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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

SACRAMENTO MUNICIPAL UTILITY DISTRICT

(Rancho Seco)

Docket No. 50-312

Place - Sacramento, California

Date - Wednesday, 1 August 1979

Pages 1 - 51

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the matter of: :
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SACRAMENTO MUNICIPAL UTILITY DISTRICT : Docket No. 50-312
:
(Rancho Seco) :
:
-----x PREHEARING CONFERENCE

Room 4061
Employment Development Department
Building
722 Capitol Mall
Sacramento, California

Wednesday, 1 August 1979

Prehearing in the above-entitled matter was convened,
pursuant to notice, at 10:00 a.m.

BEFORE:

MICHAEL GLASER, ESQ., Chairman
Atomic Safety & Licensing Board Panel

FREDERICK SHON, Member

DR. RICHARD COLE, Member

APPEARANCES:

DAVID S. KAPLAN, ESQ., and JAN SCHORI, ESQ., 6201 S. Street,
Sacramento, California 95813; on behalf of the Applicant.

JAMES REED, ESQ., and MICHAEL REMY, ESQ., Reed, Samuel, Remy &
Brodie, 717 K Street, Suite 405, Sacramento, California
95814; on behalf of Friends of the Earth, Environmental
Council of Sacramento, and Original SMUD Ratepayers.

GARY HURSH and MR. CASTRO, Members, Board of Directors, SMUD,
520 Capitol Mall, Suite 700, Sacramento, California 95814;
appearing pro se.

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APPEARANCES (continued)

2

DIAN GRUENEICH, California Energy Commission, General
Counsel's Office, 1111 Howe Avenue, Sacramento,
California 95825; on behalf of State of California.

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STEPHEN LEWIS, ESQ., and LAWRENCE BRENNER, ESQ.,
Office of the Executive Legal Director, Nuclear
Regulatory Commission, Washington, D. C.; on behalf
of the Nuclear Regulatory Staff.

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P R O C E E D I N G S

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2 CHAIRMAN GLASER: On the record.

3 Ladies and gentlemen, we are going to begin right
4 now. I ask everyone to sit down and remain quiet.

5 This is a prehearing conference in the matter of the
6 Sacramento Municipal Utilities District, licensee of the
7 Rancho Seco Nuclear Generating Station, Docket No. 5312.

8 My name is Michael L. Glaser. I am Chairman of the
9 Atomic Safety & Licensing Board panel assigned to conduct
10 these proceedings. On my left is Mr. Frederick Shon, who is
11 a full-time member of the panel. Mr. Shon has a bachelor's
12 degree in chemical engineering. He is a long-time employee
13 of the Licensing Board panels. He also spent ten years with
14 the Lawrence Radiation Laboratory at Brookhaven.

15 On my right is Dr. Richard Cole, who has a Ph.D.
16 from the University of North Carolina in environmental
17 engineering. Dr. Cole also holds a bachelor of science in
18 civil engineering and a master's degree from MIT in sanitary
19 engineering.

20 I am a member of the bar of the District of Columbia
21 and the State of Maryland, practicing attorney in Washington,
22 D.C., with the law firm of Glaser, Fletcher and Johnson, which
23 specializes in communications and administrative law. I have
24 been a member of Licensing Board panels since 1972. I am
25 admitted to practice before the United States Supreme Court

1 and various United State courts of appeals throughout the
2 United States.

3 This board issued an order on July 3, 1979, calling
4 for this prehearing conference, as a result of an order issued
5 by the Nuclear Regulatory Commission on June 21, 1979 designating the Rancho Seco generating station for consideration
6 for a hearing. The Commission's June 21 order contained sufficient explanation of the circumstances which have given
7 occasion to this meeting. In particular, the Commission noted
8 that on May 7th it had directed that the Rancho Seco facility,
9 which was then in a shutdown condition, remain shut down until
10 certain actions specified in that order were satisfactorily
11 completed, as confirmed by the director of the Office of
12 Nuclear Reactor Regulation at the Commission.

13 The Commission's May 7th order also directed that
14 the licensee accomplish as soon as possible, practicable,
15 certain long-term modifications set forth in the order.

16 Finally, the Commission indicated that it would
17 accept requests for hearings within 20 days of the May 7th
18 order, of any persons whose interests might be affected by the
19 May 7th order and who would request a hearing in respect
20 thereto.

21 Shortly after May 7th, the Commission received a
22 request from the Friends of the Earth, from the Environmental
23 Council of Sacramento, and the SMUD Ratepayers Association,
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1 as a combined filing, and also from two directors of SMUD.

2 The Commission's June 21 order directs the
3 Chairman of the Licensing Board to select a panel and vests
4 it with authority to conduct any proceedings which might be
5 occasioned by the request for hearing.

6 Significantly, the Commission indicated that, if
7 certain requirements were met, that this board could conduct
8 a hearing, and the subjects to be considered were three:

9 First was whether the actions required by subpara-
10 graphs A through E of the Commission's May 7th order are
11 necessary and sufficient to provide reasonable assurance that
12 the Rancho Seco facility will respond safely to feedwater
13 transients pending completion of long-term modifications set
14 forth in the May 7th order. The Commission noted that a con-
15 tention challenging the correctness of the NRC's staff's
16 conclusions that the actions described in subparagraphs A
17 through E of the May 7 order will be considered to be within
18 the scope of any hearing we might order in this case.

19 The Commission noted that filing such a contention
20 would not of itself stay the operation of the Rancho Seco
21 plant.

22 Secondly, the Commission indicated that the question
23 of whether the licensee should be required to accomplish as
24 promptly as practicable long-term modifications set forth in
25 the May 7th order would also be subject to hearing.

1 Finally, whether the long-term modifications are
2 sufficient to provide continued reasonable assurance that the
3 Rancho Seco facilities will respond safely to a feedwater
4 transient.

5 As a result of the June 21 order, this board was
6 convened and we issued a prehearing conference order on
7 July 3 calling for amended petitions of the parties who
8 requested hearings, setting this hearing for this date to
9 consider any amended petitions, and any other matters which
10 might be appropriate in this proceeding.

11 Our records show that the two directors of SMUD,
12 Mr. Castro and Mr. Hursh, filed amended contentions; also,
13 that Friends of the Earth, the Environmental Council of
14 Sacramento, and the original SMUD Ratepayers Association filed
15 contentions; and we have a filing from the State of California
16 by and through the State Energy Resources Conservation and
17 Development Commission, which indicated an interest in partici-
18 pating as a party in this proceeding. We haven't received
19 anything from the staff --

20 MS. GRUENEICH: We are representatives from the
21 California Energy Commission.

22 CHAIRMAN GLASER: We haven't received anything from
23 the staff, but I directed the staff counsel to be prepared to
24 respond early.

25 At this time the board would like to call for

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1 appearances of the parties, and I would like to start with the
2 staff of the Nuclear Regulatory Commission.

3 MR. BRENNER: Good morning, Mr. Chairman, members of
4 the board.

5 My name is Lawrence Brenner. Appearing with me this
6 morning is counsel for the staff, Stephen H. Lewis. Mr. Lewis
7 is on my immediate left. Our business address is Office of
8 the Executive Legal Director, Nuclear Regulatory Commission,
9 Washington, D.C., 20555.

10 I ask that people start putting us on their service
11 list. We have had a minor problem in the last week.

12 I would also like to introduce our technical
13 advisers. On my right is Mr. Danial J. Garner, who is project
14 manager for the Rancho Seco facility. On Mr. Lewis' left is
15 Mr. Robert A. Capra, who is project manager handling the
16 application of the Three Mile Island accident for B&W faci-
17 lities.

18 CHAIRMAN GLASER: For the Friends of the Earth,
19 Environmental Council of Sacramento, and original SMUD
20 Ratepayers Association.

21 MR. REED: James S. Reed from the law firm of
22 Reed, Samuel, Remy and Brodie, representing those three entities.
23 With me are Michael H. Remy from the same law firm,
24 Mark Vandervelden, an executive in the Friends of the Earth.

25 CHAIRMAN GLASER: Mr. Hursh and Mr. Castro?

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1 MR. HURSH: My name is Gary Hursh. I am an attorney
2 licensed to practice in the state of California. My business
3 address is 520 Capitol Mall, Suite 700, Sacramento. And I am
- appearing on behalf of myself.

5 I have, just prior to coming here, received a tele-
6 phone call from Mr. Castro that stated that he was ill, but
7 would attempt to make it.

8 And I would also like to point out, Mr. Christopherson
9 of the original SMUD Ratepayers Association is in the audience
10 as one of the original petitioners.

11 CHAIRMAN GLASER: The California Energy Commission?

12 MS. GRUENEICH: I am staff counsel with the
13 California Energy Commission, and our business address is
14 1111 Howe Avenue, Sacramento, California, 95825. With me
15 today is Cliff Webb, who will be the technical assistant on
16 this case. We have prepared statements issued for your
17 assistance today.

18 CHAIRMAN GLASER: Is there anyone else who wishes to
19 indicate an appearance, who desires to participate in this
20 proceeding?

21 MR. KAPLAN: Counsel for the licensee. With me is
22 Jam Schori. Our address is 6201 S Street, Sacramento, and the
23 zip code is 95813.

24 CHAIRMAN GLASER: I almost forgot you, Mr. Kaplan.
25 My apologies.

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1 MR. KAPLAN: Quite all right.

2 (Laughter.)

3 CHAIRMAN GLASER: Is there anyone else who desires
4 to enter an appearance?

5 (No response.)

6 We have to see where we have to begin. Any sugges-
7 tions, Mr. Brenner?

8 MR. BRENNER: Yes, Mr. Chairman.

9 CHAIRMAN GLASER: Will you be speaking for the
10 staff?

11 MR. BRENNER: With the board's permission, we would
12 both be speaking, at different times. We would never be
13 addressing the same point, and we have it fairly well divided
14 up in our own mind.

15 Mr. Lewis has a brief opening statement. Beyond
16 that, I would like to note that we are prepared orally to
17 address the filings of the parties issue by issue with respect
18 to the ones we have seen. We have seen Mr. Hursh's since
19 yesterday, and we are prepared on that, Mr. Hursh's and
20 Mr. Castro's, which were filed jointly.

21 We saw the Friends of the Earth filing. However,
22 this morning we were handed revised contentions, and in looking
23 at that, we would be prepared to address those orally, also.

24 I have, within the last 30 seconds, been handed a
25 document entitled "Statement of Issues of Concern to the

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1 California Energy Commission." We met yesterday with the
2 Commission and the Friends of the Earth and the representatives
3 of the Energy Commission indicated they would be filing issues
4 as an interested state, and we welcome that. But I would need
5 some time to read it, hopefully after a break at some time
6 this morning.

7 So I would respectfully suggest that we take the
8 California Energy Commission last, and maybe by the time we
9 get to them the parties and the board can attempt to go through
10 their filing.

11 CHAIRMAN GLASER: Very well.

12 Before we begin, the board does want to indicate
13 this is an enforcement show cause proceeding. Burden of
14 proof falls on the licensee on any issue which is set.
15 However, the burden of going forward on any of the issues
16 asserted is placed upon the party making the assertion.

17 Is that your understanding, Mr. Brenner, of what
18 the proceeding is involved here?

19 MR. BRENNER: Mr. Lewis will address that.

20 MR. LEWIS: Mr. Chairman, technically we do not
21 believe this is a show cause proceeding. It was not instituted
22 under 2.202 of the Commission's regulations. The issue that was
23 ordered on May 7th was not an order to the licensee to show
24 cause with respect to any item. It was an order confirming
25 a shutdown by the licensee and confirming that certain actions

1 would be taken in accordance with commitments undertaken by
2 the licensee.

3 Now, I can understand why the board would analogize
4 to a show cause proceeding. I believe that, with respect to
5 the burden of proof and the burden of going forward, the case
6 law within the Commission, with which I am sure you are
7 familiar, has basically been dealing with cases involving
8 plants that have construction permits but not yet operating
9 licenses. And as I understand it, at least part of the theory
10 there was that the burden remained upon the licensee without
11 any question upon the permittee in that case, and that he had
12 not yet received an operating license, and therefore was con-
13 tinuing to proceed at his own risk.

14 I believe the question of whether or not the burden
15 here is upon the licensee has not been precisely addressed by
16 the Commission. It has been my feeling that, broadly speaking,
17 the party with the burden would be the party who is -- the
18 proponent of the order.

19 Now, in this case it appears to me that there are
20 joint proponents of the order, the staff and the licensee.
21 If your Honor believes that this, the question of the precise
22 burden in the case, is something that requires further briefing,
23 at some point we would certainly be prepared to do that.

24 Those are the preliminary thoughts I had, that the
25 allocation of the burden would be in accordance with who was

1 proposing the order, and that the order was really a jointly
2 proposed order.

3 CHAIRMAN GLASER: We want to make a ruling right now.
4 We are going to place the burden on the licensee, and the
5 licensee and any of the other parties in the proceeding would
6 have the right to persuade us otherwise if they wish to submit
7 briefs on the matter. But as we now see it, the burden is on
8 the licensee.

9 After all, it has a license, which is a privilege,
10 not a right. And if it wants to maintain that license, it
11 has the obligation to prove whatever is necessary to maintain
12 it.

13 MR. HURSH: Could we ask you to speak up? We are
14 having difficulty hearing you, at least I am.

15 (Pause.)

16 CHAIRMAN GLASER: Before we proceed further, we need
17 some assistance from the -- Mr. Reed?

18 MR. REED: Yes, sir?

19 CHAIRMAN GLASER: You said there is someone here
20 from your office that gave a revised statement of contentions.
21 Are we to understand that the revision is in lieu of and
22 replaces the filing made on July 17th?

23 MR. REED: Yes.

24 MS. GRUENEICH: Mr. Reed, do you have any extra
25 copies?

1 CHAIRMAN GLASER: Excuse me. When the board is
2 speaking, if you need to address anyone -- and this is the
3 rule here -- you will address the board.

4 MS. GRUENEICH: Fine.

5 CHAIRMAN GLASER: That revises June 17th?

6 MR. REED: Yes, it replaces the earlier filing
7 completely.

8 MS. GRUENEICH: If I may, the State Energy Commission
9 office -- the Energy Commission did not receive a copy of the
10 revised filing. We are wondering if there were any additional
11 copies.

12 CHAIRMAN GLASER: The revised copy was handed to us
13 this morning, and Mr. Reed will make sure that everyone who
14 is a participant in this proceeding will get a copy.

15 MS. GRUENEICH: Thank you.

16 MR. REED: Thank you, Mr. Chairman.

17 CHAIRMAN GLASER: At this point, I think we would
18 be better off to hear some argument on the contentions of the
19 parties, and then we would like to hear from the staff, since
20 it hasn't made its position known to us yet. And as a part of
21 the statement, argument on the contentions, we would like to
22 have the person who is making it reaffirm and assert the
23 statement of interest, so we can be sure that you meet the
24 requisite test.

25 Mr. Brenner, you said you had a statement to begin

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1 with. Would you prefer to withhold?

2 MR. LEWIS: Perhaps, Mr. Chairman, there are a few
3 preliminary matters, if I can take it slightly out of order
4 from the way you indicated. Let me briefly set the stage by
5 describing the meetings we have had with the petitioners, and
6 that should give you an indication of the process that is
7 going on in revising the contentions..

8 We held a meeting yesterday at the California Energy
9 Commission's offices, and it was attended by representatives
10 of Friends of the Earth and their associated groups and by
11 representatives of the California Energy Commission. Subse-
12 quently this morning, we held a meeting with Mr. Hursh. In
13 both of those meetings, we discussed generally what could be
14 expected to occur at this prehearing conference and went
15 through the contentions that had been submitted by those
16 parties.

17 Of course, we did not at that time have the statement
18 of issues from the Energy Commission. But we went through the
19 now replaced statement of contentions of Friends of the Earth
20 and we went through the statement of contentions of Messrs.
21 Hursh and Castro. And we made certain comments that reflected
22 our views as to admissibility. And indeed, we are very happy
23 to see that Friends of the Earth was able to submit a revised
24 set of contentions.

25 Without getting, for the moment, into specifics

1 about that, we were very happy to see, and it does appear to
2 us, that it represents a substantial effort to telescope the
3 many contentions into broader categories. And it does have
4 the distinct advantage of focusing everyone's attention on
5 questions as to the scope of this proceeding.

6 Now, we think that the question about the scope of
7 this proceeding is an important threshold question that we
8 certainly would urge the board to rule upon as early as possi-
9 ble. And what I would like to do now, with your permission,
10 is briefly, if I could, outline what our view of the scope of
11 the proceeding is, because it bears upon our particular posi-
12 tion as to the admissibility of specific contentions.

13 Generally, we view the jurisdiction of this board
14 as being limited to the three issues identified in the
15 Commission's order of June 21, 1979. And in reviewing the
16 contentions of the petitioners, we have encountered various
17 contentions which, in our mind, were beyond that scope. And
18 then we have also identified general failure to specifically
19 hook up the assertions made in the various contentions with
20 the provisions of the order. And these are the kinds of things
21 we have conveyed to the petitioners.

22 So we feel that you are going to encounter, in the
23 various petitions put before you, many contentions which assert
24 that the matters treated in various other Commission studies
25 that are ongoing with regard to the lessons learned, generally

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1 speaking, from the Three Mile Island accident should be the --
2 should be the subject of consideration in this proceeding.
3 And it is generally our position that there are many other
4 investigations going on regarding that accident, which deal
5 with many issues which we believe are beyond the scope of this
6 proceeding.

7 As an example, emergency planning issues are asserted
8 to be an appropriate subject for consideration in this proceed-
9 ing by various petitioners. It is our view that that matter
10 is being considered by the Commission in separate proceedings:
11 a possible rulemaking proceeding on that subject. Petitions
12 for rulemaking are before the Commission on that subject.

13 CHAIRMAN GLASER: How about compliance with present
14 Commission regulations? Would that be inside the scope of
15 this proceeding?

16 MR. LEWIS: I do not believe it would. I believe the
17 subject matter -- the best way I can respond to that to be
18 helpful to you is, we believe the kinds of subjects that are
19 within the scope of this proceeding are given some meaning by
20 the enumeration of the five items of the short-term modifica-
21 tions in the Commission's order, and these are basically items
22 that have to do with procedure, and then later with some design
23 modifications relating to the plant's ability, the ability of
24 the systems within the plant, to respond safely to feedwater
25 transients.

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1 We think that those enumerations are helpful in
2 giving some meaning to the term, the ability of the facility
3 to respond safely to feedwater transients, because on their
4 face alone perhaps there is some question about what that --
5 those terms mean. But we think that the specific measures
6 mandated to be taken by the licensee clarify the kinds of
7 things we are talking about, or ability of the systems in the
8 facility to respond safely, ability of the people who are
9 running the facility to take the actions that are necessary;
10 but not matters relating to emergency response or other off-site
11 matters that indeed could be related to some actions that would
12 need to be taken by someone if an accident did occur.

13 We believe those matters are being addressed by the
14 Commission in other forms and do not appropriately belong in
15 this proceeding. In this sense, I would say that, although
16 we did have that interchange about regarding whether or not
17 this is a show cause proceeding, we believe that certain
18 elements of the specification of issues that takes place in
19 so-called show cause proceedings are somewhat analogous to
20 what is going on here.

21 We have had a proceeding whereby the Commission has
22 identified specific issues and has had -- has asked the board
23 to, first of all, determine whether or not there are parties,
24 and if there are, to determine -- to then sit upon that
25 proceeding. So we believe there was a conscious attempt by

1 the Commission to define what the issues in the proceeding
2 would be.

3 CHAIRMAN GLASER: Let me ask a question. If there
4 were no request for hearing filed in this proceeding, is it
5 your view and the staff's view that no hearing would be
6 necessary? Or, if the hearing would be necessary, in your
7 view, who would have the burden of proof on any issues which
8 might be contested?

9 MR. LEWIS: It would be our view that this is a
10 discretionary hearing, and in the absence of a determination
11 of proper petitioning parties, there would be no proceeding.
12 And I think that the fact that the Commission viewed it this
13 way is driven home by the fact that they chose to treat the
14 Three Mile Island Unit 1 facility differently, in the mandate
15 there that there would be a hearing, irrespective of whether
16 one was requested or not.

17 DR. COLE: Mr. Lewis, is it the staff's opinion,
18 with reference to the Commission's order of June 21st, is it
19 the staff's opinion that that order restricts us to the
20 subjects that are listed on page 2 of that order?

21 MR. LEWIS: Yes, Dr. Cole, that would be our view.
22 I hasten to add that the Commission, in its meeting of the
23 11th of July, a transcript of which was made available to the
24 board and parties to this proceeding, did focus upon the
25 footnote to your order convening this prehearing conference,

1 and noted there that you had indicated that further issues
2 could be asserted by parties, provided they were related to the
3 action taken by the Commission in its May 7th and July 21
4 orders. And the Commission did note that -- take note of the
5 footnote, and they said, for example, the issue of operator
6 qualifications -- not operator qualifications -- of management
7 competence and control would be one of those issues that a
8 party might assert is appropriately considered in this pro-
9 ceeding, and that if it were appropriately asserted with some
10 degree of indication of the basis for the assertion, that it
11 might well be an appropriate consideration for this proceeding.

12 DR. COLE: In view of that, do you still maintain
13 the position that we are restricted by the items listed on
14 page 2 of the June 21st order?

15 MR. LEWIS: We believe that the issue of management
16 control is closely related to one of the issues identified in
17 the Commission's order of May 7th, and that was the issue of
18 operator training, understanding by the licensee of the
19 implications of the Three Mile Island accident.

20 CHAIRMAN GLASER: The issue of management competence
21 and control is broader than constricted to the understanding
22 of the operators --

23 MR. LEWIS: Yes, and in that sense the Commission's
24 clarification of its views as to whether or not that might be
25 a permissible issue was very helpful, because I think, yes,

one could say that that issue is beyond and different from the issue. But I am simply saying that I at least perceive a relationship between the issue of management competence and control and one of the enumerated items in the Commission's May 7th order, and, whereas I may -- whereas there are other issues where I do not perceive that nexus.

MR. SHON: Mr. Lewis, is it your view that transients other than feedwater transients are to be dealt with? I noticed the California Energy Commission seems to find language in the May 7th order that suggests that various transients other than feedwater transients are before us.

MR. LEWIS: It would be our view that it is limited to the response to that transient.

MR. SHON: Thank you.

CHAIRMAN GLASER: Is there anything else you would like to state for the record as a preliminary matter?

MR. LEWIS: I think those would be the preliminary matters I wanted to bring out, and then we can respond more specifically after the parties have spoken to their contentions.

CHAIRMAN GLASER: Let's hear from Mr. Reed, who submitted a statement revising his contentions.

Have you given the California Energy Commission a copy of the revised issues?

MR. REED: Yes, we have.

Mr. Chairman, at the outset, in listening to

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Mr. Lewis and having been meeting with the staff yesterday, I can see that we are going to join the issues very early. I think the preliminary issue here is what precisely is the jurisdiction of this board, what is the scope of the review that you are to undertake.

It is our position the order of June 21st, 1979, is to be read in the broadest possible manner to give this board the broadest possible scope and jurisdiction to examine into all of the issues involving Rancho Seco safety issues.

At the outset, Mr. Lewis indicated that he felt that the Three Mile Island investigation is not necessarily relevant here. I believe, as a preliminary remark, that we are here precisely because of the accident at Three Mile Island and the great similarity between the reactor at Rancho Seco to that at the Three Mile island. So it seems to us, at the outset, that we have to consider all of the investigations at Three Mile Island to the extent that they are available, and we have to consider the conclusions reached preliminarily and permanently as a result of that investigation. Otherwise, we are wasting our time here. That is our purpose.

Secondly, with regard to the scope and jurisdiction of this board, we do believe that the board must examine into and perhaps make recommendations on steps for emergency planning. The Nuclear Regulatory Commission appointed this board to determine whether the corrective actions short-term and

long-term taken after Three Mile Island with regard to Rancho Seco will reasonably assure the safety of the people of Sacramento Valley. And that carries with it the implication that the corrective actions might not be safe. And I think to protect the people of this area, we have got to consider emergency planning steps. It is a very logical and necessary thing for this Commission to do so.

I will leave my opening statement with that, Mr. Chairman, simply attempting to indicate to you at the outset that we are widely divergent from the opinion of the staff on the jurisdiction of this board.

CHAIRMAN GLASER: And you want to rely on the revised statement of contentions as to the specific issues?

MR. REED: Yes. At the outset, in our revised statement of contentions, we have put what we think is the proper jurisdiction of the board, as paragraph Roman numeral I, page 1 of our revised contentions, really giving the broadest possible interpretation to the order of the Commission dated June 21, 1979.

We are asking this board to examine into whether the terms and conditions of all of the orders of the Nuclear Regulatory Commission relating to Rancho Seco are sufficient to reasonably assure the safe operation of that facility and the safety of the people of Sacramento County and its environs. We don't think we can simply look at the five rather simple

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short-term corrective actions taken, nor the proposed long-term actions. We have to examine all of the possible corrective actions and safety measures that might be taken to assure the safety of the people. Safety is the only issue in this proceeding.

In that sense, since safety is so important and really is the whole purpose of the Nuclear Regulatory Commission's existence, we think the scope of the board's inquiry ought to be very, very broad, in accordance with our paragraph I.

CHAIRMAN GLASER: Thank you.

Mr. Hursh, do you want to address, if you would, the board on your position and your statement? And before we begin, I note that it is my understanding that you are an elected director of SMUD; is that correct?

MR. HURSH: Yes.

CHAIRMAN GLASER: You represent whom?

MR. HURSH: I represent myself as a resident who lives within the zone of interest surrounding Rancho Seco nuclear facility. I am an elected official and have been elected on November 1976, taking office in January 1977 as a member of the board of directors representing Ward 1. The Sacramento Municipal Utility District encompasses most of Sacramento County, and the district itself is divided into five wards. I am the elected representative from ward one and

my term of office will expire at the end of 1980.

CHAIRMAN GLASER: You live within the zone of interest? You are a resident of Sacramento?

MR. HURSH: Of Carmichael, which is a suburb of Sacramento. It is approximately 25 miles from the nuclear facility itself.

I am employed about one block from here, from this location, which is approximately 25 miles from the nuclear facility.

CHAIRMAN GLASER: And you are appearing here in your own behalf and not as a representative of any other party; is that correct?

MR. HURSH: With regard to legal representation?

CHAIRMAN GLASER: Yes.

MR. HURSH: I am appearing on my own behalf and I also, in my own mind, am appearing on behalf of constituents on whose behalf I have been elected.

CHAIRMAN GLASER: Are you able to speak for Mr. Castro today?

MR. HURSH: I can attempt to do that. As I indicated, I received a telephone call just prior to coming here and he indicated he was ill and was not sure if he could make it.

I can represent to the board that Mr. Castro lives at 2231 K Street. He, as was I, was elected at the same time and is a member of the board of directors of the Sacramento

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Municipal Utility District. And I think the basis of his standing would be identical to mine, in that he represents himself as a person who lives within the zone of interest and also as an elected representative on whose behalf he feels that he is representing the views of his constituents.

CHAIRMAN GLASER: Very well.

Do you wish to rest on the statement of contentions as you filed them with the Commission, or do you want to elaborate, or do you feel a need to go beyond what you put on paper?

MR. HURSH: I would like to state that, this being the first time that I have appeared before the Nuclear Regulatory Commission or any of its boards, that I am somewhat unfamiliar with the procedures and specificities as are required. And I think that in my discussions with Mr. Lewis and Mr. Brenner, there are certain amendments which I could make to my contentions that I would appreciate the opportunity to do.

The difficulty that I have, as you can see, Mr. Lewis, as I understand it, the attorney from or representative from Babcock & Wilcox next to him can provide him with technical expertise. I also do need to have technical expertise. And just having the meeting this morning with Mr. Lewis and Mr. Brenner not less than two hours ago, I have been made aware of some of the vagueness in some of their

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contentions as to the difficulty with the things that I have stated in my document which I have filed.

I would appreciate an opportunity to elaborate more fully and more fully explain and more specifically set forth the contentions that I feel must be addressed by this board before we can be assured that the Rancho Seco nuclear facility can operate and would continue to operate in a safe manner.

CHAIRMAN GLASER: First of all, let me correct the record. There is no attorney here representing Babcock & Wilcox as far as -- the gentleman sitting next to Mr. Lewis is not a staff attorney.

MR. HURSH: I apologize for that.

CHAIRMAN GLASER: To help you a little bit in this proceeding, the NRC doesn't follow rules as you would in federal court, which may account for your unfamiliarity with the specificity requirements. Where you do assert a contention, you need to be more specific, in contrast to a complaint, let's say, filed in the United States district court, which, as you know, under the Federal Rules of Civil Procedure, only requires notice in very broad terms.

MR. HURSH: Correct.

CHAIRMAN GLASER: I think the board would be disposed to granting some time to reconsider how to construct your contentions. Do you have a feeling for how much time you need?

MR. HURSH: I would like to have the opportunity, possibly two to three weeks to revise my contentions. The difficulty that I have seen with the mails and making sure that documents are filed properly, I would think that a month would be a reasonable time for me to have on file with the board amendments to my contentions as they have been previously filed.

MR. SHON: Mr. Hursh, I take it that you are of the view that the matters before this board are quite broad. For example, your 1-B contention that says: "Rancho Seco does not have an adequate evacuation plan." I trust you don't just mean an evacuation plan for the facility itself, but for the surrounding area? Is that what you are referring to?

MR. HURSH: Yes.

MR. SHON: And you are also of the view that we are here to investigate more than simply feedwater transients, but any transient that may occur; is that correct?

MR. HURSH: That is correct.

MR. SHON: I see. Thank you.

MR. HURSH: If I might elaborate a little bit, I think that is indicative of the concern. And if you look at the course of events that took place shortly after Three Mile Island Unit No. 2 had their accident, there is lengthy negotiations which took place between representatives of SMUD and members of staff and the Nuclear Regulatory Commission. It

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was only after staff had made a recommendation to the Commissioners that Rancho Seco should be shut down for addressing some of the concerns that had developed that there seemed to be, if we might use the term, a stipulated agreement that Rancho Seco would be shut down and make certain modifications.

I think that the whole scope of the concern at that point in time was the safe operation of this facility, not just feedwater transients. I do feel that the concern that has been expressed by the Commissioners themselves and the matters that have been discussed between members of the Nuclear Regulatory staff and the SMUD staff were much broader than just the feedwater transient issue.

MR. SHON: On matters such as general management competence, you feel -- you recommend that here, too?

MR. HURSH: Yes.

MR. SHON: Thank you.

CHAIRMAN GLASER: At Mr. Brenner's suggestion, we will not here from the California Energy Commission until they have had a chance to look at the papers, and I would like to look at them as well. All right?

MS. GRUENEICH: Yes.

CHAIRMAN GLASER: Mr. Kaplan, do you want to make a comment?

MR. KAPLAN: I think not. We have filed comments on the contentions originally filed. I have had an opportunity

to glance quickly through the comments on the Energy Commission and the revised comments filed by Mr. Reed and Mr. Remy. On the basis of a quick reading, the Energy Commission's material looks more like interrogatories than a statement of contentions. And on a quick reading, Mr. Reed's contentions look rather broad.

Other than that, the only remark I would make is that my views are essentially those expressed by Mr. Lewis.

CHAIRMAN GLASER: Very well.

DR. COLE: Mr. Kaplan, do you have any comments to make relative to the demonstration of requisite interest of any of the parties in this case? Do you agree that they have demonstrated sufficient interest to participate, regardless of whether they have stated adequately their contentions in the case?

MR. KAPLAN: My understanding of the applicable precedents is that anyone residing within, say, 30 miles of the plant, meets the zone of interest test that boards of this sort -- that the Commission has established. And all of the individual petitioners meet that test. The organizations all have members who meet that test.

If I could come back to that, I am uncertain about the standing of the state. We understand, of course, that under the rules the state can appear. I am just not completely sure which agency is the proper representative of the state.

The state has several agencies concerned with these matters. There is the Public Utilities Commission, the Attorney General has some responsibility, and the Office of Emergency Services.

Assuming the Energy Commission is a proper state representative, the question might arise: Are they the proper agency to assert all of the contentions? I just think this might be an appropriate subject of inquiry for the board.

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1 CHAIRMAN GLASER: We will call for a recess now,
2 and give the staff a chance to read the California Energy
3 Commission's papers.

4 Let's take a 20-minute recess and we will come
5 back, and we want to discuss the matters and the Board will
6 be prepared to make some rulings.

7 (Recess.)

8 CHAIRMAN GLASER: We are ready to go back on the
9 record. We are on the record now. Now, the California
10 Energy Commission has submitted a statement of issues of
11 concern. We would like to hear from counsel for the
12 California Energy Commission with respect to their filing at
13 this time.

14 MS. GRUENEICH: Thank you. My name is Dian
15 Grueneich. I am an attorney with the California Energy
16 Commission and will be representing it in these
17 proceedings. We have filed a notice of participation as an
18 interested state with the Board prior to today's hearing
19 that we do wish to participate in this proceeding as an
20 interested state, and not as a full party to the
21 proceeding. We feel that our filing does set forth our
22 interest in this proceeding, sufficient so the Board could
23 grant us the right to participate as an interested state,
24 that the California Energy Commission, by its enabling
25 legislation has been designated by the state of California

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kap 1 to be the primary state agency to be concerned with energy
2 matters within California and pursuant to the Warren-Alquist
3 Act we have a broad range of duties to look into matters of
4 energy in California.

5 We feel that the proceeding clearly comes within
6 the scope of the matters that we are charged with. There is
7 specific authorization in our statute allowing us to
8 participate in federal proceedings such as these, and we
9 have been involved in a number of proceedings before
10 including ones before the NRC.

11 We feel that this, in particular will be of
12 interest to the Energy Commission and to California since it
13 involves a nuclear power plant located within the state's
14 border and its electricity is used by the citizens of
15 California. The California Energy Commission is
16 specifically concerned and is bound by its statute to look
17 into a broad range of energy issues.

18 These include monitoring energy trends in
19 California, monitoring impacts of usage of energy within
20 California, monitoring any environmental impacts, monitoring
21 public health and safety measures. We feel that all of
22 these are of concern and will be addressed in this
23 proceeding and therefore it is of interest to the California
24 Energy Commission to keep informed of what is happening.

25 In addition, the California Energy Commission is

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kap 1 charged with licensing of new power plants in California and
2 we feel that the information that is developed in this
3 proceeding would greatly assist the Commission if it has --
4 if a utility does apply before the Commission for approval
5 of a nuclear power plant, I think all of the matters that
6 come before the Commission will be ones that we might be
7 considering in future power plant licensing proceedings.

8 We are interested in keeping abreast of federal
9 developments. That is basically why we are interested in
10 participating in this proceeding.

11 CHAIRMAN GLASER: Does the California Energy
12 Commission intend to introduce evidence on any issues you
13 would assert, and participate in that manner? Or do you
14 have something else in mind?

15 MS. GRUENEICH: In the past, when we have
16 participated in proceedings we have endeavored to introduce
17 evidence and provide witnesses in the areas that we do have
18 expertise, and we do anticipate doing so in this
19 proceeding.

20 CHAIRMAN GLASER: Therefore, the California Energy
21 Commission would assume the burden of going forward on any
22 issue that it might assert, we might have thought of as
23 proper for this proceeding.

24 MS. GRUENEICH: We would like to look into that
25 further. In general we would concur with that, that we

kap 1 would be ready to go forward with assertions that are made.

2 But there may be instances where we feel it is
3 because of some legal ramifications within the burden of
4 going forward of the licenses or of the NRC, but in general
5 we would concur. And I would also like to emphasize we do
6 definitely concur with your statement before that the burden
7 of proof would remain with the licensee in this proceeding.
8 I would also like to point out that the California Energy
9 Commission has formally adopted a resolution requesting the
10 staff to intervene in this proceeding and we have attached a
11 copy to our notice of participation.

12 Turning now to some of the issues that have been
13 discussed today, first of all I would like to emphasize that
14 as an interested state we aren't taking a position on any of
15 the final resolution of the issues that may be discussed;
16 however, we have taken a position on the scope of the
17 proceeding, and in general we do concur with the petitioners
18 as to the scope of the proceeding.

19 We feel that the wording of the order that has
20 been issued by the NRC supports an interpretation of a broad
21 scope to this hearing, that the wording of the order is not
22 just whether the actions in the order have been complied
23 with, but whether the actions are sufficient to provide
24 reasonable assurance of the plant's safe operation.

25 And we believe in order to make a determination of

kap 1 sufficiency and reasonable assurance, that these are
2 judgmental decisions that the Board will have to make and
3 that in order to make this determination it will have to
4 have before it a rather complete record, and we set forth --
5 I won't go into detail -- some of the materials that we feel
6 that need to be looked in order to provide a sound basis for
7 making such a determination.

8 We have also pointed out why we feel that in
9 addition to a strict legal interpretation of the order,
10 there are important policy reasons for having a broad and
11 very substantial hearing on this matter. And as I am sure
12 the Board is aware, the entire issue of Rancho Seco's
13 concern has been of substantial interest to citizens of
14 California, and citizens across the nation.

15 And we feel that part of the concern over the
16 safety of Rancho Seco has resulted from a lack of public
17 understanding of, really, some of the criteria that have
18 been used to determine that Rancho Seco is safe, and a lack
19 of full public understanding of how -- what measures are
20 available to ensure safety and how those were set forth by
21 the NRC are implemented by SMUD.

22 Therefore, in order to provide an understanding
23 and knowledge to the people of California and to the
24 California Energy Commission we do feel it is appropriate to
25 have a proceeding that will disclose some of the decisions

kap 1 that have been made -- what are the basis for the decisions
2 and basically looking to what the information is that is
3 available.

4 I think that covers the California Energy
5 Commission's statement in this matter. If you have any
6 further questions, I would be glad to answer them.

7 CHAIRMAN GLASER: Mr. Brrenner.

8 MR. BRENNER: Thank you, Mr. Chairman. We have
9 discussed our different views among the parties as to the
10 scope of the order already. I would just like to hit the
11 topic again, in light of the comments of counsel for the
12 California Energy Commission.

13 I think her very comments support our view of the
14 order, and counsel stated the order expressly set forth and
15 then went on to conclude that the issues would be the
16 ability of the facility to operate safely. That may be the
17 words that the Energy Commission would have liked to have
18 seen in an order but those words do not appear.

19 Rather, what the order is concerned with, as is
20 expressly stated in the order, is the ability of the
21 facility to respond safely to feedwater transients, and
22 therein lies our difference, I believe.

23 CHAIRMAN GLASER: On page four of the May 7 order
24 the Commission did indicate that the licensee had proposed
25 long-term modifications to respond to various transients. I

kap 1 don't think it is restricted, as I read that order, to
2 feedwater. Did I misunderstand the Commission's May 7th
3 order?

4 MR. BRENNER: I would have to go back to the May
5 7th order and look at it more precisely in context but I
6 would like to state that it has been settled that the
7 Licensing Board -- that the full plenary authority of the
8 Commission did not reside in the licensing board, and the
9 Licensing Board takes only that jurisdiction which is
10 expressly delegated by the Commission, in this case by the
11 June 21st Commission's order, which delegated specific
12 issues to this Licensing Board.

13 So you have to look to the June 21st order, which
14 did specify the broad issues within which further
15 contentions could be specified, rather than the May 7th
16 order.

17 CHAIRMAN GLASER: I want to make a comment to
18 assist you in considering this matter further.

19 As I recall, the Commission's June 21st order, it
20 had Issue Number 2 concerned with the long-term
21 modifications.

22 MR. BRENNER: Issue Number 2 was whether the
23 long-term modifications are required.

24 CHAIRMAN GLASER: That's right. And if the
25 licensee proposed long-term modifications reflecting the

kap 1 plant's ability to respond to various transients you might
2 want to argue that various transients would be at issue if
3 they are asserted in this case.

4 MR. BRENNER: I would not, in going back to the
5 May 7th order, which I now have -- I hope this is the order,
6 it starts with page two -- but on page four if you are
7 following with me, the bottom paragraph, a paragraph that
8 contains the phrase "various transient events" it states,
9 "in addition to these modifications to be implemented
10 promptly" -- that is a reference to the short-term A through
11 E modifications.

12 Quote, "the licensee has also proposed to carry
13 out certain additional long-term modifications to further
14 enhance the capability and reliability of the reactor to
15 respond to various transient events. These are -- I think
16 the last two words are very important -- "long-term
17 modifications referred to" listed at page five are all
18 modifications relating to feedwater transients, some of
19 which are follow-ups to the short-term modifications.

20 CHAIRMAN OLASER: Mr. Kaplan?

21 MR. KAPLAN: I would have made precisely the same
22 point that Mr. Brenner has made. One way to look at this
23 is, to the extent that this paragraph in the May 7th order
24 expands the Board's jurisdiction beyond the narrow reading
25 of the June 21st order, there are still limits, and those

kap 1 limits are set forth in the material we see on the page
2 following that paragraph. The first four paragraphs of page
3 five of that May 7th order -- I doubt if we will object to
4 contentions that relate specifically to the four matters set
5 forth on page five of the Commission's May 7th order.

6 CHAIRMAN GLASER: All right. Does anyone else
7 wish to make any comments on the statement of the California
8 Energy Commission?

9 (No response.)

10 CHAIRMAN GLASER: The Board is prepared to issue
11 some rulings. We will grant interventions -- yes, sir?

12 MR. BRENNER: I'm sorry. I hadn't quite finished.

13 CHAIRMAN GLASER: My apologies.

14 MR. BRENNER: Regarding the scope of the order --
15 leaving the scope of the order and addressing the interest
16 of the California Energy Commission, we have no doubt that
17 the Energy Commission would be entitled to participate as a
18 representative of California. The problem might arise as to
19 just what issues would fit within their grant of authority
20 from the state.

21 I am certainly not an expert on California law,
22 but it is my understanding that Section 25219 of the
23 California Public Resources Code authorizes the Energy
24 Commission to appear before the federal government agencies
25 to address any matter within the scope of the powers and

kap 1 duties of the Commission.

2 You therefore have to look to the scope of their
3 powers and duties, which primarily -- I am not prepared to
4 say exclusively -- appear to be forecasting of a need for
5 power and the licensing of new power plants rather than
6 broadly any matters that may relate to facilities.

7 However, the staff does not seek to contest the
8 scope of their participation at this point. The reason I
9 raise these concerns is perhaps anticipatory. Should any
10 other agency of the state of California come forward and
11 assert that they are the proper party, I think it would be
12 within this Board's discretion to very directly tell a state
13 agency to caucus among themselves and work out just who is
14 going to be the representative of the state of California in
15 this proceeding.

16 It may not become a problem, but I think it would
17 be not proper to have various state agencies asserting
18 various positions on the same issues.

19 CHAIRMAN GLASER: Has any other state agency filed
20 with the Commission indicating its interest to indicate --

21 MR. BRENNER: No, but there have been some
22 informal contexts that indicate that possibility.

23 CHAIRMAN GLASER: We are petitioned by some
24 others. We will grant intervention to the Friends of the
25 Earth, the Environmental Council of Sacramento, to the

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1 original Great Bears SMUD Association, and we will grant
2 Mr. Hursh's and Mr. Castro's petition and admit them as full
3 parties to the proceeding. We will allow the California
4 Energy Commission to participate pursuant to section
5 2.715(c) of the Commission's rules and regulations.

6 And now we come to the matter of issues and the
7 matter of issues and the scope of this Boards'
8 jurisdiction. The Board will grant the parties two weeks to
9 meet among themselves and to reach a stipulation on issues
10 which should be heard in this proceeding, and to submit to
11 us at the end of the two-week period any issues which they
12 cannot reach agreement on.

13 We would expect to have in our hands on August
14 20th a filing of the stipulation and the issues which they
15 could not reach agreement on. Shortly thereafter, we will
16 rule on that matter. We will either adopt the stipulation
17 or reject it and we will either rule on the issues that they
18 can't agree upon accordingly -- we would also request the
19 parties submit to us by August 20th a brief on the scope of
20 this Board's jurisdiction, and in particular we want you to
21 address the matter of whether a suggestion of a rulemaking
22 procedure take place before the Commission, either one that
23 has already been constituted or one that is likely to occur,
24 whether it has any impact on this Board's jurisdiction.

25 This matter has arisen because there is a

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1 contention, at least one made, asserted, that emergency
2 planning is an issue. I believe the public record indicates
3 that the Commission has under consideration rulemaking on
4 that matter, and would like to find out whether that
5 rulemaking or suggested rulemaking would in any way impede
6 or impinge upon our jurisdiction to proceed.

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1 We will give you 60 days to complete a discovery and ruling
2 on the matters which have not been stipulated to. The
3 cut-off date, in any circumstances, will be October 26th,
4 for completion of discovery. We will hold a prehearing
5 conference on November 7, 1979, in a place an location in
6 Sacramento, at a place to be determined in subsequent
7 order. We will begin hearings on December 27th in
8 Sacramento.

9 Next week, by next Tuesday, the Board will issue a
10 prehearing conference in this case, putting in writing what
11 we have discussed here today, and the issuance of that order
12 does not delay the two-week period of time which you have to
13 reach agreement on stipulated issues and submit to us
14 non-stipulated issues. When I say two weeks, that is about
15 the 15th and we will give you until the 20th of August to
16 have the papers in our hands. They must be in our hands by
17 August 20th, the brief and the stipulations and the
18 non-stipulated issues. They must be in our hands, received.

19 Now, on the matter of service we find that the
20 parties are not properly serving members of the Board and in
21 the public proceedings we hereby direct all parties to
22 assure that public proceedings receives a copy of every
23 filing, and additional copies submitted to individual
24 members of the Board.

25 If there are any problems with rules, we will ask

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kap 1 the staff to assist any party that has been admitted here in
2 understanding the rules, and it will be followed henceforth
3 in this proceeding.

4 The Board will adopt in general the Federal Rules
5 of Civil Procedure. We intend to follow them insofar as
6 practicable. We will also follow the Federal Rules of
7 Evidence insofar as practicable. I suggest that since we do
8 have members of the bar, attorneys in good standing in the
9 state of California and otherwise, that they should be
10 familiar with those rules and we expect them to be followed.

11 I know the staff is very familiar with those
12 rules. Any questions?

13 MR. BRENNER: Mr. Chairman, if I might, and I
14 don't say this slightly -- in looking at the schedule of
15 Mr. Lewis and myself over the next two weeks, it will be
16 difficult, of course not impossible, but difficult to get
17 the brief in your hands as to the scope of the issues on the
18 20th.

19 And in addition, it is normal procedure, although
20 of course within the discretion of the Board, for the staff
21 to be able to file their views after seeing the briefs of
22 the other parties.

23 CHAIRMAN GLASER: In this case the staff,
24 according to your statements this morning, at least will
25 assume part of the burden of proof and I think the filings

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1 ought to be simultaneous with every other party. If any
2 party needs additional time for submission of a brief, will
3 you submit your brief for extension of time showing good
4 cause. We are not disposed to granting more time, but if
5 the staff needs more time, and therefore we grant it, we
6 would grant it for everyone.

7 But I urge you to consider fully whether or not
8 you can meet that date and present your views to this Board
9 by written motion indicating how much more time you need.
10 The most important thing is to reach stipulation. Since you
11 are here and the parties are here I assume that you will
12 meet that as you can and try to hammer out those matters.

13 MR. BRENNER: Yes, I was not addressing
14 stipulations and additional time.

15 CHAIRMAN GLASER: How much time?

16 MR. BRENNER: I was going to ask for one more
17 week, until the 27th.

18 CHAIRMAN GLASER: We will grant everyone until the
19 27th of August to have a brief in our hands on the scope of
20 this Board's jurisdiction. That will give you more time.

21 MR. BRENNER: I appreciate that.

22 MR. LEWIS: Mr. Chairman, does that pertain to the
23 brief alone, or -- you still want the statement,
24 stipulation --

25 CHAIRMAN GLASER: Stipulations and also any

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kap 1 contentions not stipulated to. We will have a ruling by the
2 end of August, I can assure you.

3 MR. BRENNER: Looking further down near the end of
4 your schedule, you indicated that the Board would be
5 prepared to go to hearing on November 27th. I just want to
6 indicate that in the long-term items, they are going to be
7 the subject of the staff technical review and those items
8 that have just begun to be submitted by SMUD, frankly, at
9 the preliminary review, which apparently needs more
10 information.

11 I cannot tell you at this point when the staff
12 review would be completed. Maybe in advance of November
13 27th.

14 CHAIRMAN GLASER: We say we are going to hearing
15 the 27th. That doesn't mean we will cover all of the issues
16 within a short period of time after the commencing of the
17 hearing. We will bifurcate the proceeding if it is in the
18 public interest to do so.

19 MR. REED: One point of clarification. Do you
20 wish us to state in our brief what impact we believe the
21 rulemaking proceeding on emergency planning will have on
22 this Board's determination?

23 CHAIRMAN GLASER: Yes, sir.

24 MR. LEWIS: Or any other rulemakings —

25 CHAIRMAN GLASER: — which might be relevant and

kap 1 material to the issues you see in this proceeding.

2 MR. BRENNER: The very last item, I promise,
3 Mr. Chairman, is on admitting the various groups as parties
4 to the proceeding. I assume that ruling as to their
5 interest, and a ruling as to whether they would be parties
6 would be subject to finding at least one admissible
7 contention.

8 CHAIRMAN GLASER: There are at least one
9 admissible contention, I think, in the papers we have seen
10 so far. Obviously they think there is more. The Licensing
11 does not disagree or at least one issue. We don't think it
12 is necessary for us to go through the papers at this point
13 and tell you what the one contention asserted is.

14 We would rather await the stipulations and the
15 not-agreed-upon issues, but you are correct, the ruling is
16 as interest and we found at least one contention in the
17 papers of the two parties who are admitted as full parties.

18 The state's participation according to counsel is
19 on 2.715 and they have submitted issues of concern and
20 haven't made a judgment yet as to whether they want to
21 expand that role and go beyond. If they ever do expand the
22 role and go beyond, we expect them to indicate to us in
23 statements of stipulated issues on the 20th of August.

24 MR. BRENNER: I was not trying to get the Board to
25 tell me which contention it might be; I was trying to get

kap 1 the Board to hold off ruling saying that there was at least
2 one very straightforwardly, and looking at the revised
3 contentions of Friends of the Earth at all.

4 The staff is not prepared this morning to state
5 there is definitely at least one good contention within that
6 filing.

7 CHAIRMAN GLASER: My colleagues on the Board want
8 to have the record clear that the stipulations we have
9 referred to should be between the staff, the licensee and
10 the intervenors, and the California Energy Commission if
11 they decide to expand their role.

12 You are on notice, counsel, if you want to expand
13 your role to participate in those discussions and transform
14 the California Energy Commission from an interested party
15 under 2.715 to a full party intervenor.

16 MS. GRUENEICH: I guess I misunderstood you. We
17 have been allowed to participate in the past in the sense of
18 producing witnesses and cross-examination in our capacity as
19 interested state.

20 CHAIRMAN GLASER: Yes, on issues that you have
21 asserted yourself and issues already in the proceeding in
22 which you take an interest. But as I understand your
23 papers, you now specified some issues which you have
24 attached and I assume the California Energy Commission
25 issues, if you want to go forward with those issues, you

kap 1 need to be prepared to assert the burden of going forward
2 with the evidence.

3 If you are going to rely on issues which others
4 stipulate to and on which you agree, that is a different
5 matter. Your role would be restricted to 2.715. We don't
6 have any problem with your representative capacity here. We
7 haven't seen any other state come forward to indicate that
8 they are a proper party to participate under 2.715. As far
9 as we are concerned, you are it.

10 If a dispute should arise, we can assure that we
11 will rule very quickly on it.

12 MR. LEWIS: Mr. Chairman, see if I can get some
13 clarification. Is it your view that the California Energy
14 Commission, the order to have a list specifying issues is
15 thereby coming in under 2.714 rather than 2.715(c)?

16 CHAIRMAN GLASER: I didn't understand your
17 question.

18 MR. LEWIS: Is it your view, in order for the
19 California Energy Commission to be asserting a list of
20 issues which it wants considered in the proceeding, it has
21 to therefore come in under full intervention status of 2.714
22 rather than 2.715(c)?

23 CHAIRMAN GLASER: If they want to do that. Are
24 you suggesting they could do it under 2.715(c) and they can
25 just --

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1 MR. LEWIS: I believe they can do it under
2 2.715(c) although as a practical matter I do not disagree
3 with you that the -- that they should be required to specify
4 with reasonable specificity and basis what their issues are,
5 much as a full intervenor would have to specify their
6 contentions.

7 So in the practical import, I am not disagreeing
8 with you but I think they can do it under 2.715(c).

9 CHAIRMAN GLASER: Let us consider that matter over
10 the next few days, and in our prehearing conference order we
11 will dispose of that issue.

12 MR. BRENNER: If you are going to be considering
13 it, I wonder if I might give you a citation on the record.
14 In a proceeding that some of us are familiar with, the Gulf
15 State Utilities River Bend proceeding, 6 NRC 760 at page 768
16 to 769, the Appeal Board has stated its view as to the
17 rights and responsibilities of interested states with
18 respect to specifying issues.

19 CHAIRMAN GLASER: That was the Board's concern
20 that they understand their rights and they accept their
21 responsibilities. I believe counsel has indicated they are
22 prepared to do that.

23 MS. GRUENEICH: We are prepared to clarify our
24 statement of issues to guide the Board in specificity;
25 however, we are not prepared to come in as a full party

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kap 1 unless it was required.

2 (Board conferring.)

3 CHAIRMAN GLASER: Is there any other matter to
4 come before the Board at this time?

5 (No response.)

6 CHAIRMAN GLASER: There being none, we will
7 adjourn until November 7th.

8 (Whereupon, at 11:48 a.m., the hearing was
9 adjourned.)

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