

ORIGINAL

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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

In the Matter of:

SUPPLEMENTAL SPECIAL PREHEARING CONFERENCE

OPEN MEETING

Location: Bethesda, Maryland

Pages: 76 - 173

Date: Friday, September 7, 1984

8409110131 840907
PDR ADOCK 05000338
T PDR

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3
4

5 _____ X
6 SUPPLEMENTAL SPECIAL : Docket No. 50-338-OLA-1
7 : 50-339-OLA-1
8 : 50-338-OLA-2
9 PREHEARING CONFERENCE : 50-339-OLA-2
10 :
11 _____ X

12 September 7, 1984

13 4350 East West Highway
14 Bethesda, Maryland

15 Hearing in the above entitled matter convened
16 at 9:00 a.m.

17 BEFORE:

18 JUDGE SHELDON J. WOLFE, Chairman

19 JUDGE JERRY KLINE

20 JUDGE GEORGE FERGUSON

21 APPEARANCES:

22 On Behalf of the Applicants:

23 MR. MICHAEL W. MAUPIN

24 On Behalf of the NRC Regulatory Staff:

25 MR. HENRY J. MCGURREN

MR. LEON ENGLE

On Behalf of the Concerned Citizens Group:

MR. JAMES DOUGHERTY

PROCEEDINGS

1
2 JUDGE WOLFE: Good morning. Pursuant to the
3 board's order of August 28, 1984, this supplemental
4 prehearing conference, special prehearing conference,
5 is now in session.

6 In case OLA-1, applicant requests amendments to its
7 North Anna operating licenses to permit the receipt and
8 storage of 500 spent fuel assemblies from its Surrey
9 power station.

10 In case OLA-2, applicant requests amendments to its
11 North Anna operating licenses to permit the expansion
12 of the spent fuel storage capacity.

13 To my left is Administrative Judge Ferguson. To my
14 right is Administrative Judge Kline, and I am
15 Administrative Judge Wolfe, Chairman.

16 Going straight ahead from the bench here, would you
17 identify, counsel, identify yourselves for the record?

18 MR. MCGURREN: Representing the Nuclear Regulatory
19 Commission, my name is Henry J. McGurren.

20 On my right is Leon Engle, who is the staff's
21 project manager on this case.

22 MR. MAUPIN: My name is Michael Maupin. I
23 represent Virginia Electric & Power Company.

24 MR. DOUGHERTY: My name is James D. Dougherty. I
25 represent the Concerned Citizens of Louisa County.

1 JUDGE WOLFE: Are there any preliminary matters to
2 be discussed before we proceed argument?

3 MR. MAUPIN: None from the staff, your honor.

4 JUDGE WOLFE: Mr. Dougherty? I think at some time
5 during the course of the argument, Mr. McGurren, it
6 would assist the board if you would identify a
7 citation in your August 15, 1984 response, and footnote
8 four, at the end of the first paragraph of that
9 footnote four, says a reference to Section 3.2.6, and
10 also at page 4-4 of the staff's Safety Evaluation
11 Report, in that first paragraph there's also a
12 reference to Section 3.2.6.

13 If you can now or during the course of argument, if
14 you could identify what that section has reference to,
15 what document it's part of.

16 MR. MCGURREN: Your honor, I believe the reference
17 is to this document, the Safety Evaluation itself, and
18 that section appears on 3-8.

19 JUDGE WOLFE: 3-8?

20 MR. MCGURREN: And it's entitled "Cask Rupture."
21 During the course of the argument, we'll check into
22 that a little further, just to make sure, your honor.

23 But I believe that is the reference that's being
24 made.

25 JUDGE WOLFE: Well, I have a problem then, if

1 that's what was intended, the Table of Contents for the
2 SER speaks to 3.2.5, captioned, "Case Case Ruptured."

3 And that's at page 3-8. And even assuming for
4 present purposes that when you reference 3.2.6, that
5 comes at the conclusion of the sentence where it's
6 concluded that attempted sabotage, even if successful,
7 would not produce serious radiological consequences.

8 So you go back to "Cask Rupture", which is now
9 3.2.6, in the SER, that section does not speak to
10 sabotage.

11 So figure that one out and let us know during the
12 course of argument what the citation is to.

13 And as a preliminary matter, turning to you, Mr.
14 Maupin, I think the latest word we had from you with
15 respect to the expected loss of full core reserve at
16 the Surrey plant, has there been any updating since
17 that letter of October 13, 1983?

18 MR. MAUPIN: Yes. Is that letter, Mr. Chairman,
19 referring to 1986?

20 JUDGE WOLFE: I believe that's right. Let's see
21 here.

22 MR. MAUPIN: I could bring six briefcases full of
23 documents up here and the first one you'd ask about
24 would be one I'd left at home.

25 (Laughter.)

1 JUDGE WOLFE: Yes, therein you advised that VEPCO
2 has now completed the reevaluation, it indicates that
3 VEPCO will not lose full core reserve during the
4 outage scheduled for 1985 after all, but will lose it
5 instead during the Surrey Unit 1 outage scheduled for
6 early 1986.

7 Need that be updated, or is that set?

8 MR. MAUPIN: I think that information is still
9 accurate, and I would only add what I guess that letter
10 did not say, that is, as I recall, the margin by which
11 full core reserve will be preserved in the spring of
12 1985 is on the order of 2 to 3 assemblies, so that if
13 for any reason the company were to be required in the
14 spring of 1985 refueling to remove permanently spent
15 fuel assemblies that is currently planning to reuse in
16 the following cycle, that can change.

17 I don't think I can suggest that that change will
18 occur, but simply that the margin of the spring of 1985
19 is small.

20 JUDGE WOLFE: In that self same letter, Mr. Maupin,
21 you indicated that there was some effort to negotiate
22 with the Department of Energy with respect to, I guess,
23 what, a pilot program or some sort of problem dealing
24 with dry cast storage at Surrey.

25 Has there been any development along those lines

1 since October 13, 1983?

2 MR. MAUPIN: Yes, sir. In late March of 1984, DOE
3 and Virginia Electric reached an agreement, a so-called
4 cooperative agreement, on a dry cask demonstration
5 program.

6 The first order of business has to be execution of
7 that contract on the selection of...well, let me back
8 up and tell you what the contract called for.

9 The demonstration program was to go ahead basically
10 on two fronts. The first front called for Virginia
11 Electric to purchase dry casks manufactured by
12 different vendors and to send them to a DOE site that
13 was not named in the contract.

14 It was to be, I think, as the party intended, a
15 site either in Nevada or a site in Idaho.

16 What the program contemplated was up to five casks
17 would be sent to the DOE site, that as those casks
18 arrived at the DOE site and were checked out and put in
19 place, VEPCO would send spent fuel from its Surrey
20 power station to the DOE site for storage in those
21 casks.

22 DOE performed a number of tests on them that would
23 be designed to see other casks perform under less
24 limiting conditions than the NRC might be expected to
25 apply to a licensed cask.

1 It was contemplated by the agreement that the casks
2 at the DOE site would not require an NRC license. The
3 agreement also provided that beginning with the third
4 or fourth cask, that the parties would consolidate fuel
5 in those casks, roughly doubled the amount of fuel that
6 was put in casks, and see how the cask responded under
7 those conditions.

8 All in all, it was contemplated that as many as 144
9 assemblies might be shipable to the DOE site under
10 those arrangements.

11 The second front called for Virginia Electric to
12 continue to pursue its efforts to secure a license from
13 NRC for which it applied, I think, in late 1982,
14 October 1982.

15 Virginia Electric proposes to build a concrete pad
16 at that site and then buy casks that are licensed by
17 NRC and to store fuel under more limited conditions in
18 those casks at the Surrey site.

19 We are now in the question and answer period about
20 the licensing process.

21 I think the company had hoped when it entered into
22 the agreement with DOE that it would be able to shift
23 sufficient number of assemblies from Surrey to the DOE
24 facility to Nevada or Idaho in time to preserve the
25 loss of full core reserve beyond the spring of 1986.

1 Would you please stop me if this was more than you
2 ever wanted to hear on the subject?

3 JUDGE WOLFE: Well, go ahead.

4 MR. MAUPIN: In fact, to go back to the point where
5 I departed, the first order of business was to select
6 the DOE site.

7 The DOE site that had been selected is the site in
8 Idaho, and my understanding is that that site cannot be
9 prepared for participation in this project as promptly
10 as it was thought the Nevada site could be prepared.

11 The bottom line of all of this is that the Idaho
12 site has been selected and I think right now, under the
13 most optimistic view that Virginia Electric has, it
14 would be very late in 1985 or sometime in early 1986
15 before we could actually start shipping assemblies from
16 Surrey to Idaho.

17 As I recall, the margin by which full core reserve
18 would be launched in the spring in early 1986 is on the
19 order of 50 to 55 assemblies.

20 And I suppose that even if the company could begin
21 shipping assemblies to Idaho in late '85 or early '86,
22 it is unlikely, very unlikely, that they could ship as
23 many as 55, because you've got to have three casks in
24 place in order to accomplish that.

25 Let me add just one thing. The company has

1 actually ordered three casks, and the first of those is
2 scheduled for completion later this year.

3 So this is a real ongoing project in which Virginia
4 Electric has made a very substantial commitment.

5 JUDGE WOLFE: Can you advise, if you know, when
6 VEPCO and/or the Department of Energy anticipate that
7 the demonstration program with five dry casks will be
8 finalized, completed?

9 MR. MAUPIN: You mean completed in the sense...

10 JUDGE WOLFE: In the sense that...

11 MR. MAUPIN: All of the details worked out or fully
12 performed?

13 JUDGE WOLFE: Fully performed.

14 MR. MAUPIN: I think the termination date called
15 for in this contract is 1988. Perhaps I ought to add
16 it is a part of this agreement, as far as the company
17 is concerned, that once the fuel goes to Idaho or
18 wherever, it does not come back.

19 DOE will be permanently responsible for the fuel
20 just as it would have been in any event under the
21 Nuclear Waste Policy Act from whatever date in the
22 future.

23 DOE will simply take responsibility for this fuel
24 at an earlier date. 1988 is the termination date.

25 JUDGE WOLFE: Well, let's see if I can get a

1 handle, then, on what these dates are. The date that
2 the, what, the first two or three casks will be in
3 place at the Idaho site is when?

4 You talked late or mid-'86? What was your date
5 again on that?

6 MR. MAUPIN: I don't think I said it precisely that
7 way. We had certainly hoped that that would be the
8 case, but with the selection of the Idaho site, I think
9 we are now in a position where the cask will be
10 completed in late 1985.

11 We had planned to have it shipped directly to the
12 DOE site. The problem that has arisen since the
13 execution of the contract is that the DOE site may not
14 be prepared to receive it at the time that it is
15 complete.

16 And I am considerably more confident about when the
17 cask will be completed than I am about when DOE will
18 be prepared to receive it.

19 But I believe that present thinking would be about
20 mid-1985 before DOE would be in a position to receive
21 that.

22 I have with me Steve McCay, he's from Virginia
23 Electric. He makes an important distinction.
24 Physically, DOE could accept the cask at this site and
25 put it somewhere on the site, I'm sure.

1 I was talking in terms of the ability to receive a
2 cask and use it to load fuel, and it would be later in
3 1985 before that could be possible under the present
4 estimates.

5 JUDGE WOLFE: So then the demonstration program
6 itself per contract is to be concluded when? The
7 contract.

8 MR. MAUPIN: Concluded?

9 JUDGE WOLFE: Terminated.

10 MR. MAUPIN: Concluded in 1988.

11 JUDGE WOLFE: So that there would be, what, about a
12 two-and-a-half-year time spread during which the fuel
13 would be inserted in the cason or cask and, what, would
14 it be above ground or below ground?

15 MR. MAUPIN: No, it would be above ground.

16 JUDGE WOLFE: Above ground.

17 MR. MAUPIN: Yes, sir, and...

18 JUDGE WOLFE: And that performance demonstration
19 with the spent fuel inside the cask, the duration of
20 that would be what? Two, two and a half years before
21 the expiration of the contract?

22 MR. MAUPIN: Before the expiration of the contract,
23 but in terms of what DOE would do with the fuel after
24 that, it may well leave it in the cask indefinitely,
25 until they had something else to do with it.

1 They may move it from that cask to some other
2 storage facility or do something else with the cask.
3 Let me say precisely the same sort of arrangement is
4 proposed for the Surrey site under the second front
5 that I described, the licensed facility at Surrey, you
6 buy these large casks and put 20, 24 assemblies in them
7 and put them on a pad on the Surrey site and with
8 adequate security provisions, of course, and certain
9 monitoring, leave them there until the fuel...until
10 there is a respository available for the fuel.

11 Taking the date set in the Waste Police Act, that's
12 1998.

13 JUDGE WOLFE: All right. Would you advise the
14 board, then, is it now necessary for the board to
15 proceed to consider case OLA-1 with respect to the
16 application to receive and store spent fuel assemblies
17 from Surrey and store these at the spent fuel...

18 MR. MAUPIN: Let me begin with a resound...

19 JUDGE WOLFE: ...at North Anna.

20 MR. MAUPIN: Let me begin with a resounding "yes."
21 It is important to emphasize, and I believe that I said
22 before, a copy of the settlement agreement provided the
23 basis for the withdrawal of Louisa County.

24 Didn't I send you that?

25 JUDGE WOLFE: Yes.

1 MR. MAUPIN: It might be helpful to begin by
2 refreshing our memories on what was in that agreement.

3 The company made a commitment in that agreement
4 with Louisa County, a contractual agreement which
5 really reflected the public commitments it had been
6 making prior to that time, that it would use its best
7 efforts to pursue a program with the Department of
8 Energy such as the one I've described. And I think it
9 is doing that.

10 They will use its best efforts to have NRC issue a
11 license for a dry cask facility at Surrey, and I think
12 the company is using its best efforts to do that.

13 And upon succeeding with one or both of those
14 undertakings, it will as quickly as it reasonably can
15 utilize those methods for dealing with Surrey fuel
16 and avoid shipping Surrey fuel to North Anna.

17 The company has clearly made that contractual
18 commitment and that commitment to the public.

19 The difficulty we have is that we have never
20 been...what we're talking about, of course, is
21 basically the loss of full core reserve, is the
22 possibility that it would not be available when we
23 needed it and we would need it and the unit would have
24 to be taken off the line for some period of time.

25 Now whatever the probability of that and the

1 consequences, the economic consequences would be
2 enormous.

3 So the company's approach throughout, from well
4 before the time when OLA-1 and OLA-2 proposals were
5 filed, and then to have options available for avoiding
6 the loss of full core reserve at Surry and in fact it
7 has three options.

8 But one of our concerns from the outset was that
9 even if we could get into the DOE program, that program
10 was not going as quickly as we had hoped, and indeed,
11 the events are sort of bearing out that concern,
12 because we had hoped, for example, that the Nevada site
13 would be selected where they were ready to deal with
14 this material in fairly short order, and that didn't
15 work out.

16 So we're already looking at a delay. We are
17 already in a situation where if we had to rely solely
18 on the DOE program, we do not believe we could avoid
19 the loss of full core reserve by the spring of 1986.

20 On the NRC license front, it may well be that a
21 license could be issued in sufficient time for us to
22 use the Surrey facility and never have to ship the fuel
23 assembly to North Anna and I think the company would
24 like nothing better.

25 But as I understand it, no dry cask facility or dry

1 cask has been licensed for use in the United States.
2 Anytime you are blazing a trail with the NRC, you are,
3 I think, understandably cautious of what your estimate
4 of what the future will bring.

5 And we simply have not been confident that that
6 facility will be in place in time to enable us to avoid
7 the loss of full core reserve.

8 Now if we deal solely with those two options and
9 don't have shipping, there is a third option. When we
10 get to the end of 1985 or early part of 1986 and say,
11 "Here we are. Neither option 1 or option 2 is
12 available."

13 Do we then come back and have this prehearing
14 conference and embark on a process of several months,
15 several months during which the plant will be sitting
16 there with full core reserve capacity?

17 It seems to me the rational answer to that question
18 should be "no." So it's very important that we go
19 ahead with this decision.

20 JUDGE WOLFE: All right. Any comment by other
21 counsel? If not, we will proceed to hear the oral
22 argument on the contentions with concerned citizens.

23 We have read in both cases the contentions of
24 concerned citizens, initially submitted on July 30,
25 1984 and revised on August 14 of this year, with

1 respect to the basis for contention 4 in OLA-1.

2 We've also read the applicant's and staff's
3 responses. We don't have to go into that again. Mr.
4 Dougherty, you may proceed to present any responding
5 arguments upon each contention, beginning with case
6 OLA-1.

7 Respond to the applicant's and the staff's written
8 responses, and on completion of your argument, as to
9 each contention, we will then hear from the applicant
10 and the staff responding to your argument.

11 All right. We'll begin, then.

12 MR. DOUGHERTY: Thank you, Judge Wolfe. Before
13 getting to the merits, I'd like to address the point
14 that you last made.

15 There are a lot of issues here and some of the
16 arguments will be lengthy and complex, and it's my idea
17 that it may facilitate an understanding of these issues
18 if we deal with each contention one at a time.

19 JUDGE WOLFE: That was my suggestion.

20 MR. DOUGHERTY: Oh, I understood you...

21 JUDGE WOLFE: No. In OLA-1, complete your argument
22 on your first contention.

23 MR. DOUGHERTY: Fine.

24 JUDGE WOLFE: Then we will hear from applicant and
25 staff. Then you go on to your next contention.

1 MR. DOUGHERTY: Fine, that's what we'll do, then.

2 JUDGE WOLFE: Yes.

3 MR. DOUGHERTY: I'd like to make one general
4 comment about our contention before I discuss number
5 one.

6 That is that I think in some respects, the
7 responses filed by the staff and by VEPCO
8 mischaracterize the nature of our contentions or the
9 bases.

10 The reference we made in the basis for contention
11 1, for example, referred to a risk of sabotage, and
12 this was criticized by the other parties as not being
13 specific, not including a scenario, and what not.

14 I'll get to this later, but you don't have a
15 sabotage contention. We don't have any contention,
16 really, that if we were to prevail on it, would prevent
17 the shipping of spent fuel to North Anna.

18 We have not claimed, for example, that the risk of
19 sabotage is so great that the fuel should not be
20 shipped.

21 We have not claimed, as did Louisa County earlier
22 on, that the risk of corrosion in the spent fuel pool
23 in North Anna, occupational exposures would be so
24 great that this board should reject the application
25 filed by VEPCO.

1 Our contentions, each and every one of them, deal
2 strictly with procedural compliance with NRC rules.

3 We've asked for an Environmental Impact Statement,
4 for example. Once an EIS is prepared, that's the end
5 of our case, that spent fuel can be shipped.

6 We've asked for a compliance with security
7 requirements. Once that plan has been developed, and
8 it's in compliance, then the fuel can move.

9 All we've asked for in all of our contentions is
10 just that they meet the NRC requirements before they
11 ship the fuel.

12 I just think it's helpful to keep that in mind as
13 we go through all of the contentions.

14 Contention 1 asserts that an EIS is required and
15 must be prepared by the staff before the NRC can grant
16 the application.

17 I think the basis for that contention sets out our
18 factual case pretty well.

19 We have retained the services of an expert, Dr.
20 Martin Resnicof, who may be one of the leading
21 authorities in the field on the environmental and human
22 impacts associated with spent fuel transportation.

23 And we intend to put on a full case demonstrating
24 that the risks in this kind of proposal are
25 significant, and therefore, the EIS is required.

1 I don't see any reason at this point to go into all
2 the possible risks of environmental impacts. One or
3 two issues have arisen in the pleadings filed by the
4 other parties that I'll address later.

5 The key issue with contention 1 is the alleged
6 effect of Table S-4, to the extent to which that table
7 regulation may eliminate the Commission's obligation or
8 the staff's obligation to conduct the environmental
9 assessment here.

10 And I'd like to address the applicability, the
11 alleged applicability, of Table S-4.

12 My argument is that Table S-4 is not applicable at
13 all to the case, the proposed shipping project, and
14 there are several independently valid reasons why it's
15 simply irrelevant to what we have in front of us.

16 I'd like to go through them. There are two or
17 three reasons why they don't apply.

18 First reason is that Table S-4 is part of Section
19 51.20 of the Commissions Rules. Section 51.20 doesn't
20 affect this case.

21 Section 51.20 deals with the environmental report
22 that must be submitted by an applicant when seeking a
23 construction permit.

24 It affects the Environmental Impact Statement that
25 will then be prepared by the staff. In this case we are

1 not concerned with a construction permit application.

2 We're not concerned with the Environmental Impact
3 Statement, on its face, the rule doesn't apply, Table
4 S-4 doesn't apply.

5 Now I admit, in fact, in my opinion it's the case
6 that Table S-4 does have a somewhat broader application
7 than the Environment Report prepared by the company.

8 And that demonstrated in the preamble to Table S-4,
9 where the rule was promulgated in '75, the Commission
10 had the preamble to the rule, where it described its
11 function and what not, and I'd just like to read that
12 briefly, especially what the Commission said.

13 Table S-4 governs not only the Environmental
14 Report, but also the Impact Statement prepared by the
15 staff.

16 What they said is that the proposed rule would
17 allow applicants in their Environmental Report and the
18 Commission in its detailed Environmental Statement, in
19 other words, the Impact Statement, to account for the
20 environmental effects of transportation of spent fuel.

21 So it deals with the Environmental Report and
22 Environmental Impact Statements at the CP stage.

23 It doesn't deal with license amendments to spent
24 fuel.

25 The Commission went on to say in the same

1 statement, "The purpose of this proceeding [and this
2 was the rulemaking proceeding leading to the
3 promulgation of the rule] was to determine certain
4 elements to be factored into impact statements, in
5 particular, licensing proceedings." I think that
6 covers the point.

7 It deals with EISs and we don't have one here.
8 When we do, let's talk about Table S-4, but in the
9 meantime, it doesn't excuse the staff of its obligation
10 to look at the environmental effects of this project.

11 Now not only does Table S-4 deal with the impact
12 statement, it deals only with the specific segment of
13 the impact statement, and that is the cost benefit
14 analysis, or EIS.

15 Every EIS has a section on cost benefit analysis
16 which they try and balance the economic benefits of a
17 power reactor against the environmental costs.

18 And to make this point, I'll need a few minutes.
19 The history of this cost benefit requirement in the
20 context of S-4 begins with the appeal board's decision
21 in, I think it's ALAB 73.

22 And that's when the appeal board said for the first
23 time that Environmental Impact Statements in addition
24 to the narrative analysis of environmental effects, the
25 CPs, must also have a section addressing the cost

1 benefit. You must balance cost against benefits and
2 it derives its requirement from a section known as
3 NEPA, the National Environmental Policy Act, that talks
4 about comparing cost and benefits, 1022B.

5 And so the Commission endeavored shortly thereafter
6 to come up with a way of quantifying environmental
7 effects.

8 And what they did was they promulgated Table S-3
9 and Table S-4. Now, S-3, as I'm sure you know, deals
10 with the environmental effects of the fuel cycle in
11 mining, milling, all the way through ultimate disposal,
12 and assigns numbers to these environmental effects.

13 And it permits a portion of those impacts to each
14 reactor, and so that allows you to do this cost benefit
15 analysis.

16 Table S-4 is in the same nature. It quantifies the
17 effects of transportation and then permits the staff to
18 engage in this cost benefit balancing process.

19 I'd like to read from the preamble to Table S-4.
20 I'll give you a citation of what I'm reading from.
21 It's 40 Federal Register 1005, January 6, 1975.

22 I'm reading on page 105, in column two, the
23 Commission stated, "This proceeding addresses a
24 procedural question involving the implementation of
25 NEPA's requirement for cost benefit analyses and impact

1 study."

2 The Commission said at the outset we're talking
3 about cost benefit analyses, and that particular
4 segment of impact statement.

5 It made the comment to the same effect when it
6 proposed Table S-4 in 1973. I won't read it, but the
7 citation is 38 Federal Register 3334 at 3335, column
8 one, February 5, 1973.

9 So it just doesn't apply. You don't have an impact
10 statement and we're not seeking a cost benefit
11 analysis.

12 There is nothing in the rule to require a cost
13 benefit analysis in the context of license amendments
14 or environmental analyses, environmental assessments
15 such as the one we have in front of us.

16 So we're talking apples and oranges here. This
17 whole argument by the staff and VEPCO is misplaced.

18 Now, there is another reason why it doesn't apply.
19 Even if what I've just gone through weren't the case
20 for some reason, even if we attempted to apply Table S-
21 4 to this case, by its own requirements, by the text of
22 S-4, you can see that it doesn't apply for another
23 reason.

24 I'd like to refer you to Table S-4, Section 51.20
25 G2.

1 In my book, that is page 521. In Wash 38, in Table
2 S-4, the Commission recognized it couldn't attempt to
3 quantify all the environmental impacts of all the forms
4 of transportation of spent fuel.

5 It set certain bounding limits. Well, the bounding
6 limits are set out there in Sub ii. There are five
7 different conditions that must be met before Table
8 S-4 can apply.

9 One is that if the reactor is bigger than 3000
10 megawatts thermal, it doesn't apply as a spent fuel
11 reactor.

12 It also provides that if the fuel is the uranium
13 beyond 4%, it doesn't apply. Well, Sub iii...

14 JUDGE WOLFE: Where are you reading from now,
15 please, Mr. Dougherty?

16 MR. DOUGHERTY: The '84 rule on page 521 at the top
17 righthand corner. This is Section 51.20 G23. This is
18 the third of five elements which must be met before
19 Table S-4 applies.

20 Part 3 there provides that the average level of
21 radiation from the irradiated fuel from the reactor does
22 not exceed 33,000 megawatt days per ton.

23 In other words, they limited S-4 to the movement of
24 spent fuel that falls below a certain burn factor. If
25 you burn the fuel beyond that point, it's got a higher

1 inventory of fission products, it's hotter, or
2 something, it's not covered by WASH 1238. That is
3 33,000 megawatts.

4 Now I'd like to refer you to the environmental
5 assessment submitted by the staff in July. The July 3
6 document, page 23 of that document, it's on Table 4-1.

7 On Table 4-1, the fifth line, the staff indicates
8 that the burn-up rate for the spent fuel in question is
9 36,000 megawatt days per ton.

10 It's a higher burn-up rate. Apparently VEPCO is on
11 an 18-month cycle and it's simply using its fuel longer
12 than what was anticipated back in '72 or '73 when WASH
13 1238 was performed and '75, when the fuel was
14 promulgated.

15 They weren't anticipating this more toxic fuel
16 would burn longer and therefore they put that condition
17 in the table.

18 But that reason doesn't apply to this fuel under
19 any circumstances.

20 Now because it has these limiting conditions on the
21 table, the Commission accepted in some cases certain
22 kind of fuel which would not be covered, and addressed
23 the question of what to do when your fuel falls outside
24 the scope of the table.

25 They first addressed that when they proposed the

1 rule in 1973 in this citation.

2 The Commission said there in a proposal that in
3 some cases the characteristics of the reactor fuel or
4 wastes for the condition of transport may not fall
5 within the scope of the environmental survey, in other
6 words, may not fall within the scope of Table S-4.

7 In such cases, the Commission said, the applicant
8 would be required to provide in his environmental
9 report a full description of and analysis of
10 environmental effects of such transportation.

11 And the Commission would include in this
12 environmental statement the cost benefit analysis
13 specific to that case.

14 Now one thing that this says is that we are talking
15 about EISs and cost benefit analysis, but the key point
16 I'm trying to make is that a new analysis, site-
17 specific analysis must be made in that case in which
18 the fuel is not covered by the rule.

19 This is such a case, so you need a site-
20 specific...well, according to this, we need a site-
21 specific cost benefit analysis, but my point is that
22 Table S-4, again, doesn't apply.

23 When the Commission issued a final rule in 1975, it
24 addressed the same topic and stated that it
25 deliberately excluded from the rule language addressing

1 procedures to be followed for transportation outside
2 the scope of the rule.

3 The staff had proposed language that would cover
4 fuel that wasn't covered by that table, and the
5 Commission decided not to cover those cases.

6 They said this. "Regardless of the methodology
7 used for assessing the environmental effects of such
8 transportation, any assessment...and again,
9 transportation means transportation of fuel not within
10 the scope of the rule, like this 36,000 fuel we're
11 talking about.

12 Any assessment would be subject to separate
13 consideration in individual licensing cases if it
14 covers transportation of a type which is outside the
15 scope of the rule.

16 What it called for is individualized consideration.
17 You can't rely on this numerical formula on the table.
18 You must look at it individually.

19 So to sum up, there are three reasons why S-4
20 doesn't apply. It can only apply to impact statements,
21 even then it only applies to cost benefit analyses.

22 It wasn't intended to be a shortcut for
23 environmental review required by NEPA. NEPA requires a
24 hard look at environmental effects.

25 And impact statements contain that hard look, that
full narrative analysis, and then they have a cost

1 benefit analysis, and that's what S-4 is designed to do.

2 It's not an escape route for the staff to say,
3 "Well, these impacts are covered by Table S-4," and
4 therefore not looking at the environmental impacts.

5 That wasn't its purpose. Finally, even if some
6 attempt was made to use Table S-4 by its own terms, it
7 doesn't apply.

8 Now, I would hope that that would cover the issue,
9 but there's one fly in my ointment, and that is the
10 decision by the licensing board in Cataba, in which it
11 implied that Table S-4 did in some way relieve the
12 staff of its obligation to look at environmental
13 effects.

14 Now, Cataba was only an aside. I doubt, although I
15 don't know, I doubt that this careful look at the
16 history of the rule was presented to the board.

17 Certainly if it was, it wasn't discussed by the
18 board. There is no indication that it approached the
19 proper application of the rule correctly.

20 Secondly, I presume that the fuel in that case fell
21 within the scope of the Table, it was low burn up or
22 moderate burn up fuel, below than 38,000 megawatt
23 day per ton, and therefore the rule arguably applied.

24 In other words, in this case it's different because
25 we're talking about fuel that's not covered by the
rule.

1 Secondly, the licensing board in Catamba implied,
2 actually it stated, that if the intervenors could
3 demonstrate that there were other incremental impacts
4 from the proposed transportation plan, that they would
5 have an opportunity to address those effects when
6 they'd proceed.

7 In other words, they recognized the possibility
8 that there is a ruling for further discussion of
9 incremental, supplemental environmental effects
10 associated with this kind of transportation project.

11 I think there the board is on the right track.
12 There's been a lot of talk and pleading on this case
13 and in other decisions about whether or not Table S-4
14 in its assumptions in the 1,000-mile shipping radius or
15 shipping route going from the reactor to the
16 repository or what not, somehow embraces this little
17 117-mile hike that's been proposed here, that somehow it
18 sort of swept up and it does the job anyway.

19 I submit that that's not a proper approach. When
20 the Environmental Impact Statements for these plants
21 were written and when Table S-4 was issued, the
22 Commission was not anticipating playing musical chairs
23 with spent fuel.

24 They expected it to go from reactor to reprocessing
25 facility or repository. It made no attempt to cover

1 shipping.

2 And to say that, well, this isn't much of a move
3 and therefore swept in, it doesn't take account of the
4 possibility that that will begin.

5 Five years from now, who knows what the
6 circumstances will be, and maybe we'll want to move it
7 to New Jersey.

8 You know, buy space there. Move it to Florida.
9 There is no limit on any of this, so we don't know
10 what's going to happen.

11 And at some point the logic breaks down. I moving
12 this stuff across the countryside, you have to look at
13 the environmental impacts.

14 They haven't been addressed today.

15 JUDGE WOLFE: There would have to be an application
16 in that case, would there not, to transport once again
17 from one site to another?

18 MR. DOUGHERTY: That's right, but presumably the
19 staff would make the same argument then that they're
20 making now: "Well, this is covered. We looked at the
21 shipment from reactor to repository and this all falls
22 within."

23 They could make that argument in every stage. At
24 some point the logic breaks down. That shipment from
25 reactor to reactor clearly doesn't hold water, and if

1 you apply that reasoning logically, it breaks down
2 here.

3 This is where we're making the first diversion.
4 This is where we're moving this stuff in a way that was
5 never anticipating.

6 And simply what we want to look at is the effects
7 associated with this segment. If they want to ship it
8 to someplace else, let's look at that segment.

9 That pretty much covers my treatment of S-4. A
10 couple of arguments have been raised concerning the
11 sabotage issue.

12 In the basis for contention 1, we mentioned
13 sabotage is possible. It's one of a variety of
14 environmental risks, human health risks that arise when
15 you move spent fuel, and that it, together with the
16 other impacts, cumulatively produce a significant
17 amount of environmental impact, and that's why we need
18 an EIS.

19 We're not saying that the risk of sabotage is so
20 great that this stuff should not be shipped, and we
21 don't intend to litigate sabotage fully.

22 We have not come up with a scenario in which the
23 Red Brigade or someone captures a truck and opens it
24 and what not, because we don't think that this is
25 necessary.

1 Sabotage is a basis for our contentions; not a
2 contention. The specificity requirements of Section
3 2.714 that were raised in the response by the staff
4 don't apply to a basis.

5 In fact, I think at one point they say that there's
6 no basis for this. Well, this is our basis, and if we
7 provide a basis for the basis, then they may ask for
8 another basis.

9 That's not the requirement. We're simply saying
10 that sabotage could happen, and that's why this is a
11 dangerous action.

12 There is no grounds for striking this or for the
13 contention itself. It's just a possibility and we
14 prepare to discuss probabilities or consequences in a
15 general statistical way.

16 But we don't intend to go through scenarios and
17 litigate that question endlessly.

18 The staff also made one minor point that they felt
19 that we had no basis, plus they said we hadn't...I
20 think they said we had no basis for the claim...that's
21 right, that error by VEPCO employees might somehow lead
22 to release of radioactive material.

23 Somewhere we said they might forget to close the
24 cap. Again, this is a basis we're talking about. You
25 don't need endless bases for a basis.

1 Secondly, if I had to provide a basis for the
2 possibility of error by the company employees, I think
3 I can point to the recent instance in Louisa County
4 where a truck carrying fuel to the plant went off the
5 road and overturned in a field.

6 Apparently the driver fell asleep at the wheel.
7 The state is still investigating. Accidents do happen.
8 Sometimes they're dangerous.

9 And that's all we're saying, is that it's a
10 possibility of another of the total environmental risks
11 that we have here, and I don't think an extended
12 discussion of bases for employee error is called for by
13 the rules.

14 And that's the extent of my discussion on
15 contention 1.

16 JUDGE WOLFE: Let me see if I can understand at
17 least your broad scope of your argument. What if the
18 staff had issued an Environmental Impact Statement?

19 Would you then withdraw? Would you then have
20 withdrawn your contention 1 in case number OLA-1?

21 MR. DOUGHERTY: If the staff were to prepare an
22 EIS, that would meet our...that would satisfy our
23 contention.

24 Yes, I think withdrawal is possible. I haven't
25 considered the possibility. But it's certainly

1 worth...

2 JUDGE WOLFE: Wasn't that the thrust of your
3 argument?

4 MR. DOUGHERTY: We're asking for an EIS. And if
5 they do one, then we've got it.

6 JUDGE WOLFE: All right. Mr. Maupin?

7 MR. MAUPIN: Well, let me take approximately...

8 JUDGE WOLFE: Excuse me just one moment. I don't
9 know if I understand that counsel have been discussing
10 this case, trying to agree on the admissibility of
11 contentions.

12 I assume without having been advised otherwise that
13 what you're now stating on the record was discussed
14 perhaps if not in detail, was at least discussed
15 generally with the staff and applicant's counsel.

16 Is that correct, Mr. Dougherty?

17 MR. DOUGHERTY: Yes, Judge Wolfe, it is correct.

18 JUDGE WOLFE: The reason I'm asking is we will hear
19 oral argument. If arguments are advanced by any
20 counsel that are too complex or really not been gone
21 into during prior off-the-record discussions, if anyone
22 wants to not only respond in oral argument, to respond
23 in writing, which may be necessitated by reason of
24 additional research, you may so bequest.

25 However, absenting such request, why, we'll just

1 proceed on the basis of what we hear in oral argument
2 today.

3 MR. DOUGHERTY: If I could respond briefly, Judge
4 Wolfe. As I recall, we discussed the application on
5 Table S-4 in very general terms and very briefly.

6 The issue is complex, and we weren't prepared at
7 the time we met to go into any detail.

8 I regret that I have to go through this kind of
9 elaborate legal argument with oral citations and what
10 not, but as I read the NRC rules, we are not given an
11 opportunity to provide a written response to the
12 response that we receive.

13 And so I apologize, but I think I was confined by
14 the rules.

15 JUDGE WOLFE: My comment or questioning was not
16 being critical of you, Mr. Dougherty. All that I'm
17 indicating is that in my view, oral argument, if any
18 counsel wants to respond in writing, they may request
19 leave to do so and we'll grant it.

20 All right. Mr. Maupin?

21 MR. MAUPIN: Let me begin by saying something I'm
22 not sure is relevant to any of this. You asked a
23 question about the shipment to New Jersey.

24 I think at the risk of being overly precise, I
25 don't think a license would be required to transport

1 spent fuel to New Jersey.

2 I think a license might very well be required
3 on the part of the receiving point, New Jersey, to
4 receive and store the material.

5 I don't need to reargue the points that we argued
6 and lost last year, but I think my statement is
7 accurate.

8 Let me begin with the factual argument that we just
9 heard. It is true that on page 23 of the Environmental
10 Assessment, there is the use of a calculation of a burn
11 up fee of 36,000 megawatt days per metric ton of
12 uranium.

13 I may have to...the board may want an affidavit
14 from me on what I'm about to say, but first of all, on
15 its face, page 23 deals with spent fuel modifications
16 to the North Anna pool, probably assuming the use of
17 North Anna fuel, but in any event, it deals with the
18 estimate release rate of crypton 85.

19 Just on its face, I would think, that you'd want to
20 take a fairly conservative burn up fee. In any event,
21 my understanding is, and I suspect in light of the
22 staff's conclusion that each of the five parameters set
23 out in 51.52 is satisfied, I suspect that there are no
24 plans to ship any fuel from Surrey to North Anna that
25 has a burn up of greater than 33 megawatt days per

1 metric ton. I believe I'd been advised to that effect
2 by the company and I can confirm that unless perhaps
3 Mr. Engle can confirm it or deny it, when the staff's
4 turn comes.

5 There is a whole range of fuel burn ups actually in
6 the Surrey pool. And I think the company's plans are
7 not to ship any fuel over 33,000.

8 I've tried to cut through all of Mr. Dougherty's
9 arguments before that. I am pretty much left with
10 this.

11 It is true that Section 51.52, which kicks off the
12 requirement that Table S-4 be applied for determining
13 the cost benefits of transportation of spent fuel, does
14 refer to proceedings for construction permits.

15 As you recall, going back again to the point that I
16 made about not needing a license to ship to New Jersey
17 from an operating station, and I'm not here rearguing
18 the points I made earlier, when one gets an operating
19 license, at least, and the board is saying, I think in
20 51.52, the Commission was saying before you ever get to
21 the operating license, in the construction permit
22 stage, we want you to look at transportation.

23 When we got the license, when anyone gets a license
24 on operating power stations, included in that license
25 is the authorization to ship.

1 Putting aside the question of whether the receiving
2 point is authorized to receive it, we have here
3 authorization to ship.

4 My guess is that...it's only a guess, but it seems
5 to me a reasonable guess, is that the Commission
6 tackled Table S-4 it contemplated a future in which
7 shipment could be made to reprocess.

8 It contemplated a system under which the operating
9 license would take with it the authorization to ship
10 the fuel out of the station that burned it.

11 So I'm sure it seemed perfectly adequate to the
12 Commission to say that if we look at this at the
13 construction permit stage, that's the time to look at
14 it because they're not going to have to look at it
15 again.

16 Why have a regulation that deals with shipment to
17 some point other than reprocessing plants because
18 everyone assumes, as I recall, at that time, that's
19 where it was going.

20 But there is no earthly reason that I can think of,
21 no rational reason why if all five of the parameters
22 are met, parameters set out in 51.52 A, there is no
23 earthly reason that I can think of why it makes any
24 difference in terms of the effects on the environment,
25 whether those shipment are made from Surrey,

1 Charleston, South Carolina, or whether they are made
2 from Surrey to North Anna and then to Charleston, say,
3 to Carolina, or wherever, so long as those parameters
4 are met.

5 The statement of consideration in the 1975 Federal
6 Register in which Table S-4 was adopted, the
7 Commission also said the environment survey would serve
8 as a primary database...this is on 1005, also...for the
9 amendment considers and assesses the contribution of
10 environmental effects from transportation of fuel and
11 solid waste for typical light water cooled nuclear
12 power reactor. Period.

13 And that's precisely what we have here. So we made
14 no reference to this...well, I guess we made one
15 reference but haven't made any arguments based on it.

16 No arguments in our response to Mr. Dougherty's
17 contentions to the effect that an environmental
18 analysis of shipments was done when Surrey was
19 licensed, but it was.

20 Now we find in addition, it passes muster under
21 Table S-4. Why on earth go into all of that riagmarole
22 another time?

23 I don't think that's what the Commission intended
24 when it adopted Table S-4 and I can't think of any
25 reasonable basis for doing it.

1 And I must confess, I'm not really sure I
2 understand the significance of the fact that Table S-4
3 calls for or provides a listing of cost and benefits
4 included in an impact statement or whatever.

5 Because I guess my answer is, "So what?" Cost and
6 benefits and fundamentally whether those costs are
7 significant, suppose they will have a significant
8 effect on the human environment is precisely the
9 question that the NRC staff is trying to answer when it
10 does its environmental assessment.

11 In short, the staff can choose Table S-4 precisely
12 the reason for which it was created, to evaluate the
13 environmental effects of shipments of spent fuel from
14 an operating license, operating reactor to some other
15 point.

16 Let me just add one thing which I think sort of
17 picks up on the last question that Judge Wolfe asked.

18 I guess to sort of get a hold on precisely where we
19 are, then, we heard the arguments on contention one of
20 OLA-1.

21 We seem to be here. We have a contention that is
22 based purely on a legal argument that the use of Table
23 S-4 is improper.

24 I guess there's nothing...if that answer is right,
25 then where we are is that we have to go back to the

1 drawing board, the staff has to do an environmental
2 impact statement.

3 That doesn't follow. I suppose the staff would
4 then have to go back and do an environmental assessment
5 not relying on Table S-4, and might well still conclude
6 that the environmental effect of transportation are
7 negligible, as they almost certainly would.

8 In any event, the short answer is, "Table S-4
9 applies."

10 JUDGE WOLFE: Table S-4 what?

11 MR. MAUPIN: Table S-4 applies.

12 JUDGE WOLFE: What would you, in light of Mr.
13 Maupin's argument, Mr. Dougherty, and I must advise
14 counsel as you all know, when a judge asks questions,
15 you mustn't think the judge has made a solid final
16 judgment.

17 However, the question seems to be directed for
18 seeking information; we have made no determination in
19 this case whatsoever.

20 But Mr. Maupin indicated something, that should the
21 staff, for whatever reason, go back to the drawing
22 board and draft an environmental impact statement, I
23 take it your position would be what with respect to
24 whether or not the staff should rely on Table S-4 under
25 those circumstances?

1 MR. DOUGHERTY: You're asking me, Judge Wolfe?

2 JUDGE WOLFE: Yes, Mr. Dougherty.

3 MR. DOUGHERTY: Well, what...let me just step back
4 a minute. If you recall, your honor, the lengthy
5 proceeding we had two years ago or a year and a half
6 ago concerning the board's jurisdiction to consider
7 environmental effects, in the briefing, in the
8 arguments, in the appeals and etc., which we thought we
9 finally won.

10 The upshot was that the staff was to look at the
11 environmental effects of moving the spent fuel from
12 Surrey through my clients' neighborhood to North Anna.

13 That's really why we're in this case. We're
14 concerned about the effects of this stuff on my
15 clients' health and on their environment, and we want
16 to look at the possibility of accidents or the other
17 environmental effects associated with it.

18 And when the staff, after the year-long process,
19 came out with this environmental assessment and what we
20 found, we quickly turned to the Table of Contents,
21 looking for environmental effects, and we found this
22 three-fourths of a page full of numbers saying, "We
23 used Table S-4."

24 It made us wonder what we had been fighting for
25 over the last year, because there is no analysis, no

1 discussion, there is no look, and that is really what
2 we want.

3 I agree with Mr. Maupin that what probably would be
4 required and what was required was an environmental
5 assessment as a precursor to an environmental impact
6 statement.

7 And in that assessment, some narrative discussion,
8 some ... there must be some evidence that the staff has
9 considered the environmental effects of this.

10 They have to evaluate the effected population, the
11 densities, the nature of the local environment,
12 accident probabilities, accident consequences, and
13 perhaps sabotage, that kind of thing.

14 We want some discussion. We want ... my client
15 wants to be reassured that these risks are manageable,
16 and that's I think all that's required.

17 JUDGE WOLFE: Well, the specific answer, though, to
18 my question?

19 MR. DOUGHERTY: Well, your question was could they
20 use Table S-4? No, we think not. It doesn't apply.

21 JUDGE WOLFE: All right. All right, Mr. McGurren.

22 MR. MAUPIN: Excuse me, may I ask just one point
23 that he brought up? I'm not sure that that was a
24 proper characterization of what the board did in
25 response to that briefing.

1 It seems to me the table...I must say I've not
2 reviewed that in the last several days. It seems to
3 me the question of the applicability of Table S-4,
4 though, is left open by the board, by you.

5 JUDGE WOLFE: Well, I, too, have not read the
6 memorandum or order that you refer to. I have not read
7 it recently.

8 I do know that the board was concerned that...I
9 recollect that Table S-4 had not been in existence back
10 in 19...what...

11 MR. MAUPIN: '71, '72.

12 JUDGE WOLFE: Whatever. And we didn't know what
13 values the staff had used, and we wanted to assure
14 ourselves as to the environmental impact and the values
15 that were used to make that assessment.

16 Well, all right, Mr. McGurren.

17 MR. MCGURREN: Your honor, I think it's appropriate
18 that I first address the point made by Mr. Maupin, if I
19 may reference the board's memorandum and order
20 concerning the issues briefed, dated June 10, 1983,
21 pages six and seven.

22 If I may read, "At this juncture in the proceeding,
23 having insufficient information, we waive the staff's
24 issuance of the environmental impact appraisal in
25 August, 1983, which we trust will include a

1 consideration of Table S-4 as well as consideration of
2 other environmental impacts."

3 So I think in response to Mr. Maupin's question, I
4 think the board did have in mind consideration of Table
5 S-4.

6 If I may move on to address some of the points
7 raised by Mr. Dougherty, with regard to the factual
8 issue, that referenced by Mr. Dougherty concerning the
9 33,000 burn up rate, Mr. Maupin is correct that the NRC
10 staff in its environmental assessment stated that all
11 sections of 51.52 in essence were met, and that Table
12 S-4 was the appropriate table to use for the situation.

13 We also agree with the licensing board in Cataba
14 that Table S-4 is appropriate for use here, and I cite
15 particular to page 17 NRC 292, where the board,
16 rejecting an intervenor's contention, stated, "This
17 board rejected Palmetto 14 because we saw no reason why
18 Table S-4 should not apply to the transport of spent
19 fuel to Cataba just as well as to a hypothetical fuel
20 reprocessing plant."

21 So we believe, your honor, that application of S-4
22 is appropriate here, and we also agree with Mr.
23 Maupin's statement that the purpose, the Commission
24 purpose of S-4 was to identify effects, the values for
25 the effects of transportation of spent fuel.

1 And if I can find the appropriate section of the
2 statement of considerations. Bear with me a minute.

3 In the very first paragraph at the end, I believe,
4 this is the same portion that was read earlier by Mr.
5 Dougherty.

6 I think it's clear that what the Commission had in
7 mind was the accounting for the environmental effects
8 of the transportation of fuel and waste by using
9 specified numerical values contained in the table.

10 We don't believe that the Commission had in mind
11 that these guys could only be used in a "environmental
12 impact statement," the final environmental impact
13 statement.

14 We think what the Commission had in mind was, and
15 their concern was identification of values that could
16 be used in any environmental assessment that would be
17 trying to account for impacts of transportation of
18 spent fuel.

19 And we also believe that the Commission had in mind
20 for persons who were concerned that these values were
21 not appropriate, the section of 10 CFR 2.718, which
22 allows a party to petition to show that particular rule
23 is not applicable.

24 And I believe that that option is open to an
25 intervenor to indicate where in these values it's not

1 appropriate for a particular case.

2 And that section was referenced by the Commission
3 in its statement of considerations, stated in 40
4 Federal Register 1005, published January 6, 1975.

5 Another matter, your honor, that I would like to
6 address is Mr. Dougherty's statement with regard to 10
7 CFR Section 2.714, on the point of the specificity for
8 basis stated by the intervenor in support of a
9 contention.

10 I think it's clear, your honor, that 2.714 B
11 requires, and I'll read a portion of this section, "the
12 contentions which petitioner seeks to have litigated in
13 the matter and the basis for each contention be set
14 forth with reasonable specificity."

15 It's not, your honor, just that the contention be
16 set forth with reasonable specificity, but also that
17 the basis be set forth with reasonable specificity.

18 If I have just a second to make sure I've addressed
19 the points I believed are raised.

20 The only other matter which I would like to address
21 is that the argument made by Mr. Dougherty concerning
22 cost benefit balance, I think what the Commission had
23 in mind was not the cost benefit balance as a whole but
24 really identification, as I stated earlier, of the
25 values for the effects and impacts of transportation

1 regardless of how they would be used, whether they'd be
2 used in a cost benefit balance or as in this case just
3 to determine where there's a major federal action, as
4 the staff did in its environmental assessment.

5 JUDGE WOLFE: Anything more on contention 1?

6 MR. DOUGHERTY: I'd like to have one minute, Judge.

7 JUDGE WOLFE: Yes.

8 MR. DOUGHERTY: Table S-4 is a cost benefit tool.

9 Its purpose is not, as the other counsel have
10 contended, to substitute for an environmental analysis.

11 It's a supplement to the environmental discussion
12 in the impact statement. This is made clear by the
13 record by the proposed rule as well as the final rule,
14 and some light I think is shed on it by the Supreme
15 Court in the famous Vermont Yankee decision and if
16 memory serves well, that's 435 US 519, in which they
17 described Table S-3.

18 They just suggest that this is to be used for the
19 cost benefit analysis section, it's a supplement to a
20 full environmental analysis that's required in every
21 case.

22 Secondly and finally, I think that the bankruptcy of
23 the argument that Table S-4 does apply in this case is
24 suggested by the language used in these arguments.

25 If you refer to the quoted section of the Cataba

1 opinion that the board said, "Well, we see no reason
2 not to apply Table S-4," but they never pointed to a
3 rule that said it applies here.

4 And the response to our contentions filed by VEPCO
5 says nothing in CCLC's contention so much as hints as
6 why Table S-4 should be deemed inapplicable.

7 They don't have an informative case here, and I
8 think the arguments have demonstrated that Table S-4 is
9 irrelevant.

10 JUDGE WOLFE: One final question to you, Mr.
11 Dougherty. In your submissions to the board and in
12 your argument before the board, which at the initial
13 special prehearing conference, and indeed after the
14 board issued its memorandum of June 10, 1983, did you
15 raise this argument before the board?

16 Now as you remember, we, in the memorandum of June
17 10, 1983, understanding that the staff was going to
18 proceed with an environmental appraisal rather than an
19 environmental impact statement, stated in
20 substance...and I'm reading from the top of page six of
21 this memorandum of June 10, 1983, "this juncture in the
22 proceeding, having insufficient information, we await
23 the staff's issuance of the environmental impact
24 appraisal in August of 1983, which we trust will
25 include a consideration of Table S-4 as well as a

1 consideration of other environmental impacts if any."

2 So my question is, did you bring this up during the
3 initial oral argument? And did you bring this to our
4 attention after we had issued this memorandum wherein
5 we said we trust that in the issuance of its
6 environmental impact appraisal, the staff will take
7 into consideration Table S-4?

8 MR. DOUGHERTY: Judge, the question that we briefed
9 and argued was whether or not the board has
10 jurisdiction to consider the environmental effects of
11 the transshipment.

12 The specific question was not to what extent if any
13 does Table S-4 relieve the staff of its NEPA
14 obligation.

15 The question is do environmental effects fall
16 within the board's jurisdiction.

17 The board decided yes. It did not resolve the
18 question of Table S-4 and its effect on the staff's
19 environmental obligation.

20 JUDGE WOLFE: But we did say we trust...

21 MR. DOUGHERTY: I understand.

22 JUDGE WOLFE: ...that the EIA would include a
23 consideration of Table S-4.

24 MR. DOUGHERTY: Well, I understand that, as well as
25 other environmental impacts.

1 JUDGE WOLFE: If you're correct and the board was
2 wrong, the staff was wrong, and it would seem to me
3 that this should have been brought to our attention
4 sometime before now, because there's been a lot of
5 spinning of wheels...not spinning of wheels, but
6 passage of time.

7 MR. DOUGHERTY: I can't argue with that, Judge.
8 This may not be much of a defense, but I can't recall
9 any stage at which further pleadings or arguments were
10 contemplated by the board.

11 I think at some point the submission by me of a
12 legal argument concerning the staff's NEPA duties would
13 have been improper.

14 I also have to say that we expected to see some
15 discussion of the environmental effects of this
16 proposal.

17 We thought we'd won a victory we set for the
18 appeal, and we expected to see some treatment of it.

19 Whether or not a reference to Table S-4 would be
20 included in the environmental analysis, we didn't know,
21 and frankly didn't care, but we expected to see some
22 environmental analysis.

23 And it wasn't until we got that document that we
24 realized that there was nothing there.

25 JUDGE WOLFE: All right.

1 MR. MAUPIN: Judge, may I add a couple of points?

2 JUDGE WOLFE: Yes.

3 MR. MAUPIN: Three, in fact. First of all, it is
4 true that Table S-4 is a summary. Table S-4 is based
5 on a lengthy environmental analysis underlying the
6 analysis set out in WASH 1238, which is dated December
7 1972, and supplement one to that document, which is
8 dated April 1975.

9 The second point I want to make, and this is what I
10 was groping for at the end of my first time around, but
11 I couldn't quite pull together, it is this.

12 Mr. Dougherty's arguments that he's made this
13 morning, I suggest, have nothing to do with the
14 contention that he's made.

15 The contention that he's made is that an
16 environmental impact statement is required. The
17 argument that he's making this morning is that Table S-
18 4 should not have applied.

19 And the point I want to drive at is that even if
20 you grant him that, that Table S-4 does not apply,
21 and you should not grant him that, it does not follow
22 that an impact statement is required.

23 It would merely follow that the staff has to go
24 back and take its one-page description of environmental
25 effects, which utilizes Table S-4, and look at them

1 afresh.

2 Take Surrey, Louisa, see how many people are there
3 and what kind of casks are going to be used, but it
4 seems to me his arguments have little to do with the
5 contention number one that is set out here.

6 Now perhaps contention number five does, but we'll
7 get to that later.

8 The third point I want to make is by way of
9 summary, simply that if you by your decision embark us
10 on a process in which we do look precisely at the
11 Surrey to Louisa shipment, I suggest, with all due
12 respect, you'll be launching us on precisely the kind
13 of course that the Commission wanted to avoid when it
14 adopted Table S-4, and precisely the course that the
15 Cataba board refused to embark on.

16 JUDGE WOLFE: All right. We'll proceed now with
17 argument on contention two in the case of OLA-1. We'll
18 have a five-minute recess.

19 (Whereupon a short recess took place.)

20 JUDGE WOLFE: All right, Mr. Dougherty, contention
21 two.

22 MR. DOUGHERTY: Contention two asserts that VEPCO
23 has not shown that the shipping cask to be used to
24 transport Surrey spent fuel to North Anna meet NRC
25 standards.

1 Essentially what we said in our basis was that
2 there was simply no evidence that either VEPCO or the
3 cask manufacturer had obtained NRC approval of the
4 casks.

5 In its response, I should say in an attachment to
6 the response or contentions, VEPCO has provided us with
7 the actual certificates which apparently were issued
8 either late '83 or sometime in 1984 and as far as we're
9 concerned, that meets our contention, and we're
10 prepared to fold our tent on this one.

11 JUDGE WOLFE: All right. You withdraw contention
12 two in case OLA-1, is that agreed?

13 MR. DOUGHERTY: Yes, sir.

14 JUDGE WOLFE: All right. It's so ordered that
15 contention two in OLA-1 is allowed to be withdrawn.

16 All right. We'll proceed, then, with contention
17 three in OLA-1.

18 MR. DOUGHERTY: In contention three, neither VEPCO
19 or the NRC staff has adequately considered the
20 alternative of constructing a dry cask storage facility
21 at the Surrey station.

22 This is the contention that got us off on that
23 massive tangent of a year and a half ago.

24 The key legal issue was whether or not the NRC is
25 required by NEPA to consider alternatives to actions

1 which may not produce significant environmental
2 impacts.

3 If they don't, if they will not create significant
4 effects, they do not trigger the EIS requirement, and
5 then there is no requirement to consider alternatives,
6 or so the argument goes.

7 And we went back and forth. I'm certainly not
8 going to rehash all of that. In its memorandum of June
9 10, 1983, the board decided not to resolve that issue
10 finally and instead to await the issuance by the staff
11 of its environmental assessment.

12 And at that point, to revisit the issue, I suppose,
13 I'm not sure what the board's plans are or were, but as
14 I expected, the conclusions made in the environmental
15 review so far are that in the staff's opinion no EIS is
16 required and that if we follow their argument, VEPCO's
17 argument, then staff is not subject to an obligation to
18 look at dry cask as an alternative.

19 As a practical matter, aside from the legalisms
20 here and the question of NEPA, we all know that a dry
21 cask is an important alternative.

22 They are, as far as I know, they are pouring
23 cement down there even as we speak. Well, some wheels
24 are turning someplace.

25 It's certainly something that we all like to see

1 and as a practical matter, something we should be
2 considering as an alternative to this.

3 The question, of course, is the narrow legal one of
4 NEPA's reach, depending on the environmental
5 significance of this.

6 Well, let me just repeat briefly. We think we
7 assert with as much vigor as we can, as we have from
8 the outset, that NEPA's requirement to consider
9 alternatives apply to this action.

10 So I'm not sure where to go. I think we need a
11 decision by the board that the problem of all this is
12 that we have challenged the adequacy of that
13 conclusion.

14 We have claimed that an EIS is required, and we
15 have challenged the adequacy of their environmental
16 assessment.

17 And until we have a judgment, at least if the
18 board follows this reasoning that's been suggested by
19 the staff and VEPCO that we have to await the
20 determination of whether or not this whole action
21 requires an EIS before we decide what kind of
22 alternatives analysis is required, then we really have
23 to litigate contention one and possibly contention five
24 to a conclusion.

25 And then we'll know whether or not there is an

1 obligation to look at alternatives.

2 We're going to be on hold here until we resolve the
3 other contentions and I suggest, as I have from the
4 beginning, that we not defer the resolution of this
5 issue, that we just address it and resolve it.

6 And our views on it are well established in the
7 record.

8 A footnote to this is in its recent response to
9 August 14th response to our contention, the staff
10 contended that the environmental assessment actually
11 does an adequate job of looking at the dry cask
12 alternative.

13 My rejoinder is that that word does not appear in
14 the statement; there is no consideration of dry cask
15 storage.

16 There is no consideration there at all. So I guess
17 I don't have much of a response.

18 I guess we're in sort of a limbo here. Maybe some
19 other counsel has a proposal.

20 JUDGE WOLFE: The staff did refer to and rely on
21 the final generic environmental impact statement on the
22 handling and storage of spent lightwater power reactor
23 fuel, also known as NUREG 0575, isn't that correct?

24 MR. DOUGHERTY: That's correct, Judge. But if NEPA
25 requires some look at alternatives, that's not it.

1 That's not enough.

2 And I should say that in the specific context that
3 we face, we've got an applicant that's going forward
4 with a dry cask storage program as a reference to some
5 aged document.

6 It's not what we need here. Let's evaluate the
7 possible wisdom of shipping only part of these 500
8 assemblies.

9 Let's investigate putting the proceeding on hold
10 for six months. Let's look at what we can do to get a
11 green light for the dry cask storage that's now
12 somewhere in progress.

13 We just want to see some discussion of that. We
14 really see that as the answer to this whole program.

15 And we're afraid, frankly, that if we defer this
16 contention forever, that we'll go down and litigate the
17 other contentions, I guess, and at some point dry cask
18 will arrive, and this entire proceeding will be mute.

19 And we will all have litigated our hearts out for
20 no reason. So we say let's get it up front now, let's
21 examine it, let's look at the cost and benefits of dry
22 cask.

23 JUDGE WOLFE: Mr. Maupin?

24 MR. MAUPIN: Well, first, it seems to me that...it
25 seems quite clear to me that unless contention one is

1 admitted, or contention five is admitted, to put it the
2 other way, if those two contentions are rejected, then
3 contention three must necessarily be rejected.

4 Jim is right. We briefed this point thoroughly in
5 the briefs we filed in response to your two questions.

6 Just to summarize, I think it is as clear as can be
7 from the appeal board's decisions that unless the
8 proposals involve a major federal action significantly
9 affecting the human environment or unless there is an
10 unresolved question involving the use of resources,
11 then no description or analysis of alternatives is
12 required.

13 The first point, whether the first test is met,
14 depends obviously at the threshold on whether you admit
15 contention one and perhaps contention five.

16 The very least we can say, as I began by saying, if
17 you turn them down, the first test for requiring a
18 discussion of analysis is not satisfied.

19 On the question of the unresolved...as to whether
20 there is a question for the use of resources and
21 unresolved conflict over the use of resources, there is
22 not a hint of a suggestion in the contentions or in the
23 argument we heard this morning that there is any such
24 question.

25 And so it seems to me clear that the second test is

1 not met. And it is that analysis that I conclude that
2 unless you admit conclusions one or five, contention
3 three must be rejected as well.

4 Now if you were to contrary to our arguments admit
5 those contentions, then it seems to me, for one of
6 them, at least one of them, then it seems to me that
7 contention three is at least an appropriate contention.

8 The troublesome point, of course, is that having
9 admitted contention three, before you can resolve it,
10 you have to resolve contention one and contention five.

11 We are getting to the point, from my clients' point
12 of view, where we want to get the show on the road,
13 that is, the legal show on the road, and I would say
14 the way to proceed at this point is that if you admit
15 one or five, you would admit three.

16 And the parties might very well decide at that
17 point, certainly we might decide that we'd like to just
18 go ahead and prepare testimony on the dry cask
19 alternative on a contention basis.

20 In other words, I would not put off contention
21 three dealing with it at all until after the question
22 in contention one has been answered.

23 Does that make sense? Not that it's a wise
24 suggestion, but do you understand what I'm suggesting?

25 JUDGE WOLFE: Hm...

1 MR. MAUPIN: I guess I would only add, this is a
2 real curiosity in this case, in every case I know of
3 dealing with alternatives, the applicant felt very
4 strongly that he should be permitted to do what he wanted
5 to do in lieu of doing anything else.

6 And the intervenors are saying, "No, you should do
7 A, B, or C, or all of them, rather than doing what you
8 want to do."

9 We have here a situation, and you've already given
10 me an opportunity to explain why, and we are not
11 talking about dry cask as an alternative in the
12 classical sense that I just described.

13 We're talking about it as something we would prefer
14 to do. We would be delighted if we could have
15 permission to put those casks at Surrey and to begin
16 loading them sufficiently early that we could avoid
17 having to ship any assemblies from Surrey to North
18 Anna.

19 And we would be delighted if we were able to ship
20 assemblies to Idaho, such that we could avoid the loss
21 of full core reserve in the spring of 1986.

22 It is only because we are uncertain as to the
23 availability of those options that we want to go ahead.
24 The case is perhaps all the more curious because the
25 concerned citizens say at the end of the statement of

1 the basis for contention three, if necessary, a limited
2 number of spent fuel assemblies could be shipped from
3 Surrey to North Anna so that the dry cask storage
4 facility could be completed before a full transshipment
5 program becomes necessary.

6 Now in fairness to Mr. Dougherty, I'm sure that
7 there is a substantive and informed difference between
8 our application for permission to ship 500 and his
9 statement that a limited number could be shipped.

10 I simply point out what I know has already occurred
11 to you. This is a fairly alternative argument that
12 you're approaching in contention three.

13 JUDGE WOLFE: Mr. McGurren?

14 MR. MCGURREN: Your honor, I really believe that
15 there is not much more that I can say than is already
16 said in our response to contention three.

17 The short of it is that we think that we have
18 satisfied our regulation with regard to discussion of
19 alternatives.

20 We don't believe that intervenor has indicated in
21 accordance with 2.714 necessary specificity to have a
22 good contention.

23 That's the short of our position. And rather than
24 go through what is stated here, I say that that's all
25 we have to say on that, your honor.

1 JUDGE WOLFE: Anything more on this contention
2 three?

3 MR. DOUGHERTY: Yes, Judge, I'd like to make two
4 quick remarks. Mr. Maupin's discussion or proposal
5 that we grant three conditioned on the board's
6 acceptance of contentions one and five is really a
7 rehash of VEPCO's and the staff's legal argument from
8 the outset.

9 That is that a look at alternatives is only
10 required if you have to do an EIS. I just want to be
11 clear that that's all based on their view of NEPA, and
12 we disagree with that assumption of what the law
13 requires.

14 We think that we should go forward with three in
15 any case and that this position of one and five is
16 irrelevant to that.

17 But again, that's an issue that the board has to
18 decide.

19 Secondly, VEPCO has criticized the basis for the
20 contention because it doesn't allege that there are
21 unresolved conflicts concerning alternative uses of
22 available resources.

23 There are some authorities that say that that's a
24 threshold, and unless you have such unresolved
25 conflicts that there's no requirement to consider

1 alternatives under Section 1022E of NEPA.

2 Other authorities, of course, differ and say there
3 is no threshold and no...well, without getting into
4 that, it may be that we haven't specifically used those
5 buzz words, but what we said in this contention and
6 throughout is that this is a major federal action.

7 There are very substantial environmental effects
8 here and whatever threshold must be crossed to trigger
9 this 1022E requirements to look at alternatives, we
10 allege that it's crossed by a very large margin.

11 We are claiming that there are very substantial
12 environmental effects associated with these proposals,
13 and that the staff must look at alternatives regardless
14 of its EIS obligation.

15 So let's not get into a very delicate argument over
16 what threshold has to be alleged and what not. We
17 think there's a very major action, and therefore 1022E
18 applies.

19 JUDGE WOLFE: Proceed, then, with contention four
20 in the case of OLA-1. Mr. Dougherty?

21 MR. DOUGHERTY: Judge, I launch into a discussion
22 of this contention with some trepidation because
23 circumstances seem to be changing and then there are a
24 lot of issues that yet to be resolved here.

25 As you know, we submitted a revised basis for this

1 contention several weeks ago in which we went through
2 the routing approval application that had been
3 submitted by VEPCO, and identified the areas in which
4 we contend that it does satisfy the requirements of
5 part 73.

6 Now apparently VEPCO has another plan or segments
7 of a plan that perhaps haven't coalesced into a plan
8 yet that it is working on to assure that these
9 shipments do comply with part 73 and it's reluctant or
10 quite possibly forbidden to release them to us because
11 of various regulatory conditions and propose that we
12 consider the possibility of some sort of order from the
13 board that ... Mike should probably address this
14 because he understands the ins and outs of this better.

15 But the short of it is that we are interested in
16 security. We agree with the Commission that security
17 is important in shipping this stuff.

18 It's going to be moving right through the
19 neighborhoods of my clients and we are concerned about
20 the rest of this stuff.

21 We're willing to accept the offer, in essence. We
22 still have to work out the arrangements. Exactly what
23 sort of requirements might be imposed by this board if
24 it were to require a protective order for what it is
25 exactly that VEPCO wants to feel secure about this

1 information. But at this point we are inclined to
2 agree to the confidentiality requirements and the rest.

3 And beyond that, I suggest Mike take the ball on
4 this. Is that right?

5 JUDGE WOLFE: All right. Mr. Maupin?

6 MR. MAUPIN: Well, it seems to me number one, I
7 would hope that the board would go ahead and decide on
8 all the other contentions that we've discussed this
9 morning and not postpone proceeding until we have
10 resolved finally what to do about contention four.

11 I think with respect to contention four, it seems
12 to me the way to proceed is this. I am proceeding on
13 the basis that something like the Diablo Canyon
14 solution to the disclosure problem would be called for.

15 I am proceeding on the assumption that in the final
16 analysis, if you want to release the protected portions
17 of the physical protection system of Mr. Dougherty, we
18 have to have the board order us to do it.

19 We ought to have the board order us to do it. I
20 suggest that we proceed by having Mr. Dougherty and I
21 see what sort of progress we can make on coming up with
22 a protective order and perhaps including affidavits of
23 non-disclosure in the hopes that we could present to
24 the board a protective order that the board would be
25 agreeable to enter.

1 I think Mr. Dougherty and I have to face up to the
2 question of what kind of expert...who, in fact, it will
3 provide, propose to use, and I think it is possible
4 that we might have to come back to the board and
5 quarrel over the acceptability of their experts.

6 It is also possible that we would not. I think we
7 have to give it a try.

8 Now I believe that the way, that the understanding
9 on which Jim and I would be proceeding is that if we
10 get the expert here and the expert would look at the
11 physical protection system subject to the conditions of
12 whatever order we would have persuaded you to enter,
13 he will do so in good faith.

14 And I believe he will because you can evidence that
15 having seen the certificates of compliance for the
16 cask, and that included that he withdraw that
17 contention.

18 I believe his proposal is to review the company's
19 physical protection system in good faith and conclude
20 at that point whether he wants to contend that there
21 are firmly inadequacies in it or not.

22 So it seems to me we might well come back to use
23 step one of the protective order and step two, then
24 with a suggestion that the plan looks all right, we can
25 forget about contention four or the plan has

1 shortcomings A, B, and C, and we should argue about
2 those.

3 We should have a hearing on those, perhaps. I saw
4 this coming when I filed my response to revised
5 contention four and the possibility that the fact that
6 we are dealing with safeguarded material may threaten
7 to hold up the rest of this proceeding. I desperately
8 hope to not do that.

9 JUDGE WOLFE: Well, it appears to me that there has
10 been some dancing around on this in this area. Mr.
11 Dougherty was concentrating on the spent fuel
12 transportation moving plan and what it contained or
13 didn't contain, when all along what was a concern was
14 the physical protection plan.

15 And counsel seemed to be passing one another in the
16 night on that one.

17 MR. MAUPIN: Let me speak to that. I plead guilty
18 to that. Not out of any bad faith, but I think about
19 the best I can say is that the long passage of time of
20 these two staff documents we're aborning, I think it at
21 least lulled me into a posture that we could wait until
22 those documents came out and then begin to wrestle with
23 contentions and where we go from here.

24 I don't think I for one, until I saw Jim's
25 contention four and then I sent him the routing

1 document, the so-called spent fuel transportation plan,
2 I don't think it was until that point that I really
3 started to see the deeper implications of the problem.

4 The fact, as I pointed out in my response, that the
5 spent fuel transportation plan is but one relatively
6 small part of the physical protection system.

7 I had thought there was a reasonably good chance of
8 when Jim saw the spent fuel transportation plan that he
9 could conclude that while there is a plan in effect, we
10 wanted some evidence of that.

11 He didn't conclude that, and I think we all have a
12 better handle now on just what we're dealing with.

13 JUDGE WOLFE: Well, in any event...

14 MR. MAUPIN: There has not been any intentional
15 dancing around to the point, but there has quite
16 clearly been some inadvertant dancing around the point.

17 JUDGE WOLFE: All right. Do you have anything to
18 add, Mr. McGurren, on this?

19 MR. MCGURREN: Very little, your honor. As you
20 know, we did respond to intervenor's contention four
21 and we didn't believe there was sufficient basis to
22 support the contention.

23 We do believe, however, that the approach suggested
24 by Mr. Maupin would be a good approach, if I understand
25 it correctly, that would be assuming that a protective

1 order can be agreed to by all the parties and the
2 board, that Mr. Dougherty look at the plan.

3 That would certainly be an approach that the staff
4 would find to approve. The only concern I might have
5 is that it doesn't sound like the staff would play a
6 part in developing the order.

7 We would like to be a part of any negotiations you
8 have.

9 MR. MAUPIN: Maybe Mr. McGurren would like to do
10 all the first drafts.

11 (Laughter.)

12 JUDGE WOLFE: All right. I think suggestion of
13 counsel is well taken. The board after hearing the
14 balance of arguments, will proceed to rule on whether
15 contentions that are now at issue, with the exception of
16 contention four, in case OLA-1, counsel will confer,
17 will draft for the board's review and acceptance a
18 proper protective order, and whatever affidavits of
19 non-disclosure are necessary, or resolve between
20 themselves whether the person or persons or consultants
21 that Mr. Dougherty wishes to have review this safeguard
22 information are qualified and competent people.

23 You will then proceed to submit the protective
24 order and the underlying non-disclosure affidavits to
25 the board.

1 And I see no problem with this procedure
2 whatsoever. If there is, bring it to the board's
3 attention and we'll proceed and rule on what is placed
4 before us.

5 Any other problems with this contention now? And I
6 have no doubt Mr. Dougherty and other counsel that
7 support that, if after reviewing this safeguard
8 information, you don't have any problems or serious
9 questions, you will so advise the board that you
10 withdraw contention four.

11 Is that correct?

12 MR. DOUGHERTY: Yes, it is, Judge.

13 JUDGE WOLFE: All right. We now proceed to...when
14 do you think you can get together and confer and bring
15 this back to the board?

16 Next ten days or so? Two weeks?

17 MR. MAUPIN: I'd prefer to say two weeks, although
18 I'm the one anxious to proceed swiftly because the
19 contingency I have in mind is the identify of the
20 expert.

21 I simply...I can postulate that we can agree on
22 forming the order pretty quickly, but I can see that
23 question, both his need to contact one and the need to
24 evaluate his or her qualifications, that's a couple of
25 weeks.

1 JUDGE WOLFE: Then I would assume that the
2 protective order would speak to the necessity for
3 in-camera submissions, in-camera hearing on this very
4 sensitive safeguard information.

5 Is that correct, Mr. Maupin?

6 MR. MAUPIN: I believe it would, yes, sir.

7 JUDGE WOLFE: Yes. All right. We'll proceed then
8 with contention five.

9 MR. DOUGHERTY: Contention five is the new
10 contention. It addresses the environmental assessment
11 that was released by the staff probably two months ago.

12 The case law in the federal courts, at least, and
13 quite possibly in NRC proceedings, sets out certain
14 requirements that apply to environmental assessments.

15 Just as you have rules governing environmental
16 impact statements, they must adequately address
17 alternatives and what not, other rules apply to
18 environmental assessments.

19 They're not as rigorous, of course, but they are
20 rules, and what we've done is compare the staff's
21 environmental assessment against standards that have
22 been developed for the adequacy of environmental
23 assessment.

24 And we've alleged three ways in which we think the
25 environmental assessment is inadequate.

1 Essentially it doesn't address the environmental
2 impacts of shipping the spent fuel, and the way we've
3 described that is by saying that the environmental
4 assessment does not evaluate the risk of accident, in
5 other words, the probability, and then it doesn't
6 evaluate the consequences of an accident if one were to
7 occur.

8 A third flaw we've identified is there is no
9 discussion of alternatives. Now in a different
10 contention, the staff implied that the discussion of
11 alternatives was adequate.

12 But since the existence of a parallel VEPCO plan to
13 store fuel in a dry cask facility is never mentioned,
14 then we submit that clearly it isn't adequate, and the
15 reference to that other document doesn't suffice.

16 Now in our statement of basis, we have gone through
17 the assessment and described these deficiencies, but
18 essentially you're talking about something that doesn't
19 exist.

20 If there is no discussion of alternatives, it's
21 hard to describe exactly what's wrong with it, simply
22 not there and it should be.

23 Now, VEPCO and the staff have objected to this
24 contention in a total of something like four sentences
25 between them, not counting VEPCO's legal difficulty

1 with the requirement to consider alternatives within an
2 environmental assessment that we have discussed before
3 in its claim that the contention is inspecific and
4 lacks basis.

5 We think that as much as you can say about that
6 assessment is in our contention and in the basis, there
7 is no discussion of accident probabilities, no
8 discussion of consequences.

9 So there is nothing in there dealing with
10 environmental effects, really, except for that Table S-
11 4 exercise.

12 And that's our big problem with it, is that we
13 expected some treatment of the real world environmental
14 effects, the real threats that are posed to my client
15 and their families and neighbors.

16 And it's not in there, and that's our big problem,
17 and again, we think that an alternatives examination is
18 required and that it should be in the assessment, and
19 it's not, and therefore the assessment is defective for
20 that reason.

21 JUDGE WOLFE: Mr. Maupin?

22 MR. MAUPIN: This is the contention that all of Mr.
23 Dougherty's arguments with respect to contention one in
24 fact tend to support.

25 By that I don't mean they're valid. I mean

1 logically, the arguments that Table S-4 is improperly
2 used goes to the question of whether the environmental
3 assessment is adequate.

4 They really don't go to the question of whether you
5 have to do an environmental impact statement. And the
6 answers are therefore the same answers that you heard
7 me citing before.

8 The answers to A and B are that the risk of
9 accidents and the consequences of accidents are
10 considered adequately in the environmental assessment
11 because of the use of Table S-4 and the discussion of
12 dry cask or indeed other alternatives is not required
13 for the reasons we have given you in response to
14 contention three.

15 That is to say this is not a major federal action
16 sufficiently affecting the human environment. And
17 number two, there are no unresolved conflicts as to
18 resources that Mr. Dougherty, despite the passage of an
19 enormous amount of time, and had adequate opportunity
20 to review these documents, has pointed out.

21 JUDGE WOLFE: Mr. McGurren?

22 MR. MCGURREN: Your honor, as we stated in our
23 response to contention five, as we state in this same
24 document in response to contention one and three, we
25 believe that there is no basis for contention five.

1 The use of S-4 was adequate and the discussion of
2 alternatives was adequate.

3 JUDGE WOLFE: Any more to be said on this?

4 MR. DOUGHERTY: Since I have the opportunity, I
5 guess I don't disagree that the S-4 argument that we
6 were making earlier have some bearing on this
7 contention.

8 I make that contention with confidence, though,
9 because I think we're correct on those issues.

10 In the abstract, I don't agree that an
11 environmental assessment is the same thing as a
12 negative determination as the single decision not to do
13 an EIS.

14 An assessment is a living document that must
15 contain certain things, and that's really what we're
16 driving at here.

17 It doesn't have that summary analysis of
18 environmental impacts.

19 I'm not sure that this distinction is that
20 important right now, and so I won't go into it.

21 In any event, the assessment must look at
22 alternatives and that's a question that's apart from
23 the S-4 issues.

24 Whatever the resolution to S-4 as it applies to
25 this case, we submit that that assessment must look at

1 dry cask, and nothing that's been said today undercuts
2 that thesis except the continuing legal dispute as to
3 Section 1022E of NEPA. That's it.

4 JUDGE WOLFE: All right. We'll proceed now, then,
5 to case number OLA-2. And I don't know how counsel
6 want to proceed with this, whether they want to proceed
7 with contentions one and then two and then three, or to
8 consider them together.

9 But we'll proceed unless there is some agreement
10 between counsel, we'll deal with oral arguments on each
11 contention, then.

12 MR. DOUGHERTY: I think that's probably the best
13 way to go, Judge.

14 JUDGE WOLFE: All right.

15 MR. DOUGHERTY: This should go pretty quickly. A
16 lot of this has been covered before.

17 Let's not going into the EIS issue again. We've
18 made our stand on that in the context of OLA-1. Let me
19 say that in VEPCO's response to this contention, they
20 raised the same objections that they raised to
21 contention one in OLA-1.

22 And all those issues, I think, are largely
23 deserved. However, in the basis of this contention, we
24 make the added claim that the proposed modification of
25 the spent fuel pool is linked with the proposed

1 transhipment affair.

2 Therefore, when evaluating the need of the staff's
3 obligation to prepare an EIS, you must look at the two
4 together.

5 There is really one proposal. VEPCO has challenged
6 that argument, citing the new power case, cited on page
7 13, and arguing in essence that it's fair to segment
8 these two, it's fair to look at the environmental
9 consequences and make that EIS judgment separately,
10 that there is no link, use the so-called utility test.

11 Well, my response to that is twofold. First of
12 all, even if one were to apply the independent utility
13 test, it doesn't help them here.

14 Secondly, the independent utility test that was
15 enunciated in the Duke Power...I'm not sure if that's
16 McGuire or Coney or what, I guess it's both, in any
17 case, that test isn't properly raised here.

18 Now, what happens a lot in NEPA cases or NRC
19 proceedings in which NEPA issued a raise is that an
20 intervenor typically looks at one action that's before
21 a board or before a court and say, "Well, yes, that may
22 look small, but you're really thinking about doing
23 something else, too." And you have to evaluate both.

24 There's something going on in the next county or a
25 different river or you're going to be doing something

1 five or ten years from now, and this is really one big
2 project, recognize it as such and do an EIS.

3 And the response that has been developed by the
4 courts and NRC licensing boards is that well, if what
5 we have here is discrete, and it's not clearly just a
6 fragment of some bigger project, if it has independent
7 utility, then we'll look just at this and disregard
8 this argument about this other proposal.

9 It's removed in time or distance, or both. That's
10 exactly what happened to McGuire. The intervenor
11 claimed, "You're going to move 300 assemblies now, but
12 you've got a secret plan for cascading shipments in
13 the year to come. And you should get that out."

14 I think it was only with great difficulty that the
15 intervenor ever really identified the existence of this
16 secret plan.

17 And the response, here we have a proposal that
18 makes sense, it stands by itself, here's what's on the
19 table and here's what we'll look at.

20 It rejected the claim that this is all one big
21 project. This case is different.

22 In this case we have two proposals, the
23 applications were submitted virtually simultaneously,
24 they were noticed simultaneously and it's because
25 logically they make sense or part and parcel of the

1 same idea.

2 The idea is to move spent fuel from Surrey to North
3 Anna, increase the capacity of the pool and that solves
4 the problem.

5 I really don't think there's an expectable argument
6 that the two projects are distinct.

7 That argument, though, is that it makes sense to
8 increase the capacity of North Anna even if you don't
9 move the spent fuel, because it extends their full core
10 reserve date from something like 1998 to 2005 or
11 something, I'm not sure.

12 But it makes sense to modify that spent fuel,
13 regardless of your shipping proposal.

14 I guess I can't disagree with that, although we
15 would probably oppose such a license amendment
16 application in any case.

17 But there is some use to that. But that's one half
18 of the coin. The other half of the coin is what
19 utility is there in shipping 500 spent fuel assemblies
20 to North Anna if you don't increase the capacity of
21 the pool.

22 That shipment has no independent utility of the
23 pool expansion even though the pool as mentioned may
24 have utility independent of the shipping proposal.

25 My understanding, and I'm sure I'll be corrected

1 and I hope I am, is that right now the inventory of
2 spent fuel at North Anna is in the range of 250 to 300
3 assemblies.

4 Their total capacity is 966. That leaves them
5 with...again, I'm speaking roughly...700 vacancies.
6 Now if you then ship 500 Surrey assemblies to the North
7 Anna pool, that gobbles up 500 of the remaining 700
8 vacancies.

9 You're down to 200, which is about one off-load and
10 then full core reserve.

11 So without a proposal to increase the capacity, it
12 doesn't make any sense at all for 500 Surrey assemblies
13 in that pool.

14 And it's clear that VEPCO's concerned about loss of
15 full core reserve in that kind of proposal would cramp,
16 so that the two proposals are really one. And I think
17 that's apparent on the face.

18 MR. MAUPIN: Well, I am going to make the
19 unrespectable argument that in fact there is
20 independent utility.

21 First of all, admittedly in somewhat different
22 circumstances, the appeal board in Cony-McGuire listed
23 four different ways that a spent fuel burden power
24 station might try to deal with that spent fuel in short
25 run.

1 It said in the process of that discussion that
2 reracking has manifest the independent utility. I
3 think it is manifest in this case.

4 To repeat what Jim just said, looking at the OLA-2
5 proposal, if not a Surrey assembly is ever shipped to
6 North Anna we would extend the full core reserve loss
7 date from 1989 until 1998 under the current estimate.

8 We all know that...I'm reasonably confident we all
9 suspect that a waste repository will not become
10 available before the turn of the century.

11 That being so, we are going to need additional
12 space at North Anna and this will provide us with
13 additional space.

14 On the OLA-1 side, I cannot represent to you that
15 the company would ship 500 assemblies to North Anna
16 if the spent fuel rack capacity increase for North Anna
17 were denied.

18 But the company might very well ship, for example,
19 the 60 assemblies it would need to preserve that loss
20 of full core reserve for that spring of '86 outage and
21 get another cycle out of one of the Surrey units while
22 waiting for the coming on of one of the dry cask
23 options.

24 It might well be able to ship enough to get it
25 through several more refueling cycles, something short

1 of 500.

2 It is perhaps less manifest but still clear in
3 these circumstances that each of these proposals have
4 value independent of the other.

5 Now I think the important thing to do in the last
6 analysis is to focus on OLA-2, focus on OLA-2.

7 The independent utility of that is clear. What is
8 also clear is that not a single objection on the
9 merits, technical and environmental, to OLA-2, to the
10 OLA-2 proposal has been made by concerned citizens.

11 And you know, as a second part of that test of the
12 Cony-McGuire case, the first part is the independent
13 utility and the second question they ask is, "Will the
14 board by declining (to put it in the context of this
15 case), by declining to have a hearing on OLA-2, will it
16 prejudice the outcome of its deliberations on OLA-1, if
17 you should find they are valid contentions and a
18 hearing is required on OLA-1?"

19 And I cannot think of any way that by what I
20 propose should come out of this hearing, this
21 prehearing conference, it seems to me there is no
22 rational basis for holding a hearing as required for
23 OLA-2.

24 If you reach that conclusion, the staff presumably
25 would issue a license amendment and we would go ahead

1 and put those racks in.

2 And I cannot, for the life of me, see how that
3 would have any prejudicial effect on the way you would
4 come out in resolving the issues under OLA-1.

5 JUDGE WOLFE: Have you finished?

6 MR. MAUPIN: Yes, sir.

7 JUDGE WOLFE: Mr. McGurren?

8 MR. MCGURREN: On the point raised here by Mr.
9 Dougherty with regard to the staff's consideration of
10 OLA-1 and OLA-2 proceedings together, as we noted in
11 our response to the intervenor's contention, we did
12 just that.

13 We did consider in combination the impacts of both
14 the OLA-1 and OLA-2 applications.

15 So we think that on this point, that issue is mute,
16 although we do agree that if you were going to go
17 further, that there is independent utility to an OLA-2
18 request.

19 That's all we have, your honor, on that point.

20 JUDGE WOLFE: Anything more, Mr. Dougherty?

21 MR. DOUGHERTY: Yes, Judge Wolfe. One point. The
22 essence of our contention here is that an EIS is
23 required.

24 In addition, we make the legal argument that when
25 evaluating the need for an EIS and in preparing the

1 EIS, we must look at both of these together. It's a
2 legal argument. The two are linked.

3 JUDGE WOLFE: How are they linked?

4 MR. DOUGHERTY: As I said, the shipment of 500
5 assemblies from Surrey to North Anna makes no sense
6 without changing the capacity, increasing the capacity
7 of North Anna.

8 The two were seen as a joint solution, as a single
9 solution to VEPCO's storage problems at Surrey.

10 JUDGE WOLFE: Well, I think Mr. Maupin is making
11 the point that the enlargement of the spent fuel
12 capacity at North Anna in and of itself is a necessity
13 over time to take care only of North Anna's spent fuel.

14 Now his argument is, well, regardless of how the
15 board rules with respect to case number OLA-1, since
16 there is really no contention addressed specifically to
17 the request to enlarge the spent fuel pool at North
18 Anna, that application namely in OLA-2, should be
19 without more granted.

20 You would admit that you have no contention
21 directed to the request for the enlargement of the
22 spent fuel pool at North Anna, isn't that correct, Mr.
23 Dougherty?

24 MR. DOUGHERTY: No, it's not, Judge Wolfe. We
25 have two contentions here. We accuse the staff of

1 violations procedural requirements. They have not
2 complied with NEPA.

3 We haven't, as Mr. Maupin said, we have not
4 challenged the proposal on substantive technical
5 grounds.

6 That's right. But we certainly have objections to
7 it. I should say this. I submit perhaps a little too
8 cavalierly that standing by itself, the proposed
9 increase in capacity of the spent fuel pool has no
10 utility at all.

11 They have a capacity of 966 now, an inventory of
12 perhaps 700 assemblies less than that, a lot of time.

13 Now, what are the alternatives over that five- to
14 ten-year period? I'm not familiar with the numbers.
15 Certainly we know that VEPCO is building a dry cask
16 storage facility at Surrey.

17 If that works, it's going to catch fire around the
18 country and it's really going to catch fire at VEPCO.
19 We agree this is probably the optimum way of storing
20 this stuff.

21 We'd love to see one built at North Anna, and we
22 would certainly expect that VEPCO give that serious
23 consideration, even regardless of what happens at
24 Surrey.

25 We assume that that's in the works. But in any

1 case, there are other alternatives, shipping it
2 elsewhere, DOE demonstration projects, who knows what's
3 going to come up that's going to relieve them of that
4 problem.

5 We do not have an inevitable need for modifying
6 this spent fuel pool. But in any case, the prudent
7 business course, it would seem to me, would be to wait
8 until the crunch comes, or at least a couple of years
9 before the crunch comes, and then see what your options
10 are.

11 Maybe North Anna will go down in a couple of years
12 as Surrey did for steam generator replacement, and the
13 generation of spent fuel will be diminished.

14 Maybe these other alternatives will come through.
15 And there's no need now in 1984 or 1982, when this
16 application was originally filed, to once again double
17 your capacity.

18 It was not a coincidence or not an act of foresight
19 that you sought approval for another increase. This
20 was a plan that was developed in conjunction with the
21 shipping plan.

22 And I submit that's the only reason that they would
23 do it, at least at this time.

24 MR. MAUPIN: Judge Wolfe, may I just point out that
25 we have have two years to raise contentions about

1 alternatives for dealing with North Anna's fuel.

2 There aren't any contentions about whether the
3 reracking itself, so that some alternative of dealing
4 with the North Anna fuel, whether there's some
5 technical problem with the North Anna fuel.

6 All of these contentions, all of these specific
7 contentions go to the effects of shipping.

8 JUDGE WOLFE: All right. Proceed with contention
9 two under OLA-2.

10 MR. DOUGHERTY: Well, Judge, in this contention we
11 claim that neither VEPCO nor the staff has adequately
12 considered the alternative of constructing a dry cask
13 storage at Surrey as an alternative to the reracking
14 and shipment combination proposal.

15 I think that this contention and its basis were
16 transferred to the miracle of word processing from the
17 beginning of the document to the back.

18 I think it's the same thing, and I think we've
19 covered it. Perhaps that's not the case. But just to
20 quickly sum up and then wait for the response, the
21 environmental assessment has virtually no discussion, I
22 submit no discussion to dry cask storage and as far as
23 we know, at least on the record, there's been no
24 analysis at all by the staff for the possibility of
25 deferring this project or modifying or somehow trying

1 to keep it open for dry cask.

2 And as in OLA-1, we think that's required. That's
3 our position.

4 JUDGE WOLFE: Mr. Maupin?

5 MR. MAUPIN: Well, our argument is the same. As I
6 understand it, these are the three contentions that
7 have to do with what to do with the Surrey fuel.

8 I don't think they are involved or should be
9 involved in the environmental analysis or the question
10 of whether or not the license at North Anna for
11 increased fuel storage capacity, and my answer would be
12 the same on contention three.

13 I suspect my answer would be the same on contention
14 three.

15 JUDGE WOLFE: Mr. McGurren?

16 MR. MCGURREN: Your honor, our response to OLA-2
17 contention two is the same as our response to OLA-1
18 contention three.

19 JUDGE WOLFE: All right.

20 MR. MCGURREN: Contention three, OLA-1.

21 JUDGE WOLFE: Have we now concluded argument on the
22 contentions?

23 MR. DOUGHERTY: I don't think so, Judge. I think
24 we still have yet to address number three in OLA-2.

25 JUDGE WOLFE: Oh, I thought...

1 MR. DOUGHERTY: Oh, they covered that in their
2 statement. Well, I didn't, and my comment is the same
3 as theirs.

4 JUDGE WOLFE: Yes.

5 MR. DOUGHERTY: A rehash.

6 JUDGE WOLFE: All right. I would like counsel to
7 advise me whether Mr. Dougherty's position and argument
8 with respect to Table S-4 and the inapplicability of
9 that table to any proceeding other than a construction
10 permit proceeding, that is one of your arguments, is it
11 not, Mr. Dougherty?

12 MR. DOUGHERTY: That's correct, Judge, one of
13 several.

14 JUDGE WOLFE: Yes. And could you advise me now
15 whether this has ever been raised? I am unaware of it.
16 And whether it's been ruled upon by the appeal board,
17 by the Commission, or before any federal court?

18 MR. DOUGHERTY: If you're talking to me, Judge, I
19 would prefer to do more complete research before
20 expressing an opinion on that.

21 JUDGE WOLFE: Yes. Mr. Maupin?

22 MR. MAUPIN: You excluded licensing boards from
23 that. Didn't you?

24 JUDGE WOLFE: Well, I didn't intend to.

25 MR. MAUPIN: Well...

1 JUDGE WOLFE: So licensing boards as well.

2 MR. MAUPIN: If the question is precisely has that
3 argument been made...

4 JUDGE WOLFE: Yes.

5 MR. MAUPIN: ...I guess the only case I would know
6 of in which it might have been made would have been
7 the Cataba case.

8 We could certainly find out, I think, if it had
9 been made in a proceeding.

10 JUDGE WOLFE: Mr. McGurren?

11 MR. MAUPIN: I'm limiting myself to cases reported
12 in bound volumes. I can't say that I've been through
13 the slip opinions in the last couple of weeks.

14 MR. MCGURREN: Your honor, I don't know if this
15 addresses your question directly, but in my research
16 that I did in preparation of our response to the
17 intervenor's contentions, I believe that the Cataba
18 cases that I cited, one being 15 NRC 566 and one that
19 the applicant cited, 17 NRC 291, which were licensing
20 board decisions, I believe that that...and I think it's
21 evident, if you take a quick look at those cases, that
22 those were OL cases.

23 So in part response to your question, wherein those
24 boards ruled that S-4 was appropriate, or put another
25 way, that the contention challenging S-4 was

1 inappropriate, it's clear that certainly in an OL
2 stage, the use of Table S-4 is appropriate.

3 And in addition, in both of those proceedings that
4 I mentioned, there was the further aspect of moving
5 fuel not to a reprocessing plant but moving spent fuel
6 to another utility.

7 JUDGE WOLFE: You don't know really whether that
8 was raised before those two licensing boards, do you?

9 MR. MCGURREN: Well, the Palmetto contention 14...

10 JUDGE WOLFE: Sorry?

11 MR. MCGURREN: Palmetto contention 14 was
12 challenging the use of Table S-4 for the movement of
13 spent fuel not to the ... the use of Table S-4 to
14 evaluate the movement of spent fuel from one reactor to
15 another.

16 They were saying that S-4 would be used for that
17 and as I remember, the Cataba board said, "No, you're
18 wrong, we believe that S-4 is appropriate for that
19 use."

20 And that's the case I cited, where that was 17 NRC
21 at 292, where the board said, "This board rejected
22 Palmetto 14 because we saw no reason why S-4 should not
23 apply to the transport of spent fuel to Cataba as well
24 as to a hypothetical fuel reprocessing plant."

25 JUDGE WOLFE: What were you reading from there?

1 It's not from your submission to the board, is it? Or
2 is it?

3 MR. MCGURREN: No. This is licensing board
4 decision 83 8B, Duke Power Company, Cataba, 17 NRC 291
5 at page 292.

6 This reference was made in Mr. Maupin's response to
7 intervenor's contentions. Not this particular
8 reference, but this case was referenced by Mr. Maupin.

9 (Simultaneous conversation)

10 JUDGE WOLFE: All right. The board has been
11 conferring. The board would like to have supplemental
12 written briefing.

13 Our attention has been directed to at least one
14 licensing board case or decision.

15 But we would like further research to be made upon
16 this point, namely, whether there have been any
17 licensing board, appeal board, Commission, federal
18 court rulings on the question of whether Table S-4
19 applies only in construction permit proceedings, or
20 whether that table is applicable in amendments to
21 operating license cases.

22 And further, the board invites further briefing, if
23 any, that the parties think is necessary beyond that
24 which has already been argued today on this question
25 as to why or why not Table S-4 is applicable in an

1 amendment to an operating license proceeding.

2 MR. MAUPIN: Mr. Chairman, may I say part 50 is an
3 amendment, the most recent CFR volume of part 10,
4 published, that volume revised. It says on its face it
5 was revised January 1, 1984.

6 I think I'm going to accept your invitation on that
7 second point, particularly, because I believe looking
8 at the predecessor provision of part 50...

9 JUDGE WOLFE: What section, please?

10 MR. MAUPIN: I'm sorry, part 10, section 50, which
11 deals with the implementation of NEPA by NRC.

12 JUDGE WOLFE: Uh-huh.

13 MR. MAUPIN: I believe that when we look beyond...

14 JUDGE WOLFE: Now you're speaking of part 50, not
15 51?

16 MR. MAUPIN: I'm talking ... I am talking of 10 CFR
17 Part 51. That's right.

18 JUDGE WOLFE: All right.

19 MR. MAUPIN: I'll try to do better in the brief. I
20 believe that the section on construction permits is
21 followed by the section that talks about the operating
22 license stage and says that the applicant files an
23 environmental report that incorporates, discusses the
24 same matters only to the extent that they differ from
25 those discussed or reflect new information in addition

1 to that discussed in the final environmental impact
2 statement and then in Section 51.40, subpart C,
3 entitled "Materials, Licensing, and other Actions,"
4 that I feel may deal with operating license permits,
5 I've just got a hunch that when we follow this process
6 on beyond the construction permit, we're going to find
7 that these regulations do contemplate in the licensing
8 amendment just what was done here.

9 At any rate, I will...just what the staff has done
10 here, I will pursue that.

11 In short, what I'm saying is that I believe that I
12 for one have focused too narrowly on 51.52A itself in
13 its reference to construction and permit, chased the
14 rabbit beyond the construction permit stage and the
15 subsequent stage.

16 The answer may very well be in the regulations.

17 JUDGE WOLFE: Hm. All right.

18 MR. MAUPIN: Explicitly by implication.

19 JUDGE WOLFE: Yes. I would like for counsel to
20 simultaneously file briefs in response to the board's
21 queries here.

22 Two weeks from today? And with five days
23 thereafter given for any counsel to respond to the
24 initial briefs of any other counsel.

25 All right? Mr. McGurren, have you checked out that

1 section citation I asked you about at the early portion
2 of this conference?

3 MR. MCGURREN: Well, it appears, your honor,
4 that as you stated, the Table of Contents of the safety
5 evaluation 3.2.5, it says "Cask Rupture," when you look
6 at the document itself is 3.2.6, so there has been some
7 sort of a numbering error.

8 I haven't figured out exactly how the numbering
9 error occurred. It looks like my quick analysis is
10 that the Table of Contents outline is incorrect.

11 JUDGE WOLFE: Yes, but once again, then, if you look
12 at 3.2.6, which speaks to cask ruptured, is that
13 citation which supports an argument on sabotage?

14 MR. MCGURREN: On that point, I thought you were
15 addressing two points...

16 JUDGE WOLFE: Yes.

17 MR. MCGURREN: I was addressing the one point
18 first. Let me get to the page of our response. And
19 while I'm getting there, I'll try to talk at the same
20 time.

21 I think your observation is correct that 3.2.6 does
22 not deal directly with sabotage, the means by which a
23 cask might be ruptured.

24 I said, "See also that section for purposes of
25 whatever might cause a breach of the cask," here's

1 what 3.2.6 has to say about the consequences that were
2 analyzed of such a breach, not necessarily sabotage
3 breach, but another type of breach.

4 JUDGE WOLFE: I see.

5 MR. MCGURREN: So I wasn't trying to say this is a
6 sabotage breach.

7 JUDGE WOLFE: I see.

8 MR. MCGURREN: But I thought the board might be
9 interested in that section as well.

10 JUDGE WOLFE: Uh-huh.

11 MR. MAUPIN: Correct me if I'm wrong. My
12 impression was that the Sandia...I noted that problem,
13 too, but I believed that these citations to the Sandia
14 report 3.2.6 referred to reports that were largely
15 directed towards evaluating the consequences that might
16 flow from sabotage.

17 JUDGE WOLFE: All right. I don't know that there
18 is any more that need be discussed at this special
19 prehearing conference.

20 The board will memorialize what took place at this
21 supplemental special prehearing conference.

22 We will receive your supplemental briefings. Then
23 we will proceed to rule on the proposed contentions,
24 after we get your supplemental briefs.

25 In the meantime, counsel will confer with respect

1 to contention four in OLA-1, and do that which the
2 board has requested, namely, to agree on a protective
3 order and affidavits of non-disclosure or whatever,
4 present that to the board for its approval and
5 issuance.

6 I see nothing more now to be discussed unless the
7 counsel has something else to present to the board or
8 discuss.

9 Anything more? All right. The special prehearing
10 conference session is now closed.

11 (Whereupon, the meeting closed at 12:10 p.m.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

