

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

TEXAS UTILITIES GENERATING CO.

(Comanche Peak)

Docket Nos. 50-445
50-446

PREHEARING CONFERENCE

Place - Glen Rose, Texas

Date - Tuesday, 22 May 1979

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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TEXAS UTILITIES GENERATING CO. : Docket Nos. 50-445
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PREHEARING CONFERENCE

Somervell County Courthouse
Glen Rose, Texas

Tuesday, 22 May 1979

The prehearing conference in the above-entitled matter was convened, pursuant to notice, at 9:05 a.m.

BEFORE:

- ELIZABETH S. BOWERS, ESQ., Chairman
Atomic Safety and Licensing Board Panel
- DR. RICHARD F. COLE, Member
- LESTER KORNBLITH, JR., Member

2391 002

APPEARANCES:

- NICHOLAS S. REYNOLDS, ESQ., Debevois & Liberman, 1200 17th Street, N. W., Washington, D. C. 20036, and
SPENCER C. RELYEA, ESQ., Worsham, Forsythe & Sampels, 2500-2001 Bryan Tower, Dallas, Texas 75201; on behalf of the Applicant.
- LAWRENCE J. CHANDLER, ESQ., and MARORIE B. ULMAN, ESQ., Office of the Executive Legal Director, Nuclear Regulatory Commission, Washington, D. C.; on behalf of the NRC Staff.
- GEOFFREY GAY, ESQ., and SARAH HAWTHORNE, ESQ., West Texas Legal Services, 406 W. T. Waggoner Building, 810 Houston Street, Fort Worth, Texas 76102; on behalf of Petitioner Association of Community Organizations for Reform Now (ACORN).

1 APPEARANCES (continued):

2 JUANITA ELLIS, 1426 S. Polk Street, Dallas, Texas 75224, and
3 J. MARSHALL GILMORE, ESQ., Davison & Gilmore, 1060 West
4 Pipeline Road, Hurst, Texas 76053; on behalf of Petitioner
Citizens Association for Sound Energy (CASE).

5 RICHARD FOUKE, BETTY BRINK, and JOHN MILLS, 1668-B Carter
6 Drive, Arlington, Texas 76010; on behalf of Petitioner
Citizens for Fair Utility Regulation (CFUR).

7 RICHARD LOWERRE, ESQ., and DAVID PREISTER, ESQ., Office of
8 the Attorney General, Supreme Court Building, Austin,
9 Texas 78711; on behalf of the State of Texas.

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P R O C E E D I N G S

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2 MRS. BOWERS: Good morning, everybody.

3 If I may have your attention; first, I'll introduce
4 the Board, then I'll ask the parties and Petitioners for their
5 appearance.

6 I'm Elizabeth Bowers. I'm a lawyer, I'm a member of
7 the Kansas Bar, and I've been involved in federal administrative
8 proceedings for 27 years -- 15 years as government counsel and
9 the last 12 as a presiding officer for various programs. I've
10 been in this program the last seven years.

11 On my right is Dr. Richard Cole. He's an environment-
12 al scientist. He spent a number of years on the faculty of the
13 University of North Carolina at Chapel Hill. During that time
14 he headed a program for the University in Guatemala and spent
15 four years there. He's been a full-time member, as I am, of
16 our panel for the last six years.

17 On my left is Mr. Lester Kornblith. He's our nuclear
18 specialist. He's an engineer. As a child, he was involved with
19 the Fermi experiment at the University of Chicago and has had a
20 long and distinguished career on the nuclear side.

21 Now, the Atomic Energy Act, Section 191, provides
22 that these hearings will be conducted by a three-person board,
23 and in this particular situation, having the disciplines that
24 I have just identified.

25 Let me check and call for appearances of the parties

1 and the Petitioners.

2 Is the Applicant present?

3 MR. REYNOLDS: Mrs. Bowers, my name is Nicholas
4 Reynolds. I am with the Washington, D.C., law firm of
5 Debevoise and Liberman.

6 With me today at the counsels' table is Spencer
7 Relyea, with the Dallas law firm of Worsham, Forsythe & Sampels.

8 MRS. BOWERS: The gentleman on your left.

9 And is the Nuclear Regulatory Staff present?

10 MR. CHANDLER: Yes, Mrs. Bowers.

11 On behalf of the Staff, I am Lawrence J. Chandler.
12 With me is Miss Marjorie Ulman. We're with the Office of the
13 Executive Director of the U.S. Nuclear Regulatory Commission,
14 Washington, D.C.

15 MRS. BOWERS. Now, let me check with the Petitioners.
16 Get the official name, CASE.

17 MS. ELLIS: Citizens Association for Sound Energy.
18 And if we had it to do over again, we'd make it shorter.

19 I'm Juanita Ellis, President of CASE. With me is
20 Marshall Gilmore.

21 MRS. BOWERS: Citizens for Fair Utility Regulation --
22 I think you're using CFUR.

23 MR. FOUKE: CFUR is the short name.

24 I'm Richard Fouke, and I'm a member of CFUR. Betty
25 Brink is appearing with me, as is John Mills, all members of

1 CFUR.

2 MRS. BOWERS: And the Texas Association of Community
3 Organizations for Reform Now, in association with West Texas
4 Legal Services, ACORN and WTLS.

5 MR. GAY: I'm Geoffrey Gay. I'm attorney, from the
6 West Texas Legal Services -- be representing ACORN.

7 MRS. BOWERS: And the State of Texas.

8 MR. LOWERRE: Yes, Madam Chairman.

9 There's no room at the table, so we'll sit over here.

10 I'm Rick Lowerre, Assistant Attorney General. With
11 me is David Preister, also an Assistant Attorney General.

12 MRS. BOWERS: I'll take a few minutes to give just
13 a little bit of background to this proceeding.

14 On Monday, February the 5th, 1979, the Nuclear
15 Regulatory Commission published Availability of Applicants'
16 Environmental Report in the Federal Register. That's 44 Fed-
17 eral Register, page 6995:

18 Availability of Applicants' Environmental Report,
19 Consideration of Issuance of Facility Operating Licenses, and
20 Opportunity for Hearing -- and that notice informed people that
21 they could petition to intervene at a later time, they would
22 be invited to make a limited appearance statement, and
23 Petitioners -- potential Petitioners were told that they should
24 have their petitions in by March the 5th, which was 30 days
25 after the notice.

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1 Well, a number of petitions were received, so on
2 Thursday, March the 15th, in the Federal Register, 44 Federal
3 Register 15813, there was an announcement as follows:

4 "Establishment of Atomic Safety and Licensing Boards
5 to Preside in Proceedings," and that was appointment of the
6 three members that you see before you.

7 Now, on Monday, April 16th, Volume 44 of the Federal
8 Register, 22531, this Board issued a notice that there would
9 be a prehearing conference, and we recited the various
10 Petitioners in the case, which we had identified this morning,
11 CASE, CFUR, ACORN, WTLS, and also, of course, the State of
12 Texas.

13 We said that the prehearing conference would commence
14 at 9:00 a.m. local time, on May 22, 1979, in the courtroom in
15 the -- would you believe -- Glen Rose County Courthouse, On-
16 the-Square, Glen Rose, Texas.

17 And when we realized our mistake in identifying the
18 Courthouse, we issued an amended notice on Monday, April the
19 23rd, 44 Federal Register -- and my page is cut off -- it's
20 239- and two more letters.

21 Anyway, correctly identifying the courthouse as the
22 Somervell County Courthouse.

23 Now, we had a motion for continuance, and as a result
24 of that motion, we had a conference call. We had, of course,
25 a motion from ACORN and West Texas Legal Services, and the

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1 basis for the motion for continuance of this prehearing,
2 postponing it, was, one, the Three Mile Island incident; two,
3 the testing of concrete cores; three, Federal Energy Commission
4 consideration of need for power; four, inquiries by Congressman
5 Morris K. Udall and Senator George McGovern; and five, lack of
6 final safety evaluation report by the NRC Staff.

7 And we have responses to this motion of April 6th
8 by the Applicant on April 25 and by the Staff on April 26.

9 Because we had been on travel, we weren't able to
10 immediately do a return response to this so that it would be
11 timely. And so we had a conference call with all parties on
12 May the 8th. And on May the 8th we informed the Petitioner
13 and the parties what our ruling would be on this motion, that
14 we would deny the motion and we would set out in our order the
15 basis for the denial.

16 And we also in the conference call discussed certain
17 other procedural matters.

18 I'm going to take a minute to read that last para-
19 graph:

20 "The motion is based on the fact that there are
21 ongoing, open matters. This, more often than not, is the case,
22 that there are matters that are ripe for consideration at the
23 prehearing conference. The Applicant and the NRC Staff have
24 different positions on the various Petitioners' 'interest' in
25 the proceeding. That matter alone would warrant proceeding with

1 the scheduled prehearing conference since this is a fundamental
2 matter which must be resolved, and the Board will be further
3 aided by discussion of this issue by the Petitioners, Applicant,
4 and NRC Staff, the requirements for 'standing' being interest
5 and at least one valid contention. The Applicant and Staff are
6 requested to address in writing, prior to the prehearing
7 conference, any additional plea they may wish to submit on
8 interest and their petitions as to whether they believe there
9 is one or more acceptable contentions for each of the
10 Petitioners. The Petitioners and the parties will be invited
11 to address these issues orally at the prehearing conference if
12 the Board determines an interest and at least one contention
13 had been established for a Petitioner, then that Petitioner
14 will be granted standing as an Intervenor. Then the Board would
15 expect the Applicant and Staff to meet with each Intervenor and
16 try to reach a stipulation on one or more other contentions.
17 Intervenors may request additional contentions be accepted if
18 new information becomes available at a later date."

19 Well, following that order, we did receive last
20 Friday the NRC's Staff memoranda regarding the contentions in
21 further answer to ACORN, WTLS -- I don't know how to pronounce
22 that.

23 (Laughter.)

24 MRS. BOWERS: WTLS, a Petition for Leave to Intervene,
25 and Applicant's memorandum regarding interest and contentions

1 of the Petitioners was also received last Friday.

2 So we are here today to hear from the parties and
3 the Petitioners on the question of interest and also the
4 contentions, at least one contention.

5 Now, this morning we received additional filings. At
6 least they were here on the bench, and page 21 -- which is the
7 correct page -- of which --

8 MS. ELLIS: Of CASE.

9 It's a summary of the Petition to Intevene.

10 I have one other thing -- I don't have copies made of
11 it, and I will make copies for all parties.

12 This is an amended affidavit of Marilyn Stinson. One
13 of the primary reasons that it's just now getting here is that
14 part of the questions raised in answer to our petition from the
15 Applicant raised a question of membership, how long the Appli-
16 cant had been a member of CASE, and we wanted to answer that
17 specifically. And we have further documentation of that if
18 that should be necessary.

19 We ask that this be admitted.

20 MRS. BOWERS: You have this one copy.

21 MS. ELLIS: We will make copies for all parties.

22 MRS. BOWERS: I tell you what I think might be
23 helpful today, I'd like a response from the parties. If this
24 is not agreeable, to read the relevant two parts into the
25 record so that perhaps you might take a minute or two.

1 Has Mr. Chandler -- and Mr. Reynolds -- had a chance
2 to look at this?

3 MR. CHANDLER: No.

4 MR. REYNOLDS: No.

5 MS. ELLIS: Mrs. Stinson just brought it in -- just
6 now. I received the request -- on the response from the
7 Applicant yesterday direct, before we came down. So I just
8 have not made copies yet.

9 MRS. BOWERS: Then also waiting for us at the bench
10 was a Motion to Amend Supplement to Petition for Leave to
11 Intervene by CFUR, and of course we haven't had a chance to
12 review this.

13 Now have you furnished copies?

14 MR. FOUKE: I furnished copies to all parties here
15 and mailed them.

16 MRS. BOWERS. Then also first corrections.

17 MR. FOUKE: There is nothing substantive in the first
18 correction of any significance in this particular hearing, but
19 the Motion to Amend --

20 MRS. BOWERS: Did parties receive these documents
21 this morning?

22 MR. REYNOLDS: Yes.

23 MR. CHANDLER: Yes.

24 MRS. BOWERS: Have you had a chance to read it?

25 MR. REYNOLDS: The Applicant has not had a chance to

1 review on a substantive basis the Motion to Amend relating to
2 the quality assurance potential.

3 MR. CHANDLER: I just had an opportunity to read it,
4 Mrs. Bowers, and addressed part of it. I certainly would like
5 additional time to respond more fully.

6 MRS. BOWERS: I tell you what we could do. Now,
7 first, I am going to ask parties and Petitioners if they have
8 opening statements. If there are no opening statements, then
9 we will proceed immediately into the consideration of the
10 various Petitioners' interest and contentions, if any, of the
11 response of the Petitioners and the parties; but we could
12 proceed with other than CIFR, and then at a mid-morning recess
13 perhaps there would be an opportunity for all of us to review
14 the documents that we were handed this morning.

15 MR. FOUKE: I'd like to apologize for not having
16 intervened sooner, but this is really in response to the NRC
17 letter, which we did not receive until over the weekend. We
18 felt there was no way to get it to all parties earlier than
19 this meeting.

20 MRS. BOWERS: By starting out this way we won't have
21 to begin with a recess.

22 First, let me check and see if there are opening
23 statements.

24 Does the Applicant have an opening statement?

25 MR. REYNOLDS: No, Mrs. Bowers, we don't.

1 MRS. BOWERS: Does the Staff have an opening
2 statement?

3 MR. CHANDLER: No, Mrs. Bowers.

4 MRS. BOWERS: Let me check with Petitioners.

5 Mrs. Ellis, for CASE?

6 MS. ELLIS: No, Mrs. Bowers.

7 MRS. BOWERS: Mr. Fouke?

8 MR. FOUKE: No, Mrs. Bowers.

9 MRS. BOWERS: And, Mr. Gay?

10 MR. GAY: No.

11 MRS. BOWERS: And Mr. Lowerre?

12 MR. LOWERRE: No.

13 MRS. BOWERS: Well, if it's agreeable to Petitioners
14 and parties, I happen to have on the top of the pile the
15 petition and the various pleadings and responses thereto by
16 CASE, Citizens Association for Sound Energy.

17 Now, Mrs. Ellis, you had an opportunity to read the
18 responses of the Staff.

19 Let's start out by limiting it to interest, whether
20 your interest has been established, and have you had an
21 opportunity to review the response of the Applicant and the
22 Staff?

23 MS. ELLIS: Yes.

24 MRS. BOWERS: And the Applicant is not wildly
25 enthusiastic about supporting your claim of interest, whereas

1 the Staff, I believe, did feel that interest had been establish-
2 ed.

3 Now, do you have anything further in the question of
4 interest?

5 MS. ELLIS: This further affidavit of Marilyn Stinson
6 I think will clarify some of the matters raised in the different
7 answers that you have received.

8 It states, "I, Marilyn Stinson, being duly sworn,
9 under oath, state the following:

10 "One, that I am resident of the municipality of
11 Glen Rose, Somervell County, Texas, and that I live at
12 506 Barnard;

13 "Two, that I am over 21 years of age, and of sound
14 mind;

15 "Three, that my husband and I own a five-axle,
16 semi, tractor trailer and operate a business from the above
17 address, which consists of a refrigerated hauling service in
18 a five-state area, including Texas;

19 "Four, that our home, personal, and business property
20 are located within five miles of the Comanche Peak Nuclear
21 Power Plant;

22 "Five, that I am a charter member of CASE, Citizens
23 Association for Sound Energy, and have been a member for over
24 five years;

25 "Six, that for the reasons stated in the most recent

1 Petition for Leave to Intervene and Contingencies filed by
2 CASE in Docket Number 50-445 and 50-446, dated May 7th, 1979,
3 the licensing for operation of the Comanche Peak Nuclear Power
4 Plant will constitute a serious threat to our property and our
5 health, safety, and environment.

6 "Specifically, such threat for the routine emergency
7 operation from the Comanche Peak Nuclear Power Plant includes
8 immediate or later death, cancer, or other health problems;
9 excessive danger to me, personally, from the effects of low-
10 level radiation, due to my heart condition; destruction or loss
11 of our home, personal, and business property; and possibly
12 irreversable damage to the environment.

13 "Seven, that for this reason I have authorized CASE
14 to represent me in the public health, safety, and environmental
15 aspects of the operating license hearings on the Comanche Peak
16 Nuclear Power Plant."

17 Signed "Marilyn Stinson" -- and I will have copies
18 for all parties -- I apologize.

19 MRS. BOWERS: Do you have anything further on the
20 question of interest before we go to Applicant and Staff?

21 We will give you a chance to respond to their
22 comments.

23 MS. ELLIS: I think that's about it.

24 MRS. BOWERS: Mr. Reynolds.

25 MR. REYNOLDS: Mrs. Bowers, we won't summarize our

1 pleadings. We assume that the Board has read the pleadings
2 and needn't be briefed on them again.

3 MRS. BOWERS: That's correct.

4 MR. REYNOLDS: I think it may be appropriate, however,
5 to start our discussion here with background as to the context
6 in which this Board should view this proceeding. Specifically,
7 this is a proceeding for an operating license for Comanche Peak
8 Steam Electric Station.

9 The Appeal Board has reiterated time and time again --
10 for example, in the Zimmer case, ALAB 305 -- that Licensing
11 Boards such as this tribunal should take the utmost care to
12 assure that potential intervenors have a real stake in the
13 proceeding and that they have a real and genuine contention.

14 The purpose of this admonition to this Board from
15 the Appeal Board is to assure that there are truly issues and
16 truly people who have interest such as to trigger a hearing.
17 In the absence of such people and such issues, no hearing will
18 be held in this proceeding.

19 Against that background, it may be helpful for just
20 a minute to summarize the requirements for intervention in NRC
21 proceedings. Those requirements generally are set forth by
22 the Commission in the Pebble Springs decision as well as in
23 the Commission's regulations, 10 CFR 2.714.

24 The Commission taught us in the Pebble Springs case
25 that Licensing Boards are to apply contemporaneous judicial

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1 concepts of standing in determining whether or not intervention
2 should be granted.

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1 Specifically, the commission requires that injury,
2 in fact, be demonstrated by those seeking to intervene, and
3 that the interest that the people allege be within the zone
4 of interest protected by the Atomic Energy Act, or NEPA.

5 In addition, 2.714 of the commission regulations
6 also requires that petitions for intervention demonstrate how
7 their interests may be affected by the results of the
8 proceeding and to demonstrate the specific aspects of the
9 proceeding as to which intervention is sought.

10 We have in this case three petitioners for
11 intervention, all three of whom seek standing through the
12 exception to Article 3 of the Constitution, which requires
13 a case in controversy and which requires that actual parties
14 with interest litigate that case in controversy.

15 That exception was carved out by the Supreme Court
16 in a series of cases. It's called the Associational Standing
17 Doctrine. The cases were Sierra Club v. Morton, Worth v.
18 Seldon, among others.

19 The commission has adopted the associational
20 standing doctrine in, among other cases, Marble Hill, ALAB
21 322.

22 Basically, that doctrine assumes that an association
23 may require standing in a proceeding as the representative
24 of its members when those members themselves personally have
25 interest.

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1 The Supreme Court recently, in 1977, confirmed and
2 clarified the associational standing doctrine in Hunt v.
3 Washington State Apple Advertising Commission, which is
4 cited in our pleading.

5 There, the court teaches us that associations may
6 have standing if their members otherwise have standing, if the
7 interests which the association seeks to protect are germane
8 to the purposes of the association, and if the participation
9 of the member, through whom they derive standing, is not
10 necessarily required in the proceeding.

11 Hunt represents the first time that the Supreme
12 Court addressed the question of standing through non-members.

13 Now we submit that there are questions in this
14 proceeding as to membership in the various petitioners.

15 Mrs. Bowers. Right now we're talking about CASE.

16 Mr. Reynolds. I understand. I'm getting to CASE.
17 For example, CASE just read an affidavit from one of its
18 members which represents that those people had been members
19 for five years.

20 I think it's been important for the board to
21 recognize that the Supreme Court in Hunt clarified and
22 elevated the significance of the membership concept; whereas,
23 in the past, it was assumed that if you call a person a member
24 of your group, that was enough for purposes of associational
25 standing.

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sh 1 We submit to you that Hunt represents a departure
2 from that past practice. The Supreme Court closely
3 scrutinized the meaning of membership of Hunt, and we submit
4 that the board here must look behind the general allegations
5 of the membership in CASE and in the other petitioners here
6 to assure that the appropriate indicia of membership which
7 the Supreme Court discussed in Hunt is there.

8 The membership has to be true and meaningful. The
9 indicia of membership which the Supreme Court discussed in
10 Hunt were factors such as the ability to elect the officials
11 directing the association's affairs, the ability to serve,
12 the fact that members financed the activities of the
13 association, and paramount, the fact that the members have the
14 authority to direct the affairs of the association.

15 In summary, I would suggest that Hunt represents
16 the Supreme Court's conclusion that in order for membership
17 to be meaningful, there must be control in the members over
18 the action of the association.

19 Absent such control, the associational standing
20 doctrine cannot be applied to vest standing in the association
21 itself.

22 In the past, we have seen the associational standing
23 doctrine much abused by groups who would seek to establish
24 standing through individuals who simply have no control over
25 the action of the association.

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1 We would strongly urge the board to review very
2 closely the Hunt decision and also the decision in Health
3 Research Group versus Kennedy in March, 1979, a decision out
4 of the district court of the District of Columbia, where
5 Senior Judge Sirica applied Hunt to refuse associational
6 standing to a group which had no members and had no indicia
7 of membership.

8 All right. Let's talk about CASE.

9 As we see CASE's attempt to obtain interest and
10 standing in this proceeding, it rests on three individual.
11 It rests on Mrs. Ellis, who is a resident of Dallas 60
12 miles from the Commanche Peak facility. We think that the
13 cases are clear that a 60-mile distance from the facility is
14 beyond the geographic proximity which tribunals before this
15 agency have deemed acceptable to vest interest.

16 Therefore, we argue that Mrs. Ellis, any interest
17 which Mrs. Ellis might have, and I used "interest" broadly
18 and in quotes, is not sufficient here to vest associational
19 standing in her group, CASE.

20 As to the Stinsons, I was going to argue that the
21 board must satisfy itself that they're in fact members of
22 CASE. Mrs. Ellis read the affidavit from the Stinsons. We
23 must take that at face value that they have been members for
24 five years.

25 But now let's talk about what Hunt requires and what

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sh 1 health research teaches us. In our view, the board is required
2 to do more than just read this affidavit from the Stinsons.
3 We submit that the board is required by Hunt to delve behind
4 the affidavit to determine whether in the board's view the
5 Stinsons are meaningfully members in CASE. Do they have
6 and possess the indicia of membership which the Supreme
7 Court says is necessary to vest associational standing in
8 a group such as case?

9 Do the Stinsons finance the activities of CASE? Do
10 they have direct and meaningful control over the actions of
11 CASE?

12 We don't know the answers to these questions but
13 we submit to you that if the answers are in the negative, then
14 CASE cannot derive associational standing through these
15 individuals.

16 That aside, and I think that's a significant argument
17 that the board has to closely evaluate, but that aside, having
18 looked at the previous Stinson affidavit, it seems to me that
19 they had not identified the specific aspects of the proceeding
20 as to which they sought to intervene; nor had they truly
21 demonstrated that their interests would be affected by the
22 results of the proceeding.

23 I listened to the affidavit. It's very tough to
24 hear something read to you and then criticize it
25 extemporaneously. I think it's unfortunate that it has to be

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sh 1 this way and I submit to you that these petitioners were
2 required to have all other documents in 15 days before this
3 conference.

4 And the purpose for that regulation is so the
5 parties are not caught unaware and put at a disadvantage such
6 as we are now. If I had time to read that affidavit, I may
7 be able to help the board more in evaluating it.

8 MRS. BOWERS: Would you like a recess?

9 MR. REYNOLDS: Perhaps we can take a recess at the
10 scheduled time. I can look at it at that time and come back
11 to it. Thank you.

12 The rest of my discussion on CASE's purported
13 interest really goes to the affidavit of the Stinson's,
14 which is in the record to date. It doesn't address what's
15 in this affidavit here.

16 Lastly, then, I would turn to the second factor,
17 which the Supreme Court discussed in Hunt, which tribunals
18 must consider before they grant associational standing to
19 groups.

20 That is, whether the interests which the group
21 seeks to protect are germane to the organization's purpose.
22 If you review the petition for leave to intervene filed by
23 CASE and the amendment thereto, I think you will find that
24 there is no specific discussion as to what the organizational
25 purpose of CASE is. They talk about having participated in

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sh 1 various proceedings before the state regulatory commissions,
2 the Dallas city council, and so forth.

3 That really sheds no light on what their
4 organizational purpose is.

5 I suspect that it is highly unlikely that their
6 organizational purpose is to obstruct licensing proceedings
7 before this agency. I know of no case in which CASE
8 participated in an NRC proceeding before. And we all know
9 that NRC proceedings are unique.

10 The participation by CASE in various state
11 proceedings simply isn't the same type of thing as we have
12 here.

13 I would suggest, and implore, the board to explore
14 with case precisely what the organizational purposes are to
15 assure itself that CASE's participation in these proceedings
16 would be germane to its organizational purpose.

17 Until I've had a chance to read this affidavit, I
18 think that will be all I have on that.

19 MRS. BOWERS: Mr. Chandler?

20 MR. CHANDLER: Ms. Ulman will address the case, Mrs.
21 Bowers.

22 MS. ULMAN: Mrs. Bowers, I believe the board has
23 had a chance to review our pleadings filed in response to
24 CASE's petition. I don't feel that there's any need to
25 summarize those pleadings other than to state that we do feel

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1 that CASE has made a sufficient showing of standing in a
2 representative capacity for one or more members.

3 I'd first like to emphasize that we do reach that
4 result; namely, that we feel that they have made a sufficient
5 showing with the full awareness that unlike an application
6 for a construction permit, no hearing on an operating license
7 is required in the absence of a bona fide intervenor.

8 And we do agree that boards should be cautious before
9 triggering such hearings at the behest of someone without a
10 right to intervene.

11 But we do feel that CASE's standing is firmly
12 grounded.

13 Now, first of all, I would also like to emphasize
14 that although in NRC adjudicatory proceedings, judicial
15 concepts of standing are followed, those standards are not
16 necessarily strictly applied. And we do believe that the
17 showing made by CASE is the type of showing that has been
18 deemed to be sufficient by other NRC licensing boards and
19 most recently, an appeal board decision in the south Texas
20 pre-hearing conference and order. And we believe that under
21 the NRC case law, that an organization can make a showing
22 such as CASE has done, and the showing, mainly that there is
23 a standing in a representative capacity, can be established
24 on the basis of the interest of one or more members who is
25 identified and who does reside within what is called the

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1 geographic zone of interest, which has been recognized
2 roughly, I believe, up to 50 miles from the site. And that,
3 furthermore, when the affidavit states that the person
4 wishes to be represented by the particular organization in
5 the proceeding, and that the person is a member, that that
6 type of showing is sufficient to confer on an organization
7 such as CASE standing in a representative capacity.

8 The case that I just mentioned was an appeal board
9 order. I believe it's ALAB-549, issued May 18, 1979, and it's
10 in the matter of Houston Lighting and Power Company, et al,
11 south Texas project, units 1 and 2.

12 We believe that this decision is just the most
13 recent example of what is felt to be a sufficient showing
14 for organizational standing such as CASE has made.

15 MR. KORNBLITH: Excuse me. What was the date of
16 that?

17 MS. ULMAN: May 18, 1979.

18 MR. KORNBLITH: Last week.

19 MS. ULMAN: Yes.

20 I would also like to address a few more points
21 regarding the showing made by CASE and the applicant's response

22 MRS. BOWERS: Before you leave this point, because
23 we've been on other travel, could you briefly touch on the
24 ALAB-549 south Texas so everybody -- and I'm sure others
25 probably haven't had an opportunity to see it.

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sh 1 MS. ULMAN: Okay. ALAB-549 represents the appeal
2 board's disposition of an appeal by the applicants from the
3 licensing board's pre-hearing conference order and the
4 pre-hearing conference order which was issued April 3, 1979,
5 admitted to petitions to intervene. And that admission,
6 since this was an operating license proceeding, also would
7 mean that there would be a hearing held.

8 And one of the petitioners who was admitted was a
9 group called Citizens Concerned About Nuclear Power. And
10 the showing made by citizens was basically to establish
11 standing in a representative capacity for one member of
12 Citizens who was identified in Citizens, not in their first
13 petition, but in the supplement to their petition to intervene.

14 And this member was identified in that supplement
15 and later, an affidavit was provided by that member, which
16 stated that the person resided — I don't remember the exact
17 distance, but it was, I think, within 25 miles from the site
18 that he was a member of the group and that he desired to have
19 the group represent his interest.

20 And the grounds alleged by the applicant for
21 alleging error on the part of the licensing board, in admitting
22 citizens based on this showing of standing in a representative
23 capacity for one member, were very similar to the arguments
24 we hear now from Mr. Reynolds.

25 First of all, I believe one of the grounds alleged

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sh 1 that there was, and I think that this was based on the Hunt
2 v. Washington State Apple case, which is cited by Mr. Reynolds,
3 was that there was an inefficient nexus between the
4 organization's interests and that of this particular member.

5 And I believe that the appeal board held that when
6 there was a statement in Citizens' petition, that they were
7 concerned about the effects from operation of the south
8 Texas facility, particularly effects on the health and safety
9 of their members residing near the plant. And that when this
10 particular member stated he resided within the geographical
11 zone of interest, that that Citizens' statement and the
12 members' adoption of them indicated that there was a
13 sufficient nexus between his interests and those of the
14 organization, whose standing was held to be adequate.

15 Let me see the other grounds for appeal.

16 I don't think this particular issue was raised, but
17 maybe if I describe a little bit more about the showing made
18 in the south Texas case. As far as the nature of the
19 membership, it does not appear, and I am not aware of it in
20 this case or in others, where the licensing board has to go
21 behind a statement by a person that he is a member of an
22 organization to determine, "whether there is meaningful
23 membership."

24 In this case, it was deemed adequate that this
25 particular person stated that he was a member of the

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1 organization, and that from that statement, the licensing
 2 board and appeal board did not feel it necessary to go behind
 3 his statement that he was a member and examine whether there
 4 was "meaningful membership."

5 Let me just briefly see if there are any particular
 6 points about this.

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1 Another point to note was that in this case,
2 although the particular member was identified in the
3 supplemental petition, his affidavit was not provided until
4 after the prehearing conference. And the applicants had
5 filed a motion to inquire of this person when he joined
6 Citizens.

7 This motion was denied by the Licensing Board,
8 and on appeal it was asserted that because his affidavit was
9 not filed until after the prehearing conference, that that
10 rendered Citizens' entire petition timely. And neither the
11 Licensing Board nor the Appeal Board accepted. This argument
12 was based on the decision in, I believe, Washington Public
13 Power Supply System, and although it should be noted that
14 although neither the Licensing Board nor the Appeal Board
15 felt that the affidavit provided after the prehearing
16 conference rendered the entire petition untimely, that the
17 Board did not abuse its discretion in admitting Citizens,
18 even assuming that that late affidavit could have rendered
19 the petition untimely.

20 The Licensing Board had balanced the factors in
21 2.714 dealing with late petitions, although it was never
22 stated that this affidavit rendered the entire petition
23 untimely.

24 MRS. BOWERS: Did the Appeal Board ask that the
25 criteria for late filing be met by the individual who filed

1 the late affidavit?

2 MS. ULMAN: All the Appeal Board did was to state
3 that the Licensing Board, in balancing these factors with
4 respect to the organization, Citizens Concerned about Nuclear
5 Power, that there was no abuse of discretion on the part of
6 the Licensing Board.

7 It did not state that there was a requirement
8 that these factors be applied, but noted that they had been
9 and there was no abuse of discretion in their application.
10 And they noted that, as far as balancing these factors, in
11 view of the fact that Citizens' petitions were timely filed,
12 that there was not likely to be any claim of prejudice as far
13 as a late affidavit in terms of prejudice to other parties.

14 And we do note another point that is important:
15 That the South Texas situation does evidence what may happen
16 when you have organizations or individuals proceeding without
17 counsel, or even with counsel, but who are not experienced
18 in NRC proceedings; and that the technical requirements for
19 pleadings may not be evident, or even satisfied, at the time
20 of the filing of the first petition, or even the supplement,
21 but that in South Texas both the Licensing Board and the
22 Appeal Board noted that it's neither Congressional nor
23 Commission policy to exclude parties because the licensees
24 rules for pleading are perfectly observed.

25 This is on page 11 of the Appeal Board's opinion.

1 There was also another organization who was
2 admitted in the South Texas case. That organization had
3 filed a late petition. There was not doubt that the petition
4 itself was late, but the Licensing Board applied the factors
5 for untimely petitions in 2.714, and the Appeal Board felt
6 that those factors were correctly applied.

7 We would like to note that, with this organiza-
8 tion, like Citizens and CASE here, the demonstration of
9 standing was on a representative capacity for just one member.
10 This other group in South Texas was Citizens for Equitable
11 Utilities, and this -- the person whose -- there was one
12 individual who was both the authorized representative for
13 the group, and the member who resided within the geographic
14 zone of interest.

15 And there was a similar statement of interest on
16 the part of the organization -- namely, its concern about
17 operation of the South Texas facility. And this statement,
18 coupled with the affidavit from the individual was deemed
19 sufficient in totality to confer standing on the organization.

20 Does that more or less summarize it?

21 DR. COLE: Ms. Ulman, did ALAB-549 make any
22 reference to the North Anna or the Duke Power case? ALAB-522
23 or ALAB-528?

24 MS. ULMAN: I believe they did. Yes, it does cite
25 the North Anna ALAB case.

1 DR. COLE: In a confirmatory way?

2 MS. ULMAN: It's cited as a footnote to a statement
3 that the applicants did not challenge one individual's --
4 the personal standing of the individual who was a member of
5 Citizens Concerned about Nuclear Power, or lived within the
6 geographic zone of interest.

7 So it was cited in the context that the applicants
8 did not successfully challenge his personal standing. It
9 stated that his allegation of residence within 7 miles of
10 the South Texas facility, coupled with his expressed concern
11 about injury to his person and property should the plant
12 malfunction, were sufficient to demonstrate his real stake
13 in the outcome of the proceeding.

14 And at the end of that sentence is a cite to the
15 North Anna ALAB-522.

16 MR. KORNBLITH: Mr. Reynolds, are you familiar
17 with ALAB-549?

18 MR. REYNOLDS: Mr. Kornblith, I'm afraid that the
19 Appeal Board has done it again. They've dropped one on us
20 when we're not looking. I think I'm as surprised as the
21 Licensing Board is.

22 I would suggest a few comments with respect to
23 the summary which Ms. Ulman just gave. First of all, it
24 seems to me, based on the facts in that case, that the Appeal
25 Board has left undisturbed the decision of the Licensing

1 Board in this case. I think the distinction is that in
2 South Texas the petitioners for intervention were simply
3 rounding out their demonstration of interest. They were not
4 seeking to introduce new people into the proceeding.

5 In WPPS-2, the petition for intervention there was
6 seeking to bootstrap itself into an interest situation through
7 an associational standing by scurrying around well after the
8 time limit for the filing of the petitions to conjure up some
9 local people, and thereby attempt to obtain an interest
10 through those people.

11 The Licensing Board there said: That is not what
12 is contemplated by the rules which permit the amending of
13 petitions to intervene after they've been filed.

14 So I think that the decision in WPPS-2 stands.
15 I haven't read the ALAB decision on South Texas, so I can't
16 comment further on it.

17 I would suggest that it might be helpful for the
18 Board to allow the parties a brief period following this
19 conference -- 10 days -- in which to file pleadings with the
20 Board indicating what our views are on the significance of
21 this decision on this proceeding.

22 MS. ULMAN: Mrs. Bowers, I just wanted to make a
23 couple statements about what Mr. Reynolds just said as far
24 as South Texas and the WPPS decision.

25 First of all, we note that with CASE, I don't believe

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1 there is any question as to a late filing, as there was with
2 South Texas.

3 In South Texas we didn't have an affidavit, even
4 by the time that the supplemental petition was filed. All
5 there was in the supplemental petition was a statement that
6 four individuals, including the one who ultimately provided
7 the affidavit, resided within the geographic zone of interest.

8 Here, I believe that CASE's petition, this timely
9 petition filed February 28th, '79, contains two affidavits,
10 one from Mrs. Ellis, and one from the Stinsons. Those
11 affidavits and the petition to which they're attached certainly
12 were timely.

13 And so I don't believe that we have a question
14 here about timeliness. The affidavit just filed today is
15 that it seems to me to be just basically a restatement of
16 Mrs. Stinson's earlier affidavit.

17 I believe her first one stated she was a member.
18 Today's stated she was a member for five years. So I
19 believe the situation in South Texas was different. Namely,
20 that you had an affidavit that wasn't provided until after
21 the prehearing conference, and that I don't believe is the
22 case here.

23 So I don't think that the WPPS decision would
24 necessarily apply to this situation.

25 MR. REYNOLDS: May I comment on that?

1 MS. ULMAN: Excuse me. I wasn't finished.

2 MR. REYNOLDS: Sure.

3 MS. ULMAN: One other point is: We believe that
4 there's no reason to question here the date of when
5 Mrs. Stinson became a member of CASE. I believe that in
6 WPPS it was evident at either the prehearing conference or
7 earlier, that there was a question as to when particular
8 individuals had become members, since I'm not certain -- I
9 don't believe they were identified in the initial filings.

10 So we just believe that there's no question raised
11 here about whether a particular individual joined, you know,
12 at the time of the prehearing conference. I mean, I don't
13 believe that question has been raised yet.

14 DR. COLE: Regardless of that, isn't that
15 information contained in the affidavit that was presented
16 earlier?

17 MS. ULMAN: Oh, yes.

18 DR. COLE: So that's not a question now.

19 MS. ULMAN: Right

20 MR. REYNOLDS: May I comment?

21 DR. COLE: Go ahead.

22 MR. REYNOLDS: Staff counsel is getting exercised
23 over nothing. Applicants have never in their pleadings, or
24 here today, indicated that they submitted that the Stinsons
25 were untimely. I don't know what this is all about, but we

never argued that this is a WPPS-2 situation in this case.

2 MS. ULMAN: I guess I just thought that you --

3 DR. COLE: I had the same assumption.

4 (Laughter.)

5 DR. COLE: 528 -- ALAB-528, is that also mentioned
6 in the ALAB-549?

7 MS. ULMAN: I don't believe so. I don't believe
8 it's mentioned in 549.

9 MR. REYNOLDS: Would you have my comments now on
10 the Stinson Affidavit that we received today?

11 MRS. BOWERS: Fine. Then we want to go to
12 Mrs. Ellis to respond.

13 MR. REYNOLDS: Why don't I wait for her.

14 MRS. BOWERS: We would like to caution you not to
15 build in problems that aren't there.

16 (Laughter.)

17 MRS. BOWERS: Mrs. Ellis?

18 MRS. ELLIS: Yes.

19 MR. KORNBLITH: Mrs. Ellis, why don't you wait
20 until the airplane finishes.

21 MRS. ELLIS: All right.

22 (Pause.)

23 MR. KORNBLITH: Maybe it would be better to do the
24 best you can.

25 MRS. ELLIS: All right, I'll try to talk loudly.

1 First of all, I'd like to say that there is no
2 question which has been raised by the applicant to which
3 CASE could not adequately respond. There is nothing at all
4 that I can think of that was raised that we cannot adequately
5 account for.

6 I would like to say that I believe what we have
7 shown is adequate to establish our standing. However, we
8 are ready and willing to submit whatever other additional
9 information the Board may require, including we have here
10 checks from Marilyn Stinson which go back to 1975, which
11 indicates that she has participated financially as well as
12 otherwise in the proceedings of CASE.

13 Also, she is a voting member of CASE. We do have
14 elections, and she does have an opportunity to vote, and the
15 officers are elected, and are qualified to represent all the
16 members.

17 Additionally, we do have other members in the
18 Glen Rose area and the Fort Worth area -- Marshall Gilmore,
19 who is with me here today, is not only a member of CASE, he
20 is also the Vice President of CASE. He resides in Hurst,
21 Texas. He works in Hurst, Texas, and resides in Grapevine,
22 which is also in the area of our concern in which we have
23 members.

24 We also have members in Fort Worth and if neces-
25 sary we can provide however many affidavits are needed to

1 support that contention.

2 Also, the affidavit, as was pointed out by the
3 staff, does not contain any surprises. It is simply one that
4 was submitted today is simply to elaborate further on some
5 of the questions which were raised, but there is really no
6 essential new information in it that was not in the original
7 affidavit which was filed in a timely fashion.

8 Another thing that was raised is concerning CASE.
9 And if necessary, we can supply printed information which
10 sets forth our goals and so forth, which would I'm sure
11 adequately cover all of this, especially in the particular
12 instance of CASE.

13 We were formed originally in 1974, before the
14 Dallas City Council held hearings on whether or not to allow
15 DP&L's participation in the building of the Glen Rose Plant.
16 And this was the original purpose for which we were formed.
17 Later, we expanded our purposes somewhat, but this has always
18 been one of our particular concerns. And we have also
19 participated in other NRC proceedings as a protestant and
20 made statements to the City Councils and so forth, in regard
21 to nuclear power plants.

22 So we have exhibited a continuing interest in this
23 particular plant.

24 MR. KORNBLITH: Excuse me. You say you partici-
25 pated in other NRC proceedings?

1 MRS. ELLIS: In the original proceedings there
2 were statements made by us.

3 MR. KORNBLITH: You made limited-appearance
4 statements?

5 MRS. ELLIS: It was not full intervention, or
6 anything of this sort, but we did make statements, and our
7 members did participate to that extent. And we have
8 intervened in the rate hearings.

9 One of our primary purposes in intervening in the
10 rate hearings, although we have gotten into other things
11 such as rate structure and so forth, has been to bring out
12 the cost involved, because the Dallas City Council was looking
13 at nothing but the financial costs of the Comanche Peak
14 Plant, to bring out the financial costs involved in the Comanche
15 Peak Plant.

16 So this is one of the continuing concerns, and is
17 one of the primary purposes from the very beginning of CASE.

18 If there's any other documentation or anything else
19 you would like, I'm sure we can respond adequately to anything
20 you might want to ask.

21 (Pause.)

22 MRS. BOWERS: We think that we've heard
23 sufficiently from the parties and the petitioner on this
24 question of interest.

25 Now, Mr. Reynolds, you asked for an opportunity to

1 address ALAB-549. You suggested, what? 10 days?

2 MR. REYNOLDS: Shall we pick a date?

3 June 1st? How about June 4th, a Monday?

4 MRS. BOWERS: Can the staff do a simultaneous
5 filing? You pretty well covered it today in the oral presen-
6 tation.

7 MR. REYNOLDS: I'm sure they could brief it.

8 MR. CHANDLER: June 4th? Yes, that would be
9 alright.

10 MRS. BOWERS: Mrs. Ellis, do you have a copy of
11 the South Texas Appeal Board decision?

12 MRS. ELLIS: No.

13 MRS. BOWERS: Do you have an extra copy with you?

14 MS. ULMAN: Yes, we have an extra one.

15 MRS. ELLIS: Thank you.

16 MRS. BOWERS: And then, if the petitioners would
17 like to file a brief of what that case says, it should be
18 by what? June 4th? Was that the date?

19 MR. CHANDLER: We can make a copy available to
20 Mrs. Ellis. I trust you will make it available to the other
21 petitioners, as well, to the extent they may be involved in
22 some of the following discussion?

23 MRS. BOWERS: She indicated "yes."

24 We would like to go on, at this point, with the
25 question of contentions for CASE, and we have the filings --

1 well, we have the petition, the motion to supplement conten-
2 tions by CASE, and that runs 57 pages, and we have a new
3 page 21. Is that correct?

4 MRS. ELLIS: Right.

5 MRS. BOWERS: Now, Mrs. Ellis, we've had the
6 filings from applicant and staff as of last week on this.
7 Do you have anything that you would like to state at this
8 time concerning your petition as amended, as to whether you
9 believe you do have contentions that meet the criteria of
10 714?

11 MRS. ELLIS: First of all, regarding the new page
12 21, the only thing that was changed on that were the figures
13 down close to the bottom of the page.

14 We have no objection to the suggestion by the NRC
15 Staff in their May 17th filing to having CASE's Contention
16 No. 19 phrased as the staff has phrased it, and we would be
17 glad to submit that as our contention to support our petition
18 to intervene.

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1 MRS. BOWERS: Let me check with the other parties, and
2 then we will schedule the mid-morning break.

3 Mr. Reynolds?

4 MR. REYNOLDS: We're talking about Contention 19?

5 MRS. BOWERS: Whether there is a contention in the CASE
6 petition that meets the criteria of 714.

7 MR. REYNOLDS: We indicated in our filing with you on
8 Friday last, we think the Board should be very careful that it
9 doesn't equate length with specificity. We have a 50- or 60-page
10 document from CASE, but it consists primarily of NRC inspection
11 and enforcement correspondence, newspaper articles, NUREG docu-
12 ment references, and so forth, and, more often than that, rank
13 hearsay about witnesses told me this and witnesses told me that.
14 This certainly doesn't seem to me to be the type of specificity
15 and supporting basis that is contemplated by the regulations of
16 the Commission.

17 So, as written, we find no valid contention for CASE.

18 In reviewing the staff's proposed contention, while
19 the language is nice, it certainly makes more sense than what
20 we've seen from Petitioner's, we don't find any basis in the
21 Petitioner's pleading for the Contention.

22 So, in short, as we summarized in our pleading last
23 Friday, we don't see that CASE has any valid contention here.

24 MRS. BOWERS: Ms. Ulman or Mr. Chandler.

25 MR. CHANDLER: I will address it.

1 Mrs. Bowers, I think we've set out the substance of
2 our reply to the contentions of the respective parties in our
3 filing of May 17. I would only add, and remind this Board, of
4 what the Appeal Board has been saying time and time again in its
5 decisions, most recently in ALAB 549, where it pointed out:
6 "Nor is the Board at liberty to reject the party's intervention
7 petition, as Applicants seemingly imply, because of doubts about
8 the party's ability to prove its case. The rules of practice
9 designate avenues for avoiding an evidentiary hearing where it
10 is not needed. One must follow the paths prescribed, however,
11 to reach that result." And they cite 10 CFR Section 2.749.

12 I think, just several months ago -- I believe it was
13 in ALAB 528 -- they pointed out --

14 MRS. BOWERS: What?

15 MR. CHANDLER: The CASE name for that? ALAB 528 is
16 Duke Power Company. February 26, 1979. Amendment to materials
17 license S&M 1773. Transportation of spent fuel from Oconee
18 nuclear station to storage at McGuire nuclear station.

19 It pointed out that the particular petition in ques-
20 tion, the Oconee-McGuire proceeding, the petition did not go on
21 to establish that its assertion is well-founded in fact. But as
22 we have had occasion to emphasize through the years, whether a
23 particular concern is justified must be left for consideration
24 when the merits of the controversy are reached, not at a point
25 in the proceeding, to reach the merits of any particular issue.

1 We are here to determine whether a contention has been
2 set forth with adequate specificity and basis. Quite frankly,
3 we consider the references that CASE has made to, oh, for exam-
4 ple, NRC's inspection reports, to form a quite adequate founda-
5 tion, though perhaps the contentions may not be perhaps as
6 specifically crafted as we would like to see them.

7 I don't think, again referring to the South Texas
8 decision, which indicates sound practice is to decide issues on
9 their merits, not to avoid them on technicalities, although we
10 may have preferred a nicer, cleaner articulation of issues, I
11 think it's been adequately set forth, and we've proposed our
12 contention to substitute only because we feel it's, A, more
13 convenient to be able to address comparable contentions by all
14 parties in the same form, and, B, we think it perhaps is a more
15 succinct compilation of all the concerns that have been raised
16 by CASE.

17 MRS. BOWERS: Do you have anything further, Mrs. Ellis?

18 MRS. ELLIS: Yes. We feel that we have supplied ade-
19 quate basis. We have 19 separate points listed under Contention
20 No. 19. And, certainly, the inspection and enforcement report
21 and other information do indicate that there are definitely
22 problems in the construction, especially of the welding and the
23 concrete. This has been done in a manner which is not in com-
24 pliance with standards and which we will address further in the
25 hearings.

1 But we do think that we have an adequate basis in this
2 contention.

3 MRS. BOWERS: Dr. Cole suggested to me a few minutes
4 ago, it might be of some interest to the general public attend-
5 ing today to realize the kind of thinking that's going on among
6 the parties and petitioners and the Board.

7 Now, the petition and the contentions must, to be
8 acceptable, state an item with enough information, specificity,
9 so that the other parties will know what they are going to be
10 faced with and what they must respond to. It can't be so vague
11 that the other parties really don't know what the petitioners
12 are unhappy about or trying to point to an inadequacy.

13 But in the pleadings which we have before us -- and
14 this, of course, Mr. Chandler touched on -- petitioners are not
15 expected to put on their case. They're not expected to plead
16 their evidence, to prevail on the merits of those allegations in
17 their contentions.

18 And so, that's why there has to be enough specificity
19 so that the parties and the Board could know exactly what your
20 concern is. And I am using the word "concern," trying to do it
21 in a narrow sense. But we do not look in the pleadings for the
22 evidence.

23 MR. REYNOLDS: May I make one comment, Mrs. Bowers.
24 I didn't mean to imply that the Applicant is reviewing these
25 proposed contentions with a view toward the merits. Indeed,

1 there may be absolutely no merit to the contentions. I think
2 that should be made clear to the public as well here today.
3 That is something we will decide, you will decide, after an
4 evidentiary hearing, if any.

5 We are simply saying that we believe the contentions,
6 as proposed, fail to measure up to the standards set forth in
7 the Commission's regulations for specificity and basis. We are
8 not talking about merits, either. We think they are not meri-
9 torious, but that isn't the issue here today.

10 MRS. BOWERS: I think we understand.

11 Mr. Chandler.

12 MR. CHANDLER: I would like to add and perhaps echo
13 something that Mr. Reynolds just said. You indicated a moment
14 ago, Mrs. Bowers, in the staff's position this particular con-
15 tention, particularly as we've rephrased it, is adequate to
16 satisfy the Commission's regulations. We, of course, are expres-
17 sing no views on the merits at this point in time. We are merely
18 indicating our view that it has been adequately set forth to be
19 considered as an issue in this proceeding.

20 The staff's review is at its very early stages, and
21 certainly we wouldn't presume to indicate any agreement or, for
22 that matter, disagreement with any of the contentions.

23 MRS. BOWERS: One other point which the parties and,
24 I am sure, the petitioners are aware of, but the general public
25 might not be: If a petitioner is admitted as an Intervenor on

1 interest, and then certain contentions identified -- one or more
2 -- then discovery can begin. And "discovery" means, of course,
3 that the petitioner and the parties can present interrogatories
4 which are essentially questions and requests for information for
5 documents. And this, of course, through this discovery period,
6 is when the parties learn more about what the Intervenors have
7 in mind, and it sharpens the issues. And the Intervenors, of
8 course, get more information as to what the parties have in their
9 records and their files.

10 And so, then, at the close of discovery, before a mat-
11 ter of proceeding actually goes into an evidentiary hearing,
12 there is an opportunity, under 752, to sharpen and reword the
13 contentions that reflect what has been learned through the dis-
14 covery period.

15 Let's take a 10-minute recess.

16 (Brief recess.)

17 MRS. BOWERS: May I have your attention, please.

18 Just before the morning recess we heard from the peti-
19 tioners and the parties on petition of CASE relative to
20 whether there is a contention, and reasonable criteria.

21 Mrs. Ellis spoke to me at the recess and said that
22 Mrs. Stinson had an obligation to leave as soon as possible. And
23 I told her that, as far as I knew, that matter had been covered
24 and we were ready to go on to our next petition and that the
25 Board would have no objection to her leaving the room.

1 So, now, can we begin with the petition of ACORN and
2 WTLS.

3 MRS. ELLIS: Mrs. Bowers, we do have cop-es now.

4 MRS. BOWERS: All right. Fine. Can you bring those
5 before the Board, Mrs. Ellis? Fine.

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1 We just reminded Mrs. Ellis that, although she has informally
2 provided copies to the Board and parties, that the document must be formally
3 serviced, and the proper number of copies must go to the Secretary of the
4 Commission. Now, Mr. Gay, are we ready to start for ACORN?
5 You're in kind of an awkward position. Maybe you and Mrs. Ellis
6 could trade places, now that she's going to be observing.

7 We would prefer to have individual tables for each
8 petitioner and each party, but there just simply isn't suffi-
9 cient space. I guess if there had been space there wouldn't
10 have been enough tables.

11 MRS. ELLIS: There's one other thing. We'd like to
12 just be sure that the record shows that our acceptance of the
13 wording on our Contention No. 19 does not preclude our going
14 into the other contentions later.

15 MRS. BOWERS: This was the staff's suggestion relative
16 to the criteria of at least one contention, isn't that right?

17 MR. CHANDLER: That's correct, Mrs. Bowers.

18 MRS. BOWERS: Mr. Gay?

19 MR. GAY: Mrs. Bowers, for the moment I'm relatively
20 content with our pleading and with our contentions. I think
21 the contentions have sufficient specificity to them. I think
22 we've established interest and standing.

23 However, I would like to clarify just a couple of
24 points.

25 West Texas Legal Services is an organization, a

1 nonprofit organization, founded to provide legal assistance to
2 low-income individuals. It is not a membership organization,
3 and I find it unnecessary to, at this time, substitute the
4 low-income clients of West Texas Legal Services as the true
5 parties with interest in this particular proceeding. At the
6 time I filed the petition, I had in mind that West Texas Legal
7 Services had a number of low-income clients who have an interest
8 in this particular proceeding.

9 It was also my concern to shield as many of those
10 clients as possible from publicity and from coming forward
11 and having to present themselves at this type of hearing, and
12 simply from possible harrassment or whatever.

13 After talking with Mr. Chandler after filing the
14 original petition, we considered the petition timely and
15 submitted the names of the Woods and Bishops.

16 As to ACORN, I think it's important that I describe
17 the purpose of ACORN, and that is a very broad purpose. It's
18 to serve low and moderate-income individuals, whatever their
19 condition might be, whether it be an economic matter or a
20 safety matter, anything involving the local community. Now,
21 ACORN is financed by the members. They're organized in local
22 community organizations. Fort Worth has its own board for the
23 ACORN organization there. Fort Worth ACORN has subdivisions
24 around the different communities.

25 In addition to that, Dallas is similarly organized,

1 as are other cities in Texas.

2 Now, ACORN consists of low-income individuals, and
3 West Texas Legal Services is representing them to that extent.
4 Each of the members in their local organizations exercise
5 direct control over the organization. And we have supplied
6 affidavits which indicate there are members of ACORN, especially
7 in Fort Worth who are within the zone of interest specified by
8 the NRC; the affidavit of Jean Martin, that she is a member of
9 ACORN, that she is on the governing board of ACORN, she exer-
10 cises control over the actions of the organization.

11 In short, I believe all of the discussion of
12 Mr. Reynolds this morning with reference to the Hunt case is
13 met, and that's all that I have to say in regard to organiza-
14 tional standing at this time.

15 MRS. BOWERS: Mr. Reynolds?

16 MR. REYNOLDS: I think it would be helpful, Mrs. Bowers,
17 if we just went through the three pleadings which ACORN and
18 WTLS have filed, and to look at the statements of interest or
19 attempts to state interest by the individuals from whom ACORN
20 derives its organizational standing.

21 We assume, and if we understand correctly, that WTLS
22 is not seeking to intervene as a party here. Therefore we will
23 not address them. We think their withdrawal is consistent with
24 case law.

25 As to ACORN, the first pleading filed by ACORN was,

1 as I recall, undated.

2 By the way, Mrs. Bowers, would you admonish the
3 parties to please date their pleadings and not to refer to them
4 by name.

5 MRS. BOWERS: We'd appreciate it if you'd have put
6 the date on the front page, so we don't have to file through
7 it to find out the date it was filed.

8 MR. REYNOLDS: The first affidavit is by Mr. Thompson.
9 He discusses what he perceives to be ACORN's interest. He
10 relates no facts which demonstrate that he has interest.

11 I don't think that ACORN here is arguing that the
12 group itself has interest, but rather, that it seeks associa-
13 tional standing. Therefore, in our view, the Thompson affidavit
14 dated March 2 is actually irrelevant to the question of asso-
15 ciational standing because he discusses not at all his personal
16 standing.

17 The affidavit of Mar. Garrett, dated March 2, also
18 is attached to the first ACORN pleading. He indicates there
19 that he is the legal coordinator of WTLS and that they repre-
20 sent low-income clients within 30 miles of Comanche Peak.
21 None are identified.

22 He does not purport to have interest himself. In
23 short, we believe that this affidavit also is fatally defective,
24 in that it demonstrates no interest in Mr. Garrett or any WTLS
25 client.

1 Turning, then, to the next pleading by ACORN, their
2 first amended petition for leave to intervene, that has three
3 affidavits attached to it. Actually, it has seven affidavits
4 attached to it, four of which are by the Woods and Bishops.
5 They are boilerplate affidavits, which we will address in a
6 minute.

7 The first is Mr. Thompson's second affidavit, where
8 he vaguely asserts that he is, in quotes, "personally concerned,"
9 close quotes, with the operation of Comanche Peak. He also
10 indicates that ACORN represents low and moderate income
11 individuals.

12 That is irrelevant to the question of associational
13 standing. So, the only aspect of this affidavit which could
14 conceivably be used to support ACORN's standing is the fact
15 that Mr. Thompson indicates that he is personally concerned.
16 I don't think that anyone could dispute that the regulations
17 require much more than the expression of a personal concern
18 for health and safety. The regulations require specificity,
19 particularity, and so forth. It's not present here.

20 The next affidavit is Ms. Martin, 29 March, 1979.
21 She indicates that she personally believes that she would be
22 injured, health and safety and so forth. This affidavit, as
23 far as we can tell, may fall into the WPPS-2 situation. It's
24 not clear from here that she was a member of ACORN prior to
25 the filing of the original petition, although we suspect that,

1 since she indicates that she is a board member, that she
2 probably was a member prior to that time. We'd just like to
3 have some clarification on that.

4 In any event, again, we find this affidavit vague
5 and general, and that it fails to measure up to the require-
6 ments of the Commission's regulations.

7 The Bishops and the Woods are an interesting case.
8 In this amended petition, ACORN attempted to establish its
9 interest through the Bishops and the Woods, who live in
10 Glen Rose. The statements by the Bishops and the Woods are
11 all identical. They say that they believe that the health and
12 safety and welfare of themselves, their family and their farms
13 will be injured by granting the operating license.

14 This is the most vague at all. We have no idea what
15 they're talking about; no specificity here whatsoever. In any
16 event, this affidavit, these affidavits, all are dated
17 March 27, 1979, well later than the date on which the petition
18 was filed, the original petition. They are clearly late. We
19 suspect that they are not members of ACORN. Therefore, we
20 submit that we likely have here a WNP-2 situation.

21 What we suspect happened here is that the represen-
22 tatives of ACORN and WTLS realized, upon filing their first
23 petition, that no one they had subscribed to the membership
24 at that time, or at least had set forth in their petition, had
25 valid interests such as to confer associational standing on the

1 organization. We suspect they scurried down to Glen Rose to
2 try to find some local people who would sign this boilerplate
3 affidavit, and they found four. That is precisely the WNP-2
4 case.

5 So we submit that the Board should at least inquire
6 into the timing of the Bishops' affidavits, whether or not
7 they were members of ACORN at the time the original petition
8 was filed, and on that basis rule on whether or not the Bishops
9 and the Woods can obtain standing in this proceeding.

10 The last filing of ACORN was dated May 7th, 1979,
11 and in that pleading they appeared to attempt to retrench in
12 view of the applicant's and the staff's responses to their
13 amended petitions. We had indicated there precisely what I
14 just argued, that the Woods and Bishops were late, and that
15 there had been no demonstration, pursuant to 2.714, to justify
16 the late filing. So in this May 7th pleading, ACORN elevated
17 the Woods and the Bishops to party status, while deleting
18 WTLS as parties.

19 This maneuver shouldn't be successful. The Board
20 shouldn't allow it to happen, in view of the discussion that
21 I just presented, that is, specifically, that the Woods and
22 the Bishops were late in entering this proceeding. It is as
23 though on May 7th they entered for the first with affidavits
24 requesting to be granted party status here. It's a WPPS-2
25 case, it's clear, and they shouldn't be permitted to intervene

1 on that basis.

2 In any event, if you look back at the Woods' and
3 Bishops' affidavits, they are, as I indicated earlier, so vague
4 and general that we simply cannot glean what their interest is.
5 It rather surprised me that ACORN didn't submit additional
6 affidavits from these individuals.

7 We indicated in our answer to the amended petition
8 by ACORN that they were vague and general, and we expected to
9 see further particularization. None was forthcoming, and on
10 that basis we submit that these petitioners should be rejected
11 as parties.

12 That leaves us, then, with one affidavit which in
13 our view is germane to the associational standing question of
14 ACORN. That's the affidavit of Ms. Martin, the second affidavit
15 of Ms. Martin, which is attached to the May 7 ACORN pleading,
16 basically, the same affidavit she filed previously, where she
17 says that she personally believes that she would be injured.

18 There is no particularization. There is no speci-
19 ficity as to exactly what she's talking about. It's a vague
20 and general assertion.

21 She says she's a member of ACORN, she's on the board
22 of ACORN and so forth. That is totally irrelevant to the
23 question of associational standing.

24 So, in summary, we submit that the affidavits filed
25 by ACORN to support its intervention request, and now the

1 affidavits by the Woods and Bishops to support their personal
2 intervention requests, are vague and general and are inconsis-
3 tent with the Commission's regulations. In any event, we
4 submit that the Woods and Bishops were late. They have made
5 no demonstration pursuant to 2.714 as to the basis for the
6 justification for their late filing. And it's not as though
7 they weren't put on notice that they had to do so, because
8 we indicated in our response to the amended ACORN petition
9 that they were late and that they had not justified their
10 lateness. Nevertheless, no justification was forthcoming.

11 My last point is a very important point. It's the
12 question set forth in Hunt, the second question the Supreme
13 Court discussed through which associations derive standing,
14 that is, the question of whether the interest to be protected
15 is germane to the association's purpose.

16 As we understand WTLS, it is in effect a hired gun,
17 legal counsel paid for by federal funds to represent low-income
18 individuals. I don't know that it's any more specific than
19 that in terms of what it is they're supposed to represent them
20 in.

21 MRS. BOWERS: Mr. Reynolds, I don't normally think
22 of counsel representing a client as a hired gun.

23 MR. REYNOLDS: I won't quibble with that.

24 They're a creature of federal law for the purpose
25 of providing financial support for legal assistance in

1 noncriminal proceeding or matters, to persons financially
2 unable to afford legal assistance. That's the statement in
3 the amended petition.

4 In any event, WTLS is not seeking party status here,
5 so that really isn't the question. The question is, what is
6 the associational purpose of ACORN? Let's look at that. This
7 is a quote:

8 "ACORN is dedicated to the advancement of low to
9 moderate income persons, and has more than 2500 individual
10 members," and so forth. Close quote.

11 It seems to me that ACORN principally is interested
12 in the economic well-being of low-income individuals. There
13 has been no demonstration whatsoever as to the nexus between
14 the Comanche Peak operating license proceeding and how ACORN
15 would propose to represent these low-income individuals in
16 advancing their status in life.

17 Indeed, it seems inconsistent to me that they should
18 be in here objecting to the issuance of an operating license
19 for a facility which will generate power at a substantially
20 reduced cost from that which is presently generated.

21 In any event, we submit that ACORN has not demon-
22 strated that the interests of the individuals through whom
23 they seek associational standing is germane to the association's
24 purpose.

25 MRS. BOWERS: Staff, is it Mr. Chandler or Ms. Ulman?

1 MR. CHANDLER: Yes. Ms. Bowers, I think the staff
2 is satisfied that we have adequately addressed the ACORN and
3 WTLS petition as amended, and the substitution of the Woods and
4 Bishops for WTLS, in our response to their amended petition
5 and in our memorandum filed on May 17th.

6 I would like to point out a couple of things. First
7 of all, I would like to make it clear that the staff does not
8 necessarily agree that the degree of detail Mr. Reynolds
9 suggests is necessary with respect to the purposes of an
10 organization is required by the Commission's interpretation of
11 the relevant decision.

12 It's certainly not on the face of any petition is it
13 necessary to inquire beyond that. We don't object, necessarily,
14 to any inquiry by the Board which may help the Board in its
15 determination as to the validity of any claims made by a
16 petitioner. We in general consider that petitioners are mindful
17 of Title XVIII of the U.S. Code, which provides the relevant
18 criminal penalties for making false statements in materials
19 filed with the Government.

20 So we don't necessarily agree that the explanations
21 that the parties have been kind enough to give us this morning
22 are necessarily required.

23 Mr. Reynolds, I think, raises two separate and very,
24 very distinct matters in connection with the petition of ACORN
25 and WTLS, particularly as it concerns the Bishops and Woods

1 and their substitution for WTLS. In the first instance, we have
 2 to consider whether we have a WPPS situation. In WPPS, as I
 3 understand it, there was a question raised as to the constitu-
 4 tion of the particular organization at the time the original
 5 petition was filed. If that in fact is the question that
 6 Mr. Reynolds is now raising, that's fine. And, as I indicate,
 7 we have no objection to the Board's inquiry and investigating
 8 on this matter if they believe it's necessary.

9 MRS. BOWERS: In the WPPS petition, it was an
 10 organization more than 200 miles from the facility, and it
 11 named individuals, members of the organization who resided
 12 a long way away from the facility. I think the nearest, I
 13 think, was 65 miles.

14 But then the petition said: And, by the way, we
 15 have other members of the organization who are very close to
 16 the facility. But the only person who eventually surfaced
 17 that was close joined the organization two and a half months
 18 after that petition had been filed.

19 MR. CHANDLER: Yes, ma'am.

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1 I'm aware of those facts. I think it's important
2 that they are put on the record. It's not clear to me,
3 certainly, that that in fact is what we're dealing with here.
4 We certainly haven't raised the question of membership.

5 Let me put it this way: The eligibility of he
6 Woods and the Bishops to be represented by WTLS, I think that
7 brings up very clearly the second point that Mr. Reynolds has
8 made. That concerns the alleged lateness of the affidavits
9 that were submitted.

10 Staff doesn't consider in fact that these are
11 late petitions, or late-filed affidavits, and therefore that
12 the petition would be late. Rather, we consider that the
13 initial petition may have had defects, and certainly the
14 Commission's Regulations contemplate that such defects may be
15 cured by a petitioner without leave of the Board up to 15
16 days prior to a prehearing conference. And in fact we
17 consider that the submission of these affidavits satisfies
18 our concerns and the perceived defects that the staff noted
19 in its pleadings.

20 That was a permissible filing, one which does not
21 render these affidavits a late-filed, or which would therefore
22 cause the petition itself to be considered a late-filed
23 petition on behalf of the Woods and Bishops.

24 That being said, I think there's only one other
25 point I'd like to make, and I think it's to be taken generally

1 with respect to the several petitioners, equally applicable
2 to all, including ACORN.

3 In each of the petitions, petitioners have
4 expressed their intention, their "desire," if you will, to
5 represent the general public. Well, we think that each of
6 the petitioners has adequately set forth an interest which
7 that organization can represent on behalf of that organiza-
8 tion and its members.

9 We do not believe -- and we believe the Commission
10 decisions are very clear on this point -- that a group, a
11 relatively private group, a "special interest group," if you
12 will, such as represented by CFUR, CASE, and ACORN, can
13 legitimately represent the public interest. Indeed, I point
14 out that that's the charter which the Commission itself has
15 been charged with representing.

16 I think that adequately sets forth the staff's
17 position on the ACORN, et al., as we'll choose to call them,
18 petition.

19 MRS. BOWERS: Mr. Gay?

20 MR. GAY: Mrs. Bowers, I certainly think that it's
21 acceptable to us to recognize that we don't represent the
22 entirety of the public interest. I think that our contention
23 would be that it is in the public interest to have a public
24 hearing on this particular proceeding. That is what ACORN,
25 the Woods, and the Bishops would like to see.

1 But as to their own particular interest, I think
2 we have sufficient concerns to litigate just their interests
3 in this matter.

4 As to the allegations from Mr. Reynolds that ACORN
5 has exceeded its purpose, I think -- I'll focus on that point,
6 because I personally represent them on a number of matters at
7 this time, before the Texas Air Control Board and other
8 proceedings in the state, where they're concerned about the
9 health and safety and welfare of their members.

10 They're not limited in this matter. ACORN is not
11 limited just to considerations of economic well being. Their
12 purpose is to tackle any issue confronting the community of
13 low-income/moderate-income individuals.

14 I think we have established clearly to this Board
15 that ACORN has interests which are far-ranging, and which go
16 to health and safety issues. That is all I have to say at
17 this point.

18 MR. CHANDLER: Mrs. Bowers?

19 MRS. BOWERS: Mr. Chandler.

20 MR. CHANDLER: I did neglect one point. And while
21 I think we clearly did support ACORN, et al., I would like to
22 point out -- respond to something which Mr. Gay suggests is
23 a supplemental petition, both in connection with contentions
24 that he sought to raise which we'll deal with subsequently,
25 but also in connection with the attached affidavit.

1 If I'm characterizing these correctly, Mr. Gay has
2 indicated his willingness to identify other members of the
3 organization to the staff, and I presume that his limitation
4 referencing the Allens Creek decision is deliberately limited.

5 I would like to note our disagreement with Mr. Gay's
6 position on that point, and indicate our understanding that
7 the Allens Creek decision -- and the appropriate citation is
8 Houston Lighting & Power Company, Allens Creek Nuclear
9 Generating Station Unit 1 -- and that is the Appeal Board's
10 April 4, 1979, decision, ALAB-535, wherein on page 30 of the
11 opinion the Appeal Board has said that what this line of
12 reasoning ignores is that both the Appeal Board and the
13 other parties were entitled to be provided with sufficient
14 information to enable them to determine for themselves by
15 independent inquiry when warranted whether a basis existed
16 for a formal challenge to the truthfulness of the assertions
17 in this petition.

18 We consider the thrust of this Appeal Board
19 decision is that not only must a petitioner disclose to the
20 staff appropriate names and other information appropriate to
21 its standing to participate, but it is required to disclose
22 that to the other parties, as well.

23 Each party is entitled to make that determination
24 for itself.

25 MRS. BOWERS: Well, was the petition in Allens

1 Creek the law group, or the bar group?

2 MR. CHANDLER: I'm at a loss, Mrs. Bowers.

3 MRS. BOWERS: I know there was a question raised
4 that this law association was for other purposes, and now once
5 they are finally in a proceeding dealing with nuclear power.

6 MR. CHANDLER: The point that the Appeal Board
7 was addressing at that juncture of this decision was whether
8 an organization was required to disclose the names of members.

9 The reason I raise it is because Mr. Gay in his
10 filing of, I believe it was May 7th, indicates his willingness
11 to disclose to the staff certain information. And while we
12 appreciate that, we think it comports with the decision of
13 the Commission, we believe that the decisions of the
14 Commission do go further and require that disclosure to be
15 made to other parties, as well.

16 Certainly in the absence of any indication that
17 there is a valid reason not to disclose that kind of
18 information. I don't think there's any suggestion of that.

19 MRS. BOWERS: I guess our problem with this -- and
20 of course we have several petitions in front of us -- but
21 the question is: Has one member, you know, surfaced through
22 affidavit as a member of the organization whose interests
23 fall within the criteria set forth, as others might be
24 affected? What's this onus business about additional
25 members? Are we missing the point?

1 MR. GAY: I think I can try to address that.

2 At the time I filed the petitions, the individual
3 petitions to intervene, Allens Creek was on appeal, and I had
4 a consideration that I did not want to reveal the names of
5 the parties, members of the organization, pending that appeal.

6 DR. COLE: Any members?

7 MR. GAY: Of any members. I had previously filed,
8 attached to the affidavit of Ruth Martin and Terry Thompson,
9 I was just simply stating: I don't wish to go beyond those
10 two affidavits and reveal other members. And I don't think
11 there's going to be any problem with this matter.

12 DR. COLE: Mr. Chandler, are you indicating that
13 ALAB-535 indicates that more than one member is required for
14 disclosure?

15 MR. CHANDLER: On the contrary -- well, irrespec-
16 tive of ALAB-535, I think ALAB-549 disposes of that point
17 very clearly in its citation to Warth v. Selden, on page 5
18 of the opinion.

19 In quoting from that decision they say, "Even
20 the absence of injury to itself, the Association may have
21 standing solely as the representative of its members. The
22 Association must allege that its members" -- and they
23 underscore -- "or any one of them are suffering immediate
24 or threatened injury as a result of the challenge or
25 action." And it continues: "Certainly we think that one

1 member may have sufficient standing to satisfy the regulations
2 or adequate standing certainly is sufficient for our purposes."

3 I was merely referencing the statement Mr. Gay
4 had made in his May 7th filing -- although it was not served
5 on us.

6 MR. GAY: I think it was a precautionary measure.

7 MR. REYNOLDS: Dr. Cole, I think we're on a tangent,
8 frankly.

9 MR. CHANDLER: I agree. I think the Board has
10 been informed of what is necessary.

11 MR. REYNOLDS: May I bring up a point on the
12 Woods' and Bishops'? Perhaps someone misunderstood my argument
13 on those individuals. I'm not saying that there are WPPS-2
14 situations simply because ACORN is not seeking associational
15 standing through them. They're seeking standing in their own
16 right.

17 What I am suggesting is that they are late filers.
18 They must comply with 2.714 to justify their late filing.
19 Mr. Gay, even today in front of you, has not made a statement
20 as to why they came in late.

21 MR. GAY: I think I can address that point,
22 Mrs. Bowers. The point of the initial petition was that
23 West Texas Legal Services has eligible clients who are
24 concerned about this process, this proceeding, about nuclear
25 energy.

1 It was my intention at that point to avoid
2 mentioning names and proceed in the name of the West Texas
3 Legal Services to the extent we have eligible clients.

4 After discussion with Mr. Chandler following the
5 initial petition, he suggested that I amend the petition,
6 perhaps even exclude entirely West Texas Legal Services as a
7 main party.

8 I gave some thought to that matter, brought forward
9 the Woods and the Bishops as individuals who are eligible
10 clients for West Texas Legal Services. They asked us to
11 represent them in this matter. I don't think it's a late
12 filing. We filed that we had eligible clients; that we had
13 people who had an interest in this proceeding. The affidavits
14 attached to the amended petition were timely.

15 As a matter of right, we have the opportunity to
16 demand 15 days before this proceeding.

17 DR. COLF: Mr. Gay, your use of the term
18 "eligible clients," WTLS has no "membership," per se, other
19 than the people that work, the lawyers that work for it?

20 MR. GAY: That is correct.

21 DR. COLE: So that "eligible clients" would be
22 people that are not known to you or any of your lawyers right
23 now. Is that correct?

24 MR. GAY: There are people who are definitely --
25 no, I consider people who are known -- I personally have op

1 files on individuals that we are engaged in representing.
2 It's a matter that I did not feel comfortable in disclosing
3 names of elderly, low-income individuals, possibly subjecting
4 them to harassment, or to the repercussions and publicity
5 associated with this proceeding.

6 DR. COLE: You were using the term "eligible
7 clients" synonymous with "membership"? Is that a fair
8 assumption? Is that what you did?

9 MR. GAY: "Eligible clients" is a term-of-art in
10 terms of Legal Services' representation.

11 DR. COLE: I know what it means.

12 MR. GAY: In other words, you have to be at a
13 certain level of poverty, a guideline suggested by Congress,
14 for these people who are on Social Security, who are below
15 a certain poverty level are eligible for our services,
16 eligible for the services of West Texas Legal Services,
17 eligible for our representation through an attorney in our
18 organization.

19 DR. COLE: The question has been raised as to the
20 timeliness of the affidavits submitted by the Woods and
21 Bishops. When did you first come into contact with the
22 people with respect to the preparation of an affidavit for
23 submittal in these proceedings?

24 MR. GAY: If these individuals want to talk with
25 Mr. Chandler after the pleading that I initially filed, wherein

1 I alleged that West Texas Legal Services had seen them. I
2 thought it appropriate to find clients who were within the
3 four to five mile area.

4 We went out and got the affidavits from the Woods
5 and Bishops at that point.

6 DR. COLE: It's your contention that that fulfills
7 the requirements for "membership" in the WTLS?

8 MR. GAY: No, sir, I'm not contending that they
9 are members of WTLS. I am contending that they are entitled
10 to be parties in and of themselves; that they are a party by
11 right in this proceeding; but they are not members of WTLS.

12 MR. CHANDLER: Mrs. Bowers, I am left here with a
13 somewhat different impression than I think I started off
14 with this morning concerning the Woods and the Bishops.
15 Perhaps my understanding in the past has been erroneous.
16 Perhaps I may now join Mr. Reynolds in suggesting that some
17 further inquiry is warranted.

18 I had been left with the impression in the past,
19 based on the filings, that WTLS had submitted a petition
20 initially in its name, rather than reveal the names of
21 individuals whom it represents.

22 I had been working on the assumption that this
23 petition filed by WTLS -- I'd like to exclude that and
24 separate that for a moment from the joint petition -- was
25 filed at the request of these unnamed individuals. I think

1 the discussion that just took place a moment ago brings that
2 into doubt.

3 If I understood Mr. Gay correctly, he is now
4 suggesting that perhaps WTLS filed the petition on its own,
5 and then identified members later to suit the requirements of
6 the regulations as interpreted by the Appeal Board decisions.

7 I think I'd be troubled to find that in fact this
8 suit was not brought at the request -- or this petition was
9 not filed at the request of these individuals, because I
10 question whether a Legal Service Corporation has the authority
11 to bring an action which is not requested by its client.

12 MRS. BOWERS: Are we spending a lot of time on this
13 point that is perhaps more academic than anything else?

14 Your Legal Service group would be representing
15 ACORN if they were admitted as an intervenor in this proceeding?

16 MR. GAY: That is correct.

17 MRS. BOWERS: So is it important to you to have any
18 sort of recognition for the Bishops and the Woods, individually,
19 per se?

20 MR. GAY: In fact, I would suggest, Mrs. Bowers,
21 for simplicity, I think it would be more than acceptable to
22 just say that ACORN is the party here, and they have all the
23 pleadings in the name of ACORN. The Woods and the Bishops
24 filed affidavits that have said "we're happy to have ACORN
25 representing our interests in this matter."

1 The point is that we have an interest here. I as
2 an attorney with West Texas Legal Services have an obligation
3 to represent low-income clients. We have clients who are
4 interested in this matter. ACORN is our client, as well,
5 and we're proceeding under that assumption, and it makes no
6 difference to me whether we label this "the Woods," "the
7 Bishops," "WTLS," "ACORN," it simply is irrelevant from our
8 standpoint.

9 MR. REYNOLDS: Mrs. Bowers, this is certainly a
10 moving target. Are we now saying that the Woods and Bishops
11 have withdrawn their petition to intervene, and ACORN is the
12 only one which is being represented by WTLS?

13 MR. GAY: I'm not willing to make that broad a
14 statement at this point. I'm simply stating that I think
15 ACORN has established the interest, and I think it's obvious
16 that we have "a" client with interest, with standing before
17 this Board at this time. And I am making a concession that
18 I am willing to remove whatever names are necessary to
19 expedite this proceeding and to demonstrate I am willing to
20 move on with it.

21 DR. COLE: In any event, WTLS, in the event that
22 ACORN is granted party status, WTLS will be representing
23 their interests?

24 MR. GAY: That is correct; yes, sir.

25 MRS. BOWERS: I was kind of hoping we would get off

1 this and get onto other things, but Dr. Cole has a good point.

2 If you are not ready today to completely withdraw
3 the petitions and affidavits for the Bishops and the Woods,
4 then we think you do have an obligation to address the criteria
5 of late filing.

6 MR. GAY: I was simply trying to state that I think
7 I'm representing my clients, the Woods and the Bishops, by
8 saying that they would be amenable to representation by
9 ACORN. And if this Board is willing to recognize that ACORN
10 has standing and interest in the proceeding, I will withdraw
11 the Woods and Bishops as parties -- attach them to ACORN in
12 my own mind and in their minds, because their affidavits
13 plainly state that they are willing to permit ACORN to
14 represent their interests.

15 I think I'd be doing them a disservice if I
16 completely withdrew their request without ACORN being a party
17 to this proceeding.

18 MRS. BOWERS: You're really kind of saying
19 "dismissal without prejudice," because if ACORN is not
20 admitted, then you would resurrect the Bishops and the Woods?

21 MR. GAY: That is essentially correct. If ACORN
22 is admitted, I'm going to withdraw completely consideration
23 of the Woods and the Bishops as parties to this proceeding.

24 MRS. BOWERS: If that situation should happen to
25 develop that was just described, you recognize the Board will

1 want to establish about the late petitions?

2 MR. REYNOLDS: Mrs. Bowers, it seems to me you're
3 placing the applicant in a Catch-22 situation. I think we're
4 entitled to know now the basis for ACORN's intervention, and
5 the Woods' and Bishops' intervention.

6 Are they, or are they not, petitioners? The
7 regulations require that that be made clear 15 days before
8 we come to this conference. Here we are at the conference
9 today and we're waffling back and forth.

10 Aren't we entitled to an answer so that the record
11 is clear, now? So that when this Board issues a decision,
12 the Appeal Board, if it happens to go to the Appeal Board,
13 will have a record in front of it that it can understand?

14 As far as I'm concerned, if I were reading this
15 record, I still wouldn't know Mr. Gay's position.

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1 MRS. BOWERS: Do you want to respond to that, Mr. Gay?

2 MR. GAY: I am not sure I can respond. I think we've
3 made some clear indications as to the interests of the parties
4 and all my representations today extend to that. I don't think
5 it's necessary, of course, to continue to go into those, as
6 Mr. Reynolds has suggested.

7 MRS. BOWERS: Well, in this area, the Board agrees
8 that there has to be "put up or shut up," and we are going to be
9 issuing an order following this prehearing conference, and if
10 you don't give us information today on the justification for
11 late filing for the Woods and the Bishops, we will have nothing
12 before us at the time we issue that order. We will have before
13 us, of course, the ACORN thing, but you will be taking a chance.

14 MR. GAY: I will extend this argument a bit further.

15 The primary reason for the specific late filing of the
16 Woods and Bishops, if we can call it such -- I am not willing to
17 suggest that it's a late filing; I think it was timely; I think
18 it was an appropriate attachment to our representation that we
19 had eligible clients. But at the time I initially filed the
20 petition, the first petition, West Texas Legal Services did not
21 have within its jurisdictional basis this particular county.

22 Now, at the time of the second petition, the amended
23 petition, it had already been announced in the Federal Register,
24 that this county had come under the jurisdiction of West Texas
25 Legal Services, in time for comment by those who were opposed to

1 it.

2 It was during this period that the Woods and the
3 Bishops came forward, saying, "I don't want that plant there."
4 Before that, I could not represent the Woods and the Bishops.
5 There was no way possible for me to attach their affidavits and
6 make the contention to the NRC staff and the utility company
7 that I had a right to represent them. It was not until there
8 was a publication notice within the Federal Register, it was not
9 until there had been decisions by the bureaucracy that we were
10 entitled to service low-income individuals in this particular
11 county.

12 I can make any kind of assertion to this Board that we
13 had eligible clients in this county. The Woods and the Bishops
14 all reside within five miles of this plant within this county,
15 and it wasn't until the time that I was legally permitted to do
16 so that I could do so.

17 MRS. BOWERS: Mr. Gay, that explains to us your role
18 in the participation, but it doesn't clarify the situation as
19 far as the Woods and the Bishops being late. They could have
20 sought other counsel. They could have filed, pro se, without
21 being represented by counsel.

22 MR. GAY: I understand, Mrs. Bowers. Unfortunately, I
23 am not in a position to assert to the Board as to why the Woods
24 and the Bishops did not assert a pro se petition. They're both
25 very elderly. They're both 80 years old. They simply don't have

1 the means and the resources to accomplish that purpose.

2 MRS. BOWERS: I am repeating: You realize our order
3 will address itself to the information that we have before us.

4 We've spent considerable time on interest. Do you
5 have anything further, Mr. Reynolds?

6 MR. REYNOLDS: No. I think the Board's guidance to
7 Mr. Gay is correct. You have to make the decision on the basis
8 of what you have in the record at this point. The fact that
9 2.714 has not been addressed as to nontimely filing is the way
10 the record will be. We have nothing further.

11 MRS. BOWERS: Can we go on to address the contentions?
12 That's been kind of in and out. But is there anything further?

13 MR. GAY: I am not sure that it's appropriate for me
14 to proceed.

15 MRS. BOWERS: Do you have anything to add to what you
16 have filed?

17 MR. GAY: No, ma'am, I do not.

18 MRS. BOWERS: Then, Mr. Reynolds.

19 MR. REYNOLDS: Mrs. Bowers, I have nothing to add to
20 our filing of last Friday. We're again here faced with the same
21 situation we were with CASE, in reference to Black Fox, which is
22 a BWR, NUREG documents and so forth. It just seems to me that
23 we're talking about finding a valid contention in a situation
24 where, unless you find one, you're not going to have a hearing.
25 You have to look pretty carefully at the basis of the contention

1 and the specificity, and we don't find that there's any basis
2 here for these contentions.

3 Our position, again, with respect to the staff's pro-
4 posed contention is the same as it was with CASE.

5 MRS. BOWERS: Does staff have anything further to add?

6 MR. CHANDLER: Very briefly, we have nothing further
7 to add.

8 MRS. BOWERS: Good. You notice, when they start get-
9 ting hungry, they don't talk so much.

10 (Laughter.)

11 VOICE: Mrs. Bowers, I am a concerned citizen.
12 May I ask a question?

13 MRS. BOWERS: Why don't you, at the recess, check with
14 the parties.

15 Where is Mr. Wisner? He is NRC information man, and
16 he will give you or others information that you want on this pro-
17 ceeding.

18 Now, Mr. Gay, you've heard the response of the parties.
19 Do you have any further observations?

20 MR. GAY: NRC staff suggested that there were several
21 of our contentions that looked like they should be joined
22 together. I think that this was done for an expeditious purpose.
23 We have four contentions, 16 through 19, that try to deal with a
24 great deal of specificity.

25 I rather regret that neither the staff nor the

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1 Applicant addressed these contentions, to suggest what was
2 structurally wrong with them, why there was no specificity, what
3 could possibly be added. I think they have a great deal of
4 specificity, particularly 16 through 19, which were relied upon
5 by the NRC staff.

6 I don't think it's necessary to join these contentions
7 and reword them and reshape them such that we can make one con-
8 tention which goes to all three of the potential Intervenors.
9 I am not stating right now that I have a particular objection to
10 it, but I think it's very clear, from our filing, that they have
11 not pointed out any specific reason why these contentions are
12 ineffective.

13 I think we should be entitled to party status based
14 upon these contentions.

15 MRS. BOWERS: Actually, petitions often contain lead-
16 ins, like what the staff has suggested here, and then an enumera-
17 tion, similar to what you have suggested, in more specificity.

18 Mr. Chandler, do you want to respond to that?

19 MR. CHANDLER: Certainly.

20 I think, if we take a look at Contentions 16, 17, 18,
21 and 19, the biggest concern that we have is that, although they
22 identify in a rather piecemeal fashion the general areas in which
23 the petitioner wished to explore, I think we were concerned that
24 the contentions did not themselves articulate the gist of the
25 issues.

1 For example, in looking at Contention 16: "The Comanche
2 Peak containment units are structurally deficient for the safe
3 operation of the plant." There is some suggestion in what
4 Mr. Gay has termed "an explanation," which I think I would refer
5 to as a basis, as to what his concern may be.

6 What we had hoped to accomplish by consolidating the
7 various contentions into one, particularly Mr. Gay's, was to
8 bring into that contention some of the specific areas of alleged
9 deficiencies. The only way we could do that was by synthesizing
10 the wording that Mr. Gay had presented with some of the basis
11 that he had presented. And similarly, with respect to the other
12 petition as supplements to the petitions.

13 We think the substance is there. Again, we think it
14 was largely a problem that the specificity is somewhat lacking,
15 because it's found in various bits and pieces throughout the
16 contention; one has to really pull it all together to write the
17 contention. Hopefully, we managed to do that somewhat more
18 successfully than we think the petitioners have.

19 I don't pretend that writing contentions is easy. I
20 am still not convinced I have ever seen a really good one.

21 Does that address --

22 MR. GAY: I think the point I was trying to make,
23 Mrs. Bowers, was that, for instance, 17, where I refer to the
24 "walls of the seismic one category in the control room are
25 unstable and unsafe," I think that's a pretty specific contention,

1 going to a particular area of particular walls.

2 I think that's all that's required of a petitioner in
3 this proceeding, and I don't think it's necessary to pull that
4 out and to join them into another contention at this particu-
5 lar moment. I am not saying that I find that entirely unaccepta-
6 ble. I think it would probably expedite the proceeding if we
7 worked together in shaping the contentions, but I would like
8 some time to read Mr. Chandler's wording before I would agree
9 to that.

10 MR. CHANDLER: Let me suggest perhaps a little more
11 explicitly what my problem was, and I used Contention 17 as the
12 example. The statement is: "Walls of the seismic one category
13 in the control room are unstable and unsafe." That does not, in
14 my mind, put any of the other parties on notice as to the reason
15 for this alleged "unstable and unsafe" condition. Is it a
16 design problem? Does it result from a geological or seismolo-
17 gical consideration that perhaps the petitioner is suggesting
18 was inadequately considered at one point in time? Does it result
19 from a materials problem? Were the wrong materials selected?
20 Were the materials improperly placed? Is it a quality assurance,
21 quality control problem?

22 I think if one looks at the basis that Mr. Gay has
23 set forth, one can find that. I think, by putting together and
24 adding some of the words that we suggested in our substituted
25 contention, we have pulled the basis somewhat further into the

1 contention so that we now know that we're talking about essen-
2 tially quality assurance, quality control, construction prac-
3 tices type problems, and not going back, at least in this particu-
4 lar issue, into a seismological consideration or geological con-
5 sideration.

6 MRS. BOWERS: You see, the Board, in reading the con-
7 tentions, pulled up into the general wording of the contention
8 language and the explanation which were more specific. We varied
9 the two, thinking that it was one and the same.

10 MR. CHANDLER: I am at a loss, Mrs. Bowers. My under-
11 standing of the regulations is that one is required to set forth
12 the contention and the basis.

13 MRS. BOWERS: I would like to correct. I was speaking
14 for myself.

15 MR. CHANDLER: Okay. While I tended to agree that,
16 when we look at contention, we look at the totality of the
17 language that's presented to us to get some flavor, and, cer-
18 tainly, I think it's very necessary in the case of all these
19 petitions, I think. Nevertheless, when someone will restate
20 these contentions in the form of perhaps a stipulated set of
21 issues or when this Board issues an order setting forth the
22 contentions, I work under the presumption that that language
23 that's contained in the explanation portion will not survive in
24 the sense that it does not get carried forward. It certainly
25 provides the parties with some reference points, but it's not

1 entirely carried forward through the decisional and license
2 review process.

3 So that one doesn't have one cohesive place to find
4 what the issue is. You then have to go back and look from the
5 Board's order back to the initial petition to see what the thrust
6 of it is, and we think that unnecessarily complicates the dis-
7 covery procedures that we would likely follow in the future.

8 If ACORN, for example, is admitted as a party, we
9 think by pulling it all forward into a single, hopefully cohe-
10 sive statement of the issue, it will be, if you will, memori-
11 alized, so that it's certainly a more handy reference in the
12 future as to exactly what the contention is.

13 MRS. BOWERS: Mr. Chandler, looking at page 16 of the
14 supplemental petition --

15 MR. CHANDLER: One of the problems, Mr. Gay doesn't
16 elect to serve the staff, and we don't have page numbers, either.

17 MRS. BOWERS: Well, this is Safety Contention 17.

18 MR. CHANDLER: I would ask you to note those numbers
19 down.

20 MRS. BOWERS: Looking at that in paragraph 33, if the
21 number 34 and the word "explanation" did not exist there, so
22 that you have "walls of the seismic one category in the control
23 room are unstable and unsafe," the next sentence, "According to
24 workers" and so forth. Now, does that change the situation?

25 MR. CHANDLER: Not entirely. I think Mr. Gay has

1 stated a basis in there. I don't think a basis is properly a
2 part of a contention.

3 MR. KORNBLITH: I don't understand, Mr. Chandler, what
4 your objection is to, let's say, Safety Contention 17, as it
5 stands. It seems to me that Mr. Gay has done precisely what the
6 rules bid him to do. He has stated a contention that the walls
7 are unstable and unsafe, and has provided a basis for his con-
8 tention.

9 MR. CHANDLER: I would respectfully disagree,
10 Mr. Kornblith. I think the Commission's regulations require
11 that these contentions be set forth with adequate specificity.
12 And, quite frankly, if I look at this contention, it suggests to
13 me several different avenues which Mr. Gay may wish to proceed
14 along.

15 If I look at the basis that's set forth, I have some
16 different notion. And, as I suggested earlier, I think it's
17 unclear, just reading that contention, in that one sentence,
18 whether he wishes to pursue the matter on the basis of seismolo-
19 gical considerations, geological considerations, structural
20 considerations, design considerations, quality assurance, or
21 construction considerations.

22 And I don't necessarily think that they're all open
23 for litigation in this proceeding. If he wishes to, I think it
24 ought to be set forth in various contentions.

25 MR. KORNBLITH: I think, to help you out of this

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1 dilemma, he has provided the basis. It appears to me, from
2 reading his contentions and yours, that his are substantially
3 more specific than yours are.

4 MR. CHANDLER: His basis certainly is, yes, sir.

5 MR. KORNBLITH: Yours is much more generalized and a
6 broader contention than Mr. Gay's.

7 MR. CHANDLER: I don't think we perceived that when
8 we wrote that, Mr. Kornblith.

9 I think that part of my concern is that a petitioner
10 must set forth the basis for his contention. It doesn't have
11 to necessarily be an entire basis. And if I work on the basis
12 of the language that's set forth, for example, in Contention No.
13 17, then I really don't believe that I have an idea of the sub-
14 ject matter, if you will, that he wishes to pursue.

15 We had hoped, when we synthesized that contention, to
16 identify the areas. In the end, we found that they were common
17 to virtually each of the petitions. But we have identified in
18 there a much more discrete area of inquiry. Quite candidly, it
19 is narrower than we perceive, the words of this contention to
20 permit.

21 As I indicated, we specified a number of quality
22 assurance, quality control, construction deficiencies in the
23 areas of welding, concrete, placement, et cetera. That I con-
24 sider to be a lot narrower than reading just the one sentence of
25 this contention, and perhaps then contending with, as I indicated

1 earlier, seismological or geological considerations, et cetera.

2 MR. KORNBLITH: I just you're just identifying the
3 difference between a lawyer and an engineer.

4 (Laughter.)

5 MR. CHANDLER: We do that regularly, sir.

6 MRS. BOWERS: We have the position of the petitioner
7 and the parties on this.

8 And Mrs. Ellis, I intend to get back to you because
9 you have that motion pending with us.

10 MRS. ELLIS: Yes.

11 May I ask Mr. Chandler a question that may clear up
12 five things?

13 MRS. BOWERS: Could you address the Board?

14 MRS. ELLIS: Yes. Is Mr. Chandler saying that in the
15 contention itself we should set forth the contention and the
16 basis? Is this what -- I think there's a lot of confusion on our
17 part, and probably the other Intervenors in this, regarding just
18 what is required.

19 MRS. BOWERS: We tried to explain this a little before
20 the break. Perhaps Mr. Chandler can say it better than I did.

21 But there has to be sufficient information so the
22 other parties will be put on notice as to what the issue is. And
23 by "issue," for instance, the example with 17, "The pore was
24 too old," it doesn't have to go into "These pores were such and
25 such." It doesn't have to go into that kind of detail. But that

1 could be the emphasis. We mentioned the discovery points out
2 additional information.

3 MR. REYNOLDS: Mrs. Bowers, perhaps it would help to
4 discuss just for a minute how these contentions will be used.
5 Once contentions are granted by this Board, the basis is going
6 to fall away, and we'll never see that again. We'll see it in
7 the CASE. But when you recite the contentions that you admit in
8 this case, if any, it's going to be only the contentions; the
9 basis won't be there.

10 So, the contention itself has to be specific enough to
11 give us an idea as to what the issue is which we're litigating.

12 Does that help?

13 DR. COLE: Is that really true, Mr. Reynolds? Because
14 in the discovery process, you're going to get whatever informa-
15 tion is the basis the Intervenor has. The Intervenor is going
16 to give whatever information you have on that subject, and, hope-
17 fully, what comes before the Board will be the joint issue. And
18 that's what we'll litigate.

19 MR. REYNOLDS: I think that's true to a great extent.
20 But in order to define the scope of discovery, you have to have
21 the contention fairly specific so you can see if the discovery
22 request is relevant to the contention. If it's written in a
23 way 17 is, man, that's the moon; he can get everything there is.
24 And that isn't really the issue he is talking about here.

25 MRS. BOWERS: As you know, the Board has the obligation

1 if a contention is admitted and we feel that it does not meet,
2 because of inartful drafting, the criteria, that the guts are
3 there. We ourselves can reword it and help to cure what might
4 be an inadvertent omission.

5 We would like to go on to other things.

6 MR. REYNOLDS: May I make one point? I think the
7 record should be clarified relevant to what Mr. Gay said earlier.
8 I think he left the impression with the public here that the
9 Applicant and the staff had not responded to his contentions
10 point by point. I think it's only fair to state that the reason
11 we did not do so is because the Board issued an order dated
12 May 9, 1979, in which it directed the Applicant and the staff
13 specifically to address only interests and whether or not there
14 was one valid contention. So, we were acting pursuant to this
15 Board's order when we did not address all of the contentions.

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1 MRS. BOWERS: But subsequent to this prehearing we
2 will be issuing an order covering the prehearing, and if ACOFN
3 et al. is admitted as a petitioner, then we will expect Mr. Gay,
4 meeting with counsel from the other parties, to be working on
5 other areas in the petition, with special focus on 17.

6 (Laughter.)

7 MRS. BOWERS: Now, Mrs. Ellis, I realized after we'd
8 gone on to the other petition that we hadn't settled your
9 motion to supplement contention. If you'd recall from the
10 conference call, Mrs. Ellis said that a technical advisor for
11 CASE, due to illness, had not been able to pursue this situa-
12 tion, due to injury necessitating hospitalization, and asked
13 for additional time.

14 Now, we haven't had a position from applicant or
15 staff on this motion, as I recall. Maybe it's in your filings.

16 MR. CHANDLER: The staff has not replied to this, as
17 we discussed in the conference call. We'll be replying to it
18 here.

19 MRS. BOWERS: Mr. Reynolds, do you want to go first?

20 MR. REYNOLDS: Of course, the Commission's regulations
21 provide that petitions may be amended as to contentions, for
22 good cause. It would help us if we could scope out a little
23 better exactly what we're talking about in terms of delay and
24 number of contentions.

25 MR. BOWERS: Excuse me. I should have called on

1 Mrs. Ellis first.

2 Do you have additional information? Because, after
3 all, this motion was filed some time ago as far as your techni-
4 cal assistance.

5 MRS. ELLIS: I tried to contact him right before I
6 came down yesterday and wasn't able to get in contact with him.
7 I will attempt to again, possibly, and try to find out what
8 his situation presently is.

9 The problem with this particular person is that he
10 broke his back some years ago and has for some time had to wear
11 a total body brace. He fell recently and hurt his back again,
12 quite badly, apparently.

13 The last time I talked with him on the phone was the
14 day when we had to have the contentions filed. He had gone
15 over to the office for the first time that day to work on
16 these, which he had been working on for some time, and just
17 didn't have them in the final form that he could hand them to
18 me.

19 He said that he went to the office and was there
20 about 20 minutes working on them and just simply passed out.
21 They had to take him back home.

22 I suspect that he may be back in the hospital. I
23 really don't know at this point. And I really don't know at
24 this point what his situation is. But I'll find out just as
25 soon as I can.

1 MRS. BOWERS: This, of course, is very vague. And
2 what might be better, rather than having a long discussion on
3 a situation where you're not really informed as to what the
4 condition may be or the future may be of it, it would be better
5 that, at the time the situation clarifies, that in your filing
6 you can set out -- I'll ask for the other parties, but from
7 Mrs. Ellis has said, she really can't pin that down today as
8 to when the situation would improve so that additional work
9 can be done by this individual.

10 MRS. ELLIS: One thing about that. I will be in
11 Austin Thursday and I plan to go by and try to contact the
12 party involved then personally. I'll try to go by his house
13 and see him personally, or the hospital, wherever he is, and
14 try to find out what his situation is.

15 MRS. BOWERS: At that time would you file a supple-
16 ment to your motion, and so perhaps reserve until that time,
17 when we know more about what we're being asked to consider.

18 MR. REYNOLDS: May I just note that, of course, we're
19 all very sympathetic with the situation. But it seems to me
20 that we may be faced with a recurrence of that situation due
21 to this person's incapacity. Perhaps CASE would be well advised
22 to find another witness on these issues.

23 MRS. ELLIS: This might be necessary.

24 MR. REYNOLDS: We, of course, reserve any right to
25 object to any late filing of petitions. We'll look at that

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1 when we see them.

2 MRS. BOWERS: Mr. Chandler?

3 MR. CHANDLER: I think I would agree with what
4 Mr. Reynolds has just indicated. It's a little difficult to
5 respond to an open-ended type of motion such as this. We will,
6 of course, respond at such time as Mrs. Ellis provides us with
7 additional information.

8 MRS. BOWERS: Fine.

9 Now, what we would like to suggest, we have two
10 more petitions to consider. Of course, some of the things
11 that have been said by applicants and staff on the first two
12 petitions, they were general and would have some application
13 on the additional petitions by CFUR. So perhaps there will
14 not be as much background given on this as was given earlier.

15 But what we would suggest is that we continue, rather
16 than taking a lunch break now, because it appears that we might
17 complete in the next hour or so.

18 Is that all right with you, Mr. Reporter?

19 (Discussion off the record.)

20 MRS. BOWERS: If the parties and petitioners have
21 no objection, we'll just continue now and go to the CFUR
22 petition.

23 MR. REYNOLDS: Mrs. Bowers, what is the fourth
24 petition? State of Texas?

25 MRS. BOWERS: Yes.

1 MRS. BOWERS: Mr. Fouke, did you identify your
2 associates?

3 MR. FOUKE: I'm Richard Fouke. I'm a member of CFUR.
4 I'd like to answer any questions about our application that
5 you would have.

6 I am not an attorney. I would, though -- I'm not
7 quite positive what I am supposed to tell you.

8 MRS. BOWERS: We'll try and help. But my question
9 was, perhaps the record should show that you have an associate
10 here this morning.

11 MR. FOUKE: Oh. Betty Brink is also a member of
12 CFUR. She likewise is not an attorney.

13 MRS. BOWERS: Well, you've been observing the
14 proceedings so far this morning. And what we have, of course,
15 is the petition from CFUR. And we've had a response from
16 applicant and staff, and the supplement to the petition for
17 leave to intervene, which is in the nature of contentions.

18 Mr. Fouke, that was on legal-sized paper, and you
19 may have noticed when the thing was serviced by the office of
20 our secretary that they simply reduced it to put it on the
21 regulation paper. I think it's 707 that sets forth the size
22 of the paper and it must be double-spaced. And your filing
23 was on legal-sized.

24 And so, just mentioning this to everyone, from now
25 on, please don't file on legal-sized.

6
1 So anyway, we have these filings in front of us and
2 we have the positions of the applicant and staff. So now, is
3 there anything that you would like to add, or would you like
4 to reserve until the other parties have had an opportunity to
5 further comment?

6 MR. FOUKE: If I understand the comments made by the
7 applicant to our intervention, I would like to make it clear
8 that the way I read our application is that we say that the
9 general public within a 50-mile area radius would be affected
10 by safety considerations in the event of a large accident,
11 and because the members of CFUR all reside within that, or
12 practically all, within that 50-mile radius, that CFUR in
13 turn would be affected. And that therefore we would like to
14 represent ourselves. And we have a perception of what would
15 be in the best interests of the general public, and we would
16 like to present that perception.

17 We are not trying to represent the general public.
18 That seemed to me to be the only point that I could discern
19 in the applicant's answer to our plea to intervene.

20 And I guess I would like to reserve any further
21 comments after I hear their comments.

22 MRS. BOWERS: Mr. Reynolds?

23 MR. REYNOLDS: I don't think we need spend any time
24 at all on the question of whether or not a group such as this
25 can vindicate its own value preferences under the color of

1 representing the general public. I think the cases before this
2 agency are absolutely clear in that regard, and they're set
3 forth in our pleading as well as the staff's pleading.

4 MRS. BOWERS: Well, Mr. Fouke has just announced
5 they're not taking that general position.

6 MR. REYNOLDS: Except he's just talking about his
7 general perception of what the general public's interest is,
8 and that's totally irrelevant to this issue before us.

9 MRS. BOWERS: I'm sorry. I misunderstood.

10 MR. REYNOLDS: Passing on, then --

11 MRS. BOWERS: Just a minute. I misunderstood. I
12 thought you said you're not making the representation that you
13 are representing the general public?

14 MR. FOUKE: We're not making a representation that
15 we're representing the general public. I don't think there's
16 anywhere in our petition that we do that.

17 MR. REYNOLDS: If we had a transcriber here that
18 could read it back, I'm sure we could find some reference to
19 his view of the public interest. So I think, again, it would
20 be expedient to review the affidavits which are attached to
21 the two pleadings of CFUR.

22 The first is attached to CFUR's original petition
23 to intervene, dated March 3, 1979. It's the affidavit of
24 Ms. Jacobson. The affidavit discusses the fact that she was
25 a founding member of this group and that she has consulted the

1 group and obtained authorization to represent the group.

2 There is nothing in that affidavit about Ms. Jacobson's
3 interests and we submit, therefore, that this affidavit can
4 provide no support for the associational standing which CFUR
5 attempts to obtain.

6 The only other document which contained any affidavits
7 which would support associational standing by this group is
8 their supplement to their petition to intervene, dated May 7th,
9 1979. Attached to that pleading there are two affidavits. One
10 is the affidavit saying Richard Fouke, where he recites verbatim
11 what Ms. Jacobson recited in her affidavit: He's a founding
12 member of this group, he has consulted with and been authorized
13 by the group to represent them.

14 Absolutely no discussion of interest whatsoever.
15 Again, fatally defective.

16 The last affidavit is a Mr. Reznikoff. The date on
17 the affidavit indicates that it was filed on May 3 or at least
18 executed on May 3, 1979, which again calls into question the
19 timeliness of the affidavit and whether or not it may justifi-
20 ably be used by CFUR to substantiate its associational stand-
21 ing.

22 In any event, if you'd read the affidavit, it is
23 extremely vague and general. There is absolutely no particu-
24 larization, no demonstration of how his interests may be
25 affected. And what we're left with, I would suggest to the

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1 Board, is a situation where we have one affidavit supporting
2 the admission of this party, CFUR, on an associational standing
3 basis. That is the affidavit of Reznikoff.

4 I think, consistent with the appeal board's admoni-
5 tion in Zimmer, that the Board at least should explore further
6 the situation of Reznikoff, and if no additional specificity
7 is provided at this time, then I believe that the Board is in
8 the position where it must reject the CFUR position in total.

9 Lastly, we again raise the question of whether or not
10 the interest of Mr. Reznikoff is an interest which is germane
11 to the associational purpose of CFUR. Again, I think this
12 calls for further clarification from the spokesman for that
13 group. And, absent a showing that it is germane for their
14 purpose, then for that reason alone the petition should be
15 denied.

16 MRS. BOWERS: Staff?

17 MS. ULMAN: Ms. Bowers, I would like to address
18 CFUR's showing of standing and the comments that have been
19 made. Our position, of course, is set forth in our answer to
20 CFUR's original position and in brief. We stated there that
21 we felt that CFUR had made an adequate showing of standing
22 in a representative capacity for one or more members, and in
23 particular, we do note that CFUR's standing may rest on the
24 affidavit of Mrs. Jacobson.

25 She is a member who resides within the geographical

1 zone of interest which could be affected by either normal or
2 abnormal operation of Comanche Peak. And we note that, as we
3 stated in our pleading, that the appeal board has recently held
4 that geographical proximity of a member's residence to the
5 facility is deemed enough, standing alone, to establish the
6 interest requirements of 10 CFR 2.714.

7 We cite the appeal board's decision in North Anna,
8 ALAB 542.

9 We do note that CFUR's petition asserts that it is an
10 organization of citizens residing, working or attending school
11 approximately 35 miles from the Comanche Peak facility, that
12 they own personal and real property and have business interests
13 that could be affected by the operation of the facility, either
14 normal or abnormal; and, finally, that the assertion of the
15 CFUR petition, as supported by the affidavit of Mrs. Jacobson,
16 that CFUR members reside within about 35 miles of the Comanche
17 Peak facility satisfies the requirements that interest be
18 established.

19 We do not feel that the affidavit of Mr. Reznikoff
20 either detracts or buttresses the showing of standing made by
21 CFUR. We feel that, as our response to the original petition,
22 which only contained the affidavit of Mrs. Jacobson, that
23 CFUR has made an adequate showing of standing based on her
24 affidavit -- her residence within the geographic zone of
25 interest.

1 And we do note that, as is evident from South Texas'
2 decision, ALAB 549, the residence of just one member within the
3 geographic zone of interest can be relied upon by an organiza-
4 tion to establish its own standing in a representative
5 capacity.

6 MR. KORNBLITH: How do you define the geographical
7 zone of interest?

8 MS. ULMAN: I believe it's that zone which may be
9 potentially affected by an accident or release of fission
10 products from the nuclear power plant, which has been recognized,
11 I think it's up to 50 miles from the site.

12 MR. KORNBLITH: Can you cite me any place where this
13 is defined by any precedent as an area within which safety can
14 be affected on a generic basis?

15 As I remember, every ruling that I've seen on it says
16 in effect, depending on the circumstances of the individual
17 case, this might be considered to be within the zone of
18 interest.

19 MS. ULMAN: I believe that there is, as you recognize,
20 no specific distance from a nuclear power plant which has
21 evolved from the Commission's decisions to define the outer
22 boundary of this geographic zone of interest. But I believe
23 the Watts Bar ALAB decision, ALAB 413, indicates that distances
24 up to about 50 miles have been found not to be so great as to
25 preclude a finding of standing based upon residence.

1 MR. KORNBLITH: That's a fine, definitive statement,
2 is it not? They have been found in some cases -- would you
3 read that again, what you just said?

4 MS. ULMAN: Now this isn't a quote. I'm just saying
5 that this case can be relied upon for that proposition, that
6 distances up to about 50 miles have been found not to be so
7 great as to preclude a finding of standing based on residence.
8 But I would add that in recent licensing board and appeal
9 board decisions, it appears that residence in fairly close
10 proximity to a plant -- 7 miles and 15 miles, maybe even 25
11 miles, have been found sufficient to establish the interest
12 requirements, namely, that it's presumed that residence in
13 that proximity to a plant and a statement, of course, that the
14 person resides in that distance and is concerned about the
15 operation of the plant, that has been deemed sufficient to
16 establish the interest requirements.

17 DR. COLE: Are you saying that the boards have
18 generally used that distance and the appeal boards haven't
19 reversed them?

20 MS. ULMAN: I would say it another way. I would say
21 the appeal boards have upheld them on it.

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1 MRS. BOWERS: Well, I forget the exact mileage of
2 one of the individuals, but also the record shows that she was
3 a canoeist who canoed all around the vicinity of the plant.

4 MS. ULMAN: I believe that's true.

5 I don't want to keep relying on the South Texas
6 decision, since not everybody has had a chance to read it. But
7 in that case, I don't believe -- well, I know -- there was no
8 detailed statement of activity in proximity of the plant by
9 the individual member who resided, I think it was, 7 miles or
10 so from the plant. His affidavit merely stated his residence
11 within that distance. He was concerned about operation of
12 the plant.

13 MR. REYNOLDS: Mrs. Bowers, may I make a comment.

14 I don't think that we should lose sight of the fact
15 that 10 CFR 2.714 requires more than a showing of interest to
16 support a petition to intervene. It also requires that the
17 petitioner demonstrate how that interest may be affected by
18 the results of the proceeding, and demonstrate the specific
19 aspects of subject matter in the proceeding as to which the
20 petitioner seeks to intervene.

21 Now, the reference to ALAB 522, where the appeal
22 board -- that's the Vepco case, North Anna -- where the appeal
23 board held that proximity alone was enough to justify a
24 finding of interest, did not do away with the other requirements
25 of 2.714.

2 1 Indeed, the appeal board was criticized by the
2 licensing board in North Anna, and I think the appeal board
3 listened to the licensing board. Because in ALAB 536, North
4 Anna, this is now the operating license case, as opposed to
5 the spent fuel case.

6 April 5, 1979, the appeal board said as follows:

7 There the petitioner organization had identified a
8 member who resided relatively close to the facility involved.
9 But there had been no particularization of how the interests
10 of that member might be adversely affected by the outcome of
11 the proceeding.

12 So I think that's a clear recognition by the appeal
13 board in response to the stimulus by the licensing board
14 chairman, that 2.714 requires more than simply a finding of
15 interest.

16 So, I am not quibbling with the Staff's interpre-
17 tation of ALAB 522. I am simply saying it may have not gone
18 far enough in interpreting the regulation.

19 MS. ULMAN: Mrs. Bowers, I have one additional
20 comment.

21 I agree with Mr. Reynolds that 2.714 may require
22 more than just interest. But we believe the requirements of
23 2.714 are met, including interest, by CFUR's petition as a
24 whole.

25 While we were focusing our discussion on the

MG 3 1 affidavit, we feel that the statements in the petition which
2 do indicate activities carried on in a certain proximity to
3 the site by CFUR members, that statement in the petition with
4 Mrs. Jacobson's affidavit does meet the interest requirements.

5 MR. REYNOLDS: May I respond.

6 MRS. BOWERS: Then we want to go on.

7 MR. REYNOLDS: Yes. This will be brief.

8 We have a situation where this board might require
9 a hearing in this case on the basis of perhaps only this
10 petition -- who knows? This is an unverified petition by
11 Mrs. Jacobson.

12 The only basis we have which is verified to support
13 this petition is the Jacobson affidavit, the Reznikoff affidavit,
14 and the Fouke affidavit.

15 The Staff has already said they think the Fouke
16 and Reznikoff add nothing; they rely on Jacobson.

17 I ask the board to read the Jacobson affidavit
18 before you render your decision on this petition. I think if
19 you read it closely you will find that it is as vague as it
20 could be. It has nothing in there about how she will be
21 affected by the operation of this facility.

22 In those circumstances, I think it is clear that
23 CFUR should not be admitted to this proceeding.

24 MR. FOUKE: Mr. Reynolds, do you recognize that this
25 filing was by other than an attorney?

MG 4 1 MR. REYNOLDS: Yes.

2 MRS. BOWERS: Do you think there is a slightly
3 different --

4 MR. REYNOLDS: I don't know whether she had legal
5 counsel of not to assist her in the preparation of it. I
6 would note, for example, that CASE has two counsel who happen
7 to be members of CASE and who assist CASE in the preparation
8 of their pleadings.

9 MRS. BOWERS: That has nothing to do with this.

10 MR. REYNOLDS: Likewise, we don't know. Maybe you
11 should ask Mr. Fouke.

12 But in any event, we identified these problems in
13 our answer to the CFUR petition, and they were not corrected
14 later.

15 MRS. BOWERS: Mr. Fouke, you want to respond?

16 MR. FOUKE: I can for the record point out that
17 Miss Jacobson did not have legal counsel's advice when she
18 wrote up the petition to intervene.

19 I must admit I am a little confused. So much of
20 this particular proceeding happens to be around technicalities
21 that are beyond the scope of any but the most attentive lawyer.

22 I think there is a great need to have hearings
23 in order to assure the public, especially after Three Mile
24 Island.

25 I get rather confused -- CFUR certainly, and if

5 1 anyone is aware that Texas Utilities has on many occasions
2 joined in discussions about rates, nuclear power, all parti-
3 cular subjects which we are talking about here.

4 Some of us in CFUR have made studies on the proper
5 location of power plants. I think we have something to assist
6 in the decision of whether or not an operating license, and
7 if so, whether or not any other condition should be added to
8 the operating license.

9 And I would request that we move on.

10 DR. COLE: Mr. Fouke, with respect to the affidavit
11 of Michael Reznikoff, how long has Mr. Reznikoff been a member
12 of CFUR; do you know?

13 MR. FOUKE: Two or three months, I think.

14 DR. COLE: Do you know if it was before the filing
15 date of the application?

16 MR. FOUKE: Yes, it was.

17 DR. COLE: Thank you.

18 MR. REYNOLDS: May I make one point, Mrs. Bowers.

19 If you read back to ALAB 130, the appeal board said
20 there that in situations such as we have here where people are
21 making representations as to what transpired, it is better for
22 the board to hear from the person himself than from some
23 representative.

24 Here's what the appeal board said:

25 We think that this assertion might have been

MG 6 1 advanced with greater particularity in the petition. And while
2 it was elaborated on during the course of the prehearing
3 conference, the additional information was supplied by counsel,
4 or spokesmen, rather than by the petitioner himself, a practice
5 of which we disapprove.

6 MRS. BOWERS: This is a yes or no situation.

7 MR. REYNOLDS: Well, we think it is a couple of
8 months. It is very important.

9 MRS. BOWERS: But the question was asked was he a
10 member at the due date, the cutoff date for the filing of the
11 petition. The answer given was yes.

12 Now, if you have any reason to doubt that --

13 MR. REYNOLDS: I didn't hear the yes answer.

14 MRS. BOWERS: Yes. The answer was yes.

15 MR. REYNOLDS: If they can make that representation
16 in good faith, that's fine with me.

17 DR. COLE: Yes, I think I used the term filing date
18 of the application. I used the word application erroneously.
19 I meant the filing date for petitions to intervene.

20 MR. REYNOLDS: Okay.

21 MRS. BOWERS: It's a harmless error.

22 (Laughter.)

23 DR. COLE: Is that the answer to the question you
24 answered, sir?

25 MR. FOUKE: Yes.

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7 1 MRS. BOWERS: Take official notice, it is a harmless
2 error.

3 DR. COLE: Okay.

4 Now, if there is nothing further on the interest,
5 let's go on to the contention, although there has been some
6 discussion in and out.

7 MR. FOUKE: CFUR would request --

8 MRS. BOWERS: I think, Mr. Fouke, we have had an
9 opportunity to quickly read the documents that you have
10 distributed this morning, so that's a matter that needs to be
11 discussed also.

12 MR. FOUKE: CFUR would request to amend their
13 motion, or amend the supplement to the petition for leave to
14 intervene in the following manner:

15 The thing which concerns CFUR about the wording of
16 the NRC Staff contention has to do with the manner in which
17 they talk about the adequacy of the construction. CFUR feels
18 there is enough question about the adequacy of construction,
19 so that the NRC Staff should investigate up to the point of
20 nondestructive testing at this particular time.

21 Further, we feel that because of the record as
22 indicated from the NRC inspection reports, that there is a
23 pattern there that has been established indicating a lack of
24 commitment to QA on the part of upper management of Texas
25 Utilities.

7 8 1 And because of this we feel special conditions should
2 be imposed when the operating license, if indeed the operating
3 license is granted.

4 And further, we feel that the NRC Staff has compromised
5 good QA practice after operation, and for that matter, during
6 construction as well, by not making it apparent to all the
7 people involved the consequences of large accidents, should they
8 happen.

9 We would like for the contention to read in that
10 manner.

11 MRS. BOWERS: Have you concluded?

12 MR. FOUKE: Yes.

13 MRS. BOWERS: Mr. Reynolds.

14 MR. REYNOLDS: Would you like to hear from the
15 Staff first, since it is their contention?

16 Well, our position is as stated in our pleading which
17 we filed with you on Friday.

18 This seems to me to be a quibble between CFUR and
19 the Staff in which we would not care to get involved. We
20 don't see that they have any contention, whether or not it is
21 worded the way the Staff does it, or the way they have done it
22 here.

23 MRS. BOWERS: We will go on to the Staff, then, if
24 that concludes your remarks.

25 MR. REYNOLDS: It does.

9 1 MRS. BOWERS: Ms. Ulman.

2 MS. ULMAN: I believe Mr. Chandler will address
3 this aspect.

4 MR. CHANDLER: As I think we have indicated earlier,
5 we did feel that CFUR had expressed an adequate basis for
6 contention.

7 What concerned us was again the way in which we
8 perceived that it was articulated. We felt that dispersed
9 among the bases for this Contention IV were contentions, and
10 in our view it was more appropriate to consolidate and
11 compress these into a single contention, which in our view
12 encompasses all of the matters raised by the CFUR statement
13 of its issue.

14 I think that so far as the initial petition is
15 concerne -- enough has been said in our memorandum of May 17
16 to address that.

17 I would be concerned, and frankly, I would note our
18 objection to the language proposed in CFUR's motion to amend
19 supplements to petition for leave to intervene.

20 Frankly, I think it detracts from the scope of the
21 issue that we had tried to draft.

22 In viewing the language that appears on page 2
23 through 3, I would read this as follows:

24 I would consider that only the first paragraph on
25 page 2 makes an effort at setting forth a contention. I think

MG 10 1 the remaining paragraphs merely set forth bases or argument
2 in support of that contention, which were not appropriately
3 brought up into the contention itself.

4 Viewing this, if one would, in its entirety to be
5 a contention, I would then I think have problems with
6 specificity, because we have a number of conclusional statements
7 not setting forth any particular issue. They raise CFUR's
8 position on various matters.

9 In a properly connected QA-QC program, the employees
10 are constantly reminded of the possible consequences of any
11 mistake, et cetera. That is their position on this given
12 point.

13 Certainly, they are entitled to that position, and
14 I think they have in fact raised an issue which as we have
15 redrafted it somewhat, we think probably contains that type
16 of a concern.

17 We don't, in short, believe that the proposed
18 modification to the contention enhances the original contention.
19 In fact, we believe it detracts from it, and we would be
20 opposed to that.

21 But as has been stated in our May 17 memorandum,
22 we do believe that otherwise they have an adequate contention,
23 and we have proposed the substitute language.

24 If they are not willing to accept that, I think we
25 would have to go back to first base on this one -- actually,

G 11 1 home plate -- and decide what the appropriate language would be.
2 I would have to start back with the original supplement to the
3 petition, but there is language in there, and I do believe it
4 would otherwise be acceptable.

5 MRS. BCWERS: Now we need a definite position from
6 the Staff on this matter, just like we needed a definite
7 position.

8 MR. CHANDLER: I would be happy to.

9 MRS. BOWERS: From ACORN.

10 MR. CHANDLER: I would have to back up a little bit,
11 and just inquire through the board, if I may, whether CFUR is
12 now substituting the language contained in its motion to
13 amend supplement to a petition for leave to intervene for
14 those contentions and statement contained in paragraph IV of
15 its supplement to petition for leave to intervene.

16 And at the same time, CFUR is rejecting Staff's
17 proposed language --

18 MRS. BOWERS: Mr. Fouke, could you respond to that?

19 MR. FOUKE: It seems like a fair characterization.

20 We would like to substitute this as a contention.

21 MRS. BOWERS: By this, you mean the language in the
22 motion to amend?

23 MR. FOUKE: Yes, ma'am. We would like to substitute
24 that as the contention covering all the bases described under
25 heading 4 in our original supplement.

G 12 1 And our concern about the Staff's wording is that
2 at this particular point in time, possibly after discovery, we
3 may agree with the Staff's statement. But at this particular
4 point in time, we are not taking the position that the
5 operating license should be rejected per se.

6 We think that if certain actions are taken, that
7 it would be all right to issue an operating license.

8 And in that regard, we have a somewhat different
9 stand or somewhat different position than do evidently the
10 other two intervenors, potential intervenors.

11 MR. KORNBLITH: Can I ask a question?

12 You say at the bottom of page 1 in your motion to
13 amend: "In so doing, we reserve the right to present CFUR
14 contentions IV-A through H in their entirety if CFUR is
15 admitted as a partner."

16 Do I understand you to say now that you are
17 withdrawing that reservation?

18 MR. FOUKE: Yes, sir.

19 MR. KORNBLITH: Thank you.

20 MRS. BOWERS: Mr. Chandler, does that give you more
21 information with which to proceed?

22 MR. CHANDLER: No, ma'am, I am somewhat more confused
23 then I started out looking at this motion to amend.

24 MRS. BOWERS: Let me say this:

25 This document was a surprise.

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1 MR. CHANDLER: Yes, ma'am.

2 MRS. BOWERS: And if you want additional time to
3 give this further consideration, you are certainly entitled
4 to it, rather than trying to take a position here.

5 MR. CHANDLER: I think we would like to, particularly
6 in light of the closing comments of Mr. Fouke as to what he
7 is exactly intending to include in his contention as far as
8 basis.

9 Just so I am clear on that, you are intending the
10 entire pages 2 through the close of quotes on page 3 as the
11 contention itself, not a contention and basis. But that is
12 the issue that you wish to have litigated in this proceeding?

13 MR. FOUKE: It is not the issue. It is the issue
14 which describes the bases established under IV.

15 MR. CHANDLER: I think we are talking across one
16 another.

17 The contention that you wish to raise, as distinct
18 from the basis in support of that, okay, is what I am talking
19 about? The contention that CFUR is seeking to raise
20 consists of the three paragraphs set forth on pages 2 and 3
21 of the motion, or does it merely consist of the top paragraph?

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22 MR. FOUKE: It consists of both pages 2 and 3.

23 MR. CHANDLER: Mrs. Bowers, I would then request
24 an opportunity to respond to the motion in writing.

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25 MRS. BOWERS: Fine. How long do you think you would

14 1 need, a reasonable length?

2 MR. CHANLDER: If the board has no objection, I
3 would propose we file it simultaneously with our brief on
4 ALAB 549 on June 4.

5 MR. FOUKE: I would like to comment on that
6 briefly.

7 We received -- at least I received late Friday --
8 the Staff's answer on the rewording of our contentions. We
9 have been given four days. And now the Staff is going to
10 take two weeks. I don't think that's fair.

11 MRS. BOWERS: You could have asked for additional
12 time if you had felt you needed it.

13 Actually, with the Staff's response, they were
14 suggesting language that didn't wipe out your contentions.
15 They were just saying to the board, "We suggest this language
16 which we feel more comfortable with than the language proposed
17 by the petitioners."

18 But we still have the language proposed by the
19 petitioners before us. It in no way -- but here, in your
20 motion to amend -- if we have followed, you have come up with
21 a couple of pages of new language which cancels out language
22 in the prior petition.

23 MR. FOUKE: The way this actually transpired is we
24 came up with this wording as a response to try to speed the
25 proceedings on. Clearly that's what we did, and that is what

15 1 we stated, and that is our whole intent.

2 And the actions we are considering today are going
3 to not do that. They will accomplish the exact opposite.

4 Now, under those circumstances, I feel compelled
5 to withdraw my statement that we would like to substitute this.
6 AND if indeed the Staff is not going to respond in a timely
7 manner to our suggestion, we may as well stay with the
8 original contentions.

9 MRS. BOWERS: Mr. Fouke, you realize this is a
10 motion, and under the regulations the Staff has 10 days in which
11 to respond to a motion.

12 MR. FOUKE: All right.

13 MR. CHANDLER: I am not sure where we stand,
14 Mrs. Bowers. We have a motion, or do we not have a motion
15 pending?

16 MRS. BOWERS: I think the ball was with Mr. Fouke
17 as to whether he wants -- I saw your name misspelled the first
18 time -- this has been my problem.

19 MR. FOUKE: I think the chance of getting it right
20 is 1 in a 100.

21 (Laughter.)

22 MRS. BOWERS: The one I saw didn't have an "l" in
23 it.

24 MR. FOUKE: No, it doesn't have an el in it; it
25 just sounds that way when our family says it.

16 1 (Laughter.)

2 MRS. BOWERS: So it's F-o-u-k-e?

3 MR. FOUKE: That's right.

4 MR. CHANDLER: Mrs. Bowers, may I make a suggestion.

5 I still don't think there is any particular urgency.

6 Perhaps Mr. Fouke consulted with his colleagues and perhaps

7 Mrs. Jacobson to reconsider his petition and advise us.

8 The motion is prepared if he wishes to pursue this
9 motion -- perhaps by letter within the next couple or three days.

10 Then we can proceed on that basis.

11 MR. FOUKE: That would be fine.

12 For the record, I would like to say that we withdraw
13 the withdrawal of page 1.

14 (Laughter.)

15 MRS. BOWERS: Without prejudice.

16 (Laughter.)

17 MR. FOUKE: Yes.

18 MRS. BOWERS: So then you will communicate to the
19 Staff and applicant.

20 Mr. Reynolds, are you involved in this?

21 MR. REYNOLDS: I would like to stay out of it if I
22 could.

23 (Laughter.)

24 MR. REYNOLDS: No way. But I would like a copy of
25 whatever communication transpires between the two.

17 1 MRS. BOWERS: Then CFUR will let the Staff know
2 within the next few days as to what your position is.

3 MR. FOUKE: Yes, ma'am.

4 Are you saying we don't have to give them the full
5 list?

6 MRS. BOWERS: This depends on whether -- this goes
7 to the point of whether you are standing on this motion, or
8 you are changing it, or withdrawing it.

9 And then, of course, that would go to the Staff
10 response.

11 MR. FOUKE: Very well.

12 MR. REYNOLDS: But may I also receive a copy?

13 MR. FOUKE: Yes.

14 MR. KORNBLITH: Incidentally, while we are on this
15 subject, I have noticed in the record several complaints from
16 various people that they weren't getting served with all the
17 proper documents. Maybe when we conclude, the parties can all
18 get together and amongst themselves agree upon an appropriate
19 service list.

20 MRS. BOWERS: Now, part of the problem, if one of
21 you has picked up the Staff's service list and used it, you
22 see, they don't service themselves. They don't show themselves
23 on that service list, and I think this is how some of the
24 confusion has developed.

25 MR. CHANDLER: I agree with Mrs. Bowers. We seem to

1 be the party suffering from this problem. I trust it has been
2 corrected by this time.

3 I would have one question of Mr. Fouke in that
4 regard. And that is, if in view of what appears to be two
5 authorizations from CFUR, the organization to be represented
6 by Miss Jacobson and Mr. Fouke, whether service upon one would
7 be adequate, and if so, respond as to which one.

8 MR. FOUKE: Service on myself.

9 MR. CHANDLER: We will substitute you for
10 Miss Jacobson.

11 MR. FOUKE: Yes.

12 I would have a question: Would you please say how
13 the letter should be addressed: to yourself?

14 MR. CHANDLER: Address it to Lawrence Chandler,
15 Office of the Executive Legal Director, U. S. Nuclear Regulatory
16 Commission, Washington, D. C. 20555.

17 MR. KORNBLITH: I think this can be done off the
18 record after.

19 MRS. BOWERS: Is there any further matter with CFUR?

20 Mrs. Ellis.

21 MRS. ELLIS: Not really with CFUR, no.

22 MRS. BOWERS: We were going on to the state of Texas,
23 and there may be matters, as Mr. Kornblith suggested, house-
24 keeping matters or other matters, that you people can get with
25 the Staff on.

19 1 MRS. ELLIS: This is something I would like on the
2 record in view of the information that was put on earlier, not
3 on CFUR.

4 MRS. BOWERS: Are we done with CFUR? We have
5 discussed the interest and contentions.

6 So, Mrs. Ellis, we will proceed then.

7 MRS. ELLIS: Just one brief thing.

8 There was something said by the applicant a little
9 bit ago that may have given an erroneous impression, and I
10 wanted to be sure that everyone understood just what was
11 involved here.

12 And that was regarding the attorneys working with
13 CASE.

14 In the petition and in our affidavit, it clearly
15 set out that I was to be the representative of CASE in these
16 proceedings or anyone who I should so designate. And two
17 attorneys which we have working with CASE are working with
18 CASE only as CASE members; they are not being paid to represent
19 us, and in all likelihood will not be able to be at most of
20 the hearings. They will be available to us only sort of
21 catch as catch can, just as their time allows. I just wanted
22 to make that clear.

23 And I am not an attorney.

24 MRS. BOWERS: Now, can we go on to the state of
25 Texas.

20 1 Mr. Lowerre.

2 (Discussion off the record.)

3 MRS. BOWERS: Mr. Lowerre, before you commence, let
4 me say that this is the first time that I have been in this
5 part of Texas, and it is beautiful.

6 MR. LOWERRE: Mrs. Bowers, thank you. We haven't
7 really officially welcomed you to Texas yet. I hope you have
8 been welcomed, and I hope you enjoy your stay.

9 I have been representing the State of Texas in this
10 proceeding so far. Mr. Preister, however, will be doing the
11 work and taking over the representation. And I will let him
12 continue with anything or any questions you might have about
13 our status or application.

14 MRS. BOWERS: We are just giving you an opportunity
15 if there is anything further you want to say at this time on the
16 petition.

17 I don't know whether the general public understands
18 the State, according to the regulations, made petition as they
19 say, for participation as an interested state. And it is a
20 special category under 2.715(c).

21 They need not file contentions if they determine
22 that they don't want to. They can participate, though, in
23 putting on a direct case and cross-examination.

24 And so actually, their role looks very much or can
25 look like the role of any other party intervenor if they choose

21 1 to make it that role.

2 A state can also determine that it is fulfilling its
3 role if it is primarily an observer with some participation.
4 So it is a very special category.

5 Do you have anything further at this time?

6 MR. PREISTER: I would just like to say that the
7 state is, of course, very much interested in this proceeding.
8 We are not going to take a position right now as to the various
9 positions the parties have taken today. We believe the parties
10 have very adequately represented their positions.

11 I would only urge the board to resolve any doubt
12 in favor of the decision to hold the full evidentiary hearing
13 in this matter. And if evidentiary hearings are held, we
14 believe the State of Texas can provide an important contri-
15 bution to the hearing, and provide some input.

16 MRS. BOWERS: All right.

17 Mr. Reynolds.

18 MR. REYNOLDS: The applicants would welcome the
19 participation of the State of Texas in any hearing that might
20 be held.

21 MRS. BOWERS: Staff.

22 MS. ULMAN: That's our position, too. We welcome
23 their participation.

24 MRS. BOWERS: Well, the people in Texas welcome the
25 State of Texas.

22 1 (Laughter.)

2 MRS. BOWERS: If there is nothing further on that,
3 Mr. Gay.

4 MR. GAY: I have one further comment I would like
5 to make. This regards the Woods and the Bishops.

6 I wanted to reference the board to the North Anna
7 decision. The licensing board has very broad discretion to
8 consider intervenors status irrespective of nontimely filing.

9 I would point the board to the fact that I maintain
10 that all the filings submitted by the Bishops and the Woods
11 are timely. However, should the board rule against me on that,
12 I would request that you please look to the 10 CFR 2.714(a)
13 considerations; there are four of them there to weigh.

14 The first one concerns the availability of other
15 means whereby petitioners interests will be protected. We have
16 two very elderly couples here, between 75 and 80 years of age.
17 They live just a couple of miles from this plant, and unless
18 they are involved in this proceeding, unless there is a public
19 hearing, their interests cannot be protected. And they have
20 the only other option of packing up and moving should this
21 plant become operative, and I don't think that is a very
22 desirable option for a couple who have resided in this
23 community all their lives.

24 A second consideration is the extent to which
25 petitioners' participation can be reasonably expected to assist

7 23 1 in developing a sound record. I think that the Bishops and
2 the Woods have submitted to you very sound and very specific
3 contentions on safety matters that are not submitted by any
4 other party in this proceeding.

5 And if we do not have that consideration before
6 the board, if the Woods and Bishops were to be eliminated from
7 this proceeding, plus I think through our participation I
8 think we are going to be able to offer expert witness testimony
9 which would be otherwise unavailable.

10 . The third consideration is the extent to which
11 petitioner's interest will be represented by existing parties.
12 There is no party in this proceeding representing the public
13 interest. There is no other party which would represent the
14 interests of low income, elderly individuals.

15 The fourth consideration and finally, is the extent
16 to which petitioner's participation will broaden the issues
17 and delay the proceeding. I think it is quite obvious that
18 the affidavits of the Bishops and the Woods were not intended
19 to delay this proceeding, that they were present before the
20 board.

21 All the parties have been made aware of them, and
22 there being no delay with their being participants in this
23 proceeding, I would ask that the board weigh those considerations
24 and decide in favor of the Woods and the Bishops being involved
25 in this proceeding.

24 1 Thank you.

2 MRS. BOWERS: Thank you.

3 Mr. Gay, that criteria set forth by the appeal
4 board originally in West Valley, and of course now is incor-
5 porated in the regulations, and that's information that we
6 wanted to respond to.

7 DR. COLE: Mr. Gay, are you saying that there are
8 contentions that are specific only Marion Klein Bishop and
9 Odett William Wood and that are also not contentions of ACORN?

10 MR. GAY: No, sir, I cannot make that representation.
11 They are jointly filed. I am acting as counsel to both the
12 Bishops and the Woods and ACORN.

13 Our contentions -- I think that there are conten-
14 tions -- I'll take that back.

15 I think that there are contentions in the joint
16 filing which are of greater concern to the Bishops and the
17 Woods than to the ACORN members whose affidavits you have
18 before you. They live far closer to the plant, their interest
19 is much greater than would be the associational interest of
20 ACORN.

21 I believe that those individuals live two or three
22 miles from the plant, and are greatly concerned about the
23 safety aspects of the operation.

24 DR. COLE: But with respect to one of the requirements
25 for late filing as to whether the interest could be represented

25 1 by any other party if ACORN were to be granted party status
2 and West Texas Legal Services were to represent them, don't
3 you think your basis for saying, your statement on whether
4 those interests could be represented is valid.

5 MR. GAY: I think that by all means the Woods and
6 the Bishops have interests that are similar to ACORN, and they
7 themselves have represented ACORN to represent them. If
8 ACORN is not a party to this proceeding -- in other words,
9 there is no party here that can represent their interests --
10 that was the comment that I would like to address to the board.

11 DR. COLE: I understand your position. Thank you.

12 MRS. BOWERS: Let me check with the parties and
13 the petitioners and see if there is any other matter before we
14 would adjourn.

15 Mr. Reynolds.

16 MR. REYNOLDS: Would you like to hear a response from
17 the parties on the late filing?

18 MRS. BOWERS: All right. I'm sorry.

19 MR. REYNOLDS: As to the first point, good cause for
20 failure to file on time, I heard nothing which provided any
21 good cause. The fact that someone may not know what is going
22 on at the NRC is not good cause. Neither is it good cause
23 that West Texas Legal Services may not have been authorized
24 at the time to represent someone in Somervell County.

25 Good cause weighs in favor of rejecting the untimely

26 1 filing.

2 As to other means whereby they could protect their
3 interests, we have two other petitioners for intervention here.
4 If one of those, one or both happens to be admitted, those
5 intervenors certainly would go a long way toward protecting
6 the interests and the Woods and Bishops. Indeed, the Woods
7 and Bishops might even care to get together with some of these
8 other folks if that is the way things turn out.

9 As Dr. Cole has suggested, if ACORN is admitted,
10 clearly ACORN will represent the interests of the Woods and
11 the Bishops.

12 If neither ACORN nor the Woods and Bishops are
13 admitted and neither CFUR or CASE is admitted, nevertheless,
14 the Woods and Bishops can meaningfully participate in the
15 NRC decisionmaking process through commenting on the draft
16 environmental impact statement which is issued by the Staff.

17 Also, interfacing with the NRC Staff on safety
18 issues, having an input into the preparation of the safety
19 evaluation report.

20 The extent to which petitioner's participation may
21 reasonably have expected to develop a sound record, we have
22 seen nothing whatsoever in this case to indicate that the
23 Woods and Bishops have anything to contribute on the merits
24 to the issues in this case. We don't know their educational
25 qualifications, their background, we know nothing.

27 1 So I don't see any information here which would weigh
2 in their favor in that regard.

3 I think there is an overlap on the question of
4 whether the Woods and Bishops interests will be represented by
5 existing parties. That really goes to the question of whether
6 or not the additional intervenors here, assuming that a
7 hearing is granted, cover the ground that the Woods and Bishops
8 would have covered.

9 And given the apparent nature of these other groups,
10 it seems to me that if they were contacted by the Woods and
11 Bishops, they would likely be more than glad to take up the
12 banner for the Woods and Bishops.

13 The extent to which they may broaden or delay the
14 proceeding, I don't see that they would broaden the proceeding
15 meaningfully if ACORN is admitted, the Woods and Bishops
16 are or are not; I don't think that would make any difference.

17 It may well, however, have a significant difference
18 if they are admitted as intervenors, where ACORN may not have
19 been admitted. That means that a party, an additional party
20 will participate in any proceeding which might be conducted,
21 and that that party would not have otherwise participated but
22 for the fact that this board weighed the untimely factors in
23 its favor.

24 Indeed, if all petitioners for intervention are
25 denied intervention, if the board grants an untimely petition

28 1 by the Woods and Bishops, then that would cause a hearing to be
2 held where otherwise there would not even be a hearing.

3 So that would significantly delay the proceeding.

4 That concludes my statement.

5 MRS. BOWERS: Mr. Chandler.

6 MR. CHANDLER: I really don't have much to add to
7 what Mr. Reynolds has said.

8 To the extent that timeliness is a consideration,
9 respecting the Woods and the Bishops, I don't consider that
10 representation by Mr. Gay addressing the factors identified
11 in 2.714 have adequately been addressed.

12 We, in general, I think would have to indicate that
13 as far as showing of good cause, I don't think there has been
14 any attempt at ever addressing that factor.

15 The number of parties or petitioners who certainly at
16 this point have expressed virtually the same views suggest
17 very strongly that there are other means available to the
18 petitioners whereby their interests would be protected.

19 Again, there has been no effort made at identifying
20 areas in which the Woods and Bishops could contribute to a
21 sound decision by this board in its deliberations in the event
22 a hearing is held. I think that fact certainly cannot be said
23 to be in their favor, based on the information thus far provided.

24 Again, it certainly appears that there are a number
25 of other parties or petitioners who are seeking to intervene

1 in this proceeding expressing many of the same considerations,
2 concerns, issues, interests, as the Woods and Bishops have
3 expressed.

4 Quite candidly, age alone I don't consider to be a
5 factor, suggesting that they fall into a different category
#10 6 than the other petitioners in this proceeding.

7 MRS. BOWERS: Mr. Chandler, I am personally glad to
8 hear you say that.

9 (Laughter.)

10 MR. CHANDLER: In short, Mrs. Bowers, based on
11 Mr. Gay's statements, I don't believe that to the extent that
12 timeliness becomes a factor, that the Bishops and the Woods
13 have adequately shown or demonstrated any good reason for
14 admitting them as parties as a matter of right of discretion.

15 MRS. BOWERS: Mr. Gay, anything further.

16 MR. GAY: I have nothing further.

17 MRS. BOWERS: Let me check again.

18 Any other matter that should be considered today
19 before we adjourn?

20 MR. KORNBLITH: I have one question.

21 I would like to ask Mr. Reynolds what the applicant's
22 present schedule for completion of the plant is, roughly?

23 MR. REYNOLDS: The present schedule, Mr. Kornblith,
24 calls for the loading of fuel in March of 1981.

25 MR. KORNBLITH: All right, fine, thank you.

30 1 Just for planning purposes, it is nice to have a
2 sort of schedule.

3 MR. CHANDLER: I would point out, Mr. Kornblith,
4 I am not sure that that is consistent with Staff's caseload
5 forecast. The Staff has undertaken on its own to assess likely
6 completion dates and fuel load dates, and I am not sure what
7 the Staff's projections are in that area.

8 MR. KORNBLITH: I understand that, and I realize
9 the Staff commitment or intention, but I consider it highly
10 unlikely that the Staff will come up with an earlier one.

11 MR. CHANDLER: I think I would agree with you, sir.

12 MRS. BOWERS: Mrs. Ellis.

13 MRS. ELLIS: Would that be the loading of the fuel
14 for both units?

15 MR. REYNOLDS: No, it would be Unit 1.

16 MRS. ELLIS: All right.

17 MRS. BOWERS: The board has nothing further?

18 Let me quickly check with the others.

19 Mr. Reynolds.

20 MR. REYNOLDS: Mrs. Bowers, we haven't talked this
21 morning about the possibility of consolidation of one or more
22 of these petitioners. I assume that the board will be mindful
23 of the authority it has under the regulations to order
24 consolidation in appropriate cases, and if it deems it
25 appropriate here, to perhaps order consolidation of one or more

31 1 of these petitioners.

2 MRS. BOWERS: The board is aware of that.

3 We would encourage parties to voluntarily join if
4 they find that their interests are compatible.

5 Mr. Chandler, Ms. Ulman, anything further?

6 MR. CHANDLER: Nothing further.

7 MRS. BOWERS: Let me quickly check with petitioners.

8 Mr. Fouke.

9 MR. FOUKE: Nothing.

10 MRS. BOWERS: Mrs. Ellis.

11 MRS. ELLIS: Nothing.

12 MRS. BOWERS: Mr. Gay.

13 MR. GAY: One very, very brief comment.

14 My motion for continuance was originally centered
15 around the idea that we might have some contentions that arise
16 from the Three Mile Island investigation. I understand that
17 Mr. Denton yesterday made an announcement that there is going
18 to be at least a temporary moratorium on the issuance of
19 operating licenses and construction permits until there is some
20 word from the Three Mile Island investigation.

21 I would just like to put the board on notice that
22 I would very much like the opportunity to draft contentions in
23 the future after there is some information from Three Mile
24 Island. I don't wish to urge my motion at this time.

25 MRS. BOWERS: I think that we made it clear that as

32 1 new information becomes available, you certainly can request
2 that contentions based on that new information be considered
3 by the board.

4 Each paper I read has a different version each day
5 as to what the situation is.

6 Mr. Lowerre. State of Texas.

7 MR. PRIESTER: Nothing further.

8 MRS. BOWERS: Well, we have nothing further, and
9 of course, we have enjoyed the opportunity to use this
10 courtroom. As you can see, we don't fit very well behind a
11 1-person bench.

12 And so if the situation develops that we return to
13 this area, we will think in terms of other accommodations. But
14 we certainly appreciate the loan of the county courtroom today.

15 VOICE: Mrs. Bowers.

16 MRS. BOWERS: Just a minute.

17 MRS. ELLIS: I would like to inquire about the
18 availability of transcripts.

19 MRS. BOWERS: In time, it will be in the local
20 public document room here. And of course, should you make
21 arrangements with the reporter --

22 MRS. ELLIS: That's what I was thinking.

23 The public document room, when will those be
24 available?

25 MRS. BOWERS: Maybe the Staff -- why don't you talk

MG 33

1 about this after the proceeding.

2 If there is nothing further, we have a gentleman in
3 the audience --

4 But first I want to say, this is not a town meeting.
5 It is not customary, you see, for us to call on people in the
6 audience who want to speak. We ask you to get with our
7 public information officer at the recess or to deal with the
8 other parties.

9 VOICE: My question, I think, should be addressed
10 to people who make decisions, rather than somebody whose job
11 it is to manage the information, and it relates to Mr. Gay's
12 last comment.

13 I also heard that there would be a 90-day moratorium
14 on construction. The news broadcast I heard was not clear on
15 whether that was a moratorium on construction of permits or
16 ongoing construction.

17 Could you answer that? And if it doesn't apply to
18 Glen Rose, could you explain the policy reasons behind why
19 construction should go on at Glen Rose, and yet be stopped
20 everywhere else?

21 MRS. BOWERS: We don't know what will come out in the
22 way of official word. And as far as I know, there has been
23 some newspaper comment, but we have not yet received official
24 documents so that we would know what kind of a moratorium, if
25 any, may be imposed. But that would, of course, go into

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34 1 our files, so it would be in this docket.

2 VOICE: Could you tell us your feeling as the
3 experts that make the decisions, on whether a moratorium should
4 stop present construction?

5 MRS. BOWERS: We have no idea what will be done.
6 But anything that's done officially will be reflected in this
7 file of this proceeding.

8 So, if there are no other matters, this prehearing
9 conference is adjourned. We appreciate your patience.

10 (Whereupon, at 12:50 p.m., the hearing was adjourned.)

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