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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the matter of:

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
(Seabrook Station Units 1 & 2)

Docket No. 50-443 OL  
50-444 OL

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:	:
	:
PUBLIC SERVICE COMPANY OF	: Docket Nos.
NEW HAMPSHIRE	: 50-443 OL and
SEABROOK STATION UNITS I & II	: 50-444 OL
-----X	:
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13th Floor Courtroom  
U. S. Tax Court  
No. 2 India Street  
Boston, Massachusetts 02109

Friday, April 8, 1983

The Third Prehearing Conference in the  
above-entitled matter resumed, pursuant to notice at  
9:30 a.m.

BEFORE:

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

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

DR. JERRY HARBOUR, Member  
Administrative Judge  
Atomic Safety and Licensing Board

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## APPEARANCES:

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## On behalf of the Federal Emergency Management Agency:

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BRIAN P. CASSIDY, ESQ.

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Regional Counsel, Region 1

Federal Emergency Management Agency

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## On behalf of the Commonwealth of Massachusetts:

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JO ANN SHOTWELL, ESQ.

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## On behalf of the State of New Hampshire:

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Assistant Attorney General

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Office of the Attorney General

Augusta, Maine

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On behalf of the Hampton Beach Area  
Chamber of Commerce:

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BEVERLY HOLLINGWORTH  
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Hampton Beach, New Hampshire

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On behalf of the New England Coalition  
of Nuclear Pollution:

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WILLIAM JORDAN, ESQ.  
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On behalf of the Seacoast Anti-Pollution League:

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ROBERT A. BACKUS, ESQ.  
BRUCE S. DEMING, ESQ.  
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Manchester, New Hampshire

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On behalf of Hampton Falls:

ROBERTA C. PEVEAR  
Chairman, Board of Selectmen

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On behalf of Amesbury:

MAYNARD B. PEARSON  
Civil Defense Director

19

20

On behalf of South Hampton:

WALTER SHIVIK  
Board of Selectmen

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P R O C E E D I N G S

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2 JUDGE HOYT: The hearing will come to order. This is the  
3 second day of our prehearing conference convened by this Atomic  
4 Safety and Licensing Board in the matter of Public Service  
5 Company of New Hampshire, Seabrook Stations I and II, Docket  
6 Numbers 40-443-OL and 50-444-OL.

7 I think yesterday at the conclusion of the hearing we had  
8 gone through all of the contentions that the Board is considering  
9 on summary motion, and this morning we indicated we wanted to  
10 start out with discussion of the schedule and taking some repre-  
11 sentations from the FEMA representative. That is, the Federal  
12 Energy Management Agency. Have I got that right?

13 MR. CASSIDY: The Federal Emergency Management Agency.

14 JUDGE HOYT: That only goes to prove that initials don't  
15 necessarily mean the same thing.

16 Well, I would like also to begin the hearing this morning  
17 by taking the appearances on the record of those counsels who  
18 have not been with us yesterday.

19 I believe counsels for the Applicant are all here and  
20 present. That also goes for the Nuclear Regulatory Commission  
21 staff. All other counsels including those from the states of  
22 New Hampshire and Maine and the Commonwealth of Massachusetts,  
23 and the New England Coalition on Nuclear Pollution, Inc., is  
24 in the hearing room. Mr. Backus, representing the SAPL, and  
25 Ms. Hollingsworth with the Hampton Beach Area Chamber of Commerce.  
And that took me all night to memorize all of those.

Ms. Shotwell for the Commonwealth joined us yesterday late  
in the afternoon, and is again in the hearing room. I believe

djk  
1 we have some representatives also from towns who have been  
2 admitted as a party under the rules of this Commission, 2.715,  
3 Interested Municipalities.

4 Do we have any other interested municipalities other than  
5 those who have indicated their participation yesterday?

6 Very well, so if you will stand and give us your name, and  
7 we are going to have to have you somewhere closer to the front.

8 MR. PEARSON: From the town of Amesbury, Maynard Pearson.

9 JUDGE HOYT: Mr. Pearson?

10 MR. PEARSON: Yes, from the town of Amesbury, Massachusetts.

11 JUDGE HOYT: And can we have your first name and middle  
12 initial again?

13 MR. PEARSON: Maynard, M-a-y-n-a-r-d, B. Pearson.

14 JUDGE HOYT: P-e-a-r-s-o-n?

15 MR. PEARSON: Right.

16 JUDGE HOYT: Mr. Pearson, would you come forward and sit  
17 in one of these front benches up here so that we can be sure  
18 that you are hearing everything?

19 Do we have any other members of the towns who have been  
20 admitted as parties?

21 Yes, ma'am?

22 MS. PEVEAR: I was admitted yesterday.

23 JUDGE HOYT: Yes, ma'am, and you are the representative  
24 for the town of --

25 MS. PEVEAR: Hampton Falls.

JUDGE HOYT: Hampton Falls. I believe you are also a  
representative in the New Hampshire legislature.

MS. PEVEAR: New Hampshire and Hampton Falls, right.

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NORFOLK, VIRGINIA

1 JUDGE HOYT: Are there any other appearances that should  
2 be made on this record this morning?

3 Very well.

4 MR. CASSIDY: Your Honor, excuse me. I would like to file  
5 my appearance on behalf of the Federal Emergency Management  
6 Agency.

7 JUDGE HOYT: That was the next order of business, so you  
8 are on target. Go ahead.

9 MR. CASSIDY: And I do have an appearance to be filed with  
10 the Court.

11 JUDGE HOYT: Thank you.

12 MR. CASSIDY: And copies for the parties.

13 JUDGE HOYT: You have served copies on all the other parties  
14 here?

15 MR. CASSIDY: Yes.

16 JUDGE HOYT: Would you please ensure that the Docket Clerk  
17 has the original of that filing?

18 MR. CASSIDY: Yes.

19 JUDGE HOYT: Which brings me to a point that I did forget  
20 to mention yesterday, and that is that when pleadings are filed  
21 with this Commission, the Board wants to emphasize that it has  
22 in the past and will probably have to again in the future -- that  
23 you file the originals of your pleadings with the Docket Clerk  
24 of this Commission and not with the Board. We want the docket  
25 to be served. If no one else gets served, be sure you serve  
the Docket Clerk. We will also, of course, ask that you serve  
all the parties that are on the service list in accordance with  
whatever it is you are filing.

djk  
1 We had appearances filed by -- well, we had petitions to  
2 intervene and had issued orders granting interventions to the  
3 town of Hampton, New Hampshire; the town of Rye, New Hampshire;  
4 the town of Brentwood, New Hampshire; the town of Portsmouth,  
5 New Hampshire; and the town of Newbury, Massachusetts. Are  
6 there any representatives of any of those parties here?

7 MS. SHOTWELL: Your Honor, with respect to Newbury, I was  
8 asked to represent on behalf of the chairman of the Board of  
9 Selectmen, but he had to be out of town today. He is the repre-  
10 sentative, but he could not be here.

11 JUDGE HOYT: Very well, we will rule that Ms. Shotwell  
12 will represent that town.

13 I will just briefly express the disappointment of the  
14 Board in having moved these times to participate to find that  
15 a hearing conference does not have these representatives present.  
16 It seriously calls into question whether or not there is any  
17 input desired by those towns, if that is the case.

18 Very well, we will proceed now to the matter of --

19 MS. PEVEAR: Judge Hoyt?

20 JUDGE HOYT: Yes, ma'am?

21 MS. PEVEAR: May I say something?

22 JUDGE HOYT: Yes, please.

23 MS. PEVEAR: I did speak to some of the other representatives  
24 of the towns, and --

25 JUDGE HOYT: Which ones, Ms. Pevear?

MS. PEVEAR: Brentwood I spoke to last night.

JUDGE HOYT: All right.

MS. PEVEAR: And there was indication made to me by some



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1 of the other people that there was great disappointment that  
2 the hearing was held here in Boston.

3 JUDGE HOYT: Let's move ahead to something else. Do you  
4 have some other representation from them?

5 MS. PEVEAR: No, only that they do hope that the hearings  
6 themselves can be held within the Ten Mile area, that it would  
7 make it more convenient.

8 I myself get paid nothing. I get \$100 as a legislator,  
9 but I get nothing as the Civil Defense Director. And many of  
10 these people are part-time selectmen. The two that were here  
11 yesterday are part-time. And we don't have any expense money  
12 and we don't get paid. So it makes it very difficult when you  
13 figure the travel, and I paid \$7 for parking, et cetera.

14 JUDGE HOYT: Seven dollars? Where did you park?

15 MS. PEVEAR: Across the street. And I bought my lunch,  
16 and it does make it very difficult when we are unpaid and unsung  
17 heroes of the small towns to have to come up here. And I do  
18 hope that we will have them in the Seacoast -- within the Ten  
19 Mile area.

20 JUDGE HOYT: Do you have any representations about where  
21 these other parties are? That is what we are particularly  
22 interested in.

23 MS. PEVEAR: Brentwood said that she had planned to come  
24 but she was not coming.

25 JUDGE HOYT: That would be Miss Lettie Hett?

MS. PEVEAR: Yes. She is a selectman. And I had understood  
yesterday that there was going to be someone here from South-  
hampton, but he isn't here either.

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1 Now, I don't know what the procedure is on hearings, and  
2 if there is going to be provisions for us to sit with the rest  
3 of the attorneys. It is my understanding that we don't have to  
4 have attorneys in order to appear, but we do have rights to cross  
5 examine, et cetera.

6 JUDGE HOYT: Well, the only thing, ma'am, that you need do  
7 this morning is come in here and take one of these chairs. And  
8 you certainly are welcome to do so at this point in time.

9 Now, I don't see a chair, but if you want to come up here  
10 and sit at these tables, we will make room for you right now.  
11 As a matter of fact, I think we will probably do that.

12 Let me say, this is the Commonwealth of Massachusetts.  
13 Would you, Ms. Shotwell, see that this person is provided a chair  
14 in this hearing room?

15 MS. PEVEAR: There is another gentleman here, but if we  
16 are going to have the --

17 JUDGE HOYT: We will put you both up here. We will get  
18 room for you. If you want to come up here and sit with these  
19 counsel -- and you have every right to do so, ma'am -- then you  
20 will.

21 MS. PEVEAR: Well, I don't feel that today is that impor-  
22 tant.

23 JUDGE HOYT: Well, it must have been important, or you  
24 wouldn't have mentioned it.

25 MS. PEVEAR: Well, I mention it for the hearings themselves.  
26 And it was mentioned last night going home, that we do feel that  
27 they are selectmen, and that they should be treated somewhat  
28 equally, although they do not have law degrees. That is all I

1 have to say.

2 JUDGE HOYT: All right, moving right along and into the  
3 problem of getting some representation here in these proceedings  
4 from FEMA, Mr. Cassidy -- who I believe is Regional Counsel here --  
5 is present, and has made an appearance on this record, and can  
6 certainly speak for himself.

7 Do you have some representations to make to this Board and  
8 to this assembly?

9 MR. CASSIDY: Yes, Your Honor.

10 May it please the Board and the parties, as the Board is  
11 well aware, FEMA comes into these hearings as -- under the  
12 Memorandum of Understanding between FEMA and the Nuclear Regula-  
13 tory Commission as staff witnesses. FEMA was tasked, after the  
14 Three Mile Island incident, with the responsibility for reviewing  
15 state and local emergency plans and making representations to the  
16 NRC as to whether or not those plans would adequately protect  
17 the public health and safety.

18 In order to carry out that function FEMA relies upon the  
19 states and local governments to submit those plans to us for  
20 review. We have been in consultation with the State of New  
21 Hampshire and the Commonwealth of Massachusetts, with both the  
22 attorney generals' offices in those states, and with the Civil  
23 Defense Departments in those states on an ongoing basis, to try  
24 to ascertain when the plans are going to be submitted to FEMA  
25 for review.

As this Board is well aware, we did receive a prototype  
plan for the City of Newburyport, Massachusetts, which, according  
to the Board's order, we submitted to NRC and served on the

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1 parties for the purposes of filing contentions on that local  
2 plan.

3 There apparently, as the Board is well aware, and as the  
4 Commonwealth's motion and memorandum and the letters from Mayor  
5 Sullivan of Newburyport, and Mr. Jack Dolan of the Massachusetts  
6 Civil Defense Department indicated some confusion on the part  
7 of the state with regard to FEMA submission of that plan for  
8 the purpose of filing contentions.

9 Prior to this hearing we sat down with members of the NRC  
10 staff, counsel for the commonwealth, and the State of New Hamp-  
11 shire and their planning people to try to ascertain and fix a  
12 time in which the local plans would be submitted to FEMA for  
13 purposes of our review and forwarding those plans on to the NRC  
14 for service on the parties, and filing contentions in accordance  
15 with the Board's order.

16 We have been able to arrive at a fairly fixed schedule,  
17 and certainly a procedure for doing this with the Commonwealth  
18 of Massachusetts and the State of New Hampshire. I would, at  
19 this juncture, pass around a schedule to facilitate discussion  
20 of the dates that I am going to be discussing here.

21 JUDGE HOYT: Do you have copies for all the counsels?

22 MR. CASSIDY: Yes.

23 JUDGE HOYT: Would you be sure that the two representatives  
24 of the towns that are sitting on the --

25 MR. CASSIDY: You are right; fine.

The document that I have passed out just reflects the  
Commonwealth of Massachusetts.

What we resolved in the course of our discussions are

1 the dates that appear on the documents that I just passed out.  
2 And let me explain this a bit.

3 Under the state, the state plan has two portions to it.  
4 One, the area plan or the site-specific portion of the plan  
5 for the Seabrook area. The state has indicated to us that that  
6 plan will be submitted to FEMA for review and for the purposes  
7 of filing contentions by June 1, 1983.

8 The amended state plan, which is the generic plan, if you  
9 will, which covers all of the nuclear power plants in Massachu-  
10 setts, is presently being amended in accordance with recommenda-  
11 tions that were made by FEMA and the Regional Assistance Committee  
12 as a result of exercises on the Tobrum and Grove plants. And  
13 the state has indicated to us that the amended state plan will  
14 be filed with FEMA for review in September, 1983.

15 The local plans are the plans that there seems to have  
16 been an issue with, with regard to the Newburyport plan that  
17 was previously submitted to us. There was a misunderstanding  
18 between the local communities and the state civil defense direc-  
19 tor at the time as to what submission to FEMA of the Newburyport  
20 plan was going to entail. They were not aware at that juncture,  
21 apparently -- although it had been -- apparently there was some  
22 misunderstanding that that was going to trigger the filing  
23 of contentions.

24 In order to clarify that situation, we -- as I indicated  
25 previously, the state and FEMA met. And we outlined a procedure  
for ensuring that the plans would be reviewed by the state and  
the local governments, and filed with FEMA in a timely fashion  
so that the hearings in this licensing matter could proceed in

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1 an orderly fashion.

2 The document that I have passed out for the local communi-  
3 ties indicates a column, "date received plan." This is the date  
4 for each of those communities that the commonwealth has indicated  
5 that the local communities will receive a draft copy of the plans  
6 for their review. Up to this point the planning process has  
7 been involved primarily with the state and the consultants that  
8 have been hired to assist them.

9 Once the local communities receive those plans, the state  
10 anticipates a period of 30 to 45 days during which the local  
11 governments will conduct a review of those plans and sit down  
12 with the state civil defense directors -- or excuse me, represen-  
13 tatives from the state civil defense agency -- to go over those  
14 plans and to make sure that everybody understands those plans.  
15 At the end of that period -- and I have indicated both a 30 day  
16 and a 45 day period on there just to give the Board and the  
17 parties a range of when those plans will be reviewed. At the  
18 end of that period, and for the sake of argument here I will say  
19 it is 45 days, the state will then make a decision as to whether  
20 or not the plan is ready to be submitted to FEMA. And, presuming  
21 that they do submit at that time, we will file the plan with the  
22 NRC to be served on the parties and to trigger the contention  
23 process as outlined in the Board's order.

24 As far as New Hampshire, unfortunately, the state director  
25 was out of the country last week, and the assistant was unavail-  
able to meet with us in regard to setting out as specific dates  
as we have for Massachusetts with regard to the local plans. And  
discussions that we have had this morning -- and Mr. Bisbee can

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1 collaborate on this, I think, somewhat. New Hampshire has repre-  
2 sented to us that the local plans for all 17 communities will be  
3 submitted to FEMA within 10 weeks. What the state intends to do  
4 is during the course of the next week, to sit down the civil  
5 defense department and the attorney general's office and refine  
6 those dates. So that we probably will have some firm dates that  
7 should reflect a submission to FEMA in less than 10 weeks. But  
8 ten weeks is the outside date that has been given at the present  
9 time.

10 With regard to the state plan for New Hampshire, the state  
11 submitted an amended state plan to FEMA for purposes of review  
12 for the Vernon Nuclear Power Station. The plan, since it is in  
13 the process of being reviewed and prepared for Seabrook at the  
14 same time, has a lot of Seabrook material in it. And we have  
15 requested a clarification from the State of New Hampshire as  
16 to whether or not they were intending to submit the plan for a  
17 Seabrook review as well. We have written to the state civil  
18 defense agency and asked that they get back to us by April 16  
19 with regard to their intention on the state plan.

20 That is basically the status of the -- when FEMA is going  
21 to get the plans, as of the present date. And perhaps before  
22 we go on to FEMA's review process after that and what counsel  
23 for NRC and FEMA have discussed as far as proceedings on conten-  
24 tions, we should hear from New Hampshire and Massachusetts, and  
25 give them an opportunity to confirm or make any corrections in  
any of the statements that I have made.

JUDGE HOYT: Ms. Shotwell, do you want to start off for  
us this morning?

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1 MS. SHOTWELL: Certainly.

2 JUDGE HOYT: Thank you.

3 MS. SHOTWELL: I do agree with the presentation of the  
4 proposal. Certainly in major detail. The basic procedure that  
5 we have agreed to here is to set target dates for submission of  
6 draft plans to each community, and those dates appear on this  
7 list, which would then trigger -- and my understanding had been  
8 that we would talk about a range of 30 to 45 days to allow a little  
bit of leeway for the community at that point.

9 But at any rate, a period of time for initial review by  
10 the community of the draft that has been presented to it, at which  
11 time a decision would be made about whether that draft or a re-  
12 vised draft of revisions are necessary in that time, is prepared  
for submission to FEMA.

13 Once a plan is submitted to FEMA, that under the Board's  
14 order would trigger submission to the NRC and the filing of  
15 contentions.

16 So I think it is fair to say that this does not in any way  
17 disturb the Board's order. It is talking about a process that  
18 will occur before that order takes effect.

19 The only aspect of the proposal that would, in any way,  
20 disturb the order is that we are going to resubmit a plan to  
Newburyport.

21 JUDGE HOYT: Resubmit what?

22 MS. SHOTWELL: Resubmit a plan to Newburyport. You will  
23 see that Newburyport is down here as receiving a plan on May 30th.  
24 That is because the plan that was sent to FEMA previously was a  
25 prototype plan. It was not intended as the plan of Newburyport.



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1 And I believe that this agreement contemplates that that is the  
2 case, and that there needs to be a submission of a plan particular  
3 to Newburyport to them on May 30th. So they will be part and  
4 parcel of the same process.

5 As you know, we have already had to file contentions before  
6 making this proposal to you with respect to that prototype plan  
7 that was already submitted. I suppose the contentions serve  
8 some purpose in having the parties involved in this process on  
9 notice of certain concerns. But they would, obviously, be mooted  
10 by this proposal, because there will be a resubmission to New-  
buryport.

11 I did want to correct one thing slightly. These plans  
12 that are being presented to the communities are being prepared  
13 by an independent contractor that is under contract to the State  
14 of New Hampshire. That is a minor point for our purposes today,  
but --

15 JUDGE HOYT: Are these in New Hampshire -- Massachusetts?  
16 These are towns in Massachusetts?

17 MS. SHOTWELL: There is one contract that covers the pre-  
18 paration of these plans, both in Massachusetts and for New Hamp-  
19 shire. But at any rate, the plans have been shared for review  
20 by the communities, and we are comfortable with this proposal.  
21 We think it sets forth a process to deal with this that recognizes  
22 the fact that they are the plans of these communities, and that  
23 they need to have sufficient time to review them and to make  
decisions with respect to them.

24 JUDGE HOYT: Thank you, Ms. Shotwell.

25 Mr. Bisbee?

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1 MR. BISBEE: Thank you, Madame Chairwoman.

2 I can confirm that the New Hampshire local plans will be  
3 able to be submitted to FEMA within the ten-week period. That  
4 has been communicated to me by the civil defense people.

5 We do not have precise dates during that ten-week period  
6 when the towns will receive the plans, and then when the 30 and  
7 45-day periods will fall after receipt of the plans by those  
8 towns. We can tell the Board this morning, however, that seven  
9 of the 16 or 17 New Hampshire towns have already received plans.  
10 And others are in draft form. Others are not yet in that stage.

11 But it is anticipated that all the plans for each of the  
12 New Hampshire localities will be submitted to FEMA by the end of  
13 the ten-week period that Mr. Cassidy referred to.

14 If the Board would like --

15 JUDGE HOYT: How many plans was that, again? I am sorry;  
16 I didn't get that.

17 MR. BISBEE: There are 16 or 17 plans.

18 JUDGE HOY' : All right.

19 MR. BISBEE: If the Board would like, I believe that Civil  
20 Defense could put together a list for you and the schedule simi-  
21 lar to what is reported as to Massachusetts this morning, by next  
22 week.

23 JUDGE HOYT: I would ask that you do that, Mr. Bisbee,  
24 and please serve copies of that on all the parties. Yes, I  
25 think that would be very helpful for purposes of planning for  
the future. And if you could do that -- well, I take it, though,  
Ms. Shotwell, these are all the towns in Massachusetts.

MS. SHOTWELL: That's right.

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1 JUDGE HOYT: There will be no others in Massachusetts?

2 MS. SHOTWELL: That's right. And my understanding at this  
3 point is that Haverhill decided not to -- that it does not need  
4 a plan. There was a very small corner of Haverhill that was  
5 originally included in the emergency planning zone. I will have  
6 to confirm that with the city, but that is my understanding.

7 JUDGE HOYT: Is that H-a-v-e-r-h-i-l-l?

8 MS. SHOTWELL: That's right.

9 MR. CASSIDY: Just for the Board's edification, if you are  
10 a local, it is Haverhill.

11 (Laughter.)

12 MS. SHOTWELL: There is one point I failed to mention. The  
13 date for Salisbury, April 8th, is put in anticipation of the  
14 possible acceptance of this proposal. They do already have a  
15 draft plan, and the target date for them would be acceptance of  
16 this proposal and this procedure.

17 JUDGE HOYT: We will appreciate very much having that as  
18 soon as possible, Mr. Bisbee. Thank you.

19 Do you have any input you wish to make at this time, Mr.  
20 Lessy, on behalf of the NRC staff?

21 MR. LESSY: Well, as Mr. Cassidy indicated, Your Honor,  
22 we participated in these discussions, and we think this is  
23 generally a very rational, reasonable way to proceed. Emergency  
24 planning contentions are different in tone and kind from the kind  
25 we were talking about yesterday. In yesterday's contentions we  
were talking about challenges by intervening groups to the ade-  
quacy of, say, the staff's environmental statement, or the ade-  
quacy of control room design submitted by the Applicant and

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1 reviewed by the staff. Those, if you will, are the types of  
2 concepts which are easily susceptible to litigation.

3 Emergency planning is an entirely different context. What  
4 we are really talking about is planning, and I think, just  
5 speaking for the NRC staff, I think what we would like to see  
6 is the best plans available. And that is obviously something  
7 that can happen as a result of a deliberative process of cooper-  
8 ation between groups and entities and governmental entities.

9 In terms of off-site emergency planning, as Mr. Cassidy  
10 indicated and perhaps he will get into it more later -- the NRC  
11 staff reviews applicants' FSAR submittals regarding on-site  
12 emergency planning. But as regarding off-site emergency planning,  
13 that is something really that we look to FEMA for. And in that  
14 regard, the ball is really in Mr. Cassidy's court rather than  
15 ours.

16 We have reviewed this; we think it is a fine idea. Frankly,  
17 it is the best that I have seen in all of the OL cases that I am  
18 aware of, and that is most of them at the NRC, because here the  
19 process contemplates the filing of contentions and the litigation  
20 of contentions on emergency plans. You can think that -- how  
21 difficult the situation can be when you have something less than  
22 that. I mean, sometimes there are contentions filed and litigated  
23 when the plan has not been submitted. Sometimes you get the  
24 situation where, if there isn't a local plan, then under our  
25 local rules the applicant submits a plan, submits it to FEMA  
for review. And of course, we can proceed on that basis under  
our regulations -- that is being litigated in another case, but  
our view is that you can. But this is so much more of a desirable

djk  
1 process. And I think that the result of this process will be  
2 better plans.

3 The only things that should be litigated are disagreements.  
4 And we will know the exact scope of the disagreements when we  
5 seek to litigate them. So we support this proposal wholeheartedly.

6 Now, to the dates, just looking at Massachusetts, for  
7 example, there is a range of 30 to 45 days. And then under the  
8 Board's order FEMA would be providing the plans -- or after they  
9 are submitted to FEMA, should be added 30 days for filing of  
10 contentions by any party who seeks to file contentions on the  
adequacy of those plans.

11 And then, of course, there would be responses to those  
12 contentions. And without going item by item, there would be a  
13 Board ruling admitting those contentions, there would be some  
14 discovery thereon, and then after that there would be litigation.  
15 Now, just working out a template for discussion purposes, we  
16 came out, when we discussed this with FEMA and New Hampshire  
17 and Massachusetts, roughly five to six months before we could  
18 seek to litigate, before the Board would be in a position to  
proceed on litigation of these plans after they were submitted.

19 In other words, if you take the 45 day date, and as Ms.  
20 Shotwell aptly pointed out, that was a range, 30 to 45 days for  
21 review of the plans locally, and amendments, and the deliberative  
22 process which FEMA is engaged in, then if you take the 30 day  
23 date and the 45 day date and add about five and a half months,  
24 just roughly, you are going to be coming down with a date on  
which the Board should be in a position to have litigation on.

25 And what that really means in terms of the overall hearing

2djk  
1 schedule is that we are looking at a hearing in the November/  
2 December time frame. And the staff believes there is time under  
3 existing schedules to do that.

4 What I think was fairly clear to me yesterday is that we  
5 will be going to hearing sometime this summer, and we can get  
6 into this later. In fact, Mr. Jordan had indicated a proposed  
7 schedule which I want to comment on. I don't have a terrible  
8 disagreement with it, but there are some things I would like  
9 to indicate with respect to it. But at any rate, whether we  
10 start -- the existing schedule starts in June. Mr. Jordan's  
11 proposed schedule would start a hearing in August.

12 I think we could easily complete that schedule on those  
13 issues, and we may be able to even file proposed findings and  
14 the Board may even be able to issue a partial initial decision  
15 in that regard, depending on the dates.

16 And then we have a second phase, and the second phase would  
17 be those few contentions which we were not able to litigate early  
18 on because of a couple of open items, and there are only two or  
19 three of those contentions. And the emergency planning. And  
20 we think that this could be easily accommodated within this  
21 schedule if we move with reasonable dispatch.

22 The Licensing Board's decision is scheduled for the June/  
23 July '84 time frame on all the areas, assuming existing schedules,  
24 and I think with the hearing starting in November, roughly the  
25 November time frame, I think that can easily be accommodated.

So we think it is a good idea. I haven't had all of these  
dates beforehand, but they all seem to be ballpark dates.

I wasn't clear -- maybe because my notes are incomplete --

2djk  
1 what is the status of the state plan for New Hampshire? The  
2 state plan was submitted for Mount Yankee already to FEMA for  
3 review. Either Mr. Bisbee or Mr. Cassidy can answer, but what  
4 is the status of it for Seabrook? I just didn't get it.

5 MR. BISBEE: If I could have ten seconds to speak with the  
6 Civil Defense group?

7 JUDGE HOYT: Surely.

8 (Pause.)

9 MR. BISBEE: Thank you, Your Honor. Excuse me for inter-  
10 rupting.

11 It is anticipated that the state plan will be complete  
12 within the same time period that I referred to with regard to  
13 the local plans. The precise date is also unknown on that. We  
14 can also try to provide that.

15 JUDGE HOYT: Within ten weeks? Is that what you are saying?

16 MR. BISBEE: Yes.

17 JUDGE HOYT: Mr. Lessy, we are a little concerned about  
18 such a late date in the year, November/December. The Board had  
19 anticipated something more on the order of a September/October  
20 time frame.

21 MR. LESSY: I guess that question should be --

22 JUDGE HOYT: I think, Mr. Lessy -- I think one of the  
23 representatives back here wishes to add something to the record  
24 here.

25 MS. PEVEAR: I don't wish to be a skunk at a garden party,  
but the town of Hampton Falls had requested some years ago from  
the State of New Hampshire Civil Defense, the state plan in order  
that we could work up the town plan. Because it is our contention

2dik  
1 that until we know, as a small town, what the state is prepared  
2 to do for us, we cannot know what we can do.

3 JUDGE HOYT: Well, ma'am, I think that is a matter of  
4 local concern, and probably not one within --

5 MS. PEVEAR: Right, however, in the same respect, I --

6 JUDGE HOYT: -- the jurisdiction of this Board. May I --  
7 I don't wish to be --

8 MS. PEVEAR: Could I just clarify?

9 JUDGE HOYT: If you want to clarify something that we just  
10 don't have any jurisdiction under, are we gaining anything?

11 MS. PEVEAR: You are going to gain something from this  
12 because we are not going to have a plan in Hampton Falls until  
13 we have a state plan to look at.

14 JUDGE HOYT: And again, that goes to the matter of your  
15 relationship with your state persons.

16 MS. PEVEAR: Right.

17 We are also not going to have a plan in Hampton Falls until  
18 we know how many minutes we have to get the people out. So I  
19 just wanted to --

20 JUDGE HOYT: All of these are matters that you must discuss  
21 with your state person.

22 MS. PEVEAR: I thought it would change your date schedule,  
23 though.

24 JUDGE HOYT: Thank you.

25 Now, Mr. Lessy, get back to the -- we are looking at a  
September/October time frame, is what I am trying to emphasize.

MR. LESSY: Since, again, the off-site area -- I am going  
to lateral the ball to FEMA, and then when they are done I might



2djk

1 have a further comment, but I think Mr. Cassidy is in a better  
2 position than I am to talk about this review schedule. And then  
3 I can further comment on it if the Board pleases.

4 MR. CASSIDY: This is why Mr. Lessy promised to give me a  
5 separate table.

6 JUDGE HOYT: I am running out of tables, Mr. Cassidy, as  
7 well as chairs.

8 MR. CASSIDY: I can appreciate that fact.

9 Your Honor, I think as far as a schedule goes, we can't  
10 review anything until we have it on our plate, and I think that  
11 is the simple answer. As Mr. Lessy was indicating previously  
12 as to comparing this with other hearings, this is the fourth  
13 hearing that I have filed appearances in dealing with off-site  
14 emergency planning. And they have run the gamut from one where  
15 there was one general contention that was filed on the basis of  
16 the FSAR without any plans in existence at the time the contentions  
17 were filed and discovery was had, to one where we had the plans --  
18 other parties had the plans for a long period of time, but FEMA  
19 had them for six weeks to review before we had to file testimony.

20 I think that we are well ahead in this matter with regard  
21 to everybody having input into the plans. The intervenors, cer-  
22 tainly, and the states and FEMA sitting down and discussing these  
23 plans. And hopefully we are going to have plans that are sub-  
24 mitted to us that are in relatively good shape. And I think all  
25 the parties need to appreciate these are not going to be final  
plans, that certainly these are a draft plan, and that there will  
be revisions that will be recommended by FEMA after review by  
the Regional Assistance Committee, and certainly input from the

2djk  
1 other parties involved in this matter.

2 But I think we are at a stage where this approach that  
3 we have taken by trying to get a fix from the states and set up  
4 a timetable for submission is a -- certainly a rational approach.  
5 And I think that frankly, in comparison to other proceedings on  
6 off-site emergency plans that I have participated in, we are in  
7 much better shape here to have a hearing that both is timely in  
8 the sense that the plans are far enough along that contentions  
9 can -- proper contentions can be filed on them. And that giving  
10 the parties sufficient time, including FEMA, and the Regional  
11 Assistance Committee adequate time to review and prepare a  
12 learned testimony on these plans, so that in the long run that  
13 will reduce the length of the hearing and also allow for the  
14 Board to make findings on a much better record than has been  
15 presented in some of the other cases.

16 One other matter, to throw a bit of a glitch into a  
17 September/October schedule, I am representing the agency in the  
18 hearing on Wolf Creek, and Judge Lawrenson has set a schedule  
19 for that matter which is to commence in mid-September, go the  
20 last two weeks in September, there will be a two-week break,  
21 and then pick up the last two weeks in October. So, certainly  
22 if this Board would like to adjust schedules with Judge Lawrenson,  
23 and if they deemed an earlier hearing here appropriate, that  
24 would be within the purview of the Boards to discuss. But I do  
25 have that time commitment on the Wolf Creek matter. And certainly,  
as far as a practical matter of scheduling my time, the November/  
early December -- late November/early December scenario that  
we have discussed -- and I think this schedule really would

2dj  
1 accommodate, would be more beneficial in that regard.

2 Unfortunately, FEMA is not like NRC. There are two and  
3 a half of us on our legal staff of 18 -- which is extremely  
4 small for a federal agency -- that handle these matters. And  
5 it is not a matter of being able to say well, assign Wolf Creek  
6 to somebody else, or assign Seabrook to somebody else. It is  
7 just a matter if we don't have the horses to be in two places  
8 at once. So that, I think, needs to be a consideration in the  
9 scheduling.

9 JUDGE HOYT: Dr. Luebke?

10 JUDGE LUEBKE: Mr. Cassidy, you used the word "contention"  
11 in your remarks, and Mr. Lessy previously said that the type of  
12 litigation is different, and he used the word "disagreements."  
13 I guess the question in my mind is how is it different, and who  
14 generates the disagreements, and so on. Could you clarify that  
15 a little bit?

16 MR. CASSIDY: Well, in terms of the use of the term "con-  
17 tention," I am using that as defined or as commonly used in the  
18 licensing proceeding. I think in terms of developing contentions  
19 or issues with regard to the emergency planning, that the process  
20 certainly isn't any different than for technical matters. I  
21 have not been involved in a hearing dealing with safety issues  
22 or on-site issues, so I really can't comment on how it is dif-  
23 ferent.

24 The only thing that I can suggest is perhaps by making a  
25 comparison to traditional litigation, where you are talking about  
something, an act that has happened in the past, that you are  
litigating, and you have fixed facts. Here, as the planning

2djk  
1 process goes, and as I am sure when we get into hearing the  
2 various planners from the state and from FEMA and the other  
3 experts that are presented, will tell you that planning is an  
4 ongoing process, that the planning for any nuclear power plant  
5 or any kind of emergency planning really never ends. What  
6 happens is you get to a point where plans are developed and  
7 fixed to the extent that that is what the operative plan is today,  
8 but as a result of changed circumstances, changes in equipment,  
9 changes in personnel and staffing, the plans are always being  
10 updated and revised.

11 So, in that sense I think it is different from when you  
12 have a plan perhaps in -- I don't know, this may be a weak  
13 analogy -- for a plant where you are talking about a construc-  
14 tion type of thing. You know, either the valve is here and it  
15 works or it doesn't work, or it has been contested. And once  
16 it is in place it is in place, as opposed to planning, which  
17 is a dynamic process and an ongoing process.

18 So that is probably the best answer I can give you as far  
19 as how it is different.

20 JUDGE LUEBKE: Who initiates the disagreements? You men-  
21 tioned 16 towns here and 17 towns there. Do the representatives  
22 of those towns initiate the disagreement?

23 MR. CASSIDY: I presume that the contentions will be filed  
24 by the intervenors that have been admitted to the proceedings.

25 JUDGE LUEBKE: Well, I am just trying to see how many  
people might have standing. Because every town --

MR. CASSIDY: Well, I think that would be a matter in the  
discretion of the Board as to who -- what community sought to

2djk 1 intervene in the proceeding, either as an interested municipality  
2 or as a party.

3 JUDGE LUEBKE: But you decide who has standing?

4 MR. CASSIDY: Oh, now That is the Board's decision. That  
5 is the Board's decision.

6 JUDGE HOYT: Which case is that that Judge Lawrenson has?  
7 Wolf Creek?

8 MR. CASSIDY: Wolf Creek, yes. Which is somewhat out of  
9 my region, but again, because we only have such limited staff,  
10 I am assigned to that matter.

11 JUDGE HOYT: Anything else, Mr. Lessy?

12 MR. LESSY: Not really, Your Honor.

13 In terms of the process that Mr. Cassidy explained, the  
14 time frames allotted here do give the opportunity for resolution  
15 of matters intra-governmentally. For example, let me just take  
16 one of -- the two state participants here would have an opportunity  
17 to discuss -- the attorney generals' office would have an oppor-  
18 tunity to discuss the state plan with their civil defense --  
19 the co-civil defense workers. And we would hope that as a  
20 result of that process we would not see New Hampshire's attorney  
21 general's office filing contentions on the New Hampshire plan.

22 Similarly, this gives an opportunity for discussion between  
23 the towns and the states and the state plan. This gives the  
24 process an opportunity to work.

25 My feeling would be that you may start a hearing earlier,  
in October, say, but it may not end any earlier than if you give  
the process a chance to work. My feeling is that it would be  
penny wise and pound foolish to do that. So our feeling is that

2djk  
1 the best litigation of these kinds of contentions within the  
2 Commission's time frame here would be as Mr. Cassidy outlined,  
3 and for that reason we support it.

4 JUDGE LUEBKE: You are saying, Mr. Lessy, that there will  
5 be fewer disagreements by allowing this time to pass a little  
6 bit?

7 MR. LESSY: And the disagreements we do have -- I don't  
8 know how many there will or will not be, but I am hoping that  
9 there will be. But the ones that exist should be ripe for  
10 litigation. That is, hopefully, that there has been opportunity  
11 to discuss those matters and we will know exactly where everyone  
12 stands.

13 And then also, the reasonableness of those disagreements  
14 will come into play. If there is a disagreement between a  
15 locality and a state in a planning aspect of it, and they have  
16 discussed it, and they bring it in here, and if, for example,  
17 there is only one municipal corporation which has that and the  
18 rest don't disagree, then the Board has a relative idea of the  
19 relative merits to put on that. I think it gives the process  
20 a chance to work. And maybe the next case we will say go to  
21 hearing in October, et cetera, but on this one I would like an  
22 opportunity -- our view is that we would like an opportunity to  
23 have the process work. And I think, given the opportunity, I  
24 hope we will be in a better position.

25 I guess this is on the record, and if it doesn't work you  
can all point to me and say "you are the cause." But in this  
instance I would like the chance to see it work.

JUDGE HOYT: Of course, Mr. Lessy, our concern on the

2djk  
1 Board is that we are going to have to come out with our decision  
2 all neatly tied up on all contentions by June of '84. That is  
3 a lot of work for us to have to do, because everything everybody  
4 else in this room has done has got to be reviewed by the Board.  
5 It is a monumental task, and we don't want to shirk any particular  
6 phase of it. And that is the reason we want to build in as much  
7 time for ourselves as possible. It is a totally selfish point  
8 of view from the Board, but we want as much as we can get.

9 MR. LESSY: Mr. Wheeler and I have looked at that, and  
10 we think that just based on the existing time frames for Commis-  
11 sion and Appeal Board review, that that date really ought to be  
12 July '84, and we are going to make recommendations to the  
13 Chief Administrative Judge and the Commission that that date be  
14 so changed. So there is your month right there.

15 JUDGE HOYT: We will take it; thank you.

16 Yes, sir? Let me take Mr. Backus.

17 MR. BACKUS: This raises a question about an area of  
18 contentions that I am not clear about. Maybe either Mr. Cassidy  
19 or Mr. Lessy can speak to it. And that is contentions related  
20 to the size of the emergency planning zone. At least for SAPL,  
21 we would be somewhat concerned that we sort of ignore the  
22 requirement of 50.47(c)(2) that the emergency planning zone is  
23 not cast in stone at ten miles around the reactor. It is  
24 supposed to be based on a rational assessment of the particular  
25 risks, the characteristics of the particular site.

My recollection is that NECMP filed a contention on this  
early one, and was ruled premature. I would be somewhat unclear  
as to when contentions on the size of the EPZ would be in order,

2djk 1 and I would invite staff counsel or Mr. Cassidy for FEMA to maybe  
2 speak to that issue.

3 (Pause.)

4 MR. DIGNAN: Before we base an awful lot of time on that  
5 one, could I remind the Board that in the Memorandum and Order  
6 issued by the Board on November 17, 1982, at page 17 the Board  
7 made its ruling. And they didn't reject those contentions on  
8 the basis that they were premature. You rejected them on the  
9 basis that they were not within the ambit of the regulations  
10 of the Commission. It is NECMP III.5 entitled "EPZ's." The  
11 ruling appears at page 17.

12 That is the law of this case. Mr. Backus' remedy on that  
13 is in the Appeal Board.

14 MS. SHOTWELL: There is one problem with that in that the  
15 Commonwealth did submit a similar contention which was thrown  
16 on purely on the basis of prematurity and not on the basis of  
17 any ruling of law.

18 MR. DIGNAN: I suppose the Commonwealth can resubmit it,  
19 Your Honor, and I assume the Board's rulings will remain consis-  
20 tent.

21 JUDGE HOYT: Do you have a copy of that Order of November  
22 17th? This was NECMP's Contention 5, I believe. EPZ's. We  
23 have ruled on it.

24 MS. SHOTWELL: Well, I do think that for purposes of our  
25 contention that was only ruled premature, we do need to know  
when we would refile that. I think that is a good point.

JUDGE HOYT: Are you going back to the Order of September  
13th on yours?



2dj

1 MS. SHOTWELL: That's right.

2 JUDGE HOYT: I think we took all of your contentions as  
3 a lump --

4 MS. SHOTWELL: That's right.

5 JUDGE HOYT: Because all of them dealt with emergency  
6 planning.

7 MS. SHOTWELL: That's right.

8 JUDGE HOYT: You did not reach the merits. Had you filed  
9 the same contentions and maintained the same position on the same  
10 basis, I think our rulings would have been the same, obviously,  
11 Ms. Shotwell.

12 MS. SHOTWELL: Obviously, in view of our appellate rights  
13 we do need to have that ruling. So I do need to know when we  
14 would resubmit that.

15 My suggestion would be logically it seems to me that you  
16 do that when plans have been submitted, and there is some region  
17 that one thinks should be included that has not been included.

18 JUDGE HOYT: Well, on Mr. Backus' appeal to the Appeals  
19 Board, you could take an Interlocutory Appeal. I am certain  
20 he would --

21 MS. SHOTWELL: No, we have no intention of doing that.  
22 But we do have an intention of perhaps filing a contention at  
23 which time as it is right. We were told that it was premature,  
24 and we do need to know at what time it would be viewed as right.

25 JUDGE HOYT: I think I could suggest a method by which  
you could reach the same participation. You don't care whether  
it is your contention or Mr. Backus'.

MS. SHOTWELL: Oh, I do indeed, madam, because we may word

2djk 1 word the contention quite differently, we may have very different  
2 substantive content to the contention.

3 JUDGE HOYT: Well, we are not going to take a late-filed  
4 contention just to --

5 MS. SHOTWELL: It wouldn't be late-filed because we were  
6 told that it was premature when it was filed before.

7 JUDGE HOYT: And it was premature, because your contention  
8 was based on --

9 MS. SHOTWELL: We accepted that Order. We didn't appeal  
10 that Order. But we do need to know at what time we would now  
11 be expected to file that.

12 MR. LESSY: Your Honor, if I might venture into this one,  
13 the Massachusetts state plan does draw a line, as I understand  
14 it, of the EPZ zone. Now, if the Commonwealth of Massachusetts  
15 wants to try to reoffer its contention on that line, it would  
16 be at the time that the Massachusetts state plan would be sub-  
17 mitted, in my view.

18 MS. SHOTWELL: That is acceptable.

19 MR. BISBEE: If I could add one item of interest here, I  
20 don't know whether it would clear up the water or muddy it more,  
21 but I believe New Hampshire -- I know New Hampshire had a similar  
22 contention -- it was not identical to either Massachusetts'  
23 contention on this issue or SAPL's, and, as I recall, in your  
24 September 13th Order of 1982 you denied it specifically because  
25 it was premature and for no other reason. So I think you have  
two rulings on similar contentions, one of which is that it was  
premature, so we should have the opportunity to refile.

MR. LESSY: Does Mr. Bisbee have a reference to the Order?

2djk  
1 I didn't remember the, frankly --

2 JUDGE HOYT: The November Order was page 17.

3 MR. LESSY: That was Massachusetts.

4 MR. BISBEE: I think it was in --

5 JUDGE HOYT: That was in NECMP's contention.

6 MR. BISBEE: It was Contention New Hampshire 21.

7 JUDGE HOYT: New Hampshire 21 Contention was ruled on at  
8 page 31 of the Order of September 13th. It starts at page 21.

9 MR. LESSY: At page 22, I believe, Your Honor.

10 MR. BISBEE: Yes, at page 22.

11 JUDGE HOYT: All right, then 22. It starts at page 22,  
12 and goes over to page 33.

13 MR. BISBEE: And on page 33 in the final sentence, the  
14 Board's justification for denying the contention is because  
15 it deals with local emergency plans, not yet filed.

16 JUDGE HOYT: We will have a ten-minute recess.

17 (Recess.)  
18  
19  
20  
21  
22  
23  
24  
25

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

5 Just one thing now first, Ms. Hollingworth. I  
6 want to be sure that this schedule for preparation in State  
7 decision making regarding submission of off-site plans  
8 which counsel for FEMA Cassidy has been talking to is  
9 attached to the record and was identified as a one-page  
10 document.

11 If you need some extra copies of it, just get  
12 them from him.

13 Now, Ms. Hollingworth, you indicated you had  
14 something you wanted to ask?

15 MS. HOLLINGWORTH: I just wanted to indicate that  
16 our contention 6, which was very similar to the other  
17 parties, was also the same. And the ruling on it was that  
18 it was denied because it was premature with 1, 2, and 3.

19 JUDGE HOYT: Any premature contentions obviously  
20 would be refiled at the time of the triggering document  
21 necessary which the Board has ruled is the submission of  
22 the draft emergency plans. I think that's the answer to  
23 your questions on all of the -- from Ms. Shotwell and Mr.  
24 Bisbee -- and yours, Mr. Backus? No, I think yours is a  
25 ruling on another matter.

1 MR. BACKUS: I was actually speaking to an NECNP  
2 contention and the Board's ruling on that, which I have now  
3 had a chance to look at. And I would just like to know,  
4 Madam Chairman -- and I do not agree that the Board ruled  
5 that contention out as a matter of law on the basis that  
6 there is no regulatory requirement for consideration of  
7 more than 10-mile EPZs.

8 My review of that order, which was furnished to  
9 me by Brother Dignan, indicates that there was a  
10 design-basis contention there, that the EPZ should be drawn  
11 in light of beyond-design-basis accidents, bigger than  
12 desig-basis accidents.

13 And the Board's ruling, as I see it, ruled that  
14 out, saying there was no regulatory basis for that. It did  
15 not -- and I don't think the Board ever intended to -- rule  
16 out litigation of the size of the EPZ based on those  
17 factors set forth in 50.47.(c)(2): local emergency response  
18 needs and capabilities as affected by such conditions as  
19 demographics, topography, land characteristics, access  
20 routes and jurisdictional boundaries.

21 And I still would invite guidance from the Board  
22 or the Staff or FEMA as to, first of all, whether or not  
23 they are going to make a recommendation as to the adequacy  
24 of the EPZ, the appropriate size of the EPZ, and when they  
25 think contentions on that issue would be appropriate.

1 JUDGE HOYT: All right. Let me ask you two  
2 questions, Mr. Backus. First, is that the order speaks for  
3 itself. Second is, if you have any questions concerning  
4 discussions between yourself and the Nuclear Regulatory  
5 Staff, that that is not the concern of this hearing; that  
6 is a concern that you may express and discuss with the  
7 Staff.

8 All right, let's move on to the next one  
9 here. Mr. Dignan, I don't think you have had any opportunity  
10 to comment on these proceedings. I do not wish to foreclose  
11 you at all.

12 MR. DIGNAN: Thank you, Madam Chairman.

13 The applicant in this setting of course really  
14 hasn't that much to tie it on simply because, to put it  
15 succinctly, my client's position is this: We are building  
16 a nuclear power plant that at least we want to run it, and  
17 that is why we are here.

18 Now, the planning is in the hands of local and  
19 State officials. I can offer the full resources of the  
20 Public Service Company of New Hampshire, its fellow  
21 applicants, the Yankee Nuclear Services Division, to  
22 anybody who wants help. And I think they're pretty good  
23 people, and they know their way around this game.,

24 There's very little else we can do except to  
25 urge upon the Board that the Board do everything in its

1 jurisdiction to see to it that we move this thing along  
2 expeditiously.

3 The plan that I heard outlined for the hearing  
4 sounds reasonable to me. I have a couple of questions about  
5 it that I at least would appreciate the Board asking to  
6 counsel who has spoken. One is, let us assume that at the  
7 end of the 45-day period, so-called, or 30 to 45 or  
8 whatever period the Board deems is the appropriate period  
9 if this plan should be adopted

10 JUDGE HOYT: The Board has already ruled, Mr.  
11 Dignan, that we expect those contentions to be filed 30  
12 days from the triggering device, which is the filing of the  
13 plan.

14 MR. DIGNAN: Submission of the plan. But the  
15 problem is, as I understood the plan to be outlined by Mr.  
16 Cassidy -- and I may be in error -- the towns are going to  
17 get the plans, the towns are going to get back to the  
18 State, and the State is going to file them with FEMA, and  
19 then FEMA files with the NRC, and that's the trigger.

20 The problem is if a given town decides that it's  
21 not going to give it back to the State, i.e., that it's not  
22 happy or whatever, at the end of 45 days, we've got an  
23 open-ended situation here. And I respectfully suggest that  
24 any order of this Board, because while you may not have  
25 jurisdiction over the towns, you certainly have

1 jurisdiction over the parties before you, which include  
2 both States.

3 But your order ought to instruct the States that  
4 in event the plan isn't given back to them, they are to  
5 send the draft that they sent to the town to FEMA so that  
6 we can at least get the ball rolling.

7 JUDGE HOYT: Well, Mr. Dignan, you're asking us  
8 to render a decision that would be completely premature. I  
9 am going to have to assume at this point that the States,  
10 as they have done in other matters before this Board, have  
11 filed timely in accordance with other Boards' rulings, and  
12 I am not going to prejudge that they will not.

13 And I do not want to be placed in that position,  
14 frankly.

15 MR. DIGNAN: This is not a contention that the  
16 State would not cooperate with the Board. The problem the  
17 State is going to have, if I understand the ruling that's  
18 going to come down, the State is going to be instructed  
19 under this order to give it to FEMA only after they get it  
20 back from the towns.

21 If a town refuses to give it to a State -- I am  
22 talking about a town who isn't before you -- the State's in  
23 a box. Your order is going to instruct them to only send it  
24 on to FEMA after the town has given it back. The State,  
25 therefore, cannot do anything. It is boxed in if a town



1 does not give it back to the State.

2 JUDGE HOYT: Wel'll we're about boxed in too,  
3 aren't we, Mr. Dignan?

4 MR. DIGNAN: Not if you instruct the State that  
5 in the event they do not get it back from the town they are  
6 free to file the draft they sent to the town and at least  
7 get the ball rolling. And maybe we'll get some problems  
8 after that, but I think that's the only glitch I see in the  
9 whole system, which I think has been adequately outlined by  
10 my learned friends here.

11 The State can be in a position under the way I  
12 understand the order to be worded, that they hand the plan  
13 to the town, a given town takes the plan, and for whatever  
14 reason -- I am assuming it's a good reason; I an not  
15 casting aspersions on anybody -- refuses to give it back to  
16 the State with its approval, if an order reads that the  
17 State shall only forward the plan to FEMA after getting  
18 town approval, the State can't forward the plan to FEMA.

19 And I think the Board ought to build in a relief  
20 for the State there so that the State can send the draft  
21 over to FEMA, FEMA can send the draft onto the NRC and at  
22 least get the contentions rolling on that town.

23 Now, maybe we're going to have to scrap out  
24 after that whether we can do anything in light of the  
25 town's noncooperation or whatever. But you don't want to

1 build an order that prevents the hearing from going forward  
2 by the action of a party that's not before the Board. And  
3 not all these towns are before the Board.

4 JUDGE HOYT: Let me ask the States involved here,  
5 do you feel the need of that type of relief? Let me start  
6 out with Mr. Bisbee because his is the State in which the  
7 plant is located.

8 MR. BISBEE: No, I don't feel it's necessary, and  
9 certainly not at this point. I would share your concern of  
10 ever having to be put in the position to even suggest  
11 ordering something along the lines of telling a State to  
12 submit something that it, through its various agencies that  
13 are involved in this process, did not feel it appropriate  
14 to do at a particular time.

15 New Hampshire Civil Defense has indicated to me  
16 that it intends to submit plans within the 10-week period.  
17 There is certainly always the possibility that certain  
18 problems will arise that will prevent them from submitting  
19 a plan to FEMA within that time period. But it is not  
20 expected to happen.

21 JUDGE HOYT: Now, Ms. Shotwell of Massachusetts.

22 MS. SHOTWELLD: Well, I certainly agree that we  
23 don't feel any need for this type of relief. I don't think  
24 we're faced with any kind of situation like the one that  
25 has been described. And we intend for the decision about

1 submission to FEMA to be made jointly with the communities  
2 and see no problem with that situation.

3 JUDGE HOYT: Now, Mr. Aherns for the State of  
4 Maine.

5 MR. AHRENS: I am really not a part of this at  
6 this point.

7 JUDGE HOYT: You have no plans that have to be  
8 filed, do you?

9 MR. AHRENS: Well, we're not within the 10-mile  
10 EPZ.

11 MR. CASSIDY: If I may?

12 JUDGE HOYT: Yes, Mr. Cassidy.

13 MR. CASSIDY: If I might add, and hopefully  
14 clarify, that I think Mr. Dignan's concern is well taken in  
15 terms of, you know, this possibly turning into an  
16 open-ended situation. However, I think that an order at  
17 this point would be premature, that the States and FEMA  
18 have been working in good faith and I think trying to tie  
19 down a situation here.

20 I think what is necessary, and I think the burden  
21 really falls on the States in this regard, is to educate  
22 the local governments with regard to these plans, because  
23 we're not, to my way of thinking and based on my  
24 understanding of the procedures of the Commission as far  
25 as litigating these plans, is that we're not working for

1 local approval of a final plan. Everybody has to go into  
2 this with the understanding that it is a draft plan, that  
3 there are going to be changes made, and certainly during  
4 the 45-day period there will be consultation between the  
5 State and local governments.

6 It's not as though the local government is going  
7 to be handed this document and say, here, get back to us in  
8 30 to 45 days with what you think about it.

9 I know from my conversations with Massachusetts  
10 that there will be a meeting during this period between  
11 Massachusetts Civil Defense and the local government to go  
12 over the plan and discuss it and explain the impact of it  
13 and presumably also to discuss the interface between that  
14 plan and the State plan. So that it's not going to be the  
15 local government in isolation here.

16 And I understand that New Hampshire is  
17 anticipating to carry out the same kind of process.

18 What I think needs to be clear, and I think that  
19 this is where perhaps there was a problem with the  
20 Newburyport prototype book that was submitted, is that this  
21 is not a final plan.

22 Even after the plans are filed with NRC and  
23 served on the parties as part of the contention process,  
24 there will be continuing dialogue, I would anticipate,  
25 between the States and FEMA wherein at that point our PAT,

1 which authorizes us or mandates us to assist the States in  
2 preparation of these plans, and an ongoing dialogue between  
3 all those parties that are involved in the planning process  
4 to refine and further develop the plans.

5 I think what has to be communicated to the local  
6 governments and, I think it's clear at this juncture, to the  
7 States is that we are dealing with a draft plan but what  
8 we're looking for is a decision from the States that, yes,  
9 substantively this plan is a good basic plan, yes, there  
10 are going to be further refinements, and perhaps some  
11 comments will come back into FEMA along with that  
12 submission of the plan from the local governments.

13 But I think if the educational process is done  
14 right with the local governments -- and I think that burden  
15 falls on the States, and FEMA is certainly willing to  
16 assist them in that process, and the local governments  
17 understand what the process is and that this is not the end  
18 of the planning process -- that it should facilitate  
19 submission within the 30-to-45-day timetable as outlined.

20 I think perhaps what the Board should order, if  
21 it is going to contemplate anything along the lines that  
22 Mr. Dignan has suggested, is that if there is not going to  
23 be a submission of the plan at the end of this 30-to-45-day  
24 period, that that should be communicated to the parties and  
25 the Board at the earliest possible date so that at that

1 juncture the Board may be in a position where it needs to  
2 make further ruling on this process.

3 JUDGE HOYT: Do you want to add anything?

4 MR. LESSY: Your Honor, if I might, I think that  
5 is well stated. I would just like to pick up a little bit  
6 on the very last point. When the Staff was discussing this  
7 concept with FEMA in the meeting with the State  
8 representatives, one of the things that -- and if I am  
9 wrong, I could be told now -- one of the things that the  
10 States' representatives gave the Staff the impression of  
11 was that they thought that the 30-to-45-day time frame was  
12 reasonable.

13 And certainly, as Mr. Cassidy indicated, it  
14 doesn't have to be a finally approved plan, but certainly a  
15 plan that has been discussed and talked and reviewed at the  
16 State, and that the planning process was dynamic.

17 If, as Mr. Dignan has indicated, a possible  
18 glitch here, you know, and there's no doubt about it, but  
19 the only thing that I would add is that if in fact after a  
20 30-to-45-day time frame there is a town which local  
21 municipal organization which has not participated, you  
22 know, it is my hope or expectation that that would be an  
23 isolated case and it may be, as lawyers say, sui generis.

24 In other words, if in fact there is a reason, if  
25 in fact after that time frame something is not submitted to

1 FEMA, as Mr. Cassidy indicated, I think the Board and  
2 parties should know why in essence, the record in that  
3 regard and what's occurred so that they can consider what  
4 relief might be appropriate considering the ongoing  
5 planning process when it eventually come to the  
6 consideration of an emergency plan for that town and the  
7 litigation thereof, because the hope here is that things  
8 will work, the planning process will work and things of  
9 this nature, and that this plan affords that opportunity.

10 If something doesn't work, then I think we're  
11 going to have to consider the ways to deal with it. But  
12 our expectation, our hope, is that the interfaces that are  
13 available will occur and that the result will be the  
14 litigation of real differences on considered matters on  
15 plans where there has been an opportunity for input.

16 JUDGE HOYT: I think the Board is convinced at  
17 this point that the process is maching along smartly and  
18 that we can expect the cooperation of the States. And  
19 there certainly has been negotiations and activities  
20 between the parties that would indicate that these plans  
21 will be filed. If they're not, I think we can meet it at  
22 the time that any such unfortunate situation may arise.

23 MR. DIGNAN: That is all I have, except again to  
24 repeat that I am instructed by the management of my client  
25 to indicate to all those officials present, and the NRC and

1 the States know this, that if either Public Service or  
2 Yankee's experts can be of any assistance to them in this  
3 process, they're there for the asking.

4 JUDGE HOYT: Oh, I wonder, Mr. Dignan, if the  
5 Board could prevail upon you to express that concern and  
6 offer to the towns that have been admitted into this case  
7 as parties.

8 MR. DIGNAN: I will be glad to send a letter out  
9 to all parties, including those who have been admitted as  
10 271(5)(c) parties.

11 JUDGE HOYT: The Board would appreciate that, and  
12 I ask that a copy of it be served on the Board and all the  
13 parties that are here.

14 MR. DIGNAN: Yes, ma'am.

15 MR. JORDAN: Your Honor.

16 JUDGE HOYT: Yes.

17 MR. JORDAN: We've been quiet over here.

18 JUDGE HOYT: Mr. Jordan, I didn't expect it to  
19 last this long.

20 (Laughter)

21 MR. JORDAN: I want to be I think positive on  
22 both counts perhaps. I want to emphasize that from our  
23 point of view, the Coalition's point of view, we think the  
24 approach of putting in the time for people to work together  
25 on the plan is really very important. And I just want to



1 inform the Board it is our interest to do that.

2 I ha<sup>2</sup> the opportunity to speak to a collective  
3 FEMA representative sometime back. Mr. Cassidy was there.  
4 It may have been 9 months ago now, I don't remember. And I  
5 emphasized to the FEMA people in this region that we were  
6 interested in sitting with them and working with them  
7 before we get so far in the litigation that we can't talk  
8 to each other and we can't reach understandings.

9 I think that it's a difference from NRC process  
10 in the past that I think is extremely valuable. And I hope  
11 we are able to use it.

12 JUDGE HOYT: I think, Mr. Jordan, the Board has  
13 been impressed also with the cooperation that you have  
14 exhibited in reaching some settlement agreements with the  
15 Staff concerning some of your contentions. And the Board  
16 appreciates the fact that I think the case is marching  
17 along very smartly.

18 MR. JORDAN: Let me address "marching along  
19 smartly," perhaps.

20 JUDGE HOYT: All right.

21 MR. JORDAN: First, I do want to -- there has  
22 been discussion this morning of somehow emergency planning  
23 is different, somehow contentions are different, it's a  
24 dynamic ongoing, sort of nebulous process, and we really  
25 can't quite grasp it.

1           That's not right. We can litigate emergency  
2 planning with no difficulty. There are very specific things  
3 we will address. It's not a question of some kind of  
4 nebulous ongoing thing that neither the parties nor the  
5 Board can capture. There are enough buses, or there are  
6 not. There are enough routes, or there are not.

7           It is not something that we can't grasp. And I  
8 would hate to have somehow an impression left that it's  
9 contrary to that.

10           And finally, it continues to disturb me greatly  
11 that the whole hearing seems to be directed not by the  
12 substance and the potential hazards and the issues here but  
13 by the desire to get the nuclear plant on line in time.

14           The requirement is not that this hearing be done  
15 in June or in July. The requirement is that the hearing go  
16 forward fairly, fully, that the Board have all the facts,  
17 that the Board itself seek facts, if need be, and that we  
18 take the time that is needed to protect the public up here  
19 in New England.

20           So when I hear, we need to get done by June, my  
21 blood just curdles. We need to get done when the issues  
22 have been covered sufficiently, whether it is in June of  
23 '84 or June or '85.

24           I am not interested in delaying this thing. I  
25 don't think we've done that. I don't think we will. But I

1 think we've got to be governed by the amount of time it  
2 takes to do the job right in litigating this however many,  
3 \$5-8 billion project this is now. It's a big project with a  
4 lot of problems that need to be addressed.

5 JUDGE HOYT: Well, Mr. Jordan, I don't know what  
6 response you might want from the Board. I will give you at  
7 least one, and that is that the concern that the Board has  
8 expressed, our hope here this morning and in other hearings  
9 with the prehearing conferences with you and parties to the  
10 proceeding, is that we want all the time we can get in  
11 order that we can reach just those fair conclusions that  
12 all the good evidence that will be put in by all parties  
13 can receive that can be fairly weighed and fairly judged.

14 And I hope that the Board's actions as it has  
15 indicated that it expects to render a fair decision on all  
16 parties. I think we have attempted to do that. And we hope  
17 that the parties will continue to litigate fully whatever  
18 the issue is.

19 We want the very best you have to give us  
20 because we have got the responsibility for making the  
21 decision. And we're going to take the time to do it.

22 MR. JORDAN: We will let you know when we need  
23 the time to give you the help that you have just described.

24 JUDGE HOYT: We want also, Mr. Jordan, and this I  
25 want to make I think some other person used this --

1 "perfectly clear" --

2 (Laughter)

3 -- and that is that we don't expect to have what  
4 has appeared in the past to be in this case some very  
5 inappropriate usages of time. If you have got discovery,  
6 for example, to do in a case, I don't want to see it wait 2  
7 or 3 months before the first discovery request goes down,  
8 and then when the nit becomes the grit, to tell this Board  
9 that you need additional time. And I think you know what I  
10 am talking about.

11 MR. JORDAN: Yes, ma'am, I do. And I object to  
12 that characterization.

13 JUDGE HOYT: All right.

14 MR. JORDAN: And I think I would be glad to  
15 explain our position on that.

16 JUDGE HOYT: And I want you to remember that what  
17 we ruled in that is we expect you to get your ducks on the  
18 pond on time, that that is what is fair both to your  
19 client, both to this Board, and both to that public out  
20 there. And I will not -- and I don't think that I even need  
21 to turn around and consult with this Board -- we are not  
22 going to have anyone waste a moment of the client's time  
23 with the Board being sacrificed in having the best evidence  
24 before it.

25 And you have had your order on that. And I

1 didn't intend for it to become quite based upon one order.  
2 But if that is what is here before us, then I am certainly  
3 fully intending to do, to reinforce what the Board said in  
4 that order. We expect the parties to take the times that  
5 are built into this proceeding, and we don't have always  
6 the flexibility. We have the rules that we have to follow,  
7 and those are laid down by the Commission. And when those  
8 rules are set forth and we have to put out an order, we  
9 expect you to comply with them.

10 I know, having sat on the other side of this  
11 particular table, that I could always use another 2 days or  
12 another 2 months, and sometimes another 2 years. But it  
13 just isn't always possible. And we want a very careful use  
14 of the time and to march in order without sacrificing, and  
15 we don't want to see you lose the opportunity, because we  
16 are not going to extend time to any party in this case  
17 regardless of who it is unless there is a very -- and let  
18 me emphasize -- good cause underlying. And then we will act  
19 upon granting additional time.

20 But there is going to be good cause, and good  
21 cause is not having sat on your rights.

22 MR. JORDAN: Yes, ma'am. We will -- I was not  
23 speaking to that particular -

24 JUDGE HOYT: All right.

25 MR. JORDAN: -- point. I am glad you -- I would

1 not at all intend to raise it any further here. We will be  
2 raising it in writing both to you again and probably to the  
3 Appeal Board as well. We certainly will not sit on our  
4 rights --

5 JUDGE HOYT: I expect you to exercise all your  
6 channels of litigation in the best interests of your  
7 clients, Mr. Jordan.

8 MR. JORDAN: I will emphasize that within the  
9 realities of which the Board is aware, of the limited  
10 resources not only of this intervenor but of others, we  
11 will pursue, as I believe we have in the past; within the  
12 framework that the Board has established. And we will not  
13 at all be in violation of what you have just described. We  
14 will seek good cause, seek time with good cause when we  
15 need it.

16 JUDGE HOYT: We expect no less, Mr. Jordan.  
17 All right. Anything else now?

18 MS. SHOTWELL: Judge Hoyt.

19 JUDGE HOYT: Yes, ma'am.

20 MS. SHOTWELL: Is the Board ruling on this  
21 proposal at this time or taking it under advisement or  
22 what? I guess I am not clear on what --

23 JUDGE HOYT: Taking up the proposal for the time  
24 set forth by --

25 MS. SHOTWELL: Yes. That FEMA has set forth.

1 Right.

2 JUDGE HOYT: I think this is an informational  
3 thing, Ms. Shotwell. I didn't realize you expected any  
4 order on it.

5 MR. LESSY: May I have a moment with Ms.  
6 Shotwell?

7 (Discussion off the record.)

8 MR. CASSIDY: The only thing that I was going to  
9 add is that I think when we developed the schedule, we  
10 tried to keep it I think, classifying it as for  
11 informational purposes is probably accurate, with possibly  
12 one exception that I know that Ms. Shotwell has to it. And  
13 we tried to keep it within the framework of the existing  
14 order and to provide guidance to the Board and the other  
15 parties in terms of when they can expect things to happen  
16 under the existing order.

17 And I think with the possible exception of the  
18 issue that Ms. Shotwell has, that in our opinion, there is  
19 no need for any further order other than what's before what  
20 the Board has already ruled.

21 MS. SHOTWELL: Well, one aspect that they're  
22 referring to, of course, is the City of Newburyport. As I  
23 said earlier, that is the one aspect of this proposal that  
24 does modify slightly the order that is already in  
25 existence, because this does call for the resubmission of a

1 plan to Newburyport that is specific to it, triggering the  
2 same 3-to-45-day review period, at which time a decision is  
3 made for submission to FEMA.

4 I do think in that minor respect, we do need to  
5 hear that this approach has been accepted. We felt very  
6 strongly, as you know, that it was not the proper time for  
7 contentions to be filed with respect to emergency planning  
8 for Newburyport.

9 The deadline for moving to the Appeals Board on  
10 that expired yesterday, and we did file a request for  
11 directed certification on it, which we will withdraw if  
12 this proposal is accepted such that we're no longer faced  
13 with the problem with respect to the City of Newburyport.

14 MR. LESSY: Your Honor.

15 JUDGE HOYT: Yes.

16 MR. LESSY: Just briefly, Your Honor, I think  
17 it's beneficial to have the contentions filed on the draft  
18 Newburyport prototype, because I think that will assist in  
19 the overall planning process of what the concerns of some  
20 of the parties are in that regard.

21 In addition, under the schedule that was  
22 submitted today by FEMA, there would be an opportunity to  
23 file -- another opportunity -- to file actual contentions  
24 on the Newburyport plan, which is much later down the line.

25 I feel that Staff and the applicant -- I mean



1 since there in essence is an agreement in the FEMA  
2 proposal, I personally think better resources can be used  
3 than fighting an appeal on the Board's order on the  
4 Newburport plan when in fact it's been superseded pretty  
5 much by an agreement by many of the parties.

6 And if the Board has no objection, if Ms.  
7 Shotwell wants some kind of magic words to withdraw the  
8 appeal, I would rather do that, not that I wouldn't enjoy  
9 appearing before Brother Rosenthal and company again, but  
10 then I have other plans to spring and so has Mr. Perlis.

11 So for that reason, since we're on track, I  
12 think we're liable to give the wrong impression as to the  
13 status of the emergency planning contentions in the  
14 litigation of off-site plans in this proceeding.

15 MR. JORDAN: Your Honor, just for your  
16 information, I might note that we on Wednesday filed an  
17 objection to the Board's order on that issue and requested  
18 that you certify to the Appeal Board. I think we would be  
19 in the same situation of withdrawing that if in fact it  
20 were resolved in the way it's been discussed.

21  
22  
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24  
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1 JUDGE HOYT: I don't want to foreclose you, Mr.  
2 Dignan. You clearly want to say something.

3 MR. DIGNAN: I guess I am mystified. But the  
4 contentions -- I take it that the objection on appeal that  
5 was addressed to the motion for directed certification  
6 which will attempt to get the appeal panel to violate its  
7 longstanding tradition and take certification of what  
8 amount to scheduling orders.

9 But assuming it did and they did, I don't  
10 understand what the problem is. You ruled to file  
11 contentions. I can testify from this pile of paper that I  
12 have that everybody filed their contentions. So the appeal  
13 is moot if there was going to be an appeal.

14 I mean what's going up there and what's the  
15 problem? As I understand the FEMA program, if you should  
16 adopt it, the Board will rule that these plans go back and  
17 forth, they finally come, and anybody who has got a  
18 contention on the plan that was submitted will then file  
19 those contentions.

20 I didn't hear you say no report accepted. I  
21 guess I am with Mr. Lessy: If there are some magic words  
22 that can soothe feelings here, fine. But I don't understand  
23 what is up on appeal there, given the fact that contentions  
24 were in fact filed.

25 JUDGE HOYT: I haven't seen the appeals on this,

1 Mr. Dignan, as you know. We have been up here since  
2 Wednesday.

3 MS. SHOTWELL: I hadn't thought of that, of  
4 course. The appeal we do not believe goes to a scheduling  
5 matters, it goes to the highly substantive issues that are  
6 addressed by this proposal in terms of community  
7 involvement in the preparation of their emergency plans.

8 If I am asking for magic words, they are that  
9 the contentions that have been filed with respect to  
10 Newburyport are mooted by this proposal. I believe that  
11 that is correct. I believe that that's everybody's  
12 understanding.

13 And that is simply all that I am asking for,  
14 because this proposal does contemplate that there will be  
15 resubmission of a plan to Newburyport and resubmission of  
16 contentions on Newburyport at a later date.

17 JUDGE HOYT: Ms. Shotwell, I am a little bit in  
18 the dark here -- well, I guess I am a great deal in the  
19 dark. Will the resubmission, as I think you have  
20 characterized it, on May 30 of the Newburyport plan, will  
21 the plan be actually different than what --

22 MS. SHOTWELL: Oh, yes, it will. The plan that is  
23 before the Board now was designed as a prototype.

24 JUDGE HOYT: And what do prototype plans mean in  
25 this setting?

1 MS. SHOTWELL: It was a basic outline, format.

2 JUDGE HOYT: Well, I understand what the word  
3 "prototype" means

4 MS. SHOTWELL: A suggestion for --

5 JUDGE HOYT: -- and that's what you're giving me.  
6 What I am interested in is what did this plan do? Are you  
7 just telling me somebody copied a couple of phrases out of  
8 a book and this is the prototype?

9 MS. SHOTWELL: Well, of course, I am not privy to  
10 how it was actually developed, because it was done by this  
11 independent contractor. But it was representing a broad  
12 outline, their suggestions for a format that could be  
13 followed by the various communities in their plans.

14 Everybody has acknowledged that it did not  
15 constitute the emergency plan of Newburyport, even though  
16 the words "Newburyport" were used in places by way of  
17 example. So yes, we do contemplate the resubmission of a  
18 plan to Newburyport, and under this proposal their review  
19 of that plan in a 30-to-45-day period.

20 JUDGE HOYT: That the Newburyport next plan would  
21 be its plan would be following May 30?

22 MS. SHOTWELL: That this same situation with  
23 respect to all of them, that in that period they make the  
24 necessary decisions with the State officials about  
25 submission to FEMA.

1 MR. DIGNAN: Madam Chairman.

2 JUDGE HOYT: Yes sir.

3 MR. DIGNAN: I guess what I would commend to the  
4 Board on this whole thing is perhaps taking the time -- and  
5 I know the Board is awfully busy -- take a look at this  
6 Newburyport plan that supposedly is just a, you know,  
7 abstract draft.

8 Now, I happen to have the privilege of being  
9 married to a daughter of a Newburyport resident, and I am  
10 quite familiar with that. I not only recognize names in  
11 this sort of abstract plan, but I recognize locations  
12 because one of the sirens happens to be across the street  
13 from my in-laws.

14 Now, I don't know how much more specific this  
15 thing is going to get, but it's pretty specific right now.

16 JUDGE HOYT: I have wondered that too, Mr.  
17 Dignan.

18 (Laughter)

19 MR. DIGNAN: But now, more importantly, Madam  
20 Chairman, if I hear my brethren from the intervenors  
21 correctly, what they want is leave to withdraw these  
22 contentions and be sure that they can refile when the  
23 filing comes in from Newburyport officially, whatever that  
24 is.

25 And I at least would not object to an order that

1 permitted the withdrawing of these contentions and assured  
2 that they'd still have the right to file on Newburyport as  
3 such when it comes in. It might simplify things.

4 JUDGE HOYT: Thank you. We will recess for a few  
5 moments here.

6 (Brief recess.)

7 JUDGE HOYT: Dr. Luebke will join us in a  
8 moment. But we'll go ahead. Let the record reflect that  
9 all the parties to the hearing are present in the hearing  
10 room, and Dr. Luebeke has temporarily excused himself and  
11 will rejoin us momentarily.

12 Let me ascertain from you, Mr. Backus, if the  
13 Board were to adopt this schedule set forth by the FEMA  
14 representative, Mr. Cassidy, is it your intention you want  
15 to withdraw your contentions as well at this time?

16 MR. CASSIDY: I suppose so, Madam Chairman,  
17 subject of course to refiling them if they are still  
18 appropriate.

19 JUDGE HOYT: Well, under the schedule that will  
20 be provided --

21 MR. CASSIDY: Right.

22 JUDGE HOYT: -- by using these dates.

23 Same for Ms. Shotwell?

24 MS. SHOTWELL: Yes.

25 JUDGE HOYT: And I believe Mr. Jordan?

1 MR. JORDAN: Yes, ma'am.

2 JUDGE HOYT: I think the thing that impresses me  
3 most about this is that the parties have been willing to  
4 cooperate in the establishment of this, and it seems to me  
5 that it's a good starting point to get into the contentions  
6 on emergency planning.

7 And for that reason, we will adopt this hearing  
8 schedule that FEMA has presented here this morning, which  
9 is for the filing of the plans of the six communities in  
10 Massachusetts and for the commitment made on this record by  
11 the representatives of New Hampshire that the town plans  
12 will be submitted, as will the State plans, within about 10  
13 weeks.

14 I believe also there is a commitment of the  
15 State of Massachusetts to file its plan on June 1, 1983. I  
16 think for that reason the Board does not wish to see  
17 unnecessary litigation occur, because I do think it  
18 misdirects the time of the parties to matters from more  
19 substantive matters and issues.

20 However, I would like to make it very clear that  
21 the Board does not consider the mere fact that there have  
22 appellate briefs been filed as the triggering device that  
23 has made us wish to withdraw the commitment that we had  
24 required the parties to make based on Newburyport  
25 contentions.

1 I don't know whether that requires any  
2 additional orders of this Board or not. We can probably  
3 issue one if anyone thinks it's necessary. We now have a  
4 nice large book of orders in which one more is not any  
5 great difficulty.

6 MS. SHOTWELL: As long as we can get leave to  
7 withdraw, I don't think that there is any problem.

8 JUDGE HOYT: Does that meet with anybody's  
9 approval or objection, however you want to state it?

10 MS. SHOTWELL: And that does also mean that we're  
11 withdrawing our petition for certification to the Appeals  
12 Board since this --

13 JUDGE HOYT: Well, you may do on that, Ms.  
14 Shotwell, as you wish. The Board wants to be very clear  
15 that if you wish to pursue that, you may do so.

16 MS. SHOTWELL: Not at all. We filed that simply  
17 to preserve our rights in case this proposal was not  
18 accepted.

19 JUDGE HOYT: Very well.

20 MS. SHOTWELL: But since it has been, we will be  
21 withdrawing it.

22 JUDGE HOYT: It is your client, and we want you  
23 to represent it as you best feel you should.

24 MR. JORDAN: Your Honor.

25 JUDGE HOYT: Mr. Jordan.



1 MR. JORDAN: If we can do it, we would love to  
2 move to withdraw both the Newburyport contentions that we  
3 filed and our objection to the Board's order at this time.  
4 We simply do not have to file any more paper on it if that  
5 is all right with the Board.

6 JUDGE HOYT: That's all right with us. With as  
7 much paper as we've filed. But I think the proceeding will  
8 march smartly along, Mr. Jordan.

9 All right, Mr. Cassidy.

10 MR. CASSIDY: May I --

11 JUDGE HOYT: Just a moment.

12 JUDGE HARBOUR: I would like to ask Mr. Cassidy a  
13 question.

14 Mr. Cassidy, I think you are probably the  
15 correct person to ask this question, but direct me to the  
16 party who is if I am wrong. Am I correct in assuming that  
17 this is the only prototype plan that we're going to see? It  
18 will be a prototype plan for New Hampshire?

19 MR. CASSIDY: I would probably direct you to the  
20 State Attorney General on that. But my understanding is  
21 that this is the only prototype plan that we will see.

22 MR. BISBEE: That is correct.

23 JUDGE HOYT: Mr. Cassidy, you have some other  
24 representation?

25 MR. CASSIDY: Yes, if I may, since everybody is

1 pretty much in agreement with the schedule. During the  
2 brief break Mr. Perlis was kind enough to point out a  
3 couple of typographical errors in it which I would like to  
4 correct at this time.

5 For the town of Marrimac, under the 30-day  
6 column the correct date should be 5/18. And under the  
7 45-day column it should be 6/2.

8 And under Newbury, under the 30-day column that  
9 should be 6/12.

10 JUDGE HOYT: Did the reporter make those? Thank  
11 you.

12 Do we have any other matters to discuss? I don't  
13 know which one of you is first. He had his hand up first, I  
14 think.

15 MR. DIGNAN: Madam Chairman, do I assume that the  
16 Board having accepted what we have been calling the FEMA  
17 proposal here, that there will in due course be a  
18 scheduling order from the Board based on these facts that  
19 will set the discovery deadlines and the summary  
20 disposition motion deadlines and so forth leading towards a  
21 fall -- and I not going to get into October versus November  
22 with you -- but to a fall hearing date at some appropriate  
23 time?

24 In other words, this schedule just takes us  
25 through when FEMA does its thing, and I was wondering if it

1 was the Board's intention to wait until the thing had been  
2 done before starting to schedule the fall activities or to  
3 issue an order following this prehearing conference looking  
4 towards that fall scheduling problem.

5 JUDGE HOYT: The Board is in usually unanimous  
6 agreement here that we would like to work up some firm  
7 scheduling dates, as firm as any dates can ever be in a  
8 case at this time. At this point I think if FEMA has got  
9 these plans and has got the 30 days and the whole  
10 triggering device is in place, by virtue of the order of  
11 January, and I forget the date, 1983, why can't we come to  
12 some scheduling decisions here today, Mr. Dignan? Is that  
13 what you're asking for?

14 MR. DIGNAN: Yes. I think if the Board deems it  
15 appropriate. I was looking at, as I see the last date on  
16 here is, if I have done my calculation right, the 10-week  
17 period that New Hampshire talks about end on June 18. The  
18 Newburyport plan is the last of the local plans with  
19 respect to Massachusetts, due July 14. And I guess the  
20 last plan of any kind to be submitted will be the s-called  
21 amended State plan.

22 Is there going to be a submission of the area  
23 plan, do we know, to FEMA on June? And could somebody  
24 enlighten me, at least, as to what an area plan is as  
25 opposed to the State plan?

1 MS. SHOTWELL: The area plan is a component of  
2 the State's plan that relates to this particular area at  
3 the interface between the local communities in that area  
4 and the State.

5 MR. DIGNAN: So then I assume that discovery will  
6 proceed with respect to the Massachusetts plans off of the  
7 so-called area plan because the balance of the  
8 Massachusetts plan is the generic plan that covers the rest  
9 of the State and Pilgrim and Row and everything else, am I  
10 right on that? Can FEMA --

11 MR. CASSIDY: That's correct.

12 MS. SHOTWELL: My understanding was that we were  
13 going to physically submit the full State plan at the same  
14 time as the area plan. Now, there are revisions that are  
15 planned to the State plan, but that at the time that we  
16 submit the area plan, the entire State plan will come in.

17 MR. DIGNAN: The plan on July 1?

18 MS. SHOTWELL: Yes.

19 MR. DIGNAN: In other words, the amended plan,  
20 September '83, is not a fencing item in this matter?

21 MS. SHOTWELL: It was our view that it need not  
22 be.

23 MR. DIGNAN: I agree with you.

24 That being the case, our last date on the  
25 schedule would be the 45-day date, and I guess we're all in

1 agreement that 45 days is going to be the outside time for  
2 submitting plans will be the July 14 date for the City of  
3 Newburyport.

4 That being the case, it seems to me we could  
5 start scheduling from that date; that is to say, I guess we  
6 would need to hear from FEMA how much turnaround time they  
7 need and the contentions in any event would be triggered as  
8 of July 14. That would be the last submission, as I  
9 understand it, on or about July 14, to the NRC.

10 And it seems to me we put a contention period of  
11 whatever number of days the Board feels is appropriate off  
12 of July 14, which will give even more time with respect to  
13 the other plans, and that then what ought to be set as a  
14 reasonable period of time to shake that out in terms of  
15 there will be answers to the contentions, and the Board  
16 will have to probably have a prehearing to decide which  
17 contentions are in or out.

18 I would assume that would take another 15 to 30  
19 days anyway. And then all that's left is the discovery  
20 period, the summary disposition period.

21 But I would suggest -- and I think you would  
22 probably have to defer it -- at least I would defer at this  
23 point -- for a first crack at it to Mr. Lessy and the NRC  
24 Staff. But if we took July 14 as the beginning date of  
25 starting to think about things and went from there, I have

1 a feeling that gets us down around that fall time frame.

2 MR. LESSY: The only thing is that I think that  
3 under the Board's existing order, once the document is  
4 submitted to FEMA and FEMA submits it to the NRC, then  
5 parties have 30 days to file contentions. So that that  
6 30-day period --

7 MR. DIGNAN: Would be a moving one.

8 MR. LESSY: -- would be a constantly changing  
9 date, and we don't need to wait.

10 MR. DIGNAN: But the last one is going to be --

11 MR. LESSY: Yes.

12 MR. DIGNAN: -- is going to end 30 days from July  
13 14, is that right?

14 MR. LESSY: Yes, that is correct, sir, but --

15 JUDGE HOYT: That is the last date.

16 MR. DIGNAN: Yes.

17 JUDGE HOYT: But I think Mr. Lessy has pretty  
18 much seen what we had anticipated with the order, that it  
19 would be moving date.

20 Mr. Ahrens.

21 MR. AHRENS: Your Honor, I am sorry, I think I  
22 misunderstood your response to Mr. Dignan's remark, but if  
23 the suggestion was that the Board should rule today with a  
24 subsequent writing, I think that that might work a hardship  
25 particularly on towns that filed as parties under 24715,

1 but which are not here today. And I guess I had presumed  
2 that the Board would issue an order in writing.

3 JUDGE HOYT: We will probably rule. I think we  
4 have done so much at this prehearing, we would like to  
5 probably put it in in an oral form, although I think that I  
6 can't share totally your concern about the towns, because  
7 they were notified, and I was so concerned yesterday  
8 afternoon that phone calls were placed to each one of the  
9 town representatives telling them that there was a  
10 possibility that a half an hour's difference might make in  
11 their schedule, and I find this morning that nobody comes  
12 that had been telephoned last evening.

13 And I was rather disappointed that when someone  
14 files to intervene then they don't consider it important to  
15 show up at the hearing conference.

16 MR. AHRENS: Well, for whatever reasons the towns  
17 didn't show up, Your Honor, at least for the convenience of  
18 all the parties or intervenors in other matters outside the  
19 Nuclear Regulatory Commission matters, it is to the benefit  
20 of everyone to have schedules in particular in writing. And  
21 a ruling from the bench without a subsequent writing,  
22 that may present a problem.

23 JUDGE HOYT: I think you are absolutely correct  
24 in anticipating what the Board is going to do.

25 MR. SHIVIK: Your Honor, if I may interrupt.

1 JUDGE HOYT: No, sir, you may not. Would you  
2 please be seated?

3 MR. CASSIDY: If I might comment to Mr. Dignan  
4 and Mr. Lessy's comments, I think there is something that I  
5 just did want to clarify before going on to the scheduling  
6 issue. The July 14 date, just to reiterate and clarify  
7 that, is the date that the State is going to be making a  
8 decision, the outside date, on the submittal of that  
9 Newburyport draft plan. I anticipate that the actual date  
10 that FEMA gets it in hand and that we pass that on to NRC  
11 will probably be within the range of a week to 10 days on  
12 either side of that, assuming, you know, the furthest out  
13 date, probably no later than the 24th, because physically  
14 once they have made their decision, then we have requested  
15 the State to provide us 20 copies of the plan so that we  
16 may provide them to the Regional Assistance Committee and  
17 have sufficient in-office copies and to forward a copy off  
18 to NRC.

19 NRC has been good enough to be reproducing a  
20 sufficient number of plans for the parties and serving  
21 them. So I do anticipate that there would be a hiatus of  
22 approximately seven to 10 days from that July 14th date in  
23 which the parties would have the plans in the end to  
24 trigger the contention process.

25 I did just want to point that out. And I am also



1 -- I hadn't been aware before that the June 1st date that  
2 Massachusetts was going to be submitting the entire State  
3 plan, and that certainly from FEMA's point of view will  
4 allow us to get involved in that process a little earlier  
5 than we anticipated.

6 JUDGE HOYT: That's a correct assumption, is it  
7 not, Ms. Shotwell, that that will be the --

8 MS. SHOTWELL: It will be the unrevised State  
9 plan. There will be some revisions later. But we are saying  
10 that at that point we will submit the existing State plan  
11 along with the area plan that relates to the site.

12 JUDGE HOYT: And there is no problem, do you  
13 understand, that 30 days thereafter the triggering device  
14 for filing the contentions.

15 MS. SHOTWELL: That's right.

16 JUDGE HOYT: So everybody is in agreement on  
17 that.

18 Mr. Jordan, a long time ago you appeared to want  
19 to add something to this, and unfortunately, we have passed  
20 you by. Would you like to give us the benefit of your  
21 contribution now?

22 MR. JORDAN: I guess I am at a loss as to what it  
23 was.

24 MR. CASSIDY: He said he wanted it in writing.

25 MR. JORDAN: No, Ahrens wanted it in writing. I

1 guess I think it will be useful to have a schedule. We  
2 should set it out carefully and see where everything fits.  
3 But I didn't have anything -- that's hardly a great  
4 substantive contribution.

5 JUDGE HOYT: All right. I didn't want to pass you  
6 by.

7 MR. JORDAN: Thank you.

8 JUDGE HOYT: Could we refine the schedule any  
9 further then in your opinion, Mr. Lessy?

10 MR. LESSY: We might be able to, Your Honor. I  
11 still have on my agenda -- it is probably going to be a  
12 very unpopular comment -- but the question of Mr. Jordan's  
13 proposal for the safety hearing schedule, which I wanted to  
14 address, I remember, at the close of the prehearing  
15 conference yesterday, yesterday's prehearing conference.

16 JUDGE HOYT: Yes.

17 MR. LESSY: I wanted to comment on that. I wanted  
18 to respond very briefly to Dr. Luebke's question concerning  
19 the SER. And we can work to refine the schedule. I think  
20 that maybe if we take a lunch break and then give the  
21 parties a little bit of a chance to chat about a time  
22 frame, that we could come back and take care of the rest of  
23 that within certainly less than an hour. That's my  
24 suggestion at this point in time.

25 If there are other objections to it, I would be

1 happy to stay and tough it out. But that's my feeling on  
2 it, Your Honor. I don't know that we can reach any  
3 agreements, but at least we can discuss those time frames.

4 JUDGE HOYT: We would like as much input from all  
5 of you here on scheduling. And I would like to urge as much  
6 in the discovery stage in planning that would give you  
7 enough time to make realistic exchanges, and they wouldn't  
8 be so limited to one or two exchanges. Perhaps you could  
9 refine down many of the issues.

10 I think one of the contributing factors to  
11 getting some of the NECNP's contentions settled with the  
12 Staff was due to a cooperative effort there of using the  
13 time properly. And the Board was very appreciative of that.

14 Mr. Cassidy.

15 MR. CASSIDY: My comment, with regard to Mr.  
16 Lessy's last comment, I would suggest that I would much  
17 prefer we plug on with the emergency planning schedule  
18 before the Board went back to Mr. Jordan's suggestion of  
19 yesterday afternoon.

20 JUDGE HOYT: Yes.

21 MR. CASSIDY: I would also suggest that at least  
22 with regard to the States and FEMA and the Board, I think  
23 we had discussed the scheduling or the proposed scheduling  
24 based on the proposal that he's making today in some  
25 length, and we've had some more generalized discussion with

1 the other intervenors with regard to that.

2 I think we could benefit from plugging on now  
3 rather breaking for lunch at this juncture.

4 JUDGE HOYT: All right. We would like to recess  
5 then for lunch -- yes, ma'am, Ms. Pevear.

6 MS. PEVEAR: Yes. I would like to, just because  
7 he does have another appointment, to have recognized a  
8 selectman from the Town of South Hampton.

9 JUDGE HOYT: You understand that appearances were  
10 entered on this record for this conference at 9:30 this  
11 morning, and we gave all the parties ample warning.

12 MS. PEVEAR: I know that.

13 JUDGE HOYT: If the person wishes to come in and  
14 make his appearance after the lunch schedule, that's fine.  
15 But this Board will not be run by previous appointments of  
16 persons who may wish to enter an appearance at their  
17 convenience, Ms. Pevear.

18 MS. PEVEAR: I understand that.

19 JUDGE HOYT: Thank you.

20 MS. PEVEAR: But if you could before breaking for  
21 lunch --

22 JUDGE HOYT: No, ma'am.

23 MS. PEVEAR: After lunch --

24 JUDGE HOYT: We just told you if he wishes to  
25 come back, that's fine.

1 MS. PEVEAR: That's what I wanted to know.

2 JUDGE HOYT: Yes, he may.

3 MS. PEVEAR: Thank you.

4 MR. SHIVIK: Thank you, Your Honor.

5 JUDGE HOYT: All right. We will recess for  
6 lunch. We will reconvene at 1:30.

7 (Whereupon, at 12:00 noon, the prehearing  
8 conference recessed, to reconvene at 1:30 p.m. the same  
9 day.)

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AFTERNOON SESSION

1  
2 JUDGE HOYT: The hearing will come to order. Let  
3 the record reflect that all parties to the hearing who were  
4 present when the hearing recessed are again present in the  
5 hearing room. At the conclusion of the morning session  
6 there was the person who had sought to be heard earlier, and  
7 I believe at this time would like to make an appearance on  
8 the record. Is that correct, sir?

9 MR. SHIVIK: Yes, Your Honor. Thank you.

10 I would simply like to state -- my name is Walter  
11 Shivik, and I am a Selectman in the town of South Hampton.  
12 I am a designated representative for the town at this  
13 Commission meeting.

14 JUDGE HOYT: All right, thank you for your appear-  
15 ance on this record, sir.

16 I will instruct you, as we do all the parties who  
17 enter, that you must take the proceeding as you find it here  
18 today. We will not repeat anything for you.

19 How do you spell your last name, sir?

20 MR. SHIVIK: S-h-i-v-i-k.

21 JUDGE HOYT: Thank you very much.

22 Mr. Lessy, you seem to be the one that wanted to  
23 speak.

24 MR. LESSY: We are about to discuss my least  
25 favorite subject, which is scheduling. And I think that the

5dik2  
1 easier one to discuss, Your Honor, is the schedule for the  
2 litigation of the safety contentions, as the Board calls  
3 them; the ones that we argued in essence yesterday that  
4 were admitted in the September or the November '82 Orders.

5 JUDGE HOYT: And we start out with the June 14th  
6 date.

7 MR. LESSY: Yes.

8 The Board's schedule in its Order of November 13,  
9 1982, which in essence has been followed pretty much by the  
10 parties, and which arrived at a June 14th hearing date --  
11 and which I think was a good prediction and which we, in  
12 essence, have met, is the one that I think we need to look at.

13 All dates have been, in essence met. We are at  
14 the bottom four dates.

15 Now, the first date on that schedule, in the exist-  
16 ing schedule, is Board rulings on Summary Disposition Motions.  
17 And that was, of course, scheduled for April 5, 1983, which  
18 obviously is now a superseded date.

19 Now, 30 days after that interval on the existing  
20 schedule was the timing for the filing of direct testimony.  
21 And 23 days thereafter in that schedule, which would be a  
22 total of 53 days from the Board's ruling, would be the filing  
23 of rebuttal testimony. And 17 days thereafter would be the  
24 date for the beginning of hearings.

25 Now, i think, although we didn't have a formal vote

5djk3  
1 vote on it, I don't think we are going to get any objections --  
2 or I am not aware of any objections -- to using those intervals  
3 in the existing schedule. Once we plug in the date that the  
4 Board would want to rule or issue its Order on Summary  
5 Disposition.

6 In other words, take that as the first line, and  
7 then add 30 days for direct testimony, add an additional 23  
8 days for rebuttal testimony, adding an additional 17 days  
9 for the first day of the hearing. And I think -- I am not  
10 aware of any objections to that procedure.

11 MR. BACKUS: Mr. Lessy?

12 MR. LESSY: Yes?

13 MR. BACKUS: There is no objection to that procedure,  
14 just a clarification. I would suggest that the 30 days for  
15 filing testimony based on the Board's disposition be from  
16 the date of notice of the Board's ruling on those motions.  
17 So if we get notice by Express Mail or telegram which the  
18 Board used in the past, that would advance the date, but if  
19 the Board files its Orders by mail, it would be the usual  
20 presumed course of arrival of mail that the 30 days would  
21 run.

22 JUDGE HOYT: I can probably give you an expeditious  
23 handling of that, which would make it 30 days from the time  
24 you get that notice. And that is going to be on the day  
25 that we issue the Order.



544k4 1 MR. BACKUS: Thank you.

2 JUDGE LUEBKE: So what are the total days, added up?

3 JUDGE HOYT: Fifty--three.

4 MR. LESSY: The total days would be 70.

5 JUDGE HOYT: Where do you get 70?

6 MR. LESSY: Thirty for direct testimony, 23 days  
7 for --

8 JUDGE HOYT: Oh, I see.

9 MR. LESSY: -- rebuttal testimony, and 17 for the  
10 hearings.

11 JUDGE HOYT: I forgot the 17 between rebuttal and  
12 the hearing.

13 MR. LESSY: If the Board -- I don't know what the  
14 schedules of the individual panel members are, but -- I am  
15 sorry, that is an outmoded phrase. "Individual judges" are,  
16 but if the time -- if the Board wants to pare that down, it  
17 would be on the last 17. In other words, once the parties  
18 have filed their direct testimony and rebuttal testimony,  
19 if the Board wanted to pare that down, the amount of time  
20 that they would need to review it from what was ordered in  
21 September, I think that date may be a little generous.

22 So other than that, I don't anticipate any objection.

23 JUDGE HOYT: That is where we had anticipated taking  
24 it off of. Because we wanted to give you plenty of time to  
25 file the direct and the rebuttal. And that would be the

5djk5  
1 place that we would take it off to get to the 14th.

2 MR. LESSY: Well, that wouldn't get you to the  
3 14th, now --

4 JUDGE HOYT: I think we would come pretty close,  
5 though.

6 MR. LESSY: Well --

7 JUDGE HOYT: Depending upon when we issue each of  
8 these.

9 MR. LESSY: Yes.

10 JUDGE HOYT: Okay.

11 MR. LESSY: Okay.

12 As long as we are on that subject, Dr. Luebke had  
13 raised a question about the staff SER yesterday, and we have  
14 reviewed the number of open items in that SER, which was 19.  
15 And I might indicate that is a very conservative classifica-  
16 tion. That is, if the matter wasn't completely resolved from  
17 the staff's review, it was left either open or put in a  
18 confirmatory category, which just means -- to me at least --  
19 that the paper -- it is a matter of confirming understandings  
20 and things of this nature.

21 But that number of open items, which was 19, is  
22 generally consistent with the SERs that I am aware of  
23 recently. The Catawba SER had 18 open items; the St. Lucie  
24 SER had 18 open items; the Watts Bar SER had 17 open items;  
25 the Waterford SER had 25 open items; the Midland SER had 16.

5d1k6  
1 I think as opposed to what may have been done in the  
2 past is that there is now a routine schedule for SER supple-  
3 ments to deal with these open items.

4 I might indicate that there are very few -- very  
5 few -- of these open items that relate to any contentions  
6 which we will have to litigate in the next couple of months.  
7 And the most prominent is obviously the on-site emergency  
8 preparedness issues, and which is coming out in an SER, as  
9 we indicated, very, very soon.

10 Once we receive -- the staff receives -- the Board's  
11 rulings on the pending Summary Disposition Motions, then  
12 we will be in a position to advise the Board as to whether or  
13 not any of the contentions which have been deferred for  
14 Summary Disposition purposes won't be ready for testimony in  
15 the new testimony date because they were either open on the  
16 SER or there were matters being examined like the Salem matter  
17 we just discussed yesterday.

18 I don't anticipate that will be a great number. And  
19 the way I suggest that we handle those is that we either  
20 litigate those at the end of this -- what was to be the June  
21 14th hearing -- or we litigate those before the emergency  
22 planning part. And it just depends on when the matters break.

23 But there are a very few items which are in that  
24 category which we discussed with the Board yesterday. What  
25 we will do is when our position was that the Summary Disposition

5djk7  
1 would be deferred, if there was a Motion on it, then we will  
2 file our response. Or, if we deferred Interrogatories we will  
3 file our answers, and the whole process would start off.

4 But that is a relatively very few number of those.

5 The one matter which I want to put on the table  
6 for discussion, which I know from canvassing and talking to  
7 the parties, that there may be a difference of views on, is  
8 the question about one of those open items, which is on-site  
9 emergency preparedness.

10 As I say, we are indicating an SER supplement to  
11 come out at the end of this month. We then have some Inter-  
12 rogatory responses to answer. Depending on when the Board  
13 issues its hearing schedule, again, the Board will be faced  
14 with the same question, as to whether or not those contentions  
15 should be litigated, in essence, at the end of the safety  
16 hearing or the beginning of the emergency planning hearing,  
17 or in connection with the emergency planning hearing.

18 The staff's position is that we will follow whatever  
19 the Board's pleasure is in that regard. We do realize that  
20 it is a -- that could fall either way.

21 My feeling is that as of the way we see it now, we  
22 may well be able to litigate it at the end of the safety  
23 hearing, because the safety hearing is going to be a bit later  
24 than we thought. But I just wanted to indicate that that is  
25 one of those matters that falls in between.

5djk8  
1 And I think that on the emergency planning litigation  
2 schedule, which was --

3 JUDGE HOYT: Can I ask you what you meant, Mr.  
4 Lessy, by the hearing schedule on the safety contentions  
5 would be a little later than we thought?

6 MR. LESSY: Well, we have just talked about the  
7 intervals, which we just discussed. June 14, the June 14th.

8 JUDGE HOYT: Oh, all right. I'm sorry; I see.

9 MR. BISBEE: Excuse me, Madam Chairman and Mr. Lessy.  
10 I wonder whether I couldn't address the question of the on-site  
11 emergency planning issues and when they ought to be heard, at  
12 this point, before we talk about the scheduling of the second  
13 phase, the emergency planning issues.

14 JUDGE HOYT: On-site emergency planning?

15 MR. BISBEE: That is what I would like to address  
16 now.

17 JUDGE HOYT: Go ahead.

18 MR. BISBEE: If you deem this the appropriate time.

19 JUDGE HOYT: Go ahead.

20 MR. BISBEE: As I understand it, the State of New  
21 Hampshire has two emergency planning contentions that haven't  
22 already been admitted by the Board. The first one is New  
23 Hampshire Contention 20, which deals with emergency assessment  
24 classification and notification. The second one is New  
25 Hampshire 21, which deals with on- and off-site emergency

5djk9  
1 protective actions. The Board has admitted that contention  
2 for the purposes of on-site protective actions.

3 I have spoken with each of the parties about the  
4 possibility of hearing, or having the Board hear the on-site  
5 emergency planning contentions at the same time that they  
6 hear off-site. There is general agreement that all emergency  
7 planning issues that deal strictly with off-site issues are  
8 logically to be heard at the same time as the off-site issues  
9 that will be raised later, through contentions on the various  
10 plants.

11 This seems reasonable to me. The issue, for  
12 instance, of the adequacy of medical facilities that we have  
13 raised in relation to emergency workers has been raised as  
14 an on-site issue, but it certainly has off-site ramifications.  
15 It seems to make all the sense in the world to hear that issue  
16 at the same time that you will hear, no doubt, a similar  
17 question raised on the ability or the adequacy of medical  
18 facilities to treat persons who might be injured on-site.

19 There is a question -- I might add also -- that  
20 has Mr. Lessy has pointed out, the staff still has the SER  
21 section to submit on emergency planning, and also to respond  
22 to certain Interrogatories from New Hampshire.

23 The Applicant has suggested that New Hampshire --  
24 Mr. Gad has suggested that New Hampshire attempt to divide  
25 up the issues raised in the two emergency planning contentions

5djk10  
1 already admitted, to those issues which are truly on-site  
2 which deal with documents already submitted in the FSAR, and  
3 those issues which are truly off-site.

4 For our purposes now, I would suggest that within  
5 Contention Number 20, filed by New Hampshire, we now are  
6 contesting two issues, one of which is the adequacy of medical  
7 facilities and the second of which is the adequacy of the  
8 on-site radiation exposure control program.

9 I would suggest that the latter of those two issues  
10 is properly raised before we get to on-site issues.

11 Second, however, the former issue of the adequacy  
12 of medical facilities, should be deferred until we get to  
13 that same issue with regard to off-site emergency planning.

14 As to New Hampshire Contention 20, which deals with  
15 the Applicant's ability to assess the nature of an accident,  
16 to communicate that assessment to the various officials that  
17 need to be notified under the various plans and within the  
18 Applicant's own emergency plan, and also to recommend protec-  
19 tive action to these various officials. I would suggest that  
20 that, too, is properly dealt with, perhaps at the beginning  
21 of our phase two hearing on emergency planning.

22 This contention deals with the interface between  
23 the Applicant at the onset of an accident and the response  
24 to that accident off-site. It seems to me logical there, also,  
25 to hear that issue, perhaps at the beginning of our hearing on

5djk11 1 the off-site emergency planning contentions.

2 JUDGE LUEBKE: Before you sit down, I believe that  
3 you misspoke in talking about New Hampshire 21 in your last  
4 discourse. I think you used "New Hampshire 20" twice and,  
5 just for the record, in case, as I recall it, it shows you  
6 talking first about New Hampshire 20 and again about New  
7 Hampshire 20.

8 MR. JORDAN: Your Honor, I would follow, because  
9 I think we have the same situation with respect to the  
10 Coalition's contentions. Our contentions, III, XI, and XIII  
11 relate to evacuation time estimates, which is going to be  
12 a central off-site planning issue and seems logically to go  
13 in the off-site planning area.

14 Our contention III, I believe it is, relates to  
15 training of an on-site individual, and I don't see a reason  
16 that that should go in the off-site part of the hearing.

17 I think our contention III(1) is really both, and  
18 it speaks to some of the central questions of off-site plan-  
19 ning, because it gets, in essence, to when are the off-site  
20 responses going to be triggered? That is a classification  
21 level scheme.

22 It seems to me that that is probably something we  
23 want to litigate -- it is arguably on-site, because it is  
24 the Applicant's on-site planning and structure, but it has  
25 a direct impact on the off-site responses and everything is



5dik12 1 triggered by which scheme is chosen, and so on.

2 So I guess I would be inclined to say that that  
3 should go with the off-site stage.

4 JUDGE HOYT: All right, thank you.

5 Do you want to respond, Mr. Gad?

6 MR. GAD: Madam Chairman, and members of the Board,  
7 I think the problem here is not with the theory about dividing  
8 on-site -- separating, rather, on-site from off-site. But  
9 how you apply that.

10 And in particular, bearing in mind that off-site  
11 heretofore has meant not where you do something, but rather,  
12 whether it invokes the state and the local plans on the one  
13 hand, and whether or not it involves the Applicant's emergency  
14 plans such as are required to be in the FSAR on the other  
15 hand, in the other category.

16 For this reason, New Hampshire 20 and NECNP III(1)  
17 both involve things that the Applicants are required to plan  
18 for. And I don't think that there is anything that will be  
19 accomplished by deferring that other than to defer it. That  
20 is to say it is based on stuff that we have. It is based on  
21 what we have proposed to do in the FSAR. Discovery on those  
22 is closed. There happen not to be any pending Motions for  
23 Summary Disposition.

24 And therefore, in essence, we are ready to go  
25 tomorrow, and I mean that not literally, but in the context of

5djk13

1 the June 14th hearings.

2 With respect to New Hampshire 21, by definition  
3 that was limited to on-site activities. And Mr. Bisbee  
4 raises this question about off-site medical facilities, which  
5 is one of the issues that he wants to litigate under in  
6 New Hampshire 21.

7 That was, when we first made this division, an  
8 on-site issue, not an off-site issue. And so the real question  
9 before the house is should we change it now.

10 And I submit that the answer to that is no, because  
11 the term -- and we really have reference to 10 CFR 50, Appendix  
12 E, Subsection E(6). And the phrase is, "contaminated, injured  
13 individuals," which happens to be a word of art whose meaning  
14 has been litigated. And it means people who are both physically  
15 injured in the traumatic sense, and who are also contaminated.  
16 And therefore it doesn't mean do you need 26 hospitals to deal  
17 with a bunch of injuries. It means do you need those facilities  
18 that would be necessary to deal with common injuries where you  
19 have the complicating factor of radiological contamination.

20 And the litigation to date suggests that you are  
21 only talking about a handful or two -- potentially a handful  
22 or two of individuals.

23 So it is, in essence, plans that we have to make,  
24 that have to be in the FSAR, and that issue, too, can be  
25 litigated in June, I submit, as well as it can be litigated

5djk14

1 later. If that is true, then we think it ought to be litigated  
2 in June.

3 MS. HOLLINGWORTH: Your Honor, I know I am in a very  
4 precarious position, and I don't know whether I am going to  
5 be long-lived for this world. But I would like to say that  
6 the New Hampshire Chamber of Commerce, the Hampton Beach  
7 Chamber of Commerce finds itself pretty much in the same  
8 position on our contentions 4 and 5, which have been accepted.

9 It seems to this Intervenor that the staff is  
10 speaking from both sides of their face. In the SER they  
11 stated that they are intertwined, the off-site and on-site,  
12 and therefore there is a problem. Especially in the area  
13 of the on-site emergency, where it discusses training the  
14 fire departments from the towns to go on-site. And that  
15 procedure has not been done, so I am not sure just exactly  
16 what they are trying to say, when that is going to take place,  
17 when they once stated that it has to be together.

18 MR. LESSY: Your Honor, I am just going to ask leave  
19 to --

20 JUDGE HOYT: Yes, let Mr. Lessy respond to that.

21 MR. LESSY: I just want the representative to  
22 understand what our position is.

23 We can file testimony either late on the first  
24 phase or in the emergency planning phase, depending on how  
25 the Board orders it.

5djk15 1 Now, if that, in the representative's mind, consti-  
2 tutes speaking out of both faces, or whatever expression,  
3 that is her characterization and I will leave that on the  
4 record. But our point is we will do what the Board pleases.  
5 I think it can go either way, and we will leave it up to  
6 discussion amongst the parties.

7 MR. GAD: Though it may not always be the case, the  
8 reason why I did not address CCCNH 4 and 5 was not oversight.  
9 We have no idea what is in CCCNH 4 and 5, for the reason that  
10 our Interrogatory questions have never been answered. And  
11 thus, for instance, to hear that coordination with off-site  
12 fire brigades is an issue that was intended to be litigated  
13 by CCCNH under its contention, CCCNH 5 is something that we  
14 learned approximately 20 seconds ago.

15 MS. HOLLINGWORTH: The reason why I haven't brought  
16 it up is because the supplement has not come in where they  
17 have proposed to answer the rest of them. And that is  
18 precisely why I have been unable to answer the questions,  
19 because I have been waiting for the supplement so that I could  
20 form my contentions a little more specific.

21 JUDGE HOYT: Ms. Hollingworth, you have held on to  
22 those Interrogatories, and I am afraid you can't be heard to  
23 complain about when you have heard of something or when some  
24 other document -- when your revised contention would be filed,  
25 when you haven't responded to the very basic problems.

5djk16 1 Now, let me talk to Ms. Shotwell over here.

2 MS. SHOTWELL: Yes, Judge Hoyt, on the issue of  
3 emergency action levels, I am hearing two areas of possible  
4 disagreement over areas being either on-site or off-site.  
5 One is the medical facilities question, and the other seems  
6 to be emergency action levels and classification.

7 On that area, I would point out that the regulations  
8 require that there be a jointly-accepted scheme in place,  
9 so it is a scheme that has to be accepted not just by the  
10 Applicant, but by the state and the local governments as  
11 well.

12 For that reason, I would call it an off-site issue.  
13 It certainly has off-site components to it. For that reason  
14 the Board did rule our prior contention on emergency action  
15 levels to be premature, saying that it was, at least in part,  
16 an off-site issue, and should await the submission of off-  
17 site plans.

18 So I would submit that on that it is an off-site  
19 issue.

20 JUDGE HOYT: Mr. Cassidy?

21 MR. CASSIDY: I would like to speak just with regard  
22 to the question Mr. Bisbee raised with regard to the evacuation  
23 time estimates, and their contention that deals with that.

24 And that is that it does come up as well in the  
25 off-site plan, since the inclusion of that is required in

5djkl7 1 NUREGS 54, Section J, dealing with paragraph responses. And  
2 it does seem to me, since it will be an issue that is  
3 included in the various state plans that are submitted to  
4 the Board, that it may be proper -- and certainly it would  
5 be more economical, I think -- to deal with that issue with  
6 the off-site issues.

7 JUDGE HOYT: Thank you, Mr. Cassidy.

8 Anything else on that?

9 JUDGE LUEBKE: I had a question for Mr. Lessy.

10 JUDGE HOYT: Certainly.

11 JUDGE LUEBKE: I am trying to summarize in my mind  
12 your comments about the open issues. Did you end up saying  
13 that they would all be closed by the time hearings start?

14 MR. LESSY: No. No, I did not.

15 JUDGE LUEBKE: Isn't that customary?

16 MR. LESSY: Not necessarily, Your Honor. Which  
17 open issues are you talking about?

18 JUDGE LUEBKE: Any of them.

19 MR. LESSY: Oh.

20 Of the open issues in the SER?

21 JUDGE LUEBKE: Yes. It used to be --

22 MR. LESSY: It used to be.

23 MR. LUEBKE: That the staff had their work complete  
24 when we went to hearing.

25 MR. LESSY: Yes, it did used to be. The problem is

5djk18 1 that these things have gotten more complex, and the SER  
2 supplements do come out probably -- of the roughly 18 open  
3 items, I would say half of those remaining -- say nine of  
4 those, maybe ten of those or eight of those -- I would say  
5 about half of those the Applicant has submitted information  
6 which the staff is currently reviewing.

7 It may be that in the SER supplements that number  
8 is down. There may well be a few that are published in  
9 later-filed SER supplements.

10 The only thing I can say is that the staff is  
11 proceeding as well as it can.

12 JUDGE LUEBKE: I raise the question because maybe  
13 we are being premature, because my observation is that the  
14 Intervenors pay a good deal of attention to what the staff  
15 writes, and it shows up in their responses.

16 MR. LESSY: Well, of those items, though, Your  
17 Honor, there are only a couple that bear on contentions. Some  
18 of those open items --

19 JUDGE LUEBKE: Well, I think they might make a new  
20 contention if they found new information.

21 MR. LESSY: They can, under Catawba. Or, they may  
22 well be, under Catawba, if they have an interest in it.

23 JUDGE LUEBKE: And that is why it seems to me proper --

24 MR. LESSY: But I think the current thinking is  
25 that you don't hold everything up, the whole proceeding, which

5djk19  
1 necessarily includes the off-site issues, to resolve three  
2 or four technical issues which have no relation to it. You  
3 proceed and litigate what you can, and then if there is a  
4 genesis for -- or a basis for any further proceedings,  
5 obviously the Board has to consider that.

6 But, in essence, we don't wait any more until every  
7 "i" is dotted and every "t" is crossed.

8 I will say that of the open items, there are just  
9 only a couple that relate to any admitted contentions now,  
10 and if they are still open we will -- as I indicated earlier,  
11 we will have to litigate those at the end of the first  
12 hearing or at the beginning of the second. This is no  
13 different from any other plant I am aware of in terms of  
14 procedure.  
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6djkl 1 JUDGE LUEBKE: I guess I can't cite the rules and  
2 regulations, but it is irregular. So I won't try.

3 JUDGE HOYT: The first SER supplement is coming  
4 out, as you indicated, very early.

5 MR. LESSY: Yes.

6 JUDGE HOYT: Is that going to deal with more than  
7 one of these open items?

8 MR. LESSY: That is primarily to deal, Your Honor,  
9 with the on-site emergency planning open item.

10 JUDGE HOYT: And you don't foresee having to issue  
11 individual supplements for each one of these open items,  
12 do you?

13 MR. LESSY: No, Your Honor.

14 JUDGE HOYT: All right.

15 MR. LESSY: But there will be another -- there will  
16 obviously be other ones. I think the next one is scheduled  
17 about six weeks thereafter.

18 JUDGE HOYT: And that will deal with, hopefully,  
19 how many more items? A ballpark figure.

20 (Pause.)

21 MR. LESSY: Roughly a half dozen, Your Honor.

22 JUDGE HOYT: That's close.

23 But that is still going to leave us going way into  
24 the summer months with a lot of open items.

25 MR. LESSY: Yes, but those open items probably

6dik2  
1 won't have reflected contentions in this proceeding. Many of  
2 those are subject matters which could -- there could have been  
3 contentions filed on based on the submittals and the FSAR.

4 JUDGE HOYT: Is there any way we can urge the staff  
5 to resolve those open items in the SER that relate directly  
6 to the litigation of this case; to have those resolved before  
7 put them on track before you do some of the other items? Is  
8 that possible?

9 MR. LESSY: That is what is being done in emergency  
10 planning, Your Honor.

11 (Pause.)

12 We have noted your concern, Your Honor, and we are  
13 kind of moving in that direction.

14 JUDGE HOYT: We realize that our jurisdiction to  
15 order the staff does that, but we would certainly like this  
16 record to reflect for you to carry this home to Mr. Cunningham.  
17 We would consider it to be helpful to the Board if the staff  
18 would determine, as closely as it can, to get these done first,  
19 before it does anything else.

20 MR. LESSY: Noted.

21 JUDGE HOYT: All right, that takes care of that. Or  
22 I presume it does. Do I have any other contributions here?

23 All right.

24 MR. LESSY: Well, now we come to the fun part. I  
25 guess that is really the schedul for the litigation of the

6djk3

1 off-site emergency planning issues.

2 JUDGE HOYT: I can hardly wait.

3 Go ahead, Mr. Lessy.

4 MR. LESSY: The parties have been discussing these --  
5 such a schedule, and when I say parties, of course, we are  
6 including FEMA. And there are a lot of entities involved in  
7 the process.

8 I really don't think that the difference in schedules  
9 between the one that I have been working on and the one that  
10 some of the Intervenors -- I guess Mr. Jordan is the one who  
11 has the pen in hand -- is that much.

12 The bottom line in the schedule which I was discussing  
13 is December 5th for beginning of the hearing on off-site  
14 emergency planning issues. And the date which Mr. -- well,  
15 let's --

16 JUDGE HOYT: Whatever became of November?

17 MR. LESSY: Well, this is part of a discussion pro-  
18 cess. What was Mr. Jordan's date?

19 MR. JORDAN: We came up with January 25th.

20 JUDGE HOYT: Whatever happened to November? I mean,  
21 I keep asking the question, and I keep getting January or  
22 December.

23 MR. LESSY: The problem with November, Your Honor,  
24 is that it only has 30 days in it.

25 JUDGE HOYT: I think I got that same information in

5djk4  
1 about second grade, Mr. Lessy.

2 MR. LESSY: But, no, seriously, if I could --

3 JUDGE HOYT: Why can't we --

4 MR. LESSY: Let me go down these lists with you, and  
5 tell you how we came out, in terms of discussion purposes.

6 Basically, when Mr. Bisbee stated that it would take  
7 ten weeks for submittal of, in essence, the New Hampshire  
8 local and state plans, that included the local review process.  
9 So the first date we start off with is roughly a time frame --  
10 and I am using two weeks of leeway -- of June 15th to June 30th  
11 for the submittal of state and local New Hampshire plans to  
12 FEMA.

13 That date includes the 30 to 45 days for local  
14 review and discussion and consultation regarding such plans  
15 prior to the time they are submitted to FEMA.

16 Then, I think FEMA would submit those to the NRC.  
17 They wouldn't need much time, a day or so. Let's make that  
18 June 15th to June 30th to June 16th to July 1, depending on  
19 which starting date we use. With all these plans coming in  
20 there could be different starting dates. But within that  
21 range.

22 And then we would Xerox them and Express Mail them  
23 to the parties as we did with the Newburyport, and that would  
24 just take a couple of extra days. So that would be June 18th  
25 on the near track to July 3rd on the far track.

6djks

1 Under the Board's existing Order, contentions would  
2 be due in 30 days, and that would be July 18th to August 2nd.  
3 And staff and Applicant would respond in a little less time,  
4 I think, than the rules would allow, August 10th to August 25th.

5 Now, here's -- the Board would then -- there is an  
6 opportunity then for another response from the proponents of  
7 the contentions, but the Board would then rule and then  
8 discovery on the admissibility of those contentions under  
9 2.714 and discovery would begin in the time frame of September  
10 1 to September 15.

11 Now, under the proposal which I have been discussing,  
12 the last discovery request would then be due a month later,  
13 which was not to say that discovery would end in a month, but  
14 the last request would be due in a month, from October 1 to  
15 October 15th.

16 And under the new Commission's rules of practice,  
17 summary disposition can be filed at any time. Generally it  
18 does not have to be after discovery is over. As a practice,  
19 sometimes discovery has been underway. So the only time we  
20 can't file summary dispositions is right on the eve of the  
21 hearing.

22 And around the time of October 1 to October 15th  
23 the Board may also want to have a prehearing conference or  
24 consider any schedule adjustments.

25 The testimony then would be due November 1 to

6djk6  
1 November 15th. Rebuttal testimony November 11th to November  
2 25th. And then the hearing would begin any time thereafter.

3 Now, if the submitted testimony that the Board  
4 would like, if we used the earlier date, which is November  
5 11th, and the Board only needs a week to review it, or ten  
6 days to review it, we could start in November, which is  
7 November 21st. But if we use the outside date, which is  
8 November 25th, and the Board is given ten days, roughly,  
9 it goes to December 5th.

10 Now, the last date in November, on my calendar,  
11 is November 30th. So if the Board wants five days to review  
12 the rebuttal testimony, from November 25th, we could still  
13 start on November 30th on the hearing.

14 This is a fairly tight schedule, and there is not,  
15 obviously, agreement on it. And persons can obviously comment.  
16 It is not that far different from Mr. Jordan's schedule, and  
17 that is basically what happened.

18 I didn't mean, if the Board please -- I guess I ought  
19 to stick to practicing law and not making jokes as to November.  
20 But this basically is what I was talking about this morning.

21 Now I will leave the room while everybody else  
22 discusses and comments on this, if you don't mind. But that  
23 is basically it.

24 JUDGE HOYT: You have given about six weeks, then,  
25 for discovery, haven't you?

6djk7

1 MR. LESSY: Yes, that is right, Your Honor. If  
2 this schedule we\_e to be expanded, that is obviously one place  
3 that --

4 JUDGE HOYT: I would think you would contract it,  
5 Mr. Lessy.

6 MR. LESSY: Yes.

7 JUDGE HOYT: I can't see why you need that much time  
8 for discovery.

9 MR. LESSY: Now, it just so happens, if I might just  
10 complete this, that although that was for the New Hampshire  
11 state and local plans, using the Massachusetts plans that  
12 FEMA discussed this morning, with the exception of two towns  
13 which are far out in terms of -- which are further out in  
14 terms of the time frame -- the Massachusetts local and state  
15 time plans date fits in roughly in the same time frame.

16 For example, the Massachusetts state plan is due  
17 to be submitted, the area plan is due to be submitted to  
18 FEMA June 1. FEMA could get it to us -- now, I am giving  
19 ourselves a little bit of extra Xeroxing, because that is a  
20 thick document -- June 3rd to the NRC.

21 Contentions would start after that 30 days, and the  
22 contentions on the schedule I gave you began July 18th. So  
23 the Massachusetts state plan litigation would actually be  
24 somewhat ahead of this.

25 If the Board wanted to have an earlier hearing,

6djk8  
1 depending on the number of contentions that were on the  
2 Massachusetts state plan, you could begin earlier in November  
3 by litigating the Massachusetts state plan first.

4 Now, on the Massachusetts local plans, if you take  
5 the mean -- the middle date -- or the Newbury date begins  
6 on -- I am using 30 days, June 12th to June 27th --

7 JUDGE HOYT: Why don't you use the Newburyport?

8 MR. LESSY: Well, that is the one that is the furthest  
9 out, and my feeling, Your Honor, is that that shouldn't pace  
10 the litigation of all the Massachusetts local plans. It may  
11 be that since Newburyport's document already is in existence,  
12 that that could fall within the same time frames as the  
13 existing plans.

14 But using the date of Newbury, if you follow that  
15 down, the Newbury plan would go to FEMA on July 12th to  
16 July 27th, depending on whether you use the 30 to 45 days.  
17 It would go to the NRC on June 13th to June 28th. It would  
18 go to the parties June 15th to June 30th. Contentions would  
19 be due July 15th to July 30th. And that just melds in  
20 together with the schedule which I gave you.

21 Contentions are due on the New Hampshire state and  
22 local plans under the schedule I gave you July 18th. So it  
23 all kind of fits fairly well together, and would lead to a  
24 hearing in late November or early December.

25 That is the best shot that I could give it. And, as



6djk9  
1 I say, I know there are other comments in that regard.

2 JUDGE HOYT: You said July 18th?

3 MR. LESSY: Pardon me?

4 JUDGE HOYT: That was July 18th?

5 MR. LESSY: For what?

6 JUDGE HOYT: Contentions on New Hampshire.

7 MR. LESSY: Yes, contentions on New Hampshire is  
8 July 18th to August 2nd, yes, depending on which of the dates  
9 is used.

10 JUDGE HOYT: Is it you, Mr. Jordan?

11 MR. JORDAN: Yes, ma'am, I think it is.

12 The reason we don't think that November is still  
13 there to be discussed is that we don't think we can rationally  
14 do it by then.

15 We come up with a schedule -- frankly, I first  
16 came up with a schedule that had a hearing on March 25th,  
17 beginning March 25th, which all of us thought was --

18 JUDGE HOYT: Of '84?

19 MR. JORDAN: Yes, ma'am. Which all of us thought  
20 was quite tight.

21 We have been talking with my colleagues, and again,  
22 we are talking about 23 municipal plans, we are talking about  
23 two states, we are talking about -- if there is one contention  
24 on each, that is 25 contentions. There are much more likely  
25 to be ten on each, so we are talking about 250 contentions.

6djk10  
1           You know, we are talking about a lot of litigation,  
2 and a lot of preparation. Much more, in fact, than I think  
3 that even the schedule I am about to give you allows. But  
4 I will give it to you.

5           On 6/20 -- June 20th, which is actually right on  
6 the line with Mr. Lessy's schedule, is the -- there are --  
7 most of the emergency plans have gone to the parties by then.  
8 There are a couple that are still left over, but we are willing  
9 to go ahead and start at essentially the same point that he  
10 starts.

11           July 20th, contentions are filed. August 10th,  
12 responses are filed. This is faster than their schedule.

13           August 24th the prehearing conference is held, and  
14 all contentions up to that point, the admissibility is  
15 resolved. Rulings on that point are on September 7th. We  
16 are still a week ahead of their schedule.

17           Discovery runs from September 7th to November 7th.  
18 Again, that is two months for the rather massive amount of  
19 information that I just described.

20           The last summary disposition motion is due on  
21 November 21st. Rulings on summary disposition are due on  
22 November 28th. Direct testimony is filed December 28th.  
23 Rebuttal testimony is filed January 15th, and the hearing  
24 begins on January 25th.

25           I would remind the Board that in addition to the

6djk11 1 fact that simply the number of plans that are involved, just  
2 like the number of issues that are involved, this is probably  
3 the single most important issue to the people of the New  
4 England seacoast. It is one that they certainly want to see  
5 litigated thoroughly and carefully.

6 I would remind the Board as well that if we take  
7 into account reality and we take into account the fact that  
8 the various Intervenors, including the towns, do not have the  
9 resources to be on this every day. The fact is that a hearing  
10 schedule of this sort is virtually unprecedented in any other  
11 sort of arena. Anything else this complex would take consid-  
12 erably longer than this, even the schedule I have proposed.  
13 Even with fully-funded parties.

14 That is not the case here, and it seems to me that  
15 while certainly it is clear that the Intervenors are not  
16 provided -- in fact, because Intervenors are not allowed to  
17 have support from the Commission, the Commission must take  
18 into account --

19 JUDGE HOYT: Mr. Jordan, I am going to stop you  
20 right at that point. I am not going to entertain on behalf  
21 of this Board any arguments of that nature, and I am going  
22 to only caution you the one time.

23 You know that this Board has no control over those  
24 matters, and indeed, this Commission does not. e

25 MR. JORDAN: I don't think I was at all suggesting

6djk12 1 that this Board --

2 JUDGE HOYT: I merely caution you the one time, sir.  
3 I suggest that you move along.

4 MR. JORDAN: I would be glad to, if I am clear --

5 JUDGE HOYT: Just move along, sir.

6 MR. JORDAN: I am sorry, I didn't understand what  
7 you said to me, Your Honor. I attempted to ask you for a  
8 clarification and I was denied that opportunity. I think I  
9 am finished. Thank you.

10 JUDGE HOYT: Counsel, I am not going to warn you  
11 again.

12 Is that all you have on your plan?

13 MR. JORDAN: Yes, ma'am.

14 JUDGE HOYT: Thank you.

15 JUDGE LUEBKE: Mr. Jordan?

16 MR. JORDAN: Yes, sir?

17 JUDGE LUEBKE: I am just trying to remember our  
18 discussion with Mr. Cassidy this morning, and I seem to have  
19 the idea that you put a little extra time in some of the FEMA  
20 work so that the people involved would make better plans, and  
21 it would be more complete and less subject to agreement.  
22 That is how it sounded to me.

23 MR. JORDAN: Is that subject to disagreement?

24 JUDGE LUEBKE: Yes, that is subject to disagreement,  
25 but that is how it sounded to me. Now, this afternoon, I hear

6djkl3  
1 from you that there will be these 25 communities, and each  
2 one might have ten contentions, and 250 total. That seems to  
3 be at variance with our conversation this morning.

4 MR. JORDAN: I don't really think so, Your Honor.  
5 Believe me, we would be pleased if that were not -- if we were  
6 to get to that point in the process and we were satisfied  
7 with the plans. And we certainly think we can become far more  
8 satisfied if we go through this process.

9 JUDGE LUEBKE: You think that is a better result  
10 to have 250 disagreements?

11 MR. JORDAN: I think that is a terrible result; of  
12 course it is. I am simply suggesting -- I don't know of any  
13 situation in the country where the emergency plan has really  
14 been any good, or where there has been any agreement reached.  
15 We have a process here that I think has been reasonably  
16 reached where we are going to try to work with these people  
17 who are doing the planning.

18 I am simply reflecting the fact that realistically  
19 you can expect litigation on this, although we will be glad  
20 to try to fix it up.

21 JUDGE LUEBKE: I have heard you use that word several  
22 times, "realism," yes. But then maybe we should go back to  
23 this FEMA work and say let's rush it through, because people  
24 are going to argue about it anyhow.

25 (Laughter.)

6djkl4 1 MS. SHOTWELL: Dr. Luebke is raising a concern that  
2 I have, frankly, so I thought that this might be an appropriate  
3 point to state it. Which is that I feel that we are operating  
4 in somewhat of a vacuum in terms of setting the schedule.

5 I mean, last time when we set schedules, we have  
6 done it after contentions have been filed. There were rulings  
7 on their admissibility, and at that point we know what we are  
8 dealing with. We know whether we are dealing with two conten-  
9 tions or 250.

10 So I do have a problem with being able to say at  
11 this point what makes sense, because we have no idea of the  
12 number of contentions we are dealing with.

13 I do have a problem with the staff schedule in the  
14 area of 10/1 through 11/1. It looks to me that during that  
15 period of time, or from 10/15 to 11/15 if the later dates are  
16 used, there is not only responses to discovery requests going  
17 on, but there is also filing of motions for summary disposition,  
18 responses to that, and rulings on that. So we have a one-  
19 month period in which -- and also the preparation of testimony,  
20 even though there haven't been rulings on motions for summary  
21 disposition.

22 I think the schedule needs to build in a procedure  
23 for filing of motions for summary disposition and rulings on  
24 that, so that we then know what issues are going into the  
25 hearing before testimony is prepared.

6djk15

1 But my overall response is, I would suggest that  
2 we wait until the contentions are filed and we know whether  
3 we are talking about two or 200 and proceed from there.

4 JUDGE HOYT: Thank you, Ms. Shotwell.

5 MR. CASSIDY: If I may, Madam Chairman, in response  
6 to Dr. Luebke's comment, I just want to clarify one thing  
7 with regard to the work that FEMA is doing on these plans  
8 during the schedule that was outlined here.

9 What FEMA is doing really hasn't been reflected in  
10 the scheduling we have discussed today in one sense. We are  
11 talking about two parallel schedules. What I presented this  
12 morning was a schedule to the extent that we are going to  
13 get the plans on our plate and have something to review.

14 Aside from the hearing process, and aside from the  
15 schedules that we have discussed this morning, there is an  
16 internal process that is going on with FEMA.

17 Once we receive those plans in accordance with the  
18 dates that I indicated this morning, FEMA will be distributing  
19 the plans to the Regional Assistance Committee. They will be  
20 reviewing them; they will be processing the plans; there will  
21 be a staffing on that; there will be comments going back  
22 between FEMA and the states, all during this process, all  
23 during this schedule that we have outlined.

24 And presumably there will be modifications to the  
25 plans based on those recommendations that FEMA and the

6djk16 1 Regional Assistance Committee make, going on in a parallel  
2 process to what we have discussed today as far as the hearing  
3 process goes.

4 So we are talking about two parallel happenings  
5 here. We are talking about FEMA review that would occur  
6 licensing hearing or no licensing hearing. And then we are  
7 talking about what FEMA will be doing because it is being  
8 triggered and driven by the licensing process.

9 So I just wanted to clarify that for you. I see  
10 some puzzled looks, so I may have raised some more questions.

11 JUDGE LUEBKE: No, except in part of this process  
12 I was hoping that you could reconcile some of these disagree-  
13 ments so there would not be 250 contentions.

14 MR. CASSIDY: Hopefully that is what the effect of  
15 this is going to be, although I am not sure that I would  
16 disagree with Mr. Jordan, given my past experience and given  
17 the number of Intervenors here, that ten contentions on each  
18 plan, given 23 local plans and two state plans, might not be  
19 a bad estimate.

20 And I think that is particularly true since we are  
21 talking about filing contentions here prior to any FEMA  
22 review of these plans. We are talking about filing contentions  
23 at the date that FEMA gets these plans for review.

24 Presumably some of these contentions that they  
25 file at that date are going to be resolved by FEMA review and



6djk17 1 FEMA comment, and the dialogue that goes on between FEMA and  
2 the states. So that we may start out on the date that conten-  
3 tions are due on these plans with 250 contentions, and by the  
4 time we get to the point of discovery and preparing for  
5 testimony, hopefully we will have winnowed that number down  
6 to a much smaller number.

7 I think one of the things that FEMA views, in terms  
8 of this whole process, is that we find, or we look at the  
9 process of contentions as being helpful in that it helps us  
10 focus on areas in the plans that other people perceive may be  
11 weak. It helps us focus on certain areas, and presumably  
12 the dialogue that is going to occur between the state and  
13 FEMA is going to help resolve those problems.

14 So again, we may start off with 250 contentions,  
15 and hopefully by the time we get to the point of summary  
16 disposition of these, we will have mutually eliminated a  
17 number of those contentions and have it down to a point where  
18 what we have left are areas where there is serious disagreement.

19 JUDGE HOYT: Mr. Lessy, could you reduce to writing  
20 and filing with this Board your schedule of dates that you  
21 read to us from your notes there?

22 MR. LESSY: Certainly, Your Honor.

23 JUDGE HOYT: And please serve it on all the parties.

24 MR. LESSY: Certainly.

25 JUDGE HOYT: I would like to urge you, in taking

6djk18 1 those dates to give me the dates that you have read, and then  
2 to reduce it by a minimum of ten days along the way.

3 MR. LESSY: All right, I would be happy to.

4 JUDGE HOYT: In other words, I am driving towards  
5 a hearing date of sometime around the 15th to 20th of November.

6 MR. LESSY: All right.

7 Now, what I will do, then, if I understand the Chair --

8 JUDGE HOYT: And these are just schedules that I  
9 am asking you to prepare on behalf of us. This does not  
10 indicate any ruling that we would follow such a schedule. We  
11 are simply asking you to do the mechanical work.

12 MR. LESSY: Certainly.

13 I will present the dates as I read them and then  
14 also indicate, secondly, a schedule which has the bottom line  
15 of November 15th to 20th.

16 Now, the one point --

17 JUDGE HOYT: Now, let me ask Mr. Jordan if he will  
18 take his schedule and reduce it to writing accordingly.

19 MR. JORDAN: Yes, ma'am.

20 JUDGE HOYT: And serve it on the Board and all  
21 parties.

22 MR. LESSY: I would like to ask one threshold  
23 question, and then I want to respond briefly to some of the  
24 comments, because I realize in scheduling there is very little  
25 right and wrong. It is just a matter of trying to deal, as

6djk19  
1 best you can, with what you have to.

2 I can do this much quicker if it is the Board's  
3 desire that I just take these dates, in essence, and file a  
4 schedule. If you want me to file arguments in support of  
5 the schedule, that is --

6 JUDGE HOYT: No, we don't want any arguments in  
7 support. We merely want the mechanical work done.

8 MR. LESSY: Thank you.  
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1 JUDGE HOYT: If you wish to file it, you may in  
2 support of it, but we are not requiring that it be done.

3 The same for you, Mr. Lessy, if you wish to.

4 MR. LESSY: Thank you.

5 Now there are two comments I would like to make.  
6 It is true under the existing schedule, as Ms. Shotwell  
7 pointed out, that there is a possibility that summary  
8 disposition could fall during the last discovery request  
9 and even possibly during the preliminary or prior to filing  
10 of testimony.

11 I will indicate that the Commission's rules of  
12 practice have been amended, which provides that summary  
13 disposition motions can be filed at any time.

14 So the evil, if it is an evil, which the  
15 Commission did want to protect against, is that summary  
16 disposition motions be filed at on the eve of the hearing.  
17 So that is not permitted, but summary disposition motions  
18 can be filed during the end of discovery.

19 In fact, summary disposition motions under the  
20 Commission's rules can be filed even before or during  
21 discovery. You no longer have to wait until the end of  
22 discovery, particularly where you have legal issues or  
23 issues where you have a first round interrogatory answer  
24 which makes it clear that there may be a genuine issue of  
25 material fact.

1           Secondly, and this will be included in my  
2 written submission, and I don't know if it came out clearly  
3 or if I read the numbers too fast, but I did inject after  
4 the last discovery request date of October 1st to October  
5 15th, that at that point the Board might want to have a  
6 prehearing and/or consider schedule adjustments.

7           I think the staff's view in that point is that  
8 if there are really as many contentions as has been  
9 indicated there may be, or if there are other extraneous  
10 circumstances which the Board can consider, and certainly  
11 this schedule is not cast in stone, and it is something  
12 that can be reasonably considered at that time.

13           The point is my experience is that we are much  
14 better off having a schedule to look at and to work towards  
15 in terms of reaching the ultimate resolution of these  
16 issues than it is just to let matters drift and say, well,  
17 look, we will see how many contentions we have and we will  
18 react accordingly.

19           I realize that these schedules impose burdens  
20 upon all parties and we have done that with the  
21 understanding that there will be an opportunity to consider  
22 schedule adjustments at that time.

23           JUDGE HOYT: I think that pretty much, Ms.  
24 Shotwell, may respond to your concern.

25           MS. SHOTWELL: Well, I would like to speak a

1 little bit about that more if I may.

2           Actually I am getting more concerned the more I  
3 hear and the more I look at that one month period. It looks  
4 to me like there is an awful lot that is going to be taking  
5 place in one month and more than is humanly possible to me.

6           I do understand that motions for summary  
7 disposition can be filed ahead of time, although certainly  
8 typically in practice people do await responses to  
9 discovery and responses to discovery can impact on whether  
10 in fact there is a genuine issue of material fact.

11           We wouldn't be getting answers to discovery  
12 requests until October 15th or even November 1st, which is  
13 the day when testimony is due. It is much too compact a  
14 period. The last discovery request goes out on October 1,  
15 which can mean that you don't get the answers for two weeks  
16 to a month, and yet you are supposed to already have filed  
17 motions for summary disposition without knowing what the  
18 facts are that the other side would tell you at that point.

19           It makes no sense to me frankly, and the more I  
20 look at it the more concerned I am. I think that the  
21 schedule has got to be adjusted in that area to allow for  
22 more rational treatment of the various steps that typically  
23 take place around that time.

24           JUDGE HOYT: Do you want to submit a schedule?

25           MS. SHOTWELL: I would like to do that, yes.

1 JUDGE HOYT: Please do.

2 MS. SHOTWELL: I would like to give thought to  
3 what I would recommend for that period of time.

4 JUDGE HOYT: We will ask you to do the same as we  
5 did for the staff and for Mr. Jordan and serve it of course  
6 upon all the parties.

7 MS. SHOTWELL: Fine.

8 JUDGE HOYT: All right, sir.

9 MR. BISBEE: New Hampshire also would like the  
10 opportunity to file a proposed schedule.

11 JUDGE HOYT: Very well.

12 MR. BISBEE: I would like to emphasize something  
13 for the Board and the parties, that the negotiations do  
14 seem to have led to an agreement as to when the Board was  
15 most likely to rule on the off-site emergency planning  
16 contentions.

17 Both the schedule proposed by Mr. Jordan and  
18 the one proposed by Mr. Lessy have the Board ruling on  
19 contentions around the first week in September. There is no  
20 disagreement up to that point. It is from that point onward  
21 that many of the intervenors have already expressed their  
22 feeling that the schedule as suggested by the staff is  
23 simply too tight as to be unreasonable.

24 I want to state that that is also New  
25 Hampshire's position.

1           JUDGE HOYT: Let me express to you the concern  
2 that I have individually, and I am speaking just for myself  
3 in this case. I cannot believe that we have to wait 11  
4 months more into a proceeding that has already extended  
5 more than a year to even think about beginning the  
6 litigation of these contentions.

7           I don't know how practice goes in many other  
8 agencies or Federal courts, but I just don't think any  
9 litigation, even the most complex, is on a track that  
10 tight, and I just find it, as a member of the legal  
11 profession, shocking that counsel comes in and proposes a  
12 schedule of 11 months from this time before we even begin  
13 to litigate.

14           My heavens above, we have got a Constitution in  
15 the country that didn't take that long ---

16           (Laughter.)

17           JUDGE HOYT: --- and we as Judges go to our  
18 conferences and when we are meeting in our professional  
19 meetings, we are constantly harassed by our Superior Court  
20 Judges, from the Supreme court on down, that we have got to  
21 get litigation on track and we have got to find methods and  
22 mechanisms by which we can litigate the most complex cases  
23 more quickly and fairly than we are doing now.

24           I am trying to do that and I sit here and listen  
25 to 11 months down the road for even 210 issues, and I am



1 finally just very shocked and I am going to express it on  
2 this record. I am expressing it to all of you as  
3 intervenors. If we can't do better than that, then we will  
4 never be able to make this process work.

5 We are supposed to be out there protecting the  
6 public and I don't find that six weeks of discovery when we  
7 don't file the request for 45 or 50 days down the road is  
8 exactly serving our clients very well.

9 Now having said all of the above, I will  
10 probably sometime along the line be censored for this, but  
11 sobeit.

12 Now do you want to respond to that?

13 (Laughter.)

14 MR. BISBEE: I would like to respond, but it will  
15 be in furtherance of my comments from before rather than as  
16 a direct response to your comments.

17 However, one direct response. We are dealing  
18 with issues that have not been raised yet. When you are  
19 talking about 11 months from this date, you can't use this  
20 date. The plaintiffs are not ready yet and we have to use  
21 the date from which the plaintiffs will be ready.

22 I think when you look at the schedules as  
23 proposed, they are the same until September, and there is a  
24 difference of two months from September forward between the  
25 staff's proposal and Mr. Jordan's proposal. The difference

1 lies primarily, as Ms. Shotwell has pointed out, during  
2 that month of December, during which time all the discovery  
3 is to take place on all these plans.

4           At the same time, summary disposition is going  
5 to have to be resolved during that period as well. Then  
6 under the staff's proposal November 1st to November 15th  
7 the direct testimony is going to have to be filed when  
8 discovery had only been finished a month sooner and no  
9 summary disposition rulings would have been made. It  
10 doesn't make sense ---

11           JUDGE HOYT: I am hearing excuses, but I am not  
12 hearing helpful suggestions as to how we can better manage  
13 this record, counsel, and I want some suggestions that will  
14 give us some mechanisms by which we can better manage a  
15 very complex proceeding.

16           All proceedings are complex if they involve  
17 other people's interests, but I am not hearing any  
18 mechanisms by which we can better do this work.

19           Now if you don't have any more, then I would  
20 like to hear what other counsel have. I want some help and  
21 the Board wants some help, and if you can't give us  
22 anything more than excuses, I am afraid, sir, that I have  
23 just run out of listening to excuses.

24           MR. BISBEE: I am sorry that you feel that they  
25 are excuses, but I just want to emphasize the fact that we

1 find the discovery period is insufficient. We find the  
2 discovery period to be tight when we have ---

3 JUDGE HOYT: And I am asking you to tell me how  
4 we can sharpen it up if you have a mechanism. The only  
5 thing I have seen is interrogatories. I have not seen any  
6 admissions, I have not seen any other types of discovery, I  
7 have not seen any persons being deposed and I have not seen  
8 anything except the one type.

9 Now you have locked yourself into this position.  
10 If you want to use other mechanisms, they are out there to  
11 be used and we have all been to law school.

12 I am suggesting to you, counsel, that it is  
13 about time that someone used some of these things that will  
14 help us do this record quickly and better. We want to do a  
15 good job because we are the public servants that must do  
16 it, and you in turn must do yours to your client. I don't  
17 think your clients are getting represented as well as they  
18 should if they are not getting that type of input.

19 MR. BISBEE: We are also public servants in that  
20 we think that the fairest means to develop the case is to  
21 give us a little more time on discovery for off-site  
22 emergency contentions.

23 JUDGE HOYT: Go ahead, Mr. Lessy.

24 MR. LESSY: Your Honor, I did have something the  
25 staff did agree to, and I have to ask the applicants if

1 they agree to it also.

2           As I indicated to Mr. Jordan during our  
3 discussions, and I thought he was going to mention it and  
4 that is why I didn't. What we did say was for those  
5 emergency planning contentions which are the NRC staff's  
6 concern, and that is once those contentions are filed, and  
7 if the staff does not object to the contention, we have  
8 told Mr. Jordan and any other party that we will be happy  
9 to begin informal discovery in terms of responding to  
10 requests put forward either in a meeting context or in a  
11 letter context for us.

12           In other words, if there are going to be an  
13 awful lot of contentions coming in here and if we think the  
14 contention is a valid contention or a valid concern, I  
15 think the Commission's statement on expediting these  
16 proceedings does suggest the idea of informal discovery and  
17 we make the offer to Mr. Jordan and Mr. Bisbee and anyone  
18 else that once you have filed your contentions and we have  
19 had a chance to look at them, if they are within the NRC's  
20 area of concerns, come talk to Mr. Perlis or Mr. Patterson  
21 or myself and we will try to get you some information.

22           That may cut off the time of framing a formal  
23 interrogatory and a formal document request. And in fact,  
24 that's part of the process we instituted with NECNP that in  
25 terms of informal exchange of information and documents

1 which did result, I might say, in a resolution of some of  
2 the technical issues. We we're available to do that at any  
3 time for that purpose.

4 Another thing I would add is that for some  
5 reason my reading of the use of the Commission's public  
6 document room for this proceeding in Exeter is not very  
7 heavy. Rather than frame a document request, there are  
8 materials sent there constantly, and many of the parties  
9 without the time and expense necessary to engage in formal  
10 discovery can avail themselves of that.

11 If there is something not in that public  
12 document room that the party thinks ought to be -- and we  
13 have done this in one case -- you know, we can make sure if  
14 it's publicly available material, that it is there and that  
15 it's so designated.

16 JUDGE HOYT: How about New Hampshire, you are in  
17 Concord, are you not, your office? Why is that public  
18 document room in Exeter?

19 MR. LESSY: It was established a long time ago. I  
20 am not familiar with the details of it. But I guess it's  
21 the closest, it's a site -- it is at a public library  
22 convenience of the site, which is Exeter, New Hampshire.

23 Now, one of the things I guess we could consider  
24 is setting up another that involves a lot of additional  
25 money and expense and the cooperation of the local library,

1 but that's one of the things that we can do to try to  
2 facilitate these matters.

3 JUDGE HOYT: Have you found the location of that  
4 docket room to be a burden to you, Mr. Bisbee?

5 MR. BISBEE: Well, it's about an hour's drive for  
6 us. But it's not that convenient. I can't speak for the  
7 other interested parties. I would certainly encourage  
8 setting up such a public document room in Concord. I am  
9 sure that either the State library or the local public  
10 library would be more than willing to accommodate the  
11 documents.

12 JUDGE HOYT: How about Portsmouth, would that be  
13 any help?

14 MR. BISBEE: It's a similar radius from Concord.

15 MR. DIGNAN: I guess I said this morning the  
16 applicant is sort of on the sidelines on this one, Your  
17 Honor.

18 JUDGE HOYT: I know you are, but you seemed to  
19 want to say something.

20 MR. DIGNAN: I guess my view of this -- and to  
21 the extent I can be helpful and not contentious -- I did  
22 prefer the NRC schedule laid out by Mr. Lessy of November  
23 21 or shorter to I will call it November 25, to keep Mr.  
24 Lessy in the November. But, you know, there's no doubt  
25 there are going to be some problems down the road on

1 whatever schedule.

2 But I guess from what experience I have had in  
3 NRC proceedings, they aren't that hard to end. What they  
4 are hard to do is get started. And I for one would like to  
5 get it started, because it's my view that one of the  
6 problems is something Your Honor pointed to; We all went to  
7 law school, and lawyers are great at seeing to it that  
8 something doesn't get started. But they're equally great  
9 at getting it finished once it gets started.

10 And I do not believe -- now, I may be proved  
11 dead wong on this, but I will make my highest bet, which is  
12 known to my partner Mr. Gad as my "four-martini bet" that  
13 there aren't going to be 250 contentions that are going to  
14 survive at least the hearing.

15 JUDGE HOYT: I am not going to take that bet, Mr.  
16 Dignan.

17 MR. GAD: Four martinis for everyone in the room,  
18 Your Honor.

19 MR. DIGNAN: I will also say that I wish as the  
20 Board considers the complexity that has been put forth to  
21 you, you consider this about evacuation and emergency  
22 planning issues under the present rules of the Commission  
23 -- which changed somewhat since I at least last looked at  
24 them -- the applicant isn't in this fight. There is not  
25 going to be discovery, I assume, against the applicant

1 because we aren't doing the plans.

2 Now, to the extent we help people out and  
3 somebody wants to know, you know, what did you do, fine,  
4 we'll answer questions. There is not going to be any  
5 problem on that. I will assume, perhaps erroneously, but I  
6 assume Sister Shotwell is not going to file a contention  
7 telling me that the Massachusetts plan is lousy. I assume  
8 also, since part of the Massachusetts plan will be the  
9 Massachusetts local plans, she is not going to file a  
10 contention saying a Massachusetts local plan is lousy.

11 I assume that Mr. Bisbee is not going to file a  
12 contention saying that the New Hampshire plan is lousy. I  
13 assume further he will not contend that any local plan that  
14 his State agency has approved is lousy.

15 And I will bet anything that the two assistant  
16 attorneys general who ably represent their States here will  
17 settle things in the back room rather than be forced into a  
18 position of filing a contention by Massachusetts that New  
19 Hampshire's lousy or the filing of a contention by New  
20 Hampshire that Massachusetts is lousy.

21 We've got enough problems on that border as it  
22 is with the difference in sales tax.

23 Now, it seems to me --

24 (Laughter)

25 -- they don't have a sales tax up there.



1 (Laughter)

2 In any event, I don't see a great big bunch of  
3 contentions other than two parties. And it's perfectly  
4 legitimate. Mr. Backus and Mr. Jordan represent private  
5 intervenors who truthfully can be looking at the whole  
6 emergency plan for their constituency. And I do expect that  
7 they will have a number of contentions on a number of the  
8 plants. That's two parties. But only two parties, with a  
9 lot of contentions.

10 It may well be that a given town --

11 JUDGE HOYT: Make it three, I think.

12 MR. DIGNAN: Well, excuse me. The thing of it is,  
13 the CCCNH, if they do come in, it is very doubtful they are  
14 going to come in with a contention that is different than  
15 one already raised by SAPL. They are both from the same  
16 area. And it's conceivable they will, and that would be two  
17 more contentions.

18 It is conceivable that a couple of towns, I  
19 suppose, will get into a fight and file a contention about  
20 what the other one is doing. But again I would assume that  
21 State and local officials and the attorneys general are  
22 going to settle those things one way or another before we  
23 get here.

24 So I just don't believe we're going to have 200  
25 contentions to hear. Now, once you get the 200 contentions

1 out of the picture and once you understand that the  
2 discovery is going to be between the intervenors, as near  
3 as I can figure out, because I don't have anything to say  
4 about it, Mr. Lessy's organization doesn't have a lot to  
5 say about it, and there will probably be some discovery  
6 against FEMA, I just don't see this as the kind of complex  
7 case that everybody does.

8           Now, I may turn out to be dead wrong. I have  
9 been dead wrong before. But I will tell you one thing, it  
10 looks to me a lot less complex than the CP hearing at  
11 Seabrook looked, in general. And I will tell you that if we  
12 don't start it, we're definitely never going to finish it.

13           So I say we get ourselves on a tight schedule.  
14 There is always room for somebody coming in and making  
15 argument to you later that the schedule has just become  
16 impossible to meet, and you changing that schedule. But if  
17 we don't start it, we're never going to finish it. That's  
18 all I have to say.

19           JUDGE HOYT: Ms. Shotwell.

20           MS. SHOTWELL: I would like to say that I don't  
21 necessarily agree with many of the assumptions that were  
22 just stated. I don't think we need to get into that in much  
23 detail except to say that Attorney General Bellotti has the  
24 statutory authority and responsibility to represent the  
25 citizens of the Commonwealth, and we can't know at this

1 holidays.

2 MR. JORDAN: Your Honor, I am sorry, my point to  
3 you was that we had agreed to a March date and then come  
4 back to a January date.

5 JUDGE HOYT: All right.

6 MR. JORDAN: So that in fact, the 11 months you  
7 were concerned with was not 11 months.

8 JUDGE HOYT: So that would put it over into a  
9 January date, is that what you're saying, or a February  
10 date? It doesn't matter. It would be somewhere in the same  
11 time frame as Mr. Jordan's. Well, you've been given leave  
12 to submit that as a schedule if you wish.

13 MS. SHOTWELL: Yes. I just thought it would be  
14 helpful to present the concept.

15 JUDGE HOYT: Sure. We understand.

16 I think the point that I will indicate agreement  
17 with from what Mr. Dignan said was that it seems to me that  
18 where we can save time on this is the period for discovery,  
19 because it is discovery among intervenors themselves rather  
20 than -- you are not going to file any discovery on the --

21 MS. SHOTWELL: We may well, Your Honor.

22 JUDGE HOYT: It's in their best interest to get  
23 in prompt responses. So the triggering response and your  
24 series of filings could then be based upon how fast they  
25 responded. And I think since the applicant indicates he

1 wants to move it along, that you would probably get very  
2 rapid responses. I think I am safe on that one.

3 MR. DIGNAN: Yes, ma'am.

4 JUDGE HOYT: Anything else on that scheduling  
5 point then? Because I had just one other brief thing I want  
6 to bring up, and that is, is the reporter too tired to  
7 continue? Do you want a little rest? Do you want a drink of  
8 water?

9 (Laughter)

10 THE REPORTER: I am fine, thank you, Your Honor.

11 JUDGE HOYT: You're sure you're all right? We  
12 don't want to work you too hard.

13 THE REPORTER: Thank you, Your Honor.

14 JUDGE HOYT: Oh, yes, we had also some indication  
15 this morning that the contentions that had taken out  
16 portions would be reworded. And when can we expect -- was  
17 that yours, Mr. Jordan?

18 MR. JORDAN: Yes, we had one.

19 JUDGE HOYT: All right.

20 MR. JORDAN: And we drafted on something which we  
21 gave to the other parties, and they weren't quite on track  
22 with it. I think we would be on track first thing Monday  
23 morning when they send it to you then.

24 JUDGE HOYT: Will you file those with us  
25 expeditiously?

1 MR. JORDAN: Sure.

2 JUDGE HOYT: Thank you. I appreciate that.

3 MR. BIBSEE: New Hampshire also had two. I guess  
4 it would be preferable to follow that same schedule so I  
5 can clear it with --

6 JUDGE HOYT: Sure.

7 MR. LESSY: Your Honor, when would you like us to  
8 file these letters on the proposed schedules? I would  
9 suggest that we have them in the --

10 JUDGE HOYT: This evening?

11 MR. LESSY: -- hands of the Board by Tuesday?

12 JUDGE HOYT: Sure. That's fine.

13 MR. LESSY: Okay.

14 JUDGE HOYT: I guess for you folks up here --

15 MS. SHOTWELL: I can't do that myself. I have to  
16 say Wednesday.

17 JUDGE HOYT: All right. That's okay.

18 How about you, Mr. Jordan?

19 MR. JORDAN: Why not? Tuesday would be fine.

20 JUDGE HOYT: Fine.

21 MR. BISBEE: It will take New Hampshire a little  
22 while to get them in the mail but it should get there  
23 Wednesday.

24 JUDGE HOYT: All right. We would appreciate that.

25 We have a number of towns who have intervened.

1 We have had two prehearing conferences at Portsmouth. And  
2 we have been very much involved in trying to find a  
3 suitable location for hearings in New Hampshire or indeed  
4 anywhere. And one of the requirements that we had was a  
5 facility as well done as this facility that we have here in  
6 Boston, the Tax Court, which has a courtroom, adequate  
7 room, with the addition of a number of other tables to  
8 accommodate representatives of the various towns, and also  
9 some sort of conference room where counsel could do some of  
10 the work during the hearing.

11 This facility I think illustrates to the parties  
12 here that it is a very easy to work with facility. I think  
13 you all have found that to be true.

14 We have used the facility at Portsmouth, which  
15 is a very small courtroom. It has no chambers for the  
16 various parties. We, the Judges, have a very adequate  
17 facility, but nothing else for the counsel.

18 I think there was one small room up there. And  
19 it was sort of the first on the scene was the one who  
20 grabbed the room. I think that was Mr. Gad at one time, at  
21 least.

22 Then that means that the rest of them are  
23 literally hanging out in the hallway or using the benches  
24 in the back where the public will have to sit.

25 And we haven't found anything. We've had

1 point what that will mean in terms of what contentions will  
2 be filed.

3 I want to be clear that my problem with the  
4 schedule does not go to the period of time for discovery  
5 but to the period of time following discovery. And my  
6 suggestion, very simply, would be that we add to the  
7 Staff's schedule 1 month for submission of motions for  
8 summary disposition and rulings on that prior to  
9 preparation of testimony or prior to filing of testimony.  
10 So a 1-month period that would allow for those motions to  
11 be filed, ruled on, and for those parties then knowing what  
12 contentions are going into a hearing to prepare testimony  
13 on them. That would be a very slight modification to that  
14 schedule.

15 JUDGE HOYT: Ms. Shotwell, that would be beyond  
16 even Mr. Jordan's date, wouldn't it?

17 MS. SHOTWELL: No, I don't think it would.

18 JUDGE HOYT: But you're on track with his March  
19 date?

20 MS. SHOTWELL: It would put us well ahead of  
21 that.

22 JUDGE HOYT: 1984.

23 MS. SHOTWELL: Adding 1 month to this, which  
24 would mean that the hearing would commence on December 21,  
25 or I assume we would prefer early January because of the

1 numerous letters that have offered us services, and when  
2 you call, as we did even to try to get something here in  
3 Boston, we had -- and I will just briefly tell you in very  
4 ordinary terms -- we got a runaround. And I have a very  
5 patient secretary, but even she became exhausted just  
6 trying to find a facility.

7           Now, I don't want to see the parties have to  
8 hang off the coat hooks and to have as we had even in this  
9 room some of the people who should be sitting up at counsel  
10 table having to sit in the first row in the public area  
11 because there is no place else to put them.

12           Now, I don't know who's going to take the lead  
13 on that, but I think it's about time that we got some very  
14 concrete help from the group here.

15           And very frankly, Mr. Bisbee, I am looking at  
16 you. It's your State.

17           MR. BISBEE: Your Honor, I know exactly what  
18 happened, and I would be more than happy to investigate  
19 various locations.

20           JUDGE HOYT: We will be happy to send someone up  
21 there on it. If it's nice weather, I will come myself.

22           (Laughter)

23           And look to see what you have. We will cooperate  
24 in our office in Washington in any way we can in getting a  
25 proper facility. I would like to take one place where we



1 could have the hearing centrally located, because I think  
2 the area, if I am looking here at the map, I don't think  
3 that any of the towns who have intervened are more than a  
4 half-hour away from each other. So that we're not putting  
5 any hardships on persons there in the area when we get into  
6 the limited appearance stage.

7 MR. BIBSEE: Would it be possible to contact the  
8 person that you just indicated who the contact must be  
9 with?

10 JUDGE HOYT: She will give you the phone number  
11 and you may contact her, or you can contact our legal  
12 assistant here, Ms. Miller, and she will be very happy to  
13 come up and investigate.

14 MR. BACKUS: Madam Chairman, let me just say that  
15 in your comments on the Portsmouth District Court, that  
16 for my clients, the absence of a conference room is  
17 something that they will gladly forgo in order to have the  
18 hearing in the city.

19 JUDGE HOYT: I think there were other  
20 deficiencies, though, Mr. Backus, frankly. I didn't find  
21 that an area -- perhaps there was some public  
22 transportation; I didn't notice -- but it didn't seem to me  
23 that there were very many people about, and it was somewhat  
24 off the beaten track. I found that there --

25 (Laughter)

1 MR. BACKUS: Presidential candidates find it  
2 regularly.

3 (Laughter)

4 JUDGE HOYT: Frankly, I have no problems with  
5 that.

6 (Laughter)

7 MR. BACKUS: Yes. I just say it is a courtroom. I  
8 think it's about the same size as this one.

9 JUDGE HOYT: Oh, I think the courtroom is.

10 MR. BACKUS: We don't have the conference room.  
11 We would forgo that for the benefit of having the hearing  
12 in the location, if that's otherwise suitable. If it isn't,  
13 we will try and help out.

14 JUDGE HOYT: We found it very adequate in many  
15 respects, and certainly the City of Portsmouth was most  
16 generous, Mr. Backus. And as I have written to them before  
17 and told them, we are grateful for their help in it. But I  
18 think for a large hearing with a large number of counsel,  
19 it would not afford it.

20

21

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25

1           As you recall, we had a number of counsel  
2 sitting back there balancing their yellow pad on their  
3 knees because we did not have a table to put them at or  
4 under or whatever.

5           So that we would like very much to get this a  
6 little bit larger facility and one that is convenient to  
7 the largest number of people and which would serve the  
8 needs of all of the counsel.

9           There are so many parties in this hearing that  
10 we simply have got to have larger space.

11           Is there anything else, Mr. Lessy?

12           MR. LESSY: No, Your Honor.

13           JUDGE HOYT: Mr. Dignan?

14           MR. DIGNAN: No, Your Honor.

15           (Pause while the Board confers.)

16           JUDGE HOYT: I can think of nothing else that we  
17 need to discuss.

18           We thank you for your participation in this  
19 hearing and for the comments and the contributions that you  
20 have made to this prehearing conference.

21           The hearing will close to meet at the call of  
22 the Board.

23           (Whereupon, at 4:00 p.m., the prehearing  
24 conference concluded.)

25

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the  
NRC COMMISSION

In the matter of: Public Service Co. (Seabrook)

Date of Proceeding: April 8, 1983

Place of Proceeding: Boston, Mass.

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

Mary C. Simons

Official Reporter - Typed

*Mary C. Simons*  
Official Reporter - Signature

SCHEDULE FOR THE PREPARATION  
AND STATE DECISION-MAKING  
REGARDING SUBMISSION OF  
OFF-SITE EMERGENCY PLANS

Massachusetts

State

Area Plan : 6-1-83

Amended State Plan : 9-83

Local Plans

<u>Community</u>	<u>Date Receive Plans</u>	<u>30 Days</u>	<u>45 Days</u>
Amesbury	5-20	6-19	7-4
Merrimac	4-18	<del>6-17</del> <sup>FILE</sup> 6-18	<del>6-2</del> 6-2
Newbury	5-13	6-2 6-12	6-27
Newburyport	5-30	6-29	7-14
Salisbury	4-8	5-8	5-23
West Newbury	4-22	5-22	6-6