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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

In the matter of:

Northern Indiana Public Service Company
(Bailly Generating Station, Nuclear 1)

Docket No. 50-367

Place: Valparaiso, Indiana

Date: March 13, 1980

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
NORTHERN INDIANA PUBLIC)	Docket No. 50-367
SERVICE COMPANY)	(Construction Permit
)	Extension)
(Baillly Generating Station,)	
Nuclear-1))	

PROCEEDINGS held before the Nuclear
Regulatory Commission on the 13th day of March, A.D.,
1980 at the National Guard Armory, Valparaiso, Indiana,
before Bonnie Y. Brothers, Certified Shorthand
Reporter.

APPEARANCES:

Mr. HERBERT GROSSMAN, Chairman
Atomic Safety and Licensing Board
Dr. Richard F. Cole, Member
Atomic Safety and Licensing Board

Mr. STEVEN C. GOLDBERG, Counsel
Nuclear Regulatory Commission
Mr. Richard J. Goddard, Co-Counsel
Nuclear Regulatory Commission

MR. ROBERT J. VOLLEN, Counsel
appeared on behalf of: Porter Co. Chapter
Isaac Walton League of America, Inc.;
Concerned Citizens Against Baillly Nuclear Site;
Businessmen for the Public Interest, Inc.
James E. Newmann and Mildred Warner

MR. EDWARD W. OSANN, JR., Co-counsel
(Above)

PENGAD CO., BOSTON, N.J. 07002 - FORM NO. 244

1 APPEARANCES (Continued):

2 MS. DIANE COHN, Counsel
3 appeared on behalf of: City of Gary;
4 United Steelworkers of American, 6787;
5 Save the Dunes Council; Bailly Alliance;
6 Critical Mass Energy Project;

7 MR. DEAN HANSELL, Counsel
8 appeared on behalf of: State of Illinois
9 MS. SUSAN N. SEKULER, Co-Counsel (Above)
10 MR. JOHN VAN VRANKEN, Chief of Environmental
11 Control Division, North Region

12 MR. RICHARD ROBBINS, Counsel
13 Lake Michigan Federation

14 MR. GEORGE GRABOWSKI
15 MRS. ANNA GRABOWSKI

16 MR. JOSEPH FRANTZ, Representative,
17 United States Steelworkers, Local 1010
18 MR. MICHAEL OLSZANSKI, Representative
19 United States Steelworkers, Local 1010

20 MR. WILLIAM EICHHORN, Counsel
21 appeared on behalf of NIPSCO
22 MS. KATHLEEN SHEA, Co-counsel
23 (Above)
24 MR. STEVE PRANTZ, Co-counsel
(Above)

1 THE CHAIRMAN: The special pre-hearing conference is
2 now reaching its conclusion. All of the
3 participants from yesterday, except for
4 Doctor Shults and Mrs. Grabowski are present --
5 I'm sorry, and the Lake Michigan Federation.

6 MR. VOLLEN: Counsel for the Lake Michigan Federation
7 asked me to express his regrets in his
8 inability to be here today, they don't have
9 a lawyer to be here today on their behalf,
10 and further asked me to inform the Board.
11 When you discuss the contentions the counsel
12 for Lake Michigan Federation requested that
13 I inform the Board that as we discuss
14 contentions here today to inform the Board
15 that the Federation seeks to join in our
16 contentions.

17 MR. EICHHORN: Mr. Chairman, as far as I know, Lake
18 Michigan Federation has not submitted any
19 contentions. Is Mr. Vollen now making the
20 statement at this late date that they are
21 going to adopt some contentions that have
22 been submitted?

23 THE CHAIRMAN: I believe they stated that they intend
24 to adopt and incorporate by reference or

1 adopt the contentions submitted by the
2 other intervenors, is that correct, Mr. Vollen?

3 MR. VOLLEN: I think that's right, Mr. Chairman, I
4 can't very well be in a position to argue
5 for another party, I merely an reporting what
6 I was asked to report to the Board.

7 MR. EICHHORN: I'm somewhat concerned about taking
8 up alleged issues of an absent party,
9 Mr. Chairman, and I don't know what their
10 issues are, their only pleading was filed
11 before the Board's order requesting supplements,
12 and I just don't know what their position
13 is, and I have some problems with this
14 procedure.

15 THE CHAIRMAN: The first order of this morning will be
16 to --

17 MS. COHN: Excuse me, I think the Grabowskis' are
18 here.

19 THE CHAIRMAN: The reporter will take notes that
20 Mr. Grabowski is here.

21 MR. GRABOWSKI: Mr. Chairman, my wife will be here
22 in a minute.

23 THE CHAIRMAN: The first order of business is to review
24 the contentions of the order of Porter County

1 Chapter with regard to clarifying respective
2 positions of the participants in regards
3 to whether the contentions are valid.

4 The first contention--we are going to
5 cover. the supplemental petition first,
6 and the first contention relates to the
7 allegation by the Porter County Chapter that
8 the failure to complete construction was
9 not for reasons beyond the control of the
10 applicant, and it appears to me as though this
11 raises a legal issue, which perhaps can
12 be disposed of on summary disposition on
13 the basis raised by the applicant, but
14 that nevertheless, it's of the applicant
15 having applied to this contention apparently
16 on the merits rather than indicating that it
17 isn't a valid contention to be asserted
18 in the first place, but I can hear further
19 from Mr. Eichhorn on that.

20 MR. EICHHORN: With respect to "beyond the control"
21 aspect of this three-page statement, we
22 feel that's strictly a legal question now
23 and our position is that is not determined,
24 I mean that the Commission in the past found

1 that voluntary acts on the part of a license
2 holder, that a cause of delay is just as
3 good reason for good cause as are things
4 that are beyond their control; for example,
5 there's been many, many extensions granted
6 where delays were based on financing
7 problems, design changes, that were not
8 necessarily mandated in need for power,
9 and while the construction schedule is still
10 within the control of the applicant, under
11 those circumstances they voluntarily slow
12 it down because of business judgment, and
13 this has been recognized by the Commission
14 throughout as good cause for an extension,
15 so the very fact that something may or may
16 not be within the control of the license
17 holder is not sufficient grounds to challenge
18 the issue for cause.

19 THE CHAIRMAN: The real question I have is with
20 regards to timing, whether your response is
21 really in the nature of a motion to dismiss
22 or a motion for summary disposition and
23 whether we handle that. I would assume
24 that all the parties would agree that this

1 requires some briefing in order to dispose
2 of the issue, or do you disagree with that?

3 MR. EICHHORN: Our position at this point in time
4 before there's any determination as to whether
5 or not there is a contention, our position
6 is that it's not the type of issue that
7 can be adhered by this Board. If it was
8 within the control it doesn't make any
9 difference and it isn't something that gives
10 rise to an issue in this proceeding and it's
11 not a valid contention, and for that
12 reason may not be in. We're not talking
13 about summary disposition as an issue, we
14 don't think it should be an issue period.

15 THE CHAIRMAN: Mr. Vollen, would you like to respond?

16 MR. VOLLEN: Yesterday the question of "beyond the
17 applicant's control" in this dimension
18 comes up because the application, the
19 original application by NIPSCO for the
20 extension we're talking about here said
21 that the reason they didn't get the plant
22 completed, and therefore good reason
23 for cause of extension is shown comes from
24 a variety of reasons beyond their control.

1 In the February 7 letter, paragraph one talks
2 about "a four-month period later than anticipated";
3 paragraph two of NIPSCO's February 2nd letter
4 says "because of a variety of delays beyond
5 NIPSCO's control" and paragraph three talks
6 about -- I guess there isn't any on this
7 page th, but the major point was attributed
8 to reasons beyond their control, and this
9 contention, we don't think their reasons
10 were beyond their control, but this
11 contention is beyond that, however, is
12 whether or not it was in NIPSCO's control
13 or beyond their control. We want to
14 litigate the reasons why they didn't get the
15 plant built, because we don't think the
16 reasons they put in their letter are the
17 reasons they didn't get it built, we want
18 to try to prove that and we want to argue
19 what, in fac, are the facts that they didn't
20 get it built are not in good cause, the
21 issue of beyond control or not beyond
22 control isn't an issue as far as we're
23 concerned. I think I said yesterday it
24

1 really doesn't matter whether the reasons
2 were within their control or not within
3 their control, you still have to look at all
4 the circumstances and find out whether good
5 cause or attention has been shown.

6 THE CHAIRMAN: It seems to me, though, that there
7 are other contentions that you have addressed
8 which relate to whether the reasons given
9 by the applicant are the real reasons for the
10 delay and that if everyone is going to
11 agree that the reasons need to be beyond the
12 control of the applicant, then perhaps
13 we don't have a valid contention here and
14 whatever you allege in the contention with
15 regards to the reasons given not being
16 correct reasons to be incorporated in your
17 other contentions relating to just that
18 point, whether the reasons were really other
19 reasons and had been suggested by the
20 applicant.

21 MR. VOLLEN: I think that might be a possibility
22 Mr. Chairman, if Mr. Eichhorn, by his
23 legal argument today, but I don't think
24 that is the case, but by legal argument today

1 he's amended NIPSCO's application for an
2 extension, but it seems to me right now we
3 need to deal with the application as it
4 exists, which is a February 7 letter, and
5 the February 7 letter says in substance that
6 much, if not all of the reasons why is for
7 reasons beyond their control, if they want
8 to withdraw that letter, I'm willing to
9 withdraw this contention, but I need to deal
10 with the application they have on file.

11 THE CHAIRMAN: Are you suggesting now that by saying
12 the reasons were beyond their control,
13 even though it is not necessary to say that,
14 they waive any right to rely on reasons
15 that are within their control, but nevertheless
16 are receiving an extension?

17 MR. VOLLEN: No, Sir, what I'm saying, seems to me
18 when we get to the contention stage where
19 we're not at, we need to deal not with
20 theoretical legal possibilities as to what
21 section 50.55B could deal with, but we need
22 to deal with the realities of what is
23 involved in NIPSCO's case and they say
24 what is involved is their inability to build

1 the plant for reasons beyond their control.
2 We say in this contention it's not the case,
3 there wasn't reason beyond their control and
4 there is no good cause, if they want to
5 change this application, well, it's not
6 beyond our control, it was within our
7 control for business reasons or whatever
8 reasons we didn't finish it, fine, I'll
9 withdraw this contention, we can then
10 look at their new application and see if
11 we have any contentions about that.

12 THE CHAIRMAN: Would Staff like to say something in
13 regards to that?

14 MR. GOLDBERG: Not with regards to that, I think our
15 position on this contention is stated in
16 our March 7th finding.

17 THE CHAIRMAN: Well, it doesn't seem to me as though
18 the issue before the Board is whether the
19 applicant should resubmit an application,
20 the question is extending the application
21 or applications as filed, whether you have
22 raised an issue, legal or factual, which
23 would result in the application not being
24 granted. Now it appears from what has been

1 said by you and the applicant that you both
2 agree that reasons beyond the control of the
3 applicant are not a necessary prerequisite
4 to showing good cause. Now, it also appears
5 as though you have in other contentions
6 questioned the reasons given by the applicant
7 and allege that there are other reasons
8 given, and the only thing that this contention
9 supplies in addition to the other contentions
10 is that legal propositic. that reasons beyond
11 the control of the applicant must be shown,
12 so my question is, why would he need this
13 contention if it is not really a legitimate
14 legal position?

15 MR. VOLLEN: I don't think it's true that everything
16 is in this contention with regards to our
17 arguments about these not being the
18 reasons, in fact is in another contention,
19 I think that this contention leaving aside
20 the "beyond the control" point, I think this
21 contention has more specificity and more
22 details contending that the reasons NIPSCO
23 says in its letter it did build the plant
24 are not good reasons, so I think there is a

1 degree of specificity about that reason
2 beyond the legal question of beyond their
3 control or not beyond their control.

4 THE CHAIRMAN: It appears that is the case, also
5 there are a number of factual items stated
6 here, but it seems to me as though you might
7 be in a position to agreeing to eliminating
8 that particular legal position about
9 reasons beyond their control and consolidating
10 this contention with I believe the next
11 contention or one of the other contentions,
12 using the factual matters stated in this
13 particular contention which would also relate
14 to these other contentions.

15 MR. VOLLEN: Mr. Chairman, I have no problems, of
16 course, putting in one contention, the issue
17 of the reasons why NIPSCO didn't get it
18 built and I quite agree that it's not the
19 function of the Board to rewrite applications,
20 urging an applicant to rewrite an application,
21 but I do think we have to remember that
22 we are dealing with the actual application
23 that NIPSCO submitted here and that
24 application says the reasons they didn't

1 get it built were for reasons beyond their
2 control. Now, whether that was legally
3 necessary for them to do or not, the fact is
4 that they did it, and I don't think that I
5 should be in a position, or we should be
6 in that position to having to withdraw
7 our position or their application so long
8 as their application remains part of the
9 record.

10 THE CHAIRMAN: Mr. Eichhorn, do you have anything?

11 MR. EICHHORN: I just want to repeat, it doesn't
12 make any difference if what he's saying in
13 these three pages is we don't think that the
14 reasons set forth in the application constitutes
15 good cause for the extension, I think that
16 is a valid contention, but you don't need
17 three pages to say that when we get into
18 all this "beyond the control" business, it
19 doesn't make any difference, it doesn't
20 belong in here and we ought to have some
21 specificity as to what we're looking at
22 and what we're going to litigate so the
23 parties know about it.

24 MS. SEKULER: We have a similar contention, but we'll

1 either increase 1/2 at this time or when it
2 comes up.

3 THE CHAIRMAN: I think it probably will go much
4 quicker if we had everything out at one
5 time and when we reach our contentions,
6 not repeat anything that we have done now.
7 I think that the best procedure, when we
8 get to your contentions you can just say
9 that we have covered it fully in the
10 discussion, I think almost all the contentions
11 have been duplicated, the contentions by the
12 State of Illinois and the Porter County Chapter..

13 MS. SEKULER: Prior to discussing contentions I'd like
14 to make mention, Mr. Richard Robbins, who
15 represents the Lake Michigan Federation has
16 joined us.

17 MR. ROBBINS: I'm Richard Robbins, of the Lake Michigan
18 Federation and I presume you're at the point
19 of the hearing of contentions at this point.

20 THE CHAIRMAN: I'm sorry?

21 MR. ROBBINS: Where are you in the process?

22 THE CHAIRMAN: We're discussing the respective position
23 of the parties with regard to contentions and
24 right now we're on the Porter County Chapter

1 contentions, and I think perhaps you ought
2 to state whether you are going to -- you
3 don't have any contentions in addition to
4 what has already been filed by the Lake
5 Michigan Federation?

6 MR. ROBBINS: Well, we have not filed specific
7 contentions but we will speak to the issue
8 today.

9 THE CHAIRMAN: Well, what issues are you going to
10 speak to if you don't have any contentions
11 filed?

12 MR. ROBBINS: Well, we'd like to present our contentions
13 here.

14 THE CHAIRMAN: Do you have any contentions that have --
15 you mean ad lib, oral contentions?

16 MR. ROBBINS: That's right.

17 THE CHAIRMAN: Mr. Eichhorn.

18 MR. EICHHORN: We have a problem with that. The Board
19 set up a procedure to handle this and if
20 we're going to continually come in at later
21 dates and say, well, we'd like to put in some
22 oral contentions, we're just not going to
23 have any procedure at all to follow, I think
24 they'll foreclose at this time to bring up

1 contentions without showing good cause for
2 not complying with the Board order, the
3 pre-hearing conference was set, the rules
4 specifically provide that if you're going to
5 file contentions at a later date that you
6 must demonstrate good cause for not complying
7 with the original order.

8 MR. GOLDBERG: We would share in that request and move
9 that if the Lake Michigan Federation wishes
10 to amend its intervention petition to introduce
11 those contentions and to do so with a written
12 motion addressing the facts in 2.624144
13 for timely filings, we did have a pre-hearing
14 time that the Board established, and most,
15 if not all of the parties were diligent in
16 trying to observe that, and I don't feel that
17 the other participants should be at the burden
18 of addressing contentions presented orally
19 without the benefit of observing the regulatory
20 requirements.

21 THE CHAIRMAN: Mr. Robbins, do you have any reply
22 to that?

23 MR. ROBBINS: Well, we'll certainly be able to file
24 motions, we believe that our petition basically

1 in this case thus presented general contentions,
2 we'll detail those at this hearing. We
3 speak to the petition about our interested
4 concern in the hydrologic regime of Lake
5 Michigan, our interest and concern in the
6 lake shore, itself, and our interest and
7 concern as users of Lake Michigan, we'll
8 detail those contentions at this hearing.

9 THE CHAIRMAN: Well, my recollection of what you
10 submitted is only with regards to the concern
11 of the Lake Michigan Federation, it doesn't,
12 in effect, raise any issues, and so I'm
13 going to grant the motion of the Staff
14 that you not raise any contentions orally
15 at this proceeding, but that you may, of
16 course, submit late filed petitions or
17 supplemental petitions with contentions and
18 state the reasons why at the Board's discretion
19 the contentions are to be accepted.

20 Now, I think we were in the process
21 of having the State of Illinois respond to
22 the -- or state its position with regards
23 to the contention that has been raised by the
24 Porter County Chapter and also in its own

1 supplemental petition with regards to matters
2 beyond the control of the applicant as being
3 a requirement for finding good cause for
4 requested extensions.

5 Ms. Sekuler.

6 MS. SEKULER: Yes, this is in relation to our contention
7 two. Let me first note that the Staff has
8 agreed that contention two raises an appropriate
9 issue for adjudication under 10CR50.55B,
10 and as Mr. Vollen indicated, that contention
11 was written in part, on our part, because of
12 the way the application was stated, as well
13 as because of the way 50.55B was written,
14 one interpretation of which can be that good
15 cause does in part rest on the control
16 of the reasons before delay, neither the Staff
17 or Mr. Eichhorn and NIPSCO have defined
18 good cause, it's our contention that part
19 of that declaration can be found in the
20 control and we submit that our contention is
21 valid under 214-A based on the specificity
22 and basis and that it should be allowed in
23 this hearing.

24 THE CHAIRMAN: In other words, you're not conceding

1 as it appears to be the case with regards
2 to Porter County Chapter, that there is no
3 legal requirement, that the reasons being
4 beyond the control of the applicant, you want
5 to maintain the position that the reasons
6 must be beyond the control as a legal position
7 in this case, is that correct?

8 MS. SEKULER: We would like to litigate that question
9 if it appears, we're not binding ourselves
10 to reasons that are exclusively beyond the
11 control, but we think if it appears that
12 the reasons are not beyond the control, good
13 cause should be shown, if the reasons are
14 within the control, good cause cannot be shown.

15 MR. VOLLEN: Mr. Chairman, if I may. I guess I
16 want to be clear about what concession I
17 have made and what concession is attributed to
18 me. I agree with counsel for the State
19 of Illinois that the issue of whether or not
20 the reason was beyond their control is
21 relevant to the question of whether good cause
22 has been shown. I think what I was saying,
23 what I meant to say before, what I was
24 conceding was whether or not the reason

1 is beyond their control is not dispositive,
2 that's what I'm conceding, but whether or not
3 the reasons beyond their control is a relevant
4 factor to take into account, whether or not
5 you add up everything and determine that good
6 cause should be shown.

7 MR. EICHHORN: Mr. Chairman, may we respond to the
8 State of Illinois?

9 THE CHAIRMAN: Yes.

10 MR. EICHHORN: We have established something here
11 this morning, that the contentions certainly
12 need some specificity added to them, because
13 we're not certain what they say or what they
14 really mean by this question of control,
15 but nonetheless, I think that the State of
16 Illinois has pressed the position that they
17 want to litigate this question of control
18 and that it's essential, and our position
19 is that it is simply not supported by
20 Commission precedent; in fact, to the contrary,
21 it's very clear from condition of precedent
22 without exception, and it should not be an
23 issue.

24 THE CHAIRMAN: My real question now does not go to

1 the merits, but how we resolve the dispute
2 on the merits, whether the Board resolves it
3 itself without asking for any further briefs
4 on this, whether the Board should ask for
5 briefs in the form of a motion to dismiss,
6 or in other words, a determination whether
7 it is a legitimate contention or whether the
8 Board shall allow it as a contention and ask
9 for briefs, a motion for summary disposition
10 of this and ask for a briefing on that.

11 And what is your suggestion, Mr. Eichhorn?

12 MR. EICHHORN: Well, I think it's clear that it's
13 not a proper contention and doesn't require
14 further briefing, further discussions, there
15 has been absolutely no basis even suggested
16 for this, except by the way that you might
17 read the regulation, and I submit, and we
18 have cited in our response to these contentions
19 many, many cases that have been decided by
20 the Commission on this question of voluntary
21 acts delaying construction, that still
22 constitute good cause.

23 THE CHAIRMAN: Now, does the State of Illinois believe
24 that it has presented its legal position

1 with regards to whether the element of
2 control should be a significant factor in
3 determining whether the reason constitutes
4 good cause?

5 MS. SEKULER: No, Sir, we have made no legal arguments
6 in our supplemental petition at all.

7 THE CHAIRMAN: So, then, I take it it's your position
8 that you do want some further opportunity to
9 submit something in writing with regards to
10 that issue?

11 MS. SEDKULER: Yes, Sir.

12 THE CHAIRMAN: Is that your position too, Mr. Vollen?

13 MR. VOLLEN: Well, I'll be glad to submit something
14 more, Mr. Chairman. If I understand it, what
15 we're talking about is something in support
16 of the propriety of our contention one and
17 the State of Illinois two as a contention
18 in this proceeding.

19 THE CHAIRMAN: That's correct.

20 MR. VOLLEN: I'll be glad to put something in
21 support of it. I might suggest, Mr. Eichhorn's
22 argument that this lacks specificity,
23 yesterday the Board indicated that it had not
24 had availability to it NIPSCO's applications,

1 the February 7 letter, I don't know if that's
2 still the case or not, but I would say that
3 much doubt about propriety of this contention,
4 I think, would be eliminated if the Board
5 were able to read the February 7 letter and
6 then read the contention extra, because
7 what we say in that contention essentially
8 is that we contend that what they say there
9 is not the case, is not good cause.

10 DOCTOR COLE: We received copies of both those
11 letters yesterday, the August 31st, '79 and
12 and February 7, '79.

13 THE CHAIRMAN: Now, is there any objection on the
14 part of either the State of Illinois or the
15 Porter County Chapter to having this item
16 resolved in the contention stage and not having
17 to wait until motions for summary disposition
18 are made, in view of the fact that it appears
19 that the facts are adherent on their faces
20 and you could read the legal issues and
21 refer to the application letters.

22 MR. VOLLEN: I think I disagree with that,
23 Mr. Chairman, what has emerged in the discussion
24 this morning is that, yes, there is a legal

1 issue, the extent to which the concept
2 beyond NIPSCO's control is really relevant
3 to the issue of whether or not good cause is
4 shown, but in addition to that legal issue
5 or contention one raises the number of factual
6 issues or contentions, number one says that
7 the reason they give for not getting the
8 plant built are not the reasons in fact, for
9 example they say it took them X number of
10 months to mobilize their contractors, we say
11 that was in their control, and they could
12 have done it in less than that number of
13 months, if they want to concede that they
14 could have done it in a short period of time,
15 maybe we can stipulate to that, I think there
16 are factual questions presented by the
17 contention,

18 THE CHAIRMAN: Okay, but the issue position just raised
19 now can be advanced into our submission
20 in regards to the legal issue that is involved
21 in contention one, isn't that correct?
22 In other words, you can submit a brief on
23 that, indicating that, even if the legal
24 position with regards to control is not

1 adopted there are salvagable parts of the
2 contention as an alternative to maintaining
3 that legal position.

4 MR. VOLLEN: Oh, surely, I thought you were asking
5 whether we agreed that everything raised in
6 contention one could be disposed of as a legal
7 matter and what can be disposed of, I think,
8 is whether or not it's a proper contention,
9 we think that the matters raised within that
10 contention require that we have an evidentiary
11 hearing.

12 MR. EICHHORN: Mr. Chairman, may I say one thing, it
13 was my understanding that we were discussing
14 the legal proposition of whether or not it's
15 necessary to establish that the causes for
16 delay are beyond control of the license
17 holder. I thought Illinois took the position
18 that, yes, as a matter of law you must demonstrate
19 this, and if it's within your control, it
20 doesn't constitute good cause. Then the
21 Board says, well, should we brief this
22 question, I thought we were talking about
23 that very narrow issue as a matter of law.
24 And one thing I wanted to bring up before the

1 Board made a determination as to whether or
2 not further briefs should be submitted with
3 respect to that issue is, is there something
4 further to be said? The State of Illinois
5 has informed us that is one way. You might
6 read the regulation 50.55B and if that's all
7 they have to say on it, I don't think
8 that delaying the determination of that issue
9 for that suppression is necessary, and the
10 Board can dispose of it at this time, it's
11 clearly beyond the precedent established by
12 the Commission just on that very narrow legal
13 issue.

14 MS. SEKULER: I would agree that there are no other
15 precedents that could be brought to bear on
16 that question, unfortunately I cannot argue
17 that right now because I'm not equipped with
18 my law library. If we're going to argue
19 that legal question, and we'll attempt to
20 do so in the petition, I would like an
21 opportunity to brief it. I'll go on to say
22 that I agree with Mr. Vollen with what he
23 says with regard to contention one. As to
24 our contention two, if we're briefing the

1 validity of the contention on the basis of
2 specificity requirements, I think it's apparent
3 both to us and was apparent to the Staff that
4 our contention states the basis for
5 specificity, various factual reasons that
6 should be considered as to whether or not
7 good cause was shown, and I'm at the pleasure
8 of the Board as to what issues they would
9 like to have briefed.

10 THE CHAIRMAN: There's no question but that the Board
11 is going to give you an opportunity, both
12 Illinois and Porter County Chapter, to submit
13 some memoranda, further with regards to the
14 question of whether control was -- whether
15 it was necessary that the applicant not have
16 control, and I think we ought to then go to
17 the remainder of contention one and determine
18 whether or not the applicant agrees that there
19 is a valid contention raised and that it
20 raises question of whether the reasons given
21 were the actual reasons for the delay. I
22 believe that that's correct, Mr. Vollen,
23 is that the substance of the remainder of
24 your contention one?

1 MR. VOLLEN: And Mr. Chairman, whether those reasons
2 amount to good cause.

3 THE CHAIRMAN. Fine.

4 MR. GOLDBERG: Mr. Chairman, may I be heard on that?

5 THE CHAIRMAN: Yes.

6 MR. GOLDBERG: I guess we've seen the Staff position
7 alluded to by several participants, so I
8 just want to clarify it for the Board with
9 respect to Porter County's contention one
10 and the State of Illinois contention two,
11 we feel that they present relevant areas
12 for examination in this proceeding, but in
13 certain respects which we detail in our
14 pleading, are impermissibly broad, and we
15 would recommend to the Board in ruling upon
16 the admission of those separate contentions
17 that it take into account the positions that
18 we describe in our filing of March 7.

19 THE CHAIRMAN: Do you think it might be profitable
20 for me to meet with the Porter County
21 Chapter and the State of Illinois and the
22 applicant to determine whether you can find
23 some grounds for stipulating a legitimate
24 contention?

1 MR. GOLDBERG: I think that might be profitable.

2 THE CHAIRMAN: Is there any objection to that
3 procedure? And I think that's something
4 that Mr. Vollen suggested.

5 MR. VOLLEN: Exactly so, Mr. Chairman, I suggest you
6 order us to meet counsel, I'm certainly
7 willing to meet voluntarily.

8 THE CHAIRMAN: Well, I believe that the first items
9 on the schedule that we adopted, perhaps
10 the only items that requires some meeting
11 between all the participants with regard
12 to seeing what contentions can be agreed to
13 and reworked to everyone's satisfaction, and
14 after we have a deadline on reporting back
15 to the Board, the Board will then come up
16 with an order following the special pre-
17 hearing conference with perhaps a further
18 schedule in there, and perhaps suggesting
19 other conferences or other briefings.
20 Is there any intention for that much? Is
21 there any objection to that?

22 MR. VOLLEN: I guess that raises a question in my
23 mind, I think that you said that first you
24 would not enter an order following the

1 special pre-hearing conference until after the
2 parties reported back to you as a result of the
3 meeting of our contentions. I should think that
4 it might be a better procedure for the Board
5 to rule on those matters that have been
6 presented in the special pre-hearing conference,
7 for example, standing intervention, and
8 there was one valid contention, so we know
9 whether there is going to be a hearing, and
10 then matters of other contentions could be
11 dealt with after the parties have informed
12 you about trying to work out those contentions.

13 DOCTOR COLE: This would be a normal procedure.

14 THE CHAIRMAN: That's correct, I had forgotten that we
15 had ruled on interventions here and I would
16 expect to issue an order prior to your reporting
17 back to the Board which would admit certain
18 petitioners and perhaps deny others admission.
19 Any problem with that?

20 (No response)

21 Okay.

22 Now, I think we disposed of contention
23 one of the Porter County Chapter and contention
24 two of the State of Illinois, we'll go on to

1 contention two which also appears to raise a
2 legal issue, and I don't believe any factual
3 ones dealing with the issues of whether an
4 extension, not to wait, a certain day is
5 a legitimate extension. Could the Staff
6 indicate what its position is on the
7 liability of contention?

8 MR. GOLDBERG: I believe that our position on the
9 Porter County proposed contention two is given.
10 on March 7 filing, we believe that it presents
11 an appropriate area of litigation, but
12 is in some respects the diminution concern, I
13 believe.

14 THE CHAIRMAN: Well, the question, then, is --

15 MR. EICHHORN: Mr. Chairman, perhaps I can resolve
16 the whole issue. NIPSCO has not requested
17 an extension. In the alternate, we understand
18 that there must be a date certain on this
19 construction permit and that the extension must
20 be to a date certain, I think it's just a
21 matter of perhaps we were not clear enough
22 in our applications where we said we would like
23 to consent to the extension until December
24 1, 1978, or ninety-eight months. Now, what

1 that meant, ninety-eight months from October 7,
2 1979, which was the assumed date at the time
3 of filing. That request comes out to be
4 December 1, 1979, we're not seeking indefinite
5 periods of time, and we're willing to put
6 that on the record at this point of time
7 if we can clarify it.

8 Let me further state that I'm not
9 saying we may not have to amend that specific
10 date because of the factors that have occurred
11 since our filing in August.

12 THE CHAIRMAN: Okay, if I understand it, it was offered
13 as an explanation of the date certain that
14 was requested and was in the form of a
15 parenthetical, not shown that way. It appears
16 to me as though that resolves the contention.

17 MR. VOLLEN: With Mr. Eichhorn's clarification, I
18 think it does resolve the contention and
19 as he reserved the right to amend later on,
20 we, of course, reserve the right to amend
21 contentions on any he might make.

22 THE CHAIRMAN: Does that also remove the contention
23 asserted by the State of Illinois?

24 MS. SEKULER: I don't believe we had a contention

1 regarding that.

2 THE CHAIRMAN: Let's go on to contention three.

3 Could you state in general, Mr. Vollen, what
4 this contention raises?

5 MR. VOLLEN: Yes, Mr. Chairman, in general, this
6 contention raises that the factors asserted
7 by NIPSCO for the delay do not justify the
8 extension of the construction for permit
9 which they seek, and indeed do not justify
10 any extension for construction permit.

11 THE CHAIRMAN: Is there any objection by NIPSCO
12 with respect to that portion of contention
13 which questions the reasons offered by
14 applicant for the delay?

15 MR. EICHHORN: Mr. Chairman, I think that that is the
16 remainder of their contention one, and you
17 were correct in stating that it appears
18 elsewhere. There are certain aspects of this
19 contention that we violently object to, but
20 if they are merely stating at this time that
21 this contention is only meant to challenge
22 those reasons advanced by NIPSCO as justifying
23 the delay, I think that's legitimate.

24 THE CHAIRMAN: Okay. The other portion that appears to me

1 to be significant in this contention is
2 apparently raising the TMI issues and
3 suggesting that because there may have been
4 a delay, Staff delay in reviewing the
5 application, because the Staff was preoccupied
6 by TMI, that therefore, we ought to waive
7 all the TMI issues here. Is that part of
8 this contention, Mr. Vollen?

9 MR. VOLLEN: As it's part of that contention, to the
10 extent that NIPSCO relies on TMI as the
11 reason for not getting built, we contend
12 that's not valid reason for not getting built
13 and does not justify an extension.

14 THE CHAIRMAN: I think the reason was that the Staff
15 was not able to concentrate on the application,
16 on the construction problems with the
17 applicant because of the TMI.

18 MR. VOLLEN: That may be the reasons NIPSCO assert
19 for delay, but we want to litigate whether,
20 in fact, that was the reason for the delay.

21 THE CHAIRMAN: Okay, I don't believe there's any
22 objection on the part of the applicant to
23 your questioning that as a reason, but I
24 think the applicant thought that you went a

1 little further than that and also wanted to
2 review all the matters concerning TMI, but
3 further clarifying for the record how that
4 you don't intend to get in at least as part
5 of this contention reviews of TMI by the Staff,
6 we'll accept that.

7 MR. VOLLEN: To the extent that NIPSCO relies on
8 the reviews of TMI by the Staff and even to
9 the extent that NIPSCO doesn't rely to the
10 extent that the facts demonstrate the reviews
11 of TMI by the Staff have to do with the
12 reasons why NIPSCO didn't get Bailly built,
13 we very much intend to get into it, we
14 think that's what this contention asserts.

15 THE CHAIRMAN: It seems to me as though you're
16 restricting your inquiry as to whether the
17 Staff was working or preoccupied with TMI,
18 and therefore, did not concentrate on this
19 particular site, and as far as that goes, I
20 think there's no objection to the contention
21 being asserted, is that correct, Mr. Goldberg?

22 MR. GOLDBERG: Yes, of course, the Staff position is
23 that the merits, scope of this contention is
24 outside the nature of the action, but

1 understand the reference in the February
2 extension applications to Staff, review of
3 Three Mile Island to be relevant only to the
4 time period requested for the extension and
5 is not cited as a factor which led to the
6 delay, and on completion of construction so as
7 to be relevant to the good cause showing
8 under 50.55B. I think, Mr. Chairman, if
9 you will look at this February 7, 1979 --

10 THE CHAIRMAN: Page eleven, is that right?

11 MR. GOLDBERG: I'm sorry, page two of February 7
12 application, paragraph three -- I'm sorry,
13 I had in mind the August 31 amendment to
14 the application, paragraph three, page two,
15 cites the Staff review arising from Three
16 Mile Island as a reason for the time requested
17 to extend, but does not give it as a factor
18 which led to the untimely completion of the
19 plant, unless I'm misinterpreting the amendment
20 to the application.

21 THE CHAIRMAN: Mr. Eichhorn, do you want to say
22 something?

23 MR. EICHHORN: I think that's a correct observation,
24 Mr. Chairman, that the mention of Three Mile

1 Island in there, as we all well know, took a
2 lot of the Staff resources from the time of
3 its occurrence and still is doing so, and that's
4 what that expression is in there, that it will
5 take longer to construct the plant because of
6 this, not the reason for completing it I'm
7 talking about.

8 MR. VOLLEN: I must say I can't resist the temptation
9 to make the observation, as Mr. Eichhorn
10 feels about our contention, I wonder if its
11 application needs no special clarification.

12 THE CHAIRMAN: Now, are you questioning, Mr. Vollen,
13 the fact that Staff is considering Three
14 Mile Island by engaging in all the reviews
15 that they have of the problems of TMI that
16 they have not been working on the applications
17 as diligently as if they didn't have the
18 TMI problems?

19 MR. VOLLEN: I'm questioning whether that is a fact,
20 I'm questioning the extent to which that is
21 a fact, I'm questioning the extent to which
22 that fact, if it is a fact, affected the
23 construction of Bailly, and I'm also questioning
24 the extent to which TMI otherwise affected
the construction of Bailly. NIPSCO said

1 that the NRC reviews arising from Three Mile
2 Island extends the time for construction,
3 that's their view of the effect of Three Mile
4 Island on construction of the Baily Nuclear
5 Plant. They're entitled to make that
6 assertion, I contend that there may be
7 that effect of TMI on the construction of
8 Baily, there may be other defects on
9 construction of Baily, and those defects
10 ought to be litigated in this proceeding.

11 THE CHAIRMAN: What I understand from what has been
12 stated here and from what he said, the
13 paragraph of August 31st, 1979, letter,
14 the reference to Three Mile Island reviews
15 relate to the extension, the period asked
16 for extension, that is, to December 1, 1979.
17 Now, I would assume that any attack that
18 you made with regards to this paragraph would
19 relate solely to questioning whether the
20 extension, the full extension to that date
21 is necessary, and it would seem to me as though
22 there is a contention raised as to whether
23 the extension ought to be to that date or to
24 some shorter day. Now, is that part of your

1 contention?

2 MR. VOLLEN: That's part, it's certainly not all of
3 it, in that August 31 letter, it states delays
4 have apparently already occurred with respect
5 to Bailly, so therefore NIPSCO must be
6 saying that TMI must have something to do
7 with that, not getting ready by that date.
8 They are not relating only to the date in the
9 future but by which they think they'll not
10 be able to get it built.

11 THE CHAIRMAN: Well, to the extent, then, that you
12 are questioning the length of the requested
13 extension and the amount of time that has
14 already elapsed since the construction permit
15 was received because of the allegations
16 concerning Three Mile Island were used, that
17 there is a legitimate contention that neither
18 the applicant nor the Staff will deny, is
19 that correct, Mr. Eichhorn?

20 MR. EICHHORN: I agree with the first part of your
21 statement, yes, to the extent that it extends
22 the period of time required to complete
23 construction, that it's probably a legitimate
24 issue to say that it should be for a shorter

1 period of time, because there is no factor
2 in there, there should not be a consideration
3 factor in there that it takes longer because
4 of the Three Mile Island incident. Now, it
5 appears to me as though Mr. Vollen, you are
6 not, at least here, requesting a review of the
7 Three Mile Island reports or the work that
8 the Staff has done with regards to Three Mile
9 Island as part of this case, is that correct?

10 MR. VOLLEN: No, Sir.

11 THE CHAIRMAN: What is correct?

12 MR. VOLLEN: The contention says that we contend
13 that those reviews, the generic reviews
14 of TMI must be considered as to whether a good
15 cause exists for construction of Bailly
16 construction permit. Reading from page
17 eight of our February 26th, 1980, joint
18 intervenors first supplement to petition for
19 these intervenors.

20 THE CHAIRMAN: And does the State of Illinois have
21 a similar contention?

22 MS. SEKULER: We have not raised the question of whether
23 the delays of the Staff involving the TMI
24 have been part of the reason for the delay,

1 but we would have some reference to TMI
2 in our contentions seven and eight.

3 DOCTOR COLE: Your contention three also states that
4 the factors given do not constitute good
5 cause for extension.

6 MR. VOLLEN: Yes, sir.

7 DOCTOR COLE: Isn't that your contention number three?

8 MS. SEKULER: Our contention number three concerns
9 primarily dewatering.

10 MR. VOLLEN: I think that's Porter County Chapter
11 number three, we've talked about.

12 MS. SEKULER: Our contention number three states that
13 reasons stated by NIPSCO for the extension
14 should be analyzed as to whether they give
15 rise to health and safety or environmental
16 issues, and we go into a considerable number
17 of pages, the environmental harm that exists.
18 In our contention seven we discuss health and
19 safety factors and I believe TMI is mentioned
20 in section D.

21 DOCTOR COLE: Looking at page seven of your filing of
22 February 20th, contention three, the first
23 sentence states "reasons for delay alone
24 do not constitute sufficient good cause to

1 allow the Board to extend the construction
2 permit."

3 MS. SEKULER: Yes.

4 DOCTOR COLE: And that's where I think my characterization
5 of the contention is. The reasons given do
6 not constitute good cause.

7 MS. SEKULER: Yes, contention three does allege that
8 there are other aspects of good cause other
9 than that. I thought you were referring to the
10 TMI aspect of it.

11 THE CHAIRMAN: I believe we have heard everything that
12 we need on this contention. Is there anything
13 else that Mr. Vollen or Mr. Eichhorn or the
14 Staff would like to say with regards to
15 contention three?

16 MR. EICHHORN: I'd like to say that there are a lot of
17 sentences not in here that have not been
18 discussed and I believe in his contention
19 they also suggest that this Board now should
20 also review that pile design because of the
21 review of which is designed for the reason of
22 delay in construction, and we certainly don't
23 agree that that is part of valid contention
24 or within the scope of this hearing, particularly

1 since the Commission has ruled on it and
2 specifically found that the pile design review
3 could abide the operating license review, the
4 matters have already been hashed over first
5 by the Staff and the Commission, itself, and
6 I think the Board found by Commission ruling.

7 THE CHAIRMAN: We do have a similar reference to the
8 foundation design as to the Three Mile
9 Island, yes, where the applicant had relief
10 upon the time allotted to these problems by
11 either the applicant or the Staff and the
12 Porter County Chapter petitions have raised the
13 merits of both TMI and the foundation design
14 as part of contention, and I take it whatever
15 we have said with regards to TMI applies also
16 to whether the Board ought to consider the merits
17 of the piling foundation problem also as part
18 of the contention, is that correct, Mr. Vollen,
19 or would you like to add something in
20 addition, specifically relating to the foundation
21 design problem?

22 MR. VOLLEN: I think in substance you're correct,
23 Mr. Grossman, one point I think Mr. Eichhorn
24 maybe spoke on, himself, he said the pile --

1 current proposed design passed muster by
2 the Commission and the Staff.

3 MR. EICHHORN: I apologize, that was a mistake.

4 MR. VOLLEN: I just want it to be clear, I think the
5 phrase you used was "we're raising the merits
6 of the pile design and TMI", I think that's
7 something that's understood, but I want
8 it all to be clear that in addition to
9 or perhaps prior to that we're raising a
10 series of questions about this extent to
11 which the short piling review and the TMI
12 actions were back, causes the reasons why
13 the Staff review the short piling's proposal
14 and TMI took so long, had such an impact,
15 as well as what the results of the
16 considerations of those were, so there are
17 several types of inquiry about the short
18 pilings proposal and I complied with these
19 contentions, I think.

20 THE CHAIRMAN: I think the Board is fully comprised
21 now of the two tiers that we have to deal
22 with in deciding on this contention and we'll
23 keep all of this discussion in mind when
24 it comes to that contention.

1 I think we're up to contention four,
2 which relates to the dewatering over a lengthier
3 period of time than what was anticipated in
4 the original application, and I believe that
5 this is a contention that the applicant and
6 the Staff agree has some legitimacy as a
7 contention. Do I understand that correctly,
8 Mr. Eichhorn?

9 MR. EICHHORN: We indicated yesterday that a contention
10 which stated that the extended construction
11 period requested will extend the dewatering
12 process for a longer period of time than
13 originally reviewed and approved by the
14 licensing board, would be a valid contention
15 to the extent that it dealt only with that
16 incremental difference, if any.

17 THE CHAIRMAN: Do I understand, Mr. Vollen, that
18 all you are dealing with is the incremental
19 difference between what has already been
20 covered in the prior proceeding with regards
21 to dewatering and now occur due to the
22 extended period of construction?

23 MR. VOLLEN: As is true with all of our contentions,
24 Mr. Chairman, we do not intend to litigate

1 again what was litigated in the construction
2 proceeding. What this contention says is
3 we want to litigate, we contend that we want
4 to litigate what NIPSCO proposes to do by way
5 of dewatering from September, 1979, onward,
6 and we allege that that activity will have
7 irreparable effects on the National Lakeshore..

8 DOCTOR COLE: How is that different than the
9 dewatering that had been done during the
10 original construction? Are you alleging that
11 there is a significant different kind of
12 impact than that that has already been litigated?

13 MR. VOLLEN: Yes, substantially more period of time,
14 the construction permit authorized dewatering
15 only up to the period of September 1, 1979,
16 they're now seeking permission to continue
17 dewatering over a period until 1987. In
18 addition, information now available was not
19 available when the Licensing Board authorized
20 them to engage in dewatering up to 1979,
21 suggesting there are different kinds of
22 dewatering that have to be done, different
23 effects, so on and so forth. Let me
24 reiterate, we're talking about not what was

1 litigated in the proceedings that resulted
2 in the issuance of the construction permit.

3 DOCTOR COLE: Are you then contending there are
4 additional incremental impacts that you say
5 will occur that would not have occurred had
6 construction taken place during the earlier
7 period?

8 MR. VOLLEN: Yes, Sir.

9 THE CHAIRMAN: You do not intend, I take it, to
10 re-raise any of the conclusions reached with
11 regards to dewatering in the original application?

12 MR. VOLLEN: Correct.

13 MR. EICHHORN: Mr. Chairman, there has been a mis-
14 statement here that I want to clear up, or
15 misunderstanding of what the Licensing Board
16 did. In the construction permit review,
17 dewatering was thoroughly reviewed at that
18 point of time and the amounts of water to be
19 pumped in and pumping rates were considered
20 and the Board found that it would only last
21 for a short period of time, a small fraction
22 of the overall construction time. Now,
23 Mr. Vollen wants to say that the Board
24 authorized dewatering up until the end of

1 construction, that's simply not true,
2 and to say that you now want to review the
3 entire dewatering that's going to take place,
4 I don't know, that date has absolutely
5 nothing to do with the review, itself, that
6 was conducted by the Licensing Board. We're
7 merely constructing -- asking to be able to
8 construct the plant which was authorized at
9 a later period in time.

10 DOCTOR COLE: So it's your contention that there
11 is no difference between the different time
12 periods.

13 MR. EICHHORN: That's correct, dewatering has been
14 reviewed, there's a substantial difference,
15 we put in a slurry wall which reduced the
16 amount of water to be pumped and reduced
17 to way below the amount the Board originally
18 authorized, but that has all been litigated
19 as well.

20 THE CHAIRMAN: Well, if I understand it, we're not
21 going to decide the merits of this now but
22 Mr. Vollen has indicated that to the extent
23 there's a difference in the dewatering period
24 length because of the extensions, that's what

1 he's raising and I think the record when we
2 re-read it will clarify that's what was stated
3 here, the transcript will show that and I don't
4 think there is any further dispute now as to
5 the meaning of the contention here.

6 Does the State of Illinois want to indicate
7 whether this is also one of its contentions or
8 whether it has anything additional to say
9 with regards to it?

10 MS. SEKULER: Yes, our contention three is substantially
11 the same, we also have included here a couple
12 other issues in sub-paragraph E of contention
13 three, which on page eleven of our supplement,
14 which would address again not increases
15 that have been previously litigated with
16 regards to dewatering, but questions that
17 would relate to the effects of additional
18 dewatering during construction extension,
19 and additionally any safety problems that might
20 occur during construction because of the
21 dewatering that was going on.

22 THE CHAIRMAN: Am I to understand that the reasons
23 given in E relate to the effect because of the
24 prolonged period of dewatering?

1 MS. SEKULER: That is correct, yes.

2 THE CHAIRMAN: Is there any objection to that
3 particular contention with that litigation,
4 Mr. Eichhorn?

5 MR. EICHHORN: Mr. Chairman, I think we're talking about
6 two different time periods, very clearly I
7 think the State of Illinois and Mr. Vollen
8 are talking about eight years of dewatering
9 and we're not talking about that at all,
10 we're talking about in a matter of months,
11 and to the extent that those months might
12 be greater under the new construction scheduled
13 there is something to litigate, and I think
14 Illinois is saying something entirely different
15 than that, but now with respect to the safety
16 issue here, they make reference to core
17 melt, and I don't think that's a reviewable
18 issue in this proceeding.

19 MS. SEDULER: We were not discussing the core melt
20 per se, we were discussing effects on the soil
21 as a result of additional dewatering,
22 in addition to any dewatering that was
23 incremental and how that would alter the
24 foundation.

1 THE CHAIRMAN: Do I understand that this contention
2 is within the same contention as the Porter
3 County contention and that that is what we're
4 talking about, an extended period of dewatering?

5 MS. SEKULER: Yes.

6 THE CHAIRMAN: And it's only valid to the extent that
7 there is an extended period of dewatering?

8 MS. SEKULER: Yes, which I think from point of view
9 of contention, I think I might reiterate
10 that Mr. Eichhorn must be the one to discuss
11 the merits and all we have to do is discuss
12 the merits of 714.

13 MR. EICHHORN: I didn't say I'm willing to discuss the
14 merits, I'm willing to address an issue
15 that is couched in the terms of any incremental
16 increase in the length of dewatering time
17 required under the new schedule, if that is
18 not a fact then I think dewatering is not
19 an issue.

20 THE CHAIRMAN: I believe he clarified the contention of
21 this and I don't want to dwell on that,
22 where we have an agreement now we may speak
23 a little too long and have a disagreement,
24 but let's consider, then, the allegation with

1 regard to core melt.

2 Now, would you like to say something
3 with regard to your allegation of core melt?

4 MS. SEKULER: Yes, the intent of this particular sub-
5 section of contention three was to raise the
6 question as to the effect of incremental
7 dewatering on water capabilities and its
8 subsequent ability to survive a potential
9 hypothetical core melt. We're not interested
10 in talking about a core melt, per se, but
11 the effect on the water table of dewatering
12 and how it would relate to the consequences of
13 the safety of the plant later on.

14 THE CHAIRMAN: Now, would Staff like to address a
15 question as to whether we can consider a
16 core melt in this context?

17 MR. VOLLEN: I don't believe we have anything to add
18 on that, other than to make clear that our
19 position with respect to dewatering is that
20 it's only appropriate to the extent that
21 you would consider the incremental environmental
22 impacts that might be occasioned by extended
23 periods of construction beyond those previously
24 considered, and I don't believe there is any

1 basis, in fact, which accompanies that
2 contention to suggest that there is an
3 incremental risk of the core melt resulting
4 from construction dewatering activities.

5 THE CHAIRMAN: I believe the contention has been
6 directed towards the possibility that there
7 might be a core melt independently of the
8 dewatering, but that the dewatering would
9 affect the method in which the facility would
10 be able to cope with the core melt, is that
11 correct?

12 MS. SEKULER: Yes.

13 THE CHAIRMAN: And that's what I would like the
14 Staff to address, as to whether or not that
15 is a legitimate field of inquiry in this
16 proceeding, take a few minutes to think about
17 that.

18 I think the reporter would like a
19 recess now, take ten minutes.

20 (WHEREUPON a brief recess was taken.)

21 MR. GOLDBERG: I believe with regards to whether it
22 was appropriate to consider the core melt,
23 I guess my response to that, Mr. Chairman, is
24 a two-fold one, which I alluded to before
the break, and that is that there is no factual

1 basis in contention three-E of the State of
2 Illinois for the supposition that there is
3 an increase in the risk of a core melt due
4 to any foreseeable effects arising from extended
5 period of construction, where the results
6 of construction dewatering activity or
7 otherwise of a core melt is normally classified
8 as a Class Nine accident, which absents
9 special circumstances showing that there is
10 some increased risk beyond that ordinarily
11 accorded such an accident, it's not considered
12 NRC licensing proceedings in general, further
13 there is no nexus between the consideration
14 of a Class Nine accident, such as a core melt,
15 and the issues before this Board of whether
16 there is good cause for the construction
17 permit extension under Section 50.55B,
18 so absent the showing that I have indicated
19 above, it's a matter entirely outside the
20 scope of the proceedings.

21 THE CHAIRMAN: You want to respond to whether there is
22 any special consideration or part of
23 consideration or whether we need one?

24 MS. SEKULER: We address the need to litigate Class Nine

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1 accidents in our contention four and any
2 arguments we might make in regards to Class
3 Nine accidents would apply in this regard.
4 Here again I would state that our intention
5 in Sub-section E is not to discuss the possibility
6 of a core melt, but the effect of dewatering
7 on the soil structure so that possible
8 circumstances of a core melt might be changed.
9 It's our belief that the scope of this
10 hearing must take into consideration such
11 accidents, as they are not impossible, and
12 the fact that, in fact, they have occurred to
13 some degree already. The nexus for this
14 contention should not be a nexus between the
15 possibility of a Class Nine in construction,
16 the nexus of this discussion is whether
17 or not this contention alludes to things
18 that will occur because of the construction,
19 and we believe that that nexus is apparent.

20 MR. GOLDBERG: Mr. Chairman, just a further objection,
21 it seems just as with respect to Porter
22 County's contention on dewatering there is
23 an absence of agreement, at least among
24

1 the respective litigants as to what the
2 acceptable scope of that contention is. I
3 believe that you certainly heard from all the
4 principals as to their position on that scope,
5 but I would recommend if the Board accepts
6 other parts of this contention it instructs
7 the parties to see if they can arrive at an
8 acceptable contention in their negotiating
9 process that might follow from any pre-hearing
10 conference orders this Board will enter.

11 MS. SEKULER: I presume that if a contention is accepted,
12 it's acceptable, we certainly have no objection
13 to working with the Staff on contentions
14 that could be made acceptable or in reclarifying
15 certain points of accepted contentions.

16 MR. GOLDBERG: It seems that the agreement is only
17 as to narrow aspects of the contention,
18 not as to the contention as broadly framed
19 as it is right now.

20 THE CHAIRMAN: Do you understand that, Ms. Sekuler?
21 Mr. Goldberg is suggesting that the Board
22 may wish to accept a portion of this contention
23 or a somewhat restricted form of this
24 contention and should direct the parties to

1 consult each other with regards to the
2 remainder and see if some agreement could be
3 effected that way.

4 MS. SEKULER: In that regards, that's fine, I just
5 thought that perhaps you were suggesting that
6 after a contention has been accepted we rework
7 it to make it more acceptable.

8 THE CHAIRMAN: I think once it's accepted there is not
9 going to be any impetus on the part of anyone
10 to reword it, so probably it's to accept the
11 restricted version and see if you can agree
12 on a more fuller contention. I take it there
13 is no disagreement on your part with
14 categorizing a core melt possibility as a
15 Class Nine accident.

16 MS. SEKULER: No, we'll accept that.

17 THE CHAIRMAN: Going on now to contention five, Porter
18 County Chapter. Again, I assume we have a
19 proviso here that we'll not be litigating
20 anything that has already been litigated in
21 prior proceedings, and only talking about
22 incremental changes, is that correct,
23 Mr. Vollen?

24 MR. VOLLEN: We're not seeking litigating anything

1 that was litigated before. Contention four
2 says that they're going to dewater for a longer
3 period of time and that is going to have an
4 adverse effect, this contention says there
5 is no way to mitigate those adverse effects,
6 those adverse effects of that continuing
7 dewatering program period going on.

8 THE CHAIRMAN: Mr. Eichhorn.

9 MR. EICHHORN: Well, certainly the remedial program
10 was thoroughly litigated in the licensing
11 proceedings and this is somewhat different
12 than extended period of time issue. They
13 apparently want to take issue with the
14 type of remedial program that will be used,
15 that was litigated at the construction
16 permit hearing for the period of dewatering
17 and it's certainly not a proper issue at this
18 point of time.

19 THE CHAIRMAN: Do I understand, though, that the contention
20 is that the remedial program related only to
21 a certain period of dewatering and that we are
22 now having questioned the effectiveness of
23 that remedial program in the context of an
24 alleged larger period of dewatering and that's

1 all that we're talking about now?

2 MR. EICHHORN: No, I think what the Board litigated in
3 the first proceeding was if required because
4 of a monitoring program during the dewatering
5 stage of construction, that the remedial
6 actions identified would be sufficient to
7 offset any possible adverse impacts. Now,
8 this is different than time, the possibility
9 that the remedial action would never be
10 used or that it would continually be used,
11 that wasn't tied into any time period, it
12 was necessary if the monitoring program
13 demonstrates that there are some adverse
14 impacts which the Board did not think it would
15 demonstrate, unless it was a valid system,
16 I don't think that needs to be relitigated.

17 THE CHAIRMAN: Mr. Vollen.

18 MR. VOLLEN: Again, we don't seek to relitigate what the
19 Board decided, what we seek to litigate is
20 what NIPSCO will do, in our view, to the Indiana
21 Dunes National Lake Shore through its
22 dewatering program during its period of
23 construction, which it seeks by reason of
24 applications, and this contention four says

1 it's going to have adverse effects, and
2 they have no way to litigate. Let me point
3 out that on page twelve of our document four,
4 supplement paragraph E, we assert that--
5 recent studies by the United States
6 Geological Service have indicated an
7 underlying strata which previously
8 was assumed to act as a barrier to limit
9 the effect of a site of dewatering.

10 (Reporter's note: Please refer to Porter
11 County's Document 4, pg. 12, Supplement
12 Paragraph E.)

13 The effect of dewatering during
14 the period from 1979 on that and its
15 effect on the wetlands of the National
16 Lake Shore could not have been considered
17 in the original construction permit
18 proceeding, because the study wasn't
19 done, so what we're talking about is
20 litigating their dewatering during this
21 period of construction, the effect it will
22 have on their ability to mitigate, or offset
23 the harm.

24 THE CHAIRMAN: But it seems to me that you're not raising

1 the question on incremental effect from an
2 additional period of dewatering, but you're
3 talking about having knowledge of certain
4 things now that may not have been known at
5 the time the original determination was made
6 and that we are to reopen that determination
7 to plug in certain facts that we now know,
8 isn't that basically what you're asking?

9 MR. VOLLEN: With all due respect that is exactly
10 not what I'm saying. What I'm saying is that
11 the harm asserted in this contention would not
12 have occurred under the construction permit,
13 it can only occur if NIPSCO is granted the
14 extension that it seeks, because under the
15 construction permit they have to stop doing
16 every bit of dewatering by September 1, 1979,
17 it's because they seek to dewater beyond
18 September 1, 1979, that the harm alleged in
19 these contentions will occur. That has never
20 been considered in any construction permit
21 or any other proceeding.

22 THE CHAIRMAN: Well, is there any difference in time
23 between dewatering for X period before September,
24 1979, and dewatering for X period after

1 September, 1979?

2 MR. VOLLEN: They've been dewatering since 1974,
3 up to and including the present time, they
4 are dewatering, they were only permitted to
5 dewater for five years, now they're talking
6 about dewatering for fourteen years. There's
7 a difference in time, that's exactly what
8 we allege, between dewatering for fourteen
9 years and dewatering for five years.

10 THE CHAIRMAN: I just want to understand that that's
11 what you're alleging and you're not saying
12 that because X period occurred subsequent to
13 1979 that it's different than if X period of
14 dewatering occurred before 1979. What you're
15 saying now is while they may have been X period
16 before 1979 it's plus Y period after 1979, and
17 you're talking about Y period now, the effects
18 of dewatering during Y period is my understanding,
19 correct?

20 MR. VOLLEN: I'm saying both things, Mr. Chairman, there
21 is a difference, if you take X number of months
22 of dewatering, there is a difference in the
23 Bailly case where those months occur pre-
24 September 1, '79 or post-September 1.

1 Particular reason -- there are others --
2 but one particular reason is in the months
3 pre-September 1, 1979, there was an effect
4 on the Indiana Dunes National Lake Shore
5 from NIPSCO's ash pond water seeping from
6 their ash ponds in the water, ground water of
7 the National Lake Shore. NIPSCO has now agreed
8 with the United States Department of Interior
9 to seal those ash ponds that affect that water
10 seeping into the National Lake Shore from
11 NIPSCO's ash pond will not occur in the
12 X month period after September 1, 1979, so
13 there's a difference, the period on the calendar
14 when the X months occur does make a difference.

15 THE CHAIRMAN: Okay, I understand that.

16 MR. EICHHORN: Not in the Y's, though.

17 THE CHAIRMAN: Are you saying now that there is no
18 difference in time, between what might occur
19 after 1979 and the period before 1979 as a
20 matter of substance?

21 MR. EICHHORN: I'm saying Mr. Vollen's objection is
22 incorrect, because there will be different
23 circumstance after 1979 because of the sealing
24 of the ash pond, that there will be a different

1 result to be reviewed, the impact of the Board
2 review during the construction, during that
3 period did not take into consideration any
4 recharge from the ash pond that are going to
5 be sealed by agreement with the Department of
6 Interior in determining the amount of
7 draw-down or the water which is going to be
8 pumped out of excavation, and if you read
9 that decision, the Board may, the objection
10 that the calculations of the draw-down done
11 by the applicant at that point in time were
12 conservative in that they did not take into
13 consideration any recharge from the ash pond.

14 MR. VOLLEN: What Mr. Eichhorn is doing, of course,
15 he said that at the outset, he's disputing
16 the factual allegations, he obviously has the
17 right to do that, and that's what the hearing
18 is all about, but we are not talking about the
19 merits or contentions, we're talking about
20 whether it's a contention to be admitted for
21 the purpose of holding a hearing.

22 THE CHAIRMAN: It seems to me there are two elements
23 that are asserted here, one is the incremental
24 period of time that's alleged and the second

1 is not having the counterbalancing ash pond
2 element, and Mr. Eichhorn is, I believe,
3 suggesting that with the second portion
4 that the prior decision of the Licensing Board
5 should resolve this question on the merits
6 at this stage, is that correct, Mr. Eichhorn?

7 MR. EICHHORN. That's correct.

8 THE CHAIRMAN: Do you understand that, do you have
9 any objection to a procedure whereby we do
10 resolve the second portion of his contention
11 as it relates to the ash pond on the basis
12 of that, the determination of the prior
13 Licensing Board, as to whether this was an
14 element taken into account?

15 MR. VOLLEN: I have no objection if what the Chairman
16 is suggesting that we write briefs on the
17 legal effect of the initial decision in 1974
18 on the questions, now we write briefs on that
19 legal question, I think we need to be careful
20 not to try to force intentions four and five
21 into too narrow, too specific a posture.
22 I agree that the effect of the sealing of the
23 ash pond and the one part of it, one part of
24 it can be viewed as a legal question, what did

1 the Licensing Board say about that, but the
2 question of whether and what effect the
3 dewatering will have in the X months post-1979,
4 seems to me, can be resolved as to a legal
5 matter, that's a factual inquiry and one of
6 the facts in making that inquiry, as to what
7 effect the dewatering will have in the months
8 after 1979 has to take into account the sealing
9 of the ash pond, because that's a real
10 substantial factor, so even if you find that
11 the Licensing Board didn't rely upon recharge
12 from the ash pond seepage, nonetheless the
13 absence of that discharge is going to exist
14 after the months -- in the months after 1979.

15 THE CHAIRMAN: What if the Board had determined that
16 the dewatering had a ~~deminimus~~ effect, not taking
17 into account the ash pond, and you are now
18 asking us to reconsider that determination,
19 aren't you asking us to relitigate whatever
20 was litigated in the original proceeding?

21 MR. VOLLEN: Quite to the contrary, I agree with
22 Mr. Eichhorn that the question of the ash pond
23 seepage into the National Lake Shore was
24 litigated in the construction permit proceedings,

1 what was not litigated was dewatering during
2 the period when there was not ash pond
3 seepage, so I'm not asking you to litigate
4 something that was, I'm asking you to litigate
5 something that was not litigated.

6 DOCTOR COLE: Are you saying that the seepage was
7 favorable or unfavorable?

8 MR. VOLLEN: There is some question, serious question
9 that in some respect it was going to be
10 favorable because it gave water that was
11 not otherwise there, it was a different quality
12 of water than that that was there, so the
13 whole question of its effect was litigated.
14 What wasn't litigated was dewatering without
15 the effect of the recharge, both on the quality
16 and the volume of the water coming into the
17 Indiana Dunes National Lake Shore.

18 DOCTOR COLE: Assuming the previous Board made the
19 determination that the impact of dewatering was
20 minimal, or *de minimus*, we are not talking about
21 an extended time period for dewatering, and is
22 it your contention that this extended time
23 period is something more than just a continuation
24 of the present situation, is there some additional

1 incremental difference in the dewatering for
2 the continuation of the present situation,
3 dewatering situation, the situation that you
4 consider to be unsatisfactory?

5 MR. VOLLEN: Both.

6 DOCTOR COLE: Both. And you are prepared to bring
7 forth new evidence to demonstrate that?

8 MR. VOLLEN: Yes, sir.

9 THE CHAIRMAN: If I understand correctly, you contended
10 that the ash pond seepage was determined to
11 have a remedial effect on the dewatering?

12 MR. VOLLEN: That's not correct.

13 THE CHAIRMAN: But you're saying it may have a remedial
14 effect and that you would like to litigate
15 the question of dewatering, taking into account
16 an absence of ash pond seepage having a
17 remedial effect?

18 MR. VOLLEN: What I'm saying is that the issue of
19 dewatering is a not uncomplicated one,
20 and one of the factors that was considered
21 in that complicated factual dispute &
22 issue was the phenomenon of the ash ponds
23 and their seepage, they're recharging
24 effect in the lake shore. What I'm saying

1 is that if you can be dewatering in a period
2 when there isn't going to be this recharging
3 effect in an area as sensitive, as complex
4 as the Indiana Dunes, you need to consider the
5 fact that there is dewatering going to be
6 going on without this phenomenon of the ash
7 pond seepage.

8 THE CHAIRMAN: Well, I think I would like to have some
9 briefs with regard to the question of whether
10 we can take into account, or should take into
11 account, this ash pond question in this
12 proceeding, taking into account that a prior
13 Licensing Board has already passed on the
14 general question of the dewatering; in other
15 words, whether it's appropriate for the Board
16 now to consider the ash pond seepage in this
17 proceeding. Is there any problem of briefing
18 on that?

19 MR. VOLLEN: No problem on my part.

20 THE CHAIRMAN: Now, let's talk about a time.

21 When we talked about the brief in the other
22 one Mr. Eichhorn didn't care to supply anything
23 in addition to what he already supplied. Do
24 you care to file something in addition here?

1 I think it might be an appropriate --

2 MR. EICHHORN: On this dewatering question?

3 THE CHAIRMAN: Yes.

4 MR. EICHHORN: Yes.

5 THE CHAIRMAN: How many days would you suggest for a
6 memorandum on this?

7 MR. EICHHORN: Now, I think we're talking about
8 two memorandums, one was on the "beyond the
9 control" issue.

10 THE CHAIRMAN: But you didn't care to delay it,
11 but I would like the same time length for
12 both of them. Are you going to supply one?
13 I have no objection.

14 MR. EICHHORN: I think we'll address the issue if it
15 is still of concern to the Board.

16 THE CHAIRMAN: Now, what time frame would you like for
17 supplying a submission on both of these
18 questions, I assume simultaneous submissions
19 will be appropriate here.

20 MR. VOLLEN: I'm wondering why we have asserted a
21 contention NIPSCO says is not good, why doesn't
22 NIPSCO file a brief saying why it's not
23 good and we'll respond.

24 MR. EICHHORN: I think the Board have identified the

1 specific issues that the parties want to
2 address and it shouldn't be a back and forth
3 type dispute.

4 THE CHAIRMAN: I think it would save time to have
5 simultaneous briefs on this and I would prefer
6 it that way, I think especially on that second
7 question, your allegations might be appropriately
8 brought to the Board's attention, and
9 Mr. Eichhorn, I think his position is more
10 apparent on its face than your position
11 with regards to the second matter, the ash pond.
12 I don't want to get in trouble with saying who
13 should submit, I think simultaneous briefs are
14 really appropriate in the case. Let's decide
15 on the time. Did you come up with a time,
16 Mr. Eichhorn?

17 MR. EICHORN: I guess it depends on when we are to
18 meet to work out other issues and whether there
19 is more things to be briefed as a result of
20 our further discussions this morning.

21 MR. VOLLEN: It may shock the Board, but I agree with
22 Mr. Eichhorn, perhaps it makes sense for us
23 to talk about time schedules after we have a
24

1 whole listing of what things are going to need
2 to be done by the parties after this pre-hearing
3 conference.

4 THE CHAIRMAN: That's fine with me, as long as you don't
5 let me walk out of here without going back
6 to that question of timing.

7 MR. GOLDBERG: Mr. Chairman, might I recommend in
8 that vein, that as a part of this Board's
9 special pre-hearing conference order, and
10 which I understand, it will identify parties
11 that there is to be a hearing on contentions
12 which may be tentatively or otherwise admitted,
13 that it also take the description of any
14 matters in which it would like further briefings
15 or other submissions.

16 THE CHAIRMAN: The problem is I don't want to wait
17 for that, I think when you have identified
18 the issues here that require further briefing
19 you might just as well set the time for
20 that now and you won't have to wait for a
21 special pre-hearing conference order.

22 MR. GOLDBERG: Would it be possible for you to submit
23 some kind of preliminary order? I've written
24 these down as well as I'm able, but I would

1 like to see it in writing.

2 THE CHAIRMAN: You're certainly going to get a copy
3 of the transcript, Mr. Goldberg.

4 MR. GOLDBERG: Okay.

5 THE CHAIRMAN: I just don't want to waste the time
6 between now and the time when the Board issues
7 its dewatering and drafting the response.
8 And by the way, on any of the issues that we
9 identify for briefings, all of the participants
10 here are welcome to submit their memoranda
11 during the same time period whether or not
12 admitted following the pre-hearing conference.

13 We're up to contention number six,
14 in which the Porter County Chapter again raises
15 the question as to whether the reasons given
16 by the applicant or the requested extension
17 of the correct reasons, I think that's already
18 been raised, hasn't it, in prior contention.

19 MR. VOLLEN: Yes, that has, but this contention had
20 an additional element, Mr. Chairman, this
21 contention six asserts reasons for NIPSCO not
22 having gotten it built other than the reasons
23 NIPSCO put in its application, these are two
24 factors which we contend NIPSCO didn't identify

1 these as the reasons. We contend these are
2 reasons why NIPSCO did not get the facility
3 built on time.

4 THE CHAIRMAN: In other words, to questioning reasons
5 NIPSCO gave, you are now affirmatively alleging
6 these are additional reasons, and further
7 these reasons are improper to constitute good
8 cause for replacing extensions, is that
9 correct?

10 MR. EICHHORN: Mr. Chairman, then I would suggest that
11 the Board rule as a matter of law that the
12 two issues raised by Mr. Vollen, if they are
13 correct, which we claim they are not, but
14 even if they are correct, they still constitute
15 recognized reasons for good cause for
16 construction permit **delay**, many many determinations
17 are based on delays for financial reasons and
18 need for power, we have cited all those in
19 our submittal and response to these contentions.
20 The application clearly states that the good
21 majority of the time during which we have been
22 unable to go forward with construction is
23 because of a legal stay, and secondly,
24 because of a Staff review, so we are not sure

1 we say broadly we are able to go forward if
2 we're motivated by other causes. What
3 difference does it make to say if they were
4 legally able to go forward, they wouldn't
5 anyway, that's not really relevant.

6 THE CHAIRMAN: Mr. Vollen.

7 MR. VOLLEN: I think I heard two different kind of
8 things from Mr. Eichhorn. First I think I
9 heard him say that he disagrees with us that
10 these are the reasons, that the reasons really
11 are reasons that NIPSCO could put
12 in its letter of application, and our
13 response to that is that's what a hearing is
14 all about, to determine if we are right,
15 what the reasons are, and if the company is
16 right. The second kind of thing I think I
17 heard Mr. Eichhorn say is that the reasons
18 don't really matter, it doesn't matter why
19 they didn't get it built, they have good
20 cause for an extension. Well, that is a
21 dramatically different position than NIPSCO
22 has ever taken before, it seems to me it's
23 completely inconsistent with 50.55B,
24 it's completely inconsistent with the statute.

1 Heretofore. I don't think there has been a
2 dispute, at least one of relevant considerations
3 in determining whether there is good cause
4 for the extensions to proceed is the reason,
5 yes. They didn't get it built, that's what
6 we want to litigate.

7 THE CHAIRMAN: The two points I understand are that,
8 one, the reasons given in the application
9 were the reasons, and the second point being
10 that even if they weren't and the reasons
11 you have alleged are the reasons there is no
12 legal significance to your allegations,
13 because they are appropriate reasons, also
14 they're proper reasons, and that I think
15 Mr. Eichhorn would like us to dismiss this
16 contention on the legal basis of the second
17 reason, so what if these are the reasons and
18 not the reasons alleged, these are proper
19 reasons too, as a matter of law, and that
20 there really isn't a viable contention, is
21 that correct, Mr. Eichhorn?

22 MR. EICHHORN: That's correct, and I think it's an
23 effort to get into relitigation concerning the
24 need for power, they've been reviewed and not

1 proper in this proceeding.

2 THE CHAIRMAN: A third element here, and that's the
3 one I'm concerned with, is if we allow in
4 a contention that may well be subject to
5 attack on legal basis, suggesting that we
6 don't go any further here, why should we
7 let it in when it may result in a long
8 discovery effort which is going to lead nowhere,
9 but just be time consuming, and I think
10 that's one of the dangers here, and so the
11 question is, shouldn't we resolve the legal
12 issues first and then determine whether we
13 still have a factual issue before us. Do
14 you understand what I'm suggesting?

15 MR. VOLLEN: I think I understand what you're suggesting
16 and my response to it is that, one, is not
17 consistent with the statute or the regulations
18 deal with the question of whether or not
19 NIPSCO has shown good cause by saying, well,
20 if that is the reason, so what, you can't deal
21 with a legal concept in the abstract. The
22 good cause question has to look at the real
23 facts, the totality of the circumstances,
24 and Mr. Eichhorn's suggestion that this

1 allegation, if you will, can be dismissed as
2 legally insufficient simply is not insufficiently
3 legal, insufficient good cause is a totality
4 of circumstances, and in order for this
5 Board to make a sensible, reasonable judgment
6 as to the totality of the circumstances you
7 need to know why the plant wasn't built, and
8 you can't dismiss any reason for it not
9 being built as legally insignificant. I
10 further understand that it may lead to discovery,
11 it may lead to a longer hearing, it's not our
12 intention to lead to a longer hearing, but it
13 is our intention to have before the Board all
14 the relevant information as to why the plant
15 should be built and why it shouldn't, if the
16 consequence is a longer hearing, that seems
17 to me the price of having a legal system.

18 THE CHAIRMAN: But I believe you already raised the
19 question of totality of reasons to the applicant
20 having to request an extension, and if these
21 two affirmative reasons that you allege were
22 actual reasons they would, of course, come in
23 under the other contention, but I think that the
24 suggestion by Mr. Eichhorn that if these are

1 reasons that are determined to be a part of
2 the request for an extension, that they are
3 helpful to the applicant, and that it would
4 only further justify request for extension,
5 and as far as your contention here goes, all
6 you are raising is two reasons, not to
7 question for extension, and after all, we are to
8 resolve it as a legal matter on this contention,
9 am. I'm making myself clear?

10 Mrs. Grabowski:

11 MRS. GRABOWSKI: Did Mr. Eichhorn agree that those
12 are possible reasons for the delay?

13 THE CHAIRMAN: No, no, what Mr. Eichhorn is saying,
14 that a legal proposition, even if those were
15 the reasons, he's not conceding that they are,
16 he's saying that even if they were, they would
17 not be -- they would not go to show that there
18 is not good cause for the extension; in other
19 words, he's saying that even if there is a legal
20 proposition we'll work to accept these
21 contentions as alleged, they would be proper
22 reasons for requesting an extension.

23 MRS. GRABOWSKI: We would say they are not proper reasons
24 and I don't understand why NIPSCO is allowed to

1 give their reasons that the plant was delayed
2 and we are not allowed to present our reasons
3 that the plant was delayed. Do you want to
4 find out why the plant was delayed or not?

5 THE CHAIRMAN: I believe the question now, even if these
6 are the actual reasons, is there any legal
7 justification for denying the requested
8 extension, because the proposition being stated
9 that these are proper reasons.

10 MRS. GRABOWSKI: Are you going to consider them as
11 some other reasons when you consider whether
12 they're proper or not?

13 THE CHAIRMAN: Well, yes, we have to consider whether
14 they're proper reasons, and the question is
15 whether we shouldn't consider that right now
16 as a legal proposition before we get into
17 the question of whether these were the reasons,
18 shouldn't we decide whether these are proper
19 reasons to begin with, and therefore, rule
20 out the contention, not however denying you the
21 right to assert these as reasons for the
22 actual extension under another contention,
23 which questions the totality of the reasons
24 given; in other words, you have already

1 questioned the reasons given by the applicant
2 for the extension, haven't you?

3 MR. VOLLEN: I don't know if Mrs. Grabowski is finished,
4 I think she's doing a better job than I was.

5 THE CHAIRMAN: Do you have something further to say?

6 MRS. GRABOWSKI: No.

7 MR. VOLLEN: I, indeed, in other contentions have
8 questioned why NIPSCO didn't get it built,
9 I suspect, however, that this contention
10 were not allowed and the other contentions
11 were, and I were to interrogate NIPSCO's
12 witness on the question of rate of growth
13 for demand on their system, Mr. Eichhorn would
14 object to that question on the grounds that
15 it was outside the scope of the contentions,
16 that's exactly why I put in the contention,
17 saying that these are the reasons.

18 THE CHAIRMAN: But if we were to rule that these are
19 rproper reasons, I don't think that he would
20 want to interrogate a witness to pin him down
21 on these same reasons, and so the point is
22 shouldn't we all have a determination as to
23 whether these are proper reasons right now?
24

1 I mean would you care to pin the people down
2 and put all your reliance on the fact that these
3 are the reasons when the final results of the
4 Board might say, well, you just made a case
5 for the applicant, you just made proper reasons.

6 MR. VOLLEN: Is Mr. Eichhorn willing to stipulate

7 these are reasons why it wasn't built?

8 Maybe we can go down on the question of whether
9 it's good cause, he says he's not going to,
10 he must, these are not going to help him.

11 One of the problems when you're talking about
12 good cause, you can't parce it as Mr. Eichhorn
13 is suggesting, not when we have a precedent
14 saying you have to look at a good cause in the
15 fatality of circumstances, you have to put
16 together the question of whether need for
17 power, financial ability of the company was one
18 of the factors, the other was whether TMI
19 was one of the factors, together with their
20 inability to figure out the design for the
21 foundation, was one of the factors, and put all
22 those things together to get the totality of
23 circumstances, you can't say that one factor
24 by itself would not be an issue to deny good

1 cause, and therefore, we're not going to look
2 at that one factor.

3 MR. EICHHORN: Mr. Chairman, I think that Mr. Vollen
4 is mistaken in the purpose of this hearing,
5 and let's go back at this, what triggered the
6 whole proceedings, that we are not now involved
7 in is that NIPSCO had asked for a construction
8 permit extension because of its inability to
9 complete the plant by the latest date set
10 forth in construction, the rules of the
11 Commission clearly provide that you must establish
12 good cause, that's the burden of the applicant
13 for the extension, we are then required to
14 establish the causes necessitating the extended
15 period of construction, I think Mr. Vollen's
16 role and that of the other parties is, yes,
17 they can challenge that, does it constitute
18 good cause, that's a decision that has to be
19 made. Mr. Vollen would like to say, well,
20 the reasons that you are putting forward are
21 not the real reasons, if they're not the real
22 reasons, then we're not going to have good
23 cause, I don't think there's any question
24 about that, but under Mr. Vollen's theory

1 he can say, well, one of the reasons that they
2 didn't complete it on time was because their
3 Staff was reviewing Class Nine accidents,
4 therefore, we should take up Class Nine
5 accidents, and you can run this into infinity,
6 and when they have alleged things that they
7 believe are what they call the real reasons,
8 and they're valid, I think it's ridiculous
9 for this Board to accept those and go into
10 an extended hearing on something that wasn't
11 raised by the applicant.

12 THE CHAIRMAN: I think you may have made some
13 concession that I'm not sure the Board is
14 willing to accept, Mr. Eichhorn, I don't
15 know how welcome any guidance from the
16 participants that the Board must deny the
17 application if the reasons suggested aren't
18 all of the actual reasons, but nevertheless,
19 the actual reasons are also proper reasons.

20 MR. EICHHORN: I didn't mean to make that concession.

21 THE CHAIRMAN: And there I think is the crux of what is
22 involved in this contention, as to whether we
23 shouldn't determine whether these are the proper
24 reasons to begin with, unless you're also

1 alleging that they are proper reasons, but
2 nevertheless weren't included in the application,
3 they become improper reasons now, and are you
4 going that far, Mr. Vollen?

5 MR. VOLLEN: I'm saying that we contend these are the
6 reasons and these reasons do not constitute good
7 cause.

8 THE CHAIRMAN: Now, let me ask you further as to what
9 you would expect to offer in the way of
10 evidence. It seems to me as though we are
11 questioning the subjective judgment of the
12 company here and that the evidence might be
13 restricted to what the company actually bases
14 their determination on in not proceeding with
15 construction at a more rapid pace; however,
16 it appears also that there are elements in your
17 contention that suggest that you're going into
18 the objective matters, whether there was a
19 need for power, and notwithstanding that,
20 the company may not have relied on the
21 not being a need for power at that time.
22 You can respond to that.

23 MR. VOLLEN: I think both things are true as to his
24 contention, I think I seek to establish --

1 we would establish what the facts are about
2 the rate of growth and NIPSCO's generating
3 capacity, what the objective facts are, what
4 rate the demand has grown and the objective
5 facts, what impact, what effect those objective
6 facts had on the company's conduct in pursuing
7 construction of the Bailly plant. I think
8 that the reasons why the company didn't build
9 the plant, Mr. Chairman, I'd suggest, have to
10 be considered in good cause, and again, you
11 can't isolate out certain issues and say that
12 one by itself would or would not make good
13 cause. We have before the Board a sworn
14 statement from NIPSCO as to what the reasons
15 were, why they didn't get it built, sworn
16 statement under oath, we contend there are
17 other reasons. Now, aside from what those other
18 reasons were, if the reasons NIPSCO asserted
19 under oath were not, in fact, the reasons,
20 that in and of itself ought to cast some
21 doubt on this Board's mind about whether or
22 not there is good cause for NIPSCO to continue
23 to build this plant, that's part of what I
24 mean when I say you've got to look at the

1 totality of the issues, you can't section out
2 one issue as to why they didn't get it built
3 and say that in and of itself, wouldn't have
4 an impact one way or the other.

5 MR. EICHHORN: A good reason not to consider, obviously,
6 is sheer speculation, there is no basis set
7 forth here that would give rise to the fact
8 that NIPSCO executives made the subjective
9 judgment that they would not go forward with
10 the plant based on some numbers that Mr. Vollen
11 has come up with.

12 THE CHAIRMAN: Okay, I think you understand fully the
13 positions of those two participants. Did the
14 State of Illinois also have similar contention?

15 MS. SEKULER: A couple of the issues raised in this
16 contention are raised in the contention to
17 our ERS contention, but that's in a different
18 contention.

19 THE CHAIRMAN: There's nothing you would like to add
20 to this discussion, then, which relates to your
21 contentions, is that correct, wherever
22 some similar contentions come in, it's in a
23 different context and we'll address it when we
24 get to your --

1 MS. SEKULER: That's right.

2 THE CHAIRMAN: Mr. Goldberg.

3 MR. GOLDBERG: Just say our reasons for opposing this
4 contention are stated in the March 7 filing
5 and we'll rest on that filing. Essentially,
6 I think the Staff is of the position that
7 it's acceptable for principal to contend that
8 the reasons for the failure to complete the
9 plant in a timely manner are other than those
10 assigned in the extension application, however,
11 there is no factual basis in this contention
12 with the supposition that the reasons evolved
13 around need for power and financing and
14 qualification issues, and if he were to litigate
15 the merits of those matters we would be
16 entering an area outside the scope of this
17 proceeding as we briefed it.

18 THE CHAIRMAN: Are you contending, then, that if the
19 reasons given were not the real reasons that
20 that in and of itself requires a denial of the
21 requested extension, notwithstanding that the
22 actual reasons might be proper reasons?

23 MR. GOLDBERG: I think that would be a relevant area of
24 inquiry, I don't know that I would go so far

1 as to necessarily say that that requires denial
2 of the application, I think that the application
3 should primarily be adjudged as against the
4 factors put forward in the application for the
5 need for the extension.

6 MS. SEKULER: Mr. Chairman, I'd like to bring to the
7 attention of the Board that the representative
8 of the Steelworkers 1010, Mr. Frantz and
9 Mr. Olszanski have joined us.

10 MR. FRANTZ: I'd like to apologize for myself and
11 Mr. Olszanski, we were not here yesterday, our
12 local union, Local 1010, has not retained counsel
13 for this particular petition and it was our
14 understanding in reading the contentions that
15 had come to our union that this would be a
16 meeting primarily between yourselves and the
17 lawyers involved and we did not know that our
18 presence were appropriate; however, when we
19 found out last night that it was appropriate,
20 we did this morning make arrangements for our
21 union to excuse us from work so that we could
22 be here to represent the Local. We tend to
23 maintain the contentions that we placed in our
24 filing statement of intervention. I also would

1 like to request the opportunity to file
2 supplemental written statements on whatever
3 issue you determine are relevant to intervention
4 status.

5 THE CHAIRMAN: You know it's a general rule if you
6 miss part of a proceeding you take it the
7 way it is, you don't go back and redo it,
8 that's basically how you have to take it,
9 do you understand that? And while we do
10 assist those who do not have counsel when
11 they're at the proceedings, and with other
12 matters we don't do it, it's generally to the
13 expense of disrupting the proceeding and going
14 back and reviewing matters that we have already
15 completed, just want to point that out to you
16 because of the general proposition not having
17 counsel really is not a great excuse for not
18 being present at the proceedings, it's a good
19 reason for not fully complying with all the
20 rules and regulations, but not to the extent
21 that you can't make a proceeding.

22 MR. HANSELL: It's my understanding from the Commission's
23 previous decisions, that very often the pro se
24 litigants, that special procedures are adopted

1 and it would seek only that the one that's
2 been suggested would make a lot of sense would
3 not allow us on those issues, we feel are
4 important to their status as parties of this
5 proceeding, that they be permitted to file
6 supplemental statements, I don't think that
7 would slow this process down.

8 THE CHAIRMAN: I didn't mean to suggest that I was
9 denying the right to do that. If you have
10 supplemental position to set forth to submit
11 to us we would welcome your submitting those.

12 MR. HANSELL: What might be helpful for you to give
13 them the sort of things you would want to
14 see, such as a statement.

15 THE CHAIRMAN: I believe after lunch we'll attempt to
16 do that, but I'm not going to take the time
17 now to refresh ~~their~~ recollection as to what
18 we're lacking, as far as your participation
19 or non-participation yesterday.

20 MR. OLSZANSKI: If you could just clear up, I might
21 understand that we're accepted as intervenors
22 in this matter?

23 THE CHAIRMAN: We haven't accepted anyone as intervenors.

24 MR. OLSZANSKI: I see.

1 THE CHAIRMAN: I believe we're up to contention seven,
2 in which you question the general competency
3 of the applicant on the basis of the factor
4 that gave rise to a delay in construction,
5 is that a fair characterization of your
6 contention?

7 MR. VOLLEN: At least for openers, I think it's for
8 a general statement for openers.

9 THE CHAIRMAN: Well, now, could the applicant summarize
10 his objection to this particular contention?

11 MR. EICHHORN: Our objections are set forth in our
12 pleadings and they're basically that we feel
13 it's an attempt to relitigate the question of
14 technical competency as opposed to the question
15 of good cause, and the question of competency,
16 of course, was reviewed by the Licensing Board,
17 and if he wants to at this point in time litigate
18 the present technical competency, of course,
19 that had no bearing, could not possibly have
20 any bearing on the delay that was occasioned,
21 as they indicate here before the issuance of
22 the construction permit or shortly thereafter,
23 and in essence what he's seeking here is to
24 relitigate an issue of technical competency

1 which was thoroughly reviewed by the Licensing
2 Board in the construction permit hearing and
3 may not be relitigated. I think probably
4 that the contentions, as far as it might be
5 acceptable on the question of where the
6 review and reports of various documents were --
7 let me strike that -- was the review of the
8 pile foundation properly handled, I think
9 comes in under the other contention of whether
10 these reasons constitutes good cause, but
11 to take this broad contention, we certainly
12 object to that for the reasons I have stated.

13 THE CHAIRMAN: Mr. Vollen.

14 MR. VOLLEN: We are not seeking to litigate the
15 question of whether NIPSCO was technically
16 competent to receive construction permit,
17 what we're saying, that if you look at their
18 conduct since they received the construction
19 permit, if you look at what happened since
20 1974 up to 1979 and present, their conduct
21 and the conduct of the contractors and sub-
22 contractors is of such a nature to demonstrate
23 that good cause does not exist for this
24 company to build a nuclear power plant,

1 because they don't know what they're doing.
2 That's an overstatement, they don't know what
3 they're doing, that kind of puts it in
4 perspective, we're not going back to the
5 question of their technical competency to get
6 a permit. You need to look at what's
7 happened since, what the contractors have
8 done, what the company has done, and those
9 things show that good cause doesn't exist
10 to let this company continue to build this
11 power plant.

12 THE CHAIRMAN: Are you suggesting that you want to go
13 beyond competency on the basis of the reasons
14 given for the requested extension, are there
15 actual reasons for the extension, are you
16 going to open up your areas that are unrelated
17 to the request for extension merely because
18 certain things have occurred in the period
19 beyond 1974, is it your contention?

20 MR. VOLLEN: No.

21 THE CHAIRMAN: You intend only to go into the reasons
22 for the request for an extension as they
23 may reflect on the competency of the applicant,
24 is that basically correct?

1 MR. VOLLEN: The reasons given by NIPSCO for the extension
2 and the actual reasons for the extension for
3 the failure to complete construction, if
4 those reasons are, in fact, different than
5 those given by Mr. Eichhorn.

6 THE CHAIRMAN: You understand what has been suggested
7 here?

8 MR. EICHHORN: No, I think it's very clear that
9 Mr. Vollen intends to put in issue the technical
10 competency of NIPSCO's contractors and
11 architect-engineer to construct a nuclear
12 power plant, I think it's much broader than
13 he's entitled to do, there's no nexus with
14 the question extension in this proceeding
15 and is much broader than this hearing should be.

16 THE CHAIRMAN: Ms. Sekuler.

17 MS. SEKULER: Our contention five deals with similar
18 issues, contention five draws into question
19 the ability of NIPSCO to construct a nuclear
20 power plant based on the reasons that it gave
21 for its failure to complete construction,
22 the applicant's failure to complete construction
23 taken with the fact that causes delay
24 raises question about their technical competency,

1 we do not attempt to relitigate 1974 determination
2 of technical qualification, but that determination,
3 notwithstanding, six years' new developments,
4 including those developments which led to
5 the delay happened to the Board to inquire
6 into the reasons why that delay occurred.
7 Now, Cook, which has been cited as a case which
8 defines good cause, it states on page 420, and
9 I quote, "If for example one or more of the
10 causes assigned for the delay in construction
11 in and of themselves were arguably to cast
12 serious doubt on the ability of applicant to
13 construct a safe facility, could a Licensing
14 Board justifiably blind itself to this fact
15 and nevertheless find good cause for extending
16 the deadline for completion. We think not
17 under any reasonable interpretation of the
18 term. Our contention five seeks to apply
19 that good standing, using the reasons given
20 for the delay as a nexus between our contention
21 and this particular procedure.

22 THE CHAIRMAN: Yes, but I know you went a little further
23 in your statement and you said including
24 matters related to the reasons of the delay,

1 but that you also wanted to go into other
2 significant elements that occurred after 1974
3 which had nothing to do with the delay, is
4 that correct?

5 MS. SEKULER: Not contention five, perhaps other
6 contentions we would say assert, but on
7 contention five we would be looking at the
8 ability of this company and its contractors
9 to technically competently construct a
10 nuclear facility, based on its ability to
11 do so up to this point.

12 THE CHAIRMAN: Mr. Eichhorn.

13 MR. EICHHORN: What I have heard is there is a complete
14 disagreement with the finding of the Licensing
15 Board and we want to relitigate it at this
16 point in time, that is the question of effectual
17 competency, and to construct a nuclear plant,
18 and we certainly don't think that is appropriate,
19 but I think that we will want to relitigate,
20 that's what I'm hearing that we don't relitigate.

21 MRS. GRABOWSKI: We have a contention that raises this
22 question, contention two, but not being lawyers
23 we didn't really know how to say it, other
24 than that we feel that NIPSCO doesn't really

1 know what the heck they're doing so this isn't
2 really wanting to relitigate something,
3 something that was relitigated at the earlier
4 construction hearing. What this is questioning
5 is whether this is really a good cause, they
6 gave the different reasons for a delay and
7 we're questioning whether that is a good cause,
8 whether it's not really a bad cause, it shows
9 they're not competent in some ways, and so
10 the question should be in your mind, that
11 this isn't a good cause, maybe we need a hearing
12 to decide so we can hash it out whether it
13 really is a good cause or whether it's a bad
14 cause.

15 MR. GOLDBERG: I think the Staff's position on Porter
16 County contention seven and State of Illinois
17 contention five is set forth in our separate
18 filing and we will rest on that.

19 THE CHAIRMAN: Anything further with regards to this
20 contention?

21 Contention number eight relates to
22 the use of pilings that do not reach bed rock,
23 and the issue that was brought before the
24 Commission, I believe, in which the Porter

1 County Chapter would like to litigate in
2 this proceeding, if I'm wrong, correct me.

3 MR. VOLLEN: The issue of the short piling proposal
4 that is NIPSCO's proposed change in design
5 and foundation of the plant was itself not
6 before the Commission, what was before the
7 Commission was a request for a hearing on
8 that question. I want to be clear that the
9 Commission did not look at all of the merits
10 of the short piling proposal, they looked
11 only at if the Commission would grant our
12 request for a hearing, and the Commission
13 said no, would neither react to nor did he
14 rule on the merits of the short pilings
15 proposal.

16 THE CHAIRMAN: I'm not sure I understand the distinction,
17 I believe you asked to have a proceeding
18 on the merits and that perhaps the Commission,
19 and in fact the Commission did decide
20 the question on the merits, but indicated that
21 it would not grant the proceeding to hear it
22 on the merits at that point.

23 MR. VOLLEN: Exactly, it would not grant the proceeding,
24 but nothing in the Commission's decision

1 indicates a Commission view or a Commission
2 conclusion that the short pilings are a
3 safe or appropriate way to build the Bailly
4 plant, that's what I want to say.

5 THE CHAIRMAN: As I understand from the discussion
6 yesterday, no one is attempting to let me
7 strike that. The nexus if I understand it
8 between this piling issue and the proceeding
9 here is that this design change is one of the
10 reasons for the requested extension, is that
11 correct, Sir?

12 MR. VOLLEN: That is true, in addition, this is one
13 of those very significant developments that
14 occurred subsequent to May 1, '74, and when
15 a construction permit was issued this was
16 not and could not have been considered in a
17 construction permit proceeding, and we think
18 must be determined by this Board to determine
19 whether good cause exists for the construction
20 of Bailly plant.

21 THE CHAIRMAN: And this fits under the category discussed
22 by Ms. Cohn, significant items that perhaps
23 should be considered, because we have some
24 proceeding that's in between the bifurcated

1 proceedings ordinarily held of the construction
2 permit and the operating license.

3 MR. VOLLEN: Right, and because they are fundamentally
4 significant and go to the question directly
5 of whether good cause exists for the continued
6 construction of this plant.

7 THE CHAIRMAN: Mr. Eichhorn, do you have anything to add
8 to what has already been discussed in both
9 the written and oral discussions?

10 MR. EICHHORN: No, except to mention that the issue before
11 this Board is identical to the issue before
12 the Commission, as to whether or not there
13 should be a hearing on the merits of the pile
14 design, the Commission has ruled on that,
15 that it can abide the operating license review.

16 THE CHAIRMAN: State of Illinois, I believe, also will
17 raise its contentions, is that correct?

18 MS. SEKULER: Yes, part of our contention seven addresses
19 short pilings, and our philosophy view-
20 point is also in agreement with that of
21 Ms. Cohn in terms of the application of the
22 December 12 order of the Board. It seems
23 apparent that when the Board was ruling on
24 that requested authorization of the construction

1 permit it was not anticipated that any hearing
2 would be taking place, and was this in conjunction
3 with a hearing which is being considered, it
4 seems that what we have to show is our basis
5 and our specificity requirement, but not anything
6 else. The hearing is imminent and it's not
7 going to change anything to have this contention
8 included in that hearing, it will change the
9 hearing considerably if the Board does not
10 consider those types of safety questions which
11 were not litigated at the previous construction
12 permit hearing and as the State of Illinois
13 pointed out previously in our scope argument,
14 I don't want to repeat that, but there are
15 regulations where these types of considerations are
16 brought to the Board, and specifically 10.10CR-
17 50.691, which states in determining whether
18 an amendment to license by ACP would be
19 issued to the extent applicable and appropriate,
20 we believe consideration of these questions
21 as the short piling questions are both applicable
22 and appropriate in this proceeding.

23 THE CHAIRMAN: Of course that phrase can be interpreted
24 as referring to the same types of considerations

1 as they apply to the amendment, itself, isn't
2 that a possible interpretation, rather than
3 the same considerations that would be given
4 to the full application in the first instance?

5 MS. SEKULER: Well, I'll specify that we're not trying
6 to relitigate the full application or construction
7 permit but considerations in the amendment
8 should be given the same amount of care in
9 regards to those particular issues that were
10 not litigated the previous -- if I'm making
11 myself clear.

12 THE CHAIRMAN: As they are connected to the request
13 of amendment, though?

14 MS. SEKULER: Yes, that's right.

15 THE CHAIRMAN: And it depends on how you determine the
16 connection as to whether or not that 50.55B
17 applies; in other words, it's possible to take
18 a narrow view of what 50.55B specifically
19 pertains to the amendment and not find that
20 this item should be considered and it's
21 possible to take a much broader view and
22 determine that this item should be considered
23 in connection with the application amendment,
24 I presume what you're talking about again is

1 the scope of this particular proceeding, and
2 if you took the narrow view, that only the
3 narrowest view, that only the reasons given
4 by NIPSCO for the delay constitutes a good
5 cause, yes, that would exclude the short pilings --
6 no, actually it wouldn't, because that
7 list that as one of these, so -- but if we
8 took something else, for instance, in our
9 contention marked to containment problems,
10 that might be excluded. It's by the narrower
11 views we would argue that that would be.
12 I looked in regards to the good cause
13 interpretation to the actual words of the
14 statute as well as to the words of 50.55B,
15 it says in the statute that unless the
16 construction or modification of the facility
17 is completed by completion date that construction
18 permit shall expire and all rights under it
19 are forfeited. That means there has to be
20 something that the Commission finds is good
21 reason for an extension, not just reason why
22 the construction was delayed, that is logical
23 reading of that particular statute. I think
24 as was pointed out yesterday, the regulations

1 include in them an interpretation that could
2 be similar, but the regulation might indeed
3 be narrower and the statute seems to be broader.

4 MR. OLSZANSKI: The Steelworkers also have a contention
5 with respect to short pilings, again, and I
6 don't want to belabor the point that we're
7 not represented by counsel, however, it's
8 hard for us to understand how an issue of
9 this importance could not be looked at or
10 would not be looked at in the broadest
11 sense at this point in terms of deciding
12 whether or not to grant a new permit.
13 Now, certainly, somewhere down the line,
14 whether it was in the hearing that we sought
15 on the short pilings issue, itself, whether
16 it's in this proceeding, or whether it will be
17 in some future proceeding, we certainly feel
18 very strongly that this issue has to be
19 considered, it's not a new contention that we
20 have raised, as such, but it was a new contention
21 that was raised because of NIPSCO's inability
22 to drive pilings to bed rock because of NIPSCO's
23 request for a change in the type of foundation
24 and so forth, and so therefore, the burden is

1 on NIPSCO, I would think, to show us why this
2 should not be reconsidered. This is not some-
3 thing newly brought up to try to delay the
4 proceedings in any way or to try to relitigate
5 anything that was already gone over, this
6 was not gone over before, this was gone over
7 only in the sense that NIPSCO, at the time
8 they applied for a permit said they were going
9 to build on long pilings, now they come and
10 say they can't do that, they're going to build
11 on short pilings. And this would certainly
12 seem to be the time and place for this to
13 be thoroughly aired, but whether or not it
14 is in these proceedings, you will certainly
15 find us again and again seeking to litigate
16 this point until we have some fair hearing on
17 this issue, this is an issue I don't think that
18 can be sidestepped.

19 THE CHAIRMAN: I don't think there's any question that
20 there is going to be a hearing on this issue,
21 and there is a construction permit stage in
22 which the issues are looked at, there is an
23 operating license stage in which issues have
24 not been apparent at the construction permit

1 stage, then gone into, there's an opportunity
2 for hearings on significant questions that
3 arise in between those stages, where at
4 any time under the show cause provision,
5 which was what was utilized to go before the
6 commission in asking for proceedings.

7 Now the question is whether it's going to be
8 considered and whether this is the appropriate
9 place for it, and a proceeding that relates to
10 a request for extension, I don't intend to
11 decide that question here today, but that is
12 what the question is, as to which proceedings,
13 and when and not whether, because it will be
14 looked at and that plays a part in the
15 Commission's determination in request for
16 a show cause proceeding.

17 Does anyone else who has raised this
18 particular issue with regards to change in
19 pilings have anything further to say with
20 regards to this time item?

21 MR. VOLLEN: Just one sentence, Mr. Chairman, if I
22 can, in response to Mr. Eichhorn's reliance
23 upon the December 12th decision of the
24 Commission. For the record, I want to reiterate

1 what I said yesterday that that decision of
2 the Commission could not have been and ought
3 not to be relied upon as a decision of the
4 short pilings question, should not be considered
5 in this hearing to consider the extension,
6 such a hearing such as this was not before
7 the Commission and the Commission could not
8 have addressed it.

9 MR. FRANTZ: I would for the record clarify one point,
10 and I think you made the point quite clearly,
11 it's important to us that this issue be
12 considered now, and I think you pointed to one
13 of the reasons itself, in saying it's possible
14 that this issue might be considered under the
15 licensing provisions at that point in time,
16 it's obvious to everybody here, it has to be
17 obvious, it's certainly obvious to the public
18 in this area, that if we now take a very
19 narrow legal view of these proceedings and
20 exclude that kind of discussion, that kind
21 of testimony, that may very handily take
22 care of the legal issue at this point in time,
23 then we'll be faced with a plant that has
24 already been built, or partially built on

1 short pilings, which cannot be realistically
2 be torn up and started over, which may never
3 get a license, which NIPSCO may invest a
4 considerable amount of funds, which will be
5 raised from the consumer, and we'll all be
6 stuck with a big lemon out on the lakeshore.
7 We have to consider that issue now and it
8 would seem to me, as much as I know about
9 the laws, that in regulation or any law
10 there is certainly, in addition to the letter
11 of the law, there is a spirit to that law,
12 and it seems to me that the spirit of the
13 regulation is that we all have to abide by,
14 and in this case it would certainly be to
15 assure with a maximum amount of certainty
16 the safety of everybody involved, we can't,
17 I don't think, serve that purpose unless we
18 consider that before any other construction
19 goes forward, because NIPSCO will be back
20 certainly saying we have invested so much
21 money and that it now becomes prohibitively
22 expensive to do rework in the foundation, but
23 one thing is certain, once that foundation
24 is laid it would be impractical and I'm

1 sure NIPSCO would be here screaming it would
2 be impractical to do it over, that has to
3 be considered before that foundation gets
4 started.

5 MR. GOLDBERG: Our position on this contention is in
6 our brief, but we do believe that the Commission's
7 decision of December 12 is dispositive with
8 respect to the timing for a potential hearing
9 on the short pilings, and obviously is now
10 considering whether it's appropriate for
11 consideration in this extension, but the only
12 indication for its consideration in this
13 proceeding is its relationship to one of the
14 reasons sustained further under Cook, the
15 only basis to consider in a construction permit
16 extension proceeding, safety or environmental
17 implications, one of the decisions assigned
18 is that it cannot abide hearing at the operating
19 license stage, which the Commission has already
20 determined and is presently on appeal, so while
21 we did not squarely address the question of
22 whether or not it should be litigated in this
23 contemporaneous construction permit proceeding,
24 it did answer the inquiry that Cook would have

1 us look at as to whether or not they could
2 abide the operating license stage and
3 answer that in the affirmative, and without
4 drawing inference either favorably or
5 unfavorably on it. When the Commission rendered
6 its decision in 1979 it was aware of the
7 fact that this matter had been noticed for
8 opportunity to hearing in November of 1979
9 and drawing the inference from it, chose
10 not to make any reference to the proceedings,
11 either as a form for or against considering
12 this matter, but it was aware that this
13 proceeding had been noticed.

14 THE CHAIRMAN: Any further comments on this?

15 MR. ROBBINS: Lake Michigan Federation adopted contention
16 number eight as one of their contentions and
17 in that process I'd like to comment on it,
18 that the public and the law is basically
19 fundamental, which is to take the risk
20 basically that during the five years that have
21 passed so far that we would not find significant
22 information and that beyond that period,
23 beyond that five-year period which they have
24 had November 1, 1979, we've taken on a whole

1 new set of risks, and that this does not
2 comply with the process, this process we're
3 going by today, this process of setting
4 guidelines for the hearing provides opportunity
5 which is entirely different from that hearing
6 which was denied last fall provides a
7 process for sessions of what was done, and
8 in fact, I don't believe the law can conceive
9 that this construction process, the
10 decision made basically about pilings in
11 1974 could conceivably extend the period,
12 we're not asking to extend too, but that was
13 the theory that would look into that decision,
14 but beyond that it seems there ought to be,
15 and in fact, is no law on implied policy,
16 in fact, one cannot lock in those earlier
17 decisions longer than that, that's why those
18 decisions ought to be heard at this point.

19 MRS. GRABOWSKI: We would just like to ask if we could
20 have a copy of the transcript of yesterday's
21 proceedings, we know that NIPSCO has got
22 copies of yesterday's proceedings and I
23 think especially 1010 might like to see
24 that.

1 DOCTOR COLE: I think that would normally be handled
2 for pro se intervenors, there would be a
3 local public document set up, if there isn't
4 one already, where copies of these transcripts
5 and all other documents associated with this
6 proceeding will be placed for use of the public
7 and parties, I don't know where that document
8 room is, but we'll make an effort to find
9 out. Does anyone know?

10 MR. EICHHORN: Chesterton Public Library is the public
11 document room locally.

12 THE CHAIRMAN: Do you know where that is?

13 MRS. GRABOWSKI: Yes.

14 THE CHAIRMAN: That's for your convenience, these are
15 very expensive transcripts.

16 DOCTOR COLE: And copies will be placed in the library.

17 THE CHAIRMAN: I think we ought to recess for lunch
18 before we go on to contention number nine
19 unless there was anything further to be said
20 about contention eight.

21 (WHEREUPON, a lunch recess was taken)

22 THE CHAIRMAN: The conference is reconvened.

23 It has been brought to my attention
24 that Ms. Cohn had a slight accident during

1 recess and got her hand caught in the door and
2 is going to the hospital now, she won't be
3 with us for at least part of the discussion
4 this afternoon, and we'll hold her contentions
5 until the end. We also ought to get out of
6 the way the Steelworkers Local 1010 request
7 as to what supplemental materials are going to
8 be supplied. To my recollection there was a
9 question raised as to the stating of the
10 name of a member and submitting an affidavit of
11 a member who resides in the geographical
12 location who also authorizes the union to
13 represent it in this proceeding, and I think
14 that would resolve the problem with the
15 organizational formalities, is that correct,
16 Mr. Eichhorn?

17 MR. EICHHORN: You say they're going to produce such
18 an affidavit?

19 MR. FRANTZ: We are prepared to produce that.

20 THE CHAIRMAN: You are prepared to produce that?

21 Of course I would like to point out that there
22 is still a challenge to your intervention
23 on the grounds that you haven't raised any
24 aspect that could be considered in this proceeding,

1 but that this will be discussed when we reach
2 your contentions this afternoon. I believe
3 that we had completed the discussion, we got
4 to contention eight.

5 MR. GOLDBERG: Before we proceed to discussion of
6 Porter County contention eight, I believe with
7 respect to the petition of Local 1010 there
8 is an outstanding matter, at least in the
9 judgment of the Staff as to the adequacy
10 of their showing of some interest that will be
11 affected. This is notwithstanding the formal
12 showing that they have an individual who is
13 authorized by the group to intervene and that
14 individual similarly particularizes the manner
15 in which this injury will be affected by having
16 a proceeding.

17 MR. JLSZANSKI: Would you like one name from Local 1010
18 or ten names or one hundred names or one
19 thousand names or ten thousand names from
20 Local 1010?

21 THE CHAIRMAN: The requirement is that you have a
22 member who is residing in the geographical
23 location who authorizes you to represent
24 him with respect to merits raised in the proceeding

1 MR. OLSZANSKI: Whatever is the pleasure of the Commission.

2 THE CHAIRMAN: Now, we had a lengthy discussion

3 yesterday with regards to interest

4 which was not resolved and I don't think that

5 all the intervenors here, in general, that

6 it was any matter that pertained in particular

7 to Local 1010 that didn't also pertain to

8 the other petitioners that wasn't covered,

9 but if I'm wrong about that, could someone

10 refresh my recollection, and I think we just

11 made as full a record as we need to decide

12 that interest question and I don't care to

13 go over that same ground this afternoon.

14 Does anyone have a comment on that?

15 MR. VOLLEN: Yes, my only comment, Mr. Chairman, is

16 I don't want my silence to be viewed as

17 necessarily agreeing with that, because

18 frankly I don't have in mind what the grounds

19 asserted by NIPSCO and the Staff were with

20 respect to Local 1010, so I just really don't

21 want to be in a position of indicating all

22 the issues to their interest and standing

23 that were covered, I don't know whether the

24 Staff has any specific argument about that.

1 MR. HANSELL: I guess my point is somewhat similar,
2 the question being whether there were any
3 particular objections to Local 1010 that were
4 not also to anybody else in the group.

5 THE CHAIRMAN: I think we'll just leave it at that,
6 the transcript will become available in the
7 public reading room, and any further submissions
8 by Local 1010 can be based upon a reading of
9 those transcripts.

10 MR. GOLDBERG: In that regard, Mr. Chairman, a copy
11 of the transcript for yesterday morning is
12 presently being hand carried to the public
13 document for the use of the public.

14 THE CHAIRMAN: Now, I think we can proceed. Am I
15 correct in ~~con~~cluding that we have concluded
16 with contention eight and that we are now
17 going on to Porter County Chapter contention
18 nine, which relates to the Three Mile Island
19 situation and Class Nine accident, which
20 the petitioner would like to bring into this
21 action and could you, Mr. Vollen, again state
22 what you believe the nexus between the Class
23 Nine accident and what happened at the TMI
24 has with regards to the issue before the Board?

1 MR. VOLLEN: Yes, Mr. Chairman, the accident at Three
2 Mile Island was, I think, indisputably
3 a significant event, it was a Class Nine
4 Accident according to the Staff and the
5 Commission. According to Board rulings
6 the Class Nine Accident, its probability and
7 its consequences have never been considered
8 in connection with the Bailly plant, and
9 in event of that significance needs to be
10 considered both from the environmental
11 standpoint and the health and safety standpoint,
12 in determining whether good cause exists
13 to permit the extension of the Bailly
14 construction permit. The Atomic Safety and
15 Licensing Board decision of October 19, 1979,
16 in the matter of Pennsylvania Power and Light
17 Company and Allegheny Electric Cooperative
18 against Susquehanna Steam Electric Station
19 Unit One and Two permit admitted a contention
20 of which our contention nine is a paraphrasing,
21 admits that as a litigable contention,
22 which includes both environmental and safety
23 considerations in that hearing.

24 DOCTOR COLE: What kind of proceeding was that?

1 MR. VOLLEN: I think that was an operating license
2 proceeding.

3 THE CHAIRMAN: Are you contending now that because
4 of the occurrence at Three Mile Island that
5 in every proceeding without a showing of
6 special circumstances, the Board must consider
7 Class Nine Accidents?

8 MR. VOLLEN: No, Sir, I'm contending that in this
9 proceeding, the Bailly proceeding, that a
10 Class Nine Accident needs to be considered
11 here.

12 THE CHAIRMAN: What are these special circumstances
13 that require looking into the possibility of
14 Class Nine Accident?

15 MR. VOLLEN: The fact that such an accident has never
16 before been considered and all of the
17 circumstances that we discussed yesterday,
18 and I can go through the litany of the
19 list again, if you like, Mr. Chairman, but
20 the population density surrounding the Bailly,
21 the status of completion -- let me, perhaps
22 for the sake of convenience of everyone's
23 time, incorporate my reference and response
24 to that question. The statement I made

1 yesterday with regards to the special
2 circumstances surrounding Bailly, I'm not
3 trying to be coy, I think that we discussed
4 enough yesterday, with petitioners' view
5 of what the special circumstances are, and
6 I don't want to belabor the record or take
7 unnecessary time.

8 THE CHAIRMAN: At this stage of the proceeding I don't
9 want anyone to belabor the record. Are you
10 saying that the special circumstances that
11 were alleged or are you on the evacuation
12 issue, also pertains to Class Nine Accident,
13 and that's the nexus between Class Nine
14 Accident and this case, this proceeding?

15 MR. VOLLEN: You state the question in a difficult
16 way for me to answer, because I certainly don't
17 want to appear in any way to be speaking
18 for Ms. Cohn or representing her position
19 or her client's interest. With that caveat,
20 it's the same kind, as far as I'm concerned,
21 the same kind of special considerations that
22 we discussed yesterday, as well as the
23 special circumstances I identified. For
24 example, when I talked about our petition

1 for waiver or exception to 50.55B and I
2 went through a list of special circumstances
3 that pertain to Bailly, I think those special
4 circumstances make it appropriate to consider
5 a Class Nine Accident, its consequences and
6 its probabilities to determine whether good
7 cause exists for the construction of the
8 Bailly plant.

9 THE CHAIRMAN: The State of Illinois, would you like
10 to add anything with regard to what was just
11 now said and what was said yesterday with
12 regards to this general area as it pertains to
13 the contention that you raise with regards
14 to Class Nine Accidents and TMI?

15 MS. SEKULER: Yes, the contention we raised specifically
16 addresses Class Nine Accidents, is contention
17 number four. I'm not reiterating everything
18 that has been said before, I would like a
19 reference to your question about the
20 appropriateness of the Class Nine consideration
21 in this case, going to page sixty-one in the
22 NIPSCO response filed just prior to this
23 proceeding, March 7, the latter paragraph
24 on that page states that it might be possible

1 in relation to our contention to construe
2 the petitioners' contentions as alleging
3 the TMI type Class Nine Accident is not an
4 extremely low possibility at Bailly, and
5 assuming the Board has authority to consider
6 it, such contention may be said to
7 allege a certain circumstance sufficient to
8 trigger a Class Nine Accident analysis
9 and go on to say that we have not established
10 a nexus because of their objections. I believe
11 that we do show some nexus in the contention
12 of our contention three-E, which was previously
13 discussed, about the effects of the
14 dewatering on the site and the ability of
15 the soil to then support the foundations and
16 the ability and the effects on the water table
17 which might change the effects of a core melt,
18 which has been considered as a Class Nine.
19 I think all of these types of changed
20 circumstances which comes about as a result of
21 the proposed extension can provide that nexus
22 that the NIPSCO people feel is lacking.

23 THE CHAIRMAN: Mr. Goldberg.

24 MR. GOLDBERG: I think we'll rest on our pleadings

1 and earlier oral remarks with respect to
2 this issue.

3 MR. EICHHORN: The nexus that the State of Illinois
4 has described with respect to the preceding
5 contention, being their number three, which dealt
6 with dewatering and the core melt business
7 certainly does not even suggest that there is
8 this special circumstance dealing with the
9 probability of Class Nine Accidents, and that's
10 the special circumstances that I believe the
11 Board is referring to, I think basically this
12 is a scope question as opposed to putting forth
13 any particular contention, it's an area that
14 wasn't investigated and it's clearly beyond
15 scope and we fully addressed that yesterday,
16 we have addressed it in our response and I
17 won't further belabor the point here.

18 MR. OLSZANSKI: Just without adding to anything that's
19 been said, I just would like to give the
20 bottom line for our contention on the subject
21 and that is that Class Nine consideration has
22 not been given to the Bailly Nuclear Plant,
23 it's not an issue which is capable of resolution
24 during construction of the plant, and I hope

1 you will keep that in mind.

2 THE CHAIRMAN: Wait, do you have anything more to add
3 with regards to that, please do it now,
4 whichever of your contentions are similar
5 to the one that we're discussing, we'd like
6 to have your comments on it at that time
7 and not have to redo it again later, so if
8 you're satisfied with the record --

9 MR. OLSZANSKI: That's the way it is.

10 THE CHAIRMAN: Okay, fine, thank you.

11 Does anyone want to respond to the
12 last two comments? Are you satisfied,
13 Ms. Sekuler, with the record that's already
14 been made?

15 MS. SEKULER: I think we stated the point of our
16 scope.

17 THE CHAIRMAN: Contention number ten relates to the
18 safety and environmental evaluation that
19 the petitioners request the Staff to make
20 here from Mr. Goldberg as to what the alternatives
21 are that we are faced with, as far as the
22 Staff's actions in this regard.

23 MR. GOLDBERG: The Staff is in the process of evaluating
24 the construction permit extension application

1 and intends to have its evaluation completed
2 in June. We'll consider whether the reasons
3 designed for the delay constitute good cause
4 in the meaning of Section 50.55B, whether
5 the period requested for the extension is
6 reasonable, with the reason given in the
7 supplement to the extension application, and
8 we'll further consider whether there are any
9 monumental safety or environmental impacts
10 beyond those previously evaluated i.; the
11 safety evaluation report and finally,
12 environmental statement where the documents
13 prepared at the time of the construction
14 permit extension which arises as a result of
15 the extended period of construction,
16 that may be permitted if the application is
17 granted.

18 THE CHAIRMAN: Now, what possibilities are there for
19 the Staff to reach with regards to determining
20 whether there is an environmental impact?
21 Let's assume that they determine, the
22 Staff determines there is no safety or
23 environmental impact, what would the Staff
24 have?

1 MR. GOLDBERG: The Staff evaluation will ascertain
2 whether there are any such impacts, if there
3 are, evaluate them, and if there are not,
4 so state that its review indicated that
5 there were none.

6 THE CHAIRMAN: Now, if it determines that there are,
7 it then can issue a like statement?

8 MR. GOLDBERG: Let me be clear, I'm deliberately
9 referring this to Staff evaluation, I
10 don't conceive that these will be separate.
11 There will be an evaluation, if that
12 evaluation on the environmental side leads
13 us to believe that the incremental
14 environmental effects are significant, we
15 are required by law to prepare a statement.
16 I should caution over that, we have no
17 present information to suggest that that's the
18 case, if that's true, then we will issue
19 the evaluation that would effectively constitute
20 environmental appraisal, which we will issue,
21 in that event, another declaration.

22 THE CHAIRMAN: What do you see as the authority
23 with regards to raising environmental issues
24 if the Staff, first of all, doesn't determine

1 there is any or determines that there is no
2 environmental impact?

3 MR. GOLDBERG: Well, this evaluation, of course,
4 will be the Staff's direct case, should this
5 proceeding result in a hearing, at that time
6 many of the matters contained in that
7 evaluation, basing the conclusions reached
8 therein are subject to scrutiny by the
9 litigants and the Board, if it determines
10 that the Staff conclusion that there is
11 no significant impact requiring preparation
12 of the statement is incorrect, then it
13 could instruct the Staff to prepare a statement,
14 but that is something that we feel has to
15 await the development of the record, but up
16 until the time our evaluation is prepared
17 we feel that that is a matter that is within
18 the province of the Staff and not the Board
19 at this juncture, for the reasons that we
20 have explained in our pleading addressing
21 this contention.

22 THE CHAIRMAN: Mr. Vollen.

23 MR. VOLLEN: I think I'm sufficiently surprised by
24 what Mr. Goldberg has said, that I'd like to

1 ask the Board for a very brief recess so
2 you can consider it and confer with counsel
3 for some of the other petitioners, five
4 minutes recess.

5 THE CHAIRMAN: By the way, Mr. Goldberg, if the Staff
6 determines that there is no safety or
7 environmental impact and makes that evaluation,
8 that evaluation will be in writing, won't it?

9 MR. GOLDBERG: Certainly that will be part of the
10 evaluation what I estimate now we will issue
11 in June.

12 MR. VOLLEN: The reason I ask for recess to consider
13 the implications of what Mr. Goldberg said,
14 it had never before, to my knowledge, been
15 clearly stated where the Staff stood with
16 respect to NIPSCO's request for construction
17 permit amendment, it's now clearly stated
18 where the Staff stands, ~~that~~ the Staff doesn't
19 know yet where the Staff stands. Mr. Goldberg
20 said the Staff is going to do an evaluation
21 which will consider whether good cause has
22 been shown in its view, whether the period
23 so sought for extension by NIPSCO is reasonable
24 and whether there are safety or environmental

1 impacts of that extension, all very well and
2 good, I think that's what the Staff ought to
3 do, but it seems to me that for us, the
4 participants here and the Board to be involved
5 in the exercise we are now involved in to
6 determine what contentions are to be litigated
7 when the Staff hasn't yet made up its mind
8 whether it's in favor or opposed to the
9 extension permit amendment, the Staff thinks
10 it ought to deny, or the permit puts us in
11 a very strange situation, puts me where much
12 of what we are doing is futile, much of what
13 we're doing might be just wasteful, because
14 the Staff might decide that good cause has
15 been shown. Well, obviously, that's going to
16 make a very different ball game in terms of
17 NIPSCO's position, in terms of intervenor
18 position, we don't know whether the Staff is
19 going to line up on the side of intervenor or
20 on the side of the applicant, we don't know
21 what the contentions are, because there hasn't
22 been a safety evaluation, it hasn't been
23 determined whether one is necessary by the Staff.
24 It seems to me we're in very much of a situation

1 that probably happens or at least used to
2 happen in both CP and plant license hearings
3 where there's a push to go to hearing before
4 the Staff has done its environmental impact
5 statement. On this context, in particular, it
6 just seems to me we have put the cart far
7 ahead of the horse.

8 THE CHAIRMAN: I don't see any problems, my recollection
9 is that the Staff position has got to be ruled
10 out as an issue, any of the issues it hasn't
11 taken a position on, and I don;t see that the
12 fact that it may be in an adversary position
13 or it may not be in an adversary position
14 should affect the legitimacy of the issue,
15 am I mis-stating anything?

16 MR. GOLDBERG: No, Mr. Chairman, in fact it's quite
17 customary that the Staff's evaluation of any
18 particular licensing action is normally done
19 concurrent with the pre-hearing phase of
20 any given hearing, if there is any information
21 in the evaluation it could serve to provide a
22 basis for contentions not presently put forward
23 for litigation, any party to any eventual
24 hearing is free to try to introduce such an

1 issue to further perhaps provide some measure
2 of direction and to see that the resources
3 that are applied, if there is going to be
4 a hearing, that ~~at the~~ pre-hearing stages a
5 well spent Staff would recommend that any
6 discovery that any of the would-be litigants
7 might have on the Staff might wait the
8 issuance of that evaluation so that they
9 might be more closely directed to the findings
10 and conclusions that the Staff reaches
11 rather than to operate in ignorance of what
12 the Staff position will be, I must say that
13 I'm somewhat surprised at Mr. Vollen's
14 surprise that this is somehow an atypical
15 situation.

16 MR. VOLLEN: I suggest we not discuss about who's
17 surprised about who's more surprised any
18 more, Mr. Goldberg's last suggestion seems to
19 me underscores my point. What he said was
20 that we ought to be ahead with this litigation
21 process, but that we ought to take a whole
22 area of it, namely the Staff, and carve it out
23 and sort of put it on the side. I suggest
24 that that illustrates the -- maybe absurdity

1 is too strong of a word -- but the inefficiency,
2 the impropriety of proceeding when you have
3 this whole major area that might obviate
4 a great deal of what we put in the rest of
5 the area. For example, Mr. Goldberg talks
6 about discovery, let's assume hypothetically
7 that we want to take some discovery of
8 NIPSCO on a particular issue, we depose a
9 witness, then the Staff comes up with its
10 evaluation and says something about that issue
11 about which we're seeking discovery from
12 that NIPSCO witness, that affects the same
13 subject matter, we've got to go back and duplicate
14 at least in part that whole area of discovery.
15 What we're saying is we don't have the
16 universe in front of us, we don't know what
17 position the Staff has, and while it's true
18 the Staff is a party I think it's silly for
19 us to think the Staff is any kind of party
20 in a proceeding like this. On questions and
21 environmental impact or safety impacts it seems
22 like we're proceeding without really
23 knowing what we're talking about
24 or at least with a major component

1 missing, it might very well be that the Staff
2 evaluation would obviate some of the things
3 that we would otherwise want to litigate.
4 On the other hand, the Staff position might
5 well equate additional things we want to
6 litigate, but we're playing the game with half
7 a deck and we ought to have a whole deck before
8 we start.

9 THE CHAIRMAN: I'm not sure I agree we're playing any
10 game, we do have an adversary position here,
11 you and the applicant and your discovery I
12 would expect would be directed towards developing
13 your adversary position and it might be
14 helpful to you if subsequently the Staff
15 lines up on your side, but I don't see how
16 it would hinder you at this point to conduct
17 your discovery for the purpose of building
18 your case up against your adversary, the
19 applicant, and again, that apparently is the
20 usual procedure here. We're not here to
21 change any of the procedures, especially a
22 change that would prolong the proceedings,
23 I mean there has to be compromises as with
24 regards to all aspects of the proceedings,

1 making it efficient, expedient and also having
2 a fair proceeding. Now, I don't know that
3 anything that's been suggested in here suggests
4 that the proceeding is unfair because the Staff
5 hasn't yet made its determination as to which
6 side it's going to line up on.

7 MR. OLSZANSKI: Mr. Chairman, we suggest that it's unfair,
8 the Staff is not putting its cards on the
9 table, I think it's clear that all of the
10 petitioners here have hidden nothing, have
11 put all our cards on the table, in terms
12 of our contentions, anything further that's
13 developed I'm sure will be developed honestly
14 as a result of hearing testimony from both
15 sides or events that may happen between now
16 and then. I do think it's unfair, I think if
17 we're going to be in an adversary position we
18 sure want to know who our adversaries are.
19 Until this point we have certain mixed feelings
20 about the Staff, for them to withhold this
21 kind of information, whether or not they have
22 it, if they don't have it, let's wait until
23 they get it, if they do have it they ought to
24 be able to present it now just like the rest

1 of us.

2 THE CHAIRMAN: Your position isn't one in which you're
3 trying to prevent the Staff from doing something,
4 you're an adversary in this case, as the
5 applicant here, and it may be that the Staff
6 will wind up on your side or on the applicant's
7 side, depending on its evaluation, but I
8 don't see that it's an adversary of yours
9 that isn't putting its cards on the table,
10 and I think what you're asking is that we
11 make a new policy here and just sit on our
12 hands until June. Now, if there's some
13 basis and precedent you're saying that we
14 should take a position like that. maybe
15 you ought to tell us about that, but in the
16 absence of that we'll just proceed in the
17 normal fashion.

18 MS. SEKULER: Mr. Chairman, I'm contending that we
19 don't have a position, the State of Illinois
20 and the NRC Staff, on the basis of contentions
21 we have raised, particularly one and eight,
22 contention one states that the environmental
23 impact statement should be prepared on the
24 basis of our assertion that the granting of

1 the construction permit extension would be
2 a major Federal action which would affect the
3 quality of the environment, and first of all,
4 I'm somewhat dismayed to hear that the Staff
5 is doing an evaluation of sorts, but they're
6 not quite sure what kind, and it will be sort
7 of a merged evaluation, which is not what
8 will be required by the law either, by the
9 10551C1, which demands that environmental
10 appraisal, specifically is made, and make
11 a declaration, has to be issued, given reasons
12 why an issue would not be made or July, '79
13 guidelines, that no significant impact would
14 be issued. I think we have to have a distinct
15 environmental appraisal, either with a negative
16 direct language or statement following it,
17 this is one of our assertions. In the response
18 to our supplemental petition they stated that
19 our statement is inadmissible. Well, how can
20 you rule on whether or not it's inadmissible
21 when we don't know what is going to be done by
22 the Staff at this time, whether it will become
23 moot or whether ~~it will not~~, I don't know, I would
24 say if it's not done then we might have to come

1 back, so in that sense we do have an adversary
2 situation here.

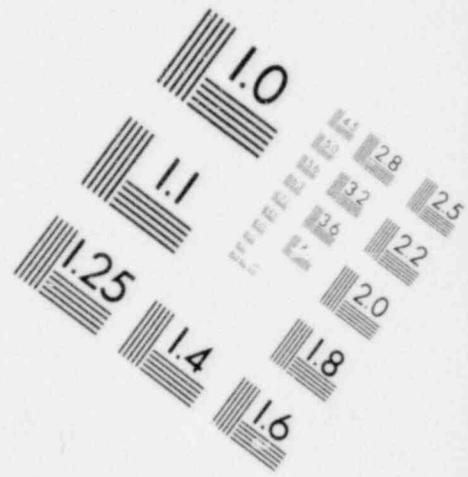
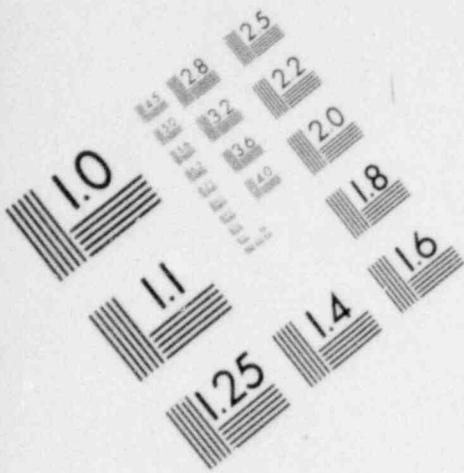
3 THE CHAIRMAN: Mr. Goldberg, do you understand the
4 comments?

5 MR. GOLDBERG: I understand the comments, but it
6 really doesn't alter anything. I said it's
7 quite customary for the Staff evaluation to
8 proceed during the pre-hearing stages
9 of a particular proceeding, it is then free
10 for any litigant in that proceeding to take
11 issue with the substance of the Staff's
12 evaluation, and contentions are raised by
13 a petitioner when presumably there is some
14 basis in fact or otherwise to seek the
15 introduction of that issue, certainly it could
16 not be on the basis of some as yet unforeseen
17 Staff position. There must be some present
18 basis to seek to introduce that issue, that
19 is in no way dependent upon what position the
20 Staff ought to take on the merits of a
21 particular application with respect to the
22 contention of the State of Illinois. He indicated
23 there was no factual basis to suggest the grant
24 of an extension of period of time for construction

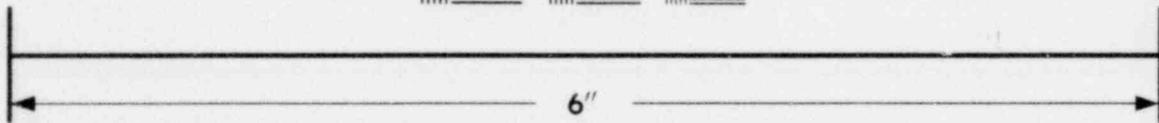
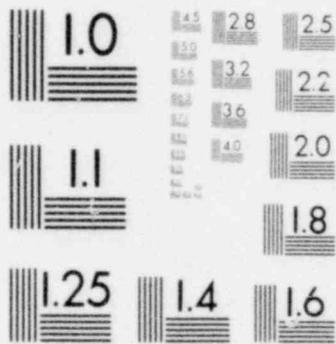
1 leading to significant environment impacts
2 beyond those previously evaluated in full
3 environmental impact situation. I want to
4 caution the Staff on the way it reaches
5 that conclusion. It's obliged under law to
6 prepare that statement with respect to some of
7 the other comments made by counsel for the
8 State of Illinois. We intend quite obviously
9 to observe anything with requirements, as I
10 indicated before, if our evaluation demonstrates
11 the absence of a significant environmental
12 impact we'll issue a negative declaration,
13 it is then for the Board, assuming there is
14 a then negative adjudication, to decide whether
15 it will affirm that decision, and it is this
16 Board's responsibility to decide whether or
17 not a decision will be granted.

18 MR. VOLLEN: I'd like to respond just briefly to what
19 I understand your concerns to be. Number one,
20 the precedent point and number two the efficiency
21 point. I suggest to you that timing in this
22 proceeding is unprecedented, I'm unaware of any
23 good cause for extension of the latest
24 completion date litigated, proceedings haven't

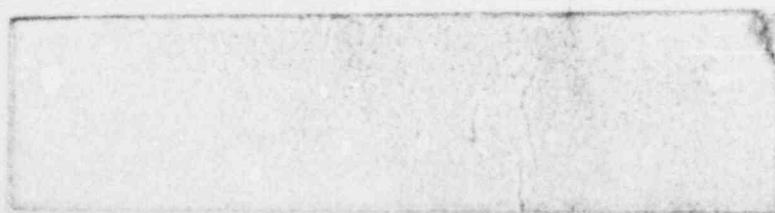
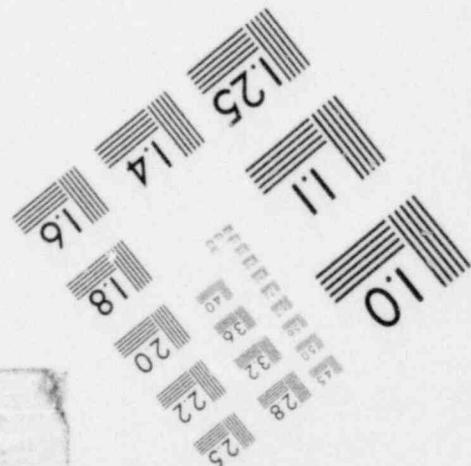
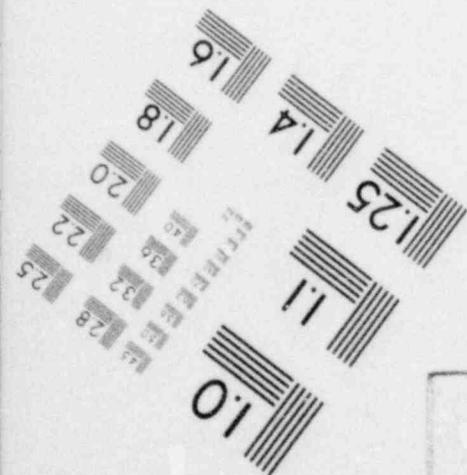
1 been held particularly in the context we now
2 know about Cook, but that was obviously a
3 quite different situation, so in a sense the
4 guidelines that are used in construction
5 permit proceedings or an operating licensing
6 proceedings really don't fit very well,
7 and what makes that point so perfectly clear,
8 it seems to me is the fact that the Staff is
9 not following its standard procedures,
10 because in every construction permit proceeding
11 and every operating procedure I believe the
12 Staff submitted an environmental statement
13 in this proceeding. Mr. Goldberg has been at
14 pains to make clear the Staff is doing a
15 Staff evaluation, he's not doing a safety
16 evaluation and environmental impact statement,
17 so the point is we're really in an unprecedented
18 situation, but what normally goes on in NRC
19 proceedings or other proceedings do not
20 apply. I beg you that we need the balance to
21 give everybody time to give their position
22 and do it in an efficient way. I respectfully
23 suggest that the most efficient way to proceed
24 is to deal with contentions, to schedule



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



MICROCOPY RESOLUTION TEST CHART



1 discovery, to hold hearings, to hold hearings
2 to limit scope and conduct and conduct the
3 matters after we know what everybody's position
4 is. I think we would be kidding ourselves if
5 we didn't all recognize if the Staff after
6 that evaluation would conclude that good cause
7 had not been shown that it would be a very
8 different proceeding and very different kind
9 of hearing, that if the Staff shows that
10 good cause has been shown and indeed without
11 knowing what bottom line the Staff reached,
12 what it's going to say in its evaluation, its
13 view of the safety issues, its view of the
14 reasons for not finding good cause or finding
15 good cause, or for reasons in this description
16 have to shape the interest of the parties,
17 have to shape the kind of things that would
18 be contended, so I think with all due respect,
19 Mr. Chairman, the most efficient way to
20 proceed, the most orderly way to proceed is
21 not to do a whole lot of discovery, a whole
22 lot of contention arguing before we know what
23 the position of the Regulatory Staff is.
24 Once we know what that is, it can change a lot

1 of things, and I think change a whole lot
2 of arguing about contentions, a whole lot
3 of hassling about discovery, I therefore move,
4 the Porter County Chapter petitioners move
5 that the proceedings be continued until after
6 the Staff produces the evaluation that
7 Mr. Goldberg has described he's going to do
8 and we then deal with that after it's
9 available and the punitive parties have had
10 an opportunity to act on that.

11 MS. SEKULER: The State of Illinois will join in that.

12 THE CHAIRMAN: I'll deny that motion. And Mr. Goldberg,
13 would you like to respond to the first point,
14 as to whether or not this is an unusual
15 proceeding here with regards to when
16 the safety and environmental evaluation is
17 made.

18 MR. GOLDBERG: The only thing unusual about that
19 proceeding is that it has the prospect
20 of being only the second construction permit
21 extension proceeding that was ever the subject
22 of adjudication, the Staff practice conducting
23 an evaluation during a pre-hearing stages
24 of any licensing action is commonplace.

1 MR. EICHHORN: Mr. Chairman, may I make a couple comments?

2 I've been very patient here listening to
3 Mr. Vollen and Mr. Goldberg and others, I just
4 want to get our position on the record that
5 we certainly concur with the observations of
6 the Board, that this is the usual process,
7 that the Staff evaluation does take place in
8 the early stages of any licensing proceeding
9 and we certainly don't object to it, I would
10 like to at this time urge the Staff to make
11 every effort to beat the June date that was
12 expressed for completion of evaluation, I
13 think that would certainly aid in reaching
14 a speedy resolution of the matter that's
15 before the Board.

16 At this time I do want to state that
17 we concur that the procedure that is being
18 followed up to this point is not unusual
19 and doesn't seem to be any reason for it
20 to be changed.

21 DOCTOR COLE: There's one thing I think I should
22 mention for certain of our pro se intervenors,
23 normally, and I think it will be the situation
24

1 in this case, assuming we go to an evidentiary
2 hearing, we'll not proceed prior to the time
3 that the Staff documentation is complete.
4 The Staff position will be known to you
5 before we go to the evidentiary hearing and
6 the regulations provide that you could
7 modify your pleadings on the basis of new
8 found information so that you will know
9 what the Staff's position is and you will be
10 able to, with good cause shown, new
11 documentation, Staff documentation, modify
12 your pleading accordingly, so I think you
13 should be aware of that.

14 MS. SEKULER: Mr. Chairman, I just want to make a
15 comment with respect to Mr. Eichhorn:
16 The State of Illinois certainly has no interest
17 in delaying this proceeding. It has been
18 stated by Mr. Vollen to do this in the most
19 efficient way possible, but we cannot proceed
20 before we do get evaluations of the Staff,
21 yet I would not hasten, though, evaluation to
22 the point of trying to rush the hearing.
23 I would urge them to do the most thorough
24 evaluation possible, even if it takes us past due.

1 THE CHAIRMAN: Mr. Goldberg.

2 MR. GOLDBERG: The June date is our best estimate now.

3 We, of course, will undertake every effort
4 to do it in a more timely fashion if that
5 can be done consistent with our responsibilities.

6 THE CHAIRMAN: I do want to note for the record that
7 Ms. Cohn has rejoined us.

8 Is there anything further to be said
9 with regard to contention number ten of
10 Porter County Chapter?

11 MR. VOLLEN: I think that what I would pose with
12 respect to that contention is that it can
13 be deferred, we're asking the Board to direct
14 us to have to do something, Mr. Goldberg
15 has said the Staff is going to do something
16 voluntarily, we don't care whether the Staff
17 does it voluntarily or does it under compunction
18 of a Board order. I suggest, therefore, that
19 this contention be deferred until the Staff
20 does whatever it is going to do and then if
21 we think that it has not done what is
22 required of them, then come to the Board and
23 ask the Board to do more.

24 THE CHAIRMAN: I understand that Mr. Goldberg has

1 indicated that would be the procedure that
2 would be followed and if there are matters
3 that you are unsatisfied about with regards
4 to the Staff review you can bring that up after
5 the Staff evaluation has been presented,
6 and that also any issues that are raised as
7 part of the Staff review, any issues that
8 become apparent can be changed after the Staff
9 evaluation is received.

10 MR. VOLLEN: That would include, I take it, Mr. Chairman,
11 if the Staff would do its evaluation and
12 conclude that an environmental impact statement 1022C
13 is not required in view of the facts and
14 circumstances, we would then be in a position
15 to argue our differences with that, would be
16 in a position for the Board to order the Staff
17 to do an environmental impact statement.

18 DOCTOR COLE: When you say 1022-C statement dictated
19 by the Environmental Act, Policy Act --

20 MR. VOLLEN: Yes.

21 DOCTOR COLE: Rather than environmental assessment
22 made by the Staff for their own purposes.

23 THE CHAIRMAN: One of the possibilities that
24 Mr. Goldberg has not addressed is that under

1 the facts of this proceeding, it requires that
2 it do draft an environmental impact statement
3 or a supplement to the existing environmental
4 impact statement, if it does. If on the other
5 hand the Staff says we don't think it requires
6 that, then we would want to be in a position
7 to argue to the Board the Staff conclusion that
8 that is wrong and the Board will order it to
9 do an environmental impact statement.

10 If I understand now, you are no longer
11 requesting that we order the Staff to do
12 anything at this point, but when the Staff
13 does perform its task you will then, if you are
14 dissatisfied with that, the Board order the
15 Staff to perform something in addition to what
16 it has already done and that we are now for
17 the moment putting this to rest to perhaps
18 be reraised at a later point, and that you are
19 reserving your right to raise it at the
20 appropriate time, is that correct?

21 MR. VOLLEN: Yes, so long as the Board is granting me
22 that reservation which I am seeking.

23 THE CHAIRMAN: Is the position of the State of
24 Illinois in regards to this the same?

1 MS. SEKULER: Yes, this would be in regards to our
2 contention one on the ERS date, on the SCE,
3 with the requirement that we would raise
4 questions.

5 THE CHAIRMAN: We can now move on to contention eleven,
6 which seems to me to be a kind of argument
7 that's eventually raised, or arguments that
8 are raised in final briefings review, but
9 would you like to state and summarize basically
10 what your contention is?

11 MR. VOLLEN: I was looking anxious, not just for that
12 reason, but before you review the contention
13 I want to correct an unfortunate but significant
14 typographical error in the contention, on
15 page eighteen of our document, which just
16 for the record is joint intervenors first
17 supplement to the petition to intervene,
18 thirteen lines from the top the word "never"
19 should appear at the end of that line.

20 THE CHAIRMAN: Thank you.

21 Mr. Goldberg, would you like to summarize
22 the Staff's objections to contention eleven?

23 MR. GOLDBERG: I stated in our March 7th response
24 to supplemental petition content¹on eleven

1 seeks to introduce three broad categories of
2 matters which are alleged, must be considered
3 in considering whether or not they have
4 shown good cause for its request of extension,
5 I'll recite what those three categories are,
6 our position was that there had not been an
7 adequate explanation, precisely what relevant
8 significance should attach to the category
9 8, category B have been made in the applicant's
10 50.55B, and with respect to the third category,
11 which I'll read, significant documents relevant
12 to public health and safety and to environmental
13 considerations, since the construction permit
14 was issued among the matters that must be
15 considered, he indicated that consideration
16 of public health and safety matters fell outside
17 the scope of a proceeding as defined by 50.55B,
18 and the interpretative decision of the Appeal
19 Courts in Cook, and was clear from the regulatory
20 process that the Commission did not intend that
21 a construction permit extension proceedings
22 provide the occasion to consider every development
23 which had arisen since issuance of a construction
24 permit, further made the recommendation that if

1 it was believed by petitioners or otherwise
2 an unsafe or environmentally harmful action
3 or practice will occur prior to the license
4 application. At this time these issues would
5 be appropriate for consideration, their
6 remedy would be to seek appropriate Commission
7 action under section 2.206 of the Commission's
8 regulations.

9 THE CHAIRMAN: Let me just indicate what my understanding
10 is of where we are with regards to my reading
11 of item A, indicates that it's a legal
12 position set forth by the intervenor, which
13 doesn't require any further factual development,
14 and it's some argument in guiding the Board
15 as to its determination in this case and that
16 there really isn't any reason why I have to
17 get into the parties with respective contentions
18 at this point with regards to point A. With
19 regards to point B, the Staff agrees that
20 this is completely within the scope of 50.55B
21 and there's no question with regards to
22 item B, but on whether item B is the exclusive
23 item that must be considered under 50.55B,
24 but that is item C, which is subject to a

1 wide difference of opinion and that this
2 difference of opinion is with regards to
3 whether the Board should take into account
4 in this proceeding all significant developments
5 that have occurred after September 1, 1974,
6 an item that was discussed at length
7 yesterday, and that perhaps it would not be
8 profitable to go into that discussion again
9 today. Would you like to comment on that
10 summary, Mr. Vollen?

11 MR. VOLLEN: I think that's exactly accurate, Mr. Chairman,
12 with one proviso, what part C of this
13 contention does that the argument yesterday
14 did not do ~~was~~ to bring in the specifics or
15 some additional specifics of the significant
16 matters that we think should be considered in
17 a good cause, but with that proviso I think
18 that your characterization of the structure
19 of the contention and the legal issues
20 which it poses is correct. I said there
21 might be two provisos, your observation
22 there was no factual dispute by paragraph A,
23 I think that's true, but in reading NIPSCO's
24 letter I'm not sure that NIPSCO has said

1 that it's been one hundred percent completed.
2 If in truth that there is no dispute about
3 that status of construction, then I agree
4 with what you said about paragraph A.

5 THE CHAIRMAN: Does the applicant take any position
6 to that?

7 MR. EICHHORN: Are you referring to the one percent?

8 THE CHAIRMAN: Yes.

9 MR. EICHHORN: No, I don't know that there is any
10 need to, I don't know that it's relevant.

11 THE CHAIRMAN: It's a matter that the Board will have
12 to address.

13 MR. VOLLEN: Is Mr. Eichhorn saying that NIPSCO
14 has not taken the position on the status of
15 completion?

16 THE CHAIRMAN: At this record, because it's the
17 applicant's position that it is irrelevant,
18 and so that is the question that the Board
19 will have to address in passing on contentions,
20 as to whether it is or isn't relevant. If
21 it's not relevant, then of course, we would
22 have some objection to the contention.

23 MR. VOLLEN: But, say, if the Board determines that it
24 is relevant, then we do have a factual issue

1 to inquire into?

2 THE CHAIRMAN: Yes, which may or may not be resolved,
3 but it would be a factual dispute. Does the
4 State of Illinois care to comment on this
5 and indicate whether there is a parallel
6 legal contention in its contentions that were
7 covered by the discussions?

8 MS. SEKULER: Contention seven-C and D would fall into
9 the categories of new developments that should
10 be assessed in the area of safety, which
11 since have occurred, since the time of the
12 construction permit was granted. Some of
13 the same arguments were made previously in
14 regards to our position, regulations would
15 apply here. I would reiterate again what was
16 said by us yesterday about the Commission's
17 need to find reasonable assurance under Section
18 50.55B that safety would be found before the
19 date of completion, and in this context such
20 things as the Mark Two Containment, which is
21 considered an unresolved safety question
22 should be looked into as part of good cause
23 determination with an assessment made as to
24 whether or not this problem can be resolved

1 by the completion date now stated as 1987.

2 THE CHAIRMAN: I believe the bulk of the Steelworkers
3 Local 1010's petition relates to considering
4 these health and safety problems that have
5 arisen since the September 1, 1974 date and
6 I wonder if you would like to make your
7 comments as to why the Board should consider
8 these items.

9 MR. FRANTZ: Well, the contentions specific that
10 are shown in contention is to the issue of
11 time period that is the changes that have
12 occurred, of course, we do concur in the
13 contentions of the intervenors that good
14 cause has not been shown, this is due to
15 the position of the Steelworkers Union that
16 the nuclear power is a changing technology
17 and position that the Federal Government
18 has recognized in allowing the development of
19 nuclear power, if there are any questions
20 such as waste disposal as yet unsolved,
21 because it's assumed there were changes
22 occurring in the process of researching new
23 technology which has not yet been developed
24 to any kind of full knowledge. It is our view

1 that the intention of lawmakers in giving a
2 specific period of time for a construction permit
3 was precisely that it was not an unlimited
4 permission to build a plant, but permission
5 for specific period of time, so that it would
6 be possible to look after a period of time
7 and see if the plant shouldn't be completed
8 and if it was still a good idea to continue
9 the plant. If it's not, I fail to understand
10 the specific reasons for putting a limitation
11 like this in, although, I think it would
12 still be necessary under law for NIPSCO
13 to show good cause, but I believe it's
14 obvious that the law, itself, intends that
15 it should be considered at the end of a
16 certain period of time whether or not it
17 should be completed, and it's very clear
18 that it could not be considered in the
19 totality of events in that period. It
20 does not ever question that everything that
21 has happened since then would be considered
22 in a hearing of this sort, but the totality
23 of events insofar as they weigh upon the
24 question of Nuclear Energy Commission
giving permission to the unit to continue

1 the construction, all these events would have
2 to be considered. So the contentions that are
3 raised by our union make it very clear that
4 we think that not only ourselves, but the
5 public, which I think there is no question
6 about, but also the lawmakers themselves
7 contend that there would be in the question of
8 renewing a construction program a consideration
9 of what had happened in the interim in the
10 development of technology, itself, not a
11 technological review, but insofar as that
12 relates to questions at that plant.

13 MR. OLSZANSKI: I just want to sum up our position
14 somewhat, especially since we weren't here
15 yesterday. I want to make one thing very
16 clear in speaking for Local 1010 and also for
17 District 31 of the Steelworkers, I realize
18 they're not petitions at this point of time,
19 but who have also at their past two previous
20 conferences unanimously voiced opposition to
21 the Bally Nuclear Plant, that while it's
22 true that the Steelworkers Union now, within
23 the last year or so, in that district, has
24 recently expressed its opposition to nuclear

1 power generally, it has been since 1976 the
2 position of our Local that whether or not you
3 feel that nuclear power is a good idea, that
4 the Bailly site is the worse possible site
5 in the country that we know of for a nuclear
6 power plant. That is based on research that
7 we have done, the findings that we have been
8 able to arrive at over a period of time and
9 it's based on, most importantly, I think,
10 the considerations for Local 1010's
11 approximately nineteen thousand members and
12 District 31, which represents the entire
13 area, approximately twenty thousand members,
14 those members have expressed on numerous
15 occasions the very strong opposition to the
16 building of the Bailly Nuclear Power Plant.
17 We have attempted to point out the good and
18 legal reasons why you ought to deny an
19 extension of the permit at this point in
20 time, we'll continue to do that when we take
21 our other legal actions necessary and
22 whatever other political actions necessary
23 to see to it that this plant is never built
24 and that there is no further construction being

1 done.

2 THE CHAIRMAN: I think we've gotten your position in
3 general with regards to the matters that you
4 have placed in your petition. Is there any
5 individual item that you think we ought to
6 treat differently than the rest, as far as
7 you placed in your petition that would not
8 fall under the general statements you have
9 made as to why we ought to consider these
10 items. In other words, I want to give you a
11 chance now if there is anything.

12 MR. OLSZANSKI: Do you mean by that in what way do
13 our contentions differ, in what way to
14 prior differences, from those that have already
15 been raised, no.

16 THE CHAIRMAN: What I'm saying is I just want to make
17 sure that the statement you have made now as to
18 why we ought to admit the contentions that
19 you have raised, all the contentions that you
20 have raised, there isn't anything in addition to
21 any point that you want to make, in addition
22 to what you have already said. That
23 applies to any particular contention that you
24 have raised, I just want to give you a complete

1 opportunity to say everything that you can in
2 support of the Board getting some or all or
3 any of the contentions that you have raised.

4 MR. OLSZANSKI: Well, I think that specifically we would
5 be remis^s if we didn't mention the fact, I
6 think that, as you will notice in our statement
7 and our contentions, we have given a lot of
8 emphasis to the problem of evacuation and I
9 think that is one of two or three key issues
10 to us which have never been resolved, which
11 I think even standing alone would be sufficient
12 to insure that a hearing would be held, and
13 that the permit not be extended. Evacuation
14 us in this point in time, at any foreseeable
15 time in the future, as long as there are
16 approximately, I think we said, eighty some
17 thousand steelworkers working in the twenty
18 mile limit of Bailly I, evacuation is an
19 impossibility, any kind of decent evacuation,
20 people cannot get out of those steel mills
21 at shift change time, I'm talking about the
22 Bethlehem Plant, the Jones and Laughlin Plant
23 which is within sixteen miles, also the
24 plant where we are, Local 1010, also sixteen

1 miles, Midwest Steel, there is just no foreseeable
2 way, and I think that area planners would
3 not be able to substantiate that these kind
4 of numbers of people could be evacuated in
5 anything like the kind of time that would be
6 necessary in the event of a small leak or
7 a non-critical, let's say, accident, in the
8 event of any kind of serious accident would
9 be a catastrophe, there is just no way, and
10 we can certainly produce witnesses if we
11 have to as to the production of traffic
12 congestion in this area. I don't know if
13 you've been here before, I don't know if you
14 plan to come back, but you'll notice that
15 one thing about Northwest Indiana, there is
16 no mass transportation, people are conveyed
17 to work in private cars, usually one or two
18 to a car, there are massive traffic jams
19 every day, even in good weather. In bad
20 weather it would certainly be impossible.
21 That, in addition to short pilings, I
22 think are probably what we want to emphasize.
23 I think that probably about covers it from
24 our standpoint, of course, we do reserve the

1 right to add to or delete from these comments.

2 DOCTOR COLE: You do not have evacuation as one of
3 your numbered contentions.

4 MR. OLSZANSKI: I think due to the fact that was
5 prepared in kind of a hurry it didn't have a
6 number, it appears after contention number
7 twelve on page eleven of our petition.

8 DOCTOR COLE: So if we were to identify that as a contention
9 we would identify it as number thirteen.

10 MR. OLSZANSKI: That would be fine.

11 THE CHAIRMAN: I believe the Grabowskis' position
12 also completely related to the health and
13 safety matters that have arisen since the
14 prior proceedings had concluded, and I'd
15 like Mrs. Grabowski to add to whatever she
16 would like to add to this discussion.

17 MRS. GRABOWSKI: I'm glad that you're giving us a
18 chance to talk about our petition right now,
19 because we're going to leave, George is
20 working the afternoon shift and I'm getting
21 a real terrible stomach ache, which I'd like
22 to offer as evidence that stress does cause
23 injury. As far as the contention goes, we
24 just got the NRC response yesterday and we

1 just received the NIPSCO response a couple of
2 days before the hearing so we really haven't
3 had a lot of time to think about our reply
4 to how they responded to our contentions,
5 so I don't know if we're going to be allowed
6 to enter further evidence.

7 THE CHAIRMAN: Well, you can submit anything in writing
8 that you want subsequent to this session and
9 move that it be admitted at that time, we'll
10 certainly consider the motion.

11 MRS. GRABOWSKI: Well, we feel that our contention number
12 four, that we should be allowed to raise this
13 contention, which is about the reasons that
14 there isn't any basis for extending the
15 completion date, we're not talking about that
16 contention, whether you have good cause for
17 being delayed, we're talking about whether they
18 have good cause for extending the completion
19 date. And as I understand it, since the scope
20 of the hearing hasn't been decided we should
21 still discuss this because it might be included
22 in the hearing, if the scope includes this,
23 we feel that there is no basis for extending
24 the completion date, we feel that NIPSCO

1 should have to try to refute the reasons that
2 we give, as well as come up with some reasons
3 of their own why the plant should be completed.
4 The NRC Staff has written on page two of their
5 response to the supplemental intervention
6 petition that quote, the Staff was hereby
7 considering the scope of the requested action,
8 whether good cause exists to continue the
9 construction permit expiration date. We
10 feel that this means that NIPSCO should not
11 only show why they didn't finish construction,
12 they should also show if there's good reason
13 for going on with the construction and that's
14 the basis of our contention number four,
15 we feel the hearing should be held to litigate
16 this contention. We know it may not be
17 required of you to do so, to allow this sort
18 of contention, but we do feel you have the
19 authority to allow it if you wish to, and we
20 also believe in this case a moral response
21 to allow these contentions, we feel that there
22 are many good reasons why the plant should
23 not be completed. NIPSCO has not asserted a
24 single reason why the plant should be completed,

1 they expect us to accept without question that
2 that's the truth, all they have provided are
3 reasons for not finishing the plant by this
4 date. We would be very interested in hearing
5 what NIPSCO has considered as a good cause
6 for extending their construction permit,
7 because we believe that NIPSCO doesn't have
8 a good enough reason to finish the plant
9 except for consideration of their profits,
10 of course. Our contention is about the plant,
11 the plant should not be finished, that the
12 plant is not needed, that it's no longer
13 needed as far as the energy needs of our
14 area. We have evidence if you want us to
15 start submitting our evidence now, but I
16 didn't think we were supposed to submit evidence
17 now. Due to developments that have occurred
18 since the first construction permit hearing,
19 that in light of the evidence and the new
20 developments that it is now not worth the risk
21 to have this plant in our region, we feel
22 that it's not possible to evacuate in time
23 in case of a melt down and we also feel that
24 NIPSCO has shown itself to be less than

1 completely honest with the public and we also
2 have evidence that if you'd like us to submit
3 evidence now, showing that NIPSCO is not
4 always truthful with the public and that
5 is the state of our contention.

6 THE CHAIRMAN: The Board is going to request that you
7 have supplemental documents to submit with
8 regards to the matters that have been covered
9 in the past two days here or in response to
10 the applicant that you submit them within
11 two weeks or if there is any reason such as
12 an unavailability of the transcript for some
13 length of time which makes it impossible, if
14 you will complete it within two weeks and
15 nevertheless inform the Board as to the status
16 of that within two weeks and request some
17 additional time, if necessary. Is that okay?

18 MR. EICHHORN: May we also give service of those
19 documents on other parties?

20 THE CHAIRMAN: There will be service on them. Do
21 you understand what's required with regard
22 to serving the documents on all the parties?

23 MRS. GRABOWSKI: Send them to everyone on that list?

24 THE CHAIRMAN: Okay. Is there any objection by anyone

1 to having those supplemental submissions?

2 MR. EICHHORN: Mr. Chairman, I think we started this
3 round-robin discussion with discussion of
4 part C of the Porter County Chapter
5 petitioners' number eleven and then we went
6 to the health and safety issues that have
7 been --

8 THE CHAIRMAN: Raised by the Steelworkers 1010.

9 MR. EICHHORN: Right, and I think it's the Board's
10 view that these are the same areas that we
11 are really talking about, scope question,
12 and that's what C is and what the basis for our
13 objection to Local 1010's contentions and
14 of the things that Mrs. Grabowski raises,
15 so I just want to make it clear that we
16 consider it a scope question and I assume that
17 what we have been discussing and our position
18 on scope was thoroughly aired yesterday and
19 is set out in our response to the supplemental
20 petitions.

21 THE CHAIRMAN: I believe that concludes it unless the
22 participants --

23 MS. SEKULER: We haven't discussed contention six of
24 the State of Illinois contention, which is

1 different from any contention that was raised
2 by the Porter County Chapter.

3 THE CHAIRMAN: I wasn't concluding the conference
4 now, I was concluding the discussion of number
5 eleven, and I believe number twelve really
6 just incorporates by reference all of the prior
7 contentions raised. Well, let's find out
8 what you're talking about as far as twelve
9 goes and what items are you incorporating
10 by reference.

11 MR. VOLLEN: I'll answer that, and then propose
12 a procedural suggestion to deal with that
13 paragraph twelve, is intended to make clear
14 that those contentions which we have previously
15 raised in prior documents, including the
16 petition to intervene, the joint supplement
17 and the request for hearing on the documents
18 incorporated therein, including the documents
19 filed in November of 1976, are still asserted
20 as contentions in this proceeding, that's
21 what is included in twelve. Now, I'd like
22 to, if I may, make a procedural suggestion
23 that we received a moment ago. I think the
24 Board has either ordered or is going to order

1 that the parties meet to work out, see if we
2 can't reach an agreement on certain contentions
3 that are in the first portion of what we addressed
4 today. With respect to these other contentions
5 that are incorporated by reference in paragraph
6 twelve, NIPSCO has pointed to some of them in
7 its most recent document, I think the Staff
8 has not responded to any of them, I think that
9 the most efficient way to proceed with those
10 is for them to be the subject matter of
11 communications among counsel for NIPSCO and
12 the Staff and myself and any party that
13 is interested, so to see if we can either agree
14 that they are litigable contentions if there's
15 going to be a hearing and agree that they're
16 not, and if they're not agree with what those
17 are, because we're dealing with a large mass
18 of information which the Staff has not addressed
19 itself to as far as the contentions are
20 concerned. In view of the time we have spent
21 on the first eleven, I think we might be
22 here for a very long time if you try to
23 do it this way. I think we have enough,
24 it's my understanding that we have enough for

1 pre-conference order, that the standing
2 has been addressed and I think issue has been
3 addressed, I think we have satisfied at least
4 one good contention requirement so if the
5 Board finds that we do have standing we can
6 be an interested party. What I'm suggesting
7 is the matters raised and referred to in
8 paragraph twelve be deferred by the Board until
9 the parties have complied with the direction
10 to confer about them, see if we can resolve
11 them, then restructure them for a decision
12 as the most efficient way to be heard.

13 MR. EICHHORN: May I be hard on this? I think

14 Mr. Vollen's order to attempt to work those
15 issues is very generous of him, but I don't
16 agree with that procedure, they were ordered
17 by this Board to list in accordance with the
18 requirements of 2.714 their contentions fifteen
19 days prior to pre-hearing conference, now in-
20 corporation by reference is not a way to
21 achieve the specificity required by that
22 regulation, and there is at least one
23 Commission decision on this question, it says
24 you cannot give rise to contention by

1 incorporating other documents and by reference
2 and we have cited that in our last filing.
3 Now, if Mr. Vollen intends to formulate additional
4 contentions out of the documents that he has
5 filed over the past four years in an effort
6 to obtain hearings on various items, I think
7 at this point in time he first must show good
8 cause for belated filing, and I'm not going
9 to agree to try to work out suitable contentions
10 out of all those documents that he has filed
11 over the last four or five years.

12 MR. VOLLEN: I think, Mr. Chairman, that I must be
13 hearing Mr. Eichhorn wrong, he can't be saying
14 that NIPSCO's position is that contentions
15 shouldn't be considered because we referred
16 to another document which is before the Board,
17 before this Commission and before him,
18 and that we referred to them by reference instead
19 of retyping all those pages, if that's what
20 he's saying I stand incredulous.

21 THE CHAIRMAN: I believe he's pointing out that you
22 haven't actually set a limit on which
23 documents you're referring to and there have
24 been a number of years of proceedings and there's

1 a possibility that had a document been submitted
2 in other proceedings you might fashion a
3 multitude of contentions. And perhaps you
4 would reassure us with regards to that and
5 set the appropriate limitations, what you are
6 referring to.

7 Mr. Goldberg, do you want to say
8 something?

9 MR. GOLDBERG: Yes, for the benefit of the record, I
10 would like to say that Staff has put forward
11 position on the matters which are incorporated
12 by reference in proposed contention twelve,
13 and they are that position is contained in
14 our January 23rd response to conditional
15 intervention petitions and we would further
16 observe that many of the issues incorporated
17 by reference are duplicative or embraced by
18 matters raised in those contentions, proposed
19 contentions one to eleven of Porter County
20 petitioners and I guess I don't hold a great
21 deal of optimism that negotiations on those
22 matters are going to prove particularly
23 productive.

24 THE CHAIRMAN: Well, a suggestion has been made by

1 Mr. Eichhorn that the extent that you haven't
2 set out the contentions as ordered by the
3 Board and its order establishing setting up
4 this pre-hearing conversation erases that
5 contention. You asked for leave of the Board
6 to have that contention considered in this
7 proceeding, I think perhaps that's the only
8 effective way of limiting the amount of
9 material that we could expect if you are
10 permitted to go back over the last few years
11 and pull out additional contentions, and I
12 think that's the thing that we are trying to
13 avoid, and I would like to hear your comments
14 on that, Mr. Vollen.

15 MR. VOLLEN: Again, I'm not prejudiced, the problem
16 that we retype this document --

17 THE CHAIRMAN: No, the problem to begin with is that
18 we don't have any indication as to how
19 extensive the prior documents are that you
20 wish to be able to refer to.

21 MR. VOLLEN: They are identified, Mr. Chairman, in
22 paragraph twelve. I say the contentions set
23 forth in or incorporated by reference in the
24 petition for leave to intervene, dated

1 September 20th, 1979, it's an extant
2 document. It in turn incorporates by reference
3 on page three joint intervenors previously
4 filed with the Commission a request for
5 hearing dated February 27, 1979, these are
6 the documents we were referring to yesterday
7 which you said you didn't have, Mr. Eichhorn
8 had them.

9 THE CHAIRMAN: That perhaps is part of the problem, I
10 don't have them and I don't know how extensive
11 those documents are, and you're asking me now
12 to take a pig in the poke.

13 MR. VOLLEN: I understand that. Frankly, I was unaware
14 until you said yesterday that you didn't have
15 any pre-notice documents, that as Chairman of
16 the Licensing Board that you didn't have
17 documents that have been filed in this docket.
18 I didn't realize that we needed to reserve you
19 as a member of the Board, obviously, I'll do
20 that as promptly as I can, but I couldn't do
21 it between yesterday and today because we
22 don't have access to the equipment to make copies.
23
24

1 THE CHAIRMAN: The only way that I can see that we
2 can resolve this question with the Board
3 maintaining some control over the amount of
4 contentions and the extent of the documents
5 that you can rely on to which may be limited,
6 but not in the cognizance of the Board is
7 to require that these contentions be at
8 the discretion of the Board, and so the only
9 way I can see to resolve it is to agree
10 that you should consult with the other
11 participants, not only with regards to the
12 copies that you have actually submitted to
13 us in this proceeding, but with regards to
14 those other contentions and that to the
15 extent you can agree on them, that's fine
16 to the extent you cannot agree on them,
17 you would then move to have them admitted
18 at the discretion of the Board, and at that
19 point we will make a determination. Of course,
20 if you are unsatisfied with that, we can make
21 the appropriate objections or motions, and
22 I think that's the only way we can resolve
23 it.

24 MS. SEKULER: I would object to making these contentions

1 subject to the discretion of the Board in that
2 we, the State of Illinois, have a similar
3 situation when we noted that we incorporated
4 by reference several filings, including
5 requests for hearings, March 5th, 1979 and
6 several of the petitions thereafter filed,
7 and a response made by NIPSCO. At least two
8 of these, one regarding the allegation that
9 the extension was not reasonable in terms of
10 time under 50.55A, and another one discussing
11 sides was alluded to. We do not feel that
12 should be subject for discretionary petition,
13 because these have been mentioned prior to
14 the time when the last document was submitted;
15 however, as we have already concluded for
16 that certain contention; for instance,
17 contention two will be the subject of
18 renegotiation, it would seem that we could
19 perhaps clarify by retyping, if necessary,
20 or specifically pointing to pages in the
21 previous filings and not have them be
22 subject to discretionary filing, but at least
23 have the right to file them.

24 THE CHAIRMAN: Again, the Board is not going to give you

1 the unlimited right. now, I would hope that
2 whatever you submit at the Board's discretion
3 that the Board is willing to satisfy you, but
4 if it does not, you have the usual recourse
5 at that time, and it may well be that we are
6 arguing over a moot point. In any event,
7 that's the only way that I can see that we
8 can maintain control over the extent of what
9 is going to be submitted and so we make the
10 same ruling in regards to what I have in-
11 corporated by reference.

12 MR. VOLLEN: Mr. Chairman, when you say discretion of
13 the Board are you referring to the efficiency
14 of these contentions or are you referring to
15 the litigilibility of the issues presented?
16 Because if it's the latter course, we agree
17 that it's ultimately the Board that decides
18 whether or not they are going to be put
19 into issue in this proceeding. On the other
20 hand, if you say that you are going to view
21 the conte.tions that we are now talking about,
22 that are incorporated by reference as being
23 out of time, because they were only incorporated
24 by reference in our supplement, that seems to

1 me to be quite a different matter and if you
2 are alluding they were out of timing because they
3 were incorporated and not retyped --

4 THE CHAIRMAN: I'm including both right now, and I don't
5 know that we are going to be including the timing
6 item, that is the only way that we can control
7 the extent of the conventions that we would
8 let in, and all I can suggest is that you do
9 it that way and if you are dissatisfied at
10 that point, we'll hear further argumentation
11 about, but we are unwilling to give you carte
12 blanche authority right now to place reports
13 that we have not even seen, and so that is
14 the only practical solution that I have to the
15 matter.

16 MR. VOLLEN: I'm certainly not asking you to give me
17 carte blanche, all I'm asking is that it would
18 be clear, because we incorporated by reference
19 or because the Commission didn't provide you
20 with documents previously filed in the docket,
21 that that not lead to the conclusion that we're
22 out of time.

23 MR. EICHHORN: Mr. Chairman, I'm getting lost here, I
24 think, and I'm pretty much concerned about the

1 prior documents. There is no label of contentions
2 in prior documents and we're left to guess
3 what we're talking about with respect to
4 what may or may not be a contention, and I
5 think Mr. Vollen should at least do us the
6 courtesy of outlining somewhat that part of
7 the document that I think constitutes contention
8 so we can at least phrase objections to,
9 or agree with, I don't think that's asking
10 too much.

11 MR. VOLLEN: That's precisely what I was proposing
12 that counsel and I sit down and do.

13 MR. EICHHORN: But it should have been done fifteen
14 days ago.

15 THE CHAIRMAN: I think my ruling is clear and I think
16 the matter that you are raising now, Mr. Vollen,
17 are matters that we'll consider in determining
18 how to exercise this discretion with regards
19 to accepting contentions, the main matter
20 being that you may have been under the impression
21 that you had already raised these contentions,
22 though, I'm not saying that we accept that
23 view completely, but nevertheless, all I can
24 say that is as far as we're going to go now

1 and whatever dissatisfaction you may have
2 is what we finally will accept from those
3 prior submissions will be expressed when you
4 can see whether or not you are dissatisfied,
5 and that's not right now, that's going to
6 be when we rule on these additional matters
7 that we would like to bring in, that we
8 believe that you have already brought in,
9 or contentions that you have already brought
10 in by incorporation, by reference..

11 MR. VOLLEN: Very well, Sir.

12 THE CHAIRMAN: And of course, we'll set a time limit
13 for the time in which to meet and consult with
14 each other and come back to the Board with
15 the results, but I do want to move further
16 and cover the remainder of the contentions,
17 including, I believe a few contentions that
18 have been raised in the original petition that
19 was filed, I don't know whether we duplicated it.
20 I believe the first item in the form of a
21 contention in your original petition --

22 MR. FRANTZ: Mr. Chairman, I'm sorry to interrupt you,
23 but before you move onto a new area, I'd like
24 to ask the courtesy for Mr. and Mrs. Grabowski

1 and for also our union and others that it's
2 the policy of the NRC to encourage public
3 participation in these hearings and pre-
4 hearings and in many cases the cost of
5 service for a hearing like this or a pre-
6 hearing is prohibitive for those who would
7 otherwise be able to participate. We would
8 like to ask the permission of the Board
9 that they submit an alternative, that any
10 written statements that are entered into the
11 record be submitted to the NRC and the NRC
12 provide the courtesy of service to the other
13 litigants.

14 THE CHAIRMAN: I believe there was a procedure that
15 has been used in which instead of filing the
16 usual amount of copies, which is how many,
17 Mr. Goldberg?

18 MR. GOLDBERG: Perhaps I should know, but I don't.

19 THE CHAIRMAN: Instead of the usual number --

20 MS. SEKULER: Twenty, plus the original, so it's twenty
21 plus service on the individuals.

22 THE CHAIRMAN: So you do serve one copy on each of the
23 participants and two copies on
24 the secretary of the Commission so that would

1 cut down the number considerably, and I think
2 that's the only provision that's made, I
3 don't believe that we ever accepted just one
4 copy.

5 MR. HANSELL: I believe in several other proceedings,
6 including the Seabrook proceeding for the
7 pro se litigants a procedure was adopted where
8 one single copy was served upon one person,
9 I don't recall if it was the Secretary of the
10 Commission or the Licensing Board, and copies
11 were served on everybody else, including all
12 the participants so there would be a precedent
13 for that sort of thing for the pro se litigant
14 which is what I believe Mr. Frantz is
15 asking.

16 MR. EICHHORN: The only problem coming out of the agency
17 is by the time it came in and got out the
18 matter, the issue would be resolved.

19 THE CHAIRMAN: Mr. Goldberg, do you have something to
20 say about that?

21 MR. GOLDBERG: I'm not aware of any precedents that
22 might be referenced and I wouldn't commit
23 to undertaking any service responsibilities
24 for the NRC Staff.

1 THE CHAIRMAN: Well, the most I can do right now is to
2 allow you to serve one copy on the participants
3 and two on the secretary, but I would ask
4 Mr. Goldberg to check when he gets these
5 to see if any other procedures had been
6 utilized and if it's workable in this case,
7 which would permit you to serve fewer copies,
8 that we'll attempt to adopt it in this
9 case, that's the best I can do right now.

10 I think we were going to the contentions
11 and the original petition and I believe the
12 first one is in paragraph number three which
13 may no longer be pursued by Porter County
14 Chapter, I believe this agreed with the
15 Commission's determination that there is not
16 a significant hazard consideration of which
17 only related to the two former, the notice
18 of opportunity for hearing I think was offered
19 in the same manner, under the Commission's
20 discretion and I don't know if there is any
21 further to add, any validity to the contention
22 at this point.

23 MR. VOLLEN: I think there's validity to it, and may not
24 pose an issue that needs to be resolved, I

1 think that the question of no significant hazards,
2 considers that question
3 of the timing of notice when the Commission
4 has to give notice before it takes licensing
5 action, or it can give notice after the fact.
6 The concern I have is that since we have not
7 yet determined there is going to be a hearing,
8 it's theoretically possible that the Staff
9 could change its view and issue the amendment
10 now prior to any hearing and it's for that
11 reason I think this issue need not be resolved
12 right now, because I presume that's not going
13 to happen, but theoretically this Board has
14 not yet assumed jurisdiction over the question
15 of whether the amendment NIPSCO seeks is going
16 to be issued, I think it will only take that
17 jurisdiction when it issues a notice, there's
18 going to be a hearing, once that happens I
19 think the Staff then loses the ability,
20 loses the jurisdiction to issue the amendment
21 until after the hearing is completed, so in
22 this interim period until the Board issues a
23 notice of hearing I think it's still a viable
24 issue, but need not be decided.

1 THE CHAIRMAN: Well, isn't it so that even if the
2 Commission has determined that there was a
3 significant hazard consideration that only
4 notice of opportunity would be issued and
5 not necessarily would there be a hearing
6 in any event, isn't that the situation,
7 Mr. Goldberg?

8 MR. GOLDBERG: Yes.

9 THE CHAIRMAN: So that we're not in any different
10 situation now or even hypothetically.

11 MR. GOLDBERG: But if the action officialing the
12 amendment takes place before there is a
13 hearing in reliance upon the fact that there
14 is no significant hazard consideration, we
15 think that's improper action.

16 THE CHAIRMAN: Well, are you suggesting that now the
17 notice of opportunity for hearing has been
18 pushed that the stuff should nevertheless
19 wait until the Board determines that a notice
20 of hearing should or should not issue,
21 and nevertheless issue the Commission to --

22 MR. VOLLEN: I'm afraid that's a theoretical possibility,
23 I hope that wouldn't happen, but it remains
24 a theoretical possibility. Again, Mr. Chairman,

1 I think this ought to be kept in line.

2 MR. GOLDBERG: To allay any fears, counsel may have,
3 the Staff will not take action on this application
4 until the Board has decided whether it will
5 initiate a hearing or not.

6 THE CHAIRMAN: I take that statement on the record, I
7 think that should resolve the issue.
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(After recess, 3:21 p.m.)

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MR. GROSSMAN: I believe the only other contention raised in the original petition for the Porter County Chapter that has not been duplicated in the supplemental petition that we have already discussed, is Paragraph Number 4, which is the next one, and we will discuss that. After discussion of that, Mr. Vollen informs us that there is some other item in there that we have to cover, too.

Number One relates to whether the application for the permit extension was timely, and I confess, I don't see any basis that has been offered for the position. Perhaps this is background and you can tell me what the basis is generally so we know what we are talking about. Of course, it is my understanding that the application was submitted a half a year before the extension date, at least.

MR. VOLLEN: I don't think the application got submitted until the day before the expiration date.

MR. GROSSMAN: Are you then saying that you are asking for a right to question whether the February 7 application was an application?

MR. VOLLEN: I think the NIPSCO application didn't get made in the form that is present before the Commission until August 31, 1979. Let me see if I can put this into context. "Whether or not the application was timely and sufficiently filed and within the meaning of the Administrative

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Procedure Act, goes to the question of whether the permit may be deemed to be in effect during this period of disposition of the application by the Commission." That issue, as far as I am concerned, of whether or not it may be deemed to be in effect is not in need of disposition as long as is the case. Now, there is no explanation by NIPSCO until the permit. That is to say, there is a halt on construction activity now. There has been a halt on construction activity since September of 1977. So long as that halt remains, it seems to me to be not an issue needing resolution as to whether or not construction could resume under the original permit which seems to be in effect pending the decision of application. So, I guess what I am saying: I don't think there is any occasion now to resolve this issue. It may be an interesting legal question, but it doesn't affect anything right now as long as there is no construction on the site.

MR. GROSSMAN: That does confuse me even more. Are you saying that we shouldn't consider your contention now?

MR. VOLLEN: If it could be held in abeyance? It may never come to the point where it needs to be resolved. It may come to the point where I may call it to the Board's attention. I may make a motion posed to this contention that something needs to be done if we reach the stage where NIPSCO resumes construction.

MR. GROSSMAN: It would seem to me if there was no valid application, we'd be spending a lot of time discussing the hypotheticals; and that is there is no contention, that goes to the heart of the matter before us now, which we would consider it and dispose of it if that is the course we were to take now. Now, if there is an allegation that the applicant didn't actually submit an application, well, we ought to know about that and we ought to decide that right now.

MR. VOLLEN: The contention doesn't say that the applicant didn't submit an application. The contention says the applicant didn't submit an application which was the requirements of 2.1094 of the Commission's Regulations and the Administrative Procedure Act for the purpose of invoking the provision of both of these sources of law and regulation in the statute; the provision that says "where an applicant has made timely and sufficient application to the extent his permit will be deemed to be in effect until the final agent."

MR. GROSSMAN: Are you raising a factual contention that the February 7, 1979 letter was never submitted?

MR. VOLLEN: No. I am saying that taken together the February 7, 1979 letter and the August 31, 1979 letter, which together, I think, constitute the application of NIPSCO, do not satisfactorily meet the requirements of those two sources

for the purposes for which they were asserted in the Notice of Opportunity to satisfy those sources. I am saying, further, that that position, the correctness of that position, may never need to be adjudicated by this Board.

MR. GROSSMAN: If you have that, sir; if you make that assertion, I think now is an appropriate time to pass on that assertion; that is, along with all the other contentions that you made. And the main question I have is one which I believe was raised by the staff as to whether we have the authority to oppose on that issue, or whether that was exclusively within the provision of the staff, and that the staff has already made its determination, and we are bound by that determination. Is that your position, Mr. Goldberg?

MR. GOLDBERG: The staff has found that the construction permit application is acceptable for docketing. Customarily, that is a responsibility that is discharged of the staff and is, of course, outside the jurisdiction of the Board. However, assuming that it is within the Board's jurisdiction to review the correctness of the staff's decision to docket this particular application, we believe that on its face, the application is both timely and sufficient under the applicable requirements of Section 2.109 of the Commission's regulations and the applicable Section C of the Administrative Procedure Act.

The staff doesn't normally like to interpose jurisdictional objection to the Board, although, I think there is a basis to interpose such an objection here. But, I would rather answer any alternatives the normal way. It is within the provision of the staff to determine whether an application is acceptable for docketing. It has done this and does not recommend that the Board review that decision, but would submit that even if it were to review it on its face, the application is acceptable for docketing.

Now, I would also like to add another point with respect to the argument of counsel for Porter County Chapter. The staff is presently undergoing a review of the technical parameters of permits of the power design filed by the applicant. It may very well be determined at the pendency of this proceeding that those plans are acceptable, in which case, there is no legal balance to those, then proceeding to the pile installation. I would not like Mr. Vollen or anybody else to be under any misapprehension as to the formulation of its position on this particular issue.

MR. GROSSMAN: Mr. Eichhorn?

MR. EICHHORN: Mr. Chairman, May we be heard as it is our application that is being challenged here?

MR. GROSSMAN: Absolutely.

MR. EICHHORN: I think there is a very serious

jurisdictional question here. I think the determination as to timeliness and sufficiency of that application was made by the branch of the agency charged with that responsibility prior to the time that the agency made a determination that a hearing would be held; that there would be a Notice for Opportunity for Hearing prior to the issuance of the permit. And I think that an applicant must be allowed to rely on the agency's interpretation, because the question of hearing of time, as it does in this case, arises after the expiration date of that permit. And if an applicant for an extension cannot rely on the agency's determination of sufficiency and it is determined that it is untimely, we have an expired license with no request for extension on file and nothing to extend. Accordingly, I think it is clear that the Congressional intention in enacting that section of the Administrative Procedure Act, and the agency's intention in adopting it in its regulations; that if a determination is made that a timely and sufficient application is made within thirty days before the expiration, that the license will continue, is made for that very purpose, to prohibit the possibility or eliminate the possibility of hiatus in an on going procedure, and Mr. Vollen's interpretation that it should be, then later subjected to hearing, upsets that entire line of reasoning and the entire purpose of adopting the Congressional intention in adopting

the Administrative Procedure Act, and the agency's intention in adopting the regulation, allows the continuation of the project. And for that reason, I think the delineation has been made at one point in which the applicant has the right to relay, which is not subject to challenge in this hearing.

MR. GROSSMAN: I believe I understand fully the position of the applicant and of the staff. And I do see an issue here that can be resolved by the Board, but I don't fully see the issue that has been raised by the petitioner of the Porter County Chapter, and without even making a determination on the contention on the basis of the legal arguments that have been raised. I think, in the posture we are in now, the Board would have to determine that there is no specificity and no foundation for the contention. Also, there is no additional matter raised with what you rely on to make your argument. So, I don't know any basis that says you find support for the assertion that was at the time to be sufficient. So, I would be forced to rule on that basis that there is no foundation for that particular contention.

MR. VOLLEN: August 31, 1979 is not thirty days prior to September 1, 1979. I suggest that NIPSCO's application was filed on August 31, 1979. That is not thirty days prior to the September 1 date upon which the permit expired and within the meaning of Section 2,109 of the Commission's regulation.

It was not timely.

MR. GROSSMAN: What I am asking you is: why the February 7, 1979 letter was not a timely and sufficient application?

MR. VOLLEN: NIPSCO said it wasn't, by reason of submitting the August 31, 1979 letter.

MR. EICHHORN: Only as to the time of extension.

MR. GROSSMAN: Now, are these items apparent from the faces of these documents, them received, or of the dispute between you and the applicant with regard to the legal sufficiency of the February 7, 1979 document?

MR. VOLLEN: I think I just heard Mr. Eichhorn say that--I'm not sure what I heard him say, so I won't try to characterize it. I think it is clear from the face of the documents and the use of a calendar that the application was not completed until August 31, 1979. It was, therefore, not timely. It was not sufficient. It was completed on February 7. So, you have to look at the time which the complication was completed. It was completed on August 31, 1979. That was not timely under the Commissions regulation which requires that it be filed thirty days prior to September 1, the date of the expiration.

MR. GROSSMAN: Okay, I think now I have an understanding of what your position is, and I will have to refer

to the documents as a part of my determination on that issue, and that is all I am trying to get at.

So, Mr. Vollen, now that we have completed a discussion of all the contentions that you have raised in both the Petition for Leave to Intervene and the supplemental petition and others with regard to this matter, and even though we haven't specifically gone over a number of contentions in your original petition, those contentions that we have not gone over have been duplicated and, perhaps, explained in the supplemental petitions. And we have covered all ground.

MR. VOLLEN: If you are excluding that matter incorporated by reference in the Petition for Leave to Intervene, then I think the answer is yes.

MR. GROSSMAN: Okay, I think now we should turn to the State of Illinois' Petition. And according to the docket, those we have remaining are Contention 6 and 7(b). Is that correct? Let me take a look at 7(b).

MR. GOLDBERG: Mr. Chairman, I thought I alluded to 7(a) and (b).

MR. GROSSMAN: Yes. Now that I refer to 7(b) I see it has been covered and that, perhaps, Contention 6 is the only one that has not.

MR. GOLDBERG: I would like to say one thing about 7(b); that we are talking about safety during construction

as well as after in relation to the construction extension. I don't want this interpreted as the effect may have held within the earlier pretension.

MR. GROSSMAN: On the effect soil may have, you talked about changing soil structure which have occurred due to the taking conducted which elluded to the proposed modification in the piling design by liquification and the effects thereof; that Section B should include safety and the danger that might occur, not only after construction, if an extended construction permit is granted, but also, any additional hazard that might occur during construction because of the altered soil structure. Mr. Hansell will address Contention 6.

MR. HANSELL: I want to make clear that what we are seeking to do, as NIPSCO and the staff have both suggested, is to re-litigate the issue of siting which was decided during the construction permit stage. Rather, with regard to siting, what we are simply seeking to do is consider significant new developments in siting which have occurred subsequent to the receipt of the construction permit. There have been several reports which have stated that the NRC should not set nuclear plants in urban areas. This recommendation of the Cemly (*) Commission, Brotherton Commission of the NRC policy task force N.U.R.E.G-0396 and of the Standard N.U.R.E.G-04599

as to site policy states that Bailly has been sited in a more densely populated area than any other power plant in the United States. In addition, a memorandum dated September 26, 1979 from Wayne Houston, Chief of the Accidental License Branch of the Division of Safety and Environmental Analysis to the Chairman of that task force, Daniel Muller, includes six proposed criteria for siting and stated one nuclear power plant in the country currently operating or under construction which flunked all six of these criteria. Now examination of the decision in a construction permit proceeding regarding Bailly provides additional support that the issue cited has not been defined and we seek to raise that issue. The Board on that case pondered the required shift and location of that site to a less populated area along the Kankakee River. We object to the Bailly site over an alternative site for two primary reasons; the population density, because of their conclusion that a Class 9 accident was so improbable that it need not be taken into consideration; and that the delay in moving the site from Bailly to this other site would take several years and the electricity was needed by 1979. Now, as had been discussed earlier by both Miss Cohn and Mr. Vollen, a Class 9 accident did occur and is now being considered by the NRC in licensing proceedings. The further demand for power will drop when generating capacity is increased, and clearly

Bailly will not be available to be generating electricity by 1979. Thus, there has been no consideration of population on which was ever taken consideration of proving the location for the Bailly plant over the alternative site. Class 9 accidents were not taken into consideration. And many of the reasons that justify that Bailly site over the alternative site are no longer true. Major reports on site have been uniform as to power plants near urban areas, and Bailly has been found by NRC personnel and by the policy task force, to be an extremely poorly located site.

Now, in response to your contention the NRC suggest that we have other options available within which to institute proceedings. Under 2.206, that is not a sufficient response, as we have already indicated yesterday. The problem with 2.206 is that there is no guarantee that proceedings, would be instituted. Further, any determination made under there would be made not by the Atomic Safety Licensing Board, but by the NRC staff who serve as our adversaries in this proceeding and who will tell us there is not need to consider that question because that was already considered in 1974. The siting can only be appropriately considered in the context of this construction permit extension proceeding and it doesn't consist of a rehash of old issues; rather, we only seek to raise issues which have come up subsequent to th

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grant of the initial construction permit.

MR. GROSSMAN: When you say you only want to raise issues that have come up subsequent to that and you are also including facts that have occurred with regard to issues that have already been resolved, and in particular, taking a projection that was accepted by the license board and coming in after the fact and saying, well, the projection was not accurate in that fact, was somewhat different in which it occurred. And if so, is that an appropriate matter to raise with regard to any proceeding that has already resulted in a determination?

MR. HANSELL: When you are saying "projection", I'm sorry. I don't understand.

MR. GROSSMAN: The projection we are talking about related to the need for power, which you have indicated and suggested that the power be needed by 1979. Now you say, and that was an issue that was, apparently, decided, but now you are coming back and saying that did not bear out that projection and therefore, we can't laterally attack a finding of the Board by the matters that have occurred since then. And I am asking you whether that is an appropriate matter for the Board to consider here?

MR. HANSELL: We are not seeking on context of this contention to raise the question about the need for power. How the need for power comes in in the last situation? Was it

determined that because there was a need for power by 1979, that militated very strongly against considering an alternative site? Three events have occurred since then. One is, obviously, that the generating capacity is not available by 1979 and, Two, is that, has the demand for power decreased? Three, is it that the generating capacity has increased and therefore it depends upon the request to consider the siting in question?

MR. GROSSMAN: Right. I wasn't referring to--at least, I didn't intend to refer to the prior board's determination of the course benefit of balance of the need for power. By that, what I refer to is what the Board's determination was as to whether or not this was a proper site, which, apparently, from what you say, was based, in part, on the Board's preliminary determination that the power would be needed by 1979. Now, what I am asking you: Is it your position that it is appropriate for this Board to second guess the prior board's determination on the suitability of the site on the basis of the actual facts; not of having occurred in accordance with the projection of what the facts would be, which was a basis of the prior board's determination? Do you follow what my question is?

MR. HANSELL: I am not asking you to second-guess whether the licensing board did, in that particular proceeding. It is very clear from their opinion. What I am simply indicating

is that on the basis of factors which have changed since 1974, since the granting of additional construction permits, those changed factors ought to be considered regarding the appropriateness of the Bailly site.

MR. GROSSMAN: And I expect, again, in determining the appropriateness of a site, and every time there are subsequent facts, if there is an opportunity for some proceeding, there might be a further determination as to the appropriate suitability of the site.

MR. HANSELL: With regard to the first part of your question, it is appropriate now. With regard to the second part of your question, every time there are changed facts, subsequently, I think Cook provides an answer to that, which is; it depends on the circumstances. If we are in a situation like they were in Cook where you were ninety percent done with the plant, it would be totally inappropriate to consider a new siting at that particular point in time. In this situation, you are simply one percent done with the plant, and therefore, it is entirely appropriate to bring this question up in view of the unique circumstances; that the NRC or the members of the NRC staff consider Bailly to be the most poorly sited plant in existence today.

MR. GROSSMAN: Mr. Goldberg?

MR. GOLDBERG: Yes, Mr. Chairman, a few comments.

In general, we regard the issues sought to be introduced in Contention 6 as falling outside the scope of this proceeding. With regard to the particular matter of population density, as we have indicated in our correspondence to that board, that is the subject of the pending 2.206 request for action filed the by State of Illinois. And I am sure the State of Illinois and any other participant believes that letter will receive careful consideration not only on the basis of the record compiled before the licensing board and the time of the construction permit phase, but any new information that is relevant to consideration of that issue. However, I believe that there are some inaccuracies in the factual basis alleged by the State for the introduction of this issue. It refers prominently to a memorandum from Mr. Houston to Mr. Muller respecting certain siting criteria, but the memorandum before me, and we will offer to serve copies upon the Board and other members upon our return to Washington, does not appear to make any reference to Bailly as falling within our-- Could I have a moment, please? Mr. Chairman, I have just been handed a copy of that memorandum with some attachments that I had not seen. So, I will base my argument solely on the matters we have put forward in our pleading and the recommendations I have made orally, and not make any comments on the merits of the matter.

MR. VOLLEN: Mr. Chairman, may we ask that staff counsel

does find and serve on the Board and all parties the same documents.

MR. GROSSMAN: I think Mr. Hansell has copies and I will request him to serve them on all the participants.

MR. HANSELL: I will be happy to do that. I would like to make mention to one additional thing with regard to the action that, evidently, has been instituted by all that was written. We had not specifically requested that an action be instituted under 2.206. Rather, a letter was written from the Attorney General of Illinois to the Chairman, Hendry, of the NRC indicating the concern that he had with the siting of Bailly and requesting that on that basis, that the chairman do what he could do to oppose construction of Bailly. That has been interpreted by the Commission as a request for action under 2.206 and notice of it has gone into the federal registrar to that extent. The problem with that is that the NRC staff could delay instituting a proceeding under 2.206.

MR. GROSSMAN: Does the representative from Local 1010 wish to say anything?

MR. OLSZANSKI: Mr. Chairman, we have addressed this issue in combination with the issue of evacuation. It really is impossible to separate the two in our contention which has just been labeled Number 13. I think for someone outside of

the legal profession, this issue is probably the epitomy of what is most frustrating about these kind of proceedings. We are faced here with a decision on whether or not procedures allow us to even look at the population density at this point in time and at this point in the licensing procedure. I think all of us who are aware and have been involved for any length of time, and there are those here that have been involved a lot longer than I have with the argument that we are going over previously with the original permit when it was granted. And I might be even a little inaccurate restating some of those arguments. The point I want to make is that if we allow, Mr. Chairman--if the Commission allows as a procedural point, not to consider this issue as part of this permit, you have to frankly--I don't think I could put it any better than Mrs. Grabowski said it--you will have to bear the moral obligation for that. The only reason there is a permit in existence today, or an expired permit that we are not talking about extending, is because at the time the original permit was applied for, NIPSCO said that there was no town of importance and there was no significant population center. They said that the Town of Gary isn't as close to that facility as it actually is. Bethlehem Steel, with fifty-eight hundred workers didn't exist. This was subsequently shown to be untrue. Yet, because of a procedural matter, because they think it already had been

considered by a previous Commission, they could not reconsider it until now. If this Commission does not consider the population density at the siting, then nobody else will. And that, along with the evacuation, is our primary objection to this plant. We can kid around. We can be cute with matters of procedure and legal technicality. But when you come right down to it, Mr. Chairman, if you build that plant, you are building it in the most densely populated area in the country and least to be evacuated. That is the bottom line here. And I wish that I were as astute as some of the counsel. Procedurally, NIPSCO may be right. If I lie and you can catch me later on in the lie and it's too late to reinstitute any proceeding-- I am saying, you can lie about the existence of those people. We live here. The people that I represent live in the area. We work in this area. I know that the City of Gary exists. I know that the steel mill is there. If you read our comment you will realize that we have here the most modern steel making facility in the country. In addition to the people, you might consider you are going to lose a huge capacity of steel making. Even if there is an attempt to evacuate, you cannot shut down a steel plant in less than five or six days. These are the heart of the matters that bring us here, and if you just shove these off, saying you can't consider this on the basis of certain procedures, you are ignoring the heart of the people in this area

to that power plant. This is the worst site in the country.

MR. GROSSMAN: I know, Miss Cohn, there is something additional you wish to say which is inseparable from the issues that you raised, and I know we prolonged the discussion yesterday, and I do want to give you an opportunity to add anything, if you want, and this is the appropriate time.

MISS COHN: Thank you, Mr. Grossman. I agree, that we, in essence, did discuss very thoroughly yesterday the contention on emergency evacuation that we have raised. I would only like to add one thing, and that is the conditions in the conditions in the current policy regarding emergency planning, as reflected in the interim rules which are based on the need to make the showing that evacuation is possible within the ten and fifty miles emergency planning zones, is based on a considerable fact of a Class nine accident. That fact is reflected in N.U.R.E.G-0396 and joins the NRC EPA task force report that I referred to yesterday. As has already been pointed out today, the licensing board in granting a construction permit several years ago for Bailly, specifically determined that a Class nine accident, because of the improbability of a Class nine accident, should not be a factor that should be considered either in siting or in an emergency evacuation. That policy has clearly changed. This demonstrates, again, a significant development affecting the health and safety

which we contend, because of the totality of the circumstances, must be considered now, under Cook, and not the operating license stage.

MR. EICHHORN: We have discussed the issue of emergency plans, as well, I do not usually take issue with pro se intervenors. I am sorry that Mr. Olszanski was not at the original hearing and didn't take the time to read the transcript before he made the remarks that he made. He would have found that, not only was Bethlehem considered during that hearing, but an emergency plan was developed and on the record.

Now, I want to talk about a more practical solution and the reasons why this contention of the State of Illinois, Number 6, regarding siting, should not be admitted in this proceeding. As we know, there are a number of reports that have been drawn up with respect to siting since the occurrence of Three Mile Island. We know that the Commission has under serious consideration, new criteria and rule making proceedings regarding siting. But here again, I think we have to wait until the Commission comes up with some regulation as to what the specific criteria is going to be, when it is going to be applied, to what facility, at what stage of the construction, or at various stages of construction, or whether it should be applied immediately. But again, if you look at the siting in

question at this time, you, the Board, are going to have to speculate as to where the Commission will land on the regulations and where the Commission will land with respect to application of those regulations to construction permit holders in various stages of the construction operating plans, and so forth. It is simply impossible for this Board now to make those speculations. And to say that you are actually sure that we are arriving at the same place that the Commission will when it adopts the regulations and criteria. Assuming that it is reviewed at this time and met mustard, it still doesn't prohibit a review at another interim stage when the Commission alights on regulations and criteria; and still a third consideration at the O.L. stage. I don't think the Commission is going to stop looking at the question of siting simply because this Board doesn't consider it in this hearing, and I don't think the Board should consider it in this hearing for the very practical reason that they don't know where the Commission is going to alight on these regulations at this point in time.

MR. GROSSMAN: Mr. Hansell?

MR. HANSELL: I am not unpersuaded by Mr. Eichhorn's suggestion that perhaps the best thing to do ought to be wait until definite regulations come out before talking a lot about the siting for Bailly. And I would be willing to withdraw

that particular contention if he would be willing to do nothing at the site that jepordizes the review of the site and until the regulations come out that would not be the case. And that since they get permission from the staff to proceed with the final proceeding both filing and subsequent to that with construction of a nuclear power plant, and greatly distorted the balance in favor of building a plant at that particular site. I think if they had to do it all over again, they, the Commission, would not relocate the site in a point where they are not going to shut them down from their conditional existence. The same would be the case if Bailly were near completion. The Commission does not--going to the O.L. licensing stage or any other proceeding at that time would not shut the plant down. As Commissioner Kolinski said, "If you think I am going to consider such basis for issues like that at the operating license stage, you're just kidding the public and that's it." I agree with him. We should, until the regulations are out, until we get the new regulations on the siting, until we get consideration on it; if NIPSCO is willing not to do anything at the site to upset the balance, I would be quite amenable to that. Unfortunately, it is not going to happen. Therefore, we have to deal with what exists today. And what does exist today, I have indicated, are many, many Commission documents that can strongly

suggest the total inappropriateness of the Bailly Nuclear Power Plant, where it is going to be located.

MR. GOLDBERG: I guess the only thing I have to add is as evident by the direct remarks for both counsel for the applicant and counsel for the State of Illinois, there is active NRC consideration both citing criteria in general and with regard to Bailly. The matter of population density that is before the NRC and is for the formal request for action under 2.206. And that is the form in which all relevant information will be considered. I should also say that many of the criteria referred to in some of the correspondence which served to provide the basis for the contentions and which I had not been provided a complete copy by my staff, refers to task force reports considered the the NRC staff and not regulations or criteria that have been endorsed by the Commission itself. But I think the central point is that the issues, once that is outside the scope of the proceeding, as we discussed yesterday, and that with the halter of the pilings insulation, which the Commission had the opportunity to consider whether there was an immediate need to institute a hearing, did indicate that there was an opportunity to litigate these issues and at the operating license stage, until such time that the plant has been built on the site as existing and under the criteria that is applicable or it may

not receive such authorizaiton.

MR. GROSSMAN: If there aren't any further comments, I think that concludes the contention discussion. I believe we have covered all of the contentions. Does the Attorney for the Lake Michigan Federation wish to speak?

MR. ROBBINS: Mr. Chairman, we would like to concur with the contentions as they have been stated here.

MR. GROSSMAN: Any further comments on the contentions? I think we will go on with the scheduling if there are not.

MR. EICHHORN: Mr. Chairman, we have incorporated by reference in our petition to what I am concerned about, and that is a party coming in with no pleadings and adopting other contentions. We just don't know where they stand with all this.

MR. ROBBINS: We have a Petition to Intervene. There is no suprise that the other parties have discussed fully all the issues. There is no new issues which have been brought up whatsoever. We merely want the Board to know that we concur with these and are willing to continue to present them.

MR. GROSSMAN: I think the submission of the Lake Michigan Federation is in the record. And your comment, Mr, Eichhorn, is noted in the record, too, and it is up to the Board now to make a determination as to the future status of the Lake Michigan Federation on the basis of what is

apparent in the record. I don't think that we need any further discussion on that, at least, at present.

MR. ROBBINS: Thank you, Mr. Chairman.

MR. VOLLEN: Mr. Chairman, there is one more matter I would like to call to the Board's attention. I am sure the real contention in the Petition for Leave to Intervene is the matter of stay of construction activity. We, in that petition, requested a reply by NIPSCO in response to the opposing issue of the stay. I think the staff has not said anything about their position, therefore I believe it should be forfeited. We would like to move for a stay of construction, which would be the final disposition of this proceeding by the Board.

MR. GROSSMAN: There is no construction going on now.

MR. VOLLEN: But if the issue were a live one, NIPSCO has been given permission by the staff to resume construction.

MR. GROSSMAN: We think then it would be appropriate. You could then seek the Board's order on granting the stay. I don't want to take up any matters that don't require any action at this time.

MR. EICHHORN: Is this a matter Mr. Vollen would like to hold in abeyance? ...If he has nothing to say, I am assuming he is withdrawing his request.

MR. VOLLEN: I want it made clear in the record that part of the subject matter which may need to be addressed at this proceeding is a matter of the Board imposing a stay. It is not something that needs to be addressed now.

MR. GROSSMAN: I believe my understanding is that it is a request that is still pursued by the petitioner, but he is also pointing out to the Board that it need not decide on that; that this is not a matter of urgency, but, of course, it is at the Board's discretion to rule on that if it desires. Is that a fair summary of your position, Mr. Vollen.

MR. VOLLEN: I suppose it is. The Board has the discrepancy to rule on anything if it desires. What I am saying is that I would like to know if the Board will rule on that now?

MR. GROSSMAN: But you are not going as far as to withdraw your request at this time, are you Mr. Vollen? If you withdraw it, then you will have absolved the Board from having to rule on it, but you're not going that route, Mr. Vollen?

MR. VOLLEN: I want it as part of the petition in the event that construction is resumed.

MR. GROSSMAN: I believe I understand your position on that.

MR. OLSZANSKI: Mr. Chairman, before you leave that

issue, I just want to point to the bottom line with respect to our entire petition which speaks to that issue, and it reads: "We the petitioner urge that no construction of a nuclear power plant be approved at this site." Now, perhaps we should have added "at any time". Certainly the contention is that we don't want to see any more piling driven into the ground. We certainly agree with Mr. Vollen. However, if we see any more piling driven into the ground, we would urge a stay at that time.

MR. GROSSMAN: Fine. I believe that does conclude the discussion of the contention, and all that we have left at this point is to decide on the scheduling, and I will throw out, for openers, that, perhaps, we should ask for consultation of the parties in person or by telephone with regard to contention. I think it would probably a reality if it were done over the phone and that there be some consultation within three weeks. Is that adequate for all the parties?

MR. VOLLEN: I think I can do it within three weeks, Mr. Chairman.

MR. GOLDBERG: It is acceptable.

MR. HANSELL: It is acceptable.

MS. SEKULER: In talking at the recess with the attorneys from the NRC, we both have a similar question which is whether it would be appropriate to meet with us after you

come up with your decision on staying and with regards to the scope of the proceeding? That would very much have an impact on the level of discussion that we would have.

MR. GROSSMAN: And it was your understanding that I would rule on the scope of the proceeding at this point?

MR. GOLDBERG: It was not an understanding. It was my understanding that there were two instructions that the Board made to the participants. One was to brief two separate legal actions, which I understood the Board would establish some scheduling for so doing. The second was that we were to meet in an effort to arrive at some agreement on some other outstanding matters, but that that process would not take place until the Board had issued a pre-hearing conference ordering the parties and determining whether or not there would be a hearing in this matter. I may be mistaken.

MR. GROSSMAN: You are not mistaken. I will withdraw the suggestion of the time limit now and suggest that the parties begin consultation immediately after this conference, but that we will issue an order soon with regard to the request of staying. But I don't expect to issue an order with respect to the scope because that entails going into all of the contentions, and I don't see how we could make a general ruling and tailor it to the individual contentions. But I don't want to commit the Board with regards to that. We will

issue an order within the next few weeks. We will, in that order, require when the consultation period should end and the reports made to the Board. In the meanwhile, we will set a limit on the time for further submission on those legal questions, simultaneous submissions, which I would like a suggestion as to time. Perhaps four weeks. Does that seem too long or too short or acceptable to all participants?

MR. VOLLEN: It is acceptable.

MR. HANSELL: Fine.

MR. GOLDBERG: It's fine.

MR. EICHHORN: I think we can meet that schedule.

MR. GROSSMAN: I believe that concludes all the matters that we have before us. I want to thank everyone for more than adequate preparation and a very conscientious effort.

(Hearing adjourned at 4:20 p.m.)