

NUCLEAR REGULATORY COMMISSION

ORIGINAL

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

THE CINCINNATI GAS & ELECTRIC
COMPANY, ET AL.,

and

WILLIAM H. ZIMMER
NUCLEAR POWER STATION

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UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

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THE CINCINNATI GAS &
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and :

WILLIAM H. ZIMMER
 NUCLEAR POWER STATION :

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: Docket No. 52-358

Friday, October 30, 1981
 United States Post Office
 and Courthouse
 Room 607
 Cincinnati, Ohio 45202

Prehearing conference in the above-entitled matter
 convened, pursuant to notice, at 9:00 a.m.

BEFORE:

John H. Frye, III, Chairman,
 Atomic Safety and Licensing Board

Dr. Frank F. Hooper, Member,
 Atomic Safety and Licensing Board

Dr. M. Stanley Livingston
 Atomic Safety and Licensing Board

ACE REPORTING, INC.

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241-3200

1 APPEARANCES:

2 On behalf of the Applicants:

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4 Conner and Moore
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7 and

8 Jerome A. Vennemann, Esq.
9 In-House Counsel
10 Cincinnati Gas & Electric Company

11 On behalf of the Nuclear Regulatory Commission Staff:

12 Mr. Charles A. Barth, Esq.
13 and14 Mrs. Janice E. Moore
15 Office of the Executive Legal Director
16 United States Nuclear Regulatory Commission
17 Washington, D.C. 20555

18 On behalf of Dr. Fankhauser:

19 John D. Woliver, Esq.
20 Legal Aid Society
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24 On behalf of the Commonwealth of Kentucky:

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On behalf of the Zimmer Area Citizens of Ohio and Kentucky:

Andrew B. Dennison, Esq.
Dennison and Eckerson
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On behalf of the Citizenry of Mentor:

Mr. Donald Reder
Route 2 Box 270
California, Kentucky 41007

On behalf of the County of Clermont:

Lawrence R. Fisse, Esq.
Assistant Prosecuting Attorney
Clermont County, Ohio
462 East Main Street
Batavia, Ohio 45103

P R O C E E D I N G S

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2 JUDGE FRYE: Good morning, ladies and gentlemen.
3 We had left hanging yesterday afternoon when we adjourned the
4 question of Dr. Fankhauser's contention -- there are many
5 portions of Dr. Fankhauser's Contention 2, and we have conferred
6 on that.

7 In light of Mr. Barth's objection and in light
8 of the discussions that we had yesterday on Contention 2, we
9 feel that it probably best to leave it as it is with no
10 further opportunity to specify.

11 This would, of course, leave you free to specify
12 on I believe it is Contention 3 that we discussed yesterday.

13 That would mean that Mr. Conner could file his
14 motion for summary disposition if he so sees fit. Otherwise,
15 we will go to hearing on that matter.

16 MR. CONNER: We will certainly file the motion
17 and hopefully very quickly, although I repeat we still do not
18 know what some of it means.

19 JUDGE HOOPER: This is just --

20 MR. CONNER: I beg your pardon?

21 JUDGE HOOPER: We are talking about just 2 now,
22 not 4?

23 MR. CONNER: Right. Actually we are talking
24 about 2-B, C and F and G, I understand. Yes.

1 Is B in to the extent of involving citizenry
2 as distinguished from monitoring?

3 JUDGE FRYE: I do not believe that. I believe
4 B was recalled.

5 MR. WOLIVER: That is correct.

6 JUDGE FRYE: We have also executed the settle-
7 ment agreement between the City and Cincinnati Gas & Electric,
8 and I want to say that while there was only space provided for
9 me to sign it, and I have signed it, that all three of us con-
10 curred that it should be executed, and I have also signed the
11 order which was submitted which I will take back and have filed
12 and served.

13 So, Mr. Conner, do you want me to keep one of
14 these and give you two?

15 MR. CONNER: I would appreciate that. We will
16 see that the City gets one of the copies.

17 JUDGE FRYE: Fine.

18 MR. CONNER: Thank you.

19 JUDGE FRYE: At this point, it seems to me that
20 it would be appropriate for us to take a look at Clermont County
21 and City of Mentor contentions which were filed yesterday and
22 get the reactions of the applicant and staff to those conten-
23 tions.

24 Mr. Conner, do you want to lead off?

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MR. CONNER: Certainly, unless you want to hear from the proponent first.

JUDGE FRYE: Well, I thought since we have got the contention that we would let you and Mr. Barth address them and then give the proponents an opportunity to respond.

MR. FISSE: They were submitted in response to the board's order of October 9, so whether you want to characterize them as contentions or whatever, it was submitted in furtherance of the detailing the subject upon which we intend --

JUDGE FRYE: Constitutes the specific concerns of Clermont County and the items that you foresee that you might want to pursue?

MR. FISSE: Correct.

MR. CONNER: If the board please, I think we can state our position rather succinctly and as a background matter, we had a conference call on 10/27. Mr. Fisse participated, and at that time I understood he intended to submit rather specific items.

In further background information, we have been working with the Clermont County officials for more than a year and a half prior to the present. We thought that we were working with responsible government spokesmen.

Now, we are in some doubt as to who the

1 spokesman for Clermont Count is on various matters. This is
2 giving us some problems.

3 We thought we had reached agreement except for a
4 few items and had written to Clermont County on October 22, 1981
5 lis ing some additional equipment the county wanted and much of
6 which we agreed to.

7 The point is that we had only 11 items that had
8 not been agreed to in terms of equipment that CG&E was going to
9 provide to the county.

10 On the other hand, there are roughly eight pages
11 of equipment that the company has agreed to provide to the
12 county for the purposes of the emergency planning. The fact
13 remains that of the 11 remaining things that the county wanted,
14 we agreed to most.

15 I mean, for example, the county wanted the first
16 item, 1350 additional TLD chips instead of the 350 we were
17 going to give them.

18 The fact is that such an accident as contem-
19 plated here certainly there is a slim possibility of occurrence,
20 and it is understood that in the event there were such an acci-
21 dent, the Federal Emergency Plan people, presently DOE, would
22 come in and have all the TLD chips one would ever need, but to
23 have a surplus of them sitting around unused to us was wrong.

24 That sort of illustrates the other -- the attitude

1 on the 11 other items. The last two items, of course, they want 4777
2 about a \$25,000 vehicle and another, either a GMC blazer or
3 Ford Bronco, in addition to, of course, the equipment that the
4 County Emergency Planning people already have.

5 We say we will provide them with one vehicle,
6 but this was one of the sticky points. For some reason, this
7 is needed -- by the county this is -- that this is what it must
8 have.

9 My point is that we had reached this stage of
10 negotiation where there were almost very few items left so this
11 letter was sent to, October 22, in our view, culminating a year
12 and a half of negotiation.

13 But we are nonetheless to find that obviously
14 this document that Mr. Fisse handed up yesterday when the
15 hearing started of some ten pages had obviously been in prepara-
16 tion for some time and we really don't understand what the
17 position of the county now is.

18 JUDGE FRYE: Well, Mr. Fisse indicates in his
19 motion and in the documents attached to his motion that negotia-
20 tions are ongoing.

21 I would hope that they would continue and that
22 you might be able to successfully resolve these.

23 MR. CONNER: Well, this is what I was leading
24 into.

1 JUDGE FRYE: Yes.

2 MR. CONNER: We have, and if the board would like
3 a copy of this letter, we would be glad to hand it up for what-
4 ever purpose.

5 JUDGE FRYE: I do not think we need it at this
6 point. If we can be of assistance in furthering the negotia-
7 tions, we stand ready to do that at any time.

8 MR. CONNER: You are anticipating my point.
9 The scope of what Mr. Fisse filed yesterday is immense in the
10 implications.

11 It is certainly not specific. It is something
12 that I think goes far beyond the actual state of the record and
13 the situation with Clermont County.

14 We object, for the record, to the various conten-
15 tions or whatever, Items 1 through 12, as failing far short of
16 the specificity required for any participant in the proceeding.

17 The mere fact that Clermont County has come in
18 under 2.71C does not relieve it from the responsibility to
19 specify what it is actually concerned with in a hearing, and
20 I believe this has been held in other cases, such as River
21 Bend.

22 Moreover, the board in its order of October 9
23 directed Clermont County to indicate in detail at this pre-
24 hearing conference what they intended to participate in, but

1 here we have the old, the emergency plan is inadequate because
2 and go down the table of contents.

3 So we believe that this document should be dis-
4 missed out of hand and that perhaps following what the chairman
5 or the board ordered yesterday with respect to the two
6 intervenor parties, to give them a short time, a very short
7 time, to say what they are talking about.

8 We would also ask this board as following the
9 Commission's policy statement to direct -- I don't know how to
10 do it -- if I knew who the person was, I would say so -- to
11 get a responsible spokesman for Clermont County to meet with us
12 so we can see what actually is the problem.

13 Our problem has been of having to talk to dif-
14 ferent people at different times and quite frankly we are not
15 quite sure who we are dealing with.

16 I wish I knew how to be more specific. The
17 county government is under a three-member board of commissioners,
18 and I guess they speak in a collegial way, and we tried to meet
19 with the sheriff.

20 We met with the sheriff. We met with all of them,
21 I think. Different people say different things about what other
22 people want. We are quite confused.

23 There is a problem whether the sheriff really
24 wants a new recording machine or not. It depends on who you

1 talk to.

2 So we would ask the board to lend its good
3 offices to suggest a day or a time when we could meet with all
4 of the spokesmen for Clermont County in an effort to resolve
5 this, because certainly we will provide equipment needed to
6 conduct a real emergency plan.

7 However, our responsibilities to the stockholders
8 and our responsibilities under state law prohibit us from
9 Christmas presents.

10 JUDGE FRYE: Mr. Barth, do you have any comment?

11 MR. BARTH: I do, your Honor. Mr. Conner laid
12 a little bit of short background. In response to the board's
13 order, the staff scheduled a joint telephone conference in which
14 Clermont County was included last Tuesday and in that telephone
15 conference, we drew attention to the last paragraph on page 4
16 of your order of October 9 in which you state that the board
17 directs these participants, Clermont County, to indicate in
18 detail what the prehearing conference subject or subjects upon
19 which they intend to participate are and the scope of such
20 participation.

21 Clermont County was a party to the Tuesday
22 telephone conversation, and Mr. Fisse informed me and the other
23 parties that he was preparing a specific list of equipment
24 which was necessary in order for Clermont County to implement

1 the plan.

2 We made arrangements for this to be delivered to
3 my motel and for the power company to pick up a copy at
4 Mr. Fisse's office later in the day, which he said would be
5 ready. It was not ready on Tuesday.

6 I received my copy last night. It was delivered
7 to the motel, and that is the document we have before us which
8 we are considering today, sir.

9 Nowhere in that document is the itemization of
10 a single, solitary piece of equipment. This is really a gross
11 breach of professional conduct, and I move that the document
12 be stricken on that basis alone.

13 We were informed to come to this prehearing
14 conference to discuss the specifics which we would litigate and
15 the board is to determine what issues are to be litigated.

16 The document we have before us is nothing but a
17 general motherhood statement that the county can do nothing.
18 Of course, that is not true. They can do something.

19 You know that. What they can do, they have not
20 specified. What they cannot do, they have not specified. Not a
21 single, solitary item of equipment was listed in spite of the
22 fact that this was clearly stated to Mr. Conner, myself,
23 Mrs. Moore, that it would be done so.

24 I call your attention, your Honor, to Gulf of

1 States Utility Company, River Bend Station Units 1 and 2, ALAB-444
2 which was cited as 6 NRC 7601977.

3 I direct your attention to page 468. "Once let
4 in, however, an interested state must observe the procedural
5 requirement applicable to other applicants."

6 They also reference ALAB-3173 NRC at 18 on
7 Footnote 7. So it becomes incumbent that we take a look at
8 what kind of burdens we are looking at.

9 2.714B states: "At this prehearing conference a
10 petitioner shall file a supplement to his petition to intervene
11 which must include a list of the contentions which petitioner
12 seeks to have litigated in the matter and the basis for each
13 contention set forth with reasonable specificity."

14 There is no specification in the Clermont County
15 Disaster Plan as to a defect.

16 There is no specific allegation as to when equipment
17 is missing so they can effectively carry out that plan. There
18 is no basis set forth as to why that particular equipment is
19 necessary to carry out the plan.

20 Apart from the breach of commitment to counsel,
21 the document we have before us filed by Clermont County totally
22 fails to meet the requirements of the Commission as interpreted
23 in ALAB 444 by the Appeal Board that they do not set forth
24 specific intentions, and they set forth no basis for those

1 contentions.

2 This is the prehearing conference at which this
3 is to be done. The Appeal Board goes on further to point out
4 on page 769 that the prehearing conference is the place to
5 set these issues for hearing and that is what we are here for.

6 The county was aware of it. The regulations and
7 the Appeal Board require it, and we do not have an issue framed
8 by the county which is subject to litigation.

9 Let me point out, your Honor, on page 3 of
10 Mr. Fisse's document, paragraph 8 at the bottom, I read, and
11 I do not read fully in context: Clermont County does not
12 have sufficient monetary capabilities to maintain -- drop a
13 few words -- any equipment.

14 Now, we just know this is not true. The county
15 must have some money to maintain some piece of equipment even
16 if it is a pencil sharpener.

17 The statement is false upon its face. We are
18 entitled, the power company is also entitled, to a list of what
19 equipment we do not have funds to maintain, not this broad brush
20 to the world that the word is bad and we are poor.

21 This totally fails to meet 2.714, on top of
22 which there is no question in my mind or I think in any rational
23 person's mind that Clermont County has no ability to maintain
24 any equipment at all. I do not interpret it.

1 On page 4, paragraph 10, I would direct your
2 attention in which they say that Clermont County does not have
3 the necessary equipment to provide independent assessment
4 capabilities that are required by federal rules and regulations.

5 Mrs. Moore and I sat in our motel last night and
6 looked at each other and said, "What regulations?"

7 We are entitled to a citation of law to provide
8 a basis that Clermont County has to make an independent assess-
9 ment of whatever they are assessing and provide a basis for it.

10 Paragraphs 10, 11 and 12 really have no legal
11 basis whatsoever either in the Federal Code or my agency's
12 regulations. There is no requirement that Clermont County have
13 an independent assessment of the capability required by my
14 regulations.

15 My regulations require a capability by the
16 Kentucky counties, State of Ohio, State of Kentucky. There is
17 no requirement at all that Clermont County have an independent
18 capability to assess whether Kentucky can perform.

19 This is just plain nonsense. This is not a list
20 of equipment, I point out. I would like to point out the
21 Commission's statement on policy on conduct of licensing pro-
22 ceedings which was issued May 27, 1981.

23 The Federal Register citation I do not have.
24 On page 3, the Commission states: "Individual adjudicatory

1 boards are encouraged to expedite the hearing process by using
2 those management methods already contained in Part 2 of the
3 Commission's rules and regulations."

4 It is the position of the staff that the Part
5 2.714, 2.714B requirement of specificity and basis should be
6 applied with extreme rigor by this licensing board and the
7 circumstances strike the document which does not provide any
8 specification or basis for a specification as to a defect in
9 emergency plans.

10 The Commission went on to state on page 3 of
11 his policy statement as previously cited, "Fairness to all
12 involved in NRC adjudicatory procedures requires that every
13 participant fulfill the obligations imposed by and in accordance
14 with applicable law and Commission regulations."

15 Now, we should, of course, address matters of
16 fairness and equity as well as law.

17 Clermont County has been negotiating with the
18 power company for several years on emergency planning. The
19 State of Ohio from Columbus has sent people down to discuss
20 this matter with Clermont County.

21 In cases well down the line, we have a prehearing
22 conference called by this licensing board for the specific
23 purpose of determining the issues to be heard in hearing. At
24 this stage, the power company and my agency are faced with a

1 document which gives no specificity, gives no basis for any
2 defects in the plan, postures the statement on its face that
3 Clermont County can maintain no equipment whatsoever, which we
4 know is not true, and goes on to ramble that they do have the
5 capability to assess the emergency capabilities of Kentucky.
6 That is paragraph 10.

7 The Commission clearly felt that this licensing
8 process should move with solidarity with due regard for the
9 rights of all parties. Clermont County has failed to comply
10 with ALAB-444. They have failed to comply with 10 CFR 2.715
11 after they had been let in with requirements of 2.714B.

12 Clermont County has also breached its agreement
13 with the power company and the NRC staff of Tuesday to provide
14 a specific list of equipment and the basis as to why they need
15 that equipment. Therefore, it is our position in a broad brush
16 that the filing by the Clermont County intervenors of the motion
17 to submit specific intentions, issues or subject matter of par-
18 ticipants should be stricken in its entirety.

19 I would like to take issue with the power
20 company's last statement, Mr. Conner. I think Mr. Conner is
21 grossly in error when he suggests to this licensing board to
22 permit Clermont County to provide a more specific list. They
23 have had that opportunity.

24 They have promised that list. They have not

1 produced. I think they should be denied the paper before you
2 and that their concerns should not be addressed in this hear-
3 ing.

4 Thank you, your Honor, for your indulgence.

5 JUDGE FRYE: Mr. Fisse.

6 MR. FISSE: Initially, I would like to say that
7 I resent Mr. Barth's attack on my integrity and my professional
8 capability. I think this is not the place to make such an
9 attack.

10 I think it is necessary you understand the
11 situation that the county has found itself in in negotiations
12 with Cincinnati Gas & Electric Company.

13 When the initial motion to intervene was filed,
14 it was a different prosecutor that was in office at that time.
15 Subsequently, there was an election, a new prosecutor was
16 elected, took over.

17 I was appointed to represent the county on this
18 case. At that time we informed Cincinnati Gas & Electric
19 Company that we were taking an active role, that any communica-
20 tion should be directed through the prosecutor's office.

21 Cincinnati Gas & Electric Company has refused
22 and has not met that request from the inception of my appearance
23 up until today at such time when we continue to negotiate --
24 I will correct that -- up until the October 22 letter which

1 the prosecutor's office received a copy of it.

2 Prior to that time, the prosecutor's office was
3 not involved in any way. Communications, negotiations were
4 directed through the Disaster Service Agency.

5 The May 15 letter is an equipment list from
6 Cincinnati Gas & Electric Company provided to Clermont County
7 indicating equipment that they had agreed to provide. I think
8 the key is that they had agreed to provide.

9 We are talking about, in terms of finding equip-
10 ment, we are talking about agreement on both sides and not
11 agreement on one side. We do not deny that some equipment has
12 been received.

13 It is the county's position that all equipment
14 necessary, and I think it is adequately spelled out in these
15 contentions, all the equipment necessary has not been received
16 to permit the county to utilize and implement the plan as it
17 should be.

18 Now, subsequent to that May 15 letter, there
19 were at least two written communications with Cincinnati Gas &
20 Electric Company, a letter by myself dated August 11, 1981,
21 a letter by Kenneth Conover with a list of equipment that we
22 consulted with him to prepare that was submitted to them, and
23 we asked for further specification, further clarify, further
24 information.

1 There were at least two or three phone calls
2 subsequent to that in which I was not a direct participant,
3 but I was involved in that I was in Mr. Patterson's, the
4 prosecutor's, office, when these phone calls were made.

5 We requested a response to our letters. Each
6 time we were informed, "We will have it within a week," or
7 "It is going out today," or something of that form which we
8 never did receive.

9 On the 18th of October subsequent to this board's
10 order on the 9th, which by the way does not require us to
11 specify with any sort of specificity in form or anything of
12 that nature, it says, "Be prepared to discuss in detail the
13 subject or subject matters upon which you will participate,"
14 and I believe, again, that this document satisfies that board's
15 order.

16 To correct Mr. Barth, during that conference,
17 it was never mentioned by myself, and I verified this with
18 other participants, that I would provide a specific list of
19 equipment.

20 I said I am planning to comply with the board
21 by submitting a list of subjects.

22 On October 18, there was a conversation with
23 Mr. Conner which a member of Stone and Webster was present
24 concerning whether or not a written list or a document had

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been prepared from CG&E in response to our phone calls and our letters.

He indicated that he had not received anything. It was necessary to place it to Mr. Conover because no communications were being received by the prosecutor's office.

Stone and Webster has already indicated that -- I just came from CG&E. I put it on somebody's desk. It is being typed. You will receive it today.

We still did not receive it on the 22nd. We met with the Commission's 021 that whether in light of the fact that they were not negotiating with us at that point and in light of the fact that the board's order required us to be prepared to discuss the subject matters, met with the commissioners as to whether or not we should prepare something in writing.

Apparently that got back to Cincinnati Gas & Electric Company on Friday. Mr. Patterson received a phone call and on the 22nd we received a letter with a list of equipment.

Now, the individual members of the County Disaster Services Agency, the sheriff, other members of the local police departments have been engaged in training exercises with the attempt to obtain the necessary experience and expertise to implement the Clermont County Plan for a number

1 of months, but particularly with a great degree -- well,
2 involving a great deal of their time within the last week or
3 two in order to prepare for the November 18th scheduled exer-
4 cise.

5 The fact that we did not receive this letter
6 until the 22nd; the fact that they were involved -- the
7 particular individuals who I must consult to determine a
8 specific list of equipment, which I do not think is necessary,
9 but if the board thinks it is, then it will be supplied -- the
10 fact that those individuals were involved in that; the fact that
11 this late response put us in a position where what were we going
12 to prepare, how were we going to prepare what to determine with
13 or on at the hearing?

14 I submit that it is not the county's fault.
15 It is not the county's fault of dragging their feet or negotiat-
16 ing in bad faith.

17 It is the company's fault in the fact that they
18 have not responded to our requests for further information and
19 the fact that they did not respond until seven days prior
20 to the hearing itself, this prehearing conference, which
21 placed the county in a position to submit the document that
22 has been submitted.

23 Now, as I understand it as far as specific
24 contentions go, the county has been submitted under Section

1 2.715C. It provides, which I am sure you are aware of, that
2 an opportunity will be afforded representative of the state,
3 county, et cetera, to participate, without requiring the repre-
4 sentative to take a position with respect to the issue.

5 The Presiding Officer may require the representa-
6 tive to indicate with reasonable specificity in advance of the
7 hearing the subject matters on which he desires to participate.

8 That was further set out in your letter or your
9 order of October 9. We hear in part to specify in some detail
10 the subjects upon which we intend to participate, which as an
11 aside, sort of confuses me that the representatives of the
12 company raised that issue, because they have been in possession
13 of letters that have been negotiated and sent back and forth.
14 They are aware of the negotiations.

15 I do not see how they can sit here and argue
16 that it lacks specificity on its face and as a whole. There
17 are certain items that are specific.

18 With regard to Mr. Barth's statement of criticism
19 of this document as far as assessment requirements go, I cite
20 the board to Section 59.47, Emergency Plans, 10 CFR, Section
21 747B 9000 which states: "Adequate method systems and equipment
22 for assessing and monitoring actual or potential off-site
23 consequences of a radiological emergency condition are in use."

24 That is a prerequisite, one of the listed

1 requirements, that have to be met in order to make that plan
2 adequate.

3 Moreover, the board's order did not include the
4 county as a participant in the conference call. They are
5 talking about, or as I understand it, technically at least
6 the order was placed to the parties to the proceeding to par-
7 ticipate in some sort of prehearing discussion, and as I understand
8 it, initially absent my request and direction by one of the
9 other participants, I was not going to be included in that
10 call. I requested to be included in that call so I could
11 inform the other parties that we were going to comply with the
12 board's order in writing or attempt to comply with that order.

13 With regard to the document itself, I really do
14 not know how much more specific it can be. It states: "Inter-
15 venor is in possession of some communications equipment, but
16 we do not possess all of the equipment needed."

17 It states that we do not have the sufficient
18 monetary capabilities to supply that equipment. It states that
19 no binding arrangements have been entered into to supply the
20 equipment which we feel is needed.

21 It repeats the same set of events with regard
22 to monitoring equipment. With regard to Mr. Barth's interpreta-
23 tion of 8A, I find that absolutely absurd that he can read this
24 document and think it refers to any equipment that the county

1 has in its possession, whether or not it is provided to imple-
2 ment a communication's plan or not.

3 There are other issues set out in there that
4 are requirements under Section 5047, under Appendix E and under
5 Section 5034, I believe it is, with regard to training, with
6 regard to implementation of the plan, updating of the plan,
7 maintenance of the plan.

8 I do not know how much more specific I can be
9 when I state that Clermont County does not have the financial
10 resources to undertake the responsibility for maintenance of
11 the plan, updating of the plan, et cetera, et cetera, providing
12 the training.

13 I don't know how much more specific I can be
14 in those areas.

15 Now, with regard to specific equipment, I had
16 every intention of coming here, if at all possible, with the
17 list of equipment other than what the company has knowledge of
18 pursuant to negotiations.

19 However, because of the fact that Disaster
20 Services, the sheriff and all of the individuals that I need
21 to consult with to prepare such a list have been engaged in
22 attempting to implement, to gain the expertise and knowledge
23 to use this plan, it has been impossible for me to consult with
24 them for the last week which is all we were given since this

1 communication, latest communication from the company, which was
2 dated October 22, 1981.

3 By the way, the company knew those training
4 exercises were being conducted.

5 JUDGE FRYE: Let me ask you, Mr. Fisse: How
6 far apart do you think you are, you and the company, in your
7 negotiations?

8 MR. FISSE: With regard to the list of equipment
9 that has been requested by DSA and which is agreed to be supplied
10 by Cincinnati Gas & Electric, we are approaching it and as this
11 indicates we are approaching it as a negotiable settlement
12 matter.

13 Now, there might be other -- it has been
14 indicated that there are other areas or possibly other areas
15 that creates a problem as far as Disaster Services and the
16 sheriff. However, as I indicated, I cannot specify that at
17 this point in time because, frankly, I have not been provided
18 the courtesy or the time by the company to sit down and provide
19 that information.

20 JUDGE FRYE: There might be other areas? Let me
21 see if I can understand this a little bit better.

22 There are other areas that the various agencies
23 of the county may have to raise; is that what you are saying?

24 MR. FISSE: Concerning equipment for monitoring

1 and communication, basically it is -- most of it is equipment
2 related. What I am saying is that I think I can supply further
3 specifics with regard to some of the equipment in the monitoring
4 and communications area, but I have not been given the oppor-
5 tunity to do that. That is my position.

6 JUDGE FRYE: When do you think that could be
7 done?

8 MR. FISSE: Depending on what the schedule is,
9 again, for the sheriff and Disaster Services Agency in attempt-
10 ing to gain the expertise to implement the plan in time for the
11 November 18 exercise, which I have no knowledge of at this
12 point in time, I would say within two or three weeks, but
13 depending on what their schedule is, and it is all --
14 well, 75 to 95 percent of DSA's time is involved in Zimmer
15 related plan related activities by his own estimate.

16 There are other things that he has to do with
17 regard to Disaster Services, but 75 to 95 percent of his time
18 is involved in this.

19 I don't know what his schedule is. I can find
20 that out. I would say two to three weeks.

21 JUDGE FRYE: In that period, then, you could
22 inform the company of all of the items that you consider to be
23 outstanding and subject to negotiation?

24 MR. FISSE: As it exists at this time, yes.

1 I understand that the board is dealing with it as it exists at
2 this time, but I understand that the board is also aware that
3 after the exercise there may be further revisions and further
4 things that are found necessary by FEMA which in and of itself
5 could act to resolve some of the problems associated with the
6 plan.

7 If FEMA makes a finding that it is not able to
8 be implemented because of the lack of the equipment we requested,
9 that may resolve the problem in and of itself.

10 JUDGE FRYE: Mr. Conner, do you want to respond?

11 MR. CONNER: Sir, yes. I think Mr. Fisse is sort
12 of jumping around a bit here, and I think he is missing the
13 point that if these contentions, or whatever, are to be
14 received, they must be specific, both under the .715C and the
15 implementing decisions and the board's order to indicate in
16 detail.

17 For that reason, I think these are just plain
18 bad and that they should be dismissed out of hand.

19 The equipment list that I referred to earlier
20 that is in this particular letter cannot give credibility to
21 the so-called contentions as Mr. Fisse would apparently have
22 them do.

23 On the other hand, we are quite willing and if
24 the board wishes in wearing its hat as encouraging negotiations,

1 to provide you with the list of equipment that we have already
2 agreed to provide to Clermont County and indeed provided much
3 of it already, totaling more than a million dollars of equip-
4 ment that we are giving the county.

5 So nobody can say we have been niggardly in
6 trying to deal with them. In fact, when you talk about dollars,
7 one wonders about Mr. Fisse's attitude because as soon as this
8 plan goes on the line, Clermont County will be getting in
9 excess of \$7 million in taxes which certainly gives them
10 plenty of money to do the support services that might be
11 required to carry out their emergency plan.

12 I do feel that it is important for the board to
13 give us some specific item, and I mean both the company and
14 Clermont County as a participant in this proceeding.

15 Mr. Fisse stated that at some point in time
16 unspecified a prosecuting attorney directed that all communica-
17 tions be made to him. Neither the company's representatives
18 who have been directly involved in that ever heard of that.
19 It is news to us.

20 We are mildly curious that the prosecuting
21 attorney is apparently new, supplanted Mr. Conover's responsi-
22 bility as the emergency plan coordinator or that he has some
23 delegation from the county board, and I think Mr. Fisse proved
24 our point by saying that he sent a letter on August 11 and then

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sometime before or after unspecified, Mr. Conover also sent a letter.

I think this simply illustrates that we really do not know who the responsible spokesman for the county is or are.

We would ask the board to, if it wishes, look at this equipment list and what we have agreed to do to indicate what, I think, you used the phrase "How far apart we are," I think if you look at this one page, you will see that we are not that far apart at all. We would like to hand you copies of these if you want to look at them for future guidance or in case you have to order some kind of negotiating conference.

JUDGE FRYE: Well, let's hold that for just a moment.

MR. CONNER: All right. So simply stated, I gather the board would give them some time to be more specific -- I have to say one other thing. I have not the foggiest idea what Mr. Fisse meant by saying about equipment or planning has been indicated for other areas.

We have not the foggiest idea what he is talking about. Perhaps we did not extend him the courtesy to which he thinks he is entitled, but he could write us a letter, make a phone call telling us what he wants anyway.

So we just do not know what the county may --

1 people in the county may have in mind in addition to the equipment
2 that is listed in here on eight pages, a million dollars worth
3 of equipment which indicates about five items as to which there
4 is any disagreement, the major two of which are vehicles.

5 JUDGE FRYE: Mr. Barth, do you have any further
6 responses?

7 MR. BARTH: I would like to, your Honor. The
8 negotiations between Clermont County and the Cincinnati Gas &
9 Electric Company for emergency planning as a result of the
10 Zimmer plant basically are not a concern of my agency, but the
11 board's concern is whether or not there is a legitimate issue
12 by the county which could be litigated in this matter.

13 The county knows the equipment it has. It
14 knows the equipment that it feels it needs in order to implement
15 the plan.

16 Now, the time to set forth what equipment they
17 need to execute this plan and why they need that equipment is
18 not tomorrow, not the next day, not two years from now. Now
19 is the time for the county to say that we need X, Y and Z, and
20 that is why we need it and that is why we have to have it.
21 That is what the ALAB Board says, and that is what it says
22 is responsible by these.

23 That is what we are here for. That is what I
24 want. That is what we were promised. We do not have it.

1 I continue my motion to strike the document. Thank you, your
2 Honor.

3 MR. FISSE: If I may in regard to a couple of
4 issues, as far as the tax that might be received by the county,
5 the county did not ask Cincinnati Gas & Electric Company to
6 place its plant there. They came out there and knew that they
7 would incur tax liability, but with regard to Mr. Barth, I take
8 that as a very personal attack on my professional integrity
9 and capability.

10 This board has the power to reprimand, censor or
11 suspend from proceedings. I would not ask for that, but I
12 would ask the board to direct him to at least apologize to me
13 in front of all these people and all these other participants
14 for those statements regarding professional capability.

15 MR. CONNER: May the record reflect that I join
16 in Mr. Barth's comments.

17 MR. FISSE: And I would ask that Mr. Conner
18 apologize as well.

19 JUDGE FRYE: Gentlemen, I would hope that we
20 could avoid getting personal.

21 Let me go back to the substance of the matter,
22 and what I am wondering is whether in that two-week period, say,
23 that the county and all of the various officers of the county
24 who would have some voice in this get together with the company

1 and try to put the final touches on some sort of a settlement,
2 and in the event that that is not possible, the county would
3 then file very specific contentions as to what they feel, the
4 county feels, is inadequate with regard to the emergency plan.

5 MR. FISSE: At this point I can say that we will
6 make every effort to meet within the next two weeks.

7 However, the company is going to be just as
8 involved, I assume, as DSA and the sheriff's office and those
9 others in preparing for November 18.

10 JUDGE FRYE: I am following your suggestion of
11 a two- to three-week period. Mr. Conner, is that a feasible
12 time period?

13 MR. CONNER: Certainly. We will meet with them
14 at any time. I believe it is possible for people to do more
15 than one thing in a two-week time frame.

16 MR. FISSE: We will certainly attempt to do that.
17 If that is not possible, I would like the board to at least
18 specify what -- in my own opinion, I don't know how you can be
19 more specific than to say that Clermont County does not have
20 sufficient monitoring capability or access to the funds needed
21 to replace, service, test --

22 JUDGE FRYE: As I understand the situation that
23 exists now between Clermont County and the company, correct me
24 if I am wrong, you basically have reached agreement on a good

1 portion of your outstanding issues between you?

2 MR. FISSE: Agreement has basically been reached
3 on those items of equipment to be supplied.

4 JUDGE FRYE: I see.

5 MR. FISSE: No agreement has been reached; in
6 fact the company has taken the position that they will not be
7 responsible for maintenance, testing, et cetera, et cetera,
8 replacement costs under certain conditions.

9 JUDGE FRYE: Without getting into the details of
10 the negotiations, the point I am trying to make is that if the
11 impression that I am getting is that there is a substantial
12 amount that has already been agreed to, would that be correct?

13 MR. FISSE: That is correct.

14 JUDGE FRYE: I would hope that you would be able
15 to resolve whatever else may be outstanding. If you cannot, I
16 would hope that what you would file by way of your contentions
17 would address just those matters that were not resolved through
18 the negotiating process rather than an overall broad statement
19 that the county does not have the financial resources to do
20 thus and such.

21 MR. FISSE: I think the board should be aware
22 that there was a discussion undertaken prior to the convening
23 of this hearing which I had mentioned that we would make every
24 attempt to provide a detailed list of some items of the equipment

1 or the problems, which apparently Mr. Conner chose to take the
2 stand on, which he has every right to do, but there was an
3 attempt prior to this to arrive at the agreement that the board
4 is now suggesting.

5 JUDGE FRYE: I think it would be much better for
6 all concerned who are able to arrive at an agreement. If you
7 can't, we will hear the issues that are outstanding and resolve
8 them, but I think that it would be better for all concerned if
9 it is possible for you to reach agreement without having to go
10 through the necessity of a hearing.

11 MR. FISSE: I certainly agree, and that is what
12 we intend to work towards.

13 JUDGE FRYE: I would hope that you could do it
14 in a spirit of cooperation.

15 MR. FISSE: I have made every effort to cooperate,
16 and I will continue to do so.

17 JUDGE FRYE: I direct this to --

18 MR. FISSE: I am not the one who started the
19 personal attacks.

20 JUDGE FRYE: Let's drop the personal attacks.
21 I think we will get along much better if we all calm down on
22 that point.

23 MR. CONNER: Mr. Chairman.

24 JUDGE FRYE: Yes.

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MR. CONNER: The same suggestion I made yesterday with respect to another party, if Mr. Fisse would simply read in what his additional items are to the court reporter after this prehearing conference or something like that, it could be all there and supplement it to get them on the record as quickly as possible, if he indeed knows what they are.

JUDGE FRYE: At this point, we are talking about items that are subject to negotiations. I do not think they need to come into the record.

MR. CONNER: Some are available right here and now.

JUDGE FRYE: If your negotiations are unsuccessful, then would be the appropriate time to put it to the record, or if you want to include it as a settlement agreement that you want the board to approve in the event that you are successful in your negotiations, that would also be appropriate.

MR. CONNER: Again, it is a question of meeting with the right people.

JUDGE FRYE: Yes.

MR. CONNER: I would ask the board to require Clermont County to submit this, not as soon as possible or something as nebulous, but say within two weeks, by November 13, so that we will have something to deal with rather than coming back here at the time of the hearing and saying, "Well, I have

1 not been able to meet with the people."

2 MR. FISSE: I would advise the board that that
3 is the situation if it takes two or three days to meet with
4 these people and resolve these issues and that interferes with
5 their preparation for this November 18 scheduled plan.

6 JUDGE FRYE: Mr. Fisse, when can you find out
7 what their schedule is?

8 MR. FISSE: I can find out from a call placed
9 today, this morning.

10 JUDGE FRYE: Let me suggest that perhaps it
11 would be helpful if you did that and perhaps you can all arrange
12 a date this morning.

13 MR. FISSE: Certainly, I will do that.

14 JUDGE FRYE: We will expect to hear by the 13th
15 of next month how things have progressed and expect in the event
16 that you cannot resolve your remaining differences that you
17 will have specific contentions filed.

18 MR. FISSE: Certainly.

19 JUDGE FRYE: Let's move on now. Perhaps it would
20 be a good time to take a short break.

21 We will take a ten-minute break. When we come
22 back, we can move on to the contentions of the City of Mentor.

23 (Short recess taken.)

24 JUDGE FRYE: Let's go back on the record.

1 Mr. Conner, do you want to lead off with the
2 City of Mentor's specific contentions?

3 MR. CONNER: Yes, sir. Here, again, I think that
4 rather than try to go through these seriatim, that it is perhaps
5 better to try to --

6 MRS. REDER: Excuse me. I could not really hear
7 because of the gentleman in the back of the room talking.

8 MR. CONNER: Anybody that calls me a gentleman
9 is entitled --

10 MR. REDER: She called the other fellows gentle-
11 men.

12 MR. CONNER: She was half right. What I would
13 say is that the filings by Mentor are based upon two fundamental
14 misconceptions.

15 The first is that they challenged the plans of
16 Kentucky and Campbell County because Mentor was not directly
17 involved, and I have sympathy, but it is not my duty nor is it
18 that of the NRC or of this board to tell the State of Kentucky
19 or Campbell County how it will do what it does to arrange
20 protective actions for members of the public.

21 For example, one illustration is: Why wasn't
22 Mentor talked to on evacuation problems?

23 Well, there is no police department in Mentor as
24 we understand it, so, you know, who would you talk to on that?

1 The FEMA procedures, of course, establish ways for input from
2 any citizen into this and apparently from what I have read,
3 that route has not been followed, and I simply -- the applicant
4 has no way of knowing the extent to which Mentor has talked
5 with Campbell County people or the State of Kentucky people
6 as to its particular interests or particular things that should
7 be done.

8 We submit that Kentucky and Campbell County has
9 prepared emergency plans which fully meet the requirements of the
10 NRC and FEMA as set forth in 0654 and that these plans in fact
11 provide reasonable assurance for the protection of the public
12 in the unlikely event that special protective measures up to
13 and including evacuation might be required, and we think this
14 is the extent to which this board can go.

15 There is no requirement that Mentor be directly
16 involved.

17 The second thing is that Mentor apparently has
18 the conception that an emergency plan must be absolute, final,
19 set in concrete, written in advance, not subject to change and
20 arranged now and no departures ever allowed.

21 For example, OJ of their contentions for the
22 storage and subsequent use of a radiological emergency of
23 uncontaminated feed and water for livestock -- well, in the
24 event, the unlikely event, such things were ever required, it

1 pretty routine, health physics, to get the proper authorities
2 in the affected jurisdiction to simply say: Do not use the
3 milk. Do not use the fodder. Do not use any of this for the
4 time being.

5 But you cannot anticipate which way the wind
6 will blow in the unlikely event that the accident ever occurred.

7 Here, again, we are talking about health and
8 safety of people, not animals, so there is plenty of opportunity
9 to protect the people given the farthest-out scenario.

10 well, like Windscale, given the old Windscale
11 case, there is still ample time to protect the public from milk
12 or any of the animals ingesting radioactivity from grass or
13 whatever.

14 So we think these are the two fundamental areas
15 in the Mentor approach to participation here, and for that
16 reason, we think that none of these contentions should be
17 granted.

18 Moreover, we do think that many of them are
19 answered and in fact the good people of Mentor simply have not
20 had an opportunity to apparently go through all of the material
21 in the application and the emergency plans.

22 For example, 1-A -- 4-A says: "Neither plan is
23 cross-referenced to the evaluation criteria of NUREG-0654."

24 This is plain wrong. They are there. I do not

1 know why the mistake was made, but the cross-references are
2 there and have been there and are in the public document room
3 and so forth. So I think this illustrates the basic lack of
4 understanding of the situation.

5 I would submit that probably in the event there
6 are any contentions ultimately granted for litigation in this
7 case that what the City of Mentor would hear at that time would
8 probably answer their questions if they come to accept the fact
9 that the local jurisdictions, the State of Kentucky and Campbell
10 County, did not choose to involve them in the emergency planning
11 exercise and preparation and that we have simply no control over
12 that, nor does this board.

13 JUDGE FRYE: Mr. Barth, do you have a comment?

14 MRS. MOORE: I would like to take these conten-
15 tions approximately one by one because the Staff has a few
16 points to make with regard to them that do not necessarily
17 lend themselves to generalities.

18 In the first contention, this contention lacks
19 the specificity requisite to formulate this as an issue in the
20 proceeding since Mentor has not demonstrated how its failure
21 to participate or the lack of collaboration within the State
22 of Kentucky has an effect on the plan.

23 They say the plan is inadequate, but they do not
24 specify which portions of this plan would be inadequate due to

1 the lack of collaboration, if there is one.

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2 JUDGE FRYE: We are starting with No. 1 on page 1,
3 right?

4 MRS. MOORE: Right. Does that need repetition?

5 MRS. REDER: I could not hear.

6 MRS. MOORE: I will reiterate briefly.

7 MRS. REDER: I did miss part of her statement.

8 MRS. MOORE: I will repeat it briefly. With
9 regard to Contention 1, it is the Staff's position that this
10 contention lacks the specificity requisite to make this a liti-
11 gable issue in this proceeding and the basis for that portion
12 is that, though the contention states the plan is inadequate
13 because of lack of collaboration between Mentor and the
14 State of Kentucky, it does not specify which aspects of the
15 Kentucky or Campbell County Plans would be affected by the lack
16 of Mentor's participation.

17 With regard to Contention 2, it is merely more
18 of a statement, as far as we understand it, that the plan is
19 self-repudiating since it also relies on standard operating
20 procedures.

21 We think the statement in 0654 clearly states
22 that the plan and the standard operating procedure are comple-
23 mentary.

24 Contention 3 discusses the plans for Indiana or

1 lack of plans for Indiana. We believe this is clearly beyond
2 the scope of Mentor's interest as a governmental entity in this
3 proceeding.

4 Mentor is representing its citizens, and those
5 people are located in the City of Mentor and their participation
6 in this proceeding should thus be restricted to that interest,
7 and that is the interest of the citizens in Mentor.

8 Mr. Conner has already addressed Contention No.
9 4 about the cross-reference, 4-A, I believe it is, so I will
10 leave that one.

11 Contention 4-B also lacks specificity. It
12 refers to an evacuation time study. The exact study is not
13 identified, and I think we need to know which study we are
14 talking about before we can litigate anything about it.

15 There is no basis presented with any specificity
16 as to the error in the study and how it affects the citizens
17 of Mentor, and it is Mentor again that we should be focusing
18 on in this proceeding as far as the participation of that city
19 is concerned. So, therefore, we would say that 4-B lacks the
20 specificity to litigate in this proceeding.

21 The same is true with regard to 4-C which is
22 alternative evacuation routes. Insofar as this contention refers
23 to roads, specific roads in and around Mentor, it would be
24 adequate.

1 However, there is nothing in the contention that
2 tells us which roads are concerned and where they are in rela-
3 tion to Mentor, and we think this is necessary because of the
4 city's particular participation in the proceeding.

5 The same is true for 4-D. There is a lack of
6 specificity. It merely states that Route 8 is an undesirable
7 road for evacuation purposes with no elucidation of why. We
8 think this elucidation would be necessary to make this an
9 acceptable issue to be litigated.

10 4-E refers generally to the schools in the ten-
11 mile area and the Staff believes that this contention, this
12 subcontention, must again be limited to the schools in Mentor
13 or the schools attended by children living in Mentor.

14 The Contention 4-F deals with the storage of
15 potassium iodide. We understand that that is being conducted
16 by the State of Kentucky and could be a dispute between Mentor
17 and the State of Kentucky, but we would not object to the
18 particular contention since it is limited to Mentor.

19 4-G, evacuation of elderly and handicapped
20 people, must again be limited to Mentor and there must be more
21 specification of what facilities principally are lacking for
22 the evacuation of these people, the type of number of people
23 we are referring to, and what is inadequate about the current
24 evacuation procedures.

1 4-H, the fire department, this contention does
2 show that there is any relationship between the Mentor Fire
3 Department and emergency planning in Campbell County or in the
4 State of Kentucky.

5 It seems to the Staff that such a relationship
6 must indeed be established.

7 This notification of Contention 4-I refers to
8 the early notification system. We know in fact that there is a
9 siren in Mentor, for one thing, and that is the staff's under-
10 standing that there will be radios provided to the citizens
11 in Mentor.

12 Part of this contention deals with compensation
13 for rental of space in homes, presumably for the radios. We
14 think this is not an appropriate subject for litigation since
15 obviously whether one has a radio in one's home is particularly
16 a voluntary act and you do not have to keep it, so we do not
17 believe that this kind of a subcontention is appropriate.

18 We would need specification as to why and how
19 the warning notification or early notification system in Mentor
20 and relating to the citizens of Mentor is inadequate, not only
21 that it is merely designed to notify 40 percent of the people
22 in the ten-mile area. That is not sufficient enough for
23 Mentor's participation.

24 J talks about the storage of uncontaminated food

1 for animals. First of all, we are not quite sure what kind of
2 animals we are talking about and, second of all, I believe
3 Mr. Conner has already addressed this in saying that the plans
4 are to be geared to the health and safety of the public and
5 the appropriate actions must and should be taken at the time
6 to determine what food should be given to animals or people
7 or whatever.

8 K, Mentor gets water, we understand that Mentor
9 gets water from wells. If this is incorrect -- and not from
10 the Ohio River -- if this is incorrect, the contention should
11 at least be redrafted to show what kind of water system we are
12 talking about, its location, and how it is affected by the lack
13 of monitoring.

14 L, there is no communication between the City of
15 Mentor and Zimmer, and I think this contention and the staff
16 believes this contention requires more specificity as to why
17 this lack of communication, if it exists, is pertinent, and
18 why the system as it does exist, whatever communication system
19 is presently available, is inadequate.

20 And the complaint that Mentor states in
21 Contention 4-M, that they have no role in the exercise, is
22 really a rather general statement. Again, that is between the
23 state and local and county authorities, and we believe this is
24 not an appropriate issue for litigation in this proceeding and

1 by the time the exercise is completed, that issue may well be
2 taken care of.

3 So in general, the Staff's position is that
4 many of these contentions presently lack the required specificity
5 and basis for these contentions.

6 While we realize that Mentor is an interested
7 state or municipality and they could come into this proceeding
8 with taking a position, the Staff believes that now it is
9 incumbent upon them, since they want to take an active role
10 in this proceeding, to provide issues with sufficient specificity,
11 but we can come here and litigate the issues in an appropriate
12 way and make a full and complete record on those issues.

13 To do that, we need specific issues on which we
14 can present evidence in the proceeding. Thank you.

15 JUDGE FRYE: Thank you very much, Mrs. Moore.

16 Do you have a question?

17 MRS. REDER: Could I ask a question before the
18 City of Mentor responds?

19 JUDGE FRYE: Well, it is your turn next.

20 MRS. REDER: There seems to be a question of the
21 use of the word specificity and reasonable specificity, and I
22 am referring to 10 CFR parts 2.715C, I believe it is, and
23 I don't really -- are we expected to be specific or reasonably
24 specific, to do this do we have to outline in detail? What is

1 it?

2 JUDGE FRYE: Well, you know we went through this
3 to a certain extent with the contentions of ZAC yesterday, and
4 I think that, as a rule of thumb, and I realize it is not always
5 easy to follow it, but I think that what we are trying to get is
6 a statement of contentions which puts the other parties on
7 notice as to precisely what it is that you have concerns about,
8 what points you plan to address at the hearing so that if you
9 say in very general terms that there is no emergency plan,
10 for instance, affecting Mentor, that is not going to really
11 tell them very much. Or if you say that the emergency plan is
12 inadequate, that doesn't tell them very much. You have to tell
13 them in what respects the emergency plan is inadequate.

14 MR. REDER: I can understand some of that argu-
15 ment about lack of specificity.

16 JUDGE FRYE: Let me interrupt you. I am sure
17 you have some opinions about the specificity of your conten-
18 tions and so on. Why don't you just address Mr. Conner's
19 arguments to the extent that you want to first. He made a
20 more general argument. Then we can move on from there.

21 MR. REDER: In regard to Mr. Conner's statements,
22 I think it is not NRC's duty to involve Mentor, according to
23 our Contention 1 and according to our citations here.

24 I hope the board will understand that I am not

1 an attorney, and I cannot trip these citations off my tongue
2 more quickly than people can write them down as the attorneys
3 here can.

4 Indeed I do not have access to all of the cita-
5 tions at present, but in regards to Mr. Conner's statement
6 that it is not NRC's duty to involve Mentor, I think we are
7 pretty specific here in Contention 1.

8 We cite Federal Register and New Reg. 0654
9 and so forth.

10 I think the whole rationale behind the concept of
11 emergency planning implies the involvement of local governments.
12 We have made a quotation here in which we say, from New Reg.
13 0654, most definitely says that even villages must be involved.

14 JUDGE FRYE: Let me ask you: To what extent
15 has the city been involved? I take it not at all?

16 MR. REDER: Only to the extent that we are here.
17 You mean in the plans themselves?

18 JUDGE FRYE: In the formulation of the plans.

19 MR. REDER: To the best of my knowledge, the
20 only involvement was a visit by the state and county DES people
21 to the City of Mentor early this year. It was an informal
22 meeting in which the city received promises and assurances,
23 verbal, however, that the city would be involved in the actual
24 planning and writing of the plans.

1 As we say in our cover here, we waited patiently
2 with hope and expectation that we would be involved, and we
3 weren't. So that is the extent of our involvement.

4 JUDGE FRYE: Do you know why this happened?

5 MR. REDER: No, I do not know why.

6 JUDGE FRYE: How large a city is Mentor?

7 MR. REDER: Population somewhere around 250
8 people.

9 JUDGE FRYE: 250 people.

10 MR. REDER: Yes, sir, although I do not really
11 see the relevance of the population of the city and --

12 JUDGE FRYE: It was more a personal curiosity
13 on my part than anything else.

14 MR. REDER: All right. I think that the 250 or
15 so people in Mentor should have the assurances of the Federal
16 Government, the same assurances, as the people of Cincinnati
17 or the people of Kentucky or Ohio or whatever.

18 JUDGE FRYE: Sure. There was some allusion to
19 procedures that FEMA may have for participation in their
20 evaluation of the emergency plans. Do you have any knowledge of
21 that or have you investigated that?

22 MR. REDER: We have no knowledge whatsoever.
23 I think what we are trying to make clear in these contentions
24 is that the city has not been involved in any way. I really

1 think that is a direct violation of the whole concept of planning.

2 JUDGE FRYE: I see. If you were to be involved,
3 I take it you would have to be involved with the preparation of
4 the county plan and the state to the extent that the state plan
5 might also --

6 MR. REDER: I think that is reasonable.

7 JUDGE FRYE: I take it really that what your
8 concern is here is the fact that you have not been brought
9 into the formulation of these plans?

10 MR. REDER: That is only one of our concerns.
11 We are also concerned about the adequacy of the plans and the
12 protection of the people in Mentor. We think the City of
13 Mentor should have the legal authority and the responsibility
14 to protect the health, safety, and interests of the people of
15 Mentor.

16 JUDGE FRYE: Have you made some effort to contact
17 the county officials?

18 MR. REDER: Many occasions, yes.

19 JUDGE FRYE: And which county is that?

20 MR. REDER: This is Campbell County.

21 JUDGE FRYE: And Campbell County is not participat-
22 ing in this proceeding, as I understand it?

23 MR. REDER: No.

24 MRS. REDER: I would like to add something to

1 what my husband had said earlier. Several years ago when the
2 City of Mentor became interested in participating in these
3 hearings, we visited the state officials. We made numerous
4 trips down to Frankfort. We talked with local officials.

5 We talked with the radiation control branch of
6 Kentucky government. We talked with military affairs. We have
7 talked to local fire departments, local school people, any
8 number of governmental branches, and we have tried to get some
9 reassurances about the interest which we had concerning Mentor,
10 its citizens, its children, evacuation, and we were included
11 for a while in the attendance of a couple of meetings held by
12 the Disaster Emergency Services local branch.

13 We did attend some of these meetings. We were
14 notified of some of these meetings.

15 Then when Campbell County and the State of
16 Kentucky decided that they were no longer going to write the
17 plan, that they would have Stone and Webster, paid for by
18 CG&E, write the plan, that was the end of our participation.
19 We were no longer notified.

20 We no longer got to voice those concerns.
21 In fact, all the issues which we have brought up to that point
22 have completely been ignored in these plans.

23 It is almost as if they said, "Well, this is
24 too much trouble. We will cut the plans right here."

1 Our children have not -- I think there are two
2 paragraphs concerning the school children, Mentor's school
3 children, that attend St. Peter and Paul in the Campbell
4 County School System. We were told when we had a public
5 hearing that we should not worry about these aspects because
6 they would be covered SOP, standard operating procedure.

7 However, we can't get an answer as to when that
8 will be available, who is responsible for it, will the equip-
9 ment be provided, so that a true evacuation can occur for all
10 the children within a reasonable time, and we can't get the
11 answers.

12 That is one reason why we are faced with this
13 position of writing contentions.

14 JUDGE FRYE: To what extent do you see your
15 position or your concerns as being the same as those that are
16 being voiced by ZAC?

17 MRS. REDER: In most instances, I do not think
18 that they are the same. There is some overlapping, but we are
19 concerned primarily with the City of Mentor and its people.

20 JUDGE FRYE: Zimmer Area Citizens of Kentucky
21 would include --

22 MRS. REDER: Children outside of Mentor, children
23 in the county, children that attend other school districts,
24 will it include all of Kentucky?

1 JUDGE FRYE: You don't think that your concerns
2 are the same as that of ZAC because of the fact you do not
3 feel that ZAC is representing the people of Mentor? Is that
4 basically it?

5 MRS. REDER: No.

6 MR. REDER: Not that in particular, not as we
7 are attempting to do here.

8 JUDGE FRYE: What I was wondering and what I
9 was leading up to was whether it might be possible to consoli-
10 date your participation with the participation of ZAC.

11 MR. REDER: To the degree that they overlap,
12 possibly, although I still do not think -- since the ZAC-ZACK
13 contentions involve two states, I do not think there would be
14 a great deal in common.

15 JUDGE FRYE: Mr. Dennison, do you have any views
16 on this?

17 MR. DENNISON: I am not sure, at least I do not
18 at this moment perceive the potentiality of a conflict. I do
19 recognize particularly on one of the contentions which, again,
20 deals with school children and I can certainly sympathize with
21 Mrs. Reder's commentary relative to the evacuation SOP.

22 As recently as September 28 or 29 I attended
23 such a meeting at the Kentucky Disaster Service people and
24 Mr. Ficke from CG&E with the Campbell County School people and

1 at that point nobody knew how any of this was going to occur
2 save and except that there was some suggestion, which was
3 refused by the Campbell County School people, that they were
4 going to use TANK buses and use such church buses and things
5 of this nature.

6 So to come swiftly to the point, I would think
7 that certainly in the area of schools, that I would in effect
8 absorb the Mentor children from the standpoint of the whip of
9 the contention that ZAC is advancing relative to school
10 children. And to that extent, I would have no difficulty in
11 doing whatever this board would please that I do.

12 I might also note for the record there has been
13 commentary about FEMA and public participation through that.
14 I spent three days on the telephone to FEMA at their Chicago
15 office to discover that the majority of FEMA has no relationship
16 to radiological emergency planning and that you find one fellow
17 and it seems to be one fellow in the region, which I might add
18 that region is for Ohio to have a -- they have a region for
19 which governs Kentucky. So my remarks are addressed only to
20 region 4.

21 Mr. Gordon Winkler, the best he could suggest
22 to me if I wished, I could contact their counsel in Washington,
23 a gentleman by the name of Spencer Perry.

24 The upshot of that was that Kentucky had had some

1 form of hearing county by county. This was all prior to any
2 plans. At first, he told me that the purpose of the public
3 participation was to comment on the plans, but that there was
4 on November 17 at 7:00 p.m. public participation in Ohio at a
5 meeting which would be scheduled near the plant.

6 They had the date and the time. I asked him
7 the place and that he did not know, advising me that I could
8 speak with somebody in the state division of the emergency
9 government agencies for the State of Ohio as to where this
10 place was to be.

11 So that I do question significantly this concept
12 being advanced by Mr. Conner that there is some sort of public
13 input, other than these particular procedures here as it pertains
14 to the plans themselves.

15 JUDGE FRYE: Thank you very much, Mr. Dennison.
16 I particularly appreciate your willingness to help out insofar
17 as the contentions of Mentor, your contentions of ZAC in that
18 they overlap.

19 I have to say, and I say this without having a
20 chance to give the matter an awful lot of fact, that I am not
21 at all certain what jurisdiction this board might have with
22 respect to giving you any relief so far as participation in the
23 formulation of plans that are a county function.

24 That is a matter that I think we will have to

1 address obviously in looking at the contentions.

2 I think it will be helpful, and I get the
3 impression that you obviously want some way to make some
4 meaningful input into what is going on here.

5 MRS. REDER: I would also like to add at this
6 time that it is not just the City of Mentor, but locally the
7 areas most affected by this plant, the City of Alexandria, the
8 City of California, the City of Mentor have not been involved,
9 that it seems as if everyone has made up their mind CG&E is
10 going to negotiate with the state, who is going to run through
11 its channels of communications down through the county, and we
12 are going to have political figures sitting in the County
13 Judge's executive office determining whether or not to sign
14 letters of agreement, and the people involved have been com-
15 pletely ignored.

16 If they have tried to voice these opinions, they
17 have been ignored totally, and I think the real question comes
18 down to whether or not the state, CG&E, and other people can
19 negotiate a way to weigh the rights of the people in this area.
20 I think it is an extremely important question.

21 JUDGE FRYE: Dr. Hooper has a question.

22 JUDGE HOOPER: Mr. Reder, either Mr. or Mrs.
23 Reder, to what extent does this document that you furnished us
24 represent something, a document that comes from having studied

1 the Campbell County Plan? Is that a result of having studied
2 the Campbell County Plan?

3 MRS. REDER: Yes.

4 JUDGE HOOPER: And the contentions that you have
5 written here are taking that into consideration; is that
6 correct?

7 MR. REDER: Yes, sir.

8 JUDGE HOOPER: For example, when you say that
9 the road is not good, Route 8, I think that is fairly specific,
10 I believe.

11 You can't get much more specific than that unless
12 you have an engineering study, but I say that -- is that road
13 near Mentor and it serves Mentor?

14 MR. REDER: It is near Mentor, and it is a
15 designated major evacuation route which the people of Mentor
16 would use.

17 JUDGE HOOPER: So this contention was written
18 after having read the plan and you find this road is not
19 adequate; is that correct?

20 MR. REDER: Yes.

21 JUDGE HOOPER: The other contentions, for
22 example, 4-B, would be things that you had discussed after
23 having looked at the emergency plan and all of these things?

24 MR. REDER: Yes, and I intend to give a specific

1 example or so. I didn't think it was necessary or even proper
2 to put in the contentions, but I can and will at this time give
3 a specific example.

4 If you wish, we can look at the plan itself and
5 we can point out other examples.

6 JUDGE HOOPER: In other words, you are perfectly
7 capable of refining these contentions so that they are very
8 highly specific, is that correct, but that you have not done
9 so?

10 MR. REDER: Yes, but this doing so -- I thought
11 that this type of thing would be a proper subject for the
12 hearing itself rather than for the contentions, and I was as
13 specific as possible to give the general areas of our concerns,
14 but if you want a particular example of an underestimation of
15 evacuation times, I would be most happy to give it to you.

16 JUDGE HOOPER: I see. Thank you. That is fine.
17 You have answered my question.

18 JUDGE FRYE: I see counsel for the State of
19 Kentucky is here. I do not know whether you are in a position
20 to respond to any of the concerns that have been raised or not,
21 but if you are, we would appreciate hearing from you.

22 MR. MARTIN: Mr. Chairman, I have not personally
23 taken part in any of the meetings that have gone on. I know
24 some of these meetings have been public, and I think

1 Mrs. Reder has mentioned that she has attended many of these
2 meetings, but the question before this particular board is
3 whether or not the emergency plans will in fact be workable,
4 and the extent of the involvement by local people is not
5 really an issue that this board has to decide.

6 If there is a hearing on these contentions,
7 I am sure we would be able to produce witnesses that would
8 certainly describe how the plans are formulated for the board's
9 information.

10 I would point out that state law is much different
11 from federal law in that there is no counterpart to the Federal
12 Administrative Procedures Act.

13 However, there is a public meetings law which
14 requires many meetings to be open to the public, and I under-
15 stand there have been many public meetings concerning these
16 topics.

17 I would also believe that FEMA has scheduled
18 an appellate meeting on the 16th in New Richmond before this
19 exercise takes place in November and also a public critique
20 of the exercise on the afternoon of the 19th.

21 I don't know exactly where that meeting is going
22 to take place, but from what I have heard, I cannot agree that
23 there has been very little opportunity for local input in the
24 drafting of these plans to this point. Thank you.

1 MRS. REDER: Is Mr. Martin referring to the
2 meeting on the 17th; when is the meeting date?

3 MR. MARTIN: Well, I have notes on an appellate
4 meeting on the 16th at 7:00 p.m. in New Richmond, but I don't
5 have a notice of that meeting.

6 JUDGE FRYE: It seems to me that we have got
7 the city's position. We have got the responses now from the
8 utility and the staff.

9 I do not know whether Mr. Conner wanted to
10 add anything or Mrs. Moore wanted to follow up on anything.

11 MR. CONNER: I would like to make about three
12 quick points.

13 JUDGE FRYE: Okay. Mr. and Mrs. Reder, did you
14 have any other points that you wanted to make before we move on?

15 MR. REDER: I had intended to respond to the
16 rest of Mr. Conner's points and also to Mrs. Moore's points, if
17 you wish me to.

18 I would like to add a couple of things anyway.

19 JUDGE FRYE: Sure.

20 MR. REDER: Mr. Conner yesterday and today has
21 repeatedly referred to the unlikely event that there will be a
22 radiological accident, and I refer us all to pages 6 and 7 of
23 New Reg. 0654 which says: "The range of possible selection
24 for a planning basis is very large starting with a zero point

1 of requiring no planning at all because significant off-site
2 radiological accident consequences are unlikely to occur;
3 2, planning for the worst possible accident regardless of its
4 extremely low likelihood."

5 I think that statement says a lot.

6 Mrs. Moore repeatedly referred to our lack of
7 specificity, and I would point out to the board that the City of
8 Mentor was not involved in any preconference telephone conference
9 in which these details were discussed or they possibly could
10 have been prepared to be much more specific.

11 I would also like to say that her points about
12 the relevance of the plans for Mentor's participation in the
13 planning and so forth, that the people of Mentor or the city,
14 neither lives in a vacuum; that we are all part of a larger
15 contention and the people receive their food supplies from the
16 Greater Cincinnati markets.

17 People in Mentor worked in various parts of
18 Greater Cincinnati and that, by the way, includes Northern
19 Kentucky. We all have friends and relatives in the Greater
20 Cincinnati area. We don't live in a vacuum.

21 Daily people come in and go out of Mentor to all
22 parts of the area, so I think that point lacks a lot of
23 validity.

24 She said that Indiana, our mention of Indiana,

1 is beyond Mentor's scope in the proceedings. Well, what I have
2 just said refers to that also, that we receive some of our food-
3 stuffs from Indiana. It is all part of the Greater Cincinnati
4 market.

5 Mrs. Moore did not leave us much, I suppose, of
6 the possibility of 4-F, the potassium iodide. She says that
7 that would -- she does not leave us much else.

8 4-H, as I have it here, she said there was no
9 relationship between the local fire department and Campbell
10 County or something to that effect, or the people of Mentor or
11 something to that effect. This is the Eastern Campbell County
12 Fire Department.

13 Maybe I should have spelled it out in those
14 terms, but that local fire department is just a few yards from
15 the city limits of Mentor and serves the people of Mentor as well
16 as the people in the surrounding communities.

17 JUDGE FRYE: The local fire department is not a
18 city function?

19 MR. REDER: No, it is not, but it does serve the
20 city as well as parts outlying the city. So I really can't see
21 how we can separate the interests of the people of Mentor from
22 our friends and neighbors in the surrounding communities,
23 although if you wish us to do it, I suppose we could do it.

24 JUDGE FRYE: Mrs. Moore did raise one question

1 about whether you obtained your public water supplies from
2 wells or from a river.

3 MR. REDER: I made a phone call just a couple
4 of days ago to the Campbell County Water District which is a
5 water transmitter, I suppose you would say.

6 They don't own any treatment facilities, but
7 they purchase their water from the Newport Treatment Facility
8 and on occasion, times of peak demand, from also the Covington
9 or Kenton County Water District.

10 And that office assured me that the City of
11 Mentor was served by the Campbell County Water District.

12 JUDGE FRYE: I see.

13 MR. REDER: I do not live in Mentor and I do
14 not have that particular knowledge at the present time, but on
15 the basis of that telephone conversation, I wrote this conten-
16 tion.

17 JUDGE FRYE: Are you through or do you have some
18 more?

19 MR. REDER: Well, I wanted to know if you want
20 a specific example of an underestimation of evacuation times,
21 which I would be perfectly happy to do for you right now.

22 JUDGE FRYE: If you have got it there.

23 MR. REDER: Well, I do have it in summary anyway.
24 I am speaking of the Stone and Webster report in both the

1 Campbell County and Kentucky Plans.

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2 The text says that the evacuation time is a
3 sum of the times of notification, mobilization and travel, so
4 there are three aspects to the total evacuation time.

5 On page 5 -- 7 of that report, it gives the
6 mobilization time for the people within the zero to two-mile
7 radial distance of the plant as 30 minutes or one-half hour.

8 On page 5 -- 7 it says the vehicle speed is
9 assumed to be 25 miles per hour, and on page 4 -- 1, in an
10 effort to be conservative, that the distance or distances used
11 in these computations would be twice the radial distance to
12 the edge of the EPZ, the ten-mile EPZ.

13 On Table 31, I do not have the page number here,
14 but Table 31 of the Stone Webster report, I am speaking
15 specifically of the zero to two-mile radial distance, and I do
16 not remember the term they use, but it was areas 1 and 2,
17 whatever, that the notification time is .25 hours or a quarter
18 of an hour.

19 The mobilization time is given as .5 hours or
20 one-half hour so three-quarters of an hour for notification and
21 mobilization.

22 Then for good weather evacuation it gives an
23 evacuation time estimate. Now, this would be the total of
24 three parts as one hour. Well, we have already used up 45

1 minutes of that hour, and we are left with 15 minutes.

2 Assuming that the person lives two miles from
3 the plant and has to travel eight miles to reach the edge of
4 the ten-mile radial distance, he has eight miles to go. He
5 has eight miles to go then in just the 15 minutes that are
6 left.

7 So 15 minutes traveling eight miles means that
8 he must travel 32 miles per hour just to travel those eight
9 miles. This is in variation with the vehicular speed given
10 of 25 miles per hour.

11 As I said, the study assumes that a distance,
12 traveling distance, is twice the radial distance. We are not
13 talking about eight hours. We are talking about 16 hours and
14 doubling the distance, we certainly have to double the rate
15 so this person must go 64 miles per hour in order to reach the
16 edge of his evacuation zone.

17 I think that is a gross error in itself.
18 There are others.

19 JUDGE FRYE: Surely. Well, does that end your
20 comments?

21 MR. REDER: Unless the board has further ques-
22 tions.

23 JUDGE FRYE: I do not think we do at this point.
24 Let's hear from Mr. Conner and Mrs. Moore.

1 MRS. REDER: I would like to add something, if I
2 may, before Mr. Conner begins.

3 JUDGE FRYE: Yes.

4 MRS. REDER: I would like to respond to a remark
5 that Mr. Conner has made on several occasions.

6 He has spoken about the plans and that we expect
7 to find some plans set in concrete. Well, that is not the
8 case.

9 Obviously we do want these plans updated, but if
10 you can't take a set of plans and at any one time get them to
11 work, you are never going to have plans that are going to be
12 workable and so we do not want them to be set in concrete, but
13 we would like to be able to see that they can work at all at
14 any one given time, and I don't think that that is unreasonable.

15 I would like to add to the comment that, yes,
16 these contentions do definitely comply or are based on the
17 study of that Campbell County plan.

18 JUDGE FRYE: Thank you. Mr. Conner.

19 MR. CONNER: Sir, I would like to make sure that
20 the record correctly states or reflects my statements about
21 participation by Mentor, because Mr. Reder did not understand
22 me correctly, and I may have not said it correctly.

23 I did not say that individuals or localities
24 cannot participate in NRC proceedings. I said the mistake of

1 their contention was that they assumed that the state and
2 county had to involve them in the preparation of the state and
3 county plans.

4 So obviously if a legitimate point was raised
5 as to the validity of those plans by anybody, Mentor or other-
6 wise, of course, they could be heard by this board.

7 I just wanted to make sure that is clear on the
8 record.

9 Another point that, although we have talked
10 about it at some length over the last two days, may not be
11 clear to the Reders that we have to know the evidence that we
12 are required to present if there is to be a hearing, and we do
13 not come to the hearing and hear glittering generalities and
14 maybe specific examples as a presentation of evidence.

15 If they want to argue that Route 8 has fallen into
16 the Ohio River and nobody is ever going to fix it, fine. We can
17 meet that kind of allegation, but just generalities that Route 8
18 is not any good does not help anybody, including this board to
19 decide the issue and that leads me finally to what, your Honor,
20 had suggested, and perhaps it is a bit premature, but we would
21 urge consolidation to the maximum extent possible of any of
22 these contentions in order to get us moving forward and to
23 prevent the situation that has plagued this case in the past
24 of round-robin cross-examination going on for days and days

1 and Jays.

2 But that is, as I say, perhaps a bit premature.
3 The other thing I wanted to add and Mr. Martin has pretty well
4 covered it, the fact that FEMA does in fact have public meetings.

5 The thing I was referring to particularly was
6 in the June 24, 1980 Federal Register, Volume 45, page 42341
7 which was the FEMA review and approval of the state and local
8 radiological emergency plans and preparedness referring
9 specifically to Section 350.10.

10 These are still proposed plans, but I understand
11 FEMA is following them.

12 JUDGE FRYE: Mrs. Moore.

13 MRS. MOORE: Your Honor, I only have one small
14 point to make, and it is a point of clarification because I
15 think Mr. Reder did not quite understand what I said with
16 regard to the fire department.

17 What I said is that the Reders have not
18 demonstrated that this fire department has any relationship to
19 emergency planning, not that it had no relationship to Mentor,
20 but that it had no relationship to emergency planning.

21 I just wanted to clarify the record on that
22 point. That is all. Everyone has covered my arguments already.
23 There is no sense to repeat them.

24 JUDGE FRYE: Thank you. Let me inquire whether

1 there would be any possibility for the applicant and the staff
2 and the Reders to go over these contentions and see what you
3 can come up with?

4 MR. REDER: Yes, we would welcome such a chance,
5 and if such a meeting or series of meetings had occurred prior
6 to this conference, perhaps we could have ironed out some of
7 the difficulties.

8 For instance, and this is rather silly, but
9 let's do it anyway. Mr. Conner said that the plans of cross-
10 reference was there.

11 Well, I am sorry. I have here the Kentucky Plan,
12 the Campbell County Plan, and I do not see any cross-reference.

13 JUDGE FRYE: That is why I am going the way I
14 am going. It is the sort of thing that might be settled very
15 quickly if you all could sit down.

16 MR. REDER: I agree.

17 MR. CONNER: Your Honor, we, of course, will
18 follow your suggestion but many of these I am not sure could be
19 responded to by the staff or the applicant since they really
20 relate to the county's situation and not knowing what they have
21 in mind, I am not at all sure that we would be able to respond
22 to a given situation.

23 Well, they referred to it as an SOP for the
24 school evacuation detail which is supposed to be an adjunct

1 to the plan, although not published with it.

2 Our understanding is it is in the last stage
3 of preparation but, here again, I am not sure we are in the
4 position to respond to a given question from the Reders on that
5 point.

6 If they would write us a letter with the
7 specific points they have in mind, I think we can find the
8 answers, if we do not know, more quickly than sitting down
9 and listening generally as a first step. That could be the
10 second step.

11 JUDGE FRYE: Mrs. Moore.

12 MRS. MOORE: Well, your Honor, we have made our
13 position very clear, but we would be willing, if the board
14 thinks it would be in fact fruitful, to sit down with the
15 Reders and meet with them.

16 We kind of would prefer at first to find out
17 what questions they have, as Mr. Conner has suggested, in perhaps
18 a letter. Then if a meeting appears necessary, then we could do
19 that, but, of course, the Staff would be very willing to follow
20 the board's suggestion.

21 JUDGE HOOPER: It seems to me that in other pro-
22 ceedings where we have had a party in without counsel that the
23 Staff has been cooperative and has been able to help them frame
24 contentions so they are in litigation.

1 In other proceedings this has been the case.
2 It seems to me that you could be somewhat helpful to this party
3 too. I think many of the things that you went over could be
4 thrashed out and made specific enough to be pursued in litigation.
5

6 A party without counsel is, I think, a ship that
7 needs to be helped in the proceedings.

8 MR. BARTH: Sir, I would like to address this as
9 the lead counsel in this case. The matter of assisting
10 intervenors has come up before.

11 JUDGE FRYE: Let me say: We are not looking
12 for intervenor assistance. What we are looking for is a negotiated
13 settlement of contentions.

14 MR. BARTH: That came up before the Senate
15 recently in Clinton. I personally will not, as a matter of professional
16 ethics, assist someone in the framing of a prosecution
17 of the government.

18 MRS. REDER: Would you repeat it, please?

19 MR. BARTH: We have a very difficult ethical
20 problem in that I cannot provide legal advice or assistance to
21 a party who is engaged in conflict with the law. Insofar as
22 these people want to know what these regulations say, we give
23 them the regulations, how to go through procedures.

24 We tell them that. That is no problem.

1 Mrs. Moore and I will certainly do this in this regard, but to
2 help them go frame contentions or write contentions, from my
3 point of view, I think maybe it is questionable activity on
4 my part.

5 JUDGE FRYE: I want to make it clear that we
6 are not asking you to engage in any questionable activity.

7 We are just trying to find some way in which
8 we might reach a conclusion of this matter more quickly.

9 Mr. Conner.

10 MR. CONNER: For the record, your Honor, noting
11 the twist that was taken here, which I did not understand you
12 to say initially, it is not the responsibility of the applicant
13 to help create contentions for anybody that is contrary to our
14 interests, and we certainly would object to the Staff creating
15 issues just to give somebody something to litigate in the pro-
16 ceeding.

17 To the contrary, we believe it is the responsi-
18 bility of the NRC to get these matters through as quickly as
19 possible and not to create false issues simply for the purpose
20 of having a hearing.

21 I am afraid that the Reders might misunderstand what
22 you said on the record a minute ago as having that effect.

23 That is why I believe it would be simpler if
24 somebody who shares their philosophy and who has the legal

1 training with the concept of the bill of particulars here or
2 specific cases such as Mr. Dennison as a party to the proceeding
3 might be a better advisor to them than we could ethically or
4 possibly be.

5 JUDGE FRYE: Well, as I say, I was not asking
6 for either of you to advise them. They have come up with a
7 list of contentions and --

8 MRS. REDER: It should be pointed out --

9 JUDGE FRYE: These matters might be settled very
10 easily if you all could sit down and talk together and to the
11 extent that they might not be settled, I think everyone would
12 know what was in issue.

13 MR. REDER: Sir, we have read several times
14 through New Reg.-0654 and all its parts and portions of 10 CFR,
15 whatever, that we think might apply, and we have placed a lot
16 of confidence in what the NRC is saying in these documents,
17 that the local governments have to play a part in the plans from
18 beginning to end.

19 We have taken the attitude from the beginning
20 also that it is not the responsibility of the City of Mentor to
21 initiate any action. That is the responsibility of either the
22 applicant or of the state government or somebody, some other
23 government, to come to us, and we have made or perhaps showed
24 very little initially along those lines because we placed full

1 faith in this document.

2 I think any person who reads this, maybe an
3 attorney would read it and get lots of different things out of
4 it than we do, but I think we are reasonably intelligent people
5 and reasonably experienced people and we can read the English
6 language as most people, and I think we are getting an entirely
7 different interpretation of this.

8 That is the basis, I think, for most of our
9 contentions.

10 JUDGE FRYE: Mrs. Reder.

11 MRS. FEDER: If it is just a matter of making
12 these contentions more specific, we find no problem there because
13 these contentions were drawn up by a list of inadequacies and
14 problems that we foresaw with the plans.

15 Now, we can restate the contentions. That is
16 no problem.

17 We worded them the way that they are worded
18 because we thought that was the way they were supposed to be.
19 Had we received some instruction or some information or had been
20 included in any way in those preconference or prehearing con-
21 ference conferences, possibly we would have known that we
22 should be very detailed and state specifically this item, that
23 item, and the other.

24 If it is a matter of just rewriting them, we

1 have no objection to that.

2 MR. REDER: And in addition, we would be very
3 pleased to sit down with the DES people from the State of
4 Kentucky and Campbell County and go over these documents page
5 by page in an effort to resolve these contentions

6 We would welcome such an opportunity, but we
7 have never had such an opportunity.

8 JUDGE FRYE: Let us confer for a moment, please.

9 (Discussion held off the record.)

10 JUDGE FRYE: Mr. and Mrs. Reder, if you would,
11 let me say initially that we are giving some fairly serious
12 thought to the possibility of appointing Mr. Dennison as lead
13 counsel as to this off-site emergency planning matter repre-
14 senting ZAC as he does, and since we have already established
15 that there is at least some overlap between ZAC's contentions
16 and your contentions, we would like for you to confer with
17 Mr. Dennison as to any revisions that you feel are necessary
18 here and give us a revised set of contentions on the same
19 schedule that we have established for the others, the 12th, if
20 I am not mistaken.

21 MR. REDER: I am sorry, I did not hear your
22 last sentence.

23 JUDGE FRYE: It would be the 12th of November,
24 if I am not mistaken.

1 MR. REDER: You are objecting to our lack of
2 specifics;

3 JUDGE FRYE: No, if you do not want to revise
4 them, we will rule on them as they are.

5 MR. REDER: With respect to Mr. Dennison as to
6 the effectiveness of the contentions and the proper form, is
7 that your advice?

8 JUDGE FRYE: I am not giving advice.

9 MR. REDER: Is that your order?

10 JUDGE FRYE: I am not making an order just yet.

11 MR. REDER: Any suggestions?

12 JUDGE FRYE: Let's go back over this again.

13 Let me say initially that we think you have got some good con-
14 tentions here, if that relieves your mind somewhat.

15 We think that they can be sharpened up. We
16 think that they can be made better, and I am asking you to go
17 through that effort of trying to make them better, make them
18 better for the purposes of the hearing coming up.

19 Now, if you want to do that, it is up to you to
20 do it. Otherwise, we will take them as they are and we will
21 issue and order rulings on them.

22 MR. REDER: When you say make them better, you
23 are implying that they are deficient in some manner and you
24 have not told us --

1 JUDGE FRYE: You have got the comments of the
2 other parties.

3 MR. REDER: You are agreeing with them?

4 JUDGE FRYE: No, sir, I am not agreeing with any-
5 one at this point. I am not ruling on these contentions at
6 this point, and I am not in a position to give you or any other
7 party advice on how you should try your case.

8 MR. REDER: Then I do not really understand
9 what you are saying.

10 JUDGE FRYE: Well, it seems to me that it would
11 be advisable perhaps, perhaps not -- It is a decision you are
12 going to have to make -- if you sharpened up the contentions
13 to the extent that you feel you can do so in light of the
14 comments that have been made by the other parties.

15 If you want to do that, that is fine.

16 MR. REDER: Thank you, sir.

17 MRS. REDER: I do have one question: You said
18 something about Mr. Dennison possibly being the lead intervenor,
19 that you were considering that.

20 My only concern is that if Mentor has a conten-
21 tion particularly dealing with notification or warning to school
22 children, prior notification so that they can be evacuated before
23 the roads become congested, if that contention does not parallel
24 ZAC's contention, are they both going to be considered?

1 JUDGE FRYE: We cannot pass on that until we have
2 got a specific contention. You see, before we can rule on
3 whether we should appoint a lead intervenor, we are going to
4 have to have the specific contentions before us.

5 Mr. Dennison is going to be filing his in two
6 weeks. I assume that you will be revising these in the same
7 time period, and then we will address that question.

8 MR. DENNISON: Your Honor, I do have one ques-
9 tion if I may.

10 JUDGE FRYE: Sure.

11 MR. DENNISON: As to getting a better handle on
12 it myself as to when I will, I recognize initially it would be
13 from the same point of making suggestions and giving some advice
14 to Mr. and Mrs. Reder as to the manner in which these contentions
15 could be more specific.

16 Now, do you wish me to go a step further and to
17 participate in unison with them as draftsman? The reason I
18 phrase this question is from the standpoint of November 12.

19 I am going to have some time consumption from the
20 standpoint of my own contentions, and then to also be carrying a
21 substantial labor with the Reders on their contentions, I would
22 find it a bit difficult within the November 12 period to have
23 both of them accommodated by then if my participation was to
24 be to that degree.

1 JUDGE FRYE: I was really trying to leave your
2 degree of participation between you and the Reders. I cer-
3 tainly want to hold to the November 12 date to the extent that
4 we possibly can.

5 So I think that it would -- I think your partici-
6 pation obviously is going to be governed to a certain extent on
7 the amount of time that you have available within that time
8 frame.

9 MR. REDER: I would like to point out that if
10 this participation of Mr. Dennison in this relationship any way
11 might pose an imposition on him and the City of Mentor has no
12 funds to consult another --

13 JUDGE FRYE: That is the other reason I did not
14 want to, you know, indicate or dictate that this happen, but
15 you are both parties, and Mr. Dennison is representing one
16 party and you are representing another.

17 I think you should confer because your interests
18 do seem to overlap to some extent.

19 Now, if you and Mr. Dennison can come to some
20 agreement to enable him to represent you, fine, but that has
21 got to be worked out between you and Mr. Dennison.

22 MR. REDER: We won't ask Mr. Dennison to represent
23 us. We have no other access for legal counsel that requires
24 money.

1 MR. CONNER: Mr. Chairman, may I make a sugges-
2 tion?

3 JUDGE FRYE: Surely.

4 MR. CONNER: Given all of this colloquy and
5 recognizing, I think, the applicant's and Staff's and board's
6 desire at least to get this hearing moving forward, let me
7 suggest here a somewhat radical approach.

8 May I suggest the board convene a special hearing
9 sometime in the relatively near future with perhaps one member
10 of the board presiding and allow the City of Mentor to come in
11 and say whatever it wants to on the record, but then we will
12 get it on the record.

13 Then they will be done and then the hearing,
14 which I hope will start on December 14, we will provide evidence
15 for it to respond to whatever points they make, but the fact of
16 the matter is we do not know what evidence we are required to
17 meet from what they have said and I will bet a cookie that on
18 November 12 we won't know much more.

19 So perhaps the simple way to solve this would
20 be to create a special hearing, let them put in their testimony,
21 whatever it is, and then we will provide evidence to respond to
22 whatever evidence they deduce.

23 JUDGE FRYE: I think you are thinking of almost
24 a special master situation?

1 MR. CONNER: Yes, exactly.

2 JUDGE FRYE: Let's see --

3 MR. CONNER: Which rules now seem to anticipate.

4 MR. REDER: I do not have a professional repre-
5 sentation to defend as Mr. Fisse, but I am not going to bet a
6 cookie with Mr. Conner, but there is a slight degree of
7 resentment on my part as to my capabilities to write an
8 English sentence or to be reasonably specific on things as
9 long as I know what you are asking for. There is some slight
10 resentment there.

11 I would ask you to caution him for the future.

12 JUDGE FRYE: Let me pass that and say that I
13 hope you and Mr. Conner can also perhaps negotiate somewhat
14 as to the contentions that you have got in this two-week period
15 or representatives of the company.

16 MR. REDER: Would CG&E be expected to initiate
17 such correspondence?

18 JUDGE FRYE: Well, Mr. Conner, are you still in a
19 mood where you could negotiate?

20 MR. CONNER: Sir, I am still back to the point --

21 JUDGE FRYE: You want some specifics.

22 MR. CONNER: I don't know. I used an example.

23 I haven't the foggiest idea whether it is any good or not.

24 Something is wrong with Route 8. The Cincinnati Gas & Electric

1 Company does not handle the highways in Kentucky obviously, but
2 if he wants to know about Route 8, we will try to find the
3 answer.

4 But I do not think sitting down before we have
5 some laundry list, specific laundry list, of what we are supposed
6 to meet, it would do that much good.

7 We will sit in a meeting for a day and hear
8 what we have heard today which, from their standpoint, are
9 legitimate complaints, but it won't help to determine what
10 evidence needs to be produced in the hearing.

11 So if they would give us a list of things, we
12 would certainly try to respond to them as questions, certainly
13 not to frame contentions.

14 JUDGE FRYE: Mr. Reder.

15 MR. REDER: I think a lot of these difficulties
16 could have been forestalled if he had done as I had suggested
17 before. The state and county officials have met with the city
18 in formulating its plan, but in the absence of that, I had also
19 suggested before that state and county officials sit down with
20 the City of Mentor and go through the proposed plans here page
21 by page if necessary, so that we can come to some agreement and
22 maybe all of those contentions can be withdrawn.

23 I hope so anyway. Can I suggest that the board
24 direct other advice or whatever the county and state to do that

1 or is that outside your authority?

2 JUDGE FRYE: I think it is really outside our
3 authority.

4 MR. REDER: Well, there is where it all is.

5 JUDGE FRYE: What we have is your contentions
6 in respect to the emergency plan, and that is what we intend
7 to --

8 MR. REDER: Would they be willing to do it on
9 their own initiative? Could Mr. Martin perhaps enlighten us
10 on that, on the state's position and meeting with the City of
11 Mentor?

12 JUDGE FRYE: I think he earlier addressed the
13 point in general, but I think that this is something perhaps
14 you might want to take up with Mr. Martin while he is here
15 after we adjourn.

16 Is there any other business before we adjourn?

17 MR. BARTH: One other matter, your Honor, if I
18 may. The matter of discovery has been mentioned very early
19 yesterday by Mr. Conner.

20 I would like the comment on discovery. The Staff
21 moves that the licensing board issue an order precluding all
22 discovery after Monday, November 30, except with permission of
23 the board for good cause shown.

24 This would include requests for depositions

1 noticed, depositions upon written interrogatories, requests
2 for production and inspection of documents.

3 I have previously discussed this with counsel
4 for ZAC and to the degree that the specificity that he will
5 produce in his contentions and the specificity which may or
6 may not be produced by Mentor, if they so desire, would go a
7 great deal towards precluding any kind of discovery.

8 I make it very clear that the Staff will want to
9 know the basis for a contention, what kind of written materials,
10 and what kind of people and expertise sponsor the contention
11 that there is an invalidity in the plans.

12 Discovery on our part after November 12 will be
13 limited to this kind of information to enable us to go to
14 trial, but I do think that if the intervenors also have a full
15 right and an opportunity to make discovery on matters that
16 they need information, at the same time we must get this going,
17 and I think it would be proper for the board to preclude all
18 discovery after November 30 except with the board's permission
19 for good cause shown. Thank you, your Honor.

20 JUDGE FRYE: Mr. Conner, do you want to respond?

21 MR. CONNER: Mr. Chairman, it has been our view
22 that discovery has been closed de facto for some time for most
23 of the evidence in the record.

24 We think we should certainly not -- November 30

1 simply provides another month to get into things that have been
2 around for five years.

3 Specifically since we have indicated that we
4 would file a motion for summary disposition on Fankhauser
5 Contention 2 and subparts thereof, we think that should not
6 be affected by the rule and, in other words, so we can make our
7 motion promptly as we previously indicated.

8 JUDGE FRYE: It is understood that you are going
9 to make that motion.

10 MR. CONNER: While I am here, I would also mention
11 the point at the hearing, the evidentiary hearing, and I would
12 again go back to the board's date of December 14, and I think
13 that in addition to the reasons I mentioned yesterday for getting
14 started and then closing the record later after the FEMA record
15 and so forth, that it becomes more and more likely that we
16 will have people, participants or intervenors asking questions
17 in the hearings, that absent some indication of the subject in
18 advance, the witnesses probably won't know the answer.

19 I mean, you know, there is no stop sign at the
20 intersection of Route 8 and something -- we do not know how
21 to meet the evidence if we don't know what it is. If we know
22 what it is, we will have a witness one way or the other, but I
23 have a feeling that we are going to have several things like
24 the witness who is present does not know, we will supply the

1 answer later. I think this is another reason for starting on
2 or about December 14 with the understanding that in early
3 February there will be a reconvened hearing to clean up loose
4 ends and receive the FEMA testimony.

5 JUDGE FRYE: We will certainly keep that in mind.
6 When we have got the contentions, I think we will be in a better
7 position to judge when we can actually start the hearing.

8 Mr. Dennison, do you want to respond to
9 Mr. Barth's motion in regard to discovery?

10 MR. DENNISON: Not specifically to the discovery
11 aspect by way of date.

12 To me, that seems reasonable as a cut-off time
13 and that there ought to be some cut-off time established and
14 particularly under the conditions that Mr. Barth has presented.

15 The question that I have is when ZAC was admitted,
16 it was stated that some of the contentions would be reassessed
17 or weighed after discovery, as was indicated yesterday, and I
18 do not want to belabor the point.

19 It has just been this October that ZAC has had
20 some sort of plan for off-site emergency preparedness which it
21 could actually inspect. Therefore, no discovery was promulgated
22 by ZAC up to today.

23 The plans, the persons who are involved in those
24 plans, that sort of thing, it is generally known to ZAC, and I

1 do not perceive any great deal of discovery in the future.

2 However, I do not want to get caught betwixt
3 and between a situation because I really do not understand this
4 order portion of July 2, 1980 dealing with this caveat of
5 discovery.

6 Yesterday it was alluded to counsel for the
7 applicant that since ZAC had not engaged in discovery,
8 therefore, ZAC's contention should be dismissed.

9 Am I given to believe that that order, par-
10 ticularly with this conference, is still affected relative to
11 the issue of whether or not some discovery has to be engaged in
12 in order to make legitimate, as it were, some of ZAC's intentions?

13 This was the sense I was getting of Mr. Conner's
14 commentary yesterday. It was my interpretation of the July 2,
15 1980 order that this was discovery as may be necessary for
16 either party to have some appreciation of the essence of the
17 contention.

18 JUDGE FRYE: Yes, my understanding of the order
19 is the same. As I understood Mr. Conner, he was saying in
20 essence that a lack of discovery indicates a lack of desire to
21 move forward with the contention, as much as anything, and that
22 one of the things, as you know, we wanted to identify were such
23 contentions that the intervenors may no longer wish to proceed
24 on.

1 Am I correct, Mr. Conner?

2 MR. CONNER: Yes, sir. I believe that the earlier
3 board's order just referred to meant what it said and that
4 absent proper following of discovery by ZAC to validate,
5 refine, and state their contentions specifically as required
6 by the rules would mean that they failed.

7 That was my reading of that order, and that is
8 the basis for my motion.

9 Secondly, ZAC's failure to prosecute its position,
10 I think, is also a basis for dismissal and, of course, we move
11 to dismiss on those and other grounds as to specificity. But
12 let us deal with what comes in on the 12th.

13 JUDGE FRYE: All right.

14 MR. DENNISON: So that I fully understand the
15 intent of Mr. Conner here, I am having a little bit of difficulty
16 with some -- I have been prepared to present evidence at a hearing
17 from the standpoint of at least a sufficient amount to make
18 what we might call prima facie cases.

19 Of course, that has been building since the con-
20 tentions were advanced. Thus, I have a different reading from
21 Mr. Conner because I do not know how I can discover anything
22 from Cincinnati Gas & Electric save and except their employee
23 Stone and Webster.

24 As the State of Ohio is not a party and neither

1 is the County of Campbell, Kenton or Bracken for me to
2 address any type of discovery for the preparation of such plans
3 leaving only two members of seven plans, and that would be the
4 Commonwealth of Kentucky and Clermont County.

5 I find it a little bit offensive to make the
6 suggestion that one has been delectory or has failed to prosecute
7 no matter how I believe.

8 The tongue may drop that forth, but nonetheless
9 the circumstances, I felt contentions as written put the
10 applicant on notice and put the Staff on notice of the area
11 that one was going at least insofar as state and federal notice
12 pleading suffices.

13 Never yet had anybody suggested that when you
14 file a pleading that Joe Doe negligently ran into Betsy Smith
15 and broke her leg and she sustained out-of-pocket damages of
16 \$1300, you have to go back and be more specific than that.

17 Discovery generally undertakes to make it more
18 specific, and that would be discovery coming from staff upon me
19 and from the applicant upon me.

20 Now, what I am trying to understand is this
21 strange obligation that I was to discover things which I may
22 have no interest in discovering, but if I don't, I am being
23 penalized.

24 I think this goes to perhaps the heart of this

1 entire matter. I have sat here for about six days of hearings
2 thus far. Mr. Conner constantly talks about how we have to keep
3 going, but we are constantly nit-picking over issues rather than
4 getting to the merits of the contentions before this board.

JUDGE FRYE: The board does not read its pre-
6 vious discovery order as requiring or obligating a party to
7 engage in discovery if it does not choose to do so.

8 MR. DENNISON: I thank you for the clarification.

9 MR. BARTH: Mr. Chairman, may I make one small
10 additional remark, sir?

11 JUDGE FRYE: Yes.

12 MR. BARTH: I have discussed the matter of dis-
13 covery with FEMA and, as counsel points out, there are some
14 problems involved there. They are not a party, and the only
15 way that ZAC could discover these people actually is by deposi-
16 tion or by subpoenaing documents to appear at trial, and that
17 is not discovery anyway.

18 Spence W. Perry, who is the Acting Assistant
19 General Counsel of FEMA has informed me that within the con-
20 straints of their personnel, their time and their ability to
21 do so, that they will entertain on a voluntary basis interroga-
22 tories on contentions which have been admitted in this
23 proceeding.

24 If the intervenors have interrogatories that

1 they wish to propose to FEMA, they should send them to Spence
2 W. Perry, Acting Assistant General Counsel, Federal Energy
3 Management Agency, 500 C Street, Southwest, Washington, D. C.,
4 20427, but I strongly emphasize this is a voluntary offer by
5 FEMA.

6 I cannot make them perform or does this licensing
7 board or my agency have jurisdiction to make them perform, but
8 within everything they can with their personnel, they will
9 provide answers to what they consider legitimate questions
10 that this licensing board requests of them.

11 JUDGE FRYE: Mr. Woliver, do you want to respond?

12 MR. WOLIVER: I would not have any more to add
13 to that other than what has been said.

14 We would, if necessary, promulgate interroga-
15 tories and also follow the suggestion that Mr. Perry, I believe
16 his name is, makes.

17 JUDGE FRYE: Fine. Mr. and Mrs. Reder, this is
18 in regard now to the discovery motion that Mr. Barth made
19 essentially --

20 MR. REDER: I do not think we understand much
21 of this legal talk.

22 MRS. REDER: I have one question: The standard
23 operating procedures are not written contrary to what
24 Mr. Conner has stated. Does that discovery include the use of

1 getting information that is used for the standard operating
2 procedure by that?

3 JUDGE FRYE: Discovery basically is aimed at
4 finding out what your opponent's case is about.

5 Mr. Fisse?

6 MR. FISSE: I have no comment.

7 JUDGE FRYE: I think that covers everyone. Any
8 other business before we adjourn?

9 MR. CONNER: Note one housekeeping detail.
10 Since we last offered the application in this proceeding, there
11 have been various amendments filed which have been served upon
12 the board and the parties which constitutes our evidence in
13 this proceeding, and these amendments have all been submitted.

14 If the board wishes, we could move that these
15 amendments will be received at this time, or wait until the
16 beginning of the evidentiary hearing.

17 JUDGE FRYE: Let's wait for the evidentiary
18 hearing on that.

19 MR. CONNER: Okay.

20 MR. DENNISON: Does the board mean that it is
21 adjourning for lunch or final adjournment of this prehearing
22 conference?

23 JUDGE FRYE: Adjournment of this prehearing
24 conference.

1 MR. DENNISON: The one thing that I am still
2 unclear on concerning the future hearing dates, will the board
3 do this by subsequent letter, order? What I am trying to find
4 out is: Can I anticipate being back here December 14?

5 JUDGE FRYE: No, I do not think so at this point,
6 and we will after we get the contentions, I think, have to take
7 a good look at what contentions can go to hearing prior to the
8 availability of the FEMA reports, and in the absence of any
9 contentions that could go to hearing prior to the FEMA reports,
10 it looks like it would be the first week in February which
11 would be the earliest.

12 But as I say, until we see the contentions, I do
13 not think you are in a position to think about the specific
14 date.

15 If you would like to get started earlier than
16 the first of February if possible, we will have to see what the
17 contentions are, whether we are able to do that. I would think
18 that probably -- well, we will give you as much advance notice
19 as we can possibly do.

20 MR. DENNISON: Then I had addressed remarks
21 yesterday to the particular conflict that I have publicly about
22 the first of February to approximately the 23rd or so.

23 JUDGE FRYE: Yes, you did. I think it was on a
24 Wednesday or a Thursday that your trial began in the second week

1 of February?

2 MR. DENNISON: It commences on the 11th and
3 simply because of the severity of the charges and the nature of
4 that litigation, I would like to reserve some days in advance of
5 the 11th so that I do not go immediately from one to the other.

6 JUDGE FRYE: Sure.

7 MR. WOLIVER: One matter on that discovery.
8 I assume that the motion and any order concerning the November
9 30 cut-off date is predicated upon the assumption that the
10 hearings are going to start sometime presumably late winter
11 and, again, it is obviously possible that there could be some
12 delay for whatever reason or another that could put the hearings
13 back several months or until whenever.

14 If that would occur, certainly we would want
15 discovery to remain open.

16 JUDGE FRYE: Well, we, of course, will take into
17 account any development that might occur, that might affect that
18 and also, as I understand Mr. Barth's motion, that he is not
19 calling for an absolute cut-off of discovery.

20 He is saying that after November 30 any further
21 discovery would have to be with specific permission of the
22 board.

23 MR. CONNER: Mr. Chairman, may I ask that you
24 do issue a prehearing conference order? I feel a lack of

1 clarity in what I think is what the record says.

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2 JUDGE FRYE: We fully intend to issue one as
3 quickly as we can. In fact, we may well end up issuing two,
4 one to come out pending the submission of the contentions and
5 the second one to cover the contentions.

6 Anything else?

7 (No response.)

8 We stand adjourned. Thank you very much.

9 - - -

10 (The hearing was adjourned at 11:50 a.m.)

11 - - -

C E R T I F I C A T E

1
2 State of Ohio :
County of Hamilton : SS

3
4 I, Patty Artrip, the undersigned, a court
5 reporter for the State of Ohio, do hereby certify at the time
6 and place stated herein, I recorded in stenotypy and thereafter
7 transcribed into typewriting the within pages and that the
8 foregoing is a true, complete and accurate report of my said
9 stenotypy notes.

10
11
12 My commission expires
July 18, 1982

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Patty L. Artrip-RPR
Notary Public - State of Ohio

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

Atomic Safety and Licensing Board

in the matter of: Cincinnati Gas & Electric Company, Et Al., and W.H.
Zimmer Nuclear Power Plant

Date of Proceeding: October 30, 1981

Docket Number: 50-358-OL

Place of Proceeding: Cincinnati, Ohio

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

Patty L. Artrip

Official Reporter (Typed)

Patty L. Artrip

Official Reporter (Signature)