

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: : Prehearing Conference
: on Operating Licenses
ARIZONA PUBLIC SERVICE COMPANY, :
et al., (PALO VERDE UNITS 1, 2, : Docket Numbers
& 3) : 50-528-OL, 50-529-OL,
: and 50-530-OL
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Courtroom No. 4,
Sixth Floor, Federal Building,
230 North First Avenue,
Phoenix, Arizona 85025
Tuesday, December 2, 1980

The above-entitled matter came on for prehearing
conference pursuant to notice at 9:30 a.m.

BEFORE:

ROBERT LAZO, Esq., Chairman
RICHARD F. COLE
DIXON CALLIHAN

HENRY J. MC GURREN, NRC Regulatory Staff
EDWIN J. REIS, Assistant Chief Hearing Counsel,
NRC Hearings Staff

APPEARANCES:

Snell & Wilmer
By: ARTHUR C. GEHR, Esq.
CHARLES A. BISCHOFF, Esq.
3100 Valley Center
Phoenix, Arizona 85073
On behalf of Joint Applicants

ALSO PRESENT:

CHRIS SHUEY, Petitioner
1100 W. Second Street

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Tempe, Arizona 85281

PATRICIA LEE HOURIHAN, Petitioner pro se
1204 W. Fifth Street, #2
Tempe, Arizona 85281

EDWIN E. VAN BRUNT, Jr.,
Vice President, Nuclear Products
Arizona Public Service Company
P.O. Box 21666
Phoenix, Arizona 85036

P R O C E E D I N G S

1
2 DR. LAZO: Will the prehearing conference come to
3 order, please?

4 This is an administrative proceeding before an
5 Atomic Safety and Licensing Board of the United States
6 Nuclear Regulatory Commission, in the matter of Arizona
7 Public Service Company and five joint applicants, regarding
8 Palo Verde Nuclear Generating Station, Units 1, 2 and 3.

9 The proceeding is identified as Nuclear Regulatory
10 Commission Docket No. STM 50-528-OL, 50-529-OL, and
11 50-530-OL, the "OL" standing for operating license
12 proceedings.

13 As a preliminary matter, just let me note the
14 change of location of the prehearing conference, which
15 previously had been scheduled for the Grand Jury Hearing
16 Room on the Fifth Floor of this Federal Building. It has
17 been relocated to Courtroom 4 on the Sixth Floor, where we
18 are presently situated, and an appropriate notice has been
19 placed down on the Fifth Floor, and hopefully all who
20 planned to attend have learned of the relocation and are now
21 present here at 9:30 this morning, December 2nd.

22 We will stop just for a minute. (Pause.)

23 The proposed administrative action before this
24 Safety and Licensing Board is the issuance of facility
25 operating licenses which would authorize applicants to

1 possess, use and operate at Palo Verde Nuclear Generating
2 Station Units No. 1, 2 and 3. three pressurized water
3 nuclear reactors located on the applicant's site in Maricopa
4 County, Arizona, approximately 36 miles west of the City of
5 Phoenix.

6 Notice that the applicants had filed an
7 application for facility operating licenses for Palo Verde
8 was published in the Federal Register of July 25, 1980.
9 That notice, which was given general public distribution,
10 including the news media, provided that any person who may
11 be affected by this proceeding may request a hearing and
12 file a petition for alleviation in accordance with the
13 Commission's Rules of Practice.

14 In response to that notice, on August 11, 1980,
15 Patricia Lee Hourihan submitted a timely petition to
16 intervene and a request for a hearing for herself as well as
17 on behalf of two other persons, Kevin Dahl and Christopher
18 Shuey.

19 Now let me introduce to you the members of the
20 Licensing Board: Dr. Dixon Callihan, physicist, seated at
21 my right; and Dr. Richard Cole, who is an environmental
22 scientist, seated at my left.

23 My name is Robert Lazo, and I am a lawyer.

24 Now we will have appearances for the parties, for
25 the Applicants:

1 MR. GEHR: Arthur C. Gehr, and Charles A.
2 Bischoff, with Snell & Wilmer, Phoenix, Arizona, appearing
3 on behalf of the joint applicants.

4 DR. LOZO: Thank you, Mr. Gehr.

5 And for the NRC Hearing Staff?

6 MR. MC GURREN: For the Nuclear Regulatory
7 Commission Staff, my name is Henry J. McGurren, and on my
8 right is Edward Reis, who is Assistant Chief Hearing Counsel
9 for the NRC.

10 DR. LAZO: And for the petitioner?

11 MS. HOURIHAN: My name is Patricia Lee Hourihan,
12 petitioner, and this is Christopher Shuey.

13 DR. LAZO: Thank you, Ms. Hourihan.

14 Now, the principal reason for this prehearing
15 conference is to consider the petition that has been filed
16 by Ms. Hourihan, and I will first ask if any of the parties
17 wish to make an opening statement. Mr. Gehr?

18 MR. GEHR: We have filed an answer with respect to
19 the petition to intervene filed by Ms. Hourihan. We have
20 acknowledged that she has standing and subject to having
21 submitted at least one valid contention she should be
22 permitted to intervene.

23 We have gone through the contentions; we concede
24 that there is one contention validly stated, specifically
25 Contention No. 4, which we consider to be admissible, and

1 therefore we would acknowledge that Ms. Hourihan is entitled
2 to intervene and her petition to intervene should be granted.

3 As to Mr. Shuey, we noticed in our answer to the
4 petition to intervene that it had not been signed by Mr.
5 Shuey, and we do not believe that Ms. Hourihan can represent
6 Mr. Shuey.

7 We also that the contentions that were filed were
8 signed by Mr. Shuey, however; so I am not quite sure what
9 his status is, but it seems clear that he has not complied
10 fully with the Rules of the Commission.

11 MR. LAZO: You have not filed anything in writing
12 regarding the contentions?

13 MR. GEHR: No, sir. We did not receive them until
14 last Monday, and we had two days, three days to work with
15 them. We have got some drafts going but we are not ready to
16 file. We are ready to address them at this hearing.

17 MR. LAZO: Let me just ask Ms. Hourihan, when you
18 filed your amended contentions did you serve them on the
19 Secretary of the Commission in Washington?

20 MS. HOURIHAN: Yes, I sent a copy to you, a copy
21 to Jay, and a copy to the applicant; and I have the little
22 pieces of paper from the postmaster indicating the date that
23 I served them.

24 MR. LAZO: They must have been delayed in the
25 mail. They were filed then on the 21st?

1 MS. HOURIHAN: Yes, and I have the certification
2 stamped on the 21st.

3 MR. LAZO: Well, we did receive a copy through the
4 Office of the Executive Legal Director who had received
5 them. The Licensing Board has still not received anything
6 in the way of contentions, but we have seen them and
7 retained a copy from Mr. McGurren's office, so that we have
8 seen them, but not very long ago.

9 Mr. McGurren, on behalf of the Regulatory Staff,
10 do you wish to make an opening statement?

11 MR. MC GURREN: Let me just briefly summarize it.
12 The staff did receive the petition and, as you know, on
13 September 2nd we responded to the petition, and we took the
14 position that Ms. Hourihan, for herself, as the petitioner,
15 satisfied the requirements.

16 MR. LAZO: I am sorry, counselor, you said on
17 December 2nd?

18 MR. MC GURREN: No, on September 2nd. We
19 responded and our position therein that we stated was that
20 petitioner Patricia Lee Hourihan satisfied the requirements
21 of 2.714 as far as interest, was deficient with respect to
22 aspects.

23 With regard to Christopher Shuey and Kevin Dahl we
24 felt that the petition which was filed was not satisfactory,
25 did not meet the requirements of 2.714.

1 We have received a supplement to the petition, and
2 as indicated by Mr. Gehr it was signed by both Ms. Hourihan
3 and Mr. Shuey. We haven't had a chance to respond to that
4 petition and as was indicated in our letter to the Board
5 several weeks ago we have indicated that there was agreement
6 of the applicant and the petitioner that both the applicant
7 and the staff be given until the 9th to file their positions.

8 We aren't here today prepared to address each of
9 the contentions, but we have reviewed them in sufficient
10 depth to have found at least one good contention, and that
11 contention, which we feel does satisfy the minimum
12 requirements of a specificity basis, is Contention 1.

13 We will be filing in writing our responses to the
14 remaining contentions, and I have checked with both the
15 applicant and Ms. Hourihan and both have indicated that they
16 would be willing to allow the staff three additional days,
17 and that would be until Friday, the 12th, to file. And if
18 this is an appropriate time, Mr. Chairman, I would move that
19 we be allowed to file responses by December 12th.

20 MR. LAZO: Well, we had hoped, counselor, that the
21 staff would be prepared today to address the contentions, at
22 least orally. I think we should attempt to do that, as long
23 as we are here, and the Board has a number of questions
24 regarding some of the proposed --

25 MR. MC GURREN: We wouldn't be able to state a

1 position on each of the contentions.

2 MR. LAZO: Well, nonetheless, we may find we will
3 get some enlightenment from the questioning, and let's get
4 along and see how far we can go on that.

5 Is it then the staff's position that you are not
6 opposed to granting of the petition?

7 MR. MC GURREN: We do not oppose the granting of
8 the petition.

9 MR. LAZO: At least as to one contention?

10 MR. MC GURREN: One contention, which means that
11 we do not oppose of a right to a hearing, the admission of a
12 party --

13 MR. LAZO: A party?

14 MR. MC GURREN: And that party is Ms. Hourihan.

15 MR. LAZO: Very well.

16 And, Ms. Hourihan, I wonder if you are interested
17 in making an opening statement? I think we will request you
18 to make one, because there is the question of the status of
19 your petition, whether or not your petition is to be treated
20 as a petition from an individual, namely, yourself, or as an
21 individual representing an organization as yet unnamed. We
22 don't see anything in your papers to indicate that there is
23 any sort of a formal or informal organization to which these
24 other two people who have been identified belong.

25 Let me ask, Ms. Hourihan, are you represented by

1 counsel, or do you plan to be represented by counsel?

2 MS. HOURIHAN: I have had a few attorneys work
3 with me, and I have a few friends who are attorneys in
4 Tucson who have worked with me; but I will be representing
5 myself. I won't have a specific person as counsel who will
6 be here during the proceedings.

7 I have had help from attorneys, but that is about
8 it.

9 MR. LAZO: Well, there is, of course, no
10 requirement under our rules of practice that you be
11 represented by counsel. We should say that it would be to
12 your advantage to be represented by an attorney. These
13 proceedings are of a quasijudicial nature, and if your
14 petition is granted and there will be an evidenciary
15 hearing, it would be very helpful to have an attorney
16 represent you. But, as I say, it is not necessary, and we
17 would ensure that you would not lose any substantiv rights
18 by virtue of the intricacies of the Rules of Practice.
19 Nonetheless, the sessions will be formal and the proceeding
20 is formal, and it will require that you meet the rules of
21 the Commission in filing timely responses and all the other
22 requirements of conducting a proceeding of this type.

23 Now, in that regard, since you are not an
24 attorney, you may only represent yourself as a pro se
25 intervenor; you may not represent another individual; so

1 there is a question as to whether, or not you are claiming an
2 organizational status in which you would be a representative
3 of an organization, or whether you are only representing
4 yourself, and that the views of your other people who have
5 been identified in the petition are also your views. Could
6 you speak to that?

7 MS. HOURIHAN: Yes. There are groups that will be
8 working on this in Tucson and Phoenix, but I choose to
9 represent myself and not to represent these groups.

10 As far as an attorney goes, a couple of attorneys
11 have offered to work on this full time, good attorneys here
12 in Phoenix, but they have also asked for at least \$10,000 a
13 year -- is the time for my opening statement?

14 MR. LAZO: Surely. Please proceed.

15 MS. HOURIHAN: I feel bad about the way this was
16 typed. For one thing, I didn't have time to get the starter
17 fixed on my car today, and I had books on the gas pedal to
18 keep it running, so I could get to the post office and get
19 copies, so I was typing really fast. So I apologize for the
20 manner in which --

21 MR. LAZO: We did encounter some difficulty, and
22 when we get to it I think we will have to ask for some
23 elaboration on portions of it.

24 MS. HOURIHAN: Copying?

25 MR. LAZO: Yes.

1 MS. HOURIHAN: All right. And also, I would like
2 to point out at this time -- well, first I would like to
3 request a copy of the transcript of the hearing today from
4 the NRC.

5 What we are doing here is totally volunteer work.
6 The applicant has a number of attorneys to work on this, and
7 I would like that to be taken into consideration if it
8 could. We don't have any money. We have zero zilch, no
9 money at all, and we don't even have a good typewriter, you
10 know, and I am just saying -- I am not trying to make
11 excuses, I want you to know that we are a volunteer -- I am
12 a volunteer. I am not getting paid for doing this, and if
13 it doesn't come off as professionally as it would were I an
14 attorney, I apologize at this time.

15 I have worked for my father's law firm, so I have
16 had some experience in legal research, but I am not an
17 attorney. I guess that is about it.

18 MR. LAZO: Now, you haven't mentioned Mr. Dahl?

19 MS. HOURIHAN: He will not be a party to this.

20 MR. LAZO: He will not be a party, and Mr. Shuey
21 is not requesting party status.

22 MS. HOURIHAN: Would you like Chris to speak to
23 that?

24 MR. LAZO: Yes.

25 MR. SHUEY: Mr. Chairman, my position in this was

1 from the beginning that I would take part if it appeared
2 that we could have some backing from the community. I
3 perceive that we have at least a moral backing if not a
4 financial backing.

5 I would agree to comply with all the rules of
6 procedure that have been set down, if necessary to become a
7 petitioner. I am not familiar enough with the rules to know
8 if I would be in addition Lee or if our efforts would be
9 combined. I think that Mr. McGurren stated the facts
10 correctly. I have not -- other than the initial supplements
11 to Lee's August 11th filing -- I have not filed anything in
12 addition to that.

13 I understand there is a petition for a late filing
14 for which you have to meet very stringent conditions, and I
15 would be willing to undertake that effort if it is within
16 the rules of the Commission and this Board. In other words,
17 I would like to seek standing as a petitioner here.

18 MR. LAZO: Have you received a copy of the Rules
19 of Practice of the Commission or have you seen one? You did
20 mention that you are aware of the requirements?

21 MR. SHUEY: Yes. I can't say that I have read
22 it. I mean thoroughly.

23 MR. LAZO: Well, it would be a late filed petition
24 if you decide to file one and, of course, you would have to
25 establish good cause for filing late.

1 May I ask, as to your background, is it technical
2 or legal in terms of the assistance that you might be
3 providing to Ms. Hourihan?

4 MR. SHUEY: I was a newspaper reporter for a
5 while, if that means anything, and I have been involved in
6 environmental research for some time. I have no Ph.D.'s or
7 M.S. after my name or anything like that. I am not an
8 engineer. I am a citizen just as much as everybody else.

9 MR. LAZO: There a lots of us who have a keen
10 regard for health, safety and environment who don't have
11 Ph.,D.'s after our names; that is a common interest that
12 everyone in the country has today.

13 Well, then, I think we will simply have to leave
14 it up to you, Mr. Shuey, as to whether you desire to file a
15 late petition.

16 MR. SHUEY: May I ask --

17 MR. LAZO: Surely.

18 MR. SHUEY: Would -- well, the only reason I
19 signed the supplement to the petition to leave to enter
20 contentions was to create this discussion, really. Is that
21 going to affect Ms. Hourihan's status, if I do not follow
22 through with a late filing?

23 MR. LAZO: That does not affect her status at
24 all. From what we have heard here today, these applicants
25 and the staff of the Nuclear Regulatory Commission are both

1 proposing that Ms. Hourihan's petition be granted. If the
2 Board does grant her petition, she would become a full party
3 to this proceeding, with all of the rights and obligations
4 which follow. Whether or not there was a second petition
5 would not affect her status at all.

6 MR. SHUEY: Okay, if I would file as a separate
7 petitioner, I would have to have my own list of contentions
8 and things like this, or does the procedure set out a way
9 that I can file in joint petition with Ms. Hourihan?

10 MR. LAZO: Well, if you filed an identical or
11 nearly identical set of contentions, and assuming you got
12 over this hurdle of the likeness and timeliness of the
13 contentions of the petition, then surely the Board would to
14 consolidate the cases. Now, if you had different
15 contentions, then as to those you would be representing
16 yourself as an additional party.

17 MR. SHUEY: I see.

18 MR. LAZO: As to your request for a copy of the
19 transcript, let us say that the Commission has not agreed to
20 any funding for intervenors, so they are unable to do so
21 under the congressional mandate; however, the Commission has
22 a one-year pilot program or experimental program under which
23 they will furnish a free copy of the transcript to parties
24 to the proceedings other than the applicants. They also
25 will copy and serve your testimony if you sent it in to the

1 Docketing and Service at Washington, which will reduce
2 considerably your expenditures.

3 They are also will to relieve you of the filing
4 requirement for filing copies of every paper with Docketing
5 and Service in Washington, and if you file an original and
6 two, that will be sufficient.

7 Mr. McGarren, would you please provide petitioner
8 with a copy of the regulation on procedural assistance?

9 MR. MC GURREN: I will make sure that we send out
10 a copy of that position.

11 MR. LAZO: All right, so that she will know
12 exactly what it is, what assistance she will be able to get.

13 Well, based upon what we have heard here from
14 applicants and from the staff and our own study of your
15 petition, we will hereby orally rule that your petition is
16 granted, and that you, Ms. Hourihan, as an individual
17 representing yourself, are admitted as a full party to the
18 proceeding.

19 Now, that means that there will be an evidentiary
20 hearing in this proceeding. Had no petition be filed or no
21 petition been granted, there would have not been any
22 evidentiary hearing in this operating license application.
23 A public evidentiary hearing is mandatory in the
24 construction period stage, and there was a public hearing at
25 which time the granting of construction permits took place,

1 but no hearing is mandatory during the operating licensing
2 stage unless there is a valid petition which is admitted by
3 the Licensing Board.

4 Now we have done that orally and we will confirm
5 that in writing in a postconference order after we return to
6 Washington. Therefore, we are in a position to grant your
7 request for a free copy of the transcript and I will
8 instruct the court reporter to so provide you with one.

9 That will be transcribed in Washington and sent by
10 mail, which raises another question: One of the problems in
11 the early part of the case was that you did not advise the
12 Commission of a change of address, and I understand some of
13 the mail went astray. That would be another obligation, Ms.
14 Hourihan, to be sure that the Public Docket Room in
15 Washington, at 1717 H Street, knows your whereabouts, and is
16 able to contact you, and that the other parties may know
17 where to serve their official papers upon you.

18 MS. HOURIHAN: I would like to apologize for
19 that. I have been waiting to move into this new house, and
20 I couldn't move in until December, and I have been waiting
21 for four months for it to open, so I moved twice before the
22 house opened, and I will be at this new home for at least
23 the next two years. So from now on there won't be any
24 problems as to my address.

25 MR. LAZO: Just be sure that the Public Document

1 Room in Washington knows that address, please, and that all
2 of the parties know it, so they can serve papers upon you.

3 MR. MC GURREN: May I ask a clarifying question,
4 Your Honor?

5 MR. LAZO: Yes.

6 MR. MC GURREN: Do you have a new address?

7 MS. HOURIHAN: Yes.

8 MR. MC GURREN: At least for the record now, so
9 that we know what that address is.

10 MS. HOURIHAN: It is the same address. It is 1426
11 South 26th Street. It is the same address as the petitioner.

12 MR. LAZO: Would you state the full address and
13 the ZIP code, so that we will have that. Now, that is the
14 address to which you want papers to be served?

15 MS. HOURIHAN: From now on. Can I check during
16 the break and after the break make sure that I have the
17 numbers for that?

18 MR. LAZO: Yes, very good.

19 Ms. Hourihan, we have before us copies of the
20 supplement to the petition for leave to intervene, the
21 contentions, which I understand was filed on November 21st.
22 We would like to go through those contentions seriatim and
23 ask you if you have anything in addition to comment on them;
24 and as I indicated, there are places where we will need some
25 additional information from you because the copying has not

1 been very clear.

2 If you have nothing to add, we will ask the
3 applicant or applicants for their view of the contentions.

4 MS. HOURIHAN: You mean all of the contentions or
5 just Contention No. 1?

6 MR. LAZO: Contention No. 1.

7 MS. HOURIHAN: I have nothing to add to No. 1.

8 MR. GEHR: If the Board please, I recognize that
9 the NRC staff has conceded that this is an admissible
10 contention, and we do not agree. We cannot tell from the
11 contention what the issue is.

12 The first sentence of the contention states that
13 the ground level release model would produce more
14 conservative -- it does not adequately explain the ground
15 release model would produce more conservative values of
16 routine reactor omissions. And I fail to understand why a
17 comparison of two models, one being conservative, one being
18 more conservative, creates an issue. The first point.

19 Secondly, the second sentence, starting out,
20 "Consequently, use of the model produces maximum site
21 boundary ground air concentrations and surface
22 concentrations which are not sufficient to predict maximum
23 dose rates." I would consider the second sentence just
24 simply a non sequitur, has nothing to do with the
25 comparison. So I just don't know the issue.

1 MR. LAZO: Pardon me, counselor. We are having a
2 little difficulty hearing you, and I am sure those in the
3 courtroom are. Is that microphone loose?

4 MR. GEHR: I will repeat my objections to
5 Contention No. 1. First, I do not believe the first
6 sentence states any issue at all; it merely states that
7 there is some comparison of something else, and one is not
8 as conservative as the other. That does not create an issue
9 that I can understand.

10 Secondly, the second sentence to the contention,
11 starting out with the word "Consequently," I do not
12 understand how the failure to be more conservative or
13 conservative results in any insufficient prediction.

14 I just don't know what the issue is that the
15 intervenor is attempting to raise here.

16 Finally, we do not believe that the explanation
17 given to support the contention is sufficiently specific to
18 meet the requirements of 2.714.

19 MR. LAZO: Mr. McGurren, you have stated already
20 that the staff feels the contention in Contention 1 is a
21 valid contention?

22 MR. MC GURREN: Yes, Mr. Chairman, we believe that
23 what is being contended here is the use of this model, that
24 the maximum dose is not correct, that it gives an
25 insufficient prediction of maximum dose. That is the way we

1 read that contention.

2 MR. LAZO: Ms. Hourihan?

3 MS. HOURIHAN: What Mr. McGurren said is true. In
4 the first sentence is quite clear to me the operating
5 license stage does not adequately explain, it doesn't
6 explain, as far as we are concerned, adequately how the
7 ground level release model would be of more conservative
8 values. By conservative we are talking about a LARA, as low
9 as reasonably achievable values. What we are talking about
10 is that the model is from the ground and not from the stack,
11 and what would be emitted, you also have to take into
12 account what would be emitted from the stacks, and take into
13 account everything that goes along with that -- how it will
14 travel, what will travel, and it does not provide for high
15 concentration outside the limited area.

16 MR. COLE: Ms. Hourihan, at least one of your
17 points in this is that the model that was used would not
18 necessarily predict maximum concentrations at other points/

19 MS. HOURIHAN: Exactly.

20 MR. CALLIHAN: Other points with boundary or
21 beyond the boundary?

22 MS. HOURIHAN: Outside the boundary.

23 MR. COLE: Also this contention addresses only
24 routine effluence within your contention as to normal
25 discharges from the plant?

1 MS. HOURIHAN: That is true.

2 MR. CALLIHAN: What you are addressing are
3 airborne effluents?

4 MS. HOURIHAN: Excuse me?

5 MR. CALLIHAN: It addresses only airborne
6 effluence? Should it also address liquid effluence?

7 MS. HOURIHAN: No.

8 MR. LAZO: All right, Ms. Hourihan, what about
9 Contention 2?

10 MR. GEHR: If the Board please, may I make one
11 more comment?

12 MR. LAZO: Surely.

13 MR. GEHR: I recognize that there are 28
14 contentions, and if we spent 15 minutes on them, we are
15 going to be here for seven hours. So I will do the best I
16 can to keep my comments brief.

17 This contention and many of the others starts out
18 that "the applicants' environmental report operating license
19 stage does not adequately explain." Now, I hope that the
20 board will instruct the intervenor that she has a burden of
21 going forward with each contention that she wishes to raise.

22 It seems to me that this is a common statement
23 that is followed throughout the supplement that is
24 improper. They are trying to place the burden of going
25 forward back upon the applicant with respect to the petition

1 to intervene. That is not proper. She has the burden of
2 going forward. If it stands the way it is, and this comment
3 I would like to make general, so I don't have to repeat it
4 again, for each case where it appears.

5 As I understand rules, she would have the burden
6 of going forward and explaining why the ER does not
7 adequately explain something. Now that is a foolish
8 issue. So I think when the rephrasing of these contentions
9 is done, if there are any that are allowed, that they will
10 be stated properly. And if her view is that the ground
11 level release is inaccurate in the predictions, she must
12 state that clearly and then assume the burden of going
13 forward and establishing that fact.

14 She must establish on a prima facie that that
15 ground level release model is improper before the burden
16 comes back to the applicant. And I think it be very time
17 saving if this point were borne in mind throughout the
18 consideration of each of the contentions, and that the
19 intervenor were properly instructed on what her duties and
20 responsibilities are going to be with respect to the
21 contentions.

22 MR. LAZO: Well, that, of course, is one of the
23 problem. Obviously, if a contention is admitted, the
24 parties are going to have to address it with sworn testimony.

25 May we ask, Ms. Hourihan, at this point if you are

1 planning to made a direct case by putting on experts in the
2 form of expert opinion testimony?

3 MS. HOURIHAN: Yes. In fact, for at least 20 of
4 the contentions, I have certain experts in mind for the
5 hearings. I may be wrong in this, but I was under the
6 impression that in this part of the proceedings I would only
7 have to state my contentions and not have to go into great
8 detail as to why that is a contention.

9 I understood that down the road, at the hearing,
10 at that time the expert witnesses would come in and I would
11 have to explain exactly what I meant. So that is why some
12 of these contentions are brief, just getting the general
13 point across. This is our contention, and we do have expert
14 witnesses who are going to testify.

15 MR. LAZO: Well, it is quite true that in
16 determining whether or not a contention is admissible that
17 the Board does not look to testimony. We are only seeing
18 whether it has been written in a way is understandable and
19 written in a way that the other parties who have to address
20 it would be able to prepare evidence controverting that
21 issue.

22 Now, you may face up to the problem of
23 articulating your contention more specifically quite a bit
24 earlier than you anticipate because once your petition has
25 been granted the formal discovery period will begin, and the

1 other parties, the applicants here, and the Nuclear
2 Regulatory Commission's staff, will want to know exactly
3 what it is you have in mind, and what sort of evidence you
4 have to back it up.

5 One thing that might be worth while, and we would
6 suggest, is that you would meet with counsel for the parties
7 and make an effort to arrive at a stipulated set of
8 contentions which are drafted in a more precise form, so
9 that at least all of the parties can understand exactly what
10 it is you are contending, and will be in a better position
11 to know how to prepare their testimony.

12 Mr. McGurren?

13 MR. MC GURREN: Mr. Chairman, we would be very
14 willing to meet with the parties to accomplish this task.

15 I would just like to add that I am not sure I
16 understand the applicants' position on burden of proof. It
17 is my understanding, without giving you the case law, that
18 the burden that the intervenor has is one of raising in a
19 reasonable mind an inquiry, and not in proving their case at
20 this point.

21 MR. LAZO: Well, surely that is true; there is no
22 need to prove their case. As I said, we will look to see
23 whether they have evidence in deciding whether they have a
24 valid contention. The contention may be easily disposed of
25 by one of the parties because it has no validity to it; but

1 that is not what we are judging now. We are judging whether
2 it is written with enough specificity so that people can
3 understand it, and if there is some basis for it.

4 MR. GEHR: I may have confused the Board and
5 counsel and everybody else, but my point was that so many of
6 these contentions that have been stated in the supplement
7 start out that the applicants' FASR or the ER does not do
8 something adequately, does not explain something
9 adequately. That very opening comment in the contention
10 seemed to me an attempt to shift to us the burden of proving
11 the ER does adequately do something. That is not a proper
12 approach and I just want to make it clear that even if it
13 were the proper approach, proving what the ER does, or what
14 it doesn't do, is a foolish issue.

15 The issue that she is trying to raise in
16 Contention No. 1 is that the ground level release model is
17 inaccurate, and if she wants to state that as a contention,
18 then I can understand what I am faced with, but not what the
19 words are in the ER as to what is adequate. I certainly do
20 not have the burden to explain and persuade the intervenor
21 as to the adequacy of my statement in the ER. That is a
22 problem that the Commission has and the Board has.

23 I do not have the burden of proving to her
24 satisfaction my explanation of the ground level release
25 model is satisfactory. That is the problem I had with the

1 statement of the contentions.

2 MR. MC GURREN: Mr. Chairman, I do believe that
3 the applicant has the burden of showing whether the models
4 they use are accurate; and if that is raised as a contention
5 and is accepted by the Board as a contention, they would
6 have that burden in the hearing proceeding, in the actual
7 presentation of evidence, to show that that model was
8 correct and accurate.

9 MR. COLE: I don't think Mr. Gehr has any problem
10 with it stated that way.

11 MR. GEHR: I don't have any problem with the
12 statement of the contention; however, the cases decided by
13 the Appeals Board of the NRC have established that as to
14 contentions the intervenor has the burden of going forward
15 to establish a prima facie case to support that contention.
16 If there is no prima facie case, we have no duty to do
17 anything further.

18 MR. MC GURREN: And I think that this comes out,
19 if I may add, through our regulations on discovery, and our
20 regulation regarding summary disposition.

21 MR. LAZO: I think that is correct and that is
22 what we are really addressing now, how can we get the
23 contentions boiled to point where everybody understands them
24 and we know what we are going to litigate in these
25 proceedings. That can be done through discovery.

1 The first thing the applicants and the staff would
2 do would be to find out from the intervenor as to what it is
3 she means through interrogatories, and then perhaps some of
4 these issues may be disposed of through summary disposition.

5 MR. MC GURREN: And I also recognize, Mr.
6 Chairman, that the tool of negotiation, meeting of the
7 parties before discovery begins with an effort to agree as
8 to what the language should be, I think a great deal could
9 be done through such negotiation. We are certainly willing
10 to do that, to meet with all of the parties to determine
11 particular language..

12 MR. CALLIHAN: Ms. Hourihan, just as an example of
13 where I think this discussion stands at the moment, I
14 believe it is incumbent upon the intervenor to state what in
15 this case is incorrect about the model, basic application,
16 or what not, and then that gives the parties, and then the
17 Board, for that matter, something firm to chew on.

18 But the statement adequately explained is a
19 nebulous thing; it hasn't much substance, and this is made
20 only as a suggestion; and perhaps it might be of some
21 guidance.

22 MR. LAZO: Well, as we indicated earlier, there
23 are a few places in the supplemental petition where we have
24 some questions to Ms. Hourihan, particularly to identify
25 certain references where the copying has not been very

1 clear. But it does occur to us now that it might be
2 profitable to take a brief recess to permit the parties to
3 explore the idea of meeting and trying to determine a
4 stipulated set of contentions.

5 I would encourage counsel to meet with Ms.
6 Hourihan during this recess, and then let the Board know
7 after we come back in open session as to your belief as to
8 whether this will be possible or not, and if so in what
9 time-frame. Otherwise, I think we do believe we should go
10 through each of the contentions today, so that when we get
11 back to Washington we can decide which ones should be
12 admitted as issues in controversy and which should be denied.

13 It would be far better if the parties themselves
14 could come to some agreement on that. That may not be
15 possible, but would 15 minutes be sufficient, do you think,
16 or would you like more time?

17 MR. MC GURREN: We can start with that and see how
18 we do.

19 MR. LAZO: Why don't we start with that, and then
20 let us know. We will be off her to the side.

21 All right, then, the prehearing conference is in
22 recess for 15 minutes. Thank you.

23 (Brief recess.)

24 MR. LAZO: Will the prehearing conference come to
25 order, please.

1 Now, who would like to respond?

2 MR. MC GURREN: Let me start, Mr. Chairman. The
3 parties have met during the recess and what we have agreed
4 upon is meeting Tuesday and Wednesday of next week, the 9th
5 and 10th, in an effort to stipulate the language of the
6 contentions as best we can, and sign the stipulation and
7 file it by the end of next week with the Board.

8 Now, there most likely will be some contentions
9 that we cannot agree on, at least as far as being ones which
10 we feel would be adequate for adjudication in this
11 proceeding, and for those we are going to file our position
12 statements by the 19th.

13 Now, I think the intervenor may want to make a
14 statement with regard to some of the contentions. I am not
15 sure.

16 MS. HOURIHAN: We would like to state that
17 Contentions No. 25, No. 27 and No. 19 we are all willing to
18 throw those out.

19 MR. LAZO: Would you repeat please? Nineteen,
20 25, and 27?

21 MS. HOURIHAN: That is correct.

22 MR. LAZO: They are withdrawn; that is correct?

23 MS. HOURIHAN: That is correct.

24 MR. LAZO: We just have a few comments in looking
25 at these. We had noted that there were a number of

1 contentions, that might have been combined, and I don't know
2 if you are taking this into account in your discussion.

3 MR. MC GURREN: We did discuss that, Mr. Chairman.

4 MR. LAZO: All right, because we did notice, for
5 example, it might be very possible to combine contentions 2,
6 3 and 4. It is possibly true with contentions 8 and 9, as
7 some of these relate to technical qualifications.

8 And I think we noted that Contention 18 is very
9 similar to Contention 26.

10 MR. COLE: Another one which you might want to
11 consider combining are numbers 10, 15 and 16, which are very
12 similar and they should be considered.

13 MS. HOURIHAN: Excuse me. Could you repeat that
14 please?

15 MR. COLE: Ten, 15 and 16 are very similar.

16 MS. HOURIHAN: We are thinking that Nos. 2, 3, 4
17 and 11 could be combined, as well as 8, 9 and 10. And we
18 also thought No. 26 should be combined.

19 MR. COLE: What were the last numbers you gave.

20 MS. HOURIHAN: The last two were the same as you
21 stated, 18 and 26.

22 MR. COLE: Okay. Fine. Eleven seems to fit in
23 with 2, 3 and 4. But I mentioned 10, 15 and 16 concern
24 operator qualifications, and we want to take a look at that,
25 to resolve qualifications.

1 MR. COLE: As we understand, No. 24, it doesn't
2 address safety matters. You may wish to consider whether it
3 should remain in issue, as we understand it.

4 MS. HOURIHAN: I am more than willing to throw
5 that one out.

6 MR. COLE: Thank you.

7 MR. LAZO: Well then, as I understand it, the
8 parties will meet on the 9th and 10th and attempt to file a
9 stipulation by the end of next week; and then let's see, the
10 end of next week, okay, and then on the 19th we will have
11 responses from the applicants and from the staff as to any
12 contentions upon which agreements cannot be reached?

13 MR. MC GURREN: That is correct.

14 MR. LAZO: The end of next week for the
15 stipulations, and that is December 12th?

16 MR. MC GURREN: That is correct.

17 MR. LAZO: Now it would be useful if we talk a
18 little bit about schedule. Most of the contentions are in
19 and agreed to by the parties first, and then we have to
20 consider the timing of the evidentiary hearing.

21 Could we ask you, Mr. McGurren, on behalf of the
22 staff, does the staff anticipate when the staff's safety
23 evaluation report and the staff's final environmental
24 statement would be published?

25 MR. MC GURREN: The best estimates that we have at

1 this point is that the SER will be published in February,
2 1982, and that the final environmental impact statement will
3 be published in December, 1981.

4 MR. LAZO: December '81 for the FES, and February
5 '82 for the SER?

6 MR. MC GURREN: That is correct.

7 MR. LAZO: Just about two months later. Then the
8 earliest you are proposing that this proceeding could go to
9 evidentiary hearing would be the beginning of 1982?

10 MR. MC GURREN: That is correct.

11 MR. LAZO: What is the status of construction of
12 Units 1, 2 and 3, Mr. Gehr, could you tell us, as far as
13 percentage of completion, which unit it is, as far as Unit 1?

14 MR. GEHR: Yes, they are going in sequential
15 number. Unit 1 is first, 2 is second and Unit 3 is third.
16 Unit 1 is about 77 percent complete. We anticipate that it
17 will be ready for fuel loading in November of 1982.

18 Our goal is to obtain an operating license by that
19 date. We believe that our estimate is well founded, and I
20 would have to be candid with you that the NRC staff believes
21 that it will be several months later than that, less than
22 six months, about six months later.

23 We expect to have another look at the progress
24 that we are making on construction. We think that we will
25 convince the staff that we are going to meet November, '82.

1 Thinking of evidentiary hearings, we are a little
2 surprised at the date they have for the FES, because it was
3 our understanding that -- the last I had heard -- that the
4 draft environmental statement would be out this May, May or
5 June, and I was surprised that it would take six months to
6 produce the final after the draft; however, whatever it is,
7 we also note that the safety evaluation report will probably
8 be pacing and may if it comes out on their schedule of
9 February '82, at that point we go to the ACRS, and there is
10 probably another supplement after the ACRS review.

11 We have or probably are thinking of -- we have to
12 add six weeks to the February '82 for that ACRS review, some
13 kind of a hearing then cannot start until May of '82 on the
14 safety issues. There may be an additional supplement coming
15 out even during the course of the hearing.

16 MR. LAZO: Well, that looks it might impact on
17 your fuel loading.

18 MR. GEHR: Yes, it would, and in order to
19 facilitate that and at least minimize the load on the Board
20 and the parties in preparing for hearings, we probably will
21 suggest and urge that we have separate hearings on
22 environmental issues, get those resolved and behind us, and
23 any appeals resolved on those, if there are appeals.

24 So that the problems left on the safety side are
25 at least the little problems that the burden of the Board

1 has will be minimized.

2 MR. CALLIHAN: Mr. McGurren, do you have a date
3 for the draft environment impact statement from staff?

4 MR. MC GURREN: Dr. Callihan, no, I do not. Mr.
5 Gehr said it was indicated by I take it the project manager?

6 MR. GEHR: It has been so long I would hesitate to
7 say what my source is.

8 MR. MC GURREN: I don't have that date.

9 MR. GEHR: But that is the date that -- the work
10 on the DEIS is proceeding, of course, and it is my
11 understanding it has been contracted out to Argon, and that
12 is the date that they have scheduled.

13 MR. LAZO: Well, of course, these two staff
14 documents are very important items.

15 MR. GEHR: Absolutely.

16 MR. LAZO: And must be published and available for
17 review before any hearings could go forward. If they are
18 likely to be separated by six months or more in the
19 publication, then we agree with you, Mr. Gehr, it would be
20 reasonable to hold a separate hearing on the environmental
21 phase, and then go forward later if indeed the SER
22 supplement is published six months later, and have a health
23 and safety hearing at that time. There is no problem in
24 breaking the hearing into two phases.

25 Ms. Hourihan?

1 MS. HOURIHAN: I would like to point out that a
2 letter was sent out by the NRC on July 11th of 1980 to all
3 applicants for operating licenses and construction permit
4 holders, and there is a chart, and this brings up some
5 questions that I have about that chart. I wonder if these
6 could be explained to me.

7 The last plant that is discussed in this letter is
8 the Palo Verde plant.

9 MR. LAZO: What is the date of that letter, and
10 the addressees?

11 MS. HOURIHAN: Okay. This was sent to me by a
12 group in Texas who are intervening, last summer, after they
13 received it. I guess they got it from their library, Glen
14 Rose people who are building the plant there, in Austin
15 Texas. It is addressed to All Applicants for Operating
16 Licenses and Construction Permit Holders, July 11, 1980, and
17 it is from Darrell G. Eisenhunt, who is the Director of the
18 Division of Licensing Office, NRC. And it is time line to
19 all of the plants in the country today that are looking for
20 operating or construction permits, and what they have listed
21 for Palo Verde is that the SER will be out in 5-82; the ACRS
22 will be out in 6-82; the SER Supplement will be out in 7-82,
23 the DES will be out in 7-81; the FES in 12-81, and then this
24 the part that I had questions about, and that is, that it
25 has a heading, Start of Hearing and Completion of Hearing,

1 and then it as the Construction Hearings and the Completion
2 and the Start, and then it has the Operating License
3 hearings. And then the very last one is, of course,
4 Operating License Issue.

5 And my question is, how can the NRC put out a
6 letter which states that in 1-82, you know, January of 82,
7 the operating license will be issued? It is just hard for
8 me to look at when here I am fighting the operating license,
9 here I receive this thing in the mail, and it states that on
10 that date they will get their operating license. And I
11 wonder where the NRC comes up with these figures and where
12 does that leave us?

13 MR. MC GURREN: Well, we don't, by having
14 something like that in a letter, indicate that the license
15 is going to be issued, regardless. I think what they have
16 done, they are showing what would happen if the Board found
17 that the evidence indicated that a license should issue,
18 would that license be issued, and I think they are going on
19 past experience of how long it takes a proceeding to run,
20 how long it takes for findings and appeals to be filed, and
21 based upon that they are saying what it would be if the
22 Board found that a license should issue.

23 MS. HOURIHAN: Thank you.

24 MR. LAZO: Again, what is the date that they have
25 proposed as an estimate for the issuance of the operating

1 license?

2 MS. HOURIHAN: 12-82.

3 MR. LAZO: 12-82. Well then, I agree with Mr.
4 McGarren that is what they are doing, saying that if it went
5 that way, the final facing item would be the staff's safety
6 evaluation report supplement, and that in approximately six
7 months thereafter the hearings would be complete, but of
8 course those are all estimates and they are about as valid
9 as any we get from crystal balls, I suppose.

10 MR. GEHR: The applicant has every hope that the
11 schedule that she has read to us can and will be improved.
12 Our Palo Verde project is a very excellent project; it has
13 been going along right on schedule and is proceeding and
14 passing up other projects in the normal progression of
15 things, and we intend to keep this record going, and we have
16 confidence that the SER can be published not in May but in
17 February of '82.

18 However, even advancing to that date, and if we
19 can we will advance it to even better than that, and we are
20 going to be trying to get this thing resolved, but even if
21 it comes up in February, I think it is clear that the
22 current rules for stays, appeals and so on, of allowing only
23 nine months for the total hearing/appeal/review process,
24 plus ACRS, which is involved here, is an extremely tight
25 schedule.

1 MR. LAZO: Yes, we are reluctant to see that come
2 about, because it would put pressure on everyone to hurry
3 along, and these are important matters to not be hurried.
4 Anytime the Licensing Board has attempted to put pressure on
5 the staff, we have been advised that the staff could only do
6 its work in an orderly fashion and get it complete based upon
7 their own schedules, and usually the staff complains that
8 the reason they cannot move these things forward is that the
9 applicants are slow to give the staff the information that
10 the staff needs to prepare those documents.

11 So if you do indeed plan to try to move the dates
12 back a little bit so they will not impact with your fuel
13 loading of Unit 1, assuming that a favorable decision is
14 reached, then I think you should work with the staff to be
15 sure that they get all the information they need.

16 MR. GEHR: We agree, Mr. Lazo. We believe we had
17 a remarkable record on the construction permit. We met
18 every schedule on every date that the staff gave us; we will
19 do that or better this time.

20 MR. LAZO: Fair enough.

21 The only thing remaining from the Board's point of
22 view, as we indicated earlier, Ms. Hourihan, some of the
23 references are very difficult to read in the supplement that
24 you have filed. I am just wondering though if it is
25 worthwhile to go through those now, or since you are going

1 to file a new set of stipulated contentions, hopefully,
2 perhaps we would be better off just wait.

3 MS. HOURIHAN: Are you referring to Contention 11,
4 because that has two pages of references. Is that the
5 contention that you --

6 MR. CALLIHAN: The reference is Contention P,
7 Chapter 10, page 50.

8 MS. HOURIHAN: That is the wrong statute but the
9 applicant's attorney knows what I am talking about, and the
10 NRC knows what statute I am talking about. I know it, but I
11 wrote it down wrong, and I apologize.

12 MR. CALLIHAN: Tell the Board what statute you are
13 talking about.

14 MS. HOURIHAN: Do you have that number, offhand?

15 MR. GEHR: She is talking about the Atomic Energy
16 Act, and the requirement that the applicant be financially
17 qualified.

18 MR. MC GURREN: Dr. Callihan, I can give you some
19 regulation references. Now, this is, of course, my
20 interpretation, but the appropriate regulation would be
21 5033(f) and Appendix C, also possibly 5057(a)(4).

22 MR. COLE: What about No. 16.

23 MR. CALLIHAN: No. 27?

24 MR. GEHR: Twenty-seven has been withdrawn.

25 MR. CALLIHAN: Thank you. I stand corrected.

1 MR. COLE: Ms. Hourihan, the list that we have of
2 references following Contention No. 4, which would be page 9
3 in my numbering system, it is almost illegible. The first
4 one is really the Heidleberg Report which is probably your
5 most important reference there.

6 MS. HOURIHAN: That is true.

7 MR. COLE: So that is not a problem.

8 MS. HOURIHAN: Would you like me to tell you what
9 the rest of the references are? No. 2 is U.S. NRC
10 Regulatory Guide No. 1.109, 1976.

11 MR. COLE: Okay.

12 MS. HOURIHAN: With 10(c) in Part 50, Appendix 1.

13 MR. CALLIHAN: Appendix I?

14 MS. HOURIHAN: "I"; and No. 3 is APS Environmental
15 Report OL Stage, Volume 4, Sec. 5, Appendix 5, B-4.

16 Number 4 is from the Washington Post, November 11,
17 1979, by D. Brookenfeld.

18 Number 5 is from Environmental Research, Vol. 17,
19 1978, pages 437-452, by C.T. Gargen, Jr.

20 Number 6 is International Atomic Energy
21 Agency-SM-237/17, by W. Bruling, B. Frank and D. Tiefel.

22 MR. CALLIHAN: Is this reference No. 6. That is
23 also No. 1 is it?

24 MS. HOURIHAN: No, it is not. We have it here, if
25 you would like to see it.

1 MR. CALLIHAN: Same authors though?

2 MS. HOURIHAN: Same authors, a different article.

3 MR. COLE: And what was the date of Reference 6?

4 MS. HOURIHAN: Oh, boy, I don't have a date for
5 No. 6. The date isn't listed in the article. It would have
6 to be after '78, because the references in the article are
7 around '77 and '78.

8 MR. CALLIHAN: What is the final entry in the
9 title of that reference?

10 MS. HOURIHAN: B-12, Transfer of Organically Bound
11 Radionuclear Food Chains to Man. Model, Example of
12 Radiocobalt and Vitamin B-12.

13 I believe the identification of No. 6,
14 International Atomic Energy Agency, is IAEA, the same
15 numbers as I gave you before.

16 MR. COLE: Ms. Hourihan, on the sixth page, which
17 is your reference following Attention:, the last one on the
18 page, an article by Lawson, could I get the reference there,
19 in Science. That is the page that starts with Assess the
20 Transport of, reference at the bottom of that page.

21 MS. HOURIHAN: It is the Plutonium in Drinking
22 Water?

23 MR. COLE: Effects of Chlorination.

24 MS HOURIHAN: It is Science, Vol 201, September
25 15, 1978, pages 1008-1009. We have a copy of that here also.

1 MR. COLE: Thank you.

2 MR. LAZO: Well, are there any other matters that
3 we may properly address here today before we adjourn?

4 MS. HOURIHAN: I have a question.

5 MR. LAZO: Please proceed.

6 MS. HOURIHAN: I was wondering about the
7 proceedings as far as the fuel loading is concerned. Does
8 the applicant -- say that the hearings are going and the
9 license has not been permitted, and their time line is down
10 where they now have to load the fuel, they don't have the
11 right to load the fuel until they have a license. So do
12 they have the right to have fuel on site prior to receiving
13 the operating license, or is that against the --

14 MR. LAZO: As far as loading fuel is concerned,
15 they will have to have a license. If a full-term operating
16 license has been issued, then that would permit them to load
17 fuel. If these hearings are not complete, and no full-term
18 operating license has been issued, they could not load fuel,
19 but would be able to apply for a fuel loading and low-power
20 testing license, if they so desire.

21 If there are issues outstanding, which relate to
22 findings which have to be made before a low-power testing
23 license could be issued, then those issues would have to be
24 resolved before any low-power fuel loading and low-power
25 testing license could be issued.

1 As for bringing fresh fuel onto the site, I don't
2 believe that they have to have a license to do that.

3 Mr. Gehr?

4 MR. GEHR: We do not need an operating license to
5 do that. We would probably need a special --

6 MR. MC GURREN: That is what we understand.

7 MS. HOURIHAN: Thank you.

8 MR. LAZO: Are there any other matters?

9 MS. HOURIHAN: When do you think the hearings will
10 start?

11 MR. LAZO: Well, assuming that discovery can be
12 completed in a timely fashion, the hearings normally would
13 start within about four weeks, four to six weeks perhaps,
14 after the two principal staff documents are issued; when the
15 final environmental statement has been published, we can
16 then establish a hearing date, to have an evidentiary
17 hearing, all of the environmental issues, whatever they are.

18 After the supplement to the staff's safety and
19 evaluation report, which would reference the Advisory
20 Committee on Reactor Safeguards' letter, the ACRS letter,
21 the same thing is true: The hearings on health and safety,
22 financial qualifications, technical qualifications, could be
23 heard following the issuance of that document.

24 Now, we have heard various estimates today as to
25 when those documents will be published, and the hope that

1 they may be accelerated; but roughly four to six weeks after
2 the two principal staff documents come out.

3 MS. HOURIHAN: And how much notice will we have as
4 to when those documents are to be published? Will someone
5 contact us and say, "Well, they are on the way, or it looks
6 like they will be published at such an such a time"?

7 MR. LAZO: They will be served upon all of the
8 parties in this proceeding as soon as they have been issued,
9 and assuming we know your address by that time.

10 MS. HOURIHAN: I have a real one now; I am not
11 kidding.

12 MR. LAZO: You were going to read it to us.
13 (General laughter.)

14 MS. HOURIHAN: I don't know if I want to say it in
15 the open or not.

16 MR. LAZO: Seriously, we do have to have a mailing
17 address.

18 MS. HOURIHAN: I do have one, and I will be there
19 for the next few years.

20 MR. LAZO: Very well, would you then file a
21 document with the Board --

22 MS. HOURIHAN: Yes.

23 MR. LAZO: -- telling where papers should be filed?

24 MS. HOURIHAN: Yes, I will.

25 MR. LAZO: And, of course, that will be served on

1 other parties to the procedure.

2 As to Mr. Shuey, we left you, I think, with the
3 understanding that if if you want to file a late petition,
4 you are certainly entitled to, but I did want to be sure
5 though that you understand that if you simply wish to assist
6 Ms. Hourihan, and she is willing to have you sit at counsel
7 table with her during the hearing, that we would have no
8 objection to you offering your assistance, and being present.

9 This would be true also of any of your witnesses,
10 your technical people who you would propose to put on when
11 you put on testimony, that they could sit in and advise you
12 at the counsel table.

13 As far as the filing of documents is concerned, I
14 want you to please look carefully at the procedural
15 assistance paper that Mr. McGurren is going to provide for
16 you, and in terms of filing of documents it is very
17 important that every party to the proceeding, in industry,
18 the three judges who are going to make the decision in this
19 proceeding receive a copy of every paper that is exchanged.

20 Under that procedural assistance provision, there
21 will be some documents that you will not have to serve on
22 all the parties. You can file them with the Public Document
23 Room and they will serve them for you, which will save you
24 some expense. But anything that is filed must be served on
25 each of the parties and each of the Licensing Board members.

1 Mr. McGurren, is there anything else that we can
2 cover?

3 MR. MC GURREN: I don't have anything to add.

4 MR. LAZO: Mr. Gehr?

5 MR. GEHR: No, I don't have anything to add. I
6 see time working against us and I employ the other parties
7 to meet the required time allowances. I don't know just how
8 this program of copying and serving out of Washington papers
9 filed by the intervenor is going to impact on time schedules.

10 MR. LAZO: It will have expired by the time we get
11 to hearing. I remember it was a one-year program, an
12 experimental program that started when, July 25th, or
13 thereabouts?

14 MR. MC GURREN: That would be my best estimate,
15 yes.

16 MR. LAZO: We were wondering a little bit about
17 establishing a discovery schedule, or whether that is
18 premature. It is going to be a worthwhile thing to do.

19 MR. GEHR: Well, we might at least discuss it. I
20 would hope that you would anticipate that there would be no
21 order immediately forthcoming from this special prehearing
22 conference until after the parties had filed a stipulation
23 and a statement of position as to contested contentions

24 And in that time I think I would think and hope
25 that the Board would establish a discovery schedule, and I

1 see no reason why the interrogatories, written
2 interrogatories, not be filed within two weeks after the
3 service of the Board's order.

4 MR. MC GURREN: Mr. Chairman, this is something we
5 can discuss next week at our meeting with all the parties.
6 We might even be able to stipulate as to a discovery
7 schedule.

8 MR. LAZO: Well, I think that would be helpful if
9 you can do that. We do want to comment right now that you
10 all should be commended in your willingness to get together
11 and spend two days. It surely will be time well spent and
12 make things a lot easier farther down the proceeding to go
13 forward with some dispatch.

14 Ms. Hourihan?

15 MS. HOURIHAN: First of all, we will be more than
16 happy to have copies of documents that you want to have
17 copies made in the Licensing Branch in Washington, we may do
18 that for Washington service papers, but we would be more
19 than happy to drive down to your office and deliver you
20 copies. In fact, I personally delivered you the first
21 petition.

22 MR. LAZO: That is correct.

23 MS. HOURIHAN: And we are aware that you are close
24 by. But I do have a request, and that is, that after we
25 meet next week, and the Board and the NRC have their answers

1 on the 19th filed, I request that we don't discovery or
2 interrogatories or anything until after Christmas. I am
3 going to be gone for two and a half or three weeks, and that
4 is the time I spend with my family, and it is only once a
5 year, and I really would not like that rushed, you know, to
6 have an interrogatory in two weeks during that time, and
7 could we say maybe the middle of January?

8 I just don't want to leave today thinking that my
9 Christmas vacation is going down the tubes.

10 MR. LAZO: You will have a term paper tomorrow.

11 MR. COLE: The mails might handle that problem.

12 MR. LAZO: I don't hear any objections from any of
13 the other two parties, so it seems that you will not have a
14 problem.

15 Very well, and again thank you for coming, and I
16 hope your meeting next week goes well, and we will expect to
17 receive your filing in a timely fashion, and we will attempt
18 to spend Christmas reading them.

19 We will move on in an expedited fashion and at
20 least get settled what the issues in this proceeding are
21 going to be, and in an orderly fashion.

22 If there are any discovery problems we do want to
23 encourage informal discovery process, and they can be used,
24 and to the extent that they can be used they should be used,
25 and if they are not working, then it may be necessary that

1 the Board get involved, but at this point we really don't
2 want to get involved in the proceedings except to help keep
3 it moving if it should bog down. If there are objections to
4 discovery requests, or if there are protective orders
5 necessary, we will take care of that, but to the extent you
6 can do this yourselves, like reasonable ladies and
7 gentlemen, get down to the meat of the controversy, please
8 do that, but if you can't, then we will help.

9 Well, then I think we have reached the end today.
10 Again, thank you for coming.

11 The prehearing conference is adjourned.

12 (Whereupon, at 12:45 p.m., the prehearing
13 conference in the above-named matter was adjourned.)

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