

NUCLEAR REGULATORY COMMISSION

ORIGINAL


ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: :
CLEVELAND ELECTRIC ILLUMINATING COMPANY : DOCKET NOS. 50-441 OL
(Perry Units 1 and 2) : 50-440 OL

DATE: August 13, 1982 PAGES: 658 - 759

AT: Washington, D. C.

~~FOR~~
TR & I

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

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: In the Matter of: Docket Nos.:
: CLEVELAND ELECTRIC ILLUMINATING COMPANY : 50-441-OL
: Perry Units 1 and 2 : 50-440-OL
: -----x

In the Offices of
Alderson Reporting Company
400 Virginia Avenue, S.W.
Washington, D. C.

Friday, August 13, 1982

The telephone conference in the above-entitled
matter was convened, pursuant to notice, at 2:05 p.m.
BEFORE:

- PETER BLOCH, Chairman
Administrative Law Judge
- FREDERICK J. SHON, Member
Administrative Law Judge
- JERRY KLINE, Member
Administrative Law Judge

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Appearing on behalf of the Applicant,
Cleveland Electric Illuminating Company:

JAY SILBERG, Esq.
ROBERT WILLMORE, Esq.
Shaw, Pittman, Potts & Trowbridge

Appearing on behalf of Intervenor, Sunflower
Alliance:

DANIEL WILT, Esq.

Appearing on behalf of Intervenor, OCRE:

SUSAN HIATT, Esq.

Appearing on behalf of the Nuclear Regulatory
Commission:

STEPHEN LEWIS, Esq.
BENJAMIN BOGLER, Esq.
NATHENE WRIGHT, Esq.

1 has been filed regarding the emergency planning and
2 evacuation contentions, and there may be some other
3 procedural matters which are of interest to Applicant
4 that have been brought to our attention, dealing with
5 the remainder of this proceeding.

6 Are there any other agenda items that should
7 be included?

8 There being none, I suggest that we begin
9 first with the quality assurance motion. I would like
10 to briefly summarize how the Board understands this
11 issue.

12 The motion was filed by Sunflower Alliance on
13 July 21, 1982. It attracted our attention because we
14 believed that we had resolved issues concerning the
15 scope of the quality assurance contention, and that
16 questions that had been asked on that subject would
17 necessarily be answered under the rather broad scope of
18 the contention as we have interpreted it.

19 However, reaction to that filing seems to have
20 been shared and by staff, which have both responded that
21 there are no interrogatories that have not been fully
22 answered.

23 Mr. Wilt, in addressing whether or not we
24 should expand this contention, I hope you will first
25 address whether there are interrogatories, which should

1 be answered, which have not been answered.

2 MR. WILT: I guess it is going to have to
3 depend on how you consider what an answer is. We have
4 met resistance on both the staff's part and Applicant's,
5 although the Staff has been more liberal than the
6 Applicant.

7 CHAIRMAN BLOCH: Has this resistance been had
8 after the Board's order, which clarified the scope of
9 discovery on these contentions?

10 MR. WILT: We believe so, because that is the
11 basis of our motion to compel discovery.

12 CHAIRMAN BLOCH: Could you give me specific
13 examples of requests that you have made subsequent to
14 that time, for which you have been unable to obtain
15 satisfactory answers, and incidentally you might comment
16 on whether you have or you have not filed motions to
17 compel in those cases.

18 MR. WILT: We have filed one general motion to
19 compel that considers all of the various issues that
20 were subject to the first round interrogatories. We
21 have not filed any other motions to compel.

22 CHAIRMAN BLOCH: What is there outstanding on
23 quality assurance. Could you refresh my mind on what
24 the set of questions are that have not been properly
25 answered and the grounds that were given?

1 MR. WILT: Sure.

2 Sue, could you help me on this a little bit,
3 if you can hear me.

4 MS. HIATT: Yes.

5 MR. WILT: Could you answer the question?

6 MS. HIATT: I think that, first, the
7 outstanding interrogatories concerning quality assurance
8 have been answered rather recently. I think it is
9 somewhat interesting to consider that these answers were
10 not filed until after the motion to compel discovery.
11 Right after the March 30 Memorandum and Order, I think
12 all parties knew or should have known that any
13 objections they had to those interrogatories were not
14 valid.

15 CHAIRMAN BLOCH: The present state of the
16 record, although with some delay in your opinion, is
17 that you have received adequate answers to the
18 interrogatories on quality assurance?

19 MS. HIATT: Yes.

20 CHAIRMAN BLOCH: Either you, Ms. Hiatt, or Mr.
21 Wilt, might want to comment on why it is necessary to
22 deviate from the procedure the Board established. Let
23 me explain a little bit what that procedure was, and how
24 it fits into the regular pattern of procedures for the
25 Commission.

1 What we said was that your discovery could be
2 very broad, and then when it came time for motions for
3 summary disposition, you would have to establish that
4 there were genuine issues of fact which could be
5 litigated. That is the general standard that is always
6 applied to summary disposition, and we, therefore,
7 didn't think that we were handicapping Intervenors in
8 any way.

9 We thought it would be better to see what your
10 specific evidence was as you developed through
11 interrogatories, and then what genuine issues of fact
12 you had. I really don't see any reason, if the
13 interrogatories are satisfactorily answered, to deviate
14 from that.

15 Would you like to comment?

16 MS. HIATT: At the time the motion to expand
17 was filed, the answers to the interrogatories had not
18 been supplied yet. There just seems to be a great deal
19 of ambiguity or inconsistency in the order.

20 The order said that the contention is not
21 expanded, and yet discovery is allowed, and until the
22 motion to compel discovery was served, Applicant took
23 the position that any construction violations prior to
24 the 1978 work stoppage are outside the scope of the
25 contention, and therefore they objected. That is the

1 reason why Intervenor did not pursue any further
2 discovery on that issue until the contention was
3 expanded in our judgment.

4 CHAIRMAN BLOCH: I am not trying to assess
5 blame either on Intervenor or Applicant, I am just
6 trying to see what is the correct way is to dispose of
7 this motion at this time.

8 If I understand the answer you have given so
9 far, there are no reasons to deviate from the procedure
10 we have established. Do you see a reason for us to
11 deviate?

12 MS. HIATT: I would only hope that in the
13 future that any interrogatories or any other means of
14 discovery concerning this issue would not be objected
15 to, bringing back the limitation on the contention. If
16 that doesn't happen, I don't see a problem.

17 CHAIRMAN BLOCH: The answers that Staff and
18 Applicant have filed suggest to you, don't they, that
19 they don't plan to object on the grounds of the scope of
20 the contention, isn't that correct?

21 MR. WILT: Based on the recent answers?

22 CHAIRMAN BLOCH: Yes, the recent answers.

23 MS. HIATT: Yes.

24 MR. WILT: Do you agree also, Mr. Wilt?

25 MR. WILT: The Staff has always been most

1 cooperative in responding to the questions, and I will
2 agree that the Applicant in its most recent answers has
3 apparently taken the position now that they will comply
4 with the September 9th order.

5 CHAIRMAN BLOCH: The Board feels that it is
6 prepared to rule on the motion without further comment,
7 but if comment by Applicant and Staff is necessary, we
8 would be willing to hear what is considered to be
9 necessary by either of those parties. Does anyone wish
10 to speak?

11 MR. SILBERG: I have no need to comment, Mr.
12 Chairman.

13 MR. LEWIS: Neither does the Staff.

14 CHAIRMAN BLOCH: Is the Staff representative
15 on the line?

16 MR. LEWIS: Yes, we are here. We would have
17 no further comment with regard to your ruling.

18 CHAIRMAN BLOCH: All right, on the ground that
19 the scope of discovery is already quite broad, and that
20 the Board has already issued procedures that might in
21 due course lead to the expansion of the quality
22 assurance contention, the Board denies the motion for
23 expansion at this time.

24 On the next issue for discussion, which deals
25 with discovery on the emergency planning, the Board also

1 has some preliminary views which we hope may expedite
2 the consideration of this issue.

3 We had fairly extensive contentions presented
4 to us by both Sunflower Alliance and by Mr. Kinney, who
5 is no longer a party, but some of whose contentions were
6 ruled on by us and included in the proceeding. We
7 admitted a quite broad general contention on evacuation,
8 originally worded more in terms of emergency planning,
9 but upon motion by Applicant, we clarified our original
10 wording and stated that it would be limited to
11 evacuation.

12 We see two principal issues that are raised,
13 and there may be more that the parties will wish to
14 address as well. The two principal issues relate to
15 discovery concerning the ingestion pathway and plans to
16 interdict ingestion.

17 On that issue, we have a feeling that nothing
18 in the original contentions raised anything about
19 ingestion, and that it is not appropriate within the
20 scope of this contention to allow those questions. On
21 the other hand, we do think it is appropriate to allow
22 questions that deal with evacuation, quite broadly
23 interpreted.

24 So that questions relating to emergency
25 centers where the evacuation activities might be

1 directed, or might be effected, would be permissible
2 within the broad scope of discovery, without stating at
3 this point whether there will be a genuine issue of fact
4 once we get to trial.

5 We also understand the byplay about potassium
6 iodide, and that clearly is an admitted contention under
7 the state of the record as defined by Ms. Hiatt and the
8 answer by the Applicant.

9 I think first we ought to deal with these two
10 general areas, that is ingestion pathway and operating
11 centers, or emergency centers, and I would like you to
12 comment on that, either Mr. Wilt or Ms. Hiatt.

13 MR. WILT: Our feeling on ingestion was that
14 there seems to be a relationship between the two
15 emergency planning zones, the plume one and the
16 ingestion one, and regulations in Appendix E do state
17 that the emergency plan is to consider both the plume
18 measure, as well as the ingestion.

19 There are certainly practical things involved,
20 we think, too, which may come out in some questions we
21 are trying to ask. At least, I think there is a byplay
22 between the two. There is an interrelationship between
23 the two.

24 CHAIRMAN BLOCH: If you can explain that
25 interrelationship, that would be helpful.

1 It is true that the Commission's regulations
2 require that there be provisions made for the ingestion
3 zone, but your contention doesn't seem to deal with
4 that.

5 The first question I was asking is whether
6 there were specific factual statements in the original
7 contention that was admitted, or other factual
8 statements that were admitted as contentions, that would
9 lead us to think that the ingestion pathway was part of
10 the contention -- not part of the rules of the
11 Commission, but part of the contention.

12 MR. WILT: I will try to do that.

13 CHAIRMAN BLOCH: The relevance of ingestion to
14 evacuation, then we may be able to admit it on that
15 ground. But we have to know how you are going to obtain
16 information on specific interrogatories that would be
17 helpful to evacuation, even though the questions deal
18 with ingestion.

19 MR. WILT: I think, at least what I have done,
20 maybe wrongly, I may have been overbroad in my view.
21 The broad problem really is, because I see an
22 interrelationship between the working of an emergency
23 plan, if one should have to actually work, there has to
24 be some kind of notifications that have go to people in
25 both zones. How do these correlate? How do these

1 things actually physically get done?

2 We have farmers in Lake. We have farmers in
3 Ashtabula County. We don't have too many farmers in
4 Cuyhoga County, but there are still a couple left. They
5 have animals and livestock, and wheat and corn, and
6 what-have-you, growing.

7 My concern is, and maybe I am not expressing
8 myself clearly, if that for this thing to actually work,
9 if it has to, what we would like to find out is how the
10 Applicant intends to actually physically make this thing
11 work.

12 In looking at it from that perspective, both
13 of them are very important and very relevant, if people
14 have to be evacuated, where are they going to go.

15 CHAIRMAN BLOCH: Mr. Wilt, I agree with you,
16 certainly, that both zones are important and relevant,
17 but not relevant to your contention, that is what we are
18 arguing.

19 MR. WILT: Let me see if I can find my copy of
20 the contention. The actual wording of the contention,
21 is that where the hang-up is? I mean, I am trying to
22 find out --

23 CHAIRMAN BLOCH: Yes, Mr. Wilt, the problem is
24 the wording of the contention, and what is in essence
25 the historical backdrop for that, which is what you

1 actually filed, and what we consolidated into that
2 wording.

3 MR. WILT: Okay, let me see --I am trying to
4 find the revised order.

5 CHAIRMAN BLOCH: Is it possible that while Mr.
6 Wilt is searching, that Ms. Hiatt could comment.

7 MR. WILT: Certainly.

8 Go ahead, Ms. Hiatt.

9 MS. HIATT: The ingestion pathway, as I
10 understand it, is primarily the responsibility of the
11 State Agencies. If the State Agencies also have
12 responsibility within plume exposure pathways as well --

13 CHAIRMAN BLOCH: Ms. Hiatt, I am having
14 difficulty hearing. I think it is the telephone
15 connection. If you could talk more slowly it might come
16 across better.

17 MS. HIATT: All right.

18 The ingestion pathway is primarily the
19 responsibility of the State Agencies, and these same
20 State Agencies also have responsibility within the
21 ten-mile plume exposure pathway, as well, but there is
22 only a limited number of personnel in the State of Ohio
23 Agencies and a limited amount of funds, since the State
24 of Ohio is experiencing severe financial difficulties.

25 CHAIRMAN BLOCH: This is an interesting

1 argument. I take it that there are some of your
2 interrogatories, or some of the Intervenors'
3 interrogatories that deal with the use of personnel for
4 ingestion pathway duties that might somehow make them
5 unavailable for evacuation duties?

6 MS. HIATT: I believe that might be the intent
7 of some of them. I don't have them in front of me.
8 There is an interface between the ingestion pathway and
9 the plume exposure pathway.

10 CHAIRMAN BLOCH: That is a narrow interface,
11 but it is an interesting possibility that would give you
12 a very limited ability to ask questions about
13 ingestion.

14 MS. HIATT: There is also the possibility that
15 should an accident become extremely severe because of
16 the meteorological conditions, that the EPA's protective
17 action guidelines would be exceeded outside of the plume
18 exposure pathway and actually in the ingestion pathway,
19 which means that areas which do not normally have to
20 formulate an emergency plan, such as the three countries
21 in the plume, would suddenly have to cope with
22 protective action, such as evacuation.

23 CHAIRMAN BLOCH: The possibility that
24 evacuation might have to extend beyond the original
25 emergency planning zone, I take it is clearly within the

1 scope of evacuation, providing that it is required by
2 Commission regulations, and it may be. I think that is
3 not the kind of issue we are intending when we talk
4 about ingestion problems.

5 I think that also is well-taken, that if it
6 really is extension of evacuation beyond the evacuation
7 zone, there are some interrogatories that deal with that
8 narrow question, it seems to me that that falls within
9 the scope of our evacuation contention.

10 We will let the other parties comment in due
11 time.

12 There is another narrow section you have
13 attempted to carve out.

14 MS. HIATT: I am going to back to the fact
15 that the State Agencies are responsible for both plume
16 EPZ and ingestion EPZ actions. I don't see how you can
17 arbitrarily separate them. We are talking about the
18 adequacy, whether there was sufficient training,
19 sufficient funding.

20 Obviously, if there are only so many people,
21 what are they going to be involved with? What is their
22 first priority. I think that might be a serious
23 concern.

24 CHAIRMAN BLOCH: If while Ms. Hiatt is
25 hesitating, if Mr. Wilt has a cogent argument he would

1 like to make. You may speak in any order you like here,
2 providing that you try to be efficient about the
3 presentation.

4 MR. WILT: I am looking for an interrogatory
5 to find a specific example, to try to explain what it is
6 that I am trying to say. So I will defer to Ms. Hiatt,
7 if she has anything further to say.

8 CHAIRMAN BLOCH: What is the pleasure of the
9 other parties, whether they would like to make brief
10 comments while the Intervenors continue to study their
11 response.

12 Mr. Silberg?

13 MR. SILBERG: Yes, thank you.

14 First of all, what I think we are doing here,
15 we are hearing some after the fact attempts to justify a
16 series of interrogatories which we can argue go beyond
17 the scope of the contention.

18 As to the question of whether there is a
19 conflict in the State's responsibilities, I am aware of
20 no such interrogatories that go to that point at all.

21 CHAIRMAN BLOCH: Would you agree that if there
22 are some, as you study them, that you would try to
23 answer those in light of the discussion that we are
24 having?

25 MR. SILBERG: If there were interrogatories

1 directed to the State's ability to carry its functions
2 in the inhalation pathway EPZ.

3 CHAIRMAN BLOCH: Specifically, duplication of
4 duties for overlapping personnel, that kind of
5 question.

6 MR. SILBERG: I agree that if there were
7 questions that asked, are there any people who have to
8 be in the ingestion pathway EPZ at the same time that
9 they are in the inhalation pathway EPZ, that would be
10 legitimate.

11 However, what I am concerned with is that we
12 will get a whole series of interrogatories that attempt
13 to investigate all the State's responsibilities in the
14 ingestion pathway zone. The argument would then be,
15 well, we have to know everything that the State is to do
16 in the ingestion pathway zone, so that we can then
17 compare it with what they are also doing in the plume
18 exposure.

19 CHAIRMAN BLOCH: I think we would intend to
20 limit that kind of discovery, again Intervenors may wish
21 to comment, to questions about individuals who have
22 responsibilities for evacuation, and finding out whether
23 they also have overlapping or possibly conflicting
24 responsibilities for ingestion, which seems like only a
25 weak possibility, given the fact that the ingestion

1 concern is usually subsequent.

2 MR. SILBERG: Yes.

3 The other point, if there is a possibility of
4 evacuating beyond the EPZ, whether or not that would be
5 within the contention. It is a clear challenge to
6 Commission regulation. I don't think we need to face
7 the question of whether it is relevant or not. The
8 Commission has set the zone that you are supposed to
9 look at for protective action such as evacuation, and
10 that zone does not go beyond ten miles.

11 CHAIRMAN BLOCH: I think that that is correct
12 as far as you have gone, Mr. Silberg, but I believe that
13 there are portions of NUREG-0654 that suggest that while
14 you plan for evacuation in the emergency planning zone,
15 that there may be conditions that will arise that cause
16 you to be able to do other things to cause evacuation in
17 a wider zone.

18 MR. SILBERG: There is nothing in the
19 Commission's regulation, and 0654 is not a regulation,
20 that requires or even suggests that that is
21 permissible.

22 I think the Commission's orders and decisions,
23 as well as the regulatory history of emergency planning
24 regulation, would prohibit the Board from looking into
25 evacuation beyond the 10-mile zone.

1 CHAIRMAN BLOCH: We are referring, in the
2 first instance, to NUREG-0654, page 11, which is the
3 section on planning basis, which says: "On the other
4 hand, for the worst possible accidents, protective
5 action would need to be taken outside the planning
6 zone."

7 We would comment that in the statement of
8 consideration for emergency planning regulation, which
9 is Section 50.47, states that the regulation was
10 intended to make the provisions of 0654 codified into a
11 regulation.

12 MR. SILBERG: I would respectfully disagree.
13 First of all, 0654, as I recollect, is not mentioned at
14 all in 50.47. It is cited in Appendix E, but only --

15 CHAIRMAN BLOCH: It is mentioned in the
16 statement of consideration to 50.47.

17 JUDGE SHON: Mr. Silberg, this is Judge Shon.
18 Section 50.47(c)(2) cites also Appendix E, and has
19 essentially the same wording, it says, "Generally, the
20 plume exposure pathway EPZ for nuclear power plants
21 shall consist of an area about ten miles radius."

22 MR. SILBERG: Right.

23 JUDGE SHON: Then they go on to say, "The
24 exact size and configuration of the EPZ surrounding the
25 nuclear power reactor shall be determined in relation to

1 local emergency response needs and capabilities, if they
2 are affected by such conditions demography, topography,
3 land characteristics, and so on," which suggests that
4 there may be adjustments to this 10 mile in either
5 direction. However, I am not sure that that is enough
6 to serve as enough justification for interrogatories
7 regarding the adjusted zone.

8 CHAIRMAN BLOCH: The discussion we are having,
9 I take it, is only about whether there might be some
10 circumstances in which there would have to be something
11 thought about or able to be done about evacuating beyond
12 the EPZ.

13 It is my feeling that we may have to be
14 briefed on this because I don't think it is a simple
15 issue legally. But my feeling is that the NUREG that
16 pre-existed 50.47 contemplated emergency planning zones
17 with very similar language to the regulation itself, and
18 yet recognized that there could be circumstances where
19 some actions would need to be taken outside those
20 zones. The language seems to be consistent with the
21 reality and the way that an accident might actually
22 develop.

23 MR. SILBERG: But all the decisions of the
24 Licensing Boards, of the Commission, and of the Appeal
25 Boards that I am aware of say that you look at

1 evacuation beyond the 10-mile EPZ.

2 CHAIRMAN BLOCH: Okay.

3 MR. SILBERG: I don't have it in front of me,
4 I think perhaps a recent Commission decision on Indian
5 Point may address that.

6 CHAIRMAN BLOCH: We don't think it does. Mr.
7 Shon was on the Indian Point Board, and he is here with
8 us.

9 MR. LEWIS: Your Honor, this is Steve Lewis.
10 It seems like we are getting two matters involved here.
11 One matter is 50.47 --

12 CHAIRMAN BLOCH: Mr. Lewis, I am having
13 difficulty hearing you now.

14 MR. LEWIS: -- 50.47(c)(2) has the regulation
15 providing that there may be --

16 CHAIRMAN BLOCH: Mr. Lewis, it is very
17 difficult to hear you. Please speak up.

18 MR. LEWIS: I will try to speak up.

19 The issue in the regulation would pertain to
20 quite specific adjustments in the plume exposure
21 pathway, and we certainly acknowledge that that is an
22 area for inquiry as they relate to evacuability of the
23 path EPZ. That is the language I referred to.

24 The question of whether or not the
25 evacuability of the ingestion pathway might have to be

1 considered is a different question, and I am not certain
2 that I find anything in the regulations that would
3 suggest that that does have to be considered. But I
4 think we have to keep that distinction in mind.

5 CHAIRMAN BLOCH: Mr. Lewis, what do you make
6 of the sentence on page 11 of 0654 that we were
7 referring to?

8 MR. LEWIS: Frankly, I don't have that in
9 front of me, Your Honor, so I really can't say.

10 CHAIRMAN BLOCH: Can you discuss what the
11 effect would be of the following sentence: "On the
12 other hand, for the worst possible accident, effective
13 actions would need to be taken outside the planning
14 zone." But it doesn't suggest the same kind of
15 extensive planning that you have to have booklets, and
16 you have to have training of personnel. It suggests
17 that you have to think about that possibility because it
18 might occur.

19 MR. LEWIS: I think, Your Honor, that there
20 are a number of suggestions in the various NUREG
21 documents on this subject that talk about the fact that
22 the kind of emergency planning that the State and
23 locality do for the exposure EPZ is expected to provide
24 the framework for expansion of that effort as
25 necessary.

1 CHAIRMAN BLOCH: That is the only point we are
2 talking about.

3 MR. LEWIS: Yes, I understand, and there is an
4 acknowledgement that in promulgating certain
5 requirements for procedures and for equipment, for
6 notification, and those types of things for the plume
7 exposure pathway EPZ, that the Commission recognized
8 that this kind of capability could be used if necessary
9 beyond the plume exposure pathway EPZ.

10 Nevertheless, the Commission did not impose
11 any emergency planning requirements in the nature of
12 demonstrations of evacuability within certain periods of
13 time.

14 CHAIRMAN BLOCH: That is true.

15 MR. LEWIS: This kind of thing beyond the
16 plume exposure pathway EPZ.

17 It appears that the major way the Commission
18 envisions that site specific concern could be reflected
19 would be in defining for a particular site what the
20 plume exposure pathway EPZ would be, which could be
21 expanded some to accommodate particular topographical,
22 or population distribution concerns.

23 I think that it was in that way that the
24 Commission believed that the set of requirements that it
25 has imposed for plume exposure pathway EPZ could then be

1 applied, perhaps, to a somewhat larger and somewhat
2 differently configured plume exposure pathway EPZ. I
3 think that is the major way that they allowed sort of a
4 safety valve for particular site considerations.

5 CHAIRMAN BLOCH: Thank you, Mr. Lewis.

6 MR. SILBERG: Mr. Chairman, can I add another
7 thought?

8 CHAIRMAN BLOCH: I was about to return the
9 floor to you.

10 I doubt whether there are any interrogatories
11 that fall within the scope of this hypothetical
12 situation anyway.

13 MR. SILBERG: I am not sure that there are,
14 but getting back to whether or not it is a challenge to
15 the regulation, I have the paragraph on page 11 of
16 NUREG-0654 in front of me, and what it says, let me read
17 the whole paragraph for the benefit of Staff and the
18 Intervenors who don't have it in front of them.

19 It says: "The choice of the size of the
20 emergency planning zone represents a judgment, and the
21 extent of detailed planning must be performed to assure
22 an adequate response base. In a particular emergency,
23 protective might well be restricted to a small part of
24 the planning zone. On the other hand, for the worst
25 possible accident, protective actions would need to be

1 taken outside the planning zone."

2 What that says is that the the FEMA and NRC
3 Staffs made a judgment as to what they thought the
4 appropriate zone was for which evacuation had to be
5 considered. They said that it is not necessarily the
6 smallest, and it is not necessarily the biggest. We
7 picked something which in our judgment is the right size
8 to use.

9 The Commission's regulations adopted the
10 concept of the emergency planning zone. In other words,
11 when the Commission defined the 10-mile zone, they said,
12 not the biggest, but not the smallest either, but that
13 is the zone that you ought to look at.

14 Any attempt to say, well, there might be
15 circumstances where you need to evacuate beyond 10
16 miles, would be going beyond what the regulation
17 require, not that it may never be necessary. But that
18 the Commission in its judgments made a determination
19 that that is what we ought to be looking at, not
20 necessarily the worst possible, but then again more
21 serious than many of the accidents that are much more
22 likely to occur.

23 CHAIRMAN BLOCH: We understand the position.
24 The Board thinks that there might possibly a situation,
25 not for intensive planning, but for the possibility that

1 your alert might go beyond that and you might ask for
2 evacuation. There might be some minimal thought about
3 how we go further, but not extensive planning.

4 MR. SILBERG: There is nothing in the
5 regulation which suggest that. It says in 50.47(b)(5),
6 where they talk about procedures for notification,
7 "within the plume exposure pathway emergency planning
8 zone."

9 CHAIRMAN BLOCH: We are not going to rule on
10 this unless there is an interrogatory which raises this
11 question. Is there at least one interrogatory that
12 raises this question?

13 MS. HIATT: Yes, there is. This was in the
14 second set of interrogatories to Applicant.

15 MR. SILBERG: What is the date on that,
16 Susan?

17 MS. HIATT: The response is dated August 11,
18 from Applicant to us. The interrogatories themselves
19 are dated April 30th.

20 MR. SILBERG: I have them. Is it one
21 interrogatory particularly?

22 MS. HIATT: Yes, interrogatory 64, "In the
23 Applicant's would there ever be a need to order
24 protective action in the area outside the plume exposure
25 pathway EPZ."

1 CHAIRMAN BLOCH: What is the number?

2 MS. HIATT: Interrogatory 64.

3 MR. SILBERG: On page 13 of that filing.

4 CHAIRMAN BLOCH: I have the wrong filing. I
5 have the one dated April 29 from OCRE. Is it a
6 Sunflower Alliance filing?

7 MR. WILT: Sunflower Alliance dated April
8 30th.

9 MS. HIATT: I believe that certain portion of
10 interrogatory 62 would fall into that category as well.

11 CHAIRMAN BLOCH: while two members of the
12 Board have left to obtain, why don't we take a two
13 minute recess.

14 (A short recess was taken.)

15 CHAIRMAN BLOCH: Ms. Hiatt, 63(c) in
16 particular that is at issue, are (b) and (e) also at
17 issue?

18 MS. HIATT: Yes, I would think that (c), (d),
19 and (e).

20 CHAIRMAN BLOCH: Has Applicant already
21 answered 63(a) and (b)?

22 MR. SILBERG: Yes.

23 CHAIRMAN BLOCH: So (c), (d) and (e) are at
24 issue.

25 MR. SILBERG: We answered them, but we

1 objected to those portions of the questions which deal
2 with areas outside the plume exposure EPZ. These
3 answers were just filed on the 11th of August.

4 CHAIRMAN BLOCH: You objected to (c), (d) and
5 (e), and you did not answer.

6 MR. SILBERG: We answered 63 in its entirety.
7 We did not separately answer (a), (b), (c), (d) and (e).

8 CHAIRMAN BLOCH: So there really is no issue
9 because there was no objection to overrule.

10 MR. SILBERG: No, we did object to a portion
11 of it, that portion of the question which related to
12 areas outside the 10-mile EPZ.

13 CHAIRMAN BLOCH: Your answer does not cover
14 those?

15 MR. SILBERG: That is right. We object to
16 that portion of the interrogatory. We answered the
17 question for the area within the EPZ, but we object to
18 the other portions of it.

19 Similarly for 64, we object to it on the
20 ground that it is concerned with areas outside the plume
21 exposure EPZ, and therefore is irrelevant to the
22 contention.

23 CHAIRMAN BLOCH: Which one?

24 MR. SILBERG: 64.

25 CHAIRMAN BLOCH: The Board is not prepared to

1 rule on this issue at this time. We are afraid that the
2 issue is sufficiently complex that we would require
3 legal briefs on this issue.

4 Would the parties be prepared to file written
5 briefs within five days. There is no need for response
6 because the issues are well ventilated. So there is a
7 filing deadline of five days from today, unless there is
8 an objection made right now by one of the parties.

9 MR. WILT: I am going on vacation for a week,
10 I don't know whether that is long enough.

11 MR. SILBERG: I will also be out of town. I
12 also believe that since the burden of proof on the
13 motion to compel rests with the Intervenors, that they
14 should go first, and the Staff and ourselves should be
15 able to respond.

16 CHAIRMAN BLOCH: How soon can you file. Mr.
17 Wilt, when do you come back from vacation?

18 MR. WILT: I will be back on the 22nd, Your
19 Honor. I could have something filed by the 29th.

20 CHAIRMAN BLOCH: Does Applicant have any
21 objection to that time schedule?

22 MR. SILBERG: No, sir.

23 MR. LEWIS: That is for simultaneous
24 pleadings, Your Honor?

25 CHAIRMAN BLOCH: No. The Applicant has

1 requested that it have, I would suggest, only five
2 additional days, if that is acceptable, five working
3 days.

4 MR. SILBERG: From our receipt, yes. But if
5 it is five days from the date that it is mailed, we
6 won't see it before we have to file.

7 CHAIRMAN BLOCH: Why don't we make it eight
8 days from mailing, would that be acceptable?

9 MR. LEWIS: Yes.

10 MR. SILBERG: We will let you know if it
11 doesn't come in.

12 CHAIRMAN BLOCH: Okay.

13 MR. SILBERG: The 29th, by the way, is a
14 Sunday.

15 MR. WILT: Why don't we make it the 30th,
16 then.

17 CHAIRMAN BLOCH: All right, the 30th will be
18 the date.

19 Is there any objection from either Intervenor
20 about the Applicant filing subsequently?

21 MR. WILT: No, sir.

22 CHAIRMAN BLOCH: There being none, then that
23 schedule is adopted for resolving those two
24 interrogatories.

25 Now, Mr. Wilt, I would like you to address, in

1 addition to the issues which the Board has just had the
2 parties discuss, whether there are other kinds of
3 interrogatories, for which you are entitled to a
4 response, that you have not gotten a response to.

5 I would like you to show us one category of
6 interrogatories at a time, so that we can discuss each
7 one separately, each issue separately.

8 MR. WILT: Sue.

9 MS. HIATT: There is a category of
10 interrogatories, quite a few of interrogatories dealing
11 with interface of Applicant's on-site emergency planning
12 or activities during an accident and off-site emergency
13 response. Applicant has objected to anything dealing
14 with on-site planning where there isn't clearly any
15 ground to do so.

16 CHAIRMAN BLOCH: You agree that the Applicant
17 should be able to limit questions about what happens on
18 site to their relationship to the off-site activities?
19 That is, the activities which are strictly on-site, and
20 are not directly or indirectly related to the off-site
21 activities are beyond the scope of the contention.

22 MS. HIATT: Yes.

23 MR. SILBERG: I would note, Mr. Chairman, that
24 there are a number of interrogatories that fall in
25 precisely that category. For instance, the Intervenors

1 have asked for information on agreements between the
2 Applicant and off-site agencies to respond to problems
3 on the site.

4 They have asked for lots of information about
5 on-site personnel, qualifications, who is going to be on
6 duty, for how many hours, and the like.

7 CHAIRMAN BLOCH: The second category is what?
8 The first category is off-site personnel responding to
9 the site. What was the second category that you
10 mentioned?

11 MR. SILBERG: The qualifications of on-site
12 personnel.

13 CHAIRMAN BLOCH: That is all on-site
14 personnel?

15 MR. SILBERG: Yes.

16 CHAIRMAN BLOCH: Do you think that there is
17 some way of restricting that to the personnel who would
18 communicate with outside people?

19 MR. SILBERG: I venture to say that anybody
20 can communicate with off-site people.

21 CHAIRMAN BLOCH: There are responsibilities
22 assigned to particular individuals to communicate about
23 what is happening inside the plant?

24 MR. SILBERG: I am not sure that I understand
25 the relevancy of that to evacuation.

1 CHAIRMAN BLOCH: Doesn't it help in assisting
2 -- Is that the process by which the Applicant decides
3 what kinds of information to give to the public, and
4 whether or not to decide to order an evacuation?

5 MR. SILBERG: The Applicant (a) does not order
6 an evacuation, and (b) doesn't give information to the
7 public, (c) you can also argue that the instruments in
8 the control room are relevant to on-site evacuation
9 because that gives information to the operators, and
10 then it gives information to the emergency planners, and
11 then to the off-site emergency planners who then decide
12 what kind of protective action to order.

13 CHAIRMAN BLOCH: We are convinced that the
14 controls don't have to be part of it.

15 MR. SILBERG: The same logic then applies to
16 the people who are reading the controls.

17 CHAIRMAN BLOCH: What about the people who
18 directly communicate with the State Agencies about what
19 is happening?

20 MR. SILBERG: I don't see that that relates at
21 all to the workability of evacuation.

22 CHAIRMAN BLOCH: Doesn't the accuracy of the
23 information available to the State Agency depend on how
24 well the people within the plant communicate that
25 information to the outside agency?

1 MR. SILBERG: It also depends on the accuracy
2 of the instrumentation in the control room, but it has
3 nothing to do with whether or not you can evacuate the
4 ten-mile EPZ, and that is the issue that has been
5 admitted.

6 JUDGE SHON: Mr. Silberg, it might well have
7 something to do with whether you can evacuate the EPZ in
8 a timely manner, because the people are all working
9 double-shift --

10 MR. SILBERG: I am having trouble hearing you,
11 Judge Shon.

12 JUDGE SHON: I was saying that the people
13 working the shift, they are all working double shift,
14 they are bleary eyed, and can't think straight, and that
15 sort of thing, might have a good deal to do with whether
16 they would get the information out so that evacuation
17 could be made in a timely manner.

18 MR. SILBERG: You could make the same argument
19 for the accuracy of the instrumentation. I admit that
20 it is a line-drawing problem. The issue is one of the
21 workability of evacuation, and there are no Commission
22 requirements for how fast one must evacuate.

23 In fact, NUREG-0654 says that the only purpose
24 for determining the time limits of evacuation is to
25 provide input on whether or not there should be an

1 evacuation, or whether other protective actions could be
2 taken. It seems to me that those types of questions go
3 beyond the scope of the workability of emergency
4 evacuation plans.

5 CHAIRMAN BLOCH: The method of collecting
6 information from within the plant and transmitting it to
7 the evacuation agencies is sufficiently removed from
8 evacuation, you think that discovery is not allowed. We
9 are not arguing about whether it is going to go up to
10 hearing.

11 Do you think that inquiring into the process
12 by which the information is transmitted is to remove
13 from the evacuation contention to allow discovery?

14 MR. SILBERG: I have tried to draw the line
15 with communication from the plant off-site, and I admit
16 that it is grey line, and I could have drawn it much
17 further off-site than I did. I was trying to be fair
18 both to my client and to the process by drawing it at
19 the site boundary.

20 CHAIRMAN BLOCH: You interpret that nothing
21 inside the site boundary would be relevant.

22 MR. SILBERG: That is right. I am willing,
23 and we have provided information on communication from
24 the site to off-site, and anything that we know about
25 that is going on off-site that deals with evacuation. I

1 think, once you get inside the site, you are
2 sufficiently remote from the workability of the
3 evacuation plan that it is just not relevant.

4 I don't see how that information would be used
5 in a contention that is going to be kept to its
6 boundary. I could construct all sorts of questions that
7 would involve everything from the nuclear physics of the
8 core to the geology and seismology of the site, which
9 could also be as relevant to evacuation as the kinds of
10 in-plant questions that the Intervenor argue.

11 Sure they are going to go to the likelihood
12 and severity of an accident, and how that information
13 might be communicated off-site, but if you want to draw
14 the line that way, then there are no bounds to the
15 contention, or the relevancy of the information that
16 would be sought by discovery, and we will be at this
17 forever. I don't think that is the intention of the
18 Board, and I don't think it was the intent.

19 CHAIRMAN BLOCH: What about the bound of just
20 saying that they could inquire into how the people who
21 are assigned the responsibility of talking to the
22 outside evacuation authorities get the information that
23 they are going to communicate?

24 MR. SILBERG: Then you are talking about what
25 kind of instruments do they have.

1 CHAIRMAN BLOCH: No.

2 MR. SILBERG: What kind of sensors are there
3 in the reactor to develop that information.

4 CHAIRMAN BLOCH: What about limiting it to
5 human communication, which people talk to them, how they
6 go about verifying that they have accurate information
7 for the people who are responsible within the plant?

8 MR. SILBERG: I think if you go back to the
9 original contention, I think the Board started to do
10 that before, if you look at what Sunflower Alliance
11 filed, you will see that we are already well beyond the
12 founds of the original emergency evacuation plan
13 contention.

14 I will admit that Mr. Kinney had raised
15 another position. However, the Commission held in the
16 Comanche Peak decision of last December that when a
17 party like that drops out, as Mr. Kinney has, his
18 contentions go away, too, unless the Board decided to
19 make them sue sponte issues in which event the Board has
20 certain obligations to the Commission, and this hasn't
21 happened in this case.

22 CHAIRMAN BLOCH: Mr. Silberg, I don't think
23 that that is my interpretation of Comanche Peak. As I
24 recall Comanche Peak, not only did the Intervenor, who
25 had those contentions, drop out, but no other Intervenor

1 was willing to take up those contentions. We admitted
2 contentions into this proceeding generally, and there
3 are lead Intervenor on them, but they are not the
4 property of an individual Intervenor as we have
5 interpreted the admission of contentions. We have
6 Intervenor actively pursuing those issues, but they are
7 not sue sponte, but they are part of the proceeding.

8 MR. SILBERG: But we don't have Intervenor
9 pursuing the Radford contention, for instance, no one
10 stepped up to bat on that one.

11 CHAIRMAN BLOCH: No. There is no discovery on
12 it, and there is no genuine issue, then there is no one
13 to try it. But to the extent that they are requesting
14 discovery, and it is related to the Kinney contention,
15 those are still live issues.

16 MR. SILBERG: You are saying that anything
17 that was ever mentioned by Mr. Kinney is a live issue?

18 CHAIRMAN BLOCH: To the extent that it was
19 incorporated in this proceeding by our order admitting
20 contentions, and to the extent that there are now
21 Intervenor actively pursuing those issues.

22 MR. SILBERG: I haven't seen any Intervenor
23 pursuing that particular issue.

24 CHAIRMAN BLOCH: Then it will probably drop
25 out.

1 MR. SILBERG: However, I suspect that now they
2 will quickly file interrogatories on it.

3 CHAIRMAN BLOCH: It wasn't our argument that
4 brought it to their attention.

5 MR. SILBERG: I think the parties are entitled
6 to know what the contentions are. I think if the ground
7 rules are going to change at this late date, at least I
8 think we have been prejudiced by that. Be that as it
9 may --

10 CHAIRMAN BLOCH: They have not changed. If
11 you just read our order, we are not changing them at
12 this point.

13 MR. SILBERG: Be that as it may, I think the
14 line that I think is the fair line to draw is the
15 off-site/on-site line. We can draw any line you want,
16 and you can construct arguments for relevancy that point
17 way off-site and way on-site.

18 It seems to me that if you are focusing on
19 evacuation plans, that is where the line ought to be
20 drawn.

21 CHAIRMAN BLOCH: Ms. Hiatt.

22 MS. HIATT: Yes, I would object to --

23 CHAIRMAN BLOCH: We can't hear you, Ms.
24 Hiatt. Could you speak up please.

25 MS. HIATT: I would object to some of the

1 statements Mr. Silberg made. Number one, that the
2 Intervenors have questioned the qualifications of all
3 plant personnel.

4 MR. SILBERG: I didn't say all plant
5 personnel.

6 MS. HIATT: I would say again that that is not
7 true. We questioned the qualifications of the shift
8 supervisors, the duty officers, persons who have been
9 identified as far as having responsibilities in an
10 emergency off-site.

11 It is true that we did have some
12 interrogatories dealing with response to off-site
13 personnel, such as firefighters, to on-site
14 emergencies.

15 We believe that might be relevant being that
16 it might be possible that these persons would also be
17 needed in an off-site capability for evacuation, also be
18 called on-site. There are only so many firefighters
19 within the 10-miles EPZ.

20 Furthermore, I believe that certain on-site
21 responsibilities and instrumentations are definitely
22 relevant to emergency planning. The first step in the
23 whole emergency planning process is the detection of the
24 accident and the declaration of one of the four
25 emergency action levels by the Licensee. If the

1 Licensee does not have certain proper training to do
2 that, it cannot indicate the recommendations and
3 information to off-site agencies, the emergency plan
4 just falls off.

5 In fact, I have seen Lake County's evacuation
6 plan, and there is a full chart concerning off-site
7 actions and these actions are directly predicated upon
8 which of the four emergency action levels has been
9 declared by the Licensee.

10 I really don't see how you can just draw a
11 line at the site boundary, because on-site activities do
12 have relevance.

13 CHAIRMAN BLOCH: Mr. Wilt.

14 MR. WILT: Yes, Your Honor. I think the
15 contention, number one, is whether or not an emergency
16 plan -- I have the old one, which has emergency plan. I
17 think that has been changed to evacuation plan. Is that
18 correct?

19 CHAIRMAN BLOCH: I believe that is correct.

20 MR. WILT: Thank you, Your Honor.

21 It says that Applicant's evacuation plan does
22 in fact provide reasonable assurance in the event of an
23 emergency to the public health and safety. I think that
24 is pretty broad, and I think drawing a line at the site
25 boundary, particularly since it is the Applicant's

1 responsibility to --

2 MR. SILBERG: I am sorry, but I am having
3 trouble hearing you, Dan.

4 CHAIRMAN BLOCH: The Board is, too.

5 MR. WILT: I will speak up.

6 I think, since the Applicant is responsible
7 for initiating all of the emergency activity which will
8 lead to evacuation, or possibly lead to any kind of
9 activity beyond that, which could include evacuation, I
10 think we are entitled to ask the kinds of limited
11 questions that I think we have asked.

12 I don't think we have gone into anything more
13 than, as Ms Hiatt pointed out, the kinds of questions
14 dealing with the individual personnel, Applicant's
15 employees that are responsible for making the decisions
16 that initiate the various actions depending on the
17 nature and scope of the accident which could well lead
18 to evacuation.

19 If the issue is, in fact, to provide
20 reasonable assurance that these measures can and will be
21 taken, one of those measures that can and will be taken
22 has to include the initiating activities on the site
23 itself.

24 CHAIRMAN BLOCH: Thank you, Mr. Wilt.

25 I will point out for everyone the general

1 guidance that when we get to deciding these contentions,
2 we will of course decide them within the legal framework
3 established by the Commission's regulations, and the
4 applicable NUREGs to the extent that they are important
5 here. The parties should not be misled by the wording
6 of contentions to think that everything within the
7 wording of a contention is necessarily also within a
8 regulation.

9 Likewise, the Board will need the parties'
10 assistance at the time of the filing of findings,
11 knowing how to apply the specific regulatory materials
12 to this case.

13 Would the Staff like to comment on this
14 particular issue at this time?

15 MR. LEWIS: Yes, Your Honor.

16 We wrote indicating that we would not respond
17 specifically to the questions on the motion to compel
18 with respect to the Applicant.

19 We, however, face very similar circumstances
20 with respect to the Sunflower Alliance's second set of
21 interrogatories filed against that. We have provided a
22 partial response on the 2nd of August, and one of the
23 areas that we still owe further responses is the area of
24 the emergency planning interrogatories filed against
25 us.

1 At the risk of adding more issues onto the
2 Board, I would say, as we frame our answers to some of
3 these interrogatories, we are also troubled in certain
4 other respects by the breadth of the interrogatories.
5 Some of them raise the same issues that Mr. Silberg
6 discussed with you.

7 For example, there is an interrogatory filed
8 against the Staff, Interrogatory 33, which asks us to
9 demonstrate and discuss how the emergency response
10 facilities meet each and every criterion of NUREG-0814,
11 and to the extent that we are dealing with on-site
12 facilities, there is no demarcation in that
13 interrogatory of the respect in which the functioning of
14 the emergency response facilities relate or do not
15 relate to off-site evacuability.

16 CHAIRMAN BLOCH: How would it serve the
17 staff's purpose if the limitation was to respond with
18 respect to the qualifications of those individual
19 directly responsible for communicating with outside
20 agencies, and the methods that they would use for
21 obtaining and verifying information that they will
22 communicate.

23 MR. LEWIS: I think the thrust of that
24 particular contention is not so important to the Staff,
25 but what might be valuable to the Staff as guidance is

1 the idea that we can approach this interrogatory with
2 the view to answering it as on-site capability relates
3 to the Applicant's responsibilities in interfacing, or
4 whatever the responsibilities are with respect to
5 off-site notification, provision of information,
6 whatever other responsibilities it has to assist in
7 enabling the officials to take the appropriate
8 protective actions.

9 CHAIRMAN BLOCH: Mr. Lewis, we note that in
10 the past, we directed the parties to discuss objections
11 they have, and I have noticed that the Staff and
12 Sunflower Alliance seem to have been somewhat
13 cooperative in resolving those things.

14 We have stated that we are inclined to grant
15 the general guidance that you are suggesting, and that
16 may help to provide a framework for constructively
17 resolving that issue with Sunflower Alliance.

18 MR. LEWIS: Thank you.

19 There are, however, I think, some others that
20 may be a little more difficult to resolve with Sunflower
21 Alliance. Let me just outline some other categories of
22 information that is sought by Sunflower Alliance from
23 the Staff and get you to focus on them.

24 There is an interrogatory 34 which asks us for
25 some very detailed information regarding various

1 engineering safeguards which may reduce the release of
2 radio-iodine.

3 CHAIRMAN BLOCH: I have a feeling that we are
4 going too far because now we are discussing a motion to
5 compel with respect to questions you haven't filed yet.

6 MR. LEWIS: That is true, Your Honor, and I
7 hesitated to bring it up. We have not filed an
8 objection, that is true.

9 CHAIRMAN BLOCH: We are hopeful that the
10 discussion we are having will help to resolve any
11 problems you have, but I think we prefer to defer
12 considering specific problems until after they are
13 raised and specifically before us.

14 MR. LEWIS: Fine. In light of the kind of
15 confrontation that has taken place today, we will
16 certainly have discussions with Mr. Wilt to see if we
17 might not be able to reach some more narrow
18 understanding of some of these interrogatories. If not,
19 we will proceed to file the remaining answers and
20 whatever objections remain in our mind.

21 MR. SILBERG: Mr. Chairman.

22 CHAIRMAN BLOCH: Mr. Silberg.

23 MR. SILBERG: Perhaps if I could focus on some
24 interrogatories to which there are objections pending.

25 CHAIRMAN BLOCH: Does this relate,

1 incidentally, to this particular question of the
2 relationship between on-site and off-site?

3 MR. SILBERG: Yes, very definitely.

4 Interrogatory 42, this goes back to the
5 Sunflower Alliance interrogatories of December 2nd,
6 1981, which we objected to on February 5, 1982, asks for
7 what type of protection systems from radiation exposure
8 is available for entering and leaving the unit's control
9 room.

10 CHAIRMAN BLOCH: Under the guidance that we
11 have been suggesting, which deals with communication
12 responsibility, can you tell us how that would relate to
13 what we have been saying. How would you like it to
14 relate?

15 MR. SILBERG: I don't see that it relates to
16 what you are saying, and it certainly doesn't relate to
17 emergency evacuation of off-site.

18 CHAIRMAN BLOCH: Could these problems impede
19 the collection of information which might be needed by
20 the off-site personnel?

21 MR. SILBERG: Anything in the world could
22 impede the collection of information. If we have an
23 earthquake on site bigger than the SSE, that would
24 undoubtedly impede the collection of information.

25 If your instrumentation in the control room

1 doesn't operate as well as you would like it to operate,
2 or as the technical specifications require, that will
3 impede the collection and verification of information
4 that may be used for evacuation.

5 If your fuel doesn't perform as well as it
6 might, and it causes more frequent accidents, that will
7 impede, and I could go on and on.

8 CHAIRMAN BLOCH: We could interpret just to
9 ask you to respond about how you plan to communicate
10 with outside agencies when there are difficulties
11 remaining within the control room. I assume that you
12 have plans for doing that.

13 MR. SILBERG: You have lots of plans. First
14 of all, the control room is sealed. Second of all,
15 there is a secondary shutdown pannel. Third of all,
16 there is a tech support center. Fourth of all, there is
17 emergency operations facility. What does that have to
18 do with evacuation?

19 If you want to get into that level of detail,
20 and that many steps removed, let me ask you to look at
21 interrogatory 41.

22 CHAIRMAN BLOCH: I think, Mr. Silberg, I am
23 inclined to agree that it goes a bit too far. We were
24 talking about methods of obtaining information, and not
25 ways of protecting the personnel within the control

1 room.

2 We will let the Intervenor comment on that,
3 but I would draw the line at that point. These are
4 necessarily going to be somewhat arbitrary lines, and I
5 think you pointed out that we need to draw some.

6 MR. SILBERG: I agree. But if you are talking
7 about methods of obtaining in-plant information, again
8 you are not drawing very much of a line.

9 CHAIRMAN BLOCH: Only by the individuals who
10 are going to be in direct communication. Ms. Hiatt
11 points out that the two individuals they have asked
12 about, the shift supervisor and I forget the description
13 of the other, both may have been called on to
14 communicate directly off-site, and we are only talking
15 about how they will directly obtain the information and
16 verify it within the plant.

17 MR. SILBERG: Does that mean that we have to
18 talk about all the instruments that they are going to
19 get information off of, what these instruments are, how
20 they work, and what they read from, and how the systems
21 that they monitor operate?

22 CHAIRMAN BLOCH: No. I would think that it
23 would be enough to say that they would be using in-plant
24 instrumentation, to the extent that this is what they
25 are going to do. No, I don't think you should have to

1 go into the complete control room in order to answer
2 interrogatories in this area.

3 MR. SILBERG: I am assuming, then, that
4 interrogatory 41, which says, "Describe the layout of
5 the emergency warning devices within the control room.
6 What access is there to multiple recorders in the
7 control room, if the control room becomes inoperable,"
8 etc., that that is going too far in your view.

9 CHAIRMAN BLOCH: I think that that is too much
10 detail on specific instrumentation within the plant. If
11 there are problems with instrumentation within the
12 plant, it would be more appropriate to have a contention
13 on that issue.

14 We will assume, for the purpose of this issue,
15 that the instrumentation in the plant is sufficient to
16 inform the people within the plant of the condition of
17 the plant. Therefore, we are only talking about who we
18 talk to, and how you are confident that what you gave
19 off-site is true.

20 MR. SILBERG: That latter point gets you right
21 back to the validity of the instrumentation, and how
22 your plant is operating.

23 CHAIRMAN BLOCH: If you are saying that these
24 people always take their information directly from the
25 instrument panel, that is going to be your answer. From

1 the interpretation that we have just given, that would
2 be sufficient. If you are going to rely on other
3 individuals, you might want to comment about the kinds
4 of information they get from them.

5 MS. HIATT: If I might comment.

6 CHAIRMAN BLOCH: Ms. Hiatt, but please speak
7 into the phone.

8 MS. HIATT: About the issue raised by the
9 Staff a short while ago about radio iodine --

10 CHAIRMAN BLOCH: I said that this was an issue
11 that we wouldn't discuss.

12 MS. HIATT: Yes, but I ask permission to
13 please make a brief comment on that.

14 CHAIRMAN BLOCH: I would rather you did not
15 make a brief comment on that one. We have enough before
16 us.

17 Mr Silberg?

18 MR. SILBERG: I have finished.

19 CHAIRMAN BLOCH: Do you have anything further
20 on this point, Ms. Hiatt or Mr. Wilt?

21 MR. WILT: No.

22 CHAIRMAN BLOCH: Let's take a very brief
23 recess for discussion, and then the Board will rule.

24 MR. SILBERG: There is one thing. Let me ask
25 the question, is the Board planning to put out a written

1 order.

2 MR. WILT: I was going to ask that, too, it
3 would be very helpful to me. I would also like to ask a
4 question as to what it is that I am supposed to file on
5 the 30th.

6 CHAIRMAN BLOCH: That is a legal brief on the
7 question of whether any provision need be made by the
8 Applicant beyond the EPZ for possible evacuation.

9 MR. WILT: If any provision --

10 CHAIRMAN BLOCH: -- need be made by the
11 Applicant, or by the plan, rather.

12 MR. WILT: -- by the plant.

13 CHAIRMAN BLOCH: By the plan, the emergency
14 evacuation plan for the possibility that the evacuation
15 might need to extend in a severe instance beyond the
16 emergency planning zone.

17 MR. WILT: All right. I don't think I have
18 gotten everything down on that one.

19 CHAIRMAN BLOCH: There will be a transcript.

20 MR. WILT: Any provision that may be made by
21 the plan for the possibility of evacuation beyond the
22 10-mile EPZ.

23 CHAIRMAN BLOCH: That is correct.

24 Mr. Silberg.

25 MR. SILBERG: Yes.

1 CHAIRMAN BLOCH: You asked whether we plan to
2 issue a written order, I would like your comment on
3 whether it might be possible for us to clarify our
4 position, and then try for a period of negotiation
5 between the parties, and only decide in a written order
6 what is necessary.

7 MR. SILBERG: I think it would probably be
8 more expeditious, considering that Dan and I are both
9 going to be out of the office next week, -- in fact I
10 will probably be out for the next three weeks, not all
11 on vacation, and we obviously have to go on -- for the
12 Board to put out an order ruling interrogatory by
13 interrogatory on the acceptance.

14 I think that would be much more expeditious
15 and it would probably help the parties a lot more by
16 precisely defining what the ground rules are, than
17 trying to negotiate.

18 Normally, I think if everyone were around,
19 Sue, Dan, Steve and myself could get on a conference
20 call, and we could probably do it, although it might
21 take an afternoon, but it sounds like we don't have that
22 afternoon to do it, at least not for the next couple of
23 weeks.

24 CHAIRMAN BLOCH: May I ask, Mr. Wilt, are the
25 interrogatories that we are going to have to rule on all

1 listed in your motion to compel?

2 MR. WILT: Yes, sir, and we have responded to
3 each one individually.

4 MR. LEWIS: That is correct.

5 CHAIRMAN BLOCH: Mr. Lewis, would you also
6 prefer that we rule interrogatory by interrogatory?

7 MR. LEWIS: Yes, sir, because one of the
8 things that I am having difficulty with is trying to
9 figure out in my own mind what is permissible in terms
10 of relevancy and what is not.

11 CHAIRMAN BLOCH: We will have to rule
12 interrogatory by interrogatory, but there is no reason
13 for us to issue a decision on that at this point.

14 MR. SILBERG: I apologize for putting the
15 Board to that task, but I really don't see an easy way
16 to avoid it.

17 CHAIRMAN BLOCH: We want to expedite this
18 proceeding, we will do what is necessary for that
19 purpose.

20 Mr. Wilt or Ms. Hiatt, are there any other
21 issues that must be discussed to help the Board to rule
22 properly on the motion?

23 MS. HIATT: Are you referring to the motion to
24 compel discovery?

25 CHAIRMAN BLOCH: Yes.

1 MR. SILBERG: Could you speak a little louder,
2 or get closer to the phone?

3 MS. HIATT: This is the motion to compel
4 discovery on the first set of interrogatories, not on
5 any subsequent set.

6 CHAIRMAN BLOCH: I think that is the only
7 motion pending.

8 MR. LEWIS: That is correct.

9 MR. SILBERG: There are other contentions on
10 which we objected to interrogatories. I would be happy
11 to talk about those as well.

12 CHAIRMAN BLOCH: Let's first see if Mr. Wilt
13 wants to talk about any of the other evacuation ones.

14 MR. WILT: No, sir.

15 CHAIRMAN BLOCH: Ms. Hiatt, the same
16 question.

17 MS. HIATT: I don't think so.

18 CHAIRMAN BLOCH: Mr. Silberg, you are up.

19 MR. SILBERG: We objected to a number of the
20 interrogatories dealing with the standby liquid control
21 system contention.

22 The Intervenors filed a motion to compel with
23 respect to those some of those objections, and I think a
24 brief discussion of the scope of that contention might
25 be worthwhile.

1 CHAIRMAN BLOCH: Would it be preferable for
2 the Intervenors to speak first, since they have the
3 burden?

4 MR. SILBERG: I would think that that would be
5 appropriate.

6 CHAIRMAN BLOCH: Mr. Wilt or Ms. Hiatt.

7 MS. HIATT: I think the main issue about the
8 objection to the interrogatories at issue is whether the
9 risks of the unmitigated ATWS event are relevant to the
10 issue. I would say that they would have to be.

11 Since the whole question is, is it or is it
12 not valuable to have an automated SLCS, clearly to make
13 that kind of decision you have to know what you are
14 getting to respond to that.

15 In other words, it is like a cost/benefit or
16 value impact analysis, you have to look at
17 consequences. The definition of risk and probable
18 consequences of this event, you have to have both to see
19 whether or not the installation of the automatic SLCS is
20 desirable, to see whether the consequences are avoided
21 by this installation.

22 I notice the Applicant objects to or tries to
23 skew the interrogatories to relate to consequences of
24 ATWS.

25 CHAIRMAN BLOCH: Ms. Hiatt, some of us are

1 having trouble hearing you. Let me ask you once again
2 to try to be a little louder.

3 MS. HIATT: All right, I will just repeat what
4 I have said.

5 Applicant object to the interrogatories
6 dealing with the consequences of ATWS, and it is my
7 opinion that you have to consider the consequences of
8 ATWS in order to determine whether or not it is
9 desirable to install an automatic SLCS as opposed to a
10 manual SLCS.

11 CHAIRMAN BLOCH: Specifically, Ms. Hiatt, is
12 it consequences that the interrogatories go to, or
13 initiating sequences?

14 MS. HIATT: We are talking about the
15 consequences of ATWS. I believe the interrogatories in
16 question, issue six talks about interrogatory 56 in the
17 first set. There is an objection to interrogatory 63,
18 and 64, and 67.

19 CHAIRMAN BLOCH: Interrogatories 56, 63, 64,
20 and 67?

21 MR. WILT: Also 68, 71, and 72.

22 MS. HIATT: On 72, I think that may have been
23 a typographical error. The words "borm pool" should be
24 boron.

25 CHAIRMAN BLOCH: "Boron" in what number?

1 MS. HIATT: In interrogatory 72 there is a
2 typographical error that may have caused the objection.
3 There is a word in there that says "borm" that should be
4 boron.

5 CHAIRMAN BLOCH: Okay.

6 Have Intervenors concluded their argument on
7 this issue?

8 MR. WILT: Yes.

9 MS. HIATT: Yes.

10 CHAIRMAN BLOCH: Mr. Silberg?

11 MR. SILBERG: Basically, what we have here, I
12 think is an attempt to reopen the scope of the
13 contention.

14 As I recall, the contention originally offered
15 by the Intervenors was a general attack on ATWS. What
16 the Board finally admitted, based on the questions
17 addressed to Applicant by Judge Shon, was a question
18 limited to whether the standby liquid control system
19 should be manually or automatically initiated.

20 What we have here is a series of questions
21 which really go to whether or not we ought to have, for
22 any protection against ATWS, and what kind of event
23 caused ATWS, how various things relate to ATWS. We have
24 very little that goes to whether the initiating of SLCS
25 ought to be automatic or manual.

1 Let's take, for instance, what is one of the
2 closer cases, and it is not very close at all, the
3 interrogatory 72 that we were just talking about,
4 mechanisms available to reduce dilution of the boron
5 injected by the SLCS. That is an interrogatory that at
6 least relates to the SLCS, but it is not true of any of
7 the other interrogatories. However, it has nothing to
8 do with the initiation of the SLCS, and how manually
9 initiating it versus automatically initiating it might
10 change some of the results.

11 We have a contention that deals with 71 that
12 talks about how isolation would occur after an ATWS.
13 Again, no relevance whatsoever to SLCS or more
14 specifically to the initiation mechanism for the SLCS.

15 CHAIRMAN BLOCH: I understand your argument
16 that they might have had to ask additional
17 interrogatories in order to find out about the advantage
18 of the automatic system.

19 What do you make of Ms. Hiatt's argument that
20 the consequences of not initiating the SLCS are
21 admissible within the contention?

22 MR. SILBERG: Only the differential
23 consequences of manually versus automatically initiating
24 it, I think are appropriately relevant.

25 CHAIRMAN BLOCH: You say that before they

1 should ask questions about the consequences, they should
2 first have to establish the risk?

3 MR. SILBERG: No, they can ask about the
4 consequences, but it is only the difference in the
5 consequences between having the two systems that are the
6 subject of the contention. Asking what are the
7 consequences of an ATWS provides you no information
8 whatsoever as to whether you ought to automate the SLCS
9 or not.

10 It is certainly not the only system that is
11 used in an ATWS, and whether or not it is automated
12 doesn't mean that it doesn't work. There is no
13 allegation that says, the SLCS is not going to function
14 properly or that it is poorly designed. All we have is
15 an allegation that says that you should have it
16 automatically initiated.

17 CHAIRMAN BLOCH: If they were to explore
18 consequences, and the question was limited to the
19 consequence of more slowly initiating the standby liquid
20 control system, and there were amounts of time involved,
21 would that meet your problem?

22 MR. SILBERG: Again, I would have to look at
23 the specific interrogatory and whether it has any
24 relationship to the time frames that are involved.
25 There isn't any such interrogatory.

1 CHAIRMAN BLOCH: It could be related to the
2 time spans which are involved.

3 MR. SILBERG: Yes. There has to be some
4 relationship to the question of initiation of SLCS, all
5 other things being equal.

6 We ought not to be looking at other ATWS
7 systems, or the ability of the plant, the likelihood of
8 ATWS in general, although we did answer some of those
9 questions where the information was readily available.

10 We ought to be thinking about what the
11 contention is, and the contention is, should we automate
12 or shouldn't we automate. We have some outstanding ATWS
13 contentions which we hope to get answers in early next
14 week, and we will, for instance, be answering, what is
15 the consequence of an inadvertent SLCS actuation, which
16 is one of the arguments against having automatic
17 initiating. Those are questions which are clearly
18 relevant.

19 I think we have answered some questions on
20 SLCS lodging, those are questions which clearly are
21 relevant to the initiation mode. But questions such as
22 how does pellet clad interaction relate to an ATWS, or
23 what are the consequences of an unmitigated ATWS, or
24 what kind of common mode failures might you have.

25 CHAIRMAN BLOCH: Mr. Silberg, I think you have

1 a good point.

2 MR. SILBERG: These questions don't come
3 anywhere near the contention.

4 CHAIRMAN BLOCH: Ms. Hiatt, Applicant's has
5 substantial merit. How do you respond?

6 MS. HIATT: I would respond by saying that
7 discovery is broadly construed in order to make
8 available information. I would note that Applicant
9 asked of Intervenors several interrogatories that had no
10 relation to the SLCS, and not even too much relationship
11 to ATWS.

12 CHAIRMAN BLOCH: I would rather not discuss
13 their interrogatories. You can object to those in
14 time.

15 MS. HIATT: We didn't, we answered them in
16 interest of full disclosure.

17 CHAIRMAN BLOCH: The question is, how is this
18 going to help you to get information relevant to the
19 contention? Not how it will help you get information
20 that you would like to have anyway, but whether it is
21 relevant to the contention. Could you address that
22 specifically.

23 MS. HIATT: I would have to really argue that
24 in order to decide whether it is desirable to have an
25 automatic over a manual SLCS, you have to know the

1 consequences.

2 CHAIRMAN BLOCH: What about the fact that the
3 consequences are the consequences of somewhat more
4 slowly actuating the SLCS, or perhaps you think some
5 other system in place of the SLCS. Applicant argues
6 that your interrogatories ought to be restricted to that
7 difference, which is the difference between having an
8 automated system and not having one.

9 MS. HIATT: That would be acceptable.

10 CHAIRMAN BLOCH: It seems to me that Applicant
11 is saying that your interrogatories don't go to that.
12 Therefore, you would have to submit interrogatories on
13 that question.

14 MR. SILBERG: There were some that did go to
15 that, and we answered them, or we are in the process of
16 answering them.

17 CHAIRMAN BLOCH: Do any of the ones now before
18 us go to that?

19 MS. HIATT: The ones that were objected to?

20 CHAIRMAN BLOCH: Yes. What kind of overall
21 guideline, or what kind of compulsion would we now place
22 Applicant under?

23 MS. HIATT: On this interrogatory 63, assuming
24 an unmitigated ATWS, says, what is the risk of off-site
25 exposure --

1 CHAIRMAN BLOCH: Would you like that
2 reinterpreted to be, what would be the likely additional
3 problem if you did not have an automated SLCS?

4 MS. HIATT: Yes. I might also add that if the
5 SLCS is not initiated in a timely fashion, it might also
6 be an unmitigated ATWS. I don't think that we should
7 really look at this issue so narrowly. There are a lot
8 of other things that could be --

9 CHAIRMAN BLOCH: I guess that the Applicant is
10 going to argue that without automated SLCS, it may not
11 be done as quickly, but it will still be done in a
12 timely fashion.

13 MS. HIATT: That seems to be their argument in
14 their answers.

15 CHAIRMAN BLOCH: They are asking us to limit
16 your discovery based on that argument. So you would
17 only be entitled to additional damage which had some
18 likelihood of being caused by a lack of availability of
19 the automated system.

20 Of course, at the present time, we don't have
21 much of a basis for knowing what that additional damage
22 might be. In fact, I guess many of your interrogatories
23 don't provide you with the information you might need
24 for that.

25 MS. HIATT: That would be acceptable.

1 CHAIRMAN BLOCH: I have a feeling that it
2 might be preferable to rule against Intervenor's at this
3 time, and have you carefully think through what it is
4 you really want to ask to clarify the issue we have just
5 discussed. Would that be acceptable?

6 MS. HIATT: Yes.

7 CHAIRMAN BLOCH: We would suggest that those
8 be promptly resubmitted.

9 We will not rule on those particular
10 interrogatories in the motion to compel because we have
11 already done that on the record just now.

12 Mr. Silberg, is that acceptable to you?

13 MR. SILBERG: Yes, sir.

14 We will look at the ATWS interrogatories that
15 we have in front of us, which are hopefully in the late
16 stage of preparation, and attempt to make sure that our
17 answers conform to what I understand is the Board's
18 ruling. I should say that Mr. Willmore will do that, or
19 will have the pleasure of doing that, because I won't be
20 here next week.

21 CHAIRMAN BLOCH: I think that the essential
22 risk here is if the Intervenor's were to establish that
23 there would be a very lengthy delay before the ATWS is
24 mitigated, you might at that time have to reconsider
25 what we have just said, because they would have

1 established that the consequences of an unmitigated ATWS
2 are relevant.

3 Is that correct, Mr. Silberg?

4 MR. SILBERG: I guess I would disagree with
5 the premise. As we answered in one of our
6 interrogatories, you do not have an unmitigated -- I
7 guess it was in the answer to the motion to compel.
8 Even if there is no SLCS, you still have other
9 mitigation systems, such as the recirc pump trip.

10 CHAIRMAN BLOCH: I understand. If they were
11 to establish that there was substantial possibility of
12 lack of mitigation for the other systems, and it was
13 sufficiently credible, then we would have to inquire
14 further into the consequences. You believe that they
15 will not establish that, I take it.

16 MR. SILBERG: I don't see any basis for
17 reaching that conclusion. So I guess that is right.

18 CHAIRMAN BLOCH: All right.

19 Ms. Hiatt, we will expect that you will
20 promptly, I hope within the next ten days or so, submit
21 interrogatories on this subject, or Mr. Wilt may, either
22 party may.

23 MS. HIATT: Are you referring to essentially
24 resubmitting those that were the subject of the motion
25 to compel?

1 CHAIRMAN BLOCH: I think that would be
2 unproductive, since we have just said that in the form
3 they are in, they are not acceptable.

4 You have to think through the consequences of
5 what we have just said, and address your interrogatories
6 to possible consequences of not having the automated
7 system. You have to determine what the likelihood is of
8 a failure without the automated system, and try to bound
9 what the additional risks for not having an automated
10 system. Having done that, you can find the consequences
11 of not having an automated system.

12 MR. WILT: May I ask a question.

13 CHAIRMAN BLOCH: Mr. Wilt.

14 MR. WILT: I take it that the transcript of
15 this conference will be sent to the Public Document Room
16 out at Perry.

17 CHAIRMAN BLOCH: We have been sending it
18 there, and we have also been sending it, if I recall
19 correctly, to an on-site repository being kept by Mr.
20 Ezone.

21 MR. WILT: Does anyone have any idea how soon
22 that will be available?

23 CHAIRMAN BLOCH: Generally, we would be
24 mailing it Monday. That is the usual time we would have
25 it.

1 MR. WILT: So that the Intervenors can review
2 your comments, Your Honor, could we say that our revised
3 interrogatories, to start the seven-day or ten-day
4 period, we are suggesting the date that the Public
5 Document Room receives the transcript. I think that it
6 is going to be very important for us to view the Board's
7 comments so that we can reframe these interrogatories.

8 CHAIRMAN BLOCH: Why don't we accept that
9 modification of the order. Does Applicant object?

10 MR. SILBERG: No. We will do what we can to
11 get one out there promptly, even if it is an additional
12 one the Board is going to have.

13 CHAIRMAN BLOCH: All right.

14 JUDGE SHON: I think there may be some of
15 these interrogatories that you have mentioned, where the
16 defects from the Applicant's side would not be cured by
17 merely addressing the automated or non-automated SLCS.
18 In particular, the one that asks how pellet clad
19 interacts seems to have problems about it that are other
20 than just a matter of differential consequences. Is
21 that not true, Mr. Silberg?

22 MR. SILBERG: Yes.

23 CHAIRMAN BLOCH: Ms. Hiatt, you understand
24 that some of the matters you have inquired into may now
25 be beyond the scope of what we have limited the

1 interrogatories to.

2 MS. HIATT: Yes. I believe the second set of
3 interrogatories dealing with issue six essentially
4 corrects these problems. I agree that some of these
5 interrogatories in the first set were not tremendously
6 relevant to the issue.

7 CHAIRMAN BLOCH: If when you review the
8 transcript, you decide that you don't need to file any
9 additional interrogatories, that would be acceptable.

10 MS. HIATT: All right. I would have to review
11 the second set of interrogatories with regard to that.
12 I suspect that most of these deficiencies have been
13 corrected in the second set.

14 MR. SILBERG: I don't want to prejudge the
15 questions, Susan, but in looking at them, I don't think
16 any of them are related to SLCS initiation.

17 MS. HIATT: I think it is a difference of
18 opinion.

19 MR. SILBERG: I will leave that up to you.

20 MS. HIATT: Right now we are only talking
21 about the first set.

22 MR. SILBERG: No, I am looking at the second
23 set.

24 MS. HIATT: Yes, I know, but as far as the
25 filing requirements, we are only talking about the first

1 set.

2 MR. SILBERG: Yes.

3 MS. HIATT: All right.

4 MR. SILBERG: We will answer the second set to
5 the extent that we can. But for instance there is a
6 bunch of questions that talk about the recirc pump trip
7 hardware and the ARI system, power isolation, common
8 mode failure frequency, again, the position that we are
9 taking and the answer that we will file is that those
10 don't relate to SLCS initiation.

11 CHAIRMAN BLOCH: May I ask a question that
12 might be helpful, but I am not sure.

13 Would it be helpful if we end this process by
14 asking Applicant to file a brief statement as to why the
15 think the automated SLCS is not necessary? Would that
16 advance things if you gave your specific reasons and
17 then the discovery began?

18 MR. SILBERG: I am sorry, why you think --

19 CHAIRMAN BLOCH: Why you think the automated
20 system is not necessary.

21 MR. SILBERG: I think we said that at the
22 prehearing conference.

23 CHAIRMAN BLOCH: For discovery purposes, you
24 think that that is satisfactory, that your reasons are
25 fully enough explained. I was just wondering if it

1 would advance things if you just stated it once more.

2 MR. SILBERG: To the extent that we didn't
3 object to SLCS interrogatories, I think it is all laid
4 out. I can tell you basically.

5 CHAIRMAN BLOCH: All right, it is not a
6 helpful suggestion and I accept that.

7 MR. SILBERG: My understanding is, and we
8 don't have testimony or anything written on it, there is
9 a risk of inadvertent initiation, and I think this will
10 be laid out to some extent in the answers that were
11 filed. The inadvertent initiation has a severe
12 consequence in that the plant would remain shutdown for
13 a significant period of time while you are cleaning the
14 boron out of the system.

15 CHAIRMAN BLOCH: I think you have also
16 commented on the limited advantage for safety.

17 MR. SILBERG: I am not sure that we see any,
18 given the nature of the procedures and the operator
19 training.

20 CHAIRMAN BLOCH: Then on the zero advantages
21 to safety, have you commented on those?

22 MR. SILBERG: I think we have. I don't know,
23 I would have to go back and look. The question is
24 operator action versus automatic action.

25 CHAIRMAN BLOCH: I was just trying to be

1 helpful, and I obviously was not.

2 Now you had another area that you wanted to
3 explore.

4 MR. SILBERG: Yes, and maybe this is not the
5 right time to bring it up, but I think one of the things
6 the Chairman just mentioned was that either party might
7 resubmit contentions. In the lead Intervenor context, I
8 guess I am a little troubled by that.

9 I am also troubled by it in a broader context,
10 and I have mentioned this to all the parties, and I
11 mentioned to the Chairman that I would raise the
12 question of consolidation of the parties. I think what
13 we have seen is Ms. Hiatt and Mr. Wilt really acting
14 together. There is nothing wrong with that. It is a
15 perfectly acceptable way to operate.

16 However, I think what we have seen is that
17 there have been filings by Sunflower Alliance that were
18 obviously written and typed by Ms. Hiatt. Mr. Wilt has
19 on many occasions deferred to Ms. Hiatt for substantive
20 responses. It seems to me that consolidation of the
21 parties into one consolidated Intervenor would speed up
22 the process considerably.

23 I am also concerned because I think Applicant
24 could be prejudiced by having, in essence, one party
25 having two bites at the apple. We have Sunflower

1 Alliance making a filing, which may or may not have been
2 written by Ms. Hiatt, and then Ms. Hiatt supporting that
3 filing. Or, if we have cross-examination when we get to
4 a hearing, first one Intervenor would have it, and then
5 the other Intervenor would get a chance to have
6 subsequent cross-examination.

7 CHAIRMAN BLOCH: So far it really has not
8 caused a substantial problem, this procedure that you
9 are worried about.

10 MR. SILBERG: It has caused some problem, but
11 it hasn't been that significant. But I am concerned
12 about the future.

13 I suggested this to Mr. Wilt who indicated
14 that he would want to discuss it with Ms. Hiatt. I
15 suggested it to Ms. Hiatt who stated that she was
16 strongly opposed, although she didn't at that time give
17 the reasons for her opposition.

18 CHAIRMAN BLOCH: Would it serve your purpose,
19 if we just asked that the Intervenors clearly identify
20 the responsibilities they have assigned to one another
21 for particular things, so that you can communicate
22 directly with whoever is principally responsible?

23 MR. SILBERG: I guess I am raising the broader
24 question of whether there is an OCRE at this point, or
25 whether Ms. Hiatt, who has been identified in discovery

1 responses by Sunflower Alliance, is a Sunflower Alliance
2 person. If she is really a Sunflower Alliance person,
3 then we ought to have only one party.

4 CHAIRMAN BLOCH: You are contending at this
5 point that she is not an OCRE Member?

6 MR. SILBERG: I don't know. I can't say.

7 I know she has been identified in Sunflower
8 Alliance's interrogatories as being one of their
9 people. I know, because I have talked to both Mr. Wilt
10 and Ms. Hiatt on Sunflower Alliance matters, that she is
11 functioning, and functioning well, as one of the people
12 running Sunflower Alliance's participation in the case.

13 I don't know what the OCRE situation is at
14 this point.

15 CHAIRMAN BLOCH: Would Intervenors comment,
16 please?

17 MR. WILT: First of all, I don't think we have
18 ever made any mystery about the fact that the two main
19 Intervenors, which are Sunflower Alliance and OCRE, have
20 cooperated diligently with one another. I think we are
21 under pressure to do that.

22 I will disagree. We do have maintained, I
23 think, a degree of separability as well as a degree of
24 cooperation. Ms. Hiatt has always, from the prehearing
25 conference to now, been associated with OCRE. She

1 appeared before OCRE, and she has responded on behalf of
2 OCRE, and is handling the lead Intervenor
3 responsibilities that have been assigned to OCRE.
4 Sunflower Alliance, likewise I hope, has done the same
5 thing.

6 We are cooperating, but I think the mere fact
7 that we are cooperating ought not to destroy her
8 separate independence, which I think she values highly
9 because there are things that she may want to do or OCRE
10 may want to do, that Sunflower Alliance is opposed to.

11 I don't think that there should be any
12 consolidation, particularly since Ms. Hiatt doesn't
13 agree with it. I think she has, and OCRE has, performed
14 very well in this proceeding, and I don't think the fact
15 that we have cooperated with one another, and will
16 continue to cooperate with one another, should destroy
17 her independent status.

18 CHAIRMAN BLOCH: If you found that a
19 particular issue you were responsible for, in fact Ms.
20 Hiatt became the lead person on it, then you would let
21 the Board know that, wouldn't you?

22 MR. WILT: Pardon me, sir?

23 CHAIRMAN BLOCH: If Ms. Hiatt actually became
24 the lead person on an issue for which Sunflower Alliance
25 is the lead Intervenor, you would notify us so that we

1 could shift the responsibility, wouldn't you?

2 MR. WILT: Absolutely, sir.

3 I don't think that has happened yet, but Ms.
4 Hiatt, OCRE, and Sunflower Alliance possibly should get
5 together and look at the contentions and see. It is an
6 excellent idea, and I think that that is what we will
7 do.

8 CHAIRMAN BLOCH: Ms. Hiatt.

9 MS. HIATT: I really see no point in
10 consolidation. I see no advantages, and I see a lot of
11 disadvantages. As Applicant has indicated, there has
12 not been a problem so far, so I don't why he is so
13 excited about doing this.

14 I do provide technical assistance to Sunflower
15 Alliance, but that does not make me a member of
16 Sunflower Alliance, or a Sunflower Alliance person. I
17 am the OCRE representative. As to whether or not OCRE
18 does exist, OCRE does exist. I don't know by what means
19 Mr. Silberg is implying that it doesn't, or even how
20 OCRE's internal affairs have any relevance to this.

21 I really strongly object to consolidation.
22 OCRE has its own unique perspective on this case, and I
23 think that that is best presented by OCRE itself as a
24 party. OCRE is a party in good standing. We have not
25 missed any filing deadlines. We have not done anything

1 improper that would give cause for consolidation.

2 CHAIRMAN BLOCH: Thank you, Ms. Hiatt.

3 Does the Staff wish to comment?

4 MR. LEWIS: Mr. Chairman, we believe that the
5 problems that were raised by Mr. Silberg can, at least
6 in present anticipation, be handled by a method short of
7 consolidation.

8 CHAIRMAN BLOCH: The Board will defer a ruling
9 on the motion for consolidation until there is specific
10 prejudice shown by Applicant. Our initial order
11 anticipated careful coordination by the Intervenors, and
12 the avoidance of duplicative filings, or redundant
13 testimony, or questioning. We would expect that still
14 to be enforced. But there is no need for us to order a
15 consolidation at this time.

16 Mr. Silberg, you had, I think, an additional
17 area or two of interrogatories you wished to address?

18 MR. SILBERG: Not of interrogatories. I did
19 want to talk about discovery schedules.

20 The Board on a number of occasions has asked
21 whether the parties could agree on a schedule, summary
22 or otherwise. In a number of pleadings, the Board has
23 indicated that Applicant didn't seem to be in a hurry
24 because we haven't pushed to close off discovery. I
25 know that in a recent filing by one of the Intervenor

1 that same point was made.

2 I have over the past couple of weeks been
3 talking to Staff and the Intervenors on the question of
4 discovery schedules. We have not been able to reach an
5 agreement, but I would like to report on a proposal and
6 a counter-proposal.

7 CHAIRMAN BLOCH: I wonder if that is an
8 efficient way to do it. Might it not be much more
9 efficient to have each party files its suggestions, and
10 then the Board will set the schedule?

11 MR. SILBERG: I think we could probably save
12 the time of filing that, if we could take a couple of
13 minutes to do it right now.

14 CHAIRMAN BLOCH: I guess my concern is that
15 there would be a bunch of deadlines that have to be
16 established, aren't there?

17 MR. SILBERG: Some of them are going to be
18 open-ended, but I think there are only two or three
19 basic dates that we have to talk about.

20 CHAIRMAN BLOCH: Let's hear what you have to
21 say.

22 MR. SILBERG: My position has been that on
23 emergency planning and hydrogen, our ultimate schedule
24 in terms of hearings, we can't set it now given the
25 state of development. However, for all the contentions

1 which were admitted, except those admitted within the
2 last few weeks, we think that it is appropriate to set a
3 schedule for cutting off discovery.

4 CHAIRMAN BLOCH: This is all of the
5 contentions admitted up until when?

6 MR. SILBERG: The ones that I would not
7 include were contentions nine and ten, which were
8 admitted in late July.

9 CHAIRMAN BLOCH: Then contentions one through
10 eight.

11 MR. SILBERG: What I had proposed was that we
12 have a discovery cutoff date of the end of August for
13 those contentions, for filing discovery requests. I
14 would recognize that there may be special circumstances
15 in which additional discovery would be available on good
16 cause.

17 Ms. Hiatt, when I mentioned this to her, said,
18 "We obviously can't cut off discovery on emergency
19 planning because the plans themselves have not been
20 finalized." I would agree with that, and that would
21 presumably be good cause for additional discovery on
22 that specific issue.

23 CHAIRMAN BLOCH: Would good cause include the
24 need to amplify responses that were given by Applicant?

25 MR. SILBERG: I think we have already been

1 through two or three rounds of discovery already, so I
2 would not include that within the scope. My suggestion
3 was that for those contentions one through eight that we
4 look to the end of August for a cutoff date.

5 CHAIRMAN BLOCH: That is one through eight,
6 excluding emergency planning and the hydrogen?

7 MR. SILBERG: No, including emergency planning
8 and hydrogen. I mentioned those separately before, but
9 that was in terms of an ultimate hearing date.

10 CHAIRMAN BLOCH: You think that you could have
11 a first phase discovery cutoff subject to showing of
12 good cause for further discovery.

13 MR. SILBERG: Right.

14 CHAIRMAN BLOCH: August 31 is your proposed
15 date?

16 MR. SILBERG: Right.

17 CHAIRMAN BLOCH: Should we discuss that
18 separately?

19 MR. SILBERG: Yes, I discussed that with the
20 intervenors.

21 CHAIRMAN BLOCH: I mean now, at this time,
22 should we let the other people comment?

23 MR. SILBERG: All right.

24 CHAIRMAN BLOCH: Mr. Wilt.

25 MR. SILBERG: Let me just finish what I

1 started. What I would propose for the two most recently
2 admitted contentions, which were admitted in late July,
3 the problem of degradation and the draft environmental
4 statement, that the deadline be September 30, the end of
5 September.

6 CHAIRMAN BLOCH: Mr. Wilt, would you comment
7 on the proposed schedule?

8 MR. WILT: I would respectfully dissent from
9 it. First off, I am going to be gone for a week in
10 August, I think that should properly eliminate August
11 31. I had proposed on the contentions, what they call
12 the older contention, although I think on No. 8, the
13 Board is supposed to reformulate the wording of that --

14 CHAIRMAN BLOCH: I am sorry, but we are not
15 aware of that obligation. Could you inform us about
16 that?

17 MR. WILT: It was my memory that somewhere the
18 Board indicated that it was going to reformulate the
19 wording.

20 CHAIRMAN BLOCH: Which contention is that?

21 MR. WILT: No. 8.

22 CHAIRMAN BLOCH: What is it about?

23 MR. SILBERG: Hydrogen control. I think Mr.
24 Wilt is referring to the Appeal Board's decision.

25 CHAIRMAN BLOCH: I believe that the Appeal

1 Board's decision does have implications for how that
2 must be tied, but I don't think it is necessary for us
3 to reword the contention. The Appeal Board's decision
4 is very plain on what must be litigated.

5 MR. WILT: We proposed, I believe, October
6 31. I am not aware of any --

7 CHAIRMAN BLOCH: What is the problem, if not
8 August 31, with the first week in September? Do you
9 have substantial on-going work on phrasing
10 interrogatories that can't be completed, specific
11 individuals doing work of that sort?

12 MR. WILT: No. What I think would be helpful
13 for Sunflower Alliance, particularly in light of the
14 discussion of today and some of the Board's comments, to
15 have a better grasp of what the meaning of discovery
16 is.

17 I think we would like the opportunity of
18 reviewing all the material that has been submitted in
19 light of the Board's comments on some of these
20 contentions, what is meant by discovery and what is
21 meant by relevance. I think we should have the
22 opportunity of reviewing the transcript and these
23 materials to see what Sunflower Alliance should be
24 filing, if anything.

25 CHAIRMAN BLOCH: Mr. Wilt, I don't think we

1 have said anything about relevancy today that we haven't
2 said in earlier orders, have we? I think we discussed
3 discovery in one of our earlier orders.

4 MR. WILT: All I can say, Your Honor, it has
5 been a lot more enlightening to me in listening to the
6 discussion today from the Board and the staff and Mr.
7 Silberg.

8 Unfortunately, I only practice in the State of
9 Ohio, and all I can tell Your Honor is that in this
10 State discovery is considerably more broad than it is
11 apparently before the Nuclear Regulatory Commission, and
12 that is the way I have operated, unfortunately, or
13 fortunately.

14 CHAIRMAN BLOCH: The only thing that concerns
15 me is that we issued an order defining what the scope of
16 discovery is, citing specific cases, so you should have
17 been informed at that time.

18 MR. WILT: Perhaps I should, but all I am
19 saying is that the discussion of today has been very
20 enlightening.

21 CHAIRMAN BLOCH: I appreciate that.

22 Is the time that you are suggesting by the end
23 of October?

24 MR. WILT: Right.

25 CHAIRMAN BLOCH: For all ten contentions?

1 MR. WILT: Some of those are OCRE's. I think
2 nine and ten are OCRE's.

3 CHAIRMAN BLOCH: But the ones that are yours,
4 you are suggesting the end of October.

5 MR. WILT: Yes, October 31st.

6 CHAIRMAN BLOCH: Have you completed your
7 presentation?

8 MR. WILT: Yes, Your Honor.

9 CHAIRMAN BLOCH: Ms. Hiatt.

10 MS. HIATT: I personally find that the end of
11 August is little bit too constraining to prepare
12 interrogatories.

13 MR. SILBERG: Excuse me, but could you get a
14 little bit closer to the phone.

15 MS. HIATT: I personally find the end of
16 August a little bit too constraining to prepare
17 discovery by that date.

18 CHAIRMAN BLOCH: What is a date by which you
19 think it would be feasible for you?

20 MS. HIATT: I think, first of all, you have to
21 look at the issues themselves, as well as the dates on
22 which they were admitted. For instance, issue one, the
23 emergency planning, that is an on-going thing. The
24 emergency plans have not been written yet, and I think
25 the Intervenors should have the right to discovery on

1 those.

2 CHAIRMAN BLOCH: The schedule that the
3 Applicant had proposed anticipates that anything new
4 raised by the plan, you certainly would have a right to
5 get any discovery on it. Certainly the Board would
6 guarantee you that.

7 MS. HIATT: All right.

8 I think Intervenors should have the right to
9 follow-up on a second set of interrogatories. For
10 instance, Sunflower Alliance's second set of
11 interrogatories was filed in April, and just now there
12 are partial answers coming back, and there are quite a
13 few months. I think we should have the right to have
14 follow-up on that.

15 As far as issue eight goes, I personally have
16 been pursuing discovery as I interpreted ALAB decision
17 to require the Licensing Board to reword that issue.

18 CHAIRMAN BLOCH: I think they are requiring us
19 to litigate the existence of compatible scenarios, but I
20 don't why that requires us to reword the contention. In
21 any event, I would advise that if there are
22 uncertainties of that sort, that rather than make a
23 guess of that kind --

24 The Board would like to be helpful to the
25 parties, and if there are open questions of that sort,

1 it would be better to call and ask, and arranging a
2 conference if necessary. Before raising it by motion,
3 we would try to clarify issues of that sort.

4 MS. HIATT: All right.

5 NUREG-0675 at page 19 states that it is the
6 Licensing Board's function to determine what the TMI-II
7 type accident is insofar as the Perry facility is
8 concerned.

9 MR. SILBERG: But it doesn't say that that has
10 to be prior to the hearing.

11 MS. HIATT: No. There is also the issue that
12 instead of just having neutron finder as the hydrogen
13 mitigating feature, the plant will also have glowplug
14 ignitors.

15 CHAIRMAN BLOCH: That, of course, affects the
16 facts that can be litigated.

17 MS. HIATT: The thing that I am concerned is
18 that I asked in interrogatories about glowplug ignitors,
19 and I get the answer that issue eight only deals with
20 neutron finders.

21 CHAIRMAN BLOCH: Well, we order that our
22 contention must be interpreted in light of the ALAB
23 decision. I think that should serve your purpose, and I
24 don't think that Applicant would object to that. Is
25 that correct?

1 MR. SILBERG: I certainly wouldn't.

2 MS. HIATT: Anyway, the parties have not filed
3 any discovery on issue eight.

4 CHAIRMAN BLOCH: All right, that is part of
5 your problem, and you have to work on that.

6 MS. HIATT: Right.

7 CHAIRMAN BLOCH: I just would like to know
8 what a realistic schedule is for conscientious work by
9 OCRE in completing its filing of interrogatories.

10 MS. HIATT: I would say, looking at issues
11 four through seven, mid-September, say, September 15th.

12 CHAIRMAN BLOCH: You are saying four through
13 seven because of what, one, two and three?

14 MR. SILBERG: Two is out.

15 CHAIRMAN BLOCH: One is emergency planning.

16 MS. HIATT: Three, that is something again we
17 have just resolved today about the scope of the quality
18 assurance contention.

19 CHAIRMAN BLOCH: But I think we already
20 established a deadline for at least meeting the Board's
21 requirement that is different than the September 15
22 deadline.

23 MS. HIATT: I am not aware that you did.

24 CHAIRMAN BLOCH: Didn't we establish a
25 deadline for filing after you receive the record?

1 MS. HIATT: That was on the emergency
2 planning.

3 MR. WILT: That was just a legal brief on
4 whether or not any provision need be made by the plan
5 for the possibility of evacuation beyond the EPZ.

6 CHAIRMAN BLOCH: On the quality assurance,
7 though, we just said that we were sticking by our
8 earlier decision. There is nothing new that we said
9 today about that. That you could get broad discovery on
10 quality assurance, there is nothing new we have said
11 today about that.

12 MR. SILBERG: In fact, Intervenors filed
13 additional QA discovery on the Staff in April, which was
14 broader than the stop work order, and which the Staff
15 answered. So they already filed part of their discovery
16 on that broader interpretation four months ago.

17 CHAIRMAN BLOCH: Let me ask you this, Ms.
18 Hiatt, if we set an ultimate cut-off date of about
19 September 15, or possibly even slightly after that, but
20 we ask that you submit a schedule so that roughly equal
21 amounts could be submitted in four parts ending on that
22 date, would that be acceptable?

23 MS. HIATT: You want us --

24 CHAIRMAN BLOCH: In other words, the problem
25 Applicant has, I take it, is that they want to be

1 working on and finishing up your interrogatories, if
2 they can get most of them earlier in order to do that.
3 You could submit them in equal parts of three or four,
4 let's say, and wind up with the last one September 22nd
5 or thereabouts. Would that suit your purpose?

6 MS. HIATT: Maybe the 30th of September.

7 CHAIRMAN BLOCH: You just said the 15th, and I
8 was suggesting going beyond the 15th to be kind to you.
9 How did we get to the 30th?

10 MS. HIATT: You included issue three, and I
11 thought that issue three was not included in that.

12 CHAIRMAN BLOCH: I see.

13 MR. SILBERG: Mr. Chairman, I would point out
14 that there have been lots of rounds of discovery
15 already on lots of these contentions. Sunflower
16 Alliance filed discovery on us on December 2nd, and on
17 the Staff on December 18. They filed additional
18 discovery on the Staff and us on February 24, and
19 additional discovery on us on April 29 and April 30.
20 There has been lots and lots of discovery, it is not
21 like we are just starting the process.

22 CHAIRMAN BLOCH: Ms. Hiatt, would you like to
23 conclude?

24 MS. HIATT: The one thing I would like to
25 ascertain now, when you talk about the discovery

1 schedule, are you talking only to written
2 interrogatories, or are you also including other forms
3 of discovery?

4 CHAIRMAN BLOCH: There is one form of
5 discovery which I will get to, and that is the site
6 visit. So we can put that aside, I think.

7 CHAIRMAN BLOCH: Are you anticipating
8 depositions, Ms. Hiatt?

9 MS. HIATT: Possibly, possibly other site
10 visits.

11 CHAIRMAN BLOCH: You mean in addition to the
12 one you have requested?

13 MS. HIATT: Either by myself or by Sunflower
14 Alliance, I think that might be needed.

15 CHAIRMAN BLOCH: Mr. Silberg, I take it your
16 proposed deadline is for all of these things?

17 MR. SILBERG: Yes, sir, except for the site
18 tour, which I think Susan and I have agreed, as I
19 discussed with you, Mr. Chairman, what we would propose
20 to do, if the Board conducts the normal site tour
21 immediately prior to the hearing, that we would postpone
22 OCRE's requested site inspection until that time.

23 If the Board decided for some reason that they
24 wouldn't walk through the plant at that time immediately
25 preceding the hearing, the Intervenor and the Applicant

1 would get a chance to go through it.

2 CHAIRMAN BLOCH: But on that arrangement, we
3 would make sure that we saw whatever OCRE has requested
4 to see.

5 MR. SILBERG: Certainly.

6 CHAIRMAN BLOCH: Unless you specifically
7 objected.

8 MR. SILBERG: Right.

9 CHAIRMAN BLOCH: Ms. Hiatt, Applicant's
10 position is that it should be for all forms of
11 discovery. Do you have a counter proposal?

12 MS. HIATT: I would say only for written
13 interrogatories and admissions.

14 CHAIRMAN BLOCH: The counter-proposal must
15 include in it some way of terminating all discovery
16 somewhat efficiently. What is it you propose with
17 respect to those other forms?

18 Now this is absent good cause related to
19 documents that are later filed.

20 MR. SILBERG: I assume you meant to include
21 also requests for documents.

22 MS. HIATT: Yes.

23 MR. SILBERG: The only thing you are proposing
24 would be that depositions, if any, could be held later?

25 MS. HIATT: Depositions and site visits.

1 CHAIRMAN BLOCH: You might want to expand the
2 scope of your site visit?

3 MS. HIATT: Or other parties may wish to have
4 other side visits.

5 CHAIRMAN BLOCH: Other parties, what are you
6 referring to?

7 MS. HIATT: I would think that Sunflower
8 Alliance may wish to incorporate site visits in its
9 pursuit of issue three, I think that is a possibility.
10 I don't know, but that is what I would say.

11 CHAIRMAN BLOCH: All they would have to do is
12 to tell us that they plan to do that by the 30th of
13 September.

14 Mr. Silberg, were you going to comment that
15 you thought depositions might be handled differently?

16 MR. SILBERG: No, I was just trying to clarify
17 what they were talking about. I guess, I am not sure
18 why deposition would be handled any differently than the
19 other forms of discovery. I was just trying to make
20 sure I understood what it was that was being excluded.

21 CHAIRMAN BLOCH: Ms. Hiatt.

22 MS. HIATT: I am trying to find the exact
23 reference, but I understand that no discovery shall be
24 had after the beginning of, I guess, the second
25 prehearing conference.

1 CHAIRMAN BLOCH: The Board can establish
2 discovery deadlines, that is clear, and we were
3 requested to do so by the Commission, and a public
4 notice to that effect.

5 MS. HIATT: As far as issues three to seven, I
6 would set a September 30th deadline.

7 CHAIRMAN BLOCH: What about contentions nine
8 and ten?

9 MS. HIATT: I believe that is nine and
10 eleven.

11 CHAIRMAN BLOCH: Nine and eleven.

12 MS. HIATT: I would say October 31.

13 MR. SILBERG: What about one?

14 MS. HIATT: I would also include issue eight
15 in the October 31st deadline.

16 CHAIRMAN BLOCH: Eight is hydrogen?

17 MS. HIATT: Right. Issue one might also be
18 included in September 30th deadline, and if the plans
19 become available that we be given the right of
20 discovery.

21 CHAIRMAN BLOCH: Have you concluded?

22 MS. HIATT: Yes.

23 MR. LEWIS: Mr. Chairman, we were looking at
24 September 30th as being a reasonable cut-off date for
25 all discovery on all of the issues, including the

1 recently admitted ones. Those were admitted several
2 weeks ago, I don't think that September 30 really
3 imposes any deprivation or limitation with respect to
4 those.

5 I think that September 30th would be a
6 reasonable cut-off date for all of the contentions, I
7 would note, particularly in light of the fact that as we
8 more clearly indicated in the completion of our
9 responses to the second set of interrogatories by
10 Sunflower Alliance.

11 With respect to off-site emergency planning,
12 we will of course be needing to rely on FEMA, the
13 Federal Emergency Management Agency, and their input is
14 to some extent not totally within our control. So I
15 think this whole idea of good cause being necessary on
16 emergency planning for an elongation of the emergency
17 planning discovery should be very liberally
18 interpreted. In fact, the Staff may well not be able to
19 provide or FEMA may not be able to provide those
20 responses for which they are responsible for some time
21 hence.

22 So I tend September 30th with the notation
23 that I think may well not end up being any final
24 deadline with respect to emergency planning.

25 CHAIRMAN BLOCH: Have you concluded?

1 MR. LEWIS: Yes, I have.

2 CHAIRMAN BLOCH: You also agree with the
3 Applicant that deposition requests should be treated the
4 same as other forms of discovery?

5 MR. LEWIS: Yes. This is the first time I
6 have heard anything about the deposition requests at
7 all, but I see no reason why they should be treated any
8 differently.

9 CHAIRMAN BLOCH: We will take a very brief
10 recess for discussion, and we will issue an order about
11 this target schedule.

12 (Short recess.)

13 CHAIRMAN BLOCH: Mr. Shon is no longer with
14 us, He left at approximately 4:00 o'clock. But I have
15 discussed these matters with Mr. Kline, and I am
16 prepared to set a target schedule. The Board in setting
17 a target understands that there may be good cause for
18 exceeding these deadlines. We would not expect them to
19 be exceeded without good cause.

20 The targets that we set will be that for
21 contentions, other than nine and eleven, interrogatories
22 and all other discovery must be filed no later than
23 September 30th. But we would expect as well that the
24 Intervenor will file their last set of interrogatories
25 in approximately equal thirds, so that about a third

1 will be received by the 15th of September, a third by
2 the 23rd, and a third by the 30th. The other two
3 contentions, we have a target cut-off date for all
4 discovery of October 15th.

5 Are there any other matters that must be
6 determined by us at this point?

7 MR. SILBERG: I would like to raise one other
8 thing, and that is a target date subject to good cause
9 for the start of the evidentiary hearing on contentions
10 four through seven, nine and eleven.

11 I think we will all recognize that emergency
12 planning issues will probably not be ready for
13 litigation in the same time frame as some of the other
14 contentions. Similarly, I think it is fair to say that
15 the hydrogen control issue will probably also take
16 additional time before it is ripe for litigation.

17 I think I said four through seven, and I meant
18 three through seven, including the QA contention.

19 CHAIRMAN BLOCH: All right, three through
20 seven, and then nine and eleven.

21 MR. SILBERG: Right.

22 CHAIRMAN BLOCH: What is the date?

23 MR. SILBERG: The dates that I would propose
24 would be December 1.

25 CHAIRMAN BLOCH: How long a time period do you

1 think we need to reserve for this first phase of the
2 hearing?

3 MR. SILBERG: I would think that three weeks
4 would be more than adequate.

5 CHAIRMAN BLOCH: December 1, that falls --

6 MR. SILBERG: I have not looked at my
7 calendar.

8 CHAIRMAN BLOCH: December 1 is a Wednesday.

9 MR. SILBERG: Yes, that is a good day to
10 start.

11 CHAIRMAN BLOCH: Three weeks would end on the
12 21st.

13 MR. SILBERG: Right.

14 CHAIRMAN BLOCH: I would like Mr. Wilt's
15 comment. Mr. Wilt, are you with us.

16 MR. WILT: Yes, I am with you. I really have
17 not thought about this. I don't know that I can make
18 any comments. Mr. Silberg and I talked about all these
19 other matters, but he did not indicate that he wanted to
20 bring this subject up.

21 MR. LEWIS: I am unable to hear you, Mr.
22 Wilt.

23 MR. WILT: I am sorry.

24 Mr. Silberg and I talked about these other
25 matters, but we did not talk about this one. I suppose

1 that before I could make any kind of commitment, I would
2 have to talk to my client.

3 MR. SILBERG: I do acknowledge, Mr. Chairman,
4 and I guess I apologize, that I have not discussed this
5 with either Dan or Susan. I guess that I can blame
6 Steve Lewis for it because he asked me questions that
7 got me thinking about the hearing schedule.

8 It is only after I talked to Steve that I
9 started thinking in my own mind what an appropriate
10 schedule would be. I am being unfair in hitting both
11 intervenors cold with the suggestion, and I apologize to
12 that extent.

13 CHAIRMAN BLOCH: Mr. Silberg, may I ask
14 whether all SER inspections and supplements on those
15 contentions are completed?

16 MR. SILBERG: The SER has been filed.

17 CHAIRMAN BLOCH: I know that, I have seen it.
18 But are there supplements due on any of the contentions
19 you have just mentioned?

20 MR. SILBERG: I am not aware of any, but I
21 guess I am not in a position to answer that. Steve
22 might be able to help you.

23 MR. LEWIS: There is a supplement to the SER
24 anticipated to be issued, I believe fairly soon. I am
25 not certain whether there will be a further supplement

1 after that, but there may be.

2 MR. SILBERG: The question though, Steve, do
3 any of those sections in the supplement deal with any of
4 the contentions that we would be talking about for the
5 first phase of the hearing?

6 MR. LEWIS: I am sorry, I am simply not in a
7 position to answer that.

8 CHAIRMAN BLOCH: I think it is a good thing we
9 raised this issue at this point. Given the fact that
10 the Intervenors have not had a chance to think about it,
11 I think we would like to settle this issue within the
12 next week. I would like the parties to either agree on
13 the date by the end of next week, or to see that I have
14 in writing by the end of next week each of their
15 recommendations, so that we can then rule.

16 MR. WILT: I might point out that I am not
17 going to be here next week, and would request that at
18 least as far as Sunflower Alliance, if agreement cannot
19 be reached, that written suggestions be filed again on
20 the 30th of August.

21 CHAIRMAN BLOCH: I guess there is no reason
22 why we can't wait until the 30th of August for written
23 suggestions, is there, Mr. Silberg?

24 MR. SILBERG: No, that will be fine.

25 CHAIRMAN BLOCH: Ms. Hiatt, you have no

1 problem with that?

2 MS. HIATT: August 30 will be fine.

3 CHAIRMAN BLOCH: I am going to be on vacation
4 on August 30, so there is no reason to impose that on
5 your. I will be returning from vacation on the 6th of
6 September. Did we set any deadlines during that last
7 week from the 30th to the 3rd?

8 MR. SILBERG: Yes, there is legal brief on the
9 scope of evacuation that is due by the Intervenor on
10 the 30th.

11 CHAIRMAN BLOCH: Why don't we change that.

12 MR. SILBERG: No, you ought to keep that
13 because we have to reply to that brief.

14 CHAIRMAN BLOCH: All right, because I want to
15 see the reply before I rule on it. So let's keep that
16 date.

17 MR. SILBERG: The reply is due on the 7th,
18 which would be the day after you get back.

19 CHAIRMAN BLOCH: All right, are there any
20 other matters that must be covered?

21 MR. WILT: Yes, did we set a date on which
22 written suggestions should be filed?

23 MR. SILBERG: We could make that September 7.

24 CHAIRMAN BLOCH: That is the same date as the
25 reply brief. We will make it September 7.

1 MR. WILT: Thank you, Your Honor.

2 CHAIRMAN BLOCH: Are there any other matters
3 that must be covered?

4 There being nothing further, the conference is
5 adjourned.

6 (Whereupon, at 4:20 p.m., the conference
7 adjourned.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
ATOMIC SAFETY AND LICENSING BOARD

in the matter of: Cleveland Electric Illuminating Company (Perry Units
1 and 2)

Date of Proceeding: August 13, 1982

Docket Number: 50-441 OL & 50-440 OL

Place of Proceeding: Washington, D. C.

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

Patricia A. Minson

Official Reporter (Typed)

Patricia A. Minson

Official Reporter (Signature)