proposed by the applicant and the Staff
6 would be so narrow as to allow CFUR to interject nothing but
7 WASH 1400 and the Lewis Committee. And, you know, that's --
8 CFUR will admit that if that's the accepted wording, we'll just
9 drop the contention, because the contention is not worthwhile.
10 WASH 1400 --

11 MR. REYNOLDS: We would agree with that.

12 MR. FOUKE: But we go to the point that the intent of
13 the intervenor is not what is stated at all in alternative 1.

14 MR. REYNOLDS: Mrs..Bowers, I don't mean to interrupt
15 Mr. Fouke. I just can't tell when he's finished talking. I
16 was just going to say that we would certainly agree to CFUR
17 withdrawing that contention if they're uncomfortable with that
18 language.

19 CHAIRMAN BOWERS: One thing I forgot to mention this
20 morning. I think I mentioned it when we were together last. I
21 very much prefer that you just refer to me as Mrs. Bowers.
22 Madame Chairman is a real hybrid, you know.

23 NOW, the next one? Mr. Fouke?

24 MR. FOUKE: Contention 3B, CFUR feels that a hydrogen
25 explosion sequence needs to be added to the list of possible

1 accident sequences for which consequences would be determined.
2 And in support of this, I'd like to point out that this is
3 one of the contentions which have been described as being a
4 deferred contention. The status of deferred originated also at
5 this July 17 meeting. The Staff brought up the suggestion that
6 certain contentions be deferred because they're Three Mile
7 Island related, and that my understanding was that we would get
8 together at a later time once subsidiary things would come about,
9 and we would discuss the contention. But as CFUR has attempted
10 to explain in their report, there are still outstanding items
11 here which could have a large effect on this; and that is,
12 whether or not it is decided to vent areas such as the reactor
13 and the steam generator pressure out.

14 And we've attempted to show what our position would be
15 in either -- under either circumstance, whether eventually the
16 applicant is required to vent, or in the case the applicant is
17 not required to. The applicant, again, says this is about to
18 become the subject of a general Commission rulemaking, and he
19 refers to a suggestion by the Staff and NUREG 0660 draft 2, which
20 is commonly referred to as the Staff Action Plan, which we
21 haven't been able to get ahold of yet.

22 We think -- and as we point out in our report, there are
23 some questions concerning the FSAR, the system at CPSES as
24 described in FSAR. Our reading of the FSAR leads us to believe
25 that the containment hydrogen monitoring system is not required to

1 be operational until 24 hours after an accident. I'd like to
2 point out that TMI hydrogen explosion took place nine and a half
3 hours after the accident.

4 The evaluation of the recombiners at Commanche Peak
5 are based on an outdated regulatory guide, and even then they
6 take exception to the guide. The guide was put out in 1971, and
7 has since been revised twice in '76 and '78. But over and beyond
8 that, the rate of hydrogen generation at TMI, although there's
9 some question to this--obviously you'd have to wait until the core
10 is actually investigated -- but there is some conjecture, in
11 my understanding, that the rate of hydrogen formation was larger
12 than expected. And we certainly think that should be cranked
13 into evaluation of the status of CPSES. And --

14 CHAIRMAN BOWERS: Have you concluded?

15 MR. FOUKE: YES, ma'am.

16 CHAIRMAN BOWERS: Fine. Mr. Reynolds?

17 MR. REYNOLDS: Again, Mrs. Bowers, in order to expedite
18 things we'll keep our responses short as possible. The board
19 has our thoughts on paper, and we will just summarize them for
20 you here.

21 We believe that this contention, again, like the others,
22 lacks basis. CFUR does not demonstrate why Commanche Peak will
23 not comply with NRC regulations relating to treatment of hydrogen
24 generation during an accident. In fact, Commanche Peak does have
25 hydrogen recombiners in containment. They are in complete

1 compliance with codes and regulations. The short-term lessons
2 learned document of the NRC Staff requires vessel venting, and
3 Commanche Peak will comply with that requirement. In short, we
4 comply with all NRC requirements. And to the extent that CFUR
5 is incontent with the design of Commanche Peak, it seems to us
6 that it's a challenge to the regulations with which we comply.

7 CHAIRMAN BOWERS: The Staff?

8 MS. ROTHCHILD: Staff will rest on its position stated
9 in its report opposing this contention, although I would further
10 add that we do not agree that this contention should be "deferred,"
11 and we never agreed that it should be deferred indefinitely.
12 I think we have to draw the line somewhere. The Staff only
13 proposed in its July meeting of the parties that at that
14 particular meeting they not discuss -- or that it might be
15 preferable to defer discussing the wording and admissibility
16 of the contention since, you know, it was so soon after the
17 Three Mile Island accident. And I think as far as CFUR's
18 assertion that their report's not in, I mean, I think there are
19 always going to be reports issued on the lot -- you know, I
20 think we have to draw the line somewhere as to determining
21 admissibility. And I think the time is now.

22 CHAIRMAN BOWERS: Mr. Fouke, briefly.

23 MR. FOUKE: In regards to the last comment, CFUR has
24 requested since January that it be supplied with the NRC Staff
25 Action Plan. We're aware that there's been predraft versions of

1 it. The applicant has actually in this contention referred to
2 the second draft of this. But we have never received this in
3 the mail. And the Staff has consistently said that they are waiting
4 for the final version. I think this puts us at a disadvantage.
5 The Rogorin report is another item. We've asked consistently
6 for volume 2 of the Rogorin report, and we've been told that it
7 has not yet been published in final form.

8 I think it puts us at a distinct disadvantage to
9 operate especially with items which are being brought up in this
10 proceeding we have requested for and have not yet had any
11 response to.

12 On the applicant's statement, he said that they were
13 complying with the regulations. It is my understanding that
14 they are complying with the regulatory guides, which is a
15 different thing from complying with the regulations. My under-
16 standing is that the regulatory guide is the interpretation of
17 the Staff, what would be required in order to comply with the
18 regulations. But I think there's a distinct difference between
19 simply complying with the regulatory guide and complying with
20 the regulations.

21 And as I pointed out, I think there would be a great
22 deal of area for discussion when you say that they're complying
23 with the regulatory guide that they have taken exception to.
24 That was written in '71, and there's two others that's been
25 written in '76 and '78.

MS. ROTHCHILD: Mrs. Bowers, we don't want to labor

1 discussion on this contention, but I would just like to respond
2 to one other comment CFUR just made. As far as availability of
3 documents, we are now -- as the Staff stated, when this issue has
4 arisen previously in this proceeding, and I think it was fully
5 discussed in the Staff's March 10, 1980 answer to CFUR in
6 Cases Response to the Staff's Status Report, I would just not
7 that, as we stated there, we are not now in discovery. The Staff
8 has in its view no legal commitment to supply documents to
9 any party at this time.

10 We have, I think, as a courtesy, and to perhaps aid
11 the other parties, we have stated that we would consider
12 inquiries about documents relating to specific contentions. I
13 think our March 10 pleading indicates the various correspondence
14 and requests, and what has been furnished. And I think that
15 it is in error to assume that the Staff has the legal commitment
16 at this point to supply documents which a particular party may
17 believe relate to its contention. As far as volume 2 of the
18 Rogovin report, it is not now out in final form. We cannot --
19 we have stated to CFUR that when it is, a copy will be provided.
20 That is all we can do at this point. And I think this is just
21 something we need to clarify.

22 MR. FOUKE: I would ask for clarification too, because
23 where the problem really comes in is when CFUR is of the opinion
24 that we are going to get something, and then turns around we
25 don't get it. If it's clearly pointed out at the beginning that

1 we're not going to get this and we have to take independent
2 steps, we can go out and take the independent steps. But the
3 problem is --

4 MR. REYNOLD: Mrs. Bowers, this is something that
end Tape 4 5 Staff and CFUR can work out among themselves.

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3 DR. COLE: I think it does not constitute compli-
4 ance with the Regulations. I don't recall seeing in your
5 filings on Contention 3B any reference to any specific
6 regulations that they would be in violation of. Would you
like to comment on that, sir?

7 MR. FOUKE: Well, I would have to take some time.
8 I'd have to get the Regulations out so I could refer to them.

9 DR. COLE: Earlier in talking about other contingents
10 reference was made to rulemaking on the hydrogen explosion
11 considerations or hydrogen generation in the containment.
12 Considering the guidance that is before us, we can consider
13 certain kinds of accidents if there is a demonstration of
14 special circumstances or definite nexus to the facility in
question.

15 Considering the fact that hydrogen explosion I
16 believe would be in the category of a Class 9 accident,
17 and considering the fact that that question is before
18 the Commission right now, could you provide us with any
19 guidance or assistance as to why we should be considering
that in this specific proceeding?

20 MR. FOUKE: I don't know. I would appreciate it
21 if you can tell everybody here whether or not this is
22 before the Commission and exactly what is going on. It
23 might clarify some things because the Applicant has just
referred to a suggestion.

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3 DR. COLE: The TMI Restart Licensing Board on
4 January 4, 1980, filed a document for Commission considera-
5 tion. I don't remember the exact title of the document
6 but the substance in effect had to do with the considera-
7 tion of hydrogen generation which is the substance of
8 your contention also.

9 MR. FOUKE: Yes.

10 DR. COLE: The Commission has not yet acted on
11 that. Possibly the Staff could comment if they know any-
12 thing on that.

13 MS. ROTHSCCHILD: All the Staff knows is that
14 that question is pending before the Commission. I'm not
15 aware of any Commission decision on it.

16 MR. FOUKE: My comment would go to there are
17 specific things which exist at every particular plant in
18 a site specific sense. When you have a hydrogen monitoring
19 system that is not required to be operational for 24 hours
20 after the accident, I should think that would be one
21 very significant factor.

22 And at the rate at which you can remove hydrogen
23 being based on rather old data would be a second very
24 specific matter. Insofar as the status of how the
25 Commission would address this, I've got to admit I'm quite
26 confused.

27 It appears to me that in the case of Class 9

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3 accident sequence with the EIS, the Applicant and the Staff --
4 the Staff has been consistent, I think -- but the applicant
5 is saying that this is nothing more than a suggestion that
6 hasn't been ruled on. And yet here they're saying this
7 is also before the Commission and we should stay away from
8 it. We should never look at it.

9 That to me creates a contradiction in position.
10 Either one to be consistent has to say only when it is
11 formerly published as a rulemaking will the Boards not
12 look at a matter, or to have some kind -- it has to be
13 consistent. It doesn't seem to me you can argue both ways
14 and yet it seems that's what's happening in these hearings.

15 DR. COLE: I understand your position there,
16 Mr. Fouke. The language in the Douglas Point Vermont Yankee
17 Line case has indicated if the subject is either in rule-
18 making or about to go into rulemaking then as a general
19 rule it's barred from consideration in individual licensing
20 proceedings.

21 MR. FOUKE: I would be glad to look at that.
22 I don't understand the term "about to be" because it seems
23 to me --

24 DR. COLE: Well, I think that's the language.

25 MR. FOUKE: I still do not understand it though
because that seems to me to give leeway that indeed if
the member of a Staff decided when an intervenor brought

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3 up a position that they did not want to have discussed in
4 a hearing, if they could get a friend of their's to write
5 a suggestion to the Commission, then the Board would
6 automatically drop that contention. I mean I'm not
7 suggesting that that has happened or will happen.

8 DR. COLE: I think it's the Board's opinion or
9 certainly my opinion anyway that that kind of an about
10 to be considered situation would not be one that the
11 Board would consider in that category. It would have to
12 be a little more formal than that.

13 CHAIRMAN BOWERS: Are you ready to go on to the
14 next one?

15 MR. FOUKE: Contention 4a has to do with the
16 QAQC and it's the wording which the Board decided on in
17 the first prehearing conference. And as stated in our
18 report, this contention accurately reflects some of CFUR's
19 concerns and we're satisfied with it.

20 We would like an additional QAQC contention, but
21 we're certainly satisfied with this one.

22 CHAIRMAN BOWERS: Do you have any comment,
23 Mr. Reynolds?

24 MR. REYNOLDS: Yes, if an intervenor were to
25 propose to this Board language which the Board has drafted
for this QA contention, we would urge and expect that the
Board would reject it as being overly vague.

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It certainly doesn't inform us as to what issues are going to be litigated in the proceeding. We're not prepared to object to quality assurance being in contention in this proceeding, recognizing that Commission regulations preclude us from appealing your earlier ruling on the admissibility of this contention.

We have tried to draft proposed language which we believe encompasses the reasonable legitimate concerns of all three intervenors into one contention. We'd like to just tender it to the Board and to the parties for its consideration.

DR. COLE: Have you previously discussed this proposed language with the parties intervenors?

MR. REYNOLDS: The language has been discussed with all the parties. With a few minor exceptions generally the language was derived from negotiations with CASE as a matter of fact. But we never reached a stipulation on it.

We, the Applicant, would agree to the admission of this contention.

CHAIRMAN BOWERS: Does the Staff have a further position on this matter?

MS. ROTHSCHILD: Yes, it does, Mrs. Bowers. Our position as stated in our April 10th report that the language that the Board determined encompassed Quality Assurance Quality Control contentions and is too broad,

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3 and it's not bounded. Since the basis and we're talking
4 about SEFOR now, CFUR does mention specific practices in
5 support of it's contention and that is why the language
6 that we proposed in our report covers those practices and
7 we find that that language or there doesn't seem to be
8 any substantial difference in the language that Applicants
have proposed and handed out now.

9 And our position is that we need a contention
10 that is specific and bounded. And that is why we proposed
11 certain language which in our view does state a contention
12 that is specific and capable of being litigated.

13 MR. FOUKE: CFUR would adopt the position that
14 because you say QAQC, it is indeed bounded. We're not
15 talking about design. We're not talking about a whole
16 bunch of other things. We think the contention as worded
is quite proper and we would oppose the Applicant's
proposed statement.

17 MR. REYNOLDS: Mrs. Bowers, we've provided a
18 copy of this to the court reporter.

19 CHAIRMAN BOWERS: Mr. Reynolds, I assume one
20 copy was given to the reporter, is that right?

21 MR. REYNOLDS: That's right.

22 CHAIRMAN BOWERS: Well, then we really would
23 prefer for the reporter when the tape is transcribed to
24 repeat this verbatim. This short paragraph should be
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3 typed into the transcript.
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5 APPLICANTS' PROPOSED STATEMENT OF QA/QC
6 CONTENTION FOR ALL INTERVENORS

7 The Applicants failed to adhere to the quality
8 assurance/quality control provisions required by the
9 construction permits for Comanche Peak, Units 1 & 2 and
10 the requirements of Appendix B of 10 CFR Part 50 in that
11 the construction practices employed, specifically in
12 regard to concrete work, welding, inspection, materials
13 used and craft labor qualifications, have raised sub-
14 stantial question as to the adequacy of the construction
15 of the facility. As a result, the Commission cannot make
16 the findings required by 10 CFR 50.57(a)(1) necessary
17 for issuance of an operating license for Comanche Peak.
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3 DR. COLE: Mr. Fouke, your proposal by the
4 Applicant seems to be a specification of the QAQC charges.
5 Is it that you have other things to add to that and if
6 so what, sir; or did you want to leave it as broad as
7 the Board had originally described it?

8 MR. FOUKE: I think CFUR would desire to leave
9 it as broadly as the Board originally described it.

10 DR. COLE: I think speaking for this member of
11 the Board, it certainly was not my intention that it
12 should not have been further specified. We wrote that
13 contention with the thought in mind being that certainly
14 anything that anyone would have with respect to contentions
15 would be covered by that QAQC contention we wrote. And at
16 last in my mind what I thought was then going to occur
17 is there would be further specification of this specific
18 charges in the QAQC area that would then result in a much
19 more specific contention.

20 I think this is getting closer to that. Now,
21 considering that, sir, would you like to make some additional
22 comments on the statement of this contention?

23 MR. FOUKE: If it's the desire of the Board to
24 make this Contention 4a more specific, CFUR would like to
25 have a chance to review what words it would like to have
in there. I would point out that the words there that
Applicant has is basically CASE's contention: concrete

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3 work, welding inspection, materials and craft labor
4 qualification. There are a number of things which CFUR
5 has already addressed which don't fall into that category.
6 I'd like also a time to review the status as of today
7 rather than as of a year ago.

8 CHAIRMAN BOWERS: I'm not sure whether you made
9 a comment on the Staff's proposed revision. Perhaps you
10 did and I missed it.

11 MR. FOUKE: I think I'm lost now. I have an
12 Applicant's proposed statement.

13 CHAIRMAN BOWERS: Yeah, but the Staff on page 17
14 of their response sets forth in a footnote their proposed
15 revision.

16 MR. FOUKE: Oh, I see, yes, ma'm. Again, here
17 the Staff is suggesting a wording they thought would be
18 appropriate to ACORN and again it does not -- here they talk
19 about concrete work, welding, inspection, material used,
20 and craft labor qualifications.

21 The wording, I think, is the same as the Applicant's
22 wording. They said that they arrived at that with CASE's
23 contention and Staff says they arrived at it with ACORN.
24 No one's talked to CFUR about this.

25 MS. ROTHSCHILD: Mrs. Bowers, I would just like
to mention that although the language in our report on
page 17 was originally stated in a staff memorandum regarding

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3 an ACORN pleading, it's the Staff's position that this
4 language covers in our view the specific QAQC practices
5 which CFUR has alleged in it's pleadings are the subject
6 of it's concern. So we have considered what CFUR has
7 alleged, and we felt that this language covered those
8 specific practices that CFUR mentioned.

9 MR. REYNOLDS: And if I might make one further
10 point, Mrs. Bowers, Mr. Fouke has requested additional
11 time to review the Applicant's proposed statement of the
12 QA contention. He has had basically that same language
13 before him since the Staff filed this document. Page 17
14 of the Staff document has a footnote which is basically
15 the same language we proposed, and it is with regard to
16 the Staff's position on CFUR. So he has been on notice
17 that this has been the Staff's position since April 10th.

18 CHAIRMAN BOWERS: Well, I might state on behalf
19 of the Board, when we get out our order we're not sending
20 it out in draft form for comments from the parties. If
21 you don't like what we do, of course, you can always
22 file a motion for reconsideration. But it will be what
23 we believe to be the final language.

24 MR. FOUKE: CFUR is at a loss as to how the
25 Staff can answer ACORN by just the cursory look at what
has been stated in our report and that statement. I
don't see how the Staff can make the statement that they

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3 think this reflects CFUR's concerns. It's stated here
4 a lack of organization.

5 CHAIRMAN BOWERS: Mr. Gay?

6 MR. GAY: Would it be appropriate for ACORN to
7 answer comments at this point in time to this particular
8 contention as proposed by CFUR? Or should we take it up
again when it becomes our turn?

9 I think that the wording that we're now discussing
10 is identical, and I might have some comments which would
expedite this particular matter.

11 CHAIRMAN BOWERS: Well, one other problem we
12 have, the clock on the wall shows it's a few minutes after
13 12:00 and so would you ho'd until --

14 MR. GAY: I'm ready for a break.

15 CHAIRMAN BOWERS: -- 1:00 o'clock?

16 MS. ROTHSCILD: Excuse me, Mrs. Bowers, before
17 we break if that's what's envisioned, since CFUR has said
18 that it doesn't believe the language proposed by the Staff
19 adequately covers the specific practices it mentions;
20 we'd just like to know just what is it that CFUR feels
21 is lacking. They haven't said anything. I do not believe
they indicated in their April 10th report that there was
anything mission.

22 MR. FOUKE: I will read from the April 10th
23 report in the positions described under "lack of organization"
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3 which is not covered: expansion joint, which is not
4 covered; fracture toughness testing.

5 MR. REYNOLDS: Mrs. Bowers, just because CFUR
6 might mention those items doesn't mean ipso facto that
7 they are valid contentions in this proceeding.

8 CHAIRMAN BOWERS: Well, we'll go back to this
9 matter after the luncheon break. We'd like for everybody
10 to be back at 1:00 o'clock.

11 Also, Mr. Gilmore, it seems to us that it would
12 be appropriate before we start back into this matter
13 after the luncheon break for us to interrupt for your
14 argument on Contention 8.

15 (Proceedings recessed for lunch at 12:05 p.m.)

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1 CHAIRMAN BOWERS: Your attention please. I
2 do want to put on the record the fact that it's now a
3 quarter after 1 and we've been waiting fifteen minutes
4 for the reporter to return so that we could commence.

5 I have a preliminary matter. The first thing
6 this morning called for appearance by the state of
7 Texas, and got no response.

8 But, I understand right after that call was
9 concluded, that the State of Texas is represented.

10 Would you like to make an appearance now?

11 Well, Mr. Gilmore, are you ready to

12 MR. GILMORE: Yes. I just had a class 9 acci-
13 dent at my table here. My water spilled.

14 VOICE: I'll take responsibility, I'm sorry.

15 MR. GILMORE: The applicant is not responsible
16 for this one.

17 VOICE: Gilmore, that's a class 2 accident.

18 MR. GILMORE: Oh, -- We have a total loss of
19 coolant water, however.

20 CHAIRMAN BOWERS: Can you procede?

21 MR. GILMORE: Yes, mam, I can.

22 CHAIRMAN BOWERS: Or is it a disaster?

23 MR. GILMORE: I might have some blotters here
24 momentarily. Most of what I wanted to say didn't get
25 washed away.

All humor aside, I'd just like to start out

1 with a basic comment. I'm going to just address our
2 contention number 8, which deals with class 9 accidents.

3 But, Mr. Reynolds in the staff has also --
4 has pointed out that that stipulations that were entered
5 into, or their commentary on the stipulations did not
6 constitute any kind of position on the merits or the
7 validity or the -- In fact, the truth of any of the con-
8 tentions, and the general comment, I think, was made by
9 Mr. Reynolds, for the benefit of the public, that any-
10 thing that he might say is not consistent of comment
11 on the truth of the contentions.

12 And, I would just say for the benefit of the
13 public that what we say on our contentions is our belief
14 and we believe that they are true, so just that little
15 comment to the public, which I think we lost most of
16 at lunch anyway.

17 Contention number 8, which is contained on
18 our pleading page 33 of our latest filed rendition of
19 our contentions which is nearly a reorganization, more
20 or less, of our contentions which resulted from the
21 hours of negotiations and going over the particular
22 aspects of each contention with staff and the applicant,
23 mostly done by Ms. Ellis.

24 Ms. Ellis, it appears, -- The one that I'm
25 going to argue from today is contention number 8 on page
33 of the recent pleading which is substantively, we

1 feel the same as our contention number 8 that was file
2 with the Board at the last prehearing conference in
3 Glen Rose on page 31 of the prior pleadings.

4 The case contends that the environmental report
5 fails to analyze a probability occurrence of class 9
6 accident, and the potential cost in terms of health and
7 dollars which failure results in the violation of require-
8 ments of 10 CFR, 51.22 and 51.23, violation of the require-
9 ments of NEPA, and in general, and specifically the
10 guidelines set down by President's counsel on environmental
11 quality and violation of the requirements of the Atomic
12 Energy Act in general, preventing the completion of a
13 valid or accurate cost benefit analysis, as required by
14 10 CFR 51.20 and 51.21..

15 In support of this contention, many of the points
16 have already been made by CFUR, by Mr. Fouke, and I'm
17 not going to belabor all the same points because you
18 could see from our written pleadings that we've also
19 attached the cover letter that was sent to the NRC
20 Commission by the CEQ, pointing out, in their opinion,
21 the deficiencies of the EIS and ER.

22 And, I would simply ask that the Board specifically
23 look at and take note of the middle section of that letter,
24 first page, which talks about the problems with the
25 border plate language concerning class 9 accidents, even
in spite of the fact that various plants across the

1 nation differ quite drastically in design capacity, et
2 cetera, and would point that out to the Board.

3 This is one of our bases that we have stated
4 for this contention, is the position set out by the
5 CEQ in their letter and the accompanying legal analysis
6 which we attached to a copy of our pleadings.

7 The legal analysis, I believe, was attached
8 to the portion of the report that went in full to NRC.
9 And with regard to NEPA, on this particular point, --
10 When we alledged that the failure to analyze a class
11 9 accident is a violation of NEPA, and in response to
12 the Staff's comment that NEPA's and CEQ's recommendations
13 to the NRC is just one agency's assessment of what another
14 agency is doing.

15 I would point out the importance of the NEPA
16 Statutes and the effects they have on every agency in
17 Government. And, it's not just the Agriculture Depart-
18 ment commenting on DOE or DOE on the Department of
19 Transportation, as such.

20 It's an environmental impact statement that's
21 required to be completed whenever you have a major
22 undertaking going on that the Government's involved
23 in.

24 And also in 40 CFR, 1500.3, the CEQ sets
25 out guidelines and standards upon, and it's codified
as to what's got to be in your environmental impact

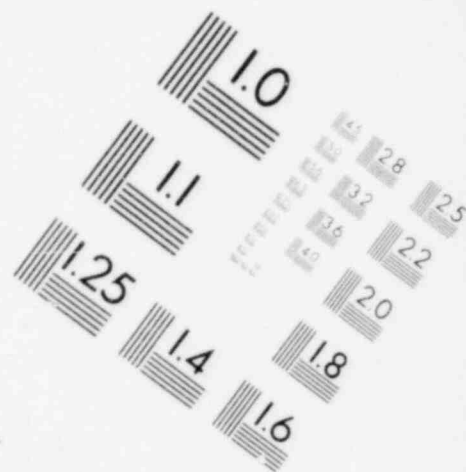
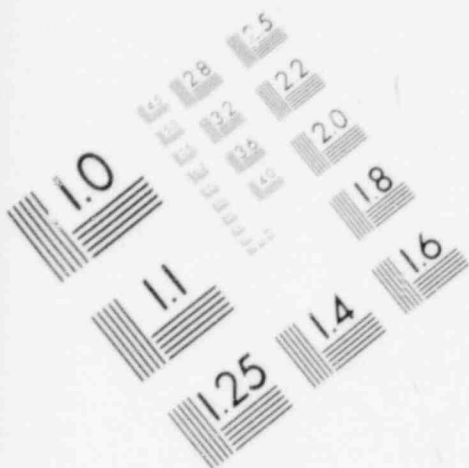
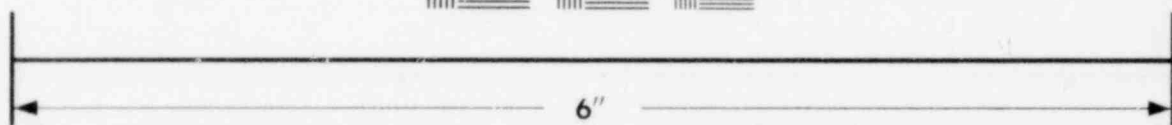
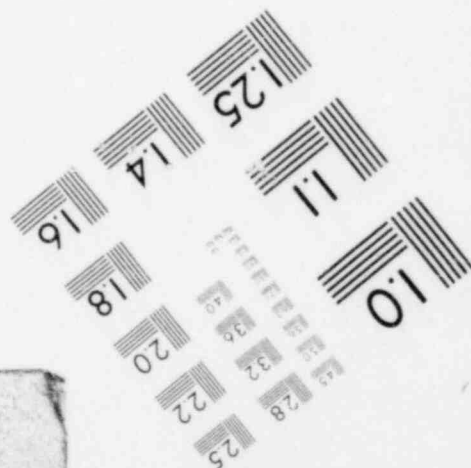
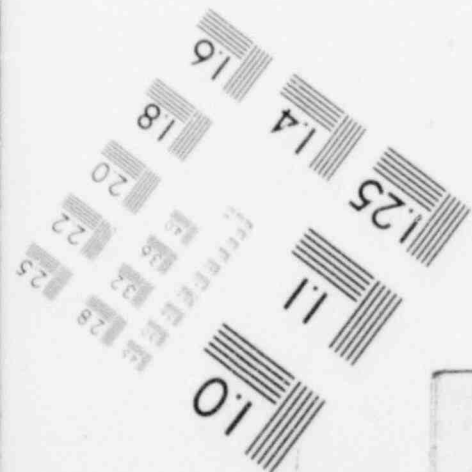


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1 argument that this is generic and I'm sure that Mr.
2 Reynolds is going to make that.

3 And it's been brought up in prior discussions
4 concerning Mr. Fouke's contention that this is something
5 that is going to be subject or about to be subject to
6 rule making.

7 But, I think that we have to address this issue,
8 class 9 accidents in light of reality, and I think that
9 this Commission, if it saw fit, this Board if it saw
10 fit, could number one, accept our contention on whether
11 or not class 9 should be discussed by the applicant in
12 it's ER, based upon the effect of the things that have
13 occurred since this operating license was started and
14 since the last time we met in Glen Rose.

15 I think they're drastic enough events that they
16 warrant including discussion by the applicant. And, I
17 don't think the burden is on the Board.

18 I think the burden is on the applicant to
19 discuss this in it's application and it's ER. I don't
20 think -- I think that it was kind of put on the Board's
21 shoulders, and I think the applicant is the one that
22 has the burden and we need merely to point out that these
23 events occurred.

24 So, this would be a specific event which
25 should effect this specific hearing on Commanche Peak,
because of class 9 the probabilities have changed, or

1 may have changed, the assessments, the reports have
2 changed and the CEQ has changed it's position.

3 And also I would cite the -- the Staff's
4 recommendation to the Commission and the Commission
5 consideration of the Staff's recommendation concern-
6 ing including class 9 consideration at the Board level,
7 which we discussed as well.

8 We don't know what the exact status of it --
9 I believe Harold Denton is going to make a final report
10 and I think, as Mr. Fouke said, it will be sometime
11 this week, hopefully.

12 All these things lean towards, I think, the
13 realistic approach that this Board should take, and
14 that is to consider whether or not a class action should
15 be considered by the ER, and we think it should be.

16 I think if this Board were to decide today
17 or following this hearing that in fact this is a rule
18 making procedure, that it should be properly conducted
19 in Washington, or that they have no grounds, due to the
20 fact that the rule making is about to occur, that this
21 Board should either one, defer a ruling on this conten-
22 tion until such time.

23 However, if they do defer, I think that it's
24 going to be to the detriment of all parties, not only
25 intervenors and not only the Staff and the expense in-
volved in your conducting the hearing, but also the

1 applicant's expense. Because, if we have a rule making
2 and it finds -- And the rule making finds that class
3 9 should be considered, there's a good chance that
4 they're going to have to -- we're going to have to do
5 an awful lot of this work over again, just because of
6 the impact that that would have on many of the other
7 contentions that we have and many other aspects of
8 this hearing, and this is why we have filed a motion
9 asking this Board to consider our class 9 contention
10 first, but we later withdrew it.

11 We feel that if the class 9 must be considered,
12 it's going to effect emergency plans, it's going to
13 effect cost benefit analysis, it's going to effect
14 many of the things that are involved in all of our other
15 contentions and change the statistics and change the
16 analysis to such an extent that we're going to have to
17 start over on alot of this material.

18 So, I think that should weigh heavily on the
19 Board's decision on what they should do with this
20 particular contention.

21 The third alternative, however, that I would
22 like to suggest as a possibility, -- If the Board
23 does not feel like we should consider this contention,
24 properly as a contention in this hearing, and if the
25 Board decides that they would rather not defer any
ruling at all and hold it in abeyance until we find

1 out what happens in Washington, I would like to ask
2 this Board if they would take it on their own initiative,
3 which I believe there are provisions for. It's not by
4 way of motion of any party or intervenor, to certify
5 this question to the Commission in Washington, as to
6 whether or not we should begin our proceeding down here
7 and consider it class 9, at this first level stage.

8 I think that the authority would ly in Section
9 2.730, subsection F of the Rules and Regs.

10 I think you do have that. And, I'm not completely
11 sure of that, but I believe that you do have the authority
12 to certify up a question like this, and I would encourage
13 this Board, if they don't feel like our contention is
14 valid, to so certify because of the total impact, as
15 I've stated before.

16 And, I'd like to address one other point before
17 Commissioner Reynolds in pre-self defense.

18 I know that Nick is going to contend that we
19 have amended our pleadings in fact, but our contention
20 8 on page 33 is substantive of the same contentions we
21 had when we were down at Glen Rose in May.

22 We contend that DR fails to analyze the
23 probability of the occurrence of a class 9 at a potential
24 cost, in terms of health and dollars and point out that
25 that prevents them from arriving at an accurate cost-
benefit analysis.

1 What we've done in the page 33 contention
2 is merely cite the Statute, that that is in violation
3 of -- that we feel that's a violation. We're under
4 the understanding that mere citing and reciting of
5 the Statutes is not really adding anything to it.

6 The bases does include the CEQ study. We
7 didn't have that last May. And that, obviously, is
8 something that's come up new and of course the Roganin
9 Report and all these.

10 But, I don't think we should close our eyes
11 to studies that have come up, so -- that have come out
12 since we had our last hearing.

13 So, I'd just like to address that ahead of
14 time. Thank you.

15 CHAIRMAN BOWERS: Mr. Reynolds.

16 MR. REYNOLDS: Well, I have 6 points to refute.
17 I'll make them as short as I can.

18 I don't see that this argument has added any-
19 thing to CFUR's argument on the general proposition that
20 class 9 accidents should be evaluated in individual
21 licensing.

22 I'll suffice it to say that the Board is
23 bound by the Commission's policy. The Board has no
24 discretion, absent and is showing special circumstances,
25 which has not been made here to evaluate class 9 accidents
in this proceeding. It's that simple.

1 Secondly, the burden, which Mr. Gilmore would
2 place on this applicant, is fundamentally unsound.
3 The actual burden that the applicant has in this pro-
4 ceeding is to comply with NRC Regulations.

5 It's not up to CASE or CFUR or any other
6 intervenor in this proceeding to formulate what it perceives
7 to be the correct Regulations with which this applicant
8 must comply.

9 We comply with NRC Regulations. We needed, as
10 a matter of law, do more.

11 With regard to the persuasivness or lack of
12 persuasivness, of the CEQ letter to the NRC urging that
13 class 9 accidents be evaluated in environmental impact
14 statements, it's well established before this agency,
15 that the NRC is an independent regulatory agency, and
16 that CEQ's views are not binding on the NRC, since in
fact it is an independent agency.

17 I would reinforce what Mrs. Rothchild said
18 this morning and would leave it there.

19 Fourth, to the extent that there is or is
20 about to be rule making on class 9 accidents, Dr.
21 Cole's reading of Douglas Point is correct. If the
22 matter is being treated generically in rule making,
23 this Board is precluded from evaluating it in the
24 context of an individual licensing case.

25 Next, if CASE were to look at the Staff

1 recommendation to the Commission, the so-called Denton
2 letter, discussing class 9 accidents, CASE would find
3 that even the Staff recommends in that document that
4 environmental reports prepared prior to July 1, 1980
5 be grandfathered from the requirement in evaluating
6 class 9 accidents.

7 So, unless CASE is prepared to go to Washington
8 and challenge the proposal of the NRC Staff in that re-
9 gard, this contention is off the market, because they
10 would have us prepare an analysis to supplement our
11 environmental report and that requirement would be in
12 contravention of the Staff recommendation.

13 Finally, we see no need for this Board to certify
14 any determination which you might make denying the con-
15 tions urging consideration of class 9 accidents. There's
16 no need to certify that question to the Commission because
17 the Commission has spoken very recently, as recently as
18 March 21st of 1980 in the Black Fox case where they
19 again affirmed their policy with regard to class 9 accidents.

20 So, for this Board to certify that issue to
21 the Appeal Board, would be a useless exercise and certainly
22 wouldn't be consistent with the efficient allocation of
23 your resources.

24 In sum, we see no additional factors which CASE
25 has added to CFUR's position on class 9 accidents and
we submit to you that this contention and all contentions

1 relating to class 9 accidents must be denied as incon-
2 sistent with the Commission's policy, prohibiting con-
3 sideration of class 9 accidents in individual licensing
4 cases.

5 CHAIRMAN BOWERS: Mrs. Rothchild?

6 MRS. ROTHCHILD: The Staff's position on cases
7 contention regarding class 9 accidents, I believe it's
8 CASE contention A as set out, beginning on page 45 of
9 the Staff's April 10th report.

10 We don't feel that there's anything that's
11 been stated by CASE, either in it's motion or by Mr.
12 Gilmore here today that changes our position.

13 I would just like to make a couple of other
14 points.

15 Staff recognizes that the National Environmental
16 Policy Act applies to licensing action such as this.
17 We would note that the Commission's regulations implement-
18 ing NEPA are in TANSIA, far part, 51, and that the Commission's
19 policy on consideration of class 9 accidents is as the
20 Staff has previously stated, both in it's report and
21 this morning in some other recent cases the Staff has
mentioned.

22 We reiterate that the views of CEQ transmitted
23 to the Commission in a letter, in the Staff's opinion,
24 do not change that policy.

25 We would note that as far as the Commission

1 alledged compliance or noncompliance, with CEQ's regula-
2 tions, regarding NEPA, the Commission has published,
3 in the form of proposed rules, certain changes or re-
4 visions to part 51.

5 These are contained in a Federal Register Notice,
6 45, Federal Register 1.3739, March 30, 1980. And there
7 the Commission states that it's policy regarding how it
8 is going to implement NEPA and with particular reference
9 to CEQ's regulations, the Commission states that these
10 proposed rules do not implement all the provisions of
11 CEQ's regulations.

12 I'm reading from 1.3742. And, in particular,
13 with reference to the depth of the analysis, of a certain
14 worse case accidents, the Commission reiterates there,
15 that under NRC's current risk analysis practices, the
16 consequences of accidents whose likelihood of occurrence
17 is remove, are not given detailed consideration.

18 The Commission goes on to state, though, that
19 these practices are being reconsidered and I think we
20 are all aware that the Commission is rethinking it's
21 policy and there's -- I don't think there is any basis
22 upon which the Licensing Board can deviate, either
23 from the Commission's present policy.

24 I would also like to note as far as whether
25 Commission's policy on class 9 accidents violate Statutes --
I think in a relevant case law, as we state in our report,

1 the Commission's policy has been upheld by the courts,
2 and finally I would like to note as far as any request
3 by case that the Licensing Board certified this question.
4 I'm assuming the question is whether class 9 accidents
5 can be considered in this proceeding.

6 We don't think that CASE has made the necessary
7 showing, that this question should be certified, and
8 I refer to the relevant regulation, is 10 CFR, 2.730-F.

9 And, I believe that the showing that is neces-
10 sary to obtain certification, which would be in essence,
11 form of interlocutory review, the parties seeking it
12 must show that without such certification the public
13 interest will suffer, or that unusual delay or expense
14 will be encountered.

15 And, that holding is from the public service
16 of New Hampshire, Seabrook Station, ALAP 271, 1 NRC, 478,
17 1975.

18 On the Staff's view, the case has not made
19 that showing.

20 And, that's all the staff has to say.

21 MR. GILMORE: In response, if I may, -- Referring
22 to that same section that Margie was just speaking from,
23 7.30, subsection F, and that's the same section that
24 I cited in my first argument, -- We -- I'd say that it --
25 "says when in the judgment of the presiding officer, prompt
decision is necessary."

1 And that's you all, not us. And, I could
2 give my commentary and my feeling and it's obvious
3 prejudice, and Marge can give his, and Nick can give
4 his as well.

5 But, I think that an awful lot of events
6 have occurred since we were last together and I think
7 that the things that this very Statute speaks to, to
8 prevent detriment to the public interest or unusual
9 delay or expense. And, I think that's what we could
10 accomplish if we could certify the question.

11 I know it's been brought up that there's
12 been a recent ruling and I think as recent as March
13 20th.

14 But, there's also reports that Harold Denton
15 and the Commission may decide this week on whether
16 or not these things should be handled at this level
17 of operating license.

18 So, it might change as early as this week and
19 we could find ourselves going down the road to an opera-
20 ting license hearing, considering the ER's and et cetera,
21 and all kinds of statistics analysis that really won't
22 be any -- It'll be of very little relevance if we have
23 to consider class 9's as well. I think it will change
24 it quite a bit.

25 I'm trying to save money for the applicant.
I'm trying to save time for everybody and I don't think

1 that since TMI has occurred and since there's been alot
2 of reassessment and that's what I speak to for my grounds
3 to say that it should be certified.

4 It's not something specific I know about
5 Commanche Peak. It's something that has come to light
6 in a general change of opinion or reassessment of studies
7 like WASH 1400 or analysis like the Lewis Report, Roganin
8 Report, of studies just like this and the CEQ position
9 that in general, in the total effect, should cause a
10 Licensing Board to maybe consider certifying this question.

11 I think there's a general duty incumbent upon
12 the entire licensing Staff, whether it's the Board, the
13 Appeal's Board, or the Commission, that there's a mandate
14 to grant licenses where it's not going to be animical
15 to the health and safety of the public. And I think that
16 generally that requires us to look at everything we need
17 to do to make sure that we fulfill that mandate and may-
18 be certifying that question would do it, find out if
19 we're supposed to look at that, because it might be chang-
ing this week.

20 DR. COLE: Mr. Gilmore, when you say class 9,
21 that can include an endless number of possible scenarios.
22 What do you mean by class 9 when you say that?

23 MR. GILMORE: He's trying to get my definition
24 now.

25 DR. COLE: Looking for help, sir.

1 MR. GILMORE: When I refer to class 9, I --
2 I don't have the engineering expertise that Mr. Fouke
3 does. Everybody can come down here and plead ignorance
4 and he can plead -- he doesn't have the legal expertise
5 I do.

6 But, I'm referring to the accidents -- When
7 I refer to class 9, I'm relying on such statements
8 as the NRC's assessments that we did have a class 9
9 accident at TMI, but it was beyond the design basis, what
10 occurred.

11 So, being more specific and technical, saying
12 mode failures or design failures or operational failure.
13 I couldn't get more specific, but I think that the general
14 allegation that a class 9, which is contained in the
15 applicant's assessment, their border plate language,
16 that they need not consider a class 9 because it's not
likely to occur, it's so unlikely to occur.

17 And so, I'm just relying on their useage in
18 the language that they need not consider a class 9 and
19 that's the same thing we're doing. I'm saying we should
20 consider a class 9, against the reverse of their border
21 plate.

22 That doesn't help you at all, I'm sure.

23 DR. COLE: There might or might not be a question
24 as to whether the accident that occurred at Three Mile
25 Island was truly a class 9 accident.

1 I think it's generally accepted by a lot of
2 people that it was a class 9 accident.

3 If, at this plant, they were to consider the
4 scenario at Three Mile Island, apply that to this plant
5 and then describe the technical fixes or modifications
6 so as to minimize the possibility of that kind of an
7 accident occurring, is that what you mean by consideration
8 of class 9 accidents?

9 MR. GILMORE: Well, I think they have already
10 considered class 8 accidents and downward, generally, okay?

11 So, if they can consider those, they should
12 be able to consider class 9 without limiting yourself
13 to the specific accident that occurred at TMI.

14 And if WASH 14 can categorize a certain grouping
15 of events as --

16 -- thing that's not likely to occur, therefore
17 we're not going to consider it.

18 And, what our contention is that in light of
19 what's happened recently in the change of opinions, we're
20 thinking they should consider this category of accident,
21 not specifically just the accident, but the sequence
22 that occurred at TMI.

23 That should be included, I think, if the Staff
24 position was that that was a class 9.

25 CHAIRMAN BOWERS: We have no further questions
on this matter, Mr. Gilmore. Thank you.

1 Now, just before we broke for the luncheon hour,
2 Mr. Gay, you asked for an opportunity to speak to, on
3 CFUR 4.b, correct?

4 MR. GAY: That is correct. The reason I asked
5 for that is that ACORN additionally has adopted the
6 language proposed by the Board in it's order of admissability
7 of intervenors and the admissability of a contention of
8 QA-QC.

9 I'm a bit concerned with the reference by Mrs.
10 Rothchild to unbounded contentions. I think that is a
11 bit of a scare tactic.

12 It is ACORN's position that we have articulated
13 very specific problems that the construction of the
14 Commanche Peak facility, and that those problems go to
15 provide reasonable specificity to a contention which
16 ACORN initially offered, that the overall QA-QC program
17 is flawed.

18 I think in light of the problems that have
19 been articulated by the various intervenors with regard
20 to QA-QC, that it is incumbent upon the Board with regard
21 to protecting the public and protecting public interest,
22 to keep this contention as presently worried by the
23 Board, to examine overall the QA-QC program of the
24 applicant.

25 I wish the Board to note the decision of South
Carolina Electric and Gas Company, et al., which was

1 noted in ACORN's statement of position.

2 In that particular proceeding, the Board per-
3 mitted a contention which read "Petitioner contends
4 that the quality control of the Summer plant is sub-
5 stantially below NRC's standards."

6 The Board in that particular proceeding went
7 on to note "The contention is specifically -- sufficiently
8 specific and the particulars may more appropriately
9 be developed during the discovery phases of an evidentiary
10 hearing."

11 It is ACORN's position that the specific charges
12 that the Staff and the applicant want articulated are
13 better delved into during the discovery phases of this
14 proceeding.

15 It is again our position that to limit the con-
16 tention beyond what is proposed by CFUR and ACORN would
17 be to obtain a summary judgment without having the
18 applicant and the Staff swear to the evidence and swear
19 to the facts.

20 I think that there is abundant specificity pro-
21 vided by the intervenors in this proceeding to support
22 the particular contention that both CFUR and ACORN have
23 offered.

24 CHAIRMAN BOWERS: Mr. Reynolds, do you want
25 to respond to that?

MR. REYNOLDS: Mr. Gay seems to be under the

1 misapprehension that the Nuclear Regulatory Commission
2 is a notice pleading jurisdiction.

3 VOICE: I'm sorry, I didn't --

4 MR. REYNOLDS: A notice pleading jurisdiction.
5 It's a legal term meaning -- I won't go into it, Mrs.
6 Bowers.

7 MR. GAY: I'll check with her later.

8 MR. REYNOLDS: Mr. Gilmore will tell Ms. Ellis,
9 I'm sure.

10 MR. REYNOLDS: In fact, it is not a notice
11 pleading jurisdiction. More is required in initial
12 pleadings than mere notice.

13 The United States Court of Appeals for the
14 District of Columbia Circuit evaluated 2.714, the
15 Commission's regulations, in VPI versus Atomic Energy
16 Commission, which we cite in our pleadings.

17 That's at 5.02, Federal 2nd, 424. And, in there
18 conclude that the Commission's requirement of more
19 than mere notice is a legitimate implementation in
20 Section 189 of the Atomic Energy Act.

21 It's well-established that the Commission may
22 require more in the statement of contentions than mere
23 notice.

24 There has to be basis, there has to be speci-
25 ficity. Mr. Gay apparently overlooks this case and
this line of cases or perhaps chooses to ignore it and

1 advocate his own standard on the Board.

2 But, in any event, the Board is bound by these
3 cases and by the precedent set by them.

4 Our concern with the Board's QA-QC contention
5 is that it does not specify what issues will be litigated.
6 It provides us with no clear statement of what subject
7 matters are relevant for discovery purposes. It does
8 not tell us what issues will be litigated.

9 Perhaps in Federal Court Mr. Gay would be
10 permitted to go on a fishing expedition after having
11 provided notice pleading. Here he cannot. He must give
12 us more at the outset.

13 That was the purpose of our trying to draft
14 common language for the three intervenors which in
15 our view encompassed legitimate concerns expressed in
16 the bases set forth with each contention.

17 That's all I have.

18 CHAIRMAN BOWERS: The Staff?

19 MS. ELLIS: We don't have anything to add to
20 what we've already stated on this.

21 CHAIRMAN BOWERS: Mr. Gay, do you want to
22 respond to Mr. Reynolds?

23 MR. GAY: I have just one further comment,
24 Mrs. Bowers, and that is that South Carolina Electric
25 and Gas Company proceeding, a portion of the petitioners
contention stated that petitioner stands ready to

1 provide direct testimony of consistently substandard
2 workmanship in several aspects of construction of
3 the Summer plant.

4 Now, the Board accepted that contention of
5 broad QA-QC contention without laying out the specifics
6 that have been articulated by the particular intervenors
7 in this proceeding.

8 I think that we have met the standards, the
9 statutory standard that is called for and I think that
10 the QA-QC contention is articulated by the CFUR and
11 ACORN and originally by the Board, as the one that should
12 be admitted in this proceeding.

13 MR. REMICK: Before we leave contention 4-A
14 on quality assurance, I just want to alert the parties
15 that regardless of the Board's decision on the wording
16 on this contention, the Board will have an interest in
17 knowing in some detail about the applicant's operational
18 quality assurance program and will so indicate that in
19 our order.

20 I thought this an appropriate time to alert
21 you to that.

22 MR. GILMORE: May I address the Board?

23 CHAIRMAN BOWERS: Oh, I'm sorry, Mr. Gilmore.

24 MR. GILMORE: I would just like to make a
25 point here about -- it might explain some of the confusion
at least on cases we have, I think on CFUR and ACORN

1 as well, and maybe all the parties.

2 Our understanding of the wording that the Board
3 had devised was that that was an acceptable wording to
4 go -- to officially go to trial on when we have our
5 hearings, more or less.

6 And, the statement this morning, I think by
7 Mr. Cole, that -- I think that was the first time that
8 we understood that was a general framework for us to
9 work within to become more specific, that we were aware
10 that we were going to discuss the QC-QA issue this morning.
11 We were aware of that.

12 But, for instance, CASE had problems with the
13 proposed stipulated contention on this because of the
14 limitations to the various things, specifically in regard
15 to concrete work, welding, inspection of materials, et
16 cetera.

17 And, we were -- This morning is the first time
18 that we were aware of what your idea was, that this
19 was a general wording that you had got us started on
20 and we were supposed to become more specific later.

21 And, I think this is also borne out by Nick's
22 argument that if this contention, the way it is worded
23 had been submitted by an intervenor, that it would have
24 been refused due to vagueness. It think that was what
25 Mr. Reynolds was getting at when he started out talking
about this particular contention.

1 Now, what I'd like to ask, -- Unless we can
2 get our wording up tonight, assuming we go on into
3 tomorrow, is that you allow the parties to submit --
4 I know this is dragging things out.

5 But, I know Mr. Reynolds had made the remark
6 that Mr. Fouke had had this stipulated wording since
7 April or some earlier time, some long period of time.

8 But our feeling was that if we didn't like
9 their stipulation, that the issue would be -- would
10 come in as you all had worded it and it was the first
11 time that I'm aware of the fact that your wording wasn't
12 going to come in.

13 DR. COLE: Well, it still might go in that
14 way.

15 MR. GILMORE: Well, I think that's the cause
16 for surprise, I know at least on our behalf.

17 We weren't aware that you all were setting up
18 a framework, within we were supposed to get more specific.

19 DR. COLE: Well, I think it would be helpful,
20 to be more specific because in issues like this, I think --
21 where charges have been made about mispractices, I think
22 the more specific you can get, the better it is going
23 to be.

24 Now, Mr. Reynolds, you indicated that for dis-
25 covery purposes you needed to know just those areas,
and that's the part that troubles me.

1 Because -- Although we want the issue specified
2 just as much as possible, I don't think the Board would
3 be interested in limiting discovery to fine line.

4 I think we want, sometime before we go to
5 evidentiary hearing, we want those issues just as clearly
6 delineated as they can be.

7 If we can that beforehand, if the parties can
8 come into agreement with that, then fine. I think we're
9 all better off.

10 But, I think -- I'm troubled by restricting
11 discovery to just those points and -- I do, and I think
12 the Board feels a little bit differently about that in
13 this particular subject, anyway.

14 MR. REYNOLDS: I think the Board should be
15 careful not to rely too strenuously on the ability of
16 this applicant, the Staff, and these intervenors to reach
17 settlement.

18 We've been trying for a year and we we
19 able to reach one out of three, and it was not because
20 of a lack of effort on all of our parts.

21 The Commission's standards governing discovery
22 are very broad. They're patterned after the Federal
23 rules of civil procedure, which also are very broad.

24 And, we're not suggesting that relevant material
25 will be withheld. The relevant material to the specific
contentions will finally define what general types of

1 information they're entitled to.

2 But if they come in -- If the Board's contention
3 goes in as it's proposed, they can ask us anything under
4 the sun about quality assurance and it's reasonably
5 calculated to lead to discovery of relevant information.

6 And we submit to you that that isn't, first
7 of all, within the scope of their contentions and second
8 of all, we don't think it's the type of contention which
9 is really permissible, when you look at 2714 and you talk
10 about specificity and basis.

11 One more point -- Not to challenge what Mr.
12 Gilmore says about cases knowledge or lack of knowledge
13 about relying on the Board's contention.

14 The Staff and applicants have been consistently
15 discussing with these intervenors for the last 11 months,
16 since the Board's order, subsequent to the first pre-
17 hearing conference, indicating that we did not think the
18 Board's contention was specific enough and that we were
19 going to ask the Board to clarify it.

20 They knew all along that that was in the offing.
21 Secondly, in your March 20, 1980 folder, you indicate
22 that the Board would hear arguments today as to whether
23 it is appropriate to refine the language of the quality
24 assurance contention admitted by the Board.

25 It couldn't be more plain. They obviously

1 were on notice that some of you on the Board were troubled
2 by the scope of that contention.

3 They certainly shouldn't be able to claim surprise
4 today.

5 MR. GILMORE: I pointed out both those points,
6 as you understand. We were -- We simply, -- I mean, if
7 you go into court and the Judge says, put out some language,
8 you feel like you kind of got the deck stacked for you
9 on that one, and we thought that that was the issue,
10 but you all -- the contention of the wording was you
11 all had already accepted.

12 So, we knew that they did not like it, both
13 the Staff and the applicant, I don't deny that. We also
14 note that you put us on notice that it will be discussed.

15 What we thought was going to be discussed
16 was their disagreement with your wording. But, we didn't
17 understand that you were going to ask it to be more speci-
18 fic, and that's why I think it's important that we resolve
19 that, so that we might know that if your wording is not
20 acceptable to yourselves, that we might add some wording
21 of our own and not be precluded, because we were kind
22 of riding with the court here, I guess.

23 DR. COLE: I understand your position.

24 MR. GILMORE: All right, thank you. If we
25 might have some sort of an indication of what we should
do in response to that sometime.

1 DR. COLE: I think the Board will probably discuss
2 that and report back to you.

3 MR. GILMORE: Thank you.

4 CHAIRMAN BOWERS: We plan to have a mid-afternoon
5 recess and we'll discuss it then.

6 MR. GILMORE: Thank you, Mrs. Bowers.

7 CHAIRMAN BOWERS: Now, can we go on to the next
8 contention?

9 Mr. Fouke?

10 MR. FOUKE: Yes. Our contention, 4-B-- CFUR
11 states that the applicants have failed to demonstrate
12 sufficient managerial and administrative controls
13 to assure it's safe operation, and contends that special
operating conditions should be required.

14 The intent of this contention is to establish
15 a feedback to the applicant's management whereby if there
16 are any problems at Commanche Peak, that they are inti-
17 mately intertwined with those problems and especially
18 by means of eating the food which is grown next to
19 Commanche Peak.

20 There are a number of unplanned radioactive
21 releases at power plants and they are directly, in
22 CFUR's opinion, a function of the capability and dili-
23 gence of the management, and this is intended, basically,
24 to be a QA function.

25 We think that we can show that there has been

1 repeated problems of the same nature which indicates
2 what we claim at first, that there has not been sufficient
3 managerial and administrative controls, and that the
4 second follows.

5 We also contend that it is proper to post in
6 the area of the operators notices that serious accidents
7 can happen.

8 It appears to CFUR that the only people that
9 have been convinced that nuclear power is absolutely
10 safe are the people in the industry, and this has the
11 contrary effect to the way things should be.

12 People in any other kind of a program, such
13 as space programs, are continually reminded, the people
14 in those programs, the ones doing the operation, the
15 ones actually producing the items, are continually re-
16 minded that they have people's lives in their hands.

17 In this particular instance, everybody involved
18 seems to be reminded that anybody that worries about an
19 accident at a nuclear power plant is a kook, and I think
20 CFUR takes the position that this should be drastically
21 changed.

22 That's all.

23 CHAIRMAN BOWERS: Mr. Reynolds?

24 MR. REYNOLDS: I think Mr. Fouke has it a little
25 backwards. The referenda throughout the country over
the last 10 years indicates that the overwhelming majority

1 of the American people are in favor of nuclear power,
2 and it's individuals and small groups such as his who
3 are opposed to it.

4 But, in any event, Dr. Remick has indicated
5 that the Board will include in it's order, a contention
6 relating to operational quality assurance. I assume
7 that's what Mr. Fouke is getting to in this contention.

8 So, I think the issue has been decided by the
9 Board and we needn't delve into it further. We only
10 ask that the Board provide us with more specificity
11 when it drafts it's contention on operation of QA and
12 CFUR has in 4-B.

13 CHAIRMAN BOWERS: Staff?

14 MS. ELLIS: The Staff rests on it's position,
15 stated in it's report, supporting admission of this
16 contention.

17 CHAIRMAN BOWERS: Fine.

18 MR. REYNOLDS: I did understand correctly that
19 that is what you were getting at?

20 MR. REMICK: Yes. I was not convinced, I
21 must admit, that 4-B was necessarily operational QA,
22 although I think one can read operational QA input.

23 I was alerting the parties that the Board
24 is specifically interested in operation of QA and
25 I wasn't clear that 4-B was that or not.

MR. REYNOLDS: Well, CFUR's contentions give

1 me a consistent problem in that regard and that is that
2 you never know exactly what regulation they're getting
3 to.

4 We're to comply with the regulations, we comply
5 with the regulations. If we don't, tell us what regula-
6 tions, and we'll litigate.

7 But, to have volitative words in this thing
8 about general administrative controls, what are we
9 talking about? We don't know. It's vague, it's general.
10 It should be rejected under 2714.

11 And, we would argue that it be rejected, but
12 for your statement earlier.

13 MR. REMICK: Yes. My statement was not meant
14 to infer that we were accepting 4-B.

15 MR. REYNOLDS: I see.

16 MR. REMICK: It was independent and I thought
17 appropriate to add onto 4-A at that time to alert you
18 that we would independent of the contentions, want to
19 look at operational QA.

20 MR. REYNOLDS: In that case, let me just say
21 that we believe that contention 4-B is too vague in
22 general to be a valid contention.

23 MR. FOUKE: For the record, I would like to
24 inform the Board that the applicant has changed his
25 position, -- the initial position it took with regard
to this contention was that it should be admitted.

1 DR. COLE: Mr. Fouke, with respect to 4-B,
2 is it your position that if the applicant were to embark
3 upon an education program including the posting of
4 signs, describing the consequences of certain kinds
5 of accidents, and if they were to embark upon a program
6 to have certain of their management personnel partake
7 of a meal on food grown near the site, that that, in
8 your opinion, would constitute managerial and administra-
9 tive control.

10 In the absence of one or both of those, con-
11 stitutes a failure of management and administrative
12 control. Is that your contention, sir?

13 MR. FOUKE: The former is not our contention,
14 that if all you did was do this, it certainly wouldn't
15 assure. But, the absence of -- In view of the performance
16 of the applicant, the absence of measures that we suggest
17 would indicate a lack of management control.

18 DR. COLE: Thank you.

19 MR. REYNOLDS: Mrs. Bowers, one more point.
20 I hate to get into nitpicks with Mr. Fouke. And when
21 he misrepresents facts as to the Staff, I don't mind,
22 but when he misrepresents facts as to the applicant, I
23 do.

24 You'll notice in the stipulation that the
25 applicant's position with respect to contention 4-B
is that we agreed to wording only and not to substance,

1 as he implied.

2 MR. FOUKE: I would hate to take issue with
3 the applicant, as much, but the original stipulation
4 sent to us by the staff, indicated --

5 MR. REYNOLDS: I'm talking about the stipulation
6 that we all signed, Mr. Fouke.

7 MR. FOUKE: Oh, yes, I said -- and what I said
8 to the Board, is the July 17th meeting, the applicant
9 agreed to the wording and the content of this --

10 MR. REYNOLDS: How is that relevant to this
11 issue?

12 That was a negotiating process and this is the
13 culmination of the negotiating process.

14 MR. FOUKE: I'm just bringing that up for the
15 record, sir.

16 MR. REYNOLDS: It's irrelevant.

17 MR. FOUKE: It may be irrelevant to you, but
18 it's not to me.

19 CHAIRMAN BOWERS: Well, I think we understand
20 your positions on this matter. And now can we go on to
21 5?

22 MR. FOUKE: Number 5 addresses tornados and
23 requirement -- I think, most probably, the description
24 of our contention as originally submitted is quite
25 adequate.

One thing which I brought up in the report

1 was that we rather belatedly requested that the words,
2 category 1 structures, be substituted for spent fuel
3 storage area and we still would recommend to the Board
4 that if this were brought up for litigation it would
5 make more sense to address all category 1 structures,
6 rather than just the spent fuel area.

7 CHAIRMAN BOWERS: Have you concluded?

8 MR. FOUKE: Yes.

9 CHAIRMAN BOWERS: Mr. Reynolds?

10 MR. REYNOLDS: The design criteria for the
11 spent fuel pool were evaluated and approved by the
12 NRC Staff at the construction permit stage of this
13 proceeding.

14 The spent fuel pool is in the process of being
15 constructed pursuant to those criteria. There is no
16 basis set forth in CFUR's proposed contention to show
17 why the design is not conservative or to indeed demon-
18 strate why this is a valid contention for this proceeding.

19 We argue that it should be denied.

20 CHAIRMAN BOWERS: Staff?

21 MRS. ROTHSCHILD: The Staff has stated in it's
22 report that we support admission of the contention with
23 the wording agreed to by the parties in their stipulation,
24 that is our position.

25 CHAIRMAN BOWERS: Do you have anything further,
Mr. Fouke?

1 MR. FOUKE: Nothing further.

2 MR. REMICK: What is the Staff's view on the
3 proposed change in wording to category 1 structures?

4 MRS. ROTHSCHILD: I think the Staff's position
5 is that the spent fuel pool area is what is mentioned,
6 was mentioned in the contention in the basis as the
7 object of CFUR's concern and that it wasn't -- For
8 months this has been the language that was understood
9 by all the parties to state CFUR's contention, so I
10 guess, you know, we are somewhat at a loss to under-
11 stand why after the parties had agreed to that language,
12 you know, CFUR now wants to change it.

13 MR. REMICK: Does the Staff foresee some
14 difficulty in presenting the evidence if it is category
15 1 structure versus spent fuel area?

16 MR. ROTHSCHILD: I don't think we necessarily
17 perceive a difficulty in presenting evidence, but we
18 don't see the basis for expanding the contention, whereas
19 we did see the basis for contention related to the spent
20 fuel pool area.

21 MR. REMICK: Thank you.

22 CHAIRMAN BOWERS: Can we go on to number 6?

23 MR. FOUKE: Number 6 addresses a rock over
24 break with subsequent fissur repairs and concrete
25 grout and the contention that in view of this there
should be a seismic re-evaluation.

1 Again, we think that what was submitted origin-
2 ally, is sufficient basis to admit this contention and
3 have no further discussion.

4 CHAIRMAN BOWERS: Mr. Reynolds?

5 MR. REYNOLDS: I don't like to continually
6 refer you back to our pleading, but let me just do it
7 again.

8 I won't respond in length. Grouting is an
9 accepted practice for correcting rock overbreak in
10 construction of nuclear plants.

11 The procedure implemented here to correct to
12 overbreak at Commanche Peak is no different than that
13 procedure pursued at other reactor sites.

14 It was evaluated and approved by the NRC in
15 inspection report number 76-05. It was evaluated by
16 the applicant and is reflected in the FSAR, and Section
17 2.5.4.12.

18 Against that background, we see that CFUR
19 has submitted no basis to support the contention.
20
21
22
23
24
25

GT 3/1

MRS. ROTHSCILD: Now, in considering it again we think that it's stated with sufficient specificity both the contention itself and its basis. So, we now have changed our -- our position and we support admission of the contention.

CHAIRMAN BOWERS: Mr. Fouke, any rebuttal?

MR. FOUKE: No, ma'am.

MR. REYNOLDS: Mrs. Bowers, may I ask one question?

Would it be appropriate to ask the Staff to explain what the Allens Creek decision did change their mind on this contention?

CHAIRMAN BOWERS: Well, I think they explained to some length this morning of their understanding and interpretation of the Allens Creek decision. If we are going to get into --

MR. REYNOLDS: I withdraw the request.

CHAIRMAN BOWERS: -- nitty-gritty.

Can we go on to Number 8?

MR. FOUKE: Number 7.

CHAIRMAN BOWERS: Oh, 7. Excuse me.

MR. FOUKE: Number 7 addresses the impacts of draw down of ground water, and in the FFSAR there are questions which have been asked by the staff which document the fact that there has been ground water mining at the site.

GT 3/2

1 And in view of that -- the fact I don't think this is even
2 argued by the applicant, the applicant in its construction
3 phase said that ground water mining would not take place.
4 It has taken place and that's the basis for contention 7.

5 CHAIRMAN BOWERS: Have you concluded?

6 MR. FOUKE: Yes.

7 CHAIRMAN BOWERS: Mr. Reynolds.

8 MR. REYNOLDS: Mrs. Bowers, I wonder if we could
9 ask Mr. Fouke to clarify his understanding as to what the
10 ground water pumping rate is now and what it will be during
11 operation?

12 MR. FOUKE: It says here -- in your -- I would have
13 to look that up. If it's in here.

14 The applicant argues that they cannot provide
15 water from other sources --

16 MR. REYNOLDS: What document --

17 MR. FOUKE: Because importation of water by tankers
18 would take 36, 5,000 gallon tank truck deliveries per day.

19 MR. REYNOLDS: That isn't my question. My
20 question is what the ground water pumping rate during
21 operation relative to construction?

22 MR. FOUKE: 127 gallons per minute is what you
23 have in here.

24 MR. REYNOLDS: What -- is that the environmental
25 report you're looking at?

GT 3/3

1 MR. FOUKE: Yes.

2 MR. REYNOLDS: I see.

3 The NRC staff as recently as last year evaluated
4 the ground water withdrawal at Comanche Peak by the applicants
5 in the context of a request to amend the construction per-
6 mits to permit continued ground water withdrawal at the
7 250 gallon per minute rate which is authorized by the
8 construction permits.

9 The staff evaluated that request, issued a negative
10 declaration which is an expressed finding that there is no
11 significant environmental impact in the continued pumping
12 of that amount; and authorized that the amendment be granted.
13 So, that the construction permits were amended to allow
14 an additional year of withdrawal of ground water at that
15 rate.

16 The proposed ground water withdrawal rate in
17 the environmental report for the operating license phase
18 is 127 gallons per minute, which is about half of the
19 construction phase pumping rate.

20 It follows AFARSHEAREY if the 250 -- 250 gallon
21 per minute construction permit rate occasions no adverse --
22 significant adverse environmental impacts then 127 gallons
23 per minute during the operating license phase should
24 certainly not occasion significant environmental impact.
25

GT 3/4

1 In short, we find no basis for -- in CFUR's
2 contention to support the contention and urge that it be
3 denied.

4 CHAIRMAN BOWERS: The staff.

5 MRS. ROTHSCCHILD: For the reasons as stated by
6 the staff in its report we oppose admission of this con-
7 tention on the grounds that it lacks adequate basis and we
8 still oppose it. I'd like to emphasize that we did note
9 in that report on responding to this contention that use
10 of ground water is discussed in the applicant's environmental
11 report operating license stage, and in Section 3.3. And
12 we -- we felt that that document provided sufficient
13 discussions of ground water withdrawal during operations
14 to allow CFUR to particularize its concerns regarding
15 impacts of withdrawal of ground water during plant operation.

16 In staff's view CFUR still hasn't done that. We
17 don't find any basis for CFUR's contention which relates to
18 withdrawal of ground water during operation, as I think
19 is obvious, as opposed during construction. And we do not
20 feel that CFUR has presented basis to -- for this contention.

21 CHAIRMAN BOWERS: Mr. Fouke.

22 MR. FOUKE: When it is documented that ground
23 water mining is taking place, and the application is extended
24 for an additional year in CFUR's mind that is nothing more
25 than a license to continue water -- ground water mining.

GT 3/5

The applicant in it -- in Section 2.4 of the ER and the operating license ER, actually talks about additional water permits being made in the area. They claim that the ground water mining is being caused by other people than themselves. But there's almost the absence of -- of -- I see nothing definitive in -- in the ER to actually backup that statement.

MR. COLE: Mr. Fouke, are you alleging any damage that might be caused by ground water withdrawal during the operation of the plant?

MR. FOUKE: It is CFUR's opinion that ground water mining is a -- something to be avoided.

It is --

MR. COLE: Could you tell me your basis for that, sir? Why -- why it should -- should or should not be avoided?

MR. FOUKE: Because it will have a permanent impact on the AKFOR.

MR. COLE: The lowering of the water table and -- and then doing what, sir?

MR. FOUKE: Future recharging if you want to -- if you want to recharge it in the future it would change the characteristics of the AKFOR.

MR. COLE: All right. Thank you.

GT 3/6

MRS. ROTHSCILD: Mrs. Bowers.

CHAIRMAN BOWERS: Yes.

MRS. ROTHSCILD: The staff would just like to emphasize that -- and we have two separate issues here. We have the issue of -- which is not the subject of an operating license proceeding, which is what the applicants are authorized to do under their construction permit. And the construction permit provides for withdrawal of ground water. That is not -- I don't think that is something that can be litigated in the operating license proceeding.

And we are emphasizing that we don't find in CFUR's contention a basis for -- any basis relating to withdrawal of ground water during operation, which is something that is separate from what has occurred or is authorized under construction permit.

MR. REMICK: Mr. Fouke, am I correct in inferring that CFUR's concern is an environmental concern and not a safety concern of structures or buildings resulting from the draw down?

MR. FOUKE: Yes, sir. This is our one environmental --

MR. REMICK: Thank you.

CHAIRMAN BOWERS: Now, can we go on to Number 8?

MR. FOUKE: Yes.

GT 3/7

1 Contention Number 8 is the contention which was
2 added at CFUR's request. And it addresses the requirement
3 to institute operating procedure whereby at the time that
4 the applicant makes batch releases of radioactive effluents
5 that they take into consideration meteorology such that
6 you would have a minimum man rem exposure both through
7 the food chain and -- and through direct sources.

8 And it further puts forth the concept that you
9 would not simply stop at 50 miles, that you did -- indeed
10 might look a lot further than 50 miles in making this
11 evaluation.

12 When -- if you build a particular plant, if you
13 take about the asthmus around the plant, one-third of it
14 might have population, another one-third might have places
15 where farms are, and the remaining one-third might have
16 desert. Of course, this is not the situation at
17 Comanche Peak.

18 But for purposes of illustration it would be
19 more desirable to make your radioactive releases so that
20 you would have them fall on the desert, not either on the
21 farm or on the population.

22 CFUR further maintains that this practice would
23 be minimal in the manner of cost if you use only the
24 meteorological towers at the plant. But if further contends
25

GT 3/8

1 that more accurate meterological data would be necessary
2 to do a sufficiently accurate job.

3 And that some cost benefit relation could be
4 derived adequate.

5 In addition, this contention addresses
6 the need for making emergency plans behond the 50-mile
7 limit in the case of a large accident. It does not
8 make the contention that you would have to have evacuation
9 capability only that you would have to have some warning
10 network in place and the possiblity of distributing thyroid
11 agents.

12 The staff when they commented on this -- in their
13 opposition to this contention, first addresses the fact
14 that it was filed late. But then they take the position
15 that they do not think that the issue should be decided
16 on that and CFUR certainly agrees and would show that this
17 is a significant argument.

18 Both the CEQ report and the time lapse radar
19 data that was referred to in our report took place in the
20 summer of 1979 after the hearing at Glen Rose.

21 No other party has similar arguments and there
22 are no other means of -- that CFUR's aware of to resolve
23 this question.

24 The staff then says that the basis is speculative
25

GT 3/9

1 meaning that is based on a report which says these are
2 hypothetical releases. But CFUR would like to bring
3 attention to the board that each and every accident analyzed
4 in the FFSAR is a hypothetical accident. Indeed the double-
5 ended pipe break which has received so much attention in
6 the regulatory process is a hypothetical.

7 And if you took the concept of never using a
8 hypothetical sequence you could not ever make any safety
9 planning. And this does not consist of a -- a rational
10 argument.

11 The staff further says that this is a vague --
12 it says that we should identify the various transport
13 mechanisms, but these transport mechanisms are described
14 in the CEQ report which is referred to.

15 And then the staff says that CFUR, and I think
16 the applicant has also made this charge, that CFUR is
17 challenging the regulations and standards. And they refer
18 to 10CFR50, Appendix I. And I would like to point out that
19 10CFR50, Appendix I addresses the requirements for the design
20 of nuclear power plants. It does not address the operation
21 phase of the nuclear power plant.

22 We are in no manner, way, or form challenging
23 the regulations and both the staff and the applicant
24 are incorrect.

25 If you read -- if you read Appendix I in abundant

VM 3/10

1 places, it talks about these are requirements when you
2 are designing nuclear power plant. We are not talking in
3 this contention about about anything to do with the
4 design of the nuclear power plant. We are making the
5 contention that when you operate the nuclear power plant,
6 you should also operate it so that you conform to the
7 -- as low as reasonably achievable criteria.

8 And we have borrowed from Appendix I, Part D
9 the \$1000 per total body man rem and \$1000 per man
10 thyroid rem as a criteria. At first glance, this also
11 may seem to -- at least in the Applicant's and the Staff's
12 eye not apply.

13 But that -- that whole thing -- in this it
14 says that these requirements need not be complied with by
15 persons who have filed applications for construction
16 permits which were docketed at on or after January 2 and
17 prior to June 4, 1976.

18 But again, this is referring to design require-
19 ments, and that's the reason why they talked about con-
20 struction licenses, not operating licenses. And if you
21 took the similar criteria and talked about applying the
22 ALARA criteria to operation at the time you make that
23 decision, you would not make it -- you would not make
24 it apply to back fit possibly. Possibly you would and
25 possibly you wouldn't.

3/11

1 And that's exactly what this is here. So the
2 arguments by the Staff and the Applicant really that we
3 are challenging the regulation is really -- they just
4 flatly do not apply.

5 CHAIRMAN BOWERS: Mr. Reynolds.

6 MR. REYNOLDS: Mrs. Bowers, I'm astounded
7 that through the last ten minutes of Mr. Fouke's pre-
8 sentation, he didn't once attempt to meet the criteria
9 in the rules of practice for late filed contentions.

10 Apparently he feels he can flagrantly ignore
11 the rules while everyone else has to comply with them.
12 In our answer to his motion to amend adding that new
13 contention, dated November 15, 1979 we set forth our
14 position on the five criteria set forth in the rules
15 governing late filed intervention, or late filed con-
16 tentions.

17 We take it that since he hasn't chosen to
18 provide the Board with the benefit of his thoughts on
19 those aspects that he is not going to and has waived his
20 right to do so. So that it seems to me that summarily
21 the Board can reject this contention since it was late
22 filed, and he has not demonstrated the good cause for
23 its late filing.

24 But assuming that you do reach the contention,
25 let's look at what it goes to, not what Mr. Fouke says

3/12

1 it means. He says it's not a challenge to the regulations.
2 I think if you really parse it, you find that it is a
3 challenge to the regulations.

4 The routine release of radioactive effluence
5 from power reactors is governed by 10 CFR 50 345036.
6 5036 is a regulation that requires that applicants for
7 operating licenses must document the means they intend
8 to employ to assure that radioactivity in effluence to
9 unrestricted areas is maintained as low as is reasonably
10 achievable.

11 The Commission noted in that regulation that
12 the application of the ALARA criterion will keep average
13 releases of radioactive material in effluence to small
14 percentages of the limits specified in part 20 of the
15 Commission's regulations.

16 I'm getting at health effects of routine
17 releases. And that's what CFUR is getting at -- health
18 effects of routine releases. The Commission included as
19 an integral part of its ALARA concept when it promulgated
20 the regulation. The assumption that any biological
21 effects occasioned by the releases in compliance with
22 ALARA -- that is at small percentages of part 20 limits --
23 have such a low probability of occurrence that they are
24 undetectable, and thus that they are inconsequential from
25 a public health and safety standpoint.

1 If you'll look at 35 Federal Register 18385,
2 you'll find support for that proposition. In order to
3 provide numerical guidance for implementation of ALARA,
4 the Commission later promulgated Appendix I to Part 50
5 in which they set forth design objectives and limiting
6 conditions for operation conforming to the guidelines of
7 the ALARA principle.

8 And in Appendix I they deemed that compliance
9 with those numerical guides constitutes compliance with
10 the ALARA concept. Section I in Appendix I will provide
11 you with that.

12 Again, in promulgating Appendix I, the Commission
13 concluded that the biological effects due to routine
14 releases in compliance with Appendix I are inconsequential.

15 It follows in our view that any attempt to liti-
16 gate the health effects of routine releases in compliance
17 with Appendix I is a challenge to the ALARA concept and
18 to Appendix I, and should not be permitted absent of show-
19 ing of special circumstances in this case.

20 The other aspect that Mr. Fouke apparently is
21 seeking to raise to my knowledge for the first time here
22 is the aspect that emergency planning must reach beyond
23 a 50-mile radius from the facility in certain situations.

24 I am aware of no regulation pending or proposed
25 which would require this. Again, this seems to be a

3/14

1 regulation which Mr. Fouke would have this Commission
2 impose on power reactor licensees. If that's the case, the
3 proper vehicle is a petition for rule making to the
4 commission itself, not raising it as a contention before
5 this Board.

6 For those reasons we believe that the contention
7 should be denied.

8 CHAIRMAN BOWERS: Staff?

9 MS. ROTHSCCHILD: The staff opposes admission of
10 this contention for the reasons stated in its report
11 basically are that the contention lacks specificity
12 in basis and constitutes an impermissible challenge to
13 the Commission's regulatory requirements and regulations.
14 We rest on our position as stated in our report, but we
15 would like to emphasize that we believe that contentions
16 -- the question of its admissibility should not be de-
17 termined on procedural grounds but on substantive
18 grounds.

19 CHAIRMAN BOWERS: Mr. Fouke, do you have any-
20 thing to respond to this?

21 MR. FOUKE: Yes, ma'am. I sure do. I realize
22 that it can be quite boring listening to me, but I'm a
23 little bit astounded when Nick makes statements that I
24 don't bother to answer 2714 when actually I sat here
25 and I read off the answers on four out of the five, and

3/15
1 the staff provided the answer on the fifth. I -- to my
2 knowledge, every requirement for late filing has been
3 answered in this proceeding, and evidently it just went
4 right by Nick like it wasn't there.

5 But if you review the record, it has all -- every-
6 one of them have been addressed.

7 MR. REYNOLDS: I'm perfectly willing to rely
8 on the transcript as it has been recorded in this hearing
9 today including if you'll also refer to our pleading in
10 answer to his motion, it suits me fine.

11 CHAIRMAN BOWERS: Do you want to continue, Mr.
12 Fouke?

13 MR. FOUKE: On almost everything that Mr.
14 Reynolds had to say, it was addressed in again in Appendix
15 I, and I would again bring to your attention that it's
16 been as the design basis. It does not address operation.
17 It isn't proper to be bringing it up.

18 CHAIRMAN BOWERS: Have you concluded?

19 MR. FOUKE: Yes.

20 CHAIRMAN BOWERS: We have one more CFUR con-
21 tention. Can we go ahead with that now, Mr. Fouke?

22 MR. FOUKE: Contention 9 addresses the need
23 for --
24
25

GT 4/1

1 MR. FOUKE: -- opinion that the applicant is --
2 has more of an obligation than simply to turn any generic
3 item over to other people and let them work -- work it out.
4 And when they get everything all figured out, come in and
5 do whatever was decided upon because we take the position
6 that the applicant's going to be the operator. The applicant
7 needs to have good input into this process. They need
8 themselves, on occasion, to realize that something may go
9 wrong with this particular operation, and that they need to --
10 well, flatly they need to be more active.

11 Everything -- all the record of this proceeding
12 is that they have referenced in the 1974 report, and they
13 bring up that same report in 1980. They -- everything in
14 the record indicates that the applicant has done exactly
15 what I've described and that is to hand this over to other
16 parties and let them take care of it.

17 If the thing is going for eleven years, so be it.
18 Let it go on for twelve.

19 CFUR also takes issue with the staff for letting
20 it go on eight, eleven years, twelve years.

21 There is a -- a limit to how long you can let a
22 generic safety item just stay in that position. It becomes
23 pretty soon a sham. And that's what we think this one is.

24 At first glance this contention may be -- appear to
25

GT 4/2

1 be challenging the Commission's authority, but as explained
2 in our -- our report, well, it is certainly not our intent
3 that it is simply the intent of the contention is to -- is
4 to have the Board do something which will bring it to the
5 attention of the Commission at the time they made the deci-
6 sion what actions this applicant has not taken in order to
7 keep themselves abreast of the issue.

8 CHAIRMAN BOWERS: Have you concluded?

9 MR. FOUKE: Yes.

10 CHAIRMAN BOWERS: Thank you.

11 Mr. Reynolds.

12 MR. REYNOLDS: You talk about vague and general --
13 I doubt that Mr. Fouke has any idea what Texas Utilities
14 and the other applicants in this case have been doing to
15 develop -- to assist in the development of the generic
16 resolution of the Atlas situation. But be that as it may,
17 this Atlas matter is an unresolved generic safety issue.

18 The NRC staff is in the process of resolving it.
19 Mr. Fouke may criticize the staff for its efforts in this
20 regard, but that's between Mr. Fouke and the staff.

21 The law governing licensing board handling of
22 unresolved generic safety issues holds that in order for
23 the contention to be admitted the intervenor must demonstrate
24 a nexus, a connection between the general discussion of the
25

4/3

1 generic issue document, and any deficiency in the specific
2 application for the reactor under consideration.

3 The Appeal Board in River Bend really provided
4 the best and most sink guidance for this board in determining
5 whether to admit this contention.

6 If -- with the board's indulgence I would like to
7 quote from the Appeal Board in River Bend so that it's in
8 the transcript. I think it's helpful.

9 I'm quoting from 6-NRC at page 773.

10 "The mere identification of a generic technical
11 matter which is under further study by the staff such as a
12 TSAR item or Task Action Plan, does not fulfill this
13 obligation. The obligation is to establish the nexus between
14 the issue and the reactor under review. Even if the matter
15 has some patent relationship to the category of reactor
16 under review to establish the requisite nexus between the
17 permit or license application and a TSAR item or Task Action
18 Plan it must generally appear both (1), that the undertaken
19 or contemplated project has safety significance insofar
20 as the reactor under review is concerned; and (2), that the
21 fashion in which the application deals with the matter in
22 question is unsatisfactory that because of the failure to
23 consider a particular item there has been an insufficient
24 assessment of a specified type of risk for the reactor."
25

4/4

Now, if you read that as the appropriate legal guidance for this board, and I don't think anyone here disputes that it is the guidance.

Then, compare CFUR's contention against that guidance. I think you will find that CFUR doesn't even come close to meeting the standards set forth by the Appeal Board in River Bend.

I won't go through it piecemeal. I think if you compare the two you will be satisfied yourself.

We think you should deny the contention.

CHAIRMAN BOWERS: The staff.

MRS. ROTHSCILD: The staff has opposed admission of this contention as stated in its report. I would just like to add one -- one point that insofar as CFUR -- what CFUR is seeking as far as imposition of any requirements on applicants even if the Commission grants the exemption to the applicants based upon some specific time frame that -- I think the contention is improperly represented -- or just represents no more than a -- a generalization about intervenors' view of what applicable policies ought to be on this. And that contention which seeks to do that must be rejected. That is an infirmity that is not -- that is bound for rejection, and we mentioned this particular infirmity on page 3 of our report. And we cite several others which may constitute grounds for rejection of contention, and one

4/5

1 of the relevant cases is Philadelphia Electric Company which
2 we cite on page 4 with Peach Bottom Atomic Power Station,
3 Lab 216, 880C1320 to 21, 1974. That is the only item
4 that I would like to add to the staff's written statement
5 of position.

6 CHAIRMAN BOWERS: Mr. Fouke, do you have a response?

7 MR. FOUKE: NU-Reg 0460, Volume IV, which we
8 refer to in our draft -- I mean in our report to the board,
9 in CFUR's opinion sufficiently establishes an exodus between
10 ATWS and Comanche Peak.

11 I also would like to remind the board of the
12 quote that we put in the -- in the last page of our report
13 by the Chimeme Commission, where it actually addresses the
14 problem of -- of generic problems being strung out over a
15 long period of time.

16 And we would request that you review that.

17 While it is CFUR's understanding that both the staff and
18 the applicant are taking the position that there's simply
19 nothing to be done; that there has been common law precedence.
20 CFUR would say to that that if it's gone eleven years do we
21 go fifty years or -- or in the case of the generic items
22 that we've addressed in this room today, would those also
23 go eleven years? You know. It doesn't seem to be any
24 rationale for this. And what we maintain is that in view of
25

4/6

1 this long length of time and the fact that this was brought
2 up as an issue at the construction phase, and if the appli-
3 cant, and the FSAR has indicated absolutely no -- nothing
4 different even though it was brought up. We think this
5 is significant and should have some unusual treatment.

6 Thank you.

7 MR. COLE: Mr. Fouke, you referred to NU-Reg 0460,
8 Volume IV which is presently our for comment as providing
9 the necessary nexus between ATWAS, A-T-W-O-S and -- and
10 Comanche Peak. Could you be a little more specific with
11 respect to the connection?

12 MR. FOUKE: I think in our -- our draft -- I
13 mean our report to the board we refer to the analysis
14 actually made of Westinghouse -- Westinghouse type reactors.
15 And I'm not prepared to make a specific -- I wish I could,
16 but I'm not prepared to make a specific analysis. It's
17 my -- my recollection of what NU-Reg 0460, Volume IV says
18 is that there is two areas that there seems to be substantial
19 questioning and -- and one applying to older plants and a
20 second applying to the most recent plants.

21 And to my knowledge CPSES is not taken any -- made
22 any hardware modifications of the second category.

23 MR. COLE: Now, this will -- this will go to the
24 Commission as a recommendation for the solution of -- or the
25

4/7

1 resolution of unresolved safety issue TAPA-9, which is
2 the cover of NU-Reg 0460. And the Commission will decide
3 whether that's satisfactory or not. What do you expect
4 this board to do?

5 MR. FOUKE: I'm anticipating that although this
6 will eventually go to the Commission and the Commission will
7 decide that by the time the Commission decides Comanche Peak
8 will be grandfathered out of the process. And that this
9 means basically that due to the lack of diligence on the part
10 of everybody involved that this problem, although it's
11 been around this long, that the health and safety of the
12 public will be affected in the locality around Comanche Peak.

13 MR. COLE: All right, sir.

14 At -- your contention says that whatever ATWAS
15 hardware modifications are recommended by the staff should
16 be installed at Comanche Peak, and it shouldn't be grand-
17 fathered. This is your view?

18 MR. FOUKE: My view is that it shouldn't be
19 grandfathered. I recognize that the Commission will make
20 the ultimate decision on what hardware modifications may
21 need to be made.

22 MR. COLE: At what point do you think the
23 information as to just what hardware modifications are
24 required will be made? And how will that manifest itself,
25

4/8

1 sir? That -- that information.

2 MR. FOUKE: Well, based on past history I have
3 no way of knowing when those decisions will be made. They've
4 been kicking around, I mean this is the fourth volume.
5 As I said it -- it's already been eleven years. Am I
6 understanding your question correctly?

7 MR. COLE: Well, if -- if you are asking us to
8 make sure that the recommended ATWAS hardware modifications
9 are in fact put on the Comanche Peak plant --

10 MR. FOUKE: No.

11 MR. COLE: -- how will we know what modifications
12 you are talking about if the process isn't finished yet?

13 MR. FOUKE: No. What I'm suggesting is not that
14 you make a decision on what hardware modifications has to
15 be made. I recognize the staff does not have the authority
16 to make that decision. And the Commission is the only party
17 that can make that decision. What I am asking the board
18 to do is to take some action so that when the Commission
19 makes the determination of which applicants have to conform
20 to this that they at that time recognize the lack of -- of
21 effort on the part of this applicant, or at least, that
22 effort perceived in the FSAR. Now, maybe the applicant needs
23 to amend the FSAR to show what they have done. But the
24 record so far does indicate nothing.

25 MR. COLE: All right, sir.

4/9

1 This ATWAS has been identified as a generic
2 problem. What -- what guidance can you give the board to
3 justify a special circumstance in the singling out of this
4 particular plant for -- for a different kind of consideration
5 than any other plant?

6 MR. FOUKE: I can see where criteria -- that --
7 that general criteria -- we're saying this is a specific
8 enough case. This applicant -- the ACRS brought this to
9 the point -- the attention of the NRC staff. The NRC
10 staff again brought it to the attention of -- of the
11 applicant and everything -- if you read all the words written
12 in the construction phase everything was going to be
13 "hunky dorey" when we got to the operating license stage.
14 Here is it operating license stage, and they're saying that
15 it's a generic item. I think those are specific enough
16 circumstances.

17 The applicant has had every opportunity to resolve
18 this and has not.

19 It is not only the responsibility of the Regulatory
20 Staff or Westinghouse to resolve these problems. The people
21 building the things have to resolve them, too. And this
22 particular applicant has to resolve them. He has a -- a
23 responsibility as do everybody else in the --
24

25 MR. COLE: Are you recommending specific hardware

4/10

changes for this plant, sir?

MR. FOUKE: No. But at the time that it is determined what specific hardware changes need to be made, that needs to be made -- there needs to be a method that the Commission has brought to its attention what the record of this particular applicant is and trying to resolve the problem.

MR. COLE: All right, sir.

MR. FOUKE: So, that they would consider grand -- not grandfathering it where possibly other -- under other circumstances if it's not brought to their attention they would just categorize it.

MR. COLE: All right, sir.

Thank you.

MR. REYNOLDS: Mrs. Bowers, may I make a comment?

It seems to me that the fundamental flaw in Mr. Fouke's contention as I now perceive it is that he would have this board impose requirements on this applicant beyond those which the generic resolution of that would -- would impose. I -- now, I think I understand what he's getting at when he talks about in the contention. If the Commission grants an exemption to applicants based upon some specific time frame, I think what he's saying is that if the Commission comes out and says that for reactors

4/11

1 of Comanche Peak vintage you will do the following things
2 to resolve ATWAS-A, B, C, D, E. We will do them. But if
3 it says for newer plants you will do A, B, C, D, E, and F.

4 I think Mr. Fouke is saying that this board should
5 impose F on Comanche Peak. In other words, this board should
6 overrule its Commission and impose additional requirements
7 beyond those imposed by the Commission.

8 And if that's what he's driving at, that's
9 beyond the jurisdiction of the board.

10 MR. FOUKE: I would like to request if the
11 board believes that's what I'm driving at? I -- I don't
12 want to belabor the point. I'm not driving at that. That
13 isn't what I was saying.

14 Do you wish me to go into more explanation?

15 MR. COLE: Why don't you do that, sir. I want
16 to make sure I understand your position.

17 MR. FOUKE: I think sufficient actions need to
18 be taken by this board so that in the example that Nick
19 used if they say that -- that plants of the Comanche Peak
20 vintage need to do A, B, C, D and later vintages needs to
21 do A, B, C, D, E, F that before Comanche Peak is actually
22 included in that prior category, the Commission weigh the
23 factors that this applicant has done -- exhibited no sub-
24 stantive effort towards resolving this issue all the way
25

4/12

1 from its operating -- I mean construction license phase
2 through the operating license stage. And let them make up
3 their mind whether they want to keep -- put Comanche Peak
4 in that particular category in view of those facts.

5 MR. REYNOLDS: May I again respond?

6 We get back to jurisdiction again. If the
7 Commission wants licensing boards to consider in case by
8 case -- in -- on a case by case basis whether the additional
9 requirements being imposed on newer plants should also be
10 imposed on older plants because the applicants in the older
11 plants have not done whatever Mr. Fouke thinks they should
12 do, the Commission will so advise you. And then you will
13 jurisdiction to do so.

14 If Mr. Fouke thinks that's a sound way to
15 regulate this applicant, then he should go to the Commission
16 on comments on NU Reg 0460 and tell the Commission that
17 that's the rule the Commission should impose on this
18 applicant.

19 CHAIRMAN BOWERS: I think we've heard the position
20 of both parties.

21 Before we recess, Mr. Gilmore, I want to make
22 sure that we are clear on exactly what you have asked us
23 to consider. Am I correct that your first question is
24 number 1, are we going to change the language of the QA
25

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1 contention that the board put out; and 2, if we are, then
2 are all parties going to be given an opportunity to propose
3 language? Is that correct?

4 MR. GILMORE: I believe you are right. My --
5 our position was that we were operating under the assumption
6 that the language you had given to us earlier was already
7 acceptable. And that we weren't required to refine it any
8 further. And what we would like to ask if -- if in fact --
9 just like it was brought up this morning by Dr. Cole that
10 you wanted some more specific language that we would be
11 given the opportunity to submit that contention with a more
12 specific language for you to rule on. Because up until
13 this morning we were under the impression that they were
14 unhappy with the language of the board, but we weren't.
15 And the language of the board was acceptable to the board.

16 CHAIRMAN BOWERS: We'll take 15 minutes. And
17 so we would like to have everybody back by 3:20.

18 (There is a 15 minute recess.)
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1 CHAIRMAN BOWERS: During the recess we decided
2 that we want to keep our options open, and we are not
3 going to take a definitive position one way or the other
4 about what the language will be whether we will continue
5 with the present language, or whether we will consider
6 other language.
7

8 But we invite the other parties -- now, we've
9 already proposed language from the Staff and the Applicant.
10 And we invite other parties to submit proposed language
11 or there position if they want us to stay with the present
12 Board language not later than ten days from to date.

13 Now, we don't think a time needs to be set
14 for response because we've had -- orally we've had the
15 position of the parties, but we want to give you that
16 time. I might mention, too, that next Monday Dr. Cole
17 and I go back to another proceeding for two weeks and so
18 there will not -- we will not be able to meet as a Board
19 until the middle of May, and so you won't be getting an
20 instant ruling subsequent to this pre-hearing conference
21 and that does give us a little time to give time to you
22 for further thought on this.

23 A couple other housekeeping matters: we thought
24 things -- well, we've covered nine contentions in this
25 time today. Now, we realize that there's a certain amount

1 of spillover and fallout into other petitions and other
2 contentions, but in order to try to finish, we propose to
3 go until six o'clock tonight which we've been told we
4 can do, and we can start at 8:00 o'clock tomorrow morning
5 which we would like to do.

6 We've also been told that tonight papers can be
7 left here if anybody wants to, but the Judge was very clear
8 this morning that when we conclude our proceeding there's
9 not to be a scrap of paper or paper cup or anything left
10 in this room.

11 Now, we'd like to take up ACORN next. Are you
12 ready, Mr. Gay?

13 MR. REYNOLDS: One point, Mrs. Bowers. Will
14 we have the opportunity to rethink our contention on
15 QA and submit proposed language?

16 CHAIRMAN BOWERS: Ten days from today.

17 MR. REYNOLDS: Thank you.

18 CHAIRMAN BOWERS: Yeah. And we'd also like to
19 ask you, you know -- our purpose here is to hear everything
20 you have to say. Maybe we didn't crank into the time
21 frame the Texas drawl -- I don't know -- but would like
22 -- I think there have been statements made today by all
23 parties in rather broad general terms and would like to
24 ask you not to repeat those same speeches when -- if the
25 matter comes up with another petition, and we do want to

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1 move along on these matters. Mr. Gay.

2 MR GAY: I am ready, Mrs. Bowers. I would like
3 to make a couple of general comments to start, and that
4 is in the interest of expediting my overall comments on
5 the contentions, and I'd like to direct those introductory
6 comments to the fact that both the Staff and the Applicant
7 were a bit perplexed with the fact that I supported a
8 number of my contentions with unresolved safety issues,
9 and I would like to deal with that problem specifically
10 at the very outset.

11 I'd like to refer the Board's attention to a
12 case which came out last year which was Pennsylvania
13 Power and Light Company, Allegheny Electric Cooperative
14 Inc., Susquehanna Steam Electric Stations, Units 1 and 2.

15 And that decision was March 6, 1979. It's
16 LBP 796. In that particular proceeding the petitioner
17 there referred to unresolved safety issues. There were
18 three issues that that particular petitioner went into
19 in rather fine detail and laid out specifically.

20 Beyond that, the petitioner generally alluded to
21 the problem of unresolved safety issues. The Board
22 accepted the three contentions that were set forth
23 specifically, and went beyond that to state that since
24 the Staff had not filed its SER, that the petitioner
25 should have an opportunity after that time to submit

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1 additional contentions regarding unresolved safety issues.
2 I believe that on page 311 of that particular opinion,
3 it sets forth pretty specifically what I hope the Board
4 will address itself to with regard what I have used as
5 the unresolved safety issues supporting the contentions
6 of ACORN.

7 And that is that the petitioner is at substantial
8 disadvantage in ascertaining whether safety issues that
9 are generic and unresolved, applicable to the particular
10 reactor have been resolved. That the information regarding
11 those issues is peculiarly under the control of the Staff.

12 And the Board in the Pennsylvania decision
13 states, and I quote: "That being so, the degree of
14 specificity upon which the Staff is insisting for this
15 contention appears to us to be unreasonable for this
16 stage of the proceeding."

17 And those contingents were admitted. ACORN
18 contends that we have in all contingents -- all 31 that
19 you have before you have provided specific documentation
20 that we have met the requirements of the statute. That
21 the other parties have been put on notice as to what we
22 want to litigate in this proceeding with particularity,
23 and we have noted that the design of the CPSES facility
24 is inadequate with regard to the problem that have been
25 articulated.

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1 Now, both the Staff and Mr. Reynolds here today
2 have referred to the River Bend decision, and before I
3 go into the contentions one by one, I wish the Board to
4 note that the River Bend opinion is a rather rare bird
5 because what the Board delved into there is the fact that
6 the intervening State -- and I believe it was Louisiana --
7 I don't have the case before me. But I believe it was
8 the State of Louisiana -- took the unresolved safety
9 contingents from a NUREG and took a red pen and merely
10 circled on the publication those items which the State
11 wished to litigate and then submitted that particular
12 document to the licensing Board stating that this is what
13 we want.

14 Now, the Board was, I believe, correct in
15 stating that that isn't good enough. But what Mr.
16 Reynolds referred to today in the mere listing is exactly
17 what took place in the River Bend decision with that
18 particular state intervening party.

19 That is not what ACORN has done however. We
20 have provided specific wording, precise contentions,
21 narrowed, and then supported with unresolved safety
22 problems.

23 I'll begin now with Contention Number One.
24 Contention Number One deals with a pipe break scenario in
25 a particular area between the reactor vessel and the

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1 shield wall. I don't know how much more precise it
2 could be for an intervenor to be in the wording of a
3 contention than what has been provided.

4 ACORN has spelled out in its position that the
5 safety significance is apparent and that it relates to
6 the fact that it is possible for radioactive materials
7 to get into the secondary system and beyond that, I
8 believe the fact that we point out that it has a task
9 of category A classification as an unresolved safety
10 contention, safety issue, means that it has safety
11 significance on its face.

12 The contention begins with the fact that CPSES
13 design is inadequate, and I think that we have provided
14 the appropriate nexus for this contention, and it should
15 be admitted pursuant to the Pennsylvania Power and Light
16 Company opinion.

17 CHAIRMAN BOWERS: Mr. Reynolds?

18 MR. REYNOLDS: Without repeating the discussion
19 that we had earlier with Mr. Fouke as to the standard for
20 admission of unresolved generic safety issues, suffice it
21 to say that the reliance on the Susquehanna decision
22 by ACORN is at best tenuous.

23 That decision was of a licensing Board. It
24 was not by the Appeal Board. It was one licensing board's
25 view of how River Bend and North Anna should be construed

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in the context of that particular proceeding.

It is of limited, if any, precedential value to this Board in applying the standards espoused by the Appeal Board in River Bend and North Anna. With regard to proposed Contention One, this is the classic case of a general and vague contention being thrown out with no basis to support it.

In fact, all of ACORN's unresolved generic safety issue questions fall into that category. There is absolutely no attempt by ACORN to demonstrate the nexus between Comanche Peak and the generic issue. Contrary to Mr. Gay's assertions, there is no demonstration that the Comanche Peak design will fail to account for the issue, or is in any manner inadequate.

We, therefore, urge that the contention be denied.

CHAIRMAN BOWERS: Staff?

MS. ROTHSCHILD: Mrs. Bowers, the Staff has stated in its report how it feels that the contingents of ACORN should be treated with specific reference to the River Bend decision. We do not have anything to add to that discussion, but I would like to note that as far as Mr. Gay's reliance on the Susquehanna decision, the Staff feels that Susquehanna does not certainly overrule the Appeal Board's decision in River Bend.

And it merely indicates how the licensing Board

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viewed certain contingents proposed in that proceeding.

And it did -- as I see it, it is not something that can be regarded as overruling or negating on River Bend.

And since Mr. Gay does cite Susquehanna throughout his report, I think it's important to keep that in mind and that the guidance in River Bend as discussed by the Staff is still applicable and thus Susquehanna indicates no more than how a licensing board on particular contentions.

And it felt some -- the proposed contentions were stated with adequate specificity and some weren't, and I think that's about it.

CHAIRMAN BOWERS: Any questions?

MR. GAY: I have two additional comments I would like to make in response to Staff and Mr. Reynolds. First is -- and I think I articulated that I don't believe that it's necessary in this contention to rely upon the unresolved safety issue.

I think it provides additional support. I think a reading of the Duke Power case and the Allens Creek case which provided us this morning state that we are at the assertion stage. And I think that, you know, there is no more requirement than the specific language and the safety significance that has been pointed out in ACORN's contention.

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1 But second, with regard to Mrs. Rothschild's
2 comments with regard to Susquehanna overruling River Bend,
3 I certainly made no allegation that that had occurred.
4 I think that River Bend can be distinguished, and that
5 Susquehanna is what should guide this particular Board.

6 But I would ask the Board to look to the pleading
7 of the Staff on page 65 wherein Mrs. Rothschild quotes
8 the River Bend opinion. And that particular opinion states
9 that it must generally appear. And then it goes on to
10 state what is necessary for the nexus.

11 And I think that both the Staff and the Applicant
12 have taken the language of River Bend and put some really
13 stringent barriers upon all intervening parties to play
14 a "Mother-may-I game." I think that all is required from
15 River Bend is that it generally appear.

16 And I think that it is obvious from the wording,
17 specific wording of this contention that it has safety
18 significance. It puts the parties on notice, and I think
19 it's adequate for admission.

20 MS. ROTHSCILD: Mrs. Bowers, I would just like
21 to add that with respect to Contention One that Staff
22 opposes admission of that contention on the grounds stated
23 in its report and that is our position as to the
24 admissibility of this contention.

25 CHAIRMAN BOWERS: Mr. Reynolds, briefly.

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1 MR. REYNOLDS: Yes, very briefly. I think we
2 again heard from Mr. Gay -- his theory on admission
3 standards before this agency, and this is notice -- put
4 you on notice. That's good enough for now. If you read
5 River Bend, the Appeal Board says the mere identification
6 of a generic technical matter which is understudy does
7 not fulfill the obligation of demonstrating nexus.

8 It's a direct quote from the Appeal Board's
9 decision.

10 CHAIRMAN BOWERS: Number Two, Mr. Gay?

11 MR. GAY: I'm ready, Madam. Number Two deals
12 with the NRC Staff's inadequacy in identifying and
13 correcting modes of interaction between reactor systems
14 at Comanche Peak, and that that failure adversely affects
15 the redundance or independence of the safety systems.

16 In supporting that, I refer the Board to
17 the Kemeny Commission finding that as presently
18 structured, the NRC Staff is somewhat incapable of
19 regulating to the highest degree possible or what should
20 be found the safety matters of nuclear reactors.

21 From the NRC's internal reports subsequent to
22 Three Mile Island and as pointed out in position paper
23 here, it is specifically identified that there is
24 serious problems with the NRC Staff review. And that
25 the Staff review is inadequate to interreact its

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1 analysis that individuals within the NRC have specific
2 training, and that they look at specific points of the
3 plant in the safety system, but that those individuals
4 don't get together to mingle their thoughts and to review
5 the overall safety significance of the plant.

6 I think the reasoning of Pennsylvania Power and
7 Light is again important, and on page 592 of that opinion,
8 it states that Three Mile Island incident constitutes a
9 prima facie showing that an accident of that particular
10 caliber can occur, and I analogize from that opinion
11 that it should be obvious at this point in time that the
12 Three Mile Island incident provides a prima facie showing
13 that NRC staff review is inadequate with regard to
14 systems interreaction.

15 And if that review was inadequate for Three
16 Mile Island, I think we must also draw the conclusion
17 that it is going to be inadequate for Comanche Peak
18 absent some change in the NRC structure.

19 CHAIRMAN BOWERS: Have you concluded?

20 MR. GAY: Yes, ma'am.

21 CHAIRMAN BOWERS: Mr. Reynolds?

22 MR. REYNOLDS: These are going to be easy, Mrs.
23 Bowers. They are all River Bend. The proper context
24 for evaluation of this contention and the other generic
25 unresolved safety contentions is River Bend and to determine

whether or not the contention and the basis stated for the contention meet the requirements of River Bend, we submit to you that the Contention Two does not meet those requirements.

CHAIRMAN BOWERS: Mrs. Rothschild?

MS. ROTHSCHILD: The Staff is opposed to this contention on the grounds that it's vague and lacks basis and we adhere to the position -- that position which is stated in our report.

CHAIRMAN BOWERS: Do you want to respond, Mr. Gay?

MR. GAY: Just similar response to what I had before, Mrs. Bowers; and that it that isn't necessary just to look at the unresolved safety issue. It is offered as support but not the only supporting basis, but it is further in my argument that even if it were the only supporting basis, it would be sufficient for admission of this particular contention in this proceeding.

DR. COLE: Mr. Gay, I've got a problem with how that might be litigated. Could you provide us with some guidance on that?

MR. GAY: I think in this proceeding that both the NRC staff and the Applicant could be compelled to provide information, provide testimony as to how their can be a review at Comanche Peak specific to that plant

which examines the interreaction of safety systems.

Irrespective of whether or not there is a permanent resolution of this problem at some point in the future -- irrespective of whether or not there is at some point a rule making or a generic study set up to handle the opinions set forth in Kemeny Commission and the NRC staff's own internal investigation at Three Mile Island.

DR. COLE: You can't be a little more specific about certain kinds of systems interacting with other kinds of systems, or -- this seems to be a little general, Mr. Gay?

MR. GAY: Well, I think that the safety systems is a term of art employed by the NRC, and as I noted in page ten that refers to systems containing the safety related items designed to prevent or mitigate the consequences of postulated accidents that could cause undue risks to the population, to the environment and to the workers there at the plant.

And I think that any system -- any safety system designed to prevent such occurrence to mitigate such occurrence should be examined more thoroughly than just the workings of that system individually.

It should be examined in how it interrelates with other systems in that plant.

DR. COLE: It seems to me to be a criticism of

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1 how you consider the NRC staff to conduct its review,
2 and if, in fact, they are conducting their review that
3 way, you can take a considerable amount of time to modify
4 or change that kind of review.

5 I was wondering what kind of relief might be
6 expected in an evidentiary hearing of this type if that's
7 what you're getting at?

8 MR. GAY: I think it's entirely possible that
9 a review that examines modes of interaction between the
10 systems could review that perhaps the design of CPSES
11 is entirely inadequate.

12 That if there had been a similar review at
13 Three Mile Island perhaps that accident could have been
14 avoided, and I think that the Staff's own documents
15 reveal that this particular matter has serious safety
16 consequences, and it is incumbent upon this Board, I feel
17 to inquire into this and have the Staff do an examination
18 of modes of interaction between systems for Comanche
19 Peak.

20 DR. COLE: All right, sir. Thank you.

21 MS. ROTHSCHILD: We have no further questions.

22 MR. GAY: Contention Three?

23 CHAIRMAN BOWERS: Fine.

24 MR. GAY: Contention Three deals with the
25 failure of both the Staff and the Applicant to establish

1 a methodology for evaluating and insuring that safety
2 related equipment, Class IE safety related equipment is
3 designed to accommodate effects of and to be compatible
4 with environmental conditions.

5 And the contention goes on to state that a
6 general design criterion for it cannot be satisfied.
7 The heart of this contention is a lack of reliable
8 methodology to demonstrate equipment qualification and
9 thus to go on to state that the safety of Comanche Peak
10 cannot be insured.

11 The safety significance of this particular matter
12 is obvious on its face through the fact that it's supported
13 with Category A, unresolved safety contention. I think
14 that the wording of the contention is very specific and
15 clear.

16 It has safety significance, and I think that
17 further it is pointed out in ACORN's position, TUGCO's
18 position relative to certain standards is entirely un-
19 clear, and this particular matter needs to be litigated.

20 CHAIRMAN BOWERS: Mr. Reynolds?

21 MR. REYNOLDS: There's no demonstrated nexus
22 between this contention which is generic unresolved con-
23 tention and Comanche Peak. And in addition to the extent
24 that Mr. Gay is seeking to raise Class 9 accidents by
25

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his phrase most severe postulated accident, that is proscribed in this proceeding.

CHAIRMAN BOWERS: Mrs. Rothschild.

MS. ROTHSCCHILD: For reasons stated in report the Staff -- supports admission of Contention Three. I have nothing further to add other than that with respect to Applicant's comment about the contention possibly of raising Class 9 accidents, it's my understanding that in the basis provided by ACORN, ACORN mentions the most severe postulated accident, and it's the staff's view that that's the design basis accident which is not a Class 9 accident.

So we just make that one additional comment As we have stated, we support admission of the contention.

MR. GAY: It was not my contention to raise the Class 9 issue in this particular contention.

DR. COLE: Mr. Reynolds, in view of the fact that Mr. Gay is not considering Class 9, but considering design basis accident, would you have any additional comment to make?

MR. REYNOLDS: No, I would just withdraw my comments on the Class 9 action.

DR. COLE: All right, sir. Thank you. Mr. Gay, this also is -- seems to be fairly broad with respect to equipment. Is there any particular kind of equipment that

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is particularly important for consideration?

MR. GAY: I think the contention here --

DR. COLE: You've got an awful lot of equipment to consider, sir.

MR. GAY: I think that it's perhaps broad but specific nonetheless, but I think that's one envisioned with the basis is primarily electrical equipment, and I think that what we have pointed to here is a failure to meet certain standards within that basis, and I think that that is an adequate showing to have this contention admitted within its present form and present wording.

DR. COLE Is part of your basis for this certain kinds of equipment problems or electrical equipment problems that arose as a result of the Three Mile Island incident?

MR. GAY: I think that this contention would have been appropriate and justifiable absent Three Mile Island, but I think that Three Mile Island perhaps provides additional bases. I think that what really going to here in the contention is the fact that there is accumulative wear and tear on this safety related equipment, Class IE safety related equipment, and that there is an inadequate methodology in examining that equipment.

DR. COLE: All right, sir. Thank you.

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CHAIRMAN BOWERS: We have no further questions.

Do you want to proceed?

MR. GAY: Contention Number Four, again, deals with both the failure of methodology from the standpoint that both the staff the applicant, and that they cannot insure that structures and systems and components important to safety are designed to withstand the effects of a safe shutdown earthquake without losing capability to perform their safety functions.

It goes on to state that general design criterion number two cannot be met. Again, this is a lack of reliable methodology. It has safety significance, again, on its face because it's supported by an unresolved category A safety issue.

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1 MR. GAY: -- Burton plants because of failures
2 to appropriately seismically view those plants is a prima
3 fac showing with regard to this contention that the present
4 methodology for reviewing seismic qualification is inappropriate
5 and needs to be examined further.

6 The contention itself is made specific to Commanche
7 Peak. I think it has safety significance which is obvious
8 and I think it has the requisite necks.

9 It should be admitted.

10 MRS. BOWERS: Mr. Reynolds.

11 MR. REYNOLDS: Continuing River Bend argument
12 here. No demonstrated nexis between the generic safety issue
13 and Commache Peak. In addition, we always rely on the written
14 submissions. We've provided to the Board -- that the conten-
15 tions are vague and unfounded.

16 And Dr. Cole, have you thought that the phrase
17 class I-E safety related equipment is vague, how would you
18 like to litigate structure systems and components important
19 to safety. I would submit to you that that's even more vague.

20 MRS. BOWERS: Have you concluded?

21 MR. REYNOLDS: Yes.

22 MRS. BOWERS: Mrs. Rothschild.

23 MRS. ROTHSCCHILD: If I could have just a minute,
24 please. The staff original feeling was that the contention
25 should be rejected. In looking at it again, we feel that

1 it could be made more specific. It is kind of vague, but
2 that ACORN does state the reasons or basis for its contention.
3 It doesn't, in this case unlike some of the others, just
4 rely on the mere statement that it's an unresolved safety
5 issue.

6 And I think ACORN's reference to a shut down order
7 and what ACORN believes to be the significance of that is,
8 in the staff's view is sufficient basis.

9 So we have changed our position, and we no longer
10 oppose admission of the contention.

11 MRS. BOWERS: Mr. Gay.

12 MR. GAY: Just one comment, Mrs. Bowers, and that
13 is that I find continually from the Applicant an effort to
14 foreclose discovery in the comments that are offered with
15 regard to stating vagueness. I don't think there's anything
16 in the language of this contention or its bases that is vague.
17 I think it's rather specific.

18 It might, perhaps, be broad, and I think it can
19 be perhaps narrowed in the course of discovery and through
20 the efforts of Mr. Reynolds or myself, through further nego-
21 tiation, but I think that the contention itself stands --
22 it's meeting the statutory requirements.

23 DR. COLE: I want to make sure I understand your
24 point on this contention, Mr. Gay. You're not questioning
25 the design basis earthquake per se, but your are questionning

1 the techniques that are used to make the determination that,
2 yes, this structure is designed to this level of an earth-
3 quake.

4 MR. GAY: That is correct, sir.

5 DR. COLE: Are these techniques that you're talking
6 about contained in computer codes, and you're in fact, ques-
7 tioning the computer codes that would check whether the struc-
8 ture had been properly designed?

9 MR. GAY: I don't know the extent to which those
10 are determined. I don't know if I could limit for you today
11 that computer codes.

12 DR. COLE: Well, what would we litigate here then?
13 What would we have the staff or the Applicant do in order
14 to litigate that issue? How do you visualize that?

15 MR. GAY: Why I think that the contention states
16 that neither the Applicants nor the staff have the methodology.
17 And we go on the basis to state that it's clear from the
18 NRC's order of a year ago with regard to shutting down specific
19 plants, that they don't have that methodology. So I think
20 that the way that we litigate it is have the staff or the
21 Applicant come forward with a methodology and have us argue
22 on cross-examination or through opposing testimony that that
23 particular methodology as proposed is, or is not, adequate.

24 DR. COLE: Are you also saying that the state of
25 the art is not at the level where it can be determined?

1 MR. GAY: I don't know that I'm saying that. No,
2 sir. I think it can be determined. I don't think that there
3 is a methodology.

4 DR. COLE: Is it that you're saying that they have
5 no methodology or that the methodology that they're using
6 is unsatisfactory?

7 MR. GAY: I'm saying that it is not reliable. That
8 it is not satisfactory.

9 DR. COLE: And your basis for saying that it is
10 unreliable, is what, sir?

11 MR. GAY: That it's not demonstrated from any showing
12 that we have been able to see from the Applicant at this
13 point in time. It's demonstrated from the showing of the
14 NRC's order itself that there -- NRC Commission, itself
15 has very serious reservations about the ability to seismically
16 qualify plants and the design and construction of those plants.

17 DR. COLE: Are you then saying, sir, that a qualified
18 structural engineer could get on the stand and then tell
19 you how that structure was designed and certified to you
20 that , yes, it is designed to withstand this kind of an earth
21 quake.

22 Would that satisfy your contention?

23 MR. GAY: I believe so. Of course, that engineer
24 would have to be subject to cross-examination, and we hope
25 we could prove that he hasn't done the best job, and there's

1 some other methodology, that is perhaps is better suited.
2 Perhaps that, you know, there are serious flaws. I think
3 that is a possibility, yes, sir.

4 DR. COLE: I'm just trying to understand what your
5 contention is, sir.

6 MR. GAY: Yes, sir. I think that is accurate.
7 I think that that covers the intent of this particular inten-
8 tion.

9 DR. COLE: Are you particularly interested in any
10 specific equipment?

11 And your basis for selecting that kind of equipment
12 as being deficient in design?

13 MR. GAY: The contention itself refers to equipment
14 important to safety. And I would not want to limit that
15 contention beyond that particular specific phase, because
16 I think that any particular element is important to the operation
17 of the plant in achieving safe shut down of that particular
18 plant in the event of emergency situation or of an earthquake.
19 So I would want that evaluation to qualify all systems that
20 are important to safety in shutting down that plant.

21 DR. COLE: So it then could be restricted to the
22 emergency response systems?

23 MR. GAY: I believe so. Yes, sir.

24 DR. COLE: All right, sir. Thank you.

25 MRS. BOWERS: If we have no further questions --

1 I suppose we should give all parties an opportunity to respond
2 or state position on Board questions.

3 Mr. Reynolds.

4 MR. REYNOLDS: My only comment, Mrs. Bowers, would
5 be that characterizing the phrase "structures, systems and
6 components important to safety" as specific, is a travesty
7 of the definition of the word, "specific". They are specific
8 words, but the connotation of those words in that phrase
9 are anything but specific.

10 MRS. BOWERS: Mrs. Rothschild. Anything following
11 the Board's question?

12 MRS. ROTHSCCHILD: No.

13 MRS. BOWERS: Well, Mr. Gay, do you want to go
14 on to the next one?

15 MR. GAY: Yes, Mrs. Bowers. Statement, contention
16 number 5 -- that contention deals with failure of present
17 fire protection measures. Those proposed by the Applicant
18 as being inadequate to minimize the probability and effect
19 of a fire from disabling the electrical cables, of all the
20 redundant safety systems within CESES.

21 And we note that because of that general design
22 criterion #3 cannot be satisfied.

23 ACORN's position as indicated in the pleading,
24 was that Regulatory Guide 1.75 is inadequate. That is not
25 an attack upon the statute or applicable regulations, because

1 the guide is merely a means for meeting the regulations.
2 And we don't think that the Applicant has provided sufficient
3 demonstration that its particular plant can withstand the
4 effects of a fire.

5 In Mrs. Rothschild's statement of position, with
6 regard to this contention she noted that this particular
7 matter had been addressed by the Union of Concerned Scientists,
8 and I just wanted to make an additional note that that particular
9 petition has been accepted for reconsideration. It's still
10 pending. I don't think that this Board should exclude con-
11 sideration of this contention because of that prior petition
12 or contention of the Union of Concerned Scientists.

13 I think that there is an adequate demonstration
14 that it meets the statutory standards of providing in a
15 language appropriate and a reasonable basis for the contention.

16 MRS. BOWERS: Mr. Reynolds.

17 MR. REYNOLDS: I submit to the Board that Mr. Gay
18 could sit here and conjure up 826 contentions just like this
19 one without any basis.

20 It's very simple to talk about you're not going
21 to comply with this regulation, or this GDC and what have
22 you, but you have to tell us more than that. And he hasn't
23 done that here.

24 He says that Regulatory Guide 1.75 is inadequate.
25 Why is it inadequate? How? And why is Commache Peak's

1 design to accomodate the fire protection issue, inadequate?

2 He doesn't tell us.

3 It's vague, general, and lacks some basis. We
4 submit that it should be denied.

5 MRS. BOWERS: Mrs. Rothschild.

6 MRS. ROTHSCCHILD: The staff also believes that
7 this contention should be denied for the reasons stated in
8 its report.

9 I would like to note -- I think Mr. Gay may have
10 mischaracterized what the Commission activity is with respect
11 to this --

12 He mentions the Commission accepting a contention,
13 and the petition related to the Union of Concerned Scientists.
14 My understanding is that that was a -- as the staff has cited --
15 a Commission action with respect to petition for emergency
16 and remedial action.

17 I don't understand that there has been any acceptance
18 of a contention with respect to this petition. At most,
19 I believe the Commission may be reconsidering a petition
20 filed by the Union of Concerned Scientists, but it is not
21 in context of accepting a contention such as we are discussing
22 here.

23 MR. GAY: Two additional comments. I may have
24 mischaracterized, and I appologize for that. I didn't mean
25 to imply that the Commission had accepted for reconsideration

1 that petition of the Union of Concerned Scientists.

2 With regard to Mr. Reynolds that I could sit here
3 and conjure up 826 -- however many -- contentions. I think
4 I need to draw the Board's attention again to the fact that
5 we are at the assertion stage of this proceeding. And yes
6 it is entirely appropriate for me to sit here and conjure
7 up 826 contentions.

8 I don't think it's possible or imaginable that
9 we could ever hope to litigate that many contentions, and
10 I think that, you know, I have to provide some reasonable
11 basis in support for those contentions, and I think that
12 the ones that have been offered have provided that reasonable
13 support.

14 Mr. Reynolds states that we must explain why there
15 is a failure, and I think that the Allens Creek opinion was
16 rather clear in his statement that to reach consideration
17 of why is to reach the merits of that particular contention.
18 And I think that reaching the merits from the teachings of
19 the Duke Power Company case and numerous cases that have
20 been decided by the NRC and its Boards, is entirely inappro-
21 priate at this point in the proceedings to reach the merits.

22 It's incumbent upon Mr. Reynolds to come back after
23 the acceptance of his contention, or at any point in the
24 discovery stage and offer a motion for some rejudgement.
25 But this Board should not let him have that summary judgement

1 at this point in time without a swearing to the evidence.
2 And I think that we have offered an assertion, and I think
3 we can support it.

4 MR. REYNOLDS: Mrs. Bowers, it seems to me that
5 many of the decisions which this Board is going to make at
6 this phase of this proceeding are going to be hinged upon
7 the Board's interpretation of the Allens Creek Pay Lab which
8 was issued last week.

9 With that in mind, may I suggest to the Board that
10 the Board call for a briefs on Allens Creek within 10 days,
11 perhaps on the same schedule that we're to submit the proposed
12 QAQC contention.

13 So that this important case can be briefed fully
14 by all parties.

15 MRS. BOWERS: Mr. Gay, do you have a position on
16 that?

17 MR. GAY: It is extremely odd, Mrs. Bowers, that
18 Mr. Reynolds could tell us this morning that the Allens Creek
19 opinion adds nothing in the way of new information before
20 this Board, and then now tell us that it's such an important
21 decision that we're going to have to brief it.

22 I agree with Mr. Reynold's earlier statement that
23 what it does is to restate and to clarify the opinions that
24 have been enunciated through the NRC for many, many years.

25 And that is that we are at the assertion stage

1 and we don't have to document why, and we don't have to provide
2 factual basis for the contentions at this point in the proceeding.

3 MRS. BOWERS: Does the staff have a position?

4 MRS. ROTHSCCHILD: Staff does not.

5 MRS. ELLIS: Mrs. Bowers, is Mr. Reynolds saying
6 that all of the intevenors should brief this? I'm not exactly
7 sure I understand exactly what that means even. If so, I
8 certainly want to oppose that.

9 MRS. BOWERS: Well, he's suggested that the Board
10 ask the parties --

11 MR. REYNOLDS: I'm suggesting that the Board afford
12 the opportunity to any party who cares to do so.

13 MRS. ELLIS: I would still oppose that. I don't
14 see that it's at all necessary.

15 MRS. BOWERS: Well, the Board will not ask parties
16 to submit briefs, but if any party wants to submit a brief
17 voluntarily, we will accept it.

18 MR. REYNOLDS: On the 10 day schedule?

19 MRS. BOWERS: On the 10 day.

20 DR. COLE: Mr. Gay, with respect to your contention
21 #5, and the fire protection measures. You mention -- the
22 Applicant mentions Browns Ferry, but I'm sure you're aware
23 of Browns Ferry and the staff has addressed some of the problems
24 associated with Browns Ferry, and some modifications have
25 taken place.

1 Is it your position that the present situation
2 is still deficient with respect to fire protection measures?
3 And in what way?

4 MR. GAY: I'm not sure, Dr. Cole, that I can articulate
5 in all ways that the present position of the Applicant within
6 its SSAR is deficient. I don't have that document before
7 me, and I'm not sure that I have the technical expertise
8 to explain that to the Board myself.

9 I think that, yes, this contention was drafted
10 in light of the post-Browns Ferry situation, and that we
11 are contending that there is still inadequacies in the way
12 that the Applicant has dealt with fire protection mechanisms
13 and opportunities to insure, minimize the probability and
14 effects of the fire from disabling electrical cables.

15 DR. COLE: So how do you visualize the litigation
16 of this subject?

17 MR. GAY: I think that we could begin with Regulatory
18 Guide 1.75, and the statement within the bases here that
19 that is an adequate showing to comply with a general design
20 criterion #3. And that is essentially the assertion.

21 The staff and the Applicant have the opportunity
22 to come in with expert testimony or to come in with the showing
23 from their FSAR, or from amendments which state that either
24 assertion is not true, that Regulatory Guide 1.75 is adequate.

25 Or they can show that they have come up with a

1 particular mechanism or a particular methodology which guarantees
2 compliance with general design criterion #3.

3 ACORN, in no way, attempts to undermine the regulations
4 in the general design criterion. That is the guiding point,
5 number three.

6 But I think that that has not been met with the
7 FSAR, and the offering of the Applicant at this particular
8 point.

9 DR. COLE: All right, sir. Thank you.

10 MRS. BOWERS: We have nothing further. Do you
11 want to go on to the next one, Mr. Gay?

12 MR. GAY: I am willing, Mr. Bowers.

13 The sixth contention -- I see a typo in it. That
14 should be the D.C. power system for CBSES plant fails to
15 meet single failure criterion as defined in 10CFR Part 50,
16 Appendix A.

17 Again, this is one of those contentions where I
18 just don't know how it could -- envision a more specific
19 wording for a contention. It's rather succinct and to the
20 point.

21 DC power system is defined by the Applicant in
22 its FSAR. I think it should be clear to anyone dealing with
23 regulatory matters within the NRC what that phrase refers
24 to. And certainly single failure criterion is a major regula-
25 tory consideration that everyone in the NRC has understanding

1 of.

2 The possibilities of loss of redundancy for the
3 system are clear, as clear safety significance, and that
4 is even further highlighted with the fact that we use a
5 category A, unresolved safety issue to support this particular
6 contention.

7 That is my offering.

8 MRS. BOWERS: Mr. Reynolds.

9 MR. REYNOLDS: Well, the language of contention
10 6 is clear. We all understand what he's talking about. However,
11 it's awfully broad and general. And in any event, when you
12 look to the basis for it, that is to say, how does it fail
13 to meet the single failure criterion, once again we end up
14 with a task action plan, generic unresolved safety issue.
15 And we're back into River Bend.

16 What's the nexis between Commache Peak and this
17 issue, and so forth.

18 And it's simply not there. Contention should be
19 denied.

20 MRS. BOWERS: Staff?

21 MRS. ROTHSCILD: Mrs. Bowers, the staff has opposed
22 admission of this contention on the grounds that it's vague
23 and lacks basis. We've stated our position in our report.

24 I would like to add, though, one more item. That
25 although Mr. Gay states that this is an unresolved safety

1 issue, and I believe he mentions Task 830 in his supplement
2 originally setting for his contention and the basis.

3 He cites to NU REG 0410, and maybe in other instances,
4 to 0510. It appears to the staff that in NU REG 0510, pages
5 32-33, that Task A-30 is not presently considered an unresolved
6 safety issue.

7 And since Mr. Gay has relied heavily on the existence
8 of unresolved safety issues for his contentions, certainly
9 with this one, we think this is certainly something to be
10 noted and I believe there are several other instances where --
11 when he states that something is a unresolved safety issue,
12 I will note those instances where in the staff's review of
13 NU REG 0510, that it just might not be the case.

14 And that is true here. This not considered an
15 unresolved issue. At least not as stated in pages 32-33,
16 of NU REG 0510.

17 MRS. BOWERS: Mr. Gay.

18 MR. GAY: Again, Mrs. Bowers, that it wasn't the
19 sole basis of this contention, and I think I could probably
20 postulate the senerio of putting out both of these particular
21 power systems.

22 And I think that the single failure criterion envi-
23 sions postulating an accident and all the consequences of
24 that accident within that initial postulation if you take
25 out one of the DC power systems and then within the single

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1 failure criterion you additionally postulate another accident,
2 the additional accident, and you postulate that particular
3 accident occurring on that other DC power system source,
4 you've got a lack of redundancy which has serious safety
5 significance for this plant.

6 And I don't think that I have to rely upon an
7 unresolved safety issue to support the rather specific wording
8 of this contention.

9 MR. REYNOLDS: Let me just add that if that is
10 ACORN's position, needn't they have to have a basis to postu-
11 late the failure they're talking about?

12 Or can they just simply allege a failure? That's
13 the crux of all these issues. What need they present to
14 the Board in order to have the contentions admitted? Simple
15 allegations with no more? No supporting basis whatsoever?
16 No, we don't think so. We think that the regulation in the
17 case law require more.

18 DR. REMICK: Mrs. Rothschild, I had a little difficulty
19 understanding the staff's response here that it's vague.
20 It seems to me, with all due respect, that this is less vague
21 than ACORN contention 3, talking about class 1-E safety related
22 equipment.

23 And the staff did not find that vague. Yet my
24 guess would be that there's more limited DC equipment in
25 class 1-E, Commache Peak plant.

1 There seems to be an inconsistency in the staff
2 approach. Is there something I'm not seeing in your response
3 to contention 5?

4 MRS. ROTHSCCHILD: I think it is perhaps true the
5 staff, in this, you know, needs two instances might be somewhat
6 inconsistent, although we have -- our position, of course,
7 is based on the contention and the basis as we perceive it.

8 DR. REMICK: But you're not questioning --

9 It seems like it's fairly specific, DC systems.
10 Realizing there's a lot of equipment in a DC system.

11 MRS. ROTHSCCHILD: I think when we say that we oppose
12 the contention that it's vague on that basis is that the
13 problem may be that we are talking about the language of
14 the contention and the basis.

15 And when we say we oppose it on the grounds that
16 it's vague, in certain instances, perhaps, what may not be
17 apparent is that we are saying that basis may not be stated
18 with adequate specificity.

19 That's the only thing I have to add.

20 DR. REMICK: Thank you.

21 Incidentally, I believe I did say 5. That's the
22 result of trying to read with my glasses on, which I shouldn't
23 do. I see 6 is the one we were on, DC power system.

24 My Board colleagues tried to correct me, but I
25 failed to do so.

1 MRS. BOWERS: Mr. Gay.

2 MR. GAY: Contention 7 deals with inadequate
3 instrumentation within CPSES, and there are several ways of
4 examining this particular contention. I think all of those
5 ways resolve indepth -- with reference to TMI II, and the
6 failures there.

7 I think there have been several cases which note
8 that TMI should have an effect upon the licensing Board's
9 considerations of contentions.

10 I've previously cited the Board to Pennsylvania
11 Power and Light Company, and I think we can analygize there
12 that TMI presents a prima facie showing that instrumentation
13 was inadequate.

14 In addition to that the Cincinnati Gas and Electric
15 Company case --

END OF TAPE 6

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1 MR. GAY: -- regulation to analogize and draw
2 support between TMI and a similar reactor. I think that
3 in this particular position statement we referenced the Three
4 Mile Island report from the commission and the fact that there
5 was inadequate instrumentation at that plant.

6 And then I go on to note the admissions of the
7 applicant with regard to their own review of the Three
8 Mile Island events and how those relate to the design of
9 Comanche Peak and they do deal with the question of instrumen-
10 tation within that document. And I think that at about the
11 time of the initial TMI accident when this contention was
12 worded, we noted that the CPSCS design is inadequate and it
13 is in violation of general design criterion number 13.

14 And I think that the language is specific and
15 the bases is specific as well.

16 MRS. BOWERS: Applicant.

17 MR. REYNOLDS: Mrs. Bowers we're all concerned
18 that the lessons learned from Three Mile Island be under-
19 stood and implemented. And certainly these applicants are
20 among those which are striving to do just that. But there
21 is an orderly progress to such matters and it's not by a
22 case by case bases when generic issues, which may or may
23 not have arisen, as a result of TMI, are being evaluated by
24 the commission generically.

25 We're back into River Bend again here which
prescribes litigation in individual cases of such generic

1 issues unless the standard set forth in that opinion are met.
2 They're not met here and for that reason the Board should
3 deny this contention.

4 MRS. BOWERS: The Staff.

5 MRS. ROTHSCHILD: Mrs. Bowers, as is stated in our
6 report we oppose admission of this contention on the ground
7 that it lacks bases but in considering ACORN's April 10th
8 report, we feel that ACORN has now stated the reasons or, if
9 you will the bases for it's concerns. And those reasons do
10 not seem to rely exclusively on the existence of an unresolved
11 safety issue so the staff would now support -- contention.

12 MRS. BOWERS: Mr. Gay do you want to respond?
13 Well, the Board has no questions. Can we go on to number 8?

14 MR. GAY: In contention number 8 is a specific
15 1 sentence contention. It would be CPSES design does not
16 adequately account for failure of passive components in fluid
17 systems important to safety.

18 Both the terms fluid systems and passive components
19 are believed defined in the regulations and statute. The
20 distinction between a passive and active component can be
21 drawn from the fact that a passive component in the fluid
22 system is not suppose to move to perform it's safety function.
23 And ACORN within it's position mentions that there is mis-
24 categorization of certain components within the fluid system
25 and that they are inappropriately classified as passive and

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1 not enough scrutiny has been given them as is given the active
2 components.

3 The regulations state with a great deal of
4 specificity that it is incumbent upon the applicant to insure
5 that passive components met the single failure criterion test
6 and ACORN does not believe that there has been an adequate
7 demonstration from the applicant of that requirement.

8 There is -- specifically referred to in our position
9 statement here a lack of methodology to evaluate those
10 passive components within the fluid system and before
11 Dr. Cole asked me the refining question. I think that what
12 we're particularly references within the passive -- I mean
13 within the fluid system are the valves that have designations
14 as either active or passive and I think that is the primary
15 component.

16 MRS. BOWERS: Mr. Reynolds?

17 MR. REYNOLDS: Another example Mr. Bowers of a
18 contention which if admitted, will set the standard for
19 virtually destroying 2.714 and the precedent established by
20 the appeals board governing the admission of contentions.

21 ACORN has apparently simply lifted from the
22 preamble to Appendix A of part 50, the statement that
23 Appendix A requires that consideration be given of the need
24 to design against single failures of passive components in
25 fluid systems important to safety. That's a direct quote from

Appendix A. Well, that's very nice but if you want to go through 10 CFR, you can come up with 6,000 of those kind of sentences. That's why the commissions regulations and legal prescedent require more than simple -- simply mere allegations and general and vague references to regulations.

We feel that there is no bases to support this contention and it should be denied.

MRS. BOWERS: The staff?

MRS. ROTHSCHILD: The staff opposed the admission of these contention on the grounds that it's vague and lacks bases. As we stood no report and we adhere to that position.

MRS. BOWERS: We have no questions. Will you go on. Do you have any response?

MR. GAY: Just one additional comment, Mrs. Bowers and that is that I did refer within the position a statement that in it's evaluation of the TMI 2 event, the applicant has come up with recommendations and statements that it is evaluating or reevaluating it's valve classification and valve qualification and I think that that adds additional supporting bases to this contention since it's initial drafting. And I think that the events at TMI are rather clear in offering some support to ACORN's position.

MRS. BOWERS: Are you ready to go on to the next? That would be 9.

MR. GAY: Number 9 states that the CPSES design

1 does not provide equipment outside the control room to
2 promptly put the reactor in hot shut down. That is a require-
3 ment of General Design Criterion 19 and it is ACORN's
4 position that there is inadequate position because --
5 inadequate equipment because we can envision the scenario
6 that what forces the evacuation of the control room, may in
7 fact prevent re-entry of the control or may in fact destroy
8 equipment within the control room necessary to bring that
9 plant to safe shut down.

10 And I don't think that -- or it's ACORN's
11 position that because of the inadequacy of the equipment or
12 spelled out within the FFAR that the CPSES design can not
13 met general design criterion 19.

14 MRS. BOWERS: Mr. Reynolds?

15 MR. REYNOLDS: We rely on our written pleadings
16 which state that we believe this has no bases, is unspecific
17 and should be denied accordingly.

18 MRS. BOWERS: Staff?

19 MRS. ROTHSCILD: Staff also relies on it's written
20 report in which it opposes the contention on the grounds
21 that it lacks bases.

22 DR. REMICK: Do you know if the Comanche Peak
23 design provides for equipment outside the control room
24 for shut down?

25 MR. GAY: I believe it provides for some, sir.

1 I think that our contention is that that provision is
2 inadequate. That it's essentially a statement that we
3 believe there should be some redundancy to the controls that
4 there is a possibility of disabling the controls within the
5 control room in the event that it forces an evacuation and
6 there would be the need to have redundant controls outside
7 the control room.

8 DR. REMICK: Are you --

9 MR. GAY: I can't sight you to any particular
10 section of the FSAR at this particular point in time. I
11 don't have that before me. I could perhaps could provide
12 you that tomorrow morning.

13 DR. REMICK: But this contention is based upon a
14 review of the FSAR?

15 MR. GAY: It is -- I think there is a generic
16 problem with reactors in that they don't have adequate controls.
17 But, yes, there has been a review of the FSAR and there is
18 belief that that is inadequate.

19 DR. REMICK: Does this contention include that
20 there should be a complete duplicate of the control room or
21 what are the bounds on the allegation?

22 MR. GAY: I think the bounds are that -- no, there
23 doesn't have to be a complete duplicate of the control room
24 but there should be sufficient equipment and controls outside
25 of the control room to bring the plant into a safe shut down.

1 To operate the safety mechanisms within the plant which would
2 be sufficient to shut the plant down.

3 DR. REMICK: Thank you.

4 DR. COLE: In your contention you mentioned safe
5 shut down to a hot shut down condition, right?

6 MR. GAY: The contention does mention a hot shut
7 down may have added a further qualifier in there in my
8 comments. But we are talking about a hot shut down condition
9 to get the plant initially shut down and so that the reaction
10 process is terminated.

11 DR. COLE: All right, sir.

12 MRS. BOWERS: Can we go on to the next one?

13 MR. GAY: Contention 10 deals with a lack of
14 methodology in evaluating the affect of aging in the
15 cumulative radiation that is imposed upon safety related
16 equipment at Comanche Peak. And according to general design
17 criterion number 4, all such equipment must be seismically
18 qualified. And it's ACORN's position that there is not a
19 demonstration of the methodology is not demonstration from
20 the applicant that the affects of aging and cumulative
21 radiation have been considered within that seismic qualification.
22 That perhaps the equipment is initially qualified but it is
23 not then evaluated based upon 20 or 30 year life and the
24 affects of exposure to radiation and the affects of aging.

25 MRS. BOWERS: Mr. Reynolds?

1 MR. REYNOLDS: It is ACORN's position that general
2 design criterion 4 has not been met. What is the bases for
3 that position? It's not clear from ACORN's pleadings, there
4 is no bases stated and for that reason should be rejected.

5 MRS. BOWERS: Staff?

6 MRS. ROTHSCCHILD: Staff also opposed the admission
7 of this contention in it's written report and we continue
8 to oppose it. ACORN in the staff's view has not presented
9 any bases to support it's contention in it's report. It
10 refers to what it believes should be done but we don't
11 provide any bases for it's contention so we continue to
12 oppose it on the ground that it lacks bases.

13 MRS. BOWERS: Mr. Gay? Mrs. Bowers I guess I'm
14 continually a awe with the fact that according to the staff
15 and the applicant intervenors are not permitted to make
16 speculations or ascertions that they've got to come in and
17 demonstrate their case at the very outset within several
18 weeks after initially filing for intervention and I don't
19 think that that is reasonable or logical.

20 But I think that the wording is rather sustinct
21 and straight forward and I think that the logical position
22 is spelled out within ACORN's statement of position. I
23 think it's entirely logically for a reasonable individuals
24 to assume that aging and cumulative radiation can have
25 some affect upon equipment. And I think there is historically

1 experience to document that. And it should be encumbent
2 upon the applicant in seismically qualifying it's safety
3 related equipment so as to comply with general design
4 criterion number 4 to consider that particular event or the
5 events of aging and radiation.

6 MR. REYNOLDS: Mrs. Bowers we're not talking about
7 the rules of practice according to Texas Utilities. We're
8 talking about the rules of practice according to the NRC.

9 They're not our rules, they're the Commissions
10 rules. If Mr. Gay doesn't want to play the game by the
11 rules established by the referee then he should get out of
12 the game. If he wants to play the game, he should abide
13 by the rules.

14 MRS. BOWERS: Do you have any questions?

15 DR. REMICK: Mr. Gay, when you referred to
16 equipment in this contention is this limited to electrical
17 equipment or does it also include mechanical equipment?

18 MR. GAY: It includes mechanical equipment as well,
19 sir.

20 DR. REMICK: So, all equipment?

21 MR. GAY: All safety related equipment, yes sir.

22 DR. REMICK: Thank you.

23 MRS. BOWERS: Can you go on to the next one
24 Mr. Gay?

25 MR. GAY: Yes, ma'am. Unfortunately, it gets
us back to Class 9 accidents and I'll try within my

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statement to not be repetitive of the comments that have been previously given.

I basically have 3 points which I wish to make and I think that they should be taken together by the Board to result in the admission of this particular contention.

I'd start with the opinion out of the Pennsylvania Power and Light Company proceeding which we referred to at several points in this proceeding. The intervenor there at some point last year, I believe it was -- that opinion came out in 23rd of October, 1979. And the intervenor in that particular proceeding saw to litigate class 9 accidents.

The Board, in making it's determination, found that TMI events had actually occurred and those events constituted a prima facia showing that the probability or an occurrence of such an accident was sufficient to form the bases of an acceptable contention.

I think the starting point should be in examining ACORN's contention is that the events of Three Mile Island constitute an acceptable scenario consideration contention within this proceeding.

But I go on to articulate Mr. Denton's SEKI memorandum of March 10th, of this year or March 11th of this year, I'm sorry , regarding the fact that the NRC should now begin within it's invironmental impact statements to consider the probabilistic risk assessment methods in the

1 need to review. And Mr. Denton states that the risks
2 associated with core melt should be included or would be
3 included within the environmental report in the environmental
4 statements.

5 Now, as pointed out previously, this morning,
6 there are some qualifiers within that statement. But
7 recognize please that that was about 10 days before the
8 statement of the Council on Environmental Quality. And I
9 don't wish to reiterate that statement so the CEQ beyond
10 stating that I think that the accumulative affect of the
11 statement from the NRC, from the CEQ, and of the position
12 of prior licensing boards, dictates a consideration of class
13 9 accidents within this proceeding.

14 Now, I wish for the licensing board to refer to
15 the Supreme Court decision of last year in Andrus versus
16 Sierra Club which can be sighted at 99 Supreme Court 2335.
17 And there are 3 points to be taken from page 2341 of that
18 particular case.

19 The Supreme Court noted that CEQ was created by
20 NEPA and charged in that statute with the responsibility to
21 "review and appraise various -- and activities of the
22 Federal Government in light of the policy set forth in this
23 Act.

24 It's second the court notes that in 1977 President
25 Carter, in order to create a single set of uniform manditory

1 regulations ordered CEQ after consultation with affected
2 agencies to issue regulations to federal agencies for the
3 implementation of the procedural provisions of NEPA.

4 The Supreme Court goes on to state that CEQ's
5 interpretation of NEPA is entitled to substantial difference.
6 It is ACORN's opinion and position that the CEQ's statements
7 within the last couple of weeks should be given strong and
8 considerable weight by this licensing board. And that there
9 should be at a minimum a contention within this proceeding
10 on the accident scenario that occurred at TMI. And that it
11 should perhaps be broadened to consider all class 9 accidents
12 in light of CEQ's statement of position to the NRC.

13 That concludes my statement.

14 MRS. BOWERS: Mr. Reynolds?

15 MR. REYNOLDS: The Commission spoke 5 weeks ago in
16 the Black Fox case reiterating it's policy on the prescription
17 of evaluation of class 9 accidents for land based reactors.
18 I have heard nothing from Mr. Gay that requires any further
19 response. We would just invite the Boards attention to our
20 argument this morning in response to cases of class 9
21 accidents.

22 MRS. BOWERS: The staff:

23 MR. REYNOLDS: Class 9 accident contention.

24 MRS. ROTHSCHILD: Mrs. Bowers, the staff has
25 stated it's position on this ACORN contention in it's

1 written report. The staff rests on that discussion. But I
2 would like to make a couple of points.

3 First of all the Susquehanna decision which
4 Mr. Gay cited is also cited by the staff in it's statement
5 of position on this contention. I direct the Board and
6 parties attention to page 77 of the staff's report and if
7 I just may quote what the staff said.

8 "In a recent decision a licensing board held
9 that general consideration of the consequences of class 9
10 accidents at land based reactors merely on the bases --
11 assertive bases of the occurrence of the TMI 2 accident,
12 is inconsistent with the Commission policy as expressed in
13 the proposed annex and in numerous appeal board decisions."

14 Staff there cites Pennsylvania Power and Light
15 Company, Susquehanna Steam Electric Station, units 1 and
16 2, 10 NRC 586, 1979.

17 I would also like to note that I believe ACORN
18 has mis-stated the holding of the Zimmer case. ACORN cites
19 the Zimmer case on page 23 of it's April 10th report, it
20 seems to -- ACORN states that that decision has provided
21 a different focus for what NRC had previously had articulated
22 regarding accident consequences.

23 I don't believe that that is an accurate description
24 of the Zimmer case of holding. Zimmer decision, which I
25 believe ACORN has correctly given the cite to 1099 RC 213,
26 1979, dealt with a contention that was filed late. And the

1 issue there was on balance of factors in Sections 2.714
2 warrant admitting of that late contention. And all the Board
3 said was that the Three Mile Island Accident provided a
4 sufficiently different focus or viewing the particular
5 contention which related to monitoring and emergency response
6 plans as to constitute new information of the type which
7 can justify admission of late contentions.

8 I'm reading at 10 NRC 217, so I just don't think
9 that the Zimmer case, in any way, is precedent for whether
10 we are going to have a general exploration of class 1
11 accidents in this proceeding.

12 And I would just like to close in noting that
13 as far as what Mr. Gay has referred to as the assertive
14 binding nature of CEQ's regulations on NRC as the staff has
15 previously stated, the NRC has issued in the form of
16 proposed rules, a revised part 51. And the Commission as I
17 stated this morning clearly states what it's position is
18 as to CEQ's regulations. And I believe if Mr. Gay differs
19 with that that the appropriate form is in the form of a
20 comment or presenting his views on these proposed rules.
21 And the rules specifically state the -- period expires
22 May 2, 1980. And I believe that that is the appropriate
23 place for Mr. Gay to bring to the attention of the Commission
24 his views as to the binding nature of CEQ's regulations.

25 So, in closing the staff, obviously, continues to

1 oppose the admission of these contentions.

2 MRS. BOWERS: Mr. Gay:

3 MR. GAY: I have 3 comments, I believe. First,
4 I think that it's appropriate for me to reword the first
5 sentence which appears on page 23 which Mrs. Rothchild stated
6 was a mis-characterization of the holding of the Cincinnati
7 Gas and Electric Case.

8 I think the wording was perhaps a little bit off
9 and I'll try in this manner. While the accident at TMI 2
10 has not to date resulted in case by case consideration of the
11 consequences of class 9 accidents at land based reactors, it
12 has provided a different focus for viewing the justification
13 of NRC categorization of accidents involving significant
14 core damage or core melt. As incredible for purposes of
15 both NEPA and safety analysis.

16 And I think that that particular statement can be
17 analogized from the Zimmer holding.

18 The second, Miss Rothchild, in noting the
19 Pennsylvania Power and Light decision did not refute the
20 fact that that particular Board did admit a contention on
21 the accident's scenario of the Three Mile Island for purposes
22 of litigation in that proceeding.

23 The third, with regard to rule making proceedings
24 and the deference that perhaps this Board should perhaps
25 give to the possibility of a rule making proceeding on this

1 issue. The case of Natural Resources Defense Council versus
2 the United States Nuclear REGULATORY Commission in 1976
3 cited as 547 Fed 2nd, 633, notes on page 645.

4 NEPA requires that agencies see to it that "officials
5 making the ultimate decision are imformed of the full range
6 of responsible opinion on the environmental affects in
7 order to make an informed choice.

8 It goes on to state the decision to proceed by
9 rule making neither releaves the Commission of this
10 obligation nor permits it to depend solely on whether
11 contributions -- on whatever contributions intervenors
12 happen to make to develop a fair representation of scientific
13 opinion for the record.

14 That particular case also notes that a prominent
15 feature of the statutory context created by NEPA is the
16 requirement that the agency acknowledge and consider
17 responsible scientific opinion concerning possible adverse
18 environmental affects which is contrary to the official
19 agency position.
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3 MR. GAY: Opinions in the last couple of
4 weeks by the Council on Environmental Quality that there
5 is significant environmental and scientific opinion which
6 needs to be considered within this proceeding. It is
7 incumbent upon this licensing board to consider some
8 of the effects of Class 9 accidents for CPSES.

9 MR. REYNOLDS: May I bring us back on focus?
10 The issue is not whether federal agencies are to evaluate
11 the environmental impact of proposed federal action. We
12 all agree with that. That's all he said when he read
13 from that Court of Appeals case.

14 The point is that courts of appeal throughout
15 the country have affirmed the Commission's handling of
16 Class 9 accidents pursuant to NEPA. For example, in CESG
17 vs. Atomic Energy Commission 510 Fed. 2nd, the D.C. Circuit
18 ruled in 1975 that the proscription of evaluating Class 9
19 accidents in individual licensing cases is a legitimate
20 interpretation of the rule of reason embodied in NEPA
21 and affirmed the Commission's policy precluding review
22 of Class 9 accidents in individual cases. That's the law.

23 CHAIRMAN BOWERS: Staff?

24 MS. ROTHSCHILD: We don't have anything to add.

25 CHAIRMAN BOWERS: We have no questions on this
contention, Mr. Gay, do you want to go on to No. 12.

MR. GAY: Contention No. 12 states that the

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3 Applicants lack the ability to detect and size flaws
4 within, number one, the reactor vessel and, number two,
5 pipes within containment.

6 This is in ACORN's estimation an attack again
7 on the methodology of the Applicant with regard to their
8 detection of flaws, and we think it's clear that this has
9 the same significance as documented in Category A,
10 unresolved safety designation that has been given this
11 particular issue.

12 The nexus is clear, the safety aspects are
13 articulated. It is also articulated that the design of
14 CPSES and the Applicant's lack the ability to perform this
15 function.

16 MR. REYNOLDS: In fact the nexus is not clear.
17 This again is a generic safety issue. We're back to the
18 application of the criteria in River Bend, and this
19 vague general contention cannot meet the criteria of
20 River Bend and should be denied accordingly.

21 CHAIRMAN BOWERS: Mrs. Rothschild?

22 MS. ROTHSCILD: The Staff has stated it's posi-
23 tion in writing that it opposes admission of this contention
24 on the grounds that it lacks basis. And as we see it the
25 contention really rests on the assertion that this is an
unresolved safety issue. And it is the Staff's view now
that based on New Reg 0510, I refer specifically to pages

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3 19 and 20, that this is not an unresolved safety issue.
4 So to the extent that the contention rests on the existence
5 of an unresolved safety issue that ACORN believes is the
6 same as the issue ACORN raises, that it's just no longer
7 the case. According to New Reg 0510 it's not a unresolved
8 safety issue, but we also feel in addition to that there's
9 no other basis presented. So we continue to oppose admission
of the contention.

10 CHAIRMAN BOWERS: Mr. Gay?

11 MR. GAY: I don't wish to add much to the argument
12 here except that without the ability to adequately examine
13 and size and determine flaws, there's the possibility
14 that radiation can escape into the secondary system which
has safety significance.

15 I think that it's incumbent upon the Applicant
16 in its FSAR to come forward and demonstrate that it has
17 the methodology. That it has adequately determined and
18 presented what ACORN is articulating in its assertion here
19 that they do not have the ability to detect and size the
flaws in the reactor vessel.

20 DR. REMICK: Mr. Gay, when you indicate that it
21 might allow radioactivity into the secondary system, could
22 you elaborate what you mean by secondary system?

23 MR. GAY: Areas of the plant that could possible
24 open up to human exposure, to environmental exposure, so
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as to affect either the workers within the plant, it means a pipe break and the release of radioactive water into the system where it can be exposed to individuals beyond the workers perhaps as perhaps in the occasion of TMI.

If you can create a scenario where you have a pipe break and a release of water to the system that permits that water to then end up where it would be exposed to the general public or to workers.

DR. REMICK: Thank you.

CHAIRMAN BOWERS: We would like to take a 10 minute break now since we will be running until almost 6:00 o'clock, and 10 minutes means 10 minutes.

(Proceedings in recess from 4:55 to 5:05 p.m.)

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CHAIRMAN BOWERS: Mr. Gay?

MR. GAY: Contention No. 13 alleges that the Applicant's FSAR fails to present a means for dealing with pressure transients produced by component failure, personnel error, or spurious valve actuation which exceed the pressure temperature limits of the reactor vessel.

The initial position of ACORN 1 felt was rather specific as far as its contention. The Staff responded to the initial allegation of that contention in that the FSAR doesn't deal with this problem by referencing an amendment to the FSAR which came out subsequent to the

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3 preparation of this particular contention which suggested
4 to the Staff that we should have articulated precisely
5 what it was that bothered us about this particular
6 amendment.

7 First, that was an impossibility with regard
8 to the timing of the amendment; but, second, it has never
9 been the position of the NRC that the intervenors were
10 required to cite a chapter and verse of the FSAR with
11 regard to providing basis for contentions. I believe
12 that reasonable specificity has been provided by ACORN
13 and this contention should be accepted.

14 CHAIRMAN BOWERS: Mr. Reynolds?

15 MR. REYNOLDS: This is a generic, unresolved
16 safety issue which requires the Board to apply the criteria
17 set forth in River Bend. We believe that if you evaluate
18 the contention and stated basis against the River Bend
19 criteria that the nexus is not demonstrated and the
20 contention should be denied.

21 CHAIRMAN BOWERS: Mrs. Rothschild?

22 MS. ROTHSCCHILD: Staff has stated it opposes
23 admission of the contention on grounds that it lacks adequate
24 basis. We adhere to that position. I'd just like to note
25 that we are not, in response to Mr. Cay's comment, the
Staff is not insisting as a part of adequate basis that
intervenors cite chapter and verse of the FSAR. All we

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3 noted in our response was that there was not adequate
4 basis presented for the contention. That ACORN states
5 that the FSAR fails to present a means for dealing with
6 it. It says the FSAR does discuss the issue, and
7 we just stated in our view therefore it was up to ACORN
8 to state some basis for its contention. And in our
9 view ACORN just hasn't done that.

10 CHAIRMAN BOWERS: Mr. Gay?

11 MR. GAY: No response.

12 DR. COLE: Mr. Gay, you had a specific kind of
13 pressure transient in mind?

14 MR. GAY: The initial statement of position,
15 initial supporting basis offered by ACORN, referred to
16 black box testimony which cited that since 1972 there
17 were over 30 reported incidents within the NRC where
18 pressure transients in pressurized water reactors exceeded
19 the pressure temperature limits of the reactor vessels
20 involved. Beyond that I can't give you a specific
21 pressure transient.

22 DR. COLE: What do you mean when you say fails
23 to deal with these pressure transients?

24 MR. GAY: Providing a means of controlling them
25 so as not to affect the safe operation of the plant. If
the pressure transients become too great, then it poses
safety significance to the CPS facility and its operation.

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3 DR. COLE: So it's your contention then that these
4 31 incidents represent an unsatisfactory number of challenges
5 to the safety systems and something should be done about it.

6 MR. GAY: I think it is a showing that it is an
7 extraordinary number of incidents for there not to be
8 something taken into consideration with the design of
9 Comanche Peak so as to prevent this from occurring in the
future.

10 DR. COLE: All right, sir, thank you.

11 DR. REMICK: Mr. Gay, the proposed contention
12 says, "Applicant's FSAR fails to present a means for dealing
13 with pressure transients", and I guess I'm not quite sure
14 I understand. Is it that the FSAR fails to present a
15 means or that the design for the reactor is such that one
16 could not adequately handle pressure transients. I'm not
quite sure what the gist of the contention is.

17 MR. GAY: It goes to a design mechanism, design
18 criteria, and again as ACORN tracks through a number of
19 contentions there is a failure of methodology on the part
20 of the Staff or the Applicant in dealing with or examining
different situations.

21 DR. REMICK: Does that include the design codes
22 perhaps cannot adequately handle transients that might
23 occur as a result of component failure, personnel error,
24 spurious valve actuation?
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3 MR. GAY: I think if you're referring to the
4 design code of the vendor it's certainly a possibility.
5 The contention deals with the FSAR's failure to address
6 that issue, and I think that the FSAR relies heavily
7 upon the vendors' provisions and their statements of what
8 is necessary and appropriate for operation.

9 DR. REMICK: Well, would you be satisfied if
10 evidence could be provided to indicate that the design
11 does incorporate that capability but it was not mentioned
12 in the FSAR, or is it your point that you want it to be
13 in the FSAR?

14 MR. GAY: I think I would be satisfied if it
15 could be shown that the design was sufficient to insure
16 this problem is addressed in this contention.

17 DR. REMICK: Thank you.

18 CHAIRMAN BOWERS: Mr. Gay, I guess 14 is up now.
19 This morning there were a number of people from the public
20 in the audience. Now, I believe, all of us in this room
21 have copies of the documents. So I don't think it's
22 necessary for you to read the contention.

23 MR. GAY: Okay. Number 14 is QA/QC and I don't
24 wish to reiterate anything I said in the early afternoon
25 session except that I would like to state that I think the
initial contentions offered by ACORN in its supplement
with regard to QA/QC and there's a suggestion on page 25

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3 those contentions were 16, 17, 18, 19, and 29, are all
4 sufficient and specific. And those contentions were I
5 think capable of being waived if the wording proposed
6 by the Board is accepted. However, if that wording is
7 not proposed, I would like to go back to the individual
8 contentions proposed by ACORN, at least that's my feeling
9 at this particular moment in time. I know that we spent
10 some time quarreling over the specificity of these
11 particular contentions at the proceeding we had prior
12 to this occasion with regard to whether or not the parties
13 would be accepted as intervenors. And one of ACORN's
14 contentions was that the containment units are structurally
15 deficient. I think there was sufficient basis provided
16 for that.

17 One of the contentions was almost identical to
18 the Board's contention but in a little bit different wording
19 in that the Comanche Peak design fails to adequately deal
20 or address -- I'm sorry, it's Contention 18, that the
21 construction of the Comanche Peak facility has been marred
22 by a lack of observance of quality assurance and quality
23 control.

24 And my adamant position in holding on to the
25 Board's wording is that I think that that is an appropriate
substitute for all the contentions initially proposed by
ACORN. But I think that all those contentions were specific

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3 and have grounds for admission. So I would like to see
4 the wording proposed by the Board accepted for litigation
5 in this proceeding for that reason and for those that I
6 have previously articulated.

7 CHAIRMAN BOWERS: Mr. Reynolds?

8 MR. REYNOLDS: I can certainly understand why
9 Mr. Gay would feel that the Board's contention would
10 encompass all of those specific contentions which he
11 raised. Indeed it would encompass many, many more specific
12 contentions.

13 However, again referring back to our discussion
14 this morning, we have to be able to get a handle on what
15 is to be litigated and what is to be the subject of
16 discovery. We would rather the Board -- given that the
17 Board has already admitted some aspect of quality assurance
18 as a contention in this proceeding, we would prefer from
19 the standpoint of providing us the ability to litigate,
20 to know what we're to litigate, we would prefer that the
21 Board adopt specific contentions, such as some of ACORN's
22 if they're supported by appropriate basis rather than
23 remaining with the language drafted by the Board in its
24 order following the first prehearing conference.

25 We're concerned that we have guidance from the
Board as to the specifics of the contentions. But in
drafting those specific contentions we request that the

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3 Board evaluate the basis stated for each of those contentions
4 so that the Board doesn't authorize contentions which are
5 unfounded.

6 We will submit proposed language within 10 days
7 attempting once again to evaluate all of the contentions
8 of the three parties, the three intervenors, with a view
9 of trying to come up with common language which will
10 accommodate all legitimate concerns which are advanced
with supportive basis.

11 CHAIRMAN BOWERS: Staff?

12 MS. ROTHSCILD: Staff has nothing to add to
13 what it's already stated about the issues that have
arisen related to the QA/QC contention.

14 CHAIRMAN BOWERS: Well, the Board has no questions
15 on this contention, so shall we move on to 15?

16 MR. GAY: No. 15 has safety significance again
17 because it is a Category A unresolved safety issue, but perhaps
18 even more importantly because ACORN takes the position that
19 the reference by NRC staff members, I think we named them
20 within our supplemental petition, and their report that
21 there was a problem with extensive pipe damage due to
the problem addressed in this contention presents a prima
facie showing which supports ACORN's contention.

22 Category A unresolved safety issues deals with
23 degradation of the integrity of the steam generating tubes,
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3 and the report from the NRC noted that there were chemical
4 reactions within certain pipes which specifically lead to
5 corrosion and degradation of the integrity of those pipes.
6 And it's pointed in page 27 of ACORN's position paper
7 that has serious safety significance. If you lose capability
8 or lose water from the steam generator, you lose the
9 ability to cool the core and also the possibility of
10 releasing radioactive materials which could pose a health
11 hazard to workers and individuals outside of the plant.

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13 CHAIRMAN BOWERS: Mr. Reynolds?

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15 MR. REYNOLDS: Applicant has nothing to add to
16 their written position which basically states that this
17 is a generic unresolved safety issue which must comply
18 with the River Bend criteria.

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20 CHAIRMAN BOWERS: The Staff?

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22 MS. ROTHSCILD: Mrs. Bowers, although the
23 Staff had originally opposed admission of this contention
24 on the grounds that it lacks basis, we now feel that ACORN
25 has stated the basis with sufficient specificity that we
no longer oppose admission of the contention.

CHAIRMAN BOWERS: The Board has no questions.
Do you want to move to the next one?

MR. GAY: I think that I can become expeditious
with the next few contentions, Mrs. Bowers.

Number 16 relies primarily on the unresolved

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3 safety issue Category A classification, and ACORN suggests
4 that this water hammer problem does have serious safety
5 significance and that it should be accepted in light
6 of the Pennsylvania Power and Light Company decision.

7 MR. REYNOLDS: It is the Applicant's position
8 that this is a generic unresolved safety issue which must
9 be admitted only in compliance with River Bend criteria
and that that compliance has not been demonstrated.

10 CHAIRMAN BOWERS: Staff?

11 MS. ROTHSCHILD: Staff opposes admission of
12 this contention for the reasons stated in its written
report.

13 DR. COLE: Mr. Gay, do you have any other basis
14 for this contention on water hammer other than the fact
15 that it has been identified in some document as a safety
16 issue?

17 MR. GAY: Well, I think a logical conclusion
18 is that in a pressurized water reactor when you have the
19 possibility of water force running through the pipes
20 and pounding against those pipes at certain points, you
21 have the possibility of a break in those points. And
22 I think it's incumbent upon the Staff to document and
23 illustrate in its FSAR that it has adequately considered
24 and protected against that possibility to insure the
25 safety of the plant.

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DR. COLE: Go ahead, if you have something to say.

MS. ROTHSCCHILD: I was going to say that I think Mr. Gay said that it was up to the Staff to adequately document?

CHAIRMAN BOWERS: Applicant and Staff.

MR. GAY: I'm sorry, my mind might be slipping at this point in the day.

MS. ROTHSCCHILD: It's clear that the FSAR is not a Staff document.

MR. GAY: Precisely.

MS. ROTHSCCHILD: I just wanted to comment on that.

MR. GAY: The contention does refer to the CPSES design.

DR. COLE: All right, thank you.

MR. REYNOLDS: My understanding of water hammer is not compatible with the description that Mr. Gay just gave.

CHAIRMAN BOWERS: We have no questions. Do you want to go on, Mr. Gay?

MR. GAY: Contention 17 again relies for its basis on several unresolved safety issues. Again, we address the possibility that a steam line break can impair the ability to cool the core and could possibly result in radioactive releases and that it's incumbent upon the Applicant and even the NRC Staff to address the

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3 unresolved safety issue presented herein. ACORN should
4 certainly have the opportunity to litigate and go
5 through discovery on this contention.

6 CHAIRMAN BOWERS: Mr. Reynolds?

7 MR. REYNOLDS: Well, it certainly is within the
8 function of the NRC Staff to evaluate the unresolved
9 contention if it remains unresolved through to operation
10 of this facility pursuant to the River Bend -- the North
11 Anna decision. But short of that and getting more specific-
12 ally to ACORN's contention, again we're into the realm
13 of generic safety issue. There's been no demonstrated
14 nexus between this issue and Comanche Peak, and pursuant
15 to the criteria in River Bend and the contention should
16 be denied accordingly.

17 CHAIRMAN BOWERS: Staff?

18 MS. ROTHCHILD: Staff opposes admission of
19 this contention on the grounds that it lacks basis.
20 We stated that position in our report. I would only like
21 to add to that ACORN only cites as a basis for the conten-
22 tion that this is an unresolved safety problem in Tasks
23 821 and 822 of of New Reg 0410.

24 I'd like to note that Tasks 821 and 822 are not
25 any longer considered so-called unresolved safety issues,
and this is set forth on pages 25 to 29 of New Reg 0510.
I just think that's important to note that was the only

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3 asserted basis for this contention and these particular
4 Tasks ACORN cites are not contrary to what ACORN states
5 unresolved safety issues. The Staff continues to oppose
6 admission of the contention.

7 CHAIRMAN BOWERS: Mr. Gay?

8 MR. GAY: I have no comment.

9 DR. REMICK: Mr. Gay, I'm not sure I quite
10 understand the statement that is made here that steamline
11 breaks as discussed with regard to Contention 15 above can
12 impair the ability to cool the core and could possibly
13 result in radioactive releases. Would you elaborate?

14 MR. GAY: I think I was trying to pool a portion
15 of the basis of Number 15 into the statement of position on
16 Contention 17 without reiterating word for word, but I
17 pointed out in Contention 15 that when you have the possi-
18 bility of a break in a pipe in this category you have
19 the possibility of losing the ability to cool the core
20 and also the possibility of exposing radioactive material
21 to workers and to the environment. That is the safety
22 significance that I wish to rely upon with that statement.

23 DR. REMICK: I'm not quite sure I see how a
24 steamline break in a pressurized water reactor might
25 impair the ability to cool the core. I'm not sure what
you mean by that. And could possibly result in radioactive
releases.

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3 MR. GAY: I think what the initial contention
4 went to and perhaps I got over anxious in my comments
5 within the basis, was with a steamline break the
6 equipment within the containment cannot be assured of
7 survival so as to assure safe shut-down of the plant.
8 And I think that's the real heart of the contention.
9 It's perhaps inappropriate for me to make the statement
with regard to Contention 15 above.

10 DR. REMICK: As it's stated there it sounds like
11 a BWR type concern rather than a PWR. Thank you.

12 CHAIRMAN BOWERS: Mr. Gay, do you want to go on
to the next one?

13 MP. GAY: May I just make one comment?

14 CHAIRMAN BOWERS: Go ahead.

15 MR. REYNOLDS: I think to the extent ACORN relies on
16 Black Fox testimony, as you well know Dr. Remick, Black
17 Fox is a PWR and I think for some of these generic
contentions ACORN has mixed apples and oranges.

18 MR. GAY: One comment there, the Pennsylvania
19 Power and Light Company case made particular references
20 to TMI II which was a pressurized water reactor which is
21 Comanche Peak as well. I think we can honestly draw the
22 similarities between TMI II and Comanche Peak. In addition
23 to that, the Pennsylvania opinion dealing with the boiling
24 water reactor at Susquehanna stated that nonetheless --
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Tape 9
4/30/80, 5:30pm
LK - rcp

You can, you can draw absolutely no parallels from boiling water reactors to pressurized water reactors.

In addition to that, I think the unresolved safety issues specifically identified by Acorn (phonetic spelling) deal with pressurized water reactors that portions of the Black Fox testimony dealt with the generic problems of unresolved safety issues and apply beyond boiling water reactors.

MR. RELYEA: My point was not that there may not be analogies. My point was that you don't litigate a steam generator integrity when the reactor is a BWR. Likewise, you don't litigate main steam line breaks when the main steam line you're talking about is the boiling water reactor steam line; and Comanche Peak is a pressurized water reactor.

You have to get the hardware correct before you can litigate the issue. That's all I'm saying.

CHAIRMAN BOWERS: Do you want to go on the next?

MR. GAY: Contention 18.

Contention 18 is supported by two unresolved safety issues. The statement directly attacks the design of the plant, suggesting that their design cannot adequately ensure reliable operation at emergency power. And to that extent it imposes serious safety significance in achieving safe shutdown and ensuring the operation of emergency cooling under certain hypotheses.

CHAIRMAN BOWERS: Mr. Reynolds.

1 MR. REYNOLDS: We rest on our position in our written
2 pleadings, that this is a generic safety issue and the Acorn
3 has not complied with the River Bend criteria.

4 CHAIRMAN BOWERS: Mrs. Thayer.

5 MRS. THAYER: Staff continues to oppose admission of
6 this contention. We stated that in our written report, but I
7 would like to add that this is another instance where Acorn is
8 exclusively relying on the existence of certain tasks as
9 unresolved safety issues. And with respect with the particular
10 tasks that Acorn cites, which in fact would be the only basis
11 presented by Acorn, these tasks are not considered unresolved
12 safety issues.

13 And I refer to NUREG-0510, page 30, and the particu-
14 lar tasks Acorn cites: B56 and A25, according to NUREG-0510,
15 are not unresolved issues.

16 That was the only basis presented by Acorn, and we
17 deemed it inadequate before. But especially since these are
18 not even considered any longer to be unresolved safety issues,
19 and Staff feels there's no basis for the contention.

20 So we continue to oppose it.

21 CHAIRMAN BOWERS: Mr. Gay.

22 MR. GAY: It's my understanding that they were still
23 unresolved at the time this supplement was prepared over a year
24 ago, and there may have been some modification since that time
25 that I was unaware of. But I think that if they are no longer

1 unresolved, it is certainly possible for the applicant to
2 address in detail how emergency on-site power is reliable and
3 can adequately ensure reliable operation.

4 DR. COLE: Mr. Gay, when you referred to on-site
5 emergency power, to what are you referring?

6 MR. GAY: I think that we've already gone through
7 contention of DC valve systems, but I think that this particular
8 contention refers to a loss of, of, of power which could oper-
9 ate emergency, emergency systems outside of DC systems. You
10 have AC as well as DC power sources on-site. And I think that
11 this contention goes to the heart of, lack reliability to draw
12 emergency power on the site.

13 DR. COLE: So you are referring to whatever power
14 systems power emergency equipment.

15 MR. GAY: So as to ensure the safe shutdown of the
16 plant.

17 DR. COLE: Are you saying that, that, that this is
18 one system or two systems? Or just exactly what systems are
19 you referring to? There, there are various power-source
20 systems. And I'm trying to determine just what your, what your
21 issue is here.

22 MR. GAY: I think that we could limit it to the AC
23 and the DC power sources at the plant site, directly at the
24 plant site, which provide backup to the emergency systems.

25 DR. COLE: "Which provide backup to the emergency

1 system."

2 (Pause.)

3 So you are saying that, that whatever power systems
4 that we rely upon to make sure the emergency equipment operates,
5 that is inadequate.

6 MR. GAY: It is a broad contention, Dr. Cole. And I
7 think it is nonetheless specific, and I recognize the breadth
8 of it. But it's initially characterized in the unresolved
9 safety issues. I think that there was a question of the lack
10 of reliability to the power sources that provided emergency
11 assistance, provided emergency power in the event determination
12 of, of power sources, failure of the power sources, which
13 normally provide power to the plant, in the operation of the
14 plant.

15 DR. COLE: So you're, you're now referring to those
16 power sources that would be in the plant after loss of all off-
17 site power coming in.

18 MR. GAY: That's correct. That's what I intend to
19 refer to. I'm sorry I've gotten very confusing in my, in my
20 rhetoric here; but if we, if you envision the shutdown of power
21 off, off-site, you have to have sources of power on site in the
22 emergency backup to the loss of that off-site power.

23 And the contention goes to the lack of reliability of
24 that on-site emergency power in the event of off-site power.

25 DR. COLE: Now, you, you develop this contention from

1 a generic document.

2 MR. GAY: That's correct.

3 DR. COLE: Do you know anything about the kinds of
4 facilities provided at Comanche Peak to provide for power in
5 the event that off-site power is lost.

6 MR. GAY: I have reviewed the FSAR, and we have some
7 notations on that. I've tried to condense the FSAR down to
8 about three or four manageable documents, but that's -- I'm
9 still by no means an expert in, in understanding all the
10 details of the FSAR; but I, I think that I could probably pro-
11 vide some additional support for these tomorrow.

12 DR. COLE: All right, sir. Thank you.

13 (Pause.)

14 CHAIRMAN BOWERS: Do you want to go on to the next
15 one, Mr. Gay? B19?

16 (Pause.)

17 MR. GAY: Number 19 deals with, again, an unresolved
18 safety issue and suggests that the support materials are subject
19 to -- and low-fracture toughness that may be in the support
20 materials for the steam generator, the coolant pumps within the
21 CPSES, the safety significances that loss of, failure of that
22 support system impairs the integrity of the steam generator and
23 the coolant pumps and can lead to lack of ability to safe shut-
24 down at the plant and impairs the safe operation of the plant.

25 (Pause.)

1 CHAIRMAN BOWERS: Have you concluded?

2 MR. GAY: Yes, ma'am, I have.

3 The contention is primarily reliant upon the Penn-
4 sylvania and Power Light decision.

5 CHAIRMAN BOWERS: Mr. Reynolds.

6 MR. REYNOLDS: Acorn simply asserts in this contention
7 that this is a high-priority safety problem for reactors of the
8 Comanche Peak type. In fact, my understanding of this unresolved
9 generic issue is that it applies to pre-ASME Code material
10 requirements for power reactors, and that Comanche Peak is in
11 fact a later-vintage plant than that.

12 Therefore, the generic issue applies only to older-
13 vintage plants and not to Comanche Peak vintage plants. In any
14 event, we're into the generic safety issue again. We're back
15 to the River Bend criteria, and Acorn has not complied with
16 that criteria.

17 CHAIRMAN BOWERS: Staff?

18 MRS. ROTHCHILD: Staff relies on its written state-
19 ment opposing admission of the contention, on the grounds that
20 it lacks basis, merely stating that this is an unresolved
21 safety issue. One does not satisfy the requirements for basis
22 as interpreted in River Bend. And so we oppose admission of
23 this contention.

24 CHAIRMAN BOWERS: Mr. Gay?

25 (Pause.)

1 You have no questions.

2 Do you want to proceed to the next?

3 MR. GAY: Contention 20, I think, is a rather novel
4 issue which JAYCOR attempted to raise and address the possi-
5 bility of, of an eye spilled up at the surface water intake
6 structure at Comanche Peak and failure of CPSES design to
7 account for that possibility. Probably, safety significance
8 may not be as pervasive as a steam line rupture. I think that
9 it is nonetheless important and that the FSAR should deal with
10 that possibility what Acorn notes in its position statement, is
11 that there have ice storms in the recent past and that that has
12 forced outages of lignite facilities. And it perhaps goes to
13 the fact that the Texas utility operational management team has
14 not adequately ensured the safe operation of its lignite plants,
15 unless if they can't ensure that, then they should, there
16 should be specific and special attention placed upon them in
17 this proceeding to ensure that that does not happen at a nuclear
18 plant where the safety problems are serious, as opposed to
19 simply the loss of electricity through lignite generation.

20 (Pause.)

21 CHAIRMAN BOWERS: Mr. Reynolds.

22 MR. REYNOLDS: Well, we know where Acorn got most of
23 their previous contentions. They got them from the generic
24 safety issue NUREG document. I don't know where they got this
25 one. This is novel.

1 But in any event, perhaps Acorn isn't aware that the
2 Comanche Peak surface water intake structure withdraws water at
3 about a depth of 15 feet below the surface of the water. That's
4 going to take one heck of an ice storm to, to foul that intake
5 structure.

6 This is just rank speculation. There's no basis for
7 it whatsoever. It should be rejected.

8 CHAIRMAN BOWERS: Staff?

9 MRS. ROTHSCHILD: Ms. Bowers, though the Staff
10 originally opposed admission of the contention on the grounds
11 that it lacked adequate basis, Staff does believe that Acorn
12 has stated the reason for its contention. And we believe that
13 that's stated adequately. So for that reason we no longer
14 oppose admission of the contention.

15 MR. REYNOLDS: Mrs. Bowers, may I make one comment?

16 I don't think it's inappropriate for the Board to
17 investigate the design of the facility before determining
18 whether a proposed contention is even worth fiddling with. If
19 it's ridiculous to evaluate the contention, the Board should
20 take that into consideration in evaluating whether to admit it.

21 And I think this is a perfect example of one where
22 it's somewhat ludicrous to talk about ice buildup from the
23 surface water intake structure.

24 (Pause.)

25 DR. COLE: Mr. Gay, at these lignite plants, could

1 you tell me what happened?

2 MR. GAY: Well, I wish I could, Dr. Cole; but we've
3 attempted to investigate that a couple of times before the
4 Public Utility Commission. We haven't gotten very far with
5 exactly what did happen. All we know is that ice spill at the
6 intake area, at the lignite plant. The lignite plant also
7 depends upon water for its, for its operation.

8 And the ice storm of a year ago incapacitated at
9 least one of those plants.

10 DR. COLE: You don't know what happened at the --
11 they had a lake, as it were, a river as a --

12 MR. GAY: Yes. Yes, sir. They, they do have, they
13 do have a water supply on-site, a lake if you will.

14 (Pause.)

15 DR. COLE: A lake?

16 Do you know if the lake freezes very often?

17 (Pause.)

18 MR. GAY: I would not expect it to freeze very often.
19 No, sir. There are contention points out that, on a supporting
20 basis, that ice storms are an occasional occurrence. I can't
21 highlight for you how often such, such events occur.

22 (Pause.)

23 DR. COLE: And an ice storm -- so the, what happened
24 at the lake was most likely a surface phenomena associated with
25 the surface of the lake and some stream. Is that how you

1 how you visualize that?

2 MR. GAY: That's how I visualize it, but I -- again,
3 I cannot define it precisely for you -- as to what that
4 structure entails or how far down into the water it goes, or
5 exactly what are the requirements or the specifications at
6 Martin Lake or, or any of the other lignite plants.

7 DR. COLE: Well, I, I think I'm getting too much to
8 the merits of it.

9 (Pause.)

10 MRS. ROTHSCILD: Mrs. Bowers, I guess the Staff
11 would just agree that we, we do not want to reach the merits;
12 and I think, as stated in the concurring opinion in Accon's
13 Creek by Mr. Ferrar, he states -- and I'm reading from page 18:

14 "My intuition tells me that when the facts are in,
15 for one reason or another" -- he was talking about the conten-
16 tion relating to alternatives -- "the proffered alternatives
17 will not appear to be superior to the new group plant."

18 But he further states: "At this stage we are not
19 allowed to decide cases on the basis of lack of knowledge or
20 intuition or personal predilections."

21 And the Staff just believes that language is, is
22 relevant in distinguishing between what, what is necessary at,
23 at this stage of the proceedings and stating an admissible
24 contention.

25 MR. REYNOLDS: One more short point?

1 I think it's legitimate for the Board to, in evaluat-
2 ing whether there is sufficient basis stated, look to whether
3 or not the contention is even compatible with the design of
4 the facility -- or whether it's a physical impossibility that
5 the scenario raised in the proposed contention just simply
6 couldn't happen.

7 I think if you investigate the, the facts here,
8 without getting to the merits, but just the basis stated and
9 the physical impossibility related to that basis, you'll reject
10 this contention.

11 CHAIRMAN BOWERS: Mr. Gay? Are you ready for the
12 next one?

13 MR. GAY: Contention 21, Mrs. Bowers, deals with
14 sabotage. And it's Acorn's position that not only must the
15 applicant examine and protect against acts of sabotage, but
16 that they also must ensure that the plant itself is designed to
17 withstand consequences of an act of sabotage.

18 And what the contention really goes to is the fact
19 that internal sabotage by individuals at the plant is a
20 historical phenomenon. We know that it exists. We know that
21 it can happen.

22 And it's Acorn's contention that within the design of
23 the plant the engineering must encompass that possibility. And
24 to the extent that it's possible to design a plant to safeguard
25 against such occurrences, I don't know that we have to give

1 specific scenarios at this point in time, but I think that it
2 can be said that anytime you can give to a particular safety
3 component of your plant for repairs, you can also give to it
4 by an act of sabotage.

5 And the present considerations by the applicant do
6 not encompass such possibilities.

7 CHAIRMAN BOWERS: Mr. Reynolds?

8 MR. REYNOLDS: Well, this contention should be denied
9 for two reasons: first, it's a generic safety issue, and Acorn
10 has not complied with the River Bend criteria for such issues;
11 secondly, it's an attack on the Commission's regulations with
12 regard to sabotage. And in fact, Acorn admits that it's a
13 challenge, indirectly.

14 On page 32 of their position statement, the last
15 sentence on that page, Acorn says, quote: "Acorn's concern is
16 with something beyond that which was contemplated for regula-
17 tion through 10 CFR, Section 73.55," close quote.

18 Now, what that says to me is that Acorn believes that
19 73.55 does not go far enough in the regulation of sabotage.

20 Now, that to me is an attack on the regulations; and
21 that's a proscribed contention, pursuant to the Douglas Point
22 case and all the other line of cases which we cite in our
23 pleadings.

24 CHAIRMAN BOWERS: Staff?

25 MRS. ROTHSCILD: Mrs. Bowers, the Staff oppose^s

1 admission of this contention for the grounds stated in its
2 written report. I'd just like to emphasize, though, that to
3 the extent Acorn is asserting that this is an unresolved safety
4 issue, as we stated in our report, we quoted NUREG-0510.

5 And I am reading now from page 85 of our report on a
6 quotation from NUREG-0510, where we -- it is stated:

7 "This task, therefore, does not involve an unresolved
8 safety issue."

9 I would just like to emphasize that, because that
10 appears to be a primary basis for the contention. And we also
11 stated that, "to the extent the contention alleges that the
12 physical security regulations in 10 CFR, Section 73.55, are
13 invalid or inadequate, contention is barred."

14 We certainly would continue to maintain that,
15 especially in view of Acorn's statement that Acorn's concern is
16 with something beyond that contemplated for regulation through
17 10 CFR, Section 73.55. I, I think Acorn has just made it clear
18 that what it is doing is, it is attacking the regs.

19 But we continue to oppose admission of this conten-
20 tion.

21 CHAIRMAN BOWERS: Mr. Gay?

22 MR. GAY: There is no attack on the regulations
23 within this contention. 10 CFR, Section 73.55, deals with
24 sabotage. It's Acorn's position that that particular section
25 in no way precludes the issue and the problem that Acorn is

1 addressing. It simply was not contemplated by that particular
2 section and thus permits the statement by Acorn that our con-
3 cern is somewhat beyond where the drafters of that regulation
4 were. It's just something that, that isn't specifically spelled
5 out; it's not precluded.

6 In fact, we think that the regulations and the statute
7 require an appropriate reading consideration within design of
8 the facility against acts of sabotage.

9 (Pause.)

10 CHAIRMAN BOWERS: Well, the Board has no questions.

11 We're told the building is locked at 6:00 o'clock.

12 And not wanting to spend the night here, perhaps we should
13 break now. But we will begin promptly at 8:00 o'clock in the
14 morning.

15 Everybody hear that?

16 (No response.)

17 Fine. Thank you.

18 (Thereupon, at 6:00 p.m., the meeting was adjourned.)
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