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UNITED STATES OF AMERICA

BEFORE THE
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of:

HOUSTON LIGHTING & POWER COMPANY

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7 STN-50-498 OL
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9 STN-50-499 OL
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Townes Hall Auditorium
University of Texas Law School
2500 Red River,
Austin, Texas

Wednesday, March 18, 1981.

PURSUANT TO ADJOURNMENT, the above-entitled matter
came on for further hearing, at 8:30 a.m.

APPEARANCES:

(As heretofore noted.)

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P R O C E E D I N G S

8:30 a.m.

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3 CHAIRMAN BECHHOEFER: Good morning, ladies and
4 gentlemen. Before we begin I would like to make a few housekeeping
5 announcements.

6 We have tentatively found out that we may have the
7 room at the Holiday Inn at Bay City on May 12, from 1:00 o'clock
8 to 9:00 o'clock, and we will... This has to be confirmed today.
9 My secretary talked to someone who didn't have final authority,
10 but we can rely on the fact that I think we will have that room
11 for that period of time. We are also, according to the same person
12 who doesn't have final authority, we are also able to use the room
13 on Saturday, the 15th, from 9:00 til 12:00, ideally; they said no
14 later than 1:00. They have a party that they have to set up in
15 the afternoon. So, we will anticipate holding the Saturday morn-
16 ing session.

17 We have been told that we may have the following
18 week at Rice, but we haven't been told which room. So, we'll have
19 to be given a room; and we're not able to get anything definite
20 on June 1st through 4th, nor the later days of June. But we will
21 let you know, perhaps mid-day. I'm going to call in, and we may
22 have found something during those times. We are seriously con-
23 sidering those last two weeks in June, until July, using San
24 Antonio, just because of the difficulty of obtaining space in
25 Houston; but we will let you know. I will give you a report later

1 in the day, but it may not be anything more than I'm giving you
2 now.

3 We are going to take limited appearance statements
4 this morning, but we will wait until at least 9:00 o'clock.

5 Are there any preliminary matters you would like
6 raised before we get into the remainder of the agenda?

7 MR. NEWMAN: Mr. Chairman, I think, perhaps, we
8 can just quickly address the schedule for filing testimony, and
9 the further steps on the non-SER items. I think we now have some-
10 thing of bifurcation with the SER having been delayed, and we
11 would propose that --

12 CHAIRMAN BECHHOEFER: I thought we would start with
13 Items 4(a) and (b), for the simple purpose --

14 MR. NEWMAN: Oh, I'm sorry, I thought you were ask-
15 ing me for a suggestion.

16 CHAIRMAN BECHHOEFER: No, I just wanted to know if
17 you had any preliminary matters that anybody wanted to discuss,
18 and I was also going to inquire about the progress on the
19 Protective Order.

20 MR. AXELRAD: We have spoken with the Intervenors
21 yesterday evening, and they were going to prepare a draft. We
22 were supposed to get together with them at 8:00 o'clock, but
23 Mr. Sinkin didn't arrive until about 8:30, so... We assume that
24 he has a draft, but we haven't had a chance to talk to him about
25 it. I suggest at the first recess we talk to him about that.

1 CHAIRMAN BECHHOEFER: All right, we'll reserve
2 this for later in the morning.

3 MR. SINKIN: Mr. Chairman, I do not have a draft;
4 we have a statement.

5 CHAIRMAN BECHHOEFER: Well, is the statement
6 appropriate for considering now, before we talk about any...?

7 MR. SINKIN: We'll be happy to.

8 MR. AXELRAD: Mr. Chairman, if I may say something,
9 Mr. Hudson is the Counsel for the Applicant who discussed these
10 matters with Mr. Sinkin last night, and Mr. Hudson, unfortunately,
11 is not here right now.

12 CHAIRMAN BECHHOEFER: Okay, we'll reserve this for
13 later in the morning. There's no problem with that.

14 MR. SINKIN: Mr. Chairman, we did mention 4(b),
15 and I expressed my reservations yesterday about taking up 4(b)
16 before the limited appearances, because I believe it will be a
17 substantive lengthy discussion, and I would rather have it all
18 be continuous.

19 CHAIRMAN BECHHOEFER: What I was going to say is
20 that the Board has reviewed your papers, and we, essentially,
21 have made a decision, and the nature of the decision would not
22 require that we listen to the staff or Applicants.

23 MR. SINKIN: Well, might we start with 4 (a)?

24 CHAIRMAN BECHHOEFER: I was going to suggest we
25 start with 4 (b); 4(a) was just setting the date.

1 The Board was considering your motion, which is
2 Motion No. 7, using the arbitrary number and sequence that we used
3 yesterday. We have decided that the Motion should be denied, and
4 our basic reasons are; first, the Commission did state that the
5 abrogation of responsibility or knowledge could form a basis for
6 denying a license. And I emphasize the word "could"; they did
7 not say that it must form such a basis. The Board believes that
8 it would be a sufficient basis for denying a license only if the
9 underlying items were not correctable. And, second, the Board
10 does not believe that the Commission mandated two separate deci-
11 sions on QA and QC matters. For an early decision we will take
12 evidence on all of the issues. Then if we find that the evidence
13 on Issue "A" produced an affirmative answer, the issues were
14 serious enough to deny the license, and that the deficiencies
15 were not correctable, we might decline to go on to decide the
16 other issues, because that might end it. But we would have taken
17 the evidence at any rate.

18 If we found that the deficiencies were were of a
19 type that were correctable, we would additionally, as a predicate
20 to an operating license, have to consider Issue "B", and deter-
21 mine whether the deficiencies were in fact corrected. We believe
22 that only if the deficiencies were of the type that were not
23 correctable, and, of course, evidence on that would be permissible,
24 then we would not have to on to decide the remaining issues.

25 Third, or in addition, the Board views the

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1 operating license procedures of the Commission as contemplating
2 that an applicant should show compliance with various requirements
3 to obtain an operating license, but if the deficiencies are
4 covered, then an applicant is permitted to demonstrate that the
5 deficiencies have been corrected. This has occurred in numerous,
6 if not all operating license proceedings. Moreover, the opportunity
7 to demonstrate that deficiencies or violations in fact have
8 been corrected is mandated under the Commission's Show-Cause
9 proceedings. Now, this isn't a Show Cause proceeding. If it
10 were, 10 CFR, Section 2.101 specifically gives an applicant the
11 chance, or the licensee a chance to show that violations have been
12 corrected or remedied.

13 We believe that comparable procedures should be
14 applied to this particular proceeding, this phase of the proceeding.
15

16 Fourth, we are declining to certify the question
17 to the Commission, or defer the ruling to the Commission. Our
18 partial initial decision is reviewable by the Appeal Board, and
19 eventually by the Commission, and it will be reviewed long before
20 any decision we might issue on other operating license issues,
21 so that any decision we issue will be subject to review long before
22 we get to the final stage of deciding whether to grant an
23 operating license. And the Commission has discouraged certification
24 of issues or referral of issues, except where there could be
25 an immediate impact on operations, or that type of thing.

1 So, we decline to certify. That's the conclusion
2 of our ruling on that. We will entertain further comments if
3 the parties wish to make them. We think that our ruling earlier
4 is correct, and we are saying, in essence, we are denying the
5 Motion for Reconsideration of that ruling.

6 MR. SINKIN: Mr. Chairman, I would say that our
7 position is that we feel the Board has misinterpreted the
8 September 22nd Order of the Nuclear Regulatory Commission....
9 That we intend to approach -- I presume the proper procedure
10 would be to approach the Appeal Board, and ask them to take certi-
11 fication of the question; that what is happening here is, as we
12 perceive it, we are being denied very specific relief given to
13 us by the Commission as an alternative to either a hearing on
14 the Show Cause Order, or a hearing on a 2.206 motion to revoke
15 a construction permit, and that rather than getting anything
16 that goes to the heart of that we are going to get this mish-mash
17 of issues that's going to allow the Applicant to confuse and
18 misdirect the Board from what the Commission intended the Board
19 to look at. And what our position is on what the Commission in-
20 tended the Board to look at was, due to the past bad acts of the
21 applicants, constitute a sufficient basis to deny the license,
22 yes or no. That's not a matter of whether those are correctable
23 or uncorrectable.

24 To use a criminal analogy, if someone has robbed
25 a bank, and gotten caught, and the issue is are they guilty or

1 not guilty; the fact that they returned the money after they got
2 caught is irrelevant to that issue of guilt.

3 Any possible means we have available to us to
4 appeal this ruling, we will do so.

5 CHAIRMAN BECHHOEFER: I might say, the Appeal
6 Board normally rejects interlocutory appeals. There is a directed
7 certification procedure, which is rarely successful, but it's
8 there. I will advise you of that.

9 MR. SINKIN: It would seem to me more logical, if
10 it's available, to ask for a directed certification procedure
11 directly from the Commission, since the meaning of the Commission's
12 Order is the essence of -- our reason for being here.

13 CHAIRMAN BECHHOEFER: I doubt whether the
14 Commission would even entertain the request for one, since they
15 delegate the authority to the Appeal Board.

16 MR. SINKIN: If the Appeal Board denies, can we
17 then request the Commission?

18 CHAIRMAN BECHHOEFER: You may request, but the
19 grantings are few and far between.

20 MR. SINKIN: I understand.

21 CHAIRMAN BECHHOEFER: I remember one in the last
22 ten or fifteen years, maybe one or two.

23 MR. SINKIN: I assure you, Mr. Chairman, if we did
24 not consider the ruling as severely adverse to our position in
25 these proceedings we would not in any way intend to bother the

1 Commission with this; but we do consider it severely adverse,
2 and we will take it as high as we can.

3 CHAIRMAN BECHHOEFER: WE understand. And I am say-
4 ing that you ought to look at the direct certification procedure;
5 that, I think, is the only procedure available.

6 Going back to 4 (a), we are open for suggestions.
7 What we would like is a brief on the legal standards to be used
8 in evaluating managerial competence, that type of issue.

9 MR. GUTIERREZ: Mr. Chairman, the staff would
10 suggest that maybe an appropriate time would be approximately two
11 weeks after filing of written testimony for the filing of a brief
12 on competence and character.

13 CHAIRMAN BECHHOEFER: Would that be suitable?

14 MR. NEWMAN: No, Mr. Chairman, I don't think we
15 can answer that in a vacuum. I think we have to have some idea
16 of what the schedule is going to look like, before we can fix that
17 time period. We have under preparation a rather extensive case
18 involving, perhaps, as many as thirty five witnesses. We would
19 suggest that in terms of schedule the hearing, now having been
20 moved back from the originally contemplated May 4 to May 11, or
21 12, that the filing of testimony also be put back by the same
22 amount of time. Originally it had been suggested that the test-
23 mony be filed about fifteen days prior to the hearing, when we
24 thought the hearing date was May 4. And I would suggest that now
25 that the hearing date is May 11 --

1 CHAIRMAN BECHHOEFER: Excuse me, if you're asking
2 for at least three weeks, I'd have to check the schedule, but
3 I'm also told that the testimony, at least of the staff, will
4 run to hundred of pages, and I presume yours will also...

5 MR. NEWMAN: Yes.

6 CHAIRMAN BECHHOEFER: And we would want at least
7 three weeks. Let me check the schedule we had before, I thought
8 we had set a date, which we would be willing to move back a week.

9 (Pause.)

10 We had suggested April 15th if we started the week
11 of May 4th.

12 MR. NEWMAN: Right.

13 CHAIRMAN BECHHOEFER: Using that same schedule we
14 could push that up a week, approximately.

15 MR. NEWMAN: Well, one of the difficulties that we
16 have is that in light of the Intervenor's failure to comply with
17 the request for the identification of sources of their information,
18 at this point we are not going to get the identification of those
19 people until, perhaps, 10 days from now, or about the 28th of
20 March. If it is that late, then we must allow some time for the
21 taking of depositions of those witnesses, or sources of informa-
22 tion, and it is exceedingly difficult for me to contemplate being
23 able to complete those depositions in much less than three weeks.
24 And, then, that's got to be fed into the testimony preparation
25 process. And, really, this major new factor, I think, almost --

1 In our case I think it just makes it most essential that the
2 testimony be filed no earlier than the 27th of April, at least
3 with respect to the non-SER types. I've got a separate suggestion
4 on those.

5 CHAIRMAN BECHHOEFER: We were going to suggest a
6 separate filing for all parties.

7 MR. NEWMAN: Sure, right.

8 But that's the reason on the non-SER items, that's
9 really the basic reason why we must have this initial time. It's
10 virtually impossible to put this case together, with so many
11 depositions to be taken, we've just so much time left and so many
12 hours left to do that job.

13 Now, if the Intervenor's were to cooperate, and
14 turn over all the names tomorrow, and so forth, that might help to
15 get on with the process. But judging from past performance, my
16 hunch is that we ought to count on full compliance not being
17 achieved within any earlier time frame than 10 days, and I think
18 there was even some discussion of advising of 15 days. Now, in
19 light of that we just have to take two to three weeks to take the
20 depositions of these people, to find out if there is any substance
21 to the allegations that either Mr. Sinkin or Ms. Buchorn has been
22 making. We can't prepare our case properly until we have access
23 to those individuals; and that, in turn, must be fed into our
24 testimony.

25 MR. GUTIERREZ: Mr. Chairman, with all due respect

1 to Mr. Newman, I just think he was getting ahead of the schedule
2 a little bit. I thought we were addressing the question of when
3 we were going to file the brief on competence and character.

4 MR. NEWMAN: And what I am suggesting, Mr. Gutierrez,
5 is that we file the brief contemporaneously with -- I was just
6 going to say that we would like to file the brief contemporaneous-
7 ly with the opening date of the hearing. Part of the reason for
8 asking for that length of time is also the fact that we are going
9 to be so busy, in developing and putting together the case.
10 I don't think anybody is really prejudiced by that.

11 MR. SINKIN: Mr. Chairman, am I correct that the
12 brief we are talking about is a legal brief on legal points, as
13 to what constitutes character and competence, and is not going to
14 go to the testimony, or evidence to be produced?

15 CHAIRMAN BECHHOEFER: That's correct.

16 MR. SINKIN: I don't see that --

17 MR. NEWMAN: The difficulty, Mr. Chairman, is that
18 there are only so many people around to brief an item, and we may
19 have a large number of depositions to take, and take them late,
20 in light of the default of the Intervenors to respond to the
21 Order to Compel Identification of Witnesses.

22 MS. BUCHORN: Mr. Chairman, Applicants' attorney's
23 statement that was just made just reinforces my determination
24 for a statement I would like to place on the record at this time.
25 I think it might cure some of the problems.

1 Mr. Chairman, after yesterday's meeting I was con-
2 cerned that these proceedings are going down a road I do not care
3 to travel. After thinking long and hard about my position, I
4 have made my decision. I intend to prove Contentions 1 and 2
5 by cross examination of witnesses presented by the NRC and the
6 Applicants, and by the use of documents proved up or stipulated
7 to, which the Applicants already have copies of.

8 If the Board decides that the time for identifying
9 witnesses is to be extended I may decide to call a few witnesses.
10 If I do decide to call witnesses I will provide their names to
11 the Applicants. Beyond that I do not intend to provide the names
12 of any other persons I have talked to regarding STNP. I do not
13 believe there is any law requiring me to provide the names of
14 people who give me information on which I might base cross examina-
15 tion, nor the source for my thought processes in developing the
16 strategy of cross examination. There is no legitimate purpose
17 or end for the Applicants' request for these sources.

18 If the Applicants wish to provide me with case
19 citations, and I do not mean rules, I mean cases, which they
20 believe compel me to disclose these sources, I will review those
21 cases, and I might reconsider my position.

22 I would also point out that the Applicants are in
23 a favored position in gathering information on Contentions 1 and
24 2, as they have complete and continuing access to their own
25 employees.

1 I have tried to cooperate with the Board in all
2 ways in this proceeding, but the Motion to Compel goes too far,
3 and I ask the Board to certify the question of my obligations to
4 disclose non-witnesses to the Commission, so that a ruling on
5 this matter may be received.

6 I have a responsibility to the people who speak to
7 me in confidence, and I will not violate that confidence.

8 MR. SINKIN: Mr. Chairman, I have a statement on
9 that matter.

10 Having had a chance to review my role in the F.B.I.
11 investigation, I can state that to the best of my recollection
12 the only name I provided to the F.B.I., for purposes of their
13 investigation, and the only person who has information related to
14 Contentions 1 and 2, or whose questioning is likely to lead to
15 information on Contentions 1 and 2, is Mr. Daniel E. Swayze,
16 who has already been deposed by the Applicants.

17 This answer relates to the first interrogatory
18 which the Protective Order was to cover, so for this item there
19 is no need for a Protective Order.

20 Regarding the second interrogatory, on my source
21 for the statement that a climate of fear exists at the construc-
22 tion site; I can state that to the best of my recollection I recall
23 no persons I have talked to regarding this statement, other than
24 Mr. Swayze and Ms. Buchorn.

25 Ms. Buchorn has not given me permission to release

1 the names of anyone she may have mentioned, and I do not intend
2 to reveal any such name without her express written permission.
3 So, there is no need for a Protective Order on this interrogatory.

4 Regarding the third interrogatory, on my source
5 for the statement that people contacted by CCANP refused to pro-
6 vide information for fear of losing his or her job; I can state
7 that to the best of my recollection, that statement is also based
8 on conversations with Ms. Buchorn, and therefore covered by the
9 earlier statement on communications with Ms. Buchorn. There is
10 then no need for a Protective Order on this interrogatory.

11 Regarding the fourth interrogatory, on persons
12 with whom CCANP has discussed extensive, pervasive and willful
13 violations of 10 CFR Part 50, the only person I can recall with
14 information related to Contentions 1 and 2, or whose questioning
15 is likely to lead to information relative to Contentions 1 and 2,
16 is Mr. Swayze, and person provided to me by either Mr. Swayze's
17 permission or Mrs. Buchorn. The same condition applies to my
18 revealing any of Ms. Buchorn's sources, and there is no need for
19 a Protective Order on this interrogatory.

20 Regarding the fifth interrogatory, persons with
21 whom CCANP has discussed incidents of intimidation or abuse of
22 QC inspectors, the only person I have spoken with who has informa-
23 tion related to Contentions 1 and 2, or whose questioning is like-
24 ly to lead to information on Contentions 1 and 2, is Mr. Swayze.
25 I have discussed such incidents with Ms. Buchorn, but I do not

1 recall the names of individuals involved in those incidents.
2 There is no Protective Order needed for this interrogatory.

3 Regarding the tapes from the files of Mr. Swayze's
4 attorney, Mr. Swayze gave me written permission to remove mater-
5 ials from the files of his attorneys. If I understand Applicants'
6 remarks yesterday, it is considered that Mr. Swayze waived the
7 attorney-client privilege regarding the tape. My position is that
8 he waived that privilege only regarding my access to his files.
9 He did not give me permission to release the information to the
10 NRC, or the Applicants. If the Applicants desires the names of
11 persons on that tape I suggest they prepare a release for Mr.
12 Swayze's signature, and if Mr. Swayze agrees to sign the release,
13 and I receive such a release, I will review the tapes to see if
14 the individual's involved have information related to Contentions
15 1 or 2, or whether their questioning is likely to lead to informa-
16 tion on Contentions 1 and 2. If I decide the individuals have
17 such information, or are likely to provide such information, I
18 will give the Applicants the names.

19 If such a situation should arise, I would submit
20 a motion for a protective order on those names.

21 Based on these answers, CCANP sees no need for a
22 Protective Order at this time, and makes no such request.
23 CCANP also endorses Ms. Buchorn's position, that the Applicants
24 are in a far better position to secure information on these matters
25 than the Intervenors. If they are truly concerned about

1 construction deficiencies or intimidation.

2 Additionally, CCANP supports Ms. Buchorn's position
3 regarding the names sought.

4 The allegations concerning a climate of fear,
5 people losing their jobs, extensive violations of 10 CFR Part 50,
6 and intimidation of inspectors, are supported by substantial
7 evidence in the form of the Order to Show Cause.

8 The burden of proof is on the Applicants, not the
9 Intervenors. It is the Applicants that have to make their case,
10 and that case should not require the work of Intervenors.

11 The only purpose CCANP can perceive from the
12 Applicants request is a believe on the part of the Applicants that
13 Intervenors have made baseless allegations, and then spread those
14 allegations in the press. Our response is that the Intervenors
15 are not applying for an operating license for a nuclear reactor,
16 and Applicants are. And it is Applicants who must satisfy this
17 Board as to their credibility. As far as Intervenor credibility,
18 we contend the Order to Show Cause settled that question. No
19 Federal regulatory commission has questioned the character and
20 competence of Intervenors; the Nuclear Regulatory Commission is
21 questioning the character and competence of Houston Lighting &
22 Power.

23 Now, you are asking Ms. Buchorn to turn over names
24 of her confidential sources to representatives of this question-
25 able company. CCANP contends the Motion to Compel is unwarranted

1 by law and by circumstances, and suggest the Chair requests briefs
2 from all parties before making a ruling in this matter.

3 MR. REIS: Your Honor, it is plain from Mr. Sinkin's
4 statement that he has an obligation to turn over any name that
5 Ms. Buchorn might have given him. She gave him the names; there
6 was no attorney-client relationship; there was no relationship of
7 a representative. Those names were fully and freely disclosed.
8 Plainly their actions in saying now that they will not give the
9 names, subject to a Protective Order, goes contrary to the Board's
10 Order of yesterday.

11 As we pointed out towards the close of yesterday's
12 session, the Board ruled, about the middle of the day, that this
13 material shall be turned over, subject to a Protective Order.
14 It was still a ministerial duty of preparing a Protective Order,
15 but the Order was made, and the Order was plain.

16 Frankly, I don't know what the protection is that
17 they are claiming, under what scheme of law, what rule. They
18 seem to say that they have a right, coming from something or
19 other, but I don't know what, to say that they can withhold in-
20 formation dealing with whether a nuclear plant can safely operate
21 or cannot safely operate. And, so, they are impeding the work
22 of this Board and the Commission. I know of no such protection;
23 and if there was any such protection, as I started to say in my
24 statement, it was waived by Ms. Buchorn talking to Mr. Sinkin
25 and turning the names over to him... and by, there was never any

1 protection sought or given on those matters. And, therefore, I
2 think that, again, if the Intervenors wish to take part in this
3 proceeding, and aid in the work of the Commission to assure that
4 nuclear plants safely operate and can be run safely... protect
5 the public health and safety... they have a duty to, as a
6 concomitant part of participating in this proceeding to turn over
7 those names, subject to a Protective Order, as the Commission
8 ruled yesterday.

9 MR. SINKIN: Mr. Chairman, we will make a motion
10 to reconsider the Order of yesterday, so that it will be formally
11 on the floor in that matter.

12 MS. BUCHORN: Mr. Chairman, I would like to make it
13 very clear that at no time have I withheld any material informa-
14 tion about construction problems at that plant from the NRC staff.
15 And there have been numerous times when I have provided people
16 to them, and names to them, and I have not withheld that.

17 I just object to going back into all of my records,
18 of all of my conversations, and bringing forth extraneous names
19 that I do not intend to use as witnesses. And I strenuously object
20 to, and will not provide those names to the Applicants. I have
21 refused to provide them all along. I cannot, in good conscience,
22 provide names of people who have their jobs at jeopardy, I cannot
23 do that, I'm sorry.

24 CHAIRMAN BECHHOEFER: The Protective Order was
25 intended to take care of that. I might add the whole theory of

1 litigation is that all the information come out on the record.

2 Further, that the Applicants are faced with quite
3 serious charges, particularly with regard to Contentions 1 and 2.
4 Those are your contentions. And to the extent that you have
5 information about them, I think it is incumbent upon you to make
6 that information available to the Applicants, as well as this
7 Board.

8 MS. BUCHORN: I believe I've answered all their
9 interrogatories, they said so yesterday. The only thing I am
10 refusing to reveal are names of those persons I do not intend to
11 call as witnesses. And I do not believe there is a law that
12 would compel me to give those names of people I do not intend to
13 call as witnesses.

14 CHAIRMAN BECHHOEFER: Well, the Commission's dis-
15 covery rules provide that you are required.

16 MS. BUCHORN: I'm talking about cases; I'm talking
17 about law.

18 CHAIRMAN BECHHOEFER: There are cases; the
19 Susquehanna case is one I can think of, A 613. That did not
20 involve material subject to a Protective Order, but it did in-
21 volve a complaint that an applicant was more able than an inter-
22 venor to develop information on this question. And the Appeal
23 Board rejected that claim, very staunchly the Appeal Board reject-
24 ed non-licensing for that.

25 The theory of the Commission's discovery rules is

1 to enable all the parties to develop their respective cases to
2 the maximum possible extent. Revealing those names to the
3 Applicants' attorney will enable the Applicants to check out
4 whether the information is well-founded or not.

5 General statements that a number of people have
6 said there's a climate of fear are not specific enough. Someone
7 has to be able to check whether -- upon what those statements are
8 based, what the foundation for those... they could be considered
9 as wild charges by someone who doesn't, just doesn't like the
10 Applicants for reason, doesn't like Houston Power & Light. Who
11 knows. The Show-Cause Order has some very specific information.
12 And to the extent there may be more, it ought to be developed.

13 The Show-Cause Order is not the exclusive vehicle.
14 More than what is in the Show Cause Order has at least been
15 suggested by the answers to interrogatories, and, perhaps, my
16 Contentions themselves. And we must be able to get all the in-
17 formation that we can on the record.

18 MS. BUCHORN: You see, I'm violating one of my own
19 self imposed rules by providing a tape that does have specific
20 charges on it, that were brought to me. And I will be providing
21 names in relation to that tape.

22 Beyond that I will not go.

23 CHAIRMAN BECHHOEFER: Well, but all of these other
24 documents, I would think, are comparable to the tape, all your
25 other sources of information, to the extent that it relates, again,

1 to the Contentions 1 and 2, because that was the extent of our
2 Order. To the extent it relates to other matters, we had urged
3 you to provide that to the staff, but we did not require you to
4 furnish that to the Applicants. That was our Order, we did draw
5 that distinction.

6 Our theory was that as the proponents of a parti-
7 cular contention you have an obligation to make available all of
8 the information you have bearing on those contentions.

9 MR. SINKIN: Mr. Chairman, we can appreciate that
10 the Applicants would like to have our cross examination written
11 out, so that they can be prepared for anything we might raise,
12 or know our thought processes, or how we intend to conduct the
13 case. And we think that is precisely what this Order is designed
14 to give them.

15 We do not think they are entitled to it.

16 MR. NEWMAN: Mr. Chairman, I think that just re-
17 flects a fundamental misunderstanding of the Federal Rules of
18 Evidence and the Rules of the NRC. Obviously the purpose here of
19 the rules, the discovery rules, is largely to prevent surprise
20 in the conduct of litigation.

21 As to the justification for the Board's position,
22 I think that the Board has stated, I think, very sound reasons
23 why these materials, or any these identities should be divulged.

24 I think that Mr. Reis has probably covered every
25 point that there is to cover with respect to the absolute

1 necessity of the disclosure of these names, so that we can proceed
2 with preparing our case. And, perhaps, the staff may have the
3 same need with respect to the preparation of their case, we don't
4 know. But we certainly need it for our case. And I think that
5 we are at a point -- let me stop for just a second and back up....

6 We will have, shortly, for the Board's perusal a
7 proposed form of an order to compel, consistent with the Board's
8 statements on the record yesterday; together with a proposed form
9 of protective order, also embodying the principles that the Board
10 enunciated yesterday on the record. With those matters before
11 the Board, and upon issuance of those orders, if it appears that
12 Ms. Buchorn and Mr. Sinkin insist on pursuing the course of action
13 that they described this morning, we will ask that they be default-
14 ed, and that they have no right to participate in any phase of
15 these proceedings, either by presentation of a direct case or by
16 cross examination.

17 I think that is an Order which is plainly just,
18 in the sense of Section 2.707 of the regulation.

19 CHAIRMAN BECHHOEFER: Perhaps before continuing on
20 this matter we should take limited appearances. I anticipate
21 your document isn't quite prepared yet.

22 MR. NEWMAN: I believe it will be by the time
23 limited appearances are over, and this would be a good time, I
24 believe to take those up.

25 CHAIRMAN BECHHOEFER: Does anybody have any

1 objection to our breaking for a time to take limited appearances?

2 (None indicated.)

3 CHAIRMAN BECHHOEFER: We have invited members of
4 the public to make limited appearance statements. These can be
5 your statements with respect to any of the issues of the pro-
6 ceeding.

7 We have received in Washington six names, and I
8 would expect to call them first.

9 Before we start... we would normally limit state-
10 ments to approximately five minutes apiece. We would hope you
11 would aim your statements for that period of time, we may not
12 break you off in the middle of a sentence, but we don't want to go
13 much beyond.

14 Limited appearance statements do not constitute
15 evidence as such. They do -- to the extent they raise matters
16 that the Board feels is significant, the Board may ask the parties
17 to the proceeding to provide answers to the questions which are
18 raised. Beyond that, we will be interested in taking account of
19 the various statements that are made. But to the extent explicit
20 issues are raised, we may ask the parties, particularly the staff,
21 to provide answers to whatever the questions may be.

22 There is a witness stand up here on the left, with
23 a microphone.

24 I will read off the names of people we have, and
25 then I will call upon any others who wish to make statements.

1 Martha Meachem. To the extent you have longer statements than
2 five minutes, or approximately five minutes, they may be supplied
3 in written form and put into the record in that form.

4 Proceed, why don't you identify your name and
5 address, so that if any specific answers... can, perhaps, be
6 provided to you.

7 MS. MEACHEM: Okay.

8 Whereupon,

9 MARTHA MEACHEM

10 appeared as a witness, and offered the following statement:

11 DIRECT TESTIMONY

12 THE WITNESS: My name is Martha Meachem.

13 Mr. Chairman, Members of the Board, I am a Master's
14 Degree student here at the University of Texas in anthropology,
15 and a resident of Austin.

16 I am opposed to the operation of STNP for two major
17 reasons. Primarily the project is a poor economic risk that the
18 ratepayers assumed. Costs already are exceedingly high for
19 questionable construction standards. Brown & Root would do less
20 harm using solar collectors in this case.

21 Nuclear waste is an issue that even the NRC has
22 not satisfactorily resolved, to my own mind.

23 As a speleologist familiar with the carst (pn)
24 in Texas, I am opposed to caves being used as dump sites, which
25 is the last suggestion that I've heard... been reading about.

1 I suggest that the present nuclear dump here, that
2 belongs to the University of Texas, located at Balcones Research
3 Center, be removed from the laboratory areas where students work,
4 before additional plutonium be added to Texas' waste storage
5 problem.

6 What is proposed for STNP's waste? I know our
7 Governor here has pretty much made the stand against storing it
8 here, presently at Todd's Shipyards anyway.

9 That's one point I'm really concerned about. Where
10 are you going to dump this plutonium after the operation begins.

11 I object also to STNP's operation in Matagorda
12 County, as it is an area of agricultural production. Contamina-
13 tion of the environment occurring due to a leak would be felt
14 throughout the market, Texas. I've spoken to local farmers in
15 Matagorda that are unhappy with the prospect of economic destruc-
16 tion occurring from nuclear waste. There's soybean production
17 going on there.

18 Accidents do happen, as remember March 29th
19 commemorates Harrisburg, an accident that couldn't happen.

20 Elementary biology cautions against the contamina-
21 tion of the delicate food chain balance. The history of STNP is
22 poor. I question Houston Lighting & Power's ability to monitor
23 quality control.

24 Austin as a community doesn't need the energy of
25 this plant. Conservation alone would reduce energy consumption.

1 With regional and Federal support appropriate resources could be
2 developed, as opposed to the vastly expensive and unhealthy
3 uranium-lignite dinosaur that is devouring East Texas.

4 My evaluation as a social scientist is that STNP
5 is an obsolete resolution for the energy needs of Texas.

6 For economic and health reasons I support, in the
7 public interest that STNP not be licensed.

8 Do you have any answers to the nuclear waste
9 situation proposed for STNP?

10 CHAIRMAN BECHHOEFER: Well, the Board normally
11 doesn't give answers. Some of these questions will be discussed
12 during the course of the proceeding, and other questions, perhaps,
13 the staff could provide answers. But answers are normally not
14 given.

15 THE WITNESS: Oh, just questions. Okay.

16 CHAIRMAN BECHHOEFER: Answers will be provided at
17 a later date.

18 THE WITNESS: My address is on a letter that I
19 wrote to the Secretary, so any answers to questions could be mail-
20 ed to that address.

21 CHAIRMAN BECHHOEFER: To some extent if they relate
22 to issues which are in the proceeding, the answers would have to
23 come through our decision in the end. I don't recall if there
24 is waste issues in this proceeding, or not... I don't think there
25 are.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 CHAIRMAN BECHHOEFER: John S. Kelly.

4 Whereupon,

5 JOHN S. KELLY

6 appeared as a witness, and offered the following statement:

7 DIRECT TESTIMONY

8 THE WITNESS: My name is John Kelly, and I am a
9 retired physicist, and I live in Austin.

10 I urge that you look with favor upon this applica-
11 tion for license, contrary to what the previous speaker said.

12 I have made some qualitative analysis, and I found
13 that Austin does indeed need the electric generating capacity.
14 It has enough for the moment, probably to the late 1980's or
15 early 1990's. By then it will need additional generating capacity.

16 Even with the construction costs of the STNP running
17 over, as they have done-- in a highly dramatized fashion--electric-
18 ity generated by the nuclear plant would only cost about two-thirds
19 of that from that generated by coal, and about half that of
20 electricity generated by lignite, and about one-fourth of that for
21 electricity generated by natural gas... that's in the Austin
22 situation.

23 The argument that by conservation and by use of
24 renewable resources one can displace the need for the additional
25 electric generating capacity misses the point. The principal

1 thing that one achieves with conservation and with solar is the
2 conservation of energy used for heat, heating, space heating,
3 water and that sort of thing. In Austin that is primarily done
4 with natural gas, although some other sources are used. And in
5 fact last year only a little over 2 percent of Austin's generating
6 capacity went to heating items. And, so, therefore, giving up
7 the STNP, which would provide something like 40 percent of
8 Austin's generating capacity, and try to substitute it for some-
9 thing that only provides a little over 2 percent just isn't going
10 to work.

11 Then there's always the oft repeated concern of
12 safety of nuclear power, not only here but elsewhere. I can only
13 reiterate what has been said, almost every nuclear power plant
14 has indeed an enviable safety record, and one that is at least as
15 good and probably better than the record of coal or gas, or any
16 other source of energy.

17 As to the specific contentions before this Board,
18 I can say that I personally visited the South Texas Plant on
19 numerous occasions. I have seen the holes in the concrete that
20 they gave so much publicity to; I've seen some of the wells that
21 people have complained about. It is my considered opinion
22 that these will have almost no effect, certainly not a significant
23 effect, on the health and safety of the people operating the plant
24 or those living in its vicinity.

25 I ask that you please consider these items in

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1 reaching your decision in licensing of the Applicants.

2 Thank you very much.

3 (Witness excused.)

4 CHAIRMAN BECHHOEFER: Mr. George A. Humphrey...
5 Humphrey or Humphries, it's difficult to read.

6 Whereupon,

7 GEORGE A. HUMPHREY

8 appeared as a witness, and offered the following statement:

9 DIRECT TESTIMONY

10 THE WITNESS: Mr. Chairman, my name is George A.
11 Humphrey. I live at 2738 Trial of Madrones, Austin, Texas.

12 I am a local contractor, and a founder of Austin's
13 Citizens for Economic Energy.

14 The reason I have come up here is because we start-
15 ed "Austin Citizens for Economical Energy" for two reasons.
16 Our first contention was that Austin did not need the generating
17 capacity of the STNP.

18 Currently Austin's peak load has been 865 megawatts,
19 and that was August 15th, 1980. Our present generating ability
20 is 1950 megawatts; the STNP will add another 400 megawatts, more
21 than 250 percent excess generating capacity.

22 Now, assume the 5.2 electrical growth rate, and
23 we'll have enough electricity through the year 1994, and with a
24 conservation program to drop that down 3 percent, which is very
25 viable, such as TVA of Porland, Oregon, and we'll have enough

1 generating capacity without STNP through the year 2000.

2 Secondly, the reason that we started Austin
3 Citizens for Economical Energy was because we felt that the cost
4 per kilowatt hour to the residences in Austin would be excessive,
5 would be higher than other forms of electricity. The reason for
6 this is because the capital cost to generate electricity from a
7 nuclear power plant, which represents about 70 percent of the
8 cost, has gone up more than 250 percent on the STNP and the plant
9 is only 47 percent complete. We feel that the cost of STNP will
10 go from the original estimate of \$931,000,000 to close to 4.5
11 billion dollars, or almost a 500 percent cost overrun. Secondly,
12 the cost of uranium, which is about 20 percent per kilowatt hour
13 delivered to the residents of Austin, has gone from \$7 a pound
14 to the spot market price, fluctuating between \$42 to \$56 a pound.

15 MR. NEWMAN: \$25 a pound.

16 THE WITNESS: And the cost that we've just negot-
17 iated with Westinghouse, that is even for the second load is \$36
18 a pound, and part of that is from foreign sources.

19 Another reason we are opposed to STNP is the cost
20 that the STNP will deliver electricity is exactly what he's talk-
21 ing about. There's not enough domestic uranium in the United
22 States to take care of existing atomic reactors, much less the
23 seventy one that are being built. Percentage-wise we have less
24 domestic uranium than we have oil.

25 And, finally, we are opposed to STNP, for deliverable

1 kilowattage, because for this plant to be effective at all it has
2 to have a capacity of 68.7 percent and run for 33 years.

3 Now, for blowing water reactors that are over 800
4 megawatts, and this is 1250, the average capacity is 52.6 percent.
5 Now, every percentage under 68.6 percent will increase the cost
6 per kilowatt hour to the residences and small businesses of
7 Austin.

8 And, finally, the 33 year life projection of STNP
9 is absurd. First of all because of legal and mechanical problems
10 this plant will never last 33 years, which will leave a white
11 elephant for the residents of Austin to have to pay for. But
12 maybe more important than the cost for delivered kilowatts to
13 Austin residences and small businesses is that the informal polling
14 that we've done in this town, over 60 percent of the residents
15 of Austin are opposed to nuclear power. Now, some of these
16 people are opposed to it for unreasonable reasons, but the point
17 is that a majority of the people in the city do not want STNP.
18 We've had five elections, and we may have a sixth one, and we can
19 kick it out... it's not going to happen for Austin.

20 (Witness excused.)

21 CHAIRMAN BECHHOEFER: Mr. Doyle W. Brown.

22 Whereupon,

23 DOYLE W. BROWN

24 appeared as a witness, and offered the following statement:
25

DIRECT TESTIMONY

1
2 THE WITNESS: Gentlemen, my name is D. W. Brown.
3 I am a citizen of Austin, I reside at 7219 Firefly.

4 I had prepared a speech that I intended to give
5 to this Board. Unfortunately I think most of the questions I had
6 dealt more directly with what this Board was going to be talking
7 about; as a result most of those questions have been answered.

8 I do have one point that I would like to make.
9 I don't really think that it's a business of this Board whether
10 or not Austin will continue to be a member of the STNP, but in
11 the sense that Austin is currently a member of the STNP, and is
12 participatory in that sense, I feel that the Board should realize
13 that it is to our financial benefit that this hearing take place
14 within an expeditious -- in an expeditious manner. We are looking
15 at considerable costs here, and I don't think anyone here would
16 like to see those costs go any higher.

17 Too often we look at the participants of a Board
18 hearing such as this, and we see lawyers on one side and people
19 on the other side, and we fail to realize that the lawyers on the
20 other side often represent people. That's the major point that
21 I'd like to make at this time. The lawyers do represent the
22 citizens of Austin; they are acting in their financial interest,
23 and it is to all our best interests to see that this is carried
24 out as expeditiously as possible.

25 Another point that I would like to make at this

1 time is that Intervenorers seem to be having some difficulty in this
2 matter in meeting certain deadlines. I feel that if the Intervenorers
3 do have a substantial backing by the society that they represent
4 that they would be able to meet all of their deadlines.

5 We tend to favor the underdogs in this matter, but
6 as I said before, we are people being represented by the lawyers
7 present here today. That's about it.

8 Thank you.

9 CHAIRMAN BECHHOEFER: Thank you.

10 (Witness excused.)

11 CHAIRMAN BECHHOEFER: Earl Cardinal, anybody by
12 that name?

13 (No response.)

14 Dan Harrison.

15 (No response.)

16 Those were all the names I had, does anyone else
17 wish to make a statement?

18 MR. HUDSON: My name is Bill Hudson.

19 Whereupon,

20 BILL HUDSON

21 appeared as a witness, and offered the following statement:

22 DIRECT TESTIMONY

23 THE WITNESS: I am a citizen of San Antonio.
24 I am not being paid by HL&P or Friends of the Earth.

25 There's a lot of dogma here in the nuclear age.

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1 I'd like to tell you some facts, and give you my opinion.
2 My opinion is that nuclear power is essential. STNP is -- what-
3 ever that 400 megawatts that Austin may or may not want in the
4 future, or whoever gets it -- a pound of U-235 has as much energy
5 in it as thirty million pounds of coal, and that's bituminous
6 coal, it's not your lignite dinosaurs.

7 What are you going to use.... use solar?

8 Good, I think most of the people in the industry are pro-solar.
9 I am, there's no question but that we'll heat most of the in-
10 dividual single living units in the future with it, but not now,
11 we don't have the technology. What we do have is the nuclear
12 technology.

13 So, you're going to turn off the nuclear?
14 The switches are on your door (indicating), it's supplying about
15 ten percent-- eight percent as of last year-- the U. S. has
16 declined.

17 Safety? Radiation? I flew to Denver last week,
18 and I got more radiation than anybody in Harrisburg, Pennsylvania
19 in March of 1979... I promise!

20 Calaveras Lake is a coal fired plant outside of
21 San Antonio, and that is producing more radioactivity than TMI.
22 And you guys have shut down TMI one.. That's \$18,000,000 a month
23 that it's costing the "GPU" I guess, General Public Utilities
24 or Edison. Maybe it's not you guys, maybe it's regional. But
25 the facts support nuclear power, I think. Maybe I'm crazy...

1 I want to show you something here. Worker's
2 survives accident caused massive radiation. This was in the San
3 Antonio paper, which is unusual. -- The reason I'm here, I was
4 going to sleep late -- but on the front page was a solar collector,
5 that I saw in another magazine recently... which doesn't say what
6 the kilowatt installed cost is. The only plant that I know of
7 is \$36,000 per installed kilowatt. The STNP estimate's about
8 1500, maybe 3,000 it's still a magnitude or order cheaper
9 than solar... now, right now. Just a fact, you know. I'll give
10 you my opinions later. Anyway this fellow, 68 years old, was
11 blasted with radiation four and a half years ago. The optomists
12 gave him no better than a 50-50 chance to live. McClusky, whod
13 worked at the Hanford Nuclear Reservation -- that dirty thing in
14 Washington state -- has suffered the biggest internal dose of
15 radiation of any person in history... outside of, I guess, maybe
16 Hiroshima. But speaking of Hiroshima and Magasaki, if you people
17 here are smart you know that a pickle or cucumber or a Hershey
18 Bar will explode just as easily as the South Texas Nuclear Plant,
19 or any other nuclear reactor! Do you know that? That's a fact.

20 I've got some D.O.E. stuff here, too, a lot to talk
21 about. It's all dogma. My opinion is that if we don't go nuclear,
22 and fast, we're going to be in a lot more trouble than we have to
23 be.

24 Another fact, with an element of speculation, 1977
25 the D.O.E.'s first budget, ten million bucks. If Mr. Carter had

1 put all that money into constructing nuclear plants, and we didn't
2 take fourteen years to get one of these suckers licensed... with
3 wonderful experiences all along the way... we wouldn't have to
4 import one drop of oil today! Fact.

5 Well, I got my stats from the U. S. Department of
6 Commerce. so...

7 I've got some old things here from college, 1948,
8 organic shale, solar energy, geothermal.... it's been around a
9 long time... so has nuclear. The U. S. is no longer the leader
10 in the production of nuclear power. We declined from 52 percent
11 of the world's power, to 46 percent during 1980, or '79. In 1979
12 the United States cancelled six thousand megawatts of nuclear
13 capacity. In 1980 we cancelled 18,000 megawatts. What are we
14 talking about here, 1200? Not very much, relative to what we've
15 been cancelling right along the way. We're headed for trouble
16 by going away from nuclear; it's not an option, you guys! In my
17 opinion. But the facts support it. The same solar collector
18 that's on the front page of San Antonio's paper -- interest booms
19 when buyers realized that the \$9,000 collectors were being in-
20 stalled for nothing. People waited all night outside the office
21 to buy a house with a collector. When the units went up, however,
22 design installers had problems. Of course there are solar heaters
23 that work in Florida; solar is good stuff, but so is nuclear,
24 by golly! Enough said.

25 I've got a little price here, a nice worksheet set

1 down... just some more facts. A little pellet of enriched fuel
2 that goes in the fuel rods of these little reactors costs about
3 \$7 to make. Fact. Calaveras Lake, I think it's \$28 bucks a ton,
4 plus twenty eight more to haul it. \$50 a ton -- what is that,
5 seven times, four tons in a \$7 pellet, so what is that fifty
6 four hundred percent savings, it's fanatical!

7 I saw in the paper last week, or two weeks ago,
8 that STNP is going to pay for itself in two years, in fuel saving
9 relative to natural gas. And listen friends, for Texas, we had
10 80 percent of our electricity generated by natural gas. I've got
11 some price things in here, if you want to look at it, and you all
12 know what natural gas has done, it's like oil. Well, there's a
13 little bit of lag in the cost of that energy for electricity be-
14 cause of contracts... But as those contracts run out you're going
15 to get-- you will find out what the cost of delaying these nuclear
16 reactors really is.

17 And I've got a vested interest -- I see an opportuni-
18 ty here... I am a geologist. I came up here just to say some
19 facts. If you'll pardon my language, that's bullshit that keeps
20 coming out, it's just ridiculous, emphasizing the wrong stuff!
21 The D.O.E. report that was leaked out, emphasizing a thirty seven
22 billion dollar subsidy for the nuclear industry-- do you recall
23 this thing? Did you read the report? I did. Did you know that
24 50 percent of our nuclear weapons between 1948 -- weapons! --
25 and in 1964 or '57, were counted as a subsidy to commercial

1 reactors in the industry! 50 percent of our nuclear submarines
2 are subsidy. They've just reissued the report, and they've come
3 up with twelve million! But more interesting -- it's outrageous,
4 you can find whatever you look for in the D.O.E., whatever...
5 you know that!

6 I've got a quote, page two or three, in the
7 Nuclear Regulatory Study, issued May 1980, it was an actual report,
8 not a leaky job.... to paraphrase, it is safer, more reliable
9 and less expensive than any other form. Two hundred and fifty
10 percent increase in your cost for nuclear... dam right! That's
11 too bad, that's terrible. But we forget to mention, ah, four
12 hundred percent coal price increase! Technicalities.

13 Sorry, I apologize for my rudeness. I want to get
14 out of here, I guess. But I thank you for the opportunity.
15 See you in May, I guess.

16 Whereupon,

17 BILL ASHLEY

18 appeared as a witness, and offered the following statement:

19 DIRECT TESTIMONY

20 THE WITNESS: Members of the Board and the public,
21 I am Bill Ashley, Manager of Communications of the North San
22 Antonio Chamber of Commerce. Thank you for the opportunity to
23 present the position of the North San Antonio Chamber of Commerce
24 regarding the licensing of the South Texas Nuclear Project.

25 The Chamber represents 1,100 San Antonio area

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1 businesses, employing many thousands of people. Our concern with
2 the project is primarily its economic impact. In brief, the
3 Chamber supports the efforts of our local utility, City Public
4 Service Board, and its three partners in the South Texas Project,
5 to provide its customers with the lowest cost electricity possible.
6 We believe the operation of the South Texas Project will be the
7 best near-term solution to meeting this concern.

8 San Antonio is, by preliminary census bureau figures
9 released March 6, 1981, the nation's ninth largest city. Its
10 three county SMSA, Bexar, Guadalupe, Comal Counties, contains
11 1,070,245 people, which is a 20.5 percent increase over 1970.
12 We're also growing commercially and industrially. This growth
13 indicates the need for additional power generation to assure
14 that expansion of the economy can keep pace with population growth.
15 Additionally, a comparison with other available or possible power
16 generation facilities indicates the South Texas Plant will be the
17 most economical source of electricity for our citizens.

18 We urge the Board to grant the operating license,
19 so that San Antonio can begin to receive the benefits of its
20 investment in the plant as soon as possible.

21 Thank you.

22 (Witness excused.)

23 Whereupon,

24 LORETTA VAN CAPPENOLLE

25 appeared as a witness, and offered the following statement:

DIRECT TESTIMONY

1
2 THE WITNESS: Good morning, my name is Loretta
3 Van Cappenolle. I am a member of Citizens Concerned About
4 Nuclear Power. I am a resident of San Antonio.

5 I would like to share with the Board and the people
6 in the audience some of the things that I have learned about the
7 South Texas Nuclear Project, both regarding safety and costs.

8 The twin reactors at the STNP were designed by
9 Westinghouse Corporation, whose pressurized water reactors are
10 known to contain flaws, and are similar to those of Babcock-
11 Wilcox, who designed the reactors at Three Mile Island and Crystal
12 River. The average capacity factor of Westinghouse reactors is
13 low. New information indicates that Westinghouse reactors over
14 80⁺ megawatts have averaged only 52.70 percent for the past five
15 years, and there is no learning curve which would show improved
16 performance over time, as evidenced by the 1979 figure which was
17 only 44 percent. This was the worst performance record in the
18 industry. It means that actual electricity generated throughout
19 that year was 44 percent of what those plants were built to pro-
20 duce.

21 Actual construction of the STNP began in 1975.
22 Brown & Root indicated at that time that they had 60 percent of
23 the plans for the STNP on the drawing board. It was later learned
24 that they had only 10 percent of the plans drawn up. This, in
25 part, accounts for delays at the construction site. The plant

1 is now about five years behind schedule. Originally scheduled
2 to begin operation in 1980, that is Unit I; and 1981 Unit II.
3 These dates have been pushed back to 1984, and 1986 for Unit II.

4 Other reasons for delay include Brown & Root's
5 unfamiliarity with construction of a nuclear power plant. The
6 inexperience and lack of skill of many of its workers, and its
7 cost-plus contract with the project partners allow Brown & Root
8 to earn more money the longer it takes to do the job.

9 Perhaps more serious than the delays alone is the
10 quality of the work being done at the STNP. The plant is now
11 known nationwide for its shoddy construction.

12 In December of 1978 several construction errors
13 were revealed in San Antonio. They indicated that a maintenance
14 building was constructed one foot from where it should have been
15 placed. Rectification of the error would cost one million dollars
16 to correct, according to a utility spokesman. It was also learn-
17 ed around that same time that there were several voids or open
18 spaces in a concrete safety wall at the project, as well as
19 numerous instances of improper welding.. 2,000 clad(ph) welds
20 cannot be documented as to placement, or whether or not they were
21 inspected. A bulging steel liner reactor contained in building
22 number two has also been found. It measured one hundred square
23 feet, and pouted out about five inches at its greatest point.
24 The liner was part of the shield for the nuclear reactor.

25 Other evidence that has surfaced indicates that

1 the South Texas Nuclear Plant should never have been built where
2 it is, in the first place. According to the Bureau of Economic
3 Geology of the University of Texas, the plant is being built at
4 the convergence of three earthquake faultlines. The Bureau warned
5 that a nuclear plant built there would be subject to increasing
6 stresses over time. The NRC, however, chose to ignore that warn-
7 ing, and permitted the STNP to be built there anyway. Stress
8 maps of the existing buildings indicate that these stresses are
9 already perceptible, with foundations showing stress in diverging
10 directions.

11 There are indications that Reactor Containment
12 Building No. 1 has experienced a major sinking. Brown & Root's
13 spokesman first said the sinking was planned, then later denied
14 it occurred at all. There is a story that has been told to us
15 by a young man, whose father was called in to find solid ground
16 under Reactor Containment Building No. 1. After completing his
17 work the father would never talk about what he had found.
18 Recently, however, as he was dying of cancer, he told his son
19 that he had never found solid ground under the building. Unfort-
20 unately, the man doing the testing died shortly thereafter. So,
21 independent verifications of his statement is difficult.

22 The site has a water table only six feet below
23 ground. The area is probably honeycombed with channels washed
24 out over the years by movement of this water. The finding of
25 quicksand in the cooling lakes suggests that the soil underneath

1 the site is shifting and compressable. This condition also makes
2 the subsurface more susceptible to the gradual movement of the
3 faults.

4 The plant has been reportedly built to sustain 90
5 mile per hour winds; hurricane winds in the area have been known
6 to greatly exceed that.

7 The possibility of a serious accident at the STNP,
8 if it is ever allowed to operate, is very great, given its poor
9 construction, its Westinghouse pressurized water reactors, the
10 rush to speed up work, to make up for past delays, and its siting.

11 I ask that the Board, and that everyone present
12 seriously consider these matters. Lives are indeed at stake.

13 Thank you.

14 (Witness excused.)

15 CHAIRMAN BECHHOEFER: The Board would only like to
16 comment concerning the last statement that many of those assertions
17 are the subject of the hearings we are going to be holding.
18 We would ask the staff to make sure that the safety evaluation
19 report deals with the geologic and seismic matters mentioned.
20 You may wish to consult with-- I didn't get your last name.

21 THE WITNESS: Van Cappenolle.

22 CHAIRMAN BECHHOEFER: But anyway, you may wish to
23 mention those matters to the staff, which is to prepare a safety
24 evaluation which includes the seismic and geologic matters. To
25 the extent that the matters you raised concerning the quality of

1 construction may go beyond the matters which the organization--
2 that your organization has raised in this case. You may wish
3 to consult with them, or provide further details to them or the
4 staff.

5 I'm not sure -- I haven't tracked, many of the
6 things you mentioned are the subject to specific contentions in
7 this proceeding... Whether all of them are, I can't say, I don't
8 have a list in front of me at the moment. So, you may wish to
9 provide any details that you have to members of your organization,
10 or to the NRC staff.

11 MS. VAN CAPPENOLLE: Thank you.

12 Whereupon,

13 ELIZABETH JACKSON

14 appeared as a witness, and offered the following statement:

15 DIRECT TESTIMONY

16 THE WITNESS: Members of the Commission, ladies
17 and gentlemen, I am Elizabeth Jackson, Acting Manager of the
18 Urban Affairs Department of the Greater San Antonio Chamber of
19 Commerce. Thank you for this opportunity to reaffirm the Chambers
20 support of the South Texas Nuclear Project.

21 We appreciate your careful deliberations in the
22 questions before you right now on safety and construction.

23 The Greater San Antonio Chamber of Commerce
24 represents over 4,000 local businesses, large and small. Many of
25 our members are the city's largest utility bill payers, and are

1 all painfully aware of the increasing costs of energy. However,
2 we are even more aware of the painful social and economic costs
3 of not having a steady, reliable source of reasonably priced
4 energy.

5 Since 1973 the Chamber has had a policy supporting
6 San Antonio's participation in this project. An Energy Task
7 Force was organized, composed of the city's top business, manager-
8 ial, and professional talent. From its chairman to its individual
9 members this TASK Force represents one of the most prestigious
10 groups ever assembled by the Chamber. Dr. Martin Goland, of
11 Southwest Research Institute, chaired the Task Force. Besides
12 serving as President of Southwest Research for over twenty three
13 years Dr. Goland has made contributions to national level policy
14 making, by serving on a host of scientific and technical advisory
15 committees, providing the guidance to the U. S. Congress the
16 Department of Defense and major industrial corporations. Assisting
17 Dr. Goland as Vice Chairman of the Task Force was Lt. Gen. A. W.
18 (Cy) Betts, who is Senior Vice President of the Southwest
19 Research Institute, prior to his current position General Betts
20 was Chief of Development and Research for the Department of the
21 Army. Other members of the Task Force included Harold O'Kelley,
22 Chairman of the Board and President of Datapoint; John Newman,
23 Past Trustee of San Antonio City Public Service Board; Major
24 General Lynwood Clark, Commander of the Air Logistics Center at
25 Kelly Air Force Base, and many other civic and professional

1 leaders.

2 This Task Force concluded that the South Texas
3 Nuclear Project is the most cost effective source of power for
4 San Antonio, which involves the least risk to human life or the
5 environment, and, realistically, is something more than a dream
6 for the future.

7 All business development and relocation firms
8 stress the top priority of attracting businesses and providing
9 for local business expansion is reasonably priced energy that is
10 in good supply. The prerequisite to economic growth should not
11 be jeopardized. Chamber studies concur with other experts in
12 the field of nuclear energy on the effectiveness of the nuclear
13 option to provide reasonably priced electricity, and free us from
14 dependency on foreign oil, railroad ripoffs, and natural gas's
15 increasing prices.

16 The prestigious National Academy of Sciences con-
17 ducted a four-year energy review, and concluded that nuclear
18 energy is cheaper than other fuels, less susceptible to energy
19 price fluctuations, less interruptible, immune to bad weather
20 transportation delay and possible labor strikes. It is also noted
21 a distinct environmental advantage it has over other energy forms
22 and concern for future generations with a coal dependent society.

23 Gentlemen, given that your Commission has approved
24 full construction activities, after safety related concerns have
25 been resolved, and in the interest of economic growth and energy

1 self-sufficiency, the Chamber urges that this phase of the
2 operating licensing go on with a minimum of delay, so that the
3 project can get operative as soon as possible.

4 Thank you.

5 (Witness excused.)

6 Whereupon,

7 GREG TAYLOR

8 appeared as a witness, and offered the following statement:

9 DIRECT TESTIMONY

10 THE WITNESS: Mr. Chairman, Members of the Board,
11 ladies and gentlemen, this is a response to the contentions that
12 nuclear power is cheap.

13 CHAIRMAN BECHHOEFER: Could you identify yourself?

14 THE WITNESS: Greg Taylor, 5322 Balcones Drive.

15 The most critical issue facing Americans today is
16 energy. The availability of cheap energy has been the foundation
17 of our rapid economic growth. Now further economic growth is
18 being threatened by rapidly rising energy costs. We need to find
19 alternatives.

20 Public utilities, with the backing of our Government,
21 have been actively promoting nuclear power as a cheap and reliable
22 source of electricity ever since it was demonstrated to be
23 commercially feasible, in the '50's.

24 The facts are finally in, and nuclear power plants
25 are by far the most unreliable and expensive way to generate

1 electricity. Nukes have a lower generating capacity than any
2 other commercial power plant in operation. The availability of
3 fuel for our nukes is shrinking, and the price of nuclear power
4 plants, even with Government subsidies, is higher than competing
5 forms of power, such as coal. Government, in independent studies,
6 has shown the capacity-- in other words the reliability of all
7 nukes to be 55 percent for the first ten years; dropping to 35
8 percent after a plant is over twelve years old. This low capacity
9 is directly related to difficulty in maintenance and repairs under
10 radioactive conditions.

11 To avoid exposure to high doses of radiation,
12 maintenance and repair crews can only spent minutes or seconds in
13 a hot area before they gain the maximum exposure. So, crews must
14 be rotated to minimize radiation. An example of the difficulty
15 involved in making repairs is a pipeline crack in Consolidated
16 Edison's Indian Point facility. The repair took seven hundred
17 welders seven months, and cost in excess of one million dollars.

18 Repairs at Three Mile Island were estimated to
19 take several years to complete, while the multi-million dollar
20 facility sits idle.

21 As plants age the breakdowns become more frequent
22 and cost more to fix.

23 Uranium, the fuel for atomic reactors is becoming
24 more expensive because of dwindling reserves and the high cost
25 of enrichment. Projections indicate that present demand levels

1 are that all known domestic reserves will be exhausted by 1990.
2 As supplies diminish the cost rises accordingly.

3 Before uranium can be used in the atomic reactor
4 it must be enriched. The enrichment cost process is very expen-
5 sive and uses massive electricity amounts. To give you an example
6 of just how much electricity is used in the enrichment process,
7 consider this. At present there are three enrichment facilities
8 operating in the United States. If all three operate at full
9 capacity simultaneously they can consume 4 percent of all the
10 electricity generated in the United States.

11 The price of nuclear power plants are 20 to 30
12 percent higher than any other commercial power plants being con-
13 structed today. Cost overruns while building the nukes are the
14 norm, rather than the exception.

15 Adding to construction costs are the price of
16 waste storage and decontamination. Since the question of waste
17 storage has not been resolved no price can be put on it, but you
18 can rest assured it won't be cheap. Decontamination has, in one
19 case, equalled the price of the power plant. At the present time
20 our Federal Government pays two-thirds of the cost of uranium
21 fuel enrichment, almost all costs of temporary waste storage,
22 and insures nukes against accidents, because no insurance company
23 will undertake the risk themselves.

24 In addition to this is the ten billion dollars
25 the Federal Government has spent in the last twenty years on

1 research and development for commercial nuclear power. If these
2 figures were included in the price of business the cost of
3 electricity would soar.

4 So, why should we base our future energy needs on
5 a system that is costly and unreliable. This would only further
6 destabilize economic tight wires we're walking in this nation
7 today. We need to decrease dependence on nukes immediately, or
8 face economic ruin for the future.

9 Thank you.

10 (Witness excused.)

11 Whereupon,

12 JULIUS BROWN

13 appeared as a witness, and offered the following statement:

14 DIRECT TESTIMONY

15 THE WITNESS: I am Julius Brown, from San Antonio.
16 I speak as a layman. My motivation for attending this hearing
17 is a concern that South Texas has adequate energy to function as
18 a viable entity during the next three decades. During that time
19 we can anticipate population growths, greatly increased industrial
20 activity, and a much increased demand for all forms of energy.

21 There is no single energy all purpose panacea,
22 and in fact, contrariwise, the many and diverse energy consuming
23 activities that make up our industrial and social structure each
24 have unique requirements.

25 I would like to emphasize the diverse... We read

1 about a coal strike, I think it was in the morning paper. That's
2 somewhere else back east, so it doesn't really affect us in Texas
3 yet. We read that LNG, liquified natural gas ships are being
4 sold by their American owners, because we don't want to pay the
5 price to Algeria that they are going to charge us for gas, that
6 they have been charging us. Gas from Canada and Mexico is running
7 well over \$4 per thousand cubic feet. I sometimes wonder about
8 that, because the regulatory set-up in the United States -- some
9 gas fields that I worked in are still selling gas for thirteen
10 cents a thousand cubic feet. Why in the hell are we sending
11 four dollars out of the country when we won't pay our own people?

12 Oil is in the ground. There is enough oil in the
13 ground to last for an awful long time, hundreds of years, if the
14 price is high enough to make it worthwhile to get that oil out
15 of the ground. Right now oil prices are still in the throes of
16 deregulating, and the cries against allowing proper compensation
17 for oil is just unbelievable.

18 Now, there are a lot of people who say we can
19 conserve our way out of our problems. They say I should park my
20 twelve year car, that's gets about 15 miles to the gallon. I
21 ran some calculations on it, to see what it would cost in energy
22 BTU's to build a new car, and I would replace that old car with
23 a new car. It just happened to work out that it would take about
24 100,000 miles of driving my old car, the equivalent energy that
25 would be required to build a new car and sell it to me, and then

1 that new car would start using fuel also. The conservationists
2 idea, if we follow their line of thinking, we'll all be back
3 burning mesquite and reading by candles in the evening.

4 I think that we've had an awful lot of obfuscation,
5 a lot of just confusing the issue by people that are against
6 nuclear power. I sat in on a meeting of those concerned about
7 nuclear power. There was concern about delays, but the concern
8 about delays was-- they had already set up volunteer rosters for
9 people who were going to chain themselves to the gates down there
10 when the plant was about to open. And these people were very
11 concerned that they would be too old, and it wouldn't be proper
12 for them to chain themselves to the gate.... that was their con-
13 cern about the delays.

14 We hear about this other stuff, this hearsay that
15 comes in. I say hearsay is a great thing if you want to goof up
16 an issue. I say it's invented by a small bunch of dissidents.
17 I can visualize this small group of society's rejects sitting
18 around their coffee klatches gleefully inventing horror stories
19 to throw out to a gullible segment of the public. Until I am
20 convinced otherwise, I will believe that story-teller is a liar.
21 We've had protection of witnesses, fabricated witnesses as I
22 consider it.

23 I say that our whole problem is to get power to
24 South Texas. These people are trying to divert attention away
25 from the real issue. The real issue is can we build a nuclear

1 power plant and make it run.

2 It's not a Federal Government problem whether this
3 thing costs more than coal or less than coal. It's a Federal
4 Government problem that this thing be built safely. If the thing
5 is not being built safely the Federal Government should act as a
6 guide to get it back into being built safely; but not to kill the
7 program.

8 I think that somewhere along the line we've got to
9 get everything in perspective, and that's why I'm sort of concern-
10 ed about the type of roadblocks that we've been seeing.

11 That's all I have to say, sir.

12 (Witness excused.)

13 CHAIRMAN BECHHOEPER: Any further statements?

14 Whereupon,

15 JOHN HAGEMAN

16 appeared as a witness, and offered the following statement:

17 DIRECT TESTIMONY

18 THE WITNESS: My name is John Hageman, and I am
19 a resident of San Antonio, and a research scientist there.
20 My concern, primarily, is as an individual, where I would like to
21 continue to have growth and electrical power available to San
22 Antonio and South Texas.

23 South Texas is definitely growing, and there's very
24 few alternatives to an economical energy source. We need all
25 energy sources, and we need to conserve energy, too. And South

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1 Texas needs the South Texas Nuclear Power Plant to continue its
2 growth and to continue the production of economical energy.

3 As a research scientist, I'm also concerned with
4 the safety of the plant, and the radioactive safety of the plant.
5 And my work has convinced me that a nuclear power plant is a safe
6 means of energy production, and the exposure or the risk from
7 that power plant is very minimal. In other industries that pro-
8 duce energy or produce any product they usually have a much worse
9 record than the nuclear industry has.

10 The question of nuclear waste..... There are
11 several alternatives, viable alternatives, safe alternatives to
12 disposal of nuclear waste. And to me it appears the only road-
13 block to disposal of nuclear waste is the political aspects in
14 trying to find an absolute solution, when there are many solutions
15 that are available now.

16 The question about Government subsidies being --
17 underwriting the nuclear industry.... Government subsidies have
18 underwritten all energy sources; solar power is one that is
19 particularly gross in this respect. To build a solar plant for a
20 house you couldn't even pay off a ten percent loan if you paid for
21 it by yourself.

22 We need all sources of energy. I'm not against any
23 particular source, and I'm not for any particular source. But
24 I am for a good alternative, and all energy sources for South
25 Texas and the South Texas Nuclear Project is one that is a very

1 good source for our area.

2 Thank you.

3 (Witness excused.)

4 CHAIRMAN BECHHOEFER: Any further statements?

5 Whereupon,

6 DALLAS FORD

7 appeared as a witness, and offered the following statement:

8 DIRECT TESTIMONY

9 THE WITNESS: Mr. Chairman, Members of the Board,
10 my name is Dallas Ford, and I am an employee of Central Power &
11 Light Company, and a resident of Bay City, Texas, and I came to
12 this hearing as an observer.

13 However, upon return to my hotel room last night
14 there were three telegrams waiting for me, with instructions to
15 read to you. And I'd like to do so at this time.

16 "The City Council and citizens of Bay City continue
17 to support the South Texas Nuclear Project. We
18 commend the firm of Brown & Root for the character
19 and dedication and credibility in the construction
20 of this important asset in the future of our
21 community. Bay City supports the issuance of an
22 operating license to Houston Lighting & Power.

23 Ernest J. Opella
24 Office of the Mayor,
25 Bay City, Texas"

1 "Bay City continues to support our nuclear power
2 plant. Bay City commends Brown & Root for the
3 character and dedication of the South Texas Project.
4 Bay City supports that issuance of an operating
5 license to HL & P.

6 Respectfully,

7 Bay City Chamber of Commerce ,
8 Harley Savage, President."

9 "Bay City continues to support our nuclear plant,
10 and recommends the issuance of an operating
11 license to Houston Lighting & Power Company, and
12 would commend Brown & Root for their dedication to
13 this project.

14 Respectfully,

15 Bay City Bank & Trust,
16 Frank Kruppa, Executive
17 Vice President."

18 Thank you.

19 (Witness excused.)

20 CHAIRMAN BECHHOEFER: Is there one further
21 statement?

22 Whereupon,

23 JAMES PHILLIPS

24 appeared as a witness, and offered the following statement;
25

DIRECT TESTIMONY

1
2 THE WITNESS: Good afternoon, gentlemen, my name
3 is James Phillips. I am speaking on behalf of the Citizens for
4 Nuclear Action Network. We were organized through the Nuclear
5 Legislative Advisory Service.

6 The reason I am here is to introduce a method of
7 measuring risk which I would like for you to consider during the
8 licensing hearings.

9 May I show you some drafts? (Indicating.)

10 CHAIRMAN BECHHOEFER: It's difficult to reflect
11 in the record...

12 THE WITNESS: Okay. Well, I have several articles
13 from Scientific American magazine. When you apply gross national
14 product against energy consumption, and against--and when you
15 put gross national product against life expectancy you always
16 get simple increasing function, there's not very much scatter.
17 One of the authors of these articles suggests that the relation-
18 ship is linear.

19 This is a 1980 graph. (indicating).

20 Okay, I would like to suggest that there exists a
21 causal relationship between change in energy use and change in
22 gross national product per capita. I also suggest that there is
23 a causal relationship between change in gross national product
24 per capita and change in life expectancy. I believe these rates
25 can be related.

1 Okay, using a graph that I showed you, I plotted
2 eighty eight points, and I excluded about six, and used the least
3 square straight line fit to quantify the data and give a measure
4 of life expectancy as a function of GNP. The slope of this line
5 gives a measure of how life expectancy changes with changes in
6 GNP, and works out to be about .00166.

7 The other ratio I gave, which is a change in gross
8 national product over a change in energy supply or consumption
9 has, ercifully, already been worked out in an October 1980 paper
10 on electrification, by Fremont Felix of Gibson & Hill, INc.,
11 which I adapt here, and it works out to be 1.5 percent for electri-
12 city, which is what I am concerned with.

13 Assuming the change in GNP -- I'm going to call it
14 delta-G over delta-E to be a good approximation of the derivative
15 DG/DE , we can use the chain rule, okay.... $\frac{DL}{DG}$ $\frac{DG}{DE}$ and then
16 $\frac{DL}{DE}$ equal two $DL/DG - DG/DE$, and that comes out to .0025.

17 So, with that I can get a differential, which
18 gives DL slope and DE.

19 Okay, so what this means is that DL is negative
20 when DE is negative. A probable negative in a populations life
21 expectancy is the same thing as a risk.

22 The change in energy consumption, if I just stop
23 the United States from increasing its electrical supply for one
24 year, the change per person would be four times ten to the sixth
25

1 Btu per capita, roughly...-Delta L, and that works out to .01,
2 which is an insignificant statistical risk. And using the famous
3 linearity hypothesis, which is 1,000 millirems, it's .0015 risk of
4 cancer. To find out what this risk is equivalent to, in terms
5 of a radiation dose.... in other words how big a dose do I have to
6 absorb in order to get that risk, it works out to 6,666 millirems.
7 I just made a proportionality and solved for X.

8 So, the risk incurred by the population as a
9 result of our suffering a one year delay is the same as the risk
10 they would incur if they suffered an extra 6,000 millirem exposure
11 to ionizic radiation. If I'm off by an order of magnitude --
12 which I doubt -- it would be 600 millirems, which people think is
13 a reason for squaking. Okay, I have also heard it argued that
14 we can make up for these losses and delays by insulating and
15 sealing a house, to trap warm air while we wait. Dr. Henry
16 Horwitz has noted that this will cause, in a few years, a .1 per-
17 cent risk of fatal cancer, due to the exposure to the increased
18 levels of radon gas which builds up in the trapped air from the
19 building materials. We don't have any evidence that the materials
20 used save energy. Cost-wise we don't have any indication of
21 that..

22 Also other electrical plants are inherently less
23 safe than the nuclear plants. We are suffering extra fatalities
24 due to these risks while we sit around and wait for the license
25 of our South Texas Nuclear Plant.

1 I suggest that after I have had competent pro-
2 fessional mathematicians go over these graphs, derive the function,
3 using a more sophisticated method of analysis, I suggest that
4 unless this relationship can be shown to be statistically much
5 -- way inferior to-- in other words its dependability is less than
6 the linear hypothesis, which is now used to estimate probable
7 risk from radiation doses, that this also be introduced, in order
8 to minimize public risk, both from radiation and strangulation
9 of our energy supplies.

10 I would also like to introduce into the evidence
11 a letter to the Nuclear Regulation Commission from Professor
12 Peter Beckman from the University of Colorado, dated 15 November
13 1980, pleading for similar reasons, for reopening of the TMI One
14 plant. I know this is isn't TMI One, but I think the situation
15 is comparable.

16 Thank you, gentlemen, I hope you will license the
17 plant as quickly as possible, maximizing public safety is what
18 we're really trying to do.

19 (Witness excused.)

20 CHAIRMAN BECHHOEFER: Any further statements?

21 Whereupon,

22 BILL SIMMONS

23 appeared as a witness, and offered the following statement:

24 DIRECT TESTIMONY

25 THE WITNESS: My name is Bill Simmons. I work with

1 the Texas Mobilization for Survival here in Austin. I represent
2 eight anti-nuclear organizations coalition here in Texas, called
3 the Lone Star Alliance.

4 I just want to make one statement here today regard-
5 ing the character and competence of Houston Lighting & Power, and
6 I will make that point in the form of a question. That I wish
7 the Board here would really consider why did Houston Lighting &
8 Power choose Brown & Root to do this construction, when there
9 were other construction firms who had more past experience build-
10 ing nuclear power plants? And I would like to suggest that Brown
11 & Root has more past experience building torture chambers in
12 Viet Nam than they do building nuclear power plants.

13 Thank you.

14 (Witness excused.)

15 Whereupon,

16 LEONARD LAMAR

17 appeared as a witness, and offered the following statement:

18 DIRECT TESTIMONY

19 THE WITNESS: I am Leonard Lamar. I'm the Mayor
20 of Palacios. My councilman and I drove up here this morning, and
21 decided to sit in on the hearings. We were a little late getting
22 but what we wanted to say, and what I wanted to say -- I'm not
23 speaking for the whole population of Palacios, I'm sure, but I
24 think I am speaking for the majority of us.

25 Last year at the hearing in Bay City I spoke for

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1 the Chamber of Commerce. At that time we supported our South
2 Texas Project. Again, we support our South Texas Project.

3 I am speaking for the City of Palacios and also
4 for the Chamber of Commerce. Thank you very much.

5 CHAIRMAN BECHHOEFER: Thank you.

6 (Witness excused.)

7 CHAIRMAN BECHHOEFER: Are there any further state-
8 ments?

9 If not, we'll take a short break...

10 MR. BILL HUDSON: Can I make two statements that I
11 forgot to make.

12 CHAIRMAN BECHHOEFER: Yes, well, make it very
13 quick, because we need to conclude this evening.

14 MR. HUDSON: Virginia Electric & Power Company,
15 which is one of the three or four proponents of nuclear power,
16 tendered a request and received, just a few days, a decrease in
17 rates, about 10 days ago. You should know that, gentlemen.
18 A rate decrease because of the-- they don't know what to do with
19 all their money... uranium is cheap stuff.

20 Regarding radioactivity. We must lead shield the
21 capital building because it's constructed of granite, and
22 Enchanted Rock should be shut down, because those two sources --

23 FROM THE AUDIENCE: Balcones Nuclear Dump also.

24 MR. HUDSON: Right. Balcones Nuclear Dump, and
25 the Frost National Bank Building in San Antonio, all these places

1 release gamma radiation, and this is dangerous... it can kill
2 you! There's no question about it, it's been proven.

3 CHAIRMAN BECHHOEFER: Thank you very much.

4 We're going to take a --

5 MR. AXELRAD: Mr. Chairman, prior to recess we
6 have prepared a written version of the memorandum and Order ruling
7 upon the Motion to Compel. We have provided copies to counsel
8 for the staff and to the Intervenors. We would like at this time
9 to hand copies up to the Members of the Board, and to the reporter,
10 so that it can be discussed after the recess.

11 CHAIRMAN BECHHOEFER: Fine.

12 We'll take a fifteen minute break.

13 (Whereupon, morning recess was taken.)
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sbl

1 CHAIRMAN BECHHOEFER: Just before the break, the
2 Applicants passed out a new ruling and order which would rule
3 on the motions to compel responses to the interrogatories and
4 provide a protective order under which such responses would be
5 made. We would like to hear from the other parties, the Inter-
6 venors and the staff, what they think of this order.

7 I might say we have looked it over and at least
8 one sentence, we would change in the body of the order itself.
9 Throughout the order, we would suggest that Applicants be plural
10 all the way through. Occasionally it is singular and occasionally
11 it is plural, but we would suggest that typographically that
12 change be made.

13 At the top of page three, we would -- assuming
14 we were to issue an order like this, we would delete the state-
15 ment that says "While no showing of need for a protective order
16 has been made," and we would revise it this way. "At the con-
17 ference, the parties discussed whether there was a need for a
18 protective order. During that discussion, and without any board
19 ruling on such need, the Applicants volunteered to accept dis-
20 closure of the requested information." From there, continue.

21 Now, we would like to open with that proposed
22 order as so amended for discussion. I realize that the
23 Intervenor are in principle against this type of order, but
24 we would like to hear your comments in any event, and about the
25 protective order attached.

sb2

1 I might say that in light of what Mr. Sinkin says,
2 said earlier, most of the -- the only information, I believe,
3 that he wasn't providing was information provided him by Ms.
4 Buchorn.

5 MR. SINKIN: To just be very clear about that,
6 I believe I specifically took exception to providing a tape that
7 I received under a waiver of the client-attorney privilege from
8 Mr. Swayze, directed to me. I have excepted to providing anything
9 on that tape without a written waiver of Mr. Swayze for me to
10 do so.

11 The other thing that I took exception to were
12 the names that I know through Ms. Buchorn.

13 CHAIRMAN BECHHOEFER: That is what I was referring
14 to.

15 MR. INKIN: At this time, having discussed this
16 with Ms. Buchorn, I can say that I am prepared to reveal the
17 three names of people whom I know because Ms. Buchorn provided
18 them to me. They are all former employees. I believe they have
19 all been interviewed by the NRC on prior occasions, and know
20 that at least two of them, two of the three, have been inter-
21 viewed by the Applicants.

22 Other than these three names, I have no other
23 names except those on the tape from the attorney's file that
24 I got through the waiver and those on the tape being delivered
25 today to NRC personnel, which is not a matter covered by this

3
1 order anyway.

2 CHAIRMAN BECHHOEFER: That is correct.

3 MR. SINKIN: And based on that statement, CCANP's
4 position is that the motion for a protective order and the pro-
5 tective order itself should strike out all places where it appears
6 CCANP. There is no need for a protective order on CCANP.

7 CHAIRMAN BECHHOEFER: Fine.

8 (Discussion off the record.)

9 CHAIRMAN BECHHOEFER: We would like to hear what
10 your comments are and whether the information which will be pro-
11 vided will enable us to knock out any specific references.

12 MR. NEWMAN: I think there are some very signifi-
13 cant problems associated with what Mr. Sinkin just said. I am going
14 to ask Mr. Hudson to respond to that.

15 MR. HUDSON: We are concerned that Mr. Sinkin
16 has had a very curious lapse of memory at this late date in the
17 proceeding. We are particularly concerned because the last plead-
18 ing he filed with us contained an outright lie, which he admitted
19 to yesterday.

20 In our third set of interrogatories, Mr. Sinkin,
21 we referenced our definitions in the first set, which included
22 a document to include tape recordings or any type of reproduction,
23 and we asked Mr. Sinkin what documents he had received from Mr.
24 Swayze's attorney. His answer and the answer that has been filed
25 with the board is, "I received no documents from Mr. Swayze's

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1 attorneys."

2 Now, yesterday for the first time, he admits on
3 the record that oh, yes, he did receive a tape recording from
4 them. He is now telling us he doesn't remember anyone's names,
5 but he has told us yesterday, I believe, that there were three
6 or four people whose names he gave to the FBI during their inves-
7 tigation.

8 We are also concerned about the fact that he has
9 not had an opportunity to review CCANP's records, which we believe
10 are in San Antonio. As his answers to interrogatories file
11 yesterday stated, those records -- his records have been dispersed
12 among the records of CCANP, which are in the house of either
13 Miss Coy or Miss Eastland in San Antonio.

14 So we don't feel comfortable at this point excluding
15 CCANP from the protective order. We believe Mr. Sinkin should
16 have the ten days that are provided by the order to review all
17 of CCANP's records, talk to other members of the organization
18 who may have helped him in formulating these contentions. He
19 must remember that he is answering here for an organization,
20 not merely himself. And then after taking the time to reflect
21 upon these matters, then file the answers that are called for
22 by the order to compel under the protective order.

23 MR. GUTIERREZ: Mr. Chairman, the staff would
24 make an additional observation: From what the staff gathers
25 from Mr. Sinkin's comments, he says, Our responses to these

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1 interrogatories will be thus and so and therefore there is no
2 need for a protective order, because I just gave you the answers
3 during this prehearing trial.

4 The fact remains that there is a formal discovery
5 process that the rules anticipate. The Applicant has used the
6 formal discovery process and is entitled to be answered by way
7 of a written answer to be served on all the parties.

8 Now, if what Mr. Sinkin is saying is, I don't
9 have that much and it is not going to amount to much, well, then
10 that is his answer and all parties to this proceeding are entitled
11 to it in the form of a written answer to the interrogatory. It
12 is as simple as that.

13 MR. SINKIN: Mr. Chairman, to respond to those
14 comments, first the latter comment: We are prepared to respond
15 to the interrogatories and don't believe it needs a protective
16 order. That is all we are saying. I am not asking for a pro-
17 tective order. I am prepared to reveal the names that I have
18 available to me.

19 As far as the comments of the Applicant, I can
20 only say that in answering the interrogatories, that was the
21 last thing I did the night before this hearing, and that all
22 I did was read their question about documents and I responded
23 to that. I did not go back and read their original definition
24 of documents, and that is my fault, true. As soon as I realized
25 that the next morning, that probably documents might include

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1 tapes, I revealed to them the tape; it was a matter of twelve
2 hours later that I revealed that to them, and I did reveal it.

3 I don't believe that I have lied on the record
4 at any time here.

5 CHAIRMAN BECHHOEFER: I might say the board does
6 not consider that you have lied. Whether or not you have made
7 a mistake in answering doesn't mean you lied, which has some
8 intent behind it.

9 MR. SINKIN: I appreciate that.

10 In terms of what the Applicants are requesting
11 from CCANP, CCANP is willing and able to provide to them openly
12 the names, other than the exceptions I have made about the tape
13 from the attorney's file and the tape being delivered to NRC
14 today, we see no need for a protective order that includes CCANP.

15 We also have additional comments about the actual
16 form of the protective order after this point is finished.

17 MR. GUTIERREZ: Mr. Chairman, just to respond.
18 In light of yesterday's discussion, which went on for quite a
19 long time -- and I think the thrust of them was that the Intervenor
20 felt a need for a protective order, and now this morning he says
21 that he does not -- for purposes of form, it seems that the board
22 would be well advised, and it doesn't seem to be prejudicing
23 to any party, if we say that an order should be entered compelling
24 the Intervenor to answer under the guidelines of the protective
25 order.

7
1 A protective order should be entered and if the
2 Intervenors feel it is not necessary, fine, but in another week
3 they might feel it is necessary, and this could be looked at
4 as an insurance policy. I don't see the wisdom of altering
5 it now, in light of yesterday's conversations.

6 MS. BUCHORN: Mr. Chairman, the only protective
7 order that the Intervenors had discussed or even asked for is
8 a protective order regarding the tape that has new information.
9 The suggestion for a protective order came from the Applicants.
10 Now, we have been cast in the role of the bad guys here, and
11 I personally resent this.

12 CHAIRMAN BECHHOEFER: I think the suggestion for
13 a protective order might have come from the board in that --

14 MS. BUCHORN: But in this proceeding it came from
15 the Applicants; it did not come from the Intervenors as the staff
16 attorney says.

17 MR. GUTIERREZ: I didn't say that it came from
18 the Intervenors. My point was that the Intervenors expressed
19 some concern yesterday at length that any possible identified
20 source should have some kind of protection and much of yesterday's
21 conversation was hammering out the details of the nature of
22 that protection.

23 MR. SINKIN: If I could address that for just
24 one second, Mr. Chairman, I think the record will reflect that
25 almost the entire conversation about a protective order was carried

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1 out with me, Ms. Buchorn thinking that discovery was satisfied
2 for her, and that at the very tail end of the discussion, Mr.
3 Pearson said, CCANP and CEU will be under this protective order
4 and Ms. Buchorn spoke to the board that she had not even been
5 listening to the discussion because she didn't think it was rele-
6 vant to her, and that may have been her error.

7 It certainly is reflected in the proceedings that
8 the discussions were about CCANP and CCANP's suggestions for
9 how the protective order should be worded and all that.

10 I would also like the record to reflect our taking
11 of an exception to the method of participation in these proceed-
12 ings by the NRC counsel. On more than one occasion we have found
13 them taking a role that we find inappropriate in excessively
14 speaking for the Applicants, rather than the Applicants speaking
15 for themselves, and inter-meddling, if you will, in matter of
16 discovery between the Applicants and the Intervenors.

17 We find this a very different role from the role
18 taken by prior NRC counsel, with whom we had a good working rela-
19 tionship. We do not feel we have a good working relationship
20 with the current NRC staff, counsel; and particularly in light
21 of the November 14 letter and the people who participated in
22 that letter, we do not feel we have a good working relationship.

23 As far as the protective order and our position,
24 I am stating today that anything that I would know would be re-
25 vealed to the Applicants. I have the names right here now. I

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1 have attempted to contact one person to tell him that I was planning
2 to reveal his name and just talk to him about that. Since he
3 was willing to testify in front of Congress, I assume that he
4 would be willing to testify in front of this board. That is
5 the only name that I am at all concerned about, and I am prepared
6 to give that name.

7 MR. HUDSON: Your Honor, one further comment that
8 would like to make I failed to make earlier: Mr. Swayze -- excuse
9 me -- Mr. Sinkin is reserving an exception to his willingness
10 to provide these these names for the tape that he obtained from
11 Mr. Swayze's file. We do not agree with that exception and be-
12 lieve in the first instance that we are entitled to the tape
13 itself, but that issue was debated yesterday and we lost that,
14 and I won't rehash it, but I believe the board's decision yesterday
15 was that Mr. Swayze -- Mr. Sinkin -- excuse me -- should review
16 the tape. If the two inspectors who were interviewed on the
17 tape gave information relating to Contentions 1 or 2, he was
18 to provide their names, and that is what our order directs, the
19 proposed order that we have given you directs Mr. Sinkin to do,
20 and we will request that the board enter such an order.

21 MR. SINKIN: Mr. Chairman, our position on that
22 is that in terms of a waiver of client-attorney privilege, that
23 waiver was a letter expressly written, "Mr. Lanny Sinkin has
24 my permission to take matters from the file." It was not giving
25 permission for anyone else to have those.

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1 And that I might be placed in the following posi-
2 tion: If, in releasing those names, something untoward should
3 happen to those people, I would think that Mr. Swayze or those
4 people might be in a position to come back to me for redress
5 of a legitimate grievance, that I had revealed confidential
6 matters.

7 I am not an attorney, and I hope that has been
8 very clear, but I am not about to commit myself to taking any
9 chances on that particular point.

10 We have requested time to brief these matters.
11 I would include that matter, and request until a week from Friday
12 to submit those briefs.

13 And just for the record, I would like to reflect
14 that the continual confusion between myself and Mr. Swayze in
15 the minds of some of the Applicants' counsel, I consider the
16 highest compliment. I consider Mr. Swayze an incredibly coura-
17 geous and incredible individual, and hope that the confusion
18 continues.

19 MS. BUCHORN: Mr. Chairman, CEU would also request
20 time to file a brief.

21 MR. SINKIN: Mr. Chairman, on that point, actually
22 there is one other observation. It seems to me that if the deci-
23 sion to compel us to reveal names is a correct decision, the
24 Applicants will get the names. If the decision is an incorrect
25 decision and Ms. Buchorn supplies those names, I believe there

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1 will be irreparable error in the record of these proceedings.

2 MR. NEWMAN: Mr. Chairman, I would strongly oppose
3 the notion of briefing this question. It is a simple, straight-
4 forward question. It has been presented to the board. The board
5 has indicated previously and again yesterday that the identities
6 of individuals who furnished information is a matter which is
7 subject to the motion to compel, and the board indicated it was
8 ready to go forward on that basis.

9 In terms of the continuing reference to the con-
10 sequences of the disclosure of these names to the Applicants,
11 that is what the protective order accounts for. That was the
12 Chair's suggestion, I think. As the Chair correctly pointed out, that
13 was the Chair's suggestion. It is clearly the way to proceed
14 in this matter, and to have a round of briefs on this subject
15 is nothing but a wasteful paperwork exercise.

16 The rules of the NRC and the federal rules of
17 evidence are absolutely clear on this subject. We would be going
18 back to reinvent the wheel if we took the time to file briefs,
19 to have the, frankly, waste of time of this board reading those
20 briefs. The Chair was very clear in its understanding of what
21 the federal rules provided in matters like this.

22 MR. REIS: Mr. Chairman, I want to bring up another
23 point. We are all trying to move these proceedings along with
24 expedition. The briefing would of course delay things, or might
25 delay things. I don't think it is really called for. There

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1 was ample time to object to the interrogatories and calling for
2 names and asking for protection. It is on the one whom the inter-
3 rogatory is directed to say why it should not be responded to
4 and brief it at that time. That time is long past here.

5 Those interrogatories were served a long time
6 ago. The opposition should have been filed at that time. There
7 should be no further time on reconsideration and rebriefing of
8 the board's order yesterday. These matters should be set forth
9 under a protective order.

10 MS. BUCHORN: Mr. Chairman, it is no surprise
11 to any person involved in these proceedings that I have refused
12 to divulge the identities of my sources. It has not been a sur-
13 prise since the very first interrogatory was answered. During
14 my deposition, I so stated. I have stated during these pro-
15 ceedings.

16 There are a lot of other things that enter into
17 this. CEU is not an antinuclear organization. We were not formed
18 to fight nuclear plants. We didn't become involved in this in
19 order to fight nuclear plants.

20 We still, after this proceeding is over, will
21 be representing utility ratepayers in any energy or utility prob-
22 lem that they have. Besides the very real concern about the
23 consequences to the people whose names we might be required to
24 reveal, there is the consequences to this organization as an
25 effective organization in representing the interests of those

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1 people who belong to it.

2 We were in existence long before this proceeding.
3 We are in existence now. We intend to be in existence long after
4 this proceeding is over. And I would hate to see this organiza-
5 tion that has been able to do a great deal of good in represent-
6 ing people who could not represent themselves go down the drain
7 because of something in the paper that says, "Panel Orders Sources
8 Revealed."

9 CHAIRMAN BECHHOEFER: I might say I haven't read
10 the paper, but --

11 MS. BUCHORN: Well, believe me, my member have
12 read the paper, and they are going to be reading the paper.

13 CHAIRMAN BECHHOEFER: Well, the only reason I
14 said I haven't read the paper is because revealing something
15 subject to a protective order is a lot different legally and
16 factually than revealing --

17 MS. BUCHORN: The innuendo is already there.

18 MR. SINKIN: That is how it will be perceived.

19 MS. BUCHORN: That is exactly how it will be per-
20 ceived.

21 CHAIRMAN BECHHOEFER: Sometimes we cannot run
22 our proceedings on the ground that some reporter is going to
23 perceive it or does perceive it in a certain way. There are
24 certain rules that we operate under, and one is that if charges
25 made against an organization or an individual, that person should

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1 have the right to find out from whence those charges are springing
2 and see if they are accurate; and we have the obligation to find
3 out all about it that we can.

4 MS. BUCHORN: I would just request a few days
5 in which to brief this from CEU's point of view.

6 MR. NEWMAN: Mr. Chairman, I want to respond
7 if I may at this point. As I said before, there really is no
8 need to brief this.

9 But I think perhaps a word of explanation would
10 be helpful to Ms. Buchorn, as she is pro se. There is a difference
11 in the organization which Ms. Buchorn represents doing essentially
12 investigative work, developing information and leads with respect
13 to material that may be pertinent to the project and then in
14 that capacity furnishing that information to the appropriate
15 officials in the Nuclear Regulatory Commission for action.

16 That investigative function is something which
17 can be undertaken and executed completely in privacy and with
18 the highest degree of assurance with respect to protecting the
19 identities of the individuals involved. I think the I&E record
20 on that without any exception assures adequate protection for
21 material of that kind.

22 The thing that I think Ms. Buchorn has missed
23 in this proceeding is that once she petitioned to intervene in
24 this proceeding and become a party to this proceeding, she came
25 under the rules of the NRC with respect to the conduct of parties.

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1 One of those rules is that if you have evidence
2 which is material or likely to lead to relevant material with
3 respect to any matter in issue, that information is subject to
4 an appropriate discovery request, which if not heeded is further
5 subject to an appropriate motion to compel.

6 And so I think the choice is Ms. Buchorn's. She
7 can proceed as a private attorney general, developing her leads
8 and information, enjoying a clear confidence of that information
9 by furnishing it directly through I&E. Or she can participate
10 in this proceeding.

11 If she participates in this proceeding, there
12 is no question about what the rules require of her as a party,
13 and I think they have been amply stated by the board, amply stated
14 by other counsel. And I don't think there is any further detail
15 or briefing with respect to that matter.

16 MS. BUCHORN: Mr. Chairman, names are not evidence,
17 and I object to --

18 CHAIRMAN BECHHOEFER: Ms. Buchorn, names are the
19 source of evidence.

20 MS. BUCHORN: I have cooperated with them in every
21 way that I could. They represented to me that all they were
22 interested in -- and they stated it on the record yesterday --
23 that all they were interested in was information regarding that
24 plant. That is the reason I became involved in this proceeding
25 to begin with, was because of the construction deficiencies at

1 that plant. And I have freely provided that information to the
2 Applicants and to the NRC.

3 I don't know how else I can cooperate with them
4 without allowing them to go on a fishing expedition regarding
5 the sources that I have which might jeopardize those sources.

6 CHAIRMAN BECHHOEFER: It isn't a fishing expedition
7 when --

8 MS. BUCHORN: If I had to go back on every tape
9 that I have made and every conversation that I have made and
10 reveal every name of every person that I have talked to, that
11 is a fishing expedition, because I do not intend to put those
12 people on the witness stand. And what I am objecting to is pro-
13 viding the names of anybody that I don't intend to provide as
14 a witness up here.

15 CHAIRMAN BECHHOEFER: To the extent you are going
16 to use that informatin in developing your case and cross-examina-
17 tion, you have an obligation to let the other parties know before-
18 hand what that information is.

19 MS. BUCHORN: I have provided them every bit of
20 information that I have. Now, it could be that I could go back
21 on those tapes and find other information, but if so, I have
22 already assured them that I will let them know when I find it.
23 I am at a complete loss as to --

24 CHAIRMAN BECHHOEFER: What they want to know is
25 the sources so they can talk to the sources and see whether the

1 source has in his or her possession information which may have
2 been provided to you. Generally, maybe there is certain explana-
3 tions of certain things that weren't provided to you. They have
4 a right also to find out what they can about --

5 MS. BUCHORN: And I have told them from the begin-
6 ning that if those sources give me permission to provide the
7 names to them, even though I am not going to use them as witnesses,
8 then I would do so. I have not received that permission.

9 And, Mr. Chairman, it is not that I am being
10 capricious about this thing or coming up with something suddenly.
11 This is something that I have refused to do all along.

12 CHAIRMAN BECHHOEFER: Right. But that doesn't
13 make it legitimate.

14 MR. NEWMAN: Mr. Chairman, I really don't believe
15 that there is any real useful purpose to be served by stringing
16 this discussion out. We have now pending before the board a
17 proposed memorandum and order to obey the proposed form of
18 protective order attached to it.

19 I would move that the board adopt this proposed
20 memorandum with the changes which have been suggested by the
21 board, and if the staff has any changes, then those changes would --

22 CHAIRMAN BECHHOEFER: Yes. I was going to inquire
23 if the staff has -- what the staff's thoughts are on the order.

24 MR. NEWMAN: I will complete my remarks after
25 the staff's.

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1 MR. GUTIERREZ: Mr. Chairman, the staff has had
2 an opportunity to review both the protective order and the order
3 compelling discovery. We also suggest the change that you men-
4 tioned at the top of page 3 with respect to the first full sentence.
5 We just simply crossed out the first clause of that sentence
6 and allowed the rest of the sentence to stand on its own, I think
7 saying the same thing you did.

8 Turning to the protective order, the staff is
9 concerned that we don't want to tie the hands of the investigative
10 branch of the NRC. And turning to the first numbered paragraph,
11 we had no changes. The third paragraph, however, with respect
12 to any investigation, interview or other use by Applicant's counsel
13 or NRC staff counsel, we would propose that that be changed to
14 NRC staff, because obviously, to the extent people are named,
15 we would want our I&E people to go out and interview them and
16 verify investigations or allegations, excuse me.

17 Along the same lines, on numbered paragraph 4 --

18 CHAIRMAN BECHHOEFER: I have a question there.
19 Is NRR included in that? Is that broad enough to include the
20 office of Nuclear Reactor Regulations? It should be, but I am
21 not sure it is.

22 MR. GUTIERREZ: We thought that in changing counsel
23 for Applicant and the NRC staff obviously would encompass all
24 the staff.

25 CHAIRMAN BECHHOEFER: Well, that is not what I

1 was --

2 MR. GUTIERREZ: I think that it is broad enough
3 to include NRR.

4 CHAIRMAN BECHHOEFER: What I am saying is the
5 next portion broad enough to allow NRR to use the information?
6 I am not sure it is, and I am not sure that it should be. It
7 says, Other than to their secretaries or persons employed for
8 the specific purpose of performing investigations related to
9 the appropriations for this proceeding. I am not positive NRR
10 is performing an investigation. NRR has undertaken a review
11 of the operating license. I&E or I&A may be the only body that
12 can perform investigations under applicable delegations of authority
13 I am not sure about that.

14 My question was whether --

15 MR. GUTIERREZ: NRR does not have investigators
16 on their staff. The way I would envision it, the results would
17 be incorporated in I&E report, obviously protecting the sources
18 of the information. And that report would become available to
19 the NRR or be put in a public document.

20 CHAIRMAN BECHHOEFER: What I am trying to state
21 is that I think paragraph 4 as written might preclude you or
22 any of the counsel, staff counsel, from revealing to anyone other
23 than I&E or I&A personnel the names of the individuals.

24 MR. GUTIERREZ: Correct. But not the results
25 of the I&E investigation.

1 CHAIRMAN BECHHOEFER: Right. But what I was going
2 to ask the staff is whether it would not be better to add, for
3 the specific purpose of performing investigations or review related

4 MR. REIS: Fine. We have no problems with that.

5 CHAIRMAN BECHHOEFER: That broadens the order
6 slightly, but I think it would take into account people that
7 would need to use the information.

8 MR. REIS: Similarly, the first line of that,
9 where it says, Counsel for the Applicant or the NRC staff; it
10 should be, Counsel for the Applicant and the NRC staff, so that
11 it encompassess all the NRC staff and not just its counsel.

12 CHAIRMAN BECHHOEFER: That is correct.

13 MR. REIS: That is on numbered paragraph number
14 4, and there is one other which Mr. Gutierrez will tell you.

15 MR. GUTIERREZ: The last, Mr. Chairman, is on
16 paragraph 5, two-thirds of the way down that paragraph. It says,
17 To the same extent as covered for counsel for Applicant and counsel
18 for the NRC staff. Along the same lines, we would suggest that
19 following "and," "counsel for" would be crossed out in order
20 to encompass the NRC staff.

21 CHAIRMAN BECHHOEFER: Instead of "counsel for,"
22 we better say "members of" or else you are going to have your
23 first counsel applying across the board.

24 MR. GUTIERREZ: It would be ambiguous that way.

25 CHAIRMAN BECHHOEFER: And I guess number 4, the

1 first line should be, Counsel for Applicants and members of.

2 MR. GUTIERREZ: Yes, it should.

3 MR. NEWMAN: Does that complete the staff changes,
4 Mr. Chairman?

5 MR. REIS: Yes, it does.

6 CHAIRMAN BECHHOEFER: In terms of the form of
7 the order, we would like to hear from the Intervenors also.

8 MR. SINKIN: I believe Mr. Newman had a comment
9 he would like to finish.

10 MR. NEWMAN: If there are further comments on
11 the order, I had understood the debate over whether or not this
12 order should issue to be essentially over, and I was at the point
13 of asking this board to adopt it as of this date and have it
14 bound into the record as though read, with the changes that are
15 reflected on the record as a result of the Chair's discussion
16 with representatives of the NRC staff.

17 MR. SINKIN: The Intervenors do not consider the
18 debate over. As far as the substance of the protective order,
19 we would consider a limitation on on-site contacts with personnel
20 and service of subpoenas on-site so that those things do not
21 happen.

22 We recognize that -- we discussed this with Mr.
23 Hudson last night. He said he goes on the site all the time,
24 talks to all kinds of people, and if he talked to a particular
25 person on a particular day, it wouldn't really target them.

1 That is his perception. That is not our perception.

2 Knowing that this protective order has been issued
3 and limited to certain persons, I think that perhaps there would
4 be more vigilance as to who is talked to, so we would want no
5 on-site contacts of these people if they are on-site. We would
6 want no subpoenas served to them while on the job. There is
7 also nothing in the protective order regarding the protection
8 of these people during a potential deposition in terms of the
9 manner of the deposition taken, where it would be taken, who
10 would be taking it, how it would be taken, so that anyone whose
11 deposition would be taken would be protected in a manner similar
12 to what we suggested in our protective order for the CEU tape.
13 That is, they would be deposed at places where they would feel
14 comfortable, not being identified, or would be deposed under
15 circumstances such as late evening or weekends when they would
16 not be required to take time off from their job, not have to
17 ask for time off from their job. Those sorts of conditions seem
18 to us to be essential to the protection of the people involved.

19 If you want to adopt something similar, the CEU
20 motion, I believe, for protective order has provisions relating
21 to that matter.

22 CHAIRMAN BECHHOEFER: I guess you would suggest --
23 that wouldn't be part of the protective order, would it? Part
24 of the terms upon which the order sets forth the discovery?

25 MR. SINKIN: Excuse me. The protective order

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1 as we understand it binds them, the Applicants, in all of their
2 activities related to how they deal with the people named. It
3 would seem to me --

4 CHAIRMAN BECHHOEFER: The protective order is
5 designed to protect the identities. I would think the order
6 that compelled discovery would be the more appropriate vehicle
7 for setting the terms of discovery. The taking of deposition
8 is such a term. It doesn't relate to the -- perhaps the first
9 term you mentioned would relate to confidentiality.

10 MR. SINKIN: On-site contacts.

11 CHAIRMAN BECHHOEFER: On-site contacts could perhaps
12 be included in the order. The other provision relates to the
13 convenience of the parties in arranging for depositions, and
14 I think more appropriate would be, if included at all, would
15 be addressed in the memorandum order.

16 MR. HUDSON: We could address that, Your Honor.
17 I believe in the first order, what Mr. Sinkin stated, the point
18 regarding the taking of depositions, we believe, is covered by
19 paragraph 3 which restricts any investigation, interview or other
20 use, i.e., deposition, by Applicant's counsel or staff counsel --
21 which we amended to be members of the staff -- be conducted in
22 such a manner that it is not likely to disclose, directly or
23 indirectly, the identities of the parties.

24 That would include the types of things that Mr.
25 Sinkin is talking about. We just thought that covering it in

1 this general fashion was more expedient than trying to spell
2 out every particular way in which we might use this information
3 and what hotel we had to rent in Victoria or wherever in order
4 to take these depositions; that we would be constantly having
5 to come to this board to seek modifications if we get too specific
6 in spelling out what can and can't be done. This general language,
7 we think, covers that point.

8 CHAIRMAN BECHHOEFER: Would you have any objection
9 to adding to that paragraph, no on-site depositions, or something
10 to that effect?

11 MR. HUDSON: No. We are willing to agree with
12 that. As I told Mr. Sinkin yesterday, I didn't think it was
13 necessary, but I needed to talk to my co-counsel and I failed
14 to do that over the evening. So that was accidentally dropped
15 out, but we are willing to agree there would be no on-site contacts
16 with these individuals -- on-site interview or deposition. I
17 might meet one of these people in a room somewhere or apart from --

18 MR. SINKIN: I don't know that that would be accept-
19 able, Mr. Chairman, that he might meet with some people in a
20 room on-site. What we are talking about is these people being
21 approached on the site to discuss these matters. That is what
22 we are concerned about.

23 CHAIRMAN BECHHOEFER: He said no on-site contacts.

24 MR. SINKIN: Then he said something about, We
25 might have to meet with them in a room somewhere. We wouldn't

1 meet with them to interview them or take their deposition, but
2 we might meet with them in a room somewhere. That sounds like
3 a loophole.

4 MR. HUDSON: Let me explain what I meant there.
5 I think -- I will agree that we won't directly interview these
6 people, you know, for this purpose on the site or take their
7 deposition there. But if I go to Brown & Root or HL&P and say,
8 Hey, we need to talk to some people about concrete problems;
9 gather up everybody that is knowledgeable and one of the people
10 they have identified is selected by Brown & Root to be the person
11 I am going to talk to, I would meet with that person on the site
12 and would accomplish the -- if I were to walk into the room and
13 say, I am sorry; I can't meet with him. He is one of the
14 specifically identified people, you know, it destroys the protective
15 order.

16 I can't draw this distinction that I would never
17 talk to this person on the site. It could accidentally happen
18 through no control of my own.

19 CHAIRMAN BECHHOEFER: Well, could you state that
20 you would never talk to them on the site pursuant to the terms
21 of the memorandum and order which is ordering discovery?

22 MR. HUDSON: I will agree that I would never inter-
23 view them alone. How is that?

24 CHAIRMAN BECHHOEFER: I don't mean that. As a
25 result of our order in discovery, you could interview them on

1 the site for your own purposes if you were selecting them inde-
2 pendently and wanted to interview them for your own case. I
3 mean, as a part of incidentally preparing for your case, but
4 as a result of dealing with the issue here, you will not inter-
5 view them, contact them on the site. I think that term should
6 go on your paragraph 3.

7 MR. SINKIN: Mr. Chairman, we don't consider that
8 if they do receive any names and addresses that it is a particular
9 inconvenience to meet them in their home or to meet them in some
10 place comfortable for the person rather than at any time contacting
11 them on-site. We don't think that is unreasonable, not contacting
12 them on the site.

13 CHAIRMAN BECHHOEFER: The remaining portions,
14 I think there are deposition rules provided if the terms of
15 any particular deposition which are stated are unreasonable,
16 you can complain to the board. Hopefully you can work it out
17 with the Applicant's attorney.

18 MR. SINKIN: Well, obviously if they serve --

19 CHAIRMAN BECHHOEFER: Arranging times and places
20 and that type of thing.

21 MR. SINKIN: So that would cover no service on
22 the site or subpoena.

23 CHAIRMAN BECHHOEFER: Service on the site, contact
24 on the site we are putting in specifically. But the other argu-
25 ments which I will call convenience items, but maybe they are

1 a little more than that, I would hope you could arrange with
2 counsel, and if necessary, we will resolve the disputes. I hope
3 we won't have to, but --

4 MR. SINKIN: I understand. I would stress that I
5 am participating in this discussion and trying to move it along
6 because I was the one that talked to Mr. Hudson last night. That
7 does not in any way indicate that we don't agree still that CCANP
8 should be struck as a motion altogether.

9 CHAIRMAN BECHHOEFER: Well, I might say that to
10 the extent you provide information and all the names in response
11 to the discovery, you will fulfill the responsibilities; you
12 won't have to -- or the protective order won't be applicable.

13 MR. SINKIN: Won't be applicable.

14 CHAIRMAN BECHHOEFER: Because you won't be asking
15 for protection of any names.

16 MR. SINKIN: I would also like to address the
17 question of the board entering an order today as opposed to delaying
18 until, say, a week from Friday for briefs. We have seen repeatedly
19 during the proceedings since the opening moments that there is
20 a tremendous pressure to move these proceedings along. We asked
21 for a 60-day delay, and we asked for a 30-day delay in the date
22 of the hearing based on what we consider to be valid concerns
23 about the adequacy of Intervenors in preparing the case in a
24 short time.

25 We received relief of one week which we consider

1 totally inadequate to the concerns presented. Decisions seem
2 to be made based on speed rather than on the best record. We
3 also take note of the fact that the Nuclear Regulatory Commission
4 has proposed a new regulation governing discovery and that that
5 regulation would abolish formal discovery as far as the NRC was
6 concerned. They would have the total discretion to reply or
7 not to reply.

8 CHAIRMAN BECHHOEFER: The NRC staff.

9 MR. SINKIN: In fact, here we have the NRC saying
10 that as far as they are concerned, due process doesn't mean they
11 have to get any discovery. And as far as Intervenors are con-
12 cerned, they have to reveal anything they might happen upon while
13 walking down the street. So we do not intend to be sacrificed
14 on the altar of expediency. We would appreciate from the Nuclear
15 Regulatory Commission as a whole some kind of consistency in
16 their approach to issues of discovery, and we object at this
17 time to the entering of an order and request until a week from
18 Friday to enter briefs on this subject.

19 MR. NEWMAN: Mr. Chairman, I really don't want
20 to belabor this point any further. There is a need for this
21 order to be passed so we can get on with the preparation of our
22 case and take our necessary depositions and file our testimony
23 by April 23rd or thereabouts, the period of time we discussed
24 earlier.

25 This process simply cannot abide another seven

1 days of what I would regard as essentially useless briefing.
2 We have the additional wording which I believe will answer the
3 concern that has been expressed, contacts on the site. Mr. Hudson
4 has it; perhaps he could just read it for the record.

5 MR. HUDSON: This would be a new paragraph, paragraph
6 6, to the protective order, stating, Applicant's counsel or members
7 of the NRC staff will not seek to meet with or depose on site
8 persons identified pursuant to this protective order.

9 MR. SINKIN: I did not hear in what he said any-
10 thing about service of a subpoena on site. I think we would
11 want any kind of service that took place on the site also excluded.

12 MR. HUDSON: Okay. I could revise it to say,
13 Applicant's counsel or members of the NRC staff will not seek
14 to meet with, depose, or serve a subpoena on site -- oh, wait.
15 That won't work.

16 CHAIRMAN BECHHOEFER: And don't federal marshalls
17 serve subpoenas?

18 MR. HUDSON: Serve a subpoena on site to persons
19 identified pursuant to this protective order.

20 CHAIRMAN BECHHOEFER: You better say, Service
21 of subpoena or have a subpoena served.

22 MR. HUDSON: Try again. Applicant's counsel or
23 members of the NRC staff shall not seek to meet with, depose
24 or have a subpoena served on site to persons identified pursuant
25 to this protective order.

1 CHAIRMAN BECHHOEFER: Mr. Sinkin, is that --

2 MR. SINKIN: I think that covers the on-site problem.

3 CHAIRMAN BECHHOEFER: Does staff have any problems
4 with that?

5 MR. GUTIERREZ: No, Mr. Chairman.

6 MR. SINKIN: Then I assume, Mr. Chairman, also
7 that the service of any material related to a deposition or any-
8 thing like that is restricted to the same group of people in
9 the sense that only parties that would be notified of a deposition
10 would be the Intervenors and the Applicants and the NRC staff.
11 If there are other parties to the proceeding, they would not
12 be noticed of that deposition.

13 CHAIRMAN BECHHOEFER: I think any document such
14 as a notice of deposition should be treated as if it were an
15 in camera document. A document that named any of those persons
16 would have to be treated as an in camera document and released
17 only to the Applicant's attorneys -- treated as if it were subject
18 to the protective order and also served only upon, insofar as
19 Intervenors are concerned --

20 MR. SINKIN: There is one other item I unfortunately
21 left out earlier. We discussed last night and requested to be
22 included, an item that is not included. We requested that we
23 be informed of the names of all persons who received access to
24 these identities. That request was made for a very specific
25 purpose. If there is any question later on that because an identity

1 was revealed and a person has suffered in any way, it would be
2 very useful to us to know the names of the people who received
3 that identity so that if their name comes up in the context of
4 any contacts with this person, we will have a clear line of where
5 the problem was.

6 MR. HUDSON: Your Honor, we believe that problem
7 is covered by our paragraph 5 which requires that any person
8 to whom a disclosure of the identities is made signs a copy of
9 this protective order, and we will then maintain those copies.
10 Should a problem arise in the future, Mr. Sinkin needs to know who
11 had access to this information, we will have those names available.

12 We don't see any need to provide these names to
13 him in advance of and in speculation of a problem arising.

14 MR. SINKIN: Let me be clear what my position
15 would be at that point if there was a problem. I would call
16 the Applicants and I would say, There is a problem regarding
17 Individual X. Please provide me with names of all persons to
18 whom his or her name was given, and the Applicant's would give
19 me the names of anyone who had seen that name. Is that correct?

20 MR. REIS: Mr. Chairman, the staff has some problems
21 with that.

22 MR. SINKIN: Actually we can exclude the NRC from
23 that concern. We are not asking for the names of NRC inspectors
24 or anything like that. We are talking about the Applicant's
25 secretaries, investigators, law clerks who would all have access

1 to these names. Apparently it would be a secret known only to
2 200 people.

3 MR. AXELRAD: Mr. Chairman, it would not be a secret
4 known only to 200 people.

5 CHAIRMAN BECHHOEFER: It would be more?

6 MR. AXELRAD: No. It appears to us if a problem
7 would arise in the future, that at that time counsel for the
8 Intervenors requests that information and for any reason we do
9 not provide that information at that time, I am certain that
10 it would be up to the board and the board would apply the appro-
11 priate redress. We would be keeping a list of these people,
12 and any need of this in the future, I am sure the board would
13 be able to take whatever action was necessary under the circum-
14 stances.

15 MR. SINKIN: Mr. Chairman, they are going to place
16 me in the following position. I can see it coming down the road.
17 Should such an incident arise, I would call and I would say,
18 Individual X has called me and said he has been transferred to
19 Siberia and he thinks it might have something to do with the
20 NRC proceedings. And I call the Applicant and I say, I am con-
21 cerned about the status of Individual X, and I would like the
22 names of the people who saw his or her name on the list.

23 They will say, You may take that up to the board.
24 We will come before the -- I will file with the board. They
25 will say, You must tell us what the substance of your allegation

1 is, and we will go back and forth on all of that with them knowing
2 then all the problems about that person, having all the time
3 in the world to deal with that problem before we can ever conduct
4 an investigation to find out if any of the people who knew his
5 name were involved in exposing him.

6 MR. NEWMAN: I really think that is just a chain
7 of speculation. I think Mr. Axelrad's point he just made is
8 perfectly valid. Protective orders like this are virtually routine
9 in federal proceedings, and the methods of redress likewise are
10 easily obtainable. I see no need to modify the memorandum order
11 or the protective order.

12 MR. SINKIN: Mr. Chairman, I have a compromise
13 proposal. If the Applicants are willing to provide those names
14 to the Nuclear Regulatory Commission or to this board, whichever
15 is most appropriate so that if an event came up and I would be
16 free then to call the Nuclear Regulatory Commission and say,
17 We are concerned about the status of Individual X and we would
18 like the names of anyone in the Applicant's group that knew about
19 the identity of Individual X so that we may find out if there
20 is any substance to the allegation that might lead to us coming
21 to the board, it would then be the decision on the part of the
22 NRC or the board which I hope would be fairly automatic that
23 we would receive those names so we could conduct our investigation,
24 and they would probably want to conduct their own investigation.

25 MR. NEWMAN: I think this is really just an

1 unnecessary burden on the board and on the NRC staff. As I said
2 before, these things are run routinely with appropriate protection
3 for people. If a problem comes up, the problem, I think, would
4 be handled very quickly, as it always is in the federal courts
5 and in my experience before this agency.

6 MR. SINKIN: Mr. Chairman, since there is a procedure
7 in number 5 that any person to whom there is to be disclosure
8 must sign a copy of the protective order, it would seem to me
9 that attached to the copy of the protective order would be a
10 simple form letter to the NRC filling in the name and mailing
11 it. And that is all that would be involved.

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1 MR. REIS: Your Honor, we don't want to get in
2 the middle of this. I think it could be arranged between the
3 Intervenor and the Applicant staff--the Intervenor and the
4 Applicant's counsel on that, informing them of who had knowledge.
5 I don't see any reason to put the NRC staff in the middle.

6 MR. SINKIN: In this instance, Mr. Chairman, in
7 this instance the NRC staff is involved whereas before I don't
8 think they were legitimately involved, in that this is an order
9 of the Board, violations of which will be subject to Board
10 sanction. It is not strictly a matter of discovery between the
11 Applicants and the Intervenors. I think the appropriate role for
12 the NRC is to be in a position to enforce that Board order
13 without the NRC having to go to the Applicants and ask for names
14 of people who knew the identity of Person X.

15 MR. NEWMAN: Mr. Chairman, in order to save time,
16 I will on behalf of the Applicant accede Mr. Sinkin's request
17 with respect to being furnished the names of the individuals
18 who have access to the information at present.

19 CHAIRMAN BECHHOEFER: I think that would solve
20 the problem.

21 MR. SINKIN: To whom? To me?

22 MR. NEWMAN: Yes.

23 MR. SINKIN: Fine. Or to Ms. Buchorn.

24 MR. AXELRAD: The counsel to the Intervenor or
25 the representative of the Intervenor who provides the name.

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1 MR. REIS: There is one further matter in that
2 paragraph. Mr. Sinkin indicated he didn't necessarily want
3 the name of the NRC employees with access, and I indicated it
4 would be a great deal of administrative problems, and I would
5 like to put after, on the third line from the bottom of that
6 paragraph, after the comma, "and the Applicant and all persons
7 to whom the Applicant is" -- "the Applicant and all persons
8 to whom there is to be disclosure of the names by the Applicant
9 shall acknowledge their agreement;" in other words, indicate
10 the last paragraph covers the Applicant and anyone who is in
11 consonance with them.

12 MR. SINKIN: We don't have any objection to that,
13 Mr. Chairman. We assume that should any member of the NRC
14 staff compromise the Protective Order in any way, that there are
15 already existing NRC procedures to deal with that.

16 MR. NEWMAN: Mr. Chairman, if there are no
17 further comments, I would --

18 CHAIRMAN BECHHOEFER: Do you have any problem
19 with that change?

20 MR. NEWMAN: No, sir.

21 CHAIRMAN BECHHOEFER: All right. We are prepared
22 to enter this Order, and we also do not feel -- the Order as
23 amended. We also don't feel that further briefings would be
24 useful, at least before us, and I would think that it wouldn't be
25 very useful before appeal bodies either in light of their

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1 previous decisions. So that we are prepared to -- When does
2 the ten days run out?

3 MR. NEWMAN: The ten days would be the 28th, which
4 I think turns out to be a Sunday, so it should -- I'm sorry --
5 no, it's a Saturday, and --

6 CHAIRMAN BECHHOEFER: Well, probably Monday
7 should be --

8 MR. NEWMAN: Yes. That's what I was going to
9 suggest.

10 CHAIRMAN BECHHOEFER: Whatever the date should be
11 that Monday.

12 MR. NEWMAN: March 30th.

13 JUDGE HILL: The 30th of March.

14 CHAIRMAN BECHHOEFER: Right.

15 So with those changes, we will enter this Order
16 and the Protective Order.

17 MR. NEWMAN: I have a related matter.

18 CHAIRMAN BECHHOEFER: One housekeeping question:
19 I don't have all of the changes. Are you going to provide the
20 reporter with the exact wording?--

21 MR. NEWMAN: Yes. We'll do that.

22 CHAIRMAN BECHHOEFER: -- to put in the record?

23 MR. NEWMAN: Yes, sir.

24 CHAIRMAN BECHHOEFER: Otherwise, we will have to
25 issue an order from Washington, and I'll have to get the wording

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1 more exactly. I think what we will do is reflect the substance
2 but not all the details in our pre-hearing conference order
3 which will cover most of the matters we dealt with.

4 MR. AXELRAD: Mr. Chairman, I believe that Mr.
5 Reis has a last change he proposed which I don't have verbatim.
6 Otherwise, I believe we have all the other changes. I just do
7 want to make sure that I have the change that the Board was
8 making at the top of page 3.

9 As I understand it, if you strike the words "while
10 no showing of need for Protective Order has been made" and
11 substitute the words, "at the conference, the parties discussed
12 whether there was a need for a Protective Order during such
13 discussion and without a Board ruling." Do I have it all?

14 CHAIRMAN BECHHOEFER: That's substantially -- I
15 have a couple of different words, but the substance is the same
16 so that's fine.

17 MR. AXELRAD: Thank you.

18 MR. NEWMAN: With the entry of that order, Mr.
19 Chairman, as a companion matter, I would ask that the Board
20 also advise of its intent in the event that the memorandum and
21 order are not complied with within the time frame that's been
22 established, that the Board will enter an appropriate order
23 under Section 2.707 reflecting any default in complying with the
24 Board's order and upon such entry -- upon the entry of such an
25 order, barring those persons disobeying the Board's order from

1 participating further in this proceeding either by way of
2 presenting a direct case or cross examination.

3 MR. SINKIN: Mr. Chairman, I would consider any
4 such position by the Board at this time as premature and
5 unnecessary.

6 CHAIRMAN BECHHOEFER: I want to discuss this.

7 (Discussion off the record)

8 MR. NEWMAN: Mr. Chairman, I would just like to
9 say one more word about why we are presenting that-- presenting
10 this request to the Board now to advise the parties of this
11 intention in the event the order is not obeyed. One of the
12 parties affected by the order has at least for now specifically
13 advised that it will not abide by the order. We don't believe
14 that there should be any doubt in anybody's mind as to the
15 consequences of not complying with the Board's order or that
16 there will be any needless time delay in the Board's response.
17 I think it's got to be clearly understood that ten or eleven
18 days from now, we are going to know for certain whether or not
19 the order has been fully complied with by any party and that if
20 they have not, they have no further role in this case.

21 MR. GUTIERREZ: Mr. Chairman, the Staff feels that
22 that request is premature in light of the fact that we don't
23 know how the Intervenors are going to respond. I think the
24 Applicant has made clear to the Intervenor the remedy it will
25 seek if they do not respond. I think the Intervenor realizes

1 that, and any further discussion on this is premature at this
2 time.

3 CHAIRMAN BECHHOEFER: I might say the board has
4 decided not to issue such an order. If answers are not forth-
5 coming, we are likely to issue some sort of an order. We will
6 not -- we have not decided now and cannot decide on remedies
7 until we evaluate all the circumstnaces, including our obligation
8 to build a full record so that we would leave open any poten-
9 tial remedies that might be imposed. Some remedies are likely
10 to be imposed, but whether complete expulsion from the proceeding
11 is appropriate, I do not want to -- I certainly would not rule
12 on that from the Bench. In other cases, I generally do not --
13 there have been lesser remedies imposed that still have significant
14 effects on the parties involved. So there is a range of remedies
15 that could be applied and so we will leave it completely open.

16 I hope we get answers. Our hope is that the
17 answers are forthcoming, that the information is revealed and
18 that we can get a full record. Our job is to build a complete
19 record in order to make our decision.

20 MR. SINKIN: Mr. Chairman, I just wanted to make
21 it very clear that it is the intention of CCANP to supply the
22 names to the Applicants other than those on the tape from the
23 attorney's files and the names on the tape being submitted to
24 the NRC today, and we trust that that will cure any
25 problems they may have regarding discovery, as soon

lp7 1 as, of course, we answer the interrogatories, too. I think there
2 will be no problem with CCANP in this matter.

3 MR. NEWMAN: That's a misunderstanding of what the
4 Memorandum and Order provides. The Memorandum and Order
5 specifically speaks to the tape and the identity of the
6 individuals on the tape. So let there be no misunderstanding
7 about that.

8 CHAIRMAN BECHHOEFER: To the extent they relate
9 to the two contentions.

10 MR. NEWMAN: That's correct.

11 MR. SINKIN: To the extent they relate to
12 Contentions 1 and 2.

13 CHAIRMAN BECHHOEFER: Are you going to inquire of
14 Mr. Swayze whether he has any objection to -- the very -- you ought
15 to at least at the outset see whether he has any objection.
16 I'm not sure that he has any valid privilege once he has been --
17 attorney-client privilege at least, once he has released the
18 information to you. But whether or not that's so, you ought
19 to see if he has any objection.

20 MR. SINKIN: I will send him a letter, and I will
21 ask him if he has any objection. And if I receive a response --

22 CHAIRMAN BECHHOEFER: Why don't you call him up?

23 MR. SINKIN: Because, Mr. Chairman, he doesn't
24 want to talk about these proceedings.

25 CHAIRMAN BECHHOEFER: In terms of timing, I

1 would think that you could call him and ask him if he would have
2 any objection to it.

3 MR. SINKIN: Mr. Chairman, to talk to someone on
4 the phone, you have to get them to agree to come to the phone to
5 talk with you. In our current state of affairs with Mr. Swayze,
6 he feels he's been through enough abuse in these proceedings and
7 he doesn't want to have anything more to do with it.

8 I will try once again. I tried last week without
9 success, but I will try once again.

10 CHAIRMAN BECHHOEFER: That's the best you can do,
11 I guess.

12 MR. SINKIN: I believe the next item on the agenda
13 is No. V, if we are ready for that, the necessity or desirability
14 of the pleadings. We only have a short comment on that point.

15 CHAIRMAN BECHHOEFER: Yes. Okay.

16 IV-A is still open. We'll have to set a date.

17 MR. SINKIN: I'm sorry.

18 MR. NEWMAN: IV-A is still open and, in addition,
19 the balance of the items under VIII are still open, Mr.
20 Chairman. They were all date matters and scheduling problems.

21 MR. SINKIN: Item VII is also open. I was just
22 going back through a logical progression.

23 CHAIRMAN BECHHOEFER: Why don't we leave IV-A
24 until we set other specific dates, although, as I thought, our
25 suggested date of one week in advance, the final date, was not

1 met with the usual acceptance at least.

2 MR. NEWMAN: That's satisfactory, Mr. Chairman,
3 April 23rd.

4 CHAIRMAN BECHHOEFER: You had wanted one
5 additional week beyond that.

6 MR. NEWMAN: No. That's all right. April 23rd
7 will do.

8 MR. SINKIN: I'm sorry. That's April 23rd for
9 the brief on character and --

10 CHAIRMAN BECHHOEFER: No. That's for the filing
11 of testimony.

12 MR. NEWMAN: Filing of testimony.

13 CHAIRMAN BECHHOEFER: The brief on character and
14 competence, the suggestion -- one person made the suggestion that
15 it be filed on the opening date of the hearing.

16 MR. AXELRAD: Mr. Chairman?

17 CHAIRMAN BECHHOEFER: Actually, we won't need to
18 use or apply any of those standards until the hearing is in
19 session and we perhaps get questions as to relevance of such
20 questions.

21 MR. SINKIN: Mr. Chairman, we have some problem
22 with that, and we did have some discussion prepared on IV-A.
23 But you seem to only want to talk about the date.

24 We had a problem in terms of character being a
25 fairly broad issue as a term, and we were going to seek some

1 guidance on what might be relevant, no rulings on what's
2 relevant and what's not, so that we can know whether to pursue
3 certain lines of evidentiary development. If they're not
4 relevant, we would just as soon avoid spending the time
5 developing them.

6 MR. GUTIERREZ: Mr. Chairman, just for
7 clarification, I thought that was the purpose of the brief, to
8 attempt to inform the Board of the various case laws and
9 statutes that address how to judge an entity's character. And
10 I'm in total agreement with Mr. Swayze -- Mr. Sinkin -- I've
11 fallen into it.

12 MR. SINKIN: That's fine.

13 MR. GUTIERREZ: And I'm in total agreement with
14 him that it is a vague term, and I think that was the reason
15 the Board initially asked for a brief on the --

16 CHAIRMAN BECHHOEFER: That's correct.

17 In terms of application, whether we can come out,
18 would you want -- do you think the Board should come out with
19 a ruling on what that term mean prior --

20 MR. SINKIN: I wasn't real sure. I was more in
21 a questioning attitude there.

22 CHAIRMAN BECHHOEFER: We certainly would have to
23 rule on it as part of any decision we issue. We would have to
24 set a standard.

25 MR. SINKIN: I would think that the briefs filed

1 substantially prior to the hearing would at least give some
2 guidance as to what parties think the term means and help to
3 form the evidentiary case around at least that much. We may
4 disagree with the Applicant's exclusion of certain matters, and
5 that can be decided at the time of the hearing. But perhaps
6 the exchange of briefs on this topic should take place before
7 the day the hearing opens in order to make the development of
8 an evidentiary presentation more reasonable.

9 MR. REIS: The Staff also believes the briefs
10 should be exchanged before the opening of the hearing. I don't
11 think it's necessary to be more than a week or ten days before
12 the opening of the hearing.

13 CHAIRMAN BECHHOEFER: The Board would want to
14 have the prepared testimony for a longer period of time before
15 the hearing than the briefs.

16 MR. AXELRAD: May we suggest five days before
17 the hearing as a time to file these briefs?

18 CHAIRMAN BECHHOEFER: Well, the only problem
19 with that is the mail takes five days and --

20 MR. AXELRAD: In the hands of the Board by that
21 time.

22 CHAIRMAN BECHHOEFER: Pardon?

23 MR. AXELRAD: In the hands of the members of
24 the Board five days before the proceeding.

25 CHAIRMAN BECHHOEFER: Would there be any way

1 for you to get it to Mr. Sinkin and Ms. Buchorn prior to the
2 hearing?

3 MR. AXELRAD: Sure.

4 CHAIRMAN BECHHOEFER: Because if it's dropped
5 in a box -- it's not going to get to them.

6 MR. NEWMAN: No. We can commit to have that in
7 the hands of the Board and parties, certainly our brief, five
8 days in advance of the commencement of the hearing.

9 MR. AXELRAD: People can serve these briefs
10 either by mail ten days before the date of the hearing or by
11 hand five days before.

12 MR. REIS: We would really prefer ten days
13 before the date of the hearing, service ten days by mail.

14 CHAIRMAN BECHHOEFER: Service by mail, ten. But
15 I think we would give the parties permission to hand-serve them
16 within five days.

17 MR. NEWMAN: We would appreciate that, Mr.
18 Chairman. I think that would be helpful and probably give you
19 greater assurance of having the material on time than dropping
20 them into the U. S. Mail.

21 CHAIRMAN BECHHOEFER: Well, we will permit
22 dropping them into the mail ten days ahead of time.

23 Should we put twelve days for the Staff and put
24 it in the NRC mail system?

25 MR. SELLS: That's optimistic.

1 MR. GUTIERREZ: With respect to the filing date
2 of the brief, it will be ten days by --

3 CHAIRMAN BECHHOEFER: Ten even for the staff.

4 MR. GUTTIERREZ: -- by mail or hand delivered to
5 all parties five days before the start of the hearing.

6 CHAIRMAN BECHHOEFER: That's correct.

7 MR. GUTTIERREZ: That would make it May 12th.

8 CHAIRMAN BECHHOEFER: That's correct.

9 I might say, we're probably going to have to
10 amend that and make it eleven days because ten days before is a
11 Saturday. Either have it mailed by Friday or Saturday. I don't
12 want the rule to carry over to Monday because -- by mail. It
13 should be mailed by Friday, that Friday.

14 MR. SINKIN: And that date is?

15 CHAIRMAN BECHHOEFER: May 1.

16 MR. AXELRAD: It could be in the mail on Saturday
17 as long as it doesn't carry over to Monday.

18 CHAIRMAN BECHHOEFER: Well, yes. If you mail it
19 by Saturday, just make sure it will go out. Get it mailed
20 early enough in the day on Saturday so that it is taken, so that
21 it doesn't just sit in the mailbox until Monday, because that
22 will delay it considerably. It could delay it enough so that
23 we wouldn't get it before we left to come down here. We hope
24 not, but . . .

25 Going to the amendment of the pleadings--

1 MR. SINKIN: Actually, perhaps we should go back and be
2 even more logical. Under Item I, we never discussed extending
3 anything other than the date of the hearing. There was a
4 discovery deadline, identification of witnesses deadline,
5 deposition of witnesses deadline. Those we discussed in some
6 detail.

7 The motion filed by Ms. Buchorn, obviously based
8 on the Board's insistence on the May 11th time, would not be
9 appropriate. However, we are in the position that if the
10 identification of witnesses deadline is not extended, that
11 deadline has passed.

12 I might seek some clarification from the Board.
13 In answer to interrogatories from Applicants long ago, they
14 asked who we intended to call as witnesses, and we did name some
15 persons. We had not filed -- we didn't actually provide a
16 summary of what they would talk about at that time. I think
17 specifically, those persons, however, were Mr. Swayze and
18 members of the NRC Staff who conducted investigations. As to the
19 latter, I don't know exactly what our rights are in calling
20 those witnesses, but they were identified.

21 We did identify some witnesses. If we had
22 further witnesses, we would consider them as amending that list.
23 We have not totally defaulted in identifying the witnesses.

24 MR. NEWMAN: Mr. Chairman, I think that the plain
25 fact is that there is a Board order out requiring it, a Board

1 order which stressed the fact that only extremely good cause,
2 a very high standard, I think, indicated that would have to be
3 satisfied before there would be any bending in the Board's
4 schedule. I don't believe that's been shown. I think the
5 Board's order speaks for itself, and I believe the fact that
6 the Board's order has not been complied with also speaks for
7 itself. And I think the remedy is obviously clear at this stage
8 now. So many days have gone by now since that was due -- it
9 was more than two weeks ago now, and information which might have
10 been useful at that time coming at this late date is of no
11 value. And I believe that the failure to comply with the order --
12 should be instantly determined that parties who have failed to
13 comply have no right to present a direct case.

14 MR. REIS: Mr. Chairman, Mr. Sinkin said that
15 he has formerly given the names of possible witnesses and somewhat
16 indicated the scope of the testimony. Can you give me the date
17 of that filing?

18 MR. SINKIN: It's answers to interrogatories.

19 MR. REIS: We still would like to have a specific
20 reference to it. It need not be immediately -- so that --

21 MR. SINKIN: I will try and provide that.

22 MR. NEWMAN: I think Mr. Hudson may be able to
23 shed some light on some part of this.

24 Tom?

25 MR. HUDSON: There is also, Your Honor, a specific

1 interrogatory we filed requesting identification of witnesses
2 on March 2nd, and that would be the Fourth Interrogatory to
3 Mr. Sinkin and the Third Interrogatory to Ms. Buchorn. Neither
4 party responded within the time frames allowed by the rules and,
5 in fact, did not respond in its latest flurry of pleadings we
6 received the other night.

7 They did see fit to respond to some of our other
8 interrogatories, and I think if these parties had the names of
9 witnesses at this late date that they wanted to develop they
10 could have answered our interrogatory late as they answered the
11 other interrogatories late, this past week.

12 On the question of other names that have been
13 provided, I am not aware of any, other than Mr. Swayze's name
14 has been mentioned. And there was -- again, I agree, Mr.
15 Sinkin did reference some NRC people. On Contentions 1 and 2,
16 he mentioned Mr. Bridenball on his contention -- is it 3?

17 CHAIRMAN BECHHOEFER: Well, that's not --

18 MR. HUDSON: That's not relevant here.

19 MR. GUTIERREZ: Mr. Chairman, maybe some
20 clarification is in order.

21 Currently, is either CEU or CCANP planning to
22 put on a direct case or asking this Board to submit witnesses out
23 of turn? I haven't gotten that.

24 CHAIRMAN BECHHOEFER: We would like to --

25 MR. SINKIN: Let me clarify.

1 CHAIRMAN BECHHOEFER: If you were asking that.

2 MR.SINKIN: Let me clarify. We are asking that
3 along these lines. I think the record is fairly clear. I trust
4 Ms. Buchorn's medical information that was submitted in the
5 record will be bound in the record, that Ms. Buchorn was totally
6 unable to do anything basically for 60 days, that I was in the
7 position of thinking things were being done when they were not
8 done. A part of what our attorneys were doing was supposed to
9 be identifying witnesses. Due to the illness of the attorney
10 and the case load and the other things we've talked about, that
11 was not possible.

12 We would ask that we be given some time that
13 would require us to discuss with certain persons whether they are
14 willing to be witnesses and can be identified.

15 I would just state to the Applicants that I have
16 done everything in my power in the last seven days to bring us
17 current and provide to them everything that they have asked for.
18 We don't think it's an undue burden on them to receive five or
19 six or seven names of potential witnesses when they are so
20 anxious to receive thirty, forty or fifty names and go out and
21 take those depositions. If they're so anxious to have those,
22 they seem to have the time to do that. I think of far more
23 interest to them would be people we would like to actually call
24 as witnesses.

25 MR. GUTIERREZ: Mr. Chairman, the Staff to an

1 extent agrees with Mr. Sinkin. What would be helpful, though,
2 from Mr. Sinkin is, in light of the hearing schedule as set
3 forth by the Board, what are the specific dates he has in mind
4 for, one, identifying witnesses on down the line, the pre-hearing
5 matters. We can't obviously take a position until we hear
6 the dates he has in mind for identifying the witnesses or for
7 whatever, some pre-hearing matter.

8 MR. SINKIN: Mr. Chairman, one of the problems
9 we have with the rush in these proceedings is that we have a
10 pending motion to compel the NRC to identify certain individuals
11 to us, and we fully intend to press that motion as far as it
12 needs to go in order to get those identifies.

13 Now, we're in the position, then, of having
14 evidence withheld from us that we consider a far more germane
15 position than what the Applicants have been arguing for the
16 last day and a half. Now, we may not get those names for
17 another thirty days, given the process we might have to
18 go through. So we're not prepared to say when the last day is
19 we can identify witnesses. We realize that that's a burden on
20 the proceeding. We realize the Applicants have certain rights
21 of deposition and prefiled testimony. But if you are going to
22 insist on a May hearing and we are going to insist on our rights
23 to those identities, I think the two are going to come into
24 conflict somewhere.

25 CHAIRMAN BECHHOEFER: Well, I might say we're

1 starting in May, but it is possible that differing subjects will
2 be taken up at differing dates. It's inevitable. So we might
3 be open to some differing dates for witnesses on different topics.

4 My guess is that we would start the proceeding
5 with issues A and then -- A first and then B, in that order.
6 However, the testimony on that will be somewhat different from
7 the testimony on the remaining issues.

8 MR. SINKIN: I would think Issue A would be
9 the clearest issue on which the identities of persons providing
10 information to the Nuclear Regulatory Commission that, like the
11 Show Cause Order, would be relevant.

12 CHAIRMAN BECHHOEFER: Yes. I would also like to
13 inquire what the Staff position would be if the Intervenor asked
14 some of your investigators to appear as their witnesses.

15 MR. REIS: Your Honor, we have set out our
16 witnesses. If they would informally approach us on it, we would
17 consider it at that point. I can't give you a definite position
18 at this time. I don't know who they're talking about.

19 CHAIRMAN BECHHOEFER: I'm sure they want to find
20 out some names before they --

21 MR. REIS: That well may be. Our position on the
22 disclosure of names was set forth last December. Motions to
23 Compel have been overdue for a long period of time now.
24 We don't feel -- we feel that we are now approaching the hearing
25 date, that these motions and an order to renew them at this time

1 is completely out of time, that there is no real good cause to
2 show why this matter shouldn't have been handled in ample time
3 to meet the hearing date. We promptly set forth our position
4 last December, as I say, and we don't feel that they even have
5 a right to make a Motion to Compel at this time. The rules
6 are pretty clear.

7 Further, we have set forth and we fully
8 briefed at that time and allowed them to rebut, if they could,
9 why under the case law and the regulations of the Commission
10 they weren't entitled to these names. And we think the policy
11 reasons set forth are quite clear in the case law, and they
12 are not entitled to these matters.

13 They have gotten the substance of every single
14 source. They haven't pointed to a single source that they
15 particularly want. They just say, "We want all the names."
16 We gave them the investigative reports. We gave them the
17 substance of the investigation. It isn't shown that it is necessary
18 for a proper decision in this proceeding that they have the
19 particular names rather than what they said.

20 CHAIRMAN BECHHOEFER: In the reports, let me
21 clarify, the people are identified, are they not, by letters?

22 MR. REIS: That's right.

23 MR. SINKIN: And their testimony is paraphrased.

24 MR. REIS: In some cases. In some cases, it's
25 verbatim.

1 CHAIRMAN BECHHOEFER: Will the Staff be presenting
2 testimony of some of those people?

3 MR. REIS: No. We have not set out any of
4 those people as Staff testimony. We intend to introduce our
5 investigative reports.

6 MR. SINKIN: Mr. Chairman?

7 CHAIRMAN BECHHOEFER: If you introduce your
8 investigative reports, will your witnesses be prepared to
9 answer questions regarding Individual X, Individual Y, as the
10 case may be?

11 MR. REIS: They will not be prepared without
12 specific orders to identify who talked to them. They will be
13 there to tell the substance of what was -- of what came to them
14 in the course of their investigation.

15 CHAIRMAN BECHHOEFER: Will they be prepared to
16 testify to what additional information, if any, was sought, I
17 mean somewhat broader than the bulk of the information?

18 MR. REIS: Oh, yes.

19 CHAIRMAN BECHHOEFER: Will the scope of the
20 questioning of each of the named individuals -- not named
21 individuals -- identified individuals be -- will your witnesses
22 be able to address that?

23 MR. REIS: Yes. They will be able to address
24 the information sought in the course of the investigation as
25 well as the information gathered and, therefore, will be

End 2.
Now 3.

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1 able to say how far and how deep the investigation went.

2 MR. SINKIN: Mr. Chairman, I would point out to
3 clarify things that we have filed a Motion for Leave to File a
4 Motion Out of Time, to compel the NRC Staff to provide the
5 information. We recognize that this Motion to Compel is late,
6 and we have filed a Motion to File Out of Time on that matter.
7 That's the first motion.

8 The second motion that was delivered to all
9 parties is a motion actually to compel. We're now on Item VII
10 of the agenda, but I guess this has to be dealt with before
11 we can decide on extending the time of witnesses.

12 In our Motion to Compel, we discussed relief
13 provided to us by the Nuclear Regulatory Commission in their
14 order of September 22nd and specifically quote from that letter
15 saying that where the Commission notes that we asked for a
16 public hearing on the Order to Show Cause, in part so that the
17 NRC would bring forward the witnesses and we would have a
18 chance to gather additional evidence from those witnesses.

19 In response to that point in our request for a
20 hearing on the Order to Show Cause, the Nuclear Regulatory
21 Commission's Memorandum and Order of September 22nd states
22 that, as Houston suggests, Citizens can file either interrogatories
23 with the Staff or a Freedom of Information Request with the
24 Commission in order to learn the identities of persons with
25 knowledge about the incidents covered by the directors' order.

1 These possibilities are a far cry from Citizens' fears that
2 failure to have a hearing on the enforcement order would be
3 tantamount to denying to it the "evidentiary basis for the
4 NRC actions in the Order to Show Cause."

5 What the Commission has done is say, "Your fears
6 are groundless that we will not give you the identities. Merely
7 submit an interrogatory or a Freedom of Information Act Request
8 and you will get them. And because your fears are groundless,
9 you don't need the hearing on the Order to Show Cause," and that
10 was one point of denial on our request for the Order to Show
11 Cause. They give us the alternate relief. We file the request,
12 and it's denied us. So we're in a revolving door here.

13 MR. REIS: Mr. Chairman, I think the first order
14 of business -- and I know Mr. Sinkin would like to forget it --
15 is whether --

16 I withdraw that remark. It's uncalled for.

17 MR. SINKIN: Thank you.

18 MR. REIS: The first order of business is whether
19 the motion -- the leave to file the Motion Out of Time should
20 be granted. That's the first order of business.

21 I looked through this motion, and I don't see
22 any reason why a -- any reason given why they should be given
23 leave to file their Motion to Compel out of time. Remember
24 that this motion was filed in March. We set out our reasons
25 and we answered the interrogatories in December. That was some

1 three months prior to it. Certainly there is nothing set out
2 in the two and a half pages to allow them to file three months
3 out of time. The rules in 7.40 set out very definite times
4 within which Motions to Compel are to be filed.

5 This flagrant abuse of the rules is not excusable
6 and there is no reason for them to file out of time. And I
7 think we should first address that rather than going to the
8 question of whether we have to turn over the names of the
9 informants at all pursuant to their request.

10 MR. SINKIN: Mr. Chairman, the motion itself
11 says, "During the period of November 1980 through February 1981,
12 CCANP had attorneys representing CCANP in these proceedings.
13 CCANP assumed that all necessary discovery motions were filed in
14 the prescribed time period. In March 1981, the attorneys
15 informed CCANP that unfortunate circumstances beyond their
16 control prevented their continuing to represent CCANP, and that
17 the same circumstances prevented certain discovery motions from
18 being timely filed."

19 Among the discovery not timely filed was an
20 appeal to you on their denial of these identities. I consider
21 that as stating a reason. Now, Mr. Reis may think that is not
22 a substantive reason or not a sufficient reason, but for him
23 to characterize this motion as saying we stated no reason for
24 the delay is obviously inaccurate.

25 MR. NEWMAN: Mr. Chairman, I would like to

1 address a question through the Board. A sentence or paragraph
2 that Mr. Sinkin just read from indicated that "CCANP assumed
3 that all necessary discovery motions were filed in the prescribed
4 time period." Does he include himself in that group?

5 MR. SINKIN: Of persons who assumed --

6 MR. NEWMAN: Were you yourself under the
7 impression that all discovery motions had been filed timely by
8 your counsel?

9 MR. SINKIN: Up until -- the first I learned
10 that they were not being timely filed was after the time had
11 passed.

12 MR. NEWMAN: When was that and how did you find
13 out?

14 MR. SINKIN: That would have been when the
15 attorney called me -- let me try and be as close as possible --
16 I believe it was the last week in April-- and said we had serious
17 problems.

18 MR. NEWMAN: The last week in what, now? Excuse
19 me.

20 MR. SINKIN: I'm sorry. I'm going the wrong
21 direction. The month before March, February, the last week of
22 February -- and said that they had serious problems in the work
23 they were doing and they were not sure that they were going to
24 be able to pursue the intervention. But they did think that
25 they would be able to represent us at the hearings and that

1 there were some matters where they may have missed deadlines
2 and there might be a need to file Motions Out of Time.

3 So that was the first I learned about it. And
4 when the attorneys formally withdrew at the beginning of March,
5 I asked about those Motions --

6 Do you wish to hear my answer, sir?

7 MR. NEWMAN: I know what your answer is, Mr.
8 Sinkin. Go ahead and complete it.

9 MR. SINKIN: Oh, well, since you're so pressing it,
10 I'll delay it until you go on.

11 MR. NEWMAN: I think the plain and simple fact
12 is that there has been a devastating admission here that Mr.
13 Sinkin has known for at least 25 days or something on that
14 order that his counsel had failed to file motions in a timely
15 fashion. And that, to me, is just the icing on the cake. It's
16 the last --

17 MR. SINKIN: Where does that 25 days come from?

18 MR. NEWMAN: We sit here at March 18th. You
19 found out in February. You said the last week in February you
20 found out.

21 MR. SINKIN: It might even have been the 28th --

22 MR. NEWMAN: Did you get in touch with the Board
23 to advise them of the fact that there had been an error or an
24 omission in filings on behalf of CCANP by your attorney?

25 MR. SINKIN: I requested the attorneys to draft

1 the Motions to File Out of Time and put their reasons on those
2 motions and to send them to me. They finally -- they did not
3 ever, in fact, send me the Motion to File Out of Time that
4 I requested. They did send me the files, and I got chose and
5 began working on this proceeding seven days before it convened.
6 I had nothing on which to base -- I had no informational base
7 on which to write the motions.

8 MR. NEWMAN: Who works with you?

9 Mr. Chairman, might I inquire through the Board
10 who else works with Mr. Sinkin in the conduct of CCANP's
11 proceeding here?

12 MR. SINKIN: As far as working on the intervention,
13 the only person that works -- there are two people that work on
14 it, Ms. Kim Eastman, whom you received letters from --

15 MR. NEWMAN: When did Ms. Eastman find out that
16 the necessary motions had not been filed?

17 MR. SINKIN: I haven't the faintest idea.

18 MR. NEWMAN: She has been involved day to day.
19 We've had lots of letters from Ms. Eastman.

20 MR. SINKIN: You've had two, I thi

21 MR. NEWMAN: That's right.

22 MR. SINKIN: That's hardly lots.

23 I don't believe that Ms. Eastman was aware of the
24 problem until I was aware of the problem.

25 MR. NEWMAN: I don't want to drag this out any

1 further, Mr. Chairman.

2 MS. BUCHORN: Mr. Chairman.

3 CHAIRMAN BECHHOEFER: We have a letter from Ms.
4 Eastman dated March 9 which does inform us of this.

5 MS. BUCHORN: Mr. Chairman, since the veracity
6 of Mr. Sinkin is being questioned here by counsel for the
7 Applicant, I would like to place on record my statement that
8 all of the statements that he has made are absolutely true
9 because he expressed to me over the telephone his concern, his
10 efforts to receive the files and all of those things that he is
11 talking about.

12 And I resent this impugning of his character
13 and his veracity.

14 MR. SINKIN: And furthermore, there has been some
15 statement on the record that I have admitted to something, and
16 I think that has been a characterization that is totally
17 unwarranted. Mr. Newman was not interested in my explanation
18 of that. I just want the record to note that I have admitted
19 to nothing which I would consider in any way impugning me or
20 in any way damaging this motion.

21 This motion was filed as soon as we could get it
22 to you.

23 MR. REIS: Your Honor, I think it would be best
24 if we passed on from ad hominem arguments and dealt with the merits
25 of whether this is a proper excuse to late file.

1 MR. SINKIN: That's fine, Mr. Reis.

2 MR. NEWMAN: I think that's exactly what I was
3 doing. It was not an ad hominem attack. I was trying to
4 establish whether there was really good cause for this
5 substantial delay in the filing of a Motion to Compel.

6 One of the elements of that is whether or not
7 either from the time that they knew this motion was not filed,
8 that they proceeded timely with this Board. My purpose was
9 not any ad hominem attack on anybody. The purpose was to
10 establish whether or not CCANP sat on its rights for any
11 appreciable period of time, and I think that that's clear.

12 MR. SINKIN: Mr. Chairman, I would suggest that
13 there is another reason for the Motion Out of Time contained in
14 the Motion Out of Time, and that is that the information sought
15 is relevant to these proceedings and, furthermore, that the
16 information is of great importance to CCANP and CCANP would
17 be damaged without it. That alone might be reason enough to
18 grant a motion for leave to file out of time.

19 MR. REIS: We do not believe so. We think that
20 the organization is bound by its counsel, particularly in the
21 circumstances here involved, in that we are coming very close
22 up to hearing, that there was time to litigate this before.

23 There are important policy questions here
24 involved, and I'm not going to go to the merits of the policy
25 because that's something else. That's not what I'm discussing

1 right now. But there are important policy questions here
2 involved.

3 If it was a light matter, it could be addressed
4 nearer the time of hearing, but there was ample time for this
5 to be addressed earlier. Certainly, the Staff and the Applicant
6 would be prejudiced by even having this considered at this
7 late date because of the imminence of hearing at this point.
8 Therefore, we think that just the fact that counsel failed to
9 perform its duties to force discovery or compel discovery when
10 the Staff set out on December 8th a rather full legal
11 dissertation citing, by the way, the words of the Commission
12 that Mr. Sinkin has quoted to the Board just now--

13 MR. SINKIN: It's in the footnote.

14 MR. REIS: It's in the footnote, cited so there
15 would be no question that the Board had it before it and it did
16 not slip through the crack.

17 But we would be prejudiced now in having this
18 motion even considered in the particular circumstances of this
19 case and when we look to go to hearing. Therefore, we strongly
20 urge that the leave not be granted to file a Motion Out of Time
21 to compel NRC Staff to provide information and that that be the
22 end of the matter.

23 As we have set out in our list of witnesses and
24 in our outline of testimony, we are going to fully discuss and
25 disclose our investigation. We will be there subject to

1 examination on whether it was deep enough or how deep it was.
2 However, we did take a firm position under the rules of the
3 Commission that we had no need to set out these names.

4 We did not read the Commission's order as going
5 beyond that and abrogating the Commission's own regulations.
6 We did not think their action on an ad hoc basis in a particular
7 proceeding was meant to in any way go beyond their regulations.
8 The material in the case --

9 CHAIRMAN BECHHOEFER: Let me interrupt and ask
10 you one question. Do you think that we would be going beyond
11 the Commission's regulations if we should decide that a showing
12 of extraordinary circumstances had been made and information
13 not otherwise available should be made available in this way,
14 and that therefore and perhaps subject to a Protective Order,
15 which the Intervenors would have to agree to, the names should
16 be revealed to them? Would that be -- wouldn't that be reading
17 the Commission's order as being consistent with the rules?

18 I'm sure you are aware of the provisions I'm
19 quoting from.

20 MR. REIS: Yes. As the case law indicates, it
21 has to be necessary for a proper decision. I don't think that
22 that determination, in view of the fact that we have the full
23 investigative reports, in view of the fact that the people who
24 made the investigation would be on the stand, I don't believe
25 that determination can be made. That is a positive determination

1 that must be made now, but it is necessary for a proper decision
2 in this proceeding. I don't think that determination could be
3 made and, therefore, I don't think that compulsion could be
4 granted because of that reason.

5 MR. SINKIN: Mr. Chairman?

6 CHAIRMAN BECHHOEFER: Well, I wanted to ask one
7 further question. Mr. Reis, would then, if your witnesses on
8 cross-examination were asked some of these questions and they
9 would indicate that some of the people contacted would have --
10 might have information which maybe the Staff wouldn't consider
11 pertinent but which might be regarded as relevant to the general
12 contentions, would the Staff then endeavor to -- or at least
13 make available the names of those individuals for future either
14 discovery or for --

15 MR. REIS: I think at the time of hearing, if it
16 becomes appropriate or if that names and further discussion
17 should be -- I'm sorry -- if in the course of hearing it appears
18 that a name or names are necessary for proper determination, I
19 think we would have to look at that issue at that time. And it
20 is very possible that at that time such an order could be
21 issued with proper -- giving proper protection so that --

22 CHAIRMAN BECHHOEFER: Obviously.

23 MR. REIS: -- we could look at it. But at this
24 point, there is no showing that the names are necessary for a
25 proper determination of this issue in this proceeding. I think

1 the facts are — as to what factually happened, I don't think the
2 names are necessary.

3 MR. SINKIN: Mr. Chairman, I feel like Alice in
4 Wonderland. It seems to me there is one rule for the Nuclear
5 Regulatory Commission and one rule for the Applicants as far
6 as who gets what from whom.

7 MR. NEWMAN: That is indeed true, Mr. Chairman.
8 That's a fact.

9 CHAIRMAN BECHHOEFER: Fortunately or unfortunately,
10 the NRC rules do draw a distinction between the Staff and other
11 parties.

12 MR. SINKIN: That's fine. The statement that at
13 the time of the hearing, should the investigator who talked to
14 the person be asked the question: "Do you believe this person
15 might have information relevant to or likely to lead to information
16 relevant to Contentions No. 1 or 2," and he says, "Yes," do we
17 then adjourn the hearing and go take a deposition of that person?

18 CHAIRMAN BECHHOEFER: We may have to.

19 MR. SINKIN: Well, we would consider that as
20 prima facie evidence that the people who gave information to the
21 Nuclear Regulatory Commission have that kind of evidence because
22 the Order to Show Cause tracks very closely what we have contended
23 about intimidation and abuse and about construction errors.
24 Those are our contentions. They were proven in the Order to
25 Show Cause two and a half years later. Those witnesses are

1 obviously all, or 99 percent, relevant to our contentions. I
2 don't think there is a need for a showing that they might have
3 information relevant to our contention. It's clearly shown by
4 the Order to Show Cause itself. Their very allegations as
5 paraphrased are our allegations.

6 MR. REIS: We're going to address those matters.

7 MR. SINKIN: You are going to address them as you
8 see fit.

9 MR. REIS: We are going to address them.

10 MR. SINKIN: Mr. Chairman, perhaps a little
11 history is in order. I think part of my thought processes, if
12 you will, that led me to encourage the filing of this motion
13 was a discussion with a counsel at the Office of Executive
14 Legal Director in Washington about the Order to Show Cause.
15 I raised the point, were any of the inspectors who went down
16 there attorneys. And he said no, they were not attorneys. And
17 I said, "If they had been attorneys, don't you think they might
18 have gotten more information than just an investigator looking
19 for one or two little items." He said, "Of course they would
20 have, and that's not a half bad idea. Maybe we ought to go
21 from the Office of Executive Legal Director and take the
22 depositions of the people that the investigators contacted."

23 I thought that was an excellent idea and, to the
24 best of my knowledge, nothing of the sort ever happened, and
25 I thought, well, if the reasoning is good for them, it's good

1 for us. These people probably have more information about other
2 items relevant to Contentions 1 and 2 than was asked of them
3 by an investigation looking into specific charges. And I
4 think we are entitled to have an opportunity to gather that
5 evidence.

6 I don't understand, Mr. Chairman. You know, the
7 Commission says, "You're not going to get a hearing in a Show
8 Cause Order and now you're not going to get the identities over
9 here." Where is the third place we're supposed to go and apply?

10 CHAIRMAN BECHHOEFER: Well, the way I understand
11 the Commission rules, you would have to make a showing of what
12 amounts to an extraordinary circumstance. But if you were to
13 ask the Staff witnesses on the stand, "Did you ask this question"
14 or "Did you ask that question," and they said, "No," that
15 might -- I'll put the Staff on notice now that that might
16 constitute a reason for us either allowing Mr. Sinkin to take
17 the deposition of that person or have to call him up to the
18 hearing and have him testify.

19 MR. SINKIN: There are roughly 35 --

20 CHAIRMAN BECHHOEFER: In building a complete
21 record, this is the type of thing that might very well serve
22 as the basis for information.

23 MR. SINKIN: I would also like to point out, Mr.
24 Chairman, that the Staff talks about prejudice to itself and to
25 the Applicants being severe. The prejudice -- the only

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1 prejudice I can see is in terms of -- well, let's take the
 2 Applicants first -- in terms of the workload between now and the
 3 hearing. We are certainly not the ones that insisted on May
 4 for the hearing. The prejudice to us goes to the heart of our
 5 case, not to some convenience item or some difficulty of workload
 6 item. And we feel the prejudice to our case far outweighs any
 7 prejudice to the Applicants.

8 In terms of the NRC, there is a difficult policy
 9 issue, and we recognize that very clearly, their desire to
 10 protect people who bring information to them, whom I would not
 11 characterize as "informants" myself. And that's an issue that
 12 we attempt to deal with in some rough way in our Motion to
 13 Compel, setting out a possible procedure for the taking of the
 14 information from these witnesses.

15 But in terms of prejudice, the prejudice to us
 16 far outweighs the prejudice to any other party in these
 17 proceedings.

18 CHAIRMAN BECHHOEFER: Just for a brief moment,
 19 we've got to discuss this.

20 MR. SINKIN: Do you want to go to lunch and
 21 discuss it?

22 (Discussion off the record)

23 CHAIRMAN BECHHOEFER: Let's break for five or
 24 ten minutes and no more.

25 (Brief recess)

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HWS.

CHAIRMAN BECHHOEFER: The Board has considered
1 the -- really, the two motions before us concerning the names
2 of persons contacted by the Staff. We first have decided that
3 there is good reason to grant the Motion to Consider the Motion
4 Out of Time. The reason is both the fairly extraordinary
5 circumstances that Mr. Sinkin's organization experienced. But
6 in addition, just the importance of the information to the
7 litigation of the two contentions demands that we consider
8 whether or not the information should be turned over.

9 Now, in addition, the Board -- well, we have not
10 formally heard an answer from the Staff on the Motion to Compel,
11 but I would like to say one thing first before you answer.

12 The Board, at the hearing itself, will want to
13 know the names of the individuals contacted by the NRC Staff
14 inspectors, and we do not think that it would be unduly
15 burdensome and we do think it would be consistent with
16 developing a good record if those names were turned over to
17 Mr. Sinkin under a Protective Order. This is our offhand
18 impression.

19 We want to hear the Staff's argument, but it is
20 our impression -- it is our feeling that the -- while the status
21 of the Staff is different from those of other parties, the
22 particular investigative sources will not be -- we don't
23 believe will be compromised any worse than the witnesses that
24 the Intervenors are going to reveal under -- or that we have
25 ordered the Intervenors to reveal under the Protective Order.

1 We think that development of a full record in this case will
2 merely require that. And I'm sure that Mr. Sinkin could ask
3 certain questions of your witnesses about whether certain
4 questions were asked and what answers were given, but in the
5 end, to remove all question about this type of testimony, we
6 think that the names of those people are going to have to be
7 revealed, perhaps in camera. Perhaps the -- we are not averse
8 to holding in camera sessions, and we will do so to the extent
9 necessary to protect anybody's identities that either the
10 Intervenors or the Staff or Applicant for that matter feel
11 must be protected. In camera sessions, we will not oppose that
12 at all.

13 MR. AXELRAD: Mr. Chairman, before Mr. Reis
14 responds, I assume it is the Board's intention that if
15 information is provided by the Staff to the Intervenors, the
16 Applicant will also get those names.

17 CHAIRMAN BECHHOEFER: Assuming the Protective
18 Order, yes.

19 MR. AXELRAD: Certainly.

20 MR. REIS: Your Honor, in our response, we, of
21 course, stand on our brief in opposition as to why we don't
22 think we have to turn them over, and we stand on the policy in
23 the cases cited as well as that reflected in the Commission's
24 regulations.

25 Further, I just want to briefly address this. We

1 did cite the Commission's opinion of last September, and in that
2 opinion we believe the Commission was saying, "Well, you would
3 have any rights you had in the OL proceeding that you would
4 have in the show cause proceeding. Not that you have additional
5 rights, but if you have had an opportunity to obtain those
6 names in a show cause proceeding, then you would have the
7 opportunity to obtain it in an OL proceeding, not necessarily
8 that the names could be obtained."

9 Leaving that aside and going to --

10 CHAIRMAN BECHHOEFER: You may have noticed that
11 some of the words I used were intended to track the findings
12 required if certain information provided by the Staff were to
13 become available. They were intended to track that. I didn't
14 have the regulation in front of me, but we do determine that
15 for our purposes in rendering a decision, we are going to want
16 to know specific details of all of these contacts and --

17 MR. REIS: It was important to the Staff, and
18 that's why the Staff said at the bottom of page 4: "In the
19 event that CCANP is of the view that Attachment 1 does not . . ."
20 and that was that the investigative report -- fully provide
21 information they would require, assuming that they had to provide the-
22 names -- assuming they had obtained the names, the staff respectfully
23 directs their attention to 10-CFR, 2.744(C), which sets forth
24 the substantive procedures to be followed as a result of the
25 EDO's objection to producing the requested names.

1 And that procedure culminates in a particular
2 order from the Board to the Staff of the Commission, directing
3 them to take certain action. And apparently in the regulations,
4 as I read it, the Board has that authority to do that, and that
5 determination must be made.

6 Now, if there is an overruling of the Motion
7 to File Out of Time.--granting the Motion to File Out of Time --

8 CHAIRMAN BECHHOEFER: We have granted that.

9 MR. REIS: -- and a feeling that this information
10 should now be turned over, that a proper showing has been made in it
11 of these matters, we would like this incorporated in a proper
12 order so that we could see whether to just turn over the
13 information at that point that it isn't an order, or to exercise
14 any appellate rights we might have.

15 I can't tell you sitting here today just which
16 course we would follow, but we would like to have some definitive
17 ruling.

18 CHAIRMAN BECHHOEFER: Well, I can understand that.
19 We do intend to issue a Pre-hearing Conference Order. I will
20 probably not be able to do so for several days, but we will
21 attempt to get that out very expeditiously. That order will
22 include an order with respect to this information which we do --
23 we were considering that information under the standards of
24 Section 2.744(C), and we were determining that disclosure is
25 necessary for proper decision in the proceeding. We have not --

1 I have not formally considered it, but I do believe the
2 document is exempt from disclosure under one of the terms of
3 Section 2.798 -- 790. The material relied on for investigation
4 is covered under one of the provisions of that section.

5 MR. REIS: Subparagraph 7.

6 CHAIRMAN BECHHOEFER: Right.

7 So we recognize that it falls within that, and
8 we will so state in our order.

9 We do, again, and we will insist that it be
10 subject to a Protective Order.

11 MR. REIS: Yes. The Staff would very strongly
12 request that it be subject to a Protective Order, both --

13 CHAIRMAN BECHHOEFER: That will tell you --

14 MR. REIS: -- both -- similarly that it only be
15 revealed to Applicants' counsel and that Applicants' management
16 be divorced from the information. We feel that is necessary,
17 certainly, if any order is issued and similarly that Intervenors
18 handle the material in confidence.

19 MR. AXELRAD: The only thing that has been
20 sought is the names.

21 MR. REIS: That's right. It's only the names.

22 MR. AXELRAD: It's my understanding it could be
23 the same type of Protective Order as the Protective Order we
24 have just developed.

25 MR. REIS: Right. Very similar to the protective order

1 MR. AXELRAD: -- to the information being released
2 by --

3 MR. SINKIN: Mr. Chairman, let me understand
4 something. What you stated was the release of the names to
5 Mr. Sinkin and CCANP. Is the result of this order to be the
6 release of those names to Houston Lighting & Power's attorneys
7 as well?

8 CHAIRMAN BECHHOEFER: Attorneys is correct.
9 I said that or I --we had contemplated it would be subject to the
10 same Protective Order as done under your recommendation.

11 MR. SINKIN: Can we consult for just one moment?

12 CHAIRMAN BECHHOEFER: It is the Staff's -- these
13 are the names of the Staff's -- people the Staff contacted.

14 MR. SINKIN: I understand.

15 (Discussion off the record)

16 MR. SINKIN: Mr. Chairman?

17 CHAIRMAN BECHHOEFER: Yes?

18 MR. SINKIN: In terms of the effect of this order,
19 would it permit Houston Lighting & Power attorneys to contact
20 those people without us being aware of that contact, talking to
21 those people prior to our having a chance to talk to them?
22 Would that be one of the effects of the order?

23 CHAIRMAN BECHHOEFER: Well, I think it would, but
24 also it would permit you to contact them without telling Houston
25 Power & Light.

1 MR. SINKIN: Okay.

2 CHAIRMAN BECHHOEFER: It would be reciprocal. It
3 would require that to the extent you talked to any persons
4 who had some -- who had technical expertise in your organization,
5 you would have to be very clear that any members that you made
6 it available to do not release it or reveal it. They have to
7 sign the same order --

8 MR. SINKIN: The same order, yes. I understand
9 that.

10 CHAIRMAN BECHHOEFER: -- that everybody else does.
11 And we will issue that order in written form
12 as soon as I can get back to Washington and write it -- issue it.
13 The Board would like to get into the discussion
14 of the order or the sequence of witnesses and that type of thing.
15 Also, we would like to get into the question of your rights to
16 present a direct case.

17 MR. SINKIN: Well, in terms of our plans to present
18 a direct case, certainly the -- if we successfully receive the
19 names of the witnesses who gave information that was the basis
20 for the Show Cause Order, those witnesses might well be part
21 of our direct case. And I assume that from the indication of the
22 Staff, they might desire to appeal the order. If they do appeal
23 the order, who knows when we'll see those names?

24 CHAIRMAN BECHHOEFER: When could you be prepared
25 to at least give the substance and identity of your witnesses that

1 you know about, that you know about now?

2 MR. SINKIN: As far as the witnesses we know
3 about in CCANP now that we would like to call, we have two
4 problems. One is the location of some of the witnesses.
5 We were going to bring that up as a topic under discussion of
6 intervenor witnesses.

7 The Staff of the NRC in Bay City at the hearing
8 were asked, Mr. Stello was asked whether it was correct that the
9 Office of Inspection and Audit was attempting to locate people
10 who used to work at the plant who had left, in order that they
11 could be interviewed about this investigation. He stated that
12 was correct, that they were doing their best to locate those
13 people. And if they have located those people, that would
14 enable us to call them as witnesses. We have not the resources
15 and have not had the chance to locate those people, and one of
16 our purposes in bringing this up was to discuss the possible
17 cooperation by the Office of Inspection and Audit in at least
18 providing us with the last known address since they were making
19 a determined effort to find them.

20 I might make that the first point of discussion.

21 MR. AXELRAD: May we have the Chairman ask why,
22 if that was something that Mr. Sinkin wanted, why it has taken
23 until today for any discussions to be held with the NRC Staff
24 on that subject? Our position would be that the Applicant --
25 that the Intervenors have had ample time to identify any witness

1 that they wanted to call, since they became parties in August of
2 '79.

3 Any time there is a showing of good cause for
4 filing names and identifying new witnesses, that could be
5 considered by the Board. But I have heard nothing at all as
6 to why they could not have done whatever they needed to do
7 before the filing date of March the 2nd. And I think before we
8 get to any discussion of witnesses identified thereafter, that
9 should be addressed by the Board.

10 CHAIRMAN BECHHOEFER: Well, the Board would
11 apply the same reasoning we applied to the Motion to File Out
12 of Time. We realize that some of this is late, and we also
13 believe that development of an adequate record requires us at
14 least to give the Intervenor a chance to put on a direct case.
15 It also requires that you be informed enough ahead of time so
16 that your witnesses can address any matters their witnesses are
17 going to address.

18 MR. NEWMAN: There are, however, other policy
19 considerations, and I think that these have to be borne in mind
20 by the Board. This is a case which is supposed to be handled
21 on an expedited basis. Any kind of laxness in the enforcing
22 of the rules of proceeding --and I think the Chair itself
23 recognized that in the language of its March 2nd order when it
24 said that "no modifications shall be granted absent a strong
25 showing of good cause." I think to deviate from that now means

1 to let this proceeding become more and more lax in terms of its
2 rules, in terms of its timing, in terms of its completion. And
3 I do not believe that that is consistent with the Commission's
4 mandate.

5 I think that if that occurs, then a substantial
6 question is raised as to whether or not this Board, particularly
7 in light of the fact that it is unable to sit this summer, whether
8 this Board can truly finish up this hearing on an expedited
9 basis.

10 CHAIRMAN BECHHOEFER: We are anticipating that it
11 might be possible to finish up the hearing by the first week
12 in July.

13 MR. NEWMAN: I submit to you, sir, that if we
14 permit witnesses to be identified late, as is being proposed
15 right now, that we are letting ourselves in for an indefinite
16 period of delay here. There is no recourse for the exception
17 to the Board's ruling and every good cause to execute the
18 Commission's mandate, and that means sticking to the schedule
19 that was well thought out and set out in December.

20 MR. GUTIERREZ: Mr. Chairman, the Staff is not
21 opposed to the Intervenors identifying witnesses they have today
22 or within the next ten days. I think we still can expedite
23 the proceeding and prepare adequately for May. I think the
24 question to be put to the Intervenors is, one, as of today
25 do you have witnesses or set a date within the next ten days to

1 provide the parties with the names of witnesses.

2 I think that would be consistent with trying
3 to accommodate the Intervenor's and also meeting the May
4 schedule.

5 MR. NEWMAN: But the matter of identifying
6 witnesses is just but the first stage. Once the witness is
7 identified, there needs to be a period allowed for deposing
8 those witnesses, and this is a never-ending chain of delay that
9 the Board will be setting in motion here by bending from its
10 rule and jeopardizing the completion of this decision.

11 CHAIRMAN BECHHOEFER: The alternative, though,
12 is creating, perhaps, an incomplete record loaded with one
13 side rather than another, and I don't think the Commission had
14 that in mind either. Now, we won't tolerate any extensive
15 delays, but we are trying to find out whether certain witnesses
16 could be identified in the relatively near future. The ten days
17 suggested by Mr. Gutierrez is perhaps a reasonable time,
18 excluding the names that they have not yet received of the names
19 of the persons interviewed by the Staff, whose names they don't
20 know yet. They haven't had a chance to talk to them.

21 MR. NEWMAN: I think that a development of this
22 type leading to the identification of new witnesses at this late
23 date really puts the entire remainder of the schedule that we've
24 been talking about in jeopardy. I do not believe that, for
25 example, that you can reasonably expect testimony to be filed

1 on April 23rd which fairly reflects the information that we will
2 have received by a deposition of a witness sometime after the
3 next ten days. This is -- I caution that this is a matter of
4 your opening a Pandora's box here, and this hearing is never
5 going to have a lid on it.

6 Ample opportunity has been given to everybody
7 in this proceeding to identify witnesses, to bring matters
8 before the Board. And the idea that an important matter like
9 this, on the basis of a pleading filed 10:45 in the evening
10 before the day of the pre-hearing conference, the Board would
11 upset the entire schedule which it had previously planned,
12 I think, is just not consistent with the Commission's mandate,
13 nor really with the instructions to Boards to get on with the
14 proceedings and get them over with.

15 MR. SINKIN: Mr. Chairman, it is our position that
16 the Chair has ruled that we had good cause for the late filing
17 and that all Mr. Newman is talking to are irrelevant matters
18 that delay the proceedings. I think we might be served better
19 if we took up the topic of the names you mentioned last
20 November. All you said, as I remember it, is you've given the
21 list of names in your pleadings, and the Board would be
22 interested in hearing from those people.

23 The first question we really wanted to deal with
24 here is whether the Board in any way indicated that they intend
25 to call those people as witnesses if we do not. If the Board

1 intends to call them as witnesses, the problems are simplified,
2 but we then need to clarify what the status is of a witness
3 called by the Board.

4 I would point out that in the list you mentioned
5 are Mr. Charles Singleton, Mr. T. K. Logan and Mr. Jack Duke.
6 If John B. Duke on page 10 of the witnesses identified by the
7 Applicants is Jack Duke, those three people will be called by
8 the Applicants. I will need some clarification in that my
9 understanding of the rules at the moment is that if the
10 Applicants call a witness, we may only question that witness
11 about matters raised on direct examination. Does that rule
12 apply to this hearing procedure? What I'm thinking is --

13 CHAIRMAN BECHHOEFER: Normally that rule does
14 apply.

15 MR. SINKIN: Normally it does apply.

16 CHAIRMAN BECHHOEFER: Yes.

17 MR. SINKIN: Because the individuals they are
18 calling are named by us in our pleadings regarding certain
19 contentions. If they call them and they do not testify to
20 anything related to those contentions, we are then in the
21 position of having to call them, too, to testify to those
22 matters. And if that is the situation, I think the only -- the
23 most appropriate assumption is that they will not be attesting
24 to those matters, just so we are both protected. And if the
25 Board is really interested, particularly in the evidence of

1 those people, the Board seriously consider calling them as
2 Board witnesses.

3 Then another problem is if you do call Board
4 witnesses we are just seeking clarification about prefiled
5 testimony. If the Board calls a witness, does that mean that
6 the Staff of the NRC meets with the witness to develop prefiled
7 testimony if that witness is not NRC Staff?

8 CHAIRMAN BECHHOEFER: I would think the witness
9 would develop his own testimony.

10 MR. SINKIN: And it would just be cross
11 examination by the various parties.

12 CHAIRMAN BECHHOEFER: And the Board.

13 MR. AXELRAD: Mr. Chairman, if the Board were
14 to call a witness, it was my assumption that the witness would
15 be called so that the Board could ask him whatever question
16 the Board wanted, and then the examination by any other parties
17 would be limited to the questions that were raised by the Board.
18 I don't understand the concept of testimony being developed by
19 a witness called by the Board, other than the response to a
20 Board question.

21 CHAIRMAN BECHHOEFER: Well, I haven't investigated
22 fully how we would handle that. Nobody on the Board so far has
23 called a witness, so that --

24 MR. AXELRAD: Well, that is a rule as I understand
25 it. To the extent that the Board calls a witness, it is

1 strictly for the purpose of the questions the Board wants to
2 ask of that witness and none of the other parties then have the
3 ability to ask questions other than within the scope of the
4 examination made by the Board.

5 MR. NEWMAN: Likewise, in proceedings I have been
6 in, it may not be a situation where there is a Board witness,
7 but after a witness has completed his testimony, if there are
8 further independent Board questions, the scope of further
9 examination is limited to the scope of the questions addressed
10 by the Board. The policy is exactly the same.

11 CHAIRMAN BECHHOEFER: That rule has been applied.

12 MR. NEWMAN: That's right. And it applies here.

13 MR. REIS: Your Honor, the regulations of the
14 Commission look generally to prefiled testimony. As a result,
15 they don't look to calling adverse witnesses. However, prefiled
16 testimony is not a necessity in the rules of the Commission.
17 However, it is generally looked for, and I think in a situation
18 where you would have adverse witnesses it would not be
19 necessarily appropriate to have prefiled testimony in that I
20 don't know how you would get the witness to prefile testimony
21 if you called somebody by subpoena. And there is provisions
22 in the rules to subpoena witnesses.

23 MR. SINKIN: That's precisely the problem I
24 was raising, Mr. Chairman. If you were intending to subpoena
25 persons on a list that you named, what is their status? What
is required of them?

1 CHAIRMAN BECHHOEFER: Well, the Board has made no
2 decision at this time whether we would call any of those
3 witnesses. The Board had noted before that those witnesses had
4 been responsible for certain information which we thought
5 looked relevant to the proceeding. Whether we would call any
6 or all of them, we can't say. We were assuming, for instance,
7 that Mr. Sinkin would be your witness --

8 MR. SINKIN: Mr. Swayze.

9 CHAIRMAN BECHHOEFER: I'm sorry. Everybody is
10 having a problem of changing Sinkin to Swayze -- Mr. Swayze
11 would be your witness.

12 MR. SINKIN: Quite frankly, Mr. Chairman, one
13 of the things I'm seeking clarification on here today is what
14 to tell Mr. Swayze. I plan to write him a letter based on these
15 proceedings, and I would like to have a feel for what to tell
16 him.

17 Now, if the Board intends to subpoena him, I
18 would like to be able to tell him that the Board intends to
19 subpoena him and what his possible options are in terms of not
20 being subpoenaed by agreeing to another procedure or being
21 subpoenaed, what it is he would face.

22 CHAIRMAN BECHHOEFER: The Board would certainly
23 prefer him to be your witness.

24 MR. SINKIN: Well, let us speculate for a moment.

25 CHAIRMAN BECHHOEFER: And particularly so that you

1 could shape the --

2 MR. SINKIN: -- the prefiled testimony and direct
3 examination? I realize that. I would much prefer it that way.
4 Mr. Swayze said in his deposition taken by the Applicants he
5 no longer intended to be a witness in these proceedings. He
6 certainly is entitled to change his mind. I have not seen any
7 real indication that he intends to change his mind.

8 We do not intend to subpoena him. I will state
9 that for the record. We are not going to subpoena Mr. Swayze.

10 The leaves us in the situation, then, that if
11 he does not agree to be called as a witness by us, his
12 testimony will not be heard by this Board unless the Board
13 issues a subpoena for him.

14 CHAIRMAN BECHHOEFER: Well, the Board would --
15 one of the reasons we wanted your list of witnesses in a
16 relatively short time was to determine what additional
17 witnesses, if any, we might want to call. The Board does
18 think that Mr. Swayze should be a witness. We would prefer to
19 have him as your witness.

20 MR. SINKIN: So would we, Mr. Chairman.

21 CHAIRMAN BECHHOEFER: We would be prepared to
22 issue a subpoena for him if you cannot get him to appear for
23 your witness. But the one trouble would be that we would have
24 certain questions and that might limit the scope of any further
25 examination.

1 MR. SINKIN: On this point, Mr. Chairman --

2 CHAIRMAN BECHHOEFER: There could be exceptions
3 granted on special showing, but --

4 MR. SINKIN: Special showing.

5 If you notify us that you intend to call a Board
6 witness, is it permissible for us to suggest a line of
7 questioning for that witness to supply a copy of depositions
8 taken of that witness to you to assist in the formulation of
9 your questioning?

10 CHAIRMAN BECHHOEFER: Well, I was going to state
11 that before Mr. Swayze appeared, we would want to see his
12 depositions.

13 MR. SINKIN: Fine.

14 CHAIRMAN BECHHOEFER: But we would prefer that
15 you call him as a witness and have prepared testimony which
16 addresses the matters that you feel are relevant.

17 MR. SINKIN: Okay.

18 MR. AXELRAD: Mr. Chairman, may I get a
19 clarification? Are you suggesting that the Board would want
20 to look at extra record material before calling a witness?
21 Depositions are not part of the record that I am aware of.

22 CHAIRMAN BECHHOEFER: They are not part of the
23 record. They might provide us guidance for examination of a
24 witness. If the person were our witness, we would have some
25 problem with knowing whether our questions were broad enough.

1 MR. AXELRAD: Well, I'm not sure that justifies
2 the Board receiving ex parte communications, which is what
3 the status is of a deposition taken by other parties.

4 CHAIRMAN BECHHOEFER: I think the rules require
5 that the depositions will be filed with the Commission in any
6 event.

7 MR. AXELRAD: What depositions, Mr. Chairman?

8 CHAIRMAN BECHHOEFER: Any depositions.

9 MR. AXELRAD: I'm not aware of such a rule.

10 CHAIRMAN BECHHOEFER: We are rather routinely
11 sent depositions on other cases, rulings on particular matters.
12 But --

13 MS. BUCHORN: As a matter of fact, Mr. Chairman,
14 there have been three depositions made.

15 MR. REIS: It's not ex parte if all parties have
16 notice of what was being said.

17 CHAIRMAN BECHHOEFER: That's correct.

18 Anyway, I don't believe that it would be ex parte
19 contact if all parties had copies. The deposition is not part
20 of the record unless it is attempted to be introduced by somebody.
21 And that's specifically provided under Section 2.74A(A), (G).
22 You could not rely on any material in the deposition in rendering
23 a decision unless it were introduced into the record. I was
24 thinking in terms of formulating questions for the witness. I
25 don't think there is any legal objection to that course of action.

1 To get back to dates, could you supply the names
2 of those dates -- names of the witnesses within that ten-day
3 period, other than from the Staff's list?

4 MR. SINKIN: Right. Now we're sort of back to
5 the problem of cooperation from the Office of Inspection and
6 Audit. We have named people. You know, it's not altogether
7 clear that we haven't given names. There are people named in
8 our interrogatories all over the place, but people like Mr.
9 Larry Perry and Mr. James Marshall, we might be able to find
10 him. We have been unable to locate Mr. Larry Perry. It's
11 entirely possible that the Office of Inspection and Audit, in
12 following up on the Show Cause Order, found Mr. Larry Perry
13 since he was central to a major I&E report, to discuss matters
14 with him. It's entirely possible that since he was fired
15 immediately after the I&E report was issued, they did not
16 consider it essential to talk to him. But if there is any
17 possibility they could give us a last-known address, we can
18 get in touch with him to find out if he is willing to be a witness.

19 That's the kind of problem we have. I would be
20 happy to provide a list of people we would like to call as
21 witnesses without necessarily being able to say we will
22 definitely call them as witnesses.

23 I guess -- Do we have that option? If we say
24 we're going to call five people on the day of the hearing, if
25 we really have only been able to produce two, then we just don't

1 call the other three? Is that not what would happen?

2 CHAIRMAN BECHHOEFER: It would be on the day you
3 had to file the testimony.

4 MR. SINKIN: The April 23rd date --

5 CHAIRMAN BECHHOEFER: Right.

6 MR. SINKIN: --we had to file their testimony.

7 CHAIRMAN BECHHOEFER: That, of course, would be
8 permissible.

9 MR. SINKIN: Well then, I think we can provide a
10 list of people whom we would expect to call, perhaps at least
11 a sketch outline of what it is they will testify -- well, we
12 don't have to do that until the 23rd, but we could provide a list
13 of people --

14 CHAIRMAN BECHHOEFER: We did ask for the substance.

15 MR. SINKIN: The substance. Okay. A sketch
16 outline --

17 CHAIRMAN BECHHOEFER: Yes.

18 MR. SINKIN: --what they are likely to testify
19 to. And we will try to provide a last-known address or telephone
20 number that we have for the Applicants to make their best
21 efforts to find the witness. I hope that if they find them and
22 we haven't, they will let us know. But we also were just
23 wondering about cooperation from the Office of Inspection and
24 Audit, whether that's --

25 CHAIRMAN BECHHOEFER: Well, I would doubt that

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1 Mr. Reis or Mr. Gutierrez would really know anything about --

2 MR. REIS: At this point, I don't really know
3 whether we have any of those addresses.

4 MR. SINKIN: I will submit a letter to Mr. Reis
5 detailing people we would like to have a last-known address on,
6 and he can either respond with a last-known address or raise
7 an objection for any reason.

8 Furthermore, regarding the Office of Inspection --
9 well, that really deals with NRC witnesses. Regarding our
10 witnesses, I think what I have said so far pretty much covers
11 what CCANP would intend to do, that we will intend to present
12 a list with at least a rough sketch, knowing that some of the
13 people we are talking about we are unable to locate. Just so
14 that's clear to everybody. But we will be making our best
15 efforts in seeking to cooperate with NRC to locate them.

16 CHAIRMAN BECHHOEFER: That would be at the same
17 time that you provide the answers to the other interrogatories
18 that we ordered.

19 MR. SINKIN: That's the ten-day period?

20 CHAIRMAN BECHHOEFER: Yes.

21 MR. SINKIN: Oh, sure.

22 CHAIRMAN BECHHOEFER: Okay. Would it be useful
23 at this time for the parties to be able to discuss which of the
24 sessions we have outlined thus far would be appropriate for
25 particular witnesses, or is that --

1 MR. SIAKIN: Mr. Chairman, before we get to that,
2 Under Item VII on the agenda, we did have some discussion
3 regarding the NRC witnesses and, just to finish up that item,
4 Mr. Stello in Bay City did say that the Office of Inspection
5 and Audits was conducting an independent investigation related
6 to the Order to Show Cause, and the -- Mr. Fortuna of the
7 Office of Inspection and Audit, in reporting to the Commission
8 on April 15th, in the transcript he's recorded as saying
9 that the Office of Inspection and Audit "is finding more of the
10 same" regarding intimidation and harassment but not anything
11 particularly different.

12 Well, if the Office of Inspection and Audit
13 has more of the same that is not contained in the Order to Show
14 Cause, we would be interested in a similar revelation of what
15 it is the Office of Inspection and Audit found. In that case,
16 I don't know about insisting on any witnesses they interviewed.
17 but at minimum we would expect the NRC witness list to include
18 someone from the Office of Inspection and Auditors if that
19 office has indeed conducted an independent investigation. And
20 I don't see on their list anyone so identified.

21 MR. REIS: We don't intend to and we will not.

22 MR. SINKIN: Could you explain that to me?

23 MR. REIS: All right. That's my statement.

24 We do not intend to put on anybody. I'm developing the case.
25 I don't think I have to account to you how I develop my case.

1 I don't intend to supply anyone from the Office of Audit and
2 Inspection.

3 MP. SINKIN: Well then, Mr. Chairman, I guess
4 we would be compelled to press a similar motion for the
5 identities of the witnesses directed to the Office of
6 Inspection and Audit, assuming that apparently they have inter-
7 viewed different people than the I&E office. I don't know what
8 the clear division is there. There seemed to be in the
9 transcript of the April 15th meeting a very clear division between
10 the Office of Inspection and Audit and what they were finding
11 and who they were talking to and the Office of Inspection and
12 Enforcement.

13 If there are further witnesses that are solely
14 in the hands of the Office of Inspection and Audit, I think
15 we would be entitled to those witnesses on a similar basis
16 as noted in the Office of Inspection and Enforcement.

17 MR. REIS: Mr. Chairman, as you are aware,
18 the Office of Audit and Inspection is an arm of the Commission
19 rather than an arm of the NRC Staff. I don't represent the
20 Office of Audit and Inspection for one thing.

21 The other point is, he is talking about
22 something he learned last September before he even hired those
23 attorneys. I think it's totally out of time and I strongly
24 object to it coming up at this time. I think this is a method
25 for delaying the hearing, and I strongly object to it. I think

1 this is a very late date to raise any of these matters concerning
2 the investigation, and it is also irrelevant, let me say, to the
3 licensing proceeding in that the I&A investigation is looking
4 at other matters.

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5 MR. SINKIN: Mr. Chairman, I don't believe --
6 we received the transcript of the proceedings of the Nuclear
7 Regulatory Commission meeting on April 15, 1980 on December 12,
8 1980, and my first opportunity to review that transcript was
9 last week. And I was just struck by the statement of Mr.
10 Fortuna in the transcript that indicate that in cooperation with
11 the Office of Inspection and Enforcement, his office was
12 conducting an independent investigation. It would seem to me
13 what they were doing was trying to follow up any additional
14 leads, any additional leads that had been developed by I&E,
15 and find out if there was any more information that I&E should
16 have. And he characterized what he was finding as "more of the
17 same," about intimidation and harassment. So apparently, the
18 Office of Inspection and Auditor found information about
19 intimidation and harassment.

20 MR. NEWMAN: Mr. Chairman, I think this scam
21 has gone on long enough here. Mr. Sinkin has indicated that he
22 has had this transcript of this meeting since December 1980.

23 MR. SINKIN: That is just not correct. I have
24 not had. I said it was received by CCANP on December 12th. I
25 have not seen it.

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1 MR. NEWMAN: Mr. Sinkin is the only known member
2 of CCANP to me, aside from Ms. Eastman, and there has to be
3 some explanation why, if the document was in his possession in
4 December of 1980, we hear about his request for that document
5 or information in that document on March the 18th. I think what
6 Mr. Reis has said is absolutely correct. This is horrendously
7 out of time. And, again, Mr. Chairman, it's an illustration
8 of how this proceeding will be forced to go if these motions
9 out of time are allowed consistently.

10 This hearing is not going to be brought to an
11 orderly close in a timely fashion. I told you we were opening
12 a Pandora's box here by entertaining each of these late-filed
13 motions which have no justification.

14 MR. REIS: I'm getting more and more concerned
15 also, Mr. Chairman, that we are delaying things and that things
16 are being pushed on.

17 As you remember, in our previous pre-hearing
18 conference we had extensive discussion about scheduling and
19 making sure we had time to get everything in. Now we look to
20 the dates and we work backwards from those dates so that we
21 could schedule everything.

22 MR. NEWMAN: That's right.

23 MR. REIS: Now we're coming and reopening
24 everything again and looking at everything again. Certainly,
25 Mr. Sinkin, as an officer of CCANP, had a duty to make sure

1 that everything was going forward and that those dates were
2 being met. The fact that he didn't check on it until the end
3 of February is his own dereliction. I don't think we have to
4 go beyond and point to what may have come out in a meeting of
5 last April or might have been referred to in meetings where
6 Mr. Sinkin was present in August. And again, something in the --
7 actually, the custody of CCANP since December and suddenly new
8 things are raised.

9 Again, we have a hearing date of May 11th, and I
10 think we ought to move forward to that.

11 MR. NEWMAN: And I don't believe that that hearing
12 date of May 11th can be satisfied if these untimely motions
13 with respect to identifying NRC Staff witnesses, with respect to
14 identifying the Inspection-Audit people are permitted.

15 And, Mr. Chairman, I believe that if this goes
16 on much longer, if we do see these further opportunities for
17 delay, I think that the Board and I think we will ask the Board
18 to certify to the Commission whether on the schedule that
19 will have to be followed in order to complete this proceeding
20 the mandate of the Commission is being followed.

21 MR. REIS: Mr. Chairman, may I be heard on one
22 matter?

23 I&A, as I said, is an arm of the Commission and
24 not of the NRC Staff. It does not look into matters from the
25 point of view of licensing but as a check on the NRC itself.

1 The NRC is not on trial here. We are considering a licensing
2 matter and only a licensing matter.

3 Therefore, I think what I&A, or A&I, might have
4 uncovered is totally irrelevant to these proceedings. I don't
5 think that we should have any more delays along this line, and
6 I think we should just go forward.

7 Certainly, Mr. Sinkin was to prepare or CCANP was
8 to submit their witness list contemporaneously at the time we
9 submitted our list. At that point, if he felt that there should
10 be other witnesses on his list, he had an opportunity back
11 then and an obligation back then to notify and put those people
12 down. It's not after he sees our witnesses that he comes
13 forward and says there should be additional people. That's
14 an addition to it.

15 And further, again I strongly object to any people
16 identified in the A&I report because the purpose of that is
17 totally different. It will only confuse the hearing rules
18 of the Board. I don't even know whether this Board has any
19 jurisdiction over A&I at all or anything A&I did.

20 CHAIRMAN BECHHOEFER: The Board is going to not
21 include A&I in the same order as I&E. I&A is, as Mr. Reis said,
22 an arm of the Commission itself and is not technically involved
23 in licensing, and has an overview of the Commission activities.
24 In fact we recognize that their investigation could have
25 developed other facts but we would trust I&A to the extent that

1 they were significant, to advise the Commission. I&A would
2 not advise us. They would advise the Commission itself. The
3 Commission will have full review over any order we have. And
4 to the extent they wish to rely on additional information
5 provided by I&A, that would be the proof for them to do so.

6 I'm not even sure that we could issue an order
7 which would affect I&A.

8 MR. SINKIN: I wasn't aware of that problem.

9 CHAIRMAN BECHHOEFER: I have real problems on
10 that.

11 I haven't made any definite decision yet.

12 MR. NEWMAN: Mr. Chairman, if that entire
13 matter of the witnesses available to be entered is still open,
14 or even if it's not, I'm going to ask as a matter of
15 reconsideration that the time period specified for identifying
16 prospective witnesses by the Intervenor be no later than next
17 Monday, this coming Monday. I know of no way to meet the
18 schedule set out in the Board's order and otherwise comply with
19 the Commission's mandate other than by getting the identity of
20 those prospective witnesses so that we can initiate depositions
21 immediately. It is the only way that that's possible while
22 keeping to the schedule that the Board has established.

23 I want to know those witnesses on Monday.

24 MS. BUCHORN: Well, Mr. Chairman, I don't think
25 that we have to sit here and sit still for his threats.

1 MR. NEWMAN: Mr. Chairman, I don't want an empty
2 list.

3 MS. BUCHORN: Mr. Chairman, this is the problem
4 that we have been encountering all along.

5 MR. NEWMAN: Look, Ms. Buchorn, you say you
6 are not going to produce any witnesses.

7 MR. SINKIN: She did not say that. She said if
8 she produces witnesses, she will identify them to you.

9 MR. NEWMAN: Ms. Buchorn indicated yesterday
10 that she had no witnesses. All right. Now, the record as it
11 stands now is that Mr. Sinkin indicates that he believes he
12 will have witnesses. Those witnesses must be identified no
13 later than Monday if we are to keep to the schedule which
14 involves the filing of testimony by April 23rd, and I don't
15 want an empty list. I want that list to reflect the fact that
16 Mr. Sinkin has spoken with the individual involved and he is
17 indeed at least a prospective witness. We don't want to go
18 chasing down blind alleys.

19 It's time to get some order into this proceeding,
20 and one way to do it is to get those names before us on Monday.

21 MR. SINKIN: Mr. Chairman, I believe the
22 Chairman's name is Bechhoefer in these proceedings.

23 We feel that we are prepared to identify potential
24 witnesses. We will indicate to the Applicant whether we have
25 secured their agreement or not, and we will provide to the

1 Applicant their last known address and telephone number to the
2 best of our ability. I think we can do that fairly expeditiously.
3 It might be more to the Applicant's advantage if we had a few
4 more days so that they could be more definite. We might be able
5 to say, "These people will definitely be witnesses." We might
6 just send him a shotgun list of everybody in our pleadings.

7 MR. NEWMAN: I don't want a shotgun list. I want
8 a list of the people that he can talk to in the next three
9 days, to identify which are prospective witnesses for CCANP.

10 That's the burden. You've imposed a burden
11 on this entire hearing and on every party in this proceeding.
12 Now it's time for you to assume a burden; namely, the burden
13 of actively going out and identifying whether or not you really
14 have witnesses or whether you intend to continue to prosecute
15 this proceeding through the press. Now, let's turn up here with
16 real witnesses under oath with real testimony, and let's get
17 some realistic investigation of that, Mr. Sinkin, so that we can
18 have that identification on Monday.

19 MR. SINKIN: I'll give you a gavel for your
20 next birthday, Mr. Newman.

21 MR. GUTIERREZ: Excuse me. Mr. Chairman, I
22 think everyone's position has been heard on this matter, and
23 this would be an appropriate time for the Board to discuss how
24 it's going to rule.

25 CHAIRMAN BECHHOEFER: The only thing I wanted to

1 point out was whether Mr. Sinkin will supply this information by
2 Monday. If it's going to be a meaningless exercise, a few more
3 days might be necessary, in which case we might give you
4 an extra week to supplement your testimony. There are ways of
5 doing this.

6 MR. SINKIN: There are remedies, yes, Mr. Chairman.

7 MR. NEWMAN: There are indeed remedies. All of
8 them involve a stretchout of the proceeding.

9 CHAIRMAN BECHHOEFER: No, that's not correct.
10 That is not correct.

11 MR. NEWMAN: Well, we'll see how it works out,
12 Mr. Chairman.

13 MR. SINKIN: Mr. Chairman, as I said earlier,
14 I tried at lunch to contact one of the prospective witnesses.
15 Unfortunately, his phone number is unlisted. So I guess it's
16 going to require some kind of trick on the part of somebody
17 to go to his home to ask him if he is willing to be a witness.

18 Regarding other witnesses, we have again last
19 known phone numbers and that sort of thing, where there might
20 be someone who might know where they are. I would attempt
21 to run those down.

22 If the Applicants want, I will send them on
23 Monday the names of everyone I definitely intend to call as a
24 witness. That might be no one at that time. I'll send them
25 another letter on Tuesday, another letter on Wednesday. The

1 minute I get any information on someone that is a prospective
2 witness that we most definitely intend to call, I'll send it to
3 them. I have no desire to hamper their efforts. I understand
4 their rights. It's just it seems to me a meaningless gesture
5 for me to name a bunch of people that we don't know whether
6 they are willing to be witnesses and, therefore, whether we can
7 call them and send them off on a wild goose chase that they're
8 worrying about.

9 MR. NEWMAN: Mr. Chairman, Mr. Sinkin has had
10 more than three years now to identify witnesses who might be
11 used in this proceeding. And I think that if we are to extend
12 that time now, that he should be under some obligation, some
13 burden to come forward with a serious list of prospective
14 witnesses. That means that he's got to do some work over the
15 next three or four days so that the burden doesn't entirely fall
16 on the Board or the parties to this proceeding.

17 We're not going to accept a buckshot list.
18 That's now what we're asking for. We're asking for a serious
19 effort in a very, very timely fashion to identify witnesses
20 who are likely to be produced.

21 CHAIRMAN BECHHOEFER: We had set the ten days.

22 MR. NEWMAN: The ten days is too late, Mr.
23 Chairman.

24 MR. SINKIN: Mr. Chairman, what the Applicants
25 are trying to do is burden us with an unconscionable directive

1 from the Chair so that we will be prohibited, essentially,
2 from finding, locating, talking to witnesses who indeed were
3 identified to them in our pleadings on many different occasions
4 as the persons that were the sources of our information,
5 identified to them throughout our pleadings. There are dozens
6 of names, and those names are old. It has been quite some time.
7 We had no idea when this hearing was going to come up until last
8 November. It was pushed into May of this year.

9 So we will do our best to provide them with
10 identities. We discourage on the part of the Board putting us
11 in a position of the Applicants coming back to you on Monday
12 and saying, "We didn't get a list. They aren't entitled to
13 witnesses." Then we'll be right back to the same thing again,
14 and that is what Mr. Newman's attempting to do.

15 And I would point out to the Board that I take
16 exception to Mr. Newman's characterization of my effort to
17 discover NRC witnesses as a "scam." I take exception to that
18 remark. And I would also point out that as soon as I learned
19 of the difficulties of our attorneys, I did my best to prepare
20 for this hearing. During the past seven days, I believe I
21 have missed two nights' sleep and we were able to file these
22 motions you see here before you and create a record of substance
23 here today. I think we have raised issues that are serious.
24 I think that the effort of Mr. Newman to limit these proceedings
25 this afternoon to five minutes apiece was an effort to cut us

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1 off.

2 I think we have shown that we are raising are
3 substantive matters of importance, that we have shown good
4 cause for the problems that have arisen outside of our control.

5 CHAIRMAN BECHHOEFER: Well, the Board has decided.
6 We are going to stick with the ten day rule. We will give the
7 Applicants and the Staff an additional seven days to file
8 supplementary testimony which would deal with any new material
9 produced by their witnesses.

10 We would expect, though, a meaningful list at
11 the end of that ten-day period.

12 MR. SINKIN: I understand.

13 MR. NEWMAN: I want it understood, Mr. Chairman,
14 that we have not --

15 CHAIRMAN BECHHOEFER: This will not delay the
16 proceeding at all.

17 MR. NEWMAN: Well, I certainly can't warrant
18 that. If there were witnesses who are identified and it takes
19 a while to get their depositions, then it will take some time
20 to formulate the evidence based upon the information in those
21 depositions.

22 CHAIRMAN BECHHOEFER: We're giving them five
23 days more than you suggested and we are giving you seven days more
24 to file your supplementary testimony.

25 MR. NEWMAN: The task involved with just

1 identifying a name as compared with the task involved in taking
2 a deposition is quite different and quite substantially different.

3 CHAIRMAN BECHHOEFER: Yes, I recognize that, but
4 I also recognize that if we impose the five-day rule, you've
5 got the names. Then you would have had seven days less to
6 provide supplementary testimony on that, so that we are giving
7 you two extra days. The testimony still will be filed close
8 to two weeks -- or two weeks before the start of the hearing.

9 MR. NEWMAN: And when is the Intervenor's
10 testimony to be filed, Mr. Chairman?

11 CHAIRMAN BECHHOEFER: The Intervenor's testimony
12 is going to be filed at the same time the other persons'
13 testimony, with the exception of that based on the Staff -- the
14 names they haven't gotten yet from the Staff.

15 MR. NEWMAN: And as I understand it, then, if the
16 Staff provides the names of the witnesses sometime in the
17 next several days --

18 CHAIRMAN BECHHOEFER: If it's in the next
19 several days, they will follow the same schedule. If it's
20 substantially later, we might have to consider something
21 additional. Maybe they could have the additional seven days
22 as well.

23 MR. NEWMAN: So in effect, we really don't know
24 whether this proceeding really can be completed because it
25 may take some time for the NRC to make a determination as to

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1 whether or not those identities should be divulged. And what
2 the Chair is saying, as I understand it, is from that point forward
3 at whatever point the NRC identifies, if it determines to identify
4 those individuals, there will be some additional period
5 thereafter running during which time the Intervenors will be
6 allowed additional time to prepare and submit testimony to this
7 Board, even if that occurs in July or August. Am I correct?

8 CHAIRMAN BECHHOEFER: Well, we would have to
9 consider that, but if it's likely to lead to additional
10 information, yes, because we would -- if we know that there
11 is additional information, we are not going to render a
12 decision.

13 MR. NEWMAN: And the matter stands as well as
14 it stood yesterday, that the Board cannot sit in July and
15 August. Is that correct?

16 CHAIRMAN BECHHOEFER: Well, there is some
17 flexibility in there, but I understand that August is out, not
18 because of me, and July is largely out, although it's subject
19 to some change. So that it's not completely locked in.
20 July is tentatively out, but it's possible that it would be back
21 in, depending on the length of certain other proceedings.

22 MR. SINKIN: Mr. Chairman, just to have a com-
23 plete record, in the view of CCANP, the holding of the hearing
24 in September of this year will still be expedited. The formal
25 licensing hearing is not scheduled until at least 1983, until the

1 next delay in the project is announced, and we would oppose
2 any motion to reconstitute this Board.

3 CHAIRMAN BECHHOEFER: Well, the Board has -- the
4 panel has numerous people all of whom have some conflicts, and
5 I don't think it's possible to completely reconstitute every
6 Board to enable -- while this Board can hold hearings in May
7 and June, many other people can't.

8 MR. NEWMAN: Unless I misconceive it, this Board
9 is a special kind of board. It has an unusual, as far as I know
10 the first time a mandate of this type, to get on with an expedited
11 decision, direct order from the Commission, and it would seem
12 to me that if, as a result of the changes and alterations that
13 may have to be made as a result of the Board rulings today,
14 that this case cannot be brought to its conclusion, the
15 proceeding brought to its conclusion, before the end of June,
16 there is a good chance, in my view, that this Commission
17 mandate can't be fulfilled by the Board, and I believe we will
18 just have to examine that situation as it develops, but I
19 do believe that unless there is reasonable assurance that this
20 matter can be wrapped up before the end of June, I think we
21 have to seriously then consider what the alternatives are.

End 7.

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1 CHAIRMAN BECHHOEFER: I'm not saying we won't be
2 able to until we get into the hearing and see the amount of cross
3 examination required. We can't tell you right now whether the
4 time that we have set forth is too much or too little or whether
5 it's absolutely correct.

6 MR. NEWMAN: On the other hand, if we know that
7 the intervenors are going to obtain the names of prospective
8 witnesses thirty or forty days from now from the NRC, then at
9 that point I think it will be very clear. There will be no
10 question any longer as to whether this hearing can be completed
11 before the end of June. On any schedule I foresee, I can't
12 believe this Board can make that end date of June 30.

13 CHAIRMAN BECHHOEFER: That may be correct.

14 MR. NEWMAN: I think we will have to look at --

15 CHAIRMAN BECHHOEFER: That would be true of any
16 other boards, too. Just because some other board could sit in
17 July or still a different board could sit in August doesn't mean
18 that any of those other boards could sit in September or October
19 or November.

20 MR. NEWMAN: Right. I'm not suggesting that I know
21 what the schedules of the Board members are. I do believe,
22 however --

23 CHAIRMAN BECHHOEFER: I think there is a real
24 question of attempting to run it a matter of a month or two or so
25 to attempt to reconstitute boards to be able to meet every -- not

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1 even every know possibility. I mean you can hold boards available
2 just to sit down on a moment's notice. Any board that took over
3 would have an extensive job of studying the records and finding
4 out about what the information in it was. So I am just saying
5 that we would hope to end it by the end of June. But whether
6 that could be carried out, we don't know.

7 MR. SINKIN: Mr. Chairman, if we could just proceed
8 with the NRC witness list, I only have one other question; and
9 it's my understanding that Mr. Reis, in putting together the case,
10 you intend to have available at the hearing persons who can
11 address every I&E report that has been filed on the South Texas
12 Nuclear Project.

13 Is that a correct understanding, or is that an
14 incorrect understanding?

15 MR. REIS: Generally I think that's so. There
16 might be some inspector who was on an audit report that we don't
17 happen to have there. If you want to give me a list of people --

18 MR. SINKIN: I would say any report that we
19 mentioned in our pleadings, and we have any number of them in our
20 pleadings.

21 MR. REIS: Those, I think, we have.

22 MR. SINKIN: Those you have.

23 MR. REIS: We are not going to have each inspector
24 who was on every report.

25 MR. SINKIN: I understand.

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1 MR. REIS: We are going to have one of the
2 inspectors or somebody who can testify to -- the supervisory
3 inspector, one of the inspectors, something like that. If you
4 looked at our list, it did not include every inspector which was
5 referenced.

6 MR. SINKIN: I also noted it did not include every
7 inspector involved in the order to show cause.

8 MR. REIS: That's right.

9 MR. SINKIN: And it's not your intention to call
10 them all?

11 MR. REIS: No. We have the head of it, the
12 resident inspector who was on that team and the headquarters
13 contact person, the regional contact person; the resident
14 inspector was on that team, and Mr. Hays was head of that team.

15 MR. SINKIN: Fine.

16 Mr. Chairman, that concludes our questions on the
17 NRC witness list. We do have one question on the Applicant
18 witness list.

19 MR. AXELRAD: Mr. Chairman, before Mr. Sinkin
20 proceeds, let me obtain one clarification. I understand that the
21 Board has in essence ruled that it has required the NRC staff to
22 provide these names to the intervenors' counsel and to us and that
23 if the intervenors obtain that information within the near future,
24 they will still be required to file their testimony by April 23rd.
25 I would like to make sure that we button down those requirements,

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1 that if the staff does provide that testimony or those names of
2 individuals to the intervenors within, let us say, the next ten
3 days, that the intervenors will be required to identify any
4 additional witnesses shortly thereafter and to file that testimony
5 by April 23rd. We do need some semblance of regularity as to what
6 dates have to be met in order for this proceeding to still be able
7 to go on on May 12th, and we need to know exactly what dates that
8 the staff has to meet and what dates the intervenors will have to
9 meet.

10 I did not, in the Board's Order before, hear any
11 specific dates by which the staff, for example, had to submit
12 that information to the intervenors and to us.

13 CHAIRMAN BECHHOEFER: Would you ask us to apply a
14 different standard than we applied to your receiving substantive
15 testimony? We gave you an extra seven days for material received
16 during the ten-day period. Would you not--

17 MR. HUDSON: I don't believe that's correct, Your
18 Honor. You gave us an extra seven days because we were going to
19 have to go out and take depositions and develop testimony, and you
20 gave us an extra seven days in which to file testimony.

21 CHAIRMAN BECHHOEFER: They would also.

22 MR. SINKIN: Mr. Chairman, let me understand this.

23 CHAIRMAN BECHHOEFER: Or they might.

24 MR. SINKIN: If on Day One the NRC staff decides
25 that they will agree to the motion to compel and they provide us

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1 with 35 names or 40 names of people interviewed by the NRC in the
2 order to show cause and sworn statements of those people in the
3 order to show cause, I trust we will have a reasonable amount of
4 time to contact and discuss with those people any possible testimony
5 they would have. If it's a ten-day period, to reach 35 people
6 might be rather difficult.

7 MR. AXELRAD: Mr. Chairman, if you do not impose the
8 kind of deadlines that we are suggesting here, what you are saying
9 is that you do not want to go to hearing on May 12th.

10 CHAIRMAN BECHHOEFER: Are you telling me we
11 shouldn't impose the same deadline--

12 MR. AXELRAD: I thought our deadline was April 23rd.

13 CHAIRMAN BECHHOEFER: We gave you a one-week
14 extension because ten days was too much. You asked for five days,
15 and we said ten; but you add an extra week to file your testimony.
16 If they supply the names within ten days, should I not give them
17 the same time for filing their testimony?

18 MR. HUDSON: There is one difference, Your Honor.
19 We have supplied the names of our witnesses on time and have met
20 all the required deadlines, and the only reason that CCANP might
21 be getting names late is because they did not see to it that their
22 attorneys did their job or they did not do the job themselves. So
23 I don't know that they're entitled to the same extra seven days
24 that we got.

25 We got those days because we were being burdened by

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1 their failure to comply with this Board's orders. They're now --
2 you're trying to give them seven days because they failed to comply
3 with this Board's orders.

4 MR. SINKIN: Mr. Chairman, there has been no talk of
5 penalties or sanctions here. All I am saying is realistically
6 if I am handed a list of 35 people on Monday and told that by the
7 following Wednesday I must identify to the Applicants who on that
8 list are going to be our witnesses at the hearing, it sounds like
9 an impossible task to me. I mean I can't imagine that the
10 Applicants have been desperate to get our witness list within the
11 next days so that they can proceed to identify and depose those
12 people and carry out discussions with them under the Protective
13 Order and all of that, and they want those identities in a hurry
14 so that they can get ready. It's the getting ready that's the
15 problem.

16 I am now in their position. I will be receiving
17 names that will be totally unknown to me prior to my receiving
18 those names, and have to find those people, talk to them, decide
19 if they want to testify, and then decide to identify them for the
20 Applicants. It seems to me I need some reasonable time after the
21 dates the NRC actually delivers the names to me to make that
22 determination. And the ten days is not a reasonable time.

23 MR. REIS: Your Honor, I think all this discussion--
24 I don't want to make a formal motion to reconsider--but all this
25 discussion points to the fact why the motion--or why there should

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1 be reconsideration of the motion to allow the Applicant to file
2 out of time his request for names--the intervenor to file out of
3 time his request for the names. We did in our response very
4 definitely say that we dispute our withholding of these names.
5 "Fine. Here are your remedies. Take care of it." It was time to
6 take care of it.

7 We're going on and on now about times and try to
8 fit everything in before a hearing. Looking at the totality of
9 the circumstances of this case, I must ask the Board--and as the
10 afternoon draws on, it becomes more and more obvious to me--why
11 the Board should reconsider its motion to allow them to file out
12 of time.

13 MR. NEWMAN: If I may be heard on that, Mr. Chairman.
14 I believe that we have heard enough on the record this afternoon
15 to raise the most serious question--

16 CHAIRMAN BECHHOEFER: The Board really doesn't want
17 to--the Board is not going to reconsider that Order, and I don't
18 want to waste the time hearing about it. We do want those names.
19 The Board is going to ask for those names in any event. And if we
20 decide they have to be called, it's really going to tie up the
21 proceedings. So we think that half of those names supplied now
22 will expedite the proceedings. We want the names, and we want to
23 be able to make sure that the record is adequate.

24 MR. NEWMAN: Whatever the Board wants to do is
25 obviously within the Board's domain to decide.

BAJK8

1 CHAIRMAN BECHHOEFER: Right.

2 MR. NEWMAN: The question of whether or not inter-
3 venors should have an opportunity to identify new witnesses based
4 upon information which may be subsequently divulged them from the
5 NRC really raises the most serious questions as to whether or not
6 this proceeding can possibly get on and get over within anything
7 resembling an expeditious fashion.

8 I think Mr. Reis's observation is absolutely
9 correct, that through a pattern of rulings this afternoon, the
10 whole mandate of the Commission is jeopardized in these proceedings.

11 MR. SINKIN: Mr. Chairman, I see no mandate in the
12 September 22nd Order that says, "On June 30th, ye shall be
13 finished." It doesn't say a thing about when. It says "expedited."
14 Expedited has a great deal of leeway in it. It means earlier than
15 normal, and that's what we're doing. A normal hearing on this
16 operating license would be sometime in 1983, '84, '85, who knows
17 when. We're expediting it at least two years and that I consider
18 expedited.

19 MR. NEWMAN: Mr. Chairman, obviously the only reason
20 I am anxious for the June 30th date was because the Chair indicated
21 the Board had some difficulty in convening and sitting during July
22 and August, which meant to me that unless the proceeding could be
23 completed by June the 30th, it couldn't possibly be completed until
24 next fall.

25 Under no reading of the term "expedited decision"

1 could I come to the conclusion that September is within the
2 Commission's mandate. And I do believe that on that basis, Mr.
3 Chairman, I think we have to seriously consider whether, in light
4 of the rulings, in light of further opportunity to identify
5 witnesses and to submit later testimony, whether this Board can
6 fulfill the Commission's desire for an expedited determination.

7 MR. AXELRAD: Not only that, Mr. Chairman, every
8 principle of fairness would require that all the parties file their
9 testimony at the same time, leading to the hearing on May 11th,
10 one party not being permitted to receive the testimony of everyone
11 else and submit testimony later.

12 I do not understand under the Board's ruling how
13 the Board presently expects that all testimony will be filed
14 sufficiently in advance of the May 11th proceeding for the hearing
15 to start.

16 If the Board has specific schedules in mind, taking
17 into account its . . . ing to compel the Staff to provide names of
18 these witnesses, names of these individuals, if the Board does
19 have such a specific schedule and identifies it right now for all
20 the parties to conform to, and that schedule will lead to a proper
21 start of a hearing on May the 11th, then that's one thing.

22 I have not heard what the Board's schedule is
23 contemplated.

24 CHAIRMAN BECHHOEFER: The Board would like the staff
25 to supply the names immediately. The staff is obviously not going

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1 to do it, at least before I issue an order, and I have to get back
2 to Washington to issue an order, a written order. That probably
3 will not even happen in a day, though I hope I can get it out by
4 the end of the week.

5 MR. AXELRAD: Let's assume that it takes ten days
6 for the Staff to provide the information--let's assume five days,
7 whatever time Mr. Reis would say he would require to make the
8 decision one way or the other. I would like to see what the
9 schedule is, assuming that the staff does supply those names.

10 If the Staff doesn't supply those names, I assume
11 that the Board has to determine a completely different schedule.
12 And I don't know how the Board contemplates still being able to
13 start a hearing on May 12th.

14 CHAIRMAN BECHHOEFER: Well, the Board may be able
15 to start the hearing without having all the evidence and all of
16 the testimony served, but it would be better if we recognized to
17 have all the testimony prepared and submitted in advance.

18 MR. REIS: Certainly, certainly other hearings have
19 started without all testimony prepared and served.

20 CHAIRMAN BECHHOEFER: This is what I am aware of.
21 We would certainly like--this does not mean that we will not start
22 on May 12th.

23 MR. REIS: Well, Your Honor, in that connection,
24 in connection with the schedule, there was some talk earlier--and
25 before we leave it today--of hearing definitive issues all at once.

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1 The staff at least believes that the issues are so wrapped up that
2 each party should present its case in order rather than hearing
3 Issue A and then Issue B and then Issue C. The testimony will
4 overlap from panel to panel, encompassing many of the areas, and it
5 is not a matter that you could divide up the testimony to meet the
6 various--you cannot divide up the testimony just to meet various
7 enumerated issues.

8 MR. SINKIN: Mr. Chairman?

9 CHAIRMAN BECHHOEFER: Yes.

10 MR. SINKIN: We take a different view of that. We
11 would much prefer, in terms of presentation, that Issue A be taken
12 up, that the Applicants, the intervenors, the NRC staff present
13 their evidence on Issue A, present their cross examination and
14 their witnesses. We are intending to appeal your Order this
15 morning regarding our motion to alter the schedule of the hearing.

16 If we do get to the Nuclear Regulatory Commission,
17 speculating for a moment, and they do say that we are entitled to
18 a separate decision on Issue A, and that is how we read their
19 Order, then it would certainly be worthwhile to have prepared for
20 the hearings on that grounds so as to not to have to go back and
21 redo presentations of all parties to deal with that ruling.

22 Now, we feel that it is more logical to deal with it
23 on an issue-by-issue basis since some things have to do with the
24 program plan for operation; some things have to do with the past
25 actions of the Applicants. We would not encourage a giant

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1 mishmash of issues of witnesses presented, on all sorts of grounds.

2 You are aware of our objections to what went on in
3 the November hearing. It's another form of that objection here in
4 terms of putting the issues all together.

5 MR. AXELRAD: Mr. Chairman, if I may present the
6 Applicants' position on that matter.

7 As the Board has noted before, the Applicants have
8 the burden of proof in this proceeding. The issues and the
9 contentions are intimately interrelated. There are matters which
10 are brought up and a series of events which relate to one issue,
11 which relate to one contention. We have spent a tremendous amount
12 of time preparing our presentation for this proceeding.

13 We have 35 witnesses; we have prepared them in a
14 logical, sensible fashion so that we could have the panels of
15 witnesses address related matters. We could not possibly dissect
16 those into Issue A or Issue B or fairness contentions.

17 We think that if we are forced to proceed other than
18 on the basis that we wish to present our case--but we have the
19 responsibility and the burden of proof--that would do us a gross
20 injustice.

21 And going back to the matter we were starting to
22 address before, we would like, as we indicated in our letter, to
23 present our entire case before the staff and the intervenors, if
24 the intervenors are to proceed, have to present any of their
25 testimony.

DAJK13

1 And we believe that it would be grossly unjust if
2 we did have to proceed before the testimony of all the other
3 parties were filed. And the schedule which the Board is beginning
4 to consider, based upon this recent ruling on identification by the
5 NRC staff individuals, is starting to look as if it would require
6 us and perhaps the staff to provide all of our testimony on April
7 23rd or shortly thereafter, before the start of the May 11th
8 hearing, and then have to proceed, have our witnesses cross
9 examined without yet knowing what the testimony is, is going to be,
10 of witnesses of intervenors who, under the Board's present
11 schedule, may not even have to be identified before our witnesses
12 will be cross examined.

13 CHAIRMAN BECHHOEFER: Rebuttal is available.

14 MR. REIS: Yes. Mr. Chairman, I agree with the
15 Applicant to some extent, and then I diverge from him.

16 I agree that each party should put on their own
17 case. However, I think that the parties, as he has just indicated,
18 could supplement any other way. That is the way we prepared this
19 case, and that's the way we have prepared our testimony. We have
20 already prepared substantial amounts of testimony with the idea
21 that the matters generally are going on and that testimony will go
22 to all of the issues. We have not divided it up.

23 Our first panel generally deals with the past
24 history of Houston Lighting & Power; and Panel Two deals with the
25 Inspection Report 7919.

IAJK14

1 But there are matters that touch on all A, B, C, D,
2 E, and F in each of the panel's testimony, and we don't intend to
3 bring the panels on and off again and divide it up as to each of
4 those particular issues. And that's the way we prepared it.

5 If you look at the outline of our testimony, you
6 will see, though, that it is somewhat Panels One and Two generally
7 deal with past violations, but I can't say that it's completely
8 separate.

9 And, as I said, we have already done a substantial
10 amount of work in preparing the testimony and--

11 MR. SINKIN: Mr. Chairman, we considered, when
12 looking at the two lists side by side, from my impresssion of the
13 NRC list was that it was basically organized along the lines of
14 Issue A, Issue B, Issue C, and on down the line.

15 If you look at what they propose to talk about, it
16 seems to track the past allegations of the corrective actions and
17 then into the other matters at issue.

18 But the Applicants' presentations, on the other
19 hand, do not reflect any such division. The first witness is Mr.
20 Jordan, who goes directly to the response to the order to show
21 cause which would be Issue B. And the first panel goes directly
22 to current operations, and it is not until the third presentation
23 that you have the violations in the order to show cause coming up
24 at all; and then they are addressed in the same context as the
25 response to the order to show cause.

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1 It seems like the Applicants' presentations don't
2 track anything.

3 MR. AXELRAD: Mr. Chairman, I don't believe we have
4 to justify for Mr. Sinkin the fashion in which we are going to
5 present the case before this Board to consider whether or not we
6 are entitled to an operating license and where the Board has to
7 consider whether or not we are entitled to an operating license.
8 We are going to start off our case with the President, with the
9 testimony of the President of the Company who will be providing to
10 the Board information with respect to the Company's dedication to
11 the safe construction and operating of the plant.

12 We are going to provide testimony with respect to
13 the current activities of the Company in managing and operating
14 QA-QC program for the plant.

15 We are then going to have a very carefully selected
16 panel which will inform the Board of the past history of compliance
17 of this plant, of this Company, and the manner in which it has
18 proceeded to respond in a responsible fashion to everything that
19 was brought to its attention in NRC inspection reports and how the
20 Company responded to the order to show cause.

21 And I don't believe that we need to go any further
22 in Mr. Sinkin's accusations with respect to all logic in the
23 presentation of our case.

24 We are not going to be able to proceed with the
25 filing of testimony of 35 witnesses and over a dozen panels, which

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1 is what we have been preparing for the past several months' we are
2 not going to be able to change that substantially to meet some
3 arbitrary decision as to what kind of testimony we should be
4 preparing in presenting our case.

5 CHAIRMAN BECHHOEFER: Let me ask you a few questions
6 first. You seem to be treating the presentation of your panels as
7 if you had won the motion you filed before the last prehearing
8 conference, and we did set out some discrete issues.

9 Now, are your witnesses addressing those discrete
10 issues, or are they trying to take the approach that you took in
11 the letter which we did not adopt?

12 MR. AXELRAD: The witnesses are preparing informa-
13 tion which is addressed to all of the discrete issues. And at
14 present, the information which we present to the Board as part of
15 this record will enable the Board to make findings with respect to
16 all the issues before it.

17 CHAIRMAN BECHHOEFER: Are the witnesses going to be
18 able to tell us which issues they're addressing?

19 MR. AXELRAD: Mr. Chairman, if we may look at the
20 issues, the question of competence and characters and the issues
21 of noncompliances come up in Issue A, it comes up in Issue--I
22 don't have the issues before me--comes up in Issue B or C; there
23 are specific contentions within what the intervenors had had
24 admitted that relate to noncompliances which, if course, are the
25 very same thing that's addressed in Issue A.

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1 In Issue A and in Issue C and Issue D and in Issue
2 E, there are references to the order to show cause, there are
3 references to notice of violation. We are going to be presenting
4 information with respect to our response to the notice of
5 violation, with respect to our response to the order to show cause.

6 That information will be relevant to Issue A; that
7 information will be relevant to Issue C; that information will be
8 relevant to Issue D; that information will be relevant to Issue E.
9 How can we--we're not going to testify six different times with
10 respect to what we have done with respect to the order to show
11 cause and notice of violation. We are going to testify as to that
12 in one logical sequence.

13 We have a large number of panels addressed to the
14 three basic technical problems that have been raised--the backfill,
15 the concrete and welding--and we are going to have separate,
16 discrete panels discussing those matters. We cannot bring every-
17 body together all at one time just to address Issue A.

18 Almost all of the things that are covered in our
19 testimony cover different parts of Issue A. Issue A-2 refers to
20 instances of noncompliance. A number of those have to be addressed
21 by differing panels.

22 MR. REIS: Mr. Chairman, I think that the parties
23 should be left to present the case in the way each of the parties
24 wants. Generally a party has a right to decide its order of proof
25 and how it will put on its witnesses in the course of the

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1 proceeding, and I think that should happen here. The only thing
2 that might be different here is that we ought to recognize and hold
3 off with the possibility, in view of the deadlines and other
4 things before the Board today, that there may have to be
5 supplemental testimony that will come after the parties' prepara-
6 tion and presentation, much in the nature of rebuttal. It might
7 not be technically, completely rebuttal; it might be supplemental
8 rather than rebuttal, but there might be additional matters put
9 forward. And we just have to keep that in mind.

10 But I think to some extent I concur with the
11 Applicant and to some extent I disagree with them. I think we can
12 hold that March 11th date. I think we should start. I have no
13 doubt that we should press forward and get any testimony we can,
14 get any testimony we can in at that point, recognizing and leaving
15 it to the parties to present their proof in the order in which
16 they wish to present it, recognizing in view of some of the matters
17 that transpired today that that testimony is going to have to be
18 supplemented and that the parties would have to have an opportunity
19 to supplement that testimony maybe a little later in the hearing.

20 MR. AXELRAD: Mr. Chairman, what we are headed for
21 is not only have the intervenors slept on their rights by not
22 proceeding from November until now, but instead of being penalized
23 for having slept on their rights, it appears to us that they're
24 going to be rewarded; they're going to have the opportunity to
25 file their testimony after having seen all the testimony filed by

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1 the Applicants and by the staff. And I think that is a gross
2 miscarriage of justice.

3 MR. SINKIN: Mr. Chairman, I would point out that in
4 the finding of good cause there was no indication that we did not
5 have good cause but it was a finding we did have good cause.
6 There was no discussion of penalties or sanctions in that
7 discussion.

8 On the problem of these issues, is it our under-
9 standing that the Chair or the Board has the authority to schedule
10 the issues for presentation as separate, discrete issues and order
11 presentation of evidence in that manner?

12 CHAIRMAN BECHHOEFER: We have the authority.

13 MR. SINKIN: You have the authority to do that,
14 then.

15 CHAIRMAN BECHHOEFER: All parties do normally
16 select the way they will present the cases.

17 MR. SINKIN: I understand, Mr. Chairman, but your
18 point is very well taken about the divisions of the issues. I
19 think on page 267 and 268 of the November transcript is where you
20 and Mr. Newman discussed their suggestions for how the issues
21 should be presented, and this concern was raised that a witness
22 would be asked a question about: Do you know of the incident in
23 which Individual X was intimidated?

24 And the answer would be, "Well, that may have
25 happened, but we have this new quality assurance program that is

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1 going to take care of everything and make everything fine again
2 and that there would be such a meshing together of all the
3 testimony that it would not allow a good separation to see each
4 issue in light of that testimony.

5 And I think that's exactly what we're getting in
6 the Applicants' witness list and presentation. And the only way
7 to prevent that is to schedule the issues one at a time.

8 MR. REIS: Your Honor, in looking at the issues,
9 that just can't be done. I think Mr. Newman has pointed out that
10 it can't be done. Too many of the matters, they are not discrete
11 issues, and they all develop, for instance, character as to the
12 very nature of the issue. It's encompassed by all of these.

13 Every one of them deals with the Applicants'
14 character and how you can predict their character and their
15 likelihood of complying with QA-QC in the future, all of these
16 issues. So you won't be able to separate them out.

17 MR. NEWMAN: And, Mr. Chairman, I just want to add
18 one thing.

19 MR. REIS: It's just an impossibility.

20 MR. NEWMAN: Mr. Chairman, I just want to add one
21 more thought that hasn't been made.

22 CHAIRMAN BECHHOEFER: We want to take a break and
23 have a conference, but--

24 MR. NEWMAN: I would like for you to take into
25 consideration one fact which may not have gotten across. We have

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1 been spending the past four months or so developing testimony along
2 the lines that we conceived of as being necessary to carry the
3 burden of proof in this proceeding. We cannot possibly disassemble
4 the pattern of evidence that we have developed over the past four
5 months to accommodate an artificial split in the issues when the
6 issues are so clearly interrelated. We have hundreds upon
7 hundreds of manhours invested in pulling together a case that we
8 believe carries the burden of proof.

9 And we think that since we have the burden of proof,
10 we ought to have the ability to put on our case in the way that we
11 think best fulfills that burden, and I think any other--

12 CHAIRMAN BECHHOEFER: Let me ask you: Would this
13 be so we thought that your presentation did not address the
14 contentions which we set forth?

15 MR. NEWMAN: Mr. Chairman, I submit to you that that
16 is a risk that the Applicant runs, that if the Applicant either
17 fails to address an issue or addresses an issue poorly, it's at
18 its own peril.

19 MR. AXELRAD: I cannot imagine how you could even have
20 a tentative view as to whether or not we will carry our burden,
21 simply on the basis of the identification of witnesses and
22 supplements to their testimony. If you are not satisfied, you will
23 have to be not satisfied after we have presented our entire case
24 and you have reviewed the record from it. I cannot imagine how you
25 are suggesting that you have any doubts as to that at this

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1 particular time, not having heard any testimony at all.

2 CHAIRMAN BECHHOEFER: I am not suggesting anything.
3 What I am suggesting is that we do inspect the issues as set forth
4 to be addressed.

5 MR. NEWMAN: The issues will be addressed.

6 CHAIRMAN BECHHOEFER: And we expect--I think we may
7 write a decision based on the issues, resolving the issues as set
8 forth.

9 MR. REIS: Your Honor, Mr. Chairman, we intend to
10 address each matter, and probably our findings will in some manner
11 bring it together and back to the issues, in writing our findings.
12 But it was not possible to do so--

13 CHAIRMAN BECHHOEFER: The order of presentation--

14 MR. REIS: That's right. It was not possible to
15 do so in preparing our testimony; and naturally, we would be
16 shifting panels off and on the stand all the time. We have
17 invested, as the Applicants, substantial time, very substantial
18 time in preparing our testimony on the supposition that we would
19 present our case in the manner we thought was our case. And we did
20 already invest substantial time doing that.

21 And I just want to call that to the Board's
22 attention.

23 MR. SINKIN: Mr. Chairman, this investment of
24 substantial time on the part of the Applicants, I understand that
25 that's burdensome for them; but it is also my understanding that

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1 the Chairman of this Board has the authority, or at least this
2 Board as a whole has the authority to decide how they want the
3 evidence presented. And the Applicants have taken the risks they
4 have taken, is that in preparing their testimony in a specific way,
5 the Board would want it presented differently. That's a risk
6 they have taken.

7 I think this whole discussion is very relevant to
8 what went on last November and how the incredibly difficult
9 discussion in drawing the issues was created by that November 14
10 letter, and that when they finally emerged, the issues lacked the
11 clarity that they needed to have.

12 And that was what our motion to alter the Order was
13 all about. We fail to have a clear record on each issue. You are
14 going to have to have evidence presented in such a way that it
15 clearly pertains to that issue.

16 MR. REIS: Mr. Chairman--

17 CHAIRMAN BECHHOEFER: We want to take a break to
18 discuss some of these things so--

19 MR. REIS: I just wanted to say that I think in
20 writing findings of fact to all of those problems can be gotten
21 over quite easily because you write your finding of fact to
22 address the issues of the Board if you had any idea of what was
23 going on in an NRC proceeding. And the fact that you might
24 reference page 200 and page 1200 in the same finding of fact,
25 there's nothing wrong with that.

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1 MR. AXELRAD: We'll address each of the issues and
2 the issues that need to be considered and how they need to be
3 considered. It is obvious that Mr. Sinkin has not prepared
4 proposed findings of fact and conclusions of law before and is not
5 aware as to how the record of a proceeding is properly brought
6 ultimately before the Board, except the Board can make the decision
7 it needs to make in the course of the proceedings before it.

8 CHAIRMAN BECHHOEFER: Well, to some extent that is
9 true.

10 MS. SINKIN: I understand that you--

11 CHAIRMAN BECHHOEFER: You do have to address the
12 issues. The proposed findings, we will expect them to address the
13 issues which we have admitted, and normally this will be done.

14 MR. SINKIN: But you yourself, Mr. Chairman,
15 expressed reservations in November about the manner in which
16 evidence was going to be presented as to getting it all in a lump
17 so that the way people would be testifying would be shying away
18 from certain issues so they could talk about other issues
19 continuously.

20 I don't have the exact page number; I hope you
21 remember that dialogue between yourself and Mr. Newman.

22 And I think that's precisely what's been set up to
23 happen here, that the Applicants' case is going to be presented in
24 such a way that each question, other than from the Applicant, is
25 going to miss its mark. That's the purpose, to deflect the

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1 questions away from the issues as they are raised.

2 CHAIRMAN BECHHOEFER: Well, let's have a short
3 recess. We want to talk over some of these things.

4 (Brief recess)

5
6 CHAIRMAN BECHHOEFER: The Board is going to allow
7 the Applicant and the staff to prepare their testimony as they are
8 doing. We do expect that the issues will be addressed in terms of
9 proposed findings in terms of the admitted issues.

10 The date we have set for the intervenors' testimony
11 is for any testimony of individuals which we aren't relying on the
12 staff's names; the 23rd date will apply to you as well.

13 If you are relying on names provided by the staff,
14 if you get the names within the next five days, then you still
15 must meet the 23rd; if you get them within ten days, then you get
16 the extra week, the same extra week the Applicant got.

17 If it's beyond that, we'll have to rule on that
18 later, but you will get more time; but what it will be, I don't
19 know.

20 One of the things the Board thinks has to be
21 discussed is any further--if there is further discovery which the
22 previous Order of ours allowed on the SER matters, to the extent
23 that testimony is based on that, I believe that that cannot come
24 in on the same schedule either.

25 But in our view, the SER issues will be taken up

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1 towards the end of the proceeding, even though there is a
2 considerable overlap.

3 MR. AXELRAD: We have a specific schedule to
4 propose with respect to the SER matters.

5 CHAIRMAN BECHHOEFER: Right. Well, that's what I--
6 I did not want to have our rule--our earlier ruling incorporate
7 those. We would like to hear a proposal and get the parties'
8 reactions to that.

9 MR. SINKIN: I don't understand why we have got to
10 inspect the SER on April the--

11 MR. AXELRAD: Well, let me make my suggestion with
12 respect to the schedule. It's not dependent upon the specific
13 date the SER has submitted, although I understood from the staff
14 that they expected it in the first week in April.

15 We would suggest that starting from today that the
16 SER is submitted, issue is served, that there then be a 15-day
17 period for filing of discovery requests which--

18 CHAIRMAN BECHHOEFER: Things that we have ordered.

19 MR. AXELRAD: That within that same 15-day period,
20 any witnesses who will be testifying with respect to matters
21 covering the SER also be identified and the substance of their
22 testimony.

23 MR. GUTIERREZ: Excuse me, Mr. Chairman. Those
24 individuals--maybe it wasn't clear--have been identified in our
25 identification of witnesses and substance of testimony submittal

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1 of March 2. If it would help, I could identify them for the
2 record.

3 MR. AXELRAD: I'm not talking so much with respect
4 to staff witnesses in speaking that the staff will be providing
5 witnesses which appear for the SER.

6 But obviously, if after we or the intervenors have
7 a chance to receive the SER, if we want to identify additional
8 witnesses not covered in the SER, we will do that within 15 days.

9 Responses to discovery requests which are filed
10 within that 15-day period would have to be answered within 15 days,
11 which is the approximate time normally allowed under the regula-
12 tions.

13 The testimony on the SER matters would be filed 45
14 days after the SER was served, and a hearing with respect to SER
15 matters would commence 60 days after the SER was served.

16 In other words, for example, if the SER is served
17 on April the 7th, by April 22nd people would have to file discovery
18 requests and identify witnesses. Within 15 days after those
19 discovery requests, say by May 7, or the latest date on discovery
20 requests would be the day it would be answered. The testimony
21 would be filed on May 22nd, and the hearing could then commence on
22 June 8th, which is 60 days after April 7th.

23 As it turns out, the Board does not have a hearing
24 session presently scheduled for June 8th, so presumably the hearing
25 on SER matters could not take place before June 22nd, which is the

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1 next hearing session after June 8th, that the Board has indicated
2 is available.

3 CHAIRMAN BECHHOEFER: The question I would have was
4 whether that schedule would require the intervenors to be preparing
5 testimony at the same time they're involved with the hearing.
6 Would you read out the--not the number of days, but the dates
7 again.

8 MR. AXELRAD: The SER is April 7th, discovery
9 requests by April 22nd.

10 CHAIRMAN BECHHOEFER: By the way, the April the
11 7th reads--would you say--is that the issue date or the service?
12 You have to always add five days which if you serve it by mail, it
13 takes that time, so . . .

14 MR. AXELRAD: April 7th is the service date.
15 Fifteen days after the service date would be the last date for
16 filing discovery requests. Those are the same dates that we had
17 set forth in the schedule before.

18 CHAIRMAN BECHHOEFER: Right. But that's actually
19 20 days after April 7th?

20 MR. AXELRAD: I don't believe so, Mr. Chairman.

21 CHAIRMAN BECHHOEFER: Service, when something is
22 served, you add five days. The reason we said 15 days after
23 service was to include a mailing time. We didn't say after
24 issuance; we said after service. So that's how that works.

25 MS. BUCHORN: Mr. Chairman--never mind.

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1 MR. AXELRAD: The responses to discovery requests
2 would have to be filed 15 days after the discovery request had been
3 made.

4 CHAIRMAN BECHHOEFER: That's correct, or after
5 service. I don't remember. Let me check. Just a minute.

6 MR. AXELRAD: Okay. If that adds another five days
7 to that, that would then come out to approximately May 17th. The
8 testimony would be required to be filed 45 days after the service
9 of the SER, which would have been May 22nd; but if you add five
10 days to that, it will make it May 27th. And the hearing would
11 start 60 days after the SER was served, which would be June 8th
12 or possibly June 15th or June 13th.

13 CHAIRMAN BECHHOEFER: Well, the June 22 date would
14 still apply for that. Under that, even with our mailing time,
15 that would be that we could come to hearing on those matters even
16 with that June session in there.

17 MR. AXELRAD: Yes, Mr. Chairman.

18 Actually, there is no reason why this 60 days
19 would have to take into account mailing time. We could have the
20 hearing start 60 days after the actual issuance date of the SER,
21 or if the SER slips a few days, it would still be well within the
22 June 22nd.

23 CHAIRMAN BECHHOEFER: I think that June 22 is the
24 only date we have in that period of time, because I think our other
25 session in June was June 1st and 4th.

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1 MR. HUDSON: And the last week of June, June 22nd
2 through 29th.

3 CHAIRMAN BECHHOEFER: I am saying the June 22nd,
4 the last week in June, yes.

5 Do you have any objections to that?

6 MR. SINKIN: I am figuring this out, Mr. Chairman.
7 Assuming April 7th is service, we have filing of discovery on
8 April 27th, witnesses identified on April 27th, then answers to
9 discovery are due 15 days plus five, after April 27th. Is that
10 correct?

11 MR. AXELRAD: Answers to discovery questions are
12 due 15 days after the discovery request is received.

13 MR. SINKIN: The filing of it.

14 MR. AXELRAD: I mean after service.

15 CHAIRMAN BECHHOEFER: Right, right. Presumably
16 the staff will be responding to discovery here, gentlemen.

17 MR. SINKIN: That would be the first day of the
18 hearing, May 12th, that the answer would come in; and between May
19 12th and May 27th would be allowed for preparing and submission of
20 testimony based on the SER, discovery on the SER. Those dates do
21 seem to coincide with the hearing, which could create a problem.
22 The hearing dates--the last hearing date in May would be the 22nd.
23 Is that correct?

24 CHAIRMAN BECHHOEFER: That's correct.

25 MR. SINKIN: So there would be only five days in

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1 that period, other than weekends--and it may even be on weekends
2 apparently--in which we would not be in the hearing. Perhaps we
3 could add an extra seven days to the 27th, which does not
4 necessarily mean, in our view, that the June date has to be moved
5 too severely. The May 27th testimony is instead filed on June 3rd.

6 CHAIRMAN BECHHOEFER: How about putting the June
7 1st date, when the hearing is going to restart, as the date for
8 that testimony to be filed?

9 MR. SINKIN: June 1st instead of May the 27th.

10 CHAIRMAN BECHHOEFER: And leave it open for the
11 June 22nd hearing which is the--

12 MR. SINKIN: That's all right.

13 CHAIRMAN BECHHOEFER: That's the schedule we will
14 set for that.

15 I hope that there are not other matters that we
16 have to discuss because we would love to adjourn, but is there
17 anything that must be taken up now before the start of the hearing
18 or the next time we come down?

19 MS. BUCHORN: The only comment that I have is that
20 I had anticipated some discovery or, rather, interrogatories, that
21 I would be filing interrogatories on the show cause order itself,
22 and my being in the hospital prevented me from doing that. I do
23 have them formulated; it would just be a matter of getting them
24 typed up and getting them sent in.

25 MR. AXELRAD: Mr. Chairman, this is grossly

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1 improper.

2 MR. REIS: Right.

3 MR. AXELRAD: We are in the midst of preparing
4 testimony for the proceeding. Intervenors have had God knows how
5 long to prepare--

6 CHAIRMAN BECHHOEFER: I am aware of this. We are
7 inclined to deny this because we will consider that aspect of
8 discovery closed; we have to cut it off at some point. And I
9 recognize you have been sick, and I'm sorry. But we have allowed
10 considerably further discovery so . . .

11 MR. AXELRAD: The only discovery permitted, if I
12 understand it, is the taking of depositions of new names provided
13 to other--to either us or to the intervenors.

14 CHAIRMAN BECHHOEFER: That's correct.

15 MR. AXELRAD: In a 30-day period for taking
16 depositions of those people after those names are received.

17 CHAIRMAN BECHHOEFER: That's correct.

18 MR. AXELRAD: That is the only discovery that is
19 permitted.

20 CHAIRMAN BECHHOEFER: Under our older Order, right.

21 MR. REIS: Mr. Chairman, may I have a clarification
22 of that? If we give names that are names that have already
23 appeared in the filings of the intervenors, is there a right to
24 take depositions of those people if they already have those names?

25 CHAIRMAN BECHHOEFER: One of the reasons we wanted

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1 the names was to find out if they're the same people. That's one
2 of the reasons the Board wanted that information revealed.

3 MR. REIS: Because I think that any further
4 depositions coming at this time should be limited to those names
5 that might be a surprise.

6 MR. SINKIN: May I have a moment?

7 CHAIRMAN SINKIN: I would tend to agree, but I
8 would hope . . .

9 MR. SINKIN: One moment, Mr. Chairman. I have to
10 understand this.

11 CHAIRMAN SINKIN: All right.

12 (Off the record)

13 MS. BUCHORN: I was still in the hospital.

14 MR. SINKIN: Ms. Buchorn was in the hospital when
15 these first deadlines came up.

16 I didn't quite understand what was said about
17 depositions, the taking of depositions. Are there any
18 restrictions on us at the moment in terms of the taking of
19 depositions of the Applicants' witness list or the NRC's witness
20 list? Are we under any restriction at the moment on that point?

21 MS. BUCHORN: They were just filed.

22 MR. HUDSON: Yes. April 1st is the deadline for
23 taking those depositions; they were filed on March 2nd, not just--

24 MS. BUCHORN: Well, we haven't passed April 1st
25 yet.

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1 MR. HUDSON: That's right.

2 MS. BUCHORN: So there are no restrictions until
3 that time?

4 MR. HUDSON: That's right. April 1st is the
5 deadline.

6 MR. SINKIN: That was my question.

7 MS. BUCHORN: Okay.

8 CHAIRMAN BECHHOEFER: What we're considering now,
9 though, there is an additional--I believe it was 30 days; I don't
10 have the Order in front of me at the moment--for depositions of
11 witnesses whose names you get after the fact; and you're going to
12 be supplied some names and you have 30 days to take their
13 depositions.

14 MR. SINKIN: Mr. Chairman, it's unrealistic to
15 restrict us to, if the name is already in our pleadings and we are
16 not entitled to depose--

17 MS. BUCHORN: Absolutely.

18 MR. SINKIN: --if they've told us something two
19 years ago and now they have told the NRC something else two years
20 later that we had no knowledge of, I see no basis for restricting
21 our access to deposing those people.

22 CHAIRMAN BECHHOEFER: I think we won't impose any
23 restrictions at this stage. The general 30-day rule will apply.

24 MS. BUCHORN: Thank you. It won't do us any good
25 to have the names if we couldn't depose them.

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1 CHAIRMAN BECHHOEFER: Well, it would if you had
2 already deposed them. That was the whole point of Mr. Reis's
3 motion or point, but we will not impose any restrictions.

4 Any further matters?

5 MR. AXELRAD: Yes, Your Honor. Do I understand
6 correctly that the intervenors are required to identify witnesses
7 by a week from Monday, which is March the 30th? That was the
8 previous Order of the Board with respect to granting the inter-
9 venors the ability to name witnesses later.

10 Now, to the extent that the intervenors would name
11 any new witnesses based upon information that they receive from
12 the NRC staff, I would assume that those witnesses would have to
13 be identified within ten days after they get that.

14 MR. SINKIN: Isn't that what I precisely objected
15 to? Ten days is hardly adequate time to reach the length of the
16 list.

17 MR. AXELRAD: Well, they are required to file--if
18 they receive the information from the NRC staff within ten days,
19 they are required to file the testimony of those witnesses by
20 April 30th.

21 MR. REIS: Right.

22 MR. AXELRAD: Since they are required to file the
23 testimony of those witnesses by April 30th, sometime before April
24 30th they should have to identify the witnesses. And I am trying
25 to ascertain when they would be required to identify those

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1 witnesses. Certainly it wouldn't be on April 30th; it would be
2 some day before that--April 5?

3 MR. SINKIN: That's a matter of reason, you know.
4 If the NRC decides that they're going to release 35 or 40 names to
5 us, then we are to decide whether we are going to have them as
6 witnesses. We need a reasonable amount of time in which to find
7 those people, talk to them and decide whether we want to tender
8 their testimony, decide if they're willing to be witnesses. I'm
9 not sure--I mean, you know, they're essentially--

10 MS. BUCHORN: You're going to have to be Superman.

11 MR. SINKIN: Yeah, really.

12 MR. AXELRAD: I would suggest that since they have
13 to file the testimony by April 30th, they should be required to
14 identify those witnesses by April 10th.

15 CHAIRMAN BECHHOEFER: Could you live with the
16 April 10th date?

17 MR. SINKIN: We're saying that if within ten days--

18 CHAIRMAN BECHHOEFER: No, we not.

19 MR. SINKIN: --the NRC gives us the names, then--

20 CHAIRMAN BECHHOEFER: Oh, yes, yes.

21 MR. SINKIN: Then within ten days the NRC gives us
22 the names, we would then have until April the 10th to identify
23 those witnesses or not. Today is the 18th. Ten days would be
24 Saturday the 28th, really moving back to Monday the 30th. And we
25 would be given essentially 11 days to develop our witness list.

1 That's exactly what I objected to earlier. I don't think that's
2 a reasonable amount of time to take that number of names and
3 determine whether they're going to be witnesses or not.

4 CHAIRMAN BECHHOEFER: We'll give you to the 15th
5 of April, but don't do it by mail. Telephone the Applicants.

6 MR. SINKIN: April 15th, and telephone them. Okay.

7 CHAIRMAN BECHHOEFER: Telephone them and make sure
8 to tell them what you're sending them.

9 MR. AXELRAD: And I assume if the staff identifies
10 it within five days, which was the other deadline, then they
11 would have to identify witnesses five days before that, which
12 would be April the 10th; that's the testimony they're supposed to
13 file April 23rd, so presumably they can identify those witnesses
14 by April 10th.

15 CHAIRMAN BECHHOEFER: Right; that's correct.

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

17 One last matter: We have had the Order retyped,
18 reflecting the corrections and changes which were made at the
19 prehearing conference earlier today, and we'll give a copy of each
20 to--

21 CHAIRMAN BECHHOEFER: Give us a copy.

22 MR. NEWMAN: Give it to the Chairman.

23 CHAIRMAN BECHHOEFER: We would like to adjourn. We
24 received the copy.

25 The prehearing conference is now adjourned. We

1 will see you May 12th.

2 Oh, one further thing: We ask the Applicants to
3 advise us about arrangements for the site tour on the morning of
4 the 12th.

5 MR. NEWMAN: Yes. We can confirm that and I'll have
6 somebody get in touch with the Board directly.

7 CHAIRMAN BECHHOEFER: All the parties should be
8 notified.

9 MR. NEWMAN: Absolutely. We'll advise everybody
10 by telephone.

11 CHAIRMAN BECHHOEFER: One person contacted me from
12 CCANP and I would not--she asked me if we had any objections; she
13 was not a representative. But I would have no objection if one
14 or two extra members came along. Thirty or 40 might be too many.

15 MR. NEWMAN: We'll advise the Chair and we'll
16 advise Mr. Sinkin and advise Ms. Luchorn.

17 CHAIRMAN BECHHOEFER: The prehearing conference is
18 adjourned.

19 (Whereupon, at 3:35 p.m., the prehearing
20 conference in the above-entitled matter was adjourned.)

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United States of America
Nuclear Regulatory Commission

ATOMIC SAFETY AND LICENSING BOARD
Charles Bechhoefer, Chairman
Dr. James C. Lamb
Mr. Ernest E. Hill

IN THE MATTER OF	§	
	§	
HOUSTON LIGHTING & POWER	§	Docket Nos. STN 50-498 OL
COMPANY, <u>ET AL.</u>	§	STN 50-499 OL
	§	
South Texas Project,	§	
(Units 1 and 2)	§	

MEMORANDUM AND ORDER RULING UPON MOTIONS TO
COMPEL CEU AND CCANP TO RESPOND TO INTERROGATORIES
PURSUANT TO A PROTECTIVE ORDER
(March 18, 1981)

On January 16, 1981, Houston Lighting & Power Company, acting on behalf of all Applicants in the captioned operating license proceeding, filed "Applicants' Motion for Extension of Time in Which to File Motion to Compel Answers to Interrogatories." Applicants asked that the motion be regarded either as a request for extension of time or as a motion to compel answers. The purpose of the pleading was to resolve the failure of intervenors Citizens for Equitable Utilities, Inc. (CEU) and Citizens Concerned About Nuclear Power (CCANP) to respond (i) to various interrogatories to Applicants' first and second sets of interrogatories, respectively, (ii) to all interrogatories in Applicants' second and third sets and its third and fourth sets of interrogatories, respectively.

On the eve of the prehearing conference held March 17-18, 1981, in Austin, Texas CEU and CCANP filed Answers to Applicants' second and third sets of interrogatories. The adequacy of these answers and the specific interrogatories which CEU and CCANP had failed to answer in their responses to the previous interrogatories were discussed at the prehearing conference. All questions regarding Applicants' second set of interrogatories to CEU and its third set to CCANP were resolved and do not require Board action with the exception of one tape recording, acquired by CCANP. In addition, CCANP agreed to answer within ten (10) days several interrogatories which were the subject of Applicants' Motion to Compel Further Answers dated April 15, 1980. After discussion between the parties at the prehearing conference, the only matters to be resolved by this Board related to the interrogatories in Applicants' first set to CEU and its second set to CCANP which requested the identity of individuals who supplied information to either CEU or CCANP which formed the basis of Contentions 1 or 2 as accepted in the Board's August 3, 1979 Order.

As observed in the Board's Memorandum and Order of March 7, 1980, requiring CEU to respond to interrogatories, the Intervenor's have no right to assert a blanket refusal to identify sources of information relating to Contentions 1 and 2. The proper course of action is for Intervenor's to seek a protective order if they are concerned about revealing the

identity of sources of information. At the conference the parties discussed whether there was a need for a protective order. During such discussion and without a Board ruling, Applicants volunteered during the prehearing conference to accept disclosure of the requested information pursuant to a Protective Order conforming to discussions at the prehearing conference. Such a Protective Order is attached hereto. Thus, the Board directs CEU to respond to interrogatories A.1, 3, 6, 9, 14, 16, 19, 25, 30, 34, 37 and B.1 of Applicants' first set of interrogatories to CEU. Such response shall be made and the information received shall be handled pursuant to the terms of the attached Protective Order. The Board directs CCANP to respond to interrogatories 2(b), 5(c), 6(b) and 6(c) of Applicants' second set of interrogatories to the extent the interrogatories request the identity of individuals who have given information relevant to Contentions 1 or 2 to CCANP or in the case of 6(c), have refused to provide information relevant to Contentions 1 or 2 for fear of reprisal. The responses required by this order shall be made pursuant to the attached Protective Order. CCANP is further directed to review the tape recording it received from Mr. Swayze's attorneys and provide pursuant to the Protective Order the identities of the inspectors interviewed in such recording if they provided information relevant to Contentions 1 or 2 or information likely to lead to information relevant to Contentions 1 or 2.

To the extent Intervenors have talked with individuals who supplied information relevant to Contentions 1 or 2 or information not likely to lead to information relevant to Contentions 1 or 2, the identity of such individuals need not be disclosed. With respect to each individual identified, Intervenors shall provide the individual's telephone number, address, current or former position with HL&P or Brown & Root, Inc. if known to Intervenors.

Intervenors' responses shall be filed by March 30, 1981.

IT IS SO ORDERED

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Charles Bechhoefer, Chairman

Dated at Bethesda, Maryland
this ___ day of March, 1981.

United States of America
Nuclear Regulatory Commission

Before the Atomic Safety and Licensing Board

IN THE MATTER OF	§	
	§	
HOUSTON LIGHTING & POWER	§	Docket Nos. STN 50-498 OL
COMPANY, ET AL.	§	STN 50-499 OL
	§	
South Texas Project,	§	
(Units 1 and 2)	§	

PROTECTIVE ORDER

It is ordered that the responses of CEU and CCANP to the discovery requests enumerated in the foregoing Memorandum and Order shall be subject to the following terms and conditions:

- (1) Neither CCANP nor CEU shall be required to serve the responses upon persons other than counsel representing Applicants and counsel representing the NRC Staff in this proceeding;
- (2) Said Applicants counsel and NRC Staff counsel shall not, either directly or indirectly, disclose to officers or employees of Houston Lighting & Power Company (HL&P) or Brown & Root, Inc. (B&R) or subcontractors of either company the identities of the persons named in the CEU or CCANP responses;
- (3) Any investigation, interview or other use by Applicants counsel or members of the NRC Staff of the CEU or CCANP responses shall be conducted in a manner that is not likely

to disclose, either directly or indirectly, to officers or employees of HL&P or B&R the identities of the persons named in the CEU or CCANP responses;

(4) Counsel for Applicants and members of the NRC Staff shall not disclose, either directly or indirectly, the identities of the persons named in the CEU or CCANP responses, other than to their secretaries or persons employed for the specific purpose of performing investigations or review related to their preparations for this proceeding, unless they first give notice to the representative of CEU or CCANP who provided the information to be the subject of the proposed disclosure. Should that representative object to such disclosure within five (5) days, the disclosure shall not occur without a further order from this Board authorizing such disclosure;

(5) All persons to whom there is to be disclosure of the identities of persons named in the responses of CCANP or CEU pursuant to the terms of this Order shall be subject to the restrictions contained herein regarding disclosure or use of such information to the same extent as covered for counsel for Applicants and members of the NRC Staff, and the Applicants, and all persons to whom there is to be disclosure by Applicants shall acknowledge their agreement to be bound by such restrictions by signing a copy of this Protective Order.

(6) Applicants' counsel or members of the NRC Staff shall not seek to meet with, depose or have a subpoena served on-site to the persons identified pursuant to this Protective Order.

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

ATOMIC SAFETY & LICENSING BOARD

in the matter of: Houston Lighting & Power Co, Et Al.

(South Texas Project, Units 1 & 2)

Date of Proceeding: March 17-18, 1981

Docket Number: STN-50-498 OL, STN-50-499 OL

Place of Proceeding: Austin, Texas

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

SUNNY P. BARKER

Official Reporter (Typed)



Official Reporter (Signature)

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

ATOMIC SAFETY & LICENSING BOARD

in the matter of: Houston Lighting & Power Co, Et Al.

(South Texas Project, Units 1 & 2)

Date of Proceeding: March 17-18, 1981

Docket Number: STN-50-498 OL, STN-50-499 OL

Place of Proceeding: Austin, Texas

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

ALOMA J. KENNEDY

Official Reporter (Typed)

Aloma J. Kennedy

Official Reporter (Signature)

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Date of Proceeding: March 17-18, 1981

Docket Number: STN-50-498 OL, STN-50-499 OL

Place of Proceeding: Austin, Texas

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

ANN J. BETTIS

Official Reporter (Typed)

[Signature]
Official Reporter (Signature)