

VOL-8



UNITED STATES ATOMIC ENERGY COMMISSION

RETURN TO DEPOSITORY CENTRAL FILES
DOM 016

IN THE MATTER OF

TOLEDO EDISON COMPANY
and
THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

Docket No. 50-346

(Davis-Besse Nuclear Power
Station, Unit No. 1)

RETURN TO DEPOSITORY CENTRAL FILES
DOM 016

Place - Port Clinton, Ohio

Date - 25 January 1971

Pages. 940 - 1061

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ATOMIC ENERGY COMMISSION

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In the matter of: :

TOLEDO EDISON COMPANY :
and : Docket No. 50-346

THE CLEVELAND ELECTRIC :
ILLUMINATING COMPANY :

(Davis-Besse Nuclear Power :
Station, Unit No. 1) :

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Ohio National Guard Armory,
135 W. Perry Street,
Port Clinton, Ohio

Monday, 25 January 1971

The above-entitled matter came on for further
hearing, pursuant to notice, at 1:30 p.m.

BEFORE:

WALTER E. SKALLERUP, JR., Esq., Chairman,
Atomic Safety and Licensing Board.

DR. CHARLES E. WINTERS, Member.

DR. WALTER H. JORDAN, Member. (Not present.)

APPEARANCES:

(As heretofore noted.)

C O N T E N T S

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LIMITED APPEARANCE OF:

PAGE

John E. Cook, Chief Development Engineer, Owens-Illinois, Inc., P. O. Box 1035, Toledo, Ohio 43601 on behalf of Sand Beach Association.

943

WITNESSES:

None.

EXHIBITS:

FOR IDENTIFICATION

IN EVIDENCE

Coalition Exhibit 1

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P R O C E E D I N G S

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2 CHAIRMAN SKALLERUP: Will the hearing please come
3 to order?

4 We will now continue the hearing in the matter of
5 the Toledo Edison Company and the Cleveland Electric
6 Illuminating Company regarding the Davis-Besse Nuclear Power
7 Station, Unit No. 1.

8 I would first like to announce the fact that
9 our colleague, Dr. Jordan, was unable to make it from Tennessee
10 today because the air traffic and the bad weather. He has
11 indicated he will be flying up this afternoon, weather per-
12 mitting, and will be with us commencing tomorrow.

13 There are several motions pending before the Board.
14 There is some unfinished business with respect to the identity
15 of witnesses, their testimony and we also have a request on
16 behalf of the Sand Beach Association, which, as you know, is
17 in the immediate vicinity of the plant, to make a limited
18 appearance.

19 Mr. John Cook, Vice President of the Association,
20 is present and would like permission out of order to make a
21 statement which he indicates will take approximately 13
22 minutes. He also has indicated that it is difficult for him
23 to leave his employment to come here and inasmuch as Sand
24 Beach is in the immediate vicinity of the proposed plant,
25 the Board is inclined to hear him out of order unless there is

1 some objection on the part of any of the parties in the
2 proceeding.

3 MR. CHARNOFF: The Applicant has no objection,
4 Mr. Chairman.

5 MR. ENGELHARDT: The Staff has no objection.

6 CHAIRMAN SKALLERUP: There being no objection,

7 Mr. Cook, will you please come forward and make your statement?

8 XXX
9 end #1

10 LIMITED APPEARANCE OF JOHN E. COOK, CHIEF
11 DEVELOPMENT ENGINEER, OWENS-ILLINOIS, INC.,
12 P. O. BOX 1035, TOLEDO, OHIO 43601; ON BEHALF
13 OF SAND BEACH ASSOCIATION.
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DONOVAN #2

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MR. COOK: I am speaking in behalf of the Sand Beach Association which was organized more than fifty years ago. The Association is incorporated and became a political subdivision in 1948 with creation of the Sand Beach Conservancy District.

Sand Beach property extends along the shore of Lake Erie for a distance exceeding 7,000 feet, and lies generally north of the northern power station boundary. The eastern-most portion of land described as lot 330 adjoins the power station property while the northwestern and most distant portion lies slightly under 4,000 feet northwest from the northwest corner of the power station boundary. Property in plots 1 and 2 of Sand Beach are owned by 146 individuals. There are 27 year-round homes and 78 seasonal homes and cottages. The winter time population is currently 72 people while the summer time population can rise to over a thousand on busy weekends. An additional 17 mostly seasonal and weekend dwellings are situated in lot 330 adjoining the power station property.

The principal use of Sand Beach is recreational and the beach itself is one of the remaining few good swimming beaches at this end of the lake. Outdoor activities range from fishing, boating, swimming, sailing and shore activities in the summer to ice skating, ice boating and snowmobiling in winter. It has been a place where our children could grow up and build a tree house or dig a cave and learn a little bit

jrb-2

1 about the beautiful world we live in. I am certain that in
2 this setting you will recognize the advent of a nuclear reactor
3 at our doorstep has been unsettling.

END# 2

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1 We had recognized the growing need for additional
2 sources of electrical power and having been assured by Edison
3 Company representatives that adequate cooling towers would be
4 built and no adverse effects or hazards would result from the
5 proposed plant or its operation, we had assumed a posture of
6 reluctant submission.

7 Two weeks ago we received a report from the previous
8 hearing held in this auditorium and received a copy of Appendix
9 A, Davis-Besse Nuclear Power Station Environmental Report
10 dated August 3, 1970. I hope all of you will have an oppor-
11 tunity to read this, in particular those who may have any
12 technical or scientific experience.

13 The first question concerns the Environmental
14 Report:

15 (a) To what degree are predictions for behavior of
16 the heated water discharge plume, with respect to
17 currents, dilution and diffusivity, based on the
18 report entitled "Currents and Dilution" on page C-15?

19 Prior to inclusion of a cooling tower in the power
20 station plan, explanation of the discharge plume behavior
21 in the lake was hypothetical and totally unrealistic.

22 Many observations from the air, of streams of
23 various sizes entering Lake Erie show clearly how an
24 entire discharge plume can be held against a shore
25 under high wind and wave conditions. The sentence on

1 page C-24, for example, refers to "that possibly unlikely
2 case wherein a northwest wind was to hold the plant plume
3 tightly against the shore from Locust Point to well
4 beyond the Camp Perry water intake," appears very likely
5 to us under normal spring to fall weather conditions
6 which apparently were not taken into account in the
7 study.

8 We question the validity of the conclusions drawn
9 from the brief six-month meteorological study as being
10 unrealistic and incomplete.

11 (b) The report also ignores late winter and early
12 spring gales which come from the sector between North,
13 Northwest and East, Northeast, and drive seas completely
14 over the beach dike and across Division Street.

15 At locations where the marsh is within 50 or so
16 feet from Division Street the seas frequently wash
17 directly from the lake into the marsh. This is not an
18 infrequent event and every year many homes are severely
19 damaged by these storms. You will find high water mark
20 evidence -- you can find debris washed clear into the
21 marsh from the lake. You will find high water mark
22 evidence on power station property also, where seas
23 wash into the marsh.

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end #3

1 The brief report which was made over the six months
2 of the year, used the mean winds and doesn't include the entire
3 year at all. Any study of this nature would have to be many
4 tests over a longer period of time. The realism of what
5 happens does not coincide with the hypothetical situations
6 presented in the manual. We have a number of questions in
7 this regard. One is:

8 What is the nature and configuration of the discharge
9 outlet and where is it to be located, and what is its volume,
10 velocity and temperature?

11 Would it be possible under high offshore wind
12 conditions previously described for radioactive discharge
13 effluent to concentrate in the shallow channels between the
14 sandbars and contaminate wells located along the beach?

15 At normal or high water levels will the turbulence
16 from the discharge flowing into a rough sea create a hazard for
17 small craft attempting to cross the juncture?

18 The immediate question which called my attention
19 to this was some of the comments heard from the meeting here
20 two weeks ago, and this is an important question to us:

21 If the proposed plant is completed and put into
22 operation at the intended level of power output, could a
23 required exclusion zone result in:

- 24 a) Vacating or expropriation of property?
25 b) Restrictions to present activities?

jrb-2

1 c) Exposure to health hazards?

2 We have had a letter from Mr. Davis of the Edison
3 Company in which he says no more land is required for the power
4 plant station. Our specific question is:

5 Are there likely to be others, because of any expanded
6 exclusions? Are there likely to be any other requirements to
7 encroach on our property?

8 That is what I am being concerned with.

9 The next question concerns: Every winter we are
10 snowbound by very heavy (6 to 8 feet) drifts for periods ranging
11 from a few hours to several days. In the event of an accident
12 at the plant requiring evacuation of Sand Beach, how would you
13 propose this could be accomplished under these conditions, and
14 whose responsibility is this?

15 Have the safeguards designed for the Davis-Besse
16 plant been used and proven in actual operation of a power plant?
17 We understand the failure of a supposedly proven safeguard was
18 responsible for an accident at the Enrico Fermi Plant.

19 Has the general plant site and surrounding area been
20 monitored for normal radioactivity and background count? Is
21 this information available?

22 At certain times of year, Lake Erie is choked with
23 blue-green algae bloom -- I am sure you all have seen it. I
24 have flown a great deal over the lake at low altitude from one
25 end of it to the other, and that lake is clogged solid with

1 blue-green algae. I understand 60 percent of the lake grows
2 thick with algae. Isn't it true that additional heat promotes
3 this algae growth? How can you support statements which claim
4 "there is no evidence the discharge would have caused ill
5 effects on Lake Erie ecology?"

6 A great deal has been said regarding the wildlife
7 refuge which will be created with establishment of the power
8 station. Isn't it true that the actual area will be reduced?
9 Is it not also true that the present 2400 foot exclusion zone
10 from the reactor will produce the same radiation hazard to wild
11 life that it would to humans? That is, what is the reason for
12 the 2400 foot exclusion zone and what effect might this have
13 on wildlife preserves? In time won't the marsh land bottoms
14 become radioactive and contaminate vegetation and marine
15 organisms upon which wild life feeds?

16 Would residents of Sand Beach and others be permitted
17 to walk along the shore between Sand Beach and the mouth of the
18 Toussaint River? -- and, would it be physically possible to do
19 so? We have been able to do this for years. It is a regular
20 family-type outing, and have a little cookout or something. My
21 boy was 20 last year, when he was walking across there.
22 He would have to get into the water; he would no longer be able
23 to walk up on the bank, in walking over the power plant boundary,
24 which is right behind my house, incidentally -- about 200 yards
25 in the middle of the marsh there is a very large open water

1 area. This is contiguous to Sand Beach also. But it's closest
2 point -- I am estimating -- it appears the reactor will be
3 located about 1500 feet from this open water area.

4 If you were to pour a can of oil, for example, 1500
5 feet from the reactor into the marsh water, this oil would
6 deposit itself on my soil. All I am asking is the question:

7 Is the exclusion zone meant to contain the plant
8 property? Is there any material that would flow, for example,
9 that would be carried over? Or do you plan to build a dike
10 along that northern boundary?

11 So, in conclusion, we are aware of the projected
12 requirements for electrical power.

13 We recognize that no fuel known today appears as
14 feasible and promising as nuclear fuel to fill the growing
15 need. We are not against nuclear power per se -- and we are
16 not mounting battle against Toledo Edison and the Cleveland
17 Electric Illuminating Companies. We support your effort to
18 meet the challenge of your industry, just as we do in our own
19 fields.

20 We do, however, believe that many critical questions
21 raised here and by others have not been satisfactorily answered.

22 We sincerely believe it is in the best interests of
23 all of us to resolve these and other unanswered questions before
24 construction of this facility is continued.

25 To the Slogan, "We Live Here Too," we must add,

1 "We Live There Now," and I trust we shall all be able to live
2 together in peace and safety.

3 Thank you.

4 (Applause.)

5 CHAIRMAN SKALLERUP: Between the time of our last
6 hearing, the armory hearing, and today, three motions were
7 filed by various parties in the proceeding. In some cases
8 answers were filed and in other cases, answers have not yet
9 been received.

10 In an effort to develop a meaningful agenda, the
11 Board would appreciate the opportunity to consult with counsel
12 at this time.

13 (Discussion off the record.)
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1 CHAIRMAN SKALLERUP: The hearing will come to order.
2 We have had our conference and a rather serious
3 discussion as well.

4 Mr. Lau announces that he will be representing him-
5 self in this proceeding.

6 Our agenda is to first deal with the motions that
7 have been made, to entertain other motions, and in the light of
8 that, proceed further.

9 The first motion we will deal with is the motion
10 filed on behalf of LIFE which sought discovery of certain
11 documents both from the Applicant and from the Commission.
12 Further, LIFE sought answers to certain interrogatories directed
13 to the Applicant and to the AEC Regulatory Staff. Answers
14 were filed by the Applicant and by the Commission Staff on
15 January 18.

16 The Board has considered the answers which in part
17 contend that certain material sought is not relevant, that
18 other parts are not in contention. The Commission likewise
19 responded with respect to certain matters, LIFE was given
20 information.

21 So, in summary, the Applicant and the Commission
22 complied in part and did not comply in other parts.

23 The Board, having reviewed these written materials,
24 concludes that the positions taken by the Applicant and the
25 Commission Staff were well founded.

1 The attorney for the Intervenor, LIFE, desires to
2 respond to the answers of the Applicant and the Commission Staff
3 with respect to interrogatories and we are prepared at this time
4 to hear them.

5 Before hearing, I would simply make one general
6 observation. The information thus sought, when provided,
7 is provided for the use of the Intervenor and providing it
8 does not make it evidence as such in the proceeding until it
9 is introduced into evidence.

10 So with that rather lengthy introduction, Miss
11 Bleicher, do you care to respond to the answers?

End #5

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1 MRS. BLEICHER: The Intervenor, LIFE, feels there is no just-
2 ification for limiting the scope of the interrogatories which they
3 requested to be answered by the Applicant and by the ABA
4 Staff to those relevant only to the specific contentions which
5 we represented to the Intervenor.

6 There is a section in the Regulations dealing with
7 discovery in general, which is Section 2.741 of the Regulations,
8 in which it states that at least with respect to locations
9 of books, documents, persons and other tangible evidence, any
10 question can be asked that is relevant to the subject matter
11 of the action, whether it relates to the claim or defense to
12 the examining the party, or to the claim or defense of any
13 party -- that is, of the examining party.

14 This would certainly be an apparent rule, since we
15 have been told we would be permitted to cross-examine other
16 intervenors' witnesses. They haven't made the same contentions
17 we have, and in order to cross-examine them we would have to
18 go beyond our own contentions.

19 In any event, as the Chairman has just explained,
20 it is not necessary that the materials produced in answer to
21 any question on discovery be admissible as evidence; merely
22 that it be related to subsequently finding admissible evidence,
23 so that a judgment could be made subsequently if we attempted
24 to introduce anything about whether it was relevant to our
25 contention or not.

1 There is a problem with respect to the way we
2 were notified that the scope of our discovery would be
3 limited. There is nothing in the Regulations that does limit
4 the scope of our discovery, and therefore we were under the
5 impression that we could ask all of these questions.

6 On January 7, at a session of these hearings,
7 after both Mr. Lau and his attorneys, and LIFE, and I as
8 LIFE's attorney, had left the room, an order varying the
9 intent of the Regulations was made. Before leaving the room
10 Mr. Lau explicitly asked on the record whether he would be
11 in any way prejudiced by not being there that afternoon, and
12 he was told no -- which I understood to mean even that there
13 would be nothing we would have to make argument on, no ruling
14 pertaining to our case that we would have to argue on.

15 Nevertheless, the ruling was made and we were
16 not notified of any ruling pertaining to limiting the scope
17 of our examination. We didn't know about this limitation
18 until after we filed our requests for information from the
19 Applicant and the AEC.

20 By that time, our questions were already in the
21 mail.

22 We feel that an ex parte ruling made in this way,
23 without a chance to discuss what is a deviation from the
24 policy of the rules, and without notifying us, is not conson-
25 ant with a fair hearing in any way.

1 However, if the Board should rule that the scope
2 of our questions must be limited specifically to those which
3 relate to our own contentions, that is the contentions relat-
4 ing to the safety of the plant in terms of the Part 20
5 criteria and whether these Part 20 criteria are adequate
6 criteria, then there are numerous interrogatories which we
7 have asked which do relate directly to those contentions which
8 should be answered by the Applicant and by the AEC.

9 The issue we have raised is whether the Applicant
10 is building a safe enough plant, and merely showing compliance
11 with Part 20 standards is not enough, because the decision
12 said that the Part 20 standards may be questioned.

13 We would therefore like to point out certain of
14 the interrogatories which we have asked which have not been
15 answered, and which we feel are very relevant and important
16 to helping us prepare our case.

End #6

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DONOVAN#7
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1 The interrogatories of the applicants, with
2 respect to Questions Number 56, 68, 10, 11, 12, 13, 15 and 16;
3 the answers to these questions are important in order to know
4 the exact quantities of radwaste discharge from this sized plant
5 during operation. What quantities are going to be released in
6 reality? What is expected to be released -- and not in terms
7 of speculation -- so that the amounts of this and their subse-
8 quent effects can be known.

9 Whether or not this is a safe plant depends on
10 how much radiation is going to be emitted, and we have to know,
11 therefore, how much is going to be emitted. We have to measure
12 these in terms of safety and not merely in terms of whether
13 there has been compliance with Part 20 of the Regulations.

14 Question Number 14 to the Applicant, which was:

15 "What is the cost of installing in the Davis-
16 Besse plant the Westinghouse Radwaste System using
17 crypton-85 as a case and tritium in liquid form?"

18 This is a question directly related to the benefits
19 of the plant versus the cost of the plant, which is one of the
20 matters taken up in Part 20. This is a safety feature we feel
21 should be installed in the plant regardless of what Part 20
22 says about it, whether it is required or not. And we would
23 like to know what the cost of this is. I think this is a
24 question directly relevant to the safety of the plant.

25 Question 17 concerns concentrations expected in

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1 fish, waterfowl, and humans in a 25-mile radius surrounding the
2 plant in the western basin of Lake Erie, considering the total
3 concentrations from all sources in this plant.

4 The question relating to concentration and several
5 other questions here also relate to concentration -- question
6 18 relates to exposure; question 20 also relates to concentra-
7 tion. Question 21 also relates to background levels of concen-
8 tration.

9 These issues have been raised in our memorandum
10 which supported our petition to intervene and which was granted.
11 We specifically said we want to look into the question of con-
12 centrations so that we can find out whether the total amount
13 which is going to be found in humans and in animal life will
14 be safe.

15 Questions 22 and 23, which we had asked of the
16 applicant, related to the release of radioactivity that could
17 be expected if the primary storage tank and water storage tank
18 become dislocated due to soil liquefaction mentioned in the PSAR.
19 This again relates to the amount of radioactivity going to be
20 released into the air upon the event likely enough to be
21 mentioned in the PSAR. Again, it relates to the safety and
22 the amount of radioactivity people are going to be exposed to.

23 The fact that it is within the Section 20 limits
24 doesn't mean it is an amount which is safe, and we want to
25 find out exactly what they expect to be the level, and then we

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1 will discuss whether or not that is going to be a safe level.

2 The same also applies to Question 26 which has to do
3 with quality control. We want to know in whom the responsibility
4 of quality control resides, because quality control will deter-
5 mine whether or not there is excessive radioactive releases.

6 Question 27 also relates to quality control.

7 I think that if the Board will consider these ques-
8 tions relating to the amount of radioactivity, that is what we
9 are talking about, the amount of radioactivity; and what form
10 it will leave human beings and plant life and animal life. They
11 are valid questions which we have to know the answers to.

12 We can't prepare our case in the dark, and this is
13 what the applicant is attempting to have us do. They make
14 general statements in the PSAR and it is up to us to ask them
15 to provide us further information. And we have witnesses to
16 evaluate this information.

17 Questions No. 28 through 32, Question 33 and 34 to
18 the applicant all relate to the engineering details of the
19 nuclear power plant, allowing amounts of radiation discharge
20 under the Section. It is important to understand the radio-
21 active emissions and the sources of these radioactive emissions
22 in the structure of the plant in order to know what would have
23 to be done to the structure of the plant in order to cut down
24 unnecessary radiation.

25 If the plant is to be built, we all want it to be

1 built in the most safe way possible. We have scientific experts
2 who say there are ways to do this which will cut down on the
3 amount of releases, and we want to know the structural details
4 so that we can help the Board to decide whether these structural
5 features are going to be sufficient.

6 Many of the other questions relate to engineering
7 details, and I would suggest that before the Board rules upon
8 the applicant's and the AEC Regulatory Staff's refusal and
9 objections to our questions, that they examine the questions
10 themselves to attempt to see how we intend to relate these
11 questions to our contentions.

12 CHAIRMAN SKALLERUP: Mrs. Bleicher, the Board will
13 do that and we will defer doing it until the arrival of
14 Dr. Jordan so that we will have a complete panel.

15 I would like to ask the applicant if the applicant
16 cares to make any response to this statement by Mrs. Bleicher,
17 and the Commission Staff, if they care to make any.

18 And one further thing: This I consider to be
19 largely a legal matter, that is, whether or not the information
20 sought by the intervenor is strictly relevant to the conten-
21 tions. Is it not so under the Commission Regulations that they
22 are entitled to the information, and that any objection to
23 bringing the information into evidence should be weighed at
24 the time it is brought in? This is one area where this member
25 of the Board would appreciate a little discussion on the part
of other counsel.

1 MR. CHARNOFF: In general, Mr. Chairman, the reply
2 that we filed is what I would reply on.

3 We filed it on Monday the 18th of this month.

4 I would like to make a few general observations,
5 however.

6 One is, Mr. Chairman, I refer you to page 624
7 of the transcript. The Board stated the Board has considered
8 these matters, looking at line 12, and believes that a fair
9 result, all interests considered, will occur if we follow
10 this schedule. That on the 12th of January that will be the
11 cutoff date for the filing of papers for discovery or inter-
12 rogatories. The 18th of January will be the cutoff date for
13 the response of this information.

14 I would suggest, sir, this is important in your
15 consideration of the response we filed on the 18th because
16 LIFE in filing interrogatories, both were technically deficient
17 in failing to show the good cause required for the interrogatories
18 and failed to file the appropriate motion with us. But we
19 didn't rest on the technical deficiency, we rested our case in
20 part on the fact that these interrogatories were patently
21 not related -- most of them were patently not related to the
22 contentions.

23 Let me also refer the Board to transcript, page
24 763, where the Board stated in accordance with regulations of
25 the Commission in the interest of an orderly proceeding,

1 direct evidence, cross-examination, motions for discovery,
2 motions for deposition, proposed findings of fact, conclusions
3 of law and similar opportunities afforded Intervenor are to
4 be confined to those contentions determined by the Board at
5 the time of the admission to proceedings properly raised by
6 that particular Intervenor.

7 The whole purpose of getting this specified with
8 reasonable specificity and soon thereafter or at the same time
9 defining the matters in controversy so that an orderly proceed-
10 ing can be developed. This was done in this case over an
11 extended period of time. Nevertheless, what we received from
12 the Intervenor in the way of requests for documents and
13 interrogatories, this Board has characterized them in the answer
14 as not related for the most part to the contentions of this
15 particular Intervenor. But we also state and I wasn't able to
16 follow quickly enough Mrs. Bleicher's list of all of the
17 questions, I notice in her list of questions that she deemed
18 relevant she mentioned three or four questions which we did
19 submit answers to, namely, 17, 18, 19, 21.

20 Furthermore, I think if you examine the petition
21 for reconsideration, it sets forth the matter in controversy at
22 this time.

23 LIFE has been admitted to protest the validity
24 of CFR-420. What LIFE was not contending is that this plant
25 will or will not conform to Part 20.

1 I submit many of the questions Mrs. Bleicher referred
2 to may fall into the second category and not the first. It
3 was on that basis we concluded that most of the cases she
4 mentioned here are not related to the contentions and the
5 matters in controversy before this Board.

6 MR. ENGELHARDT: Mr. Chairman, Mrs. Bleicher directed
7 her comments primarily and I think exclusively to the inter-
8 rogatories filed by the Applicant. She did not deal with the
9 filed interrogatories she filed on the Staff. However, I
10 assume, since there is a similarity in certain respects with
11 what she has identified in connection with the Applicant's
12 interrogatories, that the same arguments would apply to the
13 interrogatories which were filed on the Staff.

14 With respect to those interrogatories in particular
15 and after listening to the oral argument a few moments ago,
16 I am still not convinced that the material that Mrs. Bleicher
17 and LIFE, her client, have requested from the Staff in the form
18 of interrogatories are relevant to the issues in this proceeding
19 which LIFE is permitted to offer evidence on and to cross-
20 examine, namely, the validity of delating this in CFR-420 in
21 the Commission's regulations.

22 I think the thrust of the interrogatories that both
23 are addressed to the Applicant and to the Staff in which either
24 have refused to respond to relate to the matters which are
25 directed towards how Part 20 was applied to this plant and

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1 whether this plant is safe under those conditions. I question
 2 whether this is within the bounds of the contentions which the
 3 Intervenor LIFE has been permitted to question in this proceeding.

4 To that extent I feel that the oral argument has not,
 5 as far as the Staff is concerned, changed its position with
 6 regard to its response to the original interrogatories contained
 7 in the written answers filed with the Board and made available
 8 to all the parties.

End #0

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1 CHAIRMAN SKALLERUP: The Board will consider the
2 matter and advise you tomorrow.

3 With respect to the matters as to a fair hearing,
4 when the Board speaks of prejudice it is speaking in terms of
5 legal prejudice, not as to whether it is to your advantage to
6 be present or not. It is your privilege for everyone to be
7 here. If you choose not to be here, you do so at your peril.

8 Furthermore, I believe that all counsel were on
9 notice that any matter that appears in the official transcript--
10 now each of these matters did appear in the transcript, and
11 the inability of counsel to obtain this information is not
12 the burden of the Board. According to that, there is not
13 agreement in your position that you were in any way prejudiced
14 by not appearing in this proceeding, since you voluntarily
15 chose to be absent, yourself.

16 MRS. BLEICHER: It seems to me a matter of prejudice
17 when the usual policy of the Regulations is varied, as you are
18 perhaps permitted to vary. Nevertheless, one would ordinarily
19 think there would be opportunity for argument concerning the
20 variations.

21 The other thing is a matter which I think the
22 Board is aware of, that an intervenor who is representing
23 the public interest and has very little money, cannot obtain
24 copies of the transcript, the way it would be ideal to. The
25 fact is that we did not have information about what went on

1 at that session until some time after the session was over.

2 CHAIRMAN SKALLERUP: Would you agree with me that
3 we have given you the opportunity to argue the matter?

4 MRS. BLEICHER: Yes.

5 CHAIRMAN SKALLERUP: Another motion that was filed
6 during the interim, this on behalf of the Coalition for Safe
7 Nuclear Power, for reconsideration of the ruling pertaining
8 to a specific contention, required additional information from
9 the Applicant. Copies of this motion have been received very
10 recently by the Applicant and the Commission Staff, we are
11 advised. Accordingly, we will postpone further comment upon
12 this motion until tomorrow, and at the request of Mr. Baron
13 we will postpone it until tomorrow afternoon.

14 A third motion which was filed during the interim
15 was on behalf of the AEC Regulatory Staff, for an order
16 requiring the submission of certain testimony in writing, or
17 for alternative relief. This motion was filed on the 21st
18 of January of this year.

19 In order to inform those present, Mr. Engelhardt,
20 would you please state the gist of your motion?

21 MR. ENGELHARDT: Yes, Mr. Chairman.

22 At the hearing, the last session of this hearing,
23 the Board provided an order that the intervenors, LIFE and
24 Mr. Lau, on or before January 20, 1971, provide all parties
25 to the proceeding with the names of their witnesses, the

1 qualifications of the witnesses, and copies of the complete
2 testimony of the witnesses or an accurate summary thereof.
3 This was to be provided by January 20.

4 On January 20 the AEC Regulatory Staff received
5 by telephone a listing of some 14 names. This was supplemented
6 on January 21 by a further list of 14 names of witnesses
7 proposed by LIFE to be offered in this proceeding. The names
8 purported to comply with the Board order.

9 These names, however, failed to identify the pro-
10 fessional qualifications of the individuals, nor did they
11 provide an adequate summary of the testimony of the witnesses
12 proposed. In fact, in most instances the summary consisted
13 of one sentence which was insufficient for the Staff to
14 prepare any meaningful cross-examination questions or
15 rebuttal testimony.

16 Since proceedings of this nature are not benefitted
17 or are not made more useful in any respect by the element of
18 surprise, by presenting witnesses for which other parties
19 cannot have an opportunity to prepare for, the Staff has
20 moved that this Board issue an order requiring the testimony
21 of LIFE and Mr. Lau's witnesses be submitted in writing at
22 a time that it may be received five days in advance of the
23 session of the hearing at which such testimony is presented.

24 The order will also provide that unless this
25 procedure is followed, the witness will not be permitted to

1 testify.

2 The Staff has also requested in the alternative
3 that if the Board does not grant the initial request for relief,
4 that the Board issue an order that each of LIFE's and Mr. Lau's
5 witnesses be permitted to testify at the next session in the
6 public hearing in this matter on January 25, only on the
7 condition that:

8 (1) The witness agrees to be available for cross-
9 examination at a subsequent evidentiary session scheduled to
10 afford the parties a reasonable opportunity to review the
11 transcript, and to prepare for cross-examination and for the
12 presentation of rebuttal evidence, and

13 (2) The testimony of any witnesses failing to
14 reappear would be stricken from the record.

15 That, Mr. Chairman, is a summation of the Staff's
16 motion.

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end #9

1 CHAIRMAN SKALLERUP: In our conference this motion
2 was discussed and at that time counsel for the Applicant
3 indicated that he planned to file a motion regarding the same
4 subject matter, so that rather than at this time ask the
5 Intervenors to comment on the Commission's motion, we suggest
6 that the Applicant respond to the subject matter set forth by
7 the motion of the Commission.

8 MR. CHARNOFF: Mr. Chairman, my answer or comment
9 here will be in the form of an alternate motion and in the
10 sense will also be a commentary on the Staff's motion.

11 I think it is clear from the information that has
12 been provided on the 20th and 21st of January that both LIFE
13 and Mr. Law have failed to comply with the Licensing Board's
14 order of January 7, 1971 which is found on transcript page
15 765.

16 While we have received a list of witnesses from
17 the Intervenors and their place of employment, we certainly
18 have not received a statement of their qualifications nor have
19 we received copies of their testimony or anything that would
20 resemble an accurate summary thereof.

21 I would like to note that counsel for LIFE and Mr.
22 Lau agreed at our last hearing during the first week of
23 January to a two-week postponement of the hearing to the
24 week of January 18 in order to prepare their cases.

25 Due to other hearing obligations of the Staff during

1 the week of the 18th of January a third week was added to the
2 adjournment and the hearing was scheduled to reconvene today
3 on January 25.

4 The Licensing Board order of January 7 which appears
5 on the transcript, page 765, asked the Intervenors by January
6 22, which was the middle of the third week, to supply the
7 names, qualifications and testimony or an accurate summary of
8 their witnesses. As I have indicated, essentially, we sought
9 nothing more than the names and current employment of those
10 witnesses.

11 LIFE sought reconsideration, Mr. Chairman, of the
12 initial denial of its petition for intervention urging that
13 its participation at the hearing would cause neither incon-
14 venience of the parties or delay in the proceedings. Their
15 participation in the proceeding has already caused a three-
16 week delay in the hearing.

17 By LIFE's failure to comply with the Board's order
18 of January 7, 1971 in that it failed to provide the qualifications
19 and the nature of the testimony in any reasonable fashion on
20 January 20, it would automatically cause another delay in the
21 proceedings because it has set up a situation where the
22 parties and the Board would be at a disadvantage in determining
23 the relevance of the offered testimony and, as far as the
24 parties are concerned, in preparing cross-examination and
25 rebuttal testimony. The same thing, of course, applies to Mr.

1 Lau. I would only add that in his case I would remind the
2 Board that at the last set of hearings in the first week of
3 January Mr. Lau's counsel said he was advised by Mr. Lau that
4 six experts were contacted and committed or interested in
5 testifying in his behalf.

6 As to two of those experts I reported on our con-
7 versations with them and the mistake in the advice was reported
8 that day.

9 I think it is pertinent to note that the list of
10 names offered by Mr. Lau on January 20 contain none of the
11 six names that had been identified by Mr. Lau's counsel at
12 the set of hearings during the first week of January as experts
13 interested or committed to testifying in his behalf.

14 Accordingly, Mr. Chairman, we believe both LIFE and
15 Mr. Lau have forfeited their opportunity to present any direct
16 case in this proceeding and we move the Board now to so rule.

17 If the Board declines to grant our motion, I would
18 urge that the Board grant the Staff's alternative motion
19 subject to following qualifications: We will proceed this after-
20 noon or as soon as preliminary matters are disposed of, as
21 set forth in the agenda that was agreed to in January which will
22 call for the presentation of Mr. Lau's direct case and then
23 LIFE's direct case.

24 Following the presentation of Mr. Lau's and LIFE's
25 direct case, I would suggest that we afford Mr. Lau and LIFE

1 to cross-examine the Applicant and Staff witnesses.

2 This period of time following the presentation of
3 their testimony and during the cross-examination of our
4 witnesses may be sufficient to allow enough time for us and
5 perhaps the Staff to consider the direct testimony that has
6 been offered by Mr. Lau and LIFE and then we can proceed
7 without any delay directly with cross-examination by the
8 Applicant and the Staff of Mr. Lau's witnesses and LIFE's
9 witnesses. If it does not provide that period of time, then
10 we would propose that we reconvene a day or two later but
11 certainly in no event later than next Monday, February 1st,
12 to have cross-examination of Mr. Lau's witnesses and LIFE's
13 witnesses and the presentation of rebuttal testimony.

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1 CHAIRMAN SKALLERUP: Mrs. Bleicher, you can respond
2 to either or both motions.

3 MRS. BLEICHER: I received notice of the fact that
4 Mr. Engelhardt, on behalf of the Regulatory Staff, was going to
5 file a motion like this by telephone on Friday, and today was
6 my first opportunity to read that motion. Of course I have not
7 seen the motion. I just heard for the first time the motion
8 being made now by the applicant on this subject.

9 The first item that I would like to mention is that
10 LIFE objects at this stage in the proceedings to radically
11 changing the rules. One intervenor has already presented his
12 case. We are now facing a proposal that the entire procedure be
13 changed with respect to the other intervenors.

14 I think that changing the ground rules at this stage
15 so that they apply to the intervenors but not to the other
16 one is patently unjust. We, as I have mentioned with respect
17 to our previous discussion in the motion for discovery, we were
18 not present on the 7th of January. Being a public interest
19 group, we simply aren't able to appear at times when we didn't
20 think our interest was going to be prejudiced. So, at the time
21 the January 20th date was set and explicit instruction was
22 given, we were not present in order to ask for any clarification
23 of what these instructions meant. We had not received notice
24 of the fact that the January 20th date had been set until
25 January 12th, when the Chairman did call me on the telephone

1 and tell me about it. And we attempted to comply at that time
2 with the request as we understood it.

3 Accordingly, we prepared a five-page document listing
4 the names, the employment, of our various witnesses and giving
5 a short summary of the aspects of our contentions to which they
6 would address their comments. We are now told that such a
7 list was not adequate in order to comply with the Board's
8 ruling on the 7th when we were not present.

9 In answer to the motion filed by the AEC Regulatory
10 Staff, I would first address myself to the second part of the
11 motion:

12 With respect to certain of our witnesses, those who
13 have to come from outside of the Ohio area, granting that notion
14 will amount to a complete denial of our right to present any
15 evidence at all. As we know, it is a financial struggle to
16 get anybody here one time, and we certainly can't expect any-
17 body on his own to voluntarily offer himself to come across
18 the country twice, first to present direct testimony and then
19 to be here to answer to cross-examination. They are not on
20 our payroll and they are just doing this because they believe
21 the cause is so important. But they have other commitments in
22 terms of time, and other ways to spend their money.

23 It is true, however, that there are a few local
24 persons that we have to testify for us, and they could come first
25 for direct and then subsequently, after the applicant and the

1 staff has had a chance to examine the direct examination, for
2 a cross-examination.

3 So I would say with respect to the AEC Staff motion,
4 we would attempt to comply insofar as we can with requests for
5 full testimony from our out-of-state witnesses and out-of-town
6 witnesses and have them here on one occasion to answer cross-
7 examination. With respect to our local persons, however, we
8 can have them here on two occasions, first to present their
9 direct testimony and then to allow for cross-examination. Or,
10 if we can get them to do it, I gather since it was the first
11 motion, the AEC Staff would prefer to have the total testimony
12 in writing, and if that is the case we would have that from our
13 local people.

14 I might add, in addition to our five-page list which
15 we did have on the 20th and which I hand-delivered to Wilson
16 Snyder, who is the Attorney for Toledo Edison, in accordance
17 with our previous arrangements for delivery of documents so
18 they would reach the applicant and staff and Board quickly, I
19 understand it was telephoned rather than sent down, but he did
20 have it on the 20th.

21 In addition to that list, we had a two-page attach-
22 ment to that list from one of our witnesses, which is a
23 summary of his comments. I don't know if you want to impose a
24 page limit, tell us how many pages the summary should run to.
25 We had no guidance as far as that was concerned.

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1 With respect to the motion just orally presented by
2 the applicant, I would say that preventing us from presenting
3 any direct testimony at this stage would be grossly unfair.
4 As I previously mentioned, the Coalition has had an opportunity
5 to present a witness. It was not necessary to present a full
6 text of his testimony before he came. We would be denied the
7 same right they were granted if this motion were granted.

8 I think that in proceeding like this you have to
9 take into consideration the kinds of burdens there are. I
10 realize we want to do it in an orderly way, and it can be done
11 in an orderly way, but to deny us the right to present any
12 evidence at all is to deny the people of this area any chance
13 to find out more about this plant and to ensure their safety.

END#11

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1 CHAIRMAN SKALLERUP: Mr. Baron?

2 MR. BARON: Thank you, Mr. Chairman.

3 I would like to make some remarks pertaining to
4 this. Of course mine will be in support of my colleague
5 Intervenor.

6 I am a bit puzzled at the professed innocence and
7 lack of knowledge on the part of the Staff and its people,
8 and on the part of the Applicant and its people as to what
9 people such as John Gifman might say in this hearing. All of
10 the parties on behalf of the Applicant and Staff know these
11 people. They know the name Gofman, Tamplin, and most of the
12 people listed on this list of the Intervenor, LIPE, are people
13 who are not coming out of the walls. These are people who
14 have been on the public scene for a long, long time.

15 I would imagine that people from the Staff and
16 people from the Applicant could sit here and relate almost
17 verbatim the positions of these particular witnesses. Every-
18 one who has been at all conversant with the activities of
19 Dr. John Gofman know exactly what his attitude is, and exactly
20 to what items he will devote his attention.

21 I don't know the names of most of these people,
22 but I haven't been involved in atomic energy work as long as
23 the Applicant's attorneys and the Staff people. To say that
24 because they do not have a thoroughly detailed written memor-
25 andum as to what these people would say we cannot properly

1 prepare and properly have people available, that makes me
2 think that nobody is paying attention all these many months
3 and years to people like Dr. Gofman.

4 I know, with all due respect to the attorneys for
5 the Staff and the Applicants, but I am going beyond them. I
6 am going to their own technicians, the people who read the
7 technical documents that appear in most of the journals in
8 this area. They read the papers by these people, I would
9 assume. I could stand corrected. Maybe they have never
10 published anything.

11 If they pick up somebody with an odd name who
12 worked with a little laboratory behind his home, sure, what
13 is he going to say? But we are not talking about people
14 like that.

15 I sincerely suggest that -- unfortunately, the
16 Board -- I shouldn't say "unfortunately" but perhaps you set
17 a precedent with regard to the Coalition for Safety that
18 permitted Sternglass to testify without the advanced written
19 memorandum. But I would say the same thing -- he is certainly
20 not new on the atomic energy scene. Everybody cognizant of
21 the man knew what he had to say, and he certainly said it
22 when he came here. They have him listed here again as a
23 witness on their own behalf.

24 So to say that because of the failure on the part
25 of LIFE to comply with what had been a purely technical

1 requirement would be rather unfair.

2 Applicants and Staff are not in the dark. They
3 knew who was coming, and certainly it is reasonable to suggest
4 that they would know, or have a pretty good understanding of
5 what those witnesses would say upon arrival.

6 Certainly they could be prepared to cross-examine.

7 I think it would be unfair to impose that burden
8 upon us.

9 CHAIRMAN SKALLERUP: Have you anything further to
10 add, Mr. Lau?

11 MR. LAU: Yes, sir.

12 I, as you know, do not have an attorney now, and as
13 of the 20th was notified that we did have to have witnesses'
14 names and occupations, their qualifications and their testi-
15 mony.

16 I made all the efforts that I could possibly make
17 at that time, including calling the Atomic Energy Commission,
18 which I found nobody in the Regulatory Staff available to talk
19 to me. One man who was supposed to be there was sick, the
20 operator told me, and the rest were out of town.

21 I also made an effort to call you, Mr. Skallerup,
22 and you returned the call the following day.

23 I did call Mr. Sniderbach and give him the names
24 of the people that I had as of that time. These were all people
25 that were very pertinent to my case.

1 I feel that just being a citizen, a resident of the
2 area of that nuclear power plant, and having very little
3 funds, and they are dwindling every day to the point where we
4 have nothing left, that if the people of this community are
5 ever going to hear the other side of the story at all, we
6 must bring these witnesses in.

7 Now, if you decide that we need a written report,
8 testimony from these people, then I will comply with that
9 decision. But I might say I have Dr. Arthur Tamplin scheduled
10 for the 29th, Dr. Sternglass, who is coming in on the 27th,
11 who said he would further testify on my behalf. I can bring
12 in Dean Abrahamson tomorrow, and I have Carl Houston who
13 can be here very quickly, and Colonel Steve Gadler can be
14 here this week.

15 So I have come prepared -- prepared to go to work.
16 And believe me, every minute I sit here I get closer to
17 bankruptcy.

18 Thank you.

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end #12

1 CHAIRMAN SKALLERUP: We will take a 10-minute break.

2 MR. ENGELHARDT: Mr. Chairman, I don't believe I
3 have had a chance to respond to Mr. Charnoff's motion. I will
4 defer if you wish to take a break now but I would like to make
5 a comment on his position.

6 CHAIRMAN SKALLERUP: Well, we will be pleased to
7 hear your comment, if you prefer to make it now, please do so.

8 MR. ENGELHARDT: As much as I think the Board has
9 been imposed upon by delays in presentation of the Intervenor's
10 case in this proceeding, I do not believe that the equities
11 called for the drastic action proposed by the Applicant in
12 denying the Intervenor's LIFE and Lau an opportunity to present
13 their case. I think the alternative proposal of the Staff with
14 regard to how this matter can be dealt with is reasonable
15 and it is fair and will not unduly delay proceeding.

16 The opportunity to prepare for an administrative
17 proceeding is an important element in assuring that the pro-
18 ceeding be conducted in an orderly fashion and that the
19 record be complete.

20 This is not a trial in the sense of a legal trial
21 where facts are an essential ingredient, facts and facts alone.
22 Here in this type of proceeding you are testing the expert
23 opinions of many, many people and I think that the opportunity
24 for the Staff and the Applicant and this Board to understand
25 what the Intervenor's case may be and what their witnesses

1 will say will provide not only the Board but the public an
2 opportunity to have a hearing completed in a rather expeditious
3 fashion but with fairness and completeness.

4 I think that the statement that has been made that we
5 know what these witnesses are going to say, that the witnesses
6 listed by Mr. Lau and by LIFE are well known is not quite true.
7 None of these individuals, I may qualify that because there
8 may be one or two that have, but for the most part these
9 individuals have never appeared as witnesses in an AEC proceeding
10 such as this. They have testified before other bodies and
11 written articles and so forth but they have not testified
12 in a proceeding.

13 Furthermore, they have not offered testimony or
14 views with respect to this particular application.

15 I think it is important for us to have available
16 the benefit of their views and opinions with regard to this
17 application because that is what this proceeding is all about.

18 To that extent I think it is important that we have
19 an opportunity, an adequate opportunity, to either see their
20 testimony in advance so we can prepare for cross-examination
21 and rebuttal testimony, because I am sure all of you know
22 there is a difference in the scientific community with regard
23 to certain aspects of the Commission's program and I think it
24 requires that this matter be done in a fashion which is fair
25 to the parties in the proceeding so we may all have an equal

1 opportunity to review the testimony and prepare for it.

2 The Intervenors in this proceeding have had the
3 Applicant's testimony and its PSAR and the Staff's Safety
4 Evaluation for many, many weeks. They knew what the Staff and
5 the Applicant were going to say. I think it is only fair
6 and equitable and I think due process would require that we
7 have similar opportunity to read or have advanced information
8 with regard to what these experts will be saying. Because we
9 are not here to play a game with one another, we are here on
10 very serious business, to evaluate technical testimony of
11 highly skilled scientific opinions which I think in all fair-
12 ness should be evaluated in a situation which provides full
13 fairness and opportunity for all to respond.

14 With respect to another point that was made in the
15 discussion and comments on this motion, that we, the AEC know
16 what these experts are going to say and we needn't have time
17 to prepare, I would question that statement.

18 These experts have said many things in many proceed-
19 ings at different times. We don't know exactly what they may
20 say. What they may say is important for the particulars
21 of the AEC Regulatory Staff so that we will have an adequate
22 opportunity to bring to this proceeding witnesses to assist us
23 in the cross-examination of these witnesses and to prepare
24 rebuttal testimony so that the report is complete.

25 It will show what the expert views are of those

1 persons who may have views in opposition to those of the
2 AEC with respect to the matters that are dealt with in this
3 proceeding.

4 Therefore I do not feel that the preparation of
5 testimony in a written form poses any undue burden on these
6 witnesses since these people have said these things many times,
7 as the Intervenor contends. If they said them many times their
8 testimony would be essentially complete and it would be nothing
9 more than editing a version of something they said previously
10 to serve as testimony in this proceeding.

11 I think it is also important, Mr. Chairman, that the
12 Staff and the Applicant and the other parties in this proceeding
13 have an opportunity to review advanced testimony of Intervenor's
14 witness to give us an opportunity to be sure that the testimony
15 is directed to the issues on which this Intervenor has been
16 ruled to participate in this proceeding. That means we may
17 directly by this procedure provide an opportunity for, for
18 example, Mr. Lau to save money. Because it may be that the
19 proposed testimony can be offered by certain of these witnesses
20 and is indeed not relevant to the issues or contentions to which
21 the particular Intervenor has been limited and by ruling on the
22 adequacy of that individual's testimony and relevancy to the
23 issue, we may indeed save money on the part of the Intervenor,
24 if such witness does not direct his testimony to relevant
25 matters.

1 Mr. Chairman, I think the motion that we have made
2 with regard to the preparation of testimony, particularly the
3 first alternative aimed at the preparation of written testimony,
4 is the appropriate way and the best procedure to follow with
5 respect to this proceeding, provided that there is reasonable
6 limits as to the amount of time allowed for the preparation of
7 the information necessary for the Staff and the Applicant and
8 other parties to prepare their testimony.

9 CHAIRMAN SKALLERUP: Would you please fill in the
10 blanks so that your motion will be self-contained?

11 What date would you anticipate the testimony to be
12 prepared for examination of other parties and on what date
13 would you reconvene the hearing? I think we ought to have those
14 dates in mind so that we can discuss this further. But
15 once again, let's have an adjournment for 10 minutes and we
16 will resume.

End #13

(Recess.)

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1 CHAIRMAN SKALLERUP: The hearing will please come
2 to order.

3 Mr. Engelhardt, will you proceed.

4 MR. ENGELHARDT: Mr. Chairman, I believe before the
5 recess you indicated that you felt the Staff should provide
6 a time sequence for the timing of the presentation of the
7 prepared testimony. It would appear to me, Mr. Chairman, that
8 the schedule that would appear reasonable under these circum-
9 stances would be to have the prepared, written testimony in the
10 hands of the other parties to this proceeding by a week from
11 today, which would be February 1, I believe.

12 Thereafter the proceeding would reconvene on the
13 following Monday which would be February 8th, and it would
14 continue thereon until all parties had completed their case,
15 both direct testimony, cross-examination, and rebuttal.

16 CHAIRMAN SKALLERUP: Thank you.

17 MR. CHARNOFF: May I talk to that, Mr. Chairman?

18 CHAIRMAN SKALLERUP: I wanted to make one comment
19 prior to that.

20 Is it agreeable to counsel that we focus our
21 discussion on the Commission motion just made by Mr. Engelhardt,
22 that the prepared, written testimony be disseminated among
23 all parties no later than February 1, and that the hearing
24 reconvene on February 8th, and follow through to completion?

25 Do you have any objection to proceeding with that

1 motion at this time?

2 MRS. BLEICHER: I have no objection to proceeding
3 with the motion. I would like to make a few statements about
4 the times that have been set up.

5 CHAIRMAN SKALLERUP: We will get to the substance
6 once we get the procedural aspects away.

7 Any objections from you, Mr. Charnoff? Since we
8 had several variations before, it would seem to me we could
9 clear the air if we could focus on one, and the Board recommends
10 that we do focus on this one and have comments directed toward
11 this motion.

12 Any objection?

13 MR. CHARNOFF: I don't want to misuse the word, as
14 long as this doesn't prejudice the position of our motion in
15 this connection, I certainly have no objection.

16 CHAIRMAN SKALLERUP: I can't see how it would
17 prejudice disposition of your motion, so long as any action
18 taken by the Board is taken in light of the recommendations and
19 comments by counsel in your presence.

20 MR. CHARNOFF: I agree. I don't see any possibility
21 of prejudicing that position.

22 CHAIRMAN SKALLERUP: Would you care to comment on
23 the Engelhardt motion? Excuse me. The motion of the AEC Staff?

24 MR. CHARNOFF: I am going to direct myself, I think,
25 only to the time schedule of Mr. Engelhardt's motion.

1 On page 628 of the transcript, Mr. Chairman, there
2 was a statement by me following a discussion of what the
3 schedule is, namely reconvening on the 25th of January, I said,

4 "Mr. Chairman, I regret that all of this
5 means that if the Board's ruling --"

6 I am on line 14 --

7 " -- that if the Board's ruling with regard
8 to the schedule stands, that the Board will take this
9 into account when we reconvene on the 25th and that
10 we will continue to proceed forthwith and continuously
11 until the case is closed, without any further delays
12 for whatever reason on behalf of Mr. Lau and anybody else
13 in this particular case."

14 In the middle of page 629, Mr. Chairman, you made a
15 remark in response to my observation, and the sentence
16 beginning on line 17 was directly in response to what I had
17 said, and you said,

18 "It is the Board's intention when it convenes
19 on the 25th to see the case through. I confirm, Mr.
20 Charnoff, your understanding."

21 As I indicated, sir, in response to my comments.
22 in support of my motion, I have to submit that with all due
23 respect to Mrs. Bleicher, that if LIFE wanted more time, the
24 one way they might accommodate getting more time is to not
25 comply with your order of January 7th, to provide inadequate

1 information for the case to go through, and then plead that
2 in the nature of things, with public citizen-type participation
3 in hearings of this sort, that LIFE was unable to fully reflect
4 what it is that the Board had asked for, and because of the
5 nature of the testimony and for the reasons stated by
6 Mr. Engelhardt earlier, we would be forced into a delay in this
7 hearing.

8 I would submit to you that what Mr. Engelhardt has
9 just proposed gets us right to that delay, and is an automatic
10 two-week delay.

11 Each time we meet, we get more motions, perhaps
12 less compliance with orders, and arguments. We get changes
13 of counsel. I don't know if there is any basis for assuming
14 that when we meet, if we were to meet on Mr. Engelhardt's
15 schedule, two weeks from now that we won't see some other
16 interesting little quip presented by one of the parties of the
17 hearing which would result in another delay.

18 We have had several delays. We have had abundant
19 conferences. Conferences at the bench, pre-hearing conferences,
20 hearings on the record. We have had arrangements made and
21 understandings reached with regard to schedule, all to no
22 avail. Then we find ourselves again considering another
23 schedule delay.

24 It strikes me, Mr. Chairman, that the only way
25 in which to proceed is first to consider affirmatively my

1 motion. If the Board feels that is inappropriate, then it seems
2 to me the only reasonable way to proceed is to proceed directly
3 as I suggested, as a qualification to the staff's alternate
4 approach -- namely, to have the intervenors, who were given to
5 understand that their participation was to be ready to proceed
6 with their direct case today, to proceed with that case today,
7 and then to proceed with something that would fill up the time
8 in between -- at least to allow the opportunity for them to
9 cross-examine our witnesses. And this might consume most of
10 this week. Then we would perhaps break for the weekend and
11 reconvene on Monday and get on with the case, if we haven't
12 gotten on with it by the end of this week.

13 I would strongly object on behalf of the applicant
14 to schedule anything approaching the idea that the intervenors
15 have another week to deliver their testimony. At worst, it
16 seems to me we should ask the intervenors to present their
17 direct testimony to us today in writing or tomorrow, if they
18 don't have it with them today. Then we could reconvene next
19 Monday for them to present it. And by that time the staff
20 would be ready.

21 In the meantime we could continue with cross-
22 examination on the part of the intervenors and the applicant
23 and staff witnesses. But I see no reason to offer the
24 intervenors another week to prepare their testimony which was
25 to be ready for presentation today.

1 CHAIRMAN SKALLERUP: Mrs. Bleicher.

2 MRS. BLEICHER: I would say that my clients and I
3 certainly resent the implications of certain of Mr. Charnoff's
4 comments with respect to the way we complied with the order.

5 As I said before, we weren't here on the date that
6 the order was made and it was our understanding that we were
7 complying with the order when we did comply and give the five-
8 page list. However, we understand now that further expansion
9 of the list that we gave them was necessary.

10 We would like, of course, before we finally wrap
11 up the discussion of this motion, to find out exactly how
12 detailed you wanted this. You thought a two-page summary is
13 too short; how many pages should the summaries, for instance,
14 testimony, be? How many copies of it should we have? That is
15 another question. Do you want them hand-delivered in the way
16 we have done it, or do you want them mailed by any particular
17 form of mail?

18 With respect to the time, of course it is very
19 difficult to get people who have not, as Mr. Engelhardt said --
20 these people have not testified before in these hearings, so
21 they don't have their full testimony down pat. The substance
22 of what they are going to say is probably well known to us all,
23 but the format and exact words they are going to use hasn't
24 been chosen yet.

25 So it isn't a matter of reaching in to a file and

1 grabbing out the testimony they have given before.

2 It was suggested that there should be five days
3 for the applicant and the regulatory staff to examine the
4 testimony. That would mean that if we were to reconvene for
5 the direct testimony on the 8th of February, then the testimony
6 should be submitted on the 3rd, which is a Wednesday, not on a
7 Monday. You have more than five days, but, of course, we need
8 whatever additional time we can have in order to get people to
9 sit down and type up the things they are going to say.

10 Also, there is a question here of one of our witnesses
11 Dr. Sternglass -- he has already appeared at this hearing and
12 he is scheduled to come back to the hearing this week to
13 testify on cross-examination for the Coalition, and to testify
14 on direct for us. There won't be time before this week for
15 him to have a complete written statement of what he is going to
16 say. Of course, when he did present his direct testimony
17 there were many comments by the applicant that his direct testi-
18 mone related to our contentions, so perhaps his former direct
19 testimony gives you good indications of what he is going to
20 talk about.

21 But to insist that he present a complete, written
22 testimony before he gets here on the 7th, I believe it is -- no,
23 it is the 27th. It would be impossible.

24 So I suggest we go forward with Dr. Sternglass
25 without the written testimony requirement.

1 With respect to the other witnesses, it would give us
2 to the 3rd to have written statements, and you would have to
3 define for us how detailed you want every single word they are
4 going to say to be in writing, or do you want the gist of what
5 they are going to say to be in writing, and how many copies do
6 you want and where do you want it delivered to.

7 MR. CHARNOFF: Mr. Chairman, just a question for
8 information.

9 Mrs. Bleicher referred to a two-page summary. I
10 would certainly like to know what it is we are referring to.
11 If she is referring to the summary of Dr. Lederberg, I have
12 an 11-line summary that we received.

13 MRS. BLEICHER: That is the summary that I was
14 referring to, Dr. Lederberg.

15 MR. CHARNOFF: I have 11 lines.

16 MRS. BLEICHER: Well, yours was telephoned and I
17 don't know what sort of typewriter they transcribed it on.

18 MR. CHARNOFF: I think the important thing to observe
19 is that here we are hearing that they won't have it written
20 until perhaps the 3rd. Here we go again.

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MR. BARON: I would like to say --

CHAIRMAN SKALLERUP: Excuse me, Mr. Baron. Would you hold off just a moment?

MR. BARON: Yes.

CHAIRMAN SKALLERUP: I was handed a note saying that the lights are on a City of Toledo Pollution Control automobile in the A&P parking lot.

Mr. Baron?

MR. BARON: As long as the engine wasn't running, at least they are not polluting the atmosphere.

I would certainly urge the Board to adopt the alternative suggested by the Staff. The reason for my going along with it is that obviously it helps the Intervenor.

I would like to make the following observation:

The Intervenor, LIFE, is seeking time. They are pleading in all sincerity the inability to do what, shall we say, is ordered of them. The time does slip by. I learned that lesson as an attorney in this matter.

I would like to compare their plight with something the Applicant itself, I think, has shown us.

We have on the one hand Intervenor with little, if any, funds, with counsel of little or no experience, attempting to comply with all rules and regulations and conduct a proper hearing. On the other hand, we have the Applicant, with its many thousands and thousands of dollars, with its

1 cadre of skilled technicians and very qualified counsel. They
2 have received, for example, the original petition from the
3 Coalition for Safe Nuclear Power, somewhere after the 18th of
4 November. One of the contentions in that petition was an
5 item dealing with the siting factors -- Camp Perry, the
6 testing ground, and the spot out in the lake.

7 Yet, on January 7th or 6th they were totally
8 unable to provide proper answers to the contention.

9 The Board itself, on page 757, said it thought
10 that the proof that the Applicants had supplied in answer to
11 that contention was totally inadequate.

12 My comparison, then, is time was available to the
13 Applicants -- time, money, facilities. And yet they didn't
14 do it in what length of time? From November to January.

15 Here you have an intervening group saying, "We
16 have some time; we are asking for a little bit more." They
17 are hoping to bring forth some testimony which would be
18 quite appropos to the issues they have raised.

19 I submit that any time that is extended, whether
20 it be a week or day or month, if it uncovers something as
21 glaring a defect as the Coalition uncovered in its cross-exam-
22 ination of Mr. Roe, then the time and delay will have been
23 well spent -- and I couldn't care one darn about the thousands
24 of dollars that might be wasted because of the delay it is
25 going to cause. That plant is going to stand there for 40

1 years, by the statements of Mr. Roe. Another week or two I
2 couldn't care less about, if it is going to be standing there
3 for 40 years safely and protecting the public. That is really
4 what this Coalition here and the LIFE intervenors are asking
5 to do. Of the three intervenors, they did have the recourse
6 to expertise -- we didn't. If they can be given that extra
7 time, and if out of it just one important thing comes -- just
8 one -- it would be worth it.

9 CHAIRMAN SKALLERUP: Mr. Lau?

10 MR. LAU: I might say that I am ready to go. I
11 have people, Dr. Tamplin coming in on the 29th. He will be
12 here on the 28th to examine the Safety Analysis Report.

13 Dr. Sternglass has agreed to testify for me, and
14 I can bring my other people in.

15 I would like to bring Dean Abrahamson in tomorrow,
16 if possible.

17 However, if this is adopted, I might add that I
18 would appreciate, if possible, the Utility cooperating with
19 us to the extent that we could get these Safety Analysis
20 Reports into the hands of these people, so that when they
21 come here and are cross-examined, the first question, I
22 believe is "Have you studied this report?" Well, if we can't
23 get that to them, and because of the mail situation and
24 because of the time -- I have sent a letter to San Francisco
25 the other day, and it took six days. Mail from Washington

1 is taking four days. So if you allow us this time, February
2 1st, it is just going to be impossible to correspond to the
3 response of them having the material that they need to
4 adequately testify.

5 Now, the whole basis of my people coming down here
6 and what information I have sent them so far and what I have
7 been able to afford to, and the fact that they can be in here
8 a day early and go over to the library and sit down and read
9 what has gone on here in the testimony -- that doesn't seem
10 to be the fair way to do it.

11 I asked for a document the other day near the end
12 of the trial and I can't refer back to it, because again I
13 can't have copies of that -- I was turned down, if you
14 remember, my request for that.

15 I just don't think it is fair to me. I don't
16 think it is fair to my family. And I don't think it is fair
17 to this whole damn community, to be in a hearing like this
18 and be subject to not having the tools to work with. We
19 just don't have the tools.

20 Now if they want to allow our witnesses to come
21 in and testify, then I say give us enough time to get the
22 information to them, and let's be allowed enough time for
23 them to read the information and then write out their testimony
24 and allow enough time for it to get back.

25 If not, I am ready to go. I think what I have to

1 show will show beyond any reasonable doubt that that plant
2 cannot be built safely there, and I am running out of time.
3 And if we don't work these people into my dates that I have
4 down here, it is just going to eliminate me from this hearing.

5 CHAIRMAN SKALLERUP: When would your witnesses
6 be ready for cross-examination?

7 MR. LAU: Well, to start with, I would like to
8 bring up one other point. This was generally worked out by
9 attorneys and people with mutual understanding.

10 Presentation of the Lau case is Number 7. Present-
11 ation of the LIFE case is Number 8. Cross-examination of
12 Applicant's witnesses -- now I have been calling all over the
13 country and talking to everybody else who is involved in
14 hearings, and in every case the cross-examination of the
15 Applicant's witnesses is before the case presented by the
16 intervenors.

17 I just can't believe this, or understand it. I,
18 evidently, in trying to read everything and become an
19 attorney and become efficient enough to step up here and
20 present my case, did not look at this to read that I have to
21 come in here and offer my witnesses, although I did have
22 them available because I had no idea if I could cross-examine
23 for half a day or half an hour, or what these new motions
24 were going to do to the hearings.

25 So now I would like to, in consideration when we

1 are through talking about this, if this is the case I would
2 like the possibility of cross-examining the witnesses presented
3 by the Utility, and by the AEC who, by the way, have
4 neglected to answer part of my petition. My whole case is
5 built around gas waste, radioactive emissions in the atmos-
6 phere, and danger to those in close or remote proximity.

7 They did not mention how they intend to protect
8 us from radiation gases.

9 So in the testimony presented that I have been able
10 to get, this is not included. So I am not completely
11 prepared to cross-examine on something that isn't there.
12 And if they have allowed me to intervene on this, if I am
13 an intervenor and they have allowed me to intervene on this,
14 that is the whole basis of my contention.

15 CHAIRMAN SKALLERUP: Well, the Board understands
16 that you are ready to go ahead, and if you were ready to go
17 ahead with these witnesses, how much time could you give
18 the Commission Staff and the Applicant to study the testimony
19 and then cross-examine your witnesses -- leaving aside
20 whether we should have next cross-examination of the Applicant's
21 witnesses or Commission Staff witnesses?

22 MR. LAU: I think if the utility would cooperate
23 to bring this about, if they would send the necessary
24 documents to the people I have, that at that time, from that
25 point on, that we could -- well, I have no idea. I have no

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idea how long it would take for the mail to get there, or
these reports to get there. And from that time, I would say
it is just a matter of 5 or 6 or 7 days to have it back.

1 CHAIRMAN SKALLERUP: You say Dean Abrahamson
2 tomorrow and Dr. Tamplin on Friday, would they be available,
3 would they return for cross-examination, let's say the following
4 day?

5 MR. LAU: If I could have Dr. Tamplin in on the
6 28th, he would be here for that on the 29th, yes. He has agreed
7 to this, although I think in all fairness to everybody, if
8 this is to be considered, first they have to answer my
9 allegation or my contention on my petition to intervene
10 and, secondly, he would have to have at least some time to
11 review what has been said. The 28th and 29th are practically
12 the only dates I can get this very important man.

13 If I am not allowed to bring him at that time, it
14 will eliminate one of my strongest contentions.

15 CHAIRMAN SKALLERUP: I think the Board senses this
16 and that is why I am pursuing it. Perhaps we ought to do it
17 in a conference rather than do it on the record. But we are
18 trying to find some practical way of conducting the proceeding
19 forthwith with a minimum of delay without prejudicing the
20 Applicant or the Commission Staff, by way of not giving them
21 adequate time to prepare.

22 MR. LAU: Well, my three points are that I am ready
23 to go. I have my witnesses, they have not answered my
24 contentions wholly, as you can find in the transcript and that
25 I would just feel, because this has been a policy all over the

1 country, that cross-examination of the Applicant's witnesses
2 has come first, that I would rather pursue that first and then
3 at that time let my witnesses determine from that examination
4 what their testimony might be.

5 I think it is only fair. We are only seeing one side
6 that is, the utilities' side.

7 Thank you.

8 CHAIRMAN SKALLERUP: You may recall in our conference
9 we were prepared to do that. Start with the cross-examination
10 this afternoon.

11 MR. LAU: Yes, I understand but that would be only
12 for one day or so in the interim of bringing other witnesses.

13 CHAIRMAN SKALLERUP: Right.

14 MR. ENGELHARDT: Mr. Chairman, with respect to Mr.
15 Lau's comments, I had mentioned earlier my comments on this
16 motion, that one purpose of preparing written testimony in
17 advance is to determine whether the testimony of the individual
18 is relevant to the contentions of the Intervenor.

19 Mr. Lau has identified several witnesses whose testi-
20 mony he has not expanded on and we have no idea what they will
21 be testifying to. But I think the Board should be reminded
22 that Mr. Lau's contentions as we understand them are somewhat
23 limited and we, for one, as a party to this proceeding, would
24 like to see the relationship or some information with respect
25 to the relationship of the testimony of Dr. Tamplin and

1 Dr. Abrahamson and Mr. Gadler to the specific contentions that
 2 Mr. Lau is herein permitted to work within.

3 I think that it is important that at this proceeding
 4 and at an early stage we get some idea from Mr. Lau as to what
 5 these witnesses are going to generally cover so that we can
 6 determine if their testimony will be relevant to the contentions
 7 Mr. Lau has made.

8 CHAIRMAN SKALLERUP: Rather than get involved in a
 9 more detailed discussion on the record this way, I suggest we
 10 have a conference.

End #16

(Discussion off the record.)

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1 CHAIRMAN SKALLERUP: The Board has considered the
2 motion of the Applicant to hold that the Intervenors have
3 forfeited their rights to bring on witnesses, and has con-
4 sidered the motion of the Commission Staff that the written
5 testimony be prepared by February 1, with the hearing to
6 reconvene a week later.

7 I would like to, by way of explanation, say that
8 the reason the matter of written testimony is so important
9 is that this is a highly complex subject matter, and it is
10 not quite like a criminal trial where the counsel are well
11 acquainted with the investigative file, and after a man
12 testifies they can immediately cross-examine him.

13 In this kind of a situation the subject matter
14 is sufficiently complex and there are so many degrees of
15 expertise involved that it is important for parties whose
16 interest is being affected by the testimony to have present at
17 the time of the testimony, if at all possible, the kind of
18 expert who would understand it so that he can guide counsel
19 with respect to not only cross-examination, but also rebuttal
20 testimony.

21 This is why we have been very careful to explore
22 with the Intervenors the possibilities, the practical possibil-
23 ities of getting this kind of testimony.

24 Now, as you know, with respect to Mr. Lau, he
25 indicated that he is prepared to proceed with his case. The

1 Board is ready to hear Mr. Lau, after certain other matters
2 have occurred.

3 Let me redirect myself again to the motion. The
4 Board believes that Mr. Lau should proceed with his case upon
5 completion of cross-examination, and we understand that you
6 will have Dean Abrahamson available tomorrow for your affirm-
7 ative case, and that you and Mr. Engelhardt will attempt to
8 reach Dean Abrahamson tonight in an effort to determine the
9 gist of his testimony, so that the AEC Staff will have the
10 proper scientific personnel here available to assist them
11 with cross-examination and rebuttal testimony.

12 Then you are prepared with your other witnesses,
13 Dr. Sternglass Wednesday and Dr. Tamplin on Friday.

14 MR. LAU: Thursday or Friday.

15 CHAIRMAN SKALLERUP: Thursday or Friday.

16 And you will be bringing in other witnesses, too?

17 MR. LAU: Perhaps by tomorrow morning I will be
18 able to fill in the other two, which I feel we can work in
19 this week.

20 I would like the right to cross-examine in the
21 meantime between these witnesses.

22 CHAIRMAN SKALLERUP: Inasmuch as we are not able
23 to have from your witnesses this written summary, or an
24 accurate -- I mean written testimony, or an accurate summary,
25 we will have a conference before the testimony so that there

1 will be no surprise on the part of the other parties.

2 With respect to LIFE, we suggest that LIFE proceed
3 with its local witnesses first, and inasmuch as they are able
4 to return for cross-examination, as you know, we would prefer
5 to have a written summary or the actual testimony of such
6 individuals in advance. If we can't get it, we will have to
7 have a conference in advance, but one of the safeguards would
8 be that we know they will be able to return, perhaps on
9 another day, if necessary, to be available for cross-examina-
10 tion.

11 With respect to your out-of-town witnesses --
12 excuse me -- out-of-state witnesses, we think it is impractical
13 really, for you to get the testimony together by three
14 o'clock on Thursday from them, and we ask and really direct
15 that you provide it to us on Monday, February 1, and be
16 prepared to proceed on Wednesday.

17 Now, at this stage, it is not possible for the
18 Board to see when this session will conclude. We may go
19 through the weekend. There may be a break somewhere along
20 the line, but at this particular point we see no possibility
21 for a break other than perhaps part of Saturday and all of
22 Sunday.

23 In this manner we believe we are being sufficiently
24 flexible to permit the intervenors to set forth their case
25 and at the same time, provide the Atomic Energy Commission

1 Staff, who, I would point out to you, is really in large part
2 on the defensive here, as much as the AEC Regulations which
3 are under fire -- to permit that Staff adequate opportunity
4 to cross-examine and provide rebuttal testimony.

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1 Are there any questions on the part of counsel?

2 MR. CHARNOFF: Two questions, sir.

3 One is, would you address yourself to when LIFE would
4 proceed with cross-examination, and secondly, on the assumption
5 that Mr. Lau's witness, for example, Dr. Abrahamson, comes in
6 tomorrow morning and concludes his presentation -- or perhaps
7 he doesn't come at all. It seems to me we might begin to fit
8 in LIFE's local witnesses starting tomorrow, not at some
9 indefinite point in the future when Mr. Lau's direct case is
10 complete.

11 CHAIRMAN SKALLERUP: It is our desire to make the
12 best use of the time available to us so that there will be no
13 gaps. We recognize that there may have to be modifications of
14 this schedule in the light of the actual circumstances. For
15 example, in order to accommodate a witness we may have to
16 suspend further cross-examination for a while.

17 Let me give you a practical example: Mr. Lau might
18 not be finished with his cross-examination and LIFE may not
19 have undertaken its cross-examination by the time Dean
20 Abrahamson is here to be sworn in as a witness. In that event,
21 we will simply have to suspend the cross-examination to hear
22 the witnesses while they are here.

23 MR. CHARNOFF: The only point I am seeking clarifi-
24 cation on is that LIFE should be prepared to both proceed with
25 its cross and, if they are concluded with that, that they have

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1 the burden of having at least their local witnesses present
2 tomorrow or Wednesday or whenever these gaps are to be filled
3 in on the theory that Mr. Lau's case apparently is not going
4 to run continuously.

5 I would appreciate a ruling to that effect.

6 CHAIRMAN SKALLERUP: Well, as I understand it, LIFE
7 is prepared to go ahead, and certainly it would be simpler to
8 proceed with their local witnesses as soon as you can antici-
9 pate a reasonable estimate of the time when we would be able
10 to hear them.

11 MRS. BLEICHER: Does this mean that -- I don't want
12 to be paranoid, but it seems to me what is happening is that
13 LIFE is supposed to be here as a back-up man. When somebody
14 else fails, we are supposed to be here with our people to fill
15 in the space and if our people aren't here we won't have the
16 opportunity to present them at a later time. So we have to
17 sit here waiting for someone else to fail to have a witness.

18 CHAIRMAN SKALLERUP: No, when Mr. Law is finished
19 with his case, you will proceed.

20 MR. CHARNOFF: Excuse me, there is some confusion.
21 Mr. Law has a witness tomorrow, and another coming Wednesday,
22 and another one coming Thursday or Friday. It is my guess, at
23 least, that there is a fair chance -- let's assume we have an
24 hour or two, and I don't know how long their cross-examination
25 is of our witnesses or the staff's witnesses, but Mr. Lau's

jrb-3

1 case is not scheduled to be finished even at best until
2 Dr. Tamplin is finished on Friday, and what I was proposing,
3 and maybe we could accommodate Mrs. Bleicher -- I think we
4 should schedule some of Mrs. Bleicher's local witnesses.
5 For example, one or two for tomorrow afternoon, and one or
6 two for Wednesday afternoon. We are filling in the gaps on a
7 scheduled basis, and we don't have to make it very inconvenient
8 for those witnesses.

9 But I would personally object, sir, if we had no
10 presentation by LIFE until Mr. Lau is finished and we find we
11 have not much to do the next several afternoons while waiting
12 around from Dr. Tamplin to come, for example. It is entirely
13 conceivable that Dean Abrahamson may not be here tomorrow. Are
14 we then to sit until Friday doing not much perhaps until we
15 begin to hear LIFE's case? Or, as we are told LIFE's witnesses
16 are local or immediately available, that we ask for at least
17 two or three of them to be scheduled for the next several
18 days.

END#18

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1 MRS. BLEICHER: I think if cross-examination were
2 allowed first rather than direct, that might help because
3 we could go ahead with our cross-examination and fill in the
4 spaces that appear.

5 MR. CHARNOFF: I indicated and I thought the Chairman
6 indicated before that he was going to proceed with cross-
7 examination. But, I don't know how long that would take and it
8 seems if Mrs. Bleicher is finished with cross and she has no
9 direct case to present, that is her risk. But I would suggest
10 to accommodate the persons who do not live out of town but still
11 live in the state, that just as we are scheduling Dean
12 Abrahamson for a given time, that it might well be well to
13 schedule some of LIFE's local witnesses for a scheduled time
14 as well.

15 CHAIRMAN SKALLERUP: I only observe these things
16 can't be overplanned. I think what we must do, Mrs. Bleicher,
17 is ask you to alert your witnesses to the possibility that we
18 may be calling on them and try to give them the best type of
19 advance notice that you can.

20 I can understand your feeling that you are not to
21 fill in the blanks. On the other hand, you were prepared to
22 put on your case today and it would seem to me quite fair to
23 anticipate that you could bring some of the local witnesses
24 in if we found a day in advance or so that there was going to
25 be a significant block of time, by which I mean a morning or

1 afternoon when we could hear them. So I think it is possible
2 to overschedule and I would rather rely on the willingness
3 of the counsel to cooperate with the Board and bring the
4 witnesses in in order to facilitate the conduct of the hearing.

5 MR. ENGELHARDT: Mr. Chairman, I am sympathetic
6 with the interest of the Applicant to move on with the hearing
7 and with the Board's desire as well. With this schedule that
8 you just outlined seems to me that the Staff as you indicated
9 has a significant burden with respect to the witnesses that
10 are proposed to be offered. The Staff will be hard pressed to
11 meet this particular schedule.

12 You have established that the out of state witnesses
13 for LIFE should have their prepared testimony in our hands by
14 Monday and be prepared to begin cross-examination, immediately
15 then be prepared to cross-examine these witnesses beginning
16 on Wednesday. That gives the Staff two days in which to review
17 testimony and prepare cross-examination questions.

18 Simultaneously with this, presumably, we will be
19 under the burden of having to prepare cross-examination questions
20 of the LIFE witnesses presented by LIFE for the rest of this
21 week, presumably in an effort to close down this proceeding
22 the following week. We would also be cross-examining those
23 people in the second week.

24 Mr. Chairman, with the limited resources we have
25 available, I question whether that is sufficient time to allow

1 the Staff to prepare the case. It is an important case and
2 one that requires careful consideration of the testimony to
3 be offered by these witnesses.

4 There are certain individuals who will be working
5 with us in preparing this cross-examination. We will be
6 working late hours every night. I think we are going to be
7 stretching our capacity to continue at that pace for two weeks,
8 weekends included.

9 I am sympathetic with the Applicant's desire to
10 move this hearing along but I still do not believe that my
11 request of having the prepared testimony in advance and at
12 least in our hands five days before the witness appears is
13 out of order and that it is a reasonable request, it is certainly
14 in accord with the Commission's Rules of Practice as to what
15 is appropriate in a proceeding, that evidence be prepared
16 in writing and made available within five days.

17 I think the schedule that we embark on here is one
18 that is going to place a tremendous burden on the Staff and
19 I am not sure the record will benefit as a result of this.

20 In addition we have to bear in mind and discuss
21 this element, that simultaneously with the preparation of the
22 cross-examination questions I assume the Board would want us
23 to follow there on rebuttal testimony so that we would be
24 prepared to finish off the rebuttal testimony as well, possibly
25 without even a break between the cross and rebuttal. This too

1 is a burden on the Staff and we are not trying to get out of
2 work but apportion this workload in an equitable fashion to
3 allow sufficient time for our people to come from whatever
4 part of the country they have to come from to assist us in the
5 preparation of this material and I am not sure the schedule we
6 have outlined is adequate to accomplish that.

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1 CHAIRMAN SKALLERUP: Mr. Charnoff, it is now the
2 Commission that is asking for time. Is this a matter you
3 care to comment on?

4 MR. CHARNOFF: Mr. Bleicher used the word "paranoid."
5 I guess it applies to a number of us.

6 Let me suggest, Mr. Chairman -- I hate to be
7 repetitious -- I think that the Intervenors ought to be ready
8 to begin with their case today under all the ground rules
9 that have been established. They were the ones that failed
10 to comply with your order to provide testimony or summaries
11 of it as of last week.

12 Today is Monday. I would submit, sir, that we ask
13 the Intervenors to have the testimony in the hands of the
14 Commission on Friday of this week. That, including weekends,
15 would give the Commission five days when we reconvene, as
16 you suggested, on the third of February.

17 MR. ENGELHARDT: I think the difficulty would be
18 that the LIFE witnesses that the Intervenor would be offering
19 would be going on simultaneously, and we would in addition
20 be preparing for cross-examination and rebuttal of those
21 witnesses while we attempt to prepare for the future.

22 MR. CHARNOFF: I don't think that is correct. I
23 think the hearing would proceed from now until Friday, and
24 we don't even know for sure Mr. Lau's witnesses are going to
25 be here. In any event, we are proceeding through Friday of

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1 this week in the breathless anticipation that Dr. Tamplin
2 might show up. The hearing would then adjourn on Friday or
3 Saturday, and we'd reconvene on Wednesday.

4 So during the time you receive the material from
5 LIFE's witnesses on Friday, you would have the weekend off
6 and Monday and Tuesday to prepare your material.

7 MR. ENGELHARDT: With that understanding, Monday
8 and Tuesday would not be a hearing date and would instead be
9 days for preparation of cross-examination, I think the Staff
10 would be ready to move forward with cross-examination of the
11 witnesses offered by LIFE beginning on Wednesday of next
12 week. That would give us a five-day period in which to review
13 this testimony and prepare cross-examination.

14 CHAIRMAN SKALLERUP: Well, we don't think we can
15 plan ahead with that degree of certainty. So we will ask that
16 the testimony be submitted on February 1, and that we will
17 provide the Commission -- the Commission will be granted a
18 stay of two days, if that is all you need, in the course of
19 the hearing to be prepared so that in the event this proceed-
20 ing continues through Monday and Tuesday, we will have to
21 take off Wednesday and Thursday -- something of that kind --
22 so that you will have adequate time to prepare your case.

23 We are just not sure how much time is going to be
24 taken up by Mr. Lau's witnesses, and the cross-examination.
25 So we can't say for sure Monday and Tuesday will be un-needed.

1 MR. ENGELHARDT: Do I understand then, Mr. Chairman,
2 the Board is granting the Staff two days to prepare its
3 cross-examination of the prepared testimony presented by
4 Intervenor, LIFE, such that the Intervenor, LIFE, would have
5 until February first to make available to the Staff and parties
6 and the Board prepared testimony of its witnesses, and we
7 then would be given two days thereafter to prepare our
8 cross-examination? At which time -- well, let us say we would
9 be prepared to develop our cross-examination for the witnesses
10 two days hence?

11 CHAIRMAN SKALLERUP: Correct; a minimum of two
12 days.

13 MR. ENGELHARDT: Subject to possible motion, if
14 necessary, for an additional day if we are unable to meet
15 that schedule?

16 CHAIRMAN SKALLERUP: We entertain all kinds of
17 motions.

18 MR. ENGELHARDT: Mr. Chairman, I think that period
19 is somewhat unreasonably short, but of course if the Board
20 directs us to do this, we will do it and make our very best
21 effort to meet that goal.

22 But I do hope that the Board understands that
23 because of the limited time and because we did originally
24 request at least five days, that the Board will, as you
25 indicated, be receptive to the receipt of possibly a motion

1 for an additional period of time within which to prepare our
2 cross-examination.

3 CHAIRMAN SKALLERUP: Well, I think it would be
4 desirable for us to have an understanding now so that the
5 witnesses can be called by LIFE on a day certain, and be able
6 to plan to be here.

7 So let's give you three days, and we will proceed
8 on the 4th.

9 MR. ENGELHARDT: All right.

10 MRS. BLEICHER: May I ask at this point how many
11 copies of this testimony you want? For us, it is very
12 difficult to spend the money to reproduce things. If we can
13 have a typewritten copy with carbons, that is one thing, but
14 if you have to start xeroxing it costs a lot of money.

15 How many copies of this testimony do you have to
16 have available?

17 CHAIRMAN SKALLERUP: We can get along with one
18 for each party, and one for the Board?

19 MR. ENGELHARDT: As long as the copy we receive
20 can be reproduced clearly. We will need a reasonably good
21 copy to work from to get the extra copies we will need.

22 MR. CHARNOFF: Do I understand, Mr. Chairman, we
23 are to receive the copies on the first, and not have it mailed
24 on the first, or otherwise?

25 CHAIRMAN SKALLERUP: Receipt on the first. During

1 normal business hours.

2 MR. CHARNOFF: May I also suggest that in light of
3 the fact that this delay comes about again because of LIFE's
4 failure, that you might encourage them to beat that by several
5 days?

6 MRS. BLEICHER: We will run as fast as we can,
7 but when you say "receipt," ordinarily times for filing are
8 dated in accordance with when you put it in the mailbox, so
9 to speak. It is impossible to know how long the mail is
10 going to take to get it in your hands by Monday.

11 Can we hand-deliver it on Monday at a particular
12 time of day?

13 MR. CHARNOFF: I would be glad to make the same
14 arrangements we made the last time with regard to receiving
15 the material from Mrs. Bleicher, and flying to Washington and
16 making it available to the Staff, on one condition: that we
17 receive this material at nine o'clock on Monday morning.

18 The reason for that, any later than that I can't
19 possibly commit to getting this to Mr. Engelhardt on Monday.
20 If we are to cooperate with the Staff in making this available,
21 it seems to me LIFE ought to be able to put this in the hands
22 of Mr. Snyder or Mr. Roe in Toledo by nine o'clock in the
23 morning on Monday, and we would commit to getting it on the
24 first plane to Washington and hand-deliver a copy to Mr.
25 Engelhardt's office and the Board's office. But it has to be

1 that early, or else Monday is lost.

2 MR. ENGELHARDT: Mr. Chairman, one point of clarifi-
3 cation. With regard to this prepared testimony, are we now
4 referring only to the testimony of out-of-state witnesses and
5 that local witnesses, or at least in-state witnesses will be
6 offered on the basis that they will be asked to be returned
7 for cross-examination starting this week or next week?

8 I'm not clear at this point on that matter.

9 CHAIRMAN SKALLERUP: We prefer to have the written
10 testimony of all witnesses. However, inasmuch as local
11 witnesses are subject to being recalled for cross-examination,
12 we could probably live with that arrangement.

13 MR. CHARNOFF: Mr. Chairman, may I object to that?
14 We are talking about a delay now to accommodate witnesses.
15 If the local witnesses testify this week, well and good; they
16 might be recalled beginning on February 3 or February 4.
17 If the local witnesses are not called upon this week and are
18 not due to testify until the 4th, then we have to make
19 arrangements for rescheduling until we call them. And again,
20 I fear another delay at this point to accommodate schedules
21 of various people.

22 I would move as to any witness of LIFE who does
23 not testify this week, that we receive, Monday morning, the
24 copy of such person's testimony; and I take it we are talking
25 the full testimony, not a summary thereof or anything short of

1 the full testimony at that point, and that we receive that
2 testimony of every LIFE witness that LIFE intends to call at
3 that particular point, whether it is out-of-state or a local
4 person.

5 That way, if we are to reconvene as late as the
6 4th of February, we could commence and continue with the
7 proceeding without further interruption or delays for
8 rescheduling.

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1 MRS. BLEICHER: I object to that on the grounds it
2 is unduly burdensome to us. If I see that it causes no
3 additional scheduling burdens on you if we have as many of
4 our local witnesses appear this week as we can fit in, and next
5 week we go ahead with the out-of-town witnesses and continue
6 with whatever local witnesses we have left after that --

7 MR. CHAMBERLAIN: But if we haven't completed your
8 local witnesses and they come in after your out-of-state
9 witnesses, we then have to reconvene another time because they
10 have to be recalled. It seems to me hereagain, Mrs. Bleicher
11 is saying they are not prepared, they haven't written their
12 testimony. And here we are again on the 25th of January, when
13 we were to continue. Now this burden is here because the
14 witnesses haven't written their testimony. At some point the
15 line has to be drawn, I submit, Mr. Chairman. We ought to get
16 the complete testimony of those witnesses by Monday, the 1st,
17 so that we can proceed in a direct and continuous fashion with
18 this hearing.

19 CHAIRMAN SKALLERUP: Mr. Engelhardt.

20 MR. ENGELHARDT: I think I would support that motion
21 of the applicant. I think it is a reasonable motion and I
22 think it would bring good order to this proceeding, and assure
23 that we can complete this hearing in an orderly way.

24 CHAIRMAN SKALLERUP: The Board has consistently
25 felt that an accurate summary of the testimony would be

1 sufficient for our purposes and it ought to be just that, an
2 accurate summary. However, those of your in-town witnesses
3 who do not testify this week, we should have an accurate
4 summary of their testimony filed at the same time as the out-of-
5 state witnesses.

6 MRS. BLEICHER: Is the testimony of the out-of-town
7 witnesses supposed to be presented in greater detail than in-
8 town witnesses?

9 CHAIRMAN SKALLERUP: I think you understand the
10 purpose of having this testimony in writing. Make sure it is
11 sufficiently complete so that no one will be taken by surprise,
12 so that any lawyer on the other side of the case will have a
13 reasonable opportunity to prepare. I suggest those are the
14 guidelines that you should follow in preparing a summary.

15 Is there a motion pending?

16 MRS. BLEICHER: Mr. Chairman, we have two motions
17 that are still pending. Oh, you mean with regard to this?

18 CHAIRMAN SKALLERUP: Yes. Have you disposed of
19 this?

20 MR. CHAPNOFF: I don't think it is clear. I have
21 said Monday at nine o'clock. I'm not sure we have a ruling of
22 the Board with regard to that.

23 CHAIRMAN SKALLERUP: Well, it was the Board's intent
24 to give the intervenors the maximum possible time to get the
25 testimony into the hands of the other parties, and we want it

1 in the hands of the other parties on Monday. And it is up to
2 the intervenors to get it in to the hands of the other parties
3 on Monday.

4 MR. CHARNOFF: Does that go to the end of business
5 on Monday?

6 CHAIRMAN SKALLERUP: Yes.

7 MR. CHARNOFF: That means neither we nor the staff
8 get it until Tuesday, unless you are including within your
9 rule that it is the intervenor's burden to put it in the hands
10 of the AEC in Washington on Monday, by the close of business,
11 and also in my hands, since I am counsel for the applicant
12 and I have filed an appeal and I am in Washington and Mr.
13 Snyder of Toledo Edison, who has filed an appeal in this case,
14 who is in Toledo -- if the intervenor puts it in the AEC's
15 hands by the close of business, by Monday, and my hands and
16 Mr. Snyder, fine. If the intervenor is proposing to deliver
17 it to Mr. Snyder for us to deliver, I submit to you that
18 geography doesn't permit a filing at five o'clock with Mr.
19 Snyder for me to get it to the AEC or the Board members
20 before it comes down to us.

21 CHAIRMAN SKALLERUP: The Board is concerned with
22 the fact that it gets to the AEC and the other parties.

23 MR. CHARNOFF: With respect to the one copy to the
24 parties, I submit that we need one copy served upon Mr. Snyder
25 and one copy on myself in Washington.

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1 MRS. BLEICHER: We prefer to have the nine o'clock
2 deadline because we don't have the money to fly someone to
3 Washington. So if they insist on nine o'clock in the morning,
4 we have to go along with that, so long as it is understood if
5 it is there by nine, they will agree to distribute it.

6 MR. CHARNOFF: Subject to fog, icing, and other
7 weather conditions, the answer to that is yes.

8 CHAIRMAN SKALLERUP: Well, if you get it in to the
9 hands of the applicant nine o'clock Monday, your obligation is
10 discharged.

11 MRS. BLEICHER: Very well.

12 CHAIRMAN SKALLEPUP: Are there any other motions?

13 MRS. BLEICHER: Yes. LIFE has two motions to
14 present. Would it be in order to present them at this time?

15 CHAIRMAN SKALLERUP: Yes.

16 MRS. BLEICHER: The first motion we have is one we
17 filed by telegram with the AEC, and we have copies of it here
18 so that I believe all the parties now have copies of it.

19 It is a motion for disqualification of the Board
20 members.

21 The gist of this motion is that the Board members,
22 Dr. Walter Harrison Jordan and Dr. Charles Ernest Winters,
23 should disqualify themselves as members of this Board for the
24 reason they may be biased in their consideration of the appli-
25 cation for the construction permit in this case.

1 The reason we allege this possibility of bias is that
2 the occupations of these two members of the Board put them in
3 a position where they may be subject to bias. We are not
4 stating that we have proof that they are subject to bias, but
5 we have attached what was intended to be an actual copy of
6 biographical material in the book entitled "American Men of
7 Science, The Physical and Biological Sciences." But because
8 of the fact that was difficult to read, we simply typed the
9 material from that book onto an exhibit which we have attached
10 to our motion.

11 That material indicates that both of these Board
12 members are presently employed by organizations which have a
13 direct pecuniary interest in the outcome of these proceedings.
14 I will not go into great length --

15 CHAIRMAN SKALLERUP: Would you repeat that sentence?

16 MRS. BLEICHER: They have a pecuniary interest as
17 to the outcome of the proceedings. We state that in the
18 memorandum.

19 CHAIRMAN SKALLERUP: Would you amplify that?

20 MRS. BLEICHER: We are not saying that Dr. Winters,
21 per se, does, but Union Carbide, which is his employer, has a
22 pecuniary interest in the proliferation of nuclear power plants
23 and we are saying Union Carbide is under contract with the
24 AEC to operate the Oak Ridge National Laboratories, and there-
25 fore it is connected with Dr. Jordan, and Union Carbide has

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1 an interest in nuclear power plants. Union Carbide processes
2 fuels for nuclear power plants, and therefore it is to their
3 advantage to have these plants in operation.

4 We also allege that Dr. Jordan has communicated a
5 position in a publication, an article entitled, "Nuclear Energy,
6 Benefits Versus Risks," which appeared in "Physics Today," in
7 May of 1970, and also appeared in one other place that I know
8 of, one other publication that I know of. And in this article
9 he stated that although there are hazards from nuclear power
10 plants being built, nevertheless they should be built. In
11 other words, it is our contention that he already made his posi-
12 tion on whether or not a construction permit should be granted
13 very clear, and this would make it difficult for him to make a
14 determination that this power plant should not be built.

15 For these reasons, we have moved that the Board
16 members should disqualify themselves and be replaced by other
17 technically qualified persons whose associations will not cause
18 bias or lead to the possibility of bias, because the possibility
19 or even the appearance of bias is also very important.

20 CHAIRMAN SKALLERUP: I see you signed this
21 memorandum. Did you read the article in "Physics Today?"
22 I haven't.

23 MRS. BLEICHER: Yes. I did.

24 CHAIRMAN SKALLERUP: Were there any qualifications
25 with respect to building plants made in the article?

1 MRS. BLEICHER: I don't understand what you mean.
2 Could you explain what you mean by that?

3 CHAIRMAN SKALLERUP: Did Dr. Jordan qualify his
4 statements that these plants be built?

5 MRS. BLEICHER: Dr. Jordan said he would like to
6 see as much safety as possible, but he felt no matter what
7 these plants had to be built, and only by building them could
8 we obtain the experience to make them more safe.

9 CHAIRMAN SKALLERUP: Well, we will have Dr. Jordan
10 here tomorrow. It seems to me appropriate to ask the Commission
11 Staff to comment on this motion -- or would you prefer to
12 comment on it at a later time?

13 MR. ENGELHARDT: I would be perfectly willing to
14 comment now, and if the Board desires further comment, I would
15 be glad to do that at a later time.

16 I presume this motion is filed under the provisions
17 of 10 CFR Section 2704(c) of the Commission's Regulations,
18 which reads,

19 "If a party deems a presiding officer --"

20 And I pause here for a moment. A "presiding officer"
21 in the context of these proceedings is either a Hearing Examiner
22 or an Atomic Safety Licensing Board, such as the one presiding
23 at this hearing --

24 "If a party deems a presiding officer be
25 disqualified, he may so move."

1 The motion sets forth alleged grounds for
2 disqualification. If this is not granted, he will refer it to
3 the Commission, which will determine the sufficiency of the
4 grounds alleged. If the Chairman was to decide sufficient
5 grounds were presented, then the Board's ruling in that respect
6 would be referred directly to the Commission and not to the
7 Appeal Board, as is customary in a matter where there may be a
8 question certified.

9 But that matter goes directly to the Commission
10 for consideration.

11 The substance of this motion is essentially identi-
12 cal to the substance of the motion that was filed in a recent
13 proceeding before the Commission in the matter of Long Island
14 Lighting Company, Shoreham Nuclear Power Station, Unit 1,
15 Docket No. 50-322.

16 In a memorandum and order issued by the Atomic
17 Energy Commission on October 28, 1970, the Commission dealt with
18 essentially this same problem with regard to the allegation
19 that the technical members of the Licensing Board should be
20 disqualified because they appear to be too intimately connected
21 with the development of nuclear power and technology. and,
22 on the theory that action speaks louder than words, must be
23 assumed to have a favorable bias which furthers the development
24 of nuclear power as a method of generating electricity.

25 The Atomic Energy Commission affirmed the action

1 of the Board denying the motion made by intervenors in this
2 proceeding -- that is, the proceeding in Shoreham -- and for
3 the reasons set forth in the memorandum, an order that
4 I just received.

5 It indicates that first of all at least as far as
6 the affidavit in the Shoreham case was concerned, that there is
7 no contention in the affidavit that any member of the Licensing
8 Board has a connection with the applicant or other parties in
9 this proceeding. Similarly here, I don't believe there is any
10 such contention.

11 Then the Commission goes on to discuss the law,
12 precedent and legislative history of the statute, and the pro-
13 visions of the Atomic Energy Act which established the Atomic
14 Safety and Licensing Board, namely, Section 191 of the Atomic
15 Energy Act.

16 I think, Mr. Chairman, for the purposes of dealing
17 with this particular motion, that the content of this order
18 and memorandum of the Commission, which I will not go into
19 detail on, deals with the substance of the motion with LIFE
20 has offered. And I would recommend that this memorandum and
21 order of the Commission establishes a precedent necessary in
22 this proceeding to deny the LIFE motion.

23 I would be happy to make this document available to
24 the Board. It is a public document, available to anybody in
25 the Commission's Public Document room. I cited the reference

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and if the Board would like this copy to review, I would be happy to make it available to them.

CHAIRMAN SKALLERUP: I would appreciate that very much, if the Board had an opportunity to read it.

1 MR. ENGELHARDT: Mr. Chairman, I might read just a
2 short statement from the legislative history of the section of
3 the Act that I cited, Section 191. There appears the following
4 statement: "The Board members could be appointed by the
5 Commission --"

6 The legislative history of Section 191 of the Act
7 which establishes the Atomic Safety and Licensing Board has
8 the following statement which I think is relevant and which
9 is included in this memorandum and order of the Commission.

10 "Board members could be appointed by the Commission
11 from private life or designated from the Staff of the
12 Commission or another federal agency. It is expected that the
13 two technically qualified members will be persons of recognized
14 calibre and stature in the nuclear field.

15 "It is the Commission's intent in authorizing the
16 Atomic Licensing Board to bring to bear technical expertise
17 in the resolution of the scientific and technical problems
18 associated with the licensing."

19 It is this quote and the discussion that follows
20 the quote as to the intent given to that by the Commission which
21 I think is important and really repositive with regard to
22 the motion that LIFE has offered in this proceeding.

23 I would like to deliver to you, Mr. Chairman, a
24 copy of this memorandum and order.

25 CHAIRMAN SKALLERUP: Have you any comments to make

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1 with respect to the form of the motion, inasmuch as the
2 regulations appear to require an affidavit?

3 MR. ENGELHARDT: Yes, Mr. Chairman.

4 With regard to the form of the motion it is
5 defective in that it fails to attach an affidavit and as I
6 quoted from the regulations, 2.704, an affidavit is required
7 to staisfy the technical requirements of that regulation.

8 I think, Mr. Chairman, to set this record straight
9 and present our position, at least, I would be opposed to the
10 granting of this motion. It sets forth no justifiable basis
11 for granting of the motion.

12 CHAIRMAN SKALLERUP: Mrs. Bleicher, you heard the
13 comment of the Commission Staff with respect to the form.
14 You may wish to consider providing an affidavit with your
15 motion. Further, are you acquainted with the Commission's
16 ruling in the Shoreham case?

17 MRS. BLEICHER: No, I am not.

18 CHAIRMAN SKALLERUP: Is there another copy present?

19 MR. ENGELHARDT: Unfortunately, that is the only
20 copy we have with us. I am not quite sure I know where we can
21 have copies made here in Port Clinton. We will make an effort
22 to get a copy if we can do so during the evening recess.

23 CHAIRMAN SKALLERUP: We will try to get you a copy,
24 Mrs. Bleicher.

25 You spoke of another motion. To dispose of this, I

1 will say the Board will take it under advisement and report
2 on it in the morning, providing we receive an affidavit from
3 you.

4 MRS. BLEICHER: Our second motion is a motion that
5 this Board deny the Applicant's any right to an exemption under
6 the laws pertaining to the construction of a nuclear plant
7 until such time as these hearings have been concluded or in
8 the alternative that these hearings be recessed until such time
9 as it has been determined whether or not the Applicant will
10 receive an exemption from the operation of the law.

11 The Applicant has written to the Director of
12 Regulations of the United States Atomic Energy Commission on
13 January 7, 1971 asking for an exemption from the operation of
14 the law. The law in brief states it is necessary to have a
15 permit before building a nuclear power plant and this is
16 what this hearing is all about, granting of that permit for
17 construction. But the Applicant has requested that while these
18 hearings are going on it be permitted to construct the power
19 plant that we are trying now to decide wheter or not should
20 be constructed.

21 This seems to me, in other words, as though they are
22 going to continue with the construction of the plant while
23 we all sit here and talk about whether they should be construct-
24 ing the plant.

25 This Board now has jurisdiction over the question of

1 whether or not the Applicant should be able to build the
2 proposed plant and if it should be, in what manner the plant
3 should be built, whether there should be any changes in the
4 way the plant should be built at all.

5 There are two reasons, therefore, where an expert
6 consideration of the operation would be, in my mind, illegal
7 and very prejudicial to the people in the surrounding area and
8 this Intervenor.

9 The regulations in Section 50.10 specifically
10 mentions some of the acts which the Applicant has proposed in
11 his letter that will be asked if they are going to perform
12 under the exemption and the regulations specifically state
13 these acts will not be done until such time as a permit has
14 been granted.

15 The regulations, Section 50.10 on license required
16 states that no person shall be given the construction of a
17 production or utilization facility on a site in which the
18 facility is to be operated until the construction permit shall
19 be issues.

20 As used in this paragraph construction shall
21 include foundation poured or installation of any portion of the
22 permanent facility on this cite.

23 There are a few exceptions as to that but as we
24 understand the letter the Applicant has sent to the Director
25 of Regulations, there are definitely going to be certain

1 actions taken on the site which include pouring of foundation
2 for and installing portions of the permanent facility.

3 The second reason this Intervenor is particularly
4 interested is that our contentions relate directly to
5 whether or not this structure is going to allow the emission of
6 an unsafe amount of radiation.

7 On page 3 of its letter to Mr. Price, the Director
8 of Regulations, the Applicant has stated that it wants to instal
9 the containment vessel inside the walls of the shield building
10 up to a particular grade level. This means that while we are
11 sitting here talking about whether or not they should be
12 allowed to build a power plant, they are going to build a
13 containment vessel.

14 If it should be determined on the basis of some of
15 the information that we present here that the containment
16 vessel that they have proposed is inadequate because it
17 permits the leakage of too much radiation, more than would be
18 safe, then the vessel they are intending to build would have
19 to be changed. But we all know that perhaps it is impossible
20 to change something once it is built. Of course it is always
21 possible since they are doing this at their own risk that they
22 will have to abandon the project completely but the practical
23 realities are once they put all of this money into it, when
24 it comes to small changes in safety features, it may be
25 impossible to make these changes, which would indicate our

1 discussions here have no bearing on what is going to happen,
2 since it is all going to be accomplished before we ever get
3 to the decision point.

4 They also suggest on page 3 that they wish an
5 exemption so they can place the concrete fill inside and
6 outside the containment vessel. This again refers to the
7 protecting walls around the core.

8 Most of the contentions here refer to whether or
9 not they have sufficient protection of the core and if
10 they are going to start building it while we continue to talk,
11 it seems as though our talk really has little practical
12 reality.

13 I would therefore propose since this Board has
14 jurisdiction over the matter as to whether or not the permit
15 should be granted and if so, how, that the Board require that
16 the exemption not be granted until such time as these hearings
17 are concluded or that we adjourn the hearings until such time
18 as the exemption is either granted or not granted so we will
19 know if there is any purpose in continuing the hearings at all.

20 CHAIRMAN SKALLERUP: Mr. Engelhardt?

21 MR. ENGELHARDT: Mr. Chairman, first I would like to
22 state that -- let me put this in a historical perspective for
23 a moment.

24 The Director of Regulations granted to the Applicant
25 in these proceedings an exemption in the letter dated

1 September 10, 1970, prior to the notice of hearing of these
2 proceedings. Subsequent to the granting of that exemption, as
3 Mrs. Bleicher indicated and subsequent to the commencement of
4 this proceeding, the Applicant requested authority to perform
5 additional work.

6 The specific exemption was requested under the
7 provisions of 50.12, 10 CFR 50.12, the same section under
8 which the initial exemption was granted.

9 The Atomic Safety and Licensing Board has not been
10 delegated by the Commission with authority to grant exemptions.
11 The central purpose for not providing that authority to these
12 Boards was to make clear that it would not put the Boards in a
13 position of prejudging the adequacy of an application by being
14 asked to pass upon exemption requests. This matter has been
15 reserved for the Regulatory Staff. The exemption is limited
16 by regulation to a small portion of the total construction.
17 In other words, what is occurring under use exemptions is where
18 the need is shown by the Applicant, and that is the essential
19 test, the need must be shown as to why the exemption is
20 necessary and if the exemption is granted, the exemption is
21 limited in scope to permitting the Applicant to construct work
22 up to and no further than grade level. That is up to the
23 ground level.

24 They can construct no more under an exemption and
25 no exemption beyond that is to be granted. Any exemption that

1 may be granted for this type of construction work is granted
2 solely at the risk of the Applicant. The Applicant must
3 assume all responsibility so that if the Atomic Safety and
4 Licensing Board residing at the licensing proceeding makes a
5 determination that the license shall not be granted and if this
6 is affirmed, subsequently, through the appellate process then
7 the effort expended by the Applicant in performing that work
8 under an exemption is denied. In other words, the Commission
9 is under no obligation to the Applicant for permitting him to
10 do this. We are not, by allowing an exemption, guaranteeing
11 the Applicant at all. We are merely providing to the
12 Applicant an opportunity to do this preparation work, continuation
13 of the site preparation work and foundation work because of a
14 need.

15 The need is stated in his request for the exemption
16 and the need essentially relates to the needs for power to
17 the community in the area and a showing that that power will be
18 needed by a certain date certain. The basis for our providing
19 that is that.

20 In addition I think it is important to note that
21 the AEC Regulatory Staff will not grant an exemption if there
22 are any technical problems which we can observe with regard
23 to the application itself. Such an exemption is normally
24 not granted to an Applicant until the review process has been
25 completed or at least is so well along that essentially we have

1 determined that there are no significant technical problems
2 to be resolved.

3 When I say that with regard to these matters, I
4 am referring of course to matters with regard to site, in
5 particular to the geology or epidemiology or other matters that
6 would be of concern to us.

7 After we have resolved in our minds and in our view
8 that this plant, that indeed there are no such technical
9 problems that would affect the site, we are then in position to
10 consider the exemption.

End #22

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1 The Board has not been delegated by the Commission
2 to make these considerations in an effort to avoid their
3 having to be put in an impossible position of pre-judging
4 these types of requests.

5 Related to that matter, of course, is that once an
6 exemption is granted by the Director of Regulation, the Boards
7 may not upset that exemption, and it is only the total record
8 of the hearing that is determinative at that point. And it
9 is the Board's responsibility to evaluate the complete record
10 of the proceeding and make the determination as to whether
11 that construction should be granted.

12 As I mentioned before, if the Board determines that
13 it should not be granted and this decision is sustained, then
14 there will be no exemption. The work performed under that
15 exemption is done at the sole risk and responsibility of the
16 Applicant.

17 MR. CHARNOFF: I believe Mr. Engelhardt has stated
18 the law correctly. This is a request Applicant made after
19 conclusion of the last phase of the hearing. We were
20 involved in a delay because of the late intervenor coming in
21 and getting a delay in the hearing.

22 The fact is that the exemptions under Section 59.12
23 are not the subject matter of this hearing. They are limited,
24 as Mr. Engelhardt said. The only thing I would submit, Mr.
25 Chairman, is that it is not true that the added exemption work

1 that we have requested is at all related to LIFE's contention
2 with regard to the validity of 10 CFR Part 20.

3 But it seems to me what is suppositive of this
4 particular motion is the fact that the Commission has delegated
5 authority to the Director of Regulation that has not been
6 delegated to licensing boards. It is, in fact, a limited
7 type of work that the Commission has authorized in a number
8 of instances.

9 We have not asked for any authority to do things
10 that has not been previously granted in a number of cases.
11 This is all below-grade work. The concrete fill that was
12 mentioned by Mrs. Bleicher is not immediately near the core;
13 it is just inaccurate.

14 CHAIRMAN SKALLERUP: The Board will consider this
15 record, and enter its order on this motion tomorrow.

16 Are there any further motions?

17 MR. LAU: Mr. Chairman, from the beginning I have
18 just had a complete misunderstanding about the National
19 Environmental Policy Act. It is still not clear in my mind,
20 and it probably never will be, that the President of the
21 United States can sign this Act, backed by Congress, and that
22 the Atomic Energy Commission will not allow it to be spoken
23 of at these hearings.

24 I might say my background has been completely
25 around environment. My whole life has been from fishing, from

1 hunting, from tracking, or things to do with the outdoors.

2 I have fished on the reefs right outside the plant. I have
3 trapped in the area of the plant. I have hunted in the
4 area of that, and it is just a shame what they are doing down
5 there.

6 The Utilities ran ads with young boys running
7 through the woods hanging up bird houses in trees. Well,
8 there are no more trees there, and no more birds. The
9 migratory birds are being turned away from the area because
10 of the noises. The area -- the beautiful pond, the woods and
11 Bay Pond there, where there were always thousands and
12 thousands of ducks coming to that refuge -- has gone. Just
13 a few ducks come back -- what we call the stupid ducks. The
14 real wild ducks -- and the reason they are called wild is
15 because they are wild, and they don't accept man being that
16 close to them.

17 So I would like to say, especially since there is
18 a suit against the Utilities and the Government for trading
19 this land -- and it was traded behind closed doors, and
20 nobody knew about it for five months until it was announced.
21 And it wasn't even brought, I understand, before the Migratory
22 Bird Council or Commission, which has the right to refer to
23 or grant the land usage of all Federal land -- especially
24 Federal Refuges -- I would like to make this statement:

25 CHAIRMAN SKALLERUP: Mr. Lau, I asked if you have

1 any motions to make.

2 MR. LAU: This is a motion.

3 CHAIRMAN SKALLERUP: Please make the motion.

4 MR. LAU: I wish to formally move this Board for
5 an order allowing the scope of my intervention to include the
6 adverse effects upon the environment, both radiological and
7 others, that I believe that the Davis-Besse plant would cause.

8 This motion is in writing, and I hereby submit it
9 to the Board.

10 I am fully aware that Section 11(a) of Appendix D
11 to 10 CFR 50 limits the production of evidence on these
12 matters to proceedings beginning on or after March 4, 1970.
13 However, it is my belief that Section 11(a) represents an
14 arbitrary regulation by the Atomic Energy Commission, and
15 is in direct violation of the National Environmental Policy
16 Act, Title 42, Sec. 4321 to 4335; and more specifically,
17 Sec. 4434.

18 I further request that the Board make its ruling
19 before I proceed with my case, since the Board's ruling will
20 determine the course and scope of whatever evidence I wish
21 to present or elicit.

end 23

22 CHAIRMAN SKALLERUP: Mr. Charnoff?

23 MR. CHARNOFF: Mr. Lau handed me a copy of a
24 document entitled "Motion to Expand Scope of Hearing."

25 Let me remind the Board Mr. Lau was a late intervenor

1 to start with. He filed a petition to intervene which was
2 not adequate. The Board gave him a second chance to file an
3 amended petition to intervene.

4 And here we are, six to eight weeks later, with
5 a brand new proposed contention by Mr. Lau.

6 Therefore, in the first instance, we would object
7 to this as being far too late.

8 Secondly, let me observe that Mr. Lau is proposing
9 to deal with a matter which has been requested in part at
10 least in connection with the intervention by LIFE, and which
11 the Board has ruled be handled on a briefing basis, with
12 regard to the validity of the Commission's ruling in this
13 area.

14 So I think this motion is now out of order, and
15 should be denied.

16 MR. ENGELHARDT: Mr. Chairman, I think the motion
17 is out of order in its lateness in offering here. However,
18 regardless of that, as far as we are concerned, the motion
19 does not state or set forth any sound basis. It is a motion
20 unsubstantiated and unsupported, as far as we are concerned.

21 I think this is a matter for legal briefing,
22 essentially, and a matter which we need to know the basis --
23 this Board, I believe, should know the basis upon which Mr.
24 Lau is making his motion.

25 The motion itself provides no information,

1 essentially, other than the concerns that Mr. Lau has with
2 regard to these matters.

3 I think that, however, if the Board does not feel
4 the motion is delayed, or is tardy, with regard to this
5 proceeding and Mr. Lau's participation in it, there is nothing
6 to preclude Mr. Lau from making an offer of proof with regard
7 to evidentiary material that he might offer with regard to
8 this matter.

9 But under the Commission Rules, which he has
10 stated, 10 CFR Part 50, the environmental effects other
11 than radiological matters are not matters for this Board's
12 consideration, and if Mr. Lau would like to make an offer of
13 proof, he can do so as provided in the Rules. But this is
14 all he can do with regard to that particular matter.

end 24

15 CHAIRMAN SKALLERUP: Thank you.

16 MR. ENGELHARDT: Mr. Chairman, I would like to
17 correct one thing. I believe in Mr. Lau's motion he refers
18 to the burden of proof requirements of 2.732. With regard
19 to the offer of proof which I referred to in my comments, the
20 appropriate reference is 2.743(e), which cites an offer of
21 proof made in connection with objections to a ruling by a
22 presiding officer, excluding a rejection, shall consist of
23 the substance of the proffered evidence, and so forth.

24 CHAIRMAN SKALLERUP: The Board will go off the
25 record.

(Discussion off the record.)

1 CHAIRMAN SKALLERUP: Will the hearing please come
2 to order.

3 We have considered your motion, Mr. Lau, and are
4 prepared to rule on it.

5 With respect to the first paragraph, this appears
6 to us to be a subject matter which already was raised by LIFE,
7 which is a legal matter on which briefs are going to be filed,
8 and you will be given an opportunity to file a reply brief to
9 the LIFE brief.

10 With respect to the second paragraph, the Board is
11 expressly enjoined by the Commission and the Commission's
12 Regulations from going into that area at this time. I refer
13 to the Title 10, Part 50, of the Revised Appendix B as it
14 appeared in the Federal Register, Volume 35,235 of Friday,
15 December 4, 1970. And, accordingly, we deny that part of your
16 motion.

17 Let me point out that when the briefs come in and
18 these matters are presented to the Commission, the Commission
19 will require us to either take evidence concerning the environ-
20 mental effects or they won't. But that is the way that issue
21 will be resolved in this proceeding.

22 Any further motions?

23 MR. BARON: Well, the matter of the motion which I
24 introduced in the mail. I understand we will attend to that
25 tomorrow?

1 CHAIRMAN SKALLERUP: That is right.

2 MR. BARON: There is one other item which I just
3 wanted to mention, and that can be attended to tomorrow, also.
4 That dealt with the motion which I made on behalf of the
5 Coalition that we adjourn. This is back on the 7th. Picking
6 the transcript up, on page 920, I made a motion to adjourn to
7 the 25th so that we could avail ourselves of the Testimony of
8 Dr. Huver, and the Board overruled that motion but indicated
9 we would be able to proffer into the record testimony he might
10 have given so that in the event of the denial of the request
11 for the continuance was considered to have been in error by
12 the Appellate Court, the Appellate Court would also have avail-
13 able to it the testimony that he would have given.

14 We have here with us --

15 CHAIRMAN SKALLERUP: Is that testimony under oath?

16 MR. BARON: Yes. We have here the affidavit of
17 Charles W. Huver. We have his biographic information. We
18 have his testimony, and we also have the carbon of the letter
19 of transmittal which I directed Mrs. Stebbins to send to
20 Dr. Huver setting forth the specific contentions to which he
21 must address himself.

22 Again, it is our understanding that this is merely
23 to put into the record -- I am not going to ask that we do it
24 now unless the Board asks to go ahead with it. I was going to
25 say tomorrow morning or any time the Board wishes to do it.

1 Mrs. Stebbins, in my absence in the morning, could
2 put it into the record.

3 CHAIRMAN SKALLERUP. Well, is there any reason that
4 you don't want to put it in the record in today's proceedings?

5 MR. BARON: If you want to go ahead, we can do it
6 right now.

7 MR. ENGELHARDT: What is required, Mr. Baron? Do you
8 envision this to be a lengthy process?

9 MR. BARON: Well, it was the reading of the answers.
10 That is what I was going to do.

11 MR. ENGELHARDT: Isn't there -- Mr. Chairman,
12 couldn't we expedite this by offering this as if read into the
13 record and it could be incorporated.

14 MR. CHARNOFF: Mr. Chairman, if we look at the offer
15 of proof rule, 2.743(e), it seems to me the suggestion is
16 that we might treat it as a rejected exhibit at this point which
17 is to be retained into the record, if it is not evidence. But
18 I see no reason to have it read at this point into the record.
19 It is simply to be retained in the record. All that is called
20 for there is a statement of the substance of the proffered
21 evidence.

22 CHAIRMAN SKALLERUP: Yes. 2.743(e), Offer of Proof.
23 An offer of proof made in connection with an objection to a
24 ruling of a presiding officer, excluding or rejecting proffered
25 oral testimony shall consist of a statement of the substance

1 of the proffered evidence. If the excluded evidence is written,
2 a copy shall be marked for identification. Rejected exhibits,
3 adequately marked for identification, shall be retained in the
4 record.

5 This would appear to be the appropriate vehicle.

6 MR. BARON: So we are suggesting to give the written
7 statement that I have and all the information that goes along
8 with it to the stenographer for the purposes of being marked
9 and include it in the record.

END#25

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CHAIRMAN SKALLERUP: Correct.

MR. BARON: I don't have copies of it.

CHAIRMAN SKALLERUP: Well, give one to him, and that will be adequate.

MR. BARON: All right.

I have nothing else at this time.

MR. ENGELHARDT: Is this to be marked for identification as an exhibit, or just for identification based on the transcript record?

CHAIRMAN SKALLERUP: Let's mark it for identification as Coalition Exhibit -- do you remember your number?

MR. BARON: I would say number 1.

(The document referred to was marked Coalition Exhibit 1 for identification.)

MR. LAU: Mr. Chairman, would it be appropriate at this time to bring up the facts about my petition to intervene, and the fact that neither the Applicant nor the AEC has answered what I consider one of the major portions of my petition?

CHAIRMAN SKALLERUP: Hold on just a moment.

Mr. Lau, you may recall there was a discussion of this in the course of one of our conferences, and I would simply call on Mr. Charnoff to, if he could, recall what he said to Mr. Lau at the time Mr. Lau raised this issue earlier,

XXX

1 with respect to Mr. Lau's allegations and your duty to
2 respond.

3 MR. CHARNOFF: Yes. I think there are a few things
4 that need to be said, Mr. Chairman.

5 The first is that Mr. Lau is apparently contending
6 that the contention upon which he was admitted, and the
7 matter in controversy, defined as Lau's matter in controversy,
8 based upon his amended petition to intervene, would allow
9 testimony on the matter of the safety for -- not the matter
10 of safety -- the matter of health and safety effects of
11 radioactivity releases.

12 He apparently is basing this upon the opening
13 sentence of his first contention.

14 I would remind the Board and Mr. Lau that that
15 sentence is identical with the sentence which was ruled to
16 be inadequate and incomplete, and he was asked to clarify in
17 what way gas waste was dangerous emissions.

18 He then filed an amended petition to intervene in
19 which he elaborated under Contention Number 1, and he dealt
20 with his allegation that the proposed reactor facility and
21 its evaluation was not consistent with AEC regulations TID-
22 14844 with regard to adequacy of meteorology.

23 Clearly, in discussion of that petition, the
24 Board made it clear what has to be asserted as contentions if
25 one is going to get into the question of radioactivity

1 releases in terms of challenging the adequacy of AEC standards.

2 Certainly there is nothing in the amended petition
3 that would have supported that, and certainly all that Mr.
4 Lau has done is embellished on that sentence, by relating
5 things or discussing things that are not related to health
6 and safety effects of this.

7 So I think, number one, there is a substantial
8 question here that calls for a decision, perhaps, as to
9 whether or not Mr. Lau is to be permitted to present testi-
10 mony on safety aspects on radioactive gas wastes.

11 On the procedural point, let me point out, however,
12 that even if he were to be admitted to challenge Part 20,
13 we, the Applicant, and for that matter, the Staff, as I
14 understand it, have no burden to go forward with any
15 additional testimony in this particular case, to provide any
16 further information with regard to this particular matter or
17 any matter to Mr. Lau, simply because he has raised this
18 contention.

19 The burden is on Mr. Lau to put his testimony
20 forward. We have presented our case as to why this applica-
21 tion should be granted, and Mr. Lau can make of it what he
22 wishes. If he wishes to introduce testimony, and LIFE wishes
23 to introduce testimony on Part 20, it is their burden to go
24 forward with testimony with regard to that, provided it is a
25 matter allowed to them.

1 So the two points, in brief:

2 One is that I don't believe the contention on which
3 Mr. Lau was admitted involves the question of adequacy of
4 Part 20, or safety effects of radioactive gas waste, and,

5 Secondly, that the Applicant nor the Staff or any
6 party has the burden to go forward with testimony simply
7 because the Intervenor has made a petition to intervene.
8 It is up to the Intervenor to present direct testimony, or
9 by cross-examination and based upon the record offered by
10 the Intervenor, to go into this point.

11 CHAIRMAN SKALLERUP: Mr. Lau, is this clear to
12 you, the nature of the issue we are discussing?

13 MR. LAU: Yes, it is. I believe -- I am trying
14 to separate everything that is being said, and sift it
15 through my mind. In my original intervention I had four
16 contentions involved, and they got down to the point on page
17 356 where Mr. Charnoff said he was going to have to take one
18 of these contentions and almost have to address these sentence
19 by sentence.

20 And I only ask the chance to plead my case,
21 sentence by sentence, if necessary. I live within a half
22 mile. My family lives there. We cannot accept the fact
23 that what they say or the fact that they don't say anything,
24 that these are good radiation standards. There are going to
25 be poisonous gases emitted into the atmosphere. How much is

1 going to depend on the Rules and Regulations set forth, and
2 just how adequate they can live by these things.

3 But it is my main concern, if I am not allowed to
4 provide witnesses or to cross-examine on this, I might as well
end 26 5 throw it away.

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CHAIRMAN SKALLERUP: Mr. Engelhardt?

MR. ENGELHARDT: Mr. Chairman, we have always understood and believed and certainly the Applicant indicates that is his understanding, that the introductory clause or the sentence of the contentions through which Mr. Lau has been admitted to this proceeding was introductory to the specific contentions contained in the balance of his statement.

Now, he has indicated from his first petition to intervene that the gas wastes will be dangerous. Then he indicated radioactivity emitted into the atmosphere will endanger the petitioner and all others in the proximity. It was that statement Mr. Lau was expected to elaborate on in the amended petition. This he has done.

In the subsequent paragraphs of his amended petition he identified those areas of concern to him. It has been my understanding that his participation in this proceeding has been limited to the concerns he has with how 10 CFR Part 100 would apply with respect to this application and site and the challenge of or I should say the applicability of TID-14844 in connection with the application of 10 CFR Part 100.

We have understood this and our supplemental testimony with regard to Mr. Lau's contentions which we offered at the last proceeding dealt specifically with the contentions he has made here. We made it clear at that time that that

1 is what we understood his contentions to be and we attempted
2 to deal with those particular matters as best we could, and
3 making those comments subject to cross-examination by Mr. Lau.

4 I think now at this stage Mr. Lau is attempting to
5 inject into this proceeding an issue which this Board has
6 rejected previously and which I believe neither of the parties,
7 neither the Applicant or the Staff and possibly not the Board
8 understood to be Mr. Lau's case.

9 I think with that in mind Mr. Lau's testimony or
10 cross-examination should be limited to the contention as it
11 is elaborated on in his amended petition, namely, the
12 applicability of 10 CFR Part 100 and TID-14844 with regard to
13 this application and to his participation.

14 CHAIRMAN SKALLERUP: Mr. Engelhardt, at this time
15 can you conveniently cite for us the portions of the transcript
16 where you gave your redirect testimony?

17 MR. ENGELHARDT: No, Mr. Chairman, I am unable to
18 do that immediately.

19 CHAIRMAN SKALLERUP: Well, if you would, the Board
20 would appreciate it if you would supply us with those citations
21 and also Mr. Lau.

22 MR. ENGELHARDT: That we will do, certainly.

23 CHAIRMAN SKALLERUP: He will perhaps see your
24 position as to your response to the issue which he raised.

25 Am I being awkward in expressing that?

1 The Commission has your petition, they thought
2 they responded to the issues which you raised. I am asking
3 them if they would provide you with the citation of the
4 transcript so you could see and perhaps you could have a
5 meeting of the minds as to whether this is in fact what you
6 raised or not.

7 MR. LAU: Mr. Chairman, I don't think there is any
8 misunderstanding. I was allowed to intervene on this, there
9 was no question about that at the time. The two parties
10 agreed and so forth, I was presented in an intervenor status.
11 It says right there, they can't take it away from me, it is
12 there, it is my major concern and I feel it is important.

13 MR. CHARNOFF: May I point out in the transcript
14 there was substantial discussion about what these contentions
15 meant by all of us I think at the time and much of this
16 material begins on page 352 and there it is clear that statements
17 were made what Mr. Lau is referring to in the first contention
18 is one relating to the adequacy of the site. Nowhere in that
19 discussion did Mr. Lau, or his counsel, Mr. Knight, in any way
20 suggest that that was not an accurate statement as to what that
21 contention was all about.

22 CHAIRMAN SKALLERUP: Well, the next matter on the
23 agenda, Mr. Lau, is the cross-examination of witnesses and
24 considering the hour, the Board believes that it would be wise
25 to adjourn until tomorrow morning, at which time you will

1 be provided the opportunity to cross-examine and if Dean
2 Abrahamson is here, it will be necessary to sandwich him in
3 in your cross-examination.

4 MRS. BLEICHER: I am sorry we have a matter at
5 this late hour. I just want to clarify, in all the confusion
6 that developed, I am not positive as to what the Board said
7 its ruling was on our motion to compel answers to interrogatories
8 or whether the Board would announce its decision tomorrow.

9 CHAIRMAN SKALLERUP: Let me reflect on that.

10 Dr. Winters has refreshed my memory.

11 We agreed to give you our order tomorrow on your
12 argument on that issue.

13 MR. ENGELHARDT: Mr. Chairman, I wanted to give Mr.
14 Lau a reference. It is transcript page 296 and follow on
15 pages in which the Staff deals with the specific contentions
16 that you have made regarding 10 CFR Part 100 and TID-14844.

End #27

17 MR. LAU: I am sorry, I don't have that one.
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1 MR. CHARNOFF: Mr. Chairman, I don't believe you
2 stated what time we would reconvene, number one. And number
3 two, I understand the agenda for tomorrow is that Mr. Lau
4 would proceed with his cross-examination of the staff and the
5 applicant, at which time, assuming Dean Abrahamson is not
6 present, when that is concluded, LIFE would proceed with its
7 cross-examination of the applicant and staff. And if Dr.
8 Abrahamson is here, we would interrupt one or the other cross-
9 examinations to afford Dr. Abrahamson time to present his
10 direct testimony, and find some way to provide us with an
11 opportunity for cross-examination tomorrow afternoon -- at some
12 break or other.

13 CHAIRMAN SKALLERUP: That is right. The only reason
14 I didn't give you the time was that I was having difficulty
15 getting a word in edgewise.

16 The Board needs time tomorrow, as you know, to do
17 some of its homework, so we will reconvene at 10:00.

18 (Whereupon, at 6:45 p.m., the hearing in the
19 above-entitled matter was recessed to reconvene at 10:00 a.m.,
20 Tuesday, 26 January 1971.)

END#28

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