

NUCLEAR REGULATORY COMMISSION

50-254, 50-265

ORIGINAL

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

COMMONWEALTH EDISON COMPANY
QUAD CITIES OPERATION
SPENT FUEL STORAGE FACILITY

DATE: October 14, 1981

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AT: Rock Island, Illinois



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: :
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COMMONWEALTH EDISON COMPANY :
QUAD CITIES OPERATION :
SPENT FUEL STORAGE FACILITY :
:
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Wednesday, October 14, 1981
Rock Island County Office Building
1504 Third Avenue,
Rock Island, Illinois.

Prehearing Conference in the above-entitled
matter, convene pursuant to notice at 9:00
o'clock A. M.

BEFORE:

MR. JAMES KELLEY,
Administrative Judge,
Atomic Safety and Licensing Board

DR. RICHARD FOSTER,
Administrative Judge,
Atomic Safety and Licensing Board

DR. PETER MORRIS,
Administrative Judge,
Atomic Safety and Licensing Board

APPEARANCES:

On behalf of the Licensees:

MR. DAVID STAHL
and

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MR. ROBERT G. FITZGIBBONS.
Messrs. Isham, Lincoln & Beale
One First National Plaza, 42nd Floor
Chicago, Illinois 60603

On behalf of the Nuclear Regulatory
Commission Staff:

MR. RICHARD J. GODDARD,
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

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JUDGE KELLEY: Good morning.

The matter before us this morning concerns the application of the Commonwealth Edison Company for an amendment authorizing storage of increased amounts of spent reactor fuel in the spent fuel storage pool at its Quad Cities Station.

The matter was noticed in the Federal Register and interested persons were given an opportunity to petition to intervene, and we have had petitions to intervene from several organizations.

In cases of this kind, the NRC appoints a hearing board composed of three people, a lawyer chairman -- and that's my function. My name is James Kelley and I am a full-time member of the Atomic Safety and Licensing Board Panel in Washington -- and two technical members, one of whom has a background in physics, engineering, reactor safety questions, let's say, and the other of whom, typically, has a background in environmental matters.

On my right is Dr. Peter Morris. Dr. Morris is a physicist and he has served for a number of years with the Atomic Energy Commission, including Director of the Division of Reactor Licensing and he is now a full-time member of the Atomic Safety and Licensing Board Panel.

On my left is Dr. Richard Foster. Dr. Foster's

1 background is in environmental and radiological sciences
2 and he worked for many years as Director of Environmental
3 Programs at the Hanford Facility and is now a part-time
4 member of the Atomic Safety and Licensing Board Panel.

5 Our principal purposes this morning, as indicated in
6 the notice of this conference, will be to discuss whether
7 intervention ought to be granted to the various
8 petitioning organizations.

9 Secondly, to discuss the merits of certain of the
10 contentions that have been put forward.

11 Then to discuss various procedural matters, some of
12 which the Board will put forward, others of which will be
13 put forward by various of the parties.

14 This is not an evidenciary hearing. It's a
15 Prehearing Conference of counsel and the parties and
16 Petitioners.

17 We are being stenographically recorded, just in the
18 interests of an accurate record; but it is a Prehearing
19 Conference and not a hearing in the evidenciary sense.

20 Having introduced ourselves, the next order of
21 business will be for the various petitioning organizations
22 and the utility and the NRC staff to introduce themselves.

23 Perhaps, I could begin with the Petitioners and
24 working left to right, since that's a sensible way to
25 proceed.

1 If you could just introduce yourself and the name of
2 your organization and if you are an official in the
3 organization, what your position is.

4 MR. MILLER: I am Bob Miller. I am from --

5 MR. SONNTAG: Sir, you will have to speak up and
6 spell your name, please.

7 MR. MILLER: Robert Miller, M-i-l-l-e-r. I
8 reside in Camanche, Iowa.

9 I am co-chairperson for Citizens for Safe Energy
10 based in Hillsdale, Illinois, and will be here
11 representing that organization, along with others from
12 that organization.

13 JUDGE KELLEY: Are you accompanied by others in
14 your organization?

15 MR. MILLER: Yes, I am.

16 JUDGE KELLEY: Perhaps, they should be
17 introduced, also.

18 MR. MILLER: To my right is Doug Collins, from
19 Clinton Iowa.

20 Mrs. Marilyn Boss from Hillsdale, Illinois.

21 Bob Romic is a representative of QCASES and is along
22 with us on the intervention.

23 Perhaps --

24 JUDGE KELLEY: I am sorry. A representative of
25 QCASES, did you say?

1 MR. MILLER: Yes. Quad Cities Alliance for Safe
2 Energy and Survival.

3 JUDGE KELLEY: But that is a separate
4 organization, is it not?

5 MR. MILLER: It is in regard to that.

6 JUDGE KELLEY: I just want to be clear that I
7 understand your organization and its people.

8 Mr. Romic is in a different organization, is he not?

9 MR. MILLER: That's right; but we have combined
10 our contentions and are moving together as one unit in
11 this process.

12 JUDGE KELLEY: Okay. That is helpful.

13 Mr. Romic, and we will move one across.

14 MR. MILLER: I am sorry. We have a late-comer,
15 also.

16 Dennis Heller, who also is a member of the Board of
17 rectors of Citizens for Safe Energy.

18 MR. SMITH: My name is Jack Smith. I am on the
19 Board of Citizens for Safe Energy, too, and Director of
20 Older Americans for Elderly Right.

21 Our status vis-a-vis the intervention is somewhat
22 hazy, so let me just say that I am supportive of the group
23 here.

24 JUDGE KELLEY: Okay. I did want to get to some
25 discussion of the status of the Older Americans

1 organization and where they stood.

2 MR. SMITH: Sure, sure.

3 JUDGE KELLEY: At this point we will just stick
4 with introductions and then we will get to that a little
5 later.

6 Okay. Does that introduce everybody from the
7 petitioning organizations?

8 (No response.)

9 JUDGE KELLEY: Okay.

10 JUDGE KELLEY: NRC staff, Mr. Goddard.

11 MR. GODDARD: Yes. I am counsel for the NRC
12 staff. My name is Richard J. Goddard from the office of
13 the Executive Legal Director of the Nuclear Regulatory
14 Commission.

15 On my immediate left is the Project Manager for the
16 Quad Cities Station, a member of the Division of Nuclear
17 Reactor Regulation, Mr. Robbie B. Bevan.

18 On Mr. Bevan's left is Mr. Nicholas J. Chrissotimos,
19 who is the NRC Senior Resident Inspector at the Quad
20 Cities Station.

21 JUDGE KELLEY: Thank you.

22 For Commonwealth Edison.

23 MR. STAHL: Good morning. My name is David
24 Stahl, that is S-t-a-h-l. I am with the law firm of
25 Isham, Lincoln and Beale in Chicago.

1 We are here representing the Applicants,
2 Commonwealth Edison Company, the Iowa-Illinois Gas and
3 Electric Company.

4 To my immediate left is Mr. Robert G. Fitzgibbons,
5 F-i-t-z-g-i-b-b-o-n-s, of the same firm.

6 To his left is Mr. Laird Woldridge of Commonwealth
7 Edison Company.

8 To my immediate right Mr. Rich Fleschner of
9 Commonwealth Edison Company.

10 To his right Brian Strooby of Commonwealth Edison.

11 To his right is Mr. Jim Toscus, also of Commonwealth
12 Edison Company.

13 JUDGE KELLEY: Thank you. I guess that covers
14 the introductions.

15 Let me next for the record acknowledge receipt of
16 the major, if you will, pleadings that we have. I won't
17 recite every piece of paper, but we have the measure of
18 pleadings that pertain most directly to the issues that we
19 will talk about today.

20 We have petitions for intervention from the Citizens
21 for Safe Energy, from the Quad City Alliance for Safe
22 Energy and Survival and from the Older Americans for
23 Elderly Rights.

24 We have answers to those petitions from Commonwealth
25 Edison and from the NRC staff.

1 We have a stipulation of issues and proposed
2 contentions signed by Citizens for Safe Energy, Quad City
3 Alliance, Commonwealth Edison and the NRC staff.

4 Attached to that document is an Appendix A, which
5 lists a number of, I will call them, accepted contentions
6 or acceptable contentions, and Appendix B, a list of
7 contentions that are proposed by the intervenors but which
8 are objected to by the NRC staff and Commonwealth Edison.

9 In addition, I have a document filed just a few days
10 ago from Commonwealth Edison styled, "Prehearing
11 Memorandum," or words to that effect. I have it here
12 somewhere.

13 But those, it seemed to us, shape the issues before
14 us today on intervention and contentions.

15 Is there anything that bars on those issues
16 significantly that I haven't mentioned?

17 (No response.)

18 JUDGE KELLEY: Okay. The last document that I
19 mentioned, the stipulation, the Board wants to commend all
20 of those who participated in that effort. It represented,
21 obviously, a good deal of work by all the participants.
22 It appears to have been a very productive exercise.

23 Working out contentions is certainly one of the
24 hardest parts of cases like this; and if the parties can
25 get together and agree on what is in dispute, it makes the

1 Board's job much, much easier; and we do appreciate that.

2 We, of course, are here and will resolve disputes
3 over contentions that you can't agree on, that's our job;
4 but we appreciate the effort at working things out and we
5 are glad to see that you got as far as you did.

6 The first order of business that we have is the
7 question of admission of Petitioners as parties into the
8 case.

9 As to the Citizens for Safe Energy and the Quad City
10 Alliance, it's the Board's understanding that these
11 petitions are unopposed at this point by either
12 Commonwealth Edison or -- I am not talking about
13 contentions now. I am talking about standing, plus one
14 contention, if you will; and that on that basis there is
15 no objection to the admission of these organizations as
16 parties; is that correct?

17 MR. STAHL: From the Applicants' point of view,
18 Chief Judge Kelley, that is correct.

19 On the basis of the stipulation that was entered
20 into, we have withdrawn our opposition to the intervention
21 by CSE and the Quad Cities Alliance.

22 MR. GODDARD: The staff is of the position,
23 Judge Kelley, that the two organizations named are proper
24 parties to this proceeding and met the test required for
25 intervention; and, of course, at this point we are

1 treating them as Consolidated Intervenors for all
2 purposes.

3 JUDGE KELLEY: That was the Board's
4 understanding. We confirmed it. The Board has
5 independently reviewed documents.

6 The Board also believes that these organizations
7 satisfy tests of standing and tests of at least one
8 contention and it's admissible.

9 So the Board is ordering Citizens for Safe Energy
10 and Quad City Alliance for Safe Energy into the case as
11 parties.

12 Let me step ahead and say that we just made an order
13 on the record, and that's good enough.

14 We will in this case, however, have an order that we
15 will issue after the conference, setting forth the major
16 matters that were decided, such as Citizens for Safe
17 Energy admitted as a party, so that will be in a separate
18 order; but it is being done now, for all practical
19 purposes.

20 As indicated earlier, the status of the Older
21 Americans is a little unclear at this point; and I think
22 the next thing that we want to do is just clarify that.

23 There was a -- if I can just recite the background,
24 briefly, there was a petition for intervention filed by
25 the Older Americans organization.

1 It was opposed by Commonwealth Edison on various
2 grounds.

3 The NRC staff did not oppose that petition on
4 standing grounds but took the position that at the time it
5 filed the papers it was premature to reach any conclusion
6 about their admission as a party because they hadn't yet
7 filed a contention that, at least, satisfied the
8 contention requirements as the staff viewed them.

9 There was an opportunity to file contentions up to
10 15 days before this hearing.

11 We have not received any contentions from the Older
12 Americans organization.

13 Now, in their original petition they listed some
14 areas of interest, that is true; and I suppose one might
15 debate whether those listings satisfied that requirement
16 or not, and I am not indicating any view one way or the
17 other, but those are the papers that we are familiar with.

18 I understand Commonwealth Edison in its very recent
19 memorandum to be opposed to the admission of this
20 organization. I am not clear about the staff.

21 Mr. Goddard, as of today, what is the staff position
22 on the Older Americans' petition?

23 MR. GODDARD: The staff position is,
24 essentially, unchanged from what it was earlier, namely
25 that the individual members of the Older Americans for

1 Elderly Rights and through them the organization could
2 probably perfect standing; but as far as the question of
3 contentions or aspects of interest, the staff is of the
4 opinion that, while aspects may have been alluded to in
5 the petition dated May 29, 1981, there are at this time no
6 admissible contentions or attempts to offer admissible
7 contentions, in the opinion of the staff, before the Board
8 in this proceeding.

9 Accordingly, we would oppose the intervention of the
10 Older Americans for Elderly Rights at this time.

11 JUDGE KELLEY: We will sort of round-table this.
12 Let me go back.

13 I am sorry. It's Mr. Jack --

14 MR. SMITH: Smith, Smith.

15 JUDGE KELLEY: All right. I should remember
16 that.

17 MR. SMITH: Right.

18 JUDGE KELLEY: Well, you have read the papers
19 and you have heard the staff.

20 Perhaps, you would like to comment.

21 MR. SMITH: Yes, yes. That is agreeable with
22 us.

23 Our Board, in spite of the nuance suggesting that I
24 was functioning alone without Board action and without the
25 membership -- that's foolish, of course.

1 The membership of our organization is much larger
2 than any other contending organization.

3 On the first meeting with the legal counsel of
4 Commonwealth Edison, it became quite clear to me that what
5 we were into was a purely technical proceeding, which has
6 some value, I am quite sure, for technicians.

7 The issue Older Americans wanted to raise was the
8 desperately dangerous health hazard; and I just kept being
9 suggested, "That, well, is not relevant here. That's for
10 some other time," and that's perfectly all right with me.

11 So what I did was just simply cease functioning in
12 that particular capacity and rather worked along with the
13 other organizations.

14 So I am not opposed to the proceeding here. I am
15 just simply protesting that that is not the kind of
16 hearing we were interested in, but that's all right. I
17 have to accept the ground rules.

18 JUDGE KELLEY: That is right. You say it's a
19 technical proceeding. It is a technical proceeding.

20 MR. SMITH: Yes, it certainly, is; and I am no
21 physicist.

22 JUDGE KELLEY: And the issues are -- almost all
23 of them, at least put forward now -- pretty technical
24 issues.

25 MR. SMITH: Yes.

1 JUDGE KELLEY: So let me be clear.

2 You say you are working yourself with the other two
3 organizations?

4 MR. SMITH: Well, I am a Board member of
5 Citizens for Safe Energy, correct.

6 JUDGE KELLEY: Okay. What we need to do from
7 our perspective is just clarify exactly what the status of
8 the petition is.

9 Now, are you content to have the petition for the
10 Older Americans group withdrawn?

11 MR. SMITH: Considering the fact that I have not
12 kept your rules or the rules of the intervention process
13 and our organization has not kept it, there isn't really a
14 great deal I can do.

15 I have just challenged the whole process, and that's
16 adequate to me. That's American democracy, I guess.

17 JUDGE KELLEY: Given where we are today, we have
18 got to do one of two things.

19 We can't grant your petition as it stands. We
20 either have to deny it or you can withdraw it.

21 MR. SMITH: We made no effort to pursue the
22 points that we made I. I understand.

23 JUDGE KELLEY: Are you saying --

24 MR. SMITH: I would hope that our withdrawal
25 will not cast any doubt on the seriousness of the

1 contentions we made.

2 We just refused to go along with that process, and
3 there it is. So --

4 JUDGE KELLEY: Are you saying, though, that as
5 between having it denied by the Board or having yourself
6 withdraw it, you are choosing to withdraw the petition?

7 MR. SMITH: No, no. Obviously, we cannot
8 function according to your rules.

9 I do not care to function according to your rules,
10 so that's where we are.

11 JUDGE KELLEY: You are not answering my
12 question.

13 Do you want us to deny your petition?

14 MR. SMITH: Please -- maybe I didn't hear your
15 question.

16 JUDGE KELLEY: The question is this. We have
17 got to do one of two things, given the posture of things.

18 We either have to deny your petition or you can
19 withdraw it.

20 Which would you prefer?

21 MR. SMITH: You go right ahead and deny it.
22 That's all right.

23 JUDGE KELLEY: Okay. Now, let me add -- and
24 this may be of interest to you and to your members -- we
25 do have in connection with hearings of this kind

1 opportunities for public statements by people, they are
2 technically called limited appearance, they are noticed,
3 they will be referred to and your people could certainly
4 come and say whatever they want to say about the facility,
5 as long as it's somehow relevant to what is going on here.

6 MR. SMITH: I understand that.

7 JUDGE KELLEY: Okay. Thank you.

8 MR. SMITH: Surely. Thank you.

9 JUDGE KELLEY: Moving to the question of
10 contentions, we have got the stipulated contentions.

11 Excuse me. Let me just find the paper.

12 The Board has before it the document entitled,
13 "Stipulation of issues and contentions," and Appendix A of
14 that document sets forth 11 contentions; and the parties
15 have stipulated in Paragraph 3 of their stipulation as
16 follows

17 "The parties to this stipulation agree that the
18 contentions set forth in Appendix A should be admitted for
19 a consideration as matters in controve. v."

20 Let me say preliminarily -- and this is not an order --
21 the Board is inclined to admit the contentions. They are
22 stipulated to and they seem reasonable, but we want to ask
23 a couple of questions first.

24 When you say, "Admitted in the controversy in this
25 proceeding," does that mean that the parties think that

1 these contentions ought to go to hearing?

2 Or, for example, are we going to be dealing with
3 summary disposition motions on some of these? Where
4 exactly are we going is my question?

5 Let me ask the staff that.

6 MR. GODDARD: The parties did contemplate the
7 use of summary disposition proceedings on these
8 contentions.

9 We felt that as drafted contentions set forth in
10 Appendix A to the stipulation did constitute contentions
11 for which the form was adequate to permit litigation
12 thereon.

13 We did contemplate at least the use of summary
14 disposition, to the extent that the time frame allowed.

15 As the Licensing Board is well aware, the time
16 periods for summary disposition are somewhat lengthy; and
17 in a limited scope proceeding of this nature, as opposed
18 to a full-blown construction permit or operating license
19 proceeding, the schedule of this case may not of itself
20 allow full utilization of the summary disposition
21 provisions of the Commission's regulations.

22 JUDGE KELLEY: Okay. When you say that, all you
23 are really saying is you may make a motion, you may win
24 and you may lose on any one of these contentions; but they
25 are litigable contentions, however they are disposed of?

1 MR. GODDARD: They are litigable, that is
2 correct.

3 JUDGE KELLEY: Is that your understanding?

4 MR. STAHL: Yes, we basically concur in what Mr.
5 Goddard said.

6 We believe that some of the contentions set forth in
7 Appendix A may more lend themselves to summary disposition
8 than others.

9 I think it's going to be inevitable that we will
10 have an evidenciary hearing on at least several of these
11 contentions in Appendix A.

12 JUDGE KELLEY: Is that consistent with your
13 understanding?

14 MR. MILLER: Yes, it is.

15 JUDGE KELLEY: As I indicated, we have reviewed
16 these contentions and we do feel that they seem to be
17 proper for litigation. So we are ordering their admission
18 into the case.

19 Again, that will be reflected later in a
20 post-hearing order.

21 Which brings us to the disputed contentions in
22 Appendix B. What we would like to do now is take a little
23 time and hear argument from, particularly, the Intervenors
24 and -- by the way, I will use that term "Intervenors," and
25 it just means the Consolidated Intervenors.

1 Is that a satisfactory term from your standpoint?

2 MR. MILLER: Yes, that's fine.

3 JUDGE KELLEY: -- from the Intervencors and the
4 staff, because we have a brief from Commonwealth Edison on
5 these points.

6 You can add to that, if you want to, at some point;
7 but, at least, your basic position is known.

8 Perhaps, we might start with the Intervencors as to
9 this No. 2 Contention about possible alternatives.

10 Now, you have read the utility's opposition to this
11 contention?

12 MR. MILLER: Yes.

13 JUDGE KELLEY: Is that correct?

14 MR. MILLER: Yes.

15 JUDGE KELLEY: Perhaps, you could speak to their
16 position and other comments as you think appropriate that
17 we ought to hear in deciding whether we ought to let this
18 contention in.

19 MR. MILLER: Just excuse me for a moment.

20 JUDGE KELLEY: Sure.

21 MR. MILLER: Would you like us to --

22 MR. SONNTAG: You will have to speak up, sir.
23 There is noise behind me here.

24 JUDGE KELLEY: The gentlemen with the TV
25 cameras, I am perfectly happy to give you reasonable

1 opportunity to take pictures; but we have got a hearing to
2 conduct in the meantime.

3 If you could be a little -- well, I think you have
4 been up front here quite a bit; and we are having some
5 trouble hearing witnesses and the reporter is having some
6 difficulty.

7 If you could just pull back a bit.

8 MR. MILLER: Would you like us to deal with the
9 contentions one by one with supportive statements at this
10 point and provide you with copies of those or --

11 JUDGE KELLEY: Certainly. If you have got a
12 written, supportive statement, that's fine.

13 What you should do in that regard is serve copies on
14 counsel and us, too, if you have got enough copies.

15 Maybe, for openers, could you do that?

16 MR. MILLER: Yes. We can do that on some
17 aspects of the contentions.

18 I am not prepared to deal with the contentions
19 specifically myself, all the contentions.

20 I would like to give opportunity for other members
21 of the group present to deal with specifics of those
22 contentions as well.

23 JUDGE KELLEY: Okay.

24 MR. MILLER: Contention No. 2 specifically, I
25 would like to have Dennis Heller speak to contention No.

1 2.

2 I have a copy of that here that I would be willing
3 to share with the NRC staff and -- I don't know.

4 Do you have any other copies, Dennis, to share with
5 the --

6 JUDGE KELLEY: I will tell you what. If you
7 want to take about a ten-minute break and sort of figure
8 out your papers and who is going to say what.

9 What you are going to do is line up a presentation
10 as to each of these three Appendix B disputed contentions,
11 correct, the alternatives, the cost evaluations and the
12 earthquakes.

13 I think, however, let's talk about format for a
14 moment. It might be most useful, if, say, one of your
15 people talks about alternatives, we should hear from the
16 other people and then go to funding and then go to
17 earthquakes, so that we have got right there together in
18 the record each party's position on each disputed
19 contention; but if you want to take a ten-minute break
20 while you consider that approach, that might be useful at
21 this point.

22 MR. MILLER: Yes, I think so.

23 JUDGE KELLEY: We are making pretty good
24 progress. Let's just quit for ten minutes.
25

1 (Whereupon a recess was had,
2 after which the Prehearing
3 Conference was resumed
4 as follows:)

5
6 JUDGE KELLEY: We are back on the record.

7 Just a comment on something I didn't mention before,
8 that is our smoking rule.

9 I walked in here thinking this was a courtroom, and
10 in courtrooms you don't smoke at all.

11 This is a council room. I guess that's a little
12 different, and there we have followed a rule that the
13 Board and the lawyers and the reporter do not smoke.

14 If you are in the back of the room, you are a
15 nonparticipant observer, smoke if you want to.

16 So with that, we will get back to Contention No. 2,
17 consideration of alternatives.

18 Yes, sir, go ahead.

19 MR. MILLER: I do not have a summary statement
20 on all of the contentions, and I apologize to the Hearing
21 Officers and those present on that; but we do, however,
22 have some statements prepared that we will submit copies
23 of to the reporter so that you will all have a copy in the
24 transcript of the proceedings.

25 I would like to move to Dennis Heller and allow him

1 to cover his statement on Contention No. 2 of Appendix B.

2 JUDGE KELLEY: Fine. Mr. Heller.

3 MR. HELLER: My name is Dennis Heller of
4 Prophetstown, Illinois. I am a member of the Board of
5 Directors for Citizens for Safe Energy, the President of
6 the Northern Illinois Energy Association and Manager and
7 chief stockholder in The Energy Shop, Incorporated, of
8 Prophetstown.

9 I would like to speak briefly in support of
10 Contention No. 2.

11 Contention No. 2 reads, "The licensees have not
12 considered in sufficient detail the possible alternatives
13 to the proposed expansion of spent fuel storage capacity.

14 "Specifically, licensees have not considered
15 preferable alternatives for managing the spent fuel during
16 the remainder of the operating license for the Quad Cities
17 Nuclear Station, namely the possibilities of, A, shutting
18 down the Quad Cities Nuclear Station once the racks
19 presently installed in spent fuel pools are full; or, B,
20 reducing electrical output from the Quad Cities Nuclear
21 Station in conjunction with either energy conservation and
22 pricing alternatives, which would reduce demand or
23 increase the use of under-utilized fossil fuels."

24 First, in support, I feel conservation is the most
25 logical and cost-effective alternative to the re-racking

1 at Cordova.

2 The Department of Energy sponsored study completed
3 early this year concludes that the full implementation of
4 energy conservation measures throughout the country will
5 lead to an overall energy savings of over 30 percent in
6 this country, while at the same time allowing for
7 expanding business climate.

8 Utility companies throughout the country have taken
9 the lead in systematically promoting energy conservation
10 and the use of alternative energy systems. The success of
11 this policy is most notable in California, through the
12 direction of the Public Utilities Commission.

13 Secondly, I feel Commonwealth Edison should take
14 advantage of this opportunity to gradually get themselves
15 off of the nuclear treadmill.

16 A December, 1979, study by Paine, Webber, Mitchell,
17 Hutchins concludes that utilities with 50 percent capacity
18 are considerably higher risk than those using coal-fired
19 generators with scrubbers.

20 The two- to four-year lead time in closing the plant
21 will allow the company to safely shut down the reactor
22 before a Three Mile Island-type disaster destroys the
23 financial strength of the company.

24 During this time the company should look to
25 alternatives such as clean coal-fired plants, wind farms,

1 supplemental help from solar.

2 During 1980 U. S. utilities spent 30 million dollars
3 on solar research. Com Ed should be included in this
4 research.

5 Southern California Edison has just signed contracts
6 to build a 270 megawatt wind farm. Why not, Commonwealth
7 Edison?

8 Pacific Gas and Electric has just started building a
9 600 windmill plant east of San Francisco. Why not
10 Commonwealth Edison?

11 That's my written statement right now.

12 I think the --

13 MR. MILLER: I think, in connection with
14 Contention 2, Bob Romic also had some pertinent
15 information and would like to be allowed to speak, also.

16 JUDGE KELLEY: Go ahead.

17 MR. ROMIC: Due to the fact that the licensees'
18 final environmental statement, dated September of 1972
19 states, "Irradiated fuel will be transported to process
20 plant," and makes no mention of increasing the spent fuel
21 storage, it is felt that Commonwealth Edison, the licensee
22 responsible for the ongoing operation of the plant, would
23 be going against its word to the citizens of the area of
24 the station and to the surrounding communities.

25 One must wonder if the citizens near to the station

1 at the time would have allowed the licensees to build Quad
2 Cities 1 and 2 if they knew that they would have had a
3 high-level, radioactive-waste dump in their own back yard.

4 JUDGE KELLEY: Okay. Thank you.

5 Mr. Goddard.

6 MR. GODDARD: The position of the NRC staff on
7 the admissibility of proposed Contention 2 is quite
8 simple.

9 There is no showing or no basis presented by the
10 Intervenors in support of this contention that there will
11 be a significant effect on the human environment.

12 A recent Licensing Board case involving a similar
13 spent fuel pool modification at the Zion Station, also a
14 Commonwealth Edison facility, which decision was affirmed
15 by the Atomic Safety and Licensing Appeal Board, held that
16 the Board need not consider alternatives of shutting down
17 a station or reducing the power generated by such a
18 station as an alternative to expansion of the spent fuel
19 pool.

20 With regard to Mr. Romic's comments regarding the
21 intentions of the Applicant to ship spent fuel from the
22 Quad Cities Station, I think the Board and all parties are
23 aware of the fact that at the time the concept of adequate
24 away-from-reactor storage was an assumption.

25 That assumption is no longer valid; and,

1 accordingly, this is the reason spent fuel pool
2 modifications, such as the one sought here today, are
3 presently being proposed.

4 JUDGE KELLEY: The Zion ruling you referred to,
5 I believe I have seen one in seven that makes much the
6 same point; but those determinations are case by case, are
7 they not?

8 MR. GODDARD: The determinations are case by
9 case.

10 However, the staff has issued NUREG-0575, the final
11 generic environmental impact statement on spent fuel
12 handling and storage.

13 On a 39-case examination that study by the technical
14 staff found that spent fuel pool expansion did not pose a
15 threat to the environment, although specific aspects of
16 each modification were subject to case by case analysis
17 and proper subject for adjudicatory hearings.

18 Inasmuch as there is no basis set forth here to
19 assume a significant impact on the environment, the
20 staff's position will be that this contention should not
21 be admitted.

22 If the Applicants -- rather, pardon me. If the
23 Intervenors would come forth and allege a specific
24 environmental impact of significance, perhaps such
25 contentions might be a more appropriate subject for

1 litigation.

2 As set forth here, the staff position is such
3 alternatives need not be considered.

4 JUDGE KELLEY: Is the staff in the process of
5 preparing an Environmental Impact Statement in this case?

6 MR. GODDARD: Yes, the staff is preparing an
7 Environmental Impact Appraisal as opposed to an
8 Environmental Impact Statement.

9 That Environmental Impact Appraisal is in
10 preliminary stages now. I think I can safely say -- I can
11 safely say -- that it will find that there are no
12 significant impacts on the human environment, although
13 portions of that document are not complete at this time.

14 In fact, the staff's proposed dates of issuance for
15 both the Safety Evaluation and the Environmental Impact
16 Appraisal in this proceeding are presently for the middle
17 of January, 1982.

18 This is premised on timely receipt from the
19 Applicant of the presently missing portions of their
20 application.

21 JUDGE KELLEY: Could you just tell us, briefly,
22 what the procedure is with an E. I. A. in terms of
23 opportunities for comment and the like, or is there any?

24 There isn't any?

25 MR. GODDARD: There is no procedure for comment

1 or requirements for wide circulation of an Environmental
2 Impact Appraisal once it reaches the -- once the finding
3 has been made by the staff that the environmental impacts
4 are insignificant.

5 Also, there is no requirement in an Environmental
6 Impact Appraisal for cost-benefit balancing and weighing
7 of alternatives to the proposed action.

8 JUDGE MORRIS: Is that document made public?

9 MR. GODDARD: Yes, it is made public, sir.

10 JUDGE MORRIS: Through the public document rule?

11 MR. GODDARD: Yes, sir.

12 JUDGE KELLEY: Once it is made public, is there
13 a further opportunity for raising contentions in a case
14 like this?

15 MR. GODDARD: Yes, there would be a basis for
16 raising contentions based on the contents of that
17 document.

18 JUDGE FOSTER: Will that document be issued as a
19 draft or in final form?

20 MR. GODDARD: It is issued in final form, sir.

21 JUDGE KELLEY: Commonwealth Edison.

22 MR. STAHL: Well, our position, Chief Judge
23 Kelley, is as set forth in our prehearing memorandum.

24 We agree, basically, with what Mr. Goddard has said.

25 I would also point out to the Board the Northern

1 States Power Company case, Prairie Island Power Generating
2 Station, decided in 1978, which is contained in Footnote 4
3 on Page 46.

4 The statement is that it is, basically,
5 inappropriate for licensing boards to consider
6 discontinuing operation as an alternative to the continued
7 operation of a nuclear facility in a spent fuel
8 proceeding.

9 JUDGE KELLEY: Okay. Let me just take a moment
10 here.

11 What I was thinking of, Mr. Goddard, in the Salem
12 decision, the Appeal Board says -- they are talking about
13 adequacy of consideration of alternatives and it goes on
14 to say, "This is not to dispute the fact that the
15 Commission's regulations clearly permit and encourage
16 parties to challenge the admission and content of the
17 staff's E. I. A. at hearing."

18 So that opens it up on those issues when you come
19 out with the E. I. A.

20 MR. GODDARD: Yes, sir, it would.

21 JUDGE KELLEY: Sort of deferred consideration of
22 contentions to that point --

23 MR. GODDARD: Yes.

24 JUDGE KELLEY: -- it would seem.

25 MR. GODDARD: Yes, sir.

1 JUDGE KELLEY: Was there something the
2 Intervenors wanted to add and then we can move on to the
3 next one?

4 MR. HELLER: Could you briefly describe the
5 difference between an Environmental Impact Statement and
6 an Assessment and at what time are conclusions drawn?

7 Mr. Goddard, I think you stated that it will show
8 minimum impact?

9 MR. GODDARD: Insignificant impact.

10 MR. HELLER: Insignificant impact, but it hasn't
11 been issued yet?

12 I don't understand.

13 MR. GODDARD: That is correct. However, the
14 review process has been under way for some time within the
15 staff. All aspects of that document are not complete at
16 this point.

17 I have been informed by the Project Manager, who is
18 the coordinator for the issuance of both that document and
19 the safety evaluations, that the conclusion will be that
20 the impacts are insignificant.

21 MR. HELLER: The difference between Assessment
22 and Statement is what?

23 JUDGE KELLEY: Well, a statement -- speaking
24 very generally and not wishing to be held to it at all --
25 is something that one prepares because you are required to

1 do so by the National Environmental Policy Act.

2 You do a draft and you circulate it all over the
3 place, people comment on it, you do a final statement and
4 then you might litigate the final statement; but you only
5 do that if the action you have in mind amounts to a
6 so-called major federal action having a significant effect
7 upon the environment.

8 If what you are proposing doesn't have that effect,
9 you don't have to do it.

10 Now, a lot of agencies, including the NRC, go
11 through a procedure that is one step short, called an
12 Environmental Impact Appraisal. It's, essentially, an
13 exercise designed to determine whether they ought to do a
14 Statement or not.

15 It doesn't require, as I understand it, circulation
16 of drafts, comment, but rather just some kind of fairly
17 close look by the agency itself at the consequences of
18 what it is doing.

19 Let me just make one comment. From our perspective
20 it's important to realize that we are sitting to apply the
21 Commission's rules and the Commission's -- and the
22 statutes that govern the Commission.

23 We are not in any sense a sort of policy-making
24 body, so that one might sit in one's arm chair and think
25 that conservation is better than nuclear power. And maybe

1 that's right, but we are not here to decide that question.

2 We are here to decide whether or not the application
3 from the utility meets the Commission's rules; and if it
4 does, they get the amendment.

5 You get into consideration of alternatives
6 intrincically through NEPA and the environmental
7 legislation. It does apply to us, we are certainly
8 governed by it; but we wouldn't be -- we would get into an
9 alternative contention on the basis of some kind of NEPA
10 requirement or some kind of environmental requirement the
11 agency would have adopted not because someone may think
12 it's just a good idea.

13 So we look at this from a somewhat -- I won't say
14 narrow but -- restricted perspective.

15 Why don't we pass on to Contention No. 7 concerning
16 cost evaluations?

17 MR. MILLER: At this point for Intervenors I
18 would like to have Bob Romic read a statement that he has
19 prepared and supply the information to you.

20 We can supply the reporter with a copy of that after
21 the hearing, so that can be in the transcript, also.

22 JUDGE KELLEY: Fine.

23 MR. ROMIC: It is felt that the licensees should
24 be required to submit cost evaluation for handling,
25 transportation and storage of the additional fuel which

1 will be stored in proposed racks for the remainder of the
2 operating licenses for the Quad Cities Nuclear Station for
3 the following reasons.

4 1. With the licensees' advertisement program
5 emphasizing that nuclear power is a cheap, clean, safe
6 source of energy, it should be allowed whereas the
7 licensees provide to show that they are financially
8 capable of dealing with the costs of the current request
9 to re-rack -- the current request to re-rack to reaffirm
10 the statement.

11 2. In the application the subject of the
12 comparative economics associated with various spent fuel
13 operations is discussed.

14 The cost comparisons contained in this section do
15 not include the substantial hidden subsidies to the
16 nuclear power industry.

17 Some sources estimate Energy Research and
18 Development Administration's enrichment services to be
19 worth at least 1.0 mill per kilowatt hour to the nuclear
20 industry.

21 The Price-Anderson Act could provide as much as 3.8
22 mill per kilowatt hour.

23 Research and development costs provided by
24 government are probably incalculable but were estimated by
25 the Investor Responsibility Research Center in January,

1 1975, to be about 5 billion dollars. No doubt that that
2 figure is quite higher due to the current administration
3 in Washington.

4 These costs are also spread over the tax-paying
5 public and make it appear that nuclear power is a bargain,
6 when, in fact, it may not be.

7 One other cost not considered in the rate comparison
8 is decommissioning of nuclear plants. When one considers
9 the additional costs of mothballing at 3 to 5 million,
10 plus 60 thousand to 100 thousand per year for
11 surveillance, entombment at 18 to 30 million, plus 15,000
12 to 25,000 per year, or dismantling at 36 to 60 million,
13 involved here, the rate comparison might be less
14 attractive for nuclear.

15 The costs of the request operating license
16 modification is relevant to this proceeding due to the
17 fact of the never-ending amount of electrical rate hikes
18 which Commonwealth Edison and Iowa-Illinois is famous for.

19 The alternatives stated in the application fail --
20 this is 3. Excuse me.

21 The alternatives stated in the application fails to
22 discuss the alternatives to spent fuel storage
23 modification such as construction of a new, entirely
24 separate and safety-oriented spent fuel storage pool and
25 the following:

1 Dry cassion storage, air-cooled storage racks --

2 JUDGE KELLEY: Excuse me, excuse me. Are we
3 still on 7 or have we gone --

4 MR. ROMIC: Right.

5 JUDGE KELLEY: Pardon me.

6 MR. ROMIC: Yes.

7 JUDGE KELLEY: Pardon me. Go ahead.

8 MR. ROMIC: -- air-cooled storage racks,
9 air-cooled vault type and shielded, sealed storage casks.

10 Dry storage of light water reactor spent fuel
11 assemblies have been in use in West Germany for several
12 years. The West Germany style -- the West German style
13 one is a high-quality, cast-iron cask filled with helium
14 and stored in a separate building at the reactor site.
15 This would prevent the problems of transshipment of spent
16 fuel.

17 The use of alternative, dry, passive-storage
18 techniques for aged fuel has been researched by the
19 Department of Energy and the Tennessee Valley Authority and
20 appears to be equally feasible and environmentally
21 acceptable.

22 Since the storage capacity at Quad Cities will not
23 run out until 1984, these alternatives should be examined
24 and explored.

25 There would be a limited amount of work done inside

1 the pool, which would cut down on the amount of electrical
2 power that would need to be purchased from other sources
3 while the station is in a shutdown phase.

4 There would also be no need to purchase new racks,
5 which, along with, would include the high interest rates
6 accompanying the purchase of said racks.

7 With the dry storage casks, the purchase of the
8 casks would take place according to the demand.

9 Some of this information is available in the Final
10 Generic Environmental Impact Statement on Handling and
11 Storage of Spent Light Water Power Reactor Fuel, dated
12 August, 1979, NUREG-0575 Volume 1, Paragraph 3, entitled,
13 "Description of Alternatives."

14 For some applications, particularly if extended
15 storage is expected, dry storage may have economic
16 advantages over water-pool storage.

17 These issues in the application the licensees have
18 failed to address. The only alternatives they state are
19 shutting down the plant, the re-racking and then a
20 transshipment method of spent fuel.

21 JUDGE KELLEY: Thank you.

22 Mr. Goddard.

23 MR. GODDARD: Proposed Contention 7 as drafted
24 speaks only to requiring the licensees to submit cost
25 evaluations for actions which would be carried out, that

1 is the handling, the transportation, and storage of spent
2 fuel from the Quad Cities Station.

3 Whether or not the modification is granted, the only
4 effect of the modification which is at issue here would
5 appear to be the additional cost of fabricating and
6 installing the new, proposed, high-density racks.

7 There is no nexus in this contention between the
8 safety or environmental factors which the Commission must
9 consider.

10 Mr. Romic's argument is, essentially, an economic
11 one, dealing with the impact upon the utility's rates.
12 The staff would submit that this is not the proper forum
13 for such an argument.

14 Certainly, the Illinois Commerce Commission or other
15 rate-making bodies within the State of Illinois might be
16 influenced by the argument made by Mr. Romic.

17 However, it is the position of the staff that
18 neither his argument nor this contention are proper
19 subjects for NRC consideration in this proceeding.

20 JUDGE KELLEY: Can you point to anything in the
21 regulations that would authorize this Board to require
22 cost evaluations of this kind?

23 MR. GODDARD: Only in the event of a showing of
24 environmentally preferable alternatives would we get into
25 the question of cost evaluations and balancing

1 alternatives.

2 I think this Board can take notice of the fact that
3 the costs involved to modify the spent fuel pool would be
4 a very small fraction of the costs of maintaining or
5 operating a nuclear reactor.

6 In real world considerations I don't think that the
7 solvency or the financial qualifications of the licensees
8 are even called into issue by virtue of the proposal for
9 such a modification. It is a very small portion of the
10 costs or, indeed, the operating estimate of nuclear power
11 generation at the Quad Cities Station.

12 JUDGE KELLEY: Applicants.

13 MR. STAHL: When we first saw Contention No. 7,
14 we interpreted that to mean that the Quad Cities Alliance
15 and Citizens for Safe Evergy were attempting to bring into
16 issue the financial capability of Applicants, which we
17 believe is clearly inadmissible under the Consumers Big
18 Rock case. I -- what is that case called?

19 Just a minute, please.

20 It is the Big Rock fuel pool expansion case. We
21 cited it on a prehearing document.

22 It's Consumers Power Company, Big Rock Nuclear
23 Plant, 11 NRC 117, 1980.

24 Mr. Romic --

25 JUDGE KELLEY: Does that speak to costs?

1 MR. STAHL: Pardon me?

2 JUDGE KELLEY: Does that speak to costs?

3 MR. STAHL: What it speaks to is the issue as we
4 interpreted Contention 7 to raise, namely the financial
5 capability of the utility to maintain the expanded spent
6 fuel pool during the unexpired portion of the operating
7 license.

8 Mr. Romic's current description of the concerns that
9 are encompassed within Contention No. 7 seem to be
10 somewhat different and, I think, indicate even more that
11 Contention No. 7 is inadmissible insofar as Mr. Romic is
12 speaking about matters such as Price-Anderson, costs of
13 decommissioning nuclear plants, the effect on rates.

14 Those, again, raise issues that are clearly outside
15 the limited scope of this proceeding. These are matters
16 that are more appropriately determined by agencies such as
17 the Illinois Commerce Commission, Congress of the United
18 States and raise policy matters that this matter is not to
19 concern itself with, as the Chief Judge noted in response
20 to the last contention.

21 I would also make a general observation that the two
22 statements we have heard in support of Contentions 2 and 7
23 are really more appropriate, it seems to me, for airing at
24 an evidenciary presentation, either as direct evidence or
25 as a limited-appearance statement and, really, are not

1 appropriate for what we understand the limited scope of
2 our hearing to be today, namely legal arguments on the
3 admissibility under the Commission's rules and regulations
4 of these particular contentions.

5 I am sure there is much that could be said in
6 response to the statements that have been read by Mr.
7 Heller and Mr. Romic on behalf of the Applicants rebutting
8 the points that they have made, but we don't understand
9 that to be the purpose of this hearing today.

10 JUDGE KELLEY: Yes.

11 MR. ROMIC: In the application they state, you
12 know, the comparative economics associated with the
13 various fuel options.

14 I feel it is only justified that if they are going
15 to consider -- they list like coal-fired generating as 12.
16 mill.

17 If they are going to --

18 JUDGE KELLEY: Would you give us the citation?

19 MR. ROMIC: I just feel that --

20 JUDGE KELLEY: You are citing the application.

21 Can you give us a page on that?

22 MR. ROMIC: I just feel that it is only
23 justified in this, if they are going to use this as proof
24 that this is the proper way to re-rack, that they should
25 issue -- they should fully assess the real costs

1 associated with nuclear power.

2 It's not just the proceeding -- it's not just the
3 idea of the Price-Anderson Act or even when we bring up
4 the possibility of shutting down Quad Cities. They say
5 the financial costs to the stockholders and the customers
6 involved, it's a burden to the stockholders and customers
7 involved.

8 Well, that is irrelevant to the issue. What we are
9 dealing with is this plant has been built; and at one time
10 they said that the fuel would be shipped, would not be
11 stored there.

12 MR. MILLER: Could we provide the reporter with
13 the page number later?

14 JUDGE KELLEY: Would you please?

15 Good enough. Anything else?

16 JUDGE MORRIS: Well, I would ask if Commonwealth
17 or, perhaps, the NRC could speak a little further on just
18 how one decides whether a contention is admissible or not.

19 I think this might be helpful to those present and,
20 also, it might better focus on what kind of arguments
21 should be made at this time as opposed to what should be
22 made on the evidenciary record.

23 MR. STAHL: I think from the Applicants' point
24 of view, the only issues that are admissible in this kind
25 of a proceeding are those issues that can be shown to

1 raise health or safety concerns which might result from
2 the expansion of the spent fuel pool.

3 That's a very general statement but I think that's
4 the framework in which all of the particular contentions
5 have to be resolved.

6 I think for that reason matters such as
7 decommissioning and Price-Anderson and effect on rates,
8 those are really not issues that have any relationship to
9 health and safety and have not shown that there is any
10 nexus between the expansion of the spent fuel pool and any
11 endangerment of the public health or safety.

12 Those are matters that relate generally to the
13 operation of nuclear power plants, policy determinations
14 that are unrelated to the narrow and specific issues that
15 have to be decided in this proceeding.

16 JUDGE KELLEY: Mr. Goddard.

17 MR. GODDARD: I am not quite sure if I caught
18 the gist of your question, Dr. Morris, with regard to this
19 item.

20 Are you looking for the technical requirements, such
21 as the basis and specificity required in the contention,
22 or as to what is an appropriate contention for a
23 limited-scope proceeding such as this one?

24 JUDGE MORRIS: Well, both of those things, as to
25 what is discussed and why at an evidenciary hearing.

1 MR. GODDARD: A contention to be admissible
2 under the Commission's regulations, specifically Section
3 2.714 of Part 10, Code of Federal Regulations, must be
4 asserted with basis and specificity.

5 The allegations made by the Intervenor in such
6 contention must be supported by a basis either in the
7 contention itself or a basis must be provided or must be
8 essentially one that you can clearly infer from the
9 wording of the contention itself.

10 Specifically applying this to Contention 7 as
11 proposed by the Intervenors, it is a naked assertion that
12 licensee should be required to submit these cost
13 evaluations without further elaboration.

14 Now, in a limited-scope proceeding -- I personally
15 have been involved in several spent fuel pool modification
16 cases -- I think it is essential that Intervenors and all
17 other parties continually keep coming back to the limited
18 scope of the proceeding, modification of the pool, and
19 avoid the sometimes-tempting tendency to expand beyond
20 that into general areas of interest within the scope of
21 the subject of nuclear power generally.

22 The only contentions which are admissible in a spent
23 fuel pool modification proceeding, for example, should be
24 those contentions that bare directly or derive directly
25 from that modification.

1 This is not an opportunity for an interested party
2 to re-open and to re-litigate the general questions of the
3 desirability of nuclear power. The Congress has already
4 answered that for us.

5 JUDGE FOSTER: If you should decide that a
6 full-blown E. I. S. is required, as contrasted with the E.
7 I. A., would your position be that some of these
8 alternatives were then available for discussion?

9 MR. GODDARD: Yes, sir, it clearly would. The
10 need for an Environmental Impact Statement turns on the
11 existence of a major federal action, as you know, with
12 significant impact upon the environment.

13 I would, again, refer to NUREG-0575, which is a
14 basis or a consideration of the staff in preparing its
15 environmental analyses of any application of this nature.

16 Quoting from it, I offer the following. This is a
17 quote from Paragraph 6.0 of the Executive Summary at Page
18 9 of Volume 1.

19 "In the judgment of the staff:"

20 "The environmental costs of extended spent fuel
21 storage are incrementally small and are, essentially, now
22 incorporated in the previously recognized costs assigned
23 to the uranium fuel cycle. Consequently, no modifications
24 to 10 CFR Part 51 of Section 51.20 (e), including the S-3
25 Table, indicating environmental impact summaries are

1 necessary."

2 JUDGE KELLEY: Thank you. Could you supply the
3 Board with copies of that NUREG?

4 MR. GODDARD: Yes, sir. It's a three-volume
5 NUREG. I will see that copies are served on the Board and
6 also on the Intervenors.

7 JUDGE KELLEY: Fine. Well, I think that was a
8 useful discussion.

9 With that in mind, why don't we turn to the
10 remaining contention, No. 12, the contention being that
11 the racks are not adequately designed to withstand
12 earthquakes because safe shutdown and the operating basis
13 of earthquake previously established are no longer
14 appropriate. Suggestion that the Mississippi Valley is
15 right for a major earthquake.

16 Let me ask the Applicants first about your
17 determination of the safe shutdown and the operating basis
18 of earthquakes.

19 You say in a couple of places it was established in
20 the operating license proceeding, and I would have thought
21 it would have been established at the construction permit
22 proceeding.

23 MR. STAHL: I believe it was the operating
24 license proceeding.

25 JUDGE KELLEY: Strange time to be establishing

1 it.

2 MR. STAHL: Well, I was not personally involved
3 in those proceedings, so I do stand to be corrected on
4 that.

5 JUDGE KELLEY: You can check it and just let us
6 know.

7 MR. STAHL: I will check that and if it --

8 JUDGE KELLEY: Usually you figure out earthquake
9 hazards before you build a reactor; but, a part from that,
10 let me just state a concern that I have got about No. 12.

11 It does seem to me to be quite vague. Earthquakes
12 happen on faults and they happen only on active faults and
13 they only hurt reactors if they are pretty close. This is
14 a pretty broad generalization.

15 I suppose a classic example is this case involving
16 Diablo Canyon that got so much publicity. That
17 established the safe shutdown in the construction permit
18 proceeding.

19 They went out and started to build the plant and got
20 a lot of it built and found out that there was one closer.
21 They had a big problem and the proceeding over all the
22 rest.

23 But they knew what they were looking at. They were
24 looking at something called a hot three fault, they knew
25 exactly where it was and that was the focus of concern.

1 That was the so-called controlling geologic structure.

2 Now, you really can't come in and say, "There may be
3 an earthquake in the Midwest." That just won't do it. I
4 don't know exactly what you have got in mind.

5 Ideally, you know, if you came in with a contention
6 and you said, "These previously established design bases
7 earthquakes are inadequate because there is a fault seven
8 miles away that is about to have a 7.2 earthquake," then
9 we would know what you are talking about. Maybe it
10 doesn't have to be that specific, but it strikes me it
11 ought to be more specific than it is; and with those,
12 those are my just sort of preliminary comments, if you
13 could speak to the contention.

14 MR. MILLER: At this time I would like to have
15 Bob Romic again speak for the Intervenors.

16 MR. ROMIC: We would just like to bring to the
17 attention of the Board that earthquakes are very difficult
18 to predict when or where they are to occur.

19 When Quad Cities was constructed huge amounts of
20 concrete was poured to fill a void within the ground on
21 which the site is now located. The question arises on
22 this: What is to prevent this void from reforming or
23 shifting?

24 The station is currently undergoing some work by a
25 local firm concerning the earthquake possibility.

1 It is our request that, since the NRC is currently
2 gathering information on the earthquake possibility in the
3 Midwest, the Hearing Officers allow this contention
4 submission while the information being gathered by the NRC
5 be made available to the Intervenor so a review of the
6 information compiled will take place.

7 JUDGE KELLEY: I am sorry. Are you -- are you
8 suggesting that the station was built right on top of a
9 fault?

10 MR. ROMIC: I am just saying that there is a --
11 the largest earthquake ever taken place in the country has
12 been in the Midwest. It's down here in the boot hill of
13 Missouri.

14 There is also another fault which runs through
15 northern Iowa and --

16 JUDGE KELLEY: Let's stop in Missouri for a
17 minute.

18 Do you know where that fault is?

19 MR. ROMIC: I supplied the information to the
20 licensees. I thought they would get it to you.

21 JUDGE KELLEY: Well, I got some newspaper
22 articles.

23 MR. ROMIC: Right.

24 JUDGE KELLEY: That is really not our idea of
25 information about this kind of a thing. It may be

1 suggestive but it doesn't really prove anything.

2 MR. ROMIC: I don't know what else -- what
3 do you expect me to do?

4 JUDGE KELLEY: Well, I gave an indication at the
5 beginning, I thought; and I know you can come in and you
6 can say, "We think there is going to be a earthquake on
7 the x fault and it's going to be bigger than what this
8 reactor was built for," period. And that sounds like -- I
9 don't know whether you can prove it or not; but, at least,
10 it's very clear what you are saying.

11 MR. ROMIC: If we had the funds the utility
12 company has, we could hire or bring in experts and
13 attorneys and fight this.

14 JUDGE KELLEY: That is an eternal problem.

15 MR. HELLER: Would it be helpful to find out
16 specifically what is being done now at the reactor?

17 We know that something is being done in relation to
18 earthquake-proofing but, you know, the details we do not
19 have.

20 Obviously, the utility companies are, you know,
21 taking some kind of minimal preventive measures right now
22 at this time as of last week; and I don't know of any --
23 as I say, I don't have the details. Something is being
24 done.

25 JUDGE KELLEY: I don't know whether you are

1 prepared. Maybe you can give us some information about
2 what the Intervenors are referring to.

3 MR. STAHL: Chief Judge Kelley, what we are
4 prepared to talk about today is the direct attack on the
5 safe shutdown earthquake and the operating basis
6 earthquake which were established for the Quad Cities
7 plant, whether it be at the construction permit or the
8 operating license station. That is what we understand to
9 be encompassed within Contention No. 12.

10 Now, in order to make this an admissible contention,
11 it's incumbent upon the Intervenors to show some
12 reasonable factual basis to let this Board conclude that
13 the S. S. E. or the O. B. E. are, in fact, no longer
14 adequate.

15 I suggest that newspaper articles such as those
16 presented to us by the Intervenors are not adequate to
17 meet that standard.

18 What we have done in response --

19 JUDGE KELLEY: Let me just stop you. We are not at
20 the stage of proof.

21 MR. STAHL: No, I understand that; but I think
22 that there may be some threshold level of proof here that
23 is necessary to get this contention admitted.

24 It's not enough for the Intervenors to come in and
25 say, "Recent developments suggest that the S. S. E. and

1 the O. B. E. are no longer appropriate."

2 They have to specify with reasonable particularity
3 what those recent developments are and why, in light of
4 those recent developments, the S. S. E. and O. B. E. are
5 no longer appropriate.

6 They have not done that, in our opinion.

7 We have even gone one step further and have
8 requested an engineer or seismologist with the firm of
9 John Bloom and Associates to prepare an affidavit, which
10 we have here and which we can present.

11 We only received it yesterday. That's why I had not
12 served it prior to this time.

13 We could present this to the Board and to the
14 Intervenors and to the NRC staff; and the basic
15 conclusions of this affidavit are that no new information
16 acquired since the operating license proceeding provides
17 grounds for challenging the design basis earthquake
18 established for the Quad Cities Nuclear Power Plants and,
19 in the opinion of the affiant, there is no basis for
20 concern about the adequacy of the O. B. E. and S. S. E.
21 design accelerations for the Quad Cities Nuclear Power
22 Plants.

23 The affidavit also contains more detailed reasons
24 supporting those conclusions; but it seems to the
25 Applicant that, in view of the very generalized and

1 speculative evidence presented by the Intervenors in
2 support of their attack on the S. S. E. and the O. B. E.
3 and the affidavit of Mr. Summerville, which, in our
4 opinion, establishes that there is no basis for challenge
5 the S. S. E. and the O. B. E., that under those
6 circumstances Contention 12 as presently worded is not
7 appropriate for litigation in this proceeding.

8 JUDGE KELLEY: Is it appropriate for us to be in
9 the business of reviewing affidavits at this point,
10 evidenciary affidavits?

11 MR. STAHL: I think it's probably unnecessary,
12 because I don't think that the Intervenors have provided
13 enough information in support of Contention 12 to meet the
14 requirements of 2.741-B of the Commission's Rules of
15 Practice.

16 They have to specify a basis for this contention
17 with reasonable particularity.

18 All they have said is, "Recent developments,"
19 unquote, have indicated that the O. B. E. and S. S. E. are
20 inadequate. They haven't provided any basis to
21 substantiate that conclusion.

22 So I think in response to your question, no, there
23 is no need for the Board to consider our affidavit,
24 because I think this contention is inadequate and
25 insufficient on its face.

1 JUDGE KELLEY: I am concerned, because it gets
2 us into sort of a muddy situation.

3 I know what a motion for summary disposition is; I
4 understand that. I understand about arguing contentions.
5 I understand about having evidenciary hearings. Those
6 three are different boxes.

7 Now I have got a piece of one box and a piece of
8 another, and I don't know whether that is appropriately
9 styled.

10 The reason we turned to you at this point was the
11 Intervenors were wondering about -- as I recall, they
12 thought there was some sort of exploration or engineering
13 or digging or whatever going on at the site at this point.

14 Is that what I heard?

15 MR. HELLER: From a worker who is working for a
16 subcontractor at the plant currently, you know, we learned
17 that earthquake-proofing, something, is being done, money
18 is being spent at this time, last week.

19 JUDGE KELLEY: I don't know if it's fair to say
20 to the utility right here this morning at 10:30, "Tell us
21 what you are doing about earthquake-proofing," but if they
22 can say a few words about general information, fine, and
23 if not, fine.

24 Can you shed any light on this at all?

25 MR. STAHL: Well, I have just been advised by

1 Mr. Fleschner -- and I as an attorney for the Applicant am
2 not aware, really, in any general detail what is going on
3 in terms of earthquake-proofing at the Quad Cities plants.

4 However, I am aware that the NRC staff does have
5 certain requirements for seismic qualification. I am
6 advised there is a bulletin referred to as 79-14 which has
7 been promulgated by the NRC staff.

8 Certain work is being done by the Applicant at the
9 Quad Cities Plant in response to and in order to meet the
10 requirements of 79-14.

11 I would defer to the NRC staff for a more detailed
12 explanation of the purposes of 79-14; and if you wanted to
13 get into the particulars of what the Applicant is doing in
14 response thereto, we could provide that information, at
15 least in some detail, this morning.

16 I don't think that is appropriate on the record.

17 JUDGE KELLEY: Why don't we defer that for the
18 moment.

19 Does the staff have under way a sort of generic
20 earthquake review?

21 MR. GODDARD: Yes, sir. I believe Mr. Bevan,
22 the Project Manager for this proceeding, can speak for the
23 I. N. E.

24 MR. BEVAN: I know what they are talking about,
25 Bulletin 79-14, which came out two years ago.

1 I cannot at the moment recall the origin of it or
2 exactly what case gave rise to it. Maybe one of you guys
3 could.

4 But we did require all licensees to go back, make
5 new analyses based upon new, more conservative assumptions
6 of their hangers and their pipe supports and on a
7 schedule; and as an outgrowth of that, they are proceeding
8 with stiffening some supports, putting in new hangers in
9 some places where the new criteria would seem to call for
10 it.

11 That's sort of what it boils down to. I think
12 that's what they are referring to.

13 JUDGE MORRIS: Do you know, Mr. Bevan, whether
14 that arose from a difference in the requirements for
15 analysis or for the requirements of ability to withstand
16 ground shaking?

17 MR. BEVAN: It arose from new requirements for
18 analysis, which has its own background.

19 You know, why do we change the ground rules? I
20 can't really get into that. I can find somebody who can
21 or I can get up on it; but it did stem from a new
22 analyses, by new analytic methods, which were acceptable
23 at one time and then we decided were not acceptable, to go
24 back and do an analysis using the new, acceptable methods
25 and see what you got.

1 They did that. They were more conservative. In
2 some cases they found that in order to meet the
3 requirements, they had to beef up some supports.

4 JUDGE FOSTER: Were these analyses based on an
5 analysis of the structure in relationship to an
6 established S. S. E. or O. B. E. or did they delve back
7 into whether the earthquake itself was going to be more
8 severe?

9 MR. BEVAN: No. It had nothing to do with
10 increased severity of earthquake or added -- or any
11 incident which gave rise to new concerns or that the
12 design-basis earthquakes heretofore considered were
13 inadequate. It had nothing to do with that.

14 JUDGE FOSTER: Thank you.

15 MR. BEVAN: And I am not sure that I see what
16 the relevance of all of this is to the spent fuel pool
17 action that is before us now. I would like to get that
18 in.

19 JUDGE KELLEY: I think all we are looking for at
20 the moment is a little background as to what has gone on,
21 and that's what I view what has been said.

22 Just one other comment on Issue 12.

23 You mentioned that, you know, you have limited
24 resources and don't have access to seismologists, and
25 that's all true. I am sure that is true.

1 It is a problem for Intervenor groups with limited
2 money; but in an area like -- and the only real answer to
3 that I have heard about is intervenor funding; but
4 Congress hasn't done that, and that's just where that
5 stands, so we don't have money to help parties. We can't
6 do it.

7 So the Intervenor group has to do the best it can.

8 I know in a case that I just finished hearing in
9 California on a seismic issue, the Intervenor group had
10 very little money, but they did have a lot of help and had
11 a good lawyer and they had a couple of seismologists, one
12 of whom was very highly respected, Field. They subpoenaed
13 a whole bunch of other seismologists and put on a 25-day,
14 7,000-page hearing over earthquakes close to San Andreas
15 fault; but it's not easy to do, but this is to say that
16 there is a burden on you at this stage of even pleading a
17 contention.

18 It's tough to state a good seismic contention
19 without having a seismologist look at it, at least consult
20 in my some way.

21 My own reaction -- and I am only speaking for myself --
22 that as drafted, it's too general, it's too vague and it
23 doesn't tell the utility just what it is that is being
24 alleged.

25 Now, the problem then may be, "Well, you have got to

1 go to St. Louis University or wherever and find out which
2 fault and how big," but I don't see any way around that if
3 you really want to litigate that claim.

4 It's hard to come in and make a general claim. The
5 utility is not going to do it. It's your contention and
6 it's your burden of proof, and there is really nothing
7 else that I can say but that you do take on a tough
8 technical burden in that area. There is no escaping it.

9 MR. MILLER: May I respond for a moment, please?

10 JUDGE KELLEY: Sure.

11 MR. MILLER: I would like to express
12 appreciation for your understanding and indulgence because
13 we are limited. To be recognized with that burden, that
14 is something that we have to assume.

15 I would like to find out -- maybe just a point of
16 clarification -- if these contentions or if any part of
17 the contentions are denied in terms of being relevant,
18 would it be possible for us later in the proceeding to
19 move on discovery of new information and be judged by the
20 merit of that new information on any of those three
21 contentions?

22 JUDGE KELLEY: The basic scheme under 2.714 --
23 which little letter, Mr. Goddard?

24 MR. GODDARD: C.

25 JUDGE KELLEY: -- C, dealing with late

1 petitions, the idea is when new information becomes
2 available, if you want to make a contention about it, then
3 you can seek to do so.

4 Chances are you may be opposed but you can seek to
5 meet the various -- you know, how late is late, how
6 important is the issue, how much can I contribute; and you
7 go through this whole litany.

8 Then there is a ruling made one way or the other,
9 but this is not the last day or the last word on
10 contentions. New things can come up.

11 And there is a lot of new documentation forthcoming,
12 there are more pieces of the application, the staff S. I.
13 E., the Staff Safety Evaluation, any one of which -- I am
14 not necessarily saying they will give you new information
15 but they might, and that may provide an opportunity for
16 some further contention.

17 MR. MILLER: Thank you.

18 JUDGE KELLEY: Let's see. We sort of skipped
19 around.

20 Have we gotten your position on No. 12, Mr. Goddard?

21 MR. GODDARD: No, sir. You got Mr. Bevan's but
22 not mine.

23 JUDGE KELLEY: Okay. Let's have yours.

24 MR. GODDARD: The staff position on proposed
25 Contention is simply that the new information presented

1 via the newspaper articles Applicant served on all parties
2 as part of their response does not appear to include any
3 new information outside of the scope of known historical
4 earthquakes or known faults, which were, in fact,
5 considered in deriving the O. B. E. and the S. S. E. for
6 the Quad Cities Station.

7 The majority of the emphasis of the newspaper
8 article is, in fact, upon possible seismic events in the
9 Iowa, southern Illinois, southeastern Missouri areas.

10 As a matter of fact, it seems to indicate that a --
11 one of them seems to indicate a rather strong viability of
12 the New Madrid Fault Zone, which was, in fact, considered
13 using the 1813 New Madrid earthquake at the time that the
14 O. B. E. and S. S. E. for this facility were established.

15 As to the extent that there is any new information
16 that has not been presented by means of these newspaper
17 articles, the staff would like to be made aware of it at
18 this time.

19 If the only new information is within the articles,
20 then without getting to the question of proof, which is
21 not the appropriate concern of this Board, which is ruling
22 on contentions, the staff would simply state that there is
23 no basis shown to support the allegations of the proposed
24 Contention 12; and, therefore, the contention must fail.

25 JUDGE KELLEY: Applicant on Contention 12, while

1 you have spoken in your papers, do you have anything to
2 add?

3 MR. STAHL: No, nothing to add, other than what
4 we have stated in our paper and what I stated earlier this
5 morning.

6 JUDGE KELLEY: Thank you. Why don't we take a
7 ten-minute break?

8 MR. STAHL: Excuse me. There is one thing we
9 would like to correct in our Prehearing Memorandum.

10 On Page 14 we refer to the Plumb River Fault having
11 not been active for over 250 thousand million years.

12 JUDGE KELLEY: A long time.

13 MR. STAHL: That's right. It should be really
14 250 million years, which is long enough, but we would like
15 to make that correction on the record.

16 JUDGE KELLEY: All right. Fine. Let's take a
17 ten-minute break.

18
19 (Whereupon a recess was had,
20 after which the prehearing
21 conference was resumed
22 as follows:)

23
24 JUDGE KELLEY: Okay. We are back on the record.
25 Given the present status of things, it does not

1 appear we can do a great deal in the way of specific time
2 schedules but we would like to get as good a fix as we can
3 on certain matters.

4 Let me ask the Applicants, first of all, from the
5 standpoint of your operations and assuming that,
6 ultimately, your application is granted, when do you need
7 this authority?

8 By "need," I mean either you have got it or you shut
9 down, let's say.

10 What are the time pressures from your standpoint?

11 MR. STAHL: Well, there is a refueling outage
12 that is scheduled for the fall of 1982.

13 In order for us to accommodate that refueling
14 outage, I think we would need an order from the
15 Commission, say, by June or July of 1982.

16 Now, whether that means that if we do not get the
17 order in June or July of 1982, we have to shut down --

18 JUDGE KELLEY: That is a separate question.

19 MR. STAHL: -- I can't really speak to that.

20 JUDGE KELLEY: You are stating now, at least as
21 I hear it, you look at your schedule and you see an outage
22 and that seems like a logical time to do it.

23 MR. STAHL: That is correct.

24 JUDGE KELLEY: And, therefore, you would want
25 some decision early summer, is that what you are saying?

1 MR. STAHL: Yes. I have just been advised by
2 Mr. Fleschner that, in fact, the station now plans to
3 begin installation of the racks on July 15th in order to
4 accommodate the outage, which means that we would need the
5 order several weeks before that, I would say, June 1st.

6 MR. FLESCHNER: Completed by the 15th of July.

7 MR. STAHL: It has to be completed by the 15th
8 of July.

9 JUDGE KELLEY: So you are talking about a
10 hearing in the early spring, are you not?

11 MR. STAHL: It's difficult to really coordinate
12 these time dates; but I think to complete the operation by
13 July 15th, we would need to have a Commission order some
14 time the first part of April.

15 JUDGE KELLEY: You mean the decision in the
16 first part of April?

17 MR. STAHL: Yes.

18 JUDGE KELLEY: When is your application going to
19 be complete?

20 MR. STAHL: By November 20th.

21 JUDGE KELLEY: Let me ask the staff then -- I
22 may have some other questions for you but let me ask the
23 staff this question.

24 Your Safety Evaluation you anticipate at what time?

25 MR. GODDARD: The Safety Evaluation and

1 Environmental Impact Appraisal will be released in mid
2 January of 1982 as of this time. That is our best current
3 estimate.

4 That is premised upon receipt of the entire
5 application by November 20th.

6 JUDGE KELLEY: Right. That is on your critical
7 path.

8 MR. GODDARD: That is.

9 MR. BEVAN: That is right, it is, it sure is.

10 JUDGE KELLEY: Let's take a look at it from a
11 slightly different angle.

12 Discovery will be available after this hearing,
13 interrogatories, depositions, for instance; but I would
14 gather that there will be a lot of unfinished discovery
15 until those various documents are available. Some can be
16 done now.

17 But you can't expect Intervenors to complete
18 discovery until some time after the staff's documents are
19 available; correct?

20 MR. GODDARD: That is correct.

21 MR. STAHL: I think that is a fair conclusion.

22 JUDGE KELLEY: Even assuming that the staff's
23 projection turn out to be on target, which is January 15th --
24 I am really sort of thinking out loud -- wouldn't you have
25 to have at least a 60-day interval before a hearing?

1 MR. STAHL: I think we were speaking on behalf
2 of the Applicant looking for a period of 30 days after the
3 completion and filing of the staff documents within which
4 all parties, who intended to prepare testimony, would
5 prepare and file that testimony and then proceed to
6 hearing approximately two weeks after the testimony is
7 filed, which means if the staff documents are completed by
8 January 15th, we would be commencing our hearing
9 approximately the 1st of March

10 JUDGE KELLEY: Let me just say, we are not
11 talking here this morning about any proposed particular
12 date.

13 MR. STAHL: Right.

14 JUDGE KELLEY: We are just trying to get some
15 parameters.

16 MR. STAHL: Right, I understand.

17 JUDGE KELLEY: When we get to the point -- in
18 fact, we probably would have another Prehearing
19 Conference, at least one more so-called Final Prehearing
20 Conference, where all of these things would get buttoned
21 down; but it is desirable, I think, as we sit here this
22 morning, to have some notion of where we are going and
23 what the timing looks like.

24 My personal reaction is to your 30 days, two weeks,
25 that is awfully fast; but -- okay. I hear what you are

1 thinking.

2 From the Intervenor's standpoint, we go onto
3 discovery at this point; and let me ask you this.

4 I have had the impression, at least this morning --
5 you don't have legal counsel here this morning, do you?

6 MR. MILLER: No, we don't.

7 JUDGE KELLEY: Do you have any legal counsel or
8 assistance available to you?

9 MR. MILLER: At this time we don't.

10 In terms of the proceedings during the official
11 hearing, we have been trying to and we are continuing to
12 talk with legal counsel in the area to try and secure
13 that; but we are in process on that yet.

14 JUDGE KELLEY: All we can do is, you know, urge
15 you and wish you luck on that.

16 You are going to have to find somebody, if you can't
17 afford to pay full fees -- and most organizations can't --
18 somebody who will be sympathetic and help you out.

19 As you get into the discovery process, for example,
20 discovery rules are pretty technical and, you know, do the
21 best you can.

22 I think the staff is often -- well, as to the rules,
23 isn't that right, Mr. Goddard.

24 MR. GODDARD: I couldn't hear you, sir.

25 JUDGE KELLEY: We are talking about counsel and

1 whether the Intervenors will have counsel and the need for
2 counsel in certain respects, such as discovery and
3 discovery rules.

4 It's been my experience that staff counsel have
5 informally talked with intervenors' groups about things
6 like discovery and how the rules are used.

7 MR. GODDARD: Yes. The staff has done that, in
8 fact, in this case; and we have provided the Intervenors
9 with pertinent portions of our regulations and called
10 their attention to the specific portions of those
11 sections.

12 I feel there is something that I must bring to the
13 attention of the Licensing Board at this time.

14 The date of mid January which I gave the Licensing
15 Board and parties as the projected date for the issuance
16 of the staff Safety Evaluation, Environmental Impact
17 Appraisal, I am informed by Mr. Bevan, our Project
18 Manager, was based upon a Commonwealth Edison schedule to
19 provide the last of the missing sections of the
20 application to the NRC not later than the 2nd of October,
21 1981, which date has already passed.

22 Mr. Woldridge of Commonwealth Edison Company
23 informed Mr. Bevan after I made that date known to you
24 that the latest of those sections would be presented to
25 the NRC staff for review on November 20th, 1981.

1 It was, the date for the release of the staff
2 documents in mid January of 1982, premised upon the
3 October 2nd date and not the November 20th date.

4 Accordingly, we are talking about 49 days or a
5 seven-week slip in our calculations based upon this later
6 release of the or availability to us of the application.
7 This is a Commonwealth Edison schedule; and, accordingly,
8 that would probably move the date for release of the staff
9 documents from mid January to approximately the first week
10 of March.

11 JUDGE KELLEY: I appreciate your raising the
12 point. It's the pacing item, it seems to me.

13 Okay. Well, all I can -- I think I have already
14 said it. If you can get a lawyer to help you out, that's
15 fine. We will be -- I don't know if you or your members --
16 have you got copies of the NRC rules?

17 MR. MILLER: Yes, pertinent sections have been
18 provided to us by Mr. Goddard.

19 MR. GODDARD: Part 2 and Parts 50 and 51, sir.

20 JUDGE KELLEY: All right. The rules are in Part
21 2. You should go ahead with discovery as to items, you
22 know, that you are ready to go on.

23 We are all bearing in mind that there is some
24 additional documentation that will be forthcoming and you
25 may want to discover somewhat on that.

1 I might just mention one consideration. Right now
2 there is no limit on the number of interrogatories that
3 you can put to a party. Many feel that there ought to be,
4 not just in the NRC proceedings but elsewhere.

5 There is under active consideration a proposed
6 change to the Commission rules that would limit
7 interrogatories to 50. How they define sub parts I am not
8 sure.

9 But, anyway, I think you should be kind of selective
10 and I suggest that you be rather selective, even though
11 the rules are open-ended at this point, in putting out
12 your interrogatories and really just go for what you want
13 to know.

14 But from the Intervenors' standpoint, a part from
15 late-file contentions later -- that is something else --
16 discovery is really all that is on your menu in the next
17 three months.

18 Am I not right on that? Is there anything else to
19 be done, Mr. Goddard?

20 MR. GODDARD: No.

21 JUDGE KELLEY: Yes, that is it. So I don't
22 know.

23 From what I am told now, an early spring hearing
24 doesn't look too realistic. What you might do -- maybe
25 you can tell us now but you might find out whether there

1 is some pressure on you other than the fact that you have
2 got a convenient outage in the fall, any reason why we
3 should be more concerned about having a hearing earlier
4 rather than later.

5 Do you have any such information now or would you
6 want to come back on that?

7 You can come back, if you want to.

8 MR. STAHL: I think we will come back later.

9 JUDGE KELLEY: You can write a letter, copies to
10 the parties, as to what the situation is.

11 MR. STAHL: We will do that.

12 JUDGE KELLEY: I might just comment. Maybe this
13 is obvious; maybe it's not.

14 The NRC does attempt to accommodate Applicants for
15 licenses within reasonable time frames with respect to
16 their operations and their needs, the understanding being
17 that if they lose, they lose; but on the assumption that
18 they win, it does make a difference to them when things
19 happen.

20 So we will take that into account, at least, in
21 setting times.

22 There will come a time for closing discovery, and we
23 can work on that when the time comes.

24 Do the parties have other suggestions about things
25 we need to do in that regard?

1 I am not sure I see any need for status reports,
2 although the rule refers to status reports. In this kind
3 of a case I don't think that is really necessary.

4 We wanted to ask one question about this
5 stipulation. Paragraph 1 speaks of consolidation, and I
6 won't quote the whole paragraph.

7 My question is this: Consolidation to me normally
8 does mean consolidation for purposes of trial. Let's say
9 you have three Intervenor groups. You have, let's say,
10 one Intervenor group or one lawyer who tries the case and
11 the other groups don't put in a case. There is one
12 lawyer, one case.

13 That is not what you contemplate here, as I read it.
14 The second sentence says that separate representatives
15 will continue to be recognized. Each organization will
16 retain the right to submit evidenciary material and
17 conduct cross examination, and absent a consolidation
18 order that is what happens.

19 I am not sure what you really gain here, is what I
20 am wondering about.

21 If it's a pledge to cooperate and work together,
22 that's fine; but is it more than that or is that really
23 what it is?

24 MR. STAHL: I think speaking for the Applicant,
25 I think the Chief Judge is correct, the exception to the

1 consolidation may be larger than the consolidation itself.

2 JUDGE KELLEY: That is really what I was saying,
3 yes.

4 MR. STAHL: The Intervenors have retained their
5 independent freedom of action, I think; but I think the
6 consolidation does go further than a pledge to work
7 together. It does extend to discovery.

8 We would anticipate that any discovery requests made
9 on Applicant would be consolidated by CSE and QCASE. We
10 would not receive separate discovery requests from those
11 two organizations.

12 JUDGE KELLEY: Does that correlate with your
13 understanding?

14 MR. MILLER: Yes, we understand that.

15 JUDGE KELLEY: I don't know. From the Board's
16 standpoint, what we want to avoid is duplicate
17 presentations as you get to hearing.

18 As a practical matter, if you are going to divide up
19 the case and it's not a problem, then I guess we don't
20 have to worry about it.

21 One of the things we did in the last case I was in,
22 we had two organizations, about 16 contentions, and they
23 didn't want to be consolidated.

24 What we said was, you know, "Split them up. You
25 take half and the other one take half but that's that."

1 They even thought that was okay and they agreed to that.

2 Later one of them dropped out, so the other one did
3 them all, anyway; but it was an approach that seemed to be
4 agreeable, because you tend to have stronger interests in
5 one thing as opposed to another.

6 I don't think we have to cross that bridge now, but
7 we would have a sort of a general concern about
8 duplication. If we don't have that, then I guess we are
9 okay.

10 If there is a substantial threat, then we would have
11 to look at consolidation again; but we can leave that down
12 the road, I think.

13 MR. GODDARD: Judge Kelley, the staff has one
14 point with regard to discovery.

15 As you are well aware, the discovery against the NRC
16 staff is a rather complex burden, more difficult than
17 discovery, for instance, against an applicant or licensee.

18 This is especially true in the case of Intervenors
19 such as organizations here who are not represented by
20 counsel, at least at this point in time.

21 To date in this proceeding and for the remainder of
22 the proceeding, the NRC staff will cooperate with
23 Intervenors with regard to informal discovery. We have
24 been accessible by phone and by mail. To the extent that
25 information is requested of us, we will attempt to provide

1 it in an informal way, without having to restrict it to
2 the somewhat strictured provisions of Part 2 with regard
3 to discovery against the NRC staff.

4 JUDGE KELLEY: Very fine. I would like to see a
5 similar approach from the Applicants, if that is agreeable
6 with you.

7 MR. STAHL: Well, we will certainly make every
8 effort to cooperate with reasonable discovery requests in
9 an informal way.

10 JUDGE KELLEY: Yes. This can be further down
11 the road; but if we can get away from these elaborate
12 rounds of pleadings, in which you get interrogatories and
13 you get denials and you get reasons for denials, it's a
14 big waste of time.

15 If there is some way we could cut through that,
16 let's all approach it in that spirit. I would like to.

17 MR. GODDARD: Sir, along those lines, on one of
18 our recesses, I spoke with counsel for the Applicant and
19 with Mr. Robert Miller, the representative for
20 Intervenors, with regard to the possibility of a
21 Settlement Conference later in 1981 with regard to several
22 of the contentions which would normally be the subject of
23 summary disposition, contentions which, in the view of the
24 staff, are most susceptible to early and rather cursory
25 disposition.

1 Accordingly, we are going to be working out a
2 schedule whereby the Applicant and the technical staff
3 will provide appropriate expert witnesses, who will
4 attempt to resolve the issues set forth in such
5 contentions to the satisfaction of the Intervenors.

6 The Intervenors, of course, are not binding
7 themselves to settle the requested contentions.

8 JUDGE KELLEY: That seems to be an excellent
9 idea. If you bring out the right people and have them
10 answer questions, you might make some progress along that
11 line. If the Intervenors aren't convinced, then we will
12 go ahead; but I think it's a good idea.

13 Are there other matters -- I think we are reaching
14 the end of our other matters -- that the Intervenors want
15 to bring up at this point?

16 MR. MILLER: No, we are not prepared to bring up
17 other points at this time.

18 JUDGE KELLEY: Okay. Applicant?

19 MR. STAHL: None from the Applicant.

20 JUDGE KELLEY: We will get a letter from you
21 describing the practical dates you will have, timing?

22 MR. STAHL: Yes.

23 JUDGE KELLEY: Is there anything else from the
24 staff?

25 MR. GODDARD: Nothing else from the staff, sir.

1 JUDGE KELLEY: Let us just take a 30-second
2 recess.

3
4 (Whereupon a recess was had,
5 after which the Prehearing
6 Conference was resumed
7 as follows:)

8
9 JUDGE KELLEY: My colleagues have a couple of
10 technical points that they would like to --

11 MR. GODDARD: Sir, louder, please.

12 JUDGE KELLEY: My colleagues have a couple of
13 technical points that they want to raise and then I think
14 we will be about done.

15 JUDGE FOSTER: This is in relationship to the
16 evaluation on thermohydraulics.

17 The fuel module or fuel rack modules have a base
18 plate which is supported by square or rectangular legs.
19 Those legs have some holes in them for water to move in
20 and out.

21 It was not a clear to me how those holes were taken
22 into account in the overall evaluation of the temperature
23 of the water in the fuel bundles that would be stored
24 above them.

25 Perhaps, this could be explained more fully in some

1 additional material to be supplied.

2 MR. WOLDRIDGE: Are you asking about the holes
3 in the feet themselves, on the side of the feet?

4 JUDGE FOSTER: That is correct, and what the
5 role of those is relative to restricting flow to the
6 channels stored above them.

7 MR. WOLDRIDGE: We will respond to that. We
8 have already considered those holes.

9 JUDGE KELLEY: Dr. Morris.

10 JUDGE MORRIS: I guess this would be addressed
11 to Commonwealth, also.

12 Table 8-3 in Revision 1 of the spent fuel
13 modifications for increased storage capacity, dated June,
14 1981, lists the current concentrations in the pool and
15 also lists incremental additions due to the expanded
16 capacity.

17 The paragraph below that table -- well, first of
18 all, in the table itself, it would go -- if you go to 100
19 days, you find the increase is approaching 50 percent.

20 In the paragraph below the table there is sort of a
21 conclusiory statement that because of other conservatisms,
22 this is a negligible amount, will have a negligible effect
23 on radiation levels or possible exposures.

24 I was wondering if somewhere along the line you
25 could expand on this and give some better basis for that

1 conclusion that this 50 percent increase, or whatever it
2 is, is truly negligible.

3 JUDGE KELLEY: Just two other brief matters.

4 As we mentioned before, we will be issuing an order
5 probably next week memorializing the basic things we did
6 here today and, I expect, rendering our decisions on the
7 disputed contentions.

8 The possibility of a site visit was mentioned
9 earlier, and it is something that the Board would like to
10 do. They are interesting. I think they are fun.

11 But I wasn't prepared at this time. We really
12 weren't ready for it, so I think the Board would like to
13 pass.

14 I might just add that, normally, some reasonable
15 number of Intervenors, if they want to go along on such a
16 trip, arrangements can be made. Perhaps, we could do it
17 next Prehearing. I am not sure. We will -- this is just
18 to say yes, we will do it and it can be the staff and the
19 Board and the Applicants and some of the Intervenors who
20 would want to come along.

21 When the arrangements for that are made, we will try
22 to let everybody know in advance.

23 If nobody has anything else, I think we can adjourn
24 for today. Thank you very much.

25 MR. STAHL: Thank you.

1 MR. GODDARD: Thank you.

2 (WHICH were all the proceedings had
3 and testimony taken at the Prehearing
4 Conference at this time and place.)
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This is to certify that the attached proceedings before the

ATOMIC SAFETY and Licensing Board

in the matter of:

Date of Proceeding: Oct. 14, 1981

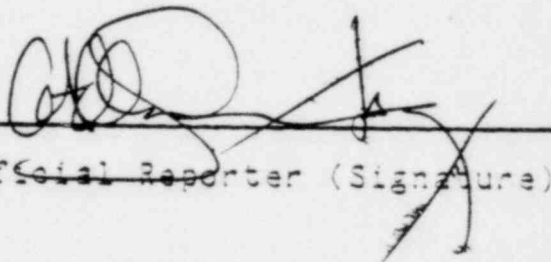
Docket Number: _____

Place of Proceeding: Rock Island, Illinois

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

G. ALLEN SONNTRAG, CSR

Official Reporter (Typed)



Official Reporter (Signature)