

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)

EVIDENTIARY HEARING)

PUBLIC SERVICE COMPANY OF)

NEW HAMPSHIRE, et al)

(SEABROOK STATION, UNITS 1 AND 2))

DOCKET: 50-443-OL
50-444-OL
OFFSITE EMERGENCY
PLANNING

Pages: 13317 through 13358

Place: Washington, D.C.

Date: June 9, 1988

TR-01
011

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888

1 UNITED STATES NUCLEAR REGULATORY COMMISSION
 2 ATOMIC SAFETY AND LICENSING BOARD

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 4 In the Matter of:)
 5 PUBLIC SERVICE COMPANY OF)
 NEW HAMPSHIRE, et al.,) Docket Nos.
 6) 50-443-OL
 (SEABROOK STATION, UNITS 1 AND 2)) 50-444-OL
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 TELECONFERENCE) PLANNING
 8)

9
 10 Thursday,
 June 9, 1988

11 Room 428
 12 East-West Towers, West Tower
 Bethesda, Maryland

13 The above-entitled matter came on for hearing,
 14 pursuant to notice, at 3:10 p.m.

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

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

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

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P R O C E E D I N G S

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JUDGE SMITH: We're on the record.

Good afternoon.

Mr. Dignan, you requested the telephone conference call, do you have any business.

MR. DIGNAN: Well, no, Your Honor, my preference was to ascertain exactly what the procedure was going to be Tuesday morning.

JUDGE SMITH: Did -- we're going to begin at 9 o'clock with the direct testimony of Mr. Thomas. Mr. Thomas's attorney, I had a telephone conversation with him, he understands that Mr. Oleskey will have the lead responsibility of developing Mr. Thomas's testimony.

He also appreciates the utility of that because Mr. Oleskey has a very good command of the factual background. He will then have an opportunity to examine Mr. Thomas on matters that Mr. Oleskey may have overlooked.

I suppose that we would accept, if offered, a statement, a narrative statement from Mr. Thomas if he wished to give one. We hadn't even thought about that.

That phase of the proceeding will be completed at the close of business on Tuesday.

MR. DIGNAN: Well, Your Honor, this is what I wanted to talk to you, I must confess I went into the law books to see if I could find anything on it. This business of having a

1 witness's own lawyer examine him for any purpose in an
2 adjudicatory proceeding is totally foreign to me.

3 JUDGE SMITH: Well, it won't be after Tuesday.

4 MR. DIGNAN: Well, I gather that that's the ruling,
5 and so I guess if that's the ruling there's no sense of my
6 arguing it. But -- and I won't obviously not argue it then and
7 I don't want to waste time doing it, if that's the ruling. I
8 just don't understand it.

9 Mr. Oleskey, presumably, is going to put some
10 evidence in for Mr. Thomas -- through Mr. Thomas and Mr. Thomas
11 is going to be cross-examined on whatever is relevant to the
12 case.

13 JUDGE SMITH: Mr. Barchak, Mr. Thomas's lawyer, told
14 me he was going to be working with Mr. Oleskey. It may very
15 well be that he'll have no need for any additional direct, but
16 this is the only practical opportunity, the only forum that Mr.
17 Dignan has that -- where his interests can be addressed.

18 MR. DIGNAN: Your Honor, you said Mr. Dignan, you
19 meant Mr. Thomas?

20 JUDGE SMITH: Yes, what did I say?

21 MR. DIGNAN: You said Mr. Dignan.

22 JUDGE SMITH: Oh, yes, right. I'm sorry, Mr. Thomas.
23 It's a practical matter. I don't know any other forum that he
24 has. It is not dictated by the needs of the case, Mr. Dignan,
25 it is dictated by simple fairness. And it may be a Board

1 indulgence, but we think that that's one of our prerogatives.
2 Nor do I see how anybody is hurt.

3 MR. DIGNAN: All right. I assume whatever Mr.
4 Barchak elicits will be fair game for cross-examination also.

5 JUDGE SMITH: Assuming that it is competent evidence
6 and relates to the issues before us.

7 MR. DIGNAN: Your Honor, if it is not competent
8 evidence or doesn't relate to the issues before us why is it
9 going to get in, in the first place.

10 JUDGE SMITH: It shouldn't.

11 MR. DIGNAN: All right.

12 JUDGE SMITH: It is not going to be turned into a
13 hearing on Mr. Thomas.

14 MR. DIGNAN: Your Honor, no one wants that less than
15 I do. But I respectfully suggest the procedure whereby a
16 witness's own lawyer examines him for any purpose as opposed to
17 simply being there to advise him of his rights and privileges,
18 immediately turns the hearing into a hearing on that witness.

19 This is my difficulty with this procedure.

20 JUDGE SMITH: Yes. And I'm very sensitive to it. I
21 mean, I see the merit of your argument. And were there any
22 other forum open to Mr. Thomas to address the problem, you
23 would probably prevail with your argument.

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

25 MR. DIGNAN: Because -- I'm grateful to the Board for

1 having the conference call because I don't want to waste
2 anybody's time with me arguing this, but I may be respectfully
3 permitted a question to Your Honor. What is the alleged
4 problem that Mr. Thomas has to address that he has no other
5 forum to address?

6 MS. WEISS: If we're going to get into that, don't
7 you think that his lawyer should be on this call? If we're
8 going to argue the right of his lawyer to question him,
9 shouldn't his lawyer be on this call?

10 MR. DIGNAN: Ms. Weiss, I couldn't agree with you
11 more.

12 JUDGE SMITH: All right. Mr. Dignan, I think that
13 you're borrowing trouble that may never come up. I do not see
14 why Mr. Thomas will be called upon to do anything except
15 address issues relevant to this case.

16 I would expect Mr. Barchak, if he sees anything that
17 is particular to Mr. Thomas's needs and falls within the issues
18 of this case to consult with Mr. Oleskey so Mr. Oleskey can
19 adopt it.

20 It will only be if something unforeseen, which I
21 cannot identify or predict should arise that we will come to
22 the other problem. But the initial invitation to Mr. Thomas to
23 have an attorney was really more intended to give him an
24 opportunity to be present when others testified contrary to his
25 point of view, and that's past now.

1 We will try to accommodate everybody's legitimate
2 interests in it. If there's going to be aspects of it that we
3 think that Mr. Thomas should be allowed to testify that do not
4 relate to the issues in the proceeding, then maybe they won't
5 be received as evidence; I don't know.

6 Mr. Dignan, how are you prejudiced?

7 MR. DIGNAN: Well, Your Honor, I suppose the easiest
8 thing to say, my name certainly has been featured prominently
9 in my local press, courtesy of that gentleman.

10 JUDGE SMITH: I mean, how are you prejudiced by our
11 ruling?

12 MR. DIGNAN: Because I don't understand -- I fully
13 understand Mr. Oleskey adducing testimony that is, in his
14 judgment, in support and relevant to his case. I do not
15 understand the need for another lawyer to adduce other stuff
16 that apparently Mr. Oleskey doesn't feel is necessary to his
17 case or he'd be adducing it.

18 MR. OLESKEY: Why don't we wait until I finish my
19 direct to have this discussion.

20 JUDGE SMITH: Yes, I think that's a good point. I
21 think that you're trying to solve a problem that probably will
22 never come up. I just do not wish to foreclose, categorically
23 foreclose, the opportunity for Mr. Thomas's lawyer to have some
24 input if he can demonstrate that it's necessary.

25 MR. OLESKEY: I'm going to do what you've asked,

1 Judge. You know, I ask the question that I clarify with Ed
2 Barchak and if something gets left out for whatever reason that
3 he thinks is important, I assume he'll ask it and Mr. Dignan
4 will object and we'll find out what's going to happen.

5 MR. DIGNAN: Let me ask you a question.

6 MR. OLESKEY: Yes.

7 MR. DIGNAN: And I'll take your answer. In other
8 words, you intend to ask everything that needs to be asked, and
9 Barchak will need to ask something only if through either
10 inadvertence or failure to have thought of it beforehand, it's
11 not brought up. There is no set piece that he's going to ask;
12 is that right?

13 MR. OLESKEY: No set what?

14 MR. DIGNAN: There's no set, set of questions, that
15 he's going to ask that you know about now.

16 MR. OLESKEY: I don't know of any now, but I know he
17 just finished a trial yesterday morning and he's doing his
18 witness preparation today and tomorrow and this weekend.

19 JUDGE SMITH: We do not anticipate that there is a
20 set piece that he in advance will examine Mr. Thomas on. He's
21 invited only to clean up, if there's a need for it, because
22 there is a slight divergence, not much, a slight divergence in
23 Mr. Oleskey's needs and Mr. Thomas's needs.

24 That we cannot assume that they coincide in every
25 respect all of the time.

1 MR. OLESKEY: The most obvious point is this, it
2 seems to me, is all lawyers presumably want to make sure that
3 the guy's personal integrity and credibility is 100 percent
4 clear to the Board.

5 JUDGE SMITH: Right.

6 MR. OLESKEY: So, it's in my interest generally, to
7 do the same thing, but I may not ask precisely the question
8 that his lawyer thinks is critical to make that point. If his
9 lawyer wants to do it, he'll do it, and objections can be made
10 and you can rule, Judge.

11 JUDGE SMITH: Furthermore, what if a matter of simple
12 litigation strategy, you decided the heck with it.

13 MR. OLESKEY: That's true. I can think of a couple
14 possibilities.

15 JUDGE SMITH: Okay. Well, Mr. Dignan, you can renew
16 your objections in context and we will try to see just exactly
17 what the problem is and what the appropriate solution is. I do
18 not believe that the mere fact that two lawyers rather than one
19 lawyer is sufficiently prejudicial to you to rule in advance
20 and should not be allowed.

21 Okay, what's the -- then we will begin Thursday
22 morning with the FEMA people.

23 MR. DIGNAN: Yes. The rest of the order is fully
24 clear to me, Your Honor, that it was this matter that I wanted
25 the call for.

1 JUDGE SMITH: All right.

2 MR. OLESKEY: Now, Judge, through you or Mr. Flynn,
3 if we can now confirm that Joan Hock will not testify, first;
4 and second, when we might expect the revisions for the FEMA
5 testimony they indicate will be forthcoming.

6 MR. FLYNN: Yes, I'll be happy to answer those
7 questions. The answer to the first question is, yes, your
8 understanding is correct, Dr. Hock will not be on the FEMA
9 panel.

10 MR. OLESKEY: Okay.

11 MR. FLYNN: The answer to your second question is, I
12 have prepared a clean draft of the amended testimony, and
13 frankly, I anticipated that I would have sent it out on Monday.
14 In fact, I think at one point I had indicated it would have
15 gone out last Friday, but the problem turned out to be
16 coordinating with the other people who needed to see it and
17 review it, and I'm still waiting to hear back from Joe Keller
18 who was involved in the exercise; and as soon as I hear from
19 him, assuming that we agree, it will go out.

20 I'm expecting that it will be mailed out tomorrow. I
21 will telefax it to the attorneys. And I believe Ms. Weiss does
22 not have a telefax machine, so I can hand-deliver it to her
23 office.

24 MR. OLESKEY: Thank you, Joe.

25 MS. WEISS: So there's only going to be two

1 witnesses: Cumming and Keller.

2 MR. FLYNN: That's correct.

3 MR. OLESKEY: Judge, I had one other brief point to
4 make in line with the Board's continuing request that we
5 identify possible rebuttal. We are contemplating two short
6 rebuttal pieces to FEMA which we would not be able to conclude
7 because of the FEMA testimony until probably 10 days to two
8 weeks after the close of the hearing, after next Friday, the
9 finish of the FEMA testimony. And we would be likely to file
10 two brief pieces.

11 MR. DIGNAN: Oh, I object. I thought we were going
12 to close the record on Friday.

13 JUDGE SMITH: That's our objective.

14 MR. OLESKEY: Well, I'm telling you what we're doing
15 and if you want to discuss it at greater length next week, we
16 certainly can.

17 JUDGE SMITH: He's just telegraphing the fact that
18 such a motion will be filed.

19 MR. OLESKEY: Right.

20 MR. DIGNAN: Your Honor, I have another matter, under
21 the order as is outstanding now, my reply to proposed findings
22 is due on the 10th, tomorrow. It was my understanding,
23 although the last phone call wasn't on record and I'd like to
24 get it on record, that the staff is getting an extension to
25 file theirs and normally we come in after them, and I'd just

1 like it understood that mine will follow the staff's whenever
2 they come in.

3 JUDGE SMITH: Yes, that's something we wanted to
4 address today. Mr. Turk --

5 MR. TURK: Yes.

6 JUDGE SMITH: -- I think was able to walk away with
7 an open ended extension, and that's pretty good. But the
8 moment of truth has arrived now, Mr. Turk.

9 MR. TURK: Yes, Your Honor.

10 JUDGE SMITH: So what are your plans?

11 MR. TURK: I don't think I can propose a date yet.
12 I'd like to be able to say, we'll have it in, in the next 10
13 days, but I can't do that. We have several people who are now
14 becoming involved and one of those people is up at the Shoreham
15 exercise this week, one of them is on annual leave this week,
16 and I'm in the midst of preparing for next week's hearings
17 again.

18 So I'm going to need to confer and get back to you on
19 a date that we think we can meet feasibly, which would be as
20 promptly as we can make it.

21 I guess it would help for our planning purposes to
22 know what the Board's requirements are.

23 JUDGE SMITH: Well, we're still working on the
24 contentions on the Massachusetts plan, and that is a big job.
25 And that is our priority. But nevertheless, as Mr. Dignan

1 observed, when you get yours in then he still has to get his
2 final pleading in. It's also a question of fairness with
3 respect vis-a-vis the other parties, too, who would like to
4 have had more time.

5 I don't know what to do. I don't think we can
6 foreclose you from filing. And I concede that you're very
7 busy. I don't know what -- you put us in a very difficult
8 spot.

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1 MR. TURK: Your Honor, if I can address the issue
2 again either later this week or when we come back together on
3 Tuesday and see if I can get you a definite date, and
4 hopefully, it will be in the near future.

5 JUDGE SMITH: We're thinking about June 22nd as a
6 date.

7 MR. TURK: I don't think we can commit to that,
8 unfortunately.

9 JUDGE SMITH: Well, what happens then, in a case like
10 that?

11 MR. TURK: I don't know, I don't think it's ever come
12 up.

13 MS. WEISS: There's nothing in the rules that say
14 that they, you know, the staff has the unilateral right to set
15 its own deadlines; whatever they can do by the 22nd they do.

16 JUDGE SMITH: Well, let's let it ride there. I'm not
17 going to set the June 22nd, but that's the date that we're
18 thinking might be an appropriate date, Mr. Turk. I don't take
19 any pleasure in making your personal life anymore difficult
20 than it is. I understand that you're working very hard.

21 MR. TURK: Your Honor, if I can ask, the 22nd is a
22 Wednesday.

23 JUDGE SMITH: Yes.

24 MR. TURK: The next week after that is the Seabrook
25 exercise, sometime during the week of June 27th. And I expect

1 I, personally, as well as one or two attorneys from the office
2 will be up at the exercise that following week of the 27th. I
3 don't know, I'm very sorry to put you in this position, Your
4 Honor.

5 JUDGE SMITH: How about the 24th? You can't ask a
6 Licensing Board to give you an open ended time to file
7 pleadings; it's just not within our authority to do it. It is
8 our responsibility to set reasonable schedules.

9 MR. TURK: Can I ask permission to confer on that and
10 get back to you rather than make the commitment and be in the
11 most unpleasant position in having to tell you later that it
12 might not be possible.

13 JUDGE SMITH: Well, yes, when you confer I think you
14 should put on your conference agenda the possibility that if
15 you do not file by a date set by the Board we will not accept
16 your findings.

17 MR. TURK: I understand.

18 JUDGE SMITH: And I think that the 24th sounds like a
19 good date for you to have them in because I don't -- we don't
20 favor yet another week while you go up to the Seabrook
21 exercises.

22 MR. TURK: All right. Would you have any problem to
23 make it the 27th, at least we have the weekend just in case,
24 Monday the 27th. I'm asking for permission to work over a
25 weekend.

1 JUDGE SMITH: I know.

2 Well, we'll have to go off the record on this.

3 (Board conferring.)

4 JUDGE SMITH: Mr. Turk.

5 MR. TURK: Yes.

6 JUDGE SMITH: The Board has split on this issue. The
7 majority of the Board has voted to require you to get your
8 pleadings in on the 24th, Friday.

9 MR. TURK: All right. Your Honor, I have one other
10 matter I'd like to raise today, that relates to testimony this
11 coming week. The Board may recall that there was some
12 discussion already about NUREG-1210, there is a brief mention
13 of that in Mr. Cumming and Mr. Keller's testimony, and also,
14 it's a subject of Intervenor testimony.

15 In light of what appears to be a potential
16 misinterpretation of NUREG-1210, I'd like to propose that the
17 staff put on a witness, very briefly, to explain the way in
18 which the entrapment situation would relate here.

19 You may recall that NUREG-1210, Volume 4 indicates
20 that, "Evacuation is the preferred response except in some
21 cases where you may find sheltering to be preferable with
22 several entrapment situations, including one of the privates,
23 where a large population density makes entrapment outside very
24 likely," close quote.

25 And I'd like to present a witness who is very

1 familiar with the text, he's principal author, and is
2 responsible for training NRC responders to explain to the Board
3 how that relates to the NRC's response in an emergency.

4 MR. OLESKEY: Sounds like rebuttal to me, Sherwin.

5 JUDGE SMITH: What did you say, Mr. Oleskey?

6 MR. OLESKEY: It sounded like rebuttal to me, Your
7 Honor. Obviously, I'm not going to object since I've asked for
8 the same thing.

9 MS. WEISS: I'm not going to object.

10 MR. TURK: I can do it with about 20 minutes worth of
11 testimony.

12 MS. WEISS: You mean --

13 MR. OLESKEY: I'd like to see it in writing.

14 MR. DIGNAN: No, as opposed to two weeks from now.

15 MS. WEISS: You're talking about being on the stand
16 live without prefiled testimony next week; is that what you're
17 talking about?

18 MR. TURK: That's what I had in mind.

19 MS. WEISS: Well, I object to that.

20 MR. DIGNAN: Well, all right, then I object to Thomas
21 without advance testimony.

22 MS. WEISS: Oh, that's a different situation.

23 MR. DIGNAN: Why is it?

24 MS. WEISS: Because nobody had the opportunity to do
25 prefiled direct testimony.

1 MR. DIGNAN: Now, wait a minute, why is it so
2 different, at least insofar as we're talking about Mr.
3 Oleskey's direct.

4 JUDGE SMITH: Wait a minute.

5 MS. WEISS: You've known for weeks about that, and
6 his deposition was taken well over a month ago.

7 JUDGE SMITH: Mr. Thomas is a third-party witness.
8 The staff's witness is not a third-party witness. It's not a
9 similar situation.

10 MR. DIGNAN: Well, Your Honor, Mr. Thomas has been
11 working for the -- with the Commonwealth throughout. I
12 respectfully suggest it's exactly the same situation.

13 MR. OLESKEY: He was working with the utility until
14 very recently, Mr. Dignan, as we'll show.

15 JUDGE SMITH: Well, I think that we've already
16 provided for Mr. Thomas; we ruled on that. And the question
17 is, what is fair with respect to a staff witness. Why can it
18 not -- why can you not produce direct testimony for the staff
19 witness, let him do it. It doesn't have to be in polished
20 legal form or even look pretty. Let him do it.

21 But the problem is, how much cross-examination is
22 that person going to need before his testimony can be accepted?
23 I mean, how much cross-examination are the Interveners going to
24 need before that testimony can be accepted?

25 And furthermore, what are we going to do with this

1 testimony when we receive it? I don't know what use it's going
2 to be. How it's going to work into our decision.

3 He's going to testify as to the meaning of a training
4 document.

5 MR. TURK: The meaning and the use.

6 JUDGE SMITH: Use of it. But how is that going to
7 apply to the Seabrook hearing?

8 MR. TURK: Well, Your Honor, the Intervenor's
9 witness, I believe it was Goble, read NUREG-1210 and he said,
10 they thought he thought, simply based on his reading of the
11 document, that Seabrook presents an entrapment situation where
12 sheltering might be preferred over evacuation.

13 I'm informed by the author of the document that in
14 fact evacuation would still be the preferred response here or
15 for any other site. And a population density does not affect a
16 decision to go to evacuation using NUREG-1210.

17 MR. OLESKEY: I guess it would be in the nature of
18 biblical commentary, Your Honor.

19 MR. TURK: Well, Mr. Oleskey, if you like you can
20 take that as the gist of prefiled testimony; that's what you're
21 likely to see.

22 MS. WEISS: Well, it's clearly rebuttal and there's
23 no excuse at all to spring this at the last minute, especially
24 on a week that's already going to be difficult to get through
25 all the scheduled witnesses. There's no excuse for it.

1 MR. OLESKEY: I'm not objecting to it, I'm just
2 asking that it be written up the way it normally is in these
3 proceedings and filed with a chance to look at it.

4 MS. WEISS: Exactly; that's my point exactly.

5 JUDGE SMITH: So no one is objecting to it.

6 MR. DIGNAN: Well, then why can't Mr. Thomas be
7 written up and filed.

8 MR. OLESKEY: Oh, Mr. Dignan, we've been over and
9 over this. The same reason --

10 MR. DIGNAN: Mr. Oleskey, I'll take an outline.

11 JUDGE SMITH: We're going off the record for a
12 moment.

13 (Board conferring.)

14 JUDGE SMITH: Mr. Turk, the Board is having, during
15 our off the record discussion, we're still having difficulty
16 seeing how we're ever going to use the author's rebuttal
17 testimony or how we can use Mr. Goble's interpretation of it.
18 We just don't know what that does. How that in any way
19 relieves us of the need to make a decision based upon the
20 evidentiary record here.

21 We just -- people have not been helpful in explaining
22 to us how that plugs into the initial decision.

23 I suggest -- I don't know, we're not able to rule on
24 it at this moment. I don't know what to suggest to you. You
25 can --

1 MR. TURK: If I understand the Board's problem it's
2 that NUREG-1210 is a training manual for responders, it's not a
3 planning guidance document.

4 JUDGE SMITH: I don't know what we can do with it. I
5 don't know what we can do with the testimony of the author of
6 that document. It is arguments -- I mean, is it going to
7 change the planning basis for emergency plans?

8 MR. TURK: No, it does not.

9 JUDGE SMITH: No, it doesn't do that. So what can we
10 do with it? What can we do with his opinion, that you cannot
11 argue; I don't know. I don't know what we can do with 1210.
12 No member of the Board knows what we can do with it.

13 MR. OLESKEY: Well, I think the missing ingredient
14 here, Judge, and this goes to the short piece that we were
15 thinking about is that, FEMA's testimony, not just Goble's
16 little comments, but FEMA's testimony depends on this guy Joe
17 Keller's interpretation of 1210.

18 Turk, I think, wants to offer an author's commentary
19 on 1210, and we're thinking of offering a separate commentary
20 on 1210.

21 JUDGE SMITH: Okay. So that -- let's go off the
22 record again.

23 (Board conferring.)

24 JUDGE SMITH: Isn't there some way that this can be
25 stipulated, what your witness would say; what Mr. Oleskey's

1 rebuttal witness would say. Incidentally, Mr. Oleskey, I heard
2 the conversation --

3 MR. OLESKEY: Yes.

4 JUDGE SMITH: -- you know, we have a continuing
5 requirement here that if you do have rebuttal testimony in mind
6 that as soon as you know what it's going to be or you have a
7 reasonable basis to believe what you know it's going to be, you
8 should identify it.

9 MR. OLESKEY: I agree and I will.

10 JUDGE SMITH: When?

11 MR. OLESKEY: I hope as early as next week during the
12 hearing.

13 JUDGE SMITH: So as we stand now you have not arrived
14 at sufficiently concrete --

15 MR. OLESKEY: We talked with our witness and we've
16 told him what we'd like and he's looking at it.

17 JUDGE SMITH: Oh, I see.

18 MR. OLESKEY: He's about to tell us what we'll get.

19 JUDGE SMITH: All right. Okay.

et/2 20 (Board conferring.)

21 (Continued on next page.)

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1 JUDGE SMITH: Do you think that there's any chance
2 of stipulating this guy's testimony, the author's testimony?
3 What's his name?

4 MR. TURK: Well, the principal person I would bring
5 would be Tom McKenna, and also it might be Jim Martin, who
6 works for Mr. McKenna.

7 JUDGE SMITH: Do you think we could -- it can be
8 stipulated?

9 MR. OLESKEY: We would have to see it, Your Honor.

10 JUDGE SMITH: Probably. All right. Do you think we
11 could work it in next week?

12 MR. TURK: Your Honor, my witnesses are quite
13 certainly going to be in Boston at different times during the
14 week coming, and I could bring them up for a short period any
15 time during the week, one or the other of them.

16 MR. OLESKEY: Well, I'm less interested in having a
17 guy there live than seeing the piece that he's going to offer
18 and getting a chance to look at it and reflect on it and talk
19 about it with our people.

20 JUDGE SMITH: I think you better get the gist of his
21 direct testimony in writing and over to the Intervenors as soon
22 as you can, Mr. Turk.

23 MR. TURK: I'll see if I can do that tomorrow.
24 Tomorrow is Friday, I'll see if he can write something up
25 tomorrow.

1 JUDGE SMITH: Well, the Board very much wants to --
2 we don't want to schedule another week of hearings. And right
3 now we cannot accept or reject evidence based upon our desire
4 not to schedule another week of hearings, but there has to be a
5 point where the record closes. And we have to start measuring
6 the value, the value of additional evidence.

7 And we're still -- other than the fact that three
8 parties -- three participants in this proceeding have used that
9 document in the evolution of their judgment, their opinions,
10 the document is of no assistance to us.

11 However, it does play a large role in the decisions
12 of qualified witnesses; and it's on that basis that we're going
13 to listen to you.

14 I don't -- I guess the thing for you to do is to get
15 the written testimony in and then let's see if it's going to be
16 accepted; let's see if we can't work Mr. McKenna or Mr. Martin
17 in next week.

18 MR. TURK: All right. I'll see what I can prepare
19 tomorrow. And may I assume, Steven, that you'll take the lead
20 on this for Intervenors and I can call you with it when I get
21 it?

22 MR. OLESKEY: Sure. If that's agreeable to my
23 colleagues.

24 MR. BACKUS: Sure.

25 JUDGE SMITH: All right.

1 MR. OLESKEY: I don't know how it works in terms of
2 next week, but let's get the testimony first. I want the
3 chance to ask my questions of the FEMA panel before anything
4 else happens.

5 MR. TURK: You mean before you decide whether
6 you'll --

7 MR. OLESKEY: Before we look for extra work, let's
8 see how much time it takes to question those folks.

9 MR. TURK: Well, that's going to leave Thursday and
10 Friday of next week.

11 MR. OLESKEY: Right.

12 JUDGE SMITH: Well, let's -- if you decide that we
13 can accept it, let's shoot for getting them in next week. It's
14 going to be very hard to come back up; everybody is going to be
15 busy the following week and the week after that, and we don't
16 want to keep the hearing record open for a matter of several
17 more weeks simply to accommodate this piece of collateral
18 evidence.

19 MR. OLESKEY: Well, don't forget we've told you that
20 we're preparing some brief rebuttal, Your Honor, and I
21 understand the planning need -- the planning objectives of the
22 Board and the pressure of the summer, but there hasn't been any
23 opportunity for rebuttal yet, obviously, in this phase of the
24 case which many of us have regarded as a very important phase.

25 JUDGE SMITH: This would be rebuttal to FEMA's

1 testimony.

2 MR. OLESKEY: Yes.

3 MR. TURK: That's not the case for me, obviously.

4 Only to clarify the record on NUREG-1210. You may see it in
5 the form of rebuttal to Intervenors, it's not intended as
6 rebuttal. So it's -- it obviously addresses the same point as
7 came out during examination of Dr. Goble.

8 JUDGE SMITH: Well, make your motions.

9 MR. OLESKEY: Okay.

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

11 (No response)

12 JUDGE SMITH: We do have two items. One is that Ms.
13 Curran filed on June 2nd a motion to permit Intervenors'
14 participation or entry in -- entry upon land and control of
15 applicants and interested governments to observe the exercise
16 during the week of June 26th.

17 We haven't received any answers yet from other
18 parties. We think that we can dispose of it without any
19 further pleadings. We don't believe that we have the authority
20 to grant the request.

21 There are no contentions upon which we can authorize
22 discovery, and that's what this is, this is a discovery request
23 and there are no contentions upon which we can grant discovery.

24 The Commission has made it clear that you cannot use
25 Commission authorized discovery for the purpose of identifying

1 information for contentions; and we don't believe we have the
2 authority to grant it, not that we favor or disfavor the idea
3 itself. We think that it's a matter for the people to extend
4 the invitation, if they choose, or not as they choose.

5 We wouldn't advise them on it, one way or the other.
6 I can see reasons why they might want to have them or reasons
7 why they might not want to have them, but I don't think we can
8 force it. So that would be our ruling on that motion.

9 And I'm announcing it now because the time is coming
10 up and I know that it would take a lot of preparation to get
11 ready for Intervenors.

12 MR. DIGNAN: Your Honor, this is Tom Dignan. Before
13 the Board makes that a final ruling the Board may or maybe has
14 read, and if so I apologize, but the Board may want to read
15 Consolidated Edison Company of New York, LBP-82-12-A, at 15 NRC
16 515.

17 JUDGE SMITH: Is that the Indian Point?

18 MR. DIGNAN: Yes, Your Honor.

19 JUDGE SMITH: Well, there's Indian Point and there's
20 Three Mile Island that was cited there. I didn't read them in
21 context of this because I recognize that both of those cases
22 were beyond the issue resolution case. Those were hearings
23 ordered by the Commission in which the respective Licensing
24 Boards had jurisdiction over the entire subject matter of the
25 hearing.

1 MR. DIGNAN: Your Honor, I am not arguing against any
2 reading, I just wanted to be sure those had been brought to
3 your attention, that's all.

4 JUDGE SMITH: I think Ms. Curran alluded to them in
5 her -- a footnote in her motion. Would you give me that
6 citation, Mr. Dignan.

7 MR. DIGNAN: The one that I thought might be of most
8 interest, there are two Indian Point cases that I'm aware of,
9 Your Honor. The TMI case I don't have in front of me.

10 The first is 15 NRC 515, it's under the designation
11 LBP-82-12-A. And then there is a second case that immediately,
12 I think, follows it in the reports, it's LBP-82-12-C, and that
13 is 15 NRC 523. It is the first of the two, which is perhaps
14 deals more in the question.

15 JUDGE SMITH: I think that my memory is that the
16 Commission stepped in there some place along the line.

17 MR. DIGNAN: The Commission stepped in on that case,
18 Your Honor, is my recollection, is that the Commission stepped
19 in to stop the -- which was going to allow people in the
20 control room and the reactor.

21 JUDGE SMITH: Oh, yes, that's right.

22 MR. DIGNAN: But as I say, Your Honor, I'm not in a
23 position of arguing against your ruling or anything like that.
24 I just --

25 JUDGE SMITH: Well, would you have opposed the

1 motion, Mr. Dignan?

2 MR. DIGNAN: Would I have opposed the motion?

3 JUDGE SMITH: Yes.

4 MR. DIGNAN: In part, but not in full. As a matter
5 of fact, before the Board bothers to make a ruling, between
6 phone calls I've had with Ms. Curran, Mr. Huntington, and Mr.
7 Flynn, I have every reason to believe we can work out a
8 stipulation that might keep everybody happy.

9 JUDGE SMITH: That's fine; that's the way it should
10 be. But the way we sit here right now, in the pre-contention
11 stage we think that -- I think a Catawba decision makes it
12 clear that we cannot authorize discovery for the fleshing out
13 of formulation of contentions.

14 MR. DIGNAN: I understand, Your Honor.

15 MR. OLESKEY: This is Steve Oleskey. We got dropped
16 out of the call just as you began the discussion, but I think I
17 see where you've been.

18 JUDGE SMITH: Ms. Weiss, are you back on yet?

19 (No response)

20 JUDGE SMITH: Oh, no. No, she's not on. Well, Ms.
21 Weiss --

22 MR. BACKUS: Judge Smith, this is Bob Backus, I've
23 been on during this and let me just make one observation, if I
24 can. We've talked about this amongst ourselves, and I'm not
25 sure I would characterize this as requesting discovery. But I

1 think that if we don't work out a stipulation I'm happy to hear
2 that there's progress in that, that it would impact our needs
3 for discovery.

4 And one of the reasons that we hope to be able to
5 have a -- on agreed basis that this exercise is to cut down on
6 the discovery that would otherwise be necessary to find out
7 what went on at the exercise.

8 JUDGE SMITH: Yes, I -- that's one of the advantages
9 that I saw in it, Mr. Backus. But we're just ruling based upon
10 our authority. If the Intervenors are allowed to observe, then
11 arguments would have more weight coming back; the discovery is
12 not as necessary.

13 MR. DIGNAN: Your Honor, I -- well, we understand the
14 ruling. I'll just advise the Board that, as I say, I talked to
15 Ms. Curran this afternoon -- is Mr. Huntington still on.

16 MR. HUNTINGTON: Yes, I'm on. I've tried to cut in
17 once, but I got cut out.

18 JUDGE SMITH: All right.

19 MR. DIGNAN: I think --

20 JUDGE SMITH: Ms. Weiss is not here, and she's --

21 MS. WEISS: I just got here, but I -- I mean, that
22 was about 30 seconds ago, so I really don't know what you --

23 MR. DIGNAN: Well, we've been talking about the
24 motion for permission. And I'm fairly confident, Your Honor,
25 that while the Board made clear, I gather, that what

1 Intervenor are in the law, but I still think what we'll be
2 able to do is work out some sort of an agreement that will keep
3 everybody happy.

4 MS. WEISS: Can I ask what the ruling was?

5 MR. DIGNAN: You lose.

6 JUDGE SMITH: Ms. Weiss, our ruling was that we are
7 without authority to authorize discovery in the pre-contention
8 stage. That the Commission's Catawba decision made that clear
9 that discovery cannot be used to develop information for
10 contentions.

11 There are no contentions on the New Hampshire
12 exercise. And whether we think it's a good idea or not to
13 allow Intervenor to observe it, we just don't believe that we
14 can force it against the wishes of the interested governments
15 and the Applicants, against their wishes.

16 Now, we are in fact, however, pleased to hear that
17 stipulations are possible that will give the Intervenor the
18 relief they're seeking.

19 Mr. Backus pointed out that if Intervenor are given
20 a chance to observe it can cut down the amount of discovery,
21 which may be required. And we think that's a laudable
22 objective.

23 Our ruling is based simply upon that we do not feel
24 we have the authority to require it in the face of objections.

25 MS. WEISS: Is this Catawba case on point with regard

1 to exercises?

2 JUDGE SMITH: I think it is, yes. We just don't have
3 any jurisdiction over those exercises; none at all. You know,
4 we can't control them; we can't set them. The first time we'll
5 be able to do anything about those exercises is when they come
6 to us in the form of contentions.

7 Now, she cited the Three Mile Island case and Indian
8 Point case, and I -- situations, not cases. I wasn't aware
9 that there was any actual published ruling on it. But Three
10 Mile Island, of course, the Three Mile Island Board was given
11 broad jurisdiction over the entire subject matter of the
12 reopening. Therefore we had from the very beginning
13 jurisdiction over the exercise, and we had the authority to
14 allow Intervenor observation.

15 The Indian Point case was somewhat the same. But the
16 Catawba decision comes along and makes it pretty clear that
17 contentions cannot be -- that discovery cannot be authorized
18 for the purpose of developing information for contentions, and
19 that is the avowed purpose of the request.

20 But we do encourage -- we do encourage for the
21 obvious utility of it, that a stipulation be worked out which
22 would meet the Intervenors' needs.

23 MR. HUNTINGTON: Your Honor, this is Geoff
24 Huntington. I'm confident that we're going to be able to work
25 out that stipulation.

1 JUDGE SMITH: Well, that's fine.

2 Now, there's another matter we want to take up is
3 that, if there are any voids in the hearing next week we might
4 want to ask questions about the contentions for the
5 Massachusetts communities. However, I doubt -- would Mr.
6 Traficonte be there otherwise?

7 MR. OLESKEY: Oh, he won't, Your Honor.

8 JUDGE SMITH: He what?

9 MR. OLESKEY: He will not be unless --

10 JUDGE SMITH: He will not. Well, I don't want to ask
11 him to come just in the possibility we might have some time.

12 MR. OLESKEY: Maybe we'll get a feeling on Tuesday
13 night whether such time might be available some time Wednesday.

14 JUDGE SMITH: Of course, he's preparing a document
15 which will also be helpful, we wouldn't want to interrupt him
16 on that.

17 MR. OLESKEY: I think that's due the 1st, something
18 like that.

19 JUDGE SMITH: Yes.

20 MR. OLESKEY: And he is working on that now, you're
21 right.

22 MR. DIGNAN: Well, whether there's going to be some
23 extra time will depend on one thing. Steve, do you have any
24 feel for how long your direct of Thomas will be?

25 MR. OLESKEY: Well, you know, there are typically a

1 lot of objections sometimes when we have questions, and those
2 chew up a lot of time. Leaving that aside --

3 MR. TURK: That's considering going to be a lot
4 of --

5 MR. OLESKEY: Well into the middle of the afternoon.

6 MR. DIGNAN: How much?

7 MR. OLESKEY: Well, into the afternoon. How deep, I
8 just don't have a feeling for.

9 MR. DIGNAN: Okay.

10 MR. TURK: Steve, in terms of objections you can
11 anticipate that you'll find a lot of objections for hearsay.

12 MR. OLESKEY: Whatever.

13 JUDGE LINENBERGER: Mr. Oleskey, Judge Linenberger
14 here.

15 MR. OLESKEY: Yes, sir.

16 JUDGE LINENBERGER: One question that, a question we
17 have that we don't have to have answered today, but Mass. AG's
18 April submittal of SPMC contentions at the bottom of page 12
19 contains a statement to the effect that, "It is the intention
20 of Mass. AG to submit a motion that will encompass a
21 structure," and that's your words, "for the litigation of the
22 first of the threshold contentions."

23 MR. OLESKEY: Yes.

24 JUDGE LINENBERGER: We are curious whether it is
25 still your intent to do that, and if the answer is, yes, on

1 approximately what schedule? Now, if you'd want to wait until
2 next week to answer that, fine, but that is a question we have.

3 MR. OLESKEY: Mr. Traficonte, as you know, has the
4 principal responsibility for that phase of the case. I'll have
5 to confer with him and see where he is and report to you next
6 week, if I may.

7 JUDGE LINENBERGER: All right.

8 Secondly, Mr. Backus.

9 MR. BACKUS: Yes, sir.

10 JUDGE LINENBERGER: Your supplemental filing on SPMC
11 contentions submitted an additional contention number 10,
12 whereas your original filing had a contention number 10 in it.
13 Now, the question is, is this a contention number 11 or is this
14 10 a substitute for the prior 10?

15 MR. BACKUS: No, it's number 11; that was a mistake
16 in the numbering.

17 JUDGE LINENBERGER: Okay, thank you.

18 MR. BACKUS: I will identify that and ask you to
19 correct that. So thank you for pointing that out.

20 JUDGE LINENBERGER: Thank you.

21 MR. TURK: Your Honor, while we're having a telephone
22 conference call I want to bring you the question that might be
23 to come up on Tuesday during Mr. Thomas' direct examination.
24 The Board may be aware that much of the deposition of Mr.
25 Thomas with an exposition of various matters which he heard

1 second or third hand from other people, clearly hearsay.

2 It's going to be our position that that testimony
3 should not be admissible. And I wonder if we can get any kind
4 of preliminary ruling of how the Board or indication of how the
5 Board will treat the hearsay if it is proposed or asked about
6 by Mr. Oleskey.

7 JUDGE SMITH: Well, Mr. Turk, I don't think we can
8 make any large predictions on how we're going to rule on
9 evidence. I don't think we can even predict that we'll always
10 be consistent, let alone, as much as we'd like to be. But,
11 gee, I think that you have a pretty good feel about our ruling
12 on hearsay now.

13 We did make some hearsay rulings when Mr. Lazarus
14 attempted to go into some hearsay, too, and Dr. Bores. We'll
15 try to be consistent. We'll always apply the test, is it
16 reliable? Are the circumstances of the hearsay such that it is
17 nevertheless reliable?

18 MR. TURK: Well, Your Honor, one problem with that
19 is, the way we're structuring Tuesday's examination is there
20 will not be any further Voir Dire of Mr. Thomas where you might
21 have objections to any hearsay -- which may serve as a basis
22 for objecting to hearsay testimony on the grounds that there
23 may be a problem with the reliability of the testimony.

24 MR. OLESKEY: I think they had four days of
25 depositions that you attended, you have the transcripts. You

1 know the context of his testimony and you even know its
2 content.

3 MR. TURK: That's not what I'm saying. What I'm
4 saying is that, if we're going to object on reliability ground,
5 we would be doing Voir Dire first.

6 JUDGE SMITH: Who did we drop? Is anybody there?

7 MR. OLESKEY: I'm here.

8 MS. WEISS: I'm here.

9 MR. BACKUS: I'm here.

10 MR. BROCK: I'm here.

11 MR. HUNTINGTON: Here.

12 JUDGE SMITH: Mr. Turk, did we lose you?

13 (No response)

14 JUDGE SMITH: That will teach him to make premature
15 objections.

16 MR. OLESKEY: The phone god struck him dead.

17 (Laughter)

18 MR. OLESKEY: Without being discourteous, Judge, I'll
19 give Mr. Turk a full chance to argue anything he wants next
20 week. Do you think we can suspend the hearing now rather than
21 wait for him to get on in five or 10 minutes?

22 JUDGE SMITH: Well, everyone is busy. I don't --
23 it's not very courteous to Mr. Turk. I don't think we're going
24 to be able to make much progress on his request, though.

25 MR. OLESKEY: That was my feeling.

1 JUDGE SMITH: It shouldn't take long to get him.

2 MR. OLESKEY: All right. I was just hoping we could
3 set a record and have all these conferences conclude within an
4 hour.

5 JUDGE SMITH: Will there be anything else to discuss?

6 MR. OLESKEY: Not from us.

7 JUDGE SMITH: Well, as a matter of fact, I don't
8 think any -- well -- all right, we'll adjourn and let Mr. Turk
9 make his arguments Tuesday morning.

10 MR. OLESKEY: Very good, Your Honor.

11 JUDGE SMITH: And nothing further. Well, you know, I
12 still am reluctant to close him off because he may have had
13 more business, too. Just hang on for a moment and see if we
14 can't get him.

15 MR. OLESKEY: All right.

16 JUDGE LINENBERGER: Mr. Dignan.

17 MR. DIGNAN: Yes, Your Honor.

18 JUDGE LINENBERGER: Judge Linenberger. Can't put a
19 tight time schedule on it, but the Board would like to have one
20 copy of an assembled up to date set of the SPMC. All we have
21 right now are miscellaneous cardboard boxes of loose paper, and
22 that's extremely awkward to deal with.

23 Now, we'll follow your preference here, whether it's
24 something that should come from your Washington office, maybe
25 you want somebody to come over and put things together or

1 whatever. But at some point we're going to need one. I can't
2 claim high urgency on this, but within a couple of weeks, at
3 least, we will --

4 MR. DIGNAN: That's no problem, Your Honor. What
5 I'll probably do is have a -- does the Board only want one or
6 do you need more than one?

7 JUDGE LINENBERGER: One is plenty.

8 MR. DIGNAN: What I will do is have them assemble a
9 new set and ship it down to you.

10 JUDGE LINENBERGER: With amendments.

11 MR. DIGNAN: What we'll do is bring it up to current
12 to its current status.

13 JUDGE LINENBERGER: Right. Thank you much.

14 MR. DIGNAN: Sure.

15 JUDGE SMITH: All right, let's --

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

17 JUDGE SMITH: Are you back. All right.

18 MR. TURK: I was dropped off the conference call
19 until just about 10 seconds ago.

20 JUDGE SMITH: Yes, we know.

21 MR. DIGNAN: You lost, Shep.

22 MR. OLESKEY: Twice.

23 MR. TURK: I was dropped out of the middle of a
24 sentence of my own, so I didn't hear what came afterwards.

25 MR. DIGNAN: It didn't make any difference, you still

1 lost.

2 MS. WEISS: Not much came afterwards.

3 JUDGE SMITH: I just don't know how we can rule in
4 advance what our likely rulings are going to be other than
5 you've seen how we rule. And I don't know what kind of relief
6 we can give you, Mr. Turk, I really don't know.

7 What relief did you have in mind?

8 MR. TURK: Well, given the Board's interest in moving
9 ahead next week, and I certainly don't want to delay that, I
10 don't see that it will be possible for me to do any Voir Dire
11 before Mr. Thomas's direct.

12 JUDGE SMITH: I guess I don't understand the
13 relationship between Voir Dire and objecting to hearsay
14 testimony.

15 MR. TURK: Well, I would argue that if I could
16 establish through Voir Dire that the witness has a bias or a
17 problem in perception or recollection, then any accounting he
18 may give of hearsay evidence will not be admitted.

19 MR. OLESKEY: I guess if you establish that, you've
20 done in all his testimony, Mr. Turk, why don't you try cross-
21 examination.

22 JUDGE SMITH: Well, we're not going to be able to
23 rule in advance, Mr. Turk.

24 Did you have any other business? No other party has
25 any other business; do you have any, Mr. Turk?

1 MR. TURK: Nothing further.

2 JUDGE SMITH: Okay. Then we're adjourned and we'll
3 meet then on Tuesday at 9 o'clock. Is that correct, Mr.
4 Oleskey, 9 o'clock?

5 MR. OLESKEY: Yes, Your Honor.

6 JUDGE SMITH: All right.

7 MR. OLESKEY: Thank you very much.

8 JUDGE SMITH: Thank you for joining us.

9 (Whereupon, at 4:06 p.m. the teleconference was
10 concluded.)

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CERTIFICATE

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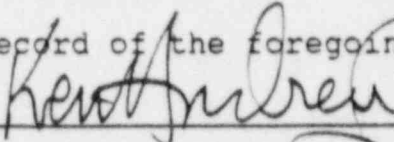
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:
Name: Public Service Company of New Hampshire, et al.,
(Seabrook Station, Units 1 and 2)

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

Place: Bethesda, Maryland

Date: June 9, 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/ 

(Signature typed): Kent Andrews

Official Reporter

Heritage Reporting Corporation