

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of: X  
X  
HOUSTON LIGHTING & POWER, ET AL X Docket Nos. 50-498  
X 50-499  
(SOUTH TEXAS) X

Pavillion East Room  
Quality Inn Motel  
6115 Jetero Boulevard  
Houston, Texas

Wednesday  
November 19, 1980

The above-entitled matter came on for prehearing  
conference pursuant to notice at 10:00 a.m.

BEFORE:

CHARLES BECHHOEFER, CHAIRMAN  
Atomic Safety and Licensing Board  
Nuclear Regulatory Commission  
Washington, D. C.

DR. EMMETH A. LUEBKE  
Atomic Safety and Licensing Board  
Nuclear Regulatory Commission  
Washington, D. C.

DR. JAMES LAMB  
Professor, University of North Carolina  
Chapel Hill, North Carolina

8011260188

## 1 APPEARANCES:

2 On behalf of the NRC Staff:

3 EDWIN J. REIS, ESQ.

-and-

4 DONALD SELLS, Project Manager  
Nuclear Regulatory Commission  
5 Washington, D. C.

6 On behalf of the Applicant:

7 JACK R. NEWMAN, ESQ.

MAURICE AXELRAD, ESQ.

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14 On behalf of the Attorney General of Texas:

15 BRIAN E. BERWICK, ESQ.

16 5th Floor, Reagan Building

Austin, Texas 78711

17 On behalf of the Intervenors, CEU and CCANP:

18 PEGGY BUCHORN

19 Route 1, Box 1684

Brazoria, Texas 77422

20 TIM HOFFMAN, ESQ.

21 BETTY WHFELER, ESQ.

22 Amarillo, Texas



P R O C E E D I N G S

1  
2 CHAIRMAN BECHHOEFER: Good morning, ladies and  
3 gentlemen.

4 This is a prehearing conference in the proceeding  
5 involving the operating license proceedings of the South Texas  
6 project. This conference was noticed by our memorandum and  
7 order of October 30th. Unfortunately, the notice was not  
8 published until last Monday in the Federal Register at 45  
9 Federal Register 75820. A problem shall we say.

10 We are here this morning to discuss certain  
11 matters arising out of the memorandum and order issued by the  
12 Commission CLI-80-32.

13 Before I get to that this licensing board consists  
14 of on my left, Dr. James Lamb and on my right, Dr. Emmeth  
15 Luebke. Dr. Lamb is a professor at the University of North  
16 Carolina. Dr. Luebke is nuclear physicist with the Safety and  
17 Licensing Board panel with the Nuclear Regulatory Commission.  
18 My name is Charles Bechhoefer. I am an attorney, also with  
19 the Atomic Safety and Licensing Board panel with the Nuclear  
20 Regulatory Commission.

21 For the record I would like the parties or their  
22 representatives to identify themselves. I will go from my  
23 left to right. Ms. Buchorn.

24 MS. BUCHORN: My name is Peggy Buchorn. I'm  
25 Executive Director for Citizens for Equitable Utilities.

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1 MS. WHEELER: I am Betty Wheeler. With me is  
2 Tim Hoffman, co-counsel representing Citizens Concerned about  
3 Nuclear Power.

4 CHAIRMAN BECHHOEFER: Mr. Reis.

5 MR. BERWICK: I am Brian Berwick. I am with the  
6 Texas Attorney General's office.

7 MR. REIS: My name is Edwin J. Reis. I am an  
8 attorney with the NRC staff and with me is Donald Sells who is  
9 Project Manager.

10 MR. NEWMAN. I am Jack Newman with the law firm of  
11 Lowenstein, Newman, Reis, Axelrad & Toll, 1025 Connecticut Avenue,  
12 Washington, D.C. With me are Mr. Maurice Axelrad of my firm  
13 and Mr. Alvin Gutterman of my firm. Also, note the presence  
14 in the audience of our co-counsel from Baker & Botts, Mr.  
15 Finis Cowan and Mr. Melbert Schwartz.

16 Excuse me. I also might add Mr. Tom Hudson with  
17 Baker & Botts.

18 CHAIRMAN BECHHOEFER: Are any of those persons  
19 going to participate at all? If so, for the Reporter, they  
20 probably should identify themselves.

21 MR. NEWMAN: I don't believe so, Mr. Chairman. I  
22 believe I will be speaking for the group.

23 CHAIRMAN BECHHOEFER: The major reason I would say  
24 we are here today is to determine what the issues will be in  
25 the portion of the operating license proceeding. The

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1 conditions in its memorandum and order of September 22, 1980,  
2 designated as CLI-80-32 has set the framework for this  
3 proceeding.

4 In addition, we have what are designated as  
5 Contentions 1 and 2 in the operating license proceeding.  
6 These were contentions that were admitted over a year ago by  
7 this Board. They deal with much the same subject as an order  
8 to Show Cause which was issued by the Nuclear Regulatory  
9 Commission and which the Commission's memorandum and order  
10 concerns.

11 As we view it the issues are somewhat rather  
12 dramatically broader than would normally be considered in an  
13 operating license proceeding. It is clear to us that the  
14 Commission wants us to emphasize the broader matters which is  
15 spoke of as character, managerial competence. That type of  
16 language which is directly to the Atomic Energy Act.

17 Because of the many deficiencies in construction  
18 which have been uncovered thus far and which are the subject  
19 of both the Show Cause Order and Contentions 1 and 2, there  
20 seem to be very serious problems with assuring that the South  
21 Texas Project will be both built correctly and operated  
22 correctly.

23 The latest of version of hitches which we have  
24 before us for this portion of the proceeding, the QA/QC issues,  
25 was provided to us in a letter, dated November 14th from the

7-1-4  
1 Staff counsel, and as I understand it, these are the issues  
2 which have been agreed to by counsel for the Staff and counsel  
3 for the Applicant. I notice that thus far we don't have any  
4 agreement from either counsel for the Intervenors or the  
5 Intervenor, as the case may be, and the -- we would like to  
6 hear from them as to their view of what the issue should be.

7 I think the best way to handle this would be to  
8 invite first the Applicants and Staff to have a brief  
9 statement if they wish of their view of what their agreed  
10 issues are and then we can hear from the Intervenors as to  
11 whether or not they either agree or disagree and in what  
12 respect. I think then if the Applicants or Staff want to  
13 supplement first the statement they provided us, I think we  
14 should give them an opportunity.

15 One thing first, before we start talking about  
16 the issues we are going to ask the Reporter to insert into  
17 the record at this stage -- and this is just for convenience --  
18 a copy of the Commission's memorandum and order, CLI-80-32,  
19 which I have given a copy to the Reporter already and also a  
20 copy of Contentions 1 and 2 which I will give the Reporter  
21 after the conference. This will be for convenience of  
22 reference because I am sure we will be referring to various  
23 portions of those documents. So at this stage I would ask  
24 that these documents be inserted into the record. I invite  
25 either the Staff or the Applicants -- perhaps the Applicants

UNITED STATES  
NUCLEAR REGULATORY COMMISSION



In the Matter of )

HOUSTON LIGHTING AND POWER COMPANY )  
(South Texas Project, Units 1 & 2) )

SERVED

SEP 23 1980

Docket Nos. 50-498  
50-499


ADDENDUM TO MEMORANDUM AND ORDER (CLI-80-32)

In the Commission's Memorandum and Order dated  
September 22, 1980, the following footnote (\*) was omitted  
from Chairman Ahearne's separate views:

\*/ Atlantic Research Corporation (Alexandria, Virginia),  
ALAB-594, 11 NRC 841, 846 (1980).

It is so ORDERED.

For the Commission

  
SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, D. C.  
this ~~22~~ day of September 1980.



**[REDACTED]**

Contentions Accepted by Licensing Board:

1. (CCANP, CEU)

There is no reasonable assurance that the activities authorized by the operating license for the South Texas Nuclear Project can be conducted without endangering the health and safety of the public in that:

1. There has been a surveying error which has resulted in the eastern edge of the Unit 2 Mechanical Electrical Auxiliary Building being constructed one (1) foot short (in the east-west direction) from its design location. This error violates 10 CFR Part 50, Appendix B, Sections X and XI.

2. There has been field construction error and as a result, extensive voids exist in the concrete wall enclosing the containment building, in violation of 10 CFR Part 50, Appendix B, Sections IX and X.

3. In violation of Quality Assurance and Quality Control requirements applicable to the South Texas Nuclear Project with regard to document control (10 CFR Part 50, Appendix B, Sections VI and XVII), a field document relating to cadweld inspections has been lost.

4. There are membrane seals in the containment structure which are damaged, indicating a violation of 10 CFR Part 50, Appendix B, Sections X, XV and XVI.

5. There are steel reinforcement bars which are missing from the concrete around the equipment doors in the containment and such bars are missing from the containment structure as well, indicating violations of 10 CFR Part 50, Appendix B, Sections X, XV and XVI.

6. There are cadwelds which have been integrated into parts of the plant structure which are not capable of being verified with regard to compliance with 10 CFR Part 50, Appendix B, in violation of Sections IX and X of Appendix B.

7. Quality Control as per the requirements of 10 CFR Part 50, Appendix B, in particular Sections III and IX, has not been complied with, because:

a. Efforts by quality control inspectors to verify that design changes were executed in accordance with the purposes of the original design were repeatedly and systematically thwarted.

b. There were personnel other than the original designer approving design changes with no first hand knowledge of the purpose of the original design.

c. There were design changes approved by personnel unqualified in the type of design where the change was made.

d. There were numerous pour cards that were supposed to record the correct execution of concrete pours which were falsified by numerous persons.

e. There has been and continues to be assaults on the Applicant's quality control inspectors, continual threats of bodily harm to those inspectors, firing of inspectors, and other acts constituting a pattern of behavior designed to intimidate the inspectors. As a result of the intimidations, certain inspections were never done because the inspectors decided to play cards over a period of four months rather than risk their safety on the plant grounds.

As a result of the foregoing, the Commission cannot make the findings required by 10 CFR §§50.57(a)(1) and (2) necessary for issuance of an operating license for the South Texas Nuclear Project.

2. (CCANP, CEU)

NRC inspection records (Inspection and Enforcement Reports #77-03, 2/77; #77-03, 4/77, and #78-08, 5/78) indicate that South Texas Project construction records have been falsified by employees of Houston Lighting and Power Company and Brown and Root, in violation of 10 CFR Part 50, Appendix B, Sections VI and XVII.

As a result, the Commission cannot make the findings required by 10 CFR §§50.57(a)(1) and (2).

UNITED STATES  
NUCLEAR REGULATORY COMMISSION



In the Matter of )

HOUSTON LIGHTING AND POWER COMPANY )  
(South Texas Project, Units 1 & 2) )

SERVED SEP 22 1980  
Docket Nos. 50-498  
50-499

CL1-80-32

MEMORANDUM AND ORDER

Citizens Concerned About Nuclear Power, Inc. and Citizens for Equitable Utilities (hereafter collectively referred to as "Citizens") have requested a hearing on an order issued by the Director of the Office of Inspection and Enforcement on April 30, 1980 which requires Houston Lighting and Power Company (hereafter, "Houston"), holder of a construction permit for the South Texas Project, Units 1 & 2, to show cause why safety-related construction activities at that site should not be stopped in 90 days and remain stopped until such time as the permittee completes a number of changes in its operations and procedures. 45 Fed. Reg. 30753 (May 9, 1980). This request will be denied, though alternative relief will be accorded to Citizens in the context of a pending operating license proceeding for these facilities.

Background

The history of much of the controversy surrounding the South Texas Project is catalogued in some detail in the Director's Order to Show Cause, as well as in a Notice of Violation and a Notice of Proposed Imposition of Civil Penalties for \$100,000, issued on April 30, 1980. In short, the Notice of Violation refers to 28 items of non-compliance by Houston, illustrated by approximately 50 incidents. These help to substantiate a critical conclusion reached in the Order to Show Cause -- i.e., the "lack of detailed knowledge and involvement [in the construction of the South Texas Project] has hindered Houston Lighting and Power Company's ability to maintain adequate control" over Brown & Root, Inc., its contractor. 45 Fed. Reg. at 30755. As a result, Brown & Root was alleged to allow conditions at the site to deteriorate to such a level that an immediately effective suspension order was issued by the staff. That order and the grounds for its termination focus on correction of the particular problems through the imposition of alternative management schemes relating to implementation of an effective quality assurance/quality control program. These changes were proposed by the staff only after 12 separate NRC investigations over a 2-1/2 year period, during which there were conferences with Houston, several prior items of non-compliance, a deviation, five immediate action letters and presently

numerous substantiated allegations of harassment, intimidation and threats directed to quality assurance/quality control personnel and false statements in the Final Safety Analysis Report ("FSAR"). As the Director of the Office of Inspection and Enforcement concluded, "[t]he facts ... reflect widespread noncompliance by the licensee and its principal contractor, Brown and Root, with 10 CFR Part 50, Appendix B of the Commission's regulations." 45 Fed. Reg. at 30755.

Houston was given the opportunity to file a written answer to the Order to Show Cause, with the requirement that such answer "specifically admit or deny each allegation". 45 Fed. Reg. at 30756. Furthermore, Houston "or any other person whose interest may be affected by this Order" was permitted to request a hearing. Id. The Director stated that if a hearing is held, the issue to be considered would be "whether the licensee shall be required to take the actions specified in Section V(A)" of the Order to Show Cause. 45 Fed. Reg. at 30756-30757. Houston responded on May 23, 1980 to the Order to Show Cause, the Notice of Violation and the Notice of Proposed Imposition of Civil Penalties. Most of the allegations in the Notice of Violation



were substantiated by Houston.<sup>1/</sup> But in failing to specifically affirm or deny charges of harassment, intimidation and lack of support of quality control inspectors by quality control management, Houston alleged that "the absence of information

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- 1/ In response to the following items, Houston replied that each item of non-compliance was "substantiated":
- failure to complete backfill compaction in accordance with a qualified procedure; failure to take prompt corrective action when test apparatus failed, halting testing; failure to establish procedures for systematic sampling as part of soil testing program; failure to document soil lift thickness and number of passes of equipment as part of QA records; non-conformance reports, examination checks/inspection books and field requests for engineering action-trend analysis are inadequate; concrete placement activities problems not corrected in accordance with prior commitments; failure to follow procedures with regard to qualification of civil and concrete QC inspectors; failure to control documents in that contractor's QA Manual copies are out of date; failure to control welding as a process with regard to cleanliness; failure to control radiography, a special process, leading to poor radiographic quality; failure to record weld-related linear indications on accompanying interpretation sheet; failure to control liquid penetrant examinations; failure to follow procedures in that a procedure was used after an expiration date; failure to take corrective action when cadwelders need requalification; failure to take corrective action in a reasonable time and management did not get the problems resolved with regard to nonconformance situations identified through the Brown & Root Site Internal Surveillance activity; failure to follow procedures to document and correct unsatisfactory surveillance conditions; failure to control the use of a nonconforming hammer for penetration; failure to control the dimensions of the split spoon in soils test control; failure to provide for, and conduct, supplemental audits as part of the Houston QA plan and audit system; failure of Houston to perform adequate audits in that unsatisfactory conditions were not observed; failure to perform audits on the prescribed frequency; failure of Brown & Root to perform in-depth audits of site activities; failure to inspect reinforcing steel for loose rebar prior to concrete placement; failure to control design changes in root openings and weld dimensions; and failure to follow ASME R&VP Code per 10 CFR § 50.55a for radiography qualification technique.

which would identify persons, places and dates" has made its task "impossible". However, it did state that "our review indicates that such instances probably did occur" and in Houston's reply to the Order to Show Cause, discussed in more detail later, it responded that "the substance of the allegation (with respect to certain incidents of harassment and intimidation) is conceded in response to the first item of noncompliance." Houston contended that it had taken "important steps ... to assure that QA/QC personnel have the requisite freedom and authority to identify problems and determine that they are adequately resolved, free from production pressures" and that "this concern has been brought under control". It promised further steps and vigilance to assure that these problems do not recur. It also identified six "root causes" for the items of noncompliance which it promised to attack.<sup>2/</sup> Finally, it recognized that "[u]pper management has

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2/ These six "root causes" were said to be:

1. Translating specifications and requirements into clear and simplified procedures down to the job level.
2. Improvement of systems for documenting nonconforming conditions and systematic trend analyses to identify programmatic weaknesses.
3. Upgraded training and indoctrination of personnel at all levels in quality-related tasks with special emphasis on the project goals of reliability and safety.
4. Stronger system controls, reflected in procedures which assure that quality-related activities are initiated, controlled and properly documented.
5. Improvement of the system of audits to verify adherence to procedures and identify deficiencies for resolution at the appropriate level of management.
6. Increased visibility of, and active participation by, upper management in QA/QC activities.

While identification of these "root causes" may be helpful to an analysis of the problems at the South Texas Project, they might also be said to raise a question of overriding significance: are these problems themselves symptoms of some other and more basic deficiencies?

the responsibility to assure that quality functions have a high degree of visibility to enhance quality awareness throughout the project."

In responding to the Order to Show Cause, Houston incorporated the text of its response to the Notice of Violation. It admitted that "clearly lack of detailed involvement by management was a contributor to the problems noted" in part of the Order to Show Cause, but it reiterated its view that other "root causes" were also involved. It promised to respond to the specific inquiries put to it by the Order to Show Cause within 90 days, at which time it would also address the allegation that "two apparent false statements in the FSAR were identified regarding test and observation [work] actually performed. In reply to the Notice of Proposed Implementation of Civil Penalties, it also incorporated its response to the Notice of Violation and forwarded a check for \$100,000 in payment.

On May 28, 1980, Citizens requested a hearing on the Order to Show Cause. It argued that the "violations found in the [NRC] investigations of November 1979 through February 1980 are not isolated events but rather part of a consistent and disturbing pattern." It cited a July 1977 Brown & Root inter-office memo as some evidence that quality assurance/quality control personnel were intimidated as early as three years ago. Citizens argued that charges of intimidation "over a three year period during which more than fifty percent of this plant was constructed is enough." Even after the latest NRC investigation, alleged Citizens, harassment

intimidation and firings on "trumped up charges" of quality control inspectors had occurred. Referring to inadequacies in the backfill work, voids in the concrete, defective welding, failure to follow proper procedures, and "the constant repetition of the same problems", Citizens claimed that these are "clear indicators that quality has not been assured since major project work began."

Citizens noted that the above charges, substantiated by the Commission's own investigation, directly support Citizens' contention before the Licensing Board in the operating license proceeding for the South Texas Project, Units 1 & 2. It claimed that "[n]ot having the public hearing [on the enforcement order] will adversely affect the ability of the [Licensing Board] to evaluate this project and the ability of Intervenor to support their contentions before the [Licensing Board]." As Citizens sees it, a hearing would lead the NRC staff to call as witnesses presently unidentified persons whose investigative interviews support the enforcement order, and this in turn would allow Citizens to gather additional testimony from these witnesses. Citizens is concerned that with rapid turnover at Houston's facility, these witnesses will be unavailable for future discovery and that only the intervenors will be denied their identities. Furthermore, Citizens expressed its apprehension that "the basic approach of the NRC Order to Show Cause is that problems



to date will be corrected by future reform and the project will then go forward." In Citizens' view, this "would be a de facto resolution of the very contention [Citizens is] arguing before the [Licensing Board]." Even if the issue raised by Citizens were left open for adjudication in the licensing proceeding, in its opinion the failure to have a hearing on the enforcement order would be tantamount to denying to it "the evidentiary basis for the NRC actions in the Order to Show Cause."

Citizens argued that other, practical reasons support its hearing request. For example, taking issue with the statement in the Notice of Violation that "no items of major safety significance were found which related to the staff charges," Citizens has expressed a desire to develop more facts on this issue by further probing of quality control employees. In addition, it stated an intention to tie into the NRC staff allegations which supply the basis for the Notice of Violation the "prior history of similar problems." Through this analysis -- what might be called an effort to look at the whole forest instead of individual trees -- Citizens would attempt to convince the Commission, through the adjudication of the enforcement order, that the "only appropriate action responsive to the long history of abuse is revocation of the construction license" held by Houston.

Citizens recognized that its contention about plant construction, raised in the operating license proceeding, might lead the Licensing Board to conclude that Houston's operating license application should be denied. However,



Citizens noted that in the interim "the project will have gone forward and more millions of dollars will have been spent.... The evidence is already available to take conclusive action now." Citizens also argued that the public is entitled to a "full airing of all relevant information regarding the safety of the nuclear plant" so that future plans can be made.

Finally, Citizens sees the petition process under 10 CFR 2.206 as unlikely to yield the results it seeks. "[I]f the Commission does not see fit to revoke the construction license based on what is already known, a denial of a 2.206 request seems likely."

On June 13, 1980, Houston responded to Citizens' request for a hearing. It argued that Citizens is not entitled to a hearing as a matter of right because, by its desire to address the issue of whether the Order to Show Cause contains a complete factual analysis of the problems at the South Texas Project site and contains an adequate enforcement remedy -- i.e., suspension until certain conditions are met, instead of revocation --- Citizens has raised an issue that goes beyond the scope of the Order to Show Cause. Houston relied upon Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), 11 NRC 438 (1980) and Wisconsin Electric Power Company (Point Beach, Unit 1), \_\_\_ NRC \_\_\_ (May 12, 1980). Furthermore, Houston argued that Citizens would not be prejudiced by failure to hold a hearing on the enforcement order; to the contrary, alleged Houston, Citizens can use its discovery rights in the

operating license proceeding and the Freedom of Information Act, 5 U.S.C. § 552 and 10 CFR § 9.3 et seq., to determine the identity of quality control employees who provided the allegations in the Order to Show Cause. Finally, Houston contended that Citizens has not made a case for the Commission to exercise its discretion to convene a hearing on the enforcement order. In Houston's view, "[t]here is no issue of fact upon which to join issue in a discretionary hearing at this time -- except the unsupported, but implicit, suggestion of [Citizens] that the Director [of Inspection and Enforcement] erred in charting the course set forth in the Order." If this is Citizens' complaint, stated Houston, it may file a 2.206 request immediately or subsequent to the Director's evaluation of Houston's response to the actions required by the Order to Show Cause. Houston is candid, however, in stating its view that Citizens' request for a hearing, if construed as a 2.206 petition, should be rejected.

The NRC staff filed its response to Citizens' request on June 24, 1980. The staff argued that Citizens was not in any way injured by the Order to Show Cause, and, hence, that Citizens had no standing to request a hearing as a matter of right. Citing Public Service Company of Indiana, supra, the staff stated that to allow Citizens to have a hearing on the issue of whether a stricter enforcement action should have been taken would be contrary to the Commission's "policy that encourages licensees to consent to, rather than contest,

enforcement actions." Furthermore, the staff noted that the Director held out the possibility of further enforcement action, depending upon Houston's actions in response to the Order to Show Cause, and that Citizens is always free to submit a 2.206 petition. As to the question of a discretionary hearing, the staff claimed that "such a hearing is neither necessary nor appropriate." As the staff sees it, "the issue which the Petitioners really desire litigated is the issue which goes to the heart of the operating license proceeding, i.e., whether there is reasonable assurance that the facility has been constructed soundly and therefore can be operated safely." It is precisely this issue, contended the staff, that is outside the scope of the enforcement action. Responding to Citizens' allegations of prejudice if a hearing is not held, the staff stated that Citizens has full discovery rights in the operating license proceeding and that, in fact, the Licensing Board in that case has expedited a hearing on the very issues sought to be raised by Citizens. See Houston Lighting and Power Co. (South Texas Project, Units 1 & 2) ASLB Memorandum (March 10, 1980). In the staff's view, "should there be any matter which the Board believes justifies additional enforcement action, e.g., suspension, then such matters would be promptly referred to the Director for his consideration." Furthermore, the staff stated that "the fact that the Licensee has consented to the Order [to Show Cause] and the imposition of a civil penalty should be of some support to the Petitioners in the operating license proceeding."

On July 28, 1980, Houston filed a detailed response to Section V of the Order to Show Cause. It stated that it has undertaken major changes in its organization, personnel and procedures since the NRC investigation. For example, its Executive Vice-President has been assigned responsibility for the South Texas Project, virtually on a full-time basis, and the QA Department Manager reports directly to him. Additional quality assurance specialists have been hired, and there has been retraining of key Houston personnel. The system of audits has been upgraded. Houston also noted that Brown & Root has taken several steps, including attitude improvement, revision of procedures and personnel changes and additions. All of these changes by Houston and Brown & Root are to assure the adequacy of ongoing work, develop a program for commencing previously suspended activities on an orderly basis, and verify the adequacy of work previously completed. Houston concluded:

These commitments, faithfully executed, provide assurance that the construction activities at STP are, and will be, conducted in accordance with applicable requirements, and consistent with the public health and safety, and therefore should not be stopped. 3/

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3/ Houston's July 28 document is quite lengthy. Because the adequacy of its technical contents can better be judged by the Director of the Office of Inspection and Enforcement, we have not endeavored to quote extensively from it, although we have examined the entire document insofar as it is relevant to our ruling on Citizens' request for a hearing on the order to show cause.

Legal Discussion Concerning a Hearing on the Enforcement Order

We agree with Houston and the staff that under the holdings in Public Service Company of Indiana, supra, and Wisconsin Electric Power Company, supra, Citizens is not entitled to a hearing on the enforcement order as a matter of right. Like the complainants in those two cases, Citizens is arguing that the remedy proposed by the Director is insufficient to protect the public health and safety. Thus, it is not adversely affected by the Director's action imposing increased regulation on Houston, but is rather aggrieved by the Director's failure to take stronger action. Furthermore, by its very terms, the Order to Show Cause states that if a hearing is held, the issue to be considered would be "whether the licensee shall be required to take the actions specified in Section V(A) of that order", and not whether other, more stringent actions should also be required. The cited cases have rejected a right to a hearing in these circumstances.

Citizens has offered a number of reasons why a hearing should be granted as a matter of discretion. It claims that a hearing would require the NRC staff to call as witnesses several persons who have not yet been identified, but whose interviews support the Director's order. This, in turn, would allow Citizens to learn the identities of those persons and to further question



them. However, as Houston suggests, Citizens can file either interrogatories with the staff or a Freedom of Information request with the Commission in order to learn the identities of persons with knowledge about the incidents covered by the Director's order. These possibilities are a far cry from Citizens' fears that failure to have a hearing on the enforcement order would be tantamount to denying to it the "evidentiary basis for the NRC actions in the Order to Show Cause."

We also find no support for Citizens' proposition that if Houston undertakes the reforms suggested by the Order to Show Cause, this would be a "de facto resolution of the very contention" that Citizens is presenting to the Licensing Board in the operating license proceeding. A decision by the Director of Inspection and Enforcement in an enforcement action does not bind a Licensing Board in an operating license adjudication from making a decision which would further restrict, or even deny a license for, the operation of a facility. The Board must make

its decision based upon the record in the case before it. Similarly, we do not believe that a hearing on the enforcement order is necessary on the ground that it could result in a relatively early revocation of a construction permit, while the Licensing Board in an operating license proceeding will be swayed by the fact that the project has further progressed and millions of dollars more have been spent. As the D.C. Circuit said in Porter County Chapter of Izaak Walton League of America v. NRC, 606 F.2d 1363, 1370 (D.C. Cir. 1979) one should

not transform a projected tendency to inertia into a presumption of infidelity to duty. (cite omitted). It is not the public, but the utility, that must bear the risk that safety questions it projects will be resolved in good time, may eventually prove intractable and lead to the denial of the operating license.

Thus, it is not true, as Citizens alleges, that a "full airing of all relevant information regarding the safety of the nuclear plant" can come about only in a hearing on the enforcement order. To the contrary, the operating license proceeding can very well serve this goal. Moreover, as Houston and the staff noted, an informal public hearing was scheduled (and has now been held) in Bay City, Texas to address the issues covered by the Director's action.

Thus far, we have indicated why we believe that a discretionary hearing on the enforcement order is not the appropriate forum for the trial of Citizens' allegations. The staff, however, has suggested the possibility of a 2.206 petition. We must candidly state, as Houston has done, that the filing of such a petition is likely to be an exercise in futility in this instance. The Director has reached a conclusion as to the appropriate remedy and Citizens has been unable to provide new evidence which could be expected to cause the Director to reconsider; in fact, it is precisely because Citizens is lacking such evidence that it has called for a full hearing on the enforcement order where it can develop that evidence. If Citizens' charges are to be given appropriate consideration, they will have to be addressed in some other way.

#### Legal Discussion Concerning the Operating License Proceeding

The Licensing Board in the operating license proceeding recognized the seriousness of the charges made by Citizens, and it proposed to expedite a hearing on those charges "so that, if corrective action is required, it may be undertaken as early as possible in the construction schedule." ASLAB Memorandum at 2 (March 10, 1980). Even more recently the Board stated:

[Citizens] ... recognize[s] that it would not be appropriate for a hearing on [the quality assurance-related contentions] to begin prior to the Commission's action on the show-cause hearing request. The Staff has also taken that position before us. We agree. The matters raised by the show-cause order appear to include the substance of [these] Contentions 1 and 2 (although the relief which we could grant might well be broader than the relief sought under the show-cause order) ....

We reiterate, however, that, whether the hearing is held under the aegis of the show-cause proceeding or this proceeding, the prompt resolution of the QA/QC issue is, in our view, in the public interest. To the extent that the Commission were to determine that hearing of the issues in this proceeding is preferable to hearing them in a show-cause proceeding, we would, of course, be prepared to admit into controversy any issues comprehended by the show-cause order but not presently included in Contentions 1 and 2. ASLAB Memorandum at 3 (August 1, 1980).

We agree with the Board that expedition is necessary, but for an additional and important reason that goes to the core of Citizens' complaint that Houston should not be operating a nuclear facility.

The history of the South Texas Project -- at least 12 separate NRC investigations over a 2-1/2 year period, resulting in conferences with the licensee, several prior items of non-compliance, a deviation, five immediate action letters, and now substantiated allegations of harassment, intimidation and threats directed to QA/QC personnel and apparent false statements in the FSAR -- is relevant to the issue of the basic competence and character of Houston. Central to that issue are two questions: whether the facts demonstrate that the licensee has abdicated too much responsibility for construction to its contractor, Brown & Root, Inc., and whether the facts demonstrate an unacceptable failure

on the part of Houston to keep itself knowledgeable about necessary construction activities. Either abdication of responsibility or abdication of knowledge, whether at the construction or operating phase, could form an independent and sufficient basis for revoking a license or denying a license application on grounds of lack of competence (i.e., technical) or character qualification on the part of the licensee or license applicant. 42 U.S.C. § 2232a. In large part, decisions about licenses are predictive in nature, and the Commission cannot ignore abdication of responsibility or abdication of knowledge by a license applicant when it is called upon to decide if a license for a nuclear facility should be granted. <sup>4/</sup>

We believe that the above issues relating to technical competence and to character permeate the pleadings filed by Citizens. They do deserve a full adjudicatory hearing, as they will no doubt get in the operating license proceeding, and they do deserve expeditious treatment because they could prove disqualifying. <sup>5/</sup> Accordingly, we agree that the Licensing Board in the operating license proceeding should proceed with its expedited hearing on

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<sup>4/</sup> Equally, and perhaps of more concern, the Commission cannot ignore false statements in documents submitted to it. Congress has specifically provided that licenses may be revoked for "material false statements", see section 186a of the Atomic Energy Act, and we have no doubt that initial license applications or renewal applications may also be denied on this ground, certainly if the falsehoods were intentional, FCC v. WOKO, 329 U.S. 223 (1946), and perhaps even if they were made only with disregard for the truth. Leflore Broadcasting Co. v. FCC, \_\_\_ F.2d \_\_\_ (D.C. Cir. No. 78-1677, June 5, 1980); Virginia Electric & Power Co. v. NRC, 571 F.2d 1289 (4th Cir. 1978).

<sup>5/</sup> We include, of course, the false statements charge in this category.

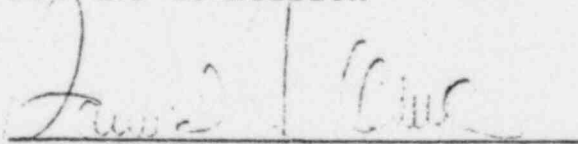


the quality control-related issues (including the allegations of false statements in the FSAR). As the Board has already determined to proceed in this manner, no formal order is necessary. However, we expect the Board to look at the broader ramifications of these charges in order to determine whether, if proved, they should result in denial of the operating license application. For this reason, we are ordering the Board to issue an early and separate decision on this aspect of the operating license proceeding. No prejudice should result from this approach and no additional time or resources should be necessary than if the matter had proceeded to a final, but integrated, decision at a later date by the Licensing Board.

Separate views of Chairman Ahearne and Commissioner Hendrie are attached, as well as the additional views of Commissioners Gilinsky and Bradford.

It is so ORDERED.

For the Commission

  
\_\_\_\_\_  
SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, D.C.

this 22 day of September, 1980.

Chairman Ahearne's separate views:

I concur in the result but do not join in the opinion. The opinion contains a large number of extraneous comments which I cannot fully support. In addition, in light of the recent Appeal Board opinion in Atlantic Research,\*/ I find it necessary to state that I do not concur in the additional views of Commissioners Gilinsky and Bradford.

Commissioner Hendrie's separate views:

Although Commissioner Hendrie concurs in the majority opinion, he does not concur in the additional views of Commissioners Gilinsky and Bradford.

ADDITIONAL VIEWS OF COMMISSIONERS GILINSKY AND BRADFORD

As we stated in our dissenting opinion in Wisconsin Electric Power Company, supra, we believe that the results in that case and in Public Service Company of Indiana, supra, are wrong. We would have preferred to re-examine those holdings here. However, the denial of a discretionary hearing on the enforcement order is not contrary to the public interest in safety and health in this case. The party requesting that hearing, Citizens, is already a party to the pending operating license proceeding involving the same issues raised in the enforcement action and, as a result of our action today, those issues will be resolved on an expedited basis in the form of a partial initial decision. There are a few other points, however, that we feel should be mentioned in connection with that operating license proceeding and the guidance given the Licensing Board.

First, as the order states, through the use of interrogatories or a Freedom of Information Act request, Citizens can seek to learn the identities of persons with knowledge about the matters covered by the Order to Show Cause. Thereafter, Citizens could attempt to contact these persons informally or take prehearing depositions of them to obtain more information, and could attempt to call them as witnesses in the operating license proceeding.

Second, the Commission has indicated that abdication of responsibility or abdication of knowledge could form an independent and sufficient basis for denying or revoking a license.

This view has been accepted by the Courts in their review of license-related actions of the Federal Communications Commission. Operating under a statute which formed part of the model for the licensing scheme in the Atomic Energy Act,<sup>1/</sup> that agency has viewed both abdication of licensee responsibility and abdication of licensee familiarity with or knowledge about its operations as grounds for license revocation or non-renewal. See, e.g., Cosmopolitan Broadcasting Co. v. FCC, 581 F.2d 917 (D.C. Cir. 1978) and United Broadcasting Co. v. FCC, 565 F.2d 699 (D.C. Cir. 1977).

Finally, as in Public Service Company of Indiana, *supra*, 11 NRC at 443, we would have requested the Director to brief the Commission prior to lifting the suspension order. If further action is necessary at that time to protect the public health and safety, this would enable the Commission to order that such action be taken, should it choose to do so. However, given the obvious Commission interest in this proceeding, we believe that the Director is likely to inform the Commission of any significant steps that he is about to take.

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<sup>1/</sup> Like Section 182a of the Atomic Energy Act, Section 309 of the Communications Act, 47 U.S.C. Section 309, conditions the granting of licenses on technical, financial, character, citizenship and any other qualification deemed appropriate by the agency. See G. Trowbridge, *Licensing and Regulation of Private Atomic Energy Activities*, 34 Tex. L. Rev. 842, 848 (1956).

1 would want to lead off and followed by the Staff whether they  
2 have any additional comments on the issues which we were sent  
3 just recently. Then we will hear from the Intervenor.

4 MR. NEWMAN: I might note, Mr. Chairman, that an  
5 effort has been made in developing the agreed upon statement  
6 of issues that has been arrived at between the Applicant and  
7 the Staff to track the language of the Commission's memorandum  
8 and order, and specifically, such matters as character,  
9 management competence and the management direction of the  
10 various construction contractors on the STP site. That is the  
11 application of responsibility contention, so to speak.

12 And I think that we have been largely successful  
13 in tracking the Commission's suggestion or the Commission's  
14 order to the Board and I don't think I have anything further  
15 to say.

16 MR. REIS: Mr. Chairman, the Staff and the  
17 Applicants, as you know, in response to the Board's memorandum  
18 and order of September 24th, sent -- originally sent letters  
19 to the Board setting out what the issues were. We did not  
20 hear from other parties to the proceeding on the particular  
21 issues here. There was some disagreement to us as to the  
22 extent of the issues and we got together and drafted up a  
23 statement that is sufficient and seems to cover the issues to  
24 the satisfaction of both the Staff and the Applicant. There  
25 was no intent in drafting this up to bind the Intervenor, of



1 course, because they weren't parties to it.

2 But, we did proceed in discussions between  
3 ourselves in that we hadn't heard from the Intervenor.

4 DR. LUEBKE: That is represented in your letter of  
5 November 14th?

6 MR. REIS: The letter of November 14th just says  
7 it has been agreed to by counsel for the NRC Staff and counsel  
8 for the Applicant. There is no indication of the Intervenor  
9 and they were not involved in these discussions.

10 DR. LUEBKE: I should like to comment on the  
11 Applicant's statement that in referring to your letter of  
12 October 22nd.

13 MR. NEWMAN: Our letter of October 22nd, which  
14 suggested issues for consideration by the Board has been  
15 superceded by the agreement that has been reached between the  
16 Applicant and the Staff, as reflected in the attachment to  
17 the Staff's letter of November 14 to the Board.

18 DR. LUEBKE: Thank you. I just want to get that  
19 clarified.

20 CHAIRMAN BECHHOEFER: Ms. Wheeler?

21 MS. WHEELER: If I can have the Board's indulgence  
22 before I comment specifically on the substance of the issue,  
23 we would like to make some comments for the record with regard  
24 to how the issues that are currently before the Board were  
25 developed and how this prehearing was scheduled and some

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1 comments that we had, and objections that we would like to make  
2 for the record in that regard.

3 As this Board will recall, on September 22nd, a  
4 memorandum and order denying CCANP's motion for hearing on  
5 Order to Show Cause was handed down together with the clear  
6 indication that our remedy in regard to what we were seeking  
7 through that hearing would be provided through this licensing  
8 procedure.

9 And furthermore, that those issues should be  
10 considered -- those issues implicit in the Order to Show Cause  
11 would be considered here on an expedited basis.

12 Pursuant to that, on September 24th this Board  
13 issued a memorandum asking all parties for their suggestions  
14 as to how best implement those comments by the Commission.

15 Subsequent to that September the 24th order of  
16 this Board, all the parties engaged in some discussion as to  
17 whether we could reach agreement and I might add that that  
18 was before our appearance as attorneys in this matter. So I'm  
19 not personally a party to those discussions, but I understand  
20 that they did occur.

21 The result of those negotiations are reflected in  
22 the October 15th letter to this Board from Mr. Black, from the  
23 NRC Staff. I might point out three things with regard to that  
24 letter. Number one is that the issues that it sets forth were  
25 formulated at the consultation with all parties. That includes

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1 not only and NRC Staff, but the Intervors, CCANP and CEU.

2 In that letter, prehearing -- this prehearing was  
3 suggested for early January and that is the date reflected in  
4 that letter. Thirdly, pursuant to those discussions and in  
5 the course of those discussions, Mr. Laney Sinkin (phonetic),  
6 who before us was CCANP's representative in this proceeding,  
7 informed Mr. Black at that time by telephone that CCANP did  
8 not have counsel, that they considered counsel to be essential  
9 for this prehearing as well as the hearing to follow. That  
10 they were working on getting both the financial resources,  
11 obtain counsel and locating counsel itself, and made it clear  
12 that counsel was desired for this prehearing conference.

13 By October 30th letter -- and I think that was  
14 preceded by a telephone call -- a notice was given to us that  
15 the prehearing would be held on this date, November 19th. In  
16 other words, that gave CCANP exactly, or about three weeks  
17 notice in which to find -- three weeks time in which to locate  
18 counsel and do all the things that previously CCANP believed  
19 they had until January to accomplish.

20 Furthermore, by letter of November 14th, which is  
21 to say last Friday, CCANP received notice for the first time  
22 by airplane and taxicab delivery that the NRC Staff and the  
23 Applicants had reformulated the proposed issues that were  
24 initially reflected in the October 15th letter. No  
25 opportunity at all was given to the Intervenor to participate

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1 in those negotiations, and, in fact, Intervenors had no idea  
2 that they were going on. And I might indicate that that  
3 October 15th letter reflected that there was a partial  
4 consensus between all parties and that, however, since there  
5 was not full consensus that no further letters, or whatever,  
6 communicating disagreement might be appropriate.

7 Now the affect of this particular sequence of  
8 events on the Applicants -- or on CCANP is as follows: first  
9 of all, it has severely undermined CCANP's ability to be  
10 competently represented and adequately prepared for this  
11 hearing. And I might emphasize in that regard that Mr. Black  
12 knew that CCANP was seeking counsel for the prehearing, that  
13 as of October 15th they had not obtained counsel, and that all  
14 indications at that point were that this hearing would be in  
15 January, thus giving CCANP some time to locate counsel.

16 CHAIRMAN BECHHOEFER: Ms. Wheeler, I might comment  
17 the prehearing that was talked about in January still might  
18 take place. This conference -- the scope of this prehearing  
19 is much narrower than the scope --

20 MS. WHEELER: We consider this prehearing -- I'm  
21 sorry -- to be quite crucial in that it does -- we anticipate  
22 that the purpose of this prehearing will be to define the  
23 issues for the expedited hearing. Am I incorrect?

24 CHAIRMAN BECHHOEFER: You are correct on that, but  
25 normally, if the parties have been able to agree we would not

1 have found this necessary and we could have issued an order  
2 saying what the issues would be.

3 MS. WHEELER: We understand that there was only  
4 partial consensus as to the issue. Our objection goes to  
5 whether subsequent -- whether it was appropriate for some  
6 of the parties to engage in subsequent negotiations without  
7 consultation with the Applicants. With regard to the ability  
8 to find counsel within the timeframe presented by the situation.  
9 It would be our position that sensitivity to the comparatively  
10 disadvantaged position that this Intervenor is in economically  
11 vis-a-vis the other parties, sensitivity to those differences  
12 is certainly appropriate as long as good faith efforts are  
13 demonstrated by CCANP to obtain counsel and to not cause  
14 undue delay.

15 Perhaps our more serious objections go to the  
16 exclusionary negotiations that took place between the NRC  
17 Staff and Applicants. We feel that severely undermines the  
18 Intervenor's role in this proceeding. First of all, we had  
19 only four days notice that the NRC Staff's position, which we  
20 understood to be spelled out in the October 15th letter, had  
21 significantly shifted. Failure to interclude us as Intervenors  
22 in these negotiations reflects a failure to accord CCANP status  
23 as a party, which it in fact has in this proceeding.

24 Certainly we feel it was appropriate for the  
25 parties to submit their differences, perhaps by letter as



1 Mr. Black indicated would be possible as October 15 letter,  
2 and which, in fact, Mr. Newman did, in his October 22nd letter.  
3 What is inappropriate we feel, under a Board order for the  
4 parties to attempt to agree which is what the order of --  
5 September 24th order of this Board said. Is for such attempts  
6 to exclude some of the parties. We feel that the role of  
7 Intervenors in this proceeding is as a party and in a sense,  
8 it is as a public interest representative.

9 We feel that the NRC clearly has always a  
10 acknowledged that role of Intervenors to be important and  
11 itself has committed the NRC to easing the financial impact on  
12 Intervenors in ways other than actual financial assistance.

13 The recent advancement of this hearing, or our  
14 preception of the advancement of this hearing from January to  
15 the present date and the exclusionary negotiations are strongly  
16 opposed by Intervenors and we would anticipate that future  
17 negotiations, future occurrences in this proceeding will occur  
18 with consultation with Intervenors in the future.

19 As to the subsenate results of these exclusionary  
20 negotiations, we also have strenous substantive disagreements  
21 with the issues as they are reflected in the letter of last  
22 Friday and basically, I state in a short manner what our  
23 positions would be with minor exceptions, the issues as we  
24 see them should be as they were reflected in Mr. Black's  
25 letter of October 15th to this Board.

7-2-1  
1 And we would specifically disagree that the  
2 November 14 letter substantially reflects the issues as they  
3 were suggested by the Commission in it's order of September  
4 22nd.

5 CHAIRMAN BECHHOEFER: Would you be able at this  
6 time to state what aspects -- it looks to us like there were  
7 three rather broad issues set forth by the Staff -- would you  
8 be able to explain which portions, if any, of those three  
9 issues are not included in the somewhat more detailed  
10 statement before. I did notice that those three issues  
11 seemed not to talk about the QA/QC program for construction,  
12 and that's why the Board highlighted that in one of its  
13 orders.

14 MS. WHEELER: You would like me to set forth  
15 briefly what we see as the differences in these decision and  
16 where our disagreement arises from?

17 CHAIRMAN BECHHOEFER: I would like to find out  
18 what you think has been left out.

19 MS. WHEELER: It's not so much as what we think  
20 has been left out, it's what we think has been added. And  
21 for example, in the October 15th letter from Mr. Black, the  
22 issue that is set forth in -- under Part A, is whether Houston  
23 Lighting and Power has the necessary competence and character  
24 to operate the South Texas facility.

25 The issues that are deemed relevant to that is;

1 number one, did they abdicate too much responsibility to  
 2 Brown and Root for construction; number two, did they keep  
 3 themselves knowledgeable about necessary construction activities  
 4 and did they make material false statements in the final  
 5 safety analysis report.

6 Now, as that comes down in the -- what I think of  
 7 as the taxicab letter of last Friday because that's how we  
 8 got it -- is the issue is refrained as follows: in light of  
 9 their performance as reflected in part in the Order to Show  
 10 Cause, and their responses thereto, taking -- looking at  
 11 what happened and what was reflected in the Order to Show  
 12 Cause, plus, everything that has occurred since, all the  
 13 actions that have been taken since, all of that taken together,  
 14 is that sufficient to find what I might characterize as lack  
 15 of managerial competence.

16 Now, it seems clear to me that the Commission  
 17 very -- made it very clear in their order of September 22nd  
 18 that abdication of responsibility or abdication of knowledge  
 19 even at the construction phase, taken in and of itself,  
 20 can form an independent sufficient basis for denying a license  
 21 application. In other words, the issue as we see it at this  
 22 expedited stage is whether, in and of itself, the problems  
 23 that are reflected in the Order to Show Cause themselves are  
 24 sufficient basis for finding lack of managerial competence  
 25 if necessary for the granting of the operating license.

1 And we feel that issue is significantly watered  
2 down when you add to that, taking the stuff in the past, plus  
3 everything that has occurred to date. Because basically, what  
4 has occurred to date is a revision in writings that we have  
5 no way at this point of measuring the effectiveness of what  
6 is happening in writing.

7 CHAIRMAN BECHHOEFER: Let me understand you. Are  
8 you saying that we should not look at attempts by the  
9 Applicants to correct what they recognize and acknowledge were  
10 deficiencies?

11 MS. WHEELER: I think those are appropriate for  
12 the hearing proceeding. I don't think they are appropriate  
13 for this issue in the expedited hearing. And I don't think  
14 that was the intent of the Board when they defined the issues,  
15 or suggested that the issues about just the past advocacy  
16 of responsibility and knowledge, whether those form an  
17 independent, sufficient basis for denying a license  
18 application.

19 I think that that is a separate issue and is one  
20 that is appropriate for expedited treatment.

21 CHAIRMAN BECHHOEFER: We have sort of envisioned  
22 that all of the QA/QC issues would be expedited and I reread  
23 the Commission's order as saying that we should cover the  
24 whole matter.

25 MS. WHEELER: Okay. But I guess where we are

1 focusing is the Board's statement in its order that the -- I'm  
2 sorry -- the Commission's statement in its order, that they  
3 say, however, we expect the Board to look at the broader  
4 ramifications of these charges. In other words, the OSE  
5 charges, not what's gone since, but in the charges in the OSC,  
6 OCS, in order to determine whether it is proved they should  
7 result in the denial of the operating license application.  
8 That's the broader ramifications of the Order to Show Cause,  
9 is whether standing alone, the charges, if proved in Order to  
10 Show Cause, should result in a denial of operating license.

11 Now, I think that is, in a sense, a separate issue  
12 from taking the entire picture together, including what's  
13 happened since. Does Houston Lighting and Power possess the  
14 sufficient managerial competence to be granted this license.

15 I'm reading from pages 18 and 19 of the Commission's  
16 orders of September 22nd.

17 MS. WHEELER: Chairman Bechhoefer, we would like  
18 to insure that the letter dated October 15th from Mr. Black  
19 is part of the record of this proceeding. Has that been  
20 entered as a part of the record?

21 CHAIRMAN BECHHOEFER: Well, it is a part of the  
22 record. It is not in evidence because we haven't taken any  
23 evidence yet.

24 Let me throw out this for comment. Would you find  
25 it more acceptable if the issues which are stated in that



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1 rather long issue were divided into two issues? One -- and I  
2 might say that you might have even understated the broadness  
3 of the Commission's order because the Commission on page 18  
4 stated that either advocacy of a responsibility or advocacy  
5 of knowledge, whether the construction or operation phase  
6 can form an independent and sufficient basis for revoking a  
7 license or denying the license application on grounds of lack  
8 of competence, et cetera.

9           Maybe that should be set up as one issue and then  
10 a second issue whether corrective actions would mitigate,  
11 assuming we found that they would be, then I think we do have  
12 to consider whether the corrective actions are sufficient.

13           MS. WHEELER: If you reach the -- if, in respect  
14 to the first issue, you find that the past, the history  
15 questions do not form independent, sufficient basis for  
16 denying a license. then, of course, you do reach the later  
17 issue. If you find --

18           CHAIRMAN BECHHOEFER: Well, I would think we would  
19 have to reach the later issue in any event because if they  
20 were able to go back and correct everything and make sure  
21 that everything was fine in the future, I think that under  
22 Commission rules, you would almost -- you couldn't deny a  
23 license --

24           MS. WHEELER: Well, I think that's what the  
25 Commission exactly says. In other words, the question is not,

1 for example, the physical safety of the plant, but what --  
2 the managerial competence, in other words. I think that the  
3 Commission, where you just read, clearly states that standing  
4 alone, past abdication of responsibility or abdication of  
5 knowledge at the construction phase can form an independent  
6 and sufficient basis for denying the license application.

7 Now you can certainly -- you may be able to cure  
8 the physical defects, but whether you can cure managerial  
9 responsibility or managerial competence, I think, is a  
10 separate issue and I think --

11 CHAIRMAN BECHHOEFER: WE fully agree on that.

12 M.J. WHEELER: The problem we have with lumping all  
13 of that in one issue is this; the QA/QC plan first adopted  
14 in this this -- with respect to these plants, was certainly  
15 sufficient. I mean, it met the regulations, right? Otherwise,  
16 it would not have been accepted. And yet, pursuant to that  
17 QA/QC program, all of these deficiencies that we are now --  
18 reflected in Order to Show Cause occurred. Okay?

19 So now what they are in the process of doing is  
20 preparing a new QA/QC that will be sufficient to address  
21 these past problems. It, like the first QA/QC, is basically  
22 a promise. We have a situation where there is a promise and  
23 then a breaking of the promise. But they can reform -- I  
24 mean, we know that they can prepare a QA/QC that meets the  
25 regs, because they've done it once before. That doesn't

1 change the fact that having once done that and showing  
2 themselves competent to prepare a QA/QC program that meets  
3 the regulations, doesn't mitigate at all the fact that that  
4 program is broken and we don't think that the fact that they  
5 can again prepare a QA/QC program that meets the regulations  
6 at all addresses whether that will correct the situation  
7 because there will be no performance at this point to measure  
8 that by. No performance at all.

9 DR. LUEBKE: If I may interrupt, I would like  
10 to clarify the Chairman's comment when he was reaching from  
11 page 18, the phrase; and sufficient basis for revoking the  
12 license. That's five lines down. We read that to be revoking  
13 the construction permit.

14 MS. WHEELER: Or denying a license application.

15 DR. LUEBKE: Yes. And when Mr. Bechhoeffer said  
16 the scope of this hearing was broad, the "broad" involves  
17 thinking about revoking the construction permit.

18 MR. NEWMAN: I don't believe the revocation of  
19 the construction permit is a matter within this Board's  
20 jurisdiction or either under the Commission's order. Now, I  
21 think that there was reference made by the Staff earlier that  
22 it might be that the Board would develop information such  
23 that would suggest the desirability of having action taken  
24 by the Direction of Inspection and Enforcement. Now if that  
25 action, which is essentially a 2.206 action, could lead to the

1 revocation of the permit. The Board's -- as I understand the  
2 charge to the Board here, is to determine whether or not the  
3 operating license should be denied. The Commission has said  
4 that your function is largely predictive in nature. I just  
5 wanted to pick up a point that Ms. Wheeler was saying. Your  
6 function is largely predictive in nature in this case and we  
7 are quite some time away from the time the plant will operate,  
8 and it seems to me the entire record of the Company's  
9 activities is germane to the determination you have to make  
10 on the operating license.

11 I do want to indicate though that I don't agree  
12 that it is within the authority of the Board to take action  
13 itself revoking the permit.

14 CHAIRMAN BECHHOEFER: Do you think we have  
15 authority to -- well, two things. First, would we have  
16 authority to make a recommendation as to revocation?

17 MR. NEWMAN: Certainly.

18 CHAIRMAN BECHHOEFER: Two, would we have the  
19 authority to acquire conditioning or modification of a  
20 construction permit as an essential element of a final grant  
21 of an operating license? Unless you modify your OA construction  
22 program in such and such a way, we do not believe that this  
23 plant can be built and operated consistent with the public  
24 health and safety here, whatever the findings are.

25 MR. NEWMAN: Yeah. I think if you reach that



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1 determination then obviously we would have to be taking  
2 action to satisfy it, because ultimately we don't want to  
3 be faced with the denial of the operating license, so that  
4 if you find that there are deficiencies that need correction,  
5 programs need rectification - that have to be rectified,  
6 certainly, it's within this Board's jurisdiction to indicate  
7 the circumstances under which it would approve or deny an  
8 operating license application, based upon what it knows  
9 today.

10 MS. BUCHORN: Mr. Chairman --

11 MR. REIS: Mr. Chairman --

12 MS. BUCHORN: I'm the one person that has not  
13 had a chance to have say in this proceeding.

14 CHAIRMAN BECHHOEFER: I was going to call on you  
15 also to submit a statement.

16 MS. BUCHORN: All right. I will defer to the  
17 Staff then.

18 MR. REIS: I want to say, if I can comment on  
19 Ms. Wheeler and the repartee that has gone on here, several  
20 issues.

21 First I would like to say it is our feeling that  
22 yes, the Board can recommend conditions on operating licenses  
23 involving QA/QC just as it did in environmental conditions or  
24 safety conditions that have been put on licenses in the past.  
25 Its determination is whether to grant the license or -- and if



1 so. on what terms it feels appropriate and for what period  
2 it might feel appropriate and --

3 CHAIRMAN BECHHOEFER: Construction QA/QC --

4 MR. REIS: I was going to get to that. I do not  
5 think so. This Board has been constituted under the notice of  
6 hearing originally constituting it and I don't think this  
7 Commission in its order here enlarge that. If it did, it  
8 was intending to look at the construction permits again, it  
9 would have granted the relief sought. It would have gone out  
10 and granted the -- it said, well, let's have the hearing on  
11 whether the permit should be revoked, the construction permit.  
12 Instead it said, we shall have the hearing on the operating  
13 license and whether an operating license should be granted.  
14 In some ways, that puts the Applicants in a rather difficult  
15 position because as it knows, and as the Commission very well  
16 said, on page 15 of the Order, the Applicant is one who --  
17 anyone who wishes a operating license has to come in and  
18 prove their case again to get an operating license.

19 But they did not say that this Board had  
20 jurisdiction to look at the construction permits and whether  
21 they should continue. I even question --

22 CHAIRMAN BECHHOEFER: Mr. Reis, while we are  
23 talking about this, how do you construe the language on page  
24 18 which at first talks about the pleadings which the  
25 Intervenors here had filed before the Commission requested a

1 hearing? And it says we believe the above issues relating to  
2 technical competence and to character permeated the pleadings  
3 filed by citizens. They do deserve a full adjudicatory hearing  
4 as they will no doubt get in the operating license proceeding.  
5 That, to me, says that we have somewhat broader, as I mentioned  
6 before, that we have somewhat broader jurisdiction than the  
7 usual operating license proceeding.

8 Our view is, I think, that we have authority to  
9 adjudicate any of the matters raised in the Show Cause Order  
10 and that clearly deals with the adequacy of the QA/QC program  
11 for construction, construction at least of the matters of the  
12 buildings and the structures that have not yet been built,  
13 plus what has been constructed and built has been done  
14 adequately. We view that as clearly encompassed by the  
15 Commission's order and that is a little broader, I think, than  
16 what the usual operating license Board has been delegated.

17 MR. REIS: Mr. Chairman, I don't think it is  
18 necessarily broader. Every operating license Board has to  
19 make sure if the issues are raised and it is appropriate, if  
20 there are contentions or if the Board wishes to go into it  
21 itself, has to satisfy itself that the plant is constructed  
22 properly. And that there is -- that the concrete does not  
23 have voids, the pressure vessel is whole and will work, that  
24 and -- to the extent that there are still things going on and  
25 that the plant is still being constructed. Yes, this Board

2-12  
1 has jurisdiction in looking at the QA/QC program on  
2 construction. To see that the construction that is going  
3 forward and will be going forward is handled under a -- not  
4 only a good paper program, but a program that is being  
5 implemented and carried out. But that does not go to the  
6 issue of whether this Board has jurisdiction to revoke or  
7 look at a construction permit which was granted in the past.

8 DR. LUEBKE: Mr. Reis, what other licenses are  
9 revokable in that sentence near the top of page 18?

10 MR. REIS: I think that what they are paraphrasing,  
11 if you will go back to the Atomic Energy Act, what it says is  
12 that the Commission may deny a -- deny license application on  
13 the ground that -- let me find it --

14 MS. WHEELER: I think I can clarify this.

15 MR. REIS: The Atomic Energy Act says you can  
16 revoke a license for these matters set forth. What the  
17 Commission is saying there, I think and as I interpret that  
18 license, is, if you can revoke a license, you obviously have  
19 authority to deny a license for the same reasons. And if  
20 you -- I didn't bring the Atomic Energy Act with me --

21 MR. NEWMAN: Its' Section 186, Mr. Reis.

22 MR. REIS: And if you look at the section of the  
23 Act, I think that's what they are saying. That a fortiori,  
24 we have authority to deny a license because -- for these  
25 things -- because we have authority to revoke a license for

1 these things, such as false statements.

2 MS. WHEELER: If I can point out in the order --

3 MR. REIS: Can I continue? Leaving that aside --

4 CHAIRMAN BECHHOEFER: You are next.

5 MR. REIS: Leaving that aside and going to other  
6 things, the Commission very clearly said the abdication of  
7 responsibility of knowledge could form an independent and  
8 sufficient basis, and not saying would or should, but using  
9 the word could, we think it is plain that the Commission  
10 intended this Board to consider the QA/QC management competence,  
11 the wholeness of construction in the past and the context of  
12 everthing that has gone before and everything up to the date  
13 of hearing. They didn't say it should, it must, they said  
14 it could. And I think in saying it could, they wanted to  
15 look at the -- a much broader picture than just as whether  
16 these things took place in the past, because certainly, they  
17 had a record with the admission on the Show Cause Order and  
18 in the Show Cause proceeding of Houston Lighting Power in  
19 itself to show that much of the charges that were there were  
20 proved.

21 Therefore, they asked for a broader hearing than  
22 just on what was in the notices of violations, the Show Cause  
23 Order before and the Applicant's responses to them and wanted  
24 more to be developed on the record.

25 DR. LUEBKE: Could I ask, all of this proof was



2-14  
1 not on the record, that you have just spoken of?

2 MR. REIS: Well, in responding to page 6, the  
3 first full paragraph of the Commission order, CLI-80-32, it  
4 says in responding to the Show Cause Order, Houston  
5 Incorporated, the text of its response to the notice of  
6 violation. It admitted that clearly lack of detailed  
7 involvement met by management was a contribute to the problems  
8 noted. And then, before, they say the substance of the  
9 allegations is conceded, on page 5, they quote where Houston  
10 has admitted that.

11 So much of the material was before the Commission.

12 DR. LUEBKE: But not in the form of sworn testimony.

13 MR. REIS: It was in the form of pleadings  
14 admitted by a party.

15 MR. NEWMAN: Mr. Chairman, excuse me. In terms  
16 of whether they were sworn, the response to the notice of  
17 violation and the show cause order, as I recall, submitted  
18 under oath. It's sworn material.

19 MR. REIS: Admissions made in pleadings are just  
20 as good as sworn testimony as a legal matter. So, the  
21 Commission had these things.

22 Let me just continue on that. At the bottom of  
23 18, where they definitely say accordingly we agree that the  
24 Licensing Board and the operating license proceeding should  
25 proceed with an expedited hearing on the quality control



2-15  
1 related issues. Including the allegations of false statements.  
2 Saying that, they are looking at all the quality control  
3 related issues; the quality control for operation, quality  
4 control on construction in the past, quality control as it  
5 shall be for the continuation and the completion of  
6 construction, and those issues.

7 But they are only talking about it in terms of  
8 this proceeding which is considering an operating license.  
9 Further, Mr. Chairman, I don't have a citation with me, but  
10 there is a case at about 4 ACE, a rather old case, that says --  
11 well, 3 AEC, that says the Board should not even, in the  
12 ordinary case, make recommendations on proceedings not under  
13 their jurisdiction.

14 As I remember the case, it was a case involving  
15 environmental considerations on requiring some kind of water  
16 monitoring or water quality control measure on the second  
17 unit. The Licensing Board went beyond and said well, these  
18 matters -- we recommend that these matters also be applied to  
19 Unit No. 1 as well as Unit No. 2 of the same type. The  
20 appeal Board very plainly in that case -- and I don't remember  
21 the name of the case at the moment -- indicated that it really  
22 was beyond the Board's jurisdiction to make that type of  
23 recommendation. The Board has before it only the proceeding  
24 before it.

25 Now, I think all the issues we are talking about

2-16  
1 are material to the operating license, but I don't think that  
2 the -- we are litigating here whether the construction permit  
3 should be revoked

4 DR. LUEBKE: How many examples are there where  
5 character of the Applicant is a serious issue in an operating  
6 license?

7 MR. REIS: I can think of it in -- I'm just trying  
8 to think whether the Midland proceeding was an operating  
9 license proceeding, but certainly it was there, and the  
10 Sharon Harris proceeding and the ongoing TMI proceeding --

11 CHAIRMAN BECHHOEFER: That was a construction  
12 permit or a Show Cause proceeding. I'm the Chairman of the  
13 Operating License Board and we haven't had that issue before  
14 us.

15 MR. NEWMAN: Mr. Chairman, I don't have the cite  
16 with me, but I believe that an issue of that type was litigated  
17 in North Anna at the operating license stage.

18 MR. REIS: It was in the context of the  
19 statements made upon faulting at the North Anna site.

20 CHAIRMAN BECHHOEFER: Do you see any conceivable  
21 difference between jurisdiction over a particular facility  
22 vis-a-vis jurisdiction over another facility as distinguished  
23 from whether jurisdiction over a particular facility such as  
24 this one has been expanded by a particular order of the  
25 Commission? I think the questions are a little bit different,

2-17  
1 but I --

2 MR. REIS: Your Honor, as I said, I do not  
3 consider this Order as too expanded. I don't see the  
4 language in the first full sentence on page 18 too expanded  
5 to say that it forms a sufficient basis for revoking a  
6 license or denying a license. As I read that, it was just an  
7 a fortiori argument that if you had the basis to deny a  
8 license -- to revoke a license, obviously, you had the basis  
9 to deny a license as well.

10 I don't think -- I don't think the fact -- I  
11 think the Board, the Commission --

12 CHAIRMAN BECHHOEFER: In any event --

13 MR. REIS: -- the Appeal Board and the Commission  
14 have been very clear that it is the original notice that  
15 constitutes the Board, whether we talk about the anit-trust  
16 proceedings involving Houston Lighting and Power or other  
17 cases, the Board and the Commission have been quite clear  
18 that the Board only has the particular license or the  
19 particular facet of a license that it was originally charged  
20 with looking at in the notice of hearing and the notice  
21 that was published in the Federal Register to look at.

22 CHAIRMAN BECHHOEFER: Could the Commission expand  
23 that?

24 MR. REIS: Yes, it could. But I don't think it  
25 did. I think it would have authority to do it, but I don't

13  
1 think it did. It said you go back and you litigate this in  
2 the operating license proceeding. It didn't say create a  
3 construction permit proceeding, it didn't -- it said  
4 constituting a 206 proceeding would not be appropriate, that  
5 it would be a waste, really, of effort because they determined  
6 not to do it --

7 CHAIRMAN BECHHOEFER: Wasn't that because of  
8 duplicate testimony -- duplicate proceedings?

9 MR. REIS: I don't think it was just duplicate  
10 proceedings because obviously, if they constituted a Board  
11 on construction permit and we litigated the matters on  
12 construction permit with the same parties it would have quite  
13 a strong effect on the operating license proceeding unless  
14 there was new facts and new law developed in the interim.

15 So I don't think that is the reason. I think they  
16 thought there was an ongoing proceeding, that if the Applicant  
17 wanted to proceed, he could proceed, but darn it, they cited  
18 the Porter County case, page 15, and they showed that all  
19 these matters would be considered and so it would be protected  
20 by considering them during the ongoing operating license  
21 proceeding.

22 DR. LUEBKE: We could wait and see where the  
23 evidence takes us. We don't need to settle the question  
24 today as to what the Commission meant or did not mean and we  
25 can raise the issue then.



T3-1

1 MR. NEWMAN: Well, with all due respect,  
2 Dr. Luebke, I do believe that the Board has to -- we have  
3 to have some understanding of what the Board's role is  
4 here.

5 I think the Order, the Commission's Memorandum  
6 and Order is absolutely clear on Page 19 where it says, "We  
7 expect..." -- they indicate that you will be looking at  
8 some broader ramifications of the issues that are normally  
9 held at the Operating License, or considered at the  
10 Operating License stage, but there is no question that the  
11 determination with which you are charged, it is determined  
12 whether the various allegations are proved, and I quote,  
13 "They should result in denial of the Operating License  
14 Application," is clear to me.

15 Moreover, Mr. Chairman, I believe if there had  
16 been the intent of the Commission to charge the Board with  
17 undertaking a proceeding to deal with the ramification of  
18 the Construction Permit, then I think they would have come  
19 out otherwise or determined otherwise on the request for a  
20 hearing on that very matter which had been submitted by  
21 CCANP, and ultimately denied by the Commission.

22 CHAIRMAN BECHHOEFER: Let me just clarify it  
23 with the Staff. Does the Staff agree that we could say  
24 that unless the construction QA/QC program is modified in  
25 certain ways a license, and Operating License will not be



3-2 1 granted, will not meet the -- the plant as constructed will  
2 not meet the --

3 MR. REIS: Your Honor, --

4 CHAIRMAN BECHHOEFER: -- public health and  
5 safety.

6 MR. REIS: -- the Staff looks at it very much  
7 as any other condition on an Operating License, just as  
8 you might require transmission lines to be put in a certain  
9 area, or built in a certain way, or that cooling towers be  
10 required instead of once throw cooling, it is a condition  
11 and the Licensing Board has the right to put those  
12 conditions on the license, if it thinks they are  
13 appropriate. We have no question about that.

14 CHAIRMAN BECHHOEFER: Even though this would  
15 modify another condition of the construction permit, which  
16 would be to carry out a QA program?

17 For instance, one of the things I'm thinking  
18 about is could we decide that the QA program should not be  
19 carried out by Brown & Root -- now this seems to be central  
20 to the construction permit, what it approved. It also seems  
21 to be an issue that was raised by the Show Cause Order. You  
22 wanted the applicants to come in to testify using their  
23 current arrangement, and there have been significant  
24 questions raised as to whether that is the most appropriate  
25 way of running a QA program. It probably is consistent

3-3 1 with Appendix B, but if it doesn't work, maybe some other  
2 method would be better.

3 MR. REIS: I can't give you a definitive  
4 answer. However, I could say that inventiveness and the  
5 skillfulness of the Board, there may be many ways to skin  
6 a cat.

7 However, I don't think you can directly modify  
8 the construction permit program. However, you might be  
9 able to frame an Order that could be upheld, and I'm not  
10 certain at this time, that says unless the rest of  
11 construction is carried out in this manner an Operating  
12 License is not appropriate.

13 So there you wouldn't be modifying the  
14 construction permit as such. You are saying that in order  
15 to qualify for an Operating License you have to do thus and  
16 so.

17 Now, if push comes to shove and there is a  
18 direct conflict between a term, a particular term in the  
19 construction permit and what you say there might be some  
20 question, but I don't think that would necessarily have  
21 to happen.

22 CHAIRMAN BECHHOEFER: As I remember, most  
23 construction permits are sort of general.

24 MR. REIS: They are.

25 CHAIRMAN BECHHOEFER: Ms. Wheeler, you are next,

1 and then we will hear from Ms. Buchorn.

2 MS. WHEELER: I don't want to preclude  
3 Ms. Buchorn having an opening statement, and we are  
4 getting --

5 CHAIRMAN BECHHOEFER: No.

6 MS. WHEELER: -- pretty far past the opening.

7 I would like to make one comment specifically  
8 in response to the issue raised by Dr. Luebke. In the  
9 language on Page 19 it doesn't say what kind of license.  
10 It says: "Abdication could form an independent and  
11 sufficient basis for denying a license." Okay?

12 On Page 19, speaking to the same point, the  
13 Commission says: "However, we expect the Board to look  
14 at the broader ramifications of these charges..." -- in other  
15 words, the charges in the Order To Show Cause -- "...in  
16 order to determine whether it proved they should result in  
17 denial of an Operating License Application."

18 Now, I think it is clear that the suggestion  
19 by the Commission is that apart from what has gone since  
20 the Order To Show Cause came out that the abdication of  
21 responsibility and of knowledge -- in other words, the  
22 issue of managerial competence shown during the construction  
23 phase in and of itself can, or as Mr. Reis used the word  
24 "could" form a basis, an independent basis for denying the  
25 license.

1           Of course, that doesn't mean that you should  
2 or you must. I mean if the Commission meant that, you know,  
3 I don't -- obviously that's the issue before this  
4 Commission, is whether or not the Operating License should  
5 be granted, and the Commission is not going to say, of  
6 course, this must be the result. It is a possible result,  
7 though, that this -- considering the issue of whether the  
8 past history of abdication of responsibility and abdication  
9 of knowledge, that that past history in and of itself could  
10 form an independent, sufficient basis for denying the  
11 Operating License.

12           Now, I think that since that is a permissible  
13 question, that it is an issue that should not be denied to  
14 the Intervenor CCANP to try to show that. I mean we may  
15 not be able to carry the weight of showing that that in  
16 fact is the result, but it is a permissible result, and  
17 we feel like we are entitled to that issue.

18           MR. NEWMAN: Mr. Chairman, I would just comment  
19 that that is among the issues. It is quite clear that in  
20 Issue B and Issue D by reference in Issue C that the  
21 question of abdication of responsibility and failure to  
22 have knowledge of the activities is included in both  
23 contentions.

24           MS. WHEELER: Well, it is included, but we are  
25 entitled to it as independent issue, not as taking into



1 consideration this and also considering Houston Lighting  
2 & Power's actions and reply. We are entitled to it as an  
3 issue of do these things independently and by themselves  
4 suffice to deny the license?

5 CHAIRMAN BECHHOEFER: Well, --

6 MR. NEWMAN: Mr. Chairman, I really want to  
7 stress our feeling that what you are -- that this Board is  
8 charged with looking at the totality of the Applicant's  
9 performance, its compliance history as a totality, both  
10 adverse and positive, its alleged abdication of responsibility  
11 and corrective measures which have been taken.

12 I think to segregate these issues artificially  
13 really detracts from the Board's primary responsibility  
14 which is to determine whether as an overall matter, viewing  
15 the totality of the Applicate's performance denial of an  
16 Operating License is in order, and I think that this  
17 artificial separation of abdication of responsibility as  
18 of a given point from the totality of the Applicant's  
19 performance on the job is an artificial split that I believe  
20 is really not consistent with the Commission's charge to  
21 your Board.

22 I think there really is a question of the  
23 weight which has to be given to these various instances,  
24 or various things that are described in the Commission's  
25 Order, and I believe that you will lose that ability to



3-7 1 weigh the evidence on different matters if you try to  
2 segregate out, in effect, deficiencies in performance from  
3 improvements in performance.

4 Through your control of the proceeding I think  
5 you can be sure that the Board investigates both those  
6 things which have been done perhaps incorrectly, and those  
7 things which reflect revisions and improvements in  
8 performance, but you really have to look at the whole thing,  
9 and apply the appropriate weight to each factor. I don't  
10 believe that an artificial split in the issues is going to  
11 contribute to that effort.

12 And I think it could be really seriously  
13 misleading the entire conduct of the proceeding.

14 MR. LUEBKE: Excuse me. I'm lost about what  
15 the split is.

16 MS. BUCHORN: Mr. Chairman, perhaps I am seeing  
17 this in a more simplistic, simply because I am not an  
18 attorney. It seems very clear to me that in the  
19 Commission's Order they stated very clearly that we were  
20 to look at their past actions, and whether they constitute  
21 reason for denying a license or coming to a partial  
22 decision.

23 I would also, to back that up, the Chairman of  
24 the Commission in his testimony, sworn testimony before a  
25 Subcommittee, stated that the Commission indicated that the

3-8  
1 Operating License Application might be denied if the facts  
2 support an unacceptable abdication of either responsibility  
3 for or knowledge about the South Texas Project on the part  
4 of the Applicant.

5 The supplement to the Statement of Issues that  
6 we recently got, I believe the heart of that in Issue A,  
7 the fifth line down, "Do the current HL&P and Brown & Root  
8 Construction QA/QC organization and practices meet the  
9 requirements?" That's not what the Commission said.

10 In Issue B the Commission did not say anything  
11 about looking at what their actions were in reply. They  
12 quoted the replies, but they didn't say anything about the  
13 actions.

14 In Issue C they said, and the last part of that  
15 issue says, "Is there reasonable assurance that HL&P will  
16 have the competence and commitment to safely operate the  
17 STP?" That does not go to the heart of the Commission's  
18 Order.

19 IE seems to me that these reformulated  
20 contentions, if you will, are diametrically opposed to  
21 what I perceive to be the guts, if you will, of the  
22 Commission's Order. They didn't say we are going to slap  
23 them on the hand, and say, "Okay, baby, you can go ahead  
24 now, because you've got a whole bunch more paper." They  
25 had a whole bunch of paper in the past. Paper didn't do

3-9 1 any good. And you can bring out ream, after ream, after  
2 ream, after ream of paper, and you can have people sitting  
3 up in Houston bringing out these reams of paper, but if you  
4 don't have the construction personnel out there doing it,  
5 and if you don't have the organization actually on the  
6 site doing it, then it doesn't do any good.

7 And the Commission, it seems to me, has said  
8 "Let's look at everything that has happened to this date,  
9 not what they say they are going to do in the future, but  
10 what has happened in the past."

11 Their testimony, their sworn testimony before  
12 a House Subcommittee states that, as well as thier Order,  
13 and going back to the original letter from Mr. Black,  
14 immediately after receiving the communication I called him,  
15 we talked at some length on more than one occasion and we  
16 agreed to those issues as he stated them.

17 The reason that CEU did not file any paperwork  
18 on this was because he and I both agreed that -- we agreed  
19 that if those issues were ones that were accepted that  
20 there was no need for us to file anything, and that he was  
21 filing that on behalf of CEU.

22 And I might add, too, that the construction  
23 permit will be up for renewal before our full hearing on  
24 the license proceeding.

25 CHAIRMAN BECHHOEFER: That latter may be true,

3-10 1 but it has no affect on --

2 MS. BUCHORN: Well, they were off into whether  
3 you can revoke the construction license, and all of this  
4 business, and --

5 CHAIRMAN BECHHOEFER: Well, under our normal  
6 delegation we could not do so. But my questions were  
7 whether we could impose conditions which if not met would  
8 call upon us to deny an operating license.

9 MS. BUCHORN: Well, I think that that should be  
10 a decision that is made by this Board after all of the  
11 evidence has come in, and after the hearing. I think that's  
12 the only way.

13 You can't decide now whether you are going to  
14 or whether you can do this, whether you can do that, or  
15 whether you can't do that, --

16 CHAIRMAN BECHHOEFER: Well, I think --

17 MS. BUCHORN: -- because you don't know what  
18 the evidence is going to be.

19 CHAIRMAN BECHHOEFER: Well, the questions I was  
20 asking would be irrespectivce of what the evidence would  
21 be, because if we don't have authority to do something,  
22 whatever the evidence would be, we might be only authorized  
23 to make a recommendation. We clearly have authority to  
24 deny or grant, as the case may be, an Operating License  
25 and impose conditions on that.



13-11

1 MS. BUCHORN: Well, I would call your attention  
2 to Footnote 4 on the bottom of Page 18. I think that makes  
3 it very clear.

4 CHAIRMAN BECHHOEFER: Well, I think it is clear  
5 that we have to look into the import of the past practice.

6 I also think we undoubtedly have to allow the  
7 Applicants to try to show if those past practices are bad,  
8 and I assuming that they are at this moment, we have to  
9 allow them the opportunity to show that they have, or will  
10 correct those, or can correct them, and I think that's one  
11 of the main issues before us.

12 Now, maybe these should be separated to two  
13 elements, these contentions. First, how bad were the past  
14 practices, and if they were bad enough to result in denial  
15 of an Operating License have they been or can they be  
16 corrected? Maybe the contentions should be written along  
17 those lines.

18 MR. REIS: Mr. Chairman, along those lines,  
19 with that in mind in Issue B I don't think, although we  
20 say in light of the overall record does HL&P have the  
21 necessary character, and in the next one essentially the  
22 necessary competence, which are the two words used by the  
23 Commission, it could be we didn't mean to foreclose -- the  
24 Staff didn't mean to foreclose the Board's making a legal  
25 determination after they heard the evidence that one of these



3-12

1 matters, such as instances of noncompliances that transpired  
2 in the past so overrode everything else that a license  
3 should be denied. That's still an issue.

4 In setting it out this way we didn't say that  
5 any one of that four or five of these issues each count  
6 20 percent. We left those legal issues open.

7 CHAIRMAN BECHHOEFER: Do you think it would be  
8 possible -- One of the things I've been picking up is if  
9 you and Mr. Newman, and the Intervenors could sit down and  
10 try to work out something during the lunch hour, which would  
11 separate out more, so that I'd say separate them out for  
12 the purpose not of emphasis but of just so that we can  
13 address the questions in somewhat the frame work that the  
14 Commission set out so that we really can answer the question  
15 whether the practices in the past were such that an  
16 Operating License should be denied.

17 Then as a separate contention if so, have steps  
18 been taken which would call for a different result, and  
19 that would seem to me to be a logical division.

20 MS. WHEELER: Could you restate that, please?

21 CHAIRMAN BECHHOEFER: I'm not sure I could.

22 MR. NEWMAN: Mr. Chairman, I think that what  
23 you've got there is a highly academic exercise by splitting  
24 the issues in that fashion.

25 Ultimately your determination, as the Commission

3-13 1 said, is predictive in nature, and nothing which is  
2 predictive in nature in the sense that the Commission's  
3 Order described it can fail to take into account the  
4 totality of the experience, both the past experience, the  
5 current experience, and that experience which might be  
6 expected in the future, and I really don't think it's a  
7 useful division of the issues.

8 CHAIRMAN BECHHOEFER: I would think the more  
9 serious the remedies we thought were necessary, the more  
10 useful a division of that sort would be.

11 MR. NEWMAN: But you have the full panoply of  
12 remedies available to you regardless of whether the  
13 contentions are stated in a single contention or split in  
14 the way that you have just described.

15 As I think Mr. Reis said, there is no intent  
16 here to foreclose the Board from finding that one of these  
17 issues is preemptively of a character as to require denial  
18 of the operating license.

19 MR. LUEBKE: I think the difference is,  
20 Mr. Newman, that if we have two missuses, we can make two  
21 findings. If we have one issue, we make one finding.

22 MR. NEWMAN: And the issue is whether or not  
23 an Operating License should be denied or conditioned in  
24 some fashion, and that's something which you can do with  
25 the issues as they are stated right now.

3-14 1 MR. LUEBKE: It's probably premature to say  
2 that.

3 CHAIRMAN BECHHOEFER: I am trying to work in  
4 the objections that both sets of Intervenors have stated.  
5 It may be the way both they and the public perceives what  
6 issues we are addressing. I do think the Commission did  
7 want us to address the questions that the Intervenors have  
8 raised.

9 I think if those questions are not buried in  
10 certain language -- I realize that those questions  
11 probably exist in the issues as stated, but I think it  
12 might be clearer to the Intervenors and to the public  
13 if we were able to separate out some of the issues dealing  
14 with past performance from those of whether sufficient  
15 corrective actions have been taken.

16 I think we will have to hear all of this  
17 material in any event under the statement of issues that  
18 we have, as well as what I just threw out for comment, but  
19 it might be desirable to set them out as separate issues so  
20 that we could make a finding, which the Commission seems  
21 to anticipate that we make, whether or not past practices  
22 have been such to warrant rejection of an Operating License.  
23 And two would be whether corrective actions would so change  
24 things that an Operating License be definitely denied but  
25 conditioned in certain ways.

3-15

1 MR. HOFFMAN: If I might just state, if we are  
2 talking in terms of a curative effect of what takes place  
3 in the future, how can you cure a false statement? A false  
4 statement has been made, and it has been shown to have been  
5 made, and the Order of the Commission said that on that basis  
6 a license to operate that plant may be denied, and they are  
7 ordering, in my opinion, in the Commission's Order that if  
8 you find those false statements were made, and you find  
9 that they were significant enough to show managerial  
10 incompetence, that at that point then this Board should  
11 find an Operating License should not be granted. How can  
12 you cure a false statement? You cannot cure it.

13 CHAIRMAN BECHHOEFER: Can you fire the people  
14 who made it? Can you replace the organization?

15 MR. HOFFMAN: I do not think so. It is our  
16 position that if this Board were to find that the Show  
17 Cause Order, the items stated in there were of a significance  
18 to deny a license, that that license should be denied now at  
19 the expedited hearing. What is the purpose of having an  
20 expedited hearing, if you cannot make a decision at that  
21 time? Why would you have an expedited hearing? Why not just  
22 wait until it is time for the final hearing?

23 An expedited hearing is to give an opportunity  
24 for this Board to say at this point that this license should  
25 not be granted on the basis of what has happened in the past,



3-16

1 and curative effect aside it is our position that the  
2 Commission has ordered this Board to make that determination  
3 at the expedited hearing.

4 CHAIRMAN BECHHOEFER: Would you say that we  
5 shouldn't have an expedited hearing to perhaps say that  
6 this license should not be granted unless the following  
7 changes are made and carried out?

8 MS. WHEELER: That's certainly within the realm  
9 I think of the remedies available to the Board.

10 CHAIRMAN BECHHOEFER: Right.

11 MS. WHEELER: I think that, though, one possible  
12 remedy, and one which we are entitled to ask for, is that  
13 based on the abdication of managerial responsibility in the  
14 past that the Operating License -- that that is sufficient  
15 to deny the Operating License at this hearing, at an  
16 expedited hearing.

17 Obviously, that's an issue of fact, whether we  
18 can bring in the evidence that we need to establish that,  
19 but I think that that is an issue that we are entitled to  
20 have, not taking into consideration the possible curative  
21 effects, but just looking at what occurred in the past is  
22 that sufficient to deny the license. If that question is  
23 answered by this Board, no, it is not sufficient, then, of  
24 course, those other issues can be considered in terms of  
25 curative remedy.



4-1 1 MR. REIS: Mr. Chairman, the closing lines of  
2 the Commission on Page 19 was that we ought to be in a  
3 hearing on the Quality Assurance/Quality Control related  
4 issues.

5 In formulating the contentions, the statement  
6 of issues to supplement CCANP's original issues, we did  
7 incorporate, we thought, all A's that would take care of  
8 that. We do have B(4), the extent to which HL&P abdicated  
9 responsibilities for construction; B(5), the extent to which  
10 HL&P failed to keep itself knowledgeable; B(1), in essence  
11 by reference refers to the false statements in the Show  
12 Cause Order.

13 Issue A was an issue that you would have to  
14 deal with really -- It goes to is there reasonable  
15 assurance that the construction will take place so that  
16 we have a whole plant, one without major technical faults.  
17 That's Issue A.

18 Issue B was the character.

19 Issue C is the competence and commitment to  
20 operate safely. Not just competence, but will they really  
21 operate, and we are dealing with an operating phantom. We  
22 refer back to those very issues the Commission highlighted,  
23 Issues 1, 4 and 5 of B, on the statements in the FASR, the  
24 abdication of responsibility, and the failure to keep  
25

4-2 1 itself knowledgeable.

2 Issue D is the structure built to date whole,  
3 which is a very important question, and is it a good  
4 structure, and one that will be proper to house -- be a  
5 proper nuclear plant.

6 Issue E is the overall Quality Assurance program  
7 for operation, which, of course, at this point is a paper  
8 program, but --

9 Intertwined with the last issue, of course, we  
10 go back to Issue C, which is competence and commitment to  
11 keep that paper program and a feeling that that paper  
12 program will work, and a feeling that they will carry it  
13 out.

14 So we think the issues are there and are set  
15 forth there. Now, the extent we didn't attempt to set  
16 forth how much law should be, and how the law should be  
17 applied to each of these issues. We were outlining in  
18 these issues as to what are the areas in which evidence  
19 might come into the record, not on -- I agree the  
20 Commission left totalling open if you find the abdication  
21 of responsibility in the past, and the abdication of  
22 knowledge and false statements are enough so that your  
23 prediction of conduct you cannot be confident that you can  
24 predict that they will live by their agreements that they  
25 might set out in a Quality Assurance program for operation,

4-3 1 that the character is shown as such that they would not,  
2 that you could take what action you think and make what  
3 findings you think.

4 But the Staff thinks that this apply summarizes  
5 the issue that should be looked at and the context they  
6 should be looked at.

7 MR. NEWMAN: Mr. Chairman, I agree with what Mr.  
8 Reis has said. It seems to me that as the record develops  
9 should it be the wish of the Intervenor to say that, for  
10 example, the alleged false statements -- and, by the way,  
11 they are only alleged false statements. There was  
12 implication by Mr. Hoffman that they were in fact admitted  
13 to be false statements. They are not. That is a subject  
14 of controversy. But it would seem to me that after the  
15 evidence is in, when the findings and conclusions are  
16 written, it is certainly within the capability, within the  
17 ambit of the things that the Intervenor can do to identify,  
18 for example, abdication of responsibility as being a  
19 pre-emptively disqualifying condition that warrants denial  
20 of the operating license.

21 Those are legal questions that have to be  
22 faced. But what Mr. Reis is saying, and we are saying, is  
23 we are trying to set out the general area within which  
24 evidence is to be offered in the case, not to set out what the  
25 legal findings are to be in the case. Those are with the

4-4 1 Board, and they are with the Intervenor to specify when  
2 the time for filing findings and conclusions is present.

3 CHAIRMAN BECHHOEFER: Would you have any real  
4 objection, however, if we set up as separate issues one  
5 were past practices so bad that they would, they of  
6 themselves would justify revocation of the license. If so,  
7 have corrective actions been taken, or will they be taken  
8 sufficient to offset that, and --

9 MR. NEWMAN: Mr. Chairman, I really am aware of  
10 no precedent, and I looked at some of the FCC cases that  
11 deal with character and competence, because there is so  
12 little on that score in the NRC cases. I am aware of no  
13 case in which the totality of the conduct of the Applicant  
14 or the Licensee was not looked at as a whole.

15 And I think that a hearing that is bifurcated  
16 in the --

17 CHAIRMAN BECHHOEFER: We will look at it as a  
18 whole in terms of partial initial decision, but I am talking  
19 about separating into issues the issue raised by the  
20 Intervenor seems pretty much to track some of the language  
21 in the Commission's Order. This is why I am inclined to  
22 see why it wouldn't be reasonable to restate some of those  
23 issues, particularly No. A.

24 MS. WHEELER: I might add that we would object  
25 to that particular statement, for this reason: Okay. We

4-5 1 Feel like there is an independent issue of does past history  
2 of managerial abdication in and of itself support a decision  
3 that the operating license should be denied. Okay.

4 Now, it seems to me that somewhere in this  
5 proceeding, obviously, it is relevant to look at what has  
6 happened since the Order To Show Cause.

7 Now, as I understand it, the basis -- the crux of  
8 what has happened since the Order To Show Cause is the  
9 preparation of a revised QA/QC program; is that correct?

10 CHAIRMAN BECHHOEFER: I think that is probably  
11 correct.

12 MS. WHEELER: I think that is within the realm  
13 of the other question, which is: Is the QA/QC program now  
14 adequate?

15 So I think that that separate issue, if you  
16 should find, yes, on the issue is the past abdication  
17 sufficient to deny the operating license, then I think it  
18 is improper to say: Is that curable. If it is curable  
19 in some way then, of course, the past standing in and of  
20 itself is not adequate to deny the license.

21 We would like an issue on which there can be a  
22 finding of whether the past actions are sufficient to deny  
23 the license, because, in effect, they are incurable. Okay?

24 Then separate issues could easily relate to  
25 what has happened since.



\$-6 1 MR. NEWMAN: Mr. Chairman, I think the simple  
2 answer to that question is that if that is the way counsel  
3 for CCANP views the case, that is the way counsel for CCANP  
4 can present proposed findings and conclusions.

5 What we are talking about here is an arena,  
6 a method of getting -- of organizing material to come into  
7 evidence in the proceeding, not questions of what the  
8 ultimate legal determinations are.

9 MS. WHEELER: I think we are talking about  
10 how the issue is framed, and how the issue is framed will  
11 certainly --

12 MR. NEWMAN: The issue in the case is whether  
13 or not the operating license should be denied, or as the  
14 Chairman has indicated, conditioned in some fashion, and  
15 that should be based on the totality of the evidence that  
16 is placed before the Board.

17 Both the things that may be regarded as  
18 adverse indications, and those which are indications of  
19 positive and adequate performance by the Applicant, placed  
20 before the Board --

21 CHAIRMAN BECHHOEFER: I was trying to see if we  
22 couldn't frame the issues so that the Intervenor could get  
23 an issue set up the way they want it.

24 I don't think the evidence which would be  
25 admissible under either formulation would be very different.

4-7 1 MR. REIS: Mr. Chairman, may I suggest that the  
2 Intervenor write out the issue they wish? Maybe we agree  
3 to the issue to indicate that it is an issue in the  
4 proceeding, not that we agree to the law or the basis on  
5 the legal issue, but indicate that we feel that evidence  
6 can come in on that issue? That might do it. And, in  
7 addition, if they feel there is another issue here.

8 MS. WHEELER: We can draft it easily. It's  
9 reflected in your office's letter of October 15th under  
10 Subpart A. That's from your office.

11 MR. REIS: We feel, and looking again at our  
12 letter of October 15th, which I might say is not only our  
13 letter, but which I approved, that -- is my office's letter,  
14 but which I personally approved -- I think under -- that  
15 these issues are already encompassed in what we have set  
16 out before, and I don't see any material difference.

17 I think we have strengthened the things, and  
18 indicated a little more where we think the evidence is  
19 going, but I think these are all in there now, and that all  
20 of those issues are in litigation.

21 MS. WHEELER: Mr. Chairman --

22 MR. REIS: The basic issue is: Does HL&P have  
23 the necessary competence and character to operate the South  
24 Texas --

25 CHAIRMAN BECHHOEFER: Well, would you tell us

4-8 1 one thing. I think one of the things the Intervenors seem  
2 to be driving at, your Issue 1, which has -- or 1(A) doesn't  
3 talk about corrective measures, and what I was wondering and  
4 the Board is wondering is whether you couldn't have an  
5 issue along those lines, and then have another issue  
6 perhaps which incorporates the corrective measures to see  
7 whether they are adequate, but just to set it out separately.

Issue A, particularly, very clearly would  
9 permit an evidentiary, A to A of the latest version, would  
10 permit an evidentiary presentation which would say the past  
11 QA/QC program is irrelevant because we don't follow it any  
12 more. The only thing you should look at is the future. It  
13 would permit that. You could concede everything that was  
14 said in the past without wanting to litigate it, not  
15 bringing out any witnesses to testify how it worked or  
16 didn't work, and --

17 MR. NEWMAN: Mr. Chairman, I think the thing  
18 to note there is that the contentions as restated in the  
19 November 14th filing do in fact reach the question of  
20 character and competence, including prior performance.

21 I guess what we are trying to say to you is  
22 that the issues that you have before you now, if anything,  
23 are more far reaching and do include the past performance  
24 of the Applicant, something which may not have been  
25 immediately evident on review of the Staff's filing of

4-9  
1 October 15.

2 DR. LUEBKE: Where does it specifically say so,  
3 Mr. Newman?

4 MR. NEWMAN: In our November 14th filing?

5 DR. LUEBKE: Yes.

6 MR. NEWMAN: Sure. If you look at the introduction,  
7 for example, to Issue B. In light of the overall record of  
8 HL&P's compliance with NRC requirements.

9 DR. LUEBKE: Overall isn't in there.

10 MR. NEWMAN: Yes, it is, sir. Issue B.

11 DR. LUEBKE: A is the one I was --

12 MR. NEWMAN: A is a separate issue which wasn't  
13 even touched upon in the Staff's filing.

14 DR. LUEBKE: I thought we were speaking of A.

15 MR. REIS: A is another issue as we look at it and  
16 A is a continuation and something that we left out of our  
17 October 15th letter, which we think is something that has  
18 to be looked at. And that in going forward with  
19 construction from this day forward, can it be completed in  
20 conformance with the construction permits and other  
21 applicable requirements? You are going to have to make a  
22 finding that eventually -- on that.

23 CHAIRMAN BECHHOEFER: I recognize that.

24 MR. REIS: Now, the issues on abdication of  
25 management responsibility and abdication of knowledge and

4-10  
1 false statements as they are relevant to character and  
2 competence, are set out in Issues B. Now perhaps we should  
3 rearrange those issues and make B and C, A and B and Issue  
4 A, C. Something like that.

5 CHAIRMAN BECHHOEFER: I think managerial  
6 competence and that kind of thing should be in A as well.  
7 And it is by reference the past practices, but what I'm  
8 worried about in A now is that you could say that -- a  
9 witness could come in and say the past practices are  
10 irrelevant because they are not followed anymore.

11 And I don't want that -- I don't want anything  
12 that could lead to that because then we would not be  
13 addressing the Commission's general --

14 MR. NEWMAN: Mr. Chairman, that is just not in  
15 keeping with what Issue A says. Issue A refers to the prior  
16 performance of the -- of the Company. It refers to those  
17 items that were noted in the Notice of Violation and the  
18 Order to Show Cause. It requires a complete examination of  
19 how the Company has conducted its QA/QC operations over the  
20 history of the project to the date of your decision.

21 CHAIRMAN BECHHOEFER: What I am saying is that I  
22 don't think it does, because it also says and HL&P's  
23 responses thereto and actions taken thereto. In light of  
24 all these things put together, a witness could come in and  
25 say that everything in the past is irrelevant because we are



4-11  
1 not following it anymore.

2 MR. REIS: Mr. Chairman --

3 CHAIRMAN BECHHOEFER: What I am saying, under that  
4 kind of a formulation we never could answer the Commission's --  
5 the issues raised by the Commission as to whether past  
6 practices would be enough to deny license. Because we  
7 wouldn't hear about the past practices.

8 MR. NEWMAN: You will hear about the past  
9 practices because that is the evidence that is required in  
10 Issues A, B and C. I think what may have Dr. Luebke perhaps  
11 misled is -- is that we perhaps have not gotten through to  
12 the Board that as -- that rephrased Issues A, B and C are  
13 amplifications of what the NRC Staff offered in Issue A of  
14 its filing, in its filing of October 15th.

15 MR. REIS: The Staff feels that way. Further, let  
16 me say this. The intent of Issue A was not to reach those  
17 things that were definitely spelled out by the Board -- by  
18 the Commission on character and competence. Because there  
19 was something else that this Board had to look at and that is  
20 whether construction can be completed from now until the end  
21 of construction in a way that you could give an operating  
22 license. It was not the issue of are they reliable, are  
23 they trustworthy? Do they have the competence to carry out  
24 the QA/QC program and incorporating into that competence the  
25 questions of reliability and trustworthines, which are

4-12  
1 incorporated in Issues B and C.

2 A was just to go as I intended it -- I can't speak  
3 for the Applicant -- but as I intended it, was just to look  
4 at construction from now on and look back -- well, I guess  
5 D looks back at construction in the past, what was  
6 constructed in the past. But A was only to look at the  
7 construction aspects of it and say will this plant be  
8 completed so that it could operate safely. Not that it would  
9 be operated safely, but that it could be operated safely.

10 CHAIRMAN BECHHOEFER: Let me ask you this. Is the  
11 competence and character the prime inquiry we have to make  
12 to determine that. Don't we have to know that they are going  
13 to give a certain emphasis to QA matters in construction?

14 MR. NEWMAN: If I may interject, the answer to  
15 that question is yes. Character and competence are dealt  
16 with in Issues B and C, specifically, dealt with in B and C.  
17 A answers -- let me just put this in perspective for a  
18 moment. The Board normally has in an operating license  
19 hearing several ultimate determinations to make, among them  
20 is the Applicant technically qualified. What you have here  
21 is an amplification of that term, technically qualified,  
22 because of the circumstances in this case, to include the  
23 specific question of management competence and the question  
24 of the character of the management.

25 Those are dealt with in B and C. Another issue

4-13  
1 that you would normally deal with in an operating license  
2 plant -- in an operating license proceeding, is whether the  
3 plant has been completed in accordance with the permit and  
4 the Commission's requirements. That answer, as of a given  
5 date, or that issue as of a given date is posed in our Issue  
6 A. Everything that the Board is charged with looking at by  
7 the Commission in terms of technical qualifications, the  
8 adequacy of plant construction, the adequacy of the program  
9 to complete the construction of the plant, all of those things  
10 are explicitly set out in joint statement of the issues by  
11 the Applicant and the Staff.

12 DR. LUEBKE: Mr. Newman, this concept of prior  
13 and past actions -- I'm trying to find it in Issue A. Is that  
14 incorporated in the words Notice of Violation and Order to  
15 Show Cause?

16 MR. NEWMAN: In part, it is, yes.

17 DR. LUEBKE: I'm having trouble finding prior  
18 and past actions.

19 MR. NEWMAN: What we are saying is, in the light  
20 of our performance in the construction, which includes  
21 everything --

22 DR. LUEBKE: It doesn't say that.

23 MR. NEWMAN: It says, "In light of HL&P's  
24 performance in the construction of the STP project." That  
25 is the whole history of the performance of the Company on

4-14  
1 the project.

2 MS. BUCHORN: But the overriding phrase though,  
3 is, do the current HL&P and Brown & Root construction QA/QC  
4 organization practices meet the requirements of 10CFR Part 50?  
5 That overrides everything that's happened in the past. It  
6 completely negates it. I'm absolutely and totally opposed  
7 to Issue A. And I fail to find where, anywhere, it is in  
8 the Commission's order. That is not what the Commission said  
9 to do. That's not what their statement was before in sworn  
10 testimony.

11 MR. HOFFMAN: Mr. Chairman, if I might amplify  
12 that a moment. We are talking about an expedited hearing.  
13 We keep hearing counsel discuss the question of let's look  
14 at the overall picture. The reason that the Commission came  
15 down with their order was that they felt like this was a  
16 serious enough problem that we should take a look right now  
17 at what has happened and if what has happened right now is  
18 significant enough for this Board to deny an operating  
19 license, then the Board should act now and say we will not  
20 grant an operating license on -- to these people for the  
21 reasons of their actions in the past.

22 If we are going to look at the totality of the  
23 picture, what's the purpose of an expedited hearing? Why  
24 not wait until the whole thing is over and then make a  
25 decision on the license. The Commission was obviously

4-15  
1 concerned about what had happened in the past and they were  
2 so concerned that they ordered this Board to decide if those  
3 practices in the past were so significant as to cause a  
4 license to be denied at this point. And that is our  
5 position.

6 MR. NEWMAN: Mr. Chairman, on the question of  
7 the timing of the Board's actions, the hearings and so  
8 forth, that's a matter to be dealt with when -- if we do  
9 reach the question of schedule. It's certainly not in our  
10 contemplation that there will be an extended schedule for the  
11 conduct and completion of these hearings.

12 We look to something that is -- that will be a  
13 timely hearing and lead to a timely decision by the Board.

14 In answer to Dr. Luebke's concern, Dr. Luebke, if  
15 you wanted to add, if you thought it would be helpful to  
16 add the word "prior" before HL&P -- after HL&P's and before  
17 the word "performance" on line one, that's entirely  
18 satisfactory to us.

19 DR. LUEBKE: I just did it with my pencil.

20 MR. NEWMAN: Sure.

21 CHAIRMAN BECHHOEFER: I might say if we do that,  
22 your prior performance is not reflected in the corrective  
23 actions. I still think you have to divide that into two  
24 sections.

25 DR. LUEBKE: But it's a beginning.



4-16  
1 CHAIRMAN BECHHOEFER: Yeah. I think the word  
2 past or prior should be in there, but I think that HL&P's  
3 responses and actions taken thereto should be out at this --  
4 as the first part of the contention as a separate  
5 contention or separate section, either one.

6 There should be something like if so, have those  
7 documents and other proposals which may come in hear -- in  
8 a hearing, modified or change any such recommendations.

9 MR. HOFFMAN: Mr. Commissioner, if I might state,  
10 again --

11 CHAIRMAN BECHHOEFER: I'm not a Commissioner yet.

12 MR. HOFFMAN: What I'm saying is, I think that --  
13 that this Board could make a determination at the hearing  
14 that the past actions are not -- or at least they could make  
15 a decision that even if they were of a nature that a  
16 licensing -- a license permit should not be granted at this  
17 time, or at least that we are very confused or worried about  
18 it, you could still make a decision that we will look at  
19 the future practices, but we've already made our determination  
20 that you've got a lot of trouble here.

21 That is -- I think that that is one of the  
22 remedies available to the Board, but we do believe that the  
23 Board also has the power at this time to deny the license  
24 based on the past practices, and we would want an issue  
25 framed in those terms. That if you -- go ahead, I'm sorry.

5-1  
1 MS. BUCKHORN: Mr. Chairman, on page 18, it says  
2 either application of responsibility or application of  
3 knowledge, whether in construction or operating phase, could  
4 form an independent and suspicious basis for revoking a  
5 license. Now, independent and sufficient, I think, are key  
6 words.

7 CHAIRMAN BECHHOEFER: Would you -- or I will  
8 give this collectively to both sets of Intervenor -- but  
9 do you think that Issue B could be phrased that way?

10 DR. LAMB: The operative sentence on Issue B is  
11 at the top of page 2, in which it says does HL&P have the  
12 necessary character to be granted the license to operate  
13 the STP safely.

14 MS. WHEELER: I believe that we could agree to  
15 that if subpart 3, HL&P's actions in the Show Cause Order  
16 word --

17 DR. LAMB: Or if it were changed so that it  
18 reflected these topics individually or collectively.

19 MS. WHEELER: We think we are entitled to an  
20 issue that could be worded as Issue B is without subpart 3  
21 in it. If you would delete that, we would accept that issue.

22 MS. BUCHORN: I agree.

23 CHAIRMAN BECHHOEFER: Would you accept 3 as a  
24 separate issue, if so --

25 MS. WHEELER: As a separate issue, I'm not sure

52  
1 what the justification is for including that in the  
2 expedited hearing.

3 CHAIRMAN BECHHOEFER: There is only going to be  
4 one hearing on a QA/QC matter.

5 MR. HOFFMAN: Let me get a clarification on that.  
6 Are we saying that this expedited hearing, that the evidence  
7 is brought forward to make a determination about past  
8 practices, if this Board does not deny the license at the  
9 time then we will not be allowed to introduce that evidence  
10 at a final hearing for licensing?

11 CHAIRMAN BECHHOEFER: We thought the QA/QC  
12 issues would be handled totally. We read the Commission as  
13 saying that. We suggested that to the Commission in several  
14 orders we issued.

15 MS. WHEELER: I think that's true insofar as the  
16 contentions of CCANP, the first two are also the subject of  
17 this expedited hearing. So, yes, as a separate issue --

18 CHAIRMAN BECHHOEFER: It would arise.  
19 Subsequently, you would have a chance to come up with  
20 a new contention if we issued a decision saying certain  
21 changes had to be made, then the evidence came forward that  
22 the changes were working -- obviously, that could be  
23 litigated again later. But, as new information.

24 But, I think the Commission wants an overall  
25 decision right now on including contentions -- substantive

5-3  
1 Contentions 1 and 2.

2 MS. WHEELER: Let me just state for the record  
3 that the CCANP had very short notice of what a hearing that  
4 they anticipated would be in January would be now, we've  
5 been counsel of record since Friday and we've actually been  
6 retained on this case since a week ago Monday, so if we --  
7 you know, we are at a point this time, but before I could  
8 agree to that, if we could take that up after lunch and give  
9 us an opportunity to consult.

10 CHAIRMAN BECHHOEFER: I certainly expect it -- in  
11 fact, I'm hoping all the parties will -- we probably will  
12 allow enough time at lunch that you will have a chance to  
13 get together for a few minutes.

14 MS. WHEELER: You won't order us to eat lunch  
15 together --

16 CHAIRMAN BECHHOEFER: Well, that we won't --  
17 although, if you are going to stay in the hotel, you've only  
18 got two restaurants to chose from.

19 DR. LUEBKE: Mr. Reis; in your recitation of  
20 Issue B, I had a little trouble with the language finding  
21 this thing called charges of harrassment, intimidation, lack  
22 of support and quality control in the character issue.

23 MR. REIS: That's in the issues of non-compliance  
24 that was in the notice of violation, and it's also the  
25 abdication of responsibility where the -- certainly, taking

5-4  
1 together with the notice of violation, it certainly was the  
2 HL&P's responsibility to see that such things did not happen  
3 and to know about them on the site if they did happen, so  
4 it's under 5 as well, and I think that there is no question  
5 that we would be looking at -- but, it's also in Contention 1  
6 of CCANP, which we have indicated, of course, continues.  
7 And it's in 1-7A, and it's there stated explicitly, and we  
8 have no question that that is certainly an issue that should  
9 be gone into in this proceeding.

10 MR. NEWMAN: I would like to associate myself  
11 with that.

12 CHAIRMAN BECHHOEFER: That is also in Contention 2  
13 in the operating license proceeding.

14 MR. REIS: That is right.

15 MS. BUCHORN: Mr. Chairman, going back to the  
16 comment I made earlier about conferences with Mr. Black; I  
17 would like to ask Staff if they attempted to get in touch  
18 with the Intervenor in their working out of the wording of  
19 this? Because I'm having a great deal of difficulty and the  
20 way this wording was arrived at and the fact that it hit us  
21 completely unaware -- I was at my office, my husband called  
22 me and said that a special delivery on this thing -- I had  
23 to leave my office and drive home, which is quite a few  
24 miles and then go back, and we were completely unaware that  
25 there was even any negotiations. How did those negotiations



5-5  
1 start? Who initiated them and why were we not brought into  
2 this whole process?

3 CHAIRMAN BECHHOEFER: I think Mr. Reis wants to  
4 tell you.

5 MR. REIS: First of all, I'm counsel for a party,  
6 as far as I know, in any legal proceeding, counsel can talk  
7 with counsel in any other -- for any other party and not have  
8 other available. I'm sure Mr. Black spoke to the Intervenors  
9 individually without bringing the Applicants in at time.

10 We apologize for any inconvenience you have.  
11 Certainly the statement as we've been discussing for two  
12 hours is not binding on the Board, it is just what is arrived  
13 at by counsel for two of the parties. If you feel  
14 differently about it, and you do, you've made your views  
15 known, and it does not -- and we do not feel that it binds  
16 the Board in any way whatsoever.

17 It is what we think was an appropriate way to  
18 put forth the matters that are going to be involved in  
19 this hearing, looking at it in total. The -- what we  
20 originally said in the October 15th letter was a little too  
21 skimpy. We felt that we ought to spell out a little bit more  
22 where we are going.

23 MS. BUCHORN: But Mr. Chairman, I feel like it  
24 was totally inappropriate in that I'm getting the feeling that  
25 here the Intervenors have been placed in a very untenable

5.6  
1 position and we've got them on the other side.

2 MS. WHEELER: If I might also respond to that  
3 briefly. I think it's -- clearly, if we felt like there had  
4 been an unlawful exparte contact we would have raised that  
5 issue. And while I don't think that that is the situation  
6 here, but we are are operating -- or were operating under an  
7 order from this Board asking that the parties attempt to  
8 agree to the issues.

9 Now, there was obviously some attempt to agree  
10 that was reflected in the October 15th letter. What we  
11 object to is being left in the position since October 15th  
12 feeling like that represents a partial contention, and there  
13 is in our view, substantial difference between the October  
14 22 -- I mean, the November 14th and October 15th views  
15 expressed in the issues and while we were consulted on the  
16 October 15th, as to what happened last Friday, we were not  
17 consulted at all, and given no opportunity to try to reach  
18 consensus on those issues.

19 And we feel like under the Board's order that  
20 would have been quite appropriate.

21 MR. REIS: All I can do at this point is  
22 apologize and try in the future to make sure that doesn't  
23 happen.

24 MS. WHEELER: Thank you.

25 MR. NEWMAN: Mr. Chairman, before we adjourn,

5-7  
1 if that's what we are about to do, I just want to take one  
2 more shot at this question of the corrective actions that  
3 have been taken. If -- I want to be clear that in framing  
4 the issues as we have framed them, there is no attempt to  
5 preclude any party from arguing that the correct --  
6 ultimately -- that the corrective actions, either had it been  
7 sufficient or whatever they had been, should not be taken  
8 into account in arriving at the decision. It remains with  
9 the Intervenors to make the very argument that they have  
10 been making here after the evidence is in.

11 And I think that this whole discussion kind of  
12 misperceives the purpose of the exercise. The purpose of  
13 this exercise is setting contentions it's so that parties are  
14 on notice as to the proof that will be required in the  
15 proceeding. It's not to reach the -- or state the ultimate  
16 legal questions which have to be determined by the Board.

17 Those questions, those ultimate legal  
18 determinations are things which can be argued to the Board  
19 by the parties in their findings and conclusions. What  
20 we are trying to find out here is what evidence should be  
21 offered up. Clearly, I can't imagine this Board does not  
22 want to have evidence offered into -- evidence offered with  
23 respect to corrective measures or the overall performance of  
24 the Applicant in determining whether or not any particular  
25 aspect of the Applicant's conduct warrants a denial or

5-8  
1 conditioning of the operatin glicense. And I --

2 CHAIRMAN BECHHOEFER: I think you are correct  
3 that we want to hear evidence on all of this. I do think  
4 that the issues could be set up framed in such a way as  
5 the past practices could be separated from corrective action  
6 so that we could decide whether the past actions are  
7 sufficient at least, if not corrective then the question  
8 becomes whether or not they are correctable.

9 DR. LUEBKE: And in that order -- in other words,  
10 let's talk about past actions before we talk about  
11 corrective --

12 CHAIRMAN BECHHOEFER: And Dr. Luebke -- in that  
13 order first whether the past actions have been so bad that  
14 if not corrected, they could -- they should warrant denial  
15 of an operating license. And two, if so, are -- what are the  
16 effectivenesses of any corrective actions, now or in the  
17 future? I think the issue could be framed that way without  
18 materially affecting any of the proof. I can agree with you  
19 under the issues as framed here, the proof that you might  
20 want to advance could come in.

21 MR. NEWMAN: I think also, Mr. Chairman, if you  
22 split issues, you are asking for a very choppy hearing in  
23 which complete presentations are really going to be very  
24 difficult to present to the Board. One day will be the day  
25 on which we talked about what the past misdeeds have been,

519  
1 and then we will set a hearing four days later to decide  
2 what -- or to hear the question of what corrective actions  
3 have been taken. And it seems to me the Board wants to hear  
4 evidence -- I'm sorry -- wants to hear evidence in context.

5 CHAIRMAN BECHHOEFER: I think we could arrange  
6 scheduling if we chose to it deficiency by deficiency. First  
7 hear whether its -- how bad it's been and then hear what  
8 correction actions -- first whether it can be corrected and  
9 what corrective actions have been or will be taken. I  
10 think there are a lot of way that the hearing could be  
11 organized so that -- I do think the Commission did indicate  
12 that the issue as framed by the Intervenors could be  
13 considered and perhaps should be considered so that --

14 MR. NEWMAN: The issue can be considered. Nobody  
15 is arguing that.

16 CHAIRMAN BECHHOEFER: Right.

17 MR. NEWMAN: The question is; how are you going  
18 to structure the hearing and how much -- and the extent to  
19 which you are going to put parties on notice as to the proof  
20 that would be required to reach ultimate findings with  
21 respect to character and competence.

22 CHAIRMAN BECHHOEFER: For instance, I think Issue  
23 B without paragraph 3 could be set up that way and then  
24 paragraph 3 could be set up as another issue.

25 MR. NEWMAN: It's always available for the



5-10  
1 Intervenor to argue the information developed under what  
2 would be subset 3 here, should not be considered because  
3 the record otherwise is so damning, if you will.

4 That option is always open. That's a legal  
5 question.

6 CHAIRMAN BECHHOEFER: Yes, but I think Issue B  
7 could be set up as sub-issues, or two separate issues, but  
8 without any particular loss of either convenience or  
9 ability of the Board to consider the --

10 MR. REIS: The Staff would not object to that  
11 although we agreed to these issues that was in agreement with  
12 the Intervenor. Of the Board will so rule, the Staff would  
13 not -- that's the option of the Board.

14 CHAIRMAN BECHHOEFER: We would like the parties  
15 to see if they could agree on a statement of Issues in  
16 which they can all agree. That's why we are going to take  
17 a break for about two hours at lunch time. We hope that  
18 will be enough time to allow you to have a little extra  
19 time to confer. Perhaps get together a way to describe the  
20 issues. If we break now, about 12:00 and come back at 2:00.

21 The one comment I want to make now is I think --  
22 Issue A -- something has to be done to Issue A as well. I  
23 think Issue A perhaps could be stated in one or two ways;  
24 first, if you stated it the way it is it would have to add  
25 something like, alternatively, would a different form of

5-11  
1 construction, QA/QC organization, including, but not limited  
2 to those specified in Section V-A1.

3 MR. NEWMAN: Could you read a little more slowly?

4 CHAIRMAN BECHHOEFER: Well, I'm just reading --  
5 but this not conclusive. This is just something I drafted up.  
6 Alternatively, would a different form of construction, QA/QC  
7 organization, parantheses, including but not limited to those  
8 specified in Section V-A1 here, V-A1 of the Order to Show  
9 Cause, provide a greater degree of assurance that  
10 construction of STP could be completed in conformance with  
11 the construction permits and other applicable requirements.

12 What troubles me is that probably every one of  
13 the alternatives mentioned in the Show Cause Order conform  
14 with the strict requirements of Appendix B. I'm not sure  
15 that we shouldn't look at what the best way -- on paper  
16 at least, all of them can comply. There's no form of  
17 organization that is specified. You can have a -- construction  
18 work and the QA work and the ownership being done by one  
19 organization. You can have a separate organization doing  
20 QA/QC work and one of the things we would like to consider  
21 is whether that is the -- what is being proposed, what was  
22 in the construction permit and what is essentially being  
23 proposed now with some upgrading requirements.

24 Whether that is -- not that it will conform to  
25 Appendix B, but it is the best way of conforming to Appendix B.

5.12  
1 MR. NEWMAN: I respectfully suggest it's not  
2 within the authority of this Board. It's the authority of  
3 the -- it's within the authority of the Board clearly to  
4 determine whether or not the Applicant has or will comply  
5 with the provisions of applicable Commission regulations.  
6 It's not within the Board's jurisdiction, I do not believe,  
7 to determine what the optimum form of organization may be,  
8 any one of which may meet Commission regulations.

9 CHAIRMAN BECHHOEFER: Item 1 of the Show Cause  
10 Order, I think Section VA1 orders the Applicant to analyze  
11 this and we may disagree with the conclusions that came out  
12 of the analysis and I would like to rewrite the issue to  
13 make sure that we can hear that, and I think that we have  
14 authority to hear that

15 MR. NEWMAN: I want to understand something  
16 here. That request was made by the Director of the Division  
17 of Inspection and Enforcement, the context of an enforcement  
18 proceeding, which might have led to the suspension revocation  
19 of the license. That is not our modification of the  
20 construction permit. That is not before the Board here, as  
21 we said at the outset. The question before the Board here  
22 is whether or not an operating license should issue, or be  
23 denied, or be conditioned in some way -- in some fashion.  
24 It is -- we are not in the midst here of an enforcement  
25 proceeding. That -- had we been in that type of proceeding,

513  
1 the Commission would have ordered that type of proceeding.  
2 It rejected that type of proceeding.

3 CHAIRMAN BECHHOEFER: I believe it rejected it  
4 because it found that the scope of what could be examined  
5 there was not broad enough to cover the issues which i.  
6 wanted to have covered. And I think it incorporated all of  
7 the Show Cause Order items for us to look at and if corrective  
8 actions should be -- the best corrective action should be  
9 an independent QA/QC organization. For example. I'm not  
10 saying -- there are several alternatives there.

11 One of the things I was thinking about is that  
12 the -- possibly the Staff should be brought in more  
13 directly. Perhaps every non-conformance report which an  
14 inspector writes out should be given directly to the Staff  
15 resident inspector.

16 MR. NEWMAN: Mr. Chairman, I would submit that --

17 CHAIRMAN BECHHOEFER: I'm not saying that any  
18 of these things should happen. I want to be free to explore  
19 that and I want the issues to be set in such a way that --

20 MR. NEWMAN: The alternatives come into play only  
21 after the Board has determined that what's been proposed does  
22 not meet Commission regulations.

23 MR. REIS: I would take the same position that  
24 you could condition the grant of an operating license on  
25 a different form of quality assurance, quality control

5.14  
1 organization only after you find that what is presently  
2 proposed doesn't give you, (a), either doesn't meet  
3 Appendix B directly and/or does not provide reasonable  
4 assurance that construction proceeding in that way will  
5 lead to a safe plan.

6 CHAIRMAN BECHHOEFER: I think it will be the  
7 latter that we will have to find. Almost any form of  
8 organization complies with Appendix B. Not quite, but you  
9 can come up with almost anything that can comply with a  
10 paper regulation.

11 DR. LUEBKE: Mr. Reis, hasn't everything that  
12 happened, happened under somebody's having ruled that it  
13 complied with Appendix B?

14 MR. REIS: If you mean that, yes --

15 DR. LUEBKE: Somebody in the past, that whatever  
16 the plans were, they complied.

17 MR. REIS: Right. Not the execution of the plans,  
18 but the plans themselves, that was found, yes.

19 DR. LUEBKE: And that was heard and decided

20 MR. REIS: And yes, certainly because of feelings  
21 of the nature of the organization that past history can  
22 probably say that in order to be assured that Appendix B  
23 would be met, which includes the execution of the plans as  
24 well as the plans, that certain other things should be  
25 done in order to give you that reasonable assurance. But



5-15  
1 first you would have to find that there is no reasonable  
2 assurance, that the construction can be completed in  
3 conformance with the -- to give you a safe plant.

4 CHAIRMAN BECHHOEFER: I would agree with that, but  
5 what I'm worried about is that the implementation phase has  
6 gotten dropped out of Issue A and the paper phase will  
7 predominate it. As I say, almost any organization on paper,  
8 as long as you set forth a high enough officer in the  
9 organization to whom QA reports will be given, almost any  
10 form of organization will qualify

11 MR. NEWMAN: Mr. Chairman, excuse me. On that  
12 particular matter, Issue A does not describe a paper  
13 exercise. It asks the question whether -- and I'm quoting --  
14 the organizations and practices meet the requirements of  
15 Appendix B, part 15. This is not just the paper program  
16 we are looking at. We are looking at whether or not the  
17 program functions in a manner which meets requirements of  
18 the Commission regulations.

19 CHAIRMAN BECHHOEFER: For instance, there have  
20 been allegations made that QA inspectors would come up with  
21 the finding that some course of action wasn't carried out  
22 correctly. Go to a supervisor, the supervisor would happen  
23 to be influenced in some degree with somebody over in  
24 construction, the supervisor would be told to kill the  
25 non-conforming report or whatever it was. That would happen

516  
1 and it would be buried and QA inspectors would find  
2 something and nothing would happen.

3 MR. NEWMAN: Question of intimidation and  
4 harrassment, if that's what you are referring to in that --

5 CHAIRMAN BECHHOEFER: I'm not even referring  
6 to that. I'm referring to the fact that a QA inspector  
7 would give something to the supervisor, supervisors have  
8 made statements to their inspectors that they can be  
9 overruled, and often were overruled --

10 MR. NEWMAN: Evidence of that type could be -- is  
11 admissible under Issue A, both as a matter of HL&P's prior  
12 performance and also, as a matter of those items that were  
13 noted in the Notice of Violation.

14 MR. REIS: Mr. Chairman, let me ask you this. If  
15 we talk not only -- it says there if you're concerned -- it  
16 just says that due to current HL&P and Brown & Root  
17 construction organizations and practices -- do you also feel  
18 that that should say and the future there? Is that what  
19 you are -- is that what the thrust of what you are saying?  
20 That is not only current but future that you are concerned  
21 with at that point? I want to sharpen in my mind what you  
22 are talking about.

23 CHAIRMAN BECHHOEFER: Well, I am talking about  
24 the future, but I really want the words implementation to  
25 be in there in some way. Both in terms of paper requirements

5-17  
1 and in terms of implementation. I want to make sure that if  
2 we should decide -- we will have to look at QA plans and  
3 programs, on paper. They will not, presumably, have had  
4 very much opportunity to work. We want to be able to  
5 determine whatever is being proposed will work, assuming  
6 something is being proposed and I can always take that as a  
7 gift.

8 MS. WHEELER: Of course, that's very tied in to  
9 the predictive question raised by the managerial competence.

10 CHAIRMAN BECHHOEFER: We would have to know  
11 whether corrective actions are likely to work. Not only if  
12 they conform with paper requirements of Appendix B, which --

13 MR. REIS: I guess, in some ways, if you want to  
14 incorporate Issue C into A, it's one of the troubles setting  
15 up these issues, some of that is in C. It is not directly  
16 applicable --

17 CHAIRMAN BECHHOEFER: A is construction. What  
18 I'm really worried about is that we allow the plant -- if  
19 we say that an operating license might be granted, we would  
20 want to make sure that the building is adequate, that it has  
21 been and will be built according to the specifications.

22 MR. NEWMAN: That's exactly what the contention  
23 states, Mr. Chairman. That is the question. Is there  
24 reasonable assurance that construction is going to be  
25 completed in accordance with the Commission's regulations

5-18  
1 by the construction permit and other applicable requirements.  
2 It's there.

3 CHAIRMAN BECHHOEFER: As I say, we want to make sure  
4 the implementation isn't dropped and then if we find that  
5 another form of organization would allow that, it's  
6 more likely to be implemented better than we would be free  
7 to -- we might have to find that the current organization  
8 wouldn't do it or wasn't likely to do it, but we don't want  
9 to be limited to either saying yes or not to the current  
10 organization and the great emphasis on corrective actions  
11 is organization, as I'm sure you know.

12 Our alternative, which were looked at, I might  
13 have some questions on some of the criteria we used in  
14 determining which was the best form. In responding to the  
15 Staff, you have an organization.

16 MR. NEWMAN: That is correct.

17 CHAIRMAN BECHHOEFER: I wanted to make sure we  
18 could ask questions. To make sure the criteria used were  
19 the proper ones.

20 MR. NEWMAN: As I indicated before, Mr. Chairman,  
21 I don't believe that it's within this Board's charge to  
22 decide what the optimum form of QA/QC organization is. That  
23 kind of inquiry, it seems to me, can only be made after there  
24 is some determination that the QA/QC program is currently  
25 enforced does meet Commission regulations.



5-19  
1 DR. LUEBKE: He's willing to risk a no.

2 CHAIRMAN BECHHOEFER: Anyway, that was just my  
3 thoughts on how Issue A can perhaps be modified.

4 MS. WHEELER: I might just note I don't think it  
5 would be improper to say the current QA/QC that will be in  
6 effect for the rest of the construction, not only that on  
7 paper conforms, but also whether this Board feel that it  
8 probably will in fact be implemented, and that is not a  
9 questio of optimum. That is a question of whether in fact  
10 it's going to happen.

11 MR. REIS: I suggest that maybe on the seventh  
12 line after Appendix B, we might be able - - and I don't know  
13 if the Applicants would accept this and whether the  
14 inconvenience -- and just put in the words and will be  
15 implemented to provide reasonable assurance.

16 CHAIRMAN BECHHOEFER: Why don't you talk it over  
17 with the parties during lunch. That might well cure -- talk  
18 it over with the Intervenors.

19 MR. REIS: Very good.

20 CHAIRMAN BECHHOEFER: Before we break, Peggy, did  
21 you ever get a chance to make your opening statement?

22 MS. BUCHORN: Oh, yes. I could have a great deal  
23 more to say because I'm very uncomfortable in the position  
24 that we've been put in, but I will defer that because I think  
25 more important issues are at hand.



5-28  
1 CHAIRMAN BECHHOEFER: I wanted you to have a  
2 chance to say everything you wanted to say.

3 MS. BUCHORN: I agreed with the statement of  
4 counsel for the other Intervenor and do back up the majority  
5 of her statements.

6 MS. WHEELER: I would advise her never to sit at  
7 the end of the table again.

8 MS. BUCHORN: I don't normally.

9 MR. NEWMAN: Mr. Chairman, before we break, could  
10 you indicate to the parties the matters you intend to take  
11 up before you close other than the statement of issues?

12 MR. REIS: I would like to indicate whether I  
13 have to make reservations for tonight.

14 CHAIRMAN BECHHOEFER: We don't have the room  
15 beyond this afternoon, so I don't know whether we can carry  
16 over or not or how late we can run. We would like to talk  
17 about discovery, whether there is any outstanding disputes.  
18 I know you have just filed a motion before us.

19 MS. WHEELER: What motion?

20 CHAIRMAN BECHHOEFER: Have the Intervenors  
21 received --

22 MS. BUCHORN: No, we have not.

23 MR. REIS: A motion for extension of time to  
24 reply to last discovery requested.

25 CHAIRMAN BECHHOEFER: During the period of lunch,

1 why don't you show them the document?

2 MS. BUCHORN: That would be nice. Mr. Chairman,  
3 I'm having a great deal of difficulty in the actions that  
4 are taken both by the Staff and by the Licensee without ever  
5 consulting or even notifying Intervenors, and I would like  
6 to protest strongly.

7 CHAIRMAN BECHHOEFER: Of course, they are just  
8 filing a motion. You would have a chance to reply.

9 MS. BUCHORN: That's just one thing piled on top  
10 of the other things --

11 CHAIRMAN BECHHOEFER: You don't have to reply  
12 today, but if you could agree with us one way or the other  
13 on it, it would help.

14 MR. REIS: I don't have one.

15 CHAIRMAN BECHHOEFER: I have one, but I only have  
16 one.

17 DR. LAMB: I don't have one, either.

18 CHAIRMAN BECHHOEFER: Well, I could circulate my  
19 copy and hope I get it back.

20 MR. NEWMAN: Are there other items other than  
21 discovery?

22 CHAIRMAN BECHHOEFER: We would like to take up  
23 possible scheduling and have some idea of the next prehearing  
24 conference, if somebody could come up with some estimate.  
25 We would like to know, if considering discovery, from all the

5.12  
1 parties whether they have currently -- there's a December 1  
2 date. We are being asked to extend that for a week, I  
3 think. But, I would like to find out whether the parties  
4 have received all the discovery they think they need and if  
5 not, how much more time and what other items they will need.  
6 So you might be prepared on that this afternoon and we will  
7 talk about that.

8 So with that we will break for lunch. It's now  
9 12:15. Let's make it 2:15 now.

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(Thereupon, at 12:15 p.m., the hearing in the  
above-entitled matter was recessed for lunch, to reconvene  
at 2:15 p.m., on the same day.)

AFTERNOON SESSION

6-1  
1  
2 CHAIRMAN BECHHOEFER: On the record. The Board  
3 has been handed three pages of documents by the Applicants.  
4 The Applicants will, I guess, explain what they stand for.  
5 They appear to be some re-written contentions, or issues,  
6 I should say.

7 MR. NEWMAN: Mr. Chairman, during the recess, we  
8 have been conferring with counsel for the NRC Staff and counsel  
9 for CCANP, Ms. Buchorn, in an attempt to rewrite the  
10 contentions in a manner which comports with their concern  
11 and some of the concerns that the Board expressed. The first  
12 page handed to you is labeled Issue A in the upper left-hand  
13 corner. It would be a substitute for Issue A in the  
14 document transmitted to you by the Staff by letter of  
15 November 14.

16 I would just point out that the wording of Issue  
17 A is the same as that which you looked at this morning,  
18 except for the additional language which is underlined and  
19 the language in brackets which is deleted.

20 Now, is -- the next two pages represent an attempt  
21 to meet the concern or the matter which the Board expressed  
22 before the recess that separating the contentions so that  
23 those matters relating to the deficiencies in past  
24 performance are segregated from those matters relating to  
25 remedial steps.

6-7  
1 Issue B asked the question whether in light of  
2 the indicated circumstance, the Applicant does not have  
3 the necessary character or managerial competence to operate  
4 the facility. Issue B(1), which is a temporary designation,  
5 says, in effect, if you find that HL&P does not have the  
6 necessary character, that is, your answer is in the  
7 affirmative, has the Company taken the remedial steps to  
8 provide assurance that it now has the character and  
9 managerial competence to operate the STP safely.

10 I might note, Mr. Chairman, that I believe there  
11 is agreement as to form among the parties. I believe that,  
12 however, that Ms. Wheeler expresses reservations about  
13 Issue B(1) being in the proceeding at all and I think  
14 likewise with respect to Issue A, if I don't misquote you,  
15 Ms. Wheeler.

16 MS. WHEELER: You do not.

17 MR. HOFFMAN: It isn't a question of reservation,  
18 it's just a question of --

19 MS. WHEELER: Opposition.

20 MR. HOFFMAN: Total opposition. Yes.

21 MR. NEWMAN: I might say, we do not believe that  
22 Issue B, as a matter of law, stands alone in the proceeding,  
23 but for purposes of getting on with this exercise of  
24 identifying the contentions, we frame them in a manner  
25 consistent with -- with the Board's, indication of its



6-3  
1 desire.

2 MR. REIS: There is one other matter I pointed  
3 out to Applicant's counsel although I don't object to it  
4 being framed this way -- if it is still recognized that the  
5 burden of proof of course in all these matters is an  
6 affirmative burden on HL&P to show that it has the  
7 necessary managerial competence and character and it isn't  
8 on other parties to prove that they don't.

9 MR. NEWMAN: Mr. Chairman, the Applicant does  
10 have the burden of proof on all these matters.

11 CHAIRMAN BECHHOEFER: Before we make any final  
12 decisions, I would like to find out why you object to the  
13 (1) and A being in at all.

14 MS. WHEELER: Mr. Hoffman will address that.

15 MR. HOFFMAN: Again, I think the significant  
16 issue is that we must go back to the Commission's order to  
17 determine what issues they felt like needed to be determined  
18 in this matter. And when you look at the order in it's  
19 totality, the initial part of it talks about the problems  
20 that were found by the Commission to -- that existed or at  
21 least of their allegations of having existed.

22 Then, on page 19 the actual order comes down and  
23 it just says we expect the Board to look at the broader  
24 ramifications of these charges in order to determine whether  
25 if approved, those charges, they should result -- they again

6-4  
1 obviously having to mean the charges that are set forth in  
2 the order set out by the Commission -- whether they should  
3 result in denial of the operating license or application.  
4 It's clear that what the -- they were asking the Board or  
5 ordering the Board to do -- in the next line, they say we  
6 are ordering the Board to issue an early and separate  
7 decision on this aspect of the operating license procedure.

8 It's clear to me that that formulates the  
9 question or the issue that is to be determined by this Board  
10 in the expedited hearing. And that to determine or to bring  
11 into that hearing the question of what remedial steps may or  
12 may not have been taken by HL&P are not relevant to  
13 determining whether those charges existed and whether those  
14 charges, separate and independent, would keep this Board,  
15 or whether this Board should deny an operating license based  
16 on those actions.

17 And therefore, A and B(1) are just not relevant  
18 to the expedited hearing and only Issue B is a relevant  
19 issue for this Board to determine in the expedited hearing.  
20 And that's just a shorthand rendition of where we stand and  
21 why we stand on that position.

22 CHAIRMAN BECHHOEFER: As we read the Commission  
23 order, I sort of had the impression that the Commission  
24 superimposed additional issues among those already in the  
25 operating license proceeding. And the standard issue in any

6.5  
1 operating license proceeding is if there are problems, have  
2 they been adequately corrected or resolved. And I don't  
3 view a separate decision on these matters to the operating  
4 license proceeding later on, except insofar as there might  
5 be new information arising later.

6 When I read the Commission's expedited hearing  
7 order, I thought they had in mind the issues that the Board  
8 itself had recommended for an expedited hearing, which would  
9 have included any corrective action because the normal  
10 operating license hearing does that under the general rules.

11 If an applicant hasn't conformed to the  
12 requirements, he's usually given a chance to state how it  
13 will conform.

14 MR. HOFFMAN: I think in normal circumstances  
15 that might be the case. But in reading the order, and I  
16 reread it again at lunch just to make sure that I wasn't  
17 blowing hot air when I didn't know what I was saying, but  
18 it's pretty clear from the order itself and even when you  
19 read the additional view of the Commissioners.

20 Again, when we talk about Mr. Bradford and Mr.  
21 Bilinski, they talk in terms of they are citizens who are  
22 already a party to the pending operating license proceeding  
23 involving the same issues raised in the enforcement action  
24 and as a result of our action today, those issues will be  
25 resolved on an expedited basis in the form of a partial

1 initial decision and I think that is clear that those  
2 additional views, even amplify what the order of the  
3 Commission was, and we just see the efforts of HL&P at this  
4 point to be an effort to dilute what the evidence would be  
5 at this hearing if such a fashion that the Board would not  
6 be able to follow the order of the Commission.

7 The order of the Commission was -- and again,  
8 we think it's clear that it was to determine whether those  
9 past actions prohibit or would cause the Board to find that  
10 the -- HL&P was not a proper person to operate STP.

11 CHAIRMAN BECHHOEFER: Mr. Reis?

12 MR. REIS: Yes, there were two issues. The basic  
13 issue is the competence and character of Houston and central  
14 to those issues, as the Board said, are these two questions.  
15 But they are not the only part of those issues, and as I  
16 read the Commission order, they talk about quality  
17 assurance, quality control in a broader sense, and I think  
18 that's the issue they were referring to generally, will the  
19 plant be operated safely and all these things and how that  
20 bears on it.

21 But more important. Even if there is only one  
22 issue to be determined, certainly, administrative economy  
23 would dictate that the whole thing be heard now, rather than  
24 risk a remand, no matter what opinion the Board would come  
25 out with. It would pay and be very wise to take all the



6.7  
1 evidence on these issues -- that bears on the issues of  
2 quality assurance and quality control, just from the point  
3 of pure administrative economy if nothing else.

4 MR. NEWMAN: I would add, Mr. Chairman, I think  
5 that all the cases that we have examined, including those  
6 which are cited in the Commission memorandum and order, all  
7 suggest that considering matters like technical competence  
8 or management competence and character, the totality of the  
9 circumstances surrounding the Applicant's conduct is always  
10 considered by the Agency.

11 MR. REIS: In that connection, I might point to  
12 one of the cases cited in the concurring opinion of  
13 Commissioners Gilinski and Bradford in the Cosmopolitan  
14 Broadcasting Company case, it was very clear that just if  
15 you were looking for violations of past conduct and a paper  
16 record of violations of past conduct without considering all  
17 that equities and everything surrounding it, the license  
18 would have been probably lifted. The Court of Appeals  
19 instead, remanded it and said you had to consider all  
20 equities surround the grant of that license.

21 MS. WHEELER: On the other hand, I think there is  
22 just no getting away from the point that the Board made on  
23 page 18, which is, that abdication by a managerial incompetence  
24 or lack of character demonstrated at the construction phase  
25 can form an independent and sufficient basis for denying the



6-7  
1 operating license application.

2 I think that's just clear. Now, the reason that  
3 we wanted Issue B reformulated as it is here is that we think  
4 that at the expedited hearing we are entitled to the  
5 question, do those things independently without any other  
6 evidence, themselves constitute sufficient basis to deny  
7 the license? Okay. If that question is answered yes, those,  
8 just assuming the evidence should reveal that yes, those  
9 grounds are sufficient to deny the license, just based on  
10 that alone, I don't understand how you can Issue B(1),  
11 because if you decide it's sufficient to deny the license,  
12 then how can you -- can you then talk about sufficient  
13 remedial steps?

14 I mean, it seems to me that there are several  
15 ways you can answer Issue B. One is you can say yes, there  
16 have been problems in the past, but no, we do not find them  
17 sufficient to deny the license based solely on those points.  
18 In which case perhaps you do get to -- well, let's look at  
19 the totality question.

20 But if you answer Issue B yes, that the evidence  
21 is sufficient from past factions, that HL&P does not have  
22 the necessary managerial competence or character, how in the  
23 world can you get to Issue B(1)? If you get to Issue B(1),  
24 then you are denying the language of the Commission which  
25 says that it is a possibility to deny the license based on

6-9  
1 the past conduct alone.

2 In other words, Issue B(1), as we see it, should  
3 read that the answer to Issue B is in the negative, not  
4 whether it's in the affirmative.

5 MR. REIS: Mr. Chairman, in considering the fact  
6 that findings and proposed findings are made and there  
7 isn't an immediate decision on any issues before a Board,  
8 it certainly pays to have all issues that are relevant in  
9 this sense considered and have the record complete. If there  
10 is not other reason to consider Issue B prime as we are  
11 talking about it now, that alone would be the reason to  
12 allow it in.

13 If we were talking about a hearing where a bench  
14 decision was made, perhaps there would be some merit to the  
15 argument made by Intervenor's counsel, but this isn't the  
16 case where there's a bench decision.

17 MR. NEWMAN: I think it's always open to  
18 Intervenor's counsel to argue that the facts found under  
19 Issue B are dispositive of the issue with respect to the  
20 Applicant's character and competence, but it seems to me  
21 those arguments are made after -- joining what Mr. Reis  
22 said -- after a complete record is taken that would convey  
23 to the Board and for the record, the totality of the  
24 Applicant's competence and character, including the  
25 remedial steps that had been taken.

6-12  
1 MR. HOFFMAN: Let me point out once again that  
2 'ere is going to be an expedited hearing. It is not a final  
3 hearing. A final hearing of what happens since takes place  
4 at the final hearing. In other words, since the time that --  
5 of the items in the items in the Show Cause. It's our  
6 position that the Commission ordered us to take -- and the  
7 Board -- to take a look at those things in this expedited  
8 hearing. If the Board were to determine that in and of  
9 themselves, that ~~that~~ did not result in the failure to -- or  
10 the refusal to give an operating permit, then we go to a  
11 final hearing when a operating permit is ready to be  
12 determined.

13 And all the evidence that they want to present  
14 as far as what they did after that time is available for  
15 them to come forward and present at that time.

16 We are not excluding that evidence if, in fact,  
17 the Board were to find contrary to the way we believe they  
18 should find at the expedited hearing. And, we are talking  
19 about a situation of if we want to economize the time and  
20 efforts of the Board, if that evidence is going to come in  
21 twice, that would be the outcome of allowing both of those  
22 matters to be heard at the expedited hearing and then have  
23 a final hearing on the operating permit as well. So I don't  
24 see any economy of time.

25 CHAIRMAN BECHHOEFER: The Board, I think, sort of

6-11  
1 saw the matter as the expedited hearing referring mostly to  
2 a hearing earlier than the normal operating license hearing,  
3 would consider all of the QA/QC issues that they would not  
4 be heard again. Later hearing would be on things like  
5 protection and numerous other issues which have been  
6 invented. Not QA matters and the only thing that would be  
7 relevant to QA/QC matters is new events, new information  
8 which would impact on whatever decision we came out with.  
9 On the earlier question --

10 MS. WHEELER: Although that does leave us in the  
11 procedure and the posture of having a new QA/QC -- relatively  
12 new and relatively untested QA/QC subsequent to the Order  
13 to Show Cause, both which we -- you know, which is basically  
14 a relatively new issue to us and which there won't be that  
15 much time for testing of it at this point. I mean, it seems  
16 premature at this point.

17 CHAIRMAN BECHHOEFER: If it should be approved that  
18 evidence of how it would -- or doesn't work -- would  
19 certainly be relevant later on as another issue. But we  
20 viewed -- when the Commission told us to hold an expedited  
21 hearing, we viewed it as a combined hearing of the -- all of  
22 the QA/QC matters which had been raised in the operating  
23 license proceeding, as well as the additional issues  
24 brought in under the Show Cause action.

25 And, if that were so, the other issues would



6-12  
1 really have to be heard. Our answer still could be under  
2 the system, as it is now or as it was before it was  
3 corrected, it's not to grant an operating license.

4 But the granting of an operating license, if it  
5 should be granted would not be created by the decision on  
6 the expedited hearing.

7 MS. WHEELER: Although it's possible that it  
8 could be denied at that point.

9 CHAIRMAN BECHHOEFER: It could be. I think in  
10 any event we would have to take evidence on if we found the  
11 faults really serious enough to warrant denial, we would have  
12 to take evidence under the Commission's rules, whether the  
13 Applicant has done anything about it.

14 The normal course is to issue an operating  
15 license to take care of any problems which arise. This  
16 Atomic Energy Act, in essence, states that if an Applicant  
17 meets the requirements and the Commission's rules and in  
18 addition satisfies the Commission and the Board that granting  
19 a license is not amenable to the public health and safety.  
20 A license under the Atomic Energy Act at least must be  
21 granted.

22 MS. WHEELER: Assuming competence and character.

23 CHAIRMAN BECHHOEFER: Assuming competence and  
24 character. But the competence and character would have to  
25 show that even though they might --



6-13  
1 MS. WHEELER: That the character has changed?

2 CHAIRMAN BECHHOEFER: That would be a factual  
3 issue, though. I would think that would have to be an issue  
4 to be heard at some point during the operating license  
5 proceeding. And I view all of these issues as the  
6 Commission telling us to hear them all together, perhaps  
7 with the exception of new information. And certainly, if the  
8 new program should come in and be approved, the way that  
9 gets implemented prior to the completion of the plant, would  
10 be certainly open for adjudication. If we should decide that  
11 the proposed program or some variation thereof would be  
12 satisfactory, you would still have a chance to show that it  
13 wasn't, in fact, didn't work out.

14 But I think the Commission wants us to issue a  
15 decision on the program to date, which is all the  
16 deficiencies and all the --

17 MS. BUCHORN: I'm having difficulty hearing, sir.  
18 I'm just a little bit hard of hearing.

19 CHAIRMAN BECHHOEFER: Is it better now?

20 MS. BUCHORN: I'm having some difficulty in hearing  
21 you. You don't have that carrying a voice.

22 MR. REIS: Mr. Chairman, I just want to make one  
23 comment on what Ms. Wheeler said about character. I think  
24 in looking at how character is judged generally, no matter  
25 what type of proceeding -- generally it is allowed to be

6-14  
1 shown as character is changed. Now it may be that character  
2 was so bad in the past that the number of traffic accidents  
3 in the past means that you should never give another drivers  
4 license, but certainly you can show that someone's character  
5 has changed and that he is now entitled to a permit or a  
6 license when he might not have been entitled to it in the  
7 past, not looking at his character that he had at a prior  
8 time, for instance. Crimes committed before the age of 21  
9 or such things.

10 DR. LUEBKE: Is it fair to say that no matter when  
11 we have hearings, the inspection and enforcement people will  
12 continue doing their job with respect to these plans,  
13 whatever deficiencies are turned up, get handled and so  
14 on and so on. Now, life goes on at the plant.

15 MR. REIS: Yes.

16 MS. WHEELER: That's our fear. Life will go on  
17 at the plant as it has in the past. That's our fear.  
18 That's why we are here as Intervenors.

19 DR. LUEBKE: Except for finding an Issue B, I  
20 guess, if we find an Issue B that it should stop, then that  
21 stops it.

22 MS. WHEELER: That's correct.

23 DR. LUEBKE: Y s

24 CHAIRMAN BECHHOEFER: I think the way it is set  
25 out here would do that.

6-15  
1 MR. NEWMAN: Well, it could do that, taken into  
2 account the evidence that you would adduce and receive  
3 into the record with respect to Issue B prime. That would  
4 be part of your overall determination.

5 One might look at all the evidence under B and  
6 B prime and determine that the character and competence were  
7 lacking, but it is the collective evidence under both issues  
8 that would be weighed. That's the only point we make.

9 MS. WHEELER: May I state for the record what  
10 our Issue B, what they are calling B prime and I was  
11 calling B(1), what our statement of that issue where we  
12 were unable to come with the typewriter and Xerox machine  
13 so I have to dictate it in. If the answer to Issue B is  
14 in the negative, has HL&P taken sufficient remedial steps  
15 subsequent to the order to show cause to provide assurance  
16 that it now has the character and managerial competence to  
17 operate STP safely.

18 That would be our view of how that issue, if it's  
19 in at all, should be worded.

20 CHAIRMAN BECHHOEFER: What if we left out the  
21 first line of B(1)?

22 MS. WHEELER: Well, it is our position that that  
23 issue would only be reached if the answer to Issue B is  
24 answered in the negative. That's our position.

25 CHAIRMAN BECHHOEFER: The thing is before

6-16  
1 issuing a decision we would not answer the issue. We  
2 wouldn't propose to issue more than one decision so in  
3 terms of accepting evidence, we would have to hear evidence  
4 across the board. We would not have any ruling or  
5 decision only on Issue B.

6 MR. NEWMAN: Mr. Chairman, that would be  
7 satisfactory. To eliminate those -- that initial phrase on  
8 that first point.

9 CHAIRMAN BECHHOEFER: I'm just asking whether  
10 that would be -- some clarification of the statement at the  
11 end of B is a negative statement already. Are you meaning  
12 a double negative?

13 MS. WHEELER: It's my feeling that if Issue B is  
14 answered in the way favorable to Intervenor from what we  
15 believe the evidence would show that the answer would be  
16 yes. The evidence is sufficient to determine at this point  
17 that the operating license is denied. Okay?

18 If that issue is found against us so that the  
19 answer is then in the negative, then we believe that the  
20 Issue B prime as we just read it into the record would be  
21 appropriate. Now, of course, you may be correct in terms of  
22 how evidence has to come in because your decision isn't made,  
23 but it would be our contention that Issue B, after hearing  
24 of the evidence when the Board's order is issued, if Issue  
25 B is answered in the affirmative, then Issue B prime should



6-17  
1 not be reached because --

2 CHAIRMAN BECHHOEFER: We wouldn't issue any  
3 decision before hearing all the evidence. We don't intend  
4 to issue a decision after every issue comes in.

5 MS. WHEELER: The scenerio as I see it then is --  
6 let's say we have X number of days of evidence and then  
7 you all go home or wherever it is you make your decision,  
8 and when the decision comes down in written form, assuming  
9 that your decision was as to the issues raised in Issue B,  
10 you answer that in the affirmative, then you would not  
11 issue a finding as to Issue B(1) or B prime because it  
12 wouldn't be reached.

13 CHAIRMAN BECHHOEFER: I would think the  
14 Commission would expect us to reach it in any event. If  
15 the answer would be -- to B would be no, I would think the  
16 Commission would insist on us reaching it, but I think even  
17 if it was yes, the Commission's rules normally give the  
18 Applicant an opportunity to show that whatever deficiencies  
19 have arisen in the past, both can be and have been corrected  
20 or both will be corrected.

21 MS. WHEELER: I think that goes against the  
22 Commission's language that what if an Issue B itself can  
23 form an independent, sufficient basis for denying the  
24 license. Basically, Issue B is our way of presenting that  
25 question here. Will you accept this as an independent



6-18  
1 sufficient basis for denying the license. Okay? If you do  
2 find that under Issue B, then the license would be denied  
3 as a result of the expedited hearing.

4 And then further issues would not be reached,  
5 including Contentions 1 and 2, of Intervenors CCANP.

6 CHAIRMAN BECHHOEFER: The Board, I guess, will  
7 rule from the bench on this one because we want the parties  
8 to be able to get to preparing their cases. The Board  
9 thinks that the Commission would find us really negligent  
10 not to take -- compile a record on Issue B(1) where we could  
11 come out with a decision on B, either way, and I think the  
12 Commission would expect us to do that.

13 I think it would expect us to take evidence on  
14 B-1. I think we will take the first line out, just to --  
15 so B(1) will be worded without the top line, and --

16 MR. NEWMAN: Mr. Chairman, it might be helpful  
17 just to read B(1) into the record as we have modified it.

18 CHAIRMAN BECHHOEFER: Well, I am going to. What  
19 I was going to say is that I am going to issue a prehearing  
20 conference order which will attach to the contentions. For  
21 today it might be useful if B(1) were read into the record.  
22 I will read B(1) into the record here. I do expect to issue  
23 a prehearing conference order.

24 As amended, B(1), and maybe it won't be referred  
25 to as B(1), maybe we should consecutively number issues,

6-19  
1 But it will read, "Has HL&P taken sufficient  
2 remedial steps to provide assurance that it now has the  
3 managerial competence and character to operate STP safely?"

4 What about, we've got A and B. What about the  
5 other issues appearing in the November 14 statement of  
6 issues? Assume those three issues will replace A and B.  
7 What do the parties think about D and E? I might ask  
8 Ms. Wheeler. Did you have any thoughts on C, D and E?

9 MS. WHEELER: In light of your recent statement, I  
10 would like to ask a question of this Board, would it be  
11 possible for you to issue a written order so that CEU could  
12 appeal that order on these issues?

13 CHAIRMAN BECHHOEFER: Well, I might say that that  
14 type of an order might not be appealable as a right. You  
15 would have to convince the Appeal Board or the Commission --  
16 Appeal Board first, that there is some reason that it ought  
17 to be decided early.

18 MS. BUCHORN: Issue B is just a simplified  
19 restatement of the old issue A and it is our position that  
20 the old Issue A is diametrically opposed to the order of  
21 the Commission, and I'm sorry, I guess I will have to comply  
22 with your order, but I have to protest strongly, because  
23 I think what you are doing is absolutely opposed to what  
24 the Commission has mandated for this Board to do. And if  
25 given a chance, some way or some manner, I would like to have

1 an opportunity to file a brief on that in appeal.

2 CHAIRMAN BECHHOEFER: As I said, normally it would  
3 not be appealable matter until the end of the whole  
4 proceeding, until we issued an initial decision. You would  
5 have to convince the Appeal Board there was some particular  
6 special reason why they should hear that. Appeal Boards  
7 have occasionally done so but rarely consider that.

8 MS. BUCHORN: I think it should be adjudicated.

9 CHAIRMAN BECHHOEFER: That we couldn't have any  
10 affect on the Appeal Board.

11 MS. BUCHORN: Let me simplify this in a way only  
12 a woman can do. If you have a woman that is pregnant you  
13 can't say later on that she was just a little bit pregnant,  
14 she was never pregnant. She was pregnant. There is no two  
15 ways about it. You've got someone in the other issue if  
16 you reach an affirmative in that issue. It's like what he  
17 was saying about the youngster that has committed a crime  
18 and the change of character later doesn't keep him from  
19 getting a drivers license.

20 We are talking about adults here. If a crime has  
21 been committed by an adult, you can't say later that their  
22 character has changed sufficiently that they didn't commit  
23 that crime to begin with.

24 CHAIRMAN BECHHOEFER: I don't think that is what  
25 anyone would be saying.

6.21  
1 MS. BUCHORN: That is what counsel said.

2 CHAIRMAN BECHHOEFER: I don't think that is what  
3 that issue said. I don't think counsel said that either.  
4 I don't think Mr. Reis said that.

5 The issue is really whether the Company or its  
6 contractors are competent to construct and operate the plant  
7 and we have decided in the past they weren't, and then we  
8 would have to decide what they constructed meets the  
9 specifications. If it doesn't can it be corrected.

10 Obviously, there are some ways of correcting all  
11 of these defects. You might have to tear the whole thing  
12 down and rebuilt it, but there are ways of correcting the  
13 past deficient construction practices. You might have to  
14 get a new organization -- there are a lot of methods of  
15 doing this.

16 MS. BUCHORN: Again, I draw your attention to  
17 starting on page 17 in the Commission order. "Central to  
18 that issue are two questions whether the facts demonstrate  
19 that the licensing that abdicates too much responsibility  
20 for construction to its contractor, Brown & Root,  
21 Incorporated, and whether the facts demonstrate an  
22 unacceptable failure on the part of Houston to keep itself  
23 knowledgeable about necessary construction activities.

24 That sounds very clear to me. That's very  
25 simple. That's very clear.

6-22  
1 DR. LUEBKE: And your contention is that is not  
2 represented in the issues.

3 MS. BUCHORN: No. I don't see anywhere here  
4 where they mandated this Board to take up what Houston  
5 Lighting and Power might do in the future at this particular  
6 time. I think the proper place for that is in the full  
7 hearing later.

8 CHAIRMAN BECHHOEFER: There won't be a full  
9 hearing later on these issues. This expedited hearing is  
10 the full hearing on these issues.

11 MS. WHEELER: I this Mr. Newman's letter of  
12 October 24th that indicated -- and I don't have that letter  
13 before me -- but indicated there are two separate questions.  
14 One is whether the -- and I'm paraphrasing -- the managerial  
15 and competence is such to deny the application now and then  
16 later an affirmative finding that they have the competence  
17 and character to run the plant, and Mr. Newman characterized  
18 that second question as premature at this state and I would  
19 agree with that.

20 CHAIRMAN BECHHOEFER: I'm not familiar with that.

21 MR. NEWMAN: I think that's being referred to as  
22 the letter of October 22nd, 1980 from me to the Board.  
23 There's a footnote in there which merely indicates that  
24 ultimately there will have to be a finding on technical  
25 qualifications under the Commssion's regulations before an



6-23  
1 operating license is issued. These issues -- and that these  
2 immediate issues are the ones that are to be dealt with for  
3 purposes of the partial initial decision that's been  
4 mandated by the Commission.

5 CHAIRMAN BECHHOEFER: I think in an operating  
6 license proceeding we would not be the one to make a final  
7 finding unless there was an issue raised. If there was an  
8 issue raised in the QA/QC matter, we obviously would make  
9 a finding. But I don't envision two separate hearings on  
10 these particular issues, except for perhaps new information  
11 that may arise, and that we have to take up as it comes  
12 along.

13 MS. WHEELER: Do you want the page number on the  
14 letter? It's footnote one on page two of the letter on  
15 October 22nd, although the Agency will ultimately have make  
16 affirmative findings concerning HL&P's technical  
17 qualifications, considerations of such finding. Could be  
18 premature at this state.

19 MS. BUCHORN: Right.

20 MR. NEWMAN: I think what is being read is a  
21 footnote on page two.

22 CHAIRMAN BECHHOEFER: Yes, I see that. I think  
23 one word you should note is the Agency. I don't think that's  
24 us. We will make the finding only on the issues which are  
25 before us, and technical qualifications may include some

6-24  
1 other matters as well.

2 MS. WHEELER: Mustn't this Board find managerial  
3 and competence and character -- competence and character in  
4 order to issue an operating license?

5 CHAIRMAN BECHHOEFER: That's correct. We do not  
6 make the entire findings of technical competence. To the  
7 extent that issue has not been raised by parties -- and I  
8 think there are certain aspects of that issue which --

9 MS. WHEELER: So that footnote language is in  
10 connection with the past problems that have arisen which  
11 can be characterized as technical in the sense that they go  
12 to the managerial competence.

13 CHAIRMAN BECHHOEFER: I think the footnote refers  
14 to some findings that the staff itself will have to make  
15 prior to granting an operating license. The Board will make  
16 findings only on the matters which are before it in the form  
17 of issues or contentions. The Staff has to make independent  
18 findings on every other matter. It has to take our findings  
19 on the issues that are before us, but there are a number of  
20 other matters which are not raised by any party and we have  
21 a right to raise some things independently and perhaps we will  
22 do so, but there are many items that won't get before the  
23 Board.  
24  
25

7-1  
1 CHAIRMAN BECHHOEFER: To reiterate what the  
2 amendments which we mentioned we will issue, we will admit  
3 Issues A, B and B(1), perhaps they should be numbered just  
4 A, B and C, and then the latter issues would be to add one  
5 letter to each.

6 MR. HOFFMAN: It would also seem more proper to  
7 us that B actually become the first issue, and what is  
8 labeled as B(1) become the second, and what is labeled as  
9 A become the third issue, rather than -- A is taking matters  
10 into consideration since that time and we think that the  
11 first problem that this Board must face is whether or not the  
12 past conduct creates an affirmative finding that a license  
13 should not be issued.

14 MR. REIS: The Staff wouldn't have any problem  
15 with that, except that I do think that B might be the first  
16 one, B(1) the second one, and C the third one, and then I  
17 think more logically A would fit in as -- But I don't think  
18 it makes much difference.

19 MR. HOFFMAN: That probably is correct. I think  
20 that logically that order would be more proper.

21 We do still want to --

22 CHAIRMAN BECHHOEFER: Okay. Let me write this  
23 down.

24 First, Mr. Newman, do you have any problem with  
25 that?

7-2 1 MR. NEWMAN: No. I don't have any problem with  
2 any order suggested.

3 The only thing I would like to mention, just in  
4 the interest of some clarity, is to perhaps have the  
5 reporter bind into the record the copy of Issue A, Issue B,  
6 and Issue B prime, as they were submitted to the Board and  
7 to the parties, just for purpose of having it in some --

8 CHAIRMAN BECHHOEFER: I have no problem with  
9 that. Does somebody have a clean copy?

10 MR. NEWMAN: Yes. I do.

11 CHAIRMAN BECHHOEFER: Why don't at this point  
12 those issues be put in the record.

13 So, B becomes A. B(1) becomes B. Issue C  
14 becomes, stays C.

15 Issue A becomes D. Issues D and E become  
16 Issues E and F.

17 Now, one other thing that I wanted to have  
18 clarified was whether we should attempt, or the parties  
19 should attempt to incorporate Contentions 1 and 2 into  
20 those issues, or whether they stay separate?

21 MR. NEWMAN: Although I think there is an  
22 overlap between the issues we have just been discussing  
23 and Contentions 1 and 2, I do think that in the interest of  
24 clarity we should keep them separate.

25 MS. WHEELER: We would agree with that.

Issue A. In light of HL&P's prior performance in the construction of the South Texas Project (STP) as reflected, in part, in the Notice of Violation and Order to Show Cause dated April 30, 1980, and HL&P's responses thereto (filings of May 23, 1980 and July 28, 1980), and actions taken pursuant thereto, do the current HL&P and Brown & Root (B&R) construction QA/QC organizations and practices meet the requirements of 10 CFR Part 50, Appendix B, and [thus provide] is there reasonable assurance that they will be implemented so that construction of STP can be completed in conformance with the Construction Permits and other applicable requirements?



Issue B. If viewed without regard to the remedial steps

*taken  
by HL&P*

~~referred to in Issue B<sup>1</sup>~~ below, would the record of HL&P's compliance with NRC requirements including:

- (1) the statements in the PSAR referred to in Section V.A.(10) of the Order to Show Cause;
- (2) the instances of non-compliance set forth in the Notice of Violation and the Order to Show Cause;
- (3) the extent to which HL&P abdicated responsibility for construction of the South Texas project to Brown & Root; and
- (4) the extent to which HL&P failed to keep itself knowledgeable about necessary construction activities at STP,

be sufficient to determine that HL&P does not have the necessary character to be granted a license to operate the STP safely?

*managerial  
competence or*

②

Issue B<sup>1</sup>. If the answer to Issue B is in the affirmative,  
has HL&P taken sufficient remedial steps to  
provide assurance that it now has the character  
to operate STP safely?

managerial  
competence and

1 MR. REIS: We would agree with that.

2 CHAIRMAN BECHHOEFER: All right. Another  
3 question is should there be specific discrepancies of  
4 various sorts pulled out of the Show Cause Order and added  
5 to Contentions 1 and 2?

6 MS. WHEELER: No.

7 CHAIRMAN BECHHOEFER: Or is that not necessary?

8 MR. REIS: The Staff doesn't feel that is  
9 necessary.

10 MS. WHEELER: It is not necessary, so long as  
11 they are pertinent or what is now Issue A, which it seems  
12 to me that Issue A encompasses all of those things.

13 MR. REIS: It does talk about it, and I think  
14 it is there and why extend, why write the issue out with  
15 unnecessary burden.

16 MR. NEWMAN: In drafting that, that was our  
17 intention, as well.

18 MS. WHEELER: We are being agreeable. What's  
19 the matter?

20 (Laughter.)

21 CHAIRMAN BECHHOEFER: Okay. When we issue our  
22 pre-hearing conference order which will summarize what  
23 happened today, we will attempt to get a statement of  
24 issues attached which implement the various pages and  
25 discussions we have been talking about.

-4 1 If we make a mistake, there is provision in  
2 the Rules which says that people can move for reconsideration.  
3 so we will attempt to attach to our pre-hearing conference  
4 order the rules as we read them.

5 One of the things I wanted to mention is that  
6 in addressing these issues we would like the parties to  
7 focus on what standards should we be using in evaluating  
8 whether the Applicant has or hasn't got managerial  
9 competence. What do we have to look at to determine either  
10 yes or no?

11 There is some Commission case law that I'm  
12 aware of, not a whole lot. Also what we look at to determine  
13 whether character is adequate. I don't think there is very  
14 much in case law defining that.

15 Those issues would be encompassed within the  
16 issues as set forth, but at some time we will be asking the  
17 parties to address that, so they might be thinking about  
18 what standards we ought to be looking at.

19 MR. HOFFMAN: Are you requesting a trial brief  
20 of sorts?

21 CHAIRMAN BECHHOEFER: Well, it could be a trial  
22 brief, or it could come in in terms of -- I think it would  
23 be beneficial for that to come in prior to the hearing, so  
24 that we could -- Certainly, it will have to come in prior  
25 to the time we issue a decision.

-5 1 It might be helpful, however, to at least have  
2 the parties' views on that before the hearing. Whether we  
3 would need to set any date, I don't think we do. I think  
4 we will have another pre-hearing conference, and --

5 This is one of the things that may be the  
6 subject of discussion during the course of the hearing, but  
7 I think we will want that prior to the hearing.

8 I don't think it will be necessary prior to the  
9 next pre-hearing conference. I do think at the time the  
10 parties submit their proposed testimony they may also be  
11 asked to submit a trial brief with that in mind, but we will  
12 have another pre-hearing conference to determine which  
13 witnesses will be testifying, that type of thing, and when  
14 testimony --

15 This will be some time in the future which we  
16 will get to, but I want to get next into some discovery  
17 matters.

18 Is there anything else concerning the issues in  
19 the proceeding to be discussed before we get into discovery?  
20 Does anybody have anything further to say?

21 (No response.)

22 Okay. Let's go into discovery.

23 MS. WHEELER: Can we have just a moment?

24 CHAIRMAN BECHHOEFER: Yes.

25 MR. HOFFMAN: Mr. Commissioner, with respect to



-6  
1 Issue E, which deals with the -- well, E as it is shown on  
2 this, and will become F, I guess, we are talking about --  
3 Quality Assurance program for operations of STP meeting the  
4 requirements of Appendix B, that -- why is that question  
5 being decided at this point, and why not closer to the  
6 time that operation actually would begin, because, as we  
7 understand, the changes that have been in the requirements,  
8 that they have been changed over a period of time, what  
9 happens if we say, "Yes, it does meet it," and then later  
10 the requirements change?

11 CHAIRMAN BECHHOEFER: I think Mr. Reis can  
12 explain that.

13 MR. REIS: If the requirements change in a  
14 material way to show that it doesn't meet it at the time  
15 of licensing -- It has been considered in the Licensing  
16 Board decision in the Tuskluhana (phonetic) that a change  
17 in requirements will allow the reopening of an issue if it  
18 is material.

19 In other words, --

20 CHAIRMAN BECHHOEFER: I thought it was in  
21 Zimrick (phonetic). It was the same Chairman.

22 MR. REIS: So that if there is a change in  
23 requirements, Quality Assurance, in the Commission's  
24 regulations between the time of the decision is made in  
25 this initial expedited decision and the time the final

-7  
1 matter is determined as to whether a license should be  
2 issued, if the requirements change in a material way so  
3 as to impact on the question of whether the program does  
4 meet the requirements of the Commission's regulations, that  
5 issue can be raised again.

6 But the requirements for such things as  
7 Quality Assurance program haven't been changing that  
8 rapidly, and we probably could get rid of the issue.

9 And it --

10 CHAIRMAN BECHHOEFER: The decisions that --

11 MR. REIS: And it does -- I'm sorry.

12 CHAIRMAN BECHHOEFER: The decision that  
13 mentioned, at least, had to do with emergency planning  
14 where the Commission's regulations have changed rather  
15 drastically, and we have allowed that case -- that was  
16 the Zimrick case -- we allowed new contentions based on  
17 the new regulations, which permitted or required evacuation  
18 clause considerably further than was the case under the  
19 old regulations.

20 The emergency planning situation might be  
21 relevant to this case, as well, where there is an issue,  
22 and the new regulations will be the ones that govern.

23 MR. REIS: The other thing is, it may be that  
24 looking at the Quality Assurance program, in view of the  
25 past conduct of the Applicant, depending upon what is shown,

-8  
1 that in judging the conduct of the Applicant, it might be  
2 very material for that as to whether their Quality Assurance  
3 program is sufficient to assure safety under the requirements  
4 of Part 50. So there might be issues, the Board before  
5 talked about issuing a license for such things, and in that  
6 way it is all wrapped together with Quality Assurance,  
7 Quality Control matters that we are dealing.

8 MS. WHEELER: Okay.

9 CHAIRMAN BECHHOEFER: I would like to ask the  
10 Staff whether if at all it expects to have its QA for  
11 operations and safety evaluation out, or whether you expect  
12 to do that prior to the time of this expedited hearing?

13 MR. REIS: Well, yes, we expect to have those  
14 out in mid February, both on the Quality Assurance program,  
15 and also we are going to have part of the SER out that we  
16 expect to have out then on managerial ability and  
17 competency and the management of HPL.

18 We expect to have those sections of the SER  
19 and only those sections of the SER prepared ahead of time  
20 for this hearing. The rest of the SER will not be prepared  
21 in the course of the next year, as far as I know, will not  
22 be finalized in the course of the next, but those specific  
23 parts for this hearing will be.

24 MS. WHEELER: If I may raise just a very brief  
25 issue for consideration, I believe you anticipate another

-9 1 pre-hearing?

2 CHAIRMAN BECHHOEFER: That's correct, and that  
3 pre-hearing is actually required. We have to have one to  
4 decide who the witnesses are, and whether there has been  
5 agreement reached, or anything, or -- 2.752 is the  
6 section of the regulations which describes that.

7 MS. WHEELER: We would respectfully request  
8 consultation with respect to the location of that hearing  
9 in this regard. We would certainly never ask anybody to  
10 come to Amarillo, but, on the other hand, we are the most  
11 economically disadvantaged party here, and Austin would be  
12 substantially more convenient, less costly to the Intervenor,  
13 and we would request some consultation.

14 I mean there is tremendous disparity here in  
15 terms of economic ability.

16 CHAIRMAN BECHHOEFER: What about San Antonio?

17 MS. WHEELER: Better yet.

18 CHAIRMAN BECHHOEFER: I don't know where all of  
19 these places are, relatively.

20 MS. WHEELER: Texas is a very small state.

21 CHAIRMAN BECHHOEFER: No, it's a big state. We  
22 buy airplane tickets.

23 MR. REIS: Don't admit that in Texas.

24 MS. WHEELER: If we could just request some  
25 consultation on it before it is set, we would appreciate it.

1 CHAIRMAN BECHHOEFER: Well, one of the things  
2 I wanted to discuss today is possible location for other  
3 meetings.

4 I don't know -- Well, I don't know if I want to  
5 get into that right now, but before we adjourn today I do  
6 want to talk about locations for both the hearing and  
7 various conferences.

8 I would like to get into discovery.

9 MS. WHEELER: Fine.

10 CHAIRMAN BECHHOEFER: What I want to find out  
11 first is I think we will extend the discovery period until  
12 December 8, as requested by the Staff, but -- in fact we  
13 will order that we will grant the Staff's motion that they  
14 filed yesterday, I guess, or the day before, but we will  
15 record that in our pre-hearing conference order. I won't  
16 issue a separate order on that.

17 What other discovery is still needed? I know  
18 that Intervenors have asked some questions. I have also  
19 noticed in the past, and I think this is CEU, CEU at least  
20 claimed at one point that it was refused copies of certain  
21 documents that it asked for, and also that it was documents  
22 prior to 1977 and documents relating to Contention 2.

23 I wonder if you have been subsequently satisfied  
24 in that regard, or -- this was sometime back in one of your  
25 submissions. There was no formal motion filed, or anything



-11 1 like that.

2 MS. BUCHORN: At this time I would not  
3 characterize it as being refused. There seems to be some  
4 difficulty in finding certain specified documents, and I  
5 have attempted to work with Houston Lighting & Power on an  
6 informal basis in working back and forth to try to help  
7 them to understand what I am asking for.

8 CHAIRMAN BECHHOEFER: I see.

9 MS. BUCHORN: And we've tried to work it out  
10 that way. There are still certain of those documents that  
11 are not available.

12 In talking with my husband, I understand that  
13 there has been a letter recently sent to me by one of the  
14 Applicant's attorneys making some statements about one of  
15 those documents. I think we need to clarify some things,  
16 but I also think we can do that on a more informal basis and  
17 personal basis.

18 There are still -- There has been some problems  
19 in getting some things that we asked for. If I might go  
20 on into further discovery, I came in thinking that we were  
21 going to be possibly looking at what Mr. Blackhead said in  
22 his letter on the 15th. I'm suddenly confronted with six  
23 new issues.

24 There is absolutely no way that I can complete  
25 discovery in less than 60 days, maybe 90 days, from that

1 date. I just don't see how I can.

2 Now, other people might be able to, because they  
3 have staffs, they have secretaries, they can dictate these  
4 things, and people to type, and all these things. I have no  
5 staff. And I'm going to have to do a lot of work on this,  
6 because all of these things have taken me completely by  
7 surprise. We've got something that didn't even come in the  
8 mail to me until Saturday. It came in the mail Saturday,  
9 these new formulated issues, and as far as I am concerned  
10 they have no relation to the ones that I was contemplating.

11 However, I'm going to have to formulate  
12 discovery and interrogatories on those issues that I didn't  
13 know anything about until Friday -- Saturday, rather.

14 CHAIRMAN BECHHOEFER: What about, Ms. Wheeler,  
15 Mr. Hoffman, what about your discovery? I know that you  
16 have asked, or one of your representatives has asked for  
17 the names of certain people from the Staff, and let me ask  
18 the Staff.

19 Is it likely that those names will be supplied,  
20 or don't you know?

21 MR. REIS: I don't know. I don't know.

22 CHAIRMAN BECHHOEFER: Because the Commission's  
23 Order seem to think that --

24 MR. REIS: Yes, it certainly did, and then I  
25 read 2.579, and the exceptions in 790(a)(5) and (a)(7), and

-13 1 I cannot give a definitive answer, without some further  
2 guidance.

3 CHAIRMAN BECHHOEFER: As you know, we can  
4 provide a protective order, also, for confidential  
5 informant, that kind of thing, which the Intervenor would  
6 have a right to have access to. They would have to agree  
7 not to disseminate the information.

8 MR. REIS: We might take that course. Frankly,  
9 I required the additional time in order to have the issue  
10 elevated and look at it, and the language the Commission  
11 used in its opinion and what our regulations say, and our  
12 desires in normal situations to prevent confidentialities  
13 so that we do have people coming to us. There are a lot  
14 of policy issues clashing and conflicting in those  
15 determinations, and we are looking at them.

16 CHAIRMAN BECHHOEFER: The way I perceive it,  
17 the discovery period could well go on until mid January or  
18 February, I would say, and that is not my thought from what  
19 the parties have been saying.

20 I would like to get -- And also in terms of  
21 issuance of the SER, it doesn't appear that we could go to  
22 hearing until probably mid spring now. Is that correct?

23 MR. REIS: Well, our letter, our much maligned  
24 letter of October 15th, we do talk there about a possible  
25 hearing in late March or early April. I think that probably

-14  
1 has slipped at least two or three weeks, especially when you  
2 look the Easter holidays come in there, and I don't  
3 contemplate to say a one or two-day hearing, and --

4 CHAIRMAN BECHHOEFER: Well, the hearing, I  
5 contemplate, is quite lengthy.

6 MR. REIS: Yes, and so I see some slippage  
7 therethere from even those dates suggested at that time.

8 If we get our SER out, which I contemplate, by  
9 mid February, then --

10 CHAIRMAN BECHHOEFER: Would you suggest we have  
11 a pre-hearing conference shortly after the SER comes out,  
12 setting schedules, or should we do that earlier, setting  
13 hearing schedules?

14 MR. REIS: It might be well to do it then. I  
15 would think that would be an appropriate time, toward the  
16 end of February, right after the SER comes out, or a week  
17 after, soemthing like that, after people have time to  
18 quickly look at them. And further pre-hearing to set  
19 schedules, although I think we do need some schedules today  
20 on some discovery.

21 CHAIRMAN BECHHOEFER: Right. Well, if we  
22 extended the discovery period arbitrarily until, say,  
23 February 1st, is that too long, do you think, or that would  
24 encompass the period that you --

25 MR. REIS: The Staff, and the Applicant, and the

-15 1 Intervenor were trying to work out a schedule just before  
2 this afternoon's session to deal with that, and we were  
3 trying to deal with the dates and work things back, whether  
4 things could go that far back, or even as far back as  
5 January 16th, 1981, for discovery, last filing of discovery  
6 request.

7 CHAIRMAN BECHHOEFER: I was thinking of --  
8 When I said February 1st I was thinking of completion of  
9 responses, and everything else, finishing discovery, which  
10 would require -- I think that would be about the 16th for  
11 discovery requests, the latest.

12 MR. REIS: The Staff has no problem with that.  
13 I don't think the other people, the parties feel -- We did  
14 not reach agreement on that issue. The only thing the Staff  
15 feels that whenever their SER comes out there should be time  
16 for further discovery on the SER itself, as is usually  
17 contemplated.

18 CHAIRMAN BECHHOEFER: Right.

19 MR. REIS: And it feels that the parties should  
20 have a right to do that.

21 The Staff has no objections to the dates you  
22 suggest. I don't know what the other parties' feelings  
23 are.

24 MR. NEWMAN: Mr. Chairman, we over the recess  
25 were working from kind of a proforma schedule, and perhaps



1 it would be convenient for everybody to be looking at the  
2 same document. That way we could see what the inter-  
3 relationship of the various steps are. I believe Mr. Reis  
4 has a copy, and I believe Ms. Wheeler has a copy, and Mr.  
5 Axelrad will be furnishing copies to the Board and one copy  
6 to the reporter.

7 Now, those are dates, Mr. Chairman -- I think  
8 the important thing is you can kind of disregard the  
9 specific dates that are there. I think the thing to be  
10 pegged is, the first item is the last date for filing  
11 discovery requests, and I believe that the Chair was talking  
12 about making that -- we had indicated 12/8. I think the  
13 Chair is talking about the last date for filing discovery  
14 request being --

15 CHAIRMAN BECHHOEFER: Somebody mentioned  
16 January 16.

17 MR. NEWMAN: -- January 16, so --

18 CHAIRMAN BECHHOEFER: I'm not sure what day of  
19 the week that is, but --

20 MR. NEWMAN: For working purposes let's say --

21 MS. WHEELER: It's a Friday.

22 CHAIRMAN BECHHOEFER: January 16 is on Friday.

23 MR. NEWMAN: Now, if we are allowed --

24 CHAIRMAN BECHHOEFER: And that would have to be  
25 with the exception of new discovery on the SER, but --

-17  
1 MR. NEWMAN: Yes. It would be the last date  
2 for filing discovery except for new information based on  
3 the SER, and except for the deposition of witnesses who  
4 might be identified later, and we will get to that in just  
5 a moment.

6 If one moves from the 1/16 date for filing  
7 discovery, and allows 30 days I guess plus the mailing  
8 time for responses, then the close-out on that aspect of  
9 the discovery would be February 23rd.

10 CHAIRMAN BECHHOEFER: Okay.

11 MR. NEWMAN: I think one of the critical things  
12 in discovery, at least from the Applicant's standpoint, is  
13 the identification of the witnesses, and the general  
14 substance of their testimony, and we would like to have  
15 that about a week or so later after the close of the other  
16 discovery so that we could begin taking depositions, looking  
17 toward the completion of depositions on about March 2nd.

18 I'm sorry. Hang on a second.

19 About April 1. Then one would allow, I think,  
20 about two weeks after the last date for the deposition of  
21 witnesses for the filing of prepared testimony. That would  
22 be about April 15th, which is a Friday.

23 April 15th would be the date for the filing of  
24 written testimony, and the hearing then would start on or  
25 about May 4, which is a Monday, and I guess if one looks

1 back, and if the Staff's SER is out on February, mid  
2 February, that should be I think sufficient time within  
3 which to study the SER, to engage in the additional  
4 discovery based on the SER, and to get to hearing in May.

5 CHAIRMAN BECHHOEFER: I guess under that  
6 schedule we would hold a pre-hearing conference sometime  
7 in March probably, after the parties have identified their  
8 witnesses, and the substance of their testimony.

9 MR. NEWMAN: I think that would be a good time  
10 to do it, because you would have also had the first round  
11 of discovery done.

12 CHAIRMAN BECHHOEFER: Right.

13 Okay. Well, we will issue an order setting out  
14 a schedule. Of course, anybody by motion can ask for it  
15 to be changed, so these things tend to slip or change, so  
16 we ought to have a schedule to shoot for, I think.

17 MS. BUCHORN: Mr. Chairman, I'm sorry, but this  
18 does not give me -- since these are, as far as I am concerned,  
19 newly formulated issues, say, that I have a couple or three  
20 weeks to digest those, get out my interrogatory, and --

21 CHAIRMAN BECHHOEFER: You have until January 16  
22 in what we are talking about.

23 MS. BUCHORN: Okay, but then their response  
24 comes in 30 days after that --

25 CHAIRMAN BECHHOEFER: Right.

-19 1 MS. BUCHORN: -- and that gives me just a matter  
2 of a couple of days to send out an interrogatory having to  
3 do with those responses, if they are not satisfactory.

4 MR. NEWMAN: I think the fault with that,  
5 Mr. Chairman, is that it postulates that you don't send any  
6 discovery requests or any interrogatories out until the very  
7 last day. If one is able to send them out two or three  
8 weeks from now, then there is ample opportunity for a round  
9 of interrogatories and for a round, second round of  
10 interrogatories or depositions.

11 CHAIRMAN BECHHOEFER: Yes, this was set forth  
12 as the latest date. You don't have to send all of your  
13 questions out at once, either. As you get some of them  
14 prepared you can send them in, and people can answer them  
15 as they come in.

16 MS. BUCHORN: We are contemplating January 16th  
17 as the last day for filing discovery requests?

18 CHAIRMAN BECHHOEFER: Right, except for the  
19 Safety Evaluation, and request for deposition. Safety  
20 Evaluation would be --

21 MS. BUCHORN: That's less than two months.

22 CHAIRMAN BECHHOEFER: For the filing of request,  
23 yes. Approximately 60 days, which is what -- that was the  
24 one date you mentioned.

25 MS. BUCHORN: Really, it is going to be extremely

-20 1 difficult, but I'll try.

2 CHAIRMAN BECHHOEFER: It doesn't include the  
3 Safety Evaluation. If you see any information in there  
4 that you want to ask questions about you will have --

5 MS. BUCHORN: I understand that. I don't have  
6 any problems with -- subsequent to that.

7 What I am having a problem with is being able  
8 to go into these issues which are, to me, issues different  
9 from what I thought they would be when I came into this  
10 pre-hearing conference today, and it is going to take me  
11 some time to formulate my discovery request and my  
12 interrogatories, and I don't contemplate being able to  
13 complete them and get them out with anything less than two  
14 and a half to three weeks. And that's not with any  
15 intention of waiting until the deadline, and then they have  
16 30 days after that to make their response, and that still  
17 doesn't give me time to look at the response, and formulate  
18 any other interrogatories.

19 Now, we have had some difficulty in the past,  
20 and I am just looking at what has happened in the past and  
21 thinking that, hopefully, it won't happen in the future,  
22 but I don't have any assurance of that.

23 MS. WHEELER: I believe the cutoff date that  
24 would be acceptable to Ms. Buchorn would be February 10th;  
25 is that correct, that first date?



1 MS. BUCHORN: I think so.

2 MS. WHEELER: I don't think that it is out of  
3 line, considering the fact that as a pro se individual  
4 working with substantially more limited resources than other  
5 parties, to assume some consideration can be given to those  
6 factors.

7 CHAIRMAN BECHHOEFER: I might say, any of these  
8 dates one can ask for an extension, but the --

9 MS. BUCHORN: Now, I'm not going to agree to  
10 this, thinking that the Staff will agree to asking for an  
11 extension for me, because they haven't agreed with us so  
12 far this whole day.

13 CHAIRMAN BECHHOEFER: Another thing I was  
14 thinking about, it might be possible, given the fact  
15 Ms. Buchorn is pro se, maybe we should allow her extra  
16 time to ask for interrogatories.

17 Would you be planning to take depositions, or  
18 not, because that requires some advance notice, also.

19 MS. BUCHORN: That's something that I'm going  
20 to have to formulate.

21 MR. NEWMAN: Mr. Chairman, I think the  
22 consideration that concerns me in setting these dates is  
23 that they not be slipped as for example, move into a  
24 June hearing. At least I think that is a matter for the  
25 Board to look at very carefully, whether a hearing of June

-22  
1 or July is still an expeditious hearing, because as these  
2 dates get out longer it becomes more difficult to get this  
3 hearing started in early May, and I think your charge is  
4 for a reasonably expeditious hearing.

5 MS. WHEELER: I agree with that. I think that  
6 certainly we want this hearing to be expedited.

7 I might point out that under the schedule here,  
8 as I understand it, April 1 would be the cutoff date for  
9 depositions.

10 MR. LUEBKE: That's answers.

11 MS. WHEELER: I might point out that  
12 interrogatories, or a poor-person's deposition, okay, that  
13 an economically powerful party can take unlimited  
14 depositions, and I anticipate that Ms. Buchorn's primary  
15 means, and our's, also, of discovery will be through  
16 interrogatories rather than through extensive depositions.  
17 That means that their principal means of discovery which  
18 I anticipate will be depositions, they have an April 1  
19 filing date, whereas Ms. Buchorn's and CCANP's primary  
20 method of discovery is cut off much earlier.

21 MS. BUCHORN: Absolutely.

22 MS. WHEELER: We are not sure what the detriment  
23 is of moving that first date to February 10th. Who did that  
24 harm, as long as it is adhered to without, you know, very  
25 good cause shown?

-23

1 MS. BUCHORN: Oh, I intend to start just as soon  
2 as I possibly can.  
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1 CHAIRMAN BECHHOEFER: The Board is considering  
2 having dual dates, giving the Intervenors longer to ask  
3 interrogatories.

4 Answering questions will soon be 30 days from  
5 when the requests are filed.

6 MR. NEWMAN: Mr. Chairman, the difficulty I  
7 think that you get into is that as you push back these --

8 CHAIRMAN BECHHOEFER: We wouldn't push back  
9 the other dates.

10 MR. NEWMAN: I think the question is whether  
11 those dates that you have are compatible with the date by  
12 which witnesses and the substance of their testimony has  
13 to be identified so the depositions can commence. That is  
14 critical.

15 CHAIRMAN BECHHOEFER: Well, --

16 MR. NEWMAN: If the witnesses fund of information  
17 is increasing and changing over a period of time it makes  
18 very difficult to know that you have disposed the witness to  
19 the full extent of his knowledge, and his ultimate  
20 presentation before the Board.

21 The objective of the deposition, of course, is  
22 to make the testimony stand still at a point in time, and  
23 if the witness is still obtaining information on discovery  
24 that becomes impossible.

25 CHAIRMAN BECHHOEFER: I was more trying to see

1 if we could make that March 2nd date for -- I think  
2 March 2nd was the date for identification of witnesses.

3 MS. WHEELER: No. I have April.

4 CHAIRMAN BECHHOEFER: That's depositions.

5 MS. WHEELER: Okay. I'm sorry.

6 What date do you have? I'm sorry.

7 CHAIRMAN BECHHOEFER: Well, I have March 2nd,  
8 and February 10th would make it difficult -- Well,  
9 February 3rd, if discovery request was filed no later than  
10 around February 1st you might possibly make it.

11 MS. WHEELER: February 1st is a Sunday. How  
12 about the 2nd?

13 CHAIRMAN BECHHOEFER: February 2nd, yes.

14 Then we would want -- the responses would have  
15 to be in in less than 30 days. Would you be willing to  
16 answer their questions in less than 30 days, like the 14  
17 days which the rules say? You would have 30 days for  
18 anything filed before January 16th.

19 MR. NEWMAN: Mr. Chairman, I think it is very  
20 difficult to answer that. I don't know what volume of  
21 discovery, or what volume of interrogatories are going to  
22 be posed, when they are going to be posed.

23 We, obviously, will do our very best to answer  
24 these things as quickly as possible, but we can't answer  
25 that question in the abstract. If there are tons of



interrogatories, then it becomes obviously beyond --

MS. WHEELER: Of course, we would anticipate that the bulk of the interrogatories would come toward the first part of the period. The additional time is for responses type, follow-up matters, so that they would presumably be less substantial.

MR. NEWMAN: Well, I think one way of accommodating this whole thing is to urge that the Intervenor's are, as they said, poor-man's depositioning, interrogatories, can be done as early as possible.

CHAIRMAN BECHHOEFER: That they certainly would do.

MS. WHEELER: That's absolutely my intention.

CHAIRMAN BECHHOEFER: What I would foresee is that if -- We would put down that we would hope that you could make January 16th for all of them, but if you could not, you would at least as much as possible before that, and was February 2nd the date that you mention?

MS. WHEELER: That's a Monday.

CHAIRMAN BECHHOEFER: So that would be the last date, the last date that you would have to come back to us.

MR. NEWMAN: Mr. Chairman, I think the February 2nd date would be workable, on just one proviso, and that is that intervening parties agree to make hand delivery, and we can have our messenger get those, the

8-4  
1 document, but we don't want to lose the time through the  
2 mails. We can do the job with a February date if we  
3 can arrange for physical delivery, hand delivery.

4 MS. BUCHORN: Okay. My office is in Bay City.

5 CHAIRMAN BECHHOEFER: How does it work out for  
6 Amarillo?

7 MR. NEWMAN: We would send someone to Amarillo.

8 MS. WHEELER: Fine. If you can find somebody  
9 who will come to Amarillo, they are welcome to come. We  
10 will even take them to lunch.

11 CHAIRMAN BECHHOEFER: We will put February 2nd  
12 down as the date for the Intervenor's. January 16th for  
13 everybody else.

14 MR. NEWMAN: All answers are still due by  
15 February 23, right?

16 CHAIRMAN BECHHOEFER: But on March 2nd, we would  
17 still have witnesses identified and then subsequent testimony  
18 which means you will have to be working on that early, but  
19 okay. We will set up a dual schedule here to see how it  
20 works out.

21 MS. WHEELER: We appreciate it.

22 CHAIRMAN BECHHOEFER: We would propose we would  
23 have a prehearing conference around March 10, but we haven't  
24 set a date or place or anything.

25 MR. REIS: Mr. Chairman, the following week would

8.5  
1 be more convenient for me. I have personal commitments  
2 during the first two weeks in March. Well, I should  
3 probably assign another attorney, but he would not be as  
4 knowledgeable.

5 CHAIRMAN BECHHOEFER: Well, what's the --

6 MR. REIS: I will be returning from my -- I will  
7 be back on the 14th or on the 15th. Make it the 15th.  
8 That's a Monday.

9 MS. WHEELER: The 15th of March -- the 16th. The  
10 15th is a Sunday.

11 MR. REIS: The 16th is when I will be back.

12 CHAIRMAN BECHHOEFER: All right. We will aim for  
13 a conference during that week sometime. We do want to try  
14 to expedite the hearing if we can.

15 MS. WHEELER: That's expedition relative to the  
16 numbers of attorneys who have entered their appearances?

17 CHAIRMAN BECHHOEFER: I guess we won't set any  
18 further dates until that March conference.

19 MR. NEWMAN: Mr. Chairman, before we leave  
20 discovery, just a moment. We do have a couple of  
21 outstanding discovery requests. We have one addressed --  
22 we have motions to compel of May 8th and ICU on April 15th  
23 to CCANP and we are going to make some attempt and that  
24 letter of July 7 to Mr. Sinkin. We are going to make some  
25 attempt now, particularly in light of the involvement of new

8-6  
1 counsel to work these matters out informally. Should that  
2 not be possible --

3 CHAIRMAN BECHHOEFER: I think we already  
4 officially deferred ruling on those until we were told  
5 otherwise. You didn't have the information -- we weren't sure  
6 what, if anything, you got on depositions. You might have  
7 got some answers through depositions and we -- we don't see  
8 the depositions.

9 MR. NEWMAN: The thing that came out -- first as  
10 a matter of information -- the thing that came out on the  
11 depositions were references to documents and people which  
12 were agreed at the depositions would be given to us and which  
13 has not yet been given to us so it is to some extent material  
14 growing out of the deposition that we seek, but we will be  
15 in touch with Ms. Wheeler and Ms. Buchorn.

16 CHAIRMAN BECHHOEFER: Well, we officially  
17 deferred that until we heard otherwise and that's just so  
18 we didn't leave anything outstanding.

19 I would like to ask a couple of -- I had it here --  
20 There were some --

21 MS. BUCHORN: May I ask for a clarification?

22 CHAIRMAN BECHHOEFER: Sure.

23 MS. BUCHORN: The depositions, as pertain to  
24 CEU, has been with all CEU's contentions and I'm a little  
25 bit unclear as to just what he's going to compel CEU to do

8.7  
1 if we are going to be involved in this expedited hearing, I'm  
2 just not going to have time to concern myself with those  
3 other issues that have been admitted in contention.

4 MR. NEWMAN: We are going to be dealing only to  
5 discovery relating to contention --

6 MS. BUCHORN: I just wanted a clarification on  
7 that.

8 CHAIRMAN BECHHOEFER: It can carry over until  
9 after we get done with this. And any further discover then  
10 I think will be plenty of time to set that up.

11 MS. BUCHORN: Good. You had me going there for a  
12 minute. I thought I was really going to be up against a  
13 wall on all those other contentions, as far as they were  
14 concerned on their depositions.

15 CHAIRMAN BECHHOEFER: No. That will carry over  
16 until later.

17 One of the things I wanted to find out about is  
18 we have in our file -- there were requests that we saw made  
19 by the Applicants and by the Intervenor for copies of an  
20 FBI report. We wondered what happened on that?

21 MR. REIS: I have not fully checked that out  
22 whether the Intervenor, at least, and maybe the Applicants  
23 got it under the Freedom of Information Act. They might have  
24 got it from the Justice Department and I have not been able  
25 as yet --



8-8  
1 MS. WHEELER: We just received a letter,  
2 apparently on a -- now, that discovery request was not done  
3 by me. I understand that possibly there was some very  
4 limited stuff that was given in response to the compliance  
5 and then there was an appeal taken as to fuller disclosure  
6 and we just got a letter since I've been in on the case  
7 that indicates that substantial supplemental response is  
8 forthcoming.

9 MR. REIS: From the Justice Department?

10 MS. WHEELER: From the Justice Department. I  
11 have not seen that to see how substantial it is.

12 MR. NEWMAN: We received a copy from the  
13 Department of Justice pursuant to a Freedom of Information  
14 Act request. On February 29th --

15 MR. REIS: Can I get myself out of a loop? Can  
16 you please supply copies of that to Intervenors since you  
17 have it?

18 MR. NEWMAN: I will be happy to.

19 MR. REIS: That will alleviate me having to work  
20 through the bureaucratic matter.

21 CHAIRMAN BECHHOEFER: There might be material  
22 in that report relevant at least to Contention 2 if not some  
23 of the other contentions and to the extent it's available,  
24 I think it might could be.

25 MS. WHEELER: I'm very unclear on my response

8-9  
1 because I really haven't reviewed any document except for  
2 a letter that I got.

3 MR. NEWMAN: Somebody informs me that you may have  
4 received a copy of the FBI report, rather CCANP has. If it  
5 should turn out that you don't I would be happy to make a copy  
6 and send it over to you.

7 CHAIRMAN BECHHOEFER: Okay. There is a couple of  
8 references and documents before us to other documents that  
9 we don't have and I just wondered how complete the mailing  
10 list is. There were some immediate action letters that were  
11 referred to in the Applicant's -- one of them was referred  
12 to in the Applicant's July 28th response and immediate  
13 action letter dated Apr 17 and I think that the Applicants  
14 document said that the Applicants were going to comply with  
15 that. Well, we have no idea what that is. There was another  
16 reference to an immediate action letter dated December 31,  
17 1979. We haven't seen that either.

18 These I think were issued by Region 4 and we  
19 don't seem to have gotten any of that material.

20 MR. REIS: We will check into that and make sure  
21 the record is complete in those matters -- that Region 4  
22 does supply those matters.

23 CHAIRMAN BECHHOEFER: Yes. Well, I know one of  
24 them was explicitly incorporated in two places in the  
25 Applicant's commitments for -- on the July 28th commitment

8-10  
1 concerning cad-welding I think, and we couldn't understand  
2 the commitments without seeing the immediate action letter  
3 and we haven't seen it so that's -- well, those are -- I'm  
4 not sure, but I've identified those two at this stage and I  
5 would think that the Intervenor, if they don't have a copy  
6 of that should be offered copies of both.

7 MS. BUCHORN: This Intervenor wouldn't know an  
8 immediate action letter if it hit her in the fact. We have  
9 extreme difficulty in getting anything. We were taken off  
10 of the list of normal responses for a period of time but I  
11 asked to be placed back on that list.

12 Everytime you get a new employee, Peggy is taken  
13 off.

14 CHAIRMAN BECHHOEFER: Well at least one of them  
15 was incorporated in what the Applicant's commitments were so  
16 I think those ought to be included in the record.

17 Let me ask one other thing. The Board was  
18 interested in seeing and I don't know whether it will be  
19 brought in later in some form or not, but the transcript  
20 of the hearing in Bay City. We had not received and it was  
21 going to be brought in later that's fine, but otherwise, we  
22 probably should be sent a copy of that.

23 MR. REIS: I'm not sure of the evidentiary status  
24 and what is evidence in the case at this point, whether it  
25 should be. I mean, there's a lot of information statements

1 in there and I'm not sure just how we are going to  
2 consider it and we really haven't focused on it. It is  
3 a public document

4 DR. LUEBKE: It had to do with the disposition  
5 of the Show Cause Order.

6 MR. REIS: In part, but it's just oral  
7 representations and the written material that goes back and  
8 forth.

9 CHAIRMAN BECHHOEFER: And I suppose there's a  
10 difference as to what evidentiary significance we get it. It  
11 may be entitled to none. I think we ought to at least see it  
12 and have access -- have an opportunity to see it before we  
13 go to a hearing. It might help us frame some questions  
14 and help us put into the record material that we think should  
15 be there.

16 MR. REIS: In the sense that there are public  
17 appearances at the hearing that would supplement public  
18 appearances in those, legislative-type statements I think  
19 is fine.

20 CHAIRMAN BECHHOEFER: We might treat it as we  
21 treat a limited appearance statements. As they raise their  
22 questions, we may ask them and ask the parties to present  
23 evidence on them.

24 MR. HOFFMAN: Would the Board be considering it  
25 also for impeachment value? I assume that it would be --



8-12  
1 could be used in the same fashion as a prior and consistent  
2 statement.

3 MR. REIS: I would imagine any statement can if  
4 it fits in that category.

5 MR. HOFFMAN: That would be another reason for  
6 having it on the record.

7 MR. REIS: I believe the Intervenors have a copy  
8 of that but I will supply it to Board.

9 CHAIRMAN BECHHOEFER: The Board does not have  
10 copies. Now, in going through -- now this may be premature,  
11 but the Intervenors in answering discovery, in particular,  
12 have mentioned quite a few individuals and the Board would  
13 hope at least some of them are put on as witnesses. I  
14 don't know what your plans are going to be. There were, oh,  
15 I think 14 people that you mentioned and that one or the  
16 other of you mentioned. At least some of them I believe --

17 MR. NEWMAN: Mr. Chairman, are you reading from  
18 a document? If so, could you identify it?

19 CHAIRMAN BECHHOEFER: No, it isn't. These are  
20 my own notes which I happen to have had typed up.

21 MR. NEWMAN: I see.

22 CHAIRMAN BECHHOEFER: I will just read out some of  
23 the names. Not all of them would have to be witnesses, but  
24 I think it would be appropriate -- Daniel Swaisy is first,  
25 James Marshall, Sherry Lacey, T. K. Logan,, M. N. Johnson,



8-13  
1 Al J. Hammonds, Jack Duke, Bill Lazier, Carles Singleton,  
2 George Wilson, W. E. BENNETT, Alfred F. Lung, L-u-n-g,  
3 Larry Perry and, well you mentioned Dale Bracken as a  
4 potential witness for Contention 2.

5 MS. BUCHORN: That was Contention 3.

6 CHAIRMAN BECHHOEFER: The latter would not be  
7 one of the ones we would request. But we think that some of  
8 those other individuals perhaps they would be brought on as  
9 witnesses either by the Intervenors or perhaps even by the  
10 Board. I just am throwing that out for consideration.

11 It was Contention 3 that dropped his name. I  
12 thought he said 2 when I read it. I can see why it would  
13 be more relevant to Contention 3 so, okay. We will drop the  
14 last -- don't include Mr. Bracken. The other people were  
15 mentioned in various capacities and the Board would like  
16 at least some of them to appear as witnesses

17 MS. WHEELER: So would the Intervenors.

18 MS. BUCHORN: Yes, we certainly would if we could  
19 find them. Some of them may be available. A large number  
20 of them are untraceable.

21 CHAIRMAN BECHHOEFER: I will say at the next  
22 prehearing conference maybe we can discuss this and--

23 MR. REIS: Mr. Chairman, before you brought up  
24 the fact and you asked to be reminded of financial -- not  
25 direct financial assistance but the right to transcripts, the

Intervenors' right--

CHAIRMAN BECHHOEFER: Right. That's coming up in this hearing. I am not sure whether the Intervenors are aware of it or not. The Commission does have a program providing free copies of transcripts and free servicing of certain types of documents, not everything. Answers to discovery are one of them. One of the things that has to be done is you have got to ask for it.

I will give you the opportunity right now if you would like to.

MS. BUCKHORN: Yes, sir.

MR. HOFFMAN: Also.

CHAIRMAN BECHHOEFER: The way this program works, while I would like to explore the very expensive part of it, which the Commission has asked us to be very careful with is the daily transcripts of hearing. And we might ask you all to share one copy of that.

What we will do for all of the transcripts is well, like for this conference, these are distributed and the Staff makes copies of the proceedings and we will send it to you and whether they make one or two Xerox copies doesn't make any difference.

What I am talking about is the daily transcript. Everybody is going to get copies of the Xeroxed transcript but they don't come in until a week or two after the session.

1 You will eventually get the ones in this session, but the  
2 original has to go up to Washington and has to be Xeroxed  
3 and sent out.

4 MS. WHEELER: You do not need a written request  
5 from us?

6 CHAIRMAN BECHHOEFER: I take it you both need it?

7 MS. BUCHORN: I certainly hope it will be a little  
8 bit faster than the transcript of the hearing in August  
9 because I had to make a request a month or so later and in  
10 view of the fact that Mr. Stelio promised me I would get one  
11 as soon as it was available to him and then I had to ask for  
12 one six or eight weeks later, when I finally discovered I  
13 was not going to get it that really put us at a disadvantage.

14 CHAIRMAN BECHHOEFER: In other cases I've been  
15 in it's taken a week or two.

16 MS. BUCHORN: I will have no problem with that.

17 CHAIRMAN BECHHOEFER: During the hearing itself --  
18 the rules says you will get the copy the same time the Staff  
19 gets its copy.

20 MR. REIS: Whose button does she push in case  
21 she doesn't get it in two weeks?

22 MS. BUCHORN: I don't want somebody else to  
23 assume that somebody else is going to do it, and that person  
24 who has been assumed to be the one to do it doesn't know  
25 that they are supposed to do it. I think that's what

1 happened with Mr. Stello.

2 CHAIRMAN BECHHOEFER: Does the Staff usually handle  
3 this or would you prefer the Board to?

4 MR. REIS: I would prefer the Board to.

5 CHAIRMAN BECHHOEFER: There is a form we usually  
6 make the request on when you establish the conference. They  
7 didn't have the forms at that time. I will -- if I  
8 remember -- I hope I remember -- I will call Chase Stevens  
9 tomorrow or Friday so I guess I will just write myself a note  
10 to do that.

11 MS BUCHORN: I'm getting mail at two different  
12 addresses. I really want to make it clear unless you want  
13 me to submit a change of address form. The post office  
14 has given us a new box number and I'm getting some mail at  
15 the new box number and some at the old box number, and I  
16 want to make sure that I get the transcript at the proper  
17 box number.

18 CHAIRMAN BECHHOEFER: Well, you can write the  
19 Board or the Secretary and we will make sure this change  
20 is made.

21 Let's take about a 10-minute break.

22 (A short recess was taken.)

23 CHAIRMAN BECHHOEFER: Back on the record. I think  
24 the only thing we really have to talk about that I have left  
25 here is the location of both the prehearing conference and I

8-17  
1 wanted to find out something about what parties would be  
2 most interested in for the hearing. The Board thinks that  
3 the hearings could be held -- the hearings themselves have  
4 to start in the area of Bay City. I don't know what  
5 facilities are available down there.

6 Ms. Buchorn, do you know if there are any  
7 facilities that are large down there for this -- we will  
8 want to take limited appearances at the start of the  
9 hearing.

10 MS BUCHORN: Oh --

11 CHAIRMAN BECHHOEFER: And I think the facilities  
12 probably aren't too satisfactory, but --

13 MS. BUCHORN: There's the building that was  
14 used for the hearing in August -- or the meeting in August.  
15 It is quite large and it is for the use as a public meeting  
16 house.

17 DR. LUEBKE: Some municipal place?

18 MS. BUCHORN: Yes.

19 DR. LUEBKE: Who owns it?

20 MS. BUCHORN: Houston Light and Power ought to  
21 be able to give you that.

22 MR. REIS: Mr. Chairman, Mr. Sells here --

23 MR. SELLS: I can give you that information to  
24 the licensing board.

25 CHAIRMAN BECHHOEFER: Okay. So for the very least



8-18  
1 we will start the hearings down there at least for the  
2 appearances. What I want to ask is whether the parties  
3 prefer to have hearings -- most of the hearings in Houston  
4 or perhaps San Antonio. We could have a good number of  
5 them in both places.

6 I know for Ms. Buchorn probably San Antonio  
7 would be inconvenient but I wanted to explore that.

8 MS. WHEELER: She just told me Austin is as  
9 convenient for her as Houston for prehearing conference.  
10 It is a State capitol. They do have airplanes.

11 MR. REIS: We can get better scheduling into  
12 San Antonio.

13 CHAIRMAN BECHHOEFER: I know the flight we came  
14 in on down here next went on to San Antonio. That one is  
15 fairly easy.

16 Do the Applicants have either any objections or  
17 preferences?

18 MR. NEWMAN: In terms of the prehearing, I think  
19 really whatever suits the convenience of most the people.  
20 We will go anywhere. I think your idea of having some  
21 initial hearings at Bay City for purposes of taking limited  
22 hearing statements is in accordance with Commission practice  
23 and probably a very good idea. In terms of the balance of  
24 the hearings, I think that if we would favor Houston and/or  
25 San Antonio, perhaps as you described it. Preferably Houston.

9-1  
1 CHAIRMAN BECHHOEFER: Well, we will decide some  
2 time before the prehearing where it will be. We may, if we  
3 hold it in San Antonio or even Austin, we may take some  
4 limited appearances from up there. We are permitted to do  
5 that at prehearing conferences so we will investigate it and  
6 see what facilities are available.

7 Are there any other matters that anyone would  
8 like to raise and have us discuss?

9 (No response.)

10 CHAIRMAN BECHHOEFER: Absent any, the prehearing  
11 conference will be concluded. We thank you all for coming.

12 (Thereupon, at 4:35 p.m., the hearing in the  
13 above-entitled matter was closed.)  
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This is to certify that the attached proceedings before the

Nuclear Regulatory Commission

in the matter of: HOUSTON LIGHTING & POWER, ET AL (SOUTH TEXAS)

Date of Proceeding: 19 November 1980

Docket Number: 50-498 OL, 50-499 OL

Place of Proceeding: Houston, Texas

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Mary L. Bagby

Official Reporter (Typed)

Mary L. Bagby

Official Reporter (Signature)