

ORIGINAL

# OFFICIAL TRANSCRIPT OF PROCEEDINGS

**Agency:** Nuclear Regulatory Commission

**Title:** Combustion Engineering, Inc.,  
Hematite Fuel Fabrication  
Facility License No. SNM-33

**Docket No.** 70-36-MLA

**LOCATION:** Hillsboro, Missouri

**DATE:** Wednesday, October 25, 1989 **PAGES:** 38 - 55

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JOHN RILEY & ASSOCIATES, LTD.

1612 K St. N.W., Suite 300  
Washington, D.C. 20006  
(202) 293-3950

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PDR ADOCK 07000036  
C PNU

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the matter of: :  
COMBUSTION ENGINEERING, INC., :  
Hematite Fuel Fabrication : Docket No. 70-36-MLA  
Facility License No. SNM-33 :

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Wednesday, October 25, 1989

Viking Room

Student Center

Jefferson College

Hillsboro, Missouri

The above-entitled matter came on for pre-hearing  
conference, pursuant to notice, at 10:18 o'clock, a.m.

BEFORE:

CHARLES BECHHOEFER, ADMINISTRATIVE LAW JUDGE

ALSO PRESENT:

DR. JERRY KLINE, ADMINISTRATIVE LAW JUDGE

U.S. Nuclear Regulatory Commission

## 1 APPEARANCES:

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On behalf of the Applicant:

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NEWMAN AND HOLTZINGER

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BY: MICHAEL A. BAUSER, ESQUIRE

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MAURICE AXELRAD, ESQUIRE

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1615 L Street, N.W.

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Washington, D.C. 20036

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On behalf of the Intervenor:

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STATE SENATOR JEREMIAH W. NIXON

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MOLLY MOORE, STAFF ASSISTANT

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Room 429

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State Capitol

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Jefferson City, Missouri 65101

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MARTHA DODSON

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412 Mississippi Avenue

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Crystal City, Missouri 63019

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

[10:18 a.m.]

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2  
3 JUDGE BECHHOEFER: Good morning, ladies and  
4 gentlemen. We're starting a little late this morning. At my  
5 encouragement, the parties have been meeting to try to settle  
6 their differences and we've been delayed for that reason. Just  
7 to have the formal record reflect who's participating, could  
8 the -- well first, my name is Charles Bechhoefer, and I'm the  
9 presiding officer.

10 At my left is Dr. Jerry Kline, who's an environmental  
11 scientist and is assisting me with the issues in this case.  
12 Could the parties now identify themselves. Mr. Bauser or  
13 Axelrad or both?

14 MR. BAUSER: Good morning Judge Bechhoefer, Judge  
15 Kline. My name is Michael Bauser. I'm with the Washington,  
16 D.C. law firm of Newman and Holtzinger, and with me this  
17 morning is Mr. Maurice Axelrad, also of that firm.

18 JUDGE BECHHOEFER: Senator Nixon?

19 MR. NIXON: Good morning, Your Honor. My name is Jay  
20 Nixon, state senator representing this district and also an  
21 individual and party in this matter, and reside in Hillsboro,  
22 Missouri. This is my staff assistant, Molly Moore, who's here  
23 assisting me this morning.

24 JUDGE BECHHOEFER: Ms. Dodson?

25 MS. DODSON: I'm Martha Dodson from Crystal City.

1 JUDGE BECHHOEFER: I would like to inquire for the  
2 record has anyone seen Mrs. Sisk, who's also an intervenor?

3 MR. BAUSER: Judge Bechhoefer, we have not seen Mrs.  
4 Sisk. We have been attempting to reach her since the beginning  
5 of last week. The last time I called, I left a message  
6 concerning the meeting that we held yesterday to attempt  
7 settlement among the parties. I left that message on her  
8 answering machine, but as I say, we have not encountered her in  
9 the last week or more.

10 MR. NIXON: For the record, Your Honor, I have --  
11 this Jay Nixon again -- I have not talked orally with her. She  
12 did receive, or at least was sent from my office, a letter  
13 indicating the time and the meeting place, of both last night's  
14 meeting as well as today's, as well as other correspondence  
15 from me.

16 I have received nothing back from her and no phone  
17 calls or other correspondence that I'm aware of. I have no  
18 knowledge as to here whereabouts now.

19 JUDGE BECHHOEFER: Well, I might say I have tried to  
20 reach her as well, and have not been able to do so. Mrs. Sisk  
21 did not submit any statements of issues or anything like that.  
22 She presumably received notice that she should do that. So we  
23 will have to proceed without her. Is there a spokesman for  
24 what went on this morning

25 MR. AXELRAD: Judge Bechhoefer, as you are aware, we

1 have spent a good part of last evening and this morning  
2 conferring with Senator Nixon and Mrs. Dodson. We did so in  
3 response to your encouragement and your order that the parties  
4 attempt to sell the issues among them, consistent with NRC  
5 policy encouraging the settlement of issues among parties.

6 The discussions were very successful. The parties  
7 discussed the matters that were of concern to Senator Nixon and  
8 to Mrs. Dodson. We have been able to reach agreement on a  
9 joint stipulation, and I will hand that up to you and to the  
10 Court Reporter, and the stipulation recites several agreements  
11 that have been entered among the parties, and provides they  
12 will become effective upon the presiding officer's approval of  
13 the withdrawal of the petition of Senator Nixon and Mrs. Dodson  
14 and upon the termination of these proceedings.

15 At this point, I will hand that up, but the -- I'm  
16 sure Senator Nixon and Mrs. Dodson will want to make a  
17 statement.

18 [Joint stipulation document handed to the ALJ.]

19 MR. AXELRAD: Your Honor, I'd like to make one  
20 additional very brief statement, because I'd like to make sure  
21 that this is understood also. A number of the matters  
22 addressed in the joint stipulation are matters which, in the  
23 view of Combustion Engineering, are not matters which would  
24 necessarily or properly be part of this hearing if the  
25 hearing were to be continued.

1           What we have tried to do in the stipulation is to  
2 address the real concerns of Senator Nixon and Mrs. Dodson, and  
3 therefore we've been willing in the spirit of accommodation, to  
4 deal with those matters in the stipulation. That's why those  
5 matters are in there.

6           MR. NIXON: If I may, Your Honor. I would further  
7 mirror counsel's statement along those areas. The agreement is  
8 a much broader agreement than the mere specific legal issues  
9 addressed concerning the additional pellet line application in  
10 this situation, and I both thank and applaud both counsel as  
11 well as those members who have represented Combustion  
12 Engineering to myself and Mrs. Dodson in this matter, for being  
13 willing to broaden their discussions and broaden the  
14 stipulation to cover issues outside the rather narrow scope of  
15 the framework of the legal issues involved in this matter.

16           [Pause.]

17           JUDGE BECHHOEFER: I have two questions about two of  
18 the terms. I don't have any problems with them, but actually  
19 both of them relate to Condition 6. First, I wondered whether  
20 the parties had any agreement on who or what the off-site  
21 response organizations will be.

22           MR. NIXON: Our discussions included local emergency  
23 police, sheriff, fire authorities.

24           JUDGE BECHHOEFER: I see, but you do not intend to  
25 designate any here, I take it?

1 MR. NIXON: It was not our intent to designate, for  
2 fear of limitation or ordering in a rather what could --  
3 potentially assuming problems which we hope never occur, be a  
4 rather important and quick time for other action and we did not  
5 want to hold them to that, but merely indicate that those off-  
6 site, local was the key for us, emergency folks should be  
7 identified.

8 I'm not adverse to including it. I don't know what  
9 the position of the others are. But it was discussed and then  
10 left in that open fashion. I don't know if -- Mr. Axelrad, do  
11 you have anything you would like to add to that?

12 JUDGE BECHHOEFER: Yes. My other question about the  
13 same provision is, is that effective upon approval of this  
14 stipulation, rather than upon the effectiveness of the NRC  
15 regulations, which cover that in more detail, which is next  
16 April I believe.

17 MR. AXELRAD: This is effective upon the approval of  
18 the stipulation.

19 JUDGE BECHHOEFER: So it's unlike decommissioning,  
20 one which is effective when the Commission's rules go into  
21 effect.

22 MR. AXELRAD: Yes.

23 JUDGE BECHHOEFER: Okay.

24 MR. NIXON: Yes. It's our understanding, Your Honor,  
25 that this would be upon approval of the stipulation, and then



1 withdrawal of petitions, that this would be an immediate --

2 JUDGE BECHHOEFER: Right, right.

3 MR. NIXON: And I don't mean to say by that that we  
4 spent the last two hours or four hours last night with  
5 Combustion Engineering consistently fighting that particular  
6 provision. We have had some difficulty with probably too many  
7 lawyers in the room trying to come up with exact language we  
8 could all agree to, but --

9 JUDGE BECHHOEFER: No. I was asking the question for  
10 clarification rather than for anything else. Judge Kline would  
11 like to ask a question.

12 JUDGE KLINE: Yes. I have one question on  
13 paragraph 5. The first sentence refers to an agreement by  
14 Combustion Engineering to provide an additional remote sampling  
15 site. I would just wonder if the parties could clarify what  
16 "additional remote sampling site means" and make sure that --  
17 it seems to me vague at the moment, but --

18 MR. AXELRAD: Right. Well, there were two remote  
19 sampling sites which are maintained by Combustion Engineering  
20 right now. We have indicated to the NRC that we would propose  
21 to add a third one. They are reviewing that subject, including  
22 where the location of that additional sampling site would be.  
23 As soon as we get the NRC's approval of the location, we will  
24 install it.

25 MR. NIXON: If I might further amplify and if I say

1 anything that's improper, let me know. In our discussions and  
2 I believe in some of the things that have provided the NRC by  
3 Combustion to date, it is their intention of this additional  
4 off-site sampling site, monitoring sampling site, to be  
5 generally in the east-northeast region from the plant, which is  
6 sort of the general area of where the prevailing winds go.

7 That is, the calculations and the determinations that  
8 they're attempting to make and work through is that working  
9 with the NRC, it's their intention to try to put this site at a  
10 place where the generally-prevailing winds go.

11 MR. AXELRAD: I might just say one thing though.  
12 Senator Nixon used the term "off-site." This is a remote  
13 monitoring station. It's not at the plant, but it's within --  
14 I believe within the site boundaries but you know, off in that  
15 direction. So it's not, quote "off-site." It's remote.

16 JUDGE KLINE: I understand that. This stipulation  
17 was not intended then to specify the location of that site now;  
18 is that right?

19 MR. AXELRAD: No. That is something that the NRC is  
20 going to have to approve.

21 JUDGE KLINE: And I understand that the parties have  
22 agreed to accept whatever NRC finally approves? Is that the  
23 intent?

24 MR. NIXON: I don't know that anybody here is willing  
25 to agree to anything that's going to happen tomorrow or the

1 next day. It is our fervent hope that the additional expertise  
2 that the NRC can provide in these areas will make sure that  
3 this remote sampling site is in an area that's the best place  
4 to put it. It's my assumption that through the work of the NRC  
5 and Combustion, it's to everyone's best interest that it be at  
6 that place and we have seen nothing, I have seen nothing, I  
7 don't think, from Ms. Dodson.

8 But I have seen nothing to indicate that anyone, be  
9 it the NRC or Combustion, has a desire to put it any place  
10 except what would be the most valuable place generally as far  
11 as the wind direction, as far as the remote site in that area.

12 But we would -- I would at this point, you know, it's  
13 my assumption the NRC will work closely with them to choose  
14 that best site, but it's -- you know, if for some strange  
15 reason some other arm of the NRC decides that this remote  
16 sampling site should be in West Memphis, it will be hard for me  
17 to say I'm going to hold mute and sit quietly on that.

18 But I have had no -- I have no belief as we sit here  
19 right now and no fear and no misunderstanding and no  
20 intrepidation whatsoever about the NRC and Combustion being  
21 able to come up with what is both the best and the most  
22 applicable site.

23 JUDGE KLINE: Well, I'm just trying to assure that  
24 this language actually resolves the controversy, and I  
25 understand you're not going to make any ironclad guarantees,

1 but presuming good faith, the language as written does resolve  
2 the controversy.

3 MR. NIXON: We are excited. I am excited about the  
4 forthrightness and the willingness for Combustion to expend  
5 additional resources of theirs, to spend additional dollars for  
6 additional monitoring devices because of the procedure we're  
7 here with is one of the -- we are all happy with that.

8 JUDGE KLINE: Okay.

9 JUDGE BECHHOEFER: And I might add we would not have  
10 before us -- whether or not we even had jurisdiction to do it,  
11 we would not have before us an adequate record to pinpoint and  
12 say the best spot is here. So we would not try to do that. We  
13 would leave that to the NRC Staff, which has the resources to  
14 perform those investigations.

15 I believe that I could accept this, if you would  
16 wish, right now as long as the parties -- it isn't signed, but  
17 as long as the parties put on the record that they do accept  
18 it, and I could accept it, make it effective immediately,  
19 because I would also --

20 MR. AXELRAD: Do you think this could be made an  
21 attachment to the transcript, an exhibit, and I think each  
22 party could stipulate that they would agree to a joint  
23 stipulation.

24 JUDGE BECHHOEFFER: Right. Well, if they indicated on  
25 the record, and I would be prepared to accept that. I would

1 also have the record reflect that I would have to -- well, the  
2 coalition has asked to be dismissed or to withdraw, and I would  
3 accept that. I do accept that.

4 Ms. Sisk has not answered or filed issues or really  
5 participated during the last several weeks, and I would propose  
6 to dismiss her intervention for lack of participation since she  
7 has not officially joined this stipulation. If she still is a  
8 party, I would dismiss her for failure to file various matters  
9 and appear here or request an extension of some sort. I regret  
10 if it she's ill, but I think the appropriate action would be to  
11 accept this and to dismiss the proceeding.

12 MR. NIXON: Your Honor, if I might, at some point  
13 here, in a moment or two, if I could have an opportunity to  
14 make a statement concerning the stipulation, I would appreciate  
15 that.

16 JUDGE BECHHOEFER: We'll do that right away.

17 MR. NIXON: Okay. Whenever. I don't know when that  
18 step might be.

19 JUDGE BECHHOEFER: Go ahead right now.

20 MR. NIXON: Okay.

21 First, to reiterate, I would like to thank the NRC  
22 and the various staff members that have been especially helpful  
23 to us in this matter, both in the technical and in trying to  
24 understand many of the problems, as well as providing -- since  
25 the beginning of this process, the Nuclear Regulatory

1 Commission and its various staff members have travelled from  
2 Washington and Chicago and come down here, for both a public  
3 meeting which was held, as well as on-site investigations of  
4 Combustion, as well as this proceeding, as well as last night's  
5 proceeding. And for the citizens of Jefferson County that buy  
6 my intellectual standing as well as my Senate standing, I would  
7 like to thank you and the others who have been involved, as  
8 well as Combustion Engineering and their staff and their  
9 people, for the openness they have shown to me, and the  
10 openness and the respect and cordiality with which they have  
11 dealt with us on all of these issues.

12 That being said, I want to very quickly go through  
13 and make a short statement here concerning the stipulation. I  
14 feel that but for the actions of Ms. Dodson and myself and  
15 others who have been active in this area, that many of the  
16 things that are agreed to here would not have been agreed to  
17 because there wouldn't have been a forum for them.

18 And I also agree with counsel for Combustion as well  
19 as members of Combustion that many of the things dealt with in  
20 the stipulation are not those issues directly related to the  
21 pelletizing, and I am overjoyed and elated at their willingness  
22 to open up our discussions and negotiations into a broader  
23 arena than merely the narrow legal grounds with which we were  
24 discussing some of the pelletizing processes.

25 That prefatory stuff being said, I will very quickly

1 go through my remarks, which is, one, I think it's important  
2 for the people of this area to understand that what is  
3 happening here is, and the stipulation specifically reflects,  
4 that no more product, no more uranium -- and that's not the  
5 proper term -- no more product will be coming in, and no more  
6 waste will be going out of the plant because of what's going on  
7 here, and that Combustion Engineering's intention is to move  
8 waste away from the Hematite facility as quickly and as  
9 efficiently as possible, and it is not neither their desire nor  
10 their intent to store additional waste on-site. It is, in  
11 fact, their desire to continue to move that to licensed low-  
12 level radioactive waste facilities in other areas as quickly  
13 and as efficiently as possible.

14 And some statements that have been made concerning  
15 the ability to store waste there and the desire to store waste,  
16 -- there may have been some misstatements or inaccuracies in  
17 that, and I am convinced by their discussions and by their  
18 statements that they are going to continue their intention and  
19 continue their process of moving this waste off the site as  
20 efficiently as possible.

21 Regarding paragraph four of the stipulation, we are  
22 also excited that there will be additional financial assurances  
23 concerning decommissioning, and that Combustion Engineering, on  
24 or before July 27th, 1990, with the new NRC regulations, will  
25 be providing greater independent assurance of the availability

1 of these funds should decommissioning become necessary at any  
2 time in the future.

3 I'm also, in paragraph five, extremely excited that  
4 the Combustion Engineering on their -- because of this process  
5 and others, they are willing to providing the additional remote  
6 sampling site, and our discussions have been indicating that  
7 that would be downwind, generally downwind. And I think that  
8 is not only useful, but important, and will add greatly to the  
9 ability of all in this area to discern whether or not there are  
10 any problems, and get an immediate response should there be  
11 any.

12 We then turn to paren six, which deals with, and I  
13 think speaks for loudly for itself, and is one of the key  
14 issues, and one of the key issues that we discussed in great  
15 specificity, which is that in the event of an off-site release  
16 similar or more severe than the one which occurred in August,  
17 Combustion Engineering will notify, as appropriate, the  
18 emergency response folks, and I think that is a key in this  
19 particular area, and also paren seven, dealing with the  
20 continuing regulatory requirements concerning the evaporation  
21 ponds generally behind our eastward, and their continuing  
22 efforts to work with the NRC to alleviate whatever problems may  
23 be there.

24 Generally, this effort made by all parties I think  
25 has reached an agreement which is to the great betterment of



1 the people of not only Hematite, but also of Jefferson County,  
2 and the areas, and also those folks who live in close proximity  
3 to the plant, I think are gaining dramatically under this. And  
4 I am excited and elated that all parties have worked so  
5 diligently together to make sure that the citizens near that  
6 plant, as well as those of the Jefferson County, will be  
7 receiving additional information, additional financial  
8 security, and additional sampling efforts that can be of great  
9 benefit to all of us.

10 Also, the final point is under paren five, where it  
11 deals with the additional remote sampling site, Combustion  
12 Engineering is also agreeing to perform radiation surveys  
13 including, as appropriate, off-site surveys, which I think is  
14 another important step towards alleviating any potential fears  
15 that those residents in that area may have of problems. And  
16 this step, I think, is another fine step forward for all of us  
17 which will continue, hopefully, as years go by to alleviate any  
18 misinformation or fears, and also to indicate if fears are  
19 necessary, very quickly and efficiently and with the highest  
20 level of technology and expertise that's currently out there.

21 I'm excited and happy and support the stipulation,  
22 and then thank all of the parties involved, and especially Ms.  
23 Dodson for her unflinching efforts and inability to be bored by  
24 reading regulations, and her continuing concern for the people  
25 of that area. It has been an interesting and educational

1 process, and I thank her and others for their help.

2 JUDGE BECHHOEFER: Ms. Dodson, do you have any sort  
3 of statement you wish to make, or did Senator Nixon say it all?

4 MS. DODSON: Senator Nixon has said it all. I do  
5 thank you for coming. I thank Senator Nixon for his  
6 compliments. I have nothing further to add.

7 MR. AXELRAD: I just have a couple of words.

8 JUDGE BECHHOEFER: Yes.

9 MR. AXELRAD: I would like to thank both Senator  
10 Nixon and Ms. Dodson for their very cooperative attitude and  
11 for their willingness to spend time with us until late last  
12 night and this morning to achieve these agreements.

13 I would just add that, of course, the terms of the  
14 joint stipulation which is approved for the Board speak for  
15 themselves, and I will not comment on anything further than was  
16 said in description of the provisions themselves. I think that  
17 this joint stipulation is representative of the agreement of  
18 the parties.

19 JUDGE BECHHOEFER: All right. Well, I accept the  
20 stipulation, as I have said. I will approve the withdrawal of  
21 Senator Nixon and Ms. Dodson subject to this stipulation. I  
22 will also approve the requested withdrawal of the Coalition for  
23 the Environment, which I received several days ago, and  
24 finally, I will dismiss Ms. Sisk for not showing up and for not  
25 responding, not setting forth any issues.

1                   With that, the proceeding will be terminated. I will  
2 issue an order recording this, perhaps attaching a copy of the  
3 stipulation to it, or I may just refer to the place in the  
4 transcript where it will appear.

5                   Thank you.

6                   [Whereupon, at 10:40 a.m., the hearing concluded.]  
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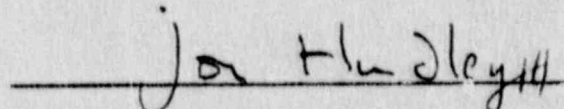
REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

in the matter of:

NAME OF PROCEEDING: Combustion Engineering, Inc.,  
Hematite Fuel Fabrication Facility  
DOCKET NUMBER: 70-36-MLA  
PLACE OF PROCEEDING: Hillsboro, Missouri

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

  
\_\_\_\_\_  
JON HUNDLEY  
Official Reporter  
Ann Riley & Associates, Ltd.

Joint Stipulation Among Combustion Engineering, Inc.,  
Sen. Jeremiah W. (Jay) Nixon, and Mrs. Martha Dodson

1. The amendment does not authorize an increase in the limitations on quantities of radioactive material authorized on site.
2. The amendment will not authorize an increase in quantities of uranium product transported from the site by Combustion Engineering.
3. Combustion Engineering's intention is to remove low level radioactive waste produced by the pelletizing operations under the amendment from the site for disposal at an approved off-site facility, as reasonably available. Except for high efficiency filters (used to remove uranium from exhaust air), Combustion Engineering does not anticipate any significant increases in the quantity of low level radioactive waste from this amendment.
4. On or before July 27, 1990, Combustion Engineering will comply with the NRC's new regulations on funding decommissioning (10 C.F.R. 70.25). These regulations provide greater independent assurance of the availability of funds for decommissioning than under the NRC's practices in 1979.
5. Upon approval by the NRC, Combustion Engineering will provide an additional remote sampling site. In the unlikely event of releases of radioactive material in excess of license "action levels", Combustion Engineering will perform radiation surveys, including, as appropriate, off-site surveys.
6. In the event ~~a site emergency is declared~~, Combustion Engineering will notify, as appropriate, off-site response organizations.
7. Combustion Engineering will continue to work with the NRC to meet the NRC's regulatory requirements concerning the evaporation ponds.

This Joint Stipulation will become effective upon the Presiding Officer's approval of the withdrawal of the petitions of Senator Nixon and Mrs. Dodson and the termination of the NRC proceedings.