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UNITED STATES ATOMIC ENERGY COMMISSION

IN THE MATTER OF:

SACRAMENTO MUNICIPAL UTILITY
DISTRICT

(Rancho Seco Unit 1)

Docket No. 50-312

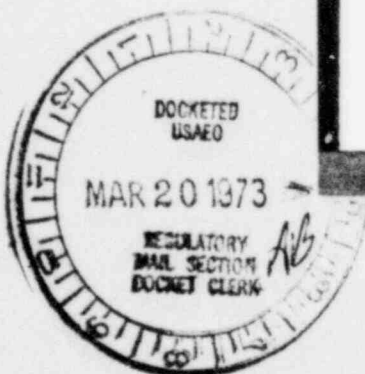
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Place - Sacramento, California

Date - 15 March 1973

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UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

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SACRAMENTO MUNICIPAL UTILITY : Docket No. 50-312
DISTRICT :
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(Rancho Seco Unit 1) :
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Federal Building and Courthouse,
650 Capitol Mall,
Room 2545
Sacramento, California

Thursday, 15 March 1973.

Prehearing conference in the above-entitled matter
was convened, pursuant to notice, at 9:30 a.m.,

BEFORE:

JOHN B. FARMAKIDES, Esq., Chairman,
Atomic Safety and Licensing Board.

DR. CLARK GOODMAN, Member.

DR. J. V. LEEDS, JR., Member.

HUGH K. CLARK, Esq., Alternate Chairman.

APPEARANCES:

DAVID S. KAPLAN, Esq., 6201 S Street, P. O. Box
15830, Sacramento, California 95813, on behalf
of the Applicant, Sacramento Municipal Utility
District.

DAVID KARTALIA, Esq., U. S. Atomic Energy Commission,
Office of the General Counsel, Washington, D. C.
20545, on behalf of the Regulatory Staff.

1 MYRA SCHIMKE, Sacramento, California, on behalf
2 of Intervenor Dick Gregory, Homer Ibser,
3 Patricia A. Macdonald, George McAdow, Bruce
4 McNitt, Ruth O'Hearn, Judi Phillips and Myra
5 Schimke.

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P R O C E E D I N G S

CHAIRMAN FARMAKIDES: Good morning, ladies and gentlemen. Please come to order.

The record will show that this prehearing conference began at approximately 9:30 a.m. on March 15, 1973 in the Federal Office Building, Sacramento, California.

We were initially scheduled to be in room 3410. The room was too small to accommodate the group, so we switched to this room.

I want to thank Mr. Widdifield, the Building Manager, and his staff, for being so cooperative.

There will be no smoking during the conference today. We appreciate that very much.

Incidentally, I don't see the Intervenors. I assume --

(Persons in the audience standing.)

CHAIRMAN FARMAKIDES: You may be seated at this time if you wish, since you have been admitted as a party. One thing I would like to know is who will be spokesman for the group?

MS. SCHIMKE: It's a spokeswoman, sir.

CHAIRMAN FARMAKIDES: Spokeswoman. I'm sorry.

MS. SCHIMKE: My name is Myra Schimke, one of the intervenors.

CHAIRMAN FARMAKIDES: All right.

1 Continuing, then, this is a special prehearing
2 conference before the Atomic Safety and Licensing Board of
3 the Atomic Energy Commission duly appointed by the Commission
4 to conduct this hearing.

5 The Board is comprised of Dr. Goodman, on my
6 right, a recognized expert in nuclear physics, a professor
7 at the University of Houston.

8 On my left is Dr. Leeds, also a physicist, and a
9 professor of environmental engineering at the University --
10 Rice University.

11 On my far left is Dr. Hugh Clark, who is the
12 alternate chairman in this proceeding, a member of the bar
13 of the District of Columbia.

14 My name is John Farmakides.

15 The Notice and Order dated March 1, 1973, called
16 for this prehearing conference as the initial preparation
17 towards providing the hearing, the evidentiary hearing, on
18 the application filed under Section 104(b) of the AEC Act of
19 1954, as amended.

20 Can you all hear me in the back?

21 VOICE FROM THE AUDIENCE: I can't, sir.

22 CHAIRMAN FARMAKIDES: Will you please have seats?

23 The application was filed by the Sacramento
24 Municipal Utility District for a facility operating license
25 for the pressurized water nuclear reactor identified as the

1 Rancho Seco Nuclear Generating Station Unit Number One.

2 This facility was designed to operate at steady
3 state power levels not to exceed 2772 megawatts thermal at
4 Applicant's site in Sacramento County, California.

5 On October 18, 1972, the Commission published in
6 the Federal Register 37 FR 22012 a notice of consideration of
7 issuance of a facility license and notice of opportunity for
8 a hearing in this matter.

9 The notice provided inter alia that any person
10 whose interests may be affected by this proceeding may file
11 a petition to intervene with respect to the issuance of a
12 facility operating license.

13 Two parties petitioned to intervene.

14 By memorandum and order dated February 23, 1973
15 the Commission denied the request of Mr. E. J. Frisbee, for
16 failure to meet the requirements of Section 2.714 of the
17 Rules of Practice of the Commission.

18 The second petition, filed by Dick Gregory,
19 Homer Ibser, Patricia Macdonald, George McAdow, Bruce McNitt,
20 Ruth O'hearn, Judi Phillips and Myra Schimke, is granted,
21 and these people were admitted as a party, subject, however,
22 to conditions stated in the Memorandum and Order.

23 Those conditions are stated as follows:

24 "By admitting Dick Gregory et al we,..." that is, the
25 Board passing on the petitions to intervene, "...do not

1 necessarily approve any of these contentions."

2 It was then left to this Hearing Board to decide
3 which, if any, contentions will be permitted.

4 Accordingly, the primary objective of this
5 prehearing conference will be to establish a clear and
6 particularized identification of the actual matters in con-
7 troversy through a review today of the contentions filed by
8 the Intervenor, Mr. Dick Gregory et al.

9 It is not the purpose of this prehearing conference
10 to take evidence. This will occur at a later time during
11 the evidentiary hearing.

12 This conference, as well as the hearing it antici-
13 pates, is open to the public. However, a member of the
14 public does not have the right to participate. That right
15 belongs to the three parties.

16 Opportunity arises for a member of the public
17 to participate through a limited appearance, which allows
18 him then to state for the record his views on the matter
19 before us.

20 All documents, transcripts and other materials
21 that are filed in this proceeding will be available for
22 inspection to the public at the Commission's Public Document
23 Room at 1717 H Street, N.W., Washington, D. C. and also at
24 the Sacramento City-County Library, 828 I. Street, Sacramento,
25 California.

1 These are the preliminary matters.

2 Let me now ask the parties to identify themselves.

3 Mr. Applicant, who is representing the Applicant?

4 MR. KAPLAN: David S. Kaplan, appearing for the
5 Applicant, Sacramento Municipal Utility District.

6 CHAIRMAN FARMAKIDES: Thank you.

7 For the Intervenors again, would you please?

8 MS. SCHIMKE: Myra Schimke, and I am one of the
9 intervenors.

10 CHAIRMAN FARMAKIDES: Thank you.

11 For the Staff?

12 MR. KARTALIA: My name is David Kartalia. I'm an
13 attorney in the Office of General Counsel, United States
14 Atomic Energy Commission, and I represent the AEC Regulatory
15 Staff in this proceeding.

16 CHAIRMAN FARMAKIDES: Thank you.

17 One matter that we should settle before we proceed,
18 Ms. Schimke, I understand that you're the spokesman and will
19 be the party to whom the documents in this case will be
20 forwarded, and you will take care of forwarding the documenta-
21 tion and coordinating for the rest of your group.

22 MS. SCHIMKE: Spokeswoman, sir.

23 CHAIRMAN FARMAKIDES: Spokeswoman. I'm sorry again.
24 I'm so used to saying spokesman -- forgive me.

25 MS. SCHIMKE: I'm well aware of that.

1 MR. MC DONOUGH: Mr. Chairman, might I make an
2 appearance?

3 My name is Martin McDonough. I'm General Counsel
4 for the Northern California Power Agency.

5 CHAIRMAN FARMAKIDES: Excuse me, sir. What kind
6 of an appearance are you talking about, sir? A limited
7 appearance?

8 MR. MC DONOUGH: No, sir. We're petitioners for
9 intervention in this matter, and our petition for intervention
10 has not been moved. And I thought it desirable to make an
11 appearance today so that you knew about me and could tell me
12 what part, if any, I have in this --

13 CHAIRMAN FARMAKIDES: Can I have a copy of your
14 petition to intervene, sir?

15 MR. MC DONOUGH: Yes, sir.

16 CHAIRMAN FARMAKIDES: Are the other parties aware
17 of this petition to intervene?

18 MR. KARTALIA: The Staff isn't aware of it.

19 MR. KAPLAN: The Applicant is aware of it, your
20 Honor. It was filed about a year and a half ago. We have
21 responded to it, but as Counsel states, a ruling has not yet
22 been made.

23 MR. MC DONOUGH: Mr. Chairman, I talked to the
24 Staff in Washington last week, and a part of the Staff is
25 aware of it, of course. The Staff has also responded to the

1 petition.

2 CHAIRMAN FARMAKIDES: Is this an anti-trust
3 petition, sir?

4 MR. MC DONOUGH: Yes, it is.

5 CHAIRMAN FARMAKIDES: Oh, I beg your pardon. Fine.
6 That answers this. This is not an anti-trust hearing. There
7 is a separate anti-trust hearing that will be convened at
8 some later time.

9 So that the reason -- I really don't know the
10 reason why you were not informed of this, but so far as I
11 understand it the reason probably was since you're concerned
12 from the anti-trust point of view that is a separate matter
13 unto itself and will be considered at a later time.

14 MR. MC DONOUGH: Yes, Mr. Chairman. I assumed that
15 might be the case. But I thought I had better put in an
16 appearance. I told Mr. Rathburg last week that I would, and
17 he said that he would advise the Solicitor. I wanted to be
18 sure I didn't overlook anything.

19 CHAIRMAN FARMAKIDES: Right.

20 MR. MC DONOUGH: You're telling me now that --

21 CHAIRMAN FARMAKIDES: You have not waived the
22 right, sir. You have not waived the right. And it is a
23 matter of record, so we'll proceed on that assumption.

24 Very late last night I received a statement from
25 the Applicant entitled "Applicant's Prehearing Conference

1 Statement," dated March 14, 1973.

2 Have the other parties received this?

3 MS. SCHIMKE: I think one of our group has.

4 VOICE FROM THE AUDIENCE: Through a misunderstanding
5 sir, the actual passage of the information wasn't accomplished.

6 CHAIRMAN FARMAKIDES: Your name, sir?

7 VOICE FROM THE AUDIENCE: Homer Ibser. It's not
8 that I'm polite, it's spelled I-B-S-E-R. It's not Ib, sir.

9 CHAIRMAN FARMAKIDES: Has the Staff received it?

10 MR. KARTALIA: We received it about half an hour
11 ago.

12 CHAIRMAN FARMAKIDES: Have you had a chance to
13 read it, ma'am?

14 MS. SCHIMKE: No, I haven't.

15 CHAIRMAN FARMAKIDES: I think it's wise that you
16 do. I've read it and to me it's a very reasonable suggestion
17 put out by the Applicant. I'd like for you to consider it
18 seriously. It might be a way for us to proceed with the
19 minimum amount of time wasted.

20 So we'll recess -- how much time do you need,
21 ma'am? Fifteen minutes? Would that be sufficient time?

22 MS. SCHIMKE: I think that will be sufficient.

23 CHAIRMAN FARMAKIDES: All right. We'll recess
24 until ten o'clock, and will reconvene then.

25 (Recess.)

1 CHAIRMAN FARMAKIDES: We will proceed.

2 Has the Intervenor had a chance to look over the
3 Applicant's Prehearing Conference Statement?

4 MS. SCHIMKE: Yes, we've had an opportunity.

5 CHAIRMAN FARMAKIDES: What do you think of it,
6 ma'am?

7 MS. SCHIMKE: I think our contentions as we have
8 outlined are still valid, and we do not accept it at all.

9 CHAIRMAN FARMAKIDES: All right. Well, then,
10 your contentions, as I understand them, are reflected in your
11 amended petition?

12 MS. SCHIMKE: We feel that in the outline that we
13 gave you today that it basically --

14 CHAIRMAN FARMAKIDES: The outline that you gave me
15 today? I have seen no outline, ma'am.

16 MS. SCHIMKE: You haven't? Do we have an extra
17 copy of that?

18 (Document handed to Ms. Schimke.)

19 (Document handed to the Board.)

20 CHAIRMAN FARMAKIDES: We'd like to have three
21 copies of this, please, for the entire Board.

22 MR. KARTALIA: We have one extra copy here.

23 CHAIRMAN FARMAKIDES: Well, does the Intervenor
24 recognize that in participating here you have to comply with
25 the rules?

1 MS. SCHIMKE: If I may preface my remarks, Mr.
2 Chairman, I think you'll have to understand that we consider
3 ourselves concerned and responsible citizens, without legal
4 counsel and without wealth. But we feel that we have a grave
5 moral obligation to this and future generations, and we're
6 doing the best we can under the circumstances. And it's
7 our understanding under the law that this particular
8 Commission encourages informality in the conduct of AEC
9 licensing proceedings, and we are doing the best we can.

10 One of the intervenors did go up to one of our
11 Congress people's offices to try to xerox more copies.

12 CHAIRMAN FARMAKIDES: Well, let's be sure that
13 we understand that informality of course is welcomed up to
14 a point where the rights of the other parties are not
15 prejudiced.

16 Secondly, informality is encouraged, I'm sure,
17 but up to the point where an orderly proceeding is not
18 damaged. We will have an orderly proceeding.

19 One of the issues here is whether or not any of
20 your contentions will be permitted. Now, above all else we
21 want a very fair and impartial record to be made, and we
22 will, in view of the fact that you have no counsel, we the
23 Board will consider this very seriously in bending over
24 backwards, if you will, in your behalf.

25 However, just the administration of this thing

1 requires that you people give us the correct number of copies
2 so that we can proceed. And if you cannot meet that burden,
3 it's for you to tell me that you can't do it, and you'll have
4 to make some arrangements.

5 MS. SCHIMKE: Mr. Chairman, is anywhere in the
6 rules that we were to provide you this morning with a partic-
7 ular number of copies? If so, we would have done that.

8 CHAIRMAN FARMAKIDES: Yes, ma'am. I think it's
9 your obligation -- and it doesn't matter if you're a lawyer
10 or not -- it's your obligation to read the rules and to
11 comply with them.

12 The rules very clearly state that when you make a
13 filing with this Board that it be filed with a certain number
14 of copies. We will enforce that rule, ma'am.

15 If you do not so file, we will not accept your
16 copies.

17 MS. SCHIMKE: Well, again, as I said --

18 CHAIRMAN FARMAKIDES: We want to be helpful here,
19 but we want you to be helpful, too. We cannot proceed in
20 an orderly way without your cooperation.

21 That's enough on that subject.

22 The problem that the Board is having is to
23 understand what are your particular contentions. We think
24 that your amended statement, dated 17 January 1973,
25 entitled, "Right of Intervention and Amended Petition for

1 Leave to Intervene," we think this states your contentions.

2 Now, is this a proper assumption on our part?

3 MS. SCHIMKE: Yes, sir. But we also feel -- and
4 correct me if I'm wrong -- in this prehearing that the
5 purpose of the prehearing is to make clear exactly what kind
6 of -- to present to you the issues we will be discussing at
7 the hearing, and we think it's well stated in this broad
8 outline that we presented -- and Pat Macdonald has extra
9 copies now.

10 (Documents distributed to the Board and to the
11 parties.)

12 CHAIRMAN FARMAKIDES: That's not completely correct
13 now.

14 The purpose of this prehearing is to allow the
15 Board to understand what your contentions are, and to partic-
16 ularize them for the record so that we can rule on them.

17 In other words, following this prehearing confer-
18 ence we will issue an order. We will either grant or deny
19 each of your contentions. We will grant all or deny all, or
20 grant any or deny any, or any mixture thereof.

21 Now, the first thing we'd like to know -- again
22 for purposes of an orderly proceeding -- what are your
23 contentions? And we think that your amended affidavit,
24 identified earlier, states your contentions. And I've asked
25 you the question: Is this true? Can we assume that?

1 MS. SCHIMKE: Yes, that's true, sir.

2 CHAIRMAN FARMAKIDES: Okay.

3 Now, does that 17 January document identify all
4 of your contentions?

5 MS. SCHIMKE: No, sir, it doesn't.

6 CHAIRMAN FARMAKIDES: All right. What are the
7 additional contentions that you have that are not in here
8 that were in your first one?

9 MS. SCHIMKE: Will you hold just a second?

10 (Pause.)

11 MS. SCHIMKE: Mr. Chairman, I think the only two
12 that aren't mentioned in the affidavit dated January 17 is
13 the one, "Divertment of Radiocactive Materials," and then --

14 CHAIRMAN FARMAKIDES: Would you identify that,
15 ma'am?

16 MS. SCHIMKE: Pardon?

17 CHAIRMAN FARMAKIDES: Would you please identify
18 it?

19 MS. SCHIMKE: That's number 7 on the other issues,
20 on the outline that we presented --

21 CHAIRMAN FARMAKIDES: On your initial outline
22 dated November 17?

23 MS. SCHIMKE: No, it's the outline we presented
24 to you today.

25 CHAIRMAN FARMAKIDES: Well, was that issue in the

1 November 17 petition?

2 MS. SCHIMKE: No, it wasn't, sir.

3 CHAIRMAN FARMAKIDES: Is it in this new one?

4 MS. SCHIMKE: The one of January 17?

5 CHAIRMAN FARMAKIDES: January 17.

6 MS. SCHIMKE: No, it wasn't.

7 CHAIRMAN FARMAKIDES: It's a new contention?

8 MS. SCHIMKE: It's a new contention.

9 CHAIRMAN FARMAKIDES: How do you identify that
10 contention, again?

11 MS. SCHIMKE: It's number 6 on the outline we
12 presented to you today, "Divertment of Radioactive Material,"
13 plus, then, we added -- am I going too fast?

14 CHAIRMAN FARMAKIDES: Oh, it's D, as in "David"
15 6.

16 MS. SCHIMKE: Sorry.

17 Also, on number 7 we added we reserve the right to
18 discuss other issues as ore information becomes available.

19 And if you go -- also -- excuse me, on number 1
20 under other issues we added an additional item, and it's
21 related to personnel standards do not provide for review of
22 mental health qualifications of operating personnel.

23 CHAIRMAN FARMAKIDES: Do I understand you, then,
24 to be suggesting these as new contentions not contained in
25 your initial petition or the amended petition?

1 MS. SCHIMKE: That's right, sir.

2 CHAIRMAN FARMAKIDES: All right.

3 MS. SCHIMKE: If it would make it easier, I would
4 be more than happy if you want to go over the 7 --

5 CHAIRMAN FARMAKIDES: We'll be going over all of
6 them.

7 MS. SCHIMKE: Fine.

8 CHAIRMAN FARMAKIDES: And we'll hear the position
9 of each of the other parties on each of the contentions that
10 you voice.

11 I think the way that the Board would like to
12 proceed with regard to considering the contentions of the
13 Intervenor is to take the January 17 amended petition and
14 proceed right down through the pages and discuss each
15 contention in turn.

16 Some of these contentions we will not have too
17 many questions on, if any. Other contentions we will have
18 more on.

19 Is this agreeable to the parties?

20 MR. KAPLAN: It's agreeable to Applicant, your
21 Honor.

22 CHAIRMAN FARMAKIDES: Staff?

23 MR. KARTALIA: (Nodding affirmatively.)

24 MS. SCHIMKE: Again, as lay people without legal
25 counsel and wealth, it's our understanding that this is a

1 prehearing. And we do have a strong belief in due process.
2 And we assumed that since it is a prehearing that we would be
3 presenting evidence and witnesses at our hearings on all of
4 our contentions.

5 CHAIRMAN FARMAKIDES: You're absolutely correct.
6 But please don't misunderstand -- I've said it before -- this
7 prehearing is a formal procedure. We're on the record. It's
8 a procedure to allow us to determine whether or not we will
9 permit your contentions.

10 So when you characterize this prehearing conference
11 as an opportunity to tell us what the issues are that you're
12 going to be discussing at the evidentiary hearing, please
13 understand this is up to the Board to decide.

14 Now, we do not expect any evidence today, as I've
15 said earlier. We certainly, however, expect your input into
16 clarifying your contentions. And very frankly, depending
17 on your input, this Board will deny or grant the contentions.

18 So I hope that's very clear.

19 Do you understand that, ma'am? We just want to be
20 certain about this.

21 MS. SCHIMKE: No I don't, sir. In fact, I'm
22 looking for the regulations that deal with prehearings.

23 CHAIRMAN FARMAKIDES: Well, look --

24 MS. SCHIMKE: And I guess I interpret them in the
25 broad sense of the word, again, since we do have a strong

1 belief in due process and are without legal counsel. And I'm
2 sure you're as concerned as we are with the health and
3 safety of --

4 CHAIRMAN FARMAKIDES: Yes, we are, ma'am. And we
5 do recognize the due process of this hearing. And there will
6 be due process here.

7 But you've got to recognize too that there are
8 certain rules under which you must govern your actions, and
9 I expect that you will follow those rules. And there's no
10 ifs, ands or buts about it, if you do not follow those rules
11 then you must pay the price. And the price would be that we'd
12 simply exclude your contentions.

13 Now, I think these are very reasonable rules for
14 you to follow. I'm not certain that I understand fully your
15 objection to the procedure that I voiced earlier.

16 Can you re-state this for us?

17 MS. SCHIMKE: Well, what we assumed we'd do at the
18 prehearing, sir, was to present the outline of those issues
19 that we would be discussing and presenting evidence and
20 witnesses to at our hearing. I mean that's the way we assumed
21 that things would be handled, because we assumed, again, that
22 this was a prehearing and it was at the hearing that we
23 presented evidence and witnesses to prove our point on all
24 these issues we contend.

25 CHAIRMAN FARMAKIDES: At the prehearing, in

1 accordance with our prehearing order, page 2, it is stated:

2 "The primary objective of said special prehearing
3 conference will be to establish a clear and particular-
4 ized identification of the actual matters in controversy
5 through a review of the contentions filed by the
6 intervenors, Mr. Dick Gregory et al, and to determine
7 which contentions shall be admitted as matters in con-
8 troversy in this proceeding."

9 I think it's very clear, and we're going to
10 proceed on that basis.

11 MS. SCHIMKE: Well, I understand that fully, and
12 I think that's what we're doing.

13 CHAIRMAN FARMAKIDES: Well, fine. We'll proceed,
14 then, and we'll consider each of your contentions in turn.

15 Staff, is there any objection to my proposal that
16 we consider the contentions stated by the intervenor under
17 document dated January 17, 1973?

18 MR. KARTALIA: I have no objection, Mr. Chairman.

19 CHAIRMAN FARMAKIDES: All right, we'll proceed.

20 Incidentally, I see on this list that you
21 presented to the Board today -- and for identification for
22 the record, let's identify it as Intervenor's list dated
23 March 15, 1973 -- unless you have another title for it.
24 Just for the record. We have to be clear that we know what
25 document we're talking about.

1 But I see under III a word which concerns me,
2 "Prejudgment."

3 What do you mean by that, ma'am?

4 MS. SCHIMKE: Well, we feel that we can present
5 evidence to the effect that our case has been prejudged.

6 CHAIRMAN FARMAKIDES: By whom?

7 MS. SCHIMKE: I would say by statements that have
8 been made by the AEC that have been reported in newspapers in
9 relationship to our case. This we would like to bring up
10 again at the hearing, if possible.

11 CHAIRMAN FARMAKIDES: Well, you understand that
12 this Board is a legal entity. We are appointed by the AEC.
13 We are not governed by the AEC. except through the rules. And
14 through the rules, our actions are governed.

15 Now, if I understood you just now you were saying
16 to me that the word "prejudgment" goes somehow to the Atomic
17 Energy Commission, and does not go to this Board. Is that
18 correct?

19 MS. SCHIMKE: I would assume it would affect you
20 also, if it's your place to --

21 CHAIRMAN FARMAKIDES: This is a very serious charge,
22 ma'am. Do you have any facts to show us, this Board, that
23 we have prejudged this case?

24 MS. SCHIMKE: Well, I think we can present that
25 at the hearing, sir.

1 CHAIRMAN FARMAKIDES: No, you can't. You've got
2 to do it right now, ma'am. I want to hear about this.

3 MS. SCHIMKE: Why can't we? This is not an
4 evidentiary hearing. It's our understanding it's a prehearing,
5 and we feel we can present evidence and witnesses to that
6 effect.

7 CHAIRMAN FARMAKIDES: Ma'am, if you want this
8 issue to be considered at the evidentiary hearing you'll have
9 to give us this information now, to me.

10 MS. SCHIMKE: Well, what rule makes it so, sir?

11 CHAIRMAN FARMAKIDES: I don't wish to engage in
12 an argument with you.

13 A moment ago I asked you all not to drink coffee
14 in the hearing room, and at that time you argued with me.
15 Again, now, I'm telling you what the rule is.

16 As the presiding board here, it is within the
17 authority of this Board to act. The rules are your respons-
18 ibility. And I want to know if there are facts in your
19 possession that indicate that we have prejudged this case, I
20 want to know those facts.

21 MS. SCHIMKE: May I say something, sir? I think
22 you're being very hostile to us. You're supposed to be
23 impartial.

24 Getting back to the coffee, at no time was there
25 a sign -- I asked you politely, I did not argue with you, sir.

1 I asked you may I please finish my cup of coffee.

2 I think that was a very hostile and not impartial
3 kind of statement that you just made.

4 Again, we are trying to do our best under the
5 circumstances, and I think that's a very hostile remark on
6 your part that shows you're not being impartial.

7 CHAIRMAN FARMAKIDES: Well, are you saying that
8 this Board has prejudged this case, ma'am?

9 MS. SCHIMKE: I think, as I stated, we will be
10 presenting evidence to that effect at --

11 CHAIRMAN FARMAKIDES: You may not have the oppor-
12 tunity.

13 MS. SCHIMKE: Well, what order allows you to
14 state that, sir?

15 CHAIRMAN FARMAKIDES: This Board will just --

16 MS. SCHIMKE: Is there a rule or regulation that
17 you're going by that allows you to make that ruling?

18 CHAIRMAN FARMAKIDES: Look, this is a prehearing
19 conference for us to decide what are the issues that are
20 going to be tried. What are the issues? If one of these
21 issues is prejudgment on the part of this Board, I'd like
22 to know about it now, for the reason that that's a very
23 serious charge. It's a very serious charge.

24 When I see this word "prejudgment" standing alone
25 as an issue that you present, and you tell me -- you haven't

1 quite told me yet, but you're implying it -- that it's the
2 Board that has prejudged, then, you see, you're making a
3 very serious allegation. And I want to know, what are the
4 facts?

5 This is something which I must know now. If we
6 have prejudged, then this whole hearing -- if you can show
7 this -- this whole hearing, in fact, becomes moot, and we
8 might as well cancel the hearing and convene another Board.

9 But if what you said earlier is that we have
10 prejudged merely because this happens to be a Board appointed
11 by the Atomic Energy Commission, then no Board can properly
12 give you a hearing, as I read you.

13 MS. SCHIMKE: You're stating things that I cannot
14 say, sir. I thought that we could present evidence and
15 witnesses at the hearing. And all I'm asking of you sir is
16 what order or rule are you going by that states that we can't
17 discuss that at the hearing?

18 Again, I'm not trying to be antagonistic. I'm a
19 lay person doing the best I can.

20 CHAIRMAN FARMAKIDES: Right. And I've given you
21 the explanation earlier, and that is that a prehearing
22 conference is an opportunity of the parties to articulate
23 the issues. It's an opportunity for the Board to decide
24 which issues will be admitted and which issues will not.

25 If the Board does not feel that you have any basis

1 of fact, that there's no material issue of fact that you can
2 present, then we will not admit the issue.

3 So I'm asking you now: what are the material facts
4 that you have, or what is it? What information do you have
5 that we have prejudged?

6 MS. SCHIMKE: Well, sir, along with some of the
7 other issues that we presented in our outline dated -- as
8 you gave it -- March 15, 1973, we feel that we could
9 add new issues, and we feel that this is a new issue from
10 recent events that have happened.

11 CHAIRMAN FARMAKIDES: But you've got to be more
12 specific. This Board -- do you have any information that
13 this Board has prejudged this hearing or this matter pending
14 before us? I think that question is very clear, ma'am. Give
15 me a no or a yes answer.

16 MS. SCHIMKE: Again, as I stated, we assumed this
17 was a prehearing and not an evidentiary hearing. And before
18 I discuss that, am I wrong --

19 MR. KARTALIA: Mr. Chairman, could I just make an
20 observation?

21 CHAIRMAN FARMAKIDES: Go ahead.

22 MR. KARTALIA: I believe that, by way of explaining
23 perhaps what the Board is driving at, the rules require at the
24 outset a statement of basis for contentions, and it certainly
25 does not fall upon you to put on witnesses and prove that

1 some type of prejudgment has occurred.

2 However, I think the nature of the inquiry of the
3 Board is merely what is the general basis for the new
4 contention which you are raising right now?

5 I think, to put it very coldly, what is at the
6 bottom of it?

7 CHAIRMAN FARMAKIDES: Thank you, Mr. Kartalia.

8 It's more than that, ma'am. I'm very much
9 concerned when I see any suggestion on the part of any party
10 that this Board has prejudged. This goes to the very
11 essence of our hearing, it goes to the very essence of our
12 judicial procedure.

13 If you have any information that this Board has
14 prejudged, I want to know. If you do not, then fine, tell me.
15 This is such a serious matter that I have pulled it out from
16 all the other issues, and I will consider this first.

17 MS. SCHIMKE: All right, sir. Before we proceed,
18 if -- again, since we consider ourselves a democratic group,
19 before I say anything else on that I would like to discuss
20 that particular issue with the rest of the people.

21 CHAIRMAN FARMAKIDES: You may.

22 MS. SCHIMKE: Thank you.

23 CHAIRMAN FARMAKIDES: I'll give you ten minutes,
24 until 10:40.

25 (Recess.)

1 CHAIRMAN FARMAKIDES: Are you ready to proceed?

2 MS. SCHIMKE: Sir, as I stated before, we, again,
3 have a strong belief in democracy and we make decisions that
4 way, and I appreciate the opportunity to discuss it with the
5 other intervenors. The other intervenors agreed it would be
6 a good idea to present to you what led us to put that partic-
7 ular statement in our outline. One of our intervenors is
8 xeroxing copies of that.

9 It's hard for me if I don't have a copy of it in
10 front of me myself, but one of the other intervenors is going
11 to xerox copies.

12 (Document handed to the Chairman.)

13 MS. SCHIMKE: And again, I think it's important
14 for you to realize that we are naive, doing the best we can.
15 We felt when we presented that, that since this Board is
16 appointed by the Atomic Energy Commission, we found when that
17 particular item was put into the press that there was
18 discredit of two of the potential witnesses we might have at
19 our evidentiary hearing. And we did receive many calls from
20 the public stating, "Gee, it looks as if your case is over
21 with, that you're not going to be having a hearing."

22 CHAIRMAN FARMAKIDES: Well, ma'am, let me very
23 quickly put your mind at rest. You've handed me an article --
24 I imagine this is in the Sacramento paper, it doesn't say
25 here...

1 MS. SCHIMKE: Yes, it was. "The Sacramento Bee."

2 CHAIRMAN FARMANIDES: The caption of it is, "AEC
3 Says It Will Okay Rancho Seco After Assurance of Safety."

4 Well, I very much share your concern, insofar as
5 whoever wrote this article -- I don't know where he got the
6 information, number one. I don't know who the spokesman was
7 at AEC who made this statement. Number three, I frankly
8 don't care. I don't care what the AEC says. This Board is
9 required by law to complete its mission under the law, and
10 we will do that.

11 If you're concerned about this statement that
12 appeared in a newspaper, I could care less about the statement
13 that appears in a newspaper. It's not going to govern the
14 actions of this Board.

15 Now, secondly, what the AEC says is their
16 business. If the AEC has said what this article states it
17 said -- we don't know that, what the Board does is our
18 business. And when you come up with the word "prejudgment"
19 and suggest to me that this Board has prejudged, I consider
20 this to be the most important issue facing us right now.

21 I'm not concerned about the AEC. I'm concerned
22 about this Board. If you think that we have prejudged there
23 is no reason for us to continue this hearing, and we will
24 then ask you to submit a motion with affidavits proving or
25 showing us, this Board, that we, the Board, have prejudged.

1 And I will require that, if you tell me that we, the Board,
2 have prejudged, and that's what you mean by that title III
3 in your new list. That's what I'm trying to get you to
4 articulate.

5 Now, insofar as I see you're not really telling
6 me that this Board has prejudged. You're saying that some-
7 how the AEC has prejudged what it's going to do.

8 But first of all, this Board rules. And this
9 Board will rule on the regulations and the law, and you'd
10 better believe that. Now, our ruling is subject to appeal.
11 Granted, you can appeal. The Staff can appeal. The
12 Applicant can appeal. And that goes to an appeal board.
13 And then it's their decision to make.

14 Now, from the appeal board, the Commission may
15 become involved on its own motion. But I'm not concerned
16 with the appeal board's decision, or the Commission's
17 decision. I'm concerned with the action of this Board, and
18 I don't want any taint of prejudgment on this hearing by
19 this Board. And I would like for you to clarify the record
20 with respect to that.

21 MS. SCHIMKE: I'd be more than happy to, sir.

22 I'm sorry if you took that as a personal affront.

23 I did not mean --

24 CHAIRMAN FARMAKIDES: Not personal to myself.

25 It's personal to this Board.

1 MS. SCHIMKE: All right, s... Then you can
2 understand, again, as lay people, that we assumed since --
3 again, I hope you're not taking this as an attack -- when you
4 were clarifying the matter to us, that is, when we saw that
5 we assumed, we will be more than happy to take that out.

6 Again, I do think it's an important issue, maybe
7 before the evidentiary hearing, in the sense that it does
8 discredit witnesses that we perhaps will be presenting at the
9 evidentiary hearing. And I do not want you to take this as
10 a personal affront to this Board. We didn't mean it that
11 way.

12 Again, in our naive fashion we saw that, and our
13 assumption was wrong, and I'm sorry.

14 CHAIRMAN FARMAKIDES: Fine. Well, then, that's
15 cleared up, and I very much appreciate it.

16 Now, if you feel that that article in any way
17 discredits your proposed witnesses -- that would be Mr. Ford
18 and Mr. Kendall, I imagine --

19 MS. SCHIMKE: That's right.

20 CHAIRMAN FARMAKIDES: -- we will allow you to
21 raise that particular issue when the witnesses testify for
22 you.

23 MS. SCHIMKE: Thank you. Then I guess we had that
24 under the wrong heading.

25 CHAIRMAN FARMAKIDES: Well I feel much better about

1 this, frankly. When I saw the word I was concerned, because,
2 as I've expressed earlier, the Board is very jealous of its
3 integrity.

4 MS. SCHIMKE: I might add we're very glad to hear
5 that.

6 CHAIRMAN FARMANIDES: Let's also mention one other
7 thing. The conduct of this hearing is the responsibility of
8 this Board, and the guiding principle that we have always
9 followed is a fair and impartial hearing. And I'd like all
10 the parties to understand that, that it's always a balancing
11 that the Board must do, what are the rights of the three
12 parties. I cannot be impartial to one party, and that means
13 the Intervenor as much as it does the Applicant or the Staff,
14 in spite of the fact that the Intervenor is not represented
15 by counsel.

16 As I said earlier, we'll bend over backwards to
17 assist the Intervenor. But we cannot do so in any way that
18 would damage the rights of the other parties. As soon as we
19 do that then I'm no longer conducting an impartial hearing.

20 Okay, let's go on now.

21 I'd like to return this article from "The
22 Sacramento Bee" to the Intervenor, and I want to note that
23 I did not show it to the Board. I looked at it as the lawyer
24 member of the Board only.

25 "The specific aspects and subject matter of the

1 proceeding as to which petitioners wish to intervene." I'm
2 quoting from page 1 of the amended petition by the intervenors.

3 Now, let's go to 1(a). Here, the Applicant and
4 the Staff, as I understand their responses, have claimed that
5 this is a challenge by the intervenor to the regulations.

6 What is your reply to that, ma'am? I'm talking
7 about 1(a), which appears on page 1 and continues over to
8 page 2.

9 MS. SCHIMKE: Well, again, sir, we thought we had
10 adequately stated it in our petition and assumed that we
11 would be presenting evidence to this effect at the hearing.

12 CHAIRMAN FARMAKIDES: Well, are you in fact
13 challenging the regulations?

14 MS. SCHIMKE: Yes we are, sir.

15 CHAIRMAN FARMAKIDES: You are? Now, if you are
16 challenging the regulations you understand that you've got
17 to comply with the rules in order to challenge the regulations.
18 And I'd like, with leave of the Applicant and the Staff -- and
19 maybe I shouldn't be doing this -- but I might just state the
20 rule to you, and that's 2.758. You've got to comply with
21 the rules. If you are going to challenge the regulations
22 you've got to do it in the manner required by that particular
23 rule.

24 And incidentally, since I mentioned a regulation,
25 I might also indicate that earlier you asked me as to the

1 authority of the Board to require you to participate in the
2 same -- under the same rules as I would require a lawyer.
3 Well, you might look at 2.718, you might look at 2.757.

4 Now, once you're a party then you comply with the
5 rules and regulations of this Board, and you agreed to that.

6 Getting back now to --

7 MS. SCHIMKE: Can I just say something, sir?

8 And again, I just can't stress it enough and it may sound
9 very naive on our part. Initially, many of us start off with
10 the material that the United States Atomic Energy Commission
11 provides to the public that makes these provisions sound
12 very simple. You know, in fact they have very good little
13 diagrams, and we thought that it would be in very broad
14 outlines and very informal. And we really took seriously
15 the material that was given to the public.

16 CHAIRMAN FARMAKIDES: Well, I'm not disputing the
17 fact that you're making; that is, that the rules are not easy
18 to read. However, they're not unclear. And that's why I
19 did pinpoint the two rules for your use.

20 MS. SCHIMKE: It would have been --

21 CHAIRMAN FARMAKIDES: You do have a copy of the
22 rules. One of the letters that was sent to you included a
23 copy of the rules. So I know you've got them. And this is
24 just one of the requirements that you've got to meet.

25 MS. SCHIMKE: Sir, would you please tell me what

1 day that was that we received copies of these rules, because
2 I don't recall receiving them.

3 CHAIRMAN FARMAKIDES: It's in the filings of this
4 case. Mr. McNitt, I believe, was the person who received
5 them.

6 MS. SCHIMKE: Is the Board obligated to send it to
7 all the intervenors, because --

8 CHAIRMAN FARMAKIDES: No. As I understood it, this
9 was part of the Staff's interaction with you.

10 MR. KARTALIA: Mr. Chairman, I have no recollection
11 of that. I did give a copy of the rules to Mr. Homer Ibser
12 this morning.

13 CHAIRMAN FARMAKIDES: Here we go. It's dated
14 April 14, 1972, to Mr. Bruce J. McNitt, 2310 Q. Street,
15 Sacramento, California, --

16 MS. SCHIMKE: That's April? We didn't even file
17 our --

18 CHAIRMAN FARMAKIDES: -- by Joseph Scinto.

19 MS. SCHIMKE: -- petition until November of '72.

20 VOICE FROM THE AUDIENCE: As I recall, that was
21 a short --

22 CHAIRMAN FARMAKIDES: Your name, sir?

23 MR. MC NITT: Bruce McNitt, sir. Excuse me. As
24 I recall, that was a short letter. It's been, you know,
25 almost a year since I read it. But I don't recall it as

1 being very inclusive.

2 CHAIRMAN FARMAKIDES: My only point is that you'd
3 gotten a copy of the rules. Now, do you need additional
4 copies of the rules?

5 MS. SCHIMKE: Yes, sir. And I'd like, if I might,
6 to clarify something. If that was in April of 1972, the
7 Intervenors, the 8 of us, did not file our original petition
8 to intervene until November of 1972. And as far as I know,
9 none of us have received rules to that effect.

10 CHAIRMAN FARMAKIDES: Mr. Kartalia, could you please
11 make a point of giving the Intervenors a set of rules?

12 MR. KARTALIA: Mr. Chairman, when I get back to
13 my Washington office, which will not be until Monday, I will
14 send a complete copy of 10 CFR Part 2 of the Rules of Practice
15 to each of the intervenors.

16 CHAIRMAN FARMAKIDES: Well, I'll tell you -- you
17 have no copy of the rules now?

18 MS. SCHIMKE: No. And if I might add, if you will
19 look very carefully --

20 CHAIRMAN FARMAKIDES: I'm willing to give you my
21 copy, but frankly I've got it so marked up. . .

22 MS. SCHIMKE: Again, it's getting back to what I
23 originally stated, which was even under Section 2, documents
24 requested, and I must say again that we took very seriously
25 the publications that have been given to the public. And

1 much of this material has been very difficult for us to get
2 our hands on, even many of the materials related to the case
3 itself.

4 If I might add -- I don't know if it's at the
5 proper time -- it's under the Section 2, under Documents.
6 Maybe this would be an appropriate time to get to that.
7 don't know.

8 CHAIRMAN FARMAKIDES: Well, I'll tell you what
9 we'll do. I'll call my office, and I'll have them mail a
10 copy to you today.

11 MS. SCHIMKE: Fine.

12 CHAIRMAN FARMAKIDES: Let me be sure that I have
13 your address. Is your address on one of the services?

14 MS. SCHIMKE: Yes it is, sir.

15 CHAIRMAN FARMAKIDES: Which service is it on?

16 MS. SCHIMKE: Well, since it is a democratic under-
17 taking, perhaps it would be a good idea to send it to all the
18 intervenors.

19 CHAIRMAN FARMAKIDES: Oh, wait a minute. No, we
20 can't do that. As we said earlier, you're the spokeswoman
21 for the group, and all service of papers will be made on you,
22 one copy, on the part of the other two parties, on you.

23 MS. SCHIMKE: Can I add something at this moment?

24 We would --

25 CHAIRMAN FARMAKIDES: If the other parties wish to

1 supply you with additional copies that's their prerogative.
2 But insofar as the rules are concerned, you are considered to
3 be one party with one spokesman or spokeswoman, and will have
4 a document served on you.

5 MR. KARTALIA: Mr. Chairman, could I get in on
6 this?

7 CHAIRMAN FARMAKIDES: Yes, Mr. Kartalia.

8 MR. KARTALIA: As an accommodation I will send a
9 copy of the rules to each of the intervenors when I get back
10 to my office.

11 MS. SCHIMKE: Thank you.

12 MR. KARTALIA: I would like to note that this
13 morning I gave a copy to Mr. Ibser, who is part of your group.
14 He has now left the hearing room, and unfortunately his copy
15 is not available now.

16 CHAIRMAN FARMAKIDES: So they do have a copy?

17 MR. KARTALIA: Mr. Ibser has a copy, but --

18 CHAIRMAN FARMAKIDES: Well, there's a copy on the
19 desk.

20 MS. SCHIMKE: This is it right here, I guess.

21 May I clarify something?

22 MR. KARTALIA: May we go off the record for a
23 moment? I don't -- there were two documents that I gave Mr.
24 Ibser, and --

25 CHAIRMAN FARMAKIDES: No, we're still on the

1 record, Mr. Kartalia. I'd like to have this straightened out.

2 MR. KARTALIA: Well, the document that was just
3 shown me was an outdated copy of 10 CFR Part 2. Mr. Ibser
4 had asked for some historical materials in addition, which I
5 gave him. The updated copy -- that is it, that's it.

6 The Intervenor has an updated copy of 10 CFR
7 Part 2, the copy I gave to Mr. Ibser this morning.

8 MS. SCHIMKE: May I clarify something, sir?

9 CHAIRMAN FARMIAKIDES: Yes, ma'am.

10 MS. SCHIMKE: We would like, especially when it
11 comes to the hearing, we would not like to be put in a
12 situation where it would not allow other intervenors if they
13 so chose at a future time, to also speak for one another.

14 CHAIRMAN FARMIAKIDES: No, ma'am. If you can't
15 speak for the group at any time, you address the Chair and
16 you ask permission to have someone else speak for the group.

17 So far as I'm concerned, there will be one person
18 speaking for the group. That's yourself.

19 MS. SCHIMKE: May I clarify something else, sir?
20 Is that binding just for this prehearing, or --

21 CHAIRMAN FARMIAKIDES: It's binding for the entire
22 proceeding. I cannot permit eight people or seven people
23 to be talking at different times for the group, unless there
24 is a reason for it and you give me the reason. Then we will
25 substitute people for you. Assuming, for example, that

1 you've divided the work among the eight people, and each one
2 of them has a block of work to do -- which will be a
3 reasonable assumption -- I will permit that kind of dividing
4 of labor. But you're the spokeswoman, and I'm going to hold
5 you responsible for the hearing, including this prehearing.

6 MS. SCHIMKE: Let me clarify something further,
7 then. If it should so happen that this was changed, we could
8 certainly do that if I went to you and explained the reasons
9 for it?

10 CHAIRMAN FARMAKIDES: Yes.

11 MS. SCHIMKE: Fine. That's all I wanted to know.

12 MR. KARTALIA: Mr. Chairman?

13 CHAIRMAN FARMAKIDES: Mr. Kartalia.

14 MR. KARTALIA: This is somewhat out of order, but
15 the question has been raised about these documents covered
16 on Part 2 of the Intervenor's --

17 CHAIRMAN FARMAKIDES: Excuse me just a minute, Mr.
18 Kartalia.

19 (The Board conferring.)

20 CHAIRMAN FARMAKIDES: My colleague has just
21 mentioned something that we want to be very clear about.

22 Insofar as the Intervenor is concerned, I'm
23 looking to Ms. Schimke to be the spokeswoman. It's the
24 decision of the Board as to whether or not we will permit
25 anyone else to be a spokeswoman.

1 As I said earlier, if there's a reason why Ms.
2 Schimke cannot pursue that role, then she will ask the Board
3 and we will then consider the reasons for having someone
4 else act as spokeswoman, or spokeslady, and the Board will
5 then agree or not agree.

6 Is this clear?

7 MS. SCHIMKE: No, it really isn't sir, because
8 again, may I point out that in the rules to that effect --

9 MR. KARTALIA: Mr. Chairman, I think I can clarify
10 this.

11 There is a provision in our rules for consolidation
12 of intervenors. It's Rule 2.715(a), and it provides that the
13 presiding officer, in this case the Board, may authorize
14 the consolidation in certain situations where no party's
15 interests would be adversely affected. And it is contemplated
16 precisely for a situation such as this, where parties have
17 essentially the same contentions. In this case it's my
18 understanding that the intervenors have identical contentions,
19 and, more or less, identical interests in the proceeding.

20 CHAIRMAN FARMAKIDES: Thank you, Mr. Kartalia.
21 That's very helpful.

22 But look, let's -- in view of the fact that you
23 just got the rules, which I did not realize earlier, let me
24 quote something else to you.

25 This is Rule 2.718, Power of the Presiding Officer.

1 "He has all the power..." -- well, he's got a
2 duty to conduct --

3 MS. SCHIMKE: It didn't say "all the power,"
4 though, did it sir?

5 CHAIRMAN FARMAKIDES: Down below, "He has all the
6 powers necessary to those ends." And I was simply going to
7 list what those ends were.

8 Now, what I'll do is go back and read the entire
9 section for those of the Intervenor group that do not have
10 copies:

11 "The Presiding Officer has the duty to conduct
12 a fair and impartial hearing according to law, to take
13 appropriate action to avoid delay, and to maintain
14 order. He has all the powers necessary to those ends,
15 including the powers to administer oaths, affirmations, to
16 issue subpoenas authorized by law, to rule on offers
17 of proof, receive evidence, order depositions to be
18 taken, regulate the course of the hearing and the
19 conduct of the participants."

20 And I emphasize that, because that is probably the
21 specific rule that would apply to a person not a lawyer more
22 so than --

23 MS. SCHIMKE: Do all of those rules also apply
24 to the prehearing?

25 CHAIRMAN FARMAKIDES: Yes, ma'am. They apply

1 throughout the entire proceeding.

2 And then there are additional rules that are listed
3 there. And it ends up with:

4 "...take any other action consistent with this
5 Act, this chapter, and Sections 551 and 552 of Title V,
6 United States Code."

7 We're not in a frivolous undertaking here. This
8 is a very serious proceeding, and I hope that we all understand
9 that. We do have the authority here, and the power to
10 censure. We have the authority and the power to suspend.

11 And this is not -- please, please understand, that
12 we're not here in any way to whitewash an application. We're
13 here to do a job. And primarily the only reason is because
14 the Intervenor's have raised contentions and we want to hear
15 those contentions, and we'll rule on them.

16 MS. SCHIMKE: May I say something, sir? I have
17 the strange feeling -- and I hope I'm wrong -- that you're
18 directing all this at me. And as I told you earlier, we're
19 trying to the best of our ability. And it seems to me that
20 it's, in a subtle way, saying that we are acting in a
21 frivolous way, and I don't think that I am at all.

22 CHAIRMAN FARMAKIDES: No, let's be clear. I was
23 directing the rule to you because I understood that you did
24 not understand what the authority of this Board was. Insofar
25 as that is concerned, 2.718, in addition to what Mr. Kartalia

1 said --

2 MS. SCHIMKE: Well, I'm looking at --

3 CHAIRMAN FARMAKIDES: But look, one more thing here,
4 so far as I'm concerned this is a court of law. We don't
5 have a court room because they're all being used.

6 Now, I want the parties -- and include all the
7 parties -- if you want to talk, to be recognized by the
8 Board. This is a standard procedure that we must follow,
9 and any court of law will require this. The fact that you
10 are not a lawyer does not waive that requirement.

11 So it isn't a colloquy between you and the Board.
12 If you want to say something, let's be recognized.

13 Let's go back, then, to my question.

14 As I understand it, in response to 1(a) of your
15 affidavit, you are challenging the rules.

16 My next question -- again, as I understood you...
17 no, forgive me. I remember now. I asked you if you had
18 complied with the rule relating to challenge of the rules,
19 which is -- I think it's 2.758. Let me just check that to
20 make sure.

21 (The Board conferring.)

22 CHAIRMAN FARMAKIDES: Yes, 2.758.

23 MS. SCHIMKE: Where are you turning to, sir?

24 CHAIRMAN FARMAKIDES: 2.758. I take it you have
25 not filed the necessary documentation under 2.758.

1 MS. SCHIMKE: Again, since we didn't look at this
2 before, it's difficult for us to say. As we stated it, I
3 think we stated it clearly in the affidavit.

4 And maybe you could clarify something for me --
5 and I'm not trying to be facetious at all --

6 CHAIRMAN FARMAKIDES: All right. If we can, we
7 certainly will.

8 MS. SCHIMKE: I think that we still contend -- and
9 again, I would have to state that not having an opportunity
10 to look over this rule very, very carefully you're putting
11 me in a very difficult position to say whether it falls under
12 this particular rule or another rule.

13 All we're saying is that we believe there is no
14 evacuation plan for Sacramento should there be a major nuclear
15 accident or technological breakdown.

16 I guess -- again, as lay people, and I'm not trying
17 to be facetious -- that's how we look at it. We were
18 concerned with an evacuation plan, and not concerned whether
19 it fell under such-and-such a rule, but were just concerned
20 with the safety and well-being of the Sacramentans.

21 CHAIRMAN FARMAKIDES: All right. We'll hear reply
22 by the Applicant on 1(a).

23 MR. KAPLAN: Our position is the statement which
24 we filed. They are seeking to challenge the regulation.
25 We don't think they've made the showing required under 2.758.

1 If we're wrong, of course, the matter should be certified to
2 the Commission. But we think we're right, and that, therefore,
3 the contention should be disallowed.

4 CHAIRMAN FARMAKIDES: Mr. Kartalia?

5 MR. KARTALIA: Mr. Chairman, I'm prepared to have
6 this matter decided on the brief, our original answer to the
7 petition to intervene, the statement that this matter had
8 been resolved in the Point Beach proceeding by Appeal Board
9 order, and that this is not a proper contention, that the
10 rules do not require evacuation plans beyond the perimeter
11 of the low-population zone.

12 CHAIRMAN FARMAKIDES: So your point here is that
13 this contention should be denied?

14 MR. KARTALIA: That is correct.

15 CHAIRMAN FARMAKIDES: Intervenor may reply.

16 MS. SCHIMKE: Again, for clarification, are you
17 telling me, sir, then, that the question isn't --

18 CHAIRMAN FARMAKIDES: You can ask the Board, ma'am,
19 and I'll direct him to reply to you if necessary.

20 MS. SCHIMKE: Oh. Is he saying, then, in effect,
21 that the question isn't whether there's an adequate evacuation
22 plan; the point is that it doesn't fall under this rule?

23 CHAIRMAN FARMAKIDES: Mr. Kartalia, would you
24 clarify your statement?

25 MR. KARTALIA: Mr. Chairman, my position is based

1 on my understanding of the contention. I do not understand
2 the Intervenor to be asserting now that the evacuation plan,
3 the emergency plan of the Applicant that the Applicant has
4 included in his Final Safety Analysis Report is inadequate
5 as far as it goes.

6 They are contending that it doesn't go far enough,
7 that it does not include an evacuation plan for the area
8 beyond the low-population zone. And our position is that
9 that is not required, that in effect they are challenging
10 the rules and must proceed by way of Rule 2.758, which has
11 already been called to the Intervenor's attention.

12 CHAIRMAN FARMAKIDES: May I ask the Intervenor,
13 do you have any information with respect to page 2, item
14 1 appearing thereon, do you have any information that
15 indicates that the emergency core cooling system is, as
16 you stated there, "faulty"?

17 MS. SCHIMKE: Can I get back to the other question
18 first? It's still not clear to me, first of all --

19 CHAIRMAN FARMAKIDES: Please reply to this question
20 and then I'll let you get back to the other question.

21 MS. SCHIMKE: On question 1 --

22 CHAIRMAN FARMAKIDES: Do you have any information,
23 ma'am, that indicates -- I think the way you've got it here,
24 that "The faulty emergency core cooling system at Rancho Seco
25 could allow a total core meltdown." Do you have any

1 information --

2 MS. SCHIMKE: Yes, that's the evidence, and we will
3 be presenting evidence and witnesses at the evidentiary
4 hearing on this.

5 CHAIRMAN FARMAKIDES: Well, right now I'm asking
6 you to tell me, do you have any information that you're going
7 to --

8 MS. SCHIMKE: Yes, yes, sir.

9 CHAIRMAN FARMAKIDES: You do.

10 MS. SCHIMKE: Yes.

11 CHAIRMAN FARMAKIDES: You have specific facts
12 that indicate to you that the ECCS is faulty?

13 MS. SCHIMKE: Yes, sir.

14 CHAIRMAN FARMAKIDES: All right.

15 Now, let's go back. What is it you wanted to
16 clarify, ma'am?

17 MS. SCHIMKE: Dealing with the vacation plan,
18 again, I'm not trying to be facetious, but when we tried to
19 get this information -- if I can, and it relates to Section
20 3 -- since this information was supposed to be available
21 at our public library, I'd like to state that, again, -- no
22 fault of the librarians, but there are many packages dealing
23 with the issues that haven't even been opened yet in the
24 public library. That makes it difficult.

25 We did inquire at our own public utility library,

1 which we thought, since it was a public utility -- our public
2 utility -- that that library would be available. And we were
3 informed on several occasions by our public utility librarian
4 that that was for private use.

5 So this has been very difficult for us. And we
6 could not find --

7 CHAIRMAN FARMAKIDES: Do you have any helpful
8 comments, Mr. Kartalia?

9 MR. KARTALIA: Mr. Chairman, I did want to address
10 myself to this. The Intervenor's have listed a number of
11 documents that they have not been able to find, and some of
12 them simply do not exist yet. For that reason, I wanted to
13 go through these item by item and indicate where they stand.

14 The first item on page 2 of your list is the
15 Safety Evaluation prepared by the Director of Licensing.
16 That Safety Evaluation has not yet been completed, and we
17 don't expect it before June or July at the earliest.

18 The second item is the final detailed statement on
19 environmental conditions -- or consideration. That statement
20 was issued on March 12, just recently. We have had copies
21 available in the room today, and I believe earlier, before
22 the prehearing, that I offered copies to you.

23 But if there are not enough copies available here
24 we would be pleased to mail out additional copies to anybody
25 who wants one.

1 The third item is the report of the Advisory
2 Committee on Reactor Safeguards on the application for a
3 facility operating license. That document is not available.
4 The ACRS has not completed its review, and we do not
5 anticipate that the ACRS will complete its review before July,
6 or that the report identified as item 3 will be available
7 before July.

8 The fourth item is the proposed facility operating
9 license. We have not drafted the proposed facility operating
10 license. I would be pleased to send you a copy of an
11 operating license issued in another case so that you could
12 get an idea of what one looks like. We will prepare one that
13 will look more or less like other facility operating
14 licenses, and offer it to the Board later in the proceeding.

15 Five, the proposed technical specifications for
16 the attached proposed facility operating license. The
17 technical specifications contain the detailed technical
18 provisions of the license. The license itself is usually a
19 document consisting of only two or three pages. The technical
20 specifications, on the other hand, go into these matters in
21 much more detail, the restrictions that are applied to the
22 facility, the valve settings, and so forth. That document
23 is not yet available.

24 The Applicant has submitted proposed technical
25 specifications for review of the Staff. The Applicant's

1 proposed technical specifications are available. They are
2 supposed to be included as part of the Applicant's Final
3 Safety Analysis Report, which is a publicly available
4 document.

5 Our review of the proposed technical specifications
6 has not been completed.

7 The sixth item, I take it, is a reference to the
8 Final Safety Analysis Report. That document is a publicly
9 available document. It should be in the local Public
10 Document Room.

11 I heard you state that some of the envelopes in
12 the Public Document Room had not been opened. This has not
13 been called to my attention before, although I must point out
14 that these Public Document Rooms -- local Public Document
15 Rooms -- are not under the direct control of the AEC. These
16 are generally the libraries and other offices who volunteer
17 to make this information available.

18 If that is the case, we certainly regret it. And
19 I will mention to the Office of the Secretary when I get
20 back to Washington to inquire into the status of this local
21 Public Document Room. It should be in order.

22 I would note that item 6 mentions specifically
23 the industrial security plan. I would like to say, with
24 respect to that, that that document is not normally available
25 to the public, for a very good reason. It contains the

1 provisions which the Applicant is going to take to safeguard
2 the facility from a security viewpoint, and obviously, when
3 those details are known they no longer serve any purpose --
4 things such as how many guards and where they will be
5 stationed, and locks, and so forth.

6 So that document is not likely to be found in
7 the local Public Document Room, and could be made available
8 only under the terms of a protective agreement to safeguard
9 its disclosure.

10 Item 7 is the evacuation plan. Again, the
11 Applicant's emergency plans, including evacuation plan,
12 should be part of the Final Safety Analysis Report. It is
13 available to the public and should be available in the local
14 Public Document Room.

15 CHAIRMAN FARMAKIDES: Mr. Kartalia, is there
16 anything you can do to somehow expedite the opening of the
17 boxes by the local public document room?

18 Look, insofar as this Board is concerned, we have
19 no authority, we have no relationship at all to the
20 Secretariat, we don't have any relationship to the Commission
21 in any administrative role. All we do is we're here to make
22 a judgment, a decision.

23 So, on this procedural difficulty that you're
24 experiencing all we can do is ask Mr. Kartalia to do whatever
25 he can through his staff, which we're doing at this time, Mr.

1 Kartalia.

2 MR. KARTALIA: Mr. Chairman, I'm willing to inquire
3 into it. I'd like to note that they are organizationally
4 separate from us, from my office, as well. But in the past
5 when situations of this kind have been discovered they've
6 been quite cooperative and have moved promptly to try to
7 correct the deficiency. And I will speak to them when I get
8 back to Washington.

9 CHAIRMAN FARMAKIDES: Thank you.

10 Let's go on.

11 MS. SCHIMKE: May I just mention something?

12 CHAIRMAN FARMAKIDES: Is there anything more on
13 1(a), because we'll never finish going over these contentions
14 if we are locked into one point.

15 I think the Board -- are there any questions from
16 the Board? Dr. Leeds?

17 DR. LEEDS: No.

18 CHAIRMAN FARMAKIDES: Dr. Goodman? Dr. Clark?

19 (Negative indications.)

20 CHAIRMAN FARMAKIDES: We have no questions on
21 1(a).

22 Do you have anything further on 1(a), ma'am?

23 MS. SCHIMKE: No. I guess I'm feeling a sense of
24 frustration, because I did want to add something to what Mr.
25 Kartalia stated, since it is part of the record. We like

1 libraries, and I just would hate for these circumstances --
2 I know their difficult job putting that in order.

3 Also, I'm wondering, maybe it can be directed
4 to you so you can direct it to Mr. Kaplan, because it's still
5 not clear to us why our public utility library, that informa-
6 tion couldn't have been available for us there.

7 CHAIRMAN FARMAKIDES: I have no authority to
8 impose myself on the Applicant in this.

9 Mr. Kaplan, have you any thoughts in this matter?

10 MR. KAPLAN: My understanding is that three
11 separate copies of the Final Safety Analysis Report are
12 available in Sacramento, two which we have provided, one to
13 the California State Library, in the Government Publications
14 Section, and a second to the Sacramento State College Library,
15 the Science and Technology Section, and thirdly, there's a
16 copy that Mr. Kartalia has been referring to, available at
17 the Sacramento City-County Library.

18 I might mention in connection with that supplying
19 to the Sacramento State College, rightly or wrongly, we've
20 looked on the Intervenors as a State College based group,
21 because Professor Ibser is on the Sacramento University
22 faculty and we felt that his copy would be easily available
23 to them.

24 MS. SCHIMKE: May I clarify something?

25 CHAIRMAN FARMAKIDES: Yes, ma'am.

1 MS. SCHIMKE: I have no connection with Sacramento
2 State College, and I think there is only one, maybe two,
3 people even connected. So we would have no knowledge of that.

4 CHAIRMAN FARMAKIDES: Well, Mr. Kaplan's point
5 was that there are apparently several copies of some of the
6 documentation available.

7 Beyond that, and beyond what the Staff can do in
8 jogging the library through the AEC Proceedings Branch,
9 there's not much this Board can do.

10 Let's go to (b), which appears on 2. This would
11 be item 1(b).

12 Dr. Leeds has a question on this one.

13 DR. LEEDS: Ms. Schimke, do you have any informa-
14 tion to indicate that Applicant is unaware of the severity
15 of inversion conditions?

16 MS. SCHIMKE: Yes, sir.

17 DR. LEEDS: You do.

18 MS. SCHIMKE: (Nodding affirmatively.)

19 CHAIRMAN FARMAKIDES: And this information, then,
20 would be shown during the evidentiary hearing as evidence?

21 MS. SCHIMKE: Yes, sir.

22 CHAIRMAN FARMAKIDES: Dr. Goodman?

23 DR. GOODMAN: Do I understand that you have not
24 read the FSAR and its discussion of this point?

25 MS. SCHIMKE: Since I'm not the one that looked

1 through that particular thing you're talking about -- that
2 would be Mr. Ibser, and he is not here at the present time.

3 But I still maintain that we will be bringing at
4 the hearing evidence and witnesses to the effect that the
5 statement is true.

6 DR. GOODMAN: But do you know whether Mr. Ibser
7 has read the FSAR or not?

8 MS. SCHIMKE: I would have to confer with the
9 other individuals before I could answer that, sir.

10 CHAIRMAN FARMAKIDES: Look, you're representing
11 the Intervenor, and if we go each and every time we ask a
12 question and you have to confer with the rest, well, we'll be
13 here for a year and a day.

14 You have to represent them. Now, if you don't
15 know there's no big problem. Just say you don't know.

16 MS. SCHIMKE: I would be guessing, sir. I would
17 assume since Mr. Ibser is well informed of this -- but I
18 would just be guessing, sir.

19 CHAIRMAN FARMAKIDES: Now, the point raised by
20 Dr. Goodman is a good one. Since you've expressed earlier
21 that you've had difficulty getting the documentation, there
22 might be this point to be made; and that is, that you have
23 not consulted the FSAR. If, after you have read the FSAR,
24 you then decide that this matter no longer is worthy of a
25 contention status, I would hope that in good faith you would

1 then so state to the Board.

2 We have no problem with the fact that if you don't
3 know of the information in the PSAR, and proceed without
4 that knowledge to reach a certain conclusion. Once you do
5 have information which indicates to you that that conclusion
6 is not sound, or that conclusion should be modified, then
7 we'd like you to go ahead and modify your conclusion, modify
8 your position.

9 (The Board conferring.)

10 CHAIRMAN FARMAKIDES: Dr. Goodman has mentioned to
11 me that it would be extremely important for the Board to know
12 whether or not the Intervenor group has read the PSAR in
13 order for us to reach a judgment on your contentions.

14 Is it possible for you to consult with Mr. Ibser
15 during luncheon, and then after --

16 MS. SCHIMKE: We would be more than happy to, sir.

17 CHAIRMAN FARMAKIDES: Fine.

18 Are there any other questions on (b)?

19 (Negative indications by the Board members.)

20 Mr. Kaplan, do you have any comments on (b)?

21 MR. KAPLAN: Well, as you know, Mr. Chairman, when
22 we opposed the petition for intervention we opposed all of
23 their contentions, basically on two grounds: one, that a lot
24 of them were outside the regulations; secondly, that in none of
25 them had they specified particulars in the manner which we

1 believe is required by the regulations. And that is true of
2 this particular contention.

3 Now, when that petition was granted we took another
4 look at it and we felt that perhaps the most productive course
5 was to work with the Board and with them, and when we had a
6 contention as to which the only defect was that it wasn't
7 properly particularized, we would, ourselves, attempt to set
8 it forth in a simple, direct way.

9 And we did that for this contention in the paper
10 which we filed yesterday. And since we took that position
11 yesterday, we'll stand by it.

12 Technically, we feel that with respect to this
13 contention, as with respect to all of the others, they have
14 not been particularized in the manner required by the regula-
15 tions; and the fact that it's not yet clear whether any
16 members of this group have read the FSAR suggests that they
17 are not in a position to properly particularize.

18 CHAIRMAN FARMAKIDES: Are you suggesting, Mr. Kaplan,
19 that you would be prepared to accept this contention if it
20 is stated in the way you have framed it?

21 MR. KAPLAN: We stipulated, in effect, in our
22 filing of yesterday -- and we stand by our stipulations.

23 CHAIRMAN FARMAKIDES: Is the Intervenor willing to
24 accept this particular contention as framed by the Applicant?

25 Now look, on this I'll give you some time to

1 consult. Let's reconvene at 25 minutes until 12.

2 MS. SCHIMKE: May I just add one thing? We'll try
3 our best, and Professor Ibser is trying -- well, he's teaching
4 a class, I assume, and I just feel nothing should be resolved
5 until --

6 CHAIRMAN FARMAKIDES: Let me mention something to
7 you. The Applicant has made an offer, and his offer is that
8 he will accept your contention if you will accept it in the
9 way he's framed it. This is a very -- from one point of view
10 it's a very advantageous offer to you. So you should consider
11 it seriously.

12 Does the Staff have anything to say before we
13 recess?

14 MR. KARTALIA: No, only that I consider it an
15 offer, also, and if this statement of the contentions, the
16 statement that Mr. Kaplan is proposing for the Applicant, is
17 acceptable to the Intervenor, then it would be acceptable to
18 us, notwithstanding the fact that we have raised exceptions
19 to certain of these along the way.

20 CHAIRMAN FARMAKIDES: Yes.

21 MR. KARTALIA: I would like to make one other
22 observation, though. My understanding is that Mr. Kaplan is
23 not proposing a final text of contentions, as such, but rather
24 an identification of the key issues. Many of these are not
25 nearly particular enough to serve as an adequate basis for a

1 trial, but certainly would serve as an identification of key
2 issues prior to discovery and other prehearing procedures.

3 CHAIRMAN FARMAKIDES: There's no doubt about it.
4 These contentions would be framed in such a way as to permit
5 discovery on the part of the parties.

6 Now, we're talking about (b) of the Intervenor's
7 list of contentions under January 17th. From now on--I don't
8 want to keep repeating it -- the document that I'm talking
9 about is the January 17 document, amended petition of the
10 Intervenor.

11 Now, we're talking about (b). Mr. Kaplan, does
12 this offer apply only to (b), or does it apply to (b) and
13 other paragraphs?

14 MR. KAPLAN: We will stand by the statement which
15 we filed yesterday, Mr. Chairman.

16 CHAIRMAN FARMAKIDES: All right.

17 What we're going to do --

18 DR. GOODMAN: This statement as submitted yesterday
19 actually covers (b) and (c), and I just hope that in the
20 recess it's clear that you're looking at (b) and (c) together,
21 as you propose it, Mr. Kaplan.

22 MR. KAPLAN: (Nodding affirmatively.)

23 CHAIRMAN FARMAKIDES: Yes, that's correct.

24 And something else comes to mind here. It is very
25 close to lunch. We decided we would ask the Intervenor to

1 talk to Professor Ibsen during the luncheon time. We'll go
2 through this. We will not ask for a decision at this point
3 in time. We'll just simply say that the offer has been made
4 to the Intervenor. You all consult and let us know after
5 lunch.

6 Okay, let's go to (c).

7 Did you have anything else on that, Mr. Kartalia?

8 MR. KARTALIA: Nothing else on that, sir.

9 CHAIRMAN FARMAKIDES: Dr. Leeds?

10 DR. LEEDS: Nothing.

11 CHAIRMAN FARMAKIDES: Dr. Goodman?

12 DR. GOODMAN: No.

13 CHAIRMAN FARMAKIDES: Okay. (c). Mr. Kartalia?

14 MR. KARTALIA: (c) is part of the Applicant's
15 offer.

16 CHAIRMAN FARMAKIDES: Yes, I know. Is there
17 anything else that we have to talk to with respect to (c)?
18 Does the Intervenor have any comments on (c)?

19 MS. SCHIMKE: No, sir.

20 CHAIRMAN FARMAKIDES: Any questions from the Board?
21 (Negative indications.)

22 CHAIRMAN FARMAKIDES: Let's go to (d). Mr. Kaplan?

23 MR. KAPLAN: Well, I think it's simplest, your
24 Honor, if we take (d), (e), (f) and (k) as a group, since they
25 all relate to the effectiveness of our emergency core cooling

1 system.

2 CHAIRMAN FARMAKIDES: (d), (e), (f) and (k). Is
3 this agreeable to Intervenor?

4 MS. SCHIMKE: Just a minute, please.

5 (The Intervenor conferring.)

6 MS. SCHIMKE: Mr. Chairman, I think I would need a
7 clarification on that. I guess the way we understand it --
8 and I don't know who can help me on this -- does that mean
9 everything, then, related to, as we have on our outline of
10 today, would be discussed? In other words, all I'm trying to
11 say is we want to make sure that somehow nothing is being
12 missed by doing it that way.

13 CHAIRMAN FARMAKIDES: Yes. Now, what we're doing,
14 remember, is going through all your contentions one by one,
15 in the 17th document. And then following that, if there's
16 anything else then you will state it on the record.

17 But now the Applicant has stated that for orderly
18 consideration of contentions (d), (e), (f) and (k), they
19 should be done concurrently. So he wishes to address all of
20 them at one time.

21 So far as the Board is concerned, we have no
22 objection. The question arises, do you have any problems if
23 we consider them all at one time? And I might suggest to you
24 that probably what he has in mind -- I don't mean to be
25 speaking for you, Mr. Kaplan, but in his prehearing conference

1 statement is to group these four contentions under one
2 subheading titled "Emergency Core Cooling System Effectiveness"
3 and he wishes to consider all these together for convenience.

4 Do you have any objection if we proceed in that
5 way? I don't think it makes that much difference to you,
6 really. I would feel that we're going to be considering
7 (d), (e), (f) and (k). What we're leading up to here, what
8 the Applicant is leading up to, is he's going to make an
9 offer to you, a second offer, which appears on page 5 of his
10 prehearing conference statement. That's what we're going up
11 to.

12 MS. SCHIMKE: May I confer with the group just for
13 a minute, sir -- sixty seconds?

14 CHAIRMAN FARMAKIDES: All right.

15 (The Intervenor conferring.)

16 MS. SCHIMKE: Yes, we're agreeable to having them
17 that way.

18 CHAIRMAN FARMAKIDES: All right. Let's consider
19 them as (d), (e), (f) and (k).

20 Proceed, Mr. Kaplan.

21 MR. KAPLAN: As we suggested in our statement, we
22 analyzed these four contentions as falling into two categories.
23 In the first place, they allege that our system doesn't meet
24 the interim criteria, and while they haven't particularized
25 that, fundamentally perhaps a contention could be stated in

1 that area, and we agree to accept that as a contention.

2 The rest of the matters alleged under (d), (e), (f)
3 and (k), if we understand them correctly, amount either to
4 attacks on the validity of the Interim Criteria or to requests
5 that this whole -- the consideration of this whole matter be
6 deferred until the final criteria are promulgated.

7 And we think that these are not appropriate matters
8 for consideration by this Board, and that those contentions
9 should be disallowed.

10 CHAIRMAN FARMAKIDES: Thank you, Mr. Kaplan.

11 Mr. Kartalia?

12 MR. KARTALIA: I don't think I can add anything
13 to what Mr. Kaplan has said. We will also agree to a
14 contention dealing with compliance or conformance of this
15 plant with the Interim Criteria. That would be a contention
16 corresponding to (f). The balance of these ECCS contentions
17 seem to us to amount to challenges of the Interim Criteria.

18 CHAIRMAN FARMAKIDES: In other words, you're saying
19 that, as you said in the earlier issue posed by Mr. Kaplan,
20 you're prepared to accept issue number 2 if the Intervenor
21 does?

22 MR. KARTALIA: Issue number 2?

23 CHAIRMAN FARMAKIDES: 2, of the Applicant's
24 prehearing conference statement, in lieu of (d), (e), (f) and
25 (k).

1 MR. KARTALIA: Oh, I see. Yes. Yes, sir.

2 CHAIRMAN FARMAKIDES: Okay. Ms. Schimke, do you
3 have any other comments to make on (d), (e), (f) and (k)?

4 What I would suggest to you is that you might want
5 to hold this in abeyance and talk to the other group during
6 luncheon, and to Professor Ibsen, and immediately after lunch
7 tell us whether or not you accept that contention.

8 Again, I urge you to consider the offer made very
9 seriously. This Board is of the opinion that it's a very
10 responsible offer to the Intervenor, and it seems to us this
11 would satisfy your needs. I'll leave that up to you.

12 (The Board conferring.)

13 The offer, Mr. Kaplan, just for clarification, the
14 offer which you suggest is your issue number 2 for contentions
15 (d), (e), (f) and (k)?

16 MR. KAPLAN: That's correct, Mr. Chairman.

17 CHAIRMAN FARMAKIDES: All right.

18 (The Board conferring.)

19 MS. SCHIMKE: Mr. Chairman, that's one issue I
20 wouldn't have to confer on. We still contend, and we plan
21 to present witnesses and evidence to that effect.

22 CHAIRMAN FARMAKIDES: In other words, you do not
23 accept the offer of the Applicant?

24 MS. SCHIMKE: That's right. We do not accept the
25 offer.

1 CHAIRMAN FARMAKIDES: All right.

2 Do you have any questions on (d), (e), (f) and (k),
3 Dr. Leeds?

4 DR. LEEDS: No.

5 CHAIRMAN FARMAKIDES: Dr. Goodman?

6 DR. GOODMAN: Well, there is one basic point that's
7 running through these things that I'm not sure whether the
8 intervenors understand.

9 You can raise contentions. You are raising
10 contentions, in two categories: one has to do with concerns
11 about this specific plant. The other has to do with broad,
12 general concerns that you have, which either are challenges
13 to the rules or are challenges, in this case, to the Interim
14 Criteria, which has been established by the Commission.

15 And it's not clear to me whether you really
16 clearly understand the categories of contentions. And I'd
17 like to be sure that you do understand those categories of
18 contentions in making them.

19 Do you?

20 MS. SCHIMKE: I guess my understanding is that this
21 Board was concerned primarily with the safety and the public
22 health of the people and other living things. And I guess
23 I'm getting confused when we're talking about such issues
24 when someone says it's not part of these rules. I guess
25 that's what I'm saying, that --

1 CHAIRMAN FARMAKIDES: Let me clarify something
2 here, please.

3 The point here is that the Congress of these
4 United States has already decided that nuclear facilities may
5 be built. That is the Act, that's a statute.

6 If you have a generic problem, if you have a
7 problem that relates to any nuclear plants, that is not to
8 be heard here. Your forum there is the Congress of the
9 United States.

10 Now, what we hear here, what this hearing is all
11 about, is to resolve problems that you see in the operation
12 of the plant -- this specific plant.

13 So if the contentions that you raise are generic
14 contentions, in other words, contentions that apply generic-
15 ally to the nuclear plant, regardless of where it is, we have
16 no authority, we have no jurisdiction to consider that.

17 MS. SCHIMKE: I feel they relate directly to
18 Rancho Seco.

19 CHAIRMAN FARMAKIDES: Well, that's where the
20 problem arises. And that is, you've got to specify with
21 particularity your concerns with the operation of Rancho
22 Seco.

23 MS. SCHIMKE: We thought we did very well, sir.

24 DR. CLARK: Mr. Chairman, may I try?

25 CHAIRMAN FARMAKIDES: Yes, sir.

1 DR. CLARK: I'm goin, to try to put the Chairman's
2 statement in other words in hopes that perhaps it may help
3 you.

4 This Board is governed by the statutes, and it's
5 governed by the rules which have been promulgated by the
6 AEC.

7 If you wish to challenge the statute which sets
8 up the AEC and which authorizes this Board, you have to
9 challenge that to the authority which made the statute, which
10 is the Congress of the United States. This Board cannot hear
11 your challenge to that.

12 If you wish to challenge the rules which have
13 been made by the AEC there's a special procedure for that.
14 But this Board cannot look to that challenge.

15 In other words, take the environmental situation,
16 for example. If the Applicant has met the procedure which
17 is required under the rules and followed that procedure on
18 the emergency core cooling, this Board has no authority to
19 hear you on the subject.

20 But if it has not met those Interim Criteria, then
21 we can hear you on that subject.

22 In other words, we have limited authority as to
23 what can be heard here.

24 Now, it may well be true that you are concerned
25 with this particular plant, and you think that this plant

1 is a danger to the people who are nearby. But it isn't
2 because of some peculiarity in this plant. You're really
3 saying, as we understand it, that any nuclear plant put here
4 would be a danger to these people.

5 We say when you think that broadly it's outside
6 the jurisdiction of this Board.

7 MR. KARTALIA: Mr. Chairman, if I may I'd like to
8 comment on that.

9 It does not seem to me that the admissibility or
10 inadmissibility of a particular contention turns on whether
11 it's generic or whether it applies to all plants.

12 What is true is that a number of generic issues
13 have been taken out of individual licensing proceedings by
14 action of the Commission. An example of that, for example,
15 is the area covered by the emergency core cooling system
16 Interim Criteria. They are generic.

17 But it's not because they're generic that they're
18 outside the scope of the hearing. It's because the Commission
19 has made a rule on that issue, and has resulted in the con-
20 text of rulemaking.

21 There are other generic issues, such as the fuel
22 cycle, which as a result of the Appeal Board rulings, have
23 been taken out of individual licensing proceedings.

24 But I do not think that I would like to have the
25 Board advise the Intervenors that they are theoretically

1 precluded from raising any generic issues. I believe that
2 there may be some generic issues which would be proper.

3 For example, the effects of low-level radiation --

4 CHAIRMAN FARMAKIDES: You're quite right, Mr.
5 Kartalia.

6 Here is the perfect example of the problem where
7 you try to oversimplify and you reach a problem.

8 No, what we were trying to say is: if it is a
9 problem that the Intervenor is having with respect to the
10 ECCS which relates to this plant, then we can hear it.

11 If, for example, it's a question whether or not
12 any nuclear plant should be built then we're saying that that
13 is not a proper subject here. That has already been passed
14 on by the Congress.

15 So let's continue.

16 I think we've had (d), (e), (f) --

17 DR. CLARK: Mr. Chairman, may I make one further
18 statement?

19 CHAIRMAN FARMAKIDES: Yes.

20 DR. CLARK: With regard to the issue number 2 which
21 the Intervenor has advised the Board that they reject, the
22 offer of the Applicant, in trying to explain our broad
23 thoughts I'm not sure that it's been brought home to the
24 Intervenor that if the Board should conclude that (d), (e)
25 and (k) are challenges to the Criteria, the Board would have

1 to deny those proposed issues.

2 CHAIRMAN FARMAXIDES: Okay. Did you have something
3 Dr. Leeds?

4 DR. LEEDS: Yes. May I direct your attention,
5 Ms. Schimke, to item (e) of your January 25th amended
6 petition? The second sentence reads:

7 "Allowance must be made in the Sacramento hearing
8 to discuss specific shortcomings of the Rancho Seco
9 ECS and the way in which these shortcomings will affect
10 the applicability of the Interim Criteria or the final
11 criteria."

12 I'm not sure I understand clearly what you mean
13 by the words "affect the applicability." Do you find the
14 place, ma'am?

15 MS. SCHIMKE: Yes, I have it. In essence, all I
16 think that means is again we're trying to relate it to
17 Rancho Seco so that we wouldn't be getting the kinds of
18 answers that this does not fall within your particular
19 ruling.

20 That's the way I

21 DR. LEEDS: In other words, you say the way the
22 Rancho Seco ECCS system is constructed that there are
23 shortcomings, and that the Interim Criteria then are not
24 applicable? Is that what you mean?

25 MS. SCHIMKE: Could we confer for just a minute?

(The Intervenor's conferring.)

CHAIRMAN FARMAKIDES: Do you have a response now, ma'am?

MS. SCHIMKE: Yes. Sorry to keep you waiting.

First of all, I have to admit quite frankly that it's poorly worded. And perhaps for clarification, so it's worded a little better, I think we could put a period after ECCS on the top of page 4.

However, I'd like to go back to our general outline, because we still feel that the ECCS does not meet the Interim Criteria. It's just that I picked that particular sentence, and to be honest, it's very poorly worded.

CHAIRMAN FARMAKIDES: So you would put a period after ECCS on page 4 and delete the rest?

MS. SCHIMKE: Yes.

DR. LEEDS: Did you say delete the rest?

CHAIRMAN FARMAKIDES: Yes. A period after ECCS, and delete the rest.

MS. SCHIMKE: Yes, the rest of that particular sentence.

CHAIRMAN FARMAKIDES: Now, let me ask: Would you be prepared to accept issue number 2 stated by the Applicant on page 5 of his brief as your (f)? In other words, the Applicant earlier has offered issue number 2 in exchange for (d), (e), (f) and (k). The Applicant has also indicated that

1 (d), (e) and (k) challenge the Criteria or request that the
2 license be withheld until final criteria can take effect.

3 So we're suggesting to you, would you be prepared
4 to accept issue number 2 of the Applicant for a statement
5 of your (f)? The reason we're doing this, we feel that the
6 Applicant's issue number 2 would be a contention that is
7 clear to the Board, and under which we would probably permit
8 discovery and hearing to proceed.

9 Now, I'm not asking you to accept the offer.
10 Understand what I'm saying. I'm asking you whether you
11 would accept issue number 2 of the Applicant for your para-
12 graph (E), 1(f)?

13 MS. SCHIMKE: Is it just the ones with the quotes,
14 or are you referring to everything on that?

15 CHAIRMAN FARMAKIDES: I don't understand what
16 you said, ma'am.

17 MS. SCHIMKE: Well, would you explain to us
18 again -- I don't know whether you mean their issue number
19 2, where it extends all the way to the next page....is it
20 possible for you to read exactly what you want us to --

21 CHAIRMAN FARMAKIDES: Well, issue number 2 -- oh,
22 now, if you all think -- let's clarify that. Issue number
23 1 is only -- of the Applicant -- is only that statement
24 within the quotes. Issue number 2 is the same, only the
25 statement within the quotes.

1 However, the remaining text in the Applicant's
2 prehearing conference brief, the remaining text is the
3 explanation for the deletion of, if you will, (d), (e), and
4 (k), or the reasons why the Applicant feels that (d), (e) and
5 (k) should be denied.

6 If you don't understand, please come back to us.

7 MS. SCHIMKE: We really don't understand, sir.

8 MR. KARTALIA: Mr. Chairman, in our last brief we
9 stated that we would be prepared to accept a contention
10 dealing with compliance with the Interim Criteria, and I
11 repeated that here today.

12 It seems to me that Intervenor's contention (f)
13 and the Applicant's issue number 2 are practically the same
14 thing. I regard them as almost interchangeable. I don't
15 have an objection to either.

16 If the Intervenor's prefer their own wording, I
17 would propose that the Board adopt it.

18 CHAIRMAN FARMAKIDES: Well, let me be clear that
19 the Intervenor's understand that the Board can deny or grant
20 any contention. The Board can also rephrase any contention,
21 so far as we wish.

22 But this Board feels it would be much more --
23 from our point of view -- much preferable if you all, the
24 parties, agreed to specific language on contentions.

25 If you do not agree, we simply will go ahead and

1 make a ruling for you, and we may well articulate contentions
2 that you don't find completely acceptable.

3 So that's why we're pressing you to come up with
4 language -- by "you" now, I'm talking about the three parties--
5 we're pressing you to come up with language that all three
6 parties agree on. This makes the Board's job easier, and
7 believe me, it makes each of your jobs easier.

8 MS. SCHIMKE: Mr. Chairman, can't we leave our (f)
9 just the way it is? Maybe it's because we understand our
10 wording.

11 CHAIRMAN FARMAKIDES: All right. In other words,
12 the suggestion of the Board is not acceptable and we'll leave
13 it at that.

14 Do you have any other questions?

15 DR. GOODMAN: I'd just like to be sure that you
16 understand, Ms. Schimke, that where the applicant has phrased
17 a contention as a question and you phrase it as a statement
18 we don't feel that that makes any difference, and that if
19 that's what bothers you then I think you should relax on that
20 score.

21 MS. SCHIMKE: Well, I'd feel more comfortable with
22 the statement than the question.

23 CHAIRMAN FARMAKIDES: Well, the Board is predisposed
24 now -- we'll alert you to this -- that we think the Applicant's
25 statement is preferable, far preferable, to yours. We

1 understand what the Applicant is getting to, and there can be
2 limits of discovery under the Applicant's statement. We do
3 not understand fully what you're getting to in your (f).

4 So I'm alerting you as to how the Board feels.
5 Now we will not rule on this until we hear all of the comments,
6 and we'll rule on the basis of the entire record made today.

7 But let's go ahead.

8 MS. SCHIMKE: One more question, sir?

9 CHAIRMAN FARMANIDES: Yes, ma'am.

10 MS. SCHIMKE: Mr. Kartalia, I really enjoyed the
11 way he expressed himself. Would you repeat the way you said
12 it? Maybe it'll make more sense.

13 MR. KARTALIA: Well, what I said about these two
14 things is that I don't really see the difference between them.
15 My personal opinion is that the Applicant has done no more
16 than to rephrase what you meant in (f). And because I don't
17 see a substantive difference between the two, but only a
18 matter of form, and some slight ambiguities in what you've
19 said, I, for the Staff, do not care which of these is
20 accepted.

21] MS. SCHIMKE: We would prefer to use our own
22 wording then, Mr. Chairman.

23 CHAIRMAN FARMANIDES: Okay.

24 Are there any further questions on (d), (e) and
25 (f)?

1 (Negative indications.)

2 CHAIRMAN FARMAKIDES: Okay. Hearing none, we'll
3 proceed to (g).

4 Any further comments on (g), Mr. Kaplan?

5 MR. KAPLAN: Yes.

6 Again, to restate what I have stated in our
7 memorandum, we are here dealing with the interpretation of
8 the Indian Point #2 decision. That decision says that you
9 can't raise pressure vessel rupture in a proceeding of this
10 type unless you allege special considerations.

11 We don't think special considerations are alleged,
12 and therefore, on the basis of the Commission's decision in
13 the Indian Point #2 case, we submit that this contention
14 should be disallowed.

15 CHAIRMAN FARMAKIDES: Mr. Kartalia? On (g)?

16 MR. KARTALIA: Well, I would agree that special
17 considerations, within the meaning of the Indian Point #2
18 memorandum, have not been shown, and that therefore, the
19 contention on pressure vessel rupture should be denied.

20 CHAIRMAN FARMAKIDES: Anything further, Ms.
21 Schimke, on (g)?

22 MS. SCHIMKE: No. We still contend that we will
23 present witnesses and evidence to the effect that we say in
24 our contention.

25 CHAIRMAN FARMAKIDES: All right. (h). Would you

1 want to state orally on (h) before we proceed, Ms. Schimke?

2 MS. SCHIMKE: No, sir.

3 CHAIRMAN FARMAKIDES: Mr. Kaplan, anything on (h)?

4 MR. KAPLAN: The way we read (h) it's a request
5 that the Commission defer determination of these matters
6 until the rulemaking proceeding on the environmental effects
7 associated with the uranium fuel cycle are disposed of. And
8 we don't think that's a proper contention -- or request, I
9 should say, and we submit that the contention should be
10 disallowed.

11 CHAIRMAN FARMAKIDES: Mr. Kartalia?

12 MR. KARTALIA: Mr. Chairman, I don't read it
13 exactly that way. I think in part the Intervenor are
14 asserting that the low-level radiation resulting from opera-
15 tion of the plant will be harmful. That would be one part
16 of it.

17 And the second part, they're requesting a stay,
18 in effect. I believe that a stay is not appropriate by
19 reason of the pendency of the fuel cycle proceeding or any
20 other reasons.

21 My problem with the first part of that, that is,
22 the general contention that the effects of low-level radiation
23 will be harmful, et cetera, is that it's simply not partic-
24 ularized enough. The fact is, this question has been
25 litigated over and over again in cases, and I think before

1 it's admitted into still another case that the Intervenor
2 must be required to say specifically what leads them to this
3 conclusion, and relate it to the operation of this plant, the
4 specific levels of radiation that will be emitted by this
5 plant.

6 CHAIRMAN FARMANIDES: I might make one point at
7 this time for the benefit of all the parties -- and I make
8 it, incidentally, because of the fact that it just came to
9 mind -- and that is: it would be, I think, to the benefit of
10 the three parties that they talk to each other on the
11 contentions raised by the Intervenor, and they seek to come
12 to some settlement, the three of them, as to what the con-
13 tentions are.

14 And I'd like to ask the parties at this time: have
15 you in fact been conferring with each other?

16 Mr. Kartalia, I ask the Staff: has the Staff
17 taken any initiative in getting the other two parties to
18 talk to each other on these specific contentions?

19 MR. KARTALIA: I have been somewhat handicapped
20 in that respect, Mr. Chairman, because I did not know who
21 the spokesman for the group of intervenors was.

22 CHAIRMAN FARMANIDES: Spokeswoman.

23 MR. KARTALIA: Well, it could have been either,
24 since both men and women were included in the group.

25 I have conferred with Mr. Kaplan, and he offered

1 the opinion that perhaps Mr. Ibser was the person to contact,
2 and so I contacted Mr. Ibser. And I expressed to him a desire
3 to sit down and talk about the contentions. I agree that it
4 would be far better to have the parties agree on a sensible
5 agenda, if you will, for the hearing than it would be for
6 the Board to have to grapple with these things on the basis
7 of the briefs.

8 The problem was that there simply wasn't enough
9 time, and Mr. Ibser and I never really moved to the substance
10 of these contentions.

11 I'd be prepared to sit down at any time, however,
12 and talk about this, to see whether we could not agree on
13 a statement of contentions.

14 CHAIRMAN FARMAKIDES: Incidentally, what Mr.
15 Kartalia was saying, if the parties get together and agree
16 on what the issues are, at least you have all agreed to some
17 wording. If the Board rules on it, and states them, you're
18 all going to be unhappy.

19 Mr. Kaplan, have you attempted to confer with the
20 Intervenor on the contentions?

21 MR. KAPLAN: Quite frankly, our understanding of
22 the position is that they're opposed to nuclear power on
23 principle, and therefore, that their position is non-negotiable.
24 We certainly are ready to sit down with them at any time to
25 attempt to work out a statement of issues. And I think that

1 the paper which we filed yesterday is a more than reasonable
2 attempt on our part to give them the benefit of every doubt,
3 and to assist them in framing issues that will enable us to
4 move forward with this hearing.

5 CHAIRMAN FARMAKIDES: Ms. Schinke, do you have
6 any -- excuse me.

7 (The Board conferring.)

8 CHAIRMAN FARMAKIDES: Ms. Schinke, do you have any
9 comments to make with respect to the suggestion of the Board
10 that you all confer?

11 MS. SCHIMKE: We'd be more than happy to make a
12 statement, sir.

13 Since we as Intervenors feel that this is perhaps
14 the most important public health issue, and perhaps the
15 most important moral issue, that is faced by human beings
16 on this earth, that we feel that through our appearing that
17 we will be able to present evidence and witnesses that can
18 prove all of the contentions that we have so far gone over
19 and will attempt to go over.

20 CHAIRMAN FARMAKIDES: In other words, then, your
21 position is that you don't think there will be anything
22 gained in negotiation?

23 MS. SCHIMKE: That's true, sir.

24 CHAIRMAN FARMAKIDES: The Board is very
25 disappointed to hear that. I don't believe that there has

1 ever been a case that I know of -- and I've been in many,
2 many of them -- where one party was completely wrong, or one
3 party was completely right.

4 And, as I said earlier, if you all do not confer --
5 I could require that you do so, I could direct that you do so,
6 yes, but I won't do it. I think it would be most valuable
7 if you did. However, if you feel that you don't care to do
8 so, for the time being the Board would honor that.

9 MS. SCHIMKE: Thank you.

10 CHAIRMAN FARMAKIDES: Let's go on to I think
11 we've gone through (g), (h), and now we're at (i).

12 Is there anything further that you wish to add,
13 Ms. Schimke, on (i)?

14 MS. SCHIMKE: No, sir.

15 CHAIRMAN FARMAKIDES: Mr. Kaplan?

16 MR. KAPLAN: We've agreed that this may be
17 accepted as a contention, and we suggested a possible state-
18 ment of it.

19 There is one problem about (i) that Mr. Kartalia
20 has already touched on that I think we ought to take up at
21 some later point in time; and that is, that the industrial
22 security plan is confidential. And if there are attempts to
23 reach it through discovery, I think appropriate safeguards
24 should be imposed on the manner in which that discovery is
25 conducted.

1 Other than that, I have no other comments to add
2 to the statement which we filed.

3 CHAIRMAN FARMAKIDES: Mr. Kartalia?

4 MR. KARTALIA: Mr. Chairman, we previously agreed
5 that the sabotage contention was admissible at least to the
6 extent of sabotage involving air piracy. I notice that Mr.
7 Kaplan has expanded a bit in his issue number 3, which he has
8 at the bottom of page 6 of his submission of yesterday.

9 But we would find that acceptable.

10 CHAIRMAN FARMAKIDES: Ms. Schimke, anything
11 further?

12 MS. SCHIMKE: Nothing further.

13 CHAIRMAN FARMAKIDES: Dr. Leeds?

14 DR. LEEDS: Nothing.

15 CHAIRMAN FARMAKIDES: Dr. Goodman?

16 DR. GOODMAN: Nothing.

17 CHAIRMAN FARMAKIDES: Dr. Clark?

18 DR. CLARK: No.

19 CHAIRMAN FARMAKIDES: (j). Ms. Schimke, did you
20 wish to state anything further on (j)?

21 MS. SCHIMKE: No, sir.

22 CHAIRMAN FARMAKIDES: Mr. Kaplan?

23 MR. KAPLAN: No, we agree that this may be
24 accepted as a contention and have suggested some language.

25 CHAIRMAN FARMAKIDES: You frame that as your

1 issue number 4, right?

2 MR. KAPLAN: Correct, Mr. Chairman.

3 DR. GOODMAN: Mr. Chairman, I beg your pardon, but
4 could we go back and clarify one point on (i) which I don't
5 believe was raised?

6 Ms. Schinke, you are not prepared to accept issue
7 number 3 for (i)? You were not asked that, I believe.

8 MR. SCHIMKE: No, I was not.

9 CHAIRMAN FARMAKIDES: Oh, yes. That's a good
10 thought. See, very frankly, it makes the job of all of us
11 easier if you all can agree on language with respect to
12 specific contentions, and we know that the parties are all
13 agreed to certain language.

14 Would you accept the language of the Applicant
15 stated as issue number 3 in lieu of your contention (i)?

16 MS. SCHIMKE: No, sir, because we just can't.

17 CHAIRMAN FARMAKIDES: I really urge Intervenors
18 to consider seriously what you're doing here. It's to your
19 advantage, as well as to the advantage of the other parties,
20 to agree on this language.

21 I will not -- please be certain that you under-
22 stand what I'm saying -- that is, I'm not necessarily going
23 to accept your language. The Board may very well accept
24 the Applicant's language, in spite of your position. We're
25 going to accept the language that we think most clearly

1 identifies the contention and will allow us to have a proper
2 hearing.

3 So please consider seriously the suggestions that
4 we're making to you.

5 MS. SCHIMKE: We understand, sir, what your
6 responsibility is, and we still prefer the wording that we
7 have.

8 CHAIRMAN FARMAKIDES: All right.

9 Now, getting back to (j), how about (j)?

10 MR. KAPLAN: I believe I commented on (j). That's
11 the earthquake contention. We're willing to accept it.

12 CHAIRMAN FARMAKIDES: Mr. Kartalia?

13 MR. KARTALIA: Mr. Chairman, we had previously
14 opposed this contention on the ground that it was not
15 a proper contention at the operating license stage. However,
16 we will withdraw that objection.

17 CHAIRMAN FARMAKIDES: The Board is concerned.
18 Look, the Board's responsibility here is to be certain that
19 we're fulfilling the responsibility insofar as the rules are
20 concerned. Now, the fact that the Applicant accepts a
21 contention is not dispositive of it.

22 How does the Staff feel? Do you still feel that
23 it's a contention raised --

24 MR. KARTALIA: Mr. Chairman, I'm going to withdraw
25 our opposition to that contention.

1 CHAIRMAN FARMAKIDES: You're accepting the
2 contention? All right.

3 Dr. Leeds?

4 DR. LEEDS: Mr. Kaplan, what do you mean by the
5 word "adequately"?

6 MR. KAPLAN: My recollection is that that word
7 occurs in one of the -- what I think of as the broad issues
8 within the framework with which specific contentions are
9 here to be identified.

10 I think the regulations provide that there must be
11 reasonable assurance that the health and safety of the public
12 is adequately protected, and I simply lifted the word
13 "adequately" from a context like that and applied it to the
14 design of the plant in relation to earthquake conditions.

15 DR. LEEDS: Would "adequately", in your mind, in
16 this particular issue imply in effect the criteria that's
17 set up in the rules and regulations, and no more?

18 MR. KAPLAN: Well, I certainly do not intend -- did
19 not intend -- by the way in which I worded that suggested
20 issue, to impose any requirement on the Applicant more
21 strict than would otherwise exist in the regulations. If I
22 have done so, I certainly want to step back to the regulations.

23 CHAIRMAN FARMAKIDES: Dr. Goodman?

24 DR. GOODMAN: Mr. Kartalia, I want to be sure,
25 when you withdraw -- not in this case, necessarily -- or when

1 you accept Applicant's suggested wording, that you -- you see,
2 one of the problems is as we've been going through these, you
3 have said you would accept the Applicant's suggestion, but
4 then when the Intervenor doesn't accept the Applicant's
5 suggestion, we haven't found out how you feel about accepting
6 the Intervenor's wording.

7 And I want to make sure that gets clarified.

8 MR. KARTALIA: Yes, sir.

9 DR. GOODMAN: In this particular area, I don't
10 think this is the case. You've withdrawn your objection --
11 period. But in any of the previous ones, where you've said
12 on the record that you would accept the Applicant's suggestion
13 and then the Applicant's suggestion was not accepted by the
14 Intervenor, does that mean you accept the Intervenor's
15 wording instead?

16 MR. KARTALIA: I'm having trouble in recalling
17 in how many instances that has been the case.

18 DR. GOODMAN: I just suddenly realized it. Maybe
19 we shouldn't take the time now, and you may get a chance
20 during lunch to look that over and see if you want to change
21 any of your statements.

22 MR. KARTALIA: I will.

23 Mr. Chairman, in regards to that, if the
24 Applicant was willing to take out the word "reasonable" and
25 just left the word "assurance," we'd be more than happy with

1 their wording.

2 CHAIRMAN FARMAKIDES: Excuse me. Now, what are you
3 talking about, ma'am?

4 MS. SCHIMKE: In relationship to "reasonable,"
5 because the question --

6 CHAIRMAN FARMAKIDES: "Reasonable?" Where, in
7 issue number 4 of the Applicant? I don't see the word
8 "reasonable" in there.

9 MS. SCHIMKE: What I was referring to generally
10 is when you stated if there was some way we could work out
11 an agreement on the wording of this, and generally speaking,
12 if the word "reasonable" was left out, leaving just the word
13 "assurance," then we would be more than happy to accept it.

14 CHAIRMAN FARMAKIDES: Where does the word
15 "reasonable" appear, Ms. Schimke?

16 DR. GOODMAN: Which issue are you talking about?

17 CHAIRMAN FARMAKIDES: We're looking at issue number
18 4, right, on page 7 of the Applicant's prehearing conference
19 statement, which is --

20 MS. SCHIMKE: I thought that's what -- I recall
21 just a few minutes ago Mr. Kaplan stating -- perhaps I didn't
22 hear it correctly....

23 DR. GOODMAN: The word was "adequately."

24 CHAIRMAN FARMAKIDES: "Adequately."

25 DR. CLARK: The word "reasonable" appears on issue

1 number 3 at the bottom of page 6 of Applicant's submission.

2 CHAIRMAN FARMAKIDES: Well --

3 MR. KARTALIA: Are we on 4 now?

4 CHAIRMAN FARMAKIDES: We're actually talking --

5 MR. KARTALIA: -- or, rather, the seismology
6 contention?

7 CHAIRMAN FARMAKIDES: Yes.

8 We're on (j) of the Intervenor's statement, and
9 issue number 4 of the Applicant's prehearing conference
10 statement. That's where the confusion arose.

11 Any other questions?

12 Dr. Leeds? Dr. Clark?

13 (Negative indications.)

14 Anything further on (j) of the Intervenor's
15 statement?

16 MS. SCHIMKE: No, we don't have anything further.

17 CHAIRMAN FARMAKIDES: All right. Let's go on to
18 (k). I'm sorry. (k) has been discussed.

19 We'll continue to (l). Anything further from
20 Intervenor?

21 MS. SCHIMKE: No, sir.

22 CHAIRMAN FARMAKIDES: From the Applicant?

23 MR. KAPLAN: Nothing further.

24 CHAIRMAN FARMAKIDES: Staff?

25 MR. KARTALIA: Nothing further.

1 CHAIRMAN FARMAKIDES: (m). Anything further from
2 Intervenor on (m)?

3 MS. SCHINKE: No, sir.

4 CHAIRMAN FARMAKIDES: From the Applicant?

5 MR. KAPLAN: Nothing further, sir.

6 CHAIRMAN FARMAKIDES: Does the Board have any
7 questions on (m)?

8 (Negative indications.)

9 CHAIRMAN FARMAKIDES: Now, I take it that this is
10 the list of contentions that you have suggested, or that you
11 have placed into the record as being your contentions.

12 The next page that we're on after that are the
13 bases for these contentions.

14 You said earlier that you had some additional
15 contentions that you wished to add to this list.

16 Now, we'll hear them. If they flow from your first
17 petition that you filed, I won't ask that you show any good
18 reason why you are filing them at this time.

19 If, however, they are new contentions in the
20 sense that they did not flow from the first petition or your
21 second petition, I'd like for you to state on the record why
22 you are filing them now, or rather, why you are filing them
23 now, late, rather than during your first and second petition.

24 And the second petition, incidentally, the Motions
25 Board accepted your second petition even though it was late.

1 We have no such authority.

2 MS. SCHIMKE: I think the reason why we should be
3 allowed to present these allegations perhaps could be stated
4 under (l) or (m) in our second petition dated in January.

5 CHAIRMAN FARMAKIDES: In other words, you're
6 clarifying (l) or (m)?

7 MS. SCHIMKE: I would say that because of the other
8 issues we're presenting especially related with number 6 and
9 7 on the outline that we presented today, I think they would
10 flow very well from that.

11 CHAIRMAN FARMAKIDES: Very well. We would accept
12 that. In other words, you are suggesting that what you're
13 doing is further clarifying earlier contentions?

14 MS. SCHIMKE: Right.

15 CHAIRMAN FARMAKIDES: All right. Would you please
16 state them for the record? If you can give us a document
17 where they have been presented I'd appreciate it, and identify
18 the document.

19 MS. SCHIMKE: Well, we're presenting them in the
20 outline dated today, March 15, 1973.

21 CHAIRMAN FARMAKIDES: All right.

22 MS. SCHIMKE: It's under Section (d), Other Issues.

23 CHAIRMAN FARMAKIDES: What we've done -- I just
24 realized, it's almost 12:30 -- this would be a very
25 convenient time to recess for lunch and reconvene at 1:30.

1 So we are recessed until 1:30.

2 (Whereupon, at 12:25 p.m., the prehearing confer-
3 ence was recessed, to reconvene at 1:30 p.m., this same day.)
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AFTERNOON SESSION

(1:30 p.m.)

CHAIRMAN FARMAKIDES: We are reconvened.

We are looking at the Intervenor's list dated
March 15, 1973.

Ms. Schimke, could you articulate for the record
what contentions are you now stating that were not contained
in the amended petition of January 17?

MS. SCHIMKE: Well, I would say that the Personnel
Standards, number one --

CHAIRMAN FARMAKIDES: This is Roman numeral number
I?

MS. SCHIMKE: No, excuse me. That's Section (d)
under "Other Issues," page 2.

CHAIRMAN FARMAKIDES: So that's Roman numeral
number I(d)(6)?

MS. SCHIMKE: Well, why don't we go to 1 first.

CHAIRMAN FARMAKIDES: Well, look at Roman numeral
I. How about (a)?

MS. SCHIMKE: We feel we have covered that.

CHAIRMAN FARMAKIDES: How about 2 -- how about (b),
then?

MS. SCHIMKE: We believe we've covered that.

CHAIRMAN FARMAKIDES: (c)? And now we're under (d).

MS. SCHIMKE: Right.

1 CHAIRMAN FARMAKIDES: All right. (d)(1).

2 MS. SCHIMKE: That's personnel standards do not
3 provide for review of mental health qualification of operating
4 personnel.

5 CHAIRMAN FARMAKIDES: Mr. Applicant?

6 MR. KAPLAN: I would think that that would be
7 within the scope of the issues that we have tendered as issue
8 number 3.

9 CHAIRMAN FARMAKIDES: In other words you feel that
10 this is a permissible contention from your point of view?

11 MR. KAPLAN: Yes, we'll accept it as a permissible
12 contention.

13 CHAIRMAN FARMAKIDES: Staff?

14 MR. KARTALIA: I'm not sure I understood Mr.
15 Kaplan. Oh, he's including that under the heading "Sabotage."

16 Well, I'm not sure whether it's that or "Technical
17 Qualifications," but we don't object to the contention.

18 CHAIRMAN FARMAKIDES: All right. How about
19 (d)(2)? Oh, excuse me. Do you have any questions?

20 Dr. Leeds, Dr. Goodman, Dr. Clark?

21 (Negative indications.)

22 CHAIRMAN FARMAKIDES: Ms. Schimke?

23 MS. SCHIMKE: No, we feel that has been adequately
24 covered.

25 CHAIRMAN FARMAKIDES: All right. (d)(3).

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1 Let's be very careful that we understand what we
2 are doing here for purposes of the record.

3 The contentions will be those that we discussed
4 this morning, that were stated in your amended petition,
5 plus those additional contentions that we are now setting
6 forth in the record.

7 MS. SCHIMKE: May I have a clarification? We
8 feel that many of the ones listed this way fall generally a-ai
9 in our amended petition.

10 CHAIRMAN FARMAKIDES: I think that we had better
11 look at these specifically under (d).

12 MS. SCHIMKE: All right, fine. Can we include
13 that as --

14 CHAIRMAN FARMAKIDES: Which one?

15 MS. SCHIMKE: Three.

16 CHAIRMAN FARMAKIDES: An adequate disaster plan
17 has not been formulated?

18 MS. SCHIMKE: Yes.

19 CHAIRMAN FARMAKIDES: Mr. Kaplan?

20 MR. KAPLAN: Well, this appears to us to be just
21 another statement of their contention (a) in the amended
22 petition. Their position, as I understand it, is that we
23 should be required to have a plan for the evacuation of
24 Sacramento. That is outside the regulations, that is, the
25 regulations do not require that we have such a plan. They

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1 know that. They so stated this morning. And they then
2 stated that their position was that they wished to attack the
3 regulation. And therefore we think that that is improper
4 and that this (d) (3) should be disallowed.

5 CHAIRMAN FARMAKIDES: Well (d) (3) talks to a
6 disaster plan, Mr. Kaplan.

7 MS. SCHIMKE: I think that is slightly different
8 than evacuation.

9 CHAIRMAN FARMAKIDES: Miss Schimke, please.

10 Mr. Kaplan, proceed.

11 MR. KAPLAN: I don't know what the term "disaster
12 plan" means.

13 CHAIRMAN FARMAKIDES: Can you clarify that, Miss
14 Schimke?

15 MS. SCHIMKE: I think that could mean anything.

16 CHAIRMAN FARMAKIDES: No, not what it could mean,
17 what it does mean.

18 MS. SCHIMKE: Well I think that to us makes it
19 difficult -- I think what we mean by that is that means right
20 at the plant itself, that evacuation deals with people getting
21 out of the area. There is, for example, an immediate disaster
22 right at the plant.

23 CHAIRMAN FARMAKIDES: All right. Also by disaster
24 plan do you mean a plan for the evacuation of people on-site?
25 Is that the way I understand you?

DB-3

1 MS. SCHIMKE: Well, that creates other problems,
2 too, because we just talked about evacuation in that event.

3 CHAIRMAN FARMAKIDES: Well, strike my suggestion.
4 What do you mean, Miss Schimke, by (3)?

5 MS. SCHIMKE: Okay, then I guess I can put it in a
6 situational kind of thing. I mean for example if there is a
7 major disaster and it couldn't be included in evacuation
8 because, perhaps, there is a need for people right at the
9 plant to take care of the immediate needs of the plant
10 facilities, because if people just evacuate, my goodness --

11 CHAIRMAN FARMAKIDES: I am sorry, Ma'am, we
12 don't understand that. You will have to --

13 Dr. Leeds, Dr. Goodman, would you like to ask
14 any questions?

15 DR. GOODMAN: Well, I would like to ask, first of
16 all, your definition of what you mean by a disaster. What is
17 there that is going to happen that you consider is going to
18 be a disaster?

19 MS. SCHIMKE: Oh, my, there would be a long list
20 of things. It could be any accident in the plant, it could
21 be --

22 DR. GOODMAN: If a man dropped a hammer on his
23 toe, is that a disaster?

24 MS. SCHIMKE: Well, it depends on where he was.

25 DR. GOODMAN: That's an accident.

DB 4

1 MS. SCHIMKE: Yes, right, I consider that an
2 accident.

3 DR. GOODMAN: Well, from what you just said it
4 could be any kind of an accident.

5 MS. SCHIMKE: Well, let's put it this way: Disaster
6 means a serious kind of an accident that would be included
7 in but not limited to that.

8 DR. GOODMAN: Can you give me an example of such
9 a disaster? Or such an accident?

10 MS. SCHIMKE: Could we have one minute, please?

11 CHAIRMAN FARMAKIDES: Yes.

12 (Intervenors conferring)

13 MS. SCHIMKE: After democratically discussing it
14 with the other intervenors, we came up with a couple of good
15 examples. One would be in the plant itself, if there is a
16 serious accident, that could be referred to as a disaster in
17 the sense, whether it be with say a fire, you would be
18 concerned with not just evacuating people, but handling the
19 situation that also could relate to the larger community,
20 which would be different than an evacuation plan, where you
21 are getting people out of the community. What happens if you
22 can't get people out of the community if there is a serious
23 accident? You would have to have adequate facilities set up
24 to take care of people who would be affected by this serious
25 accident, or failing at the plant, or what-have-you.

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1 Does that clarify it? I am sorry to have taken
2 so long.

3 DR. GOODMAN: Yes, that helps alot. On the other
4 hand, I wonder if you would answer the related question, have
5 you looked at the FSAR to see what it proposes to do in the
6 case of that kind of an accid :?

7 MS. SCHIMKE: That I have, personally, what was
8 available at the library. I looked at that personally.

9 DR. GOODMAN: The FSAR?

10 MS. SCHIMKE: Right.

11 CHAIRMAN FARMAKIDES: And you are suggesting it is
12 not adequate?

13 MS. SCHIMKE: No, it is not adequate.

14 CHAIRMAN FARMAKIDES: That's your point?

15 MS. SCHIMKE: That's our point.

16 CHAIRMAN FARMAKIDES: Which reminds me, did you
17 have the opportunity to, during the lunch hour, to talk to
18 Dr. Ibser?

19 MS. SCHIMKE: Yes.

20 CHAIRMAN FARMAKIDES: On that issue number 1(a)?

21 MS. SCHIMKE: Yes.

22 CHAIRMAN FARMAKIDES: And he did read tha'? He
23 did read the FSAR?

24 MS SCHIMKE: Yes.

25 CHAIRMAN FARMAKIDES: And he authorized you to

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1 commit this on the record, Miss Schimke?

2 MS. SCHIMKE: Yes, that can be part of the record.

3 CHAIRMAN FARMAKIDES: All right, anything further
4 on (3)?

5 Dr. Leeds?

6 DR. LEEDS: No.

7 CHAIRMAN FARMAKIDES: Mr. Kartalia, we haven't
8 heard your comments yet.

9 MR. KARTALIA: I am sorry, I think I may be the
10 only person in the room who is still confused about it.

11 Is (3) intended to challenge the entire emergency
12 plan for the facility?

13 MS. SCHIMKE: Pardon?

14 MR. KARTALIA: Is contention (d) (3) intended
15 to challenge the adequacy of the entire emergency plan for the
16 facility?

17 MS. SCHIMKE: Yes.

18 MR. KARTALIA: The emergency plan which involves
19 evacuation procedures and first-aid and everything else that
20 is covered in the FSAR?

21 MS. SCHIMKE: Yes. We have no objection if they
22 are listed together, adequate disaster and evacuation plan.

23 CHAIRMAN FARMAKIDES: Anything further, Mr.
24 Kartalia?

25 MR. KARTALIA: What my problem is is that it is

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1 awfully broad and there are several elements that go into
2 an adequate emergency plan, and I think this contention as
3 it has just been explained challenges the entire emergency
4 plan. I think this is one case where further particularization
5 is in order.

6 CHAIRMAN FARMAKIDES: As I understand the Intervenor,
7 Mr. Kartalia, they are alleging the FSAR is inadequate insofar
8 as its treatment of the disaster and evacuation plan, as I
9 hear them. It is rather broad, there is no doubt about it.

10 MR. KARTALIA: Well, the Commission does have a
11 regulation on this in part 50.

12 Well, I think I will object to this one on the
13 grounds that it is not adequately particularized.

14 CHAIRMAN FARMAKIDES: Mr. Kaplan, we haven't asked
15 for your further comments. I know you discussed the word
16 "disaster", which of course bothers the Board too.

17 In view of the clarification by the Intervenor,
18 do you have any further comments?

19 MR. KAPLAN: Yes. We object to this on the grounds
20 that as worded here it is insufficiently particularized to
21 be admitted as a contention under the Board's rules. And I
22 don't think it is my function to attempt to particularize it.
23 To some extent I did do that with the contentions they made
24 earlier, but I don't want to try to do it here.

25 We object to this on the ground that it is not

DB3

1 properly particularized.

2 CHAIRMAN FARMAKIDES: Anything further, Ms. Schimke?

3 MS. SCHIMKE: No, except that we still maintain
4 our contention and intend to present witnesses and evidence
5 to that effect.

6 CHAIRMAN FARMAKIDES: Any further questions
7 from the Board?

8 DR. CLARK: One question I would like to ask,
9 if I may --

10 CHAIRMAN FARMAKIDES: Yes, Dr. Clark.

11 DR. CLARK: Is your allegation with regard to
12 the adequacy of the disaster plan, what relation does that
13 have to the plan complying with the Commission's regulation?

14 Is it your view that the plan complies with the
15 Commission's regulations but is still inadequate, or that
16 it doesn't comply with the regulations?

17 MS SCHIMKE: Well, our major concern is the
18 safety, and I would say that we would maintain both, that
19 we don't feel that it meets the safety requirements and also
20 that we feel that we can present evidence to that effect.

21 CHAIRMAN FARMAKIDES: When you say it does not
22 meet the safety requirements, you mean it does not meet the
23 regulations of the Commission?

24 MS. SCHIMKE: Again that puts us in a difficult
25 position. As I stated earlier, which I think you stated you

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1 would bend over backwards with some of these safety evalu-
2 ations, that we are reviewing, again, we don't know how
3 up-to-date they are, since everything was not in order in the
4 public library. So again we have to be limited to what
5 knowledge we have.

6 CHAIRMAN FARMAKIDES: See what we are doing, we
7 are trying to determine the meets and bounds of your thought
8 as expressed in this contention.

9 What is it that you are alleging?

10 MS SCHIMKE: Basically it is our concern with
11 the health and the safety and the well-being of the people
12 in Sacramento and the surrounding communities. From everything
13 we have seen we feel that that does not meet what we consider
14 safe standards.

15 CHAIRMAN FARMAKIDES: How does that differ from
16 evacuation plan number 2?

17 MS. SCHIMKE: As I stated earlier, I have no
18 objection if they are included in one, evacuation and disaster,
19 and I thought I clearly stated the difference between what
20 a disaster could be and what evacuation was.

21 CHAIRMAN FARMAKIDES: But your last statement then
22 left me confused, because it seemed to contradict what you
23 said earlier, Ms. Schimke.

24 What we have got to do is pin down precisely what
25 the contention is so that the Applicant understands it and is

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1 able to rebut it, and the Staff the same way. Like any
2 issue between parties, there has got to be a meeting of minds
3 of the parties as to what the issue is before we can proceed.
4 What we are trying to do is clarify what the issue is.

5 The Applicant doesn't understand it. Of course
6 the Board already stated to you that we didn't understand what
7 you meant by (d), (3). Now we are trying to express it more
8 precisely.

9 Dr. Leeds?

10 DR. LEEDS: Ms. Schimke, let me take one word
11 that bothers me and that is the word "adequate." If a disaster
12 plan, or whatever emergency plan exists for this plant,
13 meets the Commission's criteria in the regulations, is that
14 an adequate plan?

15 MS. SCHIMKE: No.

16 DR. LEEDS: So then you say that any plan that
17 does not meet the Commission's regulations is an inadequate
18 plan, and any plan that does meet the Commission's regulations
19 is also an inadequate plan?

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1 MS. SCHIMKE: Again, that's not necessarily so,
2 because I have to state, as I stated earlier, that from what
3 we've seen -- now I think in fairness, which you've agreed
4 earlier, that we should have all of the latest analysis
5 reports.

6 I would have to say that everything we've seen
7 now -- and I know this is difficult for you, but it's
8 especially difficult for us, because we find it difficult
9 to think and talk in these terms, because we can just think
10 and talk in terms of public safety.

11 CHAIRMAN FARMAKIDES: You see, the problem that
12 has just come to issue, Ms. Schinke, if I understand your
13 response to Dr. Leeds, is that you're saying -- as I under-
14 stand you -- you're saying that the requirements of the
15 Commission's regulations are inadequate.

16 MS. SCHIMKE: Under the special circumstances --
17 and I'm not sure that we have seen the up to date report.

18 CHAIRMAN FARMAKIDES: Of what, ma'am? Of the
19 Applicant's FSAR, or --

20 MS. SCHIMKE: That's right. It hopefully is up
21 to date. I assume there have been new amendments.

22 DR. LEEDS: That's different, though.
23 I asked you about if the report met the criteria, and the
24 rules and regulations of the Commission would it be an
25 adequate plan? And I thought I heard you say no.

1 MS. SCHIMKE: No, that's correct.

2 DR. LEEDS: That a plan that meets the rules and
3 regulations and criteria of the Commission is not an adequate
4 plan?

5 MS. SCHIMKE: No, because we don't think it's
6 possible to have an adequate plan for the evacuation of
7 the citizens from a nuclear type of disaster.

8 Now, there might be other aspects that could, if
9 you're talking in terms of fire. That's why we would just as
10 soon leave our contentions as they are and to present evidence
11 at the evidentiary hearing.

12 CHAIRMAN FARMAKIDES: Right now the posture of at
13 least one member of the Board is that I'm predisposed to
14 saying well, you're really challenging the criteria and the
15 regulations very clearly, and that goes beyond the scope of
16 the hearing. So you will never have the opportunity of
17 presenting evidence, if that's what in fact you're doing.
18 And what you have just told me is clearly that.

19 MS. SCHIMKE: Well, perhaps we're doing both, sir.

20 CHAIRMAN FARMAKIDES: Well, if you're doing both,
21 then let's carve out the portion where you are in fact
22 challenging the regulations, and let's consider only -- if
23 you wish -- let's consider only that facet of your contention
24 that deals with challenging the Applicant's meeting of those
25 criteria.

1 MS. SCHIMKE: Well, we'd just as soon leave our
2 contention the way it is, and that's why we assume you're in
3 this rulemaking, decision-making business.

4 We'd just as soon leave it as it is.

5 CHAIRMAN FARMANIDES: Dr. Goodman?

6 DR. GOODMAN: In order to be sure what was the
7 latest information on the PSAR, could you tell me the highest
8 number of the amendments which was in the PSAR which you
9 examined? Then I'll be able to judge from that whether it's
10 an up to date one.

11 (The Intervenor conferring.)

12 MS. SCHIMKE: After democratically talking and
13 deciding with the other Intervenor, basically the point
14 is that the group feels that there could never be an adequate
15 evacuation or disaster plan if it meant the cost of one
16 human life.

17 So we would still have to leave our contention
18 exactly as it is, and leave it up to you to make that decision
19 on our contention.

20 DR. GOODMAN: That wasn't my question.

21 MS. SCHIMKE: Oh, your question, how far did we
22 get up? I don't think anyone has any objection. You know,
23 under that particular section, under emergency plan, it
24 went up to 12.4.5.6.

25 DR. GOODMAN: I'm afraid you didn't understand my

1 question.

2 MS. SCHIMKE: Well, would you clarify it, please?

3 DR. GOODMAN: Yes. I'll restate it.

4 I asked you, in reading the FSAR what was the
5 highest amendment number that was included in the copy of the
6 FSAR which you read? This gives me an idea of whether you
7 were really looking at an up to date FSAR.

8 By the way, do you know what I mean by the FSAR?

9 MS. SCHIMKE: No, that's what I was going to ask
10 you. Maybe if you -- I assumed -- it's very difficult for
11 us, too, in trying to find this out, dealing with different
12 emergency plans. And if you state exactly what kind of a
13 book -- again, as I stated, the way this was arranged in the
14 library --

15 DR. GOODMAN: No, I'm sorry. I thought we had
16 been talking FSAR all along.

17 The FSAR is a multi-volume set about this big
18 (indicating), and it's called the Final Safety Analysis
19 Report of the Applicant, and it occupies multiple volumes.
20 And it's about 2-1/2 to 3 feet thick. And it has amendments
21 in it that are continuously --

22 MS. SCHIMKE: Oh, yes. We looked at that. Again,
23 let me explain that many of these books -- all I can put it
24 in terms of is everything we looked at we didn't feel was
25 adequate. But again, at the library many of these amendments

1 and so forth were not put in these books.

2 CHAIRMAN FARMAKIDES: But you don't remember what
3 amendment -- what was the last amendment number in that?

4 MS. SCHIMKE: No, we did not bring it today.

5 We're not trying to be evasive.

6 CHAIRMAN FARMAKIDES: No, no. Look, on something
7 like this, this is necessary clarification.

8 Look, is there any way that we can give Ms. Schimke,
9 the Intervenors, a set of the FSAR? Do you have an extra
10 set, Mr. Kartalia?

11 MR. KARTALIA: Well, Mr. Chairman, I would like
12 to direct that question to Mr. Kaplan. I think a copy should
13 be made available to the Intervenor, and I think it should
14 come from SMUD.

15 CHAIRMAN FARMAKIDES: Well, they have made -- how
16 many copies -- available to the Staff? I don't care. One
17 of you two people should try to make a copy available for the
18 exclusive use of the Intervenors here.

19 MS. SCHIMKE: May I say something, Mr. Chairman?

20 CHAIRMAN FARMAKIDES: No, hold back, ma'am.

21 Mr. Kaplan?

22 MR. KAPLAN: Yes, we'll be happy to send them a
23 set. I take it the Sacramento State College Library set
24 isn't convenient for them. I assumed that it was. I say
25 that just to explain why this hasn't been done.

1 CHAIRMAN FARMAKIDES: Yes, that will be most
2 appreciated, and Mr. Kaplan, I think the Board would
3 appreciate it if you'd go ahead and do this.

4 We feel that by making this available to the
5 intervenors we're expediting the hearing. And I think in
6 that sense we all appreciate it.

7 Okay. Ms. Schimke, you had something else to say?

8 MS. SCHIMKE: Again, because we sometimes get the
9 feeling that we aren't making ourselves clear, I'd like to
10 reiterate what I reiterated earlier.

11 We did try very, very hard to get this from the
12 SMUD Library, which we felt they had an extra obligation
13 since they are a public utility responsible to --

14 CHAIRMAN FARMAKIDES: Yes, ma'am. We heard that.
15 And, look, don't worry about not making yourselves clear.
16 If you're not clear we're going to ask you questions. Don't
17 worry about that.

18 A number of the issues that you posed insofar as
19 we are concerned are clear. Some of them we may admit; some
20 of them we're going to deny.

21 But there are others that we're not clear about.
22 and that's what we're doing now, is going through the process--
23 and there are some that we're going to admit, too. Let's
24 be very clear about that.

25 And that's why I say you people ought to have a

1 copy of the FSAR, because we're going to go to hearing and
2 the Board feels that the whole matter will be expedited if
3 you do have a copy of the FSAR.

4 Anything further on 3?

5 (No response.)

6 All right. Let's go to 4. Ms. Schinke?

7 MS. SCHIMKE: I think that is adequately covered.

8 CHAIRMAN FARMAKIDES: All right. Let's go to 5.

9 MS. SCHIMKE: We feel that was covered also. Just
10 one clarification on that, if that's all right.

11 CHAIRMAN FARMAKIDES: On 5?

12 MS. SCHIMKE: On 5. It's covered somewhat under
13 (m) in our amended petition.

14 CHAIRMAN FARMAKIDES: (m) as in Mary?

15 MS. SCHIMKE: Yes. Why I'm bringing it up now
16 is so it's made clear that if that isn't clear enough, then
17 we would like to leave 5 as is.

18 CHAIRMAN FARMAKIDES: Ma'am, 5 as is is so general,
19 so ambiguous, so broad that I just don't see how you could
20 possibly consider it as a contention.

21 I do want to supplement what you said in (d) (5)
22 with your oral statements on the record. We will consider
23 your oral statements.

24 MS. SCHIMKE: Well, Mr. Chairman, under "Transportation"
25 what we were trying to say -- and that's why I just

1 wanted to make sure that if the Board didn't consider it
2 proper, then we wanted to make sure that it was listed as
3 another issue so we're not denied the right to talk about
4 transportation.

5 CHAIRMAN FARMAKIDES: All right. Let's consider
6 5 separately.

7 MS. SCHIMKE: All right.

8 DR. LEEDS: We're talking about (m) as in Mary?

9 CHAIRMAN FARMAKIDES: Yes.

10 Let's consider 5 separately as another contention.

11 MS. SCHIMKE: Allright.

12 CHAIRMAN FARMAKIDES: Will you clarify what you
13 mean in the expression that you have there under 5?

14 MS. SCHIMKE: Well, we don't think that there is
15 an adequate way that you can transport or store radioactive
16 waste material.

17 DR. LEEDS: There are certain rules and regulations
18 and criteria, again, which if met would you say in an
19 adequate way, to store and transmit --

20 MS. SCHIMKE: No, we cannot. Again, this is on
21 moral grounds, because we think there is no way, with the
22 fallibility of man to store radioactive materials, some of
23 which have a half-life of 24,000 years.

24 DR. LEEDS: Or to transport them?

25 MS. SCHIMKE: Or to transport it.

1 CHAIRMAN FARMAKIDES: In other words you're saying
2 that whatever the Applicant does, even if he conforms to the
3 regulations, is inadequate?

4 MS. SCHIMKE: That's correct, sir.

5 CHAIRMAN FARMAKIDES: That to me, ma'am, is a
6 clear challenge to the regulations.

7 DR. GOODMAN: By the way, when you make that
8 statement do you have in mind any particular upper limit or
9 lower limit to the amount of radioactivity you're talking
10 about?

11 MS. SCHIMKE: There is no safe level of radiation,
12 sir, from our knowledge.

13 CHAIRMAN FARMAKIDES: All right. Applicant, any
14 comments on 5?

15 MR. KAPLAN: We think it should be disallowed.
16 The intent is clearly to challenge the regulations, and
17 therefore is not within the jurisdiction of this Board.

18 CHAIRMAN FARMAKIDES: Mr. Kartalia?

19 MR. KARTALIA: Well, the matter of off-site
20 storage, which I think is what this part of the contention
21 is directed at, is a fuel cycle problem, so I don't think
22 it's a proper issue for consideration in this hearing.

23 DR. GOODMAN: Mr. Kartalia, she has not limited it
24 to fission product waste in the statement she has made.

25 MR. KARTALIA: Well, my objection would go to any

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1 off-site storage, even low-level waste storage off-site.

2 CHAIRMAN FARMAKIDES: We heard that. What about
3 the transportation end of it?

4 MR. KARTALIA: Well, to the extent I can understand
5 it, one problem is that this hasn't been adequately partic-
6 ularized, and I will object on that grounds. And to the
7 extent I do understand it, I think there may be a challenge
8 to the rules governing transportation. So I would object
9 on that grounds also.

10 The problem is, it's really hard to formulate an
11 objection until the contention has been formulated. The
12 specifics just haven't been given as to what the real concern
13 is.

14 CHAIRMAN FARMAKIDES: Ms. Schimke?

15 MR. SCHIMKE: I think we basically stated our
16 answer quite well. We said there is no adequate way you
17 could store radioactive waste or transport it. But at the
18 same time, again, we have not seen all of the complete
19 information that should be made available to us.

20 So I think our contention is valid, and we feel
21 that we can present evidence and witnesses, and that it should
22 stay on the record as is.

23 CHAIRMAN FARMAKIDES: Could you give an explanation,
24 ma'am, why you have not submitted this as a challenge to the
25 regulations?

1 MS. SCHIMKE: Well, I can only go back as concerned
2 and responsible citizens, feeling that we have a responsibility
3 to take part in the decision-making process in a free and
4 democratic society. And we've tried as best we can, using
5 the books and everything -- basic books provided by the
6 Atomic Energy Commission -- to try to understand some of
7 these proceedings, and in limited time we have done, I think,
8 a fairly decent job.

9 I don't know what else to add, sir.

10 CHAIRMAN FARMARIDES: Well, putting it in simple
11 terms, as I said earlier, the Board must balance the rights
12 of the parties, and you are not the only party here. Your
13 rights are not the only rights. And we must balance your
14 rights against the rights of the Applicant. Applicant is
15 proceeding under law, and he is seeking to obtain a permit.

16 Therefore, putting it in the old vernacular,
17 if you're going to play in the ballgame, you've got to play
18 by the rules.

19 Now, the rules here require if you challenge a
20 Commission regulation you've got to do it in a certain
21 method. As I understand your answer to my question, you've
22 done the best you can. I assume that what this means is
23 you've done the best you can in trying to comply with the
24 regulations.

25 MS. SCHIMKE: That's right, sir, and still live

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1 with ourselves.

2 CHAIRMAN FARMAKIDES: Anything further on 5?

3 (No response.)

4 On 6?

5 MS. SCHIMKE: That's something new, sir.

6 DR. GOODMAN: Could you tell us what radioactive
7 material you have in mind that might be diverted?

8 MS. SCHIMKE: Well, it could be any radioactive
9 material, and it's our understanding -- and as I said, this
10 is a new contention, and we feel that we can present evidence
11 and witnesses to verify our contention. And it's been our
12 knowledge -- and I think this has been reported many times
13 and many places -- that there's much radioactive material
14 that's unaccounted for.

15 CHAIRMAN FARMAKIDES: Ms. Schimke, when you say
16 you can produce evidence, it occurs to me, are you going to
17 be the one questioning these witnesses, or do you have a
18 lawyer who is going to be with you, or do you have training
19 in law?

20 MS. SCHIMKE: Well, let's put it this way: From
21 my understanding, reading what I have so far, this is a
22 public hearing. We can't say at this time, sir, whether
23 we'll have legal counsel or not.

24 CHAIRMAN FARMAKIDES: Okay. If you do not have
25 legal counsel are you going to be doing the questioning of

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1 witnesses?

2 MS. SCHIMKE: We don't know at this point, sir.

3 CHAIRMAN FARMAKIDES: Oh, I've got to know, ma'am.

4 Look, we're not playing games here. I've got
5 to know. This is a Board that's talking to you now. We want
6 to know how this is going to proceed.

7 MS. SCHIMKE: Sir, I think that was a very unfair
8 question. We don't consider we're playing a game either, sir.

9 CHAIRMAN FARMAKIDES: Ma'am, look, when you come
10 back and you say you don't know, I can't accept that. There
11 are tremendous resources here that are being used to have
12 this hearing because of your request, and we don't have any
13 objection to that at all. However, you've got to understand
14 too that it's my job to know how we're going to orderly
15 conduct this hearing. Procedure is what we're talking about
16 here today. And the procedure here is how are you going to
17 handle it?

18 You've mentioned this time and again. You've got
19 witnesses, you've got documentation. Fine. How are you
20 going to present it is what I'm asking you. And I've asked
21 you three questions:

22 Number one, are you going to do the questioning?

23 Or, number two, are you going to have a lawyer?

24 Or, number three, do you have training in law?

25 Or does one of your members have training in law so that he

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1 could interrogate? Or she?

2 MS. SCHIMKE: Since this is informal, can I ask
3 you a question?

4 CHAIRMAN FARMAKIDES: No, ma'am. This is not
5 informal. Look, this is informal insofar as we're not in
6 a courtroom, but this is formal insofar as it's going on the
7 record. This is part of the record.

8 MS. SCHIMKE: I understand that, but it's informal
9 in the sense that we may discuss things as one human being
10 to another.

11 CHAIRMAN FARMAKIDES: You can ask a question, sure.

12 MS. SCHIMKE: Fine. Thank you.

13 Is this part of the regulation and rules that says
14 you have the right to know the particulars of this right now?

15 CHAIRMAN FARMAKIDES: No doubt about it. This
16 Board is entitled to know every detail that it thinks is
17 necessary in the conduct of the hearing.

18 MS. SCHIMKE: Would you please let me know what
19 rule that refers to?

20 CHAIRMAN FARMAKIDES: Ma'am, I've cited the rules
21 earlier. Let's just start with 2.718. This is the general
22 authority of the Board to conduct an orderly hearing.

23 MS. SCHIMKE: I think we're being very orderly,
24 and I cannot give you a yes or no answer when we don't have
25 an answer, sir.

1 CHAIRMAN FARMAKIDES: All right.

2 DR. GOODMAN: Let's answer one part of it.

3 CHAIRMAN FARMAKIDES: Let's go back, then. You
4 don't know as to whether or not you're going to have a lawyer
5 to interrogate the witnesses?

6 MS. SCHIMKE: That's right, sir.

7 CHAIRMAN FARMAKIDES: Number two, are you going
8 to interrogate the witnesses?

9 MS. SCHIMKE: I don't know, sir.

10 CHAIRMAN FARMAKIDES: Is any member of your group
11 going to interrogate the witnesses?

12 MS. SCHIMKE: I don't know, sir.

13 CHAIRMAN FARMAKIDES: Are you trained in the law?

14 MS. SCHIMKE: Well --

15 CHAIRMAN FARMAKIDES: Are you a lawyer?

16 MS. SCHIMKE: Not with formal training, no, sir.

17 CHAIRMAN FARMAKIDES: Is any member of your group
18 a lawyer ?

19 MS. SCHIMKE: No, sir.

20 CHAIRMAN FARMAKIDES: But you do have some legal
21 training?

22 MS. SCHIMKE: Well, it depends upon what you mean
23 by legal training. If you mean through formal law school,
24 no, sir.

25 CHAIRMAN FARMAKIDES: Or through informal law

1 school.

2 MS. SCHIMKE: Informal, yes. I would say that
3 certainly in some aspects of the law.

4 CHAIRMAN FARMAKIDES: Are you prepared, then, to
5 interrogate, and you would be able to interrogate your
6 witnesses?

7 MS. SCHIMKE: I'm not saying that, sir. The
8 question was asked did we have any informal training in law
9 and I said yes, but that doesn't necessarily mean that I'm
10 going to be the one who will be interrogating witnesses.

11 (The Board conferring.)

12 DR. GOODMAN: To make it specific, because I did
13 ask you a specific question on (d)(6), do you have in mind
14 the specific radioactive material that you are going to
15 question about the divertment of?

16 MS. SCHIMKE: May we confer for a moment, please?

17 CHAIRMAN FARMAKIDES: Yes.

18 MR. KARTALIA: Would this be an appropriate time
19 to take a brief recess?

20 CHAIRMAN FARMAKIDES: All right. We'll take a
21 ten minute recess.

22 (Recess.)

23 CHAIRMAN FARMAKIDES: Are we ready?

24 Ms. Schimke, I think you were answering a question.

25 MS. SCHIMKE: Yes. I think I can just give one

1 example of fission products, but it's not just limited to
2 that. And again, I think that we can present evidence and
3 documents at the evidentiary hearing.

4 DR. LEEDS: What was your example?

5 MS. SCHIMKE: Fission products.

6 DR. GOODMAN: Why would anyone want to divert
7 fission products?

8 MS. SCHIMKE: That's a good question. We'd like
9 to know also. I think what we're trying to drive at is that
10 there's much radioactive material unaccounted for, and we'd
11 just like to leave our contention as is. And we feel that
12 we can present evidence and documentation to that effect.

13 DR. GOODMAN: Would it include potassium?

14 MS. SCHIMKE: That is not, as far as I know -- and
15 again, I'm not pretending that I'm a nuclear expert, but as
16 far as I know, I don't know what that would relate to. And
17 I'd just as soon not go any further into it.

18 CHAIRMAN FARMAKIDES: Mr. Kartalia, do you want
19 to say something?

20 MR. KARTALIA: I was going to offer, generally
21 when the subject of diversion comes up it's in the context
22 of diversion of special nuclear material -- bombstuff, if
23 you will, or plutonium, enriched uranium and so forth. And
24 I had assumed up until now that that's what that contention
25 was about. And we are prepared to agree to the contention

1 dealing with the subject of diversion of special nuclear
2 material.

3 MS. SCHIMKE: We would just like to leave our
4 contention as is.

5 CHAIRMAN FARMAKIDES: Mr. Kaplan?

6 MR. KAPLAN: Well, I think that if the Board
7 questions Ms. Schimke she will state that the intent of this
8 contention, as is true of most of her other contentions,
9 is that no matter what precautions are taken, no matter what
10 steps are followed, no transportation or use or creation of
11 radioactive material should be permitted, because of the
12 danger to the health and safety of the public.

13 If that's her position, as I think it is, it is
14 a broad attack on the regulations, and as such, should be
15 disallowed. We object to it on that basis. That's point one.

16 Point two is that, as stated here, this contention
17 is obviously too broad to provide a useful vehicle for
18 discovery and hearing, and as such, we object to it.

19 And as I said before, I don't think it's
20 appropriate or even practical for either Mr. Kartalia or
21 myself to attempt to rephrase these contentions and to make
22 them mean something that I don't think Ms. Schimke means them
23 to mean in order to make it possible to get them within the
24 ambit of the Commissions rules.

25 I think we've got to deal with them as we see

1 them. This one says, divertment of radioactive materials,
2 and I object to it on the basis stated.

3 DR. GOODMAN: Well, I don't think Ms. Schimke
4 realizes the problems that she's getting herself into by
5 making these be so broad.

6 The Board is trying to see a way to admit this
7 contention. Really, that's the way we're looking at it.
8 And now you make it almost impossible for us to admit it.

9 Do you see the difficulty? Because when I asked
10 you the question on potassium, and you said in effect you
11 wanted to leave it included, it becomes absolutely ridiculous,
12 because, well, potassium is somewhat radioactive and our
13 bodies have natural radioactive potassium in them, it is
14 ridiculous to think that that would be included, and that
15 anybody would divert potassium as a radioactive material for
16 any purpose whatsoever.

17 MS. SCHIMKE: Sir, this is why we want to leave
18 it as is, because this is not an evidentiary hearing and
19 we want to be put in the position that you are trying
20 to put us in right at this moment.

21 DR. GOODMAN: No, you misunderstand. It isn't
22 an evidentiary hearing, but we are trying today to define
23 what will be included in the evidentiary hearing. And when
24 you make it so broad, without giving us anything specific to
25 go on, we are not allowed to allow you to come in and talk

1 about any radioactive element in the whole periodic table.

2 Unfortunately, we cannot do that.

3 MS. SCHIMKE: Well, I think that even counsel
4 agreed that our contention had some validity to it. So we
5 would prefer to leave it as it is.

6 DR. GOODMAN: I don't think that's what he said.
7 He suggested a radioactive material, namely special nuclear
8 material, which you had not mentioned.

9 Do you want now to say that this contention
10 includes special nuclear material, or only special nuclear
11 material?

12 MS. SCHIMKE: I say again I would have to
13 democratically meet with the group to make a decision.

14 CHAIRMAN FARMAKIDES: Yes, ma'am.

15 (The Intervenors conferring.)

16 CHAIRMAN FARMAKIDES: Ms. Schimke?

17 MS. SCHIMKE: All right. We democratically
18 decided that we'd like to change that to "criminal or acci-
19 dental divertment of radioactive material to and from or at
20 Rancho Seco."

21 CHAIRMAN FARMAKIDES: Do we understand that 6
22 would read as you have amended it, "criminal or accidental
23 divertment of radioactive materials..."

24 MS. SCHIMKE: Right.

25 CHAIRMAN FARMAKIDES: And continue.

1 MR. SCHIMKE: "...to, at or from Rancho Seco."

2 CHAIRMAN FARMAKIDES: All right.

3 Any further comments in view of the amendment?

4 MR. KAPLAN: Yes. We object on the ground that
5 it's too broad, that to and from opens up the entire fuel
6 cycle, as we understand it.

7 CHAIRMAN FARMAKIDES: Mr. Kartalia?

8 MR. KARTALIA: I'm not sure that I understand
9 Mr. Kaplan's fuel cycle objection. Transportation from
10 the plant is within the scope of this hearing.

11 But now I'm beginning to be bothered by the lack
12 of particularization. I did suggest one particular one,
13 and I honestly think that that's what was intended in the
14 first place, diversion of special nuclear material, fissionable
15 material.

16 If it's intended to cover more than that, then
17 I would want to know what more they meant to cover and for
18 what reason.

19 So in the absence of that information, I'm going
20 to object now.

21 CHAIRMAN FARMAKIDES: Anything further, Ms. Schimke?

22 MS. SCHIMKE: No, we have nothing.

23 CHAIRMAN FARMAKIDES: Members of the Board?

24 (Negative indications.)

25 CHAIRMAN FARMAKIDES: All right. We'll proceed to

1 7. Mr. Kaplan, any comments on 7?

2 MR. KAPLAN: Yes. I assume that the Intervenor
3 could always move to raise new issues on a showing of good
4 cause, and the Board, on receiving such a motion, would rule
5 on it.

6 But I don't think that it's appropriate to leave
7 a blanket reopener at this time. That would make this whole
8 proceeding meaningless.

9 CHAIRMAN FARMAKIDES: Mr. Kartalia?

10 MR. KARTALIA: That's true. Intervenor would
11 always have the right to add new contentions when it was
12 shown, and I think any specific provision that was more
13 generous than that would be appropriate. For good cause shown
14 you can amend the pleadings. That's true in any court,
15 and in administrative proceedings as well.

16 CHAIRMAN FARMAKIDES: Ms. Schimke, is there any
17 reason why you have 7 here?

18 MS. SCHIMKE: Yes, for good reason. I think it
19 should concern SMUD as it should concern -- at any time that
20 we see other issues it's like saying -- if we don't leave
21 that it, it's like saying for example that someone has shown
22 as an individual that at one time perhaps he didn't take
23 human life, and maybe two years later he starts to take human
24 life but we cannot discuss the issue because we made a
25 decision two years ago that this wasn't so. And I would think

1 that if we are concerned with public health and safety, it
2 would be crucial that that number 7 would be left in, because
3 again you're well aware that we don't have all the information
4 available that should be available to us, so there might be
5 other issues that would be very pertinent.

6 CHAIRMAN FARMAKIDES: Both Applicant and Staff have
7 said in effect that if there is new information which raised
8 new issues that you would have the right to introduce them
9 on showing of good cause.

10 The problem that the Applicant stated, in any
11 situation, unless there's a cutoff as to what is being
12 litigated, we don't in fact have an issue that can be
13 properly litigated, because it's always open for further
14 amendment or clarification or addition.

15 So in the absence of good cause, the general rule
16 is that there are no new contentions to be filed after a
17 given point.

18 All right. We'll consider your comments on this.

19 Now, I assume, then, that this constitutes your
20 contentions which would be the contentions that we read out
21 this morning, appearing in your 17 January document, plus
22 these issues appearing on page 2 of the Intervenor's list
23 dated March 15, 1973, specifically, issues number (d)(1),
24 (d)(3), (d)(5), (d)(6) -- and I assume you want (d)(7)
25 considered as an issue. That's an item of procedure. And

1 the Board will rule on that.

2 All right. Is that correct now?

3 MS. SCHIMKE: That's correct.

4 CHAIRMAN FARMAKIDES: I've outlined, then, the
5 contentions as you've expressed them today, and in writing,
6 in your amended petition.

7 I might point out for the benefit of the Intervenor
8 that we asked several questions some time ago. Let's say
9 it was in the sequence of questions prior to this last couple,
10 on the manner the Intervenor would take to place their
11 evidence into the record.

12 We are concerned that the Intervenor knows
13 properly how to proceed in interrogating witnesses and in
14 placing evidence into the record.

15 So we would like to ask the Staff, in view of
16 the answers given to the Board's questions, we'd like to
17 have the Staff be prepared to confer with the Intervenor
18 following our rulings on the contentions, at some time
19 following the rulings, up to the point of the evidentiary
20 hearing, on the procedure ordinarily followed in placing
21 evidence into the record.

22 In order for us not to delay the hearing once it
23 gets started it would be very important that the Intervenor
24 understands how evidence is placed into the record.

25 MR. KARTALIA: Mr. Chairman, we would be glad to

1 do that..

2 CHAIRMAN FARMERKIDES: Thank you, Mr. Kartalia.

3 Now, let's get to the discovery. Once the Board
4 rules on the contentions -- and incidentally, as to that,
5 we should have the transcript, hopefully, by Monday of next
6 week, I assume. We should then be able to get together at
7 the middle of next week or the latter part of next week and
8 hopefully, we should have a ruling out, an order of the Board,
9 the following week.

10 Once that ruling is out, then the parameters for
11 the discovery would be pretty well set and the Intervenor
12 could proceed on discovery, as can the Applicant, of course,
13 and the Staff.

14 Let's be sure that the Intervenor understand
15 this. Discovery flows from one party to any of the other
16 two parties. So you may be discovered, as you can discover
17 other people. By that I mean that you can follow the rules
18 and ask questions, obtain documents from the Applicant and
19 the Staff, and then can in turn ask you questions and obtain
20 documents and information from you.

21 Now, the Applicant I noticed in the last brief
22 filed by him, Applicant's Prehearing Conference Statement,
23 has suggested on page 11 a manner of proceeding with discovery
24 in which he suggests a procedure.

25 Have the Intervenor's looked at this, and do they

1 have any comments to make with respect to it?

2 MS. SCHIMKE: Again, I think we'd like to take
3 a short time to have all the members go over it together,
4 sir.

5 CHAIRMAN FARMAKIDES: I'll tell you what. On
6 this one I think it might be adviseable if all three parties
7 agree with the Board that we wait until after the order of
8 the Board issues so we know what contentions are in, what
9 contentions are out. Are they all in, are they all out?
10 Once we know that, then we can better decide how discovery
11 should proceed.

12 What we will do is to simply call the three
13 parties and have a conference call with you on a given date.
14 We'll make arrangements with you beforehand as to the date
15 and the time.

16 Is this convenient to the parties?

17 Mr. Applicant?

18 MR. KAPLAN: That's completely satisfactory, Mr.
19 Chairman.

20 CHAIRMAN FARMAKIDES: Ms. Schimke?

21 MS. SCHIMKE: Yes.

22 CHAIRMAN FARMAKIDES: Mr. Kartalia?

23 MR. KARTALIA: Yes, that's satisfactory, Mr.
24 Chairman.

25 CHAIRMAN FARMAKIDES: All right.

(The Board conferring.)

CHAIRMAN FARMAKIDES: My colleague has just raised a good point. First of all, I urge the three parties to get together after the order, voluntarily, and talk discovery, how are you going to proceed on discovery. Let them all get together at a place most convenient to the three.

Secondly, if the conference call develops that we cannot reach agreement on discovery procedures, we'll have to have another session. I would hope that that's not necessary.

So again I would urge the parties to please talk to each other. It doesn't do any harm to talk, especially in the area of procedures such as discovery and how to proceed.

Is that agreeable to the parties?

MR. KAPLAN: Completely, Mr. Chairman.

CHAIRMAN FARMAKIDES: Ms. Schimke?

MS. SCHIMKE: Yes.

CHAIRMAN FARMAKIDES: Mr. Kartalia?

MR. KARTALIA: Yes.

CHAIRMAN FARMAKIDES: Let's go off the record.

(Discussion off the record.)

CHAIRMAN FARMAKIDES: Back on the record.

I think that, then, pretty well completes the prehearing conference for today.

1 Are there any other matters?

2 Of course, in the prehearing order the Board
3 stated in the last sentence -- and perhaps hopefully --
4 "The Board will also consider any preliminary matters by the
5 parties and any prospects of settlement."

6 (Laughter.)

7 I assume the prospects of settlement are not very
8 bright. But again, hopefully, the parties can talk to each
9 other and hopefully some of the issues -- maybe not all, but
10 some of the issues can be resolved informally.

11 An informal resolution of issues between the
12 parties is always preferable to having the Board come out
13 with a ruling. It's very seldom that everyone is pleased
14 on anything the Board does. Generally everyone is disappointed
15 in what the Board does.

16 Anything further?

17 (No response.)

18 Ladies and gentlemen, --

19 MR.KAPLAN: Just one thing: in two of the issues
20 which we tendered the word "adequate" appears, and while I
21 think I defined it once on the record, I want the record to
22 be crystal clear that when I use the word adequate I'm
23 using it in the sense that it is used in Section 50.57(a)(3)
24 of the regulations, which is of course that there's reasonable
25 assurance that the activity authorized by the license can be

1 conducted without injuring the health and safety of the
2 public.

3 CHAIRMAN FARMAKIDES: Thank you. Ms. Schinke?

4 MS. SCHINKE: I had one thing. Perhaps we can
5 understand why we raised that issue of prejudgment, because
6 this has happened right at a time when we're having the
7 hearing. Again, the public, as we were well aware, is
8 involved in this. You pick up today's paper and you find
9 again -- and this is very deceiving to the public --
10 "AEC okay's SMUD's A-Plant."

11 Now, this is very, very disturbing to us.

12 MR. KARTALIA: Mr. Chairman, --

13 (Ms. Schinke distributing newspapers to the Board.)

14 CHAIRMAN FARMAKIDES: Proceed, ma'am.

15 MS. SCHINKE: And it's the kind of thing if we
16 want to live in a democratic and free society, I think the
17 public has to know what all the facts are. And with the
18 article that was in last week's paper and this week's paper,
19 then the public is indeed unaware of anything else, when
20 you see "AEC Okays SMUD's A-Plant."

21 Now, we think that's very deceiving, and you can
22 understand why we put that whole issue of prejudgment in our
23 outline, presented today.

24 CHAIRMAN FARMAKIDES: Well, I think we've discussed
25 that adequately enough. I think that matter is disposed of.

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1 But I share your concern, Ms. Schimke.

2 Mr. Kartalia, can you explain this to us please?

3 MR. KARTALIA: I was simply going to explain the
4 article merely reports on the issuance of the Staff's Final
5 Environmental Statement. This headline should be written
6 that Mr. Kartalia's client has given the plant a clean bill
7 of health from the environmental standpoint. The AEC, of
8 course, includes this Board, it includes the Appeal Board, and
9 it includes the Commission itself.

10 The fact that my client has issued a favorable
11 environmental statement does not mean that the last word has
12 been said on this plant.

13 CHAIRMAN FARMAKIDES: Let's be a little more
14 definitive about this, Mr. Kartalia. I think it's necessary
15 that we speak to this point.

16 First of all, remember what I said earlier, Ms.
17 Schimke and the joint intervenors, this Board is not an
18 instrument of the Staff, or the Regulatory arm or the
19 Operations arm. We are a separate entity, created to rule on
20 this particular application.

21 We are beholden to no one. We have no allegiance
22 to anyone. Our only governing rules are per statute, the
23 Atomic Energy Act, and also the rules of the Commission.

24 Now, within those parameters we will decide the
25 issues. Now, I certainly agree with you that this story is

1 very misleading. But I have no control over what newspapers
2 print, and oftentimes I'm sure that newspaper reporters will
3 use symbols or what they will do is use shorthand in order
4 to place within a narrow column all the necessary information
5 that they want in there.

6 So I have no explanation for this. I am, however,
7 bothered by this statement attributed to David Kaplan.

8 (Laughter.)

9 Mr. Kaplan, I don't understand exactly what this
10 is all about, and very frankly, I have not read it. I just
11 see your name in here. They're quoting you, and I hope
12 they're not quoting you with respect to any proceeding that
13 is happening here today.

14 MR.KAPLAN: I haven't read the article, Mr.
15 Chairman. I was telephoned by a reporter yesterday and the
16 reporter advised me that he had a copy of the final environ-
17 mental impact report issued by the Regulatory Staff. I was
18 asked what my reaction was, and I said we were very happy
19 with it, it represented a passage over another hurdle in our
20 move toward a license.

21 CHAIRMAN FARMAKIDES: In other words, what this
22 reporter is writing about here has no application, really,
23 to this hearing before us here today?

24 MR. KAPLAN: My conversation with the reporter was
25 as I have stated it, Mr. Chairman.

1 CHAIRMAN FARMANIDES: I would feel very strongly,
2 especially the lawyers before us, as to discussing the case
3 in any way. And I would urge Ms. Schinke, as far as the
4 merits of this case are concerned it would be my hope and my
5 strong suggestion that the merits of this case are discussed
6 here on the record. Newspaper reporters are welcome to join
7 us. As a matter of fact, I see several sitting here, and
8 they are able to hear the entire record and make their
9 comments from the record.

10 I would feel just as Ms. Schinke said earlier,
11 that if I were Ms. Schinke I would object to having articles
12 like this which seem to mislead the public as to this
13 hearing. That's why I'm concerned.

14 Anything further?

15 (No response.)

16 We will adjourn, and you will be hearing from the
17 Board, hopefully the week after next.

18 (Whereupon, at 3:00 p.m., the prehearing conference
19 was adjourned.)
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