

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

CONSUMERS POWER COMPANY

(Big Rock Point)

Docket No. 50-155-OLA

*Please return original to Jack Whetstone,
EJW-439 - Distribution: TR 01*

Telephone Conference

Location: Bethesda, MD

Pages: 2646-2685

Date: Tuesday, June 7, 1983

TAYLOR ASSOCIATES

Court Reporters
1625 I Street, N.W. Suite 1004
Washington, D.C. 20006
(202) 293-3950

8306090005 830607
PDR ADOCK 05000155
T PDR

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

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

:
:
In the Matter of: :
:
CONSUMERS POWER COMPANY :
:
 Docket Number
 50-155-OLA
(Big Rock Point) :
:

Suite 840
1120 Connecticut Avenue, N.W.
Washington, D.C.

Tuesday, June 7, 1983

The Telephone Conference in the above-entitled
matter convened, pursuant to notice, at 10 o'clock a.m.

BEFORE:

PETER B. BLOCH, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

DR. OSCAR H. PARIS
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

FREDERICK J. SHON
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

1 APPEARANCES:

2 On behalf of the Applicant:

3 JOSEPH GALLO, Attorney
4 Isham, Lincoln and Beale
5 1120 Connecticut Avenue, N.W.
6 Washington, D.C. 20036

7 On behalf of the Regulatory Staff:

8 RICHARD J. GODDARD, Attorney
9 RICHARD G. BACHMANN, Attorney
10 EDWIN REIS, Attorney
11 U. S. Nuclear Regulatory Commission
12 Bethesda, Maryland13 RICHARD EMCH
14 Licensing Project Manager
15 U. S. Nuclear Regulatory Commission
16 Bethesda, Maryland

17 On behalf of Intervenors Mills, Christa-Maria and Bier:

18 JOANNE BIER
19 CHRISTA-MARIA

20 On behalf of Intervenor O'Neill:

21 JOHN O'NEILL, II, Pro Se
22 Route 2, Box 44
23 Maple City, Michigan 4966424 - - -
25

P R O C E E D I N G S:

1
2 JUDGE BLOCH: This is a telephone conference on the
3 Spent Fuel Pool Amendment on the Big Rock Point Plant.

4 With me in my office is Mr. Fred Shon. Dr. Oscar
5 Paris is on the line in another room.

6 The principal purpose for this morning's call is to
7 discuss scheduling matters concerning the license application.
8 I have two preliminary matters that I want to clarify. Christa-
9 Maria, could you tell us your progress on obtaining legal
10 counsel?

11 MR. GALLO: Judge Bloch, this is Gallo. Can we
12 have the notice of appearance for the other parties on the
13 call? I am not sure who is on the line.

14 JUDGE BLOCH: All right, let's have parties identify
15 themselves for the record, please.

16 MR. GALLO: This is Joseph Gallo of Isham, Lincoln
17 and Beale, appearing on behalf of Consumers Power Company.

18 JUDGE BLOCH: For Christa-Maria et al.?

19 MS. CHRISTA-MARIA: This is Christa-Maria, and
20 Joanne is on my other phone here.

21 JUDGE BLOCH: That is Joanne Bier, right?

22 MS. CHRISTA-MARIA: Yes.

23 JUDGE BLOCH: For John O'Neill?

24 MR. O'NEILL: Myself. I am right here.

25 JUDGE BLOCH: For the staff?

1 MR. GODDARD: Dick Goddard, Dick Bachmann, Mr. Edwin
2 Reis of OELD, and with us is Richard Emch, the project
3 manager for Big Rock.

4 JUDGE BLOCH: All right. Christa-Maria, could you
5 tell us if you are having success in making progress on
6 obtaining a lawyer?

7 MS. CHRISTA-MARIA: No, we have no success.

8 JUDGE BLOCH: You have not had success yet.

9 MS. CHRISTA-MARIA: Not yet.

10 JUDGE BLOCH: We are granting Mr. Semmel's motion
11 to withdraw from representation. We see no reason to deny that.

12 I would like to know from the staff if we should
13 be expecting soon to see FEMA's analysis of the Intervenors'
14 comments on the emergency planning filings that the Applicant
15 has made.

16 MR. GODDARD: We hope that that material will be
17 forthcoming soon. However, we do not have any indication from
18 either FEMA or from NRC Region 3 as to when that matter will
19 be available.

20 JUDGE BLOCH: We would appreciate a target date
21 that we could count on for that, please, if you could
22 communicate it to us.

23 MR. GODDARD: We will get back to you on that.

24 MR. GALLO: Judge, this is going to be a useless
25 transcript if people do not identify themselves before they

1 talk. Mr. Goddard did not do that.

2 JUDGE BLOCH: That was Mr. Goddard.

3 Christa-Maria, you were trying to speak. Did you have
4 a matter to talk about?

5 MS. CHRISTA-MARIA: I was not going to say anything
6 at this time, Judge Bloch.

7 JUDGE BLOCH: Thank you.

8 MR. GALLO: Judge, can I be heard on this point about
9 the FEMA comments?

10 JUDGE BLOCH: Sure. This is Mr. Gallo.

11 MR. GALLO: Yes.

12 JUDGE BLOCH: He forgot to identify himself. I do,
13 too.

14 MR. GALLO: The reporter is sitting in my office.

15 JUDGE BLOCH: Oh, okay.

16 MR. GALLO: So, for that reason I neglected to do
17 that.

18 JUDGE BLOCH: All right.

19 MR. GALLO: On this question of the comments from
20 FEMA, we seem to be a prisoner of FEMA on this matter. We
21 had a long delay with respect to the initial comments sub-
22 mitted by FEMA. It seems that the NRC staff counsel's
23 position is one of lacking any power to exert any influence
24 with respect to those people. We just have no alternative,
25 essentially, but to mark time until FEMA can fit us into their

1 schedule.

2 JUDGE BLOCH: The purpose of this scheduling conference
3 is so that we will take no prisoners. We are asking for a
4 target date and we will see what we can do to expedite matters.
5 That is all that we can try to do.

6 I think we would like to see the FEMA analysis
7 before we go ahead on whether or not to have a hearing on those
8 issues. I think we should try everything feasible to speed
9 that up.

10 Mr. Gallo, the most important subject of this call
11 is scheduling. I would like to ask staff to tell us whether
12 this case is in limbo and is not expected to go anywhere, or
13 whether we should consider it an active case.

14 MR. GOODARD: This is Mr. Goddard.

15 I think it should be considered an active case.
16 However, at the present time there are technical inputs from
17 the licensee to the staff which will require staff review
18 that have not yet been received.

19 JUDGE BLOCH: Wait, what has not been received, the
20 staff review or the technical input?

21 MR. GODDARD: The inputs from the licensee,
22 Consumers Power Company.

23 JUDGE BLOCH: So, it is up to Consumers Power at
24 this point.

25 MR. GALLO: This is Gallo. I would like to be heard

1 on that. I would like an identification of what inputs
2 the staff believes it needs from Consumers Power.

3 MR. GODDARD: I will put Mr. Emch on to answer that
4 question now, Mr. Richard Emch.

5 JUDGE BLOCH: Thank you.

6 MR. EMCH: Richard Emch, the Project Manager of Big
7 Rock.

8 MS. CHRISTA-MARIA: Will you speak up, please? This
9 is Christa.

10 MR. EMCH: Yes, and will you please speak up, also?

11 There are two inputs, essentially, that we are
12 waiting on. One of them is the analysis, the seismic
13 analysis, of the crane in the reactor building. The resolution
14 of that issue is still up in the air and we are expecting
15 something from the licensee on that.

16 The other issue has to do with structural integrity
17 of the pool at elevated temperatures. We have been discussing
18 that issue with the licensee in several meetings and there is
19 still an issue there that has not been cleared up yet.

20 JUDGE BLOCH: Have we received minutes of those
21 meetings, have we been sent those minutes?

22 MR. EMCH: I do not know, that is a good question,
23 meeting minutes. I know you were sent notices of the meetings.
24 I believe the summaries of the meetings that have been
25 finished. We have not finished all the summaries. We are

1 behind in getting the meeting summaries out.

2 JUDGE PARIS: Mr. Emch, can you hear me? This is
3 Dr. Paris.

4 Mr. Emch, would you speak directly into the speaker
5 phone? You are occasionally breaking off and everything you
6 are saying is not coming through clearly. I think it is
7 because the speaker phone, in order to be activated, has to
8 have a good, strong sound impulse directly into it.

9 MR. EMCH: Yes, sir, I will be happy to do that.
10 Did you miss something, do I need to repeat all that?

11 DR. PARIS: I did miss something, it was about
12 two or three sentences back. You might repeat it. The others
13 probably missed something, too.

14 MR. EMCH: All right, I will go through it again.

15 There are two pieces of input missing from the
16 licensee. One has to do with seismic analysis of the crane;
17 the other piece has to do with the structural integrity of
18 the pool at elevated temperatures.

19 We have been discussing the second issue, that of the
20 elevated temperatures and structural integrity, we have been
21 discussing that with the licensee over the last several weeks,
22 months, I guess.

23 There are two issues in that vein that we are
24 still dissatisfied with or have not been completely satisfied
25 with as yet. Those have been discussed in several meetings

1 over the last few weeks. There was some question a moment
2 ago as to whether or not you folks had received summaries of
3 those meetings yet.

4 I think the answer is, you received all the
5 summaries that we put out. We are running a little behind on
6 getting some of those summaries out.

7 MR. GALLO: Judge Bloch, could I respond to that?
8 This is Joe Gallo.

9 JUDGE BLOCH: Please.

10 MR. GALLO: I am aware of the second matter that Mr.
11 Emch refers to. As a matter of fact, I attended one of the
12 meetings personally that he refers to. What the staff is
13 doing is reviewing one of the amendments to the consolidated
14 application that we have previously filed on the Docket. That
15 is the amendment that deals with the structural adequacy of the
16 concrete pool at elevated temperatures, and it was the
17 document that was submitted to replace the concrete analysis
18 that was withdrawn at the hearings on the first day, in June
19 of 1982.

20 Now, as to this other matter -- let me back up and
21 continue to address myself to the concrete analysis. Mr. Emch
22 is correct that the staff has asked for more information with
23 respect to that concrete analysis, and we are in the process --
24 Consumers Power Company is in the process -- of developing that
25 information to submit it to the staff for their further review.

1 So, I think it is fair to say --

2 JUDGE BLOCH: When can we expect that will be done?

3 MR. GALLO: That is supposed to be in the hands of
4 the staff this week. I believe that is the understanding that
5 Mr. Emch has as well.

6 MR. EMCH: Yes, that is my understanding.

7 A point that might be brought out right now is that
8 this particular issue is on a little bit tighter schedule than
9 even the hearing is because it is something that has to be
10 resolved before the plant can go back to power from this
11 refueling. That is scheduled for sometime in August, the end
12 of the refueling.

13 But yes, Mr. Gallo stated it correctly, that is the
14 schedule that I expect.

15 JUDGE BLOCH: Who has the fire engine?

16 MS. CHRISTA-MARIA: Can I clarify something? This
17 is Christa.

18 JUDGE BLOCH: We are off the record. Do you want
19 to be on the record, Ms. Christa-Maria?

20 MS. CHRISTA-MARIA: Yes, I want to be on the record.

21 JUDGE BLOCH: All right, on the record, please.

22 MS. CHRISTA-MARIA: Yes. Mr. Emch just said that
23 those things have to be resolved before refueling. Does that
24 mean before the plant goes back on line for full power?

25 MR. EMCH: Yes. I believe I stated before the plant

1 could be restarted, the issues had to be resolved.

2 MS. CHRISTA-MARIA: All right. Thank you.

3 MR. GALLO: This is Joe Gallo.

4 JUDGE BLOCH: Yes.

5 MR. GALLO: On the second issue, the seismic analysis
6 of the crane, again Consumers Power has submitted an analysis
7 with respect to the seismic stability of the crane as an
8 amendment to the consolidated application in this case.

9 I was not aware -- well, strike that. We have yet
10 to receive any official response from the NRC staff with
11 respect to that analysis. As a matter of fact, the first
12 official indication that I had that the staff was even looking
13 at it was Mr. Emch's indication that he was expecting more
14 information from Consumers Power Company.

15 I guess I would like some clarification on that point.

16 JUDGE BLOCH: Mr. Emch?

17 MR. EMCH: Yes. There must be a little bit of a mis-
18 understanding here. Mr. Gallo is right, there was a submittal,
19 I believe it was Amendment 1 or whatever to the application.
20 That was looked at by the staff and there were certain problems
21 that we had with that.

22 Those problems were discussed with the licensee. I
23 do not remember the exact date but it was at least a couple of
24 months ago, and that was indicated in the meeting summary.
25 Since that time, I know that Consumers Power Company is working

1 on some additional information that is supposed to clarify
2 their position.

3 MR. GALLO: This is Joe Gallo.

4 Do you think that meeting summary that you referred
5 to was served on the Board and the parties in this case?

6 MR. EMCH: It is my understanding that all meeting
7 summaries that we write are given to the service list and
8 everybody, all the Intervenors, the Board Members, are on this
9 service list.

10 Since you have questioned it, though, I will be
11 sure and check to make sure that is indeed the case. If it is
12 not the case, I will promise to get those meeting summaries
13 together and send them to you folks.

14 MR. GALLO: So, is it the staff's position that
15 Consumers Power Company has "the ball" so to speak on this
16 issue involving the seismic stability of the crane?

17 MR. EMCH: That's right.

18 MR. O'NEILL: This is John O'Neill speaking.

19 JUDGE BLOCH: Yes, sir.

20 MR. O'NEILL: I have noticed that Mr. Gallo has
21 mentioned this concerns amendments. I do not understand why
22 an amendment --

23 MR. GALLO: I cannot hear you.

24 MR. O'NEILL: I fail to understand why an amendment
25 to the application should be considered in any different light

1 than part of the application.

2 JUDGE BLOCH: I do not understand the problem, Mr.
3 O'Neill.

4 MR. O'NEILL: Well, it seems to me as though Mr.
5 Gallo is inferring that those amendments to the application are
6 somehow less important than the entire application itself.

7 JUDGE BLOCH: Mr. Gallo, I did not infer that. Did
8 you intend that?

9 MR. GALLO: No, I did not.

10 MR. EMCH: That was not our understanding, either.

11 JUDGE BLOCH: I would like the parties' reaction to
12 the possibility that we should set a hearing in September.
13 Mr. Gallo?

14 MR. GALLO: Well, in my judgment, Judge Bloch, a
15 hearing date in September would be desirable because of the
16 large number of issues that we are ready to go to hearing on
17 that still remain outstanding.

18 I do not know at this point whether or not we could
19 go to hearing in September and complete all the issues that
20 remain outstanding. Whether or not we could complete all the
21 issues in time for a hearing in September is a function of
22 the additional information that the staff indicates it needs
23 from Consumers Power, and the staff's ability to write an SER
24 and to publish it in time so that we could go to hearing in
25 September.

1 MR. GODDARD: This is Mr. Goddard. May I be heard?

2 JUDGE BLOCH: Please.

3 MR. GODDARD: Inasmuch as Mr. Semmel is no longer
4 representing the Intervenors it would appear that personal
5 objection, based upon inconvenience, to splitting the remaining
6 portion of the hearing is of no weight at this point.

7 I am not proposing that we definitely do split the
8 hearing. However, there are a number of issues on which
9 testimony has already been filed that were not examined at the
10 hearings last year.

11 There are other issues which of course will require
12 both the input we have referred to from Consumers, new staff
13 evaluations and the preparation of testimony before the hearings
14 begin.

15 Based upon the amount of time that it took to
16 litigate relatively few issues at the last hearing, the staff
17 would recommend that a hearing be scheduled for September
18 because there are at least four issues in my mind that can be
19 fully litigated at that time.

20 They deal with the south wall; the question of
21 radiation shine from containment; the remaining issues on
22 emergency planning, and the issues involving aircraft crash
23 into containment, although there may be some new material on
24 that issue.

25 This would leave outstanding for possible litigation

1 at that time the evaluation and the testimony could be
2 prepared; the question of the cranes; the concrete make-up
3 line and other related TMI issues.

4 JUDGE BLOCH: Why are we not ready on the make-up
5 line?

6 MR. GODDARD: We are ready on the make-up line. We
7 would have to prepare the testimony yet. We would be prepared
8 to go given a September hearing date.

9 JUDGE PARIS: This is Judge Paris.

10 So people can begin thinking about the time that
11 would be required or would be available for preparation, let
12 me tell everyone now that I will be unavailable for the first
13 two weeks in September but would be available beginning
14 September 19 and thereafter.

15 JUDGE BLOCH: Mr. O'Neill, would you like to comment?

16 MR. O'NEILL: Yes. First of all, I was not aware
17 that the make-up line, a new proposal for the make-up line
18 had been submitted. Am I mistaken?

19 JUDGE BLOCH: Mr. Gallo, I thought I had seen that.

20 MR. GALLO: Judge Bloch, the information surrounding
21 the make-up line installation has been submitted. What was
22 submitted was the thermal-hydraulic analysis of the spent fuel
23 pool with respect to the ability of natural circulation to
24 maintain that pool at a temperature no higher than 150 degrees F.

25 JUDGE BLOCH: Okay.

1 MR. GALLO: And the structural analysis --

2 JUDGE BLOCH: Reliability of the line?

3 MR. GALLO: The structural analysis of the concrete.

4 Now, what was stated in those documents was that a make-up
5 line would be installed that would provide a flow of at least
6 30 gallons per minute.

7 I do not believe any additional information was
8 furnished to the NRC staff. It is my understanding that
9 Consumers Power believes that no other information is required
10 during the normal review required by the NRC staff. That is,
11 no other information concerning the details of the make-up
12 line.

13 JUDGE BLOCH: Tell me, staff, is the staff satisfied
14 that no further details on the make-up line are required?

15 MR. GODDARD: This is Mr. Goddard.

16 If we may have a minute, Judge Bloch, I would like
17 to ask a couple of questions of Mr. Emch off the record.

18 JUDGE BLOCH: All right, a one-minute recess. Please,
19 stay on the line.

20 MR. GODDARD: Thank you.

21 (Whereupon, a short recess was taken.)

22 JUDGE BLOCH: Back on the record.

23 MR. GODDARD: For the record, the staff is of the
24 position that they have virtually, if not all, of the information
25 that they need. There may be some confirmatory questions

1 are required of the Applicant in order to facilitate writing
2 of the safety evaluation. However, the staff is satisfied that
3 the proposal as far as the modification of the make-up line
4 is concerned is in-house at this time.

5 JUDGE BLOCH: And by what date will they ask for
6 those questions?

7 MR. GODDARD: I do not believe the staff can furnish
8 a firm date at this time.

9 JUDGE BLOCH: Can you tell me it will be done by the
10 end of July?

11 MR. GODDARD: Yes, sure. It will definitely be
12 done by the end of July 1983.

13 MR. EMCH: What would be done by the end of July,
14 the questions?

15 MR. GODDARD: Asking the questions, yes.

16 JUDGE BLOCH: Hopefully, Applicant will be able
17 to respond within a week or two, I am hoping.

18 MR. GALLO: Judge Bloch, this is Joe Gallo.

19 Now, I consider this problem of the make-up line
20 to be a divisible issue. I consider the information needed to
21 satisfy the NRC staff to be one thing, a separate matter from
22 the information needed to carry the burden of proof on the
23 issue to be litigated before the Board.

24 In the latter connection, testimony has to be
25 written -- and it has not yet been written -- which is

1 analogous or somewhat analogous to the testimony previously
2 written by Mr. Blanchard on this issue.

3 I would propose to have that testimony written across
4 some time frame and pre-filed in time so it could be introduced
5 at a hearing in September as an issue to be heard.

6 Have I made myself clear as to the distinction I
7 make between the categories?

8 JUDGE BLOCH: Yes. I think for our purposes, whether
9 the staff has questions or not will not matter.

10 Mr. O'Neill, you were talking.

11 MR. O'NEILL: Okay. On the make-up line, still,
12 this is a very important issue because it has to do with so
13 many issues. It is central to many of the other issues and
14 the adequacy of the make-up line is central to the decision of
15 the Appeal Board. I consider it almost the most important
16 issue.

17 JUDGE BLOCH: So, what should we do in terms of
18 scheduling it?

19 MR. O'NEIL: Well, we have to have full testimony
20 and then we have to have adequate time to review it and
21 prepare at the very least cross-examination concerning it.

22 JUDGE BLOCH: Mr. Gallo, do you think you will be
23 able to submit your testimony by the end of the first week in
24 August?

25 MR. GALLO: Well, I have not checked with Consumers

1 Power or Mr. Blanchard, but that seems so far off that I will
2 hazard the statement that I think we can do it by the end of
3 the first week in August.

4 MRS. BIER: I think it is necessary that I
5 interject at this time.

6 JUDGE BLOCH: Who is this, please?

7 MRS. BIER: This is Joanne Bier, Intervenor.

8 JUDGE BLOCH: Yes.

9 MRS. BIER: After Herb had to withdraw, the burden
10 of the technical information is mostly on myself. We are
11 going to have a baby at the end of August or the first of
12 September.

13 MR. GALLO: It is hard to hear you.

14 JUDGE BLOCH: She is going to have a baby, Joe.

15 MRS. BIER: Pardon me?

16 JUDGE BLOCH: Joanne, you are going to have to speak
17 up much louder.

18 MRS. BIER: Yes. I will be having a baby at the
19 end of August or first of September, and for me to participate
20 in the hearing I need at least six weeks. I need to tell you
21 that right now. That would put me into October.

22 JUDGE PARIS: Gentlemen, you look stunned.

23 JUDGE BLOCH: Congratulation.

24 JUDGE PARIS: Congratulation, Mrs. Bier.

25 JUDGE BLOCH: Mr. O'Neill, please continue.

1 MR. O'NEILL: Well, this is a very important point
2 that she raises, Joanne Bier raises.

3 I do not have time to review the adequacy of the
4 make-up line, I do not have the resources to do so. I am not
5 studied in the matter. I am 45 miles away from the Public
6 Document Room, and our season is beginning again.

7 MR. GALLO: I cannot hear you. Your restaurant
8 season is beginning again, is that what you are saying?

9 MR. O'NEILL: Right.

10 MR. GALLO: All right.

11 MR. O'NEILL: It will be going full blast until
12 Labor Day. I don't know, but I think it may be going -- we
13 might be serving at the minimum five days a week through the
14 color season which puts us into August. We have been prepared
15 to serve five days a week for all of May, since Memorial Day.

16 I can begin preparing for the hearing after Labor
17 Day, I believe. So, I certainly would not be ready for a
18 hearing until August.

19 JUDGE BLOCK: When does the color go back, Christa?

20 MS. CHRISTA-MARIA: What?

21 JUDGE BLOCH: When does the color go back?

22 MS. CHRISTA-MARIA: In the middle of September to
23 the end of September up here.

24 To the other parties, that is a tourist thing that
25 is promoted all over Michigan and that is when we have our

1 big influence --

2 MR. GALLO: I cannot hear you.

3 MS. CHRISTA-MARIA: Can you hear me?

4 MR. GALLO: No.

5 MS. CHRISTA-MARIA: I said that is our second big
6 influx of tourists, is during what is called "color season."

7 Up here in the north that is in the middle of September to the
8 end of September. That means all the hotels are filled, the
9 restaurants, the boats.

10 You know, anybody who works for that industry works
11 around the clock during that time again. There is a break
12 between Memorial Day until about the middle of September for
13 about two and-a-half to three weeks.

14 MR. O'NEILL: And I must add that I am considerably
15 south of Christa, so that our season lags theirs by at least a
16 week. Actually, I think our color season is about the 15th
17 of October.

18 So, what I am saying is, Christa knows all of this
19 mostly because she lives there and she studied it for purposes
20 of emergency planning, for purposes of the litigation.

21 I think I said I would not be ready in the last week
22 of August but I meant the middle of August. I think I said
23 the middle of August but I meant the middle of October.

24 JUDGE BLOCH: Mr. O'Neill, which of the issues that
25 the staff mentioned are issues in which you have the primary

1 responsibility because it sounds like you would be able to
2 be at a hearing on September 19. You have a few weeks of
3 preparation because your color season will not start then.
4 Is that not right, there is a lull in between the end of the
5 summer season and the beginning of the color season?

6 MS. CHRISTA-MARIA: You could consider that the
7 color season up here starts the middle of September until the
8 middle of October, give or take a week earlier or later depending
9 on, you know, what the weather will do.

10 JUDGE BLOCH: Okay, but the only important thing is
11 the color season for John O'Neill; is that right?

12 MS. CHRISTA-MARIA: That is not so far off, we may
13 be off by a week in moving south. I think it would be very
14 difficult to commit ourselves for anything between the middle of
15 September to October.

16 MR. O'NEILL: Also, Judge Bloch --

17 JUDGE BLOCH: Yes.

18 MR. O'NEILL: This is John O'Neill speaking. I have
19 without much -- it is not uncommon for me to put in 70 and 80-
20 hour weeks. I am physically exhausted by the time Labor Day
21 rolls around and would be unable to prepare a case for a
22 bifurcated hearing for the middle of September, realistically
23 speaking.

24 MR. GALLO: Judge Bloch, this is Gallo.

25 It sounds to me like all of the Intervenors in this

1 case have so many personal commitments that they cannot really
2 afford to participate any longer in this case and they ought
3 to withdraw.

4 MR. O'NEILL: This is John O'Neill speaking --

5 MRS. BIER: Nobody foresaw that this hearing would
6 take four years. Also, I did not know how else to plan the
7 baby, Mr. Gallo. I really did not know, and I am getting too
8 old to have babies forever.

9 MR. GALLO: Well, God forbid that I should come out
10 against motherhood.

11 But every time we talk scheduling in this case we
12 run into the same old song. Mr. O'Neill has the summer season,
13 although I must say that his ingenuity continually amazes
14 me because now we have the color season. We always have some
15 reason why we cannot go forward.

16 Judge Bloch, I just believe that while some
17 deference ought to be made for the problems of individuals in
18 scheduling we simply cannot put off hearings and moving this
19 case forward to the degree that these people have suggested
20 with respect to their personal problems.

21 MRS. BIER: I would like to ask a question, a
22 point of information.

23 JUDGE BLOCH: Who is that, please?

24 MRS. BIER: Bier. We were under the understanding
25 for some time that it really was a matter of urgency to get on

1 with the hearing and that is why we have had it in June, when
2 we did. We understood that we needed a hearing right away
3 because of your ability to off-load that core for the testing.

4 I guess what I am asking, it does not appear that
5 there is a hurry any more. Is there a matter of urgency that
6 it would be that costly at this time for Consumers Power Company
7 to wait for two or three extra weeks until I could recover
8 from the birth of my child and get my feet on the ground?

9 MR. GODDARD: Goddard, it I may be heard at this
10 point.

11 JUDGE BLOCH: Please.

12 MR. GODDARD: The staff would support the position
13 taken by Mr. Gallo and will cite as authority therefore Part 2
14 of Commission Issuance 81-8, which is a statement of
15 policy on conduct of licensing proceedings.

16 JUDGE BLOCH: Let me just ask you a question, Mr.
17 Goddard. If we were to have two solid weeks of hearings
18 starting October 17, what is the chance that this would
19 actually slow down anything?

20 MR. GODDARD: October 17 would be extremely
21 inconvenient for certain members of the staff because of the
22 press of other hearings. Possibly earlier in October could
23 be accommodated.

24 JUDGE BLOCH: What is that hearing conflict?

25 MR. GODDARD: There is a hearing conflict in that

1 Maine Yankee will probably be starting the first week of
2 November, anywhere from the 31st of October, the 1st or the 7th
3 of November. I am the lead counsel on that case and I would
4 like to avoid the conflict there.

5 I see no reason why a September hearing could not
6 be accommodated, at least in part. The Intervenors here are
7 in fact an organization, if you will, and the particular
8 inability of one person to function should not completely
9 control the hearing.

10 I realize that I am indicating my own scheduling
11 conflict at a later date, making that period inconvenient.
12 Perhaps a compromise could be worked where the hearing could
13 begin late in September and carry over into very early October
14 without inconveniencing anything.

15 As to Mrs. Bier's comment regarding the lack of
16 urgency for a hearing in September, I would only say that it is
17 unfortunate that we have too many hearings where there is a
18 condition of urgency surrounding the timing of the starting
19 date of the hearing. I would much rather do these when it is
20 not urgent in order to give a full and complete hearing to
21 all matters without being rushed.

22 MR. O'NEILL: This is John O'Neill speaking.

23 I agree that these hearings cannot be conducted,
24 they should not be conducted with an air of urgency. We
25 really have a responsibility, the Board has a responsibility to

1 develop a full record and the staff has the responsibility to
2 supply all the information necessary for that full record.

3 JUDGE BLOCH: Well, we are hardly talking about an
4 air or urgency when we are meeting in June and we are talking
5 about hearings in the middle of September or the middle of
6 October.

7 MR. O'NEILL: Well, my point is, Judge Bloch --

8 MR. GALLO: Judge Bloch, this is Gallo.

9 JUDGE BLOCH: Yes, sir.

10 MR. GALLO: I am not wedded on behalf of the
11 Applicant to any one particular week in September or any one
12 particular week in October.

13 What I am objecting to is the inability to pin down
14 today the Intervenors with respect to a firm commitment to go
15 to hearing sometime in the fall. The excuses that have been
16 offered are such that it seems to blanket the whole fall.

17 I am willing to be flexible to the extent of, maybe
18 "September is not feasible, how about October," suggested by
19 Mr. Goddard sounds good. But we are not getting any reciprocal
20 suggestions from the Intervenors on these points.

21 MR. O'NEILL: If I might speak to that. I am John
22 O'Neill.

23 We are two different parties and we cannot confer
24 off the record.

25 JUDGE BLOCH: What do you mean you cannot confer off

1 the record?

2 MR. O'NEILL: As staff just did. But it seems to me --
3 and I hate to bring this up because this is something that
4 Christa-Maria should really bring up -- but her attorney sought
5 relief in his last motion. One of the things that caused
6 this was the terrible expense of counsel and experts --

7 MR. GALLO: She cannot hear you.

8 MR. O'NEILL: -- because of the misrepresentation
9 Consumers Power made at the last hearing that were in some way
10 unnecessary or invalid.

11 If the Board were to find in Intervenors' favor they
12 would have the resources to present their case much more
13 fully.

14 JUDGE BLOCH: There is nothing in the papers that
15 suggests that that hearing was unnecessary or invalid, only
16 that it was held more quickly than it had to be.

17 MR. O'NEILL: Well, I think Mr. Gallo was driving
18 at the point that if Consumers had presented the story concerning
19 the ability to off-load --

20 JUDGE BLOCH: Well, let's worry about that another
21 time, that really is not directly relevant. I understand, you
22 want some consideration on scheduling, and when we get to
23 that motion there is the possibility to change things if there
24 was a case made for it.

25 MR. O'NEILL: Okay. Well, if I might ask Christa-

1 Maria a question. I do not know if that should be on the
2 record or off the record.

3 JUDGE BLOCH: Well, why don't we make it on the
4 record?

5 MR. O'NEILL: Christa?

6 MS. CHRISTA-MARIA: Yes?

7 MR. O'NEILL: Is it possible for you to be ready
8 and cover all of the emergency planning issues, somewhere in the
9 middle of September?

10 MS. CHRISTA-MARIA: It would be very difficult. I
11 never brought this up and I am only doing it because we do not
12 have legal counsel and we have to work on it ourselves. But
13 I have responsibilities too, just like John has.

14 It is not possible for me to actively really work
15 on all the things in, you know, September. So, I would have
16 to make a more flighty type of attempt or a shallow one
17 because I have to support myself, too.

18 I think what we cannot do is that we can schedule
19 hearings issue by issue. It is my hope that we --

20 MR. GALLO: She can't hear you.

21 MS. CHRISTA-MARIA: It is my hope that we come up
22 with a fixed date to do the whole hearing on all issues. It is --
23 I do not want to say it is disruptive, that is not even a good
24 term, that is not even a strong enough term -- dealing issue
25 by issue. I would much rather move for having a total hearing

1 starting in the middle of October where everything is being
2 proper and everything is ready to go.

3 JUDGE BLOCH: Are there necessary comments that have
4 not been heard yet?

5 MR. O'NEILL: I may have some.

6 JUDGE BLOCH: Please, only if it is new.

7 MR. GODDARD: I am Mr. Goddard.

8 I have two points I would make briefly. As to Ms.
9 Christa-Maria's inability on the remainder of the Emergency
10 Plan Contention 9, which is subparts (1), (7), (8) and (9), I would only point
11 out that testimony was in fact filed on those issues at the
12 last hearing. We were unable to examine them because of lack of
13 time to do so.

14 Second, I would point out that with regard to this
15 question of possible urgency, it is conceivable if the Big
16 Rock Point plant could be required to go down at any time,
17 necessitating an off-load of the core. For this reason, in-
18 asmuch as full core discharge capability has been lost we do
19 not have the luxury we might enjoy with a situation otherwise.

20 That is all I have, sir.

21 JUDGE BLOCH: Anything else that is new?

22 MR. O'NEILL: This is John O'Neill speaking.

23 Concerning full core off-load discharge, is the
24 staff's position different from Consumers' position on this?

25 JUDGE BLOCH: Mr. Gallo?

1 MR. O'NEILL: I am asking the staff.

2 MR. EMCH: I don't believe so.

3 JUDGE BLOCH: The position is that it is not a
4 safety problem, Mr. O'Neill, but that they will have to close
5 the plant down if they needed full core discharge. Is that
6 right?

7 MR. EMCH: If a situation developed where they needed
8 to fix something that required full core off-load, they would
9 have to shut down and then they would just be sitting down
10 until they had some place to put all the fuel.

11 So, I believe it is what we have referred to in the
12 past as a financial risk to Consumers Power Company.

13 JUDGE BLOCH: Mr. Gallo, do you agree with that?

14 MR. GALLO: I think that is a fair assessment.

15 MR. O'NEILL: I have one point to raise -- this is
16 John O'Neill again -- that the financial risks of Consumers
17 Power are comparable to the financial risks that the Intervenors
18 have taken, differing only that we are talking about one percent
19 of Consumers' power income or generating capacity -- I don't
20 know about income, and balance that to the income and livelihood
21 of four individuals who have carried the burden of raising
22 issues that are very important to the public safety.

23 We have seen over and over again that the issues
24 that Intervenors have raised are real issues and are issues that
25 have prompted important safety improvements.

1 So, therefore our ability to continue in these
2 hearings, participate fully, is important. The Commission, the
3 NRC Commission, has ruled that the staff has an important duty
4 to assure that the record is sufficiently developed to permit
5 a well-reasoned agency decision. That is from Vermont Yankee,
6 ALAB,4 AFC 1970. That was upheld in Duke Power, ALAB 143,
7 6 AEC, 23625, (1973), and there was approval on Georgia Power in
8 1975, Duke Power -- I already mentioned Duke Power.

9 But since the staff has at times been unable or
10 unwilling to assert this responsibility and it has been
11 Intervenor's who have taken action -- I am thinking notably
12 of Mr. Lantz's testimony, also Mr. Bement's who was a staff
13 witness was very negligent in providing a full record.

14 We have this emergency planning problem where there
15 are discrepancies in the Stone & Webster report that was shown
16 up when the County Commissioners filed their letter. We do
17 not know quite when FEMA will come through with another
18 evaluation.

19 I think the Board has to realize that full partici-
20 pation by Intervenor's is essential.

21 Thank you.

22 JUDGE PARIS: This is Paris. I wonder if I might
23 try to move things along by suggesting a couple of things which
24 take into account what has been said as far as it is possible
25 to do that.

1 How about beginning on Tuesday, October 11th, avoiding
2 Monday, October 10th because that is Columbus Day. We could
3 travel on that day. We could continue through Friday, October
4 21, perhaps with taking off Sunday, October 16.

5 Do the parties think they could do that?

6 JUDGE BLOCH: Mr. Paris, could you consult with
7 Mr. Shon who has just walked into your room first? We will
8 take a brief recess before we make any further suggestions.

9 JUDGE PARIS: All right. He is here and we will
10 consult.

11 (Whereupon, a short recess was taken.)

12 JUDGE BLOCH: There was discussion. If there is
13 anything important that has been said, could someone
14 summarize it for me, please?

15 MR. GALLO: I do not think there is anything that
16 needs to be summarized, Judge Bloch.

17 MR. O'NEILL: John O'Neill speaking. Joanne just
18 clarified with Joe the filing that was entitled -- Joanne,
19 why don't you tell him?

20 MRS. BIER: Not being a lawyer, I filed a motion to
21 reconsider, to that effect yesterday, and all parties will be
22 receiving a copy of my errors.

23 JUDGE BLOCH: We have no jurisdiction over that.

24 MRS. BIER: I just felt I needed to clarify that with
25 Joe.

1 JUDGE BLOCH: All right. Now, having met we have
2 discussed the problem, we are determined to conclude the
3 hearing in this case in the fall and have decided that we will
4 begin October 17 and we will meet for two weeks. We will do
5 everything possible to make sure that all issues are resolved
6 during that time period.

7 MRS. BIER: October 7th?

8 JUDGE BLOCH: October 17th for two weeks. From
9 17 to 21 and then it will be 24 through 28. If necessary, we
10 will meet some evenings. We might even meet in between on
11 Saturday.

12 MS. CHRISTA-MARIA: Why are there two days, the
13 22nd and the 23rd of March?

14 JUDGE BLOCH: The 22nd and 23rd are Saturday and
15 Sunday.

16 MS. CHRISTA-MARIA: Oh, I am on the wrong month,
17 I am sorry.

18 JUDGE BLOCH: As I just said, it is possible we
19 would meet on the 26th sometime, also.

20 MS. CHRISTA-MARIA: Okay.

21 JUDGE BLOCH: Now, I would like Applicant to file
22 within ten days the suggested schedule of target dates for
23 all necessary events from now until the hearing, including
24 dates for filing of testimony; dates for filing of all
25 necessary documents, and including a filing date for the

1 principal documents, if any, which individuals wish to rely
2 on for cross-examination, so we will have full disclosure of
3 approaches before the hearing date.

4 I would like one week after that for the staff to
5 comment and supply any additional dates or changes of its own.
6 Then, one week after the staff suggestions for the Intervenors
7 to file their comments and suggested changes.

8 MRS. BIER: One week?

9 JUDGE BLOCH: One week after staff. That is one
10 week from the time you receive it.

11 MRS. BIER: Yes.

12 JUDGE BLOCH: Are there any comments on that
13 scheduling matter?

14 JUDGE PARIS: Judge Bloch, this is Paris.

15 Would you like for the parties to suggest where the
16 hearing might be held, keeping in mind we have to have a
17 courtroom or something equivalent?

18 JUDGE BLOCH: Off the record.

19 (Discussion off the record.)

20 JUDGE BLOCH: Back on the record.

21 We have discussed various facilities while we were
22 off the record. The Board will now take that under consideration.

23 I want to thank all parties for their participation.
24 The hearing is adjourned.

25 MR. GALLO: I have one further matter, Judge Bloch,

1 that I would like to get clarified.

2 JUDGE BLOCH: Back on the record.

3 MR. GALLO: This is with respect to the pending
4 situation on the emergency planning papers that have been
5 filed in response to the Board's order, I believe, dated
6 September 14 of last year.

7 As you know, the Applicant has submitted a sub-
8 stantial number of filings. FEMA has given us their comments
9 once. The Intervenors have given us their comments. Applicant
10 has been given leave and has responded to those comments.

11 We are now awaiting FEMA comments on the Intervenor
12 comments. Because of the procedural telephone calls between
13 the Board and the various lawyers for the parties I am
14 uncertain as to what procedure the Board intends to employ with
15 respect to reconciling whether or not a hearing is needed.

16 Let me give you my viewpoint. Looking at that order,
17 it seems clear to me from the order that the Board held that
18 the Applicant had not satisfied the burden of proof because it
19 relied on FEMA witnesses to satisfy that burden of proof and it
20 turned out that that was not adequate.

21 We have now submitted a substantial number of
22 affidavits in our effort to satisfy that burden of proof. The
23 Board order also provided that the Intervenors would be given
24 so much time after receipt of all of Applicant's materials
25 to establish, demonstrate whether or not a hearing was needed.

1 In my judgment, they have had that opportunity.
2 They filed their comments. Now the Board must decide, based
3 on the papers, whether or not any issue remains that should be
4 set down for hearing.

5 Is my understanding your understanding, Judge Bloch
6 and the Board?

7 JUDGE BLOCH: It is my understanding of the state of
8 the record, what I am doing now is awaiting FEMA's comments on
9 the Intervenor's comments. If it should happen that FEMA is
10 unable to meet our schedule, say around the 1st of August it
11 looks like they are not coming, we might consider deciding that
12 issue without FEMA's assistance.

13 But until then, my understanding is that the state
14 of the record is just as you stated it, Mr. Gallo, and we are
15 going to decide it as soon as we get FEMA's comments.

16 MR. GALLO: That is a helpful clarification, Judge
17 Bloch.

18 JUDGE BLOCH: Do the other parties wish to comment
19 on this issue?

20 MS. CHRISTA-MARIA: Yes, I do. This is Christa.

21 Other material has developed in Charlevoix regarding
22 the situation and I am not sure, should I submit it to the
23 parties?

24 JUDGE BLOCH: If you have new information --

25 MS. CHRISTA-MARIA: Pardon me?

1 JUDGE BLOCH: If you have new information that must
2 be considered, I would suggest you get it into evidentiary
3 form.

4 MS. CHRISTA-MARIA: Okay. You have to tell me
5 exactly how to do that because I am not --

6 JUDGE BLOCH: Mr. O'Neill, I think you know; don't
7 you?

8 MR. O'NEILL: Know what, please?

9 JUDGE BLOCH: How to get something in evidentiary
10 form.

11 MR. O'NEILL: Yes.

12 MS. CHRISTA-MARIA: John is not my lawyer, Judge
13 Bloch.

14 MR. O'NEILL: I am not her lawyer.

15 JUDGE BLOCH: You need to file an affidavit. Some-
16 thing we are going to consider at this stage as to whether or
17 not we are going to have a hearing, we have to have an affidavit.
18 It has to be sworn testimony.

19 The Applicant has submitted sworn testimony. You
20 cannot just come in on it and believe that we will accept that.

21 MR. O'NEILL: Judge Bloch, let me ask you, do you
22 consider the Charlevoix County Commission letter which was co-
23 signed to be an affidavit?

24 JUDGE BLOCH: It is not an affidavit, is it?

25 MR. GALLO: No, it is not. This is Gallo.

1 JUDGE BLOCH: It is not evidence.

2 MR. O'NEILL: It is not evidence.

3 JUDGE BLOCH: Therefore, at the stage where we are
4 deciding whether there is a genuine issue of fact, we need to
5 have further hearings, it is not.

6 Now, if FEMA follows up on that letter and gives us
7 findings, it may well be that the FEMA findings will be
8 considered to be evidence. But the Intervenors are at risk
9 right now.

10 MS. CHRISTA-MARIA: Pardon me, I didn't hear that.

11 JUDGE BLOCH: You are at risk right now because you
12 have no evidence on these issues, you have only comments.

13 MS. CHRISTA-MARIA: Okay. I don't know how an
14 affidavit is done, but I will try to find out.

15 MR. GALLO: Well, come on. This is Joe Gallo. We
16 filed all kinds of affidavits and you got copies of them. All
17 you have to do is look at the format of the affidavits that I
18 filed. You see that they are notarized, and that is all there
19 is.

20 MS. CHRISTA-MARIA: When you go in and talk to those
21 people as a lawyer, you get the response. I go in as a single
22 person, I do not get the same response.

23 MR. GALLO: So, what you are saying is that it is the
24 substance that you have problems with, not the form of the
25 affidavit.

1 MS. CHRISTA-MARIA: I can get letters and I can get
2 decisions.

3 MR. GALLO: All right.

4 MS. CHRISTA-MARIA: However, I think I have a pretty
5 clear idea how this is pursued, and I will do it.

6 MR. O'NEILL: Christa, you can call me up when we
7 are done, if you want. I can clarify that for you.

8 JUDGE BLOCH: Once again, the hearing is adjourned.

9 MR. O'NEILL: I really need to restate the schedule
10 that you set out.

11 JUDGE BLOCH: All right. October 17, two weeks,
12 with the possibility of evening and Saturday hearings.

13 The Applicant is going to file his suggested
14 schedule within ten days. Staff, I think I said either seven
15 or ten days. What did I say, staff?

16 MR. GODDARD: Seven days, sir.

17 JUDGE BLOCH: Seven days after that, staff will make
18 their suggestions and the Intervenors will have seven
19 additional days.

20 MR. O'NEILL: I would like for Joe to try to, in a
21 couple of days, to call me and see if we can do a little bit
22 of stipulation.

23 JUDGE BLOCH: That is advisable and I would urge the
24 parties to do that.

25 Is there anything that must be handled on the record

1 at this point?

2 MS. CHRISTA-MARIA: No. But off-the-record I have
3 some comments to make.

4 JUDGE BLOCH: Shall we go off the record, Christa?

5 MS. CHRISTA-MARIA: Yes.

6 JUDGE BLOCH: Will the parties please stay on the
7 line? The hearing is adjourned.

8 (Whereupon, at 11 o'clock a.m., the telephone
9 conference in the above-entitled matter was adjourned.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF PROCEEDINGS

1
2
3 This is to certify that the attached proceedings before the
4 NRC COMMISSION

5 In the matter of: Consumers Power Company (Big Rock Point)

6 Date of Proceeding: Tuesday, 7 June 1983

7 Place of Proceeding: Washington, D. C.

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

10
11 Elizabeth Hansen
12 Official Reporter - Typed

13 *Elizabeth Hansen*
14 Official Reporter - Signature