

ORIGINAL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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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

PREHEARING CONFERENCE

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1 UNITED STATES NUCLEAR REGULATORY COMMISSION

2 ATOMIC SAFETY AND LICENSING BOARD

3

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6 NEW HAMPSHIRE, et al., ) 50-443-OL  
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8 PREHEARING CONFERENCE

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10 Friday,  
10 November 29, 1988

11 Room 428  
12 East-West Towers W.  
12 4350 East-West Highway  
13 Bethesda, Maryland

14 The above-entitled matter came on for hearing,  
15 pursuant to notice, at 2:30 p.m.

16 BEFORE: JUDGE IVAN W. SMITH, CHAIRMAN  
17 Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

18 JUDGE JERRY HARBOUR, MEMBER  
19 Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
20 Washington, D.C. 20555

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

24

25

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15 (No appearance.)

16 For the Town of Kensington:

17 (No appearance.)

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## 1 P R O C E E D I N G S

2 JUDGE SMITH: We're on the record now.

3 We had previously scheduled a prehearing conference  
4 this afternoon hoping that we could address those issues  
5 pertaining to FEMA's past and proposed testimony which remain  
6 for us to consider given the Appeal Board's order partially  
7 suspending proceeding.

8 MR. BROCK: This is Matt Brock. I'm having great  
9 difficulty hearing you.

10 JUDGE SMITH: Yes, I don't think we have a very clear  
11 connection.

12 Can anybody else hear me all right.

13 MR. FLYNN: Your Honor, I can hear you fine.

14 MR. OLESKEY: Barely, Judge, in Boston.

15 JUDGE SMITH: Okay. It would be better, I assume,  
16 then the Boston and out-of-town people -- Ms. Weiss, how about  
17 you?

18 MS. WEISS: I can hear.

19 JUDGE SMITH: I'm going to ask Mrs. Moran to call the  
20 operator and do a better job. It's Boston and Massachusetts, I  
21 mean Boston, and what's that other state, New Hampshire?

22 (Laughter.)

23 MR. HUNTINGTON: This is Geoff Huntington from the  
24 Attorney General's Office. You are very soft for us as well.

25 JUDGE SMITH: All right, but everybody else can hear

1 all right?

2 All right, I am going to ask her to fix that up.

3 We're off the record.

4 (Discussion off the record.)

5 JUDGE SMITH: I'll start from the beginning.

6 The original purpose of asking the parties to join us  
7 in this conference was to see what portion of the hearing  
8 respecting FEMA's testimony we could go ahead with.

9 Has everyone received the April 29 memorandum from  
10 the Appeal Board which --

11 Mr. Oleskey, you are not on?

12 Off the record.

13 (Discussion off the record.)

14 JUDGE SMITH: We'll begin again.

15 We originally had requested this telephone conference  
16 call because the Board wanted to set a schedule for that aspect  
17 of the hearing which was not suspended by the Appeal Board's  
18 order which was -- the suspension was partially lifted on April  
19 27th.

20 My question is, has everyone received the April 27th  
21 memorandum from the Appeal Board. I understand that it has  
22 been read to you if you have not.

23 MR. FLYNN: Your Honor, you referred a little earlier  
24 to an April 29th memorandum.

25 JUDGE SMITH: Yes, I'm starting from earlier on

1 because nobody received that.

2 MR. FLYNN: Okay.

3 JUDGE SMITH: So on April 27th, the Appeal Board  
4 lifted, and I am quoting here, "We decided to lift in part the  
5 suspension of the now scheduled evidentiary hearing. That  
6 hearing may go forward but it is not to include, pending our  
7 further order following disposition of the directed  
8 certification motion, the receipt of evidence from witnesses on  
9 behalf of FEMA."

10 Then it goes on to say that the parties are notified  
11 of this and the parties were also informed, "...that our action  
12 was without prejudice to the entitlement of each party to seek  
13 such additional relief from the Licensing Board with respect to  
14 the upcoming evidentiary hearing as might be thought  
15 warranted."

16 On April 28th, yesterday, the Licensing Board  
17 certified to the Appeal Board a question, and we quoted that  
18 language in our opening paragraphs of the certification. And  
19 then we stated, "The Licensing Board understands the  
20 restriction against the receipt of evidence from witnesses on  
21 behalf of FEMA to mean that we may not require Intervenor or  
22 any party to confront witnesses who are presenting FEMA's  
23 position in the proceeding until the Appeal Board considers  
24 Intervenors' April 22 motion for directed certification. This  
25 understanding is based in part upon Intervenors avowed need for

1 further discovery before being required to cross-examine the  
2 FEMA panel whose prefilled written testimony was served.'"

3 Then we went on to state that the Licensing Board is  
4 not confident that it understands the reach of its authority to  
5 entertain requests for additional relief.

6 We pointed out that there is pending before us the  
7 Intervenors' April 14th application for subpoenas, and that the  
8 Intervenors stated in the motion for direct certification that  
9 they intend to subpoena still others as a part of the  
10 Intervenors direct case.

11 Then we stated this, that the Board itself has need  
12 for additional evidence from FEMA witnesses to satisfy its own  
13 concerns about the quality of the evidence already submitted.

14 We observed that there is pending before us the April  
15 15th application for subpoenas which would require certain  
16 named FEMA employees to attend the hearing, and that the  
17 Intervenors stated in the motion for directed certification  
18 that they intend --

19 Mr. Oleskey, are you still there?

20 MR. OLESKEY: Yes, Your Honor.

21 JUDGE SMITH: Let me take the role quite quickly.

22 Mr. Dignan. Mr. Dignan, you're not there?

23 MR. DIGNAN: Yes, Your Honor, I'm here.

24 JUDGE SMITH: Mr. Turk.

25 MR. TURK: Yes, sir.

1                   JUDGE SMITH: Mr. Flynn?

2                   MR. FLYNN: Yes, I'm here.

3                   JUDGE SMITH: Mr. Huntington and Bisbee?

4                   MR. HUNTINGTON: Yes.

5                   JUDGE SMITH: Mr. Oleskey?

6                   MR. OLESKEY: Yes, sir.

7                   JUDGE SMITH: Ms. Weiss?

8                   MS. WEISS: Yes.

9                   JUDGE SMITH: Mr. Backus?

10                  MR. BACKUS: Yes.

11                  JUDGE SMITH: Mr. Brock?

12                  MR. BROCK: Yes.

13                  MR. TURK: Your Honor, I hear some clicking over

14                  here. Maybe people are pushing their mute buttons. Maybe

15                  that's the interference.

16                  MR. OLESKEY: We hear the clicking, too, in Boston.

17                  JUDGE SMITH: Well, let me go on.

18                  Did everyone hear me read from our certification that

19                  the Board itself has the need for additional evidence from FEMA

20                  witnesses to satisfy its own concerns about the quality of the

21                  evidence already submitted and proposed to be submitted by

22                  FEMA?

23                  MR. OLESKEY: Yes, Your Honor.

24                  JUDGE SMITH: We stated that we assume that the

25                  Appeal Board's order would not prohibit the compelled

1 attendance of named FEMA employees if the purpose of their  
2 attendance is to testify not on behalf of FEMA, but say as on  
3 cross-examination by Intervenors or perhaps as Board witnesses.

4 However, we stated we are not free from doubt on that  
5 score given the Appeal Board's strong action in suspending the  
6 aspect of the hearing pertaining to witnesses appearing on  
7 behalf of FEMA. Therefore, we requested further guidance.

8 This morning we received from the Appeal Board the  
9 following.

10 "In response to its April 28, 1988 certified  
11 question, the Licensing Board is advised as follows: The  
12 single limitation we have imposed upon the conduct of the  
13 evidentiary hearing scheduled to begin on May 2 is that pending  
14 our further order no person in the employ of the Federal  
15 Emergency Management Agency or under contract to that agency  
16 may be called as a witness by any party or the Licensing Board  
17 for the purpose of explaining, defending, or challenging any  
18 FEMA position on the beach sheltering issue."

19 There is a footnote at that point. This is the  
20 footnote. "We do not know whether the Intervenors intend to  
21 seek the testimony of one or more FEMA employees who might be  
22 in disagreement with the current agency position. Although  
23 such an individual would not be appearing 'on behalf of FEMA'  
24 within the meaning of our April 27, 1988 memorandum, it  
25 nonetheless seems advisable to subject his or her testimony to

1 the limitation."

2 Going back to the body of the Appeal Board's  
3 memorandum, "Subject to that limitation, the Licensing Board  
4 remains free to grant such request, if any, for relief in  
5 connection with the hearing as it may deem meritorious in the  
6 circumstances."

7 We don't understand yet from the Appeal Board what  
8 relief we might be able to grant in connection with the FEMA  
9 presentation. We assume that we had been remained free to  
10 grant requests for relief on other aspects of the hearing  
11 because that never was involved.

12 Nevertheless, it is clear that we cannot take the  
13 testimony of any FEMA witness called by any party, as I can  
14 see, for any purpose unless that FEMA employee is known to  
15 disagree, and then we'd better not do it then.

16 In other words, although the Appeal Board did not  
17 answer the very question we wanted answered, you cannot call an  
18 adverse witness from FEMA and cross-examine them.

19 As far as I can see, we are shut down entirely for  
20 proceeding on the FEMA position. I don't know any other  
21 possibility except calling a FEMA witness that Intervenors may  
22 know disagrees with FEMA's current position.

23 MR. TURK: Your Honor, this is Sherwin Turk.

24 JUDGE SMITH: Yes.

25 MR. TURK: I think it might be useful if the parties

1 indicated to you what transpired in our telephone conference  
2 call with the Appeal Board prior to this call today.

3                 The Applicant had indicated to the Appeal Board that  
4 there was no reason to delay hearings on the Applicant's panel  
5 of witnesses or on the prefiled testimony which Intervenors had  
6 submitted. And I believe that's the relief that the Appeal  
7 Board granted when they released the suspension of hearings  
8 except to persons appearing, as they put it, on behalf of FEMA.

9                 So as I read the current Appeal Board directive, it's  
10 that we go ahead on all witnesses other than people appearing  
11 on behalf of FEMA or other FEMA employees, even if they are  
12 being called by other parties than FEMA.

13                 JUDGE SMITH: That's what I read the answer to our  
14 certified question, yes. I don't read that in the memorandum.  
15 I just don't understand it. But I do understand quite clearly  
16 that we cannot compel or accept the testimony of FEMA witnesses  
17 until further order of the Appeal Board.

18                 MR. FLYNN: Your Honor, did I understand you to say  
19 that you no longer have jurisdiction over the request for  
20 subpoenas?

21                 JUDGE SMITH: I don't think that we could sign them,  
22 no. I don't think we can force anybody to attend. I think  
23 that's taken away from us.

24                 MS. WEISS: Well, you know, it seems to me that just  
25 as a matter of logic that any argument on the subpoenas would

1      be deferred until after the Appeal Board decides on whether  
2      it's going to take certification or not since it really is the  
3      same issues involved in the subpoenas as involved in the  
4      discovery ruling.

5                JUDGE SMITH: We certainly do not have the power to  
6      compel the attendance of any FEMA employee for any purpose that  
7      I can see that that might come, and that is to explain, or  
8      defend, or --

9                MS. WEISS: I certainly agree with that.

10               JUDGE SMITH: Yes.

11               MS. WEISS: I certainly agree with that, but I think  
12      that's just logical.

13               JUDGE SMITH: What I don't understand, though, the  
14      thing that is left open, though, is I don't understand what is  
15      the other relief in connection with the hearing that the Appeal  
16      Board is allowing us to grant?

17               I mean, what, you go to the restroom or what? I  
18      don't know. So we'll just let that go.

19               MR. OLESKEY: Well, we had a point, Judge Smith, at  
20      the Mass AG's office that I guess really arose after the  
21      argument with the Appeal Board, but I think it would fall  
22      within the scope of the language and respond to your question.

23               Carol Sneider, if we may, would like to present that  
24      now?

25               JUDGE SMITH: It's not necessary. I think I may have

1 digressed. I think that everyone agrees that whatever the  
2 Appeal Board intends for us to do, it is not to proceed on the  
3 FEMA testimony in any way now.

4 But apparently we can do anything else with respect  
5 to the other witnesses, and the other aspects of the hearing  
6 which I would have assumed would have been the case anyway if  
7 we're allowed to go ahead with that hearing. I don't know.

8 But do you want to be heard on it, Ms. Sneider?

9 MS. SNEIDER: Yes, Your Honor. We're concerned about  
10 going forward with our cross-examination of the Applicant's  
11 witnesses on Monday in light of what we have just --

12 JUDGE SMITH: Now wait a minute, this is different.  
13 This is back to the main case, right?

14 MS. SNEIDER: That's correct.

15 JUDGE SMITH: All right. Does everyone agree now  
16 that we're shut down on the FEMA testimony?

17 Does anybody disagree?

18 (No response.)

19 JUDGE SMITH: All right. So go ahead, Ms. Sneider.

20 The Board rules that we can't proceed on the FEMA  
21 testimony.

22 All right, Ms. Sneider.

23 MS. SNEIDER: Yes, Your Honor, at 5:00 last night I  
24 received a phone call from an employee of New Hampshire Yankee  
25 who informed me that New Hampshire Yankee was serving us with

1 extensive revisions to the New Hampshire plan some time late  
2 next week.

3 I asked if there was any way it could be delivered  
4 today. She told me no. She said these revisions were too  
5 extensive to be mailed, and that they are all-encompassing is  
6 my understanding.

7 I think it creates real problems for us going forward  
8 with Applicant's witnesses before we have seen these revisions.  
9 A number of them it's my understanding, do pertain to the  
10 sheltering issue, and it's also my understanding there are  
11 amendments to the plan that are not included as attachment to  
12 Applicants' testimony.

13 Now we are already served with Applicants' testimony  
14 one amendment that I consider very extensive that we clearly  
15 had enough time to address which goes to the decisionmaking  
16 process. We're expecting that the new amendments will cover  
17 such things as EBS messages which are very critical to our  
18 cross-examination, plans to shelter the transient beach  
19 population, implementing stages for sheltering, and I just  
20 think it's quite impossible for us to go forward until we have  
21 seen what these amendments are.

22 JUDGE SMITH: Mr. Dignan?

23 MR. DIGNAN: Your Honor, the -- well, I couldn't hear  
24 all of that, but I gather what the pitch is, is that the plan  
25 amendments somehow should slow the hearing down.

1           I had my people go over the plan and call me. There  
2 are about five revisions in all these amendments. Again, the  
3 box is going to be big, but they are barred and, as usual, the  
4 questions, you have to produce a lot of pages. It doesn't mean  
5 extensive changes. But there are maybe five that affect the  
6 so-called sheltering issue.

7           One thing we have done is alter the language, if you  
8 recall the famous language of sheltering may not be considered  
9 feasible and that sort of thing. As we testified, that  
10 language has been altered as everybody knows. I don't think it  
11 has anything to do with anything anymore.

12           Appendix F and U are coming in. That was Attachment  
13 1 to our testimony which was filed back on the 15th. They have  
14 had that since our testimony was filed.

15           There's a very minor change in the decision criteria  
16 that is set forth in the decision "blocked tree" type thing  
17 that's in Attachment 2 to our testimony. They have had that  
18 since we filed it.

19           With respect to the big supposed changes to EBS  
20 messages, I understand the only thing they have done is they  
21 have got an EBS message now that tells the transients to go to  
22 shelter, if they elect to use it while they are waiting for the  
23 bus. Again, something we committed to in Mr. Strome's letter  
24 to the state -- excuse me -- to FEMA at the time that the state  
25 answered the piece of FEMA testimony.

1           So there is nothing in the plan which people haven't  
2   had notice on. Or whether they have or not, the fact of the  
3   matter is nothing in the plan alters the testimony we are going  
4   to file, and it can be cross-examined without reference to this  
5   plan change.

6           The reason for the timing of the changes was very  
7   simple. FEMA has been pushing that some changes come in  
8   because they are looking towards the exercise, and this, that  
9   and the other thing. But I think this is just the usual rerun  
10   of the argument that says, that I thought had been decided a  
11   long time ago against the Commonwealth that someone there has  
12   to be a complete, unalterable plan in stone or we can't have  
13   hearings.

14           But there is nothing extensive, nothing that affects  
15   our testimony as it was filed. I see no reason for a stay.

16           MR. TRAFICONTE: Your Honor, may I just be heard  
17   briefly? It's Traficonte in the Mass. AG's office.

18           JUDGE SMITH: Just a moment, Mr. Traficonte.

19           Mr. Dignan, you stated somewhere in your remarks that  
20   testimony that you are going to file or are about to file?

21           MR. DIGNAN: No, that we have filed.

22           JUDGE SMITH: Have filed, all right.

23           Mr. Traficonte.

24           MR. TRAFICONTE: Yes, just very briefly because of  
25   Mr. Dignan's point that we don't need these amendments, or that

1 the amendment does not require a delay in the hearings. But  
2 I'll just give you an example, a very concrete example.

3 I was intending Monday afternoon when we begin to  
4 wind up my cross-examination of Dr. Miletì who appears on the  
5 sheltering panel. In that testimony package, there is a  
6 representation that EBS messages are being prepared for the  
7 beach population in the limited circumstances in which  
8 sheltering would be the recommendation for that population.

9 Those messages have not been made available to us. I  
10 have not read them.

11 MR. DIGNAN: I'm not relying on them to win my case  
12 either, and I put my testimony in with a "will be prepared".  
13 And if that's not good enough to carry the day, I guess I lose.  
14 Or if you get this thing later, you can move to get Miletì back  
15 and cross-examine him on it if you want to.

16 MS. WEISS: You know, if you already know what these  
17 changes are, why in the world could we not have these? I  
18 mean --

19 MR. TRAFICONTE: That is really where I was going,  
20 Your Honor. My point is simply a question of a practical  
21 convenience to all the parties. And it seems to me now, having  
22 gone through this argument about four times, even to the Board,  
23 why are we always getting calls late in the day, being told  
24 that we are about to be delivered a new amendment.

25 I don't disagree that the messages could come in and

1 I could get Dr. Miletí back. But if the messages had been  
2 provided, for example, to me today or yesterday or I had some  
3 notice of this, I could have read them and then intelligently  
4 cross-examined Dr. Miletí on them.

5 It seems to us at least that this is just a  
6 frustrating aspect of this that is completely unnecessary.

7 JUDGE SMITH: Mr. Traficante, I read from your letter  
8 to Mr. Dignan that you had finally mastered the art of going  
9 through these amendments, but apparently you have been  
10 overwhelmed on it this time.

11 MR. TRAFICONTE: I haven't even seen them to -- I  
12 haven't even physically seen this amendment yet. I could even  
13 review these messages over the weekend.

14 MR. DIGNAN: Judge, to get in focus how important  
15 this is to litigating the case, Ropes & Gray doesn't have the  
16 amendment yet. That's how critical it is.

17 MS. WEISS: Well, how are we supposed to know that?  
18 You have talked to your people about what's in there. How are  
19 we supposed to know that?

20 MR. DIGNAN: I have them today, because I knew I  
21 would face this argument, and I said, run it down for me. I  
22 mean these things -- my testimony has absolutely no dependence  
23 on this amendment whatsoever.

24 MS. WEISS: Well, your testimony may not, but our  
25 cross might conceivably. I just can't understand why if your

1 people can tell you what these amendments are in such detail,  
2 why they couldn't have been mailed to us.

3 MR. DIGNAN: They were put in the mail to you before  
4 they were put in the mail to me because it takes awhile to  
5 physically prepare an amendment, that's why.

6 The fact of the matter is --

7 (Simultaneous conversation.)

8 JUDGE SMITH: Wait a minute, you're off the record.

9 Stop. You are overtalking. Just one at a time.

10 Ms. Weiss, would you restate your point?

11 MS. WEISS: The point was we don't -- Mr. Dignan may  
12 or may not rely on these changes. I don't know what these  
13 changes are. I haven't seen them, I haven't talked to people  
14 who have seen them. We may wish to rely on those for our  
15 cross-examination, or they may change aspects of the cross-  
16 examination.

17 And my point is simply if Mr. Dignan's people know in  
18 such detail what these amendments are, why in the world  
19 couldn't they have been put in the mail to us so that we would  
20 have them before we go up to New Hampshire. It's a matter of  
21 simple courtesy.

22 MR. BACKUS: Judge Smith.

23 MR. DIGNAN: Your Honor, my point was they have got  
24 all the amendments with the exception of the EBS message. They  
25 were in Attachment 2 and in Attachment 1 to the testimony.

1                   JUDGE SMITH: We're not going to stay the hearing,  
2 but when we convene on Monday or sometime soon, the Board would  
3 like to address the problem of the amendments and a way in  
4 which the parties can get amendments timely; and more  
5 important, understand -- not more important, but equally  
6 important is to understand them without a lot of reading.

7                   We'll come back to that, but we see no basis to  
8 suspend the hearing. The main reason why we allowed Ms.  
9 Sneider to bring it up today is to forewarn all the parties  
10 that they are going to be arguing that on Monday. But we will  
11 proceed with the hearing on Monday as scheduled.

12                  MR. BACKUS: Judge Smith, is this conference on the  
13 record?

14                  JUDGE SMITH: Yes.

15                  MR. BACKUS: Okay. Well, then for the purpose of the  
16 record, I understand what you have just said. I would just  
17 like to say that it's our view that the hearing should be off  
18 so that the Applicants' testimony, which basically deals with  
19 the FEMA position, can be dealt with at one hearing session,  
20 not separately.

21                  MS. WEISS: I would just like to make a formal  
22 request that we at least have the amendments in hand on Monday.

23                  JUDGE SMITH: Mr. Dignan.

24                  MR. DIGNAN: The amendments, I hope will be down to  
25 them. If they haven't been -- I know some of them, I thought,

1 were in the hands of the Mass. AG today. I will see to it that  
2 the people have the EBS messages with them.

3 MS. SNEIDER: This is Carol Sneider. I requested  
4 that the amendments be delivered to me today, and I was told  
5 that the middle of next week was the earliest I could receive  
6 the messages.

7 And I would also like to suggest if we could get the  
8 message in hand on Monday, I would like to suggest that one  
9 approach may be if the Intervenors' witnesses went on first to  
10 be crossed so that we would at least have an opportunity to  
11 review the amendments before we had to cross the Applicants'  
12 witnesses.

13 JUDGE SMITH: The difficulty the Board is having is  
14 that we don't have a feeling of how important the amendments  
15 are to the prefilled testimony. We haven't identified the part  
16 of it. If, as it seems to be, a question of the EBS  
17 messages --

18 MS. SNEIDER: Your Honor, it's more than just the EBS  
19 messages. It's implementing the pages for the transit-  
20 dependents.

21 I might just add that Mr. Dignan made a  
22 representation that the decisionmaking amendments were not  
23 significant. We consider those major changes to the  
24 decisionmaking plan that we have just recently been apprised  
25 of. So, obviously, our viewpoint is different in terms of

1 what's significant or what is not significant.

2 MR. DIGNAN: Mr. Sneider, what amendments are you  
3 talking about? Are you talking about what's in the attachment  
4 to the testimony, because that's what's in the plan?

5 MS. SNEIDER: Yes, I am, and others that we are  
6 anticipating that you say are minor. I don't know based on all  
7 the evidence if they are minor or not,

8 MR. DIGNAN: I know of none that aren't in that  
9 testimony.

10 JUDGE SMITH: Mr. Dignan, would it be possible for a  
11 representative of your office, or perhaps New Hampshire Yankee,  
12 but preferably your office to meet with the Intervenors on  
13 Monday morning with the amendments?

14 MR. DIGNAN: Yes, we could -- well, what I will do is  
15 I will ask New Hampshire Yankee to have a red-lined copy up  
16 there, and I will sit them down and they can ask all the  
17 questions they want.

18 Understand something, Your Honor. I don't have it  
19 either. This thing might have been copied and filed the day  
20 after we finish the hearings up there.

21 JUDGE SMITH: Well, that's a point that you make  
22 there that troubles me, too. And that is, it would be better  
23 if there were greater control by you over these packages coming  
24 in here.

25 MR. DIGNAN: Well, Your Honor, it wouldn't be better

1 if there were greater control. The lawyer is not needed to  
2 control these. These things get filed on a schedule and put by  
3 the state in as amendments on a schedule that is their own.  
4 And you asked me at the outset of this case was I prepared to  
5 try my case without an in-place, concrete plan. I said, yes.  
6 I said, there is going to be amendments, and this, that and the  
7 other thing.

8 JUDGE SMITH: I understand that.

9 MR. DIGNAN: And the point we're making here is  
10 because coincidentally with the start of the hearings there is  
11 a set of amendments going in, now this is grounds for a stay  
12 all of a sudden.

13 All I am pointing out to you, Your Honor, is if the  
14 work had been done at a later time, the amendment would have  
15 come in two weeks from now, and there wouldn't have been this  
16 motion.

17 JUDGE SMITH: The request is simple.

18 MR. DIGNAN: The answer is, I will have people from  
19 New Hampshire Yankee there, and from my officer there, and we  
20 will --

21 JUDGE SMITH: At the hearing room.

22 MR. DIGNAN: I assume they can bring a red-lined  
23 copy, a lined copy up with them. They will sit down with the  
24 Intervenors and talk to them all they want.

25 JUDGE SMITH: All right, let's set the time for that.

1       Ten o'clock alright, everybody?

2                  MS. WEISS: I'm not getting in to Boston until about  
3                   9:00 in the morning.

4                  MR. BACKUS: Judge, this is Bob Backus.

5                  I have a hearing that morning.

6                  JUDGE SMITH: Well, it's going to be available.

7       Those that can make it, fine. The Massachusetts Attorney  
8       General can. Ten o'clock in the hearing room.

9                  MR. DIGNAN: In the hearing room?

10                 JUDGE SMITH: Yes.

11                 MR. DIGNAN: All right, Your Honor.

12                 JUDGE SMITH: All right, Ms. Sneider.

13                 MR. TRAFICONTE: We can get somebody there close to  
14       10.

15                 JUDGE SMITH: All right. Anything further this  
16       afternoon?

17                 MR. TRAFICONTE: Yes, we filed a motion which I hope  
18       you have received by fax, having to do with a request for an  
19       additional 10 days on our proposed findings on the main track.  
20       The basis of the request is primarily just the ill health of  
21       the lawyer who has been primarily responsible for working on  
22       that, and he's been unable to devote his full attention this  
23       week, and he is again ill today.

24                 And although I have some responsibility for that  
25       document, I intend to be up at the hearings next Monday and

1       Tuesday, and then I have to go and have some medical work  
2       myself on Wednesday and probably through the rest of next week.

3                 And right now they are due on the 9th, and we would  
4       request 10 additional day for that reason alone. None of the  
5       other Intervenors request additional time in which to file the  
6       proposed findings. SAPL would ask for 10 days for it to file  
7       an accompanying legal memorandum to the findings that it will  
8       be prepared to file in accordance with the present deadline.

9                 JUDGE SMITH: Mr. Dignan, I understand that you were  
10      consulted on this.

11                MR. TRAFICONTE: Mr. Dignan informed me this morning  
12      or yesterday that his client would not permit him to agree to  
13      the extension.

14                MR. DIGNAN: Your Honor.

15                JUDGE SMITH: Mr. Dignan.

16                MR. DIGNAN: Well, yes, that's put in a pejorative  
17      way. Understand, I didn't force it on the client either.

18                I'll tell you, I've been giving every extension  
19      that's been asked. Everyone got 30 days extra with the  
20      blessing of the Applicant and everything else. Now, I said it  
21      literally that way. I'm not extending. I fully understand  
22      it's in the Board's discretion, and the Board has a better  
23      control of whether they need these things 10 days early or not,  
24      and I'm not going to make a large gripe whichever way you come  
25      out. I've been handing out extensions right and

1      left, and a 30-day extension has been granted on this thing  
2      already, and I fail to see why another 10 days is necessary.

3                JUDGE SMITH: All right, the Board is going to  
4      consult.

5                (Board confer.)

6                JUDGE SMITH: Here's our position on this.

7                Number one, we have noted that Mr. Traficonte as an  
8      individual has rarely if ever, that I know, objected to a  
9      reasonable and rather fast hearing schedule. He has acceded in  
10     the past to schedules which clearly require hard work, fast  
11     work when his representation of professional and personal need,  
12     we accepted, particularly from Mr. Traficonte. So we want to  
13     entertain his motion.

14               However, we also want, on another basis, too, and  
15     that is if we give him five days, we might as well give him the  
16     entire amount because we simply cannot use those papers  
17     beginning on the 16th. There is no use for them, because we  
18     will be, I hope, in hearing up in Concord. So we are inclined  
19     to do it.

20               However, I would like to have some representation to  
21     Mr. Traficonte, or the Massachusetts Attorney General, that the  
22     additional time is actually needed and that it will not, other  
23     than the time involved, it will not put the Applicant to any  
24     litigative disadvantage.

25               In other words, about how long do you think that your

1 findings are going to be?

2 MR. TRAFICONTE: Well, Attorney Fierce, who is not  
3 available right now, is the person who is drafting them and has  
4 been working on them fairly diligently. I don't honestly know  
5 how long they will be. I know how long the portion that I am  
6 responsible for will be. It will be less than 20 pages. I  
7 honestly don't know how many pages his final product will be.

8 JUDGE SMITH: If we grant this extension, and in  
9 comes 800 pages --

10 MR. TRAFICONTE: No, no.

11 JUDGE SMITH: -- we are going to be upset, you know.

12 MR. TRAFICONTE: Well, we have filed a document of  
13 the endless number of pages, Your Honor.

14 JUDGE SMITH: I beg your pardon?

15 MR. TRAFICONTE: We've already filed the document  
16 that had a lot of pages in it.

17 JUDGE SMITH: Yes, I know. I understand that. I  
18 don't understand the relevance though.

19 Would you explain that again, Mr. Traficonte?

20 MR. TRAFICONTE: If you are afraid that giving us a  
21 week or 10 days will produce another overly long document, we  
22 would be simply preparing in this time what we -- it would not  
23 add to the length of the document. We would do the same job we  
24 would be attempting to do. We would just be able to do it  
25 without having somebody basically work sick.

1                   JUDGE SMITH: Okay. The Board will grant the  
2 extension.

3                   MR. TRAFICONTE: Thank you.

4                   MR. DIGNAN: Your Honor, what does that do to the  
5 time for filing for the staff on proposed findings and my  
6 reply?

7                   JUDGE SMITH: You keep your schedule. We are also  
8 apparently then giving Mr. Backus an opportunity to file legal  
9 arguments. Just keep the same interval.

10                  MR. DIGNAN: So just add 10 days to those two times?

11                  JUDGE SMITH: Right.

12                  MR. DIGNAN: Okay, I've got the calculation here,  
13 because I want to the Board to be aware of it in terms of the  
14 timing.

15                  On that basis, my reply will be on June 10th.

16                  MR. TURK: What does that do to the Staff's date,  
17 Tom?

18                  MR. DIGNAN: And that would move the Staff to,  
19 according to what I have in my calendar, it would move you to  
20 the 29th, which is a Sunday; the 30th is a holiday. So you  
21 would be due in on the 31st of May.

22                  JUDGE SMITH: Okay. Now you're going to keep the  
23 same interval with respect to the other Intervenors, those who  
24 have not asked for an extension.

25                  MR. DIGNAN: That's what I was going to ask. You

1 know, you want me to file two replies?

2 JUDGE SMITH: Yes. But however I want Massachusetts  
3 Attorney General to understand that they cannot, in their  
4 initial filing, address your response to other Intervenors.

5 MR. DIGNAN: Well, I'm wondering if I wouldn't rather  
6 just give everybody an extension and file one reply, Your  
7 Honor.

8 JUDGE SMITH: It's up to you. You certainly are  
9 entitled to that.

10 MR. DIGNAN: I really think I would, and I'll tell  
11 you why. Because my experience in these multiple cases is that  
12 certain -- it will be for the first time know certain of the  
13 positions taken overlap, and it's easier to pick them all up in  
14 one reply and answer them.

15 JUDGE SMITH: Yes, we agree. We agree with that.

16 MR. DIGNAN: So then the Intervenors will all have an  
17 extension until the --

18 JUDGE SMITH: No. No, only the -- you will have the  
19 extension with respect to all of the Intervenors' filings, but  
20 the other Intervenors will not have an extension. We could be  
21 using those.

22 MR. DIGNAN: All right.

23 JUDGE SMITH: That's part of our ruling, too; that  
24 there will be plenty for us to do.

25 MR. DIGNAN: All right, but my reply to everybody

1 will be due June 10th.

2 JUDGE SMITH: If that's the correct date, yes; if  
3 that's the interval date.

4 MR. DIGNAN: Yes, it is, Your Honor.

5 JUDGE SMITH: Yes.

6 MR. TURK: Your Honor, Sherwin Turk.

7 On the Staff's response on findings, I assume that  
8 our pleading will be due May 31?

9 JUDGE SMITH: Would you say that again?

10 MR. TURK: Mr. Dignan indicated that the Staff's  
11 filing moving out 10 days would then become due May 31st, and  
12 our pleading will also address all of the findings at one time.

13 JUDGE SMITH: We want to consult.

14 (Board confer.)

15 JUDGE SMITH: All right, Mr. Turk, as I understand it  
16 now -- can I be heard?

17 MR. TURK: Yes.

18 JUDGE SMITH: As I understand it now, the Staff will  
19 be filing its proposed findings on May 31st?

20 MR. TURK: That's my understanding, Your Honor.

21 JUDGE SMITH: All right, and then the Applicant on  
22 June 10th.

23 MS. WEISS: And everyone else's is due May 9?

24 JUDGE SMITH: That's right, except for Massachusetts  
25 Attorney General, and SAPL's legal brief.

1                   MR. BACKUS: Does that mean, Judge Smith, that our  
2 findings apart from the legal brief have to be in on the 9th?

3                   JUDGE SMITH: Yes. That was the only motion before  
4 us.

5                   MR. BACKUS: All right. We may, Your Honor, in view  
6 of that, choose to file a brief at the completion of the entire  
7 case instead of on the 19th, and go ahead with just our  
8 findings on the 9th.

9                   JUDGE SMITH: Well, I don't know if that option is  
10 open to you, Mr. Backus. If you are going to file -- I have no  
11 particular objection to it, but normally we set the schedule  
12 for briefing here, and we did provide for a separate briefing  
13 on the -- other than the sheltering, and why would you do that?

14                  MR. BACKUS: Well, I think at some time it's -- I  
15 would hope it would be helpful to put together all these  
16 discrete things that we're putting together in a findings of  
17 rulings and present the Board with an overall view of the case  
18 and how these things fit together.

19                  You know, we break it apart pretty minutely in these  
20 findings, and we would like to put together a document to show  
21 you how we think these parts fit together to arrive at ultimate  
22 conclusions.

23                  JUDGE SMITH: Well, I think -- you make whatever  
24 legal arguments you want us to consider in that set of proposed  
25 findings. And if you leave out any argument on that set, well,

1 it's at your risk. You can restate them at the end if you  
2 wish. Yes, I guess that would be our ruling.

3 MR. BACKUS: So you won't --

4 JUDGE SMITH: Unless you are asking for -- oh, you  
5 got your relief on the arguments.

6 MR. BACKUS: Yes. So you will not be asking for  
7 briefs at the end of the entire case on the entire case.

8 JUDGE SMITH: We haven't gone to the end of the  
9 entire case. I haven't even addressed that problem yet.

10 MR. BACKUS: No.

11 JUDGE SMITH: I assume that we -- yes, we are  
12 required by the Administrative Procedure Act in the  
13 Commission's rules to give you an opportunity to file proposed  
14 findings and proposed conclusions of law.

15 MR. TURK: I think Mr. Backus is hoping to make his  
16 legal filing after the shelter portion of the case concludes.

17 JUDGE SMITH: I know, and we said that if he -- that  
18 he does that at his own risk; that we will be addressing the  
19 proposed findings that are due on the 9th on the papers that we  
20 receive.

21 MR. DIGNAN: Well, Your Honor, I object to his  
22 getting any right to brief these matters after that. I am  
23 supposed to have the last right of reply. That last right of  
24 reply will be in on the 10th of June on all matters tried to  
25 date. And if Mr. Backus comes in with a brief after that, it

1 should be stricken, on those issues.

2 JUDGE SMITH: That's correct. The difficulty is at  
3 the end of the case, at the end of the case, including  
4 sheltering, we will also be asking for proposed findings.

5 MR. DIGNAN: On sheltering.

6 JUDGE SMITH: That's right, on conclusions of law.

7 MR. DIGNAN: Right.

8 JUDGE SMITH: And I don't know how he would be  
9 limited in what I would imagine would be very broad arguments  
10 as to the whole case. I don't know. We haven't addressed that  
11 yet.

12 MR. DIGNAN: I'm not concerned --

13 JUDGE SMITH: But so far you have prevailed.

14 MR. DIGNAN: -- right of reply to that.

15 JUDGE SMITH: How's that?

16 MR. DIGNAN: I am not concerned about that, because I  
17 assume I have a right of reply.

18 JUDGE SMITH: Yes, that's right.

19 MR. DIGNAN: All right, fine.

20 JUDGE SMITH: But our point is that we will be free  
21 to rule on those issues that are covered in the proposed  
22 findings coming up based upon the papers before us.

23 MR. DIGNAN: Correct.

24 JUDGE SMITH: And if you withhold any arguments that  
25 you want to put in later, you do so at your own risk.

1           I would guess, Mr. Traficonte, that your proposed  
2 findings are going to include legal arguments which are rather  
3 parallel to the legal arguments you made in your contentions,  
4 your new contentions on the Massachusetts plan?

5           MR. TRAFICONTE: Well, we would intend to put in some  
6 briefing, that's correct. But I believe that in light of the  
7 portion of the case that we are handling, that the briefing  
8 that we intend to be putting in and filing now has to do with  
9 ETEs and our belief that there is in fact some limit to an  
10 acceptable ETE.

11           JUDGE SMITH: Yes, okay.

12           MR. TRAFICONTE: But we would intend to brief that at  
13 this juncture, yes.

14           JUDGE SMITH: Yes, all right.

15           Anything further this afternoon?

16           MR. DIGNAN: Yes, Your Honor, I have one inquiry.

17           With respect to this meeting on Monday morning in the  
18 hearing room with our technical people, I am assuming that what  
19 people are interested in going over is the shelter-related  
20 amendments.

21           MS. WEISS: Correct.

22           JUDGE SMITH: That was my understanding.

23           MR. DIGNAN: Because if -- that's what I wanted to be  
24 sure of, because the people who will be available will be  
25 available to address that. If we are going to address

1 everything, we need an auditorium.

2 MR. TRAFICONTE: John Traficonte.

3 Mr. Dignan, I may have misunderstood earlier comments  
4 you made.

5 Do I understand that to mean that this amendment then  
6 changes other portions of the plan in any substantial way that  
7 are outside the sheltering area?

8 MR. DIGNAN: The amendment covers the whole plan,  
9 John.

10 JUDGE SMITH: All right, so that meeting will -- is  
11 intended to cover sheltering amendments, and the purpose of it  
12 is to prepare as much as possible the other parties for the  
13 hearing that's scheduled the rest of the week. It begins at  
14 10.

15 Ms. Weiss, I understand that you will not be there  
16 until later?

17 MS. WEISS: Yes, that's right. I probably won't be  
18 up there until lunchtime.

19 JUDGE SMITH: Anything further this afternoon?

20 MR. TURK: Yes, Your Honor. This is Sherwin Turk.

21 I wanted to mention that the Staff will need an  
22 extension of time to respond to the contentions. As of now our  
23 response is due next Tuesday, the 3rd. We have been preparing  
24 our responses, but then we also had other matters we had to  
25 respond to this weeks which were not anticipated when the first

1 schedule was set up.

2 So we would like until the week -- we would like to  
3 have the week after the hearing week to finish our response to  
4 contentions. And what I am requesting is that we be allowed to  
5 file our response to contentions on the 16th of May, on Monday.

6 JUDGE SMITH: Well, that's the earliest that we could  
7 possibly use them anyway, so that's fine.

8 MR. TURK: In fact, we may even be in hearing that  
9 week, depending on --

10 JUDGE SMITH: Oh, the 16th. I missed that. When  
11 were they due?

12 MR. TURK: They are due this coming Tuesday, the 3rd,  
13 while we will be up at the hearing. But because of the other  
14 things we have had to respond to and the fact that we will be  
15 in hearing next week that will keep us from filing next week,  
16 and also the fact that we will be in hearing will keep us from  
17 filing the next week because we won't have finished them yet.

18 MS. WEISS: I would -- Your Honor, I would object to  
19 that. There has been one piece of paper filed by the Staff.  
20 It's not a lengthy brief, you know, and they don't have any  
21 witnesses to present at this hearing, and I think they have had  
22 sufficient time, and I would just object to it.

23 JUDGE SMITH: How are you injured by that, Ms. Weiss?

24 MS. WEISS: Well, you know, we need to get to work  
25 on --

1                   (Laughter.)

2                   JUDGE SMITH: All right, your objection is overruled.

3                   MR. TURK: Thank you, Your Honor, and one other thing  
4 I wanted to note. I don't know if you had heard before, I had  
5 filed a letter today making some corrections to a page of our  
6 brief filed yesterday on the subpoena. I don't know if you  
7 will have any use for it this weekend, but I just wanted to let  
8 you know that we had made some corrections to some citations  
9 there.

10                  JUDGE SMITH: All right. Is there anything further?

11                  I do want to point out to the parties the  
12 significance of our certification to the Appeal Board, and that  
13 is, providing that the directed certification does not prevent  
14 us from doing so, we do have our own questions and requirements  
15 with respect to FEMA's previously submitted testimony and the  
16 testimony it proposes to submit.

17                  MR. FLYNN: Would it be appropriate to inquire what  
18 you're looking for, so that I can communicate that to FEMA  
19 management?

20                  JUDGE SMITH: I think we'll wait. Yes, we'll wait  
21 until there is more time and a better opportunity. But our  
22 intention would be to grant a substantial part of the relief,  
23 not all of it, but a substantial part of the relief that has  
24 been requested by the joint Intervenors as far as FEMA is  
25 concerned.

1                   All right, anything further?

2                   MR. DIGNAN: Your Honor, there -- the only thing, in  
3 light of the Board's last comment, the Board may recall that at  
4 the last set of hearings I filed a motion with the Board, which  
5 was rather thick, seeking the compulsion of Messrs. Bores --

6                   JUDGE SMITH: I have it on my desk right now before  
7 me.

8                   MR. DIGNAN: I was just going to say, I'm not urging  
9 a ruling or anything, but as far as I know that motion is still  
10 alive and available to me and has not been denied. Am I  
11 correct on that?

12                  JUDGE SMITH: That's correct.

13                  MR. DIGNAN: Thank you.

14                  JUDGE SMITH: I'll sum up.

15                  The Board has troubles right now with the original  
16 FEMA position and the current FEMA position. And we do not  
17 believe that there is a record that exists now that we can in  
18 good conscious make a finding one way or the other, or it's  
19 likely to be developed based upon what we know about it.

20                  So we will wait, however, until that's all worked  
21 out, and identify our needs because we are specifically  
22 prohibited from proceeding along that line by the Appeal  
23 Board's response to our certification.

24                  Anything further?

25                  (No response.)

1                   JUDGE SMITH: If there is nothing further, we will  
2 see you Monday, and I assume that we will be proceeding with  
3 the Applicants' panel as we usually do, but the parties are  
4 certainly free to change that sequence.

5                   MR. DIGNAN: My understanding, Your Honor, is there's  
6 general agreement that we'll go with the Applicant, and then I  
7 don't know whether it's the Commonwealth that's going to go  
8 next or there was testimony filed by Mr. Brock.

9                   MR. TRAFICONTE: The Commonwealth, Your Honor.

10                  MR. DIGNAN: Commonwealth will go second?

11                  MR. TRAFICONTE: Yes.

12                  MR. DIGNAN: Okay.

13                  JUDGE SMITH: All right, thank you.

14                  MR. TRAFICONTE: Thank you.

15                  JUDGE SMITH: We're adjourned.

16                  (Whereupon, at 3:34 p.m., the prehearing conference  
17 was concluded.)

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1 CERTIFICATE  
2

3 This is to certify that the attached proceedings before the  
4 United States Nuclear Regulatory Commission in the matter of:

5 Name: Public Service Company of New Hampshire, et al.  
6 (Seabrook Station, Units 1 and 2)

7 Docket Number: 50-443-444-OL

8 Place: Bethesda, Maryland

9 Date: April 29, 1988

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

16 /S/ Kent Andrews  
17 (Signature typed): Kent Andrews

18 Official Reporter

19 Heritage Reporting Corporation

20

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