

ORIGINAL

**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

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IN THE MATTER OF:	)	DOCKET NOS.:
	)	
	)	50-443-OL
	)	50-444-OL
PUBLIC SERVICE COMPANY OF	)	
	)	OFFSITE
NEW HAMPSHIRE, et al.	)	EMERGENCY
	)	PLANNING
(SEABROOK STATION, UNITS 1 AND 2)	)	

TELECONFERENCE

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UNITED STATES NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )  
 )  
PUBLIC SERVICE COMPANY OF ) Docket Nos.  
NEW HAMPSHIRE, et al., ) 50-443-OL  
 ) 50-444-OL  
(SEABROOK STATION, UNITS 1 AND 2) ) OFF-SITE EMERGENCY  
 ) PLANNING

TELECONFERENCE

Wednesday  
January 27, 1988

Room 428  
East-west Towers  
4350 East-west Highway  
Bethesda, Maryland

The above-entitled matter came on for hearing,  
pursuant to notice, at 2:22 p.m.

BEFORE: JUDGE IVAN W. SMITH, CHAIRMAN  
JUDGE JERRY HARBOUR, MEMBER  
JUDGE GUSTAVE A. LINENBERGER, JR., MEMBER  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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APPEARANCES:

For the Applicant:

THOMAS G. DIGNAN, JR., ESQ.  
Ropes & Gray  
225 Franklin Street  
Boston, Massachusetts 02110

For the NRC Staff:

SHERWIN E. TURK, ESQ.  
Office of General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

For the Federal Emergency Management Agency:

H. JOSEPH FLYNN, ESQ.  
Federal Emergency Management Agency  
500 C Street SW  
Washington, D.C. 20472

For the State of New Hampshire:

GEOFFREY M. HUNTINGTON, ESQ.  
State of New Hampshire  
25 Capitol Street  
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For the Commonwealth of Massachusetts:

JOHN TRAFICONTE, ASST. ATTY. GEN.  
Commonwealth of Massachusetts  
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For the New England Coalition against Nuclear  
Pollution:

ELLYN R. WEISS, ESQ.  
Harmon & Weiss  
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For the Seacoast Anti-Pollution League:

JANE DOUGHTY, DIRECTOR  
Seacoast Anti-Pollution League  
5 Market Street  
Portsmouth, New Hampshire 03801

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APPEARANCES (continued):

For the Town of Hampton:

MATTHEW T. BROCK, ESQ.  
Shaines & McEachern  
25 Maplewood Avenue  
PO Box 360  
Portsmouth, New Hampshire 03801

For the Town of Kensington:

SANDRA FOWLER MITCHELL, EMERGENCY PLANNING DIR.  
Town Hall  
Kensington, New Hampshire

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INSERTS:

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Memorandum following teleconference, dated 22 Jan 88

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JUDGE SMITH: Well, let's call the roll.

Did the operator -- Operator, are you off?

All right, this is Judge Smith, Judge Harbour and Linenberger are present.

Mr. Dignan?

MR. DIGNAN: Yes, Your Honor.

JUDGE SMITH: Mr. Turk?

MR. TURK: Yes, Your Honor.

JUDGE SMITH: Mr. Traficonte?

MR. TRAFICONTE: Yes, Your Honor.

JUDGE SMITH: Mr. Flynn?

MR. FLYNN: Here.

JUDGE SMITH: I understand that Mr. Bisbee isn't on, but did Mr. Huntington take his place?

MR. HUNTINGTON: Yes, I'm here, Your Honor.

JUDGE SMITH: Ms. Weiss?

MS. WEISS: Yes, Your Honor.

JUDGE SMITH: Ms. Doughty?

MS. DOUGHTY: Yes, Your Honor.

JUDGE SMITH: And Mr. Backus is not present, is that correct?

MS. DOUGHTY: That's correct.

JUDGE SMITH: Mr. Brock?

MR. BROCK: Here, Your Honor.

1 JUDGE SMITH: Ms. Mitchell?

2 MS. MITCHELL: Yes.

3 JUDGE SMITH: I guess we're ready to proceed.

4 We'll begin with, did the other parties receive a  
5 copy of the memorandum following the telephone conference of  
6 January 21st?

7 Ms. Weiss, did you?

8 MS. WEISS: Yes, I did.

9 JUDGE SMITH: Mr. Traficonte, did you?

10 MR. TRAFICONTE: I did not. I don't think our  
11 office did.

12 JUDGE SMITH: Well, that went out on the 22nd.

13 MR. DIGNAN: Your Honor, my secretary just walked  
14 in. It came in in our afternoon mail. I'm just reading it  
15 now. This is Tom Dignan.

16 MR. TRAFICONTE: Well, then maybe it's in our mail  
17 now, too. But I -- okay, I haven't physically read it yet.

18 JUDGE SMITH: Let's, for the record and for the  
19 benefit of those who have not received it, and that would  
20 be -- Mr. Brock, have you received it?

21 MR. BROCK: I have not, Your Honor, but I'm with  
22 Jane Doughty, who brought it in about a half an hour ago.  
23 So I've had a chance to look at it.

24 JUDGE SMITH: I'm going to place this into the  
25 transcript at this point.

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(The Memorandum of Telecon-  
ference dated 22 Jan 88  
follows:)



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:  
Ivan W. Smith, Chairman  
Gustave A. Linenberger, Jr.  
Dr. Jerry Harbour

DOCKETED  
USNRC  
BD 1/22/88

'88 JAN 25 A10:40

OFFICE OF THE SECRETARY  
DOCKETING & SERVICE  
BRANCH

SERVED JAN 25 1988

In the Matter of  
PUBLIC SERVICE COMPANY  
OF NEW HAMPSHIRE, et al.  
(Seabrook Station, Units 1 and 2)

} Docket Nos. 50-443-OL  
} 50-444-OL  
} (ASLBP No. 82-471-02-OL)  
} (Offsite Emergency Planning)

} January 22, 1988

MEMORANDUM FOLLOWING TELEPHONE CONFERENCE

The Licensing Board requested counsel for the Applicants, the Massachusetts Attorney General, and the NRC Staff, respectively, to join in an informal telephone conference call convened at 11:00 a.m. on January 21, 1988. The purpose of the conference was to discuss the implications to this proceeding of a Freedom of Information Act (FOIA) request by Rockingham County Newspapers, Inc. (FOIA-88-28). The conference was called without notice to the other parties and without verbatim reporting because the Board believed that prompt action on its part might be necessary for the proper management of the forthcoming evidentiary hearing on the emergency plans for the Massachusetts communities.

By way of background, the Commission, in its Memorandum and Order of November 25, 1987 lifting the stay of low power operation,<sup>1</sup> required as a condition of low power operation, that Applicants provide to the Staff and FEMA information previously deleted from the proposed emergency plan for the Massachusetts communities. As we later learned, the deleted information included the names and addresses of entities who have agreed to provide Massachusetts-related services in the event of an emergency at the Seabrook Station. The Commission also directed that, prior to low power operation, Applicants must indicate their willingness to provide the deleted information to the other parties to the proceeding, leaving it to the Licensing Board to fashion any needed protective order. Order, Slip op. at 6-7.

The Applicants provided the information to the NRC Staff with a request that it be treated as proprietary information, apparently pursuant to 10 C.F.R. § 2.790(a)(4).

The matter surfaced at the evidentiary hearing when the Massachusetts Attorney General demanded the information and the Applicants agreed to provide it, but only under a protective order with disclosure to the parties only. The Massachusetts Attorney General and other intervenors object to a protective order, arguing that the public

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<sup>1</sup> Memorandum and Order (Lifting the Order Staying the Director of Nuclear Reactor Regulation From Authorizing Low Power Operations Due to the Lack of an Emergency Plan for Massachusetts), November 25, 1987 (unpublished).

is entitled to the information. The Applicants, on the other hand, posit that, from a purely legal consideration, the information need not be made available at all until contentions on the Massachusetts plan are filed. Tr. 8398-8425, 8987-9004. No agreement was reached and the matter was deferred. Tr. 9004.

On January 21, 1988 the Chairman of the Licensing Board was routinely provided with a copy (attached) of the FOIA request by Rockingham County Newspapers. They request the information redacted from the public version of the Massachusetts plan -- the information that is the subject of the discovery dispute before the Board.

The Board was concerned that an early public release of the redacted information under FOIA would moot the issue before it to the detriment of its management of this proceeding. The telephone conference call was convened to determine whether the Applicants knew of the FOIA request and whether they would be informed before the information is released.

The Board indicated that it was sensitive to the arguments made by Applicants and that it believed that a temporary protective order might be appropriate until the issue could be briefed. Neither counsel for Applicants nor the Massachusetts Attorney General had known about the FOIA request. Counsel for the NRC Staff, after consulting with Mr. Edwin Reis, Office of the General Counsel, reported that the Applicants would be advised before any release of the information and that the NRC Staff had not yet determined whether the information should be exempted from FOIA release. It became evident that Applicants will be provided

an opportunity to seek appropriate relief in the event the NRC Staff decides to release the information under FOIA. No action by the Board is needed now.

The discussion then turned to when the request for the redacted information and the need for any order protecting it should be entertained by the Licensing Board. The Massachusetts Attorney General and Applicants agreed to brief the matter on the merits without delay. But when the conference participants reflected on the fact that other intervenors must be heard on the issue, the matter was deferred until a formal recorded telephone conference of the parties to be set for the following week.<sup>2</sup> Participants in the January 21 telephone conference call may offer any additions or corrections to this memorandum on the record during the forthcoming telephone conference.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD



Ivan W. Smith, Chairman  
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

January 22, 1988

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<sup>2</sup> Subsequently a formal telephone conference of the parties was set for Wednesday, January 27, 1988.

1 JUDGE SMITH: Is anybody not prepared to discuss  
2 that matter, the subject matter of the discovery on the --  
3 those to provide services for the Massachusetts communities?

4 (No response)

5 JUDGE SMITH: I guess we are. The way we left it  
6 was that Mr. Dignan and Mr. Traficonte were prepared to go  
7 ahead and brief the issue, but we wanted to make sure that  
8 the other parties were aware of what is happening and brought  
9 into the briefing schedule.

10 Mr. Dignan, why don't you proceed with your  
11 proposal for briefing?

12 MR. DIGNAN: Well, I -- my proposal for briefing is  
13 simple. If Mr. Traficonte gives me a date on which he wants  
14 to file his brief, I could, assuming he doesn't hit me with  
15 a date like the Monday we start a week of hearings, I would  
16 be prepared within a week to reply. Frankly, if other  
17 parties want to support Mr. Traficonte, though, I would  
18 rather there be a provision that after Mr. Traficonte files  
19 his motion and brief that the parties supporting him come in  
20 ahead of me so I don't have to write two briefs.

21 JUDGE SMITH: Isn't it possible in this instance  
22 for the other parties who want to support Mr. Traficonte to  
23 communicate their position to him and have a consolidated  
24 brief of the Intervenors?

25 Ms. Weiss, would you be agreeable to that?

1 MS. WEISS: Yes, I don't see any problem with that.

2 JUDGE SMITH: Let's do it that way.

3 Ms. Doughty, would that be satisfactory to you?

4 MS. DOUGHTY: Perfectly fine.

5 JUDGE SMITH: All right. Well, let's -- would you  
6 mind, Mr. Traficonte, taking the lead on this?

7 MR. TRAFICONTE: No, that's fine.

8 JUDGE SMITH: I think it'll be a lot simpler.

9 All right, now, with that in mind, what do you  
10 propose?

11 MR. TRAFICONTE: Well, I wouldn't want to  
12 overburden Mr. Dignan in that first weekend that we resume,  
13 so I would propose, in the week that follows that, which I  
14 believe begins February 15, I would propose that we file the  
15 Friday of that week. That must be the 19th.

16 MR. DIGNAN: So that I have to get a brief in by  
17 the 26th, which is the end of the second week of hearings?

18 MR. TRAFICONTE: Well, give yourself -- no, no, I  
19 understand the problem, but it seems to me if -- I mean, we  
20 could get a brief sooner, but it's not going to help because  
21 it's still going to make your brief due sometime in the  
22 middle of those hearing weeks.

23 Why don't you -- I was going to propose if we  
24 filed sooner, but filing sooner's not going to help, because  
25 it'll just move your filing time up. Why don't you give

1 yourself 10 days, in which case you would be due on the 29th,  
2 and we certainly would be concluded, under the present  
3 schedule, at least, by the 29th.

4 MR. DIGNAN: We've got hearings scheduled for the  
5 23rd, -4th, -5th, and -6th, which is Tuesday, Wednesday,  
6 Thursday, and Friday.

7 MR. TRAFICONTE: Right, and the 29th would be the  
8 following Monday?

9 MR. DIGNAN: 29th is the following Monday, John.

10 MR. TRAFICONTE: How about the following  
11 Wednesday?

12 MR. DIGNAN: I get three days to answer; is that  
13 the idea?

14 MR. TURK: Now, I, as you gentlemen know, I'm going  
15 to be making a motion during the course of this telephone  
16 conference call that may alleviate some of that problem.

17 MR. TRAFICONTE: Should we turn to that motion now,  
18 in light of the discussion we just had?

19 JUDGE SMITH: Well, we'll let this matter pend, and  
20 then take the motion?

21 MR. DIGNAN: Why don't you do it this way, John?  
22 Why don't you file by the 5th, and I'll file by the 19th?

23 MR. TRAFICONTE: File by the 5th.

24 MR. DIGNAN: Is that a problem for you because of  
25 testimony you got to prepare?

1 MR. TRAFICONTE: Well, that's what I'm thinking,  
2 yes.

3 MR. DIGNAN: All right.

4 MR. TRAFICONTE: That's why I was going to propose  
5 to file in the week between presently scheduled hearings,  
6 between presently scheduled hearing weeks.

7 JUDGL SMITH: Well, Mr. Dignan, couldn't we receive  
8 Mr. Traficone's brief during the intervening week, and then  
9 receive your answer during the hearing week? You're talking  
10 about a rather, I would imagine, a rather routine discovery,  
11 protective order consideration, and certainly you have the  
12 staffing to accommodate that problem, it seems to me.

13 MR. DIGNAN: Let me ask you this, Your Honor. Am  
14 I correct in understanding that the second week of hearings  
15 is also going to be in Boston?

16 JUDGE SMITH: Yes.

17 MR. DIGNAN: Okay. That relieves me of a lot of  
18 problem.

19 JUDGE SMITH: You didn't get the notice of hearing?

20 MR. TRAFICONTE: Your Honor, we haven't gotten  
21 that, either, and that was going to be another question I had  
22 for the Board, whether the second week had been scheduled  
23 and if it also was in Boston.

24 MR. BROCK: Your Honor, this is Matt Brock. I also  
25 have not seen that order scheduling the hearing.



1 MR. HUNTINGTON: Nor have I, Your Honor. Geoff  
2 Huntington.

3 MR. DIGNAN: Your Honor?

4 JUDGE SMITH: Yes.

5 MR. DIGNAN: Then you're proposing that  
6 Mr. Traficonte come in on -- sometime during the week of the  
7 15th, and I come in sometime during the week of the 22nd?

8 JUDGE SMITH: That's right. Say the 16th, and  
9 maybe the matter can even be argued during that second week,  
10 if there's more argument needed. With your brief, you  
11 submit the brief to us up there, and we'd receive --

12 MR. DIGNAN: Wait a minute, he would come in on  
13 what date?

14 JUDGE SMITH: For example, February 16th.

15 MR. DIGNAN: Is that agreeable to you, John?

16 MR. TRAFICONTE: Yes.

17 MR. DIGNAN: All right, and then I would come in on  
18 the 23rd, or the 22nd?

19 JUDGE SMITH: Well, yes, right.

20 MR. TRAFICONTE: And that way, if we wanted to have  
21 argument, and we needed argument, we could have it in that  
22 last week.

23 JUDGE SMITH: Exactly.

24 MR. TRAFICONTE: That's fine.

25 MR. DIGNAN: Your Honor, since we're scheduled to

1 be together on the 23rd, why don't we make it hand-delivery  
2 on the 23rd, and I'll just deliver it at the hearing that  
3 morning.

4 JUDGE SMITH: That's fine.

5 MR. DIGNAN: All right.

6 JUDGE SMITH: Very good.

7 MR. TRAFICONTE: That's fine.

8 JUDGE SMITH: All right, so be it.

9 Along that line, before we move to the notice of  
10 hearing, are there any corrections that anybody wishes to  
11 make to that memorandum following the telephone conference?

12 MR. FLYNN: This is Joseph Flynn. I was not a  
13 party to that conference call, and I don't really have a  
14 stake in the outcome of the argument, but as a point of  
15 information, Massachusetts Attorney General and Applicant may  
16 wish to know that the redacted material has been submitted  
17 not only to FEMA but to the RAC committee; that NRC has  
18 mailed it directly to the RAC committee.

19 JUDGE SMITH: Directly to whom?

20 MR. FLYNN: To the members of the regional  
21 assistance committee, the RAC.

22 JUDGE SMITH: Oh.

23 MR. TURK: That's my understanding as well, Your  
24 Honor. This is Sherwin Turk.

25 JUDGE SMITH: Well, that presents a potential

1 problem, and that is Freedom of Information Act requests to  
2 all of those agencies.

3 MR. TRAFICONTE: Yes.

4 I was going to ask Mr. Flynn if, when the  
5 information was provided, was there a confidentiality pledge  
6 extracted in any way? Was there a cover letter that indicated  
7 this was confidential information, or was it --

8 MR. FLYNN: Yes. The transmittal letter to FEMA,  
9 which I assume is the same as the transmittal letter to  
10 everyone else that received it, did point out that the NRC  
11 received it with a pledge of --

12 MR. TRAFICONTE: Okay.

13 MR. FLYNN: -- that it was proprietary and would  
14 be treated confidential, and requested that FEMA treat it --

15 MS. WEISS: Uses the word "proprietary"?

16 MR. FLYNN: Yes.

17 MR. TURK: Your Honor, this is Sherwin Turk. I  
18 have Ed Schumacher with me on the speakerphone. He's the  
19 information attorney for the NRC Staff. If you need a little  
20 more background on that letter, perhaps he could give it to  
21 you.

22 MR. SCHUMACHER: Your Honor, this is Ed  
23 Schumacher.

24 JUDGE SMITH: Yes, sir.

25 MR. SCHUMACHER: It was, as far as I understand,

1 it was transmitted to FEMA with a notice that said that we  
2 had received it under a claim that it was proprietary; when  
3 it was submitted to the agency, it was submitted under  
4 10 CFR 2.790 of our regulation. That's where parties  
5 submitting information have the opportunity to ask that the  
6 information or portions of their submittal not be made  
7 publicly available.

8 It was supported by an application and an  
9 affidavit. And we go through a review process for 2.790  
10 determination, in part a technical review and in part legal.  
11 We're in the middle of that review process now, and the  
12 Staff will, in a few days, be making a determination as to  
13 whether it believes the submittal can be withheld as  
14 proprietary under our regulation.

15 In the interim, we treat all submittals as  
16 proprietary information that are claimed to be, and we do  
17 not make them publicly available. So our transmittal to  
18 FEMA of copies of this, and to the RAC people of copies, was  
19 with information saying that treat this as confidential or  
20 proprietary, that's how we're treating it. And we'll let  
21 them know the extent -- or, the final decision after we  
22 finish our review process.

23 JUDGE SMITH: I don't see what we can do about the  
24 problem. Presumably they will honor that request. There's  
25 an additional exemption under 2.790 alluding to interagency

1 memoranda.

2 Do you know, Mr. Schumacher, are they aware of the  
3 sensitivity of that information in this hearing?

4 MR. SCHUMACHER: Yes, they are, Your Honor. That  
5 was made clear to them verbally before we ser' the  
6 transmittal, and then we followed up with the transmittal.  
7 They accepted it under a claim that it's proprietary, and  
8 agreed to treat it as such. Otherwise, we wouldn't have  
9 given it to them.

10 JUDGE SMITH: That's fine.

11 I see there's nothing for us to do now until the  
12 matter's briefed and argued.

13 Now, is there any request that that memorandum  
14 dated January 22nd, memorializing the conference of January  
15 2st, be modified in any way, amended or corrected?

16 MR. BROCK: Your Honor, this is Matt Brock. I just  
17 wanted -- I was not a party to that conference -- but I  
18 wanted to make one point.

19 In the memorandum, it indicates that an issue which  
20 came up was that Massachusetts Attorney General and the  
21 Applicant had no prior knowledge of that FOIA request. I  
22 just want to say on the record that it's also true for Town  
23 of Hampton. We had no prior knowledge of that request until  
24 I saw this memo today.

25 JUDGE SMITH: Okay, thank you.

1 MS. DOUGHTY: Jane Doughty. I could say the same  
2 for the Seacoast Anti-Pollution League.

3 JUDGE SMITH: So nobody wishes to correct that  
4 memorandum --

5 MR. TRAFICONTE: Your Honor --

6 JUDGE SMITH: -- or add to it?

7 MR. TRAFICONTE: -- John Traficonte. If I could  
8 just reserve my right to do that, because I haven't seen it  
9 yet. I --

10 JUDGE SMITH: All right.

11 MR. TRAFICONTE: -- I doubt I would want to, but I  
12 haven't seen it, so I --

13 JUDGE SMITH: All right. Now, the notice of  
14 hearing calls for a hearing beginning at 1:00 p.m. on  
15 February 8th at Courtroom No. 2, Bankruptcy Court, 11th Floor,  
16 Thomas P. O'Neill Federal Building, 10 Causeway Street. And  
17 it says the rebuttal testimony will be received at the same  
18 place, beginning February 22nd, 1988, at 1:00 p.m.

19 That's a new building. Mr. Oleskey was the bird  
20 dog for us on that, suggested it, and I don't know if he's on  
21 or not, but I want to thank him for it, because it promises  
22 to be very useful and comfortable for us.

23 MR. TRAFICONTE: He's not, Your Honor, but I will  
24 convey it to him.

25 MR. DIGNAN: Your Honor, the notice, which I just

1 received --

2 JUDGE SMITH: Who's speaking?

3 MR. DIGNAN: -- is in one respect -- do I understand  
4 from that that the Board is intending to take sheltering  
5 testimony on the 8th and no rebuttal of any kind until the  
6 22nd? Because it was my understanding we might start with  
7 the rebuttal on issues other than sheltering.

8 JUDGE SMITH: No, the only thing we were trying to  
9 do there is reflect the discussion that we had on the last  
10 day of the hearing. And that generally, everyone recognized  
11 that we pretty well, we should count on having that extra  
12 week beginning February 22nd for rebuttal. We didn't intend  
13 to shape what was going to be heard on the first week.

14 MR. DIGNAN: Oh, okay. Fine, thank you.

15 But I thought the consensus was we'd clean up the  
16 rebuttal on nonsheltering issues first.

17 JUDGE SMITH: Right. Yes, that's -- see, we didn't  
18 say what would be heard that first week.

19 MR. DIGNAN: Okay.

20 JUDGE SMITH: But the second week was, just for  
21 housekeeping purposes, identified as a need for rebuttal,  
22 and, of course, it would be available for anything. But it's  
23 only allusion to what we already discussed.

24 MR. TURK: Your Honor, along this line, as to what  
25

1 issues will be addressed during the week of February 8, I  
2 have indicated to the parties before the Board came on the  
3 line that I wanted to raise an issue while we're on the  
4 telephone conference call.

5 JUDGE SMITH: Yes. I might say that I could very  
6 dimly hear that, and I'm not looking forward to your motion.

7 MR. TURK: Well, let me make it, and see what the  
8 parties say in response, but so far I haven't heard any of  
9 the parties indicate how they would view the motion. With  
10 your permission, I'd like to get into it now.

11 JUDGE SMITH: Yes, would you please?

12 MR. TURK: All right.

13 The Staff received FEMA's supplemental testimony  
14 yesterday, Tuesday, by telefax. We reviewed it. We read  
15 the testimony as essentially indicating, as stated on Page 2  
16 of that testimony, "that FEMA cannot conclude that the NHRERP  
17 is adequate with respect to the beach population until it is  
18 clear that the State of New Hampshire has considered the use  
19 of sheltering for the transient beach population and  
20 explains what use, if any, it intends to make of sheltering.

21 "This latter point should not be interpreted to  
22 mean that FEMA has imposed a requirement that sheltering be  
23 available. If the State of New Hampshire intends not to  
24 employ sheltering for the transient beach population, which  
25 is not presently clear from the NHRERP, then FEMA expects



1 the State to develop the rationale for such a choice and  
2 provide it to FEMA for review."

3 Now, in essence, the Staff reads FEMA's testimony as  
4 being an interim position in which they are anticipating that  
5 further work could be done by the State along the lines  
6 suggested in this testimony, and after that work is done, that  
7 it would be submitted to FEMA for review and a determination.

8 As the Board knows, Robert Bores, who incidentally  
9 is in the office with me here now, indicated in testimony  
10 before the Board that the NRC RAC representative shared the  
11 view that the plans would be enhanced by -- with further  
12 consideration given by the State as to how and when, under  
13 what condition, sheltering would be an appropriate option for  
14 the beach population. So in essence, the Staff at this point  
15 believes that better than go into unnecessary litigation and  
16 then have to revisit the issue a second time, best use of  
17 resources, and the best procedure for this Board to follow, is  
18 to defer litigation until we see what the State is going to  
19 do, now that they have FEMA's view on paper. And I think we'd  
20 all be better off if we don't have to come back to the issue  
21 time and time again, but rather let the State make its  
22 submittal, and then we can let FEMA develop its final position  
23 and go to hearing on that.

24 Now, as I mentioned, I have not had any response  
25 from any of the parties until now. I began attempting to

1 contact people just an hour or so, or maybe an hour and a  
2 half, before the telephone conference call, and I don't know  
3 if anyone yet has had an opportunity to digest the suggestion  
4 and develop a response.

5 JUDGE SMITH: Mr. Dignan?

6 MR. DIGNAN: Well, I'd been contacted earlier, Your  
7 Honor, and told about it. I've got some problems, real  
8 problems, with this, and I've especially got a problem taking  
9 a definitive position.

10 I guess the first thing I'd like to know is what's  
11 FEMA's position on this.

12 MR. FLYNN: On the pending motion?

13 MR. DIGNAN: Well, on two things. Mr. Turk has  
14 characterized the testimony in a certain way, and what is  
15 FEMA's preference as to where we go.

16 Your Honor, if it's legitimate to ask the Board to  
17 so inquire; I, frankly, am in a quandary as to what to do  
18 about it. A lot of my instincts tell me that I've got a  
19 hearing date, I've got witnesses, I've got a piece of  
20 testimony to shoot at, a piece of testimony of my own that I  
21 could put in, and I hate to give up hearing time. But I  
22 haven't had enough time to digest this thing.

23 And I'd like to know what FEMA's view of this is,  
24 and particularly, assuming the State of New Hampshire goes  
25 along, which is their call, how fast is FEMA going to review

1 and come up with a position on what they file. FEMA so far  
2 has not amazed me with their speed. They had the shelter  
3 study for I don't know how long, and the RAC still hasn't got  
4 out a review on it.

5 Now, if I could get a commitment from FEMA that  
6 within 30 days after they receive a New Hampshire position  
7 they'd have held a RAC meeting and taken a position with  
8 testimony, I might have one view of this motion. If, on the  
9 other hand, this is some open-ended thing for the RAC and  
10 FEMA to decide when, as, and if they'll get to the problem,  
11 I have another.

12 MR. FLYNN: Well, with the Board's permission, let  
13 me respond to what Mr. Dignan suggested.

14 I agree with the way Mr. Turk characterized our  
15 testimony. I'm not opposed to his motion --

16 JUDGE SMITH: You what?

17 MR. FLYNN: I guess you're having trouble hearing  
18 me.

19 JUDGE SMITH: A little bit, yes. You oppose his  
20 motion?

21 MR. FLYNN: No, no, I'm not opposed to it.

22 JUDGE SMITH: Oh, not opposed.

23 MR. FLYNN: We're not asking for more time, but I  
24 certainly see the wisdom of not litigating what is in  
25 essence not a conclusion.

1           Now, Mr. Dignan attaches a great deal of importance  
2 to how much time it would take FEMA to review new material  
3 that's developed, assuming that it is. He suggests 30 days.  
4 I certainly can't commit to that. I think 30 days is sooner  
5 than we're likely to be able to turn it around. I think 60  
6 days is more likely, although before I make any such  
7 commitment I'd have to check with the people who do the work.

8           MR. DIGNAN: Mr. Flynn?

9           MR. FLYNN: Yes.

10          MR. DIGNAN: Could I respectfully point out  
11 something? The RAC and FEMA, when for various reasons it  
12 suited their purposes, had no trouble with cranking up a RAC  
13 meeting January 7th and 8th and having testimony done, what,  
14 two weeks thereafter, two or three weeks thereafter. And I  
15 don't see why that same speed and alacrity couldn't be  
16 applied to a New Hampshire filing.

17          MR. FLYNN: You certainly have a valid point there,  
18 Mr. Dignan, but I don't -- this is something I haven't  
19 consulted with the management on in advance, so I don't feel  
20 that I'm in a position, I don't feel I have authority, to  
21 make that commitment right now.

22          JUDGE SMITH: Mr. Dignan, I think that the ball is  
23 in your court here. You have the burden, you have the  
24 penalty of delay, you have everything. We'll listen to what  
25 you have to say very carefully.

1 MR. DIGNAN: Well, as I said, Your Honor, what I'd  
2 like is a position from FEMA on how long the process is going  
3 to take. Mr. Turk, as usual, is extremely logical. I always  
4 find brother Turk logical. But the problem I've got, Your  
5 Honor, is, as the Board is well aware, we gave them the  
6 shelter study. The first round was, gosh, because you didn't  
7 give it to us, the State didn't give it to us, under a magic  
8 reg, we can't look at it at all. Then we called it technical  
9 assistance, and I don't know how many months, was it August  
10 that thing went down there -- they still haven't looked at it.

11 JUDGE SMITH: They've looked at it, but they're not  
12 happy with it.

13 MR. DIGNAN: No, they haven't. They haven't got a  
14 RAC position on it. According to the testimony, two members  
15 of the RAC have given a position on it.

16 MS. WEISS: I don't think that's necessarily  
17 correct.

18 MR. DIGNAN: That's what the testimony says. Am  
19 I right, Mr. Flynn?

20 MR. FLYNN: Yes, that's correct. You've got --

21 MR. DIGNAN: Of course it's correct. That's what  
22 it says in the testimony.

23 MS. WEISS: No, I think the testimony has to do  
24 with the final conclusion about whether the plan's adequate  
25 or not, not necessarily whether sheltering is adequate or not.

1 MR. DIGNAN: About what they've done with the  
2 sheltering study.

3 My concern, Your Honor, is that if Mr. Turk's  
4 motion is allowed that they will, I'm sure, take their  
5 position one way or another in reasonably quick fashion, and  
6 what I want is a commitment that that federal agency is going  
7 to turn that thing around in 30 days. And I'm not wedded to  
8 30 days; if somebody wants to make it 40, that's one thing.  
9 But if it's going to stretch out, so all of a sudden there's  
10 no possibility of any hearings before the Board for three  
11 months on sheltering, that's something I've really got to  
12 consult with my client on.

13 MR. TURK: Well, one of the first problems,  
14 Mr. Dignan, is we don't yet have a position from the State of  
15 New Hampshire. We don't know what they're going to do.

16 MR. TRAFICONTE: I was going to --

17 MR. TURK: And I wanted to make one other point.

18 One of the two agencies that has responded on the  
19 shelter study was the NRC --

20 MR. DIGNAN: Correct.

21 MR. TURK: -- through the NRC RAC representative,  
22 and I will promptly mail out to the parties the NRC Staff  
23 paper written by Mr. Bores which sets out his views on the  
24 shelter study, and his paper will make it clear that there are  
25 open areas that he feels need to be addressed.

1 MR. FLYNN: Really, I wanted to further this  
2 discussion. I'm going to excuse myself for about a minute and  
3 send word downstairs to the people who can make this decision  
4 that we need their input. Be right back.

5 MR. TRAFICONTE: Your Honor -- Mr. Traficonte -- I  
6 want to know what Mr. Huntington thinks about the proposal, or  
7 further delay until the State takes a position. I think his  
8 input would be necessary, too.

9 JUDGE SMITH: Well, that certainly is the case.

10 MR. TRAFICONTE: Is he on the line?

11 JUDGE SMITH: Yes, Mr. Huntington is, yes.

12 MR. HUNTINGTON: As Mr. Dignan's already said, I  
13 think the State needs time to digest this as well. This is  
14 something that we have not given any consideration to. We  
15 would have to speak with our agency and really stop and give  
16 some thought to it before we could take any position.

17 MR. TRAFICONTE: I'm sorry, were those comments  
18 directed to the FEMA position, or to the present motion?

19 MR. FLYNN: Excuse me, this is Joseph Flynn, I've  
20 just returned.

21 JUDGE SMITH: Let's review what happened, Mr. Flynn.  
22 A question was put to Mr. Huntington as to whether -- what his  
23 view as to the -- whether New Hampshire, the State of New  
24 Hampshire, would, and the timing of any response to FEMA's  
25 testimony.

1           And he stated in essence that they don't know, this  
2 is new to him, he'd have to check with his management.

3           But I guess it was addressed to both the testimony  
4 and the motion made by Mr. Turk.

5           Is that right, Mr. Huntington?

6           MR. HUNTINGTON: Yes, sir, Your Honor. We just  
7 couldn't give any kind of response to either today.

8           JUDGE SMITH: Mr. Dignan, we're going to be waiting  
9 for your lead on this. The Board, I might say, is not very  
10 happy with the events. There are no new technical bases, no  
11 new technical considerations, that I can see that have arisen  
12 in this hearing, this issue, for since before I got into the  
13 hearing.

14          MS. WEISS: I would certainly agree with that.

15          MR. TRAFICONTE: As I would, Your Honor. I listened  
16 to what Mr. Dignan said. I frankly cannot see why we can't  
17 go forward. FEMA has perhaps an interim position, but then  
18 perhaps not. I mean, doesn't it depend on what does come  
19 forward as a result of this position that they've just  
20 announced? I can't frankly see why we -- what we would be  
21 waiting for in the absence of an affirmative move by the  
22 Applicant. I should say, the Applicant and/or the State.

23          MS. WEISS: That's right.

24          JUDGE SMITH: Well, we would presumably be waiting  
25 for FEMA's evaluation of whatever New Hampshire did. But even



1 that doesn't take care of all the problems. We have the  
2 problem of the reasonable assurance issue, the exercise  
3 deficiency, the range of protection actions issue. So it's  
4 more than just FEMA's evaluation of any submittal by New  
5 Hampshire on the sheltering matter.

6 MS. WEISS: That's right, and I noticed, because the  
7 language was underlined, FEMA hasn't expressed an opinion on  
8 whether evacuation alone would be adequate. And that seems  
9 to be wholly independent of what New Hampshire may or may not  
10 do with this sheltering.

11 JUDGE SMITH: Is there any need, Mr. Dignan, do you  
12 feel any need for discovery of FEMA's position here?

13 MR. DIGNAN: No.

14 JUDGE SMITH: No.

15 What do you want to do, Mr. Dignan? Do you want  
16 time to think about it?

17 MR. DIGNAN: I'm hoping to hear Mr. Flynn tell me  
18 what kind of a commitment FEMA will make on the schedule.

19 JUDGE SMITH: Oh, that's right, Mr. Flynn's back  
20 now with that information, yes.

21 MR. FLYNN: I'm back, and waiting for word to come  
22 back to me from management, so --

23 JUDGE SMITH: Well --

24 MR. TRAFICONTE: Well, could I just ask, so that I  
25 understand the flow, would Mr. Dignan then present FEMA with

1 something that the other parties haven't seen yet, or would  
2 it be the testimony as we know it now?

3 MR. DIGNAN: Mr. Dignan's going to present FEMA with  
4 nothing.

5 MR. TRAFICONTE: Why would we need to know how long  
6 it'll take FEMA to review nothing, Tom?

7 MR. DIGNAN: Because the State of New Hampshire is  
8 going to make --

9 MR. TRAFICONTE: Oh, okay.

10 MR. DIGNAN: -- I mean, I'm not asking --

11 MR. TRAFICONTE: Okay.

12 MR. DIGNAN: -- to tell the State how long they'll  
13 take, I'm asking for a commitment from FEMA that once the  
14 State presents them with something, will they turn it around  
15 in 30 days, one way or another, up or down.

16 MS. WEISS: Mr. Chairman?

17 JUDGE SMITH: Ms. Weiss.

18 MS. WEISS: I just want to say that before you rule  
19 on this, irregardless of whether Mr. Flynn get an answer or  
20 not and what Mr. Dignan's position may be, I would like to  
21 confer with the other Intervenors, and whether we get back to  
22 you on telephone or we get back to you in writing, I think we  
23 need to talk about what the implications of all this is. And  
24 I don't think we should be required to respond essentially  
25 instantly, this Staff motion.

1 MR. DIGNAN: Well --

2 JUDGE SMITH: Would this be helpful if we delayed  
3 this -- I mean, if we reconvened this very conference with all  
4 the parties -- this is, incidentally, being transcribed in  
5 sequence of the page numbers, as if we were in the hearing  
6 room -- would it be helpful if we all convened again either  
7 tomorrow or Friday?

8 MR. TRAFICONTE: I think that's a very good -- this  
9 is John Traficonte -- I think that's a very good idea.

10 MR. DIGNAN: I don't -- I'm not thrilled with  
11 Friday, Your Honor, for one simple reason.

12 JUDGE SMITH: Who's this?

13 MR. DIGNAN: Tom Dignan. If it's Friday morning,  
14 I'm thrilled, but not otherwise, because we have a  
15 commitment to file testimony on Friday, if we're going forward.

16 JUDGE SMITH: That's right.

17 MR. DIGNAN: I'd like it settled at least fairly  
18 early Friday morning.

19 JUDGE SMITH: Well, I was thinking more about  
20 tomorrow afternoon, as it seems to be -- we seem to be able to  
21 get people together in the afternoon easier than in the  
22 morning. Would tomorrow afternoon at 2:00 be satisfactory?

23 MR. BROCK: Yes, Your Honor.

24 MR. DIGNAN: 2:00 tomorrow afternoon.

25 MS. WEISS: Could we do it a little earlier? I've

1 got a meeting at 2:00. Would 1:30 or 1:00 be possible?

2 JUDGE SMITH: That's fine with us. 1:00's fine.

3 MR. FLYNN: Mr. Dignan, if we get off the line here  
4 today before I have the answer that you're looking for, I will  
5 call you directly as soon as I know.

6 JUDGE SMITH: Mr. Flynn, would 1:00 o'clock  
7 tomorrow be all right with you to --

8 MR. FLYNN: Yes.

9 JUDGE SMITH: Anybody object to 1:00 o'clock  
10 tomorrow?

11 MS. DOUGHTY: This is Jane Doughty from SAPL. It  
12 would be better for me if it were a little later. I haven't  
13 had a chance to talk to Mr. Backus about his availability --

14 JUDGE SMITH: Ms. Doughty, would you come back again?

15 MS. DOUGHTY: Certainly. I would have a little  
16 difficulty with 1:00 o'clock. I haven't had a chance to first  
17 talk to Mr. Backus about this. Perhaps he'd be available at  
18 1:00. 1:15 I could probably do; 1:00 o'clock --

19 JUDGE SMITH: Could anybody else, could somebody  
20 relay to me what Ms. Doughty said?

21 MR. DIGNAN: She said, Your Honor, if I heard her  
22 correctly, and I'm sure she'll correct -- that 1:00 o'clock is  
23 difficult for her; that 1:15 may be possible.

24 JUDGE SMITH: Oh. All right. 1:15 satisfactory to  
25 everybody?

1 MS. WEISS: Yes.

2 JUDGE SMITH: All right. Well, let's nail that  
3 down, then.

4 Now, what can we -- so we will come back to whether  
5 or not the FEMA testimony and the sheltering beach population  
6 issue will be litigated on February the 8th, tomorrow  
7 afternoon at 1:15; and in the meantime we would expect the  
8 parties to have authoritative positions. Can you --

9 MR. TRAFICONTE: The Intervenors will caucus, Your  
10 Honor, and try to come up with one position.

11 JUDGE SMITH: And, Mr. Flynn, you've already stated  
12 that you're willing to do that, and, of course, Mr. Turk is  
13 proponent of the motion, and I assume he's going to have  
14 authority easily available to him, too.

15 MR. TURK: I make the motion on authority, Your  
16 Honor.

17 JUDGE SMITH: Okay. So we will do that.

18 Wait a minute, let me check.

19 Okay, so we'll resume tomorrow at 1:15.

20 Now, what other business can we transact this  
21 afternoon?

22 MR. TURK: Your Honor, I want to mention one thing.  
23 You had indicated that there are other issues, such as the  
24 reasonable assurance issue and range of protective action and  
25 exercise deficiency. It seems to me that some of those, the

1 reasonable assurance, the range of protective action issues,  
2 are potentially very easily to deal with as legal issues. I  
3 don't know that you need testimony on that, unless those  
4 issues are discussed in the course of testimony. But I don't  
5 think we have to put on a case just to address those  
6 standards.

7 JUDGE SMITH: How about the exercise deficiency  
8 issue? Is that truly legal?

9 MR. TURK: No, I left that one out of my catalogue.

10 JUDGE SMITH: All right, I'm sorry, I missed -- I  
11 didn't --

12 MR. TURK: That one, it seems, would relate only to  
13 issues in contention already. In other words, different  
14 deficiencies were picked up on bus drivers and other issues.  
15 Did you mean by that to say the areas in which deficiencies  
16 were identified with respect to the beach?

17 JUDGE SMITH: No.

18 MR. TURK: I don't see that as a separate issue  
19 right now for us to have to litigate.

20 JUDGE SMITH: Well, no, I was alluding to your  
21 remark that I thought you had included the exercise  
22 deficiency issue in your list. I realize now that you  
23 hadn't. And I was asking whether that is a purely legal  
24 issue, or is it a mixed issue of fact and law.

25 MR. TURK: Oh, I don't, I guess, I don't see that

1 that's an issue that we need to address at all apart from th.  
2 issues that have already been presented in the hearing. I  
3 don't guess there's any further testimony to go in on that.

4 JUDGE SMITH: Well, we have for the time that I'm  
5 aware of a statement by FEMA that a deficiency is a basis for  
6 a finding, a rebuttable presumption, that the plan is  
7 inadequate. Isn't that -- where am I looking for it -- isn't  
8 that the first time this has come up?

9 MR. TURK: I think you're looking at Page 7, at the  
10 first full paragraph on the page, in which the last sentence  
11 says, "If FEMA's decision not to make an overall finding of  
12 reasonable assurance, that was for the manning inadequacies  
13 identified in the RAC review of the plan, and deficiencies  
14 identified in the exercise report."

15 JUDGE SMITH: Yes.

16 MR. TURK: And that goes on to say not this, but  
17 lack of explicit consideration of plans for the possibility  
18 of sheltering.

19 MR. FLYNN: Your Honor, this is Joseph Flynn.

20 That definition is not new. That is found in our  
21 guidance on exercises -- that's -- resolved, I think.

22 JUDGE SMITH: Well, isn't -- this is the first time  
23 that I have seen in this case presented to us an argument that  
24 FEMA cannot make the finding of adequacy in the face of a  
25 deficiency identified in the exercise report.

1 MR. FLYNN: Well, you're correct that that -- yes,  
2 that is the first time --

3 JUDGE SMITH: This is the first time it's been  
4 presented to us --

5 MR. FLYNN: Yes.

6 JUDGE SMITH: -- that I can see.

7 MR. FLYNN: What we were trying to do is put the  
8 beach population in perspective. That's one of a long list of  
9 things that can play of a finding of reasonable assurance.  
10 The existence of the deficiencies was noted earlier on.

11 JUDGE SMITH: Yes, I know that, yes.

12 MR. DIGNAN: Yes, but the deficiencies, for purpose  
13 of this hearing, as Mr. Turk indicated, are all encompassed  
14 within contentions that are made and to be litigated before the  
15 Board.

16 MR. FLYNN: Yes, that's right.

17 MR. DIGNAN: Position -- it is our position that  
18 the FEMA's inability to put a stamp of approval on the whole  
19 plan doesn't affect the ability of the Board to go forward  
20 with a reasonable assurance finding, which would predict the  
21 finding anyway.

22 MR. FLYNN: Nor do I dispute that.

23 JUDGE SMITH: All right. So there are no factual  
24 underpinnings to FEMA's position, as expressed on Page 7.

25 MR. TURK: No new factual underpinnings.



1 JUDGE SMITH: Yes, okay.

2 MR. TURK: Joe, am I right?

3 MR. FLYNN: That's correct.

4 MR. TURK: Yes.

5 JUDGE SMITH: So that could very well be a question  
6 of law, too. I mean --

7 MR. TURK: If it's raised at all.

8 JUDGE SMITH: Yes. Okay.

9 MR. TRAFICONTE: Well, to the extent that the  
10 exercise -- well, John Traficonte again. If I understood that  
11 flow, the only point I would want to make is that that point,  
12 that inadequacy or deficiency deals with an exercise, which,  
13 as I understand it, is certainly not the focus of the present  
14 litigation.

15 MR. DIGNAN: Correct.

16 MR. TRAFICONTE: Okay.

17 MR. TURK: Except to the extent that it's been  
18 picked up in contentions already. So the FEMA report on the  
19 exercise came out a year and a half ago.

20 JUDGE SMITH: All right. I got it.

21 MR. TRAFICONTE: Yes, but as to an exercise that  
22 would be relevant to a final determination in this case --  
23 certainly Mr. Dignan will correct me if I'm wrong -- but I  
24 understand the Applicant is looking to another exercise of the  
25 entire EPZ for both the New Hampshire and Massachusetts plan.

1 JUDGE HARBOUR: That's not before us here.

2 MR. TRAFICONTE: That's going to happen, at some  
3 point.

4 JUDGE SMITH: All right.

5 MR. TRAFICONTE: It seems to me would moot whatever  
6 FEMA has said about a now two-year-old exercise.

7 MR. FLYNN: No, we don't see it as looking at that,  
8 because we -- well, I suppose that's true, but we would look to  
9 the next exercise --

10 MR. TRAFICONTE: Well, that's what I --

11 MR. FLYNN: -- a remedial exercise.

12 MR. TRAFICONTE: Right. No, of course. I didn't  
13 mean moot in that sense. I meant as to the legal significance  
14 of the finding of a deficiency.

15 JUDGE SMITH: Okay. Well, where are we now? I  
16 forgot -- as a matter of fact, I forget why we digressed --

17 MR. DIGNAN: Come back at 1:15 tomorrow to discuss  
18 the question of Mr. Turk's motion.

19 MR. TURK: And, Your Honor, I would note one more  
20 thing, if I may. My motion is not going to in any way affect  
the fact that we're planning on going to hearing next week --  
or, I'm sorry, the week of February 8. We do have a --

MR. DIGNAN: My understanding we'd go to the  
rebuttal testimony in any event.

25 MR. TURK: That's right. But there will be matters

1 for hearing that week.

2 JUDGE SMITH: Yes, I understand that. There's --  
3 you know, we can go ahead up there. But the significance of  
4 your motion is that this phase of the record remains open for  
5 no less than 30 days, and probably like 60, or even more.

6 MR. TURK: Well, we could close the record and write  
7 proposed findings on everything else that's happened, then  
8 pick this up as a separate issue later this spring in  
9 litigation.

10 JUDGE SMITH: Well, Mr. Dignan has -- is the person  
11 to be heard on that point.

12 MR. DIGNAN: That -- well, Your Honor, I would --  
13 I'll put that in my catalogue of things to respond tomorrow.  
14 I -- as I've said, to the extent the Applicant has a say in  
15 this, I really -- my position, I'm perfectly candid, is going  
16 to be governed by what I hear from FEMA in terms of a  
17 commitment on turning this thing around.

18 JUDGE SMITH: Well, how about New Hampshire?

19 MR. HUNTINGTON: We'll be ready tomorrow to --

20 MR. DIGNAN: Yes, I'll know from New Hampshire what  
21 kind of time frames they're talking about, if any.

22 MR. HUNTINGTON: Absolutely. We can make that  
23 commitment, so we will know definitiely tomorrow what kind of  
24 time frame we would work with.

25 JUDGE SMITH: All right. Gentlemen, could I ask

1 also -- I think this is rather important to everybody  
2 involved -- could I ask that perhaps you bring your principals  
3 to this conference, in case something unforeseen comes up. I  
4 think maybe it's not too much to ask of them to spare an hour  
5 on it, unless you're assured that you come to the conference  
6 thoroughly authorized to speak for your agencies and your  
7 principals.

8 MR. DIGNAN: I'll have that in mind, Your Honor.

9 MR. HUNTINGTON: I as well.

10 JUDGE SMITH: I think, generally speaking, that  
11 counsel should come to any session reasonably prepared,  
12 unless they're surprised, to speak for their agencies. And if  
13 you can't do that, bring them with you. This is an important  
14 hearing, and I would imagine that your principals would be  
15 interested in having it concluded in an orderly way.

16 MR. DIGNAN: Your Honor, I can assure you I am here  
17 with authority to talk for my principal, and I -- my principals  
18 and I have discussed this. We were only given 15 minutes to  
19 do it, and I've got orders to go one way on one answer from  
20 FEMA, and one way on another. That simple.

21 JUDGE SMITH: One answer from FEMA and New  
22 Hampshire. I --

23 MR. DIGNAN: The New Hampshire answer probably is  
24 not going to influence me all that much, although I'm pleased  
25 to be in a position to have that answer when I talk tomorrow.

1 MR. TRAFICONTE: Well, Your Honor, that's -- again,  
2 John Traficon- -- that last point by Mr. Dignan puzzles me.  
3 I can't understand --

4 MR. DIGNAN: Well, you don't understand how I  
5 operate with my clients, John. That --

6 MR. TRAFICONTE: Oh, no, I'm concerned about the --

7 JUDGE SMITH: The logic.

8 MR. TRAFICONTE: -- the logic of the irrelevance of  
9 the New Hampshire position, because if I understand why we  
10 would be deferring these hearings, it's so that something can  
11 come out of the State; and yet you don't seem to be overly  
12 concerned as to --

13 MR. DIGNAN: Worked with the State of New Hampshire  
14 to have a pretty good working knowledge of the scope of what  
15 I'm going to hear from them. I don't know exactly what I'm  
16 going to hear from them, but I'm fairly confident I know what  
17 the scope of it is.

18 JUDGE SMITH: All right.

19 MR. FLYNN: Your Honor, this is Joseph Flynn. I  
20 will have someone from my management here tomorrow. In the  
21 meantime, I will discuss this fully, and I will discuss it  
22 privately with Mr. Dignan so that we'll save time when we get  
23 together tomorrow.

24 MR. DIGNAN: Thank you, Joe.

25 MR. FLYNN: You're welcome.

1 MR. HUNTINGTON: Your Honor, Geoff Huntington for  
2 New Hampshire. I just want to make it clear that Mr. Bisbee  
3 was not here today because we weren't anticipating that  
4 something like this would come up. I'm not able to answer the  
5 questions today, not because I'm without authority to do it,  
6 but simply because we were without notice.

7 JUDGE SMITH: Well, that's fair enough,  
8 Mr. Huntington, because this was not one of the matters that  
9 was noticed for this conference. We were mainly going to  
10 discuss the schedule for the Massachusetts plan, which I guess  
11 we can do. However, that's going, to a large extent, depend  
12 upon what we work out with FEMA position. Can we talk any  
13 more about the litigation of the Massachusetts plan?

14 MR. TRAFICONTE: Well, any meaningful schedule, it  
15 seems to us, at least -- and again, John Traficonte -- would  
16 depend on the close of the record in the New Hampshire case.  
17 So --

18 MR. DIGNAN: Just so everybody doesn't  
19 misunderstand my position, I don't see any reason why we have  
20 to close the record in New Hampshire before we can move  
21 forward in Massachusetts, especially if the result of this  
22 motion is a def. 1 of one of the issues.

23 JUDGE HARBOUR: Yes, I agree.

24 MR. DIGNAN: That makes no sense to me whatsoever.

25 JUDGE SMITH: Well, the Board agrees we do not

1 categorically exclude beginning the Massachusetts plan while  
2 the record is still open on aspects of the New Hampshire plan.

3 JUDGE HARBOUR: They don't have to be done serially.

4 MS. WEISS: This is Ellyn Weiss. I don't know  
5 whether you want to go into this in detail or not. My concern  
6 is that -- the technical one of whether the record is open or  
7 closed, but just that we cannot be involved in doing two things  
8 at once, and if the record in the New Hampshire hearings is  
9 still open but the case is inactive, I mean, during a period  
10 when we're waiting, you know, then it's fair to say that  
11 people ought to be expected to turn their attention to the  
12 Massachusetts plans. But our concern in this is that our  
13 resources don't enable us to do all these things at one time.

14 But we do have a pleading before the Board, the  
15 Coalition, SAPL, and Hampton, of September 28th, '87, which  
16 makes a proposal --

17 JUDGE SMITH: 60 days.

18 MS. WEISS: That's right.

19 MR. FLYNN: This is Joseph Flynn. I'd like to  
20 suggest that the outcome of the scheduling motion that's just  
21 been made really doesn't affect what you do on the  
22 Massachusetts plan, because the contentions can't even be  
23 generated until a review of the plan is completed, and that  
24 will be, I think, in March, and then next is the proposal for  
25 an exercise, and the exercise report won't come out --

1 MR. TURK: No, I have to disagree with you. This  
2 is Sherwin Turk. There's no reason why contentions cannot  
3 move forward while FEMA's doing a review.

4 MR. DIGNAN: Absolutely.

5 MR. FLYNN: Okay.

6 MS. WEISS: Well, we disagree with that.

7 MR. DIGNAN: I know you do, but that's just the  
8 Applicant's position. I don't see any need why we have to  
9 have a FEMA review.

10 MS. WEISS: So far, I mean, but that's looking down  
11 the road, I mean, at this point we have an enormous set of  
12 documents and a whole bunch of blanks, and a brand new set of  
13 criteria which have never been applied before. And I think  
14 at a minimum we need 60 days to prepare contentions on those.

15 And if FEMA's really going to be finished in March,  
16 then it's probably going to fit fine.

17 JUDGE SMITH: Well, all right. The only thing we  
18 have before us right now is a rather summary motion to set a  
19 schedule and rather summary answers to it, don't do it, or  
20 give us 60 days after the very, very end of the New Hampshire  
21 hearing. Would the parties like to resubmit arguments on it,  
22 or -- I just put it up to us to --

23 MR. TRAFICONTE: Or with schedules.

24 JUDGE SMITH: I beg your pardon?

25 MR. TRAFICONTE: This is John Traficonte. What



1 about proposed schedules?

2 JUDGE SMITH: Proposed schedules.

3 MR. TRAFICONTE: Why don't the parties attempt to  
4 agree on a schedule?

5 MR. TURK: If I can suggest that we wait until  
6 tomorrow's telephone conference call to talk schedule further.

7 MR. DIGNAN: I couldn't agree more, because --

8 JUDGE SMITH: All right.

9 MR. DIGNAN: -- a lot of the problems may go away  
10 once we know where we're going with that --

11 JUDGE SMITH: All right. We'll defer that, than.

12 Was there anything we can do this afternoon yet?

13 Nothing further? All right, then, we'll adjourn,  
14 then, until tomorrow afternoon at 1:15. And thank you for  
15 joining us.

16 MR. TURK: Thank you.

17 MR. TRAFICONTE: Thank you, Your Honor.

18 (Whereupon, at 3:09 p.m., the hearing in the  
19 above-entitled matter was concluded, to be resumed the  
20 following day, Thursday, January 28, 1988, at 1:15 p.m.)

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CERTIFICATE

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This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:  
Name: Public Service Company- of New Hampshire, et al.  
(Seabrook Station, Units 1 and 2)

Docket Number: 50-443-OL; 50-444-OL

Place: Washington, D.C.

Date: January 27, 1988

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken stenographically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

/s/ Kent Andrews

(Signature typed): Kent Andrews  
Official Reporter  
Heritage Reporting Corporation