

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: **TRANSCRIPT OF CASSETTE TAPE OF A 2.206**
PUBLIC PETITION CONFERENCE PROCEEDING
HYDRO NUCLEAR SERVICES

Location:

Date: **Wednesday, October 11, 2000**

Pages: **1 - 19**

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UNITED STATES
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TRANSCRIPT OF CASSETTE TAPE OF A 2.206 PUBLIC PETITION
CONFERENCE PROCEEDING - HYDRO NUCLEAR SERVICES

Wednesday, October 11, 2000
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SIDE A

MR. SUBBARATNAM: Is there anyone on this line?

[Inaudible.]

Will the person who came on-line identify, please?

MR. DOYLE: This is Shannon Doyle.

MR. SUBBARATNAM: Hi, Shannon Doyle. How are you doing this morning?

MR. DOYLE: Pretty good. How are you?

MR. SUBBARATNAM: We are doing fine. Stand by. Let's give a couple of more minutes for others to join the line.

MR. DOYLE: Okay.

MR. SUBBARATNAM: Okay.

This is the Petition Review Board on the Hydro Nuclear.

Is the Westinghouse licensee on the line, please?

[No response.]

MR. SUBBARATNAM: Is Mr. Doyle on the line?

MR. DOYLE: Yes, I am.

MR. SUBBARATNAM: Is Mr. Cohn with you, sir?

MR. DOYLE: No, Mr. Cohn isn't going to be able to attend this morning, as I informed Mr. Hilton earlier.

MR. SUBBARATNAM: Okay, Mr. Doyle. We will give the Westinghouse folks a couple of more minutes. Stand by,

1 please.

2 MR. DOYLE: Okay.

3 MR. HILTON: Mr. Doyle, Nick Hilton here.

4 MR. DOYLE: Mr. Hilton, how are you?

5 MR. HILTON: Good.

6 Hey, I understood from our call this morning that
7 Mr. Cohn had a conflict but that he would still be able to
8 attend today. I didn't understand that he would not be able
9 to attend.

10 MR. DOYLE: Well, I informed you that I'd be going
11 it alone.

12 MR. HILTON: Okay. All right. Let's talk about
13 it here for just a second.

14 SPEAKER: Hello.

15 MR. SUBBARATNAM: Lisa, is that you from
16 Westinghouse?

17 SPEAKER: Yes, it is.

18 MR. HILTON: Okay. Hold on just a minute, Lisa.

19 SPEAKER: Are you still there?

20 SPEAKER: Yes.

21 MR. HILTON: Okay, folks. This is Nick Hilton.
22 I'm going to turn it back over to Ram here to proceed with
23 the meeting.

24 MR. SUBBARATNAM: Mr. Doyle, Lisa, how are you
25 doing this morning?

1 SPEAKER: Just fine, thank you.

2 MR. SUBBARATNAM: We are on the Petition Review
3 Board, the so-called report briefing, and I'm going to turn
4 over to the chairman, Suzanne Black, and she will take it
5 from here.

6 MS. BLACK: Okay.

7 First, I think we ought to go around and introduce
8 everybody who's on the telephone call.

9 My name is Suzanne Black, Deputy Director,
10 Division of Licensing Project Management in the Office of
11 Nuclear Reactor Regulation.

12 MR. BERKOW: Herb Berkow, Office of Nuclear
13 Reaction Regulation.

14 MR. LUHEMAN: My name is Jim Luheman. I'm the
15 Deputy Director of the Office of Enforcement for the NRC.

16 MR. HILTON: Nick Hilton. I'm the Petition
17 Manager for this. I'm Enforcement Specialist in the Office
18 of Enforcement.

19 MR. SUBBARATNAM: My name is Ram Subbaratnam, the
20 agency coordinator for 2.206 petition.

21 How about Mr. Doyle?

22 MR. DOYLE: My name is Shannon Doyle. I'm the
23 petitioner.

24 MR. SUBBARATNAM: How about Lisa?

25 MS. CAMPAGNA: Yes. Hi. We have three people,

1 and we're all on different lines, so I'll let everybody
2 introduce themselves.

3 My name is Lisa Campagna. It's C-A-M-P-A-G-N-A,
4 and I'm an Assistant General Counsel for Westinghouse
5 Electric Company.

6 MR. BUDDIE: Jim Buddie. The last name is spelled
7 B-U-D-D-I-E. Also Assistant General Counsel for
8 Westinghouse.

9 MR. SCHMUTZ: Tom Schmutz. That's S-C-H-M-U-T-Z,
10 and I'm with Morgan, Lewis, and Bockius in Washington.

11 MS. BLACK: Okay. Thank you.

12 This is Suzanne Black again, and I have an opening
13 comment to read to the parties, and then we will proceed on
14 with this post-PRB telephone conference.

15 This telephone conference in being conducted to
16 provide the opportunity an opportunity to comment on the
17 tentative recommendations of the Petition Review Board, or
18 we call it the PRB.

19 As you know, the PRB has tentatively decided to
20 recommend that the NRC not accept your petition for review
21 under 2.206.

22 You assert that Hydro Nuclear's failure to comply
23 with the DOL order creates a chilled environment in the
24 nuclear industry.

25 As a basis for your request, you maintain that,

1 after a full two months of the order becoming
2 administratively final, Hydro Nuclear had not complied with
3 the order, therefore discriminating against you and creating
4 a potential chilling effect which serves as a dis-incentive
5 to workers in the nuclear industry stepping forward to
6 identify potential safety problems.

7 The NRC Management Directive 8.11, review process
8 for 2.206 petitions, states that a petition will not be
9 reviewed if, among other requirements, the petitioner fails
10 to provide some element of support beyond the bare
11 allegation. However, we did not find any support for such
12 an allegation in the petition.

13 Further, the staff has concluded that, because
14 Hydro Nuclear is pursuing its case in the courts, as its
15 right, NRC involvement at this point would not be
16 appropriate.

17 As I mentioned previously, this telephone
18 conference is an opportunity for you to provide any relevant
19 additional explanation and support for your request in light
20 of the PRB's tentative recommendation.

21 We're interested in hearing information that would
22 provide support for the assertion that Hydro Nuclear's
23 failure to fully comply with the DOL order discriminated
24 against you and created a chilling effect in the nuclear
25 industry, and this is not an opportunity to repeat the

1 information that's already on the record.

2 Because I was not the PRB chairman for the
3 September 14th meet, I read that transcript yesterday so
4 that those facts are fresh in my mind.

5 Your presentation should provide any new
6 information relevant to requested enforcement action, and
7 Westinghouse will then be offered the opportunity to ask any
8 clarifying questions.

9 After this discussion, the PRB will consider the
10 need to modify any of its recommendations, and the final
11 recommendations will be included in the acknowledgement
12 letter that we'll be sending to you.

13 Okay.

14 Mr. Doyle, would you like to provide any
15 additional information at this point?

16 MR. DOYLE: Yes.

17 First I'd like to say on the record that this
18 post-hearing conference or post-conference --

19 MS. CAMPAGNA: Excuse me. This is Westinghouse.
20 We cannot hear Mr. Doyle.

21 MR. SUBBARATNAM: Mr. Doyle, would you please
22 speak up a little bit, please?

23 MR. DOYLE: Okay. Can you hear me now?

24 SPEAKER: It's better.

25 MR. DOYLE: Okay.

1 I'd like to go on the record as stating that this
2 conference was scheduled earlier and then, for some reason,
3 it was postponed.

4 We made arrangements to be here this morning, but
5 unfortunately, my counsel is unable to attend, and I asked
6 for another postponement, but it's been denied.

7 I just want to go on the record stating the
8 situation here.

9 MS. BLACK: Does your attorney have additional
10 information that you don't feel that you are aware of that
11 you could provide to us today?

12 MR. DOYLE: I would say that he probably does.

13 MS. BLACK: I'm not talking about from a legal
14 point of view, because the legal arguments are irrelevant to
15 our decision.

16 Our decision is based on the fact that there was
17 no evidence of any discrimination or chilling effect beyond
18 what was already stated at the conference that was held in
19 September, the telephone conference.

20 So, I guess I don't really understand why you
21 think he has some information about the chilling effect or
22 discrimination against you that you don't have, that you're
23 not aware of.

24 MR. DOYLE: Well, I think that, as my counsel, I
25 think that he should be participating.

1 MS. BLACK: And when did you become aware that he
2 would not be able to support this telephone call?

3 MR. DOYLE: Last night. And I left a message for
4 Mr. Hilton to contact me, and he contacted me this morning.

5 MR. LUHEMAN: Mr. Doyle, this is Jim Luheman.

6 If you want to get Mr. Cohn on a call with us,
7 when is Mr. Cohn going to be available? I mean the problem
8 we have is a logistic one.

9 We have to get all the people at the NRC together,
10 we have to get Westinghouse attorneys on the line, and to
11 get a call at 5:11 the day before saying that he may or may
12 not be able to participate -- you know, when's the next time
13 he's going to be definitely available so that we could -- so
14 we can try to get all these people together?

15 I mean, on one hand, we -- I mean we obviously
16 want to hear anything he or you have to say, but on the
17 other hand, you know, there is a logistical consideration
18 here that, you know, we can't drag this on forever.

19 MR. DOYLE: I understand that, and I think that,
20 if I'm not mistaken, wasn't it -- the last postponement was
21 -- how much notice were we given about that?

22 MS. CAMPAGNA: I am not aware that this call has
23 ever been postponed. My understanding is that this call was
24 always scheduled, ultimately, for this time.

25 This is Lisa Campagna from Westinghouse.

1 I kind of second what the NRC is saying here. We
2 have a logistical issue here, too. We've got an attorney
3 sitting in Utah. It's seven a.m. in the morning, but he has
4 made himself available for this call as it was scheduled,
5 and frankly, Ms. Black, I, too, have reread the transcript,
6 and it is fresh in my mind, and it is difficult for me to
7 understand what additional evidence [inaudible] between now
8 and the September meeting Mr. Cohn may have that Mr. Doyle
9 doesn't have.

10 We have not really had any interaction with Mr.
11 Doyle or his counsel, and given that there was an absolute
12 lack of evidence the first go-round, I find this very
13 difficult to believe, and frankly, I realize that the NRC's
14 process supports these types of petitions, Westinghouse
15 applauds that process, but frankly, perhaps enough is enough
16 here.

17 MS. BLACK: Okay.

18 MR. DOYLE: I'll tell you what. I'll go ahead and
19 I'll continue.

20 I've noted my concerns, my counsel not being
21 present, and if you want to continue, we'll just go ahead.
22 I've got just a couple of points that I want to make, and
23 they might be reiterating earlier points, by they're
24 something that we did not allude to that was on the record
25 that I think we need to do now.

1 MS. BLACK: Okay. Go ahead, Mr. Doyle.

2 MR. DOYLE: Okay.

3 Westinghouse has stated that they have complied
4 with the non-monetary portions of the order of the ARB, and
5 it's my position that the actions that they have taken, in
6 fact, run counter to the order of the ARB.

7 The dates -- let's see. The date on this is --

8 MS. BLACK: Excuse me, Mr. Doyle. I thought I
9 tried to make it clear that the DOL case -- the NRC has
10 determined in this case that the DOL facts are -- what we
11 are saying is it does not support the 2.206, that you have
12 to have additional facts to support why the DOL case itself
13 creates a chilling effect or discriminates against you, but
14 it's irrelevant to our decision, the legal maneuverings of
15 either Westinghouse or your attorney in the DOL case itself.

16 We would like to hear additional information
17 beyond the DOL case.

18 MR. DOYLE: Well, the fact of the matter is that
19 they have -- what I've alleged is their failure to comply
20 with the DOL order.

21 MS. BLACK: We understand that, and we've decided
22 in the PRB that the DOL case, in itself, does not -- and any
23 legal maneuverings of either party -- do not, in itself,
24 contain anything other than a bare allegation of a chilling
25 effect or discrimination, and we need additional

1 information, because we have looked at the legal issues in
2 this, and our decision is that we're going to let the courts
3 handle the DOL case, that it is beyond our jurisdiction to
4 look into the details of this case.

5 MR. DOYLE: Beyond your jurisdiction to look into
6 whether or not they have complied with the order?

7 MS. BLACK: Yes. We believe that it is their
8 right to appeal and that there are other jurisdictions in
9 which this is more appropriately heard than the NRC.

10 MR. DOYLE: Right.

11 MS. BLACK: We only need to understand if you have
12 any facts that would try their -- your allegation that they
13 are not complying with this order -- if you have any facts
14 to demonstrate that that in itself -- let's assume that they
15 weren't complying with the order, for the case of argument.
16 You have to give us additional information of why you think
17 that's tied to any chilling effect or any discrimination
18 against you, just beyond the DOL case.

19 MR. DOYLE: Okay.

20 Well, I think that, when Congress enacted the
21 whistle-blower protection laws, it was to open the flow of
22 information.

23 If an individual prevails in one of these cases
24 and it's simply not complied with -- and I think the NRC
25 guidelines indicate that NRC enforcement action is not

1 stayed unless there is a stay issued by the U.S. Court of
2 Appeals, not simply a district court. I think that the
3 regulation is very clear on that.

4 SPEAKER: Well, Mr. Doyle, as I think I've pointed
5 out before -- perhaps not -- that sentence is a little out
6 of context with this case.

7 In this case, the proceedings are continuing based
8 on appeals, and what's referred to there by the stay in our
9 enforcement manual is discussing an NRC order, not a
10 Department of Labor order, as it relates to a potential
11 discrimination case.

12 MR. DOYLE: But it does -- but the NRC -- does
13 that not fall under discrimination under the NRC's
14 guidelines, specifically?

15 SPEAKER: Well, we have regulations regarding
16 discrimination, that's correct, but what you're referring to
17 there about the stay and the district court is referring to
18 when we issue orders --

19 MR. DOYLE: Okay.

20 SPEAKER: -- and it's not one of our orders, it's
21 a Department of Labor order.

22 So, what you've alleged in your petition is that,
23 by Westinghouse not complying, as you stated, as you've
24 alleged in your petition, that that has created the chilled
25 environment, because the whole industry can see that you

1 can't -- that all you have to do is just not pay the money.

2 The problem that we have is that this case
3 continues in the courts, and without rendering any kind of
4 decision on who's right and who's wrong in terms of the
5 legal basis and the actual happenings, the process is
6 continuing, and so, therefore, it's not really -- it's not
7 obvious to us how we can determine that there's a chilled
8 environment created by Westinghouse continuing to appeal the
9 case.

10 MR. DOYLE: Okay.

11 SPEAKER: And that's all we're looking for
12 additional information on, not the facts back and forth in
13 the case --

14 MR. DOYLE: Right.

15 SPEAKER: -- but how the case itself would create
16 a chilled environment out in the industry.

17 MR. DOYLE: Okay.

18 That's what I'm trying to address when I'm
19 bringing up this -- they're not complying with the order and
20 doing something that runs counter to the order, and when I
21 say that, they were directed to divulge any information
22 pertaining not hiring me, and that was done in the ARB
23 decision dated September 6, 1996, the final decision order
24 by the ARB.

25 Okay.

1 Now, if you'll look at the letter of reference
2 they refer to in the document that they sent to the Nuclear
3 Regulatory Commission, which was addressed to Mr. William
4 Borchard, on August 28, 2000, they have a letter to Choice
5 Point that was dated May 25, 2000, and they also have a
6 letter directed to whom it may concern dated May 25, 2000,
7 and they clearly state that Mr. Doyle did not work as a
8 decontamination technician.

9 Now, they were directed not to divulge any
10 information pertaining to not hiring me, and this clearly
11 runs counter to that order.

12 MS. BLACK: Okay. And do you have any other
13 information that you'd like to give us?

14 MR. DOYLE: Well, I think we discussed that, in
15 the Gavalla case --

16 MS. BLACK: Yes, I recall reading that in the
17 transcript.

18 MR. DOYLE: Okay.

19 There's a prophylactic rule prohibiting references
20 to an employee's protected activity, and I think that, if
21 you look at this letter to Choice Point dated May 25, 2000,
22 they have alluded to a final decision and order from the
23 Administrative Review Board, and that clearly runs counter
24 to the prophylactic rule prohibiting references to the
25 protected activity, and Westinghouse -- their position that

1 they have complied with the non-monetary portion of the
2 order just doesn't make sense.

3 What they've done, actually, is take actions that
4 run counter to those orders.

5 MS. BLACK: Okay. And do you have anything else
6 to add?

7 MR. DOYLE: That's it.

8 MS. BLACK: All right.

9 Ms. Campagna, do you have any clarifying
10 questions? And you understand that our inquiry today goes
11 beyond -- or excludes the legal arguments.

12 MS. CAMPAGNA: Ms. Black, in say that, I can't
13 respond.

14 Mr. Doyle just made a legal argument in connection
15 with Gavalla and in connection with his interpretation of
16 the ARB order and in connection with how we contribute to --
17 whether we complied with that order vis a vis these letters
18 that he's referring to.

19 I can't address that?

20 MS. BLACK: Well, go ahead, if you can make it
21 brief.

22 MS. CAMPAGNA: I can make it brief.

23 MS. BLACK: Okay.

24 MS. CAMPAGNA: The order required us to send a
25 notice to Equifax -- Choice Point is a successor company --

1 correcting the earlier notice and to expunge from Mr.
2 Doyle's personnel records all derogatory and negative
3 information and to provide a neutral employment reference.
4 It does indicate we shall not divulge any information
5 pertaining to not hiring Mr. Doyle or to denying him
6 unescorted access to a nuclear facility.

7 Taking that last point first, if you look at our
8 letter, the to whom it may concern letter -- I'm sorry --
9 the to whom it may concern letter without -- the letter not
10 to Choice Point but the second letter in the attachments we
11 sent -- we do neither of the things that Mr. Doyle alleges
12 we do. We don't reference not hiring him. We basically
13 state facts, and we indicate his performance was
14 satisfactory.

15 So, we disagree with that characterization of that
16 letter, and similarly, the letter to Choice Point, we are
17 only complying basically with what the ARB requested us to
18 do. We obviously needed to put the letter in somewhat of a
19 context to Choice Point other than it just kind of showing
20 up on their doorstep, and we're just explaining to them the
21 reason for sending the letter.

22 The Gavalla case was totally different than the
23 situation we have here.

24 In the case, in the information provided in that
25 case, the decision of the Secretary of Labor in the case is

1 directed to a company, an employer that -- in connection
2 with an actual call for obtaining a reference for an
3 employee who had filed a complaint at DOL and had been a
4 whistle-blower, had -- he hired somebody to call to ask for
5 a specific employment reference.

6 And in that context, which is not the context that
7 we're having here -- the context that we have here is that
8 our intent to comply with the ARB order, which we feel we
9 have done -- in the Gavalla case, it was an actual request
10 for an employment reference in which, once again, that
11 employer made reference to the employee's -- the
12 whistle-blower's protected activity and also made reference
13 to the fact that he, quote/unquote -- and this is a
14 paraphrase -- was a problem worker.

15 That's certainly not the case here, and so, we --
16 our position is that the Gavalla case has nothing to do with
17 Mr. Doyle's case, with our letters, and with the petition
18 that's before you.

19 And finally, my last point is, even assuming
20 arguendo that it does, this is still not a question for the
21 NRC.

22 It's an issue that Mr. Doyle and his attorney
23 should more properly take up with DOL if they believe that
24 their position is the valid one, which we do not.

25 MS. BLACK: Okay. Thank you.

1 Does the staff have any questions?

2 [No response.]

3 MS. BLACK: All right.

4 Then that concludes the meeting, the telephone
5 conference, and the Petition Review Board will hold a
6 meeting to determine whether to affirm or to reconsider our
7 decision on the 2.206, and Mr. Doyle, you'll be getting an
8 acknowledgement letter in the near future.

9 MR. DOYLE: Okay. Thank you.

10 MS. BLACK: Okay.

11 Thank you very much.

12 [End of conference.]

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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: TRANSCRIPT OF CASSETTE TAPE OF A
 2.206 PUBLIC PETITION CONFERENCE
 PROCEEDING - HYDRO NUCLEAR SERVICES

Case Number:

Place of Proceeding:

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.



Tamara Shipp

Transcriber

Ann Riley & Associates, Ltd.