

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

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

Docket No. 50-443 OL
50-444 OL

Location: Boston, Mass.

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Date: April 7, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of: | : | |
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| 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

Thursday, April 7, 1983

The Third Prehearing Conference in the
above-entitled matter convened, pursuant to notice at
10:00 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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2

APPEARANCES:

3

On behalf of the Applicant:

4

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ROBERT K. GAD, III, ESQ.

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Ropes & Gray

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Boston, Massachusetts

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On behalf of the NRC Staff:

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ROBERT G. PERLIS, ESQ.

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WILLIAM PATTERSON, ESQ.

Nuclear Regulatory Commission

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Washington, D. C.

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On behalf of the Commonwealth of Massachusetts:

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JO ANN SHOTWELL, ESQ.

Assistant Attorney General

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On behalf of the State of New Hampshire:

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GEORGE DANA BISBEE, ESQ.

EDWARD L. CROSS, JR., ESQ.

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Office of the Attorney General

Concord, New Hampshire

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On behalf of the State of Maine:

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PHILIP AHRENS, ESQ.

Assistant Attorney General

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PAUL STERNS, ESQ.

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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

209 Winnacunnet Road

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Hampton Beach, New Hampshire

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On behalf of the New England Coalition
of Nuclear Pollution:

WILLIAM JORDAN, ESQ.
DIANE CURRAN, ESQ.
Harmon & Weiss
1725 I Street, N.W.
Washington, D. C.

On behalf of the Seacoast Anti-Pollution League:

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

On behalf of Hampton Falls:

ROBERTA C. PEVEAR
Chairman, Board of Selectmen

On behalf of Kensington:

SANDRA GAVUTIS
Chairman, Board of Selectmen

On behalf of South Hampton:

ANNE W. VERGE
Chairman, Board of Selectmen

P R O C E E D I N G S

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JUDGE HOYT: We will call the hearing to order.

This is a prehearing conference scheduled to take place here in Boston, Massachusetts on this day, April 7, 1983 in the matter of Public Service Company of New Hampshire, Seabrook Stations I and II in Docket Numbers 50-443 OL and 54-444 OL.

I think we have some additional counsel present here that have not been with us before.

For the applicant, Mr. Dignan and Mr. Gad are here.

Mr. Lessy has himself and Mr. Perlis, and I believe you have a new member of your team with you, sir. Would you like to make your appearance.

MR. PATTERSON: Yes. My name is William F. Patterson and I am working with Mr. Lessy and Mr. Perlis in this proceeding.

JUDGE HOYT: Thank you.

I believe we also have a new counsel for the State of New Hampshire.

MR. CROSS: My name is Edward Cross. I am with the Attorney General's Office. I will be replacing Tupper Kinder who is no longer with the office and I will be working with Dana Bisbee.

JUDGE HOYT: Mr. Bisbee is here.

1 MR. BISBEE: Yes.

2 JUDGE HOYT: Then we have Mr. Jordan and Ms.
3 Curran representing New England Coalition, and you have no
4 one else here.

5 MS. CURRAN: No.

6 JUDGE HOYT: Then Mr. Backus representing the
7 Seacoast Anti-Pollution League.

8 MR. BACKUS: Yes, Your Honor, and I would just
9 like to indicate to the Board that I have with me Bruce
10 Deming who has been working with me on this matter.

11 JUDGE HOYT: Welcome, Mr. Deming. Thank you.

12 Then we have Ms. Hollingworth representing the
13 now Hampton Beach Area Chamber of Commerce. You have
14 dropped the "Coastal."

15 We want to talk with you a little bit at length
16 about your various contentions a little bit more this
17 morning, Ms. Hollingworth. So that if you would be
18 prepared, we would appreciate it.

19 Forgive me, Mr. Ahrens, I didn't see you back
20 there. Did they not give you a chair?

21 MR. AHRENS: I am afraid that the chairs have
22 been occupied on this half of the room.

23 JUDGE HOYT: Well, we could get one for you.

24 MR. AHRENS: Well, there is some difficulty in
25 hearing back here, but I think we would be comfortable back

1 on this first bench. I just wanted to indicate that I was
2 here.

3 JUDGE HOYT: Can we make a place for the State of
4 Maine at the table there?

5 MR. JORDAN: We certainly could.

6 JUDGE HOYT: I would prefer that you be up here.

7 MR. AHRENS: This will be all right for right
8 now. Perhaps at the lunch break we can ---

9 JUDGE HOYT: But I would prefer for you to be up
10 here, Mr. Ahrens.

11 MR. AHRENS: At your pleasure, Your Honor. With
12 me this morning, Your Honor, is Paul Sterns from our
13 office.

14 JUDGE HOYT: Mr. Sterns, did you get the message?

15 MR. STERNS: Yes. Thank you very much.

16 JUDGE HOYT: We are going to have to have two
17 chairs. Why don't we do that at the first break and you
18 stay there for now.

19 Now a couple of things that the Board wanted to
20 make known to the parties at this point in the proceedings
21 because we are getting close now to the hearings and the
22 conferences will soon be over and the proceedings will be
23 much more formal.

24 I am sorry, are you trying to signal something?

25 MS. PEVEAR: I don't know whether this is where

1 you want our names or not, but as interested municipalities
2 there are three of us here whenever you want us.

3 JUDGE HOYT: We assumed that the interested
4 municipalities were not coming in until tomorrow, but if
5 you wish to make an appearance, you certainly may on the
6 record at this time.

7 MS. PEVEAR: We would just like to have our names
8 on the record.

9 JUDGE HOYT: All right, fine.

10 MS. PEVEAR: I am State Representative Roberta
11 Pevear from Hampton Falls, and I am the spokesperson for
12 that town.

13 JUDGE HOYT: Have you made a petition to
14 participate as an interested municipality?

15 MS. PEVEAR: I was approved as the representative
16 from the Town of Hampton Falls.

17 JUDGE HOYT: Yes, ma'am.

18 MS. GAVUTIS: I am Sandra Gavuits. I am Chairman
19 of the Board of Selectmen in Kensington and the official
20 representative.

21 JUDGE HOYT: Would you please spell your last
22 name for the reporter please, ma'am.

23 MS. GAVUTIS: Yes. G-A-V-U-T-I-S.

24 MS. VERGE: Anne Verge, Chairman of the Board of
25 Selectmen, South Hampton. I am the designated

1 representative of the town. That is V-E-R-G-E.

2 JUDGE HOYT: Can you hear the proceedings back
3 there sufficiently, or would you like to try and see if you
4 can come up a little closer, perhaps on the front row up
5 here.

6 (The Selectpersons move to the front row.)

7 JUDGE HOYT: Is that everyone who wished to make
8 an appearance on this record this morning?

9 (No response.)

10 JUDGE HOYT: Beginning with this hearing and all
11 succeeding hearings the Board wishes to caution the counsel
12 for the parties that only they and they alone will be
13 permitted behind the bar here. We noted that newspaper
14 people and even clients that would just come in to the well
15 of the court here in other hearings and we want to ensure
16 that that doesn't happen again. If you wish to talk with
17 your clients or wish to talk with members of the public
18 otherwise, please do so outside of the well of the court.

19 The reason for that is quite simple. There are a
20 number of books, papers and materials belonging to counsel
21 that simply deserves the privacy of the court more than has
22 been observed in the past. That includes also the period
23 during the hearing and during the recess.

24 Also the Board has found that the parties filing
25 pleadings with the Board urging it to render a ruling in

1 favor of the pleading, that the pleader has not given the
2 Board the benefit of a brief of law on the question. This
3 Board with its limited facilities and resources just cannot
4 be expected to perform the pleader's legal research.

5 In one of the recent pleadings involving a
6 question of law, the Board had to devote a considerable
7 length of time to in fact doing the legal research which
8 the pleader in support of his motion should have filed with
9 it. If in doubt, brief the law is I guess about the best
10 way to put that.

11 I think the Appeal Board in a recent decision in
12 ALAB 696 and in ALAB 719, I believe they quoted from the
13 Point Beach decision and that seemed to at page 18 say that
14 parties and the Licensing Board or the Appeal Board is
15 deserving of a little bit more consideration. I give that
16 to you for your reference in the future.

17 If you feel that you have to file a brief in
18 support of it and you wish to file a motion at the same
19 time for permission to file a brief, please do that also at
20 the same time you file the brief.

21 The next point that I wanted to bring up is this
22 business of telephone conversations with the Board. They
23 have just exceeded what I think may be a reasonable amount
24 and they simply will not be tolerated in the future.

25 The exception as the Appeal Board said in the

1 North Coast Nuclear Plant case, in ALAB 313, they are to be
2 made only in the case of dire necessity, and we commend
3 that decision to your review in the future. At all other
4 times we expect all of the parties to be on the line in any
5 conference call eliminating the possibility or even a hint
6 of an ex parte communication. If you want to have all the
7 parties on the line, then it is your responsibility to
8 initiate the call.

9 Now for tomorrow I would like for the parties
10 here to be in a position of giving us some indication of a
11 schedule and a location at some sort of a central point if
12 need be concerning any limited appearances that might be
13 made on this record. We would like for you to consider the
14 times that these limited appearances could be made. We will
15 be willing to entertain any suggestions as to both time and
16 location.

17 I think those are all the announcements I have
18 to make.

19 How about you, Dr. Luebke?

20 JUDGE LUEBKE: No.

21 JUDGE HOYT: Dr. Harbour?

22 JUDGE HARBOUR: No.

23 JUDGE HOYT: I think I have been remiss in not
24 introducing Judge Jerry Harbour to this hearing. He
25 replaced Dr. Oscar Paris who had previously been a member

1 of this Board and I think you have received notification
2 that he had replaced Judge Paris some time ago as a matter
3 of fact, and we welcome him to the Board.

4 For those selectmen that may be here, or
5 selectperson I guess, we have had some of the rules and
6 regulations of practice before this Commission prepared. it
7 is everything you have ever wanted to know about a
8 Licensing Board and probably a little bit more.

9 So if you wish to obtain a copy of these you may
10 do so from Ms. Miller who is our Law Clerk here in these
11 proceedings.

12 We also have prepared a group of the contentions
13 that are now in this hearing. I would like for the counsel
14 involved in the hearings to be sure to check these to be
15 sure that the Board has not made any mistakes so much as a
16 comma, period, preposition or anything else.

17 We want to be certain that what you have in
18 these Seabrook contentions remaining as of March 30th, 1983
19 is contained on these sheets. If there is any correction
20 and we have made an error by including something we should
21 not have, we wish to have you advise us of it because this
22 is what you will be litigating after the summary motions
23 have been disposed of, particularly if there have been any
24 of these withdrawn.

25 We feel certain that this is all of the

1 contentions. However, Ms. Miller has a copy of these as
2 well.

3 Ms. Hollingworth, we have a problem. We have
4 reviewed the position of the Hampton Beach Area Chamber of
5 Commerce and we have prepared a chronology of the events
6 that occurred in your situation and I would like to just
7 briefly go through those.

8 You of course were admitted as a party in the
9 order of this Board of September 13th, 1982, and the first
10 interrogatories were filed by the staff on November the
11 10th. On December the 8th the applicant filed and served
12 its first set of interrogatories and there were no
13 objections to those interrogatories filed.

14 On January 14th there were no answers to its
15 interrogatories filed by you and the applicants have moved
16 for an order compelling answers to its interrogatories.

17 On February 4th no answers having been filed
18 and served by you to the interrogatories propounded by the
19 staff on November 10th, the staff moved for a order
20 compelling answers or in the alternative to dismiss you as
21 a party to these proceedings.

22 On February the 16th, 1983 the Board granted
23 motions for orders compelling CCC&H, now Hampton Beach Area
24 Chamber of Commerce, to answer the interrogatories
25 propounded by the applicants and the staff, and we directed

1 that you answer the applicants' and the staff's
2 interrogatories and ensure that the applicants and staff
3 have in hand those answers no later than ten days after the
4 service of that order.

5 We stated in the order of February 16th, 1983
6 that we were granting you additional time, and I quote our
7 order, "However, failure to comply with this order
8 compelling answers to interrogatories will result in
9 dismissal of contentions."

10 On the 25th of February 1983 you filed and
11 served a document entitled "Answers To Memorandum and Order
12 of Hampton Beach Area Chamber of Commerce."

13 On February 26th you filed and served HBACC's
14 answer to applicant's motion to compel answers to
15 applicants' interrogatories and request for production of
16 documents and the HBACC response to the NRC staff's
17 interrogatories and request for production of documents.

18 In your answer to applicants you stated that
19 HBACC would not litigate those contentions admitted on
20 September 13th, 1982, and in your response you stated that
21 you intended to litigate your case through
22 cross-examination and urge your case on the on the topics
23 of contention.

24 You noted that you had not relied on experts for
25 previously filed contentions and would not call any expert

1 witnesses. In your response to the staff you noted that
2 that since off-site planning contentions were ruled
3 premature that interrogatories based on such premature
4 contentions were also premature.

5 On March 11th, 1983 the applicants filed a
6 motion that the contentions of HBACC be dismissed and that
7 it be dismissed as a party.

8 On February 15th, the NRC staff filed its
9 renewed motion of the staff to dismiss HBACC contention 7
10 and to compel answers to interrogatories on HBACC
11 contentions 4 and 5.

12 MS. HOLLINGWORTH: Would you just repeat that
13 last one, please.

14 JUDGE HOYT: Yes, ma'am. On March 15th, 1983 the
15 NRC staff filed a renewed motion to, one, dismiss HBACC
16 contention 7 and, two, to compel answers to interrogatories
17 on HBACC contentions 4 and 5.

18 On March 31 you filed the HBACC's response to
19 the applicants' motion that the contentions of the HBACC be
20 dismissed and that it be dismissed as a party. In that
21 response you set forth the facts specified in No. 7 and
22 stated that your position would be that you would intend to
23 litigate any contentions concerning off-site emergency
24 planning.

25 Ms. Hollingworth, are you aware that there are

1 no off-site emergency planning contentions now admitted in
2 this hearing?

3 MS. HOLLINGWORTH: That is correct. I would like
4 to answer if I could to the Board.

5 JUDGE HOYT: Yes, please do.

6 MS. HOLLINGWORTH: I agreed with the point of the
7 interrogatories by both the staff and applicants, and as
8 far as answering them I think I explained in my letter to
9 the Board and to the applicant my reasons for not complying
10 with it.

11 As the Board was aware, I was not aware that I
12 could be dismissed. I told the Board that in the letter to
13 them that I was not aware that by not answering that I
14 would be dismissed.

15 My problem with answering the contentions was I
16 found them very difficult to answer. I tried to be very
17 fair in my answer and I told the Board that. I felt some of
18 the questions were of no purpose which I stated when I
19 answered the questions and I still believe that my answers
20 were true and to the point.

21 JUDGE HOYT: Ms. Hollingworth, you understand
22 what the interrogatories were.

23 MS. HOLLINGWORTH: Yes, I understand.

24 JUDGE HOYT: You don't have the option of making
25 the determination of whether or not you feel it is

1 important.

2 MS. HOLLINGWORTH: I did answer them to the best
3 of my knowledge that in each interrogatory no, I did not
4 accept that interrogatory or yes, I did when you compelled
5 me to answer them. I am now in the process of a litigation
6 course to try to understand the procedure. But the Court
7 was well aware of my inability as a legislator. I only wish
8 that I had had the material of how to know what goes on
9 inside of a licensing procedure that you handed out today.
10 Had I had that it might have been of some assistance.

11 JUDGE HOYT: I am not too sure it would, Ms.
12 Hollingworth. I think you are putting much too much
13 reliance on what I have said about the rules. These are
14 simply the rules and regulations.

15 The problem we are having here ---

16 MS. HOLLINGWORTH: If I could continue.

17 JUDGE HOYT: Yes, but let me give you this
18 problem that I want you in your continuing discussion to
19 address. The Board has before it two motions to dismiss you
20 as a party because you simply have not complied and you
21 have not understood what it is you were supposed to comply
22 with and we have got to make a determination on it.

23 Is there anything else you can tell us that will
24 help us in that determination? I am aware of what you have
25 had in the past, but can you give us any insight, other

1 than what you have already told us? We will consider all of
2 that.

3 MS. HOLLINGWORTH: Well, I think the question
4 they asked about my knowledge, and I tried to be specific,
5 that what I have is my own knowledge. They also asked about
6 where I got the information. I think my original document
7 stated where I had derived the information from. When I
8 cited my first contentions, I cited where I had obtained
9 the knowledge. It seemed that I was just repeating exactly
10 where I had obtained my original knowledge again, and it
11 seemed to me that if the Board and the applicants looked at
12 that they would see that I cited the different NUREGs that
13 I took those contentions from and that I was referring on
14 for my information.

15 I stated that there was not going to be any
16 extra testimony and that I was not going to litigate with
17 expert witnesses and that all I would be doing is trying to
18 where I felt there was something in error in the NUREGs
19 that I believed that I had seen in the contentions that I
20 would like to have the opportunity to cross-examine.

21 I also stated on the emergency planning that
22 that would be the area that I felt I would be most useful
23 and strong. Since those contentions have not been admitted,
24 I feel that they are premature, as I stated in the
25 interrogatories to both the staff and the applicants.

1 If you did go down my answers, I think I tried
2 to be as ---

3 JUDGE HOYT: Every one of them, Ms. Hollingworth.

4 MS. HOLLINGWORTH: --- fair and as honest as I
5 could. Where I did not know the answer I stated I did not
6 know the answer. If you have me go over each one, I will
7 try to do that again, but I think it would not be
8 beneficial to the Board to do that at the present because I
9 know of the dissatisfaction of both the staff and the
10 applicants with my being a member.

11 The applicant from the beginning has challenged
12 my being here. I have brought to the Chamber of Commerce
13 the request to obtain counsel which they are taking under
14 consideration because I feel that since I apparently cannot
15 do this as a lay person I would like to have the Chamber
16 have someone step in and take my position. We will not have
17 a new vote until the next Chamber of Commerce meeting
18 whether that will take place or not, but that is the
19 situation in which we find ourselves.

20 JUDGE HOYT: Let me just get to the bare bones,
21 Ms. Hollingworth. You have no interest really in litigating
22 the contentions that you put forth in the original
23 petition.

24 MS. HOLLINGWORTH: That is not totally true. In
25 7, which is the one they would like to have dismissed, we

1 are very concerned about some questions there. We don't
2 know what they are relying on for radiation response.

3 JUDGE HOYT: Is that your contention No. 7?

4 MS. HOLLINGWORTH: Yes.

5 JUDGE HOYT: Are you aware, Ms. Hollingworth,
6 that the State of New Hampshire is litigating that in its
7 contention No. 9?

8 MS. HOLLINGWORTH: Yes, we are aware that they
9 are litigating that in 9, but there is no guarantee that
10 the State of New Hampshire will continue to be a member. We
11 would hope that they would, but in the event that they are
12 not, we feel that it is ---

13 JUDGE HOYT: What would be the event?

14 MS. HOLLINGWORTH: Why would any of us drop from
15 being an intervenor. I mean it is possible that it could
16 happen.

17 JUDGE HOYT: Ms. Hollingworth, I don't think that
18 is a serious consideration, and I am certain that you are
19 not proposing that that is the answer that the State of New
20 Hampshire is going to withdraw from this proceeding at any
21 time.

22 MS. HOLLINGWORTH: Well, even if they are, I
23 don't see any problem that there would be two people with
24 the same interests.

25 JUDGE HOYT: All right. Do you have another

1 point?

2 MS. HOLLINGWORTH: Well, basically I think I
3 tried to state very clearly in my letter where I stood. I
4 will do whatever I can to satisfy the Board. As I stated,
5 the Chamber is trying to obtain counsel, and hopefully the
6 vote is in favor of doing that so we will find more
7 pleasure with the Board, the applicant and the staff.

8 JUDGE HOYT: Do you want to add anything, Mr.
9 Gad?

10 MR. GAD: For the most part, Your Honor, we set
11 forth our position in our written motion. Nothing that I am
12 aware of has changed since then, and I would like to rest
13 on it save in one respect that I find very troubling.

14 I believe if my ears are working that I heard a
15 reference, and I have now forgotten from which source, but
16 during the colloquy, I thought I heard a reference to
17 answers having been filed by the Chamber to our
18 interrogatories. If that is so, we never received them.

19 As the record stands insofar as we are aware,
20 those interrogatories to date have never been answered.

21 JUDGE HOYT: I think what you may have heard, Mr.
22 Gad, was the reference that I made to a February 25, 1983
23 submission.

24 MR. GAD: The answers to the Board's order.

25 JUDGE HOYT: Which was filed and served and it

1 was entitled to "Answer to Memorandum and Order of Hampton
2 Beach Area Chamber of Commerce."

3 Is that what you heard?

4 MR. GAD: It might very well have been. That we
5 did receive.

6 JUDGE HOYT: Ms. Hollingworth, did you serve that
7 on the Docket Clerk of the Commission?

8 MS. HOLLINGWORTH: Yes, I certainly did.

9 MR. GAD: The document entitled "Response to the
10 Board's Order," Madam Chairman, we did receive. I thought I
11 heard an assertion that there had been a later filing of
12 answers to our interrogatories as such and, if so, we
13 hadn't gotten that.

14 As far as we are concerned, this matter is
15 fairly simple. This Board made an order and it wasn't
16 complied with.

17 JUDGE HOYT: Let me ask you, Mr. Gad, if you have
18 ever seen this? This is a document, a multi-page document
19 entitled "HBACC's Answer to the Applicant's Motion to
20 Compel Answers to the Applicant's Interrogatories and to
21 the Request for the Production of Documents," a document
22 listed as being filed on February 26th, 1983.

23 MR. GAD: No, ma'am, this was never received.

24 JUDGE HOYT: Did you get a copy, Mr. Lessy, from
25 the staff?

1 MR. LESSY: I believe we did. The substance of
2 those answers, as I recall, Your Honor, if I might remain
3 seating because of the bulk of papers, is just like the
4 answers which we attached to our motion. They are no answer
5 answers.

6 In one question the intervenor said that the
7 applicant's question was impertinent and one other one they
8 said was irrelevant, and this is in the face of a Board
9 order to have answered those questions.

10 So I thought Mr. Gad was trying to make was the
11 fact that he never received responsive answers. In fact,
12 there was a very small document filed, as there was, with
13 regard to the staff which in essence did not provide any
14 information whether you title that response or answers.

15 The point, and I just want to be clear before I
16 begin, is did I hear correctly, and I admit that the
17 hearing is not as good as it should be today, that of the
18 three contentions that the Hampton Beach Area Chamber of
19 Commerce has had admitted, the only one they are interested
20 in pursuing now is the radioactive monitoring contention?

21 MS. HOLLINGWORTH: That was not correct.

22 MR. LESSY: What was your statement, or if the
23 Board could just ask the representative ---

24 MS. HOLLINGWORTH: The Board asked if 7 had been
25 the one that would be dismissed by both the staff and the

1 applicant, and the Board asked me if I had any interest in
2 litigating that or if all I was interested in was in the
3 emergency planning, and I said that no, that that was not
4 true, that we felt that 7 was important still.

5 MR. LESSY: All right. Let me just take 7 as an
6 example, if the Board please. Seven contains radioactive
7 monitoring. It is a technical issue which the staff devotes
8 almost a building to in terms of expertise. There is an
9 admitted contention in that regard which was filed after
10 Newe Hampshire's contention had been filed and which was
11 admitted by this Board. It is permissible for intervenors
12 to copy contentions from one another and indeed from one
13 proceeding to another.

14 However, in this area the staff filed very early
15 on what I thought was a rather simple, and there is only
16 about six or seven pages and about two or three pages of
17 that relate to that contention.

18 What we are interested to know is what are the
19 intervenor's concerns as expressed in the contention, the
20 basis for the concerns, any documents that support that
21 basis, et cetera, very simple.

22 To date answers to those questions have not been
23 provided as to documents the intervenors said contrary to
24 square holdings by the Appeal Board that it was impossible
25 for it to designate documents.

1 The truth of the matter is on that contention
2 that we will be filing, the staff, and presumably the
3 applicant will be filing expert testimony of two or three
4 experts who are very, very busy, have a lot of plants to
5 review and a lot of considerations, if that contention were
6 to say in, and we would be filing testimony in roughly a
7 month. We would be required to put on the witness stand
8 for examination by the Hampton Beach representative for
9 cross-examination experts on their testimony, and those
10 experts won't have the slightest idea of what the
11 contentions or interest is and what the problems are of the
12 Hampton Beach representative.

13 I will tell you very honestly that I have been
14 at this for seven or eight years and I have never seen a
15 situation like this that I should be required to put
16 experts on the witness stand and make them available for
17 lay cross-examination without even knowing.

18 It is not that we haven't done our job, Your
19 Honor. We filed contentions in November. We filed two
20 motions to compel, and I think it is the easiest question
21 the Board has before it.

22 Now as regarding the other two contentions ---

23 JUDGE HOYT: I wish I could agree with you, Mr.
24 Lessy. I don't. Let me throw this out for consideration,
25 and we are just going to put it out, and remember this is

1 not a lawyer party we have here and the Board has
2 difficulty with those. I think the Appeal Board has pretty
3 much indicated on occasion that you have to go the extra
4 mile on that and we are trying to do that here.

5 Would the applicant and the staff interpose any
6 objection if we were to, for example, and that is all this
7 is being presented as, dismiss the contentions that the
8 Hampton Beach Area Chamber has and that were admitted by
9 the September 13th order, but let Hampton Beach remain in
10 the sense that it has acquired standing and then if it has
11 any off-site emergency planning contentions would there be
12 any objection from the applicant?

13 MR. GAD: The answer is we have no objection to
14 the Chamber attempting to come in with an off-site planning
15 contention when that is appropriate, the same as all the
16 other parties can do under the Board's prior rulings at the
17 appropriate time.

18 The problem I have if the Chamber stays in on
19 its existing contentions is that we end up with a situation
20 where the Chamber will come in and cross-examine on those
21 contentions without having provided to us the disclosure
22 that the discovery rules require about its
23 cross-examination.

24 JUDGE HOYT: Well, I agree to that and indicated
25 to you that they could be dismissed as a party so far as

1 those contentions were concerned.

2 MR. GAD: I am sorry, I didn't hear that part.

3 JUDGE HOYT: If I didn't I should have made it
4 clearer, Mr. Gad, but retain its standing as a party to
5 file its contentions on the off-site planning which are yet
6 to be filed. We are doing this proceeding really in two
7 phases.

8 MR. GAD: No objection whatsoever.

9 JUDGE HOYT: How about you, Mr. Lessy?

10 MR. LESSY: No objection either, Your Honor. Such
11 a course is consistent with the Metropolitan Edison
12 Licensing Board decision which we cited in one of our
13 pleadings.

14 There are just two additional comments I would
15 like to make. A very strict reading of 10 CFR 2.714, the
16 intervention regulation, requires that intervenors have
17 contentions and that in fact once all the intervenors'
18 contentions are dismissed, the point is is that the
19 intervenor goes, too. Not being a governmental entity who
20 has a special status, a private intervenor has no right to
21 stay.

22 But the point of the matter is is that what
23 could happen is the intervenor might be able to intervene
24 all over again on off-site planning and we are just at the
25 threshold of having contentions on off-site planning.

1 So that in truth strictly applying that
2 regulation against Hampton Beach to dismiss her entirely,
3 if their interest really is off-site planning, I think they
4 should be able to file contentions with a proviso, Your
5 Honor, that we make good faith efforts to comply with
6 discovery requests because we won't have the luxury in
7 dealing with off-site planning litigation that we have
8 here.

9 The schedule is going to be a little bit
10 tighter and the point is is that if someone files discovery
11 directed to an off-site planning contention, if objections
12 are not timely filed or answers are not provided, we don't
13 have the time to delay and delay and delay it. By this
14 point parties should be fairly sophisticated.

15 The other point I would like to make is -- well,
16 I think in essence I have said enough.

17 JUDGE HOYT: I think also, Mr. Lessy, you should
18 recall that Ms. Hollingworth indicated that she intends to,
19 or her organization intends to employ counsel, and I think
20 the interrogatories would be probably the first order of
21 business of that.

22 MS. HOLLINGWORTH: Could I address the Board?

23 JUDGE HOYT: Yes, please, Ms. Hollingworth.

24 MS. HOLLINGWORTH: I would like to object to
25 having the Chamber dismissed as a party on the grounds that

1 were given as far as the cross-examining.

2 JUDGE HOYT: You understand what the grounds
3 were.

4 MS. HOLLINGWORTH: Right.

5 JUDGE HOYT: That was failure to comply with the
6 request for production of documents and for responses to
7 the interrogatories.

8 MS. HOLLINGWORTH: Which they thought were
9 failure to comply and I felt that I complied with the
10 answers to the best of my ability. When I stated that it
11 was impossible under 7 to answer it, it is because I felt
12 under 7 in my original contentions I had taken where I had
13 based my contention on in the NUREGs and to go through
14 every document that is my knowledge which if they asked me
15 who would be the expert cross-examining, I said it would be
16 impossible because what I have learned in my lifetime is
17 where I would be using that background and knowledge. So
18 that was a direct and correct answer by saying it was
19 impossible. When they asked about my education, I felt that
20 was irrelevant and it didn't matter and I felt that was a
21 direct answer.

22 I don't think that that was an inability or a
23 failure to answer. I think I did exactly that. As far as
24 cross-examining witnesses, I would be basing my
25 cross-examination only on the documents that I state in my

1 contentions and I don't think that that would be any
2 difficulty. I basically think that that is what I answered
3 and I think that I did comply with the Board's wishes, and
4 when I was compelled by the Board to answer I did.

5 MR. DIGNAN: Your Honor.

6 JUDGE HOYT: Yes, sir, Mr. Dignan.

7 MR. DIGNAN: May I have leave to be heard. I
8 realize one counsel has been heard on this matter.

9 JUDGE HOYT: Very well.

10 MR. DIGNAN: Thank you.

11 Your Honor, I would respectfully suggest that if
12 the representative believes she must preserve the right to
13 cross-examine, that while we will not interpose, as Mr.
14 Gad indicated, any objection to the solution the Board has
15 at least contemplated by result of its questions, I would
16 remind the Board of this.

17 If the Board goes forward with the suggested
18 alternative, that is to say, dismisses the contentions but
19 allows party status for purposes of the future, the
20 representative is put in a tough position, and the tough
21 position is she has no right of appeal because that order
22 will by nature be interlocutory.

23 I respectfully suggest that, first of all, while
24 I am only too aware of the Appeal Board's solicitude for
25 non-lawyer intervenors, I at least am prepared to defend a

1 decision before that tribunal to dismiss this intervenor. I
2 think this intervenor has gone beyond the pale, and I have
3 been in this game I guess as long as anybody in this room
4 in terms of refusal to comply with the regulations.

5 I think the best thing for this intervenor is if
6 the Board were to allow the motion to dismiss flatly
7 because that would give the intervenor the right to appeal
8 to the Appeal Board and we could get settled at a very
9 early stage what the ground rules are going to be on the
10 treatment of non-lawyer intervenors in this proceeding.

11 I respectfully suggest that while we will stand
12 by the commitment to not interpose an objection to the
13 other course, that the intervenor may well prefer, if you
14 will, and the Board may prefer to dismiss entirely and
15 give the Appeal Board a shot at this issue right now.

16 I for one at least am perfectly prepared as one
17 of the parties at least who would be in a position of
18 defending the decision of this Board to defend it.

19 I think that this intervenor has gone further
20 than anything I have ever seen, and I started trying these
21 cases back in 1970.

22 MS. HOLLINGWORTH: May I respond?

23 JUDGE HOYT: Yes, Ms. Hollingworth, of course. Go
24 ahead.

25 MS. HOLLINGWORTH: In my letter to the Board I

1 did tell you that I had failed to answer the
2 interrogatories because I had been reading all the other
3 intervenors' interrogatories and seeing how they could
4 answer the questions.

5 I don't think it is a surprise to anybody
6 present that most of the people who answered the
7 interrogatories seemed to have a great deal of difficulty
8 in answering the questions.

9 So I was not aware that I could be dismissed as
10 a party. You directed me to comply and I did. Other than
11 trying to do what I had been asked by the Board, who I
12 believed was the governing body and not the applicant, as
13 you informed me, or the staff, but that you were the
14 governing body at the first hearing, I complied with your
15 order.

16 JUDGE HOYT: Ms. Hollingworth, let me assure you
17 that we will make the rulings. I think you might be
18 impressed by the number of orders we have issued in this
19 case in barely a year, which is more than most cases get in
20 a lifetime. I don't think the Board has indicated anyone is
21 running the show, if you will, except the Board.

22 MS. HOLLINGWORTH: I am sure of that.

23 JUDGE HOYT: But we did want some input from all
24 parties here this morning because this is a difficult
25 decision we have to make concerning the organization you

1 represent.

2 I think that covers the situation on that. All
3 the suggestions by all the parties, Ms. Hollingworth, will
4 be considered in the Board reaching a determination and
5 issuing an order on this subject.

6 (Discussion off the record.)

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JUDGE HOYT: Very well. May we proceed into the next matter of scheduling here today, and that is what we have received as motions to dismiss nearly all of the contentions.

The first contention that we admitted was New Hampshire's contention No. 9, and I believe Judge Luebke has some questions that he would like to pose to counsel and see if you can respond. If not, give us some indication of when you could. If you wish to have some input on it from the staff and applicant's side, we will certainly give you an opportunity.

Dr. Luebke.

JUDGE LUEBKE: In working on the motion I think I remember correctly that New Hampshire didn't respond for the reason that discovery was not complete.

MR. BISBEE: Did not respond to which?

JUDGE LUEBKE: This is NR-9, radioactive monitoring.

MR. BISBEE: Yes, sir.

JUDGE LUEBKE: Here we are several weeks later. Has the situation changed or is it still the same?

MR. BISBEE: I might point out on which contention we are talking about, about which pleading to which we did not respond to.

JUDGE LUEBKE: To NH-9, motion for summary

1 disposition.

2 MR. BISBEE: To the contrary, I believe we did
3 file an answer to that. One of the arguments that we made
4 was that discovery was not complete. So that summary
5 disposition on the issue of post-accident monitoring should
6 be deferred. We did answer the motion.

7 JUDGE LUEBKE: Then I misunderstood it when I
8 read it. In other words, the part about discovery not being
9 complete had to do with Phase II of this hearing?

10 MR. BISBEE: Again I am not clear as to what you
11 are asking.

12 JUDGE LUEBKE: I read your piece and I came to
13 the point that you said your response was incomplete
14 because discovery was incomplete. So there is a void there.

15 MR. BISBEE: Perhaps I could summarize what our
16 response to that was. We, first of all, narrowed the issue
17 quite significantly, focusing only now on the applicant's
18 compliance with the post-accident monitoring system
19 requirements, NUREG 0737.

20 Our first argument based on that issue alone now
21 is that because discovery is not yet complete, that there
22 is good reason for deferring judgment on the applicant's
23 summary disposition motion.

24 In the alternative we suggest that should you
25 decide to rule on the issue now, that because there is

1 incomplete information the post-accident monitoring system
2 has not been fully developed yet, then you should deny the
3 motion for summary disposition on that issue.

4 JUDGE LUEBKE: Well, I guess my problem is the
5 day is coming when we must make a decision. So I am asking
6 on this occasion do we have more information to work with?

7 MR. BISBEE: We have not received any further
8 information from the applicant as to the status of this
9 post-accident monitoring system.

10 JUDGE LUEBKE: Then could the applicant indicate
11 whether this will remain the situation for a while?

12 MR. DIGNAN: Judge Luebke, it depends upon what
13 New Hampshire is looking for for information. That answer
14 to interrogatory 9.14 that they refer to was not just
15 simply a gee, we don't know. It was a reaffirmance of a
16 commitment by the applicant that it will comply fully with
17 item 2(b)(3) of NUREG 0737.

18 Now as I understand it, and I can be corrected
19 by New Hampshire if I am wrong, New Hampshire's only
20 contention left under this more general contention is
21 compliance with item 2(b)(3) of NUREG 0737. That is to say
22 they no longer assert noncompliance with general design
23 criteria 63 and 64, NUREG 0800 or any other part of NUREG
24 0737.

25 Now what the applicant did in that answer is

1 reaffirm the fact that it was committed to full compliance
2 with that.

3 Now it is our view as a matter of law that when
4 the applicant commitments under oath to comply with a given
5 regulation, that that puts the matter in order for summary
6 disposition unless somebody comes up with a factual reason,
7 i.e., an affidavit that says full compliance with that
8 regulation will not result in a situation where there will
9 be reasonable assurance of the public health and safety.

10 So to say that we haven't answered the
11 interrogatory is just not an answer to what at least I view
12 New Hampshire's problem is in this case. The applicants
13 made the commitment and more than that it cannot do. An
14 applicant's commitment historically in this agency to the
15 staff under oath has meant something and it does away, if
16 you will, with the issue that is in the proceeding, because
17 the issue as stated in the proceeding under the terms of
18 the contention was that we wouldn't comply with NUREG 0737,
19 and now it is down to item 2(b)(3).

20 JUDGE LUEBKE: So to summarize the situation
21 applicant says their answer is complete to discovery?

22 MR. DIGNAN: Yes. It is as complete as it can be
23 at this time. Now what Mr. Bisbee may have reference to is
24 that the post-accident monitoring plans and so forth which
25 will be eventually furnished to the staff for their review

1 and so forth have not yet been furnished. That is always
2 the case in NRC proceedings, but the contention, which is
3 will they comply with 2(b)(3), is the contention and we
4 have committed to compliance.

5 Until somebody comes up with an affidavit that
6 says compliance will not assure the public health and
7 safety or comes up with an affidavit, if somebody feels
8 like it, saying the applicant won't do what it committed to
9 or that the staff won't do its duty, there is no factual
10 issue left to try in the case, and that is why we think
11 summary disposition is in order at this time.

12 MR. PERLIS: Your Honor.

13 JUDGE HOYT: Yes, Mr. Perlis.

14 MR. PERLIS: We agree with the applicants that at
15 this point there really is nothing for the Board to
16 consider and that the applicants have indicated that they
17 will comply with the regulations.

18 I think in all fairness to New Hampshire,
19 however, at this stage it would be very difficult for New
20 Hampshire to challenge the compliance with item 2(b)(3)
21 specifically for the very reason that no submittal has yet
22 been made on that issue. All we have at this point is an
23 indication that the applicants will comply with the
24 regulations.

25 What we would suggest doing with this issue is

1 dropping the contention today subject to a timely
2 resurrection when the submittal on 2(b)(3) comes in, and if
3 New Hampshire at that point has specific problems with the
4 submittal and does again introduce them in a timely manner,
5 then at that point it would be appropriate to discuss the
6 issue. But at this point the Board has nothing but a
7 commitment which the staff at this point, although not for
8 licensing, but at this point does find sufficient.

9 JUDGE HOYT: Mr. Bisbee, do you want to respond?

10 MR. BISBEE: Yes, ma'am. I think this is the
11 first time where the question of commitment and
12 predictability based on the applicant's commitment will be
13 at issue. I recognize that the applicant had committed in a
14 letter to the NRC staff some time ago in response to the
15 request for the status of compliance with other
16 requirements in NUREG 0737.

17 However, as Mr. Perlis as suggested, it is very
18 difficult for any intervenor to be able to gauge the
19 strength, if you will, of a commitment before any
20 information is provided on that issue. I recognize that it
21 is impossible at any particular time to have all the
22 information available that will be needed prior to
23 operation.

24 We are suggesting, however, that at this point
25 there is insufficient information for the Board or for the

1 parties to be able to contend that a particular requirement
2 is being met and will be met.

3 So on that basis we still feel that there is
4 insufficient information, first of all, for the Board to
5 rule on the motion on that issue and, second of all, if you
6 are to rule on it that it should be denied.

7 JUDGE LUEBKE: May I ask normally in the course
8 of events when will the information become complete as we
9 move along?

10 JUDGE HOYT: What is 2(b)(3).

11 MR. PERLIS: Item 2(b)(3) of NUREG 0737.

12 JUDGE HOYT: Yes, what is 2(b)(3)?

13 MR. PERLIS: Post accident monitoring.

14 JUDGE HOYT: When is that coming out?

15 MR. DIGNAN: We would assume that probably the
16 submittal to the staff would be complete sometime this
17 summer.

18 JUDGE HOYT: I think we have been having the same
19 problem with sometime this summer that we had before, Mr.
20 Dignan.

21 MR. DIGNAN: May I have leave to consult with my
22 technical people?

23 JUDGE HOYT: Yes. See what date you can put on
24 it, Mr. Dignan.

25 (Brief pause while Counsel Dignan confers with

1 consultants.)

2 JUDGE HOYT: Go ahead, Mr. Dignan.

3 MR. DIGNAN: Candidly I am not going to be able
4 to do better and I would like to explain why. The problem
5 is that this is one of those issues which is wrapped up in
6 the so-called Westinghouse Owners Group submittal which we
7 made to the staff. That, if the Board is aware, is a
8 generic matter within the agency.

9 What we are advised back by the group is again
10 sometime this summer. My people tell me that I could use
11 July or August. I am just very nervous about saying to you
12 now July and then a group that we don't control doesn't
13 come through until August. So I would prefer, if I might,
14 to stay with that.

15 Having said that, as I say, I don't think, for
16 the reasons I indicated, that this affects the disposition
17 of this motion because the contention as phrased at this
18 time is that we are not going to comply with 2(b)(3)

19 . We have made the commitment to comply. I think
20 probably Mr. Perlis probably articulated it better than I
21 did. That is to say that if the later filed documents give
22 New Hampshire a factual basis for saying even though you
23 think you are complying and you are not, they can file the
24 late file contention as I read the Catawba case, and I
25 guess everybody does. They have got a fairly easy burden to

1 satisfy, assuming they can satisfy it, but at this time
2 this contention is in order for summary disposition as
3 currently phrased.

4 MR. BISBEE: If I might have two quick final
5 points.

6 JUDGE HOYT: Sure. Go ahead.

7 MR. BISBEE: Our contention states that the
8 applicant does not provide for compliance and not that it
9 will not provide. That is of significance. Did I say what
10 my second point was? I have forgotten it, so I will let it
11 stand at that.

12 (Laughter.)

13 JUDGE HOYT: You will stand on point one then.

14 MR. BISBEE: Yes.

15 JUDGE HOYT: Dr. Luebke.

16 JUDGE LUEBKE: All right. New subject. In
17 studying the motion for summary disposition, No.7, and I
18 guess it was applicant's motion No. 7 related to New
19 Hampshire contention No. 21 ---

20 MR. DIGNAN: If I could perhaps save the Board
21 some time on that one. The staff, if you will recall,
22 responded suggesting that there be a deferral on this
23 matter because the staff is still reviewing it, and I
24 should let them speak to it.

25 I am prepared to acquiesce in that ruling to

1 defer consideration of this in light of the staff's status,
2 but I would look to the staff to articulate for the Board
3 where they are. I don't know if it saves time or not.

4 MR. PERLIS: The Board deferred consideration of
5 those contentions admitted on I believe November 17th until
6 a later date. Those contentions all dealt with on-site
7 emergency planning, as does New Hampshire 21.

8 At this point the staff has not yet completed
9 its review of on-site emergency planning issues. I believe
10 the supplemental SER will be issued sometime within the
11 next month addressing those issues.

12 At that point we would suggest taking this
13 contention up with the NECNP contentions already deferred.

14 JUDGE LUEBKE: The next item is motion No. 13
15 which had to do with NECNP I.D.2 on the subject of reactor
16 trip failures.

17 MR. PERLIS: If I could address that one. The
18 staff was in the course of pursuing settlement negotiations
19 with NECNP, and our understanding in those discussions is
20 that only the manually operated reactor trips are still
21 involved in this contention. NECNP can confirm or deny that
22 at a later time.

23 We were reviewing a proposal put forward by
24 NECNP when the incident at Salem occurred. That incident
25 did not involve the failure of the manually operated

1 reactor trips, but it may or may not have implications for
2 the testing of those trips.

3 The staff is presently examining the generic
4 implications of the Salem event. We hope to have something
5 again by the end of the month, but at this point we can't
6 say whether or not in the staff's view Salem will have some
7 impact on the testing of those trips and we would prefer
8 that this also be deferred until such time as the staff
9 finishes its study.

10 JUDGE LUEBKE: Did I listen correctly here that
11 you inferred that the language of this contention has been
12 changed by mutual agreement?

13 MR. PERLIS: Not the language. It was my
14 understanding in talking with NECNP's attorneys that their
15 only remaining interest in the contentions is the manually
16 actuated reactor trip. That is something that they can
17 confirm.

18 JUDGE LUEBKE: That would change the language,
19 would it not?

20 MR. LESSY: The scope has been substantially
21 narrowed.

22 JUDGE HOYT: Ms. Curran.

23 MS. CURRAN: That is right, Your Honor.

24 JUDGE LUEBKE: And will we be officially notified
25 or have we been?

1 MS. CURRAN: Well, you will be. We wanted to come
2 to this prehearing conference and discuss all our
3 contentions that are up for summary disposition before we
4 filed any further redrafting of our contentions.

5 MR. GAD: Madam Chairman.

6 JUDGE HOYT: Sir.

7 MR. GAD: May I suggest a way around this. First,
8 again we have determined to acquiesce to the staff's
9 suggestion of deferral of this portion of the contention.

10 Might I suggest that the motion for summary
11 disposition being unopposed as to any of the other aspects
12 of the contention ought to be allowed as to this
13 contention, except for the manual reactor trip breakers as
14 to which it is deferred. That will put the housekeeping
15 aspect in order and is perhaps the most expeditious thing.

16 JUDGE LUEBKE: Did I hear correctly there will be
17 discussion of more changes to contentions or
18 interpretations of contentions?

19 MS. CURRAN: Well, it is early to say at this
20 point I think.

21 JUDGE LUEBKE: All right.

22 MR. LESSY: If I might just summarize, Your
23 Honor. On this contention there is only one particle left
24 of it. I don't think this has been said, and maybe it
25 should have been. I think it is clear from the SECY paper

1 83-98A that the Commission had requested the staff to look
2 into this issue.

3 When the Commission asks us to do something, not
4 only are we going to do it, but we are going to do it this
5 month. So the point is is that I expect a resolution of
6 this issue to be very expeditious in that the Board, as Mr.
7 Gad suggested, can dismiss all of this contention with
8 NECNP's acquiescence or agreement, if you will, except this
9 one small particle, and on that I think that the
10 applicant's motion for summary disposition should be held
11 in abeyance pending a more complete response to it by us,
12 by the staff, and by the NECNP, or the resolution of this
13 issue through settlement discussions by those three
14 parties, and I would expect that to occur, or I would hope
15 for that to occur in the near future.

16 JUDGE LUEBKE: Mr. Lessy, just so I understand,
17 this order you got from the Commission was on the automatic
18 reactor trip?

19 MR. LESSY: The matter the Commission asked us to
20 look into, if I might use this phrase, peripherally relates
21 to the one remnant of this contention which is still in the
22 record.

23 JUDGE LUEBKE: Which is manual?

24 MR. LESSY: Yes.

25 MS. CURRAN: Your Honor.

1 JUDGE HOYT: Yes, Ms. Curran.

2 MS. CURRAN: I would like to respond to Mr. Gad's
3 suggestion that you rule on the summary disposition motion
4 with respect to the other parts of the contention. We
5 don't see any point to ruling on a contention where we are
6 voluntarily withdrawing the remainder of the contention and
7 the NRC staff is recommending that the motion be held in
8 abeyance. We will refile new language on the contention
9 limiting it to the manual reactor trip.

10 JUDGE LUEBKE: That would be helpful.

11 MR. LESSY: May I make one suggestion, and this
12 might save a lot of time. Before you file the relanguage
13 with the Board unilaterally if you can discuss it with us
14 and with our friends here in Boston, Mr. Gad and Mr.
15 Dignan, maybe we can come up with agreed upon language to
16 the Board on the issues remaining.

17 JUDGE HOYT: We would like for you to be able to
18 do that at this conference if you could perhaps this
19 afternoon when we adjourn. You have a very nice facility
20 here to sit around and discuss this and perhaps you can
21 come up with the language. We would like to have that as
22 soon as possible. We are looking at a June 14th hearing
23 schedule to begin and we are driving towards that with
24 considerable caution.

25 MR. LESSY: That is possible with some of these

1 contentions, but it may not be possible with all of them.

2 JUDGE LUEBKE: Well, those are all the questions
3 I had, but the parties may have of their own comments to
4 make or changes to make in the motions for summary
5 disposition and their responses thereto other than the ones
6 I have brought up.

7 JUDGE HOYT: Dr. Harbour.

8 JUDGE HARBOUR: I would like to ask a question
9 about the New England Coalition's contention 1(b)(2). Is
10 that still a valid contention?

11 MS. CURRAN: Yes, it is, and no motions for
12 summary disposition have been filed in that contention.

13 JUDGE HARBOUR: But it has not been withdrawn?

14 MS. CURRAN: No.

15 JUDGE HARBOUR: Is that also true of New England
16 Coalitiion 3.1 and 3.3 for which summary disposition
17 motions have not been filed?

18 MR. JORDAN: I believe so, Your Honor. Those were
19 new contentions and summary disposition motions have not
20 been filed. They are still live contentions.

21 JUDGE HARBOUR: Thank you.

22 MR. JORDAN: I am sorry. Ms. Curran informs me we
23 withdrew 3.2.

24 JUDGE LUEBKE: As a motion for summary
25 disposition?

1 MR. JORDAN: I am sorry?

2 JUDGE HARBOUR: 3.2 has a motion for summary
3 disposition.

4 MR. JORDAN: Yes. I was just speaking to that.

5 JUDGE HARBOUR: And you are withdrawing that
6 motion?

7 MR. JORDAN: The one related to failure to both
8 units, yes, we are.

9 JUDGE HOYT: You are withdrawing the contention.

10 MR. JORDAN: The contention, yes.

11 JUDGE LUEBKE: And this is the first
12 announcement, or is there a paper in the mail?

13 MS. CURRAN: In our answers to applicant's
14 interrogatories we stated that we would be withdrawing the
15 contention.

16 JUDGE HARBOUR: In regard to New Hampshire
17 refiled motion 13, will you be changing the wording of that
18 also to indicate those parts that you are abandoning?

19 MR. BISBEE: We can certainly do that, yes.

20 JUDGE HARBOUR: All right.

21 MR. DIGNAN: If the please the Court, on NH-13
22 it is my intention to still press the entire summary
23 disposition motion on that matter. I realize that they have
24 withdrawn on all but part 1(a)(11) of NUREG 0737 and
25 1(c)(1) of NUREG 0737, but in line with the same principles

1 I outlined earlier, I think we are entitled to summary
2 disposition of those two matters also, and I will address
3 that if it be the Board's wish at the appropriate time.

4 JUDGE HOYT: This is as good as any.

5 MR. DIGNAN: Okay. I just don't like to overstay
6 my welcome on my feet.

7 (Laughter.)

8 JUDGE HOYT: If you are tired, you may sit down.

9 MR. DIGNAN: No, that is fine.

10 This contention has been cut down somewhat.

11 Insofar as it was originally based on NUREG 0737, items
12 1(a)(2)(1) and 1(a)(2)(3), it was withdrawn in response to
13 interrogatories. Insofar as it was based on 2(b)(4), it was
14 withdrawn in the response to the summary disposition
15 motions filed.

16 This leaves, first of all, item 1(a)(11). This
17 is the business of the shift technical adviser. As this
18 staff has pointed out in its response to our motion, which
19 they filed on March 18th, they have now examined our
20 position, our alternative position, and it is in accord
21 with current staff practice.

22 In addition, as they point out, we have now
23 committed that if our position is not satisfactory to the
24 staff, then we will put in a shift technical adviser.

25 So once again absent a factual matter being

1 raised that the putting in of a shift technical adviser, if
2 the other alternative is not found satisfactory, we have
3 nothing to litigate at this time because the applicant has
4 now committed that if its alternative is not accepted, and
5 it appears from the staff filing that there is every
6 likelihood that it will be, we will put in the shift
7 technical adviser. So I just don't think there is anything
8 left to try as a factual matter under this contention.

9 JUDGE LUEBKE: Excuse me, Mr. Dignan, but all you
10 have said sounds to me just like what I have seen on paper;
11 is that correct.

12 MR. DIGNAN: That is correct.

13 On 1(c)(1), as I understand New Hampshire's
14 claim in its final filing, they responded by saying it was
15 still open because the Westinghouse Owners Group guidelines
16 are not yet finalized and thus there is no basis to hold
17 that the applicant's commitment is equivalent to a
18 commitment to meet item 1(c)(1).

19 Now I think it should be pointed out at this
20 point that if you read item 1(c)(1) in NUREG 0737, it
21 states in that that if the Westinghouse guidelines come in,
22 the staff will review them and they won't become finalized
23 until the staff has found them acceptable.

24 That being the case, it seems to me again we are
25 back in that position. The applicant has committed to the

1 regulation and I know of nothing that has been filed by New
2 Hampshire in the form of an affidavit that raises a factual
3 question that compliance with that regulation and
4 compliance with the guidelines when accepted will create a
5 situation as a matter of fact that does not provide
6 reasonable assurance of the public health and safety.

7 It is my view of the law in these matters that
8 that being the case, that at this time the contention is in
9 order for summary disposition.

10 Again, and I think my brother Perlis put it very
11 well, the guidelines come in down the road and New
12 Hampshire reads them and the Commission doesn't make them a
13 regulation and thus close it off, and New Hampshire is free
14 to file a late filed contention and use the Catawba
15 decision as a basis for raising it. But as it stands now,
16 it seems to me that summary disposition is in order.

17 MR. PATTERSON: If it please the Board, if I may
18 take these in reverse order dealing with 1(c)(1) first. Our
19 position would be the same as that regarding New Hampshire
20 9 and we would agree with the applicant that this part of
21 contention 13 could be dropped now subject to timely
22 refiling later.

23 As to item 1(a)(1)(1), which is the shift
24 technical adviser portion, the staff has developed an
25 alternative requirement for the STA provisions of NUREG

1 0737 item 1(a)(1)(1) with which the applicant's current
2 proposal and commitment is in accord.

3 The staff expects routine approval by the
4 Commission of that proposal next week. However, in the
5 event that that approval is not forthcoming, the applicant
6 has committed to provide a separate STA in accordance with
7 the current NUREG 0737 requirements, and on that basis the
8 staff seeks summary disposition of 1(a)(1)(1).

9 MR. BISBEE: Address the order once again.
10 (Laughter.)

11 MR. BISBEE: In 1(a)(1)(1), now that I learn that
12 the staff has approved, the Commission will no doubt
13 routinely approve that approval. It makes the issue even
14 more pointed.

15 In our filing we indicated that we recognize
16 that there is a means for obviating the need for a shift
17 technical adviser in 0737 1(a)(1)(1). That requires two
18 things. One is that they upgrade the qualifications of
19 shift superintendents and senior operators. That, from what
20 has been made available, apparently has been accomplished.

21 There is a second requirement in 0737
22 1(a)(1)(1), however, before shift technical advisers can be
23 eliminated, and that is that the "man-machine interface in
24 the control room" be upgraded adequately also.

25 I see nothing in any of the papers filed that

1 addresses that point. We have raised it through discovery
2 and it has not been responded to. On that basis I see no
3 reason for the staff to have approved the elimination of a
4 shift technical adviser position. Therefore, the issue is
5 still live before you and the motion to dispose of it
6 should be dismissed or denied.

7 On the second item, again it appears that we are
8 awaiting the Westinghouse Owners Group report before the
9 emergency guide lines will have been changed in any way
10 that will again undergo staff review.

11 The staff and applicant both suggest that we can
12 file eight contentions when that document is filed. Well,
13 that gives us nothing new. The issue isn't can we file
14 eight contentions later. That is always open to us. The
15 question is do they comply now? Is there sufficient
16 evidence before you now that you can rule in their favor on
17 the issue?

18 We say where there is simply insufficient
19 information and you do not have that before you, that has
20 not met the burden of proof and they should not prevail on
21 the issue.

22 MR. PATTERSON: If it please the Board, may I
23 respond to Mr. Bisbee's comments?

24 JUDGE HOYT: All right, we will take your
25 response.

1 MR. PATTERSON: Thank you.

2 AS to the shift technical adviser issue, I
3 believe that Mr. Bisbee's remarks assume that the sole
4 requirement involved here is NUREG 0738 1(a)(1)(1). What
5 the staff has just stated is that there is an alternative
6 arrangement whereby the necessary expertise which is sought
7 to be provided by that item can be provided to the shift
8 superintendent and shift unit supervisor, and that is the
9 alternative proposal which is before the Commission.

10 Now in the event that that proposal is not
11 accepted, then the applicant has committed to meet the
12 requirements of NUREG 0737 1(a)(1)(1) as they are now
13 stated. So as I see it, there is no issue as to the
14 compliance with NUREG 0737 in the event that the proposed
15 alternative is not approved.

16 JUDGE HOYT: Go ahead.

17 MR. BISBEE: Just one final point. I recognize
18 there is means for eliminating that position and providing
19 alternative training or qualifications of the other
20 positions. But as I read 1(a)(1)(1), and it is clearly
21 stated that not only must you upgrade the other positions,
22 but you must also demonstrate, the applicant must
23 demonstrate that the man-machine interface in the control
24 room has been upgraded. I don't think that has been done,
25 or at least there has been no demonstration of it.

1 MR. PATTERSON: Your Honor, I think the
2 misconception which should be clarified is that if the
3 alternative as proposed by the applicant for eliminating
4 the separate STA position is not accepted, then the
5 applicant has committed to provide the separate STA as
6 required under NUREG 0737. It isn't saying it going to use
7 the alternative of upgrading the man-machine interface.

8 In the event that the alternative proposal is
9 not accepted by the Commission, the applicant has committed
10 to provide the separate STA as required under NUREG 0737
11 1(a)(1)(1).

12 JUDGE HOYT: We will recess for approximately 10
13 minutes.

14 (Whereupon, a short recess was taken.)

15 JUDGE HOYT: The hearing will come to order.

16 Let the record reflect that all parties to the
17 hearing who were present when the hearing recessed are
18 again present in the hearing room.

19 I believe Dr. Harbour has some questions that he
20 would like to ask at this time.

21 Let me interrupt Dr. Harbour just one moment
22 here to ascertain what would be the desire of the parties
23 here concerning our proceedings this afternoon. Would you
24 like to recess for lunch somewhat around noon and reconvene
25 at about an hour and a half later?

1 (Parties nodding in agreement.)

2 JUDGE HOYT: Does that meet with your schedules.

3 MR. LESSY: It is fine with us.

4 JUDGE HOYT: I wasn't concerned about you so much
5 Mr. Lessy.

6 (Laughter.)

7 JUDGE HOYT: Now, Mr. Lessy.

8 MR. LESSY: Depending on how much we have and
9 depending on what the Board's agenda was.

10 JUDGE HOYT: You mean to drive straight through
11 to conclusion?

12 MR. LESSY: Well, no. I think if we are getting
13 near and I think the FEMA matters are scheduled for
14 tomorrow.

15 JUDGE HOYT: Yes, all the FEMA will be scheduled
16 for tomorrow.

17 MR. LESSY: Depending on how much we had, if we
18 are getting near the completion of the summary disposition
19 matters, I would rather just go for a little while further,
20 depending on how much the Board ---

21 JUDGE HOYT: Well, we will see how it goes.

22 MR. LESSY: But if not, the 12 o'clock recess is
23 perfectly fine also.

24 JUDGE HOYT: Thank you.

25 Dr. Harbour, excuse me for interrupting.

1 (Pause while the Board confers.)

2 JUDGE HARBOUR: I have a request in regard to the
3 New England Coalition contention 1(g).

4 MS. CURRAN: Your Honor, may I address that?

5 JUDGE HOYT: Yes, please.

6 MS. CURRAN: That contention had assumed the
7 qualification of the wide-range pressure transmitters. The
8 applicants originally stated that these transmitters were
9 outside of containment. New England Coalition saw from the
10 drawings in the FSAR that they were inside of containment.

11 The FSAR has since been amended and those
12 transmitters have been moved to outside of containment
13 where they will apparently no longer be subject to the
14 environment that caused the NRC to have a concern in the
15 first place. So we have dropped that contention.

16 JUDGE HARBOUR: So 1(g) then will be withdrawn?

17 MS. CURRAN: Yes.

18 JUDGE HARBOUR: All right.

19 JUDGE HOYT: You haven't that in any submissions
20 to the Board yet, have you?

21 MS. CURRAN: No, we haven't. This was just a
22 recent development.

23 JUDGE HARBOUR: I am looking at the wording of
24 the contention and it says "pressure instrument
25 reliability," and it had to do with the wide-range pressure

1 instruments not being accurate. Are we talking about the
2 same contention?

3 MS. CURRAN: That is correct.

4 JUDGE HARBOUR: All right. Thank you.

5 JUDGE HOYT: Then I guess we can consider NECNP
6 l(g) withdrawn from the consideration.

7 MS. CURRAN: Yes.

8 JUDGE HARBOUR: That is all I have.

9 JUDGE HOYT: Very well.

10 This afternoon I would like to take the
11 opportunity of having us go through the remaining
12 contentions that we have before the Board in the order that
13 we admitted them in the September 13th '82 order and give
14 each of the parties here one more opportunity to make any
15 additional submissions.

16 I think on some of these we have already pretty
17 much exhausted anything you want to say on them. For
18 example, I think NH-9 has about had it, and we could
19 proceed very quickly through any of the others and give
20 everybody one more round or opportunity, since all the
21 pleadings are in.

22 JUDGE HARBOUR: We may have covered all of New
23 Hampshire's.

24 JUDGE HOYT: I think we have covered most of New
25 Hampshire's, unless anyone would have anything to submit on

1 those. We could start out with New England Coalition this
2 afternoon.

3 MR. JORDAN: Your Honor, I would assume the
4 movants would want to be first and have us respond. We
5 would certainly be prepared to go ahead now and use the 15
6 minutes or however long you want to before lunch.

7 JUDGE HOYT: Very well. If everybody is
8 agreeable, that is fine with me.

9 I think we have an agreement from the counsel
10 for New Hampshire that you have nothing further to add on
11 your contentions.

12 MR. BISBEE: Of the three contentions that the
13 applicant has moved for summary disposition, that is
14 correct.

15 JUDGE HOYT: All right then, let's start with
16 NECNP 1.A.2. Does the applicant want to lead off with
17 anything?

18 Mr. Dignan.

19 MR. DIGNAN: Could I just find out what the
20 ground rules are going to be because maybe we do want to
21 break.

22 My point is this. As I understood the Board's
23 inquiry, all you want to hear from the applicant on at this
24 point is our response to the last piece of paper filed.
25 That is to say we should assume the Board is familiar with

1 the papers that are before it and not articulate the
2 original grounds, but rather respond to the arguments that
3 have been made by the intervenors in opposition to our
4 motion; is that correct?

5 JUDGE HOYT: That is correct. If you said it
6 once, don't say it again. Tell me anything new you want to
7 add to it, and that of course is for the intervenors as
8 well. If you have some other basis, or if you would like to
9 reinforce what you have already said. But, please, let's
10 don't just go over the same ground. We have read everything
11 you have submitted. Believe me, we have read it.

12 Then do you want to go first, Mr. Gad?

13 MR. GAD: I am not sure I want to, but I am
14 prepared to, Your Honor.

15 You know, it is a little bit like leading
16 questions. Sometimes you have to ask one just to get
17 started. At the risk of plowing old ground, the issue that
18 we come down to on this contention is this. It is not
19 whether or not those of the electric valve operators that
20 the applicants have said they are going to qualify are in
21 fact adequately qualified.

22 The issue on this one between us and NECNP goes
23 to those which the applicants have said they are not going
24 to qualify, and the question is whether or not those valves
25 require qualification.

1 The Board may recall that NECNP early on hit the
2 applicants with an interrogatory that said please list all
3 of the electric valve operators that we are talking about,
4 and we did so.

5 Then they hit us with an interrogatory that said
6 list all of the ones that you intend to qualify and all the
7 ones you don't intend to qualify and tell us why you don't
8 intend to qualify the ones you don't intend to qualify, and
9 we did that.

10 The response to those two interrogatories was a
11 table, and I am sure everyone will remember this because we
12 filed the interrogatories saying that the table was
13 attached and lo and behold it was attached. So it went in
14 two days later.

15 In all events, whether for that reason for other
16 reasons, the table deserves a bit of emphasis because there
17 are four pages of electric valve operators on the table,
18 and of all of these there are only eight that the
19 applicants say do not require qualification.

20 One of the eight you can forget about because we
21 qualified it anyway. So we are down to seven of these
22 electric valve operators which the applicants say do not
23 require qualification under the regulations, they aren't
24 going to be qualified and which this contention asserts are
25 required under the regulations to be

1 qualified. Now that is the issue before the Board on this.

2 Nowhere in NECNP's papers has NECNP filed an
3 affidavit and pointed the finger at any one of the ones
4 that are not going to be qualified and said in form
5 sufficient to meet their obligations under 2749. That one
6 has got to be qualified because that I submit to you is the
7 response that has to be made and it hasn't been made.

8 Indeed, NECNP's entire opposition to this in its
9 written piece of paper on March 24th comes down to two
10 sentences on page 3, and I sort of hate to do this, but I
11 would like to quote the sentences.

12 They go like this. "The analysis performed by
13 the applicants in determining which electric valve
14 operators must be qualified consists only of a
15 determination regarding which valve operators are required
16 to operate during an emergency." Emphasis in the original.

17 The next sentence reads: "The applicants have
18 not considered whether the failure of any other EVOs could
19 prevent satisfactory completion of a safety function."

20 Now the trouble is that those two sentences are
21 a nonsequitor. They just plain don't make sense.

22

23

24

25

1 If in fact the failure of something would
2 prevent the accomplishment of the safety function, then
3 that is something that is required not to fail, and under
4 the definition is required to be qualified.

5 If, on the other hand, you don't care whether it
6 fails or it doesn't then it doesn't have to be qualified.
7 That is what we set forth in this table. If someone wanted
8 to contend that we had missed it as to one of these and
9 that our reasons for not qualifying it were not sufficient,
10 then the thing to do is to file an affidavit, point the
11 finger at one of these valves and say that valve has to be
12 qualified because NECNP has had all of this since November,
13 that is four months ago from November to today, that
14 response has never been made, and for that reason this
15 motion ought to be allowed.

16 JUDGE HOYT: Ms. Curran.

17 MS. CURRAN: Your Honor, I believe that the issue
18 here is whether applicants met the requirements of the NRC
19 rule on environmental qualification 10 CFR 50.49. That rule
20 requires the environmental qualification of all equipment
21 important to safety. That falls into two categories,
22 equipment which is known as safety related equipment, which
23 is required to function during an accident, and equipment
24 which may be non-safety related but whose failure could
25 result in the failure of safety related equipment to

1 perform its function.

2 The NRC obviously sees two separate categories
3 of equipment which must be qualified. In the proposed rule
4 the NRC was proposing not to require the qualification of
5 non-safety related equipment important to safety, but in
6 the final rule they came out and said you must qualify it.

7 Not only that, the applicants must provide a
8 list of all the equipment important to safety, including
9 safety related equipment and non-safety related equipment
10 which is important to safety.

11 There is nothing in any of the applicants'
12 submissions to indicate that they have made any
13 consideration of what non-safety related equipment may be
14 required or may fail and then cause failure of safety
15 related equipment.

16 In fact, in applicant's answers to
17 interrogatories filed December 16th, 1982 at page 3, and
18 this is the answer to our second set, they said that they
19 saw no distinction between the term "safety related" and
20 "important to safety" and that their concept of important
21 to safety related equipment only involved the definition of
22 safety related. In other words, only that equipment
23 required to function in an accident.

24 So applicants have in fact told us that they
25 don't consider themselves required to make this analysis of

1 what is important to safety.

2 We think they have not met their burden of
3 proof. It is not for us to analyze which of this non-safety
4 related equipment must be qualified. It is their
5 responsibility. They have not met that responsibility and
6 are not entitled to summary disposition.

7 JUDGE HOYT: Does staff want to input?

8 MR. PATTERSON: Yes, Your Honor.

9 The staff has reviewed those valves listed on
10 Table 1A2-3 that have been categorized as non-safety
11 related and the staff has determined that those seven do
12 not have to be qualified under the new EPQ rule. That is
13 the staff position.

14 JUDGE HOYT: Yes, Ms. Curran.

15 MS. CURRAN: Your Honor, the staff made no
16 statement in regard to this contention that this equipment
17 was important to safety. There is nothing in the filings on
18 that.

19 If the staff's position is that this equipment
20 does not have to be qualified, they haven't submitted the
21 proper affidavits or statements of facts to support it, and
22 it is not proper for disposal here.

23 MR. LESSY: Do you want us to respond?

24 JUDGE HOYT: I think you should.

25 MR. PATTERSON: Your Honor, the information that

1 I have presented to the Board is the latest up to date
2 information that we have in terms of the staff's review.
3 This review was not completed at the time the papers were
4 filed and it recently has been completed.

5 In the interest of providing the Board with the
6 latest information on this issue, which is I believe the
7 Board's request and interest today, we have presented the
8 staff's review.

9 JUDGE HOYT: Let me stop you here, counsel, and
10 ask you shouldn't you have updated your response then to
11 the interrogatories?

12 MR. PATTERSON: Had we had time, Your Honor, we
13 would have. I am not sure that we have any interrogatories
14 which needed to be updated, but the fact is that the staff
15 review of this matter has only been completed ---

16 MR. LESSY: Your Honor, the chart that has come
17 into play here in terms did not come into play until in
18 terms of the applicant's motion for this contention. Now
19 that lists those valves that are qualified and those that
20 are not qualified.

21 In addition to that, as Ms. Curran indicated,
22 there has been a change in the rule. Having taken a look at
23 applicant's listing of not qualified or unqualified valves,
24 the staff has reviewed those and concluded that the listing
25 is essentially correct, that those unqualified valves do

1 not have to be qualified in accordance with the new rule.

2 Now certainly NECNP does not expect the staff,
3 once having completed that review, to sit on that
4 information and not present it to the Board. You want our
5 views on the matter. It is applicant's motion for summary
6 disposition and you have got ---

7 JUDGE HOYT: Mr. Lessy, the quarrel I am having
8 with you on that is why didn't you give it to us earlier?

9 MR. LESSY: Because it was just completed this
10 week, Your Honor. We are dealing a new rule.

11 JUDGE HOYT: Then that is the answer.

12 MS. CURRAN: Your Honor, at the very least I
13 think we are entitled to an opportunity to review the basis
14 for the NRC staff's determination.

15 JUDGE HOYT: Mr. Lessy, what does the staff
16 intend to do?

17 MR. LESSY: Well, let's think about the summary
18 disposition rule now. Applicant's moved for summary
19 disposition. We have answered it and they have answered it.
20 At that point really you kind of draw the line.

21 We have new information concerning an ongoing
22 review and that is what we are dealing with here, even
23 though we are looking at parcels of time. If NECNP has any
24 specific questions regarding those seven valves, we will be
25 happy to set up a meeting or discuss it with them.

1 The point is is that we really get back to if
2 you take a look at the overall framework of the pleadings
3 on this motion for summary disposition, the question is
4 NECNP has interposed a theoretical objection to a very
5 practical problem and the staff's position on this matter
6 is that there is no practical problem at all. The
7 qualification of electric valves is as it should be under a
8 new rule.

9 What Mr. Gad is saying is that NECNP never
10 examined the listing of unqualified valves that it was
11 provided in November under the new rule. If it wants to
12 oppose a motion for summary disposition on that basis, the
13 argument is, and I think it is a persuasive argument, is
14 they had an obligation to get that matter before the Board.

15 Incidentally, the staff happens to believe that
16 that listing is correct. It is somewhat relevant, but
17 doesn't go to the heart of the matter proposed by
18 applicants which is that NECNP has not appropriately
19 opposed the motion for summary disposition on that matter.
20 We are merely giving you the status of our review as of
21 today.

22 JUDGE HOYT: Dr. Luebke, did you have a question?

23 JUDGE LUEBKE: Well, if my memory serves
24 correctly, the Coalition answered the motion for summary
25 disposition with a statement saying it had no dispute with

1 the factual information which led me to believe that your
2 considerations were all legal questions.

3 MS. CURRAN: Yes. We don't dispute the fact that
4 applicants have qualified the safety related valves inside
5 the containment to the proper standards. That question has
6 to do with the application of a standard.

7 JUDGE HOYT: Now Mr. Gad.

8 MR. GAD: The contention that was admitted in
9 this case was the applicants have not qualified of the EVOs
10 that have got to be qualified.

11 Now analytically that means either you
12 identified something had to be qualified but you qualified
13 it wrong, or you didn't identify something that had to be
14 qualified. The first half of that has gone out because
15 there is no such assertion.

16 A list of all of the EVOs were submitted. A list
17 of all of the ones that we said had to be qualified was
18 submitted. The essence of this contention is factual, i.e.,
19 you didn't put something in the "to be qualified" category
20 that you should have put in that category. That was the
21 contention that was proffered to the Board last July,
22 admitted by the Board last September.

23 We provided the list of all of the EVOs back
24 then and there and NECNP has to date not pointed a finger
25 at any one of those EVOs and said, hey, you did it wrong.

1 Now the Board has heard the assertion made to it
2 in connection with this one and, frankly, I would be
3 surprised if the Board doesn't hear this again, to the
4 effect that well, it is not our job to point out which one
5 of the EVOs is the villan.

6 The fact of the matter is that that is simply
7 not an accurate statement of the law under 2749.

8 We have come in with a showing, at least a good
9 prima facie unless unrebuted carries the day type showing,
10 that all of the ones that have to be qualified have been
11 qualified.

12 Now this is an imperfect world and I suppose
13 there is a probability that we might have been wrong about
14 that. But if you are going to litigate whether we are wrong
15 about that when the time comes for responding to motions
16 for summary disposition under 10 CFR 2749, you have got to
17 do at least one thing, and you have got to do more than
18 this, but you have got to do at least one thing. You have
19 got to point the finger and say that one is wrong. You have
20 also got to do it in a sufficient way by an affidavit of a
21 fellow who is qualified to render that testimony.

22 But rescinding from the qualifications of the
23 fellow who never submitted the affidavit, there has not
24 been one of these things that has been pointed out by NECNP
25 that has been put in the wrong column, and that is the

1 essence of this contention.

2 It is their burden if they want to avoid summary
3 disposition.

4 JUDGE HOYT: One last round, Mr. Curran.

5 MR. CURRAN: I would like to read the language of
6 our contention once more.

7 JUDGE HOYT: I just did. Thank you.

8 Anything else?

9 MS. CURRAN: Yes. Another point is that the SER
10 prepared the NRC staff has said that applicants have not
11 yet submitted a list of what equipment is important to
12 safety. So I don't think that the applicants can say that
13 they have qualified all equipment which must be qualified.

14 In addition, their statement of material facts
15 does not say that. It says all Class IE electric valve
16 operators have been qualified. We are not disputing that.
17 We are saying all electric valve operators which must be
18 qualified should be qualified.

19 We don't have the burden of proof of showing
20 exactly which ones those are. The applicants on the papers
21 have not sustained their burden of proof.

22 MR. LESSY: Your Honor, let me take the last
23 round. We said in our affidavit because there was a
24 question raised as to how timely our information was, we
25 said in our affidavit, the affidavit of Robert LaGrange

1 that greatly updates the FSAR, that by letter of March 9th,
2 1983 from John DeVincentis to George Knighton, and I am
3 reading from it: "Public Service Company of New Hampshire
4 has committed to qualifying all Class 1E electric valve
5 operators installed inside of containment in accordance
6 with NUREG 0588."

7 Now, that is March 18th. That wasn't very long
8 ago. The information I gave you is just a furtherance of
9 that in saying that in pursuance of that commitment we have
10 reviewed their submittals and their commitment has been
11 held to be valid. They have qualified those in accordance
12 with our requirements.

13 The other point in our affidavit is, and this is
14 the affidavit of Mr. LaGrange who is the section leader in
15 this area on paragraphs 3 and 4, is that once they so
16 qualify them, this satisfies the GDC, the general design
17 criteria for standards and the requirements of the new rule
18 on environmental qualification. This is one of the easiest
19 issues the Board has to rule on.

20 (Laughter.)

21 JUDGE HOYT: Thank you, Mr. Lessy.

22 Ms. Curran.

23 MS. CURRAN: Very briefly. I think Mr. Lessy has
24 missed the point. We are not disputing the requirement for
25 qualification of class E1 equipment. It is required. We are

1 saying there is an additional category of equipment which
2 also must be considered for qualification which is not.

3 JUDGE HOYT: I think we ought to move along on
4 this, and I have a suggestion from one of the Board members
5 that we have lunch.

6 Let's reconvene then at 1:30. Does that give
7 everybody sufficient time?

8 (Parties nodding in agreement.)

9 JUDGE HOYT: All right. Thank you.

10 (Whereupon, at 12:05 p.m., the prehearing
11 conference recessed, to reconvene at 1:30 p.m., the same
12 day.)

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AFTERNOON SESSION

(1:35 P.M.)

JUDGE HOYT: The hearing will come to order.

Let the record reflect that all the parties to the hearing who were present when the hearing recessed are again present in the hearing room.

At the conclusion of the morning session we had gotten through a great many of the things that we wanted to discuss about the contentions. I did have a note that I wanted to get with you, Mr. Dignan.

The information in our order of 3/17/83, we asked you to give us some indication when the reactor vessel examination plan would be ready.

MR. DIGNAN: Madam Chairman, that related to an NECNP contention, specifically I.E.1, an interrogatory propounded on that contention.

At or about the time, almost contemporaneously with the Board's order on the motions to compel on the interrogatories on this contention, NECNP withdrew the contention.

I asked NECNP whether or not they had any further interests in the item for which they had moved, and their answer was that they did not. So we have put that in the category of things that have since become moot.

1 MS. CURRAN: That is correct.

2 JUDGE HOYT: What was the contention?

3 MR. GAD: One delta one I believe.

4 MR. DIGNAN: That is correct.

5 JUDGE HOYT: Very well.

6 We had gotten as far as 1.B.1.

7 The same order again.

8 MR. GAD: To set the stage for this one, if I
9 may, I would like to suggest that we compare two
10 fundamental precepts about NRC licensing.

11 First is standard operating procedures for
12 nuclear power plants because you often have a number of
13 different systems by which you can perform a given
14 function.

15 The second precept is that in your accident
16 analysis you select one of the systems that all other
17 things being equal you could use as options. You select one
18 of them and you qualify it in accordance with the GDC in
19 order to assure its availability during an accident.

20 Under the regulations you only have to depend on
21 one of the systems and under the regulations you therefore
22 only have to qualify one of the systems.

23 Now this contention says, and I quote, "The
24 applicant has not satisfied the requirements of the GDC in
25 that all systems required for residual heat removal have

1 not been classified as safety grade."

2 The fact of the matter is that at Seabrook there
3 happened to be a number of ways by which one could perform
4 the residual heat removal function if they were all
5 available and which you may use as options.

6 There is one system that has in fact been
7 selected as the one on which the plant will rely. There is
8 one system that has been qualified per the regulations.
9 That system does not use any of the equipment that is the
10 subject of this contention, namely, steam dump valves,
11 turbine valves and a steam dump system.

12 Therefore, it is not qualified and it does not
13 have to be qualified. All of this is set forth in the
14 applicants' affidavits and the applicants' answers to
15 interrogatories and NECNP does not dispute this, and I
16 refer to page 5 of NECNP's opposition filed on March the
17 24th.

18 To avoid summary disposition on this contention,
19 NECNP tried two approaches. The first one is to seek to
20 establish that the system on which Seabrook does rely may
21 not be available.

22 In order to do this, it postulates that a steam
23 generator tube may rupture and that therefore that steam
24 generator in which the tube has ruptured is not something
25 that you will be able to vent to the atmosphere, which is

1 the first step in the residual heat removal process.
2 Technically it ought to be called cool-down process because
3 residual heat removal starts later.

4 The problem with NECNP's postulation is that
5 there are four steam generators on each of the Seabrook
6 reactors. At most you need two and some people think you
7 only need one of the steam generators in order to perform
8 the cool-down function or the residual heat removal
9 function.

10 If one of the steam generators should suffer a
11 tube rupture during an accident, that steam generator can
12 be isolated from the system. In fact, under the regulations
13 the FSAR is required to make a lengthy analysis of design
14 basis accidents. One of the design basis accidents happens
15 to be a steam generator tube rupture, and this entire
16 topic, i.e., what happens if you have a steam generator
17 tube rupture during an accident is set forth at great
18 length in the FSAR. My reference is to section 15.6.3 and
19 to the several tables referred to therein.

20 Therefore, NECNP's assertion which is contained
21 on page 7 of their opposition to the effect that the
22 integrity of the steam generators is an assumption for
23 accident analysis, that assertion by NECNP is simply
24 contrary to the application that is before the Board.

25 NECNP's second approach is to say in essence all

1 right, let's assume that the RHR system that you intend to
2 rely upon is working just fine, and let's assume that you
3 don't need the steam dump valves and all the other
4 equipment that is cited in order to do residual heat
5 removal.

6 Still NECNP postulates, with no basis in our
7 judgment, but let's play it out, still NECNP postulates
8 that the things we identified, steam dump valves and the
9 like may be leaking. And if in fact they were leaking and
10 at the same time you had the rupture of a steam generator
11 tube, you might get radiation that would escape from the
12 primary coolant system to the secondary coolant system out
13 to the condenser and then out through these things which
14 exosify per NECNP are leaking.

15 There are a number of problems with this
16 concoction.

17 The first is that it goes beyond the scope of
18 the contention, because the contention, after all, was that
19 equipment required to perform residual heat removal has not
20 been qualified, and by definition this equipment is not
21 requirement to perform heat removal.

22 The second and equally gating limitation is that
23 all of the equipment that NECNP refers to that may be
24 leaking, the steam dump valves and the steam dump system,
25 all of that is in fact separated from the steam generator

1 by something called the main steam isolation valves, MSIV.

2 Here is the equipment NECNP is talking about and
3 here is the steam generator which, for purposes of argument
4 only, we allow NECNP to postulate as leaking. Right in
5 between the two is the MSIV. If in fact the steam generator
6 is leaking, what you do is you close the MSIV. If you close
7 the MSIV, then you don't care whether any of this stuff
8 downstream from it is leaking or not. You simply don't
9 care.

10 All of this, we submit, demonstrates on its face
11 the fallacy of the syllogism upon which NECNP relies to
12 avoid summary disposition in this case. It shows the
13 fallacy of Mr. Minnor's affidavit and indeed it suggests,
14 and I will leave it at suggests, it suggests that Mr.
15 Minnor has not even read the FSAR.

16 Moreover, everything that I have just referred
17 to comes from section 15.6.4 of the FSAR and also from the
18 description of the residual heat removal system which is
19 section 5.4.7.

20 Now in analyzing this and getting all of those
21 drawings out to use for this proceeding, I had a little
22 trouble because those drawings have everything that you
23 need to see what NECNP is talking about and then in typical
24 fashion they have got a lot of other things on them.

25 I have made a sketch for my own purposes which

1 is drawn from those which I will be happy to give to the
2 Board has a chalk. The point is simply that the turbine and
3 steam dump system that we are asked to assume may be
4 leaking ---

5 JUDGE HOYT: Can you see this over there?

6 MS. CURRAN: Yes.

7 JUDGE HOYT: Can you give them a copy of it, Mr.
8 Gad.

9 (Copies of the chalk were handed to the
10 parties.)

11 JUDGE HOYT: I suppose we had best mark this as
12 an exhibit in the case.

13 MR. GAD: May I suggest that you mark it as a
14 chalk because it is in fact an extract from the FSAR and
15 not a new document.

16 JUDGE HOYT: All right. We will certainly mark it
17 as such.

18 MS. CURRAN: Your Honor.

19 JUDGE HOYT: Yes.

20 MS. CURRAN: I object to the marking of this as
21 an exhibit and introduction in to the record.

22 JUDGE HOYT: We just said it would be stuck in
23 the record to show what the counsel had talked from. I
24 don't want the record to show though, Mr. Gad, anything
25 that you have talked about and we have seen in this room

1 that is not attached to the record. We have got to have it
2 in there someplace, and that is the only purpose for which
3 it is being attached.

4 (The chalk submitted by applicants
5 for the record follows:)

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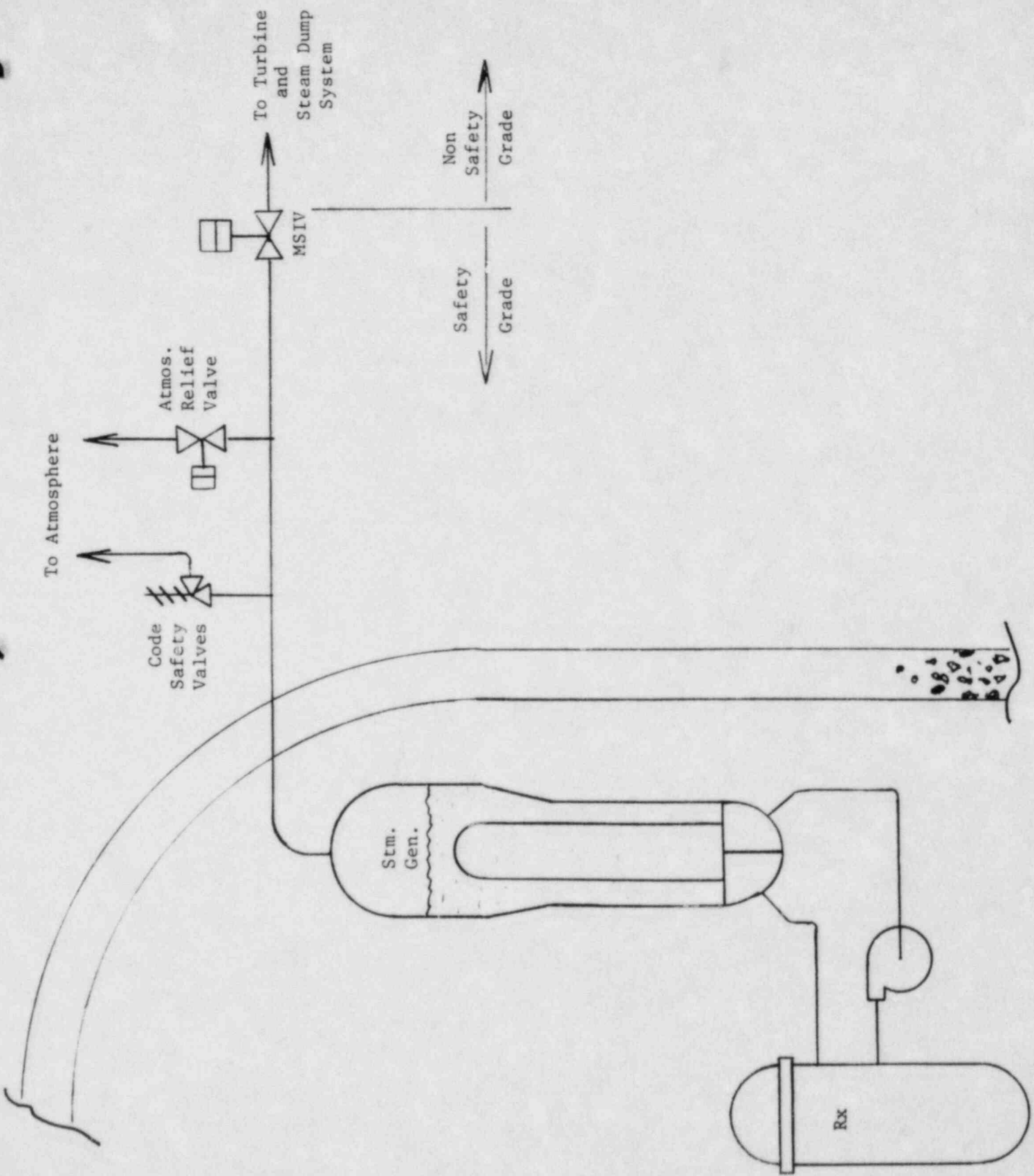
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1 MR. GAD: I would just like to make one more
2 observation on this contention.

3 The Board will note that most of what NECNP
4 said about this contention is not directed to the residual
5 heat removal system or to the turbine and steam dump system
6 which is the equipment they referred to in their
7 contention.

8 Most of the time that is spent in opposing
9 summary disposition on this contention is directed to steam
10 generator tube integrity.

11 Part of the problem with that approach to this
12 contention is that steam generator tube integrity as a
13 general subject of investigation was proposed as a
14 contention in this proceeding way back last summer. It was
15 proposed NECNP contention 1(t).

16 The Board excluded that contention by its order
17 in September and the Board reaffirmed that exclusion later
18 on. All we have been offered thus far is the same
19 generalized and distinctly unsupported allegations about
20 the Model F Westinghouse steam generator tube integrity.

21 It is wholly unrelated to the question of
22 residual heat removal under this contention. It is also
23 nothing other than an attempt to back door, to use an
24 expression, rejected contention 1(t).

25 We submit that if indeed it is necessary to do

1 so, contention 1(t) should be rejected for the third time.

2 Thank you, Your Honor.

3 JUDGE HOYT: ?Do you want to respond before the
4 staff or do you want to take them both on at the same time?

5 MS. CURRAN: I will wait to hear what the staff
6 has to say.

7 JUDGE HOYT: Very well. Go ahead, Mr. Perlis.

8 MR. PERLIS: The staff wants to file for summary
9 disposition on this contention and I think it is
10 appropriate for us to go now.

11 I would urge the Board to focus on the language
12 in the contention that reads "required for residual heat
13 removal." Without repeating all of what Mr. Gad said, it is
14 the staff's position that the equipment that is required
15 for residual heat removal has been identified and it will
16 be qualified. I don't think there is a real argument here
17 on that.

18 For NECNP and for the State of New Hampshire as
19 well, the responses are focused on the steam generators.
20 The only way the steam generator issue can be relevant here
21 is if a contention would read the steam generators won't
22 work and therefore they can't do the residual heat removal
23 function. Therefore, another system is required to do that
24 function and that system includes the steam dump valves,
25 the turbine valves and the entire steam dumping system.

1 Factually, I don't think a contention like that
2 could possibly hold water because those systems are
3 intertwined with the steam generators. Beyond that, that
4 simply isn't the argument NECNP is making here. That is the
5 only way the steam generators could be relevant to a
6 contention dealing with equipment necessary for residual
7 heat removal. That is not the argument they made in their
8 opposition.

9 JUDGE HOYT: All right. Ms. Curran, are you
10 ready?

11 MS. CURRAN: Your Honor, this contention is
12 based on both the principle of environmental qualification
13 and GDC 34 which requires the residual heat removal system
14 to be available.

15 I think the principle of environmental
16 qualification still applies here, that equipment which may
17 be relied upon in an accident must be qualified. That was
18 our intention as far as the use of the word "requires"
19 went.

20 We consider equipment to be required when it
21 comes under the definition of important to safety
22 equipment.

23 I think the applicant's argument here just
24 shows that we have raised a material issue of fact which
25 cannot be resolved on summary judgment.

1 Both the applicants and staff have mentioned
2 steam generators as one of the components that do remove
3 heat from the reactor during an accident, and I don't think
4 there is any question about that. The SER has also raised
5 questions about the integrity of the steam generators in
6 this case. That information has just come out in March.

7 We have incorporated that information. We have
8 found that it bears very heavily on the question of what
9 equipment in the heat removal system should be qualified.
10 If you cannot have a reliable steam generator, you have to
11 look and see how the other systems related to it may be
12 required to operate if they can't be used.

13 We continue to rely on our affidavit which we
14 think has raised a material issue of fact and believe that
15 these factual arguments that are being made on this
16 contention right now are only suitable for a hearing with
17 testimony and this motion should be denied.

18 JUDGE HOYT: New Hampshire had a response on
19 this, too. Do you want to enter into this?

20 MR. BISBEE: Yes, they did, Madam Chairman, and
21 yes, I would like to briefly respond.

22 New Hampshire's position on this question has
23 been simply that the steam generator as a component in the
24 residual heat removal system must be environmentally
25 qualified. We feel based on the evidence presented in the

1 affidavits submitted along with our answer that there is a
2 genuine issue of fact that needs to be resolved and that it
3 should be resolved at a hearing.

4 JUDGE HOYT: Is that it?

5 MR. BISBEE: Yes.

6 JUDGE HOYT: Do you have any rebuttal?

7 MR. GAD: Well, I am not altogether sure that I
8 was heard at least on one point.

9 The contention, the words that are there on
10 paper, go to the selection of whether or not an item has
11 been classified as safety grade and treated accordingly.

12 Necessarily, as NECNP realizes, it focus on
13 equipment that is presently not classified as safety grade,
14 such as the turbine valves and the steam dump system.

15 The problem is that now everyone wants to talk
16 about turbine generators. Turbine generators are not within
17 the scope of this contention, because they are not
18 equipment that is, and I quote, "not safety grade and
19 environmentally qualified."

20 Everything to the left of the MSIV there is in
21 fact safety grade and environmentally qualified. That is
22 the reason why what people really want to litigate, and I
23 suggest to you this contention is just being used as a
24 vehicle, is steam generators and not optional RHR equipment
25 that is not safety grade.

1 Unfortunately, the question of whether we are
2 going to litigate steam generators in this case is a
3 separate topic unto itself. It is not one that, in our
4 judgment, is open for assertion in the long run.

5 Thank you very much.

6 JUDGE HOYT: All right, sir.

7 MR. PERLIS: I will be very brief. I just wanted
8 the record to be clear that the use of the steam generators
9 for the residual heat removal function or for the cool-down
10 function was made clear in the staff's response to NECNP
11 interrogatories. It was not information that was just first
12 made available in the SER.

13 JUDGE HOYT: Can we move into I.D.2.

14 MR. GAD: If Your Honor please, I think we
15 addressed this this morning and the judgment was that
16 actually one issue, namely, the manual reactor trip
17 breakers, and at the staff's it would be deferred. The
18 applicant's position is that as to everything else that was
19 at one time within the scope of that contention, a motion
20 for summary disposition is not opposed and therefore it is
21 in order to be allowed.

22 JUDGE HOYT: Right. Thank you.

23 Is there anything that you want to add on to
24 what was said?

25 MR. JORDAN: No, ma'am.

1 JUDGE HOYT: That brings us to NECNP 2.B.3., QA.

2 MR. GAD: The same order, Your Honor.

3 JUDGE HOYT: Right. Go ahead.

4 MR. GAD: This is a contention, Your Honor, as
5 to which both the staff and the applicants have ruled for
6 summary disposition. The sole issue that is now pressed
7 under this contention is the asertion that the nuclear
8 quality manager, and it is my habit to put names on these
9 people instead of titles, Mr. Killpack, ought to be
10 reporting to the Executive Vice President of Engineering
11 and Production, Mr. Merrill, rather than to the Vice
12 President of Production, Mr. Thomas, as the applicants
13 propose.

14 The facts surrounding this are not in dispute.
15 the Executive Vice President of Engineering and Production
16 has the corporate authority for the operation of Seabrook
17 plus some other Public Service Company facilities.

18 His responsibility vis-a-vis Seabrook has been
19 delegated to the Vice President for Production, Mr. Thomas.
20 Reporting to Mr. Thomas are the station manager, the
21 training center manager, the nuclear services manager, the
22 engineering manager and the nuclear quality manager, the
23 chief QA fellow.

24 The nuclear quality manager reports directly to
25 the Vice President of Production and not through the

1 station manager and he is, to use to a term that I suppose
2 is not a technically valid term, but he is the equal in
3 terms of the hierarchial structure.

4 The nuclear quality manager also has authority,
5 and while NECNP purports to find ambiguity on this point,
6 the FSAR is clear as a bell. If you take a look at section
7 17.2.1, the nuclear quality manager has authority on his
8 own to stop work.

9 The dispute on this contention is not factual,
10 but it is legal and it turns on an interpretation of
11 Appendix B to 10 CFR Part 50 which says that the top QA
12 person shall have, and I quote, "sufficient authority and
13 organizational freedom."

14 Then it goes on to say, and I quote, "He shall
15 report to a management level such that this required
16 authority and organizatigonal freedom, including sufficient
17 independence from cost of schedule when opposed to safety
18 considerations are provided."

19 NECNP uses the word "independence" to refer to
20 this phenomenon.

21 Now the bottom line here is that it is obvious
22 on the face of the regulations that the term and the
23 concept of independence cannot be accepted in absolutice
24 fashion. That is to say, you cannot say that the person to
25 whom the NQM reports has no responsibility for production

1 and cost and scheduling, because, frankly, there is no one
2 in the company as to whom that would be true.

3 The issue here is to which of several people
4 ought the NQM to report. The selection that has been made
5 by the company is that if he reports directly with the
6 station manager, who is the top man with the line
7 responsibility for production schedules, then that provides
8 him with sufficient flexibility, and there would be no
9 difference if you had him reporting directly to the next
10 man above because the responsibility of Mr. Thomas for
11 production costs and schedules is part of his
12 responsibility for the whole plant, and that is equally
13 true of the fellow to whom NECNP wants the NQM to report.

14 The staff points out that it has a standard
15 review plan for interpreting Appendix B and interpreting
16 this particular term of it. As the staff interprets this
17 regulation, the sufficient authority and independence that
18 the regulation speaks of is achieved if in fact the top QA
19 man is on a level hierarchially equal to the station
20 manager and if they each report to a person one level above
21 them.

22 That is of course the basis on which the
23 Seabrook is designed. It is no accident that it happens to
24 be the SRP.

25 JUDGE HOYT: Mr. Gad, is that any different than

1 other managerial decisions in this area of other companies
2 which you are aware of?

3 MR. GAD: Well, I asked that question, Your
4 Honor, and the answer you get is in two chapters. No. 1, if
5 you got outside of nuclear, the standard thing for a power
6 plant outside of nuclear is that the top QA man reports to
7 the station manager.

8 JUDGE HOYT: Well, let's keep it in nuclear
9 since that is what we are dealing with.

10 MR. GAD: My information in nuclear is that in
11 some cases the top QA man reports to the station manager
12 and in some instances the top QA man reports to the Vice
13 President over the station manager on a herarchially basis
14 such as we propose.

15 The next question is what is the line of
16 demarcation between the two, and the answer is the older
17 plants did it the way power plants have traditionally been
18 done and the newer plants do it the way the SRP suggests
19 for I suggest the obvious reason that everyone wants to
20 meet the staff's SRP.

21 That is all we have to say.

22 JUDGE HOYT: Mr. Patterson.

23 MR. PATTERSON: Without going over the material
24 that has already been covered, basically, as was pointed
25 out, the issue here has to do with whether a general design

1 criterion has been satisfied which calls for the quality
2 assurance organization to have sufficient independence from
3 considerations of cost and schedule.

4 The standard review plan basically is the
5 considered judgment of the staff as to what is required in
6 the way of reporting arrangements to achieve that
7 independence.

8 That the staff has determined that the
9 particular reporting arrangement involved here does meet
10 the requirements of the GDC here is one of the material
11 facts in the staff's motion for summary disposition. It is
12 material fact No. 3, which basically says that the Vice
13 President-Nuclear Production is sufficiently removed from
14 direct responsibility for cost and schedule, that having
15 the nuclear quality manager report to that position
16 preserves the independence of the QA organization as
17 required by the GDC.

18 Our material fact No. 6 states that this
19 particular reporting arrangement satisfies the requirements
20 of Appendix B.

21 Now as the Board is aware under the rules of
22 the Commission, any material facts which are contained in a
23 motion for summary disposition in the statement of material
24 facts which is required to be filed accompanying that motion
25 are deemed to be admitted in the absence of material facts

1 controverting those which are required to be filed along
2 with any opposition to a motion for summary disposition.

3 I just would like to make sure that it is on
4 the record that in their opposition to the staff's motion
5 for summary disposition as to 2.B.3, NECNP has included no
6 material facts which would controvert those material facts
7 which I have repeated here today.

8 Therefore as a matter of law, the material
9 facts No. 3 and 6 which go to the heart of this contention
10 must be deemed admitted by NECNP.

11 JUDGE HOYT: Mr. Jordan.

12 MR. JORDAN: Thank you, Your Honor.

13 First, I did want to respond to you. You asked
14 Mr. Gad what was the situation at other reactors. In at
15 least one other case of which I am aware, the reporting
16 arrangement is that there is a Vice President for
17 Production and the quality assurance people report directly
18 to the Executive Vice President of the company, essentially
19 the proposal, or what we believe is necessary here. That is
20 at the Houston Lighting and Power Company related to the
21 South Texas project.

22 I apologize to the Board. We did not file a
23 specific piece of paper that stated the material statement
24 of facts. I am afraid we neglected to do it and included
25 only the one for the subsequent contention.

1 However, our discussion at pages 19 and
2 following of our response make clear what we believe the
3 material issue of fact is here, and that is the question of
4 whether the individual Vice President for, and they have
5 changed the name, I believe it is now Nuclear Production,
6 who is responsible for assuring that that reactor produces
7 electricity, has sufficient independence to assure that he
8 handles the quality assurance issues adequately at the
9 facility.

10 Now we have absolutely nothing in the
11 responses, even in the material facts which have been cited
12 to explain why this individual who has that responsibility
13 is for some reason independent enough.

14 All there are are bald assertions that the
15 staff has a non-regulatory document that it likes to look
16 to in reviewing these programs and that particular document
17 says well, you can have someone report to the Vice
18 President for production, and they say well, that is
19 enough. But I don't know, and they don't really say what
20 the criteria are for that Vice President for Production,
21 how they particularly relate to Seabrook, whether there is
22 anything different about Seabrook and particularly no one
23 has spoke to the question of the independence of the first
24 manager who has the responsibility to assure continued
25 production of electricity. This man is supposed to keep

1 that plant on line.

2 Of course everyone in the company has cost and
3 schedule concerns and that is as it must be. That is why we
4 are saying sure, of course, keep it in the company, but go
5 one level higher so that you are at a person who has a much
6 broader perspective on the company and is more independent
7 of the daily concerns and the need to keep the plant on
8 line and can focus on quality issues.

9 That question of fact has not been addressed in
10 either the filings of the applicant or the staff.

11 JUDGE HOYT: Mr. Jordan, aren't you in the same
12 posture that you accuse the applicant of being? Aren't you
13 answering one bald assertion with another?

14 MR. JORDAN: All we are doing, Your Honor, is
15 reading the FSAR which says this man has a responsibility
16 ---

17 JUDGE HOYT: That is exactly what I got through
18 saying.

19 MR. JORDAN: Well, I wouldn't say that. I didn't
20 think you just said that.

21 (Laughter.)

22 MR. JORDAN: I guess the difference is that we
23 read this in the FSAR and we see no refutation of it
24 anywhere. So if we are making a bald assertion, it is based
25 on something.

1 JUDGE HARBOUR: What regulatory standard or
2 regulation would you apply?

3 MR. JORDAN: Criterion 1 of Appendix B,
4 sufficient independence, and it is a question of fact.

5 JUDGE HARBOUR: Thank you.

6 JUDGE HOYT: Any rebuttal.

7 MR. GAD: If I may, Your Honor, the bald
8 assertion maybe wasn't looked at heard enough. If you take
9 a look at Figure 17.2-1 in the FSAR, which the staff
10 reproduces in its opposition papers, it gives you one of
11 these organizatigonal ---

12 JUDGE HOYT: This is 17. ---

13 MR. GAD: 17.2-1, which is an attachment to
14 either the staff's opposition -- no, it is the staff's own
15 motion I guess on this one.

16 It gives you the QA hierarchy, which is
17 somewhat a truncated version of the company hierarchy
18 because over here on top of the Executive Vice President
19 would be the President and the Chairman of the Board and
20 the like.

21 Now if we take a look at this thing, all that
22 NECNP is saying is that the nuclear quality manager, this
23 fellow over here, who now reports to the first man who has
24 no line authority for operating the plant, ought to be
25 report to the second man who has no line authority for

1 operating the plant.

2 Now our bald assertion is based on the
3 proposition that let's bear in mind it is not the fellow he
4 reports to who has to have the independence. It is the NQM
5 himself, and the real question is whether or not his
6 hierarchial reporting requirement impairs the independence
7 that he gets from having his own little block here.

8 If in fact you are arguing that one's reporting
9 judgment, that is the reportee's judgment and not the
10 reportor's judgment, may be affected by having some
11 collateral responsibility for cost and production, in fact
12 that is your argument, that NECNP's assertion that you
13 ought to draw the line, not from here to there, but from
14 here to there, is in fact empty on its face because there
15 is no rational basis for making that selection.

16 Our bald asssertion, on the other hand, is
17 based on the rational point that contrary to the way it is
18 done outside if nuclear, if the top quality assurance man
19 reports to a fellow who is the first officer who has no
20 line authority for operating these things, then in fact he
21 is independent of that direct responsibilty and so is the
22 fellow to whom he reports.

23 This fellow has no greater responsibility for
24 cost than he does for QA, and he has no greater authority
25 for schedule than he has for QA.

1 JUDGE HOYT: You are pointing, Mr. Gad, so the
2 record will be clear, you are pointing to the block labeled
3 "Vice President-Nuclear Production.

4 MR. GAD: That is correct, Mr. Thomas.
5 He, like everyone above him ---

6 JUDGE HOYT: Can you see that where he is
7 pointing?

8 MR. JORDAN: Well, I thought I was on the right
9 page. What is the page number, Mr. Gad?

10 JUDGE HOYT: Well, it is this chart.

11 MR. JORDAN: Yes, I have a chart, but I seem to
12 be at the wrong one.

13 MR. GAD: My Xerox of the staff submission I
14 guess was Xeroxed without page numbers on it.

15 JUDGE HOYT: Well, it has an identification mark
16 on the bottom right-hand corner, Mr. Jordan, of Figure
17 17.2-1. If you want to have one, here use mine because it
18 is much more important for you to see it than it is for me
19 at this point in time.

20 (The document was handed to Mr. Jordan.)

21 MR. GAD: The fellow to whom it is currently
22 proposed that the NQM would report must balance all of
23 these issues, unlike any of the people underneath him, and
24 he is no different in that regard than everyone above him.
25 So the only rational line of demarcation is the

1 line of demarcation from line responsibility, direct
2 responsibility, one of these blocks down here, to a
3 supervisory responsibility that incorporates all of these
4 things. That in fact is the line of demarcation that the
5 applicants have used.

6 The applicant's affidavit is that it does not
7 impair the NQM's independence and happily enough it happens
8 to conform to the standard review plan that the staff uses
9 in this and, as I understand it, in every other case to
10 interpret Appendix B.

11 MR. PATTERNSON: Just in order to make the
12 record complete concerning the staff's position on this
13 issue, I would like to, if I may, cite from 10 CFR Section
14 2.749(a) which governs the summary disposition of
15 pleadings, two sentences which apply.

16 "There shall be annexed to any answer opposing
17 the motion a separate short and concise statement of the
18 material facts as to which is contended ---

19 JUDGE HOYT: Counsel, he just got through
20 telling you that they didn't do that. So we are aware of
21 that.

22 Anything else?

23 MR. PATTERSON: No, Your Honor, only that that
24 is the basis for our position.

25 JUDGE HOYT: All right, Mr. Jordan.

1 MR. JORDAN: I think the only thing that I would
2 respond with again, Your honor, is that once again Mr. Gad
3 has laid out how he perceives the facts, and it seems to me
4 we disagree for the reasons that I have said before.

5 We have a factual dispute here about the
6 adequacy of independence. It is indeed the independence of
7 the nuclear quality manager which of course depends upon
8 who that person reports to and the responsibilities of that
9 person. That is the factual question here and that is what
10 we need to litigate.

11 JUDGE HOYT: Let's move on to 2.B.4.

12 MR. GAD: Contention 2.B.4 was admitted by the
13 Board on September 13th with a caveat. Now I refer, if I
14 may, to page 80 of the Board's order of that date. To wit,
15 the Board admits contention NECNP 2.B.4. "It is the Board's
16 understanding that NECNP's contention herein is that the
17 basis of the contention is the absence of the contended
18 items from the FSAR."

19 So here we have got one where all we do is take
20 the FSAR in one hand and the regulations in the other hand
21 and prepare the two.

22 Now the general subjects of this contention are
23 covered in FSAR Section 17.2.4 and 17.2.15. Those written
24 documents constitute the basis for the assertions in
25 paragraph 2(c) of Mr. Killpack's affidavit.

1 However, the real bottom line of NECNP's
2 contention is not that the FSAR doesn't address the topics,
3 but that the FSAR doesn't give you, and I will quote NECNP,
4 "the how" of your execution of these things, not what you
5 are going to do, but precisely nuts and bolts and details
6 of how are you going to do it.

7 The legal issue is whether or not that material
8 has to be contained in the FSAR. That is the contention
9 that the Board admitted.

10 There are two fairly negating responses to this
11 assertion.

12 The first one is if in fact you did the how of,
13 again to quote NECNP of "all conceivable purchases," then
14 the FSAR would not be 20 volumes long. It would probably be
15 220 volumes long, and that is certainly not what was
16 intended in the NRC requirement for an FSAR.

17 The second negating response to NECNP's
18 assertion that something is missing out of here is that the
19 FSAR in its discussion commits to and incorporates by
20 reference a number of things, as a matter of fact, a whole
21 laundry list of them.

22 One of them is staff regulatory guide 1.33. The
23 staff's regulatory guide 1.33 itself incorporates an ANSI
24 standard, and I meant to write the number of this one down
25 in my notes and I forgot to, but you can get it out.

1 NECNP in addressing the inadequacy of the FSAR
2 has not addressed, and I submit to you could not address,
3 the adequacy of the reg. guide requirements that are
4 incorporated by reference thereinto, and, more
5 particularly, the ANSI standard, which tells you
6 interestingly enough, how to do things at issue.

7 Now by definition the applicant's detailed
8 procedures are going to look an awful lot like the ANSI
9 standard because, after all, that is how you meet the ANSI
10 standard for, for instance, procurement requirements.

11 So insofar as the contention is something is
12 missing from some place, NECNP's submission doesn't cover
13 the all of the someplace that it had to be missing from,
14 because they have only focused on the pages in the FSAR
15 themselves and not the things which are incorporated by
16 reference thereinto.

17 They have also set up a legal standard for the
18 content of the FSAR which on its face is unworkable and on
19 its face would be novel, and, frankly, on its face is not
20 what the NRC regulations intended.

21 MR. PATTERNSON: To put into context the staff
22 review of the QA submission, it takes place basically in
23 two levels, one of which is where we are now, and that
24 involves a look at the FSAR and the reg. guides to which
25 the FSAR commits the applicant, as well as, as Mr. Gad

1 mentioned, the ANSI standards which detail the "how's."

2 That part of the review process basically is to
3 answer the question has the applicant shown that it is
4 committed to develop a QA program that will meet the
5 Appendix B criteria, and it must cover those criteria in
6 the form of its commitments in the FSAR and the reg. guide
7 and the ANSI standards that are incorporated therein.

8 The manner in which the applicant has fulfilled
9 this commitment is detailed in our material facts in the
10 references to the FSAR sections, and the staff would submit
11 that in terms of the "how's" that are required to be shown
12 at this point, that those regulatory guides and the ANSI
13 documents do set forth those "how's" in sufficient detail
14 to satisfy this level of the staff review.

15 The second submission by the applicant consists
16 of the QA manual, the actual procedures themselves which
17 are being developed. That is to be inspected by Region I
18 personnel prior to operating license. But that is not the
19 stage that we are at now.

20 As far as what the applicant is required to do
21 at this stage of the staff review, the staff would submit,
22 or the staff position is that it has fulfilled its
23 requirements.

24 JUDGE HOYT: Let me ask, was that 17.2:13 or 14?

25 MR. GAD: The two sections of the FSAR that

1 address the general topics of this contention are 17.2.4
2 and 17.2.15.

3 JUDGE HOYT: 15. I am sorry. I heard 4 and I
4 began to look for 14. Thank you.

5 MR. GAD: The "how to" section is 17.2.5.3, and
6 the incorporation by reference section, I don't have a
7 number on it, but you really can't miss it because it is a
8 great big laundry list. It is section 17.2.2.4, and it just
9 contains a great big laundry list of items.

10 JUDGE HOYT: I apologize for interrupting you,
11 Mr. Jordan. I hope it didn't break up your presentation.

12 MR. JORDAN: No problem, Your Honor.

13 I would begin, Your Honor, by suggesting that
14 the levels of staff review and when the staff chooses to
15 make its review is absolutely irrelevant to this question.

16 The issue is whether the information, at least
17 one of the major issues here, is whether the information in
18 the FSAR demonstrates how the applicable requirements of
19 Appendix B will be satisfied.

20 What we have here is what they intend to do.
21 They say well, we are going to commit to a bunch of reg.
22 guides. We are going to do some things which they describe
23 in really the most general terms that I suppose anyone
24 could write about virtually anything they were going to do.

25 But the question isn't yes, we are going to have

1 appropriate quality assurance requirements, and it gives an
2 example on page 25. That is not the point. The point is how
3 are you going to do that? What are those requirements going
4 to be and how are you going to implement them.

5 That is what we need, because otherwise we the
6 intervenors and indeed the staff itself cannot determine
7 whether that quality assurance program is going to work or
8 not. That is why the FSAR requires a demonstration of how
9 they are going to implement those requirements.

10 Now the fact is that for the commitment to
11 comply with reg. guides or an ANSI standard or any of that,
12 that is fine, and if that is all that is required, as in
13 some other arguments we have had today, any applicant can
14 get any license by simply saying we commit to meet these
15 things. That is not what the standard is.

16 The standard is how are you going to implement
17 those requirements and those are simply not adequately
18 addressed in the FSAR.

19 I guess the question of whether it would be 20
20 volumes, I don't know whether it needs to be 20 volumes,
21 and I don't know whether they have to have the entire
22 procedures to meet this standard, but they certainly have
23 to have more than is in there at the moment.

24 For example, for off-the-shelf items, they have
25 not decided how they are going to do it. Well, they

1 certainly haven't demonstrated how they are going to do it
2 if they haven't decided how they are going to do it. So
3 they are not meeting their responsibilities.

4 It seems to me that the real point comes when
5 they demonstrate how, is when you get the procedures and
6 you see how Public Service of New Hampshire is going to
7 implement the quality assurance requirements and how they
8 are going to do the things that they are committing to do.
9 That is what the FSAR requires, and at this point that
10 hasn't been met.

11 JUDGE HOYT: Mr. Gad.

12 MR. GAD: I think I would just be repeating
13 myself, Your Honor.

14 (Pause while the Board confers.)

15 JUDGE HOYT: In our telegraphic message of March
16 17th we indicated that summary disposition concerning those
17 emergency planning contentions admitted by the Board on
18 November 17th, 1983 would be deferred until the further
19 order of the Board. Shall we assign a time for that further
20 order to be given to you so that you could proceed with the
21 ---

22 MR. LESSY: Your Honor, the trigger event ---

23 JUDGE HOYT: We are just asking for some
24 guidance.

25 MR. LESSY: The triggering event, I should think

1 with regard to the resumption of litigation on those would
2 be, as I understand it from the papers, would be the
3 publication of the staff SER supplement dealing with such
4 issues, and that should be out by the end of this month. So
5 that is still pretty much on track.

6 The next thing that would happen would be that
7 the staff would issue its SER supplement including those
8 issues and shortly thereafter the staff would then file its
9 response to the motions for summary disposition on those
10 contentions, if the Board pleases, that applicants have
11 moved on, which would consider those contentions.

12 In addition to that, the staff has some deferred
13 interrogatory answers in that area and we would publish the
14 SER supplement together with our deferred interrogatory
15 answers and shortly thereafter we would be in a position to
16 respond to the outstanding motions in that regard.

17 Then the responding parties would have an
18 opportunity to have both the SER supplement and the staff
19 interrogatory answers before the on-site emergency planning
20 matters got back into the litigative frame. All that should
21 take place in the near future.

22 JUDGE HOYT: So the answer is we can't really put
23 any time frames on that.

24 MR. JORDAN: Your Honor, may I just address that
25 briefly?

1 JUDGE HOYT: Yes, sure.

2 MR. JORDAN: It seems reasonable, would it not,
3 to establish that the time for our responses, at least the
4 Coalition's responses then to the summary disposition
5 motions should be the standard time for such a response
6 following the staff's issuance of its documents, which is
7 two weeks, isn't it, ten days or two weeks? I am sorry, I
8 don't have the figures.

9 MR. LESSY: What standard time are you referring
10 to?

11 MR. JORDAN: The standard time for responding to
12 summary dispositions. The question is when should we then
13 take all this information into account to respond to the
14 motion? Should it be the standard period after we get those
15 documents?

16 MR. DIGNAN: Your Honor, when a summary
17 disposition motion is filed, then an opponent in summary
18 disposition has 20 days to respond.

19 In addition, because of the change in the rule
20 which allows the staff in essence to respond to all, the
21 staff response supporting the summary disposition motion
22 of an applicant, then another ten days is tacked on from
23 that response to respond to the staff's response. So those
24 are the standard times we are working with here.

25 I guess what is being asked for is 20 days from

1 the time the SER comes out that NECNP would have to respond
2 to our motion. Is that what you are saying?

3 MR. JORDAN: The SER and the staff's
4 interrogatory responses and the staff's answer to the
5 applicant's motion will all come out at the same time and
6 we would have 20 days from then?

7 MR. LESSY: Well, roughly the same time, yes.
8 There are different persons involved, but certainly within
9 the very near time frames of each other. I can't assure you
10 it would be the same instant.

11 The standard time I guess, it would be in
12 essence that you would have 20 days after our SER
13 supplement came out. I guess then, depending on whether we
14 moved ourselves, it might generate an opportunity for you
15 to respond to our responses under the rules.

16 MR. JORDAN: Well, I think 20 days from when the
17 SER supplement and interrogatory responses comes out for
18 responding to the applicant's motion would do the job.

19 MR. DIGNAN: I don't mind agreeing to 20 days
20 from the SER coming out, but I will not agree to 20 days
21 after the answers to interrogatories comes out. That I have
22 no control over and I have never understood it to be the
23 law that an intervenor has the opportunity to put
24 interrogatories of the staff, and hope to God some jewel
25 shows up they haven't thought about using ---

1 MR. JORDAN: I don't have a problem with my
2 brother's position. I am sorry, but I simply the impression
3 they were going to come out at the same time, but the SER
4 supplement issuance is fine, 20 days. Then we deal with
5 whatever the staff files according to appropriate time
6 limits.

7 JUDGE LUEBKE: Am I listening correctly that the
8 hearing on these two contentions might come later than al
9 the other contentions we have talked about today?

10 MR. LESSY: Yes. I think we will get into that in
11 much more detail tomorrow.

12 JUDGE LUEBKE: That is an option or a
13 possibility.

14 MR. LESSY: Yes.

15 JUDGE HOYT: The triggering device then is the
16 issuance of your supplemental SER?

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1 MR. LESSY: Yes.

2 JUDGE HOYT: Then we're supposed to be able to
3 fix a time for motions after that. Now, how much time do
4 you want or need or what?

5 MR. LESSY: What motions, Your Honor?

6 JUDGE HOYT: Well, that would be your --

7 MR. LESSY: We've already filed.

8 JUDGE HOYT: All right, you have already filed
9 the motions. And you'll stand on those motions?

10 MR. DIGNAN: We'll stand on those motions.

11 JUDGE HOYT: All right. Then --

12 MR. DIGNAN: We're just waiting for the answer.

13 JUDGE HOYT: You may serve or any other party may
14 serve an answer supporting or opposing the motion, with or
15 without affidavits, within 20 days. So you've got 20 days
16 from that. So it was 20 that --

17 MR. DIGNAN: That's 20 days from the triggering
18 time of the SER, which I am perfectly agreeable on.

19 MR. BISBEE: Madam Chairman.

20 JUDGE HOYT: Yes.

21 MR. BISBEE: Do I understand that the question on
22 New Hampshire's contention 21, which this morning was
23 deferred as was NECNP's on-site emergency planning
24 contentions, will this fit into the same timetable as that
25 one?

1 MR. DIGNAN: Well, you already answered.

2 MR. BISBEE: Well, we might supplement that
3 answer based on the supplement to the SER.

4 MR. DIGNAN: I have no objection.

5 JUDGE HOYT: Only if the Supplemental SER were to
6 have any --

7 MR. BISBEE: Yes, I understand --

8 JUDGE HOYT: which you intend to file, I am sure.

9 MR. BISBEE: But you understand we have
10 interrogatories outstanding to the Staff that have not --

11 JUDGE HOYT: Yes, you do. Well, that's
12 sufficiently confusing, I think.

13 (Laughter)

14 Well, that moves us down to Supplement 3. Mr.
15 Backus, you have waited long and hard.

16 MR. BACKUS: Yes, Madam Chairman, I have.

17 Foregoing to that, Madam Chairman, I was asked
18 to bring here six copies of the contentions we filed
19 yesterday with regard to the Newburyport plan.

20 JUDGE HOYT: Yes.

21 MR. BACKUS: Were those for you and the Board's
22 information?

23 JUDGE HOYT: We would like four copies for the
24 Board.

25 MR. BACKUS: All right.

1 JUDGE HOYT: And we would like a copy for the
2 Staff and a copy for the applicant.

3 MR. BACKUS: Well, I would just like to --

4 JUDGE HOYT: And I think the message that came
5 to your office was that.

6 MR. BACKUS: Okay.

7 JUDGE HOYT: Now, we asked that the original --

8 MR. BACKUS: Well, let me furnish those, if I
9 may.

10 JUDGE HOYT: -- be filed, Mr. Backus, with the
11 docket clerk at the Nuclear Regulatory Commission in
12 Washington per the standard procedure.

13 MR. BACKUS: That has been done.

14 JUDGE HOYT: Good. And these are merely copies of
15 what you have already transmitted to the --

16 MR. BACKUS: These are merely copies of what were
17 filed yesterday in accordance with the Board's --

18 JUDGE HOYT: Is there any objection if we use
19 this document for purposes of tomorrow's proceedings on
20 this?

21 MR. BACKUS: No objection at all.

22 JUDGE HOYT: Good.

23 MR. JORDAN: I am sorry, what are we talking
24 about?

25 (Laughter)

1 JUDGE HOYT: Let me bring you up to date, Mr.
2 Jordan, because it may be confusing. I do not know that Mr.
3 Backus and I have been exactly fair with all the parties.
4 Yesterday after the Board had already left Washington, Mr.
5 Backus telephoned my office and asked how he should file
6 SAPL supplemental petition for leave to intervene so far as
7 the contentions based upon the Newburyport plan, emergency
8 plan, which had already been filed.

9 And we instructed Mr. Backus that the
10 supplemental petition that he wished to file, since it
11 would be a subject of discussion for tomorrow's
12 proceedings, since we will tomorrow deal with the off-site
13 emergency planning contentions for the first time and also
14 the FEMA representative who will be here.

15 So I asked Mr. Backus' office to be instructed
16 to bring to the hearing room sufficient copies so that all
17 the parties could have a copy of the document which he has
18 filed with the Nuclear Regulatory Commission's docket clerk
19 in Washington.

20 He has complied with that, and this is the
21 multipage document entitled "SAPL Supplemental Petition for
22 Leave to Intervene."

23 MR. JORDAN: I see. We also have filed
24 contentions related to the Newburyport plan, which in
25 effect we left in final production stages as we left

1 Washington and which were filed by mail yesterday.

2 JUDGE HOYT: Do you happen to have a copy here?

3 MR. JORDAN: No, ma'am, because we had to leave
4 for the airport before the production was completed, and we
5 didn't have extra copies. We are not going to talk about
6 the contentions, are we?

7 JUDGE LUEBKE: We're not going to make any
8 decisions on them.

9 JUDGE HOYT: We're not going to make, as Judge
10 Luebke indicated, we're not going to make any decisions on
11 them, but we just wanted to have them if they were in the
12 completed stage.

13 MR. JORDAN: My understanding is that we're more
14 talking about the framework for litigating these things
15 tomorrow --

16 JUDGE HOYT: Exactly.

17 MR. JORDAN: -- rather than substance things.

18 JUDGE HOYT: And I think when we see what the
19 contentions are, I think we'll have a better idea of what
20 possible time frames we're going to have to work with. It's
21 really an informational thing.

22 Yes, Mr. Dignan.

23 MR. DIGNAN: I don't know if this would interest
24 Mr. Jordan and the Board, if they are in final form in your
25 office now and a phone call could get a set of them

1 delivered to our Washington office, we have a pouch that
2 leaves Washington at 4:30 every afternoon and comes to the
3 Boston office the next morning, and we would be glad to
4 reproduce however many sets people would want for tomorrow
5 if that would facilitate things.

6 MR. JORDAN: If you can do that, if you think it
7 really helps. I guess I don't see how we can talk about the
8 new written documents in any way --

9 MR. DIGNAN: I am just saying the service is
10 available if anyone wants a copy.

11 JUDGE HOYT: I would like to have them at least
12 in the hearing room, Mr. Jordan, if we can. What we do with
13 them certainly is not going to be any final disposition,
14 but we want to have at least the documents there where we
15 can get an idea what our time frame is going to be.

16 MR. JORDAN: Well, I guess if we can take an
17 appropriate break perhaps about 3:00 and I can contact the
18 office on some telephone that's not in this building --

19 (Laughter)

20 -- then I can make whatever arrangements we can
21 make.

22 JUDGE HOYT: Mr. Jordan, we have the magical
23 number.

24 MR. JORDAN: Okay.

25 JUDGE HOYT: If you will tell us, perhaps Ms.

1 Kern could get with our clerk and we could get the call to
2 your office and patch through and work it that way if you
3 want to do it. There's nothing compulsory about it.

4 MR. JORDAN: I am happy to do it.

5 JUDGE HOYT: We just wanted them if they were
6 available. We could read them overnight.

7 Would you mind getting together with him?

8 VOICE: All right.

9 JUDGE HOYT: Right now.

10 Mr. Backus, I have an urgent request for a
11 little recess. Would you object to that?

12 MR. BACKUS: No, ma'am.

13 JUDGE HOYT: Thank you. We will recess for a few
14 minutes.

15 (Brief recess.)

16 JUDGE HOYT: All right, the hearing will come to
17 order. Let the record reflect that all the parties to the
18 hearing who were present when the hearing recessed are
19 again present in the hearing room.

20 At this time I would like to note the presence
21 of the attorney for the Commonwealth of Massachusetts
22 Shotwell, who has very kindly brought to us copies of the
23 contentions of the Attorney General vis-a-vis the City of
24 Newport, and these contentions have been distributed to the
25 applicant, to the NRC Staff, and have been filed with the

1 docket clerk in Washington, the original copy.

2 Am I correct, Ms. Shotwell?

3 MS. SHOTWELL: That is correct.

4 JUDGE HOYT: Thank you.

5 Now, Mr. Backus.

6 MR. BACKUS: May I just note for the record,
7 Madam Chairman, that in filing the emergency planning
8 contentions we have filed, we do not waive our objection to
9 the requirement that those contentions be filed at this
10 time as to which we join with the Commonwealth's position.

11 JUDGE HOYT: Very well. I would have assumed that
12 you didn't waive it, Mr. Backus, in having placed it on the
13 record. We thank you.

14 Now, are you ready to go ahead with your
15 discussion of SAPL Supplement 3?

16 MR. BACKUS: Yes, Madam Chairman. As the record
17 will reflect, this contention is unique not only in its
18 lonlieness but also in the fact that the intervenors filed
19 for summary disposition and have also the task of resisting
20 a motion for summary disposition filed by the applicant and
21 joined in with by the Staff, a not unknown occurrence.

22 MR. LESSY: Your Honor, I object.

23 JUDGE HOYT: Mr. Lessy, I think the remark is
24 unfortunately made. I don't think you --

25 MR. BACKUS: I will withdraw it, ma'am.

1 JUDGE HOYT: -- can do more than answer it. I am
2 going to ask counsel to refrain from that. He has indicated
3 he wishes to withdraw it, and we will have no more of that,
4 Mr. Backus, or Mr. Lessy.

5 All right, let's try and see if we can have some
6 orderly substantive discussion here, which may be a change.

7 MR. BACKUS: Both of these motions were filed on
8 the same date, so I guess, since I am here, I will go
9 first.

10 The issue initially may appear to be decided by
11 the fact that both sides have filed for summary judgment.
12 However, it would be facile and, I suggest, inappropriate
13 to conclude from that that summary disposition has to be
14 granted for one side or the other, because as you will see,
15 Madam Chairman and members of the Board, in looking at
16 these motions, they come from very different perspectives.

17 Our motion for summary disposition is based upon
18 a reading of the interim policy statement, which is
19 obviously at variance with that of the Staff and the
20 applicant.

21 Our motion for summary disposition reads the
22 interim policy statement as requiring that the consequences
23 of a worst-case accident be displayed approximately equally
24 with the probability of that accident in a comprehensive
25 fashion using the best available information.

1 We have filed supporting documents with that
2 citing the law on which we rely. Specifically, we suggest
3 that the interim policy statement has to be read in light
4 of the CEQ guidelines which govern the NRC as well as all
5 other agencies, and the purposes of the National
6 Environmental Policy Act.

7 We think the statement has to be read in light
8 of the analysis of the Fifth Circuit in the Sigler case,
9 which we have cited as requiring a comprehensive
10 examination of the consequences of a worst-case accident.
11 If that is done, we think it is undisputed, if one takes
12 that view with the governing law here, we think it is
13 undisputed that the Final Environmental Statement does not
14 do that. And we have set out the reasons for that.

15 Among other things, as the affidavit attached to
16 our motion makes clear, the statement does not use
17 available information -- namely, from the Sandia Lab's
18 report on a site-specific analysis of what we will call for
19 the purposes of this, still call a Class 9 accident -- but
20 uses the WASH-1400 so-called Rasmussen Report, a generic
21 document that does not provide the best data available to
22 the Staff on this matter.

23 So we say that in light of the law that we have
24 cited, the Final Environmental Statement simply does not
25 pass muster in that there is nowhere in there displayed,

1 apart from the allegedly low probabilities of these
2 accidents, the consequences of these accidents in a manner
3 that would inform the public, the people that would have to
4 deal through emergency planning with these consequences, of
5 just exactly what they are.

6 And until that is done, we say that the Staff
7 has not complied with either the interim policy statement,
8 the CEQ regulations implementing the National Environmental
9 Policy Act, or the National Environmental Policy Act
10 itself.

11 Now, I think everything else that I have got to
12 say we have said in the pleadings that we've filed here.
13 And at an appropriate time I would respond to the
14 applicant's motion for summary disposition. But perhaps
15 there should be a response from the Staff and the
16 applicants before I do that.

17 JUDGE HOYT: Mr. Backus, I don't believe this
18 Board in any of its orders so far as I could determine we
19 have ever addressed your motion to file the brief which you
20 have attached. We will permit objections to the ruling we
21 will make at this time, but we will accept the brief.

22 If you wish to make objection on this record,
23 you may.

24 MR. LESSY: Your Honor, he filed a brief with it.
25 The motion was to file a supplemental brief in addition to

1 that.

2 JUDGE HOYT: I think his motion was to file the
3 brief that he attached.

4 MR. LESSY: No.

5 JUDGE HOYT: Wasn't it, Mr. Backus?

6 MR. LESSY: His motion was to --

7 MR. BACKUS: Mr. Lessy is quite correct. We had
8 intended --

9 JUDGE HOYT: All right.

10 MR. BACKUS: -- to provide the Board with a more
11 exhaustive brief of our position. We have not completed the
12 brief. We don't know whether the Board still wants it. We
13 have extensive materials available to incorporate in that
14 brief; it's not been done.

15 We got busy with things like the Newburyport
16 contentions and things like that. But if the Board would
17 care to have further briefing on this matter, we are
18 prepared to go forward. We certainly expect to brief it at
19 some point.

20 JUDGE HOYT: It would be supplemental to the one
21 that you filed pretty much, Mr. Backus?

22 MR. BACKUS: Yes, ma'am.

23 JUDGE HOYT: Just in more detail?

24 MR. BACKUS: That's right. We would look into the
25 administrative and legislative history of the relevant law

1 here.

2 JUDGE HOYT: When could you get it to us?

3 MR. BACKUS: 3 weeks.

4 JUDGE HOYT: No, that wouldn't do.

5 All right, Mr. Lessy, what do you want to add to
6 this? Go ahead.

7 MR. LESSY: Mr. Backus filed a pleading and
8 motion for summary disposition which had a brief attached
9 to it, and my recollection is in the 15-page area, or 10 or
10 20. In addition to that, they filed a motion to to file a
11 supplemental brief.

12 We oppose the supplemental brief simply on the
13 grounds that the Commission's regulations do not permit a
14 party who has filed a motion for summary disposition to
15 file s supplemental brief. And it's 2.749(a). The rules say
16 that no further supporting statements shall be entertained.
17 And that disposes of it, Your Honor.

18 JUDGE HOYT: I think that we are not going to
19 take a brief any time 3 weeks, Mr. Backus. If you had
20 something in addition that would have been within the next
21 few days or something, that would be in a different light.
22 But we found your brief already filed very enlightening.

23 MR. BACKUS: Thank you.

24 JUDGE HOYT: All right, let's go ahead with this
25 discussion of SAPL Supplement 3. Did you get this one, Mr.

1 Dignan? Go ahead.

2 MR. DIGNAN: May it please the Board. I would
3 confine my remarks, in line with what the Board said
4 earlier. That is to say, my assumption is the Board has had
5 a chance to digest the papers before it, and therefore I
6 intend to respond to only two documents: the response that
7 New Hampshire filed with respect to this issue, which I
8 have not had an opportunity to respond to other than orally
9 today; and to the last SAPL filing, which was their
10 opposition to our motion.

11 JUDGE HOYT: You say you identify that then as New
12 Hampshire's pleading filed March 23 and SAPL's of March 21?
13 Am I correct?

14 MR. DIGNAN: That's correct.

15 JUDGE HOYT: All right. Go ahead.

16 MR. DIGNAN: Addressing New Hampshire first, Your
17 Honor, New Hampshire goes to a new section of the FES and
18 brings up that part of the policy statement which talks
19 about the Commission wanting the Staff to identify "cases
20 that might warrant early consideration of either additional
21 features or other actions which would prevent or mitigate
22 the consequences of serious accidents."

23 And New Hampshire argues that under that section
24 the Staff should have dealt with possible interdictions of
25 the liquid pathway release in this case.

1 I respectfully suggest New Hampshire
2 misperceives the thrust of the policy statement. If you
3 read the whole policy statement, the cases which might
4 warrant early consideration are not sites like Seabrook
5 which have no unique feature or unique technology.

6 The kind of case the Commission was concerned
7 with is laid out in the policy statement. They give three
8 examples of when the Staff had already done this. One was
9 in the Offshore Power Systems matter, which is when they
10 came up for the first time with the design of a floating
11 nuclear power plant. The other was in the Clinch River
12 Breeder Reactor proceeding, which of course was an entirely
13 different technology than the light-water reactor we're
14 dealing with here. And the third was the Perry 1 site,
15 which had some very unique features and problems associated
16 with it.

17 So the Seabrook situation simply is not one that
18 triggers this part of the policy statement.

19 More importantly, even if one should come out to
20 the contrary, it seems to me that the Staff has dealt with
21 the problem in the FES, on page 9-54, where they deal with
22 this comment. And I would remind the Board that the
23 standard on summary disposition isn't that there is an
24 issue of fact as lawyers understand it, lying on the table,
25 it's that there is a genuine issue as to a material fact --

1 a genuine issue.

2 Now, the Staff has done some calculations. And
3 on page 9-54 they talk about why they don't worry about the
4 liquid pathway too much, one of it being that it doesn't
5 move very fast after an accident.

6 And I would call the Board's attention to the
7 paragraph that says that, conservatively calculated, the
8 170-day minimum travel time would apply only to those
9 radioactive constituents released from the core that would
10 not be absorbed by the rock and soil of the aquifer. The
11 Staff has determined that in the event of a core melt
12 accident, virtually all of the dose from a liquid pathway
13 would be caused by SR-90 and CS-137, both of which would be
14 absorbed and thereby retarded to a considerable extent in
15 the aquifer.

16 For this reason, the Staff estimates that
17 several years would be available before the peak in the
18 release of the most hazardous radionuclides to the marsh
19 could occur, and that suitable interdictive measures could
20 probably be taken if they were determined to be necessary.

21 Now, I think the logic of the Staff's position
22 is unassailable, as a matter of fact. If you've got several
23 years before you have to worry about the problem, I think
24 the Staff is correct in deciding we're not going to worry
25 about it right now.

1 And so therefore, even if one disagrees with my
2 view of the law -- that is to say, this portion of the
3 Commission's policy statement simply isn't triggered in the
4 Seabrook situation -- the Staff's logic I think makes it
5 clear that there is no genuine issue as to material fact
6 here.

7 Secondly, I would now like to move to the SAPL
8 last filing, which was the response to ours. SAPL brought
9 up two points, as I saw it, for the first time. Now, before
10 getting to those, my learned friend Mr. Backus has said
11 that it might be simple to say, gee, this ought to be up
12 for summary disposition because there is cross motions.
13 Right. I think that does make it probably absolutely
14 logically clear that this thing ought to be decided on
15 summary disposition.

16 By filing their motion for summary disposition,
17 SAPL is asserting that there is no genuine issue as to
18 material fact to be tried. By filing my motion for summary
19 disposition on this contention, I am saying the same thing.

20 Therefore, it would seem to me matters are in
21 order for summary disposition one way or the other, because
22 both parties are asserting that there is no genuine issue
23 as to material fact.

24 However, proceeding from that logical argument,
25 because Justice Holmes many years ago made it clear that

1 the law and logic are not anywhere near identical, the fact
2 of the matter is that the big argument that is now being
3 made is that out there is the CEQ regulation that hasn't
4 been followed.

5 Now, the short and complete answer to this is,
6 let's assume it hasn't been. That's of no concern to this
7 Board. The only thing this Board has the jurisdiction to
8 decide, never mind what the contention is, is whether or
9 not the Commission's policy statement has been followed.

10 If it has been, and if the Commission erred in
11 writing that policy statement and didn't do the right thing
12 it should have done under the CEQ guideline, that's for
13 another tribunal. It's not for this Board to decide.

14 Mr. Backus can take that to the Appeal Board. He
15 can take that to the Commission. I don't think the Appeal
16 Board can give him the relief. He can ask the Commission to
17 change the policy statement if he wants to. And he can
18 finally ask the D.C. Circuit of the First Circuit to rule
19 his way.

20 But it is not an issue for this Board to decide
21 whether or not the Commission's policy statement -- if it
22 is complied with, if the Board decides it's complied with
23 -- is or is not in accordance with the CEQ guideline. That
24 simply is a matter for the Commission to decide and only
25 for the Commission to decide in terms of its own tribunal

1 structure.

2 More importantly, I think a reading of the CEQ
3 guideline would indicate that it does not apply. And I am
4 not going to sit here and quote that. But when you read
5 that, you find out that it talks about a lack of
6 information triggering certain results of worst-case
7 analysis.

8 There is no lack of the kind of information the
9 CEQ guideline talks about. There is no lack of information
10 that X amount of radiation will do this to the human body.
11 What we have when the Commission talks about the fact that
12 things are not settled under this policy or that there are
13 scientific differences of opinion, they are not dealing
14 with hard fact that is missing, they are dealing with
15 whether or not probable risk analysis is or is not a good
16 tool. This is not what the CEQ guideline was concerning
17 itself with. So I don't think it's applicable anyway.

18 Finally, I think that the long and short of this
19 issue is that when you're all through reading the policy
20 statement, the policy statement is very simple. The
21 Commission gave the Staff a homework assignment. They told
22 them to go out and write a certain thing. All this Board
23 has to do is pick the certain thing up, read it, look at
24 what the Commission told them to write, and decide for
25 itself whether or not they did the job, and rule.

1 There is no genuine issue of material fact to be
2 tried. There is nothing you can ask a witness in this
3 contention anymore. The contention is that the policy
4 statement hasn't been complied with. That piece of paper
5 called the FES either makes it or it doesn't make it right
6 now, and no amount of talking about the evidence is going
7 to change that.

8 And I suggest for the reason that we put in our
9 brief in some detail, that I think the Staff has fully
10 completed the homework assignment and done a pretty good
11 job.

12 JUDGE HOYT: Mr. Lessy.

13 MR. LESSY: I will try to be very brief.

14 In terms of, taking New Hampshire's argument
15 first, the policy statement limits the special cases that
16 New Hampshire is referring to to those cases where the
17 accident risks differ from those of other operating plants.
18 The Staff made the determination that Seabrook in fact is
19 not one of those special cases. And I don't believe New
20 Hampshire has pointed to any fact which would indicate that
21 it might be.

22 In terms of Mr. Backus' argument, the Staff
23 agrees with both the applicant and SAPL that what you are
24 faced with here are essentially legal and philosophical
25 arguments but not factual ones and that this issue is

1 therefore susceptible to summary disposition.

2 And I agree with Mr. Dignan, there really are
3 only two essential questions which have to be answered
4 here. Those are: What did the Commission require in the
5 policy statement; did the Staff in fact meet those
6 requirements in its FES?

7 The whole issue of CEQ rules or NEPA, frankly,
8 are just not in the contention. The contention deals with
9 the policy statement and whether it's been met.

10 In all four areas that SAPL raises in its
11 original motion, SAPL either is seeking to impose a
12 requirement that frankly just isn't in the policy statement
13 or it's ignoring informatin that is already provided in the
14 FES.

15 For the rest, I would just rely on our response
16 to SAPL's motion.

17 JUDGE HOYT: Mr. Backus.

18 MR. BACKUS: Very briefly, Madam Chairman, it is
19 not our position that we have to litigate either compliance
20 with the CEQ regulations, it is our position that the
21 interim policy statement was issued after those CEQ
22 regulations were regulations and no longer guidelines as
23 promulgated, and that the interim policy statement has to
24 be interpreted in light of what those regulations
25 require.

1 We don't assume that the agency set out to be in
2 violation of the National Environmental Policy Act. We
3 assume that what it set out to do in promulgating the
4 interim policy statement was to bring itself into
5 compliance with the Act now that it determined, now that
6 the determination had been made by the agency, that in
7 appropriate cases a worst-case accident was required.

8 So I think it is appropriate and necessary for
9 this Board, to the extent that it finds any dispute about
10 our interpretation of what the interim policy statement
11 requires, to refer to the CEQ regulations for guidance on
12 that. That is all that we are saying about that.

13 Mr. Dignan has suggested that the worst-case
14 analysis that we say is called for here is not required
15 because Seabrook is a garden-variety nuclear plant not like
16 the floating nuclear plant or the breeder reactor, where
17 the Commission particularly wanted the information that
18 they described in the interim policy statement.

19 Seabrook is such a site. Seabrook is a unique
20 site. The Perryman site that Mr. Dignan mentions had some
21 unique characteristics. One of those characteristics,
22 according to my understanding, was the population density
23 around the site. I believe, and I don't think there is any
24 dispute about this, that the Seabrook has the highest
25 population density close to the reactor, within 3 miles of

1 the reactor, of any site ever licensed for construction.

2 That makes the requirement to have this
3 worst-case analysis presented in a comprehensible, complete
4 way and complete compliance with the interim policy
5 statement extremely pertinent.

6 Now, Mr. Dignan again suggests that the fact
7 that there are cross motions means that this Board doesn't
8 have to go through the difficult analysis of determining
9 whether or not there are disputed issues of fact.

10 At the risk of perhaps repeating myself, I will
11 simply say that the reason there are cross motions is that
12 Brother Dignan and I take a rather different view of that
13 the law requires here. He says that all you have to do is
14 hold up the Final Environmental Statement, compare it with
15 the interim policy statement, and say, here, we've passed
16 the test.

17 However, in his motion, his cross motion for
18 summary disposition, he challenges many of the assumptions
19 on which we based our motion. Those assumptions being in
20 dispute, there are issues of fact in dispute. Assumptions
21 about the way the evacuees will act, whether the delay time
22 is appropriate, and so forth. They challenged that. They
23 have raised issues of fact that have to be dealt with
24 through a hearing if in fact our view of the law is not
25 accepted by the Board that on its face that this Final

1 Environmental Statement does not comply with the interim
2 policy statement.

3 If you do not accept that, there are clearly
4 issues of fact to be tried here. I suggested one initially;
5 I must mention it again: whether or not they have presented
6 the best information on worst-case information by referring
7 to WASH-1400, the Rasmussen Report, rather than the Sandia
8 Lab's report which dealt on a case-by-case basis with the
9 various sites around the country, including Seabrook.

10 Now, there is no dispute that that has not been
11 done. So we say that there are, if you take the view of the
12 law that Brother Dignan and the Staff are taking here, we
13 say that there are certainly issues of fact that will have
14 to be tried out.

15 And we do intend to have expert testimony
16 available on this if this matter goes to trial and present
17 an affirmative case on this matter too.

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1 There is no affidavit attached to my motion, and the
2 reason there is no affidavit attached to my motion is that it
3 is purely a question of law. There sitteth the FES, there
4 sitteth the rules, the marking schedules, and the Board just
5 has to take a pencil and paper, look through the two, and
6 decide whether item one complies with item two. There is no
7 issue of fact here; there is no affidavit filed in the Applicant's
8 theory. It is purely a question of law.

9 MR. LESSY: It may be in fact that Mr. Backus was
10 referring to the discussion of delay times covered in the staff
11 response to SAPL's motion. If so, I would just like to deal
12 briefly with what the staff said in that motion.

13 In Appendix F to the FES, the staff discusses the
14 delay times and includes an assumption that nothing will happen
15 for 24 hours after a release, nothing at all, no one will move.
16 It is the staff's assumption that whatever evacuation measures
17 are taken at Seabrook, whatever plans come up, will certainly
18 be within the bounds of no one moving anywhere for 24 hours.

19 If Mr. Backus feels that isn't the case and can come
20 in with a factual affidavit challenging that, then I would
21 agree with him there is a factual argument that is susceptible
22 to litigation. He hasn't done that, and we submit he hasn't
23 done that, because I think it would be impossible to find an
24 affidavit stating that 24 hours of no action whatsoever after
25 a release is not as bad as an assumption which he can make.

5djk2
1 MR. BISBEE: Madame chairwoman, if I may be heard
2 also on the point that New Hampshire raised, both counsel for
3 the Applicant and the staff have given their interpretation of
4 the law that is contained in that policy statement. We have
5 taken a plain reading of that policy statement to require that
6 the staff "take steps to identify additional features," et
7 cetera, which might have to be taken to mitigate consequences
8 of serious accidents.

9 I haven't seen where the staff has taken those steps.
10 Mr. Pearls refers to the staff decision, but this isn't one
11 of those cases that comes within the purview of this policy
12 statement. I haven't seen where the staff has taken those
13 steps.

14 Mr. Dignan does refer to the FES and he quoted at
15 length from it with regard to the liquid pathway. I would
16 remind the Board that our Answer to their Motion for Summary
17 Disposition on this issue raises the question not only of
18 possible consequences from releases through the liquid pathway,
19 but also through the air.

20 Thank you.

21 (Pause.)

22 JUDGE HOYT: Do you want to respond to New Hampshire,
23 Mr. Dignan?

24 MR. DIGNAN: Only to say again, I wish to emphasize
25 the genuine issue of material fact. Now, if New Hampshire has

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1 got in mind a device that the staff could cook up to put around
2 Seabrook to contain an airborne release after an accident, I
3 want to be there when they design it, because that is something
4 unique; it's the biggest bubble in the world. And they certainly
5 didn't put any affidavit in backing up that there was a concept
6 by which an airborne release could be contained.

7 MR. BISBEE: We again are simply referring to the
8 requirement of the policy statement that the staff identify
9 certain cases, or take steps to do so.

10 MR. LESSY: If I may very briefly say again that the
11 staff is only required to identify those features for the
12 special cases where the risks are different from presently
13 operating reactors. And I don't believe New Hampshire has
14 stated or backed up a contention that Seabrook is in fact --
15 that the risks at Seabrook are in fact different than those
16 at other operating reactors.

17 JUDGE HOYT: How do you -- or do you want to reply
18 to Mr. Backus' statement that the population density around
19 Seabrook in the three-mile area was the densest of all operating
20 reactors?

21 MR. LESSY: Frankly, I would not be the one to respond
22 to that. That would be for a witness to respond to. But the
23 fact remains that Mr. Backus has not presented an affidavit,
24 an expert who is willing to testify that Seabrook is in fact
25 different from other plants.

5djk4

1 JUDGE HARBOUR: Mr. Dignan, I didn't quite understand
2 your argument about the containing of the airborne release
3 for 24 hours. Would you like someone to give you three or
4 four methods by which that would occur, or are you really
5 talking something here that goes to the merits of the question --
6 or the contention, rather than to whether we should consider
7 it for summary disposition.

8 MR. DIGNAN: My difficulty is that the contention
9 as I read it in New Hampshire's thing was the liquid. Now I
10 am told that New Hampshire is raising an airborne, and is saying
11 to the staff that the staff should have considered possible
12 ways to contain an airborne release. Now, keep in mind, this
13 is in an accident atmosphere, and if you are going to have an
14 airborne release, that means by definition the radioactivity
15 is outside the containment, the double containment of this
16 pressurized water reactor.

17 And I did say, again going to genuine issue of material
18 fact, what is the device that contains airborne releases after
19 they are outside the containment? And I made the allusion that
20 it has got to be the biggest bubble in the world. Because I
21 logically can't conceive of how you contain an airborne
22 release.

23 Now, a liquid pathway release that starts its way
24 toward the marsh, I presume what New Hampshire has in mind is
25 that if you started to trace that release and you really

5djk5
1 thought it was not going to be sorbed in time, and was going
2 to make the marsh, you could take a physical step of perhaps
3 putting a barrier in there to slow it down further, or you
4 could perhaps start removing material in some fashion.

5 On an airborne release, I confess to a logical inability
6 to see what would contain it after it is outside the containment,
7 which is, by definition, what you have got on your hands in
8 the accident situation. Until then you don't have a release.
9 That was my point.

10 JUDGE HARBOUR: I think I understand your argument;
11 thank you.

12 JUDGE HOYT: I think in discussion the New Hampshire
13 contentions, Ms. Hollingsworth, we --

14 MS. HOLLINGSWORTH: I would just like to ask a question.
15 I am just confused because I thought at the emergency evacuation
16 time that would be discussed later we would be talking about
17 the uniqueness of the site. And I am a little confused that
18 that is not being discussed then, because I am certain that
19 there would be people coming forth to state that in fact there
20 is a massive population three miles close to the site, and that
21 in fact those people are on the beach with nothing but a towel,
22 who in fact for exposure they would have nothing. And they
23 have no shelter, because they are on their bikes or busses
24 which leave the scene. And then it is not a winterized community
25 as you are well aware, so if they were to take shelter inside

5djk6
1 the establishments, they still would not be protected. So,
2 you know, I think the question of its uniqueness, I am sorry
3 that I didn't realize that that was going to be discussed at
4 this phase. I thought it was something that would come later.

5 JUDGE LUEBKE: It is not really being discussed;
6 people just brought it in.

7 JUDGE HOYT: Thank you.

8 All right, do we have anything else to discuss this
9 afternoon, then, so far as these contentions are concerned?

10 Anything from you, sir?

11 All right, Mr. Perlis.

12 MR. PERLIS: I believe the staff has been delinquent
13 in one area. The Board, in an Order, I believe, about a month
14 and a half ago, requested that the staff inform it of the
15 schedule of the staff review on New Hampshire Contention 10,
16 dealing with --

17 JUDGE HOYT: Yes, we did. That was one of the things
18 requested.

19 MR. PERLIS: As I previously made clear to counsel
20 from the State of New Hampshire a couple of weeks ago, that
21 item is covered by Supplement One to NUREG 0737. Under that
22 supplement, the Applicant must come in with a schedule of
23 when he will complete his conform and design review to the
24 staff by April 15th.

25 I have been informed by Applicant's counsel that when

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1 they come in with that information to the staff, that information
2 will relate the expected design review to be done sometime,
3 I believe, in the mid- to late-summer of this year.

4 MR. GAD: It is whatever date I gave you yesterday,
5 and I really don't remember what it was. It was the bulk of
6 it, by definition portions of it can only be done after commer-
7 cial operation.

8 JUDGE HOYT: After what?

9 MR. GAD: After the onset of commercial operations.

10 JUDGE HOYT: Oh.

11 MR. GAD: Part of it is to take a look at commercial
12 operation.

13 MR. PERLIS: In any event, the staff's review of the
14 Applicant's control design review obviously won't take place
15 until their submittal comes in to the staff sometime hopefully
16 this summer.

17 I am told that the turnaround time for the staff will
18 be somewhere between a month to 45 days after that information
19 comes in.

20 JUDGE HOYT: Anything else?

21 MR. DIGNAN: I have a question about tomorrow, if I
22 might.

23 JUDGE HOYT: Yes, sir?

24 MR. DIGNAN: You have been very explicit that you wish
25 all parties to be there with authority to commit, and so forth

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1 and so on. And I assure you I will have here management in
2 the position to make any commitment that is necessary.

3 I do not plan, unless instructed by the Board, however,
4 to bring any technical people who are engaged in the technical
5 side of emergency planning, for any purpose unless the Board
6 instructs me otherwise. I will have management capable of
7 giving me the authority to make commitments on behalf of the
8 company. But was it the Board's intention by its Order to have
9 the parties bring with them technical people to discuss, per-
10 haps, time frames and things like that?

11 JUDGE HOYT: We do not want any commitment of the
12 technical nature from the Applicant tomorrow, in tomorrow's
13 proceeding.

14 MR. DIGNAN: Thank you.

15 JUDGE HOYT: What kind of people are you going to
16 bring with you so we will know where we are?

17 (Laughter.)

18 MR. DIGNAN: The only fellow I need is Mr. David
19 Merrill, who is here, who is the Executive Vice President in
20 charge of Seabrook for public service, and he has the management
21 authority you have indicated that you want to be sure people
22 are there with, the power to make commitments and stipulations.
23 And to the extent I would need any such authority, Mr. Merrill
24 will be here to give it to me.

25 MR. BACKUS: Madam Chairman?

5djk9

1 JUDGE HOYT: Yes, sir?

2 MR. BACKUS: Tomorrow I understand we are going to
3 talk about emergency planning, and I know that some people who
4 are here from the towns are not going to be here tomorrow. Now,
5 I don't know whether the Board has got any business that they
6 want to transact with some of these Selectpeople that we have
7 here or not, but I just bring that to the Board's attention,
8 because I know that some of them will not be here tomorrow.

9 JUDGE HOYT: How many of you will not be here tomorrow?

10 MS. VERGE: I will not be here tomorrow.

11 JUDGE HOYT: Can you identify yourself, please?

12 MS. VERGE: Anne W. Verge, from South Hampton. But
13 there will be another representative here.

14 JUDGE HOYT: Will she have the authority to --

15 MS. VERGE: Yes, he will have the authority.

16 MS. GAVUTIS: I will not be here tomorrow, and I do
17 not believe that there will be another representative.

18 JUDGE HOYT: From?

19 MS. GAVUTIS: Kensington.

20 JUDGE HOYT: Kensington. All right.

21 Yes, ma'am?

22 MS. PEVEAR: I will be here tomorrow.

23 JUDGE HOYT: So we have got two out of three, and only
24 Kensington will be out.

25 MS. PEVEAR: Your Honor, there are seven or eight towns

5djk10 1 who have filed, and we are the only three that could come today.

2 JUDGE HOYT: Ms. Gavutis, is there any contribution
3 that you wish to make from Kensington at this time? If there
4 is --

5 MS. GAVUTIS: Our main concern is the safety issues,
6 the evacuation, and that is what I would speak to.

7 JUDGE HOYT: Very well. We will get to those at a
8 later date.

9 MS. HOYT: Are there any others?

10 MR. BISBEE: Yes, Madam Chairman, are we going to dis-
11 cuss the schedule for the contentions presently admitted tomorrow
12 as well as the ones that --

13 JUDGE HOYT: I wanted to have as many people here as
14 possible. The Board sees no reason why we can't continue and
15 meet our deadline of beginning the hearings on June 14th, unless
16 we hear something we haven't heard so far. We feel like we
17 can begin the proceedings on the 14th.

18 MR. BISBEE: Would you like to hear now on a particular
19 issue that was just raised by the staff with regard to New
20 Hampshire Contention 10?

21 Given that the review which forms the basis of -- or
22 half the basis of the contention as it now stands, it seems
23 appropriate to me that the issue ought to be deferred until
24 the control and design review, at least until what has been
25 accomplished has been provided to the state, which hasn't yet

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1 been worked out. But also the safety parameter display system,
2 as I understand it, has not yet been completed yet either,
3 which is the second basis of that contention.

4 JUDGE HOYT: Well, assuming there are other contentions
5 surviving the motions for summary disposition, why should we
6 delay these proceedings based upon merely the assumption that
7 one contention has not had all of its -- completed procedures
8 on it.

9 MR. BISBEE: I wouldn't suggest delay of the hearing
10 itself; just the hearing on this one issue.

11 JUDGE HOYT: I think that is what the Board under-
12 stands, that there would be a delay on that one contention,
13 the filing of testimony on it.

14 MR. BISBEE: That is all I was referring to.

15 JUDGE HOYT: And I think that is what your concern
16 was going to. And there is no problem on that.

17 But I understood you or heard you to mean that you
18 wanted to delay the proceedings beginning on the 14th of June.

19 We feel that that is a realistic date.

20 Mr. Backus?

21 MR. BACKUS: I was just going to suggest, Madam
22 Chairman, that I don't know where we are going to come out
23 ultimately as to issues to be litigated, given the number of
24 motions for summary disposition that you have got before you.
25 But if it comes out that there is only one or two issues that

5djk12
1 have neither been deferred -- and a lot of these have been
2 deferred for lack of information -- or they are emergency
3 planning issues which are quite a way on the horizon. If there
4 are only one or two, I just wonder if it is practical to try
5 and assemble everybody. I presume that this is going to happen
6 on the seacoast of New Hampshire.

7 JUDGE HOYT: What do you assume is going to happen
8 on the seacoast of New Hampshire? The hearing?

9 MR. BACKUS: The contested hearings, yes, ma'am.

10 JUDGE HOYT: All right.

11 MR. BACKUS: If that is a safe assumption. It certainly
12 is of high interest on the seacoast of New Hampshire.

13 JUDGE HOYT: Go ahead.

14 MR. BACKUS: In any event, if there is only going to
15 be a very few issues, I wonder if it is in the interest of the
16 Board and all the parties to proceed in fits and starts. That
17 is all I suggest.

18 JUDGE HOYT: Unfortunately, Mr. Backus, it seems that
19 these cases have all dissolved down into that sort of a situa-
20 tion. We do have divided hearings. Certainly we are dividing
21 safety issues -- substantially dividing safety issues out of
22 emergency planning issues. And if the only thing we have is
23 a few safety issues left, we will litigate them. And I don't
24 see any reason to stand around and wait to see who is going
25 to salute next.

5djk13
1 JUDGE LUEBKE: There won't be any more people than we
2 have here today, will there? I mean, everybody present? I
3 mean, this is about representative of the parties.

4 MR. BACKUS: Oh, I think that is not so, sir. I think
5 there would be more representation from the towns here.

6 JUDGE HOYT: Are you talking about counsel?

7 JUDGE LUEBKE: They are not involved in these conten-
8 tions.

9 JUDGE HOYT: Wait a minute. I think what Dr. Luebke
10 is saying is that there wouldn't be any additional counsel
11 present. How many people ultimately come and sit in the audience,
12 Mr. Backus, is outside of the Board's control. And indeed,
13 outside of our real concern. Our concern is dealing with the
14 counsel we have to have here. Now, your input into it is your --
15 if your clients want to be there, of course they can come. But
16 it is an open hearing. All proceedings before this Commission
17 are open.

18 MR. BACKUS: Well, if the issue before us is the loca-
19 tion of future hearings, I certainly would like to -- it is not?
20 Okay?

21 JUDGE HOYT: No, Mr. Backus, that is your concern. You
22 brought that up. That is not the concern of the Board.

23 MR. BACKUS: Right.

24 JUDGE HOYT: The Board will have the hearings in an
25 appropriate place.

5d1k14
1 MR. BACKUS: And my client's position is that that
2 would be close to the site.

3 JUDGE HOYT: And that is now on the record.

4 All right, Mr. Jordan.

5 MR. JORDAN: Thank you, Your Honor. I would mention
6 a couple of things that it seems to me may give us difficulty
7 with the schedule as has been proposed.

8 First, with respect to our environmental qualification
9 contentions, and I think particularly 1(b)(1), as I understand
10 it, the staff's review of the question of which items are
11 important to safety and must therefore be qualified, has not
12 yet been completed. And therefore, that is at least as of now
13 not yet firm. Whether it will be by the time of that hearing
14 I don't know. But it seems to me that we need that information
15 in order to proceed with those.

16 In addition, with respect to our contention 1(d)(2),
17 which we have today deferred consideration of that until a
18 staff review is completed, and I understand that review may
19 be completed next month, or, I am sorry, the end of this month?
20 The target date is the end of this month. We don't know whether
21 that will be met. If that is part of an overall Westinghouse
22 review that I understand -- I will throw this out for the staff
23 to respond. I understood it to be done sometime in the summer,
24 and it could certainly be later than this month.

25 And in addition, we have got the simple fact that this

5djk15
1 hearing has in fact slipped already. And I came up with what
2 I thought a reasonable schedule, which I will lay before you
3 for your reasoned consideration.

4 To the extent that reworded contentions are necessary,
5 I suggest that April 14th -- we were going to, I guess, try to
6 get together on at least one of ours today to reword it. The
7 one on the manual activation switch. That particular date
8 may not be necessary.

9 May 7th we get rulings on Summary Disposition. June
10 7th, direct testimony is filed. July 7th, rebuttal testimony
11 is filed. Hearings begin August 1st.

12 It seems to me that that gives everyone sufficient
13 time not only for the preparation of the testimony and for the
14 hearing, but as well, to do some of the things that the rules
15 recognize as appropriate, which is to say to identify all of
16 the documents that will be used to -- stipulations as to
17 authenticity, and all that sort of thing, to allow the hearing,
18 once it starts, to go forward efficiently.

19 And I think that if we have this kind of time frame
20 we are going to be much more able to have an efficient hearing
21 beginning August 1st rather than beginning two months earlier.

22 JUDGE LUEBKE: Your plan is that these loose ends we
23 have identified have a chance of being filled in?

24 MR. JORDAN: All I can say is that it looks like there
25 is a reasonable chance that they may be filled in by then. It

5djk16
1 doesn't look to me like they can be filled in by the June date.

2 This would allow us to have all these contentions in
3 one package instead of having a package in July and then one in,
4 oh, I don't know, October or September, or whatever the other
5 time is.

6 JUDGE HOYT: Do you want some input, Mr. Lessy?

7 MR. LESSY: May I have an opportunity to talk?

8 JUDGE HOYT: Please.

9 MR. LESSY: Thank you.

10 I think that this is the first time I have heard of
11 this schedule --

12 JUDGE HOYT: What schedule?

13 MR. LESSY: Mr. Jordan's proposal.

14 JUDGE HOYT: All right.

15 MR. LESSY: Mr. Jordan's proposed August 1st hearing
16 date. Tomorrow, I think, was the day that was going to be
17 designed to discuss the overall timing and context and scheduling
18 of hearings. I would like the opportunity to consider this in
19 light of the status of these contentions, and report back to the
20 Board in the morning.

21 JUDGE HOYT: Surely.

22 MR. LESSY: Or, if the Board wants it today, I would
23 like an opportunity to discuss it with --

24 JUDGE HOYT: I think tomorrow is -- I think because
25 we have completed today's work a little early, I think that is

5djk17
1 the reason the matter even came up, Mr. Lessy. I hadn't anti-
2 cipated that we would get into it until tomorrow.

3 MR. LESSY: I just have two other clarifications.

4 When Mr. Jordan indicated reworded contentions, I
5 guess he was referring to narrowing the scope of those conten-
6 tions where the subject matter --

7 JUDGE HOYT: There was only one that I recall. Is
8 that correct, Mr. Jordan?

9 MR. LESSY: And I think New Hampshire might have one,
10 also.

11 MR. JORDAN: I think there is only one of ours.

12 MR. BISBEE: And two for New Hampshire.

13 JUDGE HOYT: Two of yours?

14 MR. BISBEE: Yes.

15 JUDGE HOYT: Refresh my memory.

16 MR. BISBEE: New Hampshire 9 and New Hampshire 13.

17 MR. LESSY: Why that would take a week I will be happy
18 to discuss with them afterwards. I didn't see. But I will
19 be happy to consider this schedule in light of that. And
20 notwithstanding Mr. Jordan's comments about the timing of state
21 review, which I might just state is a state function and not
22 an NECNP function, my understanding of the Salem issue is that
23 that is on the very fast track, and that resolution of that
24 issue, as we stated earlier, should be in the very near future.

25 That is all I would like to say on that.

5djk18
1 JUDGE LUEBKE: Mr. Lessy?

2 MR. LESSY: Yes.

3 JUDGE LUEBKE: When you are thinking about this
4 schedule tonight, I was reading into the safety evaluation
5 report, and I came after instance after instance where the
6 information was incomplete. So I went back to the beginning
7 of the report and I found itemized on your 1.7 outstanding
8 issues that have not been resolved with the Applicant. And
9 I found that that went up to 19 items.

10 Then in 1.8, there is something called confirmatory
11 issues. Information has not been provided by the Applicant.
12 And that goes to 41 issues.

13 In my experience this is extraordinary. In other
14 words, I raise the question with you, because does this make
15 us really premature for hearing? Because usually when we go
16 to hearing in other cases we might have one or two items un-
17 resolved instead of 19 or 41.

18 MR. LESSY: Why don't I ascertain the schedule for
19 the SER supplements, and report back to you tomorrow?

20 JUDGE LUEBKE: While you are thinking about it, yes.

21 JUDGE HOYT: You might want to give us a reading of
22 any of these 19 that have been met, too. You want to know
23 what they are, and if you do, we can provide you -- but you
24 have your SER, I take it.

25 Anything else for this afternoon's session?

5djk19
1 Very well.

2 We will adjourn now, to meet at 10 o'clock in the
3 morning, local time.

4 Thank you very much.

5 MR. LESSY: Is it 10 o'clock or 9:30 tomorrow, Your
6 Honor? I thought it was 9:30 for Friday.

7 JUDGE HOYT: Does it say 9:30 or 10:00?

8 MR. LESSY: You said 10:00; the Order says 9:30. I
9 just wanted to know.

10 JUDGE HOYT: Does it say 9:30 in the Order?

11 MR. LESSY: Yes.

12 JUDGE HOYT: I guess it was today that was 10:00.
13 That's right.

14 Let me have your attention. I made an error, that
15 should be 9:30 in the morning, not 10:00. That's 9:30 in the
16 morning, local time.

17 (Whereupon, the hearing was recessed until 9:30 a.m.,
18 Friday, April 8, 1983.)

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1 CERTIFICATE OF PROCEEDINGS

2
3 This is to certify that the attached proceedings before the
4 NRC COMMISSION

5 In the matter of: Public Service Copmany (Seabrook)

6 Date of Proceeding: April 7, 1983

7 Place of Proceeding: Boston, Mass. ~~Mass.~~

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

10
11 Mary C. Simons

12 Official Reporter - Typed

13 *Mary C. Simons*

14 Official Reporter - Signature