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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DETROIT EDISON COMPANY, et al.
(Fermi Unit 2)

Docket No. 50-3410L

Place - Detroit, Michigan

Date - Monday, 18 December 1978

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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In the Matter of: :
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DETROIT EDISON COMPANY, et al : Docket No. 50-3410L
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(Fermi Unit 2) :
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Courtroom Number 1057
U. S. Court House
231 W. Lafayette Street
Detroit, Michigan

Monday 18 December 1978

Prehearing conference in the above-entitled
matter was convened, pursuant to notice, at 10:00 a.m.

BEFORE:

CHARLES BECHHOEFER, Esq., Chairman, Atomic Safety
and Licensing Board.

FREDERICK J. SHON, Member.

DAVID R. SCHINK, Member.

APPEARANCES:

HARRY H. VOIGT, Esq., EUGENE B. THOMAS, Esq.,
PATRICK K. O'HARE, Esq., and L. CHARLES LANFAR, Esq.,
LeBoeuf, Lamb, Leiby & MacRae, 1757 N Street, N.W.,
Washington, D. C.; appearing on behalf of the
Applicants.

RICHARD L. BLACK, Esq., and STUART A. TREBY, Esq.,
Office of Executive Legal Director, U. S. Nuclear
Regulatory Commission, Washington, D. C.; appearing
on behalf of the NRC Regulatory Staff.

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APPEARANCES: (Continued)

JEFF ALSON, 772 Green, Ypsilanti, Michigan; appearing on behalf of Petitioners, Citizens for Employment and Energy.

C O N T E N T S

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LIMITED APPEARANCE STATEMENT:

Page

Frank Kuron

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P R O C E E D I N G S

1
2 CHAIRMAN BECHHOEFER: I guess it's close enough
3 to 10:00 o'clock so we can start.

4 The proceeding involves the application for an
5 operating license of Detroit Edison Company and two other
6 cooperatives.

7 This Board has been established to rule on
8 petitions for intervention. Let me introduce the Board.

9 To my left is Dr. David R. Schink, an environmental
10 scientist from Texas A&M University.

11 To my right is Mr. Frederick J. Shon, a nuclear
12 engineer with the Nuclear Regulatory Commission.

13 My name is Charles Bechhoefer. I'm an attorney
14 with the Nuclear Regulatory Commission, and the attorney
15 member of the Licensing Board.

16 The construction permit for this reactor was
17 initially authorized by initial decision dated September 22,
18 1972. That is Decision Number LBP-7226, published at
19 5AEC120.

20 The construction permit was issued on September
21 26, 1972.

22 This decision was thereafter affirmed by the
23 Appeal Board, subject to a few comments on one issue, on
24 October 31, 1972. The decision was ALAB-77, 5 AEC 315.

25 On May 28, 1975, the Commission published a

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1 notice of receipt of the application for a facility operat-
2 ing license. That was published in the Federal Register
3 at 40 FR 23122.

4 The notice of opportunity for hearing was not
5 published until September 11, 1978. That citation was
6 43 FR 40327.

7 This Board issued an order setting up this
8 prehearing conference on November 13, 1978, and the notice
9 was published in the Federal Register November 20, 1978
10 at 43 FR 54148.

11 In that notice we stated that we would at the
12 outset listen to limited appearance statements from any
13 members of the public who had written in and requested to
14 make such statements.

15 I would inquire now whether there is anyone
16 here who wishes to make such a statement?

17 (One hand raised in the audience.)

18 MR. KURON: My name is Frank Kuron, and I did
19 write a handwritten letter to the Commission. I requested
20 permission to tell my story. Is that applicable?

21 CHAIRMAN BECHHOEFER: Yes, it is.

22 MR. KURON: Okay, thank you, Mr. Chairman.

23 CHAIRMAN BECHHOEFER: Since we have no microphones
24 and no place from which to make statements officially, why
25 don't you just make your statement from there, or if you'd

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1 feel more comfortable up here, you can come up here.

2 MR. KURON: Well --

3 CHAIRMAN BECHHOEFER: This room is really not set
4 up for witnesses.

5 MR. KURON: I generally can be heard regardless
6 of where I'm at. I don't have any difficulty in being
7 heard. It's just that I have difficulty in being understood
8 or listened to, and I would hope that this body here would
9 listen to me.

10 LIMITED APPEARANCE STATEMENT OF FRANK KURON,
11 5739 NELSON DRIVE, NEWPORT, MICHIGAN.

12 MR. KURON: First of all, with your indulgence,
13 Mr. Chairman, I know these proceedings are very dull and
14 repetitious, and so on and so forth, and I hope I can kind
15 of break that up for you and maybe make your day for you.

16 First of all, let me introduce myself. My name
17 is Frank Kuron. I live at 5739 Nelson Drive, Newport,
18 Michigan. I live in the back yard of Fermi-1 and 2. I am
19 presently working on Fermi-2, and I say that with emphasis
20 because tomorrow or the next day or next week, I don't
21 know. But this is the price I pay.

22 I am not a professional. I don't make any money
23 off of this. I'm a father of two, grandfather of six. I've
24 worked all my life. I don't make this a habit, or anything
25 like that.

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1 I do become involved locally, and I did not miss
2 one meeting as far as Fermi-1 is concerned. I became
3 interested approximately two years before they even broke
4 ground. So I'm well versed in the subject on my level.

5 Some of the language I read here I don't under-
6 stand, and of course I wish you would bear with me, Mr.
7 Chairman, in my presentation. I'm going to try to make it
8 as short and sweet as possible.

9 I worked on Fermi-1. I took the thing right out
10 of the ground. I know what it's like.

11 I worked on the Monroe power plant, and I know
12 what it's all about.

13 And I broke ground -- practically broke ground on
14 Fermi-2.

15 Now, I did cooperate with Detroit Edison 100
16 percent for approximately the first year and a half, and I
17 just want to say to this Commission that this is a prehearing--
18 let's call it that--to decide whether you want a full-blown
19 hearing on issuing the license.

20 At this time I do not want to say too much. I
21 want to make it short and sweet and to the point.

22 As I said, I cooperated with Edison 100 percent.
23 But between the promises and the fulfillment was two
24 different things, and I became disillusioned with Detroit
25 Edison and their promises. And I could see that my

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1 neighborhood was being affected -- adversely affected -- by
2 this power plant. And I told these people so. In fact, I
3 told them so hard and so firm that I understand I was laid
4 off after a year and a half of work.

5 Nobody in my particular company wanted to lay me
6 off, but nevertheless, that's another story.

7 I wish to bring forth the full-blown facts at a
8 future date at what this Commission has got to set -- a
9 full-blown hearing before the licensing.

10 I want to question the security on this particular
11 plant. In my estimation there is none.

12 I wish to question seriously, and I think at a
13 full-blown hearing we can bring out specifics.

14 The quality control: Until recently there was
15 none.

16 Then if the Commission will allow I wish to go
17 into the credibility of Detroit Edison, and I know that this
18 is a terrible, terrible thing, because in the years that I
19 was associated with the various projects I got to know many
20 of the Edison people, and I just want to say that many of
21 them are very, very fine people, good people.

22 In fact, on two or three different occasions I
23 met with Bill Macy, the President of Detroit Edison. And
24 I want to tell this Commission, each and every point that
25 I brought to him was settled to our satisfaction in our

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1 community, and they were settled well. And I just want to
2 say this, that I think Mr. Bill Macy is uninformed and
3 misinformed, and I wish to elaborate on that at a future
4 date.

5 Some of the people who are in charge of this
6 thing here, any similarity between those reports that you
7 read up in Washington and what I see and hear and know is
8 purely coincidental. In fact, I told the Atomic Energy
9 Commission when Tom Morgan and I went up there on our own,
10 out of our own pockets, I told them at that time that I seen
11 and sat in on all of these meetings, and I read those reports,
12 and I wondered if I was at the particular meeting. Some of
13 them were locally held, which I participated in. Some of
14 the suggestions that I gave to Detroit Edison were carried
15 out to the satisfaction and to the good of the Company and
16 the community.

17 So I'm not all bad, believe me, when I tell you--
18 I'm 62 years old, and, like I say, I want to live in peace
19 and I want to die in peace. And at least I want to leave
20 something here.

21 I am of Polish descent. No, I'm not a relative
22 of the Pope. But, by the same token, I am born and raised
23 a Catholic, and I want to die a Catholic. And I'm probably
24 not as good a Catholic as I should be.

25 But in a proceeding of this kind, when you bring

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1 in religion -- I'm trying to establish something that maybe
2 I'm not as bad as I'm painted. After all, you don't see any
3 horns coming out of my head. I am what I am. And a lot of
4 people in the last 20 years in and around Monroe County
5 wanted to know what that Polack wanted.

6 I want to tell you something:

7 I want peace and quiet. I want a good drink of
8 water. And I don't want no problems. In fact, four years
9 ago, after 50 years -- I want to tell you the kind of guy
10 I am -- after 50 years of drinking -- you name it, I drank
11 it -- I quit.

12 I quit because I knew it wasn't right. It
13 wasn't good for me. And I quit it. And, of course, the
14 old lady had something to do with it too, you know.

15 But, nevertheless, I want to convey to this
16 Commission that I'm going to lay these things out on the
17 table if I'm given the opportunity. And you are going to
18 pick out whether they're good, bad or indifferent.

19 I'm no nuclear nothing. In fact, I'm not a
20 good ironworker. I started a little bit late. I worked
21 for 21 years for Packard Motor Car Company. But then they
22 folded up under me. I was a tool and die leader when they
23 folded up under me, and I didn't even get a pink slip. I
24 went on my way.

25 At 42 years of age I went into construction, and

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1 believe me, I never worked so hard in my left.

2 I hate like hell to think that I'm going to be
3 fired again and I was fired because of my implication in
4 this. There's nothing in it for me, believe me. I work
5 for what I get.

6 At the time that I was in good with the Company,
7 with the company that was running this thing here, I worked
8 the same as anybody else. I didn't take advantage of it.
9 I was called upon for various decisions and help, and I
10 gave it to them.

11 Believe me when I tell you the people in Stony
12 Point, the people in Monroe County, right now the big thing
13 is this. What really bothers me is there is nobody in
14 Monroe County who thinks for one second that you will not
15 issue them this license to operate -- nobody.

16 There is nobody on the job who believes that
17 this thing will work -- nobody.

18 And we have some of the finest people in the
19 world working on this job.

20 As far as quality control is concerned, I'm
21 going to show you, I'm going to tell you, that people from
22 all over the country are working at Fermi-2 today and
23 they're shaking their heads. One of them worked on thirteen
24 atomic plants, and he says, "This is unbelievable."

25 It's unbelievable.

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1 I see good practices of construction which I
2 know, just at my level -- no high engineering level, just
3 at my level -- and I'm wondering. The word is out that the
4 more you spend, the more you make.

5 Believe me. It's a cost-plus job.

6 The more anybody spends, wastes, burns, tears
7 up, throw it away, steal it, the more they make.

8 Edison now has gone in for an additional rate
9 hike, not for this year alone but for next year. And we
10 say to you, My God, where is this going to end?

11 I know this isn't your part, but if you will
12 allow me -- and I want the Commission to think it over,
13 because you're going to open up a can of worms -- credibility;
14 that's a terrible, terrible thing to attack a man's
15 credibility, or a company's credibility, especially an
16 old, established firm like Detroit Edison.

17 I have stories that I could tell you -- check
18 them out if you will -- and I'm going to point you in the
19 right direction. You do what you will. And then I'll sit
20 down in peace. I'll sit down in peace. I have done my
21 part.

22 Believe me, the last word I got out of my wife
23 before I left my house -- she got up and picked out my
24 shirt and pants and shoes and socks and everything else,
25 like a good wife, and she said, "Frank, if you lose your

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1 job over this, you and I are both in trouble."

2 I've been married a long, long time to that
3 woman, and she's the best in the world, bar none -- bar
4 none. And, by God, I'm going to tell my story, if you will
5 allow me.

6 I didn't come prepared to make a big speech or
7 anything like that. Of course, like I said, I'm going to
8 make your day for you. I'm going to give you something to
9 talk about over your martinis, because if you live to be
10 99 years old, you'll never meet another guy like myself.
11 And when you leave here, you'll still wonder what the hell
12 does he want.

13 I don't want nothing. I don't make my living
14 off of this. I'm ready and willing to work, and I've
15 worked all my left. And my father before me. But I'm
16 going to tell you things that are going on out there, out
17 in the world, that you'll never get in here.

18 I'm going to tell you those things, and then
19 you can do what you will, because that is your job. And
20 I'm not going to stand here and try to tell you how to do
21 your job.

22 So, Mr. Chairman, with that, and before I put
23 my foot in my mouth, I'd better shut up.

24 So I'm asking you to allow me, on the protection
25 of that plant, the security of that plant, the quality

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1 control, and then I'll tell you the last one word that I
2 have. When I end up this story, like every good story --
3 by the way, I helped write the book, "We Almost Lost Detroit,"
4 and I don't think I done this Company any dis-service when
5 I sat down with John Fuller and we killed a few bottles of
6 good Canadian stuff in writing that book. I think you
7 mighta noticed the tone in there, you know?

8 (Laughter.)

9 But, nevertheless, it was a good experience. I
10 met a wonderful fellow. I told it to him the way it was.
11 And I didn't get a penny off of that book. I never got a
12 penny. And I wasn't looking for any penny. I didn't want
13 any penny. I had something to say and I told it to the
14 man.

15 But when I get done with this, like every good
16 story -- and I'm learning -- every good story -- I'm going
17 to give you a little bit of the sex angle. Right on the
18 end I'm going to polish it off with a good sex angle, and
19 then I'm going to let you know just exactly what's going
20 on.

21 Thank you, Mr. Chairman. Thank you very much.
22 Think it over.

23 CHAIRMAN BECHHOEFER: Mr. Kuron, have you been
24 in touch at all with CEE, the Citizens for Employment and
25 Energy, the group that is trying to intervene?

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1 MR. KURON: Yes, yes, I have.

2 In fact, reading all of your legal stuff in the
3 paper and in your correspondence, and things, I was wonder-
4 ing if I'd be given this opportunity. And I joined this
5 particular group hoping that this would help me to make my
6 presentation and this.

7 And believe me when I tell you, I would stand
8 up on a stack of Bibles and take the oath and answer any
9 questions to the best of my ability. Believe me when I tell
10 you that.

11 Thank you. Thank you.

12 CHAIRMAN BECHHOEFER: Are there any others here
13 who desire to make a limited appearance statement?

14 (No response.)

15 One of the things I forgot, I think the parties
16 and the petitioners or their representatives ought to
17 identify themselves for the record.

18 I guess we'll start from left to right, with
19 the Applicants.

20 MR. VOIGT: Mr. Chairman, Members of the Board:

21 My name is Harry H. Voigt, and I am with the
22 firm of LeBoeuf, Lamb, Leiby & MacRae, 1757 N Street, N.W.,
23 Washington. I appear on behalf of the Applicants.

24 My co-counsel, on behalf of the Applicants, is
25 Mr. Peter A. Marquardt. Mr. Marquardt is the senior

1 attorney. His address is Detroit Edison Company, 2000
2 Second Avenue, Detroit, Michigan.

3 Also appearing on behalf of the Applicants are
4 my partner, Eugene B. Thomas; my associates Patrick K. O'Hare
5 and L. Charles Landgraf, and also Mr. R. Larry Drake, who
6 is also on the legal staff of the Company. His address is
7 the same as Mr. . . . guardt's.

8 MR. SCHINK: Is he related to Mrs. Drake?

9 MR. VOIGT: That's the first thing I asked him
10 when I met him. He said no.

11 (Laughter.)

12 CHAIRMAN BECHHOEFER: For the NRC Staff?

13 MR. BLACK: Good morning, Mr. Chairman.

14 My name is Richard L. Black. I'm counsel for
15 the NRC Staff.

16 On my right is Stuart A. Treby, Assistant Chief
17 Hearing Counsel.

18 We're appearing on behalf of the NRC Staff,
19 Office of Executive Legal Director.

20 CHAIRMAN BECHHOEFER: And for the Citizens for
21 Employment and Energy?

22 MR. ALSON: Yes, Mr. Chairman. My name is
23 Jeff Alson. I am representing CEE.

24 Also with me is Tad Wysor, Rick Cannon, Nat
25 Pernick and also Leah Warn.

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1 CHAIRMAN BECHHOEFER: The Board wants to go into
2 the question first of standing. We will hear all of the
3 parties on that. And then later on we would like to get
4 into the contentions individually and hear all of the
5 parties on each contention. I think this will organize it
6 a little bit better.

7 MR. BLACK: Mr. Chairman, before we get into the
8 petition of CEE, could I first read into the record a
9 letter that I received from Martha Drake? It was dated
10 December 10, but I don't believe it has made the distribution
11 yet.

12 CHAIRMAN BECHHOEFER: Yes.

13 MR. BLACK: I'd like to read that into the record.

14 CHAIRMAN BECHHOEFER: Yes, I was shown that, but
15 it should be read into the record.

16 MR. BLACK: It is addressed to me:

17 "Dear Mr. Black:

18 I wish to withdraw my name and that of Dan
19 Drake from the intervention in the Detroit Edison
20 Fermi-2 case. I trust that others will bring
21 up the problems that I wanted to address. I
22 still feel that I could justify getting standing,
23 but the distance to the hearings and limited
24 resources make it difficult. Bob Asperger has
25 left the State. He would like to have his name

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1 removed from the service list, and Jeff Alson,
2 772 Green, Ypsilanti, Michigan, put on in his
3 place. He will be representing CEE, along with
4 Robert Maynard and David Hiller. If it is
5 possible for me to continue to get mailings on
6 the case, I would appreciate it. I am very
7 interested in what happens. Thank you."

8 And then there's a little personal note there,
9 and I'll forget that.

10 But at least that will indicate to the Board
11 that Mrs. Drake and Dan Drake have dropped formally from
12 this proceeding and wish their petition to be withdrawn.

13 CHAIRMAN BECHHOEFER: Well, the Board will take
14 that into account.

15 I think the Staff might want to make sure that
16 Mrs. Drake's name stays on the mailing list.

17 MR. BLACK: We will do that.

18 CHAIRMAN BECHHOEFER: Make sure that the Secretary
19 doesn't take it off.

20 I think we would like to start with the standing
21 of CEE. We would like to hear in particular about who is
22 the governing body of the organization and who is authorized
23 to tell us about it, particularly since Dr. Asperger, who
24 had listed himself earlier as at least the acting Chairman,
25 according to that letter is no longer living in Michigan.

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1 We have received no notification from Dr. Asperger
2 about whether or not he wishes to participate, or whether
3 he's actually moving from Michigan. We'd like to hear
4 something about the CEE organization, and also who we should
5 serve, and that type of thing, assuming that a hearing is
6 held, who we should be getting in touch with and who we
7 should serve and who the parties should serve.

8 MR. ALSON: Myself, I think, would serve in that
9 capacity. Dr. Asperger has left the State just recently,
10 in the last two weeks or so. This has caused a certain
11 amount of confusion in the group, because he was the contact
12 person with the NRC.

13 We do not, as of yet, have a director to replace
14 him officially. So I don't know how to answer that question.
15 The five of us who are here today, or the six of us including
16 Mr. Kuron, are members of the CEE group who have been
17 particularly interested in this case.

18 Mr. Hiller and Mr. Maynard are UofM law students
19 and have also helped, but this is finals week for them, and
20 so they were unable to be here today.

21 What other specific . . .

22 CHAIRMAN BECHHOEFER: Well, in the Applicants'
23 response your name was the only one given to us, with
24 address or residence. Is your residence for at least the
25 foreseeable future Ypsilanti?

1 MR. ALSON: Yes.

2 CHAIRMAN BECHHOEFER: Are you a law student?

3 MR. ALSON: No, I'm not a student. If you'd be
4 interested, I could tell you where I've worked. I don't
5 know whether that's relevant or not.

6 CHAIRMAN BECHHOEFER: No, that's not important.

7 Well, I think we would like to hear any comments
8 that, first, the Applicants would want to make and thereafter
9 the NRC Staff, about standing.

10 MR. VOIGT: Mr. Chairman, we served our response
11 on Friday, and we have made copies of it available here in
12 the room this morning, recognizing that some of those who
13 were served by mail might not actually have received it in
14 the mail.

15 We also have additional copies which we'd be
16 glad to distribute to any person who is interested in seeing
17 it.

18 That response summarizes our position with
19 respect to standing, and I will just briefly reiterate that
20 and attempt to respond to any questions which the members
21 of the Board may have.

22 It would appear from all the information that we
23 have received that CEE, as an organization, has only an
24 academic interest in this proceeding. They have never
25 asserted that they, as an organization, had any interest

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1 which would be affected by the operation of Fermi-2.

2 The question then becomes whether they represent
3 members whose personal interests may be affected by the
4 operation of Fermi-2, and the extent to which they are
5 authorized and requested by those members to so represent
6 them.

7 To date only one member has been identified, Mr.
8 Alson. When we received his affidavit we made inquiry and
9 we were told the address he gave was an apartment house in
10 Ypsilanti, and that most of the people who lived there were
11 students at Eastern Michican University.

12 Mr. Alson has now told us that that's not the
13 case as far as he personally is concerned, and I accept that.

14 I think the question of his standing, his
15 interest in this proceeding, however, is still very much up
16 in the air. I cannot judge from any of the stated purposes
17 or interests of CEE that there is anything asserted there
18 which is personal to Mr. Alson.

19 I can look at the contentions that have been
20 raised here, and some of them are very broad and don't appear
21 to relate to anybody. There are some others that seem to
22 relate primarily to local conditions within a relatively
23 small radius of the plant.

24 There's one that relates to radiation releases,
25 and Mr. Alson is agruably within the zone that would be

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1 affected by those radiation releases.

2 However, both the Applicant and the Staff have
3 pointed out that that contention is an attack on the
4 Commission's regulations and is barred.

5 So putting that to one side, we submit on behalf
6 of the Applicants that there still has been absolutely no
7 showing that any individual member of CEE has a personal
8 stake in this controversy such as to convert this from the
9 abstract to the real. And the real is a requirement before
10 we go to the expense and possible delay of holding a hearing
11 in this proceeding where none would otherwise be required.

12 CHAIRMAN BECHHOEFER: How do you interpret the
13 recent Supreme Court ruling in the case involving the
14 Price Anderson Act, which would seem to hold that the
15 injury that a particular person would suffer does not have
16 to have any particular relation to the contentions asserted
17 by that person? That's how I've interpreted that.

18 MR. VOIGT: It's my understanding, Mr. Chairman --
19 and I'm not familiar with the underlying NRC proceeding --
20 that the intervenors there were contesting the effect of
21 the cooling system of the plant on the lake, a matter which
22 they asserted did personally affect them. And the District
23 Judge translated that into standing for them to bring the
24 court suit.

25 I don't suppose that either you or I would

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1 question the standing of people who own property around the
2 lake that was going to be used for cooling purposes to
3 oppose the operation of the plant.

4 The interplay between the court suit and the
5 NRC proceeding is interesting, and I suggest to you it's a
6 one-of-a-kind case. But I'm not sure that either the
7 District Judge's decision or the Supreme Court case really
8 tells us how we ought to handle the standing in our NRC
9 proceedings.

10 CHAIRMAN BECHHOEFER: Do you have any comment also
11 on Mr. Kuron's statement earlier? We have his address, and
12 it's quite close to the plant. Do you have any comment on
13 his statement that he is a member of the CEE? How would
14 that affect it?

15 MR. VOIGT: I accept his statement but, again,
16 no one has alleged that their person or their property is
17 going to be affected by this plant. Everybody is expressing
18 concern about various aspects of the plant.

19 CHAIRMAN BECHHOEFER: Well, what does paragraph
20 2(a) and 2(c) say to you?

21 (Pause.)

22 MR. VOIGT: It says nothing to me, quite frankly,
23 Mr. Chairman, because there's no basis for it. There's no
24 specificity. Anybody can come in and say that they don't
25 like low-level radiation, but does that raise an issue which

1 requires this Board to conduct a public hearing? I submit
2 not.

3 CHAIRMAN BECHHOEFER: Well, can a person 35 miles
4 away, or within 35 miles? If Mr. Alson says he adopts all
5 these statements and would provide specificity?

6 MR. VOIGT: Clearly not, Mr. Chairman.

7 MR. SHON: Mr. Voigt, it is alleged that not
8 only his interests arise from the risk of low-level
9 radiation, but also from the risks of releases of radiation
10 through accidents in the plant, a matter not necessarily
11 low-level -- whatever low-level may mean in this context --
12 releases of radiation through industrial sabotage, through
13 sabotage by outside terrorists, and through the transporta-
14 tion of spent nuclear fuel from the plant through the
15 surrounding community.

16 Now, some of his contentions at least seem to
17 have a thrust that suggests that he believes the plant is
18 vulnerable to releases of radiation through accidents, for
19 example. In particular, contentions that relate to quality
20 assurance. Quality assurance is instituted in the event of
21 just such accidents.

22 It seems that he has been as specific as one
23 would expect.

24 MR. VOIGT: I can't agree with that, Mr. Shon.

25 Let's take the transportation as an example.

1 There is no allegation in here of what the likely transpor-
2 tation routes are, or what the possibilities of such
3 transportation are. For all this Board knows, any planned
4 transportation from the plant may not go even close to
5 Ypsilanti, Michigan.

6 It's that kind of factual connection that I
7 submit to you you must require before you can assume that
8 these very generalized allegations affect any specific
9 individual person.

10 MR. SHON: Let's address the release of radiation
11 through accidents, for example. That's probably more
12 pertinent to what he's worrying about.

13 MR. VOIGT: I don't know what he's worried about.
14 That's the problem. But, all right, talk about the
15 release of radiation through accidents. There's a spectrum
16 of accidents that the Applicants are required to consider,
17 and there's a class of accidents that are not required to
18 be considered.

19 Now, a petitioner is at liberty to take the
20 spectrum of accidents that are required to be considered
21 and attempt to show the Board how he is adversely affected
22 by them. That's not been done.

23 The releases from the Class-1 through 8 accidents
24 are extremely low, and those are calculated at the site
25 boundary.

1 Now, how do we get from there to Ypsilanti?

2 Is this kind of vague, general allegation
3 sufficient to invoke a hearing process that otherwise would
4 not be required?

5 MR. SCHINK: Could you foresee anyone who would
6 be admissible under the conditions that you've just laid
7 down?

8 MR. VOIGT: Certainly. For example, there is a
9 contention here about an area called Stony Point. When we
10 get to the contentions I hope to convince you that it's not
11 a valid contention, but I would freely state that if there
12 was a resident of Stony Point here that he would have clear
13 standing to raise that issue, raise that contention. He's
14 directly affected by it.

15 Here there is no demonstration that anybody is
16 being directly affected.

17 MR. SHON: Mr. Voigt, if, indeed, the only
18 injuries that might be considered here are those which would
19 result from the rather mild -- as you described it spectrum
20 of accidents that are generally described, why is it that
21 Commission case law and everything else suggests that
22 people as far away as 35 miles might be involved?

23 MR. VOIGT: The principal case on that point, if
24 I recall it correctly, said that it was not irrational for
25 a Licensing Board to entertain standing under those

1 circumstances. I don't read that as suggesting that the
2 Appeal Board would necessarily reverse you if you rationally
3 concluded not to confer standing under those circumstances.

4 The Licensing Boards have a wide area of
5 discretion in this field, which the Appeal Board has upheld
6 on many occasions. I submit to you, gentlemen, that you
7 have the discretion to go either way on this point.

8 MR. SCHINK: At one point in that discussion Mr.
9 Alson looked like he wanted to say something.

10 MR. ALSON: Thank you. Two things, one of which
11 is not very important, but you pronounced my last name
12 correctly. Other people have not, but it's not a very
13 important point.

14 The second thing is that in my possession -- and
15 if you'd accept it I could give it to the Board -- is an
16 affidavit signed by Frank Kuron, notarized on November 30,
17 1978. This was the affidavit that we had intended to
18 be used in our application we sent on December 4 -- our
19 amended petition. It got hung up in the mail inexplicably
20 between Monroe and Ann Arbor. But it's notarized November
21 30, and if you'll accept that I'll give it to you. It has
22 a bearing on some of the discussion that has been happening
23 here.

24 CHAIRMAN BECHHOEFER: Do you have copies to give
25 to the other parties?

1 MR. ALSON: Not at this point, no.

2 CHAIRMAN BECHHOEFER: Why don't you read it into
3 the record, and then transmit the original to our Secretary
4 with copies to the Board and the parties? I think that
5 would be the best way to proceed.

6 MR. ALSON: Okay.

7 It has the heading -- it says:

8 "Frank Kuron, on oath, deposes and says:

9 1. He is a citizen of the United States of
10 America, and a resident of the State of Michigan,
11 and resides at 5739 Nelson Drive, Newport,
12 Michigan, 48166, which is within two miles
13 of Unit 2 of the Fermi Nuclear Plant being
14 constructed by Detroit Edison.

15 2. He and his family have lived at this
16 location for eighteen years.

17 3. He is a member of Citizens for Employment
18 and Energy.

19 4. He adopts the contentions of the amended
20 petition to intervene filed on October 13, 1978
21 with the NRC, and dated October 9, 1978, signed
22 by David Hiller."

23 It then gives his signature and is notarized.

24 CHAIRMAN BECHHOEFER: All right. Make sure you
25 serve the other parties and send the original to the Secretary

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1 of the Commission.

2 MR. SCHINK: Could I go back to Mr. Alson for
3 a minute or two here?

4 We were asking you about CEE, and I wonder if
5 you could give me a little more information about your
6 organization? Do you have a formal membership? How does
7 someone join your organization? Do you have officers, and
8 how are they elected? Do you have laws and by-laws?

9 MR. ALSON: Okay. I don't have a copy of any
10 laws or by-laws with me at this time. The only official
11 officer we had was that of Director, which Mr. Asperger
12 had been until he left the State. We don't have an official
13 Director right now.

14 As far as membership, we don't have dues or
15 anything like that. It's an expressed interest in whatever
16 CEE is working on at that time.

17 We're an unincorporated organization. We have
18 no papers filed with the State of Michigan, or anything
19 like that.

20 MR. SCHINK: How was your Director elected? And
21 how will the next one be elected?

22 MR. ALSON: Just by democratic vote of the
23 organization, which, because of our scattered nature from
24 all around the State we tend to do things by phone communica-
25 tion. We often don't even have meetings together.

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1 CHAIRMAN BECHHOEFER: Would you say the participa-
2 tion in a proceeding such as this is within the scope of
3 the type of activity that your organization engages in?
4 Your statement in the intervention petition is more
5 legitimate in terms of studying and apprising people of
6 the nature of nuclear energy. Is this type of participation
7 usual within the scope of your organization?

8 MR. ALSON: Yes. And people familiar with us
9 know that we've also intervened in Greenwood, in the
10 construction permit hearings. This is the sort of thing
11 that CEE does and intends to do.

12 But we do other things, mass education of the
13 public.

14 CHAIRMAN BECHHOEFER: We would like to hear from
15 the Staff now on the standing.

16 MR. BLACK: Mr. Chairman, I might initially note
17 that we indicated in our petition that we did want to
18 inquire further into CEE's organizational structure at
19 this time. I think that some of the questions that we had
20 have been responded to, but let me back up a second.

21 I will first indicate that Staff is well aware
22 that at this point in this proceeding or in any proceeding
23 that it is often difficult for intervenors to particularize,
24 not only their standing through specified interests in fact,
25 but it's also difficult for them to particularize contentions.

1 And a lot of this goes to the fact that much of the stage
2 of this proceeding -- the review is not finalized yet. And
3 a good case in point is something that Mr. Voigt just
4 brought up, that it's awfully difficult for the Staff to
5 understand how intervenors are expected at this point to,
6 let's say, establish injury in fact on transportation routes,
7 when in fact those transportation routes have not been
8 established.

9 So, to us, we construe those standing requirements
10 quite liberally and, of course, this has been recognized in
11 NRC case practice by establishing this geographical zone
12 of interest where in fact if they come in and say that they
13 live within 50 miles, for instance, that that is usually
14 enough to connote that they will have some type of injury
15 in fact at this stage of the proceeding. And usually that
16 is good enough for the Staff. We will take close proximity
17 to the plant to establish that injury in fact in most
18 instances.

19 The thing that disturbed the Staff in this case,
20 though, and the thing that we would still like to inquire
21 into a little bit further, is CEE's organizational status.
22 We are of the firm belief that even though they do have
23 members that live in close proximity to the plant, if they
24 are going to pursue intervention they should have the members,
25 the resources, and the experts let's say, to diligently and

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1 in good faith pursue this proceeding. It is a serious
2 matter. It does have the potential to cost money. It does
3 have the potential to involve lot of time. And it does
4 have the potential to cause delays in the final operation
5 of Fermi-2 if and when that is finally authorized by this
6 Licensing Board.

7 So we do want to make inquiries at this point
8 as to whether they will, in fact, pursue intervention in
9 good faith. And to that end, some of the points that we
10 wanted to inquire about have already been responded to.

11 But we would like to inquire further into how
12 many members they have. They did indicate that there is a
13 loose organization. They do have a board of directors.
14 They do have some type of authorization from the members to
15 the board of directors.

16 We'd also like to inquire a little bit more into
17 their purpose; what kind of resources they have now or
18 intend to get, and perhaps how they intend to get those,
19 let's say, not only funding but also whether they're going
20 to have any technical people or expertise in that area; what
21 are their procedures for decision-making in the organization;
22 and, finally, how are we to find out who their representatives
23 are, how those representatives are authorized through the
24 organizational structure, and will this change over time
25 because of the loose-knit structure of the organization?

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1 So those are some of the matters that we would
2 like to have pursued a little bit further, and when CEE gets
3 their chance to respond I hope that they can touch on some
4 of these matters that we would still like to have responses
5 to.

6 But the Staff's position is that it seems to us
7 that they do have members who live in close proximity to
8 the plant. This is enough for us to connote injury in fact.
9 That is enough to confer standing. And as long as they are
10 going to pursue this in good faith, we feel that the
11 standing requirement has been met.

12 (The Board conferring.)

13 CHAIRMAN BECHHOEFER: I would like, Mr. Black, to
14 ask one question:

15 Is it the Staff's position that an organization
16 must have available to it technical expertise in order to
17 be admitted to a proceeding, to have standing to be admitted?

18 MR. BLACK: No, I don't think as a general rule
19 that's a requirement at all, but I think that is one of the
20 factors that may play a part in a decision as to whether or
21 not an organization is going to in fact pursue seriously a
22 proceeding such as this in good faith.

23 Obviously there's no blanket rule, that they have
24 to have money or experts, or what have you. But I think the
25 important thing is that we want to make sure that this is a

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1 structured organization, and not merely pursuing just
2 academic interests.

3 I think all of these things are factors that
4 should come into this decision as to whether they are merely
5 pursuing academic interests or, in fact, serious about it.

6 CHAIRMAN BECHHOEFER: I think the Board would like
7 to hear from Mr. Alson on some answers to these questions.

8 MR. ALSON: Okay.

9 I guess I'd first like to say that our general
10 position on standing, I would just like to refer to the
11 Staff's own response that we got here today. Being non-
12 lawyers ourselves, we would like to say that that summarizes
13 how we feel about the situation, so we won't go into
14 further detail right now on that.

15 The questions raised by Mr. Black, as far as
16 number of members in our organization I couldn't give you
17 an exact number, but I would say we have 20 or 30 people
18 around the State who are working on different aspects of
19 what we do.

20 I don't have, you know, a membership list, or
21 anything like that with me at this time.

22 MR. SCHINK: Does such a list exist?

23 MR. ALSON: Yes, I would think so. Probably it
24 was in Dr. Asperger's holdings, and whether he has sent
25 that maybe to Martha Drake or . . . I couldn't say where

1 it is.

2 As far as resources which, you know, everyone
3 recognizes is a critical factor here, I can say at this
4 time that we do have commitments from at least a couple of
5 professors from the University of Michigan who I think
6 would qualify as expert witnesses.

7 I don't have any affidavits or anything like that
8 with me today that I could show as proof, but there's no
9 doubt in my mind that we could get at least a couple of
10 expert witnesses. But we're not at the stage in our
11 intervention yet where we have tried to do that.

12 Money, I --

13 MR. SCHINK: I don't think the resources or the
14 technical expertise is as important to us at this time as
15 the demonstration that there is a structured organization,
16 that this isn't just five new faces who walked in off the
17 street and determined to become intervenors.

18 CHAIRMAN BECHHOEFER: Intervention is a serious
19 business, and you will be asked questions that you'll be
20 expected to respond to. And we will want to find out
21 whether you are really able and willing to participate in
22 the proceeding.

23 MR. ALSON: Well, I don't know how to attack
24 that. I can point to CEE's past work in this area. I think
25 CEE has always fulfilled its obligations, both in the Fermi

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1 considerations and in the Greenwood prehearing situation.

2 By our nature, in that we are spread across the
3 State, there is a certain amount of problem. I mean we
4 can't gather the whole organization together conveniently
5 in one place very often, so we tend to do a lot of things
6 by phone calls and letters. When a decision is needed on
7 an important issue and you're trying to make a decision by
8 phone and by letter, oftentimes you will not get ahold of
9 someone. So I can't say that every decision we make is
10 always backed by every member of CEE, but, you know, we
11 make decisions. We do it by a majority of the group.

12 I have every reason to believe that we would
13 carry out the intervention to completion.

14 Are there other specific questions I'm not
15 dealing with?

16 MR. SCHINK: I'm still concerned a little bit
17 with this membership list, the location of which now
18 appears to be unknown.

19 I think it would be useful if CEE, as represented
20 by you people, at least knew who it is. And I would hope
21 you'd find out who you're representing.

22 I'm also still curious as to how you would plan
23 to elect new officers.

24 MR. ALSON: Like I said, usually the only
25 officer we've had officially is Director, and that spot is

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1 open now, and I imagine it would be attempted to be reached
2 in some sort of consensus mode, if everyone were to agree
3 on someone. It's hard to take a vote, because a vote is a
4 function of time, and doing this by phone and letter is not
5 so easy. To say, okay, how many people want this fellow to
6 be Director, that's hard to do by phone or by letter.

7 So, you know, I can't tell you right now. That
8 will be decided, but . . .

9 MR. SCHINK: We both agree you have problems
10 there. Who will decide that? How are you going to decide
11 how to proceed?

12 MR. ALSON: As far as choosing a new Director?

13 MR. SCHINK: Yes.

14 MR. ALSON: I assume some of the members who are
15 in contact with each other will either choose a list of
16 names or one name, and then put that to a test vote or
17 straw vote, and see how that goes.

18 The nature of the group I guess probably doesn't
19 see the position as Director maybe as important as a lot of
20 organizations do. It's a pretty non-hierarchical organization.

21 The thing we're most concerned with is we have
22 a group of people in this part of the State who are interested
23 in this intervention. Maybe that's what we should be
24 addressing here.

25 MR. SCHINK: Perhaps so. Do you know whether

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1 there's a member from Stony Point?

2 MR. ALSON: Not to my knowledge.

3 (Pause.)

4 Oh, yes, I guess Mr. Kuron actually lives in
5 Stony Point.

6 (The Board conferring.)

7 CHAIRMAN BECHHOEFER: Mr. Voigt, do the Applicants
8 want to respond to any of the statements that have last been
9 made?

10 MR. VOIGT: I'm not sure it's a response to Mr.
11 Alson, but I would urge this Board, if you are interested in
12 the history of the responsibility of CEE as an organization,
13 to take a look at what has happened in the Greenwood
14 proceeding.

15 In that case there was an organization called
16 Detroit Area Coalition for the Environment, commonly known
17 as DACE, which was admitted as an intervenor having filed
18 a petition to intervene in response to the notice of hearing
19 and, indeed, having stipulated contentions with the
20 Applicant and the Staff.

21 Two and one half years later, CEE sought
22 intervention in the Greenwood proceeding, and we received
23 a response from DACE endorsing their intervention. The
24 response from DACE was signed by Dr. Asperger. CEE's
25 petition was signed by a Mr. Phillip.

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1 A few months after that, we received a copy of
2 a handwritten letter from Asperger to the Commission
3 announcing that he now represented both CEE and DACE.

4 In the course of ruling on CEE's late-filed
5 petition in Greenwood the point was made that they hadn't
6 shown that they had any local members.

7 The next thing we received was an affidavit from
8 a lady names Mrs. Daubendeik, who was already on the service
9 list in another capacity, saying that, oh, she'd just become
10 a member of CEE, and wanted to endorse their petition to
11 intervene.

12 This is a very slippery group to get a handle
13 on, and I think that the Board has properly expressed its
14 concern and the Staff has raised a concern.

15 Even if they are able to satisfy the minimal
16 requirements for standing, what assurance do we have that
17 they will fulfill their obligations as responsible inter-
18 venors? That, to me, is an open question.

19 There's been no discovery in the Greenwood
20 proceeding. There's been no test of the organization's
21 willingness to respond. And, of course, we're not even out
22 of the starting gate in this proceeding.

23 I would also comment in response to your
24 question, Mr. Chairman, to the effect that are resources
25 and technical expertise a prerequisite for standing, I think

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1 the answer is clearly no, you cannot impose that requirement
2 as a legal test for standing. However, if you were to
3 conclude that the organization had standing, I submit that
4 you could nevertheless consider their ability to contribute
5 to the record in evaluating what contentions should be set
6 for hearing here.

7 MR. BLACK: Mr. Chairman, one further comment
8 that I might make. I wonder if it would be helpful to the
9 Board if in their deliberation on this petition, particular-
10 ly the question on standing, whether it would be helpful
11 if CEE submitted a list of members, as well as a copy of
12 their by-laws? I'm just throwing that out as a suggestion.

13 (The Board conferring.)

14 CHAIRMAN BECHHOEFER: The Board has conferred,
15 and we think that while it would be desirable for CEE to
16 have a membership list at hand, we don't think it is
17 appropriate for us to ask for it at this stage.

18 You have supplied us with the affidavit and I
19 think we'll just leave it at that. You will be called upon
20 if there is a proceeding and you are admitted as a party to
21 participate, and failure to adequately respond to discovery
22 requests may have an impact on your participation.

23 But I don't think that you ought to be required
24 to supply us with a membership list at this stage, at least.

25 I think that we have about covered the standing

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1 question.

2 Do any of the parties or petitioners have any-
3 thing further they want to advise us of on standing?

4 Otherwise, we thought we would --

5 MR. KURON: Mr. Chairman, if I might, I would
6 hope, just like we're sitting here and listening to the
7 so-called status -- and I say that with all kindness, because
8 I know you guys are the ones that do the work, and then the
9 Commission takes the credit, but nevertheless one who is
10 familiar with the history -- and I mean years before they
11 even broke ground, and I have made it my business, at my
12 expense and time and trouble and everything, to be at each
13 and every meeting that was ever -- public meeting that was
14 ever held. Through my time and trouble I became involved
15 into this thing here.

16 And then, of course, at one time Mr. Morgan and
17 I went to Bethesda, Maryland to the Atomic Energy Commission,
18 at our own expense, and we spent a couple of days there.
19 And we enlightened them a little bit.

20 But I would hope -- I think the right word is --
21 and I don't even know what the hell it means, but they say
22 "the Devil's Advocate" in these proceedings, to sit here
23 and listen to some of these things that are said, because
24 I wouldn't want to accuse Edison of being liars, but
25 sometimes they don't tell the truth, you know. So how are

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1 you going to call somebody a liar when they maybe just
2 didn't tell the truth?

3 But I would hope that being able to sit here in
4 a licensing proceeding and to listen to this testimony, and
5 then be allowed to enlighten Staff or the Board itself on
6 some of the things that's going on, now I noticed that they
7 talked about the roads leading in and out of there. Believe
8 me when I tell you there are only a few roads. There's
9 only one way to go, and that's out the main so-called
10 Fermi-2 Drive to the Dixie Highway, and then turn left or
11 right. That's the only way you're going to go.

12 We in the Stony Point area -- and I live in the
13 Stony Point area, I live in the back yard of Fermi-1 and 2 --
14 and I would wish that Staff would get Mr. Tom Morgan's
15 presentation on the exits and so on and so forth that he
16 presented at the Kettering High School.

17 What I'm trying to do is give you some of the
18 background, some of the history, of these things. There's
19 nothing been changed. If there's an accident at that plant
20 we have to go right smack into the plant to get out of there.
21 We get out through Pte. Aux Peaux Road. There's only one
22 way in and one way out. It's been discussed, it's been
23 talked on, and there's been nothing done.

24 Now, I live in very close proximity of the
25 cooling towers, and I don't want to elaborate too much, I

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1 ain't that smart, to cover all those places. But what's
2 going to happen when that cooling tower -- I listened to
3 Dr. Jens give the answer at Kettering High School -- two
4 days of a big full-blown hearing. I've got some of the
5 stuff in my briefcase. And the answers were not given by
6 Dr. Jens, and Dr. Jens went around left field on fence post
7 detection, radiation detection, what these cooling towers,
8 what effect, if any, they will have on the locality. Dr.
9 Jens then went around the other way, and he still didn't
10 answer the questions.

11 And so these are the things that what the so-
12 called credibility could bring out. What's going to happen
13 when those cooling towers go in operation and they go sour?
14 Are we going to whip them with a wet noodle, or something?
15 Or are we going to close it down? No, I don't think so.
16 Because I don't think that this Commission could stand the
17 heat that would be put on it if they come down to a decision
18 to close that plant. I don't think it's ever been done, and
19 I don't think that any one individual Commission would be
20 able to withstand the heat that would be put on it to close
21 that plant down.

22 And this is what I'm afraid. I would hope that
23 we'd put some reservations on it. Some of the promises that
24 Detroit Edison -- I sat on the County Planning Commission
25 for one year, and I'm sorry to say I was not reappointed.

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1 The only County Commissioner -- I mean the County Planning
2 Commissioner that was never reappointed was Kuron. And I'm
3 sure you'll understand why.

4 But Edison made a promise of a beautiful, natural
5 park that eventually they tried to get the County to do.
6 And Kuron jumps up there and hollers loud and clear, naturally
7 not one of the favorites in that particular field.

8 But these are the things. These kids right now
9 are out-gunned, out-foxed, out-shot, and they don't have a
10 prayer unless you listen to them. Staff has to be unbiased
11 in it, and if they've got anything, fine -- use it. If
12 they don't, forget it. That goes the same with me, right?
13 What the hell. I mean, do I know anything? My old lady
14 don't even listen to me all the time, either, you know.
15 This is nothing new.

16 Thanks a lot.

17 CHAIRMAN BECHHOEFER: I think before we get into
18 the contentions we will take a ten-minute break, and come
19 back here at about 11:20.

20 (Recess.)

21 CHAIRMAN BECHHOEFER: We're back in session.

22 Before we start dealing with the contentions on
23 a contention-by-contention basis, Mr. Shon has one statement
24 he would like to make concerning some of the previous
25 discussion.

1 MR. SHON: It involves the matter of whether or
2 not the Commission shuts plants down, or whether there's so
3 much pressure that that never happens.

4 Indeed, the Commission does shut plants down,
5 and, indeed, there are plants at present shut down for
6 failure, in one way or another, to comply with the Commission's
7 safety requirements.

8 I just thought I'd mention that.

9 MR. SCHINK: Unfortunately, Mr. Kuron missed it.

10 MR. SHON: Oh, did he?

11 (Mr. Kuron was conferring during Mr. Shon's
12 comments.)

13 CHAIRMAN BECHHOEFER: Starting with Contentions,
14 I think we will address them numerically, starting with
15 Contention 4, which is paragraph number 4.

16 Starting out, the Board would like to have some
17 idea about what the petitioners would propose to present,
18 I guess. You mentioned that you have a member who has been
19 personally involved in the construction of Fermi-2 who could
20 testify to these matters.

21 Can you elaborate some on that? Would you
22 propose to bring him as a witness, prepare testimony? That's
23 the type of subject matter I'd like to hear a little more
24 about.

25 MR. ALSON: Mr. Chairman, first of all, I'd like

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1 to make a general statement of our position regarding what
2 we're about to do.

3 I'd like to quote two things first. One is a
4 short two or three sentences from the NRC Staff's response
5 to the original petition that was dated October 30, 1978.
6 It's NRC Staff response to petition for leave to intervene
7 filed by Citizens for Employment and Energy, and the date
8 is October 30, 1978. It's on page 9.

9 What I'd like to read is this, starting with the
10 first complete sentence on page 9:

11 "If CEE can cure the deficiencies in its
12 present showing of interest (identification and
13 addresses of members living near the Fermi Unit 2
14 facility, as well as statements of authorization from
15 the members of CEE that David Hiller is to represent
16 them in the proceeding) by appropriate amendment of
17 its petition, the Staff would then be prepared to
18 commence negotiations aimed at reaching an agreement
19 on those issues which should be admitted as matters
20 in controversy in this proceeding, either on the
21 basis of the aspects identified to date or a supple-
22 ment statement of contentions as contemplated by the
23 statement of consideration accompanying the amendments
24 to 10 CFR Part 2."

25 The part I'd like to emphasize is the phrase,

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1 "...the Staff would then be prepared to commence negotiations."
2 That, along with the wording of the notice of special
3 prehearing conference that was docketed November 15, 1978
4 and signed by Chairman Bechhoefer, where under points 2 and
5 3 of the purpose of this prehearing conference, read:

6 "2. To permit identification of the key
7 issues in the proceeding.

8 3. To take any steps necessary for further
9 identification of the issues."

10 Those two statements read together had inferred
11 to CEE that we would not be going through, point by point,
12 in these contentions. So we spent the time in preparation
13 for this special prehearing conference not in trying to
14 have data to support our contentions at this point. We
15 thought the discussion would be standing, and maybe other
16 more technical -- "technical" is a poor word -- other
17 procedural questions involved. The wording "identification,"
18 "commence negotiations," that sort of thing, did not lead
19 us to believe we'd be going through point by point on the
20 contentions.

21 Now, I guess this is not the interpretation
22 that the Board has.

23 CHAIRMAN BECHHOEFER: The Board will not
24 necessarily expect that every contention be addressed point
25 by point, but the Board would be prepared to indicate which

1 contentions at least present a possibility of being
2 admitted if perfected, perhaps. We have to find at least
3 one contention to satisfy ourselves that it is a valid
4 contention in order to authorize it in the hearing at all.

5 MR. SCHINK: You understand we're not asking
6 you to prove your contentions, or present detailed data
7 on your contentions. We're simply asking that you clarify
8 them, or explain to us how you intend to make your case.

9 CHAIRMAN BECHHOEFER: Give us some idea of what
10 you are driving at. Some of these statements are less than
11 clear.

12 Now, the Applicants have taken the position --
13 I don't know whether you have read their latest --

14 MR. ALSON: Just got it today.

15 CHAIRMAN BECHHOEFER: Yes. They've taken the
16 position that none of your contentions are qualified.

17 In order for us to authorize a hearing we have
18 to find that at least one is qualified. So we would like
19 to go through these and get at least a general idea of
20 what the contentions are going to involve.

21 Would you like to start with number 4? We want
22 a general idea of what type of presentation you had in
23 mind. You will certainly not be held to every detail on
24 what the contentions may involve, but we would have to
25 know something about the contentions, what the contentions

1 are driving at.

2 MR. ALSON: Okay. One question I have: Will
3 decisions be made today on whether or not to drop any
4 contentions?

5 CHAIRMAN BECHHOEFER: It's possible. Well, we
6 won't make the decision today, but we'll issue an order as
7 a result of today's conference which, as I say, in order
8 to authorize a hearing we have to find that at least one
9 contention is good. We may state that other contentions
10 do not qualify under any circumstances, or we may say that
11 the contentions require further perfection, elucidation.

12 MR. ALSON: Would I be correct, then, in saying
13 that the only contentions that you will rule impermissible
14 after the conference today would be those that, in your
15 opinion, there is no possible way we could clarify them
16 or support them, or whatever, in such a way as to make them
17 valid contentions? Is that a fair statement?

18 CHAIRMAN BECHHOEFER: Probably that is fair, yes.

19 MR. VOIGT: May I be heard on this, Mr.

20 Chairman?

21 CHAIRMAN BECHHOEFER: Yes, Mr. Voigt.

22 MR. VOIGT: I think the Licensing Board is aware
23 that the Commission's rules were recently amended in this
24 regard. Formerly petitioners were required to submit their
25 contentions as part of their initial request for a public

1 hearing. And in order to do that in a timely fashion, they
2 only had 30 days from the time the notice was published.

3 That matter was considered by a group of people
4 within the Staff, headed by a consultant, a former
5 Administrative Law Judge Wenner, and the feeling was that
6 that was too rigid a requirement to impose upon the inter-
7 venors, and that experience had demonstrated that in the
8 long run you might save time if you had a little more
9 leisurely approach to the problem of defining intervenors'
10 contentions.

11 So based upon that, proposed changes in the
12 rules were published in the Federal Register, and a number
13 of them were later adopted.

14 One of those changes was to do away with the
15 requirement that contentions be stated in the initial
16 pleading, to give the intervenors additional time to
17 frame their contentions, up until fifteen days before the
18 prehearing conference.

19 That procedure has been followed in this case.
20 The intervenors have had the benefit of the responses to
21 their earlier pleadings, which pointed out wherein there
22 might be deficiencies. They have also had the benefit of
23 this Board's order suggesting the way in which they should
24 clarify their position.

25 It seems to us that the purpose of the amendment

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1 was to lengthen the time during which this could be done,
2 but then to establish a cutoff. And the cutoff is the
3 prehearing conference, which we are here assembled to
4 conduct.

5 I submit that it would be completely contrary
6 to the considerations which prompted the change in the
7 rules to permit further amendment or expansion of the
8 contentions after we leave this room.

9 It seems to me that the intent of the new rule
10 is to require that this Board, following the conclusion
11 of this prehearing conference, rule on all of the
12 contentions, one way or the other.

13 Now, I don't mean to say by that that if you
14 rule that a contention is admissible, there might not be
15 a further opportunity to refine it. But I do submit that
16 you should not hold in abeyance your ruling on any
17 contention beyond the conclusion of this conference.

18 CHAIRMAN BECHHOEFER: Mr. Voigt, you mentioned
19 that the petitioners here had the benefit of your comments
20 on their contentions. Did you not withhold commenting on
21 all of their contentions?

22 MR. VOIGT: We did not respond specifically,
23 but the point is they were on notice that you needed more
24 information concerning these.

25 CHAIRMAN BECHHOEFER: Were they on notice with

1 respect to any particular contention? I'm not counting
2 your most recent response, but your earlier one I didn't
3 think dealt with any of the contentions, other than the
4 general notice that they had to be valid contentions. Well,
5 that they had when they got notice of opportunity for
6 hearing.

7 MR. VOIGT: My point, very simply, is, Mr.
8 Chairman, that your order and the other pleadings placed
9 them on general notice that today was the day. You're
10 right, we didn't specifically call out defects in their
11 contentions, because we didn't treat what was in the
12 earlier pleading as being the definitive version of the
13 contentions.

14 (The Board conferring.)

15 CHAIRMAN BECHHOEFER: Well, I think we should
16 start -- I do think that we will want to get further
17 information on these various contentions, but we haven't
18 decided whether we will on each one.

19 But we would like to hear something more about
20 each one individually, and to get the various parties'
21 positions on the particular contentions.

22 We would like to hear first about Contention 4,
23 which is the quality control contention generally. What
24 types of showing did you have in mind? What type of
25 showing do you intend to make as an intervenor here?

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1 MR. ALSON: Is it permissible for me to allow
2 other members of our group to talk on these too?

3 CHAIRMAN BECHHOEFER: As long as they are members
4 of the group we will hear them. They should identify
5 themselves.

6 MR. ALSON: Well, I don't know whether they w
7 want to or not, but, as you may have gathered, Frank Kuron
8 has worked at the plant and he would be --

9 CHAIRMAN BECHHOEFER: Is he the individual to
10 whom reference is made in this?

11 MR. ALSON: Yes.

12 CHAIRMAN BECHHOEFER: Yes. I think Mr. Kuron
13 has indicated some of the types of things he would be
14 willing to address already, so . . .

15 MR. ALSON: And then on point E, you can see
16 there are a few specific things listed.

17 CHAIRMAN BECHHOEFER: Yes. I had a question
18 about what is meant by E.3. Both the Applicant and Staff
19 seem to have construed this differently. Is E.3 a
20 suggestion that there ought to be fencepost detection
21 during construction, or alternatively should it be combined
22 with what you had to say in paragraph 5, just a general
23 attack on the monitoring system?

24 I was wondering what it really related to.

25 MR. ALSON: Do you have any response to that,

1 Frank?

2 MR. KURON: Well, if I may, Mr. Chairman, why
3 this subject is very near and dear to me is because at
4 the Kettering High School hearing the Chairman of the
5 Board of Inquiry -- I think you'll find it in the minutes
6 of the two-day full-blown hearing, and the question was
7 asked specifically by this young Chairman: What fencepost
8 detection has Detroit Edison got to protect outside of
9 its area.

10 You understand there is approximately 12 or 13
11 hundred acres in this particular area, surrounded by not
12 densely populated, but to the north, Estral Beach and the
13 Swan Creek area, and to the south, the Stony Point area.

14 And this question was asked by the Chairman.
15 Of course, I never heard of any such thing. It was asked
16 of Dr. Jens, the nuclear scientist who is involved in this.
17 And the question was pondered on for some two or three
18 minutes, and then Mr. Jens started out into left field.

19 He went around this way, not to the satisfaction
20 of the Chairman or anybody else there. The answer was
21 totally inadequate.

22 So the Chairman responded again. He said, "Now
23 let me make my question clear so that you know what I'm
24 talking about. If some radiation was to escape from this
25 location, how would we know about it?"

1 And after some more long, lengthy deliberation
2 and silence, Dr. Jens come up with another so-called
3 answer that was totally inadequate.

4 And, as the Chairman says, that this is not what
5 he wants to hear. He wants an answer to his question.
6 And evidently Dr. Jens didn't know it, or didn't want to
7 give it to him.

8 So, therefore, let the record show that Dr.
9 Jens was very unhappy, but the Chairman made his point.
10 And until today, as you know -- I'm also concerned. We
11 have a Monroe water system that's right in the back yard
12 of this atomic plant. And right in the back yard of the
13 discharge at some time or other from this nuclear plant.

14 What fencepost detection? What do we have?
15 What kind of an animal have we got? As far as I know, we
16 have none. We have a lot of talk, but there is none.

17 CHAIRMAN BECHHOEFER: Mr. Kuron, my question
18 really was whether this was supposed to refer to fencepost
19 detection during construction, as the Applicant seemed to
20 have interpreted it, or did you mean after operation?

21 MR. KURON: After operation.

22 CHAIRMAN BECHHOEFER: So that properly would be
23 included if we would accept it as a contention at all, that
24 would be under number 5, I would think, which seems to be --
25 if it's acceptable at all, am I not correct it should be

1 in number 5, Mr. Alson? Do you have any thoughts on that?

2 MR. ALSON: I think your interpretation is
3 correct.

4 I need to interject again. We've been caught
5 by surprise by the intention to go through each contention,
6 one by one. This is the cause for the confusion of the
7 last few minutes, and our conferring here among ourselves.

8 But also, of course, we recognize the need to
9 get something done today, because we're all here.

10 What we would propose is this: That we could
11 go through the contentions, but I would like, and CEE
12 would like, to have some time to either proceed in the
13 way that we were led to believe it was going to be done --
14 these negotiations that were mentioned . . . I don't know
15 what the best way for that to go is.

16 But we are not prepared to put our best foot
17 forward at this prehearing conference on convincing anyone
18 that these contentions are valid.

19 We've been caught by surprise.

20 CHAIRMAN BECHHOEFER: As I say, we have to come
21 up with at least one. We can't authorize a hearing unless
22 we're convinced that at least one of these presents a
23 litigable position. So that some of these questions we
24 have are directed toward that. We may indicate our ruling
25 on some of the others as well, or we may not. We have not

1 decided on that.

2 MR. SCHINK: If you had not been caught by
3 surprise what would be your posture? Is your problem that
4 you are missing key people, or what? Suppose you had under-
5 stood what we were supposed to be doing here today; what
6 would be different?

7 MR. ALSON: I think we would have come with more
8 specific information about the contentions. In other words,
9 what we were prepared for today is more in trying to under-
10 stand how the NRC operates, case precedents, things like
11 that -- procedurally, not with the substance of the con-
12 tentions.

13 And still the way I read what we had in our
14 possession, I don't think we made a mistake.

15 MR. SCHINK: You understand we're not asking you
16 to support these contentions or to demonstrate, but simply
17 to explain to us what they mean and how you intend to
18 support these contentions and demonstrate them.

19 MR. ALSON: Okay.

20 (The Board conferring.)

21 CHAIRMAN BECHHOEFER: We think maybe a better
22 procedure would be to have the Applicant and Staff comment
23 on each of these contentions first, and then have your
24 people respond to the specific comments. Maybe that would
25 be a better procedure to find out exactly what we are

1 concerned with.

2 I'm not sure whether we've heard enough on
3 Contention 4. I guess the Staff hasn't spoken yet. Maybe
4 you haven't spoken entirely on Contention 4, Mr. Voigt. I
5 have read your response, but just briefly. I've read it all,
6 but I haven't researched the various points you cite.

7 Do you have any further comments on Contention 4?

8 MR. VOIGT: I'd like to make two points, Mr.
9 Chairman.

10 First of all, the Applicants' quality assurance
11 and quality control program has been fully documented in
12 the Final Safety Analysis Report. That has already been
13 reviewed by the Staff.

14 In the Interim Safety Evaluation Report which
15 was published by the Staff in September, 1977, they have
16 reported their findings that the Applicants' procedures
17 are in accordance with requirements and are acceptable to
18 the Staff.

19 Those statements appear at pages 13-3 and 13-4.

20 I sincerely doubt if Mr. Kuron, or anyone else
21 from CEE has ever even looked at those documents. But I
22 submit that before we embark upon a hearing concerning the
23 adequacy of the Applicants' quality assurance program it
24 is incumbent upon the Intervenors to demonstrate what's
25 missing, what's wrong, wherein have we failed to comply with

1 the Commission's regulations?

2 The Staff has found that there is compliance.

3 These general allegations and innuendoes and
4 rumors that are cited in here hardly rise to the dignity of
5 requiring inquiry into a program which has been documented
6 and has been reviewed and evaluated and found to be accept-
7 able.

8 CHAIRMAN BECHHOEFER: Well, let me ask one
9 question:

10 Assume the program is acceptable. Well, what
11 happens in an acceptable program if you see a big crack
12 there, and a crack over there? That's what paragraphs E.1
13 and E.2 essentially say.

14 MR. VOIGT: All right. Let me --

15 CHAIRMAN BECHHOEFER: What happens then? Are
16 we supposed to blind ourselves to that?

17 MR. VOIGT: Let me address the allegation in
18 paragraph E.

19 CHAIRMAN BECHHOEFER: Well, E.1 and E.2, because
20 E.3 I think we've questioned about already.

21 MR. VOIGT: Well, I would really comment as to
22 E.3 that a plain reading of Conte t. on E, at least in my
23 mind, says that that's a flaw in construction. That's why
24 we responded to it as a flaw in construction.

25 All right, then, let's talk about E.1 and E.2.

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1 First of all, I would like the Board to know that
2 both E.1 and E.2 were addressed at the construction permit.
3 This plant fell into a generation of plants where you were
4 permitted to commence construction in certain respects
5 prior to the issuance of a construction permit.

6 The two flaws that are referred to had been
7 identified and detected prior to the commencement of the
8 construction permit hearing. So they were addressed by the
9 construction permit Licensing Board.

10 Secondly, there is full documentation on both
11 of these situations.

12 The situation referred to in paragraph E.1 was
13 reported to the NRC under 50.55(e). The cracks -- and
14 whether or not they're severe is a question of some debate --
15 were repaired by pressure grouting, and the NRC inspected
16 the results of that and signed off on it.

17 With respect to paragraph 2, that was not
18 reported under Section 50.55(e), and Region 3 agreed that
19 it was not reportable because it was not a deficiency, but
20 it was a normal construction problem.

21 I would also point out that the only reason those
22 cracks were found was because of Detroit Edison's own audit
23 and inspection program. They were found. The material was
24 repaired. And that also has been signed off by Region 3.

25 This is all ancient history, gentlemen. Things

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1 that were brought up that have been before the construction
2 permit was issued, and they were brought to the attention
3 of the Board in that proceeding.

4 Mr. Kiron wants to bring them up again, but I
5 submit that before you permit him to bring them up again
6 there has to be some kind of threshold showing that there
7 remains an unresolved safety problem as a result of these
8 minor deficiencies which were identified long ago and
9 corrected long ago.

10 CHAIRMAN BECHHOEFER: Were these specifically
11 dealt with in the initial decision, these two matters?

12 MR. VOIGT: They are not dealt with in the
13 initial decision. They are covered in the transcript, and
14 it is implicit from the initial decision that the
15 construction permit board was satisfied that they just
16 weren't a problem.

17 (The Board conferring.)

18 CHAIRMAN BECHHOEFER: Mr. Voigt, I have a question
19 about paragraph 4.d. Is the Ralph Parsons Company still the
20 general contractor?

21 MR. VOIGT: No, sir.

22 CHAIRMAN BECHHOEFER: Was that Company replaced
23 prior to the construction permit initial decision, or
24 thereafter?

25 MR. VOIGT: They were replaced when the

1 construction schedule slowed down and later actually halted,
2 around 1973, due to the Company's change in load forecast
3 and change in financial circumstances. It is my understand-
4 ing that the reason they were replaced at that time was
5 because they had a time-and-materials contract to do all the
6 work on the site, and with the slowdown in construction
7 activity the Company felt that they could get greater
8 economies, better pricing, by putting work out for competi-
9 tive bidding. They couldn't do that under the contract
10 with Parsons, so they terminated Parsons, which they had a
11 right to do, and offered to re-let the contract as a
12 construction-management contract. That went to Daniels.
13 Daniels is on the job now.

14 But this freed the Company up then, as I stated,
15 to have work let out on a competitive bid basis.

16 I further understand that Parsons was invited
17 to bid on some of the competitive bid jobs after they were
18 terminated from their total time-and-materials contract,
19 and they declined to do so.

20 This information is a matter of public record
21 with the Michigan Public Service Commission. But more
22 importantly, of course, the Daniels organization has at all
23 times been subject to NRC compliance, as far as QA/QC are
24 concerned, as the new construction manager.

25 CHAIRMAN BECHHOEFER: I gather, though, that the

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1 NRC in its adjudicatory program has not considered this
2 particular question in the allegation here that the change
3 was for somewhat other reasons than you've just described,
4 and whether or not that is at least a litigable issue -- I'm
5 not saying that it is, but --

6 MR. VOIGT: Not with what you have before you,
7 Mr. Chairman. I mean that's a very serious allegation, and
8 to embark upon a hearing with nothing more than this kind of
9 innuendo it seems to me would fly in the face of the require-
10 ments for specificity and basis for contentions.

11 People do change contractors on these jobs, and
12 I've never understood that the construction permit was
13 conditioned upon the fact that you continue to employ the
14 same contractors that you start off with. Quite the
15 contrary.

16 CHAIRMAN BECHHOEFER: No, it certainly isn't.
17 But if someone raises a question about why a given contractor
18 was replaced, I'm just saying, whether it's a legitimate
19 replacement or not, does it not create a question that is
20 susceptible to litigation?

21 MR. VOIGT: It is my position, Mr. Chairman, that
22 there is a great difference between raising a question and
23 raising an issue. Anybody can raise a question, but to
24 raise an issue that requires the time and attention of this
25 Licensing Board and the devotion of public and private

1 resources to its resolution, I submit to you takes a good
2 deal more than that.

3 CHAIRMAN BECHHOEFER: I think we've heard enough
4 on this.

5 MR. SCHINK: I'd just like to ask whether the
6 members of CEE present are aware of Parsons employees who
7 have made this accusation that they refused to sacrifice
8 quality control. We don't want to hear the details of these
9 accusations, but are you in touch with employees who are
10 prepared to testify on this point?

11 MR. KURON: Yes, I am. In fact, I predicted
12 six to nine months to a year before Parsons was kicked out
13 that they would kick them out, because of the poor quality
14 of work.

15 But if you will again let me, as far as the
16 construction permit was concerned, the error that he's
17 talking about, Mr. Morgan and I on our trip to Washington,
18 to Bethesda, to the Atomic Energy Commission, took a fresh
19 newspaper with all kind of pictures about the present
20 buildup of the Enrico Fermi-2 plant. And let me say this
21 in all fairness to you gentlemen, those people in Bethesda
22 were shocked because the permit was for site preparation,
23 and here they was about half done.

24 And I don't want to elaborate on that, but I can
25 assure you that the Atomic Energy Commission had a hell of

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1 a lot to say about that, because they were flabbergasted
2 when they seen the pictures that we gave to these people
3 that were taken out of our local newspaper.

4 Now, getting into the grouting process, let me
5 say this. It was only after I brought it to the attention
6 of the Atomic Energy Commission that Detroit Edison admitted
7 that this problem was there, and this was brought about in
8 this way because it was a dumb question.

9 I helped pour the initial slab in the reactor
10 floor, which is approximately eight foot thick, full of
11 number 11 rods. And I asked a stupid question: If water
12 could leak in those cracks, couldn't radiation leak out of
13 those cracks?

14 This question was asked of Mr. Jens, and he
15 couldn't answer it. He did not answer it.

16 Now, don't be fooled. I'm going to tell you
17 something. Those reports that you read in Washington and
18 what I see and hear out there, and what this man says about
19 quality control -- I was there from the very beginning. I
20 don't have to read these reports. I see. I know. I'm
21 told by people who know what the hell they're doing.

22 And this is what I'm trying to convey to you.
23 As far as quality control is concerned, until just recently
24 there wasn't any serious attempt at quality control, and I
25 don't care what their papers tell you they done or they

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1 didn't do, or what Staff accepted or didn't accept.

2 Now, let me tell you an innocent little rumor
3 that we can substantiate upon the assistance of an Edison
4 official. He come out there. He knew there was two huge
5 trailers full of records, full of this quality control
6 business, two huge trailers, long truck trailers, full of
7 these records of quality control, of welding inspections,
8 so on and so forth.

9 This Edison person asked the top supervision to
10 take those out in the back 40 and burn them. And the man
11 was very skeptical about such an order.

12 Now, I can give you names and that, but I'm
13 afraid I would give them the kiss of death. But if necessary
14 you people can talk to them quietly, secretly and --

15 MR. SCHINK: No, we will --

16 MR. KURON: Now wait awhile. I --

17 MR. SCHINK: We will not talk to them quietly
18 and secretly.

19 MR. KURON: All right. If this is not your
20 procedure, fine. Fine.

21 But let me say this: After three months, this
22 man would not burn those records up. He was then told to
23 either burn them up or he would have them burned up.

24 Within four months after they were burned up,
25 the Edison people were in there looking for those records.

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1 Now, as far as pressure grouting is concerned,
2 let me tell you this:

3 The initial hole, after all the hocus-pocus and
4 the engineering reports, and the experts' reports, they
5 said, "Drill that hole right here for the Fermi-2 reactor,
6 right here is a good hole."

7 They went down there and they found water mamby-
8 jamby -- nothing but water. Two 7-inch pumps in the north
9 corner of that hole, pumping seven days a week, pumping
10 the lake out, and back into the lake.

11 That's what they found, after the experts said,
12 "Drill the hole here."

13 We went down to bedrock. And don't forget, I
14 worked on Fermi-1. And that hole was much closer to the
15 lake. And it was a good hole.

16 And, mind you, this area was all pressure grouted,
17 pressure grouted, before it was dug. And it didn't help
18 a damn bit. The pressure grouting system, as far as I'm
19 concerned, -- and I'm no expert -- it does not work.
20 They've tried it in various other aspects. They had to
21 drill four sub-holes. They pressure grouted the area
22 before they drilled those holes. And we had a 5-horse
23 pump, and a man in there with a jackhammer with a rain suit
24 on drilling those holes.

25 So let's not talk about pressure grouting. It

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1 doesn't work. It doesn't work.

2 So here --

3 MR. SCHINK: Mr. Kuron --

4 MR. KURON: All right. I'll give you an expert's
5 opinion. But believe me, I appreciate the fact that you
6 people are bending over backwards to listen to us. You
7 separate the facts from the fiction. Thank you.

8 MR. SCHINK: Do you understand that we're trying
9 to find out whether there should be a hearing? The kind
10 of information that you're giving us would be relevant in
11 a hearing, but I think it's not particularly relevant to
12 the questions at hand.

13 The persons that you are in touch with on these
14 subjects, if there were a hearing, would be required to
15 identify themselves and to testify under oath.

16 Now, if there's a requirement, as you imply,
17 for secrecy and contact out of view, then any case against
18 the Applicant is going to dissolve in that demand for
19 secrecy.

20 So you need to assure us, I think, or at least
21 assure yourselves, that these people will stand up and be
22 heard.

23 MR. KURON: Well, like I said earlier, I would
24 hope that I could point you in the direction. Now, I've
25 suffered great financial loss, humility, and everything

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1 else, because of my outspoken attitude, and I don't think
2 that these people have the courage or financial ability to
3 withstand what I've gone through the last four or five
4 years. I'm at the point right now where I should be
5 retired, but I can't retire because I'm not financially
6 able to.

7 Now, I don't know just what's going to happen
8 after this deal here, but like I said before, I would point
9 your noses in the right direction, and I would hope -- I
10 see by your remarks that this is impossible, but by the same
11 token, a hearing of this sort conducted on the job site,
12 or in the very near vicinity -- and we have people that are
13 the best, who would come in and tell you, quietly -- they'd
14 give you their name and address and everything else -- about
15 certain doubts that they have.

16 Now, I predicted that the Parsons Company would
17 be fired a long time before they were fired, because of
18 their -- and I'll tell you what, if this Company was smart
19 they'd be firing the guy that we got out there now, and
20 that's the Daniels Construction Company, because they're
21 worse than Parsons.

22 Thank you very kindly.

23 CHAIRMAN BECHHOEFER: Does the Staff have any
24 comment on this particular contention?

25 MR. BLACK: I think the only thing I would want

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1 to say is that we perceived that the main thrust of this
2 contention was one of a concern with the adequacy of the
3 quality control during construction.

4 Now, all of these things that are identified in
5 paragraph 4 seem to be examples of that lack of quality
6 control. We feel that this at least presents a colorable
7 issue that can be admitted into controversy.

8 However, we also indicated that we felt they
9 needed more specificity to meet the requirements of
10 Appendix B to 10 CFR Part 50. In other words, what we felt
11 needed to be done is if they are going to allege that there
12 was a defect in the quality assurance program, they should
13 tie those up with the requirements in Appendix B.

14 I'm not saying at this point whether this can
15 or cannot be done, but I think that was one of the things
16 that we felt, that the allegation has to be taken out of the
17 realm of a general example into the realm of a defect or
18 a violation of the regulations.

19 MR. SHON: Mr. Black, Appendix B to Part 50 is
20 a very generalized document itself. As I understand the
21 nature of these allegations, it is not that specific
22 requirements of Appendix B have been violated in general,
23 but that matters which might have been alleged to be
24 carried out properly under Appendix B were, in point of fact,
25 not so carried out. Things were not done at the very

1 nitty-gritty level, many levels down from the requirements
2 as set forth in the Preliminary Safety Analysis Report of
3 the Applicants' plan for quality assurance, which, in
4 itself, is a rather small document compared to the vast
5 amount of documentation.

6 It might be very difficult for these people with
7 their particular background to relate to a specific
8 requirement in Appendix B, a violation of a rather complex
9 technical requirement for inspection or control.

10 Do you see what I mean?

11 MR. BLACK: I fully understand your point, and
12 I think this is a typical area of contention where
13 negotiations between the parties would be helpful, so that
14 we could define these contentions and get them back into
15 the specifics of Appendix B. Otherwise, you end up proving
16 a negative. If you have to prove that firing the contractor
17 somehow jeopardized quality assurance, that might be awfully
18 difficult unless you tied it in to the requirements of
19 Appendix B.

20 MR. KURON: May I ask a question, Mr. Chairman,
21 please? Is this plant supposed -- the life of this plant
22 supposed to be 40 years? What is the life of this plant
23 expected to be?

24 CHAIRMAN BECHHOEFER: I believe that the license
25 is for 40 years from the date of application for the

construction permit, so it's somewhat less than 40 years.

2 MR. KURON: God help us.

3 CHAIRMAN BECHHOEFER: At this point, before we
4 break for lunch, the Board would like to turn to Contention
5 8. That's the one on evacuation. This contention has a
6 fairly general introduction, but a very specific middle and
7 end, and I would like to get the Applicants' comments, and
8 Staff's as well, on that contention, particularly in view
9 of the fact that back in 1974 the Appeal Board rendered
10 a decision, ALAB-248, in the San Onofre case, and I'd like
11 to read one paragraph from that decision, and I'd like to
12 get the Applicants' comments both on that and on the
13 contention narrowly.

14 It says this in paragraph 3, and it occurs on
15 page 8 AEC 963. It says this:

16 "The beach and other park areas within the
17 modified low-population zone remain a cause for
18 concern owing to potentially large numbers of
19 persons who might be located in those areas at the
20 time of an accident. Among other things, it is
21 far from clear that as now constituted the existing
22 roads would be adequate for the purpose. Moreover,
23 as part of its feasibility demonstration, the
24 Applicant has indicated they can evacuate people
25 from certain areas north of the facility by moving

1 them out partially abandoned Route 101 to safety
2 south of the reactor. But that evacuation route
3 requires that the evacuees travel closer to the
4 reactor than their original locations in order
5 eventually to reach safe ground. It strains
6 credulity to expect the people to drive closer
7 to a reactor in order to escape from the emergency
8 generated by the reactor. In the vernacular, it
9 might appear to them that they were jumping from
10 the frying pan into the fire."

11 This was in the case of the construction permit
12 stage, and the Appeal Board required the Applicants to
13 develop a new route prior to the operating license stage
14 for evacuating those particular people.

15 So I'd like to have the Applicants' comments on
16 that as well as on the contention itself.

17 MR. VOIGT: Well, let me begin by saying, Mr.
18 Chairman, that the heart of this contention is the statement,
19 "CEE is concerned over whether there is a feasible escape
20 route for the residents of the Stony Point area."

21 They haven't said there isn't any such route.
22 They haven't identified any inadequacies in the Applicants'
23 emergency plans which are contained in the FSAR, or in the
24 State's emergency plan.

25 They just said, "Hey, we're worried." Now, that,

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1 to me, is grossly inadequate as a contention. At a minimum
2 they must advise the Licensing Board of what specific
3 problem there is in the scenario.

4 CHAIRMAN BECHHOEFER: What does the next sentence
5 say?

6 MR. VOIGT: The next sentence says:

7 "There's only one road leading to the area."

8 That's not a problem, unless it's alleged that that road is
9 inadequate to transport the number of people that would be
10 required to be transported.

11 CHAIRMAN BECHHOEFER: What about the statement
12 that you have to go closer to the reactor in order to
13 escape? That's part and parcel of the allegation.

14 MR. VOIGT: All right. If it weren't for
15 San Onofre, I would say, "So what?"

16 But I can't, because of what was said in that
17 case.

18 I can say, however, that clearly it's a matter
19 of degree. If you're telling me that in order to escape
20 from an area I have to walk or drive a couple of hundred
21 yards towards the reactor so that I may then turn and
22 immediately proceed away from it, I cannot see that there
23 is a legitimate concern.

24 Let's look at the facts here, to the extent that
25 they are available. If you'll look at Figure 1.2 in the

1 Staff's Interim SER -- it's on page 1-12 -- you can see the
2 relationship to the site. Stony Point is not shown on this
3 figure, but it is in fact south of Pte. Aux Peaux Road and
4 out toward the lake. It's not a beach area or a resort
5 area. There are, I am told, some 70 single-family houses
6 in the area.

7 In order to evacuate those people, they would
8 have to -- in the words of San Onofre -- move toward the
9 reactor the length of the local street to get from their
10 home to the main road, which is Pte. Aux Peaux.

11 Pte. Aux Peaux is an all-weather paved highway,
12 and the 70 people and however many vehicles were involved
13 would then start moving away from the reactor across Pte.
14 Aux Peaux Road.

15 Now those are the facts. These gentlemen have
16 not put forth any allegation that there's any difficulty
17 involved in moving those people, that the road is inadequate,
18 that there are too many people in the area to evacuate
19 within two hours -- nothing.

20 I say to you that that simply does not raise an
21 issue for hearing. It's incumbent upon them to tell you
22 what's wrong with the existing emergency plans, what
23 problem is going to be encountered. They haven't. And I
24 think it's fair to state from the facts that are known that
25 there is no such problem.

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1 CHAIRMAN BECHHOEFER: Well, let me ask you this:

2 In the Applicants' Environmental Report on the
3 construction permit stage -- and I don't have the FSAR at
4 this point -- it indicated that there were 1,370 people at
5 Stony Point as of 1970. What happened to the other 1,000?

6 MR. VOIGT: I have no information on that, Mr.
7 Chairman.

8 CHAIRMAN BECHHOEFER: I mean I'm just reasoning.
9 Those were 1970 population figures. That was in the record
10 in the construction permit case.

11 MR. VOIGT: I can go back and look at it over
12 the noon recess and make further inquiries.

13 CHAIRMAN BECHHOEFER: Well, we really couldn't
14 resolve that, in any event. I'm just trying to determine
15 whether it states a --

16 MR. VOIGT: Nor should you resolve it, but you
17 should require that the Intervenors identify the problem.
18 I'm being asked to respond to a concern. I don't even know
19 what the concern is.

20 It's my understanding that there's no basis for
21 it.

22 CHAIRMAN BECHHOEFER: I think that the concern
23 is that the people would say they'd have to go closer
24 before they'd get farther away, and I'm wondering if you
25 knew what the Appeal Board has said, and whether that in

1 itself does not create a contention?

2 That's what I'm trying to develop.

3 MR. VOIGT: I think two things:

4 First of all, I think what the Appeal Board said
5 has to be read as a whole. It was clearly a serious problem
6 in San Onofre, because of the potentially significant
7 transient population. Nobody has alleged that here.

8 Secondly, I don't know the distance that was
9 involved in San Onofre, but it's clear that the distance
10 here is very short.

11 MR. BLACK: Mr. Chairman, Staff would just like
12 to observe that I think that the Applicant has gone out of
13 the realm of arguing about specificity and basis now, and
14 is now arguing the merits of the contention. I don't think
15 that that's relevant at this point.

16 I think it is clear to the Staff that the
17 Intervenors have presented a concern with reasonable
18 specificity and basis and that it should be addressed as an
19 issue.

20 CHAIRMAN BECHHOEFER: Mr. Alson, did you have
21 something further? I saw your hand up awhile back.

22 MR. ALSON: Well, you said, I guess, what I was
23 going to say. I was just amazed at the Applicants' twisting
24 of the contention, but you said it all. So I have nothing
25 to add on that.

1 CHAIRMAN BECHHOEFER: I also wanted to ask the
2 Staff, I noticed in your response you said that the Board
3 has got to follow the provisions of the existing Part 100.

4 I notice in this proposed rulemaking that the
5 Commission has stated thus:

6 "The proposed amendment will be used as interim
7 guidance in reviewing the applicant's emergency plan."

8 Then it says:

9 "In cases where construction permit has already
10 been issued, emergency plans will be reviewed at the
11 operating license stage, in accordance with the
12 interim guidance of the proposed amendment, depending
13 on timing..."

14 And I ask you: Are we not under instructions to
15 look at the new proposed amendments that govern the consider-
16 ation of the emergency plans under those standards?

17 MR. BLACK: From the language you just read, it
18 seems like that's the case. However, I'm just not certain
19 that that still applies to emergency plans that are outside
20 the LPZ.

21 CHAIRMAN BECHHOEFER: The purpose of that amend-
22 ment was to include -- the way I read it, at least -- areas
23 outside the LPZ, where it could be shown that the standards
24 of another governmental agency would not be met, like EPA, I
25 assume, or the State of Michigan, perhaps.

1 MR. BLACK: I think the point that we tried to
2 make is that the interim guidance there is directed to the
3 Staff. And, of course, the Staff would follow that in its
4 review and assessment of the emergency plans.

5 We are not certain at this point whether that
6 would be the case insofar as the Licensing Board, which we
7 feel might be bound by the case law in Seabrook as far as
8 their consideration of any area outside the LPZ goes.

9 CHAIRMAN BECHHOEFER: Well, we won't have to
10 decide that, but I did notice, again from this environmental
11 report for the construction permit stage, that there are
12 four or five communities within -- well, the five-mile
13 line that the Staff is using in some other cases.

14 MR. BLACK: Five-mile line for what? Arbitrary
15 line for the LPZ, or --

16 CHAIRMAN BECHHOEFER: For the evacuation. The
17 Staff I know has used that as the level from which people
18 would be exposed. In several cases the Staff has used
19 that. I can't say whether it's appropriate to this hearing
20 or not, at this stage, but --

21 MR. BLACK: I think in the context of the
22 contention that was raised here there was a reference to
23 a 100-mile limit, and we think that that's carrying it a
24 little bit too far.

25 CHAIRMAN BECHHOEFER: Yes. Mr. Alson?

1 MR. ALSON: Mr. Kuron lives in the Stony Point
2 area. Would you care to hear what he has to say about this
3 contention?

4 CHAIRMAN BECHHOEFER: Not if it really goes to
5 the merits, because that, I think, will be something that
6 we'll obviously have to deal with at the hearing.

7 MR. KURON: It might be just a little helpful to
8 the Staff if they would read the report that Mr. Morgan
9 made on this particular subject. I think it would help
10 them very, very much.

11 And you are right, Mr. Chairman, it was told to
12 us in no uncertain terms that this matter would be decided
13 and settled by the Licensing Board before they would issue
14 the license. And to date nothing has come about in that
15 particular matter, and I just want to tell you, Edison's
16 answer to the problem was that they would notify the State
17 Police and the Coast Guard.

18 I don't know where the State Police is, and I
19 don't know what kind of a Coast Guard we've got over there.
20 But I can assure you that where I live at right now, I
21 would have to go approximately one mile straight into the
22 fire before I could make a sharp left turn and then proceed
23 along Pte. aux Peaux Road and get out of there.

24 And that goes for several thousand people, not
25 seventy people. You have a two-lane highway? It's about a

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1 40-foot road. A highway? Highway, hell. We got two big
2 ditches alongside, and I could just see chaos out there when
3 and if we had to get evacuated. And then, of course, we
4 keep very much in the back of our mind when we had the
5 problem with Fermi-1, when we wasn't even notified for 31
6 days. And this sticks in my craw more than anything else.

7 I surer than hell don't want that to happen
8 again.

9 Thank you again, Mr. Chairman.

10 If Staff will get the report from the Kettering
11 High School, there's a complete documentation. Mr. Morgan
12 and I spent fourteen months putting this stuff together,
13 and I think that at least the Staff could read it.

14 Thank you. Any questions I'll be glad to answer.

15 CHAIRMAN BECHHOEFER: I wonder if any of the
16 parties or participants have any further questions on that
17 Contention 8 -- further comments, I should say, on Contention
18 8?

19 MR. VOIGT: I would like to offer several further
20 observations.

21 First of all, it appears from what Mr. Kuron has
22 just said that this same subject matter was drawn to the
23 attention of the construction permit Board. I must say
24 there's nothing in their opinion about it. So it's not a
25 new problem.

1 Secondly, to respond to your inquiry about the
2 proposed change in the rule, Mr. Chairman, I think it is
3 clear that the Commission cannot change the rule on an
4 interim basis in compliance with the Administrative Procedure
5 Act, except by making some findings which it didn't make,
6 and probably has no basis for making. And we would
7 vigorously contend that this Board must continue to follow
8 the present rule until the new rule is properly adopted.

9 But quite apart from that, the new rule
10 envisions, if I interpret the proposal correctly, that you
11 will examine the need for specific emergency planning beyond
12 the low-population zone on a case-by-case basis. And while
13 that may impose a requirement on the Staff and the Applicant,
14 to look into this thing, it doesn't suggest that there's
15 any occasion to have a public hearing unless the Intervenors
16 have identified a specific need -- which comes back to where
17 I started out:

18 It seems to me that in fairness to the Applicant
19 the Board must require specificity from Intervenors about
20 what's going to be violated, or what's going to be
21 inadequate. Just saying we're concerned about such and such
22 ought not to be enough to require a hearing.

23 CHAIRMAN BECHHOEFER: Are there any other
24 comments on the contention?

25 MR. ALSON: No, Mr. Chairman.

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1 CHAIRMAN BECHHOEFER: I think at this stage
2 we'll break for lunch, and be back by 2:00 o'clock.

3 (Whereupon, at 12:35 p.m., the prehearing
4 conference was recessed, to reconvene at 2:00 p.m., this
5 same day.)
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A F T E R N O O N S E S S I O N

(2:00 p.m.)

1
2
3 CHAIRMAN BECHHOEFER: Prior to the luncheon
4 recess, we were just taking up the emergency plan contention.

5 We were wondering one thing, just for the record:

6 Is Stony Point within the LPZ? Our records show
7 that Stony Point is 1-1/2 miles from the reactor, and that
8 the LPZ is 3 miles. But this is based on the construction
9 permit application.

10 MR. VOIGT: It's still within the LPZ, Mr.
11 Chairman, and it's in the area that I indicated to you on
12 that figure, even though it isn't so large.

13 CHAIRMAN BECHHOEFER: All right.

14 MR. VOIGT: I would also like to respond to the
15 question that you raised just before the luncheon recess
16 about the population figure that was given in the earlier
17 environmental report.

18 It's my understanding that there were exceptional
19 high-water conditions on Lake Erie in 1973 and 1974, which
20 resulted in properties in that area being flooded, and that
21 the population has declined substantially on a permanent
22 basis as a result of those events.

23 I do not have an up-to-date population figure,
24 and the number of houses that I gave you was an estimate,
25 not an actual count. It is clear that there has been, I

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1 believe, a reduction in the population.

2 CHAIRMAN BECHHOEFER: I think we would like to
3 turn next to Contention 5.

4 (The Board conferring.)

5 Before we get there, Contention 9 is one that we
6 view as somewhat connected to 8, and we just wanted to
7 clarify or make sure that our understanding of that is
8 correct.

9 I realize that the FSAR will have to specify
10 what the treatment facilities will be, but our inquiry --
11 I guess to Mr. Alson -- is:

12 Do you intend this contention to somehow
13 challenge the particular treatment facilities that may be
14 listed in the FSAR? We have not had a chance to look at
15 that yet.

16 MR. ALSON: Mr. Chairman, this is one of a number
17 of contentions that, again, you know, there's been more
18 input into this petition than just from the five of us who
19 are here today, and it's one of a number that we would wish
20 to have more time to make more specific, to negotiate with
21 the Staff and the Board about.

22 CHAIRMAN BECHHOEFER: Do the Applicant and the
23 Staff have any comments on Contention 9, or paragraph 9?

24 MR. VOIGT: Mr. Chairman, I think it's stated in
25 our response that this contention is woefully lacking any

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1 specifics. Chapter 13 does detail the provisions that have
2 been made, and there are others -- an agreement with
3 hospitals -- and we believe before a hearing can be
4 permitted on a contention such as this, a specific inade-
5 quacy has to be pointed out.

6 CHAIRMAN BECHHOEFER: Staff?

7 MR. BLACK: I think, as the Applicant just
8 indicated, as far as we're concerned this contention is
9 totally void of any basis whatsoever to permit it, as
10 framed, as an allowable contention.

11 CHAIRMAN BECHHOEFER: Let's go to Contention 5.

12 MR. ALSON: Could I say one final thing? You
13 know, I don't disagree at least with what the Staff just
14 said, but, again, our understanding of what had been said
15 in previous documents was that the time to negotiate these
16 things and to make them more specific would come.

17 Another example is Contention 13. I will not
18 disagree with what the Staff said in their response to that,
19 but CEE would like to have time to make them more specific
20 so that we could have something to deal with here.

21 (The Board conferring.)

22 CHAIRMAN BECHHOEFER: Let's turn to 5. On this
23 one, we referred earlier today in comments about the
24 inadequacy of the monitoring system. Here it appeared to
25 the Board that perhaps what is being asserted is that there

1 should be a complete remotely-controlled system. Is that
2 what is being asserted here? I would ask Mr. Alson this.

3 MR. ALSON: Could I have one second?

4 CHAIRMAN BECHHOEFER: Yes.

5 (Pause.)

6 MR. ALSON: Again, Mr. Chairman, this is an issue
7 which specific people in our group know something about, and
8 he is not represented here today. We're not attacking the
9 Staff's or the NRC's regulations in this area. We are
10 simply saying we don't believe Edison will comply at least
11 with the spirit of those regulations.

12 But clearly we would not be able to provide the
13 specificity today. I'm sure I wish we could and you wish
14 we could. Again, it was not our understanding that we were
15 going to be required to do that.

16 CHAIRMAN BECHHOEFER: Does anybody else have any
17 comments on Contention 5? If not, we'll go on to 6.

18 MR. KURON: May I ask a question on Contention 5?

19 Is there such an animal? Have we got something
20 like that? Is it possible? Why I ask that question is
21 because the same question was asked by the Chairman in the
22 Kettering High School of Mr. Jens, who is a nuclear
23 scientist, and he could not or did not answer.

24 I mean have we got something of this nature? I
25 mean somebody should be able to answer that. Is there such

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1 an animal?

2 MR. SHON: I guess I don't understand your
3 question. Do you mean is there a radiation monitoring system
4 on the plant?

5 MR. KURON: Yes.

6 MR. SCHINK: Or is one conceivably possible?
7 The kinds of radioactivity that you might monitor for are
8 many in type, and the radiation monitoring systems that are
9 required under various health standards are rather complex.

10 It's my experience that many of these require
11 human intervention. Some kind of an air filter sampling,
12 with the removal of the air filters to a counting facility.
13 Now it is contemplated that automated designs of some kind
14 might be constructed. But generally these things do
15 involve the use of staff to collect samples that have been
16 collected, and then take it to a laboratory for analysis.

17 There are other devices, of course, which can
18 simply monitor the activity, gamma activity, for example,
19 which are passing by a detector. You could have things in
20 place which were monitoring radioactivity at all times.
21 But they wouldn't tell you the full story.

22 MR. KURON: Well, forgive me for being dumb,
23 but that question has been asked on several different
24 occasions, at hearings that I've been to, and it's never
25 been adequately answered. I mean today we're seeing movies

1 like "Star Wars," and "Superman," and all that bit, and I
2 just want to know is there such a thing that we could have
3 fencepost detection, let's say, of our water supply?

4 They're promising the moon, you know. But is
5 there a machine or a monitoring system that could check that
6 water to guarantee that there's no radiation in it? It's
7 never been answered, not to my satisfaction. And I would
8 hope that the Board would, you know, really look into
9 something like that.

10 Thank you very kindly.

11 MR. SCHINK: You could have detectors that would
12 tell you if you stood there you were going to die in a few
13 days. But the radiation standards that are generally
14 imposed on a plant are so tight that the kinds of radio-
15 activity we're looking for are much harder to detect.

16 MR. KURON: Thank you. Thank you.

17 MR. VOIGT: Mr. Chairman, if I may respond to
18 the question that you raised a moment ago, we believe that
19 we have adequately set forth our position on each of these
20 contentions in our written response, and we observed that
21 in a number of instances the Staff agrees with our position.

22 It might expedite your consideration of these
23 matters if we focused on two cases, either the case where
24 the Staff and the Applicant are in disagreement, or any case
25 in which the Board itself desires a further elucidation. I

1 think we saw an example of that before lunch, when you
2 gentlemen had some questions of your own about some of the
3 sub-sets of Contention 4.

4 But I, at least, am content not to reiterate for
5 the benefit of the oral record what's already been said
6 in our written response on contentions such as 6 and 7.

7 CHAIRMAN BECHHOEFER: 6 and 7 the Board did have
8 some questions about, obviously, of the petitioners. Mr.
9 Alson, with regard to 6, which involves certain components,
10 the only example cited, as I think the Staff pointed out
11 in its response, are reactors which are completely different
12 types than the one under consideration here. And I wanted
13 to find out whether that was the sum and substance of what
14 you are going to have to show, or whether you have any
15 basis for a contention relating to a reactor of this type?

16 MR. ALSON: The two plants quoted, of course,
17 we knew were different types. The point was that the
18 durability of these parts are often not what people think
19 they're going to be before the plant is put up.

20 A recent example that we think will lend more
21 credence to this argument is this happened at the Duane
22 Arnold plant, which is a boiling water reactor, where the
23 crack in one of the coolant pipes apparently was caused by
24 some sort of physical effect. I'm not sure if they know
25 exactly what caused the large crack. I don't believe they

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1 found that it was a mistake by the manufacturer of the pipe,
2 or anything like that.

3 So that would be, I guess, an example of a
4 boiling water reactor problem that has happened recently
5 that was not included in the original contention.

6 But the purpose of the other two was just to show
7 that there have been durability problems that were not
8 anticipated beforehand.

9 CHAIRMAN BECHHOEFER: Would the Applicant or
10 Staff want to respond to those comments?

11 MR. VOIGT: I think the point really is quite
12 simple, Mr. Chairman. Parts do wear out, and you have to
13 replace them. There's nothing shown here to indicate that
14 these Applicants will not have the ability to replace parts.
15 And lacking that, I don't think I even have to say anything
16 about the preceding allegations.

17 MR. BLACK: I don't think I can add anything
18 further to what has been stated.

19 CHAIRMAN BECHHOEFER: On number 7, Mr. Alson,
20 I wondered if you were aware that the type of reactor here,
21 a boiling water reactor, doesn't have steam generator tubes?

22 MR. ALSON: We're quite willing to drop
23 Contention 7.

24 CHAIRMAN BECHHOEFER: With respect to Contention
25 10, which I think is the next one that we haven't talked

1 about, generic safety problems, here there is a difference
2 between the Applicant and the Staff responses.

3 I wondered whether the Applicants would want to
4 comment on the Appeal Board's recent North Anna decision
5 wherein it seemed to say that in an operating license
6 case a Board should at least make sure that at least a
7 plausible answer -- I think "plausible" was the word used
8 by the Appeal Board -- was reached to various generic
9 safety problems, irrespective of whether those problems
10 were contentions or not.

11 Here there is at least an attempt to raise a
12 generic safety question, and the Staff has said that it
13 has not issued the Safety Evaluation Report yet, which is
14 the vehicle for presenting at least a solution to these
15 problems.

16 I'd like to have your comments on what you think
17 the duty of the Board would be -- not this Board, but the
18 hearing board, if there is one -- in this area.

19 MR. VOIGT: I must say I'm not familiar with
20 the North Anna decision to which you refer.

21 CHAIRMAN BECHHOEFER: It was in August, I think.

22 MR. VOIGT: It strikes me that in terms of
23 ruling on an intervention that's putting the cart before
24 the horse, because you can't possibly decide whether or to
25 what extent to consider a generic issue until you first of

1 all decide that you're going to have a hearing, and that
2 there are going to be certain specific contentions, either
3 in or not in.

4 But getting back to where we are, which is
5 whether this is a valid contention and should be admitted
6 by the Board, I'd like for the Board to look at the Staff's
7 response to Contention 11.

8 There they say:

9 "Since the Applicant has addressed the maximum
10 probable flood at the site in the FSAR, and has
11 assessed the flood design of the facility, the Staff
12 believes that this contention lacks specificity and
13 basis. In order for the contention to be acceptable,
14 it should set forth with reasonable specificity at
15 the very least either how the Applicant has not
16 adequately identified the maximum probable flood, or
17 how the structural integrity of the plant will be
18 adversely affected."

19 Now, it's our position that that same kind of
20 test should be applied to Contention 10, and that before
21 there is an admissible contention the petitioners must set
22 forth either how the problem has not been identified, or
23 how it's going to adversely affect this particular project.

24 Furthermore, it seems to us that that's exactly
25 what the Appeal Board said in Gulf States. The Staff quotes

1 that. They say:

2 "The contention must establish that the
3 undertaken or contemplated project has safety
4 significance insofar as the reactor under review
5 is concerned, and that the fashion in which the
6 application deals with the matter in question is
7 unsatisfactory."

8 Now, the fact that the Staff doesn't have its
9 final SER on the street is irrelevant to that test, because
10 the Appeal Board in River Bend clearly said, "You, Mr.
11 Intervenor, have to tell us wherein the application fails
12 to address the matter in question.

13 And our application has long been a matter of
14 public record, and in fact does address some of these
15 concerns. But there's been absolutely no effort on the
16 part of these people to tell this Board or the Applicants
17 where there is a problem of safety significance with
18 respect to Fermi-2. That is point one. And wherein the
19 application fails to address that matter. That's point two.

20 The very case the Staff cites to us says that
21 this contention is not acceptable within the standards
22 laid down by the Appeal Board. And we believe that we have
23 a right -- and the Board has a right -- to be so advised
24 before we embark upon a hearing in this matter.

25 The truth of the matter is that to the extent that

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1 we can discern from the language of this contention, where
2 there are any specific generic items of interest, they are
3 addressed in the FSAR.

4 But I don't want to argue the merits of the
5 contention. I simply rest on the proposition that they owe
6 a duty to the Board to advise you of where the insufficiency
7 lies, rather than just putting a laundry list on the table
8 and saying they should have a hearing on each and every
9 item.

10 CHAIRMAN BECHHOEFER: Mr. Black?

11 MR. BLACK: Well, maybe a couple of points are
12 in order.

13 Number one, I guess that if this were the only
14 contention standing that would allow CEE intervention in
15 this proceeding, perhaps a general laundry list like this
16 would not be acceptable to Staff.

17 However, these unresolved generic problems have
18 not been resolved, and I believe that since the Intervenors
19 have raised these things and indicate a concern in them,
20 they should be addressed if there is a hearing.

21 I think Mr. Voigt carefully hedged his words
22 when he said, "Some of these concerns are addressed in the
23 FSAR." I'm not so certain that all of them are.

24 Therefore, it becomes a big question of how in
25 the heck can Intervenors particularize contentions when they

1 have not been identified and addressed and assessed by the
2 Staff. And that's the point here, that eventually all of
3 these things will become identified, analyzed, and assessed
4 and will show up in the Staff's SER or SER supplement.
5 At that point we can particularize and find out through
6 discovery or some other means which are still outstanding
7 concerns to the Intervenors. At that point maybe some of
8 them will fall by the wayside. Maybe some of them have
9 not been adequately addressed.

10 But at this stage it's too early to make that
11 assessment.

12 CHAIRMAN BECHHOEFER: Let me ask you:

13 Is one explanation for the different approach
14 you took under Contentions 10 and 11 explained in part by
15 the fact that the Staff had its interim safety evaluation
16 and had it evaluated?

17 MR. BLACK: I think the big difference is the
18 degree of particularization that can be brought to bear on
19 these contentions at this time.

20 Now, as far as the flood problem is concerned,
21 it has been assessed, both by the Applicant and the Staff.
22 As far as these unresolved generic safety problems, some of
23 them have been addressed by the Applicant and some of them
24 have not been. But all of them have not been addressed by
25 the NRC Staff.

1 So to me it's a question of: If there are the
2 underlying documents with which you can adequately define
3 these things, these contentions, then, yes, the Intervenors
4 should be held to some higher degree of standard of partic-
5 ularization.

6 But if there are no underlying documents which
7 they can make reference to, then I just believe it's not
8 possible for them to do so at this point.

9 And this is what discovery is all about, as these
10 documents become available over the course of time.

11 CHAIRMAN BECHHOEFER: Could I ask you at this
12 point what is the schedule for the Staff's Safety Evaluation
13 Report, and also the Environmental Impact Statements? Do
14 you know at this time? Is there at least a target, a
15 blue-book date, or . . .

16 MR. BLACK: I'm thinking. I believe that the FES
17 is scheduled for sometime late summer -- maybe September of
18 this year.

19 The SER supplement, I believe, is scheduled for
20 February of 19. . . no, December of 1979.

21 MR. TREBY: Maybe I can help, Mr. Chairman.

22 My understanding is that the SER will be issued
23 either at the end of August or at the beginning of September,
24 somewhere within the period of August 20 and September 10.
25 At least that's the Staff's present target date. These

1 things have been known to slip in the past. We try our
2 best. But that's the present target date.

3 And our present target for the issuance of the
4 Supplement to the SER is December of 1979.

5 With regard to the environmental documents, the
6 present target is to issue a DES in June of 1979, and an
7 FES in September of 1979.

8 MR. SCHINK: May I ask what the present target
9 date is for fueling the reactor?

10 MR. VOIGT: The fuel load date is June of 1981.
11 That is considered by the Company to be overly conservative,
12 but not optimistic, either.

13 No -- 1980 -- I'm sorry. I mis-spoke. 1980.

14 MR. SCHINK: That's very conservative.

15 (Laughter.)

16 MR. VOIGT: And I would add that the leisurly
17 review schedule that the Staff is currently operating on
18 is not entirely consistent with that kind of a fuel load
19 date, and we're very disturbed by the inability to get
20 these basic documents in place a little more quickly, so
21 that if there is going to be a public hearing in this case
22 there'll be time to do it before fuel loading.

23 Another point I would make is that it's my
24 understanding that the supplement to the SER will be for
25 the sole purpose of dealing with financial qualifications.

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1 Therefore, we would hope that it would be possible to
2 commence hearings without waiting for that supplement.

3 (The Board conferring.)

4 CHAIRMAN BECHHOEFER: With respect to Contention
5 11, Mr. Alson, we would like to ask whether CEE has any
6 information available concerning the flooding that I think
7 wasn't available to the Staff and the Applicant. It isn't
8 a matter of public record right now. But, as stated, this
9 contention doesn't seem to have any basis at all.

10 MR. ALSON: Mr. Kuron?

11 MR. KURON: Yes. There again we're going to get
12 something right from the horse's mouth.

13 I suffered three serious floods at the Stony
14 Point area. In the second one I almost lost my wife to a
15 heart attack. The third one I almost lost here again.
16 That was the Fathers' Day Flood.

17 And I know at that time that Edison was fighting
18 for its life at Fermi-2 to try to keep it from going under.

19 I want this Board to know that this site is dug
20 out of a huge marsh. In fact, one of the finest duck marshes
21 in the world was right at this particular Lagona Beach.
22 It's in a flood area -- period.

23 Unfortunately -- or fortunately -- somehow or
24 another on the so-called flood maps and all that, everything
25 around it is in a flood zone except the 1200 acres that

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1 belongs to Edison. I think there again a little bit of
2 something was done to exclude this from the so-called flood
3 area.

4 But all the area surrounding it is in the flood
5 zone. I know Edison has taken some very serious precautions
6 on flooding, and that is by fill. I understand there will
7 be huge blocks of concrete put on the shoreline, and there'll
8 be places for pilings, so on and so forth.

9 But at the same time, it would make Edison look
10 kind of foolish to build a nuclear plant in a flood zone,
11 which they have.

12 Now, the Fathers' Day flood -- and I think Staff
13 can look out through the thing and by just noting the sea
14 level monuments, or marks that are dug on the various parts
15 of the plant -- the whole plant is covered with them, certain
16 sea levels -- and you'll find the reactor floor itself is
17 just about where the Corps of Engineers calls for diking,
18 so on and so forth.

19 So there is at the present time -- and I know
20 they fought hard and victoriously on the Fathers' Day flood
21 to keep from being flooded, but the threat is there. And
22 I would say that if we had another eight hours of the
23 northeast wind that we had, the Stony Point Peninsula would
24 have been wiped out.

25 In the April flood we had huge wave reactions.

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1 In the Fathers' Day flood, it come up out of nowhere. I
2 don't know where. No rhyme, reason or explanation. At
3 2:00 o'clock in the morning we were evacuated. I almost
4 lost my wife at that time. I lost two beautiful cars. And
5 it just goes to show you how fast and how suddenly this
6 thing come up, out of nowhere.

7 All the experts in the world could not explain
8 why and how this flood occurred, the Fathers' Day flood,
9 the last one we had in June a few years ago.

10 CHAIRMAN BECHHOEFER: What year was that?

11 MR. KURON: About three years ago, June. I
12 think Fathers' Day is June 8, something like that. But
13 anyhow, the records will show that this thing here come
14 up, and it receded just as fast. But the danger, neverthe-
15 less, was there.

16 But the April flood, where we had huge wave
17 actions, believe me, those people were on the job 24 hours
18 a day for two or three days straight.

19 MR. SCHINK: Have you read the studies of the
20 flooding problem that were published by the Staff and by
21 the Applicant?

22 MR. KURON: Let me say, in all courtesy to the
23 Staff and the Applicant, if I had read it, I probably
24 wouldn't understand it.

25 MR. SCHINK: I don't think they're so hard to

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1 understand.

2 MR. KURON: Well, I have not, sir.

3 MR. SCHINK: We'd be in much better shape if you
4 had read those and you could point to some clear error in
5 them.

6 MR. KURON: I would sure appreciate getting
7 something like that, because any similarity between the
8 facts and what we read is purely coincidental. And I find
9 that true with the newspapers.

10 Thank you.

11 MR. TREBY: Mr. Chairman, in giving the dates
12 for when the Staff intended to issue its various documents,
13 I neglected to mention that in this particular case the
14 Staff has issued an interim safety evaluation report, and
15 that was published September, 1977.

16 There has been some reference made to it during
17 the course of this prehearing conference.

18 I might add that it's an unusual thing for the
19 Staff to issue an interim safety evaluation report. It
20 occurred in this case for reasons set forth in the intro-
21 duction, in that the review had progressed to the point
22 covered by this document, and it was intended that that
23 review be preserved and set out and documented.

24 CHAIRMAN BECHHOEFER: Did the review take into
25 account the two floods which Mr. Kuron has just mentioned?

1 MR. BLACK: Yes, it did.

2 MR. KURON: Might I add, at the time the permit
3 was issued to build, nobody -- but nobody -- had any idea
4 that this thing would flood like it has been.

5 Now, for some unknown reason, that only God
6 knows, this thing has become this dangerous since that time.

7 Now, nobody -- and I'm sure Edison had no idea
8 whatsoever about the serious threats of flooding. But here
9 it is, a reality, something that nobody foresaw. Here it
10 is, and we've got to deal with it today. And it's as
11 simple as all that.

12 MR. SCHINK: I don't see how you can say nobody
13 foresaw it, when you haven't read the studies that have been
14 made. Has anybody in the CEE group read the hydrologic
15 study of the flooding forecast, and can you find -- is
16 anybody prepared to show us that there's an error, factual
17 errors?

18 MR. ALSON: Clearly not today. It's not our
19 understanding that's the purpose of the special prehearing
20 conference.

21 MR. VOIGT: Mr. Chairman, the Fermi-2 plant has
22 been the subject of elaborate flooding protections, including
23 a seawall. All of those designs and commitments were
24 presented to the construction permit Licensing Board. That
25 Board made the following findings:

1 "The plant design adequately takes into account
2 the meteorological, hydrological and geological
3 conditions, as well as the possibility of floods,
4 tornados and earthquakes."

5 They went on:

6 "The design of the plant, its elevation and
7 shore protection will prevent equipment essential
8 to plant safety from being jeopardized by a maximum
9 hypothetical flood."

10 It is my understanding that the floods that Mr.
11 Kuron is talking about were not as high as the maximum
12 hypothetical flood, and I don't think anybody has any
13 information to the contrary.

14 The question of flood design has been adequately
15 heard and decided once before in this case, and unless there
16 is some specific new information to contradict those
17 findings, I think there should be no further hearings on
18 the subject.

19 MR. ALSON: Again it seems like we're getting
20 into the validity of the contentions, which, to my under-
21 standing of how these things function, is not an appropriate
22 thing to consider today.

23 CHAIRMAN BECHHOEFER: We're just trying to find
24 out whether there's any information behind the contention.
25 On its face the contention doesn't set forth any.

1 MR. ALSON: Mr. Kuron has talked about it.
2 There's also the tie-in with Contention 4, with the crack
3 in the foundation of the reactor building. I don't know
4 whether this has been considered in the Staff's analysis of
5 the problem or not.

6 But the discussion of the validity of those
7 contentions seems out of place here, and I think the
8 Applicant is trying to push us towards that direction.

9 CHAIRMAN BECHHOEFER: With respect to Contention
10 12, I'd like to ask Mr. Alson, is there anything more in
11 Contention 12 than an attack on the Commission's regulations
12 or standards for the protection against radiation? Is
13 this contention solely an attack on the laws?

14 MR. ALSON: As it's written it was, and based on
15 the Staff's response apparently the Commission will not
16 entertain these sorts of contentions. I guess it'll have
17 to be dropped, although CEE does not agree with such a
18 policy.

19 CHAIRMAN BECHHOEFER: But you do confirm there
20 is nothing in here, as written -- or that as written it is
21 an attack on ...

22 MR. ALSON: Yes. As written. And the underlying
23 factors we believe are that the standards are not adequate.

24 MR. SHON: You're aware, Mr. Alson, that the
25 Commission's regulations do permit you to petition for a

1 change in the regulations if you think it's inadequate? And
2 it will change it for all plants for all time.

3 MR. ALSON: Yes, but not through this Board.

4 MR. SHON: Yes, not in a hearing for an individual
5 licensing case.

6 (The Board conferring.)

7 CHAIRMAN BECHHOEFER: On Contention 13, I would
8 ask, Mr. Alson, if there's anything more there that you can
9 specifically set forth? Are you claiming here that the
10 Applicant cannot do so, or did not do so correctly? We're
11 trying to figure out what you're saying here.

12 MR. ALSON: We're saying that we don't believe
13 the reconcentration problems have been considered correctly.
14 I'm not a biologist. We do have some biologists in the
15 group, and they would be the ones who would have to try to
16 detail this problem to you, I think.

17 But we do not believe that the reconcentration
18 factors were taken into consideration correctly.

19 MR. SCHINK: It's my impression that you are
20 again dealing with the general procedures by which radiation
21 standards were set, rather than the emissions from this
22 particular plant. Is my impression correct?

23 MR. ALSON: I don't believe so.

24 (Pause.)

25 Mr. Chairman, there's some confusion among the

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1 people here about this contention.

2 As I say, the person who authored this particular
3 contention is not here. I don't know what to say.

4 If, indeed, it was written just to attack the
5 standards, then, again, as in number 12, it would be
6 impermissible. I don't believe that was the nature of the
7 contention, but the author isn't with us today.

8 MR. SHON: The reconcentration factors are set
9 forth in the regulatory guides, are they not?

10 MR. BLACK: Are they not in Appendix I as well?

11 MR. SHON: Not all of them.

12 Do we have a copy of Appendix I? If I'm not
13 mistaken, what they're discussing here is Section 3 under
14 Implementation, and it's set forth there that:

15 "Conformity with the guides on design objectives
16 in Section 2 shall be demonstrated by calculational
17 procedures based upon models and data such that the
18 actual exposure of an individual through appropriate
19 pathways is unlikely to be substantially underestimated."

20 Now, that does not really set these matters such
21 as concentration factors forth, or not numerically, certainly.
22 The use of the words "maximum permissible concentration,"
23 under this proposed paragraph 13, or proposed Contention 13,
24 rather sets the average health physicist's mind off on
25 another track, because the term "maximum permissible

1 concentration is a term of art, which refers generally to
2 things set forth in Part 20, not Appendix I.

3 It may be that this is the specific reconcentra-
4 tion factors that the Staff is using, or that the Applicant
5 is using. And I think a question directed to those, and
6 their numerical values would not necessarily be a challenge
7 to the regulations.

8 MR. BLACK: I think your assessment of that is
9 correct. Obviously, because of the wording of Contention 13,
10 we're all having problems in interpreting what they do mean
11 y it. And I guess that just kind of still indicates to us
12 that because it is worded as such, and because reconcentra-
13 tion factors have been and will be considered in accordance
14 with the models used in compliance with Appendix I, that's
15 one of the reasons we have problems as it's worded right now.

16 MR. SHON: However, if they had only regulatory
17 guides, or even the lesser force of common practice in the
18 industry, it might be an appropriate matter to challenge
19 the numerical values, if the Intervenors had some basis for
20 doing so.

21 MR. BLACK: That would not constitute an
22 impermissible challenge.

23 MR. SHON: All right. Thank you.

24 (The Board conferring.)

25 CHAIRMAN BECHHOEFER: Now, turning to Contention

1 14, which has a number of parts, the Staff has taken the
2 position -- if I read it correctly -- that the paragraph
3 on radon is a permissible contention at this stage.

4 Applicant takes the position that none of the
5 paragraphs are permissible.

6 I would like to get the comments first as to
7 whether the Applicants and Staff believe that all of these
8 paragraphs are covered -- except for the radon right now --
9 are covered by the Commission's S-3? The Staff did not
10 take that position with the on-site storage.

11 I would like the Applicant and the Staff to
12 comment to the extent they think these are covered by S-3,
13 absent radon, for the moment.

14 Mr. Voigt?

15 MR. VOIGT: Well, to begin with, Mr. Chairman,
16 it's not clear to the Applicants that S-3 has anything to
17 do with Contention 14. S-3, after all, is a rule that
18 tells you how to take certain values into account in your
19 NEPA cost-benefit analysis.

20 I have re-read Contention 14 in its entirety,
21 and it nowhere talks about NEPA, and it nowhere challenges
22 the cost-benefit analysis.

23 In my view, Contention 14 is a health and safety
24 contention, and we have responded to it in that vein. And
25 I think the Staff's handling of 14-A starts off with the

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1 Staff re-writing the contention for the would-be intervenors,
2 which I don't really think is proper. It certainly is not
3 something that the Board is required to do.

4 So when you ask me how does S-3 apply to the
5 other paragraphs, my initial response is I wouldn't have
6 thought it had anything to do with it. If you want me to
7 go beyond that, in B, even if you interpret it as a NEPA
8 contention, I don't see it as having any particular
9 connection with S-3. It's talking about releases from the
10 plant, not from other parts of the fuel cycle.

11 C is again talking about something that will
12 take place at the plant. Storage on site of spent fuel.

13 And D is talking about, again, something that has
14 absolutely nothing to do with the NEPA cost-benefit analysis,
15 but the absence of a -- quote -- final solution -- unquote
16 for the permanent storage of wastes.

17 CHAIRMAN BECHHOEFER: Doesn't it mention environ-
18 mental concerns here?

19 MR. VOIGT: Indeed, yes. They say, we're
20 concerned about the health and environmental effects of
21 the lack of a long-term storage facility.

22 But, again, I say to you that has nothing, no
23 connection with S-3. And I think D is very clearly covered
24 by the Second Circuit decision, which we cited, and to which
25 my firm was counsel to some of the parties.

1 MR. SHON: Mr. Voigt, doesn't it appear from
2 14-A, starting with the second sentence, "In particular,
3 evidence has indicated the long-term effects of latent gas..."
4 and so forth, doesn't it appear from that sentence that
5 what the Intervenor is driving at is exactly what the
6 Commission has allowed to be brought up in connection with
7 the waiver of portions of Table S-3 in these hearings?
8 And the contention, although perhaps inartfully drawn,
9 certainly does raise a NEPA issue, even though it doesn't
10 say that's what it's raising?

11 MR. VOIGT: You are starting off by indulging in
12 the assumption that I can read something to say one thing,
13 when it very clearly says something altogether different,
14 Mr. Shon.

15 I read this as evidencing a concern not with
16 the numbers game under NEPA, but with the real effects of
17 these activities. And the short answer to that is that the
18 real effects of these activities are not within the
19 jurisdiction of this Board, and to the extent that they are
20 within the jurisdiction of the Commission, should be dealt
21 with in appropriate proceedings concerning those facilities.

22 No radon -- at least no measurable amount of
23 additional incremental radon -- is going to come from
24 Fermi-2.

25 MR. SHON: I can believe perhaps that no

1 measurable amount of additional radon will enter the
2 atmosphere as a result of the operation of Fermi-2, but I
3 stress the word "measurable." Certainly a calculable amount
4 will, and these calculations have been presented to many
5 licensing boards like ourselves in very similar investiga-
6 tions, very similar proceedings, over the past year or so,
7 have they not?

8 MR. SCHINK: You're talking about back at the
9 mill now, not just emanating from the plant?

10 MR. SHON: Yes.

11 MR. VOIGT: I'm talking about the opposite of
12 that. I'm saying that the Fermi plant is not going to
13 produce measurable increases in radon concentration, and
14 I'm saying that if you want to control what's going on at
15 the mill you do it in a licensing or enforcement proceeding
16 directed to that mill.

17 CHAIRMAN BECHHOEFER: Isn't that part of the fuel
18 cycle, though, generated by Fermi?

19 MR. SCHINK: He said we're not s to be
20 considering that, that this is a health and : issue
21 associated with the plant.

22 MR. VOIGT: Precisely.

23 MR. SHON: Your position is that it is not a
24 NEPA issue, and, therefore, cannot be brought into these
25 proceedings in the same fashion in which it's been brought

1 into virtually every other construction or operating permit
2 proceeding in the past year or year and a half, modeled
3 on the Perkins case at present.

4 MR. VOIGT: I am saying that it is a fair reading
5 of what has been presented to this Board that they are not
6 presenting it as a NEPA issue.

7 Now, if we find out that they are, then I have
8 a different series of problems that I'm aware of.

9 (The Board conferring.)

10 MR. SHON: Mr. Alson, just what did you mean, or
11 do you know?

12 (Laughter.)

13 MR. ALSON: Well, you know, we're not as well
14 versed as the Applicants are in whether it has to be framed
15 as a NEPA issue or not.

16 Our understanding that the Boards have been
17 considered on gas issue, and that was the point of
18 Contention A-A.

19 If it has to be framed as a NEPA issue to be
20 considered, then that's a technicality to us, but I guess
21 then we would like it to be looked at in that vein.

22 But, unfortunately, I guess we weren't experts
23 enough to realize that, so we don't mention NEPA anywhere
24 in the contention.

25 CHAIRMAN BECHHOEFER: Mr. Voigt, you mentioned

1 that you would have some additional comments if Mr. Alson
2 said it was a NEPA issue. I'd like to hear those.

3 MR. VOIGT: Well, to begin with, I think that
4 it is consistent with what the Commission originally said
5 in Midland and reiterated in Niagara Mohawk on need for
6 power, and what the Supreme Court ultimately upheld, which
7 was that it is not enough to simply suggest that there is
8 an issue concerning one of these problems, but you have to
9 go on and allege that it's going to change the outcome of
10 the need-for-power situation.

11 The Commission said, well, before we will hold
12 a hearing on conservation, or some of these other things,
13 that the intervenors in that proceeding mentioned as kind
14 of buzz words, there has to be a threshold showing that if
15 you are right, the plant won't be needed.

16 And since that threshold showing wasn't made,
17 no hearing was accorded the intervenors, and the Supreme
18 Court approved of that outcome.

19 CHAIRMAN BECHHOEFER: Well, let me interrupt you.

20 Was that not on the contest of reopening the
21 record, to hear those questions, rather than starting
22 initially? If so, do the same standards apply? I'm not
23 sure they do.

24 MR. VOIGT: I think it's very fuzzy as to
25 whether or not it was in the context of reopening the record,

1 because claims were made in response to the DES, which was
2 prior -- by definition -- prior to the hearing. There was
3 a subsequent motion to reopen the record, that is correct.

4 But that was not the first time that the thing
5 was advanced, so I don't think you can really accept that
6 as a viable or valid distinction.

7 In any event, the reference to the need-for-power
8 cases is clearly simply an analogy, but it leads me to the
9 point that I want to make, and that is:

10 Just raising an issue under NEPA ought not to
11 be enough unless there's further indication that the
12 cost-benefit analysis will actually be changed as a result
13 of the possible outcome of this inquiry.

14 And I don't see that --

15 CHAIRMAN BECHHOEFER: Would you look at that on
16 an issue-by-issue basis, or the sum of all of the issues
17 would change the cost-benefit balance, even though no one
18 of them might?

19 MR. VOIGT: This is the first one I've heard, so
20 at the moment I'm only looking at one. But I think in
21 addition there has to be some kind of minimal standard,
22 Mr. Chairman. I agree with you that if there are three
23 or four NEPA allegations they could argue that the sum is
24 going to exceed any one of the parts, but surely there must
25 be some threshold showing that the part has some significance.

1 What are we talking about? How much radon is involved? I
2 don't see it here.

3 Let me go on to another point.

4 MR. SHON: Mr. Voigt, before you go on, the
5 allegation that they calculate hundreds of thousands of
6 deaths, this in itself suggests that there is some signif-
7 icance, does it not? This is rather a serious thing.

8 MR. VOIGT: That gets me back to an observation
9 I made before lunch, Mr. Shon, that there's a difference
10 between raising a question and raising an issue.

11 These are simple-minded statements. "The
12 evidence." What evidence? In what proceeding? Which
13 expert witness? Has any reputable author written to this
14 effect?

15 These are concerns. They are ideas. But they're
16 not evidence, and they don't even come close to being
17 evidence. And I think we need more solid information before
18 we start a hearing for the benefit of these concerns.

19 MR. SHON: That seems to go to the merits rather
20 than to the admissibility.

21 MR. VOIGT: No, sir, it does not go to the merits,
22 in my judgment. It goes to the question of whether there's
23 any responsible scientific basis for the contention. And
24 that's not merits, that's a threshold issue. Is it worth
25 taking the time for? That's the test that I want to apply.

1 CHAIRMAN BECHHOEFER: Hasn't the Commission found
2 that there was at least enough evidence in this one question
3 to justify not only one hearing but a number of hearings?

4 MR. VOIGT: I think not, Mr. Chairman. All they
5 said was the table was no longer binding, and it was open
6 to litigation in individual hearings. That's hardly a
7 declaration that it has to be litigated in all those
8 hearings, or that it ought to be.

9 MR. BLACK: Mr. Chairman, I think that Mr. Voigt
10 is prejudging the outcome of most of these proceedings that
11 have dealt with this radon issue.

12 In fact, I believe most of these dockets have
13 not been closed, because of the confusion surrounding the
14 proceedings in which they were heard.

15 In fact, I believe some of the evidentiary
16 presentation now is before the Appeal Board.

17 So the question of whether it's significant or
18 insignificant, insofar as the radon release, it's still
19 open to question. And that is why the Staff believes that
20 this matter is ripe for controversy in this proceeding,
21 unless and until it is closed by a final rule by the
22 Commission. And certainly that rule has not been closed
23 by the Commission at this point.

24 MR. VOIGT: That brings me to the other point
25 that I was about to make. The Staff has said in response

1 to Contention 14-D that a generic solution is normally
2 preferable to a resolution in an individual licensing case.
3 I agree with that.

4 The case of the radon issue, assuming that it's
5 under NEPA, the Appeal Board came out with ALAB-480 last
6 May in which they were attempting to move toward a generic
7 solution of the problem, at least in the pending cases.

8 Staff has promised us an interim rule, though
9 they don't seem to be making very much progress toward
10 getting it out. It strongly appears to me that if the
11 Board were to hold that there was a proper contention in
12 this area it might also consider withholding any ruling on
13 the necessity for a hearing on the matter, because I think
14 it is possible that there will be some kind of generic
15 resolution of the problem before the time that this Board
16 would be required to address it.

17 CHAIRMAN BECHHOEFER: This Board, of course,
18 would be bound by whatever the latest Commission generic
19 rule is on the subject. That you can be sure of. Well,
20 not this Board, but if there is a hearing, the Hearing
21 Board.

22 MR. SHON: Mr. Alson, the first sentence in this
23 contention confuses me. There's one word in it which I
24 think may be a typographical error. The word is
25 "acceleration." It reads, "The operation of Fermi-2 could

1 entail the acceleration of the volume of radioactive poisons."

2 Are you sure you don't mean accumulation, or
3 perhaps accretion, or something like that? But accelerating
4 a volume of poisons would sound to me like throwing it
5 through the air someplace.

6 MR. KURON: Well, I was told by Mr. McCarthy
7 himself that there is a certain amount of radiation out of
8 the sun, there's a certain amount of radiation in the
9 atmosphere today, and we absorb radiation each and every
10 day -- fine and dandy, okay?

11 So be it.

12 We have no control over that. But to put a
13 nuclear plant in an area of this kind, I'm sure it would
14 increase already what we have. There's no question about
15 that.

16 So, like I said before, I'm no nuclear scientist,
17 no way shape or form. I'll leave that to your judgment.
18 Certainly you people know better than I do.

19 But I'm just saying common sense --

20 CHAIRMAN BECHHOEFER: Isn't what you just said
21 that the word should be "accumulation?"

22 MR. ALSON: Yes. "Which would entail the
23 increase in volume of," maybe.

24 CHAIRMAN BECHHOEFER: Yes, this is what the
25 question was addressed to. I wanted to ask a question as to

1 14-C of Mr. Alson:

2 By over storage, does that mean to say that there
3 is going to be more fuel stored than the license permits?
4 The license will have a limit on the amount of spent fuel
5 stored. Is it your claim that more than that fuel is going
6 to be stored there, or -- the Staff raised this in their
7 response, and I wondered what your comments on that partic-
8 ular one are?

9 MR. ALSON: I don't think we have any difficulty
10 in agreeing with what the Staff said, and I think the phrase,
11 "from over-storage which could lead to safety problems,"
12 should probably be deleted. We would drop that from the
13 contention. We still feel that the other basis of the
14 contention, the problem of internal or external sabotage,
15 however, is a contention we'd still like to deal with.

16 MR. SCHINK: If I could go back to paragraph B,
17 you start out:

18 "Recent evidence has indicated that..."

19 Do you know what recent evidence you're talking
20 about?

21 MR. ALSON: Well, I guess the most publicized
22 has been the Mancuso Study. Again, our biologist is not
23 here with us today, but that would be one. Some of the
24 Sternglass research, with which you may be familiar.

25 MR. SCHINK: If there were a hearing and that

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1 were a contention, what kind of persons would you bring
2 forward to support that?

3 MR. ALSON: We would hope to be able to bring
4 some people from the University of Michigan community. There
5 are some I think who would be willing to come. Again, we
6 couldn't promise any commitments right now.

7 Has Contention 14-D been dealt with? I haven't
8 had a chance to say anything about that.

9 CHAIRMAN BECHHOEFER: Well --

10 MR. ALSON: I was sort of edged out at one point.

11 CHAIRMAN BECHHOEFER: All right, I'd like to hear
12 anything you'd like to say.

13 MR. ALSON: I'd just like to point out in the
14 Staff's response we received today that I'd like some
15 clarification from the Staff itself.

16 Right after recording all the cases it says:

17 "It was held that neither the Staff nor the
18 Licensing Board need consider the matter of ultimate
19 disposal of spent fuel, in light of the Commission's
20 implicit finding that there was reasonable assurance
21 that methods of safe, permanent disposal of high-level
22 waste would be available when they were needed."

23 And I want to emphasize the term that they need
24 not concern themselves. I guess I would like to know whether
25 this item 5 is an issue that could be open to a Licensing

1 Board if the Licensing Board decided it was an issue they
2 should look at.

3 CHAIRMAN BECHHOEFER: I'd like to hear from the
4 Staff in response to the inquiry.

5 MR. BLACK: Perhaps if I could go back to the
6 background of what the Commission did with regard to
7 reprocessing of spent fuel or waste management, as you
8 recall there were two decisions that indicated that, start-
9 ing, I believe, with Aeschliman in Vermont Yankee -- I
10 don't know what the cites were, but I believe both of those
11 cases indicated Staff's assessment of fuel reprocessing and
12 waste management was defective and, therefore, the rules
13 surrounding those impacts that were implicit in Table S-3
14 perhaps were defective and would have to be reassessed by
15 the Staff.

16 Staff initiated a rulemaking proceeding -- or
17 the Commission initiated a rulemaking proceeding, but the
18 Commission also indicated that all the evidence that had
19 been brought to bear at that time indicated that there
20 would be reasonable assurance of methods of safe permanent
21 disposal of waste, and that they could be brought on in
22 time to alleviate any concern that there was in present
23 licensing activities.

24 Because of that, I believe the Appeal Board in
25 the Prairie Island case, because of this Commission finding

1 in its rulemaking procedures, the finding that there was
2 this reasonable assurance, that neither the Staff nor the
3 Licensing Board need delve into this matter.

4 But, of course, the rulemaking procedure I
5 believe is still open. Now they have not come up with any
6 final rule on this, or any other factors to be factored
7 back into Table S-3 on fuel reprocessing and waste manage-
8 ment health effects.

9 I hope I haven't confused you by that background.

10 CHAIRMAN BECHHOEFER: Let me ask you: Do you
11 read the Commission's interim S-3 as entitled to the same
12 respect as the older S-3 was given? The Appeal Board, I
13 know, held that those figures were binding, and that no
14 other discussion could be undertaken in the cases. That
15 was on the Douglas Point.

16 Do you view the new rule as entitled to that
17 same treatment?

18 MR. BLACK: That it's not --

19 CHAIRMAN BECHHOEFER: The proposed rule which
20 the Commission has instructed the Boards to follow, the
21 interim Table S-3, which came out I think maybe last March,
22 or maybe it was the year before, as a result of the updated
23 study.

24 MR. SCHINK: Do you read that as binding, is
25 the question?

1 MR. BLACK: I believe, in accordance with the
2 Commission's instructions on that interim rule that it has
3 to be taken as binding on the Licensing Boards. I might be
4 mistaken on that, but I thought that was the instruction.

5 CHAIRMAN BECHHOEFER: I was asking you, since you
6 framed it in terms of "need not concern itself," but did
7 not frame it in terms of that we can't concern ourselves
8 with any deviations from the numerical values specified, I
9 just was asking you whether you were . . .

10 (The Board conferring.)

11 CHAIRMAN BECHHOEFER: Mr. Alson?

12 MR. ALSON: To clarify the discussion that's been
13 going on here, is there now general agreement that it is
14 impossible for the Staff or the Licensing Board to investi-
15 gate this issue? Is that what --

16 CHAIRMAN BECHHOEFER: I was just asking the Staff
17 what its view was. This Board at this stage has not
18 decided. The Commission previously has held that it is
19 covered by S-3, and the most you could do is argue what
20 effect the numerical values set forth in Table S-3 would
21 have in the ultimate cost-benefit analysis.

22 MR. SHON: What is your meaning of "need not,"
23 as you used it? Should not or must not? Or what?

24 MR. BLACK: I believe that the Licensing Board
25 is prohibited from looking into the values in the interim

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1 rule. When I say "need not concern itself," I guess I
2 picked that up from language someplace, but it's not too
3 artful. But I believe that there is a prohibition.

4 (The Board conferring.)

5 CHAIRMAN BECHHOEFER: Mr. Kuron?

6 MR. KURON: Just a bit of information for the
7 Board itself.

8 Like I say, I've attended many, many of these
9 meetings, and the subject of storage on the particular site,
10 I don't believe that there's ever been a hearing what gave
11 Edison the right to store 630 barrels of highly radioactive
12 sodium and highly explosive sodium on the job.

13 You see, there again, something arose during this
14 tear down of Fermi-1. It wasn't in the books. It wasn't
15 in the law. It wasn't anticipated. Yet we have in our
16 township a firecracker ordinance against firecrackers, yet
17 we have 630 barrels of highly explosive and radioactive
18 sodium stored in the vessel -- in the vessel, mind you --
19 not proper storage. That is no storage area, you know,
20 specifically built for that. It's a thin covered vessel,
21 and there you have this huge bomb sitting there, this huge
22 giant. And I don't think there was any time that the
23 Licensing Board or the Nuclear Regulatory Commission said,
24 Hey, if this happens, you can do it.

25 So we must have some specific and some monitoring,

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1 and I mean on-site monitoring, because I don't trust
2 nobody. I don't trust nobody. And I seen it --

3 CHAIRMAN BECHHOEFER: Mr. Kuron, it's my under-
4 standing that the Applicants must apply for permission to
5 use or store or have on site any amount of special nuclear
6 materials that they propose to have there, and they will
7 have to be given permission by the Commission to have on
8 site the material they seek to store.

9 MR. KURON: The Licensing Board at the time of
10 the license and all that, I attended many of those hearings,
11 too.

12 CHAIRMAN BECHHOEFER: It's part of the operating
13 license.

14 MR. KURON: Yeah, really. But what I'm intending
15 to do --

16 MR. VOIGT: Mr. Chairman --

17 MR. KURON: This is happening. Maybe it's for
18 the best. I don't know. But I'm sure I want to say that
19 this is something unexpected, and there we sit, with this
20 huge bomb in my back yard.

21 MR. VOIGT: Mr. Chairman, Mr. Kuron is talking
22 about Fermi-1, which has nothing to do with this proceeding.

23 CHAIRMAN BECHHOEFER: Yes. We have no juris-
24 diction over that.

25 MR. VOIGT: I would add that the activities at

1 Fermi-1 have been duly licensed by the Commission. I think
2 Mr. Kuron should be instructed to cease and desist any
3 discussion of Fermi-1.

4 MR. KURON: That's up to the Commission, not up
5 to you.

6 MR. VOIGT: That's what I'm asking for, sir.

7 MR. KURON: All right, then. Keep your voice
8 down, then. And I'll do the same.

9 MR. VOIGT: May I have a ruling, please, Mr.
10 Chairman?

11 CHAIRMAN BECHHOEFER: Yes. We are only authorized
12 to consider matters relating to the proposed reactor, and
13 only to the extent that other matters might bear on that
14 can we even listen to them.

15 But what happened at Fermi-1 is not within our
16 jurisdiction to look at.

17 MR. KURON: I appreciate that, Mr. Chairman.
18 But I'm just pointing out an incident, a point of information,
19 that's all.

20 MR. ALSON: Just a concluding statement about
21 14-D, apparently there's some confusion right now as to
22 the Licensing Board's jurisdiction to rule on a contention
23 of this sort, but I would just like to emphasize that we
24 would appreciate it if the Licensing Board would look into
25 that as much as possible, to see what their limitations are.

1 It's a contention that we feel very strongly about, and if
2 the Board could look into it and wanted to, we think they
3 ought to follow that course. There seems to be some
4 confusion right now as to the limits of your power here.

5 MR. VOIGT: I don't think there's any confusion,
6 Mr. Chairman. The interim rule clearly says that you are
7 to follow it if it's an environmental contention, and the
8 Atomic Energy Act clearly does not require you -- and in
9 my view does not authorize you -- to make any such finding
10 on the health and safety side.

11 MR. PERNICK: Mr. Chairman, I'd also like to
12 comment on this, if I may.

13 The main reason why we feel that this is such
14 an important issue is the fact that nuclear waste has been
15 a topic that has been solved many times by various experts,
16 but yet there's no specific remedy to it.

17 What we're trying to bring out is that there is
18 at this time no specific answer.

19 Now, it's true that there may be an answer in
20 the near future. Yet twenty years ago when nuclear plants
21 were first put on line, I'm sure the experts then said
22 that there was a solution in a reasonable amount of time.

23 We're not trying to put down the findings of
24 this Board, but we're saying, Look, if you take a look at
25 history, you'll see that for over twenty years this issue

1 has been postponed, and the responsibility has been given
2 to someone else.

3 Indeed, in the State of California the utility
4 companies agreed to a provision that they would not build
5 any more nuclear plants until there was a federally-approved
6 solution to the problem of nuclear waste. And I'm sure
7 they felt that a solution was forthcoming.

8 But yet there have been no new nuclear plants
9 built in California, because even contrary to what they
10 expected, there was no solution to this problem of nuclear
11 waste.

12 We feel that the Applicant is shirking its
13 responsibilities by saying, well, let someone else take
14 care of this. And in the end what seems to be happening is
15 that everybody seems to be saying, well, let someone else
16 handle this problem, when we're talking about a problem
17 that has persisted for over twenty years.

18 That's why we feel that this is a very important
19 issue, and we don't feel that it's enough to just say that
20 this is a big enough problem such that all of the reactors
21 have it, but yet it's too big to be solved by this
22 Commission, by this hearing.

23 MR. SCHINK: We appreciate that this is a matter
24 of serious concern to many people. However, I think that
25 it's commonly true, and it may be true in this case, that

1 the nature of this licensing process is misunderstood.
2 We are here to determine whether this reactor should be
3 licensed, not whether you or the general public likes
4 nuclear power, which is a different issue and being settled
5 in other ways.

6 The question of how the United States chooses
7 to dispose of its nuclear waste, or whether it chooses not
8 to, if that were possible, is an issue which is being
9 treated elsewhere. And it really is not appropriate to
10 try to decide that question in a place like this, and at
11 each individual licensing proceeding.

12 And for that reason, certain issues which we
13 call generic, are excluded by the regulations.

14 MR. PERNICK: It's true, and it makes sense.
15 But still it doesn't deal with the fact that this waste is
16 being generated and that there is no solution at this time.

17 We would be willing to dispose of this
18 contention should there be some solution, but it is our
19 problem, and it is Detroit Edison's problem. And while it
20 is fine to say that this is a big problem and other people
21 should deal with it, just saying that does not get rid of
22 the problem.

23 Somebody has to take the responsibility, and if
24 five years from now we find that there's some problem
25 caused by the nuclear wastes, I'm sure you would feel -- and

1 a lot of people would feel -- that they were at least partly
2 responsible in saying, "Well, let somebody else worry about
3 it."

4 And while this may have to do with the entire
5 issue of nuclear power, it's the specific plants, and this
6 plant is a nuclear plant, Fermi-2 has this problem. And
7 since it hasn't been dealt with, we feel that it's valid
8 and just passing the buck is not going to solve that problem
9 or alleviate our concerns.

10 MR. SCHINK: I think we disagree with you in your
11 saying it hasn't been dealt with. You may not be satisfied
12 with the solution. In fact, no specific solution has been
13 selected yet. But to say that the waste disposal problem
14 hasn't been dealt with is certainly not true.

15 MR. PERNICK: If there's no specific solution for
16 the disposal of waste that is going to be generated, that's
17 what we mean when we say it hasn't been dealt with. There
18 are proposals but, as I said, it's been twenty years. How
19 does one account for that fact?

20 You know, you have to look at history. It's been
21 twenty years. And for those twenty years I doubt that the
22 AEC has been that ignorant and they thought that this was
23 something that shouldn't be looked into. They were concerned.
24 And yet it's still been twenty years, and there is no solution
25 that the Federal Government has come up with.

1 MR. VOIGT: May I say that this argument was
2 presented by the Natural Resources Defense Council to the
3 United States Court of Appeals, and the Court acknowledged
4 the problem but indicated that it was very clear that the
5 Congress was also aware of the problem, and that Congress
6 had made a conscious choice not to discontinue or hold up
7 licenses. And the Court remarked that if people didn't
8 like that rule, they ought to get the Congress to change it.

9 I think that's the position that you gentlemen
10 find yourselves in also.

11 CHAIRMAN BECHHOEFER: Let's go on to Contention
12 15, the economic considerations.

13 15-A. There's a disagreement here between the
14 Applicants and the Staff. I'd like to hear the Applicants'
15 comments, particularly dealing with what the Staff said,
16 and Staff's comments as to what you said. This is 15-A,
17 dealing -- or 15 -- dealing with the cost of uranium,
18 scarcity and price of uranium.

19 MR. VOIGT: I draw the Board's attention, Mr.
20 Chairman, as we did in our written response, to the final
21 sentence of Contention Number 15, where the CEE tells you,
22 for a change, what it means by the Contention. And it says
23 very clearly that they're concerned about the effect on
24 their rates.

25 They are concerned about the cost of the uranium,

1 and they go on to say that they're also concerned about the
2 possible replacement cost for electricity if uranium is not
3 available.

4 Now, the Staff has, through some adjective of
5 their own, rewritten that as a NEPA contention. But I
6 think that is clearly impermissible in this case, because
7 the authors of the contention themselves have advised you
8 of their intent in proffering it.

9 CHAIRMAN BECHHOEFER: Let me ask you: If it did
10 happen to be a NEPA consideration, could not this Board
11 consider the cost of uranium, among other things, as a
12 factor in the cost-benefit, or even in comparison of
13 alternatives?

14 MR. VOIGT: Part of the cost of operating
15 Fermi-2 is the cost of the fuel, and the cost of the fuel
16 has to be considered in determining the total cost of
17 operating the plant.

18 I do not, assuming again that it were permissible
19 to read this as a NEPA contention, I don't see any specifics
20 here of why the costs that were considered by the Applicant
21 are inadequate or insufficient.

22 To me it's really a matter of great concern that
23 we can be thrown into a public hearing by someone saying,
24 "Well, it wasn't adequate," or "I don't understand it," or
25 "I'm concerned about it."

1 I think they owe it to the Board, and they owe
2 it to the Applicant, to say what the basis is. Are they
3 alleging that we used \$5 a pound for yellowcake, and that's
4 inadequate? Or are they alleging that we used \$50 a pound
5 for yellowcake, and that's not enough?

6 I don't know. I can't respond to the contention,
7 if it's an environmental contention, other than to point
8 out to you how totally insufficient it is. But I can say
9 with considerable confidence here that it's not an environ-
10 mental contention, because they, themselves, said it
11 wasn't, and it ought to be dismissed.

12 CHAIRMAN BECHHOEFER: Mr. Alson, you want to
13 comment?

14 MR. ALSON: In one of his original statements
15 Mr. Voigt said he didn't see how this would have any effect
16 on the cost-benefit analysis. It's my understanding that
17 the benefit of a nuclear power plant is the electricity it
18 produces. And if it's down for one reason or another, such
19 as lack of uranium, then that's surely going to affect the
20 cost-benefit analysis, if it's not generating electricity.

21 Apart from the expense of buying replacement
22 electricity, the mere fact that it wasn't producing any
23 power at all would wipe out the benefit completely.

24 CHAIRMAN BECHHOEFER: Are you asserting here
25 that there won't be enough uranium to fuel this reactor?

1 MR. ALSON: We're asserting that there's certainly
2 a controversy over the amount of uranium available, as well
3 as the price of uranium.

4 I'm not ready to argue the merits of it right
5 now, however.

6 CHAIRMAN BECHHOEFER: Does Staff have a comment
7 on that?

8 MR. BLACK: Mr. Chairman, I must confess that I
9 did take perhaps too much liberty in rewriting this con-
10 tention. I originally thought that they were talking about a
11 NEPA cost-benefit analysis.

12 Mr. Voigt's observations of that last paragraph
13 in Contention 15 might indicate to me that I made a mistake
14 in putting it in a NEPA cost-benefit analysis versus
15 something that goes to the Intervenors' status as ratepayers.

16 Now clearly if this contention is going to costs
17 that would add on to taxes or electricity rates, or what
18 have you, it clearly would be impermissible by the
19 Commission's Pebble Springs decision, and also by a prior
20 ALAB in this case, the Fermi-2 case, which the Applicants
21 cite.

22 Originally I thought the contention dealt with
23 a NEPA cost-benefit analysis, and in that context it was
24 acceptable to the Staff.

25 (The Board conferring.)

1 CHAIRMAN BECHHOEFER: Going on to 16, I have some
2 trouble understanding this contention.

3 Mr. Alson, what is it you're referring to when
4 you say that the co-ops will satisfy all of the requirements
5 for receiving an operating license, without regard to the
6 position of Edison? Are you trying to state that you think
7 all of these applicants have to come in and make a showing
8 that they can either build or operate the entire plant,
9 or are you saying that the cooperatives can't finance their
10 share of it?

11 What does this really say? It's very unclear.
12 Does it say that you can't have lead applicants assuming
13 responsibilities for operating the plant, that type of
14 thing? I wonder what you are saying by this contention.
15 It's hard for us to understand it.

16 MR. ALSON: I'd like to make one statement about
17 15, and then I'll answer the question about 16.

18 And that is that CEE would like to see 15
19 considered as a NEPA contention, even though it's not stated
20 that way. We'd just like to go on record as saying that.

21 As far as your questions about 16, it was our
22 understanding -- and this was a contention that Dr. Asperger
23 had authored -- that when a new licensee, or when co-owners
24 were added to Fermi-2, that there were certain requirements
25 that Applicants would have to go back and include, and that

1 these were not fully met.

2 But, you know, I wouldn't be able to argue the
3 specifics on this right now. But it was our understanding
4 that all the required procedures had not been met.

5 MR. BLACK: Mr. Chairman, perhaps I can shed a
6 little light on the genesis of this contention so far as
7 CEE is concerned.

8 It is true that Dr. Asperger has been contending
9 throughout the proceeding that we had in this case before
10 on the CP amendment that the cooperatives must, indeed, be
11 technically qualified as well as financially qualified.

12 He lost that argument below. So I don't think
13 it need be considered here. Obviously, it's outside the
14 scope of this proceeding as well.

15 Perhaps it's more relevant at this point to find
16 out whether CEE still wants to pursue this contention in
17 light of Dr. Asperger's absence from their roster.

18 CHAIRMAN BECHHOEFER: Yes, Mr. Alson?

19 MR. ALSON: Well, I wouldn't want to drop the
20 contention if it had a basis just because one person left
21 the State. If, indeed, the Licensing Board found it was
22 outside the scope of the process, then that's another thing.
23 But I wouldn't want to drop it simply because one person
24 left the State.

25 MR. SCHINK: I appreciate your desire to do your

1 duty in representing the group, but you should appreciate
2 that when these things are admitted, if they are admitted,
3 somebody is going to have to stand up and answer some very
4 hard questions. If you don't have somebody who can do that,
5 you're just wasting everybody's time.

6 Mr. Voigt will be demanding that questions which
7 today are not being answered be answered, and if you don't
8 have somebody to do that, you'd just save your own time and
9 everybody else's time if you'd not try to pursue these
10 issues.

11 MR. SHON: Mr. Black, I would like to hear you
12 address the point that Mr. Voigt raises in his reply here,
13 in his written submission, to the effect that this might
14 raise res judicata and he might be collaterally estopped.
15 You said much the same thing a moment ago yourself, I
16 thought.

17 MR. BLACK: Well, I guess I wouldn't be . . . I'm
18 not totally in a position right now to fully endorse what
19 the Applicant has set forth here as far as res judicata and
20 collateral estoppel, just from the standpoint that I am
21 not certain exactly what they're trying to raise in
22 Contention 16, and whether it's estopped by any previous
23 decision on this matter.

24 I would only just go so far as saying that I
25 think whatever issue they are trying to raise through

1 Contention 16 is outside the scope of this proceeding, and
2 just leave it at that.

3 CHAIRMAN BECHHOEFER: Mr. Alson, is there any
4 area you have in mind where you think that the two cooper-
5 atives, where they have a responsibility to meet certain
6 qualifications, is there any area where you think they do
7 not meet those? Anything specific?

8 MR. ALSON: I wouldn't be the member of the group
9 that could answer that question.

10 MR. BLACK: Mr. Shon, was your question whether
11 a letter from Edson G. Case could collaterally estop this
12 Licensing Board?

13 MR. SHON: No, no, not at all.

14 MR. BLACK: Because there really was no decision
15 below on the merits of any of these. It was just on
16 whether the decision below really went into whether certain
17 parties should be admitted or not. It didn't go to the
18 merits of the issues at all.

19 Of course, both the Licensing Board and the
20 Appeal Board found that they had no standing whatsoever,
21 no interest I should say, to go into that proceeding.

22 MR. SHON: I thought you said there had been a
23 decision on the merits before.

24 MR. BLACK: No. The only decision on the merits
25 would be the letter from Edson G. Case approving the sale.

1 MR. SHON: I was misreading Mr. Voigt. I didn't
2 realize that's all he was relying on.

3 CHAIRMAN BECHHOEFER: Let me ask Mr. Voigt:

4 Are you stating that a letter from Ed Case to
5 Detroit Edison Company constitutes the basis for applying
6 res judicata or collateral estoppel?

7 MR. VOIGT: Absolutely. Dr. Asperger wrote to
8 the Commission under a Commission regulation, Section 2.206,
9 which permits the filing of complaints by citizens, and
10 complained that the transfer of the title interest to the
11 co-ops prior to the issuance of a formal construction
12 permit amendment was a violation.

13 Mr. Case declined to pursue that, and Dr.
14 Asperger at that point clearly had a right either to get
15 review from the Commission, or, failing review by the
16 Commission, to go to court.

17 That was a final order and an authoritative
18 interpretation of the Commission's regulations. Now, if
19 that's not res judicata, I don't know what is, Mr. Chairman,
20 on that issue.

21 Now, on the merits issue of financial qualifica-
22 tions of the co-ops, I agree with Mr. Black, because the
23 decision there was shall we admit these people as Intervenors
24 and have a formal public hearing. And the answer was no.

25 So the merits of the financial qualifications were

1 not -- at least in legal terms -- resolved, because there
2 was no hearing.

3 But on the technical issue of whether there was
4 a violation of the Commission's regulations, I submit to
5 you that there was a determination on the merits.

6 CHAIRMAN BECHHOEFER: Just passing on down to
7 Contention --

8 MR. KURON: Could I ask a question, Mr. Chairman?

9 CHAIRMAN BECHHOEFER: Yes.

10 MR. KURON: Are you people in your realm, in
11 your job, in your duty as a Commission, Licensing Commission,
12 are you interested in the feasibility of Edison financing
13 this particular kind of a venture? I mean is it in your
14 realm of duty, work or law, whatever you want to call it?
15 Do you want to know, or should you know, or isn't it your
16 bag -- let's put it that way -- as far as the financial
17 condition of Detroit Edison to finance this type of plant
18 operation?

19 CHAIRMAN BECHHOEFER: We only have authority to
20 rule right now on whether a contention is a valid one, and
21 whether a party should be admitted.

22 If a contention were based on financial qualifica-
23 tions, there are some contentions on that subject which
24 might qualify. But I can't say that we would rule on it,
25 absent a specific pointing out to us why the qualifications

1 were not adequate. And, of course, it also would have to
2 go to an issue that wasn't resolved earlier, perhaps the
3 amendment proceeding when the co-ops came in.

4 MR. KURON: Well, I would hope that this
5 Commission would very much weight the possibility of
6 Detroit Edison being financially able to construct and
7 operate a plant of this kind. You know, really, I would
8 think that would be in your realm.

9 CHAIRMAN BECHHOEFER: The Staff is specifically
10 required in a supplement to the Safety Evaluation to make
11 such a judgment. We can look at that, but absent a
12 particular issue on that, we probably would not consider
13 that.

14 MR. KURON: I see. Thank you very kindly. I
15 wish you would consider that very much, because if and when
16 you do hold a hearing on the licensing, I mean if you
17 decide to hold a hearing, there is a subject I would like
18 to elaborate on.

19 CHAIRMAN BECHHOEFER: Turning to Contention 17,
20 my question on this I'd like to ask Mr. Alson:

21 Is this an attack, a collateral attack on the
22 environmental impact statement prepared by REA? What was
23 the subject of REA's statement? What action did that deal
24 with?

25 Secondly, is this paragraph anything more than

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1 an attempt to collaterally attack that statement? REA
2 would have the jurisdiction to evaluate its own impact
3 statement, and it would be reviewed, and a court could say
4 whether its statement was valid or not. I'm not sure
5 we have jurisdiction to rule on the validity of an environ-
6 mental impact statement of another agency. There will be
7 a statement filed here which will be within our jurisdiction,
8 or within the Hearing Board's jurisdiction, should one be
9 appointed, to look at it.

10 But I'm a little puzzled about this contention,
11 and I'd like some explanation of what you're driving at
12 here. Are you saying that there's something in the REA's
13 statement that indicates that there's some problem that
14 the cooperatives or the Applicants here have not met? Or
15 what are you trying to say?

16 MR. ALSON: That's the implication, obviously,
17 of the reference to the court case that is still pending,
18 to my knowledge. We feel a decision in that court may or
19 should have an effect on the proceedings here.

20 CHAIRMAN BECHHOEFER: What effect would it have?
21 What if the REA's environmental impact statement were found
22 deficient? What would be the effect? Would that preclude
23 the cooperatives from participating in the project? What
24 effect would it have?

25 MR. ALSON: It seems in that case that if the REA

1 impact statement was judged to be in error or illegal, or
2 whatever, that that would have an effect on the issuance of
3 the operating license.

4 Maybe we're wrong. But that's our position.

5 CHAIRMAN BECHHOEFER: What was the REA's statement?
6 What did it involve? Why was it prepared? Why did the REA
7 have to prepare a statement? What action is that agency
8 taking?

9 MR. ALSON: Well, are you asking me to explain
10 the background?

11 CHAIRMAN BECHHOEFER: Yes, I want to know why,
12 what the REA statement said, why was it prepared, what is
13 the major Federal action, as NEPA uses the term, which
14 gave rise to the preparation of the impact statement?

15 MR. ALSON: It was involved with the sale of
16 20 percent of Fermi-2 to the two Northern Michigan cooper-
17 atives, and the REA was involved somehow in the loaning of
18 the money, is my understanding.

19 MR. SHON: In other words, it was an REA loan
20 that permitted them to make this purchase, and the loan has
21 already been made, is that right?

22 MR. ALSON: I believe so.

23 MR. BLACK: I believe that's the case. REA has
24 made money available to the cooperatives to finance their
25 20 percent ownership of Fermi-2. However, my understanding

1 of the REA impact statement was that there was none in the
2 beginning, and then someone brought suit that said REA's
3 lending of money to electrical cooperatives to get into these
4 types of ventures was a Federal action that needed an impact
5 statement.

6 CHAIRMAN BECHHOEFER: Was it a Michigan court
7 that ordered them to prepare such a statement?

8 MR. BLACK: I don't know. Perhaps someone from
9 Detroit Edison could respond to that.

10 MR. VOIGT: May I give you a little further
11 background, gentlemen?

12 CHAIRMAN BECHHOEFER: Yes.

13 MR. VOIGT: REA makes either loans or loan
14 guarantees, and they can make them for nuclear plants or
15 non-nuclear plants.

16 In the process of making a major loan for a
17 coal-fired plant, they were challenged for failing to
18 prepare a NEPA statement. And they took the position, as
19 I understand it, that the mere lending of money was not
20 a major Federal action.

21 That didn't find particular favor with the
22 court, and they concluded that before they could make loans
23 or guarantee loans for a coal-fired plant they would indeed
24 have to prepare a NEPA statement.

25 In the case of a nuclear plant, there is a lead

1 Federal agency, namely the NRC, and a NEPA statement is
2 prepared anyway.

3 So REA in those circumstances normally simply
4 relies upon the NRC's environmental analysis.

5 And since a change in the mere naked ownership
6 of a plant does not change the environmental impacts of the
7 plant, there is no additional review normally conducted.

8 And that is essentially what happened in the
9 case of Fermi-2, and the approval of loan guarantees to the
10 two cooperatives. REA relied upon the NRC environmental
11 review.

12 That reliance by REA is essentially what is
13 being challenged in the pending lawsuit.

14 Meanwhile, the bonds have been sold, the monies
15 have been paid to Detroit Edison, and the cooperatives have
16 become 20-percent undivided owners of the real estate.

17 And that situation will continue until some
18 court somewhere says to the contrary.

19 CHAIRMAN BECHHOEFER: What would happen if some
20 court somewhere said that that statement were either
21 improper, or whatever? What would be the effect upon the
22 ongoing financing of Fermi-2? Would the bonds be found
23 void?

24 MR. VOIGT: I don't think that the bonds would
25 be found void, Mr. Chairman, and I personally doubt that

1 the court would either enjoin further participation, or
2 require the transaction to be unscrambled. I think a more
3 likely remedy would be to say, well, perhaps there was a
4 procedural defect by REA, and we'd have to remediate this
5 and give them "X" number of months to correct this.

6 But I don't think it would by any means follow
7 that the transaction, underlying transaction, would
8 automatically be either declared invalid or enjoined.

9 In any event, it's outside the jurisdiction of
10 you folks, and it's highly speculative at this point to
11 say whether any relief will be granted by the Western
12 District Court of Michigan.

13 CHAIRMAN BECHHOEFER: Are there any further
14 comments on this by Staff, on this particular contention?

15 MR. BLACK: No, Mr. Chairman.

16 CHAIRMAN BECHHOEFER: With respect to Contention
17 18, I noticed that at the present time there are no specific
18 alternatives listed that the Applicant or NRC Staff failed
19 to consider here.

20 I noticed in your earlier statement there were
21 some.

22 At this stage the NRC at least is taking the
23 point of view that the available alternatives is not a
24 proper subject for consideration for the plant already
25 built.

1 I'd like your comments on what you may be driving
2 at here. I'm not implying that the Staff is necessarily
3 correct, but I'd like your comments on what you intend by
4 this contention.

5 Do you mean to have the plant just sit there and
6 have something else developed in its place? Could you
7 somehow argue that that is a better alternative?

8 Or are you saying that there's something differ-
9 ent that should be done?

10 We really want to know what you're driving at
11 here.

12 MR. ALSON: Well, the thought underlying the
13 contention is that there have been no previous interventions
14 concerning Fermi-2. There were no construction permit
15 hearings, for example.

16 CHAIRMAN BECHHOEFER: Are you aware that there
17 was the environmental impact statement which did go into
18 alternatives at the time? And, of course, it was available
19 for challenge.

20 MR. ALSON: Yes, but it wasn't challenged.

21 CHAIRMAN BECHHOEFER: It did go into alternatives,
22 and there were several that were attached to that statement.
23 I don't have it in front of me now, but I'd be very
24 surprised if coal and oil alternatives were not dealt with
25 in that earlier statement, and undoubtedly several others.

1 I don't have the statement before me at this
2 time.

3 But I really wanted to find out what you were
4 driving at in this contention 18, since we already have a
5 built plant now and to propose a different energy source
6 as a preferable alternative I would think you'd have to have
7 a rather strong showing.

8 MR. ALSON: Well, of course, the members of our
9 group have strong feelings about whether Fermi-2 should
10 operate or not, and so our cost-benefit analysis might be
11 different than that used by someone else.

12 But our concern is even if cost-benefit analysis
13 were performed now, as far as we're concerned the weight
14 would be on the side of not operating Fermi-2 and trying
15 to use the facilities to whatever other use could be made.

16 There again, that is obviously probably not the
17 conclusion that other people would come to. But that's
18 where that contention is coming from. In our opinion a
19 cost-benefit analysis on our terms would still result in
20 not issuing an operating license.

21 CHAIRMAN BECHHOEFER: Do you have specific
22 alternatives you have in mind? You said they failed to
23 address the availability of alternatives. And, as I
24 mentioned, certain alternatives were dealt with.

25 Certainly the initial decision at the Licensing

1 Board stage dealt with them, some summarily. And the
2 impact statement, I'm sure, dealt with them, because every
3 impact statement deals with them to a certain extent.

4 Do you have a basis, in other words, for this
5 particular contention?

6 MR. SCHINK: May I rephrase that and say:

7 You say that your cost-benefit analysis would
8 differ substantially from the ones that have been performed.
9 Can you just identify which components of that would differ
10 so substantially as to tilt things to the extent that you
11 would write off a one or two billion dollar investment in
12 some way?

13 MR. ALSON: Well, the last part of your statement,
14 I don't know if that's accurate. Perhaps I should get
15 into that.

16 I should just say this, that this would get us
17 into areas that we probably shouldn't get into, for a
18 number of reasons. I mean you get into the area of judging
19 the value of human life, and that sort of thing, and we
20 probably shouldn't.

21 MR. SCHINK: If we admitted this contention, we'd
22 have to go into those areas. Is there any reason to believe
23 that you have a ghost of a chance of making these arguments
24 carry?

25 MR. ALSON: We think so.

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1 MR. SCHINK: Which arguments would you expect to
2 carry?

3 CHAIRMAN BECHHOEFER: What alternatives would you
4 propose?

5 MR. ALSON: Well, there's so many, I don't know
6 which one we would, in the end, support, whether it be a
7 coal plant or utilization of solar -- whatever.

8 I can't say right now.

9 But to answer the question posed, a lot of things,
10 a lot of the health effects that are simply not able to be
11 brought out as contentions on their own, we would rely on
12 to affect that cost-benefit analysis. Low-level radiation,
13 the waste problem -- some of these things that we can't
14 deal with on their own because of procedural matters or
15 administrative directives which simply prohibit us from
16 doing it.

17 But we went into those in the cost-benefit
18 analysis and I think draw different conclusions as to costs
19 of nuclear power than maybe has been drawn before.

20 I guess I don't have a lot of faith in contention
21 18 being accepted, but if it were I think we would present
22 a strong case for the cost-benefit analysis.

23 MR. SHON: I think we've been talking about two
24 things here at once. One is the cost-benefit analysis and
25 the other is availability of alternatives. They are, of

1 course, fundamentally associated with one another, and they
2 have important connections and implications for one another,
3 but they are generally two different and separate sections
4 in an environmental impact statement.

5 Your assertion that NRC failed to address the
6 availability of alternatives in the environmental impact
7 statement filed at the time of the issuance of the con-
8 struction permit seems to the Board simply not to be so.
9 They did address alternatives.

10 Are there some that you think they should have
11 that they didn't? If so, what are they, or can you say?

12 MR. ALSON: I guess I can't respond to that.

13 CHAIRMAN BECHHOEFER: Let's turn to the last of
14 these contentions, which is 19.

15 Here we have a difference between the Applicants
16 and the Staff again.

17 I think I'd like to start off by asking Mr. Alson
18 on 19, what are the peculiar atmospheric conditions that you
19 have reference to here?

20 MR. ALSON: Would you like to address that, Mr.
21 Kuron?

22 MR. KURON: As we know, these two huge cooling
23 towers, 400 foot high, are right on the very edge of the
24 lake and, therefore, we will have different atmospheric
25 conditions to contend with in the operation of these two

1 cooling towers.

2 Here again I would say that at the Kettering
3 hearings the question was addressed very well by Mr. George
4 Thomason, then the supervisor of Berlin Township, who was
5 just a few hundred yards away from these cooling towers.
6 I might add that Mr. Thomason was not reelected, either.
7 In fact, he's left the State.

8 But, nevertheless, he made a very find presenta-
9 tion.

10 And questions were asked by the Chair, seriously,
11 of Detroit Edison, and as I stated, at that time -- and
12 there again, I have not read their answer to the particular
13 problem, so-called problem, if they wanted to admit it, they
14 simply say that they have no way of knowing because there's
15 nothing similar, there's no way of testing, there's no way
16 of knowing. And, therefore, they feel that nothing will
17 ever come of this area.

18 But here again let me insert a little something
19 to this Commission and to Staff: I am a firm believer in
20 one look is worth a thousand words. I am a firm believer
21 in that. And especially in my education, so on and so
22 forth, it's a lot better for me to see, feel, touch, hear
23 than to read about it or hear about it.

24 But anyway, I would suggest to this Commission
25 and Staff to take a tour of this given area. You might

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1 check the roads out while you're at it. Check the location
2 in the area around these two cooling towers, which I'm
3 sitting on the south of them. The Swan Creek area and the
4 Estero Beach area is to the north, immediately north of
5 these two huge cooling towers.

6 There's no question in my mind that they are
7 going to create their own atmospheric conditions and that
8 the Estero Beach area and the Swan Creek area will be Lower
9 Slobovia at times. They'll be running around with icicles
10 hanging down off of their nose.

11 We've had Fermi-1 discharge out into Swan Creek
12 by an open ditch, by an open creek, and at many times just
13 a small amount of steam off of this outlet created problems
14 in the Swan Creek and in the Estero Beach area. It created
15 its own ice, created its own moisture, created its own fog.

16 There again, we do not have nothing. There are
17 no blueprints. There are no studies. There are no books
18 telling us what these two towers are going to do.

19 So we ask, in all your learned experience and
20 Staff's, and so on and so forth, to give this some serious
21 consideration. What effects, if any, if you issue the
22 license to operate this plant, what effects are these two
23 cooling towers going to have on the immediate locality?
24 Are you going to be able to close them down if they are
25 adverse effects? Can this Commission do that once it issues

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1 the license?

2 You know, sometime ago -- when was it, just in
3 the last two months -- I spoke to the Environmental
4 Protection Agency, and we had three youngsters sitting up
5 there, one about 35, one about 30 and one about 25, and
6 they were gung-ho. They were really gonna go places and
7 do things. And in the front row sat the politicians, sat
8 the Congressman's aide, the Senator's aides.

9 And I told them at that time that when and if
10 they issued any particular orders against this particular
11 steel mill for pollution that they would get kicked upstairs
12 so far that they wouldn't even know they're around, or they
13 would be booted out of the system entirely.

14 What guarantees do we have in this location that
15 these cooling towers will have no adverse effects on us,
16 and if they do what are you going to do about it?

17 I personally don't think that anybody is going
18 to do nothing about it.

19 As you understand, I hope and I pray, one of the
20 greatest things today, one of the biggest things that's
21 happening today, is nobody has any faith in government.
22 The greatest thing that's happening in our country today is
23 that nobody has any faith in government. We just don't
24 trust them. We just haven't got that hope.

25 And this is what we're putting to you today, to

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1 conduct a full-blown hearing into issuing a license to
2 operate this plant.

3 There were questions at the Kettering High
4 School. These questions was brought up and these answers
5 were not forthcoming. The people sitting for Detroit Edison
6 did not have the answers.

7 Believe me, that's an awesome thing going on
8 over there. There'll be over 50,000, I understand it from
9 an engineer who built them, there'll be 50,000 gallons of
10 water dissipated per hour which is going to go into the
11 air in the form of steam.

12 There are times right on that very shore when we
13 can see the steam from the Davis Besse plant way over
14 across the Lake. Hopefully it might go out over the Lake,
15 but I'm sure with the southwest prevailing winds in this
16 area that it will carry that out over the Estero Beach
17 area, Swan Creek area, into the Newport area. And I'm
18 afraid we're just going to be in for one hell of a mess.

19 So, there again, I think it really has to be
20 considered. In other words, we've got to gather up all of
21 the information we possibly can, because if we allow this
22 thing to go into operation, fine and dandy, hey, it's a
23 big deal, it's going to cost a lot of money. And once it
24 gets started, we just can't press a button and shut it
25 off, unless there's a nuclear accident. But if it was

1 operating and this was the only thing that was going wrong,
2 I think we'd have a hell of a time shutting it down.

3 So please, in your wisdom and the Staff's wisdom,
4 and the people who are available that can give you an honest
5 and unbiased answer, you must check out this cooling towers
6 situation, because I'm afraid they're going to be one hell
7 of a source of aggravation, agitation and trouble for the
8 neighbors in and around that area.

9 I know the hour is getting late, and I know all
10 of us want to go. I could probably talk to you all night,
11 but my voice runs out. And I'm sure the Chairman agrees
12 with me.

13 But first of all, I want to thank you for the
14 tolerance. Believe me, you boys have bent over backwards
15 to accommodate the youngsters and myself. We must say that
16 they have done a commendable job up against these giants
17 over here, and God help them. I am sure the next time
18 they're going to come a little older and better prepared,
19 and let's hope that there will be a next time, because
20 there are things that have to be said.

21 As I said in my earlier statement, I've got my
22 stuff pretty well lined up, and I'm going to give it to you
23 straight from the shoulder. You pick it out, and after I'm
24 said and done, believe me, I'll leave it in your lap and
25 I'm not going to go any further with it, I can't go any

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1 further. I have limited means and life and limb and
2 property and money, and so on and so forth. So it's your
3 job. I don't intend to tell you how to do your job.

4 Once again, I want to thank you very, very much.
5 This is probably one of the better commissions that I've
6 been up against, and I've been up against some pretty tough
7 ones.

8 So if there's any questions, if there's any way
9 I can help, I have offered to help Detroit Edison, but I'm
10 not going to be talking to the people who perpetrated this
11 thing, I want to talk to the Old Man himself.

12 I used to be President of the Stony Point Area
13 Homeowners and Taxpayers Alliance. We built it to work with
14 Edison. And in the years that we were in operation we did
15 work with Edison. I did, on two or three different
16 occasions, talk to Bill Macy, the President, a very fine
17 person. And I'll tell you this: He acted on my suggestions.
18 He acted on them, and for the benefit of the Company.
19 Today I can't reach him. Unfortunately there are people
20 under him who see that I don't get to him, by phone, by
21 mail, by whatever.

22 So I've done my part. It's up to you to do your
23 part. It's been a pleasure to be here this afternoon, and
24 please, get together with Staff and if you see fit to hold
25 this full-blown public hearing on the licensing of this

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1 plant, fine, I want to be a part of it. If it ain't, it's
2 been nice knowing you.

3 Thanks, Mr. Chairman.

4 CHAIRMAN BECHHOEFER: I think the Applicants and
5 Staff should have a chance to comment on Contention 19,
6 which we were talking about to some extent. I would like
7 to hear from Mr. Voigt.

8 MR. VOIGT: First of all, Mr. Chairman, it has
9 now become clear, if it wasn't clear a long time ago, that
10 every point that Mr. Kuron has brought up today is a point
11 that was brought up by Mr. Kuron and his associates before
12 the construction permit Board.

13 All Mr. Kuron is really trying to do is relitigate
14 a number of issues that were presented to and decided by
15 the construction permit Licensing Board.

16 Specifically, the question of the possible
17 adverse environmental impacts from natural draft cooling
18 towers was considered and decided by the construction permit
19 Licensing Board in that portion of their decision which
20 begins with numbered paragraph 35.

21 Now, there's been no significant change in the
22 design or proposed conditions for operation of those towers
23 since that hearing. The only thing that has been added to
24 the record is that the required additional modeling has
25 been completed by the Company and presented in the

1 environmental report for the operating license stage.

2 Now, you gave Mr. Kuron a chance to tell you the
3 specifics of his concerns about the cooling towers, and
4 perhaps to enlighten you as to what has changed since he
5 presented these concerns to the other Board. I leave it
6 to you gentlemen to judge whether you heard anything
7 specific or anything that would justify a further examina-
8 tion of this question at this time.

9 Now, with respect to the Staff, I am again very
10 troubled when I compare their reaction to this contention
11 with their reaction to Contention 11.

12 You will recall when they commented on Contention
13 11 they said since the Applicant has identified the
14 maximum probable flood at the site in the FSAR and has
15 assessed the flood design of the facility, the Staff
16 believes that this contention lacks specificity and basis.

17 Going on: "In order for the contention to be
18 acceptable, it should set forth with reasonable specificity
19 at the very least either how the Applicant has not
20 adequately identified the maximum probable flood, or how
21 the structural integrity of the plant and Category-1
22 structures will be adversely affected."

23 Now, that's a safety contention. When a safety
24 contention is raised the Staff -- quite properly -- says,
25 tell us what the Applicant did wrong, tell us where their

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1 analysis is inadequate, or tell us where what they propose
2 won't do the job.

3 Here we have a contention about the impact of
4 cooling towers, which is a NEPA contention. But I don't
5 see that that's a valid distinction for not requiring the
6 same kind of approach, that the petitioners, Mr. Kuron,
7 have to tell us what's inadequate about the analysis, or
8 what's inadequate about the design, and what the adverse
9 consequences are going to be.

10 The previous Board found to the contrary, and
11 unless something new has come up in the meantime that Mr.
12 Kuron can identify, or unless CEE can point to a specific
13 inadequacy in the analysis of this problem, I submit that
14 there's no valid contention and no reason to have another
15 hearing about the cooling towers.

16 CHAIRMAN BECHHOEFER: Mr. Voigt, did the analysis
17 earlier deal with the icing question which Mr. Kuron
18 mentioned?

19 MR. VOIGT: Indeed it did, and there are specific
20 references to fogging and icing in the findings of the
21 construction permit Licensing Board.

22 MR. SHON: Mr. Voigt, has the material that has
23 been developed since that time -- I noticed that the
24 Licensing Board at that time expected further studies --

25 MR. VOIGT: That is correct.

1 MR. SHON: Have those further studies given any
2 substantial indication that the original estimates may have
3 been grossly in error in under-predicting the amount of
4 fogging and icing? Do you know that, offhand, that something
5 surprising turned up?

6 MR. VOIGT: To the contrary. It is confirmatory.
7 The information that's been developed since the construction
8 permit is included in Section 5.1.4 on atmospheric effects,
9 and Section 2.6.2 on meteorology in the ER for the operating
10 license.

11 MR. SHON: Fine. I don't want to go deeply into
12 the merits of this.

13 MR. VOIGT: I understand. But if you wanted to
14 confirm for yourself my statement that the picture hasn't
15 changed substantially, you could look at those sections.

16 MR. SHON: Thank you.

17 MR. SCHINK: May we ask the Staff why you
18 supported this Contention? What was your thinking?

19 MR. BLACK: Yes. I must admit, when the Staff
20 assesses Intervenors' contentions it's not a state of legal
21 art, by any means. There are certainly no definitive
22 guidelines by which we do this, but we basically just kind
23 of take a poll of the attorneys and technical staff that's
24 working on the case and find out if it is stated with
25 sufficient clarity that it does raise a concern and there is

1 some reasonable basis of specificity to it.

2 Now, in this case there was a consensus that
3 because they do allege unusual atmospheric conditions around
4 the site there is a possible concern here that should be
5 addressed.

6 With that we thought that it was completed
7 reasonably.

8 Now, obviously, during the course of discovery
9 if these Intervenorers are admitted as parties to this
10 proceeding, we would try to refine this contention through
11 discovery, to try to get more detailed bases for why they
12 have a concern here. But at that point, since the Staff --
13 and also Mr. Voigt raised another good point, that the
14 safety questions where we do have a finer handle on it, we
15 do require probably a higher degree of specificity when
16 the Intervenorers do raise contentions, and also, when both
17 the Staff and the Applicant have dealt with that issue and
18 we can point to a document and say your concerns are
19 addressed in this document, both Staff and Applicant, then
20 we feel more confident in throwing that type of contention
21 out.

22 But in this case -- and I have not looked at the
23 initial decision on the construction permit stage for quite
24 awhile, and I don't really remember whether this issue was
25 addressed or not, but assuming that it was we're still going

1 to address this concern in our FES on the operating license
2 stage.

3 So, consequently, I can't tell the Intervenors
4 that this is where the Staff has addressed this problem,
5 and here you can see the answers to your concerns. I
6 don't have that document, and I can't point to it. So
7 there is a subjective type of reasoning that goes through
8 this type of process by the Staff, and I can understand
9 Mr. Voigt's concern that perhaps we do do this arbitrarily.
10 Indeed we do. And I can't give you any more justification
11 than that.

12 MR. SCHINK: Mr. Kuron, in this contention -- I
13 gather you're the driving force behind it -- twice the
14 expression, "adequate consideration has not been given to,"
15 was used.

16 I wonder if you have read the documentation that
17 the Applicant has prepared?

18 MR. KURON: No, sir, I have not.

19 MR. SCHINK: It seems to me if you'd come in here
20 and said, these guys have considered fogging and icing in
21 the abstract, and it may look all right to them because it's
22 only so many days and so many hours of this kind of problem
23 and they're willing to accept it, but I live right where
24 it is and I'm not willing to accept it, you might pound on
25 your desk and get a hearing.

1 But I must say that I get a trifle impatient
2 with the charge that adequate consideration hasn't been
3 given when you don't know what consideration has been given.

4 MR. KURON: Sir, in answer to that question, I
5 did attend a public hearing at the Kettering High School,
6 and that question was asked very well, and I listened to
7 the Edison engineers.

8 As this man said, nothing new has happened since
9 that time, so I've still got to assume that they don't have
10 the answer, unless, like a lot of things, they had the
11 answer on paper and it looks good on paper.

12 But I'm going to tell you something: I've seen
13 the problem. I've seen the paperwork. And any similarity
14 is purely coincidental. Yes, I am concerned, very much
15 so.

16 MR. SCHINK: That is information that we would
17 be interested in hearing. But if you haven't prepared
18 yourself by looking at the paperwork, then it's very hard
19 for us to hear you tell us that the paperwork and the facts
20 are not consistent with one another.

21 Are you aware of the fact that there are
22 documents on public file that you could read, to go beyond
23 this high school hearing which you keep referring to, which
24 really won't be a part of the record that we're dealing
25 with in this case?

1 MR. KURCN: Well, I appreciate what you're saying,
2 believe me, and of course I'm not as learned a person as
3 some of the people sitting across this room. There again,
4 I'm counting on you, in fair play, and Staff, and so on and
5 so forth, maybe to give me some direction.

6 No, I did not read these things, because I didn't--
7 between the time that those public hearings were held, there
8 was nothing outside of probable expertise. And I've seen
9 the experts too many times. You can buy and sell them.
10 You know, you can hire any experts you want.

11 MR. SCHINK: Let's not get into that.

12 MR. KURON: I appreciate your position.

13 MR. SCHINK: Would you speak to Mr. Black or
14 some other member of the Staff and get advice on where you
15 can find the written material?

16 CHAIRMAN BECHHOEFER: The documents in this case
17 are on file, by the way, in the Monroe County Library
18 System, 3700 Custer Road, Monroe, Michigan.

19 MR. KURON: I know where it's at. Thank you.

20 MR. VOIGT: Dr. Schink, may I clarify what could
21 perhaps be a source of at least potential confusion to this
22 Board?

23 All of the hearings that Mr. Kuron is talking
24 about are the construction permit hearings.

25 MR. SCHINK: Oh? I'm sorry, I didn't realize

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1 that.

2 MR. VOIGT: All of the hearings that were held
3 at this high school were the hearings that were held by the
4 construction permit Licensing Board. The transcript of
5 those hearings is obviously accessible to you gentlemen as
6 part of the records of the Nuclear Regulatory Commission.

7 What Mr. Kuron is saying, over and over and over
8 again, is that he disagrees with what was testified to at
9 those hearings and, moreover, that he disagrees with the
10 Licensing Board's acceptance of or conclusions concerning
11 that testimony.

12 Mr. Kuron is trying to relitigate the construction
13 permit proceedings. It's just as simple as that.

14 MR. KURON: Mr. Chairman, I don't want to get
15 in any argument with Mr. Voigt, but I did make my position
16 known here first thing this morning.

17 As far as these contentions are concerned, they
18 are part of your job to get cleared up and get cleared out
19 of the way before you issue a license.

20 I have further information. I have substantiated
21 information. And, as I told you earlier, I'll put your
22 nose in the right direction. You do what you have to do.

23 Some of the statements that I have made, all I
24 want to say is I'm gonna make them for a matter of record
25 so they'll be in concrete. They'll be forever and eternity:

1 "Kuron says:"

2 And I hope really as far as these cooling towers
3 are concerned that I'm wrong -- really. But I still have
4 that doubt in my mind, and my friends and neighbors in the
5 area very much have that doubt in their minds. And it has
6 never been cleared up by Detroit Edison or nobody else.

7 So I have these doubts in my mind, and I hope
8 that I'm wrong -- really. I'm not too big a man. I've
9 been wrong before. I don't make my living offa this
10 garbage. I here on my own expense and my own volition.

11 And I'm gonna tell you something, and I leave
12 it to you: I thank you for your tolerance. I'm sure I'm
13 getting under Mr. Voigt's skin. But I'm not a learned
14 lawyer like himself, and therefore I beg of you to allow
15 me to present my case the way I see it. Then you do
16 whatever you will on it.

17 Now I have a story to tell, as I said in my
18 letter, and I want to tell it at a public hearing for the
19 licensing of the Fermi plant.

20 And last but not least, I'm gonna talk about
21 the plant protection, security if you will, about the
22 quality control and about the integrity and so on and so
23 forth of this particular Company. And I can say it loud
24 and clear, and I can substantiate. And that's all I want
25 you to do, is listen, and after I'm done saying it, forget

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1 it if you must. But I want the right to say it.

2 MR. BLACK: Mr. Chairman, at this point I think
3 the Staff would like to change its position relative to
4 Contention 19.

5 As I indicated before, one of the reasons we
6 felt that there was some reasonable specificity was the
7 phrase, "peculiar atmospheric conditions."

8 After just hearing the author of that contention,
9 I didn't hear anything that would indicate to me that there
10 was any peculiar atmospheric condition.

11 MR. KURON: I'm not the author of that contention.

12 MR. BLACK: I thought Mr. Kuron was the author
13 of that, and that he just explained it.

14 But anyway, I still haven't heard anything yet
15 that would lead the Staff to believe that there is anything
16 peculiar about the atmospheric conditions around the site
17 that perhaps would change the assessment that was made
18 earlier at the construction permit stage.

19 MR. SHON: I would like to ask Mr. Alson to
20 address himself specifically to this. Who is the author
21 or originator of the contention, do you know?

22 MR. ALSON: It's someone who is not here today.

23 (Laughter.)

24 MR. SCHINK: That's a very large group.

25 MR. ALSON: I'm frustrated. I thought that in

1 the decision on what contentions would be accepted that one
2 didn't talk about the validity of them, but that one rather
3 argued the basis for the contentions, and whether if the
4 contention were true, then, you know, should that be dealt
5 with in a hearing.

6 And time and time again today the issue has been
7 led to the validity of the contention. Am I just mistaken?
8 At every prehearing does validity --

9 CHAIRMAN BECHHOEFER: I don't think we've been
10 inquiring about the validity, but whether what you say when
11 you say "unusual atmospheric conditions," has any specific
12 basis. What do you have in mind? Are there any?

13 MR. ALSON: I assumed it would be for us to make
14 a case for it in the hearing.

15 MR. SCHINK: The problem lies in what Mr. Voigt
16 politely calls the contention being inartfully drawn, and
17 a high-powered lawyer such as Mr. Voigt would have written
18 these quite differently if he were on the other side, and
19 we would have a far more specific idea of what you are
20 contending.

21 If in fact we were not aware as a Board that this
22 is a very unequal battle in terms of legal talent -- I hope
23 I don't offend you -- we probably would deal very differently
24 with these issues that you're raising. And in fact what
25 we're trying to do is give you every benefit of the doubt,

1 recognizing the fact that you do not have a great deal of
2 legal talent to back you up.

3 So you shouldn't feel that you're being mistreated
4 by being asked to specify in some greater detail what's
5 here. We're really confronted with either asking you to
6 do that, or simply throwing out many of these contentions
7 that you've presented here.

8 I'm sure we're taxing Mr. Voigt's patience by
9 our handling of you.

10 MR. SHON: Mr. Alson, for example, in the
11 particular contention we've been dealing with now, number
12 19, it is true that some of the matters that we've discussed
13 may go, as the attorney said, to the merits of the
14 contention. But a number of them go to whether or not
15 these matters have already been considered at the construction
16 permit stage, and whether you have anything new at all to
17 tell us.

18 This is the kind of information we want. If
19 you can say, oh, I have data from New England that proves
20 that the material on which the original decision was based
21 is completely wrong, we want to know that.

22 MR. ALSON: Okay. That clarifies the situation.

23 MR. SHON: You don't have to present the data
24 here, of course, at this time. But you have to say, yes, I
25 know of someone that knows, or I have data to back it up.

1 MR. SCHINK: There is another component of this
2 unequal battle, which I'm sure the Applicant is much more
3 aware of than you are, although perhaps you are too. And
4 that is, although he has the legal skills, you have the
5 capacity of wasting time on the reactor operation, and that
6 can be very expensive for them.

7 And so although it is an unequal battle, you
8 both have weapons which do sort of counteract each other.
9 And just as we should give consideration to your lack of
10 legal talent, we have to at least be aware of the problems
11 which you can present to the Applicant.

12 MR. KURON: The Board has been more than fair,
13 believe me.

14 MR. TREBY: Mr. Chairman, I would just like to
15 indicate on behalf of the Staff that the Staff also is
16 sympathetic to the fact that these are pro-se intervenors,
17 and that they may not be able to frame their contentions
18 in the most artful manner.

19 However, the two people who have filed affidavits
20 in these proceedings indicating that they are the members
21 of this organization whose interests are going to be
22 affected, and who have indicated that they adopt all of
23 these contentions, are present here today. And what the
24 Staff has been seeking to hear or to have these people tell
25 us, in whatever terms they can state it in -- layman's or

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1 however artfully they can express it -- just what their
2 concerns are and what facts they have which support those
3 concerns.

4 And that is what we are a little concerned about
5 that we are not hearing today.

6 MR. SCHINK: These contentions came to us with
7 a letter from Robert Maynard. Robert Maynard is not here
8 today, is that correct?

9 MR. ALSON: He's a law student, and the finals
10 are this week.

11 MR. SHON: Will he, in general, be appearing in
12 the position you are now as the representative?

13 MR. ALSON: I guess I couldn't say at this
14 point. I mean I don't know the schedule of the future
15 hearings.

16 MR. BLACK: What year law school is he in, do
17 you know?

18 MR. ALSON: I don't know.

19 (The Board conferring.)

20 MR. ALSON: You know, along the lines of what
21 was just mentioned, we again would like to opportunity to
22 present more information on some of these contentions,
23 specifically, 5, 9, 13 and 19, I think were four that the
24 Board has expressed concern that we have not been specific
25 about, but yet they do feel that we do have information

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1 that is relevant to them. And there might be others that
2 the Board would also like to put in that group, I don't
3 know.

4 But CEE would at least ask for some time to make
5 these contentions more acceptable to the Board, again,
6 based on our belief that we were not going to go into
7 today what we did. I'm sure it looks awful, but this is
8 not what we were told to prepare for by people who we know
9 who have been involved in these proceedings before, and
10 the written documents we had in our possession.

11 CHAIRMAN BECHHOEFER: Basically we do have to --
12 in order for a hearing to be authorized, we would only have
13 to find that one contention meets the various criteria, plus
14 the fact of whether or not the group has standing.

15 But I would like to say that this Board, if it
16 should make such a finding with respect to one contention,
17 we have decided that CEE should be able to meet with the
18 Staff and the Applicants and discuss some of the others
19 which have been talked about.

20 So if we decide that any one of these is
21 admissible, and if we decide that a hearing is to be
22 authorized, we would think it desirable -- and we would
23 strongly recommend -- that the parties get together and
24 try to work out an agreed set of contentions, perhaps.

25 This Board will come out with its decision,

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1 perhaps rejecting some of them. Some of the questioned ones
2 have been withdrawn already. But we will come out in due
3 time -- I hope quickly -- with a decision, and we will
4 establish then some guidelines for the parties to work out
5 and confer.

6 Is there anything else that anyone here thinks
7 need be said today?

8 MR. VOIGT: Just two very brief observations,
9 Mr. Chairman.

10 First of all, I would like to associate myself
11 with Mr. Treby's remarks of a few moments ago. There are
12 two people who have sworn affidavits adopting these
13 contentions, and we've had the good fortune to hear from
14 both of them today.

15 They have been given an opportunity to explain
16 to you, in their own words, what they conceive the meaning
17 of the contentions to be. And I really think that we
18 should go ahead and rule at this point, and not give
19 further time for other un-named people who haven't come
20 forward and haven't even identified themselves as
21 petitioners, to try to come up with additional information.

22 The other point I would like to make is that
23 it will be difficult -- and I would say almost impossible --
24 for me to enter into any kind of meaningful discussions
25 concerning these contentions unless I received the guidance

1 of the Board as to each and every one of them, as to which
2 ones are deemed admissible.

3 CHAIRMAN BECHHOEFER: Yes, we would expect that
4 any subject areas at least that we felt were admissible we
5 would identify.

6 But I might say that considerable work on a lot
7 of them would have to be done before they would be made to
8 be acceptable contentions, even though the subject matter
9 may be permissible.

10 MR. VOIGT: I understand.

11 CHAIRMAN BECHHOEFER: And that's what we were
12 driving at.

13 I would think we would give, hopefully, guidance,
14 assuming we find any of them to be good contentions as
15 stated.

16 Mr. Alson?

17 MR. ALSON: Yes. To reply to one of Mr. Voigt's
18 remarks, that the two people who have signed affidavits
19 from CEE are here today, well, that poses an assumption that
20 there are only two people in CEE that know anything about
21 these contentions. And that's clearly not the case. There
22 are many, many people who authored contentions who are not
23 here. So to say that, wow, you know, we've got the two
24 people who sent in their affidavits, and they're here, and
25 they haven't done a very good job, doesn't at all deal with

1 the question.

2 CHAIRMAN BECHHOEFER: We understand this, and you
3 were also at times relying on experts whom you may have
4 consulted who would not necessarily be members of CEE in
5 any event. So we understand this. Your case does not have
6 to be solely supported by your members' expertise.

7 MR. TREBY: I guess the Staff would like to be
8 clear just who the representatives of CEE are, as far as
9 filing papers. I guess we've heard today that Mr. Alson
10 is the representative --

11 CHAIRMAN BECHHOEFER: It's my understanding that
12 the Staff was going to advise the Secretary also that
13 documents should be served to Mr. Alson.

14 MR. TREBY: Right. Now, is there any other
15 representative of CEE who should be on the service list?

16 CHAIRMAN BECHHOEFER: Ask CEE. I can't tell
17 you.

18 MR. ALSON: Could we discuss this after the
19 proceeding, or do you need the --

20 MR. SCHINK: Mrs. Drake has indicated a continuing
21 interest. She's a member of CEE.

22 CHAIRMAN BECHHOEFER: Yes.

23 MR. TREBY: I understand. I just want the record
24 to be clear. I understand that the only representatives of
25 CEE that are to be served as of this date anyway, are Mr.

1 Alson, Martha Drake and Mr. Hiller.

2 MR. ALSON: Well, I think maybe we should . . .
3 could we discuss this after the hearing, or is this --

4 MR. VOIGT: I would prefer to have it on the
5 record, Mr. Chairman. I want to know who I need to serve.

6 CHAIRMAN BECHHOEFER: Yes.

7 MR. ALSON: I think Mr. Kuron should be on the
8 list as well.

9 MR. VOIGT: Now just a moment. Normally there's
10 one representative for a party. Mrs. Drake has withdrawn
11 from the proceeding as an individual and has said that she
12 hopes CEE will represent her.

13 Mr. Kuron, who started off as a limited appearor,
14 has now emerged as a member of the organization.

15 It seems to me that we only ought to have to
16 serve the official representative of the organization.

17 CHAIRMAN BECHHOEFER: My own inclination is to
18 say that the Secretary of the Commission should serve
19 Mrs. Drake and Mr. Kuron, and that you should serve Mr.
20 Alson.

21 MR. VOIGT: That's agreeable.

22 CHAIRMAN BECHHOEFER: Well, I don't know about
23 Mr. Hiller. Perhaps one of the law students. Who will be
24 drawing up your papers?

25 MR. ALSON: David Hiller has done most of that.

1 CHAIRMAN BECHHOEFER: Would it be satisfactory
2 to you if direct service from the parties just went to you
3 and to Mr. Hiller?

4 MR. ALSON: Yes.

5 CHAIRMAN BECHHOEFER: Would you serve them, then?

6 MR. VOIGT: Certainly.

7 CHAIRMAN BECHHOEFER: And we will leave Martha
8 Drake on the Secretary's service list, and she will
9 eventually get served with anything filed and anything
10 anybody else files. So I think that will take care of that.

11 With that, I guess this prehearing conference
12 is concluded, and I thank you all for spending the time
13 to appear here and participate here.

14 I do want to say that I think the Commission's
15 regulations as they now stand really do not give the
16 Applicants and Staff enough time to respond to supplemental
17 petitions, and I think the fifteen-day period is a little
18 bit rushed. I apologize for asking for responses, but it
19 did help the Board to be aware of what your positions were
20 before we walked in here.

21 I thank you all for the contributions you have
22 made.

23 (Whereupon, at 4:50 p.m., the prehearing
24 conference was adjourned.)

25 - - -

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