

ORIGINAL

NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE )  
SEABROOK STATION UNITS I & II ) DOCKET NOS. 50-443 OL  
 ) 50-444 OL  
 )

DATE: July 16, 1982 PAGES: 502 thru 651

AT: Portsmouth, New Hampshire

*Distribution Type: TR-01*



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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 ATOMIC SAFETY AND LICENSING BOARD

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 5 In the matter of: :  
 :  
 6 PUBLIC SERVICE COMPANY OF : Docket Nos.  
 NEW HAMPSHIRE : 50-443 OL and  
 7 SEABROOK STATION UNITS I & II : 50-444 OL  
 :  
 8 - - - - - X

9 Friday, July 16, 1982  
 10 2nd Floor Courtroom  
 11 Portsmouth District Court  
 Portsmouth, New Hampshire

12 Second Prehearing Conference in the above-entitled  
 13 matter convened, pursuant to Notice, at 9:00 a.m.

14 BEFORE:

15 HELEN F. HOYT, Chairman  
 Administrative Judge  
 Atomic Safety and Lincensing Board

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

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

21 APPEARANCES:

22 On behalf of the Applicant:

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 JOHN A. RITSHER, Esqs.  
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4 Nuclear Regulatory Commission  
5 Washington D. C.

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11 On behalf of the Town of South Hampton:

12 EDWARD J. MCDERMOTT, Esq.  
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16 On behalf of the Commonwealth of Massachusetts:

17 JO ANN SHOTWELL, Esq.  
18 Assistant Attorney General  
19 Office of the Attorney General  
20 Boston, Massachusetts

21 On behalf of the State of New Hampshire:

22 GEORGE DANA BISBEE, Esq.  
23 Office of the Attorney General  
24 Concord, New Hampshire

25 On behalf of the State of Maine:

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On behalf of Coastal Chamber of Commerce:

BEVERLY HOLLINGWORTH, Esq.  
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1 On behalf of the New England Coalition of Nuclear Pollution:

2 WILLIAM JORDAN and DIANE CURRAN, Esqs.  
3 Harmon & Weiss  
4 Washington, D. C.

4 On behalf of Seacoast Anti Pollution League:

5 ROBERT A. BACKUS, Esq. .  
6 Manchester  
7 New Hampshire

7 On behalf of Society for the Protection of the Environment  
8 Southeastern New Hampshire:

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Exhibits

Page

Counsel's Exhibit No. A

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Counsel's Exhibit No. B

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Counsel's Exhibit No. c

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P R O C E E D I N G S

9:05 a.m.

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3 JUDGE HOYT: At this time would the hearing come to  
4 order. This Hearing is in the matter of the Public Service  
5 Company of New Hampshire, Docket No. 50-443 and 444, OL.

6 This Prehearing Conference convened yesterday and  
7 has been reconvened this morning at 9:05. All the parties to the  
8 Hearing who were present when the Hearing recessed yesterday are  
9 present with the exception of those who were representing the  
10 New England Coalition. I'm sorry. There you are way back there.  
11 Well, everyone is present in the hearing room.

12 Mr. Lessy, before we went on the record this  
13 morning, I was making an inquiry of you concerning a letter that  
14 you had addressed to this Board on July 1, 1982 in regard to  
15 certain matters, one of which was the inquiry that you had made to  
16 EPA. I believe you indicated you had some representations you  
17 wish to make to the Board.

18 MR. LESSY: Yes, your Honor. As you know, the  
19 State of New Hampshire had offered a proposed Contention at the  
20 initial Prehearing Conference which related to the possible sub-  
21 stitution at the Seabrook Station of Chlorination of back flushing  
22 to control biological fouling at the intake tunnels.

23 At that time, the Board and the parties discussed  
24 the fact, on the record, that that was a matter of the Environ-  
25 mental Protection Agency and we weren't certain of the exact

1 status of that matter at that agency. At the request of the  
2 Board, after this Prehearing Conference, I wrote to the appropriate  
3 official at that Environmental Protection Agency in Boston,  
4 Region I, as to the status and the EPA Attorney responded by  
5 letter of June 15, 1982 which I served upon the Board and the  
6 parties.

7 It appears to me that this letter would confirm the  
8 Staff's view with respect to that Contention and I am certain that  
9 New Hampshire has some comments that there is no proposal at this  
10 point in time. It would be premature at this point in time to  
11 consider a proposal relating to a possible modification at the  
12 Seabrook Station which does not have preliminary approval yet of  
13 EPA.

14 The way I read the letter, this confirms that.  
15 However, the matter is up for discussion, I should think.

16 MR. JORDAN: I am a little bit confused as to which  
17 specific Contention he is referring to. Also, the exact status  
18 of the proposal.

19 JUDGE HOYT: I think it was Mr. Backus' Contention.

20 MR. BACKUS: Yes. It is our original Contention  
21 No. 2.

22 JUDGE HOYT: Well, would you like to pick up on  
23 that? Do you have any comment?

24 MR. BACKUS: Well, I just don't agree that the  
25 matter is premature. I suppose this is a little bit analogous to

1 the discussion we had yesterday about Emergency Planning. We  
2 have the Applicant wanting to have the option and having actually  
3 applied for a draft permit which is in the Draft Environmental  
4 Statement suggesting what we consider to be rather major change  
5 in the Plant's design that will alter the consideration of  
6 environmental impact that was given the Plant during the construc-  
7 tion permit proceedings. I don't think it is premature at all.

8           There are going to be proceedings before EPA. I  
9 understand that, that there is an entire procedure **there**.  
10 Eventually, I think this Board is going to have to make a determina-  
11 tion of the impact of the cool system on the cost benefit analysis  
12 for this Plant. It will have to take those impacts determined by  
13 EPA and factor them into their decision.

14           Since this has gotten to the stage of a draft  
15 permit from EPA Region I, I don't know to what extent the  
16 Applicant is actually intending to do it. I understand the  
17 tunnels have been actually constructed in anticipation of this  
18 use of biofouling control.

19           I don't think it is a bit premature. I think it is  
20 a matter that is appropriate to have discovery on, and that, I  
21 should think, should start now.

22           JUDGE LUEBKE: Having mentioned discovery leads me  
23 to ask, have the reports been written? The Staff must make some  
24 analysis, I presume?

25           MR. LESSY: There has been no **amendment** to the



1 license application at the NRC.

2 JUDGE LUEBKE: So the amendment does not exist.

3 MR. LESSY: There is no amendment. It is called  
4 NPDES permit. But the draft permit was published as an appendix  
5 to the NRC's draft Environmental Statement and of course, is  
6 subject to comment there.

7 As I read the letter, particularly the last sentence  
8 on the first page:

9 "By that time we will have a firmer idea of PSC's  
10 intentions to use chlorination and/or back flushing."

11 As I read the letter, given the fact that the  
12 application has not been amended here and EPA is going through  
13 its preliminary procedures, there has been no determination as to  
14 a permit for this. I think it is premature. Perhaps the  
15 Applicant is the best one to respond to this.

16 JUDGE HOYT: That was my next question, to see if  
17 we can get some information from them on this.

18 MR. GAD: I think the question of discovery on this  
19 issue is one of the easier issues we will handle in the Prehearing  
20 Conference. I don't think there is any that is appropriate.

21 The reason for that is that I believe it was  
22 established in the Construction Permit Case that it is for EPA  
23 to decide what the actual limitations will be on this facility  
24 and EPA alone. Likewise, it is for EPA to decide what the aquatic  
25 impacts are, whatever the limitations are.

1           If you want to litigate whether or not chlorine  
2 should be allowed to be discharged, and if so, how much, you do  
3 that in front of the EPA.

4           If you want to litigate that, "X" units of chlorine  
5 discharge will have "Y" units of aquatic impact. That bit of  
6 litigation is done in front of EPA. EPA, then, issues a permit  
7 and it issues their findings and their decision.

8           When we have those in hand, then, I have to say, if  
9 there is any issue remaining, but when we have those in hand, then  
10 someone can say to this Board, look at these horrible aquatic  
11 impacts that EPA has determined will result from this. Please  
12 take that into account in making your judgment.

13           Until we have that litigation, there is nothing  
14 before us until we have that amended NPDES permit. I don't think  
15 that this is one we have to worry about discovery on because I  
16 don't think there is anything to discover on this issue because I  
17 don't think there is anything to litigate.

18           JUDGE HOYT: Let me ask you very quickly, Mr. Gad,  
19 do you intend to make any changes in your intention to use chlorina-  
20 tion and back flushing?

21           MR. GAD: I want to double check this at the next  
22 recess, but I think that the Company's intention is to seek the  
23 amended permit and then make the judgment as to which of the  
24 two methods of bio fouling control will be used from time to time.

25           JUDGE HOYT: You don't have your Request for Permit

1 before the EPA now?

2 MR. GAD: There is an application for an amendment  
3 to the NPDES permit pending before EPA, the status of which is  
4 described in Ms. Williams-Dawe's letter of June 15, 1982, which  
5 Mr. Lessy was kind of enough to serve on all of us. That is,  
6 as far as we are concerned, an up-to-date statement on the status  
7 of those proceedings.

8 JUDGE LUEBKE: To summarize your statement, you say  
9 it is not now within the jurisdiction of this Board?

10 MR. GAD: And what will be in the jurisdiction of  
11 this Board at a future date does not involve litigation of  
12 aquatic impacts and discovery of aquatic impacts. You simply take  
13 the results of someone else's litigation and factor them into  
14 your judgmental process.

15 JUDGE LUEBKE: And the consequence of that might be  
16 that we need not even have this Contention on the list, then, if  
17 we aren't going to do anything with it.

18 JUDGE PARIS: As you pointed out, Mr. Gad, it is up  
19 to the Board to decide whether the Environmental Impact, as  
20 determined by EPA, are acceptable. That certainly can be litiga-  
21 ted.

22 MR. GAD: Well, the result of the Seabrook litigation  
23 last time is that the NRC can decide to license or not to license  
24 construction that has the impacts that EPA has adjudicated.  
25 Frankly, I have some difficulty squaring that with Section 511

1 of the Clean Water Act Amendments of 1972 because a judgment that  
2 the effluent limitations that EPA has imposed is unacceptable, and  
3 therefore, we shant have a plant, amounts to a supervision of the  
4 effluent limitations.

5 I think the point is that when we have an EPA  
6 decision before us, then if someone wants to make the contention  
7 that, on account of this new development, the application ought  
8 to be denied. It seems to me that that is the time to raise the  
9 contention. The reason why we do not have a problem deferring  
10 that until later on is because there is very little to do about  
11 that contention except for lawyers to write briefs and make argu-  
12 ments to the Board.

13 JUDGE PARIS: When would you say such a contention  
14 become life, at the time the EPA issues the permit?

15 MR. GAD: EPA practices a convoluted --- it is a  
16 bit complex and it has several steps to it. My suggestion would  
17 be that proper time for the contention would be when EPA has  
18 reached the last stage that its going to, that is to say, when  
19 the initial determination has come out and no one has appealed  
20 for an Adjudicatory Hearing, or after there has been an Adjudi-  
21 catory Hearing and no one has taken it to the Administrator, or  
22 after the Administrator has ruled, and in each case we will get  
23 to a step, and we will then watch the expiration of the appeal  
24 period and we will know whether or not it is going to go to the  
25 next step.

1 JUDGE PARIS: Mr. Perlis, what is your view on the  
2 question I just asked Mr. Gad.

3 MR. PERLIS: As I understand what Mr. Gad is saying  
4 and I think I agree with it, the only issue for this Board to  
5 consider is the affect of the EPA's determination on the overall  
6 cost benefit analysis, but the input to the cost benefit analysis  
7 has to come from EPA.

8 That being the case, it does seem that we should  
9 defer this Contention until EPA has said something. I don't  
10 understand what we are going to get now.

11 JUDGE HOYT: I think, Mr. Backus, you are going to  
12 want to comment on that.

13 MR. BACKUS: Yes. Thank you. I just don't know of  
14 anything in the Regulations that would warrant this not being  
15 a good Contention at this time. It may be because EPA is going  
16 to have proceedings on this that the amount of discovery that  
17 the Applicants or the Staff want to respond to will be limited.

18 The Applicants, themselves, have put this change in  
19 their cooling system before us. This Board is going to have juris-  
20 diction over the issues of the ultimate impact and the whole cost  
21 benefit analysis as everybody here has agreed.

22 I think this Board should be aware, if you are not,  
23 that this entire Plant was licensed both before the State and  
24 before the Atomic Safety and Licensing Board for the Construction  
25 Permit, among other things, on the ground that it was an environ-

1 mental winner because there were going to be no biocides used.  
2 We were told that this was one of the environmental benefits of  
3 this Plant. It was ocean-cooling and there were no biocides.

4 Here we are with Unit I some 60-odd percent completed  
5 and the Applicant is asking EPA to now permit the use of rather  
6 large amounts of residual chlorine. It is some sort of chlorine  
7 compound to control biofouling.

8 I think it raises very serious questions and if we  
9 are not to delay this proceeding and go in fits and starts, I  
10 think this Contention can be admitted now. I fully expect that  
11 when we ask for discovery on this they will say, "Gee, we haven't  
12 made up our minds yet." This is the Burger King approach, let it  
13 do it our way. When we decide what we want on the burger, then  
14 you folks can have a chance to think about it.

15 The fact is that they are at this point, asking  
16 EPA to start proceedings on this and I certainly do not think it  
17 is too early for this Board and the parties that are interested  
18 in this issue, which my client is, to have a right to have this  
19 issue brought forward for Contention when the material is  
20 available.

21 I just don't see anything in the Regulation that  
22 would say that because we have got another agency working on this  
23 that the Contention is not even admissable now. I think it  
24 clearly is.

25 JUDGE PARIS: What would you want to discover at

1 this point?

2 MR. BACKUS: Well, one of the things we are most  
3 interested in is the reasons for this major change in plant design  
4 this far down the road. That is a major thing that we are interested  
5 in, given the fact that there was an enormous amount of litigation  
6 over the original design, including a couple of Appeals to the  
7 First Circuit, and the Applicants ultimately prevailed. Now they  
8 seem to be saying they don't think it is going to work.

9 We do know that they are planning to use, or  
10 apparently planning, subject to their discretion, to make an  
11 ultimate decision, to use biocides. We want to know what studies  
12 they have that would indicate that that was a preferable system  
13 and what they think the impacts of that system are.

14 They may tell us to wait until they go to EPA and  
15 then they will tell us. If that is so, that may be something  
16 that we would accept. We will find out then, and then get it  
17 for the purposes of this Board's Hearing.

18 I don't see why it cannot be a contention before  
19 this Board right now.

20 JUDGE HOYT: Does the society that you represent  
21 make any representations to the EPA in any of their hearings,  
22 or do you file any pleadings with EPA?

23 MR. BACKUS: We will have the opportunity to do that  
24 and given the fact that this is an environmental group, I expect  
25 that is something that would very likely occur.

1 JUDGE HOYT: Isn't that the form you should be  
2 litigating that matter, rather than this particular form? Isn't  
3 your contention at this point in time before this form premature

4 MR. BACKUS: Well, all we are talking about now, as  
5 I say, is whether or not this is the time to have a contention on  
6 this issue here. I fully expect that the impacts will be developed  
7 before EPA, that we will be given the opportunity to know what  
8 is being produced before EPA; what the record before EPA is.  
9 All I am saying now is that this is an appropriate time, it seems  
10 to me, since this is the time for contentions, and since this  
11 has been raised to have this contention admitted here.

12 I don't think it is going to take a lot of time of  
13 this Board or the parties here now, but as we get down the road  
14 with EPA, it will.



1 JUDGE HOYT: I think we have got all the argument  
2 we want on the record on that.

3 Can we dispose of the New England Coalition Problems  
4 that were raised last night before we go any further?

5 MR. GAD: Madam Chairman, the Board sent me home  
6 last night with a homework assignment. I have done it and I  
7 would like to present it and then stay out of the debate. I  
8 have provided copies to the Staff and Mr. Backus. I had eight  
9 copies and I am down to three plus the original. In view of the  
10 Provisions of Section 6 of what I have drafted, I do not want  
11 to keep a copy.

12 JUDGE HOYT: I think that for housekeeping purposes,  
13 it may very well be that we should attach this submission from  
14 you, Mr. Gad, as Counsel's Exhibit. We have got to get it  
15 attached somehow, Mr. Gad. I can understand your physical  
16 displeasure at that.

17 MR. GAD: I have no objection to it being reproduced  
18 in whatever fashion that your Honor thinks is appropriate,  
19 including binding into the transcript. I was sitting there  
20 waiting to see what Counsel you were going to select as the label  
21 for it. The Order itself would---

22 JUDGE HOYT: (Interrupting.) As Counsel's Exhibit  
23 I would just letter them. I would not assign it to any particular  
24 Counsel. I do not think I am quite that brave so early in the  
25 morning.

1 We will just attach it as Counsel's Exhibit A for  
2 identification.

3 (Whereupon the document was  
4 marked Counsel's Exhibit A  
5 for identification.)

6 JUDGE HOYT: You have sat down, is that it?

7 MR. GAD: I should point out that there were two  
8 blanks in Section 3. The blanks should be April 21, 1982 for  
9 the first one regarding NECNP and April 20, 1982 for the second  
10 one regarding Massachusetts.

11 JUDGE HOYT: Thank you. Do you want to lead off  
12 with this?

13 MR. PERLIS: I will lead off.

14 JUDGE HOYT: All right, go ahead.

15 MR. PERLIS: First of all, I do not have a copy of  
16 this in front of me so I am going to be doing this pretty much  
17 by memory.

18 The Staff does not agree to this proposal for the  
19 reasons that we pretty much stated yesterday. We still take the  
20 position that where documents do exist today, as many of them do,  
21 that specific contentions should have been filed at this point.  
22 That is the typical rule of practice. Documents that are not  
23 in existence yet, contentions should come in when those documents  
24 exist and discovery should then follow.

25 The only other point that I wanted to add is I

1 believe Mr. Lessy is talking to the Representative of FEMA who  
2 may have something to say about this matter as well. Obviously,  
3 I cannot do that now.

4 JUDGE HOYT: I hope that Mr. Lessy can return to us  
5 before we close this subject matter out. We will see if can't  
6 accomodate that.

7 Mr. Jordan?

8 MR. JORDAN: Well, I am just trying to read through  
9 it at the moment. I have gone to No. 4. Just offhand I would  
10 end it at the end of No. 4. I do not really see a need for No. 5.  
11 I do not agree with the first sentence of No. 5 for reasons we  
12 discussed yesterday. I do not think that this Order really is  
13 inconsistent with practices of prior Boards and I do not see  
14 any particular reason for the second sentence there either.

15 I guess I would want to look at paragraph No. 4 a  
16 little more closely to be sure but basically this is what we  
17 are interested in.

18 JUDGE HOYT: We will give you an opportunity to do  
19 that a little later on but I think we want to get this--I'm sorry,  
20 did you have something, Mr. Backus?

21 MR. BACKUS: Yes, ma'am. I just wanted to note  
22 here--Well, after it is noted that we should not refer this as  
23 the Gad Proposal or the Dignan Proposal which reflects a remark-  
24 able humility of the authors maybe.

25 I note that the last thing is Applicant to other

1 Intervenor/Petitioners (to be determined) and my recollection  
2 of the Prehearing Conference we have already had for which I  
3 do not have a transcript, unfortunately, is that we certainly  
4 had a contention on Emergency Planning that the Board will have  
5 under submission. My recollection of that was that the Applicant  
6 in that took the same position as to the other Emergency Planning  
7 Contentions that a generally framed contention that the Emergency  
8 Planning did not meet the requirements of 50.33 (g), 50.47  
9 Appendix E of Part 50 would be acceptable to them.

10 Therefore, speaking for the Seacoast Anti Pollution  
11 League, we would certainly want to be a part of any Emergency  
12 Planning Contention that is worked out here. In fact, I thought  
13 that that had been worked out over the last Prehearing Conference.  
14 I believe the Staff is now taking a different position in this  
15 regard than they did then. I thought that as far as the  
16 Applicant was concerned, it was agreed that SAPL would have an  
17 Emergency Planning Contention framed in that way.

18 JUDGE LUEBKE: It seems to me that I recall in the  
19 last Conference some of the municipalites were having problems  
20 with letting a contract to get a plan made, all of which left  
21 me feeling that the plans had not been made then certainly. I  
22 can wonder if they have been made now. I suspect that they have  
23 not. So I am a little puzzled of why we can't wait until we have  
24 some specific plans to discuss?

25 MR. BACKUS: There again, I think the issue is

1 whether or not this is a good contention. The evidence that we  
2 need to know how that contention is to be decided is not there yet.

3 JUDGE LUEBKE: Well, the Contention could be made  
4 next December and then we could decide whether it is a good  
5 Contention.

6 MR. BACKUS: Well, I also have to join in with what  
7 Attorney Shotwell said yesterday. As far as the Seacoast Anti  
8 Pollution League is concerned, there is an issue here <sup>of</sup> not merely  
9 whether the plans exist and whether they are within the limits  
10 we have got at this site the best plans, but whether or not  
11 given the limitations of this site the plans can reasonably  
12 assure that adequate protective measures and and will be taken  
13 even if they are the best plans available on the face Plant.

14 JUDGE LUEBKE: That such a decision to be made  
15 in advance of having plans?

16 MR. BACKUS: Well, yes, in that we do have available,  
17 for example, already estimates of times for evacuation of the  
18 area around Seabrook from a Contractor hired by FEMA suggesting  
19 what the time would be both with planning and without. We also  
20 have time estimates from the Applicant. We have data in the  
21 record which will be--eventually plans will come in and I suppose  
22 that those plans will have some additional time estimates. We  
23 do have time estimates of the time to evacuate the ten mile area  
24 right now.

25 JUDGE LUEBKE: As a listener, I hear bits and pieces.

1 Eventually we are going to have to think about and rule on the  
2 whole thing.

3 MR. BACKUS: Uh hum.

4 JUDGE LUEBKE: That is my problem with it, I guess.

5 MR. BACKUS: My only position is that for a lot  
6 of these issues you are going to have bits and pieces now. We  
7 do not have a completed Plant either.

8 JUDGE LUEBKE: We have been using the word defer  
9 quite frequently and I think when you see our Order you will  
10 probably have some word defer in there.

11 JUDGE PARIS: Mr. Backus, you are interested  
12 primarily in getting underway with discovery on this?

13 MR. BACKUS: Right.

14 JUDGE LUEBKE: Do you think it would make a signi-  
15 ficant difference to the discovery you plan to take out to carry  
16 out whether you came in with a specific contention or whether  
17 you came in under a more general umbrella such as the one that  
18 Mr. Gad is proposing?

19 MR. BACKUS: I do think it makes a difference so  
20 long as, you are quite correct, Doctor, I think the issue is  
21 are we going to have available the discovery that we need to  
22 narrow this issue down to prepare our own direct case? There  
23 are certainly things that should be discovered on this issue.  
24 As I say, the Applicant has produced estimates of time to evacuate.  
25 That is available now.

1 JUDGE PARIS: So what you are objecting now is  
2 primarily is the to be determined status that you seem to be  
3 under on Item 7?

4 MR. BACKUS: Right.

5 JUDGE PARIS: For purposes of writing this Order  
6 that I feel we are going to get to next week or so, I would still  
7 like to have a feeling of what reports exist in this subject area  
8 that could be used in a discovery process. Are there one report,  
9 two reports, three reports? Can they be identified?

10 MR. BACKUS: I am not prepared to give you a  
11 catalogue, Doctor. I think there exists today the Applicant's  
12 Emergency Plan. There exists today, at least in part, the  
13 Commonwealth of Massachusetts General Plan.

14 JUDGE LUEBKE: Excuse me. That is published?

15 MS. SHOTWELL: Yes.

16 MR. BACKUS: There exists today one or more studies  
17 of evacuation times, evacuation routes. There may very well  
18 exist a whole ream full of documents---

19 JUDGE LUEBKE: (Interrupting.) All published?

20 MR. BACKUS: I rather doubt that but they were  
21 prepared by the Company.

22 JUDGE LUEBKE: Well, I mean the distinction between  
23 that somebody does a little arithmetic and puts it in his drawer,  
24 that is not a report.

25 MR. BACKUS: Well, I am referring to reports that

1 happen to have been privately sponsored rather than publicly  
2 sponsored. They are the kinds of things that would be produced  
3 in discovery.

4 There probably exists some documents explaining how  
5 the PEZ's were constructed and boundaries, an issue that we got  
6 into yesterday, and a whole host of other materials.

7 I respectfully submit and I do not want to get into  
8 quantitative analysis here, that when the history of this  
9 proceeding is written and someone totes up the total amount of  
10 material produced on discovery, a fair portion of it, perhaps  
11 more than half is material that exists today. That is why I  
12 resist the idea of postponing discovery and indeed postponing  
13 any activity on a discreet section of Emergency Planning such  
14 as Off Site Plans to another date. That, I respectfully submit  
15 just builds in a delay that we will never be able to recover.

16 A large measure of what goes into Off Site Planning  
17 exists in addition to the plan of one particular town and another  
18 particular town.

19 I would also just like to say for the record, the  
20 phraseology of Section 7 was selected because when we departed  
21 here last night---

22 JUDGE HOYT: (Interrupting.) You are referring  
23 to Counsel Exhibit A?

24 MR. BACKUS: I am indeed, Madam Chairman. Thank you.  
25 When we departed here last night, the question had been raised



1 how the same procedure would apply to other potential intervenors.  
2 That question had not been decided by the Board and I felt it  
3 was not a function of the author of that document to presume  
4 the Board's Ruling. So I simply put in there as a reminder to all.

5 JUDGE HOYT: Thank you. I think, Mr. Bisbee, you  
6 indicated you had a comment that you wish to make?

7 MR. BISBEE: Yes, ma'am. I have to quick responses  
8 to the concerns raised by Dr. Luebke, the first being his  
9 suggestion that this Contention could be deferred until the Plans  
10 are ready. I think the proposal on the table as evidenced by  
11 Counsel's Exhibit A, does call for the deferral of a decision  
12 on the admissibility of the Emergency Planning Contentions until  
13 the Plans are submitted. The proposal calls for beginning  
14 discovery and that raises your second concern as to what material  
15 is available. Mr. Gad is correct in pointing out that there are  
16 few actual Emergency Plans published by either State or the  
17 communities in the States of New Hampshire and Massachusetts.

18 He also correctly points out that there is nonetheless  
19 a great deal of information available concerning the preparation  
20 of those plans and the information needed to develop those plans.

21 JUDGE LUEBKE: He indicated that maybe half of that  
22 was available in his opinion, I think.

23 MR. GAD: It is sort of a guess.

24 JUDGE HOYT: Mr. Lessy, you have been away from us  
25 for a short time while I believe you have been taking advantage

1 of a conference call?

2 MR. LESSY: Yes, your Honor. I have two things to  
3 report. I have information on a subject which was not available  
4 to me yesterday.

5 When we were discussing this late yesterday on the  
6 ride home or ride back to the hotel, it struck me that it would  
7 be very relevant to have the views of the FEMA. In fact, the  
8 FEMA Regional Council, Mr. Brian Cassidy I understood was planning  
9 to attend this Prehearing Conference. There was some emergency  
10 of an administrative matter in Washington which at the last  
11 minute made it impossible for him to attend.

12 In any event, I was able to reach him this morning.  
13 What I did and I did it as fairly as I could, I presented the  
14 proposal which is pending with respect to the handling of  
15 Emergency Planning Contentions in this proceeding and gave him  
16 the Staff's views and also the views pro. I have his phone  
17 number if the Board wishes to discuss it with him further.

18 I told him that the Staff felt that the views of  
19 that Agency would be relevant if they had any.

20 JUDGE HOYT: The only mechanism I can think of that  
21 could get to the Board, Mr. Lessy, would probably be for you to  
22 file some sort of a supplemental brief---

23 MR. LESSY: (Interrupting.) Or a letter from FEMA  
24 if the Board so desires.

25 JUDGE HOYT: Served on all parties to the Hearing,

1 of course?

2 MR. LESSY: Yes. Let me just tell you what FEMA's  
3 position is because he authorized me to state it.

4 FEMA opposes the proposal. They would prefer to  
5 treat Emergency Planning Contentions by the Rules under 2.714.  
6 The reasons are basically twofold.

7 Firstly, and I do not think that there is a first  
8 or a second, they do not feel that--Well, he said that as things  
9 stand now, the final State and local plans will not be submitted  
10 to FEMA for their review until early December of 1982. Therefore,  
11 they would rather not see a discovery process go on without  
12 specific contentions in mind or without specific plans as far  
13 as FEMA is concerned.

14 They also stated in their view, it is more difficult  
15 for the FEMA Staff to focus its concerns when they have either  
16 the specific plans to look at or specific issues that people  
17 want to litigate. A broad based kind of contention like this,  
18 even with specific subparts that would have been contentions or  
19 would not have been contentions had they been admitted, would  
20 not be too helpful in terms of their own planning process. So

21 FEMA's Position is that they do not favor the  
22 proposal as stated.

23 Now there has been one other material development  
24 on the legal side which I learned of last night and which I  
25 would like to apprise the Board and the parties of. Mr. Jordan

1 made substantial reference to a Catawba Licensing Board Decision  
2 in which the Catawba Licensing Board, Judge Kelly, and if I am  
3 incorrect about that I was unable to get it from Mr. Jordan this  
4 morning but I was able to ascertain the status of it, in which  
5 the Catawba Licensing Board admitted Emergency Planning Contentions  
6 for discovery purposes without basis on the grounds that the  
7 documents were not available. Is that a fair summary of that  
8 Decision?

9 MR. JORDAN: As I recall that is a fair summary of  
10 part of it, yes.

11 MR. LESSY: Pursuant to a request and I am not sure  
12 who the requestors are, I believe it was the Staff and the  
13 Applicant, the parties in the Catawba Licensing Board Decision  
14 asked the Licensing Board to certify the question to the Appeal  
15 Board of whether or not that kind of proposal or that procedure  
16 which the Catawba Licensing Board used was consistent with the  
17 Commission's Regulations, including specifically 2.714, even  
18 though it was interlocutory.

19 The Appeal Board accepted the referral, my under-  
20 standing was on an expedited basis but I was not able to confirm  
21 that. In any event, briefs of the parties on the certification  
22 by the Licensing Board to the Appeal Board on that matter, at  
23 least the Staff Brief is due today.

24 So the Appeal Board is reviewing the certification  
25 and presumably the issue at this point in time. I think that

1 impacts on the proposal to the extent that the legal argument,  
2 by NECNP at least, on behalf of this proposal may well be in  
3 some jeopardy. Now my understanding of interlocutory Appeal  
4 Board Review of matters like this is when the Appeal Board  
5 gets involved in prehearing phase of a proceeding like this  
6 on an interlocutory basis, it does it very, very quickly.

7 I would expect that that matter, including the  
8 Catawba Decision, to be reviewed by the Appeal Board on an  
9 expedited basis.

10 The other thing that I am informed of is that the  
11 Commission is also reviewing a Brown's Ferry Decision, I think  
12 by a Licensing Board, which raises a similar kind of consideration  
13 with respect to admissions of contentions without specific basis  
14 under 2.1714.

15 I did want to present those two developments to  
16 the Licensing Board, the last of which I just heard of now. I  
17 think they are relevant to the Board's consideration of these  
18 matters.

19 (Off the record.)  
20  
21  
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1 JUDGE LUEBKE: So, Mr. Lessy, the summary is if we  
2 wait a little while, the ruling will be made for us.

3 MR. LESSY: I think so.

4 JUDGE HOYT: Thank you, Mr. Lessy. I believe you did  
5 have some additional representations that you wanted to make, am  
6 I right ?

7 MR. LESSY: No, those are the two point, your Honor,  
8 that I wanted to make on the subject.

9 JUDGE HOYT: Oh, all right.

10 JUDGE PARIS: Mr. Lessy, did FEMA give any indica-  
11 tion of when their final evaluation of the state and local plans  
12 might be ready, assuming they come in in December of 1982, or can  
13 you make any estimate based on your experience?

14 MR. LESSY: Of course there would be draft plans  
15 submitted for FEMA. As I understand it, it is a continuing  
16 process.

17 JUDGE PARIS: FEMA calls it a dynamic process.

18 MR. LESSY: Okay. This dynamic process is one that  
19 includes draft plans being submitted with FEMA and FEMA working  
20 in conjunction with state and local people and an informal comment  
21 period. As I understand it, the final state and local plans for  
22 those will be submitted by 12/82 and basically I should think,  
23 based upon what Mr. Cassidy said, that would be not 12/30/82,  
24 but more towards 12/2/82 or 12/1/82. Basically, I should think  
25 FEMA would require 4 to 6 weeks. This is an estimate. Therefore,

1 you would have FEMA's views on this matter about the time of our  
2 Prehearing Conference in January.

3 Of course, FEMA is committed to formal testimony  
4 and final findings to our Agency. Under the Regulations, they  
5 in essence report to the NRC or make their findings to the NRC in  
6 May. That would be the timeframe for this.

7 JUDGE PARIS: Well, the 4 to 6 weeks would be time  
8 time required to do their preliminary analysis of the Evacuation  
9 Plans, but that is not the end of it, is it?

10 MR. LESSY: As I understand it, the 4 to 6 week  
11 period which we are talking about from December, would be their  
12 formal comment period with respect to the final state and local  
13 plans. In otherwords, the informal process is already under way.  
14 He informed me that one of the regional committees called RAC  
15 had already commented on at least one New Hampshire local plan.  
16 That process is under way. The process continues, but this is  
17 the final submittal, the final plans FEMA commented at that point  
18 in time.

19 My understanding of the process is that after the  
20 formal FEMA comment some time in January, then state and local  
21 plans may have to be revised or resubmitted one more time if  
22 there are any substitutive comments.

23 JUDGE PARIS: So if FEMA finds any deficiencies,  
24 those have to be corrected and FEMA makes a re-evaluation  
25 following that, is that right?

1 MR. LESSY: That is correct, Sir.

2 JUDGE PARIS: Sometime in here there has got to be  
3 an exercise.

4 MR. LESSY: That's right.

5 JUDGE HOYT: Do you have anything? I'm sorry.

6 JUDGE PARIS: I am just trying to get down to an  
7 estimate of the final acceptance by FEMA. After the initial  
8 evaluation is done and any deficiencies, if any, are addressed to  
9 the state and local authorities and exercise is conducted and that  
10 is evaluated, where do we come out at the end? Do you have any  
11 idea?

12 MR. LESSY: Well, I should think that their formal  
13 findings and final testimony are due to this Agency by May 5th,  
14 or whatever the date we had on our draft schedule, approximately  
15 the first week in May, that the final FEMA findings would have to  
16 precede that. There is something in my mind based upon a public  
17 meeting we had with FEMA at the Seabrook site. I don't have my  
18 notes from there because as I said, I understood Mr. Cassidy  
19 was going to be coming here to talk about these dates of sometime  
20 in March. That's just a recollection at this point in time.

21 JUDGE HOIT: I'm sorry.

22 MS. HOLLINGWORTH: I don't know whether I can offer  
23 any help to the Board, but the case is not going to be heard by  
24 the Supreme Court of whether the Evacuation Plan is being adhered  
25 to according to the state legislation. That is not going to be



1 heard until September, and we do not know at this time how fast  
2 the Supreme Court will work once they have heard the case. To  
3 say that it will be 12/82, I don't think we can go on any of those  
4 figures. I think we have no basis to rule on that.

5 JUDGE LUEBKE: This is what; I've lost track?

6 MS. HOLLINGWORTH: In the Supreme Court is a case  
7 whether ---

8 JUDGE LUEBKE: What municipality?

9 MS. HOLLINGWORTH: It is the State of New Hampshire.  
10 The law calls for all local units of government in cooperation  
11 with the Civil Defense to initiate a program. At this point in  
12 time there is that case.

13 JUDGE LUEBKE: And the only way you can make a plan  
14 and get a contractor is through the Supreme Court. There is no  
15 other avenue?

16 MS. HOLLINGWORTH: No. I'm sorry. That is not the  
17 way it is. What it is, local units of government are going to  
18 initiate the plan and make the plan. But what has happened thus  
19 far, is Civil Defense has hired a firm without the local units  
20 of government. The local units of government believe that their  
21 rights have not been adhered to by the legislative.

22 JUDGE LUEBKE: I understood that. All I am suggest-  
23 ing that in the interesting of expediting things, they could  
24 start over a different way.

25 MR. LESSY: Apparently that is what is happening.

1 How many local units of government are Plaintiffs in that suit?

2 MS. HOLLINGWORTH: I do not know what the situation  
3 is. I was at a meeting the other day in Seabrook and I was told  
4 that there were only two town that weren't working. But that is  
5 not true. Exeter had a town meeting the other night and they are  
6 meeting with the Selectmen and the Exeter meeting is going to a  
7 town meeting to determine that they will not work with the Firm,  
8 and it was voted on the other night. Exeter was not considered to  
9 be one of the towns. North Hampton has also requested a letter  
10 from the Firm stating that they will not be held liable in any  
11 way should the case be ruled against them.

12 The Firm stated also at an Exeter hearing that they  
13 had worked with other towns that say that they have not worked.  
14 They have allowed them to come in and talk to the police officers  
15 or to the fire chiefs, but as far as they are concerned, they  
16 have not functioned with them.

17 This is, again, a decision for the Courts and  
18 certainly is not a problem ---

19 MR. LESSY: (Interrupting.) What it means, to put  
20 those comments in perspective, is that there are a lot of towns  
21 in the State who are working with a consultant. There are perhaps  
22 2 to 4 towns which have a problem in litigation as to the way  
23 the consultant, as I understand it, was selected. But the  
24 process is going on notwithstanding that law suit. Whatever the  
25 percentage of towns the 2 to 4 are is not a significant percentage.

1 The process is continuing.

2 MS. HOLLINGWORTH: I would like to disagree with the  
3 numbers of towns.

4 JUDGE HOYT: That process is going on

5 MS. HOLLINGWORTH: It really doesn't matter whether  
6 the towns are working or not. If the case is ruled in behalf of  
7 the towns, it will still go back to ground zero.

8 JUDGE LUEBKE: Well, what the implication of that  
9 is that the completion of the entire Emergency Planning process  
10 eventually is later than you think. That is the gist of your  
11 remark.

12 MR. LESSY: If that law suit is successful.

13 JUDGE HOYT: I think we have got everything we need  
14 on that.

15 MR. GAD: I would like to make one note, if I may.  
16 Dr. Luebke, the Board has a copy of the License Application.  
17 There is a volume entitled Radiological Emergency Plans.  
18 Appendix C in that volume is an Evacuation Time Estimate pre-  
19 pared by a consultant to the Applicant. Appendix C also contains  
20 the comments of the Massachusetts Civil Defense Agency. These  
21 will give you just an idea of the types of materials that are  
22 already available.

23 JUDGE HOYT: Yes, we received those documents and  
24 we have them in our office.

25 Let's move on now, unless there are any more

1 comments.

2 Let's go not with Ms. Hollingworth and her four  
3 Contentions on behalf of Coastal Chamber of Commerce of New  
4 Hampshire.

5 MS. HOLLINGWORTH: I submitted a response to the  
6 Applicant's response and apparently this was not the order. I  
7 submitted it to all the members and I was sure you received a  
8 copy as well. It was changed from 4 to actually 7 Contentions.  
9 It was a supplement. I apologize for not doing it in the proper  
10 order. The Applicant said that I should not have done this  
11 without leave of the Board.

12 JUDGE HOYT: Well, the Contentions I am looking at  
13 are those that you have filed in your June 8th, and I believe I  
14 used the word "4 Contentions" because on page 2 you have the  
15 word "4 Contentions." You are quite correct. It does contain  
16 more than 4.

17 MS. HOLLINGWORTH: I do apologize to the Board and  
18 to the Applicant because I am not knowledgeable in the proceedings  
19 and I did not ask for leave to do so.

20 The Staff has commented on each one, 1 through 7,  
21 and the Applicant has commented on them together.

22 MR. LESSY: Excuse me. Maybe we ought with the  
23 standing question before we deal with the Contentions. There  
24 was a lingering standing question with respect to this petition.

25 MS. HOLLINGWORTH: And I did file. Judge Hoyt asked

1 me to submit to larger numbers of members, which I did submit to  
2 both the Staff and the Applicant and to Judge Hoyt.

3 There was some question in my mind because I  
4 received this by wire, whether I was to list each and every  
5 member. There are 248 members.

6 JUDGE HOYT: I think you had taken care of that,  
7 had you not, Ms. Hollingworth?

8 MS. HOLLINGWORTH: Yes I had. I sent you a copy  
9 and the Staff and Applicant, as well.

10 MR. LESSY: The Staff had a question about it.

11 JUDGE HOYT: We put that on the wire to Ms.  
12 Hollingworth at your request that the numbers of this organization  
13 be listed prior to this Prehearing Conference. If I read all  
14 the correspondence correctly, apparently Ms. Hollingworth contacted  
15 you and you indicated that you would take a representative group,  
16 and then at some later date she could file the balance of the  
17 membership with you. That has been done in a telegram of  
18 July 9.

19 MR. LESSY: I still had one question about their  
20 standard.

21 JUDGE HOYT: All right. Go ahead.

22 MR. LESSY: You listed approximately how many groups  
23 in that pleading?

24 MS. HOLLINGWORTH: I think there were 40.

25 MR. LESSY: The question which I had, I just wanted

1 to make it clear, how members are there of the Coastal Chamber  
2 of Commerce, not being represented by you, but how many members  
3 of the Coastal Chamber of Commerce?

4 MS. HOLLINGWORTH: There are 248, I believe, as of  
5 last count. When I spoke to you, I asked if you wanted me to  
6 contact all of them and you said that 25 would be sufficient.

7 MR. LESSY: What I did say was that a complete list  
8 wasn't required. Get what you could in a short time period.

9 This is for the record. This listing is of 40  
10 members of a total membership of 248, who have expressly  
11 authorized you to represent their interests on behalf of the  
12 Coastal Chamber of Commerce in this Proceeding.

13 MS. HOLLINGWORTH: Correct.

14 MR. LESSY: I just wanted to clarify that for the  
15 record because the telegram is a little bit ambiguous in that  
16 regard and I wanted that clear on the record as to what the  
17 representation was.

18 MS. HOLLINGWORTH: I would like to say one thing.  
19 I was a little puzzled as why I was asked, because as I read the  
20 Regulations, it said that one member would be sufficient to show  
21 call and why I was asked to give a list. It isn't anything like  
22 the NAACP V. Alabama where it was ruled that it was not necessary  
23 to divulge the association of membership because that was an  
24 invasion of your right to associate. We are not afraid of the  
25 same conditions as they were, but there is some economic impact

1 that could be made on some of the businesses because in our  
2 business we do do business with the Applicant. It was of some  
3 consideration to some of the members, although all of them did  
4 give their name.

5 It was of some consideration; not that we felt that  
6 the Applicant would use that power of economic strengths against  
7 them, but it did bear some being for their names to be applied.  
8 It was a puzzlement of why we were asked to divulge the names.  
9 Is there an explanation?

10 MR. LESSY: The Appeal Board issued a Decision in  
11 1979 called the Virginia Electric and Power, in the matter of  
12 Virginia Electric and Power, North Anna Stations I & II, ALAB  
13 536, 9NRC 402, specific holdings at 404 in 1979, and that Decision  
14 faulted the Petitioner who had failed to identify members by  
15 name and address who wished to be represented by an individual  
16 such as yourself who would have standing, but who wishes to  
17 intervene on behalf of an organization.

18 That Decision was rendered in 1979 and that was the  
19 basis of my request that the standing issue be resolved prior to  
20 coming to Prehearing Conference.

21 MS. HOLLINGWORTH: If I could have one more  
22 question.

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1 MS. HOLLINGWORTH: I just wondered, was that a  
2 Ruling that more than one member had to be given or was it all  
3 the memberships?

4 MR. LESSY: Any.

5 MS. HOLLINGWORTH: Any members?

6 MR. LESSY: That is my understanding, yes.

7 MS. HOLLINGWORTH: I want to it be clear that the  
8 forty that were mentioned were not exclude any of the others  
9 because there several who would like to be on that list but it  
10 was just impossible for me over the 4th of July to contact them  
11 all.

12 MR. LESSY: Of course, that is why I suggested that  
13 you get the ones that you could to satisfy the Board's telegram.

14 JUDGE HOYT: Which telegram?

15 MR. LESSY: The telegram of the Board requesting  
16 that this Petitioner provide the names of those who she is  
17 representing on behalf of the Coastal Chamber of Commerce.

18 JUDGE HOYT: That telegram was at your request or  
19 the solicitation of that information was done at your request  
20 by this Board, Mr. Lessy?

21 MR. LESSY: Yes.

22 JUDGE HOYT: I just want to all hang together,  
23 Mr. Lessy.

24 MR. LESSY: Sure. That is right.

25 JUDGE HOYT: Mr. Gad, did you have something you



1 wanted to add to this?

2 MR. GAD: Madam Chairman, I am a little intrigued  
3 as I listen to this because we have an organization that suppos-  
4 edly has 248 members, I must say that I had heard of a much  
5 larger number but let's take that number for the moment. Forty  
6 of them have decided that they want to hire Ms. Hollingworth  
7 to come in here and propose this plan. I guess my question is,  
8 what happened to the other 208? Now that is not my real mission  
9 to get overly upset if the names of the other 208 are used in  
10 a fashion they would not improve but it is not rank speculation  
11 because I have personal knowledge that at least one member of  
12 the Chamber of Commerce does not agree with the position taken  
13 in these pleadings.

14 Now the reason we find ourselves in this situation  
15 is because we have some very amorphous rules on organizational  
16 standing and litigation by unincorporated associations in this  
17 Agency is very different from the way it is in the rest of the  
18 world. That poses often times not much of a problem because  
19 we have an organization like NECNP which was created for the  
20 purpose of this kind of a litigation or SAPL, so that the very  
21 act of a being member is some assurance that the fellows interests  
22 are in fact being represented.

23 I rather doubt that the Chamber of Commerce was  
24 created for the purpose of proposing this Plant. I suspect it  
25 was created many years before this Plant was a gleam in anyone's

1 eye. So simply sitting here listening to what I have heard, I  
2 guess I think somebody ought to ask. What about the other 208?

3 MS. HOLLINGWORTH: Judge Hoyt, could I please  
4 answer that right now?

5 JUDGE HOYT: Yes, ma'am. I am going to give you an  
6 opportunity right now. Go ahead.

7 MS. HOLLINGWORTH: I would like to respond to that.  
8 The Board of Directors voted just recently on the second set of  
9 contentions and they voted to agree to allow me to continue and  
10 we felt that the Board of Directors usually do set precedent for  
11 the rest of the membership. They agreed that I would represent  
12 them. I am doing this because I am involved in it as a business  
13 person and because of my familiarity with some of the legislation  
14 that has happened with Seabrook.

15 As far as that one member which is Public Service  
16 Company, I assume you were referring to, that is not in favor  
17 of the Chamber of going ahead, I know one person who is a member  
18 of Public Service Company who is not in favor of Seabrook Station  
19 so I guess we are equal.

20 JUDGE PARIS: Ms. Hollingworth, do you have  
21 documentation of the vote of the Board of Directors of the  
22 Coastal Chamber authorizing you to represent the Coastal Chamber?

23 MS. HOLLINGWORTH: Do I have documentation?

24 JUDGE PARIS: Do you have documentation on that?

25 MS. HOLLINGWORTH: I do not have it with me today

1 but I would be more than happy to get it for you and submit it  
2 into the Board.

3 JUDGE PARIS: Would you do that and provide it to  
4 us and provide to us and all the other parties?

5 MS. HOLLINGWORTH: Certainly.

6 JUDGE HOYT: Let me determine first, Mr. Gad, are  
7 you opposing the standing of the Coastal Chamber of Commerce to  
8 participate as an Intervenor in this case? If you are, then  
9 we are going to require certain things of the Coastal Chamber.  
10 If not, then we have got all our jury speeches on the record  
11 and we can go ahead.

12 MR. GAD: Ms. Hollingworth plainly has standing to  
13 intervene on her own and to raise these contentions. I think I  
14 was perhaps guilty of raising ius terti here but I think somebody  
15 ought to.

16 JUDGE HOYT: Then I think the question of standing  
17 for Ms. Hollingworth is resolved as a result of that.

18 I think perhaps Dr. Paris's suggestion is well taken  
19 and I would like to reiterate the need of having some letter  
20 of submission or some pleading filed by you indicating the Board  
21 of Directors had authorized you to represent the Chamber in this  
22 matter. Please give us all the matter of the Case of Seabrook,  
23 that is the proper title, the Public Service Company, the docket  
24 numbers and so forth.

25 MS. HOLLINGWORTH: Certainly. I would be glad. In

1 my original pleading I did submit a letter from the Executive  
2 Director stating that the Board of Directors had authorized him  
3 to allow me to continue but I would be more than happy to---

4 JUDGE HOYT: (Interrupting.) I recall that letter.  
5 I think at this point in time though I would like to have a little  
6 bit more formalized document attached to the record for us.

7 If it is not being opposed then, I think we clearly  
8 have standings from the Chamber at this point in time.

9 MR. LESSY: That is right, your Honor. I want it  
10 established on the record that as Mr. Gad pointed out, the  
11 Commission does have formal requirements for groups intervening.  
12 It should not be interpreted personally or anything like that  
13 but they must be met before a group can intervene. That is what  
14 we have been attempting to establish here.

15 MS. HOLLINGWORTH: That is what we have been trying  
16 to do as well.

17 JUDGE PARIS: Mr. Lessy, if she successfully comes  
18 up with documentation that the Board of Directors has authorized  
19 her to represent the Coastal Chamber, would that satisfy the  
20 Staff do you think?

21 MR. LESSY: Yes, it would, your Honor. The document  
22 should be a Board of Directors Document. The document which was  
23 submitted technically was a document that Ms. Hollingworth  
24 recited that she had been authorized. The better document is a  
25 document from the Board of Directors with respect to that.

1 authorization. Assuming that is coming in, the Staff has no  
2 objection to the representative standing of the group.

3 MS. HOLLINGWORTH: Would the Board like me to  
4 continue or would they rather wait for me to be sure that they  
5 have the document as far as standing?

6 JUDGE HOYT: I think for purposes of your partici-  
7 pation in this Prehearing Conference we waive receipt of that  
8 document at this time, Ms. Hollingworth and proceed with your  
9 presentation on Contention No. 1?

10 MS. HOLLINGWORTH: As I stated prior to this that  
11 the Applicant had responded to group them altogether 1-6 saying  
12 that the objected to them because they were lengthy and argument-  
13 ative and they were all dealing with the Emergency Planning. It  
14 was not the intent of the Chamber to be lengthy or argumentative  
15 on our Contentions but we were trying to be specific as we had  
16 been requested to be before.

17 The Applicant suggests that we just state the  
18 Regulations and this kind of puts me in a dilemma since the Staff  
19 on the other hand says that they want more specificity. So it  
20 leaves not knowing who I am to satisfy.

21 JUDGE HOYT: The Board, Ms. Hollingworth.

22 MS. HOLLINGWORTH: I hope that is the case.

23 We do not feel that the Emergency Planning is  
24 premature. In fact, we feel very strongly that it was something  
25 that should have been something that was resolved a long time ago

1 since our New England frugality has been offended when we think  
2 of spending anywhere from 3 billion to 7 billion without deter-  
3 mining whether we can be safely be evacuated. So to bring the  
4 question of evacuation up is premature after 60 per cent of the  
5 Plant has been completed.

6 I guess I should go through my Contentions.

7 JUDGE HOYT: Is that all you want to say on C1?

8 MS. HOLLINGWORTH: Well, actually the Applicant  
9 has taken 1 through 6 and lumped them together saying specifically  
10 that---

11 JUDGE HOYT: (Interrupting.) We are not going to  
12 do it that way. We are going to take them one at the time.

13 I think we have got pretty much and exhausted  
14 literally the Evacuation Plan Contentions unless you have  
15 something absolutely new and startling to add, Mr. Gad, Mr. Lessy?

16 MR. GAD: The position the Applicant took on the  
17 EPZ Contentions Chamber of Commerce, it was consistent on the  
18 ones that we had taken on Massachusetts and NECNP, New Hampshire  
19 and who ever else raised them.

20 That position was that we thought the Contentions  
21 as stated were defective and ought not to be admitted but that  
22 we had no objection to and the admission of this broad, general  
23 Contention. Now we took that position not because we thought  
24 that the rules of pleading were any less as to EPZ than they are  
25 as to other issues. We took it simply because we said we would

1 not raise an objection.

2 If in fact we are to deal with these Contentions  
3 under those rules, then the Applicant's Position would be a  
4 little different, specifically C1-2. I think it is a single  
5 contention now as it is stated in this document, is utterly  
6 without specificity and utterly without any basis whatsoever.

7 So we have a different reaction and the reason I  
8 do this is because as I listen to the Staff I become more and  
9 more convinced that our goal of saving time is not going to work  
10 and maybe has already failed. I also frankly become more and  
11 more concerned that it was not our purpose in urging the Board  
12 to admit this broad Contention on behalf of those advocated  
13 Emergency Planning Issues. It is not our intention to making  
14 a ruling over someone's objection that could later be accused  
15 of being in error. That was not our purpose whatsoever. Our  
16 purpose was to simply say we do not object because we think  
17 this is cleaner and easier. I now think that it is probably  
18 incumbent upon the Applicant to deal with each of these  
19 Contentions as they are framed.

20 C1-2 is utterly lacking in any basis or specificity  
21 whatsoever.

22 JUDGE HOYT: Mr. Lessy?

23 MR. LESSY: Your Honor, the Staff has addressed  
24 what it considers to be the obvious inadequacies of this  
25 Contention on Pages 3 and 4 of its pleading dated July 1, 1982

1 which was the response of the NRC Staff to number of petitions  
2 including this one. Unless the Board has any questions about  
3 that response, I would just rely on our written submission.

4 JUDGE HOYT: Let us move along then to Coastal's  
5 Contention No. 3. That is dealing with the Off Site Emergency  
6 Plan.

7 MS. HOLLINGWORTH: Again, we are placed in the same  
8 position. There is no Plan so it is very hard for us to be  
9 specific about or to challenge it or to do anything whatsoever  
10 regarding it. That is, again, the same situation we find  
11 ourselves in. There is no way in which we can state anything  
12 because there is nothing to address.

13 JUDGE HOYT: Anything from you, Mr. Gad?

14 MR. GAD: What I hear there is that they have not  
15 stated a contention and an explanation for why and it seems to  
16 that disposes that.

17 MR. LESSY. The Staff opposes this Contention on  
18 the grounds on Page 4 of our written submission.

19 MS. HOLLINGWORTH: We agree with the Staff that  
20 there is not a Plan and this is what the Staff stated. It is  
21 the responsibility of the Applicant to have an Evacuation Plan.

22 JUDGE HOYT: Nothin in addition?

23 MS. HOLLINGWORTH: Nothing in addition. We would  
24 like very much to be able to comment on it.

25 JUDGE HOYT. It is your fourth Contention which



1 deals with again Off Site and On Site Emergency Planning  
2 protective measures in the event of accident. Do you want to  
3 discuss anything further on that, Ms. Hollingworth?

4 MS. HOLLINGWORTH: In the State of New Hampshire  
5 we no longer have Radiation Monitoring. They have taken it out  
6 of our budget. There was some attempt last session to put it  
7 back in so that it is a concern to us.

8 JUDGE HOYT: That was a State matter though, was it  
9 not?

10 MS. HOLLINGWORTH: Yes, but we have no basis at  
11 which to gage our radiation levels now. We are just saying again  
12 the same thing as before. We need to see the Applicant Emergency  
13 Planning. It is of great concern to us. We have 200,000 tourists  
14 in the area during the summer months. We have to be able to  
15 be sure not only that they are safe but that they believe they  
16 are so. Also, in the event of a rumor that we can protect that  
17 interest.

18 JUDGE HOYT: Just as a matter of curiosity mostly,  
19 Ms. Hollingworth, do you have some sort of Radiation Stations  
20 around the State and those were recorded?

21 MS. HOLLINGWORTH: I cannot give you too much of  
22 that information. I just know that the State did have or intended  
23 to have radiations to take the levels so that they would be able  
24 to interpret any changes in radiation.

25 JUDGE HOYT: Was there a matter that they had

1 discussed or funded for the specific purpose of Seabrook or was  
2 this a statewide function?

3 MS. HOLLINGWORTH: I think that it was statewide  
4 and I am sure it was not just for Seabrook.

5 JUDGE HOYT: Had it operated for a very long period  
6 of time?

7 MS. HOLLINGWORTH: I cannot give you that information.  
8 I am not exactly sure of just what it stood.

9 JUDGE HOYT: Anything, Mr. Gad?

10 MR. GAD: Which Contention?

11 JUDGE HOYT: We are C4.

12 MR. GAD: C4A?

13 JUDGE HOYT: Yes, I believe it has been divided  
14 into A through E.

15 MR. GAD: Looking at it as a Contention under 2714,  
16 our position would be the same as the Staff's. The Staff finds  
17 parts of this okay and parts of it not. I guess I had a little  
18 trouble figuring out what this discussion about state monitoring  
19 had to do with the parts so I apologize. We would stand on the  
20 Staff's piece of paper, we treat this under 2714.

21 JUDGE HOYT: Are you speaking of the Staff's  
22 position as stated on Page 5 of their submission of July 1?

23 MR. GAD: I was reading from some notes that I had  
24 prepared but I am sure that your Honor is correct.

25 MR. LESSY: Yes. The Staff, your Honor, had no

1 objection to this Contention.

2 JUDGE HOYT: We are dealing with C4A?

3 MR. LESSY. I was dealing with all of C4. I just  
4 put them altogether. This is very much the same as New Hampshire  
5 Contention 20. The Representative said that she would like to  
6 see the Plan.

7 In this Contention the Coastal Chamber of Commerce  
8 has reviewed the Plan or the Contention references certain  
9 sections of the Plan which the Coastal Chamber indicates is  
10 inadequate and states the reasons why. That is all we have  
11 really been asking for. They also vie a legal basis with respect  
12 to the 10 CFR Regulations and certain NuRegs. That satisfies  
13 the basis of specificity requirements and in our view is a  
14 litigable contention.

15 JUDGE HOYT: That is all parts of it?

16 MR. LESSY: Yes, C4.

17 JUDGE HOYT: Let us take Contention No. 5,  
18 Ms. Hollingworth?

19 MS. HOLLINGWORTH: On C5 I think I had started to  
20 get mixed up because I had started to address C4 and C5 together.  
21 The Staff had C4 and C5 at the top of the page and I must have  
22 mixed them together. When I said I would like to see the Plan,  
23 I was referring to the Evacuation Plan. When they addressed  
24 the question they said that once the Plan was submitted, we could  
25 be more specific and I agree with them. I would like when we have

1 it to be able to--I think we can reword it more to their liking,  
2 if that is agreeable to the Staff.

3 MR. LESSY: Our position is on Page 5 of our  
4 pleading with respect to this Contention 5. The Staff objected  
5 to the Contention, that is the alleged inadequacy of the State  
6 and local plans until such plans are submitted. A contention  
7 on plans that are not submitted, obviously at this point has got  
8 to be speculative and premature.

9 We did say in that next sentence that Contentions  
10 relating to the alleged inadequacy of the plans may be promptly  
11 framed once the Coastal Chamber of Commerce has had an opportunity  
12 to examine such plans and timely submit them.

13 MS. HOLLINGWORTH: I am in agreement with that.

14 JUDGE HOYT: Am I reading that to mean that you  
15 withdraw Contention 5 at this time?

16 MS. HOLLINGWORTH: No, I am not withdrawing. I  
17 would like to be able to, when the Plan is submitted, comment  
18 more specifically on it because this is what the Board has said  
19 that they would agree to.

20 MR. LESSY: Well, what the Staff has said that it  
21 opposes this Contention as offered. I think you should have an  
22 opportunity to submit a specific contention or a contention once  
23 you have had an opportunity to review the Plan.

24 I think the Coastal Chamber has the Chair has  
25 suggested of withdrawing this Contention until that time or you

1 can continue to press this Contention at which time the Board  
2 will rule on it as stated.

3 0 MS. HOLLINGWORTH: If the Board is to go forward  
4 with bringing Massachusetts in, in the evacuation and the other  
5 people, this perhaps would be an area that the Chamber would be  
6 involved in as well and our Contentions 1-6 would be expected.  
7 That would be our hope.

8 JUDGE HOYT: I think we understand what you want then.  
9 That brings us into Contention 6, Emergency Planning Zones you  
10 have entitled this.

11 MS. HOLLINGWORTH: Yes, of course, that we are  
12 concerned about the boundaries and so forth, topology of the  
13 communities around and the LPZ and also we have perhaps one of  
14 the largest apple growers in the country in our vicinity, we are  
15 concerned about that as well for its contamination within that  
16 area. This is an area that will be----

17 JUDGE HOYT: We understand substantive concerns,  
18 Ms. Hollingworth. What we are trying to do right now is try and  
19 get the procedural aspects of how to handle that best.

20 The Staff has suggested that this Contention lacks  
21 specificity and that it could be remedied by an appropriate  
22 amendment by providing specific examples of how the Plan fails  
23 to account adequately for jurisdictional boundaries. That would  
24 be refiling of the Contention, your amendment of it at this time.

25 MS. HOLLINGWORTH: I would like to reword it. I

1 think that it can be corrected.

2 JUDGE HOYT: Can you do it at this time?

3 MS. HOLLINGWORTH: Not right at this moment, perhaps  
4 today I can. If I am given time, I am quite nervous and I am  
5 afraid that if I sat here and tried to do it, I would not do an  
6 adequate job.

7 JUDGE HOYT: I thought perhaps that you already had  
8 done it.

9 MS. HOLLINGWORTH: I had intended to but unfortun-  
10 ately I have not been able to get to it. I will attempt to  
11 accomplish that today.

12 JUDGE HOYT: Ms. Hollingworth, there is no need to  
13 be nervous with this group of people.

14 MS. HOLLINGWORTH: Well, I am afraid that being the  
15 only lay member here, I feel very, very nervous.

16 JUDGE HOYT: I would never had known it had you not  
17 told me so do not worry about that at all.

18 Anything from you, Mr. Gad?

19 MR. GAD: I think that a contention meeting the  
20 requirements of 2714, EPZ Boundaries, is not sufficient if it  
21 simply says you have not considered apples. It is not sufficient  
22 to tell us that, "We are concerned about boundaries and so forth."  
23 I think that the contention, if we are going to play by 2714 rules,  
24 ought to say that the shape of the presently configured EPZ is  
25 inadequate because it ought to make a left instead of a right

1 and pick up this town or that facility or something like this.  
2 This gets us into what we were into yesterday. It is not the  
3 Applicant's burden and the Regulation was written to preclude  
4 an argument then. It is the Applicant's burden to do an  
5 exhaustive survey of the infinite number of possibilities here.  
6 The rule was written so that anyone who thought that there was  
7 a good reason why we should put a lump in it here, could come in  
8 and litigate that and he would not be precluded from litigating  
9 that, and I agree he is not precluded from litigating that. If  
10 we are going to go out and try to draft this one again, I thought  
11 I ought to put on the record what our views are as to how it  
12 must be granted.

13 MR. LESSY: The fact that it is alleged here that  
14 the ten mile EPZ does not adequately account for jurisdictional  
15 boundaries. As I stated yesterday, it is not something that can  
16 be done without looking at a map. We have to look at the ten mile  
17 EPZ and tell us which jurisdictional boundaries he thinks are not  
18 adequately accounted for and give us the reason why. In my view,  
19 with the absence of that objective Contention, it is easily  
20 remedied.

21 JUDGE HOYT: I wonder, then, Ms. Hollingworth,  
22 having heard all this whether you have a good idea of the suggestions  
23 that you have, the points that you would have to include in any  
24 redrafting of it, including the submission of the maps attached  
25 to it.

1 MS. HOLLINGWORTH: Well, I too heard Massachusetts  
2 had somewhat the same problem yesterday when they were speaking,  
3 and I did take lessons on how to frame a Contention at the time  
4 that Mr. Lessy was so kind to tell us.

5 JUDGE HOYT: He is a master.

6 MS. HOLLINGWORTH: And I didn't know it wasn't said  
7 and I do realize that it does need to be restructured and I will  
8 do my best to.

9 JUDGE HOYT: Yes, we are going to set a time on that  
10 for you to resubmit that.

11 MS. HOLLINGWORTH: Are you going to give it to me  
12 now, Judge Hoyt?

13 JUDGE HOYT: Let's just wait a minute and get through  
14 these and then we will get to that again.

15 Unless there is something else, and I don't hear  
16 anything else on Contention 6. How about Contention 7 dealing  
17 with the Radioactive Activity Monitoring.

18 MS. HOLLINGWORTH: The Staff accepted 7 and I will  
19 have to say that I am not able to discuss in any intelligent  
20 fashion. I do have people who are witnesses who will be able to  
21 say exactly what we disagree with in this, and part of our  
22 Contention is so strong because we feel what happened just  
23 recently with Vermont Yankee and coming close to a meltdown  
24 and whether that would have an actual factor in control we  
25 are not really sure, but we do believe that we have witnesses



1 that can bear up what this Contention 7 is.

2 MR. LESSY: I would like to clarify Staff's position  
3 on 7. We filed it in two, because it is really two things, really  
4 much different things. What we delineated was 7a, Radioactive  
5 Monitoring, that is on Page 10 of New Hampshire's submissions,  
6 and there is also what looks to us like a much different Contention  
7 beginning on Page 11 on Control Room Design, although it doesn't  
8 have a different letter.

9 . So, for our purposes, at least, since they are  
10 different subjects, we did no object to Contention 7a. It was  
11 stated in Contention 7 that we did oppose, but we do not oppose  
12 7a on Radioactive Monitoring. But this Control Room Design one,  
13 which is a different subject, we did oppose that and want to  
14 discuss that next.

15 JUDGE HOYT: Yes, that is devided into two and I  
16 probably should have indicated that that deals with the Control  
17 Room Design beginning with your Page 11, the bottom of the page.

18 Do you have something bothering you Mr. Backus?

19 MR. BACKUS: Yes, I do, Madam Chairman, and I  
20 apoligize interrupting Ms. Hollingworth, but there have been state-  
21 ments made yesterday and today that the Applicant doesn't have  
22 the burden of proof on determining the appropriate size of the  
23 EPZ, and unless there has been some ruling made by the Commission  
24 or Appeal Board that I am not aware of, I just wanted to indicate  
25 on the record that I don't agree with that.

1 JUDGE HOYT: All right, thank you, very much, sir.  
2 Go ahead, Ms. Hollingworth.

3 MS. HOLLINGWORTH: The Applicant says that under  
4 7 he does not agree that we should--that most of what is there  
5 was discussed on the Construction Permit, and we find some prob-  
6 lem with that. I am not sure whether he is addressing part of  
7 or the whole of 7.

8 JUDGE HOYT: Do you want to say anything on 7b?

9 MS. HOLLINGWORTH: No.

10 JUDGE HOYT: That is Control Room Design, and do  
11 you want to make any comments other than what you have in your  
12 written submission, Mr. Gad?

13 MR. GAD: No. If it is ambiguous, I apologize for  
14 that. We, too, saw in Contention 7 two distinct contentions.  
15 The first one has already been litigated. If somebody wants to  
16 relitigate something that has already been litigated, then the  
17 decisions of the Commission explain in detail what their burden  
18 is and Contention No. 7a we respectfully submit falls woefully  
19 short of that. There is no explanation whatsoever in terms of  
20 the Seabrook Plant; the Seabrook Plant isn't even referenced in  
21 here, and why that has since become inadequate since the time that  
22 it was adjudicated the other way.

23 The second one is Control Room Design, and on that  
24 one, we like the Staff think it is utterly lacking in basis.  
25 We don't know what regulations we are supposed to have missed or

1 in what respect we are supposed to have missed.

2 MS. HOLLINGWORTH: That was pre-TMI, and under the  
3 President's Report and the Kemeny Report, the importance of that  
4 has changed, I think, so that that has changed the situation.  
5 If we have to take the lesson that we have learned with TMI,  
6 then what happens at a construction site the next time has  
7 certainly changed the situation today.

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1 JUDGE HOYT: Go ahead, Mr. Lessy.

2 MR. LESSY: The Staff objects to Control Room  
3 Design Contention as stated on Pages 7 and 8 of our response.

4 MS. HOLLINGWORTH: Then in the case of the Staff's  
5 concern, I think that that can be cleared up by being more  
6 specific. I cannot do that today because I do not have the  
7 expertise in that but I do know that I did speak with a group  
8 of people on this issue and they feel very strongly that they  
9 can clear up that Contention.

10 MR. LESSY: Your Honor, I do not want to be  
11 unreasonable. We filed our response on the 1st of July and  
12 pointed out that this Contention lacks specificity. I am  
13 concerned that the process of contentions is not going to end  
14 if Petitioners do not--We specifically addressed a lack of  
15 specificity. I think that if the Board allows Ms. Hollingworth  
16 an opportunity to talk with whom ever she is going to talk to,  
17 to get more specificity, it should be this week or within the  
18 next few days. The Coastal Chamber has had notice of our  
19 objections to this for two weeks now and I am getting concerned  
20 about the process continuing for a long time.

21 JUDGE HOYT: Yes, I am too. Mr. Lessy, we only had  
22 one to be redrafted and I believe that was Contention 6. Am I  
23 right on that?

24 MS. HOLLINGWORTH: Judge Hoyt, if I could address  
25 that. Unfortunately my father-in-law on July 4th was rushed into

1 intensive care in the hospital and I have spent practically every  
2 minute that I have been able to free in doing that. I apologize  
3 I know that illness is not usually an excuse but under the  
4 circumstances it was a life threatening situation and I do  
5 apologize to the Staff and to the Board but I did not feel that  
6 I could take that time away. I would have had this redrafted  
7 beforehand had I had the time. In truth, I only was able to  
8 pick up the Staff's report three days ago when he was removed  
9 from intensive care so I do apologize that it is not reworded  
10 and that the work is not completed.

11 JUDGE PARIS: Do you think you could do it in a week  
12 now?

13 MS. HOLLINGWORTH: I think I could try.

14 JUDGE HOYT: So that is going to be some additional  
15 submissions on C7? What are you asking for, Mr. Lessy, 7B? I  
16 know we talked about 6.

17 JUDGE LUEBKE: Are we on the Control Room?

18 MR. LESSY: Yes, that is 7B and---

19 JUDGE LUEBKE: (Interrupting.) Since it is a  
20 radically different subject, why don't we make No. 8?

21 MR. LESSY: That is a fine idea. I am not asking  
22 for any time, I am just starting to get concerned about the process  
23 ending, that is all.

24 I understand, that is probably good cause for giving  
25 Ms. Hollingworth leave to amend but I would suggest to the Board

1 proceed with---

2 JUDGE HOYT: (Interrupting.) Well, the amendments  
3 only go then to the two. You are talking about 7B and Contention  
4 No. 6?

5 MR. LESSY: That is correct.

6 JUDGE HOYT: Ms. Hollingworth, could you get that  
7 to us by the end of the month, the 30th?

8 MS. HOLLINGWORTH: Certainly.

9 JUDGE HOYT: That should be adequate time and that,  
10 of course, will be served on the Applicant, the Staff and this  
11 Board. I do not think there is any need to serve it on all the  
12 other parties.

13 MR. LESSY. Judge Paris suggested a week. If  
14 Ms. Hollingworth could make that because under the draft schedule  
15 we had, we had suggested that a Board Ruling come out with  
16 respect to this at about the 16th of August. Could you refile  
17 those two Contentions within a week?

18 MS. HOLLINGWORTH: I will try, I will do my utmost.

19 JUDGE HOYT: That will give us the 23rd instead,  
20 Ms. Hollingworth, the same service.

21 I think that concludes all your Contentions,  
22 Ms. Hollingworth. If you wish to be excused, you may do so.

23 At this point the Board will take a five minute  
24 recess.

25 (Whereupon a five minute recess was taken.)

1 JUDGE HOYT: Let's everybody take a moment to get  
2 there.

3 MR. MCDERMOTT: The original letter putting the  
4 Board on Notice was November 12, 1981 and the Contentions were  
5 filed April 13th, 1982.

6 JUDGE HOYT: You are specifically using as part of  
7 the reference in this, the filing of April 13th?

8 MR. MCDERMOTT: Yes, ma'am.

9 JUDGE HOYT: All right, sir.

10 MR. MCDERMOTT: May I proceed?

11 JUDGE HOYT: Please. Take the first one which I  
12 believe deals with Transmission Lines?

13 MR. MCDERMOTT: Yes.

14 JUDGE HOYT: That is Contention No. 1.

15 MR. MCDERMOTT: In a preliminary fashion maybe I  
16 could just comment on the Applicant's and Staff's position and  
17 then I will go into my Contentions specifically?

18 JUDGE HOYT: All right.

19 MR. MCDERMOTT: The Staff contends that there is no  
20 basis. That is the first point that they raise and then both  
21 parties, the Applicant and the Staff raise the issue that we  
22 are seeking to be litigated at this time at the Licensing Stage  
23 was fully addressed at the Construction Permit Stage. Therefore,  
24 it should be barred from consideration under the doctrines of  
25 collateral estoppel and res judicata.

1 First of all, I would like to address the issue on  
2 Basis. The objection that the Staff raises, and this is an  
3 introductory preliminary fashion, the Staff raises objection to  
4 the basis that each party to come before the Board under the  
5 requirement of 10 CFR Section 2.714. I would like to direct  
6 the Board's attention to the Philadelphia Electric Company Case  
7 called the Peach Bottom Case in ALAB 216 8 EEC 13 and I would  
8 like to quote some of the language from that decision because  
9 I myself are absolutely alarmed at the specificity demanded by  
10 both the Staff and the Applicant. I think that in addressing  
11 these issues, I think it would be helpful to all if the Board  
12 would have this case in mind.

13 The Appeal Board in this particular case addressed  
14 these issues particularly. I quote, "Section 2.714 should not  
15 be read and construed as establishing secretive and complex  
16 technicalities such as in some areas of the Law are associated  
17 with special pleading requirements for which some practitioners  
18 have an almost superstitious reverence. On the other hand, we  
19 cannot construe this Section in a vacuum." ~~Section 2.714 Section in~~

20 They go on to say, "The degree of specificity with which  
21 the basis for a contention must be alleged, initially involves  
22 the exercise of a judgement on a case by case by basis." They  
23 say, "We have repeatedly emphasized that in passing upon the  
24 question of whether an intervention petition should be granted,  
25 it is the function of a Licensing Board to reach the merits of



1 any Contention contained therein. Moreover Section 2.714 does not  
2 require the Petition to detail the evidence which will be offered  
3 in support of each Contention. It is enough that the basis  
4 for at least one Contention be identified with reasonable speci-  
5 ficity. And then it goes on to say that a purpose of the basis  
6 for Contention requirements in Section 2.714 is to help assure  
7 at the Pleading stage that the hearing process is not improperly  
8 invoked.

9 And they add, another purpose is to help assure that  
10 the other parties are sufficiently put on notice so that they  
11 will at least know generally what they will have to defend against  
12 or oppose. Still another purpose is to assure that the proposed  
13 issues are proper for adjudication in this particular proceeding.

14 It goes on to say then that on Page 20, there is a  
15 considerable amount of discretion for the Commission or the Board  
16 presiding to exercise in this area, and the exercise of this  
17 discretion, the body deciding an intervention question should  
18 not blind itself to reality, because the denial of an intervention  
19 may well close the door to further administrative relief. While  
20 granting an intervention merely sets in motion the next steps  
21 in the prehearing process which is are designed to assure that  
22 a genuine issue exists in fact which warrants an evidentiary  
23 hearing.

24 I think it is most important that South Hampton apparently  
25 has put these parties on notice to what the issues are as regards

1 a transmission lines because they are both so certain as to  
2 the issues that they feel that they have already been decided,  
3 so they are not in any doubt as to what we had in mind in terms  
4 of a Contention.

5 In the Peach Bottom Case, there is additional language  
6 which would seem their arguments have caught esstoppal and res  
7 judicata are premature at this time and they should be better  
8 dealt with at the summary proceeding stage of the hearing process.  
9 The Peach Bottom Case at the Page 21, the Appeal Board said  
10 that the fact that a Contention may be adequate for purposes  
11 of 2.714 does not mean that it gives rise to a genuine issue  
12 which must be heard. Such a Contention is subject to being  
13 summarily rejected on the merits under the Provision of 2.749,  
14 which is your summary procedure.

15 They go on to say, granting intervention, it only  
16 sets in motion the next step in the prehearing process which  
17 is designed to assure that a genuine issue in fact exists which  
18 warrants an evidentiary hearing. So, I feel that that kind  
19 of language probably indicates that we may be premature in dealing  
20 with this issue of collateral esstoppal and res judicata, but  
21 since they have raised that in answer to our Contentions, I  
22 would like to address it at this time with your permission.

23 The Board should note that in the discussion of this  
24 issue--excuse me, there are two errors that I should call to  
25 your attention in the Staff responses. First a group that

1 of Contentions, and that is on Staff response at Page 2, Para.  
2 II A, and they group together the Contentions of the Town of  
3 South Hampton and the Society for the Protection of the Environment  
4 of Southeastern New Hampshire, and in that discussion they head  
5 up the town's Contentions with the words "The Society's Contentions."

6 Now, this should really read the Town of South Hampton's  
7 Contentions.

8 Second, on Page 4 of their response the last sentence  
9 of the first paragraph should be stricken together with the  
10 accompanying footnote 3, since the affidavits that they are  
11 referring to here were not the affidavits provided by the Town  
12 but they were provided by another party represented by Mr.  
13 Chiesa, being the Society. I assume that Mr. Lessy agrees with  
14 that. We contacted him, and he---

15 MR. LESSY: (Interrupting.) You are absolutely  
16 correct, sir on the Page 2, the A, instead of saying the Society's  
17 Contention, it should read South Hampton's Contentions.

18 And then the B is correct on Page 6. That is Contentions  
19 of the Society; however, the question of the affidavits is more  
20 substantive because as I understand it, you are representing  
21 the Town of South Hampton. Is that a legally incorporated as  
22 an entity as a Town?

23 MR. MCDERMOTT: Yes, sir.

24 MR. LESSY: You are representing a Town which has  
25 approximately 700 residents. Another party, the Society for  
the Protection of the Environment of Southeastern New Hampshire  
ALDERSON REPORTING COMPANY, INC.

1 is, as I understand it, representing certain residents of the  
2 same Town; is that correct in that regard?

3 MR. MCDERMOTT: I will have to let them speak to  
4 that. I think there are more than residents of that Town.

5 MR. LESSY: But in any event, there were affidavits  
6 from--you did not submit the affidavits, but those affidavits  
7 include residents of the Town of South Hampton, and for that  
8 purpose I would like that clarification made.

9 In other words, those affidavits which state that  
10 the Petitioners for the Society for the Protection of the Environ-  
11 ment had notice of the planned transmission corridors since  
12 the late 1950's because of their affidavits, although they are  
13 clients of Mr. Chiesa, they are residents. Some of those are  
14 residents of the Town that you are representing.

15 MR. MCDERMOTT: I understand that, but I don't think  
16 that helps clarify the issue. I think that just further confuses  
17 it. I don't represent those people, and I am not submitting  
18 anything on their behalf. I think Mr. Chiesa will address any-  
19 thing you might have on the affidavits.

20 MR. LESSY: Okay, proceed, sir.

21 MR. MCDERMOTT: In regard to the collateral estoppel  
22 issue, the Applicant raises the Alabama Power Case in 7AEC203.  
23 The Applicant argues that and I am quoting from that case, "An  
24 Operating Licensing Proceeding should not be utilized to rehash  
25 issues already ventilated and resolved at the Construction Permit

1 stage." The Applicant then goes on to state that indeed collateral  
2 esstoppal applies to us. It applies to our Contentions because  
3 the routing of transmission lines was taken up at the Construction  
4 Permit stage.

5 I would like to refer the Board to the case of Houston  
6 Lighting and Power, 10 NRC Page 563, in which the application  
7 of this doctrine of collateral esstoppel was discussed at great  
8 length. The Board there, first noted at the party pleading  
9 colateral esstoppal, meaning the Staff and the Applicant, has  
10 the burden of proving that all the requirements of the doctrine  
11 are present. My observation there is that probably this should  
12 come up at a later date, because when you start to talk about  
13 proving at this stage, I think it is a little premature. But  
14 they do list four requirement for the doctrine to apply, and  
15 I am going to dispense with a discussion of the first three,  
16 because they may want to say something on that and they are  
17 fairly clear, but the fourth one is that the prior decision,  
18 which they are invoking now to prevent us from advocating our  
19 position to you, is that it must have been determined by a valid  
20 and final judgment in the prior proceeding, and we submit that  
21 in this case there was not in fact the final decision at the  
22 Construction Permit stage on the tranmission lines, and therefore  
23 the element of finality is absent.

24 In support of this, I would like to refer the Board  
25 to the First Circuit case where the Applicant, the Public Service

1 Company vs. the United States NRC, and the Citation is 582 Fed  
2 2nd, Page 77, in which the Court stated that the matter of  
3 the transmission line was, and I quote, "was purposely left  
4 in a fluid state so that a head-on collision between the federal  
5 NRC and State PUC regulatory bodies could be averted." Page 86.

6 The Court also goes on to say, "at oral argument,  
7 the Commission, the NRC, stated that should Public Service Company  
8 be unable to obtain approval of the new routing from the New  
9 Hampshire Public Utilities Commission, it could come back to  
10 the Commission."

11 So, clearly, the NRC's decision at that time on  
12 the routing of the lines at the Construction Permit stage was  
13 not final, and that was reaffirmed in the proceeding in the  
14 first Circuit by the NRC itself. In further support, we would  
15 like to say that the Public Service Company is inconsistent.  
16 They are arguing by implication that there was in fact a final  
17 adjudication at the Construction Permit stage, but they have  
18 acted--their actions speak louder than words--and they have acted  
19 contrary to that assertion. In January of 1981, they went to  
20 the Public Service of New Hampshire and they asked that there  
21 be a major change in the lines. Now, major and minor is probably  
22 a question of evidence.

23 JUDGE HOYT: What was the date of that?

24 MR. MCDERMOTT: In January of 1981. They went back  
25 to the Public Utilities Commission, and that is when the Town

1 of South Hampton began to become involved, because that is when  
2 we found that the lines were going to be changed, and in February  
3 of 1982, the Public Service Company appealed a decision of the  
4 PUC to the New Hampshire Supreme Court, and that case is still  
5 under advisement. We have argued it in February of '82, and  
6 we are still awaiting a decision.

7 So, they can't come before you and say that is final  
8 and then run to the PUC and say it is not final, and we have  
9 the right to change it.

10 I would also like to call your attention to the  
11 Houston Lighting Power case again because it sets forth two  
12 exceptions to the doctrine of collateral esstopel and res judicata.  
13 That is in addition to the points that I just made regarding  
14 that it is not a final judgment.

15 In addition to collateral esstopal applying here,  
16 there are two exceptions to the application of the doctrine  
17 of collateral esstopel and res judicata, and the first one  
18 is significant supervening developments having a possible, just  
19 a possible, material bearing on any of the issues previously  
20 adjudicated in the Construction Permit proceeding, or No. 2,  
21 the presence of some unusual factor having some special public  
22 interest implications. I suggest that we have both of these  
23 factors.

24 The first one is a significant intervening development.  
25 Well, of course, there is more than one of those. There are

1 at least the Public Service Company's own inconsistent position  
2 saying that the lines have to be changed, and they have gone  
3 to the Supreme Court to try to get the lines changed. That  
4 certainly is a different factor than was present at the Construction  
5 Permit proceeding, and more importantly to us in the course  
6 of events regarding the establishment is the course of events  
7 that has been occurring regarding the historic districts. Historic  
8 Districts were started in South Hampton in 1974 completely apart  
9 from the proceeding, even though someone from the outside might  
10 think that our daily lives are dictated by what happens in Seabrook.  
11 That is not the case. There are interests in Historic Districts  
12 in this Town or City of Portsmouth and in other places, and  
13 that was the first Historic District that at least for the center  
14 of T wn in 1974.

15           And that is a substantial intervening factor. This  
16 Commission, the Nuclear REGulatory Commision, is obliged under  
17 Federal law to consider the deliterious affacts which the Seabrook  
18 Project, and specifically the tranmission lines, might have  
19 on Historic Sites. I refer you to 16 USC, Section 470 Para. f.  
20 A specific agency resonsibilities are set forth in great detail  
21 in 36 CFR Sect. 800.4, and while the NRC was notified of the  
22 potentially deleterious affects of these routes in South Hampton,  
23 on numerous occasions since the issuance of the Construction  
24 Permit, the agency has failed to satisfy its responsibilities  
25 of conducting appropriate studies in providing the information



1 necessary for an adequate review of the effect of the undertaking  
2 that it might have on a potentially Historic District.

3 It was further the responsibility of the agency  
4 to provide the information to the keeper of the National Register  
5 of the Historic Places, so that he, the keeper, might make an  
6 informed and reasonable evaluation whether the Districts in  
7 question can meet National Register criteria and to determine  
8 the affect of the undertaking, meaning the Historical Site.

9 The NRC has failed to do this completely in my opinion.  
10 In view of their failure to discharge these responsibilities  
11 under the Historic Preservation Act, local authorities, the  
12 Rockingham Regional Planning Council and the Town of itself,  
13 have undertaken to amass the appropriate data to file with the  
14 keeper of the National Register of Historic Places for a determin-  
15 ation of eligibility for inclusion in the Register. That is  
16 this application here that as I understand it has already been  
17 submitted.

18 Had the NRC fulfilled its obligations under this  
19 Act, this matter would already have been referred to the Advisory  
20 Council on Historic Preservation. The Council would have then  
21 had an opportunity to comment back on the effect of the Seabrook  
22 undertaking has on these historical districts.

23 We believe that the action of the local agencies  
24 in submitting the appropriate data to the keeper of the Register  
25 as well as the failure of the NRC to fulfill its duties in this

1 regard constitutes a sufficient intervening development to give  
2 us status as an Intervenor and allow us to submit Contentions.

3 JUDGE HOYT: Am I understand you to say, Mr. McDermott,  
4 that the Commission must file that?

5 MR. MCDERMOTT: Yes, ma'm.

6 JUDGE HOYT: Do you want to respond to that?

7 MR. LESSY: Very much so, your Honor.

8 JUDGE HOYT: At the appropriate time.

9 MR. MCDERMOTT: I am almost finished.

10 The second exception cited in the Houston Power  
11 and Lighting case is the presence of an unusual factor involving  
12 special public interest implications. That is the second factor  
13 that would bar the application of the doctrines of thid collateral  
14 esstopal, even if you found that it was a final decision; this  
15 is another additional exception.

16 I would like to direct your attention to two Federal  
17 statutes, as well as an Executive Order, which indicate that  
18 the nurturing and preservation of Historic Sites is a matter  
19 of National Policy. The statutes that I refer to are 16 USC  
20 Sect. 461, and I quote, "it is hereby declared that it is a  
21 National Policy to preserve for public use Historic Sites, buildings  
22 and objects of National significance for the inspiration and  
23 benefit of the people of the United States." That was in 1935.

24 JUDGE HOYT: Let me interrupt you to ask you, is  
25 this particular Indian ground hill, has that been so designated

1 as an Historical Site?

2 MR. MCDERMOTT: No, that is the application that  
3 has already been filed with the--yes, ma'm?

4 JUDGE HOYT: That is it?

5 MR. MCDERMOTT: But eligibility is not the whole  
6 factor; the fact that something has been--it is the responsibility  
7 of the agency, the NRC, once it becomes aware of this to deter-  
8 mine whether or not such a site would be eligible. We have taken  
9 it a step beyond that to get eligibility, and it is our under-  
10 standing from the information that we have been able to gather  
11 that thus far we will be registered. One never knows until you  
12 are registered, but it would appear that we would be.

13 In 1966, there was a finding by Congress that this  
14 1935 recitation that I just gave you was not being implemented.  
15 Now, in 1966, and I refer you to 16 USC Section 470, under d,  
16 the Congress found and declared that although the major burdens  
17 of historic preservation has been born and major efforts initiated  
18 by private agencies and individuals, and both should continue to  
19 play a vital role, it is nevertheless necessary and appropriate  
20 for the federal government to accelerate its historic preser-  
21 vation programs and activities to give maximum encouragement to  
22 to agencies and individuals undertaking preservation by private  
23 means and to assist state and local governments and the National  
24 Trust for Historic Preservation in the United States to expand  
25 and accelerate their historic preservation programs and activities.

1           Now, in addition, there is an Executive Order from  
2 the President. It is May 15, 1971, where the President declared  
3 it is National Policy that "The Federal Government shall pro-  
4 vide leadership in preserving, restoring, and maintaining the  
5 historic and cultural environment of the nation."

6           Now, that is my submission, and I will be happy to  
7 deal with Contentions if the Board wishes.

8           JUDGE HOYT: I think you pretty much covered your  
9 first two, have you not?

10          MR. MCDERMOTT: Yes, ma'm.

11          JUDGE HOYT: And perhaps three as well.

12          MR. MCDERMOTT: Perhaps three as well.

13          JUDGE HOYT: So that leaves us only four which deals  
14 with the property values of the Town of South Hampton. Do you  
15 want to address anything with regard to that? Can you hold off  
16 just a moment and finish with Mr. McDermott first.

17          MR. MCDERMOTT: The fourth Contention is the adverse  
18 impact which is termed there financial because it would have a  
19 substantial impact on property values, but it also is environmental  
20 in that the Town has only one commercially zoned area, and that  
21 area is going to be traversed by the transmission lines which  
22 will pretty much destroy the effectiveness of that particular  
23 section of Town to be used as a commercial area. By commercial,  
24 I don't mean in the nature of the development of the New Jersey  
25 around the Port of New York. I mean maybe a small shopping center

1 or a small manufacturing company. With the transmission lines  
2 running overhead in the vicinity of the commercial district the  
3 way it is, it would appear that that commercial district's ability  
4 to serve its function for the Town is going to be destroyed.

5 JUDGE HOYT: Could I ask you how you get power  
6 there now? I take it there is commercial development there now.

7 MR. MCDERMOTT: Yes. There is power there now and  
8 there are lines. Yes, ma'm.

9 JUDGE HOYT: Do you think that this Plant would  
10 bring in additional transmission lines of a different character,  
11 is that what you are saying?

12 MR. MCDERMOTT: Yes, ma'm.

13 JUDGE HOYT: The higher---

14 MR. MCDERMOTT: The higher and the increase in what  
15 they are going to carry as opposed to what is being presently  
16 carried in that same area.

17 You see, the Town of South Hampton seems to be the  
18 forgotten part of New Hampshire. No one seems to know where  
19 South Hampton is; even people who live in the area always need  
20 directions to get to South Hampton.

21 JUDGE HOYT: We found it without a problem.

22 MR. MCDERMOTT: Well, apparantly the only one that  
23 found it recently was the Public Service Company when they  
24 decided to run a line through it, but if you look at the Plant,  
25 and you look at the existing lines, you would assume that the

1 lines would run north and south and the lines would run west.  
2 A person of average intelligence would never assume that the  
3 lines might run southeast from the Plant through the Town of  
4 South Hampton. That may be part of the reason why the Town has  
5 not surfaced until recently, because we were not a party to the  
6 original proceeding.

7 JUDGE HOYT: Has there been any maps filed by you  
8 or diagrams, or schematic diagrams, that show it?

9 MR. CHIESA: There are some on the back here.

10 JUDGE HOYT: Oh, good. I thought I saw somebody  
11 with maps here. Do you want to put that in as part of your  
12 submission then, sir?

13 MR. CHIESA: We are really on the same issue  
14 between the Society and the Town of South Hampton, and the  
15 arguments which Mr. McDermott made to you this morning also  
16 would bear on the Society and that is what I wanted to say before,  
17 but I do have a map which shows the historic sites which are  
18 proposed, and also a map showing the transmission lines and  
19 how they go through.

20 JUDGE HOYT: We are not so much interested in getting  
21 into the merits of this thing at this point, but whether or not  
22 there is in this record any of that information available on it.

23 MR. LESSY: That information is specifically in the  
24 transmission line reading of the Draft Environmental Statement,  
25 your Honor.

1 JUDGE PARIS: While we are on that, could somebody  
2 identify the quadrant or quadrangle?

3 MR. LESSY: You have to compare those maps with  
4 these, but they are on Page 3-31 of the Construction Plans  
5 final Environmental Statement issued September, 1974. Also  
6 a number of additional maps in the Construction Permit file in  
7 the environmental segment, on Page 914 and 915, all through  
8 that section, Chapter 9, where these matters were discussed  
9 in connection with the construction of the transmission lines.

10 You can compare these maps with yours at the break.

11 JUDGE HOYT: The maps of yours being the maps that  
12 the Society has.

13 MR. LESSY: Yes, your Honor.

14 JUDGE HOYT: And we do for the record, I think we  
15 should describe that the counsel for the Society has--I am trying  
16 to find the full name of the organization.

17 MR. CHIESA: Society for the Protection of the  
18 Environment of Southeastern New Hampshire.

19 JUDGE HOYT: It's a long one. I just wanted to be  
20 sure that those are described, if you will, so that they will  
21 accurately reflect what we are looking at here at the hearing.

22 MR. CHIESA: Would you like me to do that?

23 JUDGE HOYT: Yes, would you please.

24 MR. CHIESA: The large map would be a survey map  
25 of the area of southern New Hampshire, the Seabrook Plant being

1 in this position right here, and the large line showing coming  
2 down here and across is a double line, a double transmission line,  
3 which breaks at this point and travels down into Massachusetts,  
4 and the other one goes westerly to Scobie Pond, which is in the  
5 western or middle part of New Hampshire.

6 JUDGE HOYT: And that map is, I take it, a US  
7 Geodetic?

8 MR. CHIESA: Yes, USGS survey map, United States  
9 Department of Army, Corps of Engineers, and it is called the  
10 Exeter Quadrangle, and the Newport-West New Hampshire quadrant.

11 JUDGE HOYT: And the other one you have on the board  
12 there?

13 MR. CHIESA: This is a map of the Town of South  
14 Hampton showing the proposed historic districts, and this little  
15 one down here, your Honor, shows how the transmission lines cut  
16 across first of all this section and down through, so that how  
17 the transmission lines would affect the starred districts, it  
18 does not affect all of them, your Honor, just two.

19 JUDGE HOYT: Could you just identify the document  
20 that is on the board there.

21 MR. CHIESA: It's the cultural landscape and resource  
22 inventory map prepared by the Strafford-Rockingham County Regional  
23 Council.

24 JUDGE HOYT: And the small one?

25 MR. CHIESA: The small one is a photostat of that



1 just showing the transmission lines.

2 JUDGE HOYT: All right, that adequately describes  
3 it for us.

4 MR. MCDERMOTT: May I just interject?

5 JUDGE HOYT: Yes.

6 MR. MCDERMOTT: With Mr. Chiesa helping me, I think  
7 he made one error in that he said it intersected only--it affected  
8 only two historic districts. That is not quite the case; it  
9 affects three, plus the historic site of the Indian Ground Hill.

10 JUDGE HOYT: Have you identified those three in the  
11 first three Contentions?

12 MR. MCDERMOTT: Yes, ma'm.

13 JUDGE HOYT: The Indian Campground and the historic  
14 district which is the center of South Hampton, and the historic  
15 area known as Jewelltown and island, is that right?

16 MR. MCDERMOTT: Yes, ma'm. The Town is quite rural  
17 in character, and it would appear from the plans as they have  
18 presently been shown to us, and they have these changes on  
19 appeal to the Supreme Court, so we don't know what the final  
20 plans are going to be. The Town has 7.8 square miles. It is  
21 going to contain 14,000 square feet of high voltage overhead  
22 transmission lines, which will be one-half to two-fifths of  
23 every square mile will look upon these lines. And there will  
24 exist approximately 18 feet of transmission line per person in  
25 this Town and 55 feet of transmission line per home, which is

1 probably as dense as it is anywhere in the United States, and  
2 part of it is because we are very rural and the residences are  
3 in certain small areas, and it just so happens that the lines  
4 are impacting these areas.

5 JUDGE HOYT: Can we move away from the merits of  
6 the Contention?

7 MR. MCDERMOTT: Yes.

8 JUDGE HOYT: And do you have anything in addition  
9 to the meeting the objections that were filed by the Staff and  
10 the Applicant in this case?

11 MR. MCDERMOTT: No, I think that completes my  
12 presentation.

13 JUDGE HOYT: Which one of you gentlemen want to  
14 speak first?

15 MR. GAD: I don't know whether I won or lost.  
16 Governments have been in the business of deciding where transmission  
17 lines are going to be for a long time, and the fellow who first  
18 thought that was a good idea learned pretty quickly that maybe  
19 he wasn't right about it at all. Someone once referred to this  
20 as the business of figuring out whose lawn party got skunked.

21 Everybody thinks that transmission lines are a great  
22 idea as long as they are built over there. From the beginning of  
23 the world until 1970, however, the Nuclear Regulatory Commission  
24 was sage enough to stay out of this business. Transmission lines  
25 have no safety implications, or thought they had no safety

1 implications until 1970. And there is no safety issue that is  
2 being raised here.

3 What is being raised here is a NEPA issue. And that  
4 is the issue that went to the First Circuit, and the question was  
5 whether or not--let me back up a little bit.

6 Transmission lines have no safety implications.  
7 You do have to have them, not to get the power out of the Plant,  
8 but to get power back into the Plant. The NRC had never been in  
9 the business of saying where shall we site them and shall we put  
10 them in this man's Town or that man's Town until NEPA came along.

11 The ruling of the Court, which frankly we urged be  
12 otherwise, was that the NRC would now have to exercise NEPA  
13 jurisdiction over the location of transmission lines, even  
14 though it had no Atomic Energy Act jurisdiction over the location  
15 of transmission lines.

16 The point of all that is that this is a NEPA issue  
17 only, and therefore, if we go back to first principles, and I  
18 hate to sound like a broken record on this, but the regulations  
19 of this agency will tell us what are the scope of the NEPA issues  
20 in operating license cases. Regulations, I respectfully submit,  
21 are 10 CFR 51.21 and then 51.23 and couple following that refer  
22 back to 51.21. And a general proposition they exclude from  
23 the operating license environmental inquiry issues that have  
24 already been considered in the Construction Permit Environmental  
25 inquiry, and the only thing that you can consider in the operating

1     licensing case is something that is new or something that is  
2     different.

3             There is nothing in the Contention that has been  
4     submitted to this Board that demonstrates that there is anything  
5     new or different about the transmission lines issues proposed to  
6     be raised now from what were in fact raised and in fact litigated,  
7     written about in the DES and the FES and written about at great  
8     length in the decision of the Licensing Board, the decision of  
9     the Appeal Board, and the decision of the United States Court  
10    of Appeals for the First Circuit in the Construction Permit case.

11            JUDGE HOYT: How do you respond then to Mr. McDermott's  
12    argument that estoppel does not attach here because the issue has  
13    not been made final.

14            MR. GAD: Well, presumably--I was going to get to that  
15    in a second, but when the Judge asks the question, we change our  
16    order real quickly.

17            JUDGE HOYT: No, if it out of sequence, go ahead  
18    and continue on and pick it up again at the appropriate time.

19            MR. GAD: I may be repeating myself in this and I  
20    would rather do it now. The Applicant presently have in their  
21    back pocket an NRC Construction Permit to build the lines in  
22    these locations, and more precisely in the corridors which  
23    were ultimately approved as a result of the NRC litigation in  
24    the Construction Permit case. The Public Service Company has  
25    not yet applied for and I am not suggesting that there is any

1 intention of applying for one, an amendment to an NRC Construction  
2 Permit with respect to the location of the transmission line.

3 Now, the case that is pending in the New Hampshire  
4 Supreme Court, which I am not directly involved in, I think I  
5 can enlighten you a little bit about it. When one says that this  
6 is a matter of prior litigation, it is in fact a matter of prior  
7 litigation with emphasis, because before you ever litigate where  
8 the transmission lines are going to be in front of the NRC, in  
9 New Hampshire at least, you litigate where they are going to be  
10 in front of an agency of New Hampshire called the New Hampshire  
11 I think it is called SEC, which I think stands for Site Evaluation  
12 Commission. I am not certain of what the initials stand for.  
13 I am certain of the initials.

14 That was done, and the New Hampshire SEC came up  
15 with what it preferred for the lines. The Applicant took the  
16 results of the New Hampshire litigation and put them in the  
17 Construction Permit and the result of that was that the Staff  
18 did not go along. The Staff advocated different routes from  
19 what was in and approved by the New Hampshire agency. And one  
20 of the issues that the Applicant's took to the United States  
21 Court of Appeals for the First Circuit was well, what happens  
22 to us if we are told by the State of New Hampshire to build them  
23 here, and incidentally, the differences do not apply to the area  
24 that is of interest here, but we took to the Court the question  
25 of what happens to us if the State of New Hampshire has told us

1 to build them here and the Nuclear Regulatory Commission has  
2 told them to build them over there; do we have ourselves a pre-  
3 emption problem, and it was in order to deal with the pre-emption  
4 problem that the agency said to the Court, in oral argument and  
5 the Court memorialized it in this opinion that well, we will face  
6 that problem when you go back to the State agency and ask them  
7 to conform their permission to the NRC Construction Permit.

8 The case to which Mr. McDermott refers, I am informed,  
9 is a little bit different. And that is that in the course of  
10 planning the lines within the NRC approved corridors, which  
11 happen to include the SEC approved precise location, it was  
12 decided to make some small changes in the SEC approved precise  
13 locations. That did not require a change in the NRC License  
14 which had approved the corridor.

15 The Company went back to the New Hampshire SEC  
16 and what the New Hampshire SEC said is, look it, if the NRC is  
17 going to regulate this, we don't want to be involved, and they  
18 therefore declined jurisdiction. My understanding is that the  
19 appeal to the New Hampshire Supreme Court was taken by someone  
20 else. As I say, I was not involved.

21 In any event, the point is that we have been through  
22 this once before and it has been discussed in the Construction  
23 Permit Environmental issuances DES and the FES and the Licensing  
24 Board decision constituting an amendment to those documents, and  
25 under Section 51.21, and those Regulations incorporate 51.21

1 by reference, the matter is not open for relitigation here asking  
2 a showing that has not been made.

3 The second point that I think the Board has to take  
4 into account is the whole question of estoppel by prior litigation.  
5 Frankly, I personally think that the use of the terms res judicata  
6 and collateral estoppel is potentially misleading, because those  
7 doctrines which apply to inter canem litigation might rise  
8 between two parties. Those doctrines are far too narrow to  
9 what is in real life in rem litigation.

10 When we come to Court, we come before this Board  
11 or a cognate Board to argue about how bolts in Mr. Backus'  
12 frazmus or some other issue. We are not arguing how many bolts  
13 should be Board approve as between Intervenor x and Public'  
14 Service Company of New Hampshire. The issue before the house  
15 is what action ought the agency to take on this application.  
16 There is only one application. There is only one action that  
17 can be taken on it. That is in rem litigation.

18 It is highly analagous to title registration under  
19 Torrens Act for those States that have it. There are a whole  
20 bunch of other example of in rem litigation; settlement of estates  
21 is one. Interestingly enough the adjudication of common carrier  
22 rates is one. When such as issue is raised, the question is not  
23 what shall the rates of charge be as between the carrier and the  
24 rates of charge for one particular service over one particular  
25 line, what shall they be as between the carrier and party a.

1           The issue is what action shall the agency take on  
2 the application that is for it. Now, one characteristic of in  
3 rem litigation is that when it is commenced notice goes out to  
4 all the world, and that is what happens when the NRC Construction  
5 Permit case is convening. Notice goes out to all the world and  
6 all the world who has a litigable contention is invited to come  
7 in and participate. Some people might say that all the world  
8 takes up the invitation nowadays. We are not quite that bad  
9 yet, but a lot of people do come in necessarily a lot of people  
10 decide for whatever reason to stay out.

11           A second characteristic of in rem litigation is  
12 that you are bound by the Judges, when you come in or whether  
13 do not. You have had your chance, and it matters not whether  
14 you came into Court and lost, or whether you stayed out of Court  
15 and were defaulted. And society imposes that rule because as  
16 a practical matter there can be only one answer to the kinds of  
17 questions that are answered in rem litigation, such as, what  
18 action shall the agency take on this application. That is what  
19 the Construction Permit case was all about.

20           The issues of what corridors these lines should  
21 run down was litigated. It was litigated to the hilt, and it  
22 was litigated virtually all the way up the ladder, and it was  
23 litigated in rem. I submit that it was litigated for the last  
24 time.

25           The third point---I am informed I misspoke myself



1 as to rationale on why the New Hampshire SEC declined to take  
2 jurisdiction. It was not because the NRC had taken jurisdiction,  
3 it was on other grounds. In any event the company went back to  
4 the New Hampshire SEC and asking for permission and the New  
5 Hampshire SEC declined to take jurisdiction.

6 The third reason why these requests are not admissible  
7 here, and I apologize for that, because I say I was not involved  
8 in that case--the third reason why these Contentions are not  
9 admissible here is because each of them goes to the question of  
10 where shall the transmission lines be built. They are not  
11 contending that we ought to have this Plant with no transmission  
12 lines whatsoever. They are contending that the presently pro-  
13 posed construction of the transmission lines for one reason or  
14 another is offensive.

15 The problem with that contention in an operating  
16 license proceeding is this; the company already has an NRC  
17 Construction Permit for these lines and these corridors. With  
18 all due respect to this Board, it was not convened for the purpose  
19 of deciding whether or not that issuance of that license was a  
20 good idea or whether or not that license should be altered or  
21 amended in any fashion. For this we rely upon among prior  
22 decisions the Appeal Board decision in ALAB 674, Consumers  
23 Power Company, dated, May 5, 1982. I would like to give a full  
24 cite to this one, because it is not in something that we previously  
25 did before the Board. ALAB 674 in the CCH Nuclear Regulatory

1 Reporter Series commencing at Paragraph 30,678, dated May 5, 1982.

2           Therein the Appeal Board said that---

3           JUDGE HOYT: (Interrupting.) 30,678 is that?

4           MR. GAD: 30,678.

5           JUDGE HOYT: Go ahead.

6           MR. GAD: The Appeal Board in that case said that  
7 pursuant to that mandate, i. e., the mandate that is given to  
8 the Atomic Safety and Licensing Board, a Board can authorize  
9 or refuse to authorize the issuance of an operating license.  
10 It does not however have general jurisdiction over already  
11 authorized ongoing construction of the Plant for which an  
12 operating license application is pending, and it cannot suspend  
13 such a previously issued permit; thus the Board below is powerless  
14 to grant the relief that the Intervenor requests.

15           The relief that is ultimately requested here is and  
16 must be that these lines not be constructed where they are  
17 presently proposed to be constructed and where they are presently  
18 licensed to be constructed.

19           JUDGE HOYT: What was the subject of ALAB 674?

20           MR. GAD: I believe it had to do with the question  
21 of shutting down construction because the QA Program was thought  
22 to be inadequate, and an attempt to inject QA into the operating  
23 licensing proceeding.

24           The relief sought is of necessity that these lines  
25 not be built where they are presently proposed to be built and

1 not be built where they are presently licensed to be built, but  
2 be built elsewhere.

3 It is, Madam Chairman, and Members of the Board,  
4 a matter that is for legal purposes happenstantial that the lines  
5 have not already been built, because the NRC license requires  
6 us to build them where they are presently proposed to build them  
7 and it has been outstanding for some years. If somebody wants  
8 to have that license altered or amended, some want it suspended  
9 in some fashion, then as the Midland Board pointed out that the  
10 agency's regulation provide for a mechanism for doing that, but  
11 they do not provide for it being done in an operating licensing  
12 case.

13 I apologize for taking up so much time. That goes  
14 to all five of South Hampton's Contentions.

15 JUDGE HOYT: Mr. Lessy.

16 MR. LESSY: I will try, your Honor.

17 JUDGE HOYT: Can you give us anything in addition  
18 to what you have already submitted to us in your pleading of 5/10.

19 MR. LESSY: I'll try to, your Honor. The Board is  
20 familiar with that, and that will save some of my comments.

21 JUDGE HOYT: Sure.

22 MR. LESSY: As Mr. Gad said, all the five  
23 Contentions filed by the Town of South Hampton involve the location  
24 of transmission lines emanating or going to the Seabrook Plant.

25 An examination of the pleading proposing the

1 transmission lines, the April, our date is April 16th, so the  
2 date of the Society's pleading is April 13th, 1982, is a list  
3 or basically five sentences. Those five sentences, each with  
4 a separate number are the Contentions. There is no legal basis  
5 reference thereto.

6 Just a couple points in addition to the fact that  
7 there is no basis; we agree with Mr. Gad's presentation in that  
8 each of those Contentions in our view shouldn't be admitted  
9 because it seeks to raise a matter which is not within the scope  
10 of issues of an operating license proceeding generally. Although  
11 the Town of South Hampton were not parties to the Construction  
12 Permit proceedings, the matter of the Seabrook transmission lines  
13 was litigated before the licensing Board and the cites for that  
14 are in my pleading.

15 The findings are 3 NRC 57, 885 and subsequent pages.  
16 Not only did the Appeal Board approve the location of those  
17 transmission lines routing, but the ALAB which discusses that  
18 states that the Appeal Board review included a tour of the area  
19 and route review. It doesn't say which routes. It just says  
20 part of the route.

21 The important point I want to underscore is that  
22 although there was extensive litigation, as Mr. Gad stated,  
23 concerning the location of the transmission lines, the Town of  
24 South Hampton did not seek to enter that proceeding, and that  
25 is the point that I want to focus on. As I stated on, in terms

1 of operating licensing boards, the Commission's Regulations--  
2 under the Commission's Regulations implementing the National  
3 Environmental Policy Act, the environmental review at the  
4 operating licensing stage is a general matter limited to consid-  
5 eration of relevant information which has arisen since the  
6 authorization of the Construction Permit, and that is 10 CFR  
7 50.21 and 51.23(e) and if Mr. McDermott has said on behalf of  
8 his client, and I will disagree with that but I appreciate how  
9 well it was said, the Commission has generally barred relitigation  
10 of issues at the operating license stage that were litigated before.

11 Now, whether you use a res judicata label, or a  
12 collateral estoppel label, I prefer myself to use a jurisdictional  
13 label. This Board is designed to consider the operating affects  
14 of the application, not the construction of the transmission lines.

15 There are a number of citation in footnote 5 of my  
16 pleadings which discuss the jurisdiction of operating license  
17 boards; and I won't bother to rehash those. Basically the rule,  
18 I think, is that in an operating license proceeding, the Board  
19 should not reach back to include matters previously determined  
20 in a prior proceeding, with a couple of exceptions, which I will  
21 get to in a moment.

22 I want to add, as I said in our pleading, before I  
23 get to the exceptions, that Staff believes that public policy  
24 reasons also argue against such relitigation. It is doubtful to  
25 us whether persons who had actual notice of proposed transmission

1 line routing or noticed that they were going through the Town  
2 or notice of purchase of transmission line rights of way should  
3 be permitted to wait on the sidelines until after the matter has  
4 been extensively litigated and adjudicated and first raise the  
5 issues after the Commission has authorized the construction of  
6 the lines. That also goes to the question of public interest.

7 In addition---

8 JUDGE HOYT: (Interrupting.) I have just very real  
9 problem with that; aren't those transmission lines, though,  
10 regardless if they were purchases, sort of a warehousing of those  
11 lines, so that you get a little bit away from the public interest  
12 of notice to the public; don't you, Mr. Lessy?

13 MR. LESSY: The litigation of the Seabrook Construction  
14 Permit and the specific litigation of the relocation of that route  
15 was extensive, and there was no way for that Town that persons  
16 couldn't have notice of what those rights of way were purchased  
17 for.

18 JUDGE HOYT: But those purchases were considerably  
19 before this Plant. I just didn't want to let that go by without--

20 MR. MCDERMOTT: I beg to differ on that.

21 JUDGE HOYT: I will give you an opportunity to do  
22 that and let Mr. Lessy complete his presentation.

23 MR. LESSY: I also believe that the Staff also  
24 believes that to permit such relitigation absent meeting the  
25 special interest factor would be inefficient and likely to cause

1 delays because this is an extensive issue.

2 Now, let me address two points which are used,  
3 the collateral estoppel and resjudicata, and I have a copy of  
4 this opinion. It is a significant opinion on the jurisdiction  
5 of operating license boards which Mr. Gad refers to. I can  
6 tender it to the Board if the Board doesn't have it.

7 JUDGE HOYT: Just give me a cite on it.

8 MR. LESSY: I will underscore it. It is ALAB 674.

9 JUDGE HOYT: Did you say it was a new decision?

10 MR. LESSY: The Midland decision. It quotes on  
11 Page 3, an operating license board does not, however, have  
12 general jurisdiction over the already authorized ongoing  
13 construction of the Plant for which an operating license appli-  
14 cation is pending and it cannot suspend such a previously issued  
15 permit.

16 Now, with respect to the Advisory Council and that  
17 statute which was attempted to be used for that argument of  
18 significant intervening developments, the Chair's question was  
19 right on point. The question of compliance for the 16 USC  
20 Historic Preservation Act is a matter that has been delegated  
21 to the Staff. You asked does the Commission have to comply  
22 with that? That is a matter that has been delegated to the NRC  
23 Staff, and therefore, there is a significant body of case law  
24 to the effect that licensing boards sought to supervise the  
25 Staff in its independent licensing and regulatory functions.

1 JUDGE HOYT: We are aware of that, Mr. Lessy.

2 MR. LESSY: The argument with respect to the NRC  
3 Staff's compliance with the Historic Preservation Act in my  
4 view runs afoul of that prohibition by the Appeal Board, subse-  
5 quently approved by the Commission and Shearon Harris knows of  
6 the decision. Notwithstanding that, whether I agree with that  
7 or not personally, I will continue, but that is a significant  
8 second jurisdictional problem with respect to his argument.

9 The point here is, and I did have some documents,  
10 that the draft Environmental Statement for the Seabrook Construction  
11 Permit which was issued in April of 1974, showed consultation  
12 with the Advisory Council on Historic Preservation. It also  
13 showed consultation with the--on Pages 2 to 5, and I have copies  
14 for the Board since it was a lot of time to get these out of our  
15 old CP file of almost ten years ago, so I will save the Board  
16 and also give a copy to the two Petitioners who raise the issues  
17 here--it also shows consultation with the State Historic  
18 Preservation officers on Pages 2 - 5 with respect to this matter.

19 So, at the time of the environmental review with  
20 Staff with respect to the construction permit stage, NEPA issued  
21 National Environmental Policies Act issues, after construction  
22 permits stage, the Staff considered the views of the Advisory  
23 Council and also considered the applicable regulations and dealt  
24 with the appropriate State officials. I also have a letter here  
25 dated 12/6/73 with respect to showing consultation with the



1 the Commissioner of the Department of Natural Resources and  
2 Economic Development for the State of New Hampshire with respect  
3 to the location of these transmission lines, and I will also pass  
4 out a letter from the Staff, which has already been provided to  
5 Mr. McDermott, a letter from the Staff to the Advisory Council  
6 for Historic Preservation with respect to an inquiry regarding  
7 this, and which we state in this letter that this matter was  
8 long ago determined here.

9 The reason why I am going to burden the Board  
10 with these documents of 1973 and 1974 is because this is the  
11 timeframe in which these arguments were considered. And this  
12 is the timeframe in the Staff's view the Town of South Hampton  
13 and its residents represented, or certain of its residents,  
14 represented by the Society had and argued the obligation for  
15 consideration to attention of the NRC and its adjudicatory  
16 boards while the matter was being considered then, because  
17 there were alternates. Anyone who is in the construction permit  
18 proceeding and the record will show there were alternate routes  
19 discussed and litigated and some of those alternate routes were  
20 approved.

21 The one question I would like to have answered is  
22 why did the Town of South Hampton or its members wait back in  
23 1973 back in 1974 and 1975 when this matter was being litigated  
24 until 1982 to bring this matter to the attention of the Board.  
25 It is a significant equitable consideration.

1           The other thing I want to say about that statute;  
2 my recollection of the remarks by counsel for South Hampton was  
3 that in his opinion, my notes say, that the NRC had not complied  
4 with that statute, and that was a significant development. That  
5 was posed to me earlier on the telephone by Mr. Edelman. We  
6 called the appropriate officials at the Advisory Council and  
7 they had no such opinion. The matter is so old that they have  
8 lost, the Advisory Council on Historic Preservation in Washington,  
9 has lost all of their records with respect to this matter. They  
10 have no idea with respect to this matter.

11           What they are asking us to do is provide them with  
12 our records with respect to this matter, and the documents that  
13 I am going to provide the Board, I am going to provide to them.  
14 The one thing I want to point out about this statute, the  
15 Historic Preservation Act, and the group that administers is that  
16 it is an Advisory Council. When you take a look at the statute  
17 and what it does is that it seeks to give its comments on certain  
18 proposed construction activity. That advice, though, is all that  
19 they give.

20           In my experience in litigating that statute, they  
21 do not--that statute doesn't even begin to reach the kind of  
22 relief that South Hampton and the Society wish. I mean, South  
23 Hampton's 5th Contention is reasonable alternatives to the  
24 present transmission line routes, including, but not limited to  
25 underground placement of lines must be formulated prior to the

1 granting of operating authority. Now, I have practically 40 cases  
2 currently under my perview, and a lot more over the last number  
3 of years, and I know of only two instances in which that statute  
4 has ever worked and I think was ever utilized in a proceeding,  
5 not in a proceeding to be litigated, because, as I say, it is a  
6 Staff matter to comply with it.

7 But let me tell you exactly how that statute is  
8 viewed. I remember the utility, but not the case. It was about  
9 four years ago there were some transmission lines going through  
10 some Indian Hills down in Louisiana area outside New Orleans,  
11 and it was Gulf States Utilities, and there was this field where  
12 they had these mounds. You know it was kind of like playing  
13 Russian roulette. All of a sudden one of those transmission  
14 line builders was going to go in or off over the side of one of  
15 those hills. Well, the Advisory Council gave us timely comments  
16 and the State Historic Preservation Officer gave his timely  
17 comment, and what happened was that the utility agreed that at  
18 that point in time that before the big machinery would come by  
19 to push the dirt away to build that transmission tower, that  
20 certain people, including archeologists, would go through with  
21 little shovels to make sure that there wasn't anything there  
22 that would offend that statute.

23 Well, the Advisory Council then went through that  
24 and it took about a week, and they found an arrowhead. There  
25 was an indian arrowhead in there, so everyone was satisfied.

1 They went through it with a little shovel. They pushed that dirt  
2 aside. Saved the arrowhead. Sent it to a museum and then the  
3 utility came through with a bulldozer and built a transmission  
4 line.

5 Now, the second one I am familiar with is a little  
6 bit more involvement. In that case, there was a little unique  
7 antique facility that was a structure. It wasn't a hill. It  
8 was a structure, and the Advisory Council had timely comments  
9 to the Staff and with respect to that the structure was so small  
10 that without even making a change in the drawing, the transmission  
11 was moved about a foot to the right and the structure was preserved  
12 and there was a fence put around it, and anyone who wanted to  
13 take a look at it had a chance to look at that little structure.  
14 I think it was an oven of some kind.

15 So, my point of going through these examples is  
16 the fact that that is not the kind of statute, an advisory  
17 statute, which in my view even reaches the kind of threshold  
18 that the Commission has set forth in Fargley as to significant  
19 supervening development with respect to the overall position  
20 that operating license boards should not go back to relitigate  
21 matters, and I am trouble, as I say, with the equities of the  
22 fact that these matters were known with respect to these residents.  
23 They should have been brought forward before the matter was  
24 extensively litigated before the licensing board and the appeal  
25 board. Now, I will distribute a copy of the relevant pages of

1 1974 Draft Environmental Statement of the Staff, which also  
2 has these from the NRC Staff to the State officials, and one  
3 final one is a letter from the NRC Staff currently to the  
4 Advisory Council setting forth the Staff's position in that  
5 regard. .

6 JUDGE LUEBKE: Mr. Lessy, while you are giving away  
7 goodies, would you give me the date of ALAB 674, please.

8 MR. LESSY: I will do better than that; I will give  
9 it to you. Let me just show it to you, opposing counsel. I  
10 have underscored one sentence. It's the one I read. And there  
11 is no editorial comments with respect to it.

12 JUDGE HOYT: Does anybody else want to see it?  
13 Let me also ask you, Mr. Lessy, to give a copy of these environ-  
14 mental statements to the reporter for attachment to the record.  
15 And I guess we better keep these in some sort of orderly list  
16 of these, so we will mark this one as Counsel's Exhibit B,  
17 and we will take it as a package as I think there are three parts  
18 to it as one exhibit.

19 (The 11 page document was  
20 received and marked as Counsel  
21 Exhibit No. B.)  
22  
23  
24  
25

1 MR. LESSY: The one final argument that I wanted to  
2 add is that under the 2.714, the Contentions must be relevant to  
3 the subject matter under review. It is our view that the subject  
4 matter under review does not include the construction permit  
5 transmission lines siting locations which the town of South  
6 Hampton has attempted to litigate.

7 For that reason, even though that the town of South  
8 Hampton may have satisfied the standing requirements of 2.714 A,  
9 they have not offered one good contention as required by the  
10 Commission's decisions and that, therefore, we oppose their  
11 intervention petition and it should be denied.

12 JUDGE HOYT: Mr. McDermott, maybe you will respond?

13 MR. MC DERMOTT: Thank you. The points brought out  
14 by Mr. Gad regarding the Supreme Court Case, this Board must  
15 understand that that Case is pending and the Applicant cannot take  
16 two absolutely different positions. They can't be in the Supreme  
17 Court and before the New Hampshire Site Evaluation Committee  
18 which is an arm of the Public Utilities Commission saying we can  
19 change the lines and tell you that that is a final decision and  
20 they can't change the lines.

21 That is totally inconsistent and I think that that  
22 is something that has to be brought up here because these lines  
23 not only are not final; they have told the Agencies that they  
24 are not final. There were at the time that those changes were  
25 submitted, there were not only changes in the east/west route,

1 there were accommodating changes in the north/south route. I am  
2 point to the map that is on the wall. There were four differnt  
3 changes submitted by the Public Service Company as they went from  
4 the town to the State and to the Supreme Court.

5 I think these are factors that can't be ignored.  
6 The in rem argument made by Mr. Gad based on Notice to the  
7 World bothers me substantially. I think this Board must follow  
8 Appeal Board Decisions. The Notice to the World Case is a  
9 Cleveland Lighting Case and that is a Licensing Board Decision  
10 and not an Appeal Board Decision and I think that the Houston  
11 Power & Light Case is a case that you must follow regarding both  
12 the issues of bases and the issues of collateral estoppel.

13 JUDGE HOYT: Let me ask you because I am not quite  
14 sure. What is the difference between the cases in the State  
15 Courts now on the transmissions lines that you say the Applicant  
16 has taken a different position on and the lines of transmission  
17 that have been established by the NRC? Is there a difference  
18 there?

19 MR. MC DERMOTT: There is a difference, yes.

20 JUDGE HOYT: And will the position, the new position  
21 that the Applicant takes, bring it in synch with the construction  
22 permit designations within the license given to a construction?

23 MR. MC DERMOTT: Absolutely no. They want to  
24 change what was given to them originally. They wanted to change  
25 that.

1 JUDGE HOYT: Anything else, sir?

2 MR. MC DERMOTT: Just to clarify that. The Public  
3 Utilities Commission Site Evaluation Committee gave them certain  
4 authority to change the lines. South Hampton has challenged this  
5 in the Supreme Court saying that the Public Service Company is  
6 not the only person. If there are going to be changes in the  
7 lines, due process absolutely requires that other parties have  
8 a right to have some input in the change of lines.

9 The Public Service Company cannot sit as an arbitra-  
10 tor as to why lines should be changed. The procedure described  
11 by the Public Utilities Commission was, if you wanted a change  
12 in the line, you could have one, but you had to go to them and  
13 they would then propose it. That issue, among others, is now  
14 before the New Hampshire Supreme Court.

15 Just briefly on the points made by Mr. Lessy --  
16 We must not lose sight of the fact that this is not an advisory  
17 statute as he refers to it.

18 JUDGE HOYT: You are referring to the Preservation  
19 Act?

20 MR. MC DERMOTT: Yes. Just to re-emphasize my  
21 point, the reference that we gave to 16 USE as Sections 470 f,  
22 says:

23 "The head of any federal agency having direct or  
24 indirect jurisdiction over a proposed federal or federally  
25 assisted undertaking in any state, and the head of any federal



1 department or independent agency having authority to license  
2 any undertaking, shall, prior to approval of the expenditure of  
3 any federal funds or the undertaking or prior to the issuance of  
4 any license, as the case may be, take into account the affect of  
5 the undertaking on any district site, building, structure or  
6 object that is included or eligible for inclusion in the National  
7 Register. Ahead of any such federal agency shall afford the  
8 Advisory Counsel on historic preservation established under  
9 Title II of this Act," and then they give some references.

10 I think that is very important and I would like to  
11 call your attention also to 36 CFR, Section 800.4 which is the  
12 applicable regulation. It says that if either the Agency Official  
13 or the State Historic Preservation Officer finds that a property  
14 meets the National Register criteria or a question exists as to  
15 whether a property meets the criteria, the Agency Official shall  
16 request a determination of eligibility from the Secretary of the  
17 Interior in accordance with 36 CFR, Part 63.

18 I am not trying to lay blame on anyone. I am just  
19 saying that those facts exist and I think that at this stage of  
20 the Proceeding, that support for our Contentions to be here ---

21 JUDGE HOYT: (Interupting.) Mr. McDermott, what  
22 jurisdiction do you think this Licensing Board would have to give  
23 you the relief that you seek in that regard? Isn't that the  
24 pitch that Mr. Lessy made on that.

25 Your arguments are persuasive, interesting and

1 perhaps pertinent, but is this the appropriate forum is what I am  
2 really asking.

3 MR. MC DERMOTT: It may turn out that it is not. We  
4 just want to make sure that if this Board is entertaining Contentions  
5 we feel that that is a valid legitimate Contention because of the  
6 inconsistency on the part of the law.

7 Apparently the Applicant does not understand whether  
8 this decision was final back at the Construction Permit stage  
9 because they have taken inconsistent positions on it in the Courts  
10 on it. We feel that that is a legitimate issue and there is no  
11 point in having a plant if you can't carry the power. We do feel  
12 it is an issue that this Board is going to have to deal with  
13 eventually.

14 The fact that this submission has been made to the  
15 Keeper of Historical Places will naturally trigger the inquiry  
16 from the NRC as to why they haven't, and it is the burden of the  
17 NRC to put the package together, to go to the Advisory Counsel and  
18 say here it is.

19 JUDGE HOYT: Again, Mr. McDermott, you are going to  
20 the wrong body within the Commission because we don't have any  
21 jurisdiction in that regard. We are a licensing board.

22 MR. MC DERMOTT: I understand your point, but again,  
23 the issue is one that this Board is going to have to deal with  
24 one way or another.

25 JUDGE HOYT: Do you have anything else, sir?

1 MR. MC DERMOTT: Thank you.

2 JUDGE HOYT: Just briefly, I think ---

3 MR. GAD: The Construction Permit Case is final.  
4 It is over. The license that was issued, the ink is dry, it has  
5 been in the desk for about six years and a lot of dollars have  
6 been spent. That Case is final.

7 The fact of the matter is that the Regulations  
8 afford the Company the opportunity to go in and ask to have that  
9 license ammended. They also afford Mr. McDermott's clients the  
10 opportunity to go to the NRC and ask to have it ammended.

11 The potential that somebody may ask to have the  
12 license ammended does not make the licensing litigation final. I  
13 respectively submit that there is some confusion in the argument  
14 that has been made to you between the finality of the decision  
15 that precludes relitigation here and the finality with which  
16 someone might decide to go ask to have that license ammended.

17 Presumably the town of South Hampton complains  
18 about the transmission line routes that were approved in the  
19 Construction Permit, else they wouldn't be here. If the lines  
20 that bother them are the lines that are within that Permit, then  
21 that Permit controls. If the lines that bother them are some  
22 other lines, then they are premature and they are here before  
23 anyone has asked for NRC authority to build on those other lines.

24 JUDGE HOYT: I don't think you have anything else,  
25 do you, Mr. Lessy?

1 MR. LESSY: No, your Honor. Not at all.

2 MR. MC DERMOTT: Your Honor, in connection with  
3 Mr. Lessy's submissions, I have some correspondence that was  
4 addressed to the Agency that probably should go in at the same  
5 time because it bears on the point that he made.

6 Maybe if I could show those to Mr. Lessy, we will  
7 offer them, too. We are not prepared to submit any evidence at  
8 this time because we didn't think it was ---

9 JUDGE HOYT: (Interrupting.) I don't think that  
10 this is necessary to evidence. We are merely attaching it to  
11 the record as Counsel's Exhibit.

12 MR. CHIESA: They provide a basis for my factual  
13 statements, your Honor.

14 JUDGE HOYT: And I think that was the way in which  
15 they were offered, so there is no problem.

16 May we give you a moment to organize. Let me ask  
17 you when Mr. McDermott finishes if you would then make your pre-  
18 sentation.

19 MR. CHIESA: Fine.

20 JUDGE HOYT: Let us have about a five minute recess.

21 (Whereupon a brief recess was taken.)

22

23

24

25

1 JUDGE HOYT: We will come to order. Let the record  
2 reflect that with the following exceptions, the parties are all  
3 here in the hearing room. Judge Paris is temporarily excused and  
4 will rejoin this Board momentarily. Until such time, I will  
5 continue with the hearing, and Judge Paris has just entered, so  
6 there is no need to have gone through that ritual.

7 However, I think we want to take up now the Society for  
8 the Protection of the Environment of Southeastern New Hampshire.  
9 Do I have it all in there?

10 MR. CHIESA: You got that one just perfect.

11 JUDGE HOYT: Good.

12 MR. MCDERMOTT: Your Honor, could we, respectfully --

13 JUDGE HOYT: I beg your pardon, Mr. McDermott, you did  
14 ask that we get those in.

15 MR. MCDERMOTT: Yes, and we've shown them. These are  
16 letters to Mr. Harold Denton of the NRC from the Chief of Project,  
17 the Advisory Council on Historic Preservations. One is dated  
18 May 5, 1981, a follow up letter of January 5, 1982, and another  
19 letter of January 25, 1982 and I believe he submitted their  
20 reply which was July 2, and then we have the letter to the  
21 Applicant dated July 2, 1982.

22 MR. LESSY: That letter is to the NRC staff dated July 2.

23 MR. MCDERMOTT: I'm sorry. I stand corrected.

24 MR. LESSY: I'm going to have a comment with respect  
25 to those documents.

1 JUDGE HOYT: All right. All the documents you have  
2 described to the Board, Mr. McDermott, we will attach to the  
3 record as Counsel's Exhibit C, and that is a five page submission.

4 (Whereupon the document was  
5 .marked Counsel's Exhibit C  
6 for identification.)

7 MR. MCDERMOTT: Thank you.

8 MR. LESSY: These documents underscore the point from  
9 the staff's view that what we're really talking about is a matter  
10 not appropriately before a Licensing Board. This is correspon-  
11 dence between the NRC staff. One is comments by the Advisory  
12 Council on Historic Preservation to the NRC staff with respect  
13 to the draft of Environmental Impact Statement and the other are  
14 three letters to the NRC staff which are answered in an additional  
15 letter.

16 JUDGE HOYT: Are you raising an objection, now, to the-

17 MR. LESSY: No, I'm explaining the context. The Board  
18 is not interested in hearing - I would just like to make --

19 JUDGE HOYT: Doesn't the document stand for itself?

20 MR. LESSY: They do. I want to underscore one point  
21 and that is that the personnel in handling this matter for the  
22 Advisory Council have changed and that will be obvious from taking  
23 a look at these documents, and because of that, they have been  
24 unable to locate their files and since these files are so old, it  
25 took us a good long time for us to locate them, also. I just

1 wanted to make that clear to the Board.

2 JUDGE HOYT: Well, since they are not in evidence and  
3 merely indicate what was handed to the Board and the only purpose  
4 for which it has been identified and attached to the record, Mr.  
5 Lessy.

6 Let's go ahead. Mr. McDermott, I take it that completes  
7 everything you wanted to do?

8 MR. MCDERMOTT: Yes, mam. Thank you.

9 JUDGE HOYT: Mr. Chiesa?

10 MR. CHIESA: May it please the Court, Madame Chairman  
11 and Members of the Board, the contentions which were set out on,  
12 I believe, April 21, 1982 as far as the Society go are three in  
13 number. A and C are covered in the Town of South Hampton's con-  
14 tention and I believe that they, if allowed, would be parallel  
15 to those.

16 In that vein, the same objections have been filed by  
17 the Applicant as well as the staff concerning collateral estoppel  
18 or res adjudicata. I would incorporate by reference rather than  
19 taking more time in which I would reiterate what Mr. McDermott  
20 has stated as far as we feel the law goes, and if it's alright  
21 with this Board, rather than rehashing that again, I would like  
22 to stand on what Mr. McDermott said in his excellent presentation.

23 JUDGE HOYT: So, you would like to zero in on Contention  
24 B on page 3 of that which deals with the health?

25 MR. CHIESA: Yes, mam, health and welfare.

1 JUDGE HOYT: Health and welfare stated and in this one,  
2 health of the inhabitants of the dwellings.

3 MR. CHIESA: I would like to say one further bit about  
4 the collateral estoppel issue which I think I'm a little bit  
5 apart or different from the Town of South Hampton in that the  
6 Society which I represent was not in existence at the time of the  
7 previous hearings. Many of the people who are members of my  
8 Society were not inhabitants of the Town of South Hampton at that  
9 time, nor did they have any knowledge of the construction license  
10 which was being heard or brought before the Nuclear Regulatory  
11 Commission at that time.

12 I would also like to say, furthermore, that I feel that  
13 there has been newly discovered evidence or new evidence which  
14 was not brought forth at that time which might have a very serious  
15 bearing on all of the contentions, and namely that is the ques-  
16 tion which had been discussed previously about the historic  
17 sections, which are shown on the maps which I have presented.

18 I would further like to say that I agree with Mr.  
19 McDermott that I think the contentions should lie, that discovery  
20 should take place, and then some redispotion should be taken  
21 prior to any litigation or hearing of evidence in these matters  
22 if there is no such new evidence that is being presented or a  
23 change of position of the party. This is, in a sense, an  
24 equitable proceeding. I was very happy to hear the pronouncement  
25 of the law by the Applicant's counsel and about in rem and in



1 personam jurisdiction. But I think that this even transcends  
2 that in the sense that most of what I've read there is a balance  
3 of the equities, and, again, if you're in what we use here in  
4 New England as equity jurisdiction, the Court has a perfect right  
5 to take a look at the equities on all sides and determine whether  
6 or not something is being done properly or not.

7 I would like to say as far as my Contention goes, which  
8 is B, that I would point to, I guess, Title 10, Part II, Applica-  
9 tion A, VIII B3 and that states whether there is reasonable  
10 assurance, number one, that the activities to be authorized by  
11 operating license can be conducted without endangering the health  
12 and safety of the public and this is what I am basing my conten-  
13 tion on of B, and what I would like to do is to say that there  
14 certainly has been some newly discovered evidence in this area.  
15 It is alluded to in the Draft Environmental Statement. My people  
16 tell me that there are approximately 500 new studies and papers  
17 that have been published and written since 1977 concerning the  
18 effect of the electromagnetic field on people living near trans-  
19 mission lines.

20 These studies have been undertaken to determine the  
21 effect on genetics, on the cardiovascular system, on hemato-  
22 logy, on biochemistry, on neuro physiology and granted there is  
23 no specific study that I know of that has actually used humans  
24 to the extent that they put them under the transmission lines  
25 for any period of time, a lot of them have been done by laboratory

1 animals. But one of the things that I did not see mentioned here  
2 in the DES, Draft Environmental Statement, was, and I think some-  
3 one has lost sight of this, that there is a double line which is  
4 contemplated by the Public Service Company of running out of  
5 Seabrook through to Indian Ground Hill.

6 Now, they talk about 345 kilorolt lines, I guess it is.  
7 There would be a double line in that particular instance. There  
8 has been no mention made, if you have that much more electricity  
9 going through causing these fields and the effect that it would  
10 have on people living near there.

11 I would like to further state, and I don't think that  
12 this is - I don't want to get into any testimony, but there are  
13 dwellings as close as ten or fifteen feet to the proposed corri-  
14 dor, and that certainly, to my mind, presents a grave danger to  
15 the health of the inhabitants who are near that. I think that  
16 certainly is a matter which should be taken up by this Board and  
17 that evidence should be produced and listened to testimony as to  
18 whether this is a health hazard to those people living near there  
19 or not.

20 As far as other things that have been mentioned, and I  
21 do have in my file a letter from the President of the Public  
22 Service Company of New Hampshire who does state in this letter  
23 that as far as he is concerned, the lines could be changed. Now,  
24 I'd be glad to present that as far as evidence goes, or to clear  
25 the record, and I'll certainly show the Council if they would

1 want me to.

2 JUDGE PARIS: Mr. Chiesa, how many scientific papers  
3 did you say had been published on the health effects of trans-  
4 mission lines since what date?

5 MR. CHIESA: I believe that was since 1977. I can get  
6 the direct answer and be glad to furnish that. But what I under-  
7 stood from talking to my people, who would be available to testi-  
8 fy and who have made a very thorough study of this, that there  
9 had been approximately 500 such papers. Now, these also include  
10 some in Russia and so forth. I may be off on the 1977 date. But  
11 I am certain that there have been approximately 500 of these  
12 papers or published, or at least that's my information.

13 JUDGE PARIS: That sounds like an extremely high  
14 number in the brief number of years since 1977. If you could  
15 clarify that?

16 MR. CHIESA: I certainly will, and I wasn't prepared to  
17 give any testimony or anything on that order today, but that was  
18 what was presented to me and I will double check that and I can  
19 furnish a list of those if the Board would like it.

20 JUDGE PARIS: If you can give me a list of 500 since  
21 1977, I would like to see it.

22 JUDGE HOYT: Would you address that to Doctor Paris.

23 MR. GAD: Is that with or without enclosures?

24 MR. CHIESA: I may be wrong on the date. If I am, I  
25 will so notify you.

1 JUDGE PARIS: Write us a letter and clarify, please.

2 MR. CHIESA: Fine, and I'll enclose those and direct  
3 them to your attention.

4 JUDGE HOYT: What is it you wanted to show to the  
5 Council?

6 MR. CHIESA: There was a big discussion before which  
7 took place between the Applicant's attorney and Mr. McDermott as  
8 to the finality, which they claim these transmission corridors  
9 have taken and that no one can touch it. As late as August 20,  
10 1980, the President of the Public Service Company of New Hampshire  
11 certainly didn't feel that way and I have a letter signed by  
12 him, a copy of it.

13 JUDGE HOYT: If counsel wants it.

14 JUDGE LUEBKE: It was my understanding as I listened  
15 that these things were always subject to amendment.

16 MR. CHIESA: Well, there's been some question about  
17 that. The Supreme Court case, which was in New Hampshire Supreme  
18 Court, which I had the opportunity to argue on behalf of the  
19 Society, the Public Service Company of New Hampshire took the  
20 position that they were only ones who had a right to ask for any  
21 revisions of any lines and that no one else did. One of the  
22 problems that the Supreme Court addressed in that action, and  
23 there was great discussion generated by Judge Brock of our  
24 Supreme Court who was very concerned about the fact that no notice  
25 was given to anyone living along the transmission line of either

1 the taking, any changes made in the line, or anything on that  
2 order. As I say, that was argued, I believe, in February, the  
3 first week in February, 1982 and the decision hasn't come down  
4 as yet, to my knowledge anyway.

5 JUDGE HOYT: Is that everything you have on that? .

6 MR. CHIESA: Yes. I'd be glad to try to answer any  
7 questions.

8 JUDGE HOYT: Mr. Gad.

9 MR. GAD: I have no objection to the Board looking at  
10 this letter, but I will caution in advance that I think that it  
11 has nothing to do with the issue before the house. Either  
12 brother Chiesa didn't hear me or I didn't speak myself correctly.  
13 The litigation of the construction permit is as final as any  
14 litigation ever will be. The company may, under the Commission's  
15 rules, go in and seek an amendment to the construction permit  
16 to do any number of things, one of which might be to build a  
17 transmission line over here instead of over here.

18 Likewise, anyone in the world can file an application  
19 under 10 CFR Section 2.206 seeking the same thing. The point is  
20 that unless and until somebody files such an application and the  
21 Commission approves it and the construction permit is issued,  
22 then the litigation, that construction permit including where  
23 the lines are authorized to be built, is final.

24 In that connection, and I should open by saying that  
25 I'm going to adopt a suggestion of limiting ourselves to Conten-

1 tion B of the Society believing the other two do stand or fore  
2 with South Hampton's.

3 There is an attempt by the Society to wedge this Con-  
4 tention in to the reasonable assurance of public health and  
5 safety finding requirement, the reference to which is drawn from  
6 Appendix A to Part II. I would just like to remind the Board,  
7 and the Board is probably way ahead of me on this, but that, of  
8 course, refers to radiological health and safety.

9 Neither the Board nor the Commission has any non-  
10 radiological health or safety jurisdiction over transmission lines  
11 or anything else. As we argued earlier, transmission lines over-  
12 sight, to the extent that the Agency has, arises entirely out of  
13 NEFA.

14 Finally, on the question of notice, all I can say is as  
15 a factual matter, Public Service went around to each of the  
16 towns and each of the communities where in it was proposed to  
17 build these lines. It advised people of what it intended to do  
18 and it solicited comments and responses, objections --

19 JUDGE HOYT: (Interrupting.) You did hear counsel say  
20 that his Society had not been formed at that time, though.

21 MR. GAD: I'm coming to that. All of that is as a  
22 matter of fact. It's nice in order to put some people at ease.  
23 It's all legally irrelevant. The notice that is required is the  
24 notice in the Federal Register. That notice is notice to all of  
25 the world and there are a whole line of decisions that say that

1 nobody can come in and complain that for any reason, including  
2 that he didn't use to live here or that his organization wasn't  
3 previously in existence, he is not bound by Federal Register  
4 notice.

5 That's an issue of law not an issue of fact. Society  
6 Contention B is like the other contentions. A contention that  
7 the line be built somewhere else instead of where they are now  
8 authorized, that requires a change in the construction.

9 JUDGE HOYT: Mr. Lessy, quickly, do you have anything?

10 MR. LESSY: Yes, very quickly, your Honor. I think we  
11 have a slight disagreement with Mr. Gad as to the litigability  
12 of the question of health effects of the operation of transmis-  
13 sion lines. Now, this is a different matter than the question  
14 of the location of the transmission lines, the site of the trans-  
15 mission lines.

16 This Contention as proposed by the Society that we have  
17 in front of us says, "the effect that the proximity of the pro-  
18 posed transmission lines to present dwellings in the Town of  
19 South Hampton and the effect of such proximity would have on the  
20 health of the inhabitants of the dwellings". As we've pointed  
21 out in our previous pleadings, not only the one on this Contention,  
22 but the one we filed November 25, 1981 on page 6, this is  
23 concerning what happens when you operate those lines. It doesn't  
24 regard or require any movement of the construction or any change  
25 to the construction permit. You can't have a litigal contention

1 if it's properly framed in an operating license proceeding with  
2 regard to the effects on the populace of the operation of a trans-  
3 mission line.

4           However, the only thing that this Board has before it,  
5 there are the three sentences on the top of page 3 of the  
6 Society's petition as well as the reference to Appendix A to  
7 Part II concerning radiological health and safety and because of  
8 that, we feel that a properly framed contention - we haven't a  
9 jurisdictional problem with respect to that contention.

10           The staff believes, however, that a properly framed  
11 contention which faces the specificity hasn't been made here on  
12 this record. For that, we simply rely on our pleading of May 10,  
13 1982 on page 7.

14           MR. CHIESA: May I reply to that?

15           JUDGE HOYT: Yes, please.

16           MR. CHIESA: I guess what I'm talking about in specifi-  
17 city, I don't know how specific you have to get on things. But  
18 what I'm talking about in B is not the change of the lines, but  
19 what happens when you put the juice through those lines and you  
20 start the electromagnetic field and the effect that it has on  
21 those people.

22           Now, I don't know how clear I can make it.

23           JUDGE PARIS: Mr. Lessy is not in disagreement with you  
24 on that. He just made that point. He's talking about specificity  
25 and the lack of specificity in the Contention.



1 MR. CHIESA: Could I cure that by saying that the  
2 effect of the electromagnetic field as the juices - and I'm  
3 probably not using the right terms, but - as the juice goes  
4 through those wires and gets to wherever it's going.

5 JUDGE PARIS: Mr. Lessy, I think you were referring to  
6 the effect on the inhabitants of what dwelling where with  
7 reference to the line, right?

8 MR. LESSY: Yes, and also a reference to - well, he  
9 did provide a reference to Appendix A to Part II. Previously,  
10 there had been no basis. The Board has to decide whether or not  
11 that reference is an adequate basis and whether or not B is  
12 specific. We felt there were problems with regard to both with  
13 respect to this Contention, although we don't have a jurisdic-  
14 tional problem with the subject matter.

15 MR. CHIESA: May I ask a question? In other words, the  
16 staff is asking me to say what dwelling where is going to be  
17 effected?

18 JUDGE HOYT: I think it's more general. Do you want to  
19 answer that question?

20 MR. LESSY: With respect to basis, the reference that  
21 you've given, as Mr. Gad said, is radiological effects not  
22 electrical effects. That basis is going to be, in my view,  
23 inadequate. The only thing the Board has before us is the three  
24 lines here that say the proximity of the transmission lines to  
25 dwellings and the effect that such proximity would have on the

1 health of the inhabitants, and you've referenced specifically  
2 electromagnetic effects. Now, I think if you have anything more  
3 specifically in mind with regard to health effects or anything  
4 of that nature, that's the kind of thing we'd be looking for  
5 before we could state whether or not we would accept this kind  
6 of detention.

7 MR. CHIESA: The things that I'm talking about are, as  
8 I quoted before, genetic changes, cardio vascular systems, hema-  
9 tology, biochemistry and neuro physiology. What limited reading  
10 I've done have shown that there have been effects in a number of  
11 these fields. If what they're asking me to say is, is it going  
12 to effect Sam Jones' house as compared to Joe Smith, I don't  
13 think that is called for here. I think what should be done is  
14 that discovery should be undertaken to determine where this  
15 particular phenomenon would effect, and if it doesn't effect any-  
16 one along that line, then I suppose that the Applicant, or  
17 whoever, could file and say that I should be thrown out.

18 JUDGE HOYT: Mr. Lessy and Mr. Gad, we have the Coastal  
19 Chamber of Commerce coming in with some rewording. Would you  
20 have any objections to fill out this Intervenor to do also within  
21 the same timeframe? You are shaking your head and that's a no  
22 shake?

23 MR. GAD: Yes, mam. The Applicant's would have no  
24 objection. We'll shoot in a response and presumably the Board  
25 can decide on the papers.

1 MR. LESSY: No objection.

2 JUDGE HOYT: Give us a rewording on that along the lines  
3 that you've heard discussed here, Mr. Chiesa.

4 JUDGE PARIS: Since you are going to come in with a  
5 filing, why don't you just attach to that the list I asked you  
6 for.

7 JUDGE HOYT: And address that copy to Doctor Paris.

8 MR. CHIESA: I sure will.

9 JUDGE HOYT: Seriously, would you give us that by  
10 July 23.

11 MR. CHIESA: No problem.

12 JUDGE HOYT: If you want to - it's not imperative that  
13 you submit a response if you don't want to, Mr. Chiesa. I think,  
14 unless there is some other matter, counsel, we'll move along into  
15 the next Intervenor.

16 MR. CHIESA: I didn't know whether you wanted this  
17 letter?

18 JUDGE HOYT: We don't care for that one. Thank you.  
19 However, it has been shown to counsel and is not been shown to  
20 the Board and the Board has not attached it to the record.

21 Let's see, I think if we can possibly get them all in  
22 today, we want to - how about Sudden Valley Association. Mr.  
23 Edelman, you have been most patient through four days of this.

24 MR. EDELMAN: Madame Chairperson, being the last one  
25 to present his case, I hope I will not be the blame for someone

1 missing his plane.

2 JUDGE HOYT: I think there is one other Petitioner that  
3 has come forward here. He has never appeared in the case.  
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1 JUDGE HOYT: It's Lynn Chong and co-members for  
2 Responsible Investment. Does anyone here know anything about  
3 that organization? They have never made any appearance on this  
4 record. We've had two pleadings from them, and you've responded  
5 to at least one of them. I think the record should reflect that,  
6 in all cases--

7 MR. EDELMAN: (Interrupts) Madam Chairperson, I  
8 believe someone is trying to be recognized with regard to  
9 Lynn Chong.

10 JUDGE HOYT: Well, now, just one moment here - if  
11 there is a representation to be made from a member of the public,  
12 we want you to identify yourself. Please come on up. If this  
13 can clarify it for the Board, because I don't know how else  
14 we can do it. Do you want to take on one of these mics here?  
15 Would you identify yourself, please, ma'am?

16 MS. DOUGHTY: Yes. My name is Jane Doughty from  
17 the Seacoast Anti-Pollution League. Lynn Chong called me on  
18 Wednesday evening and expected to be here either Thursday  
19 afternoon or Friday. I have no idea why she's not here, but  
20 they still do have an interest in the proceeding, and it must  
21 have been some circumstance to prevent her--

22 JUDGE HOYT: (Interrupting) you are not, in any  
23 way, associated with the organization at all.

24 MS. DOUGHTY: No, not at all. I'm just passing  
25 that on for information.

1 MR. PERLIS: Excuse me, Madam Chairman. In the  
2 same vein, the Staff just wants to point out that there are  
3 four other Petitioners who, at this point, have not filed any  
4 Contentions, but have not yet withdrawn from the Case.

5 JUDGE HOYT: That would be The Health Care  
6 Providers, I think?

7 MR. PERLIS: Patty Jacobson and--

8 JUDGE HOYT: (Interrupts) Who is the spokesperson  
9 for that group?

10 MR. PERLIS: Patty Jacobson was the spokesperson.

11 JUDGE HOYT: Then there was a Robert F. Preston,  
12 who has not appeared.

13 MR. PERLIS: That's correct.

14 JUDGE HOYT: Then there's Nicholas J. Costello.  
15 Is that the other one you had in mind?

16 MR. PERLIS: That's the third, and then there was  
17 a Joint Petition by Doctors Herzberg and Margolis.

18 JUDGE HOYT: There were five in all, and we have  
19 an explanation that they are not here, with no reasoning for  
20 it. Therefore, the record will reflect all that. Thank you,  
21 very much. Now, Sun Valley.

22 MR. EDELMAN: Madam Chairperson, and Members of  
23 the Board, Sun Valley has raised two Contentions, both of which  
24 concern off-site emergency planning. In accordance with our  
25 discussions very late last evening, we agree with many of the

1 statements made to the effect that it's difficult to frame a  
2 highly specific Contention concerning a plan which presumably  
3 lies gestating somewhere in a Marin County think tank. Sun  
4 Valley would have no objection, for example, provisionally  
5 assuming its two contentions within the broad contentions  
6 suggested by the Applicant, with leave to file more specific  
7 final contentions within a prescribed period of time after the  
8 plan has been made available. I don't think the Staff would  
9 necessarily have an objection to that. I think your primary  
10 objection concerning Discovery prior to the filing of more  
11 specified objections-- but, I don't purport to speak for you.

12           Anyway, my greatest concern here is, first of all,  
13 getting by the one contention rule at this state, because all  
14 our contentions really have to do with site emergency planning.  
15 I'm also concerned with the period of time for Discovery, which  
16 might be afforded after a plan, presumably, is made available.

17           I would, at this point, propose that Sun Valley  
18 assumes its Contentions, either within the broad Contention, or  
19 be granted leave to file more specific final Contentions with  
20 a prescribed time after the plan is made available.

21           JUDGE HOYT: Is that it, sir?

22           MR. EDELMAN: For the time being.

23           MR. GAD: Madam Chairman, the Applicants filed a  
24 Response, with reference to Sun Valley. We took the position  
25 that we would not oppose. That was the fruit of the same

1 philosophy that in hindsight has proved to be interesting.

2           However, we did object to the reference to  
3 NuReg 0654. That's in the same class as the Reg. Guides.  
4 The Sun Valley Contention No. 2, we have objected to. We think  
5 that it is vague; that it is wholly lacking in basis, and that  
6 it purports to impose upon the Applicant's legal requirement,  
7 for which there is no basis in the Regulations whatsoever.

8           MR. PERLIS: I'll try to be very brief on this.  
9 The Staff, at this point, objects to the Contentions. Contention  
10 No. 1, on the basis that it's wholly premature at this point.  
11 The off-site plans are not out yet. Contention No. 2 we object  
12 both to its prematurity and also to the fact that it lacks any  
13 sufficient basis.

14           At this point, Sun Valley hasn't proffered a good  
15 Contention, although we recognize that since their interest is  
16 off-site planning, in a sense it's impossible for them to have  
17 a good Contention at this point. The way that's traditionally  
18 handled is, when the off-site plans come out, then Sun Valley  
19 can file specific Contentions. If they, at that point, have  
20 a good Contention, we go from there; if at that point they do  
21 not come up with a Contention that meets the requirements of  
22 2.714A, they are out of the proceeding at that point.

23           JUDGE HOYT: Do we allow-- sort of in that position  
24 of a never never land there, do we allow them participation in  
25 the Hearing until such time as they have that standing?



1 Do you want to answer that, Mr. Lessy?

2 MR. LESSY: If the Intervenor has no Contentions,  
3 it can't participate in Discovery.

4 JUDGE HOYT: They can't participate in Discovery,  
5 but I'm talking about attending the Hearings, sitting at counsel  
6 tables, taking--

7 MR. LESSY: If it has satisfied the requirements  
8 of 2.714A, which is the standing requirements, then it may  
9 participate.

10 JUDGE HOYT: Yes. I should have mentioned that  
11 I had that in mind.

12 MR. EDELMAN: Madam Chairperson, we believe that  
13 with regard to Sun Valley's later-to-be-filed Contentions, the  
14 most meaningful Discovery would be after the plan is filed.  
15 All we would be asking for is a reasonable time after the plan  
16 is filed, to engage in Discovery.

17 JUDGE HOYT: Of course you would get that if you  
18 came in with a good Contention. Is that right, Mr. Perlis?

19 MR. PERLIS: Yes. If I may, the Staff would not  
20 object to affording them a reasonable period of Discovery. But  
21 again the Staff takes the position that a Contention is  
22 required before Discovery, so that if he has an acceptable  
23 Contention and it's admitted, then Discovery will follow.

24 JUDGE HOYT: No problem. I think we all understand  
25 that. Did you raise your hand, Mr. Backus?

1 MR. BACKUS: No.

2 MR. EDELMAN: Madam Chairperson, I forgot to mention  
3 one thing. There were two concerns actually - a reasonable  
4 time, first of all, to submit the final more specific Contentions  
5 after. I believe we were talking between 21 and 30 days  
6 yesterday, with regard to another discussion, but what we would  
7 be requesting would be a reasonable period of time to file  
8 final contentions after the plan is submitted, and a reasonable  
9 time for Discovery, after the filing of the Contentions.

10 JUDGE HOYT: That's something we would have to  
11 take under advisement as to what the time would be. We do note  
12 that there has been that mention on the record.

13 JUDGE PARIS: I have one question for you, Mr.  
14 Edelman. Where do the members of the Sun Valley Association  
15 live?

16 MR. EDELMAN: I can't see that map, but they live  
17 within a very interesting area. They live right on Seabrook  
18 Beach, actually, and their principal problem is that in order  
19 to get to the major access route, they have to go in an  
20 extremely roundabout way to get to that point, but they are  
21 on Seabrook Beach.

22 JUDGE PARIS: They are residents of the beach area?

23 MR. EDELMAN: Right.

24 JUDGE PARIS: Okay.

25 JUDGE HOYT: There hasn't been any challenge to

1 their standing, has there?

2 MR. PERLIS: I believe at one point there was, but  
3 they cured the defects in their standing.

4 MR. EDELMAN: I believe at the last Prehearing  
5 Conference, both Applicant and The Staff agreed that Sun Valley  
6 did have standing.

7 MR. PERLIS: I think that's correct.

8 JUDGE HOYT: Is there anything else?

9 MR. EDELMAN: No. Thank you.

10 JUDGE HOYT: I believe Mr. Jordan yesterday made  
11 mention, after we closed the Hearing yesterday, that I would  
12 like for you to memorialize in some document, perhaps in a  
13 letter or a filing of some sort - the Contentions as they were  
14 finally presented by you before his Hearing yesterday, using  
15 the changes and revisions that appear in the record.

16 MR. JORDAN: Yes, we did discuss that. I'll  
17 certainly do that once I have a transcript available, and I  
18 thought I would try and ship it first to the Applicant and  
19 Staff, so we are together at least on what we propose.

20 JUDGE HOYT: Exactly. It's a very massive amount  
21 of material, and I think that as many eyes that could go  
22 through it would be very helpful to us. You realize that  
23 everything you do we are going to have to go back and redo  
24 anyway, but it may be that we can catch a comma or two that way.  
25 Is there anything else to come before the Hearing?

1 MR. BISBEE: Yes, Madam Chairperson.

2 JUDGE HOYT: Yes, sir?

3 MR. BISBEE: It was my understanding that you were  
4 going to provide a few moments to the State of New Hampshire  
5 to make a few comments at some point during this Hearing.

6 JUDGE HOYT: I believe you did ask that and it  
7 did slip my mind, but if you would like to do it at this point--

8 MR. BISBEE: (Interrupts) Just very briefly, thank  
9 you. If I could just refer to very specific Contentions for  
10 the Staff and Applicant to be able to respond to?

11 MR. LESSY: Could you just wait one minute?

12 MR. JORDAN: Madam Chairman, during that one minute,  
13 perhaps we could clear up another matter. If you recall, I was  
14 seeking guidance on what we were doing with emergency planning.  
15 We have the draft of the proposed concept at the moment, and  
16 we still think that's a good idea. I know Ms. Shotwell, on  
17 behalf of Massachusetts, is interested in where we are going  
18 from here. We still need that guidance from the Board in how  
19 we are going to treat the Emergency Planning Contentions.

20 JUDGE HOYT: Can we have about a five minute  
21 recess?

22 (Off the Record)

23 JUDGE HOYT: The Hearing will come to order. Let  
24 the record reflect that all the parties are again present in  
25 the Hearing Room. I believe we indicated that we will afford

1 the State of New Hampshire an opportunity to make some remarks  
2 on the record at this time.

3 MR. BISBEE: Thank you, Madam Chairman. Was there  
4 anything further that needed to be clarified on the Emergency  
5 Planning issue that I still feel is floating out here unresolved,  
6 as to how much of an opportunity all of the Intervenors will  
7 have to make arguments on their specific contentions.

8 JUDGE HOYT: I think we will resolve it in the  
9 order, sir.

10 MR. BISBEE: First I have a couple of modifications  
11 to make to a couple of Contentions that will satisfy both the  
12 Staff and the Applicant.

13 JUDGE HOYT: Is this in regard to your amended  
14 Contentions?

15 MR. BISBEE: The first one - Number 16, I think  
16 will cause the most argument. It's the one Contention of our  
17 original filed contentions in April, that we have withdrawn.

18 JUDGE HOYT: Didn't you take care of that to some  
19 extent in your--

20 MR. BISBEE: That's right. I just wanted to start  
21 out on an easy point.

22 JUDGE HOYT: All right. Was that the ultimate  
23 Heat--

24 MR. BISBEE: (Interrupts) The ultimate Heat Sink.

25 JUDGE HOYT: The Heat Sink, yes. You had

1 withdrawn that.

2 MR. BISBEE: Yes.

3 JUDGE HOYT: All right.

4 MR. BISBEE: The second Contention is our number 13,  
5 as amended, in our May 24th filing. I would like to delete  
6 the phrase that the Applicant had objected to, from the  
7 Contention. That phrase is - "and all other operations personnel"  
8 so that the new Contention No. 13 on Operations Personnel,  
9 Qualifications and Training, would read - "The Applicant has not  
10 demonstrated that the following personnel are qualified and  
11 properly trained, in accordance with NuReg 0737, Item 1A 1.1;  
12 1A 2.1; 1A 2.3; 2B 4; 1C 1, and Appendix C: (a) Station Manager,  
13 (b) Assistant Station Manager, (c) Senior Reactor Operators,  
14 (d) Reactor Operators, and (e) Shift Technical Advisors."

15 JUDGE HOYT: All right. Is there anything else?

16 MR. BISBEE: To clarify for the record, I believe  
17 our Contentions nine and ten, as amended, by our May 24th data,  
18 are now acceptable to both Applicant and Staff.

19 MR. LESSY: Nine and ten?

20 MR. BISBEE: Yes.

21 MR. LESSY: Your Honor, this gets me to the subject  
22 matter of my letter.

23 JUDGE HOYT: Yes.

24 MR. LESSY: There are a lot of Contentions filed  
25 here, and a lot of Contentions to answer. Under the transcript,

1 as the Staff indicated, there were five Contentions, which New  
2 Hampshire was given an opportunity to refile - six, seven, twelve,  
3 thirteen and fourteen. The reference to that is transcript  
4 cite 239.

5 An additional reference is transcript cite 54, in  
6 which the Board requested that these points be negotiated. As  
7 I pointed out in our letter, there were no negotiations; there  
8 were no opportunities to negotiate. New Hampshire filed most  
9 of its Contentions, and it was not obvious to us which ones were  
10 changed and which weren't, and we didn't think the burden was  
11 upon us to figure out which ones it had changed, and which it  
12 hadn't.

13 It was, however, clear that there were changes to  
14 Contentions which went well beyond the ones which the Board  
15 had expressly given leave for New Hampshire to refile. So, the  
16 Staff responded because New Hampshire had permission to, to the  
17 Contentions six, seven, twelve, thirteen and fourteen.

18 New Hampshire was not authorized by the Licensing  
19 Board to refile all of its Contentions - maybe "all" is an  
20 incorrect phrase - another half dozen or so. It was not  
21 authorized in the Prehearing Conference Order, and the Staff  
22 has better things to do with its time than to look at unauthorized  
23 pleadings.

24 JUDGE HOYT: Well, I think to cut that short,  
25 Mr. Lessy, my recollection was that there was only the five

1 Contentions that you've enumerated, that they had been given  
2 leave to the State to amend.

3 MR. BISBEE: We interpreted it differently, your  
4 Honor. We did not get a transcript. It was our recollection  
5 that we were given reasonable leave to amend those that had  
6 been discussed throughout the Hearing.

7 JUDGE HOYT: Certainly there had been a discussion,  
8 but specifically of the five enumerated - six, seven, twelve,  
9 thirteen and fourteen - you had been specifically given leave  
10 to amend, and we are not going to consider anything else on  
11 that.

12 All right. Anything else you have, other than that?

13  
14 MR. BISBEE: Yes. On two Contentions--

15 JUDGE HOYT: (Interrupts) Mr. Jordan, you look as  
16 if you may have something you want to contribute.

17 MR. JORDAN: Not at this time.

18 JUDGE HOYT: All right. Very well.

19 MR. BISBEE: One of the five that we all agree  
20 had been given permission to amend, that is number seven, as  
21 amended.

22 JUDGE HOYT: On Instrumentation?

23 MR. BISBEE: Yes. The Staff continues to object  
24 for insufficient basis. Just a preliminary point, a lot of  
25 confusion, it seems to me, is thrown about during this Hearing.



1 I hear specificity, and I hear basis used in a pretty loose  
2 manner. In 61714, 10 CFR, requires that Contentions be filed,  
3 and that they be given bases with reasonable specificity. So,  
4 we are not talking about basis and specificity, we are talking  
5 about reasonably specific bases for Contentions.

6 New Hampshire feels strongly that, in its Contention  
7 Number seven, as amended, as well as others of its Contentions,  
8 that this Contention is proper; it is admissible. The  
9 Contention is based with reasonable specificity. As stated in  
10 the amended basis, specifically Subsection A, on Page 14, of  
11 our amended filing of May 24th - although it is our position  
12 that that basis is sufficient as it stands, I am able at this  
13 point to cite three specific types of equipment that do not  
14 comply with the requirement that we listed in Paragraph A. That  
15 requirement being that there be direct and unambiguous measure-  
16 ments of certain parameters. Those three are, Radioactive Iodine  
17 Monitor, a direct indication of safety and relief valve positions,  
18 and a direct indication of the liquid level in the Pressurizer.

19 Again, we feel that the basis, as it's written in  
20 the May 24th pleading, is sufficient. I add those three as  
21 additional specifics.

22  
23  
24  
25

1 JUDGE HOYT: You are responding to No. 6 and 7?

2 MR. BISBEE: Just No. 7.

3 MR. LESSY: The Staff would continue to rely on its  
4 refiled comments of July 1, 1982.

5 JUDGE HOYT: I believe we will go on to 12. I  
6 think you have already done 13. Do you have anything additional?

7 MR. BISBEE: I was not going to comment any  
8 further on any of the fives, but I did have one other that I  
9 still thought we had permission and we did ammepd. It will take  
10 just a minute.

11 It is to address a concern of the Applicant, in  
12 any event, and the Applicant's response concerning our ammended  
13 Contention No. 5 on Page 9 of our May 24th filing.

14 The Applicant has restated his position in that it  
15 believes that we ask that we have a Core Captain. I would just  
16 like to clarify that. That is not the State of New Nampshire's  
17 position on the Contention on Liquid Pathway Impack. We feel  
18 specifically that three areas need to be sutdies more carefully.  
19 That is, the possible liquid pathway release, the possible inter-  
20 vention and prevention of such a release, and finally, a hydro-  
21 logical study. That is in the Contention.

22 JUDGE LUEBKE: Are you rewording the Contentions?

23 MR. BISBEE: I'm just explaining.

24 JUDGE LUEBKE: Thank you.

25 JUDGE HOYT: Thank you. Anything else?

1 JUDGE HOYT: Anything?

2 MR. GAD: We will stand on what we said in response  
3 to the original Contention, which from our perspective, wasn't  
4 changed all that much , but which we took the liberty of saying  
5 again in our response to the ammended Contention.

6 JUDGE HOYT: Thank you. Mr. Lessy?

7 MR. LESSY: We will stand on our original response  
8 which is April 21, 1982, Pages 15 to 16.

9 JUDGE HOYT: Anything else?

10 MS. SHOTWELL: Your Honor, the Commonwealth of  
11 Massachusetts has not indicated its position on the record on  
12 Counsel's Exhibit No. A. I would like to do so now.

13 The Commonwealth as no objections to this proposal  
14 with the sole exception of Paragraph 5, the first sentence of  
15 which indicates that all parties acknowledge that the proposal  
16 would not be in accordance with normal procedure.

17 The Commonwealth does not agree with that statement,  
18 and therefore, cannot agree that it would reflect the opinion of  
19 all parties. We feel that the remainder of Paragraph 5 is  
20 simply unnecessary. Other than that, we are in agreement with  
21 this proposal.

22 I do think the record needs to clearly reflect that  
23 by indicating that we would agree with this proposal, we are not  
24 indicating that we feel our Contentions as drafted are inadmissible.  
25 We have not yet ---

1 JUDGE HOYT: (Interrupting.) I got that impression.

2 MS. SHOTWELL: We have not yet completed, by any  
3 means, our presentation on the admissibility of the Contentions  
4 as they are drafted. As I am sure you recall, we had begun dis-  
5 cussing the second Contention at which point discussions were  
6 deferred pending negotiations. Unfortunately those negotiations  
7 were not very successful.

8 The Commonwealth does not necessarily have to  
9 discuss the admissibility of the remaining Contentions at this  
10 time if the Board is going to be taking under advisement this  
11 Counsel's Exhibit No. A as a proposal.

12 JUDGE HOYT: Do you have any additional comments?  
13 I believe all four of your Contentions, Ms. Shotwell, do go to  
14 the same general area of concern.

15 MS. SHOTWELL: They do, but I would have additional  
16 comments to make in support of them if we are going to be asked  
17 to litigate the admissibility of the Contentions as drafted.

18 JUDGE HOYT: I believe you have the extensive  
19 supporting brief on your Contentions as you filed them.

20 MS. SHOTWELL: We have the supplement that we  
21 filed which ---

22 JUDGE HOYT: (Interrupting.) We couldn't rely  
23 upon and we feel we can rely upon.

24 MS. SHOTWELL: Well, your Honor, I would object to  
25 not being given an opportunity that every other party for this

1 Proceeding has been given to do oral argument in support of our  
2 Contention.

3 JUDGE HOYT: All right. Ms. Shotwell, how much  
4 time would you need?

5 MS. SHOTWELL: I feel I would need at most a half  
6 hour.

7 MR. LESSY: Your Honor, might I interject myself  
8 for just a second. The Commonwealth of Massachusetts was given  
9 by the Licensing Board on Page 2 of the order setting forth the  
10 Second Prehearing Conference to file additional supplements to  
11 petitions to intervene.

12 The Commonwealth of Massachusetts, in the form of  
13 responsive arguments or additional Contentions, the Commonwealth  
14 of Massachusetts did not take the Board's option or opportunity  
15 to file such a supplemental response and in my view, the Board  
16 has already afforded the Commonwealth to respond.

17 Therefore, it is completely a matter of discretion  
18 as to whether or not the Board wants to afford Ms. Shotwell an  
19 opportunity to have oral responses, since it did not file written  
20 responses. I think that fully complies with the Commission's  
21 requirements. We are not opposing it or unopposing the opportunity.  
22 We are just saying that that opportunity was provided to the  
23 Board by the Commonwealth and they didn't take advantage of it.

24 MS. SHOTWELL: That is simply untrue. That order  
25 said that all parties who had not filed supplements to their

1 petitions to intervene, could file such supplements. We already  
2 had one on file. I did not read that as allowing us to file a  
3 second supplement to our petition to intervene and I don't think  
4 anybody else read it that way either.

5 MR. LESSY: How did Mr. Jordan read it? He filed  
6 a supplement. The order says supplements ---

7 MS. SHOTWELL: (Interrupting.) The response of the  
8 Staff and the Applicants was that he had no right to do so and  
9 that he should have filed a motion.

10 MR. LESSY: Excuse me, your Honor. The statement  
11 says ---

12 JUDGE HOYT: All right., Mr. Lessy, the path of  
13 lease resistance ---

14 MR. LESSY: If that is the case, I want to argue  
15 the question of the timeliness of the Massachusetts Contentions  
16 as they were filed. That was an issue we didn't resolve at the  
17 last Prehearing Conference.

18 MR. JORDAN: I am not sure the path of least  
19 resistance is, in fact, as it appears because as you will recall,  
20 we had 16 matters which we discussed individually.

21 JUDGE HOYT: Did you think I meant the path of  
22 least resistance was my argument to the State?

23 MR. JORDAN: No. I thought it was to grant argu-  
24 ment to the State. My concern is that when we got the Emergency  
25 Planning yesterday for the coalition, we got into this lengthy

1 discussion and requested guidance from the Board as to what to do.  
2 At that time, I said we like the proposal, otherwise we would have  
3 to go and argue on the 16 individual items. Those items had not  
4 been originally in contention form. They had been originally  
5 drafted in basis pr in a sort of specificity and basis form. In  
6 any case, they would probably require sharpening and I requested  
7 the guidance of the Board as to whether to spend time doing that  
8 last evening. I was certainly left with a clear impression that  
9 that was not what I was to do last night, and I did not do it.

10 In any case, I don't think we can go through those  
11 16 items in a half an hour.

12 JUDGE HOYT: Well, I think, Mr. Jordan, what Ms.  
13 Shotwell is referring to is the other two Contentions within her  
14 submission, Contentions No. 3 and 4 and she wants an oral argument  
15 on that at this point.

16 Ms. Shotwell, we feel that your brief is quite  
17 adequate on it. If you can specifically show me what it is you  
18 want to talk about on these, all dealing with the same general  
19 area of Emergency Planning? That is the reason we didn't ask you  
20 for any additional oral argument here.

21 With that understanding, does that change your mind  
22 at all, or do you insist on arguing something that I think that  
23 has been argued a great deal.

24 MS. SHOTWELL: I feel that we are in a bind at  
25 this point. I have said it before and unfortunately I think we

1 are still in it.

2 JUDGE HOYT: Well, the Board wants an opportunity  
3 to go back, Ms. Shotwell, and look at its record. We intend to  
4 rule on them.

5 JUDGE LUEBKE: We will fix it.

6 MS. SHOTWELL: Well, I have no problem. I am simply  
7 trying to state for the record that we agree with this general  
8 proposal. I believe that we have made a second proposal which  
9 heads in the opposite direction, if you will, in terms of the  
10 generality specificity problems that we seem to be in.

11 We have made a second proposal that we will take  
12 the specificity that is included in our supplement in its  
13 entirety and work that into the Contentions.

14 The Staff has indicated that it does not accept  
15 either of those proposals.

16 JUDGE HOYT: And we have told the Coalition, Ms.  
17 Shotwell, as you remember yesterday when they asked us for some  
18 guidance on that, that we would not require them to do it.

19 I think that Mr. Jordan's point may be very taken.  
20 If we give you that opportunity, he is going to feel like he  
21 should have an opportunity to take those 16 points that he wanted  
22 to discuss.

23 I think, Ms. Shotwell, that you have had ample  
24 opportunity through your briefs, through your filing and through  
25 your participation.



1 MS. SHOTWELL: But my oral argument, your Honor,  
2 was cut off when I was half way through discussion of the Second  
3 Contention. The matter that we tried to resolve never got  
4 resolved, such that I have still never presented the argument,  
5 the further arguments in support of the Second Contention.

6 JUDGE HOYT: But you have in your briefs.

7 MS. SHOTWELL: Yes, but everybody else seems to want  
8 to do oral argument as well, and I am sure that you can understand  
9 that a department that is in here representing the citizens of  
10 an entire state, wishes to have that right as well.

11 JUDGE HOYT: Do you want to handle this, Mr. Gad?

12 MR. GAD: Angles fear to tread, your Honor, and  
13 that gives me leave to do so. I would like to offer a suggestion.

14 The Board has before it certain Contentions which  
15 will be ruled upon as they are framed. It also has before it  
16 a certain proposal that at one time looked fairly easy and  
17 sensible, but in the light of matters discussed, may in fact, not  
18 be workable.

19 My suggestion is that the Board might, if it chose,  
20 allow the Commonwealth and NECNP to take whatever further argu-  
21 ments they would like to have considered on the merits of their  
22 Contentions as framed. Put them in a writing and get them to  
23 the Board by 7 days from today.

24 The Board will then have before it all it needs to  
25 do either a yea or a nay on each one of the Contentions, or the

1 Counsel Exhibit A proposal if it chooses to do that without the  
2 need of sitting here further today. The Applicants for one, are  
3 content to rely on what they are submitted to date.

4 JUDGE LUEBKE: And that is how I thought we left  
5 it yesterday.

6 JUDGE HOYT: Yes, I am in agreement with Dr.  
7 Luebke that I thought that we had disposed of that. I think we  
8 will go that path. I think rather than go through the oral argu-  
9 ment, which is merely on the record, you are getting an additional  
10 bite of the apple, Ms. Shotwell, by filing additional plea. We  
11 certainly intend to extend that to you, Mr. Jordan, if you wish.

12 MR. JORDAN: Is that the circumstances that it  
13 could come to?

14 JUDGE HOYT: I think so.

15 JUDGE LUEBKE: Yes, which is the old-fashioned way  
16 of handling petitions.

17 MR. JORDAN: Which I had responded to when you  
18 raised it yesterday, I believe.

19 JUDGE HOYT: All right.

20 MR. BISBEE: You made a comment yesterday afternoon.  
21 I requested that the State of New Hampshire, at least, be considered  
22 in the same vain as NECNP and the Commonwealth of Massachusetts.

23 JUDGE HOYT: Yes, but you see, you have already had  
24 two bites, Counsel. You are not going to get any more.

25 MR. BISBEE: However, there is a problem with that.

1 Our argument on Emergency Planning was done in the context of the  
2 broad proposal that the Applicant made as early as two months ago.  
3 We did not, either, have an opportunity to delve into the  
4 specifics of the Contentions.

5 JUDGE HOYT: You had opportunity, and I think you  
6 liberally took it, in your second filing, Counselor. We are not  
7 going to hear any more arguments on that one.

8 MR. BISBEE: We did not ammend our Emergency Planning  
9 Contention.

10 JUDGE HOYT: I don't think we are going to hear any  
11 more arguments on that one, sir.

12 Anything else?

13 MR. BACKUS: Yes. I hate to jump into this. I know  
14 everybody is anxious to leave. I am totally at a loss as to where  
15 we are with regard to the Contentions and the start of discovery  
16 on the key issue in this case. I think it is the most important  
17 issue in this case and that is Emergency Planning.

18 JUDGE HOYT: That is what we have tried to indicate  
19 I don't know how many times, Mr. Backus. We are going home and  
20 look at the record and try to resolve it

21 JUDGE LUEBKE: We're going to issue an order.

22 JUDGE HOYT: We're all going to be quiet while I  
23 get this off. We are going to try to resolve the issue, the  
24 whole entire episode of the Emergency Planning and all of its  
25 ramifications that have been liberally sprinkled on this record.

1 They will be resolved in a monumental order that this Board will  
2 issue.

3 After the issuance of that order, Mr. Backus, you  
4 are going to be able to start discovery.

5 MR. BACKUS: Okay.

6 JUDGE HOYT: Now, what is so complicated about that?

7 MR. BACKUS: Well, yesterday, you said that one of  
8 the things that this Board was not going to do was it was not  
9 going to write any Contentions for anybody.

10 JUDGE HOYT: And that is correct, sir. You are  
11 going to lie, stand, fall or sink on what is not in this record.

12 MR. BACKUS: And the problem is ---

13 MR. LESSY: Mr. Backus was not here for a good  
14 deal of the afternoon discussion.

15 JUDGE HOYT: That is Mr. Backus' problem, Mr. Lessy.  
16 That is not this Board's problem.

17 MR. LESSY: I know that, your Honor.

18 MR. BACKUS: That is certainly true. I have to be  
19 responsible for my absences.

20 It seems to me that the problem is that we are  
21 being told that Emergency Planning Contentions are premature  
22 because there is no plan.

23 JUDGE HOYT: You have not been told that by this  
24 Board, Mr. Backus. Until you are, you have no grounds of  
25 complaint to this Board. We are going to resolve those in the

1 order. That doesn't differ from any court in any jurisdiction  
2 that I know of, including a few foreign courts. If you are  
3 having any problem with this, then read the transcript of the  
4 entire proceedings of yesterday. That is exactly what we have  
5 said and that is exactly what Counsel has said throughout this  
6 Proceeding.

7 We will take the very contentuous Contentions and  
8 we will try our best in our infinite wisdom to resolve them.

9 MR. BACKUS: Well, I'm sure the Board will and I  
10 don't think the problem is lack of ---

11 JUDGE HOYT: (Interrupting.) I'm not so sure we  
12 will, but we are going to try. That is the best that we can come  
13 up with.

14 MR. BACKUS: I am certainly sure you are going to  
15 try. Well, I won't go on. I think it's a big problem.

16 JUDGE HOYT: Thank you. Anything else?

17 MR. JORDAN: One thing.

18 JUDGE HOYT: Fine.

19 MR. JORDAN: The Massachusetts NECNP, Luebke  
20 Proposal, when is that filing to be made?

21 JUDGE HOYT: Seven days, and it is your option to  
22 do so, sir.

23 MR. JORDAN: One week from today?

24 JUDGE HOYT: In seven days. This would be in line  
25 with what we have asked for from Coastal Chamber of Commerce and

1 I think we asked for something from you, also.

2 All right, Mr. Gad, if you are brave enough to try,  
3 go ahead.

4 MR. GAD: I think this will be relatively uncontro-  
5 versial. Yesterday afternoon I promised the Board a citation on  
6 the proposition of the using cooling tunnels. I am now prepared  
7 to provide it. It is Section 9.2.5.3, sub paragraphs A and B of  
8 the FSAR.

9 JUDGE HOYT: Thank you very much for that information,  
10 sir.

11 Thank you. The meeting is adjourned.

12 (Whereupon the meeting was brought to a close at 2:55 p.m.)  
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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

Atomic Safety & Licensing Board

in the matter of: Public Service Co. of New Hampshire, Seabrook Station  
Units I & II

Date of Proceeding: July 16, 1982

Docket Number: 443-OL and 444-OL

Place of Proceeding: Portsmouth, New Hampshire

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

Janet M. Hills

Official Reporter (Typed)

Janet M. Hills

Official Reporter (Signature)

Nuclear Regulatory Commission/50-443-OL and 50-444-OL  
Public Service Company of New Hampshire, Seabrook Station, Units 1 & 2  
July 15-16, 1982  
Portsmouth, New Hampshire

EXHIBITS

<u>Exhibit</u>	<u>Number</u>	<u>Sponsor</u>	<u>Identified</u>
Proposed Order Regarding Emergency Planning Contention- tions, 3 pp. yellow legal	A	Counsel	7-16-82
Letter dtd. July 2, 1982, from Tedesco to Tannenbaum with attachments/letter dtd. Dec. 6, 1973, map, Draft Environmental Statement dtd. Apr 1974. 12 pp.	B	Counsel	7-16-82
Letter dtd, May 5, 1981 from Tannenbaum to Denton with attachments/letters dtd. Jan. 5, 1982, June 25, 1982, July 2, 1982, 5pp.	C	Counsel	7-16-82



SECRET

116E-EBV2E

Nuclear Regulatory Commission/50-443-OL and 50-444-OL  
Public Service Company of New Hampshire, Seabrook Station, Units 1 & 2  
July 15-16, 1982  
Portsmouth, New Hampshire

EXHIBITS

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Letter dtd, May 5, 1981 from Tannenbaum to Denton with attachments/letters dtd. Jan. 5, 1982, June 25, 1982, July 2, 1982, 5pp.	C	Counsel	7-16-82

Counsel Exhibit No. A  
Ident. Wda. Ref. Evid  
Date: 7-16-88 By: JMT  
Bay State Reporting Co.  
Boston Massachusetts

Council  
X A

PROPOSED ORDER REGARDING  
EMERGENCY PLANNING CONTESTIONS

1. Admission. NECNP and Massachusetts

shall be admitted to these proceedings as  
intervenors.

2. Contestation. For present purposes, and subject

to the terms of this order, the emergency  
planning contestation of NECNP and Massachusetts  
shall be the single general contestation stated in the  
Applicants' response to Massachusetts' contestations.

3. Discovery. Notwithstanding 912, NECNP

and Massachusetts shall be limited in emergency  
planning-related discovery to the topics described  
in NECNP's filing of April 21, 1988 and Massachusetts'  
filing of April 20, 1988. Nothing in this Order constitutes  
or shall be construed as a ruling that any of those  
topics is relevant to these proceedings or, as presently

shall, constitute an admissible contention.

4. Amendment of Contentions. On or before

December 15, ~~1982~~ 1982, NECWP and Massachusetts

shall file and serve amended emergency planning

contentions, which contentions shall be subject to

all of the rules of practice of the Commission

and which contentions, if and to the extent admitted,

shall constitute the sole emergency planning-

related contentions of NECWP and Massachusetts.

To the extent that such amended contentions

are within the scope of the topics described

in # 3, ~~they~~ only, they shall not be subject

to the late-filed contention rules. If no such

~~amended~~ amended contentions are timely filed, then NECWP

shall have no emergency planning-related contentions,

and Massachusetts shall have no contentions and

shall be dismissed from the proceedings. <sup>if Mass. timely files but none admitted, it disposes</sup>

5. Precedential Effect. The parties acknowledge that the within procedures constitute a variance from the normal rules of practice and are feasible only because of the acquiescence of the Applicants. The parties ~~and~~ represent that they will not refer to or cite this Order to any other Licensing Board as precedent for employment of these procedures in any other case, or to this Board in any other aspect of this case.

6. Citation. The within procedures shall not be cited as "the Applicants' proposal," "the Gjed proposal," or "the Dignou proposal."

7. Application to other intervention-petitioners.

[To be determined.]

JUL 2 1982

Mr. Jordan E. Tannenbaum, Chief  
Eastern Division of Project Review  
Advisory Council on Historic Preservation  
1522 K Street, N. W.  
Washington, DC 20555

Dear Mr. Tannenbaum:

This is in response to your letter of June 25, 1982 regarding the potential effect of the placement of transmission lines associated with construction of the Seabrook Station on the South Hampton Historic District. (We understand your inquiry to have reference to both the Hilltop and Jewel Town areas).

The South Hampton Historic District is not listed on the National Register of Historic Places and it has not been determined to be eligible for inclusion on the National Register. In any event, the Commission's final decision covering the undertaking occurred with the reinstatement of the construction permit on August 9, 1978, which had been initially issued on July 7, 1976. After our complete review of this matter, it is our conclusion that consideration of that which you have identified would not be timely and would not be required under Section 106 of the National Historic Preservation Act.

Sincerely,

Original signed by  
Robert L. Tedesco

Robert L. Tedesco, Assistant Director  
for Licensing  
Division of Licensing

NUCLEAR REGULATORY COMMISSION

Docket No. 50-443-04  
50-444-04 Official Exh. No. B

In the Matter of Public Service Co. of N.H.  
Seabrook Station Units I & II

Staff \_\_\_\_\_ Identified   
Applicant \_\_\_\_\_ Received \_\_\_\_\_  
Intervenor \_\_\_\_\_ Rejected \_\_\_\_\_  
Cont'g Off'r \_\_\_\_\_  
Contractor \_\_\_\_\_ Date 7-16-82  
Other Counsel's Witness \_\_\_\_\_

Reporter Janet M. Hills

Counsel Exhibit No. B  
Ident Wdn. Ref. Evid  
Date: 9-16-82 By: JMH  
Bay State Reporting Co.  
Boston, Massachusetts

JUL 2 1982

Mr. Jordan E. Tannenbaum, Chief  
Eastern Division of Project Review  
Advisory Council on Historic Preservation  
1522 K Street, N. W.  
Washington, DC 20555

Dear Mr. Tannenbaum:

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The South Hampton Historic District is not listed on the National Register of Historic Places and it has not been determined to be eligible for inclusion on the National Register. In any event, the Commission's final decision covering the undertaking occurred with the reinstatement of the construction permit on August 9, 1978, which had been initially issued on July 7, 1976. After our complete review of this matter, it is our conclusion that consideration of that which you have identified would not be timely and would not be required under Section 106 of the National Historic Preservation Act.

Sincerely,

Original signed by  
Robert L. Tedesco

Robert L. Tedesco, Assistant Director  
for Licensing  
Division of Licensing

ocket Nos. ~~50-443~~  
and 50-444

DEC 06 1973

Mr. George Gilman, Commissioner  
Department of Resources and  
Economic Development  
856 State House Annex  
Concord, New Hampshire

Dear Mr. Gilman:

We are currently conducting an environmental review and analysis of the Seabrook Station, a nuclear power plant proposed by the Public Service Company of New Hampshire (PSNH).

As part of the review process we need to consider the historical, architectural and archeological aspects of the proposed site. We, therefore, request any information in this regard you may be able to provide concerning the proposed Seabrook Station Site. We are enclosing a copy of a portion of the USGS map of the area with the site region indicated for your information.

We have received some information orally from Dr. H. Sargent which indicates that at least portions of the site may contain relics and PSNH has retained Professor C. E. Bolian of the University of New Hampshire to evaluate the site archeologically. Any further assistance you may be able to give will be appreciated.

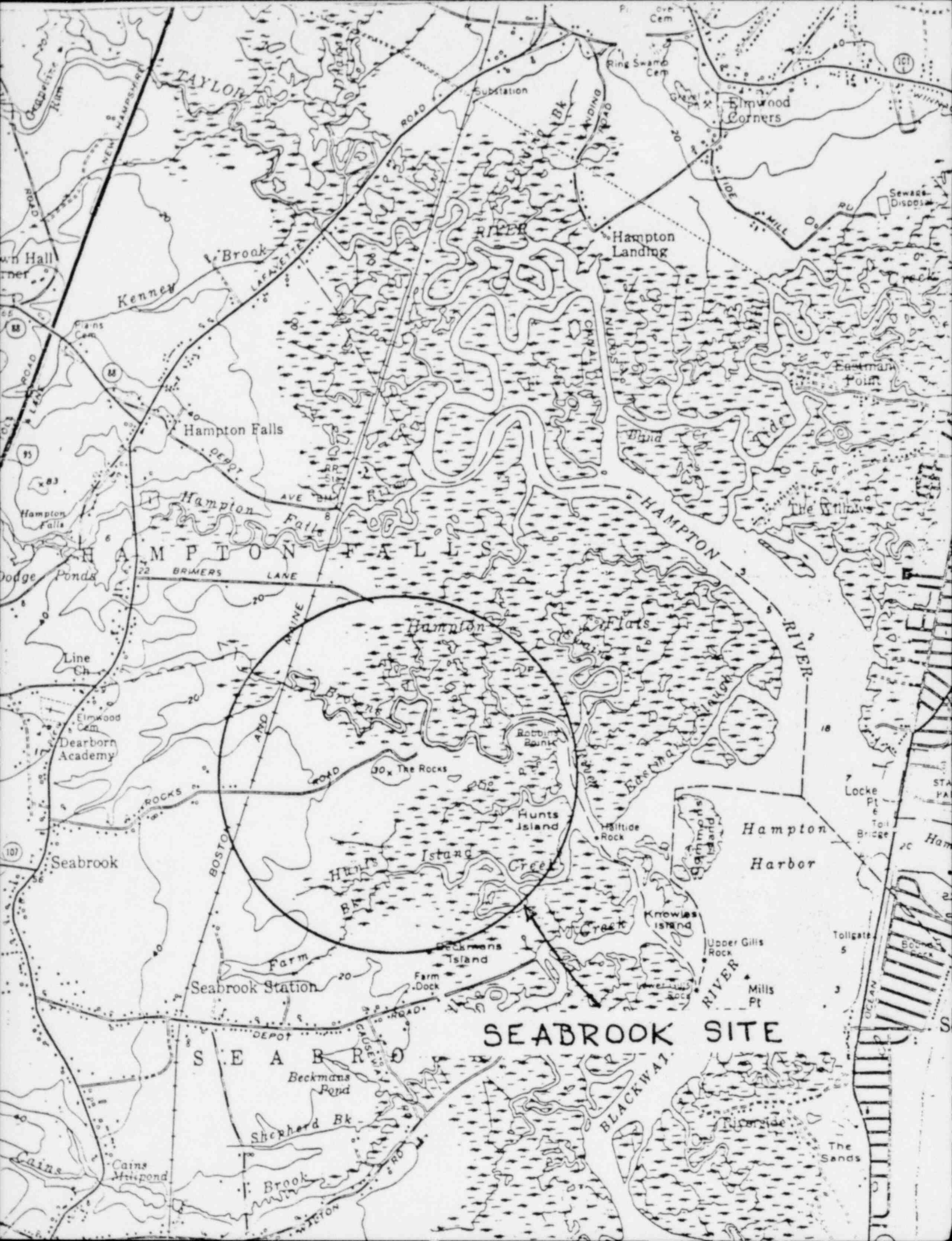
Sincerely,

Original signed by  
George W. Knighton

George W. Knighton, Chief  
Environmental Projects Branch #1  
Directorate of Licensing

Enclosure: AS stated

bcc: Mr. Bruce B. Beckley



SEABROOK SITE



**DRAFT ENVIRONMENTAL STATEMENT**

by the

**DIRECTORATE OF LICENSING  
UNITED STATES ATOMIC ENERGY COMMISSION**

related to the proposed

**SEABROOK STATION  
UNITS 1 AND 2**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Docket Nos. 50-443 and 50-444**

Issued April 1974

- a. Alternative sites
- b. Alternative energy sources
- c. Purchase of power
- d. Alternative heat dissipation methods
- e. Alternative transmission line corridors
- f. Alternative to biocide treatment

5. The following Federal, State, and local agencies are being asked to comment on this Environmental Statement:

- ✓ Advisory Council on Historic Preservation
- ✓ Department of Agriculture
- ✓ Department of the Army, Corps of Engineers
- ✓ Department of Commerce
- ✓ Department of Health, Education, and Welfare
- ✓ Department of Housing and Urban Development
- ✓ Department of the Interior
- ✓ Department of Transportation
- ✓ Environmental Protection Agency
- ✓ Federal Energy Office
- ✓ Federal Power Commission
- ✓ New England River Basins Commission
- ✓ State of Maine
- ✓ State of Massachusetts
- ✓ State of New Hampshire
- ✓ Southeastern New Hampshire Regional Planning Commission

6. This Environmental Statement was made available to the public, to the Council on Environmental Quality, and to other specified agencies in April 1974.

7. On the basis of the analysis and evaluation set forth in this statement, after weighing the environmental, economic, technical, and other benefits of the Seabrook Station, Units 1 and 2, against environmental and other costs and considering available alternatives, it is concluded that the action called for under the National Environmental Policy Act of 1969 (NEPA) and Appendix D to 10 CFR Part 50 is the issuance of construction permits for the facility subject to the following conditions for the protection of the environment:

- a. The applicant shall provide to the staff a description and results of their analytical analyses, additional dye release studies, and additional current and wind studies being performed to evaluate the acceptability of the final discharge diffuser (Sect. 3.4.8).
- b. The applicant shall design the plant so as to meet a chlorine design objective of total residual chlorine at the diffuser outfall of no more than 0.1 mg/liter (Sect. 5.f.2.3). The applicant shall undertake a study with the objective of determining means to minimize the discharge of total residual chlorine by means which may include but are not limited to mechanical techniques for condenser tube cleaning and determination of minimum chlorination (duration, amount, and frequency) required to achieve the necessary control of organic growths (Sects. 3.6.1 and 5.5.2).
- c. The applicant shall use his alternate route 2 or its equivalent for transmission lines or such other alternative routes as the applicant may wish to bring to the attention of the staff for its approval in order to reduce the environmental impact (Sects. 4.1.2 and 9.2.4).
- d. The applicant shall conduct studies in the near vicinity of the proposed intake structure on current behavior, density and behavior of aquatic biota which may be affected by the plant intake, and any other parameters deemed necessary to allow the applicant to present to the staff an analysis of possible damage and a plan of action to eliminate or reduce such damage (if required) before construction of the intake (Sect. 5.5.2).
- e. The applicant shall not use broadcast applications of herbicides to control invasions of rights-of-way by hardwoods. The applicant will use discriminate direct application (Sect. 5.5.1.2).
- f. The applicant shall supplement the pre- and postoperational monitoring program described in the ER, with amendments, as required by the staff (Sect. 6).

- g. The applicant shall take the necessary mitigating actions, including those summarized in Sect. 4.5 of this Environmental Statement, during construction of the station and associated transmission lines to avoid unnecessary adverse environmental impacts from construction activities.
- h. A control program shall be established by the applicant to provide for a periodic review of all construction activities to assure that those activities conform to the environmental conditions set forth in the construction permits.
- i. If unexpected harmful effects or evidences of significant damage are detected during facility construction, the applicant shall provide to the staff an acceptable analysis of the problem and a plan of action to eliminate or significantly reduce the harmful effects or damage.

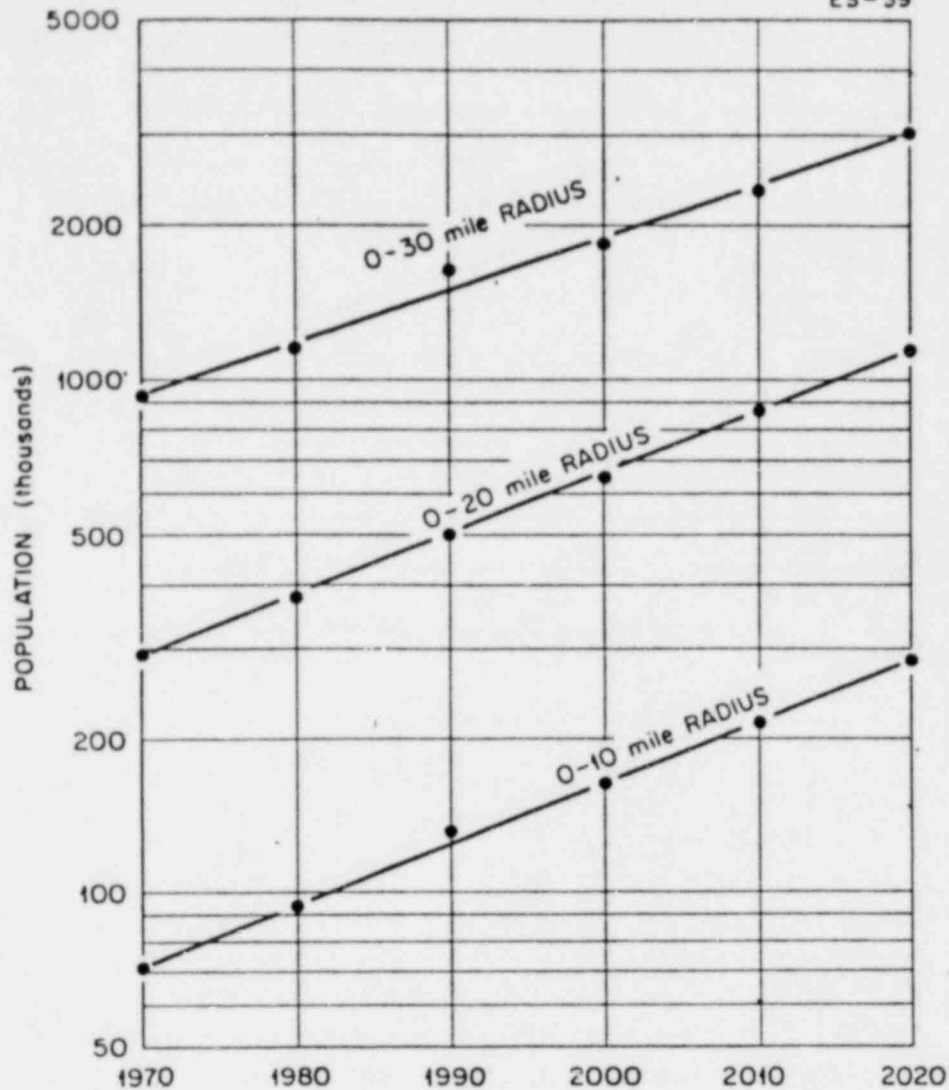


Fig. 2.4. Population projections for Seabrook site (ER, Table 2.2-4).

### 2.3 HISTORIC AND ARCHAEOLOGICAL SITES AND NATURAL LANDMARKS

The applicant lists 12 areas of interest as historic or natural landmarks which are located in Seabrook or towns through which the transmission lines will pass. None of the historic sites or markers should be affected by the plant or the proposed transmission lines. However, an archaeological survey carried out by C. E. Bolian, a consultant to the applicant, indicates that several prehistoric archaeological sites will be severely disturbed or destroyed by the proposed construction.

The applicant has indicated a desire to cooperate in preserving archaeologically valuable areas and to permit excavations before construction of the station begins. (A proposal for archaeological work on-site has been submitted to the applicant and is currently undergoing review by both the applicant and staff.) The Archaeological Society of New Hampshire, the State Historic Preservation Officer, and interested local individuals have been contacted, and their responses will be considered in the final evaluation.

Natural areas such as the Great Bog in the Portsmouth-Greenland area, Cedar Swamp in Kingston, and Pulpit Rock in Chester will be affected by transmission lines (see Sect. 4.1.2).

Table 10.2. Unavoidable environmental impacts

Description of effect	Unit	Magritude	Section
<b>1. Natural surface water body</b>			
<b>1.1 Impingement or entrapment by cooling-water-intake structure</b>			
1.1.1 Fish (loss)	lb/yr	Judged small	5.5.2.1
<b>1.2 Passage through or retention in cooling systems</b>			
1.2.1 Phytoplankton and zooplankton (resulting fish loss)	lb/yr	Small	5.5.2.3
1.2.2 Fish (loss)	lb/yr	Small	5.5.2.3
<b>1.3 Discharge area and thermal plume</b>			
1.3.1 Water quality, excess heat (volume heated 5 F°)	ft <sup>3</sup>	4 x 10 <sup>5</sup> (max)	3.3
1.3.2 Water quality, oxygen availability (volume with <5 ppm O <sub>2</sub> )	acre-ft	Small	3.3
1.3.3 Aquatic biota (resulting fish loss)	lb/yr	Small	5.5.2.3
1.3.4 Wildlife, including birds, aquatic and amphibious mammals and reptiles (area of habitat consumed)	ft <sup>2</sup>	None	
1.3.5 Fish, migration (resulting fish loss)	lb/yr	Small	5.5.2.3
<b>1.4 Chemical effluents</b>			
1.4.1 Water quality, chemical (volume within mixing zone)	ft <sup>3</sup>	Small	3.6
1.4.2 Aquatic organisms (fish loss)	lb/yr	None	5.5.2
1.4.3 Wildlife, including birds, aquatic and amphibious mammals and reptiles (area of habitat consumed)	ft <sup>2</sup>	None	-
1.4.4 People (loss of recreational use when water quality is below water-quality standards)	user-days	None	-
<b>1.5 Radionuclides discharged to water body</b>			
1.5.1 Aquatic plants (dose)	mrad/yr	1.0	5.3.3
1.5.2 Fish (dose)	mrad/yr	0.015	5.3.3
1.5.3 Animals which feed on aquatic plants (dose)	mrad/yr	0.006	5.3.3
1.5.4 People, external (dose to individual)	mrem/yr	7.5 x 10 <sup>-6</sup>	5.4.2
1.5.5 People, ingestion (dose to individual)	mrem/yr	6.3 x 10 <sup>-4</sup>	5.4.2
<b>1.6 Consumptive use (evaporative losses)</b>			
1.6.1 People (loss of potable water)	gal/yr	None	3.3
1.6.2 Property (loss of water for agriculture)	acre-ft/yr	None	3.3
<b>1.7 Plant construction (including site preparation)</b>			
1.7.1 Water quality, physical (volume to dilute to water-quality-standard concentrations) (area of water contaminated)	acre-ft	Small	4.1.1, 4.2
1.7.2 Water quality, chemical (volume that may exceed water-quality-standard concentrations)	acres	Small	4.1.1, 4.2
1.7.3 Bottom siltation (area covered by 1 in. of sediment)	acre-ft	Small	4.1.1, 4.2
1.7.3 Bottom siltation (area covered by 1 in. of sediment)	ft <sup>2</sup>	Very small	4.2
<b>2. Groundwater</b>			
<b>2.1 Raising and lowering of groundwater levels</b>			
2.1.1 People (loss of potable water)	gal/yr	0	-
2.1.2 Plants (land area affected)	acres	0	-
<b>2.2 Chemical contamination of groundwater (excluding salt)</b>			
2.2.1 People (loss of potable water)	gal/yr	0	-
2.2.2 Plants (land area affected)	acres	0	-

Table 10.2. (continued)

Description of effect	Unit	Magnitude	Section
3. Air			
3.1 Chemical discharge to ambient air			
3.1.1 Air quality, chemical (emission rate)	tons/yr	Negligible	3.7.3
3.1.2 Air quality, odor (perceptible or not)	(yes or no)	No	3.7.3
3.2 Radionuclides discharged to ambient air and direct radiation from radioactive materials			
3.2.1 People, external, total body			
(dose to individual at site boundary)	mrem/yr	0.35	5.4.3
(dose to population)	man-rem/yr	0.34	5.4.3
3.2.2 People, ingestion			
(dose to individual, thyroid)	mrem/yr	12.1	5.4.3
3.2.3 Plants and animals (dose, av on site)			
3.2.3 mrem/yr 0.35 5.3.3			
4. Land			
4.1 Site selection			
4.1.1 Land, amount (area preempted)	acres	125	4.1.1
4.2 Construction activities (including site preparation)			
4.2.1 People, amenities			
(number affected by audio visual or olfactory impact)	number	Small	4.4
(time affected)	years	7	4.4
4.2.2 People, accessibility of historical sites			
(visitation loss)	number	0	4.1.1
4.2.3 People, accessibility of archaeological sites			
(accessibility lost or not lost)	(yes or no)	No	4.1.1
4.2.4 Wildlife (disturbance to animals)			
	(yes or no)	Yes	4.3.2.1
4.2.5 Land			
(volume eroded)	yd <sup>3</sup> /yr	Unknown	4.1.1, 4.3.2.1
(area eroded)	acres	Unknown	4.1.1, 4.3.2.1
4.3 Plant operation			
4.3.1 People, amenities			
(number affected by audio, visual, or olfactory impact)	number	Small	5.1.1
4.3.2 People, aesthetics (effect)			
	(yes or no)	Yes (small)	5.1.1
4.3.3 Wildlife (habitat lost)			
	acres	125	4.2.1.1
4.3.4 Land, flood control (effect)			
	(yes or no)	No	
4.4 Transmission-route selection			
4.4.1 Land, amount			
(length)	miles	86	3.8.1
(area)	acres	1050	4.1.2
4.4.2 Land use and land value			
(length of sensitive route)	miles	7	4.1.2, 5.1.2
(area of sensitive route)	acres	144	4.1.2, 5.1.2
4.4.3 People, aesthetics			
(highway crossings)	number	3 (major)	3.8, 4.1.2, 5.1.2
(waterway crossings)	number	4	3.8, 4.1.2, 5.1.2
(long views)	number	Many	3.8, 4.1.2, 5.1.2
4.5 Transmission-facilities construction			
4.5.1 Land adjacent to right-of-way			
(length of access roads)	miles	12	3.8.3
4.5.2 Land, erosion			
(volume eroded)	yd <sup>3</sup>	Unknown	4.3.1.2
(area eroded)	acres	Unknown	4.3.1.2
4.5.3 Wildlife (effect)			
	(yes or no)	Yes (minor)	4.3.1.2
4.6 Transmission-line operation			
4.6.1 Land use (% of land not in multiple use)			
	%	~30	4.1
4.6.2 Wildlife (effect)			
	(yes or no)	Yes (minor)	4.3.1.2

constitute a nesting or breeding area for any rare or endangered species. Although direct impacts on fauna at the site are significant, no detrimental effects upon terrestrial biota on a larger (regional) scale are expected.

Construction activities may disturb waterfowl in the Hampton-Seabrook marsh (principally through construction noise). The staff recommends that controls be implemented to reduce noise levels when numerous waterfowl are present in the marsh.

Impact of the transmission line construction will be reduced by the alternative routing of one section to avoid crossing parts of Cedar Swamp natural area. Other terrestrial impacts can be minimized through accepted construction and maintenance procedures.

The staff does not anticipate any significant long-term adverse effects to the terrestrial ecology of the site and transmission line routes if approved maintenance methods are followed (Sect. 5.1.2).

Aquatic ecological impact. During construction, the only significant effects on the aquatic environment expected are those caused by the turbidity resulting from tunnel dewatering effluents. Limits on the turbidity of these effluents will be established to minimize adverse effects on the aquatic biota.

Operational discharges of chemicals and sanitary wastes to the aquatic environment by the condenser cooling discharge is not expected to have any significant detrimental effect to the aquatic environment. Impact of the thermal discharge on the aquatic biota is also expected to be relatively minor.

Entrapment of fish at the intake structure and subsequent mortality through impingement on the intake screens at the pump house may be a potential problem. However, insufficient information is available to estimate the potential seriousness of this possibility.

Entrainment of aquatic organisms in the cooling-water intake and subsequent passage through the plant will generally result in appreciable mortalities for these species. The effect of these mortalities on the aquatic ecosystem depends on the percentages of populations of vulnerable species that are destroyed. The ecosystem expected to be affected by the entrainment mortality has not yet been sufficiently defined by the applicant to permit a reliable estimate of entrainment effects.

Radiological effects. Radiological impacts resulting from radioactive effluents from Seabrook Station during operation, either on man or on other natural organisms, are not expected to be significant.

Air quality. The chemical, radioactive, thermal, and dust emissions into the air will not significantly affect air quality.

#### Other effects

Community. Community services required by the construction effort, either at the site or in the localities where the personnel reside, are not expected to put an unusual burden on any community. The most noticeable adverse effect will probably be the traffic congestion, during shift changes, caused by the commuting labor force.

During station operation, the most significant impact on any community is likely to arise from the considerably increased real property tax base of the Town of Seabrook. The real estate tax rate is expected to decrease considerably, provided that the State retains its current methods of taxing such property as the Seabrook Station.

Aesthetic. Power stations vary widely in the aesthetic impression that they make on the viewer. The staff considers that Seabrook Station will be aesthetically acceptable to the majority of those affected by its presence.

Proper planning, routing, and maintenance of transmission lines can reduce their visual impact. The staff concludes that the applicant has made a reasonable attempt to do so (see Sect. 4.5).

#### 10.4.3 Summary of benefit-cost balance

Associated with Seabrook Station will be several benefits (summarized in Sect. 10.4.13 and Table 10.1) and several costs (summarized in Sects. 10.4.2.1 and 10.4.2.2 and Table 10.2). Overall, the major benefit is the electric power, which will allow economic growth in New Hampshire and in New England during the period of station operation. Most of the costs are more diffuse; they are borne unequally by people according to when, where, and how they live.

The construction will cause some inconvenience to the people in the Town of Seabrook because of the increased commuter traffic and use of some municipal facilities. This cost will be compensated to some extent by increased taxes from the facility. Station operation should cause only minor inconvenience to local residents. The increased tax base of the community may have a major effect on the community.

Construction of the station and transmission lines will cause some damage to the aquatic and terrestrial biota. This should not result in the significant disturbance of any major (larger than tens of acres) ecosystem.

Impact resulting from entrainment of aquatic organisms in the condenser cooling-water system is a potentially significant adverse effect. However, in view of the staff requirements re the intake structure design and location (see summary and conclusions) the impact is expected to be small.

In summary, the staff believes that the benefits from the Seabrook Station will outweigh the costs and, furthermore, that the distribution of costs and benefits do not place unreasonable costs on any segment of the population.



Advisory  
Council On  
Historic  
Preservation

RECEIVED *Cow*

JUN 10 1981 *XC*

1522 K Street, NW  
Washington, DC 20005

SANDERS & McDERMOTT  
PROFESSIONAL ASSOCIATION

May 5, 1981

Mr. Harold Denton  
Director, Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dear Mr. Denton:

We have been informed that the placement of transmission lines associated with construction on the Seabrook Station, an undertaking of the Nuclear Regulatory Commission, may have an effect on the South Hampton Historic District, South Hampton, New Hampshire. This property may possess historical and architectural significance and therefore may be eligible for inclusion in the National Register of Historic Places.

Section 800.4(a) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), sets forth the method of evaluating the significance of such properties. We request that you initiate this evaluation and inform us of your findings. If the evaluation results in a determination by the Secretary of the Interior that the property is eligible for inclusion in the National Register, you should follow the remaining steps in Section 800.4 to evaluate the effect of the undertaking on the property and, if appropriate, request the Council's comments. Should you have any questions or require additional assistance, please call Joseph P. Hough at 254-3495.

Thank you for your cooperation.

Sincerely,

*Jordan E. Tannenbaum*

Jordan E. Tannenbaum  
Chief, Eastern Division of  
Project Review

Enclosure

*Counsel Exhibit No. C*  
*(Ident.) Wdn. Ref. Evid*  
*Date: 7-16-82 By: JmH*  
*Bay State Reporting Co.*  
*Boston, Massachusetts*

JAN 5 1982

Mr. Harold Denton  
Director  
Office of Nuclear Reactor Regulation  
Nuclear Regulatory Commission  
Washington, DC 20535

Dear Mr. Denton:

By letter of May 5, 1981, the Advisory Council on Historic Preservation (Council) requested that the Nuclear Regulatory Commission investigate the applicability of Section 106 of the National Historic Preservation Act (NHPA), as amended, (16 U.S.C. Sec. 470f) to the placement of transmission lines associated with construction on the Seabrook Station, an undertaking of your agency. This action may have an effect on the South Hampton Historic District, South Hampton, New Hampshire, a property that may be eligible for the National Register of Historic Places. A copy of that letter is enclosed. Please note that your legal responsibilities under NHPA and the Council's regulations exist apart from those under the National Environmental Policy Act.

We have not yet received a reply. We would appreciate your looking into this matter and replying as soon as possible.

In addition other construction activities at Seabrook Station may come under the purview of NHPA and the Council's regulations. These activities are listed, but not discussed, in a letter received by the Council from your agency, dated November 13, 1981. A copy of this letter is also enclosed. Please include these additional activities in your investigation. If you have any questions, please call Kate M. Perry at 202-254-3495.

Sincerely,

SIGNEE

Jordan E. Tannenbaum  
Chief, Eastern Division  
of Project Review

Enclosures

# Advisory Council On Historic Preservation

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1522 K Street, NW  
Washington, DC 20005

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JUN 25 1982

Mr. Harold Denton  
Director, Office of Nuclear  
Reactor Regulation  
Nuclear Regulatory Commission  
Washington, D.C. 20555

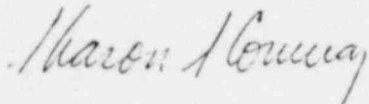
Dear Mr. Denton:

We have made two requests that your agency investigate the applicability of Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470(f)) to the licensing of construction and operation of transmission lines for the Seabrook Station in South Hampton, New Hampshire. Neither our letter of May 5, 1981, nor that of January 5, 1982, (copies enclosed) has received a reply.

Because we believe that these transmission lines will affect at least two properties potentially eligible for the National Register of Historic Places, we are particularly anxious that your agency commence compliance with the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800).

We look forward to your early reply. If you require assistance, please call Kate M. Perry at 254-3495.

Sincerely,

*or* 

Jordan E. Tannenbaum  
Chief, Eastern Division of  
Project Review

Enclosures

# Advisory Council On Historic Preservation

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1522 K Street, NW  
Washington, DC 20005

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July 2, 1982

Mr. Louis L. Wheeler  
Project Manager  
Office of Nuclear Reactor Regulation  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Mr. Wheeler:

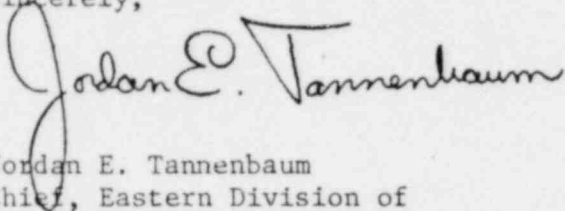
The Council has reviewed your draft environmental impact statement for issuance of operating licenses for the Seabrook Station in Seabrook, New Hampshire, circulated for comment pursuant to Section 102(2)(c) of the National Environmental Policy Act. We note that page 4-29 of the draft environmental impact statement states that two historic districts potentially eligible for inclusion in the National Register of Historic Places ". . . are along the path of the approved transmission corridor." We have been informed that, specifically, the Hilltop and Jewelltown Historic Districts, each of which have both archeological and historical significance, will be physically and visually affected by the undertaking.

Circulation of a draft environmental impact statement does not fulfill your responsibilities under Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. Sec. 470(f)).

Prior to the approval of the expenditure of any Federal funds or prior to the granting of any license, permit, or other approval for an undertaking, Federal agencies must afford the Council an opportunity to comment on the effect of the undertaking on properties included in or eligible for inclusion in the National Register of Historic Places in accordance with the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800) (enclosed). Until these requirements are met, the Council considers the draft environmental statement incomplete in its treatment of historical, archeological, architectural, and cultural resources. You should obtain the Council's substantive comments through the process outlined in 36 CFR Sec. 800.9. These comments should then

be incorporated into any subsequent documents prepared to meet requirements under the National Environmental Policy Act. Kate M. Perry may be contacted at 254-3495 for further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Jordan E. Tannenbaum". The signature is written in dark ink and is positioned above the typed name.

Jordan E. Tannenbaum  
Chief, Eastern Division of  
Project Review

Enclosure