

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: NMSS 2.206 PETITION CONFERENCE
PROCEEDING - HYDRO NUCLEAR SERVICES
TELECONFERENCE

Location: Rockville, Maryland

Date: Thursday, September 14, 2000

Pages: 1 - 53

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

NMSS

2.206 Public Petition Conference Proceeding
Hydro Nuclear Services
~~Indian Point Unit 2~~

Thursday, September 14, 2000

P R O C E E D I N G S

1
2 MR. SUBBARATNAM: This is the Petition Review
3 Board. Is anybody on the bridge line, please?

4 SPEAKER: Hello.

5 MR. SUBBARATNAM: Who is the person on the line,
6 please?

7 MR. KOHN: This is Steven Kohn, K-o-h-n.

8 MR. SUBBARATNAM: How are you doing, Mr. Steven
9 Kohn? This is the Petition Review Board and its members
10 here.

11 MR. KOHN: Okay.

12 MR. SUBBARATNAM: We are still waiting for other
13 people. Can we put you on standby till all of them are on
14 the bridge?

15 MR. KOHN: Okay. Sure. Okay. Can you -- can you
16 please identify and spell who's there?

17 SPEAKER: We will be doing that as soon as we get
18 started.

19 MR. KOHN: Okay.

20 SPEAKER: We might as well wait till everybody is
21 on board, so they can all hear it.

22 MR. KOHN: Okay. And this is being transcribed?

23 SPEAKER: Yes, it is. Yes.

24 MR. KOHN: When will that start?

25 SPEAKER: Well, it's probably already started.

1 MR. KOHN: Okay. So if I'm on the record, the
2 only -- will I be able to get a copy of this transcription?

3 SPEAKER: Yes.

4 MR. SUBBARATNAM: Yes. We can --

5 SPEAKER: We'll go over all the administrative
6 details as soon as everybody is on the line.

7 MR. KOHN: Thank you.

8 MR. SUBBARATNAM: Will the person who came on
9 identify himself, please?

10 SPEAKER: Hello.

11 MR. SUBBARATNAM: Who is this on the line, please?
12 This is the Petition Review Board at NRC.

13 MR. DOYLE: This is Shannon Doyle.

14 MR. SUBBARATNAM: Hello, Mr. Doyle. How are you
15 doing? We've been waiting for you, sir.

16 MR. DOYLE: Okay. Very good.

17 MR. SUBBARATNAM: Okay. Stand by. We're going to
18 wait for the people from the [inaudible] to join us on the
19 bridge.

20 MR. DOYLE: Okay.

21 MR. SUBBARATNAM: And then we'll go about and
22 introduce all the members of the Petition Review Board here.
23 The PRB Chairman, Herb Berkow, will explain all the
24 administrative proceedings and then we'll go from there.

25 MR. DOYLE: Okay.

1 MR. SUBBARATNAM: And [inaudible] some time.

2 MR. DOYLE: Is Mr. Kohn present?

3 MR. SUBBARATNAM: Yes. Mr. Kohn is there on the
4 line, too, sir.

5 MR. DOYLE: Okay. Thank you.

6 MR. KOHN: Shannon, I'm here.

7 MR. DOYLE: Okay.

8 MR. SUBBARATNAM: All right. Both of you stand
9 by.

10 MR. DOYLE: Okay.

11 SPEAKER: [Inaudible.]

12 MR. SUBBARATNAM: Did somebody come on this line?
13 This is the PRB. Hello. Mr. Doyle, are you there?

14 MR. DOYLE: Yes. Yes, I am.

15 MR. SUBBARATNAM: Okay. Mr. Steven, you are
16 there, too?

17 MR. KOHN: Yes.

18 MR. SUBBARATNAM: Stand by, sir. We are waiting
19 for people from Westinghouse.

20 SPEAKER: [Inaudible.]

21 MR. SUBBARATNAM: Yes. Would the person who came
22 on the bridge identify, please?

23 MS. CAMPAGNA: Yes. Good morning. Hello.

24 MR. SUBBARATNAM: Hello. How are you? This is
25 the PRB members at NRC.

1 MS. CAMPAGNA: Okay. This is Westinghouse. If I
2 -- one second. Let me conference one party in that's with
3 us by telephone and then we'll introduce ourselves.

4 MR. SUBBARATNAM: No problem. We'll stand by for
5 you, ma'am.

6 MS. CAMPAGNA: Okay. Tom?

7 SPEAKER: Yes.

8 MS. CAMPAGNA: Okay. NRC?

9 MR. SUBBARATNAM: Are you all on line, now? I'm
10 going to -- I'm going to introduce myself to the Chairman of
11 the Petition Review Board, Herbert Berkow. He is going to
12 give some preliminary remarks on this and then we'll go from
13 there.

14 MR. BERKOW: Yes. Good morning, everyone. My
15 name is Herb Berkow and I'm the Chairman of the Petition
16 Review Board meeting that we will hold immediately following
17 this teleconference to consider the petition submitted on
18 July 18, under 10 CFR 2.206, by Mr. Shannon Doyle.

19 And, basically, Mr. Doyle requested the staff to
20 take immediate enforcement action against Hydro because they
21 failed to comply with the DOL order requiring certain
22 actions and, consequently, are in violation of NRC
23 regulations.

24 I'd like everybody to identify themselves, please,
25 and, for the purposes of the transcript, please spell your

1 name and give your affiliation.

2 My name is Herb Berkow, B-e-r-k-o-w, and I'm with
3 the Office of Nuclear Reactor Regulation and Chairman of the
4 Petition Review Board.

5 MR. SUBBARATNAM: My name is Sam Subbaratnam,
6 S-u-b-b-a-r-a-t-n-a-m. I am the Agency Coordinator for
7 2.206 Petitions.

8 MR. LUEHMAN: My name is Jim Luehman,
9 L-u-e-h-m-a-n, and I'm the Deputy Director of the NRC's
10 Office of Enforcement.

11 MR. HILTON: My name is Nick Hilton, H-i-l-t-o-n,
12 an Enforcement Specialist in the Office of Enforcement.

13 MR. GOLDBERG: My name is Jack Goldberg,
14 G-o-l-d-b-e-r-g. I'm with the General Counsel's Office at
15 the NRC.

16 MR. BERKOW: Westinghouse?

17 MS. CAMPAGNA: Yes. Good morning. My name is
18 Lisa Campagna, C-a-m-p-a-g-n-a. I'm an Assistant General
19 Counsel with Westinghouse Electric Company.

20 MR. BUDDIE: Jim Buddie, B-u-d-d-i-e, also
21 Assistant General Counsel with Westinghouse Electric
22 Company.

23 MR. SEPP: My name is Hank Sepp, S-e-p-p. I'm
24 Manager of Regulatory and Licensing Engineering in the
25 Westinghouse Nuclear Services Division.

1 MR. SCHMUTZ: And my name is Tom Schmutz. I'm an
2 attorney with Morgan, Lewis & Bockius in Washington. And my
3 last name is spelled S-c-h-m-u-t-z.

4 MR. BERKOW: Okay.

5 MR. SUBBARATNAM: Mr. Doyle?

6 MR. DOYLE: Yes. My name is Shannon Doyle. I'm
7 the petitioner. My name is spelled S-h-a-n-n-o-n D-o-y-l-e.

8 MR. SUBBARATNAM: Mr. Steve Kohn?

9 MR. KOHN: Steven Kohn, K-o-h-n, attorney, Kohn,
10 Kohn & Colapinto, 3233 P Street, Northwest, Washington,
11 D.C., 20007, attorney for Shannon Doyle. And I'm requesting
12 that a copy of the transcript be sent to me at the address I
13 just provided.

14 MR. BERKOW: Okay. This is Herb Berkow again. I
15 would just like to go through a few of the ground rules and
16 the purpose of the meeting, so that everybody understands
17 it.

18 This teleconference is part of our 2.206 process
19 and it's offered as an opportunity to the petitioner to
20 provide any additional details, explanation or support for
21 why the proposed petition satisfies the criteria for review
22 under our 2.206 process.

23 Westinghouse and the staff, the NRC staff, may ask
24 questions to clarify issues raised by the petitioner and
25 relevant to the petition.

1 Mr. Doyle, you are under no obligation to answer
2 any of those questions, if you choose not to.

3 The public -- there are no members of the public
4 present, but if there were, they could listen, but not
5 participate.

6 Now, the one thing I'd like to make clear is that
7 this is not a forum to debate or evaluate the merits of Mr.
8 Doyle's case with Hydro Nuclear or DOL. It is merely an
9 opportunity for him to provide additional justification for
10 us as to why this satisfies the criteria for a petition.

11 As we all have heard, this teleconference is
12 conducted on a recorded line. It will be transcribed and
13 treated as a supplement to the July 18 petition and will be
14 given the same distribution as the original petition was.

15 Following this teleconference, the Petition Review
16 Board will meet and decide whether the request satisfies the
17 2.206 criteria and, Mr. Doyle, you will be notified as to
18 the results of our deliberations in that regard.

19 Let me just ask that whenever anyone speaks from
20 here on out, please identify yourself for purposes of the
21 transcript.

22 Does anybody have any questions on the
23 administrative details?

24 MS. CAMPAGNA: Yes. Mr. Berkow?

25 MR. BERKOW: Yes.

1 MS. CAMPAGNA: Lisa Campagna, from Westinghouse.
2 Not a question, but just a point of clarification. We, too,
3 would also like to request a copy of the transcript and for
4 purposes of that, we did not receive directly the initial
5 petition from Mr. Doyle. It came kind of through a
6 circuitous route.

7 So our address here, and it can be addressed to
8 me, is 4350 Northern, N-o-r-t-h-e-r-n, Pike, Monroeville,
9 all one word, M-o-n-r-o-e-v-i-l-l-e, PA, 15146.

10 MR. BERKOW: Okay. Fine. That's no problem.
11 We'll make sure you get a copy of this.

12 MS. CAMPAGNA: Thank you very much.

13 MR. BERKOW: It probably will be several days.

14 MS. CAMPAGNA: Okay.

15 MR. BERKOW: Okay. Mr. Doyle, why don't you
16 proceed?

17 MR. KOHN: This is Steve Kohn, attorney for Mr.
18 Doyle, and I'll be making the presentation today.

19 MR. BERKOW: Okay.

20 MR. KOHN: Briefly, I'd like to state that as I
21 understand it, Mr. Doyle filed this petition on 7/18/00. As
22 of that time, the Hydro had been ordered to make certain
23 compensation to Mr. Doyle, and they had not.

24 Hydro had the right to seek a stay from the Court
25 of Appeals under Federal Rule of Appellate Procedure 18 and,

1 in fact, that was their only legal mechanism to obtain a
2 stay at that time.

3 They did not and have never used that procedure.

4 So they had an opportunity to file an appeal of
5 the ARB's, Department of Labor Administrative Review Board's
6 decision denying the stay. They did not appeal that
7 decision denying a stay inasmuch as, under Federal Rule of
8 Appellate Procedure 18, they were required to go to the
9 Court of Appeals and obtain a stay.

10 So on 7/18, Hydro and all of its entities, and we
11 will discuss that briefly, was in the equivalent of a
12 complete contempt of the Department of Labor. Any worker
13 following this proceeding, any of the many thousands of
14 temporary contract workers, like Mr. Doyle, who may have
15 been interested in this case and following it to see what
16 their rights were would have learned that Westinghouse and
17 its entities really were violating the law.

18 So this petition must be evaluated as it was on
19 7/18/00, the date it was filed. As of that date, you had an
20 order of the Department of Labor to pay compensation to Mr.
21 Doyle. There was a final order, pursuant to Section
22 210(c)(2) or 42 USC 5851(c)(2), that order could not be
23 reviewed, reconsidered or reopened in any other forum except
24 at the Court of Appeals and, as I've already stated, in the
25 Court of Appeals, there is no automatic stay. Only you must

1 seek a stay from the Court of Appeals.

2 So at that time, that order was fully final, fully
3 enforceable and created a legal requirement upon Hydro, for
4 which Hydro did not seek judicial review.

5 Now, Hydro will state we appealed the decision,
6 but if you read Federal Rule of Appellate Procedure 18, what
7 you will learn is that the mere fact they appealed the
8 decision had no impact whatsoever on its enforceability or,
9 which is more critical, forget enforceability, had no impact
10 whatsoever on the legal, ethical and moral obligation for
11 Hydro to follow the laws of the United States, including
12 Section 210, and immediately pay the judgment.

13 That's it. The status of this case on July 18 was
14 that Westinghouse was in the equivalent of a contempt and
15 was willfully defying the law of the United States.

16 So what were you left with? Mr. Doyle -- and if
17 you read -- and I'm assuming that the members of this Board
18 have read the Secretary's final decision of May 2000, the
19 decision of the ARB, you will learn that Mr. Doyle is an
20 indigent, poverty-stricken, sick, physically sick
21 individual, who also has suffered severe emotional distress
22 and is in need of five years of therapy.

23 That -- these are conclusive findings on this
24 agency. In short, but for essentially pro bono legal
25 services, Mr. Doyle would be absolutely nowhere, just

1 essentially a bum on the street and dying, and that's what
2 the record shows.

3 And for Westinghouse to use its massive economic
4 and political advantage, to utterly destroy a bona fide
5 whistleblower is a situation that I personally find
6 revolting.

7 I've done with the blower laws, many of you know,
8 for many years. I have never seen a case of corporate
9 arrogance this outrageous. I have never seen anything even
10 closely resembling this.

11 In fact, in the -- since Section 210 was passed in
12 1978, I know of only two other instances in which an
13 employee ever had to go to court to seek an enforcement of a
14 final order.

15 Westinghouse's over-litigation of this matter
16 converted what should have been a straightforward
17 whistleblower case into a massive piece of complex civil
18 litigation. It's cost them a lot of money, but it has
19 destroyed Mr. Doyle as a person, and he is dying.

20 I want the record to be perfectly clear on this.
21 As any future severe medical consequences to Mr. Doyle, I
22 want it perfectly clear, so when others look at this
23 transcript and history looks at this transcript, we know
24 what happened here today.

25 Mr. Doyle is sick. Mr. Doyle has a family in

1 crisis. Mr. Doyle is poverty-stricken. Mr. Doyle fought
2 for 12 years and finally obtained a judgment. It was issued
3 by the Department of Labor on May 17 and it was immediately
4 enforceable. It was not -- forget enforceable. That means
5 Doyle had to do something.

6 No. It was Westinghouse had to do something.
7 Westinghouse had to pay him a check or, under Federal Rule
8 of Appellate Procedure 18, obtain a stay.

9 Up until May 17, Westinghouse had played every
10 legal trick in the book, and they lost. This is America.
11 You lose, you pay. You don't grind down and destroy in a
12 ruthless, heartless, and, in my opinion, morally despicable
13 manner.

14 There is not radiation decontamination worker in
15 the United States of America who will look upon what
16 happened to Shannon Doyle and ever blow the whistle.
17 Period. And if Shannon Doyle dies before he obtains his
18 judgment, which is a very realistic situation in this case,
19 the horror will be so incredible, the backlash, which I pray
20 occurs, will be so swift, and I pray it never happens.

21 But read the decision of the Department of Labor.
22 You will learn that he suffers physical ailments for which
23 he cannot pay money to have fixed. You will learn that
24 Westinghouse, since 19 -- five or six years ago, was told to
25 pay compensatory damages of 40,000, so he could get

1 treatment that he needs.

2 And you will learn that a multi-billion dollar
3 corporation used every legal trick in the book essentially
4 to kill Shannon Doyle, and that's not an exaggeration here.

5 Had Westinghouse not known of his physical
6 ailments, I would not use those words. They are very
7 serious. But they do know, the world will know, and we and
8 I, as his representative, am so repulsed by what I have
9 witnessed in this case.

10 Well, let me continue. So May 17, Westinghouse
11 just -- and I just want to back up here for a second. I
12 know Office of General Counsel of NRC has identified
13 themselves and I hope someone maybe calls OSHA and just
14 finds out what these laws are. They're fairly complex.
15 I've had to study this enforcement legalities for a while to
16 figure it all out.

17 But, in fact, what you will learn is on May 17,
18 Westinghouse had an obligation to write a check to Shannon
19 Doyle. Period. Generally, under the law, you get about ten
20 days to file for a stay or to do something. They generally
21 give you ten days to file for a reconsideration or anything.

22 They did nothing of the sort and they never went
23 for their stay. So Shannon Doyle -- at that point, at the
24 absolute latest date, May 27, they ere in contempt;
25 essentially, taunting Mr. Doyle, challenging him to say do

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1 something, we're violating the law, we are willfully
2 disobeying Section 210, catch us if you can.

3 And that will bring us to the second point. So as
4 of the date the petition was filed, they were in contempt
5 and that was the status.

6 Well, Mr. Doyle, through pro bono legal
7 assistance, and I'm saying that because most whistleblowers
8 can't find a lawyer, most could never pursue it as he did.
9 My firm has received absolutely no compensation since we
10 undertook this representation and obviously all the costs,
11 et cetera, have had to be paid by somebody, not Mr. Doyle.

12 So in most cases, the chilling effect and the
13 over-zealous litigation and unethical litigation of
14 Westinghouse would have won. We wouldn't even be here and
15 we don't know where Doyle would be.

16 But because of pro bono legal representation,
17 we're able just essentially to test it. So the challenge
18 for now, catch us if you can. And this is where that type
19 of legal strategy just, I find, has no place in the United
20 States of America.

21 It's the type of conduct of a fly-by-night
22 pizzeria that is trying to dodge a judgment and is running
23 around town essentially disgracing the American legal
24 landscape.

25 It has absolutely no place in nuclear power. It

1 has no place in a major multi-national corporation and it
2 has to be permanently and forever debarred from atomic
3 energy.

4 This is outrageous conduct. The law is not catch
5 us if you can. The law is we violated the rights of a
6 whistleblower, we did everything in our power to appeal it,
7 we lost, we did not seek a stay at the Court of Appeals.

8 Hey, now, I know why they didn't go to the Court
9 of Appeals to seek a stay. They did that because they knew
10 they would lose. The Department of Labor applied the exact
11 criteria that the Court of Appeals would have applied and
12 they -- and it was clear, of anyone reading the pleading
13 from their -- in the public, and I hope you look at them,
14 that they did not meet the criteria for a stay.

15 What you read in the Department of Labor final
16 order is the precise criteria that the Court of Appeals
17 would have applied. They knew they couldn't get it.

18 So instead of using the law as they should have
19 and made a good faith attempt, they played the catch me if
20 you can game.

21 And this catch me if you can game, eventually,
22 they won, at least temporarily, but they've won it this
23 time. We had to sue, take an enforcement action to try to
24 get Mr. Doyle the money he is legally entitled to and that
25 Westinghouse is in contempt for not paying.

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1 I think that's what you have to understand here.
2 This is not filing a Section 210 case. Having won, the game
3 is over and you're in a situation where someone is willfully
4 disobeying the law. And because, you know, essentially it's
5 up to us to try to track it down, it should not be.

6 How can you have anywhere at a nuclear power plant
7 in this country a fly-by-night company, and I'm calling
8 Westinghouse that because they're engaging in these tactics,
9 how can you have them anywhere close by? If a worker knows
10 that if they're wrong and they can't collect their judgment
11 even if they were to win, they must be debarred, sanctioned
12 and held -- and if possible, I'd say criminally liable.

13 I don't know. I feel impassioned about this. But
14 let's just see what happened. Mr. Doyle is forced to do
15 something that, to the best of my knowledge, only two other
16 nuclear whistleblowers in the whole history, the 22-year
17 history of this case, have ever had to do, which is seek
18 enforcement.

19 That standing alone justifies sanctions, because
20 we never should have had to do that. But Westinghouse plays
21 the catch me if you can game. What they do is they file the
22 complaint against Hydro, also against Westinghouse Staffing
23 Services, which we knew Hydro merely changed their name to,
24 and against Westinghouse Electric Corporation, which we knew
25 was the sole owner at all times of Hydro and Westinghouse

1 Staffing Services.

2 We tried to track them down as best we could. We
3 served it on a corporate representative they sent here to
4 Washington for a depo and on their official corporate person
5 for service of process for Westinghouse Electric Company in
6 Washington, D.C.

7 What happened is this. Hydro says catch us if you
8 can. We -- you have to serve a member of Hydro's Board of
9 Directors, service, you know, an official corporate officer,
10 official corporate agent, et cetera. In short, they say you
11 didn't serve the right person.

12 We researched it thoroughly. Hydro no longer
13 exists as an independent entity. It is not possible to
14 serve Hydro. So they've essentially laughed and said catch
15 us if you can. We will strictly adhere to the rigid service
16 of process requirements and you can't serve us.

17 Well, it's absolutely not true, but I will
18 continue explaining what happened. We did serve
19 Westinghouse Staffing Services in Washington, D.C. We
20 served them through Westinghouse Electric Corporation and
21 Westinghouse Staffing Services did not object to that
22 service. They actually made a mistake, because they now
23 probably realize they should have.

24 But in any event, we continue pursuing the case
25 and they actually move to dismiss. They filed a motion to

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1 dismiss Hydro, because they were not properly served.

2 Well, we respond and we state, excuse me, Hydro
3 Nuclear Services merely had a name change, merely a name
4 change. They changed their name from Hydro to Westinghouse
5 Staffing Services.

6 We cited the law and we'll give you the case, Bean
7 v. Monsanto, 414 Fed. Sup. 570, 579, Western District of
8 Arkansas, and there's one, Bankers Life, 388 Fed.2nd, 1372,
9 1384, 5th Circuit, 1964.

10 Quote, "A corporation, upon a change of its name,
11 is in no sense a new corporation nor a successor of the
12 original one, but remains and continues to be the original
13 corporation."

14 In short, if Joe's Pizza gets sued and Joe, in
15 contempt of a judgment, says I'll change my pizzeria to
16 Raul's Pizza, the courts know that fly-by-night, corrupt
17 individuals will play these little name games to try to
18 escape justice and we don't even recognize it.

19 It doesn't pass the last test. A company can
20 change its name until it's blue in the face; it remains the
21 same company. The law was clear. Westinghouse Staffing
22 Services and Hydro are identical. There's no difference.

23 So when Westinghouse, through well-paid,
24 manipulative lawyers, argued in Federal Court that we had
25 not served Hydro, they committed a false statement to the

1 court, they committed obstruction of justice, they lied, and
2 they said catch me if you can, just like Joe's Pizza.

3 Well, let's see what happens next. They then say,
4 unethically and outrageously, that Westinghouse Staffing
5 Services is not a party to the case. They actually assert
6 and they allege that Doyle's attempt to avoid the important
7 language of Section 211, which said you can only enforce
8 against a company that lost, by alleging Westinghouse
9 Staffing Services are successors to Hydro, should be
10 rejected.

11 I'm reading from a brief they filed on July 3,
12 2000. "Doyle's efforts to expand the group of defendants to
13 include alleged successors is inconsistent with the clear
14 and unambiguous language of Section 211, which unequivocally
15 provides that enforcement actions can be filed only against
16 those persons to whom the administrative order was issued."

17 That's an exact quote from their brief. Lie.
18 Catch me if you can. Unethical. And let's examine why.
19 The law was clear? Westinghouse Staffing Services is Hydro.
20 There's no difference. But they have now created a
21 confusion and they have obstructed justice and they have
22 undermined the law and they have played a tactic, deserving
23 only of the most unscrupulous merchants and unscrupulous
24 debt-dodgers out there, the people who really irritate you,
25 the ones that rip you off and run, and that's -- and for

1 Westinghouse, as a licensee with massive responsibilities
2 over this intricate technology, to be stooping to this type
3 of game-playing, it's so outrageous.

4 It's almost unbelievable and unprecedented in the
5 22-year history of Section 210. I have read every Section
6 210 and 211 case ever issued by the Department of Labor. I
7 have been reviewing this for years and I will state on the
8 record here that in my knowledge, there has never been one
9 corporate wrongdoer, under a Section 211 case or Section 210
10 case, to play this type of cheap, manipulative game.

11 END TAPE 1, SIDE 1.

12 TAPE 1, SIDE 2 FOLLOWS:
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1 BEGIN TAPE 1, SIDE 2:

2 Oh, but they're good at it. They get paid a lot
3 of money. I don't get paid for it. They get paid a lot of
4 money and I know that it's intimidating, these large law
5 firms, unlimited budgets, power on Capitol Hill. I know the
6 pressure the NRC is under. I know the pressure that nuclear
7 workers are under if they ever think of blowing the whistle.

8 And I think we all know the pressure that these
9 contract workers who are hired under short duration
10 contracts are under if they ever decide to blow the whistle.
11 We know those pressures, everyone here knows them.

12 But let's see. So they lie to the court again and
13 they say that we're seeking successor liability against
14 Westinghouse Staffing Services, among others. Why? Because
15 Westinghouse Staffing Services is Hydro Nuclear, as a matter
16 of law. It's just a name change.

17 Okay. Of course, all this is briefed. The stuff
18 to the court, unfortunately, converted a simple enforcement
19 action, which should have been summary in nature, and that's
20 Kansas Gas & Electric cases, I can provide you the cite.
21 It's supposed to be a summary proceeding, but nothing really
22 of interest happens. Here is the judgment, pay.

23 Through manipulations, lies, false statements,
24 they convert it into something very complex. Which brings
25 us to the next stage of the proceeding, a hearing in front

1 of the District Court Judge.

2 I attended. Any number of persons from
3 Westinghouse attended, including Mr. Buddie, who is on this
4 conference call, and they can correct me if I'm -- if they
5 think it's -- what I state is wrong. There is no
6 transcript, but this is what happened.

7 The judge looked this over and he said to me that
8 trying to demonstrate who has liability on this will be very
9 difficult, time-consuming, and, in fact, could go on for two
10 years, and that's true. Once a company decides to play this
11 corporate shell game and you have to sit around and litigate
12 who owns what, who is liable for what, and start looking at
13 all the contracts of sales, the contracts of dissolution,
14 the merger agreements and all that, it's extremely complex,
15 can be time-consuming and go on for years.

16 In fact, that litigation could be as difficult and
17 complex as the litigation before the Department of Labor.
18 But the judge, I think, implicitly, recognized, and when I
19 stated it at the hearing, no one on the Westinghouse side
20 denied, that liability for Westinghouse Staffing Services
21 would be found, because they didn't just disappear off the
22 face of the earth.

23 These were major corporations engaged in
24 transactions. So the judge turns to us and, in a sense,
25 says I'm doing you a favor. Since Westinghouse can delay

1 this another two years, and the judge did not use these
2 words, by the way, this is my interpretation, but he
3 essentially delivered this message.

4 Since Westinghouse can delay this proceeding for
5 another two years by playing this corporate shell game,
6 which they're doing here, I'm going to do you a favor, and
7 they've agreed they'll post this bond. So if you win your
8 case, you will get your money.

9 Essentially, the judge was splitting the baby. He
10 knew that Westinghouse could play this corporate shell game
11 and delay, so he figured, you know, at least he'll guarantee
12 that someone puts up the money and we'll get paid.

13 And those words, that was essentially the flavor
14 of the hearing. It was not that Mr. Doyle was not entitled
15 to his money and, also, since these enforcement proceedings
16 are extremely rare and there is almost no case law, I can
17 understand some confusion. We can go back and look at the
18 law. The judge had no authority to do that. Only the Court
19 of Appeals did, under the Federal Rule of Appellate
20 Procedure 18.

21 But what happened here was when Westinghouse
22 defiantly and unethically said catch me if you can, they
23 won. They were able to blow up enough smoke and mirrors,
24 enough garbage, that a busy Federal District Court Judge
25 faced with a foot of complex pleadings decided just to issue

1 the stay and be done with it.

2 They won. And they lied to win. What you really
3 are looking at here, and if this case is viewed in any other
4 manner, you are dead wrong, what you are looking at here is
5 should Westinghouse -- should Hydro, Westinghouse Staffing
6 Services, all of whom the sole stockholder is Westinghouse,
7 in complete control of these entities at all times, should
8 they be sanctioned for not paying Doyle on or before July
9 18, 2000 the money they were required to pay?

10 Should Westinghouse have filed, if they wanted to
11 appeal the denial of the stay by the ARB? That's what we're
12 talking about here. Not their legitimate right to appeal
13 the merits. It's their right to appeal the denial of the
14 stay of the ARB. If they wanted to do that, they should
15 have done that to the Court of Appeals, under Federal Rule
16 of Appellate Procedure 18. They didn't.

17 So on July 18, Westinghouse had filed no appeal of
18 the stay and were in contempt and they were playing an
19 unethical, slimy game against a poor, indigent, sick and
20 dying individual. This conduct is despicable. It's
21 outrageous. It must be barred from every nuclear power
22 plant and they must be held as an example of outrageous
23 conduct.

24 Westinghouse is very proud of the stay they
25 obtained on August 14 and have used that as a justification

1 to deny this petition. But what you must do is actually
2 then engage in a second evaluation. Did the fact that
3 Westinghouse obtained the stay on August 14 mitigate their
4 contempt from May 17 to August 14?

5 Because between May 17 and August 14, they were in
6 contempt of a decision of the Department of Labor.

7 MR. BERKOW: Mr. Kohn?

8 MR. KOHN: Yeah?

9 MR. BERKOW: Excuse me a second. I'm sorry to
10 interrupt you. This is Herb Berkow, Petition Review Board.
11 You have been speaking for about a half-hour now. In the
12 interest of time, can I ask you to sum up, please, and make
13 your summary relevant to the criteria for acceptance under
14 2.206?

15 The Petition Review Board has a responsibility to
16 make a determination as to whether or not to accept Mr.
17 Doyle's petition for review under 2.206. That's really what
18 we need to know, and we would also like to --

19 MR. KOHN: Well, I am not that -- if you want to
20 cut me off now --

21 MR. BERKOW: No, I don't want to cut you off, but
22 I just --

23 MR. KOHN: -- and eliminate my presentation, that
24 is your right. I am here at your pleasure.

25 MR. BERKOW: No, I --

1 MR. KOHN: But I want this record to reflect the
2 position of Mr. Doyle on this date and if you -- I will do
3 it by a supplemental written filing and I would like the
4 record to reflect that.

5 But given the procedure, if I must stop because of
6 your time constraint, I absolutely will, but I feel that by
7 eliminating certain facts from the presentation, I will do a
8 disservice to my client and the American people.

9 MR. BERKOW: Let me ask you how much longer you
10 have to go? How much more time do you need?

11 MR. KOHN: I would say another 15 minutes.

12 MR. BERKOW: Another 15 minutes. See, all of this
13 is very interesting history, but it's not -- it's not of
14 great benefit to us. We already have all this information,
15 it's docketed.

16 What we need is, you know, information that will
17 help us make a decision as to whether or not this
18 constitutes a 2.206 petition. What you're telling us is --
19 most of this information we already have.

20 That's why I would ask you if you could possibly
21 summarize --

22 MR. KOHN: I don't know how you have any of this
23 information.

24 MR. BERKOW: -- and direct your summary at the
25 criteria.

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1 MR. KOHN: Do you have a copy of all the pleadings
2 that were filed before the District Court?

3 MR. BERKOW: We don't have all of them, no.

4 MR. KOHN: Okay.

5 MR. BERKOW: But I'm not sure that we need all of
6 them to do what we need to do. Okay. Why don't you proceed
7 and, you know, try and be as concise as you can, please?

8 MR. KOHN: Thank you very much. So the real
9 question on this day is not whether they have escaped
10 liability, but it's whether it was a mitigating factor; and
11 what the record will show is that it should not be weighed
12 in any fashion as a mitigation, because it was based upon
13 manipulations, false statements and a variety of other
14 problems.

15 In fact, the way they responded to the suit, by
16 saying catch me if you can, by denying various efforts to
17 serve process and making false statements to the court, all
18 shows that this company did not mitigate anything and, in
19 fact, whatever judgment is rendered against them should be
20 increased.

21 Now, Westinghouse has filed a second document
22 seeking essentially mitigation of their crime. They have
23 alleged that they have complied with the order of the
24 Department of Labor, the equitable relief, and they have
25 provided to this Board a copy of a May 25, 2000 document,

1 signed by Sally Mayberry, who, by the way, was served with
2 legal process and whom they claimed does not even have
3 anything to do with Hydro and can't accept service, so
4 whoever she is, signed by Sally Mayberry, to Choice Point,
5 we understand the persons who now serve for Equifax. So
6 purportedly complying with the order.

7 I hereby supplement this 2.206 petition, I think I
8 was informed that this transcript can be viewed as a
9 supplementation, and allege an entirely new violation of 10
10 CFR 50.7. This violation was based upon the Mayberry
11 communication to Choice, which is in complete violation of
12 the law.

13 First, Mayberry sent to Choice a -- what -- I
14 don't know why they sent it, some form of supporting
15 document. They say that the authorization log sheet is
16 attached.

17 How submitting the document that -- that
18 demonstrated they made false statements is somehow --
19 correct the record -- I don't know, but if you look at this
20 document, on the second page, it makes an allegation that
21 Mr. Doyle tested positive for THC. That's a false
22 statement.

23 Now, reviewing this document on its own, next, it
24 says corrective action and then it says "positive 1110,
25 negative 1121." But by viewing this document, there would

1 be no way to tell whether Mr. Doyle was, in fact, a drug
2 user.

3 If you read the transcript of the proceeding and
4 the information filed in the Department of Labor, you will
5 know that that first test was inaccurate and Mr. Doyle, in
6 fact, was not a drug user. Why Westinghouse -- and this is
7 now Westinghouse, not the Hydro, so this is an allegation
8 directly against Westinghouse -- would circulate this type
9 of false and misleading information is beyond my
10 comprehension.

11 And I say that because there is no context here.
12 But their violation gets worse. The letter from Mayberry,
13 dated May 26, does not merely correct the record. She
14 states this, I'm quoting. "The reason for the
15 disqualification was the cancelization of the full
16 background investigation." She did not have to state that.
17 All she needed to state, that we -- it's inaccurate, he was
18 never -- not disqualified, thank you.

19 But she states a reason for the disqualification
20 as the cancelization of a full background investigation. In
21 point of fact, that's a false statement to Choice.

22 We already know from the decision of the
23 Department of Labor the reason for the disqualification was
24 that Hydro engaged in conduct in violation of Section 210,
25 for which the NRC has already issued a notice of violation

1 and the Department of Labor has issued a final order finding
2 illegal activity.

3 This statement is false and misleading. This
4 should never have been included, was not required pursuant
5 to the Department of Labor order, and, in fact, again,
6 repeat the same lie that gave rise to this claim in 1988.

7 Now we go to the second paragraph. By final
8 decision and order dated May 18, the Administrative Review
9 Board of the Department of Labor directed Hydro to notify
10 Equifax that the disqualification was improper. Boom.
11 There was no requirement or -- that Westinghouse tell
12 Equifax why they were changing it or, and more specifically,
13 because there was some sort of court order.

14 This informed Choice that Mr. Doyle had filed a
15 legal lawsuit and they were only doing this because they
16 were directed. And what we already know is such
17 communications constitute a per se violation of law.

18 I call this Board's attention to the case of
19 Gabala, 94 ERA 9, Decision of the Secretary of Labor,
20 January 18, 1996, adverse action, per se, by informing a
21 reference checking company that an employee had filed a
22 discrimination complaint. Just telling Choice that Doyle
23 filed litigation against his employer, or was the type of
24 worker who filed these types of presumably frivolous
25 complaints, just telling them that was a per se violation of

1 law and I hereby, on the record, state that Westinghouse
2 Electric Company violated 10 CFR 50.7 and I hereby request
3 the immediate debarment of Westinghouse, because this is the
4 straw that breaks the camel's back.

5 Now, you may say, well, go to the Department of
6 Labor. I will state, also, on the record, that we are not
7 going to the Department of Labor. One, Doyle cannot afford
8 it. Two, the DOL process takes too long. Three, the NRC
9 has it within its power to severely sanction Westinghouse
10 immediately, without the long delays.

11 You can investigate it, track it down, sniff it
12 out and do your job.

13 This was a violation of 10.50.7 and the fact that
14 Westinghouse would brag about violating 10.50.7, to try to
15 mitigate from their shell game, what we see here is a
16 corporation that is contempt, that is engaging in willful
17 misconduct, and that will be held accountable at some point,
18 whether -- and we will see if the NRC does that.

19 But you should check out the Gabala decision.
20 It's in parrot to the May 26 ruling and you will see, yes,
21 sir, another violation. So that's a formal violation under
22 10.50.7.

23 Now, I want to state, in terms of the criteria of
24 the NRC, Westinghouse has violated numerous whistleblower
25 protection regulations of the NRC, including those found in

1 10 CFR 50.7, other published regulations, policy statements,
2 directives, et cetera.

3 There is a clear-cut violation and continuing
4 violations. It is up to you to decide whether Westinghouse
5 -- the NRC will take any action whatsoever. It's your
6 decision. But I ask that that decision not be made until
7 you study what they did before the District Court, review
8 Federal Rule of Appellate Procedure 18, review the law on
9 whether Westinghouse Staffing Services is, in fact, liable,
10 review the statements and representations they made about
11 Westinghouse Staffing Services' liability, review the
12 statements they made before the court about whether Hydro
13 was served, and make a determination as to whether a company
14 that will state -- make these types of assertions -- one,
15 they have been found to violate the law -- has a suitable
16 character and confidence to have anything to do with atomic
17 energy.

18 In addition, we hereby have formally filed a new
19 allegation under 10 CFR 50.7 and any other regulation
20 applicable. You can give it to a new PRB, if you would
21 like, or review it here, however, in your discretion, you
22 want to deal with it, but that has been filed.

23 And my presentation, let me see, I think is now
24 concluded. And thank you very much.

25 MR. BERKOW: Okay. Thank you, Mr. Kohn. The

1 staff, at this moment, does not have any clarifying
2 questions. Let me ask Westinghouse. Do you have any
3 questions of clarification?

4 MS. CAMPAGNA: Yes. I think we would like to take
5 hopefully not as long as Mr. Kohn, but just a few points of
6 clarification.

7 I think our -- and this is Lisa Campagna speaking.
8 You have our papers and I think you understand our position.
9 I am not going to, I guess, respond to sort of the tone or
10 the derogatory remarks that Mr. Kohn has made throughout his
11 presentation with respect to Westinghouse. He is certainly
12 within his rights to have his opinions.

13 I think our position can be succinctly stated and
14 clarified by two to three fundamental points, which I would
15 like to make first, and then just respond as points of
16 clarification to a few, not all, the things that Mr. Kohn
17 stated in his remarks by way of clarification, because I,
18 again, believe there is quite a bit of mischaracterization
19 of the accurate facts going on here.

20 My points, I think, will help clarify some of
21 those and help to respond to some of those as we go, and
22 then I'll sort of wrap that up.

23 Basically, what is before the NRC is a petition
24 from Mr. Doyle, through Mr. Kohn, based on an allegation of
25 continuing non-compliance with NRC requirements, based on

1 statements that we have not complied with the order of the
2 DOL ARB.

3 However, even prior to the date of the 2.206
4 petition being filed on July 18, I think the clear facts
5 show that that's not the case. We, by our papers and by the
6 letters that we have filed, the attachments to our papers,
7 well before July 18, we were -- we were on our way to
8 complying with the ARB order; in particular, the
9 non-monetary aspects of the order.

10 Our letters went out on June 1st to Mr. Kohn,
11 indicating the compliance with the non-monetary aspects of
12 the order. That's Exhibit 4 of the document that we filed
13 with the PRB. And all the supplemental letters that back
14 that up.

15 I will address Mr. Doyle's last point about this
16 new allegation a little bit later in my remarks.

17 So for Mr. Kohn to say, I think, that we did
18 nothing after May 17 ARB order, I just don't think is
19 accurate and I just wanted to make that point of
20 clarification.

21 I think that what you really heard here was the
22 issue of the monetary judgment and, you know, I would, I
23 think, rather, clarify as the fact that as every U.S.
24 citizen has its right, including corporate citizens,
25 Westinghouse has merely been pursuing its legitimate

1 appellate rights in connection with the appeal of the ARB
2 decision.

3 There is obviously a difference in opinion as far
4 as whether or not there is a violation of Section 211 here.
5 We have stated all along that we don't believe that we
6 committed any violation and we have every right under the
7 law, this law in particular, but the United States
8 Constitution, in general, to pursue our position in a final,
9 non-appealable judgment, and that's the only thing we're
10 doing here.

11 And, in fact, that action, in part, directed along
12 the path that it was directed along, Mr. Kohn and his
13 actions on behalf of Mr. Doyle has resulted in something
14 that we have stated even before this case left the Labor
15 Department, that we have been willing to do all along, in
16 the posting of a bond to preserve the judgment for Mr. Doyle
17 if and when it becomes a final, non-appealable judgment.

18 And I would just point out, just as a point of
19 clarification, as well, that the bond is sufficiently large
20 to cover all of Mr. Kohn's legal fees, which are, I've been
21 told by Mr. Buddie, are somewhere in the neighborhood of 300
22 to \$400,000.

23 So you know all that and I won't belabor those
24 points.

25 I guess the question that you asked Mr. Kohn is, I

1 think, the crux of this matter before the NRC, and that is,
2 is this petition, that pursuant to the Commission's
3 guidelines for accepting 2.206 petitions for review, falls
4 within the category of petitions that should be accepted for
5 review.

6 Your Draft Directive 811, it's hard to do section
7 numbers and I don't know if my page numbers equate to the
8 actual page numbers in the document, but under the section
9 under preparation for a PRB meeting, criteria for petition
10 evaluation, there is a statement in Directive 811 that says
11 that the staff will review, so it's a mandate, I guess, it
12 says the staff will review petitions under the requirements
13 of 10 CFR 2.206 if the request meets all of the following
14 criteria.

15 And under that, there are three bullets and,
16 frankly, based on Mr. Doyle's petition and, I think, as
17 fully bolstered by Mr. Kohn's remarks today, I don't believe
18 that elements of the second bullet or the third bullet under
19 those criteria have been met for this petition to be heard
20 by the PRB.

21 The second bullet indicates, in part, that the
22 petitioner must provide some element of support beyond their
23 assertions and the supporting facts must be credible and
24 sufficient to warrant further inquiry.

25 And all I really have heard both -- and seen, both

1 in the petition and in Mr. Kohn's statements, are bare
2 allegations of what he assumes are our motives, which I will
3 flat-out state are not -- is not the case. Westinghouse is
4 a law abiding citizen and if this judgment stands, it will
5 comply with the law and it has complied with the law up to
6 this point, to the extent that in keeping with its
7 legitimate rights to appeal this case, it has been able to
8 do.

9 So I don't think that that bullet has been met.
10 And, secondly and perhaps more importantly, the third bullet
11 states, and I quote, "Acceptance for review under 10 CFR
12 2.206 will not result in circumventing an available
13 proceeding in which the petitioner is or could be a party."

14 Clearly, we have a proceeding and, as Mr. Kohn
15 correctly points out, the 12-year Department of Labor
16 proceeding, which he is -- Mr. Doyle clearly is a party to,
17 and, frankly, anything that I've heard today, by way of
18 clarification, from Mr. Kohn, my point of clarification is
19 to the staff and to the PRB, is that Mr. Kohn's statements,
20 the arguments in the petition really don't go so much to
21 violations of NRC regulation as they are issues under the
22 statutory scheme of the ERA and Section 211, in particular,
23 are more appropriately issues of personal remedy for the
24 petitioner and are more appropriately and, as the law
25 indicates, are only and properly before the Department of

1 Labor, and now, in this particular case, the Department of
2 Labor proceeding, as it has been now appealed to the Federal
3 Appellate Court, as Section 211 provides.

4 Based on that and based on the fact that two out
5 of the three criteria, all of which must be met for the NRC
6 to review this 2.206 petition, I would suggest to the Board
7 is the basis that they need to be focusing on in connection
8 with their decision.

9 But, again, I'm not supposed to be making an
10 argument here and I think that you already have our
11 position, as well.

12 And I guess I won't say anything more about our
13 position. Well, perhaps, actually, I'm sorry, one more
14 thing. I would just then go on in Directive 811 to point
15 out that the next section following criteria for reviewing
16 petitions is criteria for rejecting petitions under 10 CFR
17 2.206.

18 And there are several bullets under there, as
19 well, but I think the first bullet is what's relevant here.
20 The intro is that the staff will not review a petition under
21 2.206 under the following circumstances, that first bullet
22 reads "The incoming correspondence does not ask for an
23 enforcement-related action." That's not relevant here. "Or
24 fails to provide sufficient facts to support the petition,
25 but simply alleges wrongdoing, violations of NRC

1 regulations, or existence of safety concerns."

2 And, frankly, that is all Mr. Doyle's petition,
3 that is all Mr. Kohn, in his statements, has done is to make
4 bold-faced allegations without real facts and certainly not
5 accurate facts to support the position.

6 So for those reasons, based on the NRC's own
7 guidance documents and as a point of clarification to where
8 we think this whole proceeding should like and where the --
9 and how the decision should come down, what should be the
10 focus of it, we just wanted to point that out to the Board,
11 that that's where we think -- to bring this all back into
12 focus and to clarify what is really before the NRC. We
13 think that these are the relevant things that should be
14 looked at.

15 And really that was the end of my prepared remarks
16 before the Board, but I just really feel compelled to go
17 through just a few points based on what Mr. Kohn has said.

18 END TAPE 1, SIDE 2.

19 TAPE 2, SIDE 1 FOLLOWS:

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21
22
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24
25

1 BEGIN TAPE 2, SIDE 1:

2 Again, vis-à-vis the types of mischaracterizations
3 and if I could go so far as to say half-truths that we have
4 heard from Mr. Kohn today, I think the one that's most
5 relevant is his statements with respect to Westinghouse
6 being in contempt.

7 There has been no order in contempt of the legal
8 standard and there has been absolutely no issue -- utterance
9 of the word contempt in any of these judicial proceedings
10 that are ongoing, which, again, it is our right to pursue.

11 Mr. Kohn raises the point of our needing to go to
12 the Appellate Court to seek a stay of the judgment, and but
13 for that, we would have had to pay and that makes us, makes
14 Westinghouse in contempt.

15 My understanding is that, and I am not the lawyer
16 handling the appellate proceedings, and so I will ask Mr.
17 Buddie or Mr. Schmutz to chime in if I'm getting this wrong.
18 Mr. Buddie has kind of written me a note on this, as Mr.
19 Kohn has been going through his points.

20 But what factually happened is the ARB decision
21 was issued on May 17. Westinghouse filed an appeal on the
22 18th of May in the 6th Circuit. On the 19th of May, Mr.
23 Doyle appealed the case. We talked so long and so hard in
24 Mr. Doyle's -- in Mr. Kohn's presentation about
25 Westinghouse's dilatory tactics.

1 He fails to mention that -- and really this is not
2 relevant to the NRC, but for the record and for
3 clarification, we feel it is only fair to point out that
4 there have been just as many appeals at Labor taken by Mr.
5 Doyle and Mr. Kohn and that, in fact, in light of the fact
6 that they were awarded a monetary judgment of significant
7 amount, which we obviously do not agree with because we do
8 not agree with the underlying legal basis of how this
9 proceeding came down, they appealed the case because they
10 wanted more.

11 In light of that, I am told, under the rules of
12 Federal Appellate procedure, we did not have to go to the
13 Appellate Court to seek a stay of the judgment.

14 MR. BUDDIE: This is Jim Buddie. That's correct,
15 what Lisa Campagna just said. Just to follow-up on that
16 really briefly. The appellate cases are very clear on this.
17 Essentially, what Mr. Kohn tried to do was to appeal the
18 judgment and collect on it at the same time and the court --
19 the cases are clear you can't do that.

20 So there was essentially no need to file a stay.
21 But if he hadn't appealed, we would have filed a stay, but
22 since he appealed, he obviated our need to file a stay, so
23 we didn't.

24 And, in fact, the one thing that -- one of the
25 things he left out from the status conference before Judge

1 Ziegler that was brought up at the District Court level was
2 Judge Ziegler, incredulous luck, when he learned that Mr.
3 Doyle had, indeed, filed an appeal and was trying to enforce
4 a judgment while he was pursuing an appeal on it, and the
5 judge quite clearly said there's no way you can file an
6 appeal and expect to be paid on it at the same time.

7 The judge was quite clear on that, the judge was
8 quite correct on that. So there was no need. It wasn't a
9 game of catch me if you can. It was a game of if you want
10 to -- it wasn't a game at all, I'm sorry, I misspoke. It
11 was no game whatsoever.

12 It was strictly following the rules of Appellate
13 Procedure and there was no need to file a stay and we were
14 right on it and Judge Ziegler was right on it and that's why
15 there was no need to ask the Circuit Court for a stay.

16 MS. CAMPAGNA: And by the way, I don't believe
17 that Judge Ziegler ever used the word shell game.

18 MR. BUDDIE: No. Quite clearly he did not.

19 MS. CAMPAGNA: In his enforcement conference, just
20 as a further point of clarification.

21 But a more important point of clarification,
22 because Mr. Kohn relies on the date of the filing of his
23 petition July 18, clearly, we had sent to him, on June 1st,
24 and even under the U.S. mail service, which, you know,
25 people can criticize from time to time, between June 1st,

1 the date of the letter to him, when we indicated we had
2 complied with the non-monetary portion of the judgment, and
3 July 18th, there was clearly sufficient time for him to have
4 received that portion of the letter, and he fails to mention
5 that.

6 But even more importantly, and as I said, the
7 appeals, both parties took their appeals from the ARB
8 decision and within a day or two after the ARB decision, but
9 Mr. Kohn, on behalf of Mr. Doyle, filed his action in the
10 District Court on the 8th of June.

11 That -- again, that proceeding was going on well
12 in advance of the filing of the 2.206 petition on June 18th
13 -- July 18th, excuse me.

14 So for Mr. Kohn, I think, to say that all during
15 this time, Westinghouse did nothing and was in contempt of
16 not paying this money judgment, I think, just as a point of
17 clarification, for the record, I must let the facts stand
18 for what they really stand for.

19 But I think that, you know, despite the arguments
20 of the fact that Westinghouse is a liar, Westinghouse is
21 willfully disobeying, Westinghouse is playing catch me if
22 you can, again, all bear allegations on Mr. Kohn's part,
23 with no basis and no specific factual facts to support them.

24 But more importantly, everything that Mr. Kohn has
25 said today is not in issue before the NRC under the

1 statutory scheme of 211, and I think we'll just leave it at
2 that.

3 His remedies are properly in the case at DOL and
4 now in the Appellate Court. And more importantly, we are
5 prepared, once that case is final, by -- as evidenced by our
6 willingness to post a bond and, in fact, let me just say
7 this, because Mr. Hilton asked me to -- when he called to
8 give me the time for this call, and I didn't know the answer
9 at that point in time.

10 We have delivered the bond to the District Court
11 and we filed that on the 30th of August. And I think the
12 bond is somewhere in excess of a million dollars.

13 SPEAKER: 1.25.

14 MS. CAMPAGNA: Approximately 1.25 million dollars.
15 So we are in full compliance at this point in time with
16 everything that we need to be in compliance with in
17 connection with the Labor case and the appeal of that case.

18 Another point of clarification, because Mr. Kohn
19 went on for a long time about Hydro Nuclear and Staffing
20 Services and its relationship to Westinghouse.

21 We fully admit that Staffing Services is the --
22 was the same corporate entity as Hydro Nuclear. The problem
23 is that that corporation has been dissolved. It no longer
24 exists. And potentially -- and it was never the same
25 corporate entity or legal entity that Westinghouse is.

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1 So to the extent that we had arguments on
2 successor liability, we were making that in connection with
3 Westinghouse, as well.

4 But this whole issue of service of process that Mr. Kohn has
5 discussed, in some respects, is more subterfuged because in
6 the proceeding before the District Court, at the conference
7 in which the judge indicated he would issue the order,
8 issuing the same requiring what -- we have to post the bond,
9 we went through all those arguments and service of process
10 now has been validly accepted.

11 And so, again, even though it's a matter for
12 Labor, it's just a point of clarification for this record.

13 I'm just looking through my notes. I don't think
14 that perhaps there is anything more to respond to, with the
15 exception of the last statements of Mr. Kohn, at the end,
16 where he is now, once again, using the NRC process to argue
17 yet again another violation of NRC regulation based on
18 something that is -- it's a violation at all and
19 Westinghouse, at this point, because we have not had an
20 opportunity to -- we're being hit with this for the very
21 first time and we haven't had an opportunity whatsoever at
22 all to consider what Mr. Doyle is saying, all we were doing
23 in the Equifax, the letter to the Equifax successor was
24 complying, to the best of our ability, with the ARB order.

25 But, again, we will have to take a look at that,

1 but the fact of the matter is, once again, Mr. Doyle and Mr.
2 Kohn is trying to use the forum of the NRC for a matter
3 that, if it's valid at all, is appropriately before Labor,
4 and that is the only place where any allegation of that kind
5 -- and at this point, we believe it not to be valid, but
6 we'll have to look into it.

7 But if at all, that's the forum where it should be
8 heard and it should not be used to further delay and
9 complicate and confuse the NRC 2.206 process, which, bottom
10 line here, from Westinghouse's perspective, is being used to
11 punish Westinghouse, to cause Westinghouse additional time
12 and effort, because basically Mr. Kohn is mad that we have
13 pursued our legitimate rights in connection with the payment
14 of the money judgment.

15 And I would argue that for all the reasons that I
16 stated, that under Directive 811, the initial petition is
17 not a valid petition to be heard by the NRC, those reasons
18 apply equally to any new allegation raised by Mr. Kohn today
19 on this phone call.

20 And I think that that's where the focus should lie
21 vis-à-vis this 2.206 petition.

22 I guess I have nothing further, and I don't know
23 if Mr. Buddie or Mr. Schmutz have anything further to add.

24 MR. KOHN: Hello?

25 MR. BERKOW: Yes. This is Herb Berkow. Thank

1 you.

2 MR. KOHN: Okay. Mr. Berkow, can I just respond
3 for two minutes?

4 MR. BERKOW: Is this Mr. Kohn?

5 MR. KOHN: Yes.

6 MR. BERKOW: Okay. Two minutes is all.

7 MR. KOHN: Okay. Thanks.

8 MR. BERKOW: And please make it relevant to the
9 criteria of a 2.206 petition.

10 MR. KOHN: Thank you. In terms of -- in rebuttal,
11 in regards to a supporting basis for the allegations, it is
12 our position that if you read the ARB decision, look at all
13 the pleadings filed in the District Court and compare them
14 to the applicable law, that's the basis we need, as
15 supplemented by this telephone conference call.

16 It's all there and it needs to be reviewed.
17 Everything I said is accurate.

18 Second, in regards to circumventing the process,
19 of course, we have a DOL process. This petition is filed
20 under 10 CFR 50.7 and the NRC was whistleblower rules. It's
21 well established that only the NRC can take public
22 enforcement action and that the NRC has concurrent
23 jurisdiction.

24 Doyle cannot, through the Department of Labor,
25 remedy, get an NRC enforcement action or a fine. So it's

1 been for years fully permitted to do these collateral type
2 of actions. The NRC's jurisdiction, as a matter of law, is
3 recognized as distinct, and that's what we're seeking here;
4 not a private remedy, but for the NRC to do its job, to
5 protect nuclear safety.

6 In regard to the issue that Doyle file through the
7 Court of Appeals somehow, we should lose, that was briefed.
8 Briefly stated, that there is not one case under Federal
9 Rule of Appellate Procedure 18 that supported that frivolous
10 position.

11 Second, under the specific statute 42 USC
12 5851(c)(2), that, by law, contradicted the legal position.
13 The judge never made a ruling on it. The statement that the
14 judge made some type of face about Doyle appealing had
15 nothing whatsoever to do with whether the judgment should be
16 enforced.

17 The face characterization, I think, is inaccurate
18 and it had to deal with an issue of characterization and who
19 had the pay the tax liability.

20 Finally, I'm going to try to be as quick as I can
21 here, Westinghouse -- two other quick points.

22 Westinghouse -- Westinghouse has not yet admitted
23 to the service of process of Hydro. At the hearing, the
24 judge looked at them and said "Aren't you just going to
25 admit to this?" And they said, "Well, maybe," but they

1 haven't done it yet.

2 You can search the entire court file. You will
3 notice they have not withdrawn, they have not clarified to
4 the court that Hydro has accepted service of process.

5 In regards to the statement that Westinghouse is
6 now admitting that Westinghouse Staffing Services is Hydro
7 Nuclear, you will see, again, when you review the pleadings,
8 that they made the exact counter-statement to the court in
9 their initial motion to dismiss, and that has been their
10 position.

11 So they are, again, repeating some false
12 statements here, but in regards to the specific criteria,
13 only the NRC can take enforcement action under 10.50.7. So
14 the fact that there is a DOL, as a matter of law, and it's
15 actually in Section 211, has no impact on that whatsoever.

16 So we are not circumventing a process. This is a
17 safety proceeding.

18 In regards to the factual support, I'm stating
19 we'll get you any pleading you want and it's all public
20 record. It's all laid out.

21 Thank you very much.

22 MR. BERKOW: Okay. This is Herb Berkow. Thank
23 you, Mr. Kohn, and thank you, Ms. Campagna.

24 MS. CAMPAGNA: Mr. Berkow?

25 MR. BERKOW: Okay. Yes?

1 MR. KOHN: I have to go now. Thank you very, very
2 much.

3 MR. BERKOW: Thank you.

4 MS. CAMPAGNA: But I'll say one thing. Nothing
5 that Mr. Kohn has said, either initially or in rebuttal,
6 alleges any specific facts of [inaudible] violation of law.
7 Again, [inaudible] is at Labor and we are pursuing that and
8 however that comes out, Westinghouse will comply.

9 MR. BERKOW: Okay. Thank you very much for your
10 time and I guess that terminates this teleconference.

11 MR. DOYLE: In response to that statement, I'd
12 like to make one comment.

13 MR. BERKOW: Who is this, please?

14 MR. DOYLE: Shannon Doyle. And that is, if you
15 look at the whistleblower protection mechanism, there's a
16 hole. I think that Westinghouse's failure to comply with
17 this order, absence a stay issued by the appropriate court,
18 would have the tendency to throttle or restrict the flow of
19 information.

20 And I think the Nuclear Regulatory Commission
21 should view this as -- just as they would a situation where
22 there was a faulty valve within some system that throttled
23 or restricted the flow of some fluid that was necessary in
24 safe operation of a facility.

25 And the fact that there is the Department of Labor

1 proceeding and the Court of Appeals proceeding should have
2 really no -- you shouldn't consider that, because, in fact,
3 there's been an enforcement -- or there's not -- a final
4 order issued. They have not issued a stay.

5 The Court of Appeals has not issued a stay and
6 it's an order that should be carried out and the fact that
7 they haven't carried it out could have a chilling effect on
8 the flow of information within the industry.

9 With regards to the NRC maybe sitting back and
10 saying, well, as long as they've got it alive in the courts,
11 we're not going to do anything, I'd like to point out that
12 previously, a notice of violation was issued, although it
13 might have been considered toothless, there was no monetary
14 assessment made against Westinghouse, it's still -- the
15 process was still taking place then, as well.

16 Apparently, the NRC did not consider that as
17 reason not to issue that notice of violation.

18 And as far as the stay having been issued, I think
19 the three points you have to look at is that they asked the
20 ARB for a stay. It was denied. The Department of Labor
21 denied the stay, and I think that the NRC should pay no
22 attention to the stay at all.

23 And that's all I have.

24 MR. BERKOW: Okay. Thank you very much, Mr.
25 Doyle. Okay. This ends this teleconference. Thank you all

1 for your time.

2 MS. CAMPAGNA: Thank you for your time.

3 MR. BERKOW: Okay. Bye.

4 SPEAKER: Thank you.

5 MS. CAMPAGNA: Bye, now.

6 [Whereupon, the above teleconference was concluded.]

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CERTIFICATE

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

Name of Proceeding: NMSS 2.206 PETITION CONFERENCE
PROCEEDING - HYDRO NUCLEAR
SERVICES
TELECONFERENCE

Case Number:

Place of Proceeding: Rockville, MD

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission transcribed by me from recorded tapes provided by the Nuclear Regulatory Commission, and that the transcript is a true and accurate record of the foregoing proceedings to the best of my belief and ability.



Natalie Renner

Transcriber

Ann Riley & Associates, Ltd.