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

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In the Matter of:	:
	:
ARMED FORCES RADIOBIOLOGY	:
RESEARCH INSTITUTE	:
	Docket Nos.
	:
TRIGA-Type Research Reactor	: 50-170
	:
Cobalt-60 Storage Facility	: 30-6931
	:
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7735 Old Georgetown Road
Room 6110
Bethesda, Maryland
Friday, October 15, 1982

The hearing in the above-entitled matter
convened, pursuant to notice, at 10:00 a.m.

BEFORE:

- HELEN F. HOYT, Chairman
Administrative Judge
- ERNEST HILL, Member
Administrative Judge
- DAVID R. SCHINK, Member
Administrative Judge

1 APPEARANCES:

2 On behalf of Applicant:

3 DAVID RICKARD, Esq.
4 Defense Nuclear Agency5 MAJOR RONALD SMOKER
6 Armed Forces Radiobiology Institute

7 On behalf of the Regulatory Staff:

8 RICHARD G. BACHMANN, Esq.
9 ROBERT CARTER
10 HENRY J. MCGURREN
11 Washington, D.C.12 On behalf of Intervenor, Citizens for
13 Nuclear Reactor Safety, Inc.14 ELIZABETH ENTWISLE, Esq.
15 237 Hunt Road
16 Pittsburgh, Pennsylvania 1521517 DR. WILLIAM LANKFORD
18 George Mason University19 On behalf of Intervenor, Institute
20 for Public Representation:21 LAURA MACKLIN, Esq.
22 600 New Jersey Avenue, N.W.
23 Washington, D.C. 20001
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C O N T E N T S

WITNESSES

(None)

E X H I B I T S

<u>NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>BOUND IN TRANSCRIPT</u>
Counsel's Exhibit A	733		733

P R O C E E D I N G S

1 JUDGE HOYT: The hearing will come to order.

2 Let the record reflect that on this 15th day
3 of October, 1982, the prehearing conference called by
4 the order of this Board of October 1, 1982, has been
5 convened in the matter of the Armed Forces Radiobiology
6 Research Institute, TRIGA-Type research reactor, Docket
7 No. 50-170, and cobalt-60 storage facility, Docket No.
8 30-6931.
9

10 At this time the Board wishes to introduce
11 itself to the participants in this case.

12 At this time we will have that light bouncing
13 off the wall right now up, either up or off.

14 CAMERAMAN: I can't make pictures with it off,
15 and I can't make pictures with it bouncing. I need a
16 certain light level.

17 JUDGE HOYT: Sir, that is your problem.

18 The Board wishes to introduce itself to you
19 this morning. I have replaced the previous Chairman of
20 this Board, and my name is Judge Helen F. Hoyt. Judge
21 Hill to my immediate left and Judge Schink to my
22 immediate right have been members of the Board since it
23 was originally constituted. I think you have all have
24 received orders indicating my replacement. If you have
25 not, one can be made available to you.

1 At this time I would like to take appearances,
2 and also indicate to you that a notice of appearance has
3 been filed with the Board as of this morning for Henry
4 J. -- and I'll spell the last name -- M-c-G-u-r-r-e-n.
5 Let's take the appearances first of the Applicant in
6 this case.

7 MR. RICKARD: My name is David Rickard. I am
8 associated with the Defense Nuclear Agency, which is the
9 parent organization of the Armed Forces Radiobiology
10 Research Institute.

11 To my right, to provide me what technical
12 assistance I would possibly need, is Major Ronald
13 Smoker, who is at the Armed Forces Radiobiology
14 Institute.

15 JUDGE HOYT: Thank you.

16 To the Intervenor.

17 MS. ENTWISLE: My name is Elizabeth Entwisle
18 and I am counsel for the Intervenor in this case, the
19 Citizens for Nuclear Reactor Safety, Incorporated.

20 JUDGE HOYT: Would you identify your
21 colleagues with you at your table, please, counsel?

22 MS. ENTWISLE: Yes. To my left is Ms. Laura
23 Macklin.

24 MS. MACKLIN: Good morning.

25 JUDGE HOYT: Good morning.

1 MS. ENTWISLE: She's co-counsel for
2 Intervenor, and she is here on behalf of the Institute
3 for Public Representation.

4 MR. MACKLIN: That's correct. We are joining
5 in representing the Intervenor.

6 JUDGE HOYT: Thank you. Have you both filed
7 notices of appearances?

8 MR. MACKLIN: I believe so. I believe there
9 may be some question with respect to whether or not I
10 have entered an appearance formally in the reactor
11 proceeding. I have done so in the cobalt proceeding.
12 And if there is any question, I will go ahead and do
13 that. I have been signing the pleadings throughout the
14 year.

15 JUDGE HOYT: You were intervenors in both
16 dockets? Is that what I am to understand?

17 MS. MACKLIN: That's correct.

18 MS. ENTWISLE: To my right is Dr. William
19 Lankford.

20 JUDGE HOYT: "Linford"?

21 MS. ENTWISLE: Lankford.

22 MR. LANKFORD: L-a-n-k-f-o-r-d.

23 JUDGE HOYT: Thank you, sir.

24 MS. ENTWISLE: At George Mason University in
25 the physics department. Do you want to give your title

1 there?

2 MR. LANKFORD: I'm a professor of physics at
3 George Mason.

4 JUDGE HOYT: Is that nuclear physics, sir? Or
5 just physics in the general sense?

6 MR. LANKFORD: The department is a general
7 department, but my own background is nuclear physics.

8 JUDGE HOYT: Fine. All right, sir, for the
9 Staff.

10 MR. BACHMANN: For the Staff, my name is
11 Richard G. Bachmann. I've already filed a notice of
12 appearance in both of these proceedings.

13 To my immediate right is Mr. Robert Carter.
14 He is the project manager for the Staff, the technical
15 end of our review. And to my second right is Mr.
16 McGurren, whose notice of appearance you have already
17 stated.

18 JUDGE HOYT: Thank you.

19 Are there any preliminary matters before we
20 open up this morning that anyone may wish to enter at
21 this time.

22 (No response.)

23 JUDGE HOYT: Very well. I would think that I
24 may very well strike a sympathetic chord with the
25 various attorneys in this case at least. Having come

1 into the case and having Dr. Hill out in California and
2 Dr. Schink in Texas, somehow the Bell Telephone did not
3 seem sufficient to get me caught up in the case and
4 really to let us determine where we were.

5 I would be less than honest to say to you that
6 I am so thoroughly briefed in this case and so
7 thoroughly read up on the files in this case that I
8 would not wish to have the benefit of your counsel here
9 this morning.

10 Dr. Schink kindly agreed to come into
11 Washington from his very heavy schedule there at Texas
12 A&M, although he will not miss the Baylor game
13 tomorrow.

14 (Laughter.)

15 JUDGE HOYT: The fact that Dr. Hill was here
16 has afforded us this opportunity to try to meet with you
17 and determine if we can move this docket in the AFRRI
18 case, which is the one I'd like to discuss with you
19 first -- I'm sorry, the TRIGA case, the TRIGA-Type
20 research reactor, Docket 50-170, off of what appears to
21 me as dead center. And let's find out why we can't move
22 that one into a hearing posture, and find out what you
23 folks want to do with it.

24 That is just, in very simple lay terms, why we
25 have asked you to come here this morning and meet with

1 us and determine what we can do in relation to making
2 some forward progress on this case. I am not satisfied
3 with taking pleadings: I posed the question and it
4 wasn't answered, and I've answered the question and
5 that's all the information I have. We're just not
6 getting anywhere with filing that type of pleadings, and
7 I want to get some movement one way or the other.

8 I would like to start off with the Applicant,
9 the Licensees, whose interrogatories seem to have posed
10 all sorts of problems, and see if we can get some
11 resolution of that. And I don't mean resolution
12 tomorrow; I mean today.

13 I will ask counsel for the Licensee if you
14 have any thoughts or any guidance you want to put
15 forward to the assemblage and see if we can determine
16 what we can do with these interrogatories and what
17 amounts to a feuding situation between the parties.

18 MR. RICKARD: We share your fundamental
19 concern, Your Honor, with the idea that in October of
20 1980 we filed the application; in October of 1982 we
21 don't seem to be very far advanced into determining
22 whether or not our license will be renewed.

23 As to the interrogatories, we have felt that
24 the manner in which we approach the interrogatories, I
25 think is pretty apparent from them, is to take the

1 contentions and say --

2 JUDGE HOYT: Let me stop you right there,
3 counselor. It's not pretty apparent to me, and possibly
4 to my colleagues here.

5 MR. RICKARD: Okay, that's fair enough. Let
6 me explain.

7 JUDGE HOYT: Please.

8 MR. RICKARD: We began with the contentions
9 that had been admitted back in May of '81, and we
10 framed, and in fact included the contention in the
11 interrogatory and framed interrogatories that, not
12 exclusively but I think in large measure, can be
13 described as: What do you contend would happen? What
14 is your contention?

15 And to a degree we have gotten responses to
16 those interrogatories. To a degree, we have learned
17 from the Citizens group what it is that they believe
18 might occur, what they postulate might occur.

19 To some degree, however, we have not had a
20 response that gives us any inkling at all, any more
21 inkling now than we had before, as to what it was or
22 what it is that might happen in a scenario that they
23 postulate.

24 JUDGE HOYT: Let me stop you there and ask you
25 this, then. Can you pinpoint wherein the interrogatory

1 that you have propounded is deficient? And can you tell
2 us precisely where it is deficient? You have spoken in
3 generalities, and I think we're down now to the "put up
4 or shut up" situation.

5 MR. RICKARD: Let's take a look at
6 interrogatories 12 through 22, for example.

7 JUDGE HOYT: All right, let's look at those
8 interrogatories then and follow along with you wherein
9 you find those deficiencies.

10 I want to be sure that you folks for the
11 Intervenors understand here that you're going to get a
12 full crack at all these arguments.

13 MR. MACKLIN: Yes, Your Honor.

14 JUDGE HOYT: I'm not going to short-change
15 anyone, I assure you.

16 Now let's look at the interrogatories and
17 let's point out those pages. I think they started on
18 page 2 of the interrogatories filed -- there were 37 and
19 I believe they were filed on 30 September '81, is that
20 correct?

21 MR. RICKARD: Yes, ma'am, that's correct.

22 JUDGE HOYT: All right. Now, on page 2, which
23 is your first one, I think you had no problem. You
24 started out with what number?

25 MR. RICKARD: I began using for an example 12

1 through 22.

2 JUDGE HOYT: I don't want examples. I want
3 pinpointed problems.

4 MR. RICKARD: Okay. Let's begin with number
5 12, then and look at the pinpointed problems.

6 JUDGE HOYT: I'm going to assume that if you
7 start with 12, 1 through 11 have no problems in the
8 responses that you have received.

9 MR. RICKARD: Okay, we have no --
10 (Board conferring.)

11 JUDGE HOYT: I think, according to Dr.
12 Schink's list here, you didn't have any problems with at
13 least the first five or six. 7(b) or (c), and 7(d)
14 interrogatories, your response to that interrogatory was
15 the first one you had a problem with.

16 All right, 7(a). The response to that was
17 deficient.

18 MR. RICKARD: The difficulty with our being as
19 completely prepared as this Board deserves us to be
20 prepared is that we received what are supplemental --
21 yet a second supplemental the day before yesterday. We
22 have not really had an opportunity to take the original
23 answer, the first supplement, the second supplement, put
24 them together and see now, does this all add up. You
25 know, have we gotten to the point that we can reasonably

1 expect to get; is the question answered?

2 That's why we are doing the fumble routine
3 trying to do that now. I'm uncomfortable with that,
4 candidly.

5 Part of the reason I went to interrogatories
6 12 through 22 and said "for example" is that the most
7 recent supplement answers those 10 or 11 interrogatories
8 on one page. The point I was going to try to make as to
9 those interrogatories was that it seems that Dr.
10 Stillman or that the Citizens group perhaps
11 misunderstand the question.

12 The questions in general deal with -- or they
13 take specific incidents that have occurred, have been
14 reported to the NRC. And my understanding of the
15 answers that we have received, which appear basically on
16 one page, is the Citizens group would say to us, how is
17 it that you expect us to know more about this incident
18 than you, the fellows that were sitting there watching
19 it happen, know.

20 And of course the answer to that is, they're
21 right, we certainly don't. What we have tried to say in
22 those interrogatories is: Assume that this incident
23 occurred; how do you make the connection between the
24 occurrence of this incident and a release of radiation
25 to the environment?

1 That is what we are driving at on those kinds
2 of interrogatories for the most part. There are a
3 couple of other questions. We asked one somewhat
4 self-serving question: How is it that you
5 discovered --

6 JUDGE HOYT: Just one?

7 (Laughter.)

8 MR. RICKARD: Well, how is it that you
9 determined -- or how was this malfunction discovered?
10 And of course, we had hoped that they would examine the
11 docket and learn that we had discovered that during a
12 preoperational check prior to running the reactor.

13 But essentially it seems that our point has
14 been, what do you contend? In other words, take these
15 as givens, they happen. There is no dispute that they
16 did happen. How could they -- you know, speculate for
17 me, please, hypothesize. What do you mean when you say,
18 if this happens there will be a release to the
19 environment?

20 MAJOR SMOKER: Could I add to that?

21 MR. RICKARD: Yes. Please do.

22 MAJOR SMOKER: Also, Your Honor, we received
23 their interrogatories and we answered every one of them
24 in a timely manner. We still have not received all the
25 answers to the interrogatories that we have sent them.

1 That sort of leaves us in a very ambiguous position. We
2 don't know what their real complaints are and we can't
3 address these complaints.

4 That's why we went for the -- On the
5 scientists' side, we're very concerned because this is
6 dragging out and it's affecting our operations as far as
7 we're spending so much time on administrative paperwork
8 and we're not getting on to business. This has drug
9 out, as our counsel had said.

10 What we've asked them to do -- in fact, the
11 Court had even ordered them to answer the questions.
12 The last set we asked, I think the numbers were -- we
13 asked 86 questions, we got 58 responses. Now those
14 responses did not answer those 86 questions. Only
15 something like 21 of the responses that they responded
16 to here the other day, we didn't even ask for. They
17 answered questions that they had previously answered.

18 They haven't even followed the Atomic Safety
19 Licensing Board's order to answer the questions.

20 MR. MACKLIN: Your Honor, we would like to be
21 heard at some point.

22 JUDGE HOYT: You're going to get equal time,
23 and you can even run a stopwatch on it if you want to,
24 ma'am. We'll be sure that you get all the time that you
25 need to respond to every allegation or insinuation

1 problem --

2 MAJOR SMOKER: Fact.

3 JUDGE HOYT: -- or word that's spoken.

4 All right, go ahead.

5 MAJOR SMOKER: But in any case --

6 JUDGE HOYT: Let's cut it a little briefer.

7 MAJOR SMOKER: Yes, ma'am. That basically
8 wraps it up right there.

9 JUDGE HOYT: All right.

10 MAJOR SMOKER: We have not received the
11 answers to our interrogatories. That has held up the
12 proceeding, in my opinion.

13 JUDGE HOYT: You're stating, if I understand
14 you correctly, that the Board's order has not been
15 complied with?

16 MAJOR SMOKER: Yes, ma'am.

17 JUDGE HOYT: Can you specifically indicate
18 which ones and where? And take your time. Why don't
19 you just take your time there. Then we'll come back to
20 you later on and find out what you've done with the
21 files, and you can give us a little bit more complete
22 answer than you can now.

23 Anything else from you, sir?

24 MR. RICKARD: No, sir -- no, ma'am.

25 JUDGE HOYT: Now, which one of you ladies

1 wants to shoot first?

2 MR. MACKLIN: I beg your pardon. I'll let Ms.
3 Entwisle proceed.

4 JUDGE HOYT: All right. Fine.

5 MS. ENTWISLE: I'll start, anyway. Our
6 position is that as we sit here today we have responded
7 in substance and in completeness to all of the answers,
8 with the exceptions which I can lay out to you by
9 sub-interrogatory number at this point.

10 JUDGE HOYT: All right, do it.

11 MS. ENTWISLE: 12(a), 12(c), 12(d); 13; 14;
12 15(b) through (d); 16(a), (b), (f); 17.

13 JUDGE HOYT: Am I reading that (f) as in
14 "Frank"?

15 MS. ENTWISLE: That's right.

16 17(c), (d); 18(a), (c), and (d); 19(a), (c)
17 and (f); 20(a), (b) and (d); 21(a) and (e); 22(a), (d)
18 and (e); 29(e).

19 JUDGE HOYT: Now, what you have just read to
20 us is the list of those interrogatories which you have
21 not answered completely?

22 MS. ENTWISLE: Those interrogatories we have
23 answered to the best of our ability, given the
24 information we have received from the licensing
25 documents and from the documents which exist on public

1 file in the public documents room. Those are -- if you
2 look at those numbers, they correspond with the numbers
3 for which we have asked for a protective order from the
4 Board pending issuance of more information from the
5 Licensee from which we can propound substantive
6 answers.

7 JUDGE HOYT: Anything else?

8 MS. ENTWISLE: Excuse me one moment.

9 (Pause.)

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1 MS. ENTWISLE: One further item, Your Honor.
2 That is that we have filed three separate sets of
3 responses to the Licensee's First Set of
4 Interrogatories. It was in the second response that we
5 made the point that we were unable to further respond to
6 those numbers I have just read to you until we have
7 received more information from the Licensee. And what
8 they have most recently received does not bear upon
9 those questions at all.

10 What they have received most recently states
11 in a summary fashion that they are in the possession of
12 the information that we need, but those numbers were
13 responded to item by item in the Second Response to
14 Interrogatories, which was filed back in early August
15 1982. So to say at this point that they have not had
16 time to review simply does not make sense because it was
17 the August 1982 filing where we made specific points as
18 to what kinds of technical information we need on each
19 one of those interrogatories.

20 JUDGE SCHINK: Excuse me. Could you clarify
21 what you mean by the second response? I have a Second
22 Supplemental Response.

23 MS. ENTWISLE: That's the same.

24 JUDGE SCHINK: I received that in October.

25 MS. MACKLIN: I beg your pardon, sir, it was

1 the First Supplemental Response that was filed August 2,
2 1982 that is the Second Response to Interrogatories.

3 MS. ENTWISLE: I'm sorry, I stand corrected.

4 JUDGE HOYT: We should start numbering these
5 things.

6 (Laughter.)

7 JUDGE HOYT: Even my secretary had problems
8 finding them. The first set of interrogatory
9 responses. Then we have the second set --

10 JUDGE SCHINK: The supplementary. That's the
11 second supplemental. She says it's the supplemental.

12 JUDGE HOYT: Yes, and then there is the second
13 supplemental.

14 JUDGE SCHINCK: Which would be the third
15 response.

16 JUDGE HOYT: The third response.

17 MS. MACKLIN: Your Honor, if I might add very
18 briefly to the point Col. Smoker made, with all due
19 respect to the efforts that his staff has been involved
20 in to review the "Second Supplemental Response" which
21 was filed and mailed just last Saturday and therefore, I
22 believe, received in his office, as he stated, the day
23 before yesterday, I believe it's inappropriate for Col.
24 Smoker to take the position that we have not complied
25 with the Board's order in the filing of that response.

1 That response reflects a strong, thorough,
2 good faith effort to comply with this Board's order.
3 And if Col. Smoker and his colleagues are still in the
4 process of reviewing it, I would appreciate it if they
5 would complete their review before making that type of
6 representation to the Board.

7 JUDGE HOYT: Fair enough. Anything else?

8 MS. ENTWISLE: Not at this time.

9 MS. MACKLIN: No, thank you, Your Honor.

10 JUDGE HOYT: Would the Staff like to enter
11 into the foray?

12 MR. BACHMANN: Reluctantly, but we will.

13 JUDGE HOYT: Good.

14 MR. BACHMANN: On three separate occasions
15 during the discovery process, the Staff filed letters
16 with the Board indicating that we felt this was a
17 discovery dispute between the Licensee and the
18 Intervenor. And therefore, we really have no
19 substantive comments to make on the interrogatories and
20 responses thereto.

21 It has always been the Staff's position that
22 we received answers to the interrogatories that we
23 submitted. If that is all they have, that is all they
24 have. If at some later date the Intervenors come out
25 with something they have not responded to, we will

1 strenuously object to introducing any other information
2 they have not yet provided us.

3 Our second point is that as far as the
4 discovery is concerned, the Staff's main object -- and
5 I'm now stating this on the record -- would be
6 identification of either expert witnesses who will
7 present direct testimony or any other individual or
8 individuals who are aiding the Intervenor in preparing
9 their case, whether it be on cross examination or in
10 their direct case. At which point, the Staff would then
11 move the Board to, in some way, effect the depositions
12 of these individuals.

13 And we feel that the paperwork time is over,
14 and it's time to get down to the nitty-gritty to depose
15 the individuals who are either going to be testifying or
16 aiding Intervenor in their cross examination; find out
17 specifically where they stand, what their opinions are,
18 get it on the transcript and then we're ready to go to
19 hearing just as soon as it's completed.

20 JUDGE HOYT: Is it your position, then, that
21 these witnesses should be deposed rather than file
22 written testimony?

23 MR. BACHMANN: No, ma'am. What I am proposing
24 is that prior to the filing of the written testimony for
25 the hearing, that all parties have an opportunity to

1 I propose identified expert witnesses and/or those who will
2 be aiding in the preparation of the respective cases.
3 Once that is completed, we would consider, then,
4 discovery to be closed and at that point, a date to be
5 set for the hearing and the pre-filed written testimony
6 due 15 days prior to the start of hearing. At that
7 point, it would be filed.

8 So essentially, that is the Staff's position
9 insofar as this discovery dispute is concerned.

10 JUDGE HOYT: I wonder if Applicant could give
11 us a list of their expert witnesses within a given
12 period of time, a short period of time?

13 MR. BACHMANN: Excuse me, Judge Hoyt.

14 JUDGE HOYT: Sir?

15 MR. BACHMANN: There was one other point I
16 forgot to make while I was speaking. I left out a
17 step. Once the depositions are over, the Staff would
18 suggest that a time certain be set for any motions for
19 summary disposition. And then, of course, the hearing
20 would follow, a certain number of days subsequent to the
21 Board's ruling on the summary disposition. I'm
22 apologize, I left that step out.

23 (Pause.)

24 JUDGE HOYT: All right. Let's go back to you,
25 sir. Can you get that witness list?

1 MR. RICKARD: Yes, ma'am.

2 JUDGE HOYT: When could you get it?

3 MR. RICKARD: Today, probably. A couple of
4 hours.

5 JUDGE HOYT: All right, do it. Give it to us
6 today and we will put it on the record here today, and
7 then we will memorialize it in a memorandum and order
8 that will come out later. See if you can get it to us
9 by noon.

10 MR. RICKMAN: I was just going to say the
11 gentleman that is going to go do the preparation
12 suggested sometime after lunch. Could maybe we hold the
13 record open until like the end of the business day today
14 to include that?

15 JUDGE HOYT: Well, we have some problems with
16 the travel schedules of our Board members here. The
17 only thing that --

18 JUDGE HILL: I have to leave at 2:00
19 o'clock.

20 JUDGE HOYT: We could meet without him unless
21 there would be some objection from someone here. Dr.
22 Schink and I could meet with you after lunch to do that
23 particular mechanical work.

24 MR. RICKARD: To hand you the paper, if you
25 will.

1 JUDGE HOYT: Yes. I want it in hand today.

2 MR. RICKARD: No problem.

3 (Board conferring.)

4 JUDGE HOYT: We're going to pose that same
5 question to the Intervenors.

6 MS. ENTWISLE: We're not in a position to hand
7 in a witness list today.

8 JUDGE HOYT: When will you be in a position?

9 MS. ENTWISLE: This is the first time I've
10 been posed with that question.

11 JUDGE HOYT: Counselor, I'm going to be as
12 honest and as fair as I can, but this case has been in a
13 never-never land posture for at least a year. And I am
14 not, and I don't believe my colleagues here on this
15 Board are going to be, too favorably inclined to believe
16 that these parties cannot get some names to us, because
17 I think you have been preparing, as able a counsel as I
18 know you are, for a long time. And I would like to know
19 what short period of time you would need to be able to
20 get that witness list to us.

21 MS. ENTWISLE: Excuse me one minute.

22 (Counsel conferring.)

23 (Board conferring.)

24 MR. BACHMANN: Judge Hoyt, may I make a
25 comment?

1 JUDGE HOYT: Sure.

2 MR. BACHMANN: On December 3rd, 1981, the
3 intervenors responded to the NRC staff's first set of
4 interrogatories. Our question simply was who are your
5 people? Who are your experts?

6 Now, Mr. McGurran here is looking for a
7 reference. Under 10 CFR 2.740, which governs discovery,
8 every party is under an obligation to seasonably update
9 responses insofar as those responses identify --

10 JUDGE HOYT: Don't you think that's what we're
11 doing today?

12 MR. BACHMANN: Yes, but the point is they did
13 respond. They gave us a number of people.

14 JUDGE HOYT: That was what date?

15 MR. BACHMANN: December 3, 1981. Now they
16 are, by the regulations, under an obligation that they
17 "shall seasonably update their responses" as regards
18 expert witnesses. Now, I can only assume that these
19 people are still their experts and are still available
20 for deposition and that they are still the only people
21 that will be testifying.

22 JUDGE HOYT: Well, I think that this is
23 obviously, counselor, is an update of that list. I
24 don't have any indication that we received a copy of
25 that.

1 MS. MACKLIN: That has been filed, and I
2 believe it's part of the docket, Your Honor, and I think
3 Mr. Bachmann is correct in stating that it would be
4 appropriate for us to supplement that list in the very
5 near future; i.e., within the next two to three weeks,
6 by letting him know which of the people on that list are
7 currently active and working with us.

8 JUDGE HOYT: This is another list than the one
9 you have?

10 MR. BACHMANN: Judge Hoyt --

11 MS. MACKLIN: No, this is the earlier one.

12 MR. BACHMANN: Judge Hoyt, I take exception to
13 another two or three weeks.

14 JUDGE HOYT: I'll get to that, don't worry.
15 We're not going to take two or three weeks. We're going
16 to do some work this morning.

17 MS. MACKLIN: Your Honor, I don't think
18 there's any secrets about which persons have been
19 working with us in answering the fairly detailed
20 interrogatories.

21 JUDGE HOYT: Then let us have those names.

22 MS. MACKLIN: Dr. Stillman -- I can identify
23 them right here and right now.

24 JUDGE HOYT: Let's do it. Let's have the full
25 names.

1 MS. MACKLIN: Dr. Irving Stillman.

2 JUDGE HOYT: The same gentleman who is here
3 this morning?

4 MS. MACKLIN: No, your Honor.

5 JUDGE HOYT: I'm sorry.

6 MS. MACKLIN: I'll get to Dr. Lankford
7 shortly.

8 MR. BACHMANN: Your Honor, they have refused
9 to allow us --

10 JUDGE HOYT: Let counsel finish.

11 MR. BACHMANN: What I'm saying is, Dr.
12 Stillman --

13 JUDGE HOYT: Counsel, I think I indicated to
14 you that I'd like counsel to finish, if you will,
15 please. You can have a shot later.

16 MR. BACHMANN: Excuse me, your Honor.

17 MS. MACKLIN: Dr. Irving Stillman of New York
18 City is identified in a number of the recent
19 interrogatory answers filed just last Saturday as the
20 responding technical person. Also, Dr. Ernest
21 Sternglass from Philadelphia, the University of
22 Pittsburgh, I beg your pardon, is similarly identified.
23 Dr. Lankford, who is with us here today, has been
24 working with us on an informal basis.

25 JUDGE HOYT: He's not on that list.

1 MS. MACKLIN: No, your Honor. He has just
2 been working with us for the last couple of months on an
3 informal basis in assisting both Ms. Entwisle and I in
4 understanding some of the technical issues in the case
5 and in assisting us in finalizing who we can call upon
6 for this kind of testimony, and in conducting some
7 additional research to make sure that we found the best
8 and most available people.

9 I don't think it would be appropriate for Dr.
10 Lankford, whose substantive work in this proceeding has
11 been limited to answering one sub-interrogatory, 32
12 either (b) or (c), for him to be entered on our witness
13 list or deposed, and we would object.

14 JUDGE HOYT: Why?

15 MS. MACKLIN: Because he is not going to
16 testify as of our current plans at this time in the
17 proceeding. And there's no obligation -- as I
18 understand the regs or the rules of discovery -- that he
19 be deposed at this time when he's assisting us
20 informally. He may be deposed, Your Honor, I might
21 indicate, in that one area on that one subinterrogatory
22 where he has come forward, but we are not otherwise
23 offering him as a witness.

24 I believe that we have a right -- I'll be
25 happy to discuss it in greater detail -- to confer

1 informally with persons other than those who we choose
2 to offer as witnesses across the board, as Dr. Stillman
3 has volunteered to do, and not to allow a group of this
4 kind that informal consultation, which indeed we must
5 assume occurs both among NRC staff and among AFRRRI staff
6 with many different technical people, which would
7 seriously handicap the Citizens Group in their ability
8 to understand and make a presentation in detailed
9 scientific areas of this type.

10 JUDGE HOYT: But you would permit, without any
11 objection, Dr. Lankford to be deposed in the limited
12 area in which he has responded?

13 MS. MACKLIN: That's correct, Your Honor, and
14 I misspoke if I suggested otherwise.

15 JUDGE HOYT: All right. I see no reason why
16 he can't be deposed in that area, however, if counsel
17 for whichever side wishes to have him deposed. Anything
18 else?

19 MS. MACKLIN: No, Your Honor. Thank you.

20 JUDGE HOYT: Okay, sir, go ahead.

21 MR. BACHMANN: The problem I have -- I
22 apologize for interrupting earlier -- is that the
23 intervenors have concealed the whereabouts of Dr.
24 Stillman quite effectively, and we would like to know
25 where he is.

1 JUDGE HOYT: Well, he's been identified here
2 as being at 5480 Wisconsin Avenue, Chevy Chase, Queens
3 College. Oh, no, that's where he graduated; that's his
4 degree.

5 MR. BACHMANN: I have been informed that Dr.
6 Stillman moved to New York City a number of months ago.
7 We have had no update on his address and have no ability
8 to contact him.

9 JUDGE HOYT: Have you tried to get it from
10 them? Have you called over there and asked for it?
11 What have you done to help yourself, sir?

12 MR. BACHMANN: Basically, the Intervenor's have
13 said that they wished -- on paper, I don't have it in
14 front of me at the moment -- that they will not provide
15 the address of Mr. Stillman because of fear of
16 harassment or something.

17 MS. ENTWISLE: Your Honor, may I clarify
18 that? I think that it has been stated -- we have said
19 that we will provide detailed information as to his
20 whereabouts under a protective order. It is under Dr.
21 Stillman's request that we are withholding the
22 information. I am not at liberty, as counsel or as his
23 agent or anybody else's, to reveal his whereabouts when
24 he has not given me his permission. We will have no
25 problem with that if the Board would issue a protective

1 order.

2 JUDGE HOYT: All right. You draft the
3 protective order for us and send it up.

4 JUDGE SCHINCK: You have given us a draft
5 protective order, have you not?

6 JUDGE HOYT: Not with respect to that issue.

7 MS. ENTWISLE: But it was brought up in our
8 first supplemental response; either the first or second
9 response.

10 JUDGE HOYT: Yes, I recall that.

11 MS. ENTWISLE: When they asked for the
12 identity of the witnesses and their residences and so
13 forth.

14 JUDGE HOYT: All right, that solves your
15 problem, Mr. Bachmann. You will get the information
16 under a protective order when the protective order --
17 I'd like to have that in, by the way, counsel, no later
18 than 12:00 noon Monday next; i.e., the 18th of October.

19 MR. BACHMANN: That's perfectly satisfactory.

20 MR. RICKARD: Your Honor, if I may, I'm not
21 sure what this protective order will say, of course,
22 since it's not been drafted, of course.

23 JUDGE HOYT: Well now, counsel, you've seen
24 protective orders before; you can assume it will read
25 pretty much like they usually do. Now, what else do you

1 have in the way of problems?

2 MR. RICKARD: I am concerned that perhaps Mr.
3 Bachmann or the NRC staff will receive the information,
4 and we, too, would be interested in deposing Jr.
5 Stillman.

6 JUDGE HOYT: Well, I would assume that the
7 protective order would cover all adversary parties so
8 the Intervenor.

9 MS. ENTWISLE: Your Honor, I have a question.
10 Since I work in Pittsburgh and I have a 9:00 to 5:00,
11 and I am on the job on Monday morning, whether a mailing
12 by noon on Monday would be sufficient, or whether you
13 anticipate having it in your office on Monday?

14 JUDGE HOYT: Well, I'd like to have it in my
15 office on Monday. Can't you do it while you're here
16 today?

17 MS. ENTWISLE: We'll certainly try.

18 JUDGE HOYT: And then leave it if it isn't
19 absolutely neat, I'm not picky.

20 MS. ENTWISLE: If you're not concerned about
21 that, then I'm not.

22 JUDGE HOYT: Just so long as it's legally
23 sufficient and it has all the good legal phraseology and
24 dates and numbers on it, I think we can take it. I'm
25 not picky about that. We'll get it out and have it

1 served on Monday, if possible. Which probably means it
2 will be served on Tuesday, you understand, but we'll
3 give it a shot anyway on Monday.

4 Now, where are we?

5 MR. BACHMANN: I think we're back to the
6 Licensee.

7 JUDGE HOYT: Yes. We've got the business of
8 your list coming in today -- the witness list.

9 (Board conferring.)

10 Now, let's see.

11 MR. BACHMANN: Judge Hoyt, may I make one
12 statement on behalf of the Staff?

13 JUDGE HOYT: Sure, go ahead.

14 MR. BACHMANN: On October 30, 1981, the Staff
15 submitted its response to the intevenor's
16 interrogatories. On page 10 of that response we had our
17 witness list. Attached to it was the professional
18 qualifications of each witness. I have just been
19 informed by the project manager of one change to that
20 list of potential witnesses, in that Mr. Blackstock,
21 Albert W. Blackstock, will be replaced by Jerry E.
22 Koelling -- and I spell that K-o-e-l-l-i-n-g. And we'll
23 get the professional qualifications out to the parties.

24 Other than that, our witness list is as we
25 submitted it back in October of 1981.

1 JUDGE HOYT: What was the change? The
2 original person?

3 MR. BACHMANN: We eliminated Albert W.
4 Blackstock and are substituting Koelling,
5 K-o-e-l-l-i-n-g.

6 JUDGE HOYT: Do all parties have that change
7 indicated? And it's on this record now.

8 Now, let's see, we were back to the Licensee.
9 You had a comment, I believe, or did you? Perhaps I
10 misread you.

11 MR. RICKARD: You satisfied my concern.

12 (Board conferring.)

13 JUDGE HOYT: I believe you indicated your
14 dispute was with the "for example," we started out and I
15 asked you to go back. Well, apparently it will be
16 easier to do it your way and take up the disputes that
17 you had in the interrogatories 12 through 22 as an
18 example of those 37 problem areas that we have, since
19 each interrogatory I assume is a problem area.

20 MR. RICKARD: The numbers that we have perhaps
21 used are misleading because the numbers have grown.
22 There are 37 interrogatories and we have gotten down to
23 counting pieces of interrogatories when we use numbers
24 instead of whole interrogatories. So there are, what,
25 37 pieces?

1 MR. SMOKER: A total of 120, about 120-some
2 questions.

3 MR. RICKARD: There were 120 pieces.

4 JUDGE HOYT: Those are parts of the 37 whole.

5 MR. RICKARD: Correct.

6 JUDGE HOYT: Now in the area of the 12 to 22,
7 you have heard counsel give us a list of those that they
8 have given you as answers as complete as they can give.
9 We can put out all the orders on motions to compel and
10 grant them, but we're not going to get anymore answers
11 if that's all they've got. So does that satisfy you,
12 after hearing it this morning so far as their 12 to 22?

13 MR. RICKARD: If they're on the record as
14 saying that they've given us -- and they are, as I
15 understand it, anyway -- as having given us everything
16 they have, there's no useful purpose to be served by
17 continuing to argue discovery motions, as far as I'm
18 concerned.

19 JUDGE HOYT: Exactly. That's my point. So I
20 want to be sure that I have you on record here this
21 morning --

22 MR. RICKARD: You do.

23 JUDGE HOYT: -- that you have no additional
24 problem areas so far as a list of interrogatories that
25 counsel for the Intervenor read this morning 12(a) --

1 and I'm going to go through these again -- 12(a), (c),
2 (d); 13; 14; 15(b) through (d); 16(a), (b) and (f);
3 17(c) and (d); 18(a) and (c) and (d) -- that should be
4 (a) through (c) and (d).

5 MS. ENTWISLE: It's just (a), (c) and (d).

6 JUDGE HOYT: (a), (c), and (d). I didn't get
7 the coma in there. 19(a), (c) and (f); 20(a), (b) and
8 (d); 21 (a) and (e); 22(a), (d) and (e); and 29(e).

9 MR. RICKARD: Could I have a moment?

10 (Pause.)

11 (Board conferring.)

12 JUDGE SCHINCK: I would like to make sure that
13 we all understand what that list is, because as the
14 discussion developed, my first impression of what you
15 were saying is that you had not answered these, and then
16 subsequently you said you had answered these to the best
17 of your ability, and perhaps both statements are true.
18 But could you clarify the situation for me?

19 MS. ENTWISLE: We feel we have answered them
20 to the best of our ability with the information we have
21 received in licensing documents and on the public record.

22 MR. SMOKLER: Could I make a comment in
23 reference to that? Some of the questions were addressed
24 to them -- for example, they cited a malfunction. We
25 asked them specifically: What can occur if this

1 malfunctions? What effect would this have on the
2 environment, the operation of the facility itself if
3 this malfunction occurred? They never answered that
4 question. They gave us an answer but diverted away from
5 the question.

6 And even in our motion to the Board to have
7 them compel, we stated that; we made that very clear,
8 that they averted the specifics. We wanted an answer.
9 Whatever they provide us is fine, as long as it is
10 pertinent to the question. But if I say what time is it
11 and you tell me 72 degrees it doesn't help the
12 situation. That's the type of answer and response that
13 we have received. So I don't know what additional
14 information -- if I said if I should open that door,
15 what effect would it have; it will let the air come in.
16 Fine, that's all we're asking them. Anything that they
17 want to say.

18 But to give us some indication of where
19 they're going so we can pursue from a scientific
20 standpoint what they are trying to postulate. We can't
21 read their minds and we can't understand them from their
22 contentions, because based on our educations and our
23 research in the nuclear industry to date, they're
24 unfeasible. That's our problem, your Honor.

25 JUDGE HOYT: Major, you are not a lawyer, are

1 you?

2 MR. SMOKER: No, ma'am.

3 JUDGE HOYT: I think that is perhaps the
4 answer to your question, truly. You have a lawyer
5 posing a question and you've got another lawyer
6 answering it.

7 (Laughter.)

8 JUDGE HOYT: I might be sympathetic to you,
9 but that's about all I can do to help you.

10 MR. BACHMANN: Judge Hoyt?

11 JUDGE HOYT: Yes, Mr. Bachmann.

12 MR. BACHMANN: I would like to comment on what
13 Judge Schink said before; that is, we should put on the
14 record the fact that the Intervenors have answered all
15 interrogatories with all the information they have.
16 What I'm looking at is that they are not waiting for a
17 protective order to give some sort of information, other
18 than the identity and addresses of witnesses.
19 Everything they have stated --

20 JUDGE HOYT: Of a witness.

21 MR. BACHMANN: Of a witness; that's right.

22 JUDGE HOYT: There's only one and that's the
23 only one that the protective order is going to cover,
24 that one witness, is my understanding of what we were
25 asked to do.

1 MS. MACKLIN: That's right, Dr. Stillman.

2 MR. BACHMANN: I would like to make it very
3 clear on the record that there is no other information
4 being withheld subject to some other protective order,
5 since we do have this motion still outstanding, and that
6 everything they have put into the record as responses to
7 interrogatories is the full and complete information
8 they have, and that we won't be surprised later on that
9 they've got something else they haven't told us.

10 The staff would be perfectly happy if they
11 were to make that statement on the record, that this is
12 all we've got; we've given it all to you. Let's just
13 make that very clear.

14 JUDGE HOYT: Well, I thought that's what we
15 had on the record. If I have misunderstood it, this is
16 the time for counsel to straighten me out.

17 MS. MACKLIN: I'm not sure we fully understand
18 Mr. Bachmann's question. But insofar --

19 JUDGE HOYT: I do. What problems do you have
20 with it?

21 MS. MACKLIN: Insofar as Mr. Bachmann
22 contemplates depositions to further supplement what is
23 on record now, we would reserve the right which is given
24 us under the regulations he cited a little while ago to
25 further supplement our interrogatory answers in light of

1 any information which should come to light during the
2 course of those depositions, or that should come to
3 light in the course of accidents at other TRIGA
4 facilities around the country, for example, about which
5 information is periodically made available in the public
6 document room.

7 With those two exceptions, Dr. Stillman and
8 Dr. Sternglass have fully answered to the best of their
9 ability all of the interrogatories that have been posed
10 so far, based on the information available as of this
11 date. We have no problem stating that on the record.

12 MR. BACHMANN: That is satisfactory to the
13 Staff.

14 MS. MACKLIN: We're not holding back anything,
15 if that's the question. I can put it in just that many
16 words.

17 JUDGE HOYT: In view of the information you
18 now have presently available to you.

19 MS. MACKLIN: That is correct.

20 JUDGE HOYT: And that's the caveat to that.
21 Any problem with that, Mr. Bachmann?

22 MR. BACHMANN: No.

23 JUDGE HOYT: Dr. Schink?

24 JUDGE SCHINCK: Now, we're talking about a
25 selected list of interrogatories. What about the rest

1 of the questions that were covered in the motion to
2 comple that are not on this list?

3 MS. ENTWISLE: Who are you addressing that
4 question to? As I stated earlier, we feel that as we
5 sit here today, the Intervenor has responded fully and
6 adequately to all those questions with the exception of
7 the list I read.

8 MS. MACKLIN: And that's based on the answers
9 that were filed on October 9th and served, that Colonel
10 Smoker referred to earlier.

11 JUDGE SCHINCK: So that if we have further
12 dispute on those answers, it remains to be treated
13 because the Applicant hasn't had a chance to study your
14 most recent filing?

15 MS. MACKLIN: As I understand their position,
16 yes.

17 MS. ENTWISLE: Could I interject something
18 right now? Dr. Lankford has informed us that he must
19 leave at 11:30.

20 DR. LANKFORD: I can stay until 12:00.

21 MS. ENTWISLE: So if there are any highly
22 technical questions to address to us, I would ask just
23 as a matter of common sense to please do it before 12:00
24 o'clock in order to get a substantive answer.

25 JUDGE HOYT: Did you have any?

1 JUDGE SCHINCK: I don't think we're to that
2 point in this case.

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1 (Board conferring.)

2 JUDGE HOYT: We want to keep on with the AFRI
3 reactor problem, the TRIGA reactor, but we also have the
4 cobalt-60 docket, and Judge Hill was concerned that
5 there might be some technical question there.

6 MS. MACKLIN: May we confer for a moment,
7 please?

8 JUDGE HOYT: Let me tell you why. There isn't
9 a contention in that case, and we are concerned about
10 whether or not you are, in a position this morning to
11 give us some indication of what contention, if any, you
12 are going to have in that.

13 MS. MACKLIN: Let me speak to that.
14 Anticipating that we might prevail on the intervention
15 questions this past summer, we filed two FOIA requests,
16 one with the NRC and one with the DNA, the parent agency
17 to AFRI, concerning the materials on the cobalt
18 facility. We received a fairly prompt response from the
19 NRC. They had to go back and retrieve some files that
20 were in storage. That material is in their public
21 document room, and we have begun to review it at the NRC.

22 We received from DNA a refusal to grant our
23 fee waiver and a refusal to make the information
24 publicly available and had to appeal that decision
25 earlier in the summer. I just received yesterday from

1 Lieutenant Harry Griffith at DNA a response to our
2 appeal letter stating that the material will now be
3 available at AFRI between the hours of 9:00 and 4:00,
4 and we are going to proceed out there and review it.
5 They still have not waived our copying costs, but we do
6 not believe that will be an obstacle if we have a public
7 place we can review the material.

8 JUDGE HOYT: Couldn't you get that cost waived
9 for them?

10 MR. RICHARD: No, ma'am. It is Lieutenant
11 General Griffith.

12 MS. MACKLIN: I beg your pardon.

13 (Laughter.)

14 JUDGE HOYT: You'll never get it.

15 (Laughter.)

16 MS. MACKLIN: Well, the long and short of what
17 I am saying, Your Honor, is that we are now in a
18 position to begin reviewing promptly materials from both
19 agencies with respect to the cobalt facility and would
20 hope to be preparing those contentions in the next
21 couple of months.

22 JUDGE HOYT: I think I will speak for the
23 Board, and you all can object to this if you wish to.
24 However, I would urge counsel to see that that is waived.

25 MR. RICHARD: I could articulate a little more

1 of the fee situation. I think you have one side of the
2 story. A great deal of the documents, or a great many
3 of the documents that were obviously subject to a
4 Freedom of Information request that says give me
5 everything you have on cobalt-60 are presently and have
6 historically been on file with the NRC. The NRC's
7 response, by dredging that material out of Silver Spring
8 and other places and putting it in the public document
9 room essentially duplicates what AFRRI has.

10 The balance of the copying costs are
11 videotapes, and that is obviously an expensive process.
12 And I don't think after they have viewed the videotapes
13 that there will be any real problem with obtaining the
14 copy of the videotape showing a robot going into the
15 room to unstick an elevator. So I am not sure we have a
16 problem with fees.

17 JUDGE HOYT: The only thing I wanted to say is
18 that I would like to see that that fee is waived and
19 that the thing be moved over into an expeditious posture
20 without all of this waiving of inconsequential fee costs.

21 MR. RICHARD: The total fee cost involved was
22 around \$900, which we don't consider inconsequential.

23 JUDGE HOYT: Well, I do not think that should
24 be allowed to interfere with it. Move it into it, if
25 you can, or else your case is going to be delayed. Now,

1 we are trying to move as a Licensing Board, your case
2 into the hearing posture. You are the Applicant. If
3 you want to help yourself --

4 MR. RICKARD: We believe we have.

5 JUDGE HOYT: -- I think I would speak to the
6 good General and get him moving.

7 MS. MACKLIN: Your Honor, we are perfectly
8 willing to proceed, as I indicated, with an initial
9 review of that material before we request any particular
10 copies, and we will try to accomplish as much on our
11 review as possible and minimize the question with
12 respect to copies, and give you prompt notice if it
13 becomes a problem.

14 JUDGE HOYT: So that is the only question we
15 had on cobalt-60 at this point. Just a moment.

16 (The Board conferred.)

17 JUDGE HOYT: We are not going with the 2 or 3
18 months. There is a concern by the Board that you spoke
19 of 2 or 3 months, and I don't believe we are going to go
20 with any 2 or 3 months. When we get to the cobalt a
21 little bit later, I would like you to be prepared to
22 give us a better time frame than that.

23 MS. MACKLIN: I beg your pardon, Your Honor.
24 Our informal discussions with the NRC Staff had caused
25 us, at their suggestion, to suggest that time frame. We

1 had not given it thorough independent consideration
2 ourselves.

3 JUDGE HOYT: Well, the NRC does not speak for
4 the Board. And the Board is saying we want a better
5 time frame.

6 MS. MACKLIN: We will be happy to try to
7 respond to that.

8 JUDGE HOYT: We are not being unpleasant to
9 you, sir, we are simply being firm.

10 All right, that disposes of that for the
11 moment. Let's get back to the AFRRI. Now, we want,
12 after we take a brief recess for morning coffee here, we
13 want to see if we can't get a date certain for the
14 depositions to be completed, all witnesses to be
15 deposed, and also I think I will ask the Staff
16 particularly, remembering that we have that Beville
17 report problem in those time frames that the Beville
18 report people established for us?

19 MR. BACHMANN: I don't think it would be --

20 JUDGE HOYT: Well, let me just finish by
21 saying I want you to use those time frames in order to
22 give us some indications of when we can move the dates
23 to a firm posture for the depositions, and then for the
24 summary judgment phase, and then when we can anticipate
25 going to hearing.

1 MR. BACHMANN: Let me ask one question, Judge
2 Hoyt.

3 JUDGE HOYT: All right.

4 MR. BACHMANN: Can I assume that we are
5 splitting off the cobalt proceeding from the reactor, or
6 should we try to mesh them together?

7 JUDGE HOYT: No. We are trying to mesh them
8 together. I am not seeing too much movement on
9 cobalt-60 at this time. We may have to do it, but the
10 mandate we got from the Appeal Board was, as I
11 understood it, to take those two cases together.

12 JUDGE SCHINK: Let's go off the record.

13 (Board conferring.)

14 JUDGE HOYT: Let me make the parties aware of
15 what the Board was discussing informally here at the
16 bench; that is, that we may not be able to mesh the two
17 cases together so far as hearing schedules which may or
18 may not have been the mandate of the Appeal Board.

19 But because we are somewhat ahead on the AFRRI
20 TRIGA case than we are on the cobalt-60, to the extent
21 we will be the same Board that will hear both cases or
22 both dockets, we may be hearing one phase of one case at
23 one time and one phase in another of the cobalt at a
24 much later time, because we do not want to hold the
25 deposition disputes and interrogatory disputes to get in

1 a position of delaying us any further on that
2 TRIGA-Type.

3 And I frankly think this Board has delayed on
4 the TRIGA case with the assumption that we would not get
5 into the cobalt or we would get into it, whichever way
6 the Appeal Board went on that, and we would be able to
7 take them together. But that is not going to be the
8 case. We are going to be substantially advanced in our
9 disposition of the TRIGA case than we are on the
10 cobalt-60 storage case. I think that is about the sum
11 and substance of our conference on that one.

12 All right, now, could you get us that time
13 frame list sometime this morning during the same period
14 that the list of the Applicant will be given to us?

15 MR. BACHMANN: I would suggest, you indicated
16 before we would have a brief recess, I think I can talk
17 it over with the Staff and perhaps give it to you orally
18 after the recess.

19 JUDGE HOYT: That's good enough.

20 MR. BACHMANN: We will put it on the record,
21 and then, of course, the other parties would have an
22 opportunity to comment on what we came up with.

23 JUDGE HOYT: Exactly. That would be great.
24 We would urge that.

25 Let's take about a 5-minute coffee break.

(Brief recess.)

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1 JUDGE HOYT: The hearing will come to order.
2 Let the record reflect that all the parties to the
3 hearing who were present when the hearing recessed are
4 again present in the hearing room, with the exception of
5 Dr. Lankford, who has been excused during the recess.

6 Who wants to speak first?

7 MR. BACHMANN: I would like to, Judge Hoyt.

8 JUDGE HOYT: Please.

9 MR. BACHMANN: We have come to a tentative
10 schedule, subject to certain modifications. I mention
11 that there are still a number of other items that are
12 pending before the Board. I think Ms. Entwisle or Ms.
13 Macklin can address those.

14 We have tentatively agreed to attempt to hold
15 the depositions of the intervenor's witnesses in the
16 first or second week of December subject to their
17 availability and our ability to get a court reporter to
18 take a transcript.

19 JUDGE HOYT: Deposition of the intervenor's
20 witness during the period of -- ?

21 MR. BACHMANN: The first two weeks of December.

22 JUDGE HOYT: December 1 through 15, 1982.

23 MR. BACHMANN: That is, of course, subject to
24 the availability of intervenor's witnesses, and they've
25 indicated they will get back to us as soon as possible

1 and let us know.

2 Based on that, and that, of course, we would
3 consider would close discovery subject to certain other
4 things we have pending here. We also suggested --

5 JUDGE HOYT: What are you doing? Setting the
6 close of discovery on the 30th of December? Is that the
7 idea?

8 MR. BACHMANN: We would close it at the end of
9 the depositions.

10 JUDGE HOYT: I'm sorry, the 15th. I said the
11 30th and I should have said the 15th.

12 MR. BACHMANN: We would also suggest that with
13 the exception of the emergency planning contention --
14 and that is something I want to address after we get
15 through this -- that motions for summary disposition be
16 filed at the end of January. We were talking about
17 January 26th.

18 JUDGE HOYT: Okay. What are you titling that?

19 MR. BACHMANN: These would be motions for
20 summary disposition.

21 JUDGE HOYT: And you are suggesting January
22 26, 1983 for that?

23 MR. BACHMANN: I believe that is the last
24 Friday in January.

25 JUDGE HOYT: Let's make it the 29th instead.

1 That's a Monday, and if something were to straggle in
2 over the weekend I would like to have the parties given
3 that benefit. So we will make that January 29 instead
4 of 26th.

5 MR. RICKARD: I believe in 1983.

6 JUDGE HOYT: Let's make it January 31, 1983.
7 That gives you plenty of time to get all your motions
8 for summary disposition in by that time.

9 MR. BACHMANN: Then any subsequent scheduling
10 would be based upon the regulations. My co-counsel here
11 is showing me the answers supporting or opposing the
12 motion, according to 10 CFR 27.9 provides for 20 days.

13 JUDGE HILL: How many?

14 MR. BACHMANN: Twenty. And, of course,
15 assuming it is filed by mail, there's an extra five days
16 added onto that, so if anyone has a calendar perhaps we
17 can get a date certain.

18 MS. MACKLIN: That would be the 25th of
19 February. That's a Friday.

20 JUDGE HILL: That's calendar days? Full
21 calendar days?

22 MR. BACHMANN: That's full calendar days; I'm
23 informed by Ms. Macklin that that would be the 25th of
24 February, which is a Friday.

25 MS. MACKLIN: That's 20, if you add the five

1 for mailing that's 25. If you take only the 20, then
2 it's the 20th, which is a Sunday.

3 MR. BACHMANN: We assume that will be filed by
4 mail, so we assume that's the 25th.

5 JUDGE HOYT: Yes, by the 25th.

6 MR. RICKARD: Let me see if I understand the
7 arithmetic here, please. I have the 26th of January --

8 JUDGE HOYT: With all that high priced talent
9 you have here?

10 MR. RICKARD: Well, that's why I'm doing the
11 arithmetic. I leave the mathematics to them.

12 (Laughter.)

13 MR. BACHMANN: January 31st.

14 MR. RICKARD: Okay. The 31st day plus 25.

15 JUDGE HOYT: That makes it February the 25th.
16 I would think even the members of the legal profession
17 could come up with that one.

18 MR. RICKARD: I started it the wrong day.

19 (Laughter.)

20 MR. BACHMANN: The next step after that, of
21 course, would be the Board ruling on the motion, and
22 that is certainly something we can set up on our own.

23 MR. MCGURREN: Could I add something to that?

24 JUDGE HOYT: Surely.

25 MR. MCGURREN: My name is J. McGurren. I note

1 in here on Section 2.749 there's additional provision
2 made for what is called supplemental responses that may
3 be filed by the party opposing the motion within 10 days
4 after service of the answers. So in addition to the
5 date of February 25 the rules provide for an answer; 10
6 days for an answer of opposing parties. That is in the
7 same section, 2.749.

8 MR. BACHMANN: That applies to new facts and
9 arguments filed in support.

10 MR. MCGURREN: I think you would have to make
11 provision for that, also.

12 MR. BACHMANN: Which would be 10 days plus 5
13 for the mailing, so that would put us 15 days after the
14 31st.

15 MAJOR SMOKER: That would be the 15th --

16 MS. MACKLIN: February only has --

17 MAJOR SMOKER: Oh, after the 25th.

18 MR. BACHMANN: Plus five for mailing, which
19 brings us sometime in early March.

20 JUDGE HILL: The 7th.

21 JUDGE HOYT: That brings us to March 7. The
22 Board ruling should be very expeditious after that. We
23 will be right on top of this. We'll probably come up
24 with it in 30 days.

25 MR. BACHMANN: That is about as far as we were

1 able to make any determinations for dates.

2 JUDGE HOYT: Assuming we make it within 30
3 days, that is April 7th, roughly speaking. Then we
4 should be able to expect to go to hearing sometime about
5 mid-April as a good target date. That is giving the
6 Board 30 days to get its order out. And then --

7 MR. BACHMANN: Judge Hoyt, the regulations
8 provide for testimony being filed 15 days prior to the
9 hearing date. I would assume that we would need some
10 time after getting the Board's ruling to generate
11 testimony.

12 JUDGE HOYT: Assuming we came up with an April
13 7th ruling, --

14 MR. BACHMANN: Then we would need some time to
15 file testimony.

16 JUDGE HOYT: That would give you roughly 15
17 days after that to file? Is that what you want?

18 MR. BACHMANN: At least.

MR. MCGURREN: I'm just saying, Judge, by my
experience with proceedings in the past, if we don't
know until April 7th exactly what issues we're going to
be going to hearing on, --

JUDGE HOYT: You're not going to have your
24 testimony prepared.

25 MR. MCGURREN: I think it would be difficult

1 in 15 days to write the testimony. That's the only
2 point I want to make.

3 JUDGE HOYT: I think that is shooting a little
4 bit too fast. How much time, realistically, do you
5 think it would take to formulate your testimony?

6 MR. BACHMANN: May we just confer with our
7 witnesses, and perhaps the other parties can consider
8 that.

9 JUDGE HOYT: Yes. I'm particularly concerned
10 that the intevenor be satisfied, too, on that.

11 MS. MACKLIN: There is, I believe, one
12 additional point Mr. Bachmann intends to work into the
13 schedule. That is when the Board files its evaluation
14 of their emergency planning document that's due in from
15 AFRRRI on November 3rd, I assume he gets to see that.

16 MR. BACHMANN: Yes, I'll reserve time to talk
17 about that. The Staff would like 40 days from the time
18 of the Board's ruling on summary disposition, assuming
19 that there is a sufficient number of conditions that are
20 still in there. Obviously, if most of them are
21 summarily disposed of we could go quicker, but assuming
22 that all or at least part of all of the contentions are
23 still in the case and have to go to hearing, we would
24 like 40 days from the time of the Board's ruling.

25 JUDGE HOYT: To submit your written testimony?

1 MR. BACHMANN: That's correct.

2 JUDGE HOYT: All right. How does that stack
3 up with what the intervenors feel they'll need?

4 MS. ENTWISLE: Subject to what Mr. Bachmann is
5 going to bring up about emergency planning, we feel that
6 40 days is adequate.

7 JUDGE HOYT: Applicant?

8 MR. RICKARD: We were hoping for 30, so 40
9 will be just fine.

10 JUDGE HOYT: You just got 40. Now, we've made
11 that decision. Let's go ahead with the next one.

12 MR. BACHMANN: Then I would say that
13 subsequent to the filing of the testimony, that we
14 could, of course, go to hearing within 15 days
15 thereafter because all the testimony will be in.

16 JUDGE HOYT: I'm concerned about whether the
17 intervenor would have sufficient time with 15 days after
18 the written testimony had been filed. Why don't you
19 confer for a moment with your people there and see what
20 you would like to do with that? They have more
21 logistics problems than others here do, and I want to be
22 sure that they have an adequate shot at it.

23 MS. ENTWISLE: We would ask for 20 days.

24 MR. BACHMANN: The Staff has no objection to
25 20 days.

1 MR. RICKARD: No problem.

2 JUDGE HOYT: All right. Judge Hill tells us
3 that brings us to about June 7th or 8th for the hearings
4 to begin.

5 I must warn you that I have hearings to begin
6 next June in the matter of the Seabrook case, and I'm
7 going to have to work around that hearing for this case,
8 assuming I will remain as Chairman of this Board. So I
9 share with you, Major, the horror of getting another
10 chairman, but --

11 MAJOR SMOKER: June 7 or 8th, Your Honor, I'll
12 be overseas.

13 JUDGE HOYT: I'll go with you, then.

14 (Laughter.)

15 MAJOR SMOKER: I was supposed to go last year.

16 JUDGE HOYT: All right. That looks about like
17 what our future should be. I think that gives us some
18 pretty firm dates to work with. Let me review with you
19 --

20 MR. BACHMANN: Judge Hoyt, before you go into
21 that, I mentioned earlier we had one other matter
22 planning, the emergency planning contention.

23 JUDGE HOYT: Well, maybe we'd better grind
24 that into this.

25 MS. ENTWISLE: I would say there's also

1 outstanding the Commission's waiver of special rules.

2 JUDGE HILL: I didn't hear that.

3 MS. ENTWISLE: In addition to the emergency
4 planning outstanding issue there is a motion or, more
5 properly titled, a petition which is presently sitting
6 before the Board and has not been ruled on which was
7 filed back -- the first time was in April of 1981 and we
8 are still awaiting the Board's ruling on that.

9 JUDGE HOYT: Let me see if I can find where
10 that -- I think what we need is an historian in that
11 case.

12 MR. BACHMANN: Judge Hoyt, I have a copy of it
13 here, if you'd like that.

14 JUDGE HOYT: Let's see if I can find it here.
15 When was it filed?

16 MS. ENTWISLE: For the first time it was filed
17 on April 15, 1981 as part of our statement of position,
18 going into the prehearing conference.

19 JUDGE HOYT: Position of Petitioners on
20 unstipulated contentions?

21 MS. ENTWISLE: That's right. Now, in the May
22 1st hearing the Board ruled that we supplement that
23 petition which we did on, what was it -- I don't have
24 the date here, but it was five or six days after the May
25 hearing -- I'm sorry, the revision was filed on

1 September 13, 1981. At that time, the intervenor filed
2 a map --

3 JUDGE HOYT: I have that right here. Is that
4 the one you're speaking of? Intervenor's revision to
5 affidavit?

6 MS. ENTWISLE: Yes. That's right. Subsequent
7 to that, Chairman Carter wrote a letter to both staff
8 counsel and licensee counsel asking what their
9 respective positions on that revised affidavit were.
10 They both filed responsive letters saying they had
11 nothing further to add except that which they had
12 testified to on the May 1st hearing record.

13 JUDGE HOYT: I believe Judge Carter sent his
14 notes out on the 1st of May 1981, and you responded on
15 May 12, 1981. Is that correct?

16 MS. ENTWISLE: (Nods affirmatively.)

17 JUDGE HOYT: All right. I will examine that
18 first thing on Monday and see if we can get an order out
19 on that to you.

20 MS. ENTWISLE: That would -- I would have to
21 say that the schedule we're making logically would have
22 to be dependent on the resolution of this outstanding
23 issue and the other outstanding issue about emergency
24 planning.

25 JUDGE HOYT: Let's dispose of this petition

1 first, and then we'll talk about the emergency planning.

2 MS. MACKLIN: Judge Hoyt, could we suggest
3 that the emergency planning matter is a fairly
4 straightforward recitation of the Staff's schedule that
5 it anticipates, and might be more readily dealt with
6 than your ruling on that petition, which I would assume
7 you might want to give some evaluative consideration to.

8 JUDGE HOYT: I'll assure you of that. I just
9 don't have a handle on the petition and how
10 expeditiously we can get a ruling out, but it will
11 become a priority matter in the coming week and you will
12 have it as soon as we can examine it and come up with a
13 discussion between myself and the other Board members
14 here.

15 MS. MACKLIN: Thank you, Your Honor.

16 MR. BACHMANN: Judge Hoyt, I might also point
17 out that the action of the Board, if they accept the
18 petition as establishing a prima facie case, would then
19 be to refer it directly to the Commission.

20 JUDGE HOYT: Very well.

21 MR. BACHMANN: So the choice is really to deny
22 it or refer it to the Commission. I don't really think
23 it impinges on our schedule.

24 JUDGE HOYT: Well, that's the Staff's
25 evaluation.

1 JUDGE HILL: Does it have to go to the
2 Commission as sua sponte?

3 MR. BACHMANN: No. It says in 2.758(d), that
4 if a prima facie showing has been made on the basis of
5 the petition for affidavit, the presiding officer shall,
6 before ruling thereon, certify directly to the
7 Commission for a determination. So I really don't think
8 it will impinge on our schedule one way or the other.

9 Getting back to the emergency planning, which
10 as Ms. Macklin pointed out, is a fairly straightforward
11 scheduling matter. And I might add before getting into
12 that that I don't see any problems with -- if this
13 becomes a problem -- with splitting the hearing to the
14 extent that this may be a separate issue, just because
15 of the timeframe involved rather than hold up the entire
16 hearing for one issue.

17 The problem we are into is that all research
18 and test reactors of a certain power level are required
19 to submit emergency plans on or before November 3,
20 1982. As a result, we have not yet received the latest
21 information from the AFFRI people and that won't happen
22 until November 3rd, as we understand.

23 MAJOR SHOKER: On or before the 3rd, we will
24 resubmit. We've already submitted an initial emergency
25 plan based on the guidance that was --

1 JUDGE HOYT: Well, this is the 15th of
2 October; you don't have too much time to work on it.

3 MR. RICKARD: They've been working at it.

4 MAJOR SMOKER: It's going through final edit.

5 JUDGE HOYT: Oh, it's been finished. It's
6 just the mechanics of getting it out?

7 MAJOR SMOKER: Yes, ma'am.

8 MR. BACHMANN: I've been informed by Mr.
9 Carter that the Staff's review of the new information,
10 or however much of it is new, submitted by AFFRI may
11 take as long as the middle of February for completion of
12 review. I realize that sounds like a long time; we're
13 trying to be realistic. If there's information lacking,
14 we may have to go back to them, then respond and have it
15 reevaluated. So am I correct in that?

16 MR. CARTER: That's correct.

17 MR. BACHMANN: So a realistic date would be
18 the middle of February for our evaluation.

19 Now, we have had some disagreement with the
20 intervenors as to whether it is necessary for the
21 Staff's evaluation to be out before they can go ahead
22 and pursue the emergency planning contention. It is the
23 Staff's position that the Staff's review is not a
24 prerequisite for them to pursue the contention. Ms.
25 Entwisle does not agree with me on that, however, -- I

1 should let her speak to that.

2 The point is the Staff's position is that the
3 intervenors should be able to pursue their emergency
4 planning contention based on what is submitted by AFFRI
5 in November 3rd.

6 MS. ENTWISLE: Look at it just from the basic
7 level of procedural fairness. We have a tentative date
8 set here now for January 31st to submit our motions for
9 summary disposition, and as the attorney for the
10 intervenor, I am at a loss to know how I am going to
11 address the emergency planning contention when the
12 licensing agency has not come out with its final stamp
13 of approval or disapproval.

14 JUDGE HOYT: I wonder how that recent decision
15 in the Catawba case might enter into that, Mr. Bachmann.

16 MR. BACHMANN: I just read that recently, and
17 I'm searching my memory for the principle involved there.

18 JUDGE HOYT: We don't happen to have a copy of
19 that with us, do we? I thought I would never part with
20 it, but apparently I didn't bring it over.

21 MR. MINTON: You didn't tell me to bring it
22 over.

23 JUDGE HOYT: We can proceed without it, but I
24 hate to do this from the bench at this point, paraphrase
25 a case that I haven't got before me either, but I think

1 unless you have the documents, you can't formulate the
2 contention. If you can't formulate the contention, then
3 you can't expect the intervenor to file a contention.
4 It's not a late-filed contention when they finally get
5 around to getting all the documents.

6 MR. SHULTES: I'm Captain Shultes from AFFRI.
7 We will be supplying the emergency plan to all parties
8 in the proceeding, including NRC staff, and they would
9 have the same information the Staff has available for an
10 evaluation.

11 JUDGE HOYT: Well, there's another step in
12 there, and there's a staff review, and that is what
13 we're talking about now.

14 (Board conferring.)

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1 JUDGE HOYT: The position we took in the
2 Seabrook case, Mr. Bachmann, is that we wanted the Staff
3 review to be made available to the Intervenor before
4 they had to file anything, any contention on the
5 emergency planning. And I think we will go with that in
6 this case.

7 As Judges Hill and Schink both indicated in
8 our little conference up here, we still have that
9 cobalt-60 case hanging in the background anyway. We
10 might as well take the emergency planning at a later
11 time. I would rather defer that emergency planning and
12 give the Intervenor the benefit of the Staff response
13 before they had to go anywhere with that.

14 MR. BACHMANN: Excuse me, Judge Hoyt. I'm not
15 sure if you used the correct word. They already have a
16 contention on emergency planning.

17 JUDGE HOYT: We understand.

18 JUDGE HILL: We know that.

19 MR. BACHMANN: All we're talking about is the
20 summary disposition motion and the response to that.

21 JUDGE HOYT: Exactly. And I do think I
22 misspoke myself when I said "contention". That was the
23 Seabrook situation, and I did misspeak myself. It is
24 the motion, and I would like for the Intervenor to have
25 the benefit of the Staff position before you had to file

1 your motions on the summary disposition.

2 We would keep the same time frame between the
3 closing of the discovery, considering the filing of the
4 Staff's position on the emergency plan as being the
5 close of discovery for that particular matter.

6 MS. MACKLIN: So that would mean, Judge Hoyt,
7 approximately 25 days after the receipt of the Staff
8 position we would be ready on all parts to file a motion
9 for disposition?

10 JUDGE HOYT: Yes, that is correct. That keeps
11 the same time frames working throughout the case,
12 hopefully.

13 MR. RICKARD: And I would understand from that
14 that the emergency plan is fair game in discovery during
15 the first two weeks in December, to the extent --

16 MS. ENTWISLE: I would object to that, at
17 least as the Staff being the deposer. I'm probably not
18 using the right word, but I feel it is not possible or
19 fair for Intervenors' deponent to respond to the
20 adequacy of the Government's review on emergency
21 planning questions unless and until we have had time to
22 review the final document.

23 JUDGE HOYT: Sure, that's what we're talking
24 about.

25 JUDGE HILL: That's what we just said.

1 MS. ENTWISLE: But we're talking about
2 depositions now, not summary disposition.

3 JUDGE HOYT: Right.

4 MR. RICKARD: So in other words, it's not fair
5 game.

6 JUDGE HOYT: Not on emergency planning. How
7 could they? I think counsel speaks well the position
8 that they take.

9 MR. RICKARD: I have no problem. I just want
10 to know what the rules are.

11 JUDGE HOYT: All right. If you have no
12 problem, let's move along.

13 JUDGE HILL: The point we're trying to make
14 here is that you have the capability of, if this gets
15 delayed, this issue of emergency response, that you have
16 the capability of hearing it in the portion of this
17 hearing which will be cobalt-60, so that you simply
18 defer it out of the earlier part which we have just set
19 the schedule for, and we stay with that schedule on the
20 remainder of the TRIGA part of the docket, okay.

21 JUDGE HOYT: Now I think --

22 MAJOR SMOKER: I just have one question. What
23 about depositions in reference to the emergency plan?

24 MR. RICKARD: They just answered that
25 question, Ron. Maybe you'll check me out and make sure

1 I understood, but we are not going to ask any questions
2 about emergency planning until such time as the Staff
3 has provided its evaluation.

4 MAJOR SMOKER: Plus 45 days.

5 MR. RICKARD: And then 45 days thereafter.

6 MAJOR SMOKER: We pick up with the other
7 schedule.

8 JUDGE HOYT: And you'll be overseas, Major, so
9 you won't have to worry about it.

10 (Laughter.)

11 JUDGE HOYT: I think we've got everything done
12 on TRIGA that we can do here today, have we not? Any
13 other questions on that?

14 (No response.)

15 JUDGE HOYT: We still want to find out when
16 we're going to get -- do you intend to file a contention
17 on that? It's probably the silliest question I've asked
18 today, but are you going to do anything with cobalt-60?

19 MS. ENTWISLE: As you're aware, the Commission
20 has extended its time in which to review the Appeal
21 Board's cobalt --

22 JUDGE HOYT: Within the limited framework of
23 the notice problem in that time, and that is to November
24 24th, I believe.

25 MR. RICKARD: 21st.

1 JUDGE HOYT: 21st.

2 MR. RICKARD: They'll push it again, perhaps.

3 JUDGE HOYT: Probably will. But as I
4 understood it, it was merely on the matter of the notice
5 requirement problems and not as to the substantive part
6 of the decision that the Appeal Board had already ruled
7 on. I may be incorrect in that, and if I am and it's
8 decided otherwise -- remember, my channels are rather
9 limited since I cannot ask questions, being in an ex
10 parte communications position. I have not any idea
11 whether or not they will rule on any other matter in
12 it.

13 But my reading of the case, of the Appeal
14 Board case, indicated to me that the matter that the
15 Board, the Appeal Board, was concerned with was a notice
16 question, which would not be concerned with whether or
17 not this Board would hear the cobalt-60 proceeding.

18 MS. ENTWISLE: Then at this point we do intend
19 to submit contentions.

20 JUDGE HOYT: Very well. When?

21 MS. ENTWISLE: Until today I had assumed, and
22 obviously wrongfully, that we would conduct the rest of
23 discovery in the reactor proceedings and then sit
24 dormant until we had caught up on the cobalt. I had
25 assumed there would be one hearing --

1 JUDGE HOYT: Did you read paragraph 3 of the
2 order?

3 MS. ENTWISLE: What we had talked about was
4 submission of the cobalt contention and then a
5 prehearing conference for that. And the date that was
6 suggested to us from the Staff was January 26th for the
7 cobalt contention. I think Staff has told me that they
8 had also made that calendar date on the assumption that
9 the two hearings would be combined into one.

10 Now, just from a realistic point of view, if
11 we are going to be conducting depositions and working
12 toward summary disposition at the end of January, it is
13 going to be a real tax on the Intervenor's resources to
14 also within January 6th submit a contention.

15 JUDGE HOYT: Counsel, as I said to you this
16 morning earlier, I cannot believe that, having
17 intervened in this case, you haven't any conception of
18 where you're going. You only need one contention to get
19 into the case.

20 MS. ENTWISLE: We had pointed out earlier,
21 Your Honor, though, that the material we must review has
22 not been on the public record until recently, and some
23 of it still there is a question as to the capability --

24 JUDGE HOYT: I'd say between now and January
25 6th you're going to have to do some diligent effort.

1 MS. ENTWISLE: To answer your question as to
2 where we're going on it, until we've reviewed the
3 evidence in the public record we don't know what the
4 contention, what the language of that contention is
5 going to be. We have alluded to it in general terms in
6 our previous filings in the cobalt matter, but it's
7 simply impossible.

8 JUDGE HOYT: What area were you looking at?

9 MS. ENTWISLE: We were looking at accident --
10 this is from memory. We were looking at accident
11 potential of the cobalt facility, and we cited the one
12 that happened in the spring of 1981 as an example of one
13 that could recur.

14 JUDGE HOYT: Was that the little robot running
15 around?

16 MR. RICKARD: That was the one about the robot
17 running around.

18 MS. ENTWISLE: We were looking at emergency
19 planning.

20 JUDGE HOYT: How can there be any difference
21 between the emergency planning problems in the
22 cobalt-60?

23 JUDGE HILL: They're really together.

24 MS. ENTWISLE: That is why we had assumed the
25 two hearings would be combined.

1 MR. RICKARD: There are two regulatory
2 standards that are applied, though. The cobalt-60 is a
3 materials license and hasn't got the highfaluting
4 regulatory requirements on emergency planning that a
5 reactor license does. So that there is a difference,
6 even though they are, as you pointed out, pretty close
7 geographically.

8 MS. MACKLIN: Your Honor, the representation
9 was made at the Appeal Board hearing that they are
10 approximately 40 meters apart in distance. And we had
11 attempted to propound interrogatories with respect to
12 certain aspects of the cobalt facility. The Licensee
13 declined to answer those interrogatories. And so at
14 this point that's why we've been working through the
15 FOIA route. I assume we will continue to work through
16 the FOIA route.

17 JUDGE HOYT: Let me ask counsel for the
18 Licensee, assuming we're going to go ahead with this
19 cobalt-60 case -- and it appears that we are, in the
20 view of the Licensing Board -- are you now in a position
21 to answer those interrogatories on the cobalt-60 that
22 were propounded by the Intervenor?

23 MR. RICKARD: Okay. We have, according to my
24 count, five interrogatories that are focused on the
25 cobalt-60.

1 JUDGE HOYT: When were those filed?

2 MS. MACKLIN: About a year ago.

3 JUDGE HOYT: September 30, '81.

4 MAJOR SMOKER: They are Intervenors'
5 interrogatories to AFFRI. We took the position on those
6 cobalt-60, in September of '81, that it was irrelevant
7 to TRIGA. But we nevertheless went ahead and answered
8 two of them, just out of the goodness of our hearts, I
9 guess, and partly as a means of educating our opponents
10 so that we could try to focus this a little bit.

11 JUDGE HOYT: Do you think your heart could
12 open up a little further to give the other three
13 responses, sir?

14 MAJOR SMOKER: Yes, ma'am.

15 MR. RICKARD: As a matter of fact, they're
16 going to get the answers in spades as part of the FOIA
17 thing.

18 MS. MACKLIN: All we're saying, Your Honor, is
19 that FOIA is obviously a very time-consuming, although
20 sometimes constructive, way to go in this proceeding.
21 obviously much moreso than the interrogatories.

22 JUDGE HOYT: Well, you're going to get them.
23 Now, I want to know how soon you intend to give it to
24 them.

25 MAJOR SMOKER: We're talking about three

1 answers. I don't have the contentions in front of me.

2 JUDGE HOYT: You got two answers, was the
3 representation counsel made, and now there are three.
4 I'm trying to determine --

5 MAJOR SMOKER: We'll give it to them a week
6 from today.

7 MR. RICKARD: Give them a little rope and
8 they'll hang us.

9 JUDGE HOYT: That's right.

10 MR. RICKARD: My folks advise me that a week
11 from today would provide us time to get together the
12 answers. I would point out, though, that it would be
13 very useful if the Intervenor as part of this FIOA
14 process could make an effort to review the documents
15 that are being made available to them, because that will
16 answer most of their questions.

17 MS. MACKLIN: As I indicated earlier, we
18 certainly will.

19 JUDGE HOYT: The Captain back there has a
20 question.

21 CAPT. SHULTES: I would just like to point out
22 that all of the interrogatories that dealt with the
23 cobalt-60 facility in the first round of Intervenor's
24 interrogatories dealt with the connection between the
25 cobalt facility and the reactor facility, AFRRI, which

1 are separate, and there is no impact of an accident in
2 one on the other except for a potential delay or
3 cessation.

4 MR. RICKARD: Just leave that be. Leave that
5 be.

6 MAJOR SMOKER: The scientist speaking.

7 JUDGE HOYT: Well, I'll give him credit. He's
8 eager. He's pushing.

9 MAJOR SMOKER: That's right, we are.

10 MR. RICKARD: That's why we put him in back.

11 JUDGE HOYT: I hope nobody reads this
12 transcript.

13 But the answers will be forthcoming. We got
14 that one started on the road as far as that goes.

15 MS. FENTWISLE: Thank you.

16 MS. MACKLIN: Thank you.

17 MR. BRACHMANN: Judge Hoyt, may we somehow get
18 a date certain for submission of the supplement to the
19 petition including the contentions on the cobalt-60?

20 JUDGE HILL: That's what we were trying to aim
21 at.

22 (Board conferring.)

23 JUDGE HOYT: I'm going to have to ask, because
24 I just don't have a firm enough grip on what you're
25 going to be able to do with the information that you

1 have, when are you going to get that contention for me?
2 You know, there's not a supplement, counselor. There's
3 no contention at all on cobalt-60. There's never one
4 been filed.

5 MR. BACHMANN: What I meant by supplement, in
6 2.714 it says that: "No later than 15 days prior to the
7 first special prehearing conference, the Petitioner
8 shall submit a supplement to its petition which shall
9 include at least one contention."

10 JUDGE HOYT: Don't you think the appeal
11 process has intervened in that and destroyed that kind
12 of a date problem. We've got to give the Intervenor a
13 better shot than that, I believe, Mr. Bachmann.

14 MR. BACHMANN: No, I --

15 JUDGE HOYT: Well, I'm going to rule that way
16 anyway. We're going to determine from -- I'm going to
17 give you a shot in a minute.

18 We're going to determine from the Intervenor
19 when they can get it in. But what else did you have to
20 add to that?

21 MR. BACHMANN: I just wanted to point out, the
22 way I read the Appeal Board's decision is the Appeal
23 Board had said the Petitioner now has standing.

24 JUDGE HOYT: That's right.

25 MR. BACHMANN: But left open the question.

1 JUDGE HOYT: That's why I said the appeal
2 process has intervened in that and we're back to square
3 one in their cobalt 60 intervention in this case.

4 MR. BACHMANN: Right.

5 JUDGE HOYT: Go ahead.

6 MS. MACKLIN: I beg your pardon. I did not
7 hear the last thing that Mr. Bachmann said because we
8 were trying again to confer about the date for the
9 contention.

10 Ms. Entwisle had indicated before that January
11 6th would be a difficult date to meet. I think we would
12 make every effort and we would meet that date. I think,
13 given the other schedule matters for early December and
14 the need to review material and talk with scientific
15 persons who may be different than those whose expertise
16 has allowed them to assist us in the reactor proceeding,
17 we would need until January 6th to frame our one good,
18 plus any other good contentions.

19 JUDGE HOYT: All right, fair enough.

20 Anything else?

21 MR. BACHMANN: The Staff would propose that we
22 have a 30-day deadline on responding to their contention
23 or contentions in writing, and then perhaps we could set
24 a date.

25 JUDGE HOYT: I'd like to go for 20 days if we

1 could. Could you respond within 20?

2 MR. RICKARD: The direct answer to your
3 question is yes. Going from our experience, however, on
4 the TRIGA situation, that additional ten days might be
5 useful in terms of it being a stipulated contention that
6 would obviate the need for the Board to knock heads and
7 show us that we do have a litigable contention. All I'm
8 suggesting is that an investment of ten days might be
9 worthwhile over the long period, and would therefore
10 suggest 30 as opposed to 20.

11 JUDGE HOYT: That would be simultaneous with
12 the response for the Staff as well?

13 MR. BACHMANN: Yes.

14 JUDGE HOYT: They usually get a little later
15 period, I think.

16 MR. RICKARD: That's right.

17 JUDGE HOYT: You wrote the rules and I think
18 you put some extra time in there for yourself. But
19 we're going to ask you to stick to the 30 days. I think
20 that's probably a good comment. In 30 days maybe we can
21 get a stipulated contention.

22 MR. RICKARD: It's worth a shot.

23 JUDGE HOYT: Anything else?

24 (No response.)

25 JUDGE HOYT: Now, we asked for that list of

1 witnesses. Do you have them?

2 MR. RICKARD: Yes, ma'am, if I may.

3 JUDGE HOYT: Yes, sir, go ahead.

4 MR. RICKARD: We did not come prepared this
5 morning, obviously --

6 JUDGE HOYT: We thank you for your list.

7 MR. RICKARD: -- with a final and complete
8 list. I do have a list of 21 people who represent a
9 fairly tentative list at this point. We would like the
10 privilege of, assuming seasonable notice, adding to this
11 list or deleting from it. Our objective --

12 JUDGE HOYT: Or substituting.

13 MR. RICKARD: Or substituting.

14 Our objective is to try to make it possible
15 for the Board to try to get its arms around what it is
16 that is going on. A number of the witnesses who are
17 listed here have somewhat sketchy addresses, and this is
18 not one of the more professionally prepared documents
19 that the Licensee has published so far.

20 But I would ask that the Board accept this as
21 kind of a note for the reporter.

22 JUDGE HOYT: We can attach that to this record
23 as counsel's Exhibit A if you would like. Would you
24 like me to do that? It will be so directed, then.

25 (The document referred

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to, marked Applicant
Exhibit A for
identification, follows:)

The following is a list of expert witnesses who may be called to testify in the manner of the Armed Forces Radiobiology Research Institute (AFRRI), Docket No. 50-170.

1. Dr. Frank Munno
Department of Nuclear Engineers
University of Maryland
College Park, MD.
2. Mr. Wade J. Richards
Argonne National Laboratories - West
Idaho Falls, Idaho
3. Dr. W.L. Whittemore
General Atomic Co.
San Diego, CA.
4. Dr. Ralph H. Peters
" "
5. Mr. Gordon B. West
" "
6. Dr. Massoud T. Simnad
" "
7. Dr. Samuel H. Levine
Penn State University
University Park, PA.
8. Dr. Gordon E. Robinson
" "
9. Dr. Gary Sandquist
Mechanical Engineering Department
University of Utah
Salt Lake City, Utah
10. Dr. John Randall
Texas A&M University
College Station, TX.
11. Lt Col James J. Conklin, M.D.
Armed Forces Radiobiology Research Institute
12. MAJ Asaf Durakovic, M.D.
" " "
13. Mr. Marcus L. Moore
" " "
14. MAJ Ronald R. Smoker
" " "
15. Capt Joseph J. Sholtis, Jr.
" " "
16. Mr. William Webber
" " "
17. SFC Harry H. Spence
" " "
18. Dr. John M. Arras
National Bureau of Standards
Gaithersburg, Maryland
19. Mr. Lester Slaback
National Bureau of Standards
Gaithersburg, Maryland
20. CPT Leonard A. Alt
US Army, Korea
21. Mr. Robert Loesch
Canbara Industries
Meridian, Connecticut

Applicant Exhibit A

1 JUDGE HOYT: I just attached it, so I think
2 that ends it. Anything that's passed around here like
3 this I think should be attached to the record. There's
4 a reason for that ruling.

5 I must confess that I immediately have some
6 problems here. For example, on number 20 you have -- is
7 that Captain --

8 MR. RICKARD: Captain Alt. He used to be
9 assigned at EPRI, until fairly recently he was. He
10 assisted us in answering early interrogatories.

11 JUDGE HOYT: U.S. Army, Korea?

12 MR. RICKARD: We don't have an APO for him.

13 JUDGE HOYT: Let me ask you where there may be
14 other problems such as that matter?

15 MR. RICKARD: We can make it a little bit more
16 possible--

17 JUDGE HOYT: Let me finish here.

18 Would you designate someone in the AFRRI
19 office there who could respond to any queries that the
20 Staff or the Intervenor may have as to where these
21 people are or where a better and more specific address
22 could be made? Could you give us the name of an
23 individual?

24 MR. RICKARD: Major Ronald Smoker will
25 respond.

1 JUDGE HOYT: And give the parties a telephone
2 number where you could be contacted.

3 MAJOR SMOKER: 295-1096 or 1290.

4 JUDGE HOYT: And that's area code 301?

5 MAJOR SMOKER: Yes, ma'am, or 202. Both of
6 them are.

7 JUDGE HOYT: Is there anything further on that
8 one?

9 (No response.)

10 JUDGE HOYT: That's great.

11 Major, we will assume that you will respond
12 eagerly to these questions.

13 MAJOR SMOKER: Definitely, and promptly.

14 JUDGE HOYT: And I do thank the counsel for
15 obtaining this. That was very well done.

16 MR. RICKARD: The thanks are due back here. I
17 just said do it and they took care of it, ma'am.

18 JUDGE HOYT: To you and your staff.

19 Anything else before this hearing this
20 morning?

21 MR. RICKARD: I would have one other thing.
22 Judge Carter last May, as did Judges Hill and Schink,
23 had the opportunity to pay a visit out at AFRRRI to look
24 at the physical structure, and we would offer you and/or
25 your colleagues the same opportunity if you so desire.

1 JUDGE HOYT: I only have one problem with
2 that. Our office I think had some of their personnel in
3 the Board's office here in Bethesda go through it, and I
4 deliberately did not take that advantage because I did
5 not want to go --

6 MR. RICKARD: Unescorted?

7 JUDGE HOYT: -- unescorted by either someone
8 from the Intervenor or the Staff, preferably from all
9 sides. Are you extending that same invitation to them?

10 MR. RICKARD: Yes, absolutely.

11 JUDGE HOYT: If you wish to make that -- and I
12 would like to go through the facility, but I will not do
13 it unless both the Staff and the Intervenor are in
14 attendance. And I ask that whoever conduct the tour be
15 instructed not to make any pitches for their side of the
16 case.

17 MR. RICKARD: I had to kick people the last
18 time over that, but I think we've succeeded.

19 JUDGE HOYT: Well, kick once more for this
20 group when we go through.

21 If you'll call my office and make that
22 arrangement.

23 MS. MACKLIN: Judge Hoyt, I might indicate on
24 the record that I will be available between now and
25 December 15th to accompany any such tour, and the only

1 problem would be a small amount of advance notice. At
2 my office, I did not indicate but should do so here
3 today, it's an extremely busy and overextended schedule,
4 that has caused me the need to withdraw from these
5 proceedings in mid-December.

6 JUDGE HOYT: If you will call me on Monday and
7 give our office an indication of what dates you have
8 open, we will take the one which will fit our -- and you
9 also, Mr. Bachmann, if you care to. And I would prefer
10 that you do have someone available, either yourself or
11 your co-counsel.

12 MR. BACHMANN: Would you call me?

13 MR. RICKARD: If you like, and only because
14 you might not have assumed--

15 JUDGE HOYT: I would like to do that.

16 MR. RICKARD: This afternoon or right now?
17 It's completely up to you.

18 JUDGE HOYT: No, thanks, I can't make it
19 today.

20 Is there anything else that may need to be
21 discussed?

22 (No response.)

23 JUDGE HOYT: You are withdrawing, as I
24 understand it, in December?

25 MS. MACKLIN: That's correct, Your Honor. We

1 regret needing to do so, but unfortunately, given the
2 schedule of matters in my own personal schedule and my
3 other office, after a careful review we've determined we
4 simply don't have a choice in terms of responsible
5 representation to those clients we have.

6 JUDGE HOYT: We thank you for that statement
7 on this record.

8 Is there anything further?

9 (No response.)

10 JUDGE HOYT: Then I don't see any need of
11 having any time this afternoon. I think we've completed
12 all the matters that we can today. I thank you for your
13 attendance here. I'm sure I speak for Judges Hill and
14 Schink on that.

15 This hearing is closed.

16 (Whereupon, at 12:17 p.m., the prehearing
17 conference was adjourned.)

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NUCLEAR REGULATORY COMMISSION

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

in the matter of: Armed Forces Radiobiology Research Institute
TRIGA Type Research Reactor - Cobalt 60 Storage Facility

Date of Proceeding: October 15, 1982

Docket Number: 50-170 & 30-6931

Place of Proceeding: Bethesda, Maryland

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

Jane N. Beach

Official Reporter (Typed)

Jane N. Beach

Official Reporter (Signature)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
ARMED FORCES RADIOBIOLOGY)	Docket No. 50-170
RESEARCH INSTITUTE)	(Renewal of Facility
)	License No. R-84)
(TRIGA-Type Research Reactor))	ASLB No. 81-451-01- LA
)	
(Cobalt-60 Storage Facility))	Docket No. 30-6931
)	(Renewal of Byproducts
)	Material License No. 19-08330
)	ASLB No. 82-469-01- SP

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with § 2.713, 10 C.F.R. Part 2, the following information is provided:

Name	-	Henry J. McGurren
Address	-	U.S. Nuclear Regulatory Commission Office of the Executive Legal Director Washington, DC 20555
Telephone Number	-	Area Code 301-492-7836
Admission	-	Supreme Court of the State of Illinois
Name of Party	-	NRC Staff U.S. Nuclear Regulatory Commission Washington, DC 20555

Henry J. McGurren
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 14th day of October, 1982.