

NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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 In the Matter of: :
 :
 THE CLEVELAND ELECTRIC ILLUMINATING COMPANY : DOCKET NO.
 : 50-440-OL
 PERRY UNITS I & II : 50-441-OL
 :
 -----X

Lake County Courthouse
 Lake County Administration
 Conference Center
 105 Main St.,
 Painesville, Ohio 44077

Wednesday, June 3, 1981

The Commission met at 9:00 a.m. pursuant to notice,
 Peter Bloch, Chairman of the Atomic Safety and Licensing
 Board, presiding.

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300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

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APPEARANCES:

BEFORE: Peter B. Bloch
Jerry R. Kline
Frederick J. Shon

NRC STAFF:
Charles Barth, Esq.

APPLICANT:
Shaw, Pittman, Potts
& Trowbridge, by
Jay E. Silberg, Esq.
Bruce W. Churchill, Esq.

Cleveland Electric
Illuminating Company:
William J. Kerner, Esq.
Lawrence O. Beck, Esq.

William E. Coleman

INTERVENOR:
Daniel D. Wilt, Esq.
Terry J. Lodge, Esq.
Susan Hiatt
Russell Bimber
Albert Stewart
Ed Erndt

INDIVIDUAL INTERVENOR:
Tod J. Kenney

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1 MR. BLOCH: The meeting
2 will please come to order. There was a brief
3 task which we requested of applicant
4 yesterday, and Mr. Churchill informed me
5 prior to the start of proceedings that he
6 would be able to proceed. I had asked for
7 data concerning the current yield of the
8 publicly traded bonds of Cleveland Electric
9 Illuminating Company.

10 MR. CHURCHILL: Good
11 morning. I'm happy to report that the
12 Cleveland Electric Illuminating Company is in
13 sound financial health.

14 I talked to Mr. Maugans, who is the vice
15 president of finance and chief financial
16 officer of the company, and he told me that
17 currently, because of the high interest rates,
18 there are not routine bond offerings. So
19 there's no real recent data of that type to
20 report.

21 However, CEI has been rated, their bond
22 ratings are rated AA by Moody's, AA minus by
23 Standard & Poor, AA by Fitch, and the AA
24 rating is about the second highest rating
25 that you can be rated on these companies.

1 There's only right now two or three utilities,
2 if that, who have a AAA rating. One is
3 Louisville Gas and Electric, who Moody's gives
4 a AAA and Standard & Poor give a AA.

5 There was a Texas utility somewhere I
6 thought that might have had two AAA ratings,
7 but this places CEI way up at the top as far
8 as being in sound financial condition
9 relative to utilities in this country.

10 There is some minor ongoing bond
11 offerings at negotiated rates for small
12 amounts, a million or two dollars at a time.
13 The last one was March 17 of this year.

14 MR. BLOCH: I don't think
15 those would be very helpful to us, but I had
16 asked whether there was trading in publicly
17 traded markets, which would be secondary
18 tradings, not offerings by the company.

19 MR. CHURCHILL: The only
20 thing I can say about that is that I did not
21 check the Wall Street Journal to see what
22 that was, but if they were traded, they would
23 be traded at a rate that would be consistent
24 with today's interest rates in the AA bond.

25 MR. BLOCH: Most likely

1 that would be and it would be helpful to know
2 that. It may not be in the Wall Street
3 Journal. It depends if they would be traded
4 on the New York Stock Exchange, and that
5 would depend both on the size of the company
6 and on the size of the float, the number of
7 shares being traded, number of bonds
8 outstanding.

9 MR. CHURCHILL: You would
10 be interested in what the effective yield
11 would be at the traded price, I take it?

12 MR. BLOCH: Correct, I
13 would settle for current yield.

14 MR. CHURCHILL: There are
15 three bonds listed, four. I see 11 percent,
16 13 percent, 14 percent and 13 percent.

17 MR. BLOCH: Could you read,
18 in the same order of the percentages, the
19 date of maturity?

20 MR. CHURCHILL: 90, 91,
21 2011 and 1985.

22 MR. BLOCH: I got 11, 13
23 and 14, which is four percentages, and I have
24 only --

25 MR. CHURCHILL: 11, 13, 14,

1 13.

2 MR. BLOCH: And the years
3 are 90, 91, 2011, and what was next?

4 MR. CHURCHILL: 1985.

5 MR. BLOCH: Thank you.

6 MR. CHURCHILL: Are you
7 interested in recent preferred stock offering
8 and the commercial paper rating?

9 I have that as well.

10 MR. BLOCH: Those would be
11 helpful.

12 MR. CHURCHILL: The last
13 major financing was negotiated in March and I
14 think closed in April, which was a preferred
15 stock financing which was placed with six of
16 the top credit organizations, placed
17 privately with six of the top credit
18 organizations in the country at 11.35 percent.
19 This is considered a good rate for preferred
20 stock today.

21 CEI has very top quality commercial paper.
22 For short term borrowing, Moody's gives them
23 a P 1 rating and Standard & Poor gives them
24 an A 1 rating. These, I understand, are the
25 top commercial paper ratings that these

1 rating firms give.

2 Mr. Maugans further said that they
3 basically do not have trouble with financing.
4 There is money available to the company when
5 needed.

6 MR. BLOCH: First, if any
7 of the parties would like to comment on the
8 data which we just received, they should have
9 an opportunity to do so.

10 Are there any people wishing to comment
11 on the possible significance of that data to
12 this proceeding?

13 There is no comment, then Mr. Lodge,
14 would you like to proceed?

15 MR. BARTH: May I make a
16 point of order before we go into that?

17 MR. BLOCH: Sure.

18 MR. BARTH: Yesterday I
19 objected to the adoption of permitting
20 specific attention at this time. In
21 Baltimore Gas and Electric Company, Calvert
22 Cliffs Nuclear Power Plant, 4 AEC 243, 244,
23 1969, the commission stated, "Our licensing
24 regulations --" which are general in their
25 application and which are considered and

1 adopted in public rule making proceedings
2 wherein the commission can draw on the views
3 of all interested persons "-- are not subject
4 to amendment by boards and individual
5 adjudicatory proceedings."

6 I would point out that some time ago the
7 commission's regulations --

8 MR. BLOCH: Just so we can
9 understand the context, could you explain the
10 relationship between that dictum or holding
11 and the issues in the case?

12 MR. BARTH: That's exactly
13 what I'm trying to do, sir.

14 MR. BLOCH: Okay.

15 MR. BARTH: I would like
16 to point out, some time ago the commission's
17 regulations had to be submitted with the
18 petitions intervened.

19 They were amended in 12471(B) to provide
20 15 days prior to the conference you are
21 having today that the contentions which the
22 petitioner seeks to have litigated in the
23 matter must be set forth and the basis for
24 each contention set forth with reasonable
25 specificity.

1 I concede that you have enormous power to
2 regulate the conduct of the proceeding under
3 10(C) of our 2.757.

4 MR. BLOCH: You still
5 haven't done what I requested, which is to
6 explain the relationship between that
7 language and the subject that was at stake in
8 the case.

9 Is that an appeal from a board decision
10 to admit issues?

11 MR. BARTH: I see. I
12 have not read the rest of the case because it
13 does not seem important in view of the
14 commission's specific words.

15 MR. BLOCH: Well, I always
16 like to interpret the words of a judicial
17 opinion in light of what was at stake in the
18 case. I was taught that in law school.

19 MR. BARTH: I did not
20 bring the case with me, so I do not have the
21 context of the commission's statement.

22 MR. BLOCH: I see.

23 MR. BARTH: I would like
24 to suggest that the authority to regulate
25 proceedings does not extend the authority to

1 permit 2.714(B) to be changed to provide for
2 specific contentions to be submitted later
3 than 15 days, in fact, at the hearing itself.

4 MR. BLOCH: Isn't there an
5 explicit section of the regulation stating
6 that the board has the authority to alter
7 deadlines in its discretion?

8 Are you aware of that section?

9 MR. BARTH: I'm aware you
10 have the authority to extend deadlines. I
11 think, in my view, and you may certainly
12 differ, what you have done, you have not
13 extended the deadline, you have altered the
14 substance of the commission's regulations
15 which were designed to provide notice to
16 everybody so that a sensible, coherent
17 hearing could be held on the reasonably final
18 product so there would be no surprise.

19 MR. BLOCH: I appreciate
20 that. Have you concluded that point?

21 MR. BARTH: Yes, sir.

22 Thank you.

23 MR. BLOCH: Are there
24 other parties who wish to comment on that
25 point or do we go on to the contentions?

1 MR. BIMBER: It seems to
2 me this pre-hearing conference is being held
3 because there was a need for additional
4 clarification of the issues. It seems also
5 to me that, if this were the actual hearing
6 itself, the specificity expected by the staff
7 would have had to have been completed well in
8 advance of the beginning of the hearing, but
9 this being a pre-hearing conference, I think
10 it's an important difference.

11 MR. SILBERG: For the
12 record, could we have that gentleman identify
13 himself? I know who he is.

14 MR. BIMBER: I'm Russ
15 Bimber, volunteer with the Lake County DSA
16 staff.

17 MR. BLOCH: I would like
18 to remind people to please follow the rule
19 from yesterday, that if you are not a regular
20 participant and you do sneak up, please
21 identify yourself for the record.

22 Is Sunflower Alliance, Incorporated et
23 al. prepared to proceed?

24 MR. LODGE: Yes, sir, we
25 are. Good morning.

1 MR. BLOCH: Good morning.
2 I omitted saying good morning.

3 MR. WILT: Good morning.

4 MR. LODGE: The third
5 ground of intervention of Sunflower Alliance
6 et al. is that these petitioners allege that
7 the licensure of the Perry Units 1 and 2 to
8 operate will cause the petitioners and their
9 members, as the case may be, irreparable harm
10 on the ground that the forecasted net energy
11 demand of Cleveland Electric Illuminating
12 Company and the other applicants for the
13 coming two to eight years does not justify
14 licensure at this time.

15 Further, that there is considerable
16 dispute on the issue of net energy demand
17 forecasts by Ohio utility companies,
18 including Cleveland Electric Illuminating, as
19 demonstrated by the fact that the applicant
20 has revised its 10 year electricity demand
21 forecasts downward by approximately 25
22 percent between their 1978 and 1979
23 contentions.

24 This occurred after --

25 MR. SILBERG: I think that

1 word as projections rather than contentions.

2 MR. LODGE: I'm sorry.

3 You are quite right.

4 This, of course, occurred after
5 applicants were granted a construction
6 license. A 1980 study by the United States
7 General Accounting Office found that the
8 national growth rate in electrical demand may
9 range as low as 2.5 percent per year through
10 1988.

11 A 1980 analysis commission had by the
12 Ohio Office of Consumers Council concludes
13 that Ohio utilities, including applicants,
14 have greatly and historically overprojected
15 estimates for net energy demand. For
16 applicants, the Consumers Council study
17 reveals that the 1978 to 1988 growth rates
18 forecast may actually be overestimated from
19 25 percent to more than 100 percent.

20 It would be noted, I would hope, by the
21 commission, that yesterday we commenced on
22 this particular ground of intervention, and
23 the matter was continued over to today. As I
24 recall, however, the board had inquired of
25 the intervenor if we could clarify, I guess,

1 a nexus between this contention and the
2 environmental aspects of an operating license.

3 By way of responding to that specific
4 inquiry, I would like to indicate that the
5 applicant filed a rebuttal or a reply to
6 contentions three, four and five, among
7 others. The discussion of the three grounds
8 of intervention was lumped together.

9 In that discussion, the applicant cited
10 extensive precedent regarding the so-called
11 rule of reason underlying the application of
12 the National Environmental Policy Act, and
13 the applicant further discussed the
14 assertions stating that, at the operating
15 license stage, the rule of reason precludes
16 consideration of an alternative that requires
17 the abandonment of already constructed
18 facilities.

19 MR. BLOCH: Mr. Lodge,
20 because we are operating without a transcript,
21 you didn't have an opportunity to review the
22 remarks that I did make to you yesterday.

23 MR. LODGE: Yes, sir.

24 MR. BLOCH: I would just
25 like to point out that, while I do think you

1 have a problem related to what the correct
2 environmental balance is at this stage of the
3 proceeding, the remarks I made were not in
4 complete agreement either with what applicant
5 argued.

6 I was merely arguing or discussing with
7 you the problem that at this stage a large
8 portion of the investment has already been
9 made and that, therefore, the environmental
10 balance must be considered to have shifted
11 enough because of a reduction in need for
12 power, so that the 1.3 or 1.4 billion dollars
13 originally considered as part of the balance
14 would be overcome by new factors that would
15 change the entire balance, even though
16 there's no more expenditure of money for
17 bidding a plant and there's no no more
18 environmental damage to be done by
19 construction.

20 The construction is already authorized to
21 go forward.

22 MR. LODGE: Correct.

23 MR. BLOCH: I was not
24 adopting applicant's view that you are
25 entirely barred, but merely pointing out what

1 I thought was the correct environmental
2 balance at this stage.

3 MR. LODGE: Thank you for
4 that clarification. Just in a brief reply to
5 that, I was certainly not trying to impute
6 the assertions of the applicant to the board.
7 I think it might prove to be something of a
8 good counterpoint, however, to address your
9 inquiry of yesterday.

10 It is the gist of Sunflower Alliance's
11 contention on this third ground of
12 intervention that there is very compelling
13 information that has become a matter of
14 public record in several different ways that
15 would indicate that licensure of the plant to
16 operate is not warranted because there will
17 be no need for the capacity in 1984 of Unit 1,
18 and the addition of capacity from Unit 2 in
19 1988.

20 It is our contention that the
21 environmental effect of authorizing the
22 loading of fuel, minimal as those may or may
23 not be by NRC standards, simply cannot be
24 justified in light of the fact that the
25 economic benefit of having the plant operable

1 and on line at those times has, for all
2 intents and purposes, vanished as of this
3 date, or is becoming more and more
4 foreseeable as to the economic unviability of
5 the facilities.

6 MR. SHON: Mr. Lodge, we
7 have heard several times from several people
8 here that a brand new nuclear plant produces
9 electricity at a much lower price than older
10 fossil fuel plants in particular.

11 Wouldn't there be some advantage
12 economically in starting such a plant, even
13 if it meant that you shut down a few older
14 plants that had outlived their usefulness or
15 were inefficient?

16 MR. BLOCH: Marginal costs
17 of generating power at the nuclear plant are
18 substantially less than the marginal costs of
19 generating power at existing older plants
20 because you are going to have to discontinue
21 using either the nuclear plant or one of the
22 others.

23 Therefore, just strictly on economic
24 terms, aren't we comparing marginal costs
25 rather than total costs?

1 MR. LODGE: That, I
2 believe, would be correct, yes. In response
3 to your question, first of all, I think that,
4 as was discussed yesterday regarding
5 Sunflower's ground of intervention, the
6 second ground of intervention, I think that
7 it is going to be a highly debatable issue
8 indeed that the installed per kilowatt cost
9 of the Perry units, one or both of them, is
10 going to be that advantageous to Cleveland
11 Electric Illuminating.

12 The actual costs of operation, I will
13 acknowledge that my knowledge of the
14 industry's general management practices and
15 the ancillary expenses for management
16 operation, fuel costs and what not are
17 somewhat lower for simple operations, but it
18 is also my clear understanding from some of
19 the, shall we say, dissenting literature in
20 the area and some of the economists in the
21 field, such as Charles Kominov, that the cost
22 of, for instance, coal versus the costs of
23 nuclear are extremely competitive, that
24 depending on the region of the country, coal
25 generally has an advantage.

1 MR. BLOCH: Marginal costs.

2 MR. SHON: That's exactly
3 the point. As Mr. Bloch has pointed out,
4 what I was really asking is the marginal
5 costs.

6 You see, the big cost in the nuclear
7 plant is generally, in fact, interest on the
8 investment. It's a capital cost and it is
9 only the operating costs, which you yourself
10 said are lower than coal costs a moment or
11 two ago, that one must consider here. Those
12 are the marginal costs.

13 You seem to have answered that question
14 already, although I would like you to pursue
15 it a little more.

16 MR. LODGE: I think there
17 is also perhaps a related issue and that is
18 from a management standpoint.

19 It would be advantageous for CEI or the
20 other partners in the facility to immediately,
21 or very soon after the plant were to become
22 operational, to attempt to build it into the
23 base load capacity.

24 There was an investigation by the
25 Pennsylvania Public Utility Commission in

1 1980 upon its own motion. It investigated
2 delays that were then occurring in the CAPCO
3 construction schedule.

4 Testimony was adduced from Richard Rosen
5 on behalf of the Pennsylvania office of the
6 consumer advocate as to generation, planning
7 and reliability. Mr. Rosen indicated at that
8 time, which was March, 1980, that the Beaver
9 Valley Plant, which of course is not in
10 contention here, and the two Perry plants,
11 all three of which were under construction at
12 the time, were not necessary in part because
13 of the fact that CEI and the other partners
14 in those construction ventures would become
15 over base loaded, for all intents and
16 purposes, by the inclusion of those plants in
17 their capacities.

18 MR. BLOCH: I would like
19 to explain that. To some extent the panel
20 has asked questions that may not be strictly
21 necessary at this stage of the proceeding.

22 I think part of what we are trying to do
23 here is to determine whether this particular
24 contention is admissible, but part of it, I
25 think, is to inform you of the burden that

1 you will carry on an issue like this if it is
2 admitted as a contention, because it is not
3 just a simple question that, if there is no
4 need for power considered by itself, that
5 intervenors will win.

6 We are talking about a overall net energy
7 balance, and so long as you understand we are
8 asking in much greater detail than we
9 necessarily need to from a contention stage,
10 I would like you to understand we are not
11 trying to harass you on this issue.

12 There will be a lot of effort spent on it
13 if it's part of the overall case and the
14 burden will be difficult for the intervenors
15 to carry. The burden will be simple for the
16 applicant to carry unless there are strong
17 considerations that will counterbalance some
18 costs that were considered in the prior
19 balance.

20 MR. LODGE: Is it correct
21 at this point that the position of the board,
22 in terms of clarifying this issue, is that
23 the only issue is essentially the operating
24 and management costs?

25 MR. BLOCH: It's the need

1 for balance at the operating license stage,
2 which is the operating and management costs,
3 plus the environmental costs, including
4 safety costs, that are associated with
5 operating and loading, as opposed to whatever
6 financial benefits there are, because the
7 marginal cost of generating nuclear power
8 undoubtedly will be shown.

9 I'm not going to prejudge it, but it will
10 undoubtedly be shown to be less than the
11 marginal cost from generating power from the
12 other facilities, even if you were to prove
13 that the need for power did not exist.

14 Would you like to conclude your argument?

15 MR. LODGE: If I may have
16 a minute, yes, I would.

17 (Pause.)

18 MR. LODGE: I have nothing
19 further at this time.

20 MR. BLOCH: Are there
21 other intervenors that would like to address
22 this point?

23 MR. SILBERG: Mr. Chairman,
24 I think OCRE has a contention that's
25 essentially identical, I think it's number 10,

1 so I think it would be appropriate for Miss
2 Hiatt to address that contention.

3 Contention 10 is demonstrable need.

4 MISS HIATT: Pursuant to
5 10 CFR, part 51, applicant must show that
6 there is a demonstrable need for the Perry
7 Plant.

8 MR. BLOCH: That, of
9 course, would be contrary to what I've just
10 been discussing with Mr. Lodge.

11 Could you show me where in part 51 that
12 is an independent issue, that is, where it is
13 other than the overall environmental balance?

14 MISS HIATT: One moment,
15 please.

16 (Pause.)

17 MR. BLOCH: You try to
18 find it, please, but my guess is it requires
19 that that issue must be discussed in the
20 environmental report and the environmental
21 statements to be issued by the agency and
22 that there is no requirement that that be met
23 as an independent criterion.

24 You may look further, however, and inform
25 me if I'm incorrect about that.

1 MISS HIATT: I believe you
2 are correct on that. Anyway, continuing,
3 OCRE contends this requirement has not been
4 met, thus needlessly subjecting the public
5 and OCRE members from potential harm from
6 escaped radiation.

7 Applicant has failed to, A, take into
8 account in its growth projection all
9 significant factors affecting demand.

10 B, provide for complete internalization
11 of all external costs so that the total cost
12 of electricity is charged to those using it.

13 C, account for the impact of energy
14 conservation methods, both voluntary and
15 involuntary.

16 D, consider adequately the effect of
17 alternative designs such as peak load
18 pricing --

19 MR. BLOCH: When there is
20 a written statement, there's always a
21 temptation to read it faster than the
22 reporter can follow. Please restrain
23 yourself. I think the audience can hear
24 better also.

25 MISS HIATT: -- which will

1 discourage demand and take into account the
2 possibility of their connection as a means of
3 meeting peak demand.

4 A reassessment of these factors by
5 applicant is necessary to meet the applicable
6 regulations.

7 MR. BLOCH: Part of your
8 contention raises in my mind the possibility
9 that, in order to avoid unnecessary
10 environmental damage, even were we to issue a
11 license, we could consider some rather novel
12 conditions on the license.

13 I suppose you can't at this time speak to
14 whether that is part of what you are
15 contending, or are you only contending that,
16 because of these environmental considerations
17 and the failure to pass on costs, full costs,
18 that is a reason for not issuing a license
19 all the all?

20 MISS HIATT: Well, I think
21 the contention here is that there has been
22 insufficient analysis of alternatives and
23 alternative price structures, conservation
24 measures, and not explicitly stating here
25 alternative energy sources.

1 MR. BLOCH: So you
2 interpret the contention to mean an all or
3 nothing type contention, either we refuse to
4 license the plant or we license it, and there
5 are no specific environmental conditions that
6 are being requested on the license?

7 MISS HIATT: Yes, I think
8 it is interpreted as an all or nothing issue
9 to discourage licensure at this time until
10 such factors are addressed.

11 MR. BLOCH: Thank you. Do
12 you have further comments on the contention?

13 MISS HIATT: I believe
14 that Sunflower Alliance's contentions number
15 four and five are very similar to this, as
16 well as Sunflower Alliance's contention
17 number three.

18 No further comments at this time.

19 MR. BLOCH: Mr. Kenney,
20 any comments on this issue?

21 I'm sorry. There is a question here for
22 Miss Hiatt from Mr. Shon.

23 MR. SHON: I would like to
24 know whether you would care to address the
25 point your contention obviously alleges that

1 there's been no consideration or improper
2 consideration given to these things.

3 By that, do you allege that, if these
4 things were not considered or that they were
5 improperly considered at the construction
6 permit stage, you will recall that
7 construction permit stage, and that the
8 licensing board and appeal board and everyone
9 else order a final environmental impact
10 statement?

11 Were these things left out or improperly
12 treated or what?

13 MISS HIATT: I believe
14 they were improperly treated, and besides, I
15 believe that, since this is 1981, not the mid
16 70s, I'm not sure of the exact date at which
17 time the construction permit was issued, that
18 there has been significant changes in
19 alternative energy programs in various other
20 measures which could be taken, which should
21 be considered now at this time and should
22 not be considering back to the older
23 environmental statement issued at the time of
24 the construction permit stage.

25 MR. BLOCH: Do you

1 understand the overall balance considerations
2 which I was discussing with Mr. Lodge, that
3 is, that the issue of need for power is not
4 an independent issue, and that, even if this
5 contention becomes part of the proceeding,
6 proving that there is no, quote, need for
7 power now, will not necessarily result in a
8 decision that the net environmental balance
9 opposes the operating license, so that OCRE
10 and Sunflower Alliance, Inc., if they win on
11 having this contention admitted, may spend a
12 lot of effort on this without success and
13 it's just a risk you should be aware of when
14 you enter into this effort?

15 MISS HIATT: I understand
16 this risk, yes.

17 MR. BLOCH: Mr. Kenney?

18 MR. SILBERG: I would note
19 that Mr. Kenney has an issue in his original
20 petition which seems to track some of the
21 issues covered by Sunflower three, four and
22 five and OCRE ten.

23 MR. BLOCH: Mr. Kenney?

24 MR. KENNEY: Thank you. I
25 would like to contend that they have

1 overestimated the need of the plant.

2 MR. BLOCH: Off the record.

3 (Discussion off the record.)

4 MR. KENNEY: In addition
5 to overestimateing the need of the plant,
6 that the net environmental balance cannot be
7 properly figured at this time because of the
8 factors in the marginal costs, one of these
9 factors being that the company has not
10 delineated the costs to the local counties
11 for the planning of the evacuation and
12 emergency plans.

13 Since that cost has not been specifically
14 estimated, therefore, the marginal costs and
15 the net environmental balance cannot be
16 figured and is an area of concern.

17 MR. BLOCH: Now, you are
18 aware that in comparison to the total cost of
19 this plant, that the amount of money spent
20 for emergency planning is substantially less
21 than -- well, I'm going to roughly estimate,
22 it's a quarter of a percent, maybe less than
23 a tenth of a percent.

24 MR. KENNEY: Granted, the
25 percentage of the operation costs with

1 respect to the evacuation planning may not be
2 nigh, but it is still one of the factors that
3 would contribute to the increased marginal
4 costs.

5 MR. BLOCH: I take it you
6 also are adopting the arguments that were
7 presented by the other intervenors?

8 MR. KENNEY: Correct.

9 MR. LODGE: Sir, before we
10 proceed, I realize this is a little unusual
11 and perhaps a little out of order, I wonder
12 if I might be able to inject one additional
13 consideration that would go to the marginal
14 cost issue?

15 MR. BLOCH: Please
16 continue.

17 MR. LODGE: That is, that
18 historically, the industry-wide statistics on
19 reliability, particularly the capacity factor
20 statistic that is maintained generally
21 indicates, and Charles Kominov, of course,
22 stresses this very point, that there is a
23 habitual tendency by applicant utility
24 companies to overestimate the expected, the
25 anticipated lifetime capacity factors of

1 proposed nuclear facilities.

2 I would submit that, in the particular
3 instance of the Perry units being of a
4 prototype nature, that there is very likely
5 to be an extended period of start-up testing
6 or perhaps what we would call a shakedown
7 period, as Toledo Edison officials have told
8 us Davis-Besse has gone through for three and
9 a half or four years, that with a reactor of
10 unusual design in the American scene of
11 nuclear power generation, that there is very
12 possibly a considerable question as to the
13 projected reliability characteristics that
14 Cleveland Electric Illuminating anticipates.

15 The factor of reliability and of the
16 availability of a large base load plant, such
17 as the Perry units, would comprise certainly
18 the on-again, off-again availability, if that
19 were indeed to become a problem, would go
20 very much to the marginal cost issue, and as
21 I just indicated, I think that the example of
22 the Davis-Besse plant and the costs of
23 backfitting, costs that I assume would be
24 incorporated or accounted as operating
25 expenses simply because they happen once the

1 plant goes on line, could very likely become
2 factors in this case, too.

3 The various methods for generating
4 electricity using nuclear means are to a very
5 great extent involving technologies, the
6 safety factors and the refinements that occur
7 are evolutionary, and I think that the very
8 speculative aspect of those factors is
9 another operating cost consideration that
10 needs to be scrutinized and assessed at this
11 point, at the operating license stage.

12 I would also finally state, as a general
13 contention, that, as Miss Hiatt indicated,
14 there perhaps it is not appropriate to
15 relitigate a construction license proceeding
16 as to the general issue of need.

17 I would submit, as I did yesterday in
18 arguing the second ground of intervention,
19 that there are very, very serious shifts that
20 have occurred, which of course raise the
21 overall economic problem, which I do believe
22 could very much impact the cost factor, the
23 marginal cost factor of operating the units
24 once they would be licensed, if they are to
25 be.

1 MR. BLOCH: Is applicant
2 prepared to comment?

3 MR. SILBERG: I'll try.
4 First let me address some of the specifics
5 that have been discussed here before I get
6 into the generals.

7 Again, I'm kind of at a loss, because
8 what I hear just bears no relationship to
9 what I know the facts to be. I'll work
10 backwards.

11 Mr. Lodge's statements about serious
12 sniffs which affect overall economic problems
13 is so totally vague that I have no idea what
14 he's talking about.

15 As far as the costs of backfitting --

16 MR. BLOCH: It seems to me
17 that in some circumstances a contention of
18 that sort would be extremely vague. It seems
19 to me it's only common knowledge that, since
20 the mid 70s, there has been drastic revision
21 in the demand for energy in this country, and
22 I think, given the changes in demand for
23 energy and the projections of demand that
24 seem not to have taken place, not to have
25 occurred, I think it is at least worthwhile

1 to discuss whether there has been a shift in
2 energy demand since the construction permit.

3 MR. SILBERG: First of all,
4 the intervenors acknowledge that the demand
5 forecasts have been revised downward to
6 account for this in paragraph 13.

7 They say, "Applicants have revised their
8 ten year electricity demand forecast downward
9 by approximately 25 percent between their
10 1978 and 1979 projections."

11 I was referring to what I thought Mr.
12 Lodge was talking about, which is changes in
13 the economic situation rather than changes in
14 the need situation, which I will address
15 later.

16 MR. BLOCH: I misunderstood.

17 MR. SILBERG: I did too,
18 maybe. But that's the problem we have when
19 we look at the contentions and try to respond
20 to the explanations that have been given.
21 They are so vague that there is no way to
22 respond directly to them.

23 Second is as to the costs of backfitting.
24 I think you correctly pointed out that those
25 are an operating cost, but the Sunflower .

1 Alliance has indicated nothing that would
2 call into question the overall economic
3 balance of operating the plant.

4 Certainly one would have to have an
5 extraordinary magnitude of backfitting costs
6 before the marginal costs of operating a
7 nuclear plant would come anywhere close to
8 those of operating a fossil plant.

9 When one talks about recent shifts or
10 serious shifts which have affected the
11 overall economic problem, I think it is
12 interesting to note that over the past three
13 years the cost of nuclear fuel has dropped
14 and is now about a third of what it was three
15 years ago.

16 Working backwards again, Mr. Lodge raised
17 the issue of capacity factor. Now, this is
18 the first time that that issue has been
19 raised in this proceeding. It is not even
20 implicit in any of his interventions.

21 He has not indicated any basis as to how
22 that applies to Perry. He did not indicate
23 what capacity factor applicants have used in
24 their analysis. He has not indicated other
25 than a general reference to Mr. Kominov's

1 studies, none of which apply to the Perry
2 Plant specifically, certainly, and unless he
3 can say that what we used in Perry is somehow
4 out of line, I just don't think that's an
5 appropriate issue to throw in at this late
6 date.

7 As to the prototype nature of this
8 reactor, I think we had a long discussion on
9 that yesterday. It is not a prototype
10 reactor.

11 This will be the third BWR/6 with a Mark
12 III containment to go into operation, and the
13 only major difference between the Mark V's
14 and the Mark VI's, and there are many Mark
15 V's operating, as I understand it, eight by
16 eight fuel is in use around the industry.

17 His comparison to Davis-Besse is not at
18 all apt because Davis-Besse is a different
19 type of reactor manufactured by a different
20 vendor and operating by a different utility
21 company.

22 As far as Mr. Kenney's comment, other
23 than a generalized statement that we have
24 overestimated the need, I don't think he has
25 added anything to the specific nature of the

1 discussion.

2 The comment on emergency planning costs,
3 I have nothing to add to what the chairman
4 and the board discussed with him on that.

5 With regard to Miss Hiatt's statements
6 that alternatives were improperly treated at
7 the construction permit stage, the very
8 alternatives which we are talking about here
9 were litigated fairly extensively at the
10 construction permit stage.

11 There were numerous motions to reopen.
12 Every time a load forecast changed there was
13 a motion to reopen and a decision as to
14 whether or not that change was significant.
15 Wholly apart from that, the overall concepts
16 of rate changing, load management,
17 conservation techniques, was looked into in
18 great detail.

19 Other than the generalized allegation
20 that there have been significant changes in
21 alternative energy programs, again, I don't
22 know what new and different one would need to
23 be discussed in regard to those alternatives.

24 Going back to Mr. Lodge's comments, he
25 did quote or refer to the testimony of a Mr.

1 Richard Rosen in a Pennsylvania PUC
2 investigation.

3 According to Mr. Lodge, Mr. Rosen
4 testified that both Beaver Valley, and I
5 think he only mentioned Beaver Valley Unit 2,
6 and both Perry units, as I understand Mr.
7 Lodge, that these three units would give
8 CAPCO too much base load capacity.

9 It is interesting to note Mr. Lodge did
10 not give us the results of that investigation,
11 nor did he refer to Mr. Rosen's testimony in
12 the Ohio Public Utility Commission proceeding
13 involving the very same questions in which
14 Mr. Rosen changed his testimony, and even he
15 urged that Perry Unit Number 1 be completed
16 and, in any event, the PUCO rejected those
17 claims.

18 I wished I had known this issue was going
19 to come up. I would have been able to
20 provide citations. Those issues have been
21 resolved not only by the NRC but by the very
22 state agencies that are charged with making
23 the need for power determinations and the
24 same testimony we have just referred to as
25 perhaps a basis has, A, been changed by the

1 witness, and B, been rejected by the
2 commission.

3 MR. BLOCH: Could you
4 inform me, a little bit more about what the
5 issue was that was rejected by the commission?

6 MR. SILBERG: The charge
7 in the Ohio case, as I recall, and this is --
8 my memory a little hazy. This issue was
9 raised by Mr. Wilt in a corps of engineers
10 proceeding about six months ago in which Mr.
11 Wilt cited the testimony of Mr. Rosen, and at
12 that hearing we had a long discussion of Mr.
13 Rosen's change in position and the decision
14 of the Ohio Public Utility Commission.
15 Perhaps Mr. Wilt can refresh my recollection.

16 My recollection is that an intervenor
17 group in the PUCO argued that CEI's and
18 CAPCO's planning was not prudent because they
19 were building too much capacity. I can't
20 tell you which party it was that raised that
21 issue. It might have been the Ohio Consumers
22 Council office. I'm just not sure at this
23 time.

24 Testimony was heard by the utilities from
25 Mr. Rosen, who is a consultant, as I recall,

1 from a company called ESRG in Massachusetts,
2 and Mr. Rosen later came back after the
3 company testified and changed his testimony,
4 admitted that he had made some errors in his
5 assumptions and admitted that he would
6 complete Unit 1 of Perry.

7 He didn't think it was appropriate to
8 complete Unit 2. Beaver Valley is not
9 appropriate in this discussion. I don't
10 recall what the result was for Unit 2. In an
11 order, the commission rejected even Mr.
12 Rosen's revised assertions.

13 Let me now go to the overall philosophical
14 question which we are dealing with here,
15 which is whether, at an operating license
16 stage, one ought to consider alternatives
17 which require the abandonment of the facility
18 whose construction was authorized by the
19 Nuclear Regulatory Commission after the
20 completion of a full and complete NEPA report,
21 tested in a full and complete Atomic Safety
22 and Licensing board hearing and approved by
23 an appeal board.

24 MR. BLOCH: Mr. Silberg,
25 before you go into that, I know the

1 philosophical arguments you have addressed to
2 us in your brief. Those philosophical
3 problems to some extent relate to a possible
4 rule that the commission might consider to
5 can need for power issues at the operating
6 license stage, and I understand there is some
7 preliminary consideration of the possibility
8 of such a ruling.

9 MR. SILBERG: I understand
10 it is on the commission's agenda for
11 tomorrow's 2:00 o'clock meeting.

12 MR. BLOCH: Also, of
13 course, there's no final action on whether or
14 not such a rule will be issued.

15 MR. SILBERG: That's
16 correct.

17 MR. BLOCH: Also, in the
18 course of your brief, you raised questions
19 concerning whether there should be a
20 consideration of the NEPA balance after
21 construction is completed, but as I recall,
22 you cited primarily cases in which the step
23 of starting the operation of the facility did
24 not itself have serious consequences attached
25 to it as might be argued are attached to the

1 loading and operating of a nuclear plant.

2 That is in the argument over nuclear
3 power. It is the loading and operating that
4 the opponents of nuclear power fear most.

5 I hope that in the course of this
6 philosophical argument you will really give
7 us serious guidance about whether we might
8 not create reversible error given the current
9 state of the regulations, were we to reject
10 the need for power contention, as it has been
11 presented with the proviso that there has
12 been a showing of a 25 percent change in the
13 need for power from 1978 to 1979, that there
14 may be substantial changes in need for power
15 from the construction permit stage. So that
16 we really need guidance in how it might be
17 possible were we to agree that need for power
18 is not an important issue.

19 It is not an issue intervenors are likely
20 to succeed on. Nevertheless, would we not be
21 creating reversible error if we exclude this
22 contention?

23 MR. SILBERG: There is
24 always the risk that one creates reversible
25 error when one makes a choice. I don't think

1 in this case that is a significant --

2 MR. BLOCH: I do suggest
3 the line of decision that might be upheld if
4 we were to choose that line.

5 MR. SILBERG: Excuse me
6 for a minute.

7 (Pause.)

8 MR. SILBERG: My own view
9 is that the NEPA case law, which I think we
10 all agree includes the rule of reason, does
11 not require that we consider abandonment. I
12 think it is important to note that even
13 intervenors have agreed the need for power
14 issues are not appropriate once you are
15 dealing with a completed plant.

16 MR. BLOCH: In this
17 proceeding, I don't think they have.

18 MR. SILBERG: That's
19 correct.

20 MR. LODGE: That's correct.

21 MR. SILBERG: I would note
22 in testimony delivered to the senate,
23 Environment and Public Works Committee on
24 March 25, 1981, a hearing at which I also had
25 the privilege of testifying, Evelyn Weiss,

1 who is one of the leading intervenor lawyers
2 and represents the Union of Concerned
3 Scientists and the Natural Resources Defense
4 Counsel, testified that she believed it was
5 inappropriate to consider issues such as need
6 for power and alternative energy sources at
7 the operating license stage because one was
8 faced with a completed facility, one was
9 faced with a multi-billion dollar investment
10 that is already there at a time when the
11 decision as to whether or not we ought to
12 have that facility and operate it have been
13 gone through.

14 I'm hoping the commission will adopt a
15 rule which codifies that conclusion. I do
16 not think that the commission's meeting on
17 such a rule or the absence of such a rule
18 today in any way prohibits this board from
19 reading NEPA law as well as this contention
20 and the record that's been established at
21 this pre-hearing.

22 Excluding the litigation of those issues
23 everyone acknowledges that need for power
24 forecasts change, the licensing board and the
25 appeal boards in this case have done exactly

1 that.

2 The company has changed it's load for
3 costs, revised them downwards and, as the
4 intervenors have noted on other occasions at
5 the pre-hearing conference, the applicants
6 have canceled at least four base loaded 1,100
7 megawatt power plants which were due to come
8 on line after the Perry units, largely in
9 part because of the need for power changes.

10 Our position, as we have laid out in the
11 environmental report, is that there are a
12 number of reasons why this facility ought to
13 be licensed. As the board, I think, has
14 almost taken judicial notice, it is clearly
15 more economic to operate nuclear plant than
16 a coal plant. The detailed analysis which is
17 presented in our environmental report and
18 which intervenors have not failed to cite or
19 indicate any deficiencies --

20 MR. BLOCH: You mean
21 failed to cite.

22 MR. SILBERG: Thank you.
23 -- which intervenors have not cited and which
24 they have not indicated any significant
25 sufficient deficiencies, clearly demonstrates

1 that there is a large, very large cost
2 penalty in not operating the plant over
3 operating.

4 You cannot make the billions of dollars
5 that have been invested in the plant go away.
6 You cannot make the concrete, the steel and
7 the components which have been installed go
8 away.

9 Those are facts. Those are facts which
10 have been authorized by this commission to be
11 installed and monies which this commission
12 has authorized to be invested, and for a
13 licensing board to look at alternatives in
14 the NEPA sense, which could result in forcing
15 the abandonment of that investment, I think
16 is totally contrary to the rule of reason.

17 MR. BLOCH: Could you just
18 clarify for me the extent of the change from
19 the construction permit stage to the present
20 time and say the projections for need for
21 power in 1985?

22 Have we mentioned the 25 percent change
23 in one year?

24 MR. SILBERG: I don't know
25 those numbers off the top of my head. I was

1 referring to the statement in paragraph 13
2 which says the applicants have revised their
3 10 year electricity demand forecasts downward
4 by approximately 25 percent.

5 MR. BLOCH: Overall usage
6 over the entire ten years?

7 MR. SILBERG: I assume
8 that's what they mean. I don't know. That
9 information, I suspect, is in the
10 environmental report. We might be able to
11 find it for you. I suspect there has been
12 large changes in electric demand forecasts
13 and there have been large changes in the
14 capacity addition scheduled.

15 MR. SHON: Perhaps Mr.
16 Lodge could help us. Do we mean they have
17 revised the total amount used over ten years
18 25 percent or the needed capacity at the end
19 of ten years down 25 percent?

20 These are quite different things and it
21 is quite ambiguous.

22 MR. LODGE: As I recall, I
23 believe the intent of the drafter in this
24 case was that the utility companies in Ohio
25 are required to file annually a ten year

1 forecast of demand, and that, as I recall, in
2 doing research on this contention, I believe
3 that the conclusion that I had formulated was
4 that the numbers, comparing the 1978 forecast,
5 which I believe covered 1978 through 1988,
6 with the 1979 through 1989 forecast, that the
7 approximate curves for those ten year periods
8 in demand growth were approximately 25
9 percent apart in any given year.

10 MR. SHON: Does that mean
11 it grew 25 percent less or that the total was
12 25 percent less. That's quite different, you
13 see, if it were growing a few percent per
14 year, you would go 25 percent less if you
15 dropped a half a percent or so.

16 MR. LODGE: I believe that
17 the total was --

18 MR. SHON: The total
19 demand projected over the ten years was 25
20 percent for each year.

21 MR. BLOCH: That's
22 different from what you just said, that there
23 would be a difference in each year by 25
24 percent, which would suggest a projection
25 where the first year change was the whole

1 difference and then it stayed parallel.

2 In addition, there is a problem here that
3 you are focusing from a change from 78 to 79,
4 when it seems to me the key contention here
5 would be that there was a substantial change
6 from the construction permit stage.

7 Really, to know the magnitude for the
8 need for power problem, it seems to me we
9 have to know the extent to which the
10 projections that were accepted at the
11 construction permit stage have been changed
12 from then until now.

13 MR. LODGE: Well, while
14 admittedly I did not go back as far as, I
15 believe, 1976 to find data of that sort,
16 there is some prospective projection
17 information that I think is of relevance in
18 answering that question.

19 That is a study that was performed and I
20 believe came out right at the end of 1980,
21 which is a study by the same group that Mr.
22 Rosen is from, the Energy Systems Research
23 Group, Incorporated. It's a study commissioned
24 by the Office of Consumers Council of the
25 State of Ohio. It's entitled base case

1 forecasts for seven Ohio utilities.

2 In this study, by analyzing the ten year
3 forecast data which must be filed by utility
4 companies in Ohio with the department of
5 energy, state level, that is, the ESRG firm
6 found that the growth projections over the
7 ten year haul were considerably
8 overoptimistic on the part of utility
9 companies.

10 MR. BLOCH: What I'm
11 suggesting, Mr. Lodge, is that it is possible,
12 since applicant is arguing that changes in
13 need for power are very small compared to
14 some sunk costs, as in this plant, of
15 billions, that the exact magnitude in the
16 change for the need for power in the
17 construction permit stage could be of
18 importance to us in deciding whether to admit
19 this contention.

20 Clearly, the data you have used, 78 to 79,
21 would apparently understate the change, but
22 the exact change is important to us.

23 MR. SHON: Mr. Lodge, was
24 this matter not addressed in the applicant's
25 environmental report for the construction

1 permit stage and the environmental report for
2 the operating license stage?

3 Are there not simple ways to get two
4 figures from there to compare, say, for 1988
5 or something?

6 MR. LODGE: I believe so.
7 I have perused the environmental report for
8 the operating license. It might possibly be
9 so.

10 I would submit, as a general point, I did
11 not participate in the construction permit
12 proceedings anyway, but I believe that a
13 comparison would indeed show a very drastic
14 snift from 1976 through 1986 data as compared
15 to 78 or 79 through 88, 89.

16 MR. BLOCH: Of course,
17 people differ in how to use an adverb like
18 very, so that's why I wanted a quantified
19 statement.

20 MR. SILBERG: I would note
21 that I don't know that it's fair to use the
22 word very small or its Latin equivalent,
23 there are major changes.

24 I don't think that the companies would in
25 any way want to indicate that the forecasts

1 have remained approximately the same. But,
2 there have been many changes on both sides of
3 the picture.

4 As I said, there have been four major
5 base load units that were scheduled to come
6 on line which are no longer scheduled to come
7 on line. The schedules for the Perry Plants
8 have been moved backwards in part to reflect
9 today's perception of load forecast.

10 I think it is important to know that,
11 while this ESRG study that Mr. Lodge refers
12 to was talking about ten year forecasts
13 presumably, the most recent ones, we are not
14 talking about ten year forecasts. We are
15 talking about a plant which is due to come on
16 line in three or four years, or two years for
17 fuel load and three years for commercial
18 operation, with Unit 2 traveling two years
19 behind. The important factor is whether we
20 really ought to be looking at this regardless
21 of the types of changes which have occurred
22 both on the demand side and on the supply
23 side.

24 MR. BLOCH: When you say
25 regardless, is if the need for power shrunk

1 to ten percent of the amount that was
2 estimated at the construction permit stage,
3 would you still be arguing that we shouldn't
4 look at it? Doesn't it depend to some extent
5 on the quantity in the shift for power?

6 MR. SILBERG: I don't
7 think so. Given what we generally know about
8 the marginal costs of operating versus not
9 operating, and that is gone into in great
10 detail in the environmental report and has
11 not been specifically criticized --

12 MR. BLOCH: Your position
13 is that regardless of the change for need for
14 power unless the marginal cost advantages of
15 the nuclear plant also were attacked that the
16 initial balance should be considered binding
17 on this proceeding?

18 MR. SILBERG: I think
19 that's right, because the purpose of this
20 proceeding is not to determine whether we
21 ought to have a nuclear power plant.

22 MR. BLOCH: No, but
23 whether we should permit it to start loading
24 and operating which is itself an important
25 step that requires an environmental impact

1 statement.

2 MR. SILBERG: When one
3 looks at the consequences of loading and
4 operating, and we have heard little that has
5 been addressed to those consequences, it
6 seems to me that the commission has not by
7 rule said that there are certain alternatives
8 that are so far-fetched at the operating
9 license stage that we just not ought to be
10 wasting our time on them. There is a new
11 rule that came out last Wednesday or Thursday.

12 MR. SILBERG: I can't find
13 it, but it amended 10 CFR part 51 to say we
14 ought not to have to litigate or consider
15 environmental reports alternative sites to a
16 nuclear power plant. The same logic, I hope,
17 will lead the commission to conclude by rule
18 that litigating need for power at the
19 operating license stage makes no sense, but
20 the law on which that determination was based,
21 which we have tried to summarize in our
22 briefs, allows this board to reach that same
23 conclusion whether or not the commission by
24 regulation acts, I hope even if this board
25 should make the decision to admit this

1 contention, which I hope it will not, and I
2 think it is warranted in not doing so, that
3 the commission as a generic matter will
4 resolve this problem once and for all. I
5 think it is within the board's power, given
6 the state of the law and the state of this
7 record, to do so.

8 MR. BLOCH: Mr. Barth?

9 MR. BARTH: Mr. Chairman,
10 I'm not certain that I would agree with the
11 characterization that what is at issue are
12 comparing the marginal cost of 235 megawatt
13 units against the marginal cost of Perry
14 Nuclear Power Plant.

15 MR. BLOCH: I don't think
16 I struck the overall balance in quite that
17 way in the questions I asked, but I think the
18 marginal costs are relevant to the economic
19 advantage that will be earned by applicant
20 should they begin operating.

21 MR. BARTH: You used the
22 term marginal cost, which is the cost of the
23 kilowatt hour of the last kilowatt unit,
24 which is the oil fired unit, but putting that
25 aside for a moment, the appeal board has said

1 that time and money already spent are
2 irrelevant only where the NEPA comparison is
3 between completing the proposed facility on
4 the one hand and abandoning that facility and
5 not substituting --

6 MR. BLOCH: Again, this
7 quote may be relevant, but in order for me to
8 know, I must know what the issues were in
9 that proceeding. I must know what the case
10 is about so that I can tell whether this is
11 contentious dicta by the appeal board or
12 whether it was relevant to the holding so I
13 can understand what the precedent means.

14 MR. BARTH: May I continue
15 the quote and address the remarks?

16 MR. BLOCH: It will be
17 easier for me to understand it in the context
18 of the case.

19 MR. SILBERG: Could I have
20 the citation?

21 MR. BARTH: Fellows, can I
22 get through with the thing?

23 MR. BLOCH: You may
24 continue, Mr. Barth.

25 MR. BARTH: Continuing the

1 quote, abandoning that facility and not
2 substituting another facility for it on the
3 other hand. This is Vermont Yankee Nuclear
4 Power Corp., Vermont Nuclear Power Plant
5 Station 292, ALAB 392, 5 NRC 759, 1977.

6 MR. BLOCH: Could you
7 refresh my memory as to what action the board
8 took in that case and what action the appeal
9 board took on the need for power issue?

10 MR. BARTH: The appeal
11 board was considering what was involved in
12 appraising need for power issue where we had
13 a contention such as OCRE had made.

14 MR. BLOCH: What had the
15 licensing board done on the need for power
16 issue?

17 I just want to know what happened in the
18 case.

19 MR. BARTH: The licensing
20 board sustained the position of the power
21 company that the contention was not
22 well-founded. The contention was, in that
23 case, that they should abandoned the plant
24 already largely constructed, as we have here.

25 MR. BLOCH: The board

1 decided they should not accept that
2 contention?

3 MR. BARTH: No, but that
4 it had no merit.

5 MR. BLOCH: Was it a
6 summary judgment or was it at the contention
7 stage?

8 MR. BARTH: This was an
9 appeal from the partial initial decision.

10 MR. BLOCH: Well, that's
11 not at all applicable then, is it, Mr. Barth?

12 The board actually admitted that
13 contention in that proceeding.

14 MR. BARTH: I think, sir,
15 when the final adjudication by a commission
16 which the appeal board's decision is that
17 there is no merit to a contention, I think
18 this is the law of the case.

19 MR. BLOCH: But that was
20 on the evidence that was admitted at that
21 proceeding.

22 MR. BARTH: No, sir, it
23 was on the legal issue.

24 MR. SILBERG: I happen to
25 have a copy of the case in front of me and I

1 haven't recently read it, so I will try as
2 best as I can to summarize.

3 It involved the outgrowth of the Table
4 S-3 litigation. As you recall, the
5 commission promulgated a rule in 1974 which
6 quantified the environmental effects of the
7 back end of the nuclear fuel cycle. A
8 portion of that rule was overturned by the U.
9 S. Court of Appeals for the D.C. Circuit in
10 1976 in NRDC v NRC.

11 As an aside and not relevant here, that
12 Court of Appeals decision, of course, was
13 subsequently overturned by the Supreme Court
14 in the Vermont Yankee decision.

15 Once that Court of Appeals decision came
16 out, however, the commission had to determine
17 what to do with those plants which were in
18 the midst of the licensing process and whose
19 cost benefit balances had at least in part
20 been invalidated by the action of the Court
21 of Appeals.

22 The appeal board had a number of these
23 cases before it. It was looking at the
24 generic issue of how to handle those
25 proceedings which were in process,

1 particularly construction permit proceedings
2 to the portion that Mr. Barth was reading
3 from.

4 MR. BLOCH: And this is
5 with respect to the fuel cycle costs, not the
6 need for power?

7 MR. SILBERG: The question
8 was, given the fact that the cost benefit
9 balance had been in part invalidated by the
10 invalidation of a small portion of Table S-3,
11 what should we do with existing construction
12 permits and plants that were already in being?
13 Do we take away their construction permits,
14 do we suspend construction, or do we allow
15 things to continue during some pending period?

16 My recollection is that the commission
17 looked at the question of where we stood,
18 what was the nature of the sunk costs, what
19 was the physical status of the project.

20 MR. BLOCH: And also what
21 was the importance of the particular
22 deficiency in Table S-3 that was overturned,
23 I take it?

24 MR. SILBERG: They really
25 did not address that in this particular

1 appeal board decision, as I recall. They
2 were looking solely at the impact side of the
3 question, at what factors should we look at
4 in determining whether or not to take away
5 peoples' construction permits or order a
6 suspension in construction or a suspension in
7 operation.

8 MR. BLOCH: Don't you
9 think implicitly that there had to have been
10 a balancing that were invalidated for the
11 things that were explicitly discussed in such
12 a case?

13 You would think it would be impossible to
14 decide the overall effect on the cost benefit
15 balance without looking at the nature of what
16 was invalidated.

17 MR. SILBERG: I think that
18 may be right, and as I say, I'm looking at
19 this case again. It's been quite a while
20 since I read it.

21 MR. BLOCH: I think,
22 unless Mr. Barth would like to add some more
23 since he did bring the case up, we probably
24 have had a sufficient discussion of the case
25 and can now consult it ourselves with the

1 guidance we received from counsel to
2 determine its relevance. Mr.
3 Barth, I'm sorry for the interruption. I did
4 want to inquire in some depth so I could
5 understand the precedence you were citing.
6 Please continue.

7 MR. BARTH: I do not think,
8 Your Honor, that there is a good foundation
9 to compare the marginal costs of Perry
10 against the marginal costs of a oil fired
11 unit within the present system.

12 Apart from that, in the construction
13 permit proceeding below, the licensing board
14 determined that there was a need for the
15 facility. The contention by OCRE says
16 there's not a need for the facility.

17 The contentions by Sunflower are slightly
18 more gentle. They simply say not in need for
19 the time frame projected, a later time frame.
20 They do not deny the need.

21 It seems to the staff that, under these
22 circumstances, it is incumbent upon Sunflower
23 to show that there is a change which occurred
24 between the construction permit stage and
25 today which would show environmental harms

1 occurring from the delaying the on line time
2 of the plant of such significance as to
3 destroy the cost benefit balance.

4 The only change that has occurred is that
5 the need for power projections, at least
6 nationally, between 74 and today have dropped
7 from a 9 percent compound annual growth to a
8 2 and a half percent annual compound growth.

9 Assuming that is reasonably close to here,
10 there has been a substantial reduction in the
11 annual compound peaking growth and energy
12 both. We understand that. But all that does
13 is delay the on line time of the plant. It
14 does not say the plant is not needed.

15 Once you have the assumption that this is
16 so and it is hard to deny, what these people
17 must allege is that cost benefit balance is
18 altered or destroyed by the delays.

19 The intervenor for Sunflower stated that
20 one of his concerns were the environmental
21 effects of loading fuel, but we don't know
22 what the environmental effects of loading
23 fuel are or what the difference in
24 environmental effects of loading fuel two
25 years from now versus four years from now are.

1 This is the kind of thing we are
2 concerned with. We are concerned with
3 environmental effects of this facility,
4 whether you put it on line or not or whether
5 you put it on line later.

6 Of course, the plant could be justified
7 on the basis of substitution, this has often
8 been held, but I don't think that's really a
9 valid issue at the moment, and if this were
10 so, the marginal costs would be important
11 comparing the base load coal versus the base
12 load nuclear with the concept of base load
13 being somewhat arbitrary.

14 I would like to point out that the
15 licensing board below has flatly been through
16 this issue and found that there was a need
17 for the facility, and to rehash this at the
18 present time clearly seems to counsel to be
19 contrary to the commission's holding in
20 Consolidated Edison Company of New York,
21 (Indian Point Nuclear Generating Unit 3),
22 8 AEEC 7, 8 (1974), where the commission,
23 whether it be dicta or not, and if it is
24 dicta, it's good dicta, said an operating
25 license proceeding is not to be used to

1 rehash issues or resolve the construction
2 permit stage.

3 There is no showing of any kind of
4 specificity by OCRE or by Sunflower that the
5 environmental effects of delaying the on line
6 time of this plant are so significant as to
7 change the cost benefit balance.

8 I think that to relitigate at this time
9 is to merely rehash what's already been done.
10 I think that's prohibitive, as I stated in my
11 brief, and I think this concludes my remarks.

12 MR. BLOCH: In order to
13 reach a balance that was struck last time as
14 to what the need for power was in the year
15 that the plant opened, your point is we would
16 have to consider just the amount of delay
17 that would be involved until we reached the
18 projected need for power in the other balance.

19 How many years would that be at the
20 difference between 9 percent and 2 and a half
21 percent?

22 MR. BARTH: I do not
23 understand the question.

24 MR. BLOCH: The original
25 balance which we are being asked not to

1 relitigate was based on a 9 percent
2 projection need for power, according to what
3 you just said. If I recall correctly, the
4 number was 9.

5 MR. BARTH: Close to that
6 in those days.

7 MR. BLOCH: You are doing
8 it on average data and not specifically on
9 the Perry data, and now you are saying the
10 average data is 2 and a half percent and you
11 are saying all we are doing is delaying the
12 time it comes on line.

13 How many years would we delay it.

14 It seems to me it would be tens of years,
15 wouldn't it?

16 MR. BARTH: It's not a
17 matter of balance.

18 MR. BLOCH: The question
19 is are we relitigating?

20 If they were litigating at that time the
21 need for power with a 9 percent projection of
22 growth, I take it that the delay, assuming
23 the 2 and a half percent projection, in order
24 to reach the same need for power, would be
25 very substantial.

1 MR. SILBERG: Excuse me.
2 I don't know where that 9 percent came from.

3 MR. BARTH: Could I
4 continue the dialogue with the chairman and
5 then we will get onto something else?

6 MR. SILBERG: The number
7 in the partial initial decision in 1974 was 6
8 percent, just to correct the record.

9 MR. BARTH: Sir, all you
10 have done is delay the on line time by
11 reducing the compound annual growth rates.
12 You have not changed the fact that there is a
13 need for the facility. What else does it
14 change?

15 You then have to evaluate what are the
16 environmental effects that changed because of
17 that delay. Those are the only matters that
18 are at issue.

19 There's been no showing that the
20 environmental effects of the delay of the on
21 line time are so big that they would alter
22 the cost benefit balance. We haven't been
23 shown what they are even. There is no
24 showing by the intervenors of any adverse
25 environmental impact of delaying the on line

1 time of this plant, none. It's not a matter
2 of it is it big or small. There's zero.
3 zilch, none.

4 They have to show that kind of
5 environmental harm, and it has to be so
6 significant as to upset the cost benefit
7 balance in order for this kind of contention
8 to be admitted.

9 MR. BLOCH: Intervenors?

10 MR. LODGE: First, I would
11 like to note for the record that apparently
12 this particular contention has survived the
13 ipse dixit standard which is something of a
14 relief. I would like to clarify or at least
15 reply to Mr. Shon's earlier question.

16 I believe I did confuse the issue of
17 discussing annual growth rate percentages, as
18 Mr. Barth indicated. I, too, whether I knew
19 it or not, was referring to a compounding
20 type of growth percent. In other words, 3
21 percent growth this year and then 3 percent
22 growth next year would be 3 percent of 103
23 percent.

24 If you would still like specific data for
25 any figures for discussion, we were talking

1 about comparative numbers between 1978 and
2 1979, and I have located those in the interim.

3 MR. SHON: I think so, yes.
4 What I wanted to find out was whether the 25
5 percent shortfall was a shortfall in the
6 change, a shortfall in total power, a
7 shortfall each year.

8 MR. LODGE: I think I can
9 answer that pretty specifically at this point.
10 I'm going to be quoting from Summary of
11 Electrical Statistics, 1979. It was
12 published October 15th, 1980 by the Ohio
13 Department of Energy.

14 In essence, it is, as its title indicates,
15 a summary of ten year forecasts filed by Ohio
16 electric utilities.

17 In any event, at page 65 of that document,
18 there is a statement that says, "In its 1978
19 forecast, CEI projected net energy for load
20 to grow at an annual rate of 4.4 percent over
21 the ten year period, and that ten year period
22 would be through 1988. Current projections --"
23 and by current projections, the antecedent is
24 1979 to 89 forecast "-- current projections
25 indicate that net energy for load will

1 increase at an annual rate of 3.3 percent."

2 So we are talking about 4.4 in the 78 and
3 3.3 in 79, which was the source, I believe,
4 specifically of the 25 percent contention.

5 MR. SILBERG: Whose
6 projections are the 3.3 percent?

7 MR. LODGE: Cleveland
8 Electric Illuminating Company's. On page 111
9 of the same document, in discussing Ohio
10 Edison, it states that for the 1978-88 ten
11 year forecast "Ohio Edison projected net
12 energy for load within Ohio." Of course, it
13 owns Duquesne Power and Light, which is a
14 Pennsylvania --

15 MR. SILBERG: No, it owns
16 Pennsylvania Light and Power Company.

17 MR. LODGE: Quite right.
18 Thank you.

19 Ohio Edison projected net energy for load
20 within Ohio to grow at an annual rate of 5.1
21 percent over the ten year period in its 1978
22 forecast. That projection has been revised
23 downward to 4.0 percent in 1979 forecast,
24 which is also the basis for that allegation
25 of a 25 percent change, and finally, in

1 discussing Toledo Edison, page 147, the
2 document states, "Net energy for load is
3 forecasted by Toledo Edison to grow at an
4 annual rate of 3.6 percent over the 10 year
5 period."

6 That refers to the 79 to 89 study.

7 It says further, "The 1978 forecast that
8 called for an annual growth rate of 4.9
9 percent," so that too is, very approximately
10 speaking, a 25 percent change in 78 to 79
11 projections.

12 I think it is of importance to note very
13 closely that Mr. Silberg indicated that even
14 a witness who recants his testimony recanted
15 it only to the extent that he apparently
16 acknowledged that Unit 1 was justifiable in
17 terms of whatever his perception of demand
18 forecasts was.

19 I think that it should also be noted that
20 that testimony is approximately a year old,
21 is that correct?

22 MR. SILBERG: No, that
23 testimony was updated, I believe, in
24 September of this year.

25 MR. LODGE: You mean of

1 1980?

2 MR. SILBERG: 1980. The
3 decision by the Ohio Public Utilities
4 Commission, however, was subsequent to that
5 decision, to that testimony.

6 MR. LODGE: Fine. So it's
7 approximately nine months old and the
8 decision is somewhat younger.

9 I think that, if the board were to take
10 into account the fact, for instance, that
11 there is some evidence, as just adduced,
12 hearsay introduced, whatever, of a continuous
13 pattern, I believe it could be found, of
14 downward projections, that it is nonetheless
15 still questionable whether Unit 1 could be
16 justified to go on line in 1984.

17 I would also simply ask the board to also
18 remember that I think that a proper
19 interpretation of the standards for
20 intervention still remains that we do not
21 have to provide preponderance of the evidence
22 today. We have to provide a prima facie
23 showing, and as strong as one as possible, of
24 course, and I do believe that that showing is
25 evident.

1 I continue to believe that the demand
2 issue is of critical importance because there
3 are many factors in what I would call the
4 socio-economic environment of the Perry Plant.

5 The ESRG study of late 1980 that I was
6 referring to discusses in some detail the
7 factors that utility companies in Ohio have
8 not been taking what it believes due note of,
9 such as impending pressures for very drastic
10 rate reform, such as the extreme changes in
11 conservation measures being taken in
12 commercial and industrial rate
13 classifications, particularly among medium
14 and small size businesses which, ironically,
15 in Ohio, I think the situation that occurs in
16 rate cases that I have participated in, that
17 large corporations can generally afford to
18 represent themselves, residential consumers
19 have a state appointed counsel and in the
20 middle are medium and small size businesses.

21 MR. BLOCH: I don't
22 understand the relevance of this point.

23 MR. LODGE: The relevance,
24 sir, is I'm simply trying to point out that
25 conservation measures in the commercial

1 sector and industrial sectors are not well
2 taken into account in demand forecasting;
3 that there are numerous factors that cause delay
4 which are related to the problems of
5 financing.

6 Again, that's a general ipse dixit
7 allegation, but I think that, through the
8 discovery process. That point could be
9 established.

10 In any event, it is Sunflower's belief
11 that the demand issue is not and cannot be
12 treated so narrowly as res judicata at a
13 construction permit proceeding and ignored
14 forever after in an operating license
15 proceeding that takes place a number of years
16 later and is not completed even for months if
17 not years after that.

18 MR. BLOCH: Does Sunflower
19 Alliance, Inc. have any further contention to
20 present at this proceeding?

21 MR. LODGE: If I may have
22 a minute.

23 MR. BLOCH: Before you
24 answer, answer right after the break. It is
25 now 10:36. We will reconvene at 10:45.

1 (Recess had.)

2 MR. BLOCH: Will the
3 meeting please come to order?

4 Will the parties please resume their
5 places?

6 MR. SILBERG: Mr. Chairman,
7 I'm not sure if you are going to move on to
8 the next issue now, but there is one point I
9 would like to emphasize before we move off
10 the need for power contentions.

11 I think it is important that we not look
12 just at changes in load forecasts, because
13 that is only one side of the picture. One
14 has to look at the same time to the supply
15 side of the picture, what is the current
16 forecasted capacity to meet those loads.
17 Both those numbers have changed.

18 One ought not to simply say there has
19 been a downward decrease in load forecasts,
20 therefore, we ought to go back and look at
21 the need for this plant again, because one
22 cannot overlook the fact that capacity which
23 was being counted on during the same time
24 period in 1973 is no longer being planned.

25 MR. BLOCH: Can applicant

1 quantify the extent of the reduction in the
2 supply side?

3 MR. SILBERG: Well, the
4 major reductions, as I understand them --

5 MR. BLOCH: You mentioned
6 the size of the reductions, but the percent
7 is more important to us.

8 MR. SILBERG: I can give
9 you numbers and we can probably subtract.

10 MR. BLOCH: Of course, it
11 is not important at this time because we do
12 plan to ask applicant to submit a brief to
13 follow up on changes in contentions that have
14 been introduced by intervenors, so to that
15 extent you can respond to this problem in
16 writing, the deadline we will discuss later.

17 MR. SILBERG: The rough
18 number is about 3,200 megawatts of capacity
19 has been deleted by the dropping of the two
20 Davis-Besse additional units and the two Erie
21 units, and I think that leaves a total
22 capacity by 1983 of about, if memory serves
23 me right, about 15,000 megawatts.

24 MR. BLOCH: So you drop
25 3,200 megawatts and you have 16,000 left?

1 MR. SILBERG: I'm sorry,
2 I've been corrected. It's 4,200 megawatts.

3 MR. BLOCH: And you have
4 16,000 left?

5 MR. SILBERG: About 16,000.

6 MR. BLOCH: That's
7 including the Perry Plant?

8 MR. SILBERG: That's right.

9 MR. BLOCH: Thank you.
10 Does intervenor, either of them, wish to
11 respond to that?

12 MR. LODGE: No, sir, we
13 have no response.

14 MR. BLOCH: Do you have
15 any other further contentions to present?

16 MR. LODGE: I believe the
17 question that was pending when we broke was
18 whether we had any additional information on
19 this particular contention.

20 MR. BLOCH: That wasn't
21 what I thought I asked, but if you do have
22 that, you may go ahead.

23 MR. LODGE: Very briefly.
24 I guess what I would like to do, with respect
25 to the intervenors fourth and fifth grounds

1 of intervention, is first acknowledge that we
2 were apparently the only party here this
3 morning that was talking only about the third
4 contention. Everyone else seems to have
5 lumped the three together.

6 I think, for all practical purposes, we
7 would waive further discussion on our part
8 after submitting the data and ask simply you
9 consider the three together. I think a
10 simple reading of the three grounds indicates
11 that they are inter-related. The fourth and
12 fifth ones, in fact might be kind of
13 corollary to the third ground.

14 MR. BLOCH: Of course, as
15 I understand, applicant did treat them that
16 way in its brief, so I don't anticipate an
17 objection from any party. If there is no
18 objection, we will treat those contentions as
19 a single contention.

20 Have you any further contentions to
21 present?

22 MR. LODGE: No, sir, just
23 a little further information.

24 MR. BLOCH: Okay. Please.

25 MR. LODGE: I would simply

1 like to read briefly some data into the
2 record from the Energy Systems Research Group
3 study that I had previously cited.

4 MR. BLOCH: I can see from
5 here that there's a table you are reading
6 from. You are not reading the whole table, I
7 hope.

8 MR. LODGE: No, sir, not
9 at all. In fact, I will be reading very,
10 very partially from two tables. I won't read
11 the whole list.

12 I would like to indicate for the record
13 information that appears on tables two and
14 three of the executive summary of that ESRG
15 study at pages 14 and 15. Table two is a
16 comparison of ESRG and company forecast
17 growth rates, 1978 through 1988. This
18 information is based on the utility company
19 forecasts, 1980 forecasts submitted to the
20 Ohio Department of Energy.

21 The one category I wish to have entered
22 into the record is for CEI, Ohio Edison,
23 Toledo Edison, the total energy comparisons
24 for the period 1978 through 1988. For CEI,
25 the company had projected a 2.44 percent

1 growth, accumulative growth in total energy.

2 MR. BLOCH: You mean
3 compound growth?

4 MR. LODGE: Compound
5 growth, I'm sorry. I'll straighten that out
6 soon, I hope. Yes, compound growth.

7 The ESRG consultant found a 1.98 percent
8 growth for the same period. For Ohio Edison,
9 Ohio Edison had indicated a 3.14 percent
10 compound growth figure for total energy.
11 ESRG indicated 2.38 percent.

12 MR. BLOCH: I know you are
13 trying to save us trouble, but I don't think
14 you have given us the time frames involved.

15 MR. LODGE: Yes, I did.
16 It was for the period 1978 through 1988.

17 MR. BLOCH: What were the
18 years of these productions?

19 They were both ESRG estimated in 1978
20 also?

21 MR. LODGE: I believe it
22 was 1979 data that was included in a 1980
23 submission by the utility companies.

24 Finally, Toledo Edison's projection was a
25 3.62 percent compound growth figure. ESR 's

1 was 1.56 percent.

2 Turning to the other table, I have
3 similar data, except this is a comparison of
4 the periods 1978 through 1988 versus 1978
5 through 1998. These statistics are those of
6 the ESRG, which are in volume two of the
7 report, which I don't have present. I would
8 simply like to read total energy projections
9 into the record.

10 MR. SILBERG: Whose
11 projections are we talking about, ESRG or the
12 company's?

13 MR. LODGE: ESRG.

14 MR. BLOCH: That's the
15 period 1988 to 1998?

16 MR. LODGE: No. It's kind
17 of a concurrent period in part. 78 through
18 88 and then 78 through 98, so the effect of
19 that type of statistic was to take the
20 shorter ten year period and figure the
21 compound growth percent and then take the 20
22 year period and compare the longer haul.

23 In any event, it's a total energy
24 statistic for Cleveland Electric Illuminating,
25 and of course this is all the ESRG's

1 calculations. For the period 78 through 88,
2 1.98 percent. For the period 78 through 98,
3 1.77 percent.

4 For Onio Edison, period 78 through 88,
5 2.38 percent. The period 78 through 98, 2.04
6 percent.

7 For Toledo Edison, the period 78 through
8 88, 1.56 percent. The period 78 through 98,
9 1.42 percent.

10 With that, I believe we would indicate
11 that we have no further grounds for
12 intervention to present to the commission.

13 MR. SHON: Mr. Lodge, one
14 quick curious question. In each case when
15 you discussed what ESRG did, you said they
16 used the company's own data.

17 How did they use the company's own data
18 and arrive at a different result than the
19 company did?

20 Were they using a different type of
21 econometric program or formula or something?

22 Why do they differ so from the company
23 when they are using the company's fundamental
24 data?

25 MR. LODGE: If I can have

1 a minute, I think I can respond, I can find
2 the section on methodology.

3 I believe the latter characterization
4 that you suggested was what was used. The
5 sources of information include the ten year
6 forecasts. They also included a survey of
7 residential consumption which was prepared
8 for the State Office of Consumers Council by
9 another consultant in, I believe, 1979.

10 Based upon those two sources, ESRG
11 forecasts used an econometric modeling
12 procedure, which is kind of convoluted.

13 MR. SHON: I think I
14 understand what you are saying. They used an
15 econometric model in procedure. It was
16 different from that used by the company.

17 MR. LODGE: Yes, sir.

18 MR. SHON: Thank you.

19 MR. BLOCH: Mr. Lodge, in
20 later stages of this proceeding when you
21 present your case, try to please present the
22 whole case at one time, because now it is
23 necessary for me to ask once again for the
24 applicant to respond to this portion of your
25 case.

1 MR. LODGE: That's true.

2 MR. SILBERG: Again, not
3 having had the benefit of forewarning, I have
4 no idea what else is in that report. The
5 only point I wish to make is that the numbers
6 we have just had are totally irrelevant as I
7 heard them. Mr. Lodge was stating those are
8 the forecasts for total energy, and of course,
9 utilities forecast the need for capacity on
10 demand and not on energy, so that those
11 numbers are irrelevant.

12 MR. BLOCH: Mr. Barth?

13 MR. BARTH: The staff has
14 no comment, sir.

15 MR. BLOCH: We now proceed
16 to OCRE's contentions. Have you been able to
17 contact Mr. Alexander and clarify some of the
18 points?

19 MISS HIATT: Yes, I have.
20 Mr. Alexander is very sorry he can't be at
21 these proceedings but he is busy working on
22 his masters thesis right now. I would like
23 to state at this time that he definitely
24 wants to receive a copy of the transcript of
25 this proceeding and will that be sent to him

1 at the end of this?

2 MR. BLOCH: There's a long
3 history to that. There actually is a
4 restriction in the appropriations legislation
5 and the Nuclear Regulatory Commission which
6 prohibits us from giving special privileges
7 to intervenors. There's a more recent ruling
8 by the general accounting office that may
9 permit the Nuclear Regulatory Commission to
10 provide transcripts both to the intervenors
11 and applicants equally, but the Nuclear
12 Regulatory Commission has not acted to
13 effectuate that new commission from the GAO,
14 so at the present time reluctantly I am
15 unable to furnish transcripts to intervenors.

16 There will be a transcript available in
17 the public document room and I did
18 incidentally learn by the way that that room
19 doesn't have the most convenient hours and I
20 have indicated to the intervenors that I
21 would be willing to entertain a motion to
22 change the cite of the public document room
23 if they so wish.

24 Could you proceed with the first
25 contention?

1 MISS HIATT: I would also
2 like to state at this time that if there are
3 applicant and staff briefs in reply to OCRE's
4 contentions, Mr. Alexander has only received
5 these briefs on May 27th and he has not had
6 enough time to review them, I would ask for
7 leave to respond at a later date for these
8 briefs.

9 MR. SILBERG: I would
10 object to that motion very vigorously. This
11 board established procedures for our filing
12 these motions and getting them in the
13 parties' hands. We express mailed our brief
14 out on Friday, May 22nd. I have reason to
15 believe that that brief arrived the following
16 day.

17 There is no requirement under commission
18 rules for the proponent of a motion to get an
19 automatic reply. What this board did in its
20 discretion, I think very wisely so, was to
21 give intervenors an additional opportunity to
22 which they are not normally entitled. For
23 them now to ask for yet another additional
24 opportunity I think is totally uncalled for.

25 The purpose of this pre-hearing

1 conference was, among other things, to argue
2 these contentions. If Mr. Alexander had a
3 problem with the date, he should have
4 notified the licensing board. I think it is
5 unfair to all the parties that we go through
6 yet another round of briefs and counter
7 briefs on matters which should have been
8 ready for argument today.

9 MR. BLOCH: Are there any
10 further comments on OCRE's contention? There
11 being none, Miss Hiatt, would you like to
12 reply?

13 MISS HIATT: Since Mr.
14 Alexander has not been able to review these
15 briefs and I have certainly not seen them,
16 there is no reply I can make to them.

17 MR. BLOCH: The reply is
18 to the opposition to granting your motion.

19 MISS HIATT: I think it
20 should be granted because there isn't a
21 tremendous amount of time between May 22nd
22 and June 2nd to somebody who is as busy as
23 Mr. Alexander is.

24 MR. BLOCH: Perhaps what
25 we ought to do is see if there are specific

1 portions of the responses which did create a
2 substantial problem. I'm not necessarily
3 saying that we would entertain that, because
4 applicant's arguments are forceful, but let's
5 continue with the contentions and see whether
6 there was specific prejudice because of a
7 lack of time.

8 MISS HIATT: OCRE's first
9 contention is on clam biofouling.

10 "The applicant has not properly accounted
11 for the presence of biofouling organisms in
12 the nuclear power plant's source of process
13 water and the resultant impacts.
14 Specifically certain Asiatic clams, *corbicula*
15 *fluminea* being the scientific name, have
16 displayed strong biofouling abilities and a
17 proclivity for steam electric generating
18 plants similar to Perry 1 and 2."

19 And there's a reference cited L. B. Goss
20 et al. Control Studies on *corbicula* for steam
21 generating plants, and that was apparently
22 presented at the first international
23 *Corbicula* symposium, Texas 139, 1977.

24 "There is at least a 50 percent chance
25 that Lake Erie is a suitable environment for

1 corbicula."

2 MR. BLOCH: This is where
3 I expect a footnote.

4 MISS HIATT: Well, this
5 again, as I stated yesterday, is based on Mr.
6 Alexander's personal research. He is a
7 marine biologist specializing in clams. This
8 is his expert opinion, the 50 percent chance.

9 MR. BLOCH: Does it arise
10 from a particular study, from a thesis he is
11 doing? From what kind of empirical
12 information does he derive that? Is there
13 any empirical information these clams have
14 been seen anywhere near Lake Erie? What is
15 the basis for that conjecture?

16 MISS HIATT: Well, the
17 clams may not have been found in Lake Erie
18 specifically, at least not around the
19 environment of the Perry Plant, but when this
20 plant comes into operation and there is
21 heated water discharged, the environment is
22 suitable for corbicula and according to Mr.
23 Alexander, the organism will appear there.
24 Now, this is based on his personal research.

25 MR. BLOCH: Did he

1 indicate that that particular scenario of
2 being unable to find them in the vicinity of
3 a plant and then opening the plant and
4 finding them there had occurred before?

5 MISS HIATT: I do not know.

6 MR. SHON: Miss Hiatt, do
7 you happen to know whether this is the same
8 species of clam that gave troubles a short
9 while ago at Arkansas Unit 1?

10 MISS HIATT: I do not know.

11 MR. SILBERG: Yes, it is,
12 Mr. Shon.

13 MR. SHON: Thank you.

14 MISS HIATT: Mr. Alexander,
15 his position is that he need not reveal at
16 this time his research or his other
17 references at this proceeding. It is more
18 applicable to the evidentiary hearings and he
19 is citing the Pothoff standard, P O T H O F F,
20 of the Allens Creek. If I may quote from
21 this, "As a precondition to the acceptance of
22 a contention for the limited purpose of
23 determining whether to allow intervention,
24 petitioners do not have to establish the
25 existence of some factual support for the

1 particular assertions they have as a basis
2 for their contentions. That obligation
3 arises in response to a motion for summary
4 disposition or at the evidentiary hearing."

5 MR. BLOCH: Could you
6 continue, please?

7 MISS HIATT: I believe we
8 ended at about the 50 percent chance of Lake
9 Erie being suited. You have to consider
10 several impacts of this. First necessary
11 control methods can cause unacceptable
12 environmental impact. Chemical biocides can
13 alter and severely harm existing aquatic
14 biota other than the target species.

15 MR. SILBERG: I'm
16 wondering, rather than reading the contention
17 into the record we might have a discussion on
18 it. I think the public is aware at this
19 point of what the nature of the contention is.
20 We can save time.

21 MR. BLOCH: We do have the
22 contention in writing. I think the oral
23 presentation should be to give an
24 understanding of the contention to the push
25 and we can discuss it.

1 MISS HIATT: I believe it
2 would be beneficial to read each contention
3 in its entirety for the benefit of the public.

4 MR. BLOCH: Proceed.

5 MISS HIATT: The chemical
6 biocides which were mentioned here,
7 specifically they are referring to chlorine
8 which would have a very heavy fish mortality
9 in addition to killing the clams.

10 Secondly, chunking, massive detachment of
11 clams could cause partial blockage of intake
12 vessels and condensers leading to a loss of
13 coolant accident.

14 Finally, the financial aspects of this
15 necessary maintenance must be assessed. If
16 alternative control methods are utilized EG,
17 manual cleaning, there should be provident
18 allocation of funds to meet the task.
19 Applicant must demonstrate a program for
20 control that will not permit biofouling
21 beyond a certain extent. Efficiency loss
22 should be minimized and hazardous build-ups
23 prevented.

24 Since I am but a temporary representative
25 of Mr. Alexander and I do not have full data

1 on his contentions, there is nothing really
2 more that I can discuss at this time.

3 MR. BLOCH: Miss Hiatt, to
4 be clear, you are a temporary representative
5 of OCRE of which Mr. Alexander is also a
6 representative?

7 MISS HIATT: That's true.

8 MR. KLINE: We are having
9 a little trouble seeing how detachment of
10 clams could lead to a loss of coolant
11 accident. In the experience that we have had
12 with these clams referred to by Mr. Shon, the
13 clams fouled another portion of the plant,
14 not the cooling system.

15 Could you tell us the basis for believing
16 that a loss of cooling accident could occur
17 from biofouling?

18 MISS HIATT: I really
19 can't tell you at this time, no.

20 MR. KLINE: Are you aware
21 of the type of cooling system that the Perry
22 Plant has, that is either a once through or
23 closed cycle cooling system?

24 MISS HIATT: I am not
25 fully aware of all the points concerning that.

1 MR. KLINE: In referring
2 to the similarity of plants where this
3 biofouling has occurred, do you know if these
4 similar plants were close cycle or open cycle
5 cooling systems?

6 MISS HIATT: I do not know.

7 MR. SHON: Miss Hiatt, it
8 may be that either you or Mr. Alexander is a
9 little bit confused about a very specialized
10 term of organ. Loss of cooling accident
11 means something rather specific to nuclear
12 engineers and to the regulators of nuclear
13 power plants. It isn't simply, for example,
14 a plugging of the main condenser or something
15 like that. Are you aware of the specific
16 meaning of the words that are used in this
17 contention?

18 MISS HIATT: I would like
19 to point out that I am not a lawyer, a
20 physicist, economist or any other type of
21 specialist here. I am a common citizen
22 serving as a temporary representative for
23 OCRE.

24 MR. BLOCH: Miss Hiatt, I
25 must apologize because I understand the

1 situation in which you have been placed. We
2 had hearings conducted by the senate in the
3 1950's in which people were repeatedly asked
4 questions to which the senators knew there
5 was no response. We are not intending to do
6 that.

7 On the other hand, we do feel obligated
8 to raise questions about the contentions and
9 we are sorry it places you in the position of
10 having to say you are continually uninformed.

11 Are there other intervenors that would
12 like to make a comment on this contention?
13 Applicant?

14 MR. SILBERG: First, I
15 think the statement that somehow once the
16 plant starts to operate, clams will magically
17 appear, at least, is puzzling to me. As a
18 lawyer, I don't know whether it would be
19 puzzling to an environmental scientist.
20 There's certainly no basis that's alleged for
21 that kind of allegation.

22 MR. BLOCH: That may be
23 true. If magic occurred once before though,
24 you might expect it again. Do you know if
25 that magic occurred at Arkansas 1?

1 MR. SILBERG: No, I don't
2 know, because I suspect at Arkansas they had
3 not looked for those before the plant went
4 into operation. I don't know that as a fact
5 however.

6 MR. BLOCH: Was there an
7 inventory of the biotic found in the vicinity
8 of the plant as part of any environmental
9 report? I take it it's an attempt to be
10 comprehensive. If they didn't find them at
11 Arkansas and all of a sudden they occurred
12 in the systems of the plant, then the failure
13 to find them here wouldn't be overly reassuring.

14 MR. SILBERG: Yes; but I
15 have heard nothing today to indicate they
16 didn't find them there prior to operation. I
17 also have heard nothing today that would
18 indicate that the environment in Lake Erie in
19 the vicinity of the Perry Plant is one where
20 it is suitable for the growth of these
21 organisms.

22 MR. SHON: We have that at
23 least by allegation from a man who says he's
24 an expert on clams, Mr. Alexander.

25 MR. SILBERG: Well, he

1 says there's a 50 percent chance. We don't
2 know what the basis for that statement is.
3 Unfortunately, he's not here.

4 I think more important is the fact that
5 he says he need not and apparently has
6 refused to review quote his research or
7 references at this hearing and sites the
8 Allens Creek order. Of course, in Allens
9 Creek the intervenor did reveal the basis for
10 his allegation. I happen to have the Allens
11 Creek decision, ALAB 590, here and that
12 contention which Mr. Pothoff raised cited to
13 a specific document, the project independence
14 report, referring to a specific calculation
15 that appeared in that report on biomass and,
16 indeed, that was the basis on which that
17 contention was admitted.

18 We have a very different situation here.
19 The key fact, the probability or the
20 likelihood that these Asiatic clams would be
21 found near Perry has absolutely no basis
22 supplied to that statement.

23 MR. BLOCH: Could you
24 describe what was done to the applicant to
25 assure himself of that in terms of the

1 environmental report?

2 MR. SILBERG: As you know,
3 this is a problem that arose subsequent to
4 the environmental report. There is
5 outstanding a bulletin by the NRC inspection
6 and enforcement division, bulletin 81-03,
7 which asks people to look for these clams.

8 The company did undertake a rather
9 extensive environmental monitoring program in
10 connection with the construction permit and
11 the operating license application.

12 As I understand it, none of that
13 monitoring detected any signs of this clams
14 existence. That monitoring program is, of
15 course, laid out in the environmental report
16 at the construction permit stage and the
17 operating license stage.

18 In response to this bulletin, it is my
19 understanding that the company has asked its
20 environmental consultant to look again to
21 reassure themselves that these organisms are
22 not found in this vicinity.

23 MR. BLOCH: Is there a
24 change in the method of looking that's
25 prescribed by the directive from the NRC?

1 MR. SILBERG: I don't
2 think it goes into the methodology. I think
3 it just says find out whether these
4 particular organisms are present in the
5 vicinity of the plant.

6 MR. BLOCH: My
7 understanding is that the larvae at least are
8 extremely small and might be hard to spot.

9 Is there a methodology or method for
10 determining whether they are in the vicinity?

11 MR. SILBERG: There are
12 two melt orders. One is one can look at the
13 nearby operating fossil plants that CEI has
14 on the lake. That has been done and no
15 evidence, as I understand it, of these clams
16 have been found.

17 These are plants that are essentially
18 causing the same environment that the Perry
19 Plant will cause, perhaps more so because
20 they don't have the sophisticated intake and
21 discharge system that the Perry Plant will
22 have.

23 The other is an aquatic monitoring
24 program and, as I understand that, you can
25 detect very, very small organisms if you are

1 look for them.

2 MR. BLOCH: Have you
3 concluded?

4 MR. SILBERG: One point on
5 the chlorine. I think we have to bear in
6 mind that in that particular situation, we
7 are dealing with an EPA/NRC jurisdiction
8 which I'm sure the board is aware of and NRC
9 does not have free rein in that area. I
10 think the board has adequately explored the
11 LOCA question. We had the same question. We
12 are of course dealing here with a close cycle
13 cooling system. We have intake and discharge
14 tunnels which are very, very large, 12 feet
15 in diameter. It's pretty hard for me to
16 imagine how you would get enough clams to
17 close up those kinds of structures.

18 MR. SHON: Mr. Silberg, I
19 realize I raised that LOCA question myself,
20 and I think we all know that the words were
21 perhaps ill-chosen, but it is my
22 understanding that at Arkansas 11, equipment
23 important to the safety of the plant and
24 important to a recovery from a LOCA could
25 well have been interfered with by the

1 presence of the clams.

2 Is that not so?

3 MR. SILBERG: As I
4 understand the Arkansas situation, and that's
5 very imperfect, we have a very different
6 plant. It's a pressurized water unit
7 manufactured by B & W, a service water system
8 which I think is the system that had some
9 problems in the containment cooling units.
10 We are dealing with just a totally different
11 design now.

12 One can postulate anything growing
13 anywhere in the plant if you want to. But
14 the fact is NRC enforcement division has in
15 its judgment, and I think wisely, told people,
16 look at the situation, it happened in one
17 place, let's make sure it won't happen in
18 other places. If it does, we will be aware
19 of it and take prompt actions.

20 But that hardly creates a basis for
21 saying it is going to happen in this plant.

22 MR. SHON: Do you know if
23 the applicant has looked at the Perry Plant
24 to see whether there might be places in it
25 where clam fouling or biofouling of that sort

1 could disable equipment important to safety?

2 MR. SILBERG: If you give
3 me a minute, I can find out whether anyone
4 here knows that answer.

5 (Pause.)

6 MR. BLOCH: While
7 applicant is conferring, Miss Hiatt, I am
8 interested in knowing, since you are using
9 Mr. Alexander for the authority for the
10 proposition that the clams can be found,
11 whether you are prepared to give to us a
12 resume of Mr. Alexander?

13 MISS HIATT: I am not.

14 MR. SILBERG: I'm told
15 that the company has not done the kind of
16 analysis at the present time, Mr. Shon, that
17 you were referring to.

18 MR. BLOCH: Mr. Silberg,
19 have you concluded?

20 MR. SILBERG: Yes, sir.

21 MR. BLOCH: We did
22 ascertain while you were conferring that we
23 could not obtain a resume for Mr. Alexander.

24 MR. SILBERG: Thank you.

25 MR. BLOCH: Mr. Barth?

1 MR. BARTH: I don't have
2 anything to add, Your Honor. We would rest
3 upon the brief we submitted on this point.

4 MR. BLOCH: Miss Hiatt,
5 your opportunity to respond.

6 MR. LODGE: I would wonder
7 if I might respond first before her.

8 MR. BLOCH: That's her
9 choice.

10 MR. LODGE: I too have
11 read the Allens Creek's position. Very
12 interestingly it involves a petitioner like
13 Mr. Alexander who is going pro say in this
14 type of matter. I think that it is important
15 for the board to note that in its discussion
16 in the Allens Creek decision that the board
17 ruling there cited the Grand Gulf decision
18 which was actually known as Mississippi Power
19 and Light Company, Grand Gulf Nuclear Station
20 Units 1 and 2, ALAB 130.

21 MR. BLOCH: This reference
22 has occurred before. It has occurred to me
23 that the audience doesn't know what A-L-A-B
24 or ALAB means. It's the Atomic Safety and
25 Licensing Appeal Board which is the body that

1 hears appeals from this decisional body, so
2 the audience will understand that ALAB merely
3 means our appeal board.

4 MR. LODGE: In any event,
5 that decision was rendered -- I'm sorry, it
6 also is cited as 6 AEC 423, and the year was
7 parenthetically, 1973.

8 In any event, the ALAB cited the Grand
9 Gulf decision discussing the standards, I
10 guess, to be applied to petitions for
11 intervention, pointing out of course that a
12 pro say petitioner is not to be held to the
13 same standards as a petitioner represented by
14 counsel or otherwise represented.

15 MR. LODGE: I would also
16 point out in relying specifically on the
17 Grand Gulf decision, the board simply stated
18 that in passing on the question as to whether
19 an intervention petition should be granted,
20 it's not the function of the licensing board
21 to reach the merits of any contention
22 contained therein. I'm paraphrasing.
23 Essentially it says it is enough for the
24 basis for the contention is identified with
25 reasonable specificity. I think that has

1 occurred here.

2 I think there are representations before
3 the board that Mr. Alexander is an expert in
4 his field. I cannot clearly recall, but I
5 would expect that he would actually appear to
6 testify as an expert witness or at least
7 attempt to testify as such, and would subject
8 himself to cross-examination on the
9 contention, and that there is certainly
10 enough specificity cited or stated in the
11 contention to warrant this ground to be a
12 ground of intervention to be recognized as
13 such by the board.

14 MR. BLOCH: Miss Hiatt?

15 MISS HIATT: I would like
16 to confirm what Mr. Lodge has said. I
17 believe the Pothoff standard does apply here
18 and that there is reasonable specificity in
19 this contention and that there need not at
20 this proceeding be any more evidence
21 presented.

22 MR. BLOCH: I find it
23 interesting that the intervenor has asserted
24 such a technical point. What we were really
25 asking for was his help and have gone out of

1 our way to ask for his help for the basis for
2 50 percent assumption. We may conclude that
3 intervenor is going to give us the help we
4 were requesting but it seems like a technical
5 position for an intervenor wishing to
6 establish his position to take.

7 MR. SILBERG: If I could
8 add, I hate to prolong this thing more than
9 necessary, but I think it is appropriate to
10 read from the commission's statement of
11 policy of May 27, 1981, which touches rather
12 directly on the rights and obligations of pro
13 say intervenors.

14 I quote from page 28534, Federal Register
15 notes, "Fairness to all involved in NRC
16 adjudicatory procedures requires that every
17 participant fulfill the obligations imposed
18 by and in accordance with applicable law and
19 commission regulations. While the board
20 should endeavor to conduct the proceeding in
21 a manner that takes account of the special
22 circumstances faced by any participant, the
23 fact that a party may have personal or other
24 obligations or possess fewer resources than
25 others to devote to the proceeding does not

1 relieve that party of its hearing obligations."

2 I personally think this board has gone
3 out of its way to accommodate the
4 commission's rules to the intervenors in this
5 case and I think the board ought to be
6 commended for that, but I don't think that
7 that largess is infinite or should be.

8 MR. BLOCH: Miss Hiatt,
9 your next contention.

10 MISS HIATT: Contention
11 two is on diesel generator reliability.

12 MR. SILBERG: Excuse me, I
13 think we probably dealt with that already in
14 connection with the parallel contention by
15 the Sunflower Alliance.

16 MR. BLOCH: Do you agree
17 with that?

18 MISS HIATT: Yes, that is
19 true, but I have something further to add.

20 Part of the contention is that the
21 applicant should include not two out three
22 diesel generating systems which should be
23 independent and from different suppliers and
24 manufacturers, and the applicant stated
25 yesterday that they have three generating

1 systems, but OCRE wants assurances that these
2 generators have not been exposed to the
3 elements outside, the rain, and have not been
4 damaged in any way before being used.

5 MR. BLOCH: That's not
6 really a clarification of this contention.
7 That really is an entirely new point, isn't
8 it, Miss Hiatt?

9 MISS HIATT: Yes.

10 MR. BLOCH: Are there
11 responses to this new point?

12 MR. SILBERG: Only that
13 it's totally untimely and has no basis.

14 MR. BLOCH: Mr. Barth?

15 MR. BARTH: No response is
16 necessary. It speaks for itself, sir.

17 MR. BLOCH: Are there any
18 intervenors who want to comment on that point?

19 Your next contention.

20 MR. SILBERG: Excuse me.
21 Let me correct a statement which I corrected
22 before when I said the tunnel diameter was 10
23 feet and 12 feet. We have shrunk it and it
24 is now back to 10 feet and that's the correct
25 item.

1 MR. BLOCH: Miss Hiatt?

2 MISS HIATT: Three is on
3 radiation blocking agent.

4 MR. SILBERG: That has
5 been accepted by both the staff and the
6 applicant so I don't think any discussion on
7 that is necessary.

8 MR. BLOCH: I think so,
9 that's correct. Try if you could to cover
10 only the ones that were not already covered.

11 MISS HIATT: Contention
12 four is on steam injury. "Applicant must
13 demonstrate that its maintenance program on
14 steam valve's is conducted in a safe manner so
15 that technicians and maintenance workers
16 necessary to the safe operation of the plant
17 are not injured by escaping steam."

18 MR. SILBERG: Excuse me, I
19 believe we did discuss that last night.

20 MR. BLOCH: As I recall,
21 we did but we left it open because Miss Hiatt
22 said she couldn't respond to some problems
23 that the board raised, that she hadn't spoken
24 to Mr. Alexander.

25 MR. SILBERG: Perhaps if

1 we could avoid rereading the contention since
2 it has been read into the record already.

3 MR. BLOCH: I think that
4 is well taken. The question is whether it is
5 covered by the Atomic Energy Act or whether
6 it's an OSHA question and really doesn't
7 affect the safety of the plant with respect
8 to the public at large.

9 MISS HIATT: Well, in my
10 conversation with Mr. Alexander last night,
11 OCRE is concerned about procedures within the
12 plant even if they are not specifically
13 covered by this licensing procedure. OCRE is
14 concerned that all procedures are carried out
15 in a safe manner and that even if technicians
16 and not necessarily nuclear operators are
17 injured, it may lead to serious consequences
18 within the plant.

19 MR. BLOCH: Are you
20 talking about ripple effects among the work
21 force?

22 MISS HIATT: Yes.

23 MR. BLOCH: Are there
24 other intervenors who would like to comment
25 on this point? Applicant?

1 MR. SILBERG: I think the
2 statement that Miss Hiatt started with, which
3 is they are concerned about plant procedures
4 even if they are not related to the licensing
5 of this plant, disposes of the issue. As far
6 as so-called ripple effects, I don't think
7 there is any basis for those as I pointed out
8 in our response and I have heard nothing to
9 the contrary. The incident which is referred
10 to occurred in a plant which hadn't even been
11 loaded with fuel. The people that were
12 injured were not reactor operators or
13 licensed personnel. I just don't see any
14 basis for this claim whatsoever or any
15 relevance to this proceeding.

16 MR. BLOCH: Mr. Barth.

17 MR. BARTH: We have
18 nothing to add beyond our brief, Your Honor.

19 MR. BLOCH: Miss Hiatt, a
20 reply?

21 MISS HIATT: No reply.

22 MR. BLOCH: Your next
23 contention, please.

24 MISS HIATT: Contention
25 five on hydrogen bubbles, I believe that was

1 included in Sunflower Alliance's number 7.

2 MR. BLOCH: Yes, and we
3 left that at the stage of having read what we
4 believed to be the law from the commission
5 and read the standard that would have to be
6 met in order to establish that this issue was
7 legitimate at this proceeding. I take it
8 that at this point you really can't meet that
9 standard, is that correct?

10 MISS HIATT: That is true.

11 MR. BLOCH: Would you like
12 to present your next contention?

13 MISS HIATT: Contention 6
14 is on pressure vessel cracking. *OCRE
15 contends that applicant has not provided
16 reasonable assurance in its operating
17 activities can be conducted without
18 endangering the health and safety of OCRE
19 members and the public in that, A, cracks in
20 the pressure vessel would be very difficult
21 to detect before they led to catastrophic
22 failure, and B, the growth of small cracks,
23 though harmless at first, would necessitate
24 the repair in reactor conditions.
25 Currently, no equipment is available to grind

1 out and soundly weld up cracked regions in
2 radioactive steel by remote automatic methods.
3 If the cracks were not fixed and permitted to
4 grow, applicant would then have the decision
5 of either taking the chance of running the
6 reactor or shutting it down at a fraction of
7 its planned economic life."

8 There is a reference here of Nature,
9 volume 283 at 84, the date being February
10 28th, 1980.

11 MR. BLOCH: Miss Hiatt, I
12 take it you are not prepared to tell us
13 anything further about the problem since
14 there is extensive literature on how cracks
15 occur, how they are propagated, kinds of
16 materials to be used in these vessels, the
17 tests that must be conducted, the standards
18 they must live up to. There doesn't seem to
19 be any specificity as to what the nature of
20 the deficiency in the pressure vessel is
21 thought to be or the tests that are performed.
22 I take it from our previous discussions that
23 you really cannot respond to those possible
24 deficiencies.

25 MISS HIATT: That is true,

1 but there are further contentions,
2 contentions 8 and 9, I believe, which may
3 address that.

4 MR. BLOCH: Are they
5 properly considered together with the
6 pressure vessel contention?

7 MR. SILBERG: They do
8 relate to pressure vessels but they relate to
9 very different aspects of the pressure vessel
10 question. If you would prefer to continue to
11 argue the entire pressure vessel question
12 including those two contentions, it could
13 expedite the proceedings, so if you would
14 like to expand your argument to include those,
15 that would be permissible. If you would not,
16 we will proceed on what you already argued.

17 MR. SILBERG: Mr. Chairman,
18 I think it would be useful if we kept the
19 contentions separate because each of them
20 does cite separate documents and they go to
21 very different questions. I think if we lump
22 them altogether we are going to get a very
23 confused record on what the issue is that
24 this petitioner seeks to raise.

25 MR. BLOCH: Miss Hiatt,

1 would you agree to that, that it would be
2 better to work on the one contention?

3 MISS HIATT: I agree.

4 MR. BLOCH: Have you
5 concluded your presentation on this
6 contention?

7 MISS HIATT: I have.

8 MR. BLOCH: Do any of the
9 other intervenors wish to comment on this
10 particular contention? There being no
11 comment from intervenors, applicant?

12 MR. SILBERG: Just to
13 summarize, there are 3 major points. One is
14 that the document which is cited which is an
15 article from a British magazine deals with
16 pressure --

17 MR. BLOCH: I take it that
18 does not reflect on its appearance.

19 MR. SILBERG: Probably
20 makes it more acceptable. It deals with
21 pressure vessels for pressurized water
22 reactor. We do not have a pressurized water
23 reactor here. Service conditions for
24 pressurized water reactors are very different
25 from those for boiling water reactors. Even

1 if that were the only issue, the article
2 which they cite is really irrelevant.

3 The second point is that the commission
4 has a well-established rule of law in which
5 challenges to the adequacy of reactor
6 pressure vessels can only be made on the
7 showing of quote special circumstances
8 involving a particular facility at issue.
9 Those circumstances are not met by this
10 particular citation because the article is a
11 general one dealing with pressurized water
12 reactor pressure vessels in general.

13 Finally, we have in our FSAR set forth
14 our program for in-service inspection which
15 deals with the cracking problem and the
16 inspection problem that is discussed in the
17 contention and intervenor OCRE has showed no
18 basis for challenging that problem or showing
19 that it does not in compliance with
20 regulations which are fairly explicit on the
21 question of inspections.

22 MR. SHON: Mr. Silberg,
23 you say that the article was about PWRs, this
24 is about PWRs, but it's been my understanding,
25 and correct me if I am wrong, that in the

1 operating history of these two different
2 kinds of plant, at least one kind of pipe
3 cracking intergranular stress corrosion
4 cracking has been far more common in BWRs
5 than in PWRs, is that not correct?

6 MR. SILBERG: That is true
7 but we are not talking about pressure vessels.
8 There has been to my knowledge no IGSCC in
9 either BWR or PWR pressure vessels.

10 MR. SHON: Nevertheless,
11 if someone alleges cracking of some
12 particular sort in a PWR, one would not
13 necessarily expect it to be less probable in
14 a BWR in view of the experience, isn't this
15 so?

16 MR. SILBERG: Except the
17 growth crack propagation conditions are based
18 in part on stress. The pressures inside a
19 PWR pressure vessel are at least twice that
20 inside a BWR pressure vessel, so you are
21 dealing with extremely different service
22 conditions at those two.

23 MR. SHON: A difference of
24 a factor of two in the pressure that the
25 vessel is intended to maintain doesn't

1 necessarily imply any difference at all in
2 stress in the material it is made of since
3 design takes account of the fact that it is
4 made for bigger pressure.

5 MR. SILBERG: That's right.
6 Nonetheless, the operating conditions under
7 the actual stresses are quite different.

8 MR. BLOCH: Mr. Barth?

9 MR. BARTH: I think that
10 the matter has been adequately covered in the
11 briefs by the applicant and the staff. I
12 would further observe, sir, in response to
13 Mr. Shon, the technical staff does not know
14 of a pressure vessel itself that has cracked.
15 Of course, there are cracks in the fittings
16 that have occurred but not in the vessel
17 itself. The contention is only about the
18 vessel.

19 MR. SHON: I would also --
20 I believe you addressed the Indian Point rule
21 in your brief and Mr. Silberg did in his also.
22 I take it you think this is precluded from
23 our consideration by Indian Point, is that
24 right?

25 MR. BARTH: We did not

1 address that. We did not think it was
2 necessary. Having written Mr. Silberg's
3 brief, I concur with his point, sir.

4 MR. SHON: Thank you.

5 MR. SILBERG: I'm finished
6 on this.

7 MR. BLOCH: You think the
8 next contention has already been discussed?

9 MR. SILBERG: Yes.

10 MR. BLOCH: Do you agree
11 with that?

12 MISS HIATT: I agree.

13 MR. BLOCH: The next
14 contention is 8.

15 MISS HIATT: Computer
16 surveillance of RPV.

17 MR. BLOCH: Before you
18 read this, the response that was given by
19 applicant was that the computer to which the
20 intervenor was referring was not even a
21 surveillance computer, that it controlled an
22 experimental treatment designed test
23 materials, and that therefore, the citation
24 and the contention are grossly mistaken.
25 Continue with your presentation.

1 MISS HIATT: "OCRE
2 contends that applicant has not met the
3 requirements of 10 CFR part 50 appendix A
4 criterion 32 which mandates an appropriate
5 material surveillance program for the reactor
6 pressure vessel, RPV. Applicant has not
7 adequately considered all RPV surveillance
8 techniques, specifically the computer
9 mentioned by Oak Ridge Laboratory," and the
10 citation here is ORNL/CSD/TM-135.

11 MR. BLOCH: Intervenors?
12 Applicant?

13 MR. SILBERG: I hate to
14 paraphrase from congressional hearings but I
15 have in my hand here the very document that
16 is cited and as I quoted in my brief and I
17 think as the licensing board chairman
18 indicated, this computer system has
19 absolutely nothing to do with the material
20 surveillance program for an operating reactor.
21 It was a method of controlling a nonpower
22 reactor test program and was used to
23 duplicate reactor operating license
24 conditions. It is therefore simply
25 irrelevant.

1 MR. BLOCH: Mr. Barth.

2 MR. BARTH: We have
3 nothing further to add to the matter which I
4 think is well briefed in our brief and the
5 applicant's, sir.

6 MR. BLOCH: OCRE
7 contention 9, please.

8 MISS HIATT: Machining
9 defects in RPV. "Applicant has not met the
10 reasonable assurance burden in regard to the
11 RPV integrity and the defects which occurred
12 during machining. Interim report 50-440-148,
13 date being November 5th, 1975. To assure
14 adequately all OCRE members, applicant must
15 conduct further testing of the RPV prior to
16 the criticality stage."

17 MR. BLOCH: Anything
18 further on that point?

19 MISS HIATT: OCRE
20 essentially wants to know what tests will be
21 performed on the pressure vessel and there
22 must be evidence that these tests will be
23 proper tests.

24 MR. BLOCH: Any other
25 comments by intervenors? Applicant?

1 MR. SILBERG: The final
2 safety analysis report, as I stated in my
3 reply, does describe the testing program
4 which will be carried out. It is a testing
5 program which meets the requirements as
6 stated in the FSAR of section 11 of the ASME
7 code. I think what OCRE wants to do is have
8 this licensing board monitor the construction
9 testing of this plant. I think we had a long
10 discussion on that yesterday, the appropriate
11 role of the licensing board is spelled out in
12 the Union of Concerned Scientists case that
13 we discussed yesterday. It is not to
14 undertake the monitoring of the testing
15 program as this plant proceeds in final
16 stages of its construction and testing.

17 In addition, the document which OCRE
18 relies upon for this contention, again, a
19 document which I have here and it is referred
20 to in our brief, describes specifically the
21 nature of the repairs which were carried out
22 and also references, our brief also
23 references the NRC inspection report which
24 closed out this item and OCRE has shown no
25 basis for going in to question the adequacy

1 of the repair procedure which was proposed
2 and they must have been aware of it since it
3 is discussed in the document they cited or
4 with the NRC's close out of that item.

5 MR. BLOCH: Mr. Barth?

6 MR. BARTH: I think the
7 matter is well briefed and we have nothing to
8 add. I would emphasize that the intervenors
9 asked for further tests. There will be
10 further tests so they are getting exactly
11 what they asked for. Those tests are
12 described in the FSAR. Should there be a
13 defect in one of the tests or testing program,
14 they simply have an obligation to inform us
15 what test or testing is inadequate, and
16 describe why so we can take care of it but
17 they don't do this.

18 MR. BLOCH: Contention 10,
19 please. 10 we have discussed, is that
20 correct?

21 MR. SILBERG: That's
22 correct. We have also discussed contentions
23 11 A and B, which deal with the seismology
24 investigation of the site. Contentions 11 C
25 and D, we have not previously discussed.

1 MR. BLOCH: Miss Hiatt, do
2 you agree?

3 MISS HIATT: I agree.

4 MR. BLOCH: Could you
5 present C and D?

6 MISS HIATT: Okay. OCRE
7 contends that the site is not suitable for
8 the safe operation of a nuclear power plant
9 pursuant to 10 CFR part 100 C. The
10 population center distance is too short in
11 light of the accident at Three Mile Island
12 and the recommendations in the Rogovin report;
13 D, the hypothetical fission product release
14 assumed by applicant in determining an
15 exclusion zone, low population zone and a
16 population center distance is underestimated
17 in light of a TMI occurrence and renders said
18 determinations invalid.

19 OCRE recommends that -- and I'm skipping
20 E and F because they relate to parts A and B,
21 the seismic considerations -- G, Perry Plant
22 not be operated beyond 50 percent of its
23 current 3579 megawatts thermal rating; as
24 distance cannot be regarded as an ultimate
25 defense

1 in-depth barrier to OCRE members living near
2 the plant site, reduced power limits are a
3 necessary mitigation and preventative measure
4 to protect the health of those OCRE members.
5 Rogavin Report, volume one at 130;

6 H, applicant assume for its hypothetical
7 fission product release the TMI occurrence.

8 Following these recommendations can help
9 assure that no accidents releasing
10 significant quantities of radioactive fission
11 products will occur and injure OCRE members
12 or their children.

13 MR. BLOCH: Does that
14 complete your presentation?

15 MISS HIATT: Yes.

16 MR. BLOCH: I take it that
17 you haven't had an opportunity to study the
18 applicability of the rule referred to earlier
19 which precludes site considerations in the
20 operating licensing stage, section 51.21,
21 amended in the Federal Register, 45 Federal
22 Register 24168?

23 MISS HIATT: I have not
24 had an opportunity to study that.

25 MR. BLOCH: Do any of the

1 other intervenors have comments on this
2 contention? Applicant?

3 MR. SILBERG: Yes. First,
4 I would like to state that I do not believe
5 that the amended rule, the new amendments to
6 part 51 which you discussed are relevant to
7 this contention. Those amendments provide
8 that in the course of reviews under the
9 National Environmental Policy Act at the
10 operating license stage that no consideration
11 be given to alternate sites. The contentions
12 that OCRE has raised here do not deal with
13 NEPA issues but rather with issues under the
14 Atomic Energy Act, so I would suggest that is
15 not an appropriate ground to deny these two
16 contentions.

17 MR. BLOCH: We appreciate
18 your assistance.

19 MR. SILBERG: Thank you.
20 I do think there are many other reasons why
21 these contentions are not relevant. Just to
22 summarize what is in our brief, 10 CFR part
23 100 establishes the population center
24 distance and also the fission product release
25 mechanism, fission product release magnitude.

1 The commission has not seen fit to change
2 those regulations. Until it does so, this
3 board is bound by the regulations subject to
4 the procedures of 10 CFR section 2.758.

5 MR. BLOCH: That's the
6 section providing for certification if we
7 were to find that this -- could you explain
8 what that section is?

9 MR. SILBERG: Section
10 2.758 of the commission's regulations
11 overruled the Calvert Cliff decision that Mr.
12 Barth was talking about yesterday or at least
13 codified it. It provides that challenges to
14 NRC regulations are not appropriate in
15 individual licensing procedures. It does
16 state that if a person wishes to argue that
17 for a particular reactor there should be an
18 exemption or a waiver of a particular
19 legislation that it should meet certain
20 standards and present a prima facie case to
21 the licensing board. In the event that the
22 licensing board determines that such a prima
23 facie case has been made, it still does not
24 decide that matter. However, it certifies
25 the question to the commission.

1 In this contention, contention 11 C and D
2 are both challenges to very specific
3 requirements in commission regulations.
4 Wholly apart from that, the documents on
5 which they rely do not support their claim.
6 The Rogovin report, page 130, which I have in
7 my hand, does not apply to existing reactors
8 or projects under construction. It talks
9 about future reactors and criteria for future
10 siting. We are not dealing with that here.

11 In terms of the mission product release
12 as we show in our brief, if, as OCRE would
13 have us do, we applied the TMI releases in
14 doing our off site dose calculations, we
15 would be much less conservative than we are
16 in fact being with the calculations which we
17 have performed pursuant to commission
18 regulations.

19 MR. SHON: Mr. Silberg, I
20 would like to ask you one or two questions on
21 this. Is it not true that the population
22 center distance does depend in part upon the
23 release assumed? 10 CFR part 100 is quite a
24 complex part, and it gives ways of defining
25 the exclusion area and the low population

1 zone and the population center distance in
2 terms of certain doses, is that not correct?

3 MR. SILBERG: Well,
4 population center distances is defined in the
5 regulations as the distance from the reactor
6 to the nearest boundary of a densely
7 populated center containing more than about
8 25,000 residents and that is in section 100.3
9 C.

10 MR. SHON: That's true.
11 The rule, the regulation then requires a
12 population center distance of at least 1 and
13 one-third times the distance from the reactor
14 to the outer boundary of the low population
15 zone. The outer boundary of the low
16 population zone is further defined in 100.11
17 A by means of defining dose to a person, an
18 individual boundary, is that not correct?

19 MR. SILBERG: That's right,
20 but I hope you will correct me, my
21 understanding is as a lawyer and not as a
22 technical person, this is a complex and
23 technical regulation.

24 The population center distance is I think
25 more aptly characterized as the starting

1 point, the geographic distance to the plant
2 to the population center as that term is
3 defined and applied. The low population zone
4 figure is then back calculated from the
5 population center distance using the dose
6 limits which are set forth in part 100, so I
7 think it is probably more fair to say that
8 the population center distance is not related
9 directly to the doses, but rather when one
10 calculates the low population zone, you apply
11 the doses at that stage to get the
12 appropriate distances and still fall within
13 those limits established in part 100.

14 MR. SHON: Well, I perhaps
15 would have looked at it the other way around,
16 but nonetheless, if the amount released is
17 vastly greater than the reactors designers
18 anticipated for some reason, if the amount in
19 footnote one to 100.11 A, that is, the
20 fission product release assumed for these
21 calculations, and I think by saying that, the
22 commission has implied that you are going to
23 assume a fission product release and go from
24 there, if that were assumed to be larger, the
25 low population zone would be much larger and

1 that an appropriate population center
2 distance as defined in 100.11 A (3) would
3 have to be much larger and one might look at
4 this thing and say it doesn't comply with
5 part 100, the population center distance,
6 that is the distance to a large city is only
7 X miles, and it should be Y and Y is much
8 greater.

9 So that one could construe this
10 contention as calling entirely for a
11 reevaluation of the total amount of material
12 released and not as a challenge to the
13 commission's regulations if one so wished to
14 construe it, that is, so that the population
15 center distance doesn't comply with what you
16 would get by the calculation outlined in
17 100.11 A.

18 MR. SILBERG: I think to
19 reach that conclusion, you wind up
20 challenging another part of the part 100
21 process which is the reference to TID 14 A 44.

22 MR. SHON: Now we got to
23 exactly the point I wanted to get to early on.

24 MR. SILBERG: And before I
25 let you, excuse me, before we go on further,

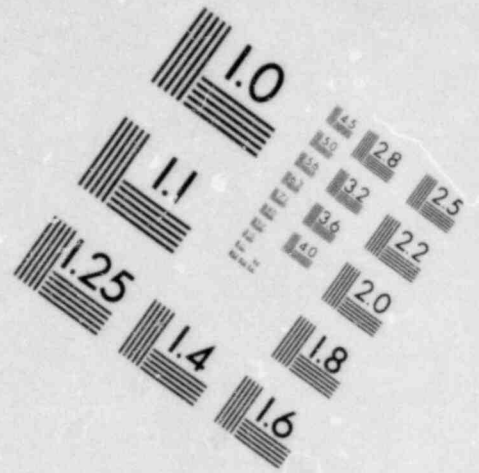
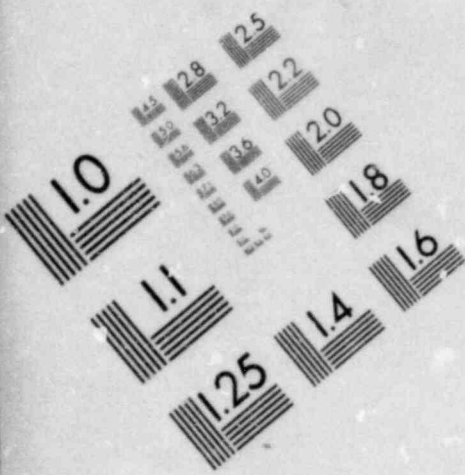
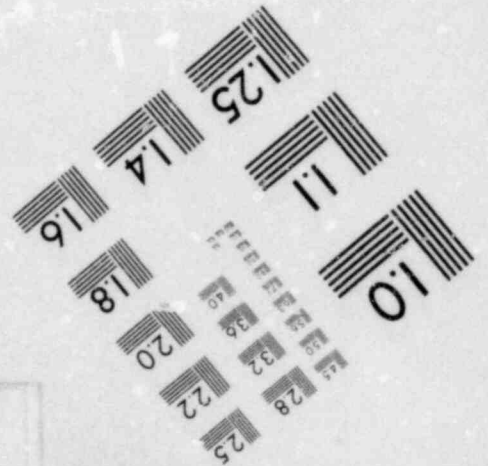
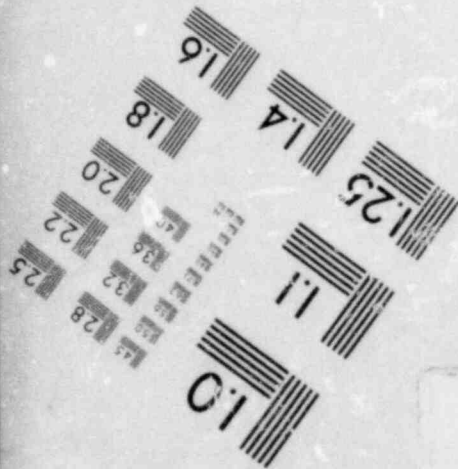
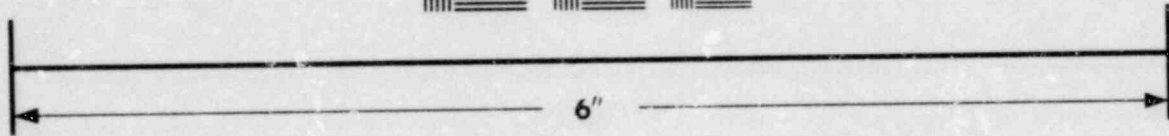


IMAGE EVALUATION
TEST TARGET (MT-3)



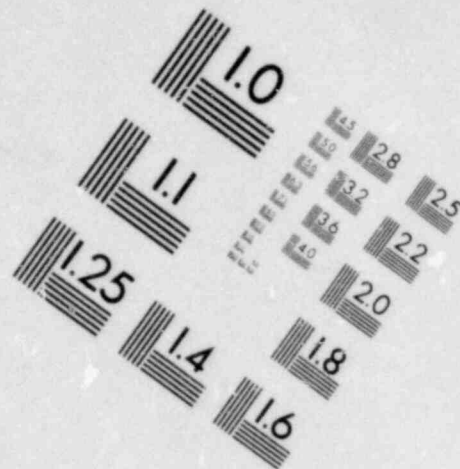
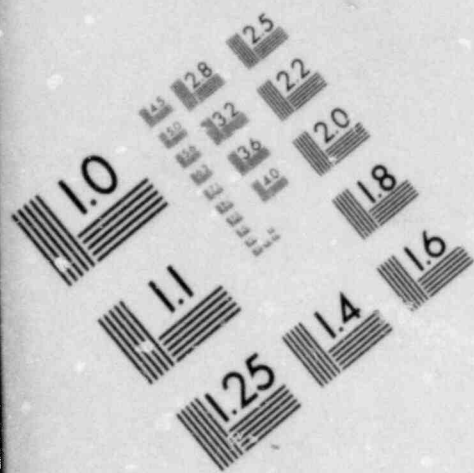
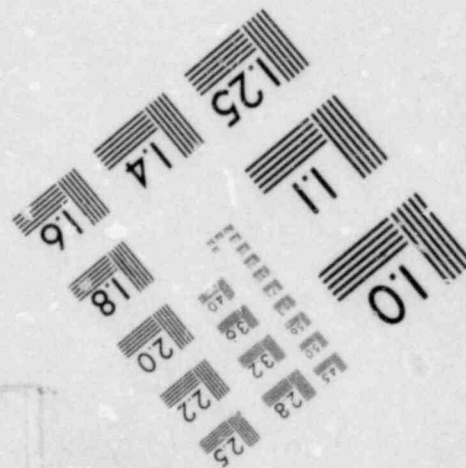
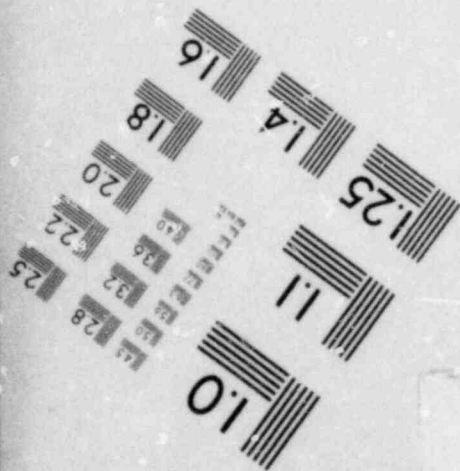
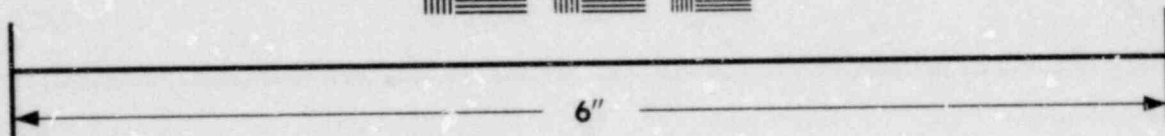


IMAGE EVALUATION
TEST TARGET (MT-3)



1 if I could point out that the applicability
2 of TID 14844 was extensively litigated at the
3 construction permit stage. It was the only
4 as I recall contested safety issue. The
5 appropriateness of using those numbers and,
6 in fact, the requirement that those numbers
7 be used to comply with part 100 was dealt
8 with by the licensing board.

9 Furthermore, there is no basis presented here
10 for arguing that the fission product releases
11 at TMI were greater than those postulated in
12 TID 1414844. My understanding is that they
13 were much, much, much smaller than the
14 assumptions that we are required to make to
15 comply with part 100.

16 MR. SHON: Let me ask you
17 one more question. Was this plant actually
18 designed and the exclusion area and so on
19 defined by TID 14844 or by the regulatory
20 guide, I can't remember the number, I think
21 it is 1.5, applicable to boiling water
22 reactors? Do you recall? Usually they use
23 the right guide and the numbers are not
24 exactly the same.

25 MR. SILBERG: I don't know

1 other than to quote to you from the licensing
2 board decision which says the source term
3 used is a postulated nonmechanistic cause
4 released of 100 percent of the fission
5 product noble gases available in the core
6 inventory and 25 percent of the radio-iodine
7 in the fuel inventory (i.e., TID 14844
8 assumptions), and that's in the licensing
9 board's final initial decision, 5 ARC at 1147.

10 The board concluded that the exclusion
11 area low population zone and population
12 center distances determined for the Perry
13 facility meet the commission's sites criteria
14 and have been determined appropriately using
15 the methodology of TID 14844 as guidance with
16 each unit operating at designed power and
17 that's 5 NRC at 1129.

18 MR. SHON: Thank you.

19 MR. BLOCH: Mr. Barth?

20 MR. BARTH: From the
21 staff's view, Your Honor, the matter was
22 extensively litigated at the construction
23 permit stage. The site was found suitable
24 and that is dispositive here, in the absence
25 of a showing by intervenor of some special

1 circumstance, that is a change of such
2 significance they would cause the
3 environmental NEPA cost benefit balance to
4 change.

5 MR. BLOCH: So you
6 disagree with applicant, I cited that section,
7 but as a safety issue that section is not
8 applicable?

9 MR. BARTH: Whether it is
10 considered a safety or environmental issue,
11 sir, the fact is it was adjudicated below and
12 you have got to somehow find different
13 circumstances to change the safety
14 significance or environmental significance
15 attached to the finding below.

16 MR. BLOCH: That's a res
17 judicata point, but you are not disagreeing
18 about the inapplicability of section 51.21,
19 it's just a general res judicata point you
20 are making?

21 MR. BARTH: That's right.
22 Which would apply whether you find this a
23 matter under Atomic Energy Act part 100, or
24 whether you find this a NEPA matter. It is
25 equally applicable. The intervenors must

1 show some changed circumstance between the
2 construction permit stage and this stage
3 which would either change an adverse
4 environmental additional impact or additional
5 safety impact not previously considered.
6 That has not been showed.

7 MR. SHON: Mr. Barth, and
8 perhaps Mr. Silberg or his technical people
9 or yours would like to address this point I'm
10 about to bring up, too. It's something
11 that's a little bit of a tickle in the back
12 of my own memory concerning the release that
13 occurred at TMI 2.

14 The releases that we have discussed under
15 TID 14844 have been releases from the core to
16 the interior of the containment building, I
17 believe. Thereafter, the methods of
18 calculation used by the staff and the
19 applicant assume that the containment
20 building functions in a particular way and
21 calculate amounts released over a period of
22 time from the containment building. Is that
23 not right?

24 MR. SILBERG: I believe
25 that's correct and I believe the methodology

1 that's used assumes a very conservatively
2 high containment leak rate at something like
3 one percent is my recollection.

4 MR. SHON: That's correct.
5 Now, it sticks in the back of my head that I
6 have heard somewhere that the total amount
7 released, I believe, of one of the noble
8 gases in curious from the TMI incident was
9 larger in fact released from the containment
10 building, I'm talking about, not released to
11 the containment building, than what the
12 normal regulatory process considers to be
13 released from the type of reactor at hand.
14 I'm talking about total number of curies of a
15 particular noble gas. I can cite you no
16 reference for this. It simply sticks in the
17 back of my head that I had heard that.

18 MR. BARTH: Our technical
19 staff has no recollection of this, Your Honor.

20 MR. SILBERG: My
21 recollection is that -- I don't know what TID
22 14844 assumes with regard to noble gas
23 releases. I do know from my recollection
24 that in TMI, the releases for krypton and
25 xenon were in the 11 times ten to the 6th

1 curie range.

2 MR. SHON: But you are
3 comparing apples and oranges because TID
4 14844 assumes a leakage to the containment
5 atmosphere and thereafter a fixed leakage
6 rate of one percent per day to the outside
7 world. What happened at TMI was that, in
8 effect, the containment failed. The material
9 was pumped, substantial quantities of material
10 was pumped over into another building that
11 was not a containment building and released
12 from there. Other substantial amounts were
13 released from auxiliary equipment in that
14 building, and I'm saying that it sticks in my
15 head that if you take TID 14844 and apply the
16 a situation of a functioning containment
17 building, you get a lower number than was
18 released in TMI. Now, I'm not sure of that,
19 but it seems to me that was true, and I was
20 wondering if anyone could for sure say that
21 wasn't so.

22 MR. SILBERG: Well, I
23 think it may well be true for the xenons and
24 kryptons, but the releases for the fission
25 products were certainly much less.

1 MR. SHON: Xenon and
2 krypton are fission process.

3 MR. SILBERG: The noble
4 gases, yes, but the radio iodines which were
5 released at TMI, my recollection is that that
6 was about seven curies but my recollection
7 may be faulty.

8 MR. BLOCH: Were the
9 overall releases within the conservative
10 assumptions?

11 MR. SILBERG: Yes, as I
12 said in my brief, citing the Rogovin report,
13 the off site, the maximum individual off site
14 dose was calculated to be 100 milligram to
15 the thyroid and less -- I'm sorry, the
16 maximum whole body dose was less than 100
17 milligram and the maximum thyroid dose was
18 less than seven milligram. That's at volume
19 2 part 2 page 400 of the Rogovin report. The
20 part 100 limits are 300 rem the whole body
21 versus 100 millirem and 25 rem to the thyroid
22 versus 7 millirems.

23 MR. SHON: I believe it is
24 the other way around. 300 rem to the thyroid
25 and 25 rem whole body.

1 MR. SILBERG: Thank you.

2 I have that error in my brief and we may
3 stand and assume the regulations speak for
4 themselves, but in any event, we are talking
5 about orders of magnitude, differences
6 between the maximum calculated doses at TMI
7 to hypothetical off site individuals and the
8 maximum part 100 doses that we are talking
9 about. Given those calculations, one must
10 assume that the total fission product
11 releases from TMI were also orders of
12 magnitude less than the part 100 releases
13 which are assumed in order to perform the
14 part 100 calculation.

15 MR. BLOCH: For the
16 benefit of the public, reference to order of
17 magnitude means a factor of ten, something is
18 ten times greater. Is there a comment by
19 staff?

20 MR. BARTH: We have no
21 further comments, sir.

22 MR. BLOCH: Reply by
23 intervenor?

24 MISS HIATT: I would like
25 to make the point that the different

1 circumstances which then existed at the
2 construction permit which the staff has
3 pointed out definitely includes the Three
4 Mile Island accident and that that is in fact
5 the different circumstances requires this
6 issue to be discussed at this time even
7 though it may have been discussed earlier.

8 MR. BLOCH: The point,
9 Miss Hiatt, was made in the course of the
10 discussion we just had that the release at
11 Three Mile Island was not beyond the
12 conservative assumptions made in the
13 construction licensing stage. Does that have
14 an effect upon whether there are in fact
15 changed circumstances?

16 MISS HIATT: I cannot say
17 personally, but I know OCRE has cited the
18 Rogovin report. Perhaps they have other
19 resources. I don't know.

20 MR. BLOCH: OCRE's next
21 contention, please.

22 MISS HIATT: Contention 12,
23 CANDU alternatives, "Applicant should be
24 required to operate a CANDU nuclear steam
25 system because of its lower occupational and

1 environmental radiation doses."

2 The reference given is AEC L-5523, (1975).

3 "National Environmental Policy Act
4 directives require applicant to consider
5 those alternatives to its facility which are
6 available and reduce or avoid adverse
7 environmental or other effects."

8 MR. BLOCH: Applicant is
9 required to do that at the operating license
10 stage by regulations of the United States
11 government, is that what you are saying?
12 Should be required, is that what you said?

13 MISS HIATT: Should be
14 required, yes.

15 MR. BLOCH: It actually
16 says required.

17 MISS HIATT: In the NEPA
18 directives, is that what you are referring to?
19 That says NEPA directives require applicant
20 to consider those alternatives, yes.

21 MR. BLOCH: I assume they
22 were considered at the construction license
23 stage. Do you know whether they were or not?

24 MISS HIATT: I don't know.

25 MR. BLOCH: Because the

1 gist of your contention at this stage is that
2 the applicant should abandon a multi-billion
3 dollar facility and build another one.

4 MISS HIATT: I don't think
5 this contention or contention 10 requires
6 total abandonment of the facility. There can
7 be a substitution without a total complete
8 abandonment of this facility since you
9 consider that Unit 1 is only 65 percent
10 complete and Unit 2 is much less than that.
11 I think that substitution and abandonment are
12 not synonymous and they need not be
13 interpreted the same on these contentions.

14 MR. BLOCH: Do any other
15 intervenors have comments on these
16 contentions? Applicant?

17 May I ask if Mr. Churchill has lost his
18 voice?

19 MR. SILBERG: We have a
20 division of labor at this table, sir.

21 There are numerous reasons why this
22 contention is inadequate. First of all,
23 commission regulations in part 51 require
24 that the NEPA review at the operating license
25 stage only consider new information. The

1 very document which is cited here is a 1975
2 report long before the construction permit
3 was issued, certainly CANDU reactors have
4 been around a long time before that.

5 Secondly, although Miss Hiatt has stated
6 that we could substitute a CANDU reactor at
7 Perry without abandoning a plant, which is 65
8 percent complete, I am unaware of any
9 technical basis for that statement.

10 Certainly every engineer that I know of would
11 be quite surprised if you could save anything
12 essentially if one were to decide today to
13 scrap the boiling water reactor and build a
14 CANDU reactor in its place.

15 MR. BLOCH: Mr. Barth?

16 MR. BARTH: The
17 construction permit authorized the
18 construction of the present two unit boiling
19 water reactor station. So that's dispositive
20 of whether or not that's appropriate at this
21 time as per type of reactor. I'm not quite
22 as rigidly firm on what the regulations
23 preclude in this area as is the applicant. I
24 would prefer to rest the staff's case on the
25 fact that this is the whole purpose of the

1 construction stage. It's already been
2 litigated. There's no new circumstances and
3 CANDU has been around a long time.

4 MR. BLOCH: Response by
5 OCRE?

6 MISS HIATT: No response
7 at this time.

8 MR. BLOCH: OCRE's next
9 contention?

10 MISS HIATT: Contention 13 --

11 MR. SILBERG: That
12 contention has been agreed to by all the
13 parties.

14 MR. BLOCH: And admitted
15 by the board.

16 MISS HIATT: Okay. There
17 are no further contentions from OCRE.

18 MR. BLOCH: Mr. Kenney,
19 have you any contentions to present?

20 MR. KENNEY: Yes, I do. I
21 would like to clarify the contention brought
22 up yesterday concerning the evaluation report,
23 the contention that the evaluation plan is
24 fatally defective.

25 MR. SILBERG: Did you say

1 evaluation or evacuation?

2 MR. KENNEY: Evacuation,
3 excuse me.

4 MR. BLOCH: Thank you.

5 MR. KENNEY: The
6 evacuation plan is fatal, defective with
7 regard to numerous aspects and therefore
8 inadequately protects the safety of the
9 public with respect to but not limited to the
10 following deficiencies and concerns. They
11 are a total of 14 points in number.

12 MR. BLOCH: I would like
13 to hear them. We did discuss evacuation
14 plans -- is this the only contention you are
15 going to present at this point?

16 MR. KENNEY: Other than
17 acknowledging that I have adopted the
18 contention number 3 of the OCRE with the
19 radiation blocking agent and contention, I
20 believe, also number three concerning the
21 need for the plant, Sunflower contention
22 number three, and I would like to extend this
23 to the contention here at this time, and I
24 also have one other contention in addition to
25 this.

1 MR. BLOCH: The board is
2 prepared to hear this information. I know
3 that's not going to be very welcome by
4 applicant or staff. Are there comments on
5 the appropriateness at this time or shall we
6 just hear them?

7 MR. SILBERG: I think it's
8 going to be very hard for applicant to reply
9 to oral contentions at this time. I would
10 think the better practice would be for Mr.
11 Kenney to submit these in writing with his
12 showing of good cause as to why they are
13 being submitted so late.

14 MR. BLOCH: I think, Mr.
15 Kenney, we should require both. I think I
16 would like to hear you read them. I do think
17 there would be limited value to a discussion
18 about them orally given they are 14 new
19 points, none of which have been heard by
20 applicant. If you can inform the public and
21 the board of the nature of the list you have
22 and we will devise a fair opportunity to
23 respond.

24 MR. KENNEY: Okay. A
25 majority of these points I bring up are

1 concerning new information that has arisen
2 since the construction and the license and
3 the processing and the completion of the
4 evacuation plan. I am referring to a report
5 by Dr. Edward Radford that was in the May
6 22nd, 1981 issue of the Journal of Science in
7 which he says that they have miscalculated
8 the dangers of exposure to radiation of a
9 degree to perhaps four times if not greater,
10 and taking this into consideration, a lot of
11 the calculation that is the applicant's would
12 have to be changed or updated to take this
13 into consideration, and since they do not
14 take this into consideration at this point in
15 time, that they are therefore deficient.

16 This is all from volume 16, appendix 13 A,
17 section 1.

18 I am concerned with the definition 2 of
19 affected person and they define affected
20 person as an individual who has been
21 physically injured or radiologically exposed
22 as a result of an accident to a degree
23 requiring special attention, EG, first aid or
24 personal decontamination.

25 I contend they should specify to what

1 degree requires special attention so that
2 they know and it is made public, and I also
3 am concerned how does one facilitate the
4 personal decontamination of a person once he
5 has been exposed to radiation.

6 The second point is concerning definition
7 number 10, contaminated area. They define
8 that as an area where contamination levels
9 are greater than or equal to specified values
10 and here is where the recalculation would
11 have to take place with the new figures
12 proposed by Dr. Edward Radford.

13 Definition point number 3, definition 14,
14 dose-projection, which is the calculate
15 estimate of a radiation dose to individuals
16 at a given location usually off site
17 determined from the quantity of radioactive
18 material released and the appropriate
19 meteorological transport and dispersion
20 parameters. Here I would like to bring up
21 the point that they should have, which they
22 did not have now, continuous off site read
23 out of current level of radiation with
24 instantaneous determination. They don't have
25 the instantaneous determination now and

1 therefore are deficient. This will be able
2 to better approximate the dose projections
3 and it seems essential.

4 Point number four, definition 15,
5 emergency action levels. These are
6 thresholds at which emergency action is taken.
7 This also would be affected by the threshold
8 change by Dr. Radford.

9 Point five, definition 36, is the plume
10 exposure pathway. This would have to be
11 enlarged to accommodate the recalculation of
12 the dosage effect, so therefore, it is now
13 too narrow and deficient.

14 Point six is definition 42, protective
15 action guides. These also would have to be
16 upgraded and be recalibrated.

17 Point 7, this is section 2.3, the
18 emergency planning zones. The first
19 emergency planning zone is referred to as the
20 plume exposure pathway and this would have to
21 be recalculated with the dose effect.

22 The second emergency planning zone is the
23 injection pathway and is of greatest concern
24 here. They have close monitoring of the
25 crops, dairy cows and farm animals, et cetera,

1 would be necessary. I assert that the human
2 population should be included in the et
3 cetera portion of this since they are the
4 ones that are ingesting the affected food, be
5 it garden vegetables or locally produced food
6 products which is not done at this time and
7 therefore is deficient.

8 Point eight is section 3.3, emergency
9 classifications. The second classification
10 is the alert classification which includes a
11 limited release of radioactive material and a
12 further description of this section, 4.12,
13 they make no allowance for the radiation
14 monitoring teams to be implemented and it
15 seems obvious if there's going to be a
16 release of radioactive material that the
17 radiation monitoring teams should be
18 implemented also.

19 Point number 9 was dealt with in regard
20 to another point that the continuous off site
21 read side of the current level of ionizing
22 radiation should be changed, adapted so
23 instantaneous determination is allowed.

24 MR. CHURCHILL: Excuse me,
25 what are your reasons to the emergency plan

1 for this point nine?

2 MR. BLOCH: Isn't there an
3 earlier point where you mentioned gave a
4 reference concerning ionizing radiation?

5 MR. KENNEY: I don't think
6 so. Monitoring is addressed in section
7 7.4.8.2 which is on page 713. It deals with
8 the off site radiological monitors.

9 MR. BLOCH: That's 7-13?

10 MR. KENNEY: Correct.
11 Point 10, stock piling of potassium iodide
12 should occur at the receiving hospitals for
13 those injured during release of radiation and
14 those mentioned in report from section 5.5 is
15 Lake County Memorial East, Painesville, Ohio,
16 and the Radiation Medicine Center Hospital,
17 University of Pennsylvania, Philadelphia, P A.

18 Point 11 is the agreements with the local
19 agencies and planning centers are not
20 complete and formal and therefore are not
21 binding which negates the contention that the
22 evacuation plan is complete.

23 Point 12 is the payments to the local
24 communities to finance the planning and the
25 maintenance of an evacuation plan is not

1 specified in the plan and therefore the
2 evacuation plan is not complete and therefore
3 deficient.

4 Point 13 is they may have, applicant may
5 have financial difficulty to actualize the
6 plan. I know this point has been addressed
7 before, but a point I wish to bring up is a
8 financial capability of the plant may be
9 affected by the many light antitrust case
10 which a large settlement may be placed
11 against them.

12 Point 14 deals with the -- well, one
13 moment, please.

14 Point 14 deals with the monitoring
15 program that they have in effect. It has
16 taken from section 7.4.8.1 the geophysical
17 phenomenon monitors. They state they monitor
18 meteorological, seismic and hydrological
19 aspects surrounding the plant. In section
20 7.4.8.2, off site meteorological monitors, a
21 quote from it, the computer will perform
22 calculations that will determine the
23 radioactivity concentration and dose to all
24 sectors of the environment around the plant,
25 and it notes, refer to table 4.

1 Upon reference to table 7.4, the type of
2 samples that they have are for airborne,
3 external radiation levels, surface water,
4 drinking water, sediment, fish and milk, but
5 I think all sectors are not covered in this
6 and that is a direct monitoring of the human
7 population. I mean the specific spot
8 monitoring of the surrounding population.

9 So those are the 14 points.

10 MR. BLOCH: Mr. Silberg, I
11 thought your request before was for Mr.
12 Kenney to file these points in writing. Now,
13 I understand that there's a certain annoyance
14 involved in the late submission, but I'm not
15 sure that would really help us at all. I can
16 see requiring him to rapidly correct any
17 errors there might be in the transcript but
18 is it helpful to anyone that they be a
19 written submission?

20 MR. SILBERG: Mr.
21 Churchill found his voice.

22 MR. CHURCHILL: I think
23 there are two important things missing, one
24 is good cause for being late. I don't see
25 any reason why this should be brought up now.

1 Secondly, as I listen to them, and I
2 can't begin to respond to them, mostly they
3 seem to be just a statement of his opinion of
4 what should be different. I don't see any
5 basis for requiring certain different types
6 of instantaneous read out monitoring at the
7 various stages that he says. Every once in a
8 while I'm told he is misreading a table and
9 it doesn't say what he has said but we are
10 moving so fast I can't check that.

11 MR. BLOCH: Is that
12 responsive to my question?

13 MR. CHURCHILL: I think it
14 may be because I think we can or should be
15 required to respond to that, that he should
16 provide his basis for this contention, plus
17 his good cause, and as long as he is doing
18 that he might as well write out his
19 contentions.

20 MR. BLOCH: That might
21 give him more leeway to revise and correct
22 his contentions than if he stands on his
23 present statement.

24 MR. CHURCHILL: Well, if
25 he has a basis, I think I would like to know

1 it rather than to go through this again and
2 be surprised again at the last minute for the
3 basis. Most of these statements were in fact
4 conclusionary one or two sentence ideas with
5 no reason why he should give it.

6 MR. KLINE: Mr. Churchill,
7 he did cite a paper published in Science May
8 22nd, this year, which could provide a basis,
9 I don't know.

10 MR. SHON: I would like to
11 hear yourself address yourself if you can.
12 Evidently on May 22nd, only two weeks ago,
13 Radford, who is a wellknown man on seismic
14 affects, was chairman of one portion of the
15 committee that held these things. He
16 apparently announced that the radiation
17 effects, he says and I don't know just what
18 effects he means, are underestimated by a
19 factor of four and therefore he says for
20 every action level or for every radiation
21 dose level that you have specified here we
22 should reconsider and see whether in light of
23 this later data we shouldn't change the
24 permissible levels. What about that as a
25 contention in general?

1 MR. CHURCHILL: Well, I
2 think that I would have to look at the paper
3 and see how it applies. It may deal with
4 defects rather than dose calculations and I
5 would like to see how that relates to the
6 contentions he made. Four or five of the
7 contentions he made, he used by reference
8 back to the Radford paper as a basis. That
9 may be well enough but I'm not sure it would
10 be wise for me to respond to that without
11 looking at the Radford paper.

12 MR. SHON: That's fine. I
13 understand your position.

14 MR. BLOCH: It seems to me
15 that what applicant has asked is fair, that
16 is, that the contentions you have just stated
17 should be submitted as a filing. Since they
18 are all written out, it seems to me you
19 should be able to do that within three
20 working days. Let's say next Monday, file it
21 next Monday, to make sure that it is
22 submitted, I think in one day mail, if you
23 could, to applicant. I understand that is an
24 expense which we don't like to impose on
25 intervenors but under these extraordinary

1 circumstances, to both applicant and staff,
2 excuse me, that it may be possible for you to
3 arrange with them that only one envelope may
4 be sent to do that and that you include that
5 a statement of the cause for late filing.

6 Are there any other comments --
7 incidentally, I also do not take applicant's
8 inability to respond to this list at this
9 point or to the new citation to Science
10 Magazine as any indication that there's a
11 deficiency in the emergency plan. There has
12 to be an opportunity to study this and to
13 respond and applicant is at a public
14 disadvantage at this point and will respond
15 in time.

16 Are there any other comments by
17 intervenors on these points? Does applicant
18 wish to make any further statement on these
19 points?

20 MR. CHURCHILL: Only a
21 question. Was this a paper by Radford or was
22 this an article in a publication. The only
23 reference I have is a date May 22. I think
24 you said the Journal of Science?

25 MR. BIMBER: Science

1 Magazine, AAAS publication.

2 MR. SILBERG: As I
3 remember that article which I have read, it
4 is not an article by Radford, it is a news
5 story which quotes Radford. As the board
6 will recall, Dr. Radford was the outvoted
7 minority on the recently released BEIR III.

8 BEIR III study, the health effects of
9 ionizing radiation. My recollection of this
10 study is that an analysis has been made of
11 the relative effects of gamma radiation
12 versus neutron radiation at either Hiroshima
13 or Nagasaki.

14 MR. SHON: I think it was
15 both. The work was done by Edmond Delson of
16 the Livermore Radiation Laboratory in
17 analyzing the radiation given off by the
18 Hiroshima and Nagasaki weapons. The mix of
19 radiation was different for the two and in
20 the opinion at least of the reporter who
21 wrote the science article, it seemed to bear
22 out Dr. Radford's rather than Dr. Rossi,
23 isn't that right?

24 MR. SILBERG: That's my
25 understanding, but neither Dr. Radford or Dr.

1 Rossi subscribed to the conclusions of BEIR
2 III. The majority struck a position in
3 between them.

4 MR. SHON: Yes. I am
5 afraid the way it was presented as an article
6 by Dr. Radford, it completely fooled me. Now
7 I know what you are talking about. I read
8 the article.

9 MR. BLOCH: Mr. Barth?

10 MR. BARTH: Let me ask you,
11 what are you asking the applicant's staff to
12 do with these 14 statements?

13 MR. BLOCH: We are going
14 to in a few minutes outline what we would
15 permit applicant and staff to do in terms of
16 final and further written response, the last
17 word.

18 MR. BARTH: I have no
19 comment except of course I object to these
20 kinds o contentions being raised at this
21 time, sir.

22 MR. BLOCH: We appreciate
23 that.

24 We will take a five minute break at this
25 time. I'm hoping that we will be able to

1 conclude the proceeding without a lunch break.

2 (Recess had.)

3 MR. BLOCH: The hearing
4 will please come to order.

5 The first order of business at this point
6 is to decide on the time limits that are
7 applicable to the response of applicant to
8 the new contentions and refinements of
9 contentions which have occurred in the course
10 of the special pre-hearing conference. I
11 would like to hear applicant's views on an
12 appropriate time limit for this response
13 which I do not plan to limit -- excuse me --
14 the staff as well, which I do not limit as to
15 form or as to its nature and which can
16 include factual materials or depositions
17 which might want to be attached but which
18 will go to the basic subject of whether it's
19 a contention that is admissible in the
20 proceeding and will not be a summary judgment.

21 MR. CHURCHILL: Are you
22 talking about all of the intervening parties?

23 MR. BLOCH: Yes, any of
24 the intervening parties which have introduced
25 new contentions during the course of this

1 proceeding.

2 MR. CHURCHILL: That would
3 include Mr. Kenney's, on the assumption that
4 he will be getting us his contentions and his
5 arguments.

6 MR. BLOCH: You should be
7 receiving those under the deadline I set
8 certainly no later than next Tuesday or
9 Wednesday.

10 MR. CHURCHILL: It's also
11 my understanding from talking to the court
12 reporters that we should be receiving the
13 transcripts from today, yesterday and last
14 night by Monday.

15 MR. BLOCH: Before you
16 answer, I want to assure you of something
17 that will save you little time and a burden.
18 In the course of this proceeding we raised
19 the possibility that when a contention is
20 covered by an on-going rule making procedure,
21 we might nevertheless entertain that
22 contention. I would like to assure applicant
23 and inform intervenors that if we were to
24 pursue that course, we would first rule there
25 was a contention of that sort that we would

1 consider admitting and would ask separately
2 for briefs concerning whether that issue
3 should be admitted or should be perhaps
4 certified to the commission so you will not
5 have to deal with that issue in this filing.

6 MR. CHURCHILL: I guess
7 there's one other point of clarification I
8 might ask. Yesterday when we went through a
9 number of Mr. Wilt's contentions, he was
10 given an opportunity to provide more
11 information today.

12 MR. BLOCH: He has not
13 done so.

14 MR. WILT: It is still
15 being copied, the information that you
16 requested is still being copied.

17 MR. BLOCH: Thank you. I
18 stand corrected. It may be possible that he
19 will submit it today.

20 MR. WILT: We are going to
21 check right now and see but I have every
22 confidence that the material will be
23 presented today.

24 MR. CHURCHILL: Maybe we
25 are talking about different things. Are you

1 referring to the inspection reports?

2 MR. WILT: Yes.

3 MR. CHURCHILL: Okay. I
4 was wondering about various contentions where
5 you were asked to provide more basis or more
6 information yesterday. Were you going to
7 provide any more information on the record
8 here today about any of your contentions?

9 MR. WILT: I wasn't
10 planning on it, no.

11 MR. BLOCH: So that will
12 be precluded, so we are talking about things
13 that actually transpired plus perhaps the
14 inspection reports.

15 MR. CHURCHILL: Okay.
16 Since the inspection reports are coming, I
17 would like the chance before we adjourn today
18 to inquire of Mr. Wilt just what contention
19 he is advancing there dealing with those
20 inspection reports and I would like to make a
21 few comments about that matter myself.

22 MR. BLOCH: You mean on
23 the record before we leave?

24 MR. CHURCHILL: Yes.

25 MR. BLOCH: I believe they

1 were related to the quality assurance program.
2 You mean you want to do it after you see the
3 documents and before we adjourn?

4 MR. CHURCHILL: If that's
5 possible, but if the documents aren't here
6 before we adjourn, I do not want to hold up
7 adjournment. What I would then do is perhaps
8 ask you to ask Mr. Wilt if he would explain
9 or clarify for us what the contention is or
10 what part of contention nine it is he is
11 advancing and would be supported by these
12 documents. In any event, I will make my
13 comments whether or not I see those documents
14 before we adjourn.

15 MR. BLOCH: Perhaps Mr.
16 Wilt could, without the documents in front of
17 him, clarify for you as best he can, what
18 they will be relevant to.

19 MR. WILT: The documents,
20 we have called this particular contention 9-1
21 and 9-1 says that petitioners allege that
22 applicants have demonstrated throughout the
23 construction process their inability to
24 comply with the quality assurance program
25 established by both the commission and the

1 applicants. Sentence one, applicant's
2 construction practices as demonstrated in the
3 commission's own inspection reports are
4 totally inexcusable. That's sentence 2.
5 That is contention 9-1.

6 Then we have 9-2, 9-3, et cetera. The
7 inspection reports are being submitted in
8 support of this particular contention.

9 MR. BLOCH: 9-1.

10 MR. WILT: 9-1 and only 9-1.
11 9.2, 9.3, 9.4, 9.5 are separate matters and
12 the inspection reports are not being used for
13 or nor are they intended to be used to
14 support any other portions in section 9.

15 MR. SHON: In other words,
16 in effect, they are simply to show that the
17 applicant hasn't followed --

18 MR. WILT: That's correct
19 and I'm just told that that should be done,
20 the photocopying work should be done in about
21 one more hour.

22 MR. CHURCHILL: Which I
23 hope won't be in time.

24 (Laughter.)

25 MR. CHURCHILL: Would you

1 like me to address this briefly now? Maybe
2 we could dispose of this.

3 MR. BLOCH: If you will.

4 MR. CHURCHILL: Thank you.

5 Yesterday we expressed some surprise that
6 this issue would even come up because we did
7 not read it into this contention. We thought
8 this contention because it ended in a colon
9 and was followed by four lettered items
10 referred to those four items.

11 He brought up for the first time
12 yesterday a stop work order early in the
13 course of construction of the Perry Plant.
14 This raised several questions I think by the
15 board and by others which we did not
16 satisfactorily answer yet because we were
17 surprised by this.

18 Last night and this morning, I have
19 talked to the manager of quality assurance,
20 that is the manager who came on board at
21 about the time that this had happened and as
22 it was being corrected, to find out exactly
23 what had happened, and I think it might be
24 helpful to the board if I just recite some of
25 the courses of events here.

1 This came about as a result of an
2 inspection or several inspections in late
3 1977 and early 1978, 77 as you recall is the
4 year that the construction permit was issued.

5 There was an inspection report suggesting
6 that the QA program was having some problems
7 in its implementation. As a result of that
8 and several follow-up inspections, the
9 applicant voluntarily agreed to stop work on
10 certain safety related items. Their
11 voluntary agreement is reflected in what is
12 known as an immediate action letter written
13 by the staff to the applicant on February 8,
14 1978, and it said this will reflect our
15 agreement whereby you will cease construction
16 of certain areas, and those areas included
17 the pouring of concrete, imbedding some steel
18 in the concrete, erecting certain guard
19 piping and plant piping and I believe
20 something to do with coating of materials by
21 a certain coating contractor. In addition it
22 said there are several items in effect that
23 we want you to look at your QA program and
24 iron out certain deficiencies we have found.

25 As a result of that, work was halted.

1 At that time all that had been done is
2 concrete had been placed, concrete had been
3 poured and there was some piping, I believe,
4 that may have been erected. There were also
5 imbedments. Every bit of the work that had
6 been done was inspected 100 percent, was
7 found to be adequate. Every area where work
8 had been stopped was personally examined by
9 the NRC and not allowed to start up, or at
10 least by voluntary agreement of the applicant
11 it was not started up until the NRC signed
12 off.

13 The upshot of it was that all of the --
14 and this is an important point -- all of the
15 problems involved were really the
16 implementation of the procedures of the plan.
17 It was not and had nothing to do with any
18 defects in the physical plant or what had
19 been done. It all related to the paper,
20 procedures, organizations, document control
21 and so forth.

22 Within three weeks after the immediate
23 action letter, I believe probably the first
24 area that was started again -- I don't have
25 all the details on that -- but the letter was

1 in February and by late April, early May, all
2 areas were back into operation again.

3 The interesting thing about this is that
4 as a result of this, the applicant completely
5 restructured its entire QA program and there
6 was a tremendous improvement in it. They
7 restructured the QA program, they expanded
8 eight threefold or fourfold. There was a
9 significant number of management personnel
10 that was there. They revamped the records
11 and the procedures program as well as the
12 drawings and specification control program.
13 They revised the QA requirements and made
14 them more stringent for all of the
15 contractors and subcontractors. They revised
16 their procedures for receipt inspection and
17 for process in line inspection. That's the
18 actual quality control inspections that go on
19 and for the document control.

20 In addition, they did a fairly innovative
21 move for the time which was to move the
22 entire QA management out to the site. I
23 understand that's a process that the NRC is
24 either requiring or suggesting for programs
25 today.

1 They signed off on everything, the NRC,
2 division of inspection enforcement, signed
3 off on everything. That was in the immediate
4 effectiveness letter, all has been cleared
5 and all has been signed off as okay.

6 Since then the program has been much
7 improved. There have not been problems. In
8 fact it's considered a good quality assurance
9 program and there is not an unusual amount,
10 any more than the normally expected amount of
11 noncompliances found.

12 This whole process, I think, at least
13 until the work got started again, was only a
14 matter of two or three months. There was a
15 final inspection report --

16 MR. BLOCH: I thought
17 earlier you said two or three weeks.

18 MR. CHURCHILL: Before the
19 first area that had been stopped started up
20 again, but before it was all going again it
21 was no more than 3 weeks.

22 MR. BLOCH: So all of the
23 work was able to be resumed within two to
24 three months.

25 MR. CHURCHILL: Yes, it's

1 a gradual process. Meanwhile, in the service
2 of inspection reports, which if the board is
3 interested, I can give you cites, but it's a
4 series, every deficiency that led to the
5 immediate action letter was in fact signed
6 off and okayed by the NRC.

7 Now, the interesting thing about this
8 process and the one that really baffles me,
9 is why we had to be surprised by this at this
10 late date, was the involvement of counsel for
11 Sunflower Alliance et al. in this process.
12 On November 1, 1979, which was well after
13 every last item had been signed off, he wrote
14 a letter, this is Mr. Wilt, wrote a letter to
15 Senator Glenn to tell him about what had
16 happened at the Perry project, tell him about
17 the inspection reports and the bottom line of
18 the letter was, and I can quote, "I am
19 enclosing a copy of a memorandum that I
20 prepared dealing with construction practices
21 at Perry. I would be delighted to meet with
22 you to discuss this matter further because I
23 believe that this evidence will more than
24 demonstrate the need for a complete
25 moratorium on the construction and licensing

1 of new nuclear power plants and determination
2 of the licenses of all existing nuclear power
3 plants."

4 MR. BLOCH: I don't
5 understand the relevance of the letter. It
6 seems to be an exercise of the rights of the
7 Sunflower Alliance and I don't understand why
8 you are bothering with us at this time.

9 MR. CHURCHILL: I don't
10 mean to bother you at this time. But it is
11 for two reasons, sir. The first is to show
12 that that letter which had attached
13 memorandum summarizing these inspection
14 reports was, in fact, within the knowledge of
15 Mr. Wilt and we could have been well served
16 with this earlier, at least noticed that it
17 was coming.

18 The second is that through the normal
19 chain of events, where Senator Glenn sent it
20 to chairman Henry and so on, there was a
21 response from the NRC. The response, I think,
22 is relevant, at least as far as an
23 understanding of the significance or
24 seriousness of this. We do not have a copy
25 of the final response. We have a letter that

1 says a response will come in January, and we
2 have a memorandum written by the reactor
3 inspector at region 3, he was in charge of
4 the inspections for this plant, to C. C.
5 Williams, chief project section 2, also at
6 region three, saying this is a draft of the
7 response for the commission to send back to
8 Senator John Glenn. Since we don't have the
9 response, I can't represent that this is
10 actually what was said by the commission to
11 Senator Glenn. It is, however, what was
12 written by the inspectors who started the
13 process and followed it through and I think
14 it is a good indication of where they think
15 or they thought at that time how the
16 situation had been resolved and where the
17 Perry situation stood.

18 Essentially what it said, I won't trouble
19 you with reading this, but it did say that --
20 it explained a little bit about what had
21 happened, the improvements that had been made
22 and their conclusion that now there was no
23 problem with the works that had been
24 performed and there was no further problems
25 with the implementation of the QA program and

1 he also did the improvements that had been
2 made.

3 It's not only a late issue but it's a
4 dead issue because it has been solved. I
5 felt it necessary to put that on the record
6 because of the dialogue held yesterday where
7 the inuendos and insinuations were that
8 something seriously happened or there might
9 have been something seriously wrong with the
10 construction of this plant. That is not the
11 case.

12 MR. BLOCH: Mr. Wilt, some
13 of the indulgence of the board for
14 intervenors is due to an appreciation of
15 their lack of resources. What applicant has
16 said is that, in fact, the vague contention
17 that you submitted on Q and A was submitted
18 despite the fact that you had done
19 substantial work in the past and despite the
20 fact you could have given more specific
21 indications to applicant that there was a
22 position. If I recall correctly I stated on
23 the record yesterday that my reading of that
24 contention also had not led me to believe
25 that you were making a separate Q and A

1 allegation when in fact you had done
2 substantial work and it seems to me that this
3 particular contention may be in a different
4 position than some of the others where we
5 have allowed great liberality in amending at
6 this stage. I would like your comment on
7 whether we should allow the same liberality
8 for this stage as we have allowed for other
9 contentions.

10 MR. WILT: I don't think
11 it needs amendment. I think I clearly state
12 everything that would put anyone on notice as
13 to what I'm talking about. I state that
14 there is a continuing --

15 MR. BLOCH: The board can
16 accept that, in which case we will not need
17 the licensing reports and we will decide
18 whether that contention is admissible as it
19 was submitted.

20 MR. WILT: Well, I think I
21 am not amending the first two sentences of
22 that contention. I set forth clearly that
23 the contention is based on the commission's
24 inspection reports. I set forth the
25 contention that there has been a general

1 inability of the applicant to comply with the
2 quality assurance program. That's what the
3 inspection reports over the period of time
4 that I received them demonstrate. I think
5 the inspection reports will speak for
6 themselves. I'm certainly not going to read
7 them into the record.

8 MR. BLOCH: I will receive
9 them. I also will be very interested in the
10 documentation of the applicant and the board
11 will decide whether to treat that contention
12 as we have treated others or whether some
13 special treatment is called for.

14 MR. SHON: Mr. Wilt, are
15 you still receiving inspection reports?

16 MR. WILT: Yes, Your Honor.

17 MR. SHON: Do you feel
18 that they still, in the immediate past, let's
19 say in the past year or year and a half
20 demonstrate a complete inability to follow a
21 quality assurance program?

22 MR. WILT: Yes, I do.

23 MR. WILT: Are they going
24 to submit my letters to Senator Glenn because
25 I don't know if I have them or not. I have

1 written quite a few letters to Senator Glenn.
2 I have also written quite a few letters to
3 people in the NRC before I became counsel to
4 anybody, and I've always felt that I had a
5 right to do that.

6 MR. BLOCH: The board
7 already supported that right and expressed
8 some reservation.

9 MR. WILT: I appreciate
10 that.

11 MR. BLOCH: It becomes a
12 problem as to whether it is relevant -- it
13 becomes relevant to the amount of information
14 that was available at the time of filing and
15 to the amount of liberality we should be
16 accorded to that filing if it is necessary.

17 MR. WILT: It's my
18 contention that there's no amendment to 9-1 U.

19 MR. BLOCH: Staff hasn't
20 had an opportunity to respond to these new
21 arguments. Does staff wish an opportunity to
22 do so?

23 MR. BARTH: I don't think
24 any response would be helpful, sir.

25 MR. BLOCH: I assume from

1 our earlier discussions that the other
2 intervenors also have nothing to say on this
3 point. I think, Mr. Churchill, earlier we
4 were trying to establish a date for this
5 unique filing that we are going to require
6 and I did want your ideas about how we set
7 that date or what the date was to be.

8 Mr. Barth, I will also want your comments
9 on that date.

10 MR. CHURCHILL: May we
11 have a moment to check the calendars?

12 MR. BLOCH: Please.

13 MR. CHURCHILL: Mr.
14 Chairman, we hadn't really thought that there
15 would be a filing as a follow-up to this, so
16 our schedules probably aren't that great.
17 Both of us have vacation time schedule in
18 there, not that vacation time supersedes the
19 importance of timely filing of this, but I
20 wonder in this case, we would suggest Friday,
21 July 3 for a response to this. That will
22 give us a chance to go through all of the
23 transcripts, digest this latest information,
24 read Mr. Kenney's information. We have to
25 confer with our clients, too and we are in

1 different cities.

2 MR. BLOCH: I have no
3 problem with a July 3 date for this filing.
4 As a special accommodation of intervenors we
5 permitted them to produce as much information
6 in this hearing as we did, and if applicant
7 needs until July 3 to respond, that certainly
8 is acceptable.

9 Does staff require additional time beyond
10 July 3 or is that adequate for staff?

11 MR. BARTH: It is
12 difficult for me to project the schedules of
13 the technical people and Chicago and
14 Washington will have to address these matters.
15 It's difficult to project how long it will
16 take to sort out from the verbiage what is an
17 alleged new contention. I think frankly from
18 our point of view July 3 is close. That's
19 pressing it. I would prefer to set it back
20 at least a week or more. I do not want to
21 get these things delayed, but it is an
22 enormous problem to take people off of active
23 cases to say go try to figure out from these
24 four pages of verbiages what is the basis of
25 this, what kind of response do we make.

1 MR. BLOCH: What you say
2 appeals to me. What I would like to do is
3 set a July 3 deadline with the understanding,
4 good faith filing by staff. If they need
5 additional time, it will be automatically
6 accepted for an additional week and will be
7 seriously considered if it's necessary beyond
8 that.

9 MR. BARTH: Thank you,
10 Your Honor.

11 MR. BLOCH: We will not be
12 meeting again before discovery will commence
13 in this case. I would like to make some
14 remarks about discovery. I do not view this
15 proceeding as a gladiatorial combat and I do
16 not expect the parties in it to seek to erect
17 technical barriers to seeking the truth.

18 I suggest that in making discovery
19 requests that each party exercise constraint
20 on himself to get what he needs efficiently
21 and to try to reduce the number of necessary
22 steps as much as possible. One way to do
23 this, I think, is to try as much as possible
24 to not only state individual questions or
25 requests for documents, but to try to state

1 the purposes of the general area of discovery
2 so that when a request is received, the
3 person receiving the request can know not
4 only what the specific language is which may
5 not be acceptable to that person, but how it
6 fits into the overall plan.

7 I would expect that in addition to
8 providing answers for not responding to
9 discovery requests, that anyone who would not
10 respond will call the party making the
11 request and consult with them about the
12 problems involved and will state in the
13 denial of the request that this call has been
14 made and an attempt has been made to satisfy
15 the legitimate needs of the moving party
16 before discovery was denied. So there is one
17 additional part of a denial of the discovery
18 request that will be required.

19 We do not think that there's a need at
20 this time to set any special discovery
21 schedule, but as discovery proceeds, we will
22 of course entertain any motions about
23 limitations on discovery schedules or
24 discovery times that may seem appropriate in
25 light of what has been accomplished at that

1 point.

2 I would like intervenors and the parties
3 to have a chance to comment on these
4 procedural requirements. Mr. Kenney.

5 MR. KENNEY: I would like
6 to first comment I'm going to have a
7 temporary change of address.

8 MR. BLOCH: You should
9 file that -- well, tell it now.

10 MR. KENNEY: Effective
11 June 14th, I be switched to 228 South College,
12 Bowling Green, Ohio 43403, apartment A.

13 MR. BLOCH: It would be
14 helpful if you also filed that change with
15 the commission so that the docketing will be
16 corrected.

17 MR. KENNEY: Okay.

18 MR. BLOCH: I understand
19 that Lake County wants to make a statement.
20 Is this a comment on this procedure?

21 MR. ERNDT: Right. I
22 don't know when I should give it to you.

23 MR. BLOCH: If we can get
24 through with the comments on what I've done,
25 we can reach Lake County's statement.

1 MR. LODGE: It's been my
2 understanding that the intervenors actually
3 at this point have a conditional type of
4 status, we are conditional intervenors. I
5 assume that if the board were to find that
6 there were no adequately found grounds for
7 intervention that we would not be intervenors,
8 is that correct?

9 MR. BLOCH: That's correct.
10 With respect to OCRE, however, there is one
11 admitted contention, therefore, they are
12 definitely a party. And the county has been
13 admitted definitely and I thought there was
14 one contention for Sunflower Alliance that we
15 also ruled admitted but I may be wrong. Am I
16 incorrect in that?

17 MR. CHURCHILL: It may
18 have joined with one of the two contentions
19 that we had not objected to of OCRE's.

20 MR. BLOCH: Yes, I think
21 in the course of your presentation, you
22 agreed that one of your representations on
23 pipe breaks was the same as OCRE's and
24 therefore agreed it should be combined and
25 therefore you also have an admitted

1 contention.

2 MR. WILT: That is correct.

3 MISS HIATT: May I add
4 OCRE has two contentions that were admitted.
5 You stated one.

6 MR. BLOCH: I was just
7 stating at least one which is all that is
8 required to be a party. I was also not
9 precluding the part that other contentions
10 would be admitted as well.

11 MR. LODGE: Additionally,
12 and I'm not trying to press you ahead of what
13 you want to cover, but would we not need to
14 know the admitted contentions in order to
15 sanely commence discovery?

16 MR. BLOCH: You will not
17 sanely commence discovery until you know what
18 the issues are.

19 MR. CHURCHILL: Just a
20 small point on the discovery schedule,
21 usually in my experience there has been some
22 kind of discovery schedule, but the
23 circumstances haven't always been the same,
24 but a couple of points come to mind.

25 First of all, the one just mentioned. We

1 wouldn't anticipate there would be any
2 discovery until there is a pre-hearing
3 conference hearing conference order.

4 MR. BLOCH: Right.

5 MR. CHURCHILL: Which
6 identifies the issues in this case.

7 Secondly, it sometimes is helpful to set
8 a certain time. We would suggest maybe 45
9 days within which any interrogatories or
10 requests for discovery on those contentions
11 perhaps should be filed. This is just because
12 with an open-ended limit, we just don't know
13 how long this is going to go on. Pretty soon
14 we are going to come into a crunch and it
15 might be a good idea to at least have had
16 this first round of discovery started, and I
17 would like to suggest --

18 MR. BLOCH: Are you
19 suggesting a 45 day deadline on all initial
20 requests for discovery under the contentions?

21 MR. CHURCHILL: Yes, 45
22 days from the --

23 MR. BLOCH: From the date
24 that the order is published?

25 MR. CHURCHILL: Yes. And

1 the second part, going hand in hand with that
2 is perhaps having a 45 day date after that
3 for responding, or I'm sorry, not after that,
4 45 days after the request for interrogatories
5 or documents to respond. This is a fairly
6 liberal elaboration or extension of the time
7 allowed in the rules. The rules say that the
8 parties should respond to requests for
9 interrogatories 14 days after they have been
10 filed, and that I don't think we really have
11 to be that tight at this point in the
12 proceeding, so maybe it would make sense to
13 set a 45 day schedule.

14 Now, whether or not there's going to be
15 further rounds of discovery on these
16 contentions, we don't know. It depends on if
17 there's any follow-up. I don't think there
18 is, that it's necessary to assign any date to
19 that now. Often there is not.

20 The second part of this which may be of
21 concern later goes back to the statement you
22 made, your opening remarks for the hearing,
23 that you intended to be very reasonable about
24 requests to have new issues considered when
25 new significant documents were released, and

1 I wonder if it would make sense to impose a
2 schedule whereby if anybody wants to propose
3 new contentions based on a new significant
4 document that they should do so within 30
5 days of the issuance of that document.

6 That starts a new round of machinations
7 like we have just had. There could be
8 objections to it. We might require another
9 pre-hearing conference to determine the
10 issues and so on, so I think it would be a
11 good idea if there was a limitation on when
12 new contentions would be filed after the
13 introduction of new information of this type.

14 With one or two exceptions. I would say
15 that would be reasonable for the draft of the
16 final impact statement, but I wouldn't think
17 you would need 30 days after the final impact
18 statement which probably would have little or
19 no change from the draft. 15 days might be
20 sufficient for that.

21 Similarly, the SER, when it is initially
22 issued, probably would warrant 30 days, but I
23 don't think that 30 days would be necessarily
24 warranted for any NSR supplements after that.
25 When I say this I'm not assuming

1 automatically there would be new contentions.
2 It's my view there probably would not or
3 should not be and I think anybody seeking to
4 raise new contentions based on these
5 documents ought to have some burden to show
6 this is something he cannot or could not have
7 raised before.

8 MR. BLOCH: As I ask, each
9 amendment to the FSAR comes out, they are a
10 code by indexes showing changes, specific
11 sections but there really is no, correct me
12 if I am wrong, there is no easy way of
13 knowing the nature of the subject matter that
14 has been changed each time, is there?

15 MR. CHURCHILL: I think
16 that's right, but if you go to the key in the
17 beginning, I think it tells what sections the
18 materials go to.

19 MR. BLOCH: I was just
20 wondering since one way to make things get
21 raised as early as possible is to place some
22 obligation on the parties to be aware of
23 changes as they occur, whether applicant
24 might be interested in a very brief summary
25 of what principal changes have been made in

1 amendment.

2 MR. CHURCHILL: The
3 changes do show up in the sense that when new
4 pages come, there's a vertical line. If it's
5 amendment 3, it will mark it as such.

6 MR. BLOCH: I understand
7 that, but there's no subject matter guide
8 into it. Some of those changes are extremely
9 technical and minor. Some might reflect
10 substantial areas of change and safety
11 related equipment. If these things were
12 called to the attention of intervenors at an
13 early date, it would be easier to hold that
14 they couldn't raise them at a later date.
15 Why doesn't applicant deal with that as a
16 section of the paper that we have required?
17 I don't think that will plan to enter this
18 order on procedure today, just to hear the
19 parties' comments, and it could be made a
20 part of the special pre-hearing conference
21 order that we will issue that will also set
22 the contentions.

23 MR. WILT: Would we have
24 the right to respond to whatever suggestions
25 the applicant makes as to discovery?

1 MR. BLOCH: Certainly, all
2 of the parties will have the opportunity to
3 address all of these special procedural
4 requirements.

5 MR. WILT: Thank you.

6 MR. CHURCHILL: I think
7 that's the only thing I would suggest in the
8 way of schedules at this point. As we get
9 further on into the hearings, it may be
10 necessary to define a more detailed schedule,
11 but it's applicant's position this would be
12 okay for now.

13 MR. BLOCH: Would you like
14 to comment on scheduling and the special
15 comments made on discovery Mr. Barth?

16 MR. BARTH: As regard to
17 Mr. Churchill's suggestion, absolutely
18 opposed to it. The 45 day situation, which I
19 have seen before, is totally unworkable.
20 This means I file an interrogatory on one of
21 the intervenors asking for the name of a
22 witness. 45 days he comes back with the name
23 of the witness, he comes back 45 days later,
24 discovery is over. This is ridiculous.

25 There need be no scheduling. You cannot

1 have discovery until the order comes out. I
2 understand that. From there on, I am quite
3 confident that if Mr. Wilt's discovery upon
4 me becomes burdensome, overly late, overly
5 oppressive or mine upon him, he will probably
6 come to the board for a protective order and
7 I am fully confident the board will do what
8 is just. I don't have any problem with
9 leaving the staff open to Mr. Wilt's
10 discovery or to having the staff open to the
11 power company's discovery without these kinds
12 of what I consider almost silly limits.

13 The Federal Rules of Civil Procedure have
14 cost millions with the best minds going into
15 them and the rules do not set these kinds of
16 time schedules on them. The only thing is it
17 can't commence until 20 days after the filing
18 of the complaint. Our own discovery
19 regulations have no time frames in them as
20 the sort proposed by the applicant. We are
21 going to enter a silly situation in which I
22 file to the board to go depose a witness
23 disclosed by Mr. Wilt after the second 45
24 days which the time is up. We don't want
25 that. We are grown men. We are grown

1 attorneys. If I oppose him or if he does me,
2 we have proper methods to the board to get it
3 done right. I think before it is done you
4 will have a rigid shut off. There will be no
5 discovery prior to 45 days, prior to the
6 commencement of the evidentiary hearing or
7 some kind of shut off prior to the
8 evidentiary hearing which is all-normal in
9 the federal courts, but for me to ask the
10 question and for him to answer and nothing
11 else from then on is ridiculous. I think
12 this well emphasizes my feelings.

13 I'm content to turn people loose and
14 leave it to the board to adjudicate disputes
15 between the parties.

16 MR. BLOCH: Intervenors,
17 does anyone know who would like to go first?
18 Mr. Lodge?

19 MR. LODGE: Just for the
20 record, the Sunflower's Alliance would, I
21 believe, support the contentions of the staff
22 on this matter. I think it's kind of
23 interesting to note that the Federal Rules of
24 Civil Procedure apply today. As I recall,
25 they were perhaps not quite so applicable

1 when we were talking about intervention.

2 MR. BLOCH: Do any of the
3 other intervenors wish to address the
4 discovery schedule?

5 MR. KENNEY: I am flexible
6 to whatever the board proposes.

7 MR. BLOCH: I was informed
8 that Lake County wishes to make a brief
9 presentation at this time.

10 MR. CHURCHILL: Excuse me.
11 Could I make a point of clarification about
12 the discovery schedule?

13 MR. BLOCH: Please.

14 MR. CHURCHILL: When I
15 said 45 days, 45 days, I was really talking
16 about the first initial round of discovery
17 which I suspect would be the main one. I
18 think when we get down to new contentions
19 later, if in fact there are any, that
20 discovery schedule would have to be looked at
21 then and there probably would not be time for
22 that.

23 MR. BLOCH: I appreciate
24 that amendment. Sir?

25 MR. ERNDT: Yes, Ed Erndt,

1 Lake Disaster Services Agency. We have an
2 item number ten in the appendix of our
3 presentation which somehow was missed in
4 typing, apparently, between our office and
5 yours. Item ten, I want to get this into the
6 record.

7 MR. BLOCH: If it's
8 important to read it, we can of course read
9 it. But if you just want to get it into the
10 record, it could be filed.

11 MR. ERNDT: Whichever you
12 prefer.

13 MR. BLOCH: If it's
14 important to read it.

15 MR. ERNDT: It's small,
16 let me read it.

17 There appears to be a conflict between
18 the protective action guides in 613 appendix
19 13 A of the CEI final safety analysis report
20 and 10 CFR section 20.105, permissive levels
21 of radiation in restricted areas.

22 MR. BIMBER: That should
23 be unrestricted.

24 MR. ERNDT: That's correct,
25 in the unrestricted areas. Therefore, in

1 order to provide greater protection for its
2 citizens, the County of Lake has a preference
3 of a PAG of 100 millirems whole body exposure
4 for the duration of an emergency.

5 That's the basic statement. There's
6 another place, there's a word off and we will
7 send that in.

8 MR. BLOCH: Thank you.

9 MR. SILBERG: I would
10 point out quickly that part 120 does not deal
11 with accidents.

12 MR. ERNDT: We would still
13 like to have it in the record.

14 MR. BLOCH: The time has
15 come to just touch a couple of closing
16 matters. Do you have a statement, Mr. Wilt?

17 MR. WILT: I do have an
18 affidavit that Mr. Hill, he's the gentleman
19 from Citizens for Safe Energy, he was here
20 last night and we did not put him on the
21 stand for him to discuss his standing with
22 this organization. He filled this out.
23 Unfortunately, he did it himself.

24 MR. BLOCH: It does not
25 appear to be an affidavit, does it?

1 MR. WILT: I notarized it.
2 I am a Notary Public. I don't have my seal
3 with me. It's one of the free things the
4 lawyers in the State of Ohio get when you
5 pass the Bar, that's the only benefit I ever
6 got. I would like to submit this, too.

7 MR. BLOCH: I'm afraid to
8 allow it. To establish party status, we are
9 going to have to hear what you have said in
10 the affidavit. Why don't you show it to
11 applicant and staff who can look at it
12 simultaneously to see if we have any problems?

13 MR. LODGE: While that is
14 transpiring, I have a question to ask of the
15 board. In light of your comments today about
16 transcript availability, that sort of thing,
17 what are the possibilities of intervenors
18 being able to obtain copies of the FSAR or
19 environmental studies, that sort of thing,
20 environmental statements?

21 MR. BLOCH: The FSAR also
22 must be in the local repository. In terms of
23 getting additional copies, that's a question
24 between, I'm afraid, between intervenors and
25 applicant.

1 MR. LODGE: In light of
2 your recommendation, at this time I believe
3 the county as well as Sunflower Alliance wish
4 to move the commission to consider the
5 physical movement of the document repository
6 away from the village of Perry or north Perry,
7 wherever it presently is, to Gainesville to
8 the Morley Library at 184 Phelps Street.

9 MR. BLOCH: 185 Phelps.

10 MR. LODGE: 184, P H E L P
11 S, I believe. Would you like a statement of
12 reasons in support of that motion?

13 MR. BLOCH: I assume it's
14 because it's more convenient.

15 MR. LODGE: That's correct,
16 sir.

17 MR. BLOCH: Are there any
18 objections to the moving of the repository?

19 MR. BARTH: I have to not
20 object but reserve. I'm not sure if the
21 licensing board is to do this. This has been
22 before the boards before and the licensing
23 board, of course they have authority to
24 discuss and rule upon matters of public
25 health and safety, but the routine

1 performance of how it is functioning I think
2 it is beyond the pale of the licensing board.
3 I am certain we could find an equal number of
4 people from north Perry that would like it
5 kept.

6 The agency has made the determination of
7 where it could be best locally available and
8 serve the most people. I have strong
9 questions whether or not the board can find
10 that this is a matter of significance under
11 2.760 of such momentous value that it can
12 order the director of NRR to change his
13 administrative functions.

14 MR. BLOCH: Of course, we
15 need not face that issue until a much later
16 time. If we decide the repository should be
17 moved we can first request the director of
18 NRR to change the repository at our request
19 and then we would face at a later date the
20 possibility that he would not want to do it
21 to accommodate the parties to the proceeding.

22 MR. STEWART: Your Honor?
23 I would like the county withdrawn from that
24 last comment. I don't feel that we should
25 move the repository.

1 MR. BLOCH: Could you
2 comment on your reason?

3 MR. STEWART: I see no
4 validity with the time element. We have
5 checked the times and there's only a one hour
6 limit between the Perry library and Morley
7 Library. There is a one hour fluctuation
8 between Perry and Morley from what I've been
9 able to understand from our research this
10 morning. I don't see the validity in the
11 movement at this point in time. What could
12 be gained by it?

13 MR. BLOCH: In light of
14 that, would intervenor like to explain its
15 reason?

16 MR. LODGE: Well, first of
17 all, I think just because there's only a one
18 hour time differential in the business hours
19 of the two libraries, an additional hour
20 could be very helpful, particularly an
21 additional hour in the evening time or an
22 additional half hour.

23 Secondly, another reason for requesting
24 the move was geographical accessibility. It
25 is a few miles closer to Greater Cleveland

1 and a number of members of intervenors'
2 organizations are not necessarily from
3 Painesville but are from the Greater
4 Cleveland area. It is also a bit more
5 accessible by major thoroughfares.

6 MR. BLOCH: Does applicant
7 wish to comment?

8 MR. SILBERG: Mr. Chairman,
9 I don't think we have a preference one way or
10 the other. I do recall clearly that there is
11 a decision by the atomic safety and license
12 appeal room, I believe on the Yankee docket,
13 dealing with the questions of licensing
14 boards' authority to control local public
15 document rooms. I can't cite what the
16 decision says. I think it may be along the
17 lines that Mr. Barth referenced.

18 I would urge you before you issue any
19 statements, orders or requests that you might
20 want to try to find that decision. We will
21 look for it as well and call that to your
22 attention should we find it.

23 MR. BLOCH: Thank you.
24 Are there any other motions or remarks that
25 are necessary before I make some concluding

1 remarks?

2 MR. CHURCHILL: It's not
3 necessary, but Mr. Shon asked for a source of
4 the quotation in the FSAR yesterday. That
5 was from a letter -- this is in section
6 1.5.1.2 on page 1.5-1. I read a quote into
7 the record. That was a letter from Denny
8 Woodross and Daryl Eisenhut at NRC to Dr. G.
9 E. Sherwood, all of the General Electric
10 Company. The letter was dated February 3,
11 1978, and I believe it summarized agreements
12 that had been reached between the two at a
13 meeting on January 19, 1978.

14 MR. SHON: Thank you.

15 MR. BLOCH: This board --

16 MR. WILT: I really hate
17 to do this, Your Honor, but does anyone have
18 any objections to this?

19 MR. SILBERG: I'm sorry.
20 We should have stated that on the record. We
21 do not.

22 MR. BARTH: The staff does
23 not, sir.

24 MR. BLOCH: So that
25 establishes party status for which

1 organization?

2 MR. WILT: Citizens for
3 Safe Energy.

4 MR. BLOCH: At one point
5 Toledo Coalition, Incorporated stated it was
6 incorporated. Do we have the names of all
7 the parties correct at this point? We do.

8 As we began these proceedings, we
9 outlined the general framework, the
10 procedures that govern this case and we also
11 described the important responsibilities of
12 the staff of the Nuclear Regulatory
13 Commission, responsibilities which extend
14 beyond the responsibilities of this board
15 whose responsibilities are primarily limited
16 to the contentions that have been raised.

17 We do also, as we pointed out, have a
18 responsibility to raise important safety
19 issues, and I think in the course of this
20 proceeding, it was impossible for some of the
21 members of the panel to refrain from asking
22 questions on matters that they are informed
23 on and that are of concern to them. Some of
24 those interests will persevere whether or not
25 individual contentions are admitted into this

1 proceeding and will be of interest to the
2 board, although the standards for satisfying
3 those serious safety concerns are different
4 than if contentions are admitted.

5 I want to indicate that I have been
6 personally impressed in my reading of Three
7 Mile Island reports about the importance of
8 some of the steps that have been taken by the
9 Nuclear Regulatory Commission since that
10 incident. In particular, I have been
11 interested in steps taken to assure that the
12 management of a nuclear power plant exercise
13 independent responsibility for safety and
14 that it take a variety of steps to indicate
15 that it has an independent concern apart from
16 the complex regulations of the Nuclear
17 Regulatory Commission and there are many of
18 the requirements that the commission has
19 passed since Three Mile Island that go to
20 that issue, but I did want to indicate that
21 management issues are of general concern and
22 while we, of course, at this stage would not
23 have to raise any issue related to management,
24 the parties are entitled to know that we have
25 those concerns, that we have no particular

1 reason at all to question the management of
2 Cleveland Electric Illuminating Company, but
3 that that has to be a general concern.

4 Similarly, the question of operator error
5 and what has been called the human machine
6 interface is extremely important and the way
7 in which the control room is arranged is
8 under active study within the industry and
9 will be of concern to us so that we will want
10 to be assured that not only are the dials and
11 gauges available in the control room within
12 which the trained operators can make
13 reasonable decisions but that they are
14 organized in a way that will help them make
15 correct decisions and not to make errors that
16 may cause problems both to the public and to
17 the property of the company itself.

18 There is one rather unique interest that
19 I'm particularly interested in surfacing at
20 this point because I don't think it appears
21 in any of the public literature. It
22 certainly is not a requirement that I'm
23 making at this time. But in my reading of
24 the literature on these reactors, it strikes
25 me that ordinarily the control room computer

1 surface this concern of mine.

2 There may be many ways in which I am
3 satisfied that this is not a necessary idea.
4 It's not a serious safety issue at this point,
5 but I think it is fairer to raise an issue of
6 this kind early in the proceeding rather than
7 to raise it later when I have an indication
8 that I have some concern about it. It may
9 not take much to satisfy me on this issue.

10 I have appreciated the participation of
11 all the parties in this proceeding, as has
12 the board, as well as the hospitality shown
13 to us by Lake County in these hearing
14 facilities. I've also been impressed by the
15 attendance of the public which has been
16 concerned with fairly complex issues and has
17 stayed through lengthy and arduous
18 proceedings and I would like to express my
19 appreciation and the appreciation of the
20 board for all of the parties. The meeting is
21 adjourned.

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25

This is to certify that the attached proceedings before the
Nuclear Regulatory Commission

in the matter of:

Date of Proceeding: June 2 & 3, 1981

Docket Number: 50-440 OL, 50-441 OL

Place of Proceeding: Painesville, Ohio

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Diane Sideris

Tia G. Moseley

Nancy Rothman

Bruce A. Matthews

Official Reporters (Typed)

Official Reporters (Typed)

Diane Sideris
Official Reporter (Signature)

Tia G. Moseley
Official Reporter (Signature)

Nancy Rothman
Official Reporter (Signature)

Bruce A. Matthews
Official Reporter (Signature)