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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,
Units 1 & 2)

Docket No. 50-352
50-353

Location: Philadelphia, Pa.

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Date: Tuesday, March 6, 1984

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U.S. Customs House
Old Customs Courtroom
2nd & Chestnut Streets
Philadelphia, Pennsylvania
Tuesday, 6 March 1984

The hearing in the above-entitled case reconvened
pursuant to recess, at 9:05 a.m.

BEFORE:

LAWRENCE BRENNER, ESQ., Chairman
Atomic Safety and Licensing Board

RICHARD F. COLE, Member
Atomic Safety and Licensing Board

PETER A. MORRIS, Member
Atomic Safety and Licensing Board

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P R O C E E D I N G S

JUDGE BRENNER: Good morning.

Whenever the parties want to do it -- I don't see Mr. Anthony here. I don't think he was planning on being here this morning. We are prepared to hear the argument on the FOE motion to strike the Applicant's structural testimony. And whenever he is here, and the parties want to deal with that, we're prepared to do it.

MR. WETTERHAHN: Let me inform the Board of the scheduling matter that's been agreed to among the parties. If it meets the Board's schedule, the parties have agreed to argue the DES Severe Accident Contentions on March 19th which would be the Monday, at 1:30, when we reconvene. It certainly looks like we will reconvene on the structural analysis testimony.

JUDGE BRENNER: All right. That was always our schedule.

MS. BUSH: Yes, there was just no way to work it out this week.

JUDGE BRENNER: You better use the microphone, Ms. Bush.

MS. BUSH: There just didn't appear to be any way to work it out for this week so, since it's the beginning of that week, I'll just rearrange the time and if we can do it at the beginning of the week, I'll just change my plans.

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1 JUDGE BRENNER: We'll do it at 1:30, starting
2 at 1:30, in this courtroom on March 19th.

3 MS. BUSH: Thank you.

4 JUDGE BRENNER: Are there any other preliminary
5 matters before we pick up the emergency planning contention,
6 at this time?

7 MR. CONNER: I might note one preliminary matter
8 on the emergency contentions. I think it might be well to
9 show, in the record, that the Applicant's response to these
10 contentions tracks the numbering system suggested by LEA,
11 in its February 5, 1984 letter. And that would explain -- and
12 that the Staff followed the same format, apparently. I
13 think it might be well to have it in here, to indicate why
14 we have these two sets of numbers.

15 JUDGE BRENNER: I think we all know what the
16 situation was, but now you've got it.

17 All right. Ms. Zitzer, on LEA, I guess it's -- which
18 is the one involving the Red Cross?

19 MS. ZITZER: We left off with number VII. And in
20 reviewing the contention, I think that what I would like to
21 clarify is that the contention specifically says that in the
22 Bucks and Chester plans the Letters of Agreement that are
23 in the plans, we feel, are inadequate. And as requested, I
24 did provide to the Board and to PEMA both the Red Cross letter
25 and the other letters as well, which I think clarify why we

11b3

1 have continued, in the rest of the contention, to express our
2 concern. Generally, I would say we feel that the Red Cross
3 Letters of Agreement might be appropriate to deal with any
4 other kind of disaster. And in those kinds of disasters, it
5 certainly would appear adequate. But our concern is with
6 regard to the particular nature of a nuclear incident.

7 And we think that the Letter of Agreement really
8 needs to reflect that concern. But the contention does attempt
9 to go beyond just the Red Cross Letters of Agreement, with
10 regard to the Letters of Agreement presently in the Berks
11 and Chester County plans, and is not more specific simply
12 because most of the other letters that are there we do not
13 consider to be final letters of agreement. They are general
14 letters that indicate a willingness to work out the arrange-
15 ments, but they don't yet really -- in our mind -- really
16 constitute formal Letters of Agreement, which is why we
17 haven't submitted more detailed comments on them.

18 We would expect to see more specific letters in
19 additional revisions of the plan and that is, frankly, why
20 the contention has the additional information in it that it
21 does, with particular regard to the Red Cross Letter of
22 Agreement in the Chester County plan. While the letter -- it's
23 page T-1-7. It's a seven page letter which is entitled
24 Statement of Understanding between the Chester County
25 government and Southeastern Pennsylvania American Chapter of

11b4

1 the Red Cross. While the letter is signed by all three
2 commissioners and a representative of the Red Cross, it is
3 not dated. And just above the signatures, under term of
4 agreement, it does shall say that this agreement shall be
5 reviewed and, if necessary, revised in 1984 and every four
6 years thereafter.

7 What we particularly were seeking here, was some
8 understanding and some assurance that in the event of a
9 radiological emergency that these same provisions, normally
10 provided by the Red Cross, would indeed be provided. And
11 the only reason we attempted to specify our concern about
12 human response was to indicate that that's a factor we think
13 needs to be considered. And the letter could adequately
14 provide that assurance, if that were addressed.

15 But we don't feel -- not only the Red Cross
16 Letters of Agreement, but I think probably -- of maybe even
17 greater concern -- in the Berks County plan, where the other
18 Letters of Agreement which are extremely general, particularly
19 with regard to the RACES and REACT radio-equipped emergency
20 volunteers, the letters state that they will make emergency
21 Citizen's Band radio services available to the maximum extent
22 possible.

23 Our concern there would be to seek some additional
24 reassurance as to what the maximum extent possible would mean,
25 because those volunteers are an absolutely crucial part of

11b5

1 the whole communications system, which are very heavily
2 relied upon.

3 So again, in general, I think in offering an
4 explanation as to why the contention doesn't specifically
5 delineate a comment about each existing Letter of Agreement,
6 which we don't feel is sufficient, is because we feel that
7 while these are general letters of agreement, that in several
8 of them they indeed reflect that there will be additional
9 details worked out and provided. And when those are forth-
10 coming, they may or may not be adequate. But we don't feel,
11 at the present time, that these existing letters really
12 provide sufficient assurance that there is really a mutually
13 agreed to criteria, as is required in NUREG-0654 A.3.

14 JUDGE BRENNER: I still don't know what else you
15 want, particularly in the Red Cross letter, given the
16 Applicant's answer that the agreement, with Berks at least --
17 I haven't read these. I'm just relating the Applicant's
18 answer to you. According to the Applicant, the agreement
19 between Red Cross and Berks County covers man-made disasters,
20 including nuclear incidents. And the Applicant references
21 page T-1-3.

22 MS. ZITZER: Given the fact that it's almost
23 impossible to read page four of that letter, it's difficult
24 to really make a determination that again sufficient considera-
25 tion has been given to the special -- what we perceive as

11b6

1 special nature of a nuclear incident. I've provided the
2 best possible copy to you that I could, but that's the
3 condition of the original.

4 JUDGE BRENNER: Do you have any basis for
5 believing that the Red Cross -- the Southeast Pennsylvania
6 Red Cross is taking a position that it will not participate
7 in staffing a Mass Care center 20 miles outside the EPZ, in
8 the event of a nuclear emergency at the Limerick Plant?

9 MS. ZITZER: At the present time I don't, but
10 I have not consulted with them and I would assume that if
11 they signed this Letter of Agreement that they believe that
12 they are able to. We are just concerned about assurance that,
13 under the special conditions of an alert, or in particular a
14 radiological emergency, that assumptions -- misassumptions --
15 are not being made with regard to the availability of personnel.

16 And I think the contention seeks to go -- to
17 address not just the Red Cross but in particular some of the
18 other particularly crucial volunteers. Particularly, again,
19 the RACES and REACT volunteers. What we're seeking, in the
20 Letters of Agreement, is assurance that under not just a
21 normal emergency but the kind of conditions of a radiological
22 emergency -- but everybody has agreed to and understands
23 what their participation involves. That's all.

24 end t1
25

2pbl

1 JUDGE BRENNER: Is there any response from the
2 other parties to Ms. Zitzer's statements this morning?
3 Otherwise, we're ready to move on.

4 Commonwealth?

5 MS. FERKIN: Judge Brenner, one response.

6 JUDGE BRENNER: Better speak up. I've heard some
7 complaints about your voice yesterday from the audience.

8 MS. FERKIN: One response concerning the Red
9 Cross Chester County agreement. It came to our attention
10 as of this morning, that that agreement has been approved
11 by the NRC and by FEMA, with regard to --

12 JUDGE BRENNER: FEMA or PEMA?

13 MS. FERKIN: FEMA, F. Has been approved with
14 regard to the Peach Bottom Atomic Power Station. I wanted
15 to make sure that that fact was in the record.

16 JUDGE COLE: That's the southeastern chapter of
17 Red Cross?

18 MS. FERKIN: Southeastern chapter, yes.

19 JUDGE COLE: The same chapter we're talking about
20 here?

21 MS. FERKIN: Yes, and Chester County.

22 JUDGE BRENNER: All right. LEA-VIII. Now this
23 is your contention that voluntary emergency workers will
24 not respond in a radiological emergency. And as I commented
25 before, LEA has an organizational problem. But we've got

2pb2

1 a greater one in starting to try to put together the lack
2 of organization of LEA's contentions. And in discussing the
3 others you kept alluding to this one at some point, including
4 the immediately preceding one.

5 All right. I think we understand contention. Now
6 if I understand the basis for the contention, it's the
7 testimony in the Three Mile Island restart proceeding,
8 correct?

9 MS. ZITZER: Yes. Dr. Erikson has also testified
10 in several proceedings. I think what we seek here is an
11 opportunity to provide some expert testimony to make a
12 showing that human response is indeed a factor that must
13 be considered.

14 But you know, in this particular contention we
15 wouldn't envision really, the volunteers themselves necessarily
16 possibly presenting testimony. But more of an opportunity
17 to provide a basis with some expert testimony as to why this
18 is a factor that should be considered.

19 The reason we did submit separate contentions on
20 these particular types of volunteers was in that instance
21 to explore their position. But in this particular contention,
22 we seek an opportunity to present expert testimony with
23 regard to the human factors issues.

24 JUDGE BRENNER: I suppose on the one hand it's
25 always nice to be able to refer to testimony in another

2pb3

1 proceeding by expert witnesses which can form a basis for
2 your contention. That's the positive as far as the proponent
3 of the contention is concerned.

4 However, on the other hand you've got a real
5 problem relying on that testimony for a basis. The problem
6 is it's been litigated before and the decision of the board
7 and the appeal board in that very case was against the
8 result you seek here.

9 How can you still use that testimony for a basis
10 given those findings?

11 MS. ZITZER: I think you would have to base that
12 however on this particular circumstance. What we seek to
13 show is not what happened in a different set of circumstances,
14 but why in this particular case, it is a factor that should
15 be considered.

16 JUDGE BRENNER: If you've read Dr. Erikson's
17 testimony -- incidentally, I think you spelled his name
18 wrong. It's without a "c" in the middle. At least somebody's
19 testimony in that proceeding, I think Dr. Erikson's included.

20 The point was made that Three Mile Island was a
21 special case, if any case be a special case. And although
22 emergency workers might, for the sake or argument, respond
23 in other areas, Three Mile Island is the area where voluntary
24 emergency workers were most likely not to respond.

25 The boards there found against that testimony.

2pb4

1 And now, if I understand the argument you just made, we
2 should consider this a special case, more special than the
3 Three Mile Island area. And I don't know what the basis is.

4 MS. ZITZER: The basis, frankly, is the comments
5 we've received from many of the volunteer emergency workers
6 themselves.

7 JUDGE BRENNER: Although you list examples in the
8 contention, as I understand it, you intend just a broad
9 contention to apply to all emergency workers without any
10 distinction among them.

11 MS. ZITZER: I think that would be correct, because
12 frankly, I think the specific roles of the volunteers we
13 have attempted to be more specific, to address more
14 specifically in other contentions.

15 JUDGE BRENNER: That was going to be my next
16 question, where there are emergency workers, you deem
17 particularly important for the success of the plan, be they
18 voluntary or employees, you've got contentions on them.
19 Am I correct?

20 MS. ZITZER: Yes, as long as they're admitted,
21 yes.

22 JUDGE BRENNER: Let me give you a preliminary
23 view. That's just mine and not the Board's so you can
24 respond. My view is, isn't it much more efficient and
25 useful to LEA as well as the Board and the public interest,

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1 to litigate the particulars of the roles of emergency
2 workers where there is a particular concern in the other
3 contentions, in a context in which we can see the importance
4 of those workers doing their job. And contrary, the
5 importance of those workers not doing their jobs. As well
6 as some specific testimony as to whether such workers
7 would respond.

8 For example, there might be a difference between
9 volunteer bus drivers who are themselves parents, as opposed
10 to telephone operators who are in a telephone facility
11 somewhere and on the job.

12 And there might be a difference in the efficacy
13 of the plan if certain telephone operators don't report to
14 work, as opposed to certain personnel actually handling the
15 evacuation vehicles.

16 That situation, as opposed to just some abstract
17 testimony where we get the same witnesses. And I tell you,
18 it's a traveling road show. They have been in other
19 proceedings. And you get the Applicate wheels somebody in,
20 and that person says, in the past people have responded.

21 Then the Intervenor brings an expert witness in
22 who says, well, the past may be different than the future,
23 because there may be something different about nuclear
24 emergency. And the argument goes back and forth. But it's
25 a very abstract discussion. And if you ask any of those

2pb6

1 witnesses anything about the details of these emergency
2 plans, very few of them know much about it.

3 And what the litigation has come down to is the
4 example I gave you at the outset, at looking at the particular
5 roles of workers.

6 MS. ZITZER: I would envision any testimony with
7 this contention admitted to be specific to the Limerick
8 circumstance and not just a general discussion of what
9 volunteers do under certain conditions.

10 But I do share your concern about the need for
11 the testimony to be specific to the roles of people involved.
12 And again, as long as the other contentions are admitted,
13 I would hope that they would present an opportunity to deal
14 with the factor of human response, and whether or not there
15 is reasonable assurance that those roles will be carried out.

16 Again, we just felt that this was just such an
17 important factor that we wanted to be absolutely certain
18 that we would have an opportunity to explore this in the
19 record.

20 JUDGE BRENNER: Let me rephrase what I think you
21 just said. And then you can correct me if I'm wrong.

22 You are saying you want this contention admitted,
23 of course. But if we did not admit this contention, you
24 would want us to make clear that the exclusion of this
25 contention did not mean an exclusion of the issue of whether

2pb7

1 voluntary emergency workers, particular ones, in particular
2 other contentions would perform their jobs.

3 MS. ZITZER: Yes.

4 JUDGE BRENNER: Do you have plans to present an
5 expert witness on this contention if it was admitted?

6 MS. ZITZER: Yes, that is exactly what we would
7 want to do. Part of the difficulty of now specifying who
8 is not knowing when the litigation is going to take place.

9 We've had general conversations with Dr. Erikson.
10 We haven't really pursued it any further, because at this
11 time we didn't know whether the contention would be
12 admitted, or when the litigation would take place.

13 But we certainly would intend to present expert
14 testimony.

15 JUDGE BRENNER: Well, you said you would have
16 particular testimony. You would envision, rather that the
17 litigation, if this contention is written, would focus on
18 the particulars of the Limerick emergency plan?

19 MS. ZITZER: Yes.

20 JUDGE BRENNER: Dr. Erikson's testimony does
21 not typically do that. I don't want to say he doesn't look
22 at the plans.

23 MS. ZITZER: We would not present a witness that
24 wasn't prepared to deal specifically with the Limerick plan,
25 because that's what our concern is.

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JUDGE BRENNER: Okay.

MS. ZITZER: We have discussed this with him.

JUDGE BRENNER: Well, the admission of the contention won't turn one way or the other on whether he's a witness or not. I just wanted to get some insight.

MS. ZITZER: I understand your concern.

JUDGE BRENNER: I guess as we did yesterday, we'd like to get the Commonwealth's position if they have one on admissibility of this contention.

end 2.

1 Mr. Lammison, as I recall, was a Commonwealth
2 witness it the Three Mile Island Restart proceeding.

3 MS. FERKIN: With regard to the testimonies of
4 Mr. Lammison, that is cited, Commonwealth acknowledges that
5 Mr. Lammison's point -- with regard to TMI -- was valid. We
6 would state that the emergency planning, following the TMI
7 accident, has been greatly expanded in level of detail and
8 scope. And what Mr. Lammison's point really went to was the
9 need for additional training and education of emergency
10 workers, beyond what was availalbe at the time of the TMI
11 incident.

12 And we would simply note that training of
13 emergency workers is essentially, at the first level, a
14 municipal responsibility and a county responsibility. And
15 should the counties and municipalities desire additional
16 aid in training and educating workers, PEMA's resources are
17 available.

18 To the extent that this contention seeks to have
19 the issue of human response litigated, the Commonwealth
20 would not support its admissibility.

21 JUDGE BRENNER: Well, why not? LEA's position is
22 the plans just assume that all these emergency workers,
23 including voluntary emergency workers, would do their job,
24 without an analysis of their competing roles as parents,
25 and so on.

1 MS. FERKIN: And our position is that that kind
2 of allegation is speculative, that the plans provide for
3 agreements with response organizations, to the extent those
4 response organizations are not already required to respond
5 in this kind of emergency. And the allegation is too specula-
6 tive.

7 JUDGE BRENNER: Well, isn't it speculative to
8 assume that these voluntary emergency workers will do their
9 jobs also? Which way does the speculation lie?

10 MS. FERKIN: We have no indication, at this point,
11 that any of the groups of workers, cited by Ms. Zitzer, will
12 not do their jobs to the extent they understand what their
13 jobs are. And that's a training issue.

14 JUDGE BRENNER: Do you think the issue of whether
15 or not emergency -- voluntary emergency workers will do their
16 jobs, would be admissible in other context, in LEA's proposed
17 contentions? Where they have specific contentions, talking
18 about specific plans and the dependency of those plans on
19 particular emergency workers? Or should we exclude any
20 testimony on whether or not a worker will do the job, simply
21 because there is a provision in the plan that bus drivers will
22 drive buses, for example?

23 MS. FERKIN: I'm not sure if I understand the
24 question.

25 JUDGE BRENNER: I understand your position on LEA

1 LEA VIII. I'm trying to go beyond that and see whether or
2 not it's a Commonwealth position, that the issue of whether
3 or not voluntary emergency workers -- and I use school bus
4 drivers as an example, but it's only an example -- would do
5 their job and should be excluded from even specific
6 contentions. They talk about the efficacy of school
7 evacuation plans.

8 That is, if the evacuation plan is approved by
9 the County and the school board, and it relies on school
10 bus drivers, that that should be sufficient and we should not
11 engage in any litigation of whether the bus drivers would
12 actually show up.

13 MS. FERKIN: Judge Brenner, with regard to
14 specific allegations concerning specific groups of emergency
15 workers, we would not exclude -- we would not argue that those
16 contentions were not admissible. But as this contention is
17 phrased, it is just too broad.

18 JUDGE BRENNER: Staff did not object to the
19 admission of a contention, so I would like to ask the Staff
20 what litigation they would envision, in terms of the type
21 of testimony the Staff would put on?

22 MS. WRIGHT: The Staff, unlike LEA, did not envision
23 an examination of the state of mind of people near the
24 Limerick facility, or emergency workers associated with
25 Limerick --

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1 JUDGE BRENNER: I can't hear you. I'm sorry.
2 Could you back up and start again, please?

3 MS. WRIGHT: The Staff, unlike LEA, did not
4 anticipate an evaluation of the specific frame of mind of
5 Limerick emergency plan workers, but interpreted their
6 contention to be a consideration -- that a consideration of
7 the state of mind of emergency plan workers, in an
8 emergency situation, generally and how people tend to
9 react when there's a real emergency. Whether they do, in
10 fact, vacate the area.

11 And if there is a propensity to do so, then
12 obviously that would affect the dependability of the plant.

13 JUDGE BRENNER: Did the Staff have either a
14 particular witness or witnesses in mind? Or if not that,
15 at least an area of expertise of witnesses, which the Staff
16 would put on for LEA Contention VIII, if we admitted it?

17 MS. WRIGHT: No.

18 JUDGE BRENNER: I'm trying to understand what
19 kind of testimony the Staff would put on, and I don't yet
20 understand that.

21 MS. WRIGHT: Apparently at TMI there was testimony
22 about the -- I'm sorry. Apparently there was testimony, at
23 TMI, about the propensity of workers to vacate the area if
24 an emergency occurred. Looking at that, and trying to formulate
25 some -- I think there are psychological studies of people's

1 response in emergencies. Maybe not necessarily nuclear
2 emergencies, but the reaction of a human to either stay and
3 assist, as he is committed, or to leave in a panic.

4 JUDGE BRENNER: How would we relate that, if at
5 all, to the emergency plans around Limerick? If I understand
6 you correctly, you're talking about the abstract argument,
7 in general.

8 MS. WRIGHT: I'm not sure that it could be anything
9 more than an abstract argument. I did not perceive, in this
10 contention, any intent by LEA to examine just the specific
11 state of mind of an emergency plan worker for Limerick.

12 JUDGE BRENNER: All right. Did the Staff want
13 to add anything to the comments of the other parties, that
14 were made here?

15 MS. WRIGHT: No.

16 JUDGE BRENNER: All right. Applicant?

17 MR. CONNER: Here again, as we said yesterday,
18 I think this has to be considered inseparably from the
19 training program. While I have confidence that the people
20 who say that they will do a job will, in fact, do it when the
21 circumstances arise, the function of the training program would
22 be to detect or find people who said no, despite the fact that
23 I am the volunteer fire chief in one area, I will not do it.

24 Well, if that were the case, you would find somebody
25 who did.

1 Now of course, I'm talking only in the sense of
2 experience we've seen in other cases. And it is the state's
3 plan so we cannot say what the state will ultimately do
4 in this area, in the counties. But I have every confidence
5 that the individuals involved, once they understand what is
6 asked of them, will in fact perform as they have in other
7 cases, as they did at Ginna, as we point out.

8 JUDGE BRENNER: Shouldn't that type of information
9 be part of the litigation of the merits, then? In other
10 words, the response to the contention would be to focus -- by
11 some parties, presumably in part, that the Commonwealth would
12 be to focus on the training involved in an effort to prove
13 before us that given that training and the understanding that
14 these voluntary emergency workers would get, of what they
15 are being expected to do, that a sufficient number of them
16 would do it such that the plan would work.

17 MR. CONNER: Here again, it's trying to prove a
18 negative. I mean, how can we say that there are -- I don't
19 know how many there might be, two or three thousand perhaps,
20 volunteer workers. It's very difficult to prove that each and
21 every one of them will, in fact, respond. I submit that the
22 matter is something that if there would be any litigation,
23 it would be after the training. And then if somebody, it turns
24 out -- my hypothetical fire chief -- decides he wouldn't
25 function, then it would be a question of should he be replaced.

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1 But to speculate now on some psychological
2 testimony that has already been rejected versus presumably
3 some people who know what they are doing, such as Mr. Lamnison
4 or such as Civil Defense personnel from other areas, that have
5 had some experience like this, which would generally show --
6 in fact, I guess, universally show that your problem with
7 your volunteers is not that they don't show up, but too many
8 of them show up and have to be weeded out.

9 We had testimony like that from Kentucky. I just
10 think that at this stage of the game, it would be pure
11 speculation. You would have some psychologists come in and
12 say people won't respond in an emergency situation the way
13 they should, goodness gracious. And we would say yes, they
14 would. And where are we? Nowhere.

15 So we think that to this kind of a litigation, if
16 you will, would be purely based upon speculation. And if there,
17 in fact, was a problem, this is the kind of thing that would
18 show after the training and after the exercise.

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1 JUDGE BRENNER: Except that part of the contention
2 as I understand it, can be interpreted as saying, well,
3 training and agreements are one thing. But the real situation
4 is something else. How would exercises meet that part of
5 the contention.

6 MR. CONNER: Well, we could bring in some generals
7 I guess to say that the troops do go over the top when they
8 have to. And I think that when a person is properly trained,
9 that's what he will do.

10 JUDGE BRENNER: Well, part of the allegation here
11 is you're dealing with people like volunteer school bus
12 drivers, and they're not troops under command, and/or, but
13 I don't want to get into the merits now.

14 MR. CONNER: If you have a volunteer bus driver,
15 I think he will say, I will take care of my family first.
16 Then by definition you get another bus driver.

17 JUDGE BRENNER: All right. Does anybody else
18 want to add something?

19 LEA, did you want to respond?

20 (No response.)

21 JUDGE BRENNER: Okay. LEA IX. Here again, we're
22 getting into a series of contentions. They may or may not
23 be sequential. I don't remember. But they overlap in the
24 sense that there is not enough resources as a general term
25 to assure that the emergency plans can be implemented.

4pb2

1 As I understand LEA IX, although you talk about
2 other resources, the real focus of LEA IX is funding,
3 financial assistance.

4 MS. ZITZER: Yes, absolutely.

5 JUDGE BRENNER: Because you have other contentions
6 where you talk about particular resources.

7 MS. ZITZER: Yes.

8 JUDGE BRENNER: Just for my own peace of mind and
9 organization, I want to talk about just financial assistance
10 in this one. When we get to your other contentions on
11 particular resources, we'll do that.

12 MS. ZITZER: Exactly. That's what's intended by
13 the contention.

14 JUDGE BRENNER: Part of the answer of the Applicant
15 and the Staff are that there is no overall requirement for
16 financial assistance from the utility. And where there are
17 particular problems in the plans, the off-site governmental
18 authorities can work that out.

19 But we would have no broad authority to just order
20 that the utility fund anything the governmental bodies want.

21 MS. ZITZER: Our concern is that in order, again
22 to be able to make a determination that the plans can and
23 will be implemented, there is a need, we think, early on
24 in the planning process to assure that the resources available
25 are sufficient to indeed, result in adequate resources to

4pb3

1 not only develop the plan, but to ensure that it will work.

2 I think in an attempt to provide some more
3 specific information, we did as a supplement file a letter
4 that was sent from Chester County to Philadelphia Electric
5 Company, which we didn't receive until the day after these
6 contentions were due. But had been submitted in September of
7 1983, which indicated the concerns certainly that Chester
8 County has about funding problems that it is having, not
9 only with regard to particular equipment, both needed at
10 the Chester County EOC, but at the municipal EOC as well.
11 And also with regard to training expenses.

12 And we submit that as an attempt to be more
13 specific with regard to why we think it is a problem in
14 this case, I believe there have been some discussions between
15 the county and Philadelphia Electric. I am not, frankly,
16 appraised of what the outcome of that have been.

17 But we think that frankly, what we are seeing is
18 no resolution to the problem. The county in particular says,
19 well, we don't have the resources to do this. Our EOC is
20 not equipped as it should be to deal with this kind of
21 an emergency.

22 And generally, the position of the Applicant seems
23 to us to be, well, it's your responsibility. You are supposed
24 to be prepared for whatever kind of an emergency might occur.
25 So, you know, it's your responsibility.

4pb4

1 And we end up with everybody sitting there,
2 throwing their hands up and no resolution to the problem.
3 And we think that it is such a problem that it may well
4 result in -- with particular reference here to the Chester
5 County plan, to the plan itself not being workable, simply
6 because of insufficient resources.

7 Again, we are seeking some assurance that somewhere
8 these resources will be forthcoming. And we think that it
9 is a very significant problem.

10 JUDGE BRENNER: What would we litigate factually
11 if this contention was admitted?

12 MS. ZITZER: I think by the time the litigation
13 occurred, if some resolution had not resulted, to at least
14 in this particular case what are identified as unmet needs
15 and equipment, that from the county's point of view is
16 necessary, in order to be prepared. Whether or not, in
17 the absence of having that equipment the plan itself would
18 function.

19 JUDGE BRENNER: Do we have authority, do you
20 think, to order Philadelphia Electric to fund the matters
21 deeded in the plan by payments to the government?

22 MS. ZITZER: We think that the regulations
23 provide -- somewhere there needs to be a resolution of the
24 fact that this equipment and these resources will be available.
25 And we think that the Board does have the responsibility to

4pb5

1 be able to make a determination that these needs will be
2 somehow met. And that the plan will be implementable.

3 If these needs are not made available, we don't
4 see that a finding can be made that the plan can be
5 implemented. We hope that it will be. We hope that it won't
6 continue to be the problem that it is now.

7 But again, based on the current state of the
8 plans, and at least the extent of the discussions between
9 the Applicant and particularly Chester County, which is the
10 only specific example we're aware of presently, although we
11 know it's a concern at the municipal level. Particularly
12 with the municipal EOCs being able to operate as they are
13 planned. That matter is addressed later with regard to
14 communications.

15 For example, telephones. But not only at the
16 county level, but at the municipal level, we see a need for
17 some kind of resolution to this problem. We think that it
18 is the Board's responsibility to assure that those resources
19 will come from somewhere.

20 We're not saying that necessarily the Applicant
21 must be or should be ordered to provide them. Although I
22 think that in many instances we think that that's going to
23 be necessary.

24 JUDGE BRENNER: As a practical matter, isn't what
25 your talking about -- doesn't it fall into two areas as far

4pb6

1 as the Board is concerned. One is that where you have
2 particular contention, that the plan does not meet the
3 applicable requirements because of certain -- the lack of
4 certain things, including resources. We would, if the
5 contention is admitted, look at the alleged lack.

6 And in fact, if the matters are lacking and we
7 agree that the plan cannot be reasonably implemented without
8 it, we will find that there is no adequate plan, absent
9 those resources. Even in the plan otherwise has been approved.

10 That's one possibility. And you have a few
11 contentions like that. More than just a few. On the other
12 hand, if you don't have a particular contention, isn't it
13 part of the normal planning process of the governmental
14 entities, particularly the risk counties and down to the
15 municipalities, upon which the risk county plans depend,
16 for them in this planning phase to be identifying the things
17 they need. And then deciding whether they can furnish those
18 things themselves or whether they want to go to the state
19 or the utilities or somewhere else and indicate that they
20 don't think they can approve a plan, unless those things
21 are provided.

22 Isn't that part of the normal give and take of
23 the planning process?

24 MS. ZITZER: It certainly should be. I am
side 2 bu 25 not aware to what extent that has happened. Generally,

4pb7

1 in many instances we are aware, particularly at the municipal
2 level that the resources are totally inadequate to be able
3 to implement the plans and to carry out what is necessary
4 under the condition of an alert, or under anything that
5 might escalate above that.

6 We are concerned that we don't see any answers
7 forthcoming. And I think that these concerns have been
8 obvious for quite a period of time. Maybe the state can
9 inform us that things have -- or that they're aware of what
10 is going on at the county level. Maybe Applicant can.

11 But particularly, with regard to the municipal
12 level, we just have seen little resolution to this problem.
13 I would say, we just think, in and of itself it could well
14 be insurmountable if there isn't some progress made. Which
15 at the present time we're just not aware of.

16 JUDGE BRENNER: My point is that part of your
17 very basis shows that if there's no progress made to use
18 your phrase, that the counties, such as Chester County comes
19 in and says we don't have a plan that we're going to approve
20 yet. And that's as a general matter.

21 And then where you have particular matters that
22 LEA itself wants to litigate we've got contentions on it.

23 MS. ZITZER: We do if they are admitted, yes. I
24 believe in most cases. Again, I understand your concern
25 that the contentions should be more specific and that there

4pb8

1 may be other areas, other contentions that cover the
2 generally stated concern. Again, the planning is not
3 sufficiently far along to really have any resolution as to
4 the specifics of itemizing what these resources are. And
5 hopefully, that this is a problem that will be resolved as
6 the plans are developed further.

7 But at the present time they are not.

8 JUDGE COLE: Then what will we litigate?

9 MS. ZITZER: Well, at that point in time then
10 there wouldn't be a need to litigate the contention. But
11 at the present time, based on the current status of the
12 plans, there is no assurance that a lot of the equipment and
13 in particular at both the municipal EOCs and in Chester
14 County's case, at the county EOC is available.

15 JUDGE COLE: In Applicant's response to this,
16 they indicated that particularly with Chester County, they
17 were going to provide some assistance in meeting certain of
18 the needs that were specified.

19 MS. ZITZER: We hope they do.

20 JUDGE COLE: Didn't they say that?

21 MS. ZITZER: There has been, I believe, a response
22 to this letter, just to Chester County's letter sent out
23 recently. But it in no way indicated that all of the
24 concerns were going to be addressed. Given some time to
25 work that out it may well not be a problem. But the letter

4pb9

1 did indicate that the bulk of the really substantial
2 expenditures, with regard to equipment that the Applicant
3 felt was Chester County's responsibility. And that normally
4 they would need to have that equipment to deal with other
5 emergencies.

6 And therefore, that it was their responsibility.
7 We hope this will be worked out. But at the present time
8 given the present status of the plans, it's not. Which is
9 why we had to offer it as a contention. Given more time to
10 work the details out, the differences may be resolved. But
11 presently they are not.

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1 JUDGE COLE: Okay.

2 JUDGE BRENNER: Does the Commonwealth want to
3 take a position on the admissibility of this one?

4 MS. FERKIN: We'd just like to comment that what
5 the Board characterized as the normal planning process is
6 correct. The State depends upon being informed by the
7 municipals and the counties that they lack resources. And at
8 this stage, the State simply doesn't have that information,
9 as to many of the items that are cited in LEA X, for example.
10 That's all I'd like to say.

11 JUDGE BRENNER: Do the Staff or Applicant want
12 to add anything to their written response, given the
13 discussion here? Staff?

14 MS. WRIGHT: No, sir.

15 JUDGE BRENNER: Applicant?

16 MR. CONNER: We would emphasize again that we
17 think the correct decision was made by the Board in the
18 Callaway case, which says this is not something that is
19 within the jurisdiction of the Board to consider, as such.
20 Reference was made to the letter that Mr. Boyer sent to
21 Chester County, which points out many things, including the
22 fact that Chester County gets \$229,000 for that particular
23 year, based upon their share of the public utility realty
24 tax, paid to the state, that is shared with the counties.

25 And that happened to be the amount directly

1 attributable to the Limerick facility. So money is, in fact,
2 going to the counties through this public utilities realty
3 tax. The letter offers to provide certain information --
4 I mean certain equipment to the county, and discusses the
5 fact that there's been a series of meetings and discussions
6 with the county people and Philadelphia Electric. And
7 certain things are promised, certain things will be looked
8 into, and define the needs more correctly.

9 Stated another way, the Applicant is doing every-
10 thing we can to carry this forward.

11 JUDGE BRENNER: All right. We're ready to move to
12 LEA X. LEA X contains a long list which LEA says are
13 examples of items that -- according to LEA -- the emergency
14 plans, in their present draft, state are to be developed.
15 I guess, to a large extent, this contention, with the particular
16 examples, overlaps some of the contentions we discussed
17 earlier of LEA's overall contention that as long as the
18 plans were to be developed LEA -- or anybody else that doesn't
19 know that the plans will be adopted.

20 And in this case, it's even worse, because even
21 the draft plans don't indicate exactly what the situation is
22 with respect to the list of items provided.

23 Do you want to explain the focus of the contention,
24 in comparison to your other contentions, or otherwise add
25 anything?

1 MS. ZITZER: I think with this contention we're
2 really trying to make a more -- give the Board a better sense
3 of the fact that so much work remains to be done generally
4 that, based on the present status of the plans, it is -- in
5 our opinion -- impossible to make a finding that the plans
6 can and will be implemented. And the reason we gave so many
7 examples was to try to give a sense of, frankly, how much work
8 really yet remains to be done.

9 We are concerned about the plans we gave that
10 we cited as examples. We gave, in particular, because we
11 feel that each and every one of these plans -- at least examples
12 we cited -- is unworkable in its present form simply because
13 of the fact that so much of the information hasn't even yet
14 been developed. And what we did attempt to do was, in the
15 attachments listing the items to be developed, tried to make
16 specific the reason why -- the reasoning for us feeling that
17 the plans are not workable, particularly the Borough of
18 Phoenixville plan.

19 With that many items still outstanding, there's
20 absolutely no way, and there's not even sufficient information
21 available based on the fact that these many items still are
22 marked to be determined, that we could even attempt at the
23 present time to be specific as to why the plan wouldn't work
24 until more information is available.

25 We would hope that a lot of these problems will

1 be resolved and, in general, some of the concerns are
2 addressed in other contentions. But overall, because of the
3 current status of the plan, so much work remains to be done
4 that we find the plan unworkable, particularly with regard to
5 the Montgomery County plan.

6 There are a few items here -- page 19, after the
7 Phoenixville plan, is the Pottstown Memorial Hospital plan.
8 Again, Attachment E in the plan is to deal with procedures
9 for medical emergencies involving radiation. And that's
10 marked to be developed by Radiation Management Corporation
11 because of the proximity of that hospital to the site and the
12 need to be prepared to deal with any potential, either on-site
13 problems or problems involving the population off-site.

14 That information isn't sufficiently developed
15 to really assure that the hospital personnel will be able to
16 deal with such an emergency. That is a specific concern we
17 have with regard to the Pottstown Hospital.

18 JUDGE BRENNER: Don't go through all of them.

19 MS. ZITZER: Okay. Again, just above that, there's
20 no census information to even determine the population that
21 we're trying to plan for. So in order to even go through and
22 determine whether or not we have sufficient staff, equipment,
23 and personnel, it's just very difficult to do that, given
24 the current status of the plan. I really would just appreciate
25 an opportunity, with regard to the Montgomery County plan, to

1 point out that with regard to the hospital information and
2 the ability to deal with the information about the medical
3 facilities, this is listed on pages 22 and 23 --

4 JUDGE BRENNER: We've changed the pagination. And
5 the way we've put together our package. Is it Table 5?

6 MS. ZITZER: Table 6. Table 6 is a listing of
7 the items yet to be developed in the Montgomer County plan.
8 And they are listed by page number. On page 23, these numbers
9 are at the top, I'm referring to page G-10-1. There's a
10 listing of medical facilities outside the plume EPZ. And the
11 heading indicates that these are hospitals with radiation
12 exposure contamination treatment capability.

13 However, no information or Letters of Agreement,
14 stating the number of patients that could be treated, is
15 available. All that is there is a listing of the number of
16 beds in the entire hospital and there's absolutely no way
17 to make any kind -- to draw any kind of conclusion about
18 whether or not the number of radiation incident -- radiation
19 -- victims exposed to radiation exposure or having radiological
20 problems, can in any way adequately be treated or provided for.

21 That is a specific concern we have, with regard
22 to the county plan, because we think that that information
23 needs to be much more specific. And again, given the current
24 status of the plan, as is the case with a lot of the information
25 in the plan, there are lists. There are all kinds of lists

1 of the firemen, all the firemen, and all the resources in
2 the whole county. But there is absolutely no way to determine
3 whether or not the actual role that any of these -- either
4 individuals that are listed in the plan, or a lot of the
5 facilities that would be used, particularly in that case the
6 medical facilities -- is adequate. And we would expect to
7 see revisions in the county plan that would provide more
8 information.

9 But given the large number of items that, frankly,
10 haven't even been developed yet, we find the plan itself
11 unworkable and particularly with regard to the items, which
12 we have mentioned, which I would admit is very lengthy and we
13 did not really intend to overburden the Board, but really
14 felt the need to give a sense of how much outstanding work
15 there was to be done.

16 JUDGE BRENNER: I think that was a good idea,
17 particularly given the objections to contentions like your
18 LEA II, that they are just general contentions.

19 MS. ZITZER: At a minimum --

20 JUDGE BRENNER: I think we understand the contention.

21 MS. ZITZER: We would seek to be able to litigate
22 our concerns about the particular plans that have been listed
23 here and generally -- well, I would hope that by the time we
24 have litigation, we will have additional revisions of plans
25 that will provide a lot of this information. But I have no

1 information, at the present time, available to be able to
2 know what we're going to see in any given period of time. And
3 given the absence of that, we felt a need to try to really
4 give the Board an understanding as to the basis for our
5 overall theme, which is that we find the plan simply
6 unworkable because so much work isn't even done.

7 But yet, at the present time, it's a little
8 difficult to be more specific in many instances. And that's
9 really the purpose of this contention.

10 JUDGE BRENNER: This is probably an unanswerable
11 question, but I'll ask the Commonwealth anyway. And they
12 can tell me, even if they can't give me a direct answer.
13 Maybe they can give us a feel for the situation.

14 Is there some general schedule within which these
15 plans would become much more finalized, even though still
16 short of adoption? Or does that depend on a seriatum review
17 by FEMA and that type of thing?

18 MS. FERKIN: We are hoping that the plans will --
19 that plans will be finalized to a greater extent than they
20 are now, prior to the July exercise, depending on hearing
21 from the municipalities and the counties as to the kinds
22 of details that LEA has pointed out.

23 Frankly, some of the details that LEA has pointed
24 out -- I won't get specific -- but it seems that some of them,
25 if they are not supplied by the time of the exercise, might

1 impede the successful implementation of the exercise.

2 MS. ZITZER: That's true. That is a concern we
3 have.

4 JUDGE BRENNER: Did the Commonwealth participate
5 with the parties in the negotiations prior to, and perhaps
6 after, these off-site contentions were filed?

7 MS. FERKIN: The Commonwealth participated in
8 one meeting. I think it was approximately two weeks before
9 these contentions were filed.

10 MS. ZITZER: I would add, for the record, at that
11 point in time the contentions were -- there were approximately
12 ten broad, general contentions that didn't have this degree
13 of detail in them. And it was frankly, as a result of that
14 meeting, that we really felt we needed to try to be much more
15 specific with regard to why we felt really the plans weren't
16 far enough along to be more specific than we had in the
17 original first version of the contentions, as we drafted them.

18 And that's why we went through and tried to provide
19 all these tables and all this informatin.

20 JUDGE BRENNER: I think you said that a few times
21 already.

22 MS. ZITZER: I'm sorry.

23 JUDGE BRENNER: Does the Commonwealth have a
24 position on the admissibility of this contention?

25 MS. FERKIN: Commonwealth, for the reasons I just

1 stated, would not object to the admissibility of the
2 contention. The kind of detail that LEA provides here does
3 provide the sort of information that could be litigated.

4 Some of it does rise to the level of implementing
5 detail, but some of it does not and does go to the question
6 of whether the July exercise can be implemented.

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1 JUDGE BRENNER: Staff and Applicant objected to
2 the contention on the basis that although LEA has provided
3 a long list of particularities, the Staff and Applicant say
4 LEA has not shown how those particular things would prevent
5 adequate emergency planning.

6 And in addition, the Applicant at least stated --
7 well, we all know that the plans are still being worked on.

8 I guess I'd like to ask the Applicant and then
9 the Staff, why is it LEA's burden to now go further and show
10 that each of these particular things are important to the
11 workability of the plan, prior to our admitting the contention,
12 when the very basis for the contention is the plan itself
13 depends on these things. Except that it is not yet developed
14 in the plan. Isn't that enough?

15 MR. CONNER: Let me say two or three things on
16 that. In the first place, the plan of course, is still under
17 development. There's no question of that and has to be
18 followed. Many of these things are covered by implementing
19 procedures, which have been furnished to LEA.

20 The whole thing must be read in the overall context.
21 For example, you just pointed out Table G-10 and said that
22 there is no description of anything there. But if you look
23 in the text of the plan, that is simply the hospitals that
24 are to be notified in the event of a general emergency.

25 In G-10, it does not purport to have a definitive

6pb2

1 description of what the hospitals do. So you have to read
2 the whole total thing.

3 The main resource for decontamination of
4 radiation workers would be at the hospital of the University
5 of Pennsylvania, which is described also. So you can't just
6 pick something out of a particular table and say, therefore
7 the whole thing is deficient. It must be read together.

8 And here again, it is the state and counties'
9 plans, we will have to do what we can to bring the whole
10 thing up to speed in time for the exercise, to make sure
11 that the state will be able to testify that there is
12 reasonable assurance the thing can be carried out for the
13 protection of the health and safety of the public.

14 And we are doing everything we can to bring us
15 to that stage.

16 JUDGE BRENNER: Well, given that, why isn't the
17 contention admissible? LEA cites, in effect, the very basis
18 that you just stated. That the plans are not developed.

19 MR. CONNER: I don't think so. I think LEA is
20 more or less taking things out of context. If they came
21 up to something specific, if they said one of the hospitals
22 listed on Table G-10 cannot do what other places say that
23 that hospital is supposed to do, if anything. Then that
24 would be an issue to litigate.

25 But just in general, to read off a notification

6pb3

1 list, and say therefore the plan is inadequate because it's
2 not definitive or descriptive on that table. I don't think
3 helps anybody very much.

4 JUDGE BRENNER: Is it incorrect -- is LEA's
5 allegation that all these items to be listed and developed
6 in the plans incorrect?

7 MR. CONNER: I haven't checked it seriatim. But
8 I have no reason to doubt that those are things that are
9 marked in the plan as such. How they are covered in the
10 implementing procedures, I can't say. But I know that some
11 are, to some extent at least.

12 MS. ZITZER: I'd like to make a comment with
13 regard to implementing procedures. And I won't belabor what
14 we explained in the cover letter to the contentions.

15 We did the Saturday before these contentions were
16 due, based on a discussion with the Applicant that did
17 confirm there had been implementing procedures available for
18 quite a period of time. We received a big box of them two
19 days before the contentions were due.

20 I might add however, they were only for the
21 municipal plans, and they really didn't provide any greater
22 detail than was in the current draft plans we had. And we
23 have yet to see implementing procedures for the county
24 plans, which again, might resolve quite a bit of our concern.

25 But to our knowledge at least based on information

6pb4

1 we have we're not sure that they even exist yet. And if
2 they do, we would appreciate having them.

3 JUDGE BRENNER: All right. Staff, let me get your
4 position, in answer to my question. Why isn't this
5 admissible? LEA has given specifics. That was your complaint
6 about the general contention. Now they have given you
7 eight or nine pages of specifics. And their basis is the
8 plan itself depends on these specifics and says it's to be
9 developed.

10 So why do they have to go further in order to
11 have a contention admitted as distinguished from litigation
12 on the contention on the merits?

13 MS. WRIGHT: Well, the Staff originally objected
14 to the way the original contention reads, is that the
15 emergency response plans don't provide adequate assurance,
16 because much of the plans remain to be developed. Under
17 the Catawba standard, we did not believe that that contention
18 was as specific as it could be, given the fact that LEA did
19 provide approximately 10 pages of tables listing what it
20 felt were unmet needs and items that need to be resolved.
21 And in some instances those identified needs were the
22 subject of other contentions.

23 The contention was so broad that we did not
24 understand whether they simply wanted the items in the tables
25 litigated, or did they want all items marked to be developed

6pb5

1 litigated. And that was our primary concern.

2 Now as I understand it, LEA is willing to have
3 the tables be the subject of the contention. I presume that
4 that's a correct assumption.

5 JUDGE BRENNER: We'll ask them in a minute. But
6 what if it is?

7 MS. WRIGHT: If it is, there are still items in
8 those tables that are the subject of other contentions. And
9 there is a possibility that those items could be merged
10 into the other contentions.

11 I think we stated the identification of letters
12 of agreements or inadequate staffing are just examples of
13 such concerns.

14 JUDGE BRENNER: Okay. That's an organizational
15 problem which can be taken care of at a stage beyond this.
16 But won't advance the litigation.

17 What about the question of admissibility of the
18 contention, subject to curing the organizational problem?

19 MS. WRIGHT: Curing the organizational problem.
20 Again, it depends on the particular line item. Just because
21 something is marked to be developed, the Staff still does
22 not understand how that makes the plan inadequate. It
23 depends on the stage of development in our minds.

24 JUDGE BRENNER: Well, stage of development is
25 that these items are not developed at this time.

6pb6

1 MS. WRIGHT: I'm not sure that in some instances
2 they are in initial development, or still working out some
3 particular aspect of a problem. It was just that we did
4 not understand the contention as stated.

5 JUDGE BRENNER: Ms. Zitzer, what about Staff's
6 inquiry to you. Is that correct that these tables would
7 define the contention, or are they still just examples?

8 MS. ZITZER: Frankly, I would almost have to say
9 it is some of both. Certainly with regard to these particular
10 plans we provided the information because we felt that in
11 each instance, independent of the rest of the contention,
12 that the plans were unworkable because of the number of
13 items to be developed.

14 But I think the contention itself, again, given
15 the fact that we have had to file these at the time of the
16 proceeding when we have had to, seeks to make a showing that
17 not only these particular plans, which is a sampling of a
18 couple of municipal plans, a hospital plan, a school plan,
19 a county plan, but they are symptoms of the overall status
20 of all of the other plans as well.

21 And all of them fit together, frankly, don't
22 fit together and don't render any of the overall plan workable,
23 simply because there is still so much work yet to be done.

24 It's not just that in these particular instances,
25 this one hospital plan, or this one school plan, or this

6pb7

1 county plan is not even yet developed. But that as the plans
2 mesh together, in order to provide reasonable assurance that
3 the entire EPZ population at risk will be provided for, that
4 we are unable to make a finding of that given the current
5 status of the plans.

6 I would just like to add that I would hope that
7 by the time that any litigation might occur that we will
8 have additional information that may resolve a lot of these
9 concerns. But again, given the current nature of the plans,
10 we felt that so much of the information was not yet there,
11 that that in and of itself made the overall emergency plan
12 for the EPZ totally lacking any assurance that it could
13 indeed be implemented.

14 MS. WRIGHT: Mr. Chairman, may I ask a question?
15 At what point would LEA's concern about the amount or the
16 percentage of items marked to be developed go away? I guess
17 my concern is, is it because 50 percent of the plan is
18 marked to be developed, or 25 percent of the plan is marked
19 to be developed. Or all items marked to be developed
20 should be litigated. That was our concern.

21 JUDGE BRENNER: That's not going to be a useful
22 question at this point. Take my word for it.

23 MS. WRIGHT: Thank you.

24 MS. ZITZER: We never intended to litigate
25 everything.

6pb8

1 JUDGE BRENNER: It depends on the items is the
2 answer that you're going to get.

3 (Board conferring.)

4 JUDGE BRENNER: We want the parties to consider
5 something and discuss it among themselves. And it will
6 come up in the course of other contentions we have not
7 yet gotten to. And also come up as a general matter, including
8 as applied to some contentions we have already discussed.

9 But it applies to this particular contention,
10 LEA X, among others, and that's why we'll mention it now.
11 By way of a little history, and this will bore the parties
12 who have been with us from the beginning. But let's remember
13 it expressly in any event.

14 At the beginning of this case we had off-site
15 emergency planning contentions that were timely filed by
16 LEA and other Intervenor. We deferred ruling on those
17 contentions, because there were, I think in effect, no
18 emergency plans available, or almost none, draft or otherwise.
19 Everybody had the same problem. The Applicant felt it would
20 be prejudiced by having to address the bases or lack thereof,
21 of those contentions because the Applicant didn't have the
22 information available.

23 But they didn't want the proceeding burdened with
24 the contention that we might admit at that time, if the
25 contention would otherwise be proved to have no bases at the

6pb9

1 time the plans were developed.

2 On the other hand, the Intervenor's had the reverse
3 problem of not having anything at that point, but nevertheless
4 having to file contentions within the time limits at that
5 point, which they did.

6 So balancing the competing interests, and we
7 thought the Applicant's argument was accurate from the
8 Applicant's point of view. And we sympathized with it. And
9 we also thought LEA's argument was accurate from its point
10 of view and we sympathized with it.

11 And I think it's fair to say that the Staff and
12 the Commonwealth and the city of Philadelphia, had in effect,
13 the same position. We set further events, particularly the
14 filing of these draft emergency plans by PEMA, the
15 Pennsylvania agency with FEMA as the event when we thought
16 we would certainly have a lot more available upon which
17 contentions could be based.

18 And I think that proved to be the case, witness
19 the fact that there is a lot more information available now
20 in the form of draft plans and LEA has been able to draft
21 quite a lot of contentions, which -- we will resolve the
22 arguments as to whether they are particular or not. But
23 we certainly can understand reasonably what they are
24 contending in most of them.

25 However, there seems to be still areas within the

6pb10

1 draft plans -- not unexpectedly I suppose -- where there are
2 things to be developed. The significance of those things to
3 be developed is not ascertainable by this Board at this time.

4 And in fact, it is probably not readily
5 ascertainable by any of the parties, I will submit, because
6 it is a function not only of the individual items, but of
7 the cumulative nature of the items.

8 What we are getting to is we think there is a
9 category of contentions upon which we think we should defer
10 ruling at this time. Now all the contentions, we are not at
11 the stage where we were at the beginning. There are many,
12 many contentions upon which we can decide whether they are
13 admissible or not, although even if ruled admissible there
14 is still more work that can and should be done to organize
15 them and better specify them, which we expect all the parties
16 to be involved in.

17 But now I am talking about yet a different category,
18 a category in which we defer ruling on the contentions
19 primarily for the reason that further information is
20 anticipated to be developed in the plans.

21 I don't know if we could set a particular
22 triggering event. We probably could not. But in the
23 interim we could insist, order that the parties go over
24 the particular concerns that the contentions were meant to
25 encompass -- in some cases you have got them -- in LEA X.

6pb11

1 In others you don't -- as the plans are being developed.

2 And go over, not in argument before us, but in
3 negotiations, the exchange of information as to which items
4 are going to be developed in implementing procedures, or
5 maybe already are in implementing procedures; which items
6 are going to be developed in the plans and so on.

7 And then maybe at an appropriate future point
8 that the parties can suggest, we would take another look
9 at the situation and see what matters are still in
10 contention, if any, and then be able to address the
11 importance of those items if they are still not developed
12 in the plan.

13 We raise that now. We want the parties to think
14 about it among themselves, and talk about it over the
15 lunch break. And then come back to us.

16 LEA X would be one example that we would put in
17 that category. We would ask the parties to consider what
18 other contentions might be put in that category, because
19 otherwise it seems we're going to have the same problem
20 we had at the outset of either ruling on a contention that
21 might be admissible. And then be in the case when really
22 future events will prove that there was nothing to litigate.

23 On the other hand, perhaps not admitting a
24 contention now, but providing something later for the
25 contention to come back in, such as the further development

6pb12

1 of a plan. But we are concerned that that method has some
2 problems in terms of prejudicing LEA's interest, when they
3 have in fact timely filed an otherwise admissible contention
4 now. Which contentions contend lack of specificity is due
5 to the lack of development of a plan, and not LEA's own
6 fault in not specifying. So that's the problem.

7 It's almost 10:30 now. We will come back at
8 10:45 based on that clock.

end 6.

9 (Recess.)
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1 JUDGE BRENNER: All right. We are on the record
2 now.

3 MR. WETTERHAHN: We received a document entitled
4 Response of Anthony/FOE to PECO Supplemental Testimony, filed
5 2/28/84, yesterday morning. We have reviewed it and find it
6 similar to the one he previously filed, moving to strike
7 Applicant's and Staff's testimony and we believe generally
8 the reasons that we gave in opposition to the previous motion
9 are applicable here.

10 The first two paragraphs go to the merits of the
11 issue, rather than the admissibility of the testimony. We
12 have discussed not only the legal difference, but we have
13 discussed Applicant's position with regard to the factual
14 assertions in paragraphs one and two. They are simply that
15 as far as the structures are concerned, does it make a
16 difference whether the blasts were considered as part of the
17 design basis or were analyzed after the plant was under
18 construction.

19 That is the substantive position. However,
20 procedurally, even if correct, it doesn't call for the striking
21 of the testimony.

22 JUDGE BRENNER: Let's stay with that one point.
23 Maybe that will make it easier for Mr. Anthony. I don't know
24 how you divide it up, but we see three points, basically,
25 in the motion. And that's the first one.

1 Mr. Anthony, we agree with the Applicant's
2 position, as just stated by Mr. Wetterhahn. I'm not sure
3 you understand it. I hope you do. The position is this:
4 they don't think it makes a difference, but even if it does,
5 that's the merits and you can ask the witnesses about it. And
6 then, if the questions are not objectionable, you will
7 get answers.

8 But it is not the basis of a motion to strike and
9 we agree.

10 MR. ANTHONY: This is just a technical point. This
11 is not, as such, a motion to strike. It's a motion to
12 substitute testimony and the Applicant has already substituted
13 one revision of that testimony, besides the original. And I
14 think we are still calling for further revisions, which go
15 to the heart of the matter of proving that the buildings have
16 a certain structural composition that we don't believe they
17 have established by submitting us the drawings of the design,
18 rather than --

19 JUDGE BRENNER: You're on the second or perhaps
20 the third point. The first point is your argument, in
21 paragraph one, and including the first sentence of paragraph
22 two of your motion. And that is that you don't see that the
23 Applicant used that U.S. Army manual in the designing of
24 the structures, rather that they are only using the manual to
25 now analyze, or after-the-fact analyze the structures. That's

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1 your first point.

2 As to that point, it does not support a motion
3 to strike. You can ask questions about how they used the
4 Army manual and you will get answers, to the extent the
5 questions are not otherwise objectionable -- and we'll deal
6 with it on the merits.

7 So I will rule against you on that one point, in
8 terms of a motion to strike.

9 Let's get to the second point now, which is what
10 you had started to talk about. You say that there is no
11 evidence that the buildings have actually been constructed
12 in the as built condition, to conform with the design, and
13 we understand your argument. Mr. Wetterhahn, do you want
14 to respond?

15 MR. WETTERHAHN: As the Board had previously
16 pointed out, discovery had ended. Nevertheless, in the
17 period in which this testimony has been filed, we have
18 provided a number of pieces of material responsive to
19 requests.

20 With regard to as built drawings, we provided Mr.
21 Anthony structural drawings of the facility. The term as
22 built means something very narrow to the engineering firm that
23 constructs Limerick and I advised, giving some legal advice
24 to Mr. Anthony, that he ask the witnesses as far as what
25 as built means to them.

1 The drawings that we did provide were drawings
2 as the facility was constructed as to the date of the issuance
3 of the drawing and how it was to be completed. You cannot
4 have as built drawings until the facility is completed.
5 What we have provided him is drawings as to what has been
6 constructed has actually been constructed. That is reflected
7 on each of the drawings, noting that field change request --
8 which are a method of reflecting the as built portions of the
9 facility -- have been changed on the drawing.

10 I have explained that to Mr. Anthony. So what
11 he has got in his hands is as close to as built as we can
12 give him. So I don't believe that this supports the motion
13 to strike. As I told him, and I will tell the Licensing
14 Board, and I'm sure you will ask the witnesses, there may
15 be construction openings that have not been closed in buildings.
16 Therefore, you cannot say the drawings, as they exist now,
17 show the plant as it will be completed. But once construction
18 will be completed the drawings, as revised, will be the
19 as built drawings.

20 JUDGE BRENNER: Give me a moment.

21 (Board conferring.)

22 JUDGE BRENNER: Mr. Anthony, do you agree that you
23 have got everything that exists, in terms of the drawings,
24 as to how the structures are built? What else do you want
25 at this point?

1 MR. ANTHONY: Well, I did ask for the aerial
2 photographs --

3 JUDGE BRENNER: We didn't get to that one, yet.
4 That's point three.

5 MR. ANTHONY: I want some proof, and this is what
6 will happen in the hearing. That I will ask for proof that
7 these reinforcement rods were put in where they said they
8 would be put in, that --

9 JUDGE BRENNER: You're jumping ahead. The basis,
10 as I understand, for your motion to strike is that you think
11 there are drawings in existence that show things -- as you
12 have termed them -- as built, which you have not been given.
13 And your complaint is that you have not been provided
14 information.

15 Mr. Wetterhahn, on behalf of the Applicant, has
16 argued that you just didn't understand and, in fact, you
17 have been given everything that shows the state of construction
18 to the present state.

19 MR. ANTHONY: I thought I understood him to
20 say there is no such thing as the as built drawings.

21 JUDGE BRENNER: That's right. At this time.

22 MR. ANTHONY: That they don't have any record of
23 what's been put in.

24 JUDGE BRENNER: In terms of your discovery
25 argument -- that's not what he said, but I don't want to

1 debate it with you -- in terms of the argument that there
2 is discovery-type information out there, drawings that you
3 have not received, we find that that's not the case and I
4 want to know, before we make that our ruling, whether there
5 is something else that you meant, that we're not understanding,
6 in terms of drawings?

7 MR. ANTHONY: Well, there certainly are.

8 JUDGE BRENNER: Existing drawings that you have
9 not been given.

10 MR. ANTHONY: Drawings that we haven't been given
11 and calculations.

12 JUDGE BRENNER: There are existing drawings, that
13 you have not been given, that you have asked for?

14 MR. ANTHONY: Well, I don't want to just keep
15 repeating, but I haven't seen anything -- there is one drawing
16 that was provided to us of a cooling tower which has on it
17 certified built as shown in this design. It's the only one
18 of the cooling tower drawings that has that on it. There is
19 no other drawing, that has been provided to us, that has
20 anything like that which says certified built as designed
21 by these plans.

22 JUDGE COLE: I thought Mr. Wetterhahn indicated
23 that they don't do that until such time as the structure is
24 completed. There are some details that are not yet complete.
25 But the drawings that were provided you were accurate, as of

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1 the time they were provided to you, in indicating that the
2 structure as built. Now if that is, in fact, the case, is
3 that not what you need for your purposes?

4 MR. ANTHONY: How can the stresses on the structures
5 be measured if there are holes in the buildings and those
6 holes are going to be filled at some time? How will the Board
7 or anybody know that those holes will be filled in such a way
8 that they will not be a weak point in the structure?

9 JUDGE BRENNER: Okay. That gets to the next
10 and larger, more encompassing, point that we wanted to get
11 to. Given the contentions as well as the Board's questions,
12 which stimulated this further testimony on what these
13 structures could withstand, it is our view -- and we are
14 so ruling now -- that the quality assurance type questions, as
15 to whether the structures, in fact, have been built properly
16 by the workmen in accordance with the designs, is not within
17 the contention.

18 This is not a quality assurance contention.
19 We directed the focus to the design of the structure, which
20 is the testimony we expected to hear this week, although --
21 as I discussed preliminarily yesterday -- we've seen other
22 things we did not expect to see. Because we saw some
23 ambiguities that, at least, we did not fully understand at
24 the time, in the FSAR in January when we were litigating this
25 contention in terms of statements as to what overpressures

1 the structures would be designed to. And having heard the
2 testimony extensively, ad infinitum, on what the blast
3 overpressures would be from the postulated pipeline accidents,
4 we then wanted better assurance that the structural designs
5 in fact considered overpressures of that approximate magnitude.

6 And beyond that, we wanted to know what the
7 margin would be as an assist for us to determine how much
8 of the detail of the overpressure testimony would be material.
9 None of that involves quality assurance/quality control
10 contentions, as to whether or not those particular structures
11 are as built.

12 We've had -- that would be a new contention. It
13 would be weighed without any basis, I might add, and it would
14 be late also. This is, in effect -- it's not a Board
15 question because it's in the contention, but it's in effect
16 the particular Board interest, within the contention, that
17 we have focused on. And if there was any doubt as to whether
18 any part of our question involved the quality assurance
19 questions that you are now raising, we want to put that to
20 rest now. It did not.

21 And for that larger reason, your second point
22 would not form the basis for a motion to strike because it's
23 not material. Beyond that, it seems you've been given all
24 the drawings anyway. But that becomes not material, given our
25 ruling now.

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1 The third point is you want aerial photographs, up
2 to the present, taken during Limerick construction. And I
3 guess we'll ask the Applicant for their response and then turn
4 to you.

5 MR. WETTERHAHN: Let me touch the other items
6 in the unnumbered paragraph, after two. As I said yesterday,
7 they have been, I believe, mooted. We have provided Mr.
8 Anthony details of the manhole structures and electrical
9 conduit manholes.

10 JUDGE BRENNER: Those are more as built examples?

11 MR. WETTERHAHN: Yes.

12 JUDGE BRENNER: We've already ruled on that.

13 MR. WETTERHAHN: We have not provided the valve
14 housing and valve pits, since I have represented to him
15 there is nothing safety related in them. I've asked him to
16 confirm that with the witnesses.

17 With regard to the circulating water pumphouse, the
18 same thing is true. We have provided him structural drawings
19 of the safety related piping that passes underneath, but is
20 not attached to that structure. I asked Mr. Anthony --

21 JUDGE BRENNER: Let me clarify what I just said.
22 In terms of a discovery-type item, the drawings might be
23 helpful in examination of things that are material to the
24 contention, in terms of understanding the design and so on.
25 What I mean to exclude was the quality assurance/quality

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1 control type question of whether the drawings, in fact, have
2 been followed. So I didn't mean to say that the drawings would
3 be of no assistance to Mr. Anthony in the litigation.

4 Go ahead.

end t7 5

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1 MR. WETTERHAHN: With regard to the aerial
2 photographs, I asked Mr. Anthony -- I guess it now becomes
3 moot -- why he needed them. His answer was he hoped to spot
4 quality assurance deficiencies by looking at an aerial
5 photograph. And I said that's ridiculous.

6 JUDGE BRENNER: If the Commission could do that,
7 they would save a lot of money, Mr. Anthony, just fly over
8 the site and find the defects.

9 MR. ANTHONY: That would be great, but I don't
10 think I said anything of the sort.

11 MR. WETTERHAHN: That's what I will say that I
12 understood him to mean. I could see no other purpose in this
13 part of the testimony, since he had been provided with
14 accurate drawings of the buildings and the plan for the
15 facility, that I decline to provide that.

16 JUDGE BRENNER: Why do you want the aerial photo-
17 graphs?

18 MR. ANTHONY: It's important. Here's one right
19 here --

20 MR. WETTERHAHN: That's not an aerial photograph.

21 JUDGE BRENNER: Tell me, why do you want the aerial
22 photographs?

23 MR. ANTHONY: This shows --

24 JUDGE BRENNER: Why do you want the aerial
25 photographs?

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1 MR. ANTHONY: To show at what stages the various
2 buildings were built. This is one that happens to show
3 the spray pond in the process of construction, associated
4 with the date then. I would have some idea of what the
5 sequence was.

6 JUDGE BRENNER: If you want a favorable ruling,
7 Mr. Anthony, you're going to have to help me by answering
8 the questions in terms of the merits of the contention.
9 Why do you want the aerial photographs?

10 MR. ANTHONY: For one thing, they might show up
11 these holes that Mr. Wetterhahn is talking about.

12 JUDGE BRENNER: That's what Mr. Wetterhahn said,
13 and you said he was wrong.

14 MR. ANTHONY: The aerial photographs would show
15 them?

16 JUDGE BRENNER: Do these -- I wasn't paying
17 attention as closely as I should have to your statement,
18 Mr. Wetterhahn. There are aerial photographs, but you don't
19 want to show them to him, or there are none, or something else?

20 MR. WETTERHAHN: There are aerial photographs, but
21 they are again expensive to reproduce. And since discovery
22 was over, I saw absolutely no value to going through the
23 expense of providing them.

24 JUDGE BRENNER: Do you have copies, that the
25 Applicant owns, available and convenient to the hearing room?

1 MR. WETTERHAHN: I will see if I can round up the
2 latest one or two, if that's what he's looking for, the present
3 status as opposed to a series of them. I will see what I
4 can get.

5 MR. ANTHONY: I don't need copies. All I would like
6 to see are the ones that are on hand, the series that are
7 on hand.

8 JUDGE BRENNER: All right. Give us a moment.

9 (Board conferring.)

10 JUDGE BRENNER: We don't see any need or materiality
11 of the aerial photographs to the contention, in terms of
12 finding holes in the walls. We don't think the aerial
13 photographs would be very helpful on that. Beyond that, we've
14 already said why it's not material.

15 In terms of the sequence, in which things would be
16 built, we don't understand why that's material, but you won't
17 get that from aerial photographs very efficiently either. If
18 they were material, there are much more direct ways of doing
19 it, namely asking the questions. So it's not material and
20 not necessary.

21 That's our ruling. Beyond our ruling, and we are
22 not ordering this at all, if there are aerial photographs
23 that are convenient to the Philadelphia area, that the
24 Applicant owns, without going through any expense in copying
25 them, and the Applicant can still maintain control over them,

1 we see nothing wrong with parties dealing with each other
2 on a courtesy basis and letting Mr. Anthony see the aerial
3 photographs, if he would like to see them.

4 We're not ordering it, but it's like everything
5 else in life. If it ends up not being a lot of effort and
6 no expense, and it would make Mr. Anthony happy to see the
7 photograph, why not? We'll leave it at that, and it's
8 not a subject we want to hear about one way or the other,
9 again.

10 MR. ANTHONY: May I express my appreciation for
11 the courtesy already and the supplying of these documents,
12 which Mr. Wetterhahn has been very cooperative about. And
13 he mentioned discovery, and I would like to correct that,
14 because the Board ordered that there would be no discovery.
15 And just one further --

16 JUDGE BRENNER: I think he was accurate on that
17 point. We know it occurred, so I didn't see it necessary to
18 fill it out, but since you came back to it, we ordered no
19 formal discovery period. One of our important considerations
20 in not doing so were the understandings which everybody agreed to
21 on the record-- we didn't have to order anybody to do anything,
22 we were pleased about that--of the full exchange of information
23 in support of the testimony and the willingness to the extent
24 reasonable of supplying other informal requests.

25 I agree with you, Mr. Anthony. Our perception is

1 that that, in fact, has occurred, subject to the minor
2 disputes that you have not brought to us and which we've ruled
3 on.

4 MR. ANTHONY: I would like to ask that those be
5 available here in the courtroom, all that material, so it
6 can be used in cross examination. Is that legitimate? It
7 certainly will be necessary.

8 JUDGE BRENNER: All what material?

9 MR. ANTHONY: The calculations and the drawings
10 that have been submitted in what's called Discovery 29.

11 JUDGE BRENNER: Don't you have what you have
12 received on discovery?

13 MR. ANTHONY: These were all in their document room,
14 which is their material. And I've used it. But in order for
15 it to be here for cross examination, or submitted for cross
16 examination, it will have to be in the courtroom.

17 MR. WETTERHAHN: We'll bring it.

18 JUDGE BRENNER: All right. But that's going to
19 be one copy.

20 MR. WETTERHAHN: That's correct.

21 JUDGE BRENNER: I'm not going to go through what
22 went through last time, Mr. Anthony, because now you are
23 presumably more educated. We're not going to stop the
24 proceeding every time you have a document that, at the last
25 minute, you decide you want to mark in the record and then

1 we end up with one copy, and so on. You decide in advance
2 what you want to identify or otherwise move into evidence and
3 somehow get copies made in advance.

4 At least one copy will be available here and you
5 can use that to have other copies made. But we're not going
6 to stop the proceeding every time to do that.

7 MR. ANTHONY: No.

8 JUDGE BRENNER: And that's one purpose for your
9 having to develop a detailed cross examination plan, as
10 every party does, in order to be able to know what you're
11 going to ask. Which reminds me, you owe us a cross examination
12 plan.

13 MR. ANTHONY: Yes.

14 JUDGE BRENNER: Yesterday you told me you would
15 have it today.

16 MR. ANTHONY: I have the copies. Do you need them
17 now?

18 JUDGE BRENNER: We would like them so we can look
19 at them perhaps over the lunch break, if we want to. Are you
20 going to be here up until the lunch break?

21 MR. ANTHONY: Yes.

22 JUDGE BRENNER: All right.

23 MR. ANTHONY: One word -- I understand what you were
24 saying about the quality control. On the other hand, the
25 Applicant did submit some test cylinder -- cement test

1 cylinders -- which may be an indication that they are offering
2 quality control or realizing that there's an obligation there.

3 MR. WETTERHAHN: May I explain? This was just
4 another request by Mr. Anthony for further background, with
5 regard to actual cylinder breaks and we provided him. We're
6 not offering him anything, with regard to actual cylinder
7 breaks.

8 JUDGE BRENNER: Mr. Anthony, our discovery rules
9 were -- and I'll state it bluntly -- for the parties just
10 plain not to bother us unless they had to bother us about
11 discovery. We emphasized that very strongly. As a result,
12 it is not surprising that materials would be turned over
13 in discovery that later proves to be not material to the
14 contention, because if it was readily available, we didn't
15 want to have to rule on every single discovery dispute.

16 So just because material is made available on
17 discovery, that -- by no means -- concerns the relevance
18 or materiality of the material. And that is always the rule,
19 because otherwise you force a party to make extensive and
20 perhaps unnecessary objections in a discovery stage in order
21 to preserve their right. And it's well understood in litigation.
22 And I wanted to state it for you.

23 I think you can see the common sense reason for
24 that. All right.

25 I think we have completed the ruling on the motion

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1 to strike, which is to strike or defer, which is denied
2 in its entirety for the reasons we have discussed.

3 MR. WETTERHAHN: I think we have a quick motion,
4 with regards to systems interaction, to be made by LEA.

5 JUDGE BRENNER: I thought we were going to do it
6 -- the reason I want to defer it is for the parties to
7 discuss the full schedule implications of it. Has that taken
8 place already?

9 MR. WETTERHAHN: Yes. The parties will not be
10 able to comment, having to check with the witnesses and
11 Bethesda with regard to schedule. So even if we wait until
12 after lunch, we cannot get any --

13 JUDGE BRENNER: All right. Let's take up the
14 subject then we'll tell you what we want you to do, since
15 we have to do it by rote in this proceeding, apparently.

16 MS. ZITZER: Limerick Ecology Action has made a
17 decision to withdraw contention I-41, which is the systems
18 interaction contention. And if necessary, I would be glad
19 to provide a written filing of that.

20 JUDGE BRENNER: No, it's not necessary.

21 MS. ZITZER: It's primarily due to the complex
22 nature of the contention and the difficulty for LEA, as a
23 volunteer organization, to obtain sufficient technical
24 assistance to really be able to provide any kind of a
25 meaningful pursuit of the contention in the hearings. And we

1 had discussed it with the other parties.

2 It was not until this past Friday that it was
3 clear to us that the city of Philadelpia was not particularly
4 interested in pursuing that contentio . So it was
5 subsequent to that realization that we've come to this
6 decision.

7 JUDGE BRENNER: All right. Give us a moment.

8 (Board conferring.)

end t8

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1 JUDGE BRENNER: All right. We will note and
2 accept the withdrawal at this point. There will be no need
3 for you to file anything in writing.

4 Now that leaves the hearing week of April 23rd
5 unscheduled. We don't want to leave that hearing week
6 unscheduled. Let me add that we're not available Friday,
7 the 27th of April, but we planned on having a hearing Monday
8 through Thursday of that week. And we want, if at all
9 possible, for something to be scheduled that week.

10 And one thing that comes to mind is moving up
11 on-site emergency planning, which right now is scheduled
12 for the week of May 7.

13 MR. VOGLER: Mr. Chairman, will you entertain a
14 comment?

15 JUDGE BRENNER: I'm raising this for your
16 consideration unless you know what your consideration is
17 already, then you could comment.

18 MR. VOGLER: We are in the process of contacting
19 Bethesda regarding moving that up. It doesn't look too
20 promising at the moment.

21 JUDGE BRENNER: All right. The other possibility
22 is -- and we'll discuss this when Mr. Romano is here. And
23 we're supposed to receive his specification by the end of
24 the day today. Of his contention, Roman VI-1 involving
25 welding deficiency.

9pb2

1 The other option is to schedule that litigation,
2 if there is litigation for that week of April 23rd. Another
3 possibility is April 30th right now is open. The week of
4 April 30th. And that was because in part we couldn't get
5 the Staff to file on-site emergency planning testimony earlier
6 than a hearing for the week of May 7.

7 It may be that we can schedule Mr. Romano's
8 contention for the week of April 30th and at least pick up
9 one of those weeks. Originally I guess in our own minds
10 we had thought that we weren't too worried about pushing
11 the Staff harder than we did on the week of April 30th because
12 we thought it might well be a carry-over week, if systems
13 interaction was starting on April 23rd.

14 I think we doubted that systems interaction would
15 be completed in one week. Now that that is no longer in
16 the picture, perhaps there can be a compromise, and maybe
17 the Staff can move on-site emergency planning up to the week
18 of April 30th. I just carefully told you why we didn't
19 push too hard for one week earlier, because we thought it
20 would become moot, and you would have rushed to file the
21 testimony and we wouldn't have gotten to it until the week
22 of May 7th anyway.

23 But now that is no longer the case. One reason
24 we're so interested in not losing these hearing weeks is
25 that we are available very, very little for hearings in

9pb3

1 June. Very, very little. And if anything gets carried over
2 beyond April and May, it's going to get carried over for
3 more than just a week.

4 In fact, I guess maybe we might as well tell you
5 now, in terms of your long range plans, that if any hearing
6 time is necessary in June, the only week we will be available
7 in June 18th. And it would start on Tuesday, June 19th.

8 When I say June, I'm talking about weeks starting
9 in June. We're available June 1st, which I consider that
10 last week in May. June 1st is the Friday.

11 But going beyond that, the only week in June is
12 the one I just gave you, which is the week of June 18th,
13 but we would be starting on Tuesday, June 19th. And that's
14 another reason why we would ask the parties to look very,
15 very carefully before they decide that we have to let those
16 two weeks go by empty. And remember, we don't yet know
17 what the situation is going to be with severe accidents.

18 And we have accepted a schedule adjustment by the
19 parties as to when we will take up that subject. But our
20 own mind, in rethinking it, after receiving Ms. Bush's letter,
21 there were reasons in support of handling that this week.
22 In terms of being able to schedule things faster, in the
23 event any contentions were admitted on that subject.

24 But of course, that's a function of something out
25 of our control, in part. That is issuance of the Staff's

9pb4

1 final environmental statement.

2 You might tell us whether that schedule is still
3 in existence, if you know now. Or when you check later Mr.
4 Vogler.

5 MR. VOGLER: The schedule was firm on Friday,
6 last Friday.

7 JUDGE BRENNER: Tell me again what that is. By
8 the end of March?

9 MR. VOGLER: That was the schedule that we discussed
10 at a meeting on Friday.

11 JUDGE BRENNER: All right. We are ready to get
12 back to the subject of emergency planning. And we will take
13 up the Part 70 license matter immediately after lunch,
14 and that involves LEA as well as Mr. Anthony on behalf of
15 FOE.

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16 All right. We left you with some thoughts on
17 emergency planning before the break. We won't come back
18 to it now. As we said, we'd appreciate the views of the
19 parties after the lunch break. And I guess now, after the
20 Part 70 license matter.

21 LEA XI is the next one. The contention here is
22 that the school district emergency plans do not have an
23 information -- enough information in them to provide a
24 basis for reasonable assurance that there will be enough
25 buses for the schools in the event of evacuation. And the

9pb5

1 contention gives some examples.

2 I guess my first question is whether you are
3 talking about all school plans, or the ones you list, or
4 what?

5 MS. ZITZER: I listed this as an example, referring
6 to Montgomery County schools, as is obvious. I believe that
7 the Chester County public school plans do indicate they
8 have enough buses for the public schools. I believe that
9 there is some uncertainty with regard to the private -- no,
10 no, I'm sorry.

11 Let me start over.

12 JUDGE BRENNER: I guess my question is, what did
13 you intend to encompass within the contention?

14 MS. ZITZER: The fact that particularly with
15 regard to Chester and Montgomery County, the plans in their
16 current state, indicate that there aren't enough buses, simply
17 by the fact that in many places, in most places it indicates
18 the number needed. But the item is marked TBD.

19 And what we tried to do was give examples with
20 regard to the Montgomery County school districts as to the
21 fact that we weren't just talking about a few buses. But
22 that it was a very significant number of buses. And
23 particularly, given the fact that the school district
24 evacuation concepts in each plan specifically state that
25 it is expected that the transportation will be provided to

9pb6

1 move all students inside the EPZ in one lift, would lead us
2 to believe that the planning assumption is that only one
3 trip would be made with each bus.

4 And therefore, given the fact that there are so
5 many buses, again, marked TBD where it's known where they're
6 needed, given the existing information, it's not possible
7 to make a finding that there is sufficient transportation
8 available to evacuate the school students.

9 Again, I think this would particularly refer to
10 the school districts in Montgomery and Chester Counties.
11 I believe that in Berks County that I think the plans do
12 indicate that they do have sufficient buses. But it is a
13 very significant number that other than knowing that it's
14 marked that they are needed and it's TBD, we have no other
15 information available at the present time to know where
16 they're going to come from.

17 JUDGE BRENNER: So the contention is that for
18 Chester and Montgomery County there's no reasonable assurance
19 that there will be enough buses needed for evacuation of the
20 schools.

21 MS. ZITZER: Yes.

22 JUDGE BRENNER: And although you're not sure from
23 reading the plan, part of the scope of the -- of what's in
24 controversy might not be just pure numbers of buses, but
25 rather the assumptions as to how many trips or lifts each

1 bus would have to make.

2 MS. ZITZER: The plans state that it is to be
3 done in one lift. That is one of the planning assumptions.
4 Given that, it is a very significant problem, and I just
5 might add that we are particularly concerned about the
6 school children. This will be in addition to the many
7 hundreds of buses needed for evacuating other segments of
8 the population.

9 Again, those needs, in addition being marked
10 to be developed. It's literally hundreds of buses, that we
11 just don't know where they're going to come from.

12 JUDGE BRENNER: But in this contention we're
13 talking about the public school children?

14 MS. ZITZER: Yes.

15 JUDGE BRENNER: You're interested in numbers of
16 buses that would be dedicated for the children. You understand
17 there may be other buses but they may be used for other
18 things.

19 MS. ZITZER: (Nods affirmatively.)

20 JUDGE BRENNER: Does the Commonwealth have a
21 position on admissibility of this one?

22 MS. FERKIN: Yes, the Commonwealth supports the
23 admissibility of the contention.

24 JUDGE BRENNER: Do you know offhand -- I realize
25 I haven't forgotten what the Commonwealth said yesterday.

9pb8

1 Many of these questions go into detail beyond which you have
2 prepared for this hearing. And if that's the case you can
3 just say so. But if you know, we sometimes get the benefit
4 of further detail.

5 Is the contention correct that the assumption in
6 the Chester and Montgomery County plans are that evacuation
7 of school children will be handled in one run?

8 MS. FERKIN: Yes, that's a correct assumption.

9 JUDGE BRENNER: Let me ask LEA. Isn't this the
10 type of simple, factual contention that can be determined
11 ministerially by counties, in terms of counting buses and
12 number of children, and not be something that a board has
13 to be concerned with in hearing time?

14 MS. ZITZER: The county plan simply marked refer
15 back to the municipal plans with regard to this information.
16 And this has planning for several school districts, has
17 virtually come to a standstill because no answers have been
18 forthcoming from the county as to where the buses are supposed
19 to come from.

20 And I don't think that this Board could make a
21 finding that there is a reasonable assurance that this
22 segment of the population could be adequately protected in
23 the event of a radiological emergency, without having that
24 information available.

25 JUDGE BRENNER: Okay. The Applicant objected,

9pb9

1 saying there's no reason to believe that adequate buses
2 won't be identified and planned for after the plans are
3 developed; is that correct?

4 MR. CONNER: Yes, sir. We believe that -- of
5 course we're at a stage now where we do not even have all
6 of the municipals need for buses identified. And we understand
7 that when that is completed will be up to the counties to
8 make additional arrangements under contract with private
9 companies, perhaps using PEMA's good offices as may be
10 necessary.

11 And there is no question that the adequate number
12 of buses must be available before full power operation. And
13 we simply say, we don't need to do that now, as long as the
14 mechanism exists for obtaining that number of buses when
15 the time comes.

16 Oh, I might note, that the Chairman said something
17 about public schools only. And this, I understand it,
18 applies to private schools as well. And I would note that
19 the attachment on LEA's contention XI here, as I understand
20 it lists only private schools or parochial schools, if that's
21 a distinction to make.

22 JUDGE BRENNER: All right. So it's all schools.

23 MR. CONNER: I beg your pardon?

24 JUDGE BRENNER: Is it all schools?

25 MR. CONNER: The list does not include all schools

9pb10

1 as I understand it. It lists only parochial schools and
2 the Hill School.

3 MS. ZITZER: Might I provide a clarification?
4 The list that is Table 8, which is attached to Contention
5 number XI, which is marked page 28, is a listing of what
6 in the plans is marked unmet needs. And this is from each
7 school district, municipal -- each school district radiological
8 emergency response plan.

9 The reason that the private -- that page lists
10 private schools which are the responsibility of the school
11 district within which they are located. And these are the
12 ones that are marked TBD, that no information is available
13 for. Where they are not listed, it means that there at
14 least is some arrangements already known as to what buses
15 would be available.

16 But these particular examples are simply marked
17 TBD in the plans, so we don't know where these buses will
18 come from.

19 JUDGE BRENNER: Well, Mr. Conner was in part
20 correct. That I misstated it. Do you intend the contention
21 to go to all the public and private schools in Chester and
22 Montgomery County?

23 MS. ZITZER: Yes, that's how the plans have been
24 developed.

end 9.

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1 MS. FERKIN: Judge Brenner, may I make one comment?
2 Let's get clear that the definition of private school, that
3 we should be using here, would be a non-profit private
4 school. Those are the subset of private schools for which
5 school districts plan.

6 MS. ZITZER: Thank you.

7 JUDGE BRENNER: Mr. Conner, one thing you said
8 was that we needn't litigate whether the actual number of
9 buses had been identified as being in existence, so long as
10 the mechanism is in place by which -- and I'm paraphrasing
11 you now -- by which it can be reasonable assured that the
12 buses will be provided at the time they're needed. That is,
13 in a time frame of a possible full power operating license.
14 Is that right?

15 MR. CONNER: It's my understanding of how the PEMA
16 would plan to operate. I want to make sure that I didn't
17 misstate what I meant. There's no need to litigate that
18 at this point. I also said that before full power operation
19 there would have to be provision for an adequate number of
20 buses available, in the event of such an emergency.

21 JUDGE BRENNER: Would it be open now to litigate
22 whether or not the mechanisms are in place, to get the buses
23 by that time? I view that as being part of it.

24 MR. CONNER: I think that's explained in Annex E,
25 as to what the State would do, as I understand it. Here again,

1 I can only give my impression of what I think the State would
2 do. Perhaps Ms. Ferkin could be more specific on how
3 additional buses would be obtained if needed.

4 JUDGE BRENNER: Ms. Ferkin, can you? You have been
5 volunteered.

6 MS. FERKIN: Again, it's a general question of
7 where resources are needed. Where does the organization
8 needing a resource go? The school districts identify a
9 need for buses and are to report that need to the counties.
10 The county plan, in our view, should identify outside sources
11 for buses that it would rely upon if the school district,
12 within the county, lacks the buses. Again, we're dependent
13 upon the county plan, identifying where buses are needed.

14 And if any available outside sources, to which it
15 would go to get those buses.

16 JUDGE BRENNER: Ms. Zitzer, in some sense, LEA XI
17 is really a subpart of LEA X, which was the overall one.

18 MS. ZITZER: I think, in LEA XI, we're just
19 attempting to be more specific. But certainly --

20 JUDGE BRENNER: Then the point I was going to
21 get to and ask you is that an indication of this one item
22 that is, buses involving evacuation of school children being
23 of particular concern to LEA? Are you prioritizing this
24 concern, as compared to the long list of other to be developed
25 needs which was in LEA X?

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1 Was there some reason for separating this one
2 out, other than highlighting it?

3 MS. ZITZER: Probably not, as long as the Board
4 would make a finding that this kind of a problem would be
5 litigatable under Contention X. Certainly, it would apply
6 to the same status of the fact that the needs are not
7 provided.

8 JUDGE BRENNER: We have the Staff's position in
9 writing. They did not object to the admissibility of the
10 contention. I don't know if the Staff wants to add anything.

11 MS. WRIGHT: No, nothing to that. But, as Ms.
12 Zitzer's last statement, we considered this particular
13 contention a specific contention in the gender of Contention X,
14 their Contention X. And that's what we meant by objecting
15 to the general items marked to be developed versus pointing
16 out a specific item to be marked to be developed, where
17 there were concerns. That's all. Thank you.

18 JUDGE BRENNER: We are ready to proceed to XII,
19 which also involves school district plans, but another aspect
20 of them. When I give these contentions, as the parties
21 recognize, it's just a paraphrase. I'm not attempting to
22 quote the contention or rewrite it by my paraphrase. But I
23 am attempting to prod the parties to tell us better what
24 the specific focus is.

25 Contention LEA XII is that the school district

1 emergency plans cannot be implemented because there is no
2 assurance that there will be enough teachers and staff
3 required to stay at school or with evacuated students. And
4 the basis gives three factors, as to why LEA thinks that's
5 a proper allegation for a litigation, at least.

6 And one of them is the human response factor, which
7 I take it is shorthand for the item we discussed before.
8 Is that correct Ms. Zitzer?

9 MS. ZITZER: (Nods affirmatively.)

10 Yes.

11 JUDGE BRENNER: Two is, I guess, a subset of one.
12 A desire to evacuate oneself and one's family first. And
13 three is the absence of clear specific and binding contracts
14 or agreements that the people need it. Teachers and staff
15 will fulfill the assigned tasks needed to protect this
16 especially sensitive segment of the population.

17 I guess it was that phrase that I had in mind
18 when I asked you about LEA XI. I recalled it, but I had
19 it in the wrong contention.

20 Staff, I'm not sure I understand the reason for
21 the Staff's position, so let me turn to the Staff, first.
22 The Staff thinks it's admissible, but on the basis of the
23 third factor only, which is just the agreements. I take it
24 the Staff doesn't think it's admissible, as part of this
25 contention, to talk about the human response of the teachers

1 and the Staff. And I see that as a contradiction from what
2 I thought the Staff said when we discussed that general
3 contention. Which number? I forget.

4 MS. WRIGHT: No, the Staff does not perceive it
5 as a contradiction, but simply as a means of reorganizing
6 litigation of the contention. Teachers reactions to an
7 emergency situation could be discussed under the auspices
8 of the other contention. And here we're talking about the
9 absence of Letters of Agreement.

10 JUDGE BRENNER: Okay. Thank you. That is
11 consistent because the Staff -- the other contention, I'm
12 told, was LEA VIII -- because the Staff supported the admissibi-
13 lity of

14 MS. WRIGHT: Yes.

15 JUDGE BRENNER: I wrongly accused you of
16 inconsistency. If LEA VIII were not admitted, would you object
17 to the litigation of LEA XII as including the first two
18 factors also?

19 MS. WRIGHT: Yes, because if the Board did not
20 consider LEA VIII capable of meeting the specificity and basis
21 requirements, at that point there would be no specificity and
22 basis for it in this contention either.

23 JUDGE BRENNER: We see a distinction, arguably,
24 between the two, as we discussed before. And I don't want
25 to repeat that whole discussion. The problem we had

1 preliminarily with LEA VIII was that it wasn't specific
2 because it just said all volunteer workers. And for the sake
3 of argument, different volunteer emergency workers may be
4 more or less important. And in order to evaluate their
5 role we needed specifics. And over here we have specifics.

6 I will leave you with that thought.

7 Applicant objected. You didn't find any of the
8 contentions admissible, did you?

9 MR. CONNER: No.

10 JUDGE BRENNER: It's hard to get a quick count,
11 but approximately over four of the contentions anyway, the
12 Applicant thinks is a general attack on the training programs.
13 And I guess that's similar to the position the Applicant
14 took at LEA VIII, that you look to the training and not
15 as to whether or not people will respond.

16 MR. CONNER: More specifically, the results of
17 the training.

18 (Board conferring.)

19 JUDGE BRENNER: I wanted to ask the Commonwealth
20 whether they had a position on the admissibility of LEA XII?

21 MS. FERKIN: Commonwealth doesn't believe LEA XII
22 is admissible on the basis stated. In the Commonwealth's
23 view, Letters of Agreement with teachers and staff to stay
24 with their students are not required.

25 JUDGE BRENNER: I think we understand the positions

1 of the parties on this one. I am seeing nobody jumping to
2 the microphones, so we will go to the next one.

3 LEA XIII involves plans for private day care
4 centers with 20 to 75 children. Do I have the number right?

5 MS. ZITZER: (Nodding affirmatively.)

6 JUDGE BRENNER: The Staff thought the contention
7 was admissible, except for the part of the contention that
8 refers to the psychological effects on children. And Ms.
9 Zitzer, it wasn't clear to me, on reading the contention,
10 as to what you want to litigate under that. I thought that
11 that was just support, for the reasons as to why it was
12 important to have good evacuation or other protective plans
13 for children.

14 MS. ZITZER: Exactly because it can be such --
15 because problems can result, because of that being a factor.
16 We think it's important to have a planned response to assure
17 for adequate protection of the sensitive population. We think
18 that's a factor supporting the reason why planning needs to
19 be done for the day school.

20 JUDGE BRENNER: In the first paragraph you talk
21 about -- in fact, in the first sentence, you talk about
22 day care centers or private day care. Am I correct that that
23 is defined by the second paragraph? That is, you're talking
24 about a private day care center, where there are reasonably
25 large number of children?

1 MS. ZITZER: Yes, sir.

2 JUDGE BRENNER: And not a situation of a small
3 number of individual children?

4 MS. ZITZER: Yes.

5 JUDGE BRENNER: So the contention really would
6 be the first paragraph and then the first two sentences of
7 the second paragraph. And then I can skip down to the
8 references one, two, and three, and still have the same
9 contention?

10 MS. ZITZER: Yes.

11 JUDGE BRENNER: Is it correct that, with that
12 understanding, the Staff does not object to the admissibility
13 of the contention?

14 MS. WRIGHT: Yes, sir. And with reference to
15 the statement that on page 30 that says "If it is, these
16 numbers are not reflected in traffic patterns and control"
17 et cetera, et cetera.

18 JUDGE BRENNER: I'm sorry?

19 MS. WRIGHT: On page 30, LEA contends that "If
20 there is a separate plan" -- I presume that that's the "it"
21 they're talking about -- "these numbers are not reflected in
22 the traffic patterns and control if they have other children
23 shipped to host schools, or in the home preparation times,
24 to evacuate (as cited in Appendix 4, NUREG 0654)."

25 JUDGE BRENNER: I take it, and I'm glad you raised

1 that so we can be clear, that if a contention were admitted,
2 along the lines I indicated, that if the proof was put forth
3 by one party that there is an evacuation plan that provides
4 for the parents to come get the children, that it would be
5 open -- and this is what discovery, among other things, is
6 all about, so parties can learn in advance what the positions
7 will be, as well as for the development of the draft plans
8 in the particular case of emergency planning, to further
9 divulge information that we don't yet know.

10 But if that's the case, then it would be open to
11 LEA or another party to show that that won't work because
12 the traffic plans won't permit it and those numbers are not
13 reflected in the traffic patterns. But you think that would
14 not be permissible?

15 Anytime somebody, on the merits, comes up with
16 a reason in support of their argument, it's open to the other
17 parties -- so long as it's material -- to provide testimony
18 or cross examination as to why the proposed solution won't
19 work. Isn't that true?

20 MS. WRIGHT: Yes, it is true.

21 JUDGE BRENNER: What I was trying to accomplish
22 and I was overbroad -- I'm glad you raised it, Ms. Wright.
23 I was trying to delete any reference to psychological effects
24 on children so there would be no mistake that that was not
25 part of the litigation. I did not mean to delete the other

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1 point. And that's why a Board is not capable, at the spur
2 of the moment, of rewriting contentions, as I have just proved.
3 But I think that other point would be preserved anyway, for
4 the reasons I indicated. But maybe it's best to find another
5 way of preserving it.

6 The Applicant objects partly on the fact that there
7 is no basis that there are all kinds of provisions for these
8 types of facilities. Then the Applicant gives examples.
9 Is that correct?

10 MR. CONNER: Yes. We again are following the PEMA
11 guidelines which distinguish between various public institu-
12 tions and private, unlicensed institutions, which are not
13 to be included in the school district plans and are to be
14 handled as members of the general public. We have no
15 choice.

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JUDGE BRENNER: Does Commonwealth have a position
on this one?

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MS. FERKIN: Private?

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JUDGE BRENNER: Does Commonwealth have a position
for it?

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MS. FERKIN: Private for-profit schools that will
probably include day care centers do not have to be included
in the school district's plan. They may develop their
own plans.

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The municipal plans should list these types of
institutions. But, to the extent the institutions that
LEA XIII refers to constitute private for-profit centers,
they do not have to be included in the school district's
plan.

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JUDGE BRENNER: Did you intend that conclusion
in this contention? All day care centers, whether they be
non-profit or private for-profit?

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MS. ZITZER: I think that there is some of both.
Obviously, whatever is in the school district plan is already
provided for. Our concern is that somewhere planning be
done, and that the existing plans for the areas where these
facilities are reflect that planning, whether it's a
municipality or whether -- it would seem to be that it would
need to be incorporated into the local planning.

But at the present time it's not.

11pb2

1 JUDGE BRENNER: Ms. Ferkin, I was going to make
2 that point, too. As I read the contention, it's not keyed
3 to the school plans. It basically says what Ms. Zitzer just
4 said. I should be provided for in plans.

5 With that and with the clarification you gave,
6 do you have a view on the admissibility of the contention?

7 MS. FERKIN: Yes, I don't believe the contention
8 is admissible.

9 JUDGE BRENNER: Okay. And why not?

10 MS. FERKIN: The extent of planning that we're
11 talking about for these kinds of institutions is at most
12 a listing by the municipalities of the institutions that
13 are contained -- of these types of institutions that are
14 located within the municipality. Our position is, no further
15 planning by the local governmental entities has to be
16 accomplished for these kinds of institutions.

17 JUDGE BRENNER: Is it not a criterion of emergency
18 planning that special groups of the general public, even
19 if they're classified just as general public, be provided
20 for in emergency plans? And if so, wouldn't this fall into
21 a special group?

22 MS. FERKIN: Can you define special group any
23 more explicitly?

24 JUDGE BRENNER: Persons who needed assistance to
25 evacuate because they can't get out on their own, such as

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1 large groups of school children, or 'nvalids or so on.

2 MS. FERKIN: May I have a moment, please?

3 (Counsel conferring.)

4 MS. FERKIN: Judge Brenner, I'm not sure if I
5 stated my description of what we consider these day care
6 institutions to be very clearly. We consider these day care
7 institutions to be like any other for-profit business. And
8 as such, the municipal coordinator should be aware of these
9 institutions, should review plans that these institutions
10 draw up for themselves, giving any aid that is required.

11 And I think there's a distinction between what
12 you are terming special groups and how we are characterizing
13 these sorts of institutions.

14 JUDGE BRENNER: All right. That's your position
15 as to private for-profit day care centers; correct?

16 MS. FERKIN: Exactly.

17 JUDGE BRENNER: The contention is not so limited.
18 The contention includes day care centers, whether they're
19 losing money or making money.

20 MS. FERKIN: Loss of money or making of money
21 isn't the problem --

22 JUDGE BRENNER: I was being facetious. The not
23 for-profit type day care center. I don't know if there are
24 any. Do you?

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25 MS. FERKIN: I'm not aware at this point.

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1 VNER: Ms. Zitzer, do you know?

2 R: There are. I would need some
3 consultation to provide some examples. But there are.

4 JUDGE BRENNER: The Applicant has referenced some
5 that are included in plans, but of course, the Applicant's
6 reference in the Applicant's view proves that they are
7 being provided for. That's where they got the reference,
8 from the fact that there are plans for them.

9 But those may only be some of them. I don't
10 know.

11 MS. ZITZER: There are others. Just give me a
12 moment.

13 JUDGE BRENNER: We're not going to do it now,
14 we're going to break in a minute. We will come back to
15 this contention after lunch. And one of our questions might
16 be whether you can specify the contention to particular
17 institutions, either now or soon.

18 MS. ZITZER: Soon certainly. It would be hard
19 to do it right now, just because I would want to be sure
20 that the information was thorough and accurate. But certainly
21 be able to provide that.

22 JUDGE BRENNER: All right. And identify whether
23 they would be private for-profit or not for-profit.

24 MS. ZITZER: Certainly.

25 JUDGE BRENNER: If you know. All right. You tell

11pb5

1 us how soon you could do that after lunch and we will think
2 about whether we want to ask you to do it.

3 MS. ZITZER: Certainly.

4 JUDGE BRENNER: Any other comments on this
5 contention? Staff?

6 MS. WRIGHT: The Staff would just like to point
7 out that in Appendix 4 of NUREG 0654 entitled Evacuation
8 Time Estimates Within the Plume Exposure Pathway, Emergency
9 Planning Zone. Persons in special facilities is included as
10 part of the population segments that shall be considered in
11 determining the number of people to be evacuated. And on
12 page 4-3 of that appendix, it says an estimate for this
13 special population group shall be done on an institution-by-
14 institution basis.

15 The means of transportation are also highly
16 individualized and shall be described. Schools shall be
17 included in this segment.

18 The Staff relied on that particular definition of
19 special facility population in determining or assisting in
20 its determination of whether this contention was admissible.

21 Thank you.

22 JUDGE BRENNER: Okay. Thank you. Anything
23 further on this contention?

24 (No response.)

25 All right, we will adjourn for lunch in a moment,

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1 and then we will come back to the question we left open
2 on specification, further specification of LEA XIII. I guess
3 we will defer it until after the Part 70 argument, so you
4 will have even a little more time to think about it.

5 MS. BUSH: Your Honor, this could be off the
6 record.

7 JUDGE BRENNER: Okay. Tell me the subject first.

8 MS. BUSH: About what you would encourage the
9 parties to discuss off the record in terms of your deferring
10 a ruling on some of the emergency planning contention issues.

11 I wanted to ask clarification.

12 JUDGE BRENNER: Let's do that on the record.

13 MS. BUSH: My question was, would you envision
14 this to be applicable to the types of issues raised by the
15 city of Philadelphia?

16 JUDGE BRENNER: I want to be frank. When I made
17 the comments I made, I was not thinking of the city of
18 Philadelphia. I was thinking of LEA's contentions. Don't
19 infer anything one way or the other. But if you see something
20 there that fits in that category, go ahead and put it in
21 that category and participate in the discussions.

22 If you see something that you think should be in
23 that category, discuss it with the other parties, so that
24 when we get to the contention, and we will get to Philadelphia
25 someday, you can tell us that you think that should be in

11pb7

1 that category also.

2 MS. BUSH: So basically you would be looking for
3 an agreement among the particular -- I guess it would be
4 the Commonwealth who is developing the plan and the city,
5 if they thought that they might, could without a formal
6 ruling come to some agreement about some of these issues
7 that we raised being included in the plan.

8 JUDGE BRENNER: Of course we encourage that as
9 to all contentions, even those that we fully admitted at
10 this time. We're open to suggestions as to (a) what are
11 the parties views on the overall concept, and how it might
12 procedurally be implemented. We're addressing the latter
13 point now, and your suggestion is one way to do it. There
14 may be others.

15 MS. BUSH: One final question. Could we have
16 any kind of estimate as to when we might get to the city
17 of Philadelphia contention? Will it be today or is it likely
18 it won't be?

19 JUDGE BRENNER: I'm hoping it might be today.
20 I'm hoping it won't be early this afternoon.

21 MS. BUSH: Probably would be after 3:00?

22 JUDGE BRENNER: Yes. Because we're going to be
23 coming back a little later than 1:30 now, as we keep talking.

24 Yes, it will be -- you want to know if it would
25 be safe for you to come back after 3:00. Is that your

11pb8

1 question?

2 MS. BUSH: One of us has a meeting to prepare for.

3 JUDGE BRENNER: You will be safe until after 3:00.

4 MS. BUSH: Thank you.

5 JUDGE BRENNER: You're right. We may not get to
6 it, but I don't want to stop artificially. I'm hoping to
7 get to it.

8 MS. BUSH: Thank you.

9 JUDGE BRENNER: All right. Let's adjourn until
10 1:40.

11 (Whereupon, at 12:10 p.m., the hearing was
12 recessed, to reconvene at 1:40 p.m., this same day.)

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AFTERNOON SESSION

(1:45 p.m.)

JUDGE BRENNER: All right. We're on the record.

The subject now is what we have loosely referred to as the Part 70 matter, after the numbered section of the Commission's regulations dealing with applications for, among other things -- well, in general, applications for handling and storage of special nuclear material, which would include new -- that is unirradiated -- nuclear fuel for commercial nuclear power plant.

The paper we have in front of us, and perhaps before us, so we'll ask LEA about that in a moment, are as follows. We have a filing from FOE dated February 23rd entitled Application by Anthony/FOE to File a Contention Based on New Matter, i.e. PECO's Application Part 70 to Store Fuel at the Limerick Plant, served 2/21/84.

We also have, from FOE, a one page document dated February 28th, 1984 entitled Addition to Anthony/FOE Application for Contention on New Matter, PECO's Application Part 70, Docket Number 70-2988 to move fuel to site and store 764 bundles of fuel.

When we had received the first of those two documents, we issued an order setting a rapid schedule for answers by the Staff and the Applicant. We received Applicant's answer to both of those documents, although the time was even more shortened with respect to the second document. And

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1 Applicant's answer is dated March 1st, 1984.

2 We received an answer to the Staff directive only
3 to the first document, dated March 2nd, 1984. In that answer,
4 the Staff acknowledges just having received the second document
5 from FOE, explains it did not have time to respond in writing,
6 but offers a preliminary, very brief, comment on that second
7 document.

8 Before arriving here, we thought those were the
9 only documents pertaining to the matter. Yesterday, we
10 received, from LEA, a document entitled Petition to Intervene
11 and Request for Hearing, pursuant to Atomic Energy Act, as
12 amended, January 4, 1983 PL 97-415 Section 12A. And it
13 captioned -- and I'll shorten it here -- In the matter of
14 License Number SNM-1926, License Amendment Application. It's
15 filed dated February 28, 1984 and it's filed, as I said,
16 by LEA through its counsel Mr. Elliot.

17 It also has a cover letter of the same date,
18 indicating that it was sent to the Secretary of the Commission
19 with copies to the Director of the Office of Nuclear Material
20 Safety and Safeguards, who is an NRC Staff official, and
21 copies to corporate officials, Mr. Bradley and Mr. Bower, of
22 Philadelphia Electric. I don't know if copies were otherwise
23 sent to the Board. In any event, we did not receive them
24 before arriving here.

25 First question, is what your intent is, with

1 respect to the filing, Mr. Elliot? Is that meant to be a
2 separate petition, in a separate proceeding from ours?

3 MR. ELLIOT: Yes, it is.

4 JUDGE BRENNER: All right.

5 MR. ELLIOT: Incidentally, you received your copy
6 from the Staff, rather than from LEA.

7 JUDGE BRENNER: All right. Did you serve copies
8 on the Board and the parties?

9 MR. ELLIOT: No, I did not. The only reason for
10 that is because we had perceived it to be an entirely separate
11 proceeding, on a different docket.

12 JUDGE BRENNER: We disagree with that as a reason
13 for not serving us, even if it's correct, and we will get to
14 that more directly with the Applicant perhaps. We have a
15 standing order, in this case, and I don't remember the
16 exact wording of it, but it was very broad. And we discussed
17 a little bit, and it was basically any correspondence -- we
18 particularly directed it to Applicant and Staff correspondence,
19 but we were talking about any correspondence.

20 We discussed the reasons way back at the beginning
21 of this proceeding, that it was for the benefit of all parties,
22 as well as the Board, that copies of anything pertaining to
23 the licensing of the Limerick plant -- and it was in that vein
24 -- be served on all the parties and the Board. We have made
25 some exceptions since then and clarified it, with respect

1 to discovery and so on. But certainly something like this,
2 a legal pleading in the case -- even if LEA deems it in a
3 separate proceeding before another body -- it would be
4 within our order get a copy of it. So I make that clear
5 for the future.

6 MR. ELLIOT: I understand now.

7 JUDGE BRENNER: Especially since, at present,
8 there is no separate proceeding. If there ever is a separate
9 proceeding established, your filing would be the first filing
10 starting it off.

11 Have any parties responded to LEA's filing, in any
12 form?

13 MR. WETTERHAHN: Not, yet.

14 JUDGE BRENNER: Staff?

15 MS. HODGDON: We have only just received it, as
16 was just said. It was the Staff that served these. I don't
17 recall when we got it, but not in time --

18 JUDGE BRENNER: The answer is no?

19 MS. HODGDON: The answer is no.

20 JUDGE BRENNER: Okay.

21 Now the first we learned about the amendment
22 involving an amendment filed by the Applicant, Philadelphia
23 Electric, with respect to an application to store unirradiated
24 nuclear fuel at the Limerick site, was when we received copy
25 of a letter from Staff counsel indicating that it had received

1 such an amendment. And if I recall the sequence correctly,
2 was at first just serving us just with the cover letter of
3 that amendment. And then, very shortly thereafter, served
4 us the actual amendment. We received the actual amendment
5 on February 21st, 1984. And I guess it was a few days prior
6 to that that we first had some indication of its existence,
7 as I have indicated.

8 The Application itself is apparently dated
9 approximately January 26, 1984. That might be wrong by a
10 day or so. Am I correct, that the Applicant did not serve
11 that Amendment on the Board and the parties, the January '84
12 amendment?

13 MR. WETTERHAHN: That is correct.

14 JUDGE BRENNER: Why not?

15 MR. WETTERHAHN: Our position has been, since the
16 original filing, that the Part 70 license was completely
17 separate and apart from the Part 50 license. And that we
18 understood the Board's order, as broad as it was, to cover
19 matters relating to the issuance of the operating license
20 for Limerick.

21 I think it was clear, or should have been clear,
22 that there was an ongoing -- would be an application for
23 Part 70 license filed.

24 JUDGE BRENNER: Assuming that you're correct and
25 I'm not disagreeing with it at this moment, that our order

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1 was broad enough to cover all matters relating to the
2 operating license for Limerick, it's your position that there
3 was no argument that the filing of that application could be
4 deemed to be so related?

5 MR. WETTERHAHN: You can always make an argument
6 that things are related. But as far as --

7 JUDGE BRENNER: I'm talking about a legitimate
8 position, not just a wild argument.

9 MR. WETTERHAHN: No, I don't think there's a
10 reasonable argument that the hazards that this Board is
11 looking at in the licensing, would require that this be
12 served, no.

13 JUDGE BRENNER: Mr. Wetterhahn, your law firm,
14 in another proceeding, lost that very argument before another
15 Licensing Board, before the Zimmer Board. How can you sit
16 here today and tell me that there's no legitimate argument
17 that that license application is related to the operating
18 license for Limerick?

19 MR. WETTERHAHN: First of all, we -- of course --
20 recognize the Zimmer decision. However, the issue there was
21 very much different. The issue there is whether the Board had
22 jurisdiction to modify a license already issued. And that
23 brought into account 10 CFR Section 2.17(h) and we argued, in
24 that case, whether the Board has jurisdiction to modify a
25 license already in existence.

1 I think it was clear that the holding in that
2 case is limited to the fact that once the license is issued
3 the Board might have jurisdiction. While I disagree with
4 that and would like to, as our pleading indicates, preserve
5 that question for appeal, that question was never appealed.
6 But that is not really the question before this Licensing
7 Board.

8 And I also believe the basis upon which that Board
9 took jurisdiction was in error.

10 JUDGE BRENNER: I understand that position. But
11 you lost that position.

12 MR. WETTERHAHN: As to the question of the Board
13 having jurisdiction over the license, once issued.

14 JUDGE BRENNER: A predicate for the Board, in that
15 case, exercising jurisdiction under 2.717(b) was the finding
16 that the subject matter was related to the operating license
17 proceeding. Now that obtains, regardless of the chronology
18 of whether the license was first issued or whether the
19 operating license board gets involved before it was issued.

20 MR. WETTERHAHN: There are other requirements,
21 simply that -- I would agree that a Part 70 license is issued
22 does not give the Board jurisdiction, even under that ruling.
23 But I don't believe that one can have the subject matter
24 jurisdiction from a jurisdictional point of view, under that
25 very limited regulation, until the license is issued.

1 JUDGE BRENNER: You're changing my question. My
2 question is is it related to the proceeding or not? And I
3 put to you the fact that that question is separate and apart
4 from whether or not jurisdiction is properly invoked, because
5 it meets the other requirements of 2.717(b)?

6 MR. WETTERHAHN: As I said before, I don't believe
7 that the questions related to a storage of cold fuel are
8 related to the proceeding. I realize that one can make an
9 argument that without having fuel on site, you can't load
10 fuel, and certainly that argument could be made.

11 But from my point of view, I don't see any
12 relationship or a relationship between the questions on a
13 Part 70 license, for cold storage of fuel, and one having
14 to do with the operation of this reactor.

15 JUDGE BRENNER: I thought we agreed that precedent
16 had found that the matters were related. Even though it's
17 perfectly proper for you to preserve your rights on appeal,
18 that's not the same as withholding information from the Board
19 which other Boards had found were related to operating
20 licenses.

21 MR. WETTERHAHN: There was no intent to withhold
22 information. We believe that the requirements of previous
23 cases would be satisfied. And indeed, the Board's requirements,
24 if notification of the issuance of license, was given to the
25 Board.

1 JUDGE BRENNER: After the fact?

2 MR. WETTERHAHN: Contemporaneous with the fact.

3 JUDGE BRENNER: Notwithstanding the fact that we
4 had a standing order in this case, tha all matters related
5 to the operating licensing of the Limehick plant be served
6 on the Board and the parties? You see, we had that requirement
7 in this case, which did not necessarily exist in the other
8 cases.

9 MR. WETTERHAHN: As I stated before, you have told
10 me now I'm incorrect, but my interpretation was that this was
11 one of the pieces of information necessary for an operating
12 license, but not sufficiently ancillary that we would provide
13 it. I would give you another example. I'm sure we have not
14 provided this Board with information on operator licensing
15 or indemnity correspondence. If the Board is requesting
16 that type of information, we will provide it.

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1 JUDGE BRENNER: Offhand I don't see why it's not
2 related, but I don't know what particular information you
3 have in mind in those categories. And I don't want to digress
4 now into them.

5 Is it correct that the original application for
6 a Part 70 license for Limerick was filed in -- I guess it's
7 in June of '83?

8 MR. WETTERHAHN: I provided a copy of the letter
9 to the Licensing Board dated June 1, 1983. That is the
10 initial application.

11 JUDGE BRENNER: You provided the letter to us.
12 But the letter is to the director of nuclear material safety
13 and safeguards.

14 MR. WETTERHAHN: And I will confirm it was not
15 served on the Board.

16 JUDGE BRENNER: Or the parties?

17 MR. WETTERHAHN: Or the parties.

18 JUDGE BRENNER: For the same reason you have just
19 indicated, you did not serve the January '84 amendment?

20 MR. WETTERHAHN: That's correct.

21 JUDGE BRENNER: June '83 was after the time we
22 had the standing order in this case also; isn't that correct?

23 MR. WETTERHAHN: I don't recall. I would assume
24 that it is.

25 JUDGE BRENNER: Well, the case, for your

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1 recollection, started in approximately September '81, if I
2 recall correctly.

3 MR. WETTERHAHN: I will take your word. I don't
4 recall when the standing order was. I've heard for the
5 Board, as for information related to this, we didn't interpret
6 it that broadly. Correctly or not, that's the way we
7 interpreted it.

8 JUDGE BRENNER: Was that a conscious determination
9 made by counsel for the utility, not to serve either the
10 application or the amendment?

11 MR. WETTERHAHN: I don't recall when I learned
12 about this amendment. But I certainly learned about it
13 before the Board was served by the Staff. And yes, I
14 considered whether to serve it. Or, Applicant considered
15 whether to serve it, and made a decision that it wasn't
16 sufficiently relevant.

17 JUDGE BRENNER: Who made the decision?

18 MR. WETTERHAHN: I can't point to an individual.

19 JUDGE BRENNER: Somebody must have made it.

20 MR. WETTERHAHN: I'll take responsibility for
21 it.

22 JUDGE BRENNER: You didn't consider it, even
23 legitimately arguable, such that you should err in the
24 direction of disclosing possible relevant information?

25 MR. WETTERHAHN: I thought all the Commission

13pb3

1 requirements would be satisfied, including these Board's
2 orders, at the most by sending this Board a copy of the
3 license when issued.

4 I hope that's responsive.

5 JUDGE BRENNER: For its part, the Staff obviously
6 received the June 1983 license application. It did not
7 serve a copy of that license application on the Board and
8 the parties. I want to know in the same context the Staff
9 did serve, as I indicated, a copy of the amendment in
10 January 1984. And were it not for the Staff's -- well, you
11 sent us a copy in February. And were it not for the Staff's
12 action we would not have learned of it. We would have
13 preferred to have received a copy sooner than several weeks
14 after. But that's a quibble in the larger context here.

15 I would like to inquire, however, as to the
16 June 1983 application. Why Staff counsel did not serve that
17 on the Board and the parties?

18 MS. HODGDON: Staff counsel did not receive a
19 copy of that application and was not aware of its existence
20 until Staff counsel saw the application for an amendment,
21 which we served immediately.

22 JUDGE BRENNER: You went through the same process
23 we went through of learning about the original June '83
24 application by inference and reference from the January 1984
25 amendment; is that correct?

13pb4

1 MS. HODGDON: That's correct.

2 JUDGE BRENNER: Let me state for the record, that
3 I saw a copy of a special nuclear material license issued by
4 the Staff approximately September 1983, if I recall correctly,
5 which was a Part 70 license, but it was a Part 70 license --
6 I may get the technical terms wrong, but it was solely for
7 radiation sources used in testing I believe, and things of
8 that nature.

9 When I saw that license, and I saw the Part 70
10 license, I went through the thought process of thinking to
11 myself, what's this. Not having seen a license application.

12 But upon reading the license and seeing what it
13 covered, I decided I was not concerned with the subject
14 matter. And inferred from that, that that was the only
15 subject of the license application, which the license
16 referenced.

17 It was only after seeing the amendment application
18 which the Staff provided to us in February 1984 that I
19 realized that the original application also pertained, or
20 apparently also pertained to new, that is unirradiated fuel
21 for the facility. And it was only after receiving a copy
22 of the June 1983 license application yesterday, which the
23 Applicant provided in response to our request that I confirmed
24 that.

25 That's a long way of saying that when we had just

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1 the amendment before us, we didn't know how much of that was
2 actually new, and how much was in the original application.

3 Although there were some marginal lines, we weren't
4 sure of the extent to which we could rely on that. Particularly
5 we were interested in seeing, whether the proposal to store
6 unirradiated fuel outside, in what has been termed the new
7 fuel storage area, I believe -- is that the right term,
8 Mr. Wetterhahn?

9 MR. WETTERHAHN: Yes.

10 JUDGE BRENNER: We did not know if that proposal
11 was included as part of the June 1983 initial application,
12 or only as part of the January 1984 amendment.

13 Upon looking at it we confirmed that indeed it
14 was part of the June 1983 initial application. Is that
15 correct so far, Mr. Wetterhahn?

16 MR. WETTERHAHN: I gave the Board my only copy
17 of the June 1st, '83 application. So I cannot trace that
18 down. I will accept the Board's word.

19 JUDGE BRENNER: If you think that document
20 is really relevant to this conversation, I should give you
21 a copy.

22 MR. WETTERHAHN: I will accept the Board's word
23 for it.

24 JUDGE BRENNER: Page 2, and it's better to nail
25 it down for the record. It's not a matter of accepting my

13pb6

1 word. Page 2 of the June 1st, 1983 application. Under
2 the subsection 1.2.1, fuel storage location, states, "The
3 new fuel will be stored outdoors in the new fuel storage
4 area, which is located on the west side of the plant, within
5 the protected area boundary, as shown in Figure 1.2.1, which
6 is attached here to an incorporated herein.

7 "The new fuel will be stored here for approximately
8 four months, and then it will be brought to the refueling
9 floor and stored in the spent fuel pool before fuel load."

10 That's the end of the quote and that's consistent
11 with the amendment also. Staff and Applicant has taken the
12 position that FOE's contentions are late-filed contentions,
13 because basically, if I understand the answers, the information
14 was available at least I now infer the position was, at least
15 since June 1983. And it was subsequent to that time that
16 FOE should have filed such contentions.

17 Moreover, FOE had an obligation to affirmatively
18 search the local public document room to become aware of the
19 June 1983 application. Is that correct, Mr. Wetterhahn?

20 MR. WETTERHAHN: I think the June 1, 1983 was
21 the latest that it could have been filed. I think an
22 Intervenor could have reasonably anticipated if the Board
23 is correct in saying that it had jurisdiction. The time to
24 file it would be within the time prescribed by the notice
25 of opportunity for hearing in the operating license stage.

13pb7

1 JUDGE BRENNER: Is there something in the FSAR
2 that indicates that a Part 70 license would be applied for
3 for permission to store fuel on-site, in advance of an
4 operating license?

5 MR. WETTERHAHN: No, that subject is not covered
6 in the final safety analysis report.

7 JUDGE BRENNER: All right.

8 MR. WETTERHAHN: However, I don't believe that
9 that fact alone would change the inference that one should
10 have anticipated such an occurrence. I believe such an
11 occurrence has happened in every reactor proceeding, that
12 I am aware of.

13 I'm not aware of any exception to that rule.

14 JUDGE BRENNER: Accepting that for the sake of
15 argument for now, the thrust of FOE's contentions in large
16 part is their problem with the fact that the fuel is going
17 to be stored outside. Should they also have inferred that
18 it would be typical -- or at least that Philadelphia Electric
19 would later seek permission to store the fuel outside?

20 And in advance of any such permission being sought,
21 should have filed a contention saying, if in the future,
22 Philadelphia Electric wants to store fuel outside, that
23 wouldn't be good for the various reasons?

24 MR. WETTERHAHN: If fuel storage outside were
25 unique to Philadelphia Electric, I would agree with you that

13pb8

1 June 1st, '83 or about that time would be the time.

2 But again, I can't say that I have surveyed the
3 field, but I know of other instances where the NRC has
4 routinely reviewed and approved such storage outside under
5 conditions similar or with fewer conditions than the ones
6 for which Philadelphia Electric Company has applied.

7 JUDGE BRENNER: Even if that is correct, for the
8 sake of argument, and it's not unique, wouldn't Applicant
9 have opposed such a contention in the say, fall, 1981 time
10 frame as being speculative and premature?

11 MR. WETTERHAHN: With regard to the exact details.
12 But I believe that a contention could have been filed. I
13 have been given, as you may have noticed, a copy of the
14 Limerick EROL and Chapter 12 talks about environmental
15 approvals and consultation. And one of the items is with
16 regard to the special nuclear materials license at issue here.

17 JUDGE BRENNER: What does it say?

18 MR. WETTERHAHN: It says, special nuclear material
19 license not yet received -- not received under status. It's
20 one of the separate federal permits, and their status for
21 Limerick generating station. That's all the information it
22 provides.

23 JUDGE BRENNER: Does it say that one has been
24 applied for?

25 MR. WETTERHAHN: No, it does not. But it is

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1 certainly implied that before Limerick can load fuel or
2 operate, all these approvals have to be granted.

3 JUDGE BRENNER: Does it say the fuel will be
4 stored outdoors?

5 MR. WETTERHAHN: It makes no other statements
6 than the one I have just read.

7 JUDGE BRENNER: Do you have a date at which that
8 portion was first placed in the EROL?

9 MR. WETTERHAHN: It shows no change bar, and it
10 therefore would mean that it was filed with the operating
11 license.

12 JUDGE BRENNER: Does the page have a change
13 indication on the bottom?

14 MR. WETTERHAHN: No, it does not. That's what
15 I meant by a change bar.

16 JUDGE BRENNER: Staff, as I had stated earlier,
17 opposed FOE's contentions in part on the basis that they
18 were late-filed contentions. When would they have been
19 timely filed contentions in the Staff's view? When should
20 FOE have filed contentions criticizing in large part the
21 proposal to store the new fuel outside?

22 MS. HODGDON: Under Catawba I think, timely filed
23 contentions are filed within a certain period of time after
24 the notice of opportunity for hearing, and establishment of
25 a board. And any other contention is late-filed.

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I think the question goes to good cause, and not
to whether it is in fact late. I think that by Catawba
the Commission acknowledges that such a filing would be
late-filed.

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1 JUDGE BRENNER: Do you think the June 1933
2 license application should have been filed with the Board
3 and the parties, including Staff counsel, on the basis that
4 it was arguably relevant to the subject matter of this
5 proceeding?

6 MS. HODGDON: Yes --

7 JUDGE BRENNER: Reasonably arguably relevant. Not
8 just anybody could come up off the street and make any
9 argument?

10 MS. HODGDON: Yes, I believe so. Had I had any
11 control over the filing, or had I been given a copy of the
12 filing, I certainly would have filed it. However, I must
13 say that what the Staff did, when the Board indicated at
14 the pre-hearing conference in January of '82, that it would
15 like copies of all correspondence between the Staff and the
16 Applicant. What the Staff did was to ask for copies of
17 correspondence between -- licensing correspondence.

18 In other words, what we gave the Board and the
19 parties was, in fact, only Part 50 licensing correspondence.
20 And so, we too, were -- I suppose -- not in total compliance
21 with the Board's understanding. I think our understanding
22 was different.

23 Later than that, we managed to bring in I&E
24 correspondence and we still hadn't realized, I suppose, that
25 we weren't getting, ourselves, NMSS correspondence between

1 itself and the Applicant. It was the first time, the first
2 indication we had that somebody telephoned and said we have
3 this application. We said, send it to us, and we sent it
4 right along.

5 JUDGE BRENNER: Isn't that a matter of bureaucratic
6 problems of separation within the Staff and the legal
7 definitions of what's relevant or not.

8 MS. HODGDON: Definitely, that is a bureaucratic
9 limitation within the Staff. We would have given the Board
10 anything in which we thought they had expressed an interest
11 with regard to this licensing, in the very broad definition
12 of that term.

13 JUDGE BRENNER: For what it's worth, that Staff
14 office has a memory that doesn't go back several years,
15 apparently. When it was told that, in the context of the
16 Zimmer proceeding, to be alert for Part 70 new fuel applica-
17 tions that might affect Part 50 proceedings.

18 I will leave that to your own future devices, as
19 the Staff's lawyers.

20 MS. HODGDON: Yes.

21 JUDGE BRENNER: Accepting, for the sake of argument,
22 your interpretation of Catawba, Ms. Hodgdon, would that same
23 interpretation apply to a proceeding like this one, where we
24 had a standing order that all relevant information be served?
25 And assume, for the sake of argument, that the Part 70 license

1 application would have fallen within the order. If that's
2 the case, and the Part 70 application was not, in fact,
3 served, would Catawba still apply?

4 MS. HODGDON: I think Catawba would still apply,
5 except that the good cause -- addressing good cause, it would
6 be somewhat different and this Intervenor expected that he
7 would be given everything that was relevant, even marginably
8 or arguably relevant to this licensing proceeding. And he
9 did not believe that he had to go to the Public Document
10 Room to find it. And therefore, he had good cause. That
11 helps him out on good cause, I think.

12 I don't believe that it waives the requirement to
13 address the five criteria.

14 JUDGE BRENNER: If that's the case, couldn't a
15 party -- by withhold informatin -- and I'm certainly not
16 ascribing that purpose for withholding yet to the Applicant
17 here. I am just suggesting it for purposes of probing
18 your legal analysis. If that's the case, couldn't a party
19 just withhold information and therefore cause an intervenor
20 to have to meet a higher standard for having a contention to
21 be admitted, by filing the information later? And then the
22 intervenor, for the first time, learns of information that
23 would have been available earlier?

24 MS. HODGDON: I'm not sure that I'm getting the
25 hypothetical. I think maybe you're asking me two different

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1 things. Couldn't a party, who has information, by withhholding
2 it until such time as it's very late, escalate the showing
3 that needs to be made on good cause, because it's so late
4 in the day?

5 JUDGE BRENNER: Yes, I'm asking if that does
6 not follow from your position, that the late knowledge that
7 the Part 70 application existed, applied to new fuel, would
8 cause the five factors to apply, whereas if FOE had found out
9 about that information on a timely basis, those factors
10 would not have applied?

11 MS. HODGDON: I continue to believe that the
12 five factors are applicable. I believe it goes to the way
13 they are applied. I think that Catawba should be read that
14 way.

15 When you are dealing with a party deliberately
16 withholding information, which you have posed to me in your
17 hypothetical, then certainly that has to be taken into account.

18 JUDGE BRENNER: What if it wasn't deliberate, but
19 it was just a crabbed interpretation of what was relevant,
20 even though I'll assume good faith on the part of that party?

21 MS. HODGDON: If it's not relevant, then it's
22 probably not admissible anyhow.

23 JUDGE BRENNER: No, the party was wrong.

24 MS. HODGDON: The party was wrong in determining
25 that it was not relevant and did not serve it because of his

141b5

1 misreading of relevance, did not serve it, not deliberately,
2 the same case.

3 JUDGE BRENNER: Another question is, the Staff
4 focused on the late filed contention factors. Some of FOE's
5 complaints go to contentions that have been timely filed, or
6 at least admitted in the proceeding. That is the pipeline
7 hazards accident contentions. Why do the late filed
8 criteria apply to those contentions?

9 MS. HODGDON: To the extent that the FOE's
10 contention goes to the pipeline hazards contention, and
11 it is already included in it, as admitted, as the position
12 the Staff takes in its paper, because fresh fuel would have
13 been on site, will be on site, if and when the application
14 is granted. Then this condition is not different because
15 of the filing of this information, which has only recently
16 become known to FOE.

17 JUDGE BRENNER: So you say it is, in effect, a
18 different contention?

19 MS. HODGDON: It would seem to be, within
20 a contention of (3)(a) and (3)(b) as submitted. Without being
21 -- the contention, as articulated that way, would have been
22 available to FOE without filing this amendment to the SNM
23 application.

24 JUDGE BRENNER: If they would have known a, that
25 there was going to be fresh fuel stored on site and b, the

1 further detail that it would be stored outside.

2 MS. HODGDON: They should have known that fresh
3 fuel would be stored onsite within the operating life of the
4 plant.

5 JUDGE BRENNER: Before an operating license would
6 issue?

bu s2 7 MS. HODGDON: No. Their intervention is on the
8 operation of the plant. There are (3)(a) and (3)(b) contentions
9 which go to the operation of the plant, after the operating
10 license issues. Therefore, any concern that they might have
11 with fresh fuel is comprehensible within their contention,
12 as originally submitted. And should have been so articulated,
13 should have so stated at the time.

14 JUDGE BRENNER: I understand that. And I
15 misunderstood it a moment ago. You just explained it. Should
16 they have known that it would have been stored outside, that
17 the new fuel would have been outside?

18 MR. HODGDON: I'm not sure that they should have
19 known it. I don't know that their contention shows that
20 it makes a difference.

21 JUDGE BRENNER: That's a separate point. We're
22 talking about the late filed criteria, whether that should
23 apply.

24 MS. HODGDON: No. At that time, they could not
25 have known that it would be stored outside, as far as I know.

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1 It frequently is stored outside, but I don't know that they
2 would have done that.

3 JUDGE BRENNER: Mr. Wetterhahn, you wanted to
4 add something?

5 MR. WETTERHAHN: I wanted to make sure that we
6 had our factual predicate correct. I think it's important,
7 with regard to what is being considered, with regard to
8 Contentions V(3)(a) and V(3)(b). I think, if you read the
9 first set of contentions, it refers to storage inside the
10 building, when we're talking about storage outside the
11 building. Mr. Anthony and FOE is talking not about
12 contentions at issue, but the effect of a hypothetical
13 railroad blast, which is not encompassed by the contention.
14 And I think that's important to keep in mind.

15 JUDGE BRENNER: You may want to take a look at
16 the February 23rd filing, Paragraph 1. I think he has
17 that, and what you just said.

18 MR. WETTERHAHN: Excuse me?

19 JUDGE BRENNER: I think one of his allegations is,
20 as you just described it. But I think he also has, in the
21 reference I just gave you, the allegation, not expressly
22 stated, that until all the Board has all the evidence and has
23 ruled that these structures are built to withstand offsite
24 accidents, no fuel can be risked there. And leading to that,
25 talks about determining, in evidentiary hearings, whether the

1 safety related buildings can withstand overpressures and
2 impacts from offsite actions. And Contentions V(3)(a) and
3 V(3)(b).

4 MR. WETTERHAHN: I believe that that Item 1
5 is talking about that part of the application concerning
6 storage inside one of the safety related buildings. Okay?
7 Which would be encompassed within the contention, or could have
8 been.

9 What I wish to point out, though, is that with
10 regard to the February 28th filing, Item 3 does not talk about
11 the matter at issue before the Board, or only very peripherally,
12 but talks about the TNT railroad car explosion. I believe
13 that is the portion directly expressing outside storage.
14 That is my only point.

15 And I do think that distinction makes a difference,
16 ultimately.

17 JUDGE BRENNER I think you're reading one too
18 narrowly, but we'll hear from Mr. Anthony at some point.

19 What is the status of the Applicant's plans, with
20 respect to this fuel, at this time? In general, to the
21 extent you can tell us publicly?

22 MR. WETTERHAHN: If the Staff finds the facility,
23 and the outside storage area, is ready, we would expect to
24 bring fuel onsite after about approximately two weeks from
25 now, very general.

1 JUDGE BPENNER: As of now, Staff, is it correct
2 that the Staff has not found all requirements having been met?

3 MS. HODGDON: That is correct. Would you like a
4 status report on that, or do you want a simple answer of that
5 is correct?

6 JUDGE BRENNER: Give us a brief status report.

7 MS. HODGDON: I spoke with Monty Connor, who is
8 the --

9 JUDGE BRENNER: That's a little more detailed than
10 I need.

11 MS. HODGDON: He's the Project Manager just now.
12 And he gave us a status report. It's very short.

13 They had some problem with QA, which they now
14 find is okay, Quality Assurance. Certain other areas, they
15 are reinspecting, with regard to health physics, the security
16 and fire protection. They are reinspecting now, almost on
17 a daily basis. They find that most of the work has been done.
18 And they will have finished their reinspection shortly.

19 JUDGE BRENNER: In the amendment to the application
20 -- that is, the June '84 amendment, Mr. Wetterhahn. I don't
21 have it in front of me --

22 MR. WETTERHAHN: June '84?

23 JUDGE BRENNER: January '84 amendment, thank you.
24 I don't have it in front of me, but the point was expressly
25 made, to this general effect. No new fuel would be

1 stored in the new fuel storage vaults. Do you recall that?

2 MR. WETTERHAHN: Yes.

3 JUDGE BRENNER: Is there such a thing as the
4 new fuel storage vaults?

5 MR. WETTERHAHN: No. This design eliminated the
6 new fuel storage vaults. When it is stored inside, before
7 it is removed from the inner and outer protective shipping
8 containments, it will be stored on the refueling deck, as
9 described therein.

10 JUDGE BRENNER: Were there ever provisions for
11 the new fuel storage vaults in the plant?

12 MR. WETTERHAHN: I cannot recall when the design
13 was changed. Let me see if I can get that information for
14 the Board.

15 Yes, there were originally. But we cannot tell
16 you, now, when the design was changed. Let me make a point
17 though. Every boiling water reactor design, even that
18 includes new fuel storage, usually only includes enough
19 for reload. And I'm not aware of any that would not store
20 some fuel in the manner I have just described, on the
21 refueling deck, just prior to its being inspected.

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15pb1

1 JUDGE BRENNER: The refueling deck is inside.

2 MR. WETTERHAHN: That's correct. I thought that
3 was --

4 JUDGE BRENNER: You answered the question. I
5 just wanted to clarify.

6 MS. HODGDON: Excuse me. I have the application
7 here. May I read the sentence I presume you are asking the
8 question about? I have a question about it.

9 JUDGE BRENNER: Okay.

10 MS. HODGDON: It says, "No new fuel will be
11 stored in the new fuel storage vaults at Limerick," which
12 certainly suggests that they exist.

13 Did I understand Mr. Wetterhahn to say they
14 didn't?

15 JUDGE BRENNER: That's the question and answer
16 we just went through, Ms. Hodgdon.

17 MS. HODGDON: Yes, I know. But I do not understand
18 whether he said they do not exist or exist only in a limited
19 way, because they store only that amount of fuel needed for
20 refueling, and not for original.

21 JUDGE BRENNER: Okay, that's a good question.
22 I don't know if it's material, but we'll get the clarification.

23 MR. WETTERHAHN: There is a space for new fuel
24 storage racks. There are no racks installed. If that makes
25 any difference.

15pb2

1 JUDGE MORRIS: But those racks are in the spent
2 fuel pool.

3 MR. WETTERHAHN: Let me go through the process,
4 perhaps that will help everyone.

5 The fuel bundles are delivered and will be
6 stored for a short time outside. It's less than the four
7 months schedule. Things have changed.

8 They will be hoisted up at some point in time
9 to the refueling deck where they will be stored horizontally.
10 One or two, I can't tell you exactly, will be opened,
11 inspected, channeled, and then put in the spent fuel racks,
12 in the spent fuel pool for Limerick Unit 1.

13 There are no new fuel storage racks at Limerick.

14 JUDGE BRENNER: Let me change subjects slightly.
15 Does the Applicant agree with, I guess, LEA's intent that
16 we not deal with its amendment application at all, and that
17 we leave it as its intended status as a petition to start
18 a separate proceeding?

19 MR. WETTERHAHN: From a jurisdictional point of
20 view, as I previously stated, we don't believe that the
21 Board has jurisdiction. If it is going to retain jurisdiction
22 over one of these matters as raised by FOE, then certainly
23 it should at least for expedition and to avoid two separate
24 Commission proceedings on the same matter, it should make
25 its intent known to those who would dispose of the petition

15pb3

1 by LEA.

2 If it's more expeditious to institute another
3 proceeding separate and apart from this one, let's be practical
4 and do it that way.

5 But I think ultimately, both petitions will have
6 to be heard by the same presiding officer.

7 JUDGE BRENNER: And who do you think that would
8 end up being?

9 MR. WETTERHAHN: I don't know. I don't know the
10 Board's schedule. It indicated it had problems, and the
11 Commission has previously taken issues and subdivided them.

12 JUDGE BRENNER: The Commission has, or the boards
13 on their own have?

14 MR. WETTERHAHN: I guess it's at the instigation of
15 the boards. I don't know how that worked. I'm not that
16 familiar with cases.

17 JUDGE BRENNER: You are thinking of -- I think
18 it's Catawba most recently. I'm not sure. And Shoreham.
19 Both cases were at the board's instigations.

20 MR. WETTERHAHN: I would not be aware -- I'm not
21 aware of how that began.

22 JUDGE BRENNER: It's not a secret. The notice
23 is so indicated.

24 MR. WETTERHAHN: But if it were up to the Commission
25 as LEA believes, and I think we believe that's so, I don't

15pb4

1 think it would be inappropriate for the Commission to direct
2 who had -- who should consider it, even if this Board had
3 otherwise had jurisdiction over FOE's petition.

4 JUDGE BRENNER: If we were to hold that we had
5 jurisdiction over FOE's petition, you would want us also to
6 exercise jurisdiction over LEA's. Is that correct?

7 MR. WETTERHAHN: If the Board so rules, I would
8 have to say it then has jurisdiction over LEA's, yes.

9 JUDGE BRENNER: There might be a difference
10 between having jurisdiction if somebody seeks that jurisdiction
11 as opposed to forcing somebody to come within our
12 jurisdiction who is content to seek its remedies elsewhere.
13 2.717(b) recognizes that.

14 MR. WETTERHAHN: You are correct. But practically
15 speaking, I don't think that even if there were questions
16 of jurisdiction that way, and they never sought it, I think
17 the Commission could state, and I would have every reason to
18 believe it would give this Board jurisdiction, or state that
19 even though this Board had jurisdiction over the FOE petition,
20 it should relinquish that jurisdiction.

21 It might suggest it and might order it. But I
22 believe that would be the outcome. I can't see as a practical
23 matter any other outcome.

24 JUDGE BRENNER: One problem I have with your
25 approach deals with potential, and maybe it's just potential,

15pb5

1 prejudice to LEA. That is if we were to find we had
2 jurisdiction over FOE's filings before us, and for that
3 reason exercised jurisdiction over LEA's filing, because it
4 dealt with similar subject matter, yet the Applicant wants
5 to preserve its right on appeal to argue that we had no
6 jurisdiction, LEA could lose on appeal because we might have
7 been wrong on jurisdiction.

8 Whereas, if we left LEA alone, it could follow
9 a path by which there may be less question as to jurisdiction.

10 MR. WETTERHAHN: Well, the Commission could
11 ratify the Board's jurisdiction. There could be many things
12 that happen. And I think the outcome, if LEA does not
13 seek to ask for the Board's jurisdiction would be the same.

14 I can't see any way where the Commission will
15 allow, as a practical matter, jurisdictional questions aside.
16 It's been known to put jurisdictional aside and to seek
17 the practical answer. And the practical answer is to have
18 one presiding officer take jurisdiction.

19 JUDGE BRENNER: I guess I would like to get the
20 Staff's view on what we should do with LEA's filing.

21 MS. HODGDON: First of all, I would point out
22 there was a similar situation in Susquehanna, which I don't
23 believe anybody raised and on which the board found no
24 jurisdiction. And the Commission -- the board found, the
25 licensing board in the operating license proceeding declined

15pb6

1 to assume jurisdiction over the materials license proceeding.
2 When intervenors in the operating license proceeding sought
3 a hearing on the materials license application, the
4 Commission --

5 JUDGE BRENNER: Why didn't the Staff cite that
6 case in its brief?

7 MS. HODGDON: I don't know. It's an unpublished
8 memorandum of the Susquehanna board. I can give you the
9 cite on that, and I can tell you what the Commission did on
10 it. And that's also unpublished.

11 JUDGE BRENNER: I'm not familiar with it. Mr.
12 Wetterhahn, I don't recall it being cited in your brief.

13 Mr. WETTERHAHN: We did not cite that case.

14 MS. HODGDON: In that case, the Susquehanna
15 board finding no jurisdiction, the Commission in an unpublished
16 order, directed the chairman of the Atomic Safety and
17 Licensing Board panel to designate a licensing board to
18 review the hearing requests, and if appropriate to hold
19 a hearing.

20 The licensing board in the operating license
21 proceeding was designated by the chairman of the Atomic
22 Safety and Licensing Board panel, to be the licensing board
23 to hear the materials license proceeding. And that was --
24 I could give you those cites. None of these were published.

25 JUDGE BRENNER: Why did the licensing board hold

15pb7

1 it had no jurisdiction? Was that a long decision by it?

2 MS. HODGDON: No. The reason -- these decisions
3 go I think on the grounds of whether the 2.717(b) order has
4 actually issued the order which would give the board
5 jurisdiction. I know that the board in Perry held that
6 didn't make any difference. But in Susquehanna they said
7 there being nothing to tie it to, there being no subject
8 matter related contentions, and there being no order under
9 2.717(b), they lacked jurisdiction.

10 JUDGE BRENNER: Do you think that's a correct
11 analysis?

12 MS. HODGDON: Yes.

13 JUDGE BRENNER: Aren't there subject matter related
14 contentions here on the basis of (a) the possible argument
15 that the existing contentions are subject matter related.
16 And even if you disagree with that, (b) there are proposed
17 late file contentions which are subject matter related.

18 MS. HODGDON: I think that most of the boards --
19 the holding of most boards is that the contentions, the
20 subject matter related contentions would need to have been
21 already admitted. And therefore, the unadmitted contentions,
22 the proposed contentions that relate to the application,
23 the Part 70 application itself would not give a licensing
24 board jurisdiction, because they wouldn't be in the proceeding.

25 JUDGE BRENNER: What's the logic of that as you

15pb8

1 see it?

2 MS. HODGDON: The logic is that unless it's
3 related to something that's already in the proceeding, it
4 rests with NMSS as 2.717 states before that last sentence.

5 JUDGE BRENNER: So you say you agree with the
6 Susquehanna analysis, which incidentally is a different
7 position than the position the Staff has taken in some other
8 proceedings.

9 MS. HODGDON: I don't think so. I think that the
10 cases are different. I think the cases are distinguishable.

11 JUDGE BRENNER: We should decide, based on whether
12 the license is actually issued first?

13 MS. HODGDON: If it's the order that gives this
14 Board jurisdiction, then the Board certainly can't exercise
15 that jurisdiction until such time as the order issues.

16 JUDGE BRENNER: What order?

17 MS. HODGDON: The order 2.717(b). The order that
18 allows the application to be amended.

19 JUDGE BRENNER: You mean the issuance of a
20 license?

21 MS. HODGDON: The issuance of an amendment.

22 JUDGE BRENNER: What amendment?

23 MS. HODGDON: The amendment to SNM license 1926,
24 I believe it is.

25 JUDGE BRENNER: The Part 70 license. In this case

15pb9

1 it's an amendment only because there is the pre-existing
2 license for sources.

3 MS. HODGDON: Yes, it makes no difference. It
4 may as well have been a license.

5 JUDGE BRENNER: So we should -- all right. If
6 you agree with the Susquehanna decision, the Staff would --
7 is it correct that the logical extension of that, as applied
8 to this case would be that we should find we have no
9 jurisdiction, allow the parties to petition for a Part 70
10 proceeding as LEA has done, and now we could advise FOE to
11 do that also? And the Commission should receive the petitions
12 and direct the chairman of the licensing board panel to
13 appoint a hearing board to hear that Part 70 case.

14 Is that what you want us to do?

15 MS. HODGDON: That certainly is the outcome that
16 would be consistent with Susquehanna. That is what's been
17 previously done.

18 JUDGE BRENNER: If the same thing happened as
19 happened in Susquehanna, we would be the very same board;
20 correct?

21 MS. HODGDON: Yes. And subsequently they got it
22 back and I believe found that it had no merit. I don't
23 remember exactly how it came out.

24 JUDGE BRENNER: And that process makes sense to
25 you?

15pb10

1 MS. HODGDON: It seems rather a circuitous way
2 to do it. However, to exert jurisdiction at this point, to
3 issue a stay for example, would seem to me that the Board
4 would not have the jurisdiction to do that at this time, in
5 anticipation of jurisdiction attaching by the issuance of
6 that order.

7 JUDGE BRENNER: Can the Staff issue the license
8 while there are petitions under a separate Part 70 proceeding
9 pending before the Commission?

10 MS. HODGDON: I don't know whether they can or
11 not. I think probably not, until there is some resolution
12 of that. Certainly the contentions in this proceeding with
13 regard to that would not have kept the order from issuing in
14 one way or another.

15 I mean, it could be made not immediately effective
16 for example. I mean, if there's no reason that this should
17 not be worked out in some way.

18 JUDGE BRENNER: What could be made not immediately
19 effective?

20 MS. HODGDON: The order amending the license to
21 store fuel on-site.

22 JUDGE BRENNER: Was there a notice issued of
23 proposed issuance of this license, or amendment to a license?

24 MS. HODGDON: No, these are not noticed. These
25 Part 70 licenses, applications are not noticed. I don't

15pb11

end 15.

1 know whether the license is -- the applications are certainly
2 not noticed.
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1 JUDGE BRENNER: I asked about a proposal by the
2 Staff to issue such a license. They are not noticed either?

3 MS. HODGDON: I'm not sure. I don't believe so.

4 JUDGE BRENNER: Can you cite me the provision that
5 exempts those from noticing?

6 MS. HODGDON: Well, I don't -- are you asking me
7 whether they're prenoticed or whether they're just noticed
8 at all after issuance?

9 JUDGE BRENNER: Prenotice. It's under -- I'm
10 asking, as you know, the amendment to the Atomic Energy Act,
11 as applied to Part 50 amendments at least, changes the old
12 dichotomy between prenotice and postnotice. And I'm asking --
13 I don't want to attach the wrong label to it, but I'm asking
14 whether there is a similar noticing of Part 70 licenses to
15 ship and store fuel for a commercial nuclear power plant.
16 I'm not talking about all Part 70 licenses, of which we know
17 there are many, but as to that one category, whether the
18 Staff notices its proposal to issue such a license in advance
19 of issuing the license, which notice is not the same form as
20 the old prenotice. That's why I don't want to use that label.

21 MS. HODGDON: You mean, insofar as it would seem
22 to offer an opportunity for a hearing on prenotice? But
23 50-91 is specific, as you noted, to Part 50. And I really --
24 no, I really don't know.

25 JUDGE BRENNER: Well, if the Staff didn't notice

1 it, I think it behooves the Staff -- and I'm not saying the
2 Staff is incorrect in not doing that. But I think it
3 behooves the Staff to cite the provision to us, as to why
4 it didn't have to notice it.

5 Mr. Elliot, what do you want us to do with your
6 petition?

7 MR. ELLIOTT: LEA does not seek the jurisdiction
8 of this Board. We prefer that the Board refer the matter
9 to the Commission for the appointment of a licensing board
10 to hear LEA's request for a hearing.

11 JUDGE BRENNER: And why do you want to proceed that
12 way?

13 MR. ELLIOTT: We choose the form because we
14 thought, first of all, that was the appropriate procedure
15 to follow, and notice of hearing before this Board involving
16 only Part 50 matters. Secondly, LEA perceived certain
17 advantages to it, in following that course.

18 JUDGE BRENNER: Do you want to tell us what
19 advantages?

20 MR. ELLIOTT: I consider that to be a matter of
21 privilege.

22 JUDGE BRENNER: You didn't file an application
23 for stay with this petition, as I read the papers?

24 MR. ELLIOTT: That's correct. We are of the
25 opinion that a hearing must be held on the petition prior to

1 the issuance of any license.

2 JUDGE BRENNER: What do you base that on?

3 MR. ELLIOTT: The section of the Atomic Energy
4 Act, which was cited in the heading to the petition. The
5 immediate effect from this provision, in the Atomic Energy
6 Act, applies only to operating licenses, amendments to
7 operating licenses.

8 JUDGE BRENNER: Do you have a copy of that section?
9 I didn't bring the Act with me. We're talking about amended
10 Section 12(a).

11 MR. ELLIOTT: I have one copy.

12 JUDGE BRENNER: I'll give it right back to you.
13 I'm familiar with it. I want to check some language.

14 (Document handed to Board.)

15 In your -- although you do not seek a stay for
16 the reasons you indicated, I see no claim in your petition
17 stating LEA's position that a license cannot issue unless
18 and until a hearing is held on your position.

19 MR. ELLIOTT: We think that follows just as a
20 matter of law. We don't think we need to cite -- make
21 specific requests for a matter that follows by operation
22 of law, by virtue of that section of the Atomic Energy Act.

23 JUDGE BRENNER: Aren't you being pretty subtle,
24 when you know there's a license application and you know the
25 possibility of eminent issue of a license?

1 MR. ELLIOTT: No. I've read the Act and that's
2 what it seems to clearly state to me.

3 JUDGE BRENNER: In looking at your petition, can
4 you identify what would be the particular contentions?

5 MR. ELLIOTT: LEA is not in a position, right now,
6 to delineate the contentions. I think our focus will
7 probably be on the security plan for the protection of special
8 nuclear material of low strategic significance.

9 JUDGE BRENNER: We didn't see any particular
10 contentions in there, and you're confirming that they were not
11 intended.

12 MR. ELLIOTT: There were no contentions listed
13 because we considered Part 2 to be applicable, given some
14 period of time within which to file contentions.

15 JUDGE BRENNER: Because it's a brand new proceeding?

16 MR. ELLIOTT: That's correct.

17 JUDGE BRENNER: Is there any practical reason
18 why you couldn't have been in a position to file contentions
19 at the time of your February 28 filing?

20 MR. ELLIOTT: Because we just received the request
21 for amendment and the application. We haven't seen it before.

22 (Board conferring.)

23 JUDGE BRENNER: Mr. Anthony, am I correct that you
24 want us to exercise jurisdiction over your applications?

25 MR. ANTHONY: I am very well satisfied with the

1 Board so far.

2 JUDGE BRENNER: That's not the consideration either
3 way.

4 MR. ANTHONY: Yes.

5 JUDGE BRENNER: As long as we're all here, let's
6 go ahead and talk about the particular complaints by FOE,
7 since it has filed what it views to be contentions, setting
8 aside -- for the moment -- what our views might be on
9 jurisdiction.

10 Let me back up on jurisdiction for one moment.
11 If I ask the Applicant its views on this particular point,
12 I have forgotten your answer. And if so, I apologize in
13 advance. I understand that you don't want us to exercise
14 jurisdiction inconsistently. If we exercise jurisdiction over
15 FOE, you want us to deal with LEA's filing.

16 MR. WETTERHAHN: I think that's a little too
17 strong. I think I agree with the Board that a courtesy
18 copy to the Board does not give them jurisdiction, if LEA
19 does not seek its jurisdiction. What I would expect the
20 Board to do, as a practical matter, is inform the Commission
21 -- or whoever the Commission has delegated in this instance --
22 who will be considering it, of the fact that there are two --
23 there is a possibility of two separate presiding officers.

24 And I would expect that the Commission -- I would
25 ask the Board to give that person its recommendation and then

1 the presiding officer -- hopefully the Commission, who has
2 jurisdiction, would decide who has the final right to hear
3 both contentions. So I don't think that the Board can
4 enforce jurisdiction over LEA, because this matter has not
5 been addressed to it.

6 But I would suggest there are practical things
7 it could do to eliminate the dichotomy.

8 JUDGE BRENNER: Okay.

9 Mr. Anthony, what I would like to do is to put
10 aside, for the moment, any of your contentions which might
11 bear on your existing V(3)(a) and V(3)(b) and come back to that
12 at the end.

13 Taking the original filing first, the February
14 23, 1984 filing, we want to discuss primarily the bases and
15 specificity of the contentions which would apply, be they
16 timely filed or late filed. And in addition, we want to talk
17 a little bit about the significance of the contentions, which
18 we view as being pertinent to the consideration of whether or
19 not the proceeding would be delayed. That is, if the proceeding
20 would be delayed.

21 The counterbalance is how significant is the issue?
22 And I won't get into detail, why we think that is inherent
23 in our view. It might or might not become important,
24 depending on how other considerations apply to each individual
25 issue.

161b7

1 In paragraph two of the February 23 filing, you say
2 that the new fuels -- I'm paraphrasing -- that the new
3 fuels should not be shipped and stored at the site, because
4 the Staff is in the process of -- as you say -- "ascertaining
5 verification" from the Applicant that the plant has been
6 designed and constructed in accordance with the regulations
7 and the FSAR commitments.

8 And until that's been accomplished, no fuel storage
9 can take place.

10 Now as I understand, that you don't have anything
11 particularly wrong with the plant. You're just saying the
12 Staff is still in that overall review process and it should
13 be completed before new fuel is shipped to the site.

14 MR. ANTHONY: I have everything wrong with the
15 plant, Judge Brenner. It was a violent shock to me to
16 receive notice of this application. There have been
17 citizens groups attempting to protect the public interest
18 for years now --

19 JUDGE BRENNER: Mr. Anthony, can you answer my
20 question? What do you think is particularly wrong with the
21 plant, as it might affect the new fuel storage, within your
22 paragraph 2 there?

23 MR. ANTHONY: If fuel is to be moved into the
24 building, I don't think the building has been proved to be
25 safe to have fuel in it.

1 JUDGE BRENNER: Now, if there were particular
2 problems with the building, isn't that a contention that
3 could and should have been advanced on a timely basis, several
4 years ago? Because that concern is not related solely to the
5 fuel. It would be a general concern that there's something
6 wrong with the building, right?

7 MR. ANTHONY: Well, from what I've heard this
8 afternoon, it appears that citizen advocates are supposed
9 to be all-seeing, all-knowing, are supposed to anticipate and,
10 my God, can we do that? The best we can do is to falter
11 along and try to represent the public interest and fight
12 millions of dollars worth of legal fees and tons of paper and
13 still we are criticized because we haven't filed in time or
14 that we haven't done what we're supposed to do to anticipate
15 what PE is going to do.

16 And right now, I am anticipating are they moving in
17 fuel today? I don't know.

18 JUDGE BRENNER: Mr. Anthony, you're not answering
19 my questions, and it's not going to help you if you continue
20 not to answer my questions. Number two is, we just got a
21 status report, in your presence, within the last half hour,
22 as to the status of the fuel, so let's stay with the
23 pertinent comments and not digress.

24 I will give you one more chance to answer my
25 question. If you have a particular problem with something

1 about the building, and that's all you've told me so far, isn't
2 that something that would pertain -- whether or not they are
3 going to ship new fuel on the site? And if so, shouldn't
4 that have been the basis for a timely contention, several
5 years ago?

6 MR. ANTHONY: No, I don't think so.

7 JUDGE BRENNER: Why not?

8 MR. ANTHONY: I don't think I could have known.

9 JUDGE BRENNER: What is it about the building,
10 that you now know, is unsafe, and what's the basis for it,
11 that you could not have known several years ago?

12 MR. ANTHONY: I didn't know about the cranes, for
13 one thing, that they haven't been certified.

14 JUDGE BRENNER: That's another paragraph. We'll
15 get to that one.

16 MR. ANTHONY: I don't yet know about the airlock.
17 I don't know anything about the structures.

18 JUDGE BRENNER: Okay. You mentioned the crane.
19 It's paragraph 3. Let's get to it, since you want to.

20 Your basis -- well, in paragraph 3. this is still
21 of the February 23, 1984 filing, you say the NRC Staff has
22 recently raised questions about the qualification of the
23 Limerick overhead cranes for handling nuclear fuel, since
24 they do not have the required load safety factor. And until
25 that has been solved, no fuel should be brought to the site.

1 Correct?

2 MR. ANTHONY: Right.

3 JUDGE BRENNER: In looking at the SER --

4 MR. ANTHONY: Excuse me. It's not the SER. The
5 Staff is correct, that it's the other reference.

6 JUDGE BRENNER: It's the letter?

new bu

7 Once again, we don't have a copy of that letter
8 before us. What is the reference?

9 MR. ANTHONY: The reference is to -- I believe it's
10 the February 2nd -- I have it here somewhere.

11 JUDGE BRENNER: Can somebody lend us a copy of that
12 letter?

end t16

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1 MS. HODGDON: I just want to be sure I have the
2 right thing.

3 MR. WETTERHAHN: February 2nd.

4 JUDGE BRENNER: Well, tell us what it is that is
5 that is the basis for this paragraph, Mr. Anthony, even if
6 you don't have an exact date handy.

7 MR. ANTHONY: It's February 2nd, technical
8 evaluation control of heavy loads.

9 MS. HODGDON: Phase II?

10 MR. ANTHONY: Page 16. "It was indicated that
11 none of the lifting devices meet the requirements of ANSI
12 N14.6-1978, because they do not use twice the normal design
13 safety factors."

14 JUDGE BRENNER: All right. The reference -- it's
15 a letter dated February 6, to Philadelphia Electric from the
16 Staff. It encloses a draft technical evaluation report for
17 Limerick, which was developed by the Staff's consultants
18 based on the responses of the Applicant to the Staff's
19 generic letter, involving control of heavy loads, Phase II.

20 And it encloses the report entitled, Control of
21 Heavy Loads at Nuclear Power Plants, Limerick Generating
22 Station, Units 1 and 2, Phase II. And it's prepared for
23 the Staff under contract by EG&G Idaho, Inc.

24 That's one thing in front of us. The other thing
25 that we have looked at, and I want to find out what the

17pb2

1 connection is between the two things, is the SER issued by
2 the Staff for Limerick, Section 9.1.5 which deals with
3 overhead heavy load handling systems. And it indicates that
4 as part of long term item related to unresolved safety issue
5 836, control of heavy loads near spent fuel. And I emphasize
6 the title, some further work need by done.

7 And that work should be done prior to startup,
8 after the second refueling outage. That section of the SER
9 in turn references an Appendix G, which is technical evaluation
10 report prepared for the Staff on that subject.

11 I had the excerpt from Appendix G at one time.
12 I don't have it with me now. But the open item referred to
13 in the SER, which is dealt with in Appendix G involves a
14 concern of the control of heavy loads on your spent nuclear
15 fuel, as the title indicates. And beyond that, the concern
16 was for items weighing over 10,000 pounds, as I recall.

17 And I would like to ask the Staff what the
18 connection is between the reference in the attachment to
19 the letter that Mr. Anthony just made, as compared to the
20 SER item. And are we talking about something that is the
21 same or different? And what is this item that is being
22 talked about in the attachment to the February 6, '84 letter?

23 MR. WETTERHAHN: Mr. Chairman, I think that there's
24 another section of this February 6th letter which is
25 pertinent, and that is page 20, Section 2.3.3.c. EG&G

17pb3

1 conclusions and recommendations.

2 The first sentence reads, "The Applicant has met
3 the intent for compliance for all lifting devices, except
4 for the refueling shield and the Fuel Pool Stop logs."

5 Therefore, are we not only talking about
6 conditions which are not applicable until after the second
7 refueling. We're talking about loads which are not
8 contemplated by the application.

9 As I recall the new fuel application, it calls
10 for lifts of not more than six containers. Each container
11 weighing approximately 1900 pounds. We're talking about
12 125-ton crane during the lifting. And you can calculate
13 the safety factors from there.

14 So, even this February 6 document, even if it
15 applied, there's no applicability to this contention. It
16 doesn't support it.

17 JUDGE BRENNER: All right for the moment. Mr.
18 Anthony, I lost the page that you referenced in that
19 attachment. Could you give it to me again, please?

20 MR. ANTHONY: It is page 16. I would like to
21 reference, too, the table on page 24, which reactor building
22 overhead crane is noted non-conforming. Page 16 is paragraph
23 4, I believe.

24 JUDGE BRENNER: All right. Staying with the
25 Applicant, what is that reference paragraph on page 16 all

17pb4

1 about?

2 MR. WETTERHAHN: As I understand it --

3 JUDGE BRENNER: It's the one that Mr. Anthony
4 quoted into the record before.

5 MR. WETTERHAHN: The Applicant does not -- since
6 this crane was constructed before this, does not use a 200
7 percent proof load. It uses 150 percent. So we're talking
8 about 125 times -- it doesn't use the 200 percent which is
9 recommended by the standard which came after the construction
10 of the crane.

11 But still, considering the case that we have
12 here, that does not cause any problem, because the lifting
13 weights are so small compared to the load capacity of the
14 crane.

15 JUDGE BRENNER: What's a Fuel Pool Stop log for
16 the record?

17 MR. WETTERHAHN: It's a piece of concrete and
18 structural steel that I think separates the fuel pool once
19 refueling has been completed, from the reactor area.

20 (Board conferring.)

21 JUDGE BRENNER: All right. And the pertinence
22 to this report is the Fuel Pool Stop logs. I don't know
23 how many there are. But that's something that would have
24 to be lifted by the crane during certain operations; correct?

25 MR. WETTERHAHN: Let me give you the weights.

17pb5

1 The stop logs are 120 --

2 JUDGE BRENNER: Is my premise correct? The reason
3 that's mentioned is that something heavy that would have to
4 be lifted by the crane during certain operations?

5 MR. WETTERHAHN: 120,000 pounds for the stop logs.

6 JUDGE BRENNER: The refueling shield is a heavy
7 item also, isn't it?

8 MR. WETTERHAHN: That's correct.

9 JUDGE BRENNER: Do you know about how heavy?

10 MR. WETTERHAHN: 100,000 pounds.

11 JUDGE BRENNER: Staff, we'd like to get your
12 view on both the items referenced by Mr. Anthony in that
13 letter, and also the SER items that I referenced in the
14 context of the application for new fuel at the site.

15 MS. HODGDON: They don't seem to be related.

16 JUDGE BRENNER: I can't hear you, I'm sorry.

17 MS. HODGDON: They don't seem to be related to
18 the concern about new fuel at the site.

19 JUDGE MORRIS: Ms. Hodgdon, I'm still a little
20 bit in limbo. It appears, and we haven't had a chance to
21 study the papers, but it appears from the discussion here
22 that the overhead crane is not fully qualified for operation
23 at Limerick. Is that correct?

24 MS. HODGDON: It's not fully qualified for all
25 operations as I understand it.

17pb6

1 JUDGE MORRIS: Is it qualified for some operations?

2 MS. HODGDON: It's apparently qualified for some
3 operations, yes. But not for full operation. That is, full
4 plant operation throughout the life of the plant.

5 However, my answer saying that it was not related
6 to the storage of new fuel on-site, is that the Staff doesn't
7 understand how this contention is related to the new
8 information.

9 JUDGE MORRIS: Aren't the operations that are
10 qualified defined somewhere?

11 MS. HODGDON: I believe so, in the SER. I mean,
12 I think that the reservation about the overhead crane is
13 stated in the SER, for which it's not qualified.

14 In other words, for what it's not qualified is
15 stated in the SER, yes.

16 JUDGE MORRIS: Well, you have qualified your
17 answers a little bit, and the written material which we just
18 had a chance to glance at might very well infer what you
19 say is apparently true. But, I'm trying to find out whether
20 specifically, the movement of fuel as proposed by Philadelphia
21 Electric has been reviewed by the Staff and approved by the
22 Staff with the overhead crane in its current condition.

23 MS. HODGDON: The reason I don't understand your
24 question is that I don't know whether you're asking me a
25 question about the movement of the new fuel under the

17pb7

1 license amendment, or whether you're asking me about the
2 movement of fuel once the plant is licensed to operate.

3 So I don't know whether you're asking me about the
4 overhead crane or about the reactor enclosure crane.

5 JUDGE MORRIS: I'm asking only about those
6 activities which are addressed in the applications for the
7 amendment, and the contentions based thereon. Namely, the
8 lifting of the new fuel for this first operation.

9 Has this operation been reviewed and approved by
10 the Staff for the overhead crane? Or are you telling me
11 now that the overhead crane will not be used for this
12 operation?

13 MS. HODGDON: I believe -- is that my understanding?

14 MR. WETTERHAHN: The overhead crane and the reactor
15 enclosure crane are one and the same, and they will be
16 utilized for this lift. This minor lift, may I add.

17 MS. HODGDON: I'm sorry. I misunderstood then,
18 the contention with regard to that. I did not understand
19 that this crane would be used in relation to the lifting of
20 this fuel.

21 It has not been approved by the Staff because the
22 overhead concern -- concerns about the overhead crane were
23 not the concern -- in other words, under Part 50, this part
24 of the Staff that had the concerns about the overhead crane
25 was not communicating -- there were two separate applications

17pb8

1 is the answer.

2 I don't know whether NMSS has reservations about
3 the use of the crane to lift the fuel.

4 JUDGE MORRIS: That leaves me totally uninformed
5 about whether the Staff has reviewed the use of the overhead
6 crane for the movement of this fresh fuel for the first time
7 operations.

8 MS. HODGDON: No. I do not know.

9 JUDGE BRENNER: Based on the status report you
10 gave us before, the Staff is reviewing matters relating to
11 this Part 70 license application on a daily basis, I believe
12 you stated.

13 MS. HODGDON: I was told by the region that they
14 had expressed certain concerns --

15 JUDGE BRENNER: Was my summary correct on the
16 status?

17 MS. HODGDON: Yes, it is correct. However, our
18 conversation did not include the overhead crane. And there
19 is paper, a memorandum here which we gave to the Board which
20 says what their concerns are. And I don't believe that it
21 mentions the overhead crane.

22 JUDGE BRENNER: I don't have the memorandum in
23 front of me. We did receive it from the Staff and I read
24 it. I don't recall any mention of the overhead crane
25 either. You can tell us if that proves -- if our memories

17pb9

1 prove to be incorrect.

2 But for now I agree with you. It doesn't mention
3 the overhead crane. A general question is, is the Staff
4 going to issue safety evaluation of some sort, evaluating
5 this amendment to the Part 70 license, which seeks permission
6 to ship and store new fuel at the site? And if so, are
7 they going to look at the proposed lifting of the fuel by
8 the crane among other things? Look at it in the sense of
9 at least commenting on it one way or the other.

10 MS. HODGDON: I don't know the answer to that,
11 but I will find out.

12 Let me also add that the Staff's paper concerning
13 these items merely addresses the fact that FOE did not state
14 so that the Staff could understand it, what FOE's concern
15 was. And not that there did not exist a concern or a basis
16 for concern.

17 MR. WETTERHAHN: May I make two points, Your
18 Honor?

19 JUDGE BRENNER: Let me just close the loop on
20 that last one, then we'll get to you, Mr. Wetterhahn.

21 We would like to know sooner rather than later
22 whether a safety evaluation is going to be issued of this
23 application, at some point in advance of issuing the application
24 at least as to all items completed at some point. Even if
25 there are still some items open. And if so, when that

17pb10

1 might issue.

2 MS. HODGDON: We will try to get that information
3 this afternoon.

4 JUDGE BRENNER: I wanted to ask Mr. Anthony, what
5 the items which he referenced and the additional items
6 which we on our own added have to do with lifting the new
7 fuel, given the concerns for spent fuel and the weights,
8 relative weights involved.

9 What's the basis for the contention involving
10 the lifting of new fuel weighing 10,000, say 15,000 pounds,
11 as compared to concerns as to whether 125-ton crane has
12 margin to lift 120,000, or 100,000 pounds? And the more
13 pertinent concern as to lifting over spent fuel, which of
14 course does not exist at this time.

end 17.

1 MR. ANTHONY: If the crane doesn't meet the
2 standards it's supposed to meet, I don't see how any
3 regulatory body can approve it being used. For whatever
4 weight it was being used for, it doesn't meet the requirements.
5 To me it's another indication of something going wrong in
6 the process.

7 We've heard quite a nice example this afternoon,
8 of a new fuel vault that's in the drawings, that has never
9 been even subjected to contracts. And this is what I'm
10 getting at. This could be an as built drawing, handed to
11 me, and the vault never existed.

12 JUDGE BRENNER: Mr. Anthony, you are just not
13 answering my questions. I'm sure it's not purposeful on
14 your part. Take my advice, if you don't answer the questions,
15 we will infer that you don't have an answer, so it behooves
16 you to try to answer the questions.

17 The concerns that we just went through, in the
18 document that you referenced, and in the SER, which we
19 referenced, appear not to be related to lifting new fuel in
20 an area where there will be no spent fuel to worry about,
21 particularly when the weights involved will be 10 to 15,000
22 pounds, as distinguished from weights in the neighborhood of
23 100,000 pounds and up. Particularly when the concern is
24 listed in this document, as we read it, is that the margin
25 for 125 ton crane may be only 150 percent instead of 200

1 percent.

2 MR. ANTHONY: It's obvious I'm not a technical
3 person. If a stop log weighs 120,000 pounds, that would cause
4 quite a smash if it dropped.

5 JUDGE BRENNER: And what is the concern, as to
6 what it would smash?

7 MR. ANTHONY: Well, the rods are going to be
8 stored on the floor. That crane picks up 120,000 pounds and,
9 for some reason, it isn't qualified or isn't guaranteed that
10 it can carry that. And it is moving over this fuel stored
11 on the floor. I think there could be serious consequences
12 if it lets go.

13 JUDGE BRENNER: Over the new fuel?

14 MR. ANTHONY: Right.

15 JUDGE BRENNER: That's a different concern than the
16 one I understood earlier, from your written filings.

17 Mr. Wetterhahn, what heavy loads would be moved
18 over the new fuel?

19 MR. WETTERHAHN: You realize that this is also
20 new to me, and I don't want to make any misstatement before
21 the Board. I will give you my present understanding.

22 JUDGE BRENNER: I'll give you a chance to check
23 it, if you want.

24 MR. WETTERHAHN: I would appreciate checking it
25 before I make the statement, but let me make a couple of

1 general observations.

2 JUDGE BRENNER: All right.

3 MR. WETTERHAHN: I don't think, at least as far
4 as this issue is concerned, a safety evaluation is necessary.
5 Additional safety evaluation. The Staff has issued its
6 Safety Evaluation Report with regard to the lifting of heavy
7 loads. That has been in existence since August of 1983.

8 JUDGE BRENNER: Although it didn't include the
9 items in the Attachment to the February 6th, 1984 letter, as
10 I read the SER.

11 MR. WETTERHAHN: My reading may be wrong, but there
12 are two phases. I don't think the fact that Phase 2 has not
13 been completed would preclude or is saying that the Staff is
14 precluding the lifting of the loads which must be lifted for
15 the first two refueling outages. That's my interpretation.

16 But in any event, the Applicant was supplying
17 information which didn't even have to be submitted until
18 sometime in the future, in order to take care of matters as
19 soon as it can. And it shouldn't be penalized for that.

20 In any event, the loads that we're talking about,
21 and the application says at most six assemblies will be lifted,
22 each let's say 2,000 pounds. That's 12,000 pounds --

23 JUDGE BRENNER: We've been through that. He
24 changed the contention. The written contention, that we have
25 been discussing up until his last comment states, as I read

1 before, the NRC Staff has recently raised questions about
2 the qualification of the Limerick overhead cranes for handling
3 nuclear fuel. And we don't see any basis for any concern,
4 with respect to the crane lifting the fuel itself. We've
5 been through it. Mr. Anthony did not come with any remotely
6 credible answer.

7 However, what he did come up with, and which
8 we are now asking about, he's saying okay, the fuel doesn't
9 weigh much. But are you going to lift anything very heavy
10 over or near the new fuel, such as the reactor spent fuel
11 stop logs, which he had never heard about probably prior to
12 this discussion?

13 MR. WETTERHAHN: I'm getting advice from the back.

14 JUDGE BRENNER: You'd better tell them to keep
15 quite while I'm giving you advice.

16 MR. WETTERHAHN: I will. I would like to check
17 that during the break.

18 JUDGE BRENNER: I understand you want to check that
19 and we'll give you an opportunity. I wanted to note I
20 think that was not what was stated in the written contention,
21 but he stated orally and we asked you for the answer, your
22 views on whether or not a safety evaluation is necessary.
23 You can make those views now, do whatever you want to. We
24 asked the Staff if they're going to do one.

25 It may be, that if something has already been

1 reviewed, the evaluation as to that one item can be no more
2 than a reference to the fact that it's been reviewed. And
3 that may apply as to whether or not they can handle the
4 loads for lifting the fuel, or a determination for some other
5 reason, that a particular thing doesn't have to be evaluated.

6 But I don't know if they're going to evaluate the
7 lifting of other potential heavy loads over the new fuel.
8 You want to check it? That will be something they can check,
9 too, at some point. Maybe there's no basis. Maybe none of
10 these things get lifted while the fuel is out on the
11 refueling floor. I don't know. Maybe the procedural
12 stops, that are talked about in the SER procedural, or
13 otherwise are in fact in place in the area where the new
14 fuel is stored. I don't know that either, at this point,
15 so we'll leave you with the question.

16 Ms. Bush, you have been here patiently. I don't
17 think we're going to get to the City's contentions today.
18 I do hope to get back to LEA's contentions, since it's the
19 subject of offsite emergency planning. You decide for
20 yourself whether you want to be here.

21 MS. BUSH: I will probably stay, but call my
22 colleague and tell him he doesn't have to return.

23 JUDGE BRENNER: That's up to you and your colleague.
24 Mr. Wetterhahn?

25 MR. WETTERHAHN: I noticed Mr. Romano is here.

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1 Perhaps we can just physically get his contentions before
2 the break.

3 JUDGE BRENNER: Welcome, Mr. Romano. I imagine
4 you are here to give us the specification of your Contention
5 VI-1. All right. Did you have any other purpose in being
6 here today? Is there anything else -- is there anything
7 you wanted to tell us orally today?

8 MR. ROMANO: No, I don't think so.

9 JUDGE BRENNER: All right. What we would like
10 to do, later this week, is to get to some matters pertaining
11 to your interests, including the specification that we are
12 going to be receiving today, including the discovery disputes
13 and including -- I hope -- the asbestos contention.

14 MR. ROMANO: The what?

15 JUDGE BRENNER: You filed a new contention relating
16 to asbestos. We had asked the parties to talk with you and
17 work in a mutually convenient time -- as long as it's this
18 week -- not later than Friday morning. That's acceptable
19 to us. So you work it out. And we also need some time,
20 of course, to review your specification. And so we will take
21 that today and we will see you at some time, later this week,
22 at your convenience. Okay?

23 MR. ROMANO: Yes.

24 JUDGE BRENNER: We will break now and come back
25 at 3:45.

(Recess.)

Index

1 JUDGE BRENNER: Back on the record.

2 We left the heavy subject of overhead cranes
3 before. Let me point out the obvious. The new concern is
4 -- we heard earlier for the first time -- doesn't apply
5 to fuel, so long as it's outside for the time period of some
6 months that the Applicant contemplates. That states the
7 obvious.

8 Going beyond that, did you come up with an answer
9 to our question, Mr. Wetterhahn?

10 MR. WETTERHAHN: I'm still waiting to see the type
11 of controls, with regard to moving heavy objects over new
12 fuel. I'm sure it's going to come up later and I think it's
13 applicable here, too. Let's take the worst case, to move a
14 stop log or other heavy object over the new fuel, while it's
15 on the refueling deck. It comes down and crushes the boxes.
16 There's nothing at all which would one, cause a criticality
17 accident or any way that there could be any offsite
18 exposure. Or even onsite exposure.

19 It's a matter of fuel is expensive and that's the
20 only conceivable problem. And this is a theme that we have
21 stated throughout our answers. Even were the accident to
22 occur, Intervenor-Petitioner here has never stated how there
23 would be a health and safety problem. As I tried to point out,
24 that new fuel is benign with regard to health and safety
25 offsite dose.

1 And given the accident, I can't conceive -- and
2 certainly the Intervenor has not shown how the health and
3 safety of the public would be affected.

4 JUDGE BRENNER: You're right that it's going to
5 come up. In fact, we might as well get to it. It's
6 pertinent to some of the things we've already discussed,
7 although there are some other things more pertinent, and
8 that's why we left what you just stated out of the discussion
9 until now. It is pertinent.

10 Let's turn to the February 28th filing by FOE
11 in which FOE states its concern that the fuel will be subject
12 to natural hazards, such as tornados and electrical storms.
13 Fuel will be subject to the hypothesized railway car
14 explosion. I guess we could add in the postulated pipeline
15 accidents.

16 MR. WETTERHAHN: I would rather not add that in.

17 JUDGE BRENNER: Well, let's add it in for now.
18 The point I wanted to get to is it's Applicant's position
19 that if all those things happen, there is no danger from any
20 violation of the integrity of this new, unirradiated fuel.
21 Is that right?

22 MR. WETTERHAHN: Even if the integrity of the inner
23 and outer containers were violated, there is still no health
24 and safety problem.

25 JUDGE COLE: You say it's an economic issue, rather

1 than a health and safety issue?

2 MR. WETTERHAHN: Yes, for new fuel.

3 JUDGE BRENNER: You were very careful in your
4 answer. You said inner and outer containers of the -- I don't
5 know what to call them. They are not casks. Shipping --

6 MR. WETTERHAHN: They are shipping containers
7 which are qualified to the same requirements, as far as normal
8 transport, hypothetical accidents, as are spent fuel casks.
9 Excuse me, the same drop test, the 30 foot drop test, et
10 cetera, as fuels. The same kind.

11 There's a 30 foot drop test. There's an immersion
12 test. There's dropping on a pin, which are similar to spent
13 fuel casks.

14 JUDGE MORRIS: Mr. Wetterhahn, when you say there's
15 no health and safety question, what standard do you have
16 in mind to make that decision?

17 MR. WETTERHAHN: Initially, I'm talking about
18 health and safety of the public. That is offsite dose.
19 There's absolutely no chance and I don't believe that there's
20 any chance of any dose, even in the immediate vicinity, under
21 any conceivable circumstances.

22 JUDGE MORRIS: Are you saying absolutely zero
23 dose or are you saying something like Part 20 limits, or
24 some fraction of Part 20 limits?

25 MR. WETTERHAHN: I don't think it would even

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1 approach Part 20 limits.

2 JUDGE MORRIS: I assume, in that answer, you
3 are postulating crushing of the fuel itself. Is that correct?

4 MR. WETTERHAHN: Yes.

5 JUDGE BRENNER: Is it fair to say the Staff took,
6 in essence, the same position in its answer?

7 MS. HODGDON: Yes.

8 JUDGE BRENNER: Is that the type of thing that
9 might be discussed in an evaluation by the Staff of the
10 application?

11 MS. HODGDON: By application do you mean in
12 response? I'm not sure that that's normally done. However,
13 I think it's well known what the conditions are for not
14 causing criticality.

15 JUDGE BRENNER: We're not talking solely causing
16 criticality. You heard the exchange before.

17 MS. HODGDON: Yes, and other accidents --

18 JUDGE BRENNER: Do you know if that's going to
19 be evaluated, in any written evaluation issued by the Staff as
20 part of its review of this Part 70 license amendment
21 application?

22 MS. HODGDON: I will make it a point to find out
23 this afternoon exactly what will be evaluated by the Staff
24 in its review of the Part 70 amendment application and
25 report back tomorrow or later today, if possible.

1 JUDGE BRENNER: We'd also be interested in the
2 timing of any such evaluation, as compared to the timing of
3 any potential issuance of a license.

4 MS. HODGDON: I will report on that also.

5 JUDGE BRENNER: Mr. Wetterhahn, there's something
6 I meant to ask you at the outset. Why is the fuel going to
7 be stored outside for -- obviously when it first gets onsite,
8 it has to be outside for some finite period of time. But why
9 for several months?

10 MR. WETTERHAHN: As I understand it, it will not
11 be ready for inspection -- it's not longer a matter of
12 several months. I think it's a matter of four or five weeks
13 now. And I believe there is some minor construction going
14 on. It was felt better to keep it outside until they are
15 ready to begin the process of taking it out of the
16 containers, examining it and then putting it in the spent
17 fuel pool.

18 JUDGE BRENNER: Why not just hold off on receiving
19 it until the facility is ready to put it inside?

20 MR. WETTERHAHN: It's an economic matter.

21 JUDGE BRENNER: In terms of any potential stay
22 considerations, as the only reason?

23 MR. WETTERHAHN: Yes, sir.

24 JUDGE BRENNER: If we found that some of these
25 contentions had any validity, with respect to the fuel being

1 outside -- that's a big if at this point -- given what you
2 have indicated the consideration is, is it more efficient
3 to just change the proposal and not store the fuel, for any
4 length of time, outside as distinguished from litigating such
5 contentions on the merits?

6 MR. WETTERHAHN: I would have to look into it.
7 It depends on what the Board means by outside. If it means
8 inside a safety related structure -- I would have to look at
9 it. Of course, we would examine that as an alternative.
10 Certainly if we could put it someplace inside and alleviate
11 eight contentions, we would certainly do that.

12 JUDGE BRENNER: Well, as you propose it not,
13 you would keep it outside and then move it inside to the
14 refueling floor, correct?

15 MR. WETTERHAHN: Yes, sir, on a piecemeal basis.

16 JUDGE BRENNER: Right.

17 MR. WETTERHAHN: Enough to keep -- enough to have
18 the people be able to inspect it and channel it on an
19 efficient basis.

20 JUDGE BRENNER: But that doesn't take several weeks,
21 does it? The reason for the several weeks is because of
22 construction activities, right?

23 MR. WETTERHAHN: It's also, as I understand, a
24 delivery problem. It takes a while, once you begin the
25 process, to receive all the fuel. So it's a matter of

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1 stockpiling it as it is received. You just don't call the
2 General Electric Company and say deliver all these burdles,
3 There are a number of truckloads involved. They do it
4 over some period of time. And this is the period of time
5 which would allow the beginning of storage and then the
6 checking out of the fuel on a routine basis.

7 JUDGE BRENNER: But you don't have to leave the
8 first arrivals outside until the last arrivals get there,
9 before you can move it inside, isn't that correct?

10 MR. WETTERHAHN: There are many other considerations,
11 I understand, which can be adequately addressed for outside
12 storage. I think this is also a matter of Staff review.
13 Okay? The Staff has said if you want to receive these things
14 on the schedule that you are proposing, we don't have time
15 to complete our review as to the additional requirements
16 inside. And therefore, in effect, has said store it outside.

end t19

20pbl

1 JUDGE BRENNER: But you were proposing to store
2 it outside as early as the initial application in June '83.

3 MR. WETTERHAHN: That was an alternative available
4 to the company. Again, we don't believe outside storage
5 causes any problem, or is unique to the Limerick plant.

6 JUDGE BRENNER: I know that's your position. But
7 we're taking it beyond that for the sole purpose of discussion
8 at this point.

9 And I didn't understand your last reason that
10 it was being stored outside for some extra length of time
11 beyond that then might otherwise be necessary due to the
12 Staff's purposes. If as far back as June '83 when you had
13 no reason to know what the Staff's review schedule problems
14 might be, you indicated it would be stored outside for
15 four months.

16 MR. WETTERHAHN: It's a matter of scheduling the
17 activities. Again, you want to leave yourself some
18 alternatives. Yes, if some of the final things that are
19 happening are happening on the refueling floor, you want to
20 leave an alternative available.

21 These take up a lot of area. There are 764
22 bundles, which take up a lot of area. Therefore, prudence
23 dictates that you at least have an area ready that will store
24 all of them, if and when they are delivered.

25 I'm not saying it couldn't be done. But it

20pb2

1 probably was looked at and found as the most efficient way
2 to do it, and yet meet all the Commission regulations.

3 JUDGE BRENNER: Incidentally, I multiplied the
4 description of the number of piles in the configuration of
5 the shipping containers and did not get 764 bundles of fuel
6 exactly, on the assumption that there would be two bundles
7 per container. But maybe my assumption is wrong. But it
8 was close to 764 I will grant you that.

9 Is it two bundles per container?

10 MR. WETTERHAHN: Yes. Some piles may not be
11 quite as high. The final ones.

12 But there will be 764 eventually. That is the
13 correct number.

14 JUDGE BRENNER: Including spares?

15 MR. WETTERHAHN: There are no spares planned.

16 JUDGE BRENNER: All right. You say there's no
17 basis for any concern that there would be any radiation
18 danger from a violation of the integrity of the new fuel.
19 What would you say to the possible argument that here Mr.
20 Anthony has identified some phenomena, which we know could
21 take place because they are analyzed in terms of the safety
22 of the plant. That is tornados, the railway car accident.
23 And he would also add his postulated pipeline accidents to
24 his contention.

25 MR. ANTHONY: Let's not forget earthquakes, please.

side 2 bu

20pb3

1 That's not in there.

2 JUDGE BRENNER: Well, I've forgotten it because
3 it's not in here, so let me finish this discussion. And
4 that would be enough of a basis for him to say these
5 phenomena exist. But you haven't analyzed it.

6 And if it's true that there's no basis for
7 any belief that there would be any health and safety danger,
8 as distinct from economic problems with the fuel being
9 affected by such phenomena, shouldn't the Applicant show
10 that there is no basis, as opposed to just sitting back
11 and saying, FOE has not shown the basis?

12 MR. WETTERHAHN: I believe that -- I don't think
13 one can equate the things that you look at for operation with
14 the storage of new fuel. I don't think that you can attribute
15 the fact that there is an inventory buildup of fission
16 products, which has the potential to cause an accident. That
17 is what you're looking at in operation.

18 We have unirradiated fuel. I don't think this
19 Board has to turn its mind away from the laws of basic
20 physics and the way that these reactors operate. The fact
21 that without a startup source, you can't get a fission.

22 The lack of -- the lack of any problem is inherent
23 in the Commission's requirements regarding the fuel storage.
24 This fuel, as I pointed out in my response, this fuel can
25 be handled. It is not required to be underwater. There are

20pb4

1 no fission products. There's a criticality analysis. I
2 believe the Applicant has borne its burden of proof with
3 regard to this matter.

4 I don't think we have to start and reanalyze the
5 laws of physics. As an example, there is a supposition that
6 the overhead electrical wire which could somehow break would
7 cause a criticality event is somehow ridiculous. I think
8 the Board can recognize these facts, in looking at this
9 new fuel analysis.

10 JUDGE BRENNER: All right. What about theft and
11 sabotage, which Mr. Anthony, on behalf of FOE mentions in
12 one sentence? This is in the February 28, 1984 filing,
13 the last sentence of the numbered paragraph number, the fuel
14 will be at risk of theft and sabotage since PECO does not
15 have sufficient safeguards in out-of-doors storage.

16 MR. WETTERHAHN: Without getting into the -- I
17 think that's a general assertion without foundation. He
18 has shown no qualifications, not shown any expertise, or
19 not given any indication as to why this is so.

20 We are in a fenced off area, and security will
21 be provided.

22 JUDGE BRENNER: I guess we'd like to know what
23 the Staff, if anything, looks at with respect to theft and
24 sabotage also for this license application. As long as
25 your going to make the inquiries, Ms. Hodgdon.

20pb5

1 Mr. Wetterhahn, I think I interrupted you. I
2 didn't mean to.

3 MR. WETTERHAHN: There is a plan for the protection
4 of this fuel, which is not -- which is indicated in the
5 application but has not been forwarded, which does meet the
6 requirements of the Commission.

7 Again --

8 JUDGE BRENNER: I thought that was the case, but
9 I didn't want to supply it of my own knowledge. I wanted
10 to get the confirmation from the Staff.

11 MR. WETTERHAHN: There is the page which physically
12 recites that fact. That it is omitted from both the 1983-
13 1984 version.

14 JUDGE BRENNER: It's outside, but it's within the
15 security area is what you're saying.

16 MR. WETTERHAHN: There is a special security area
17 for this fuel. It is not the same security area as for
18 operation.

19 JUDGE BRENNER: And each container weighs 1900
20 pounds, you say? Or is that each rod?

21 MR. WETTERHAHN: 1865, 1900 pounds.

22 JUDGE BRENNER: Jumping to FOE's other filing,
23 February 23rd filing, item 4, Mr. Anthony on behalf of FOE
24 says you need an approved off-site emergency plan before you
25 can do this. As I understand the answer, of at least the

20pb6

1 Applicant as I recall, and maybe the Staff also, the position
2 was you did not need an off-site emergency plan for low
3 power license. Ipso facto, you certainly don't need one to
4 ship new fuel on-site in advance of a low power license.

5 Is that right?

6 MR. WETTERHAHN: That, in addition to the fact
7 that Part 70 for this type of application does not call for
8 such an off-site emergency plan.

9 JUDGE BRENNER: I think you referenced a particular
10 section of Part 70. And I don't have it before me. Could
11 you give me that again?

12 MS. HODGDON: We did.

13 MR. WETTERHAHN: I think it was the Staff.

14 JUDGE BRENNER: Could you give me that please,
15 Ms. Hodgdon?

16 MS. HODGDON: 10 CFR 70.22 and 70.23 lists the
17 types of facilities for which physical security plans are
18 required. And this type of license -- for this type of
19 license it's not required.

end 20.

20

21

22

23

24

25

1 70.22(i).

2 JUDGE BRENNER: I guess I don't see a capital I
3 or a Roman I for 70.22.

4 MS. HODGDON: We have a footnote 3 there.
5 70.22 lists the types and applications that require emergency
6 plans to be in place before a license can be issued.

7 JUDGE BRENNER: You're talking about (i)?

8 MS. HODGDON: Yes, I'm talking about i. I'm not
9 sure which that is. I'll look it up.

10 JUDGE BRENNER: We'll look at the section.
11 I don't think that section applies to what we're talking
12 about, but I'll look at it more closely later.

13 MS. HODGDON: The point is that it doesn't.

14 MR. WETTERHAHN: By its absence.

15 MS. HODGDON: The point is that it doesn't, yes,
16 because all Part 70 licenses that require emergency plans --
17 excuse me, as a physical security, I meant emergency plans,
18 are listed and this one isn't. And therefore, it doesn't.

19 JUDGE BRENNER: I see. Thank you.

20 MS. HODGDON: It is i, little i, like "h, i."

21 JUDGE BRENNER: Mr. Anthony, Staff and Applicant
22 argue that you haven't shown any basis for belief that any-
23 thing unsafe could happen to new fuel, given the physical
24 nature of new fuel, or on which we can take notice as a known
25 physical fact. And you have not shown anything otherwise.

1 MR. ANTHONY: Well --

2 JUDGE BRENNER: They're willing to smash the fuel
3 open, hypothetically of course, and say nothing is going to
4 happen.

5 MR. ANTHONY: Of course, there's the question of
6 disintegration of the cladding outdoors --

7 JUDGE BRENNER: They're willing to break the
8 cladding open and they'll say there's no health and safety
9 danger.

10 MR. ANTHONY: And I don't know how much uranium
11 oxide dust comes off from fuel. I do know the Supreme
12 Court has made a decision recently, which granted relief
13 to Karen Silkwood's family. And it wasn't for nothing. She
14 was handling fuel.

15 JUDGE BRENNER: She was handling plutonium.

16 JUDGE COLE: That's a different material.

17 MR. ANTHONY: But maybe --

18 JUDGE BRENNER: Do you understand that? She was
19 handling plutonium in a fuel fabrication facility. It was
20 a weapons facility.

21 MR. ANTHONY: Well, the Supreme Court has
22 broadened that to include liability for all companies that
23 handle radioactive materials, as far as I know.

24 JUDGE BRENNER: I don't understand how that relates
25 to the point of what is your basis for us to believe that there

1 is any health and safety danger from new unirradiated fuel,
2 uranium oxide.

3 MR. ANTHONY: Well there are many references to
4 protect this fuel to criticality in this application.

5 JUDGE BRENNER: That's right. You don't want it
6 to get critical outside.

7 MR. ANTHONY: That's why they have all these
8 precautions in here and they don't have them there for
9 nothing either. There must be a possibility that it could get
10 critical, or else there wouldn't be a discussion of it in this
11 application.

12 JUDGE BRENNER: So your argument is because the
13 application discusses why it's not possible for the fuel to
14 get critical outside, that there must be something to worry
15 about?

16 MR. ANTHONY: Something to worry about that there
17 is the possibility of criticality. Now I'm not a scientist
18 and can't tell you how that would happen, but I believe there
19 is the possibility and I was interested to hear the attorney
20 for the PE to specifically say it's a matter of economics.
21 And what does economics for PE have to do with the
22 possible injury to the public?

23 JUDGE BRENNER: That's not an accurate characteriza-
24 tion of the context in which he made that statement, Mr.
25 Anthony, but I don't want to get into the debate. I just

1 want to note that. You're not being accurate. And when you
2 are not accurate, whether it be purposeful or not, it leads
3 to digressive discussions.

4 MR. ANTHONY: Economics was the word he used,
5 was it not?

6 JUDGE BRENNER: That part is accurate. I said
7 the context in which you then applied it was inaccurate.

8 MR. ANTHONY: And the application has a provision
9 for \$1 million worth of insurance? Is that just to cover the
10 cost of the fuel without any thought of the risk, I wonder?

11 I wonder. I'd like to know.

12 JUDGE BRENNER: I don't know either.

13 MR. WETTERHAHN: I can tell you.

14 JUDGE BRENNER: I don't think it matters for the
15 determination of whether there's a basis for these
16 contentions.

17 MR. WETTERHAHN: It's a requirement, in the
18 Commission's regulations, that insurance coverage be
19 received.

20 JUDGE BRENNER: All right.

21 MR. ANTHONY: Excuse me. Does that cover -- is
22 that supposed to measure the risk of criticality?

23 JUDGE BRENNER: We're getting digressive here.

24 MR. MORRIS: Let me interrupt. Mr. Wetterhahn,
25 is that health and safety insurance, or property damage

1 insurance?

2 MR. WETTERHAHN: I'm going to have to check it,
3 but I believe it's in addition to the property. I believe
4 that's the Price-Anderson type public liability insurance.

5 JUDGE BRENNER: Mr. Anthony, I guess one we didn't
6 ask you about particularly, you talked about electricity
7 activating the fuel, either electrical storms or the
8 electrical cables on the site. What is your basis -- what
9 do you mean by activation of the fuel and what's your basis
10 for believing that electricity could do whatever you mean
11 by activation of the fuel? It's a new one on us.

12 Did you just make it up, or did you have some
13 basis for it?

14 MR. ANTHONY: Well, do I need to say again that
15 I'm not a nuclear scientist?

16 JUDGE BRENNER: Did you just make it up or did
17 you have some other basis for it?

18 MR. ANTHONY: I've seen electrical storms. I
19 even worked in an electrical substation --

20 JUDGE BRENNER: You didn't answer my question.

21 MR. ANTHONY: I derived it from my past
22 experiences. It isn't a scientifically based contention,
23 in that respect. But I've observed natural phenomenons
24 and I have observed high tension wires.

25 JUDGE BRENNER: You've observed electrical storms

1 and high tension wires. And from that you derived the fact
2 that fuel could be "activated?"

3 MR. ANTHONY: I know severe things can happen
4 when lightning strikes high tension wires and possibly wires
5 can fall and the towers can fall. So -- granted there's lots
6 of protection for these high tension wires, and yet there
7 is the potential.

8 JUDGE BRENNER: Potential of what?

9 MR. ANTHONY: And underground cables can explode,
10 can short circuit and explode, so there is the possibility,
11 just as inside the building with the dropping of a bar or
12 -- even if they were transporting the cover of one of those
13 reactor vessels, which is even heavier, there is a potential
14 for electrical storm causing a severe weight to fall or an
15 underground explosion happen. They are possible. They would
16 bring an impact on the fuel.

17 JUDGE BRENNER: And then what would happen?

18 MR. ANTHONY: Well, that I don't know. I don't
19 know what produces criticality. All I can go by is the fact
20 that it is discussed here and is a possibility and is provided
21 for by these safeguards in the application.

22 JUDGE BRENNER: Okay.

23 MR. ANTHONY: Supposed safeguards.

24 end t21

25

22pbl

1 JUDGE COLE: So you say in item number 3 of your
2 February 28th letter, with disastrous consequences for the
3 whole metropolitan area. These consequences that you refer
4 to there would be those that might be associated with
5 criticality of the fuel.

6 MR. ANTHONY: Yes. And as I say, I don't know
7 whether there's any possibility of some kind of leakage
8 from the fuel other than that. But I think that would be
9 the principal risk. But there might be contamination in
10 other ways.

11 And I see provisions in the application for the
12 health officers to be testing this. I believe they are
13 testing it for these low level radiations or whatever, the
14 kind of contamination would come from the fuel itself.

15 JUDGE BRENNER: You wanted to say something, Ms.
16 Hodgdon?

17 MS. HODGDON: I was going to say that I have copies
18 of ALAB 334 which addresses what causes criticality. And
19 I would give Mr. Anthony a copy, and also everyone else.

20 JUDGE BRENNER: We have a copy because you cited
21 that one in your brief.

22 MS. HODGDON: I will give Mr. Anthony a copy. I
23 think that will be useful.

24 (Document handed to Mr. Anthony.)

25 MR. WETTERHAHN: Let me catch up to a couple of

22pb2

1 questions asked by the Board. In reverse order, easy ones
2 first.

3 10 CFR, Section 140.13 --

4 JUDGE BRENNER: Excuse me, Mr. Wetterhahn. Ms.
5 Hodgdon, in this sea of paper I can't find my copy. I have
6 it somewhere. So if you have an extra one I'll take it.

7 MS. HODGDON: These are only part of it.

8 JUDGE BRENNER: We've read it.

9 (Document handed to Board.)

10 MR. WETTERHAHN: 10 CFR Section 140.13 does
11 require the \$1 million, and it is, as I stated, financial
12 protection.

13 JUDGE BRENNER: We know it's financial protection.
14 The question, and I'm not sure it's material, is whether
15 were the property or liability --

16 MR. WETTERHAHN: Financial protection means
17 public protection. There's additional, yes.

18 MR. ANTHONY: A drop in the bucket.

19 MR. WETTERHAHN: There's additional --

20 JUDGE BRENNER: Mr. Anthony, I don't let other
21 people talk when you're talking.

22 MR. ANTHONY: All right. I apologize.

23 JUDGE BRENNER: I'm sorry, Mr. Wetterhahn. Go
24 ahead.

25 MR. WETTERHAHN: I was complete on that. With

22pb3

1 regard to the question the Board asked before the break,
2 regarding control of heavy loads, there's two aspects. As
3 I previously noted, once the fuel has been inspected and
4 channeled, it's stored in the spent fuel pool. There are
5 interlocks which prevent the crane from moving over the
6 spent fuel area with any heavy load on it.

7 That is really more designed to protect the spent
8 fuel when generated. But it would protect that spent fuel
9 and spent fuel racks. With regard to that spent fuel which
10 is on the floor, administrative control would prevent heavy
11 loads from being lifted over it.

12 JUDGE BRENNER: So the first part, the interlocks
13 over the spent fuel pool, they're physical interlocks.

14 MR. WETTERHAHN: That's correct.

15 JUDGE BRENNER: Now what was it in the SER section
16 that I referenced before, which according to the SER was a
17 longer term item beyond the second refueling that it was
18 concerned with? Because I thought there was kind of a general
19 discussion and it related to heavy loads. But I thought it
20 discussed something similar to administrative controls of
21 lifting heavy loads. Maybe my recollection is wrong.

22 What in particular is left open in the SER as
23 related to lifting of heavy loads, which concededly the SER
24 said need not be resolved until after the second refueling?

25 MR. WETTERHAHN: I believe it would be the need

22pb4

1 for any additional requirements after that time with regard
2 to the lifting of two types of things. And that's all.

3 I believe that the Staff found it satisfactory
4 to make all necessary lifts up to that point.

5 JUDGE BRENNER: And the two types of things are
6 the two things referenced in the attachment to the letter we
7 talked about?

8 MR. WETTERHAHN: Yes. But as I understand it,
9 that would not prevent the crane from lifting these two
10 things during the first and second refueling.

11 Let me just tell you. The crane is rated for
12 125 tons. Before you lift a load, a very heavy load, it
13 will be tested to one-and-a-half times that value.

14 What else the Staff wants I can't tell you. But
15 it will be tested and capable of lifting a load of 120,000
16 or 100,000 pounds before that load is lifted.

17 JUDGE BRENNER: It's difficult for me to tell
18 from reading Section 9.1.5 of the SER what else it is that
19 the Staff says need be done, although admittedly it says it
20 doesn't need to be done until the second refueling outage.

21 And I can't tell whether the things in there
22 are related to, or the same as the further margins for
23 lifting the -- I guess it was the spent fuel shield -- not
24 the spent fuel shield,--

25 MR. WETTERHAHN: The stop logs.

27pb5

1 JUDGE BRENNER: Yes. The refueling shield and
2 the Fuel Pool Stop logs. I don't know if the items in this
3 letter are something else in addition to the SER, or whether
4 they're the same things.

5 I don't know if we need know for purposes of
6 deciding the contention on this Part 70 license. But that
7 was a question I asked. You haven't answered it.

8 MR. WETTERHAHN: Anything more I would say would
9 be speculative, and probably better ask the Staff what they
10 meant.

11 JUDGE BRENNER: That's what I'm going to do.
12 I can't tell from reading SER Section 9.1.5 in the fine
13 manner in which it is written as to just what it is that
14 the Staff is talking about here, other than it relates to
15 heavy loads.

16 There's something else the Staff wants. They
17 don't want it until after the second refueling outage. I
18 don't know what it is. Admittedly, I did not read Appendix
19 G which is referenced. Appendix G to the SER very carefully.
20 I scanned it.

21 If you can enlighten, Ms. Hodgdon, I would be
22 appreciative.

23 MS. HODGDON: Mr. Vogler has gone to inquire of
24 the author what it means, of the project manager.

25 JUDGE BRENNER: Okay. I think we would like the

22pb6

1 answer again. I don't know if it's material to our
2 determination, but we would appreciate checking.

3 Mr. Elliott, I know you don't want us to reach
4 out and assert jurisdiction over your pleading, and we may
5 or may not agree with that view on your part. But in the
6 event we don't, or in the event we are the very same board
7 later after some very circuitous procedural steps are
8 followed, given the discussion we have had, and the Applicant
9 and Staff's argument that there is no basis for any concern
10 with respect to public health and safety from even a
11 postulated violation of the integrity of this new, unirradiated
12 fuel, what is it that LEA is worried about? Because you have
13 filed no contentions so we don't know.

14 What would be your basis for any health and
15 safety concern?

16 MR. ELLIOTT: What we intend to do is examine
17 the application and test it against the regulations and the
18 regulatory guides. We haven't had an opportunity to do
19 that yet. Counsel's assertion, you know, are subject to
20 test.

21 JUDGE BRENNER: Do you have any present basis for
22 believing those assertions are incorrect?

23 MR. ELLIOTT: The Staff's report that was served
24 on the parties in the case that there is a problem with
25 procedures. And it's my understanding that the security plan

22pb7

1 is still in the process of review. LEA has not had an
2 opportunity to see the security plan, so we're in absolutely
3 no position at all to even comment on the adequacy of that
4 plan.

5 JUDGE BRENNER: But you had no existing contentions
6 in this case involving a security plan; correct?

7 MR. ELLIOTT: That's correct.

8 JUDGE BRENNER: Are you worried about the security
9 plan only if the fuel is outside, or even if the fuel is
10 inside?

11 MR. ELLIOTT: I'm not sure. I don't think we're
12 prepared to create a distinction of that right now. What
13 we intend to do is to review the plan against the requirements
14 for protecting special nuclear material of low strategic
15 significance, whether those requirements apply within the
16 building or without the building, it's our intention to
17 ascertain the Applicant's compliance with them.

18 JUDGE BRENNER: The reason I ask this, in anticipa-
19 tion of a potential argument that somebody who didn't want
20 you to have a contention might raise. That if you are
21 talking about physical security as it applied to the fuel
22 inside, that's no different than a contention that you could
23 have and should have raised at the beginning of the proceeding
24 involving physical security of the plant. Which would be
25 even more important if you had irradiated fuel in an

22pb8

1 operating facility. Either in the facility or the spent
2 fuel pool or both.

3 MR. ELLIOTT: That is true. But our position is
4 that given our filing as petition to intervene on a new
5 application, the requirements with respect to late filed
6 contentions are not applicable.

7 JUDGE BRENNER: Even as to contentions that could
8 have and should have been filed at the beginning? As opposed
9 to anything new keying from particular provisions of an
10 application to store new fuel.

11 MR. ELLIOTT: If a person, if a member of the
12 general public would come in and establishing standing to
13 intervene in the SNM license proceeding, they would have
14 had the right to file contentions applicable to that license
15 amendment application.

16 LEA doesn't see why its participation will confer
17 any lesser rights than what a general member of the public
18 with standing would have in the circumstance.

19 JUDGE BRENNER: Well, you've got standing. The
20 question is, now that you've got standing, what particular
21 issue would you want to litigate and what's the basis for
22 it?

23 You want to think about it?

24 MR. ELLIOTT: The point that you seem to be
25 making is applicability of standard regarding late filed

22pb9

1 contentions to LEA. The only point I'm making is that LEA
2 shouldn't have any less rights than a member of the general
3 public coming in and seeking to intervene in that license
4 application amendment proceeding.

5 JUDGE BRENNER: Okay. I didn't understand that.
6 The counter-argument to that is, that's right and we'd
7 apply the same standards to them, too. They should have
8 come in at the beginning of the operating license proceeding,
9 if they were concerned about the security plan as applied to
10 facilities inside the plant.

11 MR. ELLIOTT: It's not clear to me that the
12 security plan applicable to Part 70 was required to be
13 filed with the Part 50 operating license proceeding.

14 If in fact the security plans were identical,
15 then I think you are correct. But the plan I am referring
16 to is the Part 73.67 plan.

end 22.

1 JUDGE BRENNER: The argument I thought you were
2 going to make is as follows: it may be true that the Part
3 50 license security plan, once it is adopted and implemented,
4 would encompass any concerns with respect to anything inside
5 the facility, whether it be new fuel, spent fuel, or fuel
6 in the core. But at this point in time, in advance of the
7 adoption and implementation of the Part 50 security plan,
8 there's no reasonable assurance that a security plan, adequate
9 to the new fuel, is in place.

10 MR. ELLIOTT: That may also be true.

11 JUDGE BRENNER: What was the provision you just
12 cited, 73 --

13 MR. ELLIOTT: 73.67.

14 JUDGE BRENNER: You cited, in your petition, the
15 Section 12(a) of the amended Atomic Energy Act, Public Law
16 97-415, for which the party has made the disadvantage. It
17 was your copy and you have it back before you now, but my
18 recollection of the Act and my recollection of my quick
19 reading before -- which may be incorrect -- is that the
20 wording applies to notice of amendment to an operating license.
21 Is that the wording? You can give me the exact quote, if
22 you want. I think you will find it in the first or second
23 indented paragraph.

24 MR. ELLIOTT: The language states "In any proceeding
25 under this Act, for the granting, suspending, revoking, or

1 amending of any license or construction permit, or application
2 of transfer or control, and in any proceeding for the
3 issuance or modification of rules and regulations dealing
4 with the activities of licensees" et cetera." That section
5 conferring the right to a license is applicable to all
6 licenses under the Act.

7 The limitation, with respect to operating
8 license is the following section, which talks about the power
9 of the Commission to make immediately effective amendments
10 to operating license.

11 JUDGE BRENNER: Yes. And how does the limitation
12 read? That's the provision I had in mind?

13 MR. ELLIOTT: That section reads "The Commission
14 may issue and make immediately effective any amendment to
15 an operating license, upon the determination by the
16 Commission that such an amendment involves no significant
17 hazards consideration, notwithstanding the pendency before
18 the Commission of a request for a hearing from any person."

19 JUDGE BRENNER: Are you arguing that for a Part
20 70 license or amendment, the Commission cannot suspend
21 prenotification upon such a finding?

22 MR. ELLIOTT: My reading of the Act tells me that
23 the power of the Commission to issue a license prior to the
24 completion of the hearings, while there is a pending request
25 for hearing, that that power has been expressly withheld from

1 the Commission. The power granted is limited to amendments
2 to operating licenses.

3 JUDGE BRENNER: If we were to agree with you
4 legally, at this point, you are saying that if you were given
5 time to file contentions with bases and specificity, as is
6 required, what you want to look at is the physical security
7 plan?

8 MR. ELLIOTT: That is one of the things we will
9 be looking at.

10 JUDGE BRENNER: Well, what else would you look at
11 if we were to find that there is no basis for believing that
12 there is any public health and safety danger from violation
13 of the integrity of the fuel by phenomena, such as the type
14 talked about by Mr. Anthony, or any others, as long as the
15 fuel is still within the control of the Applicant on the site?

16 MR. ELLIOTT: The other identified and more specific
17 concern I can identify now is that the Commission's regulations
18 require a monitoring system that Philadelphia Electric
19 Company is seeking an exemption from. We have not yet seen
20 the proffered justification for that exemption.

21 JUDGE BRENNER: Do you recall, offhand, what
22 monitoring system that is? Or I can ask the Applicant if they
23 know.

24 MR. ELLIOTT: I think I can give it to you.

25 JUDGE BRENNER: Do you have a reference in the

1 application?

2 MR. ELLIOTT: The system is required, by 10 CFR
3 Section 70.24.

4 MS. HODGDON: (a).

5 MR. ELLIOTT: Thank you.

6 JUDGE BRENNER: Is that a criticality monitor that
7 you're talking about?

8 MR. ELLIOTT: It's a monitor to determine a
9 dose rate, whether it's limited to a criticality event I'm
10 not certain.

11 JUDGE BRENNER: The heading of 70.24 is criticality
12 accident requirements.

13 MR. ELLIOTT: The regulation requires that the
14 monitor be in place. As I say, PECO is seeking an exemption,
15 based -- I assume -- on the same arguments its counsel is
16 making here. We have not had an opportunity to review the
17 application to determine whether the exemption is appropriate.

18 JUDGE BRENNER: Well, there's a last sentence in
19 70.24(a), which may or may not apply, regarding the fact that
20 such a monitor is not required when special nuclear material
21 is being transported, when packaged in accordance with the
22 requirements of Part 71 of this Chapter. But I won't get
23 into what "being transported" mean or does not mean right now.
24 Or what the requirements of Part 71 are.

25 Mr. Wetterhahn, is Mr. Elliott correct, that the

1 Applicant, in one of these applications -- either the original
2 or the amendment -- is applying for an exemption from the
3 requirements of 70.24?

4 MR. WETTERHAHN: I can't recall specifically, but
5 it's been my experience that most Applicants do ask for
6 this exemption because of two reasons. First of all, when
7 it is stored outside it is never removed from the shipping
8 container and that provides the protection against criticality.
9 Second of all, when it is being inspected there is a procedural
10 limit, as stated in the application, to removing more than
11 a certain number of elements from the shipping containers at
12 once.

13 And that has been analyzed and shown not to present
14 a criticality hazard. And on that basis, it is the usual
15 practice to request an exemption from that part.

16 JUDGE BRENNER: And when it's in a spent fuel pool
17 under water, by the express provisions of that section,
18 criticality --

19 MR. WETTERHAHN: That criticality has been analyzed
20 in the application, that the prevention of criticality --
21 that is really the basis for the design of the spent fuel
22 pool. It considers new fuel in its most reactive state and
23 then analyzes to assure that it cannot achieve criticality.

24 JUDGE BRENNER: Does Staff know whether that
25 statement, by Mr. Wetterhahn, is accurate?

1 MS. HODGDON: Yes. And also, the Staff is
2 aware -- knows, is aware that the Applicant has applied for
3 an exemption from the requirements of 10 CFR 70.24(a).

4 JUDGE BRENNER: Is that in the June 1983 applica-
5 tion or the January 1984 amendment?

6 MS. HODGDON: It must be in the June because I
7 read the January and don't find it. And in any case --

8 JUDGE BRENNER: How do you know it's there, then?

9 MS. HODGDON: Because I'm told that they have
10 applied for it and I have read the one that I have, which is
11 the January. Therefore, I think I'm allowed an inference
12 that it's in the June. At least they have told me that it's
13 been applied for.

14 They say that outside storage and exemption from
15 the monitoring requirement is -- has been granted to
16 licensees who have applied for outside storage in the past.

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1 JUDGE BRENNER: It's on page 13, over to page
2 14, of the June 1st, 1983 application. I don't have the
3 January '84 amendment with me, but as I recall the format
4 of that amendment, it's in a format that is cumulative.
5 That is, it would include anything still applicable from the
6 original application, plus any modifications by additions or
7 deletions.

8 So if such application is still extant, it
9 presumably should be in both documents.

10 MS. HODGDON: I will try to find it.

11 JUDGE BRENNER: Maybe, if they didn't change the
12 section numbers in the June application, it's Section 2.2.6,
13 entitled Exemption.

14 MS. HODGDON: It is there. It's on page 22.
15 2.2.6, Exemption.

16 JUDGE BRENNER: You want to be careful before you
17 say something isn't in the document, right?

18 MS. HODGDON: Yes, I do. I read it and I was
19 mistaken. The application is there.

20 JUDGE BRENNER: If we're going to rely on
21 counsel's representations in this proceeding, those represen-
22 tations had better be more accurate in the future than
23 they have been in the past. This is just a minor matter,
24 but I want to make the point. We're not here engaged in
25 idle conversation.

1 All right, I think we have heard everything we
2 can hear at this point. The Staff was going to check for
3 information. You have?

4 MR. VOGLER: We have.

5 JUDGE BRENNER: All right.

6 Do you want to give it to us, Mr. Vogler? Let
7 me get it from the person who talked from the source
8 of information.

9 MR. VOGLER: I talked, with regard to your first
10 series of questions, I talked to the responsible official in
11 NMSS. And the answer, the broad answer, is yes they do
12 conduct a safety evaluation. It will be a written review.
13 They have already issued one review for storage outside the
14 plant and on the site.

15 It was short and simple -- and I'm quoting him --
16 because, in their opinion, there is no safety significance.
17 They are now evaluating the unloading and the storage of the
18 new fuel in the storage area and that will take a little bit
19 longer. He said perhaps a month to a month and a half.

20 JUDGE BRENNER: Are we going to be blessed with
21 a copy of this evaluation?

22 MR. VOGLER: Yes. Before the safety review is
23 issued, it will be sent to the Office of the Executive Legal
24 Director for concurrence by Staff counsel.

25 JUDGE BRENNER: I'm sorry. I thought you said

1 one already issued for the outside storage.

2 MR. VOGLER: He said it's gone, but there are
3 no safety significance. And I'm quoting.

4 The last thing he said --

5 JUDGE BRENNER: Let me stop you there. Is this
6 another item that we have not received a copy of?

7 MR. VOGLER: Nor has the Staff.

8 JUDGE BRENNER: What's going on?

9 MR. VOGLER: I don't know. We'll get back on that.

10 JUDGE BRENNER: When was it issued?

11 MR. VOGLER: It may be internal. I don't know,
12 but we can find out.

13 They do not notice, Judge Brenner, these matters
14 because, in the opinion of the gentlemen I was talking to,
15 there is no requirement that they be noticed.

16 JUDGE BRENNER: Well, that's nice.

17 MR. VOGLER: I'm relating the conversation.

18 JUDGE BRENNER: But you're the lawyer. I asked
19 for this before. Is there a legal reference that you want
20 to supply us, as to why there is no requirement to notice this?

21 MR. VOGLER: It must be in Part 70. We will find
22 it.

23 JUDGE BRENNER: All right.

24 MR. VOGLER: With regard -- well, I'm done with
25 NMSS. I've talked to the Project Manager with regard to the

1 overhead crane, which was your second issue. The Staff will
2 conduct another safety evaluation of the overhead crane and
3 will publish that when the safety evaluation is completed.
4 If it is not completed before the operating license is
5 issued, there will be a license condition presented,
6 governing its use.

7 In any event, the evaluation -- the safety
8 evaluation -- of the overhead crane will not go beyond the
9 second fuel load or Phase 2.

10 The letter that we discussed earlier today,
11 publishing the results of the Staff's contractor for results
12 of his investigation were put out for comment.

13 JUDGE BRENNER: One thing we asked about, and it
14 might have been while you were already out, Mr. Vogler, I
15 don't remember -- we looked at the SER that we referenced
16 earlier, and this is the existing SER for Limerick,
17 Section 9.1.5, Overhead Heavy Load Handling Systems -- I
18 don't want to repeat the whole thing, Ms. Hodgdon can fill
19 you in.

20 But the gist of it is, in reading that, we can't
21 tell what it is the Staff is talking about in terms of what
22 further need be done, even though we recognize the conclusion
23 is that it isn't needed to be done -- whatever "it" is --
24 until after the second refueling.

25 MR. VOGLER: I'll find out for you.

1 JUDGE BRENNER: But if you can find that out
2 tomorrow. I'm sorry we got to it after you went out for
3 the initial inquiry. I had forgotten that we had that
4 question coming up, or I would have included it in the
5 same sequence for you.

6 We can't figure out precisely, in simple terms,
7 what that section is talking about, other than the obvious
8 subject of course of overhead heavy load handling systems.
9 I will note, as I did before, that it references Appendix G,
10 which I read -- but not carefully. And maybe the answer
11 is in there.

12 But I looked at the portion of Appendix G that
13 purported to talk about an open item and I had trouble matching
14 up exactly what was involved, other than 10,000 pounds or over.
15 So what is it that the overhead handling systems don't have
16 now, that the Staff wants them to have after the second
17 refueling and --

18 MR. VOGLER: By the second refueling.

19 JUDGE BRENNER: Startup after the second refueling.

20 MR. VOGLER: Okay.

21 JUDGE BRENNER: And whether the items in the
22 attachment to the letter, which was sent to Philadelphia
23 Electric for comment, are the same items as raised in the
24 SER. They don't appear to be. That is, the lifting of the
25 shield and the stops, Spent Fuel Pool Stops.

1 MR. VOGLER: What items were in the letter of
2 February 6th?

3 JUDGE BRENNER: There were two items in the
4 attachment. We have discussed what they are. I don't know
5 if those are the same items that are of concern in the SER
6 or if that is yet something else now.

7 MR. VOGLER: You also want to know where the report
8 is on their review for the storage of the fuel? This is
9 back to NMSS. I'm just touching base here.

10 JUDGE BRENNER: Yes, and if you can get a copy,
11 we sure would like to see it. Maybe there is a telecopy
12 here.

13 MR. VOGLER: And where is the requirement that
14 no notice --

15 JUDGE BRENNER: That's for you.

16 MR. VOGLER: We'll find that out.

17 JUDGE BRENNER: The same question to the
18 Applicant. We want to get that tomorrow morning, what the
19 requirement is for noticing of proposed issuance of the
20 license, or in this particular case amendment for a license
21 being applied for here. There's got to be something somewhere
22 that talks about whether it's required to be noticed in advance
23 or not.

24 You've told me here that it has not been noticed.
25 And I don't want somebody's opinion that it wasn't important.

1 I want the legal support for it.

2 MR. VOGLER: I understand.

3 JUDGE BRENNER: I'm not taking a position that
4 that's wrong. I just want the legal citations.

5 MR. WETTERHAHN: I want to research it further,
6 but I would draw the Board's attention to 16 CFR 2.103.

7 JUDGE BRENNER: 2.103, I haven't the vaguest idea
8 what that is.

9 MR. WETTERHAHN: 2.103 is entitled action on
10 applications for byproduct source, special nuclear material
11 and operator licenses. And by excluding -- well, I draw the
12 Board's attention to that. We can discuss it tomorrow.

13 JUDGE BRENNER: All right. We will read it.
14 I have got, as you can see, the revised -- as of January
15 '83 -- version of the regulations with me. I'm cognizant
16 of the fact that we're talking about an area here that has
17 been the subject of recent legislation and I believe action
18 by the Commission, either by regulation or otherwise, in
19 terms of noticing of amendments as a general subject.

20 I'm not saying noticing of Part 70 amendments
21 necessarily. We're talking about the Sholly Amendment
22 and so on. So my version of the Regs and pre-existing section
23 may or may not still be applicable in light of the present
24 regulations.

25 MR. WETTERHAHN: Mr. Chairman, I would note, I

1 have a loose leaf version put out by the Commission and
2 it states the section was last changed at 47 Federal Register
3 57446.

4 JUDGE BRENNER: That's an old one. That's
5 December '82 then. I've got that one included.

6 All right. But there may be other provisions
7 involving the Sholly Amendment procedure and Congressional
8 action and the section 'a) of the Atomic Energy Act that
9 Mr. Elliott cited.

10 All right. Give us a few moments at this time.

11 Does any party have another comment on the Part
12 70 argument so far, because subject to what we left for
13 tomorrow just now, we think we have heard it all.

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1 MR. ELLIOTT: In light of that, I'm just
2 wondering whether or not my presence will be required
3 tomorrow on this subject.

4 JUDGE BRENNER: We will get into the noticing
5 requirement. We will do it without you if you are not here,
6 but you may want to be heard. It is going to affect your
7 argument more than anybody else's.

8 MR. ELLIOTT: My only problem is having to
9 comply with discovery requirements in another aspect of
10 this case.

11 I have **answers** to interrogatories that are due
12 Friday, and every day that I am here is another day that
13 I can't deal with that.

14 JUDGE BRENNER: Which contention?

15 MR. ELLIOTT: On-site emergency planning.

16 JUDGE BRENNER: Have you worked out your
17 specification or possible deletion of some of those conten-
18 tions?

19 MR. ELLIOTT: That is a parallel process.

20 JUDGE BRENNER: We are going to take a few
21 minutes right now. You were going to have the Applicant
22 and the other interested parties receive that by the close
23 of business Friday, is that the schedule now/

24 MR. ELLIOTT: I'm not certain whether that was
25 received date or mailing date. I hope it is a mailing date,

mm2 1 because if it is a received date, I am already in trouble.

2 JUDGE BRENNER: I don't remember. I am not saying
3 it is, I just don't remember, but most of our discovery
4 dates were received dates. But, I don't remember what is
5 involved here.

6 We are going to take a break for a few minutes.
7 I don't want to recess yet, we may come back and do nothing
8 but recess, but I am not sure yet.

9 We will make it ten minutes. Why don't you
10 discuss what the considerations are of you getting that into
11 the Applicant's hands on some day later than Friday. Say,
12 Monday. Maybe you can work it out.

13 (Recess)

14 JUDGE BRENNER: All right, we are back on the
15 record.

16 Go ahead, Mr. Anthony.

17 MR. ANTHONY: I just didn't want to leave the
18 subject of -- we have discussed inside, with an accident
19 of something dropping on the fuel. But I don't want it to
20 be left out that there could be such an accident outdoors,
21 and that could happen from, as I mentioned, an electrical
22 tower falling, it could happen from an airplane crashing.
23 And if that happens, the containment, inner containment
24 could be fractured, uranium oxide dust could be released to
25 the community. And it is not a slight thing.

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1 Right in today's paper, there is a reminder of
2 the uranium tailings that are poisoning people every day.
3 So this is a really live public hazard.

4 JUDGE BRENNER: All right.

5 We are prepared to make a partial ruling now.
6 It is going to be subject to certain other things which are
7 affected by the information we have asked the parties to
8 come back with tomorrow.

9 First of all, we think we have jurisdiction over
10 contentions which are related to or affected by the Part 70
11 application -- that is the case whether the contentions
12 are old contentions or whether the case is as to new-filed,
13 late-filed contentions. And it doesn't matter for purposes
14 of 2.717(b) jurisdiction applying common sense to the purpose
15 of that jurisdiction, whether the contentions are early or
16 late, or whether the contentions are filed when the applica-
17 tion is filed, but before the license issues, or as the
18 license is imminent, or after the license issues, which of
19 the contentions are valid. Only causes the unnecessary
20 procedural problems for everybody of stay considerations.

21 The bases for jurisdiction are the two cases we
22 cited in our preliminary order, the Diablo Canyon Commission
23 decision CLI 76-1. I won't repeat the cite, it is in our
24 written order. But it is Footnote 1 of that decision as
25 applied by the Zimmer Licensing Board, 10 NRC 226 1979. The

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1 case which Mr. Wetterhahn and I are familiar with. And
2 that is a 1979 Licensing Board decision.

3 We have looked at the Susquehanna unpublished
4 decision dated May 20, 1981. Based on our recollection --
5 and our recollection may be faulty -- but based on our
6 recollection of what Staff counsel said the case stood for,
7 we don't believe that was an accurate description of what
8 the case said, in the one paragraph on page 29 of that un-
9 published decision dealing with that situation.

10 Regardless -- well, let me read what that
11 decision says, and our view is we are not going to follow
12 it if it stands for what the Staff said it stands for.
13 But it says:

14 "The Applicant has a pending application for a
15 license under Part 70 to receive, possess, store,
16 inspect and package for transport nuclear fuel
17 bundles/assemblies. There is precedent in the
18 Commission's proceedings for Licensing Boards to
19 assume jurisdiction over this application once it
20 is filed, and there seems to be ample justification
21 where the receipt of these unirradiated fuel
22 bundles/assemblies and their storage on the
23 refueling floor of the reactor building relates
24 closely with one or more contentions."

25 I will stop there for a moment on the quote. We

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1 agree with that, and we think that is consistent with what
2 we just said. The case cites no precedent, and we have
3 cited the precedent we are relying on. Given the March 1981
4 date of the decision, we will assume that that Board had in
5 mind the very same precedent.

6 The paragraph in the Susquehanna unpublished
7 decision goes on to state:

8 "However, inasmuch as the grant of an
9 operating license negates the necessity for Part
10 70 license, the Board declines to assume
11 jurisdiction of this proceeding at the present
12 time. At present the Board intends to
13 concentrate on expediting the hearing process
14 on the operating license application."

15 Just from that excerpt we cannot tell what the
16 Board had in mind. If it was true that the Part 70 license
17 issuance was imminent, then we don't understand the Board's
18 reasoning there because it is a non sequitar. If they say
19 that jurisdiction should be affected where it affects --
20 in its words "relates closely with one or more contentions,"
21 then the fact that it is going to concentrate on the Part
22 50 proceeding is okay, only if you assume the Part 70 license
23 isn't going to issue until after its adjudication.

24 If that was the factual circumstance there, then
25 that paragraph makes sense and it is consistent with our

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1 ruling.

2 If that was not the factual circumstance, then
3 we decline to follow the ruling because we don't follow the
4 logic of it.

5 The Applicant has also cited the Perry
6 Licensing Board proceeding -- incidentally, it has been
7 published. The Applicant published the slip opinion version.
8 The Perry decision is in the matter of Cleveland Electric
9 Illuminating Company. It is a Licensing Board decision,
10 18 NRC 61, issued July 12, 1983, LVP 83-38.

11 I am paraphrasing now -- the Board made the
12 same point I attempted to make orally here, that in terms of
13 the jurisdictional question it makes no difference whether
14 the Part 70 license has merely been applied for, or has
15 issued.

16 The case also holds that -- all right, that takes
17 care of the jurisdictional point.

18 In terms of whether the contentions are late-
19 filed or not, the Perry case states that it would consider
20 the late-filing criteria as to new contentions coming in,
21 stimulated by the application for the Part 70 license,
22 because it should have been known by Intervenors from the
23 beginning of the case that new fuel would have to be stored
24 on the site at some point.

25 The case also went on to discuss and analyze

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1 whether or not there was any new material in the application
2 of the Part 70 license which would not have been apparent
3 as a matter of general intuition, which Intervenor should
4 have had at the beginning of the case.

5 We think that it is debatable whether the
6 reasoning of that Board is fully correct, even as to the
7 general proposition. While it may be true that an
8 Intervenor can generally, and should generally assume that
9 new fuel will be shipped to the site and inspected and
10 prepared for use at some point in the preparation of the
11 facility if an operating license is issued, it is not
12 necessarily true that an Intervenor should assume at the
13 beginning that that permission would be granted in advance
14 of a grant of a Part 50 license, at least a low-power
15 license.

16 So, an Intervenor should not assume when it
17 reads the FSAR and the reviews that will be conducted, that
18 new fuel will be shipped to the site in advance of the
19 completion of those reviews.

20 So we would disagree with Perry on that aspect of
21 the point.

22 Number two, even if Perry is correct as to that
23 general point, it, as we said, keyed on whether there was
24 new information in any license application.

25 In this case, Perry certainly does not go this far,

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1 and we would not go so far even if we agreed with its
2 general proposition, as to say that an Intervenor at the
3 beginning of the case should further assume that new fuel
4 would be stored outside for some extended period of time,
5 of at least weeks and maybe months prior to being moved
6 inside.

7 Now whether or not that creates any concerns is
8 another matter. We are merely talking about the source of a
9 contention.

10 Furthermore, another reason we would not follow
11 Perry, even if we agreed with it, as applied to this case,
12 is because we think it was a violation of our standing order
13 in this case, for the Applicant not to have served its
14 June 1983 application on the Board and the parties.
15 That application, had it been served and received, would
16 have started the clock running for contentions to have been
17 filed which deal with outside storage, at least, from
18 June 1983.

19 Our order was broad enough to include matters
20 related to the licensing of Limerick facility, and we
21 this this is arguably -- reasonably arguably a matter
22 related. And even if one were ultimately to conclude it is
23 not related on a jurisdictional question, even though we
24 decided otherwise, it was certainly a close enough question
25 where it was material that should have been served.

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1 The consequence of not serving that material
2 is later being able to claim that a party is late. We
3 consider it a serious violation of our requirements, par-
4 ticularly since the precedent exists which Applicant's
5 counsel, individually and as a firm is well familiar with
6 in terms of what is related.

7 We expect -- we are not saying it is willful.
8 We, nevertheless consider it a crabbed interpretation at
9 best, especially given the discussion that the determination
10 was consciously made.

11 We expect any close calls -- and I don't have to
12 cite the precedent that exists on the Commission for that --
13 but any close call as to whether matters are related to the
14 licensing of this facility, those documents wher there are
15 external correspondence; that is applications to the
16 Staff, correspondence from the Staff, between the Staff
17 and the Applicant would be served immediately on the Board
18 and the parties.

19 Let me digress for a moment. The Applicant
20 indicated other areas in which it had not been serving
21 correspondence. We cannot tell from the description what is
22 in it, but it certainly is arguably relevant to the
23 licensing of this facility, and should have been served.
24 And, I don't know how much is involved, but it should be
25 served in some fashion. Now, if it is a lot of material,

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1 perhaps the compensation can be a listing and description
2 of what it is. If it is not a lot of material, perhaps
3 it should be the material itself.

4 We will let the Applicant judge in the first
5 instance as to how it wants to catch up on the matters.
6 You mentioned operator licenses, which certainly sounds
7 pertinent to the licensing of the facility.

8 And you mentioned indemnity provisions, which
9 certainly sounds pertinent to the licensing of the
10 facility.

11 We do not draw the line as to what might clearly
12 be within an admitted contention, or within our jurisdic-
13 tion. We went over the reasons long ago and you have
14 now got one of the reasons in front of you. Where something
15 is arguable, we didn't want to find out late in the case
16 that an Intervenor had an interest in it, even if we later
17 find that that interest should not be dealt with for one
18 reason or another -- be it jurisdiction or merits.

19 Here we are in that very situation we tried to
20 avoid because our order was not followed.

21 Enough about that.

22 Staff, you better straighten out your Part 70
23 operation, and any other operation of the Staff in terms of
24 serving correspondence on the Board and the parties,
25 presumably through Staff counsel, but whatever mechanisms

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1 you desire. We care not one whit as to the bureaucratic
2 separations within the Staff. As far as we are concerned,
3 the Staff is one body, one party before us.

4 Staff has to straighten out its own internal
5 communication problems.

6 For the reason that the application was not
7 served, and that Intervenor, including FOE and LEA had a
8 right to rely on the reasonable proposition that anything
9 pertinent to the licensing of this facility, relevant to
10 the licensing of this facility would be served to them, they
11 had no obligation to constantly visit the Public Document
12 Room to see if anything new had been filed that week.

13 Incidentally, I didn't ask if the application has
14 even been filed in the Public Document Room because it is
15 not pertinent now, given our determination.

16 If it had not been, you have got even less of an
17 argument. That is, the Applicant has even less of an
18 argument.

19 If we were to apply the late-filed criteria to
20 these contentions under the Staff's approach -- that is,
21 even though the document should have been served, that goes
22 only to the good cause, and we should nevertheless apply
23 the other factors. We would find against both LEA and FOE
24 on all their aspects, because even though they have good
25 cause for the late filing, they have the other factors on

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1 balance that would weigh against them.

2 I won't go through them all, but basically it
3 would be; ability to contribute to the record, and whether or
4 not it would delay the proceeding. And, we would add, as
5 counterbalanced by anything significant.

6 On our own, we see nothing of significant concern
7 in the allegations that would balance that. But, that is
8 not the main basis for our ruling we pointed out in case
9 anybody wants us to know.

10 However, it is our view that the late-filed contention
11 criteria should not apply in a situation where our orders
12 were not being complied with. This does not require a
13 finding of willfulness on our part, and we make no such
14 finding in terms of what legal definitions might exist for
15 willfulness, and for your benefit I want to make that very
16 clear, Mr. Wetterhahn. We are just talking about the
17 factual circumstance that it was not filed.

18 We are not inquiring into anybody's state of mind
19 at all. It is just our view now that it should have been
20 and was not for the reasons we indicated.

21 But, given that, we would not apply the late-filed
22 criteria, we would just deal with them as timely contentions.

23 Thatpart is not going to be important, because when
24 we look to the contentions, even considering them timely
25 contentions -- and of course, some of the contentions are the

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1 existing contentions as FOE would now have us apply them
2 to the situation of the fresh fuel.

3 We see no bases at this time -- and it is going
4 to be subject to certain things we will get to in a moment.
5 But, we see no bases whatsoever -- staying primarily with
6 your allegations, Mr. Anthony--for any reasonable belief
7 that there, A, would be a potential for criticality. Just
8 that potential for criticality when you have new fuel being
9 stored in the fashion it is going to be stored in both
10 outside and inside, to get critical is just not a credible
11 contention.

12 So, there is no bases whatsoever, and we so find
13 now.

14 In terms of other possible safety implications
15 involving radiological releases caused by damage to this
16 low enriched uranium oxide fuel pellets within the unirradiated
17 new fuel rods of the type proposed for Limerick. We also see
18 no bases for that. And all of the contentions depend on some
19 harm being caused by this damage to the fuel.

20 However, we don't want to stop there, we want to
21 go further. We see no bases set forth by you. In argument
22 you have set forth no bases. But, we want to, before we
23 rule definitively on the absence of bases -- and we are
24 still at the bases stage -- we want to go further and make
25 very sure our ruling is correct. The agency precedent is

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1 consistent with that, the Intervenors have showed us
2 nothing different, our own expertise -- I speak of that
3 collectively, and in fact excluding myself on this Board --
4 is that it is not -- that there is no credible basis for
5 assuming any harm to the public from any such releases.

6 Nevertheless, we want to get affidavits from the
7 Applicant and the Staff on that point. Again we are talking
8 about bases. The contentions are not admitted, we are not
9 talking about summary disposition.

10 We want to make sure we are correct. We think we
11 are correct, we want to make sure.

12 The affidavits would be to discuss whether or not
13 there would be any violation of the regulatory requirements
14 both onsite and offsite for radiation releases. We are not
15 talking about doses, we don't want a health effects analyses.
16 You have got the releases in the regulation, I guess Part
17 20 and Part 50 are the primary ones -- Part 100, I mean.
18 I won't state definitively whether those are them or not,
19 whether Appendix I is relevant or not. I haven't considered
20 it. You can consider it. Arguably not. We are talking
21 about an accident here. But I will let you determine that.

22 In any event, what the affidavit should address
23 is whether or regulations -- there is a credible
24 potential for violat. the regulations applicable to
25 onsite and offsite releases from an accident in the event

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1 of an accident to the low-enriched uranium oxide fuel
2 pellets in the unirradiated new fuel rods for Limerick from
3 any credible accident.

4 Now we have excluded criticality. You don't
5 have to address criticality. That was based on our own
6 knowledge, as well as the Commission precedent -- I guess
7 it is particularly Appeal Board precedent cited by the
8 Staff in the Diablo Canyon proceeding, which is ALAB 334.

9 Do you have the cite, Ms. Hodgdon?

10 MS. HODGDON: 3, NRC 809, 818, 819, 1976.

11 JUDGE BRENNER: Thank you.

12 We would give FOE and LEA, if it wishes --
13 although so far we are primarily dealing with the area of
14 FOE -- an opportunity to respond to those affidavits, but
15 we want to get them down in a timeframe and rule prior to
16 the shipment of this fuel to the site.

17 We are not issuing a stay at this time because
18 we don't think that is going to be necessary, given the
19 timeframes we have heard.

20 MR. ANTHONY: Could I ask --

21 JUDGE BRENNER: Wait.

22 But you come back tomorrow morning and suggest
23 a timeframe. We want the affidavits, we want a short time-
24 frame, so we probably want simultaneous affidavits from
25 the Applicant and the Staff, and then a one-week response

mml6 1 time from the date of receipt by the other parties.

2 So, what we would suggest is a week and then
3 another week, but parties can think about it and get
4 back to us.

5 Mr. Anthony, I want to get to LEA's area of
6 interest.

7 MR. ANTHONY: I just wanted to ask that you
8 consider a stay.

9 JUDGE BRENNER: We are not issuing one. Nobody
10 formally applied for a stay before us, and we have not
11 formally decided whether the stay criteria would apply, and
12 that is where it stands.

13 MR. ANTHONY: I would like to ask for one now.
14 Should I ask in writing?

15 JUDGE BRENNER: You want to ask for one now?

16 MR. ANTHONY: Yes.

17 JUDGE BRENNER: It is denied for the reason that
18 we don't have to address at this time whether or not we
19 should issue a stay, given the circumstances. And, it is an
20 old court black-letter law that you don't have to issue
21 injunctions and stays unless you have to. And we don't
22 have to now.

23 You wouldn't be on very solid ground if you
24 forced us to rule today, I will tell you that, given
25 everything we have just said.

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1 There is a serious question as to whether the
2 stay criteria would have to apply, given what we have said
3 about the absence of the following of our prior orders
4 in this case. And let me leave it at that.

5 But, it is logically a complex question, and
6 even without that factor, as the Zimmer Board alluded to
7 in passing, at least, there are arguments both ways as to
8 whether the stay criteria should apply to this type of
9 situation. Of course, even if the lesser criteria applied,
10 you might not be in better shape, Mr. Anthony.

11 But let's leave it at that and not have to face
12 it.

13 As of now, our order still exists that we are
14 to be informed in advance, prior to any fuel shipment. Once
15 we get the schedules tomorrow for the affidavit, I am going
16 to extend that order to the fact that there be no fuel
17 shipments until we have ruled on the bases requirement for
18 the contentions -- either confirmed our own views, or we
19 found that we couldn't confirm them after receiving and
20 considering the affidavits.

21 And we would probably leave it that way. But
22 somebody can suggest a different formulation if they want to.

23 We are talking about a two-week timeframe for
24 the affidavits, and then a ruling more or less, and then
25 ruling in the next week or so thereafter, more or less.

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1 All right. As to LEA, we are not ruling on
2 whether or not LEA is correct in its argument that this
3 amendment had to be pre-noticed. And as such, unless and
4 until that happens, LEA has an absolute right to file
5 contentions after that notice and basically start from
6 the beginning.

7 First, come in with your expression of interest,
8 which you have done, and then be given a later opportunity
9 to file contentions. We are not ruling on that.

10 We want to hear some more on that tomorrow,
11 and then we will decide whether we have to rule on it at
12 all, and if so, when.

13 However, subject to a possible ruling in your
14 favor on that question by us or some other body, our ruling
15 now is that you have advanced no contention with bases or
16 specificity which we should consider before us. You have
17 alluded generally to the security plan. However, we
18 understand you haven't seen the plan. Nevertheless, you have
19 cited nothing specific or with bases to give this Board
20 reason to believe that there is a problem, or going to be a
21 problem once the plan is finally approved by the Staff
22 with respect to security.

23 Security plans of this nature exist. And for us
24 to stay the process with the possibility that LEA, if it
25 were given the opportunity to examine the security plan,

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1 could find something it didn't like about the security
2 plan, is not the normal course of events for the process.

3 You should have come in promptly with particular
4 contentions once you received notice of the proposal to
5 store new fuel at the site.

6 We agree that you didn't receive that notice
7 until February. You then came in promptly, but you didn't
8 come in with anything specific.

9 We didn't stay with that. We asked you what
10 you would have in mind later, and what you said is, you
11 need to look at the plan. And we appreciate your argument,
12 but we reject it in terms of what is required by an
13 Intervenor at this point, at least, even keyed from the
14 February filing.

15 And, had you given us some reasonable
16 indication of some problem with bases and specificity, we
17 might have given you time to perfect it. But, you did not
18 do that.

19 The one specific item you did come up with was
20 the exemption for the criticality monitor. We see no bases
21 to admit a contention that that's a problem, given our
22 discussion already as to criticality.

23 It is our collective experience that that type
24 of exemption has been given in the past, in essence on the
25 bases that Mr. Wetterhahn described. We are not saying it

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1 is typical. We don't know.

2 But it has been given in the past. The reasons
3 were logical to us, given our views on lack of bases as
4 to criticality and the lack of application of the very
5 regulation that was cited while the fuel was in transport;
6 partially because it is in the shipping containers, partially
7 because you don't have the configuration of criticality.

8 But given the application for storage in other
9 cases and this one, that is one thing -- if nothing else
10 is looked at, the one thing that is looked at is where that
11 fuel is stacked and stored in terms of criticality
end26 12 consequences.

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1 Of course the Staff is going to examine the
2 exemption and either grant it or deny it on its bases. But
3 we see no bases that the criticality monitor is required,
4 which is my inference what such a contention would be,
5 because we see no bases for criticality.

6 MR. ELLIOTT: May I respond on two matters?

7 JUDGE BRENNER: Yes.

8 MR. ELLIOTT: One is that clearly our filing
9 did not contain specified contentions because that was
10 not the purpose of the filing. The filing was a request for
11 hearing and notice of intervention.

12 JUDGE BRENNER: Right, we understand that.

13 MR. ELLIOTT: Also, that the filing was not
14 filed with the Board at all.

15 JUDGE BRENNER: I understand that.

16 MR. ELLIOTT: The copy you have was given to
17 you by the Staff. And you appear to be assuming jurisdiction
18 over a matter that you haven't formal notice of, but which
19 LEA is not even seeking jurisdiction over.

20 JUDGE BRENNER: I understand. I was going to
21 get to that in a minute.

22 MR. ELLIOTT: The second point was with respect
23 to particularized contentions on the security plan. The
24 contentions must necessarily be based upon the contents of
25 the security plan. And it is simply impossible for

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1 Intervenor to file contentions on the contents of a document
2 which it has not seen.

3 Now I don't see what conceivable showing LEA
4 could have made with respect to a document that it has no
5 knowledge of the contents of.

6 JUDGE BRENNER: We understand that argument. And
7 we have accepted that argument as applied to emergency plans,
8 as you know well, because we saw enough at the beginning to
9 know that there are in fact problems, unless things are
10 worked out right with things as complex as emergency plans
11 for off-site emergency planning.

12 And you gave us the area of concerns right at
13 the beginning of the case to the extent you could on
14 emergency planning. And we have gone through this whole
15 process that I won't repeat on emergency planning.

16 MR. ELLIOTT: And we will do that when we have
17 an opportunity to file contentions.

18 JUDGE BRENNER: Okay. I understand your position.
19 We contrast that with the area of security plans for new
20 fuel which we consider a much less complex matter, in which
21 there's no reason for us on our own to believe that there is
22 going to be any problem with respect to the adoption and
23 implementation of a security plan for new, unirradiated fuel,
24 given the nature of what we're dealing with here.

25 Now, if you had shown us something specific, we

27pb3

1 were certainly willing to say, okay, you have shown us
2 something with bases and specificity. But on a speculation
3 that you might find something with security plan, we're
4 not going to admit a contention and hold up the proposal
5 to ship and store that fuel on that basis. Which we would
6 consider a speculative.

7 Admittedly, we were applying our own administrative
8 collective expertise view as to bases. It is our view --
9 well, I haven't discussed this point with the other Board
10 members. Let me state my view.

11 Bases requires a common sense application. There's
12 no simple standard for bases. When you are dealing with
13 an area where you know that there is some potential for
14 an Intervenor's contention to be correct and have merit, but
15 the Intervenor cannot state more bases now because there is
16 more information yet to come. We would apply a lower standard
17 of bases, as we did for the emergency plan.

18 Bases, as applied in the particular context, it's
19 a reasonable balancing. Where you're dealing with something
20 where we have no reason to perceive any problem will occur,
21 given the Staff and the Applicant working on the area, and
22 given the nature of the area. We would say you're going to
23 have to show us some particular concern before we will
24 assume that something with bases and specificity can be
25 arrived at. And that's the way we have applied it.

27pb4

1 MR. ELLIOTT: It's not my intention to belabor
2 the point.

3 JUDGE BRENNER: It's getting late and I want to
4 get to your other point. You disagree with us. I know that.

5 MR. ELLIOTT: Well, bases must be found in the
6 found. The bases must be found in the plan. And if I
7 haven't seen the plan, then I can't provide bases.

8 You are imposing an impossible standard.

9 JUDGE BRENNER: I guess for the reasons I
10 attempted to articulate, and perhaps at a quarter of six,
11 after a long day I did not do it very effectively.

12 We do not think, as applied to the security plan,
13 on-site security plan for new fuel storage that it is a
14 necessary prerequisite for you to have access to the plan
15 before you can decide there is some problem for which you
16 have a concern. What we find, in effect, is that you have
17 no present tangible concern. You just want to look to see
18 if you're going to have concerns. And that is different
19 than the position you had on emergency planning.

20 And it's not the standard by which we would hold
21 up this application. If you find something later, you can
22 move to suspend the license, or amend the license, or
23 whatever. That's a possibility.

24 Now you may, if you have problems getting access
25 to a plan to find such a thing, that may be. But I'll tell

27pb5

1 you, I don't want to go into all of the legal ramifications
2 of security plans. But there is a balance in a democracy
3 between -- in my view, between allowing any number of people
4 access to sensitive information, such as security plans
5 for a nuclear facility or some aspect of it on the bases that
6 they may find something in there that they don't like.

7 Now that's different than the admitted and
8 adjudicated many times in the Commission precedent, right
9 of an intervenor to have access to a security plan, provided
10 certain requirements are met that there's assurance that
11 the information will be protected, where there is a bases
12 for a contention. But it's a balance.

13 So where you've got something to litigate, you're
14 entitled to look at the plan with the safeguards. But where
15 there's nothing in the offing, just to wait until you look
16 at the plan and moreover to open a plan up to scrutiny by
17 an outsider such as yourself, would not in my view, be
18 warranted.

19 Now that's a general proposition, and as a lawyer
20 I know you'll understand it's no reflection on yourself or
21 LEA. That's not a ruling for the future, that there be
22 no condition under which you should be entitled to protective
23 access to look at the security plan, because we're not at
24 that point.

25 If there's a problem there and you want to argue

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1 that you should have access before us or some official that
2 you deem more appropriate, you can make that argument.

3 But we see no reason to state now that you should
4 get the plan now. And we should wait and see if you can
5 file a contention before we decide anything with respect to
6 this Part 70 license.

7 In terms of your other point, you haven't filed
8 this before us. And it's none of our business, in effect,
9 in terms of ruling on it. You were courteous in giving it
10 to us, and that's where the matter stands.

11 Subject to the prenoticing aspect, which we will
12 discuss tomorrow, which may or may not affect our jurisdiction,
13 that's another possible ramification of it. Subject to that,
14 we think it makes sense for us to exercise jurisdiction over
15 your filing, given rulings on the arguments before us, which
16 we have just made.

17 We felt we are capable and in a position to
18 make the rulings and we made them. The reason we think
19 it makes sense is as follows. If we are wrong on jurisdiction,
20 the only consequence will be -- and I'll tell you in a moment
21 how we're going to provide procedurally for this to be
22 effectuated.

23 The only consequence will be that a body wiser
24 than ourselves will tell us that we should not have done
25 that. And they will then notice a proceeding and appoint

27pb7

1 a board. It has been the practice in past cases to appoint
2 for obvious reasons the very same board hearing the Part 50
3 application to hear the Part 70 application. The Board's
4 familiar with the parties, the case and the circumstances.

5 We see no reason why we could not be such a
6 board, although we don't make the determination. If it
7 occurs that way, it will be right back to us and we will
8 make the determination we just made. If it goes to another
9 board, they will have the benefit of our view and they can
10 follow it or not follow it, as they see fit.

11 Either way, you are not set with our decision,
12 and that gets me to the next point. This decision in our
13 view is appealable at this time. I haven't looked through
14 all the regulations and I'll be a little more specific on
15 that tomorrow with the help of the parties. And I'd like
16 the advice of the parties tomorrow as to whether I'm correct
17 that it's appealable.

18 The Zimmer board said it was. But we want to
19 hear the parties as to whether it is. If that's right, you
20 can go to the appeal board right now and argue that we
21 shouldn't have accepted jurisdiction.

22 Now, you may also want to argue in the alternative,
23 I assume you would, that even if we had jurisdiction we made
24 the wrong decision because you should have been given further
25 opportunity after having access to the security plan to form

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1 contentions.

2 So you can get that argument up immediately, too.
3 If you want, you can seek a stay as part of your appeal. We
4 will issue a notification as soon as we can, but I don't
5 know to whom. Probably to the appeal board and the Commission
6 telling them what action we have taken here. Telling them
7 that you have still got your petition pending. We're not
8 going to physically reach out and bury it.

9 We think we have ruled on it, nothing further
10 need be done. But if the parties disagree, if anybody
11 disagrees they can sua sponte tell us we're wrong. But you
12 better not depend on that. If you think we're wrong, you've
13 got a responsibility it seems to us to file the appeal with
14 the appeal board. If there's not appellate right, we'll
15 refer the ruling. We'll get you a rapid appeal somehow.

16 MR. ELLIOTT: Thank you.

17 JUDGE BRENNER: But I think you probably have
18 an appellate right. It seems a final action as to the
19 particular Part 70 license application. That's why I
20 think it's appealable. So you can appeal us on the jurisdic-
21 tional question as well as on the question of whether you
22 should have been given additional time to file a contention.

23 Now because of the time frames involved, we
24 issued an oral ruling here. Now in terms of your appellate
25 rights, we don't think they would start until the time of

27pb9

1 our written confirmation of this ruling.

2 What I'm trying to say, LEA, is that you can
3 have it both ways. If you wanted more time to file an
4 appeal and a request for stay, your time won't be cut off
5 until the proper amount of time after our written ruling.

6 However, you don't have to wait until our
7 written ruling to file the appeal, if you want to get up
8 right away on a stay or something else. You may even be
9 able to do it faster than we can do our notification, but
10 that's okay.

end 27.

11 And we will leave it up to you.

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1 Mr. Anthony, if we're right that it's appealable,
2 we think it's appealable by you as well as LEA, although you
3 don't have the jurisdictional question, perhaps happily for
4 you. But you've got the other matters. That is our
5 exclusion of your contentions.

6 Now let me add one thing. The exclusion of the
7 contentions is subject to confirmation of our preliminary
8 view that there were no bases as we have discussed. That
9 applies to FOE more than LEA, although some of that was our
10 feeling of bases for the security plan, too.

11 I am giving some advice here and I always get
12 in trouble when I give unsolicited advice. It seems to me
13 LEA won't have an appealability problem. I'm waiting for
14 a ruling on bases, because it doesn't directly affect our
15 ruling on LEA's petition.

16 You have been denied without respect to the bases
17 we're waiting for, confirmation of bases in the affidavit,
18 so you can get up on appeal right away, if we're right about
19 the appeal. Otherwise, we'll refer it up right away. We
20 won't wait for the affidavit, so you can get up on the
21 jurisdictional question and the question of whether you
22 needed a contention.

23 Now we may amend some of what we said here today,
24 when we hear about the prenoticing requirements tomorrow.
25 I don't know what affect that might have, so whatever we say

1 is subject to that.

2 It is also subject to what we hear about the
3 heavy loads. We don't think that's going to have any
4 effect, given our rulings on the bases as we gave it, that
5 there will be no public health problem from damage to the
6 uranium oxide fuel pellets involved here. But we want to
7 hear about it, nevertheless, tomorrow.

8 Mr. Anthony, I don't know whether you'll have an
9 appeal problem or not, until we rule on the bases, because
10 technically we have not formally excluded your contention.
11 But if the lack of bases, that we believe exists, is confirmed
12 in the interest of public health or safety, we just want
13 to make sure we're right -- we're quite sure we're right,
14 but we want to make absolutely sure the contentions are
15 not excluded.

16 So whether or not an Appeal Board would deem
17 it right for you to file an appeal now, until we confirm or
18 do not confirm our feeling of the bases, I don't know. But
19 that's all I can do for you on that.

20 MR. ANTHONY: Could I ask if the Staff is still
21 working on and is still required to do a safety evaluation?

22 JUDGE BRENNER: We didn't issue an order requiring
23 them to do anything other than the affidavit we asked for.
24 We asked them what evaluation they were doing. They said
25 they were doing one. They said there's a written one which may

1 be internal, external. They're going to provide copies.
2 From now on, in this case, there are going to be copies
3 provided of anything relevant, because the next time this
4 comes -- which I hope is never -- that is the question of
5 relevant documents being served, we've had this precedent here.

6 So if, arguably, any clarification of a prior order
7 was necessary, that clarification has now been given.

8 MR. ANTHONY: I guess I'm not quite clear, as to
9 whether -- when the Staff issues their safety evaluation --
10 whether or not there will be a chance for me to renew the
11 question and file contentions?

12 JUDGE BRENNER: I doubt it, because we have found
13 that they probably have no bases, subject to the confirmation
14 of the affidavit. And the reason we said they probably have
15 no bases is because there's just going to be no public health
16 problem from unirradiated new fuel, uranium oxide pellets.

17 And that's why we're getting the affidavits from
18 the Staff and Applicant, just to make sure. Now whether
19 those affidavits are more detailed than the normal safety
20 evaluation might be, or whether they'll come out in advance
21 of the completion of their safety evaluation, I don't know.
22 But we're going to rely on what we ask for, and that's what
23 we think we need to make the decision we made.

24 Now if something unexpected comes up in the
25 evaluation, I'm certainly not clairvoyant, we can deal with

1 if and when it comes up.

2 MR. ANTHONY: And I will be allowed time to
3 respond to the affidavits, with whatever expert testimony
4 I can muster?

5 JUDGE BRENNER: You're talking about in response.
6 You don't have to have an affidavit in response. You can
7 respond with anything. You're better off with an affidavit.
8 We've discussed this many times in the case. Yes, but
9 we're setting time frames, as I've indicated. We haven't
10 set them exactly. We'll set them tomorrow morning.

11 MR. ANTHONY: Are you able to look at tomorrow's
12 schedule now?

13 JUDGE BRENNER: We have got to finish these
14 emergency planning contentions, because we have some rulings
15 to make, if not here then next week or as soon as we
16 can get to it back at the office.

17 Any disagreement with that?

18 (No response.)

19 We didn't expect the Part 70 matter to come up
20 when we scheduled things this week. We didn't expect a lot
21 of things to come up that have come up. Beyond that, the
22 emergency planning contentions are important, on the part
23 of you and the persons advancing them. They're important from
24 the point of view of the persons opposing their admission and
25 it is helpful for us to get the views of the parties.

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1 It's not an efficient process, but it's an important process
2 to us. And we are going to go through them so that we
3 are sure we understand the positions of the parties and
4 the contentions. And if we lose efficiency to that process,
5 so be it. It's too important.

6 We have the week of the 19th to finish up things
7 we don't finish up this week. And presumably, we will be
8 able to finish up the structural analyses testimony, if we
9 don't finish that this week.

10 That's the best I can say. We're going to go back
11 to the emergency planning contentions tomorrow.

12 MR. ANTHONY: Have you any idea whether I personally
13 should be here tomorrow morning?

14 JUDGE BRENNER: Mr. Anthony, I understand why
15 you make the request. You have to look at it from my point
16 of view. I'm not going to promise you that nothing will
17 up tomorrow, that you may later think will affect your
18 interest. And in fact, the first thing we're going to do
19 tomorrow will be on the Part 70 matter, although it affects
20 LEA's aspects more than yours, it could have some effect
21 on your position, too.

22 After that, we're going to go to emergency planning.
23 If it doesn't take us all day, I want to go -- we still have
24 the structural testimony. I don't know what arrangements
25 were made between Mr. Romano and the other parties, to take

1 up his matters either. Presumably, the parties will tell
2 us at some point. But that's the best I can do.

3 The possibility is you can come here in the
4 beginning and then leave, when we get into the emergency
5 planning contentions, but leave word where you can be called
6 in advance that we're going to get to the testimony. That
7 has worked before.

8 We're sympathetic, but I can't make the promise
9 for the reasons I indicated.

10 MR. ANTHONY: I appreciate that.

11 JUDGE BRENNER: Anything else?

12 MR. WETTERHAHN: With regard to Mr. Romano's
13 testimony, Mr. Romano would prefer to start --

14 JUDGE BRENNER: Not testimony.

15 MR. WETTERHAHN: I'm sorry. Mr. Romano's argument
16 with regard to Contention VI-1. He would prefer to start
17 Thursday afternoon immediately after lunch. Is that correct?

18 MR. ROMANO: Correct.

19 JUDGE BRENNER: That's fine with us.

20 MR. ROMANO: Then I don't have to be here tomorrow?

21 JUDGE BRENNER: If that's a convenient time for
22 you -- we wanted you to pick a convenient time this week
23 because we had flexibility.

24 All right. Usually we start approximately 1:30.
25 You better assume that we're going to start at 1:30 on

1 Thursday, maybe a little later, but that's the typical
2 time.

3 All right. Thank you all for your time and
4 patience. It's been a long day for us. I'm sure it has
5 been for you, too. And we will pick up at 9 o'clock
6 tomorrow morning.

7 (Whereupon, at 6:00 p.m., the hearing was recessed
8 to resume at 9:00 a.m. on Wednesday, March 7, 1984.)
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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the
NRC COMMISSION

In the matter of: LIMERICK GENERATING STATION,
(Units 1 & 2)

Date of Proceeding: Tuesday, 6 March 1984

Place of Proceeding: Philadelphia, Pennsylvania

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

Mimie Meltzer
Official Reporter - Typed

Mimie Meltzer
Official Reporter - Signature