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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

OFFICE OF THE  
GENERAL COUNSEL  
ADJUDICATORY STAFF

**Title:** TELEPHONE  
PREHEARING/CONFERENCE  
CONAM INSPECTION, INC.

**Docket No.:** 30-31373-CIVP

**Work Order No.:** ASB-300-99

**LOCATION:** Rockville, MD

**DATE:** Wednesday, January 14, 1998

**PAGES:** 1 - 28

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

4 In the Matter of: :

5 TELEPHONE PREHEARING/CONFERENCE : Docket No. 30-31373-CIVP

6 CONAM INSPECTION, INC. :

7 - - - - - X

8 Hearing Room - T3B45

9 11545 Rockville Pike

10 Rockville, MD

11 Wednesday, January 14, 1998

12  
13 The above-entitled matter came on for telephone  
14 prehearing/conference, pursuant to notice, at 10:50 a.m.

15 BEFORE:

16 CHARLES BECHHOEFER, Chairman

17 DR. RICHARD F. COLE

18 DR. CHARLES N. KELBER

19  
20 APPEARANCES

21 On Behalf of Conam Inspection, Inc.:

22 CLIFTON A. LAKE, Esquire

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1 APPEARANCES: [Continued]

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13 Rockville, MD

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15 Nader Mamish

16 Senior Enforcement Specialist

17 Office of Enforcement

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C O N T E N T S

WITNESS

EXAMINATION

[NONE.]

E X H I B I T S

NUMBER

RECEIVED

[NONE.]

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

[10:50 a.m.]

CHAIRMAN BECHHOEFER: Good morning. This is --

MR. LAKE: Good morning, Judge.

CHAIRMAN BECHHOEFER: -- going to be the initial prehearing conference in the proceeding, civil penalty proceeding, involving Conam Inspection, Incorporated. It is being transcribed by a court reporter, and later on we'll mention, if you desire to get transcripts, how you do it.

First, I would like to identify the Board Members, and my name is Charles Bechhoefer, I am Chairman of the Board and legal Member of the Board.

Sitting on my left is Dr. Richard Cole, and would you speak -- he is an environmental engineer. Would you speak up so they can recognize --

DR. COLE: Yeah. This is Richard Cole. Good morning, Mr. Barth. Good morning, Mr. Lake.

MR. LAKE: Good morning, Dr. Cole.

CHAIRMAN BECHHOEFER: And on my right, sitting on my right is Dr. Charles Kelber who is a nuclear physicist. And could you identify --

DR. KELBER: Good morning, gentlemen.

MR. LAKE: Good morning, Dr. Kelber.

CHAIRMAN BECHHOEFER: I would like the parties, for the benefit of the reporter, more than anybody else, to

1 identify themselves, parties and their representatives.

2 Start with Mr. Lake.

3 MR. LAKE: Clifton Lake of the firm of McBride,  
4 Baker and Coles in Chicago for the Respondent, Conam  
5 Inspection, Inc.

6 CHAIRMAN BECHHOEFER: And Mr. Barth.

7 MR. BARTH: I am Charles Barth. I am an attorney  
8 with the Office of General Counsel, and I have with me Mr.  
9 Nader Mamish, M-A-M-I-S-H, who represents the Director of  
10 the Office of Enforcement.

11 CHAIRMAN BECHHOEFER: Could you just speak so we  
12 could hear Mr. Mamish?

13 MR. MAMISH: Sure, this is the -- Nader Mamish. I  
14 am a Senior Enforcement Specialist with the Office of  
15 Enforcement, representing Mr. Lieberman, who is the Director  
16 of the Office of Enforcement Headquarters.

17 CHAIRMAN BECHHOEFER: Finally, we have Lee Dewey,  
18 who is counsel for the ASLBP, the panel.

19 Lee, do you want to just say something so they  
20 recognize your voice?

21 MR. DEWEY: Good morning. I am happy to be here  
22 and hope I can be of assistance.

23 CHAIRMAN BECHHOEFER: I would like each person,  
24 before they speak, to identify themselves so that it is  
25 easier to determine who is speaking then. We try to

1 recognize your voices, but sometimes it is difficult. So  
2 before starting to speak, please identify yourself, who you  
3 are.

4 I think the first matter we should get into is the  
5 issues to be considered in this proceeding, and the  
6 Commission has defined those issues as those set forth in  
7 the Order Imposing a Civil Monetary Penalty.

8 I first want to question whether Conam wishes to  
9 emphasize any particular issues that we should focus on.

10 MR. LAKE: This is Cliff Lake. I don't -- I don't  
11 think there are particular issues. I think your Order for  
12 December 17 pretty well covers the ground. Basically, we  
13 challenge the violations of 1(b) and 1(c) and the imposition  
14 of the penalty on the basis of those found violations.

15 CHAIRMAN BECHHOEFER: Well, okay, the next -- or  
16 maybe it is a sub-issue, but the Board believes that the  
17 proper way to interpret 10 CFR 20.1201, which sets forth  
18 dose limits, is going to a significant question, and the  
19 Rule sets forth an annual limit which is the more limiting  
20 of either (1) the total effective dose equivalents, which is  
21 5 rems, or (2nd) the deep dose equivalent or committed dose  
22 equivalents of 50 rems, and the Board believes we could have  
23 expert -- some expert testimony on the proper ways to  
24 interpret that particular Rule.

25 Would you like to elaborate a little bit?

1 DR. KELBER: We -- this is Judge Kelber. We  
2 understand that there is an expert available to Conam who  
3 aided them in their analysis of the incident, and we would  
4 -- we would benefit, I believe, from hearing from that or  
5 some similar expert, and we imagine that the staff may well  
6 have experts of their own to testify on how the staff  
7 assesses these doses in accordance with the Rule.

8 MR. LAKE: Judge Cole, this is Cliff Lake. We  
9 fully intend to have expert testimony from IEM, Mr. Carroll  
10 Burger, who was referred to in the -- was the author the  
11 report that we submitted into evidence at the Pre-decisional  
12 Enforcement Conference. So that -- that is in our plans at  
13 this point and we are glad to see that the -- that the  
14 Judges agree that that is an appropriate issue here.

15 DR. KELBER: Well, the question that I have been  
16 asked is -- this is Judge Kelber. The question that is  
17 before us is the appropriateness of using -- one of the  
18 questions before us is the appropriateness of using the ICRP  
19 regulations -- publications, either the 1977 or the 1990  
20 publications, or the 10 CFR Part 20 Rules which are based,  
21 at least in part, on those publications, and the different  
22 ways of interpreting the tables of weights used in arriving  
23 at the total effect dose equivalents.

24 MR. BARTH: Judge Kelber, this is Charles Barth  
25 here. The Court is approaching the area of what rules apply

1 and the staff will address this as a matter of law in the  
2 appropriate time, Your Honor.

3 DR. KELBER: You do not anticipate a technical  
4 expert?

5 MR. BARTH: In regard to what rules apply, Your  
6 Honor, I think the law applies, not --

7 DR. KELBER: I mean on the -- on the -- on the  
8 uses -- on the methods by which you calculate the total  
9 effective dose equivalents.

10 MR. BARTH: In order to prove our case, we will  
11 undoubtedly do so, Your Honor, from in-house.

12 DR. KELBER: Okay.

13 MR. BARTH: I hope we are just not really running  
14 ahead of ourselves at the moment with --

15 DR. KELBER: We just tried to estimate -- excuse  
16 me, Mr. Barth, this is Charles Kelber again. We are just  
17 trying to estimate how much time we have to allow for expert  
18 testimony.

19 MR. BARTH: I have never seen an offer by the  
20 staff or anybody else come close to the time they said, so  
21 good luck, Your Honor.

22 DR. KELBER: Thank you.

23 DR. COLE: You have always been accurate in your  
24 estimates, Mr. Barth, haven't you? This is Dr. Cole.

25 [Laughter.]

1 MR. BARTH: Oh, gosh.

2 CHAIRMAN BECHHOEFER: Well, and then the other  
3 issue, of course, is the appropriateness of the remedy, or  
4 the sanction imposed and whether there should have been  
5 escalation. And that leads us to one of the discovery  
6 issues. We plan to set a time frame for discovery today.

7 But the question that I am raising now is whether  
8 the OI report, which was not sent to us, and Mr. Barth had  
9 an explanation, but whether that explanation is appropriate  
10 or not -- I raised some questions about that because the --  
11 there are numerous examples throughout the record where it  
12 appears that the OI report is the sole source of the  
13 determination of willfulness, whether or not certain  
14 violations were willful.

15 MR. LAKE: Judge, this is Cliff Lake. We couldn't  
16 agree with you more. However, I think that it is -- it will  
17 be necessary for us to review the full report.

18 There are references, as you point out, at pages 7  
19 and 8 of the November 5, 1997 decision --

20 CHAIRMAN BECHHOEFER: I was just getting at those  
21 new ones.

22 MR. LAKE: -- which is the subject of this  
23 proceeding that referred to conclusions drawn on the basis  
24 of that report. And, thus far, we have a two paragraph  
25 summary, as do you.

1           So, my position is that we are entitled to that  
2 report as part of either discovery or simply by way of  
3 having the staff comply with the request made in your letter  
4 of January 8.

5           MR. BARTH: Your Honor, this is Charles Barth. I  
6 would like to address that very briefly. The violations of  
7 the subject matter before Your Honors are violation 1.A,  
8 that is whether or not a proper survey was made. The OI  
9 report has nothing to do with it.

10           The second, as Your Honor has already brought up,  
11 is that those calculations, whether it is proper, that has  
12 nothing to do with the OI report. The OI report has nothing  
13 to do with whether or not a proper survey was made or how  
14 the staff calculated a dose, and it is irrelevant to the  
15 issue, Your Honor.

16           It also has not been released. If Your Honor  
17 wants it in some kind of In Camera, to look at it, browse  
18 the thing, fine. If you determine it is relevant, fine, we  
19 can address that when it comes. But it has nothing to do  
20 with whether or not this man walked round the camera and  
21 made a survey.

22           MR. LAKE: If I might respond, Cliff Lake.

23           CHAIRMAN BECHHOEFER: Yes, You may.

24           MR. LAKE: I think, if you will look at the pages  
25 of the -- of the Order that I referred to, that there is

1 reference to other radiographers employed by the Respondent  
2 allegedly having a lax attitude with regard to compliance  
3 with safety procedures, and that lax attitude is clearly the  
4 basis for the decision by the Commission to impose the  
5 penalty. I think -- and I think it is indisputably  
6 relevant. And I can't imagine why the staff doesn't want to  
7 produce it.

8 CHAIRMAN BECHHOEFER: The other thing, it would  
9 certain be -- it is normally permissible to redact the  
10 report to exclude names of confidential informants, that  
11 type of thing. That is frequently done, and at least  
12 initially, that would not be objectionable, if it were  
13 turned over in that form. And it is my understanding that  
14 OI reports have frequently been turned over. And I think  
15 the OI report is almost the sole basis for determining  
16 willfulness and willfulness is the basis that you went from  
17 8- to 16,000, basically, seems to be, reading the file.

18 So that's why the Board initially had thought that  
19 the OI report -- at least portions of the OI report that  
20 deal with the particular subject matter of the proceeding.  
21 Obviously, portions of overall reports that don't deal with  
22 the violations, or as the basis for the violations, probably  
23 could be excluded. But portions of the report that are  
24 relied on should be produced.

25 Off the record for one minute.

1 [Discussion off the record.]

2 MR. LAKE: Lake is back.

3 CHAIRMAN BECHHOEFER: Yeah, this is the Board.  
4 We're back.

5 MR. LAKE: Okay.

6 CHAIRMAN BECHHOEFER: In considering the OI  
7 report, I think it should be turned over in its entirety,  
8 with redactions if necessary.

9 MR. BARTH: Your Honor, may I address this? This  
10 is Charles Barth.

11 CHAIRMAN BECHHOEFER: Yes. We find it very  
12 relevant, and it is, by definition, just reading the --  
13 well, if you read the letter of June 9, 1997, which  
14 transmitted the Notice of Violation, it says, "Based on the  
15 OI findings, the NRC concludes that the radiographer's  
16 failure to lock the radiographic exposure device is willful  
17 and that his actions demonstrated careless disregard for NRC  
18 requirements." By its terms, that relies on OI.

19 And then are -- the next paragraph also --

20 MR. BARTH: What page are you on, Your Honor?

21 CHAIRMAN BECHHOEFER: Two, page 2 of the June 9  
22 letter. The next paragraph down, "Violation 1.A is of  
23 concern not only because of its willful nature but also  
24 because the OI investigation determined that other  
25 radiographers typically rely on the automatic locking

1 mechanism, rather than locking the camera in the required  
2 manner." That is the only source of that information that I  
3 have seen. And the OI report should detail that.

4 MR. BARTH: Your Honor, we are really jumping the  
5 gun. The violation itself is based solely upon this one  
6 man's failure to lock the camera. It is not based upon  
7 other radiographers having anything to do with willfulness  
8 whatsoever.

9 Under 2.743, you are only supposed to admit  
10 evidence which is reliable and probative. This is neither  
11 reliable, probative, it is not relevant.

12 Third, though I hate to bring this up in public,  
13 the Licensing Board, of course, by the Appeal Board  
14 decisions is prohibited from engaging in discovery on its  
15 own. And I think that as we develop this case, if Mr. Lake  
16 can prove a need for this report under normal discovery  
17 against the staff, we will address that at the time.

18 The report itself does not relate to the  
19 violations which are set forth and those violations which  
20 are attached to the June 9, 1997 letter.

21 The willfulness was the failure of this one man to  
22 lock that source in the camera. That is the willfulness.

23 MR. LAKE: If I might respond?

24 CHAIRMAN BECHHOEFER: Yes, you may.

25 MR. LAKE: I do acknowledge that I do, as

1 Respondent, have a right to engage in discovery, and I think  
2 when the OI report is specifically referred to in the Order  
3 from which we are taking review, at page 8 of Appendix A,  
4 that we are entitled to see it. And I agree entirely with  
5 the Judges on this -- on this point.

6 It says, "When questioned by the OI investigator,  
7 approximately 25 percent of the licensee's radiographers at  
8 the Gary facility, including the radiographer associated  
9 with the event, admitted that on or prior to February 28,  
10 1996, they failed on occasion to rotate their selector ring  
11 from the operate in a locked position and failed to depress  
12 -- excuse me -- depress the plunger mechanism as required by  
13 the licensee's operating procedure."

14 If you are going to refer to a report and Order  
15 from which we are seeking review, I think we are entitled to  
16 see it. You can redact it however you want to redact it,  
17 but I think we are entitled to see the report. It is in the  
18 Order, it is referred to. And I would be happy to request  
19 it formally if the Judges think that is necessary. Or the  
20 staff can voluntarily comply with the Judges' Order -- or,  
21 excuse me, request of January 8.

22 CHAIRMAN BECHHOEFER: No, it is our opinion that  
23 the report must be produced to -- as a background at least  
24 for the licensee to explore what -- what the basis was for  
25 the Order against them, and for the \$16,000 civil penalty

1 that is sought to be recovered. And, in our view, the  
2 penalty without the willfulness aspect would have been  
3 probably no more than half that. I am not even saying that  
4 would be, but it appears that willfulness was used to  
5 escalate the penalty from \$8- to \$16,000.

6 So, therefore, we think the report should be  
7 turned over. To the extent it need be redacted to exclude  
8 confidential informants, that is permissible and the  
9 Commission has a policy on that. And we -- the Board may  
10 have to look it over in any event, if there is some question  
11 raised by the redactions. But that procedure is permitted.

12 MR. BARTH: Your Honor, let me bring this to --

13 CHAIRMAN BECHHOEFER: And I don't think that it  
14 should necessarily have to be sought on discovery. This is  
15 basically relevant. I think anybody formulating discovery  
16 requests could not avoid including that report as -- or  
17 including information from Office of Investigations.

18 MR. BARTH: Your Honor, this is Charles Barth.  
19 Let me bring this to a termination, because it is really an  
20 irrelevant issue. It has nothing to do with the price of  
21 eggs. I will produce the report in redacted form and send  
22 it to you and the other Judges and to Mr. Lake, then we can  
23 go on from there.

24 DR. COLE: Thank you, Mr. Barth.

25 MR. LAKE: Thank you, Mr. Barth.

1 CHAIRMAN BECHHOEFER: That's fine. That's fine.

2 Now, we ought to set discovery schedules. And  
3 does anybody have any suggestions about how much discovery  
4 they need or require in terms of days or weeks or months? I  
5 hope not months.

6 MR. LAKE: Your Honor, Cliff Lake for the  
7 Respondent. Until we see the redacted OI report, I don't  
8 think I can be definitive, but I would think that 60 days  
9 should be -- should be plenty from our end.

10 MR. BARTH: That sounds like a good approach. On  
11 January 14th, Your Honor.

12 And as Mr. Lake suggests, time may show, as this  
13 case develops, there are other needs.

14 MR. LAKE: Right. I agree, that is just a  
15 suggestion at this point.

16 MR. BARTH: It's a good one.

17 MR. LAKE: It's probably relevant. In fact, --

18 CHAIRMAN BECHHOEFER: Well, the Board thinks that  
19 we will set an initial discovery schedule of 60 days,  
20 running from the time that Mr. Lake referred -- receives the  
21 redacted copy of the Inspection Report, OI report.

22 DR. COLE: The Investigation Report.

23 CHAIRMAN BECHHOEFER: Investigation Report, I'm  
24 sorry. And the 60 days will run from that.

25 Can we -- Mr. Barth, do you know about how long it

1 will take to redact and to distribute that report?

2 MR. BARTH: No, but I will find out today, Your  
3 Honor.

4 CHAIRMAN BECHHOEFER: Well, anyway, let's do it  
5 from the -- 60 days from the day Mr. Lake receives the  
6 report. Then the discovery schedule will commence.

7 MR. LAKE: Okay.

8 CHAIRMAN BECHHOEFER: Then if there should be  
9 discovery disputes, and either motions to compel further  
10 discovery or requests for protection orders, I believe we  
11 should handle that by telephone conference calls, to the  
12 extent possible, I think.

13 MR. BARTH: That sounds better than going out to  
14 Indiana to hold hearings for those kinds of discussions.

15 MR. LAKE: I agree, Judges.

16 CHAIRMAN BECHHOEFER: Well, we could do this same  
17 procedure and we -- there could be requests for us to  
18 establish conference calls of this type and we can certainly  
19 arrange to do it.

20 Another question I really personally wonder is  
21 whether there was a transcript of the December 13, 1996  
22 enforcement conference, and whether that has been  
23 distributed, most importantly, to Conam.

24 MR. BARTH: It was, Your Honor. A copy has been  
25 provided to the licensee.

1 CHAIRMAN BECHHOEFER: Okay.

2 MR. LAKE: Yes, Your Honor, we have that.

3 MR. BARTH: And should it become necessary and  
4 relevant, Your Honor, we will introduce it in the proper  
5 course of the proceeding.

6 DR. KELBER: Thank you.

7 CHAIRMAN BECHHOEFER: Okay. We are not requesting  
8 that we be sent copies, at this time, at least.

9 Now, in many NRC proceedings, all licensing  
10 proceedings, the usual way of presenting testimony is to  
11 have prepared testimony filed in advance of the hearing.  
12 That is not required in enforcement type cases such as this.  
13 I would like to inquire what the parties' preference would  
14 be in this respect. And one party can do it one way and the  
15 other party can do it the other way. I mean --

16 MR. BARTH: I would suggest, Your Honor, that the  
17 -- it is a good matter you brought up. That the testimony  
18 be provided in, quote, a 2 point -- in Part -- Part 2, which  
19 requires pre-filed testimony. This way, Mr. Lake has no  
20 surprises and we have no surprises. We can evaluate each  
21 other's testimony in advance --

22 CHAIRMAN BECHHOEFER: Well, I might say --

23 MR. BARTH: -- in a normal rational way, rather  
24 than off-the-cuff.

25 CHAIRMAN BECHHOEFER: Mr. Barth, that requirement

1 only governs licensing proceedings.

2 MR. BARTH: I am aware of that. I suggest that  
3 you use your power to control the proceeding which you have  
4 to require that it be filed in that sort of way, Your Honor,  
5 in advance.

6 CHAIRMAN BECHHOEFER: I see. Okay.

7 MR. BARTH: I like to prevent surprises.

8 CHAIRMAN BECHHOEFER: Well, Mr. Lake, do you  
9 have --

10 MR. LAKE: On behalf of Conam, my preference is  
11 just the opposite. I would prefer to have -- to not have  
12 pre-filed testimony from Conam. If staff wants to pre-file  
13 its testimony, that's fine with me. And I think that the  
14 NRC cases recognize the right of a Respondent like Conam in  
15 this proceeding to -- to not file pre-filed testimony if  
16 that is its choice, and that is its choice.

17 CHAIRMAN BECHHOEFER: We will accept that and we  
18 will permit the staff, if it wishes, to file pre-filed  
19 testimony. We won't require it to.

20 What we will do for both parties is, at some  
21 stage, we would like to have filed a list of documents that  
22 are going to be used and identification of witnesses, the  
23 witnesses who are going to be presented. That is mostly for  
24 time planning so we know how long the hearing is likely to  
25 take, that type of thing.

1 MR. LAKE: I have no problem with that, Judge.

2 MR. BARTH: Your Honor, before you formalize this  
3 to form an Order, I hope you will reconsider your addressing  
4 of the testimony. Because if you stop to think of it, this  
5 is not a tort case where people are talking about -- in  
6 line, and that kind of stuff. This is a matter of fact.  
7 And I think that the Board needs to be informed in advance  
8 of a hearing in order to make rational decisions as to what  
9 the positions of the parties are.

10 We have nothing to hide here. We will write this  
11 up. We have no problem with that. On the other hand, we  
12 are not going to give any special advantage to any other  
13 party. I think you need to know in advance of any kind of  
14 hearing what Conam -- Conam's position is and what their  
15 experts say. But I leave that up to you for consideration  
16 of how you can best arrive at your judgements.

17 I think a rational look at paper facts is going to  
18 be a lot better, Your Honor, than off-the-cuff testimony as  
19 you do in a criminal case.

20 CHAIRMAN BECHHOEFER: Okay. Off the record for  
21 one minute.

22 [Discussion off the record.]

23 DR. COLE: Okay. We are back. Can you hear us?

24 MR. LAKE: Yes.

25 CHAIRMAN BECHHOEFER: Okay. We have decided we

1 will not insist on pre-filed testimony. We certainly don't  
2 object to it. In fact, it would be helpful in certain --  
3 perhaps could be helpful in certain technical issues. But I  
4 also think it would add to the cost for the licensee, or it  
5 could add to the cost for the licensee, and they may prefer  
6 not to do it that way, and where -- particularly where  
7 willfulness is an issue, direct testimony would not be out  
8 of order.

9 We will let the parties select whether they wish  
10 to, but we will anticipate now that -- that Conam will not  
11 file direct -- prepared testimony and the staff will --  
12 although, again, we will not insist on it for anybody.

13 MR. BARTH: It's the wrong assumption, Your Honor.  
14 I think we will play the rules of the game for both parties  
15 the same. They may well file as we walk into the hearing,  
16 so you can then call a recess for a couple of days and read  
17 it and digest it, but I don't think that if the licensee is  
18 going to pre-file, I don't think the staff will pre-file.  
19 This is a preliminary judgement. I may reverse my decision  
20 after consulting with the supervisors in General Counsel's  
21 office.

22 CHAIRMAN BECHHOEFER: Right. Well, we won't force  
23 the staff to. I mean we are saying if we don't require it.  
24 But what we will do is require, by a date certain, which I  
25 guess is too early to set at this stage, when we need

1 identification of documents and witnesses. That we should  
2 have in advance.

3 MR. BARTH: You are quite correct, Your Honor.

4 MR. LAKE: We have no problem with that, Your  
5 Honor.

6 CHAIRMAN BECHHOEFER: Yes. And that is -- just  
7 for planning purposes, we want to know how long we will be  
8 -- be in Chicago and that type of thing and how --

9 MR. BARTH: You used that word Chicago, I think if  
10 you are talking local, this occurred in Indiana, in Gary.

11 CHAIRMAN BECHHOEFER: I though Itasca is near  
12 O'Hare Airport.

13 MR. LAKE: Itasca is near O'Hare Airport. The  
14 incident itself occurred in Indianapolis.

15 MR. BARTH: Indianapolis has got a good airport.  
16 Fine.

17 CHAIRMAN BECHHOEFER: Well, O'Hare was supposed to  
18 be a good airport.

19 DR. COLE: Mr. Barth, you don't like Chicago?

20 MR. BARTH: I have been there, I lived there.

21 CHAIRMAN BECHHOEFER: Oh.

22 DR. COLE: The reason why we mentioned Chicago is  
23 it does have a convenient group of courtrooms that we could  
24 use and it certainly is easy to get to for all parties.

25 MR. LAKE: Well, it is certainly fine with the

1 Respondent.

2 MR. BARTH: Cross that bridge when we come to it,  
3 Your Honor.

4 CHAIRMAN BECHHOEFER: All right. Yeah. No, it is  
5 too early to try to arrive at that, or particular dates for  
6 the hearing. It is likely to held right in -- somewhere in  
7 the Loop in Chicago, but, again, that is not definite  
8 either.

9 MR. BARTH: Well, we can all have lunch at the  
10 Heidelberg which is pretty good downtown there.

11 CHAIRMAN BECHHOEFER: Or Berghoff's for that  
12 matter.

13 DR. COLE: Berghoff's isn't bad.

14 MR. LAKE: Berghoff's is right next door to  
15 federal court, so --

16 CHAIRMAN BECHHOEFER: Right.

17 DR. COLE: We have spent a lot of time there.

18 DR. KELBER: This is on the record, gentlemen.

19 CHAIRMAN BECHHOEFER: Okay. One thing we would  
20 like is that for various things that are filed, that they be  
21 filed electronically.

22 MR. BARTH: That's fine.

23 CHAIRMAN BECHHOEFER: As well as paper. The rules  
24 require paper copy filings. It would -- an electronic  
25 filing via the Internet or in either WordPerfect, which we

1 prefer, or Word, is okay.

2 MR. BARTH: That's fine, Your Honor. We will do  
3 so. I have Mr. Lake's e-mail address. We will do so.

4 MR. LAKE: That's fine with me, Your Honor.

5 CHAIRMAN BECHHOEFER: Okay. I think the rule is  
6 still --

7 MR. BARTH: If we have exhibits, we will see if we  
8 can't get them scanned and send those also.

9 CHAIRMAN BECHHOEFER: Okay. Good.

10 MR. BARTH: Mr. Lake, do you want Word or  
11 WordPerfect. We can do either one.

12 CHAIRMAN BECHHOEFER: WordPerfect is probably  
13 easier.

14 MR. LAKE: WordPerfect, I think would be --

15 MR. BARTH: We are using 6.1 in the office at the  
16 moment.

17 CHAIRMAN BECHHOEFER: Yeah. Well, I don't think  
18 the version of WordPerfect matters. Now, the version --

19 MR. BARTH: You can't get 8, which I have at home.

20 CHAIRMAN BECHHOEFER: Oh. Oh, okay.

21 DR. KELBER: That's all right. 6.1 is -- format  
22 is recognized and so is 8, they are all the same.

23 CHAIRMAN BECHHOEFER: That was Dr. Kelber.

24 DR. KELBER: Sorry.

25 CHAIRMAN BECHHOEFER: So --

1 MR. BARTH: That's the trouble with these  
2 technical experts, they always know more.

3 [Laughter.]

4 CHAIRMAN BECHHOEFER: Yeah. Okay. And as I said,  
5 there will be a transcript. Following our receipt of the  
6 transcript, we will issue a Prehearing Conference Order,  
7 shortly -- shortly after we receive it, writing up what we  
8 did today.

9 If Conam wishes to get transcripts, the reporter  
10 -- I guess there is a way of doing it. We don't -- I am not  
11 sure we know all the details. But --

12 DR. KELBER: You can put it in the Prehearing  
13 Conference Order.

14 CHAIRMAN BECHHOEFER: Off the record for one  
15 minute.

16 [Discussion off the record.]

17 CHAIRMAN BECHHOEFER: Okay. Mr. Lake, do you  
18 think you will need or want a transcript?

19 MR. LAKE: Of this prehearing conference?

20 CHAIRMAN BECHHOEFER: Of this prehearing.

21 MR. LAKE: I don't think it will be necessary.

22 CHAIRMAN BECHHOEFER: Okay. Because I was going  
23 to have the reporter tell you how to get one, but --

24 MR. LAKE: Okay. Two minor matters. Judge, can  
25 you give me the e-mail address for the Board?

1 CHAIRMAN BECHHOEFER: Yeah. Hold on a minute.

2 It's --

3 MR. LAKE: Or for you or whoever -- whoever you  
4 want me to send it to.

5 CHAIRMAN BECHHOEFER: For me it is CXB2 -- number  
6 2 -- at sign -- nrc is small isn't it? -- @nrc -- which is  
7 small, point gov, g-o-v --

8 MR. LAKE: Okay.

9 CHAIRMAN BECHHOEFER: -- which is small as well.

10 MR. LAKE: And Mr. Bart@, do you have --

11 MR. BARTH: Mine is CAV@nrc.gov, and it is not  
12 case-sensitive.

13 MR. LAKE: Okay. Got it.

14 MR. BARTH: And you had another point, too, sir.

15 MR. LAKE: Did I?

16 MR. BARTH: I thought you said two.

17 MR. LAKE: Oh, I just -- I just think I meant both  
18 e-mal addresses, that's all.

19 MR. BARTH: I have two very small minor matters,  
20 Your Honor. Mr. Lake has not filed a notice of appearance,  
21 and we talked earlier, he is going to do, which will clear  
22 that up. And if the Board would provide me with a copy of  
23 the transcript on a 3-1/2 inch disk, I would appreciate it.  
24 We can stick it on Summation or Personal Library or one of  
25 the search mechanisms which make it easier to handle.

1 CHAIRMAN BECHHOEFER: Let me ask the reporter.

2 [Discussion off the record.]

3 CHAIRMAN BECHHOEFER: Mr. Barth, if we get it, we  
4 will send you a copy, if it comes on a disk, and I think it  
5 will, I think it has been ordered that way.

6 MR. BARTH: Thank you, Your Honor.

7 CHAIRMAN BECHHOEFER: I didn't put the order in,  
8 but the reporter is hearing me at least.

9 Is -- yeah, I agree that a notice of appearance  
10 should be filed. Mr. Barth filed one and the rule --

11 MR. BARTH: 2.7138.

12 CHAIRMAN BECHHOEFER: Right. States that. So I  
13 think, Mr. Lake, that would be a good idea to file that.

14 MR. LAKE: Okay. Will do.

15 CHAIRMAN BECHHOEFER: Any other matters that  
16 anyone wishes to raise?

17 MR. LAKE: Nothing for the Respondent, Your Honor.

18 MR. BARTH: Nothing from us.

19 DR. COLE: How is the weather in Chicago these  
20 days?

21 MR. LAKE: Oh, yesterday it was about 1 below in  
22 the Loop.

23 DR. COLE: It hasn't changed much.

24 MR. LAKE: Pretty nasty.

25 [Laughter.]

1 MR. LAKE: Today up to about 15 and cloudy.

2 MR. BARTH: If you are thinking about that  
3 prehearing conference, Indiana. That's cold.

4 [Laughter.]

5 CHAIRMAN BECHHOEFER: Yes.

6 MR. BARTH: Mr. Lake, it has been a pleasure  
7 talking to you and I want to thank you kindly, sir.

8 MR. LAKE: Okay.

9 CHAIRMAN BECHHOEFER: Okay.

10 MR. LAKE: Thank you.

11 CHAIRMAN BECHHOEFER: We have appreciated having  
12 you all here and we will issue our prehearing conference  
13 Order and we also -- to the extent we need further  
14 conferences of this sort before the hearing, we will set  
15 them up, and some day we will see you in Chicago.

16 MR. LAKE: Thanks, Judge.

17 DR. COLE: Okay. Good day, gentlemen.

18 MR. LAKE: Bye-bye.

19 CHAIRMAN BECHHOEFER: Okay. Off the record. Off  
20 everything.

21 [Whereupon, at 11:20 a.m., the telephone  
22 prehearing/conference was concluded.]

23

24

25

REPORTER'S CERTIFICATE

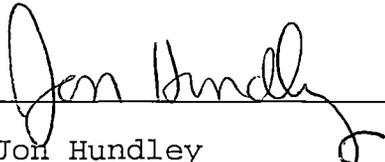
This is to certify that the attached proceedings  
before the United States Nuclear Regulatory Commission in  
the matter of:

NAME OF PROCEEDING: TELEPHONE PREHEARING/CONFERENCE  
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DOCKET NUMBER:

PLACE OF PROCEEDING: Rockville, MD

were held as herein appears, and that this is the original  
transcript thereof for the file of the United States Nuclear  
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typewriting by me or under the direction of the court  
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accurate record of the foregoing proceedings.



Jon Hundley

Jon Hundley

Official Reporter

Ann Riley & Associates, Ltd.