

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 15, 1982 PAGES: 255 thru 501

AT: Portsmouth, New Hampshire

Distribution Type: TR-01

ALDERSON  REPORTING

400 Virginia Ave., S.W. Washington, D. C. 20024

Telephone: (202) 554-2345

8207210242 820715
PDR ADOCK 05000443
T PDR

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

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

Thursday, July 15, 1982
2nd Floor Courtroom
Portsmouth District Court
Portsmouth, New Hampshire

Second Prehearing Conference in the above-entitled
matter convened, pursuant to Notice, at 9:45 a.m.

BEFORE:

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

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

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

APPEARANCES:

On behalf of the Applicant:

THOMAS G. DIGNAN, JR., ROBERT K. GAD, III, and
JOHN A RITSHER, Esqs.
Ropes & Gray
225 Franklin Street
Boston, Massachusetts

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

On behalf of the NRC Staff:

ROY P. LESSY and ROBERT G. PERLIS, Esqs.
Office of Chief Hearing Counsel
Nuclear Regulatory Commission
Washington, D. C.

On behalf of Sun Valley Association:

LAWRENCE M. EDELMAN, Esq.
Sanders & McDermott
408 Lafayette Road
Hampton, New Hampshire

On behalf of the Town of South Hampton:

EDWARD J. MCDERMOTT, Esq.
Sanders & McDermott
408 Lafayette Road
Hampton, New Hampshire

On behalf of the Commonwealth of Massachusetts:

JO ANN SHOTWELL, Esq.
Assistant Attorney General
Office of the Attorney General
Boston, Massachusetts

On behalf of the State of New Hampshire:

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

On behalf of the State of Maine:

PHILIP AHRENS, Esq.
Assistant Attorney General
Office of the Attorney General
Augusta, Maine

On behalf of Coastal Chamber of Commerce:

BEVERLY HOLLINGWORTH, Esq.
7 A Street
Hampton Beach, New Hampshire

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.

5 On behalf of Seacoast Anti Pollution League:

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

9 On behalf of Society for the Protection of the Environment
10 of Southeastern New Hampshire:

11 ROBERT L. CHIESA, Esq.
12 95 Market Street
13 Manchester, New Hampshire
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

1
2 JUDGE HOYT: The hearing will come to order. This
3 is the second special Prehearing Conference called in the case
4 of The Public Service Company of New Hampshire, Seabrook Station
5 Units I & II, Docket Nos. 443-OL and 444-OL.

6 In order to have this record for this morning be
7 as accurate as possible, I will take the appearances of counsel
8 so that we can indicate on this record who was present at each
9 of the hearings. Let us take the Applicant first. Mr. Gad.

10 MR. GAD: Madam Chairman, Members of the Board, my
11 name is Robert K. Gad, II. I am an attorney. I practice with
12 the firm of Ropes & Gray, 225 Franklin Street, Boston, Massachusetts

13 With me, to my right, is Mr. John A. Ritsher of the
14 same firm.

15 Also appearing with us, but unavoidably prevented
16 from being here this morning is our partner, Mr. Thomas G. Dignan,
17 Jr. Together we appear for the Applicant.

18 JUDGE HOYT: You will represent the Applicant
19 this morning, however?

20 MR. GAD: Yes, indeed.

21 JUDGE HOYT: Thank you.

22 For the Staff, Mr. Lessy?

23 MR. LESSY: May it please the Board, my name is
24 Roy P. Lessy, Jr. I am Deputy Assistant Chief Hearing Counsel.

25 Also on behalf of the NRC Staff, to my left is

1 Robert G. Perlis.

2 JUDGE HOYT: Let us start over here, sir.

3 MR. EDELMAN: Madam Chairperson, Members of the
4 Board, my name is Lawrence M. Edelman. I am with the Hampton
5 Law Firm of Sanders & McDermott Professional Association and I
6 represent Sun Valley Association.

7 JUDGE HOYT: Good morning, sir.

8 MR. MCDERMOTT: Good morning, Madam Chairman.

9 I am Edward J. McDermott. I am from the same Firm
10 of Sanders & McDermott. I represent the Town of South Hampton.
11 Our Offices are located in Hampton, New Hampshire.

12 MS. SHOTWELL: May it please the Board, my name
13 is Jo Ann Shotwell. I am an Assistant Attorney General. I
14 represent the Commonwealth of Massachusetts in this proceeding.

15 JUDGE HOYT: Sir?

16 MR. AHRENS: Good morning. My name is Philip Ahrens.
17 I am Assistant Attorney General for the State of Maine. We are
18 here as an interested State.

19 JUDGE HOYT: Thank you. Sir?

20 MR. BISBEE: Good morning. My name is Dana Bisbee.
21 I am from the New Hampshire Attorney General's Office, represent-
22 ing the State of New Hampshire and its Attorney this morning.

23 JUDGE HOYT: Mr. Kinder is not with you today?

24 MR. BISBEE: That is correct.

25 JUDGE HOYT: Thank you. Sir?

1 MR. JORDAN: William Jordan with the Washington
2 Firm of Harmon and Weiss representing the New England Coalition
3 of Nuclear Pollution.

4 With me to my left is my Associate, Diane Curran.

5 JUDGE HOYT: Thank you. Mr. Backus?

6 MR. BACKUS: I am Robert A. Backus of Manchester.
7 I am here to represent the Seacoast Anti Pollution League.

8 JUDGE HOYT: Ma'am?

9 MS. HOLLINGWORTH: I am Beverly Hollingworth. I
10 am here to represent the Coastal Chamber of Commerce.

11 JUDGE HOYT: Ms. Hollingworth, we asked you for the
12 list of members of your association by telegramming. You very
13 graciously replied expeditiously. However, in that wire I merely
14 asked you to reply to the NRC Staff and to the Applicant. I
15 wonder if you would be able to make copies of that list of
16 members to the other parties that are available here?

17 MS. HOLLINGWORTH: I certainly would be glad to.

18 JUDGE HOYT: I think they may be interested in
19 doing so. The reason that I did not ask that the list be
20 circulated to all of the parties, the potential Interveners in
21 this case, is that we had so many remarks last time is that the
22 expense of all this was unbearable. We thought that this would
23 be an easy way to do it and everybody would still be able to
24 have the information at the appropriate time.

25 Thank you, Ms. Hollingworth.

1 Anyone else? Sir? I'm sorry, sir, I did not see
2 you there.

3 MR. CHIESA: My name is Robert Chiesa. I am an
4 Attorney and I represent the Society for the Protection of the
5 Environment of Southeastern New Hampshire.

6 JUDGE HOYT: Thank you, sir.

7 Are you people through with the NRC Staff?

8 MR. LESSY: This is Mr. Wheeler, your Honor, Project
9 Manager for the Division of Licensing Office of Nuclear Regulation
10 and to his left is Mr. Claude Scott, Summer Intern with the
11 Office of the Executive Legal Director. Thank you.

12 JUDGE HOYT: We want to do some work here in this
13 Prehearing Conference to see if we can wind up everything as to
14 the contentions and get some feel of the parties' various
15 positions.

16 I think the last time it was simply a too protracted
17 discussion that we had. This time we would sort of like to limit
18 it down and get some sense of where we are going with these things.

19 I do not think that we are going to need to do too
20 much more with the contentions filed by the State of New Hampshire.
21 At least I thought that way until they apparently have revised
22 your contentions pretty drastically from the first time. So we
23 will take any argument that the Staff and the Applicant may wish
24 to submit on that basis at this Hearing but let us limit it down
25 to that.

1 As soon as Counsel has completed their work with us,
2 insofar as their contentions are concerned, that their interest
3 in this particular Prehearing Conference may cease at some point,
4 this Board will be happy to entertain a Motion for the party to
5 be excused, and it will get everyone out a little bit quicker
6 and hopefully we will not be going on so long.

7 There is a method here; that is, the less people
8 we have in the room the less likelihood we will go too long
9 into the discussion. That may help a little bit.

10 We have noticed also that the date for the completion
11 of the Plant has slipped considerably from our last Prehearing
12 Conference in which we were advised that it was going to be
13 completed in November of 1983, I believe. Mr. Gad, could you
14 give us some help on that?

15 MR. GAD: Madam Chairman, to what you refer is a
16 pronouncement by the Staff---

17 JUDGE HOYT: (Interrupting.) Yes, that is correct;
18 but since it is your Plant, maybe you can go one better and
19 give us an actual.

20 MR. GAD: Well, as I think has been communicated by
21 the Company to the Staff, the Company is a little bit disappointed
22 at this change having been made at this point. There is a
23 Session Plan for, I think it is, October or November where the
24 Caseload Forecast Panel will come up and review the schedule
25 with the Company, at which time the question of whether or not

1 adjustments which need be made will be finally determined at least
2 for the time being.

3 Therefore, I feel that the Staff's position may
4 be not unfairly characterized as a tentative one at this point
5 to which the Company's response is not intended to be forthcoming
6 until that Caseload Forecast Panel meets in October.

7 In terms of what impact the Staff's present position,
8 I think the emphasis ought to be on the word present, ought to
9 have on the scheduling on these proceedings is a subject that
10 I think all parties are prepared to address. I do not know if
11 you want to take that up in all of its detail right now. I am
12 not sure that I give any more guidance than that.

13 JUDGE LUEBKE: Am I hearing correctly, you are sort
14 of saying that it is unofficial?

15 MR. GAD: Not all, Dr. Luebke. The Staff has made
16 a proposal and it says, as we look at things we ought to recognize
17 this change. The Company's response is, we would not have made
18 that change now. We are not prepared to sit down and go through
19 this thing definitely until the session that is already planned
20 for October or November. So there is no response from the
21 Company.

22 JUDGE LUEBKE: So what you are telling me is from
23 the Company's point of view it is unofficial, I think.

24 MR. GAD: I think it is even one notch below
25 unofficial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE LUEBKE: All right, less than that.

JUDGE HOYT: On a scale of 1 to 10---

MR. GAD: (Interrupting.) I hesitate to get into quantitative analysis to determine it.

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 JUDGE HOYT: That Panel--I am sorry. I didn't
2 understand the date.

3 MR. GAD: I believe it is October or November of
4 1982. Frankly, though, I can't recall whether I was told the
5 precise date, but it is in the mid-Fall of 1982.

6 JUDGE HOYT: I'm sorry. Is that correct, Mr. Lessy?

7 MR. LESSY: My understanding, your Honor, is that
8 the Company is doing a detailed revaluation of their progress
9 and construction, and that is due sometime early in the Fall,
10 perhaps at the end of the month of September, and then after the
11 Staff has a chance to take a look at that, then there will be a
12 physical Plant Site Tour, and that should take place within a
13 month or two months after the Applicant's study is completed.

14 JUDGE HOYT: Putting it somewhere around December?

15 MR. LESSY: I'd say November. The final Prehearing
16 Paragraph 4 of the Board's Prehearing Conference Order asked
17 that the parties be prepared to discuss scheduling further, and
18 we are prepared to do that. In fact, considering the comments of
19 the parties to the Proceeding at the last Prehearing, as well
20 as some of the scheduling adjustments, in addition, some discussion
21 we had with F.E.M.A. concerning their input, we do have a proposed
22 revised schedule to pass out. If you would like me to do so,
23 I could do it now. I don't know in which order you want to take
24 this. At the last Prehearing we did it last, but if the Board
25 prefers to have parties who are completed to be able to go, maybe we

1 ought to do it at the beginning. I'll leave that up to the Board.

2 JUDGE HOYT: Yes, that's the reason that I brought
3 it up at this time, so we could get --

4 MR. LESSY: I could pass this tentative proposal
5 out.

6 JUDGE HOYT: Sure. Thank you.

7 On the schedule that you gave us before, Mr. Lessy,
8 I think the word is not operative.

9 MR. LESSY: I'll respond, your Honor, when he
10 finishes passing this out so that everyone will have a copy in
11 front of him.

12 I never had a course in scheduling in law school,
13 so in this area I rely on the input that I get from the Division
14 of Licensing and we discuss these matters.

15 Based upon the knowledge that I have today concerning
16 this matter, as Mr. G has said, nothing is cast in concrete. I
17 think at the last Prehearing we discussed with the Board the fact
18 that there was approximately a twelve or thirteen doubt or
19 difference between the forecast that the staff had sort of in
20 mind with respect to construction and completion at Seabrook,
21 vis-a-vis, what the Applicant had in mind, and we've been trying
22 to deal with this.

23 We also said that at the Seabrook site our Resident
24 Inspectors reported upwards of 8,000 men working three shifts.
25 My understanding is that the schedule which I have here would be

1 accurate from the Staff's standpoint. I think there is enough
2 flexibility in this schedule to consider any adjustments which
3 may be required and if the Public Service Company of New Hampshire,
4 which if possible could catch up on some of the time, that has
5 been indicated that has not been made, this gives them an
6 opportunity to do that. If there is any further slippage, I
7 think the schedule can be adjusted in that regard.

8 JUDGE HOYT: That last Discovery Request which you
9 show as December 15 of 1982, is that a sufficient discovery time?

10 MR. LESSY: Well, the discovery period would start
11 roughly 8/15/82 and run, if that were an interrogatory request,
12 the rules provide -- or a document request -- the rules provide
13 30 days to provide documents; 15 days for interrogatories as a
14 matter of practice when document requests are coupled with inter-
15 rogatories. People just assume that they have 30 days.

16 This would give the parties from 8/15/82 until the
17 Prehearing Conference, which would be almost 5 months.

18 JUDGE HOYT: Well, the N.C.R. though, is not
19 scheduled until November 8th of 1982.

20 MR. LESSY: Yes, that's one of the dates which has
21 been changed. The F.E.S., the Final Environmental Statement --
22 there is no change in that. That's still the original date for
23 the issuance of that.

24 JUDGE HOYT: If it's going to hold.

25 MR. LESSY: Yes, that's right. The S.E.R., the

1 date has moved two months with the agreement with the Applicants
2 with respect to that, as I understand it.

3 JUDGE PARIS: So you are talking about January 3
4 for the S.E.R. ?

5 MR. LESSY: No, the S.E.R. is 11/08/82. The date
6 is on the bottom left hand side of the --

7 These are revised dates. I'm sorry. It should
8 have said that.

9 What I'm saying is that the F.E.S. would come out
10 right in the middle of the discovery opportunity. The S.E.R.
11 would come out also in maybe the back third of that period,
12 certainly within five weeks or six weeks of the opportunity to
13 file the discovery request.

14 The other thing that this does is that if you look
15 at the fourth line from the bottom, we have had discussions with
16 F.E.M.A., Region I, which is responsible, as the Board knows, for
17 off-site planning with respect to sites, nuclear power plant
18 sites, and I think in the last Prehearing there was considerable
19 discussion about the input from F.E.M.A. and how that would gel
20 with the proposed schedule and the fact that this was something
21 that neither the Board nor the Staff had any control over and
22 it was a very iffy date.

23 We have had discussions with F.E.M.A. in that regard
24 and they have promised to us to make their findings and testimony
25 available in accordance with this schedule; in other words,

1 May 5th, and as this schedule works out, all the schedules, all
2 the testimony would come in together, and therefore, there would
3 be not delay or biforcation necessitated as a result of having
4 F.E.M.A. testimony come in during the pendency of an ongoing
5 operating license proceeding.

6 The one thing that this schedule does that I wanted
7 to point out to the Board was that it does two things. Under
8 the schedule which we had previously discussed, the hearing was to
9 begin in February or March of 1983, and the estimates in the con-
10 struction completion have approximately been revised backwards
11 for 22 weeks, which if you figure it out in terms of workdays, is
12 roughly six months.

13 This splits the difference. This says that instead
14 of just advancing the Hearing date or postponing the hearing date
15 for six months all the way across the board, this only postpones
16 the hearing date for approximately three months.

17 The affect of that is twofold.

18 JUDGE HOYT: Wouldn't that be four months?

19 MR. LESSY: Four months, yes. The affect of that
20 is that it gives us an additional two months for available hearing
21 time. The Bevill Schedule only allowed approximately two months
22 the the hearing. This would make it approximately four and one
23 half months which gave us a lot more flexibility in terms of con-
24 tinuation.

25 JUDGE HOYT: Do you think we are going to need that

1 much hearing time?

2 MR. LESSY: It depends on the schedules or the
3 parties and the Board and the availability of witnesses and things
4 of this nature. It gives us the opportunity to do that. In
5 addition to that, this schedule here also gives us from June
6 until April with respect to the requirements -- the Commission's
7 requirements, for the Licensing Board's decision.

8 If the Hearing is over more expeditiously, and in
9 fact the Applicant studies and the Staff's review indicates that
10 catch-up progress has been made with respect to this Unit, that
11 amount of time between the Hearing start date and the Licensing
12 Board's initial decision date, permits us to at least make and
13 probably beat the the Commission Decision, the Licensing Board's
14 Decision Date.

15 JUDGE LUEBKE: In view of this meeting you are
16 going to have in October or November, is there really any point
17 of trying to be very accurate about things beyond?

18 MR. LESSY: Only in the sense, your Honor, that
19 with a lot of parties, and certainly a lot of proposed contentions,
20 our feeling is -- the Staff feeling is, and we hope the Board
21 would agree that it would be prudent to get the proceeding going
22 now.

23 There are a lot of issues in the proceeding that
24 don't need to await the final estimate of construction completion
25 date to get started on.

1 In my experience at least, in nuclear power plant
2 licensing proceedings, is that the best way to have a long, big
3 delay which is going to have a deleterious affect on everyone is
4 to have a lot of little delays.

5 Our feeling here was that we would like to get the
6 proceedings started and this did provide for, I think, a fair
7 amount of time for discovery. It also provides a date for
8 January 12 and that should, obviously, be 1983, an opportunity
9 for the Board and the parties to deal with any schedule adjust-
10 ments, either positive or negative at that point in time, any
11 extensions of discovery which might be required, as well as
12 resolving any discovery disputes that sometimes arise in these
13 cases at that time.

14 After the results of the Staff Baseload Forecast
15 panel would be out in January 12, 1983, under this proposed
16 schedule, we would not have only issued the Safety Evaluation
17 Report in the Final Environmental Statement, but we would have had
18 the opportunity for good discovery. I think we would have a
19 running start on what ever else is to come.

20 As I say, I'm not --

21 JUDGE LUEBKE: Excuse me. A running start -- I
22 read the discovery would be practically over.

23 MR. LESSY: That's right.

24 JUDGE HOYT: Hold on, Mr. Lessy. We have to change
25 tapes.

1 JUDGE HOYT: Go ahead.

2 MR. LESSY: The last discovery requests, it would
3 about over at that time but that would afford the parties almost
4 five months for discovery. Now in operating licensing proceedings
5 that is generous from the dates that I have seen.

6 JUDGE LUEBKE: Then we ought to hang tough to really
7 get the discovery over.

8 MR. LESSY. We would have to look at that in
9 January but my feeling would be that at that point in time any
10 discovery that was not over with, there would have to be a good
11 reason for it.

12 JUDGE LUEBKE: Exactly.

13 JUDGE HOYT: I believe Ms. Curran had some input
14 in a schedule. There seems to be a considerable difference.

15 MR. JORDAN: Well, actually, your Honor, I am struck
16 that in a sense it is not as different as it might seem.

17 JUDGE HOYT: Very well. Then let us dwell on the
18 agreements that we have.

19 Your hearing schedule start, of course, is October
20 and the Staff is proposing June?

21 MS. JORDAN: Correct. That is four months. We are
22 basically off by three or four months in the whole thing.

23 In my experience, the four months that is provided
24 for, for discovery is simply not adequate for the scope on the
25 premise that we will get the contentions that we expect to get.

1 I must say I am particularly concerned about Quality
2 Assurance contentions. My experience is that we really need
3 a six month Discovery Period in order to handle that adequately.
4 If we are able to do it as we expect to, it involves discovery
5 in analysis of massive amounts of documents, documents involving,
6 again if we have the capacity to do it, virtually all of the
7 nonconformances that have occurred on that site, trend analyses,
8 an enormous number of things to look at. That is just in the
9 area of Quality Assurance.

10 If I could give you an estimate just based on my
11 own experience in the last two or three months at Comanche Peak
12 Site, helping out down there, it was 30,000 pages of documents
13 discovered in a couple of month. You can imagine they have not
14 had much time to assimilate that material very well and that was
15 only part of the information available.

16 So just fundamentally I am concerned that we really
17 do need six months.

18 JUDGE LUEBKE: This morning we are not really ready
19 to show cause. In other words, you are imagining this?

20 MR. JORDAN: I am postulating it, I guess I prefer.
21 At any rate, that is the kind of concern that I have. I recognize
22 that there is a desire to move operating license proceedings
23 along but this is substantial litigation about a very, very
24 complicated machine.

25 JUDGE HOYT: You know, Mr. Jordan, if we hold onto

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 the schedule proposed by the Staff with some flexibility, if you
 2 could show cause you need additional time, would not we be in
 3 a better posture than just tossing out time so free handed?
 4 I feel, and I am speaking for myself on this, I just feel that
 5 discovery is a very overworked term. You may get 30,000 pages
 6 of documents, you may get 3 and you may get none. Until you get
 7 the 30,000 let's not talk in terms of what we need to assimilate
 8 that kind of material. Let's talk in terms of what the bare
 9 minimum would be and if you need to get some extra quarters
 10 from this Board to get discovery on a particular matter, then
 11 let's meet it individually, point by point, rather than by such
 12 broad approach.

13 MR. JORDAN: I think my feeling on that, your Honor,
 14 in fact I think raised a concept similar to what Mr. Lessy has
 15 in here at the last Prehearing Conference, and that is I think
 16 it is a reasonable approach to set what I would refer to more
 17 as an essentially tentative discovery deadline by which the
 18 Board looks to us and says, okay, have you been doing your job?
 19 Have you been taking the discovery you could take? Tell us where
 20 you are and what do you need? In a sense my concern would be
 21 just how the Board is viewing this as to whether we have an
 22 enormous threshold to get over to proceed or just exactly what we
 23 further need to show.

24 At any rate, the concept of sort of a tentative
 25 deadline with showings to justify another two or three months,

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 whatever is necessary, is to me a reasonable one.

2 I guess in this case if it is something along the
3 lines of this January Prehearing Conference that Mr. Lessy
4 suggests, at which point to take stock in effect and see if
5 we need to go to the two more months to the March discovery close
6 that we have in our schedule, is a reasonable concept.

7 I would say by the way, with respect to ours, there
8 is a date which we should have included after 3/15/83 which we
9 put for last discovery requests, not including depositions. The
10 purpose there is to close off in effect, interrogatory document
11 discovery and to give us another month to take any further
12 depositions that we might we want to take, based on what we had
13 received in those materials so that you understand where that is.

14 I guess I would run the discovery, in Mr. Lessy's
15 case, through January and then we would come to the Prehearing
16 Conference and find out if it was closed or not based on the
17 arguments we would make to the Board. That concept is reasonable.

18 JUDGE HOYT: How about that, Mr. Lessy? Let's take
19 that last discovery request into January? Realistically I do
20 not think you are going to find too many people working themselves
21 to death over the Christmas Holiday.

22 MR. LESSY: What that means, your Honor, is simply
23 that the last interrogatory or document request should have been
24 filed prior to the Prehearing Conference and the last deposition
25 scheduled prior to it. At that point in time when we go to the

1 Prehearing Conference in the second week in January, we should
2 know two things.

3 We will know, one, that the parties have engaged
4 in good faith efforts to discover each other or at least have had
5 the opportunity to and the only thing that will be left will be
6 unresolved issues or matters that cannot be settled or matters
7 that, as sometimes happens, need the Board's intervention.

8 I know that the Chairman indicated she does not
9 like motions to compel. I do not like to file them or answer
10 them but sometimes these things come up.

11 JUDGE HOYT: Let me put that in its proper context,
12 Mr. Lessy. I want to say I do not like motions to compel where
13 the motion is needed because we have had an unwilling party.
14 The word compel has a nasty connotation. I hate to use it unless
15 it is absolutely necessary.

16 MR. LESSY: Right, I agree. What I am saying, I
17 guess we are saying the same point. A certain percentage of
18 these matters can be resolved amicably between Counsel. Sometimes
19 there is a certain percentage that need the Board's intervention
20 and that gives the opportunity for that.

21 JUDGE HOYT: That is recognizable. That is not the
22 type of motion to compel that is unpleasant to have to rule on.

23 MR. LESSY: The other thing that this Prehearing
24 Conference gives an opportunity for here is if there are any
25 hangover items from the discovery period, the period will go up

1 to the completion date of responses from 12/15/82. Responses to
2 document requests would not be due until 1/15/83 if they were
3 made on 12/15/82 under our Rules.

4 It also gives us the opportunity to see exactly
5 where we are in terms of Plant construction. If there is a little
6 bit more time allotted because of Plant Construction Schedules,
7 the Board at least would have the opportunity of considering that.

8 If, however, the Plant Construction Schedules,
9 the Applicant Studies and the Staff Review indicates that we
10 better get cracking because there has been a lot of progress
11 made and we have a very short timeframe, then the Board should
12 consider that also at that point in time and have the opportunity
13 to compress the Schedule.

14 I view this date as kind of an accordion date, if
15 you will, but one in which the overall timeframes for proceedings
16 should be set. I am really starting to feel just a little bit
17 nervous about not having something like this in front of us at
18 this point in time in order to have an expeditious completion.
19 I do not want to see us compel to be in hearing every weekday
20 of every month over next summer, as nice as it is up here. I
21 would like a little flexibility and I think that was the aim
22 here and also to consider a lot of the comments we got last time.

23 MR. JORDAN: Your Honor, if I may?

24 JUDGE HOYT: Yes, Mr. Jordan.

25 MR. JORDAN: With respect to the Staff's proposed

1 schedule, it does seem to me quite unrealistic in a couple of
2 areas that could have a significant impact. One, of course, is
3 the issuance of the SER and the treatment of the SER not coming
4 until November. There may well be some treatment of that once
5 it comes out.

6 Perhaps more obvious and of concern, I think to
7 virtually every party here, is Emergency Planning. There is an
8 awful lot that is not out on Emergency Planning. There is the
9 FEMA information that we are going to need to get into discovery
10 and also the state and the local plans, to my understanding are
11 not available yet.

12 JUDGE HOYT: Mr. Jordan, that is a matter that
13 neither the Staff or the Applicant can control. That is the
14 local authority and we have no jurisdiction over that whatsoever
15 to compel them. That is where a motion to compel might be handy
16 but we do not have that available.

17 Therefore, I do not think we should use the
18 Emergency Plan as an excuse to hold up the hearings.

19 MR. JORDAN: All I am saying is that that is a
20 matter that will be litigated, I assume, in the hearing and we
21 should simply look ahead realistically. I do not know that it
22 controls anymore.

23 I think your point that your point as to we do not
24 know whether we will get 30,000 documents or 3 is very well taken.

25 JUDGE LUEBKE: At which case we will Phase I and

1 Phase II. We will go ahead with the Hearing, Phase I. Phase II
2 is what is left over.

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 JUDGE HOYT: I think we've explored this as far as
2 we need unless there is some other party here who would like to
3 make a contribution.

4 You are?

5 MR. BISBEE: I'm Mr. Bisbee. With start of discovery,
6 I have one concern. If discovery begins the day that your order
7 is issued, that might not allow sufficient time to fully under-
8 stand which issues have been allowed and which ones haven't, to
9 investigate them in time to properly respond to discovery request.
10 May it be submitted to us immediately upon issuance of your order.

11 JUDGE HOYT: Let me advise you that when we issue
12 our next order, you will know what your contentions are, because
13 we will deal with each one of them. We are going to deal with
14 them all in that one order. The quicker we get back to Washington,
15 the quicker we can draft this.

16 MR. BISBEE: You didn't understand my concern. If
17 discovery was to begin immediately, if interrogatories were
18 served upon us, for instance, we would have 14 days under the
19 rules to respond to them and we would not have had much notice
20 of which issues had actually been admitted for us to investigate
21 further.

22 JUDGE HOYT: Your point is made, sir.

23 Anything else?

24 MR. AHRENS: Even though I admit that I'm not a
25 party, I had a concern that maybe that the other parties are

1 not going to stay right not, but the S.E.R. is due in November,
2 I notice that Mr. Jordan's schedule has a timeframe for conten-
3 tions based on those and I see none of those in Mr. Lessy's
4 schedule.

5 I don't know whether that's an assumed contention
6 based on those in the Discovery might go beyond the mid-January
7 date or not. I just thought I'd raise that.

8 MR. LESSY: The Commissions Rules of Practice Con-
9 trol -- let's assume that you have contentions based upon the
10 S.E.R. in November. Since the opportunity for filing contentions
11 would have been over by that time, you are going to have to file
12 contentions under the Commissions Rules of Practice. I don't
13 particularly like to address the five factors for late file
14 contention.

15 Certainly, if you couldn't have filed the contention
16 because it emanated from the S.E.R. exclusively, that's good
17 cause. What I am saying is, yes, if contentions emanate from
18 these documents, they are going to be contentions in which you
19 are going to have to address why you didn't file them previously.
20 If the Board admits those contentions later and if the Board
21 remits those contentions during Discovery Period, we can engage
22 in Discovery on those contentions.

23 If the Board admits those contentions later than
24 that, then the Board will have to discuss it at Prehearing
25 Conference whether or not we want to have a little bit additional

1 limited Discovery for the purpose of new-filed contentions which
2 weren't filed because they emanated exclusively from the S.E.R.

3 That's the way the rules are and the Board as well
4 as the Staff is obliged to follow the Commission's rules. That's
5 all I can say.

6 MR. AHRENS: Your Honor, I understand the rules.
7 My comment was that Mr. Lessy's schedule has Last Discovery Request
8 and since that seems to be very narrowly worded, I thought there
9 should be an understanding that deals with those contentions
10 that have already been admitted.

11 JUDGE HOYT: I think his explanation is complete.
12 Moving right along, if there is nothing else on that issue, I
13 wonder if we would be well advised to dispose of some of the
14 lessened numbered contentions, that is in weight of the contentions
15 as far as numbers are concerned.

16 I believe that the state of Massachusetts has only
17 four Contentions. All four of those Contentions are based upon
18 Emergency planning. Since we don't have emergency planning and
19 you want to get in on the basis of those contentions, it seems
20 like one of the dilemmas that the rules give us, get us into in
21 this thing is the problem of getting the parties in with one good
22 contention in the beginning so they can participate in Discovery.

23 Since we don't have emergency planning, I'm
24 reluctant to see the contentions. I think the Board has discussed
25 this among ourselves on several occasions, and we are reluctant

1 to just take those contentions and let you tentatively -- a plan
2 actually being filed.

3 What I would like to ascertain if the Applicant and
4 the Staff would have any objection to proceeding somewhat along
5 these lines; to admit the state of Massachusetts as an Intervenor
6 in this, based upon the fact that their contention will be that
7 of Emergency Planning and to defer the admission of their con-
8 tention until such time as the final version of their contention,
9 until such time as the plan is actually before it.

10 Do you have any thoughts on that, Mr. Gad?

11 MR. GAD: That would be very similar to what we
12 had suggested in our written document -- the Applicants do not ---

13 JUDGE HOYT: (Interrupting.) Probably where I got
14 it.

15 MR. GAD: We have no opposition to admitting
16 Massachusetts on a single contention framed in the following terms:
17 The Applicants have not complied with 10 C F R , S. 50.33 (g),
18 10 C F R , S. 50.47, 10 C F R , part 50, appendix (e) and I'm
19 just picking up from the written document that we filed.

20 JUDGE HOYT: What was the first one on that?

21 MR. GAD: 10 C.F.R. S. 50.33 (g)

22 JUDGE HOYT: Thank you. Number 54 and 47 are
23 appendix (e).

24 MR. GAD: And we have no objection to admitting
25 Massachusetts on that basis.

1 JUDGE HOYT: Would you be willing to accept that
2 as your contention at this point, and subject to your advising
3 that contention upon the submission of the emergency plan, the
4 point being let's get you in. Let's get your show on the road
5 and get the thing out of the way so you can go ahead and participate
6 in the discovery when the plan is available.

7 How does that sound?

8 MS. SHOTWELL: Well, that last phrase was of
9 interest to me. I was going to ask for a matter of clarification
10 in terms of what this would mean in terms of discovery.

11 Our Contentions don't really go to aspects of off-
12 site plans. The fact that those plans aren't available yet,
13 in my opinion, doesn't make the Contentions premature.

14 The Contentions go to the question of the feasibility
15 of any emergency plan. In other words, the question of, assume
16 that you are going to have the ideal plan.

17 JUDGE HOYT: We are not going to be litigating just
18 any plan; we are going to be litigating, in this case, if
19 anything---

20 MS. SHOTWELL: (Interrupting.) That is true, your
21 Honor, but the Commission's Emergency Planning Regulations require
22 this Board to determine whether there is reasonable assurance
23 that in the event of an accident, the Public can and will be
24 adequately protected. I believe that I am quoting the language
25 from the Rule.

1 What that says to me is that there has to be
2 evidence that an Emergency Plan, that adequately, perhaps subject
3 what
4 to judgment about/adequately means, but that provides some degree
5 of protection that the Board feels is adequate.

6 One of our Contentions goes to certain evidence
7 that is available as of this time and is asking the Board to
8 inquire into the question of whether any plan, given the location
9 of this particular plant and many particular features of the
10 site and this location, is going to adequately protect the public.

11 That contention is not in any way dependent upon
12 these off-site plans that haven't yet been prepared.

13 JUDGE LUEBKE: As I listen to your comment, I do
14 have the feeling of the word "anticipate".

15 MS. SHOTWELL: Well, I don't believe so in the
16 sense that certainly there may be additional evidence. There
17 will certainly be additional evidence that will come out that will
18 bear on this question. I think there is no doubt about that.

19 JUDGE LUEBKE: You said you don't expect there is
20 going to be a good plan.

21 MS. SHOTWELL: No, I didn't say that at all.

22 JUDGE LUEBKE: Then I misunderstood.

23 MS. SHOTWELL: I think that there are two separate
24 issues when we talk about emergency planning. There is the
25 question of the mechanics of the Plan -- how mechanically you
are going to use people or shelter people -- the details of that.

1 People may have contentions that relate to aspects
2 of those plans once those plans are available. In other words,
3 they may say, We don't think these particular mechanics will
4 work. We don't think you've looked at this particular detail
5 that bears on this mechanic.

6 That's not what the Commonwealth's Contentions are.
7 At this point we have four Contentions. One is simply the fact
8 that there are no off-site plans submitted as of yet. And the
9 Contention doesn't go into ---

10 JUDGE LUEBKE: (Interrupting.) That's just a state-
11 ment -- that's not really a contention. That's not argumentative.
12 Everybody agrees.

13 MS. SHOTWELL: It's conceivable, your Honor, that
14 the off-site plans would never be submitted. It is conceivable.
15 Until they are, the Commissions Regulations are not satisfied.
16 That's what our contention says.

17 Obviously, at the point where they are submitted ---

18 JUDGE LUEBKE: (Interrupting.) Yes, but why don't
19 you say that when the time comes?

20 MS. SHOTWELL: Well, we are saying it at the time
21 now and there are none. That is true as of this date. It could
22 remain true forever, at which point there could never be the
23 issuance of a license.

24 JUDGE PARIS: How would we litigate such an act?

25 MS. SHOTWELL: I think it would be a summary

1 disposition matter.

2 JUDGE PARIS: Okay. That's way down the road. At
3 this point, I don't see how we could litigate a contention that
4 says there is no emergency plan in existence right now. When
5 we come down the road and we've done everything and still there is
6 no Emergency Plan in existence, then we may very well need to
7 litigate.

8 MS. SHOTWELL: But I don't think I'd be allowed to.
9 Perhaps you are saying that I would be. My view of the Regulations
10 was that I would not be allowed to introduce the contention at
11 that point.

12 JUDGE LUEBKE: I think that if we came down to the
13 end of the road and there was still no Emergency Plan in place,
14 you would have good cause for filing a late contention.

15 MS. SHOTWELL: In that case, I will withdraw our
16 first Contention if that is the concensus of the Board, because
17 we have no problem with that.

18 Obviously once the Plans are out, we would have to
19 revise this Contention to deal with any aspects of the Plan. If
20 you would prefer the approach of simply not having that Contention
21 at all, with the understanding that once the Plans are available,
22 that would be a proper subject for the introduction of contentions,
23 we have no problem with that.

24 JUDGE LUEBKE: I think that's what it said in the
25 very beginning.

1 MS. SHOTWELL: Well, I think that the Chairman's
2 suggestion would prevent the Commonwealth from doing Discovery
3 as I understand it at this point in time.

4 JUDGE HOYT: We are trying to get you into a posture
5 where you can participate in Discovery. It was not to prevent
6 you from exercising your rights to Discovery. It was to get you
7 into a posture where you could exercise Discovery.

8 MS. SHOTWELL: Perhaps I misunderstood, your Honor.

9 JUDGE HOYT: I'm afraid you did.

10 MS. SHOTWELL: You say, then, as of this point if
11 we were to have this one generally worded contention that the
12 Commonwealth would be in a position to conduct Discovery, then
13 on the matter of Emergency Planning ---

14 JUDGE HOYT: (Interrupting.) I think that's what
15 I said. If you misunderstood me, I think we may be spinning our
16 wheels a little bit and not go any further.

17 JUDGE LUEBKE: You might ask questions, but you
18 might not get many answers.

19 MS. SHOTWELL: Our questions don't relate to the
20 Plans is what I'm trying to say. We have the Applicant's
21 Emergency Plans. That's already on file. One of our contentions
22 deals with aspects of that Plan. We have the FSAR on file which
23 presents certain evidence about the consequences of an accident
24 at this particular site. We would want to conduct Discovery on
25 that because that bears on the question of the feasibility of

1 evacuation and other protective action.

2 If it is understood that we will be in a position
3 then to do Discovery on the issue of Emergency Planning, we do
4 not object to the introduction of the generally worded contention
5 that has been suggested by the Applicant as our contention in
6 this matter.

7 MR. LESSY: Unfortunately I hate to be the one who
8 breaks up a beautiful dance, but we would. We don't feel that
9 Massachusetts in its contention here has merely cited the NRC
10 Regulations and then merely made the blanket statement that they
11 haven't been met. As we said at the previous Prehearing Con-
12 ference, in order to satisfy the controlling regulation, we need
13 to be told how the regulations are not met and the basis for that
14 statement.

15 JUDGE HOYT: The problem that we are getting into ---

16 MR. LESSY: (Interrupting.) If I may finish, your
17 Honor.

18 JUDGE HOYT: All right.

19 MR. LESSY: In response to the Board's question,
20 even though the theme of testimony and filings or file testimony
21 won't be available until May 5, 1983, the draft plans will be
22 made available, my understanding is, sometime next fall or late
23 next fall, during the Discovery period -- the draft state and
24 local plans, the off-site plans. It may not be the final plans
25 but it will be an indication of -- there will be specific docu-

1 ments by which Massachusetts can focus its attention and attempt
2 to litigate the problems or the issues which are of concern to it.

3 So my feeling would be, rather than be -- I am
4 more or less in agreement with the Board's proposal rather than
5 the Applicant's. The Applicant's proposal is a statement that
6 says -- a generalized contention which says these contentions
7 don't need the Regulations.

8 We litigated a contention like that. The NRC Staff
9 did that in another proceeding. There are 16 requirements for
10 Emergency Planning contentions and a couple NuRegs. With a
11 contention as broad as that, it means you have to address each
12 of those 16 requirements and all the NuRegs in the hearing never
13 ended as far as I'm concerned. I don't think that kind of con-
14 tention meets the requirements of the Regulation.

15 What I suggest we do is admit them as a party as
16 having identified the specific aspect of the proceeding. In
17 addition to that, let them frame a specific contention when
18 the draft plans are available. If you have specific concerns,
19 however, if Massachusetts has specific concerns about Applicant's
20 plan which has been submitted, then that specific contention --
21 there is no reason that has to await until next November, December
22 or January. That can be done now.

23 JUDGE PARIS: How do you react to that, Ms. Shotwell,
24 conducting Discovery now on the Applicant's plans which are
25 available, and then as soon as something is available on the off-

1 site plans, proceed with Discovery on that. That is what you
2 are suggesting, Mr. Lessy?

3 MR. LESSY: Yes.

4 MS. SHOTWELL: I feel that what is prompting me to
5 say that Discovery could commence now on the Applicant's plan
6 is equally true of the other Contentions of the Commonwealth in
7 the sense that none of our Contentions depend in any way on what's
8 going to come out in those off-site plans.

9 If I could just discuss very briefly what the Con-
10 tentions are, I think it might help to clarify things. I think
11 for a moment that we can ignore the first one and proceed directly
12 to the second, which says that the Applicants have failed to account
13 for local emergency response needs and capabilities in establishing
14 boundaries for the two emergency planning zones that the Rules
15 require them to establish--the plume exposure pathway, EPZ, and
16 the ingestion pathway, EPZ.

17 This Contention does not relate in any way to what
18 is going to come out in off-site emergency plans. The Commission's
19 Regulations say, Applicant, you must examine local factors that
20 relate to local emergency response needs and capabilities and
21 determine what the boundaries of the zones should be for this
22 particular facility. The Rule says generally those will be about
23 ten to fifty miles, but it puts a burden on the Applicant in con-
24 sultation with State and local officials to examine all relevant
25 factors and to come up with what the boundaries should be

1 for this site and this plan. They have not done so. That's
2 that Contention. Nothing that comes out of the off-site plans
3 is going to change that.

4 The third Contention that we submitted ---

5 MR. LESSY: (Interrupting.) Excuse me. Maybe we
6 ought to do it contention by contention if we could. Could we
7 respond to the second contention?

8 JUDGE HOYT: I think that might be helpful, particu-
9 larly when we have to read these records. Go ahead.

10 MR. LESSY: I think what we said about the second
11 Contention on our pleading which we filed on May 19, 1982, is
12 that certainly a proper contention could be framed on this subject
13 matter, but the way this is framed, this contention merely
14 challenges the EPZ Emergency Planning Zone boundary selected by
15 the Applicant. While these boundaries aren't inflexible,
16 Massachusetts hasn't supplied any reason to support its belief
17 that those boundaries are not inappropriate for Seabrook. It
18 fails to meet the specificity requirements.

19 If you can tell us how and why those boundaries are
20 unacceptable for Seabrook, then you may have the genesis here of
21 an acceptable contention -- just the broad statement saying those
22 boundaries -- I think your contention says that the Applicants
23 have failed to account for local emergency response needs and
24 capabilities in establishing boundaries. How? Give us an
25 example. If you can do that, you've got a contention.

1 MS. SHOTWELL: Could I respond to that? What this
2 amounts to then is that the burden is on the Intervenor to say
3 what local factors would have an affect on the boundaries and how.
4 I think that's simply wrong.

5 JUDGE LUEBKE: After the you read the documents that
6 have been written.

7 MS. SHOTWELL: What I'm saying is that the
8 Commission Regulations very clearly place that burden on the
9 Applicant. They say that the Applicant has to conduct a study --
10 has to examine these factors. They haven't even begun to examine
11 them. Once they do, obviously, and they indicate their views on
12 what the boundaries should be in their opinion, then we will be
13 in a position to specify more particularly whether we agree or
14 disagree with them.

15 But to say that the Intervenor has the burden in
16 the first instance to conduct that kind of study is not consistent
17 with the Commission's Regulations. The Commission's Regulations
18 very clearly say that the Applicant can start with these approxi-
19 mate generic zones, but that it has to determine Emergency
20 Planning Zones for this facility with respect to local conditions,
21 and it has not done so. It hasn't begun to even look at local
22 factors, so that we are really not in position yet to say you
23 haven't properly accounted for this factor or this factor, because
24 in fact, they haven't accounted in any way whatsoever for any
25 factors.

1 We have in our list of bases, we have indicated a
2 number of the local factors that we feel ought to be examined.
3 At this point we are not in a position to conduct the initial
4 examination that the licensee is obliged to conduct with state
5 and local officials to ascertain exactly what that Emergency
6 Planning Zone is ultimately going to look like.

7 JUDGE HOYT: I'm sorry. Mr. Gad.

8 MR. GAD: This is exactly the reason why we had
9 proposed what we had proposed. I think a little explanation is
10 in order as to why the Applicant differs from the Staff on this.
11 It is not because we don't agree with the Staff about what
12 specificity ordinarily requires with respect to a contention. It
13 is because one is Emergency Planning, and with a certain sense of
14 resignation, we have no doubt that anyone wants to litigate the
15 Emergency Planning in the Seabrook case is going to get litigated,
16 and there wasn't much point in spilling a lot of ink over
17 precise contentions at this point.

18 Not only is there not much point, but there is
19 a vice to the problem. The vice to the problem is that you get
20 into precisely this kind of a discussion. The implicit in the
21 contention that Ms. Spetwell has picked out of the air is a poor
22 instance -- implicit in that is an assertion that goes as follows:

23 If you assume that the minimum EPZ will be a perfect
24 circle concentric with the center of the reactor core, but it
25 may go outside of that, then there is an infinite number of

1 possibilities. If you go inside of that, then there are twice the
2 infinite number of possibilities and the legal implications of
3 what the Commonwealth is asserting here, and what they are asking
4 the Board to rule is that the Applicant has to go out and somehow
5 do a study on each one of those possibilities which will be an
6 infinite number of books, and in an infinite number of libraries.

7 That's not in our judgment what the Rules said.

8 In our judgment, what the Rules say is: We are going to give you
9 a default position. Here is when you start unless somebody
10 funds a good reason, and it really doesn't matter who comes up
11 with the reason. Ultimately it will be this Board's judgment.
12 Here is what you take unless someone has got a good reason to
13 take something different. If there is no evidence whatsoever,
14 if nothing tilts the scale, then this is what you take. That's
15 what the Rules say.

16 Someday, maybe -- frankly we doubt it, but someday,
17 maybe, this Board will have to decide whether the Commonwealth
18 view of what the Rules tell us is correct or whether our view
19 of the Rules say is correct. It was to avoid this kind of argu-
20 ment and necessity of making these kinds of fine distinctions
21 at the very threshold of the case that we have made the suggestion
22 that we did. On that basis, I urge you.

23 JUDGE HOYT: Excuse me.

24 (Off the record.)
25

1 MR. GAD: I did not mean to get wound up and go
2 faster than the machinery. I apologize.

3 JUDGE PARIS: It sounds to me as though you are
4 saying our position is that we take the center of the reactor
5 core and with a protractor we draw a circle around that without
6 any regard to where that circle falls. If it goes through the
7 middle of a town, so be it unless somebody says we need to take
8 in the whole town. Is that the Licensee's position?

9 MR. GAD: That the legal of the Licensee's Lawyers
10 is and what the Rule means is, is that you have null position or
11 this default position in the absence of coming up with some
12 reason to the contrary, then, yes. You do precisely that and
13 if it is between Units you have two circles and you get something
14 that really does not look like a perfect circle.

15 Now, you may make adjustments for local boundaries,
16 you may make adjustments for anything else if you can come up
17 with a good reason for it.

18 The position of the Commonwealth is that you have to
19 go out and do an evidenciary study and presumably mark all of
20 that evidence into this courtroom to disprove each and every
21 other one of the alternatives. That would take an infinite
22 number of hearing dates.

23 My purpose is not to litigate this morning which
24 view of this correct or to demonstrate that we have no need to
25 do that this morning and there is good reason why we ought not

1 to do that this morning.

2 JUDGE LUEBKE: What you have just described, does
3 it now exist in a plan of document?

4 MR. GAD: Yes, it does, Dr. Luebke and if you ask
5 me the page number I cannot give it to you.

6 JUDGE LUEBKE: That is a plan that the Petitioner's
7 could read and make specific objections to if they cared?

8 MR. GAD: It is at least in the FSAR. It may be
9 in another Applicant issued document and I could probably find
10 the DES.

11 JUDGE LUEBKE: If I hear you correctly then, there
12 is no need to talk about generalities, it is possible to talk
13 about specifics. That is Mr. Lessy's concern.

14 MR. LESSY: Did the Chairman have a question of me
15 first?

16 JUDGE HOYT: Go ahead.

17 MR. LESSY: This is not the first time this matter
18 has been considered. It was considered by the Licensing Board
19 in the Three Mile Island Decision. The exact same question,
20 Licensing Board Panel Decision 81-59, 14 NRC, 12/11/81. It was
21 almost the exact same contention.

22 What the Licensing Board said in that opinion is
23 something that I think is a well reasoned opinion. It said that
24 the Board noted in the TMI Restart Decision that it had "No
25 jurisdiction to challenge as a matter of policy whether the

1 approximately ten and fifty mile EPZ's are too small or too
2 large." The Board in the TMI Case placed a burden on the
3 Intervenors to contest the configuration of the EPZ contained
4 in the Emergency Plan. The State Agency in that Case was
5 Pennsylvania in the TMI, initially drew a circle with a radius
6 of ten miles around the Plant. The boundaries of the circle
7 were then moved to a close recognizable marker by considering
8 political boundaries, geographical features, roads, or other
9 easily recognizable landmarks. The Board stated that no party
10 brought to their attention any particular boundary line in which
11 it believes is ambiguous, not well defined or otherwise
12 inappropriate, and that the requirements of the regulation in
13 the Applicant's Plan had been met.

14 So the burden is on the Intervenors to object and
15 under that Decision, to show why the listed boundary does not
16 satisfactorily place the public on notice as to the Zone's
17 boundary.

18 I am going to do something I very rarely do, to show
19 you how to do a contention just to save time. You have a
20 contention which says that the boundary markers are inappropriate.
21 That is your contention, the contention that the Applicants have
22 failed to account for local emergency response needs and capabil-
23 ities in establishing boundaries for the Plume Exposure Pathway.
24 The only thing you would have to do is take a look at that map.

25 Now if that ten mile radius cuts through a town and

1 one half the town is inside the boundary, the EPZ, and one half
2 on the outside, your contention is that you have to/through the
3 circle and you have list the towns that are cut in half. If
4 you feel that the entire town should be in or that the entire
5 road should be in, you make your contention. The Applicant has
6 failed to account for local emergency response needs and
7 capabilities in establishing boundaries for Plume Exposure
8 because the town of X Massachusetts is cut in half. State road 128
9 is cut in half, that is all you have to do. It is not our job
10 or the Applicant's job since they have submitted the plan to do
11 that for you and it is not the Board's job to rewrite that
12 contention for you. It is a simple thing to do.

13 The burden is on the Intervenors to look at the
14 line, look at the radius and decide exactly what it is that you
15 do not like about it. Then tell us and we can litigate it.

16 JUDGE HOYT: Let me follow through on one thing you
17 brough up, Mr. Lessy. That is, this particular Board has no
18 intention of rewriting Intervenors' contentions. You will stand
19 and fall on your own wording.

20 With that in mind, let me suggest to you,
21 Ms. Shotwell, that we get your contention in your words, the
22 way you want it because you are either going to get in our out
23 of this based upon that.

24 MS. SHOTWELL: Fine, Your Honor.

25 If I may respond to Mr. Lessy's comments, I think

1 that his example is very important because our contention is
2 very different and this situation is very different from the
3 one that he just gave you as an example, in the Three Mile Island
4 Case.

5 In that Case, the Applicants had drawn boundaries
6 that were not the exact ten and fifty generic zones that is
7 supposed to be the starting point for drawing boundaries. As
8 he indicated they had drawn boundaries so as to take into account
9 certain jurisdictional boundaries, certain access roads, matters
10 of that sort. At that point I agree that the burden is on
11 Intervenors to say that we disagree with that because you did
12 not look at this factor or you improperly accounted for this
13 other factor.

14 I disagree that when what you are dealing with is
15 a situation where the Applicants have not even looked at those
16 factors, any of them, and they have simply taken the ten and
17 fifty mile boundaries. It is an important point to have the
18 burden on this. He has picked the easiest example to imply that
19 I can very easily look at this and determine without much review
20 what the boundaries should be.

21 JUDGE PARIS: It sounds to me like you are saying
22 the same thing.

23 MS. SHOTWELL: No, he is saying very different
24 things. He is saying I have to tell you now exactly what the
25 Commonwealth of Massachusetts thinks these boundaries should be.

1 I am telling you that we need to hear from the
2 Applicants that they have complied with the requirement in
3 the Rule and looked at the local factors that can have an impact
4 on that boundary, told us how they feel those factors affect
5 the boundaries and why, and some of these will require some
6 detailed studies. They are not as simple as just looking at
7 jurisdictional boundaries. You have to look at tomography,
8 topography, land characteristics, access routes, jurisdictional
9 boundaries. We would suggest that meteorological conditions
10 peculiar to this area would also have to be considered.

11 What I am saying is that once we have from the
12 Applicants their indication of their review of these factors
13 and their affect, we will then be in position with our experts
14 to review that and be more specific.

15 JUDGE PARIS: If they have not done that, what
16 you have to do is look at what they have done and say they
17 have not done this because---and site what you think is wrong
18 with the Plan that they now---

19 MS. SHOTWELL: (Interrupting.) I believe that
20 is what we have done in our contention. We have said that they
21 have not examined local factors---

22 JUDGE PARIS: (Interrupting.) You just said they
23 have not examined local factors. Name two or three local factors
24 that they---

25 MS. SHOTWELL: (Interrupting.) We do, not in our

1 contention but in the specification of the contention. If I can
2 direct your attention to the supplement to our Petition. The
3 contention itself is on page three, but that was perceived for
4 several pages, specifically beginning on page five, to discuss
5 the particular local factors that we feel have to be considered.

6 JUDGE HOYT: Ms. Shotwell, let me put in this
7 fashion on behalf of the Board.

8 Perhaps your contention with the specificity that
9 Mr. Lessy has suggested to you, gives us a copy of it after lunch.
10 If that is what you want to have your case stand on. I am not
11 going to reword your contention for you. You will submit it to
12 us. We will vote it up or down on this Board, based upon what
13 you give us.

14 In the present form we do not feel that we want to
15 commit ourselves to it but I would strongly urge that you make
16 the additions. If you do not want to accept---

17 MS. SHOTWELL: (Interrupting.) I have indicated
18 that I will accept that. It is the Staff that has indicated they
19 will not take that approach.

20 JUDGE HOYT: Yes, I beg your pardon. You are quite
21 correct.

22 Mr. Lessy, we are going to have to go one way or the
23 other on that.

24 Let me ask you, Ms. Shotwell, if you will draft
25 that perhaps you can work it out with Counsel over the noon hour

1 hour if you wish, resubmit it and we will see if we can get some
2 consensus on it.

3 I really do not normally indicate that we demand
4 you that you get some consensus on it. We are simply trying to
5 get your wording as to how you want it in or out of this parti-
6 cular case.

7 MS. SHOTWELL: If I can have a point of clarification
8 I am understanding Mr. Lessy not simply as asking us to identify
9 the local factors that we think should be considered but actually
10 to indicate what affect we feel that would have on boundary.

11 JUDGE HOYT: Why don't we do this, Ms. Shotwell.
12 Why don't you discuss that in the recess period with Mr. Lessy
13 with more detail. I think we are simply burdening this record
14 in taking up a great deal of time. I think it would be more
15 productive is what I am really driving at.

16 JUDGE PARIS: I think Mr. Lessy is trying to give
17 you some advice and perhaps the two of you could get together
18 and talk about it some more.

19 JUDGE HOYT: Let us move along. Do you want to go
20 into Contention No. 3 or No. 4? Why don't we have you just do
21 the same things with Contentions No. 3 and 4 that you will be
22 doing with Contention No. 2?

23 MS. SHOTWELL: Nos. 3 and 4 will be very simple in
24 that they do have an outline.

25 JUDGE HOYT: Good. As I indicate to you, Ms. Shotwell,

1 we want your wording of your contention because when we memorial-
2 ize this contention in our order, it will be stated in your words.
3 We are not going to reword any contention of any Intervenor.

4 MS. SHOTWELL: We certainly are not asking you to do
5 so. The way that we have submitted our contentions, as you know
6 at this point we have fairly diametrically opposed positions
7 between the Applicants and the Staff. The Applicant is saying
8 let's have one general contention that incorporates your four
9 separate ones and the Staff saying, no, we want all of your
10 detailed specifications actually included in your contentions.
11 We can go either way. We have the specificity there I feel,
12 and it is simply a matter of incorporating it in the contentions
13 or we can collapse the four into the one generally worded
14 contention that the Applicants have suggested.

15 JUDGE HOYT: Maybe I should ask Mr. Gad if we would
16 like to participate in, I was going to say negotiations but the
17 word has a weird connotation in this day and age. Perhaps get
18 together in a discussion group would be better.

19 MR. GAD: If the questions is would I be willing to,
20 Madam Chairman, the answer is, of course, yes. I think that
21 loops the question of whether or not I would like to.

22 JUDGE HOYT: Let's go ahead and see where we can go
23 from here. I think with that spirited discussion, I would like
24 a five minute recess. Let's go off the record.

25 (Off the record.)

1 JUDGE HOYT: Let the Hearing come to order.

2 Let the record reflect that all parties who were
3 present when the Hearing recessed are again present in the Hearing
4 Room.

5 I think we have, and I do not mean to put this in
6 an unpleasant sounding wording, but we have disposed of
7 Massachusetts at least for the moment, Ms. Shotwell. You will
8 advise us later of the result of your conference.

9 I think the next we would like to move into is the
10 largest group of contentions which is yours, Mr. Jordan, if you
11 are ready. If you would rather wait until after the noon hour,
12 you may. If you would like to begin now, we would like to go
13 ahead with those contentions that you filed since yours is the
14 largest number.

15 MR. JORDAN: I think that is fine, your Honor. It
16 may make some sense dovetailing our Emergency Planning Contentions
17 together with the resolution of the Massachusetts situation as
18 well after lunch. That is a good idea.

19 JUDGE HOYT: We will go off the record for a moment.

20 (Off the record.)

21 JUDGE HOYT: Back on the record. The record should
22 reflect that during that off the record period, the Board had a
23 housekeeping matter concerning the temperature of the room
24 discussion. Having resolved that, we now resume our position
25 on the record.

1 Mr. Jordan, did I understand that you want to go
2 ahead at this point?

3 MR. JORDAN: Yes, ma'am. We can certainly proceed
4 at this point.

5 JUDGE HOYT: Very well. I think up front, Mr. Jordan,
6 with your contentions, one of the problems that this Board has
7 had is that you had used the Regulatory Guide in the wording
8 of the contention. We do not want to admit contentions with
9 the Regulatory Guide wording in it. You may want to consider
10 that in your discussion.

11 The problem that we found with that is that the
12 Regulatory Guides themselves specifically, usually the cover
13 sheets on the Regulatory Guides indicate the status that they
14 have in this Commission and I think there is ample Case Law
15 on the point as well. We wanted to give you that as a basis of
16 our thinking in the beginning so that we could perhaps aid you
17 and expedite you in handling the contentions that you may wish
18 to pursue here.

19 MR. JORDAN: I think, your Honor, we do not have a
20 particular problem with leaving out the reference to the
21 Regulatory Guide as such in the contention. We do not hold to
22 the Regulatory Guide as a Regulatory Requirement that the
23 Applicant has suggested. I think we have explained our point.
24 It is in general that often the Regulations do not give you a
25 very precise benchmark. The Regulatory Guide explains a threshold

1 which would constitute compliance with the Regulations.

2 JUDGE HOYT: We understand that and you are quite
3 correct in what you are saying, Mr. Jordan. Our feeling was that
4 the benchmark, if you use the Regulatory Guide, you have to
5 demonstrate that, that you have no other benchmark against which
6 can attest your standard.

7 Any problem with that?

8 MR. JORDAN: I am not sure that I understand what
9 you are saying. Our approach is in many cases, for example,
10 the FSAR discussion of a Regulatory Guide will say, the Applicant
11 does not do this, this, or this according to the Regulatory Guide.
12 They do not have an alternative suggestion or approach that they
13 take that would provide the protections that those matters in
14 the Regulatory Guide would have provided.

15 So if that is a response to what you said, we do
16 not see that the reading of that benchmark, if we do not see
17 another benchmark around---

18 JUDGE HOYT: (Interrupting.) Mr. Jordan, what we
19 are saying is that you must demonstrate that there is not another
20 benchmark around.

21 MR. JORDAN: I guess I am little unclear as to how
22 we demonstrate that another benchmark does not exist.

23 JUDGE HOYT: Well, if the Regulation does not have
24 the Standard then you are using the Regulatory Guide. Are you
25 not using it because there is not one in the Regulation, that is

1 the Standard. Therefore, you should tell us that. You should
2 demonstrate that.

3 MR. JORDAN: Yes. That is what we are doing. All
4 we can say is there is no other benchmark that we can find. I
5 do not know of a way to demonstrate the negative.

6 JUDGE HOYT: I think we are getting into confusion
7 on it and it is really not worth that effort. Go ahead.

8 MR. JORDAN: Our First Contention relates to, and
9 I would say that our first several contentions---

10 JUDGE HOYT: (Interrupting.) Are these in your
11 original contentions or are these your supplemental?

12 MR. JORDAN: It will depend upon whether they have
13 been revised or not.

14 JUDGE HOYT: All right.

15 MR. JORDAN: I believe that these were not reworded,
16 the Environmental Qualification, at least the first one, has not
17 been reworded so the language itself is in our original dialect.

18 JUDGE HOYT: That is the filing of April 21st?

19 MR. JORDAN: Yes.

20 JUDGE HOYT: All right. We are looking at the
21 Contention that you have described on page five, is that correct,
22 the Environmental Qualification?

23 MR. JORDAN: Yes, ma'am.

24 JUDGE HOYT: Technical Safety Contentions and
25 Environmental Qualification?

1 MR. JORDAN: Yes, ma'am. Electrical Equipment being
2 the first under Environmental Qualifications.

3 JUDGE HOYT: Go ahead.

4 MR. JORDAN: The responses are, I think this is
5 fairly simple. The Applicant argues that we not go beyond
6 CLI-80-21, a Commission Decision on the matter in Requirements
7 in particular in raising Requirements related to Three Mile
8 Island.

9 The Staff goes somewhat further in saying that in
10 effect, the TMI Lessons are all in NuReg 0737 and that nothing
11 need be required beyond what is in 0737. The nub of both of
12 those arguments is that we do not raise a Regulatory Requirement
13 for going beyond CLI-80-21. We disagree. We think it is a
14 criteria for Appendix A, Part 50 which states, "The structure
15 systems and components important to safety shall be designed to
16 accomodate the affects of and to be compatible with the environ-
17 mental conditions associated with normal operation, maintenance
18 testing, postulated accidents, including the loss of cool in
19 accidents." We feel the occurrence of the accident at the Three
20 Mile Island criterion for, by itself, regardless of 0737 and
21 regardless of CL-80-21 requires that the Environmental Qualifica-
22 tion extend to the affects caused by the accident TMI, in this
23 case with respect to Electrical Equipment. Accordingly we stand
24 on Criterion 4 as the applicable Regulatory Requirement.

25 JUDGE LUEBKE: You essentially translate postulated

1 accidents as being TMI?

2 MR. JORDAN: I think in essence that is correct.

3 JUDGE LUEBKE: That is what I heard you say and
4 disagreed any modifications or improvements that this Applicant
5 or other people have made in their plans?

6 MR. JORDAN: We take Three Mile Island, at this
7 stage at least, we have not seen any that would prevent.

8 JUDGE LUEBKE: Then I would ask Mr. Lessy, does that
9 put him in argument with Commission Policy?

10 MR. LESSY: Yes.

11 JUDGE LUEBKE: Perhaps you could clarify that for
12 the record?

13 MR. LESSY: We have addressed that, your Honor,
14 at pages 17-19 of our latest reply by cover letter of July 1, 1982.
15 I think in this instance the Commission itself has spoken in
16 the TMI Decision, CLI-80-21 at 11 NRC 705.

17 What NECNP said in its response on page two of its
18 refiled contentions, the second sentence under Environmental
19 Qualification, "However, as noted by the Commission in that
20 Decision, CLI-8-21, does not incorporate the lessons learned
21 at Three Mile Island, etc." What the Commission said at 11 NRC
22 at 716 was that they did say that, in this order we have not
23 attempted to apply the lessons of Three Mile Island to Environ-
24 mental Qualification but then they had another sentence which
25 NECNP did not. "This issue is addressed in the NRC Action Plan

1 (NuReg 0737)." The TMI Action Plan, NuReg 0737, does not require
2 the action requested by NECNP in its Contention. In this
3 proposal NECNP would impose Requirements beyond that required
4 by the Regulations and the Action Plan.

5 The Commission did have a revised statement of
6 policy at 45 Federal Register 85236 on December 24, 1980. It
7 did allow previously forbidden challenges to the sufficiency
8 of the supplementation of the Regulations and the Action Plan
9 but that supplementation does not relieve a proponent of an
10 additional Requirement, in this case NECNP, of the burden of
11 demonstrating that compliance with the Commission's Regulations
12 is not a sufficient basis upon which to grant a license. There
13 are two cites for that.

14 NECNP has not met its burden and we object to the
15 Contention. I think it would be helpful, and maybe my answer
16 is broader than your question, if the Board please, let us go
17 back to the Contention. In NECNP's response they did not restate
18 or refine the Contention but merely offered legal arguments to
19 justify it. The Contention is, "Seabrook cannot be licensed
20 because it does not meet the Commission's Standard for Environ-
21 mental Qualification of Electrical Equipment under 10 CFR, Part 50,
22 Appendix A, GDC 4." In light of Three Mile Island, GDC 4 requires
23 more rigorous environmental qualification testing than was
24 previously the case in order to provide reasonably assurance that
25 electrical equipment will function for the entire time period

1 for which it was meant. That is a contention which not only
2 raises the question of going beyond the Commission's own
3 Requirements which it has defined but which completely fails
4 to meet the basis of specificity Requirements or Regulations.

5 If I have answered it too broadly and you have any
6 further questions, I would be answer them. That is our position
7 on it.

8 JUDGE HOYT: Go ahead, sir.

9 MR. JORDAN: First of all, the Applicant suggested
10 on page five of its response to us dated June 28, that we should
11 word to the effect that it does not comply with GDC 4. In other
12 words, the contention that GDC 4 itself requires that the
13 Applicant---we ought to be satisfied with the contention stated
14 in terms of GDC 4 alone. I am sorry for wandering.

15 Mr. Lessy I think just quoted to you from our
16 contention where we cited GDC 4, the fact that we cited CLI-80-21
17 in addition, does not really damage that it seems to me. We
18 would indeed stand on GDC 4 here.

19 The fact that the issue is not addressed in CLI-80-21,
20 the fact that this particular matter in 0737 does not change the
21 extent of the Requirements of Criterion 4. That is the Regulation.
22 The 0737 cannot narrow the Regulation, neither can it fit
23 Commission Policy Statement and narrow the Regulation. The
24 Regulation is what requires Environmental Qualification to meet
25 those conditions.

1 MR. GAD: Madam Chairman, if I can jump into this
2 spray and I do so because if we spend a little time on this one,
3 we spend a little less later on.

4 The whole legal argument on NECNP Contention 1A1
5 comes down and it can be encapsulized in a single sentence. That
6 sentence appears on page two of NECNP's reply, a document filed
7 June 17, 1982.

8 That sentence reads as follows, "Both the Applicant
9 and the Staff would restrict NECNP's Environmental Qualification
10 to a claim of noncompliance with GDC 4." Now that sentence
11 is right as rain. If the Contention is so limited then we have
12 no problem with it---

13 JUDGE LUEBKE: You would put a period after 4,
14 GDC 4?

15 MR. GAD: That is correct or as implemented by
16 CLI-80-21.

17 JUDGE LUEBKE: So you would take the entire sentence?

18 MR. GAD: They really are different. The reason
19 why that must be the contention is because that and that alone
20 is the ruler against which this application can be measured.
21 The problem with taking the wording in NECNP's original filing,
22 either the 14th or the 21st of April, is that it wanders all
23 over the place and includes such things as a statement,
24 Furthermore, and I elipsizing a little bit, the accident at
25 Three Mile Island showed that the Commission Standards are

1 inadequate. That is not an admissible contention.

2 We did not, as we have in other places, suggested
3 the precise form of wording because after a while you get tired
4 of doing that. The contention ought to be in terms about like
5 this, the Application's description of the Environmental
6 Qualification of the Electrical Equipment does not satisfy the
7 Requirements of GDC 4. The end. That is the ruler the Board
8 will ultimately apply. If it turns out that those things do not
9 require what NECNP really wants, and they do not, then the
10 contention will fail after trial.

11 JUDGE HOYT: Did I understand you in the beginning
12 to say that you would include CLI-80-21 and now you are saying
13 not or did I misunderstand you?

14 MR. GAD: CLI-80-21, Madam Chairman, is a Decision
15 of the NRC. So that Decision, whatever it does, it must tell
16 us what is in GDC 4. GDC is the published Regulation. That is
17 what we have to live up to.

18 JUDGE HOYT: I am with you. I was just confused as
19 to whether or not I understood to mention that. Thank you.

20 MR. LESSY: Perhaps simply for clarity and to respond
21 to some degree at least the Applicant's concerns, we can reword
22 the contention with the language that is already on page five
23 that you have in front of you. It seems to me that in responding
24 to these concerns, the rewording would begin at the fifth line
25 and the contention would read as follows: NECNP contends that

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 the Seabrook Facility cannot be licensed because it does not meet
2 the Commission's Standards for Environmental Qualification of
3 Electrical Equipment under 10 CFR, Part 50, Appendix A, General
4 Design Criterion, GDC 4.

5 I would delete the next sentence and the contention
6 would continue: The FSAR's discussion of Environmental
7 Qualification is deficient in four respects. One, the parameters
8 of the relevant accident environment have not been identified.
9 Two, the length of time the equipment must operate in the accident
10 environment has not been included as a factor. Three, the
11 methods used to qualify the equipment are not adequate to give
12 reasonable assurance that the equipment will remain operable.
13 Four, the effects of aging and cumulative radiation exposure
14 on the equipment have not been adequately considered. Those, it
15 seems to me, give substantial specificity to what might otherwise
16 be an unworkably broad charge of noncompliance with the Regulation.

17 MR. LESSY: The problem with that, your Honor, is
18 what Dr. Luebke started with. As I understand it, this
19 Contention, although beginning to be properly framed in terms
20 of 2.714, is now going beyond the Requirements of Environmental
21 Qualification of Electrical Equipment as delineated by the
22 Commission in its Decision and in NuReg 0737 and because of that,
23 it can constitute an impermissible challenge to the Regulations.
24 Therefore, under Peach Bottom it would be an unacceptable
25 contention unless NECNP can comply with the Maine Yankee Decision

1 and the judicial decision of demonstrating first why those
2 additional requirements, at least in the contention stage, should
3 be required.

4 Unless you can get under that hurdle, then you are
5 in the area of impermissible challenge to a regulation. In other
6 words, this contention, if admitted, would be a challenge to
7 the Regulations. There are certain limited challenges to the
8 Regulations which are usually completely prohibited, permitted
9 as a result of CLI-80-21. The Commission permitted limited
10 challenges to the Regulations.

11 There is one caveat to that. That caveat is, the
12 proponent of such a contention has the burden of demonstrating
13 the compliance with the Commission's Regulations which in this
14 case is CLI-80-21 and the NuReg is not a sufficient basis upon
15 which to grant a license.

16 The contention does not even address, as I read it,
17 the insufficiency of the NuReg. It just lists what any NECNP's
18 views of what it would like the Regulations to be. Again, under
19 Peach Bottom that is prohibited. So you are half there and you
20 are half out the way I look at it.

21 JUDGE HOYT: Let us go ahead. Is there anything
22 else?

23 MR. LESSY: We disagree that it is a challenge to
24 the Regulations. We think it is required and we will stand on
25 the knowledge that I have just read into the record with the

1 deletions.

2 JUDGE LUEBKE: You will stand on the form of the
3 writing in your submission of 4/21 or the writing of June 17th,
4 I guess it is.

5 MR. JORDAN: Your Honor, I would stand on the
6 language. It is in our submission of April 21 at page five.

7 JUDGE LUEBKE: We read this and we like it or we
8 do not like it.

9 MR. LESSY: He deleted a sentence.

10 MR. JORDAN: Read it into the record with essentially
11 deleting the first sentence and the third sentence, then we
12 stand with the second and fourth sentences.

13 MR. LESSY: I have one further comment. That is
14 the legal objection to this.

15 The other objection is already stated on page two
16 of our 5/19/82 response to that contention. That is, we are not
17 given an idea of any equipment or any category's equipment that
18 NECNP wishes to litigate. GDC says and I paraphrase, all
19 equipment important to safety. I should think that NECNP should
20 give us a little bit more specificity should be required as to
21 what it means. Do you mean all equipment, what particular
22 categories of equipment, what particular systems. The next
23 contention is a particular category of equipment, electric
24 valves but certainly the general contention relating to all
25 equipment "important to safety" would be a hopelessly vague

1 contention. That is my second objection and we have already
2 filed. I will just rest on it.

3 MR. JORDAN: We have responded to it in writing.

4 JUDGE HOYT: I think we have unless the Applicant
5 wants to make any mention on it?

6 MR. GAD: We joined in the written fray so we will
7 join in the demur.

8 JUDGE HOYT: Let us go off the record.

9 (Off the record.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MR. JORDAN: Unless my colleagues want to discuss
2 I.A.2, my view is the arguments are the same and we have covered
3 them, although Mr. Lessy suggests we have been a little bit more
4 specific here, otherwise the arguments are the same.

5 JUDGE HOYT: But you stand on the contention as is
6 written on page 8?

7 MR. JORDAN: That is correct.

8 JUDGE HOYT: Fine.

9 MR. GAD: Which is fine with us, as long as it is
10 understood that the otherwise ambiguous phrase "Commission
11 Standards" means GDC4 and that any CNT is backing away from the
12 language in it's June 17th document, which said ---

13 JUDGE HOYT: (Interrupting.) GDC4 contains the
14 standards for the ---

15 MR. GAD: (Interrupting.) I believe it does.

16 JUDGE HOYT: How about that, Mr. Jordan. Would you
17 take that as a change on the Phase Commission Standards?

18 MR. JORDAN: I am trying to get clear on what
19 Mr. Gad would have us back away from.

20 JUDGE HOYT: Top of page 8, the Applicant has not
21 complied with Commission Standards and he wants to substitute
22 GDC4 for the words, "Commission Standards."

23 MR. JORDAN: That's fine with me.

24 MR. GAD: Well, just to be fair to Mr. Jordan, that
25 is not what he was willing to do in his written document of

1 June 17th.

2 JUDGE HOYT: Let's keep going forward.

3 That disposes of I.A.2. Let's go on to I.A.3 before
4 we have a change.

5 MR. JORDAN: The issue in I.A.3 again is Environ-
6 mental Qualification. Here it relates to qualification to with-
7 stand a hydrogen burn. The Applicant and the Staff in essence,
8 argue that there is no regulation establishing such an Environ-
9 mental Qualification requirement. Also that the issue is governed
10 by 10 CFR 50.44 which is Hydrogen Control Provision . We have
11 addressed the matter, I think,adequately in writing. The point is
12 that this is not Hydrogen Control. This is Environmental Quali-
13 fication. It is a different purpose that 50.44 does not govern,
14 just as it does not govern in another examp'le we give related
15 to the ECCS.

16 Again, the Regulation in question is GDC4. We are
17 not trying to create some other Regulation. That is what we
18 stand on as the Requirement and we stand on the language of the
19 Contention.

20 MR. PARIS: Your Contention on page 9 doesn't really
21 say hydrogen burn. It just says hydrogen release. Do you mean
22 hydrogen burn?

23 MR. JORDAN: I think we can make the word "release"
24 into "burn."

25 MR. PARIS: Release-Burn?

1 MR. JORDAN: Release and burn would be acceptable
2 to us.

3 MR. LESSY: I guess our point, your Honor, is that
4 there is no Regulatory Requirement for that which NECNP seeks to
5 hang on GDC4. GDC4 does not require that.

6 JUDGE LUEBKE: Is it not also true, Mr. Lessy, that
7 the Commission has a statement about hydrogen release and burn?
8 The thing that was used in the McGuire Operating License Proceed-
9 ing?

10 MR. LESSY: Yes, and I believe -- NECNP is arguing
11 that that statement, as I understand it, does not apply.

12 MR. JORDAN: That is hydrogen control.

13 JUDGE LUEBKE: They cannot make contentions about
14 disagreeing with the Commission.

15 MR. LESSY: Exactly. I don't think we are dis-
16 agreeing with the Commission. This is what the Commission holds
17 to -- that is not an Environmental Qualification consideration.
18 That is a hydrogen control consideration. What do you do to make
19 sure there is not too much hydrogen getting out? There is already
20 another Regulation that has a different figure for handling
21 hydrogen once it is released.

22 The ECCS Regulation, as we say on page 4, has a
23 17% assumption of hydrogen release. The point is clearly, the
24 Commission is -- the Hydrogen Control Regulation does not govern
25 the amount of hydrogen release to be assumed for other purposes

1 than hydrogen control.

2 MR. LESSY: All right. The fact that the Commission
3 has a different hydrogen generation assumption for purposes of
4 the Emergency Core Cooling Regulation, in our view, does not pro-
5 vided an adequate basis for NECNP adding an extra regulation
6 relating to the hydrogen aspect of Environmental Qualification.
7 It's a different matter. It is apples and oranges.

8 MR. GAD: There is an additional problem. You
9 admit Contention I.A.3 with the words on -- I can't read the
10 page number, but in the NECNP filing, then the Board is, at least
11 implicitly making a ruline that as a matter of law, GDC requires
12 the effects of a hydrogen relrelease/burn such as occurred, which
13 really means of the quantities at Three Mile Island Unit II.

14 That is what is part of what is wrong with this
15 Contention. The Contention ought to be written: NECNP contains
16 that the electrical equipment is not environmentally qualified
17 for that circumstance, and that such qualification is required by
18 the Rules. If we have got to buy all the other problems, the
19 Board could admit that Contention without making a ruling as
20 to what or what is not required by the Rule.

21 A Contention in those terms is very easy to deal
22 with and indeed, could go out on a Summary Disposition Motion
23 strickly on the law, when the time is appropriate.

24 Part of the problem with this Contention here is
25 that it assumes, therefore asks this Board to assume, a legal

1 requirement concerning which there is at a minimum, considerable
2 doubt, and in our opinion, it is plainly wrong. So the wording
3 of this just doesn't fly.

4 JUDGE LUEBKE: Then you would propose to postpone
5 the legal argument until a later time

6 MR. GAD: Yes indeed.

7 MR. LESSY: That would be prudent, your Honor. There
8 is a proposed rule out. The Commission is considering adding a
9 rule on hydrogen control. If that rule were passed, this might
10 be a good contention. That rule has not been passed and nobody
11 knows if it will. Therefore, if the Board rejects this contention,
12 which the Staff believes it should, it should give NECNP leave
13 to refile it in the event that rule were passed.

14 MR. JORDAN: I would follow that with one further,
15 which is I do not have a particular problem with Mr. Gad's re-
16 formulation, although it seems to me that he can make his Summary
17 Disposition Motion on the Contention as it is written. This is
18 not the point, really, where you make that final ruling on the
19 substance of the Regulation, but where you determine the
20 sufficiency of the Contention to get it in for litigation. Then
21 we will have the filings and the detailed argument on Summary
22 Disposition. Of course we can do that. I don't think that you
23 are admitting the Contention results inability then, to rule on
24 a Summary Disposition Motion.

25 JUDGE LUEBKE: I guess what we need to do now is,

1 shall we rule on the wording as you have it on page 9, or are you
2 thinking about rewriting it?

3 MR. JORDAN: No, I am not thinking about rewriting
4 it. All I am saying is that it can be treated in the way that
5 Mr. Gad would treat it with the language as we have it.

6 JUDGE HOYT: I think you have got the wording in
7 the record, haven't you?

8 MR. GAD: I think not, because the point is, as
9 rewritten, it cannot be admitted because the law does not require
10 what follows the phrase, "in that" in the words that are on this
11 unnumbered page. It is as if this Contention said the Applicant
12 has not complied with the Regulations because it has not complied
13 with Reg. Guide II. That is an easy one to rule on. You do
14 not have to comply with Reg. Guide II.

15 JUDGE LUEBKE: The Petitioner has answered my
16 question and he says for us to rule on it as written, and we will.

17 JUDGE HOYT: Let's move on. Let us go on to I.B,
18 Environmental Qualification Mechanical Equipment.

19 MR. JORDAN: I.B.1 relates to the Environmental
20 Qualification of Mechanical Equipment. The language that we
21 would use, which in our filine of June 17th, we did reword this
22 one on page 6. The Staff apparently has no objection. The
23 Applicant would limit this Contention to the equipment that we
24 have mentioned, particularly steam imp valves, turbine valves
25 and steam dumping system, in our view, the Contention is

1 sufficient for litigation at this point, and it should not be
2 limited to particular mentioned equipment. We are at the point
3 at which we cannot possibly know everything that has not been
4 environmentally qualified. The best that we can do is give some
5 examples.

6 I refer the Board to a Licensing Board Decision of
7 June 30, 1982 in the matter of Duke Power Company, Catawba
8 Nuclear Station, No. 50-413. This was actually a decision over-
9 ruling objections to a Prehearing Conference Order in which the
10 Board states; how else, but through Discovery, is an Intervenor
11 going to find out, for example, about possible defects in equip-
12 ment or lapses in Quality Assurance at a nuclear power plant?
13 Such things will not be reported in the FSAR.

14 Our point is that we have given examples of things
15 that are not environmentally qualified in the area. The FSAR is
16 not going to give us a nice list of everything that is not
17 environmentally qualified that ought to be. We have enough now
18 to take Discovery to determine if there is anything else.

19 At least under the Catawba Decision I have just
20 referred to, the Contention should be admitted as written or as
21 reworded on June 17th.

22 MR. LESSY: Your Honor, the Staff did not object to
23 this Contention. They not only identify certain kinds of
24 mechanical equipment, steam dump valves, turbine valves and the
25 dumping system, but they link them all into a function, which is

1 residual heat remove. Now we have something that we can litigate
2 and we don't object to that.

3 JUDGE HOYT: That Contention would then limit
4 litigation on any other system other than steam dump valves,
5 turbine valves and the entire steam dumping system.

6 MR. LESSY: If I heard you correctly --

7 JUDGE HOYT: I'm sorry. You would not be limited
8 to the systems that he has just listed here as examples.

9 MR. LESSY: They would be. Yes. They would be
10 limited to residual heat removal. Those matters are examples
11 of the residual heat removal function. We are saying that that
12 is sufficient. This is Environmental Qualification Mechanical
13 Equipment. This is specifically what we want to litigate and we
14 do not object to that.

15 If they want to litigate the Environmental Qualifi-
16 cation of other mechanical equipment that does not have the
17 residual heat removal function, they have not proposed that and
18 nothing else ---

19 MR. JORDAN: Yes. That is correct and that is the
20 way we read it, your Honor. It is limited to residual heat
21 removal. It would not limit it to the systems given as examples
22 of residual heat removal, but we could not go beyond residual
23 heat removal.

24 JUDGE HOYT: That answers my question. Do you have
25 anything?

1 MR. GAD: No.

2 JUDGE HOYT: All right. Let us go on to the dura-
3 tion of environmental qualificâtion, which is your Contention,
4 I.B.2.

5 MR. JORDAN: Yes. As I understand it, there is no
6 objection to that Contention as reworded. I think it is as
7 worded in our original filing of April, 1982. We must have been
8 all right in wording and satisfied the Staff on other matters.
9 There is no problem here.

10 JUDGE HOYT: Then I.C., which is Environmental
11 Qualification, Emergency Feed Water Pipe, HVAC valve.

12 MR. JORDAN: In this area, your Honor, the Staff has
13 agreed to the Contention, as I understand it, for the purpose of
14 Discovery, based on the position of the cables being unqualified,
15 the Applicant would restrict it to the cables. The argument is
16 the same as on I.B.1

17 The cables are the example of the problem of lack
18 of Environmental Qualification. The subject matter would be
19 restricted to the Emergency Feedwater Pump House. We would then
20 take Discovery in that area to determine what we have got beyond
21 the cables that are not environmentally qualified.

22 JUDGE HOYT: Very well.

23 MR. GAD: If I may, not to tread too far from what
24 we have said in our written document, the situation here is a
25 little bit different from the situation in the other ones.

1 The Applicant has a list of equipment that it says
2 is important. The thrust of this Contention is that NECNP wants
3 to argue that some frazmus that is not now in our list ought to be
4 added to the list. Beyond electrical cables, this doesn't tell
5 us what it is that they contend is important to safety and is not
6 on our list of items that is important to safety.

7 It doesn't tell us what you want to litigate about.
8 If you want to figure that out later on in the case of something
9 like this, which I think is a very different matter from Emergency
10 Planning, so be it. This Contention just does not tell us what
11 it is that they are contending ought to be upgraded from non-
12 safety related to safety related.

13 JUDGE LUEBKE: When Staff says to admit for
14 Discovery only, I think I read that it was your intention that
15 this would help to identify any of these anonymous items?

16 MR. LESSY: That is right. Our position is that
17 this is pretty specific environmental qualification of heating,
18 ventilating and air conditioning in the Emergency Feedwater
19 Pump House with respect to the cables in that pump house system.

20 That is specific. The Contention, therefore, at
21 this point in time, would be limited to that. If NECNP, durning
22 the Discovery phases of the proceeding, hopefully not on January
23 12, 1983, but prudently during the Discovery phases, feels that
24 there is something else that they want to litigate, then the
25 Staff would not object to a timely ammendment to this Contention.

1 If they don't, they are limited to this specific cable in the
2 pump house.

3 MR. JORDAN: As I understand it, it seems to be that
4 we can take Discovery that we need in order to know what is in
5 that Feedwater Pump House. Our problem is that we do not have
6 the design of that plant. We are not out there looking at it.
7 We do know that the cables are there and they are not environmentally
8 qualified and we need the rest of it. I think that responds to
9 Mr. Gad's point. We need to know what is there and have our
10 experts be able to tell us about it.

11 My question is whether under the Staff's position
12 we have the right as the Contention would be admitted, even under
13 their interpretation, to take the discovery necessary to
14 determine whether there are other matters.

15 MR. LESSY: Yes.

16 JUDGE HOYT: I think it is going along with the
17 other case that you cited earlier. We've got to get to Discovery
18 in order to find out. I think that is the way we understood your
19 position.

20 MR. LESSY: That is satisfactory to us.

21 JUDGE HOYT: You do understand it ---

22 MR. GAD: As I understand it now, we are all in
23 agreement to the Contention as presently framed. It goes only
24 to the cables and if it is to be enlarged later, we will enlarge
25 it later and I think everybody is in perfect sinc.

1 JUDGE HOYT: Good show. Let's move along.

2 MR. LESSY: And he can have Discovery going beyond
3 the cables with respect to the Emergency Feedwater Pump House.

4 JUDGE HOYT: Fine.

5 MR. JORDAN: We are now at Contention I.D which has
6 four Contentions. I guess we are at the point where we will talk
7 about Reg. Guides. I'll start with I.D.1.

8 I'll note that Staff appears to accept all the
9 Contentions of I.D.1 through I.D.4. The Applicant, beginning with
10 Contention I.D.1 objects with the argument that NECNP has
11 attempted to raise the Reg. Guide to the point of a Regulation,
12 which is not the case.

13 The Board, however, has indicated that it would not
14 want the reference to the Regulatory Guide itself in the Contention.
15 If I may look at it for a second, perhaps we can solve that
16 problem.

17 JUDGE HOYT: Very well.

18 MR. GAD: We have suggested some wording on page 8
19 and may assist in the matter.

20 JUDGE HOYT: On page 8 of your document?

21 MR. GAD: Of our document of June 28, 1982.

22 MR. JORDAN: We can accept that language.

23 This is for I.D.1. I will read it into the record. NECNP would
24 insert the following Contention:

25 The Applicants have not complied with GDC1 with

1 respect to ultrasonic testing of reactor vessel wells during
2 pre-service and in-service examination.

3 This seems to be the kind of Contention, I must say,
4 that Mr. Lessy does not like, but when he goes back to our earlier
5 reading, he then, I guess, sees the specificity related to the
6 Reg. Guide. That should solve that kind of problem.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 JUDGE HOYT: Thank you. Is that 1 D 2? Mr. Jordan,
2 do you have problems with that?

3 MR. JORDAN: I just want it to be clear from the
4 Staff that their position has not changed?

5 MR. LESSY: That is right. We have no objection
6 to that reworded contention.

7 MR. JORDAN: We have another rewording here, if I
8 can get a look at it.

9 JUDGE HOYT: Is that the one on page nine?

10 MR. JORDAN: Yes. I think we propose wording as
11 follows: The first sentence would be the Applicant's sentence
12 on page nine of its filing of June 28th. The Applicant's
13 proposed testing of protection systems and actuation devices
14 fails to meet the requirements of GDC 21 and NuReg 0737,
15 Task II.D.1.

16 In particular, the Applicant does not provide for
17 the testing at full power of twelve safety functions (see FSAR at
18 1.8-9), justify that omission or provide for other reliable means
19 of testing them.

20 Then I believe we could it stop it there. So we
21 would propose as I just read it.

22 MR. LESSY: No objection to that reworded contention.

23 JUDGE HOYT: Do you have anything on that?

24 MR. GAD: As long as it is perfectly clear that no
25 one is ruling now as to whether or not any of the twelve are in

1 fact required, then I think it is innocuous.

2 JUDGE HOYT: The only thing we are really ruling
3 on is the contentions to get the discovery started. That is
4 what the whole exercise is all about I think.

5 Let us take up the I.D.3?

6 MR. LESSY: The I.D.3 our contention was reworded
7 according to the wording on which stand is at page ten of our
8 June 17th Filing. I notice that it does have Reg. Guide
9 references in there which I can try to take care of in a moment.
10 Let me first speak to the Applicant's complaint that we must
11 specify the respect in which the Leakage Detection System or
12 testing of the System does not comply. Our specificity is that
13 the Applicant has not met the language or the guidance, if you
14 will, of Reg. Guide 1.22 or provided an alternative means of
15 achieving the same goal.

16 That being the case, it seems to me that we at
17 least need to have discovery to determine whether in fact there
18 is some other way that the Applicant has provided the protection
19 that the Reg. Guide 1.22 would provide. At this point we cannot
20 say and all we know is that they have not done that.

21 JUDGE HOYT: Do you want anything on this one,
22 Mr. Lessy?

23 MR. LESSY: We did not object to the reworded
24 contention by any NECNP. I think the ball is in Mr. Gad's court.

25 MR. GAD: We have objected on two grounds. Madam

1 Chairman, one, the reference to the Reg. Guide as a legal
2 standard and which I think Mr. Jordan is excising surgically
3 while I speak.

4 The second is the attempt to use the Reg. Guide
5 for the same thing as his specificity requirement. I cannot
6 say it any better than we said it in our written document so I
7 will not try to do it except to say that what we have to meet
8 is the Regulation, not a document that proports to state one
9 way of meeting the Regulation.

10 The specificity that ought to be required is some
11 articulation of why we missed the boat on the Regulation, not
12 why we missed the boat on the Reg. Guide which, of course, they
13 just got out of a table some place. Whether or not you missed
14 the boat on the Reg. Guide logically does not tell you whether
15 or not you have missed the boat on the Regulations.

16 I think that striking the reference to the Reg.
17 Guide is required here. We do not think that that satisfies
18 the specificity requirement, apparently the Staff does.

19 MR. JORDAN: To respond, your Honor, to you concern
20 about language actually referencing Reg. Guide, I think we can
21 simply delete the second sentence of the contention as it worded
22 on page ten of our June 17th Filing. So the contention would
23 read without that sentence--if you would like me to read it into
24 the record I will.

25 JUDGE HOYT: Yes, please?

1 MR. JORDAN: The contention would read as follows:
2 The Applicant has not provided a reasonable assurance that the
3 Leakage Detection System for the Seabrook Reactor will operate
4 when needed because not all of the System is to be tested during
5 Plant operation as required by GDC 21. Only the Airborn
6 Radioactivity Detector has the capacity to be tested during
7 power operation, FSAR at 1.8-17. The Applicant thereby also
8 fails to satisfy GDC 30 which requires the development of
9 adequate Leakage Detection Systems. That would be the contention.

10 Again, on the specificity matter, what we are able
11 to read from the FSAR and from the information available to us
12 is here is a Regulatory Guide that the Staff considers to be
13 sufficient to comply with the Regulation. What we read is,
14 the Applicant does not do what the Regulatory Guide suggests,
15 what the Staff considers sufficient as set out in the Regulatory
16 Guide. We are not saying that the Applicant cannot do something
17 else, that the Regulatory Guide itself is a requirement. What
18 we are saying is, the Regulatory Guide indicates at least a means
19 of complying which the Applicant on table says they did not do
20 and we do not have the Applicant saying, well, we did not do
21 something else. We do not have them telling us we did not comply
22 with it in some other way also. It seems to me we have enough
23 there to raise a question, that we need discovery to answer.

24 If we get on discovery that there is this wonderful
25 system that in fact is more than an alternative to Reg. Guide 122

1 or is an alternative or is not even as good but still complies
2 with the Regulation, my question is answered. There is not
3 enough there now for us to know that.

4 JUDGE HOYT: Let us quickly do I.D.4 which would
5 get us well into your contentions.

6 MR. JORDAN: Again, the Staff has no complaint. I
7 think that in this case I will try to give you rewording without
8 the Regulatory Guide Reference. The wording would be as follows:

9 JUDGE HOYT: If you want to work that a little bit
10 further down, Mr. Jordan? I do not want to hurry you.

11 MR. LESSY: He can do it now.

12 MR. JORDAN: I might be able to refine it better
13 over lunch.

14 JUDGE HOYT: I would rather because I can see it
15 might be straining. Why don't we do that because we have reached
16 that time.

17 Let us adjourn the morning session and we will meet
18 this afternoon at 1:30 P.M. Is that agreeable?

19 MR. LESSY: That ought to be fine, your Honor.

20 JUDGE HOYT: If in the event you do not get enough
21 nourishment to carry you into the afternoon session, maybe we
22 could extend the lunch hour but we will not hold you.

23 (A noon recess was taken.)
24
25

1 JUDGE HOYT: The Hearing will now come to order.

2 Let the record reflect that after the noon recess,
3 the parties to the Hearing are all present in the Hearing Room
4 and that we are ready to proceed again.

5 We will take the Contentions of the New England Coalitio
6 on Nuclear Pollution and take it up with, I believe we went as
7 far as ID 4; is that right?

8 MR. JORDAN: Yes, Ma'm.

9 JUDGE HOYT: Then ID 4 is where we will begin, the
10 Testing of Electric Power and Protection Systems.

11 MR. JORDAN: Your Honor, in order to respond to your
12 concerns about the language of the Regulations, not in the NuReg
13 Guide, we will reword it as follows: The Applicant has not complied
14 with GDC 21 in that the Applicant indicates compliance with an
15 outdated standard, IEEE 338-1975, which has been superseded by
16 IEEE 338-1977.

17 Furthermore, for the rest of the Contention remains
18 as it is on Page 11, or June 17th.

19 JUDGE LUEBKE: Perhaps for completeness; it is just
20 two sentences.

21 MR. JORDAN: Okay, do you want me to read it?

22 JUDGE HOYT: Yes.

23 MR. JORDAN: Fine. The Contention would continue;
24 Furthermore, the Applicant improperly asserts that he does not
25 comply with IEEE 338-1975 whenever the standard states that an

1 action should be taken or a requirement should be met. All the
2 provisions of the IEEE standard should be treated as mandatory
3 unless the Applicant can show an alternative means of achieving the
4 same level of safety.

5 JUDGE HOYT: All right. Any comments from the Staff?

6 MR. GAD: The attempt to elevate an IEEE standard
7 or doctrine to a level of a regulatory measure against which this
8 application is to be tested is, if anything, compounding the felony
9 that we think in attempting to do that with a regulatory guide.

10 This is a contention that I will ask the Board to
11 rule that the application should be denied because it doesn't
12 meet one particular addition, one particular document published
13 by IEEE. That we do not think is an admissible or litigable
14 contention in NRC licensing proceedings. The contention ought
15 to be that the application does x, and for that reason it does
16 not comply with y, where y is one of the NRC Regulations in this
17 case, GDC 21.

18 JUDGE LUEBKE: I think that the Petitioner wishes
19 us to rule on this as now is different.

20 JUDGE HOYT: Let me ask you out of total ignorance,
21 haven't you, since you raise the standard in your Pleading of
22 IEEE 338-1975, why would you complain that we really should not
23 take advantage of that?

24 MR. GAD: I am not entirely certain of what the Chair
25 refers to.

1 JUDGE HOYT: Let me put it this way; I can understand
2 your argument against the use of the reg guide. Now, the standard
3 which you yourself have raised, the IEEE standard, you say the
4 Intervenor shouldn't use that as a measure of testing.

5 MR. GAD: My difficulty is that we have not raised
6 the IEEE standard and our Contention is that the IEEE standards
7 are one notch below the regulatory guide. For the same reason
8 that you cannot convert a regulatory guide into a Regulation that
9 has never been published by the Agency, it is an a fortiori
10 proposition that you cannot take an IEEE standard, convert it
11 into an unpublished Regulation and treat as if it were a regulation
12 that has never been promulgated, and then use that as a Rule against
13 which you would measure this application.

14 JUDGE PARIS: Are you saying that your documents
15 do not indicate compliance with IEEE 338-1975?

16 MR. GAD: The FSAR discusses at various places whether
17 or not the proposed piece of equipment or proposed system or pro-
18 posed testing methodology or proposed something else in the judgment
19 of the Applicant complies with, although I don't like the term
20 complies with, a regulatory guide; an IEEE standard where the
21 IEEE standard is referred to in the regulatory guide, and ASTM
22 standard, where perhaps that is referred to in a regulatory guide,
23 or as is traditionally used, for piping.

24 The point is that the License Application stands
25 or falls on the Regulations. Now, if a particular characteristic

1 or set of affairs is both in noncompliance with a reg guide or
2 an IEEE standard and noncompliance with the Regulation, the
3 application will be denied, but it will be denied because it doesn't
4 comply with the REgulations, not because it doesn't comply with
5 the IEEE doctrine or the regulatory guide. Moreover, in a
6 Contention like this, it equates the Regulation with the IEEE
7 standard, and therein lies the vice. We do not have to meet an
8 IEEE standard. We do have to meet the approved Regulations.

9 We contend they are different. Apparently any
10 NECNP contends they are the same. Whether or not that is true,
11 I think will be determined when the evidentiary hearing takes
12 place, but if the license application doesn't meet the GDC that
13 is referred to here, then NECNP wins and it will be denied. If
14 it does meet the GDC, then the application must be approved without
15 regard to what the IEEE standard is.

16 JUDGE HOYT: Didn't you in your application say that
17 in conformance with the GDC 21 standard, you have done it by
18 complying with IEEE 338-1975?

19 MR. GAD: I cannot answer you precisely as what it
20 said.

21 JUDGE HOYT: Well, in general terms. You do admit,
22 though, that you raise that in your FSAR?

23 MR. GAD: I don't believe that the Applicant in any
24 case say we comply with the regs because we comply with an IEEE
25 standard. We may very well have tables address various IEEE

1 standards or ASTM standards and various regulatory guides, because
2 the inclusion of the tables is at least traditional and perhaps
3 even required.

4 JUDGE LUEBKE: Would it help any if I said that these
5 IEEE and ASTM things are part of your Engineering procedure and
6 how you do engineer it?

7 MR. GAD: I think the standard answer to that is
8 not, because, once again, the license application is not tested
9 against some general notion of how you do engineering.

10 JUDGE LUEBKE: That is what I mean.

11 MR. GAD: And I understand that these IEEE standards
12 are widely accepted among Engineers as defining whatever it is
13 that they have to define. The point that we are making is a little
14 bit different. We are not urging that the plan is good or bad
15 because it meets or it doesn't meet with what the Engineers have
16 said, the IEEE has said. What we are saying is that the legal
17 standard that governs this application, and frankly governs the
18 applications of the Intervenors and the Board, the legal standard
19 is the Rules and Regulations of the NRC period. And if it turns
20 out that there is something that ought to be in those Rules and
21 Regulations that isn't in those Rules and Regulations, then the
22 lament must be addressed somewhere else than this particular Board
23 that the way is that if you meet the Rules and Regulations, then
24 the thing must be approved, even if you are all in consensus that
25 the Rules and Regulations aren't any good.

1 Now, I don't know if I am complexing it or am
2 answering your question.

3 JUDGE LUEBKE: I think the Contention as it was read
4 into the record argues with the Commission's Regulation.

5 MR. GAD: It equates the Regulation with an IEEE
6 standard, and that is not the function of the Contention for the
7 ruling on the Contention.

8 JUDGE LUEBKE: Which we heard before.

9 MR. GAD: Indeed, the same as a reg guide.

10 JUDGE HOYT: Let 's see if Mr. Lessy wants to have
11 a word in here.

12 MR. LESSY: We didn't oppose the rewording on the
13 grounds that the legal framework for it was essentially the GDC
14 21. Having taken the reg guide matters out of there, the question
15 of whether or not the Applicant's testing systems complied with
16 GDC 21; that is the general Contention. The subpart of that
17 Contention is that "a particular Applicant indicated compliance
18 with an outdated standard, IEEE 338-1975, which NECNP alleges
19 has been superceded. It doesn't say whether the standards were
20 raised or lowered. But I think we have enough in this Contention
21 to ask the question of whether or not Periodic Testing of Electric
22 Power and Protection Systems is consistent with the general design
23 criterea.

24 The Staff's way of looking at the Contention and
25 the question as to the IEEE matter are a corollary to that, but

1 not a necessary part of it, and therefore we felt we had enough
2 to litigate.

3 JUDGE HOYT: Well put. That is what I was aiming
4 for. Do you have anything else?

5 MR. JORDAN: Simply taking what Mr. Lessy said, I
6 agree with him or a large portion of it. We do not assert the
7 IEEE standards as the standards to be met, GDC 21 has to be met;
8 no question about it. I agree with what Mr. Lessy says.

9 JUDGE HOYT: All right, let's move along then into
10 LE, which is Reactor Cooling Pump Flywheel Integrity.

11 Any problems with that?

12 MR. JORDAN: Again we have the reg guide reference
13 that we have deleted. Accordingly I would propose the following
14 Contention. This is reading from deletions from Page 19 of our
15 April filing. The Applicant has not complied with GDC 4 in that
16 the Applicant will not perform post-inspections of the flywheel,
17 has not identified the design speed of the flywheel and tested
18 it at 125 per cent of that speed and has not specified the
19 cross roll and ratio. Furthermore, the flywheel should be environ-
20 mentally qualified under GDC 4 because it constitutes equipment
21 important to safety.

22 JUDGE HOYT: Mr. Gad, do you have anything on that?

23 MR. GAD: It is a little bit difficult to assess
24 without seeing it in writing, but it sounds to me like if it didn't
25 land in the okay zone, it was pretty close.

1 MR. LESSY: Our view would be that everything up
2 to the furthermore statement would be acceptable; the statement
3 "furthermore, the flywheel should be environmentally qualified
4 under GDC 4" seems to go beyond the Commission's Regulations and
5 therefore would not have an adequate basis. The first part of
6 the Contention up to the "furthermore" statement would be acceptable.

7 MR. JORDAN: On that point, your Honor, it seems
8 to us the flywheel is the source, a potential source, of damaging
9 missiles. It is also equipment that itself is important to safety.
10 as I understand it, in providing inertia to the pumping of the
11 water, and that as being important to safety, it must then be
12 primarily qualified under GDC 4.

13 MR. LESSY: Let me understand; is it your understanding
14 that the Commission requires environmental qualification of the
15 Reactor Coolant Pump Flywheel?

16 MR. JORDAN: That is what the sentence is.

17 MR. LESSY: What is the reference?

18 MR. JORDAN: GDC 4 is the reference.

19 And also I do not know if the Commission's Regulation
20 says x piece of equipment must be environmentally qualified. That
21 is why we have all these difficulties; you are not aware of all
22 the Regulations.

23 MR. JORDAN: I am not aware of any requirement that
24 that particular piece of equipment has to be environmentally quali-
25 fied. I realize that NECNP believes it should be. In the absence

1 of a reference to that, we object to that as a lack of basis.

2 MR. JORDAN: Your Honor, finally, I guess I raised
3 it here and probably in a number of other places, it seems to
4 me that that is something that we obviously disagree on the inter-
5 pretation of. That isn't a matter appropriate for summary disposi-
6 tion. The Board can have more focus and legal argument on the
7 language of Regulations. But it seems to me that the appropriate
8 thing is to leave the Contention in that Mr. Lessy believes it
9 must allow on summary disposition grounds, and he may do that.

10 MR. LESSY: I wouldn't agree to that. It has to
11 have a regulatory basis. You are stating that the particular
12 equipment must meet the environmental qualifications requirements
13 of the Commission in your view. Since it was done orally, we
14 have to do it--I am aware of no pending requirement that the piece
15 of equipment be environmentally qualified. Until you point to
16 it there has been no basis established and we are not going to
17 wait eight months before we move it out on summary disposition.
18 That is the Staff's view.

19 JUDGE LUEBKE: In which case the Contention argues
20 with the Commission.

21 MR. LESSY: That is right.

22 JUDGE LUEBKE: And the Petitioner has to argue with
23 the Commission and not with us.

24 MR. LESSY: In an individual licensing proceeding,
25 that is correct.

1 JUDGE HOYT: Do you have anything to report to us
2 to sustain the position of Staff on the flywheel that it should
3 be environmentally qualified other than your reading it.

4 MR. JORDAN: I think what this gets down to really
5 is a question of fact, not a question of misinterpretation or
6 challenge to the Commission Regulation. I mean, we do not intend
7 any such challenge. The question of fact is whether the flywheel
8 is equipment important to safety. If it is important to safety,
9 no question, the criterion 4 applies. I would think a relatively
10 straight Board affidavit of the position to show that that flywheel
11 to the pump is somehow involved in the operation of those pumps
12 is not important to safety.

13 MR. LESSY: As to legal basis, the only basis that
14 is in the record for any NECNP proposition that the Reactor
15 Cooling Pump Flywheel need be environmentally qualified is a reg
16 guide 1.14. We have been through that. In the absence of any
17 other basis, I object as lacking in adequacy.

18 JUDGE HOYT: I find that that is all the argument
19 that we will take on that particular Contention. Let's move on
20 to Contention 1F, Diesel Generator Qualification.

21 MR. JORDAN: We have again the regulatory guide.
22 From here I gather that the Staff does not object to the Contention.

23 We would reword the Contention as follows: taking
24 this from Page 21 of our April filing, the second sentence of
25 that: NECNP contends that the Diesel Generators cannot be

1 considered to be qualified for the use at Seabrook because they
2 do not meet the requirements of IEEE 3.3-1974.

3 JUDGE PARIS: And you are deleting the first sentence
4 altogether?

5 MR. JORDAN: Yes, and I just reword the second and
6 third sentences to put them together so that they make sense in
7 light of the deletion of the first one.

8 JUDGE HOYT: And I take it that it is your position,
9 Mr. Gad, that you object to that rewording because it raises the
10 IEEE to the standard of a regulation.

11 MR. GAD: It in substitution for the real standard,
12 yes, indeed.

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. JORDAN: I'm sorry. I got a little off track.
2 I may have given the wrong impression of what the Staff had
3 agreed to. We did reword this Contention. I was incorrect where
4 I was reading from.

5 The reworded language is on page 12 of our June 17th
6 filing. That is the language I understand the Staff agreed to.

7 JUDGE PARIS: Are we discarding what you have just
8 read?

9 MR. JORDAN: Yes.

10 JUDGE PARIS: All right.

11 MR. JORDAN: Yes. We would discard what I had just
12 read. I will use what we just reworded. I think it is clear and
13 it does include the Regulation Citation.

14 JUDGE HOYT: We will strike all of the above and
15 we are looking at the wording that you have on page 12 of the
16 June 17th filing.

17 MR. JORDAN: Yes. It is as follows with the
18 deletion:

19 The Applicant has not met the requirements of
20 GCD17 or Criteria III, App. (b) in that it has not indicated
21 compliance with 1EEE, 323-1974.

22 MR. PARIS: In that it has not indicated compliance
23 with, and so on. Is that right?

24 MR. GAD: Because there is not a jot in GCD17
25 or Criteria III, App. (b) that purports to manifest a commissioned

1 policy decision and that IEEE, 323-1974 is a Regularoty Standard
2 against which this thing must be met. Such a Contention is not
3 admissable.

4 JUDGE HOYT: Anything from you, Mr. Lessy?

5 MR. LESSY: My understanding is that GCD17 does
6 apply to the generator qualification and since that is the
7 criteria from which the Applicant's generators were reviewed, we
8 found it to be an acceptable Contention.

9 JUDGE HOYT: Let's look at I.G. on Pressure Instru-
10 ment Reliability and I guess your new wording is on the bottom
11 of page 12 and the top of page 13 on that one.

12 Mr. Jordan, anything you want to change on that one?

13 MR. JORDAN: No. I understand the Staff and
14 Applicant have accepted that wording.

15 JUDGE HOYT: I think that is a milestone in this
16 case.

17 Now we will go into I.H, Decay Heat Removal
18 Capacity, and I take it that you do not have any additional new
19 wording on that but you stand on the wording of the Contention
20 of April 21, is that right?

21 MR. JORDAN: Yes, we do.

22 JUDGE HOYT: And that would be found in the middle
23 of page 23. Is that it?

24 MR. JORDAN: I have it at the top of page 23

25 JUDGE HOYT: Right. Go ahead.

1 JUDGE HOYT: Where does the wording start? Are you
2 just saying that whole paragraph at the top of the page is your
3 Contention?

4 MR. JORDAN: I would not have reworded it from this
5 language.

6 JUDGE PARIS: In essence, your Contention is con-
7 tained in the last two sentences, is that right?

8 MR. JORDAN: Actually, the Contention as to what
9 is wrong and what should be done could be the last sentence.

10 JUDGE PARIS: Okay.

11 MR. JORDAN: It says, "The Applicant should be
12 required to install additional heat exchanger capacity to allow
13 for more rapid cooldown of the facility in the event of an
14 accident."

15 JUDGE HOYT: I can see what the objection to that
16 is going to be. Do you want to tell us what it is that they
17 should install?

18 MR. JORDAN: Well, we are unable to say that, but
19 we are able to do is to say that the adequacy of heat exchanger
20 capacity is an unresolved safety issue. It is a new one under
21 NuReg. 0705.

22 What has happened here is that the FSAR indicates
23 that the heat exchanger capacity for Seabrook is indeed less than
24 the heat exchanger capacity for, I believe, at least two older
25 plants.

1 If the issue is already an unresolved safety issue
2 with respect to existing plants, we have Seabrook having a lesser
3 capacity than two of those. The issue needs to be resolved. We
4 have a Contention on it. We do not know whether they are going to
5 be able to resolve it or not.

6 JUDGE LUEBKE: It is my recollection that the Staff
7 puts out a supplement to the SER at some time which addresses
8 the unresolved safety issues and presumably they would include
9 this on the list?

10 MR. LESSY: Yes. Staff had a problem with this
11 Contention because of the lack of basis. The basis for the
12 Contention was NuReg. 0705 which is a document entitled, "Identi-
13 fication of New Unresolved Safety Issues Relating to Nuclear
14 Power Plants," dated May of 1981.

15 The way we read the document, that unresolved safety
16 issue, which will be addressed in the Staff's SSER, there is
17 no shelling in NuReg. 0705 or not discussion that the reference
18 applies to inadequacies in the size of the heat exchangers.

19 This Contention goes to the size of the heat
20 exchanger as opposed to its designed pressure. We objected to
21 this Contention on the grounds of a lack of adequate basis. Un-
22 less Mr. Jordan is able to qualify that, he is in the right
23 church, but the wrong pew.

24 JUDGE HOYT: Would not this be a more timely filing
25 of a Contention of that nature after the SER is out?

1 MR. JORDAN: I have two or three responses. Our
2 Problem is that we have what we view to be a basis for it now,
3 and accordingly it would be untimely for us to raise it later
4 after the SER comes out.

5 If the SER is to be considered to be the point at
6 which the information arrives, then I do not have a problem in
7 raising the Contention after we find out the resolution. I would
8 have no difficulty with that at all, if I could be assured now
9 that I will not have a timeliness objection if we have a Contention
10 to raise when the SER is issued on this subject, I can withdraw
11 the Contention. Without that, I must hold to it because we
12 do believe we do have a basis for it.

13 JUDGE PARIS: So you are proposing that the Contention
14 lie fallow until the SER comes out, at which time you will
15 either withdraw it or you would like it to become activated?

16 MR. JORDAN: I would be willing to do that. Yes.
17 If that is all right, I'll get to the rest of it.

18 JUDGE HOYT: We will go on. Let's go on to the
19 Inadequate Provisions for Achieving Cold Shutdown. Again, we
20 want to word your Contention and what language you want to use
21 in it.

22 MR. JORDAN: I think the Staff has done that for us.
23 I have in front of me the Staff's response to various supplements,
24 including yours dated July 1, 1982, page 21, in which in effect,
25 the Staff appears to propose some language.

1 Let me see if I can give us a Contention based on
2 it. The following Contention is NECNP Contention I.I.

3 NECNP contends that the Applicant must identify
4 and environmentally qualify one path to cold shutdown as per I
5 and E Bulletin 79-01B, Supplement 3.

6 MR. LESSY: What is the basis for that Contention?

7 MR. JORDAN: In fact, the basis for the Contention
8 is the I and E Bulletin; itself, in which the Staff takes the
9 position that that must be done and the fact that we have not
10 found , I believe -- let me clear my thoughts.

11 Based on the FSAR, the Applicant has not identified
12 an environmentally qualified such a one path to cold shutdown, but
13 has provided the capability to place and maintain the Plant in a
14 hot standby position. You cannot just go down the path to cold
15 shutdown; you may have to reach a standby condition and then
16 do something else to recover from an accident; then get to cold
17 shutdown.

18 MR. LESSY: The Staff does not object to that
19 Contention, your Honor. An I and E Bulletin is not a Regulation
20 of the Commission, but it is a mandatory document which requires
21 a response from the Licensee and we feel that this particular
22 Contention is admissible.

23 JUDGE HOYT: As worded here on this record?

24 MR. LESSY: Yes.

25 JUDGE HOYT: Thank you.

1 MR. GAD: I hate to disagree with Mr. Lessy and
2 I do so with a fair measure of trepidation, but it seems to us
3 that when, as and if the policy judgment is made that there must
4 be one environmentally qualified path to cold shutdown as a
5 operating license standard. When that policy judgment is made,
6 it has to be made in a different fashion in which it has not yet
7 been made before it can be used as a ruler against which you are
8 going to measure this application.

9 JUDGE LUEBKE: Are you saying it is a pending matter?

10 MR. GAD: Not to my knowledge.

11 JUDGE LUEBKE: I heard Mr. Lessy say it exists.

12 MR. GAD: I want to be careful here. I think what
13 Mr. Lessy said is it is the Staff's opinion that this thing
14 ought to exist and that they have issued a document calling for
15 a response by the Applicants.

16 JUDGE LUEBKE: So it is a matter in process. It is
17 not completed.

18 MR. GAD: Well, my point was intended to be a little
19 more general. I am not sure that there is even a Notice of
20 Proposed Rule Making on the point. My point is this: A contention
21 must related to the NRC Regulations, a contention, the basis of
22 which is, well, in our judgment what the standard ought to be is
23 "X" is a contention that is looking to NRC policy decision
24 making that has not yet taken place. We cannot be denied a
25 license on the basis of the failure to meet a standard that has

1 not been imposed yet.

2 MR. JORDAN: I must add, we have cited in our
3 original filing on page 25, the April filing, a number of GDC
4 from which this, what we view as a requirements derives, we
5 would serve specifically GDC34 and we will stand on that

6 JUDGE HOYT: We have in the record the wording you
7 want.

8 JUDGE PARIS: Mr. Gad, is it your position that
9 a contention cannot be based on Applicant's failure to comply with
10 an I and E order or directive?

11 MR. GAD: I think the answer to the question is yes.
12 But before a say so, I would like a chance to consider my plea
13 over night. I think that the application cannot be denied because
14 of the non-existence of something, the requirement to have which,
15 is not traceable to an NRC Regulation. Yes, Doctor, that will
16 be our position.

17 JUDGE HOYT: Well, put in those terms, I suppose
18 anything I and E does can be traceable to a Regulation.

19 MR. GAD: I have a little bit of trouble with this.
20 If someone came out with an I and E or an IEEE Bulletin or an
21 ASDN that said that all nuclear power plants shall be blue and
22 we came in here with an application for a red one and someone
23 tried to deny it on that basis, we would have trouble with it.

24 There are various categories of issuances from the
25 Office of Inspection in Portsmouth. There is an I and E Infor-

1 mation Notice which puts applicants and others on notice of
2 certain technical requirements, but is not mandatory upon them.
3 An I and E Bulletine, however, is a mandatory document and,
4 whereas Mr. Gad notes, it does not have the precise status of a
5 Commission Regulation from the Staff's standpoint. It is a
6 mandatory document and there is no holding to the effect that
7 compliance with an I and E Bulletin does not form the basis for
8 a valid contention. There is no commission law to defect the
9 compliance with an I and E Bulletin.

10 The other thing I might add, there is one piece
11 of information and it is the matter of a cold shutdown is some-
12 thing that has been discussed at the Commission level.

13 There is not a proposed rule on it but it is some-
14 thing that is being very actively discussed in connection with
15 some other things and I would expect to see Commission Regulations
16 coming out in the next couple of years to deal precisely with
17 that; maybe even sooner. So it is an active matter at the
18 Commission level and it is a mandatory matter at the Staff level
19 and unfortunately the Board has to issue a couple of sentences
20 ruling upon the admissability of this Contention.

21 Our position is that it is a valid Contention.

22 JUDGE HOYT: Now, returning to I.J. Sabotage.

23 Mr. Jordan, I want to tell you in advance that I had some trouble
24 with this one. Give me a pretty good explanation on it.

25 MR. JORDAN: Let me take a shot. Fundamentally,

1 the point is that Seabrook is vulnerable to sabotage, largely
2 because of the complexity of the design. Our advice from Mr.
3 Pollard of the Union of Concerned Scientists, the Nuclear Engineer,
4 who was formally with the NRC, is that there are innumerable
5 aspects of the Plant that can be relatively easily be tampered
6 with in a way that he would expect could not be detected. He
7 is not an expert on whether it could be detected.

8 JUDGE HOYT: Would he be your witness, though?

9 MR. JORDAN: He would be one witness. Yes.

10 JUDGE HOYT: Can you tell us some of the concerns
11 that he has on those. I'm trying to understand where you are
12 going with this.

13 MR. JORDAN: Okay. As best I recall, he explained
14 to us, for example that valves could be faced in a permanently
15 open position. I believe a permanently opened position as he
16 explained it to us.

17 MR. GAD: I hate to interrupt, but if we are going
18 to get a lesson on how to sabotage a nuclear power plan, then I
19 think we ought to do it in a slightly different form.

20 MR. JORDAN: I am certainly not going to go into
21 any more detail than I have just told you. I don't know it.

22 JUDGE HOYT: I did not intend that my question
23 would generate that type of thing, Mr. Gad.

24 MR. GAD: I was reacting to the answer I was start-
25 ing to hear, not necessarily the question.

1 JUDGE HOYT: I know that the answer was in response
2 to my question. I want you to understand that I did not intend
3 on that.

4 Let me ask any people who wish to use their cameras
5 be advised that we ask you not to use a light that would shine
6 in our eyes. It is rather unpleasant. We would appreciate it
7 if you would abide by that. We do not want to impose any restric-
8 tions upon the press, but it is very difficult if you have to have
9 that in your eyes.

10 All right, Mr. Jordan. The idea that I was coming
11 to was how you could perhaps word the Contention that would make
12 it as to Seabrook. I am sure that if you have Valve No. 22 in
13 every other plant in the country, Valve No. 22 could be just as
14 subject to sabotage in those plants as it would be in the Seabrook
15 Plant. What makes Seabrook unique as to sabotage is what I am
16 really probably asking.

17 MR. JORDAN: That is the other side of the coin that
18 I had not gotten to yet. I assume they are all virtually sus-
19 ceptile in essentially the same way. What you get to is the
20 question of whether the Security Plan for the Plant protects
21 against the potential sabotage.

22 There may be a Plan that is adequate at Plant No. 1
23 and Plant No. 2 may have a different Plan that is not adequate.
24 That is the point.

25 JUDGE HOYT: Let me stop you there and say my con-

1 cern is how can you word that Contention to indicate the missing
2 link at the Seabrook Plant?

3 MR. JORDAN: Okay. That is when we get to the
4 question of the Security Plan. You cannot tell until you have an
5 expert look at the Security Plan. It is impossible for us to
6 know that.

7 MR. GAD: May I volunteer a way out of this?

8 JUDGE HOYT: Go ahead, Mr. Gad.

9 MR. GAD: I would not put it quite in those terms.
10 NECNP is very candid in its latest filing and I am talking about
11 page 15 of whatever date it was.

12 JUDGE HOYT: June 17th.

13 MR. GAD: Yes. They are quite candid when they say
14 they cannot frame a proper Contention at this time. I think
15 the Applicants are in agreement that they have not and cannot; I
16 think the Staff is, and I think that disposes of the issue of
17 whether or not we have a Contention at this time.

18 NECNP also takes the position they would like to
19 take a crack at looking at the Security Plan. There seems to
20 have evolved in NRC practice, a pre-established procedure which
21 is unique to getting a look at the Security Plan. NECNP has not
22 trod down that path yet, and when they do, we are ready to respond
23 to it.

24 I think the issue that is on the table today is
25 limited to whether or not there is an admissible Contention today.

1 I think there is no disagreement that today there is none.

2 MR. LESSY: That is right, your Honor. The NECNP
3 has stated that they are not able to frame a contention because
4 they have not reviewed the Plan, which is true, and therefore,
5 such a contention would be inappropriate at this time.

6 The litigation of Security Plan matters, the
7 procedures, are different from the procedures on almost any other
8 Contention. Perhaps the leading discussion is the Pacific Gas
9 and Electric Company, Diablo Canyon Nuclear Power Plan Units I &
10 II, ALAB 410, cited that 5 NRC 1398, 1977, NECNP cannot frame a
11 contention until its experts review the plan.

12 However, before its experts can review the Plan,
13 they have to first demonstrate to the satisfaction of the Licensing
14 Board that they possess the technical competence to evaluate it.
15 That is accomplished by one of two ways. The burden of demon-
16 strating expertise is upon the parties sponsoring the expert
17 witness. That would be on NECNP.

18 The two ways that are available is the Licensing
19 Board decision, Licensing Board 78-36, also Diablo 8NRC 567, 1978.
20 The two methods available a voir dire examination before the
21 Board under appropriate circumstances with respect to the back-
22 ground and technical competence of the experts.

23 Generally, the background has to be usually for
24 Security Claim issues, is an expert in sabotage or terrorism
25 with respect to nuclear power plants.

1 The other method other than the voir dire examina-
2 tion which is used is a deposition method. We would take the
3 deposition of certain of the experts and then submit the deposi-
4 tion to the Board under appropriate circumstances with appropriate
5 legal arguments.

6 In the Security Plan issue, all of that has to be
7 done before you get to the question of framing Contentions. We
8 are just at the point now where frankly, when I was packing my
9 bags, getting ready to go to the plane, I got a letter from Mr.
10 Jordan's associate setting forth the qualifications of two
11 proffered experts.

12 I guess the Board, in conjunction with NECNP has
13 to decide if we are ready to proceed using that method of approach
14 at this time, or whether or not NECNP wants to wait. That is
15 exactly the status of where we are right now.

16 JUDGE HOYT: You are referring to Ms. Curran's
17 letter of July 9th?

18 MR. LESSY: That is right, your Honor. I got it
19 as I was packing my bag Tuesday night.

20 JUDGE LUEBKE: There was a time when we didn't use
21 the word "sabotage." When did we start using it?

22 MR. LESSY: I thought I used the word "terroism."

23 JUDGE LUEBKE: I guess you used both words. I
24 have the notion that sabotage was not a thing we litigated.

25 MR. LESSY: I think that you may be referring to

1 international sabotage. That is the ruling of the Siegel case,
2 as opposed to industrial sabotage.

3 JUDGE LUEBKE: I was thinking there might be a milder
4 word.

5 MR. LESSY: Well, security issues.

6 JUDGE LUEBKE: That's fine. I think sabotage is
7 an exaggeration of the language.

8 MR. LESSY: That is their Contention.

9 JUDGE LUEBKE: I don't think there should be a sub-
10 title of Sabotage.

11 MR. LESSY: Anyway, we are in that procedural mode
12 here, which is unique to this subject matter.

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. JORDAN: I agree with Mr. Lessy. I think he
2 has been very helpful in laying out what goes in the litigation
3 of the Security Plans. I do not see that is probably helpful
4 to pursue it here at the moment.

5 I would tell the Board and the parties that in
6 addition to those individuals indentified in the letter from
7 Ms. Curran, we all are in contact with and hope will be able
8 to obtain the assistance of two further experts, Dr. Forest Frank
9 and Dr. Peter Zimmerman of the ZF Corporation, both of whom are
10 Ph.D.'s, Zimmerman in Physics and who have experience in this
11 field. I will not get into arguing their qualifications here.

12 I think as next week begins, we can enter the process
13 of the Security Plan Contention and see if we go through the
14 routes that Mr. Lessy is talking about. Then we will frame the
15 contention when that point comes.

16 JUDGE HOYT: Do I read that to mean that you are
17 withdrawing at this time?

18 MR. JORDAN: Mr. Gad is correct. We have said that
19 we cannot frame a contention now because we do not have the Plan.

20 JUDGE HOYT: I just want to get it on the record
21 that you are withdrawing it.

22 MR. JORDAN: No problem.

23 JUDGE HOYT: Does that also mean that you withdraw
24 the request for a protective order set out in Ms. Curran's letter
25 of July 9th?

1 MR. JORDAN: In any event, we are not at this time
2 requesting a protective order, that is the process that we then
3 eventually use, I gather.

4 JUDGE HOYT: I can conclude this letter is being
5 withdrawn?

6 MR. JORDAN: Yes. The request for a protective
7 order, to the affect there was one, would be withdrawn.

8 MR. AHRENS: Your Honor, may I be excused?

9 JUDGE HOYT: Certainly. Are you withdrawing for
10 a purpose?

11 MR. AHRENS: No, your Honor.

12 JUDGE HOYT: Just for a call, surely.

13 Then I take it we can move on into Solid Waste
14 Disposal?

15 MR. JORDAN: I think we are on Item K, Instrumenta-
16 tion. Ms. Curran will address the next several contentions.

17 JUDGE HOYT: Ms. Curran, if you will?

18 MS. CURRAN: Thank you. In this contention NECNP
19 challenges the Applicant's failure to submit a Post Accident
20 Monitoring System. In response to the Applicant's and Staff's
21 objections, we propose two alternative means of dealing with
22 the fact that PAM System has not yet been submitted by the
23 Applicant.

24 First we offer to leave the contention as is to be
25 amended or withdrawn and then the PAM System is submitted or else

1 we will withdraw the contention now with the option of resubmit-
2 ting it at a later time when the PAM System is submitted. It
3 appears to us that both the Applicant and the Staff would prefer
4 the second alternative. That is fine with us.

5 Our major concern here is that we not have to suffer
6 the prejudice of meeting the late filed Contention Standard if
7 we do so. We feel that it would be unfair to us to penalize
8 us for the failure of the Applicant to complete the FSAR on time.

9 JUDGE HOYT: Let me assure you that you would not
10 have to meet that. I think that one of the problems that the
11 Board has had and I think this is because of the way that this
12 Commission's Regulations are framed, and that is when you have
13 got a contention that is going to come out on a document that
14 is substantially in the future, you cannot have an Intervenor
15 framing a contention against something they have no idea what
16 it is all about. As far as this Board is concerned, the way we
17 want to look at it in that the contention can only be right for
18 framing when the document against which the contention will be
19 aimed has been framed for the proceeding. I think that is a
20 fair and equitable manner in which to proceed.

21 MR. LESSY: In other words, there would be good
22 cause for their filing at that point in time.

23 JUDGE HOYT: Exactly. It would meet one of the four
24 or all of the late filed contentions but in order to remove that
25 obstacle of having to go across all those and ritualistically

1 reciting them, that we just make that ruling up front and let it
2 go. Then we would take the contentions at the time at which
3 the documentation on which the Intervenor is basing the conten-
4 tion has been filed.

5 Does either Applicant or Staff have any problems
6 with that?

7 MR. LESSY: The only suggestion that I would have
8 in that regard, your Honor, is that the framing of the contention
9 follow fairly quickly after the availability of the document
10 to that party.

11 JUDGE HOYT: Yes, I think that would have to be
12 understood that that would be the policy of the Board, to expect
13 it immediately upon the submission of the document or within a
14 reasonable length of time. I think that you do not want to shoot
15 from the hip.

16 Mr. Lessy had something else. Let's get him up.

17 MR. LESSY: We had suggested in the case of the
18 Instrumentation Contention that the Licensing Board require
19 NECNP to submit the contention within twenty-one days of its
20 receipt of the information on Applicant's Instrumentation
21 selection. Anything within that timeframe or whatever timeframe
22 that the Board ordered would be a contention which would meet
23 the late filed Contention Requirements. Anything outside of that,
24 you would start getting back into weighing those factors.

25 MS. CURRAN: Judge Hoyt?

1 JUDGE HOYT: Yes, ma'am.

2 MS. CURRAN: We would like to respond to that. We
3 feel that the PAM System description may be a very extensive
4 document that we would really require at least thirty days in
5 which to respond adequately to that which would give our experts
6 an opportunity to review and come up with very specific content-
7 tions.

8 JUDGE HOYT: So you are saying thirty days and you
9 are saying twenty-one?

10 MR. LESSY: The twenty-one was a rule of thumb,
11 it was not a precise time.

12 JUDGE HOYT: All right. Let us consider then that
13 you will withdraw I.K. at this time with the assurance that you
14 may file it at the time in which the PAM document will be needed.
15 All of the above will be applicable.

16 Let us move along into Contention I.L., PORV Flow
17 Detection Monitoring System.

18 MS. CURRAN: I believe we may have resolved our
19 disagreement about this contention this morning. As long as
20 Mr. Gad would still agree, I would like to read the version that
21 we discussed this morning into the record.

22 MR. GAD: I have not changed my mind.

23 MS. CURRAN: Applicants have not provided for a
24 direct indication of Power Operated Relief Valve Positions and
25 therefore, have not complied with NuReg 0737, Item II.D.3.

1 A safety grade environmentally qualified system in compliance
2 with GDC 4 should be installed.

3 JUDGE HOYT: Anything from you, Mr. Lessy?

4 MR. LESSY: The Staff agreed with that rewording.

5 JUDGE HOYT: Let us move along into Contention I.M.
6 Fire Protection.

7 MS. CURRAN: The Staff accepts this contention
8 provided it is limited to the component and systems described
9 in our reply to their objections. We are willing to agree with
10 that and we will limit the contention to those components.

11 The Applicant has responded that CLI-80-21 does not
12 make the Branch Technical Position or the proposed rule that
13 we cited enforceable with regard to Fire Protection.

14 I think the best way to clear that up is for me
15 to read the Commission's Decision, the sentence in CLI-80-21
16 which we believe makes the standards cited in our contention
17 enforceable with regard to Fire Protection. That is, the
18 combination of the Guidance contained in Appendix A to Branch
19 Technical Position 9.5-1 and the requirement set forth in the
20 proposed rule to find the essential elements for an acceptable
21 Fire Protection Program at nuclear power plants docketed for
22 construction permit prior to July 1, 1976, for demonstration of
23 compliance with General Design Criterion 3 of Appendix A to
24 10 CFR Part 50, we believe the words of the Branch Technical
25 Position and the proposed rule define the essential elements of

1 Fire Protection make them enforceable standards.

2 JUDGE HOYT: Mr. Gad?

3 MR. GAD: The point here I think is best illustrated
4 by comparing the grammar of the sentence quoted and then the
5 sentence immediately following there of argument because the
6 argument left out the words, an acceptable. An acceptable,
7 indefinite article, one acceptable.

8 The position of NECNP is that the documents referred
9 in CLI-80-21 are the only way to meet GDC 3. If they are correct
10 about that then their contention need be framed in terms of GDC 3
11 alone. We contend that the materials that are in AD-21 are one
12 acceptable way of satisfying GDC 3. If we are correct about
13 that then all that you may refer to is GDC 3 and not something
14 that serves a function akin to a Regulatory Guide. Who is ever
15 right about the Law, the only thing that need be referred to
16 in the contention that is admitted and the only thing that we
17 think may properly be referred to in the contention that is
18 admitted, is the GDC, the General Design Criterion.

19 JUDGE LUEBKE: Then it also follows that the basis
20 must be consistent with that limitation?

21 MR. GAD: That is correct.

22 JUDGE HOYT: Anything else? Do you want to input
23 in this, sir?

24 MR. PERLIS: The only input I would like to make
25 is the official NRC Cite, which I guess we should apologize, the

1 Staff miscited in its first response to NECNP is 11 NRC 707. It
2 was a different number earlier. I believe the cited passage
3 was at 11 NRC at 718.

4 JUDGE HOYT: Is this on page twenty-one?

5 MR. PERLIS: .No. This is on page thirteen of our
6 May 19th Filing. This is our original response to NECNP's
7 contentions.

8 JUDGE LUEBKE: Your position is that the contention
9 was okay?

10 MR. PERLIS: Our contention is that I do not think
11 we paid quite as much attention to the wording as the Applicant
12 did. We would agree to the Applicant's suggestion or to NECNP's.
13 We think a contention dealing with prior requirements is
14 acceptable.

15 JUDGE LUEBKE: I guess I am a little puzzled because
16 which one are we accepting? There is one version here, it has
17 a two page listing of items. Is that the one we are accepting.
18 There is one version here, it has got a two page listing of items.
19 Is that the one we are on?

20 MR. LESSY: The contention proffered by NECNP now
21 is limited to those items.

22 Our suggestion in our May 19th pleading, your Honor,
23 was that we would not object to a contention to the affect that
24 Applicant's Fire Protection System does not meet the requirements
25 of GDC 3 as interpreted by the Commission in CLI-80-21 provided

1 they were limited to the two pages of items. They have limited
2 to that so our objection is satisfied.

3 JUDGE LUEBKE: You will make some specifics?

4 MR. LESSY: Yes, that is right.

5 MS. CURRAN: If you would like we can just change
6 the wording of the contention to say, looking at page sixteen
7 of our reply brief that says the Applicant does not meet the
8 requirements of GDC 3 as implemented by the Commission in CLI-80-
9 21 with respect to Branch Technical Position APCSB 9.5-1
10 Appendix A regarding the following items. Then following that,
11 the list of items that we have identified as not complying with
12 the Branch Technical Position, if that would clarify things.

13 JUDGE HOYT: I seem to have misplaced your original
14 filing. Is that the one of the 21st?

15 MR. LESSY: The 17th.

16 JUDGE HOYT: Very well. I have it. Thank you.

17 MR. LESSY: Our recommendation is that we would end
18 GDC 3 as interpreted by the Commission and CLI-80-21. That was
19 our suggestion.

20 MS. CURRAN: That is fine.

21 JUDGE PARIS: What are we doing here? Are you
22 accepting what Mr. Lessy has just proposed and dropping the long
23 list of particulars?

24 MS. CURRAN: No.

25 MR. LESSY: She is including the list of particulars.

1 The only question is the legal framework for the contention and
2 our suggestion was that if the legal basis for the contention
3 is that Applicant's Fire Protection System does not meet the
4 requirements of GDC 3 as interpreted by the Commission in that
5 order, CLI-80-21, limited to those particular items, we have no
6 objection to such a contention.

7 JUDGE LUEBKE: All right, then I am still not certain
8 as to what the language of the contention is going to be. Is
9 it going be that sentence, the Applicant Fire Protection and so
10 on, with respect to and then that list of particulars? Something
11 like that?

12 MS. CURRAN: Yes.

13 JUDGE LUEBKE: All right. After CLI-80-21 we will
14 put comma with respect to colon, how about that?

15 MS. CURRAN: Fine.

16 JUDGE HOYT: I have a feeling that everyone is just
17 a little bit weary as we our tripping over our words here.

18 Let us have a very brief recess. Please do not get
19 too far away from the Hearing Room.

20 (Off the record.)
21
22
23
24
25

1 JUDGE HOYT: Back on the record. The Hearing will
2 come to order.

3 All parties to the Hearing with the exception of
4 Counsel for the State of Maine, who has been over the recess
5 period excused, are here present in the Hearing Room.

6 Let us go ahead with NECNP's Contention IN on Solid
7 Waste Disposal System. Mr. Jordan, are you ready on that one,
8 sir?

9 MS. CURRAN: I am.

10 JUDGE HOYT: Go ahead.

11 MS. CURRAN: There was no objection from the
12 Applicant or the Staff to our Contention IN on Solid Waste.

13 JUDGE LUEBKE: That is the reworded version in your
14 June 17th Filing?

15 MS. CURRAN: That is correct.

16 JUDGE HOYT: Let us go into Contention IO, Emergency
17 Feedwater.

18 MS. CURRAN: The Staff has accepted our Contention
19 IO2 but objects to Contention IO1. The Applicant continues to
20 object to both Contentions.

21 JUDGE HOYT: Yes. I think there are two contentions
22 in this area, 1 and 2, and both are objected to by both Applicant
23 and Staff and you still stand on submission of the Contention as
24 is phrased in your original filing April 21st?

25 MS. CURRAN: Actually, Contention IO1 was not

1 rephrased but Contention 102 was rephrased.

2 JUDGE HOYT: Well, I am trying to get through 101
3 first.

4 MS. CURRAN: I am sorry.

5 JUDGE HOYT: So 101 is as you had phrased it on
6 page 34 of the April 21 submission?

7 MS. CURRAN: Uh hum.

8 JUDGE HOYT: Now on 102 if you have reworded it in
9 the June 17th pleading and that is contained on page twenty.
10 Is there anything else on that?

11 Let us see what the Applicant wishes to submit on
12 that at this time? Anything different from what you had
13 previously stated?

14 MR. GAD: The answer is no, Madam Chairman, we would
15 rely on our written submission.

16 MR. LESSY: The Staff found the resubmitted
17 Contention 102 to be acceptable.

18 MS. CURRAN: I would like to make one comment.

19 JUDGE HOYT: Please?

20 MS. CURRAN: On Contention 101, the Applicant
21 responded that there was no regulatory requirement that a single
22 failure in the Common Discharge Header be considered. We believe
23 that the preamble to Appendix of Part 50 does provide a regulatory
24 basis for our Contention and that is equal to any other part of
25 the regulations.

1 MR. LESSY: Which part of the preamble are you
2 referring to?

3 MS. CURRAN: I am referring to footnote 2 to
4 Appendix A which says that the conditions under which a single
5 failure of passive component in a Fluid System should be
6 considered in designing a System against a single failure are
7 under development.

8 However, this statement does not relieve any
9 Applicant from considering these matters in the design of a
10 specific facility and satisfying the necessary requirement. These
11 matters include consideration of the need to design against
12 single failures of Passive Components in Fluid Systems important
13 to safety. They require consideration of redundancy and diversity
14 requirements for Fluid Systems important to safety. They require
15 consideration of the type, size and orientation of possible breaks
16 in the Components of the Reactor Coolant Pressure Boundary in
17 determining design requirements to suitably protect against
18 postulated loss of coolant accidents.

19 They require the consideration of the possibility
20 of systematic nonrandom concurrent failures of redundant elements
21 in the design of the Protection System and Reactivity Control
22 Systems.

23 We believe that this is a very specific Regulatory
24 Requirement that a single failure in a system so important to the
25 safety as the Common Discharge Header be considered.

1 Our concern in both of these Contentions springs
2 from the fact that in this particular plan design, all of the
3 Steam Generators rely on a single Emergency Feedwater Pipe, the
4 Common Discharge Header for Feedwater Flow. Therefore, a break
5 in that System is particularly dangerous to the entrie system.

6 JUDGE HOYT: Where were you reading from just a
7 moment ago?

8 MS. CURRAN: I was reading from both the Introduction
9 and Footnote 2 to the Preamble to Appendix A of 10 CFR Part 50.

10 JUDGE PARIS: Mr. Perlis is looking at the same
11 version of the 10 CFR that I am looking at. Did you find what
12 she is reading?

13 MR. PERLIS: I think you are reading from a sub-
14 paragraph, there is a separate footnote.

15 MS. CURRAN: First I read from the Footnote. That
16 was the first sentence that I read, actually the first two
17 sentences. Then I followed that with part of the third paragraph
18 of the Introduction to Appendix A.

19 JUDGE HOYT: Starting with the development of these
20 General Design Criteria is not yet complete?

21 MS. CURRAN: That is correct.

22 JUDGE HOYT: That is on page four and five in the
23 book and then the footnote is on page four of six.

24 MR. LESSY: Your Honor, we did not say anything
25 about the Discharge Header in the Preamble to Appendix A and it

1 is the first time I have head of a Preamble being used to the
2 Appendix. We objected to the Contention as not having a basis.
3 There is still not a Regulatory Requirement for the design change
4 which NECNP is advocating. Because of that, Contention 101 is
5 unacceptable because it does not have an adequate basis and
6 because of Peach Bottom. You cannot litigate a design which
7 NECNP is advocating if it is not a Commission Requirement.

8 MS. CURRAN: We simply disagree that the single
9 Failure Criterion does apply to these passive Fluid Systems
10 important to safety and that the Common Discharge Header is
11 a piece of equipment which is extremely important to safety.

12 JUDGE LUEBKE: Well, this is a matter which the
13 Staff must have considered in its regular review of the engineer-
14 ing design and come to some conclusion about it, it seems to me.

15 Has the Petitioner seen the SER?

16 MR. LESSY: It is not out yet.

17 JUDGE LUEBKE: It is not out yet?

18 JUDGE HOYT: Not until the latter part of the year.

19 JUDGE LUEBKE: So until they read what the Staff
20 engineeringwise says about this thing, it is a little hard to
21 go further, isn't it?

22 MR. LESSY: It is accept that I am not aware that
23 the Discharge Header had been classified as NECNP classifies it
24 or seeks to have it classified. That is the key to their argument.

25 JUDGE HOYT: There are other plants in operation

1 with that same type of Header, are there not?

2 MR. LESSY: Yes, there are other Discharge Headers.
3 I am not familiar with a Discharge Header being categorized in
4 the category that NECNP seeks to place it in. That is simply
5 our argument that that part of the contention lacks basis.

6 JUDGE HOYT: Anything else, Mr. Gad?

7 MR. GAD: Again, at the risk of oversimplifying,
8 I think that NECNP is contending that the Appendix A, and they
9 do not find in any of the specific criteria in the back, imposes
10 a legal requirement that I think this Board will find has never
11 been imposed on any other plant before. So the Board is going
12 to have retire and take a look at what they are saying the legal
13 requirement is, take a look at the regulation that they are saying
14 imposes that requirement, see if you can find it any other case
15 and decide whether or not they are right.

16 Our position is that Appendix A does not impose
17 this requirement as heretofore never been thought to impose
18 this requirement, and the fact that somebody might very earnestly
19 think that such a requirement ought to be imposed, and indeed
20 maybe they are right about it, is simply not an issue for this
21 litigation.

22 JUDGE HOYT: Very well. Let's move along then.

23 I think we have taken care of both Contentions in
24 10, have we not?

25 Very well, that brings us down to 1P, Human

1 Engineering.

2 MS. CURRAN: The Applicant's objection to this
3 Contention is that there is no Regulation requiring the relocation
4 of the Multi Point Recorder.

5 The Staff has said that we have not shown the
6 location of the Multi Point Recorder is a significant problem
7 under the Standard of NuReg 0737. T

8 This Contention has to do with a placement of a
9 Recorder that records temperatures from 0 degrees to 2300 degrees.
10 As far as we can tell from FSAR, the placement of that Recorder
11 would be require the person who is at the control panel to get
12 up from his our her position and go around the back on the
13 control panel to look at the monitor. That would require that
14 person to leave the other monitoring functions that he or she
15 was performing.

16 We think that on the face of it, this is a violation
17 of GDC 19 which requires that a control room be provided from
18 which the plant can be run safely under normal and accident
19 conditions and of NuReg 0737, Task 1D1, implementing the lesson
20 of Three Mile Island which calls for the re-evaluation of control
21 room design and the correction of design deficiencies.

22 JUDGE HOYT: What Criteria did you cite?

23 MS. CURRAN: That is General Design Criterion 19.

24 JUDGE HOYT: Has there been any change in the Control
25 Panel Design since this Plant has been designed starting of

1 construction? We are much too early as to the actual placement
2 of it.

3 Could you give us some help on that, Mr. Gad, after
4 consultation?

5 MR. GAD: As I understand your Honor's question, it
6 is what has been the evolution of the Control Room Design?

7 There was a simulator built, it was tested. A
8 number of things were identified that ought to be changed in
9 order to improve it. Those changes have been incorporated into
10 the design of the actual Control Room and they are now in the
11 process of being incorporated into the simulators so that the
12 two will look the same. The description of that process in the
13 FSAR is reasonably if not perfectly up to date. As I say, the
14 FSAR may lag a little bit behind but not by much.

15 JUDGE HOYT: Have you had an opportunity to examine
16 the FSAR? I think you are stationed in Washington?

17 MS. CURRAN: Uh hum.

18 JUDGE HOYT: You can use our Files there in
19 Washington so there is no problem in your examination of this
20 application.

21 MS. CURRAN: Yes, that is where we got our contention
22 from the FSAR. We could not have clarified it any further from
23 the FSAR. What we would like is an opportunity for discovery
24 in order to really identify what exactly the location is and how
25 the person might or might not have to move to read it.

1 JUDGE HOYT: Do you have anything on this?

2 MR. PERLIS: No, I just wanted to point that GDC 19
3 which has been mentioned in regard to this contention for the
4 first time today, relates merely to whether the Plan can be
5 operated safely from the Control Room. As I read the Contention,
6 the Contention does not address safe operation of the Plant. It
7 is not alleging that it cannot be operated safely but merely
8 that from a human factor and from the community standpoint, it
9 might be nicer to just locate it somewhere else.

10 I am not sure that the General Design Criterion 19
11 applies. If it does apply, I do not see much of a factual basis
12 for that statement.

13 JUDGE HOYT: Very well. I think the record on that
14 is sufficient.

15 Let us move on now to Contention IQ, Systems
16 Interaction.

17 MS. CURRAN: For that, your Honor, my colleague will
18 take over again.

19 MR. JORDAN: On this subject, your Honor, I think
20 we probably have as much argument useful to the Board in writing
21 as on any of the others. I do not want to belabor it here. The
22 Staff has suggested, I believe in its most recent response to us,
23 that we are currently unable to particularize objections to the
24 Systems Interaction Analysis. We should, perhaps, refile after
25 we receive the Staff's discussion in the SER. It is indeed the

1 case that the Staff must address the matter in the SER.

2 However, we do not believe at this point that you
3 can escape the problems that exist with respect to Systems
4 Interaction. The matter is an unresolved Safety Issue. We have
5 cited the Board a Study which concludes to the effect that there
6 is no adequate methodology or means of performing Systems
7 Interaction. That citation is on page forty of our April 21st
8 Filing to Brook Haven National Laboratory Study.

9 So we have a situation where an unresolved Safety
10 Issue and apparently an authoritative study that says in effect,
11 it cannot be resolved. We are at the operating license stage
12 as opposed to construction permits so we must resolve it now and
13 not simply demonstrate how it could be resolved.

14 It seems to me that the issue gets down to here
15 whether this is really a contention requiring that every
16 conceivable Systems Interaction be examined at Seabrook and
17 be probably examined. Whether I agree with the rulings or not
18 I think that it is correct that the Applicants and Staff have
19 found rulings, at least through the Licensing Boards, and I believe
20 perhaps the Appeal Board as well, such a contention cannot be
21 admitted, a contention that all systems must be analyzed for
22 their interaction.

23 I think, however, that given the existence of the
24 Brook Haven Study that we have cited which questions the under-
25 lying ability to do this adequately, you do end up at the Shoreham

1 Contention, the Contention that was admitted in the Shoreham
2 Proceeding which Mr. Dignan quite properly identified for the
3 parties and the Board the last time around, and which challenges
4 the methodology for the Systems Interaction Analysis. The
5 problem with having a poor Systems Interaction Analysis is not
6 simply that you do not know how the Systems work. It is simply
7 that you then cannot be certain what the design basis for the
8 Plant actually is because you do not if Systems are going to
9 operate the way that you think they are. So in effect, you do
10 not know what the size of the balloon is that you are dealing
11 with to limit your design basis.

12 Accordingly, while we would press our Contention
13 as written and indeed, we think it gets to methodology, we would
14 at this time based on the contentions that we have seen, we would
15 adopt a contention of the language that is in the Shoreham
16 Decision which I we have here but I do not have in front of us.
17 In fact, we said in our last Filing that we would do so if the
18 Contention as written was rejected.

19 JUDGE HOYT: That is your June 17th Filing?

20 MR. JORDAN: Yes, we said that in our June 17th
21 Filing.

22 I think really what I am doing is trying to make
23 it clear that we are getting at the methodology. Our original
24 Contention, page thirty-eight of our April Filing says, the
25 Applicant has not demonstrated that his adequately evaluated

1 Systems Interaction to confirm that Seabrook has been designed
2 against all potential undesirable Interactions between and among
3 Systems, in order to meet the requirements of 10 CFR Part 50,
4 Appendix A.

5 We believe that really gets to methodology and is
6 not saying you must examine every potential one. In order to
7 avoid worrying about how you interpret our Contention, we would
8 assert the Contention that was approved in the Shoreham Decision.

9 We have the Decision here and if you like I can---

10 JUDGE LUEBKE: (Interrupting.) What is that,
11 Shoreham?

12 MR. JORDAN: Yes.

13 JUDGE LUEBKE: I do not think we would be particu-
14 larly influenced.

15 MR. JORDAN: I am sorry?

16 JUDGE PARIS: Well, he wants to adopt the language
17 that is in the Shoreham Record.

18 JUDGE HOYT: He wants to use their methodology?

19 MR. JORDAN: That is right.

20 JUDGE PARIS: Why don't you read into our record
21 the language you want to use.

22 MR. JORDAN: I will do that.

23 JUDGE LUEBKE: Is that going to be your proposed
24 contention?

25 MR. JORDAN: Yes, sir. It would be the proposed

1 contention and I do want to make clear that we did say in our
2 June 17th Filing that we would press that one, although I had
3 not previously developed the language for Seabrook. I will do
4 it now.

5 The Applicants and the Staff have not applied an
6 adequate methodology to Seabrook to analyze the reliability of
7 System, taking into account Systems Interactions and the
8 classification and qualification of systems important to safety
9 to determine what sequences of accidents should be considered
10 within the design basis of the Plant, and if so, whether the
11 design basis of the Plant in fact adequately protects against
12 every such sequence.

13 In particular, Proper Systematic Methodology such
14 as the fault tree and event tree logic approach of the IREP
15 Program or a Systematic Failure Modes and Effect Analysis has
16 not been applied to Seabrook, absent such a methodological
17 approach to defining the importance to safety of each piece of
18 equipment. It is not possible to identify the items to which
19 General Design Criteria 1, 2, 3, 4, 10, 13, 21, 22, 23, 24, 29,
20 35 and 37 apply. Thus it is not possible to demonstrate
21 compliance with these Criteria.

1 MR. LESSY: Your Honor, if I might, not only does
2 NECNP want us to litigate all the TMI Issues under NuReg 0737,
3 but they want us litigate Shoreham and Seabrook.

4 I am going to let Mr. Perlis who is on the Shoreham
5 Proceeding address part of that and I am going to address part
6 of it. I think that the Diablo Canyon Licensing Board Decision,
7 which we cited in Page 13 of our response to New Hampshire who
8 also asked for the same Systems Interaction Analysis is control-
9 ling. In Diablo Canyon the Intervenors raised a Contention
10 involving Systems Interaction and the Board stated at 14 NRC at
11 331, they the Intervenor then conclude that no license should
12 be granted to Diablo until all adverse interactions between
13 Safety and Non-Safety Systems are identified and remedied.

14 The Board is not aware of any requirement in the
15 Regulations for this kind of comprehensive study. Those special
16 circumstances have been established by the Joint Intervenors
17 and no specific interactions have been identified.

18 As we said with respect to New Hampshire's
19 Contentions, here no special circumstances have been established
20 and no specific interactions have been identified to form a
21 basis of a proper contention. There is no regulatory requirement
22 for the type of time consuming and expensive study that this kind
23 of contention requires.

24 In addition, in terms of the criteria used by the
25 Diablo Board, NECNP has not been able to particularize its

1 objections to the Systems Interaction Analysis. They say they
2 disagree with the methodology and, of course, the Staff will
3 be addressing this matter, a specific issue, directly in the SER.

4 Now, Shoreham is kind of a special case. So not
5 only do I oppose as without any regulatory base and without any
6 specificity as under 2.714, the proposed contention of NECNP,
7 Staff also opposed relitigating the Shoreham Contention here.
8 The reason is, is that the Shoreham Contention is a combination
9 of three contentions done at the end of that proceeding altogether
10 in order to get that proceeding going. Since Mr. Perlis is
11 involved in that proceeding, I am sure he can explain it better
12 than I.

13 MR. PERLIS: If you look at the Shoreham on Pages
14 2-4, you find what the Licensing Board did there was combine
15 three separate contentions.

16 One, very similar to the contention originally
17 promulgated by NECNP dealing with Systems Interaction, one
18 dealing with Probablistic Risk Assessment and a third dealing
19 with Safety Equipment Classification.

20 If you look closely at the contention on Page 12
21 of the Shoreham Order, the one that was just read into the record,
22 you find that what the Board did and what he would now have this
23 Board do is combine the three contentions. Whereas, if we look
24 at the original NECNP Contention, we find that it addresses
25 itself to Systems Interaction and only to Systems Interaction.

1 Now he would have us do what they are doing in
2 Shoreham which is Systems Interaction, PRA and Safety Equipment
3 Classification.

4 MR. LESSY: All without a Commission Requirement
5 to do so. They are going to be litigating for Shoreham for the
6 next year. I can see no reason, unless one is given, why this
7 Board should relitigate Shoreham at Seabrook.

8 JUDGE LUEBKE: Mr. Lessy, I would like to ask the
9 Staff for a little more background going back a little farther.

10 In my recollection I have never seen a Chapter
11 Heading in SER's or other reports that sound like Systems
12 Interaction. When did this happen? How did this come about?

13 MR. LESSY: The question of Systems Interaction is
14 an unresolved Safety Issue---

15 JUDGE LUEBKE: (Interrupting.) Excuse me. Did the
16 ACRS make it so?

17 MR. LESSY: I believe so. I think it is the
18 Division of Safety Technology of the Office of Nuclear Reactor
19 Regulation, sent a special report to Congress. I believe this
20 is one of the new, unresolved Safety Issues, so called.

21 In any event, it is a requirement for the Staff to
22 address in the Staff Documents.

23 JUDGE HOYT: Has it ever been litigated in any case
24 other than Shoreham, Mr. Lessy? Do you know?

25 MR. GAD: The issue of whether or not this Contention

1 is proper has been ruled upon in Diablo Canyon and if I can just
2 take an opportunity, I think I see this Issue a little bit
3 simpler than maybe some other people do.

4 JUDGE HOYT: Well, I do not want to cut Mr. Lessy's
5 lines of thought off there. Let him finish and then perhaps---

6 JUDGE LUEBKE: (Interrupting.) He was on this
7 unresolved Safety Issue. If it is a new one it is probably far
8 from being solved.

9 MR. LESSY. Yes. I am not aware of the litigation
10 of this Contention in any other proceeding. I am aware that the
11 Disablo Board refused to consider it as being without a Regulatory
12 Base. I am aware that the Shoreham Board has decided to tackle
13 this in connection with two other contentions. That tackling
14 is going to take a long, long time. It requires a lot of money
15 and a lot of analysis. I come back to the very basic point under
16 2.714 that there is no requirement that it be done but a specific
17 Systems Interaction Analysis is analyzed by the Staff in its
18 documents.

19 Now, I will turn over to Mr. Gad.

20 JUDGE LUEBKE: Excuse me. Analyze the Staff in its
21 SER?

22 MR. LESSY: Yes, sir.

23 JUDGE LUEBKE: That is a recent activity?

24 MR. LESSY: Yes, sir.

25 JUDGE LUEBKE: You have not been doing this for a

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 long time?

2 MR. LESSY: Yes, sir. That is correct.

3 JUDGE LUEBKE: Last month? Two months ago.

4 MR. LESSY. My understanding is that it is the recent
5 vintage of SER.

6 JUDGE LUEBKE: Very recent.

7 MR. LESSY: Yes, very recent.

8 JUDGE LUEBKE: That is the point I wanted to make.

9 JUDGE HOYT: Thank you for being patient. Go ahead.

10 MR. GAD: There has been two votes on this issue,
11 one by Diablo Canyon, one by Shoreham. To be blunt about it,
12 this Board is going to have line up with one or the other. It
13 cannot line up with both. One was right and one was wrong.

14 Now, Diablo Canyon says that this Contention is not
15 admissible--let me back up a bit. The Contention is you cannot
16 license the machine without a certain study. Diablo Canyon
17 says that the Contention is not admissible because there is
18 no requirement that you have that condition as a precedent to
19 licensing. That is one of the votes.

20 The other one is Shoreham. Shoreham says we will
21 admit this Contention. Interestingly enough, and I will say
22 on its own if Counsel for the Staff is not willing to because
23 I do not have to go down and appear in front of the Shoreham
24 Board, the Shoreham Decision does not say that we will admit
25 this Contention because we have found a regulatory requirement

1 of such a study. The Shoreham Decision is a little bit hard
2 to read because they mix these three things together and frankly,
3 they treat them as one and the same through at least Pages 9-14
4 or so as you go from the front to back. They seem to be saying
5 well, we acknowledge that there is no requirement of such a study
6 but we are going to admit the Contention. Now that just flies
7 in the face of Vermont Yankee and I will give you a Court cite
8 in a moment. You cannot admit a contention that says that you
9 cannot license a plant until you have an X, if you are willing
10 to acknowledge that there is no regulatory requirement that you
11 have the X first.

12 The votes are split one on one as to whether or not
13 we will admit the Contention. I submit to you that the votes
14 are two zip, two to nothing, that there is no licensing require-
15 ment that such a study be done the condition preceding in
16 receiving an operating license.

17 I further submit to you that in the absence of such
18 a requirement, there may be one five years from now but there
19 is not one today, I submit to you that in the absence of such
20 a requirement, you cannot hold up the license on that account,
21 you cannot measure the application against that standard and you
22 may not and there is no purpose in admitting such a contention.
23 We see it just as straight forward as that.

24 JUDGE HOYT: Is there any requirement in the
25 Regulations that the individual systems, however, be put through

1 the same sort of a study?

2 MR. GAD: I respectfully submit that I cannot answer
3 that question and I am not sure the question can be answered
4 without specifying the particular system and the kind of analysis
5 you want to submit it to.

6 JUDGE LUEBKE: I would like to go back to Mr. Lessy.
7 In origin of this concept was there any reasoning that you are
8 familiar of that would help the Board?

9 MR. LESSY: My recollection is that this first
10 arose in NuReg 0510. I do not have NuReg 0510 with me and I
11 do not recall--It is such a new item that I do not even recall
12 a discussion of it in an SER.

13 JUDGE LUEBKE: That is my recollection.

14 MR. LESSY: That does not mean that there is not
15 but I cannot recall having seen one. As a result of that NuReg
16 Systems Interaction was labeled an unresolved Safety Issue which
17 the Staff, therefore, will address in its SER.

18 There is no requirement, however, that the Applicant,
19 as I understand it, perform a Systems Interaction Analysis. This
20 contention, if admitted, would have the effect in order to
21 litigate, of requiring Applicants to do that.

22 Therefore, there is a split between two Licensing
23 Boards and there is a threshold in the Diablo opinion which we
24 feel is a reasonable one and that is one of special circumstances.
25 In order to put the parties to this kind of burden, there has to

1 be a fairly high threshold. There is not even an allegation
2 of special circumstances.

3 In the absence of that, our position was that we
4 would let NECNP read what the Staff has to say about it as an
5 unresolved safety question in its analysis. Of course, the
6 Board would also be provided with a copy of that. At that point
7 in time, it would be an opportunity to file a contention with
8 respect to it. As something that another Licensing Board did,
9 it is an awfully broad, wide avenue to litigate without any
10 reasons to do it and without any regulatory requirement to do
11 that, given specifically the number of contentions and types of
12 physical science contentions that we have got in here.

13 For these reasons we object to it at this point in
14 time.

15 JUDGE PARIS: Mr. Lessy, you said that the Staff
16 has not in the past discussed this in the SER's but is doing so
17 now or is going to start doing so?

18 MR. LESSY: My understanding is that is right. The
19 very recent SER's or perhaps the ones that will come out this
20 fall will discuss this. I have not seen it myself. It does not
21 mean that there are not one or two that have not discussed it.

22 JUDGE LUEBKE: When was the Diablo Canyon Ruling
23 on this matter given?

24 MR. LESSY: That is a fairly recent ruling. I know
25 that the legal cite is 14 NRC. My recollection is that the

1 Diablo Canyon Ruling came out after NuReg 0710 if that is your
2 question.

3 JUDGE PARIS: Diablo Canyon is ahead of Shoreham.

4 MR. JORDAN: We have a date here, your Honor, of
5 August 4, 1981.

6 MR. LESSY: Is that 14 NRC?

7 MR. JORDAN: 14 NRC 325.

8 MR. LESSY: Yes, that is it.

9 JUDGE HOYT: 325?

10 MR. JORDAN: Yes.

11 JUDGE PARIS: 1981 and when was the Shoreham Decision
12 or Ruling made?

13 MR. JORDAN: March 15, 1982.

14 JUDGE PARIS: Does the difference between these
15 two Boards relate to historical factors? It seems to coincide
16 with the sudden Staff Decision to start putting this in the SER.

17 MR. LESSY: I do not think it does, your Honor, and
18 I want to be very specific about Shoreham, more specific than
19 I was in the beginning.

20 The Licensing Board took three dangling contentions.
21 There was a shift of the Chairmanship from Judge Carter to
22 Judge Brenner on the eve of Hearing. There was some bunch of
23 contentions that were not ruled upon. Shoreham is an impacted
24 Plant in terms of timeframe.

25 What happened there was that the Licensing Board

1 right as the Hearing was about to begin, came out with this
2 Order and put all these brand new contentions on the floor and
3 made some new Law.

4 However, for the impacted Plant and the Staff
5 resources and having to go to Hearing, my information was the
6 Staff and the Applicant in addition, would have appealed that
7 Order. I do not feel personally, and I cannot speak for the
8 Staff because it is such a recent Order, consider that to be
9 good Law. I think when the Shoreham Licensing Board is through
10 with that, they are going to come to the same conclusion. Due
11 to the timing and the impacted Plant, everyone said let's just
12 go and litigate contentions.

13 Therefore, my understanding is, the issuance state
14 of NuReg, and I maybe incorrect and we can check on that because
15 I do not have a list with me, that the NuReg which made this
16 an unresolved Safety Issue, preceded both the Diablo and the
17 Shoreham Decision.

18 JUDGE PARIS: I went out to the Shoreham Board at
19 the same time that change was made so if they made bad Law there
20 probably was a reason for it. That is a helpful explanation I
21 think.

22 MR. LESSY: Mr. Perlis might have some input.

23 MR. PERLIS: I might just try and answer your
24 question a bit further. If the Shoreham Decision was meant to
25 reflect some historical change in position, that Board was

1 certainly silent on that and in fact, it has not tie whatsoever
2 to Diablo Canyon.

3 JUDGE PARIS: Actually behind all of this is the
4 treatment of unresolved Safety Issues. I get the impression
5 that some effort is being made to treat this one differently
6 than the way we treat others.

7 MR. LESSY: Why would that be? I am not sure I
8 follow.

9 JUDGE PARIS: We do not litigate other unresolved
10 Safety Issues, do we?

11 MR. LESSY: Well, an Intervenor is always free to
12 attempt to file contentions with respect to the Staff's discussion
13 of those.

14 I agree with your perception, your Honor. I think
15 that the Systems Interaction Issue should be treated no different-
16 ly from any other unresolved Safety Issue. Maybe I have not
17 been clear about it but that is basically the position we are
18 advocating here. I did not want to retry Shoreham at Seabrook.

19 JUDGE PARIS: That puts it very simply.

20 MR. LESSY: Yes.

21 JUDGE PARIS: Treat it the same as any other
22 unresolved Safety Issue.

23 JUDGE HOYT: Let me ask you this, Mr. Lessy, and
24 then let us close the argument out on this unless there is some
25 startling new piece of information they want to put in. That is,

1 are you going to discuss this in the SER in this case?

2 MR. LESSY. Yes.

3 JUDGE HOYT: Would then it not be better, Mr. Jordan,
4 that this Contention be filed at the time at the time the
5 documentation would be available to you from the Staff? We are
6 going to have a tape change. Off the record.

7 (Off the record.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 MR. JORDAN: Your Honor, we believe in this Con-
2 tention as we have now restated to be a valid Contention at this
3 point. In effect, it does go beyond systems interaction as we
4 originally raised it, but largely because it gets to the core of
5 what the problem is when the systems interaction failure exists,
6 which is that you cannot tell what the design basis of the plant
7 ought to be.

8 We would, I think, stand on the Contention as we have
9 proposed earlier this morning. If the Board does not accept the
10 Contention, we would then address whatever the Staff has to say,
11 but we think it litigatable at this point. We don't think that
12 this history of Shoreham has relevance to the Board's decision.
13 I don't think you can rely on that.

14 We think the reasoning is good in the Shoreham
15 decision and we will stand on it.

16 JUDGE HOYT: If there is not anything else, let us
17 close this section up and move on to Contention IR Hydrogen Control.

18 MR. JORDAN: In this Contention, IR, we have the
19 following approach. We believe the Contention as stated on
20 Page 42 of our April filing is and should be a valid Contention.

21 We recognize the decisions of the Commission and its
22 subordinate bodies. We recognize the arguments of the parties
23 contrary to that Contention.

24 However, we seek a ruling from the Board on that
25 Contention, as stated on Page 42 of the April filing. I must say

1 we do so because we believe that the Commission's basic position
2 is illegal and need a mechanism to address it outside the
3 Commission.

4 JUDGE LUEBKE: In which case we are not the Board
5 to hear.

6 MR. JORDAN: Well, we need a ruling from you so that
7 we can take it elsewhere.

8 JUDGE LUEBKE: You mean if we rule negative on
9 this --

10 MR. JORDAN: If you were to rule negative on our
11 language on Page 42 of the April decision, we need that to take it
12 elsewhere if that is to be your ruling.

13 JUDGE LUEBKE: I see.

14 MR. LESSY: If you are granted party status, you
15 could only appeal a denied Contention at the end of the Proceeding.

16 MR. JORDAN: Of course. I have not raised the
17 question of when we would appeal. We would appeal at the appropriate
18 time.

19 JUDGE HOYT: The interlocutory appeals?

20 MR. LESSY: Not generally.

21 MR. JORDAN: As a general matter, no.

22 MR. LESSY: Unless the party is completely denied
23 intervention status and its Contentions are all denied, then there
24 is an appeals as a matter of right. Anything else would be
25 interlocutory until the end of the Proceeding.

1 MR. JORDAN: I am not sure that matters to our
2 discussion, but my understanding is that we would do it later; to
3 us, it is an important point of law that must be addressed at
4 some point.

5 However, while we seek that ruling, we assert the
6 Contention that we have restated on Page 24 of our June 17th filing
7 which asserts a credible scenario based on this Contention. It
8 is based on the so-called Parry Decision, as we have discussed in
9 our June filing.

10 JUDGE HOYT: Is that it?

11 MR. JORDAN: I think that covers it.

12 JUDGE HOYT: All right.

13 MR. GAD: I am not sure whether I heard NECNP
14 acknowledge that on the existing state of the juris prudence
15 this one had to be denied or otherwise. In a nutshell, NECNP
16 cites a Commission Decision in 1980 and then believes that sub-
17 sequently the Commission---

18 The acknowledged a Commission Decision in 1980 that
19 would preclude litigation of this Contention. They then contend
20 that a 1981 and subsequent Commission Decision relieve them of
21 that burden that would preclude litigation of this Contention.

22 They cite for this metamorphosis a Licensing
23 Board Decision in 1982, however, we have cited to you a subsequent
24 decision of the Appeal Board rejecting the idea that there has
25 been a metamorphosis and stating the Appeal Board's view that the

1 original Commission Decision is in place. In a contest between
2 an Appeal Board Decision and a Licensing Board Decision on a point
3 of law is kind of lopsided for purposes of further rulings, and
4 therefore, this Contention must be denied.

5 As far as the so-called credible accident scenario
6 is concerned, it is lacking in basis. It is simply speculation.
7 You take a piece out of here and a piece out of there and put them
8 together.

9 MR. JORDAN: I don't know exactly what Mr. Gad
10 meant. I think that the Appeal Board Decision that he is referring
11 to was McGuire ALAB 669.

12 JUDGE PARIS: I have 675 in front of me.

13 MR. JORDAN: Number 675 was an Appeal Board Decision
14 in the Perry Case.

15 Through the Board, I will ask Mr. Gad, you were
16 referring to ALAB 669 in the McGuire Decision, were you not?

17 MR. GAD: I was. It is in our written response.
18 All of the cases to which I was referring are in our written
19 response and I was referring to 669.

20 MR. JORDAN: With respect to ALAB 669, whatever that
21 Decision gets to, it does not get to the language that we have
22 proposed on Pages 24 and 25 of the June 17th order. If it has a
23 bearing, it has a bearing with respect to the language that we
24 had proposed as our original version of the Contention.

25 MR. PERLIS: If the Staff agrees with NECNP to the

1 point where it accepts the scenario as credible for the purposes
2 of the Contention, for the purposes of litigation, the Staff
3 is not accepting that that in fact, is a credible scenario. In
4 fact, it would result in hydrogen generation to the degree
5 alleged by NECNP.

6 For the purposes of the Contention, we accepted the
7 scenario on Pages 24 and 25 as a good one.

8 JUDGE PARIS: I don't understand your position,
9 Mr. Paris.

10 MR. PARIS: As to their original Contention, I
11 think this is the same as the Applicant's. The law is very clear
12 on that. A credible scenario is required.

13 As to their second filing, we think that scenario
14 is credible for the purposes of getting the Contention in at this
15 point of the Proceeding. At the hearing, the Board will have to
16 make three findings: One, that that scenario is, in fact, credible
17 in that it could generate whatever amount of hydrogen is alleged
18 by NECNP; the second finding the Board would have to make is that
19 the hydrogen control measures could not be successful in
20 controlling that amount of hydrogen; and the third finding that
21 you would have to make is that off-site releases will then
22 exceed their guideline values of .100.

23 The Staff, in conceding that the scenario is credible
24 at this stage, does not concede that that amount of hydrogen
25 would be generated by such a scenario in the event of an accident.

1 So we are conceding this credibility only for the
2 purposes of getting the Contention admitted, not for trial.

3 JUDGE PARIS: I have another approach to this. As
4 I understand it, there is outstanding and advanced notice of
5 proposed rule making regarding degraded cores. Degraded cores
6 involve hydrogen generation. Hydrogen generation involves hydrogen
7 control and thereafter, safety.

8 How does that relate to the Contention in question?

9 MR. PERLIS: When and if a rule comes down, depend-
10 ing upon what plants the rule applies to, and I would assume it
11 would apply to all plants, then that may change things.

12 In the absence of the rule making, at this point,
13 we don't have anything further than the Commission guidance that
14 we have had in the past. We have to go with the Commission's
15 policy statements.

16 JUDGE LUEBKE: Well, my understand is that nothing
17 has superseded this announcement in the Federal Registry.

18 MR. PERLIS: That is correct. It is something in
19 the future and when, in fact, the rule does come down, then it
20 may change matters.

21 JUDGE LUEBKE: And in the meantime, we do not
22 litigate.

23 MR. PERLIS: No, in the meantime, we can litigate
24 it as per the Commission policy statements of the past. They
25 are referred to in Staff filings. It was the Commission's

1 McGuire Decision; it is TMI Decision and I believe there is a
2 policy statement as well.

3 I did want to summarize our position. We do oppose
4 to the original Contention, the one that was filed back in
5 April or May.

6 JUDGE LUEBKE: Wasn't that the one that the
7 Commission is now saying was his main contention?

8 JUDGE PARIS: It wasn't clear to me what you wanted
9 us to do. You want us to rule on the original Contention and
10 rule on this ammended Contention?

11 MR. PERLIS: Exactly. The Staff position was that
12 the original Contention is invalid for the reasons that have
13 been discussed here, but the second Contention that they filed,
14 with the credible scenario, is acceptable for litigation purposes.

15 MR. LESSY: I do not think it would be unreasonable
16 for the Board to require NECNP to say which hydrogen Contention
17 it wants to offer. I think the Board has the choice. They can
18 either require NECNP to say which hydrogen Contention they want to
19 offer, or the Board can give the alternative rulings that NECNP
20 is requesting. That is a matter of discretion of the Board.
21 That is the first time I have heard that. It is an alternative
22 offer. The Board can treat it whichever way it likes.

23 JUDGE PARIS: You are, in effect, taking no position
24 on whether the Board should rule on both of them?

25 MR. LESSY: If I were the Board Chairperson, I

1 would ask them which contention they want me to rule on because
2 we have a lot of contentions to rule on and tell us which one to
3 look at. They are asking for an alternative ruling for sub-
4 sequent Appellant purposes. It is a matter of discretion for the
5 Board.

6 JUDGE HOYT: Let me see if I can approach it in
7 this way. Is the accident scenario that you set forth on Page 24
8 necessary to the litigation of the Contention that you have on
9 Page 42 of your April 21 filing?

10 MR. JORDAN: In our view, it is not. That is the
11 reason that we pressed the Contention as stated in the April
12 filing and we want a ruling on that. We believe the problem is
13 that we are very concerned about the whole hydrogen issue, both
14 as a legal matter and as a fact of what happens at Seabrook.

15 We think it is very important that we have a ruling
16 on the Contention as stated in our April filing in order that we
17 can take it to the Court of Appeals if we are able to do so and
18 try and get a change in the way the Commission is dealing with
19 hydrogen control.

20 The problem is that if we simply give you that one
21 and you rule against it, as I assume you would do, I think, on
22 the basis of Commission precedent, then we are in a position of
23 being unable in this hearing to get to hydrogen control at all.

24 Given the importance of the issue, we still want to
25 press the credible scenario Contention as stated in the June

1 filing on Page 24 and 25.

2 MR. LESSY: I think the answer to your question,
3 your Honor, is the Commission Decision on Three Mile Island,
4 CLI 80-16, 11NRC 674. The Commission determined that such a
5 Contention would be litigatable only upon a prior showing that
6 there is a credible scenario for the generation of hydrogen in
7 excess of the 50.44 design basis. Isn't that the answer to his
8 question; the question as to whether or not that scenario is
9 an integral part of your Contention.

10 MR. JORDAN: I think I answered the question. We
11 do not believe as a matter of law that it needs to be.

12 MR. LESSY: So you are challenging the Commission's
13 Decision with regard to CLI 80-16?

14 MR. JORDAN: I think that is what I just said.

15 JUDGE HOYT: I think we have got what we need.
16 Let's have about a five minute break at this point in time.

17 (Off the record.)
18
19
20
21
22
23
24
25

1 JUDGE HOYT: The Hearing will come to order.

2 Let the record reflect that all the parties who
3 were present are again present in the Hearing Room, except those
4 parties previously indicated as having been excused.

5 Sir, do you have something to add?

6 MR. EDELMAN: I would like to add two parties to
7 that, Mr. McDermott from the Town of South Hampton and Mr. Chiesa
8 for the Society of the Protection of the Environment of
9 Southeastern New Hampshire are no longer here.

10 JUDGE HOYT: Thank you very much. All other Counsel
11 are present.

12 Very well. I think we have exhausted 1R. Let us
13 look at 1S. This is a Contention dealing with Loose Parts
14 Detection Systems.

15 MR. JORDAN: The Applicant objects on the grounds
16 that it elevates the Regulatory Guide to the requirement. The
17 Staff had a language objection.

18 MR. GAD: A need for power.

19 JUDGE HOYT: That is no longer a litigation for
20 this Commission. That shall be a memorable moment. Let us
21 see if we can reprieve this one. Excuse us, Mr. Jordan. Go
22 ahead, sir.

23 MR. JORDAN: I think we resolved the language matter
24 with the Staff and I will read the Contention into the record,
25 also to speak to the Board's earlier concerns.

1 This is NECNP's Contention 1S. The Applicant has
2 not yet designed or developed a Loose Part Detection System
3 for the Reactor's Primary System and therefore, does not satisfy
4 Criteria 1 & 13 of Appendix A to 10 CFR Part 50, 10 CFR 50.36,
5 or 10 CFR 20.1. (c), nor does it provide an adequate alternative
6 to satisfy the requirements.

7 JUDGE HOYT: Mr. Lessy, do you want to go on this?

8 MR. PERLIS: The Staff has no objection to this as
9 it has been stated. I wonder if the last clause adds anything
10 to it.

11 MR. JORDAN: As I look back through it I think the
12 Staff is correct. I was trying to have their language correction
13 and your language correction and it did not work.

14 The Contention would end with the reference to
15 10 CFR 20.1 (c). Do you want me to reread it?

16 JUDGE HOYT: Yes, I think that is better.

17 MR. PERLIS: The Staff has no objection to that
18 Contention.

19 JUDGE HOYT: How about the Applicant?

20 MR. GAD: I think the Applicant will stand on what
21 it has written which I do not see is corrected by this. What is
22 sought here is to impose a new requirement, the source of which
23 is in the Regulatory Guide. There is a right way to do it and
24 a wrong way to do it and this is the latter.

25 JUDGE HOYT: Thank you. Let us go along to T?

1 MR. JORDAN: NECNP's concern in Contention 1T is
2 with Steam Generators for Seabrook. It is a Westinghouse Steam
3 Generator. We are concerned largely with the history of problems
4 with Westinghouse Steam Generators.

5 We have at Seabrook at new Model F Westinghouse
6 Steam Generator. As a result of the fact that there is a new
7 design, the Staff and the Applicant say you cannot raise a
8 contention because we have not found any failed Model F's.

9 The problem with that is that if you go through
10 the history of Westinghouse Steam Generators, you see consistent
11 failures and problems arising. So it is a little bit up in the
12 air to me. It seems as though the history of Westinghouse Steam
13 Generators is enough basis to give us a basis to get in and look
14 at this one. Otherwise, if Westinghouse makes a new Steam
15 Generator every year and there is never basis to litigate it
16 because you never a history of that particular one, although you
17 likely have a history of failures of each of the models as time
18 went on.

19 It seems to me that the fact, and this by the way
20 is detailed in our discussions in Pages 47 and 48 of our
21 April 21st Filing and 27 and 28 of our June 17th Filing, we have
22 in that history of problems with Steam Generators, a basis for
23 litigating the difficulties in the Model F. I would cite again
24 the Catawba Decision that I cited earlier. We are here at the
25 threshold where we have provided enough basis to at least get into

1 discovery to determine what the story is with the Model F as it
2 relates to its predecessors.

3 JUDGE LUEBKE: Mr. Jordan, what is the story with
4 the rest of the Steam Generators? They have problems and it
5 usually represents expenses. What is the safety hazard in your
6 Contention?

7 MR. JORDAN: The hazard we specifically reference
8 is degradation.

9 JUDGE LUEBKE: That does not harm anybody except
10 it costs a lot of money.

11 MR. JORDAN: I do not have the expertise frankly
12 to say whether it does. It seems to me that if---

13 JUDGE LUEBKE: (Interrupting.) You say there has
14 been many instances of failure. I just do not think that people
15 have been harmed, except financially.

16 MR. JORDAN: The problem with that is, that is
17 probably true. The question is not whether they have been harmed
18 in the past, the question is when is one of these things going
19 to harm somebody. Based on the history that we have---

20 JUDGE LUEBKE: (Interrupting.) You are suggesting
21 that the Steam Generator might harm somebody?

22 MR. JORDAN: I am suggesting that there has been
23 enough history, particularly of degradation problems, that we
24 need to look at this one to be sure that its degradation problem
25 does not get so far as to harm someone.

1 JUDGE LUEBKE: You did not say that?

2 MR. JORDAN: I did not put it in those terms in
3 writing though, that is true but it seems to me that is implicit
4 in what we have.

5 JUDGE HOYT: Mr. Jordan, is this somewhat of a
6 summary of some of the other problems you think you may have had
7 in some of the other systems? You enumerate all sorts of systems
8 and sorts of problems throughout these contentions. Are these
9 any different than what you have in some of the other system
10 problems that are going to be in this case, looking at your
11 previous contention?

12 MR. JORDAN: I guess I am at a loss---

13 JUDGE HOYT: Perhaps I am not phrasing it as well,
14 being not as good at this phraseology as you are. The problem
15 that I am having is that it seems like to me that you are just
16 taking the whole system and saying, well, the individual parts
17 of this thing that we have got on our list of contentions have
18 all been enumerated here. If we did not catch them on everything
19 else, we will catch them on this one. Is this kind of a summation
20 of everything you have got up to that point?

21 MR. JORDAN: I do not think so. I am not sure I
22 understand you but I do not think so at all.

23 JUDGE HOYT: Well, I am not sure I have phrased it
24 well enough and I apologize for my inadequacies.

25 MR. JORDAN: I would like to get back to perhaps

1 to Dr. Luebke's concern. .What we do cite in our April Filing
2 is the Report of the Reactor Safety Research Group in September
3 of 1981 which does state that the consequences of transient or
4 some other failure that might lead in turn to the failure of
5 a significant number of tubes, such failures could lead to the
6 degradation of ECCS's function. It seems to me that at least
7 there, if not elsewhere, we get to this question of harm to
8 someone as a result of an accident.

9 JUDGE PARIS: Such failure could lead to what?

10 MR. JORDAN: The degradation of ECCS functions.

11 JUDGE PARIS: Degradation of Steam Generator Tubes?

12 JUDGE LUEBKE: It would blow out to the Condenser.

13 MR. JORDAN: That is right. I do not have the
14 expertise to back that up. I am reading from a report of the
15 Reactor Safety Research Review Group as quoted in our document.
16 It seems it is a matter of damage to the heat removal function.

17 JUDGE PARIS: Okay. I will get Dr. Luebke to tell
18 me how that works at dinner tonight.

19 Is the hazard that you have in mind something like
20 the Ginna Accident?

21 MR. JORDAN: The Ginna Accident is certainly one
22 of the hazards we have in mind.

23 JUDGE PARIS: Which could lead into release of
24 radioactivity into the atmosphere, is that right?

25 MR. JORDAN: As I understand it, yes.

1 JUDGE HOYT: Anything from the Staff?

2 MR. PERLIS: Yes. The Staff continues to see no
3 basis in specificity in this Contention. As we have pointed
4 out in both our Filings, the only thing I would like is that if it is
5 nonetheless admitted, we submit that NECNP should be required
6 at some date to provide specifics that do relate to Seabrook.
7 We think the Contention is too speculative as it is.

8 If it is admitted, we think at some point NECNP
9 should be required to tie this in somehow with Seabrook.

10 MR. LESSY: In other words, Mr. Jordan's argument
11 is that because there have been problems with other Westinghouse
12 Model Steam Generators, therefore, since Seabrook is a Model F,
13 he is suspicious about the Model F. We are saying that is specula-
14 tive but if the Board disagrees and lets it in, we want to know
15 pretty soon into the proceeding what exactly he thinks is wrong
16 with Model F so that we can address it in testimony or in
17 summary disposition.

18 JUDGE HOYT: Is the only other Model F? Are there
19 are other Model F's?

20 MR. GAD: I am told there are others, your Honor.

21 MR. JORDAN: Your Honor, our view on the Staff's
22 position is that is not the proper burden. The history is
23 enough to raise the question about the Model F. Then it is up
24 to the Staff to demonstrate that in fact, the Model F refutes
25 the history, if indeed it does. It should not be so difficult

1 if presumably that is the reason they made the Model F.

2 MR. LESSY: The Staff did not make the Model F,
3 Counselor.

4 MR. JORDAN: I am sorry. It is up to the party
5 with the ultimate burden which is, the Applicant to make that proof.

6 MR. LESSY: What would be the contention then? If
7 you have a contention--Excuse me, I am addressing Mr. Jordan.

8 Your Honor, I do not see a contention then. If
9 Mr. Jordan wants information on Steam Generators difficulties
10 with respect to other models, is he suppose to keep that
11 information secret if he learns anything about a Model F. I
12 mean I do not see that we have a contention for Seabrook. He
13 has a logical chain which leads him to the argument that he has
14 suspicion or wants to litigate this Model F but our position is,
15 if in fact he finds out specifics about Model F, he must be
16 required to amend his contention with respect to the Seabrook
17 Steam Generator. That is the only thing that this Board is
18 interested in, not the generic question of whether Westinghouse
19 Steam Generators are safe or adequate. That is why citations
20 to generic studies like that do not, in my opinion, prove too
21 helpful in terms of litigating specific contentions to specific
22 licensing proceedings.

23 JUDGE HOYT: In other words, you would depose the
24 Westinghouse Engineer assigned to Seabrook for your discussion
25 of questioning of any of the problems that Model F. may have?

1 MR. JORDAN: What I am saying is that if NECNP
2 wants to litigate this Contention, as opposed to just having a
3 contention for discovery purposes, it should be required to
4 provide specifics and bases with respect to the Model F.

5 The only argument we have now is that there is
6 suspicion about the Model F because the Ginna and things that
7 happened elsewhere. That is not a very specific contention for
8 a different model, a different design at another plant.

9 (Off the record.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MR. GAD: Once again, our position on this is fairly
2 simple. This Contention neither has or discloses any basis for
3 a specificity for what has happened here. NECNP acknowledges and
4 demonstrates that maybe this thing is terrific and maybe it is
5 not, and they have no way knowing one way or another.

6 Steam generators, NECNP perceives, has been an
7 interesting thing to litigate for, and therefore, they served
8 notice that they want to litigate it in this case.

9 If that is the standard for Contention -- if that
10 is all you have got to do is get the right book and learn the
11 right terminology, then frankly we have wasted a lot of our time
12 here this morning.

13 There is no basis whatsoever for any allegation of
14 a defect in the steam generators. There is no allegation of a
15 defect in the steam generators. It is far from clear to me what
16 the Witness is supposed to say or defend when he gets up there
17 on the Witness Stand if this is admitted in its present form,
18 and I think we will all take a basic course in steam generators,
19 but without any real focus .

20 JUDGE HOYT: Anything else, Mr. Jordan?

21 MR. JORDAN: Well, I guess it is late, and perhaps
22 that is the reason, but I am concerned that we did not pose this
23 Contention because we think it is an interesting thing to
24 litigate. We have never litigated it before and don't know much
25 about anybody who has. It is a very grave concern of NECNP, and

1 that is the reason that we pose it as a Contention.

2 We will go to the following Contentions and Ms.
3 Curran will take over.

4 MS. CURRAN: This is Contention IU. The Staff does
5 not object to this Contention. The Applicant objects in that it
6 would require compliance with the Reg.Guide. I would like to
7 reword the Contention to say ---

8 JUDGE HOYT: (Interrupting.) Are you using your
9 language on Page 49?

10 MS. CURRAN: That is correct.

11 JUDGE HOYT: Thank you. Go ahead.

12 MS. CURRAN: The Applicant has not demonstrated that
13 it meets General Design Criteria for Appendix 8 to 10 CFR 50 in
14 that it has not provided that structure systems and components
15 important to safety be protected against the effects of turbine
16 missiles who's launching might occur as a result of equipment
17 failure.

18 JUDGE PARIS: You are dropping the last sentence?

19 MS. CURRAN: Yes.

20 JUDGE HOYT: Go ahead, sir.

21 MR. GAD: I think we have no objection to the
22 Contention as thus modified.

23 MR. PERLIS: The Staff has no objection to it.

24 JUDGE HOYT: Perhaps the sequel to this thing is
25 to get everybody together at 4:30 in the afternoon.

1 All right. Let us see about Contention IV In Service
2 Inspection of Steam Generator Tubes.

3 MS. CURRAN: On this Contention we would like to
4 accept the Applicant's word of the Contention, which is found in
5 its response to our reply. I will just read it into the record.

6 The Applicants have not demonstrated that they have
7 met GDC 14, 15, 31 and 32 insofar and to the extent that those
8 GDC require a program for the inservice inspection of steam
9 generator tubes.

10 JUDGE HOYT: That is the Contention that is framed
11 on Page 21 of the Applicant's response of June 28.

12 MR. GAD: Yes. Obviously we find it beautifully
13 drafted.

14 MR. PERLIS: Even though it is after 4:30, the
15 Staff objects to the rewording. Our original objection dealt
16 with the failure of NECNP to provide any specificity as to how
17 the Inspection Program was inadequate. It still has not done
18 that. We are left with no idea as to why they complained about
19 the InService Inspection Program. Until we get some specificity,
20 the Staff will continue to object.

21 MS. CURRAN: I'd like to respond to that.

22 JUDGE HOYT: Surely.

23 MS. CURRAN: Our basis for this Contention lies in
24 the fact that the Applicant's FSAR indicates that it has complied
25 with Regulatory Guide 1.83. At the Ginna Reactor, a program in

1 compliance with that Reg.Guide did not reveal the existence of
2 a defect in the steam generator tubes, which I believe it was a
3 matter of weeks later, led to the accident.

4 This is our basis for saying that compliance with
5 that Reg.Guide is not adequate to satisfy the General Design
6 Criteria.

7 MR. LESSY: I think what the argument would have to
8 be is that you have to make a showing that applicants, by complying
9 with the Reg.Guide, have failed to heed the GDC.

10 It is true that compliance with the Reg.Guide is
11 not mandatory. Applicants have stated in the FSAR that the
12 Inspection Program will be performed in accordance with Reg.Guide
13 1.82, Rev. 1. Here you appear to be arguing that compliance
14 with the Reg.Guide would not satisfy you.

15 MS. CURRAN: That is correct.

16 MR. LESSY: Although previously you have been
17 arguing for compliance with the Reg.Guide.

18 You have made no showing that the Applicant, by
19 complying with the Reg.Guide will not meet the applicable
20 General Design Criteria. In the absence of that showing, you
21 do not have a basis for your Contention.

22 JUDGE HOYT: Have you based your argument on the
23 Revised Contention?

24 MR. LESSY: Yes.

25 JUDGE HOYT: All right. Anything else?

1 I think that brings us down to the Seismic Quali-
2 fication of Electrical Equipment in Contention IW.

3 MS. CURRAN: All right. I think we can solve the
4 Applicant's objection to this Contention by rewording it to
5 eliminate mention of the Regulatory Guide. The new Contention
6 would read:

7 The Applicant has not demonstrated that is has
8 adequately assured the seismic qualification of electrical equip-
9 ment at Seabrook as required by Criteria III, Design Control of
10 Appendix (b) to 10 CFR, Part 50.

11 MR. GAD: Could you read that again?

12 JUDGE HOYT: I think it is the one on Page 53,
13 Mr. Gad. It is the first paragraph down to Part 50, and then she
14 cut it off at that point. It is at the top of Page 53 of the
15 submissions of April 21st.

16 MR. GAD: My document only has 39 pages.

17 MR. LUEBKE: Are you looking at the April 21 ---

18 MR. GAD: Oh, the original one? I apologize. I
19 have it.

20 JUDGE HOYT: There must be an easier way to keep up
21 with these files, but I do not know how you can refer to them
22 except by dates.

23 When you file your responses and in your filing
24 they relate to several different agreements, would you file them
25 individually? I cannot seem to get everything together and we

1 keep making copies, which are probably lost. Would you just file
2 your responses one at a time? I am afraid that it is going to
3 cause some problems for you, but it is causing more problems for
4 me. Since I may have a little leverage in this, I think I will
5 use it today. Thank you. I appreciate it.

6 JUDGE PARIS: I have a housekeeping comment also.
7 I would like to ask everyone to please put the date of filing on
8 the front page so that we can look at the title and the date it
9 was filed without having to thumb through to the back.

10 JUDGE HOYT: We are getting pickey.

11 MR. GAD: Using that opportunity to find the right
12 page, we are satisfied.

13 MS. CURRAN: The Staff has indicated that it would
14 accept this Contention if we limit to an assertion that the
15 program has not itself complied with the Criteria III and not
16 individual components.

17 We believe that our Contention is not limited to
18 the Program and also includes individual components. It is
19 entirely possible that the Program for Seismic Qualification
20 could be approved and Individual Components could be found
21 wanting.

22 In addition, I would like to point out that I believe
23 that the Seismic Qualification Program for the Seabrook Plant is
24 still under review by the NRC. Until we can see the final
25 evaluation, we do not know what the evaluation is for individual

1 components.

2 MR. LESSY: How does that affect your Contention?

3 MS. CURRAN: We do not want to limit ourselves to
4 a Contention that only the Program in general is inadequate.
5 There may be individual components that are inadequately qualified.

6 MR. PERLIS: On the assertion of NECNP's Counselor
7 that they need the Staff document, we would be willing to wait
8 until that document was forthcoming. But if they want to liti-
9 gate individual Components, we think they should have to state
10 fairly soon up front which Components they are dissatisfied with.

11 JUDGE HOYT: Do you mean accept this and take
12 ammendments later, is that what you are suggesting?

13 MR. PERLIS: If Counselor asserts that they need
14 a document, yes.

15

16

17

18

19

20

21

22

23

24

25

1 MR. JORDAN: There is just one thing, your Honor,
2 it does seem to me that in litigation the issue of the Seismic
3 Qualification Program, it seems to me that one can litigate
4 the question of whether various individual components are in
5 fact qualified or not. Litigating that gets to the question
6 of whether the program works, obviously.

7 JUDGE HOYT: Are you saying Electrical Equipment
8 Program, is that the idea? I'm sorry. I do not see where we
9 are getting Program.

10 MS. CURRAN: The FSAR identifies a Program for
11 Seismic Qualification of NSSS Equipment which is safety related
12 Electrical Equipment in the Plant.

13 JUDGE HOYT: Would it anything to it if we described
14 it in the Contention as the Electrical Equipment Program? That
15 would nail it down to the FSAR.

16 MR. JORDAN: I do not think that really adds much.

17 JUDGE HOYT: I do not think so either.

18 MR. JORDAN: All I am trying to get to is that here
19 is a Program, the Staff says that we can litigate the Program..
20 You go in and say, here are all these things under the Program
21 that did not get adequately qualified. You have litigated the
22 Program and maybe you have got some proof here of ten items that
23 were adequately qualified and two that were not. So you may have
24 a decision that the Program is adequate but you have got two of
25 the items that are not adequate and somehow you are not allowing

1 the contention to get those items, whereas surely the Board
2 should rule that those items are not adequate.

3 MR. LESSY: Which items do you want to litigate?

4 MR. JORDAN: I do not mind specifying items after
5 discovery when we are at a position we are able in fact to
6 identify the items. We do not have a problem with that.

7 JUDGE HOYT: Accepting this for the purposes of
8 discovery, Mr. Lessy?

9 MR. LESSY: That would be acceptable, your Honor,
10 subject to either proper specification or dismissal of the
11 contention later.

12 MR. JORDAN: Although, I believe, your Honor,
13 I gather the Staff is satisfied that we can litigate the Program.
14 A dismissal would be respect to handling individual components.

15 MR. LESSY: That was the offer in our pleading.

16 JUDGE HOYT: All right. I think that is sufficient
17 on that.

18 Now we get into the second section in here. Down
19 towards the end here, Quality Assurance Contentions and the
20 first one you have Division A, Design and Construction. So I
21 guess we have got IIAI which is the General Design Criteria 1
22 of Appendix A to 10 CFR is the one you want to litigate here.
23 You are contending that the Seabrook Quality Assurance Program
24 for Design and Construction has been too narrow in scope?

25 MR. JORDAN: Yes, ma'am. On IIAI the objection by

1 I believe both the Applicant and the Staff is an effect that
2 the Issue has already been litigated at the construction permit
3 stage to determine what would be the adequacy of QA Program for
4 construction of the Plant.

5 In our view, the intervening development of the
6 Commission finally saying to everyone in the documents that we
7 have referenced, you have been doing it wrong. It is not safety
8 related. The standard is important to safety which is broader
9 and it is applicable to Quality Assurance for Appendix B.

10 We think that is sufficient to justify relitigating
11 the contention and requiring the Quality Assurance of some form
12 at least, although it could not be the original Quality Assurance
13 Program, to be applied to those items important to safety that
14 were not considered safety related and included under the Program

15 We made the argument. I do not think that we need
16 to go on further with it.

17 JUDGE HOYT: Mr. Gad?

18 MR. GAD: Madam Chairman, insofar as NECNP in
19 Part II wants to litigate the correctness of the utility or
20 the sufficiency of the Seabrook Construction QA Plan, that is
21 not a litigable issue here for at least two reasons. The first
22 is that it has already been litigated. The second is that this
23 is an Operating License Case and not a Construction Permit Case.
24 The remedy that would flow from a determination that there is
25 something wrong with your Construction QA Plan presumably is

1 some form of amendment to your Construction Permit. I say this
2 with all due respect, this Board was not convened for the purpose
3 of and its RIF does not run to the leasing, altering, revising
4 or revoking of the Construction Permit.

5 Insofar as NECNP wishes to litigate the sufficiency
6 with which the Applicants have executed their Plan, once again
7 we think this is not an OL Issue. If in fact it were to be
8 the case that the Applicants were not complying with their
9 Construction Permit then again, the remedies have to do with
10 Construction Permit and Forum to which that must be addressed
11 and the means by which it is raised other than an Operating
12 License Case. We think that has always been good Law. We think
13 it has been recognized in the Midland Decision, ALAB 674, the
14 complete citation to which appears on Page 23 of our response.

15 In a number of these contentions you are going to
16 have to decide whether they are talking about how good is the
17 Plan or how good did you follow it. We think that for slightly
18 different reasons both types of issue are not within the scope
19 of and Operating License Case.

20 MR. LESSY: Your Honor, the item before the Board
21 is the Contention IIA1, Quality Construction QA Program. As I
22 listen to Mr. Gad's comments, I think he was also arguing IIA2
23 which is another issue. I would like to limit my comments to IIA1.

24 As we pointed out in our May 19, 1982 response, the
25 Licensing Board presiding over the Construction Permit Application

1 found that Applicant's Quality Assurance Program met NRC
2 Requirements. We gave the Licensing Board Cite to that, 3 NRC 857
3 at 866-867, June 29, 1976. NECNP was a party to that proceeding
4 and in the absence of either significant supervening developments
5 having a possible material bearing upon those previously
6 adjudicated issues, or the presence of some unusual factors
7 having special public interested applications, NECNP is a stop
8 from raising the issue in the Operating License Proceeding.

9 NECNP has failed to demonstrate or even meet any
10 of those factors. They are a very high threshold because the
11 matter was litigated and determined previously. We are talking
12 about the scope of the QA Program and its acceptability for
13 construction.

14 There also is an argument in addition to whether
15 you tipify or label a collateral estoppel or res judicata as to
16 the authority of the Board to consider a pure Construction Permit
17 Issue, which this is. The cite which Mr. Gad gave is one of many.
18 I believe he referred to the Midland Decision, Consumers Power
19 Company, ALAB 674, May 5, 1982. I will qupte on Page 3. It
20 is important because I disagree with Mr. Gad with respect to the
21 following contention but on this contention it says, "The
22 Licensing Board for an Operating License Proceeding such as the
23 one involved here, is limited to resolving matters that are
24 raised therein as legitimate contentions by the parties or by
25 the Boards sua sponte cites. It does not, however, have general

1 jurisdiction over the already authorized, ongoing construction
2 of the plant for which an Operating License Application is pending.
3 It cannot suspend such a previously issued permit." I would
4 suggest when the Appeal Board said suspend, they also meant modify.

5 Now the Construction Permit pursuant to which
6 construction is proceeding at Seabrook, was issued with an
7 understanding and approval by the Licensing Board, the Appeal
8 Board and eventually the Commission, as to the QA Program for
9 construction. The programs and implementation, I think it is
10 clear to me, that this is not an Operating License Issue.

11 JUDGE HOYT: Did you want to address IIA2 at the
12 same time?

13 MR. LESSY: Now IIA2, that is a different matter.
14 In IIA2 NECNP contend that the Applicant has failed to meet
15 the requirements of 10 CFR Appendix B with respect to Quality
16 Assurance and the Quality Control Program at Seabrook. NECNP
17 allege that that Program has been pervasively inadequate and
18 they have asked for a number of things.

19 We continue to object to this Contention only
20 inasmuch as NECNP refuses to give a complete list of the items
21 it contends were properly excluded from the QA Program. Mr. Gad's
22 argument is that Construction QA, not the scope of the Program
23 pursuant to which construction will proceed, but the success of
24 the Program, the actual construction that takes place, is not
25 an Operating License Issue. Now if that were true, Mr. Perlis

1 and I wasted all last fall litigating that in an Operating License
2 Proceeding in Callaway and Mr. Jordan wasted about a year in
3 other proceedings doing the same thing and the Chairman's comments
4 about Construction QA are gone. I mean if you do not litigate
5 them here, where do you litigate them.

6 Let me just ask Applicant's Counsel, what is the
7 purpose of an OL Proceeding?

8 MR. GAD: I think that we may have failed to
9 adequately articulate a distinction that maybe is more subtle
10 than appeared to us.

11 What you want to litigate is how well did you
12 execute a program in the sense that did you have the right guys,
13 did they wear the right hats, was there vision of sufficient
14 acuity. That we think is not an OL Issue. If somebody thinks
15 that we have blind men out there reading the labels or inspecting
16 the wells, then the answer to the question is I think you do that
17 by means of 10 CFR 2.206.

18 If the issue is, did we build Mr. Backus's frazmus
19 according to spec., is the as built machine what it was suppose
20 to be, then I do not think that is a QA Question at all. That
21 is simply, did you build it with the number inches of concrete
22 or the number inches of steel or the number of pounds of straw,
23 or whatever it is suppose to have in it. You may have gotten
24 perfect even though you had a crummy QA Program and frankly, you
25 may put in too little concrete even though you had a perfect

1 QA Program.

2 So I think we have to be careful to distinguish
3 between execution of a QA Program as one topic and the compliance
4 of as built machinery with to be built plans and specifications.
5 We are not suggesting that the latter is not on OL Issue. We
6 are suggesting only that former is an OL Issue. I was not there
7 in those cases to which my esteemed colleague refers. Maybe if
8 I had been, it would have been a shorter case.

9 MR. LESSY: If you cannot litigate the way in which
10 construction is proceeded, in other words, if there are Quality
11 Assurance deficiencies in an OL Proceeding then the public
12 cannot litigate the adequacy of construction in a nuclear power
13 plant. I do not have the string of cites here, we could provide
14 them but that has been litigated in many, many, proceedings. It
15 is not even an issue.

16 It is certainly an ingenious argument to the extent
17 that you can only litigate the program rather than a deficiency
18 but I am afraid that the weight of Commision Policy and Decisions
19 goes the other way.

20 The point I wanted to make with respect to that is
21 that since Mr. Jordan, Mr. Perlis and myself have sat through
22 such litigation that the Staff really feels that the contention
23 should be limited to the specific alleged failures of the
24 QA Program.

25 NECNP in its answer appeared to admit that it had

1 no additional information other than roughly a dozen items that
2 were listed in Pages 58-61 of its contention.

3 The contention should be limited to those and if
4 during the discovery process it learns of any other, they should
5 seek to amend it. I can tell you that in terms of long summer
6 days, there is nothing that will be less interesting to the Board,
7 I should suggest and to anyone else, to have welders and other
8 craftsman come up here and tell how they welded each weld and
9 tell you how they did each item of construction.

10 What I would ask is that the contention be limited
11 to these items and would hope that Mr. Jordan would take a look
12 which of those he really wants to litigate because we can bring
13 the Inspectors on board for which each of these 13 and indicate
14 what the problems initially were and to the extent that they
15 were satisfied.

16 I think we need to have a lot of focus on Quality
17 Assurance, Quality Control type contentions. If not, we can
18 spend the next decade here up in Seabrook. It is going to be
19 difficult.

20 My suggestion is that the contention is admissible
21 if, contention to the effect that Applicant's QA/QC Program
22 has not operated in accordance with the requirements of 10 CFR
23 Part 50, Appendix B, etc., limited to these 13 items.

24 That would be our position on that.

25 (Off the record.)

1 JUDGE HOYT: Back on the record.

2 JUDGE LUEBKE: In the few cases I am familiar with
3 where the QA gets into an operating license proceeding, it is
4 by way of a whistle blower who alleges something or other. That
5 gets to be a specific item in a contention. If you have two or
6 three whistle blowers, you might have two or three contentions.

7 My question here is, do you view the Contention in
8 that way, or do you view the Contention more generally as it is
9 presented?

10 MR. LESSY: What has happened here in terms of
11 basis, is that NECNP has taken roughly thirteen NRC Office of
12 Inspection I and E reports and indicated those as failure of the
13 QAQC Program.

14 When we get to litigate the merits, I think it will
15 be found that these thirteen, first of all, in terms of what Mr.
16 Jordan and Mr. Perlis and I have been through, is that thirteen
17 is an awfully small number for a project like this.

18 These programs will probably indicate the working
19 of a QA Program as opposed to its failure. But the point here,
20 for Contention purposes, instead of whistle blowing, which did
21 happen in the beginning, there are public reports of construction
22 defects, if you will. These defects enter the Operating License
23 Proceedings on the grounds that they reflect a deficiency in the
24 QAQC Program, because if that Program worked, everything would be
25 perfect.

1 Whether that is a valid hypothesis or not, however,
2 I would limit the Contention to the thirteen. In essence, he
3 was a welding contention, there is an inspection contention and
4 things of this nature, a pipe support contention.

5 That is something we can litigate precisely.

6 JUDGE LUEBKE: But isn't there a process for resolv-
7 ing these things to a happy conclusion, and if it is not a happy
8 conclusion, then something else happens?

9 MR. LESSY: That is right.

10 JUDGE LUEBKE: That is not in a Board Hearing?

11 MR. LESSY: That is right.

12 JUDGE LUEBKE: Could you describe that briefly for
13 the record. These matters are taken care of somehow, someplace
14 else.

15 MR. LESSY: Well, there is a 2.206 procedure. After
16 the authorization for construction there are two things that
17 happen.

18 Under 10 CFR 50.55 (e), at that point, the permittee
19 has reporting responsibilities when the construction at the site
20 do not in its view meet the requirements that they are supposed to.

21 In addition to that, the NRC has resident inspectors
22 at the sites and also regional inspectors that make announced and
23 unannounced inspections with respect to these matters.

24 With respect to the NRC inspections, these matters
25 are brought to the attention to the Licensee in a letter which

1 is put in the public document room and then after that, corrective
2 action is taken and the matter is closed. The NRC inspectors
3 review the action taken and they either agree or disagree with
4 it and eventually the matter is disposed of. It is either closed
5 out or accepted.

6 What has happened in a lot of Operating License
7 Proceedings, this process which I described, has been the genesis
8 of contentions to the effect that these wouldn't have happened
9 if the QAQC Program had worked adequately. When we come to
10 litigate the merits of this Contention, each instance stands on
11 its own footing. That is basically the process.

12 JUDGE LUEBKE: Could it be said that these items
13 have been closed?

14 MR. LESSY: Generally, yes. I am not familiar in
15 detail with each one of these. Generally these are closed items.
16 These thirteen items would be the history of the construction of
17 the Seabrook Plant from a deficiency standpoint, and there are
18 relatively a small number of items

19 JUDGE HOYT: Could we get you to redraft that
20 Contention?

21 MR. JORDAN: Well, I really strongly disagree with
22 Mr. Lessy's point about limiting the litigation to the thirteen.

23 By the way, thirteen categories, but considerably
24 more than that of Inspection Reports that are cited.

25 JUDGE HOYT: Yes, I can tell at a glance that that

1 is true. How about the drafting point?

2 MR. JORDAN: Well, my view is that what we have
3 is a series of Inspection Reports that show a continuing failure
4 of Quality Assurance.

5 Just to take one for example, number 2. If the
6 system were working, and perhaps this is a repeat of what Mr.
7 Lessy was just saying, those should not be recurring.

8 Our point is that they are recurring -- some of
9 them. An infinitesimal number are being caught by NRC personnel.
10 The desperate hope is that the rest of them are being caught by
11 the Applicant's program.

12 The problem is if they are being caught by the NRC
13 personnel, they are not being caught by the Applicant's program,
14 but it seems to us that is what those Inspection Reports tell
15 you.

16 To get to the drafting question, what we have done
17 is give you, in an analysis of I and E Reports; there isn't
18 any other source unless you get a whistle blower, until you get
19 into discovery and begin to analyze for yourself the various kinds
20 of internal reports and documents and non-conformance reports,
21 deficiency reports, trending reports and so on, on the Applicant.

22 Even then, those tell you something. What they
23 don't tell you is what wasn't reported on. What I am saying is,
24 what we have a basis for is pervasive quality control failure,
25 for which reason the Contention should not be redrafted to be

1 limited. It should stand as a broad contention related to the
2 entire Quality Control Program.

3 JUDGE PARIS: So you are offering these thirteen
4 examples as the basis for your Contention when you would like
5 to go in with discovery and uncover more?

6 MR. JORDAN: Yes, Sir.

7 MR. LUEBKE: My question is, when you go through
8 this process, is there a regulation which tells you that if you
9 find ten more examples in Category 2 that the Plant should not
10 be licensed?

11 MR. JORDAN: That is a factual judgment. In fact,
12 I went through that just about a month ago with Mr. Taylor who
13 is the Resident Reactor Inspector at Comanche Peak. He testified
14 and probably accurately that it is indeed, very difficult to
15 evaluate whether a program is working or not. But, it can be
16 done and that there is a range and it depends upon the safety
17 of the significance of the particular item. It depends on the
18 number of items and the number of deficiencies given the number
19 of items. If there are ten out of a million, maybe it is not
20 important. If there are ten out of 20, then it may become
21 important. That is the kind of thing. It gets down to a factual
22 judgment.

23 The answer is there is a requirement for an ade-
24 quate Quality Assurance Program and that Quality Assurance Program
25 is essentially, and I believe Mr. Taylor agreed with this, the

1 last line of defense to determining that the reactor is properly
2 built. You need it to know whether it is properly built.

3 JUDGE LUEBKE: Well, the fact that you have got all
4 these things to look at, it shows that there is a Quality Assurance
5 Program. Otherwise, you wouldn't have the paper to look at.

6 MR. JORDAN: Well, that is a rather complicated
7 philosophical question. It is not at all clear that just because
8 you have all of these that the program is actually working.

9 The question is, when you analyze them, what do
10 you learn from them; what's missing and what do people tell you
11 about them?

12 JUDGE LUEBKE: Yes, but after you have supplied all
13 this information to us at a Hearing six months or a year from
14 now, we still need a regulation which says, yes or no, it is
15 adequate or inadequate.

16 MR. JORDAN: Well, I think you have. You have
17 Appendix B which require the Program to be effective. There are
18 at least as specific as most NRC regulations. To my mind, most
19 NRC regulations do not require what is done to be effective.
20 At least this one does. That is as good a standard as I find in
21 NRC regulations, generally.

22 JUDGE LUEBKE: So that is your plan. How about the
23 other parties. Can you work with that kind of principal case?
24
25

1 JUDGE HOYT: Let me just get one thing. The basis
2 of your Contention, then, would be in your version would be on
3 Page 57, starting about one-quarter of the way down with: The
4 NECNP contends that the Applicant has failed to meet the require-
5 ments of 10 CFR, Part 50, Appendix B with respect to either the
6 design or construction of Seabrook.

7 The Quality Assurance and Quality Control Programs
8 at Seabrook has been subject to pervasive inadequacies in all
9 areas such that there is no assurance that the Plant has been
10 designed or constructed in accordance with the applicable require-
11 ments in consistence with the protection of the public health and
12 safety.

13 That is the kernel of your Contention?

14 MR. JORDAN: I think that is the kernel of it.
15 I guess I am not so concerned that we leave the remainder of it
16 in, but it is important to our point of view. Maybe there is a
17 remedy that doesn't involve denying the license as such. It is
18 a remedy of a complete independent audit and so on.

19 You are correct, the kernel of the Contention is
20 the two sentences that you read.

21 JUDGE HOYT: I wonder, though, if the word "design"
22 be struck, because beyond the design part. We can only deal now
23 with the Quality Assurance as to construction.

24 MR. JORDAN: That gets me to actually respond to
25 some of the things Mr. Gad said.

1 JUDGE HOYT: All right.

2 MR. JORDAN: I think it rather works well together.

3 JUDGE HOYT: Can we dispose of that particular
4 phrase?

5 MR. JORDAN: Yes, indeed. I don't mean we can
6 dispose of the word design. I will dispose of the other point in
7 argument.

8 In effect, what Mr. Gad says, and in that sense
9 he is right, we are not only beyond design, we are beyond con-
10 struction here. The question is not how to construct the Plant.
11 The question is, should you give it an operating license?

12 What we are saying is the Quality Assurance Program
13 for design and construction is such that you shouldn't give it an
14 operating license. The requirements apply to design as they do
15 to construction and we press them both.

16 I would add, I believe the case cited by the
17 Applicant, ALAB 674, is a case in which suspension of construction
18 was requested. We are not doing that. This is an Operating
19 License Proceeding. If we were to request suspension, we would
20 go under 2206.

21 Similarly, we are not requesting a modification of
22 the construction permit as Mr. Lessy suggested we might be in
23 our Contention to Al. We are saying, given what has happened
24 in the past, you can't give them an operating license unless you
25 remedy the inadequacy.

1 I would add one further point. I loaned out my
2 copy of the Duke Power Catawba Decision of June 30, 1982, but
3 again, the Board there does make the point, on Page 12, that
4 the Applicant is not going to have told us in the FSAR where the
5 QA Program was wrong or where the construction was deficient. We
6 need to do that on discovery. That is why we need to get this
7 Contention in and not limit it to the thirteen items we have
8 discussed.

9 MR. LESSY: Well, I guess the Staff's position is
10 a hybrid of that. I think discovery could go in on the scope of
11 the QA Program, but that litigation, the acceptance of this
12 Contention for litigation purposes, should be limited to those
13 thirteen categories of I and E Reports, subject to appropriate
14 and timely ammendments by NECNP.

15 I have litigated these kinds of matters before, and
16 if you have a contention to the effect that QA Program is inade-
17 quate, there are only two ways to address it in terms of testimony.
18 One way is to get an overall QA person in to say that it is not
19 adequate. I do not know whether or not the Board would accept
20 that.

21 The other way is to bring in a representative of
22 virtually every craft at the site or their Inspector or Super-
23 visor for every craft at the site to talk about each area and its
24 adequacy and that will take all year.

25 My suggestion is that we have the overall QA Program

1 in for discovery purposes so Mr. Jordan can engage in the kind of
2 discovery he would like to engage in, subject to objections by
3 appropriate parties, but that the Contention for litigation
4 purposes be limited to the areas that he has identified.

5 I would secondly ask one other thing. Even though
6 there may be, and this would be of NECNP, an area of deficiency
7 I would hope that NECNP, for litigation purposes, would look at
8 those categories and decide if they really want to litigate Wells.
9 If you want to really litigate Wells, we will bring in the Welders
10 and the Welding Inspectors and we will put pictures before the
11 Board and radiographs and everything else. It takes a lot of
12 time.

13 JUDGE LUEBKE: Excuse me. As I am listening here,
14 you are talking about items which have been closed out?

15 MR. LESSY: That is right.

16 JUDGE LUEBKE: Why are they any longer problems?

17 MR. LESSY: We may ask Mr. Jordan.

18 JUDGE LUEBKE: All right. I ask Mr. Jordan. Why
19 are they problems?

20 MR. JORDAN: They are problems because in most, if
21 not all of these cases, we have an I and E Report on any given
22 subject. I will get back to the point I made earlier. An I &
23 E Report is a snapshot of that Plant at a thousandths of a second.
24 It sees very little. It doesn't see the whole thing. It has
25 found these inadequacies continue over time. Of course, when the

1 NRC Staff has found inadequacies, of course, they have twisted the
2 arm of the Applicant and the Applicant has fixed the inadequacies.

3 It goes without saying the questions is, what wasn't
4 found, and what this shows us is that there were things there to
5 find that the Applicant's Program had not found and I don't think
6 anyone would assert to the NRC's Program that the purpose of the
7 NRC's Program is to find everything the Applicant didn't find.
8 There are other things there.

9 MR. LESSY: It was for that reason that the Resident
10 Inspection Program was implemented. I think Mr. Jordan's comments
11 are a little outmoded in that regard.

12 When there were periodic inspections, the purpose
13 of the Resident Inspection Program was to have an Inspector there
14 at all times.

15 The NECNP in litigating this Contention, your Honor,
16 would have to demonstrate that this particular deficiency
17 evidenced that there was not only a bad well, but that that bad
18 well evidenced the failure of the QAQC Program that has caused
19 safety problems. That is a pretty significant burden.

20 If we are not careful about framing this Contention
21 for litigation purposes as opposed to discovery purposes, we have
22 bought an awful big pie to eat.

23 JUDGE HOYT: How about if the Contention is as I
24 suggested to you? The wording should be, admitted for purposes
25 of discovery only.

1 MR. JORDAN: Actually I was hoping I would be
2 breaking the dam in a few minutes in agreeing to limit our
3 Contention for litigation as Mr. Lessy has suggested to the
4 thirteen items on the premise that we would then be able to
5 litigate on discovery, to pursue on discovery the entire QA Program
6 and add if we found something wrong.

7 I certainly agree with Mr. Lessy. It is not an in-
8 considerable proof that we have to make, but it is a proof that
9 we believe is there and is indicated at least, by the documents
10 that we have seen thus far.

11 MR. LESSY: The matter that is still pending,
12 though, is the Board's question to NECNP as to whether or not
13 they would agree to strike out the word "design?"

14 JUDGE HOYT: I think he has rejected that.

15 MR. JORDAN: Oh, no. I rejected that one.

16 MR. LESSY: So the Board only has before it a Con-
17 tention which says design or construct?

18 MR. JORDAN: Let me see if I can read this into the
19 record and perhaps satisfy your concern.

20 Let me look at it for a second.
21
22
23
24
25

1 MR. JORDAN: This is my proposed language. Let me
2 read it out for you.

3 NECNP contends that the Applicant has failed to meet
4 the requirements of Appendix B with respect to the design and
5 construction of Seabrook in the following areas: Such that there
6 is no assurance the Plant has been designed or construction in
7 accordance with the applicable requirements and consistent with
8 the public health and safety: Following the colon would be the
9 Items No. 1-13 on pages 58-61.

10 JUDGE LUEBKE: Item No. 13 does not even have a
11 subject word in it.

12 MR. JORDAN: Do you mean it is not a sentence?

13 JUDGE LUEBKE: No, it does not say what.

14 MR. JORDAN: I guess I think it says a lot.

15 JUDGE LUEBKE: No. 12 has to do with welding and
16 wells. No. 11 has to do with document control.

17 JUDGE HOYT: No. 13 deals with the Order Program.

18 MR. JORDAN: No. 13 deals with the Order Function.
19 What they found in the I and E Reports were deficiencies in the
20 Order Function as opposed to deficiencies in Wells as opposed
21 to deficiencies in Concrete, deficiencies in the Order Function.

22 JUDGE HOYT: I do not think anything can be said
23 to change your position, has it, Mr. Gad?

24 MR. GAD: No, Madam Chairman. I will relieve the
25 room of that suspense. The question that Dr. Luebke pitched to

1 my direction a little while ago is, can you live with what was
2 then on the table? The shortend answer is, if someone wants to
3 tell me that a plant that has been built in perfect conformance
4 with the plans and specifications approved in the Construction
5 Permit Case, is either not get licensed or is going to suffer
6 three years worth of litigation while we worry about how it was
7 that you built it perfectly. Then the answer is no, I cannot
8 live with that and I do not think there is any point to be
9 litigated there.

10 JUDGE PARIS: If I understand what Mr. Jordan is
11 driving at, he is not contending that you build it perfectly.

12 MR. JORDAN: Dr. Paris, my point is this. As I
13 understand, the contention that we say is not admissible is did
14 you properly execute your QA Plan. We have no objection to the
15 contention that says, you did not build a plant the way you were
16 suppose to. There is only three bolts where there is suppose
17 to be four, they are only torque to 100 pounds instead of 125 or
18 whatever else the deficiency may be. We are not opposing that
19 whatsoever.

20 I am also not saying that on account or because of
21 a certain report somebody cannot go in and litigate whether or
22 not the thing is reported on and five or six other around perhaps
23 were torque to the right spec. or had the right number of bolts
24 in them.

25 What I am suggesting is, and I am not saying that

1 these might not be evidence to some other admissible contention,
2 what I am saying is that a QA Plan is for two purposes. It is
3 for planning purposes and it is for ongoing construction. IT
4 is to help you get a perfect plan.

5 Once the whole thing is built, the issue is did
6 you build it right not did you build it right because you a good
7 plan and it worked or did you build it right in spite of a good
8 plan that you did not do a good job following, or did you build
9 it right in spite of a bad plan that you followed or not. It
10 does not really matter. My point is that once you have built
11 the thing, the issue is how well is built, not how did it get
12 built that way.

13 If anybody is concerned about a QA Plan functioning
14 today or for the rest of the construction, then Appendix B talks
15 about remedies. They do not include litigating it in the OL Case.
16 2206 has remedies, they do not include remedying it in the
17 OL Case and if the issue is that we are to have this Plant which
18 for all we know is a perfectly built plant, in conformance with
19 all the plans and specifications, and is going to sit their idle
20 while we have fun with three years worth of litigation to which
21 my brethren say we are inviting ourselves, then I say to you
22 that is a regulatory disaster.

23 There is no reason why that issue ought to be
24 litigated in an Operating License Case and if there is no reason
25 why it ought to be litigated in an Operating License Case, then

1 it ought not to be litigated.

2 JUDGE HOYT: Is not your argument more directed
3 towards IIA1 rather than IIA2?

4 JUDGE LUEBKE: He has been speaking to all of 2.

5 MR. GAD: There is really very little distinction
6 between IIA1 and IIA2, IIA1 says you did not plan to send the
7 Inspector out often enough and IIA2 says, well, you planned
8 to send him out every day but he only went out Monday, Wednesday
9 and Friday.

10 I am asserting to you, Madam Chairman and Members
11 of the Board, that once we have the thing built, it does not
12 matter whether you send him out the right number of days per
13 plan or per execution. What matters is whether or not the Plant
14 was built in accordance with the plans and specifications that
15 it was suppose to be built with.

16 I am not suggesting that to you that somebody
17 cannot use I and E Reports or Licensee Deficiency Reports or
18 anything else as evidence for to bolster a case that says this
19 is not built right or that is not built right. What I am
20 suggesting to you is, a decision at the end of this case says
21 the Seabrook Construction QA Plan is the greatest thing in the
22 world is not what we are after.

23 What we are after is whether or not the Plant as
24 built meets the Statute and the Regulations of the NRC. If it
25 does then it will be licensed to operate.

1 It may very well be that the air conditioning in
2 here does not have a very good QA and it is late in the day and
3 I may not be articulating myself very well. We see a distinction.

4 JUDGE LUEBKE: No one has mentioned in this argument,
5 the Test Program that follows construction. There is a Pre-
6 Operating Test Program and a Low Power Test Program, I do not
7 know what all the phrases are but that ought to be good for
8 something. Is that pertinent to the contentions on the table?

9 MR. LESSY: Well, those programs I should think are
10 additional assurance that as to the safety of the plant and its
11 compliance with NRC Requirements. They are complimentary to the
12 QA/QC Construction Program but in my view at least, would not
13 be a substitute for it.

14 I do have one further comment I would like to make
15 with respect to the restated contention.

16 JUDGE HOYT: Let us move on unless we have something
17 radically different.

18 JUDGE LUEBKE: He has got something.

19 JUDGE HOYT: Oh, yes, Mr. Lessy, excuse me.

20 MR. LESSY: I do have one more comment with respect
21 to the restated contention of Mr. Jordan's which includes the
22 13 categories.

23 That is, this Contention still is phrased in terms
24 of the design and construction of Seabrook. It is not phrased
25 solely in the terms of whether or not Applicant's QA/QC Program

1 has not operated. It includes design and construction in it
2 and for those reasons the Staff objects to the restated Contention
3 to the extent that includes design issues because we feel that
4 is not Operating License Issue.

5 Since Mr. Jordan has stated the Contention in the
6 conjunctive, in other words, the design and construction and
7 since the Board has stated that it will not rephrase contentions,
8 unless that Contention were changed, then that in my view would
9 clearly not be an acceptable contention for litigation.

10 JUDGE PARIS: Well, Mr. Lessy, if he could show
11 that that product or show that the plans were drawn backwards
12 and the pipe supports were put in mirrorimage position than what
13 they should have been or something like that, would that not be
14 design?

15 MR. LESSY: Say that again, sir?

16 JUDGE PARIS: If he could show that the plans were
17 drawn mirror images to what they should have been and pipe
18 supports were put in according to the Plan but because of that
19 are wrong, would that not be design?

20 MR. LESSY. Yes, but we are talking about design
21 of QA Program, not the design of Plan. QA Contentions are not
22 the same.

23 MR. JORDAN: No, I am sorry. That is the misunder-
24 standing that we are not concerned with the design of the QA
25 Program. It seems to me that if anything is true about nuclear

1 plants, it is that they are not fully designed by the time they
2 are authorized to be built and that design, with intended Quality
3 Assurance related to design continues, my understanding is
4 practically up until the time the thing is turned on, of course,
5 there is an initial threshold of what the QA Program is for both
6 design and construction. That is where we got into the argument
7 on IIAI but there is an implementation of Design Quality
8 Assurance throughout the period. The issue is really the same
9 in the sense of whether it is a CP Issue or whether it is an OL
10 Issue, it is an OL Issue.

11 MR. LESSY: That is an important clarification as
12 far as the Staff is concerned.

13 JUDGE HOYT: Then you would be willing to accept
14 that Contention, Mr. Lessy, if it read after Appendix B with
15 respect to either the design of construction of the Seabrook
16 Plant? Does that make any difference to you?

17 MR. LESSY: Yes, that would be acceptable.

18 MR. JORDAN: I hate to do this but may I have two
19 more seconds?

20 JUDGE HOYT: Go ahead.

21 MR. JORDAN: I would disagree with Mr. Gad that he
22 has been inarticulate this afternoon, I think he has been very
23 articulate.

24 Our point is and I think the function of Quality
25 Assurance is to tell you whether in fact you are building the

1 Plant right and to be able to look at it and tell whether you
2 built the Plant right. That, in our view is very important to
3 mural from the conclusion. If the Program did not work, you
4 cannot tell.

5 JUDGE HOYT: I think we have done enough with that
6 one. Let us look at IIB2.

7 MR. JORDAN: Parts of IIB are easy. IIB1 we are
8 clear for lift off on both the Staff and the Applicant.

9 IIB2, the Applicant accepts it. The staff does not
10 on the grounds that we refuse to give a conclusive items improp-
11 erly excluded from the QA Program, those would be items important
12 to safety, improperly excluded. By the way, we are now talking
13 about the Operations QA Program as opposed to the Construction
14 QA Program. I believe we have answered that.

15 I am sorry, let me be clear on IIB1. We did reword
16 IIB1. That rewording is at Page 35 of our June 17th Filing.

17 I believe that the Catawba opinion that we cited
18 before on June 30th, again is important on this point. The
19 question of importance to safety, the Regulatory Agenda in which
20 the Commission discussed this issue and the language itself of
21 importance to safety is not specific. We need to get into the
22 discovery to determine in fact what items that are important
23 to safety as a matter of fact, have not been included under
24 the operations of the QA Program.

25 JUDGE PARIS: Excuse me. Did you say that IIB2 has

1 been reworded?

2 MR. JORDAN: No. that was IIB1 that was reworded,
3 I am sorry.

4 JUDGE PARIS: Oh, IIB1 was reworded.

5 MR. LESSY: We had objected to IIB2 on the grounds
6 it lacked specificity and NECNP has not given a list of items
7 it contends were excluded from the QA Program. We do not even
8 have a category of items or one example. We just have a generic
9 distinction between safety related and important to safety.

10 I think that before we can engage in extensive
11 discovery on this, we need to know the kinds of items that NECNP
12 feels should be included within the QA Program for operations
13 that are now not included. I do not think we need a complete
14 listing but we need certain examples and categories and we do
15 not have any. We have asked for them so in the absence of that,
16 we continue to object to IIB2's as lacking required specificity.

17 MR. JORDAN: I think we give specific examples
18 on Page 36 of our June 17th Filing, the middle of the Page. I
19 think we actually discuss this in more detail in our earlier
20 Filing of Contention IIA1.

21 JUDGE HOYT: I think you have some matters related
22 to Emergency Planning on the bottom of Page 35 and then on 36
23 you go back.

24 MR. JORDAN: Yes. I am afraid that we did do that
25 and we are back to IIB2.

1 JUDGE HOYT: All right. So that is on Page 36?

2 MR. JORDAN: Right.

3 JUDGE HOYT: Did you reword that at any point?

4 MR. JORDAN: No.

5 JUDGE HOYT: Do you have anything, Mr. Gad?

6 MR. GAD: We did not object to anything in IIB,

7 your Honor.

8 MR. JORDAN: Should we go on to IIB3?

9 JUDGE HOYT: Right.

10 MR. JORDAN: We can pass IIB3 which is a blessing

11 from the Applicant, I believe. We have not reworded it. The

12 wording is as in our original Filing of April 21st.

13 JUDGE HOYT: IIB4?

14 MR. JORDAN: IIB4, the Applicant objected. The

15 Staff argues that there is no regulatory requirement. I think

16 we have adequately answered in writing on Pages 37 and 38 of

17 our Filing of June 17th.

18 (Off the record.)

19

20

21

22

23

24

25

1 MR. LESSY: The Staff continues to object. The
2 regulatory requirements are kind of a grab bag of things that
3 might help, but seldom do, and the Board has before it the issues
4 in writing, and will determine whether or not there is a regulatory
5 delay.

6 JUDGE HOYT: That gives us five is the last one.
7 Do you have anything, Mr. Gad? Do you have any objection to
8 5, Mr. Lessy?

9 MR. LESSY: IIB 5, there is no objection.

10 MR. JORDAN: We have reached a rather sensitive sub-
11 ject of Emergency Planning. We happen to have 16 items that we
12 have termed specifications and bases, and then what we intend is
13 incorporate into the Contentions my view of NECNP, which is that
14 it is by far the most reasonable way to approach the Emergency
15 Planning Contention is that proposed by the Applicant, essentially
16 that proposed by the Applicant.

17 I am in a quandry, unfortunately, because I guess
18 we feel that we need some guidance from the Board, but let me
19 lay out what I think is a good way to treat this, and we can save
20 this and let us go home tomorrow and then have a hearing on Saturday.
21 I would buy the language that Mr. Gad has proposed as the language
22 of the Contention, subject to that we then proceed with discovery
23 on Emergency Planning. We then would be required to provide
24 specificity or specific Contentions after all the Emergency Planning
25 documents of all the various sorts have been received, so that

1 by the time we go to litigation we do not have the problem to
2 which I am sensitive, which is completely unfocused litigation
3 at that point and really nothing for the Board to decide on with
4 vague Contentions. You end up with thorough specificity at the
5 later time, after discovery is completed. You end up with speci-
6 ficity for the litigation and for the Board's decision. We don't
7 have to address now the seemingly intractable questions of how
8 to deal with the unavailability of documents and whether to
9 accept a Contention at a given time or not at this time, when
10 and whether to file them later, and so on.

11 I would add this and have a reasonable concern which
12 is that the discovery might indeed ask for the kitchen sink if
13 they were completely broad Contentions except for purposes of
14 discovery. I suggest that discovery proceed, and as the parties
15 who raise the Emergency Planning Contentions be limited in their
16 discovery to the matters that they raised in their draft material
17 that they filed with the Board so far, so we can't go beyond that
18 with some limit. We don't have to go ahead and argue with every-
19 thing now. It deals with the issue of picking up later on the
20 documents that come in and give you specific Contentions to liti-
21 gate when we get to the hearing.

22 The only thing that I see any potential complexity
23 in is exactly when we file the this specified Contention. It
24 seems to me to be easy to deal with. Now, the other side of that
25 is I would have to say that if we can't go that way, and I seek

1 the Board's guidance on this, then I guess I think we tried to
2 in effect incorporate our 16 items as part of our Contentions.
3 I think that we would have to target, redraft each of those, to
4 have a sentence or two which is the kernal of a Contention for
5 your use and then argue about them tomorrow, rather than having
6 the way they were written, because they weren't written as
7 Contentions. We are simply trying to in our June 17th filing
8 say okay if the Staff wants us to give this stuff, here it is.

9 I think if we are going to argue about each one of
10 those specifics, we need to rewrite them.

11 JUDGE HOYT: Now, the wording that you talked about
12 was the wording that was offered to Ms. Shotwell earlier today
13 in regard to her four Contentions.

14 MR. JORDAN: I don't have the formal wording, but
15 that is what I am talking about.

16 JUDGE HOYT: Well, it is on the record. Would you
17 give the Board a minute?

18 MR. JORDAN: Certainly.

19 (There was off the record discussion.)

20 JUDGE LUEBKE: Are there any other Petitioners with
21 an Emergency Planning Contention? I want to see the scope of
22 this thing.

23 MR. EDELMAN: Sun Valley has two Contentions and
24 they both have to do with Off-site Emergency Planning.

25 MR. LESSY: Also Massachusetts has four Contentions.

1 JUDGE HOYT: Four, yes, we discussed that a moment
2 ago and we know that we have those four, and I believe there is
3 some in New Hampshire. How many?

4 MR. BISBEE: Three.

5 JUDGE HOYT: Three, fine. We have 75 Contentions
6 in all.

7 MR. PERLIS: Madam Chairman, there also other parties
8 that have Emergency Planning Contentions. I believe South Hampton
9 does and Ms. Hollingworth.

10 JUDGE HOYT: The Chamber, yes. They do. That is
11 principally the thrust of their position.

12 JUDGE LUEBKE: We were thinking a little bit about
13 the prospects of consolidating.

14 JUDGE HOYT: I think it is the consensus of the Board
15 that we will go along with the proposal of Mr. Gad this morning
16 which will get at least the case started and in a posture that
17 we can at least as we go along--I understand.

18 MR. LESSY: I would like to argue on that point.

19 JUDGE HOYT: We already got you this morning. Is
20 there anything different than that?

21 MR. LESSY: Yes. I think it can be more specifically
22 be addressed in the context of Massachusetts Contentions as well
23 as Mr. Jordan's.

24 JUDGE HOYT: All right. Well, let's take your argu-
25 ment then at this point, Mr. Lessy, but let me say that that is

1 the consensus of the Board at this time at this point. We are
2 certainly not going to be iron-clad if you can come up with
3 something persuasive argument that we should not go in that
4 direction.

5 MR. LESSY: May I do it first thing in the morning,
6 or do you want me to go on with it now?

7 JUDGE HOYT: Well, I--

8 MR. LESSY: I think it is a fairly substantial point.

9 MR. JORDAN: I am certainly sensitive having had
10 my tongue begin to tie considerably over the last hour or so
11 at the late hour. What I am concerned about is that we have some
12 guidance so that we know what to do tonight whether we should
13 come to you with having reworded all those 16 things to be argued
14 tomorrow or not.

15 JUDGE LUEBKE: Sixteen things on what?

16 MR. JORDAN: We are talking about 16 items that we
17 listed.

18 JUDGE LUEBKE: Oh, well, Emergency Planning is the
19 tail end of every hearing, is it not?

20 MR. LESSY: We have FEMA here to avoid that.

21 JUDGE HOYT: I am sorry, you did what?

22 MR. LESSY: We have been working with FEMA here to
23 avoid that so that their process would be available here in tune
24 with the process of the Staff had proposed, so that their findings
25 will be coming in--I mean their testimony and their formal findings

1 will be coming in in May and their drafts and comments will be
2 coming in earlier during the process, so it doesn't have to be
3 here. We have been able to avoid that. If you want me to proceed
4 I will. The problem that I have with a very general Emergency
5 Planning Contention apart from the fact that I don't believe that
6 such a Contention complies with the Commission's Regulation 2.714
7 even for discovery purposes, especially here where we have
8 specifically delineated areas; Massachusetts Contentions, NECNP
9 Contentions--I am losing it, too--is that what they do really
10 in as broad a form is, just take a look, for example--one moment.

11 Just for discussion purposes, and I know that it
12 is Massachusetts Contention 2, it simply says The Applicant has
13 failed to account for local emergency response needs and capabili-
14 ties in establishing boundaries for plume explosion pathway and
15 just in pathway EPZ's for Seabrook Station is required by 10 CFR
16 50.33(g) and 50.47(c)(2). Now, that Contention is nothing more
17 than a statement of what the law requires and saying that the
18 Applicant hasn't done it.

19 This Contention is substantially the same as the
20 ones that Massachusetts filed in the now defunct Pilgrim Proceeding
21 and Massachusetts has indicated, I believe, will file the same
22 discovery that was filed in that proceeding, probably, and that
23 was about three and a half inches high, and it was filed within
24 about an hour after the Board's Order setting forth and admitting
25 discovery. What that does is imposes upon the Staff and the

1 Applicant the requirement to answer extensive questions about
2 Emergency Planning as a basis for framing further specified Con-
3 tentions before discovery.

4 One of the parts of Massachusetts Contention 2 is
5 that these local emergency response needs, for example, have not
6 been drawn or clarified including, a) Jurisdictional boundaries,
7 and the proximity of the site to the Atlantic Ocean, and things
8 of this nature. We discussed today earlier the Staff Discussants
9 views on why in the case of Massachusetts the only that they had
10 to do was look to a map to find out which of the jurisdictional
11 boundaries were not properly drawn and to add that to the a
12 Contention; but this kind of Contention, if the Board allows them
13 the Contention as a generalized Emergency Planning Contention,
14 but require us, because it would be within the penumbra of such
15 a Contention to look at the map and to answer the question as
16 to which of Applicant's--which of the jurisdictions within the
17 ten mile zone are cut in half and which are the roads that are
18 cut in half, without any real specificity.

19 In the Emergency Planning area, such broad-based
20 discovery becomes a fishing expedition, okay, and the basis of
21 which is the hope that specific Contentions can lie. Now, here
22 Mr. Jordan and NECNP has, I think, 16 specific areas at least
23 according to our analysis that they have concerns with. They
24 have concerns with Emergency Classification, simultaneous failure
25 to both units, training of unit shift supervisor, the plume EPZ,

1 meteorology, access routes, etc. These are specific areas of
2 concern on a specific matter which can be litigated. Now, Mr.
3 Jordan has said that he is willing to specifically delineate those
4 Contentions and take the time to come up with specifics and we
5 realize, the Staff realizes, when it came up with its response
6 to this that even though some of these were objectionable, that
7 this was preliminary at this point and many of these objections
8 could be overcome by a little more drafting, and I think that
9 Mr. Jordan realizes that. But we can see no merit from the stand-
10 point of timeliness, joinder of issues in a litigative sense,
11 or efficiency in terms of litigation, to permit broad-based issues
12 which just say the Regulations haven't been complied with, EPZ
13 zone is insufficient, when you have available a number of very
14 specific areas that people want to litigate, and that is, and
15 we strongly urge the Licensing Board, to litigate the specific
16 areas that have Contentions on the specific areas, allow more
17 liberal discovery, but not allow a fishing expedition that transfers
18 the burden from one party to another, and then let the parties
19 who propose these Contentions have an opportunity to amend them
20 after discovery based upon any information that was properly
21 obtained during the discovery process; but to have a Contention
22 that as there was in both the San Onofre and Diablo Canyon
23 Licensing Board Decision and Licensing Board Proceedings which
24 is setting up the possibility of endless discovery and endless
25 litigation without real joinder of issue, and we think the whole

1 direction of the Commission's jurisprudence over the last few
2 years having rules to modify 10 CFR Part 200 and the experience
3 of the Staff and the Licensing Board to go in the way of having
4 specific Contentions, and for whatever reasons underlie the
5 proposal to have generalized Contentions we can only say that
6 we wish that those who propose would talk to those who litigated
7 it, because it was really a very inefficient process.

8 JUDGE LUEBKE: Was it legally decent for the Board
9 to consider deferring all Emergency Planning Contentions now to
10 a later date when more reports are in hand and specific Contentions
11 can reasonably be raised?

12 MR. LESSY: I think that would be legally acceptable
13 if the bounds of discovery were somehow limited. In other words,
14 if you define.

15 JUDGE LUEBKE: If there is no discovery until the
16 reports are out; what is there to discover until the reports are
17 out?

18 MR. LESSY: That is a very good question. I would
19 like to consider that.

20 JUDGE LUEBKE: It is a very big question concerning
21 the legal aspects of it whether there is solid ground to take
22 such a view.

23 MR. LESSY: I think there it is legally within the
24 Board's discretion to do that. The thing that you need to do
25 is to ascertain the possible date of availability of these

1 documents and meld that into the overall hearing process.

2 JUDGE LUEBKE: I have in mind the saying wait to
3 motivate the production of those documents.

4 MR. GAD: Well, unfortunately, Dr. Luebke, the people
5 that you want to wack over the head aren't in this room.

6 JUDGE HOYT: And we don't have any jurisdiction over
7 that.

8 MR. LESSY: If the Board would look at the 16 items
9 specifically in the draft response, just to consider this, and
10 I wouldn't ask the Board to rule now, but take a look at the 16
11 areas which NECNP itself has delineated. If there is something
12 in these precise 16 areas as well as an opportunity to engage
13 in other responsible discovery and in other areas, the parties
14 preparation time and understanding time of what is really at issue
15 in my view would be much greater than that which would happen
16 if you had a broad understanding that an Emergency Planning issue
17 is going to be litigated, now let's just find out, let's just
18 disengage and go on the broadest possible fishing expedition.

19 I really think that by focusing on specific areas
20 the proponents of this Contention will be able to sharpen their
21 thinking and those that respond to those Contentions on the off-
22 site will be another agency also have some focusing on their thinking
23 and I just think that the process will be much more efficient
24 and not run the risk of just having open-ended, undefined,
25 Contentions, because at some point they are going to have to be

1 defined. My view that is let's define what we can right now and
2 not defer it to November or December when a lot of other issues
3 are then going to be defined.

4 Mind you, I haven't probably articulated my views
5 as well as I would like to, but I think you get the genesis of
6 my thoughts.

7 JUDGE LUEBKE: The only reports that exist, as I
8 understand it, are some words in the FSAR. Is there any other
9 report on the Emergency Planning?

10 MR. GAD: I want to be a little careful here, but
11 I believe that there is a discussion in the FSAR. I believe that
12 there is a the Applicant's Radiological Emergency Response Plan,
13 a separate document, and I am really out on a limb here, but I
14 think it is about two volumes.

15 JUDGE LUEBKE: Is that on-site only?

16 MR. GAD: That is the Applicant's plan, that is correct.
17 So, that is on-site what we do. There already exists, at least
18 in certain respects, a plan for the Commonwealth of Massachusetts,
19 a generalized plan. I don't know exists generally for Emergency
20 responses for the State of New Hampshire. There may very well
21 be a whole--I am not certain of any of this, but I was in about
22 this position a year ago and I am really generalizing from that--
23 there are a whole fistful of studies that show exactly why the
24 EPZ borders were drawn as they were and goodness knows what else.

25 Dr. Luebke, I hate to be the skunk at the lawn party,

1 but the suggestion of deferring anything at all on Emergency
2 Planning until some point in time in the future troubles me.

3 As I said earlier, in my judgement, the schedules
4 only go one way, and time that is given away today can never be
5 recovered. I think that there is an awful lot of discovery that
6 probably could be undertaken at this point in time, much of which
7 may in fact convince people that there is not prospect of fruit
8 in litigating some of the things that they want to litigate and
9 may serve to narrow all of this.

10 Just let me make one other observation, if I may.
11 This has been called the Applicant's suggestion and I suppose
12 historically it is the Applicant's suggestion. I would sort of
13 like to make it clear. This is a suggestion born out of a certain
14 measure of frustration, a certain measure out of resignation;
15 we are not suggesting that this is how it ought to be done with
16 respect to other topics than EPZ or in other cases than Seabrook.

17 JUDGE LUEBKE: Well, if certain numbers of identified
18 reports exist, then it would be possible to say that discovery
19 could proceed with respect to those identified reports, and not
20 in general because if discovery proceeds in general, the person
21 can just answer and say that I haven't done the work. You can't
22 discover new work. You can only discover on work that has been
23 done, and if we can identify the existing reports, then the Board
24 can say, okay, proceed with discovery on those reports. And if
25 two months from now two more reports exist, the Board can amend

1 its order and say amplify your discovery to two more reports.

2 Is that palatable? Then we are not deferring indefi-
3 nitely. We are getting started. As you say, it's bad to not
4 start.

5 MR. LESSY: Until yesterday, I was under the hope
6 that the FEMA counsel from Region I was going to be attending
7 this proceeding to give a status report with respect to the
8 activities of that agency. I was told this morning, or yesterday
9 morning, that he wasn't going to come. I can't say what he was
10 going to say. I do think that FEMA feels that they can meet the
11 May 5th date for testimony that they are starting. FEMA Regional
12 Committee just commented on one of the lead Town Emergency Plans.
13 So there are a number of documents being generated and my under-
14 standing is that a lot of this work is done in draft stage in
15 the November, December timeframe here, and of course there are
16 a number of documents which are available already, including
17 particularly to on-site plans. The off-site plans require the
18 occasion of local groups and work by the various States. So,
19 there are a number of documents that could be used already and
20 could be the basis for a particularizing Contentions at this point
21 in time.

22 JUDGE LUEBKE: If and when these reports are finished
23 then they are open for discovery. If they are three months late,
24 they are three months late, but before then there is no need to
25 discover that party, is there?

1 MR. LESSY: I am always impressed with the amount
2 of interrogatories and document requests that that can be generated
3 by attorneys.

4 MR. JORDAN: It is an interesting suggestion. I
5 am not sure it is workable. I guess there can be a sort of dis-
6 covery that involves getting the documents that are available.
7 Perhaps interrogatories with respect to positions contained in
8 or positions with respect to what is in the documents---

9 JUDGE LUEBKE: (Interrupting.) If the document has
10 all the answers, you don't need to ask any questions.

11 MR. JORDAN: I am bothered that there seems to be
12 something there that I am not going to work very well.

13 JUDGE LUEBKE: There would be no work for you to do.

14 MR. JORDAN: I thought that I had presented a proposal
15 that would be reasonable and then Mr. Lessy ably expressed his
16 concern, and then I thought that he basically said that he agreed
17 with the proposal, so I want to go back to that. He wants to
18 tie the discovery to the specific things that the various parties
19 have raised, and what I said was the discovery should be undertaken
20 by the parties would be limited to, in our case, the 16 areas
21 that we have raised. There are four areas that Massachusetts
22 has raised. So there are three areas that New Hampshire has raised.
23 I got the impression from what Mr. Lessy was saying that he wanted
24 to be clear that it would be limited to those specific areas.

25 JUDGE LUEBKE: Well, anybody can make a list like

1 that. It is easy. My problem is that it is kind of wheel spinning
2 unless you are working with published reports.

3 MR. JORDAN: As I say, the concept sounds useful.
4 I am just not sure how I am going to see it working.

5 MR. LESSY: And my point is that if you done even
6 have a list like that, then you are ten yards behind even there.

7 JUDGE LUEBKE: This like what?

8 MR. LESSY: Of specific areas like Mr. Jordan has.

9 JUDGE PARIS: Are you and Mr. Jordan in agreement?

10 MR. LESSY: No, Mr. Jordan had said that he would
11 be willing to go either one of two ways. Mr. Jordan is completely
12 agreeable to that. He said that he would be willing to litigate
13 the Emergency Planning Contentions the way the Applicant had pro-
14 posed, which is a general Contention.

15 JUDGE PARIS: Which you are violently opposed to.

16 MR. LESSY: He would be willing to, which we are
17 opposed to. He also said that he would be willing to particularize
18 his 16 areas add language here and there, and make them acceptable
19 as Contentions, which means that he has asked the Board for
20 guidance as to whether or not he should add those sentences to
21 those 16 tonight, and that raises a question as to whether
22 Emergency Planning Contentions have to be general or whether or
23 not they need to be more specific. That is exactly where we are.
24 So, depending on Mr. Jordan, he and I are in agreement that on
25 16 particular ones, but that puts him in disagreement with Mr.

1 Gad as I understand it.

2 MR. GAD: It depends on how we play it. If we are
3 going to--I am sorry. I didn't mean to lead in.

4 JUDGE LUEBKE: Glad to know you are still here.
5 Go ahead.

6 MR. GAD: If we are going to have to litigate Mr.
7 Jordan's 16 items as Contentions, yes, indeed, we will be here
8 for another four or five hours. Let me suggest that the motion
9 that might pass by acclamation would read a little like this:
10 Massachusetts and NECNP are admitted. For the time being, the
11 Contention upon which they are admitted is the broad one articulated
12 by the Applicant. For the time being each would be permitted
13 discovery with respect to EPZ matters, but only insofar as that
14 discovery relates to the areas of concern, or categories of con-
15 cern, that each has identified, and that both parties are on
16 notice that by some fashion or another substantially before we
17 write testimony, they are going to be forced to either specify
18 what bothers them or drop their Contention.

19 JUDGE LUEBKE: Can I add, identified in a report?
20 I don't want to have my desk cluttered up with motions to compel
21 and motions to protect.

22 MR. GAD: I am not certain that I understand that.

23 JUDGE LUEBKE: Well, when you do discovery in general,
24 we end up with what I call dump trucking of paper.

25 (There was a brief recess taken at six o'clock.)

1 JUDGE HOYT: We have been off the record for a few
2 moments. The parties are all back in their seats.

3 MR. GAD: Let me just finish one part of what I was
4 saying. There is an awful lot of material that is available for
5 discovery today. If you exclude simply the text of the local
6 community plans themselves, then probably, I won't go so far as
7 to say the bulk, but a large measure of what will ultimately be
8 produced on this, exclusive of lawyers' briefs, is in existence
9 today. There are studies that are no secret to anybody; most
10 of them are referred to in the plan, so we for one look with grave
11 misgivings on any idea that says let's take effort on this topic
12 and put it off to later.

13 As to the method by which we proceed, we thought
14 we had an idea that made a certain amount of sense. As said at
15 the outset, it was born of resignation as much as anything else.
16 Maybe it wasn't such a good idea after all, and maybe we are going
17 to have to litigate the legal sufficiency at the outset of a
18 bunch of details of this topic.

19 But, those are the two ways we can go from this point.
20 What I do not think is a third alternative is to just take the
21 whole thing and put it off to another day. That just buys us
22 unnecessary delay.

23 JUDGE HOYT: I am certainly in agreement with you
24 on that. I would like to get this done now. I don't want to
25 put anything off that we can avoid.

1 It appears, Ms. Shotwell, you would agree to the
2 suggestion now that the new Applicant's plan, if I may burden
3 you with that description.

4 MS. SHOTWELL: Right.

5 JUDGE HOYT: Let me turn to Mr. Lessy and here from
6 you; how about that? Do you have any fault with that?

7 MR. LESSY: The technical Contention would be the
8 broad form one, but for discovery purposes, each of them would
9 be limited to the areas that they heretofore identified in their
10 bases, without us having to argue and decide today what are the
11 legal boundaries of Emergency Planning issues.

12 JUDGE HOYT: Would you do this, Mr. Gad, would you
13 reduce that to a written format.

14 MR. GAD: As long as I don't have to sign it, your
15 Honor..

16 JUDGE HOYT: Never would I ask you to do that.
17 And let's run it through the Commonwealth and you too, Mr. Lessy,
18 and see if it would be acceptable in the morning and we will dispose
19 of that and we will have the show on the road, and then you won't
20 have to go through the 16 Contentions and redraft them this evening.

21 MR. JORDAN: May we look at it, too?

22 JUDGE HOYT: Yes. I would assume that everything
23 would go through Mr. Lessy. Let me ask you, sir, would you be
24 willing to accept that as well? I think you indicated that that
25 was your Contention as well.

1 MR. EDLMAN: Yes, we would be willing to subsume
2 our Contention within that general plan.

3 JUDGE HOYT: Does that dispose the Town of South
4 Hampton, too?

5 MR. EDLMAN: No. The Town of South Hampton will
6 object to the transmission line.

7 JUDGE HOYT: That is right, the transmission lines.
8 All right, at least we can get through with three of the Intervenor
9 if we can work that out in such a fashion on each of them and
10 accept that. The Board might be subject to criticism which doesn't
11 bother me particularly if I think it is going to serve the useful
12 purpose, and that is that we be hitting the same Contention from
13 several different Intervenor, but I think that with the explanation
14 certainly liberally sprinkled over this record, it would be recog-
15 nized why we did it in the fashion that we did.

16 MR. LESSY: Do I understand that the proposal to
17 be that the technical Contention would be in the broad form, each
18 Intervenor would be limited to the area delineated in the bases
19 of his present pleadings? And what were the other elements of
20 that?

21 MR. GAD: That we would proceed to discovery now
22 or whenever the order on Contentions comes out, and that everyone
23 will be on notice that by a certain period of time, and by a certain
24 fashion, and I am indifferent as to precisely how it is done either
25 an amendment to their Contention or an answer to the last answer

1 to interrogatories that we would propound, they are going to have
2 to specify tightly and in a legally sufficient fashion the Con-
3 tentions that they want to litigate. Any that are not so specified
4 are out the window.

5 JUDGE LUEBKE: So, preliminarily then, these are
6 preliminary Contentions we are talking about at the moment?

7 JUDGE HOYT: For purposes of discussion.

8 JUDGE LUEBKE: For purposes of discussion.

9 JUDGE HOYT: I think that gives you sufficient
10 enlightenment.

11 MR. JORDAN: Indeed it does, yes.

12 JUDGE HOYT: I think that satisfies Sun Valley, too.

13 MR. EDELMAN: It sure does.

14 JUDGE HOYT: So as soon as we get that matter straight
15 ened out in the morning, counsel, the parties may wish to---

16 MR. LESSY: (Interrupting.) Is this a proposal that
17 is under consideration or is it a proposal that has been adopted
18 by the Board?

19 JUDGE HOYT: I think the strong indication is the
20 Board has every intention of adopting the idea that has been pre-
21 sented after Mr. Gad drafts it out.

22 MR. LESSY: So it is not a point in the Board's mind
23 that all the proposed Contentions of some of the other parties
24 may be subsumed within this overall umbrella?

25 JUDGE HOYT: Since they are not here, I am going

1 subsume it for them.

2 MR. LESSY: Let's try it.

3 JUDGE HOYT: We can try.

4 MR. LESSY: Even if there outstanding deficiencies
5 in the Contention?

6 JUDGE HOYT: Other than the ones that have already
7 been expressed here? I think we have covered all of them.
8 Haven't we?

9 MR. LESSY: I have an outstanding objection. For
10 instance, Staff has objected to all of Massachusetts' Contentions.

11 JUDGE HOYT: Yes, you have.

12 MR. LESSY: And Staff has objected to---

13 MR. GAD: (Interrupting.) Even for purposes of
14 discovery?

15 MR. LESSY: This agreement works to the detriment
16 of Staff positions with respect to this matter.

17 JUDGE HOYT: Well, Mr. Lessy, you can't win them
18 all.

19 MR. LESSY: This is a pretty important one, your
20 Honor. Your Honor's indication is that for exploratory purposes
21 this is a matter of a ground which you think may be adopted by
22 the Board.

23 JUDGE HOYT: I certainly intend for to be a very
24 strong indication to you, and unless I am very persuaded by your
25 arguments, I think that they are all very well taken, but it

1 still does not get the Board past the difficulties that we feel
2 that we must resolve here and get the case in a litigating posture.

3 MR. LESSY: Rather than requiring the specificity
4 which is available to Mr. Jordan with just an hour or so of work
5 and is available to the other parties with some additional work.

6 JUDGE HOYT: Well, you see, if we do that so far
7 as Mr. Jordan's Contentions are concerned, Mr. Lessy, we have
8 given a different treatment to the Commonwealth Contentions,
9 and what I think we are trying to do here, and I certainly hope
10 I have indicated it, and if not I will say it, and that is we
11 want to give equal treatment to the Contentions of the Common-
12 wealth as we give to the Contentions of the Coalition.

13 MR. LESSY: I understand that, your Honor, but Mr.
14 Jordan specified that the only thing that the Board would have
15 to do is add the Commonwealth's file, and the trouble I have
16 with this, and I realize that I am in a minority of one, is that
17 it subsumes to be the umbrella of acceptability Contentions which
18 the Staff feel are not legally acceptable, which I want to register
19 now the Staff objection to the preliminary indication of the Board
20 on this method, and we will proceed in due course as we deem approp-
21 riate.

22 JUDGE LUEBKE: But it is the Staff's position that
23 it would be possible now to be more specific about these Contentions.

24 MR. LESSY: Yes. They can do that this evening.

25 JUDGE HOYT: Well, we have offered two methods by

1 which we can proceed. It appears that we can dispose of those
2 Emergency Planning Contentions of the Sun Valley Intervenor and
3 of the Commonwealth of Massachusetts if we accept this approach.

4 As I understand this procedure, MR. Lessy, these
5 Contentions are not cast in concrete. They can be amended,
6 changed, deleted and prior to the litigation of this case, all
7 the way up to that point.

8 JUDGE PARIS: But the pile of paper that you get
9 is quite different.

10 MR. LESSY: It is going to be much higher now.

11 JUDGE HOYT: Well, you know, I have heard cases that
12 involved a great many problems.

13 MR. LESSY: It's not a problem. I wanted to make
14 clear on the record that I have two objections to this proposal.

15 The first objection that I have to this proposal
16 is that I think it permits within the umbrella the admission of
17 Contentions for discovery purposes which would not otherwise be
18 admissible under 2.714.

19 JUDGE HOYT: I don't read 2.714 with that.

20 MR. LESSY: The second objection to this proposal
21 that I have is that it will set a different standard for the admission
22 for discovery purposes of Emergency Planning Contentions than
23 any other Contentions that we are handling. It lowers and sets
24 a different standard for admission of Contentions.

25 JUDGE HOYT: I think you are right. I think it

1 perhaps does at this point in time, but we haven't been able to
2 arrive at any other method, Mr. Lessy, and we spent all day here
3 arguing this through and we can't seem to do it.

4 JUDGE LUEBKE: I have to disagree with the Chairman,
5 but we have to ask the parties to be more specific.

6 JUDGE HOYT: Well, we have asked Ms. Shotwell and
7 we have got pretty much---

8 JUDGE LUEBKE: (Interrupting.) Well, then we can
9 refuse.

10 MS. SHOTWELL: Well, if I may speak to that. We
11 haven't had a chance to yet go into the specificity that we pro-
12 vided in our Pleading. We have provided about 20 pages of
13 specificity of our Contentions and we haven't discussed that today
14 and perhaps you are not aware that it is there, but it is there,
15 and one of the offers that we made to try and resolve this entire
16 situation was the same one that Mr. Jordan has made of incorporat-
17 ing that spcificity into the actual Contention. What that doesn't
18 relieve is the burden on the Board and all of the parties to argue
19 at length about each one of those particular bases or specific
20 bases that have been presented, and those involved fairly signifi-
21 cant issues of interpretation of the Commission's Emergency Plan-
22 ning Regulations. I think that the proposal offered by Mr. Gad
23 avoids all of the necessary review of those questions at this
24 point in time, because I think it is not the most appropriate
25 time to lengthy discussion on those kind of issues.

1 If I can add another point, I think it perhaps is
2 appropriate to the issue of Emergency Planning to be treated
3 slightly differently than the others for the reason that if there
4 is any issue that is of critical concern to the people living
5 in Massachusetts, and I am sure New Hampshire as well, and if
6 there is any issue that they can understand relative to this proceed-
7 ing it is the issue of Emergency Planning. If there is any issue
8 that they need to see that there is thorough study and thorough
9 discovery on, and thorough investigation by their representatives,
10 it is the issue of Emergency Planning.

11 JUDGE PARIS: We recognize that. Mr. Gad, if I under-
12 stood you correctly, you promised if we had Mr. Jordan come in
13 with 16 specific Contentions tomorrow to give us two hours of
14 argument?

15 MR. GAD: I did not mean to put a time limit on it,
16 doctor. My recollection is that our original suggestion arose
17 out of an attempt to decide whether or not each of those was in
18 fact a properly admissible Contention. I recollect that it was
19 our judgment that at least some of them probably were not, and
20 it is my recollection that it would take a fair amount of time.
21 I did not mean to be peremptory.

22 JUDGE PARIS: Okay, but in any case, if we went that
23 route, we would be in for some additional argument about the--
24 whether those additional Contentions were litigable, right?

25 MR. GAD: I think it is necessarily true if they

1 are going to be proposed Contentions.

2 JUDGE PARIS: Can I assume from that that if Ms.
3 Shotwell did the same thing with her 20 pages, he had 10 pages,
4 of specificity we would in for maybe twice as much argument with
5 respect to her specific Contentions.

6 MR. GAD: Actually, the Commonwealth's last two EPZ
7 Contentions are no more specific than the one that we used taken
8 the Contentions themselves. I am not sure it will be exactly
9 twice as much. I do have a distinct recollection that a fair
10 measure of, I think it is one of the subparts of the Contention
11 No. 2, we do think is inappropriate, inadmissible.

12 Now, I guess I just want to say that frankly among
13 the list of merits behind the proposal that is quickly being
14 labelled the Applicant's Proposal, frankly, I don't think saving
15 work is one of them.

16 JUDGE PARIS: Just the opposite.

17 MR. GAD: Well, I mean saving work today. I don't
18 think that that is one of them at all. The reason why we advanced
19 this was to avoid what we regarded as premature attempts to define
20 something that we certainly would define itself a little bit more
21 over time.

22 I also want to disassociate myself from the justifi-
23 cation Ms. Shotwell offered. That is not the reason why the
24 proposal was urged when it was.

25 JUDGE HOYT: Mr. Lessy, unless there is some other

1 way in which you can possibly suggest the Board handle it and
2 reach a conclusion, I certainly don't want to preclude you. I
3 realize the seriousness of your position and I understand it.

4 MR. LESSY: It is a policy decision made on behalf
5 of the Licensing Board with respect to interpretation of important
6 regulation. The more important the issue, in responding to Ms.
7 Shotwell, the more important it is to proceed by the rules of
8 cricket, and that is by requiring and complying with the Regulations
9 in terms of bases of specificity.

10 I don't see any advantage, frankly, to proceeding
11 in any other way from Emergency Planning Contentions than in a
12 different way from how we proceed with respect to the other
13 Contentions. Now, I realize that may require some argument, but
14 I think additional time on behalf of the parties, but on the
15 other hand, I think that in the long run it will save time because
16 when we have specific Contentions, FEMA, and the NRC reviewers,
17 and the others, have specific items that they can look to that
18 they can consider in evaluating the plans, that they can consider
19 with respect to preparing testimony, that they consider with respect
20 to discovery. When you have a vague Contention such as this,
21 in my view, the focus of the parties will be much broader and
22 won't be as clear, and I am afraid that in the long run we set
23 ourselves into a situation where we are not going to get joinder
24 of issue, and frankly, I am concerned about that procedure. I
25 want to give full consideration to what options the Staff has

1 to expeditiously oppose this if that is the way we are going to
2 go, because the experience in two other licensing proceedings
3 has been that such a start is a nonstart. The parties don't know
4 how to prepare the testimony; they don't know how to bring Contention-
5 tions, and the testimony draws the Regulations and the NuRegs,
6 and they are fairly undefined in this area--it is just a guideline,
7 sort of like the reasonable man theory--and I am afraid that the
8 only way to do it is on a Contention by Contention basis by the
9 party. I don't see the long run merit of adopting special procedure
10 with respect to this, and that is all I can say.

11 JUDGE LUEBKE: There was a day when we decided on
12 Contentions on things called Petitions without oral argument.

13 MR. LESSY: Yes.

14 JUDGE LUEBKE: We received the Petitions on paper.
15 We received the comments of other parties on paper. We sat down
16 in a room and we made decisions and we wrote an order. Is there
17 any reason why we couldn't do that now?

18 MR. LESSY: No.

19 JUDGE LUEBKE: In other words, you all resubmit more
20 specific Contentions, as it has been said this afternoon for the
21 parties to do, the parties that are here and the parties that
22 are absent, and in the next week or two, we resolve this thing
23 on paper.

24 MR. LESSY: The Board's order, I guess, would resolve
25 it.

1 JUDGE LUEBKE: Well, it wouldn't have to be the same
2 order. I am saying it could be phase one and phase two. Phase
3 one could be everything but Emergency Planning; Phase two we
4 recognize is going to take a few days for you all to write some
5 more letters.

6 MR. JORDAN: I think in response to that, I think
7 what you will get is not simply a restatement of the Contention,
8 but another full round of argument. That is where we have been
9 so far.

10 JUDGE LUEBKE: In which case, we might vote them
11 down.

12 MR. JORDAN: Well, in our case we have been through
13 it twice and I am not sure where we have gotten with it.

14 I would like to respond to what Mr. Lessy said about
15 somehow the approach of the Board is an innovative concept being
16 a change of the policy of the Commission, or some kind of intoler-
17 able disaster.

18 MR. LESSY: I don't like to be mischaracterized.

19 MR. JORDAN: I would like to finish.

20 JUDGE HOYT: Just a moment, Mr. Lessy. You will
21 get your chance. Let Mr. Jordan finish his own.

22 MR. JORDAN: I have no wish to mischaracterize
23 Mr. Lessy.

24 JUDGE HOYT: Just proceed, Mr. Jordan.

25 MR. JORDAN: However, I don not think that to adopt

1 this approach is in any way a violation of a policy or the estab-
2 lishment of a new policy. What I gather, Mr. Lessy has referred
3 a couple of times now to at least two cases in which a very similar
4 approach has been taken with respect to Emergency Planning.

5 He appears to have been dissatisfied from the Staff's
6 point of view with the way it went, but it seems to me that we know
7 having happened before, and I don't know whether one of those
8 decisions was the Catawba Decision that I referred to earlier,
9 but indeed again the Catawba Decision, the one of June 30th that
10 I have mentioned and there is a predecessor that actually adopted
11 the contentions, that adopted a number of Contentions for the
12 purpose of discovery. It is a standard practice of this Commission
13 and these Boards to take those vague Contentions when there is
14 a reasonable justification for doing so, having discovery, and
15 that justification exists in this area of Emergency Planning
16 for all of the reasons that have been laid out so far.

17 JUDGE LUEBKE: I heard this afternoon that the thing
18 could be more specific.

19 JUDGE HOYT: Let Mr. Lessy defend his honor here.

20 MR. LESSY: I don't like to be misquoted. I am
21 sure that Mr. Jordan didn't mean that.

22 JUDGE HOYT: I think it was unintentional.

23 MR. LESSY: All I said was that it seems that the
24 Board is adopting a different standard for the admissibility of
25 Emergency Planning Contentions for discovery purposes than any

1 other Contention in this proceeding heretofore.

2 JUDGE HOYT: I don't think that we are deliberately
3 setting up to blaze new trails, Mr. Lessy, in regard to Emergency
4 Contentions. It is merely because the Contentions and contentious-
5 ness of the group has dictated that the Board has to act in some
6 fashion. This is the only way that apparently that we can resolve
7 the conflict. It is not that we are trying to blaze new trails
8 and give a different consideration to Contentions dealing with
9 Emergency Planning; it is merely because of the status of the
10 case at this point. The Contentions are on the Board and we
11 have to act accordingly in some fashion.

12 I for one am very much in agreement with Mr. Gad.
13 I think we want to get the proceeding going, and the more you
14 wait, the longer and more difficult it is going to become.
15 Let's get something started and with the Rules as flexible as
16 they are, we can change and alter and amend these, and revise,
17 and all these other words you want to use and apply to it. When
18 Contentions are in line and the case is in a more documented
19 status---

20 MR. LESSY: (Interrupting.) How does what I suggested
21 cause more delay?

22 JUDGE HOYT: I am not too certain the position that
23 you would take, Mr. Lessy, pertaining to the Coalition's
24 Contentions on Emergency Planning. It would then give us an
25 opportunity to adjudicate the Contentions that the Sun Valley

1 Intervenor has proposed and the Contentions that the Commonwealth
2 has proposed. They sent--The Commonwealth refuses to change the
3 Contentions as they are now stated and make them more specific.
4 They say they are already specific enough. Well, if we take them
5 in a generalized fashion at this point in time, at least we got
6 the Commonwealth in and they can participate in discovery.

7 MS. SHOTWELL: We have not refused to make Contentions
8 more specific. We agree between the two approaches that have
9 been suggested that the more general approach in this particular
10 case is more appropriate. But we have provided already, as I
11 said, over 20 pages of specification in support of our Contentions
12 and one of the things that we have offered to do is to incorporate
13 those into the Contentions. That is one possible approach.

14 Now, I understand from Mr. Lessy that at least in
15 certain respects, and certain minor aspects, I am not sure since
16 I haven't heard yet, I believe he expects that more specificity
17 would be required, even than what we have provided in our bases.

18 JUDGE HOYT: Is that right, Mr. Lessy?

19 MR. LESSY: That is right.. That is correct.

20 JUDGE HOYT: On the Commonwealth's?

21 MR. LESSY: Sun Valley, as I recall, had no bases
22 for their Contentions. So we have objection to that. I don't
23 want to rehash it ad infinitum, but it makes acceptable Contentions
24 that might otherwise be unacceptable for purposes of discovery
25 and to which there are outstanding objections by the Staff. That

1 is basically it, and I don't want to delay this Board and the
2 parties.

3 JUDGE LUEBKE: And Mr. Jordan has offered to be more
4 specific if I heard him right.

5 MR. JORDAN: What I offered to do was work with the
6 language that we have to write those 16 items as Contentions
7 that were originally drafted as something else.

8 Whether I would be able to put more specifics in
9 them than are already in them tonight, that is something else.

10 JUDGE LUEBKE: But it is good because we can identify
11 them by number then.

12 JUDGE PARIS: Is that the same thing you are offering,
13 Ms. Shotwell?

14 MS. SHOTWELL: Yes. I can put them in another form,
15 but I cannot without hearing any greater specificity that would
16 be needed, I can't provide more than my complete document.

17 JUDGE PARIS: But you can organize them with numbers.

18 MS. SHOTWELL: Yes.

19 JUDGE LUEBKE: And that is what you want, Mr. Lessy?

20 MR. LESSY: Yes, sir.

21 JUDGE LUEBKE: And that is your problem with that,
22 Mr. Gad?

23 MR. GAD: I have no problem with putting numbers
24 on them, but if you call it a Contention that says, for instance,
25 Emergency Plans are no good because they don't go out 12 and a

1 half miles, then I want to argue to you the law as to whether
2 they have to go out 12 and a half miles. And that is just an
3 example.

4 JUDGE LUEBKE: Doesn't that get to the merits of
5 the case.

6 MR. GAD: That would begin to be the merits of the
7 legal sufficiency of the particularized Contentions.

8 JUDGE LUEBKE: Relating to our Regulation of whether
9 it's 12 and a half miles or ten miles or something else.

10 MR. GAD: That is why I didn't do it this morning
11 on the question of who has got the burden, if you will, of at
12 least saying something about the EPZ.

13 JUDGE LUEBKE: I just wanted to be sure it wasn't
14 the merits.

15 JUDGE HOYT: Sir?

16 MR. PERLIS: May I ask Mr. Gad a question? I am
17 wondering under his proposal if it is going to have to be specified
18 at a later date. If it is a Contention at some point that the
19 EPZ go out 12 and a half miles instead of ten, sooner or later
20 before litigation, the parties are going to argue and the Board
21 will have to decide whether in fact that Contention is acceptable.
22 We may be postponing this beyond tomorrow, but at some point before
23 a Contention is accepted, even as I understand it under Mr. Gad's
24 plan, that that argument is going to have to be made, in which
25 case I am not sure what we are going to get by putting this off.

1 MR. GAD: I think Mr.---

2 JUDGE PARIS: (Interrupting.) Are you arguing against
3 Mr. Lessy, Mr. Perlis?

4 MR. PERLIS: No, no.

5 MR. LESSY: He is saying way specify later, and I
6 am saying you might as well do it while we are all here and ready
7 to do it before we engage in free for all discovery.

8 MR. GAD: There is no question that we are going
9 to have to do it later. The reasons, I hope, that some of the
10 ambitions of the Commonwealth of Massachusetts about what law
11 they would like to make in the case, and some of the ambitions
12 about NECNP as to what issues they would like to make in the case
13 will in fact prove to be futile and recognized by such by their
14 authors, when we get to it in point of time, so that they amount
15 of it may be less.

16 . There is also some hope that between now and then
17 this amorphous EPZ set of Regulations may in fact have had more
18 meat put on them so that there will not be so many difficult
19 questions as there are today. There may be some in this room
20 who hope it to be appealed by then, but the point is that, yes,
21 indeed, you are going to have cross some of these legal bridges
22 at some point in time. It is possible that you will have to cross
23 just as many of them and it is possible that everything will be
24 just as hard to do then as it is now, and it is possible that
25 intervening discovery will not have made any of them go away in

1 one fashion or another. Absolutely so; it is possible. The
2 proposal was based on the assumption that it is unlikely then,
3 and the effort will have reduced it in some fashion.

4 MR. LESSY: My point is that I just didn't see the
5 time setting for the proposal.

6 JUDGE HOYT: I think that probably Mr. Lessy I am
7 in more agreement with you than you think. The thing that I was
8 hanging my hat on is that I feel that discovery is going to change
9 Contentions considerably. And perhaps that was a new experience,
10 and maybe it is broad enough to indicate that it would not change
11 it that much, and in fact it will not be that much saved. Maybe
12 that is where you are going with it beyond where I had thought.

13 Well, it still leaves Mr. Jordan up in the air.
14 We indicated that we are not going to ask him to do the specifi-
15 cations, the specificity of those 16 Contentions, I believe it
16 is, any further. If you feel like going through the exercise,
17 Mr. Jordan, perhaps it would be worthwhile in the morning.

18 MR. JORDAN: I must say to the Chair that I still
19 strongly urge you to adopt what I call our proposal. I thought
20 I had amended Applicant's proposal.

21 JUDGE HOYT: Well, let's just call it your proposal.

22 MR. JORDAN: Well, in any case, I like the proposal.
23 I think it is better for the hearing for all the reasons that
24 I have already said.

25 JUDGE HOYT: Ms. Shotwell, I take it you and Mr.

1 Edelman.

2 JUDGE LUEBKE: Would you be satisfied if the Board
3 voted the whole thing down?

4 MR. JORDAN: Well, what I would say is that if the
5 Board does not find that proposal to be acceptable, which I hope
6 we can know in the morning, unless we know it now, then I think
7 that Dr. Luebke's suggestion of another round of filings without
8 any further oral argument is a good one. For one thing, we will
9 take all day tomorrow these 16, those 4, these 3, his 2; and---

10 JUDGE HOYT: (Interrupting.) We had hoped to get
11 this Prehearing Conference business out of the way with these
12 two days.

13 JUDGE LUEBKE: You weren't alone.

14 JUDGE HOYT: I am standing here alone, it seems like
15 by myself, but perhaps we will need to have another conference.
16 I don't know.

17 JUDGE LUEBKE: The written process is also worthwhile
18 because it makes us sit down and think about it.

19 MR. JORDAN: I hope you mean that it makes us sit
20 down and think about it some more.

21 JUDGE HOYT: Well, let's see what we can do with
22 it in the morning. I think the Board will want to talk it over
23 this evening, and I think that certainly we won't ask you to do
24 anything unnecessarily overnight, Mr. Jordan. It doesn't mean
25 that all is lost, Mr. Lessy. It merely means that if we have

1 to have more specificity that we will ask for it and give the
2 parties ample time. But I would ask you to go ahead with what
3 I requested of you earlier in the drafting of that.

4 MR. GAD: Yes, ma'm.

5 JUDGE HOYT: All right, is there anything else?

6 MR. GAD: I don't want to sound impertinent, but
7 I am going to suggest that we turn before we depart tonight to
8 NECNP 4 and 5. I think they can be disposed of relatively quickly.

9 JUDGE HOYT: Four and five what?

10 MR. GAD: Contentions. That way, perhaps, we will
11 have NECNP behind us.

12 JUDGE HOYT: All right. I thought we had.

13 MR. BISBEE: I would like to clarify for the record
14 that the State of New Hampshire would be included in any arrange-
15 ments being discussed if it is turned down and ultimately ordered
16 by the Board on the Emergency Planning issues.

17 JUDGE HOYT: Sure.

18 I think four and five is the ones that Mr. Gad said
19 we had not covered. I have some that were refiled.

20 MR. GAD: They are in the second of two documents
21 that were filed on the 17th of--

22 JUDGE HOYT: --June.

23 MR. GAD: Yes. I apologize for keeping you waiting,
24 but these supplemental Contentions which be on Page 24; is that
25 the one that you had in mind, sir of the Pleading of--I'm sorry.

1 Strike that.

2 MR. GAD: Madam Chairman, I have a separate document
3 called NECNP Supplemental Contentions.

4 JUDGE HOYT: Yes.

5 MR. GAD: It is only about six or seven pages long.

6 JUDGE HOYT: Yes, thank you. That is on the first
7 page, then, of that, and this is Contention No. 4 of NECNP,
8 Blockage of Coolant Flow Through Safety Related Systems and
9 Components. All right, who has that one. Do you have that one?
10 Go ahead.

11 MS. CURRAN: I do. I won't go into a lengthy descrip-
12 tion of the Contention. The Staff has not objected to it, and
13 therefore thinks it is timely filed under the Fed Reg. on this.
14 Our Contention is based on unpublished accidents.

15 The Applicant has objected to this Contention on
16 the ground that the Atlantic Ocean is not open heat sink for the
17 Seabrook Reactor. The Contention concerns a possible accumulation
18 of marine organisms in cooling systems in the Plant which could
19 cummulatively--the cooling systems are essential for safety.

20 I can only point ot the Applicant's FSAR which in
21 Section 9.2.1 says that the Atlantic Ocean is not only the ultimate
22 heat sink for all operating and active heat loads, so as far
23 as that objection to this Contention goes, it simply is not
24 supported by the FSAR.

25 MR. GAD: The Contention, as I understand it, is

1 based on the assumption that the Atlantic Ocean and the cooling
2 tunnels are a system essential to safety. As I understand it,
3 NECNP will withdraw this Contention if they were satisfied that
4 the cooling tunnels were not classified in this Plant as a system
5 essential to safety.

6 May I ask if the Board would so inquire?

7 JUDGE HOYT: Can you respond to that?

8 MS. CURRAN: The answer to that is no. We base
9 our Contention on the fact that cooling water which may be used
10 to counter accident conditions may be drawn through the tunnels
11 from the Atlantic Ocean. We think--Well, I guess we are saying
12 that we think that the equipment is essential to safety.

13 MR. GAD: The problem I have with that, Madam
14 Chairman, is that to a certain it has already been litigated
15 as to whether or not those tunnels need be seismically qualified
16 or anything else. There is an ultimate heatsink at Seabrook
17 that is something other than the Atlantic Ocean. That is why
18 we built the cooling tower for.

19 It may very well be, in the unlikely event there
20 is ever an accident there, that and I quote, the water that is
21 used to cool during the accident sequence may come from the
22 Atlantic Ocean, if it happens to be available. The point is it
23 need not come from the Atlantic Ocean, and the unavailability
24 of those tunnels on account of cockles and muscles alive are
25 simply not a safety issue, and I guess I will have to find a

1 Citation for that. I thought it was well-known.

2 MS. CURRAN: If I may, your Honor, one of the notes
3 that was raised in the Federal Register Notice about these six
4 abnormal occurrences that took place at a number of Plants was
5 that it is not always recognizable when marine organisms are accumu-
6 lated in the cooling system. Now, as far as I understand from
7 the FSAR the cooling towers are not to be called upon unless a
8 seismic event blocks 95 per cent of the cooling fluid in the
9 tunnels, so this leaves a whole area of uses of those cooling
10 tunnels for safety purposes, and regardless of whether there is
11 seismic event, cooling fluid may be blocked to the safety systems
12 by either an accumulation in those tunnels either getting into
13 the heat exchangers or other phases of safety in the Plant,
14 and that is all documented in the Federal Register Notice.

15 MR. GAD: Madam Chairman, the problem with this one
16 is that, and this is why I asked the question at the outset, if
17 someone is going to argue that these cooling tunnels are supposed
18 to be safety related for one purpose, then they are safety related
19 for all purposes. We have crossed that bridge a long time ago
20 when we went and built them, and we put up other equipment
21 particularly the cooling tower to deal with that problem. That covers
22 this question of their getting blocked by organisms just as much
23 as it covers the question of their getting blocked by an earthquake
24 or submarine that turns down the wrong lane and gets stuck. I
25 don't think Ms. Curran really meant what she said which was that

1 we would only use the cooling tower if the tunnels were blocked
2 by an earthquake and not by something else. That just doesn't
3 make any sense.

4 The cooling tunnels are not a safety grade system.
5 Period. We submit that is the end of this Contention. As I say,
6 I thought that was widely understood. It was certainly litigated
7 in the Construction Permit Case, and I don't believe it is open
8 for litigation again today.

9 JUDGE HOYT: Okay. Anything else on that?

10 MR. LESSY: Staff has no objection to that.

11 JUDGE HOYT: I don't think we need to consideration
12 of the justification of the late-filing. We are going to permit
13 you to file this, at least. What we do with it will be done later.

14 On the fifth Contention, Ms. Curran, I believe the
15 Commission has ruled on that and you are presently in Court, your
16 client is presently in Court on that, Appellate Court on that,
17 are you?

18 MS. CURRAN: This Contention is based on a recent
19 decision from the District of Columbia Circuit invalidating the
20 FC Table.

21 JUDGE HOYT: Oh, I am sorry. I thought that was
22 a financial justification. You are right. Go ahead. Go ahead
23 on this one. My colleagues have reminded me, Ms. Curran, that
24 the Commission intends to make some policy statement. You don't
25 have anything recent on that, do you?

1 MR. PERLIS: It is supposed to be coming out soon,
2 but we don't have it.

3 JUDGE HOYT: This century. We want to take your
4 argument on this regardless of what the policy statement will
5 be.

6 MS. CURRAN: Our Contention here is that in light
7 of the recent Circuit decision a new cost-benefit analysis is
8 required under the National Environmental Policy Act for the
9 Seabrook Reactor. It is particularly important for Unit II, which
10 is only partially completed at this point, whose need for a cost-
11 benefit analysis could very well be tilted by a new evaluation
12 with different assumptions than those that were in the FC Table.

13 Now, both the Applicant and the Staff have suggested
14 that the Board wait until the Commission has issued its policy
15 statement before they accept this Contention. It is our position
16 that rather the D.C. Circuit mandate has issued. It is a valid
17 decision. It is an important decision. It is an enforceable
18 decision and that our Contention is perfectly viable as it is.

19 MR. GAD: Madam Chairman, I am reasonably certain
20 as of whenever it was that we were scurrying to leave Boston yes-
21 terday, the mandate was not issue out of the United States
22 Court of Appeals.

23 JUDGE HOYT: That is my understanding, too, Mr. Gad,
24 that has not issued out of the Court. When I left Washington,
25 that was the latest thing that I had done.

1 MR. GAD: I can further advise the Board that the
2 Department of Justice has notified the United States Court of
3 Appeals for the First Circuit that it has asked the Solicitor-
4 General of the United States to file a Cert Petition in the
5 S 3 case. And, of course, Seabrook was not involved in the D.C.
6 Circuit case. There is a separate action now pending a separate
7 appeal, now pending in the United States Court of Appeals for
8 the First Circuit on Seabrook and S 3, so we are all of those
9 reasons we think this thing is a little premature.

10 I have about a half dozen more reasons, if you would
11 like to hear them.

12 JUDGE HOYT: No, I think that we are all aware of
13 what most of those are, Mr. Gad. I don't mean to cut you off,
14 but the hour is getting late.

15 Is there anything else on that?

16 MS. CURRAN: If I may respond. We believe that the
17 existence of a Petition for Cert could not in any way vitiate
18 the strength of the D.C. Circuit Decision, and that that is a
19 valid precedent for this particular case, and we consider that
20 the D.C. Circuit Decision is res judicata as far as the First
21 Circuit goes.

22 MR. JORDAN: Let me just add that with respect to
23 the mandate that it was my impression that it had been issued,
24 but perhaps it had not. But what had happened, I do know, is
25 that the Petition for Rehearing had been denied and there is a

1 pending Motion, as I understand it, for a Stay of Mandate. I
2 do not believe that that Motion has been granted. My impression
3 was that the mandate would issue when the rehearing was denied.
4 That could be incorrect. But at any rate there is a pending
5 Motion.

6 JUDGE HOYT: The only thing I can add to that is
7 that it was my understanding that the mandate had not issued.
8 So, at this point in time, that is all I know. Sir.

9 MR. PERLIS: Let me just add, regardless of what
10 is going on in the Federal Courts, the Commission is planning
11 on doing something in the very near future, so that whatever the
12 Courts determine, this Board is guided by the Commission's policy
13 statement when it comes out, and I think it would be best if we
14 deferred action until the Commission's statement of policy.

15 MR. LESSY: I saw the matter on the Commission's
16 agenda for today. Probably it was scratched.

17 JUDGE PARIS: If we had been home in time for the
18 six o'clock news.

19 MS. CURRAN: May I add one more thing?

20 JUDGE HOYT: Surely.

21 MS. CURRAN: We would request that our Contention
22 be lodged until the Commission acts upon the D.C. Circuit Decision
23 and possibly the affects of the majority of the Commission.

24 JUDGE HOYT: It is on the agenda of the Contentions
25 to be considered by this Board. Anything else for this evening?

1 If not, let us adjourn for the moment and we are
2 off the record at this point.

3 (Whereupon the hearing adjourned at 6:55 p.m.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

Atomic Safety and Licensing Board

in the matter of: Seabrook Station Units I & II of Public Service co.
of New Hampshire

Date of Proceeding: July 15, 1982

Docket Number: 443-01 and 444-01

Place of Proceeding: Portsmouth, New Hampshire

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

Janet M. Hills

Official Reporter (Typed)

Janet M. Hills

Official Reporter (Signature)