

NUCLEAR REGULATORY COMMISSION

PREHEARING CONFERENCE

IN THE MATTER OF:

POOR ORIGINAL

HOUSTON POWER & LIGHT COMPANY,
CITY OF AUSTIN,
CITY OF SAN ANTONIO,
CENTRAL POWER & LIGHT,

Applicants.

(South Texas

Place - Houston, Texas

Date - Thursday, 11 January 1979

Pages 1-196

Telephone:
(202) 347-3700

ACE - FEDERAL REPORTERS, INC.

Official Reporters

444 North Capitol Street
Washington, D.C. 20001

NATIONWIDE COVERAGE - DAILY

7901220015

CR 1403 1
THORPE:mask
herm 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

3

----- X
 4 In the Matter of: :
 :
 5 HOUSTON POWER & LIGHT COMPANY, :
 CITY OF AUSTIN, :
 6 CITY OF SAN ANTONIO, : Docket Nos. 50-498
 CENTRAL POWER & LIGHT, : 50-499
 7 :
 Applicants. :
 8 :
 (South Texas) :
 9 ----- X

10

Host International Hotel
Conference Room 747-B
Houston, Texas

11

12

Thursday, 11 January 1979

13

14

The PREHEARING CONFERENCE in the above-entitled matter was
convened, pursuant to notice, at 9:30 a.m.

15

BEFORE:

16

CHARLES BECHHOEFER, Chairman
DR. EMMETT LUEBKE, Member
17 DR. JAMES LAMB, Member

18

APPEARANCES

19

MELBERT D. SCHWARZ, ESQ., of Baker & Botts, Houston, Texas,
on behalf of the Applicant.

20

JACK R. NEWMAN, HAROLD REIS, and ROBERT CULP, ESQS., of
21 Lowenstein, Newman, Reis, Axelrad & Toll, Washington, D. C.,
on behalf of the Applicant.

22

HENRY MCGURREN, MARJORIE ULMAN, STEWART TREBY, of the Nuclear
23 Regulatory Commission, Washington, D. C., on behalf of the
Nuclear Regulatory Commission.

24

25

DAVID MARKE, pro se, and of the Austin Citizens for Economic
Energy on behalf of the Petitioners.

1 APPEARANCES

2 RICHARD LOWERRE, ESQ., of the State of Texas, on behalf of
3 the Petitioners.

4 CORAL RYAN and LOUIS CAMPOS, of the Citizens Concerned About
5 Nuclear Power, San Antonio, Texas, on behalf of the
6 Petitioners.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

P R O C E E D I N G S

2 CHAIRMAN BECHHOEFER: Good morning. This is a prehearing
3 conference in the matter of the application for an operating
4 license of Houston Power & Light Company for the South Texas
5 Nuclear Plant. The Applicants are Houston Power & Light
6 Company, the City of Austin, City of San Antonio and Central
7 Power & Light Company.

8 Construction permit was authorized in this proceeding
9 in 1975. The Applicants submitted their final safety analysis
10 report and their environmental report in May of 1978. A notice
11 of receipt of the application for an operating license was
12 published in the Federal Register on August 2nd, 1978. Inter-
13 vention petitions were permitted to be filed by September 1,
14 1978.

15 This Board was shortly thereafter established to rule
16 on any petitions which had been received. Actually, three
17 petitions to intervene have been received plus a petition by
18 the State of Texas to participate as an interested state.

19 At this stage I would like to have -- first I would
20 like to introduce the Board. To my left is Dr. Luebke, who is
21 a physicist with the Nuclear Regulatory Commission. To my
22 right is Dr. Lamb from the University of North Carolina. He
23 is an environmental scientist. My name is Charles Bechhoefer.
24 I am an attorney, a member of the Atomic Safety and Licensing
25 Board now.

1 At this stage I would like the various participants
2 to identify themselves for the reporter, so that she may know
3 who is here and who is representing who. On my left is the
4 Applicants.

5 MR. SCHWARZ: My name is Melbert D. Schwarz. I am
6 a lawyer with Baker & Botts in Houston, Texas. I am here today
7 representing Houston Lighting & Power Company, one of the
8 Applicants. Houston Power & Lighting Company is the project
9 manager of the South Texas Project and is appearing in these
10 proceedings on behalf of itself and the other participants:
11 the City of San Antonio, Texas, acting through the City Public
12 Service Board of San Antonio, City of Austin, Texas, and the
13 Central Power & Lighting Company.

14 To my left is Mr. Jack R. Newman of the Washington,
15 D.C., firm of Lowenstein, Newman, Reis & Axelrad. Mr. Newman's
16 address is 1025 Connecticut Avenue, Northwest, Washington, D.C.,
17 20036.

18 To Mr. Newman's left is Mr. Harold Reis, also with
19 Mr. Newman's firm and having the same address. And to Mr. Reis'
20 left is Mr. Robert H. Culp, also with Mr. Newman's firm and
21 having the same address.

22 We have all filed appearances in this proceeding.

23 CHAIRMAN BECHHOEFER: Are these representatives of
24 the various Intervenors or potential Intervenors? Could you
25 identify yourselves?

1 MR. MARKE: My name is David Marke. My residence
2 address is 900 Cardiff Avenue, Austin, Texas. I represent myself
3 and Austin Citizens for Economical Energy.

4 MR. LOWERRE: I am Richard Lowerre, State Attorney
5 General's Office in Austin, Texas, representing the State of
6 Texas.

7 MS. RYAN: I am Carla Ryan from San Antonio,
8 414 King's Court, Apartment C, representing Citizens Concerned
9 About Nuclear Power, representing Bayer and Matagorda Counties.

10 MR. CAMPOS: I am Louis Campos, a student from
11 San Antonio. I am with the Citizens Concerned About Nuclear
12 Power.

13 MR. MC GURREN: For the Nuclear Regulatory Staff, I
14 am Henry J. McGurren. On my far right is Marjorie Ulman as
15 co-counsel, and on my immediate right is Stewart H. Treby, who
16 is the Assistant Chief Hearing Counsel.

17 CHAIRMAN BECHHOEFER: Is anybody here representing a
18 Mr. McGowen?

19 (No response.)

20 CHAIRMAN BECHHOEFER: The Board would like to go into
21 the parties petitioners' standings first off. I would first
22 like to inquire whether the potential Intervenors and the
23 State of Texas have received the responses filed by the
24 Applicants and the NRC staff to the supplemental petitions which
25 were filed late in December. These documents were filed either

1 January 5th or January 8th.

2 MR. LOWERRE: I have not received the responses of
3 the NRC staff. The one copy I received of the Applicant's
4 response has some blank pages in it, I think. I would like to
5 get a better copy if I could.

6 MS. RYAN: Yes, I received the Applicant's response
7 yesterday and I got the NRC's response this morning when I
8 walked in.

9 MR. MARKL: I have had in my possession for
10 approximately 48 hours the Applicant's response, and for
11 approximately 15 minutes the staff's response.

12 (Board conferring.)

13 CHAIRMAN BECHHOEFER: Would it be useful for the
14 intervenors if the NRC staff in particular and perhaps the
15 Applicants also summarized their response at this stage, insofar
16 as standing is concerned, before we get into any contentions?
17 Would that be useful?

18 MR. MARKE: I think so.

19 CHAIRMAN BECHHOEFER: 15 minutes isn't very much time.
20 I think we will hear first from the Applicants on the standing
21 of the two petitioners for intervention who are appearing here
22 today.

23 MR. SCHWARZ: I am furnishing Mr. Lowerre a complete
24 copy of our response. I regret that he received one with blank
25 pages.

1 MR. NEWMAN: Mr. Chairman, as you pointed out, the
2 Applicant has filed an extensive response to the petitions to
3 intervene by the Concerned Citizens in San Antonio and Mr.
4 Marke and potentially the group that he purports to represent.
5 We filed that response approximately three days prior to the
6 time when it was required to be filed, in order to facilitate
7 the Board's review of the document as well as the review of the
8 parties.

9 We are pleased that the Intervenors were able to get
10 our answer at least a day prior to this hearing.

11 Let me turn first to the Citizens Concerned in
12 San Antonio and briefly state the facts concerning their
13 petition. They originally petitioned on August 30, 1978, in
14 response to a notice of opportunity for hearing referred to by
15 the Chairman. The NRC staff and the Applicant filed our
16 positions to that petition on the grounds that the petitioner
17 did not state an interest -- that is, had no standing -- nor
18 did he -- nor did the organization submit a good contention
19 under NRC rules and regulations.

20 Before we move on to that original petition, I think
21 it is important to note that the petition as originally filed
22 purported to represent, and I quote, "the residents of
23 San Antonio, Texas." As the Board is aware, the petition by
24 the Citizens Concerned was rejected by the Board on the basis
25 that its location, approximately 150 miles from the STP site,

1 was, I think the words are "too remote to confer standing."
2 The Board noted, however, that if there are members or residents
3 who live or conduct activities near the site they should be
4 identified and gave the petitioners another opportunity to amend
5 their pleadings of their deficiencies, for the Board, the
6 Applicant and the staff.

7 The Citizens filed a response to that Board order
8 identifying, and I quote again, "at least four members within
9 25 miles of the site." The petition contained no more than
10 that assertion in terms of the relationship of those members to
11 the organization. Specifically, it did not state how the
12 interests of the individual residents were affected by the
13 operation of the STP project, and indeed, did not differentiate
14 between the interests of those four people and the members of
15 the group at large, almost all of whom apparently reside in
16 San Antonio.

17 The petition contained no affidavit that the
18 residents adopted the statements in the organizations filing,
19 nor was there any affidavit evidencing the desire of the four
20 individual members to have the organization represent them in
21 this proceeding.

22 But perhaps the most significant change in the
23 second petition was that the organization, which had only a
24 few weeks ago been described as representing, quote, "San
25 Antonio residents," was now described as, quote, "a non-profit

1 organization with members in Bayer and Matagorda Counties."
2 I think it is evident that the essential showings regarding,
3 A, the interests of the resident members, B, their adoption
4 of the organization's petition, C, the authority of the
5 organization to represent them, and, D, the authorization of
6 Mrs. Ryan or Ms. Ryan to represent the organization have not
7 been made, and therefore the petition is patently defective.

8 Having had the opportunity to amend their petition,
9 having failed to do so properly, we think the matter can be
10 dispensed with at this point.

11 But the defects in the petition, Mr. Chairman, go
12 further than that. I would like to briefly summarize those
13 difficulties, particularly in light of the fact that not every-
14 body has had a chance to review the brief.

15 Even assuming that there are a handful of members of
16 this organization who reside within what has traditionally
17 been the geographic zone of interest in the proceedings before
18 the Commission, that is not sufficient, in our view, to boot-
19 strap the standing of the organization. And we assert,
20 Mr. Chairman, that one cannot impute to an organization such
21 as the Citizens Concerned About Nuclear Power the interests of
22 the Matagorda County residents-members, where virtually no
23 other members of the citizens organization have those interests
24 of the Matagorda members which would give the latter standing,
25 that is, standing in terms of residence within the geographic

1 zone affected by normal or accidental releases.

2 There must be, Mr. Chairman -- I think this is
3 well-supported in case law generally in some proceedings before
4 the NRC -- there must be a substantial commonality of interests
5 between the organization and the members it purports to
6 represent, before the organization can bootstrap its own
7 standing based upon the standing of its members.

8 This argument is not new. It finds its derivation
9 in several early cases: Baker v. Carr, Alabama v. NAACP, Patterson.
10 And I am sure the Chair is aware of all those cases.

11 The reason I think -- and I think it is important to
12 look at the reason for that requirement, because otherwise it
13 is just a hurdle that can be overcome by pleadings. The reason
14 for insisting upon some nexus between the interest of the
15 individual members who may have standing and the organization
16 which claims standing by virtue of representing those individuals
17 is to assure, in the words of now-Chief Justice Burger, that
18 "concrete adverseness, concrete adverseness essential to the
19 illumination of issues, is in fact realized." And Justice
20 Burger spoke -- has spoken to that point on many occasions.

21 I refer you to Duke Power Company versus Carolina
22 Study Group, 98 Supreme Court 2620 at 2634; and another case
23 which I believe the Chair is aware of, Hunt v. Washington State Apple
24 the Advertising Commission, 97 Supreme Court 2434 at 2442.

1 There is a further reason beyond just illumination
2 of legal issues for the insistence on concrete adverseness on a
3 personal stake on the part of the organization seeking to have
4 standing, and I submit that, while not fully articulated, it
5 has a peculiar relevance to proceedings before this agency.
6 The reason for having an organization that has a clear and
7 relevant stake is to assure that this agency's processes are
8 not misused or used for purposes other than those which are
9 intended.

10 In this case we have an organization which seeks to
11 litigate, among other matters, the ultimate disposition of
12 high-level wastes, the decommissioning of nuclear power
13 reactors, the validity of WASH-1400, the adequacy of Appendix I
14 standards; all matters which constitute a general opposition to
15 nuclear power, rather than a particular concern with any
16 particular injury alleged to occur as a result of the operation
17 of the STP project.

18 It is important, I think, that we bear in mind that
19 the purpose of this proceeding, should there be one, would be
20 to test whether STP has been built in conformity with its
21 construction permit and Commission regulations, and not whether
22 nuclear power is a good idea in general.

23 Mr. Chairman, if those arguments relating to the
24 commonality of interest between the organization and the members
25 it purports to represent have not been made clearly in recent

e-1

1 case law, the rationale, I submit, you will find at page 8 of
2 our brief. Almost all of the organizational standing cases of
3 the past several years, the classic cases, have involved
4 organizations, national organizations seeking organizational
5 standing on matters clearly within the scope and purpose of
6 the national organization, or, conversely, organizations with
7 narrower constituencies representing quite specifically the
8 interests of those constituencies.

9 That, we submit, Mr. Chairman, is a far cry from an
10 organization whose members are almost entirely located within
11 a geographical zone of interest more than 100 miles removed
12 from the operation of a power plant. I think that to bootstrap
13 their standing on the basis of these four individual members,
14 assuming they are bona fide members, I think is an unwarranted
15 extension of the principles of Sierra Club versus Morton.

16 Mr. Chairman, we believe these are essential matters.
17 That concrete adverseness, the thing that we have stressed in
18 our brief and here, you will find to underlie the decisions
19 of the Atomic Safety and Licensing Boards in North Anna and
20 Barnwell. And those matters are discussed at pages 5 to 9 of
21 our brief.

22 The concept of concrete adverseness also underlies
23 the requirement that an organization have a clear, I believe
24 the words are, quote, "clear and current showing that
25 significant numbers of the members of the organization do in

1 fact reside near the plant." Now, I understand that one cannot
2 determine in a vacuum what constitutes a significant number of
3 members. It would depend very much on the circumstances of the
4 case. If, in a situation such as Duke, you had 40 members, all
5 members, residing within the geographical zone of interest,
6 bringing themselves together in an organization, those 40 members
7 might suffice. And I can even think of cases where one member
8 might suffice.

9 I do think, however, that in this case, where the
10 overwhelming preponderance of the membership of the organization
11 is so remote from the affected area that there must be some
12 larger showing of a personal interest on the part of specific
13 resident members.

14 Mr. Chairman, we are making these arguments as
15 strenuously as we have because of the fact that we are now
16 involved in an operating license proceeding, where I think, as
17 we all know, there will be no hearing but for the request of
18 the genuinely aggrieved party. And it is up to this Board to
19 decide whether there is in fact that genuinely aggrieved party.

20 I won't touch on the contentions now. I will simply
21 indicate that in our judgment, as in the judgment of the NRC
22 staff, apparently there are no contentions that meet the
23 Commission's standards for litigation under 10 CFR 2.714.

24 There is one final point that must be addressed, and
25 that is the question of the Board's discretion to admit a party

1 to a proceeding even if the party cannot establish standing as
2 a matter of right. As I said before, that standard is espe-
3 cially high in operating license cases. In a situation where,
4 as we and the staff have indicated, there are no issues to be
5 litigated, that I think must also be a factor which must weigh
6 in your decision as to whether to exercise discretion. That is
7 the quality of the pleadings that have been made before you.

8 I think also that the staff's analysis of the
9 individuals who purport by the organization's pleading to have
10 some expertise in the area -- I urge that the staff's filing
11 in that regard be reviewed very carefully. I think it cogently
12 dissects the particular interests of those members, and pretty
13 clearly demonstrates that there is no special unique expertise
14 in this organization.

15 I think also that the seriousness of the organization's
16 contentions must be tested against some obvious failings on the
17 face of the document. For example, it asserts a general
18 interest, as I recall, in its most recent pleading, with
19 respect to radon gas emissions from the operation of a nuclear
20 power plant. I think anybody who has taken the time to look
21 at the Commission's analysis of fuel cycle activities and
22 elsewhere, clearly understands that radium is removed from
23 uranium during the course of the milling process; that essen-
24 tially there are no daughters of radium, that is, radon, in
25 uranium as it proceeds through the fabrication process; that in

1 fact the amount of radon in a reactor core after fabrication
2 is probably less than the amount of radon in the earth surround-
3 ing the reactor.

4 And finally, Mr. Chairman, on the matter of Citizens,
5 I would urge that -- and if I may be permitted your indulgence,
6 I think that there is a very important paragraph to refer to
7 in considering this matter in the Watts Bar proceeding, and I
8 quote at page 1422 from the Watts Bar determination of the
9 appeal board. This is an operating license case, and I quote:
10 "In the circumstances of this case, there is particularly
11 strong reason why the discretionary intervention should not be
12 allowed, in the absence of some clear indication that the
13 petitioner has a substantial contribution to make on significant
14 safety or environmental issues appropriate for consideration
15 at the operating license stage. As the petitioner herself
16 acknowledges, in the absence of the successful petition for
17 intervention, there is no hearing at that stage."

18 And going on, continuing with the quote: "Certainly
19 before a hearing is triggered at the instance of one who has
20 not alleged any cognizable personal interest in the operation
21 of the facility, there should be cause to believe that some
22 discernible public interest will be served by the hearing."

23 I submit that in the case of Citizens that showing
24 has not even begun to be made.

25 I would like now to turn very briefly to the matter

1 of Mr. Marke's petition. A brief statement of the facts
2 indicates that Mr. Marke filed a late petition to intervene in
3 this case, that the Board rejected that petition on grounds of
4 its untimeliness and on grounds of the remoteness of Mr. Marke's
5 residence from the STP site.

6 Mr. Marke now returns with a second pleading, which
7 boils down to this: First, the Board should ignore the
8 geographical limitations on interest which have traditionally
9 been associated with determinations of standing in NRC
10 proceedings.

11 He secondly says, in response to your request that
12 he identify any substantial activities conducted near the site,
13 that he generally refers there to fishing in some undefined
14 area, which to the best of our ability encompasses some 180
15 miles -- clearly not sufficiently tied to the site and clearly
16 an inadequate statement of interest under the rule of the
17 North Anna case recently decided by Member Deale of the
18 Atomic Safety and Licensing Board panel.

19 He refers next to his status as an interested
20 consumer. And, Mr. Chairman, that is an inadequate and not
21 cognizable interest, under the authority of Jamesport and the
22 many cases cited at page 13 of our brief.

23 Finally -- and perhaps we are getting some clarifica-
24 tion now -- Mr. Marke asserts that he is a member of the
25 steering committee of an organization called Austin Citizens

1 for Economical Energy. Clearly, Mr. Chairman, if what we said
2 before has any relevance, this organization has not taken the
3 first step toward establishing its interest in this proceeding.
4 Indeed, any attempt now by that organization to do so would
5 be clearly out of time.

6 The organization purports to have two resident site
7 representatives. However, Mr. Chairman, it is never indicated
8 that those two individuals are members of the organization.

9 Generally, Mr. Chairman, we cannot derive from
10 Mr. Marke's petition the purpose for which he would use his
11 connection with the Austin Citizens organization. It seems
12 absolutely clear to us that there is no basis for finding
13 standing as a matter of right.

14 If, Mr. Chairman, if the statement that I just read
15 from Watts Bar has any meaning whatsoever, it must apply here
16 to prevent the exercise of the Board's discretion to allow either
17 Mr. Marke or the Citizens organization standing and opportunity
18 for hearing. And also, Mr. Chairman, as a matter of discretion,
19 we submit the Board must go much further than the staff has
20 gone in evaluating the ability of Mr. Marke or the organization
21 he represents to make a truly significant contribution to these
22 proceedings.

23 I note, for example, Mr. Marke's petition refers to a
24 number of publications in certain fields, but none are cited.
25 It refers to graduation from California and Nevada university

1 systems, but identifies no degree, whether bachelor or post-
2 graduate; and in the initial petition, as the Chair is well
3 aware, complained extensively of cooling tower effects, when in
4 fact there are no cooling towers associated with the South
5 Texas Project.

6 In these circumstances, Mr. Chairman, I believe that
7 it is abundantly clear that no good ground has been stated for
8 the exercise of the Board's discretion, particularly because
9 this is an operating license proceeding.

10 I would, Mr. Chairman -- I do have some additional
11 requests and argument to make. But I think perhaps I should
12 afford the opportunity to the other parties now, and I will
13 get back to my argument in just a moment.

14 (Board conferring.)

15 CHAIRMAN BECHHOEFER: Could we hear now from the
16 staff?

17 MR. MC GURREN: Mr. Chairman, I will address the
18 petition and the amended petition filed by Mr. Marke and
19 Marjorie Ulman will address the petition and amended petition
20 of Carla Ryan.

21 The NRC staff filed its original response to the
22 petition on 9-22-78, and in that response we noted the sole
23 allegation of interest of Mr. Marke was an interest that he
24 described as being an academic request. We indicated that such
25 a concern was not sufficient to support standing.

1 In the supplemental petition, Mr. Marke asserts that
2 he will suffer mental anguish and possible loss of mental health
3 due to the operation of the plant. One of the assertions is
4 that this harm will result because of the fuel and waste that
5 will pass by his residence or near his place of business.

6 In our response we assert that such a harm is too
7 remote and speculative. He further supports standing in his
8 amended petition on the basis of recreational pursuits. But
9 he fails to identify exactly where those recreational pursuits
10 are, other than a vague reference to an area which encompasses
11 approximately 175 miles of the Gulf Coast. Nor is there an
12 indication of how frequently he participates in these activities.

13
14
15
16
17
18
19
20
21
22
23
24
25

e-2

1 We feel that that too is an insufficient basis to
2 support standing. As the applicant noted with regard to an
3 assertion of interested -- interspaced upon that of a consumer,
4 we feel that that is unsupported in the atomic energy law.
5 Also in support of standing there is a reference to known
6 releasives and his concern that, due to these known releasives,
7 his residence in Austin would create an interest.

8 We feel that this distance is too great to support
9 interest. It is beyond the geographical zone of interest.
10 Therefore, with regard to petitioner's alleged standing as an
11 individual, we feel that he has failed to meet the requirements
12 of 2.714 and in this amendment should also assert standing
13 for an organization by the name of Austin Citizens for Economical
14 Energy.

15 With regard to this group there is no assertion or
16 no reference to the requirements of 2.714 for an untimely
17 petition. Also with regard to this group, we feel that he has
18 not alleged sufficient basis for standing. He simply alleges
19 that there are chairpersons, or the essence of the basis for
20 that standing is that two persons who are members of a steering
21 committee live eight miles from the plant.

22 We feel there is a lack, that there is no particular
23 revision required by 2.714 of Mr. and Mrs. Cook's interests
24 and how that interest will be affected by operation of this
25 facility. And in addition there is no indication from Mr. and

pmcc 2

1 Mrs. Cook that they wish to have ACEE represent them in this
2 proceeding. Therefore, the staff believes that this petition
3 in its present form is deficient and does not support
4 intervention of Mr. Marke as an individual or of ACEE, the
5 organization that petitioner alleges to represent.

6 In our response to Mr. Marke's supplemental petition
7 we indicated with regard to the letter of intervention as a
8 letter of the board's discretion we indicated that there are
9 some factors which we feel would -- which Mr. Marke would be
10 able to make a contribution, a contribution on the significant
11 issue appropriate for consideration in this proceeding;
12 however, we indicated that that contribution could only be
13 with regard to our contention.

14 In our evaluation of the contentions with respect to
15 the necessary specificity, that specificity required by 2.714,
16 we felt that none of the contentions satisfied the 2.714
17 requirements, and therefore we believe the board has no basis
18 for exercising its authority to grant intervention on a
19 discretionary basis.

20 Marjorie Ulman will now -- yes.

21 MR. LUEBKE: Could you identify that one contention
22 that is a maybe?

23 MR. MC GURREN: The one contention that we felt that
24 Mr. Marke might be able to make a significant contribution on
25 is contention four.

pmcc 3

1 MR. LUEBKE: Thank you.

2 MR. MC GURREN: Marjorie Ulman will now address the
3 Citizens petition, amended petition.

4 MS. ULMAN: Mr. Chairman, I would first like to state
5 that in our original response dated September 19, 1978, to
6 Citizens original petition --

7 CHAIRMAN BECHHOEFER: Could the lights be kept on?
8 Pardon me. I thought television coverage could be without
9 these lights.

10 (Pause in the proceedings.)

11 MS. ULMAN: As we stated in our original response
12 dated September 19th, 1978, to Citizens' original petition, we
13 noted that it is clear that Citizens' attempting in that
14 petition to establish its standing through the standing of
15 members of the organization, and we stated that in this case
16 when an organization claims that its standing is based on the
17 interest of its members, the organization must satisfy certain
18 requirements; namely, it must identify specific individuals
19 whose interests might be affected by the proposed action,
20 describe specifically how the interest of each of these members
21 might be affected and show that each of those members has
22 authorized the organization to act on his or her behalf.

23 Now, we noted, as did the applicant and the board,
24 that there were certain defects in Citizens original petition.
25 It contained only certain broad statements of interest. It did

pmcc 4

1 contain a specific statement based on certain economic in-
2 terests, but, as was noted by the board and as was noted by
3 our response and that of the applicant, those economic
4 interests were those of rate pairs, and they are not within
5 the zone of interest to be protected by either the Atomic
6 Energy Act or the National Environmental Policy Act.

7 The Citizens original petition did allege certain
8 health concerns, but they were only very broadly stated. And
9 later we also pointed out that, with respect to any residence
10 of Citizens members within a geographical zone of interest that
11 might be affected by the accidental release of fission
12 products, there was not any identification of any individuals
13 or specifically how their interests would be affected.

14 And the board specifically asked for more detail as
15 to identification of those individuals and an explanation of
16 their activities. Those were the defects in the original
17 petition.

18 As we state in our response to the amended petition,
19 it is our position that Citizens has not cured these defects.
20 We outline these defects on pages 1 to 9 of our response to
21 Citizens amended petition, and we point out that this amended
22 petition only contains certain broad statements of interest.

23 In fact, the language in the amended petition is
24 practically verbatim for the original petition about Citizens
25 interest in education concerning nuclear power, and that is

pmcc 5

1 clearly not a statement with particularity that is necessary to
2 support the petition for intervention.

3 Now, we also noted that there is no identification of
4 specific interest of Citizens which it feels could be affected
5 by the operation of South Texas Project. There is in this
6 amended petition an affidavit signed by Coral Ryan which lists
7 three members who allegedly live within 25 miles of the
8 South Texas plant.

9 However, there is no detail as to how the interests
10 of these three individuals would be affected, and also there
11 is no authorization from these individuals to Citizens which
12 would supply authority for Citizens to represent their
13 interests.

14 That is in general the staff's position as outlined
15 on pages 1 to 9 of our response of our response as far as
16 Citizens' assertions of interest. We also note that there is
17 no authorization supplied by Citizens to Coral Ryan which
18 would authorize her to represent Citizens.

19 We've also noted that there is no basis in this
20 petition to support intervention on a discretionary basis.
21 We noted in our response to Citizens' amended petition that
22 the key issue is -- the key issue to be considered in
23 determining whether there is a sufficient showing to support
24 a decision by the board to permit Citizens to participate on
25 a discretionary basis is whether Citizens has shown that it

pmcc 6 1 can make a substantial contribution to issues appropriate for
2 consideration at the operating license stage.

3 As the applicant attorney pointed out and as we
4 outlined in our response, Citizens has identified, I think,
5 seven individuals and has certain details to their education
6 and professional background. As we point out, there is, with
7 respect to certain of these individuals, no indication that
8 they have any expertise at all related to any issues which
9 would pertain to nuclear power. With respect to certain of
10 these other individuals, it possibly could be said that they
11 might have some expertise with respect to certain of Citizens
12 contentions.

13 However, we do not believe that any of these
14 contentions should be admitted into this proceeding. So, as
15 we state, there is no showing that Citizens can make a
16 substantial contribution to any issues appropriate for
17 consideration at the operating license stage and because in
18 fact there is no basis for discretionary intervention.

19 (Board conferring.)

20 CHAIRMAN BECHHOEFER: We would like to hear from both
21 Ms. Ryan about the Citizens and from Mr. Marke. I noticed that
22 you have had to confer with various people around the room.
23 You are welcome to take that other table next to you and spread
24 out a little, if you desire, or to bring any of the people you
25 are consulting with up to the tables.

pmcc 7

1 You can choose your order. We would like to hear
2 from you as to the points raised by the staff and applicant as
3 to your prospective petitions, and we may ask you questions as
4 you go along.

5 MR. MARKE: Mr. Chairman, as regards the matter of
6 standing regarding my petition, perhaps an initial word of
7 qualification needs to be made, since there seems to be some
8 confusion regarding the relationship between myself and
9 Austin's Citizens for Economical Energy.

10 This petition has been filed by me as an individual.
11 I have been requested by the membership and the steering
12 committee, which is the governing body of Austin's Citizens
13 for Economical Energy, to represent their interests in this
14 proceeding.

15 This is admittedly slightly awkward, but it was done
16 in deference to glutting this proceeding with a great number of
17 citizen complaints and was thought of more or less as a
18 convenience both to the board, the applicant and to the staff,
19 so that there would not be so many different personnel to deal
20 with.

21 CHAIRMAN BECHHOEFER: Why did you take so long to tell
22 us about the Austin Citizens' connection, your connection with
23 them? That one didn't come in until late December, and the
24 applicant at least has taken the position that, if we consider
25 that as a petition by them, you would have to fill the

pmcc 8

1 requirements for a late petition. I would like to hear your
2 comments on that.

3 MR. MARKE: From the time that I received the initial
4 notification published in the Federal Register until the date
5 to file, the petition date, was not a great deal of time. And
6 while Austins' Citizens for Economical Energy has a core group
7 of 120 or 150 members, there are several thousand people
8 involved with it, and so forth, many of whom had to be
9 canvassed in order to obtain a consensus opinion as to whether
10 or not the group wanted to be represented or to have any
11 saying at the proceeding.

12 There was no mandated requirement, as I perceived it,
13 either from the applicant's response or the staff's response
14 or the NRC rules of practice that I submit any information
15 prior to the date, December 26th, which was 15 days before this
16 pre-hearing conference.

17 I saw no need to file an interim action before the
18 requirement for supplemental petition was made.

19 CHAIRMAN BECHHOEFER: I think the applicants at
20 least are gearing the organization's petition as not being
21 identified until the 26th and, therefore, late.

22 MR. MARKE: In my initial petition I referred to the
23 fact that I was not professionally engaged by any groups. And
24 the reason for that at that time was because this action was at
25 that time contemplated by ACEE and had not been acted upon.

pmcc 9 1 It was not intended to be done in a professional or paid
2 capacity, and I felt that there was adequate room there to
3 leave the opening for essentially voluntary work representing
4 that organization.

5 There was no intent made to mislead anyone in that
6 initial petition; however, there was also a conscious effort
7 to overstate our case at that point, since there had not been
end #3 8 complete official action taken at that time.

start #4 9 (Board conferring)

10 CHAIRMAN BECHHOEFER: Do you have any authorization
11 for, waiting authorization from that group to -- for you to
12 represent them?

13 MR. MARKE: In the filing of that affidavit, no,
14 because I was unaware until this point in the discussions that
15 have just gone by that that would be required. I submitted a
16 directory which was filed as Appendix A to the supplemental
17 petition indicating the leadership of that organization, the
18 minutes of meetings of that organization in September of 1978.
19 They will reflect the authorization of that group to ask me to
20 ask me to represent them.

21 And as far as an affidavit is concerned, one could
22 most assuredly be produced, but it was not recognized prior to this
23 point that it was required.

24 CHAIRMAN BECHHOEFER: If we were to determine that the
25 group should be admitted, could you produce such a document for

pmcc 10

1 the record?

2 MR. MARKE: Immediately.

3 (Board conferring.)

4 CHAIRMAN BECHHOEFER: Does the group want to be
5 admitted as a group? This was not completely clear from your
6 petition.7 MR. MARKE: The group's instruction to me was that
8 I represent their interests, should I be admitted as a party to
9 this proceeding. I don't know if I answered your question
10 clearly.11 CHAIRMAN BECHHOEFER: Does the group itself, though
12 -- the only way for you to get in would be as a representative
13 of the group. Does the group want to be admitted? There is
14 a difference between the group's interest and your interest.
15 I think the applicants and the staff have pointed that out.16 MR. MARKE: I am having a little trouble with
17 definitions, but as I perceive it, yes, the group is essentially
18 saying that these are the things that they wish and that I'm
19 their authorized representative. So I will therefore then
20 represent the interests of the group as a party as required in
21 the proceeding.

22 (Board conferring.)

23 CHAIRMAN BECHHOEFER: Let me ask you is it
24 potentially possible that both you and the group would be
25 admitted? Is that what you desire?

pmcc 11

1 MR. MARKE: No. The intention of the group was
2 initially that, in order to prevent having to have 20 of us
3 down here, for instance, that we consolidate our interest to
4 the point that I would speak for the group and for myself as
5 well.

6 And again, the reason for this, the timing of it is
7 that the group did not have sufficient time to formally act
8 before the initial petition. I am not trying to be evasive.
9 I am trying to understand what you are asking.

10 CHAIRMAN BECHHOEFER: We are trying to determine the
11 difference between your personal interest and the interest of
12 the group whom you may be representing as a member thereof.

13 DR. LUEBKE: At this time.

14 CHAIRMAN BECHHOEFER: At this time, at this particular
15 time, because we would want much more information. I would
16 like to know for your own personal interest, but this wouldn't
17 be relevant to the group's interest, about the recreational
18 activities you described in the vicinity of the site. This
19 would not be relevant to whether the group itself got in,
20 except insofar as it affects your own status as a member of
21 the group.

22 I would like to hear a little bit about that in an
23 event where you carry out your activities around the site and
24 how often, how frequently.

25 MR. MARKE: Have I answered the group versus personal

pmcc 12

1 question to your satisfaction yet?

2 DR. LUEBKE: I'm sorry. I don't understand. You
3 wish to be a party as an individual and as a member of the
4 group now?

5 MR. MARKE: The question that has gone on in my mind
6 and is possibly the same one in yours, I am not exactly sure
7 whether that is in fact possible. We have not defined it with
8 quite the particularity that you are asking for. A group is
9 effectively asking for representation or asking for
10 participation in the proceeding via my representation.

11 MR. NEWMAN: Mr. Chairman, is it possible at this
12 point to ask as of this moment has the group requested party
13 intervenor status in this proceeding, just that simple question?

14 CHAIRMAN BECHHOEFER: I thought I had asked that.

15 DR. LUEBKE: You didn't get an answer.

16 MR. MARKE: I think that the indication of the
17 petition is that this is a joint filing filed by me on behalf
18 of myself and the group. So the answer to that question would
19 be yes.

20 DR. LUEBKE: Yes, one party? Yes, two parties?

21 CHAIRMAN BECHHOEFER: I might say two parties might
22 be consolidated and represented by a single individual.

23 MR. MARKE: That is what I have been trying to get at
24 is that our joint interests will be represented by my
25 appearance.

pmcc 13

1 CHAIRMAN BECHHOEFER: I would like to find out a
2 little bit more about the group. Are there only two members
3 in the vicinity of the site and the others all in Austin? This
4 is the way it seems to have been characterized by both your
5 supplemental petition and by the other parties. I want to make
6 sure if that is the case or whether you have other members
7 scattered throughout the state or exactly what or where are
8 your members and about how many?

9 MR. MARKE: Appendix A to the petition indicates only
10 the members of the steering committee of that group. It is
11 not intended to reflect the views of the entire group. We have
12 members ranging from Austin and the surrounding areas, persons
13 in San Antonio, persons in Houston, persons in Brazoria, who
14 are all members of essentially a consensus group but who are
15 not members of the governing body of that group, and therefore
16 it was felt unnecessary to list the news of all of those
17 people.

18 CHAIRMAN BECHHOEFER: What is the consensus for my
19 information?

20 MR. MARKE: A group of persons who have banded
21 together and are governed rather than by a strict set of
22 operating rules, by the immediate consensus of the group with
23 regard to any particular issue.

24 CHAIRMAN BECHHOEFER: Is there anything like dues to
25 your organization or regular meetings or any meetings at all?

D.MCC 14

1 How does it operate?

2 MR. MARKE: Yes, sir, the regular meetings of the
3 group as a whole are held monthly and occasionally bi-monthly,
4 as necessity indicates. Meetings of the steering committee are
5 held on the basis as necessary, which runs at a minimum weekly
6 and as of late run occasionally every other day.

7 The group is very active, and the reason for its
8 being a consensus group is because of the widespread diversity
9 of opinion represented in so many people, and therefore it has
10 been our feeling that the only way we can speak for the group
11 is to ask the group if indeed this is something that the entire
12 group can agree on and represent to the public or other persons
13 that we are dealing with.

14 CHAIRMAN BECHHOEFER: If you or the group were to be
15 admitted, are you prepared to participate in a fairly complex
16 legal proceeding?

17 MR. MARKE: Yes, sir, we are.

18 (Board conferring.)

19 CHAIRMAN BECHHOEFER: Could you address again the
20 question I asked you earlier about the extent of your own
21 recreational activities near the plant? Where is that? What
22 area? The applicants have said that maybe there is 175 or 180
23 miles on the stretch that you pointed out.

24 I think we talked about the Commission precedent on
25 the order of the issue back in October. I wanted to see if you

pmcc 15

1 could fill us in a little bit about your activities.

2 MR. MARKE: I intended to deal with this in the order
3 in which the responses were, but in regard to your question
4 the interest that I have expressed, which would basically lie
5 between Galveston and Port Aransas would indicate that
6 basically my singular leisure pursuit is fishing. It is about
7 what I have time for, and where I do my salt water fishing in
8 particular is under those two ports and along the shore, and
9 from those two ports we have -- I have both been involved in
10 charter vessel expeditions and what would be known as party
11 boat expeditions and private boat expeditions, fishing up and
12 down the shoreline, both offshore and on shore along that
13 section of the coast.

14 The reason that such a long stretch of the coastline
15 was delineated was those are the two ports of launch from
16 which we operate, and we have gone as far east as the Louisiana
17 coastline and went into the Gulf of Mexico as well. So I have
18 no better way to indicate to you where it was that we were
19 fishing and to say that those are the two ports from which we
20 normally leave.

21 The frequency of those expeditions has been
22 questioned, and it has been our practice, that of myself and my
23 friends, to establish quarterly joint fishing trips which are
24 generally of a group nature, and the normal frequency of my
25 offshore fishing trips, aside from that, has probably been such

DMCC 16

1 that I've fished there at least bi-monthly. During the winter
2 months the frequency is occasionally bi-weekly. I don't have a
3 set schedule for the time that I go fishing.

4 I am just trying to give you an indication of how
5 much activity there is in the area.

6 CHAIRMAN BECHHOEFER: And out of those occasions
7 would you expect that you would pass the area of the coast that
8 was, say, closest to the plant? And also do you know how far
9 away that would be?

10 MR. MARKE: On all of them, certainly not. Fishing
11 isn't an exact science, so you basically go where the fish are
12 biting.

13 (Laughter.)

14 Let me state that the frequency is at least 50-50 that we would
15 be in the area. If you drew a line from the point to the sea,
16 that we would be in perhaps a 15 degree radius of that area.

17 CHAIRMAN BECHHOEFER: Do you know how many miles that
18 is?

19 MR. MARKE: It is probably -- I expect that it is
20 40 miles, 50 miles. The application as regards the fishing in
21 my estimation is, however, not the fact that the plant is 100
22 yards or 100 miles from the shore of the ocean, the fact that
23 it is uphill from the Gulf of Mexico, and that is the only
24 place that drain waters from the normal meteorology have to go.

25 It is relatively obvious that, if there should be

pmcc 17

1 effluent released from the plant in any fashion, it seems
2 obvious that it will gravitate to that point.

3 (Board conferring.)

4 DR. LUEBKE: Mr. Marke, I would be interested to hear
5 some more from you about the transportation of fuel and waste
6 products past your house, how you determined that it would be
7 coming past your house.

8 MR. MARKE: Aside from the fact that the location of
9 my house and place of business, which I presume you will take
10 my word for, the determination of whether or not nuclear
11 materials are carried on those roadways and railways is -- has
12 been deemed only by inspection of media documents instead of --
13 and I say I have asked from the Department of Transportation
14 that information be supplied us to rating, et cetera, and
15 have not yet as of this date received it.

16 There are, however, several civilian applications in
17 existence indicating that Interstate 35 and the Mo-Pac rail
18 line, which run outside of the area of my petition, are common
19 carriers for this type of material.

20 As you are possibly aware, they are groups interested
21 specifically in those documents, and the majority, I would say,
22 of the documentations from that has come from those directions
23 at this point and would have to be substantiated by referring to
24 this documentation.

25 I have requested and not received official word from

pmcc 18

1 the Department of Transportation at this point as to the exact
2 rating that might be expected.

1 #4

3 (Board conferring.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DR. LAMB: Mr. Marke, I feel a need to go back and
2 explore a little bit more the question of your participation
3 versus that of the ACEE. I am not quite clear on this yet.
4 To become an Intervenor you have to do certain things, and some
5 of these you have been doing, of course. You submitted a
6 petition and then a revised one. And this has been responded
7 to by the staff and the Applicant.

8 The organization has not done that. The organization
9 per se has not requested that they, the organization, or it
10 be made a party to these proceedings.

11 Are you requesting -- what I guess, to get right to
12 the point, I am asking you whether, on behalf of the organiza-
13 tion, that you are requesting now that the organization be
14 considered as a formal Intervenor in these proceedings? Because
15 the reason -- let me explain the reason I am asking this.
16 There are certain interests that you might have which the
17 organization might not have, and conversely, there are interests
18 which the organization might have which you might not have.
19 Although you could both be represented in the proceeding by
20 you an individual, the -- you do not necessarily have exactly
21 the same set of qualifications or interests.

22 I feel a need to clean up this question of whether
23 we have -- whether you are representing one or two Intervenor,
24 potential Intervenor.

25 MR. MARKE: Perhaps my hesitancy in being able to

1 answer that question is due to the nature of the group itself.
2 As I explained, we operate on a consensus basis. The question
3 as you specifically phrased it is one that we have not
4 considered. And admittedly it had not occurred to us. The
5 group's authorization specifically was phrased such that I
6 would represent their interests in the proceeding. The group
7 was not faced with the question of whether it, as a singular
8 entity, wanted to be a participant to the proceeding. And so
9 I am not sure that at this point I can answer your question
10 any more fully than that.

11 I can go back and produce for you records and obtain
12 an affidavit of the group's authorization for me to represent
13 them. However, to this point, I cannot in certainty say that
14 the group has directed that they want to become an official
15 party to the proceeding. The general discussion was at the
16 time, was that I was applying as an individual and being involved
17 with the group, being one of the founding members of the group,
18 brought the issue up and said: Does ACEE want to be represented
19 in this thing? The reply was in the affirmative.

20 But I do not believe that the group has actually
21 addressed the question of whether, as a legal entity, they
22 wish to become a party to the proceeding.

23 DR. LAMB: Could I perhaps try to read back to you
24 my paraphrase of what you have said?

25 MR. MARKE: Certainly.

1 DR. LAMB: Would it be fair to say that the group
2 as of this time has not officially requested to become an
3 Intervenor?

4 MR. MARKE: I think that's true.

5 DR. LAMB: But that they have said, in effect,
6 through the motions that you are speaking of, that they support
7 your intervention?

8 MR. MARKE: Yes, sir.

9 DR. LAMB: Is that a fair representation of the
10 status now?

11 MR. MARKE: Of the immediate status, yes.

12 DR. LAMB: Okay.

13 MR. MARKE: I will no doubt have to address this
14 exact question to the group, which obviously is not going to
15 happen in time for today's proceeding. I don't know where to
16 go further.

17 CHAIRMAN BECHHOEFER: Our problem lies with the
18 fact that for you as an individual, I don't think that you can
19 rely on the membership, the members of the group living at
20 the site. The group itself can. That would be our problem
21 that we are trying to work out. And you have supplied names
22 of several individuals living near the site, but that is only
23 relevant to the group coming in.

24 And also, I don't think that you as an individual
25 would be permitted to represent other individuals in our

1 proceedings, because you are not an attorney. You could
2 represent a group of which you are a member or yourself.

3 MR. MARKE: I think that probably what is in order
4 at this point is that we request that we be given some time
5 to consider the motion of whether ACEE will become a participant
6 in the proceeding. I feel relatively confident that that answer
7 will be in the affirmative, but I do think that it requires
8 some action on the group, both from our operating rules and
9 from yours as well.

10 CHAIRMAN BECHHOEFER: About how long do you expect
11 that would take?

12 MR. MARKE: 24 hours.

13 (Board conferring.)

14 CHAIRMAN BECHHOEFER: I think -- would it be
15 convenient for you to mail in something by Monday along that
16 line?

17 MR. MARKE: Yes, sir.

18 MR. NEWMAN: Mr. Chairman, I am going to strenuously
19 object to that procedure. There has been an extended period
20 of time in which to file petitions to intervene. Mr. Marke
21 himself has indicated the group started talking about it in
22 September of 1978, which is now almost six months ago. And
23 I submit that there is no basis for further attenuating these
24 proceedings, and certainly no good cause for that untimely
25 filing, which the motion invites, has been made.

1 CHAIRMAN BECHHOEFER: We think, Mr. Chairman --

2 MR. MC GUPREN: May I state a position on that? We
3 feel that the rules allow filing of a petition in conformance
4 with 2.714 at any time. However, we feel that the petitioner
5 would have to address the factors of 2.714 with regard to
6 timeliness.

7 CHAIRMAN BECHHOEFER: That is what I was going to
8 state. We think that maybe by Monday you can mail us both
9 the statement as to how the group wants to participate and
10 the authorization for you to represent it. Also give an
11 explanation of why you were late, and it could be in terms,
12 perhaps, of confusion about our rules. Our decisions say that
13 if you are not represented by counsel we can give you some
14 leeway. You could give us an explanation along that line or
15 any other line about the time it has taken your group to
16 formulate a position. Tell us why and address the 714(a)
17 factors that the Board can take into account.

18 You did address them as for your own petition.

19 MR. NEWMAN: I would like to request a clarification
20 of that statement. Is the Chair entertaining or inviting a
21 petition to intervene in full conformity with the requirements
22 of 10 CFR 2.714?

23 CHAIRMAN BECHHOEFER: The Chair is inviting Mr. Marke
24 to supply the additional information to -- I don't think
25 Mr. Marke at this stage will have to file new contentions and

1 that type of thing. I think that we would like to get a
2 clarification of whether the group as a group wants to come in
3 and the authorization of Mr. Marke to represent it, and why it
4 took so long to identify whether the group wanted to participate,
5 if that is the case.

6 MR. NEWMAN: Mr. Chairman, it is my understanding
7 that this Board is authorized to rule on petitions to intervene
8 and not some mixed type of filing which is an explanation for
9 a late filing and authorization to file a petition. The thing
10 that Mr. McGurren was referring to and which is certainly
11 true, that is, one can file a petition to intervene at any
12 time. It may be an untimely petition that requires justifica-
13 tion, is certainly so.

14 But I think that the Chair is not really clearly
15 stating that requirement to the Intervenor, and I believe that
16 that must be the requirement.

17 CHAIRMAN BECHHOEFER: I don't believe that's so. I
18 think an earlier petition may be supplemented, if that is the
19 case.

20 MR. NEWMAN: There was no earlier petition,
21 Mr. Chairman.

22 CHAIRMAN BECHHOEFER: Well, if the group -- I
23 believe that Mr. Marke's petitions may well be the earlier
24 petitions, and I think that a further supplement to those is
25 perfectly in order for us to consider. This proceeding is

1 one of the so-called early notice proceedings. There is no
2 time -- time is less relevant here than it would be if it were,
3 for instance, a construction permit or very much closer to the
4 fuel-loading date.

5 MR. NEWMAN: At this point I am not discussing the
6 matter of time. I am discussing the nature of the filing that
7 has to be made. I think that this Intervenor ought to -- or
8 the petitioner ought to leave this room clearly understanding
9 what it is that the Board expects to see on Monday.

10 CHAIRMAN BECHHOEFER: What we expect to see is a
11 statement of the group whether or not the group wishes to
12 participate as a party, and whether it authorizes Mr. Marke
13 to represent it. It could adopt -- I assume it will adopt by
14 reference the earlier contentions to the extent that they may
15 be set forth in Mr. Marke's supplemental petition. I assume
16 that the group can adopt those.

17 I am not going to require it to retype out its
18 contentions.

19 MR. MC GURREN: Mr. Chairman, if I might state
20 another deficiency that we have noted throughout our responses,
21 and that is that we still don't see a statement of the standing
22 of the group. We don't see the specification of interest of
23 the group of ACEE.

24 CHAIRMAN BECHHOEFER: I have some questions I want
25 to ask about that later. I want to ask both you and the

1 Applicant several questions about the authority you are
2 relying on. But notwithstanding that, I think that the petition
3 we are talking about should explain what the group's standing
4 is, the basis for its standing, and presumably the two members
5 that live near the site and the fact that Mr. Marke pursues
6 recreational activities near the site. There may be others.
7 You have mentioned other members that may live in the vicinity.
8 That type of thing would be helpful.

9 (Board conferring.)

10 MR. TREBY: Mr. Chairman, if I could make a comment.
11 The staff has a concern here that we are just being advised
12 this morning here that the -- this organization wishes to
13 participate. What we have is an indication that the organiza-
14 tion is encouraging Mr. Marke to participate in this proceeding,
15 and they have, as I understand the conversation between
16 Mr. Marke and Dr. Lamb -- my concern is that if the organiza-
17 tion now wishes to participate in this proceeding, it seems
18 that the organization must meet the various requirements of
19 2.714. That is, they must file a petition which sets out
20 their interests, either of the organization, or perhaps an
21 organization can acquire standing through its members, that
22 sets out the interests of one member and how that interest
23 may be affected.

24 The second requirement for intervention is that the
25 organization must set forth at least one good contention. To

1 date what we have is a petition which sets out Mr. Marke's
2 contentions. There is no indication that these are the
3 concerns or the contentions that the organization would have
4 asserted if it were filing a petition.

5 I think that we must know what those interests are
6 of the organization, and I don't think that these can just
7 merely be adopted. It is conceivable that they can be adopted,
8 but the organization may well have additional concerns.

9 I think it would be much cleaner, if the organization
10 wishes to intervene in this proceeding, if they would submit a
11 complete petition which meets the requirements of 2.714. And
12 the staff would further take the position that, as of this
13 date, that petition should also address the question of time-
14 liness.

15 MR. MARKE: Mr. Chairman?

16 CHAIRMAN BECHHOEFER: Yes?

17 MR. MARKE: I may be able to clarify just a little
18 bit, if I indicate to you that during the preparation of the
19 supplementary petition in particular, considerable research
20 effort has been expended by members of ACEE in the preparation
21 of that report. Source materials and so forth were gathered
22 by the facilities and the auspices of the organization. And
23 I think perhaps by inference they have already participated in
24 the preparation of that petition, and it was just not wisely
25 phrased as to how -- as to what we were asking.

1 I think that this is due simply to the fact that it
2 is a citizens group. We are not heavily endowed with lawyers,
3 and the rules and mechanisms and operation of this Commission
4 are not entirely clear to us.

5 (Board conferring.)

6 MR. NEWMAN: Mr. Chairman?

7 CHAIRMAN BECHHOEFER: I think that the group should
8 be afforded the opportunity to file a complete petition. We
9 do expect a statement as to why, the reason for the lateness
10 and a reason for the delay in identifying whether the group
11 wished to participate. You may treat it as a separate petition
12 or you may, as a group, adopt all of the parts of the petitions
13 that have already been filed.

14 I am trying to save you so you won't have to restate
15 various materials.

16 MR. NEWMAN: Mr. Chairman, may I please have a word
17 about that? My concern here is that the Chair and the Board
18 may be misleading the potential party. At some point this
19 matter will be reviewed by the Appeal Board and a question will
20 exist as to whether Mr. Marke's organization ever intervened
21 in accordance with the Commission's regulations. If what we
22 have here is some kind of an intermediate incomplete process
23 not contemplated by 10 CFR 2.714, it may be that at some
24 later point in time that organization can say: We did what
25 the Board told us to do. And I am terribly concerned that

1 this Intervenor not leave this room under any misapprehension
2 as to the nature of the filing that is required by the
3 Commission's regulations, and has indeed been spelled out on
4 at least two occasions by orders of this Board.

5 DR. LUEBKE: Would Mr. Marke want some help from the
6 staff, let's say, in improving the adequacies of this petition,
7 as well as preparing, if your group wants to, an adequate group
8 petition?

9 MR. MARKE: Would we appreciate the cooperation of
10 the staff?

11 DR. LUEBKE: Well, to help you fill in the blanks.

12 MR. MARKE: Yes, sir, we would definitely be most
13 appreciative and we would make every effort to cooperate as
14 well.

15 I think, in regard to Mr. Newman's response, that I
16 do understand the intent of what the Chair has said and
17 recognize that any action further clarified on the part of
18 the group will be subject to ruling at the appropriate time.
19 I am not intending to leave here under the delusion that we
20 have done some magical thing which will cause that thing auto-
21 matically to be accepted.

22 DR. LUEBKE: Then I think the impression is this
23 would be hard to get all done by Monday.

24 CHAIRMAN BECHHOEFER: I believe that's so. If the
25 staff were to meet with Mr. Marke and perhaps help him in

1 drafting, could you give us a time schedule when you could
2 arrange to do that?

3 MR. MC GURREN: Mr. Chairman, let me indicate the
4 staff would not be willing to draft the petition for the
5 Intervenor. What we would be willing to do is to explain the
6 requirements of the 2.714.

7 CHAIRMAN BECHHOEFER: Well, that is certainly under-
8 stood. They have not had any legal assistance, apparently,
9 someone to explain to them what should be in a petition and
10 how it should be phrased. I think that would be very useful
11 to them. If you were to meet with them in this regard, what
12 kind of a time schedule would you think would be reasonable?

13 MR. NEWMAN: Mr. Chairman, let me interrupt for one
14 second. It seemed to me that the requirements of 2.714, that
15 they can be explained over the lunch hour. It is very simple.
16 The regulations are very clear, particularly as they have been
17 amended within the past couple of months.

18 MR. MC GURREN: Mr. Chairman, we would be happy to
19 meet with them as soon as this prehearing ends today, depending
20 upon what time it ends. But we can meet with them tonight.

21 MR. TREBY: However, Mr. Chairman, the time that they
22 need then to prepare their document, of course, is up to
23 Mr. Marke. We don't know how long that will take. But we will
24 be happy to explain what 2.714 requires after the close of
25 this prehearing conference.

1 CHAIRMAN BECHHOEFER: We think maybe we will give you
2 until a week from tomorrow, a week from Friday, to mail in
3 such a petition. Is that okay? That will give you a little
4 more time.

5 MR. MARKE: That is very, very good.

6 CHAIRMAN BECHHOEFER: We will have to give the other
7 parties a chance to respond.

8 MR. NEWMAN: Mr. Chairman, may I just make a sugges-
9 tion? Let us proceed now with the petitions that are here.
10 The petition will be filed, perhaps it may be filed, and we
11 will consider it at that time. And I assume we will have the
12 opportunity to answer it. Let's get on with the fact that we
13 have, at this point, Mr. Marke and the Citizens organization
14 of San Antonio. Let's get on with their petitions.

15 CHAIRMAN BECHHOEFER: We intend to. We also intend
16 to get into the contentions later on.

17 Mr. Marke, do you have anything further to add?

18 MR. MARKE: I would like to go back and start where
19 I initially intended to.

20 CHAIRMAN BECHHOEFER: Don't get into contentions at
21 this stage.

22 MR. MARKE: I understand we are still talking about
23 standing. Before I go to the beginning, I would point out in
24 the Applicant's response at the top of page 9 a citation regard-
25 ing Detroit Edison Company, the Fermi plant, where it was

1 established as a matter of right that an organization having
2 just two identified members residing 35 and 2 miles from the
3 site, were authorized and authorized an organization to
4 represent them. I think that this also has considerable to
5 say about the bootstrapping which Mr. Newman has referred to
6 in regard to both the petitions.

7 And I would note also that this response seemingly
8 objects to the ruling of that Board and contends that it is
9 in conflict with another action. But I think that it should
10 be considered on its merit. We have a very similar situation
11 existing here.

12 CHAIRMAN BECHHOEFER: Mr. Marke, I have a question
13 that perhaps should be addressed to a lawyer, but let me give
14 it a try. Do you think there should be a difference in the
15 way we apply the rules to an application for intervention in
16 an operating license case such as this one and one where the
17 sole question is the expansion of a spent fuel pool, which is
18 the case at the North Anna case which was cited by the
19 Applicants and I believe by the staff as well, which is a very
20 narrow question, just the expansion of the capacity of that
21 pool?

22 MR. MARKE: I wouldn't purport to try to help the
23 Board make its own rules. But I do think that the Board is
24 well-advised to respond to the needs of the immediate situation;
25 that rules cannot be so inflexible as to simply preclude,

1 because it says so on page 12, the hearing of interests which
2 may have substantial impact at proceedings. And so I think
3 that basically boards of this nature should respond to demand
4 of the situation as is indicated at that time. I don't think
5 that there is necessarily any tight conjecture to be drawn
6 between the expansion of a spent fuel rod pool and an operating
7 license hearing. I think these things have to be considered on
8 its own merit and the time frame in which they are presented
9 by the parties that are involved?

10 CHAIRMAN BECHHOEFER: The reason I asked is that the
11 Board in the spent fuel case seemed to draw much stricter
12 requirements of a showing of a connection between how the
13 people living close to the plant were injured than, for
14 instance, the Fermi Board did in an operating license case.
15 And as I read it, there are some prior Commission decisions
16 where the connection between the alleged injury and the
17 individual property, the licensing action, has not been very
18 specific.

19 I was just wondering whether a distinction should
20 be drawn between those types of situations, where one is a
21 rather narrow action involving a limited type of activity and
22 one involves the operation of the plant itself.

23 MR. MARKE: I would have to agree that it is a
24 difficult question to respond to. My general feeling, not
25 having considered this over any period of time, is that the

1 narrowed scope in which some things are viewed should not be
2 tied over to proceedings of this nature, that the Board should
3 have and seems to have discretionary power to bring in a broader
4 range of items; which I trust comes as close as I can to
5 answering your question.

6 CHAIRMAN BECHHOEFER: Okay. Do you want to continue?

7 MR. MARKE: The Applicant's response, as well as
8 Mr. Newman's remarks this morning, begin with the reference to
9 the fact that the initial petition was filed in an untimely
10 fashion. I have indicated in the supplementary petition that
11 this was -- as best as I can determine, due to conditions
12 beyond our control, that it was submitted in good faith; and
13 have explained as best I have understood under the qualifications
14 of 2.714 why -- or the justification for the untimely filing.

15 The staff response also indicates -- I had little
16 time to read this -- on page 2 that they don't believe that
17 the four days by which the petition was received late has any
18 large bearing on the matter. I think that in that regard I
19 would like to attribute that to human error beyond my control,
20 and we have done the best we can to indicate a further indica-
21 tion under 2.714, a further petition can be accepted if the
22 interest cannot be presented by any other parties, and so forth,
23 and going down the line of all of the requirements of 2.714 in
24 trying to establish the reason that the petition should be
25 accepted in spite of the fact that it appears to have been

1 filed untimely.

2 If we go on in the Applicant's response, the
3 Applicant asserts that because of the distance between Austin
4 and the plant site at Bay City, that it should be rejected.
5 And while I recognize that the NRC has traditionally established
6 a zone of interest that has variously been specified at 15 or
7 25 and in some cases 40 miles from the plant, I think that in
8 light of the scientific evidence with which we are presented
9 today and the means whereby the products of the plant and
10 interactions as a result of the plant with the environment and
11 the populace, that the 100-mile specification which has been
12 cited as being outside the zone of interest should be
13 dismissed.

14 I think that we are continually endeavoring to learn
15 more about these operations than we knew in the past. As an
16 example, in some of my earlier days when I was at the University
17 of Nevada we built a reactor on-site there by hand, which we
18 called a glorified hot water heater and thought that we knew
19 a great deal about running the thing. But we didn't know
20 enough that we provided the tunnels for visual inspection of
21 the operation of the core. And now, of course, that would be
22 considered absurd. Nobody would consider sticking their hand
23 inside a power reactor and looking at what is going on inside
24 the core.

25 With the advance in technology and the general

1 scientific knowledge, I think that it is behooving of this
2 Board to consider that the zone of interest can well be extended
3 to a point as remote as Austin is, because of the various
4 implications that are there just associated with the operation
5 of the plant. Then if we consider that there are possibilities
6 of transportation problems coming into play, I think also then
7 that myself and/or persons in Austin have a right to be repre-
8 sented at a proceeding like this, wherein their livelihood,
9 their health and safety may be affected by such an accident.

10 The staff and the Applicant have cited the likelihood
11 of such an accident is very low. And while I will very readily
12 admit that there are many millions of miles driven in transport
13 over rail wherein nuclear materials are carried, there also are
14 accidents, and those accidents quite often affect people who
15 are not even within the 100-mile region. They affect people
16 who are totally disinterested, totally uninvolved and not even
17 aware that these kinds of things have happened.

18 I think that as a result consideration should be
19 given to standing in that there is an increased potential due
20 to the operation of this plant which the license considers,
21 which this Board is considering licensing, for risk to persons
22 in an area where transportation is likely to occur and the
23 accidents that are possibly associated with it.

24 Going on, there are biological and ecological reasons
25 as well, aligned with normal operation of the plant, not taking

1 into account any accident where the weather, traffic or
2 operating accident at the plant, but whereby the normal operation
3 of the plant can affect persons at such a radius as the place
4 of my residence. The consideration of airborne and waterborne
5 releases getting back into my part of the food chain seems
6 very realistic to me. A considerable amount of the food that
7 I eat is grown in the part of Texas where, in southern Texas
8 where the plant is situated. Water from those agricultural
9 interests and water involved in this plant structure have a
10 tendency to commingle.

11 The infusion or leaching of products from the cooling
12 pump into the aquifers, while it is not readily traceable on
13 a map due to the meandering pattern of ground-borne water, it
14 is almost an assumed fact that it will ultimately get to some-
15 place where it can be presented in the food chain.

e-6

16

17

18

19

20

21

22

23

24

25

#7

1 This again is my rationale regarding the fishing
2 discourse. I am not worried about the fact that the plant will
3 have an excursion at the time that I am fishing offshore and
4 blow my head off nearly as much as I am worried about the fact
5 that the fish swimming by offshore has eaten something that is,
6 by one means or another, inadvertently -- or perhaps purposefully
7 as is considered by the normal emissions of the plant -- gotten
8 into that fish and into my part of the food chain.

9 It is also important, I think in this respect, that
10 we recognize the latency period of this kind of thing. We at
11 one point did not recognize that such emissions had any effect
12 on persons because nothing happened immediately, but now we
13 recognize that genetic defects and carcinogenetic effects have
14 a latency of about 15 years.

15 So it will be some time before the full effect of
16 what this Board is doing will even be recognized. I think that
17 should be taken into consideration, also.

18 Going on, the Applicant's response to my interest as
19 an interested consumer have been disputed. I think that,
20 particularly in a situation such as we have in Austin where
21 the utility is in fact municipally owned, and in fact at public
22 meetings of the City Council of Austin and the Electric
23 Utilities Commission of Austin, the citizens of Austin,
24 including myself, in direct conversation have been told that we
25 are the stockholders of that utility. And therefore, I would

1 contend that we should have standing, or persons in the range
2 should have standing in this proceeding because we are parti-
3 cipants in effect in the operation and construction of the
4 plant that is being discussed.

5 CHAIRMAN BECHHOEFER: Let me clarify this.

6 You are asking us to look at your interests more as
7 a stockholder, rather than as a rate payer?

8 MR. MARKE: Yes, sir.

9 CHAIRMAN BECHHOEFER: The Commission decisions have
10 talked about rate payers, but I would like to hear more about
11 the interest of the stockholder. Are you a stockholder? Or
12 are you just a taxpayer? Or how does this work?

13 MR. MARKE: Two-and-a-half years ago I thought I was
14 a "rate payer," and in the last year and a half in particular,
15 I have become intimately involved in the operations of the
16 Electric Utility Commission in Austin in their interactions
17 with the City Council, and familiar with persons in the adminis-
18 tration of the Austin Electric Utility, and have been told
19 repeatedly -- and I believe that it is published in the
20 minutes of those meetings -- that the citizens of Austin, as
21 rate payers, are effectively the stockholders of the company
22 which is own as the Austin Electric Utility.

23 It is owned by the City of Austin, of which I am a
24 citizen, of which I am a taxpayer, and the inference -- as has
25 been specifically dictated to the citizens of Austin -- is that

1 we are individually and collectively the stockholders of that
2 utility.

3 Did I answer your question?

4 CHAIRMAN BECHHOEFER: Yes.

5 MR. MARKE: The next thing I would like to address
6 is: that the Applicant has referred to my requests for standing
7 as a matter of discretion.

8 I have requested standing as a matter of discretion,
9 alleging that I have sufficient expertise to make a reasonable
10 contribution to these proceedings.

11 The Applicant has said that I haven't specified with
12 sufficient clarity or particularity my expertise or where my
13 education has come from.

14 At this time I will, with your permission, go ahead
15 and explain that, for clarification of the record.

16 I have a Bachelor of Science degree in Nuclear
17 Chemistry from the University of Nevada. I have a Master of
18 Science degree from the University of California at Berkeley.
19 I was involved, until the mid-1960s, in operations at the
20 University of California at Berkeley in the nuclear engineering
21 laboratories there, as well as in the cyclotron laboratory.

22 If the Board desires, I will send a copy of my
23 resume along with the next communication that I send, so that
24 they can see the publications that I have done.

25 I didn't feel that it was necessary, or that it was

1 mandated by any of the Rules of Practice of the Board that I
2 submit my resume, or a listing of publications along with this
3 petition, but I would be perfectly willing to do that and, if
4 necessary, provide copies of those publications for you if they
5 are requested.

6 Further, with regard to my current expertise, I am
7 no longer involved in the field of nuclear chemistry actively.
8 My involvement is on the side as an innocent bystander, if you
9 would.

10 I am, however, continually and daily involved in the
11 business of the research and development of energy production.
12 In my case in particular, I am concerned with solar energy in
13 terms of electrical generation.

14 However, that ongoing practice, and my previous
15 experience as well, provides me with significant expertise in
16 the understanding and general knowledge of large power stations.

17 I have, as well, performed -- as I cited in my
18 petition -- both consulting work and requested testimony for
19 various organizations within the State of Texas, within the
20 City of Austin, and out of state as well, regarding the knowledge
21 that I may have had, and expertise that I may have been able to
22 lend to situations of that sort.

23 And I would propose that, as a matter of discretion,
24 that the Board consider that experience and that expertise as
25 having some significant impact to lend to the proceedings at

1 hand.

2 I believe that that is about all that I felt neces-
3 sary to address from the response to my petition.

4 (Board conferring.)

5 CHAIRMAN BECHHOEFER: I think at this stage we will
6 take a short recess, and then after that I think that we would
7 like to hear the Applicants, and the staff, and Mr. Loweree, if
8 you have anything to say about Mr. Marke's petition, and then
9 we will get into Ms. Ryan's petition.

10 We will recess for about 10 minutes.

11 (Recess.)

12 CHAIRMAN BECHHOEFER: On the record.

13 We would like to hear from the Applicants as to
14 whether they have any additional comments on Mr. Marke's peti-
15 tion.

16 I would like the Applicants, however, to answer the
17 same question I asked Mr. Marke about what their views of the
18 difference is in standing, if any, of a showing of standing
19 between a person who lives near a reactor that is being licensed
20 for operation, and one which is being licensed for expansion of
21 the spent-fuel pool.

22 I would like to hear that, and any other comments
23 you may have.

24 MR. NEWMAN: Let me comment briefly. The facts of
25 North Anna are not the same as STP. Nevertheless, the

1 underlying reasoning is sound, regardless of the nature of the
2 proceeding. Member Deale makes the point that, really in order
3 to establish standing, it is not simply enough to allege
4 residence.

5 One must, in effect, identify the cause and effect
6 associated with the operation of the facility. And in
7 Mr. Deale's case, the expansion of the spent-fuel pool, and in
8 this case the operation of the reactor, Mr. Deale's reasoning
9 is sound. And it applies I think in this case just as well as
10 it would in North Anna.

11 Turning now --

12 CHAIRMAN BECHHOEFER: Isn't Mr. Deal's reasoning --
13 I don't know if it is his, or his Board -- I might add, that
14 decision is being appealed, at the moment. I view that
15 decision as a little anomalous in line with some -- many other
16 Appeal Board or Commission decisions dealing with standing.

17 The earlier Prairie Island decision, which was an
18 operating license case, where I think residents 40 miles away
19 were deemed enough. I think there are other cases where
20 residents, plus certain safety-related contentions, have been
21 deemed to be enough.

22 And I would just like your view. I think that North
23 Anna decision is considerably different from earlier decisions,
24 and particularly those involving operating licenses or construc-
25 tion permits. I think the Barnwell case that you cited is also

1 different. That was spent-fuel storage. I think that is
2 different, also.

3 I would like your comments on this.

4 MR. NEWMAN: I think the question of the type of
5 activity involved obviously has an effect on the nature of any
6 finding to be made. But underlying it is the question of
7 whether or not a naked assertion of residence and nothing more
8 is sufficient to entitle a party, a person to standing in the
9 proceeding.

10 I am not arguing with you, Mr. Chairman, that there
11 is a de minimis requirement. What I am saying is that there
12 must be a showing of sufficient interest of a cause and effect
13 relationship by a person who is clearly within the geographic
14 zone of interest.

15 I think that that is good law. I think that that is
16 what the Appeal Board -- what the Licensing Board did in North
17 Anna. I think that is an explication of prior law.

18 I think the fact that there has to be a significant
19 number of persons within the vicinity in order to -- for the
20 organization to establish standing is clearly, by the way,
21 enunciated in an operating license case.

22 I would refer you to the Midland proceeding at
23 8 NRC 275-277 of this year.

24 CHAIRMAN BECHHOEFER: Do you know --

25 MR. NEWMAN: I'm sorry. I was last year.

1 CHAIRMAN BECHHOEFER: Do you have any reason for
2 us -- would you say that the Prairie Island decision, the
3 Salem decision -- which is ALAB 136 -- and I think the Prairie
4 Island was 107; I think those are 1973 decisions. They have
5 been on the book for a long time.

6 MR. NEWMAN: I think what we are saying now is more
7 of an explication of the underlying bases for those determina-
8 tions, and in many instances, Mr. Chairman -- let me just
9 backtrack for a moment.

10 I indicated to you earlier that you were not seeing
11 very much in the current case law concerning the coincidence
12 of relationship or interest between the organization and the
13 particular people who are effected. I think that that is
14 substantially in part because of the fact that in the leading
15 cases like Sierra Club v. Morton you had a national organization
16 vindicating a national interest and persons whose interests were
17 coincident with that of the organization.

18 In other cases you may have an organization with a relatively
19 narrow constituency, and providing the interest is coincident,
20 that narrow constituency can be represented. I think that the
21 underlying point is that you must determine, based upon the
22 facts of each case, whether or not a sufficient interest has
23 been established by virtue of geographic residence or some
24 other indicia of activity in the vicinity of the plant to
25 warrant bootstrapping the interests of an organization.

1 CHAIRMAN BECHHOEFER: What would your position be
2 if these members of these organizations -- of the ones who
3 lived close to the site -- what if they wanted to come in on
4 their own?

5 MR. NEWMAN: If they wanted to come in on their own,
6 they would have had to specify --

7 CHAIRMAN BECHHOEFER: With the very statements that
8 are in the petitions?

9 MR. NEWMAN: The statements have nothing whatever to
10 do with the interest of the individual members, the statements
11 that are in the petitions now.

12 CHAIRMAN BECHHOEFER: You would say that the fact
13 that they are making safety challenges in some cases could
14 conceivably anticipate accidents -- I am not saying that it
15 would, but could conceivably -- that wouldn't be enough?

16 MR. NEWMAN: No, sir.

17 CHAIRMAN BECHHOEFER: You would then disregard the
18 earlier cases I mentioned which said nothing at all about how
19 the operations of the particular reactors could affect the
20 particular people involved?

21 MR. NEWMAN: I would not disregard those cases.
22 What I would do, however, sir, is go back and reevaluate those
23 cases and determine from their record the nature of the organi-
24 zation that was involved, the nature of the people who were
25 involved, and the nature of the contentions that they asserted

1 in their petitions.

2 I think what you will probably find is that the
3 Appeal Board and Licensing Boards acted responsibly in those
4 cases.

5 I think what we are trying to identify for you here
6 is the fact that it is not a one-and-one-equals-two situation.
7 You do not have a situation here where membership in an organi-
8 zation in California by a person who is a resident in New York
9 establishes the interest of the organization to participate in
10 a reactor licensing proceeding in New York City. It is not
11 that simple.

12 You must look at the quality of the contentions;
13 the nature of the intervenors; the nature of the organization;
14 and that will vary from case to case.

15 I believe that that is the underlying law in NRC
16 cases concerning standing.

17 CHAIRMAN BECHHOEFFER: Do you have further comments?

18 MR. NEWMAN: I might briefly say, Mr. Chairman, that
19 on hearing Mr. Marke's additional remarks, I see nothing to
20 change our prior statements.

21 Obviously the residence remains outside the boundary
22 of geographical interest. The activities that have been
23 described are only in the most vague generalities, I think,
24 not really much more significantly stated than in the initial
25 petition.

end #7

beg #8

1 Obviously we have this anomaly with respect to the
2 nature of the group. Much of what you said -- what Mr. Marke
3 said goes to the contentions, and I think I would reserve those
4 remarks for when we get to that point.

5 CHAIRMAN BECHHOEFER: I did want to ask you: Do
6 you have any views as to Mr. Marke's fishing activities? There
7 was one case that I looked up, the Rio Gulf case, which I think
8 said that a person who used an area every several months, and
9 I think that was deemed sufficient.

10 MR. NEWMAN: I don't know how close that petitioner
11 got to the site. Mr. Marke, as far as I can determine,
12 described an area which might get within -- I think his remarks
13 were "40 to 50 miles" of the site.

14 I think that that is certainly on the fringe of the
15 geographic interest and without more cannot certainly establish
16 standing as a matter of right.

17 I have nothing else to add.

18 CHAIRMAN BECHHOEFER: Does the staff have any
19 comments? I would like the staff to answer the same question
20 I asked both Mr. Marke and Mr. Newman about whether there should
21 be any differences in an operating license case and a spent-fuel
22 case, and other more limited types of action like Barnwell,
23 between the degree to which we would require a statement of how
24 the interest would be affected.

25 MR. MCGURREN: The staff believes that the same

1 standard which was set forth in 2.714 is applicable in each
2 situation, whether it is a fuel reprocessing plant like
3 Barnwell, whether it is an expansion of spent-fuel pool, or
4 whether it is a nuclear reactor.

5 We believe that the petitioner must allege and
6 particularize his interest and how that interest will be
7 affected by the particular operation, whether it be a spent-
8 fuel pool, reprocessing plant, or a reactor.

9 We agree with what Mr. Newman said about some of
10 the cases cited by the Board. We believe that a careful look
11 should be taken at those particular cases -- the particular
12 facts of those cases -- particularly the nature of the intervenor
13 and particularly the whole petition of those intervenors,
14 including their contentions.

15 With regard to the question of how that particular
16 intervenor's interest would be affected by the particular
17 operation, with regard to comments made by Mr. Marke today,
18 we believe that those are essentially the same assertions which
19 are set forth in his supplement and his original petition, and
20 we believe that our response addresses those.

21 We don't feel that there is anything new. We still
22 believe that the standing -- the allegations regarding standing,
23 based upon transportation, his residence in Austin, the
24 biological transfer through the food chain, are still too remote
25 and speculative to support standing.

1 With regard to the question you asked the Applicant
2 about the asserted recreational activity, we believe that that
3 is too remote -- the distance of 40 or 50 miles. We still
4 believe that that is too remote to support standing in this
5 proceeding.

6 CHAIRMAN BECHHOEFER: Is that the end of your
7 comment?

8 MR. MC GURREN: Let me add one more thing.

9 The question of standing as a stockholder, we believe
10 that this would not be the appropriate forum to assert concerns.
11 We believe that the appropriate forum would be before the --
12 whatever -- the Board of the utility, but not the Licensing
13 Board of the Nuclear Regulatory Commission.

14 MR. TREBY: I would also like to add a comment. The
15 Board directed the attention of the Applicant's attorney to a
16 number of cases which have addressed the question of standing.
17 I would like to direct the Board's attention to two cases which
18 have talked about standing, as well.

19 For the purpose of showing that the staff believes
20 that standing -- to show standing, one must set forth those
21 interests, and how those interests are going to be affected.
22 Those interests and the effect upon the interests must be set
23 forth with particularity.

24 I would invite the Board's attention to the Virginia
25 Electric & Power Company case in the North Anna Power Station

1 Units 1 and 2, ALAB 146 at 6 AEC 631, where it was said on
2 pages 633 through 634 that: "The requirement that interest be
3 set forth with particularity must be strictly observed to
4 ensure that the adjudicatory process is invoked only by those
5 persons who have real interests at stake."

6 I would also direct your attention to the Cincinnati
7 Gas & Electric Company, et al., the William H. Zimmer Nuclear
8 Power Station case, which is ALAB 305, which is set out at
9 3 NRC 8, in which the Appeal Board indicated that Licensing
10 Boards -- this was with regard to an operating license case --
11 Licensing Boards must take the utmost care to assure that
12 potential intervenors have the required interest to warrant a
13 hearing. That is set out at page 12.

14 MR. MARKE: Mr. Chairman, may I address a remark to
15 you?

16 CHAIRMAN BECHHOEFER: Yes.

17 MR. MARKE: One of the reasons for my trepidation as
18 to the actual distance from the plant to the Gulf where these
19 fishing activities are reported partly lies in the fact that I
20 have requested several times, as have members of my staff, my
21 office, to be able to visit the south technical site of HL&P.
22 That has been denied. Therefore, I have not been to that site.

23 I was informed during the recess that it is actually
24 12 air miles from that plant to the Gulf, and so the zone of
25 interest is perhaps a little closer than we had previously

1 indicated.

2 Further, I think that an old report perhaps you are
3 all familiar with -- which is WASH-740 -- indicates that the
4 potential harm is several hundred miles from the plant; that
5 that could be recognized. I think that this should be pointed
6 out, just as a matter of clarification.

7 CHAIRMAN BECHHOEFER: I think that we will go on to
8 CCANP at this stage.

9 Ms. Ryan, I would like you to address those other
10 things -- the nature of your organization, and whether it is,
11 as characterized earlier, everybody in San Antonio except four,
12 or whether perhaps there is something different involved.

13 MS. RYAN: I am Coral Ryan with Citizens Concerned
14 about Nuclear Power. I would like to ask the Secretary of the
15 Nuclear Regulatory Commission, or whoever sends out notices
16 of these hearings, I would like to ask you if you sent me one,
17 because I didn't get one.

18 I was not officially notified of the meeting, and I
19 am officially representing the group who has got a petition,
20 so I am just kind of wondering about the communications, for one
21 thing.

22 I would like to clarify, before I leave today, maybe
23 that I could be sure that I would be getting the information. I
24 was not notified of the meeting.

25 I would also like the Board to refer to my amended

1 petition. Our original petition was filed, and I asked if you
2 accept the amended petition as our official petition.

3 It is my understanding that when you amend a petition
4 that it is generally accepted to be the document that you are
5 working with.

6 We had a person who was helping us on the original
7 petition who made many mistakes in filing, and I would really --
8 my intent was that we amend it so that the final petition that
9 I sent in would be the one we would be working with.

10 DR. LUEBKE: Is that dated December 25th?

11 MS. RYAN: Yes.

12 CHAIRMAN BECHHOEFER: That is permissible. The
13 amended petition may replace the first one.

14 MS. RYAN: Good. Thank you. They had things like
15 "most of the members are under 30," and there were many mistakes
16 in the original petition. So I would like to just refer to the
17 amended petition.

18 The Citizens Concerned about Nuclear Power are a
19 group that were primarily located in San Antonio. We have been
20 approached by citizens of Matagorda County to communicate with
21 them and to help them, and they have asked to be members of our
22 group because there is not, for one thing, a group in the area
23 of Matagorda County that is organized as we are.

24 Citizens Concerned about Nuclear Power mainly
25 organized -- we have been organized since February of '78 -- to

1 investigate the issues of nuclear power, and to educate our-
2 selves and the citizens more -- with more information about
3 nuclear power in general, and then specifically the South Texas
4 Nuclear Project -- what this meant to us as citizens, and as
5 participants in the project.

6 So the members that we have that live in Matagorda
7 County have asked that we represent their interests, and I
8 don't think that we have a big group down there, but it has
9 been my understanding from even the television and the reporting
10 that I have seen, that most of the citizens of Bay City in
11 Matagorda County seem to accept the nuclear power plant as a
12 boon to their economy, and have accepted it as a short-term
13 benefit to them.

14 There are some persons who are more concerned with
15 long-term effects, and they probably are in the minority, but
16 a few of them have approached us and are asking to work with
17 us and asking us to represent them at this time.

18 I would also like to plead that the original construc-
19 tion permit hearing which took place in 1975 did not have any
20 public participation, according to my understanding; and that,
21 at this time, we would really like to have the citizen input
22 in the South Texas Nuclear Project. It may be thought by some
23 to be late, but it is my understanding that nuclear power in
24 general is just coming into seeing a lot of problems, and I
25 think that as citizens see the problems and want to find out more

1 about the actual running of the plant, that it is time to get
2 in when you see the problems.

3 So at this time, we are particularly interested as
4 Citizens Concerned about Nuclear Power that our group -- that
5 the members in San Antonio are mainly asking for standing as a
6 matter of discretion.

7 Our citizens and members are, I would consider,
8 learning and concerned citizens. I think that is a good reason
9 to be involved in activities surrounding our lives and our
10 economic status, and the members that are in San Antonio, we
11 don't expect to be doing all of the solving of our questions.

12 We would expect that we would get consultants,
13 possibly, to help us; and also to be doing other methods of
14 discovery, and don't expect that just our expertise would be
15 used in developing the record.

16 Also, in the matter of our members of Matagorda
17 County showing particular direct interest in -- maybe we
18 haven't been as specific as requested, but we would like to
19 show the interest in our members by living within the zone of
20 interest. And the members have indicated to me their concern
21 about the construction itself.

22 They are particularly interested that the construc-
23 tion be inspected, and that the standards be met, so that the
24 plant would be qualified and would be operating as safely
25 as possible when it went into operation.

1 We understand that these hearings are designed to⁷⁴
2 ensure and to evaluate the effectiveness and the quality of
3 the construction so that it would be able to function and meet
4 the standards that are set.

5 So that is our contention: That we are mainly
6 interested in following through on these standards, and being
7 sure that they are met also from our point of view.

8 Are there any questions?

9 CHAIRMAN BECHHOEFER: Do you have any documentation
10 or anything from those four members who requested you to
11 represent their interests?

12 MS. RYAN: I have had phone conversations with them.
13 They have sent in membership cards. They have just given me
14 verbal agreement.

15 I have some letters, but what I did -- it was their
16 intent that we represent them, so with the affidavit that I have
17 attached to our intervention petition --

18 CHAIRMAN BECHHOEFER: That is your affidavit, not
19 theirs.

end #8 20 MS. RYAN: We can get an affidavit from them.

21
22
23
24
25

CRL403

Tapes 9,10

DAVID 1

1 CHAIRMAN BECHHOEFFER: The usual practice is so
2 have the member in question authorize the group to represent
3 their interest and state that they accept or adopt what the
4 group filing is.

5 MS. RYAN: Since we filed as a group, Citizens
6 Concerned about Nuclear Power, we have identified just
7 a few of our members. We haven't identified all.

8 CHAIRMAN BECHHOEFFER: Have you identified all
9 of your members in the vicinity of the plant?

10 MS. RYAN: I would say that we have identified
11 all of the members that have given us written and verbal
12 permission. There are other people in the area that are
13 interested and in communication but have not indicated
14 specific requests that we represent them.

15 CHAIRMAN BECHHOEFFER: Would you be able to supply
16 for this board statements from those members that you are
17 authorized to represent them?

18 MS. RYAN: Yes.

19 CHAIRMAN BECHHOEFFER: And in addition, the
20 Commission requires a statement from the group that you are
21 authorized to represent the group. I think -- I look at the
22 notice of this conference which was circulated and it was
23 distributed to Mr. Schulman who was your primary representative.
24 He was the one who was on the service list. You wrote a
25 letter to our secretary and our secretary, and our secretary

1 should have changed that.

2 MS. RYAN: I wrote it in November.

3 CHAIRMAN BECHHOEFFER: Yes. But whether that
4 happened or not, it doesn't always follow. I will try to
5 contact the secretary's office when I get back to Washington
6 and make sure you are listed correctly as the person to
7 contact.

8 I think the applicant and the staff have served you,
9 am I not correct? They have served Ms. Ryan rather than the
10 former representative.

11 MR. NEWMAN: Yes.

12 MR. MC GURREN: Mr. Chairman, the staff did serve
13 Coral Ryan instead of Mr. Schulman.

14 CHAIRMAN BECHHOEFFER: I think the secretary's
15 office hasn't made the change yet. You should have gotten
16 the notice of this conference.

17 MS. RYAN: There was that one letter that was
18 sent to -- certificate of service was sent to all of the
19 members and to the docketing and service the secretary of
20 the NRC saying that to please relieve Bob Schulman as our
21 lawyer from representing us and to send the material to me,
22 signed by our co-coordinators, Ronnie Sinken and Sidney Janek.

23 Do you think that would be sufficient enough to
24 say that I am representing the group, or would you like another
25 letter?

david3

1 CHAIRMAN BECHHOEFFER: I think it should be more
2 directly stated than identifying their positions and the
3 fact that they have authority to make the statement. And
4 they should tell us that you are their official representative.

5 MR. NEWMAN: Mr. Chairman, may I just for a minute
6 interject something?

7 CHAIRMAN BECHHOEFFER: Yes. You are going to be
8 asked to comment in any event.

9 MR. NEWMAN: Perhaps I will wait.

10 CHAIRMAN BECHHOEFFER: You are welcome to.

11 MR. NEWMAN: The board's inquiries are not
12 dissimilar from our own inquiries concerning both the
13 organization and the members asserted to live in the
14 vicinity of the south Texas project site. In reviewing the
15 kinds of questions that have been asked by prior boards,
16 we have developed a list of questions which we feel are appropriate
17 and necessary actually in the circumstances for the board
18 to determine the nature of the organizations.

19 And here I speak to both the citizens group in
20 San Antonio and the one in Austin, should that Austin
21 organization petition.

22 I have my questions written out. I would be pleased
23 to read them into the record or simply to serve them. They
24 are very short and it shouldn't take just a moment to read
25 the questions in.

1 CHAIRMAN BECHHOEFFER: I believe they could be
2 read into the record.

3 MR. NEWMAN: All right.

4 CHAIRMAN BECHHOEFFER: The various groups could maybe
5 be prepared to answer them then.

6 MR. NEWMAN: They are these questions regarding the
7 organizations. Both the organizations have formal membership;
8 both the organizations have a membership list.

9 What is the present total membership of the
10 organization?

11 How does someone join the organization?

12 Are the organizations' purposes stated in a charter,
13 bylaws, or some formal decision making process?

14 Does the organization have a formal structure?

15 Who is the present chief executive officer of the
16 organization?

17 How is the authorization or act for the
18 organization in this proceeding obtained?

19 Has the organization participated in any other
20 federal, state or local proceedings concerning energy
21 generation or uses?

22 And finally, state the names and present
23 addresses of each member of the organization residing within
24 50 miles of the South Texas project site.

25 As to members who are or alleged members within the

1 50 mile zone, the following questions:

2 How long have you been a permanent resident of
3 Matagorda County?

4 What is the approximate distance between your
5 residence and the South Texas project site?

6 State the date that you became an official member
7 of the organization.

8 Are you familiar with the organization's purposes
9 as stated in its charter of incorporation, bylaws or other
10 documents?

11 Have you paid dues or otherwise financially
12 contributed to the organization?

13 Have you ever attended organization meetings?

14 Have you ever voted on whether the organization
15 should intervene in this proceeding?

16 Have you authorized the organization to
17 represent you in these proceedings?

18 If so, when and how was that authorization given
19 and then finally, was your authorization solicited in any way?

20 Now, the reason for these questions, I think,
21 are appropriate regardless of the nature of the proceeding.
22 Earlier you asked about the difference between an operating
23 license proceeding and any other type of proceeding, and I
24 don't think that I completely addressed that point. In an
25 operating license proceeding I think that it is clear from the

david6

1 cases that the board has a somewhat higher standard to meet
2 in evaluating petitions to intervene. I think that is
3 evident from Watts Bar and other cases dealing with
4 interventions in OL cases.

5 I think that these cases are essential in order
6 for the board to understand all of the aspects of the
7 proposed interventions in this case.

8 MR. MARKE: Mr. Chairman.

9 MR. NEWMAN: I would like to ask, Mr. Chairman,
10 by the way, or move, Mr. Chairman, that the organizations
11 in the proceeding -- the organization now, or a petitioner,
12 or organization if a petition is filed for the Austin
13 organization and the individual members alleged by each
14 organization to reside within the geographical zone of
15 interest to respond to these questions in connection with
16 the filings that you have discussed to be due next week,
17 and in any event, prior to the time that the board must
18 rule on these petitions to intervene.

19 I think that is allowing them a reasonable time
20 to answer the questions and is certainly in order. But I
21 do believe that the questions should be answered, all of them,
22 in the course of the materials that you have asked for from
23 Mr. Marke and his organization and Ms. Ryan and her
24 organization.

david7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Board conferring.)

CHAIRMAN BECHHOEFFER: Mr. Marke and Ms. Ryan, do you have any objections to answering those questions or are there any of them that give you problems?

MR. MARKE: The thing I would like to know, Mr. Chairman, is where is the basis involved for such a detailed listing of questions? The rules of practice refer to an affidavit, not a personal history question.

They further refer to the fact that persons not wishing specifically to be identified for reasons of their own, living within a certain radius of the plant, that specific recognition at their behest.

And I perceive this: in as much as it is such a lengthy list and in as much as it becomes relatively intimate about a fairly large number of people, if this is not just an intimidation by the applicant's attorneys in order that the organizations trying to meet the requirements of this board not be able to respond.

CHAIRMAN BECHHOEFFER: I would like to ask the applicant; there are a couple of questions that gave me some pause. I wonder why it is relevant for us to -- what do we care how long people have lived in that area, as long as they say that they are residents of that area right now, the area near the plant. I am not sure that their history of moving in in 1910 is relevant to whether -- relevant to the organization

1 or not, particularly -- and I also wanted to ask, why should
2 we be interested --

3 MR. NEWMAN: One reason to ask about the duration
4 of the residence is the question of whether or not they were
5 in the area when the South Texas project construction permit
6 proceeding was undertaken because the really ripe
7 opportunity to consider the plant was at that time. And that
8 is a matter which I think would go to the general exercise
9 of the board's discretion with respect to allowing
10 intervention in the operating license proceeding.

11 CHAIRMAN BECHHOEFFER: Also --

12 MR. NEWMAN: I would like to add, Mr. Chairman,
13 that of many of these questions, particularly to the
14 organizations involved, are essentially questions that I
15 drew from the transcript of the Fermi prehearing conference
16 on December 18th.

17 MS. RYAN: I would like to respond. I would think
18 that an affidavit from these people saying that we represent
19 their interests to me follows from the directions of the rules
20 of practice as I interpret them. And I think that that
21 would fulfill the obligations enough, I would hope.

22 Or I would ask you that we not have to answer all
23 those questions. IT seems more than is needed.

24 CHAIRMAN BECHHOEFFER: I would like to hear what
25 the staff has to say about that list of questions.

1 MS. ULMAN: It is my view that -- I am not
2 aware of any decisions where just a mere identification or --
3 of three individuals who live at a specified distance from
4 the proposed site is adequate to establish that the organization
5 has a standing based on the interests of the members.

6 And in the Fermi decision it describes what was
7 provided by the organization which was demonstrating
8 its standing upon the interest of the members. I don't believe
9 that it is in as much detail. It doesn't require the kind
10 of detail of information that the applicant's questions may
11 do.

12 But if I could just describe briefly what was
13 provided there, I think that it indicates the type of
14 information that is necessary and that just as Ms. Ryan said,
15 just an identification of individuals. And they believe that
16 Citizens will represent their interest. That is not
17 adequate.

18 In the Fermi case, there the organization
19 furnished an affidavit from two members, at least one of
20 which listed the person's name and address, stated the
21 specific distance of his residence from the proposed plant.
22 It stated that he was a member of the organization, that
23 he desired the organization to represent his interest, and
24 that he adopted and supported the statements of interest in
25 the organization's petition and in its contentions, so that

david10

1 I would say that certainly more information than Ms. Ryan
2 may think is necessary will actually be required.

3 MS. RYAN: I am just trying to clarify what
4 is needed, but I would like to comment on -- we are being
5 represented in a hearing such as this, if it hopefully
6 takes place. It is a matter of time and energy and
7 expense to apply for intervenor's status. And I think that
8 that is one of the benefits of a group is that you are working
9 together for common goals.

10 And that is what is going on in this situation,
11 that we are representing people and trying to clarify issues
12 that are of concern to a lot of people.

13 (Board conferring.)

14 MR. MARKE: Mr. Chairman?

15 CHAIRMAN BECHHOEFFER: Yes?

16 MR. MARKE: There is something that I think should
17 be pointed out here. My Rules of Practice is not updated,
18 but there is -- there is a revision as of January 1, 1978.
19 It is my understanding -- and I have seen it in other
20 citations -- that affidavits in fact cannot necessarily be
21 required at this time. I think that we could perhaps get
22 staff to clarify that.

23 I can't find it. I can't put my finger on it.

24 CHAIRMAN BECHHOEFFER: I think it was effective in
25 June, but that is correct.

1 MR. MARKE: That should be brought out. The
2 second thing which may be a little bit untimely now, but
3 I neglected to insert this before; I feel that -- in fact,
4 I would request that some provision be made in order that
5 Concerned Citizens and myself both be allowed to respond
6 to the responses that were received from staff and the
7 applicant, in as much as we only have very recently
8 received it and under no means have been able to adequately
9 review it, even to respond orally.

10 There should be some provision made so that after
11 a detailed study we can respond to these responses in
12 writing.

13 MR. BECHHOEFFER: Under the Commission rules,
14 normally there are no such responses. This conference is
15 the opportunity really to respond, but you are going
16 to have an opportunity to file another paper for the
17 organization.

18 Now, to the extent that they relate to standing,
19 you can take those into account in determining what you
20 are going to file. And Ms. Ryan is going to have a chance
21 to upgrade her filing with some of the information we
22 indicated was lacking at this point.

23 (Board Conferring.)

24 MR. TREBY: Mr. Chairman, I don't believe that the
25 staff has responded directly to your question as to what we

davidLl

end 9

begin 10

david12

1 thought of the applicant's list. I think that the questions
2 that the board wishes to ask with regard to the organization
3 and its members is within the discretion of the board, and
4 they can determine what information it is that they require
5 so that they can make an informed determination as to whether
6 or not to grant the organization intervention or to deny
7 its petition.

8 Many people can prepare a list, and the applicant
9 has given you its suggested list. I will draw up a list,
10 and it may not appear to be the same as the applicant. I am
11 not endorsing his list or indicating that there is anything
12 wrong with it, but I think what is the important point is
13 that the board should get sufficient information so that
14 it has some information about the organization and also that
15 it has some information to determine if the organization
16 is seeking to establish its standing through its members
17 one or more members, who that member is or members are,
18 where they live, and also what their interest is and how that
19 interest is affected.

20 As it has been previously stated, we don't think
21 that merely stating that I live five miles from the plant and
22 nothing more is sufficient to say that that member has an
23 interest, and therefore the organization has an interest in
24 this proceeding.

25 I think that stating that he lives within five miles

1 of the plant would place the member within the geographical
2 zone, and then if you could indicate why, because he
3 lives within five miles of the plant, he has an interest
4 in this facility or he has an interest which he thinks will
5 be affected by that facility is the type of information
6 that is needed in order to determine whether or not
7 intervention should be granted.

8 And to the extent that questions need to be asked
9 to solicit that information, I think the board certainly
10 is within its discretion to do that sort of thing.

11 MR. NEWMAN: Mr. Chairman, I would like to make one
12 further point with respect to the list of questions. It
13 certainly was not meant to be intimidating or chilling as far as
14 participation in the proceeding; it was developed toward the
15 view of assisting the board in the execution of its
16 responsibilities under Section 189 of the Atomic Energy
17 Act of 1954.

18 In 1961 that law was amended to eliminate the
19 mandatory second hearing, and the Congress was very, very
20 clear in its statement as to what it was doing that.
21 In the course of the committee report, it stressed there
22 will be no hearing, and I believe the words are "in the
23 absence of bonafied intervention."

24 It is up to this board to establish the bonafides of
25 these petitioners, and the questions that I have directed or

david14

1 suggested that the board ask in this case are entirely
2 for that purpose.

3 (Board Conferring.)

4 CHAIRMAN BECHHOEFFER: The board has decided
5 that the information that we desire would be the information
6 such as Ms. Ulman read from the Fermi decision. I happen
7 to have a copy with me of the Fermi decision, and if it
8 would assist the petitioners, I could let them use that.
9 I don't know whether they have seen the Fermi decision,
10 which is a very recent decision of another board with
11 which I am somewhat familiar.

12 I might add that we asked some questions in
13 Fermi concerning the length of residence of the people only
14 because of an allegation that they were all students and
15 would move away before the plant operated.

16 I don't think that we have any indication that
17 that is the case here. I don't think that that question
18 is particularly relevant to this proceeding. I do think
19 that some nature of the organization, its organization
20 and how it is carried on would be useful, plus the
21 authorizations from the individual members who live near the
22 plant.

23 And this is further explained in this decision
24 which I will let you have a copy of, and in addition, an
25 authorization to Mr. Marke and Ms. Ryan to represent those

david15

1 organizations respectively from someone in the organization
2 who has authority to say so, whether it be the president,
3 the governing body or whatever.

4 I don't think that we need a list of all of your
5 members who live near the plant; all of them who wish to be
6 represented by you certainly should be indicated with
7 their authorizations. The ones who live near the plant
8 who you wish to identify in terms of maybe even of general
9 numbe-s might be useful, but it isn't required.

10 But certainly, the authorizations of those
11 living near the plant are required.

12 MS. RYAN: We would appreciate a copy of the
13 Fermi report.

14 CHAIRMAN BECHHOEFFER: I only have one,
15 unfortunately.

16 MS. RYAN: Could we get a copy made today,
17 hopefully?

18 (Pause.)

19 CHAIRMAN BECHHOEFFER: Is the staff aware of any
20 facilities for making copies?

21 MR. MC GURREN: The staff is not aware of any
22 facility for doing that.

23 MR. NEWMAN: We can provide a copy and provide it
24 to the board for distribution after lunch.

25 CHAIRMAN BECHHOEFFER: Thank you.

david16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. NEWMAN: Before we leave the subject, however, I think that I must emphasize the importance of -- by certain of the questions that we asked, that it is very important to know whether these people -- when these people became members of the organization.

It is part and parcel of establishing the bonafides of the petition. If, for example, the organization filed a petition and went out and shopped for clients or shopped for participants, that seems to me is a matter which ought to be taken into account in the board's exercise of whatever discretionary authority it has with respect to allowing intervention.

And that is my only remark in that regard, and that is why I believe that all of the questions that I have asked are properly related to the bonafides of the intervention.

I would like to have for the record -- just for the record, Mr. Chairman, an indication or a statement of whether the applicant's motion is denied or approved or denied in part.

CHAIRMAN BECHHOEFFER: I think, granted, in so far as it covers the information that we outlined in the Fermi decision, and denied in other respects.

MR. NEWMAN: I just note our exception to that ruling.

MR. MARKE: Mr. Chairman, perhaps with regard to

david17

1 Mr. Newman's note, it should be taken into consideration
2 that Citizen's organizations are by nature somewhat
3 evangelistic. They don't just happen, that on a certain
4 date 150 people can deal at a certain price and become an
5 organization, but generally there is some small root of
6 that organization from which new members are drawn in.

7 And I doubt that with the exception of the
8 founding charter members of any group you could qualify
9 anyone as having not been solicited into a public organization
10 of some sort, and they may have come in voluntarily without
11 your having twisted their arm, but they were persuaded
12 by the weight of your arguments, and therefore solicited
13 to join that organization, I think, should be qualified as
14 being such.

15 (Board Conferring.)

16 MR. NEWMAN: One final point, Mr. Chairman. In
17 response to Mr. Marke's statement, I understand the nature of
18 Citizen's organizations and consumer organizations, their
19 evangelicism, et cetera. I would note that part of the
20 basis for my concern for the applicant's concern in this
21 regard is that the organization has transmuted itself
22 somehow between its first petition and its second petition.
23 And it raises significant questions in our mind as to the
24 bonafides of the second petition.

25 I think that that is a matter that should be looked

1 at very carefully here and similarly to the extent that
2 the Austin Citizens Group petitions, I think that their
3 petition is going to have to be looked at very carefully
4 in the same light.

5 It is a petition that is from an organization by
6 Mr. Marke's own statement of September 20th, 1978, where
7 were they.

8 MR. MARKE: If I can answer that question. I
9 think the organizations of this nature should be viewed to
10 be growing both in size and experience at all times. And
11 it should not be considered that an organization has been
12 transmuted as has been alleged since the time of some
13 particular writing when normal growth will cause more people
14 than were previously involved to be involved in that
15 organization.

16 Now, I can understand Mr. Newman's concern that
17 a trumped up case not be developed to buy witnesses to
18 testify in this proceeding. I think when reasonable
19 considerations have been given to assure that, then I think
20 that the issue should be dropped.

21 MS. RYAN: Mr. Chairman --

22 MR. TREBY: Mr. Chairman, I would like -- so that
23 the record is clear, the staff does not join in Mr. -- or
24 the applicant's comments about the bonafides. We have no
25 concern as to the good faith of the petitions that have been

david19

1 filed here.

2 The only concern that the staff has is that
3 they have not met the requires of 2.714 in that they have not
4 indicated with sufficient particularity the interest of
5 the individual member in the case of Mr. Marke or
6 in the case of the organization the interest of the identified
7 member and how that interest is going to be affected.

8 That is the staff's only concern. We don't
9 agree that the length of time one is a member of an organization
10 is the controlling factor.

11 MS. RYAN: Mr. Chairperson, I would like to make
12 one comment about people asking for intervention status;
13 the deadline was September 1st, and this notice was given
14 in the federal register and it is a rather complicated
15 procedure for Citizens and the general public to even
16 find out about this notice.

17 We are happy that we got our petition in on time,
18 and I am sure that there are a lot of other people who would
19 also be interest even if they knew about it. And so we
20 would really ask that we represent the Citizens, our
21 membership, in a particular way, the people that live in
22 Baye and Matagorda Counties; although we don't have
23 large numbers, and there is probably a lot of
24 other people interested, at least who represent the interests
25 of our members, and we really ask for standing.

david20

1 CHAIRMAN BECHHOEFFER: Do either the applicant
2 or the staff have further comments or anything further
3 to say on the standing questions of these various people?

4 MR. NEWMAN: No, sir.

5 CHAIRMAN BECHHOEFFER: I understand Texas
6 would like to make a statement.

7 MS. ULMAN: The staff does have some further
8 comments, if we could. We just want to summarize our
9 position on Ms. Ryan's comments about standing of Citizens.
10 And basically that is that we agree that an organization
11 can base its standing on its members, but as was
12 stated in our response of September 19th, 1978 to Citizens'
13 original petition, the organization must identify specific
14 members and those members must identify their interests and
15 how those interests may be affected.

16 And it is our position that that has not been done
17 here. There is no indication of what the interests of
18 these particular members is and how it will be affected
19 by the South Texas project.

20 We do not believe that just stating a member lives
21 within a certain amount of miles from the plant, say 50
22 miles, usually referred to as the geographical zone of
23 interest, is sufficient.

24 And we do recognize that on occasion, other
25 portions of a petition may be examined to see if the petition

david21

1 sets for th interests and how that interest will be affected.
2 We are talking about the contentions portion, and looking
3 at this petition as a whole, we have not found in other
4 portions of it a statement of interest of any of the
5 identified members and how their interests will be affected.

6 CHAIRMAN BECHHOEFFER: Ms. Ulman, would you say
7 that the -- if you by chance agreed with one -- that one
8 of the -- if one of the safety contentions should prove
9 to be a valid contention -- I am not saying it is or isn't --
10 assuming there were a valid safety contention of an
11 individual who lived, say, whatever the number of miles
12 there are, but within 50, an individual who said that
13 he or she adopted that contention; would that be sufficient
14 for the staff to establish standing?

15 MS. ULMAN: I guess our answer is if that contention
16 satisfies the particularization requirements which are
17 applicable to establish standing, then, yes, we would agree
18 there is standing.

19 MR. CAMPOS: Mr. Chairperson, can I make a quick
20 comment in response to the contention that we do not make
21 our interests clear in our petition under -- how the interest
22 is -- we in CCANP are concerned that its members may be
23 subject to unnecessary risk and of -- of life and/or property
24 from accident or ordinary operation of the South Texax nuclear
25 project.

david22

1 And then we have -- no, I don't want to get into
2 the contentions, but we point out some of the mistakes that
3 have been built in -- that have been made in the construction
4 of the project, and I have a letter here from Houston
5 Lighting and Power in which they admit that they have made
6 mistakes, specifically concrete voids that were in the
7 reactor building wall and that they say, "the repairs should
8 be completed by May '79."

9 And I won't go any further than that. But I
10 think that we have shown that we have interests to be
11 affected. I think that our health is at stake here in that
12 this plant could endanger our health.

13 So, I disagree with the staff.

14 And that's all.

15 CHAIRMAN BECHHOEFFER: Do you have any further
16 comments, Mr. Newman?

17 MR. NEWMAN: No, I would submit that the fact that
18 a good contention was found and that somebody adopted it would
19 not necessarily dispose of the question of interest. The
20 contention might have nothing whatsoever to do with the
21 nature of the individual's interest.

end 10

1 CHAIRMAN BECHHOEFER: Mr. Lowerre, do you have any
2 comments on the question of standing? You told me you wanted
3 to make a statement on behalf of the State.

4 MR. LOWERRE: I don't believe yet the Board has ruled
5 on the State's petition to intervene as an interested State.

6 CHAIRMAN BECHHOEFER: That's correct.

7 MR. LOWERRE: I would like to make a statement before
8 the day is over concerning our participation and maybe
9 clarify a couple of things, and at that time I might also make
10 appropriate statements --

11 CHAIRMAN BECHHOEFER: You are welcome to make it now,
12 if you choose.

13 MR. LOWERRE: Okay. First of all, I hope and assume
14 that the Board has received a copy of our petition and a copy
15 of the responses to our petition from the Applicant and the
16 staff, and the Board has received a copy of our subsequent
17 filing on our response to the Intervenors' petitions.

18 I want to make a brief statement for the record to
19 explain the position of the State of Texas, the position we are
20 now taking in this proceeding. The State is seeking participa-
21 tion as an interested State, not as a party at this time. The
22 State has consistently filed for participation as an interested
23 State in nuclear power plant licensing proceedings whenever
24 they have occurred in this State.

25 The purpose for us filing as an interested State is

1 to preserve the right of state officials and state agencies to
2 participate in the proceedings. The State has always taken a
3 position encouraging the safe and economical energy development
4 in the State. In the past nuclear proceedings, the State has
5 at times supported the position of Applicant on certain issues.
6 We have supported the position of Intervenors on certain issues.
7 And we have raised new issues on our own.

8 We have asked for participation as an interested
9 State because the State of Texas needs to be in a position to
10 continue to support positions that we see and that we think are
11 meritorious; and also, to examine the issues fully that are
12 presented in proceedings. If the State supports a contention
13 of the Intervenor, it should be obvious that we are not taking
14 a position opposing the power plant. Instead, it should be
15 recognized simply as a responsibility of the State to ensure
16 a full disclosure of the information on the issue and a full
17 review of the important issue.

18 The timely development of safe and economical energy
19 for Texas demands that, and the development of credible energy
20 projects and public support for energy projects also demands
21 that we take that position.

22 Thank you.

23 CHAIRMAN BECHHOEFER: I think at this stage we will
24 break for lunch. I think we should take about an hour and a
25 half for lunch, because I think that the staff was going to go

1 over with the petitioner some of the requirements of the NRC
2 regulations, and that will give them a little opportunity to do
3 that. So we will be back about 2:20, maybe 2:25.

4 (Whereupon, at 12:55 p.m., the hearing was recessed,
5 to reconvene at 2:25 p.m. the same day.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

AFTERNOON SESSION

(2:30 p.m.)

1
2
3 CHAIRMAN BECHHOEFER: The conference will come to
4 order.

5 I would like the record to demonstrate that I gave a
6 copy of the decision in the Fermi case to the Applicant's
7 attorney, who had it reproduced, and he advises me that he
8 gave it to the staff and asked the staff to circulate it to the
9 various petitioners who needed it. I would like the record
10 to show -- I assume they received a copy of that.

11 MR. TREBY: It was distributed to the Intervenors,
12 although the record should also reflect that that has all
13 occurred within the last 15 minutes or so.

14 (Board conferring.)

15 MR. TREBY: I misspoke. I guess I mentioned
16 "Intervenors"; I meant to say "Petitioners".

17 CHAIRMAN BECHHOEFER: I believe the portions that
18 Ms. Ulman read earlier and which we want the Petitioners to
19 address are those on pages 5 and 6, and then carrying over to
20 the bottom of 7 and 8. I think those are the pages where the
21 material that was read off came from.

22 The Board would now like to get into a discussion
23 of certain contentions. And we may not be able to cover all
24 of the contentions, but we would like an explanation of certain
25 of them. We have some questions to ask about certain of them.

1 We would like to start with the Contention 2 of the
2 CCANP and Contention 2 of Mr. Marke and I think Contention 18
3 is related to that, various contentions dealing with alleged
4 construction deficiencies. And we would like to know what kinds
5 of information the Petitioners plan to present in support of
6 the assertions, at least, that there have been inadequate
7 construction -- inadequate construction has been carried on or
8 other types of problems with construction, perhaps quality
9 problems. So we would like to hear from the petitioners on
10 that, telling us what types of information, what they really
11 meant to allege by these contentions.

12 MR. MARKE: Mr. Chairman, specifically with regard
13 to Contention 2 in my petition, some of the documentation for
14 that had been cited as being I&E reports which I have in my
15 possession. If you need the numbers for them, I can get them.
16 All of the dates are cited.

17 This particular contention, rather than dealing with
18 particular correctable construction deficiencies, and tied in
19 with the others, is intended to demonstrate that the quality
20 control, quality assurance program ongoing at the project site
21 has not been functioning satisfactorily. And particularly, I
22 would refer you to an I&E report dated 12/19 through the
23 21st of '77. And there are two deficiencies pointed out in
24 this particular report.

25 The first one indicates that audit checklists in the

1 transmission of plans and operating procedures have not been
2 maintained. In other words, to say that, as plan revisions
3 and so forth are instituted into the construction program,
4 sufficient documentation has not been maintained on that in
5 the manner prescribed by NRC and HL&P operating procedures,
6 such as adequate documentation can be maintained on these
7 items.

8 The second item refers to the fact that the audit
9 design review committee had not, and I quote the last sentence --
10 it is a little difficult to read -- referring again to the
11 transmission of documents, the paragraph also states: "The
12 minutes will identify all documents reviewed and approved or
13 returned to the cognizant engineer. Concurrent to the above,
14 the review of the minutes of the meetings, review of the minutes
15 of the design review committee to date, fails to reveal" -- I
16 have two words I can't make out any longer. There are two
17 words missing -- "any work that the committee had conducted
18 in audit to date."

19 This is one thing that is considered as a major
20 contention, the fact that proper transmission and recordkeeping
21 and so forth on the plant has been demonstrated and cited by
22 enforcement and the Investigation and Enforcement personnel,
23 but has not been complied with.

24 I have another I&E report of 5/16 through the 19th
25 of '78, wherein again two infractions are cited. The first one

1 indicates that at the time of this inspection on April 18th,
2 1978, four outdated reactor containment drawings, numbers
3 1-C-1509-1, number 1-C-1510-3, number 1-C-1511-2, and number
4 1-15-12-2, were observed in the containment area where related
5 work activities were being performed. This is to say that
6 personnel on the job site were working with outdated plans and
7 could not be expected to construct that portion of the contain-
8 ment in accordance with the construction permit as revised, as
9 would be indicated in those plans.

10 The second infraction cited on that same report
11 indicates a falsification of quality control records, and is
12 cited -- and I will read this into the record, if you would
13 like: "Incomplete inspection of structural steel documented
14 as completed. 10 CFR Appendix B, Criterion 14, requires that
15 measures be established for the identification of items which
16 have satisfactorily passed required inspections and tests to
17 preclude inadvertent bypassing of such inspections and tests.
18 Brown & Root procedures" -- "Brown and Root Procedure
19 QCP-4.5, Section 5.7.1, requires that quality control personnel
20 use print records as signoffs to identify the inspections and
21 verifications performed. Concurrent to the above, although
22 measures have been established for identifying, through use of
23 record prints, the I&E inspector found a record print marked
24 to indicate that an inspection was complete when in fact it
25 was not.

1 "Specifically, on April 19th, 1978, the inspector
2 observed that the bolted joint of four structural beams to
3 103-C-17 and elevation minus 2 feet in the containment" -- "in
4 the Unit 1 containment was only partially inspected, as
5 confirmed by the responsible QC inspector. Yet the record
6 print No. KK-7-C-24-B-3-B was marked indicating that the
7 inspection was completed on April 14th, 1978. This has been
8 cited as an infraction."

9 CHAIRMAN BECHHOEFER: Is this the deliberate
10 falsification that you refer to in Contention 18?

11 MR. MARKE: This is one example of that, yes. I
12 consider that I did not make a false allegation there.

13 CHAIRMAN BECHHOEFER: One of the things we wanted to
14 find out is what the basis for the --

15 MR. MARKE: There is the documentation. I would
16 contend specifically that, if by no other means than this,
17 that operating crews on the plant site, whether they are
18 attached to project management or the construction firm, have
19 demonstrated, as I indicate in my petition, a willingness or
20 an ability to falsify records stating that inspections have
21 been done when in fact they have been proven not to have been
22 done. And this casts a tremendous shadow of doubt on the
23 performance of any similar operations throughout that plant.

24 I have other indicated citations and there have been
25 infractions before and deficiencies. And as these things are

1 mechanical, they are normally cleared up. I am not overly
2 concerned about mechanical things that go wrong in a project
3 of this size, which can be corrected.

4 The falsification of records, however, the assurance
5 that quality control has been met when it hasn't, and when
6 these are not allegations by an employee or by the media or
7 by the public, but items discovered by NRC enforcement
8 inspectors, I feel that it is a valid contention.

9 CHAIRMAN BECHHOEFER: If I understand you, you are
10 not alleging, for instance, that the four or five specific
11 instances that you mentioned have not been satisfactorily
12 resolved, but that this, rather, is exemplary of the way that
13 the QA program is being carried out? Is that the gist of your
14 contention?

15 MR. MARKE: That is the major thrust of the
16 contention. I have pointed out other specific failures that
17 have been done and either have been resolved or they may not
18 have been resolved at this time. But I would anticipate that
19 the majority of those which can be identified can probably be
20 resolved.

21 The question, the cause for concern, is those things
22 that are not properly identified or misidentified by personnel
23 on the site.

24 CHAIRMAN BECHHOEFER: As you probably know, the
25 Applicants have taken the position that the more of these

1 deficiencies or the more of those that are uncovered by the
2 program, the better it illustrates that the program is working
3 the way it is supposed to. Can you comment on that?

4 MR. MARKE: In theory, an enforcement program ought
5 not to have to work. The need for an enforcement program
6 under the guidelines of the NRC, were the contractor meeting
7 his own quality control plans and the dictates of the construc-
8 tion permit, then there would be no need for enforcement; there
9 would be no violations.

10 And I think it is totally reverse psychology to sit
11 back and say, well, these deficiencies have been covered, so
12 it shows what a good job we are doing. To the contrary, I
13 think it shows what a poor job they are doing. Not only are
14 they doing a poor job at it, but they are getting caught at it.

15 (Laughter.)

16 CHAIRMAN BECHHOEFER: Miss Ryan, do you have comments
17 on your contention, or is that the comment you have on that
18 contention? You have a similar Contention No. 2.

19 MS. RYAN: Citizens Concerned About Nuclear Power,
20 our second contention reads: "Applicant's request for an
21 operating license is premature due to mistakes in construction."
22 We are basing that on the 10 CFR 50.57, issuance of operating
23 license, which reads: "Construction of the facility has been" --
24 Excuse me, I will start with (a): "An operating license may
25 be issued by the Commission upon finding that the construction

1 of the facility has been substantially completed in conformity
2 with construction permit and the application as amended;

3 "(2) that the facility will operate in conformity with
4 the application as amended and the provisions of the Act."

5 We are concerned that there have been delays in
6 construction, which then would 1 for a delay in the granting
7 of an operating license, since the operating license is based
8 on the ability to assess the safety of the construction and
9 the standards have been met. We are -- our contention is that
10 it is premature at this time.

11 Some of the data that we are concerned about that
12 we have seen -- and if granted a full hearing, we would like
13 to do discovery, with having subpoenaed quality control
14 inspectors, and if we needed to subpoena some of these construc-
15 tion people due to the fact that they are not free at this time
16 to volunteer this information due to economic dependency on the
17 project.

18 So we would like to ask that some of this information
19 be subpoenaed and developed through discovery. One letter in
20 particular that we have noted is Houston Lighting & Power,
21 November 20, '78, who wrote a letter to the Director of the
22 Office of Inspection & Enforcement of the NRC, citing the
23 reports of containment voids for Unit 1 of the South Texas
24 Nuclear Project. They noted that these voids could have come
25 from the structural integrity of the containment in that

1 containment, and that it is possible, if built, could not
2 meet its design load criteria.

3 They have suggested, then, that repairs should be
4 completed on this by May of '79, and then at that time a final
5 report providing a description of the deficiencies and an
6 analysis of the safety implications and corrective actions be
7 taken, to be sure that the recurrence of the problem will not
8 happen.

9 One of our contentions is that it is premature at
10 this time to be granting a license until some of the construc-
11 tion problems have been solved.

12 There have been other problems that have been brought
13 to our attention which we would like to further explore. One
14 of them is a description of a wedge made in the Unit No. 1 of
15 the South Texas Nuclear Project. We are concerned that this
16 is an unusual construction maneuver, and we are concerned, then,
17 that it will threaten the integrity of the building once in
18 operation. We would like more discovery on this wedge
19 situation.

20 It has been described at the electric utility's of
21 Austin, in one of their regular meetings, August 28th, 1978,
22 that a wedge would be cut and is cut in the reactor building
23 to lower -- to slide in the reactor and some of the equipment
24 sideways, although it was described as a routine maneuver; and
25 we question this.

1 There have been further allegations about field
2 sketches lost, foremen not being able to read the blueprints.
3 And we would like to have more discovery of the construction
4 process itself, more assurance of the -- that the construction
5 has met standards.

6 There is one other example of construction problems.
7 That is an auxiliary structure that was built one foot from
8 where it should be located. This problem has been identified
9 and, as I understand it, is on the road to being repaired.
10 However, it does raise the question of construction problems.
11 And I think that it is another example of construction
12 deficiencies. And we as a group would like to investigate further
13 some of these issues.

14 CHAIRMAN BECHHOEFER: Do you have either members or people
15 that you could call upon to give you advice as to whether these
16 practices were proper or not?

17 MS. RYAN: We anticipate consulting with nuclear
18 engineers about the design such as the wedge problem. Also,
19 we do have people that we can call for testimony from the
20 construction site if you would subpoena them.

21 CHAIRMAN BECHHOEFER: Does that end your comments
22 on that contention? Then I would have the Applicants respond
23 and the staff respond.

24 MS. RYAN: Yes.

25 MR. NEWMAN: Mr. Chairman, I will try to briefly

1 respond to this. This is a frustrating kind of contention to
2 have to chase, because as we noted in our answer, in a project
3 of this magnitude errors in construction in quality assurance
4 are bound to occur. And of course, the important test is whether
5 the system is working. And one of the tests, as you pointed out,
6 is the errors and deficiencies are noted and corrected.

7 In that connection, I would like to note that in
8 connection with every single specific allegation of Mr. Marke's
9 petition alleging construction deficiencies, all of those items
10 have now been closed out by the NRC inspectors. I cannot,
11 however -- and I realize Mr. Marke did not deny that that was
12 the case, and I am not accusing him of that. I do, however --
13 I must respond to his allegation with respect to the falsifica-
14 tion of records.

15 Again, it is somewhat difficult to go chasing around
16 in the files of the Inspection and Enforcement Division. But
17 I believe that the allegation to which he is referring of
18 falsified records is reflected and dealt with in I&E Report
19 78-09, where the NRC investigated an allegation that Cadwell
20 records had been falsified, and the investigation failed to
21 substantiate the allegations. The items are closed out on
22 16, 1978.

23 Whether we are talking about the same contention is
24 difficult, because Mr. Marke read into the record a series
25 of inspection, or extracts from Inspection & Enforcement

1 reports, which were not the subject of his petition. So it
2 gets a little difficult to follow him around. But needless to
3 say, an inquiry launched on the basis of Inspection & Enforce-
4 ment reports already closed would seem to me to be a rather
5 frustrating and nonproductive cause of action.

6 In any event, I think there is a misconception on
7 the part of the Petitioners as to the function of an Atomic
8 Safety and Licensing Board. I don't believe that it is really
9 you gentlemen who are charged with ensuring that a job is built
10 correctly in accordance with the construction permit, but
11 rather primarily the job of the Inspection and Enforcement
12 Division of the NRC.

13 Clearly you have a question before you on a substan-
14 tial issue that applies to the regulations in the context of
15 an adversary proceeding. But the primary function in assuring
16 the successful and safe completion of a power plant resides
17 with those people in the Inspection and Enforcement Division
18 and the Director of Regulation staff.

19 I would hope that that might serve to educate, as
20 well as to answer, certain of the allegations, particularly
21 those of the Citizens organization, the San Antonio Citizens
22 organization. They have to be viewed in a larger context,
23 Ms. Ryan.

24 I acknowledge this morning she indicated that her
25 primary interest was in educating and being aware of what was

1 going on. But she expressed a concern with respect to voids,
2 the finding of voids in the containment structure concrete.
3 As I know Dr. Luebke and Dr. Lamb and undoubtedly yourself,
4 Mr. Chairman, are aware, the problem of voids in the concrete
5 of the containment building is not new. Indeed, Regulatory
6 Guide 1.55 refers to it as a problem which is faced with some
7 degree of regularity in the construction of power plants, and
8 prescribes methods by which investigation and correction of
9 that problem can be done.

10 In the case of the voids noted in connection with
11 the STP project, they were discovered during QA inspections, I
12 might say, in Unit No. 1 containment building on October 16.
13 On October 20 that matter was reported by the company to the
14 NRC pursuant to 10 CFR 50.55(e). Repair procedures for that
15 purpose are being prepared. A final report is due in May '79.
16 But this is not a situation where the I&E people detected a
17 major problem and called it to the attention of HL&P. In
18 fact, it was the reverse.

19 Another illustration of where there is a gap in
20 education and understanding is in connection with the so-called
21 wedge section. I must say that, Miss Ryan, I can understand
22 how one could develop a misconception of that sort. It does
23 seem unusual for a section of a building to be removed once
24 completed. But the construction of buildings like this is a
25 routine type of construction. A large construction opening

1 has been designed in the Allens Creek Project to facilitate --
2 the South Texas Project -- to facilitate equipment installation.
3 That is consistent with standard construction practice.

4 And again, for the benefit of the technical members
5 of the Board, the reactor containment liner, as you all know,
6 is installed at -- it is the inner form for the placement of
7 concrete in the area of the construction opening. The liner
8 is later cut away following concrete placement, and a cut is
9 then made in the containment liner, through which the innards
10 of the reactor structure are installed and emplaced. This in
11 no way impairs the integrity of the reactor containment build-
12 ing, and is a perfectly standard construction practice.

13 I might note there are a large number of errors in
14 the way that Ms. Ryan in particular has characterized the
15 problems. Her assertion that a building has been built one
16 foot from where it was to be located is wrong. The building is
17 one foot shorter than it should have been. Corrective action
18 studies are now under way, to be completed -- again, reported
19 by the company to the NRC.

20 CHAIRMAN BECHHOEFER: One question. Are not some of
21 the things which you have mentioned matters which go to the
22 merits of a contention, rather than whether there is a conten-
23 tion itself? The fact that the building is one foot short or
24 one foot long or whatever it is, isn't -- and whether or not
25 it has been adequately taken care of -- is that not a matter

1 of -- for an evidentiary hearing?

2 MR. NEWMAN: The question is whether or not there is
3 a reasonable basis stated for the contention. My answers are
4 designed to show you and members of the Board that there is
5 no reasonable basis for those contentions. To the extent that
6 they seek to assert QA and QC in this project are substandard,
7 they fail. There is no basis for that argument.

8 CHAIRMAN BECHHOLFER: They seem to be saying that
9 because of the numbers that have occurred -- and I can't tell
10 you whether these are abnormal or not -- they seem to be
11 claiming that because of the numbers that have occurred, perhaps
12 the nature of the deficiencies that have been uncovered, that
13 there is something different and something abnormal may be
14 taking place, that it is something that ought to be resolved.

15 MR. NEWMAN: That is surely pure speculation.

e-12

16

17

18

19

20

21

22

23

24

#13

1 CHAIRMAN BECHHOEFER: That will be for us to decide.
2 But in terms of putting their assertions in context, this is
3 how I seem to be reading it. I guess they are not saying that
4 any one of them has been discovered, hasn't or can't be taken
5 care of. They seem to be worried about the very numbers, and
6 the nature of some of the ones that were discovered.

7 MR. NEWMAN: If I may, I might also note that in
8 part I addressed some of these contentions, because of your --
9 the decision you will have to face with respect to discretionary
10 intervention, the extent to which the assertions that are made
11 really reflect an understanding on the part of people who are
12 making them.

13 As I indicated in three or four different areas,
14 they demonstrate a lack of understanding as to the nature of
15 the deficiency, and that is a factor to be weighed. I think
16 you never really did receive an answer to your question "what
17 evidence do you plan to put on?"

18 If it is sufficient to simply go to the public docu-
19 ment room and read for four days into the record all of the
20 deficiencies and corrections, I suppose a hearing could be
21 convened for that purpose. I don't see any point in it, and
22 I don't see where any of the problems is going to give rise to
23 the dignity of an assertion that the regulations are not being
24 followed at STP.

25

CHAIRMAN BECHHOEFER: Staff?

1 MR. MC GURREN: The staff's difficulty with the
2 contention regarding QA inspections is really with regard to --
3 we don't see that there has been stated a contention.

4 What we appear to have is requests for just simply
5 a statement of deficiencies. What is missing is, we feel, the
6 "so what?" part of the contention. With a statement of defi-
7 ciencies, there should be something that would follow.

8 What we are asking for and feel that is deficient
9 at this point is the "so what?" part. What follows from the
10 fact that there are deficiencies here?

11 MR. MARKE: Mr. Chairman?

12 CHAIRMAN BECHHOEFER: Would you please wait until
13 the staff is finished?

14 MR. MARKE: I thought they were. He quit talking.

15 MR. MC GURREN: I don't know if you wanted to get
16 into the -- what we saw as being contention one, but I think
17 Ms. Ryan did get into the contention one with regard to this
18 proceeding being premature.

19 I would like to first point out that, in the staff's
20 response to Mr. Marke's contention one, which is a similar
21 subject, firstly that we referenced a particular finding that
22 had to be made by 50.57(a) with regard to -- that a plant had
23 to be substantially complete before a license could be issued.

24 The statement appears in the staff response. That
25 is a reference to the Board. That is not a Board finding, but

1 rather a finding of the Commission.

2 Further, with regard to response to the contention
3 that it is premature now to proceed with this proceeding, it
4 is a staff policy that these proceedings go early in the review
5 process so that petitioners -- and if there is intervention --
6 intervenors can follow along with the development of the staff's
7 review, and thereby understand a little bit more about the
8 nature of the review and participate more fully in the review
9 process, and ultimately the hearing process.

10 And further, there is no requirement in the Commis-
11 sion regulations that the proceeding and how the proceeding
12 progresses be tied to any particular percentage of construction
13 completion.

14 Another matter, with regard to what we said earlier
15 about getting back to standing, in essence the deficiency that
16 we see with this contention -- or what we call "this contention,"
17 and we feel it is a deficiency -- is that it is not really a
18 contention. They have merely alleged deficiencies.

19 What is absent here is a showing of how the interest
20 of petitioners will be affected by these deficiencies that they
21 assert.

22 That is all, Mr. Chairman.

23 CHAIRMAN BECHHOEFER: Is this the type of thing, if
24 the Board should decide that it was a subject worthy of a
25 hearing, is this the type of thing that the staff could help out

1 the intervenors in expressing their contention, really what
2 they are trying to say?

3 In many proceedings that I have been in, that I have
4 been involved with, the staff attorneys have helped intervenors
5 write their contentions in a way. Now we have to accept at
6 least one contention, at this stage, as properly written and
7 properly set forth, but there are many proceedings where the
8 parties have gotten together and discussed contentions and tried
9 to get them in a form where they are workable and legal.

10 I am wondering whether we should decide that a
11 contention were valid, and the parties should be admitted, could
12 the staff help the intervenors who are not represented by
13 counsel write the contentions?

14 MR. MC GURREN: I think --

15 CHAIRMAN BECHHOEFER: The staff has volunteered this
16 on a number of occasions.

17 MR. MC GURREN: I don't think it is accurate to say
18 that we would draft their contentions. We have a system, and
19 we explained to petitioners especially -- what we have usually
20 done is to explain to petitioners that we feel have made a
21 showing of standing, how or what is required with regard to
22 the particularization of a satisfactory contention.

23 CHAIRMAN BECHHOEFER: Your comments concerning the
24 fact that this isn't written as a contention would seem to me
25 to be assuming that there is any material in there that is

1 litigable, would seem to be the type of thing that a staff
2 attorney could assist an intervenor on.

3 MR. MC GURREN: We think that there is substance
4 here that we could assist a petitioner with with regard to
5 satisfaction of particularization.

6 MR. NEWMAN: I can't hear your remarks. What was
7 that?

8 CHAIRMAN BECHHOEFER: I said, at least as to the
9 technicalities of how to draft a pleading with which nonattorneys
10 may not be familiar --

11 MR. NEWMAN: I thought we were at the stage where
12 petitions to intervene had to be filed in time to specify a
13 contention? That time existed before the first petitions were
14 filed and, more than that, existed in the period between the
15 first and second petitions.

16 How many more opportunities do you or the Board
17 intend to afford to come up with an acceptable petition?

18 CHAIRMAN BECHHOEFER: The Board will have to be
19 satisfied at least of the substance of a proper contention that
20 it is here. If it is not a perfectly worded one --

21 MR. NEWMAN: I suggest that discussions about
22 cleaning it up are premature until one establishes that there
23 is some substance.

24 CHAIRMAN BECHHOEFER: I was responding to the
25 comment of staff attorney that at least certain deficiencies

1 which he was talking about seemed to me to be the type that,
2 if it were a proper contention, could be cleaned up.

3 MR. TREBY: Mr. Chairman, I think the record should
4 be clear as to just what the staff does do. The staff does not
5 draft petitions, or assist petitioners in drafting petitions.

6 What the staff gets involved in is that, if a
7 petitioner has been found to satisfy the standing requirements
8 and one good contention has been found, there have been pro-
9 ceedings where the staff has been directed, or the staff on
10 its own has gone out and negotiated with the petitioner -- or
11 if it has been admitted -- an intervenor, to see if we can
12 reach some understanding as to the issues that are to be
13 litigated, and just what the concerns are, and to see if we
14 can reach a common understanding as to the wording that -- of
15 the contentions.

16 And that has frequently been joined in by the
17 Applicants, as well, in what is presented to the Board. And
18 what is presented is a stipulation of the parties as to just
19 what everybody has agreed is the wording of the contentions.

20 Sometimes that has also included contentions that
21 the staff or the applicant don't consider to be admissible
22 contentions. But so as to remove the time-consuming process of
23 deciding on just what is meant by the contentions, what the
24 words should be, they have agreed on language, and then the
25 parties have discussed why it is that they think a contention

1 is admissible or not admissible.

2 What I would like to stress is that that does not
3 occur until after there has been some determination that the
4 petitioner has met the standing requirement. The staff does
5 not get involved in this process prior to that determination,
6 and I think that the point that Mr. McGurren, co-counsel, was
7 making was going to the point that we have previously indicated
8 that: in determining whether or not there is standing in a
9 petition, we have looked at not only what has been labeled a
10 portion of the petition that says "standing," but we look over
11 the whole petition to see if maybe in another portion of the
12 petition there has been something that shows how a particular
13 interest -- what the interest is, and how that interest is
14 being affected.

15 What we were merely pointing out was: that if these
16 allegations of deficiencies -- in those, we did not see an
17 indication of an interest, or how that interest was being
18 affected, but what we saw were a list of deficiencies, and we
19 did not find them contentions.

20 But given this list of deficiencies, they are what?
21 What is it that the staff and the applicant can respond to?

22 (Board conferring.)

23 CHAIRMAN BECHHOEFER: Mr. Marke, did you have some-
24 thing to add?

25 MR. MARKE: Yes. With regard to Mr. Newman's

1 response to my contention number two, I would point out that,
2 on page 18, line 21, of my supplemental petition, the dates of
3 the specific reports which I read into the record are contained
4 there. And if it is necessary, I will certainly loan these to
5 Mr. Newman or the staff to make copies of them, so that he can
6 verify that the citations which I made in the petition are
7 exactly those citations which I read.

8 Further, I would respond that the "what if" to this
9 contention, while it has perhaps not been made clear -- and this
10 is due to simply an inadequacy and unfamiliarity of dealing
11 with this type of proceeding -- the "what if?" is what happens
12 to my safety and the safety of those persons whom I represent
13 if these kinds of practices, even one such practice, is
14 undetected and some deficiency or infraction is allowed to go
15 unchanged, and a safety problem or an operational problem
16 occurs in the reactor? Then, what happens to our physical
17 safety, our health, the value and continued existence of our
18 real properties, and so forth?

19 I did not go to large emphasis to explain that, as
20 I said, because of my unfamiliarity with the proceedings. I was
21 striving for particularity, and I rather assumed that the answer
22 would be semi-obvious.

23 Inasmuch as it is not apparently obvious, I would
24 offer that much explanation. And if I might comment slightly
25 further, I have been involved in another proceeding with this

1 same Applicant at Allens Creek and am familiar with some of
2 the prior history regarding, in particular, the dealings and
3 stipulations with Tex PIRG prior to the time that any standing
4 was granted.

5 And it is my belief -- and it has been relayed to
6 me by the persons who were directly involved -- that staff did
7 indeed help them, and indeed drafted verbatim at least eight
8 of the contentions that were presented by Tex PIRG in that
9 proceeding.

10 MR. NEWMAN: Is that an assertion that the NRC staff
11 drafted eight contentions in the Allens Creek proceedings on
12 behalf of the intervenors? I direct that question through the
13 Chair to Mr. Marke.

14 CHAIRMAN BECHHOEFER: You may answer.

15 MR. MARKE: The assertion specifically was that,
16 prior to the point that any standing was granted in the Allens
17 Creek Proceeding, that by my second-hand knowledge -- although
18 I can present to you immediately the man who knows -- at least
19 eight of the contentions were drafted in their final form with
20 the assistance of staff.

21 And the only point I am trying to make here is that
22 it is not entirely out of order for staff to assist the public
23 whose interest they are charged with protecting in the prepara-
24 tion of such documents.

25 MR. NEWMAN: If I may comment, briefly: There is

1 at least one distinction I would like to make on the Allens
2 Creek. It is a construction permit proceeding, and a hearing
3 will be held, and the willingness on the part of the NRC staff--
4 its role in that connection -- is not to be compared with the
5 role of the operating license stage.

6 I do believe that it -- and I can't speak for the
7 staff -- but every case that I have been involved in, and I
8 have been in this field for many, many years, I do not recall
9 sessions with an intervenor as to whom there was not even a
10 colorable or a colorably acceptable petition -- the staff has
11 made it clear that there is not a colorably acceptable petition
12 in this case.

13 Therefore, I think that it is unfair and unreal to
14 impose that burden on the NRC staff and/or the Applicant.

15 MR. TREBY: I don't wish to prolong this, but let
16 me just indicate that I am not involved in the Allens Creek
17 proceedings, so I will have to go back and check, but what I
18 indicated was that the staff will not get together and
19 negotiate with intervenors until either standing has been found
20 by the Board, or the staff has filed something in which it says
21 that there is standing but -- and has identified what it things
22 is perhaps one good contention, and then subsequently says in
23 the pleading with regard to the remaining contentions the staff
24 reserves comments until it has had an opportunity to meet with
25 the intervenors and have further clarification or simplification

1 or whatever the terms may be used in the petition.

2 But I am not aware of any time that the staff has
3 gotten together with intervenors prior to the staff at least
4 acknowledging in some pleading that it thought that the inter-
5 venors had standing.

end #13

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CR1403

ape 14

davidl

1 MR. MARKE: I did not make the allegation
2 that that wasn't the case. That was not intended.

3 MS. RYAN: Mr. Chairperson?

4 CHAIRMAN BECHHOEFFER: Yes?

5 MS. RYAN: I would like to comment for
6 Citizens Concerned About Nuclear Power; the second half of
7 our second contention reads, "The mistakes in construction
8 on the part of the contractor to -- directly related to the
9 ultimate safety of the South Texas Nuclear Project."

10 We are contending that it does affect the safe
11 operation, and I agree with staff that it needs to be clarified
12 in sorely delineating what we would expect, what we would ask
13 to be done about these problems.

14 And I can see that that is a failing in our
15 contention in that we would intend to develop to include
16 that, that when we do make the contention or raise an
17 issue, I think that it would follow logically in that you
18 should say what would be done about it.

19 (Board Conferring.)

20 CHAIRMAN BECHHOEFFER: I would like to turn now
21 to the next contention. I would like to discuss number
22 three of CCANP and number five of Mr. Marke. These both
23 deal with reactor overpressurization.

24 I believe CCANP cited NRC staff report, November
25 1976 report. I was interested in the type of evidence or the

david2

1 type of presentation each of you respectively intended
2 to put on on this contention.

3 Are you asserting that there is no resolution
4 of the overpressurization problem with respect to this
5 reactor?

6 MR. MARKE: Yes, sir, essentially.

7 CHAIRMAN BECHHOEFFER: The report that was referred
8 to mentioned at least some potential solutions. I am not
9 sure that the record would show what solutions have been
10 reached for this reactor because they would appear in the
11 technical specifications, but I wondered what you were
12 driving at here.

13 MR. MARKE: If I might, I am looking for a cover
14 letter that went with this particular report. The report
15 I have in my possession dates from 1973, I believe, until
16 at least late 1976. The cover letter is on the back. This is
17 a letter from the NRC to Pacific Gas and Electric Company
18 dated -- it is an undated letter. It was apparently
19 received on January 10th, 1977.

20 It speaks of overpressurization excursions in reactors
21 of an identical type to that being installed at South Texas.
22 I have listed in the specifics including the range of the
23 pressure transient the specification limit which should have
24 been adhered to and the time over which the pressure excursion
25 occurred. That is the real time over which it occurred

1 as well as the date and the description of the causes of
2 at least 30 separate instances regarding this type reactor.
3 The latest covered on this report is 9/30/76.

4 In applicant's response to my supplementary
5 petition, there was a statement made that there were
6 further incidents of this type which were as yet unconfirmed
7 as far as documentable, written evidence.

8 I have not yet received the documentation on
9 the latest instance. However, the latest instance was
10 reported to have occurred approximately five weeks ago,
11 some two weeks before the time when I delivered the
12 amended petition.

13 I have made an effort through the Union of
14 Concerned Scientists to get documentation on that particular
15 incident. I understand it is en route. I do not know if the
16 cause has been determined yet, however this is the 31st
17 incident that is referred to, and at this pint it is undocumented.
18 However, it is my understanding from that excursion and
19 further my understanding from personnel who have worked for
20 Westinghouse in the past and additional testimony which I have
21 given by Mr. Dale Bridenbaugh, which I think I can give you
22 a date on that, that this problem seems to be nearly generic.

23 The testimony was given in the matter of Long Island
24 Lighting Company, specifically, the Jamesport Nuclear Power
25 Station, Units one and two.

1 And this testimony was presented to the
2 New York State Board on Electric Generation Siting and
3 Environment, and it is dated at the end somewhere. But
4 to the best of my knowledge, and with all the sources that
5 I am able to produce at this time -- this is December 15th,
6 1976 -- I think there is a more recent one dated March 15th,
7 1977.

8 This problem has not been corrected generically
9 in this reactor type, and there is every reason to contend that
10 it should either be cured or announced, the proposed
11 fix for the problem, as regards STP units one and two. This
12 is something that cannot be developed fully at this point
13 without the cooperation of the contractor and project
14 management and perhaps the supplier as well.

15 And will probably not be fully documented until
16 discovery can proceed.

17 (Board Conferring.)

18 DR. LUEBKE: From what you have read from the
19 documentation, have these overpressurizations exceeded the
20 margins of safety designed into the equipment?

21 MR. MARKE: Some of them have drastically
22 exceeded those margins. I believe I cited perhaps one of the
23 most major that went to 3376 pounds of gauge. The majority
24 of these excursions, I can run briefly down the list, are
25 generally anywhere from 200 to 600 pound excursions above the

vid5

1 operating ambient with rare exceptions went in excess from
2 2000 to 3000 pounds. They have been documented.

3 The excursions, as well, are of significance
4 because of the timeframe in which they occur. The very large
5 one, which I indicated, took place at the Trojan plant on
6 7/22/75, and the pressure transient went from 400 pounds
7 per square inch gauge to 3326. I believe I must have a
8 typographical error in the petition. I think it is 3376.
9 That was in a period of 10 to 12 minutes.

10 And the mechanical shock applying to that vessel
11 is considerably more than it was intended. Granted, proof
12 pressure is greater than operating pressure, and proof pressure
13 is always built into devices of this type. But I think when
14 excursions of this nature have been demonstrated to occur
15 with repetition, that the public involved and the public
16 concerned in the licensing of an identical type reactor
17 should be at least made aware or availed of the facts of the
18 current status of the resolution of that problem.

19 The contention then is what again will happen to the
20 safety of not only the immediate occupants of the area but
21 considerably downwind if an extreme overpressurization
22 occurs and a rupture of the containment occurs as a result of
23 that dispersing, presumably, steam and other volatile contents
24 into the biosphere.

General Reporters, Inc.

25 CHAIRMAN BECHHOEFFER: Do either you or Ms. Ryan

1 plan to bring out Mr. Bridenbaugh as a witness? I know
2 you both cited Mr. Bridenbaugh, you orally and she in her
3 petition.

4 MR. MARKE: Mr. Bridenbaugh has offered to come
5 testify to this if necessary, if requested, yes. We have
6 had him in Austin recently, and he has been in San Antonio
7 also, and he is willing to return to document this
8 evidence, if necessary.

9 (Board Conferring.)

10 CHAIRMAN BECHHOEFFER: Would the applicant like
11 to comment; first the applicant and then the staff. I have
12 a few questions to ask of you, but you may want to start first.
13 Let me lead off with my own questions.

14 As far as I am aware, this particular
15 issue is one of the unresolved generic safety issues which
16 the appeal board dealt with in both the River Bend case
17 and most recently in August the North Anna case. And it
18 directed licensing boards to make sure that there -- that
19 these problems were resolved prior to operation of a reactor.

20 My question is: does this take this problem
21 out of the special circumstances situation, or is special
22 circumstances even applicable to this question?

23 MR. NEWMAN: I think not. The distortion in the
24 presentation really requires some correction. We are
25 now dealing with statements made by both petitioners seeking

david7

1 to respond to the board's request that particularization
2 be provided under the special circumstances doctrine of
3 the Indian Point case with respect to reactor overpressurization.

4 CHAIRMAN BECHHOEFFER: I am asking you: is
5 that doctrine applicable to this case? I am not sure it is.
6 I am not sure that special circumstances even applies here.

7 MR. NEWMAN: I don't think it does. It does
8 not apply. What we are talking about is a phenomenon that
9 occurs generally at low temperature, low pressure, usually
10 during reactor startup or shutdown. There are tight specifica-
11 tions placed on operations during that period, occasionally,
12 as a result of operator error.

13 For the most part those very severe and very
14 conservative tech specs, which by the way, assume a
15 substantial crack in the pressure vessel and a neutron
16 bombardment for a 40 year period, even though the reactor
17 may be starting up in the second day. Those conservative
18 assumptions have to be taken into account.

19 In fact, the NRC called the attention of the
20 industry to this problem in September of 1976, as I recall.
21 And of the 29 incidents or 30 incidents -- I won't be held to
22 that number -- plus or minus one -- 26 occurred prior to the
23 NRC advice in that regard.

24 The document which I don't -- I think Mr. Marke
25 is referring to is probably NUREG-0138, and I would call your

1 attention to page 6-1 of the attachment to that document
2 which concludes with respect to these overpressurizations;
3 all of the pressure transients "were such that fracture
4 mechanics and fatigue calculations indicate that reactor
5 vessels were not damaged and continued operation of the
6 above vessel was acceptable."

7 Finally, in commenting, Mr. Marke refers to
8 apparently a missing context; it is not very clear from
9 this petition of a comparable incident at Diablo Canyon. We
10 have done our best to track that down. Such an event
11 involving the reactor pressure vessel has never occurred
12 at Diablo Canyon.

13 The only overpressurization which we are able to
14 find is in connection with a small tank and has nothing whatever
15 to do with the pressure vessels.

16 To the best of our knowledge, Diablo Canyon has
17 never been brought down because of a concern with respect to
18 an overpressurization of the pressure vessel. The assertion
19 is totally without merit.

20 (Board Conferring.)

21 CHAIRMAN BECHHOEFFER: I guess I would like to have
22 the staff comment now. I guess the staff first raised the
23 special circumstances rule. I will ask you the same question
24 I asked Mr. Newman, whether special circumstances applies to
25 this issue, particularly since this is one of the unresolved

david9

1 generic issues that we are talking about in River Bend and
2 North Anna.

3 MR. TREBY: The staff raised the question of
4 special circumstances because it wasn't quite clear to us
5 what the contention was. If it was something relating
6 to the integrity of the pressure vessel, then we believe
7 special circumstances applies.

8 If it is strictly concerned with this question of
9 the overpressurization that is one of the Category A generic
10 items, that is going to be addressed by the staff in its
11 safety evaluation in the same way that Category A items
12 were addressed in the Allens Creek proceeding.

13 DR. LUEBKE: In which case are the subject of
14 litigation in this hearing.

end:14

pv

1

MR. TREBY: The subject of overpressurization, that
2 would not be excluded on the doctrine of special
3 circumstances.

4

DR. LUEBKE: This, then, could be considered a
5 valid contingent, if I am listening to you correctly?

6

MR. TREBY: It could be a valid contingent. It is
7 not precluded by the special circumstance rule.

8

DR. LUEBKE: Right.

9

MR. TREBY: It still must meet the specificity.

10

DR. LUEBKE: But if you fix up the language, the
11 subject area is not excluded by legal --

12

MR. TREBY: The subject area of overpressurization?

13

DR. LUEBKE: Yes.

14

MR. TREBY: Not the integrity of the pressure
15 vessel, just overpressurization, I do not believe, is
16 excluded.

17

CHAIRMAN BECHHOEFER: Maybe I should ask the
18 Applicant: Has the proposed technical specifications to take
19 care of this problem been submitted yet as of this time?

20

MR. NEWMAN: If you will allow me to consult for a
21 moment, I will get that for you.

22

I am informed, Mr. Chairman, that the tech-specs
23 have not yet been established with respect to assuring against
24 reactor overpressurization. They will be, of course,
25 developed prior to the time the Commission authorizes

pv

1 operation of the plant.

2 I think the point, by the way, that you asked me
3 about earlier, I might have misconstrued, and particularly in
4 the light of Dr. Luebke's illumination. I proceeded with the
5 assumption that what the petitioners are doing in this case is
6 establish special circumstances. My argument was that the
7 facts did not establish special circumstances. My further
8 response was that, viewed as a contention, aside from that, it
9 lacked merit.

10 (Board confers.)

11 CHAIRMAN BECHHOEFER: The next one I would like to
12 turn to is No. 6 of Mr. Marke. That is the one dealing with
13 financial condition of the City of Austin.

14 What is your contention here? That the City can't
15 fund its share of cost of operating this plant? That is about
16 the limit of what we can look at in terms of cost.

17 MR. MARKE: My contention is: Yes, that the
18 financial situation, as exhibited in Austin now, places doubt
19 as to whether they can satisfactorily keep up their portion of
20 operating expenses once an operating license is granted.

21 A little background here may be helpful. I
22 recognize that the Commission is generally not prone to
23 entertaining economic issues in operating-license proceedings.
24 However, I do feel that the documentation indicates that the
25 evidence of an economic inability to operate, perhaps at all

pv 1 or perhaps not directly, may be heard in the Applicant's
2 response to this petition. And I don't know which of the
3 Applicant's attorneys wrote this. The second paragraph, it
4 says: "Petitioner Marke does not identify which of the
5 Applicants are financially" -- "are not financially capable."

6 If I could interject for a moment, this is some of
7 the same kind of discussion we have been hearing, and I am not
8 a lawyer and I am not accustomed to the intricacies of
9 legalese discussion. I tend to call them exactly what they
10 are.

11 Mr. Newman a minute ago referred to the "vagueness"
12 of my description of the overpressurization, when, in fact, I
13 had recounted exactly. Again, he says that I don't identify
14 which one is not financially capable. And in the next-to-last
15 line on page 21 of my petition, it says: "Austin, for
16 instance, is faced with two immediate problems. There is
17 currently a city council-sponsored referendum placed on the
18 20 January '79 ballot which will, at the very least" -- "at
19 least hold its financial commitment to the \$161 million
20 currently allocated." This specified which partner is having
21 possible financial difficulties in pursuing the construction
22 and presumably in the operation of the plant --

23 CHAIRMAN BECHHOEFER: What does the ballot question
24 relate to?

25 MR. MARKE: The ballot wording says -- and this is

pv 1 not exactly -- this is quite close: "To authorize the city
2 council to sell all but \$161 million worth of Austin's
3 participation."

4 So, two things happen here. One of them is --
5 that is the only option. There is not an option that says to
6 go to full participation, so at the least Austin's
7 participation will be dropped to its current level, exclusive
8 of the last cost overrun.

9 There are two problems. One is that Austin will
10 either have to find the buyer for its portion, or fall in
11 default when the next payments on the latest cost overruns
12 arise. The latest one is, I believe, next month; we have a
13 \$28 million progress payment due on the \$161 million to which
14 we are now committed, and there is widespread speculation that
15 this will have to be borne out when it happens. There is
16 widespread speculation among the bonding people in the City of
17 Austin, among the bankers, that should this election measure
18 fail -- and it has almost been determined that they can't do
19 anything else no matter which way the question is answered --
20 that those bonds may not be saleable, placing Austin in
21 jeopardy of immediate default.

22 I have merely raised the question that it is
23 conceivable, and thus a bone of contention, that at least one
24 of the partners in the City of Austin is in danger of not
25 being able to complete their portion of the contractual

pv 1 agreement for STP, which includes the operation of the plant,
2 not only the construction. And if expenditures are limited to
3 \$161 million, I don't know where operating expenses come from
4 after that point, should the voters so decree.

5 If the mood of the investors and bonds-persons is
6 such that the progress-payment bonds are not saleable, then we
7 are faced with an even further immediate crisis. Then, by
8 inference, I would contend that all of the partners must be
9 suffering the effect of increased cost and should perhaps at
10 this point -- and this is the question of the contention -- as
11 to whether they should be required to indicate their current
12 financial capability in light of current cost totals and/or
13 any others that may be anticipated.

14 And if the answer to that is in the negative, then
15 one might contend that the operators of the plant would not be
16 capable financially of causing the plant to operate in the
17 prescribed manner.

18 CHAIRMAN BECHHOEFER: It is my understanding that
19 the Applicant's final safety-analysis report does have a
20 discussion of its financial qualifications. Have you had a
21 chance to look at that?

22 MR. MARKE: I have requested a copy of the final
23 safety analysis from Ms. Vicki Harding when she was in the
24 staff office. She is no longer there, and I have not received
25 it to date. . At the time that I requested it, it wasn't easily

pv 1 available, and she was going to get it to me along with a
2 quantity of other documentations. A good deal of the
3 documentation she did get, and I have not yet been able to get
4 a copy of the final safety analysis.

5 DR. LUEBKE: Is there anything in the City of
6 Austin paper which suggests that the actions are applied to
7 the operation of the plant as distinguished from the
8 construction of the plant?

9 MR. MARKE: Woulr' you repeat the first part?

10 DR. LUEBKE: These bond issues, whether they are
11 voted up or down or whatever, is there anything in there that
12 suggests that it is related to the operation of the plant
13 rather than the construction of the plant?

14 MR. MARKE: Specifically, no. The bond issue --
15 which is debatable whether it is a bond issue or not; there is
16 no sale of bonds indicated in the election -- is related
17 directly to cost overruns and funding the construction cost at
18 the current level.

19 The contention then is admittedly slightly
20 speculative, but can hardly be overlooked in the light of the
21 current financial history.

22 DR. LUEBKE: Do you know anything about how the
23 rates are set? Do the voters set the rates for paying for
24 electricity, or is there a board in Austin?

25 MR. MARKE: There is a board, a rate commission,

pv 1 and it is not subject to voter influence unless the city
2 council would be hanged and all the officers appointed, which
3 is not likely to happen.

4 (Laughter.)

5 CHAIRMAN BECHHOEFER: Applicant, do you have
6 comments?

7 MR. NEWMAN: Burt Schwarz.

8 MR. SCHWARZ: The proposition to which Mr. Marke
9 related literally reads this way: "Shall the City Council of
10 the City of Austin, Texas be authorized to sell as much of
11 Austin's 16 percent interest in South Texas Project Nuclear as
12 cannot be financed with \$161 million in bonds previously
13 authorized by the aforesaid project?" That is all it says.
14 It simply seeks the authority in favor of the city council to
15 sell an interest in the project, it would appear, should the
16 council decide to do so.

17 I am advised by counsel for the City of Austin that
18 their financing for the electric utility system is by revenue
19 bonds. Their revenues clearly are sufficient to cover the
20 operation of the system, which I think would include the
21 operation of the South Texas Project.

22 Mr. Marke admits that his proposed contention is
23 speculative, and it seems to me that it is self-evident that
24 any assertion that a plant owned by four systems who have
25 AA or A-plus ratings by Moody's and Standard and Poor each,

pv

1 that there won't be found sufficient funds to properly operate
2 the system.

3 There was one other point I should have raised, in
4 that Mr. Marke indicated that it was felt that the next issue
5 of bonds, which I believe have been authorized by the voters
6 in Austin, could not be sold. As is the practice in matters
7 involving South Texas Project, when Mr. Marke's petition to
8 intervene was received, it was distributed to counsel for each
9 of the participating systems' Applicants. And we were advised
10 of several misstatements by counsel for the City of Austin,
11 and that was one in particular.

12 CHAIRMAN BECHHOEFER: I did have one more question
13 of you. You stated on, I think, page 13, it says: "Austin's
14 bond rating" --

15 MR. MARKE: Page 13?

16 CHAIRMAN BECHHOEFER: Page 13: "Austin's bond
17 rating has fallen significantly the past two years due solely
18 to Austin's participation in the STP." What is the basis for
19 that?

20 MR. MARKE: What is the basis for that statement?

21 CHAIRMAN BECHHOEFER: Yes.

22 MR. MARKE: The report that has been commonly
23 ascertained -- one of the things that I would point out in the
24 Applicant's response, the data they give on Austin's bond
25 rating is mid-1978. Austin's Citizens for Economical Energy

pv 1 talked to the bond raters in October of 1978, and we were
2 told, I believe by Standard and Poor — incidentally, Standard
3 and Poor and Moody's bond ratings don't look the same, so the
4 figures cited in the Applicant's response are not consistent
5 -- we were told that the Standard and Poor rating at that
6 time had fallen from a AA to an a, small "a." And the reason
7 for that, in those persons' estimation that delivered that
8 report, was due to Austin's participation in the South Texas
9 Nuclear Project. And so, the justification for that, for the
10 statement on page 13, is simply that communication.

11 In regard to Applicant counsel's remarks regarding
12 the ballot question, one of the foreseeable difficulties is if
13 that bond proposition is answered in the negative, in which
14 case the city council is not authorized to do anything, they
15 are not authorized to sell all but \$161 million of it, they
16 are not authorized to sell more bonds, they are not authorized
17 to do any except to think about it and go back to the voters
18 when the next opportunity for election comes along. And only
19 side of that ballot question was presented by Applicant's
20 counsel.

end#15

21
22
23
24
25

pv

1 MR. SCHWARZ: If I might make a comment.
2 Applicants feel that the answer, as supplemented already
3 sufficiently, disposes of this proposed contention. It is the
4 rankest type of speculation, by Mr. Marke's definition, where
5 he is trying to crystal-ball well into the future of what may
6 happen on financial matters, some of which he can't possibly
7 know and others of which he has indicated erroneous
8 information as a basis for his projection.

9 CHAIRMAN BECHHOEFER: Does the staff care to
10 comment?

11 MR. MC GURREN: The staff's position is set forth
12 in its response on page 16: It is not admissible, because it
13 is too speculative, essentially.

14 MR. MARKE: May I have a moment to read that? I
15 haven't gotten that far.

16 CHAIRMAN BECHHOEFER: You think it is more
17 speculative if limited to the City of Austin? I notice that
18 you commented that at least some language was a bit ambiguous.
19 But if you limit it to the City of Austin, do you still have
20 the same feeling?

21 MR. MC GURREN: We still feel it is speculative.

22 CHARIMAN BECHHOEFER: Turning to Mr. Marke's
23 Contention 9, which talks about alternatives, does this deal
24 with any new alternatives that were not discussed at the
25 construction-permit stage? At that stage there was a final

pv 1 environmental statement, and the Applicant prepared a report,
2 and the staff had a final environmental statement, and then
3 the licensing board took those up.

4 Both of those documents did discuss a number of
5 alternatives. I wondered what in addition, if anything, you
6 were driving at.

7 MR. MARKE: I would say, without having been able
8 to review all of the prior documentation, that the majority of
9 those issues have been no doubt discussed, and I have even
10 heard of reports of their discussion. With the exception of
11 the last item, that being an aggressive conservation program.
12 Prior discussion about such a program, in fact, could possibly
13 not be considered to have relevance at this time, owing to the
14 fact that since the time that construction license discussions
15 were held the American public in general, the Texas public in
16 particular, has been intensively educated by force along lines
17 of conservation.

18 It has been estimated in innumerable studies,
19 ranging from Davis, California, to studies prepared for
20 Austin, that between 15 and 30 percent of our current energy
21 needs could be relieved by an effective conservation program.
22 I think we would all agree that, among generating
23 technologies, nuclear generating, nuclear generation of
24 electricity does present a significantly high risk, which is
25 why hearings of this nature is held, which is the reason that

pv 1 there is an atomic safety and licensing board, because there
2 is concern for the safety owing to the relatively dangerous
3 nature of those facilities should they run amok.

4 If an effective conservation program could be
5 initiated such that it would alleviate the burden which is to
6 be borne by the South Texas Project, the need for building the
7 plant or operating it, which is what we are discussing at this
8 point, could be obviated or at least prolonged. And I would
9 submit that at this time a reanalysis of the possibility for
10 effective conservation should be weighed in comparison with
11 the assumed and well-known risk of operating a nuclear
12 generating station.

13 Those questions should be answered and see where
14 the cost-benefit ratio -- I speak of "cost" in terms of the
15 quality of life, essentially, rather than dollars -- where
16 that ratio balances out.

17 I would contend that our safety would be more
18 easily enhanced, perhaps by common consent, were that plant
19 not to be operated. For that matter, our safety would be
20 enhanced were a coal plant not to be operated, or nearly
21 anything else that presents a risk to the public.

22 Inasmuch as we are discussing the operation of a
23 possibly hazardous plant, I believe that this is the time that
24 questions like this should be answered. We cannot rely upon
25 questions which were investigated some several years ago as

pv 1 having still-current answers.

2 (Board confers.)

3 DR. LUEBKE: Mr. Marke, on the subject of
4 conservation, where you put your main emphasis, were it
5 accepted as a contention, would you foresee presenting
6 witnesses or numerical information, quantitative information
7 which would give a basis for the contention?

8 MR. MARKE: Yes, sir. I believe that information
9 is readily available. I probably have some of it in my
10 briefcase at this time.

11 CHAIRMAN BECHHOEFER: Applicant?

12 MR. SCHWARZ: We feel that Mr. Marke's Contention 9
13 is adequately addressed in the response -- in our response
14 starting on page 31, and particularly as far as conservation
15 goes, commencing with the paragraph on the bottom of page 32.

16 And we would call the Board's attention to a
17 finding by the licensing-board hearing, the construction
18 permit application on this case, which is quoted on page 33 of
19 our brief, indicating a need for this plant to facilitate a
20 diversity of fuel supply for the systems.

21 MR. MARKE: I don't see any connection between the
22 diversity of fuel supply and conservation.

23 CHAIRMAN BECHHOEFER: Staff?

24 MR. MC GURREN: The staff's position is set forth
25 on page 18 of its response. And we would like to add to that

pv

1 response that in the staff's FES, section 8.2.3, which runs
2 from pages 8-4 through 8-10 of the staff's final environmental
3 statement for the South Texas Projects Units 1 and 2 at the
4 construction stage, that the subject of conservation was
5 analyzed and discussed by the staff.

6 MR. NEWMAN: I might add to that, Mr. Chairman,
7 that Mr. Marke has not, as we note in our page brief at 33,
8 not even bothered to address that conclusion.

9 CHAIRMAN BECHHOEFER: Turning to Contention 10 now,
10 of Mr. Marke, this is the one where a report is cited, and it
11 indicates that severe drought conditions may exist in this
12 area. Does this report go into information which was likely
13 to have been developed after the construction permit review?

14 MR. MARKE: Yes, sir. The report that I have cited
15 is a two-volume report. The first volume is smaller than
16 this. This is the draft copy of a report entitled "Continuing
17 Water Resources Planning and Development for Texas," published
18 by the Texas Water Development Board in Austin, dated May
19 1977.

20 There is considerable information in here which may
21 have been in the making at the time the construction license
22 was considered. It was almost assuredly not available until
23 at least this date, May 1977, and this, I would hasten to
24 note, is still a draft copy. I have not yet received a copy
25 of the final report. I am not sure it is available. So, the

pv

1 information contained in this report. I think, could be
2 construed to be new evidence, effectively, since the time of
3 the construction permit hearings.

4 DR. LAMB: Mr. Marke, I had trouble following your
5 statements at the bottom of page 25 and the top of page 26. I
6 am not sure that I understand those. Could you perhaps clear
7 that up for us a little?

8 MR. MARKE: Yes, sir. Regarding water
9 availability?

10 DR. LAMB: Yes.

11 MR. MARKE: All right. In volume 1 of that draft
12 report, indication is given, first of all, of the water
13 allotment for the various water districts in Texas. And I
14 will find the exact place. The breakdown, however, is in the
15 chart, which includes a breakdown for domestic consumption,
16 industrial consumption, power generation for steam-powered
17 generation plants, and, separately, nuclear generation plants.
18 And the quantity of water allotted in the Matagorda County
19 area is the same as in the adjacent areas, which is 11.0
20 acre-feet per megawatt per year as being available for a
21 nuclear reactor cooling.

22 DR. LAMB: You said "per year"?

23 MR. MARKE: Yes, sir. If you extend the
24 mathematics of that slightly, you will wind up with
25 approximate numbers that I have generated. The 11.0 acre-feet

pv 1 per megawatt indicates that from that allotted supply it will
2 take approximately 1.4 years' supply to fuel the cooling pond.

3 DR. LAMB: That is to fill it initially?

4 MR. MARKE: To fill it initially, yes. And when
5 you consider that we have the problems of the normal
6 maintenance of a pond of that size, including percolation,
7 surface evaporation, there obviously will be a loss. The
8 calculation that follows is tied to the cyclic drought
9 prediction given in the charting in this document. It goes
10 back to the '40s and documents the drought history since that
11 time and indicates that we will have droughts of the magnitude
12 which I indicated. A drought as defined by the Water
13 Development Board is a year in which the rainfall is 75
14 percent or less than that of normal.

15 And taking that ratio into consideration -- I think
16 there is a mathematical error in here -- we could see the
17 needs of that cooling pond not supplied in a drought situation
18 such as the one that we have just gone through. Our rainfall
19 -- I am not sure what the rainfall level in Houston actually
20 is -- in Austin it has been slightly less than 75 percent last
21 year of what it normally is. It has been widely reported that
22 most of Texas suffered a drought last year and the year
23 before.

24 When we have a situation where the filling of the
25 vessel alone is more than is available in a single year, then

pv 1 a drought lasting less than a single year could inhibit the
2 performance of that lake. It is very obvious that were that
3 drought to be extended from two to three years, which is the
4 normal — well, which has been the demonstrated duration of a
5 short-term drought in the State of Texas — that the lake
6 conceivably could become unusable and the reactor
7 nonoperational for want of cooling water unless the cooling
8 tower were employed.

9 I think that the question raised by this contention
10 is, then: Is the method of cooling, when compared with the
11 availability of water and drought prediction as developed by
12 the Texas Water Development Board, sufficient to assure
13 adequate operation throughout the at least one major drought
14 cycle which is almost inevitably going to show up during its
15 lifetime?

16 This doesn't take into account at all the fact that
17 there may be less water than is anticipated in the 1977 report
18 available due to population increases.

19 DR. LAMB: You indicated that was the contention.
20 Actually, that is a question you are posing, I believe; isn't
21 it?

22 MR. MARKE: What I am trying to do is pose the
23 "what if" question of the contention that we were asked for
24 earlier.

25 CHAIRMAN BECHHOEFER: Is it your contention that

pv 1 there hasn't been shown here that sufficient water supply will
2 be available to cool the plant?

3 MR. MARKE: My contention is that current
4 documentation shows that there is a strong possibility that
5 there won't be sufficient water available, and what do we do
6 in that situation, how do we assure continued proper operation
7 of that plant?

8 DR. LAMB: Did you, in framing this contention, did
9 you take into consideration the alternate sources of supply of
10 water?

11 MR. MARKE: Well, in the Applicant's response, I
12 noted that they cited a different agency as being responsible
13 for assigning quantities of water down there. This agency,
14 which is the official agency of the State of Texas and claims
15 to be responsible for that, is the source that I used, not
16 being aware of any other, and they don't cite any alternate
17 sources. They cite that in the Matagorda County area there
18 are available 11.0 acre-feet per megawatt per year for nuclear
19 plant cooling, and they don't say anything about alternate
20 conditions. And I would presume that if, indeed, this board
21 is in control of the water situation -- that plants want more
22 water, that the State's wishes will take priority over those
23 of the operator of the plant, and it will only get its
24 allotted share of water, presuming it is available.

end#16

25

pv

1 DR. LAMB: I have not actually seen the report you
2 are referring to, of course. But based on what you are
3 saying, am I correct in presuming or interpreting what you
4 said as being that the shortage of water is based on an
5 allocation in that report as contrasted with an actual
6 physical shortage of water in the stream?

7 MR. MARKE: I think we agree as to what it is.

8 (Laughter.)

9 DR. LAMB: In other words, this was an allocation
10 by the agency that brought about the shortage as opposed to
11 the shortage of water which will be flowing past the plant? I
12 am trying to clear this up in my mind what that report is
13 saying.

14 MR. MARKE: The allocation that the Water
15 Development Board has provided is assuming a normal year's
16 rainfall. In a normal year rainfall that quantity of water is
17 available. In a drought year that quantity of water isn't
18 available to anyone.

19 DR. LUEBKE: As I understand it, the thing he has
20 his hand on there is the basis for his contention?

21 MR. MARKE: Yes. The two volumes of this report.
22 It is obviously very lengthy.

23 DR. LAMB: I am still not quite clear on the basis
24 for your conclusion that there would not be enough water
25 available. Is that based on the 11 acre-feet per megawatt per

pv 1 year, or is it based on the fact that it takes longer than a
2 year to fill the pond?

3 MR. MARKE: It is based on the fact that in a
4 normal year more than one year's supply is required to fill
5 that thing, that in a drought year a normal year's supply
6 would not be available. The pond is obviously going to be
7 depleted by attrition to mother nature, and if it cannot be
8 supplied under conditions, then it becomes inoperable.

9 DR. LAMB: Have you determined in your preparation
10 of this that the pond actually will be empty, that the amount
11 of water used will exceed the capacity of the pond?

12 MR. MARKE: I have done approximate calculations.
13 I am lacking some meteorological information necessary to
14 calculate exact surface-evaporation rates. But for a pond of
15 7000 acres' surface size in this area, it is not unusual, as
16 is fairly well documented in the environmental texts, to lose
17 up to a third of that capacity per year. This is a very
18 shallow pond with excessive surface area. It is going to
19 suffer the greatest attrition rate to evaporation that it
20 could.

21 And so, assuming approximately a third attrition to
22 evaporation, I have taken into account a small percentage, I
23 believe, of six or seven percent to leaching, and, running the
24 figures together, it is quite conceivable that following the
25 second year of a strong — of a severe drought — that the

pv 1 lake would be less than three feet deep, perhaps on the order
2 of 2.5 feet. This will require a detailed calculation to
3 confirm, and I would not be surprised that the Applicant does
4 not have these figures available. However, I can't dig them
5 up. And one of the things I knew to do is see them, and to be
6 assured I think that we need to be made aware of what their
7 plans are and see if those plans are realistic in light of
8 this data and assure ourselves that the plant's operational
9 quality can be continued.

10 DR. LAMB: Without getting into the merits of the
11 question any more, the contention, your contention is, then,
12 that there will not be enough water to operate the plant
13 during a drought year?

14 MR. MARKE: Yes. During times of severe drought.

15 CHAIRMAN BECHHOEFER: Applicants?

16 MR. SCHWARZ: I believe Mr. Marke has demonstrated
17 again that he is really asking a question: Where will the
18 water come from? And he has demonstrated not only a lack of
19 understanding of the project but, really, a lack of diligence
20 in finding the information.

21 It is to be noted that the report which he has
22 cited and which he describes as a preliminary report is dated
23 in May of 1977. In our response, as is noted in Table 12-1.1
24 of the environmental report operating license stage, a permit
25 for the water supply for the South Texas Project was issued by

pv 1 the Texas Water Rights Commission, now the Texas Department of
2 Water Resources. And this permit was issued on February 24,
3 1976, at least a year before the report to which Mr. Marke
4 refers.

5 Under the law of this State, as Mr. Lowerre may
6 care to confirm or disaffirm, we basically have an
7 appropriative system, which includes the basis of first in
8 time is first in right, and that time relates to the time you
9 get a permit. That is the permit we referred to here. This
10 permit was issued by the Texas Water Rights Commission, the
11 agency of the State given that responsibility at that time.
12 The Texas Water Development Board was and is a planning arm of
13 the State. In connection with obtaining that permit, the
14 State Commission, in carrying out its duties, forced the
15 Applicants to demonstrate that there was sufficient water
16 there for operation of the plant. Likewise, the NRC staff
17 did.

18 In a water simulation, using the water appropriated
19 by this permit, based on a period -- the basic period goes
20 back into the '40s and comes up into the '50s and includes the
21 most severe drought of record ever experienced in this State
22 -- the discussion in 24.116 of the final analysis, safety
23 analysis report, demonstrates that there is sufficient water
24 available under the appropriation which predates the report.
25 And I am unaware of these allocations that he is referring to.

pv 1

To safely operate the plant, in addition, as we note in the response, there is a back-up supply under contract from a River Authority which is upstream, to see that the plant can be operated safely. It is included in the PSAR. It is in the FSAR. The permits have been issued.

2
3
4
5
6 And Mr. Marke asked a question, and I trust that we have answered it or at least told him where he can go get the information. I don't believe that it is a proper matter for litigation by this Board.

7
8
9
10 CHAIRMAN BOEHHOEFER: Staff?

11 MR. MC GURREN: It appears that Mr. Marke has at least clarified, at least to some extent, his concern. What we have difficulty with at this point is we don't know if we have -- if he is alleging an health-and-safety concern or an environmental concern.

12
13
14
15
16 With regard to health and safety, there would be a tech-spec that if there should not be enough cooling water in the cooling pond, the plant would have to be shut down. Therefore, there really is not a safety situation. There is not a safety concern, because of the tech-spec that a plant shut down if there -- if it would happen that there -- a plant would have to shut down if there was not enough water in the cooling pond.

17
18
19
20
21
22
23
24 Beyond that, if that is all the petitioner is asserting here, we still don't think that we have an adequate
25

pv 1 basis for a contention.

2 CHAIRMAN BECHHOEFER: How about an environmental?

3 MR. MC GURREN: I don't know. From what we have so
4 far, I don't think he has indicated that there is an
5 environmental concern.

6 CHAIRMAN BECHHOEFER: Would it affect the
7 cost-benefit balance if the plant had to shut down and there
8 was some likelihood that that might have to happen?

9 MR. MC GURREN: It would affect the cost-benefit
10 balance.

11 MR. SCHWARZ: If I might, Mr. Chairman, as I
12 indicated, the water analysis shown in 24.116 of the final
13 analysis safety report is based on a 40-year simulation, which
14 includes a period with the most severe drought of record,
15 which showed that there was sufficient water so that no safety
16 situation arose because of draw-down of the reservoir. That
17 was done exclusive of the back-up supply, water available from
18 upstream in reservoirs.

19 I will rest, with that.

20 CHAIRMAN BECHHOEFER: Is that not a matter of
21 evidence, rather than of pleading?

22 MR. SCHWARZ: It is a matter that has been
23 resolved, believe.

24 CHAIRMAN BECHHOEFER: Has the staff reviewed it
25 yet? Has anybody reviewed it yet?

pv

1 MR. SCHWARZ: It was reviewed in connection with
2 the construction permit.

3 (Board confers.)

4 CHAIRMAN BECHHOEFER: I think at this stage we will
5 take a short break of about 10 minutes.

6 Before we do, I would like to inquire: How many
7 persons are here would like to make a limited-appearance
8 statement? We are saving those for the end.

9 One woman is raising her hand. We still have you
10 in mind. We are trying to plan our schedule for the rest of
11 the afternoon.

12 We will take a 10-minute break.

13 (Brief recess.)

14 CHAIRMAN BECHHOEFER: The conference will come to
15 order.

16 MR. SCHWARZ: Mr. Chairman, may I address myself
17 one more time -- and I will be brief -- to Mr. Marke's
18 Contention 10? I will make one more stab, and then I will
19 quit.

20 The staff has very succinctly answered the
21 health-and-safety question, and I thought that I had answered
22 completely the environmental question. Our evaluation, as set
23 forth in section 2.4 of the PSAR and the FSAR, is based on our
24 permanent appropriation by the appropriate state agency of
25 102,000 acre-feet of water per year on the basis of the most

pv 1 severe drought of record with the facility operating and an
2 assumed 80 percent capacity factor under described
3 environmental parameters as to withdrawals and supporting
4 sufficient water for the estuary. And it was found under
5 those circumstances sufficient was available for the
6 continuous operation of the plant. The cost-benefit balance
7 was struck by the staff at an 80 to 60 percent capacity
8 factor.

9 MR. MARKE: Mr. Chairman, if I might add, also, a
10 brief note to clarify the record. For reference, if someone
11 is trying to determine where these figures came from in volume
12 I of this draft report, the particular table that has those
13 quantities is on page II-43.

14 The second thing that I would note is that where we
15 seem to be involved in a great debate about comparing
16 evidence, about my source of evidence versus the Applicant's
17 source for evidence, that is really not the point of this
18 hearing. We are here to determine if, indeed, there is a
19 basis for contention and then argue the evidence at a later
20 point in time. I would submit that we could possibly be more
21 brief by staying to those guidelines.

22 CHAIRMAN BECHHOEFER: At this stage, our notice of
23 this conference mentions that before the end of the day we
24 would hear limited-appearance statements. There is only one
25 person who has requested one, and these statements usually are

pv 1 limited to five minutes.

2 And at this time -- we are going to pick up some
3 of the other contentions, but I think the woman who has asked
4 for it has been waiting all day.

5 MRS. BUCHORN: I am in no hurry, sir.

6 CHAIRMAN BECHHOEFER: We think you are welcome to
7 make the statement now. I am not sure what the best place for
8 you is. Probably at that microphone there.

XXX 9 MRS. BUCHORN: Gentlemen, my name is Peggy Buchorn.
10 I am executive director of Citizens for Equitable Utilit
11 Rates, Inc., an organization chartered under this state in
12 June of 1976. We are governed by a board, of which I am also
13 a membe

14 I have listened here today to something that
15 actually is unfamiliar to me. I did not know about this
16 hearing until last weekend. The subject matter of the hearing
17 I did not know until this morning.

18 In view of the fact that we are based in Brazoria
19 and that we have a mailing list in the area of interest of
20 several thousand, and in view of the fact that great emphasis
21 has been placed on the interest of the people in that area, I
22 feel that it is necessary to make this statement: that we are
23 vitally interested in these proceedings and plan to file a
24 late petition of intervention.

25 Do you have any questions?

pv 1

(No response.)

2

CHAIRMAN BECHHOEFER: No questions at this time.

3

Going to Contention II of Mr. Marke. I wanted to

4

find out here whether the cooling lake fell in the Applicant's

5

exclusion area, or where in relation to the plant is that

6

lake, or do you know?

7

MR. MARKE: Are you asking me?

8

CHAIRMAN BECHHOEFER: I am asking you.

9

MR. MARKE: From the drawings that I have seen, it

10

is in front of, I believe -- the direction is probably

11

generally southeast of the reactors, although I am not sure

12

that that is accurate. But I have seen drawings and pictures

13

of the storage area or of the cooling lake, along with the

14

temporary coffer dams that are currently being constructed

15

and the breakwater device that is set out in the lake in front

16

of the two reactors.

17

CHAIRMAN BECHHOEFER: Will the public have access

18

to this lake at all?

19

MR. MARKE: At this point I don't know, and have

20

questioned that. I admit that that is, indeed, a question.

21

My contention is that for both environmental and

22

safety reasons, that public access to that lake must be

23

controlled to the point of prohibition. There is little doubt

24

that the lake which is created and used for the sole purpose

25

of cooling of a nuclear reactor will have a higher level of

pv 1 waste products in it than would the upper Colorado River, for
2 instance.

3 The environmental consideration, beyond the
4 physical limitations of the lake itself, revolve around that
5 material being carried to other portions of the surrounding
6 area and even farther than that.

7 The safety considerations -- well -- health and
8 safety considerations and how the Applicant intends to
9 prohibit the public from having access to that lake, such as
10 would endanger their health, and specifically how they are
11 going to prohibit me from having access to that lake which
12 would endanger my health.

end#17

13 In the Applicant's response to this contention, I
14 did notice that they have dealt in some detail with the matter
15 of leaching and the aquifers. They have touched briefly on
16 the crops and marine life. I noted with some interest that
17 they avoided any mention whatever of the possible transmission
18 of materials from that lake by migratory waterfowl.

19
20
21
22
23
24
25

j1

1 My contention is that there exists a significant
2 possible health hazard, due to the presence of that cooling
3 lake, which bears further investigation in order that the
4 public interest may be protected.

5 CHAIRMAN BECHHOEFER: Are you claiming that the
6 Applicant -- that the effluent discharges from the facility
7 will not meet the Commission standard for such discharges?

8 MR. MARKE: Specifically on the long term, no,
9 although it is widely acknowledged that instant emissions from
10 a plant of this type, or any other, may well exceed guideline
11 emissions.

12 So, there very conceivably could be -- and, in all
13 likelihood, will be -- instances wherein some particular area
14 or portion of that cooling lake will contain higher levels
15 than those permissible.

16 My basic contention, however, though is that --
17 well, based on the fact, in the first place, that I am not
18 sure, because I don't believe it has been stated what the
19 Applicant's intention with regard to the lake is and the
20 contention that the public must be protected from the lake and
21 its effects under normal and otherwise operation.

22 CHAIRMAN BECHHOEFER: Are you claiming the public
23 must be protected even though the Applicant may be meeting the
24 standards of the regulations governing such releases?

25 MR. MARKE: Yes, sir; even in situations where

j1

1 broad guidelines are met, which is what the emission
2 guidelines are. They are considered over a broad integration
3 of the total biological spectrum if it is confined in one
4 place, or, let's say, out of order or, even within guidelines'
5 emissions, is confined to one place, and you or I happen to
6 get into that place and go swimming or catch the fish that
7 pass through that place, or shoot down the duck that drank
8 from that place, and we ingest even that normal amount of
9 radiation or byproducts, we are subjected to a health hazard,
10 which we ought not to me.

11 The premise of normal emissions holds true only as
12 long as though emissions can be contained in a specified area
13 and isolated from the public.

14 (Board conferring.)

15 CHAIRMAN BECHHOEFER: Do the Applicants have
16 comments?

17 MR. SCHWARZ: Yes, Mr. Chairman.

18 To answer a few of the questions, the exclusion
19 area is, in part, coexistent with the lake. A part of the
20 lake is outside the exclusion area. There has never been, and
21 there is not now, any plan to allow the public on the lake.

22 In fact, there is a plan to exclude the public from
23 the lake. The lake area is now -- and I believe it certainly
24 will be -- fenced.

25 The analysis of the doses through waterfowl is set

j1

1 forth in Section 5.2.3 -- 5.2.3 of the Environmental Report.

2 In our answer, we did brief that with some other
3 items, but it is cited on page 24 of our reponse.

4 MR. NEWMAN: Our Appendix I evaluation, Appendix
5 .11-A of the FSAR, I think, before there be any contention
6 entertained with regard to meeting or not meeting Appendix I,
7 the Intervenor would have to address the specifics from which
8 that analysis was drawn.

9 CHAIRMAN BECHHOEFER: Staff?

10 MR. MC GURREN: The Staff's response, on page 19,
11 responded to this contention. We indicate there that the
12 contention is not specified, how the cooling lake will be
13 contaminated; and since the contention is only concerned with
14 the normal operation, it appears to challenge Appendix I of
15 the 10 CFR, Part 50.

16 Further, the Staff, as we indicate, and was
17 clarified by the Applicant, we don't know of any plans of the
18 applicant to allow public access to the cooling pond.

19 And with regard to the statement of Mr. Marke, that
20 I think it was a duck would be eaten and thereby giving an
21 individual a dose of radiation -- I think that is what his
22 concern is -- we consider that to be remote and speculative.

23 MR. NEWMAN: I would like to add to that that
24 pathway is, in fact, considered in the analysis. I believe he
25 has given you the citations.

j1
1 CHAIRMAN BECHHOEFER: Yes, he has.

2 MR. NEWMAN: You certainly want to take a look at
3 the environmental report of the enviromental stage of 5.2.3.
4 All of it -- to the best of my knowledge, all of the pathways,
5 crops, seafood, waterfowl, migratory birds, and so forth.
6 They are all taken into account in the analysis.

7 CHAIRMAN BECHHOEFFER: Contention 14 of Mr. Marke.
8 On this one, this seems to be maybe several contentions put
9 together. I would like to know what you are driving at. With
10 respect to the very first sentence, I wonder -- I would like
11 to find out whether is any part of the evacuation plan that
12 you know about, or have you looked at the Applicant's
13 evacuation plan and determined that it is not sufficient in
14 some way?

15 There is a plan that exists in the FSAR.

16 MR. MARKE: The reason for the emphasis on public
17 -- and my contention is the crux of the major portion of the
18 first of this argument, the fact that an evacuation plan is on
19 file at the NRC and in the city library in Bay City, that does
20 not indicate, in a broad sense, that that plan is public.

21 Well, it is not secret. It is not publicized to
22 the point that should there be an accident which -- around
23 which such plants are designed, and the reason for the
24 evacuation requirement, it seems to me that it is the
25 responsibility of the Applicant to make known to the people in

j1

1 the surrounding area the means and methods of evacuation and
2 isolation of the site.

3 I think that it is the public responsibility of the
4 Applicant to assure that persons, at least within the
5 immediate geographical zone, are made aware, to the best of
6 their ability, of evacuation plans.

7 I recognize that you cannot force the entire public
8 to understand, or comply with, or pay attention to an
9 evacuation plan.

10 However, I also recognize that it can be made
11 considerably more available to the public than filing in the
12 document section of a public library.

13 And I contend that it is the responsibility of the
14 Applicant to make that thing available in the interest of the
15 safety of the public.

16 CHAIRMAN BECHHOEFER: Do you have the comments on
17 the rest of it?

18 MR. MARKE: Yes, I hadn't read the rest of it. I
19 just got as far as you had.

20 CHAIRMAN BECHHOEFER: I wanted you to talk about
21 the rest of it, too.

22 MR. MARKE: Okay.

23 The second portion, the second sentence, deals with
24 contingency plans in the event of an accident. We have seen
25 several accidents in the last decade, wherein there were not,

j1

1 for instance, sufficient welders available to make repairs on
2 a plant that had suffered an accident.

3 And while it is certainly not anticipated that an
4 accident would happen, it must be considered in the overall
5 planning.

6 And, in the event of an accident that is not
7 contained internally to the containment vessel, and one which
8 allows the possibility of effluents escaping into the
9 environment, I would contend that the Applicant must develop
10 and/or make known the plans that they have in stock to repair.

11 And an instance, in the past two weeks' history, in
12 Dallas, of a non-nuclear nature, where they have suffered
13 serious power outages due to the ice storm, has caused them to
14 have to import workers from several states to repair that.

15 They were obviously quite unprepared for it, and,
16 to this date, power has not been restored to some of those
17 persons. And while power may not be considered a safety
18 hazard, unless you are very cold, the analogy that can be
19 drawn between that kind of an accident and the kind of an
20 accident that could occur at the South Texas project is
21 relatively clear.

22 Further, generic problems with various reactors
23 have been well identified and are being dealt with, I am
24 aware, by the NRC. And I contend that a portion of the
25 operating plan for such a plant must include the necessary

j1

1 changes and improvements which will be brought about as
2 solutions or fixes to those generic problems, amended by the
3 NRC.

4 I think that this is fairly well an economic issue
5 on the front, and plans should be made there; and, further,
6 wherein those problems are safety-related and could endanger
7 the surrounding populace or others, I think that contingency
8 plans need to be drawn.

9 I am sure that, to a degree, they are; but I would
10 contend, again, that it needs to be made public how this is
11 going to come about.

12 I have made note that all of the partners in the
13 construction project have contracts with essentially fixed
14 dollar amounts that are updated as cost overruns happen.
15 Those things are subject to political whims; they are subject
16 to the general economy; they are subject to the economic
17 encumbrances that all of us have to deal with day by day.

18 I am sure that the Applicant is no less sensitive
19 to those concerns than I and that preparations and plans
20 should be laid to make allowances for such eventualities,
21 beyond any doubt, during the lifetime of the plant, that will
22 occur.

23 That's all I would say about that.

24 CHAIRMAN BECHHOEFER: Applicants, comments?

25 MR. NEWMAN: First, on the publication of emergency

j1
1 plans, the Commission, as you probably know, has already
2 considered that matter, in the context of a proposed
3 rulemaking, and rejected a proposed rulemaking petition for
4 the public interest research groups, which would have required
5 publication, more widely than is now required under Commission
6 regulation, on the evacuation plan associated with any given
7 reactor.

8 I have a cite to that, if it would help the Board.
9 The cite is 42 Fed. Register 36326, in 1977.

10 The other point -- and this is very difficult to
11 find, because in this rather unfocused paragraph 14, there are
12 so many potential contentions that it is very difficult to
13 sort them all out.

14 The only other one, I think, that Mr. Marke talked
15 about, in any degree of clarity at all, is his concern with
16 respect to generic issues.

17 As the Board knows, the Appeal Board has spoken to
18 that question and requires now that generic issues be
19 addressed by the Staff in the safety evaluation reports on
20 each application for a construction permit and operating
21 license.

22 That will be done, Mr. Chairman, insofar as I can
23 divine the Appeal Board's mandate, in this case, as well,
24 without necessity for public hearing.

25 CHAIRMAN BECHHOEFER: Mr. McGurren?

j1

1 MR. MC GURREN: Mr. Chairman, the Staff stands on
2 its statement, on page 20 of its response. In essence, we
3 indicate that the Petitioner has failed to identify, in the
4 Applicant's FSAR, which is available, any deficiencies in
5 these documents.

6 Further, with regard to the Applicant's ability to
7 handle repair, we indicate that there is no reason given by
8 the Petitioner, indicating why the Applicant will not be able
9 to handle repairs or hire the necessary workers.

10 With regard to concern about ability to pay for
11 improvements, we feel that that is speculative.

12 MR. TREBY: I might add, as I have earlier stated
13 during this proceeding, the Staff does intend to address the
14 generic concerns of the safety evaluation.

15 CHAIRMAN BECHHOEFER: In contention 15 now,
16 Mr. Marke, you say that something is a supreme engineering
17 error. I would like to know why? Being a layman, I am not
18 sure why it is a supreme engineering, and please tell me.

19 MR. MARKE: Considerable of my previous generating
20 station experience has been for auxiliary stations powered by
21 diesel engines; and in the design and maintenance of such
22 facilities, the consideration of the placement of the fuel tank
23 immediately above an engine which stands considerable prospect
24 of catching fire as being its failure mode, doesn't seem to
25 employ good rationale.

j1

1 I would contend that it is a serious safety
2 problem to the workers on the site, if nothing else, as far as
3 fire hazard is concerned.

4 The standby engines, because of the nature of their
5 existence, are not exercised as regularly as would be
6 continuous-duty engines; and the possibility for the failure
7 in an engine which has remained idle for even a short period,
8 with large engines being asked to attain operating speed and
9 heat very rapidly, tends to produce a higher rate of failure
10 in this type of engine than continuous-duty engines.

11 It seems, as I said, a supreme engineering error to
12 place a flammable fuel tank immediately above an engine that
13 exhibits a higher potential than would most engines for
14 failure, including fire.

15

16

17

18

19

20

21

22

23

24

25

j1

1 CHAIRMAN BECHHOEFER: Is your contention that the
2 fuel tank shouldn't be there, it should be someplace else?

3 MR. MARKE: Yes. I would offer, as documentation
4 for that contention, that there is underway at this time an
5 investigation by Dr. Robert Pollard, at the Union of Concerned
6 Scientists, regarding this particular thing, which, it is my
7 understanding, he intends to petition the NRC, in a rulemaking
8 effort, to see if that question can be resolved and whether or
9 not that is indeed good design.

10 The response of the Applicant was that this would
11 provide for adequate suction head for the fuel lines in the
12 engine. And, as is very common in diesel engines, there are
13 driven transfer pumps, which have no difficulty whatsoever in
14 supplying fuel over a considerable range.

15 Again, by way of reference, I was involved in the
16 engineering of the Tracy Power Plant at Wadsworth, Nevada,
17 which has a back-up diesel generator — very large, of perhaps
18 the capacity that these generators are.

19 And fuel tanks, at that time, were similar to the
20 oil storage tanks' fuel dumps and were 500 yards from the
21 engine, and no suction problems were created or observed.

22 MR. NEWMAN: If I may respond, now that we have
23 heard what the supreme engineering error is, I would refer
24 Mr. Marke to Section 9.5 of the FSAR, where a fire hazard of
25 that configuration is discussed specifically.

j1
1 He has not in any way contravened the nature of the
2 analysis in that section, and I believe, without doing that,
3 he has no contention.

4 CHAIRMAN BECHHOEFER: Has he stated, for reasons
5 which he has supplied, the fuel tank should not be located
6 where it is located?

7 MR. NEWMAN: The analysis that has been done,
8 taking into account potential fire hazard, indicates that the
9 engineering configuration is acceptable and has other
10 attractive values, including the net positive suction head.

11 MR. MARKE: Mr. Chairman, I would remark, since we
12 have seen several instances where the Applicant has rebutted
13 contentions in this matter, by citing a previous report that
14 the operating history of the Nuclear Regulatory Commission in
15 no way infers that, simply because there is a prior report
16 that says this thing is safe, indicates that it is so for all
17 time.

18 This is why there are amendments made to the
19 Operating Guidelines' Rules of Practice of the NRC. This is
20 why we see rulemakings, and proposed rulemakings, and proposed
21 changes continually.

22 And I think that substantiation on the basis of the
23 fact that this was covered in a previous report is not grounds
24 for the rejection of the contingent and is merely rhetoric.

25 CHAIRMAN BECHHOEFER: I take your evidence, that

j1

1 you referred to, would tend to show -- or, you would intend to
2 show that there is a hazard, notwithstanding some of the
3 facts that the Applicant has pointed to?

4 MR. MARKE: Yes, sir. I think that can be easily
5 documented. It can perhaps be easily argued, as well, that it
6 is cheaper to put it on top, that there is, you know, this
7 case where the transfer pump fails and gravity will work. And
8 that is the reason for putting it up there, but it is very
9 easily arguable, from a technical standpoint, that the fuel
10 tank of any reciprocating engine, or combustive engine, ought
11 not to be located directly above it.

12 CHAIRMAN BECHHOEFER: Staff?

13 MR. MC GURREN: The Staff does not believe that
14 this alone is a sufficient basis to support the
15 particularization requirement of 2.71 just because the tank is
16 above the diesel.

17 The Applicant believes that further specification
18 is needed, in light of the fact that the Applicant's analysis
19 on this particular matter, as set out in detail in Chapter
20 9.5.4 of the FSAR.

21 CHAIRMAN BECHHOEFER: I take it the Staff has not
22 yet completed its review of that analysis that is correct?

23 MR. NEWMAN: If I may correct the record in that
24 regard, the safety evaluation report, the initial one, did
25 refer to the potential hazard associated with a location of

j1 1 the diesel -- the fuel oil tanks.

2 That matter was resolved in the supplement to the
3 safety evaluation report, issued in October 1975,
4 NUREG-75/075, Supplement 1, page -- or, Section 9.5.1. I
5 submit that without an analysis that suggests in what way the
6 Staff is wrong in its evaluation, there is no contention.

7 (Board conferring.)

8 CHAIRMAN BECHHOEFER: I would like to skip to 17
9 now. I would like to find out what you were saying here. You
10 claim that you have evidence that there isn't enough fuel
11 available to fuel this plant during its 40-year life; or what
12 is it?

13 MR. MARKE: --

14 CHAIRMAN BECHHOEFER: This isn't set up as a
15 contingent either.

16 MR. MARKE: It is probably very poorly phrased. My
17 contention is, if I could just restate it perhaps more easily,
18 that there does exist a finite supply and, by some opinions, a
19 limited supply of fuel for nuclear fission reactors without
20 the employment of breeder reactors or fuel reprocessing,
21 neither of which are available at this time.

22 If indeed there exists a real possibility that the
23 plant could not be fueled for its full operational lifetime,
24 the economic effect on the investors would be obvious.

25 The health hazard generated by having brought this

j1

1 plant on line, and ceasing operation before its useful
2 lifetime had been run, would be grossly exaggerated as
3 compared to the same health hazard distributed over the full
4 lifetime of the plant.

5 The understanding that I have, at this time,
6 regarding fuel agreements is that fuel is guaranteed, under
7 current contract, for 10 or 11 years. And beyond that, to the
8 best of my knowledge, no guarantee is available; and should
9 that be the case, my contention would be that there is an
10 increased health hazard, and minimum benefit, to the public,
11 provided because of that, and that this fuel shortage, if
12 indeed it exists, must be dealt with in the same fashion that
13 have dealt with — or that we have tried to deal with other
14 fuel shortages.

15 That should be considered of no less importance
16 and should be considered, due to the nature of the plant and
17 its operations, that, indeed, perhaps it does present a
18 greater health hazard to the populace than the curtailment of
19 operation, let's say, of a coal plant adjacent to it.

20 CHAIRMAN BECHHOEFER: In other words, you are
21 saying that the shortage of fuel could affect the cost-benefit
22 balance for this reactor?

23 MR. MARKE: Yes, sir.

24 CHAIRMAN BECHHOEFER: Applicants?

25 MR. NEWMAN: It is governed. We addressed that

j1

1 problem at page 41 of the brief. It is obviously addressing
2 an economic issues, which is outside the zone of interest --
3 protected damage.

4 CHAIRMAN BECHHOEFER: Mr. Newman, I think, in
5 response to my last question, he clearly indicated that it was
6 not an economic issue.

7 MR. NEWMAN: I was just about to say that his
8 attempt to stretch it to include something beyond an economic
9 issue is so tenuous as to be totally without the bounds of
10 credibility. It is an attempt to get by the Commission's and
11 the Appeal Board's construction that economic interest will
12 not be considered, absent any connection with the health and
13 safety interest or a protected environmental interest.

14 And it is nothing more than that. It has no basis
15 in fact. It is a purely speculative contention.

16 CHAIRMAN BECHHOEFER: Staff?

17 MR. MC GURREN: The Staff finds that this
18 contention is inadmissible on a different ground. We feel
19 that the Petitioner has failed to adequately show why the
20 Applicant will not be able to obtain the fuel supply after the
21 present contracts expire.

22 CHAIRMAN BECHHOEFER: They have referred to -- at
23 least, documentation that some people have referred to a
24 shortage of uranium. I take it that you don't think that is
25 specific enough?

j1

1 MR. MC GURREN: We don't believe that that alone is
2 specific enough, Mr. Chairman.

3 MR. MARKE: Mr. Chairman, if I might make one
4 defense remark, it is not my responsibility to prove that the
5 Applicant cannot provide the fuel sourcing until the end of
6 the plant's useful lifetime.

7 Rather, the burden of proof rests, in this case, on
8 the Applicant. That is what I am asking for, is to be shown
9 that if, in fact, that doesn't exist, then no associated
10 health hazard exists as a result of it.

11 MR. NEWMAN: Mr. Chairman, may I address that. I
12 believe that Mr. Marke has really crystallized the problems
13 that are involved in virtually all of contentions. He
14 operates from the assumption that the burden of proof is on
15 the Applicant, and that is true in any of the proceedings.

16 But he indicates further that it is up to the
17 Applicant to demonstrate the nonexistence of conditions which
18 he speculates may occur. The burden of coming forward with a
19 complete contention that has a basis is on the Intervenor or
20 the Petitioner..

21 If he is unable to do that, it is impossible for
22 the Applicant to address the question for there to be a
23 litigable issue and for the Board to have anything to decide.

24 And you will find that, I think, as you reexamine
25 this transcript, that what you have had presented to you is a

j1

1 series of vague questions and no assertions, based upon fact,
2 which would support the material issue to be litigated before
3 the Board.

4 CHAIRMAN BECHHOEFER: We will have about one more
5 contention, I think, and then we have some questions; but
6 Dr. Lamb has to leave early, and we will operate for the rest
7 of the day under our Quorum Rule, which permits two of the
8 Board Members to hear evidence, as long as one of them is the
9 legal Member.

10 MR. NEWMAN: Mr. Chairman, before Dr. Lamb leaves,
11 there is just a clarification, for the record, that he ought
12 to be aware of, too.

13 Earlier, you had asked whether or not there were
14 tech-specs governing the heat-up/cool-down rates of the
15 reactor. I had indicated, on the basis of information from
16 the Technical Staff, that there were none. That information
17 turns out to be in error.

18 The tech-spec curves that we found in the Figure
19 3.4-2 and 3.4-3 of the FSAR are here. (Indicating.)

20 CHAIRMAN BECHHOEFER: Turning to the contention on
21 decommissioning, number 20, your first sentence says, "In no
22 fashion has decommissioning been considered or plans laid
23 down."

24 I understand, at least, that the primary report
25 does deal with at least a proposal for decommissioning,

j1

1 although perhaps not in any precise detail.

2 MR. MARKE: You read that from number 20?

3 CHAIRMAN BECHHOEFER: The first sentence, page 30.

4 MR. MARKE: I'm sorry.

5 CHAIRMAN BECHHOEFER: I wondered what your basis --
6 what is your claim here that -- have you looked at the
7 analysis, the environmental report, or perhaps the construction
8 permit, FES, also.

9 MR. MARKE: As I told, I have not been able to
10 obtain a copy of the environmental report. I have received
11 excerpts from it, both Xeroxed and over the telephone, from
12 such sources, and so I have been able -- I am aware that the
13 City of Austin, if it can be considered a representative
14 example, has set aside some 4 percent of its total economic
15 commitment for the purpose of paying for decommissioning.

16 I would contend, that having viewed the state of
17 the art of decommissioning as it now exists, that this is not
18 close to the amount which could feasibly be considered
19 necessary to decommission the plant, were there a methodology
20 available, which, at this time, there is considerable question
21 as to whether, in fact, we do have a methodology.

22 I would refer you to pages 22 through 25 of the
23 23rd report of the Committee on Government Operations,
24 entitled "Nuclear Power Costs," which was issued in October of
25 1978. It was very recent.

j1

1 And their statement is, and I quote, "To
2 decommission, some operating plants may arrange from 25 to
3 100 percent of initial cost."

4 This was the case with the Elk River, Minnesota,
5 experimental reactor. They go on and talk about power
6 reactors and indicate, of the 67 known nuclear reactors now
7 operating at this stage, the Committee knows of only six where
8 provisions have been made for decommissioning.

9 These are operated by California Edison, which,
10 decommissioned, would cost 10 percent of capital cost;
11 Northeast Utilities Company in Connecticut; Pacific Gas and
12 Electric in California, 5 percent; Northern States Power
13 Company in Minnesota, 10 percent; Wisconsin Electric Power
14 Company, 12.5 percent; and Florida Power and Light, 19
15 percent.

16 I would add to that that the State of California,
17 which has, incidentally, placed a moratorium on new nuclear
18 construction until waste problems, including that of
19 decommissioning, have been resolved, has estimated, in a
20 report prepared by the energy office, attached to the
21 Governor's Office, headed by Wilson Clark -- I forgot the
22 exact title of that office -- of some \$216 million per 1000
23 megawatts, estimated decommissioning costs.

24 In addition, the State of New York, I understand,
25 has prepared estimates which run somewhat in excess of

j1 1 \$300 million per 1000 megawatts.

2 This is closer to the order of 25 to 30 percent on
3 the initial projected costs of the South Texas project.

4 Beyond that point, the matter of decommissioning,
5 which may well fall in the category of being generic, as far
6 as this proceeding is concerned, has not been defined well
7 enough so that the Applicant -- or anyone else, for that
8 matter -- can at this time define either how much it is going
9 to cost or they are going to go about, and how, in fact, we
10 will protect ourselves from the remaining danger of that
11 reactor over the period for which it is considered dangerous.

12 The estimates as to the longevity of material, such
13 as might be found there, run into the many hundreds of
14 thousands of years.

15 The most recent estimate, put out by persons
16 generally involved in the nuclear industry, indicates that it
17 won't be significantly active beyond the period of 700 years.
18 I am willing to accept that figure, or one at even half that
19 rate, if necessary, and contend that it is, in fact,
20 impossible for the Applicant to make plans to decommission and
21 care for a reactor for a period of time that is, at the
22 minimum, twice as long as this country is old and perhaps
23 several times that amount.

24 I consider that this is one of the very main issues
25 which needs to be dealt with in safety considerations. The

j1

1 decisions that we make are going affect your children and
2 mine for some generations to come.

3 I want, beyond anything -- even more than I want to
4 be vague, as I have been accused of several times -- I don't
5 want to be alarmist, but I think we have a very real
6 responsibility to consider those issues. And to sidestep
7 them, or to dismiss them as having been dealt with in an
8 environmental report or a safety report, and not apply maximum
9 attention to them, we would be neglecting our duty.

10 CHAIRMAN BECHHOEFER: I noticed the Commission's
11 Regulations, 10 CFR Part 50, Appendix C, they specify that the
12 Applicant must set forth the estimated cost of permanently
13 shutting down the facility and maintaining in a safe
14 condition.

15 Are you saying that the Applicant has not fulfilled
16 this standard, at least insofar as the City of Austin is
17 concerned, and they have not shown that they can meet these?
18
19
20
21
22
23
24
25

j1

1 MR. MARKE: My contention is that, with respect to
2 this Applicant and with respect to any o. of them, we are not
3 capable. We demonstrated, at this point, that we don't know
4 to handle problems of that magnitude. We are not able to
5 build containments that we have fantasy of lasting for that
6 kind of time.

7 And I would contend that until some realistic
8 plan -- even if it should be in error -- can be proposed --
9 which will essentially perpetually store that plant, once it
10 has been decommissioned, can be proposed, that the
11 consideration of an operating license is out of order.

12 CHAIRMAN BECHHOEFER: I am trying to tie this into
13 the Regulations of the Commission, what they might require.
14 That is why I was asking these questions.

15 I would like the Applicants to comment on what
16 Mr. Marke has said.

17 MR. NEWMAN: I think the Staff has covered the
18 precise point you were just raising, the the requirments on
19 the Applicant to identify the resources, to complete
20 decommissioning, are specified in Appendix C, and the
21 Applicant has, of course, complied with that.

22 Estimates of the cost of decommissioning will be
23 found in the ER at Section 5.9.

24 I can't resist commenting, however, on Mr. Marke's
25 description of what has been going on in California, having

1 appeared before the California Energy Resources Conservation
2 and Development Commission for two years, in another
3 proceeding, I am somewhat familiar with contention involving
4 decommissioning costs.

5 And one of the common things that is done in
6 throwing numbers around is to take a decommissioning cost in
7 1975 dollars and compare it to a construction cost that may be
8 estimated in the year-2000 dollars, and thereby show that the
9 amount set aside as a percentage of construction costs is too
10 low.

11 It can be -- the game involved simply is the
12 slipping off -- in and out of 1975 dollars versus the
13 year-2020 dollars.

14 And, finally, I think the thing that is really
15 dispositive of this whole issue is the fact that it is a
16 matter under active consideration for rulemaking by the
17 Commission.

18 I refer you to the Federal Register for Monday,
19 March 13th, 1978, page 10370, in which the Commission
20 announces that it is considering amending its Regulations to
21 provide more specific guidance on decommissioning criteria.

22 And in that connection, Mr. Chairman, as indicated
23 in the brief at page -- of response at page 42, this is
24 clearly within the Douglas Point Doctrine. It is a matter
25 which is now, or is about to become, a matter of rulemaking

jl 1 before the Commission and is not appropriate for consideration
2 in an individual licensing proceeding.

3 CHAIRMAN BECHHOEFER: Is this a rulemaking where
4 the Commission has indicated, in any way, what should be done
5 about questions which may be pending?

6 MR. NEWMAN: No.

7 CHAIRMAN BECHHOEFER: I know the Douglas Point one
8 was one where the Commission had said, "Leave this to
9 rulemaking, and don't take this up in individual proceedings."

10 It is very clear, in that situation, the Boards
11 were not authorized to look at matters that were involved in
12 that rulemaking. I think that was the S-3.

13 MR. NEWMAN: What we are talking about here is
14 Appendix C, whether it is going to change if Appendix C is as
15 stated now, then the Applicant's complied with that, and
16 Mr. Marke's problem is with Appendix C and not with the
17 Applicant's statement.

18 CHAIRMAN BECHHOEFER: Under Appendix C, could not
19 a Petitioner come in and say, "You are required to set forth
20 the funds you estimate, or are estimating, to be used for
21 decommissioning. Those are out of the ballpark. You need --
22 and we have proof to show, that you have to show there is much
23 more."

24 Don't you think that is a valid issue?

25 MR. NEWMAN: No, Mr. Chairman. I think that a

j1

1 person can walk into a proceeding and say, "I think it is 10
2 times that."

3 CHAIRMAN BECHHOEFER: Wouldn't a study that shows
4 -- what if a study does show it is 10 times?

5 MR. NEWMAN: I have seen no evidence of a study
6 that shows that it is 10 times the amount estimated by the
7 Applicant, or any other basis, in Mr. Marke's contention
8 number 20.

9 There is not a single study that is identified in
10 that contention. There is not a single factual basis for that
11 assertion.

12 CHAIRMAN BECHHOEFER: You are saying that the
13 contingent has no basis?

14 MR. NEWMAN: It has no basis.

15 CHAIRMAN BECHHOEFER: All right.

16 Mr. McGurren?

17 MR. MC GURREN: Again, the Staff is going to stand
18 on its response on page 24. since we believe the Petitioner is
19 challenging the Commission Regulations, is requesting
20 Applicants to provide more than is required by the
21 Commission's Regulation.

22 DR. LUEBKE: Is there not a national study by the
23 Battelle Memorial Institute that treats this subject and
24 discusses several ways of decommissioning and makes cost
25 estimates several ways?

j1

1 MR. NEWMAN: The answer to that, Dr. Luebke, is,
2 yes, there are a number of studies outstanding, none of which
3 have been referred to by Mr. Marke, none of which indicate
4 that the Applicant's estimates are wrong.

5 (Board conferring.)

6 CHAIRMAN BECHHOEFER: At this point --

7 MR. MARKE: Mr. Chairman?

8 CHAIRMAN BECHHOEFER: Yes.

9 MR. MARKE: I have one further comment that I would
10 like to mention, in lieu of the fact that what we may term as
11 the state of the art indicates that costs are considerably in
12 excess of those made public; in lieu of the fact that I have
13 been made aware -- although I have not verified -- that the
14 intent of the Applicant is to set aside approximately
15 \$30 million for the decommissioning of the South Texas
16 Project; in lieu of the fact that major evidence is presented
17 in the 23rd Report of the Committee on Governmental
18 Operations; in lieu, additionally, of the fact that the
19 subject is dealt with somewhat in a very recent report, of
20 October 1978, of the Interagency Review Group, to the
21 President; and, further, in lieu of the fact that the State of
22 Texas has submitted a petition to this Board in which they
23 say, and I quote, "The State of Texas is vitally concerned
24 with, among other issues, the proper construction of any
25 nuclear plant in Texas, the cost and benefits of any nuclear

j1

1 power plant, and the ultimate disposal and decommissioning of
2 such plant.

3 "On the decommissioning issue, even the NRC Staff
4 has suggested that decommissioning costs will be greater than
5 those set forth in the environmental report on the South Texas
6 Project," quote.

7 And the reference here is the footnote states that
8 "The NRC has stated that decommissioning costs could be
9 \$70 million per 1000 megawatts. See hearings on NRC
10 authorizations, hearings before Subcommittee on Energy and
11 Power of the Committee on Interstate and Foreign Commerce of
12 April 29th and May 7th, 1977, pages 355 and 356."

13 And it goes on, and not related to that.

14 In lieu of the fact that I have particularly
15 dedicated a considerable portion of my professional career to
16 the investigation and research of this particular item, I
17 would contend that, at the very least, as a matter of
18 discretion, this Board should grant that a contention is
19 present.

20 DR. LUEBKE: Your contention is it is more
21 expensive than you think?

22 MR. MARKE: The contention is two-fold. It is more
23 expensive than has been allowed, and that, in fact, it may not
24 be possible.

25 CHAIRMAN BECHHOEFER: At this point, the Board has

1 asked the questions that we had to ask.

2 If any of the parties has anything further that you
3 think we should be informed of, we would be pleased to listen
4 -- the Petitioners, Applicant, or the Staff.

5 Ms. Ryan?

6 MS. RYAN: No.

7 CHAIRMAN BECHHOEFER: Is there anything we haven't
8 covered that you would like to advise us on in particular?

9 MS. RYAN: If the further contentions that we have
10 made clear, I have no further comments to make.

11 MR. NEWMAN: Mr. Chairman, I just have a very brief
12 commen.. I think the Board has obviously been engaged in a
13 very serious and thorough-going search to find out if there is
14 a contention that is worth litigating in this proceeding.

15 I think that what you have heard, instead of
16 contentions, is facts asserted, with reasonable bases
17 identified. I don't believe that you have heard a single
18 contention that is worthy of litigation.

19 And I think, as I indicated at the outset of my
20 remarks, that is a matter that is of peculiarly significant
21 importance at the operating license level.

22 And so I would urge that, as you examine the
23 transcript, the record you have developed today, that you keep
24 in mind the importance of assuring yourselves that a
25 reasonable, factual predicate has been laid for each of the

j1

1 proposed contentions offered by Mr. Marke and the Citizens
2 Committee of San Antonio.

3 I want to thank you for your patience, by the way.

4 CHAIRMAN BECHHOEFER: The Board, of course, now has

5 --

6 The Staff?

7 MR. MC GURREN: The Staff has nothing further to
8 add, Mr. Chairman.

9 CHAIRMAN BECHHOEFER: The Board has permitted the
10 two potential intervenors to file additional documents by a
11 week from Friday.

12 I hope we have explained the type of thing that
13 should be addressed.

14 I think the Applicants and Staff should have about
15 10 days from the receipt of those documents -- receipt being
16 five days after they are mailed -- to respond, if the 10-day
17 period is the normal time for responding to them, the
18 intervention petitions.

19 Following our receipt of those responses, we will
20 take some action.

21 So, at this stage, the conference is concluded --

22 MR. TREBY: Mr. Chairman, I thought that when you
23 asked for additional comments, you were relating -- you were
24 concerned about just the two petitions we have here.

25 The Staff has one comment we would like to make

11 1 with regard to a petitioner who is not here today.

2 The Staff did receive a petition from a
3 Mr. McGowen and responded to that on November 14th, 1978, in
4 which we set out --

5 CHAIRMAN BECHHOEFER: I am aware of that.

6 I asked if Mr. McGowen was here, and I did not hear
7 a response.

8 MR. TREBY: We would just like to note --

9 CHAIRMAN BECHHOEFER: The Board is prepared to rule
10 on that one.

11 MR. TREBY: Fine.

12 I have one other matter.

13 CHAIRMAN BECHHOEFER: Right. At the same time as
14 we rule on the others, we will rule on his.

15 MR. TREBY: I have one other matter I would like to
16 raise, and that is Mr. Marke has indicated, once or twice
17 during the course of this prehearing conference, that he had
18 requested a copy of the FSAR from the Staff, and we had been
19 unable to provide that.

20 We discussed this informally, and it was my
21 impression at that time that he was really talking about the
22 -- an FES, which is a Staff document, but I guess I
23 misunderstand -- that he, in fact, really does want a copy of
24 the FSAR, which is an Applicant's document.

25 As the Board may be aware, the Commission changed

j1

1 its regulation with regard to how many copies an Applicant has
2 to file with the Staff.

3 And the Staff found it is a very small number of
4 copies, and the Staff does not have available additional
5 copies of the FSAR. All we would be able to do would be to
6 pass on the request to the Applicant.

7 And perhaps, maybe, we could determine right now
8 whether or not the Applicant can provide Mr. Marke with a copy
9 of the FSAR. I would note that it is available in the Public
10 Document Room, which is in the library down in Bay City, but
11 that may not be convenient to Mr. Marke.

12 MS. RYAN: Mr. Chairperson, I would like to clarify
13 documents that we can submit within a week from tomorrow. I
14 am understanding that we clarify by written letter that -- who
15 was the official representative -- also, to clarify, with the
16 Fermi decision, our membership.

17 And I am wondering if we are to --

18 CHAIRMAN BECHHOEFER: The fact that the members you
19 listed near the plant are the authorizing group to represent
20 and document the contention, that type of thing is outlined in
21 the Fermi order.

22 MS. RYAN: It meets the requirements?

23 CHAIRMAN BECHHOEFFER: The Fermi order; it held
24 that it did.

25 MS. RYAN: Thank you.

j1

1 And then I was wondering about the contentions
2 themselves. I saw deficiencies in our own contentions, as far
3 as being more specific.

4 Did you want us to clarify within the week?

5 CHAIRMAN BECHHOEFER: No. I think, at this point,
6 we will have to find that at least one of your contentions, as
7 it stands now, and as you have explained them to us today, in
8 order to admit you, you or your group will have to meet the
9 requirements. We will have to find at least one.

10 If we should do so, there may be further
11 opportunity to perfect others and there may not. I just don't
12 know. But we will have to consider what we have before us
13 now, plus what you have told us about — we have asked a
14 number of questions to help clarify in our minds what they
15 were.

16 MS. RYAN: Thank you.

17 CHAIRMAN BECHHOEFER: With this, the prehearing
18 conference is concluded.

19 (Whereupon, at 6:00 p.m., the prehearing conference
20 was adjourned.)

21

22

23

24

25