

NUCLEAR REGULATORY COMMISSION

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In the Matter of:

PENNSYLVANIA POWER & LIGHT COMPANY )

and )

ALLEGHENY ELECTRIC COOPERATIVE, INC. )  
(Susquehanna Steam Electric Station )  
Units 1 and 2) )

) DOCKET NO. 50-387 & 50-388  
)  
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DATE: July 23, 1981

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AT: Wilkes-Barre, Pennsylvania



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UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION

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| In the matter of:                    | :             |
| PENNSYLVANIA POWER & LIGHT COMPANY   | :             |
| and                                  | : Docket Nos. |
| ALLEGHENY ELECTRIC COOPERATIVE, INC. | : 50-387      |
| {Susquehanna Steam Electric Station, | : 50-388      |
| Units 1 and 2)                       | :             |

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Grand Ballroom  
 Genetti Bldg. Western Motor Inn  
 77 East Market Street  
 Wilkes-Barre, Pennsylvania

Thursday, July 23, 1981.

The hearing in the above-entitled matter was convened, pursuant to notice, at 9:30 A.M.

BEFORE:

JAMES P. GLEASON, ESQ., CHAIRMAN,  
 ATOMIC SAFETY AND LICENSING BOARD.

MR. GLENN O. BRIGHT, MEMBER.

DR. PAUL W. PURDOM, MEMBER.

G & G REPORTING AGENCY, INC.

FRED L. GILOTTI, C.S.R., PRES.

OLD FORGE PENNA. 18518

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1 APPEARANCES:

2 On behalf of the Applicants:

3 JAY E. SILBERG, ESQ. and  
4 MATIAS F. TRAVIESO-DIAZ, ESQ.,  
5 SHAW, PITTMAN, POTTS AND TROWBRIDGE,  
6 1800 M STREET, N. W.,  
7 WASHINGTON, D. C.; and

8 BRYAN A. SNAPP,  
9 LEGAL DEPARTMENT  
10 PENNSYLVANIA POWER AND LIGHT COMPANY  
11 TWO NORTH NINTH STREET  
12 ALLENTOWN, PENNSYLVANIA 18101

13 On behalf of the NRC Regulatory Staff:

14 JAMES M. CUTCHIN, IV, ESQ. and  
15 JESSICA LAVERTY, ESQ.,  
16 OFFICE OF THE EXECUTIVE LEGAL DIRECTOR,  
17 U.S. NUCLEAR REGULATORY COMMISSION  
18 WASHINGTON, D. C.

19 On behalf of the Commonwealth of Pennsylvania:

20 ROBERT ADLER, ESQ., P.A.  
21 COMMONWEALTH OF PENNSYLVANIA

22 RALPH J. HIPPERT,  
23 DEPUTY DIRECTOR  
24 PLANS AND PREPAREDNESS:  
25 PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

On behalf of Petitioners for Leave to Intervene:

PHYLLIS ZITZER, substituting for  
DR. JUDITH H. JOHNSRUD,  
CO-DIRECTOR  
ON BEHALF OF ENVIRONMENTAL COALITION  
ON NUCLEAR POWER.

THOMAS J. HALLIGAN,  
ON BEHALF OF  
THE CITIZENS AGAINST NUCLEAR DANGER

COLLEEN MARSH  
(Pro Se)

1 (NO APPEARANCE)

2 On behalf of the Commonwealth of Pennsylvania:

3 WILLIAM DORNSIFE,  
4 THOMAS GERUSKY AND  
5 THOMAS POLLOG,  
6 PENNSYLVANIA BUREAU OF RADIATION  
7 COMMONWEALTH OF PENNSYLVANIA

8 On behalf of Petitioners for Leave to Intervene:

9 GERALD SCHULTZ, ESQ.  
10 ON BEHALF OF SUSQUEHANNA ENVIRONMENTAL  
11 ADVOCATES  
12  
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P R O C E E D - N G S

1  
2 CHAIRMAN GLEASON: All right. We are  
3 ready.

4 We are back in session again. Has  
5 anyone heard from Mrs. Marsh? Oh, Mrs. Marsh, you are  
6 here. Thank you for showing up.

7 The first thing we will get to that we  
8 are talking now about the beginning of the area of each  
9 point of agenda and summary dispositions in a hearing  
10 schedule as the Applicant's Attorney has pointed out.  
11 The Commission has changed the rules so that motions  
12 for summary disposition can be filed at anytime up to  
13 and including the hearing when the Board concurs.

14 So that it doesn't interfere with the  
15 other proceedings that are going on, it is obvious it  
16 seems, that this matter ought to be evaluated so that it  
17 is accomplished in the sense of fairness to all the  
18 parties involved. It also has been contemplated from  
19 the beginning, that there would be a separation of the  
20 issues. In other words, the hearings would be bifurcated  
21 and that the environmental issues would be considered  
22 first and be followed, I think, the early schedule is  
23 some 8 or 9 months later. Of course, that schedule is  
24 way beyond us now because at that time reports that were  
25 going to be coming in, were widely separate for each

1 other as far as the time is concerned and now they  
2 are practically all in as we heard yesterday.

3           It would be the Board's intention to  
4 start the hearings on October the 6 on environmental  
5 issues and it would be our intention there to have a  
6 3-day week hearing schedule--Tuesday through Thursday.  
7 And further, we would follow the environmental issues  
8 with the safety issues so that there would be no kind of  
9 a break between the hearings. By that time, the final  
10 reports would have been in several months prior to that  
11 on the safety matters. The supplement would have been  
12 in and discovery would have been completed. This will  
13 require, I believe, probably some limited discovery to  
14 be going on on safety issues while we are into the  
15 environmental hearings but that is why we are on a  
16 3-day week schedule.

17           We would encourage the parties to make  
18 their motions for summary disposition as much in advance  
19 of the hearing dates as possible so that the parties  
20 could be aware of it as early as can be. Further, so  
21 that the Board can have time to rule on them and there-  
22 fore the parties would have a full understanding of what  
23 they would have to prepare for in terms of witnesses  
24 through testimony.

25           There was an indication early in one of

1 the early Orders, I think, the March 1979 Order; that  
2 the identities, qualifications of subject matter, and  
3 the substance of testimony of expert witnesses would  
4 have to be provided by, I think, 45 days before the  
5 hearing.

6 MR. SILBERG: Sixty days.

7 CHAIRMAN GLEASON: Excuse me, 60 days.

8 And, I really do not see the necessity of that sort of  
9 schedule. I would like to cut that in half so that it  
10 would be a 30 day period or, in our context, the date  
11 would be September the 7th as far as Environmental  
12 Contentions are concerned and we would announce at a  
13 later date the requirement for submitting that  
14 information on safety issues or what the time requirement  
15 is.

16 I think what I will do, is that I will  
17 go all through these various points that I want to make,  
18 and we will go back and discuss them. If anybody wants  
19 to go back and discuss them for clarification, they can  
20 do so; but at least let me go through them. In order for  
21 there to be a sensible organization of evidence--  
22 presentation of evidence for the hearing, it would be  
23 helpful for the Intervenors, and it would assist them  
24 in their orderly presentation of the issues, if they  
25 would agree among themselves and advise parties of the

1 Board of the designation of a lead Intervenor for each  
2 issue. That would mean that each party then would be  
3 under an obligation to--and a duty to work with that  
4 lead Intervenor on the presentation of an affirmative  
5 case connected with the Contention. It is important,  
6 of course, that the Intervenor do the selecting for the  
7 presentation of this and perhaps among the four  
8 Intervenor's one person to be selected by the four to kind  
9 of pull the whole thing together to be discussed at the  
10 subsequent session. Hopefully, by getting together  
11 alone, you can work out that kind of an agreement.

12 For the submission of testimony, we will  
13 require written, direct testimony as well as proposed  
14 Exhibits to be filed at least 21 days prior to the  
15 hearing. Where the testimony is to be sponsored by a  
16 panel of witnesses, there should be some indication of  
17 which part of the testimony is supported by which  
18 witness. The professional qualifications of expert  
19 witnesses should be submitted with their testimony. The  
20 Board will require the submission of what is termed  
21 "Cross-Examination Plans." Now, these plans are  
22 to be submitted to the Board alone not to the other  
23 parties. Their purpose is, and what they are is simply  
24 an explanation of what you intend to prove by your  
25 cross-examination; what areas it will cover; what your



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1 objectives are. They will help the Board to prepare for  
2 the substance of issues at the proceeding and also help  
3 us to avoid accumulative and duplicative and argumenta-  
4 tive cross-examination which is important for all of  
5 us in unaffected terms.

6 It will also help us to exclude, when  
7 the time comes, if the time comes, to exclude that kind  
8 of examination that should not be admitted in that  
9 hearing; so those plans should include objectives. The  
10 affirmative evidence, if any, that the cross-examiner  
11 intends to produce by his cross-examination or the  
12 aspects of his direct testimony--if the cross-examiner  
13 tends to disagree, of course, you will have your  
14 position at that time of the testimony of those parties.  
15 It can include, but is not necessary, the precise line  
16 of proposed questions that you intend to follow; and,  
17 of course, as you realize, cross-examination is limited  
18 to direct testimony.

19 We will anticipate at the same time, that  
20 these Cross-Examination Plans should be submitted to  
21 the Board about 7 days, at least, before the hearing.  
22 They should include some indication, it is not necessary  
23 to do at that time, but we should have from you before  
24 the hearing some indication of the time required for  
25 the presentation of your cases. This is--

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1 MR. SILBERG: I am sorry, is that for  
2 cross-examination?

3 CHAIRMAN GLEASON: No, this is for  
4 presentation in the affirmative case and, of course,  
5 this applies to all the parties as well. You can at  
6 the time that you submit the testimony--when you submit  
7 the testimony it would be an appropriate time to submit  
8 that kind of implication.

9 I think that we ought to stop at that  
10 point and go back. We do have other areas to discuss.  
11 We want to discuss a site visit. I would suggest that  
12 that is important to all of us. We should suggest, too,  
13 it would be participating in that site visit; we should  
14 have some indication. The Board will desire to have  
15 some indication that the witnesses, that each party  
16 intends to call be by subpoena. We would like to have,  
17 of course, the State to define as I indicated yesterday,  
18 the issues it intends to raise and they are in addition  
19 to those not indicated already. That is also fair to  
20 all the parties.

21 All right. We will hear from the Applicant  
22 first.

23 MR. SILBERG: Thank you. On the  
24 assumption that the 3-day week schedule is intended to  
25 allow discovery to be taking place during the hearing, I

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1 guess, it is not clear to me that: A. There is going  
2 to be discovery going on during the hearing and B. That  
3 even if there were, that that discovery would interfere  
4 with the hearing that would go on for perhaps 4 days  
5 a week as we have recommended in our letter to the Board.

6 I think both the Staff and Applicant  
7 have indicate. that it is unlikely that we would be  
8 undertaking further discovery. Therefore, if there is  
9 any discovery, it would be directed against Applicants  
10 and Staff and I think both the Staff and ourselves have  
11 indicated that we would be able to have that discovery  
12 process go on in parallel with the evidence you are  
13 hearing.

14 So, in terms of number of days of hearing,  
15 from the standpoint interfering with the discovery  
16 process, I would suggest that we could do with more than  
17 3 days a week hearing. In terms of the schedule which  
18 you have proposed, starting on October 6, there is a  
19 minor problem with that first week. As the Board may  
20 know, the Jewish holiday of Yom Kippur starts on  
21 Thursday evening on October 7 and that would be somewhat  
22 of a problem, although not unsurmountable. One  
23 recommendation that we had on the assumption that the  
24 hearing would start on October 5 or indeed, if it  
25 started on October 6; not Thursday and perhaps Friday,

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1 could be reserved for taking limited appearances--many  
2 of whom would not be, most of whom would be able to  
3 appear notwithstanding the Jewish holiday.

4 Your point to filing summary dispositions  
5 as early as possible, we will agree with that; and we  
6 will do our best to accommodate that. In terms of 60  
7 day advance notice, the Board's indication that 30 days  
8 was appropriate. I think under the particular circum-  
9 stances of this case 60 days would serve a very useful  
10 function for Staff and Applicants.

11 We had sought, in our discovery, to  
12 obtain the identity of witnesses that the Intervenors  
13 must be using. We have never received any identification  
14 of those witnesses. If we are to prepare for the hearing,  
15 and if the Intervenors are to bring in witnesses, for  
16 their direct case, we would be at a disadvantage unless  
17 we have adequate time to undertake our own research into  
18 those witnesses' prior statements, prior publications  
19 and prior testimony. I am afraid if we are only to get  
20 that notification 30 days before the hearing with the  
21 testimony itself coming in 30 days before the hearing,  
22 that would not leave us an adequate time to find out  
23 who these witnesses were, to find out whatever informa-  
24 tion we could about their positions, where they have  
25 testified in the past, their publications, et cetera. I

1 also have a question with respect to the submission of  
2 testimony and how that relates to this advance identi-  
3 fication of witnesses. You indicated, that professional  
4 qualifications would be submitted with the testimony  
5 which is a standard practice. However, the Board Order  
6 which specified the 60-day advance filing also required  
7 that statement of professional qualifications accompany  
8 the identification of witnesses at that time. I am not  
9 sure whether the Board intended to delete the require-  
10 ment.

11 CHAIRMAN GLEASON: It would be better  
12 to clear that up right now. I assumed that what perhaps  
13 would happen and generally does happen, is that  
14 although the major expert witnesses be identified early  
15 enough to provide that information at the earlier date  
16 with their qualifications--for additional witnesses  
17 that would be submitted so as to prepare their testimony  
18 and that would be an added requirement at that time.  
19 But, that was what the intention of the additional  
20 requirement was. The additional clarification of the  
21 requirement with respect to having it included at the  
22 same time the testimony was given.

23 MR. SILBERG: Yes. I think it is  
24 appropriate to include it with the testimony, but I  
25 would also request that it be included with the earlier

1 filing, whenever that filing has been selected.

2 CHAIRMAN GLEASON: Okay.

3 MR. SILBERG: I believe that you  
4 indicated that this 30 day advance notice would only  
5 apply to Environmental witnesses. Since the Board  
6 anticipates that safety issues would be heard immediately  
7 following our Environmental issues--and I want to  
8 address that also, and there would not be any break in  
9 the hearing.

10 CHAIRMAN GLEASON: There will be an  
11 off the record discussion.

12 (Whereupon, an off the record discussion  
13 was held.)

14 MR. SILBERG: Since the hearing will  
15 go consecutively, there won't be a break between the  
16 Environmental and Safety hearings. I would think that  
17 it be appropriate for all the witnesses, both Safety  
18 and Environmental, to be identified prior to the start  
19 of the hearing whether it is 30 or 60 days prior to  
20 the October 6th hearing. If some later date is set for  
21 identifying the Safety witnesses that would occur right  
22 in the middle of the hearing, itself, and would not  
23 give ourselves an opportunity to do the necessary  
24 background research into those witnesses.

25 Considering the amount of time that

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1 parties have had to prepare for this hearing, that does  
2 not seem like any significant burden that would make it  
3 more difficult to supply the identification at an  
4 earlier time.

5 I think you have also asked the parties  
6 to provide some estimate as to the time it would be  
7 required to present an affirmative case. I am not sure  
8 whether we would be able to provide any useful informa-  
9 tion because since testimony is presented in writing,  
10 essentially all of the time for presenting an affirmative  
11 case is taken up on cross-examination. If the Board  
12 intends--wants to get information on the length of the  
13 hearing, I would think that the best way would be to ask  
14 for a estimate of how long the parties anticipate that  
15 they would be cross-examining a particular witness.

16 I guess, the experience I have had  
17 indicates that it is very very hard to judge how long  
18 that process will take. But, we would certainly be  
19 willing to provide our best estimate, certainly.

20 And finally, the question of the order  
21 of Contentions; I think the Board indicated that it would  
22 prefer earlier, to hear the Environmental issues  
23 followed by the Safety issues. I think in terms of  
24 witness convenience, and because we are not having a  
25 too bifurcated hearing because all of the issues are to

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1 be heard at the same time, I am wondering whether it  
2 would not be more profitable just to take the Contentions  
3 up in the order that it is most convenient for bringing  
4 in witnesses. That order may well be Environmental,  
5 followed by Safety; but in many cases we are dealing with  
6 witnesses who are not company employees--some of who  
7 are affiliated with universities or outside consulting  
8 companies and whose schedules are not completely flexible  
9 at the control of the people who are trying to manage  
10 this hearing process.

11                   What I had hoped could be done was to  
12 provide a significant advance notice as to which  
13 witnesses would be coming up or which Contentions would  
14 be coming up in which order; and allow parties an  
15 adequate opportunity to prepare to cross-examine those  
16 witnesses, as I mentioned in my letter of July 16. I  
17 think it would be useful in trying to figure out which  
18 Contentions ought to come first. If we could have some  
19 advance notice, perhaps even today, as to any witnesses  
20 or any Contentions on which the Intervenors currently  
21 intend to bring their own witnesses I think that would  
22 help us a great deal in trying to schedule the order of  
23 Contentions.

24                   Obviously, if the Intervenors do not  
25 know whether they will have a witness on a particular



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1 Contention, we cannot do that, but to the extent that  
2 they already do--or think that they will have a parti-  
3 cular witness, that would help significantly in trying  
4 to schedule the order of Contentions.

5 CHAIRMAN GLEASON: I have two  
6 observations in connection with your comments, at least,  
7 which I want to communicate to you.

8 The first is in connection with your point  
9 on dividing the Environmental from the Safety issues even  
10 though it is one continuous hearing. The Board at this  
11 time, and I believe, the parties at this time know the  
12 precise date at which the final Safety supplement will  
13 be in everyone's hands. Therefore, it does not have  
14 any idea as to whether there will be any additional  
15 Contentions and any additional discovery in connection  
16 with it. Once that occurs--once the period transpires  
17 for discovery and for the submissions of Contentions,  
18 particularly then, the Board will be able to issue  
19 additional; it tends to at that time issue an additional  
20 Order with respect to the--the dates required for the  
21 submission of the written testimony in other matters  
22 in connection with the Safety issues. So that, at  
23 least, was the Board's thinking.

24 The second point I would observe, is in  
25 connection with your mingling, if you will, the Safety

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1 and of the Environmental Contentions. The Board would  
2 be appreciative of receiving a suggestion from the  
3 Applicant after this has been discussed with the Staff  
4 and the parties as to what Safety issues can go forward.

5 I don't see how that can be done unless  
6 you sit down with the Intervenors at this point. We are  
7 going to get into a discussion, a little bit later, with  
8 respect to the pause in this 8752 Pre Hearing Conference  
9 which is going to come back into session in a couple of  
10 weeks. And, perhaps at that time, perhaps you may feel  
11 free to meet a day ahead of time with the parties and  
12 work out some kind of acceptable arrangement with respect  
13 to the Safety Contentions which also could be clear for  
14 hearing, if you will.

15 So, I just pass that on to you and then  
16 we will get back to it. Do you want to make a comment?

17 MR. CUTCHIN: We worry that, Mr.  
18 Chairman, in general--with respect to the scheduling  
19 matters, I would have no problem with the discussions  
20 made by the Licensee, by the Applicant as modified by  
21 the Board; but with respect to the naming of witnesses  
22 sufficiently in advance, I could strongly  
23 the Licensee--the Applicant's suggestion, because my  
24 recollection is as was Mr. Silberg's was one of the  
25 purposes of setting that 60 day advance notice of

witnesses. It was to make up for the lack of response to discovery by naming the witnesses, and I really think if one is going to be preparing a direct case and has to submit written testimony 21 days in advance of the hearing, he will come nearer knowing the name of that witness 60 days in advance than he will 30 days in advance because 9 days is not really going to give him a lot of time to put together much in the way of direct testimony. So, I think, from the practical standpoint maybe not 30, but every day more than that--if not 60, something like 45 might be more helpful because it is useful to know who these witnesses will be for the purposes of--as the Licensee said, as researching their capabilities.

As far as estimating the time for a case, again, in many if not most instances, the Staff's case will consist of putting its direct testimony and more often than not, there is not a lot of cross-examination by the State. Again, we have to have a better idea of that after we see what the direct case of the other parties will be. But other than that, I would agree wholeheartedly with the suggestion that the parties seek to get together shortly in advance of this next session to try to agree on an order of presentation of Contentions.

1 I think that worked very well in other  
2 cases that I have been in and, while it may be a little  
3 premature at the moment, it certainly can get things  
4 started. I think it will be beneficial. I guess that  
5 is all I have to say at this point.

6 CHAIRMAN GLEASON: I understand your  
7 concern about the resume, the lateness in the filing of  
8 the expert witnesses, and of the names and then of their  
9 qualifications but I do have to say that that really was  
10 not predicated in my recollection on the lack of discovery  
11 responses. Because it was in the first Order of the  
12 Board, I believe, at least, that is my recollection.

13 MR. CUTCHIN: I would have to refresh  
14 mine.

15 CHAIRMAN GLEASON: It was March of  
16 1979, in the Order of the Board.

17 All right. Mr. Halligan, would you like  
18 to go first, please?

19 MR. HALLIGAN: Well, Mr. Chairman, I  
20 have a couple of objections--I will have to speak much  
21 louder.

22 Yes, we have a few comments to make which  
23 --to the Board, but first, sir, could you indicate if  
24 the recommendations you are making--are they, in fact  
25 based on this document known and, I believe, they are

1 known as United States Nuclear Regulatory Commission  
2 Statement of Policy on conduct of licensing proceedings  
3 and the number of it is CL1-81-8 and it was issued on  
4 or about May 21, 1981 by Chase R. Stevens, the Chief  
5 Docketing and Service Branch Officer of the Secretary of  
6 the Commission. Some of these recommendations you are  
7 calling for to expedite the hearings were in this  
8 report, is this the one that you are basing some or all  
9 of your suggestions for directives?

10 CHAIRMAN GLEASON: Let me say that I am  
11 very mindful of that document as we are directed to be.  
12 And, I am trying to keep our schedule conformity with  
13 it. Yes.

14 MR. HALLIGAN: So you are doing--

15 CHAIRMAN GLEASON: It does not spell out  
16 in precise detail all of the things that I have talked  
17 about, but as far as attempting to manage a trial,  
18 certainly that has been very much in our minds.

19 MR. HALLIGAN: Thank you, sir. I want  
20 to be sure because we wouldn't want to bring it to the  
21 attention of James Nelligan, the United States  
22 Congressman from the 11th District of Pennsylvania,  
23 Wilkes-Barre.

24 Now, I would like to put this in  
25 perspective, sir. These directives about the submission

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1 of testimony and direct case, cross-examination, and so  
2 forth, it is appropriate for a licensing procedure  
3 wherein all of the parties are of equal footing. Now,  
4 this document, which I just identified, was sent to  
5 "The Counsel to parties in the NRC proceedings", Counselor  
6 Meane, Attorney at Law. And, I wish to point out for  
7 the record at this time that the Citizens Against  
8 Nuclear Dangers will not necessarily be represented by  
9 Counsel at the public hearings.

10 I also understand to the best of my  
11 ability that Colleen Marsh and others of Mountain Top  
12 will not be represented by Counsel.

13 It is also my understanding that the  
14 Coalition on Nuclear Power will not be represented by  
15 Counsel at these hearings. And, even though Gerald  
16 Schultz is an Attorney at Law, I understand he will not  
17 be representing his group as an attorney. He will be  
18 as an individual Intervenor--so all four of the  
19 organizations and groups that have legal standing before  
20 this Panel will, in fact, not be represented by attorneys.

21 So, they I would respectfully request that  
22 this Panel take this into consideration in trying to  
23 attempt to make an even-handed evaluation of the ground  
24 rules and regulations. I have talked to attorneys in  
25 this area who would simply not even consider coming

1 before the NRC because of the complexity of the laws  
2 and regulations and we are individuals who are not  
3 trained in the law, and we are here to assist the  
4 Licensing Board. We will assist and expedite in anyway  
5 that we can, the hearing process; but you must take into  
6 consideration, and I believe the NRC has that prerogative  
7 and that discretion to take that into consideration that  
8 organizations and individuals who are testifying be  
9 given some consideration about these obscure  
10 regulations.

11 Now, as far as the recommendations by the  
12 Board for 30 days before the start of the hearing for the  
13 submission of testimony. The Citizens Against Nuclear  
14 Danger of Berwick who support that, in fact, will put  
15 that into motion, I believe, at sometime and what is  
16 the 30 days for?

17 CHAIRMAN GLEASON: Twenty-one days for  
18 testimony.

19 MR. HALLIGAN: Thirty days was for the  
20 notification of witnesses?

21 CHAIRMAN GLEASON: Yes.

22 MR. HALLIGAN: We feel that that is  
23 appropriate because it maybe, it is quite likely that  
24 we will not have any firm commitment from so-called  
25 expert witnesses prior to that time because of the

1 lateness in the year.

2 If the hearings were being held in the  
3 summer months more people are available in the  
4 academic field, for example. They are on vacation and  
5 they could have been here today, perhaps, if the hearing  
6 were in session. But, come October, it is more  
7 problematic and we may not be able to obtain services of  
8 individuals until not necessarily the last minute, but  
9 we will adhere to the 30 days and also to alleviate  
10 the concerns of the Applicant. At least, The Citizens  
11 Against Nuclear Dangers do not intend to bring an array  
12 of witnesses. There will be some, I can't state the  
13 number, later again today, I can identify a few people  
14 perhaps informally for their interest. And, we can--  
15 maybe that will resolve their apprehension on that  
16 matter.

17 Our case, our direct case will be concise  
18 and that means brief and to the point. The submission  
19 of testimony 21 days before--by the way, that draft  
20 testimony or it should be verbatim, which?

21 CHAIRMAN GLEASON: So that is the  
22 actual testimony.

23 MR. HALLIGAN: All right. Now, if there  
24 is any amendment to that, if that is permissible, though  
25 if the witness has some added remarks that may be



1 brought along or presented in writing?

2 CHAIRMAN GLEASON: They will have to be on a  
3 diminutive side because the whole purpose of this was  
4 to advise each other on each other's case.

5 MR. HALLIGAN: Well, let's say the  
6 testimony of the witnesses is 10 pages of printed  
7 testimony and he might want to amend that with two  
8 pages of calculations a week before on the computer  
9 something--that is all we are asking, it wouldn't be  
10 admitted?

11 CHAIRMAN GLEASON: I think that we  
12 would have to take a hard look at that.

13 MR. HALLIGAN: You will prefer the  
14 complete verbatim testimony?

15 CHAIRMAN GLEASON: But we must insist  
16 on the testimony in advance.

17 MR. HALLIGAN: I want that clarification.  
18 Now, we believe that The Citizens do believe that the  
19 Environmental question should be conducted first as of  
20 the intent of this Licensing Board for two and a half  
21 years. That was the thrust of the whole program of  
22 scheduling and everything else up to yesterday afternoon,  
23 that was our understanding and we will still--we will  
24 strongly urge that Environmental questions are to come  
25 first and all be conducted on a schedule of 3 days a week

as you suggested.

2                   We support such a schedule Tuesday,  
3 Wednesday, and Thursday schedule each week whenever  
4 they would commence, not for five days. And, we would  
5 want the Environmental issues and Contentions handled  
6 collect--together. And then later, the Health and  
7 Safety issues because as you wisely pointed out, there  
8 still may be one or more new Contentions on the Safety  
9 issues. Quite likely, there will be and there is this  
10 discovery process and so on and even though it has been  
11 expedited or telescoped, so to speak, it will still cause  
12 some time conflicts, perhaps. So, we would support the  
13 Environmental issues first, exclusively; which was our  
14 understanding all along as was the other parties, I  
15 believe.

16                   There may be one or two other items in  
17 here.

18                   CHAIRMAN GLEASON: Well, we can get back  
19 to you.

20                   MR. HALLIGAN: Yes, this is the basic  
21 thing. So, in conclusion, the main point is that I  
22 would ask the NRC and the Commonwealth of Pennsylvania  
23 and the distinguished Attorney for the Pennsylvania  
24 Power and Light Company and Allegheny Electric to  
25 perhaps not be overbearing upon the Intervenors. We are

1 here to assist the Board in unresolved issues and that  
2 is our primary intent and our only legitimate intent  
3 before this Board.

4 We will welcome the opportunity to cross-  
5 examine. We will attempt to comply in every way with  
6 the rules because they are simplified to some degree. I  
7 mean, thus far, we are not concerned with anything but  
8 I can assure the other parties that if there is any  
9 other discovery, it will be concise.

10 Hopefully, that will be the way they  
11 will deal in any future communication about interroga-  
12 tories.

13 CHAIRMAN GLEASON: Let me just make one  
14 general observation, Mr. Halligan. In connection with  
15 your remarks of the pro se status of the Intervenors,  
16 all of them are preparing, in fact, without Counsel.  
17 It does seem to me that it is more in your interest  
18 than in anyone else's for these rules to be looked at  
19 carefully--the Contentions looked at extremely carefully,  
20 and the testimony provided because that can help people  
21 not familiar with complicated Court procedure to  
22 concentrate and focus their attention a lot easier than  
23 if things are just let go the way their normal course  
24 could take place.

25 So, the Board will be mindful of your

1 status and sympathetic with it, and I would hope and we  
2 will get into discussion with this before we conclude--  
3 I would hope that and what we are going to do--I think  
4 I announced it--we are going to have a meeting on it  
5 to try to schedule a meeting on the 11th of August as  
6 a continuation of this Pre Hearing Conference to  
7 finalize the work of the Conference.

8 Well, it is August the 11th, and I would  
9 hope that, and I am mentioning it now, so that you can  
10 consider it and discuss it perhaps during recess period,  
11 on the 10th of August that you and parties of the  
12 Intervenors might meet together with the Applicant  
13 and the Staff to go over part of that session, the  
14 Contentions again, and to go over and perhaps there  
15 might be some Safety Contentions at that point that  
16 will not be tied up with any additional documents. That  
17 could be lined up for a continuation of the hearing,  
18 but in any event, think about it.

19 MR. HALLIGAN: In other words, you are  
20 saying there will be another Pre Hearing Conference on  
21 the 11th?

22 CHAIRMAN GLEASON: That is right. This  
23 Pre Hearing Conference, as we get through today, as I  
24 announced yesterday, it will be recessed until the  
25 11th.

1 MR. HALLIGAN: Now, what is on the  
2 10th?

3 CHAIRMAN GLEASON: On the 10th, I am  
4 hoping, there is no obligation--that perhaps you and  
5 other Intervenors agree to meet with the Applicant and  
6 Staff to go over the Contentions so that when we meet  
7 on the 11th we could finalize; and also at that time,  
8 perhaps, we can discuss whether there are any other  
9 Safety Contentions that would not be subject to any  
10 additional modification and that therefore would be  
11 eligible to be put on a list to go to trial.

12 MR. HALLIGAN: So, we will ascertain, and  
13 I think this State the Commonwealth of Pennsylvania  
14 had some interest in a meeting on the same date--the  
15 10th, so perhaps, I will raise that when they speak.

16 One other thing, The Citizens do not  
17 support or, would in fact, be opposed to the change of  
18 the 45 days prior to the start of the hearings for  
19 submission of summary disposition. We feel that it is--

20 CHAIRMAN GLEASON: No, that is already  
21 ruled.

22 MR. HALLIGAN: You have ruled--

23 CHAIRMAN GLEASON: No, it will not stop  
24 the ruling. It is a Commission ruling.

25 MR. HALLIGAN: Oh.

1                   CHAIRMAN GLEASON:    They have eliminated  
2 the 45 day requirement and so that anybody can file it  
3 at anytime.   The only authority the Board has is to  
4 make sure that it does not interfere with the carrying  
5 on with the hearing itself.

6                   Am I correct?

7                   MR. SILBERG:    Yes, sir.

8                   MR. CUTCHIN:    Yes.

9                   CHAIRMAN GLEASON:    And therefore, what  
10 I want to say--look everybody, let's get at them as  
11 quickly as possible, because the earlier that we can get  
12 those in, the better is for all the parties and  
13 certainly the Board that has to rule on it.

14                   MR. HALLIGAN:    Well, on that matter  
15 on summary disposition, the NRC Staff has indicated  
16 in each, virtually, everyone of their statements that  
17 on the record dealing with summary dispositions pointed  
18 out that the Intervenor that had proposed the Contentions.  
19 are under no obligations to respond.

20                   The burden of proof is entirely upon the  
21 party, namely, the Applicants in trying to dismiss the  
22 Contention claim that there is no individual aid or  
23 genuine issue of controversy and by any Intervenor not  
24 responding that it should not be construed otherwise.

25                   We feel that the record will show, going

1 back to the other Pre Hearing Conference, that the issue  
2 is clearly defined and that there was a controversy and  
3 that there was genuine issues to be resolved at the  
4 hearing. We did not in any instance, file Affidavits  
5 because we felt that the issue was there and that the  
6 Board would see that on its merits and the fact that  
7 they are filing those summary dispositions.

8 We feel in some instances it is out of  
9 order in one or two cases. Perhaps it was justified,  
10 but we just want to mention that for the record that  
11 there is no regulation said that we have to file any  
12 Affidavit and on that matter, too, as far as submitting  
13 direct testimony, we noticed that the Applicant and  
14 NRC Staff filed Affidavits supporting their position on  
15 summary disposition which more or less is like direct  
16 testimony of sort.

17 Now, at the hearing, itself, can we get  
18 Affidavits from experts as they did? People from  
19 California, Tennessee, Florida, and wherever else they  
20 got their experts to submit this information because  
21 in other words, in addition to a witness--

22 CHAIRMAN GLEASON: Let me clarify--

23 MR. HALLIGAN: What is the process for  
24 that?

25 (Whereupon the morning reporter was

1 relieved by a second reporter.)

2 CHAIRMAN GLEASON: Let me clarify that--  
3 try to clarify that, Mr. Halligan, a little bit.

4 The attorneys with the Staff and the  
5 Applicant would like to add, first of all, with respect  
6 to your remarks on not having a obligation to support  
7 your Contention. That statement would have to be looked  
8 at very carefully.

9 MR. HALLIGAN: We did, in fact, reply,  
10 but others didn't.

11 CHAIRMAN GLEASON: Well, what the rules  
12 contemplated and, of course, what the rules of similar  
13 procedure contemplated, is that we not have spurious  
14 issues tried in a hearing and in order to evaluate  
15 whether a issue is a general or spurious, that is tested  
16 by means of a motion, by means of summary disposition.

17 And the Affidavit, in effect, is a  
18 showing that there are witnesses that will testify in  
19 this issue you know, doesn't really exist.

20 And then the burden goes over to the  
21 person that has raised the Contention or has not  
22 responded to the interrogatory, and he will really, at  
23 the risk of being--of having the Contention dismissed,  
24 did not respond to that point, or did not submit  
25 Affidavits.



1                   There are, of course, cases of interpreta-  
2 tion of how the Boards are supposed to rule and much  
3 is construed in your favor, or construed against the  
4 person raising the motion for summary disposition.

5                   But, you really run a risk in this whole  
6 test is whether there is a genuine issue or a material  
7 fact    testifying    to a genuine issue. Well then, of  
8 course, the Contention goes out and,    you see what the  
9 Board is restricted to is just judging it on the basis of  
10 what is before.

11                   We're going to get into a little bit of  
12 discussion on this when we get into discussion of the  
13 Chlorine issue later on.

14                   MR. HALLIGAN:    Just a final objection.  
15 In addition to not being represented by attorneys, the  
16 Counsel at the hearing should keep in mind that the  
17 purpose of the public hearings, and one of the main  
18 purposes, is to obtain a most complete record, and we  
19 represent the public.

20                   We represent officially, legally, the  
21 public interest. And we feel that no doubts should be  
22 left in the minds of the Licensing Board Panel prior to  
23 making the judgements about the health and safety of  
24 this Reactor complex.

25                   And we feel that summary disposition is

1 an imposition and it, more or less, restricts the  
2 completeness of the record. So we would oppose the,  
3 you know, this. We feel that the Applicants are  
4 overreacting at this time because they could present  
5 their direct case and defend themselves on these points  
6 if they, as they claim, are not in a controversial or  
7 substantive, that will come out in their testimony. And  
8 we feel that the public interest intervenors should be  
9 heard at the hearing. It would be different if there  
10 were 40 or 50 intervening groups, but you are just  
11 talking about 4 small ad hoc groups.

12 CHAIRMAN GLEASON: Yes.

13 MR. HALLIGAN: So, put that into  
14 perspective.

15 CHAIRMAN GLEASON: Let's go on.

16 MR. HALLIGAN: Yes.

17 CHAIRMAN GLEASON: Miss Marsh, we are  
18 very happy to see you. We were ready to send a  
19 searching party out for you.

20 Where are you located?

21 MRS. MARSH: Right in Angola.

22 CHAIRMAN GLEASON: Somebody told me you  
23 are close.

24 I do want to get back with a couple of  
25 things we've gone over yesterday, get your responses to

1 it.

2                   How does this outline of procedures  
3 strike you? Is that satisfactory to you that I outlined,  
4 as far as discovery and the hearing, and so forth?

5                   MRS. MARSH: I like the ideas of 30  
6 days rather than 60 days.

7                   CHAIRMAN GLEASON: All right. And the  
8 date of the hearing, October 6th, Environmental issues  
9 first?

10                   MRS. MARSH: That sounds--that's okay  
11 with me.

12                   CHAIRMAN GLEASON: All right. Well, you  
13 see no real problems in connection with the procedure  
14 of--at least outlined--at least at this point.

15                   Would you be able, hopefully, to parti-  
16 cipate in this session as well? I'd better not ask  
17 that question because we're going to go for the session  
18 August 11, but I would hope that during recess there  
19 might be some discussion on people getting together  
20 on the 10th to bring these things up-to-date and perhaps  
21 you'd be able to participate.

22                   I'm sorry, I didn't get your name yet,  
23 or I should have listened carefully.

24                   MS. ZITZER: Phylis Zitzer, and I am  
25 Co-Director of the Coalition of Environmental Power.

1 CHAIRMAN GLEASON: How do you spell  
2 that?

3 MS. ZITZER: Z-I-T-Z-E-R.

4 CHAIRMAN GLEASON: And you are co-  
5 director?

6 MS. ZITZER: Of ECNP.

7 I would like to make a few brief comments.  
8 We would go along with supporting the 30-day time period  
9 in advance of hearings for identification of witnesses.  
10 I'd like to point out that if you were to adopt the  
11 policy of 60 days that would be approximately something  
12 like August 7, which is just over a week away--two weeks.  
13 And, in particular, for those parties that have Safety  
14 Contentions in view of the fact that we are still  
15 awaiting the second supplement, which wouldn't even be  
16 out by that time, I think that the 60-day period would  
17 be difficult, if not impossible to meet that requirement.  
18 So that, we would certainly support, particularly in  
19 consideration of those parties that do still have Safety  
20 Contentions, we would support the 30-day time period  
21 for identification of witnesses and also support the  
22 21-day time period hearing for the filing of direct  
23 testimony.

24 Also, I think it is important to keep in  
25 mind when you are making your decision regarding 30

1 or 60 days that there are still many outstanding motions  
2 to dismiss, many of the Contentions, so that presently,  
3 even the number of Contentions is likely to be greatly  
4 limited when we really get down to the hearing. So  
5 on behalf of ECNP, we don't feel that is an extreme  
6 burden on the Applicants or the Staff to deal with  
7 that 30-day time period, and we certainly would support  
8 that.

9 I have some comments regarding the  
10 locations of the hearings and some other things that I  
11 think might be appropriate at another time.

12 I would like to propose that you consider  
13 holding possibly the hearings on direct testimony  
14 dealing with Emergency Planning in the vicinity of the  
15 plant. I think there might be some direct benefit to  
16 the communities that would have to live with the Berwick  
17 facility, to be able to have more access to the hearing  
18 than they might if it were here in Wilkes-Barre again.

19 I think that might be out of order at  
20 this time. I'd like to come back to that later on.  
21 I think that's primarily--

22 CHAIRMAN GLEASON: Okay. Thank you Mrs.  
23 Zitzer.

24 Could you transfer that mike over to  
25 the State, please?

1 MR. ADLER: Thank you.

2 CHAIRMAN GLEASON: Senator--

3 MR. ADLER: The State agrees with the  
4 schedule and the procedures set by the Board and we  
5 will comply with them. We would simply request that the  
6 date for filing Safety testimony be set as soon as  
7 possible so we can have a date that is certain to  
8 shoot for.

9 I have one question concerning rebuttal  
10 testimony; whether the Board envisions any sort of  
11 schedule or notice requirements for that?

12 MR. SILBERG: Mr. Chairman--

13 CHAIRMAN GLEASON: Yes, I meant to say  
14 something and I didn't.

15 Yes, go ahead.

16 MR. SILBERG: If I can make a comment  
17 on rebuttal, and then I'd also like to make another  
18 remark about the 30 or 60 days.

19 In terms of rebuttal, the only party  
20 that's entitled to rebuttal in NRC proceedings is the  
21 Applicant. The Appeal Board held that in the Three  
22 Mile Island Radon Hearings, the Three Mile Island, which  
23 involved the Environmental Coalition On Nuclear Power  
24 as the party challenging--by the way held that that  
25 rebuttal testimony could be delivered orally, and need

1 not be submitted in advance in writing.

2 Obviously to the extent that there is  
3 rebuttal testimony that can be prepared in advance,  
4 and submitted in writing, our practice has been to do  
5 that and that is, or course, one of the great advantages  
6 of getting written testimony in advance -- significantly  
7 in advance of the hearing as well as figuring--learning  
8 who the witnesses are going to be, significantly in  
9 advance of the hearing.

10 With respect to the 60--30 or 60 day  
11 question, that date was set in Discovery Memo 2, which  
12 was issued in October 30, 1978--1979. It was issued  
13 in the Contention of the lack of responses to Applicant's  
14 and Staff's discovery on page 20 of the slip opinion.

15 CHAIRMAN GLEASON: I stand corrected  
16 unless you want to continue with that.

17 MR. SILBERG: No, I just want to point  
18 out it was issued in the Contention of Applicants  
19 and Staff not having the benefit of interrogatory  
20 responses from the Intervenors. That paragraph started  
21 out by saying, "Responses to discovery requests shall  
22 be updated as required by Commission rules."

23 Then it went onto say each party shall  
24 identify the testimony, witnesses, et cetera, 60 days  
25 in advance and shall--also the documents did intend to

1 imply in it's clear case. And I think the clear purpose  
2 of that Order by the Board, at the time, was to, in a  
3 way, substitute for the actions of discovery responses  
4 that had been supplied to Applicants and to mitigate  
5 the amount of surprise at the time of the hearing by  
6 giving as much advance notice as possible as to who  
7 might be supplying direct testimony.

8 I agree with Mr. Cutchin's statement that  
9 if direct testimony has to be filed 21 days in advance,  
10 it would seem very unlikely that the Intervenor would  
11 not have a very good idea, although perhaps not 100%  
12 sure as to who its witnesses were going to be  
13 significantly before 21 days in advance.

14 If a witness obviously turns up at the  
15 last minute, that can be dealt with, however, if the  
16 party is reasonably sure it is going to be presenting  
17 a witness on a particular Contention, I don't see any  
18 great burden in telling the other parties about that  
19 significantly ahead of time.

20 If this turns out that witnesses don't  
21 show up or can't be made available, there is very little  
22 that's been lost. On the other hand, if witnesses  
23 identity is not made known at an early date, there is  
24 a significant lost to the parties in their ability to  
25 prepare adequately for cross-examination and preparation



1 by Applicants of rebuttal testimony.

2 CHAIRMAN GLEASON: Well, I will come  
3 back to your comments later. Let's go back to the  
4 State.

5 MR. ADLER: Getting back to the point  
6 on rebuttal testimony, testimony will be filed 21 days  
7 prior to the hearing.

8 Mr. Silberg has made the point repeatedly  
9 and correctly this morning that parties have a right to  
10 have adequate notice in time for preparation. I don't  
11 see any burden on the Applicants to give notice to the  
12 party prior to the hearing of what Contentions they  
13 have in the way of rebuttal and this would enable all  
14 of the parties time to prepare for cross-examination on  
15 that rebuttal testimony.

16 MR. SILBERG: We would have no problem  
17 with that to the extent that we don't know what rebuttal  
18 is going to be to the extent we haven't had an opportunity  
19 to see early enough what the direct testimony is that  
20 we might have to rebutt, or, more likely, what  
21 information comes forth on cross-examination that we  
22 may want to put in additional testimony.

23 Obviously, we can't let, you know,  
24 something we don't know about--

25 CHAIRMAN GLEASON: I think--

1 MR. ADLER: That's certainly true for  
2 cross-examination, but with respect to direct testimony  
3 you receive 21 days prior to the hearing. I would see  
4 no burden to say one week prior to the hearing, two  
5 weeks after receipt of the direct testimony to give  
6 notice to the parties of what rebuttal Applicants intend  
7 to put on.

8 MR. SILBEG: We would certainly do our  
9 best. The problem is the date of rebuttal is the date  
10 of service, not the date of receipt. So we would not  
11 be getting that testimony for some period of time after  
12 the 21 days unfortunately.

13 We would then have to turn around and  
14 get that testimony to our witnesses, who would have  
15 to look at it. We might not have very much time to  
16 turn around and say, 7 days, what might be a week, after  
17 the witness gets the testimony. What kind of rebuttal--

18 CHAIRMAN GLEASON: Why don't we leave  
19 it like this. I think it is a very valid point that  
20 you are raising, but I can also see that is difficult  
21 in the stream of things going back and forth to put  
22 down a precise date at this time.

23 The Applicant has indicated that he will  
24 provide the rebuttal testimony as rapidly as he can.  
25 The Board will make sure that no witnesses or no parties

1 are surprised by that testimony, and if it comes in at  
2 a time when they have not had a chance to prepare,  
3 we will just put some time in the hearing to allow  
4 them a chance to develop their cross-examination--their  
5 testimony.

6 So, it is in the Applicant's interest  
7 to get it in as quickly as possible.

8 MR. SILBERG: I would on the subject  
9 of rebuttal, although, suggest that we--we are properly  
10 bound by the Appeal Board's rules as laid down in the  
11 Three Mile Island Radon Decision.

12 I have not reviewed that decision  
13 recently, but I was there at the hearing and I recall  
14 specifically directions of the Appeal Board because  
15 at that time we did try to work out a propose for  
16 serving rebuttal testimony in advance. The Environmental  
17 Coalition On Nuclear Power rejected that suggestion,  
18 and in light of th rejection, the Appeal Board said,  
19 we thought Applicants were trying to accommodate you, and  
20 since you are rejecting that, we will go to the formal  
21 rule which is that rebuttal testimony can be delivered  
22 orally at the time of hearing.

23 But as I said, we would do our best to  
24 let everybody know what we're going to do. The object  
25 of the hearing is not to surprise anybody but to get a

1 record which is addressed to the Contentions and to  
2 let everyone have their fair shot at that record.

3 CHAIRMAN GLEASON: I have not read the  
4 decision and will. It is my--it is a question that I--  
5 I would ask was the Appeal Board ruling only applicable  
6 at that particular case, or was it a general ruling.

7 MR. SILBERG: No, sir. My recollection  
8 is that it was a general ruling on "The Procedures For  
9 Rebuttal Testimony in NRC Hearings."

10 CHAIRMAN GLEASON: All right.

11 MR. HALLIGAN: Mr. Chairman, I have a  
12 comment on this.

13 CHAIRMAN GLEASON: Well, let's wait.

14 MR. ADLER: I just have two more  
15 comments.

16 First with respect to the August 10  
17 meeting referred to by Mr. Halligan. We, in fact,  
18 tentatively scheduled a meeting for that date, but it  
19 was for the very purpose suggested by the Board with  
20 respect to Contention 6 and 20; so we see no inconsistency.  
21 We can combine that into one meeting on all Contentions.

22 My last comment on scheduling refers  
23 to Emergency Planning. Since Emergency Planning is  
24 an ongoing process, the plans are being revised now,  
25 and maybe later on in the hearing based on the review

1 of the Federal Management Agency. We would suggest that  
2 the Emergency Planning Contentions both 6 and 20 be  
3 heard as late as possible in the proceeding.

4 We found during the TMI Restart Pro-  
5 ceeding that it was most efficient to litigate the  
6 Emergency Planning issues as late as possible in the  
7 planning and preparedness process so as not to require  
8 recalling of witnesses and so forth.

9 MR. SILBERG: We have no objection to  
10 that.

11 CHAIRMAN GLEASON: Yes. Yes, I guess  
12 from the Board's imprecise understanding of where those  
13 plans exist at the moment that that's the way it is  
14 going to eventually work out, that they will be the  
15 last Contentions coming before us. Is that right?  
16 But I appreciate your bringing that to our attention.  
17 All right. Mr. Halligan.

18 MR. HALLIGAN: We would object to the  
19 previous speaker's recommendation about dealing with the  
20 Number 20 and Number 6 as late as possible. I would ask  
21 you to hold us in obedience until we meet with them on  
22 the 10th and they spell this out in some detail.

23 CHAIRMAN GLEASON: I think that it is  
24 in your interest what the State is recommending here,  
25 and because we want to make sure the plans are in, the

1 people's review is in, the Staff's review of FEMA's  
2 review is in, Applicant's review is in, and that's what  
3 we're saying that that is dragging at the moment, and  
4 so we were going to, if you want--and of course those  
5 are areas that the Board has a great interest in.

6 Also, I am saying well, we don't have  
7 to say, you can decide that when we get together.

8 MR. HALLIGAN: On the rebuttal, I would  
9 refer to the document I cited before, The Statement  
10 of Policy On Conduct, on page 8 there is a--this is the  
11 guidelines, Item I., it says, "Combining rebuttal and  
12 surrebuttal testimony."

13 So, apparently the Applicants are saying  
14 that only rebuttal from the--from their side is allowed.  
15 What is surrebuttal and isn't that allowable?

16 CHAIRMAN GLEASON: I--

17 MR. HALLIGAN: Would you analyze that?

18 CHAIRMAN GLEASON: Have you read this?

19 MR. SILBERG: Not recent .

20 CHAIRMAN GLEASON: It says that for  
21 particular highly technical issues, Boards are encouraged  
22 during rebuttal and surrebuttal to put opposing witnesses  
23 on the stand at the same time so each witness will be  
24 able to accommodate an opposing witness' answers to the  
25 questions.

1                   They are talking about cross-examination,  
2 surrebuttal testimony.

3                   MR. SILBERG:    I think what that indicates  
4 --all that is to be done on a oral basis as opposed to  
5 prefiled rebuttal or surrebuttal testimony.

6                   MR. HALLIGAN:    It cites the regulation  
7 that explicitly recognizes they are your right to act  
8 on this matter.

9                   CHAIRMAN GLEASON:   All right.  Well  
10 I appreciate your bringing it to our attention.

11                   MR. HALLIGAN:    I believe that's important.  
12 Does any of that pertain to the

13 intervenors?  Are we involved in anyway with rebuttal?

14                   CHAIRMAN GLEASON:   Well, according to  
15 the Applicants Counsel's reference to the Board of  
16 Appeals Rulings in the Three Mile Island case, you were on  
17 --as I indicated I have not had a chance to read that.  
18 Can you enlighten us?

19                   MR. CUTCHIN:    Nor have I read that Mr.  
20 Chairman.  I have these rulings on the abstraction of  
21 evidence as the Board has pointed out before is very  
22 difficult to do.

23                   CHAIRMAN GLEASON:   It is, and we will  
24 say we will look at this and give you some information  
25 on it on the 11th.

1 MR. HALLIGAN: Thank you.

2 MR. CUTCHIN: I would like to say one  
3 thing--

4 CHAIRMAN GLEASON: Go ahead Mr. Cutchin.

5 MR. CUTCHIN: I would respectfully urge  
6 the Board rather than leaving this meeting of parties  
7 to discuss the order in which Contentions can be taken  
8 up, rather than leaving it on a voluntary basis; the  
9 Board directs the parties to do so.

10 CHAIRMAN GLEASON: I think you are right.

11 MR. CUTCHIN: And indicate that they are  
12 expected to go make a good faith effort because I think  
13 otherwise things are going to continue.

14 CHAIRMAN GLEASON: That is a good  
15 suggestion. I will announce it that way before we are  
16 through today.

17 MR. SILBERG: Mr. Chairman--

18 CHAIRMAN GLEASON: Yes.

19 MR. SILBERG: I think we have tried  
20 to reconstruct what that Board Appeal Hearing was  
21 issued and we think it is January, 1980, and that  
22 it is a reported Order.

23 It is in the consolidated radon cases so  
24 that the docket may not be Metropolitan Electric or  
25 Consolidated Edison and it may be Philadelphia Electric.



1 CHAIRMAN GLEASON: Well, I'll get that  
2 actual citation. We appreciate having it.

3 Let's see. I want to comment on something  
4 that you said before, but I've forgotten it. What were  
5 you talking about before, Mr. Silberg, when the State--

6 MR. SILBERG: You are referring to the  
7 30 or 60 days?

8 CHAIRMAN GLEASON: When you were talking  
9 about the State's case you went into rebuttal and then  
10 something else.

11 MR. SILBERG: Yes, I think I was talking  
12 about the Order that established the 60 day advance  
13 notice or advance identification of witnesses.

14 CHAIRMAN GLEASON: And there was another  
15 thing.

16 MR. HALLIGAN: He is mistaken on that  
17 in citing the Order, but the 60 days was a punitive  
18 directive and what it did, in fact, it dealt with  
19 certain Contentions primarily where the interrogatories  
20 were not submitted to the Applicants when they were  
21 asking for over 2,000 answers and those Contentions have  
22 either been laid to rest or--or the parties have been  
23 denied the right to testify on those direct cases. So,  
24 that's a moot question in a way.

25 Sixty days was put there because of

1 noncompliance. Since that time there was extended time  
2 given for the final directors to file interrogatories  
3 which we, in fact, did comply with. So, it is really  
4 a moot question about the 60 days. We all--I think all  
5 the Intervenors, and the Commonwealth would ask that  
6 you would hold up your original directive of 30 days  
7 for identification of the witnesses, et cetera.

8 CHAIRMAN GLEASON: All right. If we  
9 could take a few minutes, I think that concludes any  
10 discussion with respect to the hearing schedule and we'll  
11 come back on this before we're through on this; to  
12 reiterate it again this meeting on the 11th of August.  
13 If we could take a few minutes to discuss the site visit.  
14 It has always been, at least the Boards or the cases  
15 that I have served on in the past, and I'm sure that  
16 it applies to most cases, that we have always found it  
17 helpful to visit the facility prior to the hearing or  
18 at least sometime during the hearing.

19 And, of course, when the Board does that,  
20 all the parties would be invited to participate at the  
21 same time.

22 Does the Applicant have a suggestion on  
23 that? It should be done as early before the--it seems  
24 to me as early before the hearing and not during the  
25 hearing if possible.

1 MR. SILBERG: We are available at your  
2 schedule, at your convenience.

3 We need some advance notice, about a week  
4 would be appropriate. One possibility would be to have  
5 it the day before the start of the first day of the  
6 hearing, or any other time at the Board's convenience.

7 CHAIRMAN GLEASON: What has been  
8 suggested by the members of the Board is perhaps it  
9 might be feasible to do it in connection without coming  
10 together on the 11th of August to do it the following  
11 day or that afternoon or so.

12 Would that be inconvenient?

13 MR. SILBERG: That will be fine with  
14 us.

15 CHAIRMAN GLEASON: All right. Why don't  
16 we at least discuss it, talk to each other during the  
17 recess. In a few minutes.

18 Is that all right with the Staff?

19 MR. CUTCHIN: It is fine with the Staff.

20 CHAIRMAN GLEASON: Now, place of hearing.  
21 What comments do you have?

22 MR. SILBERG: Really any place that's  
23 convenient to the Board. I guess our problems with  
24 the Federal Courthouse have been that I don't think we  
25 would be guaranteed to have a large Courtroom 3 days a

1 week, and I think it would be very inconvenient to have  
2 to shuffle around to different courtrooms.

3                   There are other facilities here in  
4 Wilkes-Barre which I'm sure would be obtainable. We  
5 are staying at the Sheraton Hotel on the Square, and I  
6 do know that they have suitable rooms too. This room,  
7 aside from the tinkling of the chandeliers, I would  
8 think it would be useful to have a room that we know  
9 we would be in all the time.

10                   CHAIRMAN GLEASON: All the time.

11                   MR. CUTCHIN: That's satisfactory with  
12 us.

13                   CHAIRMAN GLEASON: Mr. Halligan?

14                   MR. HALLIGAN: Mr. Chairman, the  
15 Citizens Against Nuclear Danger would recommend if a  
16 facility being obtained at Wilkes College in Wilkes-Barre,  
17 Pennsylvania because for the hearings there are  
18 facilities on campus for reproduction of documents,  
19 probably communication hook ups, and so on.

20                   They do provide public service facilities  
21 for important issues and I would suggest--

22                   CHAIRMAN GLEASON: Where is that  
23 located?

24                   MR. HALLIGAN: It is just on the other  
25 side of the center of town here. It is right on the main

1 thoroughfare in downtown.

2 CHAIRMAN GLEASON: Within the City limits?

3 MR. HALLIGAN: Right along the  
4 Susquehanna River in fact. It is a very modern campus  
5 and very large university, and they have all sorts of  
6 facilities to accommodate people who would like to come  
7 in, news media and others.

8 I don't know what their policy is, but  
9 it would be our nomination the Wilkes College in Wilkes-  
10 Barre, Pa. They have meeting rooms and a auditorium  
11 in fact.

12 CHAIRMAN GLEASON: Mrs. Marsh, do you  
13 have any feelings about the site?

14 MRS. MARSH: That would be fine. That  
15 sounds very good.

16 CHAIRMAN GLEASON: The College?

17 MR. SILBERG: Mr. Chairman--

18 CHAIRMAN GLEASON: Let me finish, then  
19 we will come back.

20 Ms. Zitzer?

21 MS. ZITZER: Dr. Johnsrud had also asked  
22 to recommend Wilkes College as a place. It seems that  
23 here in Wilkes-Barre for the bulk of the hearings it  
24 seems to be best suited for everyone, particularly  
25 because the public documents room, being located here

1 in Wilkes-Barre, it seems to make the information more  
2 accessible to the Intervenors.

3           However, I think it certainly is  
4 important, in my mind, to hold some part of the pro-  
5 ceedings, if possible, closer to the facility of the  
6 plant. Certainly I hope you would consider holding  
7 the limited appearance hearing, some of them, in the  
8 Berwick area and possibly--

9           CHAIRMAN GLEASON:   Why do you believe  
10 that's helpful?

11           MS. ZITZER:   Because I think many of  
12 the people who have things to say are people who live  
13 directly in the vicinity of the plant, local officials  
14 that will be involved, particularly in Emergency  
15 Planning Procedure.

16           I think that many of those people are  
17 more likely to come and voice their concerns, which I  
18 think is a contradiction to the proceeding--

19           CHAIRMAN GLEASON:   Oh, yes. Yes, it is.

20           MS. ZITZER:   --As well as to everyone's  
21 benefit.

22           And I think to schedule those hearings,  
23 hopefully in the evenings, and on Saturday, if possible  
24 so--

25           CHAIRMAN GLEASON:   Is there a facility

1 close to the plant that could be accommodated?

2 MR. SILBERG: The Town of Berwick and  
3 there is a high school there, there have been on prior  
4 occasions hearings in the high school auditorium.  
5 Construction Hearing was held there.

6 CHAIRMAN GLEASON: Is that right?

7 MR. HALLIGAN: I'm not making this my  
8 nomination, but there is the PP&L Information Center  
9 which has an auditorium and the complete record there.  
10 Other people may want to boycott the place, I don't  
11 know, that's not my intent, but there probably are a  
12 number of places.

13 But, we would concur, as a spokesman  
14 for the petitioners from the Salem Township in Berwick  
15 area, certainly the limited appearances certainly some  
16 of it should be obtained in that area. Our petitioners  
17 are from that area.

18 CHAIRMAN GLEASON: Right.

19 MS. ZITZER: My suggestion on the  
20 limited Appearance Hearings would be that you hold  
21 them not in any one place, but that you try and hold  
22 them in rotating places in the vicinity.

23 CHAIRMAN GLEASON: I don't think we  
24 could hold them all in one day anyway.

25 MS. ZITZER: Right. For everyone's

1 benefit.

2 CHAIRMAN GLEASON: You are saying to  
3 hold them as close to where people live as possible?

4 MS. ZITZER: Certainly have some of  
5 them in the area of the plant, but not all in one place  
6 so that people who might not be able to come to one  
7 location. could come to another.

8 I would like to encourage the Board to  
9 consider if it is possible to hold the Evidenciary  
10 Hearings on Emergency Planning closer to the vicinity  
11 of the plant, if there is a vicinity obtainable, again,  
12 because it is the local officials that will be involved  
13 in implementing these plans, and I think it is, again,  
14 to everyone's interest to have those people as actively  
15 involved and as aware of the information that will be  
16 presented in the hearings as possible. So that I would  
17 ask you to please consider that.

18 One more thing just regarding the  
19 documents. It is my understanding that the earlier  
20 Board had decided to keep a record of those documents  
21 in the document room at the Pettee Room at the  
22 State College Library.

23 I'm particularly for our involvement  
24 in this proceeding, recognizing the great difference  
25 involved in coming to Wilkes-Barre--



1 CHAIRMAN GLEASON: Where is that  
2 located?

3 MS. ZITZER: That is at Penn State.

4 CHAIRMAN GLEASON: Penn State?

5 MS. ZITZER: Yes, and we would just  
6 like to request the transcripts and all documents in the  
7 proceeding do continue to be placed in the library  
8 particularly so that we will have access to them.

9 CHAIRMAN GLEASON: Do you know what  
10 arrangements have been made in that connection, Mr.  
11 Cutchin?

12 MR. CUTCHIN: We had many discussions  
13 earlier in the case about the inconvenience, especially  
14 to ECNP, and the Local Public Documents Room Staff,  
15 on its own, decided to make available their copies of  
16 transcripts; I believe it is already a depository  
17 library which means that they have access to all of  
18 the Government documents that they choose to have and I  
19 don't know whether they take all of the documents, but  
20 I have no indication that the LPD Staff does not plan  
21 to continue--

22 CHAIRMAN GLEASON: Could I ask you,  
23 or ask you to have somebody to recheck to make sure  
24 that was done because I think that is important to have  
25 access to transcripts.

1 MR. CUTCHIN: I'll have to say, as I  
2 did earlier in the proceedings, sir, I'll have to check  
3 out that is a service that is under the control of  
4 those people, and I believe neither we nor the Board  
5 can do more than just ask them.

6 CHAIRMAN GLEASON: Under control of who?

7 MR. CUTCHIN: Of the LPD Staff and of  
8 course, local public document rooms are not required by  
9 law or anything other than admission possibility.

10 CHAIRMAN GLEASON: I understand that.  
11 I understand that.

12 MR. CUTCHIN: I will continue--I will  
13 continue to ask.

14 CHAIRMAN GLEASON: But you will advise  
15 me if that has not been done?

16 MR. CUTCHIN: I would do so.

17 MS. ZITZER: Thank you, sir.

18 CHAIRMAN GLEASON: How about the State?

19 MR. ADLER: The State has no preference.

20 MR. SILBERG: Excuse me, Mr. Chairman--

21 CHAIRMAN GLEASON: Yes.

22 MR. SILBERG: Two comments. I have  
23 been informed that the auditorium at the PP&L Information  
24 Center at the site is probably too small for limited  
25 appearance statements.

1 I'm also informed that there is a  
2 YMCA in Berwick--which probably would be another suitable  
3 facility in addition to the school.

4 In response to the suggestion for using  
5 Wilkes College, I understand that there may be severe  
6 parking problems at the College while school is in  
7 session.

8 I also don't know if we can have a room  
9 in the school on a long-term basis during classes, but  
10 I think because the hearings would be taking place  
11 during the time when students were there, that parking  
12 may be very difficult.

13 CHAIRMAN GLEASON: All right. Excuse  
14 me.

15 (A discussion was held off the record.)

16 (The discussion was concluded.)

17 CHAIRMAN GLEASON: Someone mentioned,  
18 Mr. Purdom, reminded me and I just bring it up without  
19 indicating, just to get the information really, that  
20 there was a facility, an air facility near Naval Air  
21 Force near the airport.

22 MR. HALLIGAN: That's correct. We  
23 would oppose that for very good causes.

24 Mr. Chairman, the parking situation in  
25 center city Wilkes-Barre is no different here at this

1 Hotel or at the Federal Building where we were yesterday,  
2 or at the Wilkes College. It is the same vicinity.  
3 Wilkes College is accessible to people in public  
4 transportation, Wilkes College is accessible to the  
5 handicapped, it is accessible to the general public,  
6 within walking distance of the urban area and the  
7 residential areas.

8 The facility of the airport is not  
9 served by public transportation. It is not accessible  
10 to the people of Wilkes-Barre without an automobile.  
11 It is not a appropriate place. I have testified at  
12 hearings there and it is an echo chamber. It is a big  
13 repair shop, really, for trucks and things. It is a  
14 motor pool, painted white, converted into makeshift  
15 purposes like hearings occasionally.

16 The audio visual facilities are inadequate  
17 up there, the lighting and sound effects are poor. It  
18 is not appropriate at all.

19 So we would reiterate our desire to use  
20 Wilkes College. First, of course, and foremost, you  
21 would have to get permission and, in fact, reserve the  
22 space there for the period of time.

23 CHAIRMAN GLEASON: All right. the time  
24 has come for us take a five minute break.

25 (Whereupon at 10:30 a five minute recess

1 was taken.)

2 CHAIRMAN GLEASON: If we could come back  
3 in session.

4 I don't think it is necessary, parti-  
5 cularly in light of the fact that there will be a con-  
6 tinuation of this Pre-Hearing Conference on the 11th,  
7 and 12th, is necessary to take Mrs. Marsh back through  
8 what we went through yesterday in connection with her  
9 Contentions because she'll have an opportunity to look  
10 them over in that period of time and discuss them with  
11 the other parties on the 11th, and 12th, and with the  
12 Board on the 12th.

13 There is one Contention, a Contention  
14 13, which did not appear, that there was a lot of  
15 complications with, or there was a lot of substance,  
16 but that the Board previously had not wanted to consider  
17 withdrawn until it heard directly from Mrs. Marsh, which  
18 it wanted to do at this Conference.

19 So Mrs. Marsh, would you like to  
20 communicate to us about what your views are about that  
21 Contention, please?

22 MRS. MARSH: I've reviewed the papers  
23 that they've sent me on the motion to withdraw  
24 Contention 13, and I have signed the paper here. I  
25 would agree that it should be withdrawn.

1 CHAIRMAN GLEASON: You would agree that  
2 it should be withdrawn. All right. Fine.

3 MRS. MARSH: Yes.

4 CHAIRMAN GLEASON: I don't think it  
5 would serve any purpose to discuss Contention 10 anymore  
6 at this time. I think that--

7 MR. HALLIGAN: Mr. Chairman--

8 CHAIRMAN GLEASON: Yes.

9 MR. HALLIGAN: There is a matter on  
10 Contention 10, a brief, added information since yesterday.

11 What is the status of Contention 10  
12 at this point?

13 CHAIRMAN GLEASON: The status is that,  
14 if I recall the Board Order, that it did not support  
15 the motion to dismiss it at that time.

16 The Intervenor is obligated under the  
17 prior Order of the Board to designate several--

18 MR. CUTCHIN: Again. Just a portion of  
19 the beginning just after Criterion 4, which is on page  
20 314.

21 CHAIRMAN GLEASON: The structure systems  
22 or components--

23 MR. CUTCHIN: It is the paragraph.

24 CHAIRMAN GLEASON: --which are important  
25 to Safety, which could be affected by an on-site rail

1 accident prior to the hearing or prior to at some  
2 point before it, it would be dismissed. It says, "Prior  
3 to any Hearing on the Contention."

4 In the Order of the Board, I believe, we  
5 suggested that one of the reasons it could not be dis-  
6 missed was that the additional documents had not been  
7 submitted by the Applicant or by the Staff, the Safety  
8 documents.

9 So, I would think that we are reasonably  
10 talking about Mr. Halligan as soon as--let's see. The  
11 supplement is in within a reasonable period after that  
12 point in time, the 10-day period, if you will, that you  
13 would identify those structures, components or that  
14 the Board will entertain favorably the motion to have  
15 that motion dismissed.

16 MR. HALLIGAN: Mr. Chairman, we concur  
17 with your decision there. We will, in fact, make the  
18 objection and comply with that discovery on the day we  
19 visit the site. The Citizens, a small delegation,  
20 prepare their replies. That was the basis for their  
21 objection to the Contention.

22 There is just one little thing about this  
23 that bothers me. When the train derailed, on the  
24 site, it was human error and, as I understand, that  
25 some of the proposals to improve the Safety there have

1 to do with mechanism, but it was panic.

2           The engineer panicked and jumped off the  
3 train when the brakes gave way, and it almost went into  
4 the Susquehanna River, but the thing of it is the  
5 transformer was badly damaged. It was worth nearly  
6 \$1,000,000, it weighed nearly 250 tons and at that time,  
7 the PP&L issued a press release saying they had a back  
8 up transformer that would be used.

9           Now, on or about October 19, 1980, the  
10 PP&L filed some information in the media saying that  
11 they filed suit against ConRail for damages to this  
12 250 ton transformer.

13           And, by the way, we have outstanding  
14 discovery against the PP&L for any and all inform: on  
15 about any and all lawsuits pertaining to the equipment  
16 or the manufacture of anything used on that site. And  
17 they haven't complied with that discovery.

18           Since last October when they filed that  
19 lawsuit, they did not give us the documentation. They  
20 have been in flagrant violation of their discovery  
21 requirements all along.

22           Now, this filing was made in Lehigh  
23 County Court against ConRail, that's a Federal  
24 corporation, and PP&L is suing for the cost of repairing  
25 the transformer. They have previously said they would



1 not repair the transformer, but they would use another  
2 brand new one in place of it last October. They said  
3 they are going to repair the transformer and return it  
4 to the construction site at the nuclear plant from the  
5 McGraw Edison Plant in Canonsburg, Pa.

6 McGraw Edison is the manufacturer of  
7 the transformer. The cost of having the severely  
8 damaged transformer repaired and returned to the  
9 construction site is over \$700,000 and now--

10 CHAIRMAN GLEASON: Mr. Halligan, I  
11 don't understand what that has to do with this.

12 MR. HALLIGAN: The relevancy is that  
13 there has been a recent transformer fire at a nuclear  
14 plant, and I'm not certain, that I believe it was at  
15 Indian Point, and it almost caused a total destruction  
16 to the electrical back up system that will be used at  
17 that Reactor as a fail-safe device, and it could have  
18 been a reoccurrence of the Brown's Ferry accident of  
19 1975.

20 In other words, why in the world are  
21 the Applicants putting back into service, on that site,  
22 a transformer that's slipped off the runaway train, that  
23 was severely damaged and apparently insured.

24 Now, they are suing, and all of this  
25 is relevant information to Contention 10. It has not

1 been forthcoming. They are well aware of this and,  
2 as you told us yesterday, all parties are under the  
3 injunctive Order to bring information forward as it  
4 becomes available, and they have been in non-compliance  
5 from day 1.

6           So I feel that this Contention has a lot  
7 of implications in addition to the lengthy argument I  
8 gave yesterday about the Statewide Rail Plan, and effect  
9 that the PP&L may have to buy the rail system and  
10 everything else. But, this is something that just came  
11 to my attention now, to transformer 5.

12           CHAIRMAN GLEASON: Mr. Halligan, I  
13 just have to say, again, within the period of 10 days  
14 after the final supplement is out, you are going to have  
15 to identify those--

16           MR. HALLIGAN: We will.

17           CHAIRMAN GLEASON: And you will have to  
18 write them down.

19           MR. HALLIGAN: We will.

20           MR. CUTCHIN: Mr. Chairman, I'd like to  
21 remind the Board that I pointed out yesterday that the  
22 supplement in which that matter is addressed is the one  
23 which exists.

24           Recently, it does exist, now, with the  
25 information which Mr. Halligan would be interested in

1 seeing. I pointed out was on page 2--2.

2 MR. HALLIGAN: It is not relevant to  
3 the Contention part of it.

4 CHAIRMAN GLEASON: What you are saying,  
5 Mr. Cutchin, is that there will be no further reference  
6 on that matter in the final supplement?

7 MR. CUTCHIN: That's what I am saying,  
8 sir.

9 CHAIRMAN GLEASON: All right. I'm  
10 glad to have the correction, because then, Mr. Halligan,  
11 we would expect you--as soon as it says in the prior  
12 Order before the Hearing--but think that as soon as  
13 that 10 days after the site visit is over, then you ought  
14 to have something in or we'll have to take further action.

15 MR. HALLIGAN: Well, Mr. Chairman, I  
16 would petition the Board to allow me and the Citizens  
17 to make that issue of compliance with that Order on the  
18 day we visit the site. You realize--

19 CHAIRMAN GLEASON: Ten days after the  
20 visit.

21 MR. HALLIGAN: Okay, thank you.

22 CHAIRMAN GLEASON: Because I heard you  
23 indicate this was important. Okay.

24 I should be asking the Applicant, but  
25 what can he say as I said before.

1                   Now, on Contention 2, the Board is in  
2 this--just deals with the Chlorine use part of this  
3 Contention.

4                   The Board has given a great deal of  
5 thought to this matter and it finds it is in a very bad  
6 situation because of--frankly, it probably would have  
7 ruled differently if it had been the full Board at the  
8 time that that motion for this position had been before  
9 us.

10                   However, a ruling has been made by the  
11 Board and we think it would be unfair to the parties  
12 to reverse that saying on the basis of just a motion for  
13 reconsideration without anything more.

14                   But in order to provide a fair oppor-  
15 tunity for that, what we would do is--I'll put in an  
16 Order just so you'll know, unless you have some other  
17 comments you want to make. We will provide an  
18 additional period for discovery, a short time with  
19 respect to that Contention, and a short period for  
20 response on the discovery.

21                   And, on the basis of that, we will rule  
22 anew with respect to that whether that Chlorine part  
23 survives as a Contention for retrial or not.

24                   It seems to me that that is a correct way  
25 of doing it, it is fair to the Intervenors.

1 I should be addressing, I guess, to the  
2 Applicants as well, I'm sorry. It is fair to the  
3 Intervenors who sponsored that Contention, it would  
4 prevent the thing in the light where the Board can get  
5 it without going to all the parties. So that's what  
6 it intends to do.

7 MR. SILBERG: Could you just explain a  
8 little more the scope of--

9 CHAIRMAN GLEASON: Yes. Go ahead.

10 MR. SILBERG: The scope of discovery?

11 CHAIRMAN GLEASON: Well, it seems to me--  
12 it seems to us that what has happened before is the  
13 Board rarely permitted a new Contention to come into  
14 the proceeding via its response which it should have  
15 done as far as--as part of the sua sponte authority  
16 rather than the way it did it.

17 I think it is fair to say the Board does  
18 have some concern of its own with respect to the use  
19 of Chlorine on this facility, but, I cannot say that  
20 it desires to raise this issue on its own at this  
21 particular time, or any question in connection with it.

22 The predicate, if you will, or the  
23 foundation, if you will, and the Board's reading of the  
24 Rulings--the prior Board's Ruling, was that they were  
25 two things which formed its basis, and that was an

1 allegation, and they were nothing more than allegations  
2 by the Intervenor, that a new facility had been planned  
3 somewhere 15 miles above the site which would add  
4 additional material into the Susquehanna River, which  
5 would then flow into the intake, which would increase  
6 the necessity, or which would add to the necessity, for  
7 increased chlorine, which further complicated it.

8           And furthermore, there is additional  
9 study of environmental nature that was supposed to  
10 either lower the standards or call for lowering of the  
11 standards, and call for consideration. And those were  
12 accepted without any proof of their authenticity or  
13 accuracy.

14           And that is the direction we think the  
15 discovery ought to take.

16           MR. SILBERG: So the discovery would  
17 flow from Staff and Applicants to the Intervenors?

18           CHAIRMAN GLEASON: Absolutely.  
19 Absolutely.

20           MR. SILBERG: And not vice versa?

21           CHAIRMAN GLEASON: No. No, it should be  
22 your responsibility on the discovery against the Inter-  
23 venors responsibility to either ignore or respond to it.

24           And on the basis of that, you decide to  
25 respond or a new motion for summary disposition

1 automatically to be filed with the Board. And then the  
2 Board will rule on it. That is the only way the Board  
3 can approach the resolution of this issue.

4 MR. HALLIGAN: Mr. Chairman--

5 MR. CUTCHIN: Could we go in some order?

6 CHAIRMAN GLEASON: We will let the  
7 Applicants go first because it is their motion.

8 MR. CUTCHIN: It is the Staff's motion  
9 for reconsideration.

10 CHAIRMAN GLEASON: Let the Staff go  
11 first.

12 MR. CUTCHIN: I would like Mr. Laverty  
13 to respond.

14 MS. LAVERTY: I would just like some  
15 clarification--you are treating this as a new Contention  
16 dealing with the Ethanol facility.

17 CHAIRMAN GLEASON: I'm not treating it  
18 as a new Contention. I'm saying that's the way it  
19 should have been treated by--I am allowing because it  
20 does have that aspect of the period.

21 MS. LAVERTY: On the findings of fact  
22 that the original Board may--

23 CHAIRMAN GLEASON: That is right.

24 MS. LAVERTY: And nothing else.

25 CHAIRMAN GLEASON: Mr. Silberg.

1 MR. SILBERG: On the assumption that  
2 we will--I think you can assume that there is 100%  
3 probability that Applicants and the Staff should file  
4 such discovery.

5 CHAIRMAN GLEASON: Well, we assume  
6 nothing. Go ahead.

7 MR. SILBERG: On the assumption that an  
8 answer is forthcoming from the Intervenors, is it at  
9 that point necessary that there be a summary disposition  
10 motion?

11 CHAIRMAN GLEASON: Yes, we should file  
12 another motion.

13 MR. SILBERG: But need that motion--need  
14 that motion be based on Affidavits or can it be based  
15 on the responses?

16 CHAIRMAN GLEASON: I think it should be  
17 based on whatever you think is necessary to have the  
18 motion approved.

19 MR. SILBERG: Okay.

20 CHAIRMAN GLEASON: Mr. Halligan.

21 MR. HALLIGAN: Mr. Chairman, I believe  
22 you are referring to the Memorandum and Order dated  
23 May 15, 1981 of the Atomic License and Safety Board  
24 Number 641.

25 CHAIRMAN GLEASON: Probably.



1 MR. HALLIGAN: Which more or less  
2 sustained our--that part of the Contention dealing with  
3 Chlorine--

4 CHAIRMAN GLEASON: Right, right.

5 MR. HALLIGAN: --As an issue. In other  
6 words, you are saying, now, that the summary disposition  
7 matter would have to be reinstated at some later date.  
8 But, I point out that at the present time, the Atomic,  
9 or rather, the Nuclear Regulatory Commission is now  
10 reviewing an Appeal Board decision on this matter and  
11 they will decide this no earlier than July 27 of this  
12 year.

13 CHAIRMAN GLEASON: Right.

14 MR. HALLIGAN: So, I would petition  
15 this Panel to ask the Applicants to withhold any  
16 discovery and the NRC Staff to withhold any discovery  
17 on us until this Order is forthcoming and can be  
18 analyzed.

19 It may give us--shed some light on the  
20 matter.

21 CHAIRMAN GLEASON: I am not going to  
22 direct them.

23 MR. HALLIGAN: Would it be logical to,  
24 in fact, give us due process as well? It is only a  
25 few days.

1 CHAIRMAN GLEASON: Well--

2 MR. HALLIGAN: We will concur.

3 CHAIRMAN GLEASON: Well, let me say  
4 this, Mr. Halligan, that whatever the Commission does  
5 it will affect whatever anybody else is doing.

6 What we cannot do is to sit with this  
7 issue in limbo while the Commission does not address  
8 the issue. And so, I don't want to direct the Staff.  
9 I am just telling them that the only way the Board can  
10 consider this issue, again, is that if they follow that  
11 kind of proceeding and--

12 MR. HALLIGAN: On this, I will just--

13 CHAIRMAN GLEASON: And it may be that  
14 the Commission could delay this for the next two or  
15 three months but, of course, we are going to a hearing.

16 MR. HALLIGAN: But could you use your  
17 good offices to inform them to perhaps rule on it and  
18 also--

19 CHAIRMAN GLEASON: Well--

20 MR. HALLIGAN: --do you have a right  
21 to serve discovery on other parties based on this  
22 information? I believe we do.

23 CHAIRMAN GLEASON: Which information?

24 MR. HALLIGAN: Well, we never sent any  
25 discovery requests to the Applicants dealing with any

1 knowledge they would have about this industrial  
2 development upstream. And, I am certain that they have  
3 information because the PP&L have a very large marketing  
4 division and any company that is going to put a big  
5 multi-million dollars out, initially, for a more complex  
6 area must call in the PP&L marketing staff and engineers  
7 to insure them that they have enough electric power to  
8 run that facility.

9 We feel that they have files on all of  
10 these propose operations and it is their business.  
11 They sell electricity, and we feel that they have in  
12 their possession this very information that they are  
13 going to ask us. So, we are going to, in turn, ask  
14 them to make public this information. We know that  
15 they have this type of information either in Allentown  
16 or one other type of division in their system.

17 So, I think, it is to be a two-way--but  
18 will you say, be 10 days on this and you are not willing  
19 to wait until they rule necessarily?

20 CHAIRMAN GLEASON: No. But I am saying  
21 if they rule--Ms. Lavery, you are going to say something?

22 MS. LAVERTY: I am very uncertain as  
23 to how the Board thinks that I can effectively deal with  
this issue.

24 I would like to go through a little of

1 the history of it so that you can understand my inter-  
2 pretation of the Contention. The Contention talks about  
3 the Health Effects of Chlorine and if you looked at the  
4 effects of the Board Order on page 300, it talks about  
5 NRC Consideration of the Health Effects of the Chlorine  
6 Discharged must be based on the amounts specified in  
7 the discharge permit.

8 Okay. That established the breath of  
9 this Contention. The breath is the Health Effects of  
10 the amount which dictated by NPDES permit which, of  
11 course, the Staff has no jurisdiction. So, what  
12 happened, was during the discovery process when CAND  
13 was asked what its concern was regarding chlorine, they  
14 indicated that they were concerned about acid-mine  
15 drainage and toxic chemicals. When Applicant responded  
16 to their Contention and their motion for summary motion  
17 disposition they addressed CAND's concern. When the  
18 Staff responded to Applicant's motion, CAND's response  
19 was not only addressed to acid-mine drainage and toxic  
20 chemicals; we also discussed the Health Effects of  
21 Chlorine amounts that would be discharged by the  
22 facility under Applicants NPDES permit.

23 Now, what happened when the Board ruled?  
24 The Board brought into question, into issues, the  
25 possibility of an Ethanol facility existing upstream.

1 It also references the QED study of the Health Effects.  
2 Now then, if I filed discovery on CAND and CAND gives  
3 me the same newspaper articles which is referenced in  
4 its earlier motion, we will still not know whether or  
5 not there is going to be an Ethanol facility and I will  
6 still not know what to do because in effect, that is  
7 changing the Contention without having required any of  
8 the specificity or basis that would have originally  
9 been required at submission stage. Originally, the  
10 Staff's reviews just goes to the Health Effects of  
11 amount that will be discharged.

12 Now, I will address the CEQ study because  
13 that is not going to be talked about, I understand, the  
14 Health Effects but the responsibility of an Ethanol  
15 facility upstream, unless the Board wants to spell out  
16 for me what relationship it thinks that the possibility  
17 of an Ethanol facility upstream has on the plant. I  
18 don't know what I should do.

19 CHAIRMAN GLEASON: I don't think it  
20 would be appropriate for the Board to do that. Mr.  
21 Halligan.

22 MR. HALLIGAN: No, Mr. Chairman.

23 CHAIRMAN GLEASON: No. Again, let me  
24 finish. It is clear that the Intervenors imposing the  
25 motion for summary disposition relied on information

1 which was not supported by Affidavit. That can be  
2 tested through another motion for discovery and that is  
3 the opportunity you are being offered.

4 We are not changing the Contention as it  
5 was discussed by the prior Board and that has been  
6 really the substance of your motion for reconsideration  
7 to r consider the Board's decision on that Contention  
8 as was defined.

9 I think that is the only fair way that  
10 we can get on it. We are not in a position, and to be  
11 fair to parties, to approve your motion for reconsideration.  
12 We are in a position to offer another opportunity  
13 for discovery and that is what we are doing.

14 MR. HALLIGAN: Mr. Chairman?

15 CHAIRMAN GLEASON: Mr. Halligan.

16 MR. HALLIGAN: The Citizens substantially  
17 support your views just made, and we just want to add  
18 one thing that Attorney Laverty omitted. We had filed  
19 papers that identified the fact that not one, but two  
20 licenses apparently were filed with the Department of  
21 Energy--the U.S. Department of Energy and we suggest  
22 that they contact the GAO in due course and obtain copies  
23 of them. They do not have them in their possession,  
24 but they have access to their records and files that  
25 they could learn that information.

1 CHAIRMAN GLEASON: Mr. Halligan, I think  
2 that--

3 MR. HALLIGAN: They omitted the statement.

4 CHAIRMAN GLEASON: Well, I really do not  
5 want to get into this any further. What the Board  
6 offered--Ms. Zitzer?

7 MS. ZITZER: Just as a point of clari-  
8 fication, the beginning part of Contention 2 as it had  
9 been distributed.

10 CHAIRMAN GLEASON: That still has not  
11 been touched and it is still part of the Contentions  
12 it is still valid and alive.

13 MS. ZITZER: Do you know the Health  
14 Effects of Low-Level Radiation, that is still--

15 CHAIRMAN GLEASON: That is still in  
16 the hearing process. That has not been affected by  
17 any of this. It has not been affected by the summary  
18 motion of summary disposition.

19 MS. ZITZER: What I understand from  
20 the ECNP case--I guess my question is relating to that  
21 Contention. Are we still permitted to participate or  
22 have we been of error? Is that one of the areas we have  
23 been barred to participate from?

24 MR. SILBERG: ECNP--

25 CHAIRMAN GLEASON: I think you have been

1 barred from all Health and Environmental issues.

2 MR. HALLIGAN: But I think it is barred  
3 from all Environmental issues.

4 CHAIRMAN GLEASON: Then you are still  
5 there.

6 MS. ZITZER: Okay. Thank you.

7 CHAIRMAN GLEASON: Does the State want  
8 to comment in this area?

9 MR. HALLIGAN: We are going to request  
10 the State to comment.

11 CHAIRMAN GLEASON: You cannot.

12 MR. HALLIGAN: Well, the objection is  
13 that Attorney Laverty, for the NRC Staff, said that  
14 this permit that she referred to is a State permit.  
15 And, I believe, that the Attorney for the Commonwealth  
16 could clear the air a bit here because there is no  
17 finality to permits. They can reopen a permit when there  
18 is a change used if they expand their waste disposal  
19 in a waterway of the Commonwealth and the D.E.R. --  
20 Department of Environmental Resources must go in and  
21 inspect and examine this and deal with it accordingly.

22 Obviously, if you go to apply for a permit  
23 and dump 3,000,000 gallons of treated water in the River  
24 and they later learn that you are dumping that many  
25 gallons of treated water here of more toxic substances



1 into the River, they are going to reopen the hearing on  
2 this permit and license, whatever, and deal with it  
3 accordingly. And, I think, I would like to get a  
4 comment from the Solicitor from the Commonwealth.

5 CHAIRMAN GLEASON: If you want to  
6 comment, fine. But, I do want to end this session.

7 MR. HALLIGAN: Just a few--

8 MR. ADLER: First of all, I put in  
9 yesterday to put Mr. Halligan in contact with the  
10 Bureau of Water Quality, D.E.R. Office and they can  
11 plan a permit for the plant.

12 They will also have on file all permit  
13 applications that are now outstanding. These  
14 applications are in addition, published in the  
15 Pennsylvania Code and Mr. Halligan could learn of any  
16 upstream permit applications by looking at the Code.

17 We will have an Order of that and we  
18 can give you the right application.

19 CHAIRMAN GLEASON: I do want to say,  
20 again, that we are not going to stand basis for  
21 Contentions through this new method of discovery. We  
22 are standing with the basis of where it was with the  
23 discovery opportunity.

24 It is open to Mr. Halligan as well as  
25 the State during this 10 day period, but--

1 MR. ADLER: That was my additional  
2 point.

3 It seems to me that regardless of what  
4 additional upstream discharging may occur in the  
5 future, PP&L are still bound by their limits of their  
6 NPDS permit and they will be able to discharge a  
7 maximum of the Chlorine.

8 CHAIRMAN GLEASON: That is a point that  
9 has been ignored frequently in this case.

10 MR. ADLER: All right.

11 CHAIRMAN GLEASON: Anyway, I understand,  
12 where we are with respect to that reconsideration, if  
13 you will. All right. The only thing left to--not  
14 discuss, but to summarize--

15 MR. SILBERG: Excuse me, before you  
16 summarize. As I understand it, you will put out an  
17 Order that spells this out and establishes the time  
18 frame for this discovery?

19 CHAIRMAN GLEASON: Yes, yes, I will.  
20 I hope to have this done in the next  
21 few days.

22 We will recess this hearing in a few  
23 minutes until July--until August 12th. We will direct  
24 the parties to meet and it will be at 9:00 o'clock  
25 on the 12th in, I think, this hotel; unless you are

1 notified to the contrary.

2 We will direct the parties to meet  
3 together on the 11th, to consider the further modifica-  
4 tion and further specifications of the remaining  
5 Contentions. That will be the subject of the Board's  
6 review consideration on the 12th.

7 We will be making a visit to the site,  
8 the afternoon of the 12th, and which the parties cer-  
9 tainly are encouraged to be present.

10 I presume--can transportation be made  
11 available so we can make a caravan so that we can  
12 stay together with the Applicants?

13 MR. SILBERG: You mean a bus or van?

14 CHAIRMAN GLEASON: Something like that,  
15 I think it is important to keep the group together at  
16 the site.

17 MR. SILBERG: We will make arrangements.

18 CHAIRMAN GLEASON: We will need prior--  
19 you have to have prior notification of the individuals  
20 who will be at the site. Keep in mind, we are not  
21 talking about friends of friends, we are talking about  
22 parties.

23 MR. SILBERG: We will request that it  
24 be kept to the representatives of the parties. If we  
25 have a large number, it will become unmanageable.

1 CHAIRMAN GLEASON: Right.

2 MR. SILBERG: I would request that  
3 those who are coming notify Pennsylvania Power and  
4 Light not later than Tuesday, August 4, by calling  
5 either Bill Barbieri (sic) at area 215- 770-5833, or  
6 Ray Harris; and he is on the same area code, same  
7 exchange. His extension is 4474.

8 MR. HALLIGAN: Mr. Chairman.

9 CHAIRMAN GLEASON: Yes, Mr. Halligan?

10 MR. HALLIGAN: This refers to Attorney  
11 Silberg. The Citizens --are you allowing us to take  
12 four or five people in this case?

13 CHAIRMAN GLEASON: No, I think I will  
14 allow one other person.

15 MR. HALLIGAN: Well, I may need--I  
16 think the thing of it is, a few people might be down  
17 there to join us. They won't come up here, but in  
18 other words, each group--each Intervenor should be  
19 allowed to have three or four people to tour the site.

20 MR. SILBERG: That will really be  
21 too much.

22 MR. HALLIGAN: I don't think so, because  
23 any day of the week, the PP&L have buses. They have  
24 been bringing in thousands of people.

25 MR. SILBERG: --Those are the people

1 that are billing the facility.

2 MR. HALLIGAN: No, I am not talking  
3 about that, I am talking about social groups, citizen  
4 groups. And, I read it in the newspaper. And, they  
5 take busloads down there and they serve them lunch.

6 MR. SILBERG: That is not a tour of  
7 the plant.

8 MR. HALLIGAN: They do go down to the  
9 site. I am well aware of this, and to restrict it to  
10 one person--this is where we are going to be busy--down  
11 there dealing with Contention Number 10.

12 I think that we should be allowed that  
13 each group have three or four people and that is not  
14 too many.

15 MR. SILBERG: I would also note, I think,  
16 you have a misunderstanding of the site tour. This is  
17 not an opportunity for you to wander at will at the  
18 Contention site.

19 MR. HALLIGAN: I know. We will follow  
20 the instructions.

21 CHAIRMAN GLEASON: No. They will be  
22 having an opportunity to have the certain places that  
23 are not on the tour visited.

24 I mean, if they want to look at the  
25 railroad tracks.

1 MR. SILBERG: The tour is really for  
2 the benefit of the Board, and whatever the Board wishes  
3 to see, it will see.

4 CHAIRMAN GLEASON: Right. Well, I  
5 don't know how to handle this thing on people. We have  
6 organizations admitted as parties.

7 Would it be too much to say, or incon-  
8 venient to say, no organization could have more than  
9 three people? Would that inconvenience you?

10 MR. SNAPP: Can we take two minutes?

11 CHAIRMAN GLEASON: Yes, sir.

12 (Whereupon, a brief off the record  
13 discussion was held.)

14 MR. SILBERG: That will be acceptable.

15 CHAIRMAN GLEASON: All right, fine.  
16 So, let's leave it at that. No organization will have  
17 more than three people as a part of their party.

18 Let me ask the State, is that all right  
19 with you?

20 MR. ADLER: Yes that is fine.

21 CHAIRMAN GLEASON: I might say that we  
22 do have a motion from the State, which I meant to dis-  
23 cuss, about substituting somebody. So that they  
24 represent the State. That is construed to the taking  
25 place--anyway, so if it will, we will put that in an

1 Order.

2 MR. ADLER: That was merely in response  
3 to another motion, Mr. Halligan's.

4 CHAIRMAN GLEASON: Yes.

5 MR. ADLER: We will skip the Pennsylvania  
6 State motion. I would prefer to leave that until the  
7 12th.

8 CHAIRMAN GLEASON: All right, fine.  
9 But I would urge you to have that on the 12th.

10 MR. SILBERG: Again, one other thing,  
11 I would request you to call Mr. Barbieri or Mr. Harris  
12 by the 4th.

13 CHAIRMAN GLEASON: That is right. They  
14 have to have the names ahead of time.

15 MR. SILBERG: If the names are not  
16 given ahead of time, they will not be able to go.

17 CHAIRMAN GLEASON: Please keep that  
18 in mind.

19 Are there any loose ends?

20 MR. ADLER: Just one. I misstated this  
21 yesterday, permit applications are published in the  
22 Pennsylvania Bulletin, not the Pennsylvania Code.

23 CHAIRMAN GLEASON: All right, thank  
24 you.

25

1 that you can recall?

2 MR. SILBERG: Nothing.

3 CHAIRMAN GLEASON: Mr. Cutchin?

4 MR. CUTCHIN: Nothing, that can't wait.

5 CHAIRMAN GLEASON: All right. We are  
6 appreciative of that.

7 MS. ZITZER: Where is the meeting  
8 between our parties on the 11th?

9 CHAIRMAN GLEASON: Yes, should that be  
10 here, too? I think you ought to keep it here in the  
11 Hotel.

12 MR. CUTCHIN: We will make an attempt  
13 to arrange a room here in the Hotel.

14 MS. ZITZER: What time? I assume we  
15 will be notified?

16 MR. CUTCHIN: I will say that I will  
17 check with the parties and get a phone call to each,  
18 and I will assume the responsibility.

19 CHAIRMAN GLEASON: All right, you will  
20 assume the responsibility.

21 MR. SILBERG: Why don't we assume that  
22 it is 9:00 o'clock unless we hear otherwise.

23 MR. HALLIGAN: One other alternative  
24 suggestion, when you talked about the hearing site,  
25 before we--



1 CHAIRMAN GLEASON: That is right, yes.

2 MR. HALLIGAN: We talked about Wilkes  
3 College. I would like to amend that for the record  
4 and about the possible site to Wilkes College or to  
5 Kings College which is in walking distance to the hotels  
6 in the center city. They are both accessible to public  
7 transportation, and so forth.

8 CHAIRMAN GLEASON: That is another one  
9 that we can take a look at. Hopefully, we can decide  
10 on that.

11 MR. CUTCHIN: Oh, the Board will specify  
12 9:00 o'clock here, and I will arrange for a room and  
13 have people at the desk.

14 CHAIRMAN GLEASON: Okay, see you all.  
15 Thank you.

16 (Whereupon, at 11:45 A.M., the Hearing  
17 in the above-entitled matter was recessed to reconvene  
18 at 9:00 o'clock A.M., August the 12th.)

19  
20  
21  
22  
23  
24  
25

This is to certify that the attached proceedings before the  
NUCLEAR REGULATORY COMMISSION

in the matter of: SUSQUEHANNA STEAM ELECTRIC STATIONS, UNITS 1 & 2

Date of Proceeding: JULY 23, 1981

Docket Number: 50-387-388

Place of Proceeding: WILKES BARRE, PA

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Lisa Levine

Francesca Tesoriero

Official Reporter (Typed)

*Lisa Levine*  
*Francesca Tesoriero*

Official Reporter (Signature)