

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

TELEPHONE CONFERENCE,
PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, et al.
(Seabrook Station, Units 1 and 2)

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) Docket Nos.
) 50-443-OL
) 50-444-OL

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
TELEPHONE CONFERENCE,) Docket No. 50-443-OL
PUBLIC SERVICE COMPANY OF) 50-444-OL
NEW HAMPSHIRE, et al.)
(Seabrook Station, Units 1 and 2))

PREHEARING CONFERENCE
(Telephone)

Thursday,
September 17, 1987

4th Floor
4350 East West Highway
Bethesda, Maryland

The above-entitled matter came on for hearing,
pursuant to notice, at 2:10, p.m.

BEFORE:

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

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

JUDGE JERRY HARBOUR, Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C.

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APPEARANCES:

On behalf of the Applicant:

THOMAS DIGNAN, JR., ESQ.
KATHRYN SELLECK, ESQ.
Ropes and Gray
225 Franklin Street
Boston, Massachusetts 02110

On Behalf of the Nuclear Regulatory Commission:

SHERWIN TURK, ESQ.
Staff
Nuclear Regulatory Commission
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C.

On Behalf of FEMA:

H. JOSEPH FLYNN, ESQ.
FEMA

On Behalf of NECNP:

DIANE CURRAN, ESQ.
Harmon and Weiss
2001 S Street, N.W.
Washington, D.C. 20009

On Behalf of the Town of Hampton Falls and SAPL:

ROBERT BACKUS, ESQ.
116 Lowell Street
Manchester, New Hampshire 03101

On Behalf of Massachusetts Attorney General:

FRANK OSTRANDER, ESQ.
ALAN FIERCE, ESQ.
Massachusetts Attorney General Office
1 Ashburton Place,
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APPEARANCES (Cont'd):

On Behalf of Town of Hampton:

MATTHEW BROCK, ESQ.
Shaines & McEachern, P.A.
25 Maplewood Avenue
Portsmouth, New Hampshire 03801

On Behalf of Town of Kensington:

SANDRA GRAVUTIS, ESQ.
SANDRA MITCHELL, ESQ.
Kensington, Massachusetts
(603) 394-7847

I N D E X

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WITNESS:

EXAMINATION:

None

EXHIBITS:

PAGE

DESCRIPTION

None.

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P R O C E E D I N G S

1
2 JUDGE SMITH: First, I want to express our
3 appreciation for so many of the parties being able to join us
4 on such short notice. We wanted to make our announcements as
5 early as possible, so that our information will have maximum
6 benefit.

7 As you may have inferred by now, I am the Chairman of
8 the Seabrook Licensing Board, if you have not received the
9 notice. My name is Ivan Smith and Judge Hoyt, is hospitalized
10 and she expects to be released soon. She explained to me that
11 she wished to be relieved of this case, because she was
12 concerned that during the -- as the case was ongoing, she may
13 have to seek additional treatment for her health and she did
14 not want to endanger the proceeding.

15 So, this was a good time to change chairmanship and
16 she recognized that and asked to be relieved on that basis.

17 Present with me, is Judge Linenberger and Judge
18 Harbour. I think that you have met both of those before.
19 Judge Linenberger is new to the proceeding, as a matter of
20 fact, I understand.

21 First, we wish to announce that -- we will go off the
22 record, just for a moment.

23 (Off the record.)

24 JUDGE SMITH: Back on the record.

25 The first item of business is that we wish to

1 announce that the hearing will begin on October 5, at 1:00
2 p.m., at the place initially designated. With that
3 information, I am going to review the other agenda items that
4 the Board hopes to cover this afternoon.

5 One is, the next item is the objection by
6 Massachusetts Attorney General, concerning the Applicant's
7 proposal for the Order of Proceeding. We wish to bring to the
8 attention of the parties that not all testimony has been
9 served; that apparently not all notices of appearances have
10 been served, and filed; we wish to cover the need for Exhibits;
11 the manner in which they should be offered and identified; we
12 have some housekeeping matters relating to direct testimony,
13 bulky documents and we will finally discuss the need for cross-
14 examination plans. And finally we wish to bring to the
15 attention of all the parties and the attorneys, the requirement
16 for dignity and decorum set out in Section 2.713 in the Rules.

17 Going back to the first or second agenda item, the
18 Board has decided that it wishes to proceed with the hearing on
19 an issue-by-issue presentation. And that is that we are not
20 accepting the Applicant's proposal, which would have us hear
21 all Applicant's witnesses and receive all of Applicant's
22 evidence on all issues before we proceed with the other
23 parties.

24 And we wish to have an issue-by-issue presentation to
25 the extent that that is feasible. We hope this afternoon to

1 decide what needs to be done to accomplish this. And our
2 evaluation, and particularly Judge Harbour's evaluation, of the
3 proposed testimony as presented, indicates to us that
4 presentations divided according to issues, seems to be entirely
5 feasible.

6 The presentation of the, order of presentation of the
7 evidence also leads us to the recognition of the need to have
8 lead intervenors, as to our particular contentions and issues
9 and parties. Previously, Mr. Turk, legal counsel representing
10 the NRC Staff, has volunteered to be the Chairman of the effort
11 to organize the parties into an issue-by-issue order of
12 presentation.

13 We will call upon Mr. Turk, if he is still willing to
14 do that to proceed with that undertaking. And along that line,
15 I wish to announce that I did have an ex parte communication
16 with Mr. Turk yesterday, to tell him, to inquire as to whether
17 he was making any effort along that line and to inquire as to
18 whether he would be willing to do that.

19 In general, except for --

20 VOICE: May I ask if the Executive Session is still
21 on?

22 JUDGE SMITH: Who is speaking?

23 Who is that voice inquiring about the -- apparently
24 we dropped somebody here. Let's call the roll.

25 VOICE: Sir, I think that we are waiting to go back

1 on the record. Incidentally, are you still representing both
2 SAPL and Hampton Falls?

3 JUDGE SMITH: Gentlemen, please don't have any --
4 listen, would you please, gentlemen --

5 JUDGE HARBOUR: They are not hearing you, that is the
6 problem.

7 You lost everything.

8 JUDGE SMITH: Gentlemen, I have learned that my
9 speaker phone has been on moot, for the last several minutes.

10 Can anybody hear me?

11 VOICE: Off and on.

12 JUDGE SMITH: I am going to take the roll again.

13 Mr. Dignan?

14 MR. DIGNAN: Yes, Your Honor.

15 JUDGE SMITH: Mr. Flynn?

16 MR. FLYNN: Flynn, yes, here.

17 JUDGE SMITH: Mr. Turk?

18 MR. TURK: Yes.

19 JUDGE SMITH: Ms. Curran?

20 MS. CURRAN: Here.

21 JUDGE SMITH: Mr. Backus?

22 MR. BACKUS: Yes, here.

23 JUDGE SMITH: Mr. Ostrander?

24 MR. OSTRANDER: Yes, here.

25 JUDGE SMITH: And Mr. Brock?'

1 MR. BROCK: Here.

2 JUDGE SMITH: And I understand that Sandra Gavutis is
3 on too?

4 MS. MITCHELL: Sandra Mitchell.

5 VOICE: And attorneys from the Massachusetts Attorney
6 General's Office.

7 JUDGE SMITH: I am uncertain as to when my remarks
8 were mooted, muted. Let me begin again. Did I introduce myself
9 in your area?

10 VOICE: Yes, yes.

11 JUDGE SMITH: And did I report the fact that Judge
12 Linenberger and Judge Harbour were present?

13 VOICE: Yes.

14 JUDGE SMITH: Did I report the fact that we were
15 setting the hearing for October 5th, at 1:00 p.m.?

16 VOICE: No.

17 JUDGE SMITH: All right, here is where we begin. That
18 is the case, the hearing will commence on October 5th, at 1:00
19 p.m.

20 And I will identify other agenda items that the Board
21 hopes to cover, this afternoon. The next item will be the
22 Applicant's proposal for the order of presentation, and the
23 Massachusetts Attorney General's objection to that proposal.

24 And we wish to cover the preparation and service of
25 direct testimony; we wish to remind all lawyers that they must

1 file notices of appearances for all parties in this as a matter
2 of fact. And we will cover the housekeeping procedures for the
3 handling of papers, direct testimony and exhibits at the
4 hearings.

5 And we will cover and announce the requirement that
6 cross-examination plans be filed. And finally, we wish to
7 review with the parties the requirements of Section 2.713 of
8 the Commission's Rules of Practice, concerning the need to have
9 a hearing that is conducted with decorum and dignity.

10 Going back to the first issue that I described, the
11 Board has decided that it prefers to have an issue-by-issue
12 presentation, that is in contrast to Mr. Dignan's proposal that
13 the Applicant present all of its evidence, followed by the
14 other parties.

15 What we hope to cover this afternoon, is what needs
16 to be done to accomplish that. It is our view, as we have seen
17 the submittals so far, that the issues seem very divisible and
18 it seems that the testimony and the exhibits can be divided
19 according to issues with a reasonable amount of effort.

20 And in examining this problem, we have identified the
21 need and desirability to have lead intervenors appointed as to
22 particular issues and contentions. Yesterday, I had an ex
23 parte conversation with Mr. Turk, in which I inquired as to
24 whether he would be willing to serve as the Chairman with an
25 undertaking to arrange the presentation of evidence, in

1 accordance with our ruling this afternoon, and that is, issue-
2 by-issue.

3 I wish to report that fact that it was an ex parte
4 conversation. Judge Harbour has analyzed the filed testimony
5 to date, and he will identify the issue categories that the
6 Board wishes the parties to accept in the presentation of their
7 cases. We do have one general rule, however, and that is
8 deference to the Applicant is in order, as it comes to how the
9 Applicant wishes to present its case.

10 And that is, that we would give deference to the
11 Applicant as to the order in which the issues are heard. That
12 is deference, that is not surrender, however, that is just a
13 recognition that the Applicant has the largest burden here and
14 does have the burden of proof.

15 Going back to the earlier item, there is -- let me
16 hear from the parties who have an interest in this matter.
17 Does it seem to be the consensus of the intervenors that this
18 case is divisible, issue-by-issue for the evidentiary
19 presentation?

20 Anybody, but from here on in, would each person be
21 careful to identify by name, themselves, when they begin to
22 speak?

23 As a matter of fact, let me call upon the parties.
24 Ms. Curran, what is your view on this?

25 MS. CURRAN: I think that they are reasonably

1 divisible, but I think that the order or presentation -- some
2 of the issues do overlap and it may help to put some issues
3 before others, in order to lay the groundwork to get to other
4 issues, at least in the intervenor's case.

5 JUDGE SMITH: That may very well be the case, and
6 when Judge Harbour brings these categories of issues up, that
7 would be the appropriate place to raise it.

8 Mr. Backus?

9 MR. BACKUS: We agree that the case would be better
10 presented going issue-by-issue.

11 JUDGE SMITH: Mr. Ostrander?

12 MR. OSTRANDER: We have the same agreement, and I
13 would second Ms. Curran's comments.

14 JUDGE SMITH: Mr. Brock?

15 MR. BROCK: We would agree to an issue-by-issue
16 format, Your Honor.

17 JUDGE SMITH: Then I am still uncertain, who is
18 representing the Town of Kensington, here?

19 Is there somebody who can hear me who is representing
20 the Town of Kensington?

21 VOICE: Yes, sir.

22 JUDGE SMITH: And who is that?

23 MS. MITCHELL: Mitchell.

24 JUDGE SMITH: Sandra Mitchell?

25 MS. MITCHELL: Yes.

1 JUDGE SMITH: Then Sandra, Gavutis is not on, is that
2 right?

3 MS. MITCHELL: She is, she is on.

4 JUDGE SMITH: But you are representing?

5 MS. MITCHELL: Yes.

6 JUDGE SMITH: Do you care to express your preference?

7 MS. MITCHELL: We concur with Diane and Mr. Backus.

8 JUDGE SMITH: Mr. Turk?

9 MR. TURK: No objection.

10 JUDGE SMITH: And Mr. Flynn?

11 MR. FLYNN: No objection.

12 JUDGE SMITH: Now, Mr. Dignan, you proposed a
13 different approach? We will hear from you, if you wish to be
14 heard?

15 MR. DIGNAN: Well, no, Your Honor, as I said in my
16 letter, I realized that this is a matter of discretion
17 committed to the Board, and certainly it is no abuse of the
18 Board's discretion to so order, and we will abide by the order.

19 JUDGE SMITH: Mr. Turk, did I understand you
20 correctly, that you are willing to organize the parties into an
21 endeavor to -- as an issue-by-issue presentation?

22 MR. TURK: Yes, I am.

23 JUDGE SMITH: And now, we will ask Judge Harbour to
24 review his view, the Board's view of the issue categories and
25 we will see if we can arrive at a consensus on that?

1 JUDGE HARBOUR: I had done this -- this is Judge
2 Harbour, and I had done this analysis some time earlier, simply
3 to try to organize in my own mind, how many separate issues
4 there were and to group the contentions.

5 What I will do is that I will read off the issues
6 that I came up with and then I will indicate which contentions
7 it is my understanding fall within each of these issues. Now,
8 these are not set in stone and we will also supply a chart of
9 this when we issue an order memorializing this conference.

10 First -- and the order that I have has nothing to do
11 with the order of presentation, it is just the grouping of the
12 issues.

13 Well, first I have the ETE issues. And I have under
14 this, SAPL 31, SAPL 34, Town of Hampton III.

15 The second, I have, Sheltering. I have NECNP
16 Contention RERP-8, SAPL 16, and Town of Hampton VIII.

17 And I have a category which I call Notification and
18 Communication and I have under that, NECNP Contention NHLP-4,
19 and Town of Hampton Falls 4.

20 And I have another category called Response Personnel
21 or the Adequacy or Allegations of the Inadequacy of the
22 Response Personnel. And under that, I have NECNP Contentions
23 NHLP-2, and SAPL 8 and 8-A, and Town of Hampton VI, and Town of
24 Hampton Falls 2, Town of South Hampton 2, and Town of
25 Kensington 1.

1 And Transportation Availability, I have under that
2 NHLP
3 6, of NECNP, and SAPL 18 --

4 MR. TURK: Your Honor, I am sorry, the phone cut out,
5 could you begin on this category?

6 JUDGE HARBOUR: The Transportation Availability?

7 MR. TURK: Yes, sir.

8 JUDGE HARBOUR: All right, under Transportation
9 Availability, I have NECNP Contention, NHLP 6, and SAPL
10 Contention 18, 25, and 37.

11 And Town of Hampton Contention IV. Town of South
12 Hampton 8. And then I have Emergency Support Services as a
13 category, and I have under that, Town of South Hampton 3, and
14 Town of Kensington 6.

15 I have a category Reception Centers and Host Plans,
16 and under that I have SAPL Contentions Number 7 and 33.

17 And then I have a Mixed Issues Contention which is a
18 Contention all by itself, which addresses at least three
19 separate issues, mostly duplicated elsewhere above, but that is
20 SAPL 15.

21 And that includes the 26 surviving, it covers the 26
22 surviving admitted Contentions.

23 And now, I would like to ask Mr. Dignan, to explain
24 what categories, or how he feels that the category that he had
25 listed as Letters of Agreement, if he could see how that would

1 correspond to different parts of the organization of issues
2 that I have just presented.

3 Mr. Dignan?

4 MR. DIGNAN: Well, I think that if I hear you
5 correctly, Your Honor, you -- and I am sorry, if I did not hear
6 you fully -- the phone was clicking.

7 The question is, how our Letters of Agreement would
8 spread across the issues, or the categories that you have
9 enumerated?

10 JUDGE HARBOUR: That is correct, or can you tell me
11 which contentions would fall under your category of Letters of
12 Agreement?

13 MR. DIGNAN: Okay, let me just have a moment here.

14 JUDGE HARBOUR: I believe that by and large a lot of
15 these topics are quite similar except for that category and
16 also for the one which I call which I call Mixed Issues, which
17 has only the SAPL 15 Contention.

18 MR. DIGNAN: I need to get a piece of paper, that I
19 don't have in front of me, Your Honor, excuse me.

20 The ones that we covered in Letters of Agreement
21 would have been SAPL 15, in part, or really in whole. And
22 South Hampton III, and the last one is Kensington VI.

23 JUDGE SMITH: This is Judge Smith again, and I do not
24 have the familiarity with those contentions and issues that I
25 really need, which is one of the reasons for postponing the

1 start of this hearing. The parties should feel free, to the
2 extent that they can, to comment upon those categories now.

3 MR. FLYNN: This is Joseph Flynn and I would like to
4 ask the question and I am sure that you have already presented
5 this information but I was not able to write fast enough to get
6 it down.

7 We have, in our testimony, we have grouped in one
8 category, Contentions having to do with the Transient Beach
9 Population, mainly Revised Hampton Contention VIII, and SAPL
10 Contention 16 and NECNP Contention REREP 8. Were those, Judge
11 Harbour, were those in your category entitled, Sheltering?

12 JUDGE HARBOUR: That is correct.

13 MR. FLYNN: Okay.

14 JUDGE SMITH: Ms. Curran, you had indicated that you
15 would have some comments on your order of presentation when the
16 issue categories were identified.

17 Do you wish to comment?

18 MS. CURRAN: Really my comment arises from
19 conversations with Massachusetts, and maybe I should take that
20 up with them.

21 JUDGE SMITH: Now, we are leaving it to the parties
22 with the -- as I stated -- with deference to the Applicant as
23 to order to work out the order of procedure for the
24 presentation of these issues.

25 And if it cannot be worked out, of course, you will

1 have to return to the Board, for guidance, but we expect that
2 the parties should be able to agree as to the sequence in which
3 these orders, these issues are heard.

4 And if there is an objection to the categories,
5 themselves, please bring them to our attention immediately,
6 without delay, after you have had a chance to examine them.

7 MR. OSTRANDER: This is Frank Ostrander from
8 Massachusetts.

9 JUDGE SMITH: Yes?

10 MR. OSTRANDER: I don't think that we have any
11 objection to this order.

12 MR. FLYNN: This is Joseph Flynn, again.

13 The one comment that I would like to make is that we
14 have structured what amounts to three different panels, even
15 though we presented all of our testimony in a single document.

16 And that works out fine, it is just that the panel on
17 Letter of Agreement issues, well, I am not expressing myself
18 too clearly.

19 The Letter we have grouped Letter Agreement issues as
20 being presented by one panel, which is different than the
21 composition of the other panels. So that it would make our
22 presentation easier and make cross-examination easier, if all
23 of the Letter of Agreement issues would be heard as a single
24 group and I can list -- in fact, we have listed on page 3, of
25 our pre-trial testimony which contentions that we are talking

1 about.

2 They include all of the ones that Tom Dignan
3 mentioned a few moments ago, plus the Revised Hampton
4 Contention IV, NHLP-2, Basis D, and NHLP-6, Basis D, E, and
5 Host Plan 1-E and SAPL Contention 25.

6 VOICE: Your Honor, Host Plan I is not in the case.

7 JUDGE SMITH: All right, who is speaking just there?

8 MR. DIGNAN: I am sorry, that was Mr. Dignan, I
9 apologize.

10 JUDGE SMITH: Are you making now, a request, Mr.
11 Flynn, that Letters of Agreement be set out as a separate
12 presentation segment?

13 MR. FLYNN: Yes, it would be convenient.

14 JUDGE SMITH: Okay.

15 MR. FLYNN: See, the reason for it, is that Bruce
16 Warren is one of our witnesses, but there was a period of time,
17 when he was working for HMM Associates, a consultant to the
18 State of New Hampshire and he was working on obtaining Letters
19 of Agreement, so that we want to remove him from any testimony
20 having to do with that issue.

21 That is our only concern.

22 JUDGE SMITH: The Board, as Judge Harbour stated, the
23 Board does not have any fixed views on it. We are particularly
24 interested in what Mr. Backus' attitude on Letters of Agreement
25 might be.

1 JUDGE HARBOUR: And Ms. Curran.

2 JUDGE SMITH: And Ms. Curran. If you recognize that
3 as a reasonable issue for presentation, or segment for
4 presentation.

5 MR. FLYNN: I will comment on that in just a moment,
6 Judge Smith.

7 MS. CURRAN: I have a question for Judge Harbour and
8 this is Diane Curran.

9 And I wonder if you could clarify what is the
10 distinction between the Transportation Category and the
11 Emergency Support Services Category?

12 JUDGE HARBOUR: The Emergency Support Category is, as
13 I understand it, these are things like tow trucks and snow plow
14 availability and things of that nature.

15 Transportation had to do with the availability of
16 buses and things of that sort. I would assume that NHLP IV
17 would be in the Transportation Category and I don't see any
18 NECNP Contentions within the Emergency Support Services, at the
19 present time.

20 MS. CURRAN: I think that NHLP-2 might have covered
21 some of those issues. I would have to go back and look.

22 JUDGE HARBOUR: All right.

23 JUDGE SMITH: Could we leave it -- I hesitate to ask
24 for a commitment on that issue right now, if you have not had
25 an opportunity and if you are not prepared.

1 Can we leave it this way, asking that the parties who
2 are primarily concerned with those issues, if you possibly can,
3 give Mr. Flynn what he is asking for, and if you cannot, go
4 back to the Board.

5 The Board does not have any strong feelings on it.

6 JUDGE HARBOUR: Isn't this part of what Turk is going
7 to do?

8 JUDGE SMITH: Yes, and Mr. Turk is going to organize
9 people and Mr. Turk, along that line, although these are our
10 ideas of the issue categories, if in negotiations with the
11 parties should suggest better ones, I am sure that we would be
12 prepared to accept that.

13 MR. TURK: All right, along that line, Judge Smith, I
14 was thinking that it might be useful if I fly up to Boston or
15 the seacoast area on Monday and get together with all of the
16 parties and see if we can hammer out what the proper categories
17 should be?

18 JUDGE SMITH: Well, clearly the earlier that this
19 gets resolved, the less, the more convenient it will be for the
20 witnesses and the parties, and I would appreciate it, if you
21 could give it your high priority attention. I know that you
22 will.

23 MR. TURK: All right, that is what I would propose to
24 the parties, and maybe we can confer at the end of this
25 conference call, to see if Monday is a good day and work out a

1 time for us to get together.

2 I have one concern about the reorganization of
3 issues, and that is on the one hand, I recognize that it needs
4 to be done and we probably all should have worked towards this
5 sooner, but now that testimony has been presented, according to
6 different theories of how the issues are broken up, if we do
7 come to some common understanding of the issues, which, I think
8 that we must, then the testimony may have to be reorganized
9 according to the issue lines that we agree upon.

10 JUDGE HARBOUR: FEMA is adopting only one is a big
11 problem.

12 JUDGE SMITH: Judge Harbour is under the view that
13 the only real problem that might be presented is FEMA's
14 testimony.

15 That the other items of testimony seem to have
16 logical dividing points. And like almost as if you can tear
17 them apart, but we recognize that it might be necessary, that
18 it will probably will be necessary to re-present your
19 testimony.

20 Now, you don't have to worry about it being fancy and
21 in final form. It can, in fact, be cut and paste, or whatever
22 method you believe satisfies this approach, with one caveat,
23 this is not an invitation or a license to make substantive
24 modifications to testimony.

25 Anybody that undertakes that, should do it as a

1 separate matter, recognizing the burden that you have for late
2 changes to the substantive nature of your testimony.

3 We are only talking about what has already been
4 presented and broken down according to the issues that Judge
5 Harbour has set out, or issues that you could agree upon
6 yourself.

7 Is there any question about that?

8 MR. BROCK: Your Honor, this is Mat Brock, from the
9 Town of Hampton, and just so that I am clear on that, it would
10 not require more than, in your view, simply a cut and paste --
11 meaning that we have expended a good bit of time putting the
12 testimony together, as is -- and would not want to be asking
13 our clients to shoulder some significant financial cost
14 restructuring testimony at this point.

15 JUDGE SMITH: We don't see that that is required. A
16 cut and paste is fine, providing that it is legible and
17 logical.

18 JUDGE HARBOUR: Or even we could have some testimony
19 from an adjacent overlapping contingent out of sequence. That
20 is --

21 JUDGE SMITH: Right and as Judge Harbour just pointed
22 out, that this -- you do not have to achieve perfection. If
23 some issues will overlap, we can take an issue out of sequence
24 or a witness out of sequence, if doing that, facilitates the
25 parties, and makes issue-by-issue presentation feasible.

1 JUDGE HARBOUR: Your Honor, if one witness is
2 covered --

3 MS. GAVUTIS: Your Honor?

4 JUDGE SMITH: Or as Judge Harbour -- let me interrupt
5 the speaker. If you have a witness whose appearance is not
6 easy -- a travelling witness for example -- and his testimony
7 covers more than one issue, we certainly would not expect you
8 to bring him back at great inconvenience. We are just asking
9 you to adhere to the principle of an issue-by-issue
10 presentation.

11 Now, who is the speaker that I cut off?

12 MR. DIGNAN: Tom Dignan, and I was going to ask the
13 question, which I think might facilitate discussion among the
14 parties. I assume that we can all assume as a legal matter,
15 that assuming a good faith effort, by a party to break the
16 testimony up along the categories agreed upon in presenting it
17 that way, then an inadvertence or an inability to squeeze
18 something in, in exactly the right category, will not carry
19 with it some kind of a penalty like a refusal to hear the case?

20 JUDGE SMITH: Well, no, we are talking now about
21 procedural matters, and I assume good faith on everybody. I
22 don't see any problem there, Mr. Dignan.

23 MR. DIGNAN: I concur. I don't either and I assumed
24 that was the rule, because I think that one of the legitimate
25 concerns that a lawyer can have in these, is to be sure that

1 all of his testimony is in the right category, and not be
2 worried about a penalty for it, if it is too inadvertent and
3 something gets into the wrong category.

4 JUDGE SMITH: You see what we already have is full
5 notice by the parties to each other as to the nature of the
6 testimony.

7 We are only asking now for virtually a physical
8 reorganization.

9 JUDGE HARBOUR: And we don't even require that.

10 JUDGE SMITH: And we don't even, in all instances,
11 require that. We just require that that objective be your
12 goal, that is all.

13 Now, that raises the next point about lead
14 intervenors. We have not mentioned this in the past, but this
15 is an ideal case for lead intervenors. We have noticed that
16 different intervenors and different parties, many parties have
17 testimony on the Contentions of other parties. And we would
18 hope, that as you negotiate the issues, and the order of
19 presentation, that as to each issue, a lead intervenor be
20 designated.

21 Normally, we would expect the proponent, the owner,
22 so to speak, of a Contention, to be the lead intervenor on that
23 contention. But that is up for you to decide. And we will
24 require a good faith effort to establish lead intervenors as to
25 particular issues and Contentions.

1 Now, there will be exceptions to that. As we stated,
2 it is a good faith effort. And if a particular party, in good
3 faith, after having tried, believes that their case cannot be
4 pre-presented fairly by some other person who is a lead
5 intervenor, they should seek the Board's permission to
6 represent themselves, as to the issue or subissue that they
7 wish to do so.

8 And furthermore, we would always allow intervenors,
9 or parties who are not the lead intervenor on an issue, to
10 supplement the record, where there is a failure.

11 We require solely, a good faith effort, to designate
12 a lead intervenor as to each issue.

13 MR. OSTRANDER: This is Frank Ostrander from
14 Massachusetts.

15 JUDGE SMITH: Yes?

16 MR. OSTRANDER: It would be helpful if you could
17 elaborate on the duties, responsibilities and privileges of a
18 lead intervenor?

19 JUDGE SMITH: All right.

20 The lead intervenor would have: number one, the
21 responsibility of working with the other intervenors on that
22 issue, to gather up all of the questions and issues to be
23 covered by cross-examination. And each party would have to make
24 an effort to provide the lead intervenor with the questions and
25 the issues they wished covered by cross-examination.

1 Now, that is your responsibility to see that that is
2 done. Other than that, you can organize yourself as you see
3 fit. I would see procedural advantages to lead intervenor, and
4 that is, as to the scheduling of an issue, we would be able to
5 contact a lead intervenor, who would contact the other
6 intervenors, on that issue, for procedural matters, too.

7 Do you have any questions about that, Mr. Ostrander?

8 MR. OSTRANDER: Well, let's say that there is an
9 issue that the Applicant has put his case on, do we all get to
10 cross-examine?

11 JUDGE SMITH: No. That is exactly the point.

12 MR. DIGNAN: Your Honor, I could not hear Mr.
13 Ostrander.

14 JUDGE SMITH: Mr. Ostrander, can I be heard better,
15 easier?

16 MR. OSTRANDER: Yes.

17 JUDGE SMITH: Well, Mr. Ostrander said, assume that
18 the intervenor puts on cross-examination, and as to a
19 particular issue, do all of the intervenors get to cross-
20 examine?

21 And I said, no, that is exactly the point or the
22 purpose of a lead intervenor. As to that particular issue, the
23 lead intervenor undertakes the primary responsibility of cross-
24 examination.

25 It is only when other intervenors, after a good faith

1 effort, cannot get the representation they think that they need
2 through a lead intervenor, and convinced the Board of that; or
3 when the lead intervenor fails to cover a point and that could
4 not have been anticipated, or whatever surprises might come up.

5 But in preparation for the hearing, we do require a
6 good faith effort, to work through a lead intervenor for cross-
7 examination purposes.

8 And cross-examination plans should reflect that. We
9 will come to that later.

10 Any questions?

11 MS. CURRAN: Yes, this is Diane Curran.

12 I would just like to suggest that for some of these
13 issues, where there is kind of a grouping of several parties'
14 Contentions, that we all come to the issue from different
15 perspectives and with different strengths. I am comfortable
16 with the idea of a lead intervenor kind of organizing how the
17 cross-examination is going to go, and making sure the points
18 are covered.

19 But I guess I would like to be able to break-up the
20 cross-examination between several intervenors, depending on
21 which aspects they want to go at. And I was wondering if that
22 would be acceptable?

23 JUDGE SMITH: Well, --

24 MR. BROCK: -- Your Honor, this is Mat Brock from
25 Hampton and we would agree with Ms. Curran's view on that. We

1 would like to reserve our right to cross-examine.

2 JUDGE SMITH: Well, let me say that there is no right
3 to cross-examine, as such.

4 We do not wish to give a blank check to every
5 intervenor cross-examining on every issue, as to which they may
6 have a different perspective.

7 We require, that, at first, you make a good faith
8 effort to have your cross-examination done by a lead
9 intervenor. And if, after that good faith effort, it is your
10 judgment, that that cannot be done, and you represent that to
11 the Board, that you have tried, then we will entertain a
12 separate cross-examination request.

13 Now, Ms. Curran, and Mr. Brock, do you wish to
14 comment; do you have any questions about that?

15 MR. BROCK: Your Honor, are you saying that, at the
16 hearing, if it is our view, that certain material has not been
17 covered at that point, and only at that point, would we have an
18 opportunity to present to the Board, a request that we be
19 allowed to cross?

20 JUDGE SMITH: What predicate are you assuming, Mr.
21 Brock? What will have transpired before hand?

22 MR. BROCK: That a lead intervenor will have been
23 designated and will have conducted a cross-examination, and
24 there will be issues, or points, or whatever, that we would
25 like to see raised, or expanded upon, or whatever, which the

1 lead intervenor did not cover.

2 JUDGE SMITH: Right. You left out a necessary
3 predicate. And that is, also, that you have made a good faith
4 effort to work with that lead intervenor, to provide that lead
5 intervenor with your questions, and your concerns, and your
6 area of cross-examination. All of that having failed, then we
7 certainly will not deny the opportunity for a person to
8 confront the evidence.

9 But we require a good faith effort to try to get a
10 lead intervenor to reflect your questioning.

11 MR. BROCK: Your Honor, I would just make one more
12 point on that, and that is, as Ms. Curran pointed out, I think
13 intervenors come with different views and strengths to this
14 proceeding, and certainly with respect to the Town of Hampton,
15 the idea of another intervenor leading cross-examination on
16 issues which might involve that particular town, I think that
17 it is not fair to expect another intervenor to have that
18 background going into the case.

19 And that is our concern.

20 JUDGE SMITH: Well, I appreciate the concern and
21 there certainly may be particular issues, that are so unique to
22 that intervenor, and so unique to the Town of Hampton, that
23 only its representative can do it correctly. But the only
24 thing that we require is that you look at the issue and you
25 look at the testimony and you see, you make a good faith effort

1 to turn it over to a lead intervenor.

2 We don't ask you to ever abandon your professional
3 responsibility to represent your client. We ask, only, a good
4 faith effort, but we insist upon a good faith effort.

5 MR. BROCK: Yes, Your Honor.

6 MR. OSTRANDER: This is Frank Ostrander, again.

7 JUDGE SMITH: Yes, Mr. Ostrander.

8 MR. OSTRANDER: Sir, there are two issues where I am
9 afraid that this might be somewhat complex. I cannot say that
10 we won't try to make a good faith effort, but I just want to
11 point out to the Board, that on the ETE issues, and the
12 Sheltering issues, there is a great deal of testimony.

13 MR. BROCK: Your Honor, we cannot hear Mr. Ostrander.

14 JUDGE SMITH: Mr. Ostrander said that on the ETE
15 issues and the Sheltering issues there is a great deal of
16 testimony. And there may very well be.

17 But let me remind you, putting the lead intervenor
18 concept aside -- for a moment, we will return to that -- but
19 even if we did not have a lead intervenor, we would not allow
20 intervenors in sequence, to ask questions that have already
21 been covered.

22 See? So, you are not losing an awful lot by the lead
23 intervenor approach. You are simply making sure that there is
24 organization and thoroughness to it.

25 Now, Mr. Ostrander, did I cut you off, sir?

1 MR. OSTRANDER: Well, you restated my question, and
2 answered it. I think -- I just want to caution the Board,
3 that on those two issues, Sheltering and ETE, there is a great
4 deal of testimony from a great many experts, and I think a
5 great many of the parties are involved in those issues.

6 JUDGE SMITH: Well, let me review my last remark.
7 Let's take a hypothetical case. And let's say, that
8 through lot or alphabetical order, or whatever it may be, we
9 begin the cross-examination of a panel. Once a question is
10 asked and thoroughly covered by the cross-examination of the
11 first questioner; the second questioner cannot duplicate that
12 cross-examination.

13 Therefore, it is in your best interest, to make sure
14 that the first questioner, you made a good faith effort for the
15 first questioner to cover your perspective and your point of
16 view.

17 Now, nothing we say along this line is ironclad.
18 Cross-examination, we recognize, is sometimes an art; sometimes
19 there are new ideas that have come to your mind that were not
20 available -- there are many reasons why you could represent to
21 the Board, that you have to cover an area of cross-examination,
22 outside the lead intervenor approach. And we will listen to
23 those arguments.

24 But you must have made a good faith effort to have a
25 lead intervenor represent your questioning.

1 VOICE: Judge Smith?

2 JUDGE SMITH: Yes? Who is speaking, please?

3 MR. BACKUS: This is attorney Backus for SAPL.

4 JUDGE SMITH: Yes, Mr. Backus.

5 MR. BACKUS: First of all, I am only getting about
6 half of this. I am not picking up Mr. Ostrander, at all, when
7 he speaks and only occasionally, Mr. Brock.

8 I do hear you and I do hear Mr. Dignan.

9 I just have a suggestion and I would like to offer it
10 to the Board, sir.

11 You put this hearing off until October 5th -- we all
12 had next week, at least tentatively set aside in our calendars
13 -- and I wonder, sir, if the Board would consider holding a
14 pre-hearing conference, where we can all be together, face-to-
15 face on Monday, since that time has been reserved?

16 And perhaps also consider taking limited appearances
17 at that time?

18 JUDGE SMITH: I will answer your second question,
19 first, Mr. Backus.

20 As to the limited appearance problem, the Board,
21 before I became Chairman, decided not to accept limited
22 appearances orally. They made it clear that limited
23 appearances, in writing, will be welcome. And I have not
24 talked to the Members of this Board. I see no reason to upset
25 that ruling.

1 And I might note, that, as to you, Mr. Backus, you
2 and your clients will have every opportunity to be heard, and I
3 do not really recognize that you are the person to raise the
4 issue for others.

5 Second, as to having the pre-hearing conference, up
6 there, on Monday, one of the reasons why we are extending the
7 time, is so that I can come up to speed. And if there is a
8 question or subject matter that you have missed, today, we will
9 be patient; we will go over it. We will even have another pre-
10 hearing conference tomorrow. But to take the necessary time to
11 travel to and from Concord, will take time that I really need,
12 very much, to get up to speed on the case.

13 Now, let's go back. Is there an area that you feel,
14 Mr. Backus, that you were not fully informed in? I think,
15 that, in each instance, I restated Mr. Ostrander's question
16 adequately.

17 MR. BACKUS: You may well have done so, sir, I just
18 could not hear Mr. Ostrander.

19 JUDGE SMITH: All right, is there any -- and I will
20 try to remember to do that -- who is the other questioner that
21 you did not pick up?

22 JUDGE HARBOUR: Brock.

23 MR. BACKUS: I did not pick up everything that Mr.
24 Brock had to say.

25 JUDGE SMITH: Mr. Brock expressed the concern that he

1 had doubts that the Town of Hampton could be represented in
2 cross-examination by lead intervenor, by somebody who is not
3 intimately familiar with the Town of Hampton's concerns.

4 Have I stated you correctly, Mr. Brock?

5 MR. BROCK: Yes, Your Honor.

6 JUDGE SMITH: Yes.

7 I will try to remember to restate the questions of
8 the people whose volume is not very high.

9 Okay, is there any question about the lead
10 intervenor?

11 MS. CURRAN: Yes, this is Diane Curran.

12 A lot has been said here, and I just want to clarify
13 NECNP's position on this.

14 I understand the Board's wish to avoid duplication in
15 cross-examination and I don't have any problem with that. I
16 would object to the Board's position, to the extent that it
17 would require the lead intervenor to get into cross-examination
18 on issues that did not involve that particular intervenor's
19 interest, or special knowledge.

20 And I just want to make that clear for the record.

21 JUDGE SMITH: Ms. Curran, let's make sure that your
22 concerns are accompanied by the observation, that if you find
23 that it is practically impossible for a lead intervenor to
24 represent you, you may come to the Board with that fact, and
25 explain that problem.

1 And I don't think that you should have any problem.

2 MS. CURRAN: All right, thank you.

3 JUDGE SMITH: You can report to us any time up to the
4 beginning of the hearing, and no later than the beginning of
5 the hearing, as to who the lead intervenor is, on particular
6 issues and exceptions.

7 Of course, exceptions will also be made, during the
8 course of the hearing, upon a representation of late found
9 need, for separate cross-examination.

10 If there no further questions on lead intervenor and
11 separation by issue, I will move on to the next matter.

12 MR. BACKUS: Judge Smith?

13 JUDGE SMITH: Yes.

14 MR. BACKUS: This is attorney Backus, again. I must
15 say that I ask the Board's permission -- I have another
16 commitment at this hour that is going to take me out of this
17 office, and I would request permission for Jane Doughty to
18 represent SAPL, in regard to the rest of this conference.

19 JUDGE SMITH: Okay, Mr. Backus, we have completed the
20 most important items of the pre-hearing conference.

21 And it is Ms. Doughty?

22 MR. BACKUS: Yes, sir.

23 Perhaps, before I leave, if the Chairman would
24 indulge me, I would just make known a few of the things that I
25 was going to bring up, for consideration of the parties and the

1 Board. I think the most important thing, I think the only
2 other thing really, was the point that I think, at least for my
3 client, would like an opportunity to make an opening statement
4 on the first day of the hearing and not necessarily have to
5 wait until a particular issue comes up.

6 I don't know how the other parties feel about that,
7 but I assume the Applicant will make the first opening
8 statement and we would like to be able to follow, in some
9 order, with the other intervenors immediately thereafter.

10 JUDGE SMITH: Well, the rules do provide for opening
11 statements, and the Board has no objection to them. I think
12 there should be some time limits put on them. Why don't, as
13 you discuss, as you get together, on the discussion of lead
14 intervenors, and categories of issues -- why don't you also
15 make a proposal to the Board as to the presentation of opening
16 statements and the requested length of time?

17 MR. BACKUS: Fine.

18 JUDGE SMITH: All right, anything else, Mr. Backus?

19 MR. BACKUS: No, thank you, Your Honor.

20 At this time, with your permission, I will leave this
21 particular conference.

22 JUDGE SMITH: All right, thank you.

23 MR. OSTRANDER: This is Frank Ostrander again.

24 I have one more comment on lead intervenors. And this
25 is going to greatly increase the burden of the next two weeks;

1 we will have to review all of the testimony from all of the
2 parties, even on some of the issues that we had not focused on,
3 yet. And do this at the same time that we are scrambling to
4 get ready, following the development of the schedules.

5 JUDGE SMITH: Well, Mr. Ostrander, I am very hopeful
6 that you will find that this is not a burden. That this is,
7 that we are asking you to do nothing that you should not do
8 anyway to have a carefully prepared case.

9 JUDGE HARBOUR: There is an equal burden on all
10 parties.

11 JUDGE SMITH: And it is an equal burden on all
12 parties. We look forward to seeing you in a well organized
13 presentation and this will help you, I am sure that you will
14 find that to be the case.

15 MR. FIERCE: Frank, can I say something?

16 MR. OSTRANDER: Yes, go ahead, Allen.

17 MR. FIERCE: Judge Smith, this is Alan Fierce, in the
18 Attorney General's Office, in Massachusetts. Can you hear me?

19 JUDGE SMITH: Yes, I can, quite well.

20 MR. FIERCE: If I might, I wondered whether you would
21 consider one suggestion I would have regarding the lead
22 intervenors on some of those issues that are particularly
23 lengthy.

24 I, for example, have been working considerably on the
25 ETE issues. And know that these three Contentions that Judge

1 Harbour has listed under those, contain numerous bases, and I
2 have seen the lengthy testimony that has been filed by the
3 Applicant on the ETE issues.

4 And I thought that our plan among the intervenors
5 would be to break-up the ETE issues into a series of sub-
6 issues, not necessarily following each basis, but there are
7 some sub-issue areas.

8 And that, if we could outline, to you in advance,
9 those sub-issue areas, and then divide the responsibility for
10 cross-examination, could we do it that way.

11 So, that for example, I would not have to do all the
12 cross-examination, regarding the Applicant's witnesses on all
13 of the ETE issues, as I see them.

14 JUDGE SMITH: Judge Harbour observes that you don't
15 have a Contention on ETE's. However, let's talk about it as a
16 general rule, rather than a specific rule.

17 If the parties, in organizing themselves, issue-by-
18 issue, and lead-intervenor-by-lead-intervenor, find sub-issues
19 are better for a particular party to handle, that is a matter
20 that I regard as being largely in the discretion of the
21 parties, based upon your own needs.

22 We do not expect any intervenor to take a very, very
23 broad issue, involving many, many sub-issues, and be an expert
24 on all of it. If you have sub-issues, which, after a good
25 faith look at it and a good faith effort, you believe should be

1 broken down into specific cross-examiners, you do that.

2 But just bear in mind that the Rule throughout the
3 hearing will be, we will not have cumulative, repetitive cross-
4 examination.

5 And the better way to assure that is to have, as much
6 as possible, a single intervenor ask -- a single cross-examiner
7 as to every issue and sub-issue.

8 Now, if you would like to take up with, Judge
9 Harbour, the problem about the ETE, that is fine, Mr. Fierce.

10 JUDGE HARBOUR: This is Judge Harbour. I agree that
11 the ETE issue is divisible, but as Judge Smith said, that is
12 for the intervenors to work out on these issues, within these
13 broad topics.

14 JUDGE SMITH: Is that helpful, Mr. Fierce?

15 MR. FIERCE: I think that is really very helpful. I
16 understand the overall concern not to have questioning on
17 cross-examination, which duplicates anything.

18 But, I believe, within that framework we can, perhaps
19 among ourselves, or perhaps on Monday, when Mr. Turk comes up,
20 begin to work out that order, and perhaps be able to break it
21 into a couple of discreet issues.

22 And I think that we can do it reasonably, Your Honor.

23 JUDGE SMITH: Okay, that is fine.

24 Now, moving down to the next item and most of these
25 now are housekeeping items.

1 We noted that the parties did not serve all of the
2 testimony on all of the other parties. For that matter, there
3 was carelessness, each Board Member did not receive all of the
4 copies of testimony.

5 Now, when the new testimony is served or identified,
6 if you do it, you will have to either serve all of the parties,
7 who have filed notices in this case, or have an understanding
8 with them that it is not necessary.

9 But there is no way in which their interests can be
10 adequately protected, unless they are served, everyone is
11 served equally with the evidence that is going to be presented.

12 Is there any question about that point?

13 (No response.)

14 JUDGE SMITH: All right, now, there is an item that
15 was overlooked in the pre-hearing conference order that we wish
16 to remedy.

17 And that is, we did provide for the pre-filing of
18 direct written testimony. And we also provided for the pre-
19 filing of attachments to the testimony, but we did not provide
20 for the pre-filing or identification, of other exhibits that
21 the parties intend to offer and we will require that.

22 We assume by now that the parties all have, in hand,
23 all of the exhibits that they intend to offer. And we will
24 require, and the date is negotiable, we will require that those
25 exhibits be served on all of the parties, except where it is

1 known that the parties already have those exhibits, or it is
2 known that they are commonly available, or unless, they are so
3 bulky and so burdensome, that it is not feasible to do it.

4 And, in any case, we will require that all exhibits
5 be identified and described. If you choose not to serve your
6 proposed exhibits, based upon the burden or the bulk of it, you
7 are going to have to come up with a functionally equivalent
8 service to the other parties, and that is, that you are going
9 to have to identify it quite well, so that they are put on
10 timely notice as to the exhibits that they have to meet in the
11 hearing.

12 Now, I would propose that that be done by September
13 25th. Are there any comments on that point?

14 (No response.)

15 JUDGE SMITH: All right, moving on to --

16 JUDGE HARBOUR: What about the cross-examination
17 exhibits, do you want to mention that?

18 JUDGE SMITH: Oh, yes.

19 If you have an exhibit that you think that you need
20 for cross-examination and you believe that it would interfere
21 with your cross-examination plans, and that is the only purpose
22 of that exhibit, then you may withhold it.

23 But then, if that exhibit comes up, I will ask for
24 your representation, at the hearing, that that is the reason
25 why you withheld it.

1 Any questions about that?

2 MR. FLYNN: This is Joseph Flynn.

3 JUDGE SMITH: Yes, Mr. Flynn?

4 MR. FLYNN: Would not every exhibit fall into that
5 category?

6 JUDGE SMITH: No, not at all.

7 There could be exhibits -- as a matter of fact, Mr.
8 Dignan referred to an exhibit in his letter, that he intends to
9 offer, that supports your case-in-chief.

10 MR. FLYNN: That is, in other words, supporting the
11 direct testimony? Okay.

12 JUDGE SMITH: Well, supporting the direct testimony
13 or otherwise. And then there are other exhibits that the
14 parties would lay-in-wait with and seek to cross-examine, to
15 impeach testimony or cross-examine with.

16 MR. FLYNN: I am back on track, thank you.

17 JUDGE SMITH: Yes. Is there any confusion about that
18 distinction?

19 (No response.)

20 JUDGE SMITH: Now, in the pre-hearing conference
21 order, earlier, it was made clear that on the copies of direct
22 testimony, that corrections must physically be made -- last
23 minute corrections must physically be made -- on the copy of
24 the direct testimony that is going to be bound into the
25 transcript.

1 In other words, the Board wishes to avoid what
2 happens in most cases, and that is, witnesses take the stand
3 and the parties, by a very laborious method, very time wasting
4 method, begins to make, for the first time, corrections to
5 their written testimony.

6 And those corrections should be physically made on
7 the copy that is going to be offered into evidence. And as
8 soon as you are able to, at the hearing, make those corrections
9 known to the Board and to the parties, either by a fresh copy
10 of the testimony, or by whatever means is necessary.

11 Is there any question about that?

12 (No response.)

13 JUDGE SMITH: I want to remind the parties that going
14 back to the issue of exhibits, that in addition to the working
15 copy of each exhibit -- that is the copy that the parties have
16 for use during the hearing -- that the Commission requires
17 three official copies of every exhibit.

18 And recently there has been confusion, in fact, I
19 think perhaps, in this very proceeding, as to that point. And
20 unless we have a very, very strong reason, we will not accept
21 an exhibit that does not have three, authentic copies to be
22 received into evidence, and taken into the record, by the court
23 reporter.

24 Is there any question about that? That is a long-
25 standing, old, NRC Rule.

1 MR. TURK: Judge Smith, this is Sherwin Turk.

2 JUDGE SMITH: Yes?

3 MR. TURK: How many copies of the testimony will you
4 require at the hearing?

5 JUDGE SMITH: I am glad that you mentioned that.

6 If you have a short document, I recommend that you
7 only bring one document for insertion into the transcript and
8 that way, corrections on it can easily be made, even say, that
9 the witness mid-way through his testimony wishes to correct his
10 testimony, that could be made right then and there.

11 And we could be assured then, that as it is
12 duplicated with the verbatim, with the oral testimony, that
13 every duplicated copy of the transcript is exactly the same.

14 Therefore, I propose that as to short items of
15 testimony, that you only intend to offer one corrected copy.
16 Now, as to bulky attachments, I think that the Board already
17 issued an order, that those should be regarded and offered as
18 exhibits, not to be bound in a transcript.

19 We have not set a page demarcation on this. I don't
20 know if we really have to. Judge Harbour has said 20 pages; I
21 said, 100, and I guess somewhere in between 20 and 100 would be
22 the break-off point between a bulky testimony and a short one.

23 I will allow that to your own judgment, based upon
24 how easy it is to break testimony up into attachments and
25 direct testimony.

1 JUDGE HARBOUR: You talk about attachments, all
2 testimony will be included.

3 JUDGE SMITH: Yes, all testimony, as such, will be
4 bound into the transcript and discovered.

5 Any questions on that.

6 MR. DIGNAN: Your Honor, this is Tom Dignan and I may
7 be confused, but with respect to testimony -- forgetting
8 attachments or anything else -- I take it that if a piece of
9 testimony -- for example REPE testimony, if you had a chance to
10 glance at it, it is considerably more than 20 and considerably
11 more than, indeed, a 100 pages.

12 Would it be expected with a document like that, to
13 bring sufficient copies for the reporter?

14 JUDGE HARBOUR: You said one copy, didn't you?

15 JUDGE SMITH: I did say one copy. I was not thinking
16 -- are you speaking now of written testimony, as if it is oral
17 testimony?

18 MR. DIGNAN: That is correct, Your Honor.

19 JUDGE SMITH: Well, in that event, I think that is
20 probably the only case. In that event, you are buying a copy
21 of the transcript and if you are thinking about saving money, I
22 guess that we ought to hear from you on it.

23 MR. DIGNAN: No. It is not a question of saving
24 money. I just want to know what the Board's preference is. In
25 other words, the court reporters normally, at ACE, and I know

1 that we have a new reporting service this time, or at least
2 that is my understanding, always said, just give us the one
3 copy and we will duplicate it and make our schedules. There is
4 no problem.

5 Now, when you were going through this, I was
6 wondering if you were suggesting that instead of giving them
7 just the one copy, when it was particularly bulky, you wanted
8 us to be in the hearing room with whatever number they say that
9 they need per copy of the transcripts, and it usually runs 30
10 or 35, something like that.

11 JUDGE SMITH: No.

12 Our preference is, that testimony as such, written
13 testimony as such, be offered one corrected copy only.

14 MR. DIGNAN: And is it your understanding that the
15 reporters are prepared to deal with that?

16 JUDGE SMITH: Well, as you noted the contract is new.

17 MR. DIGNAN: I know.

18 JUDGE SMITH: The representative is quite busy here
19 today in taking this transcript and she does not know.

20 After this pre-hearing conference, I will go to the
21 contract and see if there is anything inconsistent in the
22 contract with what we ruled today.

23 MR. DIGNAN: Thank you, Your Honor.

24 JUDGE SMITH: That is a good warning and I appreciate
25 it.

1 Now, going back to the testimony. Some of the
2 parties, and it comes to mind that I saw an example by Mr.
3 Backus and by Mr. Dignan, preceded the narrative part of the
4 testimony by a description of what the testimony, what the
5 purpose of the testimony was, or a summary of it.

6 Now, that is very, very helpful. Particularly when
7 you are handling a large volume of papers, as we are, and it is
8 also helpful for searching the transcript.

9 So, I am asking every party, who has not done that
10 with their testimony, to go back and look at their testimony
11 and make sure that at the very outset, the first thing that you
12 have to say in your testimony -- even if it is an attachment --
13 is a summary of what it is about, together with what the
14 purpose of it is.

15 And for example, one that comes to mind, that I
16 picked up the other day is the one that has Steve Sholly and
17 Jan Beyea, and other witnesses on it, and my memory is that I
18 had to go several pages into the testimony before I learned
19 exactly what issues they were talking about.

20 So, it would be very helpful to all of us, if we
21 would have, either an outline, table of contents, a summary, or
22 something which, in short amount of information, can tell us
23 what that item of testimony is about.

24 Are there any questions about that?

25 MS. CURRAN: This is Diane Curran.

1 Would that be covered by a question appearing on the
2 first page, what is the purpose of your testimony?

3 JUDGE SMITH: That, I think, is a good way to do it.

4 MS. CURRAN: Okay.

5 JUDGE SMITH: Yes, I think that would be a good way
6 to do it.

7 We have another problem, too, and that is, that all
8 documents, let me say all documents more than one page long,
9 should have page numbers on them, otherwise, it is very, very
10 difficult to refer to them during the hearing, and just almost
11 impossible to cite, in your proposed findings and in a
12 decision.

13 And this was brought to our attention by a document
14 filed by FEMA. And we are all aware that if you are doing
15 your own word processing that it is pretty tricky to get that
16 machine to number the pages. But even if you have to do it by
17 hand, the pages have to be numbered, otherwise, we are just in
18 disarray and we are wasting our time.

19 So, please attend to that, and Mr. Flynn, I would ask
20 you that you file corrected copies of your papers.

21 JUDGE HARBOUR: And separate pagination on the
22 attachments, each of them.

23 MR. FLYNN: Yes, Your Honor.

24 JUDGE SMITH: And, furthermore, another problem that
25 comes up quite often is that an item of testimony, for example,

1 will have many attachments, more than one attachment, at least.

2 And it is very, very difficult to tell when one
3 attachment begins and when another one ends. Therefore, if you
4 have attachments, don't put them back to back without some
5 marker to suggest a beginning and an end.

6 And, of course, the obvious way to do that, would be
7 to have attachments numbered in any way that you wish, A
8 through B, and each one having its own numbering.

9 Now, I am sure that if you follow this, you will all
10 be grateful during the hearing, as it cuts down frustration
11 when you are able to go to the document that is being
12 discussed.

13 Any questions on that point?

14 VOICE: Is that supposed to be --

15 JUDGE SMITH: Who asked that, who was that?

16 Mr. Brock?

17 MR. FIERCE: Your Honor, this is Alan Fierce in
18 Massachusetts Attorney General's Office.

19 JUDGE SMITH: I missed your question, Mr. Fierce.

20 MR. FIERCE: Does that mean now, that if we go
21 through a document and renumber it, or number the pages, that
22 another document with numbered pages, now, needs to be served
23 on each and every party in the case, at this time?

24 JUDGE SMITH: Well, I don't know what to tell you. I
25 would say, yes. I realize -- how many parties are there, 20?

1 MR. FIERCE: Forty.

2 JUDGE SMITH: Forty parties?

3 MR. OSTRANDER: Excuse me, Your Honor, Frank
4 Ostrander.

5 JUDGE SMITH: Yes.

6 MR. OSTRANDER: I think that we served something like
7 30-some-odd, 35 copies, of 1,300 pages.

8 JUDGE SMITH: I think that maybe the time might come
9 for the intervenors in the forthcoming negotiation to report to
10 the Board, who are the active parties, and who are the inactive
11 parties.

12 I see no point in having every exquisite enabling
13 consideration made available to 35 parties, if they don't come
14 to the hearing.

15 How many will we expect to be at the hearing?

16 VOICE: Who are you talking to?

17 JUDGE SMITH: Let me ask Mr. Turk, do you have any
18 feeling for that?

19 MR. TURK: I have a general feeling that the parties
20 who are on the line today, with the addition of Mr. Lord of the
21 Town of Amesbury, are the active participants in the
22 proceeding.

23 And I am not aware of others who have been excluded
24 from this conference call, who are active in these proceedings.
25 I may be off on omitting one, and if I do that, I am going to

1 hear about it, but that is the general impression at this time.

2 JUDGE SMITH: All right, give me a moment will you so
3 that I can consult with the Board, and then I will come back to
4 you.

5 We are off the record for a moment.

6 (Whereupon, a brief recess was taken at 3:17 p.m.)

7 JUDGE SMITH: Back on the record, at 3:20 p.m.

8 MR. TURK: This is Sherwin Turk and I don't know if
9 you heard our conversation while your phone was out.

10 JUDGE SMITH: I heard it in the background, yes.

11 MR. TURK: In addition to Bill Lord for Amesbury, Mr.
12 Nado for the Town of Rye, wishes to be considered active and no
13 party on the phone was aware of anyone else who should be
14 considered to be an active participant.

15 JUDGE SMITH: Well, we went through somewhat the same
16 exercise, while we were off the record, and with the addition
17 of the Town of Rye, we will allow service of these corrected
18 items, only on the active parties, if you wish.

19 We will accept that, I mean. Is that satisfactory,
20 gentlemen?

21 MR. TURK: Yes, Your Honor.

22 JUDGE SMITH: Which raises another point, when we
23 speak of the active parties, the Board will require at the
24 beginning of every issue, a representation by the parties that
25 each Contention and sub-issue is still a valid issue and it has

1 not been mooted by evolving events.

2 For example, I have seen in many cases, and perhaps
3 most of the cases I have been in, that a panel of witnesses
4 will be sworn, and ready to testify and the cross-examination
5 is so insignificant as to suggest that the cross-examining
6 party no longer has an interest in that issue.

7 We simply don't want that and I don't think that
8 anybody wants it. So that what we require is that as the
9 proceeding unfolds, that as soon as a party recognizes that
10 either they have no interest in an issue, or that their
11 concerns have been satisfied that that fact be made timely
12 known to the other party and to the Board, so that unnecessary
13 and unnecessary travel and all of the unnecessary aspects of
14 it, can be avoided.

15 And I will tell you what brought that to our
16 attention just now. We noted that the Town of Kensington,
17 apparently has Contentions in here, and is participating on
18 this telephone conversation but has not provided any testimony.

19 Now, I am not suggesting that the Town of Kensington
20 must do that because the Rule at the Commission is clear, that
21 you can establish your case, solely by cross-examination. But
22 it does give rise to the question, is the Town of Kensington
23 still interested in its Contention?

24 MS. MITCHELL: Yes, Your Honor.

25 JUDGE SMITH: Okay, that is fine, but we just are not

1 trying to encourage or discourage anybody from actively
2 pursuing this issue. And we just wish you to acknowledge as
3 soon as you are able to, that you have been satisfied as to a
4 particular issue.

5 JUDGE HARBOUR: Ask Ms. Curran about the NECNP.

6 JUDGE SMITH: Ms. Curran, Judge Harbour is interested
7 in what your standing is, what your position is on Contention
8 NHLP 6, and RERP 8?

9 You do not seem to have testimony on that.

10 MS. CURRAN: No, we intend to pursue those through
11 cross-examination.

12 JUDGE SMITH: All right, but that is still an active
13 point with you?

14 MS. CURRAN: Right.

15 JUDGE SMITH: All right, that is exactly the type of
16 consideration and representation that we would like to have,
17 with the parties, if you don't mind.

18 Moving now to cross-examination plans. We will
19 require cross-examination plans, and first there is no
20 particular format which is necessary. The cross-examination
21 plan can be done in question and answer form or question form,
22 or narrative form, or outline form or whatever form you choose.

23 Providing that it adequately informs the Board, as to
24 what the objectives of your cross-examination is, and how you
25 intend to go about it.

1 Now, the procedure that we will follow, of course, is
2 that some of you, most of you will probably wish to keep your
3 cross-examination plan private during the cross-examination,
4 although I think that that is usually something that is
5 unnecessary, we will certainly honor that desire.

6 So, we will require, at the beginning of the cross-
7 examination, that you provide the Board, each Board Member with
8 a copy of your cross-examination. Then, without any further
9 action on the part of the Board, it is up to the parties,
10 themselves, after the cross-examination, to exchange copies of
11 that plan.

12 It is up to the parties not cross-examining the other
13 parties, to seek and demand a copy of the examination and, of
14 course, it is up to the cross-examiner to provide it.

15 Are there any questions on that?

16 MR. FIERCE: Yes, Your Honor.

17 Alan Fierce, again, and this cross-examination plan
18 needs to contain what? I am somewhat confused, a statement of
19 the objectives of the cross?

20 JUDGE SMITH: Yes, and how you intend to proceed.
21 And you may do it virtually any way that you wish by listing
22 the questions that you intend to ask, if that is better for
23 you; or an outline of your cross-examination, or whatever.

24 So long as we know what it is that you seek to
25 accomplish by your cross-examination, even if it is to test the

1 credibility of a witness, if that is what it is, say it.

2 If it has no substantive objective, say it. But we
3 want to know why you are pursuing each line of questioning.

4 Any questions?

5 MR. FLYNN: This is Joseph Flynn.

6 JUDGE SMITH: Mr. Flynn?

7 MR. FLYNN: If you choose to list the question, it
8 frequently happens that an answer to a question will suggest
9 other questions. Will those other questions be disallowed?

10 JUDGE SMITH: Well, no.

11 This business of cross-examination plans, depends
12 entirely upon the good efforts of the parties. Let me say that
13 I have never seen a party in litigation -- I am sure here, who
14 could not conceive of a cross-examination plan that does not
15 reveal what they really have in mind.

16 I am sure that it would be possible not to come up
17 with a cross-examination plan that does not inform us. So, we
18 intend to allow cross-examination, we must allow cross-
19 examination on any area of answers that you did not anticipate.

20 MR. FIERCE: Okay, I think that I follow you. You
21 don't want to have to ask the question, where are you going
22 with this line of questioning?

23 JUDGE SMITH: That is right.

24 Now, let me point out the advantages to that. I know
25 that it is hard work but it is no more work than you have to do

1 anyway to get ready for your cross-examination, but you have
2 the advantage of having the Board understand, from the very
3 beginning, what it is that you intend to accomplish.

4 And that means that the questions from the very
5 outset, have significance to us, and as the Chairman, it is
6 very, very helpful to me to understand and to be able to
7 anticipate objections and to be ready for them and I just like
8 them very much and they are very helpful.

9 And I think that they will be very helpful to you,
10 too, when you get accustomed to them.

11 Anything further on that?

12 MR. FLYNN: This is Joseph Flynn, again.

13 JUDGE SMITH: Yes?

14 MR. FLYNN: I would like you to just go over one more
15 time, the mechanics of disclosing the cross-examination plans.
16 I understand they are given to the Board, when the cross-
17 examinations begin, but only to the Board.

18 JUDGE SMITH: Right.

19 You may choose, if you wish, and I have seen this
20 done very effectively, to give a copy of your cross-examination
21 plan to the witness. And therefore, he knows what the scheme of
22 it is and he may have or she may have a better response.

23 But you are only required, at the outset, to give it
24 to the Board.

25 MR. FLYNN: But then at the end of the cross

1 examination, it must be provided to the party who sponsored the
2 witness?

3 JUDGE SMITH: To all parties.?

4 MR. FLYNN: To all parties.

5 JUDGE SMITH: Because that is, in effect, the cross-
6 examination plan is, in effect, an ex parte communication to
7 the Board, and to remedy that problem, all parties have to be
8 informed as to what it was.

9 MR. FLYNN: I see, okay, thank you.

10 JUDGE SMITH: Now, anything further on that issue?

11 MR. DIGNAN: Your Honor, this is Tom Dignan.

12 JUDGE SMITH: Yes?

13 MR. DIGNAN: Could I make a suggestion on that
14 exchange of plans with all the parties, and confusing the
15 problems?

16 At the last session of the hearing, it worked quite
17 successfully when the cross-examiner had one extra copy and
18 handed it to the reporter, and it just got bound in.

19 JUDGE SMITH: The difficulty -- Mr. Dignan, I think
20 that is a good idea and let's explore it.

21 The other side of that, is that if the cross-
22 examination plan, if you feel that the cross-examination plan
23 was an inappropriate or unintended - - if it put an idea in the
24 Board's mind, that you did not think belonged there -- and it
25 gives you the chance to address that timely --

1 Let's say, for example, in this cross-examination, I
2 intend to demonstrate that witness A is a scoundrel. And he
3 always has been and not one question is ever asked about that,
4 then you should have the opportunity assuming that you are
5 sponsoring witness A, to object to that and to address it and
6 to complain.

7 But if we wait until the hearing is over, then that
8 opportunity will have passed.

9 MR. DIGNAN: Well, I was assuming and perhaps,
10 erroneously, that and at least it has been done in the past,
11 and I may be wrong, but people would be seeking daily copy so
12 that the transcript would be available, to people the next day.

13 JUDGE SMITH: Well, let me say, Mr. Dignan, that that
14 is entirely within the discretion of the parties, themselves.

15 MR. DIGNAN: Okay.

16 JUDGE SMITH: If the parties agree that that
17 satisfies their requirements, it certainly satisfies the
18 Board's requirements. And I see the logic of it.

19 MR. DIGNAN: Yes, Your Honor.

20 JUDGE SMITH: There, of course, is an understanding
21 that the cross-examination plan is not evidence in any way.

22 All right, is there any question about anything that
23 has come up to date?

24 MR. FIERCE: Alan Fierce again, Judge.

25 I have one question about cross-examination plans

1 because it is something that I am not familiar with. Is there
2 leeway in your procedure for changes in the plans in mid-
3 stream?

4 For example, as you know, cross-examination can be
5 somewhat of a dynamic process, and if there happens to be a
6 break in the cross-examination because the day ended and it
7 needed to be continued to the following morning, many lawyers
8 might want to think about how their cross-examination was
9 going, sit down that evening and perhaps revise the strategy.

10 JUDGE SMITH: You are entirely correct.

11 MR. FIERCE: And have an amended cross-examination
12 plan to be filed the following morning with you.

13 JUDGE SMITH: I agree, and you are entirely correct
14 on that. Furthermore, as we discussed in a slightly different
15 context, earlier, that if a line of questioning does not go in
16 the direction that you anticipated, certainly there is no
17 impediment to your following the questioning wherever it takes
18 you.

19 I would only require again, a good faith effort, to
20 tell us at the outset, what it is that you have in mind, and
21 then if you believe that your cross-examination plan no longer
22 meets your purposes, then you tell us about it, as soon as you
23 are able to.

24 MR. FIERCE: I appreciate that, thank you.

25 JUDGE SMITH: All right, anything further on anything

1 so far, because I have a final item that I want to bring up
2 when we are all done with other business?

3 MR. OSTRANDER: This is Frank Ostrander from
4 Massachusetts.

5 We have several other items that we would want to
6 bring up in a regular pre-hearing conference.

7 JUDGE SMITH: Well, do you want to --

8 JUDGE HARBOUR: He can present them to us and we will
9 see what it is.

10 JUDGE SMITH: All right, go ahead, Mr. Ostrander. We
11 are not agreeing to hear them all but you can identify them and
12 see if we can take them up.

13 MR. OSTRANDER: Why don't I try just to list them?

14 JUDGE SMITH: All right.

15 MR. OSTRANDER: The Board has taken several of these
16 away.

17 Perhaps the most important is the issue that we
18 raised in our motion of what appears to be an amendment to the
19 New Hampshire Plan by way of direct testimony put in by the
20 Applicant on the Sheltering Issue.

21 I know that the other parties have the same
22 confusion.

23 JUDGE SMITH: Okay, you happened to raise the one
24 issue that the Board has had an opportunity to discuss. In the
25 context of your motion, we see absolutely nothing wrong with

1 that.

2 The Plan will be a changing one, and if you have been
3 surprised by the testimony, that is one matter, but if you find
4 that the Plan is being amended, we are not aware of any legal
5 barrier to that, or any practical one or any fairness barrier,
6 or anything else. We see nothing wrong with that.

7 Perhaps an analogous situation is environment impact
8 statements where the NRC Staff is required to prepare an
9 environmental impact statement. Well, we have very substantial
10 Court of Appeals law on the fact that environmental impact
11 statement is amended as the hearing on it, unfolds. And the
12 final decision is an amendment to the environmental impact
13 statement.

14 The entire purpose of the hearing is to consider the
15 Plan and if the Applicant chooses to amend it in that fashion,
16 that is up to them, providing, of course, that you are fairly
17 treated and not surprised.

18 Mr. Ostrander?

19 MS. DOUGHTY: Judge Smith?

20 JUDGE SMITH: Yes.

21 MS. DOUGHTY: This is Jane Doughty and I am still
22 having great difficulty hearing Mr. Ostrander, can you repeat
23 what he says?

24 JUDGE SMITH: Yes, yes, I will.

25 In Mr. Ostrander's motion, he -- though he is

1 paraphrasing, let me get it.

2 Mr. Ostrander objected to what appeared to be a
3 functional amendment to the New Hampshire RERP, and I don't
4 know what that is.

5 JUDGE HARBOUR: Radiological Emergency Response.

6 JUDGE SMITH: Yes, Radiological Emergency Response
7 Plan Revision II, by the aggregate evidence, consistent with
8 the exhibits and the testimony.

9 And he believes that that is impermissible. And in
10 our ruling you heard that putting aside the issue of surprise,
11 of lack of fair notice, we see nothing wrong with that.

12 MR. OSTRANDER: Your Honor, can I speak on this a
13 little bit more?

14 JUDGE SMITH: Yes, but let me caution you that when
15 this hearing unfolds, when you have an argument to make, you
16 make them at the outset and you do not attempt to add to them
17 as the Board rules.

18 We will be very hard nosed on that point, because if
19 you don't make your arguments at the outset, then you may very
20 well lose the opportunity to make the following arguments.

21 We will let you off this time, go ahead.

22 MR. OSTRANDER: Okay, I understood that when I
23 started to talk that I was simply listing agenda items, I did
24 not realize that that was my argument.

25 JUDGE SMITH: Well, let me say here, you have a

1 motion which you have asked us to take up and rule on without
2 answers, in that motion in its entirety on this issue consists
3 of a short paragraph on page 2. And you have not carried your
4 burden. Now, we are giving you, we gave you a second chance,
5 and now we are going to give you a third chance. But let me
6 caution you, you are not going to be able to get away with that
7 during this hearing, now that you understand what our rule will
8 be.

9 You may proceed.

10 MR. OSTRANDER: Thank you.

11 We, I think that there is NRC case law to the effect,
12 I think that the Zimmerman decision by the Appeals Board, at
13 least partially addresses this issue. I agree with the Board
14 that many ministerial changes can be made in the Plan without
15 causing a difficulty for the parties who are litigating the
16 case.

17 But here, we have a fundamental change in the Plan
18 and the Plan now includes a Plan to shelter, apparently without
19 being formally amended, a Plan to shelter the beach
20 populations.

21 I know that the Federal Emergency Management Agency
22 has just sent a letter to the Applicant saying, now, is this in
23 the Plan or isn't it?

24 And it seems to us, that if it is an amendment to the
25 Plan of such a fundamental nature, we are talking about one of

1 the basic protective actions here, then we have a right to have
2 FEMA review it, to see what FEMA thinks of it, and to, perhaps,
3 file new Contentions.

4 In the alternative, it seems that we would have a
5 right to strike testimony regarding something that is not in
6 the Plan.

7 Otherwise we are litigating a shadow.

8 JUDGE SMITH: Litigating a shadow?

9 MR. OSTRANDER: Well, right now, we have a promise to
10 amend the Plan, that is what they are stating in their direct
11 testimony. We don't know what that amendment is and we don't
12 know how it works.

13 JUDGE SMITH: Have the other parties understood Mr.
14 Ostrander's complaint?

15 MR. DIGNAN: Your Honor, this is Tom Dignan and I had
16 great difficulty hearing the connection between us and Mr.
17 Ostrander as it is not that good. If I am to respond, is it
18 possible, for Your Honor, to summarize the points?

19 I have a feeling that I know what they were, but did
20 I understand correctly that the thrust of it is, that you have
21 no right to give testimony such as the Shelter testimony which
22 relies on new data?

23 JUDGE SMITH: Well, it goes further than that. He
24 explains why he believes that he is prejudiced by that. It is
25 not an issue of surprise, so much as it has denied them an

1 opportunity number one, FEMA review that; and two, perhaps
2 raise new Contentions based upon the amendment and based upon
3 FEMA's evaluation.

4 Have I paraphrased your concern, correctly, Mr.
5 Ostrander?

6 MR. OSTRANDER: In part, and in the alternative, if
7 you know, either this stuff is in the Plan or it is not,
8 basically.

9 JUDGE SMITH: And he has also -- did you hear that
10 Mr. Dignan?

11 MR. DIGNAN: I did not, Your Honor, I am sorry.

12 JUDGE SMITH: He says, either the items set out in
13 your testimony, the Sheltering is in your Plan or it is not.

14 And if it is not, then that part of your testimony is
15 subject to attack, I guess.

16 MR. OSTRANDER: That is correct.

17 JUDGE SMITH: I don't under -- yes, right.

18 MR. DIGNAN: Is it in order for me to respond?

19 JUDGE SMITH: Yes, it is in order. This type of
20 thing is sometimes more appropriate as an objection to the
21 receipt of testimony at the time of the hearing, however, I
22 think that we should commend, Mr. Ostrander, for raising such
23 an important issue very, very early.

24 Although he did not do it in a thoroughly supported
25 way, but he has raised it early.

1 MR. DIGNAN: Well, I think that my response in terms
2 of whether it is part of the Plan or not, is irrelevant. What I
3 am dealing with is a Contention by various people, and indeed,
4 to date, although I have not reviewed everything as thoroughly
5 supported, as I understand it by FEMA, that the beach situation
6 is such that Sheltering is not a possible remedy.

7 And that testimony is directed to that Contention.
8 Whether the study does or does not go into the Plan as a matter
9 for the future, I point out to the Board, as the Chairman has
10 already indicated, the Plan is never final even after it is
11 litigated and put to bed in a case. And the findings the Board
12 makes are always predictive and I briefly would cite to the
13 Board, the Limerick case, A Lab 808, 21 NRC 1595, 1601,
14 Louisiana Power and Light, the Waterford case, A Lab 732, 17
15 NRC 1076, 1103-04.

16 Now, whether something becomes part of the Plan, in
17 the last analysis is between the State of New Hampshire, FEMA
18 and other people.

19 But that does not put a stricture on whether or not
20 an Applicant can defend against a Contention by the data that
21 it has put together and is prepared to defend on the stand.

22 The fact that a Shelter Study was ongoing was known
23 for some time, and the fact that we were prepared to, and the
24 Plan was not to be read as saying that Sheltering would never
25 be used, was revealed in an interrogatory some time ago.

1 So, I confess to seeing no difficulty with this
2 testimony whatsoever, under the Rules as they apply to this
3 proceeding.

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

5 I am not taking a side in this controversy but I
6 think that I can add something to your understanding.

7 It makes a difference to FEMA whether the Shelter
8 Survey is considered a part of the Plan, simply because that
9 determines whether we review it or not. Our relationship with
10 the NRC is such that, in fact, our relationship is with NRC and
11 not directly with the State in this context, at least.

12 If it is part of the Plan, we will review it because
13 that is a part of the work that we are doing for NRC. If it is
14 not a part of the Plan, then we don't have a role to play.

15 JUDGE SMITH: I think that we have heard enough now
16 to recognize that this is a matter of substantive merit and
17 will have to be addressed at the time that the testimony, the
18 respective testimony is offered.

19 You have not given us enough in the motion to -- as a
20 matter of fact, you don't seek any relief, other than a delay
21 in the hearing.

22 MR. OSTRANDER: If I could answer that, Mr. Chairman?

23 JUDGE SMITH: Certainly.

24 MR. OSTRANDER: It was raised in the motion, simply a
25 request for a pre-hearing conference.

1 JUDGE SMITH: Right, well, you have it, but if you
2 wish to address the relevance, the fairness, the
3 appropriateness of testimony and exhibits, you should do so at
4 the time that the exhibits are offered. However, I think that
5 it is very responsible of you to give timely notice to the
6 Board and to Mr. Dignan that exactly you do have that
7 objection.

8 But we do not have anything before us right now, to
9 allow the Board to make a definitive ruling other than
10 surprise, other than surprise, which you are not raising, we
11 see nothing wrong with it.

12 But we will not rule until a particular item of
13 evidence is offered.

14 MP. BROCK: Your Honor, this is Mat Brock for the
15 Town of Hampton and since you have particularly commented with
16 respect to the issue of surprise, I have not by any means gone
17 through all of the pre-trial testimony, but it is my
18 understanding that in addition to the Sheltering Issue,
19 Applicants have changed the Plan by omitting teamsters, or at
20 least most teamsters as bus drivers for the evacuation buses.

21 Originally there were some 1,500 teamsters designated
22 to perform that role, and Hampton submitted pre-trial testimony
23 on that basis and apparently that is no longer the Plan and
24 some other groups have been designated to fulfill that
25 function.

1 And it is certainly surprise and we believe, unfair
2 surprise for us to go into the hearing at this point, and to be
3 litigating the issue of, for example, personnel to drive those
4 vehicles, when we have had no discovery, and we have no
5 information other than their statements in Applicant's pre-
6 trial testimony that these other groups will now perform that
7 function.

8 And we would offer that as an additional grounds for
9 Mr. Ostrander's motion that some additional time, here, for
10 discovery and possibly new Contentions would be appropriate.

11 JUDGE SMITH: Mr. Ostrander moved for two weeks
12 continuance and he is receiving one week and we will have to
13 take the objections to particular items of testimony up in
14 context with those items. We cannot sit here and make generic
15 rulings as the broad issues that you are raising.

16 We are just not prepared for it. This really was not
17 the intent of the pre-hearing conference. The arguments were
18 made solely for an extension of time and we decided that one
19 week would benefit everybody and be sufficient for all purposes
20 and that is our ruling.

21 MR. OSTRANDER: Mr. Chairman, just for the record,
22 this is Frank Ostrander.

23 JUDGE SMITH: Yes.

24 MR. OSTRANDER: Our motion was, maybe it was sort of
25 hastily drafted and it was unclear, was that we really wanted

1 two things -- one, more time and two, a pre-hearing conference
2 to resolve just these kinds of fundamental issues before we got
3 into the case.

4 And I guess your ruling has it that this was our pre-
5 hearing conference.

6 JUDGE SMITH: Well, it is.

7 You were not denied your opportunity to raise as to
8 particular items of evidence. The argument that you are
9 raising today, at the hearing.

10 MS. CURRAN: This is Diane Curran.

11 I would just like to make two points. First of all,
12 I think that everybody's purpose in doing this, is to eliminate
13 any kind of inefficiency in these hearings.

14 The motion that we filed, on Monday afternoon, it was
15 literally or maybe it was Tuesday -- none of us had really gone
16 through the testimony to any extent and certainly we have all
17 been looking at it, as carefully and quickly as possible, and
18 as far as for myself, I was not even aware until yesterday that
19 the bus driver issue had been changed.

20 It has been a process of trying to review these plans
21 and trying to bring to the Board's attention the problems that
22 we are going to have so that we don't waste a lot of time at
23 these hearings.

24 I have one other matter to raise, and that is the
25 issue of the personnel resources segment survey, which is part

1 of Applicant's case.

2 From FEMA's testimony, I understand that that survey
3 is now being reviewed by FEMA and that FEMA did not say how
4 long it would take to review that. But pursuant to the Appeal
5 Board's order of AI-864, it is my understanding that we would
6 have thirty days from the time that FEMA issues its finding on
7 that survey, before we had to respond to it, and begin hearings
8 on that particular issue.

9 And that is just another problem that we would have
10 raised. Again, I was not even aware of it, until I had a
11 chance to look over all of the testimony.

12 JUDGE SMITH: Well, you can raise your points with
13 respect to the items of testimony and in the meantime, we will
14 go back to your citation here, and see if there is a problem,
15 here, that we overlooked.

16 But you raise it at the hearing.

17 MR. TURK: Judge Smith, this is Sherwin Turk and I
18 won't make a motion at this time, but I wanted to give you
19 early warning of the way that you noted and appreciated it,
20 Massachusetts Attorney General is giving you warning.

21 We may move with respect to the Massachusetts
22 Attorney General's testimony presented by Beyea and Sholly, we
23 may move to keep that testimony out as inappropriate or
24 irrelevant. I don't know if we will file a motion in limine,
25 or just simply a motion to strike, at the time that it is

1 presented.

2 But one or the other is a possibility.

3 JUDGE SMITH: All right, surely, the Attorney General
4 appreciates your warning.

5 VOICE: Your Honor, I should say for the Applicant,
6 that the Attorney General can assume that he will get a similar
7 motion from the Applicant and I may go further than the
8 testimony that Mr. Turk just outlined.

9 MR. TURK: Incidentally, I told Mr. Fierce, and the
10 Attorney General that yesterday, when I spoke to him that that
11 was my intention, so that he was aware of it.

12 JUDGE SMITH: Ms. Curran, were you cut off?

13 MS. CURRAN: No, I was not. I think that Ms. Doughty
14 had something to say.

15 JUDGE SMITH: Ms. Doughty?

16 MS. DOUGHTY: Yes, I would like to concur with the
17 points and join in the objections raised by Mr. Ostrander for
18 the Commonwealth and Mr. Brock for the Town of Hampton and also
19 to concur with what Ms. Curran said.

20 And in addition, there appears to have been some
21 revisions in the Decontamination Reception Center Area as well
22 that constitutes a bit of a surprise. Specifically the
23 provision by the Applicant that they will be seeking Fire
24 Department personnel from other undesignated communities to
25 augment the staffing of the host communities.

1 That was not in the Plans before.

2 JUDGE SMITH: All right, well, we appreciate the
3 sentiment that you are raising here. We want to point out that
4 one of the reasons that the NRC has a provision for the filing
5 of testimony before the hearing, and exchange of evidence
6 before the hearing, is exactly for the reasons that you are
7 raising, so that you can be given timely notice as to what the
8 case is going to be.

9 If you still feel that you have been surprised or
10 unfairly treated, you can make those arguments at the time that
11 the respective item of testimony is offered. You have been
12 given more time to examine this tendered evidence, than the
13 Rule provides. It seems to me that the issues have been laid
14 out fairly well throughout the past six months or a year.

15 We will have to have a specific showing as to the
16 specific items of evidence, before we can entertain your
17 complaints and objections.

18 JUDGE HARBOUR: And within the confines of the
19 Contentions as presented.

20 JUDGE SMITH: And within the confines of the
21 Contentions as presented.

22 Anything further?

23 (No response.)

24 JUDGE SMITH: I have one final item of business if we
25 are all --

1 MR. OSTRANDER: Mr. Chairman, this is Frank
2 Ostrander, and I have one other matter.

3 JUDGE SMITH: All right, Mr. Ostrander.

4 MR. OSTRANDER: The rebuttal testimony scheme, that
5 was presented to us by the Board's Order of September 10th,
6 causes us some problems. That once again, it is - - maybe Alan
7 Fierce can probably outline the problem, better than I.

8 MR. FIERCE: I will give it a try.

9 There is a series of questions and concerns we have
10 regarding how and when rebuttal testimony is to be handled. And
11 we understand that the Board is asking for an outline of
12 rebuttal testimony.

13 And from our standpoint, Mr. Chairman, what we would
14 want to have is flexibility at the hearings to do, and in cases
15 where there is a single point or two that needs to be rebutted,
16 have the flexibility to put on a rebuttal witness and to give
17 that quick rebuttal testimony orally.

18 But there are other cases where the testimony that
19 has been filed contains technical information or detailed
20 studies or reports, we would like the flexibility to file
21 written rebuttal testimony of a more complex nature and have
22 that filed after the hearings.

23 So, that is what we are seeking and in terms of an
24 outline of the rebuttal now, prior to the hearings, you know,
25 because we are not sure until we have the cross-examination,

1 what the exact rebuttal should be, it becomes very difficult to
2 outline it in advance, and you know, were we to have a pre-
3 hearing conference, this would be an issue that we would be
4 asking for some clarification on.

5 JUDGE SMITH: This is a pre-hearing conference.

6 MR. FIERCE: I guess I am asking for some
7 clarification on that point.

8 JUDGE SMITH: Well, that was Mr. Ostrander?

9 MR. FIERCE: This is Alan Fierce. I guess the first
10 question was, can we have that kind of flexibility that I
11 suggested?

12 JUDGE SMITH: Well, I tell you, I am reading your
13 paragraph where you make the point right now, and I stumble
14 over mockery and shambles and that is why I did not appreciate
15 the point that you are making, but I will get to it.

16 This is a provision in the Board's September 9th,
17 Order, you say September 10th or September 9th?

18 MR. FIERCE: I believe that it was the 10th.

19 JUDGE SMITH: I am not familiar with it, and it may
20 very well be that we can resolve it, with a moment off the
21 record now, or maybe it can be resolved later.

22 Let me go off the record now, and consult with my
23 colleagues and see what the problem is here.

24 (Off the record at 3:57 p.m.)

25 JUDGE SMITH: Back on the record.

1 Yes, this is Judge Smith again, and we are back on
2 the record. We had a brief conversation about this matter off
3 the record.

4 And I am still not clear as to everything that is
5 involved in this, and I am aware that the Appeal Board awarded
6 the opportunity for rebuttal testimony. I am also aware that,
7 so far in this case, it seems that the intervenors have been
8 given more opportunity to file case-in-chief testimony, rather
9 it be rebuttal or not, than is normally the case.

10 I think that the Board is going to have to consult on
11 this at greater length. As I understand it right now, you have
12 been given an additional opportunity to file, to present
13 written testimony over and above the traditional. The
14 traditional in NRC hearings is for following discovery, for
15 direct testimony and rebuttal testimony to be filed,
16 simultaneously, in anticipation and in recognition that you
17 know what you have to rebut through discovery.

18 Then, if it follows on cross-examination or other
19 developments, that additional rebuttal is necessary, you seek
20 relief for that and are given that opportunity.

21 It seems to me that now you have been given a blanket
22 opportunity --

23 JUDGE HARBOUR: No.

24 JUDGE SMITH: Well, I don't know what you have been
25 given so that the fact is that we are not going to be able to

1 rule on that point. We will have to --

2 JUDGE HARBOUR: They have been given leave to -- have
3 been given an --

4 JUDGE SMITH: Oh, you have been given an opportunity
5 to outline in advance of the hearing, an opportunity to file
6 rebuttal. And you want more time, is that it?

7 MR. FIERCE: Well, the first thing that we want to
8 know is whether we were going to have flexibility at the
9 hearing to do what I call, the quick oral rebuttal where
10 necessary and where we saw fit, without having to do an outline
11 of that in advance?

12 JUDGE SMITH: I don't understand that to be any of
13 intention to part from the traditional ability that all parties
14 have, and that is, when events during a hearing, demonstrate a
15 need for rebuttal that earlier it could not have been
16 anticipated, it was not anticipated, that the Board gives you
17 appropriate relief. Either, as you say, a quick rebuttal or
18 whatever is needed. I don't understand anything that has
19 happened so far to change that.

20 That is a fundamental element of due process that you
21 have to have reasonable opportunity to address the information
22 presented against you and if it comes up late, well, we will
23 have to take that into account.

24 JUDGE HARBOUR: Our requirement for an outline
25 addressed the pre-filed addressed direct testimony.

1 JUDGE SMITH: Let's go off the record again.

2 (Off the record, at 4:02 p.m.)

3 JUDGE SMITH: I have again confirmed with my
4 colleagues that the intention of that rebuttal testimony
5 outline, is to give you an early opportunity, where you already
6 see it, based upon the pre-filed direct testimony, a request
7 for rebuttal testimony.

8 You are, in no way, denied the traditional
9 opportunities to request rebuttal testimony as the hearing
10 unfolds and you demonstrate the need for it. All of this is
11 something that is extra that I have never seen before in a
12 hearing, and it is -- I don't see how you can complain about
13 it.

14 MR. FIERCE: I am not complaining, Your Honor. We
15 just want clarification and I appreciate it, I think that I
16 have gotten that now, thank you.

17 JUDGE SMITH: Okay.

18 MR. TURK: Mr. Sherwin Turk?

19 JUDGE SMITH: Yes, sir.

20 MR. TURK: In light of the fact that the hearing
21 start date has now changed, by a week, may we also ask that the
22 order for filing the outline of rebuttal testimony move a week
23 ahead as well, so the outline would be due October 5th?

24 JUDGE SMITH: The first day of the hearing.

25 MR. TURK: Thank you.

1 JUDGE SMITH: Now, as we were off the record, I was
2 able to overhear the conversations about, can you get together
3 on the issue problem? You made an invitation to the people.

4 And I understand that some people cannot make it.
5 Well, that is fine, we cannot control how you go about it. But
6 we wish to make it clear that we require each party to enter
7 into these negotiations. You must do it. Is there any
8 question about that?

9 (No response.)

10 JUDGE SMITH: If it is a question of scheduling, that
11 is one thing, but the parties do not have discretion not to
12 negotiate the categories of issues. Is there any question
13 about that?

14 (No response.)

15 JUDGE HARBOUR: And we will send them a copy of this
16 with our order.

17 JUDGE SMITH: Does everybody hear that?

18 VOICE: Yes.

19 JUDGE SMITH: Does anybody have any question about
20 that?

21 (No response.)

22 JUDGE SMITH: All right, is there anything further,
23 Mr. Ostrander, have we completed your agenda?

24 MR. OSTRANDER: There is one more item.

25 JUDGE SMITH: Okay.

1 MR. OSTRANDER: It has come to our attention that the
2 Applicant's intent to file their mass plan some time in the
3 next few days, if not weeks. And we expect that they wou'd
4 probably file a motion asking for a Contention schedule and a
5 hearing schedule and by way of early warning, I guess, we would
6 like to sort of notify the Board that we would like some
7 consideration of the burden of the New Hampshire hearing when
8 they consider any such schedule.

9 In other words, we would rather not be in the
10 position of having to use our resources in three different ways
11 at the same time. In other words, having the review, and
12 quickly filing the petition on a whole new Plan that we have
13 not seen before, at the same time that we are litigating the
14 New Hampshire Plan might be a bit much.

15 And we would just like to notify the Board of that.

16 JUDGE SMITH: Right, those are matters correctly
17 raised at the time that the issue arises. We understand your
18 warning us about that.

19 All right, anything further?

20 MR. TURK: Judge Smith, this is Sherwin Turk again.

21 JUDGE SMITH: Yes?

22 MR. TURK: During my talks next week with the
23 parties, I am going to inquire from them as to how much cross-
24 examination they will anticipate that they will have per issue.

25 And so that we can also see if we can come to a

1 common understanding of how much time we will need for issue.
2 And I wanted to inquire of the Board, though, whether the Board
3 sees that the four weeks now scheduled for hearing, should be
4 sufficient to cover all of the issues, or does the Board
5 speculate that the main things will be beyond four weeks?

6 JUDGE SMITH: We have every hope that four weeks will
7 do it, however, we don't know and we have actually made our own
8 plans, and reservations for that hearing room, into December.

9 But let me say, that the burden of the hearing and
10 the length of the hearing, will depend, in large part, upon the
11 success of the negotiations that you are going to be having as
12 to order of procedure and categories of Issues, and the lead
13 intervenor approach.

14 That will be very important. If all of those things
15 fall into place, then the shortest period might be achievable.

16 MR. OSTRANDER: One last thing, since we are still on
17 the conference call, I would mention to the other parties, that
18 I hope to be up at Mr. Dignan's office to use his conference
19 room as he has offered, commencing at 11:00 a.m., Monday
20 morning.

21 JUDGE SMITH: All right, is there anything further?

22 MR. FLYNN: I have a couple of quick questions and
23 this is Joseph Flynn.

24 One is that assuming that we hear within a couple of
25 days of that meeting, what the grouping of issues is, when is

1 the reorganized testimony due?

2 At the beginning of the conference call, you had
3 requested that we pull apart our testimony and organize it
4 according to the grouping of the issues. And I am just asking
5 by what is the date by which that needs to be filed?

6 JUDGE SMITH: That is right, Mr. Flynn.

7 That is something that needs to be addressed. So
8 let's back up.

9 Mr. Turk is going to undertake to organize
10 negotiations as to the issue categories and the order of
11 presentation and that, I expect, should be done before the end
12 of next week.

13 Does anybody object to that?

14 VOICE: Your Honor, I did not hear that, could you
15 repeat that please?

16 JUDGE SMITH: Mr. Turk will undertake to organize the
17 parties into issues and lead intervenors, beginning next week
18 and the Board will expect that to be completed by the end of
19 next week.

20 Does anybody object to that?

21 (No response.)

22 JUDGE SMITH: All right, then that being the case, we
23 will give the parties until -- just let me consult with my
24 colleagues here.

25 (Judges confer.)

1 JUDGE SMITH: And now, bear in mind, that there are
2 going to be no substantive changes, see. And so we can give
3 them a long, long time.

4 That being the case, then, we will expect to have new
5 testimony in our hands, October 2nd. In the event that you are
6 unable to do that, after the best efforts that you can make,
7 and then you can bring it to the hearing. But make, whatever,
8 make a good effort to get it into our hands, October 2nd that
9 is Friday.

10 We would expect to have a report from Mr. Turk, as
11 soon following the September 28th, as he can get it into our
12 hands, and it may very well be that we will have another
13 conference on this, telephone conference.

14 And, in that event, it would be very, very helpful,
15 if we could keep it so that it is easily organized to this
16 active group as we are now. I think that it is almost an ideal
17 group to have a telephone conference call with. But it may be
18 possible that Mr. Turk will be able to give us a stipulation or
19 a joint report, or whatever, and that is what I hope that you
20 do.

21 Are there any questions on that?

22 MR. TURK: Your Honor, I am hoping to beat your
23 deadline, I am hoping to get an agreement on issues and lead
24 intervenors, by Wednesday the 23rd.

25 JUDGE SMITH: Oh, great, that would be fine.

1 I was concerned about the people being available for
2 your negotiations.

3 MR. TURK: Well, fine, I hope that we don't have to
4 take the whole week on it.

5 JUDGE SMITH: Fine, that is great.

6 MS. CURRAN: This is Diane Curran and I just want to
7 clarify, I understand that the offer being directed to try to
8 agree on an order or presentation?

9 JUDGE SMITH: Yes. That is right, order of
10 presentation, groupings of issues, and the order of
11 presentation, deference should be given to the Applicant, and
12 lead intervenors.

13 Anything further?

14 MR. FLYNN: Yes, one quick point. Earlier in the
15 conversation, Judge Smith, you raised a question about the
16 pagination of FEMA's testimony and it is not appropriate to go
17 through that with you on the phone, but I would like to just
18 let the parties know that I intend to call you privately later.
19 It would be an ex parte communication, I suppose, but I would
20 just like to get clarification on that, at a later time.

21 JUDGE SMITH: Mr. Flynn, perhaps we can save this
22 call, for that purpose, if you would like to, when we get done,
23 I don't know.

24 MR. FLYNN: Well, I did not want to take everybody
25 else's time on this.

1 JUDGE SMITH: Oh, I see, you just have individuals.

2 MR. FLYNN: Right.

3 JUDGE SMITH: Okay.

4 You understand that our concern, Mr. Flynn, is that
5 your attachments, there is a rather substantial volume of them
6 and they don't have page numbers on them.

7 MR. FLYNN: Well, that is what I wanted to talk to
8 you about, I just looked through it.

9 JUDGE SMITH: Oh, you wanted to talk to us about it?

10 MR. FLYNN: Right.

11 JUDGE SMITH: Oh, okay, what, all right.

12 MR. FLYNN: I mean, I wanted to ask you to show me
13 where it was that the page numbers were missing, because mine
14 does have page numbers. But again, this is not something that
15 we need to take everyone else's time.

16 JUDGE SMITH: Certainly, we will do that, we will do
17 that very thing. We will get in touch with you, if nobody
18 objects to that very limited type of ex parte communication.

19 And point that out to you and we only used you as an
20 unfortunate example, we happened to pick yours up and see that.

21 MR. FLYNN: Believe me, I will accept full
22 responsibility.

23 MR. OSTRANDER: This is Frank Ostrander, and I would
24 like to make a similar request to chat with you about
25 summaries, because we do have summaries in every volume of our

1 testimony.

2 JUDGE SMITH: Well that is - -

3 MR. OSTRANDER: They start on the first page.

4 JUDGE SMITH: Well, it may be your bad luck that the
5 one that I picked up as I walked in to this telephone
6 conference was yours and I did not identify the first page as
7 being a summary, but --

8 MR. OSTRANDER: Well, I think that the summary that I
9 am talking about is actually on page 12.

10 JUDGE SMITH: The summary is on page 12?

11 MR. OSTRANDER: Right.

12 JUDGE SMITH: Well, that is exactly what I was
13 saying, you know, it is very far into the testimony, without a
14 table of contents for the summary to do us any good.

15 We need it at the outset. We need a way to manage a
16 large volume of exhibits and testimony, physically handle them
17 easily and that is by summary or purpose of the testimony.

18 And you could cut and paste and send your summary and
19 paste it on the front, if you want to. That is okay.

20 MR. OSTRANDER: Okay.

21 JUDGE SMITH: So long as it does the job, okay?

22 MR. OSTRANDER: Okay.

23 JUDGE SMITH: Now, we have one further item and this
24 is a matter of great importance to the Board.

25 I, myself, was quite pleased with this conference

1 that everyone showed a cooperative attitude and a great sense
2 of responsibility.

3 However, I am concerned, that because of the long
4 nature of this hearing and the hardness of the issues, the
5 positions on the issues, and the everything that is involved,
6 of an escalation of intemperate statements by counsel.

7 And I came into this hearing and the first document
8 that I read, was Mr. Ostrander's joint, the one filed by Mr.
9 Ostrander, the joint intervenor's emergency motion.

10 And in it, on page 2, for example, he states that
11 they have had insufficient time to prepare given this Board's
12 "inexcusable failure to previously schedule and hold a pre-
13 hearing conference" and the next paragraph you alluded, as I
14 stated before, to "mockery and shambles" and you talked about
15 the Board's "belated September 9th order".

16 And now, I won't defend or disparage or even comment
17 on what has happened in this case before or other cases, but I
18 believe that your comments, Mr. Ostrander, are in the direction
19 and approaching the margin of disrespectful statements.

20 And I want to bring your attention to Section 2.713
21 of our Rules and let me read to you the relevant part.

22 It says, the -- "We are required in the exercise of
23 our duties, to function in a quasi-judicial capacity, and
24 accordingly, parties, and their representatives, in
25 proceedings, subject to this subpart, are expected to conduct

1 themselves with honor, dignity and decorum as they should
2 before a court of law."

3 And I would suggest, Mr. Ostrander, that if you had
4 filed a pleading like that before a court of law, in the State
5 of Massachusetts or the Federal Courts, it would be regarded as
6 an unusual document.

7 I want to remind you that we will enforce, throughout
8 this hearing, that subpart. And it may have been a matter that
9 you were in a hurry to get this document out and you had strong
10 feelings on the issue, but nevertheless, I think that we have a
11 long and difficult hearing ahead of us, and it will be easier
12 for all of the parties, and the Board, if all of us, including
13 the Board, try to temper our remarks and have civility always
14 uppermost in our minds.

15 I do not regard this as an admonition, it is just an
16 early concern that is, maybe the direction that the parties
17 might move and to cut it off early.

18 MR. OSTRANDER: Mr. Chairman, this is Frank
19 Ostrander.

20 I appreciate your warning, and I would just like to
21 make one remark which is that well, I don't want to dwell on
22 the past in this proceeding, but we did have some difficulties
23 and letters to go up at one point over scheduling.

24 And we made a motion for a pre-hearing conference and
25 it was denied, by the previous Board, so that --

1 JUDGE SMITH: You review the language that you used
2 in that order and decide for yourself what you think.

3 MR. OSTRANDER: Okay.

4 JUDGE SMITH: I am sure that you will recognize the
5 great value and benefit to everybody if we temper our remarks.

6 Is there anything further?

7 MR. FIERCE: Yes, Judge Smith, this is Alan Fierce
8 again, from Massachusetts.

9 One matter has occurred to me belatedly and I am
10 sorry to bring it up at this point, but it occurred to me that
11 in your effort, as you described it, to get up to speed on this
12 case, that it might be very much helpful to you and to perhaps,
13 other Members of the Board, as well, to act on a motion that is
14 still outstanding that the intervenors had filed some time ago,
15 which was a motion for a view.

16 And we think that it is very important for the Board
17 to understand the layout of the beach areas and their very
18 close relationship to this nuclear plant and I think that it
19 would be extremely helpful to you if you are not familiar with
20 that situation, to come up to Massachusetts, and perhaps, even
21 now, just a day or so ahead of the beginning of the hearings,
22 or perhaps to take the first day of the hearings and allow the
23 parties and their counsel to accompany you on a view of the
24 site.

25 JUDGE SMITH: Excuse us a moment.

1 (Off the record, at 4:20 p.m.)

2 JUDGE SMITH: Back on the record at 4:21 p.m.

3 JUDGE HARBOUR: He and I took a tour of the beach on
4 Saturday, August 1st, and which is a nice warm day and we
5 toured the entire area including the beach areas.

6 JUDGE SMITH: I have seen -- the suggestion that the
7 Board view the salient landmark features is a good one. Judges
8 Linenberger and Harbour have already done that. They had a
9 visit up there, some time ago, arranging hearing space, and
10 they did exactly that. I, myself, happened to be on vacation
11 up there, not too long ago, and I did it as a matter of
12 curiosity, not knowing the benefit that it would bring to me,
13 but I assure you that early in the hearing, I will do it again,
14 with the issues in mind and your consideration in mind.

15 Now, as to whether the intervenors go along or not,
16 we see no need for that.

17 JUDGE HARBOUR: The parties.

18 JUDGE SMITH: Yes, the parties, any parties, we see
19 no need for that, and the points of interest are perfectly
20 obvious and apparent and we need no one to point it out to us
21 and the awkwardness of arranging that type of trip is not
22 outweighed by the value of it.

23 But we do appreciate your reminder on that, and I
24 will assure you that I will be fully cognizant of the physical
25 features when the hearing, when the evidentiary hearing begins.

1 Thank you.

2 Is there anything further?

3 (No response.)

4 JUDGE SMITH: If there is nothing further, again, I
5 want to thank everybody for participating with early notice,
6 and the spirit of cooperation today, the civility today, and
7 the progress that we have made and we look forward to seeing
8 you at either at the hearing or the pre-hearing conference
9 whenever the report of the issues comes in.

10 MR. DIGNAN: Your Honor?

11 JUDGE SMITH: Yes?

12 MR. DIGNAN: I did have one thing just to advise the
13 Board, and that is the Applicants do plan to furnish the Board
14 with the testimony on disk. The reason that we are later than
15 the staff is because from our word processing system, it has to
16 go through, the computer people have to play with it, in order
17 to get it into the format that has been requested by the Board,
18 as I understand it, and I am no expert on this.

19 But in light of the fact, that testimony may have to
20 be reorganized, is it satisfactory to the Board, if we send the
21 disk after it has been finalized, as to how the testimony is
22 going to be?

23 JUDGE SMITH: Yes, we certainly want the disks in the
24 form in which it is going to be placed into evidence.

25 MR. DIGNAN: All right, then we will have it, and we

1 will hold off sending any disks until it is in final form,
2 then.

3 JUDGE SMITH: Yes, I guess that will be necessary,
4 yes.

5 MR. DIGNAN: Thank you, Your Honor.

6 JUDGE SMITH: Yes, and thank you for bringing that to
7 our attention.

8 Now, is there anything further for today?

9 (No response.)

10 JUDGE SMITH: All right, if there is nothing further,
11 then this pre-hearing conference is adjourned.

12 And thank you.

13 (Whereupon, at 4:25 p.m., the pre-hearing conference
14 was adjourned.)

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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: TELECONFERENCE CALL, PUBLIC SERVICE CO. OF NEW HAMPSHIRE
Seabrook Station

Docket Number: 50-443-444OL

Place: Bethesda, Maryland

Date: September 17, 1987

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.

15/ Margaret Daly

(Signature typed): Margaret Daly

Official Reporter

Heritage Reporting Corporation