

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,
Units 1 and 2)

DOCKET NO:

50-352 OLA 1
(CHECK VALVES)

50-352 OLA 2
(CONTAINMENT ISOLATION)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:	:
	:
PHILADELPHIA ELECTRIC COMPANY	: Docket Numbers
	: 50-352 OLA 1
	: (CHECK VALVES)
(Limerick Generating Station,	: 50-352 OLA 2
Units 1 and 2)	: (CONTAINMENT ISOLATION)
	:
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Old Customs Courthouse
Room 300
Second & Chestnut Streets
Philadelphia, Pennsylvania

Thursday, March 27, 1986

The prehearing conference in the above-entitled
matter convened at 1:00 p.m.

BEFORE:

JUDGE IVAN W. SMITH, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

JUDGE RICHARD F. COLE, Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

JUDGE GUSTAVE A. LINENBERGER, JR., Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

-- continued --

1 APPEARANCES:

2 On behalf of the Applicant:

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4 MARK J. WETTERHAHN, ESQ.
5 Conner & Wetterhahn
6 1747 Pennsylvania Avenue, N.W.
7 Washington, D. C. 200068 On behalf of the Nuclear Regulatory
9 Commission Staff:10 JOSEPH RUTBERG, ESQ.
11 Assistant Chief Hearing Counsel
12 Antitrust Counsel
13 BENJAMIN H. VOGLER, ESQ.
14 Deputy Antitrust Counsel
15 Office of the Executive Legal Director
16 BOB MARTIN
17 Project Operator
18 U. S. Nuclear Regulatory Commission
19 Washington, D. C. 2055520 On behalf of Friends of the Earth, and
21 appearing Pro Se:22 ROBERT ANTHONY
23 P. O. Box 186
24 Moylan, Pennsylvania 19065

25 Appearing Pro Se:

FRANK ROMANO
Air & Water Pollution
Control ProjectDR. GRANT KROW, ESQ.
Consultant

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P R O C E E D I N G S

2 JUDGE SMITH: This is the prehearing conference
3 ordered by the Licensing Board by order of March 14th. The
4 conference was scheduled to begin this morning at 9:00
5 a.m. but because of a problem of communication the Reporter
6 was not present. As a consequence we conducted some
7 business off the record and I now wish to review what that
8 business was.

9 We announced the main features of the agenda.
10 Those are: we will call for new matters raised by the
11 parties, preliminary matters, we will first take up the
12 petition of Air and Water Pollution Control, we gave
13 Mr. Romano his option as to whether he attended this
14 afternoon or had the matter decided on papers and I see that
15 ... are here, Mr. Romano.

16 Then we will take up Mr. Anthony's contentions on
17 the amendment number one on the check valves and the next
18 item will be Mr. Anthony's entire petition including
19 contentions on amendment number two, then Mr. Anthony's
20 motions for stay and then, if it is possible to determine
21 during this session that at least one contention is
22 acceptable, we will discuss other prehearing scheduling
23 matters. And if we have time, we would entertain some
24 recommendations from the parties as to what this is all
25 about in the event it becomes moot.

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1 In the meantime I understand that at table for
2 the Petitioners is Mr. Krow and you, sir, are representing
3 Friends of the Earth.

4 DR. KROW: I'm Dr. Krow.

5 JUDGE SMITH: You're Dr. Krow and you are an
6 attorney?

7 DR. KROW: Yes.

8 JUDGE SMITH: You know we have a provision for
9 filing Notices of Appearance by attorneys and you haven't
10 done it. I will allow you to do it orally and then I will
11 ask that you comply with the provision in writing as soon as
12 possible.

13 Would you please state your full name, your
14 business address and phone number and the bar to which you
15 are admitted?

16 DR. KROW: My name is Grant, G-r-a-n-t, R. Krow,
17 K-r-o-w. I am a chemistry professor at Temple University.
18 I am in the bar of the Eastern District of Pennsylvania. My
19 work phone number is 787-7154.

20 JUDGE SMITH: And you're admitted to the bar in
21 the State of Pennsylvania?

22 DR. KROW: Yes.

23 JUDGE SMITH: And you're representing Friends of
24 the Earth?

25 DR. KROW: I'm with Friends of the Earth, I

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1 hadn't planned to testify, I was going to call -- give
2 support when he asked me questions but...

3 JUDGE SMITH: I understand, you're here just as a
4 helper, not as a representative, is that....

5 DR. KROW: That's what I come here as but it's
6 possible I may speak to clarify something that's said. So
7 you'd better go ahead and put me in that context.

8 JUDGE SMITH: I think it should be also clarified
9 that Friends of the Earth is not a party to this
10 proceeding. If you're helping Mr. Anthony that's another
11 matter, but Friends of the Earth has, as such, no status
12 today.

13 MR. ANTHONY: Could I ask about that? Because
14 all my submissions have been jointly representing myself and
15 Friends of the Earth and so I would expect -- doesn't
16 Friends of the Earth have standing? I noticed that the
17 Board did raise a question about it but I didn't think it
18 was any question that Friends of the Earth didn't have
19 standing, they just wanted an explanation.

20 JUDGE SMITH: I think that you have -- you're
21 making the fundamental mistake that the Nuclear Regulatory
22 Commission has an institutional memory in which it carries
23 over from one proceeding to the next to the next to the
24 next the various standings that people have and that is not
25 the case. For different cases there may be different

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1 standards for standing. And you did not do anything -- as a
2 matter of fact, unless Counsel for Licensee had told me and
3 unless I had talked to Dr. Cole I would have no idea who the
4 FOE is. I don't know anything about this case. So that's
5 what your problem is.

6 MR. ANTHONY: I can understand that and I thought
7 that this would be covered if the President of FOE was here
8 today to restate that I am representing FOE.

9 JUDGE SMITH: Well let's say that it is not an
10 item that is for hearing this afternoon, we have other
11 matters, let's put that at the bottom of the agenda to see
12 if we can get to it. And it may be that the other parties
13 might object to taking that up today, I don't know. But
14 let's put that at the bottom of the agenda.

15 MR. ANTHONY: Would this be a time to ask you a
16 question, Judge Smith, about the order? I understood this
17 morning that consideration of my motion for stay would be on
18 the top of the list and I would hope it can be because if
19 that stay were granted -- as I hope it will be, a temporary
20 stay -- then that will make a difference in how we proceed.

21 JUDGE SMITH: In the first place you have caused,
22 in my mind, at least, a certain amount of confusion. I
23 count three motions for stay filed by you so far in one or
24 another of these proceedings: one filed to the Commission,
25 one filed some time ago and yet another one filed Friday.

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MR. ANTHONY: That was the one directed to the Board.

JUDGE SMITH: All right.

Now to digress for a minute, an important digression, you sent all these papers to me. Mr. Voqler's office is about a half a mile from my office. You put him and Mr. Rutberg to some personal, I might say personal inconvenience to come to my office and get the papers. They had not received them, I don't know when they got them. There is no reason for that, Mr. Anthony. You were instructed to follow the rules for serving papers.

And I want to tell both you and Mr. Romano how that is done: don't put a little footnote on the bottom of your paper, you give a list of the names of the people that you mail things to, their actual names. Don't say service list, don't say judges, you give a list. Mr. Wetterhahn does it, Mr. Conner does it, Mr. Vogler does it, you do it their way.

Now with respect to the three members of the Board, we will accomodate you and we will -- if you wish to send all three of us in one envelope, that's fine. But you are causing a great deal of personal inconvenience to the parties in this case by not doing what you are required to do, and it just isn't fair.

MR. ANTHONY: I would like to apologize.

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1 JUDGE SMITH: Well it's not necessary to
2 apologize but it is necessary for you to comply.

3 MR. ANTHONY: All right.

4 JUDGE SMITH: Mr. Romano, that goes for you.
5 There is no reason why you cannot do it in the way that the
6 rules provide and we will insist upon it.

7 Now Mr. Vogler did not even see a copy for that
8 motion for a stay as far as I know until this morning.
9 Under the rules the Licensee has 10 days, plus five days for
10 mailing, to respond to it and the Staff has another five
11 days. It is not even ripe to take it up. Yet you file
12 these things one on top of another and before anybody can
13 answer them you have another one and it keeps the
14 consideration in turmoil. You are causing a delay in your
15 own proceeding which you do not want.

16 MR. ANTHONY: That's right. However I am asking
17 for the stay under the particular regulation that is
18 possible for a temporary stay and to not have required
19 immediate responses.

20 JUDGE SMITH: I think that we could rule upon
21 that without any further discussion. You moved to the
22 Commission twice, on two occasions, you have filed so far to
23 this day four motions for a stay, two to the Commission and
24 two to the Board.

25 With respect to the first two, the Commission

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1 referred the request for a stay to the Director of Nuclear
2 Reactor Regulation. It is my view that we do not have
3 jurisdiction to entertain your petition for a stay. The
4 Commission has given that jurisdiction to the Director of
5 Nuclear Reactor Regulation.

6 MR. ANTHONY: However I am addressing a petition
7 for a stay to the Board under the regulation that provides
8 for that. And it's 10 CFR 2.788(g) and it says:

9 "In extraordinary cases where prompt
10 application is made under this section, the
11 Commission, the Atomic Safety and Licensing Board
12 or Presiding Officer may grant a temporary stay
13 to preserve the status quo without waiting for
14 filing of any answer."

15 JUDGE SMITH: Okay, that's a good point but it
16 does not address the point that we don't have jurisdiction.

17 MR. ANTHONY: This regulation says the Board does
18 have jurisdiction, the Presiding Officer is empowered to do
19 this. This is 2.788(g).

20 JUDGE SMITH: Let's have an expedited
21 consideration. You believe the Board has jurisdiction --
22 who is speaking for the Licensee?

23 MR. CONNER: This morning I am. We do not
24 believe this Board has any jurisdiction, as we have so
25 stated in the response to a motion to the Commission which

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1 was served on this Board.

2 MR. VOGLER: The Staff concurs.

3 JUDGE SMITH: You have not addressed in any of
4 the motions that were sent to the Board the question of
5 jurisdiction, you have not even mentioned it. The
6 Commission has given jurisdiction to the Director of
7 NRR. Even if it had not, I question whether we would have
8 jurisdiction to grant a stay because the amendment has
9 issued and I don't believe we have jurisdiction anyway.

10 MR. ANTHONY: Did this Regulation 2.788(g) not
11 give the Board the jurisdiction? To me that language says
12 if you decide it is an extraordinary case then you assume
13 the jurisdiction and I would expect and hope that you would
14 decide this is an extraordinary case since every hour that
15 goes by the people in the area are exposed to the risk of
16 some kind of an accident at Limerick as a result of the
17 failure to make these valve tests.

18 JUDGE SMITH: Jurisdiction aside, in any event
19 the Board is not going to issue a stay today.

20 MR. ANTHONY: Well now that is an appealable
21 ruling, isn't it?

22 JUDGE SMITH: I am not going to advise you on
23 that.

24 MR. ANTHONY: That is a ruling by the Board that
25 I can appeal?

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1 JUDGE SMITH: Whether you can appeal it or not is
2 one thing but it is a fact that the Board is ruling today
3 that we will not today issue a stay.

4 Any other new matters?

5 MR. CONNER: If the Board please, in relating to
6 your digression, we wish you would explain to Mr. Anthony
7 and Mr. Romano on the record that there is a difference
8 between special delivery and express mail. Some of the
9 filings that they have made on us have been, among other
10 things, by special delivery. We have never had one, as I
11 recall, by express mail. And that effect, though, is we
12 will get it one or two days later than the Board intended by
13 its order.

14 JUDGE SMITH: We did receive ours from each of
15 you, I believe, by express mail.

16 But did you understand what Mr. Conner is saying?

17 MR. ANTHONY: Your ruling, I understood, was for
18 express mail but it didn't say the parties, it said to the
19 Board. So I suppose it should specify... As you know, I
20 have spent hundreds of dollars of my own money and there is
21 no financing for the work I'm doing so we have to be as
22 economical as possible and this express mailing just doesn't
23 come every day.

24 JUDGE SMITH: That may very well be but how did
25 you expect Mr. Conner to be prepared this afternoon to

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1 address your contentions? We are expediting this hearing as
2 a matter of a strong effort to give you a hearing while
3 there is still a hearing to be had.

4 MR. ANTHONY: I appreciate that.

5 JUDGE SMITH: And failures along that line can
6 only result in us delaying enough to give the other parties
7 an opportunity to address your papers.

8 MR. ANTHONY: I did the best I could by sending
9 it special delivery and I guess Mr. Conner did get it, as he
10 said. But I didn't understand that that was required.

11 JUDGE SMITH: You're referring now I guess to the
12 supplemental petition--

13 MR. CONNER: That's correct.

14 JUDGE SMITH: -- which contains all of the
15 contentions for amendment number two? There's many of them,
16 some 14 or so, 15.

17 It is really asking a lot for anybody to be ready
18 this afternoon to address those supplemental contentions.
19 They did -- if they were able to do it, I would expect that
20 there is some weekend involved in that. It was a very large
21 effort.

22 MR. ANTHONY: Well if it was a hardship because
23 of that --

24 JUDGE SMITH: You should be sensitive to the fact
25 that if the rules were applied literally that we wouldn't be

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1 ready for this prehearing conference for perhaps another
2 month.

3 MR. ANTHONY: I am very sensitive to that and I
4 am very grateful to the Board for sacrificing their Easter
5 weekend for this purpose.

6 JUDGE SMITH: We don't intend to do that.

7 (Laughter.)

8 All right. I think we can move on then. Any
9 other preliminary matters?

10 (No response.)

11 Then let's take up the petition of the Air and
12 Water Pollution Control. We need Staff's oral response and,
13 having received that, then I think that the matter will be
14 ripe for our ruling, except that we would have Mr. Romano's
15 opportunity to address new matters.

16 MR. CONNER: May we note for the record, sir,
17 that we filed a hand-delivered response to the Board
18 yesterday and served it on Mr. Romano and Mr. Anthony today.

19 JUDGE SMITH: That's correct, and the Board did
20 receive two pleadings from you yesterday afternoon in
21 response to the Control and in response to Mr. Anthony's
22 supplement.

23 Mr. Vogler?

24 MR. VOGLER: Mr. Chairman, members of the Board,
25 the Staff has not changed its mind as it advised the Board

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1 in its written response to the first petition to intervene
2 filed by AWPP. The supplement has not changed our mind. As
3 I noted, it is vague, it's a general complaint in which
4 surprisingly amendment number one isn't even mentioned.
5 There's not one reference to flow check valves or
6 instrumentation lines.

7 JUDGE SMITH: Excuse me, Mr. Vogler. You said
8 "as I noted." Is there a paper that we should have had on
9 this?

10 MR. VOGLER: We filed a response to the original
11 petition to intervene and then this is the supplement. And
12 I meant to indicate there is nothing in the supplement to
13 cause the Staff to change its position that it took in its
14 pleading filed with the Board.

15 As I noted there is no reference to any of the
16 matters on the subject of the amendment. In Staff's view
17 what we have here are old complaints about old matters that
18 have been litigated in the operating license proceeding,
19 litigated, decided and closed, at least in this form. And
20 on that basis there are no contentions here and there is
21 nothing to litigate and for that reason we think that the
22 Board should dismiss it.

23 I can close on that or -- I hesitate to go
24 through the 2-1/2 pages and point out what we regard as
25 errors on old matters. If the Chairman desires that or the

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1 Board desires it I will, otherwise we feel that the
2 supplemental petition of AWPP should be dismissed.

3 JUDGE SMITH: I think we could approach it two
4 ways: one is the approach that you're taking, that they are
5 old matters, and the other is that whatever they are they
6 are not within the scope of the Notice of Hearing.

7 MR. VOGLER: That's correct.

8 JUDGE SMITH: And I think we can -- it's very
9 hard for you to say why something is not within the scope of
10 the hearing as compared to saying why it is. I mean the
11 whole universe exists outside of the scope of the hearing.
12 I think we can probably read it ourselves to see if anything
13 in his contentions falls within the scope of the hearing.
14 If you would prefer, I will hear from Mr. Romano.

15 MR. VOGLER: That's fine.

16 JUDGE SMITH: But I don't believe you have to go
17 through what had been heard before.

18 MR. VOGLER: That's why I presented the argument
19 the way I did. We are opposed to it in the overall view and
20 I don't think it's necessary to go through the supplement
21 line-by-line.

22 JUDGE SMITH: Mr. Romano?

23 MR. ROMANO: My heading for the supplement
24 specifically identifies the copy of the document dated
25 1/27/86 to Mr. Bower of Philadelphia Electric from the NRC

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1 which relates to Limerick Generating Station Unit 1. This
2 document is identified as "Monthly Noticed Applications and
3 Amendments to Operating Licensing Involving No Significant
4 Hazard Considerations," dated such-and-such. I think that
5 identifies the -- what I'm talking about. I'm very sure the
6 Staff knows what I'm talking about and to say that it is
7 seemingly ignorant of this document does not really describe
8 the situation properly.

9 I think that in the supplement, whether or not
10 Mr. Vogler or attorneys for the Applicant feel it is so, I
11 have contentions there and I hope, Judge, that you will
12 allow it to proceed to the point that we have the
13 opportunity to bring these out.

14 I would like to say another thing: I don't know
15 now whether what we are discussing is just preliminary to
16 some points that Mr. Vogler just brought up or whether I
17 continue through my whole situation or do I -- what is the
18 schedule here?

19 JUDGE SMITH: Mr. Vogler has pointed out that in
20 his view you have said nothing about amendment number one as
21 to which you have petitioned to intervene in your
22 supplement, and that is the gist also of what Mr. Wetterhahn
23 filed and served upon you yesterday.

24 Now we are giving you an opportunity to come
25 back, if you choose, to say well yes, these are my

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1 contentions and, yes, they do relate to the matter as to
2 which I have petitioned to intervene. You will have to be
3 of help to me because in my reading of the document I cannot
4 relate your supplement to your initial petition.

5 MR. ROMANO: Yes. Well isn't it so that
6 this specific letter of that date relates to the amendment
7 that PE seeks?

8 JUDGE SMITH: You say it does but nothing that it
9 says can I identify -- I can't identify anything that
10 relates to the testing of check valves.

11 MR. ROMANO: But the amendment has to do with the
12 check -- and I asked Mr. Vogler and Mr. Conner and
13 Mr. Wetterhahn whether they recognized that that letter
14 referring to their amendment had to do with the isolation
15 valves.

16 JUDGE SMITH: What letter are you referring to
17 now?

18 MR. VOGLER: A copy of a document dated 1/28/86
19 to Mr. E.C. Bower of Philadelphia Electric Company from NRC,
20 it relates to Limerick Generating Station Unit 1. This
21 document identified as "Monthly Notice Applications and
22 Amendments to Operating Licenses Involving No Significant
23 Hazard Considerations," dated December 26th and 30th, 1985
24 and January 9th, 1986.

25 Well the significant --

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1 JUDGE SMITH: After you get beyond the title of
2 your document -- we can read the title of your document.
3 Now I have pointed out to you, Mr. Vogler has pointed out to
4 you and Mr. Wetterhahn has pointed out to you that we, none
5 of us, understand what the rest of your document has to do
6 with the amendment. And now you are being given an
7 opportunity to explain what it has to do, if you wish, or
8 whatever arguments you wish to make.

9 MR. ROMANO: Mr. Vogler seems to think, as I
10 feel, that because I didn't specifically mention isolation
11 valves he didn't understand what I was talking about. And I
12 want to clarify that situation. I will just go ahead.

13 On the point of necessary to comply and the costs
14 of, say, express mail, this notice that we had to absolutely
15 do it by express mail, maybe if it wasn't that specific we
16 might have done it earlier with less costly mail. And as it
17 relates to timeliness --

18 JUDGE SMITH: You mean you delayed sending it
19 until the 20th because we told you to do it on that date by
20 express mail?

21 MR. ROMANO: Well --

22 JUDGE SMITH: I wondered when I wrote that if
23 somebody might confuse it; I didn't think that was possible,
24 but I was wrong.

25 MR. ROMANO: It wasn't a purposeful delay but

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1 it's the same old story, when you have some more time, you
2 know, you take the more time.

3 And anyway as it relates to timeliness of getting
4 information out, I was handed some literature by
5 Mr. Wetterhahn this morning and if this hearing would have
6 continued to start this morning I would not have had time to
7 look over his either.

8 JUDGE SMITH: All right.

9 Would you please get to the arguments on your
10 supplement?

11 MR. ROMANO: Because there's been a question as
12 to whether this document relates to amendment one, would you
13 require an explanation of how that does relate so I could
14 then try and tailor my arguments in with it?

15 JUDGE SMITH: The Board requires nothing of you,
16 Mr. Romano, we are giving you the opportunity to meet the
17 observations made by the Chairman on behalf of the Board,
18 Mr. Vogler and Mr. Wetterhahn that they, for themselves,
19 cannot see any relevance to your petition, any relevance of
20 the letter of March 19th, your supplement of March 19th. I
21 can't see it, the Board can't see it and we're telling you
22 that. Now you may or may not, as you see fit, respond to
23 that observation or whatever other argument you wish to make
24 on the supplement.

25 MR. ROMANO: All right. I will proceed to that.

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1 I understand what you're saying.

2 But before I do I want to say that Mr. Wetterhahn
3 gave me this this morning and it says down here that
4 Mr. Romano ordered the file on behalf of Air and Water
5 Pollution Control but did not identify AWPP's interests in
6 proceedings or state that he had been authorized by the
7 organization to represent it and its members.

8 I have been before the Board, you know, maybe
9 three years or more and they absolutely know that I
10 represent the Air and Water Pollution Control and I don't
11 understand why Mr. Wetterhahn, if he has some good material,
12 has to proceed in this manner in an effort to discredit what
13 I might say. I just wanted to make that observation.

14 Now then as it relates to contentions, as I had
15 before Judge Brenner, one of my main contentions had to do
16 with the pattern of carelessness and failure of equipment
17 due to poor management and -- well that's the carelessness.
18 There's a definite pattern of carelessness, both in the
19 construction and now following operation that indicates what
20 I had said to Judge Brenner that he dismiss -- absolute
21 patterns of carelessness which endanger me, my family and
22 property -- my property within 10 miles of Limerick -- and
23 endangered members of AWPP and the public.

24 And that pattern of carelessness has to do with
25 approximately 120 and maybe by now it's 130 Licensee Event

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1 Reports, some of which makes you wonder whether they have
2 proper management and proper inspection rather than have it
3 found by someone else or reported by workers.

4 The original carelessness and coverups -- I have
5 to use the word "coverups" -- had to do with welding and
6 indications of -- in 76-06-01 I continued to bring that
7 specific incident up known as the broomstick affair where
8 there is absolutely no question that someone that was doing
9 the welds was not qualified, someone that was inspecting the
10 welds was marking them okay without having looked at them.

11 JUDGE SMITH: Let me interrupt here. Would you
12 please, the very next point that you speak on, the very next
13 one, give me an overview as to what this has to do with
14 amendment number one which relates to testing of check
15 valves and the outage. The very next thing you say; don't
16 talk about welding, talk about the check valve.

17 MR. ROMANO: It has to do -- the reason why I do
18 not want to have PE delay inspection is because the record
19 is such that they have not properly inspected up to now.
20 And I have these documentations of poor inspections and that
21 they should not be permitted, they have not earned the right
22 to have -- to avoid inspections. That's the point I want to
23 make.

24 JUDGE SMITH: All right. Now we can read what
25 you've already written.

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MR. ROMANO: Yes. And now you --

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JUDGE SMITH: And we have read it.

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MR. ROMANO: I wanted to give examples of such

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things.

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JUDGE SMITH: Well don't give any more examples,

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you have had that opportunity. We can read the examples

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that you have put here in writing. Additional examples are

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not the subject matter of this afternoon's prehearing

9

conference.

10

MR. ROMANO: My fundamental contention had to do

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with that the previous contention of pattern of carelessness

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is now brought out with time, that there is a definite

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pattern of carelessness and we have many reports now on

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these LER situations.

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And time has done another thing -- that's another

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contention of mine and it does relate to welding and

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concrete work that also we discussed before Judge Brenner

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because Inspection 86-02, a report of February '86, 1986,

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brings out the fact that there was welding ruptures and,

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more particularly, brought out the fact that the steam,

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great volumes of steam that escaped, continued to escape and

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condense on the walls until it seeped through the walls

23

outside to an outside walkway, radioactive steam.

24

Now here's the situation --

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JUDGE SMITH: I'm going to stop you on that. You

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1 are digressing. You alluded to Report 86-02, I think that
2 it has been provided to us, I don't know, but you are not
3 going to have an opportunity this afternoon to enlarge upon
4 your supplement. You have explained why now you believe
5 your supplement is relevant to your initial original
6 petition. We are not going to let you have a chance for
7 additional examples.

8 MR. ROMANO: I just wanted to....

9 (Mr. Romano conferring.)

10 MR. ROMANO: I will be considered to be able to
11 do this at some later hearing, right?

12 JUDGE SMITH: I don't know.

13 MR. ROMANO: You say you don't know but I then
14 wonder --

15 JUDGE SMITH: If you should file such a paper we
16 are required by regulations to consider your paper. I don't
17 know what your paper might say or what your request might
18 say. We noticed for this afternoon what the subject matter
19 would be; we gave you an opportunity to file supplement to
20 your petition; you have done it; the parties have had little
21 opportunity to respond to it; this afternoon you have no
22 opportunity to enlarge upon your petition other than to
23 address their responses.

24 MR. ROMANO: Yes.

25 JUDGE SMITH: Additional examples will not be

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1 entertained this afternoon. It isn't that we have no time
2 for that; it is not scheduled; it is not fair to the other
3 parties to have new matters brought up without notice and
4 that is not provided in our rules.

5 MR. ROMANO: That's what I thought. I wanted to
6 know how the schedule would go. Now I understand that this
7 was sufficient and they would be discussing it and then I
8 will answer. I didn't get that procedure...

9 (Mr. Romano conferring.)

10 MR. ROMANO: Well if I have to restrict myself to
11 what I wrote at this time, okay, you have it, you have it
12 with you and they can proceed.

13 JUDGE SMITH: And that, incidentally, was all set
14 out in our memorandum and order of March 14th. We gave
15 point-by-point-by-point what we would cover this afternoon
16 or today and that's fine.

17 Now we will move on to Mr. Anthony's check valve
18 contentions. We have received the response of the Licensee
19 to his supplements. We have not received the Staff's.

20 As I stated this morning -- and I forgot to put
21 this on the record, I will do it now -- this morning I
22 invited the parties off the record to be prepared to discuss
23 the situation perceived by the Board which is as follows:

24 We ruled preliminarily that Mr. Anthony had
25 satisfied the aspect requirements of the intervention rule

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1 by alleging that he wanted to participate on instrument line
2 failure. Based upon that and based upon language in the
3 Notice of Hearing alluding to instrument line failure, we
4 ruled that he had standing to intervene as far as proximity
5 was concerned for the reason that the probabilities of
6 failure are no different for someone living very close to
7 the plant as compared to someone living far away from the
8 plant, so the probabilities should not be the test for
9 standing to intervene based upon distance from the plant.

10 If his aspect has merit, that is, that there is
11 instrument line failure possibilities, then his standing to
12 intervene would be in the nature of anybody who
13 traditionally has been permitted to intervene which has been
14 held to be somewhere in the neighborhood of 50 miles.

15 At the time we ruled on that petition
16 Mr. Anthony's contentions had been filed with the
17 Commission. However there were no responses yet -- or there
18 may have been the Applicant's, Staff's had not been in I
19 believe and the Board did not look at Mr. Anthony's
20 contentions; they were not ripe for our consideration; we
21 were only ruling on your initial petition.

22 When it comes time to look at the actual
23 contentions, we find that you have most of your contentions
24 on amendment number one relate to check valve failure -- not
25 as a matter relevant to instrument line failure, but as

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1 a matter relevant to leakage through containment. But you
2 had not petitioned to intervene on that basis.

3 The Board questions whether you have standing to
4 raise contentions which are predicated upon check valve
5 failure as that might relate to the amount of emissions
6 through containment in that we believe that, as pointed out
7 the briefing, that the nature of the amendment can have an
8 effect upon the proximity to the plant, as that proximity
9 relates to standing and to the very small amount of
10 emissions that might be possible through a stuck open check
11 valve would be such that someone living 20 miles away might
12 not have standing.

13 The Board has given that matter some thought,
14 unless we are persuaded to the contrary this afternoon --
15 and we will give you an opportunity to address it and to
16 have both the Licensee and the Staff correct us if we're
17 wrong -- it is our preliminary view that you cannot raise
18 contentions relating to check valve failure unless they
19 relate to instrument line failure.
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1 Now if the Licensee and the Staff do not wish to
2 have us rule on that basis, we would like to hear from
3 them. I think this is a very complicated question. If
4 Mr. Anthony does not have standing to intervene on those
5 contentions and if we don't have jurisdiction in the first
6 instance to even allow you to agree to allow us to rule on
7 that basis, I would like to hear it before we hear from
8 Mr. Anthony as to whether our analysis is a valid one, or if
9 you would have us not rule on that basis.

10 Mr. Wetterhahn.

11 MR. WETTERHAHN: Yes, I will address that point.

12 The Applicant's evaluation is based upon the same
13 situation but slightly different. The Board must look, as
14 far as admissible contentions, at how the interest is
15 affected, whether anything is changed by this amendment.

16 It is the Licensee's view that no aspect of
17 check of instrument line failure is affected by this
18 amendment. Therefore, it cannot support the contention and
19 cannot support interest--

20 JUDGE SMITH: But you have lost on that. You
21 have already raised that argument and we have already ruled
22 that instrument line failure was an aspect alleged in his
23 petition which we found acceptable.

24 MR. WETTERHAHN: Yes.

25 JUDGE SMITH: Now you didn't ask for a

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1 reconsideration. You footnoted it in your answer to the
2 contentions. I don't know if we can take your
3 reconsideration, but I would like for you to-- I am going
4 to allow you to finish your argument in its entirety and see
5 where we come out.

6 MR. WETTERHAHN: Our view then is even if the
7 Board were to admit this as an aspect, it also has to view
8 as to whether anything in the evaluation is affected by the
9 amendment to look at the admissibility of contentions. And
10 as pointed out in various answers through our brief which I
11 would like to summarize, we don't view any change in the
12 question of instrument line rate evaluation. We have
13 provided, in response to the contentions as supplementary
14 information the accident evaluation as done at the operating
15 license stage.

16 Now as -- I believe it was in the attachment to
17 our first response that shows doses in the order of 10 to
18 the minus seven rem at the site boundary. Therefore,--

19 JUDGE SMITH: This is for instrument line
20 failure?

21 MR. WETTERHAHN: That's correct, assuming failure
22 of the check valve. That was the condition analyzed in the
23 FSAR and there was nothing in the amendment which changes
24 that analysis.

25 JUDGE SMITH: You are asking us to accept as

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1 established, factually established in this case that fact?

2 MR. WETTERHAHN: Yes, sir. In fact, while there
3 was an opportunity to litigate it at the operating license
4 stage, it was not litigated. As it stands, the Staff did
5 its safety evaluation and I am making the assertion, which I
6 guess if Mr. Anthony wants to challenge he can, that there
7 is no aspect of the analysis which is changed by this
8 amendment. And we are saying Yes, he is bound by the
9 findings in the FSAR and the findings of the Staff that this
10 plant meets the requirements of 10 CFR Part 100, found at
11 the operating license stage. He cannot challenge that
12 unless something is changed. That goes to the interest
13 aspect.

14 MR. ANTHONY: May I respond?

15 JUDGE SMITH: Not yet.

16 Did the FSAR as presented in the operating
17 license proceeding evaluate the extension of time that is at
18 issue in this proceeding?

19 MR. WETTERHAHN: No, sir. The analysis contained
20 in the FSAR is simple, deterministic. It assumes whether
21 the time is one day, an extension of ten weeks, or over the
22 40-year life of the plant that this will occur. That is,
23 the probability of this occurring is assumed to be one.
24 That is what deterministic means.

25 And even considering that probability set to one

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1 of this occurring, the results and therefore the risk is
2 exceedingly low.

3 The basis for setting 50 miles as an area for
4 standing was based upon other accidents which could cause
5 effects at up to 50 miles. However, I believe the Board can
6 take under advisement the fact that values such as 10 to the
7 minus seven rem at the site boundary would not cause any
8 dose at distances of 20 miles. The distance of 20 miles
9 that I am using is what I believe Mr. Anthony's place of
10 residence to be as far as distance from the facility.

11 But whether it's 20 or even 10, such small doses
12 would not affect his interest.

13 JUDGE SMITH: Well, Mr. Wetterhahn, I think that
14 you may have somewhat the same problem that you alluded to
15 with respect to Mr. Romano. We did rule that instrument
16 line failure was an aspect which gave him standing. You
17 did not-- You said we had made a mistake and we were
18 wondering if we may have. Nevertheless, you did not move
19 for reconsideration. That was not noticed for today's
20 discussion. The contentions were. I suppose you could
21 argue that within the context of the contentions.

22 Licensing Boards, when they approach standing,
23 have had to make the judgment on standing before any
24 evidence is received, as you know. Therefore, the Licensing
25 Boards have had to fall back on a certain amount of

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1 technical expertise and make a very rough judgment as to
2 whether the type of hearing that is at stake is one that
3 would give standing to the Intervenor, to the Petitioner,
4 before any evidence is received.

5 In this case, based upon the notice of hearing
6 and the application, we would have ruled that check valve
7 leakage through containment was not sufficient to sustain
8 standing on a petition to intervene, but we would have
9 ruled, based upon the general scientific expertise of the
10 Board, that instrument line failure would sustain the
11 standing. I think you may very well be stuck with that
12 ruling for this time.

13 Now we are giving you an opportunity as to which
14 you may not even be wholly entitled to raise the issue of
15 what right does he have now to raise contentions outside his
16 aspects of his petition as to which we have doubts that he
17 has standing to raise. I think you are stuck for now on
18 the--

19 MR. WETTERHAHN: We're stuck for now. We would
20 agree with the Board that the scope of his contentions must
21 be within the aspect that has been identified and therefore,
22 he cannot raise issues outside the scope of instrument line
23 failure.

24 My second point, though, is he is stuck because
25 there is no aspect of Amendment Number 1 which affects an

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1 analysis regarding instrument line failure and therefore,
2 there is no contention which is admissible, which can be
3 admissible relating to instrument line failure because this
4 amendment simply does not change the consequences of
5 instrument line failure.

6 If a check valve fails and the instrument line is
7 intact, there is no accident. It is a closed-end system.
8 Nothing happens. It is only when you have an instrument
9 line failure coincident with a check valve failure or excess
10 leakage, which is probably better, that you can have any
11 consequences.

12 JUDGE SMITH: Wait a minute.

13 Excess leakage through the check valve?

14 MR. WETTERHAHN: No, sir.

15 JUDGE SMITH: Excess leakage as a consequence of
16 instrument line failure?

17 MR. WETTERHAHN: No, sir. It has to be
18 coincident, check line failure coincident with a separate
19 break in the instrument line, because an instrument line is
20 a closed-end system and even should there be a failure -- an
21 undetected failure of the check valve, the line is closed.

22 Should the line break, that accident has been
23 evaluated at the operating license stage. That analysis is
24 entirely unchanged by this amendment. Therefore, we don't
25 believe that there are any admissible contentions even

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1 within the aspect of the proceeding he raised.

2 And I can see why the Board wouldn't recognize
3 that without seeing the analysis of the particular
4 contentions, but that is our position, that he is stuck,
5 that he can't raise any contentions outside of the aspect
6 and there are no -- as a legal matter, there are no legally
7 admitted contentions within the aspect he has raised.

8 JUDGE SMITH: Is there any person whose interest
9 might be affected by this amendment?

10 MR. WETTERHAHN: I believe that this amendment is
11 so trivial, but perhaps somebody right next to the plant
12 might be, but certainly nobody at 20 miles. I don't
13 believe--

14 JUDGE SMITH: You say that the instrument line
15 failure has been postulated for the 40-year life of the
16 plant in the operating license procedure. How could, under
17 that argument, any person, living right next to the plant
18 boundary even, have a standing?

19 MR. WETTERHAHN: He could not on any evaluation--
20 If he raised the same aspect in the proceeding, I don't
21 believe he could.

22 JUDGE SMITH: I think that our problem, that is,
23 our problem versus yours, is that our bosses, the
24 Commissioners, told us to forge ahead, that there was
25 someone whose interests might be affected, and we are giving

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1 it our best shot.

2 MR. WETTERHAHN: You will see that I respectfully
3 have disagreed with the findings. Yes, there was a notice
4 and this Board must make a finding and we will abide by
5 whatever finding, but I disagree that this particular
6 Petitioner, the way he has framed his contentions and the
7 aspect in his interest, has stated an admissible contention
8 and is entitled to a hearing.

9 I can't speculate. I haven't thought out whether
10 some one else could have framed an issue which is--

11 JUDGE SMITH: I'm raising that because of your
12 basic argument that instrument line failure cannot be an
13 issue in this proceeding because it has already been
14 analyzed in the FSAR in the operating license stage.

15 MR. WETTERHAHN: Yes, sir.

16 JUDGE SMITH: Then if I buy that argument -- and
17 it is not a question of buying it, it hasn't really been
18 articulated so that we have understood it, but if the
19 argument is correct, then as far as I can see, no one, by
20 virtue of proximity, can have standing to intervene in this
21 proceeding.

22 MR. WETTERHAHN: Some one may have an interest in
23 this proceeding, not on that aspect but perhaps on the other
24 aspect which Mr. Anthony did not raise.

25 JUDGE SMITH: Right. But on the instrument line

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1 failure--

2 MR. WETTERHAHN: Yes, I believe that it is clear
3 that since there is no change brought about by this
4 amendment, -- and I could go through this a little bit more
5 to show you where the various aspects of instrument line
6 failure were evaluated, not only those consequences but
7 other consequences at the operating license stage. I think
8 I can convince you that there can be -- since there is no
9 change in that analysis, there can be no hearing based upon
10 the interest that he does raise.

11 JUDGE SMITH: I think that your arguments will be
12 germane to the contentions themselves.

13 MR. WETTERHAHN: I thought I would introduce it
14 generally and if I may have another minute or two, I will
15 just hit the other aspects which were examined at the
16 operating license stage which are unchanged in the
17 Licensee's view.

18 JUDGE SMITH: Well, what I had hoped to do here
19 was keep some kind of organization, and I wanted to very
20 narrowly know if, on the basis of aspects, his failure to
21 request a hearing on check valve leakage as a question of
22 omission precludes him from now advancing contentions. I
23 wanted that to be-- It is easier for us to grapple with
24 these things if we can break it down into -- at least for me
25 -- into more discrete units.

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1 And I think you have made it clear that you don't
2 believe that as a matter of law he can do that.

3 MR. WETTERHAHN: That's correct.

4 Let me say by way of conclusion that the
5 Commission has stated that there must be interest aspects
6 and then contentions. It must have had some meaning in mind
7 for the aspects, and we believe that meaning is the one
8 articulated by the Board, that is, it acts to focus on the
9 contentions which may be raised.

10 And we are agreeing with the Board that the
11 Petitioner fails for that reason since his contentions are
12 not within the aspects which he originally raised and which
13 the Board found to be meritorious.

14 JUDGE SMITH: Yes.

15 MR. WETTERHAHN: And I think that we might even
16 have the broader principle and that is that notwithstanding
17 how an Intervenor gets into a proceeding, it should not be
18 permitted to pursue contentions as to which it has no
19 interest.

20 JUDGE SMITH: Yes, sir.

21 Mr. Vogler.

22 MR. VOGLER: Mr. Chairman, we will start off by
23 saying that the Staff basically agrees with Mr. Wetterhahn's
24 technical/legal argument about aspect and interest. This
25 matter came up when the Staff was responding to

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1 Mr. Anthony's contentions and it was discussed and a
2 decision was made then and again this morning that while it
3 is technically legally correct, the flow check valves and
4 the instrument lines are intertwined or related, one with
5 the other, in this particular case and we would not quarrel
6 with the distinction. And we went ahead and responded to
7 Mr. Anthony's contentions on flow check valves.

8 We believe that without getting into any of the
9 aspects or merits of it that his contentions are of no
10 value, but not on the basis that is being discussed at the
11 moment.

12 I don't know whether I have confused it or
13 responded. We did perceive the difference.

14 JUDGE SMITH: The Board perceived a difference
15 in-- The Board perceived two aspects which might give rise
16 to standing. One is that a check valve might stick open or
17 fail and break. Therefore, you would have the possibility
18 of emissions.

19 We listened to what you had to say and brought in
20 the technical expertise of Judges Cole and Linenberger and
21 said on that aspect, standing to intervene would not exist
22 20 miles away.

23 But postulating multiple instrument failures, not
24 knowing what they are, as we had a right to do from the
25 notice of hearing, we found that he had standing. Now we

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1 retreat and believe that -- not "retreat," but now we look
2 at his contentions and see that most of them are on leakage
3 through containment, and we don't believe that he has
4 standing to raise those contentions.

5 Do you agree with that?

6 MR. VOGLER: Yes.

7 JUDGE SMITH: Now we can take up instrument
8 failures, if such be the case, when we come to the
9 contentions.

10 Mr. Anthony, do you understand the direction
11 where we're going here? Your petition did not allude to
12 check valve failure; it alluded to instrument line failure,
13 and it is on that basis that we admitted you as a
14 Petitioner.

15 Now we are suggesting to you, and we wish to hear
16 your argument, that contentions on check valve failure and
17 attendant leakage are beyond your standing and beyond your
18 petition.

19 MR. ANTHONY: Well, I was glad to hear Mr. Vogler
20 just say that the two are intertwined.

21 JUDGE SMITH: Yes.

22 MR. ANTHONY: To me that means that they are both
23 involved and, as you said, a stuck-open valve could cause a
24 break in a line.

25 JUDGE SMITH: Wait a minute. I didn't say that.

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MR. ANTHONY: I thought you said a stuck-open valve could rupture a line.

JUDGE SMITH: No, we didn't. We made two distinctions that we perceive exist in the notice of hearing. One is that one of the concerns might be that a check valve sticks open or therewise fails to function. As a consequence, there is leakage directly through the check valve or is placed through the containment. As to that, we would not have been prepared to find that you have standing.

The other one is the intertwining thing that you are coming to now, and that is presumably a failure of check valves could lead to multiple instrument line failures of unknown consequence. It was on that basis that we permitted you to intervene,--

MR. ANTHONY: Very good.

JUDGE SMITH: -- and only on that basis. And your contentions on check valve leakage or check valve failure, standing alone, would not be within the scope of your petition.

MR. ANTHONY: But you have mentioned multiple failures, and that is just one of the aspects of what I was-- If you would turn to page two of my February 15th submission, which is the first petition,--

JUDGE SMITH: I have reorganized your

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1 contentions by contention number and not by page number, so
2 give me an allusion to your contentions.

3 MR. ANTHONY: Well, this is Contentions Number 6
4 and 7 in the original submission. Number 6--

5 Do the Judges have that?

6 JUDGE SMITH: Yes, sir.

7 MR. ANTHONY: Number 6: The amendment does not
8 specify the number of valves or tests counted, but it does
9 include primary containment isolation valves, Table 3.6.3-1,
10 Part B. Part B lists 67 instrumentation lines. Some of
11 these include multiple valves.

12 I think the figure which is not here -- it's in
13 my later contention -- is about 110, about 110 valves. It
14 is obvious that the amendment involves a large number of
15 valves operating in most of the plant's key systems, for
16 example, the main steam line, recirculation pump, pipe
17 breaks at cooling injection, reactor pressure vessel, low
18 pressure cooling injection, jet pumps, core plate, residual
19 reactor core, that's RCIC -- sometimes we get tangled up
20 by these initials -- and RWCU, which is the reactor water
21 clean-up.

22 These are all, I am injecting here, vital systems
23 in the operation of the plant.

24 JUDGE SMITH: What do they have to do with excess
25 instrument lines -- instrument line excess flow check

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2 MR. ANTHONY: They all have to do with
3 instrumentation, or perhaps they operate some of these
4 valves. They have both functions, the instrument lines.
5 They have the actuation possibility. They have the
6 indication of pressures.

7 The next sentence is:

8 "The failure of one or more of these
9 valves--"

10 JUDGE SMITH: Excuse me. Let's clear up some
11 confusion.

12 When we referred to instrumentation lines,
13 sometimes a confusion is made between instrumentation lines
14 which are lines which operate instruments compared to lines
15 which operate other components.

16 Can anybody help us on that?

17 MR. ANTHONY: Excuse me. I would like to hear
18 from Mr. Martin. He is the man who is plant operator.

19 JUDGE SMITH: Okay.

20 Mr. Martin, what is involved here? Information
21 systems or operating systems?

22 MR. MARTIN: These instrumentation lines
23 communicate with a line transmitting fluid, usually inside
24 the primary containment. They tap off the lines. The
25 instrumentation lines are small lines coming off of larger

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1 lines. They are on the order of one inch or so in diameter.

2 They go through a containment penetration,
3 through a manually operated isolation valve, through an
4 excess flow check valve which will act to terminate the
5 flows in that line should the pressure downstream of the
6 excess flow check valve drop for any reason, and then the
7 fluid -- the pressure of the fluid would continue on through
8 the check valve through what is termed instrumentation
9 tubing to, for instance, a pressure transmitter or a
10 pressure differential transmitter.

11 JUDGE SMITH: Conveying information?

12 MR. MARTIN: The information--

13 JUDGE SMITH: Wait a minute. The distinction is
14 do these lines do things, or tell things? I have seen the
15 term "instrumentation lines" used on plants when they do
16 more than operate dials and gauges. They actually actuate
17 other valves to do things.

18 MR. MARTIN: That may be the result of the
19 information which is transmitted electrically from the
20 pressure transmitter to either the control system or the
21 protection system or the engineered safety feature system,
22 yes.

23 JUDGE SMITH: So the instrumentation line can
24 actually be in the causal link directly to actuating another
25 component?

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1 MR. MARTIN: On the instrumentation line, the
2 associated pressure transmitter serves to monitor pressure
3 on some part of the system and communicate with a hydraulic
4 pressure signal to an electrical signal and then from--
5 The pressure transmitter has an electrical signal on
6 elsewhere into the plant system.

7 JUDGE SMITH: Either into a gauge in the control
8 room or to something that automatically initiates or--

9 MR. MARTIN: Yes.

10 JUDGE SMITH: Okay.

11 So that is the context in which you alluded to
12 the other valves in Contention 6?

13 MR. ANTHONY: Yes. It is the actuation aspect as
14 well as the indication aspect which has clearly come out. I
15 think Mr. Martin has said these valves and these pressure
16 lines do have a function in actuating the other valves,
17 actuating other plant systems.

18 And that's why the importance of all these vital
19 plant systems which are connected in with the
20 instrumentation lines, not only for indications of pressure,
21 heat and so forth, but to actually actuate the performance
22 of the safety valves which close down the reactor or isolate
23 parts of the systems in the case of an emergency.

24 So that these fundamentally are essential to
25 safety.

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1 JUDGE SMITH: All right. I don't understand that
2 aspect, and that is the aspect of the amendment as to which
3 we understood that you were going to intervene.

4 MR. ANTHONY: And it is both aspects, isn't it?

5 JUDGE SMITH: In that instrument lines could fail
6 causing consequences downstream in the instrument line?
7 That is the aspect as to which we thought you were
8 intervening.

9 MR. ANTHONY: Well, it is both aspects because
10 the valve can fail in its function to check, and if that
11 fails in the function to check then that exerts a huge
12 pressure on the line outside of it, and that also
13 reverberates--

14 Excuse me. Can I interrupt just a minute?

15 (Mr. Anthony conferring.)

16 MR. ANTHONY: I would just like to continue with
17 Contention 7, which is the next one--

18 JUDGE SMITH: Would you please address the very
19 narrow point that the Board is making now?

20 We understood the notice of hearing to allude to
21 two aspects. One is the possibility of a check valve
22 failing and, as a consequence, through the check valve
23 through containment is a leakage. Putting aside failure of
24 an instrument line but as a direct consequence of check
25 valve failure, there is a leakage. We understood that to

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1 be one of the aspects of the notice of hearing.

2 If we are wrong about that we would like to know
3 about it this afternoon.

4 The other aspect was instrument line failure.
5 You have indicated you wish to intervene on instrument line
6 failure. Now I want to know what you say to the argument
7 that you may not now file contentions on check valve failure
8 which directly permit leakage from containment.

9 MR. ANTHONY: Well, I wouldn't want to disagree
10 with you on your granting me standing which is on the basis
11 of instrumentation line failure.

12 JUDGE SMITH: All right. Now we're going to give
13 you an opportunity to address our preliminary view that you
14 do not have standing to assert contentions on the other
15 aspect. We have already found that you have standing to
16 assert contentions on instrument line failure. We have
17 already found that.

18 MR. ANTHONY: Does that mean then, Judge Smith,
19 that I have been accepted on the basis of this contention?

20 JUDGE SMITH: No, on the basis of your initial
21 petition. We haven't looked at this contention yet after
22 hearing from everybody. The initial petition spoke only of
23 instrument line failure, nothing else.

24 MR. ANTHONY: Could I refer to Contention 7?

25 JUDGE SMITH: Yes, but can you answer my

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1 question?

2 Do you have anything in addition you want to say
3 about the observation that you have not intervened on any
4 aspect of failure of check valves related to leakage from
5 containment, not instrument line failure?

6 Now if you want to talk about that, if you do,
7 now is the time.

8 MR. ANTHONY: Well, I may be a little confused,
9 but I thought I heard you say to Mr. Wetterhahn that the
10 FSAR didn't make any provision for a postponement of valve
11 tests. And that is the issue here. What effect does the
12 postponement of the tests have upon these valves? And this
13 was not evaluated in the safety evaluation. This is a
14 separate thing, and this was a new thing that was never
15 visualized--

16 JUDGE SMITH: I need some assurance from you,
17 Mr. Anthony, that you understand the distinction I'm
18 making. Could you accommodate me and try to explain to me
19 what distinction you perceive that I am making?

20 MR. ANTHONY: I find it very difficult to do that
21 because they are all together in my mind. This is an
22 illegitimate postponement of tests and that creates the
23 possibility for the valves to fail.

24 JUDGE SMITH: We understand failure, but which
25 valves? Check valve failure?

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MR. ANTHONY: Yes, check valve and with them go the lines.

JUDGE SMITH: And what are the consequences of that failure?

MR. ANTHONY: The consequences of that failure are overpressure.

JUDGE SMITH: On the instrument line?

MR. ANTHONY: Yes.

JUDGE SMITH: And what's the consequence of that?

MR. ANTHONY: The consequence of that is a disruption of the plant's ability to control as reflected from the pressures in those instrumentation lines and the signals that are given through them.

JUDGE SMITH: And that is the aspect as to which you wish to intervene?

MR. ANTHONY: Of course. But that is not the only aspect.

JUDGE SMITH: Okay.

MR. WETTERHAHN: May I respond to that?

JUDGE SMITH: Well, let me catch up here if I may.

Do these check valves, Mr. Martin, themselves perform the function of containment boundary?

MR. MARTIN: Yes, they do. They are identified as containment isolation valves in the technical

AGBeb

1 specification.

2 JUDGE SMITH: And one aspect of this amendment is
3 failure of containment boundary when the check valves fail.

4 MR. MARTIN: Were the check valves to fail, yes.

5 JUDGE SMITH: Were they to fail.

6 I'm not sure we've read it correctly, but I guess
7 we have. We have read it.

8 Mr. Wetterhahn?

9 MR. WETTERHAHN: I don't believe that you have
10 read it correctly. Let me try to explain the design of the
11 check valve and the instrument lines, and try to put this in
12 perspective.

13 I think the major problem that Mr. Anthony has is
14 he believes that there is a change in the design temperature
15 and pressure downstream of this valve. The answer is there
16 is not. As a matter of fact, it is probably stronger
17 downstream of the valve than upstream. In other words, it's
18 designed for the same-- The line is designed for the same
19 temperature and pressure outside the containment downstream
20 of this excess flow check valve as it is inside the
21 containment.

22 This valve is open all the time. It is open all
23 the time. The line downstream of it senses the pressure
24 approximately of the reactor. So when you say it fails, it
25 is going to cause some failure downstream, it is a

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1 non sequitur because it is open all the time, and the
2 dead-end instrumentation feels -- sees pressure from inside
3 the primary containment.

4 It only acts as the reactor pressure boundary
5 should there be a failure of the line downstream of the
6 check valve. Normally the containment pressure boundary is
7 at the instruments in the closed manifold that these lines
8 enter into.

9 We are going to talk about other lines in the
10 context of Amendment 2--

11 JUDGE SMITH: That's different.

12 MR. WETTERHAHN: -- that are different--

13 JUDGE SMITH: We understand that.

14 MR. WETTERHAHN: -- that are different from a
15 leakage -- from an operability point of view, whether if
16 this check valve failed to seat, the instrumentation
17 downstream would still work. Okay?

18 Should there be an accident downstream which
19 breaks an instrument line, it would seat. If it failed to
20 seat, there are two things that occur. One is there is a
21 minor dose which is, as I stated before,--

22 JUDGE SMITH: If that's the case, when it becomes
23 the containment boundary.

24 MR. WETTERHAHN: That's correct. If it fails in
25 its job as the containment boundary, there is a minor

AGBeb 1 release inside the reactor secondary containment.

2 JUDGE SMITH: But please bear with me. I am so
3 frustrated that I cannot get the distinction of what all
4 three members of the Board think is a very simple idea.
5 That was one aspect of the notice of hearing. Is that
6 right?

7 MR. WETTERHAHN: Yes, that's correct.

8 JUDGE SMITH: And that is the aspect as to which
9 he has yet failed to allude.

10 MR. WETTERHAHN: Yes, sir.

11 JUDGE SMITH: And the other one is--

12 MR. WETTERHAHN: The second aspect, as I hear it
13 now is he is saying should there be a failure of the
14 instrument line,--

15 JUDGE SMITH: Right.

16 MR. WETTERHAHN: -- there is an unanalyzed
17 condition because there may be multiple transmitters
18 downstream.

19 JUDGE SMITH: Right. We understood that.

20 MR. WETTERHAHN: I think it is important to note,
21 as I stated before, that at least the Licensee doesn't see
22 any change in--

23 JUDGE SMITH: I know, but you are overloading the
24 Board and you are racing ahead of us. This member of the
25 Board can only take one of these things at a time, and try

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1 and put it in the matrix.

2 Now I think that we have established, after all
3 this discussion, that Mr. Anthony does not seek to intervene
4 or did not seek to intervene on failure of check valves as a
5 failure of containment boundary. That I think has been
6 established.

7 Now I think that we are free to go on to take his
8 contentions, and take them one at a time. If they fall in
9 the containment-boundary category, it will be the ruling of
10 the Board that they are not within the aspect as to which he
11 wishes to intervene. If they fall within the instrument
12 line failure category, then we have to discuss them as to
13 their validity.

14 Does everybody agree with that?

15 Mr. Anthony.

16 MR. ANTHONY: I think I follow you. That wasn't
17 one of my major thoughts.

18 JUDGE SMITH: That's what we understood. I think
19 we have understood your intervention right from the very
20 beginning.

21 Now with that in mind can we proceed to
22 Contentions 1 and 2?

23 The Licensee has already responded to them. The
24 Staff has not had an opportunity to respond to the
25 supplement to Contention 1, and there was no supplement to

AGBeb

1 Contention 2.

2 MR. VOGLER: There is no basic change in the
3 Staff's position regarding the supplement that the Staff
4 didn't already respond to regarding Mr. Anthony's original
5 Contention Number 1. There is no basis for the conclusion
6 that Mr. Anthony reaches, and there is nothing offered to
7 support Mr. Anthony's conclusion. It is just his bare
8 statement.

9 And therefore, we don't think that it is an
10 admissible contention.

11 JUDGE SMITH: As I read the Licensee's response
12 to this supplement, you have only alluded to your position
13 on the original Contention 1.

14 MR. WETTERHAHN: Yes.

15 We don't believe the supplement changes
16 anything. We don't believe it adds anything and therefore,
17 we will stand on our pleadings.

18 JUDGE SMITH: Okay.

19 Mr. Anthony.

20 MR. ANTHONY: Well, on Contention 2--

21 JUDGE SMITH: We're on Contentions 1 and 2.

22 MR. ANTHONY: 1 and 2.

23 Well, Contention 1--

24 JUDGE SMITH: We have viewed Contention 1, by the
25 way, as a containment-boundary contention.

1 AGBagb 1

MR. ANTHONY: Categorical exclusion is what the
2 -- is the basis for the Staff finding there was no
3 significant hazards.

4

JUDGE SMITH: We understand that.

5

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MR. ANTHONY: And the Staff was mistaken in that,
I believe.

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8

JUDGE SMITH: All right. I understand what you
said except that we read it to be a containment boundary
9 contention, not an instrument line failure contention.

10

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MR. ANTHONY: Well I don't think you can
necessarily read categorical exclusion in that way. The
categorical exclusion is under 51.22(c)(9).

13

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JUDGE SMITH: And that is surveillances,
inspections or surveillances?

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MR. ANTHONY: It's 51.22(c)(9) and the
surveillance requirements of the -- these are surveillance
tests that test whether the valve is to function as it is
supposed to function.

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JUDGE SMITH: All right. Is that your --

MR. ANTHONY: And if it doesn't function as it is
supposed to function then the instrument lines are in
danger --

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JUDGE SMITH: Instrument lines.

MR. ANTHONY: -- and the valve in the lines --

JUDGE SMITH: Mr. Anthony, even though when I

AGBagb

1 seem to interrupt it may be rude it's important, I want you
2 to listen carefully to my question and I know you have a lot
3 to say but it is important to us that we get our questions
4 answered because these are the doubts we have.

5 MR. ANTHONY: Very good. I'll try.

6 JUDGE SMITH: This is not a containment isolation
7 contention, is it? You just said instrument line failure,
8 didn't you?

9 MR. ANTHONY: Do you understand my problem of not
10 being able to narrow this down?

11 JUDGE SMITH: I have serious doubts -- if you
12 can't understand the difference between containment
13 isolation and instrument line failure, for our discussion
14 this afternoon it really raises serious doubts as to whether
15 we can understand your contentions. We had better get this
16 distinction down.

17 MR. ANTHONY: I think I can follow that. What I
18 am referring to, of course, is categorical exclusion.

19 JUDGE SMITH: We can read that as well as you
20 can, Mr. Anthony. I want to know what this contention is
21 about. Give it a classification for us. Does it relate to
22 containment boundary as we have discussed this afternoon or
23 does it relate to instrument line failure?

24 MR. ANTHONY: I may not be listening carefully
25 enough, Judge Smith, but I am trying.

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JUDGE SMITH: All right. I just can't explain it

2

any better.

3

(The Board conferring.)

4

JUDGE SMITH: I just can't give you any further

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help, Mr. Anthony. I have checked with the technical

6

members, we don't know how we can explain it any better.

7

MR. ANTHONY: Excuse me, can I....

8

(Mr. Anthony conferring.)

9

JUDGE SMITH: Mr. Anthony?

10

MR. ANTHONY: The instrument line failure has the

11

potentiality for initiating a general plant failure.

12

JUDGE SMITH: Yes.

13

MR. ANTHONY: And in that sense the secondary

14

boundaries could be breached.

15

JUDGE SMITH: Right.

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MR. ANTHONY: And there could be radiation spread

17

around the countryside.

18

JUDGE SMITH: We understand what you're saying.

19

MR. ANTHONY: And that is related to the

20

instrument line failure.

21

JUDGE SMITH: All right.

22

Contentions three and four, three and ten, we

23

will categorize them in the sense that the Licensee did.

24

MR. ANTHONY: Excuse me, was that for me?

25

JUDGE SMITH: We've moved on. Did you have more

AGBagb 1 to say about contentions one and two? I understand your
2 purpose this afternoon is to respond to the Staff and
3 Licensee's answers.

4 MR. ANTHONY: Are we on number three then?

5 JUDGE SMITH: We are going to take three and ten,
6 as the Licensee analyzed them, together. If you want to
7 keep them separate that's fine but it's Mr. Vogler's turn to
8 speak now -- wait a minute, he didn't supplement contention
9 three -- yes, he did, he supplemented contention three.

10 Would you address, if you choose, Mr. Anthony's
11 supplement to contention three, Mr. Vogler?

12 MR. VOGLER: Other than the fact that he is
13 incorrect in his arithmetic of the statement that the test
14 was extended from 18 to 26 months and therefore it is an
15 eight-month extension is misleading, the technical
16 specifications allow a 25 percent extension for flexibility
17 purposes and you wind up with approximately a 3-1/2 month
18 extension of 14 weeks as found in Licensee's applications.
19 We feel there is no basis for contention three and the
20 supplement to contention three doesn't help any, it is still
21 without any basis.

22 JUDGE SMITH: Thank you.

23 Mr. Anthony, Mr. Vogler has simply said that you
24 have not added any basis to supplement number three. The
25 Licensee has answered that in writing, the supplement to

AGBagb 1 contention number three. Now you may respond to their
2 answers.

3 MR. ANTHONY: I think the probabilities for
4 accidents increase with the amount of time, therefore, the
5 amount of time is not only extended from the time when
6 Philadelphia Electric applied for an amendment, it is
7 extended from the time when that test was due. The test,
8 the 24-month test was due in September; the 18-month test
9 was due early in October. Every day after that is beyond
10 the requirements of the regulations.

11 I grant there is a 25 percent flexibility. That
12 doesn't mean that there's any less risk. The risk -- the
13 regulation was set up for a reason, so that the valves would
14 be tested when they needed to be tested to protect the
15 safety of the plant and the public. So every moment from
16 the time they were due last September and October to this
17 very moment now is when they have been neglected and the
18 safety of the plant and the public has been at risk and
19 continues to be increasingly at risk because the
20 probabilities increase and accelerate each day that goes by.

21 I think the Staff and Mr. Wetterhahn, with due
22 respect, are mistaken; it is a eight-month and a nine-month
23 extension. Whether that's part of the 25 percent allowance
24 is immaterial.

25 JUDGE COLE: But isn't that how you calculated
26 it,

AGBagb

1 sir? Isn't that how you calculated it? You got your eight
2 or nine months by taking the 25 percent plus the 14 weeks or
3 whatever it was?

4 MR. ANTHONY: Of course, that's the only way I
5 had. I didn't get any information from the NRC as to when
6 those tests were due, I had to go backwards and I think
7 that's approximately correct. But Mr. Martin can tell me if
8 that isn't correct.

9 JUDGE COLE: I just wanted to make sure I knew
10 how you arrived at your figure, that's all.

11 MR. ANTHONY: That's right.

12 JUDGE COLE: Thank you.

13 JUDGE SMITH: The next supplement is a supplement
14 to contention five.

15 Mr. Vogler?

16 MR. WETTERHAHN: May I add something on this?

17 JUDGE SMITH: Yes.

18 MR. WETTERHAHN: I think here is the first time
19 we get into the dichotomy between this valve operating as a
20 reactor pressure boundary and it acting as part of an
21 instrument line which has another function. Were the
22 reactor -- this valve, to stick open when it was needed,
23 that would prevent it from acting as part of the reactor
24 pressure boundary. But if it was needed, that would mean
25 that there would have to be an independent break downstream

AGBagb 1 of the valve and the instruments which it served would not
2 be able to function.

3 The question is how does this amendment -- the
4 fact that the leakage testing being postponed -- affect that
5 latter element? And as we state here in the reference we've
6 given, that doesn't affect anything regarding the second
7 item, that is, instrument line failure.

8 We assert that this multiple -- even multiple
9 instruments on the same line have been analyzed such that
10 the plant can be safely shut down even considering an
11 instrument line break, whether or not the valve seats is
12 totally irrelevant.

13 If you use logic and a general knowledge of the
14 NRC regulations, you are required to be able to shut the
15 plant down with a single failure. That single failure could
16 be the instrument line break. So there must be other
17 instruments as required by the General Design Criteria to
18 shut down the plant. And that's in essence how it works,
19 that if there is one instrument to scram the reactor on one
20 line, that can't be the only instrument, there must be other
21 instruments on different lines available.

22 JUDGE SMITH: Mr. Wetterhahn, our concern is
23 that we think it's premature for you to be going so
24 exhaustively into the merits.

25 MR. WETTERHAHN: My point is not the merits, my

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1 point is that this is a matter which was analyzed at the
2 operating license stage and in effect in fact it was a
3 contention which was finally not pursued by another
4 intervenor but it was a matter which could have been pursued
5 at the operating license stage and there is nothing
6 associated with this change which would affect the response
7 to the plant to a broken instrument line. Whether or not it
8 may affect the ability of the valve to seat -- which we
9 don't believe it does -- there is nothing changed here and
10 therefore we're saying that this contention cannot be
11 recognized, cannot be admissible because it is not a matter
12 which is within the scope of the Notice of Hearing because
13 the amendment does not change the analysis in any way, shape
14 or form.

15 JUDGE SMITH: I think I understand now your
16 footnote. You're saying that indeed a specific contention
17 in the operating license proceeding raised as an issue for
18 res judicata litigation, instrument line failure -- that the
19 worst that could happen under this extension is an
20 instrument line failure; it's already been looked at and is
21 regarded as a safety matter under the FSAR and, in fact, in
22 the adjudicative proceeding.

23 MR. WETTERHAHN: I don't want to use res
24 judicata. The contention was systems interaction which was
25 abandoned before litigation. But it could have been raised.

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1 And independent of that the Staff exhaustively
2 looks -- as it looks at these things as far as single
3 failure and it did a control system-safety system failure,
4 and I quoted that in my supplementary response, which looked
5 at common instrument lines and common taps. I can point to
6 you -- I didn't have time to cite it in my brief -- where in
7 the Supplementary Safety Evaluation the Staff has written
8 off on this evaluation and provide a copy of it if you wish
9 now.

10 But that is -- yes, if you understand that point
11 I think that we've gone a long way this afternoon. It is
12 the Applicant's position that these matters were reviewed by
13 the Staff, could have been raised and indeed were pursued at
14 least part of the way by an intervenor. But the question is
15 not whether it was adjudicated, it is whether it could have
16 been raised when the Staff pursued this. There is no change
17 in the ability to meet the General Design Criteria or any
18 other requirement as far as instrument lines which is raised
19 by this contention and I wanted to make this point.

20 MR. ANTHONY: May I respond, your Honor?

21 MR. WETTLERHAHN: And once the license has been
22 issued by the Staff and approved by the Commissioners after
23 the 5 percent plateau, we believe that it's accepted the
24 safety of the facility and that safety is not subject to
25 being raised in an adjudicatory hearing unless something

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1 changed.

2 Yes, you can go back to the Staff and go under a
3 separate procedure, but this Board was asked by the
4 Commission to litigate any matters which were raised and
5 changed by the amendment. I again submit that the
6 instrument line aspect -- the analysis of the plant
7 performance should an instrument line be hypothesized to
8 break is not part of the evaluation.

9 Looking at this contention again he says -- he
10 postulates a rupturing valve. Leak testing has nothing to
11 do with a rupture, so this valve -- so therefore it is not
12 related to leakage testing and therefore it can't be
13 litigated. And I think we explained that --

14 JUDGE SMITH: That's a different point --

15 MR. WETTERHAHN: That's a slightly different
16 point, yes.

17 MR. ANTHONY: I would like to respond.

18 JUDGE SMITH: Yes.

19 Didn't we get a little bit out of order here?
20 This contention number five is one which has been
21 supplemented and we haven't heard from you on that, have we,
22 Mr. Vogler?

23 MR. VOGLER: No.

24 JUDGE SMITH: All right.

25 You'll have your chance, Mr. Anthony.

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1 MR. VOGLER: Contention five, Staff will just
2 respond to the supplement, not to the original contention.

3 Contention five has many parts, five paragraphs,
4 and in Staff's position all of them are without any basis or
5 with specificity and should be rejected.

6 One of the problems we have with the contentions
7 that we have here today is pointed out in the first
8 paragraph of contention five when Mr. Anthony refers to
9 Inspection Report 86-02 and then pyramids that into some
10 sort of a catastrophe when, in fact, 86-02 concerns a steam
11 relief valve in the turbine hall and has no connection with
12 the valves that we're talking about.

13 In paragraph two he says that the FSAR doesn't
14 cover consequences and yet the section cited does cover the
15 consequences.

16 There is no basis for the statement that -- by
17 Mr. Anthony that the Staff has found that the valves in
18 question are known to be reliable throughout the industry
19 and he has provided nothing to the contrary.

20 He goes on in paragraph three talking about the
21 names of various valves and the subject and there are no
22 valves in amendment one by the name of Rockwell and Atwood
23 and Morel, they are all Mirada excess flow check valves.
24 There is no basis for the statement.

25 He maintains that the tables set forth in the

AGBagb 1 January 29th, 1986 letter from Mr. Cooney of the
2 Philadelphia Electric Company to Mr. Bernaro of the NRC
3 Staff is not -- sets forth -- excuse me, sets forth recorded
4 failures. He is referring to Table 1. Table 1 reflects all
5 recorded failures, not just leakage failures.

6 And that upsets his arithmetic in which he comes
7 up with the conclusion that a certain percentage of failures
8 is guaranteed. The two columns used by Mr. Anthony for
9 percent purposes is incorrect. The total number of valves,
10 that is, the total valve population does not use just those
11 that have failed and not just those that have failed from
12 leakage. So his arithmetic is wrong again.

13 That basically covers it. There's no basis set
14 forth in contention number five to substantiate any of these
15 claims.

16 JUDGE SMITH: Mr. Vogler, does the Staff have a
17 position on Mr. Wetterhahn's explanation that the instrument
18 line failure was analyzed in the operating license stage and
19 therefore cannot be a -- even in worst case cannot be a
20 matter cognizable in this Notice of Hearing? Do you have a
21 position on that?

22 MR. VOGLER: Mr. Chairman, in the Federal
23 Register notice on December 26th we state that in the
24 Register notice.

25 JUDGE SMITH: That was the paragraph --

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MR. VOGLER: The failure of an instrument line --
excuse me.

(The Board conferring.)

JUDGE SMITH: We cited that paragraph in our
memorandum and order finding that was an aspect of the case
as to which Mr. Anthony wanted to intervene. You say: "The
failure is analyzed...." -- I see, all right.

So you agree exactly in very good language there
-- well let me ask you, why do you bother with tech specs on
this anyway?

MR. VOGLER: I didn't hear you.

JUDGE SMITH: Why do you bother with tech specs?
Why require them to test these check valves? That's some
point, you know. You have to have some reason for doing it.
If you are prepared to have those fail in your analysis, why
are we even here?

MR. VOGLER: If the Chairman please, I'll pass
the handle to Mr. Martin.

MR. MARTIN: These are local leak rate tests to
satisfy the requirements for assurance of containment
isolation which are set forth in Appendix J to 10 CFR Part
60. That is why -- that is the basis of the requirement and
that requirement to do it on a consistent schedule as
reflected in that set of specifications.

JUDGE SMITH: So perhaps we have misread the

AGBagb 1 Notice of Hearing -- from your point of view we have misread
2 the Notice of Hearing entirely. The only thing the Staff
3 saw as an issue was a violation of the containment
4 boundary.

5 MR. MARTIN: I think I understand you and, if I
6 do, that is correct. The issue at hand of amendment number
7 one was the testing of these excess flow check valves to
8 meet the requirement of Appendix J of 10 CFR Part 50 for
9 Type C local leak rate testing.

10 JUDGE SMITH: To prevent them from directly
11 leaking into the environment.

12 MR. MARTIN: Yes.

13 JUDGE SMITH: The Staff has not been concerned in
14 this whole amendment about instrument line failure?

15 MR. MARTIN: That is correct.

16 JUDGE SMITH: As far as you're concerned, with
17 respect to instrument line failure and excess flow check
18 valves, there are no tech specs?

19 MR. MARTIN: I'm not sure I understand that.

20 JUDGE SMITH: The failure of excess flow check
21 valve could produce instrument line failure.

22 MR. MARTIN: I don't think we have reached that
23 conclusion.

24 MR. WETTERHAHN: Sir, we have to define what you
25 mean by failure.

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1 If for some reason the valve goes closed during
2 operations and seats, for whatever reason,
3 non-mechanistically, it would cause the instruments
4 downstream to read something else than they are designed to
5 read.

6 But if you define that as an instrument valve
7 failure, that could affect downstream instrumentation.
8 However, as I said before -- but not leakage. But it would
9 affect the ability of that particular line and the
10 instruments connected to it to function. But that still
11 will not affect the ability of the plant to safely shut
12 down.

13 If you assume that the failure is an in situ
14 failure -- that it is in place -- the instrument lines and
15 the instruments will perform their functions. However
16 should there be a break in that instrument line its pressure
17 boundary function will not be fulfilled and it doesn't seat
18 at that time.

19 I think that is the explanation that I can give
20 on that.

21 JUDGE SMITH: We'll take a ten-minute recess.
22 And then, Mr. Anthony, we will call upon you to
23 respond.

24 (Recess.)

25 JUDGE SMITH: During the break, so that we could

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1 benefit from the explanation given by the parties, we went
2 back and looked at the Safety Evaluation Report issued by
3 NRR on Amendment Number One. And we note now, for the first
4 time understanding it in perspective, that as to both
5 aspects of the Notice of Hearings leakage from the lines
6 outside of containment and instrument line failure, as to
7 both of those aspects NRR has concluded that there is no
8 change necessary in the FSAR leakage because it would leak
9 to secondary containment and the instrument line because it
10 has already been analyzed, which raises again what is it
11 that we could possibly hear under this Notice of Hearing if
12 in the view of the Staff and the Licensee nothing in the
13 FSAR is changed; what is it, what could we possibly hear.
14 And as we sit here right now we don't know.

15 But Congress said something could be heard. And
16 our Commissions do not, I am sure, just send people up to
17 Philadelphia to explain to petitioners that there is nothing
18 -- that they have no relief; that the whole thing is a
19 shallow offer. I just don't think that that is the scheme
20 of the law. But we really need more help on this.

21 MR. WETTERHAHN: It is not Applicant's position
22 there is nothing in the universe of this amendment that
23 cannot be raised as an issue. Our position is that the four
24 corners of the two pleadings does not raise any such issue
25 and that the Board is not obligated to try to change the

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1 contentions to find an admissible contention.

2 JUDGE SMITH: Your advice to us was relevant
3 advice, and we understand that. But to help us understand
4 the contentions and to help us understand the scope of the
5 Notice of Hearing so that we can put your advice in the
6 proper context, we wish to inform you that we have a void in
7 our understanding of the scheme of the regulation and the
8 scheme of the statute and the scheme of this particular
9 analysis and this amendment.

10 If you could help us by contrasting what a valid
11 petition to intervene would look like as against one that is
12 invalid, as you allege this is, maybe then you could help
13 us. But...

14 MR. WETTERHAHN: I hesitate to do that.

15 JUDGE SMITH: I wouldn't want to do it either.

16 MR. WETTERHAHN: As a representative of the
17 licensee I can assure you that I think the engineers sitting
18 behind me probably could frame a contention that is -- that
19 would meet the requirements of the various licensing
20 boards. But all I can say is -- and maybe the Staff can
21 comment -- this petition does not.

22 JUDGE SMITH: I understand that. But here is
23 what has been told to us by the Staff and the licensee:
24 That both aspects of this notice of hearing have already
25 been analyzed by FSAR; therefore none of the contentions

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1 relating to it are valid.

2 MR. WETTERHAHN: Yes, sir.

3 JUDGE SMITH: Dr. Krow.

4 DR. KROW: I don't know if I'm allowed to speak.

5 JUDGE COLE: You were just given permission,
6 Dr. Krow.

7 DR. KROW: I was looking at the position taken by
8 Philadelphia Electric in which to justify a variance I
9 looked at the Statute 5012(A)(1)(2). And two grounds they
10 show to support their position were ground two and ground
11 five.

12 And Mr. Anthony has the problem getting into the
13 hearing in the first place. So you allege that safety
14 problems in order to get standing.

15 Then on the other hand, Philadelphia Electric
16 talks about that there won't be any harm to the public
17 safety if you grant the variance. And this is a dilemma in
18 that if you look at a lot of mechanisms and a lot of
19 equipment in a power plant, and by itself that equipment
20 isn't going to -- failure of that equipment isn't going to
21 cause a safety problem.

22 So on page 50776 of the Federal Register, in
23 column three, which relates to the Statute 5012, the Court
24 state with regard to --

25 JUDGE SMITH: Is it --

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DR. KROW: 5012(A)(2).

JUDGE SMITH: This is for amendment number two
you're referring to?

DR. KROW: No, this is for when you grant a
variance, the standard. And I'm looking at --

JUDGE SMITH: This is the amendment to the
regulation?

DR. KROW: This is the amendment to the
regulation.

JUDGE SMITH: Which we don't have.

DR. KROW: It's in this building if we want to
get it because I got it. Quote:

"It must be understood here that the
underlying purpose of the rule --"

This is 5012(A)(2), which is relied upon by
Philadelphia Electric.

JUDGE SMITH: Not in this amendment.

Are you?

MR. WETTERHAHN: No, sir. Amendment One does not
involve a requirement to vary Commission rule.

DR. KROW: Okay. So when I say 'still
applies'...

JUDGE SMITH: Let's see if it expresses a
philosophy.

DR. KROW: "The underlying purpose of

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1 the rule should be something more
2 specific than achieving adequate
3 safety protection. Otherwise all
4 of the safety requirements in
5 10 CFR Part 50 become subject to
6 open litigation and the exemption
7 process becomes open-ended."

8 I think if there is a rule set up as to when this
9 particular item is supposed to be tested then there were
10 two purposes. The one purpose is certainly protecting the
11 integrity of the power plant. Another purpose is making
12 sure that everything is operating in a way that it is open
13 and above-board; everyone is being protected.

14 And I don't want to argue merits here, but it is
15 going to get some related contentions about what sort of
16 good faith effort was being made to follow these
17 procedures.

18 In other words, knowing that I have to inspect a
19 valve in July or August, do I go ahead and start up knowing
20 that I am going to have to apply for a variance, knowing
21 that I am going to say that there is no safety hazard by
22 getting --

23 JUDGE SMITH: We had hoped that we could resolve
24 this paradox of what seems to be a Catch-22 to us so far as
25 notice of opportunity and hearings is extended that when a

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1 petition is filed the response of both the licensee and the
2 Staff as well says this doesn't change anything anyway;
3 therefore none of your contentions are valid. And we're
4 missing that point. And we simply don't understand it, and
5 you're not touching on it.

6 You're touching upon prior concept of justice and
7 openness and things like that. While we appreciate your
8 advice on that, we do need help on the more narrow legal
9 issues of where do we have jurisdiction, what is our
10 jurisdiction.

11 Now, Mr. Anthony, what has been put to you is the
12 proposition that the amendment number one makes no change in
13 the final safety analysis report; therefore none of your
14 contentions are admissible.

15 Does that basically sum up your position?

16 MR. WETTERHAHN: Yes, sir, as far as the
17 contentions.

18 JUDGE SMITH: That the FSAR already assumes or
19 evaluates the consequence of check valve not performing.
20 Therefore, even if it doesn't during the extension of time,
21 they are saying that matter has already been looked at in
22 the operating license stage application.

23 That is the legal argument that you have facing
24 you and that is an argument that -- that is an issue that
25 the Board needs help on.

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1 MR. ANTHONY: I don't think the Board needs to
2 accept PE's position on this, and I hope they won't.

3 As you said yourself, Judge Smith, what are we
4 here for; why are there any regulations or why is there
5 anything to do with testing since it's all covered by the
6 FSAR. They didn't need to apply for an exemption or an
7 amendment. It's all covered.

8 So I don't know what they're doing here, or why
9 did they ever submit this request for an amendment. They
10 must have some idea that there is a hazard here that hasn't
11 been covered or there are some regulations that have been or
12 are about to be violated, and so they have had to take this
13 step.

14 JUDGE SMITH: No, we won't accept you imputing to
15 the Applicant any feeling that they have violated
16 regulations because they clearly have to apply for an
17 amendment for a change in the tech specs. And complying
18 with the law can never carry with it an imputation that it
19 is being done to cover up some other misconduct or failure.

20 MR. ANTHONY: I didn't mean to say anything like
21 that, Judge.

22 JUDGE SMITH: I didn't understand you then.

23 MR. ANTHONY: I'm just saying that they have
24 asked for an amendment to not carry out the regulations, and
25 they did it because they knew there was something that had

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1 to be fulfilled besides the FSAR.

2 JUDGE SMITH: They said right out that they felt
3 there was no significance. It has its considerations. And
4 that has been their argument from the very beginning.

5 MR. ANTHONY: May I just refer to the
6 introduction in Part 50, Appendix J? I think it does throw
7 a little light on what we're discussing.

8 JUDGE SMITH: Appendix J being the containment
9 leak--

10 MR. ANTHONY: That's the criteria for, and the
11 reasons for, the testing of these valves.

12 JUDGE SMITH: This is containment leakage, as to
13 which you are not intervening.

14 MR. ANTHONY: It's systems and components which
15 penetrate containment.

16 JUDGE SMITH: Well, I suspect that we're not
17 going to get any better advice this afternoon. I was really
18 hoping Staff could throw light on this paradox.

19 It has suddenly come to our attention this
20 afternoon for the first time that the position of the
21 Licensee and the Staff is that under no circumstances that I
22 can conceive can a person intervene successfully during this
23 notice of hearing.

24 MR. VOGLER: I...

25 JUDGE SMITH: What kind of a person would that

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1 be?

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MR. VOGLER: I think we'd better take a few minutes to discuss something here. We may be able to make a statement.

Judge Smith, the three of us here would like to discuss something that you mentioned maybe five or six minutes ago that has kept us busy here.

JUDGE SMITH: Okay.

MR. VOGLER: And I believe we are going to alter to an extent what you just said.

JUDGE SMITH: Fine.

MR. VOGLER: But we're going to need a few minutes to discuss it.

JUDGE SMITH: Well, that would be very helpful if the Staff could give us some additional guidance on this.

MR. VOGLER: Okay.

JUDGE SMITH: Do you need a conference room?

MR. VOGLER: They have a hearing room back there.

(Discussion off the record.)

MR. VOGLER: Mr. Chairman, members of the Board, the Staff feels that Mr. Martin, the project manager, would be best to respond to what we feel is information that you should have regarding what we were talking about just before we broke.

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1 MR. MARTIN: I would like to go back to the two
2 aspects which were discussed earlier, the one being the
3 issue of failure of an instrumentation line, and the other
4 thing the issue of the effects of extending the surveillance
5 interval on the excess check flow valve itself.

6 With respect to failure of the instrumentation
7 line itself, the bounding scenario there would be if you
8 have a failure of the instrumentation line due to some
9 cause, combined with a failure of the check valve to perform
10 its function and shut off the flow of fluid, that would be
11 your bounding scenario.

12 That was analyzed with respect to its
13 consequences, the response of the plant systems and so forth
14 in the Final Safety Analysis Report and reported in Section
15 15.6. The Staff reviewed that analysis and presented its
16 findings in the Safety Evaluation Report. This was in
17 August of 1983.

18 In a lesser accident scenario than that, such as
19 if you fail the instrumentation line but the check valve
20 works, the consequences would be significantly less than
21 that.

22 That is what we were referring to when we pointed
23 out in our Federal Register notice on page 52874, I believe
24 it is, the third column there, the top of the third column,
25 wherein we said:

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"The failure of an instrument line is an analyzed event in the Final Safety Analysis Report, and no aspect of the proposed change in the technical specifications would require a change in the safety analyses."

We also referred to the same subject in our safety evaluation on page two, page two of our safety evaluation accompanying the issuance of amendment number one, wherein we stated, after having discussed the bounding analysis, we stated:

"The analysis of such an event has already been performed and is included in the FSAR in Appendix Two..."

and so forth and so on.

Offering a comment on the second aspect, which we have discussed earlier, which would be what is the significance of extending time to conduct the surveillance test on these check valves to see -- to ensure that it still performs its function from February 19th until May 26th, after looking at this the Staff reached the conclusion, as stated in the third paragraph on page two of the Safety Evaluation:

"Based on the above, the NRC Staff concludes that extension of the interval

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1 for the surveillance testing by 14 weeks
2 on a one-time only basis is acceptable
3 because the increased surveillance interval
4 does not significantly increase the
5 possibility that an undetected failure
6 will occur in the instrumentation line
7 excess flow check valves covered by this
8 technical specification."

9 I would like to add that the nominal time for the
10 surveillance interval, which in the Limerick technical
11 specifications is 18 months, is based on the boiling water
12 reactor standard technical specifications which have evolved
13 over a number of years based on licensing experience,
14 operator reactor experience and so forth. And so that's the
15 standard that we started with in developing the technical
16 specifications and therefore that is the origin of the
17 18-month period for these particular excess flow check
18 valves.

19 That's the extent of what I had to offer.

20 JUDGE SMITH: You haven't alluded to leakage of
21 the lines outside primary containment in your discussion.

22 MR. MARTIN: Yes, sir.

23 JUDGE SMITH: You have or you acknowledge that
24 you have not?

25 MR. MARTIN: These instrumentation lines, of

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1 course, come from inside primary containment through
2 penetrations to the secondary containment. They terminate
3 in secondary containment.

4 JUDGE SMITH: And, as a consequence, the analysis
5 of that event has been performed and is included in the
6 safety analysis report too.

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1 MR. MARTIN: The analysis of the failure of the
2 instrumentation line.

3 JUDGE SMITH: No. The leakage from the lines--

4 MR. MARTIN: The analysis would be a bounding
5 analysis. It would be the failure of the instrumentation
6 line concurrent with the failure of the check valve to shut
7 off the flow.

8 MR. ANTHONY: Your Honor, may I ask Mr. Martin a
9 question, please?

10 JUDGE SMITH: Do you mind, Mr. Martin?

11 MR. MARTIN: No.

12 MR. ANTHONY: Thank you.

13 On the same page -- you mentioned page two of the
14 safety evaluation. You say -- or somebody says a line may
15 serve as an instrumentation manifold with multiple
16 transmitters.

17 The question I want to ask is is that
18 situation of manifold transmitters covered in the FSAR
19 or does the FSAR cover one scenario for one line break
20 and does not cover this multiple effect of a line break or
21 the failure of a valve.

22 MR. MARTIN: Principally that discussion is
23 intended to illuminate why it would be very unattractive for
24 personnel to try to perform this test with the reactor at
25 power. The analysis of the event in Chapter 15 of the FSAR

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1 does discuss the single-failure assumptions which were
2 utilized in doing that analysis.

3 MR. ANTHONY: That means only one line failing
4 without any repercussions in the multiple manifold?

5 MR. MARTIN: It would be the worst line failing.
6 The analysis in the FSAR would be the bounding analysis for
7 the configurations that you could have.

8 MR. ANTHONY: But does that include this business
9 of multiple transmitters which again might include many
10 different systems in the plant all at once on one line
11 failing? Is that I understand in the FSAR?

12 MR. MARTIN: Several points. I don't believe you
13 will find many of these instrumentation lines that have
14 transmitters for many systems, depending on how many you
15 mean by "many."

16 Several of the instrumentation lines have a
17 number of transmitters coming off of them, but it is not
18 like one line serves, say, a major fraction of the systems.

19 Single failure-- The Staff did review the
20 single-failure considerations of the Licensee. That is in
21 fact in the operating-license review, and we made our
22 findings as reported in the Safety Evaluation Report.

23 MR. WETTERHAHN: May I add something on this
24 point?

25 One or two of the references which I've provided

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1 along with the pleading dated March 26th show directly
2 where, in the FSAR at the operating license stage, the NRC
3 asked the question, and where the response was provided. I
4 think it would be helpful if Question 421.10 and Question
5 421.11, -- I think if I read it, it will call out the
6 instrument lines.

7 "Section 7.7.1.3.1.5 of the FSAR
8 indicates that the RPV pressure and water level
9 instruments use the same instrument line.

10 "Identify all other cases where
11 instrument sensors or transmitters supplying
12 information to more than one protection channel
13 are located in a common instrument line or
14 connected to a common instrument tap.

15 "Verify that a single failure in a
16 common instrument line or tap such as break or
17 blockage cannot defeat required protection
18 system redundancy."

19 And I think that that is the technical statement
20 of the issue we have before us. I was reading from Question
21 421.11.

22 It indicates that the requested information was
23 provided in the Common Sensor Evaluation Report which the
24 Staff found in the Safety Evaluation Report, Supplement 2,
25 at page 7-1 in Section 7.2.2.2. I have copies of that

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1 section with me that I can provide to the Board.

2 JUDGE SMITH: Was that in your package of
3 yesterday, too?

4 MR. WETTERHAHN: No. The Safety Evaluation
5 Report reference is not in the package. I will provide it
6 to the Board and the parties at this time.

7 JUDGE LINENBERGER: Mr. Wetterhahn, correct me if
8 I'm wrong but I think the implication of what you just said
9 is that the answer is Yes to Mr. Anthony's question.

10 MR. WETTERHAHN: Yes, the answer is Yes, multiple
11 instrument failure off the same instrument line was indeed
12 analyzed at the PSAR stage, considered by the Staff, and
13 analyzed in the Staff's Safety Evaluation and Supplemental
14 Safety Evaluation Reports.

15 JUDGE SMITH: The Board now is faced with this
16 consideration. If we accept Mr. Wetterhahn's argument and
17 Mr. -- the Staff's, all of these contentions fall within
18 previously analyzed -- the scope of the previously-analyzed
19 items in the PSAR. Therefore, they are not admissible.

20 So what should we do? Should we go ahead and
21 finish this afternoon's work, or should we go back and
22 consider your arguments and go on from there, or can the
23 parties give me any advice on this?

24 MR. WETTERHAHN: I think it would be productive
25 to hear the Staff's presentation, and the response of the

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1 Intervenor such that if the Board decides it should proceed
2 that we have the record complete before us and we can
3 decide -- if it decides adversely to Licensee and the
4 Applicant, just upon the record before us so that we don't
5 have to have another prehearing conference.

6 JUDGE SMITH: That seems to be the conservative
7 approach. All right.

8 Mr. Vogler, excuse me if I'm confused on this but
9 at this moment I'm not sure if you have addressed the
10 supplement to Number 5-- Yes, you have.

11 MR. VOGLER: We had completed our comments on
12 Supplement Number 5, and concluded that they were all of our
13 bases for the reasons we stated.

14 JUDGE SMITH: I don't know if we cut you off.
15 Have you--

16 MR. ANTHONY: I do want to respond to Mr. Martin
17 and Mr. Wetterhahn if I may.

18 JUDGE SMITH: Yes, I think you should.

19 MR. ANTHONY: As I glanced-- I can't follow all
20 of Mr. Wetterhahn's number references but as I look at the
21 FSAR document he has provided to me, these are referring
22 largely to sensor -- instrument lines that are sensor
23 lines. That's their function.

24 And we are discussing lines that serve a function
25 not only as sensors but as actuating mechanisms, and I don't

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1 feel that Mr. Martin has really told us all the story on
2 that.

3 Did the FSAR concentrate largely on the sensor
4 function and make its finding on that, and did they include
5 the possibility of the sensor and actuating functions of a
6 number of lines? The multiple-manifold wording that is used
7 by the Staff is -- quote:

8 "Since the line may serve as an
9 instrumentation manifold with multiple
10 transmitters...."

11 I don't see any reference in the FSAR citations
12 that would include such a inclusive kind of aspect of the
13 instrumentation lines as this.

14 JUDGE SMITH: What do you have to say to
15 Mr. Martin's observation, or the reference to opening of the
16 instrumentation line during operation, if I understood you
17 correctly?

18 Mr. Martin, did I, that your reference to the
19 instrumentation manifold with multiple transmitters was a
20 reference to the inadvisability of opening the
21 instrumentation line during operation? Did I understand
22 you correctly to say that that was the context in which you
23 are raising it?

24 MR. MARTIN: The context of that statement was
25 that if you try to take these things out with the reactor

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1 in service, when you need these transmitters you need--
2 Looking at "Condition for Operations" statements in the
3 technical specifications, you will have to declare those
4 transmitters inoperable as you take them out of service,
5 that they will either be declared inoperable, result in
6 half-scam signals, et cetera, et cetera.

7 It would not be practical to continue operation
8 of the reactor and conduct this testing with these various
9 complexities introduced by trying to do it at power. That
10 was Licensee's basis for justifying that he needed a
11 shutdown of some 14 days' duration to conduct this testing.

12 MR. ANTHONY: Then does this reinforce the idea
13 that anything that happens to these instrumentation lines
14 reflects upon a whole host of different other alarms and
15 instruments and actuating devices, and that's the reason you
16 said this right here? The manifold meant that if the plant
17 is shut down, all of the subsidiary things that depend on
18 this line will have to be deactivated or else they will
19 scam the reactor.

20 JUDGE SMITH: If the plant is not shut down.

21 MR. ANTHONY: Yes, if it is not shut down.

22 So to me that reinforces the fact that these have
23 tremendous repercussions, any failure of these lines, on the
24 operation of the plant and safety of the plant.

25 JUDGE SMITH: Contention Number 11, by my

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1 count, is the next one with a supplement.

2 Did you want to address that one? Am I correct
3 that Contention Number 11 is the next one?

4 MR. ANTHONY: Excuse me. Have we skipped 8?

5 MR. VOGLER: You didn't have a Number 8.

6 MR. ANTHONY: 8, 9--

7 JUDGE SMITH: You didn't supplement those.

8 MR. ANTHONY: But we're not going to leave those
9 out, are we, or are we?

10 JUDGE SMITH: Excuse me. That's right. That's
11 right. I overlooked that.

12 So you have an opportunity to respond now to 6,
13 7, all of them from 5, the written responses. You are
14 correct. We'll take up 6.

15 MR. CONNER: If the Board please, just as a
16 suggestion, for example we handled 6, 7, 8 and 9 together,
17 and given the fact that I think everybody now understands
18 their relative positions philosophically, perhaps we can
19 summarize the rest of these contentions for each party, and
20 that would be -- might move it along a lot faster, if that's
21 possible.

22 JUDGE SMITH: I think we should give deference to
23 Mr. Anthony's wishes.

24 How do you wish to approach it, Mr. Anthony?
25 They did summarize 6, 7 and 8 in the introduction, and then

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1 they went to specific discussions later on.

2 MR. ANTHONY: I think, with due respect, they may
3 have not had an adequate answer to those, so I would like to
4 consider them one at a time rather than summarize them.

5 JUDGE SMITH: All right. Will you proceed then
6 with Number 6?

7 MR. ANTHONY: As far as Number 6 goes, I think
8 that's been pretty well covered.

9 JUDGE SMITH: All right. Let's proceed with
10 Number 7.

11 MR. ANTHONY: Number 7. And that's been pretty
12 well covered, too, in the discussion we've just had.

13 Number 8 is systems interaction, and my reference
14 is to the probability risk assessment insights which--

15 Do you have those documents? Were they
16 provided on Millstone and Seabrook?

17 JUDGE SMITH: Millstone and Seabrook? No.

18 MR. ANTHONY: Yes, Millstone and Seabrook.

19 JUDGE SMITH: They might be available someplace
20 but--

21 (The Board conferring.)

22 JUDGE SMITH: Yes, Judge Linenberger tells me we
23 do have them.

24 MR. ANTHONY: That's good.

25 The quotation from there is in the two PRAs,

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1 Millstone and Seabrook, which specifically documented risk
2 contribution by sequences interfacing systems LOCA
3 represents over 98 percent of the total contribution to
4 early fatalities.

5 This is December '85. Of course this is after
6 the FSAR for Limerick so this is a new aspect, a new
7 contribution to the risk which was not covered in the FSAR.

8 JUDGE LINENBERGER: Mr. Anthony, on this point
9 perhaps you could clear up another corollary question the
10 Board has.

11 We note that Millstone and Seabrook are both
12 pressurized water reactors, and we have some confusion about
13 how you bridge the connection from the PRAs for Millstone
14 and Seabrook to the specific situation we are talking about
15 here.

16 MR. ANTHONY: Well, not being a scientist or an
17 engineer, I could easily fail on that.

18 JUDGE LINENBERGER: Why is it you think that the
19 PRA message with respect to a pressurized water reactor is a
20 valid message with respect to a boiling water reactor such
21 as Limerick?

22 MR. ANTHONY: I think I would have to grant that
23 I don't know what the relationship between the two is, or
24 the risks. But I believe whatever risk they evaluated on
25 those pressurized ones has some application to the boiling

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1 water reactors.

2 JUDGE LINENBERGER: So this is a belief on your
3 part, not that you have some specific basis for connecting
4 the two. Is that correct?

5 MR. ANTHONY: That's correct.

6 JUDGE LINENBERGER: Okay, Mr. Anthony. Thank
7 you.

8 MR. ANTHONY: But there is another reference
9 which is Sarah M. Davis' 1984 reference, and that includes a
10 number of plants besides these. I think these are boiling
11 water plants, as I recall.

12 And the quotation there is:

13 "Interfacing systems LOCA:

14 "For many plants, the valves of
15 concern are the check valves in the
16 residual heat removal or low pressure injection
17 lines."

18 And these are lines that we are actually talking
19 about.

20 JUDGE SMITH: Today?

21 MR. ANTHONY: I guess maybe they are in Amendment
22 2, but I get a little mixed up between Amendment 1 valves
23 and Amendment 2 valves.

24 JUDGE SMITH: We're talking about instrument
25 line excess flow check valves.

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1 MR. ANTHONY: The last part of that is the Part B
2 valves. It lists the number of low pressure cooling lines
3 and valves.

4 JUDGE SMITH: In all fairness, Mr. Anthony, we
5 can't give you this afternoon an opportunity to amend your
6 contentions, only to respond to the criticism of them by
7 Licensee and the Staff and to answer questions about it.

8 MR. ANTHONY: Very good. Well, I'll try to
9 respond on this FSAR, which seems to be the stumbling block
10 which eliminates me and you and everybody; according to the
11 Licensee we shouldn't be here.

12 JUDGE SMITH: Well, now you're digressing. We're
13 focusing on contention eight. I've read it, my colleagues
14 have read it. We've discussed it and no one can explain to
15 me what this has to do with instrument line excess flow
16 check valves.

17 MR. ANTHONY: Well, all right. I haven't made
18 the point.

19 Let's go to nine. And I can skip that one and go
20 on to number ten.

21 JUDGE SMITH: When you say 'skip it,' are you
22 withdrawing it or --

23 MR. ANTHONY: No, I'm not withdrawing it. But in
24 the interest of speeding the process --

25 JUDGE SMITH: I would like to have a

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1 representation from you, Mr. Anthony, if such be the case,
2 that all these contentions that you have offered you believe
3 in, and that they're really the scope of the notice of
4 hearing.

5 If you made a mistake, I'd recommend that you
6 just say it.

7 MR. ANTHONY: Judge Smith, I am not withdrawing
8 this. I have made plenty of mistakes. But I will go ahead
9 or I'll discuss it, whichever you say.

10 JUDGE SMITH: I want your representation that
11 contention eight is, in your view, within the scope of the
12 notice of hearing.

13 MR. ANTHONY: Yes, I believe it is. And number
14 nine also.

15 JUDGE SMITH: Number eleven I think we're up to.
16 You again, Mr. Vogler.

17 MR. VOGLER: Are we back on contention eleven?

18 JUDGE SMITH: Yes.

19 MR. VOGLER: Mr. Anthony's conclusion, set forth
20 in his supplemental contention number eleven, that the
21 Philadelphia Electric Company was not in good faith by not
22 conducting the tests earlier, and then he puts forth the 14
23 days, the time frame that he used. And in the opinion of
24 the Staff, it is without any basis.

25 The reasons that the Philadelphia Electric

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1 Company put forth on page three of their second amendment
2 request was reviewed by the Staff and accepted by them. And
3 it is quite a statement in there. I don't think it would do
4 anybody any good to have me read it into the record.

5 But the Staff, for the reasons set forth,
6 accepted Philadelphia Electric Company's reasons for not
7 conducting the test when Mr. Anthony said they should be
8 tested.

9 The Staff notes that at least 14 days are needed
10 to test amendment one in a row, and during this time period
11 when the plant was kept in the standby condition -- which
12 means that the temperature was up -- they couldn't have
13 really done it without taking the 14 days to shut down and
14 they didn't have 14 days in that time period, consecutive 14
15 days.

16 And for that reason we think that his conclusions
17 that Philadelphia Electric is not in good faith is a
18 statement that is made without any basis and should be
19 denied.

20 JUDGE SMITH: Mr. Anthony.

21 MR. ANTHONY: Could I get Mr. Vogler to read into
22 the record the reasons why the testing was not done in the
23 40 days or some period during that time when Philadelphia
24 Electric and NRC knew that these tests were due in October,
25 and the plant was able to be shut down before it was

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1 operating at full speed? In fact, it was not operating at
2 full speed until late in August and the license was granted
3 on the 8th. It could have been done in the two weeks
4 between the 8th and the time when it was operating at full
5 power.

6 I would like Mr. Vogler to tell me why these 40
7 days in especially the August period, why these tests were
8 not performed as they were required.

9 JUDGE SMITH: Mr. Vogler.

10 MR. VOGLER: It's already in the record. It's in
11 the application for the amendment. If Mr. Anthony would
12 take the time to read it he would see it.

13 I'd be glad to, with the instruction of the
14 Board, to read the statement in the record. But it's
15 already there.

16 JUDGE SMITH: You're not required to do that
17 unless you choose to.

18 MR. ANTHONY: I don't believe that I have read
19 anything from the NRC that justifies the reasons for not
20 doing these tests. And certainly there is nothing in the
21 NRC write-up that tells about these times when the plant was
22 at zero production.

23 JUDGE SMITH: You say 40 days. At first it
24 confused me because I thought, you know, well, 40 days,
25 that's a long time. It's 40 days, not in a row; it's 40

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1 days cumulative.

2 MR. ANTHONY: It's specified in the contention
3 eleven, the supplement to it --

4 JUDGE SMITH: You just haven't addressed it all;
5 the fact that zero power at 16 days does not mean they hve
6 16 days to do it. You have ignored that point.

7 If you want to address it you have a chance.
8 It's not 40 days, it's 16 days and nine days. Isn't that
9 correct?

10 MR. ANTHONY: In August it was 16 days.

11 JUDGE SMITH: Right.

12 MR. ANTHONY: I can't understand why the tests
13 were not done in those 16 days.

14 JUDGE SMITH: Why don't you talk about what
15 Mr. Vogler said. That's your opportunity. You don't have
16 to, but that's your opportunity.

17 MR. ANTHONY: He said that it would interfere, as
18 I understand it, with the plans that PE had for their
19 program. And to me, that is not a reason to avoid tests
20 that are connected with the safe operation of the plant.

21 JUDGE SMITH: Okay.

22 Contention 12.

23 MR. ANTHONY: Could I say in connection with good
24 faith -- and that is the issue here, I think --

25 JUDGE COLE: Still on number eleven or...?

AGBmpb 1

MR. ANTHONY: Right.

2 The Board itself mentioned that Philadelphia
3 Electric's letter of December 18th seemed a little bit late,
4 and that the NRC performed a quick turn-around. In seeing
5 that amendment one was written up and put through the
6 process and appeared in the Federal Register by the 26th,
7 the Board said eight days seemed like a quick turn-around.

8 JUDGE SMITH: Over the Christmas holidays.

9 MR. ANTHONY: Over the Christmas holidays. And I
10 agree. And I don't know what the normal expectation would
11 be.

12 But to me this indicates that Philadelphia
13 Electric all of a sudden saw February 19th coming up and
14 they quickly -- and that was the end of the 25 percent
15 addition and they quickly got their application in. And
16 they thought everything would go through fairly quickly.
17 And they got the NRC to issue the license on the 6th. And
18 then before that, on the 30th, I sent in my letter to
19 intervene.

20 I would speculate that that perhaps was a
21 surprise, and therefore they looked at the other part of
22 this operation, which was the notice of December 30th, and
23 they saw that March 3rd, the deadline there was coming up.

24 And this time they, instead of an 11-page
25 document, they got together a 40-page document with even an

1 AGBmpb

1 environmental --

2 JUDGE SMITH: Who is 'they'?

3 MR. ANTHONY: Excuse me, the Staff.

4 Even with the environmenal evaluation the process
5 looked like a pretty rush job. The license was issued on
6 the exact day when the time limit ran out. It was issued in
7 such a hurry that a letter from Philadelphia Electric
8 written on the 3rd appeared in the issue of the license on
9 the 3rd.

10 That seems like a small matter but it just -- it
11 occurs to me that something caused the NRC to all of a
12 sudden put a lot more effort into this. And it may have
13 been because they thought they had to do a little better job
14 because there was going to be somebody interested as an
15 intervenor.

16 JUDGE SMITH: This is still on contention eleven
17 you're talking about?

18 MR. ANTHONY: Yes.

19 JUDGE SMITH: I think that you --

20 MR. ANTHONY: We'll go on to number 12 if you are
21 ready.

22 JUDGE SMITH: I think you have added new
23 information to contention eleven. That being the case, we
24 should allow others to respond to it if they wish. And
25 we'll go on to 12 then.

AGBmpb

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(No response.)

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JUDGE SMITH: We'll go on to number 12,

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Mr. Vogler.

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MR. VOGLER: In contention 12 it is contended

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that the operator of the nuclear plant could be called upon

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to shut down the plant, but for normal plant instrumentation

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and controls it could very possibly not be available since

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the instrument line may serve as an instrument manifold with

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multiple transmitters.

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This is what we have been discussing earlier, the

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multiple transmitter problem, which not only Mr. Martin of

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the Staff responded to, but also Mr. Wetterhahn on behalf of

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the Licensee. The Staff maintains there's no basis for this

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contention.

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Mr. Anthony is taking the FSAR statement and

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using it for an improper conclusion, in our opinion. He

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ignores the multiple and redundant systems available to shut

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the plant down safely. He fails to specify how or why other

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systems would not be available. And in Staff's view there

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is no basis for his remark. His remark is unsupported and

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it is just a bare statement.

22

JUDGE SMITH: Mr. Anthony.

23

DR. KROW: Could I add something? We just

24

received a copy of this at lunch and Mr. Anthony hadn't seen

25

it. So he's trying to read the response and respond at the

AGBmpb

1 same time.

2 JUDGE SMITH: What is that document?

3 MR. ANTHONY: This is the Licensee's response,
4 the Licensee's answer to my contention supplement.5 MR. WETTERHAHN: Mr. Chairman, I handed that to
6 Mr. Anthony at 8:15 this morning.7 MR. ANTHONY: We did get it this morning. And it
8 is difficult to digest and respond, but I will do my best.9 But I will stand by what I wrote. And the NRC's
10 verbal response, we have discussed that and, of course, we
11 are not in agreement. It came up, as Mr. Vogler said,
12 before.

13 JUDGE SMITH: 13, Mr. Vogler.

14 MR. VOGLER: In this contention Mr. Anthony
15 advises that the Philadelphia Electric Company has provided
16 no operating record from its own experience or the industry
17 to assess the reliability of the valves, and challenges the
18 Staff's conclusions the same way.19 In contention eleven I pointed out that
20 Philadelphia Electric Company in its December 18, 1985
21 application for this amendment set forth the reasons why
22 they hadn't had time to conduct the tests prior to this
23 time. And my answer is basically the same, only another
24 part of the application.

25 The Philadelphia Electric Company in its letter

AGBmpb 1 to the NRC on December the 18th, 1985, at pages five and six
2 of its application set forth its industry -- its experience
3 and the industry's experience as well concerning these
4 valves. And, you know, the Staff is forced again to say
5 there is no basis for what Mr. Anthony puts in his
6 contention.

7 The information was provided. And it's there to
8 review. And to just simply say without any support at all
9 that there is no operating record, industry or otherwise, is
10 incorrect. There is no basis for it and the contention
11 should be dismissed.

12 JUDGE SMITH: Mr. Anthony.

13 MR. ANTHONY: I would like to know where that
14 record is. At least in amendment two the Staff made an
15 effort to -- or at least Philadelphia Electric submitted one
16 letter which had a list of valves in it, and the
17 manufacturers and the --

18 JUDGE SMITH: Could you show it to him? Do you
19 have it handy?

20 Does anybody have it handy?

21 MR. ANTHONY: It's dated January...

22 JUDGE SMITH: You received it? It was served on
23 you directly on December 18th, apparently, according to
24 Mr. Conner's representation.

25 MR. ANTHONY: January 26th was the letter.

AGBmpb

1 JUDGE SMITH: Mr. Conner stated that he had
2 served you on December 18th with a copy of the application.
3 Mr. Vogler, as I understand him, said that the information
4 was contained in the application.

5 We have a factual dispute here which I think can
6 be easily resolved by showing him the pages of the
7 application to which it refers.

8 MR. VOGLER: Not only did the licensee send the
9 application, but the Staff in January of 1986 sent him the
10 application.

11 JUDGE SMITH: Okay. Just show him the language
12 to which you allude and maybe we can resolve it.

13 MR. WETTERHAHN: I am proffering the documents to
14 Mr. Anthony.

15 (Documents handed.)

16 MR. ANTHONY: What I am saying in this contention
17 is that we get conclusions without any backup material. The
18 only backup material that I received and that I saw anywhere
19 near connected with the amendment is a letter of January
20 29th. It's on amendment number two, and it has in it two
21 tables. Table One is NPR --

22 JUDGE SMITH: Wait a minute.

23 Are you representing to the Board that you did
24 not receive a copy of the application for amendment number
25 one?

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MR. ANTHONY: I am not saying that. I am saying there was nothing in that that identified the manufacturers of these various --

JUDGE SMITH: Let's look at the document. I'm trying to find it in my own files, and I can't. But we don't have to debate whether it was in there or not. Let's look at it.

(Document handed to the Bench.)

AGBeb

1 MR. ANTHONY: I would like to add, Judge Smith,
2 that if all that is needed is a history on conclusions from
3 the industry there wouldn't be any need for testing the
4 specific valves, and that seems to be the only thing we've
5 gotten from the Staff on this.

6 JUDGE SMITH: I see that the issue has -- after
7 some probing has finally been drawn. Your Contention 13
8 does not allude to the information you did receive. I think
9 that you have a legitimate point that you might not regard
10 that as an operating record.

11 I don't agree with you, Mr. Vogler, that that was
12 an operating record. On the other hand, without a
13 discussion of that information, your contention is not
14 forthcoming, is not forthright. And there was some
15 information. Just take it into account. That's all.

16 MR. ANTHONY: The information was inadequate and
17 if we had had a chance for discovery, I would have asked
18 these questions, but there has been no such chance.

19 MR. CONNER: If the Board please, for the record
20 there is a copy of the December 18th, 1985, application
21 attached to the material that we sent the Board at its
22 request by my letter dated March 6th, 1986, which is Item 23
23 in my pleading file.

24 JUDGE SMITH: It is 27 in mine.

25 MR. CONNER: It shows the distribution to the

AGBagb 1 service list and the very last page --

2 JUDGE SMITH: Mr. Anthony has admitted now -- we
3 got off on the wrong trail. He has admitted that he
4 received the document, he says now that the document does
5 not say what Mr. Vogler says it says.

6 Is that your position, Mr. Anthony? That is the
7 way I've heard you say it and we've read the document for
8 ourselves.

9 MR. ANTHONY: We said there are conclusions in it
10 and no material to back up the conclusions.

11 JUDGE SMITH: But in the first instance I
12 understood you to say you never even received the
13 applications and that is not the case.

14 All right. Now we'll move on to amendment number
15 two. And may I ask you to summarize your position on
16 amendment number two similar to amendment number one?

17 MR. WETTERHAHN: Yes, sir. I would note that
18 unlike amendment number one the Board has not yet ruled on
19 the interest proceeding. I will not rehash our pleading but
20 our position is still contained in the pleading before the
21 Commission which was referred to the Licensing Board.

22 JUDGE SMITH: Didn't we get a direct response
23 from you on this?

24 MR. WETTERHAHN: As far as the interest and the
25 lateness, it first went to the Commission because the

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1 members of the Board had not been appointed.

2 JUDGE SMITH: Yes, that was a little detour that
3 we weren't sensitive to. I mean we could have received it,
4 yes.

5 MR. WETTERHAHN: And you have our position on
6 that. That remains our position.

7 JUDGE SMITH: All right. Now as a matter of
8 prudence we'll go ahead with these contentions, too, just in
9 case you don't prevail.

10 MR. WETTERHAHN: Again for individual reasons
11 Mr. Anthony has failed to state a contention which is within
12 the scope of this contention and which is stated with
13 sufficient basis and specificity. The reasons for each are
14 -- on each of the contentions is contained in the paper
15 which we filed with the Board yesterday. That's a general
16 statement.

17 The only opening statement, if you will, is the
18 question -- I think I would like to raise a question of
19 interfacing system LOCA's, the matter of confusion. And now
20 that we're beginning the second amendment I would like to
21 address that.

22 JUDGE SMITH: Interfacing LOCA's?

23 MR. WETTERHAHN: LOCA's.

24 JUDGE SMITH: -- loss of coolant accidents.

25 MR. WETTERHAHN: Yes. System LOCA's, yes.

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1 That is that there are -- where the isolation
2 valves serve as the pressure boundary and there is a change
3 in the rating or the service of the pipes downstream of that
4 isolation valves; examples are the RHR system and the LPCI
5 system.

6 But it is our position, the Licensee's position
7 that that matter is not the matter at issue here, it is a
8 matter which is subject to another technical specification
9 and that if there is sufficient leakage across these valves
10 there are systems installed and described in the FSAR such
11 that there will be no consequences because the operator will
12 be alerted and can take specific action.

13 So therefore -- as I think we have provided the
14 technical specification and the reference to it -- this is
15 different from the first amendment. There are systems,
16 including the two I mentioned, that are high-pressure,
17 low-pressure boundaries but that is irrelevant to the action
18 being requested since that is addressed by a different
19 specification and there are design provisions which can
20 accomodate that.

21 Aside from that general statement, if I have any
22 further comment on an individual contention above that
23 presented in our pleading I will ask to be heard.

24 JUDGE SMITH: Mr. Vogler?

25 MR. VOGLER: Does the Board want the Staff to

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1 comment on what was just said? If so I will call upon the
2 project manager, otherwise I would like to get into what we
3 would have put in writing.

4 JUDGE SMITH: All right. I guess we would like
5 to have Staff's comment on --

6 MR. VOGLER: -- on what Mr. Wetterhahn just said.

7 MR. MARTIN: On the subject of interfacing system
8 LOCA's with respect to the subject of amendment number
9 one --

10 JUDGE COLE: Amendment number two.

11 MR. MARTIN: -- and number two?

12 JUDGE COLE: I thought that's what he was talking
13 about a minute ago, too.

14 JUDGE SMITH: I understood him to say that
15 interfacing LOCA's were the subject of different tech specs
16 and not in the scope of amendment number two.

17 Is that right?

18 MR. WETTERHAHN: Yes, sir.

19 JUDGE SMITH: And now we have asked for your
20 comment on that.

21 MR. MARTIN: I would agree with that on the basis
22 that there are separate technical specifications which
23 define the frequency and the requirements for conducting
24 surveillance tests on a valve identified as a pressurized
25 laser valve; no change to those technical specifications is

1 AGBagb 1 sought by the amendment number two.

2 JUDGE SMITH: And those are different valves?

3 MR. MARTIN: In some cases they are some of the
4 same valves for which an extension of the Type C leakage
5 tests are sought in that number two.

6 JUDGE SMITH: I see.

7 Are you going to discuss standing and then we'll
8 take up the contention?

9 MR. VOGLER: The Staff is going to discuss
10 lateness of amendment number two.

11 MR. ANTHONY: Sorry to interrupt but there is a
12 problem here in that my contention 15 -- are we on 15?

13 JUDGE COLE: We have just started the
14 individual --

15 JUDGE SMITH: Mr. Vogler has not had an
16 opportunity to discuss whether we should even accept your
17 petition let alone your contentions because of his view that
18 you are late.

19 MR. ANTHONY: Now are we including now the
20 request for an exemption as well as the request for
21 amendment, the two --

22 JUDGE SMITH: I have a hard time separating
23 them.

24 You're shaking your head like I have a problem.

25 MR. ANTHONY: I guess I have a problem.

AGBagb

1 JUDGE SMITH: Let's hear Mr. Vogler talk first
2 about the preliminary matter and that is should we accept
3 your petition despite the fact it was not filed on time. He
4 has not yet had an opportunity to do that. We have heard
5 from the utility but not from Mr. Vogler.

6 Mr. Vogler.

7 MR. VOGLER: Unlike the Staff's response in the
8 first request for an amendment -- in other words, operating
9 license amendment number one -- where we said nothing about
10 the timing or the receipt of Mr. Anthony's petition to
11 intervene, the Staff takes a different position with his
12 present request for intervention on operating license
13 amendment number two for the following reasons:

14 The Federal Register notice for OL-2, operating
15 license number two, was dated December 30th, 1985 with the
16 notice therein that responses or petitions to intervene or
17 requests for hearing are due by January the 29th, 1986.
18 This was subsequently corrected but nevertheless the due
19 date for the Federal Register notice was January the 29th.
20 Mr. Anthony's petition is dated February the 26th. The
21 petition is approximately four weeks late.

22 Regarding the Federal Register, I note that
23 various parties have commented on it and the fact remains
24 that the Commission has taken a very strong stand that the
25 Federal Register notice serves notice to all -- the most

1 AGBagb 1 recent one is probably the Seabrook opinion in 16 NRC page
2 1029 in which they again held -- regarding a late-filed
3 intervention petition by a knowledgeable intervenor -- that
4 the Federal Register notice serves proper notice to all.

5 There was confusion with regard to operating
6 license number one and the Staff didn't pick up on
7 Mr. Anthony's tardiness. That is not present in this
8 proceeding.

9 In Staff's view with regard to operating license
10 number two Mr. Anthony is hopelessly out of time, it is late
11 and it should be denied for that reason.

12 Furthermore, no effort to explain or run through
13 the five factors that pertain to late filing as found in 10
14 CFR Section 2.714 is mentioned by Mr. Anthony other than the
15 fact in the second paragraph of his petition that we
16 received a copy of the notice of the amendment in a monthly
17 notice from the NRC addressed to Mr. Edward G. Bower, Jr. of
18 the Philadelphia Electric Company. That is not sufficient.
19 The Federal Register notice was duly sent out and published
20 and Mr. Anthony missed it.

21 Good cause, that's the only reason that
22 Mr. Anthony mentions and in Staff's opinion that is
23 insufficient.

24 Staff notes the length of the delay can be taken
25 into consideration and, as opposed to license amendment

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1 number one which involved a matter of days, this involves a
2 matter of four weeks. We don't think that Mr. Anthony has
3 satisfied the good cause factor.

4 With regard to other means, inasmuch as the Staff
5 is opposed to what we have seen thus far, we don't think
6 that we can represent Mr. Anthony and that would probably
7 fall in favor of Mr. Anthony.

8 With regard to the third category, sound record
9 development, with regard to the particularity that has been
10 put forward so far, just general conclusions about danger to
11 himself and the public, he has made no effort to show how
12 these generalized concerns would develop a sound record that
13 would assist this Commission and this Licensing Board in
14 reaching a decision and we don't think he has satisfied that
15 contention either.

16 Existing parties: there are no other parties at
17 the present time in Staff's view to represent Mr. Anthony.

18 And the last one, delay, yes, of course, there
19 will be a delay because we will have a hearing versus no
20 hearing and we feel that on balance, the balancing that the
21 Commission has directed the Staff to do, the balance is in
22 favor of denial, that he has failed to satisfy the criteria
23 for late filing.

24 With regard to interest and standing, as the
25 Board notes, we've been talking about it quite a bit today,

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1 the Petitioner must come forward with an interest and show
2 how that interest is affected and what specific aspect of it
3 would affect Mr. Anthony.

4 Staff points out that other than a very minor
5 reference at the very beginning when he is referring to the
6 leak rate testing on the valves he gives no mention of the
7 operating license to valves throughout his petition, which
8 is opposed to what he did in operating license amendment one
9 where he talked about instrument lines.

10 We have here a one-page generalized complaint; no
11 injury in fact is stated. His concerns about general
12 meltdown, being forced to move from the area have all been
13 discussed before in this proceeding and in other proceedings
14 and have been found to be insufficient, not only by the
15 former Licensing Board during the operating license
16 proceeding in this matter and the Appeal Board -- and as we
17 pointed that out to the Licensing Board in our written
18 response to operating license number one, but also in the
19 TVA proceeding involving Watts Bar and also in the
20 Washington Public Power proceeding involving Pebble Springs.
21 Economic matters are not concerned.

22 Staff wants to point out that we don't think that
23 Mr. Anthony can speak for the public in general, which he
24 does for himself -- as he can for himself, which he does
25 here. And in short to conclude Staff is unable to find any

AGBagb

1 nexus between the second operating license amendment and the
2 problems that Mr. Anthony foresees and puts forth in his
3 paper. And on that basis we urge that the petition be
4 denied.

5 JUDGE SMITH: Mr. Anthony, did you wish to
6 comment?

7 Did you wish to comment, Mr. Anthony?

8 MR. ANTHONY: Yes, I would like to comment.

9 I didn't address the lateness criteria because I
10 consider my request to intervene was not late. As the Staff
11 admitted it was an oversight and I was not provided by the
12 Staff with a copy of the Federal Register in both of these
13 applications. And I believe that Staff is right in saying
14 that I was entitled to receive it; I did receive it and I
15 responded immediately on amendment one. I was not able to
16 respond with the work I was doing on amendment one to
17 amendment two until later; however, I did have in mind that
18 the expiration date was 30 days from the day that I received
19 the notice and that was the 29th.

20 JUDGE SMITH: Mr. Anthony, I want you to make a
21 representation to the Board that you really believe that, if
22 that is the case. It is very difficult for us to understand
23 how you can have that thought. And if you are representing
24 to the Board that that is the case, I want you to expressly
25 make that representation, that you believed that you had 30

AGBagb 1 days from the Staff's letter.

2 Is that the truth?

3 MR. ANTHONY: Absolutely, I had 30 days. And I'm
4 glad that the Board itself acknowledged that the Staff in
5 your quotation --

6 JUDGE SMITH: You're digressing. I asked you to
7 make a representation, which you have done. We'll go on
8 from there.

9 MR. ANTHONY: Of course that's what I believed,
10 and I still believe that this was legitimate, it was not
11 late. I didn't address the factors because it was not late.

12 JUDGE SMITH: What was the basis of your belief
13 that you had 30 days? Where did the 30 days come from?

14 MR. ANTHONY: I believe that it comes from the
15 regulations.

16 JUDGE SMITH: Okay.

17 MR. ANTHONY: The regulations on intervention,
18 714.

19 JUDGE SMITH: Proceed.

20 (Pause.)

21 You may proceed, Mr. Anthony.

22 MR. ANTHONY: Can I take a couple of minutes,
23 please?

24 JUDGE SMITH: Certainly.

25 (Mr. Anthony conferring.)

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JUDGE SMITH: Mr. Anthony?

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MR. ANTHONY: You asked me if I had responded to the five criteria. I would have if I thought it was late intervention, that would have only been sensible to strengthen my intervention; I would have been foolish not to. I certainly would have claimed that I could add to the record and I think that's already been demonstrated by the contentions that I submitted. And without my intervention there would be no such record because no one else intervened. So I think I performed a service and that I could have answered the five criteria in a way that would have made my intervention petition acceptable.

JUDGE SMITH: Mr. Anthony, the Board has some concern about whether we can accept the representation that you believed that you had 30 days -- and not all members of the Board may think alike on this.

I am looking right now at your letter of January 30th, 1986 in which you allude to the fact that the NRC Staff gave you a copy of the letter to Mr. Bower dated January 27, 1986 and you said to the Commission:

"We call your attention to the fact that we could not have responded any earlier since the NRC notice of 1/27/86 reached us only on 1/29/86."

One could infer from that language that you recognized full well that you did not have the 30 days from

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1 the time the Staff served you with the Notice of Hearing. I
2 just perceive not a uniformly consistent belief on your
3 part. In short, it is very difficult for me to accept your
4 representation.

5 MR. ANTHONY: I would like to respond, Judge
6 Smith.

7 JUDGE SMITH: Yes, I think it would be
8 appropriate.

9 MR. ANTHONY: I have to admit to a certain amount
10 of confusion, and I wasn't even sure there were two
11 amendments requested. And if I had been, I might have
12 applied to intervene on both at the same time. I received a
13 copy of the Federal Register on the 29th. I sent in my
14 intervention on amendment one the next day. I responded as
15 quickly as I possibly could after getting the Federal
16 Register notice. I wrote a letter sometime after to
17 Mr. Butler which definitely shows my confusion about the
18 two. And I admit that there was confusion.

19 JUDGE SMITH: The Board itself was confused.
20 That is somewhat irrelevant.

21 MR. ANTHONY: So as I say I would have submitted
22 both at the same time if I hadn't had this confusion. But I
23 was able to catch up with it and figure it out. I did the
24 best I could to reply right away.

25 JUDGE SMITH: That wasn't the point of my

AGBagb 1

reservation.

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You may proceed.

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(Mr. Anthony and Dr. Crow conferring.)

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DR. KROW: Could I ask a question?

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JUDGE SMITH: I suggest you go on.

6

(The Board conferring.)

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JUDGE SMITH: Have you finished the five factors,

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Mr. Anthony?

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MR. ANTHONY: Yes.

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JUDGE SMITH: Okay.

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Let's proceed then to contention 14. And you can

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do it just about any way you wish to organize it,

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Mr. Vogler.

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MR. VOGLER: We didn't look at it. Wherever

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there are overlaps we point that out, we didn't attempt to

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group them.

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JUDGE SMITH: Wait a minute.

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MR. VOGLER: We just took 14 through the end.

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JUDGE SMITH: And that's what you're going to do

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now?

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MR. VOGLER: Yes. However, Staff's response to

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contention 14 is one line long.

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Mr. Anthony is in disagreement with the findings

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of the NRC Staff and Staff says there is no basis for this

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contention, there is no specificity for the contention,

AGBagb 1 just a bare statement of disagreement and without more it
2 should be dismissed. And he should say why he disagrees.

3 JUDGE SMITH: I guess I should pay more deference
4 to Mr. Anthony's wishes as to how he approaches this. I
5 don't know if we want him to have to respond to 14
6 contentions at once or -- what is your pleasure,
7 Mr. Anthony?

8 MR. ANTHONY: I have a hard enough time
9 responding to one at a time.

10 JUDGE SMITH: All right. I think we'd better
11 allow you to... Can't we lump 14 and 15 together along the
12 same lines?

13 Take them separately.

14 MR. ANTHONY: 14.

15 JUDGE SMITH: That's just an introduction, isn't
16 it?

17 MR. ANTHONY: I'm prepared to move on from 14 to
18 15.

19 JUDGE SMITH: It's up to you. I can see that --
20 we can even say you prevail on that contention and it
21 wouldn't do much.

22 JUDGE COLE: We are now aware that you're in
23 disagreement.

24 MR. ANTHONY: We'll go on to 15.

25 JUDGE SMITH: Mr. Vogler?

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MR. VOGLER: 15.

JUDGE SMITH: Yes.

MR. VOGLER: Contention 15, Mr. Anthony continues from what he was saying in number 15, that he disagrees with the Staff and that there is no basis for its conclusions and that we apparently fabricated a causal connection between the exemption and the amendment. And Staff just simply says that there is no basis for this bare disagreement.

JUDGE SMITH: Well do you understand it, the contention?

MR. VOGLER: Sir?

JUDGE SMITH: Do you understand the contention?

MR. VOGLER: No, I don't. There is no basis for it.

JUDGE SMITH: Is that what you mean by that?

MR. VOGLER: There is no support for his disagreement with the Staff, there is just a bare statement.

JUDGE SMITH: Do you understand this statement of causal connection between exemptions and amendments? This is a thread that is passing around here that I think we are missing. I mean as I understand it the request for the amendment requested the exemption.

What do you mean by "no causal connection?"

MR. ANTHONY: Causal connection is on page two of the exemption, and I'll quote it:

AGBagb

1 "The Staff has found that approval
2 of the proposed extension is warranted and is
3 authorized by the granting of this one-time
4 exemption so that unit one may continue to operate
5 until a shutdown is required on May 26, 1986 to
6 perform other extensive surveillance and
7 maintenance activities."

8 Well that's plain language as far as I can read.
9 It says "...is warranted and is authorized by the granting
10 of this one-time exemption." I don't find any reference in
11 the regulations to authenticate this. Where it came from, I
12 don't know. I would hope that the Staff would elucidate
13 where they got this from. The exemption therefore
14 authorizes the extension and the amendment.

15 JUDGE SMITH: Perhaps somebody could help us.
16 None of the Board members have been into this type of
17 hearing before. As I understand, the difference between
18 number one and number two is number one fit the categorical
19 exclusions, number two, you didn't fit into any categories
20 and you needed an exemption, is that --

21 MR. WETTERHAHN: No, sir, that's not correct.

22 MR. VOGLER: That's not it.

23 MR. WETTERHAHN: May I try it?

24 JUDGE SMITH: Yes.

25 MR. WETTERHAHN: There are 37 valves involved

AGBagb 1 amendment two. All 37 are covered by the technical
2 specifications. So if you want to change the interval for
3 all 37 you need an amendment to the technical
4 specification. For 27 of those valves the basis for the
5 time period is not only in the technical specification but
6 it is in Appendix J. So for those 27 valves you not only
7 need relief from the technical specifications but you need
8 relief from the regulations and it's as simple as that.

9 JUDGE SMITH: Okay.

10 16?

11 MR. ANTHONY: 16.

12 MR. VOGLER: Staff has nothing further to say on
13 15, nor on what Mr. Wetterhahn had to say.

14 JUDGE SMITH: Right. I thought Mr. Anthony was
15 done with 15 and we were ready to hear from Staff on 16.

16 MR. ANTHONY: I just want to say one more thing:
17 that this was done so that the reactor could continue to
18 operate and that is the point.

19 JUDGE SMITH: I think that is conceded.

20 MR. ANTHONY: -- that the exemption was warranted
21 because it was an effort to keep the generator going, keep
22 the reactor going.

23 JUDGE SMITH: Isn't that conceded?

24 MR. WETTERHAHN: Yes, sir.

25 JUDGE SMITH: So you have prevailed so far on the

AGBagb 1 first two contentions.

2 MR. ANTHONY: It's giddy stuff.

3 JUDGE SMITH: 16.

4 I mean you have prevailed that they do concede
5 that they deliberately wanted to keep the reactor going.

6 16, Mr. Vogler.

7 MR. VOGLER: Fine.

8 Again no basis for 16, there is no basis for
9 Mr. Anthony's remarks that the Staff's evaluation of the
10 Licensee's application is superficial and devoid of factual
11 substantiation.

12 Again it's just a bare, unsupported allegation
13 about Staff or Licensee inadequate procedures. As noted
14 before, this is insufficient to meet the specificity and
15 basis requirements for a valid contention. The Staff has
16 set forth in the Safety Evaluation for both the amendment
17 and the exemption the substantiation and the reasons for its
18 analysis and we feel that this contention should be
19 dismissed for lack of specificity and lack of basis.

20 JUDGE SMITH: Okay. When you have a contention
21 just generally which alleges an absence of information and
22 you say there's no basis for it, generally you come back, as
23 you have done Indeed there is information and here it is but
24 it doesn't really help us much, if there is to be a
25 categorical --

AGBagb

1 MR. VOGLER: We intended probably by contention
2 number 16 to respond in kind.

3 JUDGE SMITH: If it doesn't work for him --

4 MR. VOGLER: -- page three and four of our
5 exemption which sets forth the reasons and shows that we
6 have reviewed the available data.

7 JUDGE SMITH: Okay. Contention 17 --
8 Mr. Anthony, I'm sorry.

9 MR. ANTHONY: I'm still lacking any idea what the
10 probabilities are of failure on these valves and there is
11 nothing in there that gives me anything but their
12 conclusions that they are reliable and it is not
13 satisfactory to have only that.

14 JUDGE SMITH: Okay. So what the Board will have
15 to do is, as we look at the transcript, we will have to go
16 back to the documents to see which of you is right.

17 MR. ANTHONY: There is nothing to back up the
18 Staff's statement there is negligible reduction in
19 containment integrity. There is nothing that....

20 JUDGE SMITH: All right. Contention 17.

21 MR. VOGLER: This allegation number 17 maintains
22 that there are no statistics to prove maintenance histories
23 and that they are incorrect -- this is incorrect and the
24 allegation is without basis. The basis originally was
25 provided by the Licensee in its application to Staff. I am

AGBagb 1 referring to page six of the Licensee's amendment number two
2 application which sets forth the maintenance history of the
3 valves in question.

4 JUDGE SMITH: This sets forth the history or --

5 MR. VOGLER: No, this sets forth the valves.

6 Page five and six sets forth the Licensee's experience not
7 only with Peach Bottom but as a result of its inquiry to
8 other licensees and a review of the -- I stumble over these
9 initials, NPRDS, Nuclear Plant Reliability Data System --
10 which further sets forth its statistical proof that is
11 alleged to be missing. Furthermore, the Staff in its Safety
12 Evaluation at page three sets forth again what the Licensee
13 has done to establish maintenance histories.

14 In Staff's view, Mr. Anthony is just simply
15 incorrect in his allegation and therefore it is without
16 basis.

17 JUDGE SMITH: Okay.

18 Mr. Anthony --

19 MR. VOGLER: Furthermore -- I just picked up
20 something else I didn't think was important but I'll put it
21 in here because perhaps it is because it shows the calibre
22 of the contention that the Staff is struggling with.
23 Licensee Event Report 85-102 -- referred upon by Mr. Anthony
24 which he predicates as support for his allegation -- is not
25 within the set of valves under subject of this amendment.

AGBagb 1

MR. ANTHONY: My point is --

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MR. VOGLER: He just goes on and on without any

3

basis.

4

JUDGE SMITH: All right, Mr. Anthony.

5

MR. ANTHONY: I don't know who manufactures that

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valve, the one that is in question with the LER 85-102. I

7

don't know whether there are any valves manufactured by the

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same manufacturer that are in this contention; there's

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nothing to -- no cue to tell me who made the valves, what

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the history of the operations of these valves is. And I

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claim in contention 17 that there will be degradation of

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safety during the extension and that there is only a false

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assurance that the Staff gives "...to accomodate any

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additional degradation likely to occur during the period of

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the extension....," that there is margin to take care of

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this.

17

I'm pleased that they noted -- they recognized

18

that there will be degradation, so that's one point at least

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in their favor, but there's no evidence that there's a

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margin of protection against this. There is nothing in

21

their submission to give that.

22

JUDGE SMITH: Mr. Anthony, we should have been

23

inviting you all along to respond to the Licensee's response

24

to these contentions, too. We haven't done that and I want

25

to remind you that you do have that opportunity.

AGBagb

1 MR. ANTHONY: I've got my hands full, Judge
2 Smith. Thank you for reminding me of that. If there's any
3 question that comes up on those that I can specifically
4 answer I will.

5 JUDGE SMITH: Contention 18?

6 MR. VOGLER: Excuse me. Mr. Anthony are you
7 finished?

8 MR. ANTHONY: Yes.

9 MR. VOGLER: 18.

10 Mr. Anthony gives no basis for the assumption
11 that all valves with the same code number will fail during
12 the short time extension provided by the amendment. One
13 recorded failure, as put forth in LER 85-102 to which he is
14 referring, simply does not equate to more of the same.
15 Furthermore, there is no evidence to establish this fact.
16 And Staff points out that the valve involved in 85-102 is
17 closed and remains closed, it is not open.

18 Finally, Mr. Anthony ignores the multiple systems
19 and redundant valves that will pick up any valve failure and
20 permit the safe shutdown of the plant.

21 This contention, in Staff's view, is without
22 basis and is without any supporting evidence and without
23 specificity, because Mr. Anthony does not point out how or
24 why such valves will fail, simply because they have the same
25 code number or nomenclature as the failed valve in

AGBagb

1 LER 85-102.

2 JUDGE SMITH: Mr. Vogler, does the Staff agree
3 with Mr. Wetterhahn that amendment number two is subsumed by
4 the FSAR?

5 You don't have to answer now if you want to come
6 back to it.

7 Am I misstating you, Mr. Wetterhahn?

8 MR. WETTERHAHN: Subsumed is a difficult word for
9 me to put in a context of a technical amendment.

10 JUDGE SMITH: That requires no change in the
11 FSAR.

12 MR. WETTERHAHN: I've got to say that we believe
13 that the accident -- the same evaluation is still -- the
14 evaluation contained in the FSAR and approved by the Staff
15 in the SER is completely unchanged by the amendment at
16 issue.

17 MR. VOGLER: Staff agrees with that.

18 JUDGE COLE: Number 19 Mr. Anthony.

19 MR. ANTHONY: These valves that I noted here are
20 HV-51-1F0 and then a number. I don't know why there would
21 be that designation on there if they weren't at least
22 speaking cousins; I don't know whether they're brothers and
23 sisters or not.

24 But the Staff has given me nothing to go on that
25 says that these are not made by the same company or that

AGBagb 1 they are not the same kind of valve or that they fail the
2 same way that the valve at Peach Bottom failed. So I think
3 it's -- I don't have any reason to know how these valves
4 will perform and no assurance that they will not cause the
5 allowable technical specification values to be exceeded.
6 And there's no justification for the Staff's conclusion that
7 the assurance that the leakage shall not exceed technical
8 specifications' allowable values will be met with this
9 one-time extension. There is no justification for that.

10 I'm faltering, as you see. Would there be some
11 time we could have a recess?

12 JUDGE SMITH: We may have a problem with the
13 building at 6:00. I'm wondering -- you've been under a lot
14 of mental pressure today, Mr. Anthony, I believe.

15 MR. ANTHONY: Sure.

16 JUDGE SMITH: We're trying to balance your
17 interest in getting this resolved quickly against pushing
18 you into unreasoned responses. The cost of delay is
19 entirely on you. Would you like to have Mr. Vogler proceed
20 orally on your contentions and give you a chance to respond
21 in writing?

22 MR. ANTHONY: All I asked for was a 10-minute
23 break.

24 JUDGE SMITH: Okay. Let's give him a 10-minute
25 break.

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All right. Ten minutes.

(Recess.)

JUDGE SMITH: On the record.

Are you ready, Mr. Anthony?

MR. ANTHONY: Yes, thank you.

JUDGE SMITH: 19, Mr. Vogler.

MR. VOGLER: Was he finished on --

JUDGE COLE: Were you finished on 18,
Mr. Anthony?

MR. ANTHONY: Yes.

MR. VOGLER: Contention number 19 in Staff's view
is simply a reiteration of contentions three, five and 16,
all of which have been discussed above, especially the
improper use of table one to establish valve failures, see
contention five, paragraph three and four.

It is really not a contention. It is just a
review and a restatement of a position and it should be
dismissed. All of the arguments have been put forth
previously.

JUDGE SMITH: Mr. Anthony?

MR. ANTHONY: Well I'll just stay with my
contention 19; the six meaningful failures reported on 61
valves is a significant failure rate and the other rate is
-- the other company has a failure rate of one out of 18.
But I'll stand with what's here in my numbr 19.

AGBagb

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JUDGE SMITH: All right.

2

Contention 20?

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MR. VOGLER: Board, this is a repeat of the

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contention above, contention 11 above, and as noted in

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contention 11 is without any basis. Further, it doesn't set

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forth any issue to be litigated. Staff's reasons for

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granting the amendment and the exemption is set forth in the

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Safety Evaluation and related documents; whereas Mr. Anthony

9

merely states his disagreement and without any support. And

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for that reason we feel it should be rejected.

11

JUDGE SMITH: Mr. Anthony?

12

MR. ANTHONY: I'll rest on what I said about good

13

faith, I think it was bad faith.

14

JUDGE SMITH: 21.

15

MR. VOGLER: This is another simple disagreement

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with the Staff in which he just says we assert the opposite

17

regarding Section 50.12 and we maintain that there is no

18

basis for this contention to bear assertion. It doesn't

19

possess the requisite specificity and bases necessary to

20

have a contention admitted and it should be rejected.

21

MR. ANTHONY: I think my assertion is as good as

22

the NRC's so I'll stick with what I said about 21.

23

JUDGE SMITH: 22?

24

MR. VOGLER: The allegations regarding Commission

25

error on finding no significant environmental impact fails

AGBagb 1 for the same reasons set forth by the Staff in 21 above: a
2 lack of basis and specificity.

3 JUDGE SMITH: Mr. Anthony?

4 MR. ANTHONY: I think my contention says it.

5 JUDGE SMITH: 23?

6 MR. VOGLER: There is no basis and no specificity
7 for 23, Mr. Chairman. His contention just simply presents a
8 rehash of previous contentions and again just presents
9 general disagreement with the Licensee and the Staff's
10 conclusions and we feel that more than just a simple
11 disagreement is necessary.

12 JUDGE SMITH: There is more than simple
13 disagreement here. Are you looking at 23 now, Mr. Vogler?

14 MR. VOGLER: 23.

15 JUDGE SMITH: Okay.

16 Mr. Anthony?

17 MR. ANTHONY: I think it says it, what I have
18 stated says it.

19 JUDGE SMITH: All right.

20 Number 24?

21 MR. VOGLER: Before I go to 24, does the Board
22 have a question on 23?

23 JUDGE COLE: I guess I was looking at the 2/5/86
24 letter and it states there the reason for his disagreement
25 is "...gives no figures to support the conclusion that

AGBagb

1 no difficulties with leakage of these valves
2 should be anticipated..." That seems to be a little
3 bit more specific than the kind of response that you make.

4 MR. VOGLER: Do you want us to come back to it?
5 We'll look up the letter.

6 JUDGE SMITH: I don't even know that we have the
7 letter. Do we have this letter of 2/5/86?

8 MR. ANTHONY: Do you want to look at it?

9 (Mr. Anthony displaying document to the Board.)

10 JUDGE SMITH: Our problem is it is very difficult
11 to file older documents when they come in under a new cover
12 letter; you know, it's hard to retrieve them that way.

13 MR. WETTERHAHN: May I add something to this?

14 JUDGE SMITH: Yes.

15 MR. WETTERHAHN: It may be true that the February
16 5th letter doesn't provide numerical data; however, that is
17 not surprising since another letter which has been supplied
18 to the Board and is in the docket and it supplies the
19 numerical data he seeks.

20 He first complained that he didn't like the
21 January 29th data and then to say there's no data in another
22 letter in the record; I think it is quite misleading, the
23 excerpt that is quoted here in contention 23.

24 JUDGE COLE: But see you didn't respond that way
25 in your response to the contention.

AGBagb

1 MR. WETTERHAHN: It's kind of hard to pick out a
2 contention or a single issue -- when it looks like he's
3 quoting items or he's making observations, it's kind of
4 difficult sometimes to determine what the issue he wishes to
5 raise is. And I guess that's why I sought to try to clarify
6 here.

7 JUDGE COLE: I understand your position.

8 JUDGE SMITH: Mr. Anthony, do you remember the
9 Board's admonition that you should use double-spacing unless
10 you are quoting or making a footnote?

11 MR. ANTHONY: Oh yes, indeed. Right. Right.

12 Since I was referring to the letters I guess I
13 felt that they would fit under this but it is confusing I
14 think, since it looks like a quotation.

15 JUDGE SMITH: Have you ever thought of getting
16 together with Mr. Romano for your typing purposes? He does
17 a pretty nice job. He doesn't double-space though, we'll
18 have to talk to him about that.

19 Well your contention 23 carries with it the
20 presumption that these various letters should do what you
21 say that they don't do and Mr. Wetterhahn is saying well
22 that is not necessarily a presumption. I don't know how the
23 Board can ever unravel this. I don't think we have a
24 complete file and, even so, I don't think we should be
25 obliged to search through large volumes of documents to find

AGBagb 1 -- to test your contention.

2 DR. KROW: It's implied here that you relied on
3 these four letters, so you should probably respond to it.

4 Is that correct?

5 MR. VOGLER: Are you asking us questions now?

6 DR. KROW: I....

7 JUDGE SMITH: Parties if you wish, we can just
8 leave it go. We'll look at the transcript, look at the
9 documents we have and let's see who's right, if it comes to
10 that.

11 MR. VOGLER: Do you want additional comments on
12 contention 23?

13 JUDGE SMITH: No. I might say that I, for one
14 member of the Board, am at a loss. He says the letter of
15 2/5/86 gives no figures. That carries with it the
16 presumption that the letter of 2/5/86 should give figures.
17 And Mr. Wetterhahn says well that's not the purpose of the
18 letter, the letter doesn't purport to give figures.

19 MR. VOGLER: The opening sentence -- I'm sorry.

20 JUDGE SMITH: And that just takes us in a total
21 circle and I don't know where we are and we'll just unravel
22 it when we get the transcript and look at the documents.

23 MR. WETTERHAHN: Sir, may I read the first line
24 of the February 5th letter into the record, the first
25 sentence?

AGBagb 1

JUDGE SMITH: Okay.

2

MR. WETTERHAHN: And there is one error in it.

3

"The following information is supple-

4

mental to our letter of January" -- and it reads 28, it

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should read January 29, 1986 -- "M.J. Cooney to

6

R. Bernero and completes our response to requests

7

for additional information RAI from R.E. Martin

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of your staff in support of a December 18, 1985

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request for amendment to the Limerick operating

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license and temporary exemption to the require-

11

ments of Appendix J of 10 CFR 50."

12

JUDGE SMITH: Okay.

13

Let's go to 24 -- Did I cut you off, Mr. Anthony?

14

MR. ANTHONY: No.

15

JUDGE SMITH: 24.

16

MR. VOGLER: Again the Staff notes that the valve

17

in LER 85-102 is not within the scope of the amendments.

18

The LER 85-102 valve is an Anchor Darting 16-inch valve and

19

the only Anchor Darting valves within the scope of the

20

amendment are 12-inch gate valves and the numbers have been

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set forth.

22

Mr. Anthony's contention is without any basis or

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specificity. His allegations about the NPRDS tables are in

24

error, see contentions -- our remarks on contentions five

25

and 19, and on that basis we feel that it is without basis

AGBagb

1 or specificity. His comments do not support the conclusions
2 that he reaches.

3 JUDGE SMITH: Mr. Anthony?

4 MR. ANTHONY: I'll stick with what I say on 24.

5 JUDGE SMITH: 25.

6 MR. VOGLER: Contention 25 is a repeat of
7 contention six, the Sarah Davis study involved a LOCA,
8 L-O-C-A. The amendments that we have under review here
9 concern containment integrity, not LOCA. It is again a
10 misuse of the tables to reach incorrect failure rates.
11 There is no basis for this contention.

12 JUDGE SMITH: Mr. Anthony?

13 MR. ANTHONY: I believe my contention is stated
14 properly.

15 MR. VOGLER: 26?

16 JUDGE SMITH: Yes, 26.

17 MR. VOGLER: Again we have a simple disagreement
18 with the Staff's conclusions without any support. He just
19 says we disagree with Staff findings and ask the Board to
20 reach an opposite conclusion and he gives no basis for it.

21 JUDGE SMITH: Incidentally how does this differ,
22 Mr. Anthony, number 26, from number 14?

23 MR. ANTHONY: I believe it's more specific than
24 14 and adds to 14 and that's about all I can say about it.

25 JUDGE SMITH: We struggle with these

AGBagb 1 similar-appearing contentions, trying to find a distinction.

2 27?

3 MR. VOGLER: Again simple disagreement with the
4 conclusions of the Staff without any support and, therefore,
5 in Staff's view no basis for 27.

6 JUDGE SMITH: Mr. Anthony?

7 MR. ANTHONY: I think I've said it all right in
8 27.

9 JUDGE SMITH: How about 28?

10 MR. VOGLER: Same, there is no basis, same reason
11 set forth in contention number 27 by the Staff. He just
12 asked the Board to find an opposite conclusion.

13 JUDGE SMITH: What do you say, Mr. Anthony?

14 MR. ANTHONY: I believe I said it correctly.

15 JUDGE SMITH: And how about 29?

16 MR. VOGLER: Well 29 concerns whether or not we
17 have fulfilled our obligations to the State of Pennsylvania
18 and the contention alleges Staff failure to contact the
19 State of Pennsylvania.

20 First of all, it is Staff's view the contention
21 is beyond the scope of Mr. Anthony's intervention. The
22 State of Pennsylvania is capable of speaking for itself.

23 Secondly, the Staff did contact the State of
24 Pennsylvania; plus the fact it contacted the Bureau of
25 Radiation on the phone; plus the fact they are on our

AGBagb 1 service list, so the State has been contacted regarding
2 these amendments. We didn't feel it was necessary to advise
3 Mr. Anthony.

4 JUDGE SMITH: Mr. Anthony.

5 MR. ANTHONY: Just a minute.

6 (Mr. Anthony conferring.)

7 JUDGE SMITH: Your letter of January 27th, was
8 that served on the State?

9 MR. MARTIN: Yes, it was.

10 JUDGE SMITH: In any event, your point is the
11 State, if it wishes to complain, can do so?

12 MR. VOGLER: That's one of the aspects of it,
13 yes. The State can speak for itself; plus the fact that we
14 did contact them.

15 MR. ANTHONY: I'm glad there is something in the
16 record now about the State. There was nothing in it
17 before.

18 JUDGE SMITH: All right.

19 Do you have anything further to say?

20 Are you satisfied then with that state of
21 affairs?

22 MR. ANTHONY: Excuse me?

23 JUDGE SMITH: Do you withdraw that contention?

24 MR. ANTHONY: No, I stay with....

25 JUDGE SMITH: Do you believe the contention is

AGBagb 1 true?

2 I don't want any party in this proceeding ever to
3 give us a contention that you do not believe is true.

4 MR. ANTHONY: I'll be glad to withdraw that
5 contention.

6 JUDGE SMITH: Well do you believe it's true?

7 MR. ANTHONY: What I said was true. I said we
8 find no documents and that's still true, but I'll withdraw
9 the contention.

10 JUDGE SMITH: Because why?

11 MR. ANTHONY: Because I don't think it has much
12 meaning right now.

13 JUDGE SMITH: Are there any contentions that you
14 advanced to this Board that you no longer believe are true?

15 MR. ANTHONY: No.

16 JUDGE SMITH: I see no particular point in
17 discussing a hearing schedule because there are too many --

18 MR. ANTHONY: Could I make one more statement,
19 Judge Smith?

20 JUDGE SMITH: Sure.

21 MR. ANTHONY: This is in reference to the
22 requirement of bi-weekly notice in the Federal Register, and
23 I guess I'd better read what it says. This is the notice
24 that comes every two weeks:

25 "Bi-weekly notice, applications and

AGBagb

1 amendments to operating licenses involving no
2 significant hazards considerations. Background
3 number one: pursuant to Public Law 97-415, the
4 Nuclear Regulatory Commission is publishing this
5 regular bi-weekly notice..." and it says it is in
6 compliance -- I'm skipping here -- with the Atomic Energy
7 Act. And then it goes on to say:

8 "Any amendments issued or proposed to
9 be issued under the new provision of Section 189
10 of the Act. This provision grants the Commission
11 the authority to issue and make immediately
12 effective any amendment to an operating license
13 upon a determination by the Commission that such
14 amendment involves no significant hazards
15 considerations, notwithstanding the pendency
16 before the Commission or a request for a hearing
17 from any person. This bi-weekly notice includes
18 all amendments issued or proposed to be issued
19 since the date of publication of the last bi-
20 weekly notice which was published on January 29th."

21 Now the next two-week interval refers back to
22 January 29th. I have not been able to find any notification
23 in the Federal Register for either of these amendments being
24 issued and I claim this is in violation of the statute which
25 said they must be published in the Federal Register.

AGBagb

1 JUDGE SMITH: You however did receive your own
2 personal copies of these amendments by service.

3 MR. ANTHONY: I did.

4 JUDGE SMITH: All right. So on whose behalf are
5 you complaining?

6 MR. ANTHONY: I'm complaining on behalf of myself
7 and the public that the requirements have not been
8 fulfilled.

9 JUDGE SMITH: We'll take your complaint under
10 advisement.

11 Anything further? Anybody care to respond to
12 Mr. Anthony?

13 MR. VOGLER: No, sir, I have nothing.

14 JUDGE SMITH: All right.

15 Dr. Krow, now did you want to make a statement
16 about the standing of Friends of the Earth.

17 DR. KROW: I don't need to make one. I was just
18 here with him. I made about two statements so... It
19 depends on whether you want to make them in the record or
20 not whether I go through the formality of filing the forms.

21 JUDGE SMITH: What forms are you talking about?

22 DR. KROW: You said I would have to fill out some
23 forms if I was going to...

24 JUDGE SMITH: If you have no further business to
25 do with this proceeding we will excuse you from filing your

AGBagb 1 notice of appearance, if that's what you are relating to.

2 DR. KROW: That's what I'm relating to.

3 JUDGE SMITH: Yes, right. Nevermind, you have
4 satisfied our requirement.

5 As I stated, I see no point in discussing
6 discovery, summary dispositions or a hearing now because we
7 have fundamental questions about all of the contentions
8 which we will have to address.

9 Is there any further business before we adjourn?

10 (No response.)

11 JUDGE SMITH: What do you think will happen,
12 Mr. Anthony, if this matter is still pending at the time of
13 the May 26th shutdown?

14 MR. ANTHONY: I find it very difficult to think
15 about such a prospect and I appreciate the Board's having
16 that in mind and trying to expedite the schedule so that
17 wouldn't happen and this become moot. I would hope that in
18 some way the hearing could be held and a decision arrived at
19 so that this wouldn't become moot.

20 JUDGE SMITH: Do you think that the hearing -- if
21 we should find that Mr. Anthony or Mr. Romano met all the
22 requirements for intervention and we accept the contention
23 and the time passes and the plant close down would a hearing
24 still be necessary?

25 MR. CONNER: Are you directing that to the Staff?

AGBagb

1 JUDGE SMITH: At anyone. I was looking at -- I
2 happened to be looking at Mr. Rutberg at the time, and I
3 think he wants the cup to pass from him.

4 MR. RUTBERG: I would say the answer to that is
5 yes. The regulations contemplate that hearings can be held
6 after the amendments have been issued.

7 JUDGE SMITH: Mr. Conner?

8 MR. CONNER: We take a slightly different
9 position -- being fully mindful of the matter of Mississippi
10 Power and Light at 19 NRC 1312 and the somewhat anomalous
11 results that go out of the Shawnee amendments and the
12 Shawnee regulations and while we know the licensing boards
13 are generally loathe to certify questions, I submit in all
14 respect to everybody that the Commission has messed us up to
15 a fare-thee-well and it might be well to recall it to their
16 attention for future reference, if not in this particular
17 case -- in our view this would be moot. And on this point I
18 note that the Board has recognized that we expect to shut
19 down on or before May the 26th. At the present time it is
20 possible that we would shut down as early as the first of
21 May and I need also to advise the Board that some of the
22 water restrictions such as temperature restrictions could,
23 of course, require shutdown earlier.

24 JUDGE SMITH: All right. Thank you. If there's
25 nothing further, we'll adjourn. Thank you.

26 (Whereupon, at 5:45 p.m., the prehearing
27 conference was concluded.)

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: PHILADELPHIA ELECTRIC COMPANY
(Limerick Generating Station,
Units 1 and 2)

DOCKET NO.: 50-352 OLA 1 (Check Valves)
50-352 OLA 2 (Containment Isolation)

PLACE: PHILADELPHIA, PENNSYLVANIA

DATE: THURSDAY, MARCH 27, 1986

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

(sig) Anne G. Bloom

(TYPED)

ANNE G. BLOOM

Official Reporter

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