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RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket Number: 50-390-CivP et al.

Location: Rockville, Maryland

Date: Monday, September 9, 2002

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

_____) Docket Nos. 50-390-CivP
TENNESSEE VALLEY AUTHORITY) 50-327-CivP 50-328-CivP
) 50-259-CivP 50-260-Civ.P
(Watts Bar Nuclear Plant,) 50-296-Civ.P
Unit 1, Sequoyah Nuclear)
Plant, Units 1&2, Browns) ASLBP No. 01-791-01-CivP
Ferry Nuclear Plant, Units) EA 99-234
1, 2, & 3)
_____)

Nuclear Regulatory Commission
One White Flint North
11545 Rockville Pike
Rockville, Maryland

Monday, September 9, 2002

The above-entitled matter came on for hearing,
pursuant to notice, at 11:00 a.m.

BEFORE:

CHARLES BECHHOEFER, Chairman
ANN MARSHALL YOUNG, Administrative Judge
RICHARD F. COLE, Administrative Judge

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P-R-O-C-E-E-D-I-N-G-S

(11:03 a.m.)

1
2
3 CHAIRMAN BECHHOEFER: Good morning, ladies
4 and gentlemen. We welcome you here to Rockville,
5 Maryland. I would guess that it would be preferable
6 for the participants today to introduce themselves for
7 the record. We have a different reporter, et cetera.
8 And the Board Members are Dr. Richard Cole on my left,
9 Ann Marshall Young on my right, and I'm Charles
10 Bechhoefer. Parties wish to introduce themselves.

11 MR. DAMBLY: For the Staff, this is Dennis
12 Dambly.

13 MS. EUCHNER: For the Staff, Jennifer
14 Euchner.

15 MR. MARQUAND: My name is Brent Marquand.
16 I'm with TVA.

17 MR. SLATER: John Slater. I'm with TVA.

18 MS. GREEN: Donna Green. I'm with TVA.

19 CHAIRMAN BECHHOEFER: Mr. Hilton, did you
20 want to --

21 MR. HILTON: Just in case, Nick Hilton,
22 Office of Enforcement, for the Staff.

23 CHAIRMAN BECHHOEFER: Before we start, we
24 have at least one preliminary matter before us, and
25 that is the TVA's motion to compel, and the Staff's

1 response. I'm not sure we want to resolve the
2 question now, but at least the Board has a question
3 whether the parties have attempted to resolve the
4 differences on this matter. And the reason I mention
5 that is that Mr. McArthur, the subject of the motion,
6 did appear on the witness lists of both parties, and
7 did appear as a witness on behalf of both parties.
8 But the subpoena was issued by the Staff, and I'm not
9 sure that the Staff, at least their response is that
10 they paid everything they were authorized to pay. And
11 I'm not sure. I haven't done any research, and there
12 may be some benefit of letting this be resolved by the
13 normal agency that resolves travel disputes. But I
14 wondered whether the parties -- since it arises out of
15 a subpoena that we issued, or I issued, we may have
16 some place in resolving it, as well.

17 MR. MARQUAND: Your Honor, I want to
18 address that; and that is, that the response that the
19 Staff filed is simply inapposite to the issue before
20 you. You had issued a subpoena. Your regulations
21 provide that witnesses who are subject to subpoena be
22 recompensed at the same -- on the same basis as under
23 federal statutes, and it's for the Board to determine
24 that.

25 The arguments that they raise about the

1 level of compensation all have to deal with temporary
2 duty and the federal travel regulations for federal
3 employees. All of the GSA opinions that they cited to
4 you have to deal with employee travel and the TDY
5 regulations, and those are simply inapplicable. Their
6 argument about the proper method for him to file a
7 claim and appeal the claim does not apply to non-
8 employees who are subject to subpoenas.

9 When you look at the -- I mean, you're
10 dealing with a separate set of regulations, and
11 they're mixing and matching apples and oranges here.
12 They just don't apply.

13 What we're talking about is a gentleman
14 who is a non-federal employee. He's not employed by
15 the federal government. He used his own personal
16 assets to travel pursuant to their subpoena.

17 JUDGE YOUNG: Mr. Marquand, let me just
18 ask you two questions. Could you respond to what the
19 Staff said about, and also what Judge Bechhoefer just
20 said about your also calling him as a witness. And
21 then secondly, to the Staff's statement in its
22 response, that the Staff was relying on, I guess, your
23 statement that Mr. McArthur was going to be driving
24 through Chattanooga anyway. Because I think those
25 could be relevant --

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1 MR. MARQUAND: I understand.

2 JUDGE YOUNG: -- to the general equitable
3 consideration of how much, if any, we order.

4 MR. MARQUAND: Yes. He's on both witness
5 lists. The Staff subpoenaed him. They called him
6 first, and we explained to them that to the extent
7 that they didn't ask any questions, we intended to --
8 we thought pertinent, we intended to ask questions,
9 and we did. But Dr. McArthur wasn't driving to
10 Chattanooga anyway. He used that opportunity as an
11 opportunity to visit people -- once he knew he was
12 coming, he used it as an opportunity to visit some
13 people in the area. He wasn't coming to Chattanooga
14 anyway.

15 He did tell me originally he was going to
16 drive. He later chose - he didn't tell me - he chose
17 to fly because he had the frequent flyer, and it was
18 quicker for him. And you've seen his state of health,
19 he's not capable of driving.

20 JUDGE YOUNG: So he wasn't planning to
21 come near here, or go through -- not here, near
22 Chattanooga or go through Chattanooga?

23 MR. MARQUAND: He did not have plans to go
24 there in the first place. He utilized that
25 opportunity to extend his travel. And as you're all

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1 aware, government employees can combine personal
2 travel with government travel, but then you have to do
3 a constructive trip to determine how much of it was,
4 in fact, for government time. And I don't have a
5 problem with the way that the Staff figured out the
6 constructive time that he was in Chattanooga. You
7 know, he was there for a limited period of time, and
8 I don't think there's any obligation to pay for eleven
9 days, or the time that he spent visiting other people.
10 I don't have a problem with that. It's just simply,
11 I think that he's entitled to be paid more than \$5 for
12 his expenses in getting from Salt Lake City to
13 Chattanooga. And Dr. McArthur wasn't insistent that
14 they pay him \$1,400, or \$700. He suggested that they
15 could look and see how much a ticket costs, and pay
16 him that. Or he even suggested alternatively, figure
17 out how many miles it is, and recompense him on a
18 mileage basis.

19 JUDGE YOUNG: What about TVA paying for
20 part of that, since he was also a witness for TVA?

21 MR. MARQUAND: What I told Dr. McArthur
22 was that I understood that given the limitations on
23 recompensing people who are traveling pursuant to a
24 subpoena, I didn't want him to suffer on either TVA's
25 or NRC's account, in having to foot part of the bill.

1 And I told him that what they were unable to pay
2 legally, that TVA would pay for.

3 I mean, I didn't expect us to pay \$1,000
4 a night rooms or anything like that, but we would pay
5 the difference in what was -- the Board determined to
6 be reasonable, and what he actually incurred.
7 Because, for example, the Board used \$30-a-day meals
8 and incidental expenses. TVA is more liberal in our
9 travel regulations, and so to that extent, I would pay
10 him that difference, both on the meals and expenses,
11 on the rooms, and matters of that like.

12 CHAIRMAN BECHHOEFER: Well, is there any
13 dispute between the parties concerning the amount of
14 per diem that the Staff included?

15 MR. MARQUAND: I don't have a problem with
16 the per diem, or the way that they paid any of that.
17 The only difficulty, we've got --

18 CHAIRMAN BECHHOEFER: There was 600 and
19 some dollars, according to the --

20 MR. MARQUAND: There's a difference
21 between the \$5 that they suggested he be paid for
22 getting from Salt Lake City to Atlanta, versus either
23 the value of the ticket, or based on the mileage.

24 JUDGE YOUNG: Why don't you all talk with
25 each other and see if you can work this out by

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1 agreement? And then if you can't, we'll take it up
2 later.

3 MS. EUCHNER: Your Honor, just to say
4 something. It's the Staff's position that we legally
5 cannot pay any additional monies to Dr. McArthur,
6 because even though the cases that were cited may
7 relate to employees, the reasoning behind why frequent
8 flyer miles can't be reimbursed remains the same. And
9 the courts that I cited, the Comp Gen and the BCA, lay
10 that rationale out quite clearly. So we can talk
11 about it, but the Staff cannot agree to pay something
12 that the Travel Management Branch has told us that
13 legally we are not allowed to pay, so I'm not sure
14 that us discussing it is going to get us anywhere,
15 unless we can meet with the Travel Management Branch
16 and see if we can go somewhere.

17 CHAIRMAN BECHHOEFER: Well, let me ask a
18 question. Is the Staff treating this like they would
19 treat, say invitational travel, where you seek to pay
20 for, say a candidate for a job to coming in to
21 interview?

22 MR. MARQUAND: Those people are paid
23 pursuant to TDY regulations, and they would -- those
24 types of people would be subject to those regulations,
25 but not somebody subject to a subpoena. That is not

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1 subject to TDY.

2 JUDGE YOUNG: Why don't you talk with each
3 other about what law and regulations govern, and see
4 if you can work something out. If you can't, come
5 back to us later, and tell us what regulations you're
6 talking about.

7 CHAIRMAN BECHHOEFER: I have a couple of
8 other questions that I'd like them to consider. I'd
9 like you to consider first whether - I don't happen to
10 have any details of what United's frequent flyer
11 account pays - but many airlines, frequent flyers,
12 allow you to purchase additional miles needed to make
13 up whatever the rate would be. And I think a
14 possibility for the parties to consider is what would
15 be the value of the number of miles that Dr. McArthur
16 had to use under United, which I can't tell you at the
17 moment. But I do know that some airlines allow you to
18 purchase miles, so that would be another measure of
19 value you may wish to consider. And I guess that
20 would be it.

21 MR. MARQUAND: The other thing I was going
22 to suggest is, I disagree with Ms. Euchner's
23 suggestion that the reasoning for the TDY prohibition
24 on paying for frequent flyer mile tickets is different
25 when you're dealing with a non-employee. And the

1 reason is, as you all know, government employees are
2 now allowed to accumulate frequent flyer miles, and
3 use them on their personal trips, even though they're
4 acquired in the context of government travel. And the
5 problem that the GSA has, is that they -- and the IRS
6 too, didn't know how to tax those as a benefit to
7 employees, and so they put zero value on them, because
8 they didn't want the government to give you a frequent
9 flyer ticket, and then have you turn around and sell
10 that frequent flyer ticket back to the government.
11 And so there's a difference between government
12 employees using government obtained frequent flyer
13 miles, than there is with respect to non-employees who
14 are using their own personal frequent flyer miles
15 pursuant to a subpoena.

16 And, Judge Bechhoefer, I agree with the
17 analysis that you had, as one way to value it is how
18 much those frequent flyer miles are worth, how much
19 you have to pay for them.

20 CHAIRMAN BECHHOEFER: Right.

21 MS. EUCHNER: Well, just to note, I don't
22 know whether Mr. Marquand had the opportunity to read
23 all the rationale of the cases that I cited, but the
24 rationale is, it's too subjective to value it, because
25 there are so many ways to value it. There's the way

1 that you just suggested, Judge Bechhoefer, and see how
2 much the mileage would be worth, how much you'd have
3 to buy from United. You could see how much a contract
4 carrier for the government would cost to fly from Salt
5 Lake City to Atlanta. You could figure out how much
6 United would charge for a regular flight, non-
7 contract.

8 In other words, there are way too many
9 ways to try and figure out how much it's worth, in
10 order to figure out what a determinate amount would be
11 for reimbursement. That's what the rationale is. It
12 has nothing to do with government employees using
13 government earned frequent flyer miles.

14 CHAIRMAN BECHHOEFER: Well, you could
15 probably agree, I would think, that there's some
16 reasonable value, however you choose to arrive at it.

17 MS. EUCHNER: But if the Staff can't
18 legally pay it, it makes no difference whether we
19 agree with TVA on what a fair value is. If we decide
20 that a fair value is \$400, and we go to the Travel
21 Management Branch and they say no, there's absolutely
22 nothing we can do about that. We don't have the
23 authority, as counsel for the Staff, to tell the
24 Travel Management Branch what they have to reimburse
25 someone for.

1 JUDGE YOUNG: I think Mr. Marquand is
2 saying that there is support for our having the
3 authority to order the Staff to pay. Now I haven't
4 read that, and I think that both of you should look at
5 that, talk about it, and then make your arguments on
6 the basis of that. But I'm not sure that it's
7 profitable to continue talking about it at this point,
8 since it doesn't sound like both of you are talking
9 about the same set of regulations.

10 MS. EUCHNER: That's fine. I'm willing,
11 if he is willing to show me what law he's pointing to,
12 I'll be glad to read it and talk to our Travel
13 Management Branch further, and see if we can reach an
14 agreement.

15 MR. MARQUAND: I think it's in the
16 regulations dealing with the issuance of subpoenas.

17 MS. EUCHNER: The regulations are very
18 brief, and do not go into detail as to what has to be
19 paid. That's the problem.

20 MR. MARQUAND: It says -- the regulations
21 are for the procedure and practice before the Board.
22 They are the regulations dealing with the Board's
23 issuance of subpoenas, and it says that subpoenas
24 shall be issued, and that the witness shall be
25 recompensed in accordance with federal statutes. And

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1 you specifically refer to, I believe it's 28 USC 1821.
2 And that's the model that the Board has to follow in
3 determining how much the witness has to be paid. And
4 Dr. McArthur is not unreasonable and, you know, he
5 suggested either alternatively mileage, or the value
6 of the ticket.

7 MS. EUCHNER: I've read those laws, and
8 they don't change my mind. I'll go back and read them
9 again, and I'll run a search of NRC case law to see if
10 there's any case where the Board has recompensed
11 someone for expenses they didn't actually incur, which
12 is what we're facing here. And if that is the case,
13 then we can talk. But if that's not the case, I still
14 don't see where we're any place different.

15 CHAIRMAN BECHHOEFER: Well, you also might
16 find out whether there is any authority to depart from
17 the strict procedural rules governing government
18 travel, at least, and just find an exception.

19 I personally have received more than the
20 per diem rate for hotels, for instance, and there is
21 a procedure you go through to authorize that.

22 MS. EUCHNER: And actually, Dr. McArthur
23 was paid more than the per diem rate for the hotel,
24 simply because in downtown Chattanooga, it's
25 impossible to find a hotel at the per diem rate, so he

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1 was paid his actual cost for the hotel, despite the
2 fact it went over per diem.

3 JUDGE YOUNG: There are a couple of other
4 sources that you might want to look at. One would be
5 the Federal Rules Decisions, if we're to follow
6 federal statutes. And secondly, would be to see
7 whether there are any other administrative agencies
8 that have dealt with this problem before, because I
9 would presume that the same travel regulations apply
10 to other agencies. And some of the other --

11 CHAIRMAN BECHHOEFER: Also, the
12 Comptroller General, which you cited one of his
13 decisions, his or its decisions. I'm not sure which.

14 JUDGE YOUNG: Well, in adjudicatory
15 context, I think would be what you'd want to look at
16 also.

17 MR. MARQUAND: The adjudicatory context
18 generally gives the district court discretion to award
19 the cost, reasonable costs expended by the witness.
20 I don't think there's any question. In this case, the
21 Board would have that discretion.

22 JUDGE YOUNG: You might want to look to
23 those sources to see about whether there's anything
24 out there relating to the use of frequent flyer miles,
25 and reimbursement for that.

1 CHAIRMAN BECHHOEFER: Right. Okay. Well,
2 we'll ask later in the week whether you've been able
3 to come up with anything. I just wish to note that we
4 received the fifth supplemental exhibit list from TVA,
5 and the Staff's supplemental document list from the
6 Staff.

7 With that, are there further preliminary
8 matters that any party wishes to raise before we
9 begin? I understand that --

10 MR. MARQUAND: Well, we've got our copies.
11 We brought copies of the additional exhibits. Would
12 you want us to give you the complete sets now, or let
13 them trickle in as they --

14 CHAIRMAN BECHHOEFER: Well, we are going
15 to want each exhibit that's offered to be properly
16 marked.

17 (Judges confer.)

18 JUDGE YOUNG: Just bring them up one by
19 one.

20 CHAIRMAN BECHHOEFER: Yes. But I also
21 think that before we conclude, I believe I've
22 mentioned this to both parties on the telephone, you
23 should look through the record to make sure that any
24 documents that were offered or discussed with
25 witnesses have formally been offered into evidence.

1 There are a few, I understand, that may not have been,
2 and each party should check before we close the record
3 to make sure that all the documents they wish to have
4 entered, are formally entered. And in addition, all
5 the documents that you think should travel with the
6 record, even though they're not moved to be
7 introduced, should be at least formally submitted for
8 the record, offered, even though you may choose not to
9 put them in the record.

10 The ones that were discussed by the
11 witnesses, or with the witnesses, for the benefit of
12 reviewing bodies, it would be desirable to have those
13 documents also traveling with the record. And OCAA
14 would like to know what it is when certain documents
15 are discussed, so I think it would be useful.

16 JUDGE YOUNG: Just if I might.

17 CHAIRMAN BECHHOEFER: Go ahead.

18 JUDGE YOUNG: We have discussed within our
19 office how to handle the exhibits that have not been,
20 or will not be this week offered into evidence, but
21 which were provided to the Board at the beginning of
22 the hearing back in April. And what we have discussed
23 doing, and if either of you would like to address
24 this, now might be a good time. What we've discussed
25 doing is separating out those exhibits that were not

1 offered into evidence from those that were offered and
2 either admitted or rejected, and put them in a
3 separate binder or set of binders that would be
4 designated exhibits provided to the Board at the
5 hearing, or on April whatever the date was, April 23rd
6 I think was the first date - just so that the record
7 would reflect what documents were provided to us.

8 Obviously, the decision would be made
9 based on evidence in the record, but if any of you
10 have any objection to that, now might be a good time
11 to state it. Otherwise, just for purposes of the
12 record, we do need to get three sets of the exhibits
13 that were offered to SECY, and this other category
14 would just make clear for the record which things were
15 provided to us, even though they were never formally
16 offered into evidence.

17 MS. EUCHNER: Will you be distinguishing
18 between the ones that were entered into evidence, and
19 the ones that were proffered but were not entered, so
20 that someone who wasn't attending the trial would know
21 if they're flipping through a notebook that, you know,
22 Staff Exhibit 23 was proffered, but not entered?

23 JUDGE YOUNG: Well, when you say
24 "proffered but not entered", do you mean proffered but
25 rejected?

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1 MS. EUCHNER: Proffered but rejected, or
2 shown to a witness, but we decided not to offer it at
3 all, but it's still in the record as having been used.

4 MR. MARQUAND: Identified.

5 JUDGE YOUNG: What I was saying is that
6 exhibits that were offered into evidence, and either
7 admitted or rejected, would be in one category.
8 Exhibits that were provided to the Board, but that
9 were never offered into evidence and ruled on would be
10 another category. That second category --

11 CHAIRMAN BECHHOEFER: I think there's a
12 third.

13 MS. EUCHNER: Yeah.

14 CHAIRMAN BECHHOEFER: There's a third
15 category that I think -- and that's exhibits that were
16 identified, and those -- but never offered for one
17 reason or another. They're identified, perhaps
18 discussed with the witnesses, but never formally
19 offered.

20 JUDGE YOUNG: I was including that in the
21 second category.

22 CHAIRMAN BECHHOEFER: Well, but they're
23 different.

24 JUDGE YOUNG: I think basically --

25 CHAIRMAN BECHHOEFER: To me, they're

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1 different.

2 JUDGE YOUNG: Basically, all we need to
3 decide is what to do about them, and so if either
4 party has any suggestion, now would be a good time to
5 make it. I believe that the plan would be to separate
6 them into the two categories. And the category you
7 mentioned, Judge Bechhoefer, would be in the second
8 category.

9 CHAIRMAN BECHHOEFER: Yeah, but I don't
10 view them as equivalent.

11 JUDGE YOUNG: Whatever. Do you want to
12 make any suggestions?

13 MS. EUCHNER: Well, my only suggestion
14 would be to make sure that if we have notebooks that
15 have exhibits that were proffered and some were
16 admitted, and some were rejected, that there's some
17 way to designate which ones were rejected, so that
18 someone other than the three of you, say OCA who's
19 reviewing it, knows as they flip through that notebook
20 that Staff Exhibit 23 is not in evidence.

21 JUDGE YOUNG: That will be indicated on
22 the stamp.

23 MS. EUCHNER: Okay.

24 JUDGE YOUNG: And there's a place on the
25 stamp that has a blank for admitted, a blank for

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1 rejected, so that would be clear from the stamping
2 that's done today, and that will be done by our staff
3 to the exhibits, and have been done for the original
4 list, or for the original set up there, the ones that
5 are marked with the red tabs, and will be done to the
6 second and third sets, which are the second shelf, and
7 then this shelf up here. So if you want to look in
8 the official volume, the ones that have been marked by
9 our staff people have been stamped and filled in, are
10 the ones that have been marked, that the tab, divider
11 tabs have been highlighted in yellow. So if you'd
12 like to look at those, and make sure that your records
13 coincide with what has been done, that would be the
14 way to do that. And then anything else would be in
15 another -- handled differently.

16 Now whether you want us to divide those
17 out into two separate other categories, or just the
18 one other category, basically, we need to designate
19 exhibits that have been offered, admitted or rejected,
20 and then as to all others, if you have any suggestions
21 on how to handle those, please feel free to make them.

22 MR. MARQUAND: Let me make sure I
23 understand. I think you're correct. I agree that we
24 all need to have the same understanding as to which
25 exhibits have been admitted in the record, and which

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1 exhibits have been rejected. And so I think, I'm
2 really thankful somebody took the time to put together
3 these lists that show where they were identified and
4 admitted in the record. And I think at the
5 conclusion, we need to go through and make sure
6 everybody's on the same page, and that everybody's
7 records reflect the same thing.

8 I'm not sure I understand why there needs
9 to be any sort of record maintained of exhibits that
10 were never admitted or rejected in the record. I
11 mean, nobody has any authority to look at those
12 records, those exhibits, and base the decision either
13 way on anything that's not admitted or rejected into
14 the record. But I don't have a problem with them
15 traveling with it. I don't even have a problem with
16 them being in the same books, as long as everybody's
17 got a list that says here are the exhibits that are in
18 the record. And everybody has an understanding that
19 that's what the Board's decision is going to be based
20 on. I don't know that there's any -- I trust you all
21 not to peek. I don't know that there's any reason to
22 separate them.

23 CHAIRMAN BECHHOEFER: Well, it's mostly
24 that they have to be kept in different categories by
25 the secretary.

1 MR. MARQUAND: But if we have -- if we put
2 together a hard copy list that says here are the
3 exhibits that are in the record, and here are the ones
4 that have been rejected.

5 CHAIRMAN BECHHOEFER: Yeah. Those two go
6 in the same category.

7 MR. MARQUAND: Right. Everything else is
8 surplusage. I don't know that anybody has any
9 confusion about it. I mean, the Board's decision
10 could start off saying here are the exhibits that have
11 been admitted into the record, and our decision is
12 based upon our review of these exhibits. And we have
13 not reviewed, and do not intend to review any of the
14 other exhibits.

15 CHAIRMAN BECHHOEFER: Well, I was thinking
16 of people who are reading the transcripts.

17 MR. MARQUAND: Right. And the transcript
18 could reflect that at the end, as well. There could
19 be a stipulation by the parties, approved by the
20 Board, that says here are the exhibits that have been
21 admitted into the record. Here are the exhibits that
22 have been excluded, and there are some other exhibits
23 which were never admitted into the record, and which
24 the Board is not basing its decision upon.

25 CHAIRMAN BECHHOEFER: Yeah. But whether

1 or not we base our decision on something, somebody
2 reading the record, the transcript, and they'll have
3 a reference to a document. And if those documents
4 have never been either formally offered and rejected,
5 or even -- I think the ones that are formally offered,
6 but I assume you will get around to move admittance of
7 those that were offered but never formally admitted,
8 through inadvertence perhaps. I assume before we
9 finish you will separate out those, and then those
10 documents will join the first group. But it's the
11 others, if any, for which people may be reading the
12 record, and not knowing what's being discussed.

13 MR. DAMBLY: I'm having a little trouble
14 myself. To the extent that a document has been
15 mentioned but not used, or a sentence has been placed
16 in the record but the document was never offered, why
17 anybody needs to read the whole document, because
18 that's not part of the record. I don't know why this
19 second group needs to travel with anything. Or to the
20 extent a witness was shown something to refresh their
21 recollection, and then it was taken away and it's not
22 in the record, why is OCAA or anybody going to be
23 looking at documents that were never offered, and are
24 not officially part of the record?

25 CHAIRMAN BECHHOEFER: Merely to understand

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1 what the witness was being questioned about it.

2 MR. DAMBLY: That should be obvious from
3 the questions that were asked, and the answers that
4 were given. They don't need to do an independent
5 research of what we were thinking when we ask.

6 JUDGE YOUNG: I agree with you, and also
7 with Mr. Marquand. Obviously, we can base our
8 decision only on documents that were admitted into the
9 record. With regard to the other documents, I think
10 that after some discussion in our office, my analogy
11 would be to any ex parte materials that were provided,
12 or any materials that were provided to a decision-
13 making body so that if anybody in the future wanted to
14 challenge something, it would be clear what was
15 provided to us.

16 You provided all your tentative exhibits
17 to us. You did not offer all of them. You may not
18 offer all of them. From my point of view, we do not
19 consider any of those that were not offered and
20 admitted, and but for the idea of making clear in the
21 record what things were in our possession and might
22 have been looked at, I would agree with you, that
23 there's no reason for them to go up.

24 CHAIRMAN BECHHOEFER: Well, I'm not
25 certain about that. I do know that documents that are

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1 formally rejected have to travel with the record under
2 the rules.

3 JUDGE YOUNG: Right. They do.

4 CHAIRMAN BECHHOEFER: They have to stay
5 with the other group.

6 JUDGE YOUNG: They do, and so I think
7 we're all clear on what the categories are. If you
8 have anything more to say about them, think about it
9 and maybe we can come back to that later. We probably
10 need to go ahead and get started on our first witness.

11 CHAIRMAN BECHHOEFER: Right.

12 MS. EUCHNER: Actually, I'm sorry. I have
13 a couple of preliminary matters before we get started.

14 CHAIRMAN BECHHOEFER: Okay.

15 JUDGE YOUNG: Go ahead.

16 CHAIRMAN BECHHOEFER: Okay.

17 MS. EUCHNER: First of all, Judge Young,
18 you had asked me on Friday to do a revised Staff
19 document list that includes all of our supplemental
20 lists, and I have that for the Board, and for TVA.

21 JUDGE YOUNG: Just to explain for the
22 record, Ms. Euchner was over here putting her books
23 here yesterday or Friday, putting the Staff's --

24 MR. MARQUAND: Surely she doesn't work on
25 Sunday.

1 JUDGE YOUNG: -- documents here. And I
2 mentioned that we were trying to draw up a list of all
3 the complete -- a complete list of all the documents
4 that have been introduced or proffered, at least. And
5 certainly, TVA, you're welcome to do the same.

6 We got all the lists that were prepared in
7 our office. Now we have the Staff's, and Mr.
8 Marquand, I agree with you. At the end, we need to
9 just make sure we're all on the same page.

10 JUDGE COLE: You all have copies of the
11 list that we prepared in this office?

12 MR. MARQUAND: Yes, Your Honor.

13 MS. EUCHNER: Yes, Your Honor.

14 MR. MARQUAND: We'll double check that
15 against our records as well, make sure we haven't
16 missed anything.

17 JUDGE YOUNG: Any other preliminary
18 matters?

19 MS. EUCHNER: The Staff has one other
20 preliminary matter. When we were last in Chattanooga,
21 we had discussed calling agent Beth Thomas, and she
22 was unavailable at that time. And we were seeking to
23 reach a stipulation with TVA counsel, essentially as
24 to when the TVA Office of Inspector General
25 investigation into Ronald Grover was initiated. And

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1 we proposed a stipulation. Mr. Marquand submitted a
2 revised one, but we're unable to reach an agreement.

3 We'd like to avoid having to bring Ms.
4 Thomas up for what would essentially be five minutes
5 of testimony. We do have a document that was provided
6 to us by TVA during discovery, which is a memorandum
7 from Agent Thomas to the Inspector General,
8 recommending the initiation of a new investigation
9 based on allegations of travel fraud. And we'd like
10 to simply admit this document as demonstrating the
11 date on which Agent Thomas recommended that the new
12 investigation be opened. And for the record, this is .
13 Staff Exhibit 180.

14 JUDGE YOUNG: Objection?

15 CHAIRMAN BECHHOEFER: Any objection?

16 MR. MARQUAND: I'm going to also state
17 that there are two other documents showing allegations
18 raised to the IG's office, and how those matters were
19 handled. And as long as those documents are admitted
20 simultaneously into the record, I don't have an
21 objection. However, if --

22 CHAIRMAN BECHHOEFER: Do you have them
23 here?

24 MR. MARQUAND: Yes. However, if the Staff
25 is simply trying to put in one document, and wants to

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1 object to the other two documents, yes, I object.

2 MS. EUCHNER: Would you state that again?
3 What are you objecting to?

4 CHAIRMAN BECHHOEFER: Has the Staff seen
5 these other two documents?

6 MR. MARQUAND: Yes.

7 MS. EUCHNER: Assuming they're what you
8 attached to your proposed stipulation, then yes, I
9 have seen the documents. But I'm sorry, I missed part
10 of what your objection was, Mr. Marquand.

11 MR. MARQUAND: I'm just saying that all
12 three documents should come in. They're all three IG
13 documents relating to allegations regarding Mr.
14 Grover, and how those matters -- what was done
15 initially with respect to those allegations. And I
16 think that would resolve the matter if all three came
17 in at the same time.

18 JUDGE YOUNG: Do you have any objection to
19 the other two documents being attached to your's?

20 MS. EUCHNER: Being attached? Yes.

21 JUDGE YOUNG: Or being included.

22 MS. EUCHNER: Being admitted, not
23 necessarily. But being attached insinuates that this
24 OIG investigation --

25 MR. MARQUAND: They're different

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1 documents.

2 MS. EUCHNER: -- was investigating those
3 issues. It was not.

4 JUDGE YOUNG: Do you have any objection to
5 their being admitted?

6 MS. EUCHNER: No.

7 JUDGE YOUNG: Okay. Then why don't we go
8 ahead and --

9 MS. EUCHNER: As long as they are separate
10 from this document.

11 JUDGE YOUNG: Why don't we go ahead and
12 have them both admitted.

13 CHAIRMAN BECHHOEFER: Why don't we do
14 that. Yeah.

15 MS. EUCHNER: Do we have copies of that
16 now, or do we need to get copies of it?

17 JUDGE YOUNG: We're going to need three
18 copies, plus two. We're going to need three for the
19 record, plus three for us of each exhibit.

20 MR. MARQUAND: Why don't we mark all those
21 exhibits during the break, and just -- rather than
22 deal with that now, because I'm going to have to mark
23 them, and I want to get on with this.

24 JUDGE YOUNG: Well, we're going to have to
25 stop and mark exhibits as we go, I think, so we may as

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1 well start now.

2 MS. EUCHNER: Are we going to allow the
3 court reporter to mark them, or should we handwrite
4 what the --

5 JUDGE YOUNG: The court reporter has a
6 stamp, and she'll mark them.

7 MS. EUCHNER: All right.

8 JUDGE YOUNG: And we all need to keep in
9 mind that when she is marking them, you can't be
10 talking and expect it to go on the record, so let's
11 try to avoid discussion while the court reporter is
12 marking them.

13 MS. EUCHNER: Well, then I will bring up
14 Staff 180 to be marked.

15 (Staff Exhibit 180 marked for identification.)

16 JUDGE YOUNG: And, Mr. Marquand, what
17 number will your's be?

18 MR. MARQUAND: I need to know what our
19 last number is going to be. They'll be TVA X-150 and
20 TVA X-151.

21 (TVA Exhibits 150-151 marked for
22 identification.)

23 JUDGE YOUNG: Okay.

24 MR. MARQUAND: Thank you.

25 JUDGE YOUNG: Before you start marking, I

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1 just want to ask a question. Where are Exhibits 137
2 through 149 of TVA's?

3 MR. MARQUAND: Well, some of those, for
4 instance, are resumes that Judge Bechhoefer suggested
5 that we submit, so we have both premarked --

6 JUDGE YOUNG: Okay. We have not gotten
7 them yet.

8 MR. MARQUAND: No.

9 CHAIRMAN BECHHOEFER: No.

10 JUDGE YOUNG: That's fine.

11 CHAIRMAN BECHHOEFER: Is this the same
12 document that is listed under 180 on your revised .
13 document list?

14 MS. EUCHNER: On the one that I just
15 handed you, yes, it is.

16 MR. MARQUAND: And by the way, Ms. Thomas
17 thanks everyone for this handling of this issue. She
18 doesn't have to travel here.

19 CHAIRMAN BECHHOEFER: I mean, isn't
20 traveling here a delight or joy? Isn't traveling here
21 a joy or delight?

22 MR. MARQUAND: It was not easy, and it
23 will not be easier later this week. And she has sole
24 custody of two small children, and it would have been
25 a hard thing.

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1 CHAIRMAN BECHHOEFER: I'm just -- I'm
2 being facetious.

3 JUDGE YOUNG: Are you marking the exhibits
4 now? I'm asking because if you are, then I want to
5 remind counsel that we shouldn't be talking while
6 you're doing it. Okay. Thanks. Any other
7 preliminary matters?

8 CHAIRMAN BECHHOEFER: Well, is TVA going
9 to offer at the moment 150 and 151?

10 MR. MARQUAND: Yes. I'm re-assembling
11 these in another fashion, as opposed to the
12 stipulation that we had prepared.

13 CHAIRMAN BECHHOEFER: Okay. Why don't we
14 formally go off the record.

15 (Off the record 11:51:59 - 11:57:39 a.m.)

16 CHAIRMAN BECHHOEFER: I said we're back on
17 the record, after having spent some time marking
18 documents.

19 MR. MARQUAND: For the record, I
20 understand where we are now is that Staff Exhibit 180
21 - is that right?

22 MS. EUCHNER: Yes.

23 MR. SLATER: Staff Exhibit 180 is a two-
24 page document, a July 8 and -- July 9 is the first
25 page, and the second page is July 2, 1998 memorandums.

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1 And the other two documents, which were TVA Exhibit
2 150 and 151, TVA Exhibit 150 is a one-page form
3 document referencing a hotline call to the TVA IG.
4 And TVA Exhibit 151 is a fax cover sheet dated
5 10/21/97, and attached to that is a four page
6 memorandum from Sam Harvey.

7 MS. EUCHNER: No objection.

8 CHAIRMAN BECHHOEFER: All three of those
9 will be admitted. They're admitted, either using the
10 microphone, or without the microphone.

11 (Staff Exhibit 180 and TVA Exhibits 150-151
12 received.)

13 MR. MARQUAND: Judge, could you break
14 dance with that too?

15 (Laughter.)

16 CHAIRMAN BECHHOEFER: Any further matters
17 before we bring on the first witness?

18 MS. EUCHNER: None for the Staff.

19 MR. MARQUAND: We're ready to proceed,
20 Your Honor.

21 CHAIRMAN BECHHOEFER: All right. Well,
22 bring on your witness.

23 MR. MARQUAND: TVA calls Robert J.
24 Beecken.

25 JUDGE YOUNG: I notice we had some

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1 people -- I think we're asking the witnesses who are
2 not testifying to sit in our lobby area.

3 MR. MARQUAND: They don't sit back here?

4 JUDGE YOUNG: Well, we tested beforehand,
5 and you can hear through that door, so if there's --

6 MR. MARQUAND: We know. We'll ask them to
7 move. Will you swear the witness?

8 CHAIRMAN BECHHOEFER: Okay. Yes, I will.

9 WHEREUPON,

10 ROBERT J. BEECKEN

11 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY
12 SWORN, M WAS EXAMINED AND TESTIFIED AS FOLLOWS:

13 JUDGE YOUNG: You may need to get a little
14 closer.

15 THE WITNESS: I'll try. Thank you.

16 DIRECT EXAMINATION

17 BY MR. MARQUAND:

18 Q State your name, please, and spell it.

19 A Yeah. I am Robert James Beecken, B-E-E-C-
20 K-E-N.

21 Q And how are you employed?

22 A I am the Vice President of Nuclear Support
23 for the Tennessee Valley Authority.

24 Q How long have you been employed by TVA?

25 A Since February of 1988.

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1 Q Could you just give us a thumbnail of the
2 positions you've held at TVA?

3 A Beginning in 1988, I was the Maintenance
4 Major at Sequoyah Nuclear Plant. In '91 I was
5 promoted to Plant Manager at the Sequoyah Nuclear
6 Plant. In '93 I was rotated to Corporate, and quickly
7 dispatched up to Watts Bar as the Plant Completions
8 Manager, help drive plants completions at the Watts
9 Bar Unit.

10 From Plant Completions Manager, I was
11 selected as the Maintenance and Mods Manager at Watts
12 Bar. And in July of last year, I was selected as the
13 Vice President of Nuclear Support.

14 Q You work in Chattanooga, Tennessee?

15 A Now I do, yes, sir.

16 Q Let me show you, just to expedite this
17 matter, a document which we've marked as TVA Exhibit
18 138.

19 CHAIRMAN BECHHOEFER: We have witnesses in
20 the room.

21 MR. MARQUAND: Yes. Would you wait out in
22 the lobby area.

23 (TVA Exhibit 138 marked for identification.)

24 BY MR. MARQUAND:

25 Q Mr. Beecken, I hand you TVA Exhibit 138.

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1 What is it?

2 A It's a resume of my experience.

3 Q Is it a fair and accurate resume of your
4 experience, your work experience?

5 A It appears to be.

6 Q Does it also include your educational
7 background?

8 A Yes, it does.

9 Q And for the record, would you tell us what
10 your educational background is?

11 A I'm a graduate of the Naval Nuclear Power
12 Program, veteran of the Naval Submarine Force. Also,
13 I have a BS from Arizona State University, Industrial
14 Supervision, an MBA.

15 MR. MARQUAND: Your Honors, I tender TVA
16 Exhibit 138 into evidence.

17 CHAIRMAN BECHHOEFER: Any objection?

18 MR. MARQUAND: No objection, Your Honor.

19 CHAIRMAN BECHHOEFER: TVA 138 will be
20 admitted into evidence.

21 (TVA Exhibit 138 received.)

22 BY MR. MARQUAND:

23 Q Mr. Beecken, I note from TVA Exhibit 138,
24 your resume, that you were the Plant Manager at
25 Sequoyah Nuclear Plant from March of '91 to July of

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1 '93. And that previous to that, you worked there as
2 the Maintenance Manager from '88 to '91. Is that
3 correct?

4 A That's correct.

5 Q Did you know Gary Fiser?

6 A Yes, I did.

7 Q And how did you know Gary Fiser?

8 A Well, he was in the Chemistry Department
9 at Sequoyah Nuclear Plant. I was in the Maintenance
10 Department, and it would be normal to interface, and
11 as Plant Manager also.

12 Q As Maintenance Manager, were you a
13 supervisor, or supervised by him, or were you a peer
14 of his?

15 A A peer would be a better description.

16 JUDGE YOUNG: Why don't you pull the
17 microphone a little bit closer.

18 THE WITNESS: I'm sorry. Peer would be a
19 better description.

20 BY MR. MARQUAND:

21 Q All right. And describe the types of
22 interactions you would have with him when you were the
23 Maintenance Manager.

24 A Well, we'd attend meetings together.

25 Q Did you perform services for -- did your

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1 organization perform services for --

2 A We maintained equipment that he would have
3 used.

4 Q Did he perform services for your
5 organization?

6 A From time to time he may have run an
7 analysis for us to troubleshoot equipment problems.

8 Q And when you were the plant manager, what
9 was your working relationship with Gary Fiser?

10 A Fiser would have been the Chemistry
11 Superintendent reporting to the OPs Manager, who in
12 turn reported to me.

13 Q All right. And what was the function of
14 Chemistry at that point in time?

15 A Well, the Chemistry Group is responsible
16 for monitoring plant chemistry parameters to ensure
17 that we can pick up trends, changes quickly, in order
18 to ensue corrective action to put the parameters back
19 on track.

20 JUDGE YOUNG: Excuse me. Monitoring
21 chemistry what?

22 THE WITNESS: Trends, parameters.

23 JUDGE YOUNG: Parameters. Okay, that's
24 the word. If you could pull the microphone back
25 towards Mr. Marquand, then probably when you talk

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1 we'll get you more clearly.

2 THE WITNESS: All right. I'll try and
3 talk a little louder too.

4 JUDGE YOUNG: And closer to you. Okay.
5 Closer to you.

6 THE WITNESS: I'm sorry. Could you put
7 the question before me again? I'm sorry.

8 BY MR. MARQUAND:

9 Q I had asked you what the responsibility of
10 the Chemistry program was, talking about the
11 responsibility to monitor chemistry trends and
12 parameters.

13 A Correct.

14 Q All right. Did there come a time after
15 you became Plant Manager, that you became aware of
16 problems with the Chemistry Program?

17 A Yes, there was.

18 Q Tell us about that.

19 A We were getting a lot of data and feedback
20 that we had performance problems in Chemistry. We had
21 input from people, organizations like the Nuclear
22 Safety Review Board, which was an advisory council
23 that was independent. It would come in and look at
24 our performance. We had INPO issues and findings. We
25 had internal corrective action documents that were

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1 generated, that indicated we had performance-related
2 problems in Chemistry, or areas for improvement that
3 were needed.

4 Q Was it your responsibility to address
5 those problems?

6 A Well, as Plant Manager, yes.

7 Q So what did you do?

8 A Well, and I'm not sure the genesis of the
9 issue, but one of the things was a rotation was
10 proposed for Mr. Fiser and Mr. Jocher. Mr. Fiser was
11 the site Chemistry Superintendent, and Mr. Jocher is
12 a Corporate Chemistry Specialist. And it appeared
13 that this was a real win-win situation, as in the on-
14 site chemistry area, a lot of criticism of the
15 Chemistry Program, data points coming on, and here was
16 an opportunity to maybe see if a swap of these two
17 individuals could help the program. It looked like
18 the fellow downtown had a real strong supervisory
19 skills, communication skills, could articulate well.
20 And Mr. Fiser appeared to me to be a good chemist, a
21 good technician, and would fit well with the Corporate
22 staff, so it looked like a real win-win situation for
23 both the Sequoyah Plant Chemistry role, Mr. Fiser and
24 Mr. Jocher.

25 Q Well, you said Mr. Fiser appeared to be a

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1 good -- appeared to have good chemistry technical
2 skills. What was the problem that you perceived that
3 initiated the swap?

4 A Well, I've seen in my career that there's
5 different types of management style. Some people are
6 good at managing an operation that has different
7 levels of people from analyst, technical people to
8 highly skilled people, and that run a 24/7-type
9 schedule. And others that are more independent, and
10 would rather -- you know, are more successful working
11 by themselves, the real technologists, and can do
12 better analysis off to the side, but are not the
13 drivers that are needed to manage a 24/7 operation.
14 And it appeared to me that this was a better fit, that
15 Mr. Fiser in a technical specialist role, versus that
16 driver role.

17 Q So he didn't appear to be -- have the
18 skills to be the driver of a --

19 A To be the driver that would take the
20 Chemistry effort at Sequoyah to the next level of
21 performance.

22 Q And how -- what did you perceive about
23 that? Tell us what -- explain a little bit more
24 about, you say he didn't appear to have -- be that
25 driver.

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1 A Well, a lot of it is, you've got to be
2 able to articulate your issue. You're competing with
3 the other plant organizations for limited resources.
4 You've got to get in there, be able to articulate what
5 it is that you need, why you need it, why takes a
6 priority. You can't back down. You need a drive.
7 You need to be able to defend your position. You need
8 to stand your ground. And I was concerned that Mr.
9 Fiser didn't have that chemistry makeup, especially in
10 this time when a lot of improvement was needed, to
11 take that type of challenge on. I thought Mr. Jocher
12 was better suited for that.

13 JUDGE YOUNG: You said, "He didn't have
14 that chemistry makeup". Is that what you said?

15 THE WITNESS: Not from a chemistry
16 standpoint, but from a personal makeup, to take on
17 those challenges.

18 BY MR. MARQUAND:

19 Q You mean personal chemistry?

20 A Personal chemistry, not parameters in the
21 plant, but the personal chemistry to take a program
22 that needed a lot of work, a lot of movement and
23 improvement. You know, it takes an individual that's
24 really going to go toe-to-toe where necessary, and be
25 able to articulate. Put their arguments together and

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1 stand their ground, and help make sure the right
2 priorities come to the right surface. If a person's
3 ready to acquiesce, you know, then they will
4 acquiesce, and that program will suffer.

5 Q You say he wasn't aggressive in pursuing
6 the needs of the chemistry organization?

7 A Looking forward from where we were, I
8 thought it was a better fit of personalities and
9 people, and a good action to help us improve
10 Chemistry, and better utilize our people, both
11 Corporate and at the site.

12 Q All right. So you said there was a swap
13 between him and Jocher.

14 A Yes, there was.

15 Q Did you know, or were you responsible for
16 carrying out the administrative details of that
17 assignment?

18 A No.

19 Q Did you follow that, look at the paperwork
20 on that, or anything like that?

21 A No. I don't think I saw any of the
22 paperwork. I knew the swap was going on. I thought
23 it was a good thing.

24 Q And it's not your responsibility, and you
25 don't handle that administrative paperwork?

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1 A No.

2 Q At the time that this swap occurred, were
3 you aware of any nuclear safety-related concerns that
4 Gary Fiser had raised?

5 A No, I wasn't.

6 Q Now this -- the record reflects that this
7 swap or rotation began in the spring of '92, somewhere
8 in the March time frame. As that -- sometime
9 afterwards, did you form an opinion as to whether or
10 not Gary Fiser should come back to Sequoyah at some
11 point in time in his previous position as a Chemistry
12 Superintendent?

13 A Yes, I did. Over time, I saw more and
14 more problems, maybe got a feel for the depth of
15 challenges, and --

16 JUDGE YOUNG: I'm sorry. I'm just missing
17 some of the words.

18 THE WITNESS: I'm sorry.

19 JUDGE YOUNG: You saw more and more
20 problems that appeal --

21 THE WITNESS: Well, since his rotation --

22 JUDGE YOUNG: Just I didn't hear the words
23 you said. You saw more and more problems.

24 THE WITNESS: Yes. Since the beginning of
25 the rotation. And I think the question was, did I see

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1 after the rotation further issues that caused me
2 concern about bringing Mr. Fiser back to the Sequoyah
3 Chemistry Department. And the answer is yes. After,
4 you know, Mr. Fiser went downtown, over that period of
5 time, more and more problems were identified. And
6 maybe the depth of those problems, you know, were
7 revealed to me. And it further reinforced my
8 perception that he wasn't the right person to come
9 back into that chemistry role at Sequoyah.

10 BY MR. MARQUAND:

11 Q What types --

12 CHAIRMAN BECHHOEFER: Were these problems
13 all arising during the period or prior to the period
14 that Mr. Fiser served down at Sequoyah?

15 THE WITNESS: I think it's a mixed answer
16 to that, during the period, before the period. And
17 some of them should have been things, or some of the
18 things that did occur during his tenure, some of the
19 things that should have been addressed during his
20 tenure that may have been there before. I don't remember
21 the specifics.

22 BY MR. MARQUAND:

23 Q What types of problems are you talking
24 about?

25 A Well, there were problems with chemistry

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1 training, knowledge.

2 Q Training?

3 A Training and knowledge of the technicians.
4 There were problems with -- I think there was one LER
5 on improperly set point for radiation monitoring.
6 There was concerns with data collecting and data
7 reporting, concerns like that.

8 Q In initiating this rotation with Bill
9 Jocher, did anyone tell you that you should remove
10 Fiser from the Chemistry Superintendent position
11 because he had refused to do daily trending plots?

12 A No.

13 Q Did Tom McGrath, or anybody in the Nuclear
14 Safety Review Board tell you to get rid of Gary Fiser
15 for any reason whatsoever?

16 A No.

17 Q Now we talked about the fact that as this
18 rotation progressed, you didn't think Gary Fiser was
19 the right person to return as a Chemistry
20 Superintendent. Did you, at some point in time, have
21 a discussion with Gary Fiser about that subject?

22 A Yes, I did.

23 Q All right. And where was that -- where
24 did that discussion take place, if you recall?

25 A At my office at Sequoyah.

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1 Q All right. Did you later learn, at some
2 point in time, that Gary Fiser had tape recorded that
3 conversation?

4 A Yes, but a number of years later.

5 Q Okay. And at some point in time, have you
6 listened to that recording?

7 A Yes, I have.

8 Q All right. I'm going to show you Joint
9 Exhibit 27. For the record, Mr. Beecken, Joint
10 Exhibit 27 has been admitted into the record, and Mr.
11 Fiser has testified that he attempted to prepare a
12 transcript of various recordings that he had made.
13 And I'm going to direct your attention beginning at
14 the top of page 50 of Joint Exhibit 27. There appears
15 an entry entitled, "December 9, 1992." And it appears
16 to be a transcript or -- an attempt at a transcript of
17 a conversation between you and Mr. Fiser. Have you
18 previously had a chance to review this purported
19 transcript at my request?

20 A Yeah. I think this is the same
21 transcript.

22 Q All right. And does this appear to be an
23 approximation, at least, of that tape recording that
24 Mr. Fiser made?

25 A Well, the tape recording is pretty poor

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1 quality, but I think this is a pretty close summary of
2 our discussion, or document of our discussion.

3 Q In your discussion with Mr. Fiser, did you
4 tell him the problems that you perceived with the
5 performance of Chemistry, and why you didn't think he
6 was the right person to return as the Chemistry
7 Superintendent?

8 A That's what I tried to do at this
9 conversation. This was at Mr. Fiser's request, and I
10 had to make special time to do this. We came in early
11 one morning to meet, but my purpose of the
12 conversation was to discuss my perception of
13 performance with Mr. Fiser.

14 Q In this conversation you had with him, was
15 there an issue raised about depth of knowledge by the
16 technicians who were taking the chemistry parameters
17 and tests?

18 A That was one of the topics we discussed.

19 Q And tell us what that -- what Mr. Fiser
20 suggested about that.

21 A As I recall, reading the transcript and
22 thinking back on the conversation, the issue was
23 pumping up the technicians immediately prior to an
24 evaluation so they could be successful at answering
25 questions directed in certain technical topics.

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1 Q What kind of evaluation?

2 A INPO, I think was the one that was cited
3 in the minutes of the meeting.

4 Q All right.

5 A And I tried to tell Mr. Fiser, and explain
6 to him that pumping-up wasn't the appropriate
7 approach, wasn't the desired end-state. What we
8 wanted to do is ensure the qualifications and
9 fundamentals were embedded in the analysts so they
10 didn't have to take temporary pumping-up to answer
11 questions, but could answer those questions on shift
12 Monday through Sunday.

13 Q Was there discussion between you and Mr.
14 Fiser about an issue regarding filter change-out?

15 A Yes, there was.

16 Q And what was the gist of that discussion?

17 A As I recall that issue, the technicians
18 were -- the root cause of that issue is the
19 technicians not meeting management's expectations for
20 following procedures, procedure compliance. And we
21 discussed that that was part of the Chemistry
22 Superintendent's responsibility to ensure, to maintain
23 oversight, to ensure those management expectations are
24 understood by the rank and file, and are executed. I
25 think we talked about that at some length.

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1 Q And that there was a problem, in that the
2 technicians hadn't been properly supervised, and
3 weren't following procedures?

4 A That's correct.

5 Q And was there also a discussion about an
6 LER, a License Event Report?

7 A Licensee Event?

8 Q Right. Regarding rad monitor setpoints?

9 A Yes, there was.

10 Q And what was the gist of that
11 conversation?

12 A That was an example of where a response
13 to, I don't remember exactly if it was an industry
14 experience, or some other document that came out, that
15 talked about conservatism built in as setpoint of rad
16 monitors. In response to that issue, during Mr.
17 Fiser's watch, we didn't respond properly, and it
18 became evident years later, and I think an LER. I
19 don't remember exactly if it was an LER or not, but
20 years later became evident that we had mishandled the
21 application of a vacuum correction in this
22 calculation. And we talked about that, and the
23 disposition about that on Mr. Fiser's watch, and I
24 said that --

25 JUDGE YOUNG: Excuse me. When you say

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1 "we", who are you referring to?

2 THE WITNESS: Mr. Fiser and I, talked
3 about that and it's in the tape transcript. I talked
4 to him about that, and discussed the fact that gee,
5 that was on your watch, and it wasn't done properly.
6 And his response to me was, "Well, I tried. I went
7 over. I talked to Engineering, and they told me it
8 was correct. But I tried. I raised the issue 13
9 times. I tried." But it didn't happen. And I tried
10 to explain to Gary, I said, "Well, that's the type of
11 issue that needs to be escalated, moved upwards in the
12 chain of command so they can interdict and correct
13 those type of problems. That's the type of
14 performance that I was trying to tell him in this
15 session of where my thinking at that time was relative
16 to him returning to Sequoyah.

17 BY MR. MARQUAND:

18 Q Now we've discussed just briefly now at
19 least three issues that you had problems with
20 Chemistry. Was Mr. Fiser willing to accept
21 responsibility for any of those problems in your
22 discussion with him, or did he try to tell you that
23 no, these happened somewhere else, or I tried to fix
24 it, but was unable to?

25 A I don't know how to answer that question.

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1 Part of them were excuses back as to why they were
2 elements outside of his control. Part of it was no,
3 they're not on my watch. And part of it was, you
4 know, resource constraint-type response, I didn't have
5 the assets to do things I wanted to do.

6 Q What did you expect an effective Chemistry
7 Manager to do, to handle those problems?

8 A I could go point-by-point, but for case of
9 the vacuum issue would be to escalate that to the OPs
10 Manager or Plant Manager, especially if you had a
11 concern that setpoints weren't being properly handled.
12 And write a corrective action document, if that's
13 what, you know, is called for to enter into the
14 corrective action program to be dealt with.

15 Q In other words, to keep pushing to drive
16 the issue.

17 A Yes.

18 Q I show you TVA Exhibit 148.

19 JUDGE YOUNG: Is this one we have yet?

20 (TVA Exhibit 148 marked for identification.)

21 BY MR. MARQUAND:

22 Q I've handed you TVA Exhibit 148. It's a
23 compact disk. And I will represent to you, this is
24 one you listened to. Does that appear to be the
25 recording that Mr. Fiser made of your conversation

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1 with him on December 9, the same one that's reflected
2 in this transcript? If it's the same one you listened
3 to?

4 A It's a compact disk, and you're telling me
5 that it's the same one I listened to.

6 Q Yes.

7 A I'd have to listen to it.

8 Q I mean, having listened to it, what you
9 listened to, does that coincide with what the
10 transcript, which is Joint Exhibit 27 that we've been
11 talking about?

12 A I think it's -- as best you can tell from
13 the quality of the tape, the transcript and the tape
14 match.

15 MR. MARQUAND: Okay. And I will represent
16 to the Court that this is a digitally enhanced version
17 of the tape recording Mr. Fiser made.

18 MS. EUCHNER: Is this one that TVA
19 digitally enhanced, or is this one of the ones -- a
20 copy of one of the CDs we provided to TVA?

21 MR. MARQUAND: You didn't provide us any
22 CDs of this conversation. This is one that we
23 prepared. And I will tender TVA Exhibit 148, Your
24 Honor.

25 MS. EUCHNER: No objection.

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1 CHAIRMAN BECHHOEFER: I take it the Staff
2 has received this.

3 MS. EUCHNER: Yes, Your Honor, we have.

4 CHAIRMAN BECHHOEFER: Okay. TVA 148 will
5 be admitted.

6 (TVA Exhibit 148 received.)

7 BY MR. MARQUAND:

8 Q In your discussion with Mr. Fiser on
9 December 9, 1992, we talked about some subjects that
10 you had some problems with in Chemistry, rad monitor
11 setpoint issue. Was that an issue that Mr. Fiser was
12 responsible for identifying?

13 A No, I don't believe so.

14 Q Your problem was that he hadn't identified
15 it. Is that correct?

16 A Yes. Well, he hadn't dispositioned
17 properly originally.

18 JUDGE YOUNG: Say that over again.

19 THE WITNESS: He hadn't dispositioned the
20 issue properly originally.

21 JUDGE YOUNG: He had not.

22 THE WITNESS: He had not.

23 JUDGE YOUNG: Okay.

24 THE WITNESS: I'm sorry.

25 BY MR. MARQUAND:

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1 Q The issue had come to him, and he hadn't
2 carried -- to make sure that the setpoints were
3 properly --

4 A That's correct.

5 Q -- reflecting conservative basis.

6 A That's correct.

7 Q And you talked about the filter change-out
8 scenario, where the filter was -- the technician
9 hadn't properly returned the valve to the open
10 position after changing the filter. Was that an issue
11 that Mr. Fiser would be responsible for raising?

12 A No, I think that became self-evident.

13 Q And the issue about lack of technician
14 depth of knowledge, was that an issue that Mr. Fiser
15 was responsible for?

16 A I think you'll see that in the NSR, the
17 Nuclear Safety Review Board notes and INPO Plant
18 Evaluation notes.

19 JUDGE YOUNG: What's the last word? I
20 keep losing you.

21 THE WITNESS: I'm sorry.

22 MR. MARQUAND: Nuclear Safety Review Board
23 Evaluation Notes.

24 THE WITNESS: I'm sorry.

25 JUDGE YOUNG: I hate to keep reminding

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1 you, but even if you feel like you're yelling, if you
2 pull it real close, we can hear you.

3 THE WITNESS: I'm worried about ingesting
4 it, but --

5 MR. MARQUAND: I think if the witness was
6 over there, where he wouldn't have to turn his head.
7 He keeps turning back and forth between the Board and
8 me, you're losing it then. And if he was on the
9 opposite side of the room, I think he would feel --
10 maybe in the future if we would put the witnesses
11 there, they'd feel obligated to speak up to project
12 across the room.

13 THE WITNESS: I promise I'll stay focused.

14 BY MR. MARQUAND:

15 Q In making your decision that you didn't
16 want Mr. Fiser to come back as a Chemistry
17 Superintendent, did Tom McGrath tell you that you
18 shouldn't bring Mr. Fiser back?

19 A I don't recall any conversations with Mr.
20 McGrath about that.

21 Q Was Mr. McGrath in your chain of command
22 even?

23 A No. He was on the Nuclear Safety Review
24 Board.

25 CHAIRMAN BECHHOEFER: Well, didn't you

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1 mention that you had received some complaint about Mr.
2 Fiser, as a result of activity before the Nuclear
3 Safety Review Board?

4 THE WITNESS: No.

5 CHAIRMAN BECHHOEFER: I thought that's
6 what you just said a few minutes ago.

7 THE WITNESS: No, sir. The NSRB wouldn't
8 be directed towards individuals. You know, they'd be
9 along the lines of the Chemistry Program has the
10 following problems. You know, the Management Team has
11 to make the decision on individuals and fit, but the
12 NSRB didn't discuss individuals. They would -- if you
13 look at the report, it's pretty accurate. The NSRB
14 reports, they give you a pretty accurate transcript of
15 the meetings and sessions we'd have. You know, the
16 NSRB would come in and do oversight. Then they'd
17 report to the Chief Nuclear Officer and the site Vice
18 President their findings, and we would respond to
19 those.

20 BY MR. MARQUAND:

21 Q Does the NSRB tell you how to manage your
22 people, or what people to install? Or do they tell
23 you what technical issues they see out there?

24 A They tell you what technical issues they
25 saw at the plant.

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1 CHAIRMAN BECHHOEFER: Did they raise
2 questions about fault, why certain reports to them are
3 not complete?

4 THE WITNESS: I'm sorry, sir.

5 CHAIRMAN BECHHOEFER: Did they raise a
6 question about the adequacy of reports that are given
7 to them, and the persons who are supposed to be
8 preparing such reports?

9 THE WITNESS: I don't recall the NSRB
10 talking about reports that were given to them. I
11 remember, and I have to apologize. It's been a long
12 time since all this occurred, but I remember the NSRB .
13 was concerned about what was being trended and
14 monitored in the Chemistry Program. The number of
15 trend reports and those type of analysis documents,
16 and where they went, not delivered to the NSRB, but
17 produced within the Chemistry Program so that the
18 Chemistry Program would be effectively managed.

19 BY MR. MARQUAND:

20 Q The second half of the judge's question,
21 I believe, is did the NSRB try to tell you who was
22 responsible, which individuals were responsible for
23 any failings?

24 CHAIRMAN BECHHOEFER: That's correct.
25 That's correct.

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1 THE WITNESS: No. They didn't -- they
2 wouldn't get into individuals. It would be that
3 you're not doing A, you're not doing B, you're not
4 meeting expectations on C. And if you don't move in
5 this area, we have a concern. If you don't improve or
6 change what you're doing in these areas -- but they
7 also give you, if they looked at an area and had no
8 recommendations or no observations, they'd say so
9 also.

10 JUDGE YOUNG: While we're at this point,
11 this might be a good time for me to ask. You
12 mentioned earlier that there had been a recommendation .
13 that --

14 THE WITNESS: Now I'm getting every other
15 word. Excuse me.

16 JUDGE YOUNG: Pardon me?

17 THE WITNESS: Excuse me. I'm getting
18 every other word. Excuse me. I'm sorry.

19 JUDGE YOUNG: I believe that earlier you
20 said that there had been a recommendation that the rad
21 setpoints needed to be set more conservatively. Did
22 that come from the NSRB?

23 THE WITNESS: No, I don't remember the
24 source of the initiating issue that brought that issue
25 to light. It may have been a bulletin from the

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1 Commission. It may have been an industry operating
2 experience issue.

3 CHAIRMAN BECHHOEFER: In the NRC.

4 THE WITNESS: Yes, sir.

5 CHAIRMAN BECHHOEFER: Yeah. Thank you.

6 JUDGE YOUNG: Do you recall --

7 THE WITNESS: It wasn't an NSRB generated
8 concern.

9 JUDGE YOUNG: Do you recall when you got
10 that?

11 THE WITNESS: I believe it was in 1982.
12 I think it's cited in this transcript.

13 JUDGE YOUNG: And earlier, when you said
14 that that was not dispositioned during Mr. Fiser's
15 watch, I assume you meant by that, that the setpoints
16 were not changed to reflect the appropriate
17 conservative values?

18 THE WITNESS: That's correct.

19 JUDGE YOUNG: When were they ultimately
20 changed?

21 THE WITNESS: It's -- I'm not sure. They
22 were changed. I don't remember the exact date.

23 MR. MARQUAND: That matter is in the
24 record, Your Honor. The LER, in fact, is in the
25 record, I believe discovered when Mr. Jocher took

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1 over, and after Mr. Fiser was rotated out.

2 JUDGE YOUNG: Thanks.

3 CHAIRMAN BECHHOEFER: Mr. Marquand, do you
4 have a lot more in your direct?

5 MR. MARQUAND: No, Your Honor.

6 CHAIRMAN BECHHOEFER: All right. I'm
7 trying to figure out when a good lunch break would be.

8 MR. MARQUAND: I was just getting ready to
9 say, if the Board has no further questions, I'm
10 prepared to tender the witness.

11 JUDGE YOUNG: I have one more question.
12 And that is, early on in your testimony you indicated .
13 that there were complaints during Mr. Fiser's watch,
14 I understood you to be saying. And I was wondering
15 from whom did those complaints come, and in what
16 subject areas were you referring to?

17 THE WITNESS: It may be a bad choice of
18 words in complaints. It was issues like the issues
19 raised by NSRB, where there were shortfalls in the
20 Chemistry Program. Complaints is my term, and
21 probably the wrong term for what I'm trying to
22 describe.

23 JUDGE YOUNG: So NSRB issues?

24 THE WITNESS: That would be one category
25 of issues. The Institute of Nuclear Power Operations

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1 Evaluation issues, LERs that evolved during the period
2 were all data points in the area of Chemistry.

3 JUDGE YOUNG: Thank you.

4 MR. MARQUAND: Thank you, Mr. Beecken.
5 Tender the witness.

6 CHAIRMAN BECHHOEFER: Why don't we break
7 for lunch now, and is an hour enough? It's enough to
8 eat downstairs, but it's up to you, if you need more
9 time. I guess an hour is fine. It's about 12:35. Be
10 back in an hour.

11 MR. MARQUAND: Thank you, Judge.

12 THE WITNESS: Thank you.

13 CHAIRMAN BECHHOEFER: Okay. Off the
14 record now.

15 (Whereupon, the proceedings went off the
16 record from 12:35 until 1:41 p.m.)

17 CHAIRMAN BECHHOEFER: Back on the record.
18 Anything before Ms. Euchner starts her cross
19 examination? Okay. You're on.

20 CROSS EXAMINATION

21 BY MS. EUCHNER:

22 Q Mr. Beecken, you stated during your direct
23 testimony that you were not happy with Mr. Fiser's
24 performance as Sequoyah Chemistry Manager; is that
25 correct?

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1 A Well, at two points in time different
2 context. Early on when we did the swap, there were
3 issues in chemistry, and we thought this would be a
4 win-win situation, where he may not be the right
5 person for chemistry, but this looked like a good job
6 for swap that would -- he'd develop and be able to use
7 his talents more, and the other person would be able
8 to use their talents more effectively in the field for
9 the benefit of the Sequoyah Nuclear Plant and the
10 Company. And as time progressed and more evidence of
11 issues came out and I formulated that opinion that I
12 discussed with Mr. Fiser that -- is this coming across
13 okay? Sorry.

14 JUDGE YOUNG: You could talk a little
15 louder. You tend to sort of fade out on some of your
16 words. The court reporter is nodding too, so she's
17 the one who needs to get it down.

18 THE WITNESS: Yes, ma'am. I formulated an
19 opinion later that he wouldn't be the right person for
20 that job in the long run, that there were performance
21 issues that had me concerned.

22 BY MS. EUCHNER:

23 Q And just for the record, who initiated the
24 swap between Mr. Fiser and Mr. Jocher?

25 A I don't remember who initiated the swap.

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1 Q But it wasn't you?

2 A It might have been. It might have been a
3 brain child of mine, I don't know. I just don't
4 recall.

5 Q Prior to the conversation with Mr. Fiser,
6 which was in December 1992, did you ever discuss his
7 performance with him? Did you ever let him know that
8 you weren't happy with his performance?

9 A I don't recall any direct interface with
10 that. I would have had conversations before with Mr.
11 Fiser about all the chemistry problems and all of the
12 issues that were constantly coming up, but I don't .
13 think I would have had as a direct a conversation back
14 then on performance than I did as I formulated the
15 opinion later in '92.

16 Q Now, I'm going to show you Joint Exhibit
17 32. And just for record, this is Mr. Fiser's
18 performance appraisal for fiscal year 1991, and it has
19 already been admitted into evidence. If you could
20 take a minute and just glance that over, familiarize
21 yourself with it, because I'm sure you haven't seen it
22 in a very long time.

23 (Pause.)

24 Q First of all, do you recognize your
25 signature on Pages 1 and Page 5 of this document?

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1 A Yes, I do.

2 Q And in what capacity did you sign this
3 appraisal?

4 A Would have been Plant Manager at that
5 time.

6 Q And that would have been Mr. Fiser's
7 second line supervisor; is that correct?

8 A Yes.

9 Q Now, if you'll look on Page 5 of this
10 document, it lists a number of accomplishments and
11 performances. Of those accomplishment performance
12 lists, how many did Mr. Fiser fail to meet?

13 A One.

14 Q And if you'll please go back to Page 2 of
15 the document, do any of those goals relate to INPO
16 evaluations?

17 A Yes.

18 Q And you testified earlier that one of the
19 problems that you had with Mr. Fiser's performance was
20 that INPO had raised repeated problems. Could you
21 explain why you signed a performance appraisal
22 indicating Mr. Fiser met his INPO-related goals?

23 A They would have been for the context of
24 the previous INPO -- my only explanation would be that
25 they would be for the previous INPO evaluation.

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1 Q If you could go back to Page 5 of the
2 document. Would you please read the paragraph that's
3 written under the list of performances and goals?

4 A My pages aren't numbered.

5 Q Go back one more page from where you are.

6 A This paragraph, read that?

7 Q Yes.

8 A Okay. "As Chemistry Superintendent,
9 maintain the Chemistry Program, such as INPO
10 evaluation and various audits, very good. NRC special
11 audit had no findings in this area and assigned as a
12 member of the Unit 1 cycle five outage team to observe
13 broader management skills and performance. Pre-outage
14 preparation have been good.

15 Q Can you tell me how this appraisal
16 indicates that INPO was finding problems with
17 chemistry that were caused or the responsibility of
18 Mr. Fiser?

19 A I have to look at the INPO -- what
20 happened between 9-30-91 or 10-3-91 and the next INPO
21 evaluation in the December of '92 meeting. I don't
22 recall directly whether there was another INPO
23 evaluation during that time period. Those are
24 periodic.

25 Q So what you're saying is that in 1991,

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1 according to this evaluation, Mr Fiser and his
2 chemistry group did well on the INPO evaluation, but
3 it's possible that the following year there may have
4 been problems and those are the problems that you're
5 referring to?

6 A Well, in the conversation with Fiser and
7 I in '92 he alluded that he could not have findings in
8 certain areas that occurred in the INPO finding that
9 occurred during the rotation and that his methodology
10 would be that he could, you know, pump up the
11 technicians, have them ready to answer questions. And
12 before with the INPO evaluations they were being .
13 successful, but it wasn't a true picture of the
14 strength of the organization.

15 Q This is now Joint Exhibit 33, which for
16 the record is Mr. Fiser's appraisal for fiscal year
17 1992, and it has also already been admitted into
18 evidence. If you could look on the first page of that
19 document and tell me if it says anything about the
20 1992 INPO visit.

21 MR. MARQUAND: I'm going to object to lack
22 of foundation. There's no showing that this witness
23 has ever seen this document before. It doesn't
24 reflect his signature on here at all.

25 MS. EUCHNER: It's already in evidence.

1 I'm asking him -- he just testified that it wasn't the
2 1991 INPO that was a problem; it was the 1992 INPO.
3 This goes to that. He can read the document and --

4 MR. MARQUAND: Well, the document speaks
5 for itself unless this witness is shown to have some
6 independent knowledge of this document.

7 CHAIRMAN BECHHOEFER: Yes. I think we'll
8 overrule the objection.

9 BY MS. EUCHNER:

10 Q Did you seen anywhere on that front page
11 where it mentioned the 1992 INPO visit?

12 A There's two.

13 Q And what do they say?

14 A "During the recent INPO assist visit,
15 there were items identified that had already been
16 assigned action to resolve." Now, that -- an assist
17 visit and evaluation are two different entities.
18 There are no -- then, "There have been no chemistry-
19 related findings by INPO for Sequoyah. This is a
20 record for Sequoyah."

21 Q Now, just so that I'm clear, when I first
22 asked you about Mr. Fiser's performance, you
23 distinguished between before the rotation and after
24 the rotation. Looking at Joint Exhibit 32, which is
25 the evaluation you did sign, when you signed that

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1 evaluation were you pleased with Mr Fiser's
2 performance as Sequoyah Chemistry Manager?

3 A Yes. But I think in this evaluation also
4 the message is sent to Mr. Fiser about his interface
5 with other organizations to get the job done. Overall
6 successful evaluation but there were comments in here
7 to the effect that you need to focus on this area, you
8 need to improve.

9 Q Were those comments related to his
10 rotation as Outage Manager or specifically to his
11 duties as Chemistry Manager?

12 A Well, the comment his support personnel
13 get pre-outage work done but it's influencing others.

14 Q Did you ever have any discussions with Tom
15 McGrath about Mr. Fiser?

16 A Not that I recall.

17 Q Do you recall after a 1991 NSRB meeting
18 Mr. McGrath complaining to you about a meeting that
19 Mr. Fiser had attended and that he was upset about Mr.
20 Fiser's denial of a request that he made?

21 A Not that I recall.

22 Q This is Joint Exhibit 24, which is Dr.
23 McArthur's OIG interview on January 10, 1994. I am
24 merely showing this to the Witness to see if it might
25 assist in refreshing his recollection. If you could

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1 please read to yourself Paragraph 2.

2 (Pause.)

3 A I'm sorry, it doesn't -- I don't recall
4 that conversation.

5 Q Okay. So although Dr. McArthur said that
6 Dr. McGrath told him that he -- or that Mr. McGrath
7 was going to speak to you, to your recollection Mr.
8 McGrath never did?

9 A I don't remember that conversation.

10 Q So any timing between Mr. McGrath stating
11 that he was going to talk to you because he was upset
12 with Mr. Fiser and you soon thereafter going to talk
13 to Mr. McArthur about the swap would be purely
14 coincidental?

15 A I don't understand the question.

16 Q According to Mr. McArthur's statement, he
17 says that Mr. McGrath left a meeting very upset with
18 Mr. Fiser and said he was going to speak to you. Soon
19 after McGrath made that statement to Dr. McArthur, Dr.
20 McArthur said you contacted him to discuss the swap
21 between Fiser and Jocher. What I'm asking you is, is
22 that a pure coincidence in timing that that happened?

23 A I don't remember the conversation with Mr.
24 McGrath.

25 Q You stated in your testimony earlier that

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1 the conversation you had with Mr. Fiser in December of
2 1992 was at his request; is that correct?

3 A As I remember it, he came to me and asked
4 to speak to me.

5 Q Do you recall why he wanted to speak to
6 you?

7 A It may be after reviewing the record and
8 all of that that colors my recollection. My
9 perception was he wanted to know if I had performance
10 concerns with him, as I recall.

11 Q Was he concerned that you had made a
12 decision that he would not be returning to Sequoyah at
13 the end of the one-year rotation?

14 A I think it started with, "Rob, I've heard
15 you've got concerns with my performance."

16 Q At that time, had you already made the
17 decision that Mr. Fiser would not be returning to
18 Sequoyah?

19 A I think I had pretty well made up my mind
20 that he wasn't the right person.

21 Q Did you ever counsel Mr. Fiser as to his
22 performance and give him the opportunity to improve on
23 those areas where you thought he was weak?

24 A I think that was the '92 discussion,
25 albeit that he initiated, that we discussed his

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1 performance.

2 Q You just told me that you had already made
3 up your mind. How is that giving him the opportunity
4 to improve after you've told him what your problems
5 with his performance were?

6 A You always have the right to change your
7 mind after somebody presents an argument why you're
8 wrong.

9 Q Did you give him the opportunity to come
10 back to his position and prove you wrong through
11 performance?

12 A No.

13 Q Is it normal practice at TVA to tell
14 somebody they can't do their job for performance
15 reasons without giving them the opportunity to
16 improve?

17 A Well, no, it's not.

18 CHAIRMAN BECHHOEFER: What was that last
19 answer?

20 THE WITNESS: No, it's not. It was kind
21 of a unique position because it was a rotational
22 assignment, it was a non-standard type effort to -- we
23 do rotations, but those are efforts to help develop
24 the employees.

25 BY MS. EUCHNER:

1 Q When you testified that you became the
2 Plant Manager at Sequoyah in about March of 1991; is
3 that correct?

4 A Yes.

5 Q And then Mr. Fiser rotated to Outage
6 Management in approximately April of 1991; is that
7 correct?

8 A If that's the record, I don't recall.

9 Q Okay. And I will represent to you that
10 Mr. Fiser testified that he returned to his position
11 as Sequoyah Chemistry Manager towards the end of 1991.
12 How much time did you have to observe him as Sequoyah
13 Chemistry Manager before deciding that his performance
14 was inadequate?

15 A Well, I would have observed him in many
16 different capacities. I would have observed him in
17 the Outage Management position during that tenure, in
18 what time I had there as Plant Manager, and I would
19 have had the interface with him that I described
20 earlier while I was Maintenance Manager.

21 Q But as a supervisor, while he was at a
22 Sequoyah Chemistry Manager, not in Outage Management,
23 Sequoyah Chemistry Manager, how much did you get to
24 observe Mr. Fiser's performance?

25 A I'd have to go back through the record

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1 and, you know, what months he was in what capacity.
2 I don't know that off-hand.

3 (Pause.)

4 Q I'm going to show you what has been
5 marked, and I believe has also been entered into
6 evidence, it's TVA Exhibit 122, and it's a fax sheet,
7 and attached to it is a statement by Pat Lydon. If
8 you could please read that to yourself.

9 JUDGE YOUNG: It's a fax sheet and then
10 four attached pages, correct?

11 MS. EUCHNER: That is correct. Probably
12 more specifically, the sections I'm going to ask you
13 about are on the last page.

14 (Pause.)

15 Okay. First of all, just for the record,
16 what was your employment relationship to Pat Lydon?

17 THE WITNESS: He worked for me as
18 Operations Manager at Sequoyah.

19 BY MS. EUCHNER:

20 Q He was a direct report to you?

21 A Yes.

22 Q Now, first, on Page 1 of his statement, he
23 states that you and Mr. Bynum directed him to fire Mr.
24 Fiser; is that correct?

25 A I don't recall.

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1 MR. MARQUAND: Where does it say that,
2 Counsel?

3 MS. EUCHNER: It says that in the fifth
4 paragraph on Page 1 of his statement, "Bynum and
5 Beecken wanted Lydon to fire Fiser." You don't recall
6 ever directing him to fire Mr. Fiser?

7 THE WITNESS: No. No, I don't.

8 BY MS. EUCHNER:

9 Q During your time as Plant Manager, did you
10 ever fire anybody?

11 A I believe there was one termination of an
12 Operations Superintendent that I can recall for
13 inappropriate behavior.

14 Q Mr. Lydon on the last page of his
15 statement states that you and Mr. Bynum would, quote,
16 "fire people for effect."

17 A I read that, and I don't know what the
18 basis for that statement would be.

19 Q Well, he also stated that TVA was the most
20 abusive place he had ever worked? Do you agree with
21 that statement?

22 A No, I don't.

23 Q And you were his immediate manager; is
24 that correct?

25 A Correct.

1 MS. EUCHNER: I am almost done, Your
2 Honors. Just give me one minute to get the right
3 document in front of me.

4 This is Joint Exhibit 43, which is the
5 temporary transfer agreement for Mr. Fiser and Mr.
6 Jocher, and I believe that has also already been
7 admitted into evidence. Mr. Beecken, if you could
8 take a minute to read that document.

9 Are you a party to this agreement?

10 THE WITNESS: My name's on the agreement.
11 I don't remember the agreement specifically.

12 BY MS. EUCHNER:

13 Q What does this agreement entitle Mr. Fiser
14 to at the end of the one-year rotation with Mr.
15 Jocher?

16 A Return back to his position.

17 Q Did you honor that agreement?

18 A Well, at the time of the '92 discussion,
19 I told him that I wasn't happy with his performance
20 and didn't really think he was the right guy for the
21 Sequoyah position, but I didn't take any action then
22 to stop him from rotating back, from coming back.
23 That was mid-stream of the tenure.

24 Q Well, in March of 1993, did Mr. Fiser
25 return to his position at Sequoyah?

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1 A No.

2 Q Does it state anywhere in this agreement
3 that you or any of the other individuals named here
4 have the right to deny Mr. Fiser a return to Sequoyah
5 because of performance reasons?

6 A Not in this agreement.

7 Q So, essentially, you and other Sequoyah
8 and TVA Management violated your agreement with Mr.
9 Fiser when you refused to allow him to return to
10 Sequoyah.

11 A Well, to begin with, in December '92, I
12 didn't refuse his return back to Sequoyah. And in
13 March of 93, I don't recollect -- recall how that
14 precipitation of transfers occurred -- those rotations
15 occurred.

16 Q Right now I'm going to show the Witness
17 Joint Exhibit 26, which is his own TVA OIG interview
18 statement from February 3, 1994. If you want to take
19 a minute, I don't know whether you've seen this
20 recently, if you want to go ahead and review it.

21 (Pause.)

22 A Okay.

23 Q I'd like you to look at Page 4 of that
24 document, under the heading, "Beecken's knowledge of
25 Fiser's Reduction In Force, RIF." And does that

1 statement by you not say that you told McArthur, Bynum
2 and Keider that you did not want Mr. Fiser back at
3 Sequoyah?

4 A Yes, but it also states that I was
5 surprised that he was reduced in force from the
6 Sequoyah position, and I would have thought it -- the
7 way the items would have transposed that either he
8 would have -- he had found another job in Corporate,
9 I didn't follow his -- after that conversation in 1992
10 I didn't follow his career that closely, and I would
11 have thought at the end of the term we would have had
12 to dealt with the term, either he came back where he
13 had another job. I thought he was in another job.
14 That's why I was surprised when he was RIF'd from the
15 Sequoyah Chemistry position. I knew there were org
16 changes going on and standardization in the Chemistry
17 area amongst our three sites, but I think, as I
18 recall, that's how I saw that.

19 Q I understand that. What I'm getting at is
20 it was your call as to whether Mr. Fiser returned to
21 Sequoyah, and you made it fairly clear to those
22 corporate officers that you did not want Mr. Fiser
23 back and you did not want that agreement honored.

24 A I don't know even know if I was aware of
25 this agreement at the time. I see the agreement now.

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1 I don't know that I was aware of that. But I did
2 share my opinion with the other managers.

3 Q Do you recall a time where Mr. Kent sought
4 to have Mr. Fiser return as a Sequoyah Chemistry
5 Manager?

6 A Only as I look at the record here that
7 there's an item in there that the interviewer informed
8 me, talked to me about that. And if I had -- and like
9 I say in here, if I had known, I would have advised
10 against it.

11 Q Mr. Kent has stated that he did advise you
12 that he was seeking to hire Mr. Fiser back or at least
13 interview him for the position and that you were fine
14 with that. Do you disagree with that statement?

15 MR. MARQUAND: I'm going to object to the
16 characterization of the testimony by Counsel. I think
17 Mr. Kent indicated he wasn't certain whether it was
18 Mr. Beecken or the new Plant Manager, Ken Powers, who
19 came in at that point in time.

20 MS. EUCHNER: And I believe Mr. Kent's NRC
21 OI interview, which is Staff Exhibit 73 and is in
22 evidence, is fairly clear on this point, that it was
23 Rob Beecken who he spoke with.

24 MR. MARQUAND: That's not the only piece
25 of testimony in the record by Mr. Kent. I think Mr.

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1 Kent explained that he wasn't certain at what point in
2 time and who it was that he talked to.

3 MS. EUCHNER: Well, I'm sure Mr. Kent
4 wasn't certain about a lot of things, but his
5 questioning from Diane Vincent was fairly clear. His
6 answer was clear. He said Mr. Beecken's name twice.

7 JUDGE YOUNG: Maybe the simplest thing
8 would be to refer back to the actual testimony, which
9 I think is on Page 3034 and 3035.

10 MR. MARQUAND: I don't have a copy of
11 that, Your Honor.

12 MS. EUCHNER: I do. If you'll give me a
13 minute, I can pull it up. What's the date on --

14 JUDGE YOUNG: June 12.

15 JUDGE COLE: Did you want to borrow a copy
16 and I'll share one with Judge Bechhoefer?

17 MR. MARQUAND: Thank you.

18 MS. EUCHNER: And, again, I believe this
19 testimony is fairly clear that Mr. Kent testified that
20 he did speak to Mr. Beecken but he also spoke to Mr.
21 Powers. He does not hedge in his testimony about
22 speaking to Mr. Beecken.

23 JUDGE YOUNG: Well, I misspoke. Look back
24 at 3033. I believe it starts on 3033.

25 MS. EUCHNER: I think you're correct, Your

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1 Honor, but I believe after Mr. Dambly refreshed Mr.
2 Kent's recollection with his NRC OI interview that he
3 did state, "Yes, I did speak to both Mr. Beecken and
4 to Mr. Powers." It acknowledges that those were the
5 words that he said to Ms. Vincent and does not deny
6 it.

7 JUDGE YOUNG: Does that resolve any
8 questions you had, Mr. Marquand?

9 MR. MARQUAND: I see what Mr. Kent said.

10 BY MS. EUCHNER:

11 Q Now, to ask my question again, Mr. Kent
12 testified that he told you about it and that you said,
13 "Okay, fine. I don't have a problem with it." Do you
14 disagree with that testimony?

15 A I don't recall that conversation. I don't
16 recall that conversation.

17 Q It could have happened, you just don't
18 remember.

19 A It could have. It could have happened.
20 There had been conversations. It could have happened.

21 MS. EUCHNER: Your Honors, I'd like to
22 move Joint Exhibit 26 into evidence as Mr. Beecken's
23 TVA OIG statement.

24 CHAIRMAN BECHHOEFER: Any objection?

25 MR. MARQUAND: No objection.

1 CHAIRMAN BECHHOEFER: Joint Exhibit 26
2 will be admitted.

3 (Whereupon, the above-referred
4 to document, previously marked
5 as Joint Exhibit 26 for
6 identification, was admitted
7 into evidence.)

8 JUDGE YOUNG: We're going to need to get
9 all three copies marked.

10 MR. DAMBLY: Can we go off the record?

11 CHAIRMAN BECHHOEFER: Go off the record
12 for a moment while all this is happening.

13 (Whereupon, the foregoing matter went off
14 the record at 2:19 p.m. and went back on
15 the record at 2:22 p.m.)

16 CHAIRMAN BECHHOEFER: Okay. Back on the
17 record.

18 MS. EUCHNER: I have nothing further.

19 JUDGE YOUNG: Any redirect?

20 MR. MARQUAND: I have a few questions.

21 REDIRECT EXAMINATION

22 BY MR. MARQUAND:

23 Q Mr. Beecken, let me direct your attention
24 to Joint Exhibit 26, the TVA OIG's report of their
25 interview with you. On cross examination, Counsel

1 asked you if your conversation with Mr. Fiser in
2 December of '92 was the first time that you had ever
3 told him you had problems with his performance, his
4 performance in Chemistry. Directing your attention to
5 the first page of Joint Exhibit 26, if you will look
6 at the third paragraph on the first page, is there any
7 indication there that you had an earlier conversation
8 with Mr. Fiser about problems in the Chemistry Program
9 and suggest to him that it was a good career move for
10 him to go downtown to Chemistry?

11 A This is the stairwell conversation that's
12 in the --

13 Q Yes.

14 A -- third paragraph?

15 Q Yes.

16 A And I also stated I didn't specifically
17 recall a stairwell conversation like that, but that
18 could certainly happen.

19 Q But this is reflective of the fact that
20 even before Mr. Fiser went downtown you were telling
21 him there were problems in Chemistry and it was a good
22 career move for him to go downtown.

23 MS. EUCHNER: Objection, Your Honor. If
24 Counsel has a question, he can ask it, but he's
25 testifying for Mr. Beecken?

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1 BY MR. MARQUAND:

2 Q Is that what this O2 says, Mr. Beecken?

3 A It simply relates that Mr. Fiser brought
4 up an issue that we -- because they had asked me about
5 an alleged stairwell conversation, and I didn't recall
6 any specific stairwell conversations, but being Plant
7 Manager I'm stopped in the stairwell, the hallway, the
8 bathroom, all day long by different employees, on
9 different interactions. So that type of conversation
10 could have taken place. I don't recall specifics.

11 Q That would have been prior to him even
12 going downtown.

13 A Yes.

14 Q If you will turn over in the book further
15 on to Joint Exhibit 33. Counsel asked you about this
16 particular employee appraisal. Did you have any
17 responsibility for signing or approving any of the
18 statements in this performance appraisal?

19 A No.

20 Q Counsel pointed some specific language out
21 to you. For example, the fifth bullet on this page
22 says, "There have been no Chemistry-related findings
23 by INPO for Sequoyah. This is a record for Sequoyah."
24 Do you see that?

25 A Yes, I do.

1 Q Now, harkening back to your testimony this
2 morning about the December '92 conversation with Mr.
3 Fiser, did the two of you discuss in your December '92
4 conversation problems that INPO had had with Sequoyah
5 Chemistry?

6 A Yes, we did.

7 Q And did Mr. Fiser ever during that
8 conversation stop you and say, "Hey, wait a minute,
9 Rob. INPO doesn't have any problems with Sequoyah
10 Chemistry"?

11 A Not that I recall.

12 Q Did he acknowledge that there were
13 problems that INPO had found with Sequoyah Chemistry?

14 A I believe he did.

15 Q And in fact if we could, would you turn
16 back to Joint Exhibit 27, Page 50 to 51, let's start
17 with Page 50. The last entry at the bottom of the
18 page from Mr. Fiser. Do you see where Mr. Fiser is
19 acknowledging the fact that INPO had a problem with
20 apparently something in the control room and the
21 Chemistry Shift Supervisor not knowing what bags to
22 remove and how to watch for dissolved oxygen?

23 A I'm sorry, you're on Page 50?

24 Q Page 50. There's an entry for you, second
25 entry for you talking about the System Engineer

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1 calling the Chemistry Shift Supervisor removing some
2 bags and watching, is that, dissolved oxygen?

3 A Yes, that's dissolved oxygen.

4 Q And Mr. -- .

5 JUDGE YOUNG: Excuse me, where are you
6 reading from?

7 MR. MARQUAND: Okay. It is the, I'm
8 sorry, third entry from Mr. Beecken on Page 50. Mr.
9 Beecken is pointing out an issue with the System
10 Engineer calling the Chemistry Shift Supervisor, and
11 the System Engineer being prepared to remove some bags
12 and to tell the Chemistry Shift Supervisor to watch
13 the levels for dissolved oxygen. And Mr. Fiser's
14 response -- does Mr. Fiser indicate that INPO had a
15 problem with the way the Chemistry Shift Supervisor
16 handled that?

17 THE WITNESS: I can't tell from his
18 response whether he's addressing the Chemistry Shift
19 Supervisor's performance directly or not.

20 BY MR. MARQUAND:

21 Q He's acknowledging that INPO found some
22 problems in the control room with respect to alarms,
23 doesn't he?

24 A Well, in respect to alarms and being on
25 top of Chemistry parameters.

1 Q Right. Let me direct your attention to
2 Page 51. In the first entry that has Mr. Fiser's name
3 on it there, do you see where Mr. Fiser says, "Yes, I
4 can't sit here and tell you, Rob, that I could have
5 gotten you out of that one." When he says, "gotten
6 you out of that one," what is he talking about getting
7 you out of?

8 A I think the line above it is the material
9 condition concern from INPO on Chemistry equipment
10 material condition.

11 Q Is that a finding by INPO about a problem
12 with respect to material condition?

13 A I believe it was a finding. They have
14 different categories. They have areas for
15 improvement, they have findings, they have different
16 issues.

17 Q And as you go through this, does Mr. Fiser
18 continue to recognize that there are problems with
19 Chemistry and that those problems have been recognized
20 by INPO?

21 A I believe he does.

22 Q And this conversation happened in December
23 of '92.

24 A Yes.

25 Q Okay. Now, if you turn back once again to

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1 Joint Exhibit 33. Do you have any idea what this
2 language, "There have been no Chemistry-related
3 findings by INPO for Sequoyah," why that is in there?

4 MS. EUCHNER: Objection, Your Honor. Mr.
5 Marquand stated when I questioned the Witness about
6 this that he has no basis for saying this. The
7 question he just asked he has no true basis for
8 looking at. He's asking him to read into what this
9 line says, rather than just read what the line itself
10 says. I think we could ask Dr. McArthur to do that,
11 not Mr. Beecken.

12 JUDGE YOUNG: Any response, Mr. Marquand?

13 MR. MARQUAND: Counsel was allowed to
14 inquire about this particular thing. We just have
15 gone through a discussion about the conversation Mr.
16 Beecken had with Mr. Fiser to establish that Mr. Fiser
17 certainly was aware of INPO problems at Sequoyah in
18 Chemistry. And I want to know from Mr. Beecken
19 whether or not, based on his knowledge of Sequoyah
20 Nuclear Plant, his knowledge as Plant Manager and also
21 having refreshed his recollection about this
22 conversation with Mr. Fiser if he has any idea why
23 this language is accurate and why it was even included
24 in this service review.

25 JUDGE YOUNG: Mr. Beecken, do you have any

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1 basis for knowing why that would be there?

2 THE WITNESS: No.

3 JUDGE YOUNG: You don't?

4 THE WITNESS: No.

5 JUDGE YOUNG: Okay.

6 BY MR. MARQUAND:

7 Q Does it appear to be accurate?

8 A My only impression to this line in that
9 service review is I don't understand that basis for
10 the comment in the service review.

11 Q Is that consistent with your knowledge
12 about INPO findings at Sequoyah Chemistry?

13 A It doesn't seem consistent.

14 Q Counsel asked you a question about how
15 much opportunity you had to observe Gary Fiser's
16 performance while you were the Plant Manager after he
17 had returned to Chemistry in December of '91. I would
18 like to ask you a broader question. How much
19 opportunity did you have while you were at Sequoyah to
20 observe the performance of Chemistry and Mr. Fiser as
21 the Chemistry Superintendent?

22 COURT REPORTER: You're breaking up.

23 BY MR. MARQUAND:

24 Q How much opportunity did you have to
25 observe Chemistry performance while you were at

1 Sequoyah and Mr. Fiser while he was in as the
2 Chemistry Superintendent?

3 A That's a tough one to answer. As part of
4 the Management team of Sequoyah, I would have
5 interacted with him frequently.

6 Q Beginning when?

7 A Beginning when I came on board.

8 Q In 1988?

9 A I can't recall specific dates when I first
10 met Mr. Fiser.

11 Q You were the Maintenance Manager beginning
12 in February of '98, right?

13 A Yes.

14 Q You would have been his peer, interacting
15 with him?

16 A Actually, I would have been the Operations
17 Manager peer.

18 Q Okay. But you would have been part of the
19 Management team at Sequoyah from February '98 forward.

20 A Yes.

21 Q Eighty-eight, I'm sorry.

22 A Eighty-eight.

23 Q I'm getting my decades confused. And did
24 you have an opportunity to observe his performance in
25 Outage Management?

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1 A Yes.

2 Q By the way, when he was in Outage
3 Management, Mr. Fiser has suggested that he didn't
4 have any continuing responsibility for Chemistry.
5 Would that be true?

6 A Well, we used the rotation as to Outage
7 Management also to provide external exposure and
8 experience for line managers. I rotated for
9 maintenance to the Outage Management team. But it
10 still maintained responsibility for your department.
11 You put the person that was being developed as your
12 replacement into that -- the lead role while you were
13 out. But from my perspective, while I was doing an
14 outage, I would very much keep my hand on the ongoing
15 maintenance business, so I would have expected that he
16 would have kept an oversight in Chemistry. It's
17 challenging. There's a lot of work to do in outage
18 and it's challenging.

19 CHAIRMAN BECHHOEFER: Would he have been
20 aware of that?

21 THE WITNESS: Well, I would have hoped we
22 would have all had that level of ownership.

23 (Pause.)

24 BY MR. MARQUAND:

25 Q Let me ask you to turn to TVA Exhibit 122.

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1 Pat Lydon's record of interview with TVA's Inspector
2 General is attached.

3 JUDGE YOUNG: Just for future reference,
4 Mr. Marquand, let's try to not use the official
5 copies, these up here or the bottom shelf. We want to
6 make sure that we don't get anything out of order in
7 the official one.

8 MR. MARQUAND: Yes, Your Honor. If you
9 look at the third page. I'm going to refer you to the
10 third page of TVA Exhibit 122. That's Mr. Lydon's
11 record of interview by the Inspector General. Under
12 Mr. Lydon's name, it says Former Operations Manager.
13 Do you see that?

14 THE WITNESS: Yes.

15 BY MR. MARQUAND:

16 Q Why does it say Former Operations Manager
17 in August of '93? What happened to Mr. Lydon?

18 A He left the Company.

19 Q Did he leave on good terms?

20 A I really don't know the answer to that.
21 I don't think it was on good terms, but I wasn't in
22 that loop when he left.

23 Q Okay. You didn't fire him.

24 A No.

25 Q He apparently didn't have a very high

1 opinion of your or Mr. Bynum when he said that the two
2 of you fired people for effect?

3 A Yes, I read that earlier. I found that
4 pretty offensive.

5 Q Counsel directed your attention to the
6 fourth paragraph on Page 1 where it says, "Bynum and
7 Beecken wanted Lydon to fire Fiser because he was not
8 competent." Do you have any idea what he's talking
9 about there?

10 A No.

11 (Pause.)

12 Q In your direct testimony, I asked you if
13 you knew about the administrative details of Mr.
14 Fiser's rotational assignment downtown. What did you
15 mean you didn't know about the administrative details
16 of his assignment?

17 A I don't recall any knowledge of the
18 administrative details of his assignment.

19 Q I'd like to get your attention to Joint
20 Exhibit 43. When is the first time you ever saw that
21 temporary transfer agreement?

22 A I think today.

23 Q Is this one of those administrative
24 details you never -- weren't familiar with?

25 A Yes, I would think so. I can't recall

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1 specifically seeing this in the past, a signed
2 agreement.

3 Q You had your -- this was dated March of
4 '92, and you had a conversation with him, according to
5 Mr. Fiser, in the stairwell prior to his going
6 downtown. And then I know you had a conversation in
7 December of '92 in which you told him you didn't
8 think he was the right person to come back to Sequoyah
9 Chemistry. After that, did you have any knowledge of
10 what his job status was between December of '92 and
11 March of '93?

12 A My recollection, I'm really not clear on
13 what his job status was.

14 Q He didn't work for you.

15 A Not at that time. He was downtown and the
16 tour had not been up, I guess, until March. So I
17 really didn't have specific knowledge of his job
18 status.

19 Q The last thing I'd like to ask you about
20 is Counsel asked you whether or not you had a
21 conversation with Charles Kent in the summer of '93
22 about whether or not Kent would be hiring Mr. Fiser as
23 Chemistry Manager.

24 COURT REPORTER: I'm sorry, I didn't pick
25 that up.

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1 BY MR. MARQUAND:

2 Q Counsel asked you about whether you had
3 conversation with Mr. Kent in the summer of '93 about
4 whether you had approved Mr. Kent hiring Mr. Fiser as
5 the Chemistry Manager. At some point in time, did you
6 begin transitioning out of Sequoyah Plant Manager job?

7 A In February of '93.

8 Q February of '93. Five months before the
9 July of '93 alleged conversation with Mr. Kent you
10 started transitioning --

11 A I believe that's the right time. I said
12 February. I believe that's the right time.

13 Q And I believe your testimony to Counsel
14 was, "Well, you don't recall, but maybe you had a
15 conversation with Mr. Kent about it." You said it's
16 possible you had had a conversation.

17 A I don't recall.

18 Q And then Counsel said, "Is it possible
19 such a conversation occurred," that you had a
20 conversation about that subject?

21 A Had I thought it would be possible, I
22 would have had that conversation.

23 Q All right. And since Counsel asked you to
24 speculate if it was possible, if you had such a
25 conversation with Mr. Kent in which Mr. Kent asked you

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1 about Mr. Fiser, what would you have told Mr. Kent
2 about Mr. Fiser working as a Chemistry Manager?

3 MS. EUCHNER: Objection, Your Honor. Now
4 we truly are into speculation. I merely asked him if
5 Mr. Kent was accurate or inaccurate? Could it have
6 happened. I didn't ask him --

7 MR. MARQUAND: That's not the question.
8 She said, "Is it possible?"

9 MS. EUCHNER: I didn't ask him to
10 speculate as to what the nature of a conversation he
11 has no memory of was.

12 BY MR. MARQUAND:

13 Q Well, let me ask the question. If Mr.
14 Kent had asked you, what would you have told him?

15 MS. EUCHNER: Same objection, Your Honors,
16 and I'd like for Counsel to wait until Your Honors
17 have ruled, either overruling or sustaining my
18 objection, before he continues questioning the
19 Witness. He's done that repeatedly today.

20 JUDGE YOUNG: Do you recall what your
21 state of mind was at the time?

22 THE WITNESS: At what time, Your Honor?
23 February?

24 BY MR. MARQUAND:

25 Q July of '93.

1 JUDGE YOUNG: July of 1993.

2 THE WITNESS: Put it in context so I can
3 answer your question.

4 JUDGE YOUNG: What were you doing in July
5 of 1993?

6 THE WITNESS: I was transitioning to a new
7 Plant Manager. I think in November, in '92, a new
8 Site Vice President came on board, and by February of
9 '93 it was evident that he wanted to bring in his own
10 person for Plant Manager and that the chemistry
11 between he and I was not very good. So the new Plant
12 Manager -- now I'm having a brain lapse, I forget the
13 name of the fellow --

14 BY MR. MARQUAND:

15 Q Ken Powers?

16 A Ken Powers was brought on board to relieve
17 me, and I transitioned to Corporate, then through
18 Corporate to Watts Bar.

19 JUDGE YOUNG: Would you have had any
20 thoughts or opinions about Mr. Fiser in July of '93?

21 THE WITNESS: I think my opinions and
22 mind-set at that time would have been not to interfere
23 with what Mr. Fiser, Mr. Kent and Mr. Feneik where
24 they were going with the organization. I think that
25 would have started more in the time frame of even as

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1 early as February.

2 JUDGE YOUNG: That pretty much resolves
3 your question?

4 MR. MARQUAND: Thank you. I have no
5 further questions.

6 CHAIRMAN BECHHOEFER: Mr. Beecken, I would
7 like to follow up just on one point. What was your
8 relationship with Mr. Kent in terms of timing? How
9 did your service at Sequoyah overlap with his, et
10 cetera, that type of thing?

11 THE WITNESS: Mr. Kent, I believe, was at
12 Sequoyah during my entire tenure. He was the Health
13 Physics Manager. In either late of '92 or early '93,
14 the Company decided to combine health physics and
15 chemistry under one line manager, and Charles was
16 selected -- Charles Kent was selected as what we now
17 call a Rad Chem Manager, and that's the organizational
18 structure that we use today.

19 JUDGE YOUNG: Health Physics being the
20 same thing as Radiation Control?

21 THE WITNESS: Yes, ma'am.

22 CHAIRMAN BECHHOEFER: Were you aware of
23 whether Mr. Kent had asked or sought to have Sam
24 Harvey assigned to work under him at any point of that
25 point in time?

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1 THE WITNESS: I don't recall Sam Harvey
2 coming into that discussion or that area in my mind.
3 I don't remember any discussions. But I don't recall
4 anything in that area.

5 CHAIRMAN BECHHOEFER: Well, I was
6 wondering whether this was the same time frame in
7 which Mr. Fiser had been first transferred away to
8 Corporate and then not invited back.

9 THE WITNESS: He would have been -- by
10 March of '92, I think, based on that agreement letter,
11 was his rotation down. December of '92 is his
12 conversation with me. March of '92 would have been
13 the end of his tour downtown and his -- March '93, I'm
14 sorry -- would have been the end of his tour at
15 headquarters. And either his rotation back to
16 Sequoyah or his landing a permanent position at
17 headquarters.

18 MR. MARQUAND: Judge, I think what you're
19 thinking about Sam Harvey that occurred in the spring
20 of '96 as opposed to the spring of '95.

21 CHAIRMAN BECHHOEFER: Oh, okay. Okay.
22 Well, I'll drop that for now at least. Are there any
23 further questions that others would like to ask --

24 MS. EUCHNER: I have two.

25 CHAIRMAN BECHHOEFER: -- before we release

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1 the Witness?

2 MS. EUCHNER: I have just two questions.

3 RECROSS EXAMINATION

4 BY MS. EUCHNER:

5 Q First of all, the December 1992
6 conversation you had with Mr. Fiser where you were
7 discussing a number of these INPO-related problems.
8 At that time, who was the Chemistry Manager at
9 Sequoyah in December of 1992?

10 A I think it was Mr. Jocher.

11 Q So it wasn't Mr. Fiser.

12 A At the time of that meeting, he was on his
13 rotational tour.

14 Q And --

15 JUDGE YOUNG: His what?

16 THE WITNESS: He was on that rotational
17 tour downtown.

18 BY MR. MARQUAND:

19 Q You testified when Counsel was asking you
20 about whether Mr. Fiser maintained authority over the
21 Chemistry Program while he was rotating onto Outage
22 Management. When he was rotating down to Corporate
23 Chemistry, was he also supposed to maintain
24 supervision over both Sequoyah Chemistry and Corporate
25 Chemistry?

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1 A No, no.

2 Q So why would he be expected to maintain
3 responsibility over both his responsibilities in
4 Outage Management and his responsibilities as
5 Corporate Chemistry Manager?

6 A Well, the intense period of the outage in
7 that time period was maybe 65 days. And then there
8 was a lead-up of pre-outage work that required a team
9 to oversight and nurture, to be prepared to execute
10 the outage. We then hold line managers into those
11 assignments. But that wasn't a totally, all-
12 encompassing assignment immediately prior to the
13 outage. So it was -- and I'm talking from my
14 experience as a line manager being in the outage
15 rotation that you could maintain enough oversight in
16 your organization, and it was a careful balance too.
17 The person that you put in place to fill your shoes
18 while you were out truly as a developmental
19 opportunity, you wanted to give them enough leeway to
20 succeed and to demonstrate their capabilities and
21 learn from the experience. But you also wanted to
22 keep enough ownership into the organization that you
23 knew you were complying with what the organization
24 needed to do to meet day-to-day expectations. So, you
25 know, it wasn't full-time day maintaining full

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1 oversight, but you needed to be stable -- you're still
2 the Chemistry Manager and I'm still the Maintenance
3 Manager. We're still -- those are our departments.

4 MS. EUCHNER: I have nothing further.

5 CHAIRMAN BECHHOEFER: Mr. Beecken, we
6 thank you for your appearance, and you're excused.

7 THE WITNESS: Thank you.

8 CHAIRMAN BECHHOEFER: Why don't we take a
9 short break and go off the record. Ten minutes? Ten.

10 (Whereupon, the foregoing matter went off
11 the record at 2:53 p.m. and went back on
12 the record at 3:00 p.m.)

13 CHAIRMAN BECHHOEFER: Back on the record.
14 Mr. Marquand.

15 MR. MARQUAND: We call Mark Burzynski.
16 Could you swear the witness please, Your Honor?
17 Whereupon,

18 MARK J. BURZYNSKI
19 was called as a witness by Counsel for TVA and, having
20 been first duly sworn, assumed the witness stand, was
21 examined and testified as follows:

22 DIRECT TESTIMONY

23 BY MR. MARQUAND:

24 Q State your name please.

25 A Mark Burzynski.

1 Q How are you employed?

2 A I work for Tennessee Valley Authority as
3 the corporate licensing manager.

4 Q How long have you worked for TVA?

5 A I've worked for TVA 25 years.

6 Q Would you just give us a thumbnail of your
7 work history at TVA?

8 A I started work in 1977. I worked in the
9 licensing organization up through 1980. I moved over
10 into the engineering organization and worked in the
11 corporate office up until 1985. I was then
12 transferred up to Watts Bar where I worked as a
13 regulatory engineering manager for approximately one
14 year and a half. I moved to Sequoyah in 1986 and
15 stayed at Sequoyah as the site licensing manager
16 through the close of 1989. Then I went to Browns
17 Ferry in 1990. I returned to licensing in the
18 corporate office in 1991. Then I went to Sequoyah as
19 the engineering manager in 1993 and worked there
20 through 1997. Then I returned to the corporate
21 licensing office where I am currently employed.

22 MR. MARQUAND: I'm going to show you
23 what's been marked as TVA Exhibit 139.

24 (Whereupon, the above-referred to
25 document was marked as TVA's Exhibit No.

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1 139 for identification.)

2 CHAIRMAN BECHHOEFER: Off the record.

3 (Whereupon, the foregoing matter went off
4 the record at 3:13 p.m. and went back on
5 the record at 3:14 p.m.)

6 CHAIRMAN BECHHOEFER: Back on the record.

7 MR. MARQUAND: Mr. Burzynski, can you tell
8 us what TVA Exhibit 139 is please?

9 THE WITNESS: This is a brief synopsis of
10 my work history for the Tennessee Valley Authority.

11 BY MR. MARQUAND:

12 Q Is it accurate from your acception of your
13 work at TVA through current time?

14 A Yes.

15 Q I didn't ask you but what is your
16 educational background?

17 A My educational background, I have a
18 Bachelor of Science in Nuclear Engineering from the
19 University of Michigan and a Masters in Organizational
20 Management from the University of Phoenix.

21 Q Do you have any specific training with
22 respect to nuclear operations?

23 A I have completed TVA's shift technical
24 advisor training program.

25 MR. MARQUAND: Your Honor, I would like to

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1 tender TVA's Exhibit No. 139 into evidence.

2 MR. DAMBLY: No objection.

3 CHAIRMAN BECHHOEFER: Any objection?

4 MR. DAMBLY: No objection.

5 CHAIRMAN BECHHOEFER: Okay. Without
6 objection, TVA Exhibit No. 139 will be admitted.

7 (The document referred to having
8 previously been marked for identification
9 as TVA's Exhibit No. 139, was received
10 into evidence.)

11 BY MR. MARQUAND:

12 Q Let me focus on the time when you worked
13 at Sequoyah plant. You worked at Sequoyah nuclear
14 plant. Is that right?

15 A Yes sir, I have.

16 Q Are you familiar with Gary Fiser?

17 A I briefly worked with him during the
18 period of probably the late '80s, 1988, 1989
19 timeframe.

20 Q According to your résumé, it said that you
21 worked as a site licensing manager at Sequoyah from
22 1986 to 1990 and Mr. Fiser didn't come to there until
23 sometime in 1988 so during that coincidental
24 timeframe.

25 A Yes, I recall a period of time when he was

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1 the chemistry manager at Sequoyah. He had an office
2 adjacent to mine.

3 Q Is the Sequoyah site licensing manager, is
4 there a point in time when you became familiar with an
5 issue regarding diesel storage fuel tanks?

6 A Yes sir.

7 Q Can you tell us what the issue was?

8 A The issue as I recall it was an operating
9 experience item that came in through our contact with
10 the Institute of the Nuclear Power Operation. That
11 was one that was judged to be applicable to Sequoyah
12 and resulted in some problems being identified at
13 Sequoyah.

14 Q For the record, when you say "operating
15 experience" what do you mean?

16 A That's a program that was instituted after
17 the Three Mile Island accident to share operating
18 experience amongst all of the utilities and you got
19 copies of people's problem reports and you could use
20 those to try and identify those same problems at your
21 plant before they cause an event or a problem. This
22 was one such item.

23 Q When you were the licensing manager did
24 you have some sort of responsibility with respect to
25 operating experience or nuclear experience review?

1 A Yes, one of my responsibilities was to
2 manage the operating experience program for Sequoyah.

3 Q I'm going to show you a document which we
4 will have marked as TVA's Exhibit No. 145. Mr.
5 Burzynski, what is Exhibit No. 145?

6 (Whereupon, the above-referred to
7 document was marked as TVA's Exhibit No.
8 145 for identification.)

9 A It's a copy of an operating experience
10 item that we had received from INPO, the Institute of
11 Nuclear Power Operations, involving a problem
12 identified at the Waterford Plant. The specific
13 problem involved a method of sampling diesel fuel oil
14 and it mentions the specific ASTM standard that was
15 identified in their technical specifications. They
16 identified that their method of sampling using a
17 recirculation line did not comply with ASTM standard.

18 Q Why was that a concern to TVA?

19 A We look at all of these items that come in
20 from INPO to try and see if they are applicable. We
21 looked at this one and thought that it was applicable
22 to both the Sequoyah and Watts Bar and that's recorded
23 on the front page you can see for action items.

24 Q So it was sent to both Sequoyah and Watts
25 Bar for action.

1 A Yes sir.

2 Q What organization would be responsible for
3 this particular sort of issue?

4 A All these items came in through the
5 corporate office. We conducted the screening meetings
6 or screening telecons to do some preliminary review,
7 research and identify applicability either for
8 information or action. If action was identified, an
9 action would be assigned then to the site licensing
10 organization to do the appropriate follow-up with the
11 line organization that had technical responsibility.

12 Q Let me see and make sure I understand
13 this. The way this works is for this particular one
14 there was a problem with respect to these fuel storage
15 tanks at the Waterford nuclear plant.

16 A Right.

17 Q After it was identified there, then INPO
18 would route this to the various utilities including
19 TVA to say hey you may want to look and see if you
20 have this same problem.

21 A Yes.

22 Q So it came in through nuclear experience
23 review through licensing and then licensing
24 distributes it to somebody at the plant to go out and
25 walk down and make a check to see if it's a problem.

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1 A Yes.

2 Q When did this issue first come to
3 anybody's attention?

4 A The item became available to us on August
5 8. These are posted to an electronic bulletin board
6 and we would periodically download the information
7 from that bulletin board and conduct screening of that
8 information.

9 CHAIRMAN BECHHOEFER: Is that August 8,
10 1989?

11 THE WITNESS: Yes, I'm sorry. That was
12 August 8, 1989.

13 MR. MARQUAND: I'm going to show you now
14 a document which I had marked as TVA Exhibit No. 128.
15 Your Honor, I would like to tender TVA Exhibit No.
16 145, the nuclear experience review item received by
17 TVA from INPO and then sent out by licensing to
18 Sequoyah and Watts Bar.

19 CHAIRMAN BECHHOEFER: Any objection?

20 MR. DAMBLY: No objection.

21 CHAIRMAN BECHHOEFER: Without objection,
22 TVA Exhibit No. 145 will be admitted.

23 (The document referred to having
24 previously been marked for identification
25 as TVA's Exhibit No. 145, was received

1 into evidence.)

2 THE WITNESS: 145 or 128? I'm looking at
3 Exhibit No. 128.

4 MR. MARQUAND: 145 is the one we just got
5 through talking about. Now, Mr. Burzynski, what is
6 TVA's Exhibit No. 128?

7 THE WITNESS: I'm sorry. Exhibit 128 is
8 a documentation package that's put together by the
9 site organization.

10 BY MR. MARQUAND:

11 Q Which site organization?

12 A In this case, it was the Sequoyah site
13 from Mr. Jim Smith who worked for me back to the
14 corporate office documenting our review results of the
15 operating experience item that we just talked about.

16 Q When you say Sequoyah organization, you
17 specifically mean the Sequoyah nuclear experience
18 review group.

19 A That worked for me in licensing. Yes sir.

20 Q What are they documenting?

21 A They documented that this item was looked
22 at. The coversheet just reflects the fact that we
23 looked at it and we found some actions that we took
24 and the information attached and various documents are
25 referenced. The coversheet acts like just a memo, a

1 traveler back and forth between the organizations.
2 The second page in the document covers the internal
3 site correspondence. In this case, it went from Mr.
4 Jim Smith to Gary Fiser, transferring the action item
5 to review this particular operating experience item.
6 Then the middle section of that page documents the
7 actions taken by Mr. Fiser's organization as a result
8 of their investigation, a review of this operating
9 experience item.

10 Q Now you mentioned earlier that there was
11 a screening telecon. Did Mr. Smith, the guy who
12 worked for you in nuclear experience, did he have some
13 screening responsibility when this item came in?

14 A Yes, Jim was responsible for participating
15 on this screening phone call between the operating
16 experience people. Typically what they would do in
17 looking at an operating experience item, they would
18 talk to the line organization, they would do some
19 research of documents like the plant technical
20 specifications, in this case the surveillance
21 instruction procedures that implemented the technical
22 specification requirements.

23 You can see on the third page of this
24 document was a note from Mr. Smith and Mr. Fiser
25 outlining his suggestions for them to take a hard look

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1 at this item. In particular he noted that there were
2 some differences in the technical specification
3 requirements between Sequoyah and Watts Bar.

4 Second he was asking the question of how
5 we missed this item during the surveillance
6 instruction review program. What's important to me
7 about that is when Sequoyah was shut down between 1985
8 and 1988 one of the programs we committed to the NRC
9 was to do a complete review of our surveillance
10 instructions to insure that they were properly
11 implementing technical specification requirements.
12 Now that was a program we committed to and one that we
13 reported as complete.

14 JUDGE YOUNG: Let me just clarify one
15 thing. When you say your "surveillance program" you
16 are talking about surveillance including sampling.

17 THE WITNESS: Yes, in this particular case
18 the surveillance requirement and tech specs called for
19 testing and sampling of the diesel fuel oil and our
20 surveillance instruction was a procedure that we used
21 to carry that out.

22 He also suggested that they write a
23 condition adverse to quality and a potential
24 reportable occurrence report. He also noted that it
25 would be helpful if they had copies of the ASTM

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1 standards that were referenced in the tech specs or
2 committed to in the FSAR.

3 BY MR. MARQUAND:

4 Q Mark, what page are you referring to?

5 A I'm referring to page three of the Exhibit
6 128.

7 CHAIRMAN BECHHOEFER: Do you have any
8 indication or do you know that this document was
9 actually received?

10 THE WITNESS: The only indications I have
11 are all the subsequent actions that occurred as a
12 result of it that are in this package and my own
13 recollection from the events that unfolded as a result
14 of this investigation.

15 CHAIRMAN BECHHOEFER: Okay, thank you.

16 THE WITNESS: I'm assuming that it was
17 received because all of these actions were followed up
18 on.

19 BY MR. MARQUAND:

20 Q When we looked at TVA Exhibit No. 145, you
21 said that this was posted on the bulletin board on
22 August 8.

23 A Yes sir.

24 Q So looking at the third page of Exhibit
25 128, this was sent by Mr. Smith to Gary Fiser saying

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1 here is an issue. You need to go out and look at it
2 and write a CAQ.

3 A Yes.

4 Q CAQ is what?

5 A That's a Condition Adverse to Quality.
6 It's part of our Corrective Action Program that's
7 required by 10 CFR Appendix B.

8 Q That's the document that specifically
9 identifies a problem.

10 A Yes.

11 Q Then he wanted Mr. Fiser to say how did
12 you miss this in the SI review program.

13 A That's what the second note indicates.

14 Q So by the 11th, Mr. Smith already knew
15 that there was a problem. He was telling Fiser to go
16 out and look at it and document it.

17 A Yes.

18 Q And the Sequoyah had missed it the
19 previous year through the review program.

20 A Yes.

21 Q Tell us briefly what was the nature of the
22 problem.

23 A Briefly the technical specifications
24 require that diesel fuel oil be sampled in accordance
25 with this ASTM. When you went and looked at the

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1 details of the ASTM standard, it had very specific
2 methods of collecting a representative sample.

3 In particular it had guidance that if you
4 were going to use a tap system and draw off a tap that
5 the tap had to be designed in a certain way to be
6 representative or you had to use a bottle and collect
7 representative samples at different elevations in the
8 tank. We were sampling using the recirculation line
9 but the recirculation line did not conform to the ASTM
10 pipings configuration for representativeness.

11 Q What is the significance on the third page
12 of TVA's Exhibit No. 128 of the fourth item? The
13 fourth item if you look at it says "maintain working
14 copy of all chemistry related ASTM referenced in
15 Sequoyah TSS or committed to in FSAR."

16 A When we went to look at a comparison what
17 we could determine from the operating experience item
18 is that Waterford found that recirculation line
19 sampling was not adequate. We saw that our procedures
20 called for recirculation line sampling but we were
21 unable to get a copy of the ASTM standards on site
22 since the chemistry department did not have working
23 copies of those.

24 Q The chemistry department did not have
25 working copies of the procedures they were supposed to

1 follow?

2 A They didn't have copies of the ASTM that
3 were the basis of their procedures.

4 CHAIRMAN BECHHOEFER: So you are saying
5 that they had the particular procedures but not the
6 underlying background to the procedures.

7 THE WITNESS: That's right. Yes sir.

8 MR. MARQUAND: And did the procedures
9 incorporate the ASTM?

10 THE WITNESS: In the end we did find that
11 the procedures did not incorporate the requirements of
12 the ASTM standard.

13 BY MR. MARQUAND:

14 Q But they were inadequate because they
15 didn't incorporate it.

16 A True.

17 Q Was a Corrective Action Report written on
18 that problem?

19 A Yes, a Corrective Action Report was
20 written on this problem.

21 MR. MARQUAND: I'm going to show you TVA
22 Exhibit No. 146.

23 (Whereupon, the above-referred to
24 document was marked as TVA's Exhibit No.
25 146 for identification.)

1 JUDGE YOUNG: Are you finished with this
2 particular problem?

3 MR. MARQUAND: (Off microphone.) No --

4 JUDGE YOUNG: Okay, then I'll save my
5 question. What number did you say this was?

6 MR. MARQUAND: TVA's Exhibit No. 146. Are
7 you ready? Mr. Burzynski, we've established that on
8 August 8th this experience review item appeared on
9 INPO bulletin board and then on August 11th, Mr. Smith
10 sent this over to chemistry to review. Then you said
11 that a Correction Action document was initiated. Can
12 you tell from TVA's Exhibit No. 128 when the CAQ or
13 Corrective Action document was written?

14 THE WITNESS: Yes, the document was
15 initiated on August 14, 1989. I'm looking at this
16 one.

17 JUDGE YOUNG: You are looking at 128.

18 MR. MARQUAND: Looking at 128, can you
19 tell me based on that when the CAQ was written, the
20 preliminary event report in there that has the
21 chronology?

22 THE WITNESS: Yes, there is.

23 BY MR. MARQUAND:

24 Q If you would give us a page number that's
25 indicated by the Bates number on the page.

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1 A It's 106.

2 Q FI-106.

3 A Yes.

4 Q And is that a chronology of the timeframe
5 for this particular event?

6 A Yes, it appears to be so.

7 Q Does it show on that timeframe when the
8 CAQ was written?

9 A It shows that chemistry personnel were
10 first notified of the operating experience item on
11 August 10, 1989 at approximately 15:00.

12 Q Okay.

13 A It notes that chemistry personnel believed
14 that the problem identified in this operating
15 experience item did not apply to Sequoyah. Then on
16 August 14, 1989 at approximately 19:00, it indicates
17 that Sequoyah CAQRSQP890457 was written due to
18 potential problems in verifying compliance with the
19 tech specs.

20 Q That's the document that identifies the
21 nuclear safety problem.

22 A Right, that's the one that documents the
23 a Condition Adverse to Quality regarding fuel oil
24 sampling.

25 MR. MARQUAND: Your Honor, I would tender

1 TVA's Exhibit No. 128.

2 CHAIRMAN BECHHOEFER: Any objection?

3 MR. DAMBLY: No objection, Your Honor.

4 CHAIRMAN BECHHOEFER: All right. TVA's
5 Exhibit No. 128 is admitted.

6 (The document referred to having
7 previously been marked for identification
8 as Applicant's Exhibit 128, was received
9 into evidence.)

10 MR. MARQUAND: Now if you would, Mr.
11 Burzynski, move to TVA's Exhibit No. 146.

12 CHAIRMAN BECHHOEFER: Do we want to --
13 It's been marked.

14 MR. MARQUAND: What is TVA's Exhibit No.
15 146?

16 THE WITNESS: 146 is a copy of Condition
17 Adverse to Quality Report SQP890457. It addressed a
18 noncompliance with the technical specification
19 regarding diesel fuel oil sampling.

20 BY MR. MARQUAND:

21 Q Can you tell by looking at this document
22 who initiated this particular Condition Adverse to
23 Quality report?

24 A Yes, you can see that in block 8A --

25 Q 8A.

1 A -- up at the top half of the page. It
2 will say CAQR initiated by Don Amos and it lists the
3 date as August 14, 1989.

4 Q Does it have further indication as to who
5 his supervisor was or who it was coordinated with or
6 who approved it?

7 A Yes, the document indicates that the
8 management approvals that occurred are listed further
9 down on the page under Part B and it lists Donald Amos
10 and Don Adams as the preparer and the
11 supervisor/reviewer of the corrective actions.

12 Q Does it indicate what organization they
13 were in?

14 A It does not by those initials. It does
15 indicate the initiator's organization up in block 8A
16 where it says initiating organization on the righthand
17 side. There's code letters and it has CEM. That's
18 the chemistry group, acronym.

19 Q So Mr. Amos was working in the chemistry
20 group and Mr. Amos is the individual who initiated the
21 document. Is there any indication on this document
22 that Mr. Fiser was responsible for identifying the
23 issue?

24 A There is no indication that I have found
25 that Mr. Fiser was involved with the initiation of it

1 or the initial review of the corrective action plan.

2 Q Is there any indication that Mr. Fiser was
3 responsible for documenting the issue?

4 A None that I could find from reviewing this
5 document.

6 CHAIRMAN BECHHOEFER: Mr. Burzynski, just
7 as an aside perhaps, there's a listing of a Mark
8 Reinders.

9 THE WITNESS: Mark Reinders is his name.

10 CHAIRMAN BECHHOEFER: Who is he?

11 THE WITNESS: Mark Reinders was the
12 manager that chaired our management review committee
13 and all the CAQRs went to a management review
14 committee for a secondary review by the management
15 team. Mark Reinders was the person that chaired that
16 committee. It documents that it went through that
17 review, that secondary level management review of the
18 problem reports.

19 CHAIRMAN BECHHOEFER: Okay, thank you.

20 MR. MARQUAND: Your Honor, I would like to
21 tender TVA's Exhibit No. 146.

22 MR. DAMBLY: No objection.

23 CHAIRMAN BECHHOEFER: Without objection,
24 TVA's Exhibit No. 146 will be admitted.

25 (The document referred to having

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1 previously been marked for identification
2 as TVA's Exhibit No. 146, was received
3 into evidence.)

4 CHAIRMAN BECHHOEFER: Do you want to take
5 time out briefly while she does the stamping and all
6 that?

7 (Pause.)

8 JUDGE YOUNG: Before you go on, I'd like
9 to ask a question and it may be that you are going to
10 answer it later but if not, it's confusing me at this
11 point so I'd like to if possible see if it can be
12 cleared.

13 MR. MARQUAND: We're trying to follow a
14 sequence on this issue. I would be glad to cover
15 anything we missed.

16 JUDGE YOUNG: On August 14th which appears
17 to be the date of the CAQ Exhibit 146. 145 is also
18 dated August 14th. In the corrective action at the
19 bottom of the second page of Exhibit 145 unless I'm
20 reading that incorrectly, the change that was sought
21 was to allow them to do it the same way they had been
22 doing it or am I missing something?

23 THE WITNESS: I think I lost you on that
24 part of the question.

25 MR. MARQUAND: Looking at the bottom of

1 the second page of TVA's Exhibit 145, the change at
2 Waterford.

3 THE WITNESS: Okay, the change at
4 Waterford.

5 MR. MARQUAND: The corrective action.

6 JUDGE YOUNG: Oh, that's the change at
7 Waterford.

8 MR. MARQUAND: Yes, they did a corrective
9 action at Waterford to fix their problem.

10 JUDGE YOUNG: I understand.

11 MR. MARQUAND: Okay.

12 JUDGE YOUNG: Thank you.

13 MR. DAMBLY: Are we talking the second
14 page of -- I'm on 128. Okay.

15 JUDGE YOUNG: The second page of 145 was
16 what I was looking at. The bottom part that says
17 "Corrective Action."

18 THE WITNESS: You are correct.

19 JUDGE YOUNG: I thought that referred to
20 TVA's corrective action or Sequoyah's corrective
21 action and that's what was confusing me.

22 MR. MARQUAND: That whole page describes
23 the incoming document, a description of the problem
24 and corrective action at Waterford.

25 JUDGE YOUNG: Thank you. That clarifies

1 it.

2 MR. MARQUAND: I've handed you TVA's
3 Exhibit No. 147.

4 (Whereupon, the above-referred to
5 document was marked as TVA's Exhibit No.
6 147 for identification.)

7 BY MR. MARQUAND:

8 Q What is that?

9 A 147 is a copy of the final event report
10 that was issued regarding the problems associated with
11 representative sampling of the diesel fuel oil storage
12 tanks. These reports were initiated whenever a .
13 significant event, incident or a regulatory problem
14 occurred at the site.

15 Q Was the issue with respect to these diesel
16 fuel storage tanks a significant event?

17 A Yes, it was a very significant event. As
18 a result of identifying the problem with the lack of
19 representative sampling, all four diesel generators
20 were declared inoperable and they are common to both
21 units and so both units were in a 24-hour action
22 statement. We had 24 hours to correct the problem or
23 shut down both units at Sequoyah.

24 Q Before we go further with that, I
25 previously had asked you if a CAQ which was TVA's

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1 Exhibit No. 146 had indication that Mr. Fiser was
2 responsible for identifying or documenting or raising
3 the issue. Let me ask you on TVA's Exhibit No. 147.
4 Is there any indication attached to that as to who was
5 responsible for handling this particular item? If you
6 will look towards the back there's what's called an
7 NER Evaluation Form. I think it's around page FI-313.

8 A Yes sir.

9 Q What is that particular form trying to do?

10 A This was a traveler form that came out of
11 the licensing organization and went to line
12 organizations to assign them actions out of the .
13 operating experience program. In this particular
14 case, it went to Mr. Fiser and it was identified for
15 immediate attention which is our highest level of
16 prioritization on these items. At the top there's a
17 note that says "Don, you are assigned responsibility
18 on this item. Don" I'm assuming that's Don Amos and
19 Don Adams.

20 Q So Don Amos was assigned responsibility to
21 handle this when it first came over to chemistry.

22 A Right and I'm assuming that the second Don
23 is Don Adams who was his immediate supervisor.

24 JUDGE YOUNG: How can you tell when this
25 top thing was written on this sheet? I guess the

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1 other question I would have is if it went to Mr.
2 Fiser, why is there a note to Don on it if you know.

3 THE WITNESS: I don't know the answer to
4 that. All I can tell from this is it was sent to Mr.
5 Fiser's organization and I'm assuming that somewhere
6 in the routing of his organization it went down to a
7 subordinate manager who assigned it to an employee.
8 The timeframe I would assume was prior to the CAQR
9 being initiated. That would have been the expected
10 response to the immediate attention item.

11 JUDGE YOUNG: So both Dons were under Mr.
12 Fiser.

13 THE WITNESS: Yes.

14 BY MR. MARQUAND:

15 Q If you will turn over two pages to page
16 FI-315, can you tell who was given an advanced copy of
17 that operating experience item?

18 A This note on here which --

19 Q What note? Is there a handwritten note
20 there?

21 A Yes, there is a handwritten note on this
22 particular file copy of the operating experience item
23 that says an advanced copy was given to Gary Fiser and
24 Don Adams for evaluation.

25 CHAIRMAN BECHHOEFER: Is that "and" or

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1 "or"?

2 THE WITNESS: Well, this is slash.

3 CHAIRMAN BECHHOEFER: Yes, but does that
4 mean "and" or does that mean "for Gary Fiser"?

5 THE WITNESS: I couldn't tell you which
6 that meant.

7 CHAIRMAN BECHHOEFER: Okay.

8 MR. MARQUAND: Do you know whose
9 handwriting that was?

10 THE WITNESS: That's Jim Smith's
11 handwriting.

12 BY MR. MARQUAND:

13 Q Your employee's?

14 A Yes, that was my employee. He also
15 references the surveillance instruction that was
16 involved and had a note that it mentioned the
17 recirculation of two volumes which was the similarity
18 to the Waterford problem.

19 Q So he was noting the similarity and by
20 noting that similarity he's noting that there's a
21 problem at Sequoyah?

22 A It indicated to me that he had looked at
23 that surveillance instruction and noted that it called
24 for recirculation of two volumes.

25 Q All right. I earlier asked you if this

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1 was a significant problem. You said that it had
2 something to do with 24-hour --

3 A Yes, it had a 24 hour limiting condition
4 for operation. The tech specs the way they are
5 constructed if you don't comply with the technical
6 specifications there are associated action times that
7 you are given to correct a situation or other actions
8 that tell you what to do in the event that you can't
9 correct the problem.

10 In this particular case, there were 24
11 hours to correcting missed surveillance or you had to
12 initiate the shut down of the plant. This requirement
13 was applicable to both units so both units were under
14 that action statement and both units would have had to
15 have been shut down after the 24 hour period had we
16 not successfully tested the fuel oil in that 24-hour
17 period.

18 JUDGE YOUNG: Which page refers to 24-hour
19 period?

20 MR. MARQUAND: How about page 267?

21 THE WITNESS: That mentions the particular
22 surveillances and actions. If you see on --

23 MR. MARQUAND: Talking about 24 hours.

24 THE WITNESS: Yes.

25 MR. MARQUAND: Doing it within 24 hours

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1 until the action statement requirements are in effect.

2 THE WITNESS: Yes, it says "we entered the
3 LCO 3.8.1.1 D" which essentially said the diesels were
4 inoperable and then the last sentence under that
5 description of events says "surveillance requirement
6 or SR 4.0.3 is allowing 24 hours until the action
7 statement requirements are in effect." The action
8 statement that it's referring to is an immediate
9 shutdown of the plant. So the surveillance
10 requirement 4.0.3 allowed 24 hours to correct the
11 missed surveillance before we had to immediately shut
12 down because all four diesels were considered
13 inoperable.

14 MR. MARQUAND: If you look at --

15 JUDGE YOUNG: Surveillance requirement
16 4.0.3 is a technical specification.

17 THE WITNESS: Yes, it is.

18 JUDGE YOUNG: Thank you.

19 MR. MARQUAND: If you look at also TVA's
20 Exhibit No. 128, we previously looked at page FI-106
21 which has the timeline on it.

22 THE WITNESS: Yes sir.

23 BY MR. MARQUAND:

24 Q Is there a reference at 11:09 hours on
25 August 15th of the 24-hour requirement to take action

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1 if the SI was not performed?

2 A Yes, that indicates that at 11:09 on
3 August 15, 1989 the operations department reviewed PRO
4 1-89-187. PRO stands for potential reportable
5 occurrence and entered the limiting condition for
6 operation. It notes the 24 hours until the action
7 statement requirements are in effect.

8 Q When you say the "potential reportable
9 occurrence" that is the page 267 of TVA's Exhibit No.
10 147 which we were looking at a moment ago.

11 A Yes, that's the actual paperwork that went
12 to the control room for them to make that evaluation.
13 It actually starts on page 266.

14 Q In your experience, is it unusual to have
15 to enter into an action statement requiring Sequoyah
16 nuclear plant to be shut down?

17 A It's not unusual to enter an action
18 statement. What is unusual is to enter an action
19 statement that requires an immediate shutdown that
20 affects both units for a problem that we created. We
21 have had situations where a pump broke or something
22 like that, some unexpected equipment problem which
23 would put you in that situation. But this is the only
24 one in my memory in 25 years where two units were
25 placed in jeopardy because we had done something

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1 wrong.

2 Q And what was it "we had done wrong"?

3 A What we had done wrong is we had failed to
4 identify the problem with the technical specifications
5 surveillance instruction when we did our review back
6 in 1988 as part of our restart program.

7 Q Who was responsible for reviewing that SI,
8 that procedure in 1988?

9 A That would have been the chemistry
10 department.

11 CHAIRMAN BECHHOEFER: In 1988, who was in
12 charge of the chemistry department at that time?

13 THE WITNESS: At one point in time, Mr.
14 Fiser was. I can't tell you for certain when the
15 decision was made that the tech specs were -- I can
16 tell you that the decision was made that they reviewed
17 the surveillance instruction and it was wrong based on
18 this subsequent paperwork. What I can't tell you is
19 when that review was actually done that turned out to
20 be an error. I know it was done in that timeframe
21 because it was a condition of us restarting. I just
22 can't tell you the exact date and therefore I can't
23 tell you --

24 CHAIRMAN BECHHOEFER: So you can't tell us
25 actually whether Mr. Fiser was involved or if someone

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1 else was involved with the responsibility for it.

2 THE WITNESS: I can't tell you that from
3 the paperwork that I have.

4 CHAIRMAN BECHHOEFER: Thank you.

5 MR. MARQUAND: Did entering this action
6 statement that caused part of the plant to be shut
7 down did that cause concern to management?

8 THE WITNESS: Yes, it did cause concern
9 for a number of reasons. One obviously it affected
10 generation. Number two it indicated a error in a
11 major program we had as part of recovery. Three it
12 put us in a bad light with the regulator. It was a .
13 reportable occurrence which meant we had to file a
14 licensee event report but we also got a lot of
15 regulatory attention because of this problem. We had
16 to alert them of the potential that the units might
17 shut down and they reminded us several times during
18 that period that this was a problem we should have
19 identified earlier and as a result we're not going to
20 afford us any opportunities for a notice for
21 enforcement discretion.

22 BY MR. MARQUAND:

23 Q How do you know that?

24 A Those conversations all occurred in my
25 office. I was the site licensing manager and I had

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1 those telecons in my office with the site director,
2 John LaPoint, with the senior resident inspector. At
3 the time I believe it was Mr. Ken Jennison (PH) and
4 the regional and headquarters people that are
5 typically participants on that call. I was new to
6 that job as site licensing manager so it's one of
7 those remarkable events that you remember.

8 Q You called it NOED.

9 A Notice of Enforcement Discretion. NOED is
10 the acronym that we use within the industry.

11 Q When they have that discretionary
12 enforcement, what does that mean?

13 A That's an opportunity to make a judgement
14 between continued compliance with the tech specs or
15 continuing to operate if you think that that's a safer
16 condition. Often times you balance the risk of
17 putting the plant through a transient with the risk of
18 operating for additional time with the equipment
19 inoperable.

20 A likely case for that is a shaft breaks
21 on a pump, an unexpected failure, and it might take
22 you longer to fix it. A judgement might be made that
23 you could fix it with the plant on-line rather than
24 shutting down with that. In this particular case
25 though, they indicated that that was not an

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1 opportunity for us.

2 Q Why did the NRC indicate that enforcement
3 discretion wasn't available in that situation?

4 A At the time the criteria for notice of
5 enforcement discretion indicated that it had to be
6 more of an unexpected event. If it was something that
7 you caused or could have prevented that argued against
8 giving you the relief that enforcement discretion
9 would give you.

10 Q How did the NRC view this as something
11 that TVA could have prevented or had caused?

12 A They were certainly well aware of the
13 surveillance instruction review program and the
14 importance of that as part of their decision to allow
15 us to restart in 1988. This was considered a missed
16 opportunity in that review.

17 MR. MARQUAND: Your Honor, I want to
18 tender at this time TVA's Exhibit No. 147.

19 MR. DAMBLY: No objection.

20 CHAIRMAN BECHHOEFER: Without objection,
21 TVA's Exhibit No. 147 will be admitted.

22 (The document referred to having
23 previously been marked for identification
24 as TVA's Exhibit No. 147, was received
25 into evidence.)

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1 MR. MARQUAND: So as I understand it, if
2 NRC had granted a notice of discretionary enforcement
3 there would not have been a requirement to shut down
4 the plant at the end of this 24 hours.

5 THE WITNESS: That would have been the
6 likely outcome if they had approved it. That's what
7 we would have asked for.

8 BY MR. MARQUAND:

9 Q But that was not even available?

10 A No, they indicated right at the start for
11 us not to even consider that option.

12 CHAIRMAN BECHHOEFER: Does the reporter
13 need any further time to mark the documents?

14 COURT REPORTER: No.

15 MR. MARQUAND: Was an analysis done of the
16 cause of this particular problem?

17 THE WITNESS: Yes, an incident
18 investigation was our highest level of corrective
19 action review and it required a root cause evaluation.
20 You will see on page 261 of that document towards the
21 bottom of the page there is Roman numeral IV.

22 JUDGE YOUNG: Which document are you
23 referring to now?

24 MR. MARQUAND: TVA Exhibit No. 147.

25 JUDGE YOUNG: 261?

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1 THE WITNESS: 261. There's a section
2 Roman numeral IV where it had the root cause
3 statements and it has "reviewed during design, did not
4 consider sampling" and a code. "Inadequate review of
5 system design during procedure evaluation" and another
6 code.

7 Then they are restated in plain English
8 language in section Roman numeral V-A. You can see
9 the statements there. Restate those cryptic root
10 cause statements in a little more understandable
11 language.

12 On page 262, there was a finding that the .
13 interpretation of the requirement for sampling failed
14 to identify that dip sampling was the only acceptable
15 method to satisfy ASTM D-270 of 1975 edition.

16 MR. MARQUAND: That's under Roman V.

17 THE WITNESS: Right.

18 MR. MARQUAND: Letter A, number 2 on page
19 262.

20 THE WITNESS: Right and then it
21 specifically goes on to say that recirculation
22 sampling was not allowed.

23 BY MR. MARQUAND:

24 Q It says that "interpretation of the
25 requirements for sampling failed to identify that dip

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1 sampling is the only acceptable method". When were
2 those requirements interpreted that made that mistake?

3 A I believe they occurred at two different
4 times. One would have been the initial procedure
5 development at some point in time probably at initial
6 licensing. Then a second opportunity was when we did
7 the surveillance instruction verification and
8 validation review during the restart effort in 1988.
9 That review was intended to specifically establish
10 that all of our procedures explicitly met the tech
11 spec requirements. So it really could speak to both
12 of those opportunities.

13 JUDGE YOUNG: Maybe this would be a good
14 time for me. I would just like to get a better
15 understanding of the basic things that were going on
16 with this. As I understand it, what brought this
17 whole issue to your attention was the notification
18 from Waterford.

19 THE WITNESS: Yes.

20 JUDGE YOUNG: The notification from
21 Waterford indicated that they had discovered that they
22 were doing sampling from the recirculation line and
23 they had discovered that that did not meet the ASTM
24 requirement.

25 THE WITNESS: Yes.

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1 JUDGE YOUNG: Their ultimate resolution of
2 that was that their sampling from the recirculation
3 line was comparable to the sampling that was required
4 under ASTM and so their solution was to ask for a
5 change to the technical specifications to allow the
6 sampling to continue from the recirculation line.

7 THE WITNESS: Yes.

8 JUDGE YOUNG: Okay. So the way that TVA
9 became aware of the problem was from the Waterford
10 NER.

11 THE WITNESS: Nuclear Experience Review.
12 NER.

13 JUDGE YOUNG: Then this part I want to see
14 if I understand as well. Once you got this, I don't
15 know whether Waterford had the same situation but once
16 TVA got the NER, you realized that -- I'm not sure if
17 I'm remembering from Waterford or TVA but you couldn't
18 do the sampling from taps because there were no taps
19 installed at the different levels or is that
20 Waterford?

21 THE WITNESS: ASTM calls for if you are
22 going use a tap system, the taps have to be installed
23 at various elevations.

24 JUDGE YOUNG: Right.

25 THE WITNESS: Our particular design had a

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1 single tap and I believe Waterford's had a single tap.

2 JUDGE YOUNG: Okay and so in order to test
3 this in response to the NER, you had to shut down the
4 diesel system.

5 THE WITNESS: Well, you had to declare it
6 inoperable.

7 JUDGE YOUNG: Declare it inoperable. So
8 it was still working.

9 THE WITNESS: It's a distinction --

10 MR. MARQUAND: You can't count on it.

11 THE WITNESS: -- that has meaning relative
12 to license requirements. Something is either operable
13 or not operable and that's a regulatory call.

14 JUDGE YOUNG: But there was no actual
15 change in what was going on.

16 THE WITNESS: No, we would have concluded
17 that the diesel was functional. In reality, it would
18 have performed its function but tech spec
19 inoperability also has elements that you are in strict
20 compliance with the requirements.

21 JUDGE YOUNG: Okay.

22 THE WITNESS: That your surveillance
23 instructions have been performed on time, that you got
24 acceptable results.

25 JUDGE YOUNG: So you had to declare the

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1 diesel system to be inoperable as a result of the NER
2 and learning that TVA also was not following the ASTM
3 requirements.

4 THE WITNESS: Yes.

5 JUDGE YOUNG: That precipitated the 24-
6 hour time period for correcting the situation before
7 a plant shutdown would occur.

8 THE WITNESS: Yes.

9 JUDGE YOUNG: Ultimately am I
10 understanding you correctly to say that TVA resolved
11 this differently than Waterford did?

12 THE WITNESS: Yes, we at the time chose to .
13 use the bottle sampling method that was outlined.
14 What that involved was physically removing man-ways
15 from the fuel tanks and lowering collection bottles to
16 specific depths and collecting quantities of fuel at
17 each depth, mixing them together and then running the
18 laboratory analysis on that composite sample. I
19 suppose we could have tried to pursue the route they
20 did which was to get relief from the ASTM requirement.
21 However we chose not to do that. I can't tell you why
22 we chose that.

23 JUDGE YOUNG: An unusual thing about it
24 was that the 24-hour time limit for the plant shutdown
25 was caused by something you had done but the way you

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1 discovered it, you being TVA, was from this NER from
2 Waterford which was issued for the purpose of finding
3 out whether there were other plants out there that may
4 have the same problem.

5 THE WITNESS: Yes.

6 JUDGE YOUNG: Maybe I'm incorrect in
7 presuming that this might indicate that there were
8 more than one plant who had this same problem.

9 THE WITNESS: Certainly that's the whole
10 purpose of the operating experience program. On one
11 hand, this you would judge as a success. We
12 identified this problem and went and solved it. What
13 was disturbing to us at Sequoyah and I'm speaking of
14 the management team was that we had just completed an
15 extensive review of our surveillance instructions to
16 insure that they met the literal word of the tech spec
17 requirements.

18 JUDGE YOUNG: Because of your previous
19 shutdown the year before.

20 THE WITNESS: Yes, probably about 18
21 months earlier.

22 JUDGE YOUNG: So you should have been
23 especially aware.

24 THE WITNESS: That's right.

25 JUDGE YOUNG: Okay, now I understand.

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1 THE WITNESS: That's what was significant
2 to us because we were right there and should have
3 identified this and helped Waterford out rather than
4 the converse.

5 JUDGE YOUNG: Thank you.

6 MR. MARQUAND: And in fact, that's why the
7 NRC would not grant notice of discretionary
8 enforcement because TVA had just gone through this
9 process and said hey we're committing to reviewing our
10 procedures to make sure they are right as a condition
11 of restart.

12 THE WITNESS: Yes, those were the
13 discussions we had in my office with the senior
14 resident and others on the telephone.

15 MR. MARQUAND: And you said no you blew
16 it. Let me direct your attention to --

17 THE WITNESS: That would be the short end
18 version of what they told us.

19 JUDGE YOUNG: Thank you.

20 MR. MARQUAND: Direct your attention to
21 TVA Exhibit No. 128. If you would refer to page FI-
22 83.

23 THE WITNESS: Yes sir.

24 BY MR. MARQUAND:

25 Q That's the beginning of the surveillance

1 instruction, isn't it? Or it's the revision log?

2 A That's the revision log for the
3 surveillance instruction that was revised to correct
4 this fuel sampling and analysis problem.

5 Q And if you look at pages 81 and 82
6 immediately before that, can you tell us what they
7 are?

8 A 81 is the procedure change form or
9 instruction change form that was processed to
10 incorporate the correct ASTM sampling methods into
11 this procedure. It was part of the corrective action
12 for this problem.

13 Q In 1988, right?

14 A No, this was being processed in 1989 if
15 you look. This was September 18, 1989.

16 Q Okay, so that's the fix.

17 A That's the fix.

18 Q What is page 82?

19 A Page 82 is the cover page of the procedure
20 that had the temporary change made to it.

21 Q Who are the persons who were responsible
22 for preparing and reviewing and approving that
23 procedure?

24 A This indicates that it was Cathy McDonald
25 who was the preparer. Don Adams was the person that

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1 submitted it. The qualified reviewer was Don Amos.
2 Then it was approved by Gary Fiser.

3 Q So this is the procedure that was in
4 error.

5 A This was the cover sheet of the procedure
6 that was in error at the time the problem was
7 identified.

8 Q So does this document refresh your
9 recollection as to whether Fiser was there when the
10 error was made?

11 A It certainly indicates that he was
12 associated with it, yes.

13 JUDGE YOUNG: When you use the word
14 "temporary" a minute ago, what did you mean by that?
15 You were on page 82.

16 THE WITNESS: Yes, this just tells you how
17 much we change technology. At the time, we didn't
18 have word processing and so when we needed to make an
19 immediate change, we told the existing procedure and
20 made what we called a temporary change to it.

21 The way that would look is you would have
22 the cover sheet that was the traveler for it, the
23 existing base procedure that you were making the
24 temporary change to, that would be the pages here, and
25 then if you will look at for example on page 86,

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1 you'll see that the procedure looks kind of jumbled up
2 and there's revision bars out to the right. We used
3 the old fashion word processing of cutting and pasting
4 where you type something on a piece of paper, cut it,
5 tape it on to the page and then Xerox it. So it
6 didn't look clean but it was technically correct.
7 Then you would submit the procedure to the typist
8 group who would then retype the whole procedure to get
9 it to look good and be formatted well.

10 JUDGE YOUNG: And that would be the
11 permanent one?

12 THE WITNESS: That would be the permanent .
13 one. So often times you saw two changes get issued.
14 There would be an interim change and then a final
15 revision. If you look on page 83 for example, you
16 will see that reflected in the revision log where it
17 happened once before for revision 12 because it
18 supersedes interim change form umptyfrats (PH) number.
19 That was reflecting that there was an interim change
20 that had been made sometime prior to that and then
21 this official revision incorporated another one of
22 those interim changes.

23 JUDGE YOUNG: So pages 82 forward were
24 what had occurred in 1988?

25 THE WITNESS: 82 was the cover sheet for

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1 revision 13 which was the revision of record. Page 83
2 tells you that revision 13 was issued on December 13,
3 1988. Then there's a date stamped that shows that
4 they interfiled the interim change form 89-0750 which
5 was the fix to this problem and then it attaches --

6 JUDGE YOUNG: Hold on a second. They
7 interfiled something in 1989 which was the fix for
8 what problem? What do you mean by "interfiled"?

9 THE WITNESS: That was the terminology
10 that they used when they made these cut-and-paste
11 versions of the pages. They interfiled those into the
12 existing procedure books.

13 JUDGE YOUNG: Okay, let me see if I
14 understand. Page 81 is the cover page for what is
15 going to be done in 1989 in response to the NER.

16 THE WITNESS: Right.

17 JUDGE YOUNG: And then what follows are
18 the pages that were most recently typed up in 1988 and
19 by "interfiling" you mean that certain changes were
20 made to the 1988 pages.

21 THE WITNESS: Yes.

22 JUDGE YOUNG: And those changes were made
23 in 1989.

24 THE WITNESS: Right. The mechanics of it
25 you would still have the same cover page for the

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1 procedure which is page 82 which shows revision 13.
2 You would have a revision log that showed on the last
3 line of it that we were interfiling this ICF. Then
4 the pages that follow such as 85 and 86, those are the
5 pages that were interfiled.

6 JUDGE YOUNG: Those are the new pages in
7 1989.

8 THE WITNESS: Right and they are the cut
9 and paste ones with the revision bars noted on the
10 righthand side in handwriting.

11 JUDGE YOUNG: And ICF means?

12 THE WITNESS: Interim Change Form.

13 JUDGE YOUNG: Okay.

14 THE WITNESS: That was just the hard way
15 we used to have to do procedure changes back then.

16 JUDGE YOUNG: Thanks for explaining it.

17 THE WITNESS: Okay.

18 MR. MARQUAND: Mr. Burzynski, I'm going to
19 show you Joint Exhibit 22 page 417. It's the
20 beginning of Mr. Fiser's résumé that he testified was
21 accurate and that he submitted 1996. If you will look
22 at --

23 JUDGE YOUNG: Did you say Joint Exhibit
24 22?

25 MR. MARQUAND: Yes. It's one of the

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1 selection review board notebooks, Your Honor, but it
2 has Mr. Fiser's résumé in it.

3 CHAIRMAN BECHHOEFER: Do you know what
4 page?

5 MR. MARQUAND: Four seventeen. About
6 midway through the page, you see the heading
7 "Chemistry" and "Environmental superintendent,
8 Sequoyah Nuclear Plant, April 1988 to April 1993."

9 THE WITNESS: Yes.

10 BY MR. MARQUAND:

11 Q Does that show that according to Mr.
12 Fiser, he was the chemistry superintendent during the
13 period of time that he would have been responsible for
14 approving the changes to the procedural review that
15 this particular surveillance instruction that was
16 eventually found to be an error?

17 A It certainly indicates that he was the
18 chemistry and environmental superintendent when
19 revisions 12 and 13 were issued for that procedure.
20 It appears from the revision log that the
21 recirculation time problem was introduced in revision
22 12.

23 Q He would have been the superintendent in
24 charge at that time.

25 A Yes.

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1 Q He would have been the superintendent in
2 charge when that error was introduced.

3 A Looking at the dates in that exhibit that
4 you showed me, that indicated that Mr. Fiser was the
5 supervisor during the period of time that revisions 12
6 and 13 were issued for this procedure. Revision 12 in
7 the revision log on page 84 of Exhibit 128 indicates
8 that they were making changes to the recirculation
9 aspects of the sampling for the diesel fuel oil tanks
10 at that particular time.

11 Q When Mr. Fiser was here and testified, I
12 believe he was testifying about the conversation that
13 he had with Mr. Beacon at some later point in time,
14 Mr. Fiser was asserting that Mr. Beacon had some
15 animosity against him for raising safety concerns.
16 Judge Young asked him how do you know that. Mr. Fiser
17 related an account about this particular concern about
18 the diesel fuel storage tanks. He stated that there
19 was a management review meeting and that an individual
20 came out and informed him that management was
21 considering taking disciplinary actions against him on
22 account of this particular issue. Mr. Burzynski,
23 based on your review of the documents and your
24 participation with the site vice president and the NRC
25 on this, was there a basis for discipline against Mr.

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1 Fiser at this point in time?

2 A I wouldn't have been surprised by that
3 given that the problem that was identified here was
4 one that we should have and had an opportunity to
5 avoid. It did cause us problems in our relationship
6 with our regulator in that it indicated that we
7 weren't as thorough with something that we thought we
8 had been.

9 Q But why would the discipline be directed
10 at Mr. Fiser?

11 A My guess would be, not having been privy
12 to any of those discussions, that they were holding
13 him accountable for the technical reviews that should
14 have been done for this procedure to establish that it
15 was technically adequate to implement the technical
16 specification requirement.

17 MR. MARQUAND: I'm going to show you now
18 a document which I had marked as TVA Exhibit No. 126.
19 Mr. Burzynski, if you will look first at TVA Exhibit
20 146.

21 CHAIRMAN BECHHOEFER: 146?

22 MR. MARQUAND: Look at 146.

23 THE WITNESS: Yes sir.

24 BY MR. MARQUAND:

25 Q There's a slash through the bottom half of

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1 the page, the block entitled "Corrective Action." At
2 the bottom it says "superseded" and there's somebody's
3 initials and a date. What's that mean?

4 A What that indicates is that the corrective
5 action plan that had been previously been reviewed and
6 approved by Mr. Adams was superseded. If you look
7 again, we didn't have the ability to revise the forms
8 other than to draw lines through them and duplicate
9 paperwork. The first page of Exhibit 126 is that same
10 form but it has the updated section B which indicates
11 that the corrective action plan is now covered by LER
12 or licensing event report 327/89025.

13 Q All right. So this is the closure then of
14 the problem.

15 A Yes.

16 Q It says that it was redundant with this
17 LER, LER being a licensing event report.

18 A Yes.

19 Q So this was reported to the NRC.

20 A Yes sir.

21 Q Was there an analysis and a reporting to
22 the NRC about the cause of this problem?

23 A Yes, the cause of the event is one of the
24 things you have to identify in the LER and it's listed
25 on page eight.

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1 Q Page FI?

2 A FI?

3 Q Six, I believe. Is that right?

4 A Eight.

5 JUDGE YOUNG: Does it say "4" of "19" at
6 the bottom?

7 THE WITNESS: It says "6" of "19."

8 MR. MARQUAND: Okay, I see where are you
9 are.

10 THE WITNESS: And there's a section in
11 there entitled "Cause of the Event."

12 BY MR. MARQUAND:

13 Q Let's go in the sequence I started. Let's
14 start with the page FI-6 first.

15 A Okay.

16 Q Because it talks about root cause.

17 A That's the summary.

18 Q So what does it summarize and say the root
19 cause was?

20 A It was an inadequate procedure resulting
21 from the failure of chemistry personnel to incorporate
22 ASTM D-270-1979 requirements into the procedure.

23 Q All right. So that's the problem we've
24 been talking all along which is the procedure didn't
25 follow the ASTM standards.

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1 A Yes.

2 Q That was caused by the chemistry personnel
3 who failed to do that.

4 A Yes sir.

5 Q Now if you would go back to the page you
6 wanted to look at which is page FI-8.

7 A Yes sir.

8 Q And you were going to point out to us
9 where it also talked about the cause of the problem.

10 A The page that we had just discussed is a
11 abstract or summary of the entire document. This
12 would be the central statement.

13 Q All right.

14 A This says "the root cause of this event
15 was determined to be an inadequate procedure resulting
16 from failure of chemistry personnel to perform an
17 adequate technical review of both ASTM requirements
18 and tech specs and accordingly failed to determine
19 that this method would not produce a representative
20 sample."

21 Q Did plant management concur in this
22 analysis?

23 A Yes sir. If you look at page 11 and page
24 12, you'll see all of the different people that
25 reviewed this document and concurred. Yes sir.

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1 Q And did Mr. Fiser concur that that one of
2 the causes? Did he sign this as concurring or did
3 someone sign on his behalf?

4 A No, Don Adams signed.

5 Q For Gary Fiser?

6 A For Gary Fiser.

7 JUDGE YOUNG: Could that have indicated
8 that he was doing it at the direction of Mr. Fiser or
9 does that have some different significance? What
10 significance does that have to your knowledge if you
11 know?

12 THE WITNESS: The only thing I can tell
13 you just from the experience of handling hundreds of
14 these documents is that if somebody was not available
15 for signature, we got the person that had the
16 delegated authority to sign for the document when it
17 was going through the process. For example, if you
18 look on page 11 or the page before, you will see that
19 Mr. Bynum was not available and Mr. LaPoint had
20 signature authority and signed in his absence. It's
21 not uncommon to have that.

22 CHAIRMAN BECHHOEFER: Is there a
23 difference though where there's a "for" on page FI-11
24 and there's no Mr. Adams?

25 THE WITNESS: No, I think that was more of

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1 a style by person signing it.

2 CHAIRMAN BECHHOEFER: Could it have been
3 that Mr. Fiser had gone on to headquarters by that
4 time?

5 MR. MARQUAND: He didn't get sent downtown
6 for another two or three years after that.

7 THE WITNESS: Actually there is a "for"
8 related to the signature for Mr. Fiser. It's just out
9 past the date.

10 CHAIRMAN BECHHOEFER: Okay, I see it.

11 JUDGE YOUNG: What page are you referring
12 to there?

13 THE WITNESS: Page 12. Just to the right
14 of the date, you can see Mr. Adams.

15 CHAIRMAN BECHHOEFER: It's hard to read
16 but it's there.

17 MR. MARQUAND: These signatures indicate
18 that these individuals or that these positions at
19 least concur in the handling and analysis of this
20 problem. Is that right?

21 THE WITNESS: Yes sir.

22 BY MR. MARQUAND:

23 Q It doesn't indicate that any of these
24 individuals is taking credit for identifying the
25 problem. Just from their standpoint, they concur in

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1 the way it's being disposed of.

2 A Yes, actually each different person we
3 would task them with a specific aspect of the
4 concurrence. For example, Mr. Byrd, project controls
5 finance manager, had to review all commitments to make
6 sure that there was adequate funding so that we didn't
7 run into a problem with making a commitment that was
8 unfunded. Whereas, the plant manager and the site
9 director had a more global responsibility with
10 concurrence that they agreed with the analysis, the
11 corrective action, the cause. So the lower you went
12 in the organization, the more specific their
13 concurrence tied to.

14 Q And if you look at page FI-7, the page is
15 headed "Description of Event."

16 A Yes sir.

17 Q If you look at the third full paragraph,
18 you see the language that says "this condition was
19 identified during an evaluation of a nuclear
20 experience review report concerning a problem another
21 nuclear power facility encountered." Do you see that?

22 A Yes.

23 Q So when all of these individuals were
24 signing off, they were concurring at least from their
25 own organizational interests in these statements.

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1 A Yes.

2 MR. MARQUAND: Your Honor, I tender TVA's
3 Exhibit No. 126.

4 MR. DAMBLY: No objection.

5 CHAIRMAN BECHHOEFER: Without objection,
6 TVA Exhibit No. 126 will be admitted.

7 (The document referred to having
8 previously been marked for identification
9 as TVA's Exhibit No. 126, was received
10 into evidence.)

11 MR. MARQUAND: Now to summarize, Mr.
12 Burzynski, we've looked at TVA Exhibit No. 146, TVA
13 Exhibit No. 128, 147, 126 all concerning the problem
14 with the diesel fuel storage tanks. Is there any
15 indication in any of these documents or do you have
16 any independent knowledge that Mr. Fiser is
17 responsible for identifying or raising or documenting
18 that issue?

19 THE WITNESS: No sir, I don't have any
20 indication that he identified it or was involved in
21 it.

22 BY MR. MARQUAND:

23 Q And based on your experience with this
24 issue, who did identify it and pointed it out and
25 directed it be written up?

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1 A I would have to say a primary person that
2 was involved in that was Mr. Jim Smith. I get to that
3 by the fact that he identified the particular
4 operating experience item as applicable, conducted the
5 initial research that resulted in that handwritten
6 memo to Mr. Fiser and then I draw your attention to
7 look at page 259 of Exhibit No. 147. If you look
8 under the sequence of events on August 10 when Mr.
9 Smith first gave them the advance copy, it's noted
10 that "at this time chemistry personnel believed that
11 the design allowed recirculation of the tanks and that
12 the NER item did not apply to Sequoyah." On the 11th,
13 Mr. Smith wrote the handwritten note indicating to
14 them that he thought that it did apply and
15 specifically mentioned the surveillance instruction
16 review and the fact that they didn't have the ASTM
17 standards. If you look on the sequence of events on
18 the 14th --

19 CHAIRMAN BECHHOEFER: Which page are you
20 on?

21 THE WITNESS: I'm looking at page 259 of
22 Exhibit 147. That's the final event report. It
23 indicates that their focus in chemistry was "the
24 timeframe was utilized to verify that the NER item did
25 not apply to Sequoyah and to prepare the appropriate

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1 response." This means that a justification that it
2 didn't apply. However they found out what I believe
3 Jim Smith knew on the 11th that it was applicable and
4 they initiated the CAQR. From that sequence, I think
5 that Mr. Smith was engaged in bringing it to their
6 attention and telling them there was something they
7 needed to look hard at.

8 BY MR. MARQUAND:

9 Q You mentioned that Mr. Smith worked for
10 you.

11 A Yes sir, he did.

12 Q Did anybody take any sort of adverse
13 action against him for raising this and pushing this
14 issue?

15 A No, in fact he still works for me at the
16 Sequoyah organization.

17 Q One last matter. You said that you worked
18 as a licensing manager of Sequoyah and you had
19 interface with Gary Fiser while he was chemistry
20 superintendent.

21 A Yes sir.

22 Q Did you have an opportunity to formulate
23 any opinion as to his effectiveness as a manager?

24 A Yes, I did formulate some opinions on
25 that. I'll draw your attention to some documentation

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1 and explain one thought that I had. Each group was
2 expected to be self-sufficient at Sequoyah in terms of
3 being able to handle their own procedure changes and
4 to handle their own administrative work. Mr. Fiser's
5 group was not able to do that relative to reviews of
6 their procedures.

7 I would say probably sometime in 1988, we
8 got a significant violation on 50.59 where we had made
9 an error as a site. As a result of that, we
10 established --

11 JUDGE YOUNG: What's 50.59? Excuse me.

12 THE WITNESS: 10 CFR 50.59. It's the
13 evaluations of changes.

14 CHAIRMAN BECHHOEFER: And what year was
15 this?

16 THE WITNESS: I believe it would have been
17 1988 but I'm not certain of the exact date in that.
18 But what I do know is that --

19 MR. MARQUAND: And what was the
20 consequence of doing that?

21 THE WITNESS: We got a level three
22 violation.

23 MR. MARQUAND: As a result how did you fix
24 it?

25 THE WITNESS: One of the things we did at

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1 the site was we instituted a second level of review
2 for all of the 50.59 evaluations and the second level
3 reviewers had to pass a pretty stringent qualification
4 test and go before a review board and be certified as
5 people who were able to apply the standards and be
6 tough about them. Mr. Fiser was never able to get
7 people qualified to do this second level review.

8 The reason I know that is as I mentioned
9 earlier his office was adjacent to mine. So by
10 sitting next to him I also had an employee I hired out
11 of chemistry three years earlier, Mr. Jim Proffitt.
12 If you look on page 95 of Exhibit No. 128, you'll see .
13 the 50.59 review for the procedure change that fixed
14 this problem. You'll see that the level 2 reviewer
15 was Mr. Proffitt. For the period of time in 1989 when
16 I was the site licensing manager and Mr. Fiser was
17 there, I had to do his level 2 reviews because he
18 didn't have anybody qualified. It was one of those
19 things. It was additional work. It was always
20 emergent work. No advanced warning and all these
21 urgent items.

22 I was always a little disappointed in his
23 ability to manage that part of his job
24 responsibilities because it impacted my work group by
25 us having to do this work for his group. That's just

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1 an example of where that's documented. That occurred
2 throughout the period of 1989. In 1990 I went to
3 Browns Ferry and I don't know if my replacement had
4 the same experience with him or not.

5 JUDGE YOUNG: Am I correct in
6 understanding that part of your reference to Mr.
7 Proffitt was to indicate that Mr. Fiser was unable to
8 get Mr. Proffitt sufficient training that he could
9 qualify when he was under him but you were able to --

10 THE WITNESS: No. Because the level 2
11 review didn't exist when Mr. Proffitt worked in
12 chemistry. That was something that came about like I
13 said I think in 1988. It was after we restarted. So
14 I'm guessing it was late 1988. The reason I pointed
15 it out was I had an expectation for my employees to
16 get qualified, to take the necessary training and to
17 pass the test and to develop the skills and attributes
18 necessary to be a good level 2 reviewer.

19 JUDGE YOUNG: Where was the training done?

20 THE WITNESS: It was done at TVA at our
21 training center.

22 JUDGE YOUNG: So you are saying that Mr.
23 Fiser never tried or was never able to --

24 THE WITNESS: My experience was that I
25 thought he was ineffective at getting people

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1 qualified. Whether that was technically or just even
2 scheduling them or getting the right kind of
3 attributes to pass what we called the "murder board"
4 where you wanted people to be strong enforcers of
5 standards and demonstrate that. I don't know which
6 one or all of those.

7 But what I do know is that he had no level
8 2 reviewers and I had to do that work for his group
9 during that period of time. This is just an example
10 of it. But as a manager it was disruptive work to me
11 and extra work that my peer wasn't able to become
12 self-sufficient in.

13 JUDGE YOUNG: Thank you.

14 MR. MARQUAND: Could we take a two minute
15 break?

16 JUDGE COLE: How about five minutes?

17 MR. MARQUAND: Five is good to me.

18 JUDGE YOUNG: We can go off the record.
19 How much long do you anticipate with Mr. Burzynski?

20 MR. MARQUAND: I want to take a break and
21 assess where we are.

22 CHAIRMAN BECHHOEFER: Off the record.

23 (Whereupon, the foregoing matter went off
24 the record at 4:43 p.m. and went back on
25 the record at 4:55 p.m.)

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1 CHAIRMAN BECHHOEFER: Back on the record.
2 The person you just saw sitting over on my left is
3 Brandon Moss, one of the law clerks for the Board. I
4 guess he'll be back in shortly.

5 JUDGE COLE: He's on an errand of mercy.

6 CHAIRMAN BECHHOEFER: Yes. In conjunction
7 with one or two questions I asked about timing and Mr.
8 Fiser's presence, I perhaps was thinking of his
9 assignment out into management. What was that
10 timeframe?

11 MR. MARQUAND: That occurred, Your Honor,
12 in April '91.

13 CHAIRMAN BECHHOEFER: So that was later as
14 well. Okay.

15 MR. MARQUAND: We only addressed this
16 because as you recall, the third time Mr. Fiser was
17 recalled to testify after discussing other protected
18 activities in response to a question I believe from
19 Judge Young about why he thought Mr. Beecken had
20 animosity towards it. He related this particular
21 event and said that it was symptomatic he thought of
22 everything that had happened to him at TVA. He didn't
23 relate it to Mr. Beecken. But -- suggested that he
24 was responsible for raising and identifying this issue
25 and said he couldn't believe that they were proposing

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1 disciplinary action against him. And then he
2 indicated that he had some or whatever responsibility
3 he thought he had for identifying this issue. That's
4 the purpose of Mr. Burzynski --

5 CHAIRMAN BECHHOEFER: Okay.

6 MR. MARQUAND: To show, no, Mr. Fiser
7 didn't identify this issue, didn't raise it, didn't
8 document it. It was done through nuclear licensing.
9 The chemistry had a difficult time owning up to this
10 issue.

11 CHAIRMAN BECHHOEFER: Okay.

12 MR. MARQUAND: That concludes our
13 examination of Mr. Burzynski.

14 CHAIRMAN BECHHOEFER: Mr. Dambly or Ms.
15 Euchner.

16 MR. DAMBLY: Yes. Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. DAMBLY:

19 Q Mr. Burzynski, when did Unit 2 restart?

20 A Unit 2 restarted in May 1988.

21 Q In May. And the SI review was done prior
22 to that.

23 A It was done prior to that.

24 Q I see. So all this stuff that Mr.
25 Marquand went through to try to make Mr. Fiser

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1 responsible for the SI review was all done before the
2 restart was done. Was it not?

3 A I can give you the dates. It restarted in
4 May '88 and this review would have been done before
5 that.

6 Q Right. Before Mr. Fiser was Chemistry
7 Superintendent. Isn't that correct?

8 A Yes.

9 Q So we just wasted a lot of our time
10 discussing why he was responsible for something he
11 wasn't there for. Isn't that correct?

12 A I don't know that we wasted our time. The
13 question I thought I was answering was who identified
14 this issue in 1989 and how it was identified in '89,
15 not where the problem came from earlier than that.

16 Q Well, didn't Mr. Marquand spend a lot of
17 time trying to refer you to documents to tell you that
18 Mr. Fiser was the one who should have discovered this
19 during the SI reviews?

20 A Well, he did ask me some questions on
21 that. All I can tell you in terms of the answer is
22 that Mr. Fiser was responsible when revisions 12 and
23 13 of this procedure were issued and those involved
24 this same area. So one could argue that those were
25 additional opportunities to have identified the

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1 inconsistency.

2 Q Those were not the SI review.

3 A Those were in addition to that. Yes, sir.

4 Q But the SI review was done prior to the
5 restart.

6 A It was done prior to the restart.

7 Q These were issued after the restart.

8 A Yes. Revision 12 was issued in June '88
9 and revision 13 was issued in December '88.

10 Q So Mr. Fiser being involved in the ones in
11 June and December have absolutely no bearing
12 whatsoever on who was responsible for the screw-up on
13 the SI review. Isn't that correct?

14 A In terms of the SI review, yes. In terms
15 of having a procedure that was at fault, maybe that's
16 a different answer.

17 Q And Mr. Goetcheus was Mr. Fiser's preceдер
18 as Chemistry Superintendent at Sequoyah.

19 A I don't know.

20 Q You don't know. You sat next to Mr. Fiser
21 but the guy that was there before him you didn't sit
22 next to.

23 (No response.)

24 Q Okay. Now the issue that came out of the
25 NER had to do with sampling and recirc, whether you

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1 used bottle sampling or whether you use taps.
2 Waterford had a problem, but they didn't think they
3 had a problem because they were recircing and they
4 thought that was appropriate. Is that right?

5 A Waterford identified that they weren't in
6 literal compliance. They also concluded that they
7 thought they still were getting a representative
8 sample even though they weren't in compliance. They
9 then proceeded to pursue a change to the tech specs so
10 that it would literally match the method that they
11 wanted to use for sampling.

12 Q When this was first brought to the
13 attention of the people of Chemistry at Sequoyah, they
14 thought they didn't have the problem. They thought
15 the research was appropriate and there wasn't an ASTM
16 violation. Is that correct?

17 A That would be my reading of the sequence
18 of events log.

19 Q Right. The real problem that was
20 discovered subsequently when Mr. Fiser and his staff
21 were involved wasn't the issue that was raised at
22 Waterford. It was the design that instead of having
23 a single diesel storage tank, each was made up of four
24 separate tanks that didn't have proper recirculation
25 between them for sampling purposes. That's not the

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1 Waterford issue. Is it?

2 A I think that's an additional complication
3 of the Sequoyah design that maybe precluded us
4 pursuing the same fix as Waterford.

5 Q That's what caused you to be in the LCO
6 with the 24-hour --

7 A No. I don't think it was the design of
8 the tanks themselves. It was the fact that the recirc
9 line did not give a representative sample regardless
10 of whether it was we didn't have three or four taps
11 into the side of the tank or there were four separate
12 tanks.

13 Q But the problem at Sequoyah wasn't because
14 the recirc was wrong. It was because with those four
15 tanks it wasn't discovered until this was done. It
16 wasn't discovered by Mr. Smith. You didn't know you
17 had four tanks instead of one for each tank. You
18 didn't know there wasn't recirculation between the
19 four tanks.

20 A I think the issue was that the recirc line
21 didn't give you a representative sample.

22 Q Because of the design of the tanks.

23 A I think it was a combination. The design
24 of the tanks contributes to it, but we also don't have
25 additional taps into the side of the individual tanks.

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1 Q And you didn't even know going in you had
2 separate tanks.

3 A I personally did not know that.

4 Q Mr. Smith didn't know that either. He
5 didn't identify that.

6 A I don't believe he did either.

7 Q That was the Chemistry people working for
8 Mr. Fiser who was listed as the Event Manager. Is
9 that correct?

10 A I think when they finally pulled the
11 physical drawings they found that not only did the
12 recirc line not have four separate or three separate
13 elevation taps, it also didn't connect to all four of
14 the separate tank modules.

15 Q When you said that you can see why they
16 might have disciplined Mr. Fiser, it wasn't Mr. Fiser
17 that was responsible for the screw-up during the SIs.

18 (No response.)

19 JUDGE YOUNG: Surveillance.

20 THE WITNESS: I think the answer I gave
21 you was --

22 MR. DAMBLY: What was it? Surveillance
23 instruction.

24 JUDGE YOUNG: Instruction. Is that the
25 word?

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1 THE WITNESS: Yes, Your Honor. I think
2 the answer I gave you was the only one I can stand on.
3 The review was done when I said it was done, and there
4 were subsequent revisions to this procedure that were
5 done after that which involved the recirc line
6 sampling. There wasn't a copy of the ASTM standards
7 available. That's the best answer I can give you.

8 BY MR. DAMBLY:

9 Q The SI review prior to restart, that was
10 a base up review of all the instructions and to make
11 sure the whole thing you had committed to NRC was
12 going to check it all out and make sure they all
13 worked and they all complied.

14 A That's true. Every department on-site
15 that owned a surveillance instruction was required to
16 do that review and to establish that their procedures
17 were correct.

18 Q And that's what's listed as the root cause
19 of the problem. That and the bad design to start
20 with.

21 A I think the root cause, and we can read it
22 again, the root cause said "interpretation of the
23 requirements for sampling failed to identify that dip
24 sampling was the only acceptable method to satisfy
25 ASTM D270. Recirculation sampling was not allowed."

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1 It doesn't say when we missed that review or how many
2 times we missed that review or how many times we
3 should have corrected it. It just says we didn't
4 understand that.

5 Q If I could turn your attention to TVA
6 Exhibit 128.

7 A Yes, sir.

8 Q The third page in. The instruction from
9 Mr. Smith to Mr. Fiser down to item number two which
10 Mr. Marquand tried to read was how did Mr. Fiser miss
11 this in the SI review. The question is how was this
12 missed in the SI review program. Isn't that correct?

13 A Yes, sir.

14 Q And that's the one Mr. Fiser wasn't there
15 for. Isn't that correct?

16 A That's true.

17 Q In point of fact, you did indicate during
18 your testimony that management was very upset because
19 this ended up in the 24-hour mode where you might have
20 had to begin shut down.

21 A I don't know if I would use those exact
22 words. But certainly it was a significant issue.
23 There's no question about it.

24 Q How about TVA management was not happy
25 with the actions taken?

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1 A If that's what I said, I didn't write down
2 exactly what I said. But certainly they were not
3 happy with the situation, and it was a significant
4 issue. There's no question about it.

5 Q And since the issue that was raised and
6 asked about was why was this missed in the SI review,
7 would it be inappropriate for Mr. Fiser to be
8 concerned why he's being held responsible for
9 something he didn't do? He was a convenient whipping
10 boy for a problem that resulted in almost a plant
11 shutdown.

12 A I don't know if that was in anybody's
13 mind. I can tell you that from looking at the
14 instruction revision log there were subsequent
15 revisions involving the recirculation line that were
16 made on his watch. Those were incorrect. They were
17 expected to be correct too. So if you want to just
18 time data to the surveillance instruction review, you
19 may be missing the expectations for doing a thorough
20 review of the procedure whenever you're making a
21 revision.

22 Q Isn't it true that during your Direct
23 Testimony you spent all the time and Mr. Marquand
24 spent all the time talking about the important thing
25 and the reason that the NRC didn't give you an

1 enforcement discretion NOED was because you had this
2 major from the ground up SI review and you'd missed
3 it? It was your own fault. That's what led you to
4 being in the situation you were in.

5 A That is true.

6 Q And none of that was Mr. Fiser's watch.

7 A No. I think that was meant to tell you
8 that it was a significant problem and why it was
9 significant.

10 Q I think it's fairly clear it was meant to
11 blame Mr. Fiser for something he wasn't there for.
12 Mr. Marquand used his name repeatedly and tried to say
13 he was the one there. You agreed with him. First you
14 said you didn't know. Then he showed you a few
15 documents. Oh, yes. He was the one that was there.
16 He wasn't there. Was he?

17 A He was there during the period of time he
18 showed me in there.

19 Q That's not when the SI review was done.

20 A The SI review program.

21 Q Right.

22 A I agree with you on that.

23 Q Okay.

24 A He was there when revisions 12 and 13 were
25 made. So I guess you're suggesting that he's not

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1 accountable for the quality of those procedure
2 revisions.

3 Q Are they the ones that led to this? Was
4 that in the root cause? Was that the question that we
5 just showed you?

6 A The root cause does not tell me exactly
7 which procedure review was in error. I mentioned the
8 SI review because that was the one NRC indicated to us
9 was the reason we weren't going to be afforded any
10 opportunities for enforcement discretion which made
11 the problem that much more significant from an
12 economic standpoint.

13 Q When it was discovered by Mr. Fiser and
14 those on his staff what the real problem with the four
15 separate tanks had caused so the recirc design
16 wouldn't work anyway, that's what led you to be in
17 really noncompliance. You couldn't even argue
18 compliance at that point.

19 A I don't think we could have argued
20 compliance from the get-go.

21 Q Would Waterford argue? They went in for
22 a change and said we're accomplishing the same thing.
23 You couldn't even say we're accomplishing the same
24 thing with the design that was done.

25 A I would agree with you that our design was

1 less likely to give a representative sample. But we
2 also did not do what Waterford did which was to make
3 comparisons between the two sampling methods to
4 establish the degree of representativeness. We did
5 not pursue that. I guess that's an option that
6 Chemistry could have pursued, but we didn't. We
7 looked at the design and made decisions off of that.

8 But I don't necessarily agree with you at
9 the suggestion that it was only the design of the four
10 tanks that led to the noncompliance. I think if you
11 read the standard you'll find that you have to know
12 the details of the sampling connections regardless of
13 whether you have one tank or four. Mr. Fiser's group
14 did not know that until they did this research. They
15 also did not have a copies of the ASTM standard until
16 they went and got them. So how they were establishing
17 compliance all along, I don't know. I think that was
18 a question that was on the table and was a concern.

19 Q How was it that the compliance was
20 established during the SI program review?

21 A I don't know.

22 Q It wasn't there then.

23 A It was not there then. It wasn't there at
24 the initial review. It wasn't there when they made
25 revision 12 which addressed recirculation times. It

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1 wasn't there for revision 13.

2 Q Did anyone suggest firing whoever was
3 responsible for the SI review program?

4 A I don't know that anybody suggested firing
5 anybody.

6 Q Did you ever hear of firing for effect
7 used at TVA? Mr. Bynum and Mr. Beecken.

8 A No.

9 Q We'll change subjects so we all get out of
10 here on time. I'm going to talk to you about your
11 duties presently in the -- What are you now?

12 A I'm the Corporate Licensing Manager.

13 Q That's what I was talking about. Your
14 responsibilities of that include attendance at
15 predecisional enforcement conferences.

16 A Yes, sir.

17 Q At a predecisional enforcement conference,
18 who determines for TVA who will be there and who will
19 speak and what they will say?

20 A The final decision would rest with our
21 Chief Nuclear Officer.

22 Q So when you come into an enforcement
23 conference the people that are there and speak, they
24 speak on behalf of TVA.

25 A Yes.

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1 Q And they're authorized to speak on TVA's
2 behalf. Is that correct?

3 A Yes, sir.

4 MR. DAMBLY: I'll go into one other area.
5 But before I do, since we seem to have Staff Exhibit
6 135 which is the transcript of predecisional
7 enforcement conference, we had some kind of strange
8 ruling the last time that only certain pieces could be
9 talked about or something. I would just at this time
10 move to remove any restrictions from that.

11 Mr. Burzynski has made it real clear that
12 the statements by TVA at the predecisional enforcement
13 conference constitute admissions by TVA and can be
14 used for any purpose. Anything in there. There was
15 a ruling that only things that had been shown to
16 people and talked about could somehow be used as I
17 recall. It was admitted but with some kind of caveat.

18 Judge Young suggested that we might be
19 able to establish that they in point of fact were
20 admissions. I think Mr. Burzynski has made it very
21 clear that they spoke for and were authorized to speak
22 for and therefore those would constitute admissions
23 anything in that without restriction can be used in
24 this proceeding.

25 CHAIRMAN BECHHOEFER: Well, is that

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1 irrespective of relevance to this proceeding or wasn't
2 there anything else?

3 MR. DAMBLY: No. It's obviously relevant
4 to this proceeding because that's the enforcement
5 conference on the issues in this proceeding.

6 CHAIRMAN BECHHOEFER: Okay.

7 MR. DAMBLY: That's what I'm talking
8 about. And for some reason on that document only,
9 there was a restriction on use pertaining to only
10 things that we specifically asked somebody about.

11 (Discussion away from the microphones.)

12 JUDGE YOUNG: It's not up to us to object.
13 Mr. Marquand, do you have any objection?

14 MR. MARQUAND: I don't object because
15 we've already established that somebody has something
16 they want to bring to the Board's attention, that's
17 fine. But just to dump in volume after volume of
18 things that were taken in some other context doesn't
19 give any party fair notice of what the issues are or
20 what they intend to rely off on or what their
21 contentions are. Certainly the Staff has continued to
22 skate around as to what its positions are. If they
23 want to make a contention, let them make a contention
24 and say what they're relying upon or what they're
25 particularly asserting.

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1 CHAIRMAN BECHHOEFER: Well, when they
2 supply their proposed timing they will have to --

3 MR. MARQUAND: I think we're entitled,
4 Your Honor, to have an opportunity to address their
5 contentions. Unless they come forward and say here's
6 the evidence we want for the Board to rely upon, we at
7 TVA don't have an opportunity to address it. They
8 just come in and dump stacks of depositions and
9 previous hearings, transcripts in the record. That's
10 not fair notice to us what their contentions are.

11 CHAIRMAN BECHHOEFER: Well, how long is
12 the transcript and how many different subjects does it
13 cover?

14 MR. DAMBLY: It covers the issues in this
15 case; the predecisional enforcement conference in this
16 case in which TVA was asked to come in and explain why
17 they did to Mr. Fiser what they did to Mr. Fiser.
18 Everything that they've told us is an admission on
19 their part.

20 CHAIRMAN BECHHOEFER: How lengthy is it?

21 MR. DAMBLY: I don't know.

22 CHAIRMAN BECHHOEFER: Approximately.

23 MR. DAMBLY: Maybe 100 pages. I don't
24 know.

25 MS. EUCHNER: Almost 200.

1 CHAIRMAN BECHHOEFER: Okay.

2 MR. MARQUAND: And by comparison, Your
3 Honor, we have the depositions and statements of all
4 these other witnesses that they continue to dump in
5 the record without really saying here's what we really
6 want the Board to consider, here's what we're
7 contending with respect to it. It's not fair notice
8 to TVA.

9 MR. DAMBLY: And, again, we've gone
10 through this many times.

11 MR. MARQUAND: And I thought we already
12 had a resolution.

13 MR. DAMBLY: These are admissions. No,
14 there was a limitation on this document only. Judge
15 Young even suggested that potentially this could be
16 caused through admissions. I used Mr. Burzynski to
17 make it real clear that they meet the legal definition
18 of admissions. As such, there's no restrictions on
19 them. They said what they said. They know what they
20 said. If they don't know what they said, that's not
21 my problem.

22 JUDGE YOUNG: I'm just looking back to
23 what we discussed when this came up before.

24 (Judges consult.)

25 MR. DAMBLY: I guess while everybody is

1 looking I would note also TVA moved in the Staff's
2 admissions and we didn't object. This is an
3 admissions as well. It shouldn't be treated any
4 differently

5 JUDGE YOUNG: When you say the "Staff's
6 admissions" what are you referring to?

7 MR. DAMBLY: They had during discovery a
8 request for admissions. We answered and admitted
9 various things and that was moved in as an exhibit in
10 this proceeding.

11 JUDGE YOUNG: You're saying that the
12 transcript of the predecisional enforcement conference
13 is the equivalent of admissions.

14 MR. DAMBLY: Yes. We just heard Mr.
15 Burzynski. People came to the NRC, to the Staff to
16 explain to us speaking for and on behalf of TVA what
17 their position and what they did and why they did it.
18 That's an admission.

19 JUDGE YOUNG: But you're not arguing --

20 MR. DAMBLY: And Mr. Marquand was there.
21 So he's certainly not surprised by what happened.

22 JUDGE YOUNG: But you're not arguing that
23 you made requests for admissions and then they
24 admitted that.

25 MR. DAMBLY: No. I'm not arguing that.

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1 But an admission is an admission whatever form it
2 comes in. It's not treated differently.

3 (Judges confer.)

4 MR. MARQUAND: Your Honors, I would just
5 say that we're down to the 25th day of this hearing.
6 I am surprised that Counsel is still rearguing the
7 same matters and why we can't move on with this
8 proceeding.

9 JUDGE YOUNG: Are you ready?

10 CHAIRMAN BECHHOEFER: Yes. The Board has
11 decided to remove whatever the restrictions are.
12 Staff Exhibit 135 will be just admitted.

13 (The document referred to having
14 previously been marked for identification
15 as Staff's Exhibit 135, was received into
16 evidence in full.)

17 MR. DAMBLY: Thank you, Your Honor.

18 CHAIRMAN BECHHOEFER: Judge Young has a
19 further statement I believe.

20 JUDGE YOUNG: Yes. Obviously the rules of
21 evidence do not apply, but I believe I said before
22 when this came up that the better practice is to give
23 a party the opportunity to address a particular issue
24 and then point out a prior inconsistent statement, et
25 cetera, if there is one. So for instances where that

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1 may not have been done, I might be inclined to give
2 this less weight. But with that said, I'm not going
3 to --

4 MR. DAMBLY: But again, this isn't a prior
5 inconsistent statement. It's an admission. There's
6 a difference. It comes in for whatever use it is.
7 It's an admission. We're not necessarily saying it's
8 inconsistent, but it's an admission. They said it.

9 JUDGE YOUNG: I understand your arguing
10 that. I think we've made our ruling, and we probably
11 need to move on.

12 MR. DAMBLY: All right.

13 BY MR. DAMBLY:

14 Q Mr. Burzynski, are you familiar with 10
15 CFR 50.9?

16 A Yes, sir.

17 Q What is it?

18 A 50.9 is the complete and accurate
19 requirements.

20 Q You're aware that implies to enforcement
21 conferences.

22 A Yes, sir.

23 Q So when you came in on TVA's behalf and
24 were asked why you took actions against Mr. Fiser
25 under 50.9 you were required to give us complete and

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1 accurate information. Is that correct?

2 A Yes, sir.

3 Q So if you had five reasons you took the
4 action, you're required to tell us all five reasons.
5 Is that correct?

6 A Yes, sir.

7 Q You're not free to have reasons you did
8 something that you don't tell us about under 50.9.

9 A Okay.

10 Q So when you came in, you expressed the
11 reasons you did the action and what happened to Mr.
12 Fiser and you gave complete answers to everything. We
13 can look at the enforcement conference and find out as
14 of that day your position, exactly why you did what
15 you did in regard to Mr. Fiser.

16 A When you say "me" are you referring to me
17 or the company?

18 Q TVA.

19 A Yes. I would expect so.

20 Q All right. Thank you.

21 MR. DAMBLY: I have no further questions.

22 JUDGE YOUNG: Do you have a question?

23 MR. MARQUAND: I have one more question,

24 Your Honors.

25 CHAIRMAN BECHHOEFER: Okay.

REDIRECT EXAMINATION

BY MR. MARQUAND:

1
2
3 Q Mr. Burzynski, Counsel that questioned you
4 was trying to suggest that the problem with the diesel
5 generator fuel storage tanks had to do with the fact
6 that there were four tanks, that it wasn't related to
7 sampling methods. Would you look at TVA Exhibit 147
8 at page FI-289 please?

9 A Yes, sir.

10 Q What is that?

11 A That's a part of the ASTM standard that
12 discusses a tap sampling method. One of the
13 requirements for tap sampling methods is listed under
14 16.1. It indicates that you need at least three
15 sampling taps placed equal distance throughout the
16 tank height to satisfy a tap sampling method.

17 Q If that was the method you were going to
18 use.

19 A Yes.

20 Q Regardless of whether TVA had one, two,
21 four, or 20 tanks, were the tanks equipped with three
22 sampling taps?

23 A No.

24 Q All right. Now if you'll look at TVA
25 Exhibit --

1 CHAIRMAN BECHHOEFER: Any of them?

2 THE WITNESS: No.

3 BY MR. MARQUAND:

4 Q If you'll look at TVA Exhibit 126, page
5 10, what's that?

6 A That's a drawing in plain view of the four
7 tanks that are embedded in concrete that comprise the
8 diesel generator storage tank.

9 Q And the fact that the drawing is there,
10 the fact that there's four tanks there as opposed to
11 one at Waterford, was that the nature of the problem?

12 A Well, I think it added to the complexity.
13 What we identified in the LER is that the
14 recirculation line drew from tank two I believe. Let
15 me read the text here. "It took suction from tank two
16 and returned it to tank three." So you had the recirc
17 line that we were using for sampling just drawing from
18 tank two and pumping back to tank three. So there is
19 some question of whether it properly, you know, sample
20 tanks one and four.

21 In addition, it didn't have the three taps
22 that would be equal distance in the height up tank
23 two. I think both of those issues were reasons we
24 didn't conform to the ASTM standard. It was the four
25 tanks, but it was also the arrangements of the taps

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1 within those tank assemblies.

2 Q The problem was essentially a failure to
3 conduct the sampling in accordance with ASTM
4 standards. Right?

5 A Yes, sir.

6 Q What was the driving force in discovering
7 that problem? What caused that problem to be
8 discovered?

9 A It was the operating experience item.

10 Q And Jim Smith identifying it to Chemistry
11 and telling them to go out and look at it.

12 A Yes. As I indicated, the initial
13 reactions from them were that it was not applicable.

14 Q The initial reactions from "them" being
15 Chemistry.

16 A Yes. That was listed in the sequence of
17 events that I referred to on August 10th and August
18 14th.

19 MR. MARQUAND: That's all, Your Honors.

20 MR. DAMBLY: If I might just have another
21 question.

22 JUDGE YOUNG: Yes, of course.

23 RECROSS EXAMINATION

24 BY MR. DAMBLY:

25 Q Mr. Burzynski, if you look at TVA Exhibit

1 147, the final event report.

2 A Yes, sir.

3 Q Page two which is FI-259.

4 A Yes, sir.

5 Q There's a sequence of events down at the
6 bottom. The second thing in there. "This timeframe
7 was utilized to verify that NER did not apply to
8 Sequoyah to prepare the appropriate response.
9 However, during the evaluation, it was determined that
10 each seven day storage tank was designed with four
11 horizontal cylindrical tanks side-by-side
12 approximately 85 feet long and six feet in diameter.
13 These tanks are connected to each other at each end of
14 the top and bottom by a 12 inch section of pipe. The
15 recirculation was inadequate, but only a portion of
16 the two center tanks was affected."

17 A Yes, sir.

18 Q That wasn't discovered by you. That
19 wasn't discovered by Waterford. That wasn't
20 discovered by Mr. Smith. That was found, and that was
21 really the problem, when this was done.

22 A I think that's the confirmation of it.
23 Yes, sir. And it contains the elements that there
24 were four tanks and also that we were inadequate in
25 that only a portion of the two center tanks were being

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1 sampled.

2 Q And that was discovered by the Chemistry
3 people in response.

4 A That was one that they identified that
5 you're right, we're not in compliance. You could also
6 argue that they should have known that prior to that
7 by having procedures to meet the surveillance
8 requirements.

9 Q They should have had those procedures when
10 they designed it. They should have designed it with
11 taps. They should have had a procedure originally
12 that complied with ASTM for any number of years.

13 A We can talk about how many times the
14 problem was missed if you want to. There's no
15 question about that.

16 MR. DAMBLY: Thank you.

17 JUDGE YOUNG: I'd like to clarify
18 something about Mr. Fiser's involvement when Sequoyah
19 was shut down and right before and when it was
20 restarted. I think you said it was in May '88.

21 THE WITNESS: May '88 was when Unit 2
22 restarted. Unit 1 restarted in I believe it was
23 November '88.

24 JUDGE YOUNG: In Mr. Fiser's resume that
25 someone referred to earlier, it indicates that from

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1 September 1987 to April 1988 he was the Chemistry
2 Program Manager. Tell me first of all, do you know
3 what the Chemistry Program Manager duties consisted of
4 at that time?

5 THE WITNESS: I have no idea.

6 JUDGE YOUNG: Okay. Thank you.

7 CHAIRMAN BECHHOEFER: I just have one very
8 short matter. I think you testified that there was
9 some requirement that ASTM standards be available.
10 What did you mean? Are you talking about the paper
11 copies?

12 THE WITNESS: I don't believe I said that
13 there was a requirement. I think what was remarkable
14 to me about the reviews that we were doing was that a
15 copy of it was not available within Chemistry when
16 this question came up. I would have thought that it
17 would have been an important working document for them
18 to have available.

19 CHAIRMAN BECHHOEFER: Right physically in
20 the department or through some electronic means or
21 didn't they have those things then.

22 THE WITNESS: All I recall is that they
23 didn't have working copies available. The specific
24 medium, I don't know. Normally those things are in
25 bound books. There used to be a microfiche system

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1 that had large libraries of information.

2 JUDGE YOUNG: Did you have the ones that
3 were relevant to your section available?

4 THE WITNESS: Yes.

5 CHAIRMAN BECHHOEFER: Okay. That's what
6 I wanted to clarify. Does anybody have further
7 follow-up questions?

8 MR. MARQUAND: I do.

9 REDIRECT EXAMINATION (cont.)

10 BY MR. MARQUAND:

11 Q Mr. Burzynski, referring to TVA Exhibit
12 128, page FI-85, that particular ASTM is incorporated
13 by reference in standard 1.2.11 where it says that the
14 sampling can be obtained in accordance with that
15 standard. Right?

16 A I'm sorry.

17 Q FI-85 of TVA Exhibit 128. That's page one
18 of the surveillance. I'm looking at Section 1.2.11.

19 A Yes.

20 Q Do you see where it says "At least once
21 per 84 days we'll do the sampling in accordance with
22 that ASTM standard?"

23 A Yes.

24 Q So my question is if they don't have a
25 reference copy of it available how do they know how to

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1 do that then.

2 A That's a good question. I think what we
3 learned in here was they apparently assumed that a
4 recirculation line sample was sufficient. The
5 particular wording there that "At least once per 84
6 days" that's just a verbatim quote of the tech specs.

7 Q Okay. But the point is that this
8 surveillance instruction incorporates the procedures
9 of that ASTM sample.

10 A Yes.

11 MR. MARQUAND: That's all, Your Honors.

12 MR. DAMBLY: Nothing further, Your Honors.

13 CHAIRMAN BECHHOEFER: Anything further?

14 JUDGE COLE: Mr. Burzynski, this ASTM
15 standard that we're referring to, is that the one
16 that's referred to dated 1975?

17 THE WITNESS: Yes, sir.

18 JUDGE COLE: This is on TVA Exhibit 128,
19 page 85, in that paragraph 1.2.11.

20 THE WITNESS: Yes, sir.

21 JUDGE COLE: That is the version that is
22 applicable during this time period of '88, '89.

23 THE WITNESS: Yes, sir.

24 JUDGE COLE: All right, sir. Thank you.

25 CHAIRMAN BECHHOEFER: Were some of the

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1 documents we referred to in the last few minutes, have
2 they all been moved into evidence?

3 MR. MARQUAND: I think so.

4 MR. DAMBLY: I didn't object to any of
5 them.

6 (Discussion off the microphone.)

7 CHAIRMAN BECHHOEFER: 147 is the one I
8 don't have any note on. Okay. Well, we'll close for
9 the day. We'll be back at 9:00 tomorrow morning.

10 JUDGE YOUNG: We'll have Mr. Harvey and
11 Mr. Goetcheus tomorrow.

12 MR. MARQUAND: Yes, Your Honor.

13 JUDGE YOUNG: If we get through with them
14 early, do we have anyone else on standby?

15 MR. MARQUAND: We'll see. I don't know.
16 Let me check.

17 (Discussion off the microphone.)

18 MR. MARQUAND: Judge, we had originally
19 scheduled Ms. Westbrook for tomorrow.

20 CHAIRMAN BECHHOEFER: Yes.

21 MR. MARQUAND: And we've decided to submit
22 her deposition that was taken by the Staff. I think
23 that will expedite matters. I don't see that she has
24 anything that she can add if she was here live beyond
25 an expert examination by Counsel.

1 CHAIRMAN BECHHOEFER: Will the Staff have
2 any objection to that?

3 MR. DAMBLY: I certainly would object to
4 her deposition coming in, not because it's her
5 deposition, because I don't see the relevance of her
6 testimony if she was here. She was not a member of
7 the Board. She was not a voting member. She sat
8 there. Her only testimony would be to come in and
9 tell us what her impressions were. But she wasn't a
10 voting member, so she's not entitled to have an
11 impression.

12 MR. MARQUAND: She was there.

13 MR. DAMBLY: So what? She's not a
14 technical person. She doesn't know what the technical
15 answers are. She didn't vote. She just totaled the
16 scores that other people gave. There's no protector -
17 -

18 JUDGE YOUNG: Are we still on the record?

19 CHAIRMAN BECHHOEFER: Yes.

20 JUDGE YOUNG: What is the purpose for
21 which you're offering her testimony or her deposition?

22 MR. MARQUAND: Because her testimony does
23 show that this was conducted in accordance with normal
24 procedures. She didn't witness anything untoward
25 happening, any collusion between these individuals.

1 It all appeared to happen the way it normally does in
2 the selection review boards that she's conducted and
3 facilitated. I don't think that the entire issue in
4 this case as Counsel would like to say is who passed
5 the test and who passed the technical test best. It's
6 whether these procedures were followed, whether Fiser
7 was discriminated against, whether he was treated
8 differently.

9 JUDGE YOUNG: And she was in the HR
10 office.

11 MR. MARQUAND: She was human resources
12 person facilitated this thing and was there throughout
13 the interviews.

14 MR. DAMBLY: And I would be willing to
15 stipulate that if she was here and testified, she
16 would testify that she didn't see anything unusual
17 during the interviews of Mr. Fiser. They were in
18 accordance with the way she's seen other interviews.

19 MR. MARQUAND: Plus, from her standpoint
20 as a human resource person, she heard the answers and
21 she evaluated when they talk about what strengths do
22 you bring to this, what weaknesses do you bring to
23 this. She was able to evaluate their attitudes, how
24 they presented themselves, how good of communicators
25 they were, how well they articulated themselves, all

1 pertinent things when you're talking about somebody
2 who is a Program Manager who has to interface between
3 various departments and sell themselves and sell their
4 product.

5 MR. DAMBLY: And, again, that's the very
6 thing to which I would object. She was a non-voting
7 member. What she thought of his demeanor or anything
8 else is totally irrelevant. As we've heard from the
9 members that were there, there were not standards.
10 Each one was free to evaluate based on whatever, from
11 whim and caprice to some specific thing he had in his
12 mind about what's a one and what's a ten on a given
13 answer. What she might have thought is irrelevant and
14 doesn't add anything to the record.

15 JUDGE YOUNG: As an HR person, weren't
16 TVA's HR procedures relevant?

17 MR. DAMBLY: Their HR procedures are
18 already in the record.

19 JUDGE YOUNG: Weren't how they were
20 complied with or how they weren't complied with --

21 MR. DAMBLY: I said I would stipulate that
22 as far as she would testify, she would say they did
23 things the way they normally do things.

24 JUDGE YOUNG: You would stipulate, but my
25 question is as to your objection on relevance.

1 MR. DAMBLY: Not to that. I don't think
2 that's irrelevant. My objection on relevance is to
3 have her come in and tell us or have her deposition
4 come in and tell us how she evaluated Mr. Fiser, Mr.
5 Harvey, Mr. Chandra and all their answers because she
6 wasn't there to do that. She didn't get to vote. It
7 didn't count, whatever she thought.

8 JUDGE YOUNG: But we don't have the
9 deposition. At least, I haven't read the deposition.
10 So I don't know what it says.

11 MR. DAMBLY: It goes through the same
12 stuff that was gone through by Mr. Kent and Mr. Corey,
13 so far, all the questions, all her answers and what
14 she thought about them.

15 CHAIRMAN BECHHOEFER: Is there any
16 material concerning the methodology by which the
17 selection Board was set up with one person pre-
18 selected and then dropping out?

19 MR. DAMBLY: She was not involved in that
20 at all. That was Mr. Easley. She only sat in because
21 Mr. Easley recused himself. She only came in for the
22 interviews that day and then she left. As a matter of
23 fact, Mr. Easley totaled the scores. She just sat
24 there as an observer.

25 CHAIRMAN BECHHOEFER: Okay.

1 MR. DAMBLY: Period. That was her only
2 involvement in this entire process.

3 MR. MARQUAND: The issue in this case
4 obviously is whether Mr. Fiser was discriminated
5 against. The Board ultimately has to make that
6 decision. The Board wasn't there. The Board has to
7 take evidence from the best possible sources as to how
8 this was done. Whether or not Ms. Westbrook actually
9 was one of the people who scored these people is
10 irrelevant. She was there. She can tell the Board
11 what she saw with respect to the functions of the
12 board.

13 What Your Honors have to decide eventually
14 -- So what better person can you get besides a neutral
15 person, an HR person who has experienced numerous
16 selection review boards to tell you what she observed
17 about how this particular selection review board
18 functioned?

19 JUDGE YOUNG: I think the most reasonable
20 way to approach this is probably if you have specific
21 objections to portions of the deposition, you could
22 object to those. But I don't imagine that you would
23 object to her if she were here to her testifying at
24 all. Period.

25 MR. DAMBLY: No. I wouldn't object to her

1 testifying at all. Period. But again the only thing
2 I wouldn't object to would be for her to spend five
3 minutes here saying yes I sat in. I was the HR
4 observer. I didn't see anything unusual in this. The
5 same people ask the same candidate the same questions.
6 They wrote down whatever and gave me the scores.

7 JUDGE YOUNG: We haven't seen the
8 deposition. Why don't we take this up later when we
9 can look at the deposition? Meanwhile, you can look
10 at parts of it and say which parts of it you object
11 to.

12 MR. DAMBLY: That's no problem, Your
13 Honor. I'm sure that will be 90 percent of the
14 deposition.

15 JUDGE COLE: It has been determined that
16 Ms. Westbrook has a lot of experience with selection
17 review boards. Is that so?

18 MR. MARQUAND: I believe that's correct.
19 She spent her career in HR and that area. She spoke
20 on behalf of TVA at the predecisional enforcement
21 conference.

22 JUDGE COLE: Well, I know she sat in for
23 Mr. Easley in this one. I wonder if maybe she came in
24 only as a substitute periodically. Or does she in
25 fact have a lot of experience with selection review

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1 boards?

2 MR. MARQUAND: No. She does. The way the
3 HR people work is Mr. Easley was responsible for one
4 organization. She was responsible for other
5 organizations. Since he felt it was not appropriate
6 for him in this particular context, she sat in on this
7 additional one.

8 JUDGE COLE: All right. Thank you.

9 CHAIRMAN BECHHOEFER: Perhaps as an
10 alternative that the parties may wish to consider or
11 the TVA would be to offer Ms. Westbrook's sworn
12 affidavit which was submitted in support of your
13 motion for summary disposition.

14 MR. MARQUAND: Your Honor, Counsel
15 submitted numerous depositions and statements. I
16 don't think that we want to limit ourselves to
17 something that's crafted. He posed these questions in
18 the deposition.

19 MR. DAMBLY: During discovery.

20 MR. MARQUAND: During discovery.
21 Certainly under the rules, she's hundreds of miles
22 away. I was simply trying to expedite this hearing by
23 submitting her deposition rather than having her
24 testify live.

25 MR. DAMBLY: She was never on our witness

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1 list. If they wanted to call her, they could have
2 brought her when we were down in Chattanooga. They
3 can bring her now for whatever relevance her testimony
4 may have. We haven't offered any documents from a
5 witness who wasn't here yet. In fact, I offered to
6 say we'll just rest and put in Mr. Rogers' deposition
7 and they made a big stink, no, we're bringing him. So
8 he'll be here.

9 (Discussion off the microphone.)

10 CHAIRMAN BECHHOEFER: Anyway, if the
11 parties can discuss this or consider this before the
12 deposition is offered, that would be fine. I think
13 we'll leave it for now and just conclude for the day.
14 You can decide later what course of action both of you
15 would like to take.

16 JUDGE COLE: Could you first identify
17 where Ms. Westbrook's deposition is? What's the
18 number?

19 MR. MARQUAND: It's a Staff Exhibit. I
20 don't remember the number.

21 CHAIRMAN BECHHOEFER: Is it available now?

22 MR. MARQUAND: Yes.

23 MR. DAMBLY: It was there in the event she
24 might testify. We might use it for impeachment
25 purposes or otherwise.

1 MS. EUCHNER: It's Staff Exhibit 122.

2 CHAIRMAN BECHHOEFER: Okay.

3 MR. DAMBLY: She was on their witness
4 list. She was not on our witness list.

5 JUDGE YOUNG: I think we can confer
6 tonight, and we'll let you know how we'll approach it
7 in the morning. So shall we adjourn for the evening?

8 CHAIRMAN BECHHOEFER: Yes.

9 JUDGE YOUNG: We'll see you tomorrow
10 morning at 9:00 a.m.

11 CHAIRMAN BECHHOEFER: We are adjourned.
12 Off the record.

13 (Whereupon, the above-entitled matter
14 concluded at 5:47 p.m.)

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CERTIFICATE

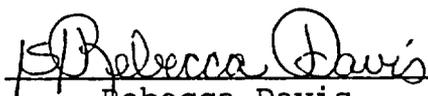
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Tennessee Valley Authority
Watts Bar Nuclear Plant,
Unit 1 Sequoyah Nuclear
Plant, Units 1 and 2 Browns
Ferry Nuclear Plant, Units
1,2,3

Docket Number: 50-390-CivP; ASLBP No: 01-
791-01-CivP

Location: Chattanooga, Tennessee

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken 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.


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