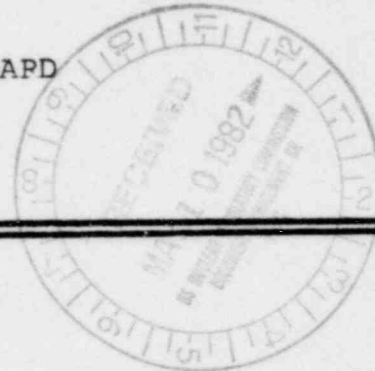


NUCLEAR REGULATORY COMMISSION

ORIGINAL

ATOMIC SAFETY AND LICENSING BOARD



In the Matter of:

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE
SEABROOK STATION
UNITS 1 AND 2

DOCKET NOS. 50-443-OL
50-444-OL

DATE: May 6, 1982 PAGES: 1 - 157

AT: Portsmouth, New Hampshire

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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In the matter of: :
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PUBLIC SERVICE COMPANY :
OF NEW HAMPSHIRE :
SEABROOK STATION :
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- - - - -X

Docket Nos. NRC 50-443-OL
NRC 50-444-OL

Thursday, May 6, 1982
2nd Floor Courtroom
Portsmouth District Court
Portsmouth, New Hampshire

A prehearing conference in the above-entitled matter
convened, pursuant to Notice, at 9:50 a.m.

BEFORE:

HELEN F. HOYT, Chairperson
Administrative Judge
Atomic Safety and Licensing Board

DR. EMMETH A. LUEBKE, Member
Administrative Judge
Atomic Safety and Licensing Board

DR. OSCAR PARIS, Member
Administrative Judge
Atomic Safety and Licensing Board

APPEARANCES:

On behalf of the Applicant:

THOMAS G. DIGNAN, JR., Esq.
ROBERT K. GAD, III, Esq.
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

1 On behalf of the Nuclear Regulatory Commission Staff:

2 ROY P. LESSY, Esq.
3 ROBERT G. PEPLIS, Esq.
4 Deputy Assistant Chief Hearing Counsel
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

5 On behalf of the State of New Hampshire:

6 E. TUPPER KINDER, Esq.
7 DANA BISBEE, Esq.
8 Assistant Attorney General
Office of the Attorney General
Concord, New Hampshire 03301

9 On behalf of the State of Maine:

10 PHILIP AHPENS, Esq.
11 Assistant Attorney General
Office of the Attorney General
Augusta, Maine

12 On behalf of the Commonwealth of Massachusetts:

13 JOANN SHOTWELL, Esq.
14 Assistant Attorney General
Office of the Attorney General
Boston, Massachusetts

15 On behalf of the Town of South Hampton:

16 EDWARD J. MCDERMOTT, Esq.
17 Sanders and McDermott
408 Lafayette Road
Hampton, New Hampshire 03842

18 On behalf of Sun Valley Association:

19 LAWRENCE EDELMAN, Esq.
20 Sanders and McDermott
408 Lafayette Road
Hampton, New Hampshire 03842

21 On behalf of the Society for the Protection of the
22 Environment in Southeastern New Hampshire:

23 ROBERT CHIESA, Esq.
24 95 Market Street
25 Manchester, New Hampshire 03101

1 On behalf of the New England Coalition on Nuclear Pollution:

2 WILLIAM JORDAN, Esq.

3 DIANE CURRAN, Esq.

4 Harmon & Weiss

5 1725 I Street, N. W.

6 Washington, D. C. 20006

7 On behalf of Seacoast Anti-Pollution League:

8 ROBERT BACKUS, Esq.

9 116 Lowell Street

10 Manchester, New Hampshire 03105

11 On behalf of the Coastal Chamber of Commerce:

12 BEVERLY HOLLINGSWORTH, Esq.

13 209 Winnacannet Road

14 Hampton, New Hampshire

P R O C E E D I N G S

JUDGE HOYT: The hearing will come to order.

The Nuclear Regulatory Commission has assigned for hearings before this Board the case of the Public Service Company of New Hampshire in Docket Nos. 50-443-OL and 50-444-OL in the Application for an operating license for the Public Service Company of New Hampshire.

The members of this Board are--My name is Helen F. Hoyt, the Chairperson of the Board. To my immediate left is Dr. Emmeth Luebke, and to my immediate right is Dr. Oscar Paris.

We have distributed copies of the Statement of Policy on the Conduct of License Proceedings to all the parties present; and let me correct that to say all the Intervenor, the Applicant, and the Staff here this morning. That has been done prior to going on the record here.

At this time I will take appearances of counsel. First, may I have the appearance of counsel for the Applicant, again, sir?

MR. DIGNAN: Madam Chairperson, members of the Board, my name is Thomas G. Dignan, Jr. I am a member of the firm of Ropes & Gray, 225 Franklin Street, Boston, Massachusetts. With me to my right is Robert K. Gad, III, and we will appear for the Applicants in this proceeding.

JUDGE HOYT: Thank you, sir.

MR. LESSY: May it please the Board, my name is Roy P.

1 Lessy, Jr., Deputy Assistant Chief Hearing Counsel, appearing on
2 behalf of the NRC Staff. To my left, the Board's right, is
3 Mr. Robert G. Perlis, also Counsel for the NRC Staff.

4 JUDGE HOYT: Now, sir.

5 MR. KINDER: Good morning, Judge Hoyt. My name is
6 Tupper Kinder and I'm Assistant Attorney General for the State
7 of New Hampshire.

8 To my left is Dana Bisbee also with the Office of
9 Attorney General. We appear for the State of New Hampshire
10 and its Attorney General.

11 MS. SHOTWELL: Madam Chairperson, members of the Board,
12 my name is JoAnn Shotwell. I'm an Assistant Attorney General
13 and I represent the Commonwealth of Massachusetts.

14 MR. MCDERMOTT: May it please the Board, my name is
15 Edward J. McDermott of the Firm of Sanders and McDermott and
16 I represent the Town of South Hampton.

17 MR. EDELMAN: Good morning. My name is Lawrence
18 Edelman. I'm with the Law Firm of Sanders & McDermott of Hampton.
19 I represent the Sun Valley Association.

20 MR. CHIESA: May it please the Court, Madam Chairperson,
21 my name is Robert Chiesa and I'm representing the Society for
22 the Protection of the Environment of Southeaster New Hampshire.

23 JUDGE HOYT: Sir, would you like to come over here
24 in the Jury Box with the other Counsel?

25 MR. CHIESA: I would be delighted.

1 MR. JORDAN: Judge Hoyt, members of the Board, I'm
2 William Jordan of the Law Firm Harmon & Weiss, Washington, D.C.

3 With me is Diane Curran my Associate. We are here on
4 behalf of the New England Coalition on Nuclear Pollution.

5 MR. BACKUS: Madam Chairman, my name is Robert Backus
6 of Manchester, New Hampshire. I appear on behalf of the
7 Intervenor, Seacoast Anti-Pollution League.

8 JUDGE HOYT: Go ahead, sir.

9 MR. AHRENS: May it please the Board, my name is Phil
10 Ahrens, Assistant Attorney General, appearing on the behalf of
11 the State of Maine.

12 JUDGE HOYT: Thank you, sir.

13 MS. HOLLINGSWORTH: Good morning. My name is Beverly
14 Hollingsworth and I'm appearing on behalf of the Coastal Chamber
15 of Commerce.

16 JUDGE HOYT: Are you an Attorney, ma'am?

17 MS. HOLLINGSWORTH: No, I'm not.

18 JUDGE HOYT: Who filed a Petition of Intervention in
19 this case?

20 MS. HOLLINGSWORTH: I believe Mr. Kendrik filed a
21 petition for the Coastal Chamber of Commerce. He is no longer
22 the Director, and as far as receiving the papers through the
23 present Board of Directors, and I'm told we are still in the
24 intervening section, I'm not familiar with anything other than
25 that. It was the Hampton Beach Chamber of Commerce. It has a

1 new name.

2 JUDGE HOYT: Very well. We've had some problems in
3 beginning this proceeding through the Order that was issued in
4 March. I have become conscious of a number of difficulties that
5 the parties have mentioned concerning various inability to either
6 receive the service on the Order or some combination of other
7 factors of which they have not met the deadlines of this Order
8 that we issued on the 6th of March.

9 One of the biggest problems I've seen is that no one
10 seems to have a service list. I think everybody has a different
11 combination of parties on the service list. Since I would
12 rather get started off on the right foot in this case and avoid
13 problems with matters that should not become of great magnitude,
14 I took a moment to go into the official documents of the
15 Commission; that is, the documents of the Secretary of the
16 Commission. I have obtained copies of the service lists as they
17 are constituted by that Office; that is, the Office of the
18 Secretary of the Commission, and I have copies of these service
19 lists for you if you wish to take one.

20 One of the parties, and I believe it was you, Mr. Backus,
21 noted that you had not been served with various things. I think
22 perhaps your case, if I may use it to illustrate some of the
23 difficulties that I found, was that the Petition to Intervene
24 that you had filed was sent in its original form to the Office
25 of the Executive Legal Director where we ultimately found it.

1 I believe Mr. Lessy had that forwarded to the Secretary where it
2 is now properly filed.

3 Service on the various parties is done by the Secretary
4 and all the Orders of this Board will be sent through the
5 Secretary and we will use this service list that the Secretary
6 has. Despite this, your name did not appear on the service list
7 because you did not file your pleas with the Secretary of the
8 Commission. We have, as you will note, placed your name on
9 the service list and the Secretary has made that correction.

10 I realize that sometimes in dealing with governmental
11 bodies, it is very easy to assume if you serve one, you serve all.
12 Let me assure you, that's not necessarily true.

13 Please do file your future pleadings with the Secretary.
14 I noticed in one of the pleas that you filed in regard to this
15 hearing, you say you have not received service of the Order.
16 Your name did appear on the service list of the Secretary and,
17 as you will notice, it has a date beside it. That's the date
18 that you were placed on the service list for this case. So there
19 has been service made. Whether you received it or not is another
20 matter. We can only assume that if the pleading is filed in the
21 regular course of the Postal Service, it will be delivered to you.

22 So before we have any future pleadings, any allegation
23 made that you were not served, let me urge you to first of all
24 check your own files to be sure that it isn't behind the cabinet.

25 MS. SHOTWELL: I did so, ma'am, but I will be sure to

1 do that.

2 JUDGE HOYT: Thank you.

3 For the Applicant, we have not received on this Board
4 copies of your Application. I find that our Office has nothing
5 from you. I'm sorry, but that's the case. So if you would send
6 us copies of the books that you usually serve on the Board, I
7 would appreciate it.

8 Please send it to the Office in Bethesda. We don't
9 want to carry those back with us.

10 Mr. Lessy, let me bring to you one matter; that is,
11 any matter of this Board, and let me be very clear with you,
12 that is any Order of this Board will be served by the Secretary.
13 We will urge you to make any appropriate arrangements that you
14 feel necessary to insure that you receive service.

15 However, I think in order that we may have the assurance
16 that all parties are served simultaneously, that will have to
17 be the best plan that we can come up with.

18 We have no other preliminary types of problems to bring
19 up. Do any of the parties wish to make any preliminary--

20 MR. BACKUS: I have just a question, Madam Chairman.

21 JUDGE HOYT: Yes, sure.

22 MR. BACKUS: Some of the names of this service list
23 are names of people that are not here. I know one, for example,
24 Mr. Wight. I believe I have a piece of correspondence from him
25 to Attorney Kinder saying that he no longer cared to appear.

1 So I'm wondering if we are going to be, as a result of
2 this pre-hearing conference, if we will be getting an amended
3 service list. I always have concern about keeping the service
4 list as sparse as possible.

5 JUDGE HOYT: Mr. Backus, I think perhaps you are
6 confusing the service list with parties or Intervenors. At this
7 point we have a number of Intervenors who have not yet become
8 parties. They are on that service list as well, as you well know.

9 However, you may be on the service list if you wish
10 and in the case of the person you mentioned, I think will probably
11 remain on it. He has withdrawn as Judge Luebke has reminded me
12 but he will remain on the service list unless he wishes to be
13 removed.

14 MR. BACKUS: Does that imply then that for all parties
15 that are filing something with this Board, that he should also
16 be served? I mean that's what I took a service list to mean?

17 JUDGE HOYT: Well, for whatever reason Mr. Wight is
18 still on that list, we will continue to serve him. I would
19 assume that if he has withdrawn, the Secretary will very probably
20 withdraw his name from the list if he wishes to have it withdrawn.
21 I don't recall exactly what Mr. Wight said in his withdrawal.

22 However, many people may remain on the service list
23 that are not necessarily the parties.
24
25

1 MR. BACKUS: I would just suggest that maybe when we
2 are through with this prehearing conference, and I assume this
3 Board will be issuing an Order setting forth its Decision on the
4 various petitions, at that time we might be given an amended
5 service list of those people who are parties who are required
6 to receive copies of all Pleadings.

7 JUDGE HOYT: Very well. What we'll do is make a
8 concerted effort with the Secretary to see that the service list
9 is amended. We will have an amended service list available at
10 the next prehearing conference.

11 MR. LESSY: I have one minor point, if it pleases the
12 Board?

13 JUDGE HOYT: Sure.

14 MR. LESSY: The service list here of the Docketing and
15 Service Section just says, counsel for NRC Staff. It would
16 probably save a few days if the parties could insert my name
17 and the name of Mr. Perlis also. It would save someone the time
18 it takes to look up the name of the counsel in the book, and
19 that's liable to take more time than you think.

20 JUDGE HOYT: Mr. Lessy, could I suggest that perhaps
21 we could ask the Secretary to amend the search list, and place
22 your name on it as such.

23 MR. LESSY: Well, the Secretary's office, your Honor,
24 traditionally uses this form of delegation. It doesn't use a
25 particular individual for a lot of reasons that aren't really

1 too relevant here. But, mailing from the outside in, mailing from
2 New Hampshire or Boston, it would be helpful to me, particularly
3 on documents that have a time sensitivity, if Mr. Perlis' name
4 and my name were on there. It would save a whole additional
5 process of mailroom people trying to figure out to whom it should
6 go to.

7 JUDGE HOYT: Yes. I think Mr. Lessy's point is well
8 taken. You may not be aware that, as the NRC, we are in several
9 different buildings, distributed throughout the Washington area.
10 We have a mail system that probably makes the Pony Express look
11 like Express Mail. It's just very difficult for us to always
12 get the mail promptly. And, Mr. Lessy has a point well taken,
13 when you happen to have sensitive documents, if you will.

14 Mr. Dignan, do you have anything, sir?

15 MR. DIGNAN: No.

16 JUDGE HOYT: Any other preliminary matters?

17 VOICE IN BACK OF ROOM: I'm from the--

18 JUDGE HOYT: Sir, sir. I do not believe that you have
19 made an appearance on this record as counsel for any of the
20 organizations, and therefore, as our Order indicated to you, we
21 will not take any public testimony or statements here. I must
22 ask you to refrain from speaking, sir.

23 VOICE IN BACK OF ROOM: I'm speaking on behalf of--

24 JUDGE HOYT: (Interrupting) Sir, I think I just
25 indicated to you that you would not speak on behalf of any

1 party that is not present at this Hearing this morning. I would
2 appreciate you not interrupting the proceedings again. Thank you,
3 sir.

4 VOICE IN BACK OF ROOM: Do I understand that--

5 JUDGE HOYT: (Interrupting) Sir, please be seated.

6 VOICE IN BACK OF ROOM: It's typical of the conduct of
7 the NRC. When it comes to a Hearing, the citizens who live here--

8 JUDGE HOYT: (Interrupting) Sir, I'm trying to be
9 courteous to you, please be seated.

10 VOICE IN BACK OF ROOM: And, I'm trying to be courteous
11 to you.

12 JUDGE HOYT: We have received two responses to our
13 Order of March 12. There are two that have met the filing
14 deadline that we have said in that Order, one is the Seacoast
15 Anti-Pollution League, and the other one was the State of New
16 Hampshire.

17 Any particular discussion do we need to have on these
18 two?

19 First of all, the Seacoast Anti-Pollution League.

20 MR. BACKUS: Are you asking to have arguments addressed
21 in support of these contentions?

22 JUDGE HOYT: Yes, if you wish.

23 MR. BACKUS: And, this is just on the first?

24 JUDGE HOYT: I believe there are three contentions,
25 or four. Yes, four.

1 MR. BACKUS: Four contentions. Well, Madam Airman,
2 and Members of the Board, as you pointed out in the initial
3 submission, on behalf of the Seacoast Anti Pollution League,
4 we did file four contentions. The first one, which is one that's
5 been filed in various forms by several other parties, was that
6 emergency planning cannot reasonably assure that the public
7 health and safety will be protected at the Seabrook site.

8 Now, various parties, and I believe the Applicants
9 have pointed out that some portions of this contention were
10 somewhat inartfully worded in that we described the concern
11 as being the site there when we intended to say, and we urge
12 that the Board treat this as being amended to say that the
13 concern is that no determination has ever been made that the
14 Seabrook Emergency Protection Zone to be established, can be
15 evacuated in time to avoid a major adverse effect from radiation
16 in the event of a major accident.

17 There has been, additionally, an objection by the staff,
18 I believe on the grounds of vagueness, and I would simply say
19 that as I understand the prior Decisions of this Commission
20 and its various licensing Boards, that our pleading practice
21 here is, as was said in the Commonwealth Edison case, in 12 NRC
22 687 --analogous to the pleading traditionally employed in
23 Judicial proceedings in the Federal Courts; that is, we are
24 under a Notice Pleading System here, as I understand it. And, I
25 submit that this contention and the other contentions, which we

1 have set forth, are fully sufficient at this stage of the
2 proceedings, when we are merely at the first prehearing
3 conference-- We do not have final safety evaluation from the
4 staff, final environmental report, fully sufficient to advise
5 the parties and the Board of the areas of concern that we feel
6 must be addressed, and in which the Applicant has the burden of
7 proving a proper resolution of the issue.

8 We have no objection to the idea that these conten-
9 tions can be further refined as Discovery proceeds and
10 additional material is developed. But, I do think that for
11 SAPL, as to Contention No. 1, and now I'm speaking in support
12 of the other contentions as well, has set forth under a Notice
13 Pleading requirement, a fully sufficient basis for its participa-
14 tion in this Proceeding, and we look forward to participating
15 in a responsible way, as we always have.

16 With regard to Contention No. 2 that had to do with the
17 operation of the proposed condenser cooling system: Now, as I
18 think the Board will be aware from the submissions on this
19 matter, and maybe its general background on this issue, the
20 condenser cooling system at Seabrook was, has been, and still
21 is, a controversial issue with regard to this plan. It is
22 proposed to use once-through cooling, as you know, and with very
23 large amounts of water taken from an offshore port, just outside
24 of Hampton Harbor, for condenser cooling. Until very recently,
25 everybody associated with this project believes that the

1 Applicant is committed to running the system in conjunction with
2 a back-flushing operation, but which the bio-fouling in those
3 tunnels; that is, the marine growth that one would inevitably
4 expect in a salt water environment and one that is going to use
5 heated salt water, too, will be affected by the growth of various
6 organisms, particularly muscles, I guess, and that the method
7 that the Applicant was going to be using to address this was
8 going to be periodically, either shutting down or decreasing
9 power output from the Plant, reversing the flow of water to the
10 tunnels and killing all those organisms by thermal shock by
11 intentionally putting through these tunnels water at such a
12 temperature that they couldn't survive. I believe it is 120
13 degrees farenheit at the discharge, during the back-flushing
14 operation. We have recently learned in the Public Information
15 Hearing held in Seabrook with the Staff that the Applicant is
16 now considering that it may want to abandon that method of
17 bio-fouling control in favor of a method of chlorine injection.

18 Both the State and the EPA permits the Applicant now
19 has contain very strict limitations in the amount of residual chlor-
20 ine that would be allowed to be added to the cooling water. It
21 appears that the Applicant is again changing its plans, or may be.

22 This contention is directed toward that; because SAPL
23 has had a particular interest in the quality of the marine
24 environment and has been particularly interested in those
25 issues, and the response that we get is that this is

1 premature from the Applicant.

2 Well, I submit, Madam Chairman, if the Applicant is
3 reserving to itself, as I think it is, the possibility of going
4 back to the Environmental Protection Agency for an amendment to
5 its permit, and for approval for a new system, using a biocide
6 instead of heat killing, that we are certainly appropriately
7 entitled, and it is not premature for us to reserve the right
8 to contend that that makes the operation of the plant inappropri-
9 ate on a cost benefit basis. And, that's what we are
10 suggesting with that contention.

11 With regard to contention number three, which is, that
12 the operation of the proposed nuclear plant, will have an
13 unreasonable adverse affect upon the economic well being of
14 the seacoast area. The response that we got to this was, that
15 this had been litigated in the construction permit proceedings.

16 Indeed, Madam Chairman and Members of the Board, it is
17 true. This issue was raised, in a construction permit
18 proceedings. However, in reading the regulatory decisions,
19 issued by licensing boards, I would submit that this issue is
20 still ripe for consideration in this operating license
21 proceeding. I wanted to cite particularly the Alabama Power
22 Case, which is a decision of the Commission in 1974.

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have

1 JUDGE HOYT: Do you/a citation of that case, sir?

2 MR. BACKUS: CLI-7412 and it looks like my Xerox copy
3 did not get the NRC number.

4 MR. LESSY: It would be 7AEC 210.

5 JUDGE HOYT: That's 7--

6 MR. LESSY: 7 Atomic Energy Commission Reports, begin-
7 ning at page 210.

8 JUDGE HOYT: 210?

9 MR. BACKUS: Right. There the Commission said that
10 the doctrines of res judicata collateral estoppel between
11 construction permit proceedings and operating licensing proceedings
12 should be applied with "sensitive regard for any supported
13 dissertation of changed circumstances or the possible existence
14 of some special public interest factors in the particular case."

15 The Commission also said, "In the future we shall
16 ex ct licensing boards to solicit a response from any prospective
17 interveners whose contention is attacked by another party on
18 res judicata or collateral estoppel grounds, prior to deciding
19 a matter."

20 Now, with that in mind, Madam Chairman, I respectfully
21 submit that this contention, and the next one where we get the
22 same objection, should be admitted in this proceeding on the
23 grounds of changed circumstances.

24 At the time we did the construction permit proceeding,
25 of course, there were Regulations that required protective action

1 be limited to the so-called low population zone. In the case
2 of the Seabrook reactors, that was a circle that was originally
3 drawn a mile and a half around the reactors. As a result of
4 subsequent appeals, it was subsequently reduced, those appeals
5 resulting in a different decision on what the population center
6 was, the circle was drawn into a mile and a quarter.

7 In any event, the decisions made in the construction
8 permit proceeding were that there was an LPZ a mile and a quarter
9 around the reactors and that the Commission did not have the
10 authority and therefore, did not need to consider taking protective
11 action for people beyond a mile and a quarter from the reactors.

12 Today, as everybody in this room I am sure is aware
13 and certainly members of this Board are aware, we have
14 Regulations declaring that the protection of people not within
15 the Low Population Zone, but within an Emergency Planning Zone
16 of approximately ten miles from plume exposure, and a fifty mile
17 zone for ingestion exposure, must be given consideration. That,
18 I think is a changed circumstance and has always been a consider-
19 ation of the seacoast. This is a heavily tourist dependent
20 area as the Board will be aware and can see that the operation
21 of this plant with its risk of hazard and even the reports of a
22 hazard, and even the reports of hazard at another facility,
23 will have a devastating impact on the major business in this
24 area which is tourism.

25 Now, that issue was dealt, as I say, in the construction

1 permit proceeding but under different standards. The change today
2 is that we now have legal standards embodied in the Commission's
3 Regulations which recognize that that hazard extends beyond a
4 mile and a quarter around the plant.

5 In addition, of course, we've just had the operating
6 history of nuclear plants since that time. In particular we have
7 had the event at Three Mile Island with the recommended evacuation
8 around that plant, and the spontaneous evacuation far in excess
9 of that that was recommended by that of the Governor of
10 Pennsylvania. All of these, I think, require that this operating
11 license proceeding that the issue of the economic operation
12 of this plant on the citizens within the area within the emergency
13 protection zone, where ever that may be drawn, need to be
14 considered and I submit that this is an appropriate contention
15 to be considered in this proceeding.

16 The fourth contention we filed originally met the
17 same objection, Madam Chairman. That was that the decommissioning
18 of the Seabrook Plant, should it receive its operating permit
19 and actually operate, will have a major long term impact on
20 the health and well being of the citizens in the area of the
21 facility.

22 There again, it is true that there was some testimony
23 at the construction permit proceeding on the decommissioning
24 of the Seabrook plant. At that time, we were told that all that
25 was necessary was that there was a general demonstration of the

1 capability for decommissioning the plant, that no particular plan
2 for decommissioning had to be devised, that there did not need
3 to be a choice made between mothballing and total removal
4 whatever.

5 Today, we are talking about not siting the plant but
6 an operating license for the plant. I think there again, there
7 are changed circumstances that require that this issue now be
8 looked at in greater detail.

9 For example, one of the things that my clients and
10 many of the others in the area are concerned about, is whether
11 or not in the construction of this facility itself which we will
12 be examining in detail in this proceeding, has provision to
13 facilitate the decommissioning of this facility when its going
14 to be ending its useful life, whenever that be. In other words,
15 I am suggesting that a different standard was applied at the
16 construction permit proceeding when the only concern was, is
17 there a technology out there that can handle this problem? No
18 need to consider the likelihood of what the choice of technology,
19 is there a technology out there.

20 I think the operating licensing proceeding, it is
21 appropriate and we think necessary to look at this issue with
22 somewhat more detail with full awareness that decommissioning,
23 if the plant operates, is granted an operating license, is not
24 something that is going to happen now but something that will
25 become inevitable and we will be dealing with a particular

1 design, with particular construction features which need to be
2 considered in the area of decommissioning.

3 That basically, Madam Chairman and members of the Board,
4 is my additional comments on the four issues we originally
5 submitted and my response to the written objection that we got
6 from the Applicant and the Staff.

7 JUDGE HOYT: Dr. Paris?

8 JUDGE PARISH: Mr. Backus, are you suggesting with regard
9 to Contention No. 1 that you want the language changed to read
10 Emergency Planning cannot reasonably assure that the public
11 health and safety will be protected in the Seabrook Emergency
12 Planning Zone?

13 MR. BACKUS: Yes.

14 JUDGE PARISH: With regard to No. 3, you talked about
15 the Emergency Planning Zone with reference to that contention.
16 I didn't quite get the nexus you were making between that and
17 economic well being. Can you say anything ^{to} illuminate that for me?

18 MR. BACKUS: Okay, I'll try. What I was addressing
19 was the contention that this issue had already been determined
20 at the construction permit stage. The nexus is that the
21 Commission has itself now, as a result of Regulation changes
22 resulting out of Three Mile Island, recognized that a possibility
23 exists for protective action within the entire Emergency Planning
24 Zone. Now the concern here is that we have a massive nuclear
25 facility located right behind the State's most popular tourist

1 attraction, Hampton Beach. The characteristics of this region
2 are such--Let me back up. Hampton Beach is not the only beach
3 in New England. It's not the only place that people can go for
4 vacations.

5 The evidence we would present on this issue would
6 involve some historical evidence about past problems, the beach,
7 tourist business, in light of problems, problems at the beach,
8 problems or riots, disorder and so forth and the kind of impact
9 you can have on business at the beach.

10 What we intend to try and show this Board, and we
11 think the Applicant has a duty to respond or a duty to prove
12 that this affect will not occur, is that the Seabrook plant if
13 it has an accident or a report of an accident, even reports of
14 accidents at other similar facilities at a time when the booking
15 season is at its height in this area, it can have a devastating
16 economic impact. It seems to me that the Commission in saying
17 that there is an Emergency Planning Zone, now is not going
18 encompass just the marsh as with the case with LPZ, but Hampton
19 and Seabrook, North Hampton beaches, and a good many towns around
20 them where there are major tourist facilities, that that is a
21 recognition that we have a concern for economic well being that
22 will be generated out of the drawing of that circle at that level.

23 JUDGE PARISH: So in other words, you are contending
24 that if Seabrook and Hampton Beach are, when they become
25 incorporated in the Emergency Planning Zone, tourists will go

1 to some other beach rather than to those. Is that the idea?

2 MR. BACKUS: That's the idea.

3 JUDGE PARISH: Thank you.

4 JUDGE HOYT: Dr. Luebke?

5 JUDGE LUEBKE: Mr. Backus, I'm looking at the initial
6 decision dated June 29, 1976 and up in the corner it says LBP
7 77-26 which I think is some kind of reference number. I'm on
8 page 881 on the subject of tourism which says that Intervenors
9 contend that the facility will have an adverse impact on the
10 tourism industry in the Hampton-Seabrook beach areas.

11 Paragraph 92 says, "The Board finds that while there
12 is no way to determine the exact impact on tourism in Hampton-
13 Seabrook which would result from the plant, there is no basis
14 at this time for finding that Seabrook would have any adverse
15 affect on tourism."

16 Do I understand you to say you intend to carry this
17 thing--you keep mentioning ten and fifty miles, does that mean
18 you are talking about beaches fifty miles up and down the coast
19 here? Is that your intention? I think the Seabrook-Hampton area
20 was litigated in the construction permit from what I read here.

21 MR. BACKUS: All I'm saying, sir, is that I am trying
22 to meet the language of the case I just cited, the Commonwealth
23 Edison Case. Before res judicata is applied to an issue that was
24 dealt with in the construction permit, it has to be with a
25 sensitive regard to what actually was litigated and with regard

1 to whether or not there are changed circumstances, it seems to
2 me absolutely clear that there are changed circumstances here,
3 changed circumstances as a result of the accident of Three Mile
4 Island itself and as a result of the Commission's response to that.

5 The concern we may have had during the construction
6 permit was by this Commission's Regulations in essence, limited
7 to the Low Population Zone. The Board was entitled to take
8 account of that. Now we have going on, as a result of this
9 Commission's change of its Regulations, enormously controversial
10 attempts to plan Emergency Planning in each of the towns within
11 the Emergency Planning Zone. All of that, I submit, makes a
12 proper contention as to whether or not that concern, if the plant
13 operates, will be translated into an adverse economic affect.
14 I think this is an entirely appropriate issue to be admitted.

15 Now, of course, we are only talking here about whether
16 a contention could be admitted before this Board. We don't have
17 any evidence on the issue yet. I think the decisions of the
18 Commission and its Appeal Board and its Licensing Board have
19 been very clear that this Board is not going to decide on the
20 merits of anything at this point, simply whether we have a
21 contention that should be brought forward.

22 I can tell you, sir and members of this Board, I think
23 there is no issue of greater concern in this area than this one.
24 I think there are people here also that could speak to that better
25 than I perhaps since I don't happen to live in this area. I do

1 think there are changed circumstances about this issue and the
2 decision of the Licensing Board that you just quoted there,
3 certainly should not be res judicata on this point.

4 Indeed, from what I heard you read, they said at this
5 time. Well, a lot has happened since that time.

6 JUDGE LUEBKE: Well, if I understand you correctly, your
7 changed circumstances emphasize more things like Three Mile
8 Island incident than it does ten and fifty mile Emergency Zones.

1 JUDGE HOYT: Mr. Backus, are the changed circumstances
2 that you are addressing the same as those that were addressed
3 in the interim policy statement, issued June 13, 1980 and
4 contained in 45, Federal Register 40101?

5 MR. BACKUS: Well, we have a supplemental contention on
6 that, Madam Chairman.

7 JUDGE HOYT: This is in regard to your contention
8 number three, which is what you were discussing.

9 MR. BACKUS: Well, as I understand it, and I don't
10 have the June 13, 1980 policy statement here with me--

11 JUDGE HOYT: Mr. Dignan, do you happen to have that
12 with you?

13 MR. DIGNAN: I was just looking, Madam Chairman. It
14 may be in the CCH.

15 JUDGE HOYT: Wait a moment. If it can be located
16 fairly rapid. I don't want to put you through too much trouble.

17 Let me approach this, Mr. Backus, in another direction,
18 then.

19 MR. BACKUS: I'm generally familiar with the policy.

20 JUDGE HOYT: Yes, I'm sure you are. The Applicant's
21 response to the supplement to the Petition to Intervene and for
22 Further Statement, contentions on behalf of the Seacoast Anti
23 Pollution League, filed by the Applicant, suggested an
24 alternative wording of your contention number three. What I'm
25 really driving at is whether or not you would be willing to

1 accept the alternative proposal of the Applicant. Are you aware
2 of that?

3 MR. DIGNAN: Madam Chairperson, I think some confusion
4 is getting into the record. As I understood Mr. Backus, and he
5 will correct me if I'm wrong, he was addressing his original
6 Contention No. 3, not his supplemental Contention No. 3.

7 MR. BACKUS: That's right.

8 MR. DIGNAN: I stand-- Mr. Gad will address it at the
9 appropriate time. We stand on the position that No. 3, original,
10 should stay out. It is true, we did try to reword the
11 supplemental contention. I thought that was what Mr. Backus was
12 addressing at this time.

13 JUDGE HOYT: That's what I was trying to determine.
14 You've answered the question, and I think, Mr. Backus, that takes
15 care of that.

16 MR. BACKUS: That's right.

17 JUDGE HOYT: It's the original Contention No. 3 that
18 you were addressing.

19 MR. BACKUS: Yes, ma'am.

20 JUDGE HOYT: Do you want to add anything to your
21 remarks on the supplemental No. 3?

22 MR. BACKUS: From the way you started, ma'am, I thought
23 you were going to have me address my original Contentions, and
24 then maybe Mr. Kinder, who also filed at that time, before he
25 went on to the supplemental ones, but--

1 JUDGE HOYT: Perhaps that would be the better way to
2 proceed. I agree with you, sir. Thank you.

3 Mr. Lessy, do you have anything you want to say?

4 MR. LESSY: There are a few points, your Honor. We
5 have, first of all, a response to Mr. Backus -- If the Board
6 pleases, I would like to remain sitting, because there are so
7 many papers here.

8 JUDGE HOYT: Please do, Mr. Lessy. No problem.

9 MR. LESSY: Thank you. The test, under the Farley
10 Decision, which Mr. Backus referenced in terms of his Contention
11 Nos. 3 and 4, to which there was this question of the fact,
12 as he previously stated, was litigated, is not just merely
13 the test of changed circumstances. In Farley, the Commission
14 barred licensing Boards to reconsider matters at the operating
15 license stage, which were considered by construction permit
16 boards, absent two things. First, and I quote: "Significant
17 supervening developments, having a possible material bearing
18 upon previously adjudicated issues." And the second is, and I
19 quote again: "The presence of some unusual factor, having
20 special public interest implications." That language would be
21 at 7 AEC, Atomic Energy Commission Reports, at Page 216.

22 I would read that language as opposing a higher thresh-
23 hold than Mr. Backus argued, simply-- Maybe he was referring
24 to it in a shorthand manner, as changed circumstances.

25 "Significant supervening developments, having a possible material

1 bearing upon previously adjudicated issues."

2 The second thing that was not addressed, and I would
3 just like to underscore, since it is in our filings, is that
4 we are here talking about an environmental issue, and the
5 Commission's regulations which implement NEPA, the National
6 Environmental Policy Act, state that review of the operating
7 license stage is, as a general matter, limited to a consideration
8 of relevant information which has arisen since the authorization
9 of the construction permit.

10 That's interpreted as-- Again, you wouldn't necessarily
11 have to use the term, res judicata or collateral estoppel, but
12 it's used in a jurisdictional sense, to mean, the scope of
13 environmental review at the OL stage, by regulation and by one
14 Court Decision, limits the scope of the OL Hearing for that.

15 I've cited those regulations and the relevant court
16 case on Page 5 of my response to SAPL's original Petition. It's
17 10CFR, Section 51.21, and Section 51.23d.

18 I, like some of the Board members, apparently didn't
19 really see the nexus between the change in Emergency Planning
20 Rules, and Economic Effect.

21 I think litigation of Emergency Planning Contentions
22 is one thing; relitigation of the economic effects of the
23 construction of the Seabrook Facility, is something entirely
24 different.

25 With respect to the first Contention that Mr. Backus

1 addressed, he mentioned briefly, in his amended Emergency Planning
2 question, in terms of Contention, we have Notice Pleading here.
3 That is true, but it is also true, by the Commission's Decisions,
4 that we shouldn't have to engage in Discovery to find out really
5 what you want to litigate.

6 The Contention, as reworded, is vague, and not specific,
7 for the reasons as outlined on Page 6 in my Pleading. I thought
8 there was a problem.

9 On the second Contention, which concern the proposed
10 condenser cooling system, as I listened to the argument, I think
11 Mr. Backus realized that there is no Proposal before the NRC to
12 modify the existing construction permit, as I understand it.
13 There may be pending requests for modification before the
14 Environmental Protection Agency, or other such requests.

15 If the Application were to be modified and produce a
16 change in the cooling system, by a number of decisions, the EPA
17 must first approve that. So, I don't know if it's efficient for
18 the Licensing Board to spend time-- you know, us to spend time
19 on Discovery and Litigation of a non-change, or non-proposal in
20 the plant.

21 That underscores the basis for our staff's position on
22 this one, at this point at least, the proffered contention is
23 speculative and premature.

24 If, in fact, there's an amendment to the Application
25 before the NRC, then that's a different story.

1 One final comment on SAPL's fourth proposed original
2 contention, which is decommissioning. I believe we pointed this
3 out in our original response. As I read it, there was a
4 question raised by SAPL as to the financial qualification of
5 the Applicants to implement a decommissioning plan, and almost
6 coterminously with the filing of that contention, in 47 Federal
7 Register, 13750, and I don't believe Mr. Backus is aware of
8 this, that the Commission has acted to eliminate the
9 consideration of financial qualification issues at the
10 operating license stage.

11 Not only was this litigated previously, but the scope
12 of that contention really isn't an operating license issue
13 jurisdictionally, in any event. Basically, that's another point
14 with respect to SAPL's proposed fourth contention that I wanted
15 to briefly emphasize.

16 That's all I have at this point, unless the Board has
17 any questions.

18 JUDGE HOYT: Dr. Paris?

19 JUDGE PARIS: Mr. Lessy, then I take it you would not
20 consider the institution of a Ten Mile Emergency Planning Zone,
21 as opposed to the Low Population Zone, that was initially
22 approved, to meet the test in Farley? With regard to
23 economic impact?

24 MR. LESSEY: That's correct.
25

1 MR. LESSY: If you want me to elaborate on the point,
2 as I indicated Emergency Planning Contentions can be crafted to
3 be litigated in this context but the economic affects in this
4 area were litigated before as Judge Luebke pointed out and I
5 don't see that a change in drawing of the lines is going to
6 affect the question of tourism in the area. I don't think that
7 meets the rather significant threshold of what the Commission
8 set forth in Farley and is set forth in the Commission's
9 Regulations.

10 There are other ways to litigate those zone changes
11 in Emergency Planning context.

12 MR. DIGNAN: Madam Chairperson, members of the Board,
13 with your permission, my partner, Mr. Gad will address the Board.

14 JUDGE HOYT: Thank you. Mr. Gad.

15 MR. GAD: May it please the Board, the Applicant too
16 has filed written response as to SAPL's original contentions
17 and did so on April 15th. I don't want to be duly repetitious
18 when measured either against that or with what we've heard this
19 morning so I will just summarize.

20 SAPL's first proposed Contention relates to Emergency
21 Planning. We've already stated that we think it is a legitimate
22 contention that the Applicant's proposed plans do not meet the
23 requirements of the EPZ Regulation and the EPZ Appendix. The
24 difficulty we suggest, with the phraseology of SAPL's first
25 proposed contention, is not limited solely to its on site or

1 off site scope but includes the fact that as drafted, the sample
2 proposed Contention would measure these Emergency Plans against
3 some standard other than the Regulations. The decisions of this
4 Agency are fairly plan that if the application meets the
5 Regulations, that's the end of the inquiry.

6 Hence, we suggest a revision in the draftsmanship of
7 SAPL's proposed First Contention but as revised, we agree that
8 it ought to be admitted.

9 JUDGE LUEBKE: Would you read that into the record just
10 for completeness?

11 MR. GAD: Yes, Dr. Luebke.

12 The Applicants have suggested and I'm referring now to
13 page 4 of our April 15th response, that the appropriate contention
14 and admissible contention is, "The Applicants have failed to
15 comply with the applicable provisions of 10 CFR, Section 50.47
16 and 10 CFR Part 50 Appendix E."

17 The second proposed Contention relates to the condenser
18 cooling system and the affect of operating this condenser cooling
19 system. Once again, the Contention is somewhat ambiguous to
20 the extent that it proposes to relitigate all of the environmental
21 impacts of the operation of the Seabrook condenser cooling system.
22 That relitigation is barred by the prior litigation and prior
23 adjudication in this Agency to the extent that contention is
24 limited to a contention that says, notwithstanding current licenses
25 and current plans, there may be a change in the way that system

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1 will be operated, then we suggest that the Contention is both
2 premature and speculative and that it is addressed to the wrong
3 forum. The emissions on this cooling system are set by EPA and
4 I think Section 511 of the Clean Water Act says the EPA alone
5 sets those emissions limits. So that we cannot litigate it here,
6 how much chlorine ought to be in the condenser cooling system
7 discharge. If EPA were to entertain and grant a change in the
8 discharge permit, then perhaps there might be a litigable
9 contention here under NEPA as what the impact of that change is
10 on the overall cost benefit balance. It's a long time before
11 we reach that issue. For the moment there has been no change
12 in the EPA Permit and the EPA Permit governs.

13 With respect to Nos. 3 and 4, once again the decision
14 to which Mr. Backus refers, I believe from the citation is the
15 Farley Decision. The basic principle of the Farley Decision
16 as stated is, "An operating license proceeding should not be
17 utilized to rehash issues already ventilated and already resolved
18 in the construction permit stage."

19 What is proposed in Contention No. 3 is to rehash
20 economic impact, which is an NEPA Issue, of tourism. We agree
21 with the Staff Counsel that the fact that the NRC has since set
22 forth an additional, not a substitute but an additional safety
23 related planning consideration does not rise to the level of
24 a significant supervening effect necessary to get around res
25 judicata which Farley in subsequent decisions say is a matter

1 of rule and not necessarily a matter of discretion.

2 Moreover, what is proposed here is not to litigate
3 simply the impact of the fact that we now have a ten mile EPZ.
4 What is proposed is to reopen the tourism impacts all over again
5 and that we say is barred by Farley. It is also barred by,
6 as Counsel for the Staff has pointed out, the environmental
7 Regulations of this Agency, specifically Sections 50.21 and 23.

8 With respect to decommissioning, once again, the issue
9 has been litigated. There has been no suggestion that the
10 economic effects or the environmental affects rather, which is
11 the NEPA issue of decommissioning will be--that there is any
12 reason now to believe there will be any different than there
13 was to believe at the time.

14 In so far as the Contention addresses financial quali-
15 fications, as Counsel for the Staff has pointed out this morning
16 and as we have pointed out in our written response, that is no
17 longer an operating license litigable issue.

18 JUDGE PARIS: Mr. Gad, you referred to 10 CFR something
19 just now and I thought you said 50.21 and 50.23. I must have
20 misheard you.

21 MR. GAD: I may have mistated myself. I intended to
22 say Sections 51.21 and 51.23 which go to the scope, Dr. Paris,
23 of the Applicant's environmental report and the Agency's
24 environmental impact statements in the operating license case.

25 DR. PARIS: Let me ask you another question while I'm

1 talking to you now. Has the Applicant applied the EPA or approval
2 to change its bio-fouling prevention measures?

3 MR. GAD: I understand that the Applicant has.

4 JUDGE PARIS: When do you expect the decision to come
5 down or do you know?

6 MR. DIGNAN: I have been informed, and I would like a
7 chance to check this, Dr. Paris, so that my statement is absolutely
8 correct in the record. As I understand it, they are in a draft
9 permit stage over at EPA. That is to say, they would publish
10 that as a draft which would then set in motion the various
11 procedures of EPA such as layoff. I would like leave to check
12 that at the first recess because I want to be absolutely sure
13 I'm correct with the Board.

14 JUDGE PARIS: Okay. Anymore information you could give
15 us would be helpful. Thank you, Mr. Dignan.

16 JUDGE HOYT: Mr. Dignan, may I add in terms of timeframes
17 that there be some decision on that.

18 MR. DIGNAN: I'll be glad to.

19 JUDGE HOYT: Thank you.

20 MR. DIGNAN: I might respectfully suggest that again
21 we attempted a rewording of this contention with a view to the
22 fact that this thing might be something that was between desks
23 when we had to settle this and we put as a conditional phrasing
24 in a contention to the affect that if EPA should change the
25 permit, it is contended that this would tip the cost benefit

1 analysis which we think is the one litigable issue that can come
2 out of this. We have phrased that in our response to the SAPL
3 Contention in writing and would not object to that contention
4 as we phrased it being admitted.

5 JUDGE HOYT: That's the same one that you have on page 5
6 of your response then as I understand it?

7 MR. DIGNAN: I believe it is on page--

8 JUDGE PARIS: Mr. Backus, could you give us your reaction
9 to the Applicant's proposed rewording of your Contention No. 2 and
10 Contention No. 1?

11 MR. BACKUS: Yes. On Contention No. 2 the Applicant
12 suggests that the only litigable issue will be to say that if
13 EPA changes the bio-fouling control mechanism to the use of
14 chlorine instead of thermal shock, that this will tip the cost
15 benefit balance against the operation of the facility. I think
16 that's a very difficult issue for this Commission to manage in
17 those terms, rather this Board.

18 The Commission has, as I understand it, very recently
19 eliminated the need for power as an issue in operating license
20 proceedings by Regulation. My understanding is that the only
21 benefit of building nuclear power plants is the power they are
22 to produce. If you can't consider the benefits, I'm not sure
23 just exactly on what basis you are supposed to deal with measuring
24 the costs against the benefits anymore. It's a conundrum I don't
25 know the answer to, but it does occur to me it's a real dilemma

1 with they way it's been worded by the Applicant here. I think and
2 I think the Applicant has conceded that the affects of the
3 operational cooling system, if they are changed by EPA, still
4 have to be dealt with in approving an operating license that the
5 costs have to be figured in. I don't think they can be figured
6 in the way the Applicants worded the Contention.

7 The Emergency Planning Contention as they reworded that,
8 I agree in general that the Emergency Planning has to be set
9 against a standard to be set up by the Commission, but the standard
10 the Commission has set up is a very, very general one. It's
11 whether or not there is reasonable assurance that adequate,
12 protective measures can and will be taken in the event of a
13 radiological emergency. I think that is the gist of it and I
14 think that's what our Contention is directed to. It is whether
15 or not Emergency Planning cannot reasonably assure that the public
16 health and safety can be protected, and I suppose that should be
17 and I would agree it could be amended to be, adequately protected
18 in the area of the Seabrook LPZ.

19 JUDGE HOYT: Does that leave us, Mr. Backus, with an
20 outright rejection of the alternative phrasing of your Contention?

21 MR. BACKUS: Well, I think given what the Commission
22 has done to the benefit side of the equation by eliminating it
23 by rule, and I'm not quite sure that can be squared with the
24 requirements of NEPA, I think that the contention as we have
25 framed it is appropriate in terms of unreasonable adverse affect.

1 JUDGE HOYT: I'm not sure you answered the question,
2 Mr. Backus, but thank you.

3 MR. BACKUS: Well, I'll be glad to try again but I
4 don't think I can say anymore about it.

5 DR. PARIS: The point you raised there is one I have
6 not considered and it is an interesting one but I have a feeling
7 we could get around that one way or another.

8 JUDGE HOYT: Anything else, Mr. Lessy?

9 MR. LESSY: No, your Honor.

10 MR. BACKUS: One other thing, Madam Chairman, just if
11 I could just quickly say. Everybody here on this issue has
12 addressed my contentions that they are tacking on res judicata
13 collateral estoppel, has cited this Farley Decision. I'm sure
14 that the Chairman and members of the Board will take a close look
15 at it but I do point out the language includes, "It was expressly
16 pointed out that there was no claim in the case that they are
17 distinguishing in either significant supervening developments
18 having a possible material bearing upon any of the issues
19 previously adjudicated in the construction permit proceeding or
20 the presence of some unusual factor having public interest
21 implications. I submit that with the issues that we are seeking
22 to have brought forward for consideration in this proceeding,
23 that both of those things are present: that is as to the economic
24 impact of the problems of station operation or reports of problems
25 with station operations. There have been significant supervening

1 developments; namely, the Three Mile Island event in particular.
2 I think that's the most significant intervening development in
3 the nuclear power industry in many years. I think everybody
4 recognizes that.

5 The presence of unusual factors, I think, Madam Chairman
6 and members of the Board, that there is no issue of more concern
7 to the people of this area than this issue. I think there is
8 enormous public concern about this issue here. I just do not
9 imagine it would be acceptable for this Board to not deal with
10 the issues of most concern with the people here in the course of
11 this proceeding.

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1 JUDGE HOYT: Mr. Backus, the Board will consider all
2 the arguments that you have forwarded in regard to your Contentions,
3 and those other arguments which may come forward in the other
4 intervener's contentions, which they will present later on in
5 this Hearing.

6 I would like to also leave it on this record that the
7 public does have mechanisms to ensure that there will be a full
8 exploration of their concerns. Probably one of the methods,
9 of course, is the limited appearance statements of any public
10 member, at the appropriate time.

11 As our Order read on the Proceedings this morning,
12 we will not take any public testimony. I am concerned that your
13 statement may have indicated that the public will be foreclosed,
14 and I want to be certain that this record is very clear that
15 the public is not going to be foreclosed in the participation
16 in these Hearings. Thank you.

17 MR. BACKUS: Thank you, Madam Chairman. I did not
18 take your statement in that view, but, of course, we are
19 concerned that there be not merely limited appearances, but an
20 opportunity to litigate, on the record, those issues which are
21 of concern to the affected public here.

22 MR. HOYT: As I've indicated to you, sir, we will.
23 Do you want to go ahead with your Supplemental?

24 MR. GAD: Madam Chairman, I suggest that we go forward
25 with the State's contentions first.

1 JUDGE HOYT: Let's have about a five minute recess.

2 (Recess)

3 JUDGE HOYT: Will everyone take their seat, please?

4 Will the Hearing come to order. Let the record reflect that
5 all the parties to the Hearing are present when the Hearing
6 recessed, and are again in the Hearing room.

7 All right, sir.

8 MR. DIGNAN: Madam Chairlady?

9 JUDGE HOYT: Yes, sir.

10 MR. DIGNAN: I wanted to report something. I said I
11 would report further on this business of the EPA Permit. My
12 understanding is this, that this preliminary draft permit has
13 been authored, written, or whatever, at EPA. That EPA plans to,
14 or has in fact, turned it over to NRC; that it will be included
15 as an appendix in the NRC draft Environmental statement.

16 Beyond that, we now go into the question of a comment
17 period at EPA, I frankly do not feel comfortable speaking for
18 EPA timing.

19 Perhaps the Board will want to send a letter of inquiry
20 over to EPA Region 1, on what they were looking at. I, frankly,
21 don't know, and it takes a greater lawyer than me to predict
22 progress in that Agency towards the Hearing. I just really
23 don't know how fast that will move at this point.

24 If this issue is to get in at all, I urge this
25 conditional phrasing, which we could litigate it, and then wait

1 for the Decision to come out either way. In other words, if it's
2 chlorine, it's good, if it's chlorine, it's bad; if it's not
3 chlorine it's good; if it's not chlorine, it's bad, under the
4 conditional phrasing of the contention I've offered to the
5 opponents.

6 But, that's as much as I know at this point, in the
7 EPA situation. So, there can be no doubt, and I don't want
8 anybody misled, that the company will be urging EPA to permit
9 this chlorination. We feel this is the way to go.

10 JUDGE HOYT: Do you anticipate that there will be an
11 EPA Hearing on this?

12 MR. DIGNAN: I have no idea. I am not familiar enough
13 with what they do with the two permits in between, or whether
14 there would be one requested, or whether a request is necessary.

15 JUDGE HOYT: That's not under the Clean Air; that's
16 under the Clean Water?

17 MR. DIGNAN: It would be the clean water.

18 JUDGE HOYT: I believe Dr. Paris has something to say.

19 JUDGE PARIS: Or, the Water Pollution Control Act, I
20 guess is the formal name of it.

21 JUDGE HOYT: One or the other. Dr. Paris has some
22 questions.

23 JUDGE PARIS: Can Mr. Lessy, or the staff, get any
24 information from the EPA about their timing?

25 MR. LESSY: I would be happy to try, your Honor.

1 The information which Mr. Dignan related about the inclusion
2 of that draft EPA document or permit into the draft Environmental
3 Statement is correct, as I understand it, and the DES will be
4 issued this week.

5 In addition, we'll contact EPA by letter, and ask for
6 a status of it, and any response we get we'll submit to the
7 Board and parties.

8 JUDGE PARIS: Okay. Thank you.

9 JUDGE HOYT: Please be certain, Mr. Lessy, that it is
10 served on all the parties when you have it, if you will. Thank
11 you.

12 All right, is the State of New Hampshire ready?

13 MR. KINDER: We have filed twenty-two Contentions. I
14 will proceed in any way that you like, but I would suggest that
15 perhaps that perhaps if we took them one by one, it would be a
16 little easier for everyone involved.

17 JUDGE HOYT: Mr. Kinder, we want to proceed in whatever
18 manner is most helpful to you in the presentation of your case.
19 If you feel comfortable with that, go right ahead.

20 MR. KINDER: I think it will be helpful to the Board
21 and the rest of the panel to do that, with your approval.

22 JUDGE HOYT: Thank you. Go ahead.

23 MR. KINDER: The first contention that we have raised
24 relates to a Reliability Evaluation Program that we feel is
25 necessary, in order for this plant to be properly licensed.

1 The staff and the Applicant have both objected to this
2 contention on the grounds that there is no regulatory requirement
3 for such an evaluation and study.

4 I'd like to submit on that point that, as we have
5 indicated in the basis of our contention, the Three Mile Action
6 Plan, NuREG 0737, at Part 1C(1), refer to a requirement to
7 perform analyses of transients and accidents.

8 Now, that is similar, and in fact, a part of what we
9 are proposing, that should be required in our contention.

10 I would also like to refer the Board to the comments
11 of Chairman Palladino, that he made on April 5th of this year.
12 I can make a copy of those comments available to the Board.
13 In summary, he refers to the probabilistic Risk Assessment
14 Technique, which is being considered by NRC now, as to whether
15 it will be required for plants, and how it might be used in
16 a licensing procedure.

17 Chairman Palladino indicates in his remarks, and I
18 believe he's speaking for the NRC, that probabilistic Risk
19 Assessment studies are felt to be valuable in licensing
20 procedures.

21 The Applicant has made statements to that effect in
22 its newsletter, which it makes available to anyone who wants it,
23 I guess. It has indicated that the company feels a probabilistic
24 Risk Assessment study will be useful in licensing proceedings.

25 The State of New Hampshire certainly feels that such

1 a study would be valuable to licensing proceedings, and
2 certainly beyond that. In fact, there is legislation pending
3 before the New Hampshire Legislature which would require that a
4 Probabilistic Risk Assessment study be performed for Seabrook.

5 In summary, I take that to mean that the NRC, the
6 Applicant, the State of New Hampshire, all feel that such a
7 study would be beneficial, and would be beneficial to this
8 Licensing Proceeding, be beneficial to developing any design
9 for programatic changes that might be necessary for the Seabrook
10 Facility, and would be helpful to the Applicant and the NRC
11 as a dynamic document, even beyond the Licensing Proceeding.

12 For those reasons, and further based on the require-
13 ments of NuReg 0737, I believe that this contention should be
14 allowed in this Proceeding, and that a Probabilistic Risk
15 Assessment approach to a reliability evaluation study of the
16 safety systems, and the operation procedures of the plant,
17 should be done, and should be reviewed by the Licensing Board.

18 With the Board's indulgence, those are my comments
19 on this contention. I would be happy to answer any questions.

20 JUDGE HOYT: Do you have any questions?

21 MR. LESSY: I went first the last time. Does the
22 Applicant want to respond first and then I'll respond, or I can
23 go ahead.

24 JUDGE HOYT: I don't know that it makes a great deal
25 of difference, but whichever one of you gentlemen who wishes to

1 respond, you may toss it among you.

2 MR. LESSY: I just don't want us both leaping forward,
3 and talking at the same time.

4 MR. DIGNAN: Madam Chairperson and Members of the
5 Board. My learned friend, Mr. Kinder, as usual, has been
6 eloquent, but he has pointed yet to no regulation of the
7 Commission, and I submit upon a careful reading of 1C1, in
8 NuREG 0737, nothing in that document, which, by Commission
9 Decision, has been made a regulation, which requires a PRA.

10 It is true that the Applicant is having a PRA done
11 at his plant. It's well publicized. I doubt that it will be
12 finished before these Hearings are over.

13 On the other hand, the fact that we are doing a PRA,
14 does not make a matter for this Board to concern itself with.
15 The PRA, the Applicant has indicated, in public, we believe
16 to be a very good engineering tool; we believe it is something
17 that's on the cutting edge of analysis, and something valuable
18 for us to have.

19 But, the scope of this Board's jurisdiction, I
20 respectfully submit, are items regarding compliance with the
21 Commission's Safety Regulations. That principle was first laid
22 down in Maine Yankee - Atomic Power Company, ALAB 161, 6AEC,
23 1003. It was affirmed by the Commission, and it was affirmed
24 by the United States Court of Appeals for the District of
25 Columbia Circuit, in the case of Citizens for Safe Power v. NRC

1 524 Fed 2nd, 1291.

2 It seems to me that the interesting thing about the
3 argument for PRA is that no one attempts to point to a regulation
4 which requires it. So, as long as that be the case, it may well
5 be that the regulations will change as we move through this
6 Hearing. It is not a safety issue for litigation before a
7 Licensing Board, or an operating license, or construction permit
8 here.

9 JUDGE HOYT: Mr. Lessy?

10 MR. LESSY: I essentially agree with that position.
11 As we stated in Page 10 of our Response, there is no statutory
12 or regulatory basis to show that compliance with 10CFR, Section
13 50.46, which is Acceptance Criteria for core cooling systems,
14 for nuclear power reactors, requires the submittal of a
15 Probabilistic Risk Assessment. The fact that the Public Service
16 Company of New Hampshire has a news release which talks about
17 its desirability, or the fact that they can be useful in certain
18 cases, does not mean that that is a criterion against which the
19 adequacy of the safety of the operation of a Seabrook Plant,
20 which is the concern of this Hearing, will be evaluated.
21 Therefore, we oppose its admission. Nuclear power plants are
22 licensed routinely without such assessment.

23 JUDGE PARIS: Mr. Dignan, what is Public Service going
24 to do with the PRA when it gets it? That's just out of
25 curiosity.

1 MR. DIGNAN: The PRA is viewed by the company as a
2 number of things. One, as I said, is an engineering tool. It
3 will give them a view of future analysis.

4 The second thing we hope it will do, whether we are
5 successful in this, I don't know, is that it will provide, in our
6 judgment, an unbiased analysis of this plant, which hopefully
7 will assure the public as to the plant.

8 I'm not asking every member of the public to jump up
9 and agree that it will, but we do think that the uncommitted
10 person who is honestly looking at this will get some assurance
11 out of the Risk Assessment.

12 Finally, quite frankly, and I always try to keep my
13 reputation for candor with the Boards - one of the reasons that
14 that decision was made was the theory that the Commission
15 Regulations could change. What I didn't want to do is have a
16 licensing hearing where we had a major hiatus, because we hadn't
17 even gotten the ball rolling.

18 That does not mean that the regulations have changed
19 as of today. I don't know whether they will change or not during
20 the course of the Hearing.

21 That's the value of the thing from our business point
22 of view.

23 JUDGE PARIS: Thank you.

24 JUDGE HOYT: You indicated that that would be some
25 time after these Hearings, that it would be made available.

1 MR. DIGNAN: If I understand the schedule of the
2 completion of the PRA, by that I mean the final report on the
3 table, against one scheduling scenario I've seen, the entire
4 run of the operating licensing proceeding, the final report will
5 come out after the Evidentiary Hearings are over, and maybe
6 after the Decision was out - the final report.

7 It's no doubt that, as the Hearing progresses, the
8 dynamics of the thing are such that some things may become
9 available that would be capable of putting in testimonial form,
10 if necessary.

11 But, we do not expect a completed report to be out
12 before, as I see, the present schedule of the Hearings. Of course,
13 if there's slippage in the Hearing Schedule, I'm sure there will
14 be slippage in the PRA, too.

15 JUDGE PARIS: When do you think the PRA will be
16 available?

17 MR. DIGNAN: Eighteen months from now.

18 JUDGE HOYT: What parts of it will be available earlier
19 than that, if you know.

20 MR. DIGNAN: Could I reply to that after a recess?

21 JUDGE HOYT: Yes.

22 MR. DIGNAN: Because you are now pressing me in the
23 areas where I want to consult with technical people before I
24 answer.

25 JUDGE HOYT: Of course, yes. I would like your best

1 estimates from your staff, if you would give them to us, at the
2 time that you have it available.

3 MR. DIGNAN: I would be glad to.

4 JUDGE HOYT: Thank you.

5 MR. LESSY: May I make an additional comment?

6 JUDGE HOYT: Yes.

7 MR. LESSY: The contention is, Judge Paris, that such
8 a plan is necessary to ensure compliance with 10CFR, Section 50.46.
9 The staff proposes that on the grounds that it's an illegally
10 incorrect premise for that contention.

11 JUDGE PARIS: I understand, Mr. Lessy, but we are
12 just trying to get some handle on some dates. We are going to
13 talk about dates later.

1 MR. KINDER: Madam Chairman, if I may?

2 JUDGE HOYT: Of course, Mr. Kinder.

3 MR. KINDER: I would like to make one comment in response
4 before I go on to the second contention.

5 That is, as you know, I've advised the Board in writing
6 that these contentions were put together on what I felt, given
7 the seriousness of this matter, on rather short notice. I
8 recognize that the phraseology in some of these contentions might
9 be improved and I would be happy to consider revising phraseology
10 on this or any other contention but with regard to this particular
11 contention, it appears to me that the requirements of Section 1C1
12 of NUREG 0737 overlaps to a considerable extent with what we
13 have raised in Contention No. 1.

14 For example, it would require a multiple failure
15 analysis of NUREG 0737 and it also requires consideration of
16 human error in accident sequences.

17 Therefore, if the Board so desires, I would be happy
18 to consider rephrasing that Contention.

19 DR. LUEBKE: You would then limit the scope of the
20 contention?

21 MR. KINDER: Well, my feeling is that a full reliability
22 evaluation should be done but should the Board not agree with me
23 on that, I would consider terminology which would limit the scope
24 of that contention.

25 JUDGE HOYT: Yes. Just one other point, Mr. Kinder, that

1 I would like to make. If you do have some changes in the wording
2 of your contention, we would like for you to negotiate that with
3 the opposing parties here and determine what the language could
4 be and would be acceptable to the parties on that basis.

5 MR. KINDER: We have discussed among some of us this
6 morning that that might be helpful for us to meet perhaps over
7 the lunch break to see if we can't resolve--

8 JUDGE HOYT: (Interrupting.) We don't want to limit
9 you to some hastily conceived language but we would certainly,
10 as a Board, be willing to accept any changes that you had
11 negotiated out perhaps by letter or telephone conversation, however
12 you wish to do it.

13 Specifically, what language would you want to amend or
14 revise?

15 MR. KINDER: I don't have any particular language to
16 present at this time?

17 JUDGE HOYT: I said it as a matter of interest rather
18 than--All right, the second contention if you have nothing else
19 on that one.

20 MR. KINDER: Yes. Contention No. 2 relates to the
21 problem of Systems Interaction. In general, this is the concept
22 of the interaction between safety and non-safety systems in a
23 manner which they render the safety systems not capable of
24 performing their functions in the manner that they were designed
25 for. The Applicant has claimed that there is no requirement, no

1 regulatory requirement that such an interaction analysis be
2 performed. The Staff has indicated that it feels that the State
3 of New Hampshire should show some special circumstances and
4 apparently be more specific.

5 My comments are that this concern arose in large part
6 out of the incident at Three Mile Island, although certainly the
7 concern existed prior to that. It has been identified as an
8 unresolved safety issue by the Staff. It is numbered A-17 as an
9 unresolved safety issue.

10 I believe that our contention is specific enough to
11 qualify it as a contention in these proceedings. I won't go
12 over the standards for specificity since Mr. Backus has referred
13 to them. We are in a notice pleading kind of circumstance here
14 and I think the parties recognize what the problem of Systems
15 Interactions is and what appropriate responses to that are.

16 Under the Law that has developed out of the Virginia
17 Electric Decision which held that unresolved safety issues must
18 be addressed in the Staff's Safety Evaluation Report, I believe
19 that this contention must survive at least until the Safety
20 Evaluation Report is available. At that time the Intervenors
21 will have an opportunity to review the extent to which the Staff
22 has considered this particular unresolved safety issue, Systems
23 Interaction, and we will be able to further refine, if necessary,
24 this contention.

25 So in summary, I believe the contention adequately states

1 an issue that should be considered by this Board and at least
2 until that Safety Evaluation Report is made available, it should
3 be included as a contention.

4 JUDGE HOYT: Before you respond, Mr. Lessy, could you
5 give us an idea of when your Safety Evaluation Report will be held?

6 MR. LESSY: The Safety Evaluation Report, your Honor,
7 is scheduled for issuance in September of 1982 and that's in
8 addition to our response on page 13 of our pleading in which we
9 felt that the decision in Diablo Canyon controlled this. I don't
10 we should hold open a contention to which you couldn't even
11 engage in discovery until next September. If the State of
12 New Hampshire or any other party feels that the treatment of
13 that particular issue is inadequate in the Safety Evaluation
14 Report, then that's the time to file a contention and our rules
15 specifically provide for that.

16 On the other hand, we feel that you still haven't
17 identified any statutory or regulatory basis to establish that
18 Appendix A to 10 CFR Part 50 requires the analysis of Systems
19 Interactions which your contention requires. Diablo went slightly
20 beyond that in which it said they might consider such a matter
21 in the event of special circumstances and they haven't been
22 alleged. We feel at this time we would continue to oppose that
23 contention.

24 JUDGE HOYT: Do you have any idea what special
25 circumstances you are referring to there?

1 MR. LESSY: A special circumstance of the plant concern-
2 in the adverse interaction between safety and non-safety systems,
3 something you need to design of that facility as I understand it.

4 JUDGE HOYT: Mr. Dignan.

5 MR. DIGNAN: Madam Chairperson, members of the Board,
6 I can be just as brief again.

7 Again, I have not heard from Mr. Kinder what portion
8 of NUREG 0737 he claims requires requires this analysis. That
9 being the case, I believe under the cases cited, that it is not
10 a matter for this Board.

11 Having said that, and having also addressed the PRA,
12 I feel as a lawyer I must call to the attention of the Board
13 a decision which came into my possession yesterday from another
14 Licensing Board. It is as far as I know, unpublished. This
15 Board should probably should peruse before ruling. I think it
16 is wrongly decided but it is fair to say that that Board coalesce
17 a PRA contention and a Systems Interaction contention into one
18 contention and cast it in terms of a general design criteria.
19 I feel that as a lawyer I simply must point it out to the Board
20 because it cuts against the argument I am making and it is a
21 decision of the Licensing Board of the Commission. It came down
22 in the matter of Long Island Lighting Company, Shoreham Nuclear
23 Power Station, Unit 1, Docket Nos. 50-322-OL, 50-322-CPA, decided
24 March 15, 1982. The Board members were Judges Brenner, Carpenter,
25 and Shon.

1 As I say, my view in this decision is it was wrongly
2 decided. I think the Board reached to get a contention on these
3 issues. On the other hand, I feel duty bound to point its
4 existence out/^{to}the Board and they may wish to review it before
5 ruling.

6 MR. DIGNAN: That opinion is referenced on page 13 of
7 the Staff's response.

8 JUDGE HOYT: S-H-O-N, Shon.

9 MR. LESSY: I apologize to the Board for not referring
10 to it. I have no means of getting the unpublished opinions from
11 Boston and it was shown to me last night.

12 JUDGE HOYT: Thank you.

13 Mr. Lessy, did you say you had some reference to that
14 on page 13?

15 MR. LESSY: Yes, page 13 and page 10. The longer
16 reference is on page 10.

17 JUDGE HOYT: You were citing it as the Shoreham Case?

18 MR. LESSY: Yes, that's right.

19 JUDGE HOYT: Very well. I have that. Thank you.

20 Do you want to do some rebuttal, Mr. Kinder?

21 MR. KINDER: Yes, ma'am. Thank you.

22 I appreciate the candor of both Mr. Dignan and Mr. Lessy.
23 If Mr. Dignan has trouble getting these unpublished things in
24 Boston, you can imagine how much difficulty we have up here.

25 I did try to obtain a copy of the Shoreham Decision

1 which was cited by Mr. Lessy and was unable to do so prior to
2 my coming here today.

3 JUDGE HOYT: The Board will just share with you their
4 concern too. We have problems getting them also.

5 MR. KINDER: I would like to say as far as citing the
6 particular regulatory statutory requirements, I have cited in
7 the contention as a basis for NUREG 0737, again the same section
8 which I referred in my discussion of the first contention. I
9 believe there is an overlap between the Systems Interaction Issue
10 and the requirements of that Section of NUREG 3707. I have also
11 referred to the Virginia Electric Decision which I think requires
12 the Staff to consider unresolved safety issues in its Safety
13 Evaluation Report.

14 So I believe the legal foundation for the entrance of
15 this contention. Naturally, had I been able to read the Shoreham
16 Decision, I feel sure I would have cited it as a basis for the
17 contention.

18 I would like to also note that Mr. Jordan, on behalf
19 of his client, has included Systems Interaction as a contention.
20 I don't know how the Board wishes to proceed, whether they would
21 like Mr. Jordan to comment on this contention at this time or
22 whether you would like him to reserve his comments for a discussion
23 of his contention.

24 JUDGE HOYT: Yes, the Board wishes to have that done
25 later.

1 MR. KINDER: I'm going to proceed to my next contention.

2 As Mr. Backus has referred to in his comments, the
3 Seabrook site is quite unique in terms of its proximity to the
4 beach area which is intensely populated. In fact, it is one of
5 the most intensely populated portions of New Hampshire at times.
6 It is also that area of the seacoast that is very important
7 economically to the State of New Hampshire.

8 For that reason the analysis of accidents is very
9 important and should be given great consideration in this
10 proceeding. The State feels that further analysis is required.
11 I think that's reflected by two previous contentions which overlap
12 with this one as well as with several of the following contentions.

13 It's been noted that the draft Environmental Impact
14 Statement is not available to any of the parties in this
15 proceeding. When it becomes available, we may be able to provide
16 further specificity on this contention. As it stands right now,
17 we do not feel that the Environmental Report adequately treats
18 Class 9 Accidents and we do not feel that the requirements of
19 NUREG 0737 of Section 1C1 have been complied with.

20 Further, Judge Hoyt referred earlier to 45 Federal
21 Register, 40101, which by the way I have located a copy of if
22 the Board would like to see it. I don't believe that the
23 Applicant's FSAR complies with the standards that are presented
24 in that document. The objection that has been raised by Public
25 Service Company is that only the requirements of this Federal

1 Register apply and the Staff has indicated that the contention is
2 too general and should be rejected.

3 I disagree obviously with both of those positions and
4 feel that there is a firm basis in the Regulations of the
5 Commission for this contention to be accepted.

6 JUDGE HOYT: Mr. Lessy?

7 MR. LESSY: Mr. Perlis will respond if the Board please.

8 JUDGE HOYT: Mr. Perlis?

9 MR. PERLIS: The problem that the Staff has with the
10 contention as phrased, that there is no rational given for the
11 allegation that the Applicant has not adequately considered a
12 Class 9 Accident.

13 The only real basis given are New Hampshire statement
14 that methodology in WASH 1400 has been discredited by the
15 Commission. The Staff has searched the Commission's statement
16 on WASH 1400 and has not found any discrediting of the methodology
17 used.

18 Secondly, there is one bare statement that the
19 Applicant's Environmental Report does not consider the impact
20 of human factors on the probability of an event occurrence and
21 that's really the only basis we are left with. The Staff's
22 position is that that is not a sufficient basis to support a
23 contention.

24 JUDGE HOYT: Thank you.

25 MR. DIGNAN: I would like to take a little time with

1 this contention because/^{its}illustrative of a problem that I'm going
2 to have with a number of contentions as we discuss them further.
3 Perhaps one dissertation of this would assist the Board and I
4 wouldn't have to repeat it.

5 One of the problems I'm having with a number of the
6 contentions is the insistance of a punative party to state the
7 contention not in terms of the Applicant doesn't meet Regulation X
8 but rather to state it, the Applicant must do this because
9 Regulation X so requires. If I accept that contention, I accept
10 their view of what the Law is as to Regulation X. That is what
11 I find difficult to accept.

12 This is a classic. It says, the Applicant has not
13 presented, contrary to the requirements of 50 CFR 51.20 (a), (d)
14 a complete assessment of the risks posed by the operation of
15 Seabrook.

16 Now that certainly isn't in hygrerver from 51 (a) or (d).
17 It isn't even close to it. What I don't know is what is complete
18 assessment ever mean? You can always assess something a little
19 further. I would have no trouble with a contention from the
20 State of New Hampshire that said, the Applicant and Staff have
21 not complied with the applicable provisions of the Commission's
22 interim policy statement of June 13, 1980 which incidently is
23 the thing that governs the consideration of Class 9 Accidents
24 before Licensing Boards specifically, not the general provisions
25 of 51.20.

1 A contention stated that way, I can deal with. It leaves
2 open to the parties, whatever their position may be, freedom as
3 to the law and freedom as to the facts to develop their case.
4 When you start freighting onto the contention your interpretation
5 of the Regulations saying by the wording of the contention that
6 the Regulation has certain legal requirements in it, that's when
7 the problem starts.

8 New Hampshire wishes to rephrase their contention that
9 there has not been proper compliance with the Class 9 interim
10 policy statement. I have no trouble with the contention but
11 freighting 51.20 (a), (d) with some spongy words like complete
12 assessment, I maintain, is not a proper contention.

13 JUDGE HOYT: Then would you be willing to accept the
14 contention reworded in some agreed fashion that you can work out
15 with Counsel?

16 MR. PERLIS: Reworded in the way I simply just stated,
17 yes.

18 JUDGE HOYT: Do you find any basis upon which you might
19 conduct some out of the hearing and negotiations with Counsel
20 concerning that?

21 MR. PERLIS: I suspect we may be able to find some.

22 JUDGE HOYT: Let's leave it at that point at this time
23 and urge Counsel, again as we indicated earlier, that the Board
24 would entertain and free wording of the contention to meet the
25 objections of all the parties.

1 Anything else on that , Mr. Kinder?

2 MR. KINDER: No, I have nothing further. I'm not sure
3 if Mr. Lessy commented.

4 Based on Mr. Dignan's comments, I feel that I would be
5 happy to discuss with him whether we can reach an agreement on
6 wording. I'd be happy to talk with him but I don't know whether
7 his position is the same.

8 JUDGE HOYT: I'm certain that Mr. Lessy would make it
9 clearly known to you on any discussion. So we urge all parties
10 to participate in them fully.

11 It's approaching the noon hour and I would like to
12 determine since I am a total stranger to this area, I don't know
13 how long it would take Counsel to have the appropriate lunch
14 break. Do you have any desires?

15 Please, just because no one else has spoken other than
16 Mr. Kinder, it doesn't mean that you cannot participate.

17 MR. AHRENS: If you are looking at me, your Honor, I'd
18 be happy to invite everyone to Maine but I don't think we would
19 make it back this afternoon.

20 JUDGE HOYT: The Board will go with you, sir.

21 Very well, I guess we should have asked Mr. Kinder.
22 He's our host here.

23 MR. KINDER: Yes. I was going to suggest that I guess
24 I am the host but I think I would like to refer to Mr. McDermott
25 who is more familiar to the local area.

1 JUDGE HOYT: We're passing it around, Mr. McDermott. It
2 seems to be your turn.

3 MR. MCDERMOTT: Again, we welcome you all to the area.
4 I would guess that you'll need at least an hour to get everyone
5 out, fed, and get everyone back. I suggest on the safe side an
6 hour and fifteen minutes or an hour and a half. All the local
7 restaurants are in the direction of the busy part of town.

8 JUDGE HOYT: Yes, sir.

9 MR. DIGNAN: Madam Chairman, I was also going to inquire
10 as to the Board's usual practice in terms of a quitting hour.
11 That's just to let people know. Do you have a usual hour in
12 which you adjourn?

13 JUDGE HOYT: Yes, sir. The appropriate one. Whatever
14 the business before the Board appears to be a good point at which
15 we can break off the session without it interfering with Counsels'
16 presentation and any arguments back and forth. I don't like to
17 leave a matter hanging in mid air overnight. I like to complete
18 all the work and I think that my colleagues on the Board feel
19 pretty much the same way. If they don't, they probably just
20 adopted that with me hopefully.

21 All right, we'll adjourn then to meet at--

22 MR. JORDAN: (Interrupting.) Madam Chairman?

23 JUDGE HOYT: Yes, sir.

24 MR. JORDAN: Excuse me. I'm sorry. It has occurred
25 to me actually from the Applicant's response to our contentions

1 in addition to discussions with other Intervenor and the most
2 recent contention, that discussions are probably very useful on
3 language that could be adopted I think particularly on Emergency
4 Planning. I mentioned it very briefly with Mr. Dignan over the
5 last recess.

6 It seems to me it may be useful to take an extra or
7 allot an hour in which we are put in the "boiler room" to talk
8 about that.

9 JUDGE HOYT: We had anticipated that that would take
10 place overnight, Counsel and you would have a more free and
11 informal atmosphere in which to conduct your talks. There is one
12 thing that I almost forgot to mention and that is, I would like
13 to caution persons behind the bar in the public section of this
14 Hearing Room not to enter as someone did earlier and moved the
15 microphones around. I do not wish to have the Counsel for any
16 of the Intervenor, Applicant and the NRC Staff, interrupted in
17 that fashion again.

18 I'm sure it was inadvertently done and it will not
19 occur again and we thank you for that.

20 We will adjourn and convene at 1:30.

21 (Off the record.)
22
23
24
25

1 (The hearing continued at 1:30 p.m.)

2 JUDGE HOYT: The hearing will come to order. Let the
3 record reflect that all parties to the hearing were present when
4 the hearing recessed are again present in the hearing room.

5 I believe that you--I am sorry. Do you have some
6 representation?

7 MR. DIGNAN: I had some information for the Board.

8 JUDGE HOYT: Please.

9 MR. DIGNAN: I had an inquiry as to the status of the
10 PRA. Work has started. The first phase is expected to be
11 completed in August of '82, and the first phase is defined as
12 basically a work-through of all the issues with a view to
13 determining what are the ones that really control and will get
14 the indepth treatment that is necessary for them.

15 Then there will be a draft of the full study completed
16 plus or minus on this time about March of '83. The final report
17 with the backup would be ready in October of '83.

18 If I might be permitted to add one word in connection
19 with this whether this issue should be admitted, there was
20 reference to the speech by Chairman Palladino concerning this
21 matter, and I think if we are going to put part of that in the
22 record, at least we ought to add also the statement he made,
23 "but we emphasized that they" meaning PRA's and safety goals,
24 "are not a substitute for our regulations, and that individual
25 licensing decisions will continue to be based principally on

1 compliance with those regulations."

2 So, I don't think that that speech of the Chairman
3 is in any way inconsistent with the position which you have
4 heard either from the Applicant or the Staff today.

5 JUDGE HOYT: Could we identify that speech in the
6 record any further?

7 MR. DIGNAN: Yes, ma'am. It was remarks by Nunzio J.
8 Palladino, Chairman, U. S. Nuclear Regulatory Commission, at the
9 American Nuclear Society Executive Conference, entitled Methods
10 for Probabalistic Risk Assessment, delivered in Arlington, Virginia
11 April 5, 1982.

12 JUDGE HOYT: Thank you. Is there anything else before
13 we continue with this? Please.

14 MR. KINDER: Just a comment on Mr. Dignan's comment.
15 Then I will go on. Rather than rely on whatever Mr. Dignan or
16 I may choose to read out of the remarks into the record---

17 JUDGE HOYT: (Interrupting.) Let me stop you at this
18 point, counsel, and say that we will take judicial notice of the
19 remarks of the Chairman of this Commission on the date in question.
20 Thank you, very much. Go ahead.

21 MR. KINDER: That is what I was going to suggest.

22 The next contention relates to anticipated transients
23 without SCRAM, which I prefer to refer to as HEWS from now on,
24 with the Chair's permission.

25 JUDGE HOYT: No problem. Go ahead.

1 MR. KINDER: This is, of course, the concern over
2 events that would occur without the reactor shutdown mechanism
3 coming into play. It has been identified as an unresolved
4 safety issue. I believe that there is--the Commission is involved
5 in rulemaking at present on this issue, and I believe in
6 November of 1981 presented some proposed rulemaking. As an
7 unresolved safety issue, I believe that the doctrine set down
8 in the Virginia Electric case which I have referred to before
9 which states that the Staff must deal with it in the SER provides
10 the legal basis for this to be a contention in this proceeding.
11 Since we don't have the SER at present, I think the contention
12 should be admitted subject to further refinement when that SER
13 becomes available.

14 I also believe as further legal basis for this
15 contention the section of NUREG 0737, which I have referred to
16 before as well, Section 1(c)(1) also relates to this concern.

17 I have nothing further on that issue.

18 JUDGE HOYT: Very well.

19 MR. PERLIS: Again, the NRC Staff has drafted its
20 contention principally on the basis that there is no real basis
21 for the contention. As we read it, the contention generally
22 states that the risk from an ATWS event must be greater analyzed,
23 and as we see it, the Commission has already stated that during
24 the period of interim rulemaking, unless special circumstances
25 are shown, the risk, in part, because of interim steps taken to

1 develop procedures and train operators from an ATWS event, is
2 acceptable. We think that New Hampshire to keep this contention
3 should have to show why the interim steps taken in Seabrook,
4 in light of the Commission's statement, are not sufficient, and
5 it has not done so.

6 JUDGE HOYT: Mr. Dignan?

7 MR. DIGNAN: Very briefly, Madam Chairman. First of
8 all I took the position in my written response to this at the
9 time that I wrote it that it was simply in rulemaking and relying
10 on an ALAB 655, and ALAB 218, the Douglas Point Decision, it is
11 my view that ATWS ought to be out.

12 This package of unpublished Decisions that landed on
13 my desk last night had a lot of surprises. Again, I would have
14 to inform you, I think Mr. Lessy, as usual, being a better
15 scholar than me, has probably cited it, which I did not. That
16 Long Island case I cited to you this morning let an ATWS issue
17 in. Although in this case I don't think think this does New
18 Hampshire any good, because I think it comes right along the
19 lines that the Staff has given you for an argument, because
20 there, there was a very specific contention as to a system that
21 the Intervenor said should be required on the plant under the
22 view that it was necessary as an interim matter until the generic
23 issue was resolved.

24 As I read New Hampshire's contention, what they want
25 you to do is conduct the rulemaking here. They want a general

1 runthrough of ATWS, which is a problem which has been around this
2 industry since back in the early '70's, at least when I first
3 stumbled into this quagmire called Nuclear Regulation, and it
4 doesn't seem to me that the Commission or anyone else is author-
5 izing Licensing Boards to take it up in its true generic form.

6 Now, if New Hampshire can restate to say that there
7 is a specific system that they are contending is necessary to
8 provide the interim assurance, it seems to me that under this
9 Long Island Lighting case, if the Board were to follow it, and
10 I have already given my views generally on that decision, then
11 they have got something, but this blanket request that we go
12 into ATWS, I think, is still out of bounds on the basis of the
13 general rule that matters that are before the Commission in
14 generic rulemaking should not be taken up in individual licensing
15 proceedings.

16 JUDGE HOYT: Mr. Kinder, do you want to respond to
17 that, also to my question of whether or not you will take this
18 also under consideration in any discussions that you have with
19 counsel.

20 MR. KINDER: Yes, I would be happy to discuss anything
21 with any counsel at anytime. My further comment on that--pardon
22 me?

23 JUDGE HOYT: I was just thinking, that was a very
24 big order, but if you want to try it, go ahead.

25 MR. KINDER: Well, this is a very big case, as far as

1 I am concerned. I would like to point out by way of emphasis,
2 it's in our written basis of contention, what the Applicant is
3 relying on, the Westinghouse Study that was prepared prior to
4 1974, as its method of dealing with ATWS concerns, and based
5 on everything that has gone on since 1974, we feel that that is
6 inadequate. I say that in part. Quite honestly, I have not had
7 the ability to obtain that Westinghouse Study. It is very
8 difficult to read and identify by detail at this time what parts
9 of it we feel need improvement, but with regard to development
10 of the contention, I think we have raised an issue here that
11 certainly has a basis both in law and in fact as something that
12 this Board should be concerned with, and I think as to refinement
13 of specifically what issues we will present evidence on is
14 something that can be refined as we go along.

15 JUDGE LUEBKE: This is just one of the list of items
16 which will appear in a supplementary SER sometime by the Staff
17 for response?

18 MR. PERLIS: The Staff will be responding to all the
19 end result safety issues that are relevant.

20 JUDGE LUEBKE: And this is just one of the list?

21 MR. PERLIS: Right, either in the SER or later.

22 JUDGE LUEBKE: Correct. Then it would be premature
23 at this time to be very positive about it one way or the other
24 until you do your writing.

25 MR. PERLIS: Yes.

1 JUDGE PARIS: Mr. Dignan, you mentioned the Shoreham
2 Order, again; was that the March 15, 1982, Shoreham Order?

3 MR. DIGNAN: Yes, it was, doctor.

4 JUDGE HOYT: Mr. Kinder? We got down now to the systems.

5 MR. KINDER: Yes. This contention raises the issue
6 that a complete study of the impact of a radiological release
7 through the liquid pathway, that is, ground water or surface
8 water, might have in the event of an accident. Again I would
9 call the Board's attention to the location of the site primarily
10 its proximity to beach areas, and its importance as an economically
11 viable area to the State of New Hampshire. For those reasons,
12 we feel that it is essential to have as complete a knowledge as
13 possible of the hydrologic workings in the area of the site.

14 I don't believe that the hydrologic work that the
15 utility has done to date is sufficient to do that.

16 The Applicant and the Staff--I'm sorry--The Applicant
17 has objected to this contention on the basis that there is no
18 regulation that requires a liquid pathway study. The Staff
19 apparently claims that the statement of policy on the study of
20 Class 9 accidents that has been referred to before; that is,
21 45 Federal Register 401.01 is the standard and that there must
22 be some special basis for Seabrook.

23 The contention recognizes that the draft Environmental
24 Impact Statement is not yet out, and certainly we would expect
25 that to have some comment on this problem from the Staff's point

1 of view. The Environmental Report, we submit, is not adequate,
2 and that is the basis of our contention at this point.

3 I believe that this contention is specific enough
4 to advise the parties of what the issue is. Quite obviously
5 we are concerned about releases to the ground water in the area.
6 of the Seabrook site. Obviously it can be further refined when
7 the draft Environmental Impact Statement is made available, but
8 I think it can be admitted as a contention at this point.
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1 MR. PERLIS: I think we can. We give this as another
2 Class 9 Accident question. The Commission policy statement was
3 to provide the Board with guidance as to how to deal with Class
4 9 contentions, and with how the Applicant and the staff should
5 address Class 9 Accidents in their Environmental Reports.

6 We don't read the contention as alleging that this
7 violates the Commission's policy statement, and until New Hampshire
8 can show how the Commission's policy statement is violated in
9 its treatment of Class 9 accidents, through liquid pathways,
10 the contention should be rejected.

11 MR. DIGNAN: Madam Chairperson, may I respectfully
12 ask the Chair to inquire of Mr. Kinder as to what is his
13 contention of Class 9, because I, like the staff, had thought it
14 was from reading it. He talks about the need for core catchers,
15 and things like that. I responded in that genre, and pointed
16 out that Seabrook vintage plants simply weren't required to have
17 these devices.

18 Then I heard Mr. Kinder say that what he really is
19 upset about is he doesn't think hydrologic studies have been done.
20 I'm not sure that's open, because presumably the construction
21 permits settled that question.

22 I certainly am in some confusion now as to precisely
23 what it is that Mr. Kinder wants to litigate. Maybe the best
24 thing to do is to move aside from this one and leave it to
25 counsel to try to thrash it out.

1 But, I certainly read it as the staff did, as being
2 a contention that we had to design Seabrook against a Class 9
3 accident, that would result in the release of a Liquid Path Way,
4 and he specifically mentions core catchers and other devices
5 that would have to be included in the design. And, I responded
6 in that thing. But, if I heard him correctly, that's not the
7 contention he is making.

8 I would just ask the Board to ask counsel for New
9 Hampshire to say, yeah, or nay, as to what he is proposing here,
10 because I'm in a bit of a quandry.

11 JUDGE LUEBKE: I would go back a step further, and that
12 is Mr. Kinder said his contention is related to the Applicant's
13 Environmental statement, which is, as I understand it, has the
14 function of providing information to the staff who eventually
15 puts out the official environmental statement - first in draft
16 form, then in final form.

17 So, I would be inclined to view this matter as being
18 premature until the staff writes what it writes. Is that a
19 fair statement as to the staff, as to how things go?

20 MR. LESSY: Yes, your Honor. The DES is to be issued
21 soon, so Mr. Kinder would have an opportunity to review that.

22 JUDGE LUEBKE: Then he could be more definite about
23 his contentions.

24 MR. LESSY: Yes.

25 JUDGE HOYT: When you say soon, on that DES, what are

1 we working with regarding timeframe?

2 MR. LESSY: It should be issued by next week, your
3 Honor.

4 JUDGE HOYT: I think we will go on now to your sixth
5 contention, unless you have something else you wanted to add.

6 MR. KINDER: I would be happy to respond if the Board
7 wishes to Mr. Dignan's request.

8 JUDGE HOYT: Well, if you say it would be helpful, go
9 ahead.

10 MR. KINDER: All right. This is a Class 9 related
11 contention. It is based, in part, on the information contained
12 in the environmental report, which says, in effect, that the
13 Liquid Pathway you need not be concerned about in regard to
14 Seabrook. Pardon me, if I'm paraphrasing it improperly, but
15 because it is less important than the atmospheric Pathway, I don't
16 feel that that is an adequate approach.

17 I'd also like to point out that Mr. Dignan seems to
18 interpret this as the State's position that core catchers should
19 be required in the Seabrook design. That is not our position.

20 Our position is that the Liquid Pathway has not been
21 adequately studied, and should be, as to whether core catchers
22 would be required in the design or not, is something that
23 further study should tell us.

24 MR. DIGNA: With that edification then, I would stand
25 precisely on the remarks of the staff, to wit: It's a Class 9

1 contention; it simply does not meet the interim policy statement,
2 and should be excluded.

3 JUDGE PARIS: Do you want to respond to that?

4 MR. KINDER: No.

5 JUDGE HOYT: Then go ahead with the sixth contention.

6
7 MR. KINDER: Contention No. 6 relates to the Environmental
8 Qualification of safety related equipment. The position of the
9 State of New Hampshire is that the Applicant has not satisfied
10 the-- has not demonstrated that the requirements of general
11 design criteria for the DOR guidelines, and the provisions of
12 NUREG 0588, have been complied with.

13 I will point out for the Board's information that one
14 of the other interveners in this proceeding, Mr. Jordan's client,
15 has raised specific contentions with regard to environmental
16 qualifications of both electrical and mechanical equipment.

17 The Public Service Company's position on this contention
18 is that it is acceptable, I believe, if it is rephrased, as Mr.
19 Dignan has indicated earlier. He would like to see contentions
20 raised. And the Staff seems to take a similar position.

21 I believe the contention should be admitted, based on
22 both factual and legal foundations that is set forth in our
23 basis.

24 JUDGE HOYT: Do I read that to mean that you reject
25 the alternative language?

1 MR. KINDER: Yes. Although, as I've said before,
2 I'm willing to discuss phraseology of these contentions with
3 counsel.

4 MR. LESSY: I don't think, Mr. Kinder, that our
5 position is the same, or quite the same as Mr. Dignan's, as
6 you indicated. I feel your contention here, the staff feels,
7 violates the specificity requirements of 10CFR 2.714, as well
8 as the Peach Bottom case, saying that contentions had to be
9 specific.

10 There is a lot of safety related equipment in a nuclear
11 power plant, such as Seabrook. The contention merely states that
12 the Applicant has not demonstrated that all equipment important
13 to safety will comply with the applicable requirements.

14 We need to know what specific categories, or what
15 specific equipment you feel does not meet those requirements,
16 and then we'll have something to litigate. We shouldn't be
17 required to engage in Discovery to find out what you really mean
18 by this contention.

19 Because of the lack of specificity, it's too vague to
20 be litigated, and we oppose it.

21 MR. DIGNAN: My position is stated in the writing.
22 Unless the Board has any questions to elaborate on it, beyond to
23 say that I pushed for my rewording if it's going to stay in.
24 The contention as it's now worded freights upon the regulations,
25 legal interpretations, factual interpretations of those

1 regulations. The contention should not do that.

2 JUDGE HOYT: Do you have any specific category of
3 equipment that you were thinking of in this contention, in
4 phrasing it, Mr. Kinder?

5 MR. KINDER: I guess I would have to defer to the
6 areas that have been raised in the New England Coalition on
7 Nuclear Pollution's Contentions, and leave it at that.

8 JUDGE HOYT: All right. Let's go to the seventh
9 contention, then, Mr. Kinder.

10 MR. KINDER: This contention relates to the instru-
11 mentation, and raises the question of whether instrumentation
12 is adequate to monitor variables under both accident and normal
13 operating conditions.

14 This is a contention that rises in large part out of
15 the incident at Three Mile Island, and NUREG 0737, which has
16 been referred to in the contentions, contains a number of
17 requirements that relate to this issue.

18 A similar contention has been raised by other
19 interveners in this proceeding. The objection of the Staff,
20 which has been mentioned, with regard to other contentions, is
21 that it's not specific enough to allow them to know how to
22 litigate this particular contention.

23 The public Service Company, on the other hand, appears
24 to want the contention to be phrased in a more general manner.
25 I find myself in between the two, I'm afraid, as I do on other

1 contentions.

2 With regard to this circumstance, which I guess we'll
3 discuss in other contentions as we go along here, I feel that
4 the-- Well, I understand the staff's concern for specificity.
5 It seems to me that we are in a circumstance here of defining
6 general issues that will be litigated in this proceeding, and
7 the specificity that the staff seems to want to require, would
8 put us in the position of placing all our evidence in the form
9 of a contention, which I don't think we are required to do.

10 As long as we provide sufficient notice to the staff
11 and the Applicant, of the general area in which we intend to
12 bring evidence before the Board, I think that's sufficient.
13 And the specificity that they desire, they can obtain through
14 Discovery, and in further proceedings before the Board.

15 This contention is based on general design criteria
16 No. 13, and uses as a factual basis also, Regulatory Guide
17 No. 1.97.

18 JUDGE HOYT: Mr. Kinder, let me interrupt you for a
19 moment?

20 MR. KINDER: Yes.

21 JUDGE HOYT: Isn't that something Mr. Lessy brought
22 up a short time ago, and that is, why should we go through the
23 ritual of a discovery when if you have the information and you
24 know you are going to have to give it up anyway, eventually,
25 why not just play the cards now instead of waiting until you

1 are queried by some interrogatory or deposition?

2 MR. KINDER: As you know, Judge Hoyt, each one of
3 these contentions is an exceedingly complex area in itself.

4 JUDGE HOYT: That's what I'm trying to say. I'm
5 trying to indicate to you that we'd like to avoid the difficulty
6 of having counsel go through that, when maybe we can expedite
7 matters and make it a bit smoother running process, by simply
8 having you give the information the first opportunity that you've
9 had.

10 Now, you've had something in mind when you framed the
11 contention. If you do, can we know what it is now?

12 MR. KINDER: I'm not prepared to make a statement of
13 all the particular items of instrumentation that we feel should
14 be improved upon, or that the Applicant is not included in the
15 FSAR today, and I don't think that I'm required to in order to
16 have a contention entered in this proceeding.

17 If the contention satisfies the requirement to place
18 the Applicant and the staff mentally on notice as to what the
19 issue is going to be that's litigated, and we're talking about
20 instrumentation for the monitoring of the various variables that
21 one should be concerned with in the operation of nuclear power
22 plants, then I think the staff and the Applicant, and I certainly
23 expect them to provide us with interrogatories at the first
24 opportunity which states: State all the ways in which you feel
25 the instrumentation for the Seabrook Facility is inadequate, or

1 does not comply with the requirements of General Design Criteria
2 No. 13, and NUREG 0737. It's certainly an allowable
3 interrogatory which we should respond to.

4 But, as I've said, I'm not prepared to, this morning,
5 or this afternoon, to try to delineate all the areas of this
6 contention that we expect to produce evidence on.

7 JUDGE HOYT: Our problem, Mr. Kinder, in my thinking,
8 and I certainly want the other members of the Board to express
9 theirs if they have any, is that if we can do this up front, you
10 can give the Board a clearer understanding of your contention
11 is based on. Then we have some ammunition which we can use in
12 ruling.

13 As it is now, we just seem to have a great deal of
14 straw in there and a little more, and I want something more
15 substantive. What I'm asking you now is, can we get it? When
16 can we get it, and will you cooperate with us in getting it to
17 us?

18 MR. KINDER: I would be happy to.

19 JUDGE HOYT: Otherwise we are going to have to make
20 rulings in almost a vacuum, and I don't like that idea at all.
21 I want to have as much information as possible, because I think
22 it gives you a fair opportunity to have your concerns litigated
23 in this proceeding, and we'll get to them more quickly and
24 thoroughly if we do it up front.

25 MR. KINDER: Yes, I agree. I wish to point out, as

1 you are well aware, the State of New Hampshire was very concerned
2 when it found it had to file its contentions by April 6th, I think
3 was the date.

4 JUDGE HOYT: Oh, now, Mr. Kinder, you can't expect the
5 Board to think that you were not aware that these contentions
6 were going to have to be framed, because somewhere between
7 November, when this Board was constituted, and the audit
8 came out in March, you knew we were out there, and you knew you
9 were going to be putting out a prehearing order somewhere along
10 the line.

11 MR. KINDER: Absolutely.

12 JUDGE HOYT: So, let's not claim surprise.

13 MR. KINDER: Well, I will claim surprise as to the date,
14 and I think the other--

15 JUDGE HOYT: (Interrupting) Not when you read the
16 regulations, and we should have acted probably sooner. So, I
17 don't think that's going to carry a great deal of weight with
18 the Board. Let's move along and see where we are in the
19 contentions. Do you have anything else on that?

20 MR. LESSY: Yes, your Honor. We have, in our Response,
21 indicated some contentions which we felt that New Hampshire had
22 met the basis and specificity requirements of the controlling
23 regulation and the Commission's Decisions, but this one is just
24 a generalized statement. We objected in our Pleading on the
25 grounds of lack of specificity, and I'm also going to add to

1 that, a lack of basis.

2 The only thing Mr. Kinder says, and the State of New
3 Hampshire says, and this contention is that Seabrook design does
4 not provide adequate instrumentation to monitor variables. He
5 hasn't indicated any category of instruments; there hasn't been
6 an indication of what kind of instrumentation, and the only
7 basis for that contention is the citation. There were some
8 regulations cited, but the citation was that the Three Mile
9 Accident also demonstrated, and I'm quoting from Page 20 of
10 his pleading - the inadequacy of post-accident monitoring, etc.

11 I think the State of New Hampshire wants to litigage
12 a contention dealing with instrumentation, but before you can
13 litigate it, in the staff's view, and the NRC proceeding, you
14 are going to have much more detail and much more basis.

15 We've objected on the grounds of basis and
16 specificity. There's more work to be done before this can meet
17 the threshold of our regulation. It's just a generalized
18 statement that instrumentation is important. I would agree
19 with that. That doesn't meet the requirements as some of
20 your others have.

21 JUDGE HOYT: Mr. Lessy, the Board has asked that Mr.
22 Kinder give us that, and give us the basis upon which we can
23 make an intelligent and appropriate ruling.

24
25

1 MR. DIGNAN: I have only this to say, your Honor. I
2 have not objected on the grounds of specificity which should not
3 necessarily be taken to mean that I disagree with my brother,
4 Lessy.

5 However, what is disturbing about this contention to
6 me is this is the first one that we have discussed of this nature
7 today. One of the things they want us to meet is Reg. Guide
8 1.97. As I rephrased it, I left out Reg. Guide 1.97 and I put
9 a footnote on page 5 of our response indicating. Why is, because
10 I'm trying to do this the first time it comes so you don't have
11 to hear it from ad infinitum is if there is anything that is
12 absolutely clear in Commission practice, an Applicant does not
13 have to meet a Reg. Guide. It is not a contention to say that
14 an Applicant doesn't meet Reg. Guide 1. whatever it is. That
15 was decided in the Vermont Yankee Case back in ALAB 179, is an
16 unbroken string of Commission and Appeal Board Decisions holding
17 that up, and finally the Court of Appeals of the 7th Circuit
18 in 1976 weighed in and said the same thing in the Porter County
19 Case which I've cited at page 5.

20 Now I'm sorry to take time on what maybe is an issue
21 that we are passing through but I want to make this point now
22 and I won't make it again. I will just indicate reference back
23 to these authorities but New Hampshire wants to freight that
24 Reg. Guide onto the Regulations the way they've stated this
25 contention. That's why I've reworded. I said, as long as it's

1 stated in terms of the Regulations, I would accept the contention.
2 I think, frankly, the specificity remarks are well taken. I
3 basically feel unlike the Staff, we have to satisfy them first
4 that we're built right, so I'm assuming if my people can get by
5 the Staff, that they've satisfied GDC 13, that I will have enough
6 to satisfy Mr. Kinder and the Board in time. So I don't get as
7 worried about the factual specificity as the Staff does but they
8 see it from a different perspective than I do. I think the remarks
9 are well taken because it's not that easy to list all the
10 instruments that have to meet GDC 13.

11 JUDGE HOYT: I think the Counsel is well aware of what
12 revision you want and I'm sure we're going to find another ream
13 of paper with all the appropriate references made. So let's
14 go ahead and see what we come up with on Contention No. 8.

15 MR. KINDER: Did you have a particular timeframe in mind
16 in which you wanted a response on this?

17 JUDGE HOYT: The deeper we get in this and the deeper
18 the responses are getting, the longer I look in terms of what
19 it is going to require you to do. I'm also going to ask you,
20 sometime during this hearing, to give us an idea. I think we better
21 go through them all to see how much work you are going to have
22 to put into it.

23 MR. KINDER: Thank you.

24 JUDGE HOYT: That's also an opportunity for all other
25 parties here that must respond, the Applicant and the Staff, will

1 be given, of course, an appropriate opportunity to reply to any
2 amended, revised, contention.

3 Go ahead.

4 MR. KINDER: Yes. The next contention relates to the
5 Hydrogen Control System. The Applicant feels that this could
6 be admitted provided that it's limited to satisfaction of the
7 provisions of 10 CFR Part 50.44.

8 The Staff takes the position that the credible scenario
9 for a situation developing an amount of hydrogen in excess of
10 50.44 must be shown. This contention or facsimiles thereof,
11 have been raised both by the State and the New England Coalition.

12 My feeling or my belief is that this contention should
13 be allowed based on the fact that the design assumptions of
14 10 CFR 50.44 have been shown to be inaccurate by the Three Mile
15 Island Accident in which the amounts of hydrogen well in excess
16 of those set forth in 50.44 were produced.

17 As for a credible scenario, I submit that what
18 happened at Three Mile Island is a credible scenario and is one
19 that could occur at a reactor such as Seabrook.

20 Also, facts relating to this contention are also raised
21 in NUREG o737. I believe that based on the information that
22 is available to the Board and to the parties in this case from
23 the Three Mile Island Accident, this contention should be
24 admitted and there is a legal basis in NUREG 0737 and in the
25 general understanding of the hydrogen generation problem.

1 MR. PERLIS: The Staff thinks its answer really speaks
2 for itself.

3 JUDGE HOYT: Very well. Is that all?

4 MR. PERLIS: No. I just wanted to respond to one other
5 thing that Mr. Kinder said. I believe it's the Federal Register
6 Notice that is cited in our answer. If not, I would be happy
7 to supply the Board with the citation.

8 It has been determined that the Three Mile Island
9 scenario is no longer an acceptable scenario for the generation
10 of hydrogen in excess of 50.44. Precautions are now taken to
11 guard against that particular scenario. So the existence of
12 the Three Mile Island Accident by itself is not enough.

13 MR. LESSY: If I might just double team for a second.
14 As I understand in the hydrogen matters under the Commission's
15 Decision in CLI 80-16 which we cite, there is really a two step
16 process here for litigation of such a contention.

17 First, there must be some sort of pleading demonstration
18 that there is a credible scenario here for the generation of
19 hydrogen in excess of the 50.44 design basis. Once you do that,
20 you get to the question of whether or not the other requirements
21 of 2.714 are met. If you don't have that decision I can provide
22 it to you.

23 JUDGE HOYT: Do you need it, Mr. Kinder?

24 MR. KINDER: I believe I have it.

25 JUDGE HOYT: Sir?

1 MR. KINDER: I have nothing to add.

2 JUDGE HOYT: Fine. Then we can move on into radioactive
3 monitoring which is Contention No. 9 of the State of New Hampshire.

4 MR. KINDER: This contention appears to have been
5 accepted by both the Applicant and the Staff, although it is
6 my understanding that the Applicant would like to see a change
7 in phraseology. I don't know whether the Board would like me
8 to continue on with it or not.

9 JUDGE LUEBKE: What is your position on the suggested
10 change in phraseology?

11 MR. KINDER: As I understand it, the change left out
12 of the reference to NUREG 0800 which was used in our contention,
13 I'm not sure on what basis that was left out by the Applicant in
14 its request of change of terminology.

15 Other than that I have no problem with it.

16 JUDGE HOYT: Yes. I think that's another one of those
17 matters that could be resolved in conference.

18 Mr. Dignan, could you make a note of that please?

19 MR. DIGNAN: Yes, ma'am.

20 JUDGE HOYT: Thank you. If we have nothing else, let's
21 go on to Contention No. 10 which is the Control Room Design.

22 MR. KINDER: Yes. This Contention as well has been
23 accepted by the Applicant and the Staff provided again, I assume,
24 that we could arrange mutual agreement on the phraseology.

25 JUDGE HOYT: Very well.

1 MR. DIGNAN: I'm not sure that does it because to say
2 it is accepted by the Applicant provided we can reach an
3 accomodation of phraseology is a little understating the case.
4 I don't want to make a speech. The Board might review what I
5 said I would accept and that's about it. It's a lot shorter
6 than New Hampshire and it doesn't have a lot of adverbs and
7 adjectives in it and it goes right at the Regulation. I think
8 those contentions are broad enough. It doesn't pin them down,
9 it doesn't pin me down out of a legal theory or anything. That
10 is the Applicant's position. It is not merely trying to
11 substitute my draftsmanship for another lawyer and I certainly
12 would never try to do that with one as able as Mr. Kinder.

13 On the other hand, the change in draftsmanship is a
14 substantive to my client. It is not just a question of phraseology.
15 I don't think these contentions which contain within them an
16 interpretation of the Regulation should fly in that phraseology.

17 JUDGE HOYT: Let's go then into the 11th contention
18 that you've stated, Mr, Kinder, which is the deviation from
19 current regulatory practice.

20 MR. KINDER: Yes. This has been objected to by both
21 the Staff and the Applicant on the grounds that there is no
22 regulatory requirement. I'll be frank, there is no regulatory
23 requirement that demands that this contention be complied with.

24 However, it is my position that it makes very good sense
25 for this Board and the parties before us to have a systematic

1 approach to just how the Seabrook design and construction has
2 been dealt with in relation to regulatory requirements. For that
3 reason, I believe that there should be produced by the Staff and
4 the Applicant, for inquiry in this proceeding, a statement that
5 as to how regulatory practices have either been complied or not
6 complied with in the course of this proceeding or in the course
7 of the review of the Seabrook application.

8 JUDGE HOYT: That's current regulatory practices of
9 the Nuclear Regulatory Commission. Is that what you are saying?

10 MR. KINDER: Yes. For that reason I believe that this
11 should be allowed in as a contention.

12 MR. LESSY: There is no such requirement, your Honor,
13 and we oppose it on that basis. In addition, Licensing Boards
14 have pretty much uniformly rejected such proposed contentions.
15 Even the Shoreham Board which issued this famous Order of not
16 too long ago, rejected this contention. If the State of
17 New Hampshire feels that that should be a requirement in our
18 Regulations, there are procedures to add that to the Regulations
19 but not to be litigated in an individual licensing proceeding.
20 There is nothing in the basis in addition that refers to Seabrook.

21 JUDGE PARIS: Did the Shoreham Board reject it in the
22 same Order?

23 MR. LESSY: Yes. In pages 14 and 15 of Judge Brenner's
24 starting to be well known Order.

25 JUDGE PARIS: There have been Shoreham Boards and

1 Shoreham Boards.

2 JUDGE HOYT: I think we only have one Shoreham Board
3 here though that we've been concerned with so far. Let's leave
4 it at that.

5 Is that pretty much ditto with you?

6 MR. DIGNAN: I have nothing to add to Mr. Lessy's plan.

7 JUDGE LUEBKE: Just as a matter of clarification, there
8 is an exchange of questions in the form of correspondence between
9 the Staff and the Applicant and all these questions are a matter
10 of record, are they not? You ask questions, the Applicant answers,
11 and you say it's not good enough. Try again. Then it goes back
12 and forth, correct?

13 MR. LESSY: That is correct, sir.

14 JUDGE LUEBKE: Then there is no need for us then to
15 spend the whole bunch of hearing time going through all of that
16 literature.

17 MR. LESSY: Policing that correspondence, that is
18 correct.

19 JUDGE HOYT: Is that public correspondence? Can the
20 parties get that?

21 MR. LESSY: Yes. Correspondence is public correspondence
22 between--

23 JUDGE HOYT: (Interrupting.) Freedom of Information
24 Act to reach it or just plain--

25 MR. LESSY: Put it in the local public document rooms

1 and things of this nature.

2 JUDGE HOYT: I wasn't sure whether it required a public
3 information request or whether it was part of the document.

4 MR. LESSY: We routinely provide public copies of such
5 correspondence.

6 MR. KINDER: I might just point out on this contention
7 that, as you are well aware, the terminations of compliance with
8 regulatory practice are voluminous and I believe it makes sense
9 to view that in systematic manner then to provide that in one
10 place for use by this Board in this proceeding.

11 That's the basis of this contention.
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1 MR. DIGNAN: Madam Chairman, to the extent that that
2 is the problem, I would respectfully suggest that in the FSAR
3 of this plant there is a section, which is Compliance with the
4 Reg Guides. The Staff asked you to do it. There is no reuquire-
5 ment to do it, and we have done it. As last I saw the Reg Guides
6 are "Current Regulatory Practice," and we have a section in
7 which we take each of the Reg Guides and see where we deviate
8 from them and where we are in compliance with them.

9 JUDGE HOYT: And that is on file?

10 MR. DIGNAN: It is part of the Application, which I
11 am very sorry to hear the Board members don't have. The usual
12 practice was, up to now, when we filed the 60 copies, three are
13 reserved for the appointed Board. Now, why the three were not
14 delivered to you people by the Agency---

15 JUDGE HOYT: (Interrupting.) Let me say, we just
16 one copy of it.

17 MR. DIGNAN: Okay, would you have one addressed to
18 you then, Madam Chairman, or do the other two members want a
19 copy of their own?

20 JUDGE HOYT: We will, but before we can share that
21 one copy.

22 JUDGE LUEBKE: Just send us one. We don't have
23 enough shelf space.

24 JUDGE HOYT: We just have the 4th floor.

25 MR. DIGNAN: I am very sorry. In the past--I have

1 not been on top of what apparently has been current practice in
2 the past. Three of the 60 copies that we actually filed, I believe,
3 are sent to the Board once they are appointed, and I just assumed
4 that had been done. Otherwise I would have done it.

5 JUDGE HOYT: Well, I spent an afternoon looking,
6 and I can tell you it is not on the 4th floor.

7 MR. DIGNAN: I am sure it isn't.

8 JUDGE HOYT: I am somewhat in sympathy with your
9 problem of running for these things, Mr. Kinder, but there has
10 to be some sort of central point. I think there is in the FSAR.

11 MR. DIGNAN: Well, I am aware, of course---

12 JUDGE LUEBKE: (Interrupting.) Excuse me, I am just
13 catching up with this conversation here, and my recollection says
14 that I have seen it FSAR, but that it was incomplete with respect
15 to amendments. I think amendments went up to No. 22, and some-
16 body was talking about Amendment No. 46; is that a fair statement?

17 MR. DIGNAN: I don't know if it is 46, doctor, but it
18 certainly is a lot higher than 22. We will send down---

19 JUDGE LUEBKE: (Interrupting.) And so my reaction
20 to it was that at some suitable time before we go to evidentiary
21 hearing we would like to get a set of books in which all of the
22 Amendments have been brought up to date.

23 MR. DIGNAN: What we will do is sent down one as it
24 is currently amended, and my practice is to have another one
25 available for the Board at the start of the hearing which will

1 have picked up all current Amendments that took place after the
2 first one was sent down, if you haven't been able to keep it up
3 to date down there; so we will have one in the hearing room
4 anyway.

5 JUDGE HOYT: You follow the Amendments then as they
6 are filed with FSAR.

7 MR. DIGNAN: The Amendments are filed with the Office
8 of the Secretary in the case of a case in hearing under the
9 rules laid down of an Appeal Board Decision, or two of them.
10 All parties are also served with all Amendments, because that
11 is part of Staff and Applicant correspondence, and the Board
12 would be receiving their individual copies of the Amendments also.

13 If it is the Board's preference that they have only
14 one FSAR and wants to authorize the furnishing of only one
15 set of Amendments each time, we would be glad to do that also,
16 but we are also glad to furnish three separate ones. They make
17 nice wall decorations. They are 22 volumes. If you want to
18 take one home, they will fill one book shelf.

19 JUDGE LUEBKE: I am staking them on the floor now,
20 Mr. Dignan.

21 JUDGE HOYT: I think we have discussed that to the
22 ultimate. I think we ought to move along now. Let's see if
23 we can get into---I am sorry. Did you have something else,
24 Mr. Kinder?

25 MR. KINDER: I had just one further comment on that.

1 I am aware of a section of the FSAR which sets forth whether or
2 not Regulatory Guides have been complied with. Naturally, I am
3 interested in that, but I am interested as well in whether or
4 not current regulations have been complied with, with regard to
5 the Seabrook design and construction, and it is that information
6 that I am looking in that contention as well.

7 JUDGE HOYT: Just a moment. Mr. Lessy, you are very
8 helpful in giving us the information about the NUREG's, now how
9 about the question that Mr. Kinder just brought up. Is there
10 any other way that he can check that, whether or not the Applicant
11 was complying with the Regulatory Requirements?

12 MR. LESSY: I don't believe that it is summarized
13 other than through individual correspondence.

14 JUDGE LUEBKE: That is the main function of the Staff
15 that goes on month after month after month.

16 MR. LESSY: Yes. That would be a roomful of documents.

17 JUDGE HOYT: Mr. Kinder, let's move on if you have no
18 further comment on that into the 12th Contention, which is the
19 Quality Assurance.

20 MR. KINDER: Yes. This contention, Public Service
21 apparently finds their contention acceptable again which is
22 their concern over phraseology. The Staff is looking for more
23 specific instances that the State of New Hampshire would itemize,
24 I guess. I believe that the contention is satisfactory as it
25 is phrased. It has a basis. It states a number of instances

1 which have caused us concern over the question of whether the
2 Quality Assurance Program is adequate and has been properly
3 implemented.

4 I note for the Board's information that the New
5 England Coalition has filed a contention which is similar and
6 has substantial detail contained in that contention. I don't
7 think it makes sense for the State of New Hampshire to list
8 the number of pages, or the quantity of particular references,
9 to areas where we feel that Quality Assurance may not--the
10 Quality Assurance requirements have not been followed at this
11 time. Obviously, that will be important as part of the
12 evidentiary portion of this proceeding, but I feel that the
13 contention is acceptable as it is presently phrased.

14 MR. LESSY: The Staff stands by its written response.

15 MR. DIGNAN: Again, I wish to expand on the reason I
16 went for a rephrase. I rephrased it in terms of the Seabrook
17 Quality Assurance Program does not comply with the 10 CFR 50,
18 Appendix B. Again, it is a matter of substance. The way that
19 New Hampshire has phrased this, it seems they want to get into
20 what has gone wrong out on the site of construction. This
21 Board does not sit to police construction of the Seabrook Station.
22 It sits to decide whether the Quality Assurance Program proposed
23 for operation is in conformity with the REGS or not. If somebody
24 wishes to contend, for example, that this company can't run a QA
25 Program, and our evidence is that this is what went on during

1 construction, that is a matter of evidence that may or may not
2 be relevant under that sort of a contention; but what you can't
3 contend before this Board is that QA out at the site today is
4 no good.

5 If you want to police QA out at the site today, you
6 bring a 2206 to the attention of the Director of Nuclear Reactor
7 Regulation, and you go from there. So, the phraseology, again,
8 is a matter of substance, because when you phrase strictly in
9 terms of the REG, then the issue is the right issue, which is
10 whether the QA Program proposed for the operational phase is
11 in compliance with the Regulations. Whether the CPQA Program
12 was any good, whether it was adhered to and followed out, whether
13 they were doing a good job of constructing, is not a matter
14 that is an issue before this Board.

15 JUDGE LUEBKE: Is it correct, though, that if they
16 had a specific example to state where they said it was not in
17 compliance, that might be a contention?

18 MR. DIGNAN: What it would be is a piece of evidence
19 to back a different kind of contention. I wouldn't object to
20 a contention that said :Is the Contention of the State of New
21 Hampshire that the Reactor Vessel isn't welded right?" And in
22 conformity with design criteria such and such. And then as part
23 of that evidence, they through in a bunch of QA reports that
24 they ask you to infer from that we weren't doing the welding
25 right, let us say.

1 That is using it as evidence. It is not proper to
2 take a contention before this Board as to whether the Quality
3 Assurance Program during the construction phase was proper or
4 whether it has been properly carried out. That is in the hands
5 of other forae; not this Board.

6 MR. LESSY: The one thing I would add is one of the
7 problems that we had with the State of New Hampshire's contention
8 is the first statement of basis, they say this contention is
9 supported by, but not limited to, the following, and a couple
10 examples were given. You really have to, for litigation purposes,
11 have to focus on specific instances where New Hampshire alleged
12 that Quality Assurance Program functioned improperly during
13 construction of the Plant.

14 If you just think about it in an evidentiary context
15 that there was a contention as general as the one proposed by
16 the State, we would have to have a whole stream of witnesses
17 saying what and how the Quality Assurance Program, in fact,
18 functioned. If you have specific examples, you can litigate
19 those. In the absence of the specific examples, it is almost
20 impossible and too general to proceed with. I think one of the
21 other Intervenor has given a little more specificity in that
22 regard.

23 JUDGE HOYT: Is that one of those contention, counsel,
24 that perhaps you would like to rework in any fashion?

25 MR. KINDER: As I said, I feel it is acceptable now.

1 With regard to the specificity that the Staff seems
2 to want, I guess I will say this just once more and then quit,
3 that I don't feel it is necessary to require for the State of
4 New Hampshire to list the evidentiary points that it is going to
5 make at this stage of the proceeding. At some future stage,
6 obviously we have to do that, but it appears to me that what
7 the Staff wants is point by point what the State of New Hampshire
8 raised at an evidentiary proceeding, and I can tell you right
9 now, I am not prepared to do that.

10 MR. LESSY: Then what is the basis for the conclusion,
11 if the Board please, that there is a defect in the QA Program?

12 MR. KINDER: There are four bases listed on Page 31.
13 Those are not intended to be all inclusive. We may well provide
14 additional evidence on that point.

15 JUDGE LUEBKE: Just as an idea it might work out
16 to admit the general front end of this thing to which there
17 seems to be some objection, and make several contentions out
18 of Page 31.

19 MR. KINDER: We will certainly consider that. I
20 would be happy to consider your comments.

21 JUDGE HOYT: Yes, I join with Judge Luebke in that
22 request to you, Mr. Kinder. Let's move along into Contention
23 No. 13, Operation Personnel Qualification and Training.

24 MR. KINDER: Yes, this contention, I believe, has
25 been accepted by the Applicant and the Staff, although, I guess,

1 again the Staff wants the specifics. The issue relates to the
2 requirements set forth in NUREG 0660 and 0737, and it is my
3 belief it is specific enough. It puts the parties on notice
4 what the issue is, and it should be acceptable.

5 JUDGE HOYT: That means you want to limit it to the
6 Qualifications and Training of those five categories that you
7 list on Page 32.

8 MR. KINDER: It relates Operations Personnel. Those
9 five are examples of that. There may be other Operations
10 Personnel that we would be concerned with as far as the
11 evidentiary proceeding is concerned.

12 MR. LESSY: At the risk of talking too much, our
13 position was that we would be--that there was less specificity
14 and basis to litigate these five categories of Operations
15 Personnel. As we said in our Footnote 8, on Page 19, if New
16 Hampshire wishes other Personnel Categories to be included in
17 the contention, they should identify the categories as clearly
18 as possible.

19 In response to what the Assistant Attorney General
20 just said, we can't wait to the hearing for us to be prepared
21 to litigate any other categories; you got to get it as soon as
22 possible; now, or soon thereafter, because you can't wait for
23 the hearing--you know--the Staff and the Applicant have proced-
24 ural rights, too. We can't wait to the hearing to see if there
25 are other categories added to it. If you have any other

1 add them; if you don't, my contention is that you litigate
2 it now. If one comes up, there is a procedure in the Regulations
3 to handle that.

4 MR. KINDER: Obviously, we would be limited by
5 whatever our discovery responses were in litigating this
6 contention.

7 JUDGE HOYT: You list in the category the Operating
8 Personnel. That is such a broad term, I find that one a little
9 difficult to understand, but the term that he used in his oral
10 presentation was Operating Personnel, am I correct on that?

11 MR. KINDER: That is correct.

12 MR. LESSY: Staff has agreed to a contention, which
13 of the five categories on Page 32 of New Hampshire submittals
14 the Station Manager, the Assistant Station Manager, the Senior
15 Reactor Operator, Reactor Operator, and Shift Technical Advisor;
16 there are, of course, a lot of other Operating Personnel which,
17 in my view, you have not specified sufficiently for us or the
18 Board to be able to litigate at this point.

1 JUDGE HOYT: I think that, again, is one of those
2 things that you may have to rethink. All right, let's see if
3 the Applicant--

4 MR. DIGNAN: (Interrupting) I have nothing beyond what
5 is written in my--

6 JUDGE HOYT: I believe you wanted to limit it.

7 MR. DIGNAN: I just rephrased in my usual way, to mail
8 it to the Regulation, NUREG 0737.

9 JUDGE HOYT: All right. We'll go on fourteen.
10 Reliable operation under the on-site emergency power, (diesel
11 generator units).

12 MR. KINDER: Yes, this relates, as you've just observed,
13 to the diesel generator units. This is an unresolved safety
14 problem, identified as Task B-6.

15 The concern here, of course, relates to the availability
16 of diesel generator units in circumstances where there has been
17 a loss of off-site power.

18 I believe that there is an overlap here, with the
19 contention that we discussed earlier, relating to the Three Mile
20 Island Action Plan requirement, that's 0737, Section 1(c)(1),
21 which requires an analysis of accidents and transients, which
22 obviously diesel generator units are important safety aspects.

23 As an unresolved safety issue, this is an issue that
24 must be addressed by the staff in its Safety Analysis Report -
25 Safety Evaluation Report. I don't know whether it will be

1 treated in the Impact Statement, or not.

2 JUDGE HOYT: Can you answer that for us, Mr. Lessy?

3 MR. LESSY: It will not be treated until the SER.

4 It will not be in the Environmental Statement.

5 MR. KINDER: Under the Virginia Electric determination
6 it would be treated in the SER. On that basis, I feel that
7 there is a legal foundation and a factual one to allow this
8 contention.

9 JUDGE HOYT: Anything from the Staff?

10 MR. PERLIS: The staff's problem with this contention,
11 again we know that the State is concerned with the reliability
12 of diesel generators, but we are never exactly sure why. And,
13 there's just no real basis for their concern.

14 MR. DIGNAN: This is my turn to be on the business
15 of basis, I guess. If one reviews this contention, and its
16 basis as its set out, there's almost the whole thing I can
17 agree with, that you should have a diesel, and it ought to work
18 and all that. And, there's a big speech in that. Then, at
19 the end, we are told Applicant's FSAR 9.5 fails to adequately
20 address problems associated with diesel generator reliability,
21 in the event of loss of outside power and in the event of loca.

22 Now, diesels at Seabrook, there are four of them -
23 two per unit. They are 6.2 megawatts each, and they are great
24 big machines. I would like at least a glimmer of what control
25 instrument or other things the State is worried about, before

1 I try this issue.

2 It's a little difficult to walk in here and try to
3 figure out what's in their mind as to what components they are
4 claiming the Seabrook diesels are deficient in, that are
5 necessary to meet a regulation. And, this is a classic lack of
6 specificity. These machines are of a size that a regular electric
7 generator used to be years ago in the system. They are great
8 big things, with lots of pieces and lots of parts.

9 And to be thrown a contention that says, Mr. Dignan,
10 we think your diesels aren't any good, and you haven't described
11 why they are good, I have no idea of even how to start to
12 prepare a witness on that basis.

13 They've got to come in and tell me, we are worried
14 about this switch, and we are worried about that device, or we
15 are worried about that piece of pipe.

16 JUDGE HOYT: Let me ask you something about those
17 machines. Where in your filings, your application or elsewhere,
18 any documents, do you have any listings of this equipment; its
19 performance ratings.

20 MR. DIGNAN: Absolutely. The FSAR covers them in
21 depth. They are one of the safety systems that have to be
22 very thoroughly covered in the FSAR, reviewed by the staff, and
23 I'm sure the staff will devote a section of the SER to it.

24 JUDGE HOYT: Is there anything that you have
25 available in your documents that may add something to what has

1 already been filed, that would give them the operating
2 specifications on the machines, for example, in any more complete
3 detail that has already been given?

4 MR. DIGNAN: It would be impossible to detail one of
5 these things in more detail than you do in an FSAR, I think,
6 with the exception of the actual drawings. But, the engineering
7 drawings I couldn't read them, and I don't think there are very
8 many lawyers who could. But, the point is, the State of New
9 Hampshire has had that FSAR, and it's all laid out in the FSAR.
10 There are pictures; there are figures; there are specifications,
11 and everything else - A to Z.

12 You are told the criteria to which it has been built;
13 the performance criteria that its required to meet, and so forth.
14 And you just come in and tell me, well, I've read 9.5, which is
15 where this all is; I've read all of 9.5, and you haven't shown
16 me anything, I really don't know how a lawyer is expected to
17 prepare his case, when that's all he's got to go on, that they
18 are upset about.

19 Now, what I can do, is waste this Board's time by
20 bringing in a couple of top flight engineers; having them sit up
21 on a witness stand and say, now Madam Chairman, we are going
22 to describe for you diesel generators - ad nauseum. And,
23 perhaps New Hampshire will jump up in the middle of its
24 description and say - Aha, it's that piece of pipe that I'm
25 worried about.

1 Well I suggest the piece of pipe ought to be listed
2 right now. so we can shorten this hearing up; so I can put a guy
3 on who knows about the piece of pipe; get him off, and move onto
4 the next issue. This thing is really without basis as its set
5 here with this piece of machinery.

6 MR. KINDER: If Mr. Dignan feels that we need to go
7 through the presentation of witnesses, there is a procedure for
8 disposition of issues that would make it unnecessary for this
9 Board to sit through listening to technical testimony on the
10 specifications of diesel generators.

11 The point is here, I think, that the State has raised
12 an issue on the question of reliability of these diesel
13 generator units, to perform the function that they are safety
14 functions, that they are designed to perform.

15 The only question is, could we allow that in as a
16 contention. And I submit that we should, based in part on the
17 fact that it's an unresolved safety issue; that it might be
18 addressed in the SER. And based secondly, upon the claim that
19 the State of New Hampshire has raised that 9.3 fails to address
20 the problems of diesel generator reliability.

21 DR. LUEBKE: Is not in the category of some other
22 contention where we are really waiting on the appearnce of this
23 SER and the analysis it makes, to see how more complete it is,
24 and whether you still then have questions of, is it adequate,
25 or not adequate, and in what respect?

1 MR. KINDER: The SER may well allow us to further
2 refine this contention.

3 JUDGE HOYT: Let's see from Staff what you have on
4 that. Are you going to comment on that on your SER?

5 MR. LESSY: Yes. We can't admit a contention now
6 on the possibility that you find something wrong with the SER
7 discussion next Fall. You either have to have a sufficient
8 basis now for it, or you have to get a contention in at that
9 time. There's a procedure to do that in our regulations.

10 If we asked you a Discovery question on what you know
11 about these kinds of diesels, you couldn't answer it. And then
12 to go out on summary disposition. So why let it in to begin with?
13 Why don't you wait until September?

14 MR. KINDER: Presuming as to whether we'd be able to
15 answer the question.

16 JUDGE HOYT: Let's have counsel address their
17 questions through the Board. We might get a little personal
18 otherwise.

19 Let's try fifteen and see what we can do with
20 Contention No. 15, Unresolved Safety Issues.

21 MR. KINDER: I suspect that we've discussed a very large
22 part of this in this last contention. Since, in this
23 contention, the State of New Hampshire identifies the number
24 of unresolved safety issues, which it feels should be addressed
25 in the course of this proceeding.

1 Now, whether or not the staff's comments in the SER
2 will be adequate from the State of New Hampshire's point of
3 view, we don't know at this point.

4 I recognize that it may be premature to be raising
5 them. But, quite frankly, the reason I did is that I did not
6 want the State to be put in a position where it did not raise a
7 contention at this stage of the proceeding, and might therefore
8 be somehow foreclosed in raising it later on.

9 Clearly we need the SER in order to refine what our
10 position is in these various unresolved safety issues.

11 JUDGE HOYT: I think we can move along. I don't think
12 the problem needs any further response, unless you feel
13 compelled to make one.

14 Let's do an examination of Contention No. 16, then
15 we'll have about a fifteen minute break.

16 MR. KINDER: This contention relates to the heat sync
17 or the combination of the Atlantic Ocean and the cooling tower
18 on the site, as the place for heat discharge.

19 I will be frank that the basis for this contention
20 is based on staff request for additional information in
21 February of this year, which identified a concern of the
22 staff, as to whether or not the tower make-up water was
23 sufficient to maintain the plant in safe shutdown for the period
24 required.

25 I have no other basis for this contention. When I see

1 the response, and perhaps it's been made, and I haven't seen
2 it yet, to the staff's request for additional information, I may
3 well withdraw this contention.

4 MR. LESSY: We would rely on our written response
5 and not supplement it.

6 MR. DEGNAN: We, too. We feel it was litigated fairly
7 well, the construction permits.

8 JUDGE HOYT: All right. Any additional response?

9 MR. KINDER: No.

10 JUDGE HOYT: Let's have a fifteen minute recess.
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1 JUDGE HOYT: The hearing will come to order. All
2 the parties to the hearing who were present in the hearing room
3 at the recess are again present.

4 Okay, Sir, I believe you have some more contentions,
5 and I think we will go back to No. 17, is that correct?

6 MR. KINDER: Yes, it is.

7 JUDGE HOYT: Environmental Impact.

8 MR. KINDER: The major basis of this contention as its
9 name indicates on the Environmental Impact Statement, which is
10 not yet available, but I understand from Mr. Lessy's earlier
11 comments, may be available in a week or so. For that reason,
12 I am not sure that it would be constructive to discuss this
13 further. I think the State may be filing contentions based on
14 the Environmental Impact Statement, and this was intended to
15 reserve our rights to do so.

16 JUDGE HOYT: All right. I think I will dispose of
17 that one, gentlemen, pretty much, unless you have something
18 else to ask the Applicant.

19 Very well. Does that also take care of Contention
20 No. 18, Health and Environmental Monitoring?

21 MR. KINDER: Well, no.

22 JUDGE HOYT: We tried. Go ahead, sir.

23 MR. KINDER: This relates to, as you may recall, there
24 was an earlier Contention No. 9 which related to Radiation
25 Monitoring in plant. This contention relates to Radiation

1 Monitoring external outside the plant facility.

2 The objection opposed by the Applicant and the Staff
3 is that this has already been litigated and that therefore
4 res judicata should be applied. I disagree with that position.
5 I think that this aspect of the plant's design may well have been
6 litigated. Certain aspects of it were in the construction
7 permit proceedings but much has gone on since then in the nuclear
8 industry and in fact standards have changed.

9 NUREG 3707 does have requirements relating to
10 radiological monitoring and I believe that a contention is
11 appropriate on the question of whether or not the facility
12 complies with the standards that have come into place for
13 Environmental Monitoring since the construction permit decision.

14 On that basis, I feel that this contention should be
15 admitted.

16 JUDGE HOYT: Contention No. 18 is radiation outside
17 and No. 9 was inside? Is that correct?

18 MR. KINDER: Yes, essentially, yes.

19 JUDGE HOYT: Anything, Mr. Lessy?

20 MR. LESSY: I think the Applicant will argue first
21 on this one, if the Board please?

22 JUDGE HOYT: Surely. Go ahead.

23 MR. DIGNAN: I can do no more than refer the Board to
24 the initial decision on the construction permit. Page 877 of
25 that initial decision spots out Intervenors, State of New Hampshire

1 contends the Applicant's Offsite Radiation Monitoring Program
2 is inadequate to protect public health and safety as a result of:

3 (1.) Inadequate redundancy in equipment.

4 (2.) Inadequate equipment to provide a meaningful monitoring
5 program.

6 (3.) An inadequate number and placement of monitoring stations.

7 In short, a gambit.

8 There are a number of findings and the last two findings
9 are: The Radiological Environmental Monitoring Program exceeds
10 the monitoring requirements of the recommended minimum level
11 environmental surveillance program around nuclear reactors
12 recommended by EPA.

13 The last finding the Board finds that the Offsite
14 Radiation Monitoring Program contemplated by the Applicant is
15 sufficient and appropriate.

16 If it is anything that was litigated thoroughly, it
17 was New Hampshire that injected the issue, it was tried out,
18 witnesses were put on, and it was resolved. I have heard no
19 reason other than just sort of a general thing that time has
20 passed as per a supervening event which indicates that
21 res judicata in its purest sense shouldn't apply to New Hampshire
22 on this one.

23 JUDGE HOYT: Anything else?

24 MR. DIGNAN: Madam Chairman, incidently, the page I
25 read from is cited in my brief on the matter.

1 JUDGE HOYT: Yes. Well, it was the decision that I
2 was referring to.

3 I believe Mr. Lessy had--

4 MR. LESSY: (Interrupting.) We would just rely on our
5 written response, your Honor.

6 JUDGE HOYT: Very well. Thank you.

7 Go ahead.

8 MR. KINDER: I think the point of this is not that it
9 wasn't litigated to before which I would stipulate to but I guess
10 I don't have to, but that the Regulations have changed and if
11 that's the case it is certainly open for litigation again.

12 JUDGE HOYT: Would you like to indicate to us, Counsel,
13 what Regulations have changed? Can you be specific as to how
14 you feel any further litigating basis on this contention?

15 MR. KINDER: Yes. As I have indicated, NUREG 0737
16 does contain requirements that relate to Radiation Monitoring.
17 I may be wrong, perhaps some of the more knowledgeable here can
18 correct me and I'm sure they will, but I recollect that Appendix I
19 has also been amended since then but I'm sure that Mr. Lessy
20 can tell me if I'm correct or not.

21 JUDGE HOYT: Mr. Lessy, can you respond to that? If
22 you wish?

23 MR. LESSY: Yes. My recollection is that there have
24 been some amendments to Appendix I but I don't know of any such
25 amendments that would materially bear on the desire of the State

1 of New Hampshire to re-open this particular contention.

2 JUDGE HOYT: Anything further on Contention No. 18?

3 Contention No. 19, Financial Qualifications, I believe
4 the Staff response and the Applicant's response both indicate
5 that the ground rules on that the Commission have changed and
6 Financial Qualifications is no longer before this Commission,
7 a litigable contention?

8 MR. KINDER: Yes. I did not have that ruling when
9 that contention was drafted. I recognize the position of that
10 issue before the Board.

11 JUDGE HOYT: I think the citation to it was in the
12 Federal Regulations of March 31, 1982 so it is very new.

13 All right. Let's go on to Contention No. 20, the
14 Emergency Assessment Classification and Notification.

15 MR. KINDER: Yes. Mr. Bisbee from my Office will
16 respond to the remaining contentions.

17 JUDGE HOYT: Very well.

18 MR. BISBEE: Madam Chairwoman, members of the Board,
19 the State of New Hampshire's three remaining contentions all
20 relate to the Emergency Planning Issue generally. So I would
21 like to treat all of them together with the Board's leave.

22 JUDGE HOYT: Does that pose any problem for Counsel?
23 Well, let's treat them as a whole.

24 MR. BISBEE: The Applicant has responded by objecting
25 to the language we have used in the three separate contentions

1 by suggesting the same one Emergency Planning Contention that
2 was discussed earlier today, this morning, in relation to SAPL's
3 Emergency Planning Contention.

4 While I'm sure we will discuss that contention along
5 with the others that we will be talking with the Applicant's
6 Counsel about, it is still our position that by organizing the
7 Emergency Planning Issue into the three categories that the
8 State of New Hampshire has done is an appropriate way of handling
9 the issue and it may be a little bit more manageable fashion of
10 litigating the issue of Emergency Planning.

11 The Staff has also indicated that it would not object
12 to certain Emergency Planning Contentions.

13 It has, however, objected to a contention relating to
14 offsite planning due to the fact that many of the localities have
15 not yet submitted Emergency Plans nor has the State of New
16 Hampshire.

17 We do not feel that that issue is premature, however,
18 in that the mere absence of those Emergency Plans is a sufficient
19 basis for a contention that the Applicant's Emergency Plan is not
20 yet complete.

21 The Staff further indicates that the Onsite Emergency
22 Planning that we have contended is inadequate, our Contention
23 Nos. 20 and 21, is not sufficiently specified. We feel that there
24 is a sufficient basis for our contention that in Contention No. 20
25 that Emergency Assessment Classification and Notification has

1 not been demonstrated in the FSAR or in the Emergency Plan and
2 that protective measures for Onsite personnel has not been
3 demonstrated to be sufficient either.

4 I would add, however, a reference to 10 CFR Part 50,
5 Appendix E, Section IV, Sub-section (e) for a basis of those
6 specific requirements that we are contending have not yet been
7 met in the FSAR and the specific section on Emergency Planning.

8 In our final contention, we raise the issue of the
9 demarcation of the Emergency Planning Zones. The Staff has
10 responded that that is not a proper contention in that the
11 Applicant does not have the burden of showing that there are
12 special circumstances that would require a different zone other
13 than the ten and fifty mile radii zones that is the demarcation
14 used unless there is a demonstration that there are special
15 circumstances.

16 It is our position, however, that it is the Applicant
17 that should demonstrate that it has considered the factors that
18 are included in Section 50.47 and in Appendix E as well as in
19 NUREG 0654. I would refer specifically to that NUREG cf page 17,
20 Table I that judgment should be used in adopting the distances
21 for demarcating the size of the EPZ, based on local conditions
22 such as demography, topography, land characteristic access routes,
23 and local jurisdictional boundaries.

24 Nothing further.

25 JUDGE HOYT: All right. Applicant?

1 MR. DIGNAN: I don't have anything to add beyond a
2 short statement in there that I think if we phrase--I am prepared
3 to concede. The Emergency Planning Contention has to be litigated
4 in this proceeding. It seems to me that best way to state it,
5 the broadest way, nobody is going to be cut out on whatever
6 their individual gripe in life is on this plan is, is to just
7 phrase in terms of the REGS, to wit, the Applicant has not been
8 or there has not been compliance with 50.47, 10 CFR 50 Appendix E.

9 If you do that, everybody's complaints about the
10 Emergency Planning process are in and we don't get into the
11 business of trying to twist the Regulation one way or the other
12 by the statement of contention.

13 Just there we heard that New Hampshire apparently
14 wants to apparently take the position that you've got to comply
15 with NUREG 0646. No, we don't have to comply with NUREG 0646.
16 It's not even a Regulatory Guide. You just phrase it this way
17 and nobody is going to get hurt. Nobody is going to get harmed.
18 Everybody is going to be able to take the legal positions they
19 want to with respect to this brand new essentially Regulation
20 and nobody is going to be foreclosed out.

21 I respectfully suggest if we get into the business
22 of nit picking our way through with fifteen contentions, the
23 hearing is going to be longer and people are going to be spending
24 hours arguing legal positions to the Board with every question
25 that is asked as being objectionable, as irrelevant under my

1 interpretation of the REGS.

2 On the other hand, we accept the burden of proof. We've
3 got in on every Regulation. We have got to satisfy you that
4 we have complied with the Regulations. All I ask is that the
5 contention be phrased that way, without any nuances as to what
6 the contention might or might not require. Let the Board deal
7 with the legalities and the specifics of whether this or that is
8 required as the points come up in the hearing.

9 JUDGE HOYT: Mr. Lessy?

10 MR. PERLIS: The Staff just pretty much would stand on
11 its response here. We do want to address the issue of off site
12 planning. As Mr. Bisbee stated, the Offsite Plans do have to be made
13 and I think everyone here recognizes that. If they are going to
14 be litigated in terms of specifics, there doesn't seem to be any
15 point in mentioning specifics until the actual plans come out.

16 JUDGE HOYT: At which time you would have, interpose,
17 I take it, both Staff and I have no objection to contentions
18 being then framed and---

19 MR. PERLIS: (Interrupting.) Based on the Offsite
20 Plans?

21 JUDGE HOYT: ---At that time. I think that's the theme
22 that's run through these hearings this afternoon.

23 JUDGE LUEBKE: I would like to ask the Staff to clarify
24 the mechanics. Is this an additional separate report that comes
25 out sometime in addition to the supplementary SER?

1 MR. PERLIS: No. The Offsite Plans have to be
2 developed by the local government bodies with the EPZ's.

3 JUDGE LUEBKE: The plans are written on a piece of paper
4 and provided to whom?

5 MR. PERLIS: The plans have to be accepted by the local
6 governments and then they will be reviewed by FEMA.

7 JUDGE LUEBKE: So another government organization comes
8 into the picture?

9 MR. PERLIS: FEMA, the Federal Emergency Management
10 Agency.

11 JUDGE PARIS: FEMA reports to the NRC. Is that right?

12 MR. PERLIS: That's correct.

13 MR. LESSY: Let me just clarify. FEMA makes a finding
14 which is entitled to a rebuttable presumption in NRC proceedings.

15 JUDGE HOYT: The concern that I would like to express
16 to the State of New Hampshire, since I think that it would be
17 your Emergency Planning that will be up for discussion here, is
18 that now in the planning stage?

19 MR. BISBEE: Yes, Madam Chairwoman. The State of
20 New Hampshire has contracted with the private consulting firm to
21 develop the State Plan as well, as I understand, many of the
22 localities within the Emergency Planning Zones.

23 JUDGE HOYT: What timeframes are you working with, with
24 this consultant.

25 MR. BISBEE: As I recall, the final draft of that plan

1 is not to be submitted until December of this year. There will
2 be earlier drafts prepared in the fall and throughout the fall
3 until December.

4 JUDGE HOYT: Does that include your City of South
5 Hampton, sir?

6 MR. EDELMAN: I believe you are talking about the
7 Sun Valley? They are part of the Town of Hampton.

8 JUDGE HOYT: Yes, Hampton.

9 MR. EDELMAN: Right. I believe it will include that
10 area.

11 JUDGE HOYT: What other areas are covered by that?

12 MR. BISBEE: I'm not sure of the exact number of
13 localities that would be included. They are localities both in
14 New Hampshire and Massachusetts, as I understand it.

15 JUDGE HOYT: Ms. Shotwell---

16 MR. BISBEE: (Interrupting.) Each town has agreed to
17 take part in this, having decided to do their own Emergency Plans
18 on their own.

19 JUDGE HOYT: ---What is your position, Ms. Shotwell,
20 for the State of Massachusetts? Do you know what the local
21 communities are doing?

22 MS. SHOTWELL: As I understand it, it is the same
23 timetable, Madam Chairwoman.

24 JUDGE HOYT: Is it the same firm that is developing it?

25 MS. SHOTWELL: With respect to the localities, yes. I

1 understand that it is. Now I also understand that there is also
2 an Area Plan that comes out of the Massachusetts Civil Defense
3 Agency. Whether that is part of the same package, I am really
4 not sure but it relates to the State response as opposed to
5 individual localities.

6 JUDGE HOYT: Could you get that information then and
7 relate it to all the parties, all the participants?

8 MS. SHOTWELL: Information specifically as to the
9 timetable?

10 JUDGE HOYT: Yes, and who is doing what, when, where
11 and how. I think that's going to be helpful.

12 Yes, ma'am?

13 MS. HOLLINGWORTH: Madam Chairman, if I could I would
14 like to say that that legislation is in the Supreme Court. There
15 is a belief in the communities that involved the legislation
16 called for the local units of government to be involved in the
17 initiation stage in hiring the firm and they were not. So that
18 is in the Supreme Court. There have been several towns that
19 have taken that to the Supreme Court.

20 JUDGE HOYT: Do you have something?

21 MR. AHRENS: No. I was just going to volunteer provid-
22 ing the civil information for the towns within the southern
23 part of the State of Maine if the Board would like?

24 JUDGE HOYT: Yes. We will take them all from
25 Massachusetts, Maine, and New Hampshire. That's a ten mile radius

1 and fifty.

2 MR. BACKUS : I just thought the Board might want to know
3 that Ms. Hollingworth was talking about may, of course, have an
4 impact on the schedules that you've been asking about that the
5 New Hampshire Legislation under which this Plan is being funded
6 is under challenge in the State Supreme Court. I don't believe
7 the case has been argued that but it is pending there and it might
8 of course, depending on how that decision goes, have an impact
9 on when the results of this Plan would be available, I assume.

10 JUDGE PARIS: The question is whether the State can
11 appropriately allocate funds for that?

12 MR. BACKUS : As I understand it, Ms. Hollingworth is
13 really the appropriate person to speak. The challenge is to
14 the method by which this Plan was implemented that the Legislation
15 under which this contract was awarded. It was contemplated that
16 it would start out with consultation in the local communities and
17 the claim that she is making, and she is a State Representative
18 with another State Representative who is also here in the room
19 today, is that that process was not followed. Therefore, the
20 contract was not validly awarded. That went before the
21 New Hampshire Public Utilities Commission which made a decision
22 in the matter which was in favor of the contract and that is
23 now under appeal in the State Supreme Court.

24 JUDGE HOYT: Is it your organization that is taking
25 the appeal to the Supreme Court?

1 MS. HOLLINGWORTH: Madam Chairman, as a Representative
2 I was involved in the Legislation and because I am also from
3 Hampton and involved in the community there, our Selectmen in
4 most of the surrounding seventeen surrounding communities, there
5 have been two that have chosen to work with the firm rather than
6 wait for the appeal come down. That is extra. They have not
7 gone ahead and done anything other than say that they will
8 contemplate working with the firm in Newburyport, Massachusetts
9 which has met with the firm. All other towns have refused to
10 have any meetings with the firm because they feel that legislation
11 was not adhered to.

12 JUDGE HOYT: Mr. Lessy, how is that going to fit into
13 what we are---

14 MR. LESSY: (Interrupting.) Might I ask, who are the
15 Appellants or the Plaintiffs in that action?

16 MR. BACKUS : You've just heard one speak. The other
17 one is a Civil Defense Director of the Town of Hampton Falls,
18 Representative Roberta Pevear who happens to be here today. They
19 are the moving parties in the State Supreme Court.

20 MR. LESSY. For my own information, what was SAPL's
21 position with respect to that law suit to your clients?

22 MR. BACKUS : I don't know as there was any position
23 taken by SAPL. I am not representing any of the parties in that
24 law suit.

25 JUDGE LUEBKE: Well, it's not uncommon for this

1 Emergency Plan to be the tail ending thing in these proceedings,
2 right?

3 MR. LESSY: That's true. We have to go forward and do
4 everything we can to make sure the deadlines are met with respect
5 to some of these other matters. Maybe even some of the individuals
6 in the room would be participant to some of these other pieces
7 of litigation.

8 If the rules to provide a mechanism for dealing with
9 contentions from documents that arise if these matters come up
10 after the close of discovery, the rules do provide a means to
11 add additional contentions and also there are cases as to
12 reopening discovery if in fact, there are disputes about the
13 adequacy of these plans after this proceeding is in a post
14 discovery phase. That's the way we'll have to deal with it.

15 JUDGE HOYT: Yes, ma'am.

16 MS.. HOLLINGWORTH: Madam Chairman, if I could go
17 further. There is some disagreement there because in the
18 legislation it calls for initiation and that initiation,
19 seventeen towns have called a Risk Assessment before going
20 forward with the evacuation. So, of course, if that were brought
21 into play it would bring on several other things.

22 I think perhaps if we could bring our legal counsel,
23 and this would be something we would discuss later on in the
24 hearing if you prefer, rather than argue that argument now. That
25 is something I will address in my statement anyway later on.

1 JUDGE HOYT: I think that would be very well if we
2 could have the legal counsel available.

3 JUDGE PARIS: The counties want a Risk Assessment before
4 evacuation is gone into?

5 MS. HOLLINGWORTH: What they called for is the counties
6 to be involved at the initiation stage and the counties, prior
7 to that and 165 legislators requested a Risk Assessment in the
8 beginning. Of course, in the bill it's very lengthy and I really
9 don't think you want the time to be taken up on it now. That
10 will be addressed.

11 JUDGE HOYT: Can you just tell me this one additional
12 fact? How many of the seventeen communities that you have
13 indicated here within the radius of ten to fifty miles?

14 MS. HOLLINGWORTH: All of them.

15 JUDGE PARIS: I would just like to observe. Off the
16 record.

17 (Off the record.)

18 JUDGE HOYT: Back on the record. The other Representative
19 indicated that she was in the back of the room. Since we have
20 heard from one of the Representatives, is there anything that
21 you would have that would be helpful to us on this issue?
22 Perhaps you would like to come forward and sit up here with your
23 colleagues.

24 MS. PEVEAR: Thank you. I hadn't realized I was going
25 to be speaking.

1 I am the Civil Defense Director of the Town of Hampton
2 Falls.

3 JUDGE HOYT: You are not an attorney, are you, ma'am?

4 MS. PEVEAR: No, I am not. I am also the Town
5 Representative on the southeast New Hampshire Regional Planning
6 Commission which I understand this firm has gone to for some
7 assistance.

8 I am on the Executive Board for the County which is
9 a legislative delegation. It is a consensus, the majority of
10 the towns, Selectmen and Legislators, now this is not all of the
11 people in all of the towns, but the majority have backed us in
12 that position that the legislation has not been adhered to and
13 we have taken it to the Supreme Court. That's where it lies
14 at this moment.

15 JUDGE HOYT: Do you happen to have any information,
16 ma'am, as to when the case will be heard by the Supreme Court?

17 MS. PEVEAR: I've heard nothing from the Supreme Court.

18 MR. KINDER: Madam Chairwoman, perhaps I should interject
19 that the Attorney General, of course, represents the Public
20 Utility's Commission in situations such as this and my office
21 not myself, I'm not familiar with the litigation, is handling that
22 appeal. I'm sure I can provide information as to "schedules"
23 and so forth to the extent that they are predictable.

24 JUDGE HOYT: I think that would be helpful for planning
25 purposes here because I would not want to see us get bogged down

1 with the case and have this lying around. It is a very difficult
2 issue to have to hear after we have taken the evidence on every
3 other issue which will be ultimately be admitted.

4 Does Applicant have any statements here to make?

5 MR. DIGNAN: I have nothing to add.

6 JUDGE HOYT: All right. Fine.

7 Yes, sir?

8 MR. KINDER: If I may, Madam Chairwoman, one very small
9 point for the purposes of the record.

10 We refer to NUREG 0654 in our Emergency Planning
11 Contention only to the extent that is referenced in 10 CFR
12 Section 50,47 (b), it's in Footnote 1. It's just a supplement to
13 the requirements in the CFR.

14 JUDGE HOYT: I think we have completed all the
15 submission of the New Hampshire---

16 MR. KINDER: (Interrupting.) Yes. That's correct.

17 JUDGE HOYT: Did you indicate that you wanted to do
18 something after the presentation of New Hampshire?

19 MR. AHRENS: As I understood the way you were breaking
20 this hearing up this morning, it at least had the appearance
21 of those who had filed on time---You did mention two parties
22 have filed on time and left the others hanging I think.

23 The State of Maine has filed its appearance in this
24 as an interested state and it is my understanding of the rules
25 that we need nothing further.

1 To the extent that there is any question about filing
2 on time or not on time, I would like to just state my position.
3 I believe that Maine has done all that it need to, to participate
4 as an interested state and that it did it on time in the Board's
5 interpretation.

6 JUDGE HOYT: Yes. I think that's correct. What I
7 would also like to indicate to you, is after the Board has made
8 its ruling on all of the contentions by all the Intervenors who
9 will become parties---I ask that you, on behalf of the State of
10 Maine, indicate to the Board what issues you wish to participate
11 in since you will have the right of cross examination. It may
12 be that you will not wish to participate in all of the various
13 contentions that will be litigated. If you will advise as soon
14 as possible on that we would appreciate it.

15 MR. AHRENS: I will. As I understood the Order for
16 today's proceeding that you would not take any comments other
17 than the issue of the contentions and I had nothing for today.

18 JUDGE HOYT: That's correct.

19 MR. AHRENS: We will be prepared to explain what
20 issues we would like to participate in.

21 JUDGE HOYT: Thank you.

22 MR. AHRENS: Thank you.

23

24

25

1 JUDGE HOYT: It is my understanding that the Staff has
2 taken the position that the Seacoast Anti-Pollution League has
3 no problems in participating in this Hearing today.

4 MR. LESSY: It is the Staff's position, on the original
5 contentions filed by Seacoast Anti-Pollution League, where
6 none of the four original contentions was satisfied by the
7 requirements of the regulations.

8 Seacoast Anti-Pollution League filed an amendment to
9 its Petition in which it filed approximately four or five others.
10 Staff does believe that one of those contentions does satisfy
11 the requirements of the regulations. We haven't discussed those
12 yet. We didn't have any objection to the standing of Seacoast
13 Anti-Pollution League, so long as they had one valid contention.

14 I think, under the last pleading, they did make it,
15 although, in our view, they didn't under the first.

16 JUDGE HOYT: All right, we'll take up the balance of
17 yours.

18 MR. BACKUS: I take it then, Madam Chairman, that the
19 Seacoast Anti-Pollution League meets everybody's agreement as a
20 participant here, since I recall that the Applicant found one
21 of our first submissions, as to contentions, to be acceptable,
22 if they choose to reword it.

23 With regard to the supplemental contentions, I think I
24 can be pretty brief, because I think most of the material has been
25 covered in what's gone over with Mr. Kinder from New Hampshire.

1 I'll just make a few comments in response to the Applicant's
2 response to the supplement to the Petition for Leave to Intervene.

3 I do not have, and I don't know if Mr. Lessy filed, any
4 written response to our supplemental contentions on the Staff.

5 JUDGE HOYT: I believe he was asked to give those on
6 the record here today, haven't you not, Mr. Lessy?

7 MR. LESSY: Yes, that's correct. Our response would
8 not be due until sometime next week, from the date that you
9 filed your supplement, sir.

10 MR. BACKUS: Okay.

11 JUDGE HOYT: Are you prepared to give your response
12 today?

13 MR. BACKUS: Yes.

14 JUDGE HOYT: Fine. Now, if you'll go through yours,
15 at this time.

16 MR. BACKUS: Okay. The first supplemental contention
17 was another phrasing of the Systems Interaction concern that
18 the State expressed in their second contention.

19 The Applicant again says, and this recalls the
20 discussion with Attorney Kinder, that they want to be advised
21 as to which safety systems are being talked about; which worse
22 case accidents are being talked about; what non-safety
23 components we are talking about, and a more specific legal
24 reference. I'll just say a few words about each of these
25 things.

1 Basically, the point I want to make in all of these is,
2 that I'm still coming, on behalf of SAPL, from the perspective
3 that we are dealing here, with notice type pleading, and that
4 all is required is reasonable specificity. And I think that
5 what's reasonable has to be decided in the context of what we've
6 got before us at this time.

7 What we've got is an enormous amount of Staff material
8 in the form of an FSAR, environmental report, and various other
9 materials. We do not have a safety evaluation report; we do not
10 have access to the site. We cannot go down there and say which
11 part of the frazmus they haven't torqued correctly.

12 I think that all that we are required to do, and I'm
13 just going to make this general argument for all of these
14 contentions, is to give proper notice at this time of the area
15 in which we are going to be concerned, and in which we are
16 going to try and specify the issue, through the Discovery
17 process. I frankly think that's all that should be required.

18 I think that these contentions do have reasonable
19 specificity at this time. We do know that the Commission, through
20 various studies that have been cited, does have unresolved
21 safety issues, generic unresolved safety issues, that this
22 Board is going to have to find are not a problem for this
23 particular application.

24 If we have that, and we've indicated the area within
25 those unresolved safety issues, where we think that the Applicant

1 and the Staff should direct their attention, pending the receipt
2 of additional information and the opportunity for Discovery,
3 to find out, for example, what part of those diesel generators
4 might not work, it seems to me that we have met the requirements
5 of the regulation for admission of a contention.

6 One of these licensing Decisions, and I think it's
7 the Allen's Creek Decision, 11NRC 542, dealt with an intervenor
8 that wanted to raise an alternative of a bio-mass farm for the
9 nuclear facility. In reversing a Licensing Board Decision, I
10 believe, that that was not an admissible contention. The
11 Appeal Board said, we are not concerned with the merits of the
12 contention at this early stage.

13 I think, really, that the Applicant asked too much
14 of intervenors that have access to nothing except their own
15 material, when we were asked to be more specific than this at
16 the very start of this proceeding in the very first prehearing
17 conference.

18 I guess that's what I have to say about supplemental
19 Contention No. 2, and the Applicant's response thereto.

20 JUDGE HOYT: I believe Applicants had also filed a
21 Motion to Respond Late to the Supplement Petition, and that
22 will be granted.

23 Do you wish to do it here on this record today?

24 MR. GAD: Madam Chairman, together with the Motion, we
25 did file a written Response.

1 JUDGE HOYT: Oh, I'm sorry, you did. That was my
2 next paper, and I've already read it. Thank you. We will
3 consider it, of course. Go ahead, sir. Is there anything else?

4 MR. BACKUS: What I've said in regard to supplemental
5 Contention No. 1, is also what I would say in regard to
6 supplemental Contention No. 3, which was also raised in different
7 form by the State, about the environmental qualification of
8 safety related equipment over the lifetime of the plant. Unless
9 there is a question I could answer, I don't think there is
10 anything more I can say about that.

11 The third contention does deal with the Commission's
12 Interim Statement of Policy on Class 9 accidents, and I note that
13 the Applicant in response believes that that's an appropriate
14 contention, and wants it reworded in a way they've suggested,
15 which basically, I think, I have no quarrel with.

16 We do feel that the Seabrook site is a unique site,
17 and is one where the consequences of a Class 9 accident require
18 analysis under the Commission's policy statement of June 13, 1980.

19 JUDGE PARIS: Then the Applicant's wording on that is
20 satisfactory to you?

21 MR. BACKUS: Yes. Supplement Contentions Nos. 4 and 5,
22 you will recall, related to need for power and financial
23 qualifications, to which we merely stated to reserve our rights,
24 in the event that the Commission's regulations eliminating
25 those matters from consideration in this proceeding should be,

1 for any reason, set aside.

2 I've already suggested earlier this morning that I
3 see a substantial problem in the elimination of the need
4 for power argument, and it's going to make it very difficult,
5 I think, for this Board to deal with striking the cost benefit
6 analysis under NEPA, and to the extent that this Board is going
7 to do that and consider that there's some benefit from the
8 power allegedly to be produced, I don't know quite how that's
9 going to be worked out.

10 The last thing we did, as you are aware, is that we
11 joined in selectively, certain of the contentions as stated
12 by the State of New Hampshire, and I don't know that the
13 Applicant, which has responded to that, objects to it. They've
14 gone a CF, see Brown's Ferry Nuclear Plant case, which frankly
15 I do not have, and cannot respond to. It was the practice in
16 the construction permit proceeding for parties to join in
17 contentions, and to then-- and I would commend this procedure
18 hereto designate among themselves a lead party on those
19 contentions, but with the parties having the right to make
20 argument and offer cross-examination on the contentions that
21 were joined.

22 That was the purpose for doing that, rather than
23 making more burdensome paper requirements for us and the Board
24 by repeating a lot of contentions that had already been raised
25 by the State.

1 JUDGE HOYT: I think the Board is going to want to
2 take that into consideration. We will present our Ruling on
3 that in the Order that will come out of this Hearing. Is
4 there anything else?

5 MR. BACKUS: No, I think that's all.

6 JUDGE HOYT: Mr. Lessy?

7 MR. LESSY: We haven't filed a written Response. Why
8 don't we let the Applicant go first on this, and then I'll
9 supplement with additional comments, based upon their orals
10 afterwards, if the Board pleases.

11 JUDGE HOYT: Very well. Are you prepared, sir?

12 MR. GAD: Yes, indeed, Madam Chairman. Once again,
13 we did file a written document. I don't want to rehearse it,
14 but I am going to modify it just a little.

15 With respect to Contention No. 1, Mr. Backus is
16 correct. This is Systems Interaction again. We have two
17 responses to this. The first is, it is not substantively a
18 litigable issue. The second is that this contention, as framed,
19 is hopelessly vague.

20 On the first question on whether or not this is a
21 litigable issue - the Diablo Canyon Decision, which we've cited
22 in response to New Hampshire - somehow didn't make it into our
23 written Response to SAPL, but it ought to have. The citation
24 is 14NRC 325, at Page 331. It's a Licensing Board Decision
25 flatly holding that this is not a litigable contention.

1 Now, having made an amendment, I have to make an
2 amendment to the amendment, because since we submitted these
3 written documents we learned about the Shoreham Decision.

4 Frankly, the burden of the Board now is going to be
5 to select between the Diablo Canyon result, and the Shoreham
6 result, and figure out which of the two is correct.

7 On that, the best that we can offer is, if you read
8 the Shoreham Decision, you expect to find in there a contrary
9 judgment. In fact, there is a regulation requiring Systems
10 Interaction. That is what you'd logically expect to find, and
11 yet, if you turn to Page 10 of the Decision, and it's a little
12 hard to read because the Shoreham Decision is treating three
13 contentions together, but they seem to acknowledge straight up
14 that these things are not required. And I quote for Shore an,
15 "in the sense that the failure to do one, is not, per se,
16 insufficient under the regulations."

17 So, having reached the same conclusion that the
18 Diablo Canyon Board reached, namely that there is no requirement
19 in the Regulations; that you do an Systems Interaction Study.
20 It seems to us that the conclusion reached by Shoreham is
21 something of a non sequitur. In any event, this Board is going to
22 have to select from between those two authorities. Only one of
23 them, obviously, can be right.

24 On the second ground of objection to the first
25 supplemental contention, it is, as we said in our written

1 response, hopelessly vague. If Mr. Backus doesn't know which
2 frazmus was in tort, then how are we supposed to know which
3 frazmus we are supposed to defend, bearing in mind that
4 virtually the entire plant can be said to be a system.

5 The most aggregious example, however, of the vagueness
6 of this contention as framed, is its reference to 10CFR, Part 50.
7 Because for our purposes today, 10CFR, Part 50, is not a part
8 of the Regulations that the design is supposed to comply with,
9 but it's the entirety of the Regulations. I mean, it's the
10 book. It simply does no good to tell us that somewhere in the
11 book we have missed something.

12 The second contention is environmental qualification
13 of some unstated equipment. Once again, the contention is
14 wholly without any specification of what equipment is of
15 concern, is therefore wholly without any basis. It gives us,
16 and everyone else, no notice whatsoever as to what is to be
17 litigated; what we are to defend; what testimony we are to
18 prepare and submit. It essentially advances the process not a
19 whit, and therefore should be denied.

20 Number 3 is Class 9 accidents. Again, we've been
21 through this this morning. Mr. Backus finds the proposed
22 language of the Applicant acceptable, and I think that puts that
23 one to rest.

24 Numbers 4 and 5 - The notion of standing up at this
25 stage and saying, well, we reserve the right to raise a

1 contention later, is troublesome, because I don't know what it
2 means. I don't think anyone else knows what it means. I think
3 it suffices today to say that the issues stated in Nos. 4 and 5,
4 are not litigable issues, and like all proposed contentions
5 that relate to issues that are not litigable, they ought to be
6 denied. Thank you.

7 MR. LESSY: Your Honor, on the general agreement with
8 Mr. Gad's very well stated arguments, Counsel for Seacoast
9 Anti-Pollution League referred to the Allens Creek Decision.
10 That is discussed in detail on pages 4-6 of the Staff response
11 to the original SAPL Petition dated 4-21-82. I don't think
12 Allens Creek is interpreted as a change in the bases and
13 specificity requirements of the Regulations for admission of
14 contentions by Intervenors.

15 On that basis we oppose the admission of SAPL's
16 supplemental contention on the grounds that it is vague,
17 hopelessly vague, and has an adequate basis.

18 As we do SAPL Contention No. 2, Contention No. 2
19 which I just will focus on for a minute states, "The Applicant
20 has not provided assurance that safety related equipment will
21 be able to perform adequately in an accident environment or the
22 projected lifetime of the plant." We have no idea what SAPL
23 means or what particular equipment is meant by safety related
24 equipment, what the phrase means to SAPL, which equipment if not
25 all of the equipment, we do not know what SAPL means by an

1 accident environment.

2 Without the specificity that the Regulations require
3 and indeed the Allens Creek Decision which SAPL's Counsel relies
4 upon, the Contention does not meet the requirements of our
5 Regulation for admission.

6 SAPL Contention No. 3, however, concerning Class 9
7 Accidents is acceptable to the Staff for litigation or for
8 discovery in the manner restated by Applicant's Counsel.
9 Therefore, that is the one contention in our view which SAPL
10 has proffered which gets it over its threshold for admission
11 into the proceeding.

12 SAPL's Contention Nos. 4 and 5, I think SAPL's Counsel
13 realizes Financial Qualifications and Need for Power have both
14 been prohibited in Operating License Proceedings. I sense that,
15 except for preserving some right in the event of change, that
16 SAPL is not really pursuing those a litigable contentions at
17 this point anymore.

18 SAPL's No. 6 Contention is an incorporation by reference.
19 It is certainly an acceptable practice that once contentions are
20 admitted, a party may incorporate by reference under certain
21 circumstances or join in the lead presentation as to who is the
22 lead counsel. As Mr. Backus indicated, lead counsel can be
23 indicated, or lead intervener on a particular contention. A
24 particular intervener cannot bootstrap its intervention on the
25 basis of someone else's. You simply cannot just copy a portion

1 of someone else's pleading.

2 Therefore, we would have a real problem with SAPL's
3 6th Supplemental Petition if we did not already have a satis-
4 factory contention by SAPL's 3rd. Since we have one satisfactory
5 contention by SAPL's Supplemental No. 3, we don't need to get
6 into the question of whether that bootstrapping is permitted.
7 I would just view the State of New Hampshire's contentions as
8 submitted and as argued upon and not permit the bootstrapping
9 here but it doesn't become a serious issue because of the one
10 adequate contention by SAPL.

11 JUDGE HOYT: Mr. Backus, did you want to respond?

12 MR. BACKUS: The only thing I was going to say, Madam
13 Chairman, and I haven't been able to find the citation in my
14 regulatory issuances---I'm having to get use to them again
15 after something of a hiatus but I do recall a Licensing Board
16 or an Appeal Board Decision, that in support of a contention
17 one did not have to, in the basis, cite the authority relied
18 upon. That was not the requirement for the admissibility of
19 a contention. If I can find the cite of that, I will bring it
20 to your attention. This was in response to the Applicant's
21 contention that the reference to Part 50 was an inadequate
22 citation to the Supplemental Contention No. 1.

23 JUDGE HOYT: Is that all?

24 MR. BACKUS: Yes.

25 JUDGE HOYT: Thank you. This appears to be perhaps

1 to be a good breaking point in today's business unless there is
2 something else that you wish to bring up this afternoon?

3 MR. LESSY: I would just like to go off the record for
4 a moment and if necessary we can go back on.

5 JUDGE HOYT: Let me ask you what's the nature of your---
6 I'm very leery of taking things off the record. Let's just go
7 ahead and put it on.

8 MR. LESSY. I thought it might be helpful if we could
9 just kind of a get a rough agenda as to what the Board would
10 like to cover in the second session tomorrow.

11 JUDGE HOYT: The Board had discussed this and determined
12 that what we would like to take on tomorrow morning and I take
13 it since it's the end of the week there is not going to be a mass
14 desire to much beyond the early part of the afternoon, we would
15 like to just have the standing of the remaining interveners
16 determinedas far as we can in these hearings tomorrow morning.

17 We also had determined that we would like to get
18 some ideas and perhaps over the evening hours you can make some
19 determinations and give the Board an indication tomorrow, of
20 the timeframes which I think some of them you have given us,
21 Mr. Lessy, today. I believe the State of New Hampshire gave
22 us one and perhaps there were some others. I think you had one
23 that you gave us also, one statement that you were coming out
24 with at the end of the year.

25 MR. DIGNAN: I had indicated my view of the process

1 that we are about start down the road of. My hope, dream, is
2 that we would look at a hearing in the spring of 1983 and I did
3 that simply out of the basis that that was the kind of timeframe
4 that was being kicked around in the so-called Bevill Reports
5 that went up to Congress of the scheduling.

6 I think that if no one would be offended by it, it
7 might be useful, and I would be glad to do it or perhaps
8 Mr. Lessy is the more appropriate one to do it, to present a
9 suggested schedule to the Board and the parties that at least
10 could give us a reference point to start talking about. If
11 somebody needs Xerox facilities I could probably provide those.
12 If Mr. Lessy wants to present something, I don't know how he
13 would feel about that.

14 MR. LESSY: I have been thinking in that regard and I
15 would be happy to not only present something but to discuss
16 that with the other Counsel to the extent we can in the
17 appropriate intervals.

18 JUDGE PARIS: Mr. Dignan, could I ask what is the
19 Company's projected construction completion date?

20 MR. DIGNAN: Fuel load date projected for Unit I is
21 November of 1983.

22 JUDGE HOYT: Unit II?

23 MR. DIGNAN: Working numbers are always two years later
24 on any given license schedule.

25 JUDGE PARIS: So for Unit II you are projecting as

1 of right now 1985?

2 MR. DIGNAN: No. It's a little longer than that. It's
3 February of 1986.

4 JUDGE PARIS: Is the Staff at variance with this?

5 MR. LESSY: The Bevill date that we have for the
6 issuance of the OL would be 11-83. I understand there are such
7 things as case load panel forecasts and they discuss any deltas
8 or differences between the two but that's the date that I'm
9 carrying all the latest information on. In order to meet that
10 date a Licensing Board Decision prior to that time of approxi-
11 mately October 1983 would be required.

12 The Bevill scheduled hearing date for the beginning
13 of the hearing is March of 1983. What I have been thinking
14 about and I've shown a brief copy of it to one of the intervenor's
15 counsel who we have worked with before and also the Applicant's
16 Counsel, is working back from that date to see, using the
17 guidelines, the timeframes, and the commissioned rules of
18 practice---the intervals and what we have to accomplish in that
19 interim have begun to work back in terms of a discovery schedule,
20 etc. in order to meet that current date. Maybe it's just some-
21 thin, that we can present and would be happy to present in detail
22 tomorrow and leave it open for consideration and discussion
23 by the parties and ultimately by the Board.

24 JUDGE HOYT: Nothing we say here should indicate to
25 any of the other counsel representing any of the other interveners

1 that you would be precluded from making some sort of schedules
2 or proposals yourselves. Indeed, we would either ask you to
3 join with counsel or the Staff to make your individual presenta-
4 tions tomorrow, if you wish.

5 JUDGE PARIS: Mr. Lessy, you've mentioned the Bevill
6 date several times. Perhaps you would like to explain to the
7 audience what Bevill refers to?

8 MR. LESSY: That's the Congressional Bevill Committee.
9 I'm not an expert in it but these are the dates that the Staff
10 and the Commission have used in terms of the licensing cycle
11 of nuclear power plants. These include the Staff issuance dates
12 and the projected hearing dates for this. It's public information.

13 As a matter of fact, I think Mr. Backus wrote me and
14 requested some of those dates some time ago.

15 JUDGE PARIS: In other words, this is a Congressional
16 Oversight Committee that the Commission reports to and gives
17 these dates to, chaired by Mr. Bevill?

18 MR. LESSY: Yes. That is true, Judge.

19 MR. SHOTWELL: If the Chair pleases, the Commonwealth
20 of Massachusetts has submitted only four contentions, all of
21 which relate to the issue of Emergency Planning. I'm wondering
22 and this is just a suggestion, if it might leave more time
23 tomorrow for other matters, if we could be heard on our
24 contentions. If the Applicant have not objected to them, then
25 I believe it could be handled fairly expeditiously. I think

1 there may be some discussion of the notice question under the
2 Order. I'm simply suggesting that it may be something you could
3 deal with quickly at this time.

4 JUDGE HOYT: I think as Counsel from Maine indicated
5 to you, we have only taken up those matters that were filed in
6 accordance with the Order of the Commission, Ms. Shotwell, and
7 I think yours came in late. As a matter of fact, you gave me
8 an alternative invitation instead of meeting the Order of the
9 Board.

10 MS. SHOTWELL: Due to non-receipt of the Order. That's
11 right.

12 JUDGE HOYT: No, ma'am. We won't hear yours today or
13 tomorrow. We will hear them later and we will indicate to you
14 tomorrow what we intend to do with those.

15 JUDGE LUEBKE: To clarify this, we intend, I think,
16 to have another prehearing conference in the future to take up
17 the late filed contentions after Staff and Applicant have made
18 suitable responses, is that correct?

19 JUDGE HOYT: That's correct, Judge. You have
20 anticipated me a bit. I was going to bring up tomorrow and
21 ask for some indications. I guess this is as good a time as any
22 to have some indications as to when we could do the next
23 prehearing conference which would take up contentions that were
24 not otherwise discussed at this hearing conference.

25 JUDGE LUEBKE: So tomorrow we are just going to talk

1 about the standing of the Petitioner's that were offered in their
2 original intervention letters way back.

3 JUDGE HOYT: And the schedule.

4 MR. LESSY: Maybe since that second prehearing
5 conference would be a scheduling matter, what I would prefer as
6 the Chair initially indicated, to deal with that tomorrow in
7 terms of the overall schedule.

8 JUDGE HOYT: Yes. I think Judge Lueble's design, I'm
9 sure that I join with them, these are the matters that we will
10 be discussing tomorrow.

1 JUDGE HOYT: There are certain Board members who have
2 commitments to other matters. Mr. Paris, for example, has
3 commitments through-- Is it through September, Mr. Paris?

4 JUDGE PARIS: Well, I have a very heavy schedule of
5 prehearing conferences and hearings through September, so it
6 will have to be just fitted in somewhere. I'll stop by here
7 on the way to some place else.

8 JUDGE HOYT: Mr. Paris joined us yesterday after
9 coming from Champagne, Illinois, by a very slow aircraft.

10 MS. SHOTWELL: Madam Chairwoman.

11 JUDGE HOYT: Yes, ma'am.

12 MS. SHOTWELL: For the record I must object to the
13 treatment of the Commonwealth's contentions as late filed. I
14 would like to state for the record, and I will do so under oath,
15 that I never received the Order of this Board setting this
16 prehearing conference, or regarding the deadline for filing any
17 documents, any contentions, until April 9, three days after the
18 date that the Board now indicates the contentions were due.

19 I simply state this for the record. I will do so under
20 oath, if the Board or any party feels that that will be
21 necessary.

22 JUDGE HOYT: That's not necessary, counsel.

23 MS. SHOTWELL: Due to certain suggestions made earlier,
24 with respect to checking files, I also want to state for the
25 record that I checked my files thoroughly. Not only my files,

1 but also the files of every other individual in the Office of
2 the Attorney General to whom the documents could have been sent,
3 on the ground that their names appeared on our original Petition.

4 I would sum up by saying, we did not receive the Order.
5 Our contentions were filed within the deadline that is
6 prescribed in the regulation. We could not meet the deadline
7 in the Order, because we never received it until after the
8 deadline passed.

9 Therefore, I don't believe that the contentions were
10 late filed, and I think it would be appropriate for them to be
11 addressed at this time.

12 I certainly don't mean to deprive any party of their
13 right to respond to the contentions, but I believe that I've
14 heard responses, and I think the contentions could be dealt with
15 at this time.

16 JUDGE HOYT: Let me share with you, and other counsel
17 here, why we asked for the particular timeframes that we did.

18 This case came to this Board in November of 1981. And,
19 from November, until the issuance of the Order on March 12,
20 this Board had not taken any action. We really, I think, by
21 regulation, should have taken probably some action earlier.
22 But, there were commitments of all members of this Board, to
23 other cases that prohibited us from meeting those particular
24 times.

25 As a result, in discussions by the Board, we

1 determined that all Members of the Board have other commitments.
2 As we've just indicated to you, Mr. Paris had another hearing
3 earlier this week, and was only able to join us here in
4 Portsmouth yesterday by virtue of the fact that he had to come
5 a very long distance. So, we had determined that these times
6 were needed, that is the thirty days prior to the hearing,
7 because the Board members simply had no other way to fit the
8 considerations, and to simply read and analyze the pleadings
9 that were being filed with the Board.

10 I think that that is perfectly within the prerogatives
11 of the Board to do so, and acting in the best interest of all
12 parties, we did that.

13 Now, you had other options which you could have
14 exercised, one of which was not to file with us an optional
15 timeframe which you thought was more appropriate, simply
16 because it was fifteen days before the Hearing conference date
17 of May 6th.

18 The Orders of the Board are not invitations to be
19 accepted. They are Orders. And they will be acted upon as
20 such.

21 We do not intend the State of Massachusetts being
22 deprived in any fashion of the full participation in these
23 Hearings. Not only is it the obligation of this Board to hear
24 the party, but it is also the right of the intervening party
25 to receive the fairest treatment possible.

1 If we hold one of the Interveners to the deadline as
2 set forth in our Order, and I do not think we can vary from that,
3 and give the party you represent, the Commonwealth of
4 Massachusetts, another timeframe.

5 If anything, this Board is going to be abundantly fair,
6 and you may follow your contentions, and they will be considered
7 later. But, they will not be considered at this prehearing
8 conference.

9 MS. SHOTWELL: With respect, just for the record, I
10 would state that I believe that you can distinguish, because we
11 never received the Order - we are distinguishable from parties
12 who received the Order.

13 MR. LESSY: Does the State of Massachusetts have oral
14 notice of the provisions of that Order?

15 MS. SHOTWELL: We did in respect to the timing of the
16 oral notice; the nature of the oral notice - I believe were all
17 set forth in the written documents. I don't want to go over that.
18 I think that's unnecessary at this point.

19 I'm simply stating, for the record, that I believe
20 that it is not proper not to treat us differently. We did not
21 receive the Board's Order. We take the Board's Orders with the
22 utmost significance; we take this proceeding with the utmost
23 significance. I wish everybody to believe that. It is certainly
24 the truth. I checked my files, and the files of other persons
25 in my office, only out of an excess of caution, because I never

1 would have not noticed an Order coming from this Board, addressed
2 to myself, or to anyone in the Office. I certainly would have
3 given it tremendous significance.

4 I say that I did not get the Order, therefore, I could
5 not comply with it. I do think that to the extent that you
6 treat these as late file contentions, nothing could state better
7 cause for the contentions being filed late.

8 There has been some talk of the fact that the
9 documents that I filed should have been termed a Motion, rather
10 than a Notice, and some have interpreted that as arrogance on my
11 part, or on the part of the State.

12 JUDGE HOYT: The Board certainly hasn't indicated that
13 to you, Ms. Shotwell.

14 MS. SHOTWELL: I think we want to indicate that there
15 was no arrogance meant or intended.

16 JUDGE HOYT: And none was taken. I can assure you of
17 that.

18 MS. SHOTWELL: We simply wanted to file something on
19 the record indicating the cause for our failure to comply with
20 the deadline, which was apparently set by the Board, in which
21 we simply could not comply. We have made every effort to
22 file, I believe, a very detailed bases for the contentions
23 which we are seeking to introduce into this proceeding.

24 JUDGE HOYT: Thank you, ma'am. That's all on the
25 record for you.

1 MR. JORDAN: Madam Chairman?

2 JUDGE HOYT: Yes, sir.

3 MR. JORDAN: I'm not really sure I want to jump into
4 this full text, but on behalf of the New England Coalition on
5 Nuclear Pollution, I'm sure you are aware that we had a
6 different reading of your Order than apparently you did. And,
7 we stand by that. But, we have no desire to confuse matters.
8 If it is indeed my understanding that our contentions, as we have
9 suggested, that the Applicant and Staff will be given opportunity
10 to respond in writing and we will then be able to address them
11 in a second prehearing conference.

12 We have no objection, but with the one proviso that I
13 do not believe they can be subjected to any concerns or
14 standards for late filing.

15 Perhaps the Board is already of a mind to either accept
16 them as not being late filed, in that sense, or to grant them as
17 late filed - in which case I'm not going to worry about it.

18 But, I am concerned that we acted according to the
19 language of the Order and I don't feel we should jump over any
20 other hoops, such as the 2.714, Late Filed Contention
21 Requirements.

22 I wonder if the Board has a sense that we have to make
23 some sort of showing, or whether you intend simply to go ahead
24 with argument, and then deal with it on the basis of substance.

25 JUDGE PARIS: Well, we have that question under

1 consideration. If we want you to meet the criteria for late
2 filing, we'll let you know.

3 MR. JORDAN: That's fine. That will be fine, thank
4 you.

5 JUDGE HOYT: We will give you a reading on it
6 tomorrow, I'm sure. Dr. Luebke, did you have anything?

7 JUDGE LUEBKE: I was just going to comment - we are
8 giving an opportunity to give twice as many contentions.

9 MR. LESSY: I wouldn't want to double the number they've
10 already submitted.

11 MR. JORDAN: Neither would I.

12 JUDGE HOYT: Anything else this afternoon?

13 JUDGE PARIS: I'd just like to say to Ms. Shotwell
14 that we recognize that the mail service is not infallible, and
15 perhaps our docket service room is not infallible. And we
16 believe that you didn't get it. If anyone has good cause for
17 late filing, and we think you have good cause for a late
18 filing--

19 JUDGE HOYT: Yes, sir?

20 MR. AHRENS: Excuse me. Do you expect to address
21 tomorrow the scheduling of the second prehearing conference?

22 JUDGE HOYT: It has discussion potential.

23 MR. AHRENS: Including the dates of the other Actions.

24 JUDGE HOYT: Yes, we want to get some sense of when
25 we can have our second prehearing conference.

1 JUDGE PARIS: There might be several options. Maybe
2 not the date, but maybe two or three possibilities.

3 MR. AHRENS: I understand.

4 JUDGE HOYT: The scheduling of the conference will be
5 determined by the schedules that all the parties here have to
6 meet, and certainly members of this Board will also have to
7 meet.

8 MR. LESSY: That was the point that I would make, to
9 see that no other schedules could go, unless it also included
10 the date of the second hearing.

11 JUDGE HOYT: Yes. We will have to do that.

12 JUDGE PARIS: Mr. Lessy, are you going to come up with
13 a proposed schedule for us?

14 MR. LESSY: I'm going to try to, your Honor.

15 JUDGE PARIS: Okay. And, you'll have in there the
16 second prehearing conference, recognizing that it may have to
17 be shifted a bit?

18 MR. LESSY: Yes.

19 JUDGE PARIS: Okay.

20 UJDE HOYT: I think that does it for the day, unless
21 there's something else that needs to be discussed.

22 Very well. Thank you, and the meeting will be
23 adjourned until 9:30 in the morning.

24 (Meeting adjourned until 9:30 in the morning)
25

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
Atomic Safety and Licensing Board

in the matter of: PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE,
SEABROOK STATION UNITS I & II.

Date of Proceeding: May 6, 1982

Docket Number: NRC Nos. 50-443-01 & 50-444-01

Place of Proceeding: Portsmouth, New Hampshire

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

Robert E. Mayer/Janet Hills

Official Reporter (Typed)

Robert E. Mayer/Janet Hills

Official Reporter (Signature)