

ORIGINAL

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DKT/CASE NO. STN-50-522 and STN-50-523
TITLE PUGET SOUND POWER & LIGHT CO. et. al.
(Skagit/Hanford Nuclear Project Units 1 and 2)
PRE-HEARING CONFERENCE
PLACE Olympia, Washington
DATE December 2, 1982
PAGES 78 - 175

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:	:	
PUGET SOUND POWER & LIGHT CO.	:	
<u>et. al.</u>	:	Docket Nos.
(Skagit/Hanford Nuclear Project	:	STN-50-522
Units 1 and 2)	:	STN-50-523
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Auditorium
 Energy Facility Site
 Evaluation Council,
 State of Washington, 4224
 6th Ave. SE, Olympia, Wash. 98504
 Thursday, December 2, 1982

The prehearing conference in the above-entitled
 matter was convened, pursuant to notice, at 10:30 a.m.

BEFORE:

The Honorable JOHN WOLF, Chairman
 Administrative Judge

The Honorable FRANK F. HOOPER
 Administrative Judge

The Honorable GUSTAVE A. LINENBERGER, Jr.
 Administrative Judge

1 APPEARANCES:

2 On behalf of the NRC Staff:

3 LEE SCOTT DEWEY, Esq.

4 On behalf of the Applicant, Puget Sound Power & Light Co.:

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10 DAVID G. POWELL, Esq.
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15 Council, Inc.:16 RALPH C. CAVANAGH, Esq.
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18 San Francisco, California 9410819 On behalf of the Intervenors, National Wildlife
20 Federation and the Oregon Environmental Council:21 TERENCE L. THATCHER, Esq.
22 Law Center
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24 Eugene, Oregon 97403

25 On behalf of the Intervenors, Coalition for Safe Power:

NINA BELL
Coalition for Safe Power
408 S.W. 2nd, Suite 527
Portland, Oregon 97204

Also present:

ROBERT LOTHROP
Columbia River Intertribal Fish Commission
8383 N.E. Sandy Boulevard, Suite 320
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1 Office of the Attorney General
2 State of Washington, Department of Fish & Game

3 PAUL S. MAJKUR, Assistant and
4 THOMAS BJORGER, Assistant.

5 ENERGY FACILITY SITE EVALUATION COUNCIL:

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P R O C E E D I N G S

1
2 CHAIRMAN LEWIS: The hearing will come to order.
3 My name is Nicholas Lewis. I am chairman of the
4 Washington State Energy Facility Site Evaluation Council.

5 I am pleased to call into session at this time
6 the Joint Prehearing Conference between the Atomic
7 Safety and Licensing Board and the Nuclear Regulatory
8 Commission in the matter of the Energy Facility Site
9 Evaluation Council of the State of Washington in the matter
10 of Puget Sound Power and Light Company Skagit/Hanford
11 Nuclear Power Project Units 1 and 2.

12 First, or before we proceed further, I will
13 ask Chairman Wolf, Chairman of the Atomic Safety Licensing
14 Committee to introduce the board today.

15 CHAIRMAN WOLF: Immediately to my right is
16 Mr. Linenberger, Nuclear Physicist and to his right is
17 Dr. Hooper, an Environmentalist. I am John Wolf, lawyer.

18 CHAIRMAN LEWIS: Also at this time I'd like to
19 acknowledge the presence here of the pre-hearing conference
20 of various members of the State Energy Facility Site Evalua-
21 tion Council, seated immediately behind me today, to
22 observe.

23 Starting at my right is David Guier, Mr.
24 Mr. Claude Lakewold, Mr. Fred Hahn, Ms. Nancy Burnett
25 and two members of the council senior staff,

1 Mr. William Fitch, and Council's legal officer,
2 Carol Peeples.

3 I'd like at this time to request the parties
4 to join with me to identify themselves and make their
5 appearances for the record at this pre-hearing conference,
6 starting with the applicant.

7 Puget Sound Power and Light?

8 MR. THOMSEN: I'm Theodore Thomsen of the
9 Perkins Law Firm in Seattle and David G. Powell and
10 Steven Frantz of the law firm in Washington, D.C.

11 CHAIRMAN LEWIS: And the NRC staff?

12 MR. DEWEY: I'm Lee Dewey representing the
13 NRC staff.

14 CHAIRMAN LEWIS: Proceeding?

15 MR. HOVIS: I'm James P. Hovis representing
16 the Yakima Indian Nation.

17 MR. THATCHER: Terrence Thatcher representing
18 the National Wildlife Federation. And, if I may say,
19 the National Resources Council is not represented here
20 today but I spoke to Mr. Cavanagh yesterday by phone
21 and he said that they expected to be here by 11:00 o'clock.
22 There's not perfect connections from San Francisco and he
23 did request that the hearing go forward without him and he
24 would be here as quickly as possible.

25 CHAIRMAN LEWIS: Thank you very much.

1 MS. BELL: Nina Bell representing the
2 Coalition for Safe Power, Portland, Oregon, and
3 Lathrop with the Columbia River Intertribal Fish Commission.

4 MR. MAJKUT: Paul Majkut representing the
5 Washington State Department of Fisheries and Department of
6 Game and I am from the Attorney General's Office.

7 MR. BJORGER: Thomas Bjorger, Assistant Attorney
8 General and I am counsel for the Department of the Environ-
9 ment in these proceedings.

10 CHAIRMAN LEWIS: Thank you, Mr. Bjorger.

11 I believe that it is generally known to everyone
12 here which parties are involved in this proceedings; but,
13 if my recollection is serving me correctly, the parties
14 in the federal proceedings include all of those persons
15 up through the Coalition for Safe Power seated at the
16 table.

17 Mr. Lathrop of Columbia River Intertribal
18 Fish Commission has the distinct privilege of being active
19 in both proceedings and the Washington State Department of
20 Fish and Game, the State Council for the Environment,
21 or the state proceedings.

22 As soon as the representative for the National
23 Resources and Defense Council arrives we will take his
24 statement and appearance.

25 Before getting into the meat of the pre-hearing

1 conference today, I would like to state for the record
2 and to remind the parties, that this Joint Prehearing
3 Conference is operating under the provisions of Sub-Agreement
4 Two between the Washington State Energy Facility Site
5 Evaluation Council and the United States Nuclear Regulatory
6 Commission establishing a protocol for the conduct of
7 joint hearings. Skagit Nuclear Power Projects Unit 1 and 2
8 protocol in its most recent amended form was signed on
9 behalf of the State of Washington on July 20, 1982 and
10 on behalf of the Commission on September 17, 1982. That
11 protocol provides among its various provisions for a
12 conduct of the joint hearing certain selected issues
13 of interest to both the State of Washington and the
14 U. S. Nuclear Regulatory Commission.

15 I think it would be fair to say that the purpose
16 of the joint hearing is to provide for an efficient
17 use of the time of the state and federal government
18 agencies and the parties in the proceedings to allow
19 issues that are of interest to both federal and state
20 governments to be heard jointly in a single hearing room
21 at one time rather than two times.

22 We recognize that this is somewhat of an unusual
23 proceeding, particularly for those who are familiar with
24 both the Energy Council's procedures and the procedures of
25 the Nuclear Regulatory Commission. However, I believe

1 the protocol itself is very explicit. It sets forth
2 principles that have been agreed to and the conditions and
3 circumstances that we can expect to operate under. We
4 would, of course, appreciate and expect the cooperation of
5 all of the parties to assist us to some extent in plowing
6 new ground here.

7 I would note that in the protocol, Section Five
8 deals with the subject of joint prehearing conferences.
9 It states that the NRC will convene a joint hearing pre-
10 hearing conference and hold one or more such conferences
11 for a series of purposes which are enumerated in the
12 agreement. I will further note that in compliance with the
13 provisions of the protocol that notices have been issued
14 by the State of Washington and dated November 19, 1982,
15 setting forth the notice of prehearing conference to occur
16 at 10:30 a.m. on Thursday, December 2nd, 1982 at this
17 location. And that similarly a notice dated November 18
18 has been issued by the Atomic Safety and Licensing Board
19 with the signature of Chairman Wolf ordering a prehearing
20 conference held at the same time, on the same date and
21 in the same location.

22 The agenda that is before us today consists of
23 three principal matters as set forth in the agenda, that
24 of scheduling and then a discussion of the various conten-
25 tions and issues that may present themselves for concern.

1 Let me say in connection with that that it is the practice
2 of the Nuclear Regulatory Commission to speak in terms
3 of contentions. It is the practice of the State of
4 Washington to speak in terms of issues. The two terms,
5 as far as we are concerned, can be used interchangeably.
6 Following that discussion of those two agenda items,
7 there will be an opportunity for the parties to raise other
8 matters and make other statements to the Joint Prehearing
9 Conference as they wish.

10 Chairman Wolf and I share in the responsibility
11 concerning the prehearing conference and we have agreed
12 that I will take the prehearing conference to this point
13 for the preliminaries and he will next take up the agenda
14 items concerning scheduled contentions and I will then
15 come back and talk about some of the issues that the State
16 is concerned about and we will trade back and forth through
17 the prehearing conference today.

18 I think it is time now to have Judge Wolf to
19 move the agenda take up the matter of the scheduling.

20 CHAIRMAN WOLF: Thank you.

21 On November 8th, 1982 the applicants submitted
22 a proposed schedule for hearings and they subsequently
23 submitted a somewhat more detailed one on November 24th,
24 1982. The Atomic Safety and Licensing Board has considered
25 the schedule and on November 23rd we sent out and served

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on the parties to this proceedings a memorandum relating to scheduling matters in this case, and attached to that memorandum a proposed Elapsed Time Schedule.

We had looked at the schedule as originally submitted by the applicant and we felt that because we are still awaiting two important documents that the schedule would have to be set up to begin after the submission of the documents. The first one that we are looking for is the supplement to the SER. It has been indicated that it should be out in 1982. However, to then set dates based on the issuance of that document, would of necessity require a complete change in the schedule if the document didn't come out on the assumed date. So, we proposed that we wait until the document is issued and then set forth a calendar of dates which would elapse between the various activities that must then take place to the start of hearing.

We have discussed this with the EFSEC people and they feel that perhaps that is the way that we should proceed. After the issuance, for example, of the SER supplement, there will be a period of approximately ten days in which any of the parties may determine whether or not the material in the document warrants submitting an extension going out of that material and whether or not discovery will be needed because of it. After that period has passed, we will get together; that is EFSEC and the

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NRC Board have set up the dates based before this
Elapsed Time Schedule.

1 We also have another document, the vital statement
2 that will trigger the actions on part of the parties. Be-
3 fore I proceed any further, I would like to in the first
4 place, I assume that the parties have received a copy of
5 this November 23rd memorandum because it was mailed out
6 that day, and have you received that, you people on the left?

7 MR. THOMSEN: Yes, we have.

8 MR. HOVIS: Yes, it was received in my office on
9 November 29th.

10 MR. THATCHER: We received it.

11 MR. BELL: We received it.

12 MR. LATHROP: We received it.

13 CHAIRMAN WOLF: And I don't imagine the State
14 people have received it?

15 MR. MAJKUT: No, we haven't. Do we need to put
16 ourselves on the service list as opposed to EFSEC?

17 CHAIRMAN WOLF: I'd like to discuss that with the
18 Chairman, and I'm sure you should get the material, but
19 whether you get it through him or directly on our list, I
20 don't know. We would take that under advisement, and pass
21 on it when we get a chance to discuss it. Since the other
22 parties had received it, I wonder if anyone wishes to make
23 a comment on this proposal of the Board?

24 MR. THOMSEN: Yes, the applicants would like to
25 make a brief comment, and ask David Powell to consider the
time periods that you're mailing, and he would like to

1 speak briefly to that.

2 CHAIRMAN WOLF: Mr. Powell?

3 MR. POWELL: Yes, Judge Wolf, we think the approach
4 using daily elapement of documents, we feel it's very
5 sound. The total time interval from the issuance of the
6 document to the start of the hearing appears to be reason-
7 able to us. We had a concern about the number of days
8 between the filing of the summary disposition motions,
9 and the responses to those motions, and it seemed to us
10 that should we file a motion for summary disposition, that
11 time period of seven days may cut the respondents a little
12 bit short, and we thought that it would be appropriate to
13 suggest that the time period of seven days be increased
14 somewhat by making some of the slight adjustments in the
15 intervals between the periods of time in order to give the
16 parties a little more time to respond to motions for summary
17 disposition.

18 CHAIRMAN WOLF: Very well. I think that's a good
19 suggestion, and I might say that we are not wedded to this
20 time schedule. If anyone has a good reason why it should
21 be changed, it's perfectly agreeable to us to make those
22 changes.

23 MR. POWELL: In that regard, Judge Wolf, we have
24 taken the liberty of preparing I guess, an alternative
25 schedule with some adjustments made that would permit a

1 longer period for response to those motions, and to clarify
2 slightly, matters in regard to discovery, and I would be
3 glad to pass out that at this point if it would be suitable.

4 CHAIRMAN WOLF: Fine. Would you do that, Mr. Powell?

5 (Documents distributed to panel.)

6 CHAIRMAN WOLF: (Continuing) In glancing over
7 the calendar days elapsed in the applicant's suggestion
8 which has just been passed out, does that raise any prob-
9 lem offhand with any of the other members, any of the other
10 parties?

11 MR. THATCHER: I would comment both on your
12 suggestions and on the suggestions of the applicant, I
13 don't know if it's proper to do that now unless you want
14 to wait. I think it's perfectly appropriate and we agree
15 with the applicant that it is probably wise to have a
16 little bit of extra time and response to the disposition
17 motion, and we would therefore agree. I am not sure we
18 need, however, in doing that to cut back on other times
19 which the Board properly thought were reasonable times
20 simply to keep it within this approximate two-month period.
21 If we slip over two or three days because we've had a
22 little bit more time on the respondent's summary disposition,
23 I'm not sure that, for instance, with respect to discovery,
24 that there should be substantial cutbacks in time, and I
25 really haven't had a chance to compare in detail, but it

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1 looks like there is some reduction in time for discovery
2 in general. The National Wildlife Federation is somewhat
3 concerned that the discovery period seems too short on
4 both schedules, and seems to start from the original docu-
5 ment issue date as opposed to the period when contentions
6 are accepted, and I understood that discovery was based
7 on accepting contentions, and I think perhaps we should
8 expand just a little bit on the discovery period so that
9 there is more time between acceptance of contentions at
10 the end of discovery with respect to prefiling of testi-
11 mony from the date of the Board's recommendation, from
12 the end of filing of summary disposition motion. And as
13 I read it, there were -- excuse me -- from the end of
14 all the discovery, from the end of discovery there were
15 37 days to prefile testimony, and I might say that 37 days
16 is more than a month, and we think there should be a little
17 bit of extra time simply because of preparation of testi-
18 mony. I know for instance the Yakima Indian nation has
19 some very detailed issues relating to the salmon habitat.
20 We think 37 days should be somewhat expanded from the end
21 of discovery to the prefiling of the testimony.

22 And finally, I'm somewhat concerned generally by
23 two things that seem to be reflected in both the schedules, they're
24 reflected in the schedule of NRC, and coming out with the
25 FDS, we've talked about it before. We feel constrained

1 to mention it again, and that is the Pacific Northwest
2 Planning Council is going to be issuing a final power plan
3 on April 28th which will discuss in some detail the
4 regional power needs that will probably have a critical --
5 will have a critical impact on this proceedings on a need
6 for power issued in that proceedings. And yet, the NRC
7 persists in its desire to issue a final environmental im-
8 pact statement prior to this authoritative regional de-
9 termination number one.

10 And number two, there seems to be, since the docu-
11 ment issue date that is, the FDS is the controlling factor
12 in both the applicant's schedule and the Board's schedule,
13 it means that the hearings may in fact begin very shortly
14 and prefile testimony will be required very shortly, per-
15 haps two or three days according to the applicant's pro-
16 posed schedule of November 24th, after this power plan
17 comes out. And yet it seems to us that the Board and the
18 parties should have time to review that power plan, and
19 prepare testimony that will be reflect -- reflect that
20 power plan.

21 Just to give an example, the Power Planning Council
22 came out on November 15th with its Fish and Wildlife pro-
23 gram to the Columbia River Basin; they approved it on
24 November 15th, and it was only yesterday that any of the
25 interested parties in the region received a copy. From

1 approval to publication now takes two or three weeks to
2 review that plan, to see how the interest of the interested parties
3 are affected. Similarly, if we have an approval of the
4 power plan on April 28th, we will get a final draft and
5 everyone can review perhaps two weeks later, perhaps the
6 end of May, that is so critical to this proceeding. And
7 it will be necessary therefore for at least, well, I would
8 say a month for the need for power experts to anticipate
9 what is going to be presented in this hearing, and to re-
10 view that document, and determine how it should be melded
11 into the testimony. And yet, there is nothing in either
12 of these schedules, I am constrained to say, that reflects
13 that need. So in summary, we would request, number one,
14 that there be an expanded discovery schedule. Number two,
15 that there be a reflection in the schedule of the timing
16 of the Regional Council's Power Plan. Number three, we
17 agree that the responsive time for summary disposition
18 should be expanded and number four, we do not believe that
19 at that time it's expanded, respondents disposition motions
20 are cut down in a reasonable time that the Board has
21 suggested, or that we have suggested for other issues on
22 this schedule.

23 CHAIRMAN WOLF: We will of course take your points
24 under advisement. I might point out, however, the need
25 for power issue will not be taken until after thereport

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that you mentioned is out. We've already agreed not to hear that until a time subsequent to the receipt of that report.

MR. THATCHER: May I ask a question? Is there a time, well, I haven't seen any documents indicating how that time would be reflected except in the applicant's submission which indicates that a joint hearing testimony on a need for power would be filed four days after the plan was approved. Has the Board considered its schedule for the need for power?

CHAIRMAN WOLF: We have not yet, no, but we are aware of it, of the problem, and will not cut it so short that anyone can't properly prepare to meet the issue.

MR. THATCHER: Thank you.

CHAIRMAN WOLF: Yes? State your name for the reporter as you each speak in turn so that he can become familiar with it.

MR. DEWEY: I am Lee Dewey, of the NRC staff, and I have several comments. First with respect to the comment made concerning the need for power. And I would like to add one further thing to what you just responded to, and that is that according to the schedule there, there will be another month added onto the applicant's schedule, and that hearing is supposed to go or begin on May 17th of '83, so if we have the additional 30 days as the Board has

1 suggested, that would be another month on top of that.

2 CHAIRMAN WOLF: There will be additional time, I
3 don't know the precise number of days.

4 MR. DEWEY: I thought it would be about a month
5 so that might take care of that problem. Of course, the
6 draft plan of the council is going to be out in January,
7 so that will give everyone a pretty good idea what the
8 final plan is going to be. There shouldn't be many changes,
9 and I think that would also alleviate the problem.

10 And one further point the staff would like to
11 make on the proposed schedule which the applicant has just
12 handed out has to do with the item number three. The appli-
13 cant discusses or lists discovery requests on the new
14 materials, and it has that as the third item in the point
15 of time, and it would appear to staff that discovery
16 would not begin until after the Board rules on the con-
17 tentions.

18 CHAIRMAN WOLF: Usually that's the way it proceeds,
19 and we're going to try to work out all these problems be-
20 fore we come out with a final schedule, and I appreciate
21 your comments.

22 MR. CAVANAGH: I am Ralph Cavanagh, representing
23 Natural Resources Defense Council.

24 CHAIRMAN WOLF: Thank you. Have you received the
25 Board's Memorandum dated November 23rd relating to scheduling?

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1 MR. CAVANAGH: Yes, sir.

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2 CHAIRMAN WOLF: Did you receive the Board's memo-
3 randum in order responding to your motions regarding con-
4 tention three?

5 MR. CAVANAGH: No, I haven't.

6 CHAIRMAN WOLF: We have them here; at the break
7 I will hand them out. I might point out that we granted
8 both of your motions.

9 Are there any other further comments? Yes?

10 MR. HOVIS: I'm Jim Hovis representing the Yakima
11 Indian Nation. One of the problems that I have with the
12 schedule is it is a problem that has frustrated me somewhat
13 during the course of this proceedings. At the first
14 quarter involving our opportunity to interview and to
15 supplement our contentions, I did not receive a copy of
16 that order. Luckily enough I received it from Mr. Rob
17 Lothrop, and of course it was some time later, that it was
18 a tremendous job due to the shortness of the time that I
19 then had to get my contentions put together.

20 CHAIRMAN WOLF: Wasn't your name on the service
21 list?

22 MR. HOVIS: It was on the service list and I get
23 part of the orders. The other situation is --

24 CHAIRMAN WOLF: Aren't you the attorney that
25 changed his office address?

1 MR. HOVIS: No. We've been in the same store
2 for 12 years, Judge.

3 CHAIRMAN WOLF: Well, I can't blame it on that.

4 MR. HOVIS: The other problem that I have is more
5 immediate right now and that is that the memorandum and
6 order regarding the supplement to petition to intervene
7 submitted by my clients, the Confederated Tribes and Bands
8 of the Yakima Indian Nation, was never received by me. The
9 only way I got any notice of it at all was that the Depart-
10 ment of Energy filed their limited appearance, and I saw
11 that and asked my gal, "Where is that order?", and she said,
12 "It's not been received". I've also checked with Mr.
13 Lothrop, and he hasn't received it either, and usually
14 when we're talking back and forth, he would have mentioned
15 it to me, but he didn't receive it either. Since I had
16 a response dated there of December 1st, and it's pretty
17 hard to respond to December 1st when you don't get it
18 until December 2nd, Mr. Moon was kind enough to give me
19 a copy of it now, and I would like to ask if I'm going to
20 be held responsible following the issues raised by the
21 applicant in the Department of Energy, and I would like
22 to have a request of ten days in which to respond.

23 CHAIRMAN WOLF: You may have the ten days. Would
24 you state your proper address for the record now so that
25 we can check the service list?

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1 MR. HOVIS: I do have a name change, Your Honor.
2 My firm -- but it's still the same address. I'm James P.
3 Hovis, H-o-v-i-s; Hovis, Cockrill, Weaver & Bjur. Our
4 Post Office Box is 487, Yakima, Washington, 98907. The
5 street address is 316 North 3rd Street, but we receive
6 things better if they address directly to the Post Office
7 Box.

8 CHAIRMAN WOLF: Thank you.

9 MR. CAVANAGH: Ralph Cavanagh. Just one more
10 thought on the scheduling. I know that the Board understands
11 that the bearing on the Council's plan and need for power
12 issue, that issue will be deferred, but I want to raise to
13 the Board's attention to the possibility that at least the
14 Council plan /with this entire proceeding and not just the
15 need for power question. I brought with me excerpts from
16 applicant Puget Power's latest annual report and its May
17 15th quarterly report. I would be glad to hand those for-
18 ward after Mr. Thomsen has taken a look at them, and what
19 those excerpts indicate is that Puget Power has made very
20 clear in these public documents that it will not proceed
21 with construction at Skagit/Hanford unless the Regional
22 Power Council indicates in this plan that there is a need
23 for the facility. Under those circumstances we have the
24 possibility at least of an adverse decision in the Regional
25 Council's plan with respect to Puget including this entire

1 proceeding, and I would ask the Board to consider the
2 possibility of holding all proceedings in abeyance until
3 it's really apparent that it's necessary to go forward and
4 be possible to go forward, in light of what the Regional
5 Council plan does to Puget's professed construction plans.

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1 MR. MAJKUT: I understand there'll be drafts
2 available before the April deadline. Will it be possible to
3 get an idea of where the council is going on this so that
4 we can be doing what the NRC is suggesting? It will not
5 be delayed 'til April, but maybe January or February.
6 Thank you.

7 CHAIRMAN WOLF: I think the Board has considered
8 the possibility that you raised and unless there is some
9 more to it, I think we intend to go forward until the
10 applicant withdraws as that is the ultimate position or
11 intention.

12 Would you have something to add?

13 MR. CAVANAUGH: The only thing worth adding is
14 the applicant--that I could understand justifying that
15 decision--is that the applicant's submission in this
16 proceedings has suggested that the Regional Council's
17 decision will not be dispositive as far as Skagit/Hanford
18 is concerned. What I think is significant about the
19 Annual Report and their latest Quarterly Report is that
20 they make very clear in Puget's submission to its own
21 stockholders that this really is a dispositive event.
22 Under those circumstances, does it make sense to invest
23 the resources that would be required to go forward
24 expeditiously over the next couple of months when the
25 whole thing will go up or down very definitively and

1 at a relatively near date.

2 MR. THATCHER: If I just may add, the National
3 Wildlife Federation, in response to Mr. Majkut, I might
4 say that there's some indication in the draft plan that
5 is coming out in January, but my concern is with the
6 issuance of the Final Environmental Impact Statement
7 based on the draft plan and the issues, a decision to
8 go forward one way or another, on the draft plan, it
9 simply indicates a certain arrogance on our part to
10 expect that the public will have no influence on that
11 draft plan and that the final plan will not, in fact, be
12 somewhat different than the January plan.

13 What we are merely suggesting is that the final
14 plan in April is the final plan that's going to be dis-
15 positive in this region, and as Mr. Cavanagh points out,
16 evidently is dispositive to the applicant.

17 MR. BJORGEN: Mr. Cavanagh's comments brought
18 up a point that I wanted to make too, and that is that it
19 seems to me to be most proper now, at least in the joint
20 hearing, to hear the issue of need for power first.
21 Mr. Cavanaugh has brought up some reasons and I think there
22 are other reasons. One, at least as far as EFSEC, the
23 State Council is concerned, they consider need for power
24 as one of the factors in their balancing equation on which
25 they rest their decision. It would seem that the Council

1 could better make this balancing equation if they had
2 before them a good idea of the need for power before
3 evidence was admitted on the environmental issues.

4 I think that the report by the Regional Council
5 is going to be, at least with the exception of the
6 Hinman Report which was commissioned by the Washington
7 State Legislature and issued earlier this year, and with
8 that one exception, this will, I think, be the first
9 major power forecast which was not prepared either by the
10 utilities themselves, the PNUCC, or by Bonneville.
11 As such, it is going to be a very important report and
12 for that reason I think we should hear it first.

13 One final point, also in the State of Washington
14 a new issue which has been popping up is the issue of
15 what we call Site Banking or Site Certification Banking.
16 This is a ~~phenomenon~~ phenomenon which first raised its head in the
17 Creston proceedings, and the State Council has just concluded
18 a proceeding on licensing of Washington Water Power's
19 Creston Coal Power Plant, and during the course of
20 this proceedings, with each passing year the need for power
21 was revised downward and even though up to 30 percent
22 of the Creston Plant was unsubscribed, maybe about
23 twenty-eight or thirty percent, in that neighborhood, in
24 spite of that, the applicant in the Creston proceedings
25 insisted that it be granted the license now, which

1 of course raised the spectre of not going through with
2 the plant for some time with respect to obsolete
3 conditions. I think that with that possibility it would
4 be better to have the evidence, the good evidence, after
5 the regional power plan is out, the forecast is out.
6 I think it would be better to have that first, at least
7 in the joint hearing, before we go on to the other issues.
8 For that reason my suggestion is the joint hearing at
9 least be postponed until after April 28th, a good time
10 after April 28th, a month or a month and a half, and that
11 the joint hearing commence with the issue of the need for
12 power.

13 MR. MAJKUT: The Department of Fisheries and
14 Game would join in those comments. We will have to
15 prepare extensive testimony for this project both under
16 Federal and State law and in the EFSEC proceedings and we
17 are concerned about expending those resources if, in fact,
18 the dam will never be built due to the power predictions
19 that come out. Thank you.

20 CHAIRMAN LEWIS: If I might ask a question
21 and get some response from the parties on the need for
22 power question, as the parties will recall, the State of
23 Washington and the Nuclear Regulatory Commission acting
24 jointly have now formally agreed that the Final Environ-
25 mental Impact Statement or the Environmental Report will

1 be issued on March 1, 1983, four weeks after the issuance
2 of the draft report, whichever comes first. If that were
3 the case, looking at the elapsed schedule that has been
4 proposed here by the Board and concurred in by the State,
5 there's an idea that we would like to pursue from
6 scheduling this matter. If that were the case, and
7 hypothetically speaking we're talking about issuance of
8 the Final Environmental Impact Statement on 1 March,
9 it would seem to me we'll be talking about the need for
10 power some time in June, or two months after the issuance
11 of the final Power Council Report.

12 Does that place--I would like some comments from
13 the parties as to whether or not that creates, or what
14 kind of problem it creates, if that's not a reasonable
15 schedule to follow.

16 MR. CAVANAGH: Chairman Lewis, I'm Ralph Cavanagh.
17 It is not really obvious to us that that is an unreasonable
18 schedule for the need for power with one caveat that I
19 will make in a moment, but the point is that the need for
20 power is the condition precedent to the entire project.

21 Why on earth should the State be put to the
22 expense and time of preparing all of the materials and
23 all of the other issues before the condition precedent
24 has been satisfied. And the caveat I wanted to enter is
25 that we continue to lack any understanding why the final

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1 environmental statement of this project is going to be
 2 issued about six weeks before the final Regional Plan
 3 comes out. Now as Mr. Thatcher pointed out, the
 4 Regional Council is committed by federal law and by
 5 its own regulations to a maximum possible public involvement
 6 in its decision making. There is no assurance that the
 7 draft plan will accurately reflect or mirror the final
 8 document and so by failing to wait that six week period
 9 for the final document to come out, you are very likely
 10 issuing the final environmental statement and it will be
 11 rendered obsolete by the critical subsequent events to
 12 which the scheduling of that document supposedly responds,
 13 that is the environmental statement is moved back to
 14 accommodate the regional planning conditions. Why not
 15 accommodate the process to its conclusion on the April release
 16 date?

17 MR. LOTHROP: I'm with the Columbia River Inter-
 18 tribal Fish Conference. I would like to suggest for--
 19 in support of Mr. Cavanagh's position of setting back
 20 the process until the final Regional Energy Plan comes out,
 21 and judge it for what it's worth. The Council, for the
 22 last two or three months has been somewhat preoccupied
 23 with the development of the fish and wildlife program in
 24 the Columbia River basin. At this point I am not certain
 25 exactly if they will be adhering to the schedule for the

1 Regional Energy Plan and it may be the Regional Energy
2 Plan in draft form may not come out in January, it may
3 come out in February, in which case the issuance of the
4 Final Environmental Impact Statement and the issuance of
5 the Regional Energy Plan are even more closely compressed
6 in their timeframe. It might be reasonable to actually
7 make that the next step and hold off in the preparation
8 for the finalization of the Environmental Impact Statement
9 until the Energy Plan is completed.

10 One other point that I would like to make is that
11 with regard to discovery, reiterating Mr. Dewey's comments
12 that I think we would prefer to have discovery taking place
13 after contingents have been finalized and with regard to
14 the proposed scheduling that the Board has prepared, to
15 reiterate Mr. Thatcher's comments, it would be beneficial
16 perhaps to the Intertribal Fish Commission if we had more
17 time to study.

18 CHAIRMAN LEWIS: Thank you.

19 Mr. Hovis?

20 MR. HOVIS: I'm Jim Hovis. I represent the
21 Yakima Indian Nation. What I am about to say, Chairmen --
22 Chairman Lewis and Judge Wolf, is somewhat embarrassing
23 to me; but I guess we have to talk about the real world
24 and yet I don't like to poor-mouth in regard-- and this
25 is the first time in representing my clients in 30 years,

1 this particular client, that I've had to say this, but
2 the facts of the situation are that we depend for the
3 running of our government, the Yakima Indian Nation,
4 our entire budget, 90 percent of our funds of our
5 governmental budget, take care of the government within
6 the exterior boundaries of the Yakima Indian Reservation
7 and also the other problems that we have throughout the
8 Northwest, comes basically from income from timber.

9 Our income from timber has just gone right
10 straight down to almost bare bottom. The people from
11 the Department of Natural Resources of the State of
12 Washington can relate to loss of income from those kinds
13 of problems. At the same time our problems with governmental
14 funds are increasing tremendously. We are running over
15 seventy percent unemployed on our reservation; we've
16 had to drop our employment from over 600 on our tribal
17 employment, from over 600 down to about one-third of
18 that, and at the same time our income is going right down.

19 Our problems are, as you must all understand--
20 we all live in this real world--really increasing,
21 so when we talk about the commitment my client has to
22 make in this matter, it is not surplus funds that they
23 are spending. The funds that they spend to hire me
24 and the other people to be of assistance to the people
25 on this commission are coming right off of somebody's table

1 and those kind of things, those funds that they feel
2 are important to spend are going to be a tremendous
3 hardship to the constituents within that nation. They
4 are going to be paying. So if we are going to be playing
5 games only to go through all this--and I understand these
6 people's problems too, of not having, well I know what
7 it is to have to or to be paying interest on monies or
8 have investments and not have them proceed forward, I
9 understand their problem, but I also want you to understand
10 ours. As we proceed, and we will proceed, we will make
11 the commitments, we will do the things that it is
12 necessary for us to do, Judge Wolf, to be of as much
13 assistance as we can with our limited means, but if it is,
14 whatever we spend is not just money. It's got something
15 more to it, Judge, than just money, that we're spending
16 in this proceedings. And I want in all fairness to give
17 my constituents and people who are hungry and unemployed
18 some consideration and I would ask you for that in making
19 a determination in the scheduling.

20 It is embarrassing to have to bring that up
21 but I guess we live in the real world and we have to say
22 those kind of things.

23 CHAIRMAN WOLF: I appreciate your comments.

24 MR. HOVIS: The other thing I think for a lot
25 of us, if we're going to be helpful to the Commission,

1 we have, well, we are of course limited with our own
2 house staff, we've had to cut back a lot of our own
3 house staff now, and we are somewhat limited with that
4 but it would be so much better if we have people from the
5 outside who can help us with these matters, so we can
6 present you with better evidence and better factual
7 considerations and I think we could be more helpful to the
8 commission as we do that, start putting together testimony
9 with people who are not in-house, again the facts of life
10 are just that it takes you about twice as much time if
11 you have to put it together and fit it in with other
12 people's consulting schedules who have other commitments
13 than it takes if you have to do it with in-house counsel
14 and in-house staff and experts and that's going to be the
15 position I'm in.

16 I will do what the Commission asks me to do,
17 Judge, to the best of my ability, my clients will do that
18 to the best of their ability, but the schedule, as
19 far as we are concerned, with the facts and the problems
20 that we have, is totally unrealistic and I just have to
21 say that. What we have to do, it is not realistic for us
22 to meet that schedule. We're in here late, we haven't got
23 any discovery done and the problems that we have, we've
24 had for some time, and we're not fooling around, but whether
25 we're bored or not, people/asking for more contentions,
are

1 more contentions. I find it hard to believe that
2 Congress, kind of hard to believe that Congress, who
3 is making all kinds of notices, and every other court
4 in the country, I've been to the Supreme Court, the
5 Tax Court, and the Court of Claims and every other
6 tribunal this country has had on behalf of my Indians
7 and I've never seen anything like this.

8 We're going back, Judge, you and I probably
9 remember code pleading or common law pleading and code
10 pleading. Nobody else knows anything about it but everybody
11 else is throwing that kind of stuff away. Congress is
12 talking about different court rules and here we go through
13 all this kind of business that makes code pleading and
14 common law pleading look like it is pretty simple. I
15 don't believe that Congress wants us to do that. I don't
16 believe Congress wants you folks to be doing that and I
17 can't believe that it's true. Maybe I'm--well, I read
18 some of those cases. I've read what the Supreme Court
19 says and I understand these things but I can't believe that
20 Congress wants you to do all this.

21 CHAIRMAN WOLF: We didn't set the rules as you
22 know, but we appreciate your comment. I don't know what
23 we can do but we will sure consider them.

24 I would like to hear any comment the applicant
25 has on the question that was raised in the NRDC.

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1 It seems to me Chairman Wolf, that all of this has a
2 strikingly familiar ring. It just seems that we've heard
3 about all of this last May at a pre-hearing conference,
4 and the suggestion was that we should stop the proceedings
5 until the original power plan comes out. It seems that
6 I recall that we were overruled on that, and we're moving
7 forward today. This schedule as suggested in the Board's
8 memorandum and order that we are discussing contemplates
9 the environmental hearing beginning sometime in the latter
10 half of June. It contemplates preparation of testimony
11 some time after the April 28th Regional Plan published by
12 the Regional Council. Things that happen on the schedule
13 to that time, it seems to me necessary, preliminary steps
14 leading to that sort of hearing. It seems to me that the
15 environment statement can come out as scheduled on March
16 1st, the great bulk of that environment statement does not
17 concern the need for power. The great bulk of that en-
18 vironmental statement concerns the impact on the environ-
19 ment, and the great number of contentions in the proceedings
20 and the concern of impact upon the environment. I think
21 we are proceeding in an orderly fashion to handle those
22 things.

23 There is another aspect to this proceeding which
24 is entirely within the NRC's jurisdiction, and that's the
25 Health and Safety hearings. We see no reason not to pro-

1 ceed on with that. I think there is a certain amount of
2 administrative regularity that needs to be preserved, and
3 it seems to me that the schedule we're talking about does
4 in fact do that.

5 I might mention if hardship stories are in vogue
6 today, that in October of this year that began the ninth
7 year that this application has been contingent. It seems
8 to me that the proper action is to move forward in an
9 orderly fashion that the Board has suggested here to pro-
10 ceed on. Let's not forget what has been accomplished
11 today, that the Board had a July ruling with many con-
12 tentions and discovery has been held for practical purposes
13 and completed on that. The Board had another ruling which
14 numbered and defined the contention in November. It seems
15 to me to be contrary to efficiency in this rate of irregu-
16 larity to just disregard all of that now and put it in
17 some sort of a state of suspension. I just don't see any
18 useful purpose in going over again the items that were
19 covered last May in the documents that were filed, and
20 the Board Order that was the result of all of that dis-
21 cussion. It seems to me the thing to do is for the Board
22 to consider these matters and let's proceed with the kind
23 of schedule that the Board suggests. I don't think we
24 have anything to contribute beyond that, Mr. Chairman,

25 CHAIRMAN WOLF: Is this statement in the Quarterly

1 Report, October report, to the effect that the applicant
2 will not proceed if the report shows there is a question
3 about the need for power?

4 MR. POWELL: If I may have a moment?

5 MR. THOMSEN: We're taking a look at it here.

6 MR. CAVANAGH: I can give you the copies.

7 MR. THOMSEN: I see it there, it's dated last May.
8 When we first talked about this matter, and I remember the
9 statement was referred to in Mr. Cavanagh's filing made at
10 that time, what the applicant said last May.

11 MR. THATCHER: This is May, 1982, right? This
12 this statement?

13 CHAIRMAN WOLF: Right.

14 MR. THOMSEN: I remember it being quoted in Mr.
15 Cavanagh's brief last May.

16 CHAIRMAN WOLF: I was under the impression
17 apparently erroneously that this was some new stance that
18 was taken by the applicant.

19 MR. THOMSEN: Apparently not, it was taken last
20 fall, and as far as I know it still is the stance.

21 MR. CAVANAGH: Chairman Wolf, at the time of the
22 pre-hearing conference and the subsequent inquiry from the
23 NRC, the applicant was asked if the Regional Council's Plan
24 was indeed a determinative event as far as the decision
25 to proceed with the construction was concerned, and I

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1 believe that if you'll consult the transcript of that May
2 hearing which I think was held before this Quarterly Report
3 which incidentally was not cited in my papers. If you'll
4 consult the transcript of that hearing, and if you'll also
5 look at the applicant's response to subsequent Board in-
6 quiries, the applicant indicated that in fact the Regional
7 Council did not have the final word. As far as it was
8 concerned that there were other considerations that might
9 still bar the decision to proceed. I think at one point
10 it was indicated for example that the applicant's forecast
11 that this agreed with the Regional Council's forecast
12 and there was some possibility construction would go for-
13 ward. What the statements in the annual report and the
14 subsequent Quarterly Report made manifest is that that is
15 not the official position of the Puget Power and the Regional
16 Council's Plan really is a determinative event as far as
17 this proceeding is concerned.

18 MR. THATCHER: If I could add, last May as I recall
19 when this issue was discussed, counsel for the applicant
20 was correct that the Board determined to proceed and the
21 NRC determined to proceed with the FDS. As I remember
22 however, they anticipated that the final impact statement
23 was going to be out September-October, and I can't remember
24 the exact date, but there now seems to be an understanding
25 on behalf of the part of EFSEC, and NRC that this final

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1 environmental impact statement should not come out until
2 we have a draft of the Regional Power plan. Now we're
3 coming out with a final environmental impact statement
4 one month before the final plan, and I can only urge EFSEC
5 and I recognize the Board cannot control the schedule of
6 the final impact statement, but it seems to us that we
7 simply cannot understand the urgency of rushing ahead with
8 the impact statement six weeks before the event which is
9 accepted by all parties to be this positive of the issues.

10 There is, as a matter of fact, thousands of mega-
11 watts of surplus energy in this region and a forecast of
12 the Bonneville Power Administration indicates there will be
13 a surplus at least through 1990 and '91 and past. The
14 schedules of another nuclear plants has been shifted. The
15 notion that six or eight weeks is a make or break issue in
16 light of a ten-year surplus is difficult for a National
17 Wildlife Federation and the Environmental Council to under-
18 stand.

19 CHAIRMAN WOLF: Any further comments?

20 MR. BJORGER: Tom Bjorger. In response, sir, in
21 support of the comments which were just made, I would like
22 to remind the Board that the delay in the hearings up to
23 this point were at the request of the applicant last May
24 and did not seem to make any sense since the hearings had
25 been delayed at the applicant's request to this point.

1 Now, to rush ahead before this extremely important final
2 regional power forecast is going to be issued, I did not
3 see why we cannot wait until after it is issued and respond
4 to the entire report, we're putting the cart before the
5 horse.

6 CHAIRMAN WOLF: Thank you.

7 MR. MAJKUT: I did have some comments on this
8 schedule if it's time to give those now unless you want to
9 say something regarding the other issues as discussed, I
10 want to make those comments known.

11 CHAIRMAN WOLF: Will you go ahead and make them now?

12 MR. MAJKUT: I want to reiterate the problem with
13 service. I've been involved in the Federal Regulatory
14 proceedings for some time, and we've waited at least a week
15 to two weeks for some documents from Washington, D.C., and
16 I'm concerned that the elapsed time from document issuance
17 will be unreasonable in any of these cases, and that a
18 receipt of procedure ought to be used rather than docu-
19 ment issuance procedures, so that we don't get it for two
20 weeks, and our time will not be elapsing during the time
21 we're waiting to receive the documents.

22 The second comment I have regarding the appearance
23 in Federal proceedings, I earlier asked about service which
24 you deferred to later, and also note to what extent I
25 understood earlier from the joint procedures that we did

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1 not have to separately appear in the Federal proceedings.
2 I see from the discussion of this schedule on various
3 issues involving the SER and the EIS, that there may be
4 some connections and I want to make clear on the record
5 what, if any, further participation we have to provide
6 in appearance of contention pleadings, or whatever else
7 process is called for in the Federal proceedings beyond
8 what we'll be doing in the EFSEC portion of this proceeding,
9 and I quote from proceedings Paragraph Four, Procedure for
10 Identifying / Parties and Issues" issued by NRC, by EFSEC and NRC,
11 in the separate agreement it states in the EFSEC certifi-
12 cation proceeding, "Determination of party status, and
13 definition of issues shall be governed by the procedure
14 set forth in Chapter Four, WAC 63.30," so I assume by not
15 participating in this discussion we're having today, in
16 the rooms of the FEI is -- and the SER, that my department's
17 participation, will not be prejudiced for full participation in
18 the State proceedings.

19 The third comment I have was with respect to
20 any of the issues regarding mitigation under Federal law.
21 We also take part commenting on any project requiring Federal
22 approval under the Fisheries Coordination Act. To that
23 extent we will continue to participate, and that would be
24 separate from our EFSEC participation. And I wanted to
25 ask to what extent that would be affected by this documenting

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1 schedule if any, the coordination act requires some sort
2 of comment by the Agency in Mitigation Enhancement for any
3 given product. That is in issue in this proceedings be-
4 cause the Department of Game anticipates some substantial
5 impact on wildlife by displacement which would occur due
6 to the construction of this project.

7 That's all the questions I wish to raise.

8 CHAIRMAN LEWIS: If I might respond, Mr. Majkut,
9 and I don't think I can respond entirely; there are some
10 things we'll have to take under advisement here, working
11 out the -- on this joint proceedings, the matter of
12 service is a matter that we will take up. There are pre-
13 sently two service lists. Added together they represent
14 a sizeable number of people. I'm not certain if it's
15 desirable to require everybody to serve everything on
16 everybody unless the Northwest Pulp and Paper feels it's
17 a valuable thing to do. We'll have to deal with that.
18 I recognize the problem here, you're concerned and I apolo-
19 gize that the Federal Board's adjusted schedule which I
20 did receive in my office was not given to you prior to the
21 hearing.

22 If it's any consolation, a member of the Site
23 Council also did not receive it and they may have some-
24 thing to say to me about that after the break.

25 I think as a party to the State proceedings, to

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1 the extent that the issues we will take up jointly between
2 the NRC and the State, are coexistent with your concerns.
3 You will have ample opportunity to present your views and
4 your testimony to both the joint transcript, the joint
5 hearing record, that is being established by the Board and
6 by the Council, to the extent that there are issues that
7 are not held jointly that you are concerned about that
8 you will be of course, presenting singly to the State Energy
9 Study Council. It would seem to me that in addition to
10 where you are at should wait until we have a chance to
11 get a little closer to the exact issues that we will be
12 holding jointly. We'll be having some conversation about
13 that after the luncheon break, so you might want to defer
14 that question until a little later. I'm not sure I've
15 clarified it completely but that's an attempt to move in
16 the direction of helping you.

17 MS. BELL: Nina Bell. I'm from the Coalition for
18 Safe Power. Chairman Lewis read the issue of whether or
19 not the issue of reasonability, and it seems to me what
20 we have here is just the balancing of the urgency of the
21 application going forward in the period of weeks ahead of
22 schedule or behind schedule or even months, and that is
23 the reason. of waiting what might be just a period of
24 a few months more which would have a result of mitigating
25 the waste of resources of the State for five organizations

T4-10DD

1 representing the public and the one Indian nation. It
2 seems to me that it weighs toward waiting and seeing if
3 the need for power suggests that we should go forward with
4 this proceeding. I really think that this needs to be con-
5 sidered again, even though the applicant does say that it
6 was discussed at the last pre-hearing conference, and it
7 was -- it seems to me if continuing, and there is no clear
8 contentions from all the parties on this issue. And now
9 we have the State of Washington basically saying the same
10 thing, that we really need to hold off, we need to wait
11 until the need for power issue is clarified. And I think
12 that's the main issue we should be looking at.

13 CHAIRMAN WOLF: Any further comments?

14 JUDGE LINENBERGER: With respect to scheduling
15 considerations, planning considerations, I would like to
16 ask you, Mr. Dewey if you are in a position as NRC Staff,
17 in a position to sharpen up what the Board understands to
18 be a one-month interval in which the SER supplement might
19 issue, can you pin that down a little better between now and
20 the end of December?

21 MR. DEWEY: It's my understanding the SER supple-
22 ment is seven to ten days.

23 CHAIRMAN WOLF: Seven to ten days?

24 JUDGE LINENBERGER: So it is mid-December is what
25 we're talking about?

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MR. DEWEY: Yes.

CHAIRMAN WOLF: Are there any comments?

MR. HOVIS: Yes. Counsel for the applicant mentioned that the situation has been pending for nine years, and I want to point out that we're in a different situation. We weren't objecting to these people having their nuclear power plant over there in their own back yard. It's only when they came across the hill to get into our back yard that we got into this situation. We're not objecting to the nuclear power situation over there, we're objecting to it because of its location. That location has been pending for nine years and we haven't been into this thing for nine years. We have to have some time to go forward with discovery, and to be able to be of assistance with this Commission, we need time. We haven't had the nine years or the staff to do what they've been able to do. It's a new ball game when they get on our side of the hill. I would like to have more time to be of assistance with regard to the damage to that particular area.

CHAIRMAN WOLF: Mr. Hovis, have you received a copy of the Department of Energy's letter which was addressed to me dated November 26th, 1982?

MR. HOVIS: I have the one December 19, and incidentally, that November 19th --

CHAIRMAN WOLF: -- I'm asking you about the letter

1 dated November 26th?

2 MR. HOVIS: No, I have not received it.

3 CHAIRMAN WOLF: That has a statement, a limited
4 appearance statement from the Department of Energy.

5 MR. HOVIS: Yes, I had received it. I thought it
6 was from the applicant, yes, I received that. I've had
7 an opportunity to review that, Your Honor.

8 CHAIRMAN WOLF: Are you going to want to file
9 a written statement in response to that?

10 MR. HOVIS: Yes, and I thought you would give
11 me ten days in which to do that, Your Honor.

12 CHAIRMAN WOLF: I thought we had to, and from your
13 comments this morning, I d.in't understand that you had
14 gotten it.

15 MR. HOVIS: I'd gotten theirs, and I can tell you
16 the date I received it. That's the first time I heard
17 about the October 29th Order.

18 MR. THOMSEN: Judge Wolf? Since that statement
19 by the -- has come up, I'd like to take this opportunity
20 if I might, to introduce Mr. Fitz, Clyde Fitz, Attorney
21 for the Department of Energy who is here this morning in
22 regard to the limited statement. You will see he is one
23 of the attorneys who signed this statement.

24 MR. HOVIS: I think it would be a little con-
25 fusing, on the December 1 response date, that's a request

1 by the Board Order, not responding to the Department of
2 Energy.

3 CHAIRMAN WOLF: You can have the ten days for that, Mr.
4 Hovis, or if you want more time, if you can't get enough
5 in ten days, if you will advise me we will give you more
6 time. Actually, this will be made a part of the record.
7 When we get on the record at the regular hearing, and when
8 we accept the limited appearances, orally limited appearances
9 by the public at that time, so there's really no great
10 rush on it, but I think you should want to respond.

11 MR. HOVIS: So we don't get a lot of papers, Judge
12 Wolf, I think that the question here raises the same
13 which Ted raises in his brief over here, the applicant,
14 and I think I can respond to both of them within the ten
15 days. If I'm not able to do it, well, I will ask you for
16 more additional time, Judge.

17 CHAIRMAN WOLF: Yes.

18 MR. DEWEY: I have a comment on this. We did
19 want to make some comments with respect to Contention Four
20 and the comment had to do with the comments made in the
21 statement. I can wait until we are talking about the con-
22 tentions and then I'll talk about that.

23 CHAIRMAN WOLF: Can you do that?

24 MR. DEWEY: I do want to make comments, and he
25 may want to respond.

1 CHAIRMAN WOLF: I'm going to suggest right now
2 that we adjourn for lunch and come back in about an hour
3 and a half which would be 1:30.

4 MR. THOMSEN: Judge, before we break, I'm sure you
5 did not get our brief because I mailed it yesterday, and
6 I have it here and I would like to pass it out in case
7 you wanted it to have it before the break, and then I'll
8 pass it out.

9 MR. THATCHER: Judge Wolf, I would speak on my be-
10 half and I don't know about some of the others who drove
11 here today that I would be willing to take at least an
12 hour rather than an hour and a half in order to expedite
13 this matter for lunch if that would be convenient with
14 you. Otherwise, I would take the hour and a half that
15 you recommend.

16 CHAIRMAN WOLF: If it would suit your convenience
17 we'd be glad to limit it to an hour.

18 MR. THATCHER: That would be much easier.

19 MR. CAVANAGH: I'll join in that request.

20 CHAIRMAN WOLF: We'll come back at 1:00 o'clock
21 instead of 1:30.

22 (Hearing recessed at 12:05 p.m.)
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AFTERNOON SESSION

1
2 CHAIRMAN WOLF: On the record. Mr. Cavanagh,
3 you said you had a statement you wanted to make about
4 witnesses in connection with the need for power. Would
5 you make it at this time? As we understand it, you may
6 have to leave before the close of the session. Please
7 feel free to do so now.

8 MR. CAVANAGH: I appreciate the accommodation.

9 As the Board knows, and as we informed the
10 applicant in our response to this first Discovery Request,
11 the NRDC intends to offer a witness on the need for power
12 proceedings as soon as they occur who will testify,
13 a senior staff scientist, Dr. David Goldstein, and his
14 credentials and qualifications have already been presented
15 to the Board.

16 CHAIRMAN WOLF: What staff is he on?

17 MR. CAVANAGH: National Research Defense Council;
18 he's a senior scientist.

19 Also, on the question of additional witnesses
20 on the need for power, it struck me, and I think the other
21 interveners are in agreement, that this is an area where
22 the dispositive issues in the contention of one as framed
23 by the Board involve independent forecasts prepared by
24 State and government agencies. The people involved in
25 preparing those forecasts are therefore, in our view,

1 crucial to your decision on the need for power question
2 and they are not partisan witnesses. Their work was not
3 done under contract or under any influence from any of
4 the positives of this proceedings. In our view it would
5 be inappropriate or likely impossible for NRDC or any
6 other intervener to sponsor them as witnesses, again
7 these are not partisan witnesses but government officials
8 involved in the preparation of the independent forecasts
9 that are at the heart of Contention One, and that under
10 this Board, precedence must be deferred to on the need
11 for power question. The proposal that we want to put to
12 the Board today and the one that we made again in our
13 latest discovery response is that the Board consider calling
14 as its own witnesses the individuals primarily responsible
15 for preparing the four key independent forecasts that
16 really have been raised by all the parties as the core
17 documents underlying Contention One and underlying the
18 whole question of the need for power.

19 Now those four documents are the Washington
20 State Forecast Regional Electricity Needs commissioned
21 by the State legislature in 1981 and the Bonneville
22 Power Administration Forecast of Regional Electricity
23 Needs published in July of 1982 and the Twenty Year
24 Regional Power Plan mandated by the Northwest Power Act
25 which we've heard a lot about this morning, and fourth

1 and finally, the California State Forecast of Electricity
2 Needs which addresses the contingents admitted in this
3 proceedings and the question of sales of the Skagit/Hanford
4 output to California.

5 What I have prepared is a list of those documents
6 and the individuals who were primarily involved in their
7 preparation which I will be glad to submit to the Board
8 at this time and to the applicant. I would hope that in
9 discussions with the NRC staff and the applicant and the
10 Board, some agreement could be reached which would be
11 helpful to you. One individual associated with each
12 of those forecasts could be called by the Board as its
13 witness during the need for power proceedings.

14 We strongly feel that it is crucial for you to
15 hear from these people and take this opportunity to
16 bring them to your attention along with the reports that they
17 have prepared.

18 CHAIRMAN WOLF: Thank you. We'll take your
19 statement under advisement. If you have a roll, you
20 might give it to the reporter to combine in the record.

21 MR. CAVANAGH: I'll do that Judge.

22 (Statement of Mr. Cavanagh follows:)

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25

Date: December 2, 1982

Key Government Documents and Witnesses: Skagit/Hanford Proceeding

1. Washington State forecast of regional electricity needs: Washington Energy Research Center/Washington State University, Final Report to the Washington State Legislature: Independent Review of WNP-4 and 5 (March 1982)

Study directors: George Hinman, Walter Butcher (Washington State University, Pullman)

2. BPA forecast of regional electricity needs: Forecasts of Electricity Consumption in the Pacific Northwest (July 1982)

Head of BPA forecasting section: Terry Esvelt (Portland office)

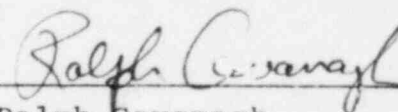
3. Twenty-year plan mandated by Pacific Northwest Electric Power Planning and Conservation Act (Pub. L. No. 96-501): Northwest Power Planning Council, Conservation and Electric Power Plan (forthcoming: draft scheduled for January 1983, final version scheduled for April 1983)

Resources and conservation staff: Thomas Foley, Thomas Eckman (Northwest Power Planning Council, Portland office)

4. California state forecast of electricity needs: California Energy Commission, Fourth Biennial Report (forthcoming: final version will be released by January 1983)

California Energy Commission experts on inter-regional power transfers: Gary Simon, Daniel Meek (Sacramento)

Respectfully submitted,



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1 I want to mention to you and staff that there
2 is, of course, clear precedence for the NRC calling its
3 own witnesses on need for power issues in licensing
4 proceedings. I refer the Board and staff to the Consumers
5 Power Company case, Midland Plant Units 1 and 2, cited
6 ALAB-3825NRC603, 1977 Appeal Board decision which made
7 it clear that this Board is free to call witnesses on its
8 own where it finds a general need for their testimony and
9 in the statement that I think is particularly relevant here,
10 "In a close case involving a key safety or environmental
11 issue, we are confident that the Commission does not
12 proceed with this mission as required for the protection
13 of the public at the expense of its search for truth."

14 So there is no question of the Commission's
15 authority to do this. It's at its discretion to call its
16 own witnesses and in this case, in our view, there's a
17 particularly compelling occasion for doing it, Judge,
18 because it is our belief, and we know in three of the
19 four cases it's true, that these independent forecasts will
20 show no need for power from these facilities. They will
21 directly contradict the forecast put forward by the
22 applicant as to the Regional Plan and its need at this
23 point. But it is hard to imagine a more probative or
24 more impartial source on the need for power question.

25 Thank you, Judge Wolf.

1 CHAIRMAN WOLF: Thank you.

2 Mr. Dewey?

3 MR. DEWEY: If the Board will allow, I would
4 like to direct one question to Mr. Cavanagh regarding
5 the Board calling witnesses. I would like to ask
6 Mr. Cavanagh if his organization cannot afford to call
7 these witnesses as your own people.

8 MR. CAVANAGH: Well, Mr. Hovis has already
9 explained rather eloquently the situation all of the
10 interveners are in. I am already past the limits of my
11 budget for this proceedings and have no real hope of the
12 situation significantly improving. So there is a
13 substantial resource problem as far as I am concerned
14 but I think even more important, Judge, I don't believe
15 these people ought to be partisan witnesses. Even if I
16 somehow could afford to call them, which I at this point
17 cannot, even if we got their consent to appear as an
18 NRDC witness, which I have no reason to think they
19 could, I still think that these people shouldn't be
20 cast as advocates for one side or the other in this
21 proceedings. They are the authors of independent state
22 and federal forecasts that again this Board's precedence
23 has reference to and I urge it shouldn't be any responsibility
24 of any of the parties to bring them before you. You should
25 bring them in yourself.

1 CHAIRMAN WOLF: Thank you, Mr. Cavanagh.

2 I take it there are no more questions about
3 the schedule at this time.

4 We ended on the note that there are no more
5 questions and just to make sure, I thought I would ask
6 again.

7 MR. MAJKUT: I do have a question. In spite
8 of the discussion we had this morning, I still don't
9 understand what impact procedures will have upon the
10 joint hearing portion of the case. I have received from
11 Mr. Peeples, Darrel Peeples from EFSEC a copy of the
12 contentions he's attempted to outline, contentions that
13 EFSEC sees in the case. As you know, we use an environmental
14 impact statement outline, so to speak, to help us pin down
15 what the issues are.

16 Now the key issues for the Fish and Game Depart-
17 ment of the State of Washington as to aquatic impact
18 seems to be involved in joint issues, as far as
19 Mr. Peeples's decision and I assume that you, yourselves,
20 and EFSEC, that being the case, I need to understand what
21 kind of procedure I will be going through.

22 One, will I need to intervene in your proceedings
23 or two, if not, will I still need to participate in your
24 suggested outline of contentions and response to
25 contentions, etc.?

1 We did use--and have used other procedures in
2 state proceedings in the past. I don't understand if
3 that question was answered.

4 CHAIRMAN LEWIS: One more time, Mr. Majkut,
5 your obligation is to the Energy Facility Site Evaluation
6 Council, not to the NRC, and there's no need to intervene
7 in those proceedings. There is no need to outline
8 contentions for the NRC. You will be certainly asked by
9 the Council to outline the issues to be presented in the
10 Council's proceedings. You are very likely correct that
11 those issues will be held jointly and heard jointly in
12 which case both parties appearing before the State and
13 parties appearing before the Federal government will be
14 participating jointly. So you need do nothing more than
15 what you've already done, in order to represent the
16 concerns and deal with the issues that you are concerned
17 about.

18 MR. MAJKUT: Does that mean that we don't
19 follow the scheduled procedure unless the state agency,
20 EFSEC decides to follow that procedure?

21 CHAIRMAN LEWIS: I anticipate there will emerge
22 from this prehearing conference a joint order, as it were,
23 on schedule, issued jointly by the NRC and the Board and
24 Council, pertaining to the schedule for joint hearings, and
25 that will take into account your needs as well as the needs

1 of the parties in the federal procedure and we will make
2 sure that everybody understands all the words that are
3 there.

4 MR. MAJKUT: I guess the final question I have
5 is does that mean that the state proceedings, separate
6 and apart from what you just said, will involve this
7 contention process? I'm not talking about different
8 hearings, I'm saying in the same hearing are we going
9 through this process where our state hearing issue--
10 as you know, in our order here we used a different process
11 to identify the issues.

12 CHAIRMAN LEWIS: I will speak to that point in
13 just a moment. We have changed policy in that regard,
14 talking about that.

15 MR. MAJKUT: Thank you.

16 CHAIRMAN WOLF: I'd like to turn next to the
17 contentions that were contained in the memorandum and order
18 of the Board dated November 2nd, 1982. I assume that
19 everyone has a copy of that.

20 First, before going through each of the contentions,
21 I would like to ask Judge Linenberger to explain the
22 changes in the contentions that we find are necessary at
23 this time.

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1 JUDGE LINENBERGER: I think I'm responsible a
2 little bit for it on this, a little bit of confusion here
3 with reference to the 2 November memorandum and order
4 listing them as accepting contentions. I should like to
5 note that Contention 10 on Page 3 of that order which
6 had come in originally as Coalition Contention 26,
7 was dismissed under Summary Judgment procedure in the
8 Board's Order of September 16, 1982, and should not have
9 been included in that list. So far as to the November
10 list, goes through 12 contentions, 13 contentions. There
11 should have only been 12.

12 Now the second bit of contention that has crept
13 in is that in the Board's Order of November 5th, 1982,
14 pertaining to the Columbia River Intertribal Fish Com-
15 mission, Petition to Intervene, and contentions associated
16 therewith, at Page 3 of that Order, we indicated that a
17 portion of the Intertribal Fish Commission's Contention
18 5 should be admitted at this time, I've reworded that
19 slightly. And then we went on to indicate that that be-
20 came accepted Contention No. 11. That is in error;
21 there were rightly 12 contentions in No. 2 order; this is
22 a 13th one, so we now have before us as of this time, 13
23 accepted contentions.

24 CHAIRMAN WOLF: Since everyone has this list of
25 contentions as modified now earlier by the Board, before

1 then, are there any special comments that anyone wishes to
2 make at this time, any contentions that are still accepted?

3 MS. BELL: Nina Bell. I'm from the Coalition for
4 Safe Power. Are you changing the numbers on 11,12 and 13?

5 CHAIRMAN WOLF: We will change all of the numbers
6 when we issue as we stated in some of these documents,
7 we're going to issue a final listing of the accepted con-
8 tentions. At that time we will change the numbers.

9 Mr. Hovis?

10 MR. HOVIS: By your leave, Judge Linenberger, I
11 didn't understand your taking 10 out and you will have
12 12 contentions as they are now?

13 JUDGE LINENBERGER: That is correct. The first
14 order listed 13 contentions, one of that number 10 should
15 not have been included; that would have then reduced the
16 list to 12 in number. Then there was one more added of
17 the Intertribal Fish Commission which then becomes the
18 13th one.

19 MR. HOVIS: That's the thing that confused me.

20 JUDGE LINENBERGER: We will straighten that out
21 in the conference order.

22 MR. THOMSEN: I'm Ted Thomsen from the applicants,
23 and I had two suggestions concerning the contentions. The
24 first relates to number Four and also to the one now
25 designated as 13, which is No. Four, relates to the Yakima

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1 Indian Nation, and the newly designated Number 13. It's
2 the same contention that related to the Columbia River
3 Intertribal Fish Commission, and my suggestion so far
4 is simply since those two contentions are identical except
5 that one refers to the Yakima Indian Nation, and the other
6 refers to the other three tribes, that is a matter of
7 saving us some duplication, and possible confusion in the
8 future as the proceeding goes on. Then we have Findings
9 of Fact and so on, I have a thought for combining those
10 two, just making it one contention, that would be this:
11 Have the contention read, I'm looking at Number Four now
12 which says, "Rights of the Yakima Indian Nation", that
13 instead it should say, "Rights of the four Indian tribes",
14 and you might wish to name them, Yakima plus the other
15 three. What the Fish Commissioner presents, and then
16 refer it to the Board's sight that we don't want the Yakima
17 represented twice. Simply designate the lead part of it,
18 the lead party for the aquatic effects of the Yakima Indian
19 Nation, that is their -- well, the Columbia River Fish
20 Commission, I'm sorry -- for aquatic effects -- that the
21 Yakima Indian Nation be deleted, and the rest, and that
22 would divide that pie -- you would have one contention.
23 I think you would certainly achieve the same results that
24 the Board intends. Anyway, I pass that out as my first
25 suggestion. That if they really designated 13, it's not

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1 deleted but instead before of four, be extended to refer
 2 to the four tribes and then designate the Columbia River
 3 Fish Commission as the lead party for aquatic effects,
 4 to satisfy their area of expertise, and then we would
 5 present all four tribes including the Yakimas on that
 6 subject as the basis on which they are admitted. And then
 7 designate by Indian Nation on **terrestrial** effects because
 8 they do have some contentions on their community, the
 9 Yakima Indians.

10 My second suggestion relates to Number Seven in
 11 the Board's Order, on recognizing that Seven as stated
 12 there is the National Wildlife Federation contention Four,
 13 and it is also the Yakima Indian Nation as the first sen-
 14 tence of contention Number Five which in the order dealing
 15 with the Yakima contention which has occurred, and also
 16 the first sentence of the Columbia River Intertribal Fishing
 17 Commission's contention Five which was deferred, and which
 18 effected the National Wildlife Federation in their July
 19 order that had been deferred, and since it is now admitted,
 20 and I would think and would make it clear that this also
 21 represents the first sentence of the Yakima Indian Five,
 22 and the Columbia River Fish Commission Five, so it seems
 23 to be adding here to the reference that this is NWF Four,
 24 and it is also the Yakima Indian Nation, 5-1, also the
 25 Columbia River Fish Commission 5-1; let it be a matter of

1 designating the lead party, and since in their supplemental
2 positions, both the Yakima Indian Nation and the Columbia
3 River Intertribal Fish Commission, since they were simply
4 incorporated with the National Wildlife Federations, con-
5 tention Four. The NWF would be a -- the appropriate
6 leading agency for that. I was a little puzzled by what
7 the future of these deferred sentences as to the Indian
8 Nations, and then it would be clear what we're talking about
9 and I assure just the Yakimas and the Fish Commission
10 people have incorporated and adopted the National Wildlife
11 Federation's contention on the basis that it would then be
12 clear that they're adopting the basis as spelled out in
13 NWF's supplement to its petition, identified as base to
14 this contention. The contention as phrased is quite
15 broad, but the basis makes it clear what they're driving
16 at. That's my second suggestion, and those are the only
17 suggestions that the applicants have on the contentions.

18 CHAIRMAN WOLF: Thank you, Mr. Thomsen. Any
19 other comments? Mr. Hovis?

20 MR. HOVIS: Yes, the staff has.

21 MR. DEWEY: Yes, we do note that several other
22 contentions such as contention Two, either 12 or 13, of
23 the Board's November 2 list of contentions, were fairly
24 broad in scope, and we realize those contentions are legal
25 leading to the basis which have been listed by the intervenors

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1 with respect to those contentions. There's also been some
2 discovery of the Interrogatories which have limited the
3 scope of the contentions. So on that basis, we don't think
4 it will be necessary to limit the contentions a little
5 bit more on the basis that they are limited by the basis
6 which was listed by the Interrogatories. I did want to
7 make a comment which was general in scope.

8 JUDGE LINENBERGER: Mr. Dewey, now maybe it's the
9 acoustics, I'm not really sure I understood what you were
10 saying here. Were you saying that contrary to the breadth
11 of the scope is -- represented by the listing and the wording
12 in the Board's Order contrary to that is the discovery
13 and basis has defined a narrower scope, and you feel that
14 that narrower scope should prevail and is adequate to de-
15 fine the scope? You don't see the need for any further
16 rewording of the contentions?

17 MR. DEWEY: Yes, sir.

18 JUDGE LINENBERGER: Thank you.

19 MR. DEWEY: The second point --

20 CHAIRMAN WOLF: Would you repeat again, was it
21 three contentions you mentioned?

22 MR. DEWEY: There were four contentions. Con-
23 tention Two and contention Eight, contention 12 and con-
24 tention 13. We felt were rather broad in scope, and since
25 they would be limited in a way that I have described, if

1 the staff is satisfied with the wording.

2 CHAIRMAN WOLF: Would you proceed?

3 MR. LOTHROP: I just looked over the memorandum
4 and order admitting the Intertribal Fish Commission and
5 its contentions that is the November 6th order, and its
6 contentions, I didn't see anything within that order that
7 would limit it -- limit our contentions to the basis that
8 was stated. Maybe I missed something, on the contentions,
9 I'm just not clear. If that is your intention, or if that
10 is Mr. Dewey's intention as he requested at this point.

11 MR. THATCHER: From the National Wildlife Federation
12 Two of these contentions, I don't know if Seven is included
13 here, but Number Two is the National Wildlife Federation
14 need for contention, and it was true that there were cer-
15 tain limited basis announced in our supplement, that is,
16 we listed those factors and we already discovered that we
17 felt would be appropriate and had led us to believe and
18 provided the basis for that contention. It doesn't mean
19 I hope, Mr. Dewey is not saying that it means that we are
20 somewhat limited in the presentation of financial data
21 and evidence at this hearing, to the three pieces that we
22 included in our basis in this initial pleading that indi-
23 cated that we have found this and we intend to find more.
24 We intend if necessary, to put on witnesses. This week
25 we filed a discovery of the applicant with respect to this

1 contention, and if material from that discovery requests
2 it appropriate, I think that the Board, is relevant to that
3 contention, the Board would want to hear it so I guess all
4 of us would like some clarifications whether we can in fact
5 bring in evidence as not exactly listed in the basis, and
6 the initial pleading. I should certainly think that would
7 be the case.

8 JUDGE LINENBERGER: Now let's make sure we're on
9 the same wave length here. One thing that did occur with
10 respect to this contention Two was the Board's deletion
11 of the environmental costs aspect.

12 MR. THATCHER: I was hoping to speak to that.

13 JUDGE LINENBERGER: I wonder if that was being
14 specifically being addressed to the comment you just made?

15 MR. THATCHER: I was not speaking to that issue,
16 but I wish to do so. What I was talking about was the
17 fact that we listed certain documents that we had discovered
18 through informal means up to the point of filing the con-
19 tentions and bases which happened last May, or April, and
20 that certainly seemed too inappropriate for us and we
21 should be limited on the question of financial cost and
22 I suspect that the Columbia River Intertribal Fish Com-
23 mission feel the same way with respect to certain environ-
24 mental matters, and should be limited specifically to the
25 evidence, as it were, that was on that basis, on those bases.

1 We have certain questions about the financial costs and
2 calculations of this plan, and the environmental calculations
3 with respect to this plan. And insofar as we discovered
4 evidence before the hearing, we expect that we should be
5 permitted to put on that evidence.

6 MR. DEWEY: I'd like to make one comment as far as
7 the type of evidence that might not be the problem. Let
8 me give you an example. On the first paragraph on the
9 NWFO you see contention Three, they do set forth particular
10 points with regard to the contention. It would seem to me
11 that the National Wildlife should be limited to those
12 points because in order for the other parties to address
13 them, there has to be some specificity.

14 MR. THATCHER: Which kinds of points are you
15 talking about?

16 MR. DEWEY: Well, let me look at your pleading
17 and I can give it to you.

18 JUDGE LINENBERGER: Mr. Dewey was just talking
19 about contention Three. Was that listed in the envelope
20 of your prior one?

21 MR. DEWEY: Yes, that's the Board's contention
22 to its NWF, National Wildlife's contention Three, I'm
23 sorry, I confused you on that. Okay, this is the National
24 Wildlife's second supplement to intervene data, May 21st,
25 and on Page 2, they have for their contention Three, three

1 paragraphs, Paragraph A, B, C and D. A pertains for
2 example, to the applicant, and as soon as somebody pre-
3 sents plant capacity figures, and paragraph B, it pertains
4 to applicants have not included decommissioned costs on
5 the project cost calculation, and C is the applicants
6 have assumed the cost of money for planning the scheduling
7 problem 10.67, and D is the total cost figures are low
8 compared to other plants owned by the applicants. It
9 seems to me that these are the areas which the contentions
10 should be limited to, for purposes of going forward
11 and obtaining testimony in these proceedings and establishing
12 the contention.

13 CHAIRMAN WOLF: What is your response?

14 MR. THATCHER: My response as I understand the
15 procedure is that if my discovery uncovers other reasons
16 to believe that the applicant has used an accurately low
17 estimate of the financial costs on the project, I should
18 be able to present that evidence. Otherwise, the dis-
19 covery seems to me to be --

20 CHAIRMAN WOLF: I think you have the right but
21 I think maybe you'll have to modify your contention some-
22 what to show that you're going to bring that evidence
23 in.

24 MR. THATCHER: I'd be more than happy to do that,
25 maybe the discovery indicates there is no other basis, and

1 we're certainly not trying to assume any other basis.

2 CHAIRMAN WOLF: And you must apprise the other
3 parties which you're going to present. I think it's
4 necessary to do that.

5 MR. THATCHER: That seems perfectly fair to me.

6 MS. BELL: As far as Mr. Dewey's comments refer
7 to three of our contentions, I would say the same thing,
8 that basically in preparing that contention we listed
9 bases to support the contention but not to say that we
10 would be limited to those issues, and if our parties wanted
11 us to specify to any of the contentions before specificity,
12 we would agree to that. Well, we would object to the idea
13 that we would be limited right now on the bases that we
14 presented, some of which the Board apparently didn't like
15 anyway, and some of which the Board felt reasonable to
16 consolidate in these more general contentions.

17 CHAIRMAN WOLF: If your discovery has unearthed
18 other or additional bases, then I think you have to apprise
19 the Board and other parties what your new bases are.

20 MR. THATCHER: Certainly, that would be prior to
21 any hearing in which any of those arguments would be made.

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1 MR. THOMSEN: Judge Wolf?

2 CHAIRMAN WOLF: Let me finish. At that point
3 if you do wish to stand on an additional basis then you
4 can file a petition to amend, all right?

5 MR. BELL: I have a question. I don't have your
6 order specifically, and there are contentions in front of
7 me, but, for example you take ten contentions that are
8 related and some are on environmental issues. You didn't
9 accept any of those but you rewrote a general one that
10 covered all those issues. Are those going to be considered
11 as bases?

12 CHAIRMAN WOLF: I'd have to look at it too to
13 tell you that. It seems to me that the basis for the
14 ones that we eliminated, didn't accept, wouldn't be the
15 basis for the new one unless there was a direct tie in to
16 it in some way.

17 MR. BELL: I guess all I can say is that it
18 wasn't clear to me which ones you consolidated and which
19 ones you didn't accept. I don't think we want to expand
20 the scope of our issues but we're not clear which ones
21 you have read in the first place.

22 CHAIRMAN WOLF: We will take a look at it and
23 advise you.

24 MR. THOMSEN: I simply want to remind the Board
25 and the parties that in addition to the basis stated, the

1 applicant has conducted its first round of discovery
2 against three of the interviewers. We asked them specifi-
3 cally what the basis for Contentions 1, 2 and 3, etc. were
4 and received answers, generally saying, "Our only basis
5 are those in our petition , and we are relying on those
6 answers in preparing our case."

7 CHAIRMAN WOLF: If they come back and tell you
8 that's their basis, that's right.

9 MR. CAVANAGH: To clarify, Judge, the one who
10 prepared that response was Mr. Thomsen and we got an
11 identical one back from him. I might add that all parties
12 have the right of additional evidence.

13 CHAIRMAN WOLF: In addition to reserving it,
14 you have to take some action if you discover any basis,
15 additional basis.

16 MR. CAVANAGH: I believe the rules provide for
17 that in fact.

18 MR. MAJKUT: I'm from the Department of Fish
19 and Game. The reason for my concern expressed this morning,
20 magnified by the discussion we just had, and I've reviewed
21 the Memorandum of Order of November 2nd just as we discussed
22 it here today and I can tell you now that it's not co-
23 extensive with the issues that were presented in the
24 state proceedings. For example, due to the mitigated
25 enhancement for the state permit and under federal law

1 the Fish and Wildlife Coordination Act is not addressed
2 here. The closest they get here is where they're talking
3 in Number 7 about the applicants having failed to assess
4 environmental impact. That, of course, doesn't address
5 or mitigate the enhancement proposal.

6 I assume that this does not limit the evidence,
7 whatever procedure is decided on, the joint procedure for
8 joint issues, this will not limit the presentation of
9 evidence by my clients on the issues as we perceive them
10 in the EFSEC proceeding portion of this joint hearing.

11 CHAIRMAN WOLF: I think you'll have to take that
12 up with the chairman of EFSEC.

13 CHAIRMAN LEWIS: My response is that you're
14 absolutely right. My understanding of the joint hearing
15 protocol is that the federal government with its parties
16 will bring its issues to the joint hearing and the state
17 government with its parties will bring its issues and they
18 both will be heard. I will describe that process in a
19 moment.

20 MR. MAJKUT: Thank you

21 CHAIRMAN WOLF: Mr. Hovis?

22 MR. HOVIS: Thank you, Judge Wolf.

23 I would like to take a moment to comment on
24 Mr. Thomsen's suggestions with regard to form. At first
25 blush, when you first look at it it's a good suggestion,

1 but I think if you go a little deeper that you will
2 realize that it is not one that should be done,
3 basically because we're talking about two different things.
4 We're talking about different types of treaties.

5 The Nezperce, the Oregon tribes, and the Yakima
6 Indian Nation have different treaties and particularly in
7 Article 8, which is a very important difference; they are
8 two different treaties. So to try to lump them all
9 together, I think, would be confusing. The fact of the
10 matter is that eight different Oregon tribes whose treaty
11 was executed on the same day and also ratified on the same
12 day, the Tribes of Middle Oregon, provided that they would
13 be bound by the laws and regulations of the United States.
14 The Yakima Treaty, in Article 8, did not make any such
15 provision.

16 Of course, in the interpretation of statutory
17 language, Judge Wolf, you are familiar with--one thing
18 you said the same statute is passed one day involving
19 parties and is left out of the other one, the assumption
20 is, the rebuttal presumption is that it was meant to be
21 left out and that the Yakima Nation is not bound by the
22 laws and regulations of the United States and therefore
23 the plenary power of Congress will not involve them
24 either in the licensing provisions or any obligations of
25 the treaty, rights that exist within the reservation.

1 That's a very important point in these administrative
2 hearings and also any additional proceedings that
3 evolve after these administrative proceedings.

4 I think that that is going to be an important point and
5 I think to lump them together would be an large
6 mistake and it would be confusing to the Board.

7 I am much obliged for Mr. Thomsen's suggestion
8 to shorten things up. It looks like a good one. I
9 think in the end it would be conducive to the Board to
10 so provide.

11 CHAIRMAN WOLF: Thank you and, Mr. Hovis, I
12 have a question for you.

13 I have some qualms about the fact that the
14 Yakima Indian Nation is one of the four nations that is
15 represented in the Intertribal Fish Council, the Columbia
16 River Intertribal Fish Council, and the fact that the
17 Yakima Indians are in here on their own behalf as an
18 individual body, how do we square that with the usual
19 concept, with the right to only be represented at a
20 proceeding in your own capacity?

21 MR. HOVIS: I think it's easily reconcilable.
22 The Commission, the Tribal Fish Commission, has very
23 limited circumstances. It's not a government but they
24 are a group of tribal--well, they have certain--

25 CHAIRMAN WOLF: I don't think that goes to the

1 point.

2 MR. HOVIS: Well it's just like the State of
3 Washington may be represented in several capacities before
4 this Board. One is the State of Washington--

5 CHAIRMAN WOLF: What part of the Yakima Nation
6 is being represented by the Fish Commission?

7 MR. HOVIS: No part of the Yakima Nation is
8 represented by the Fish Commission.

9 CHAIRMAN WOLF: Then what are they representing
10 in regard to the Yakima Nation?

11 MR. HOVIS: They are representing a branch of
12 the Fish Council; they're representing, they have a fish
13 committee and they have a group there together in that
14 regard, they are in that particular area that they are
15 representing that fish committee.

16 CHAIRMAN WOLF: And are you representing the
17 Yakima Indian Nation, not going to take part in any of
18 the evidence that deals with the fish problem in this
19 case?

20 MR. HOVIS: I'm going to take part in all the
21 evidence that deals with the fish problem, presenting
22 my own evidence in that regard.

23 CHAIRMAN WOLF: Then the Yakimas are going to
24 be taking part twice concerning fish matters, is that
25 it?

1 it.

2 MR. HOVIS: I think we will coordinate to be
3 able to shorten things up so we won't burden the
4 Commission with the problem.

5 CHAIRMAN WOLF: I don't think that helps,
6 Mr. Hovis.

7 MR. LOTHROP: May I speak to help clarify this?

8 CHAIRMAN WOLF: Just a moment and then you may.
9 I would like a little more answer from you than that,
10 Mr. Hovis.

11 MR. HOVIS: What better answer can I give you?

12 CHAIRMAN WOLF: I don't know unless you know
13 a better answer.

14 MR. HOVIS: I'm representing the government of
15 the Yakima Indian Nation. Mr. Lothrop is representing
16 the Columbia River Fish Commission which has some particular
17 interests and some particular duties in regard to the
18 management of the fisheries on the Columbia River. The
19 basic rights reside, with regards to the basic rights
20 that are involved, reside in the governments of these
21 various tribes.

22 CHAIRMAN WOLF: That's what I thought too.

23 MR. HOVIS: But they have some particular
24 management duties and considerations that are involved
25 down there on the Columbia River that they work at

1 collectively in regards to the information and some of
2 the enforcement and some of these other problems to
3 enhance the fishery. They are also funded by the
4 federal government to assist in that area but we are
5 not funded by the federal government to assist in that
6 area.

7 MR. LOTHROP: What I would suggest, your Honor,
8 is possibly a number of things. I think our situation
9 is somewhat different than the Yakimas in being some sort
10 of an interest. We are chartered to represent the concensus
11 position of the four tribes, at least as represented
12 in the official designation. There may be certain
13 situations where we are somewhat different than the
14 position of the Yakima Indian Nation with respect to a
15 matter which the Commission has no authority to deal with,
16 such as matters on the reservation.

17 As another point of clarification, in the
18 decision of the Licensing Appeals Board on the standing
19 of the Intertribal Fish Commission to participate in
20 this proceedings, the Appeals Board did cite the opinion
21 of the U.S. Supreme Court stating that "It is not uncommon
22 for both a trade association and several of its members
23 to participate as separate parties in a lawsuit."
24 That is in American Manufacturers vs. Donovan, 452-490.

25 I think as Mr. Hovis presented and as the Board

1 has characterized in rephrasing our contention in
2 Number 6, the Intertribal Fish Commission would be
3 willing to participate in close coordination with the
4 Yakimas but is representing a different entity. So, I
5 don't know the extent the Appeals Board has answered
6 this question, I think it is more a matter of handling
7 matters in the hearing rather than dispositive issue
8 reframing contentions.

9 CHAIRMAN WOLF: Any other comments on any of
10 the contentions?

11 MR. DEWEY: Yes. I was also going to give the
12 staff's position which is the Contention 4 and 13 of
13 the Board's November 2nd order.

14 As you know both of those contentions deal with
15 infringement upon existing treaty rights of the Yakima
16 Indian Nation and the other Indian Nations. Staff believes
17 that the clarification with respect to Contentions 4
18 and 13 are necessary since treaty rights should only include
19 fishing, not include hunting and gathering and pasturing
20 rights. We are in receipt of the Department of Energy
21 statement in this regard. The staff also believes that
22 gathering and pasturing and hunting rights should not be
23 part of this proceedings since in the past 40 years there
24 has never been any of these rights on the reservation,
25 on the Hanford Reservation, therefore there's nothing being

1 taken away that the intervener didn't have before.
2 If the interveners believe they have hunting and gathering
3 rights on the Hanford Reservation, they can go to a forum
4 such as the District Court and get their relief there.

5 The staff also points out the fact that the
6 Board has rejected the Contention 8 regarding Indian
7 treaty rights on the reservation. So in rejecting that
8 Contention 8 the interveners have not allowed to come in
9 through the backdoor Contentions 4 and 13 and should be
10 allowed to litigate treaty rights involving hunting,
11 gathering and pasturing in this proceedings.

12 As I said, the only treaty right which should
13 be in this proceeding is the fishing rights in the
14 Columbia River.

15 CHAIRMAN WOLF: When you said eight, you weren't
16 referring to eight in the Boards--

17 MR. DEWEY: No, the Indians' contention, the
18 Board is talking about the Indians' contention when the
19 Board did adopt the decision that the reservation had
20 some controversy as far as the Indian treaty rights were
21 concerned.

22 CHAIRMAN WOLF: Mr. Hovis, do you wish to
23 comment?

24 First, Mr. Hovis, is it your position that the
25 Yakima Indian Nation has the right to gather areas, use

1 the land of Hanford to gather, also use their horses
2 and cattle on?

3 MR. HOVIS: Yes, that's my contention.
4 When I have the opportunity to review that for you, your
5 Honor, I think I can address that.

6 CHAIRMAN WOLF: I just want to make sure that's
7 your contention.

8 MR. HOVIS: And, secondly, staff has made the
9 contention that those rights have not been exercised
10 for 40 years and that may be true, but the claim of right
11 to those things has always been made. It may be true that
12 we have an opportunity to try this in a judicial forum
13 but only after we have had the opportunity to exhaust
14 our administrative remedies. So must exhaust our
15 administrative remedies. If the contention is excluded
16 and I suppose there's nothing else we can do about
17 administrative remedies but to go into court. But it seems
18 like we should have six or seven different places to
19 try this particular matter and the Congress has indicated
20 that they would like this Commission to consider these
21 matters in granting an application, in granting the
22 license.

23 With regards to eight, Contention 8, I presume I
24 have ten days in which to reply to that since I just got
25 the order which was denied; I will reply to Contention 8

1 in depth but I do feel that the exclusion of that is
2 certainly an error and I would like to raise that
3 particular question with you again and to brief it for
4 you and to give you some reasons for my so feeling
5 in a better way than if I try to talk to you here about
6 it.

7 CHAIRMAN WOLF: You know you do have that time
8 to respond.

9 MR. HOVIS: Yes.

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1 MR. HOVIS: We're not just talking about
2 fishing rights, we're talking about hunting and gathering
3 and also I wish to respond on excluding the consideration
4 of the archeological sites. That's one of those real
5 prime archeological sites and they haven't made an adequate
6 survey in there before they're going to start their
7 construction and there's been no provision for it and
8 that's been excluded and I wish to bring that up.
9 And that is right within the federal law in regards to
10 the Department of Energy taking care of those types.
11 They can't exclude that, that consideration.

12 CHAIRMAN WOLF: Does that conclude your premise?

13 MR. HOVIS: Yes, that will be in writing.

14 MR. THATCHER: Terrence Thatcher for the
15 National Wildlife Federation. I did wish to respond to
16 one of Mr. Thomsen's contentions in response to Contention 7.

17 CHAIRMAN WOLF: Are you speaking of seven in
18 the Board's order?

19 MR. THATCHER: Yes, No. 7 in the Board's order.
20 As I understood Mr. Thomsen's suggestion, if my notes
21 serve me properly, he suggested that that contention,
22 that there be an indication that the Columbia River Inter-
23 tribal Fish Commission and the Yakima Tribe file similar
24 contentions. We've incorporated some of the National Wild-
25 life Federation's bases and the Marine Environmental Council

1 and I wish to point out that I have not had a chance to
2 confer with the other parties at length on this and it
3 would be easier if we did. The National Wildlife
4 Federation in its supplement to this petition to intervene
5 raised one primary basis with respect to the environmental
6 impact of this project which we intend to pursue and it
7 had to do with the impacts of the construction of a thermo-
8 nuclear power plant and its operation and hydro-peaking
9 operations or hydropower plants on the Columbia River
10 and we are prepared to delete part of that issue.

11 Nevertheless, the Yakimas and the Columbia River
12 Intertribal Fish Commission raised a whole series of
13 substantive bases for their contention that there were
14 inadequate environmental considerations and if my memory
15 serves me, that had a great deal to do with impingement
16 of fish, chemical constituents of effluent and, I'm sorry,
17 I don't have the petition here in front of me, but they had
18 a whole series of things that the National Wildlife
19 Conferation did not raise and quite frankly I think it
20 would be right for the National Wildlife Federation to
21 be a lead party on the very substantive issues which had
22 been raised only by other parties.

23 If the National Wildlife Federation is going to
24 be the lead party here, I would suggest that they be lead
25 party only on those issues related to hydro-peaking and

1 those issues regarding our bases and the other issues
2 that fit within the general grouping of Contention 7.

3 I simply do not wish my organization to be in
4 a position of trying to represent adequately issues which
5 we did not raise, that is the basis for a general issue
6 which we did not raise, and I think that I can coordinate
7 that with the Yakimas and the Columbia River Intertribal
8 Fish Commission--

9 CHAIRMAN WOLF: I don't think you said that,
10 you didn't raise the issue.

11 MR. THOMSEN: Judge Wolf, on this discussion
12 about No. 7, I thought I made it clear that that represented
13 the first sentence, the two Indian groups contention,
14 in which we simply adopted your bases as the hydro-peaking
15 issue and I didn't mean that you would be the lead agency
16 in all the environmental things.

17 In that very second sentence to which we come,
18 Contention 4 and Contention 13, in which they, of course,
19 would be the lead parties. Now 7, this confronts the
20 hydro-peaking thing and when you look at their petition
21 you will see that that's the case, in the first sentence.
22 Their bases is we adopt NWF and the second part goes on
23 with other environmental concerns. It might be a suggestion
24 that you would be lead agency for all the environmental
25 things.

1 MR. THATCHER: I don't want to even speak here
2 for the tribes and whether or not they believe their
3 specific contentions on environmental matters are covered
4 by these other contentions that relate specifically to
5 treaty rights or if they have some other environmental
6 issues that they thought were covered by their contention.
7 I won't speak to that.

8 MR. THOMSEN: However the Board wants to clarify
9 it but it should be understood that certainly it should be
10 clear to everyone that No. 7 relates to the hydro-peaking
11 issue that the NWF raised and the Indians simply said,
12 "Me too!" and I think the NWF is the lead on that contention.

13 MR. THATCHER: Well, if that's the case, it's
14 no problem.

15 CHAIRMAN WOLF: I thought that's what
16 Mr. Thomsen had said.

17 MR. THATCHER: I have another question to raise
18 and that's with respect to Contention No 2 in the Board's
19 order which came up--the original contention of the
20 applicant using a low estimate of the financial and
21 environmental cost of the project ratio, the cost-benefit
22 ratio and the Board took out the words, "and environmental"
23 with no explanation and we have now received an explanation
24 in the most recent order with respect to the Columbia
25 River Intertribal Fish--rather the Yakima Indian Nation

1 Order dated October 29, Footnote 2 on Page 2, which says,
2 "The Board excluded environmental costs because these
3 had not been addressed by NWF OEC in their discussion of
4 bases. The Yakima Indian Nation incorporates those bases
5 by referencing the environmental costs which had been
6 excluded from the Yakima Indian Nation contention."

7 I would suggest that the words "and environmental" should
8 be included again in this contention and I reviewed our
9 petition and our petition under that contention there
10 are five paragraphs, four of them numbered A through D
11 and relate to finances and the last paragraph, unlettered,
12 relates to environmental impacts and the environmental
13 impacts are indeed referred to with respect to
14 Contention 4 and that again relates to hydro-peaking.

15 The point of our contention was to say that
16 under the Board's or the Commission's rules there should
17 be an effort to calculate in a quantitative fashion the
18 costs of the project. A general discussion of hydro-
19 peaking in our Contention 4, now under the Board's
20 Contention 7, went to the failure to assess what the impacts
21 were in a general fashion but we believe that there is an
22 appropriate place here to consider the quantifiable
23 environmental costs of hydro-peaking and therefore we
24 request that the words, "and environmental" be included
25 in the contention.

1 Our understanding of the reason for the exclusion
2 was simply that we did in fact give a basis for that
3 which was hydro-peaking impact.

4 JUDGE LINENBERGER: Mr. Thatcher, insofar as
5 your comments relating to environmental costs are concerned,
6 we have heard you and we'll certainly look at this and
7 see whether we are close to our disposition or not but
8 we will ask you if you're in a position to say to any
9 extent whether your concern about environmental costs
10 is or is not assumed in the Exemption Convention 8.

11 MR. THATCHER: Your Honor, that would certainly
12 appear to be so. Is the identification of CSP Hearing
13 Case versus the OEC party in that matter?

14 JUDGE LINENBERGER: Yes.

15 MR. THATCHER: Could I consult just for a
16 moment?

17 (Brief discussion off the record.)

18 MR. DEWEY: While he's consulting, your Honor,
19 it's the staff's position that we are trying to narrow
20 and define these contentions, if we can. If I understand
21 correctly, if he hasn't used No. 8 as a basis, if that
22 hasn't been used as a basis, No. 8, well it wouldn't be
23 right for him to leave out No. 8 now unless he revises his
24 petition somewhat. Do you follow me?

25 We don't want to be so loose that people can say,

1 "This is part of something that's never been identified
2 before."

3 JUDGE LINENBERGER: I follow you but I don't
4 see how your comment addresses my question.

5 MR. THATCHER: It seems to me, your Honor, that
6 our general concern of environmental costs and quantifiable
7 environmental costs can fit within No. 8.

8 CSP is to be lead party on that and we will
9 cooperate with them I guess and it is my concern, quite
10 frankly, that we recently filed something which may have
11 some relation to all this and I wouldn't have my discovery
12 denied simply because I was put under the rubric of No. 8.

13 If I'm going to get responses to No.8 and provide
14 the Coalition for Safe Power, that's perfectly acceptable.

15 CHAIRMAN WOLF: Should we take your prior
16 comments ~~this is~~ in essence a request for reconsideration of
17 the Board for reinstatement of environmental costs in
18 your contention?

19 MR. THATCHER: Yes, you may do that.

20 JUDGE LINENBERGER: Thank you.

21 CHAIRMAN WOLF: I just want to say one or two
22 things here.

23 Yes?

24 MR. LOTHROP: I have not seen the October 29
25 memorandum regarding the Yakima Indian issue but what appears

1 to be happening is that the Intertribal Fish Commission
2 at least is being precluded from raising claims other
3 than treaty rights claims with respect to aquatic impacts,
4 particularly because of the exclusion and limitation
5 by the exclusion of certain language from the contention
6 and cost-benefit ratio, the distinction between the two
7 sentences of Contention 5, I think that the Intertribal
8 Fish Commission would like to be able to present both
9 with regard to assessment, quantification and the environ-
10 mental impact and the adequacy of both of those and the
11 amount as well as potential impacts and compliance with
12 treaty applications.

13 In essence I am restating some of what
14 Mr. Thatcher said with regard to the Board's memoranda
15 and orders.

16 MR. THATCHER: As I understand it as I read
17 the Columbia Intertribal Fish Commission contentions,
18 Mr. Thomsen has indicated that there were two sentences
19 here, one of which incorporated NWF and merely asserted
20 treaty rights and the contention itself is very broadly
21 worded. The contention says that environmental impact of
22 Skagit/Hanford Nuclear Power Project on the Columbia,
23 the resources have not been fully assessed and further,
24 environmental impacts do not infringe on Indian treaty
25 rights. It seems to me that that is the general contention

1 and the whole series of bases in this rather elaborate
2 document that the Columbia Intertribal Fish Commission
3 turned in, and go to those contentions, one related to
4 treaty rights and one related to general environmental
5 assessment and that is why I said my comment with regard
6 to Contention No. 7, on the Board's order that NWF would
7 be lead party in those issues relating to hydro-peaking
8 but I felt that the tribes in one way or another should be
9 lead party on non-hydro-peaking and fish and wildlife
10 issues and I think that that is what the petition is.
11 We certainly have some treaty rights here, we have
12 some other legal rights and I think they are all the bases
13 for this contention. That, I think, is where I disagree
14 with Mr. Thomsen's reading of the Columbia Intertribal Fish
15 Commission petition.

16 MS. BELL: I also add that it is further confused
17 by the fact that some of--the sentence in the Yakima
18 Indian Nation's Contention 5 is that the first sentence
19 that has been deferred for consideration, some of the bases
20 for that are identical in substance to the bases for our
21 Contention 14 which has been accepted as Board's Contention 8.
22 So on one hand you have the same bases with the same issue
23 being deferred for two different parties and that somewhat
24 confuses things and eventually--of course it would make
25 more sense for us not to duplicate the work that the

1 Yakima Indian Nation would do and vice versa on that
2 particular issue of--like health effects of radiation.

3 MR. THATCHER: Maybe we should clarify whether
4 in fact there is a deferral of any contention at this
5 time.

6 CHAIRMAN WOLF: Would you state that again?

7 MR. THATCHER: In the original order the
8 National Wildlife Federation petition and then again
9 on the acceptance of the Columbia River Intertribal
10 Fish Commission contingent, the Board indicated that
11 subsequent events might require change and therefore that
12 contention was deferred. Mr. Thomsen mentioned that
13 No. 7 appears here in a different form and it isn't clear
14 that it has been deferred, but it appears it has been
15 accepted. As Ms. Bell pointed out, some of her contentions
16 haven't been deferred which are the same as those which
17 have been deferred. It just simply--well, we're not quite
18 sure who's on first.

19 MR. THOMSEN: I think Mr. Hovis is right.
20 This is very similar to a common law pleading.

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1 CHAIRMAN WOLF: Mr. Dewey, you have with you
2 a memorandum and order dated October 29th which relates
3 to the supplement to the petition to intervene with the
4 Confederated Tribes and Bands of the Yakima Nation.

5 MR. DEWEY: I think so. Would you like to
6 borrow it?

7 CHAIRMAN WOLF: I have two accounts here.

8 MR. THATCHER: While he's looking for that, I'd
9 like to express on behalf of the National Wildlife
10 Federation, if the tribes do not object, that the
11 confusion that I seem to have raised by my question
12 could perhaps be clarified. I'm not sure we can clarify
13 it unless we sit down and actually list bases and
14 contentions, but if it would be possible, it seems to me,
15 for the parties, the affected parties, particularly the
16 tribes and National Wildlife Confederation, to file with
17 the Board the proposed order with clarification where we
18 would list what we understood our contentions and bases
19 were. What we believe these environmental contentions and
20 bases, for instance, mine would be quite simple, would
21 be hydropeaking, as an environmental contention. The tribes
22 would say, "these are our environmental contentions and
23 these are the bases that we attach" and simply propose that
24 to the Board and sort of clarify what seems to have
25 happened after these last few months of papers being filed,

1 just put all the paper in, match bases with contentions
2 and move forward on that basis.

3 CHAIRMAN WOLF: If you wish to do that, we will
4 accept that, within the next ten days.

5 MR. THATCHER: Thank you, your Honor, I hope
6 that we can clarify that.

7 CHAIRMAN WOLF: We think we can clarify it.

8 MR. THATCHER: Thank you.

9 CHAIRMAN WOLF: Mr. Dewey, on Page 5 of that
10 October 29th memorandum, paragraph 11, do you see that?

11 MR. DEWEY: Yes.

12 CHAIRMAN WOLF: Would you within the next 10 days
13 comment on that as to whether or not you feel staff is
14 required to take any action on behalf of the "treaty rights"
15 of the Yakima Indians.

16 MR. DEWEY: We have done that but I guess it
17 hasn't gotten through, you haven't received a copy yet.

18 CHAIRMAN WOLF: We haven't received it.

19 MR. DEWEY: Well, it's in the mail.

20 CHAIRMAN WOLF: Thank you.

21 MR. DEWEY: Yes, I'd like to make one clarification
22 with respect to that. The filing that we made on that
23 one Contention 11 that is we have cited the Appeal Board
24 case in the Skagit Decision in that memorandum and I
25 want to point out to the Board that the Commission later

1 vacated that order, 12 NRC 407, however, although that order
2 was vacated for other reasons, the legal precedence, we
3 will put that in our brief.

4 CHAIRMAN WOLF: Very well.

5 It appears we've gone through these pretty
6 well now and we will in due course get out a list of the
7 accepted contentions, modified to the extent that they
8 should be modified according to the arguments that have
9 been made here today.

10 At this time, I guess, the chairman will
11 take over, continue.

12 CHAIRMAN LEWIS: After the extensive discussion
13 by the NRC, I'd like to turn for a few minutes to the
14 matter of issues that may be presented in the State's
15 proceedings and to both identify for the parties of the
16 State proceedings the procedure that the Council will
17 follow and also to ask them for some assistance and to hear
18 whatever comment they may care to make.

19 First of all I would like to know if you're
20 not already mindful of it, the reason that the Council has
21 not yet dealt with the question of issues to be taken
22 up in these proceedings but that it has, as you may be
23 aware, pending before it, proposed regulatory amendments
24 which have been duly noticed in the State Register which
25 are to be heard by the Council on December 13, 1982 at

1 10:30 a.m. in this hearing room. Those mandatory
2 sections are WAC 463.32.60, 463.32.80 and 463.32.95. The
3 pertinent one in this instance however is WAC463.32.60
4 which requires by regulation the Council authority to
5 identify and define specific issues to be heard in
6 proceedings before it and provides for the issues of
7 pretrial order and the Council shall limit the scope of
8 the hearings to those issues that have been identified.

9 Now that regulation has not yet formally
10 been adopted but I would anticipate, based on my
11 experience with the Council, and the amount of work that's
12 gone into the proposed regulation, that unless we hear
13 something startling on Monday that would cause us to
14 defer, that regulation will be adopted. And should it
15 be adopted, and if it is adopted, it will be our intention
16 to proceed according to that regulation to request the
17 parties to identify for us those issues that they feel
18 should be properly brought before the Council, in general
19 those issues that they believe are appropriate to be
20 heard in the hearing.

21 In that regard, I would note for you that our
22 staff has already identified those matters the Council
23 may be interested in. As candidates for the joint hearing,
24 the entire key of the subject area to on-site and local
25 construction operations, physical impacts which relate to

1 the project, related environmental descriptions and
2 impacts for terrestrial area, existing conditions and
3 environmental impacts and litigation and the aquatic
4 area, existing conditions in environmental impact and
5 litigations and the entirety of Section 5 pertaining
6 to need.

7 Identified with a question mark, at least in
8 my own mind, is the question of issues versus scientific
9 areas, particularly topography, geology, cosmology
10 and perhaps the material of Section 2F on accident
11 security and safety. I would invite the parties to the
12 same proceedings to be prepared to respond to requests
13 of Counsel in the very near future as to those--their
14 views on issues that are properly presented and why they
15 should be presented. I would not anticipate Counsel to
16 hear anything and everything you had in mind to present
17 unless it has been clearly identified pursuant to the
18 regulations that I have just referenced for you and
19 encapsulated in the hearing order issued by the Council.

20 Now all this is tentative, of course, upon
21 the adoption of Counsel of that regulation on 13. If
22 that doesn't happen, we'll have a state prehearing
23 conference in which we will discuss an alternate approach.

24 MR. MAJKUT: Am I to assume that there will be
25 a prehearing conference to follow this prehearing

1 conference in which we can sit down and talk about the
2 state issues in terms of the procedure for identification
3 under your new regulations?

4 CHAIRMAN LEWIS: That may well follow another
5 prehearing conference in the appropriate period of time.
6 We would like to meld all of those together or at least
7 discuss them in context.

8 MR. MAJKUT: There may be two prehearing
9 conferences that will follow the joint hearing issues
10 after we've discussed the issues of particular concern?

11 CHAIRMAN LEWIS: Given the complexity of this,
12 I wouldn't limit it to just two. There's likely to be
13 at least two. That's a matter that I have to discuss
14 with my colleagues but that would appear to be the way
15 we're going.

16 MR. BJORGER: I would like to ask a clarifying
17 question.

18 Are you suggesting that the regulation, 260 I
19 believe you said, concerning identification of issues at
20 a pretrial conference type of procedure would apply both
21 to the state hearings and said parties participating in
22 the state hearing?

23 CHAIRMAN LEWIS: Yes.

24 MR. BJORGER: Thank you.

25 CHAIRMAN LEWIS: I believe--I should note that

1 there will, of course, be an opportunity afforded to the
2 applicant to respond in an appropriate way to any
3 suggestions of the intervening parties of the hearing
4 issues, obviously the normal practice that we would
5 afford.

6 Any other comments regarding state concerns?

7 (No response.)

8 CHAIRMAN LEWIS: Then at this time I would
9 like--I should note for the information of the parties
10 who are all here today that the State and Federal proceedings,
11 as I believe you may be aware, certainly the parties in the
12 State proceedings are aware, the Washington State Energy
13 Facility Site Evaluation Council has under its jurisdiction
14 the matter of the issuance of an assistance permit and
15 the 401 certification. I merely advise you that counsel
16 has issued proposed findings in questions of law and order
17 for some permit and certifications on November 22nd, 1982
18 and parties in state proceedings are now under a requirement
19 to supply exceptions and replies to exceptions to that
20 proposed order and that we would anticipate formal adoption
21 of that document some time later this month, possibly
22 early January. We will, of course, take steps to see that
23 that document is supplied not only to the parties of the
24 State proceedings but to the Atomic Safety and Licensing
25 Board as well.

T9-8

1 At this time I would like to inquire as to
2 whether there are additional matters to be brought before
3 the Joint Pre-hearing Conference, or additional statements
4 need to be made or other issues which you would care to
5 bring up.

6 MR. BJORGER: One additional question about
7 what you were just talking about. I believe you mentioned
8 Section 2F in the outline of possible issues prepared by
9 your staff, the section entitled "Accidents and Security
10 and Safety". I believe you mentioned that was a possible
11 area of consideration by state parties in the joint hear-
12 ing; did I understand you correctly?

13 CHAIRMAN LEWIS: That's correct.

14 MR. BJORGER: Can I take it from that statement
15 that it is the position of the Council that there is no
16 preemption which might happen by those same issues con-
17 sidered in the ASLB Safety Hearing?

18 CHAIRMAN LEWIS: No, you may not take that,
19 Mr. Bjorger. We understand the preemption issue and ob-
20 viously this particular issue requires close and careful
21 consultation with the U. S. Nuclear Regulatory Commission.
22 I would point out to you that if you look at Section F4,
23 Emergency Response, it is a major matter of both concern
24 and jurisdiction to the State of Washington, so that our
25 piece of the pie, so to speak, may well focus on that
particular area.

1 MR. BJORGER: I expect then that in the procedure
2 of prehearing conferences and pretrial type conferences
3 under the new regulations that we would probably at
4 that point make a decision or come to a decision as to the
5 extent of the effect granted.

6 CHAIRMAN LEWIS: Yes, certainly you can take
7 that into account.

8 MR. MAJKUT: I'd like to state for the record
9 that the Department of Ecology anticipates participating
10 in these proceedings and Mr. Lean could not attend, but
11 some of these people may be participating in the future
12 so that their not being here today should not be taken
13 to mean that they won't be here to participate. I'm
14 not sure if they are on the appropriate service lists
15 but I assume the questions of service which were raised
16 earlier today will be handled at the next prehearing
17 conference.

18 CHAIRMAN LEWIS: Yes. I appreciate your
19 statement on the status of the Department of Ecology.

20 MR. MAJKUT: They would like to be informed of
21 what happens, even if they are not on the appropriate list
22 at this time.

23 CHAIRMAN LEWIS: They are on the service list
24 and they will be so informed.

25 MR. MAJKUT: Thank you.

T9-10

1 CHAIRMAN LEWIS: Any further matters to come
2 before this hearing conference, any further discussion?

3 (NO RESPONSE).

4 CHAIRMAN LEWIS: I have nothing further.

5 CHAIRMAN WOLF: I have nothing.

6 CHAIRMAN LEWIS: The prehearing conference will
7 be considered closed. We will have another prehearing
8 conference at another time. In the meantime, as soon as
9 possible, we will get out a joint memorandum and order
10 on this conference.

11 There is one other thing; we did have a date,
12 December 6th, when certain responses were to be made. Is
13 anyone going to respond at that time?

14 MR. MAJKUT: As I indicated, I'll get with some
15 of these other parties and try to clarify what appears to
16 be confusion caused by getting into this contention bases
17 thing, and I will be filing that one in ten days at your
18 request.

19 MR. CAVANAGH: On this next conference, this
20 will become of increasing interest to a large section of
21 the Northwest public, and without in any way impugning the
22 reputation of either Richland or Lacey as the site of the
23 first two hearings, I would suggest that a more accessible
24 site, I would entreat the Board to consider for future
25 hearings the possibility of locating them closer to one
of the major urban centers, either Seattle or Portland.

T9-11

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CHAIRMAN LEWIS: We will consider that.

Well, we'll call the parties' attention to Section 3 of the Protocol for Conferences and Joint Hearings. I think that stands on its own.

Meeting is adjourned.

(MEETING ADJOURNED AT 2:35 P.M.)

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

NUCLEAR REGULATORY COMMISSION

in the matter of: Puget Sound Power & Light Co., et al

Date of Proceeding: December 2, 1982

Docket Number: STN 50-522 and STN 50-523

Place of Proceeding: Lacey, Washington

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

ALLAN MILES JOHNSON

Official Reporter (Typed)

Allan M. Johnson

Official Reporter (Signature)