

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 - - - - -x
4 In the matter of: :
5 GENERAL ELECTRIC COMPANY :
6 (Vallecitos Nuclear Center) :
7 - - - - - :
8

Docket No. 50-70-SC

9 Ceremonial Courtroom,
10 Federal Building,
450 Golden Gate Ave.,
San Francisco, Calif.

11 Monday, January 5, 1981

12 The prehearing conference in the above-entitled
13 matter was convened, pursuant to notice, at 9:30 a.m.

14 BEFORE:

- 15 HERBERT GROSSMAN, Esq., Chairman,
Atomic Safety and Licensing Board
16
17 GUSTAVE A. LINENBERGER, Member
18 HARRY FOREMAN, Member

19 Also present on behalf of the Board:

20 PAUL C. HAMILTON,
Board Technician
21
22
23
24
25

~~XXXXXXXXXX~~ 8101090048

1 APPEARANCES:

2 On behalf of the NRC Staff:

3 STEWART A. TREBY, Esq.
4 RICHARD BACHMANN, Esq.
5 CHRIS NELSON

6 On behalf of the Licensee, General Electric Company:

7 GEORGE EDGAR, Esq.
8 KEVIN GALLEN, Esq.
9 Morgan, Lewis & Bockius,
10 1800 M Street, N.W.
11 Washington, D.C.12 On behalf of Intervenor, Friends of the Earth
13 and Barbara Shockley:14 ANDREW BALDWIN, Esq.
15 124 Spear Street
16 San Francisco, Calif. 9410517 On behalf of Intervenor, Congressmen
18 Ron Dellums, Phillip Burton and John Burton:19 A. LEE HALTERMAN, Esq.
20 201 Thirteenth St., Room 105
21 Oakland, Calif. 94617
22
23
24
25

1 CHAIRMAN GROSSMAN: The prehearing conference will
2 now come to order. This is the second prehearing conference
3 in the matter of the General Electric Company Vallecitos
4 Nuclear Center General Electric Test Reactor, Docket No.
5 50-70-SC, a show cause proceeding.

6 This prehearing conference was noticed by orders
7 issued December 10th and December 15th, 1980, which I am not
8 sure everyone received. As you are all aware, the NRC
9 hearings are generally before three administrative judges:
10 an attorney qualified to conduct administrative proceedings,
11 who acts as Chairman, and two scientists, one generally a
12 nuclear physicist and another an environmentalist.

13 On my right is Judge Gustave Linenberger, who is
14 the nuclear physicist administrative judge. He is a
15 full-time judge on the Atomic Safety and Licensing Board
16 Panel. On my left is Judge Harry Foreman, our
17 environmentalist, who is a part-time judge at the Licensing
18 Board. He is the full-time director of the Center for
19 Population Studies at the University of Minnesota.

20 My name is Herbert Grossman and I will act as
21 Chairman.

22 I would like for the parties or their counsel to
23 introduce themselves now, starting on the left with the
24 staff.

25 MR. TREBY: Yes. My name is Stewart A. Treby,

1 Assistant Chief Hearing Counsel for the NRC staff. Also
2 appearing for the NRC staff today is Mr. Richard Bachmann.
3 Also at the table with me, on my left, is the project
4 manager for the show cause proceeding, Mr. Chris Nelson.

5 MR. BALDWIN: My name is Andrew Baldwin. I
6 represent Friends of the Earth.

7 MR. HALTERMAN: My name is H.D. Halterman. I
8 represent Congressmen Dellums, Burton and Burton.

9 MS. SHOCKLEY: I am Barbara Shockley, Intervenor,
10 along with Friends of the Earth.

11 MR. EDGAR: I am George Edgar. I am a partner in
12 the Washington law firm of Morgan, Lewis and Bockius. I
13 represent GE. Seated to my far right is Mr. Edward A.
14 Firestone, GE Nuclear Energy Division, Legal Department. To
15 my immediate right is Mr. Kevin Gallen, my colleague with my
16 law firm.

17 CHAIRMAN GROSSMAN: By the way, let me tell you,
18 the PA system is not functioning too well and you are going
19 to have to speak up in order for everyone to hear you,
20 including the court reporter.

21 MR. DARMITZEL: My name is Bob Darmitzel. I am
22 manager of the radiation processing operation, General
23 Electric Vallecitos Nuclear Center. And to my right is
24 Dwight Gilliland, manager of reactor radiation at
25 Vallecitos.

1 THE REPORTER: Could you spell that last name?

2 MR. DARMITZEL: G-i-l-l-i-l-a-n-d.

3 CHAIRMAN GROSSMAN: I think first that we ought to
4 briefly mention what the chronology has been of this
5 proceeding and the General Electric Test Reactor, which I
6 believe began operations in the late 1950's. There was one
7 license renewal about 1956, and then there was a further
8 renewal application filed in 1976.

9 That application was examined by the staff and a
10 notice of opportunity for hearing was issued in September of
11 1977. That is on the license renewal. In October, on
12 October 24th, 1977, a show cause order was issued which
13 required that the reactor be shut down.

14 A notice of opportunity -- well, I believe as part
15 of the show cause there was provision for petitions for
16 hearing. And on November 14th, Congressmen Dellums and
17 associated Congressmen and Friends of the Earth filed
18 petitions for hearing.

19 The first prehearing conference was conducted on
20 March 16th of 1978, in which a discovery schedule was
21 established permitting discovery to continue until the staff
22 had completed its safety evaluation report, which was at
23 that time expected in approximately three months.

24 Discovery proceeded beyond that date because the
25 staff report was delayed and continued until December of

1 1978, at which time, because of the refusal of the
2 Intervenor to respond to an interrogatory by the General
3 Electric Company, the Board then cut off discovery on the
4 part of the Intervenor until the staff safety evaluation
5 report was to be completed.

6 The SER was not issued in one part. There was a
7 partial SER that was issued in May of 1980, another partial
8 issued, I believe in November, and there is a final portion
9 that is expected possibly this week. Is that correct, Mr.
10 Treby?

11 MR. TREBY: I believe we indicated it was going to
12 come out in early January, which could be either by the end
13 of this week or perhaps early next week. But certainly it
14 will come out before January 15th.

15 CHAIRMAN GROSSMAN: Do I understand correctly that
16 that portion will not be submitted again to the ACRS?

17 MR. TREBY: That is correct.

18 CHAIRMAN GROSSMAN: And so that will be the
19 completion of the staff report?

20 MR. TREBY: That's true. Now, when I indicate
21 that it is not going to be submitted again to the ACRS, when
22 the ACRS wrote their report, they indicated that the one
23 remaining matter could be resolved to the satisfaction of
24 the staff.

25 We do intend, as a courtesy to the ACRS, to

1 provide them with a copy of the final portion, which has
2 been designated Appendix B. But it is my understanding that
3 the ACRS does not intend to hold any further hearings or
4 issue any further report.

5 While I am speaking, I would like to make one
6 comment on one of the things you indicated in the course of
7 your chronology, and that was that you indicated that the
8 discovery was suspended until production by the staff of the
9 safety evaluation. The order that was issued by the Board
10 on January 15th, '79, states that: "The following sanctions
11 are hereby imposed," and I quote:

12 "Intervenor shall, from the time of service of
13 this order, have no further discovery of any kind of any
14 other party to this proceeding, such bar to continue until
15 such time as it may be removed." Then in parentheses:
16 "Which shall not be sooner than production by the staff of
17 its safety evaluation," close parentheses, "by further order
18 of this Board." Unquote.

19 So that I would think that discovery has been
20 suspended until further order from the Board.

21 CHAIRMAN GROSSMAN: Yes. I am sorry if what I
22 said was subject to misinterpretation. I did not intend to
23 suggest that discovery would automatically be reinstated,
24 but that the matter would be reconsidered at the time that
25 the staff issued its SER. And as of now, discovery

1 continues to be suspended on the part of Intervenors, and
2 perhaps resolving that problem might be the major portion of
3 this morning.

4 MR. LINENBERGER: Pardon me, Mr. Treby. In
5 commenting about, I believe you called it Appendix B to the
6 SER, being published by approximately January 15th.

7 MR. TREBY: By no later than January 15th.

8 MR. LINENBERGER: By no later than January 15th.
9 I was curious about the form this will take. Will you
10 publish at that time, whenever it occurs, a complete
11 document that includes all of the previous parts that have
12 been issued in draft form, or will those just be deemed by
13 administrative act to be final, and Appendix B only
14 published at that time?

15 MR. TREBY: At this time it was our contemplation
16 to do the latter, that we would just issue the Appendix B as
17 in boy, and that we would indicate that, I believe, it was
18 just our supplement of October 1980 that we indicated was a
19 draft, and that the earlier one dealing with the geology
20 business would issue as part one of the SER. I don't
21 believe we designated that portion of the draft, but when we
22 issued the final portion of this SER, which is this Appendix
23 B, we would indicate on the cover letter to that document
24 that it constitutes the last portion, and that all three
25 pieces would now constitute the final position of the

1 staff.

2 MR. LINENBERGER: Thank you.

3 MR. BALDWIN: Mr. Chairman, before we go ahead
4 with the hearing today, I would like to propose that, as far
5 as Friends of the Earth is concerned, I don't believe that
6 we can proceed today at all. I was informed, or I have been
7 informed this morning, that an order was issued December
8 10th scheduling this hearing.

9 I had no knowledge of that order. Neither did my
10 client. Nor did I or my client know or know of the December
11 15th order until this morning.

12 I also learned this morning that the December 10th
13 order invited the parties to respond as to what should be
14 discussed here this morning. And of course, I had no
15 opportunity to do that. And in fact, I have also learned
16 that General Electric and the NRC staff have responded and
17 that these responses have been available to the Licensing
18 Board. We have had no opportunity to do that.

19 Mrs. Shockley, who I am informed also wants to
20 speak about this problem, did not get either of these
21 notices, either, although she has been on the service list
22 for three years.

23 CHAIRMAN GROSSMAN: Excuse me. You received
24 neither the December 10th nor the December 15th?

25 MR. BALDWIN: That is correct, neither one. And

1 in addition to that, as far as I know and as far as NRC
2 staff counsel knows, this hearing was not noticed in the
3 Federal Register, either.

4 In light of all that, I am not prepared to
5 proceed. I got a call from my client over the weekend. My
6 client found out from the member of the Friends of the Earth
7 who heard about it from a reporter who had read the press
8 release. And I, after getting a call from Friends of the
9 Earth, got another call from the reporter, and that is how I
10 found out about this hearing. And I don't believe that a
11 credible case can be made that I or Friends of the Earth
12 fairly can proceed here today. It simply can't be done.

13 And so I would suggest that, at a minimum, this
14 prehearing conference should be postponed at least until we
15 have the final safety evaluation report, because discovery
16 as to that will be the focus of what we are going to talk
17 about when we do finally have this conference.

18 MR. LINENBERGER: Mr. Baldwin, just to help us
19 understand what kinds of things might have gone wrong here,
20 can you tell us for yourself and Mrs. Shockley, did either
21 of you receive copies of the Licensee's and the Applicant's
22 responses to the Board's order?

23 MR. BALDWIN: Well, the Licensee's response is
24 dated December 29th, and I first saw a copy of this this
25 morning.

1 MR. LINENBERGER: Well, but that may have
2 something to do with your personal moving around. Do you
3 know if it came into your office?

4 MR. BALDWIN: Well, I was not informed
5 specifically that it had not come. But then, see, I did not
6 even know that it was requested, so I did not ask. And I
7 presume that I could go back and ask. But --

8 CHAIRMAN GROSSMAN: Mr. Halterman, did you receive
9 either notice?

10 MR. HALTERMAN: We received the notice of the
11 10th, noting that a meeting would be held tomorrow. And to
12 my knowledge I have not received a notice that was issued on
13 the 15th of December. But then I have been on maternity
14 leave for the last half of December and my office has not
15 communicated to me that any documents have arrived.
16 Certainly I can go to my office this morning, which was not
17 available to me, since the mail was held inside the post
18 office building, and see if these documents are there.

19 But I have not had an opportunity, except this
20 morning, to take a brief look at the response given by
21 counsel for General Electric and to the response given by
22 the staff attorneys.

23 CHAIRMAN GROSSMAN: But of course, with regard to
24 the Congressman's office, you did have notice of the subject
25 matter and the request to prepare, if you desired, a

1 submission with regard to further scheduling.

2 MR. HALTERMAN: That is correct. As far as our
3 offices are concerned, we could have met the 29th date for a
4 submittal. But I have seen neither until this morning of
5 those submittals prepared by General Electric or the staff
6 of the NRC.

7 CHAIRMAN GROSSMAN: Now, Mr. Edgar, if I
8 understand correctly, you never received the December 15th
9 notice, either; is that correct?

10 MR. EDGAR: That is correct. But let me first
11 assure you, we made service on both Friends of the Earth and
12 Congressman Dellums, as indicated on the certificate of
13 service, our 29th filing. Had they checked at the address
14 indicated on the service list, which is the address of
15 record, they would have indeed received it.

16 I did not receive the amended notice, if you will,
17 of the prehearing conference. And I learned of that fact
18 through people at Vallecitos, that the date had been
19 changed.

20 CHAIRMAN GROSSMAN: Well, of course, the responses
21 of the staff and the Licensee are not critical with regard
22 to whether you received them or not. Those were for the
23 Board's information, and seeing them this morning
24 suffices.

25 The big problem is your not having received --

1 when I say "your," Mr. Baldwin not having received -- either
2 the December 10th or the December 15th notices which
3 requested that you prepare, in effect, your proposal as to
4 the further course of proceedings here.

5 Would the staff like to offer its suggestion as to
6 how we ought to proceed?

7 MR. BALDWIN: Excuse me, Mr. Chairman. As I said
8 a moment ago, Mrs. Shockley has a tale to tell also about
9 what happened to her. And before we get to deciding what we
10 are going to do about this, perhaps you ought to hear from
11 her as well.

12 CHAIRMAN GROSSMAN: Well, my understanding is that
13 Mrs. Shockley is consolidated with you and that you are lead
14 counsel for the joint intervention. Isn't that correct?

15 MR. BALDWIN: Yes, that is correct.

16 CHAIRMAN GROSSMAN: So it really depends on what
17 notice you received, either directly from us or from Mrs.
18 Shockley.

19 MR. BALDWIN: May I have just one moment? I would
20 just speak to her about that.

21 CHAIRMAN GROSSMAN: Yes.

22 (Pause.)

23 MR. BALDWIN: Well, the one point that should be
24 made in regard to Mrs. Shockley is that she did not receive
25 either of these two notices as did we. She has informed me

1 that the December 10th and the December 15th notices,
2 neither one of those arrived at her home. And if you look
3 on the service list for this proceeding, she has been on it
4 since the inception of the proceeding.

5 CHAIRMAN GROSSMAN: Well, all right. It is clear
6 that you did not receive notice. The question really is,
7 how much time do you need to discuss your position, so that
8 you can decide what you would like in the way of further
9 scheduling in the proceeding. It doesn't appear to me as
10 though that would require more than a few hours of
11 discussion.

12 Could you tell me what the logistics are that
13 creates a greater problem than that?

14 MR. BALDWIN: Well, there are a number of
15 considerations. First of all, I have simply -- I have been
16 absolutely unaware of this entire situation until over the
17 weekend. And I have not looked at the file for some time.
18 And I'd have to go through that file and review it. I have
19 to bring myself back into this case.

20 It is the first day after Christmas vacation, and
21 I found out about what was going on two days ago, and I need
22 time to do that. In relation to that, it may be necessary
23 -- well, the principal or a principal consideration for all
24 of us is going to be the final report of the staff, the
25 SER. And I think that since that is going to be the focus

1 of the prehearing conference, is that report, that is the
2 time that this prehearing conference ought to be held.

3 That would give me time to go back and put all of
4 this, put this case back in my mind, because I am basically
5 -- I basically walked in here this morning off of the
6 street. And I cannot realistically represent the interests
7 of my client in that situation. I just can't do it.

8 CHAIRMAN GROSSMAN: One of the matters that we are
9 prepared to discuss this morning is the reinstatement of
10 discovery. I would assume that it would be to your benefit
11 to have as great a period of discovery as possible. To
12 simply walk out of the courtroom this morning without
13 discussing that matter or reinstating some form of
14 discovery I think would in some sense be detrimental to your
15 interest in the case.

16 Now, by the way, in the past you and the
17 Congressmen appear to have coordinated efforts in this
18 proceeding. Are you no longer in communication with
19 Congressman Dellums' office?

20 MR. BALDWIN: Well, no. We are not no longer in
21 communication with Congressman Dellums' office. The
22 communication, as it were, has been ad hoc. And sometimes,
23 as I recall, we made joint filings in this case and
24 sometimes we did not. I have not spoken to Mr. Halterman
25 since the beginning of the Christmas vacation.

1 CHAIRMAN GROSSMAN: And you spoke to him at the
2 beginning of the Christmas vacation?

3 MR. HALTERMAN: I think the record should show
4 that we haven't spoken to each other for probably in excess
5 of nine months or something like that.

6 MR. BALDWIN: It has been quite a while.

7 CHAIRMAN GROSSMAN: Well, I would think that you
8 would certainly be prepared to tell us whether you would
9 like discovery reopened at this point, rather than asking us
10 to reconsider that question in a few weeks, when we are
11 getting closer to whatever hearing schedule that we are
12 going to see if we can provide for.

13 Now, I don't see that that is such a complicated
14 problem that you need extensive preparation for.

15 MR. BALDWIN: Well, there may, for example, be
16 discussion of the reason why discovery was cut off in the
17 first place. Now, as I recall, the papers in that
18 controversy were filed in the summer of 1978, and I have not
19 looked at them since. And it's simply impossible for me to
20 sit here and argue the questions of law that came up at that
21 time. I just have no idea what is in those papers and I
22 have to go back and read them.

23 CHAIRMAN GROSSMAN: It seems to me as though the
24 most reasonable course that we can take this morning is to
25 have our discussion with regard to what the parties would

1 like in further scheduling, not to issue any orders unless
2 the parties are in full agreement, and if they are not to
3 provide you an opportunity, Mr. Baldwin, to submit something
4 further to the Board in writing in a few days, whatever time
5 limit we decide would be appropriate for the nature of the
6 question that you are not completely satisfied on.

7 Now, is there any objection to that course of
8 action?

9 MR. BALDWIN: Well, yes, unfortunately there is.
10 And I am, of course, prepared to go ahead. I'm not going to
11 get up and walk out. But I simply believe that in the
12 interest of fairness I cannot be expected to hear about this
13 on Saturday from reporter on the radio and be ready to go
14 on Monday morning on any issue in this cause.

15 I simply cannot, under these circumstances, fully
16 represent the interests of my client.

17 CHAIRMAN GROSSMAN: Your objection, of course, is
18 noted. And whatever further document you submit with regard
19 to that will, of course, I'm sure, incorporate your
20 objection to the proceeding. But I think we ought to at
21 least make an effort at this proceeding this morning.

22 And I first would like to find out where we are.
23 I'm sorry. Mr. Edgar, did you have something to say?

24 MR. EDGAR: No, Mr. Chairman. I will hold and
25 respond later.

1 CHAIRMAN GROSSMAN: I would first like to know
2 where we are as far as plant operations go. It is my
3 shallow understanding from reading the materials that have
4 been prepared in the way of reports that the plant will not
5 begin, in any event will not begin operations immediately
6 after the issuance of the SER, even if it agrees with the
7 Licensee's position, but that further modifications will be
8 necessary to the plant structure. Is that correct?

9 MR. EDGAR: Yes. The fact is that if you examine
10 the structure of the show cause order, it contemplates three
11 basic issues: A, what are the appropriate criteria; B, will
12 the facility as modified meet those criteria; and C, should
13 activities under the license be suspended pending resolution
14 of issues A and B.

15 Now, at the present time we expect on or about
16 January 15th to be a supplemental SER on the subject of soil
17 properties. As the Board may be aware, on November 14th the
18 ACRS letter came out, which essentially indicated that
19 restart should be authorized subject to resolution of the
20 soils issue.

21 At such time as the soils issue is resolved, GE
22 would then have to perform certain modifications which are
23 enumerated in the structural reports and ready the facility
24 for operation.

25 It is our position that, having been shut down for

1 three years, we think it is imperative that the show cause
2 hearings be initiated and indeed completed; that looking at
3 the normal life expectancy of hearings, that GE could be
4 ready to operate approximately at the same time that the
5 hearings would be completed.

6 Obviously, under the third issue in the order, if
7 there were some urgency in the particular case, further
8 downstream GE might be coming in for further interim
9 operating authority. But at the present time your
10 statement, or the sense of it, is correct, that GE could not
11 go immediately up because of the modifications.

12 CHAIRMAN GROSSMAN: I have a little trouble
13 fitting that time factor in with your reference to hearings,
14 since we haven't yet scheduled hearings. Are you now
15 referring to your suggested hearing date of approximately
16 two months from now as when you would begin modifications?
17 Exactly --

18 MR. EDGAR: I wasn't presuming that the Board
19 would necessarily accept our position. Our position is in
20 fact that hearings should commence within 60 days. We
21 strongly believe that that ought to occur and we see no
22 reason why it couldn't.

23 The issues are rather finite here. The
24 information surrounding those issues has been available for
25 some time. Today, as I understand it, we are not talking

1 about substance. We are talking about the simple matter of
2 scheduling.

3 On that point, we would like to have a firm
4 schedule that would provide all of the parties with a
5 framework for getting ready to go to hearing and completing
6 those hearings.

7 CHAIRMAN GROSSMAN: Well, I think your schedule is
8 somewhat ambitious, because it doesn't take into account
9 discovery on the plant, on the staff SER that is being
10 issued now. And to a certain extent, you would expect that,
11 considering especially the staff's change in position, that
12 the Intervenors would have some matter to discover from the
13 staff.

14 MR. EDGAR: Well, that may or may not be, Mr.
15 Chairman. The SER itself as it has come out in three
16 pieces, or ultimately it will be in three pieces, the basic
17 SER and the criteria has been available since May 23rd,
18 1980.

19 Secondly, the draft on structural and landsliding
20 has been available since October 27th, 1980. The soils
21 property issue will be resolved in the January 15th SER.

22 Now, originally the Board in this proceeding
23 contemplated that post-SER discovery would be restricted to
24 new matters first addressed in the SER. We are not talking
25 about broad-ranging discovery on the entire SER, but only

1 new matters.

2 Now, my point here is that if we have a firm
3 schedule, then we can get whatever limited discovery may be
4 required on those documents. We find ourselves in the
5 position right now where, given the passage of time, we see
6 no reason why the parties could not have diligently examined
7 the information available.

8 The fact that Friends of the Earth and Congressman
9 Dellums were foreclosed from discovery was their own doing.
10 And we think it is imperative that we commence a schedule
11 right now, that if there is a compelling need for certain
12 limited discovery focused only on new matters, so be it.
13 But the parties have to come forward on that.

14 CHAIRMAN GROSSMAN: Well, I am not so sure how
15 limited the discovery would be in any case just on the SER,
16 in view of the drastic change in the position of the staff.
17 Would Mr. Treby like to offer something with regard to
18 that?

19 I notice that in your written submission to the
20 Board there was no proposed schedule of further
21 proceedings. It was merely the indication that the staff
22 report would be completed shortly.

23 MR. TREBY: Yes, Judge Grossman. Let me first
24 address the information in the SER. As has been indicated,
25 we have already issued two portions of it, one in May and

1 one in October of this year. This is the great bulk of the
2 staff information. I suspect that this third piece that we
3 will be providing the staff and the parties within a week or
4 so is not going to be much more than ten pages at most, and
5 relates to a narrow issue, and that is of soil properties
6 and what effect that might have on an issue that was raised
7 as to possible cantilevered stresses on the facility.

8 So that the great bulk of the staff's position is
9 out and has been out since October, at least.

10 CHAIRMAN GROSSMAN: But it has not been discovered
11 on.

12 MR. TREBY: But it has not been discovered on,
13 although I would also note that there have been a number of
14 ACRS Subcommittee meetings and one full ACRS meeting, and in
15 particular there was a two-day ACRS Subcommittee meeting
16 that was held here in California at which there was
17 extensive discussion of the staff's information and the
18 basis for its positions, and also extensive discussion of
19 the Licensee's position and the basis of its information.

20 The Intervenors, number one, certainly had the
21 opportunity to attend that. In effect, my information is
22 that they did attend that. So that they have had the
23 benefit of some information as to what the staff's position
24 is and what the basis for that position is.

25 Secondly, while the staff back in '77 did issue a

1 show cause order indicating that the plant should be shut
2 down until General Electric could show a reason why it
3 should start up again, and we indicated that the basis for
4 that order was that there was some new information regarding
5 the geology of the area, I am not sure that I could
6 characterize the fact that the staff has had a drastic
7 change in position.

8 At that time we indicated that we had some new
9 information that we needed to have further information
10 about, we wanted to look into it, and that we thought that
11 it would be prudent that the plant be shut down until we had
12 it, had better information about it. Over the course of
13 time, we have been getting more information.

14 The record will indicate that the General Electric
15 Company has been doing a lot of field work in the form of
16 trenching and stuff to give, to develop the raw data on
17 which the staff could consider these matters, and that now
18 that the staff and its various consultants, including the
19 USGS, have had an opportunity to review all of these
20 materials, we are documenting it in the SER's that we have
21 been issuing.

22 We have been evolving our position, but in the
23 interim we have been developing this information and giving
24 it to the Intervenor, and it certainly has been available
25 in its written form since May and October, and they have had

1 the opportunity to attend the ACRS Subcommittee meetings, at
2 which time the staff was put to a rigorous review by the
3 ACRS, had to answer many questions as to what the basis was
4 for their position; and that in effect they have had the
5 opportunity to gather a lot of information that they would
6 normally have gotten through discovery.

7 So that while they -- and I believe also that they
8 also had the opportunity early in '78 to file a set of
9 interrogatories with the staff, and the staff did provide
10 certain information to the Intervenor at that time.

11 I would also agree with what the counsel for
12 Licensee has indicated, and that is that at the original
13 prehearing conference it was the contemplation that any
14 further discovery after the staff issued its SER would be on
15 new matters. And that discussion took place at pages 73 and
16 the two or three following pages of the transcript.

17 CHAIRMAN GROSSMAN: Well now how do you restrict
18 the area of new matters when it is the fundamental position
19 that has changed in the staff? I am not trying to
20 characterize it in any opprobrious manner, but when I refer
21 to a drastic change in position it may well be justified.
22 But nevertheless, the standards or the design basis required
23 under the new staff report differs markedly from what was
24 required in the original staff position.

25 And it seems to me as though that change covers

1 the waterfront. Is there any way you can find a practical
2 limitation on what are new matters and what are the old
3 matters that were covered in the staff reports?

4 MR. EDGAR: Mr. Chairman, if I might address
5 that. I think you should recognize that the criteria which
6 the staff have agreed are considerably conservative, they
7 have been available and have been presented in their SER's
8 since May 23rd of 1980. The remaining work, that is the
9 structural work, landslide and now soils, those analyses
10 followed from having set the criteria, one, then performed
11 the analysis to show compliance with the criteria.

12 Now, we have a unique situation here in that the
13 criteria were established on May 23rd, 1980. Whether you
14 call it a drastic change or an evolution or what is not
15 really important here.

16 Now, the Intervenors have been barred from
17 discovery until at least the SER issuance date. Now, it
18 seems to me the suggestion is that they be allowed to have
19 unlimited discovery on the SER because of a drastic change
20 in position back in May of 1980. It seems to me that allows
21 them to gain an additional benefit without regard for the
22 fact that their own refusal to answer interrogatories
23 foreclosed discovery.

24 Now, I think there can be a suggestion of what is
25 a new matter and what is not a new matter, and that is, was

1 the information available prior to issuance of the SER. And
2 there is a workable test on that: Was it available in a
3 report that was on the docket, or is it new information
4 first presented in the SER?

5 CHAIRMAN GROSSMAN: Well, I think we are confusing
6 two matters here. One is whether there is something new in
7 the partial SER that has been issued in November and the one
8 that will be issued in January over what was disclosed in
9 the May portion of the SER. And the second question is,
10 what was new in the total SER issued in May, November, and
11 possibly in the coming January, over what had been issued
12 before discovery was cut off.

13 Now, maybe Intervenors should have requested a
14 reconsideration of discovery in May of 1980 or perhaps the
15 Board should have scheduled this conference a little
16 earlier. And it is unfortunate that we didn't. But
17 nevertheless, we are here now and we have to do the best
18 that we can.

19 Now, I still haven't heard from Mr. Treby what he
20 would propose in the way of a further schedule in this
21 matter. Do you have any suggestions for us?

22 MR. TREBY: I guess in the absence of any showing
23 by the Intervenors that they have a need for further
24 discovery, we would rest on what we indicated back at the
25 time when the sanctions were initiated and imposed, and that

1 is that we don't believe that there should be any further
2 discovery in this proceeding.

3 CHAIRMAN GROSSMAN: I see.

4 Judge Linenberger?

5 MR. LINENBERGER: Mr. Treby, with respect to
6 scheduling there are other things to consider besides
7 discovery, or in addition to discovery. Now, we have heard
8 from Mr. Edgar about as soon as the staff's final and
9 complete position regarding new problems are concerned, if
10 there is agreement between staff and the Licensee, the
11 Licensee will then be in a position to undertake the proposed
12 modifications that presumably the staff will have blessed,
13 if you will, in the various pieces of the SER.

14 All right, that is a futuristic thing. But comes
15 the time when those modifications are alleged to have been
16 complete, what is the staff's position about the extent to
17 which it wishes to satisfy itself that the modifications
18 that have been made are indeed identical with and
19 satisfactory compared with the proposed modifications, and
20 does not that impact the schedule?

21 MR. TREBY: Well, my understanding is that the
22 staff will go out and inspect all modifications. And in
23 fact, my further understanding is that there have been some
24 further modifications that have been undertaken already
25 based on the exchange of information between the staff and

1 the Licensee. For instance, in the facility there are some
2 supports, I believe, to protect a crane, and that is
3 essentially completed and our Office of Inspection and
4 Enforcement has gone out and inspected that to assure that
5 it meets all of the qualifications and requirements that the
6 staff had indicated that kind of a modification would
7 require.

8 There are other modifications that the staff
9 believes would be appropriate, and some of those I guess are
10 under way and some of those have not yet been undertaken.
11 My understanding is that the question of modifications was
12 discussed at the full ACRS Committee meeting, and that there
13 was a rough estimate of approximately nine months suggested
14 by the Licensee for completion of all of the
15 modifications. You would have to check with the Licensee
16 to confirm that date, but that is my recollection.

17 Now, as I understand the question, we of course
18 will inspect all of the modifications to make sure that they
19 meet our requirements before we would approve them, and we
20 would think that all of that should be completed before the
21 plant should start up again.

22 CHAIRMAN GROSSMAN: Now, there is also another
23 matter with discovery. I am not satisfied that the parties
24 have been updating their responses to discovery, as required
25 by the rules. Notwithstanding that there was a suspension

1 of Intervenor's discovery, it would appear as though the
2 parties still had some obligation to update their responses
3 with regard to expert testimony.

4 And I think discovery cuts both ways here, or
5 maybe three or four ways. But I would assume that the
6 Licensee and the staff would be interested in the final
7 position of the Intervenor or in some position of the
8 Intervenor before we go into the proceeding. I don't think
9 anyone is interested in having a trial by ambush here.

10 And if I recall, the responses by Intervenor to
11 the staff's interrogatories and to the Licensee's
12 interrogatories basically were temporizing responses
13 indicating that the final positions had not been arrived
14 at.

15 Now, let me first throw out some suggestions that
16 the Board thought we might be heading for.

17 MR. BALDWIN: Mr. Chairman.

18 CHAIRMAN GROSSMAN: Yes, Mr. Baldwin?

19 MR. BALDWIN: I apologize for interrupting. But
20 we were discussing the problem of what is or what is not to
21 be considered new matter. And we heard Mr. Edgar and the
22 NRC about that. And I have a few comments of my own. So if
23 we are going to move on to another topic, in other words,
24 what is our final position going to be, then I do have a
25 couple of comments about this problem of the new matter. I

1 can either state them now or later, whatever.

2 CHAIRMAN GROSSMAN: That's fine. I just want to
3 bring up all of the elements before we arrive at any
4 decision. But I would just as soon hear you now on what you
5 consider new matter.

6 MR. BALDWIN: Well, it is hard with a straight
7 face to call the staff's series of documents in this case an
8 evolutionary change. They said -- and I would like to
9 review my files before making this argument, because I am
10 drawing on old memories -- but they said rather clearly that
11 that earthquake fault was capable of an offset of something
12 like eight feet, and said in fact that they were shutting
13 down their review, that it was impossible for any structure
14 to withstand an eight-foot offset and that was the end of
15 it.

16 In fact, I believe most people thought at that
17 time that this case was over. General Electric then --
18 well, let us just say that they brought more information to
19 the staff, and the result of that was that the staff decided
20 that it was suddenly -- three feet was okay. Three feet was
21 all that we could expect off of that earthquake fault.

22 There wasn't any more trenching done in between
23 this change of position. And even more significantly, there
24 are a number of geologists at the U.S. Geological Survey who
25 first identified this fault who disagree with this staff

1 position in several significant respects. They do not, if I
2 may characterize as best I can from a remote memory, they do
3 not believe that this fault has been adequately
4 characterized at all as to, for example, how long it is.
5 They don't know. And they disagree severely with the
6 conclusions of the staff in this, following the sudden
7 change of position.

8 So as far as we are concerned, everything they
9 have to say is new because everything they have to say is
10 different.

11 CHAIRMAN GROSSMAN: Well, what is the nature of
12 the discovery that you have in mind now with regard to this
13 changed position?

14 MR. BALDWIN: Well, that is a type of thing that I
15 need to think about. That is the type of thing that I
16 cannot simply give you a list of topics that I would like to
17 go into. Because like I said, I am coming in here on Monday
18 morning after Christmas vacation with no preparation
19 whatsoever.

20 CHAIRMAN GROSSMAN: Well, let me throw out for
21 discussion what the Board thought might be a reasonable
22 schedule and see what objections there might be. For one
23 thing, with regard to interrogatory number one that has
24 created that problem, whatever may have been the
25 justification for requiring responses to that interrogatory

1 I think are no longer valid when we are approaching the time
2 of hearing.

3 We are primarily concerned with the witnesses that
4 are going to be presented at the hearing and I don't think
5 that it would be profitable to linger on persons who may
6 have assisted in preparation or investigation or discussions
7 when we are on the eve of hearing. We ought to be concerned
8 solely with the people who are going to be presented at the
9 hearing. And so I don't see any reason why we ought to be
10 concerned any longer with interrogatory number one.

11 And it is the Board's inclination at this point to
12 no longer require any response to interrogatory number one
13 of Licensee. However, it appears to the Board that, in
14 addition to the other interrogatories propounded by
15 Licensee, there are also staff interrogatories that were not
16 really answered because of the posture of Intervenor's case
17 at the time the interrogatories were propounded.

18 But it is the Board's feeling that those
19 interrogatories required a disclosure of what the
20 Intervenor's case is all about, and that the answers ought
21 to be forthcoming some time before the hearing. And I don't
22 mean two weeks before.

23 It would appear as though we ought to require all
24 of the parties to update their prior responses to the
25 discovery requests, including those staff interrogatories,

1 Licensee's interrogatories, except for interrogatory number
2 one, and probably the staff's responses to Intervenor's
3 interrogatories, in light of the evolving or drastic or
4 whatever the case may be, change in the position.

5 And so we would like to have everything updated,
6 possibly in five or six weeks. Is there any problem with
7 that? Or perhaps a shorter time, maybe a month. That is a
8 prior discovery. Is there any problem with that, Mr.
9 Edgar?

10 MR. EDGAR: No, and I would think it could be done
11 within a substantially shorter period of time than that, if
12 indeed we are talking about updating as contemplated by the
13 rules of practice.

14 Do I understand that you are talking about your
15 duty to amend the prior response?

16 CHAIRMAN GROSSMAN: Yes.

17 MR. EDGAR: All right. That should be
18 substantially more prompt than that. We are talking about
19 -- even more specifically, if we are talking about naming of
20 witnesses, if you establish a hearing date you will get very
21 prompt naming of witnesses. If you don't do that, then
22 there is no motivation to get going on preparing testimony
23 and naming witnesses.

24 CHAIRMAN GROSSMAN: Well, I don't think that we
25 could take a much shorter time, because what we have in mind

1 also is a cutoff of the affirmative case -- that is,
2 witnesses and subject matter that are not disclosed -- by
3 whatever date we establish for the updating, unless of
4 course whichever party wants to offer further matter, it
5 could of course move and submit a good cause motion why that
6 matter was not previously disclosed.

7 Do I make myself clear? In other words, setting a
8 cutoff date for updating the responses and requiring that
9 the parties not be permitted to offer any subject matter or
10 witnesses or documents that are not disclosed where required
11 by the discovery request. Does anyone have a comment on
12 that? Mr. Baldwin?

13 MR. BALDWIN: Yes, Mr. Chairman. I believe again
14 that this has to be resolved once we see the final SER,
15 which we have not seen. If you ask a structural engineer to
16 try and figure out what is going to happen when a three-foot
17 fault rupture comes underneath of the reactor, the first
18 question he is going to ask, the first one, is what type of
19 soil is it and how is that going to affect the foundation
20 when it slides into it.

21 And we don't know. That part of the SER isn't
22 done yet, and I think we have to wait for it.

23 CHAIRMAN GROSSMAN: Well, maybe we can put the
24 time requirement on the basis of service of the final
25 portion of the SER, and perhaps set the date on that basis.

1 And of course, I want to give you my complete suggestion
2 here, and that also involves further discovery with regard
3 to the new matter contained in the SER.

4 And I would like to have -- well, let me ask Mr.
5 Edgar whether he would be satisfied to have an updating of
6 the prior discovery without an opportunity now to discover
7 on those answers that will be updated? Because I don't
8 really think that the staff or Licensee have had an
9 opportunity to conduct discovery.

10 MR. EDGAR: I think that you can state it so that
11 if you have a time period required for supplementation, you
12 can have a slightly longer time period in order for people
13 to file their discovery requests, so that there is a band in
14 the second time interval that falls outside the
15 supplementation.

16 CHAIRMAN GROSSMAN: That is correct. But then
17 again, we find ourselves moving to a position where we
18 should not have any limitation on the subject matter of the
19 new discovery, because I think that would prejudice all the
20 parties, including Licensee and the staff, because neither,
21 none of them would have the opportunity to discover on
22 matters that have not previously been disclosed in response
23 to old discovery.

24 And it seems to me as though we ought to have our
25 cutoff on updating, and we ought to have something like two

1 or three weeks for additional discovery unlimited, and then
2 we ought to be thinking in terms of a hearing approximately
3 six or seven weeks after that. And we are inclined to
4 require prefiled testimony 25 days before the hearing.

5 And I want to make sure that no one confuses the
6 updating of discovery with the prefiled testimony. We want
7 to have a limitation on the updating of the discovery
8 responses with a short interval in which the parties
9 presumably would be disclosing the substance of their cases,
10 but not the full testimony to be offered at the hearing;
11 then a short period further in which discovery will
12 continue, unlimited discovery; and then a short -- and then
13 a requirement that the prefiled testimony be filed and the
14 hearing be conducted . . . days after that.

15 Has everyone been able to digest the suggestion
16 now?

17 MR. HALTERMAN: Mr. Chairman, if I might just ask
18 what period of time you and the Board contemplated allowing
19 for the preparation of testimony between that and filing 25
20 days before the hearing?

21 CHAIRMAN GROSSMAN: Well, it would seem to me that
22 we are talking in terms of a hearing possibly at the end of
23 April or the beginning of May. That would mean that 25 days
24 before that would be at the beginning of April.

25 And I would like all of the parties to take their

1 time, but I would like them all to hear what is being
2 discussed so that we don't have any problems with that, with
3 the scheduling. Would Mr. Edgar like to say something with
4 regard to that?

5 MR. EDGAR: Well, I am still adding your
6 intervals, quite frankly. But I just want to be sure I
7 understand that you -- that the kinds of intervals that you
8 are talking about are roughly four weeks for updating, I
9 take it; that any discovery request be filed within the time
10 period of the updating deadline, plus two to three weeks.

11 CHAIRMAN GROSSMAN: Yes.

12 MR. EDGAR: Then hearings, evidentiary hearing
13 sessions, commence six to seven weeks after the updating
14 deadline plus two to three weeks; am I correct?

15 CHAIRMAN GROSSMAN: I'm sorry, I did not hear that
16 last one.

17 MR. EDGAR: What I missed was, I am with you to
18 the point of an updating milestone, and then after the
19 updating milestone you said all discovery requests within
20 two to three weeks after the updating deadline.

21 CHAIRMAN GROSSMAN: Right.

22 MR. EDGAR: So call that the discovery deadline.
23 Then what was your time interval measured after the
24 discovery deadline for hearings?

25 CHAIRMAN GROSSMAN: Well, I would think we would

1 need about another two or three weeks for the preparation of
2 the prefiled testimony. And so, assuming that we require
3 that 25 days before the hearing, that would make and put the
4 -- let us say two weeks after the discovery is cut off for
5 the prefiled testimony, and then 25 days later for the
6 scheduled hearings.

7 MR. EDGAR: I am with you now.

8 CHAIRMAN GROSSMAN: Has everyone digested that
9 schedule now?

10 MR. TREBY: Well, I think I understand it, but I
11 have some small problems with it.

12 CHAIRMAN GROSSMAN: Fine, as long as they are
13 small.

14 MR. TREBY: I guess I think that - I guess one of
15 my concerns is that, as I understand what is being proposed,
16 all sorts of new discovery will be sort of inflowing during
17 this period that we are updating, and it will continue to
18 flow in for another two weeks thereafter, so that there will
19 be like a six-week period sometime when we are having a
20 number of interrogatories or whatever other forms of
21 discovery may be used coming at the parties.

22 I did not hear any date upon which all of this new
23 information is going to be responded to, other than that we
24 were going to be filing testimony at some point thereafter.

25 It seems to me that we need a couple of things.

1 We need -- I guess my suggestion would be that we have the
2 four weeks for updating, and that after the parties have
3 gotten the updated answers to the discovery which has
4 previously been filed, that they have two weeks thereafter
5 to file whatever additional discovery they are going to
6 file; that there then be a period set after that to respond
7 to that discovery; and that once we have that date set, that
8 there be another date set giving a reasonable period of time
9 for the written prefiled testimony to be prepared and filed
10 within; and that thereafter we would have -- and I agree
11 with the Board that I think that that prefiled testimony
12 should be filed at least 25 days in advance of the hearing,
13 given the mail service, et cetera. It seems to me important
14 that the parties have that.

15 I guess that I would like to throw out one or two
16 further suggestions to the period after the prefiled
17 testimony and perhaps before the hearing begins. And that
18 is that I have noted with interest the proceedings that are
19 currently going on in what is known as the TMI-1 restart.
20 And one of the items that the Board at that proceeding
21 suggested was that all of the parties file with the
22 Licensing Board -- and I believe it was something like five
23 days before the hearing began there -- an outline of the
24 cross-examination that the parties were indicating, or at
25 least their plan of cross-examination. Not that this was

1 going to be distributed among the parties, but just so that
2 the Board would have it, so that they would have some idea
3 of where the cross-examination was going.

4 And another technique that was used by that Board
5 was that they requested the parties, when they prefiled
6 their written testimony, that they indicated at the
7 beginning of that written testimony a brief outline of the
8 testimony and the purpose of the testimony, so that, again,
9 I suspect, the Board and the other parties would have some
10 idea of what the purpose of the testimony was.

11 CHAIRMAN GROSSMAN: Well, I agree with Mr. Treby
12 that we failed to take into account the period for responses
13 to the discovery, and that we ought to incorporate something
14 like, unfortunately, a three or four weeks period for those
15 responses. And that is a problem now.

16 With regard to the suggestion of outlining
17 cross-examination, I really don't -- I think that is a big
18 burden on counsel and I don't think that we would want to
19 require that in the case. I am always -- I think the Board
20 is amenable to motions made during the course of the hearing
21 for further hearing in matters in which any party is
22 surprised and matters in which the party has failed for good
23 reason to prepare adequately, and we will be very liberal
24 with regard to that.

25 But I think it is a tremendous burden on counsel

1 to require an outline of cross-examination, and especially
2 when some counsel may not be as well organized as others.
3 It is just a difficult matter and I don't think that we
4 would require that.

5 Does anyone have comments on what has just been
6 said?

7 MR. EDGAR: Yes. Mr. Chairman, I think, having
8 had a chance to listen through one ear and go back over this
9 schedule with another, I think that we would be inclined to
10 support the type of scheduling that the Board has
11 established. And certainly in principle it is logical and
12 probably reasonable. I have just sketched it out in terms
13 of intervals here, and would like to make several
14 suggestions, but addressed to each of the milestones that
15 the Board has established.

16 In terms of the updating obligation, I would
17 suggest that that be done within four weeks.

18 CHAIRMAN GROSSMAN: That is four weeks from the
19 final SER; is that correct?

20 MR. EDGAR: That is correct.

21 CHAIRMAN GROSSMAN: All right.

22 MR. EDGAR: Then the close of discovery milestone
23 would be two weeks after the four, so that the total time
24 interval for discovery would be six weeks. Then discovery
25 responses would be due three weeks after that.

1 CHAIRMAN GROSSMAN: Let me ask if anyone foresees
2 a problem with regard to changing the time limits as
3 established by the rules.

4 MR. EDGAR: There's only one new change. That is
5 on document production.

6 CHAIRMAN GROSSMAN: Pardon?

7 MR. EDGAR: The only one new change is the
8 document production. All of the documents have been made
9 available and they have been available for months and
10 months. So your interrogatories, you are actually
11 stretching that one somewhat -- no, you are right on target
12 with your interrogatories.

13 So I don't think it is a change. It is just a
14 deadline to try to regularize the schedule. The only
15 possible change would be in regard to document production.
16 And if we are talking about document production this far
17 into the process, we really shouldn't be in that stage after
18 three years.

19 The interrogatories are 14 days. So actually we
20 are -- that is a stretch-out on interrogatories.

21 CHAIRMAN GROSSMAN: Now we ought to -- that is
22 right, it is. Now, we ought to have some accelerated
23 procedure, I would think, with regard to objections to
24 discovery. I think that perhaps, if objections are made
25 within those 14 days also, I believe under the rules that

1 motions to compel ought to be filed five days after service
2 of the objections.

3 Would that be agreeable to the parties? Mr.
4 Baldwin?

5 MR. BALDWIN: I would like to look and review the
6 rules as to the time limits with regard to production of
7 documents and the motions to compel, and also look at my
8 files and try to figure out what kind of courses of
9 discovery we are talking about. All of that took place more
10 than two years ago, and it is just a homogeneous problem, my
11 recollection at the moment of it, and I need time to look at
12 it before I can really respond.

13 CHAIRMAN GROSSMAN: Mr. Edgar?

14 MR. EDGAR: I think that if you establish this
15 three-week time interval for the responses to discovery and
16 Chairman Miller in the Clinch River document made the
17 parties, if they were going to object to an interrogatory,
18 made them do it within five days, and if they were going to
19 respond substantively it was set within 14 days. And that
20 got things out in the open early.

21 I mean, there isn't much one has to do to register
22 an objection. So to accommodate that, I would suggest that
23 if there is an objection that it be done within the five
24 days, and then a motion to compel five after. Because you
25 could get cluttered if you assigned a three-week period for

1 responses to discovery. You could end up with discovery
2 disputes controlling the entire time interval.

3 CHAIRMAN GROSSMAN: Well, I think the staff would
4 have some problem considering the review that is necessary
5 to come up with objections in five days.

6 Mr. Treby, would you like to -- are you going to
7 be wearing two hats in this proceeding, as initiator and
8 also reviewer of everything?

9 MR. TREBY: No. It is my hope to wear just one
10 hat, that is as reviewer. And I guess I could assure you
11 that we would give prompt review to that business. I guess
12 I would see no problem in responding within five days if we
13 had any objections. I think we could get that done in that
14 period of time.

15 The one thing that I am concerned about, though,
16 that we have not discussed, and that is the mail. It
17 sometimes takes at least five days or so for papers to get
18 from one coast to the other coast. And we may find that we
19 have very fine schedules here, which just go out of kilter
20 because the papers aren't being received by the people.

21 I guess we either have to set up some sort of an
22 expedited mailing procedure whereby everybody agrees to use
23 whatever the best one is --

24 MR. EDGAR: We are prepared to address that one.
25 In fact, we had addressed it before. And that is, if we

1 file anything, we will hand serve the Intervenor or the
2 West Coast. Furthermore, if they file anything with us from
3 the West Coast, they can serve here in San Jose. So that
4 will short-circuit anything on that side.

5 We will also agree that, where we can tailgate our
6 efforts, where we are going to make an air express shipment
7 out to the West Coast, we will get together with the staff
8 and try, if they have anything to file, we will do it the
9 same way and do the hand service for them.

10 CHAIRMAN GROSSMAN: Do I understand that you are
11 agreeable now to pick up from the Intervenor's office
12 whatever is ready for service, if they will notify you by
13 telephone?

14 MR. EDGAR: We will accept service by mail from
15 the West Coast out here. In other words, if they want to
16 file something and our GE legal department here will receive
17 it, and then that will save at least three days.

18 CHAIRMAN GROSSMAN: Are you agreeable to that kind
19 of service, Mr. Baldwin and Congressman Dellums, that you
20 serve on whichever -- well, I suppose any way that they mail
21 it, you will be receiving it, so there is no problem with it
22 that way.

23 MR. HALTERMAN: We will certainly agree with
24 that. First of all, I will just note that it often takes
25 five days to mail mail to San Francisco as well. I don't

1 think we have totally solved the problem of mail. But I
2 certainly think that that is a substantial step in the right
3 direction. So we will be prepared to serve and accept
4 service from the local West Coast operation.

5 MR. EDGAR: I am not so sure that we can guarantee
6 every delivery if the staff is making a filing. But I think
7 that we will both be doing enough filings that we ought to
8 be able to get a cooperative effort together and make sure
9 that things reach the Intervenor promptly. I know that our
10 stuff will.

11 CHAIRMAN GROSSMAN: Well, I think that perhaps we
12 will let the time delays take care of themselves, and we
13 will be somewhat flexible about within a few days of
14 enforcing the schedule. But it seems to me -- and I don't
15 care to repeat the schedule -- that the one that we have
16 just discussed is probably the one that we ought to
17 establish, subject, of course, to written objection by the
18 Intervenor with regard to this schedule.

19 We will impose it, but we will be flexible in
20 deviating from the schedule in response to whatever you
21 might care to submit after this conference, Mr. Baldwin.

22 MR. BALDWIN: Thank you, Mr. Chairman. If I may
23 make one more point, that is that in order to comment on
24 this schedule and in order to participate in this discussion
25 here this morning before this Board, it was in my opinion

1 necessary for me to review the NRC regulations in regard to
2 discovery and to review the discovery that has taken place.
3 And I have not been able to do that.

4 CHAIRMAN GROSSMAN: Why don't we set as a time
5 limit for your submitting objections to this schedule at a
6 week from today. Would that be agreeable to you?

7 MR. BALDWIN: Well, not exactly. And I must
8 return to my original problem that I have with this entire
9 proceeding. Now, I am put in the position of objecting to a
10 decision that has been made. It has been made without the
11 benefit of the consideration of the file by Friends of the
12 Earth and its attorney. That has been just completely
13 absent from the record because I haven't had a chance to
14 look at the file.

15 And I don't believe that it is a supportable
16 procedure to make a decision like this and then tell
17 counsel, who has come in with no notice whatsoever, that he
18 has a right to object to it. I presume I would have the
19 right to object to it anyway. But I simply don't think that
20 the process is going properly if I am now here with no
21 preparation and given, as my remedy for that, the right to
22 object later to a decision that is being made here after a
23 fairly detailed discussion of what is going to take place.

24 And again, I would urge the Board to postpone
25 these discussions until we have the final report of the

1 staff, because that is what we are in the final analysis --
2 that is what this is all going to be about. And we are
3 still talking about discovery against an unknown document
4 and the discussion is taking place with, in a sense, an
5 unknowing counsel. I don't think that that is supportable.

6 CHAIRMAN GROSSMAN: Well, perhaps we ought to
7 leave the discussion where it is right now without issuing
8 an order orally from the bench with regard to the schedule,
9 require that the parties review the transcript, which I
10 assume they will receive within a day or two, and have the
11 parties then submit their proposed schedule by a certain
12 day, and have a conference call on or about the day after
13 the parties are presumed to have received the schedules.

14 And why don't we leave it that way, and I foresee
15 having that conference call perhaps in two weeks, probably
16 just as we either receive the final installment of the SER
17 or word that it will be delayed for some additional time.
18 And so why don't we set the date for having the parties'
19 proposed schedules filed and served by -- let's see, today
20 is the 5th -- about the 14th. Well, why don't we set it for
21 the 15th, and we can be almost certain, too, that all of the
22 parties will have received it by the next Monday, and
23 perhaps schedule a conference call for January 20th.

24 MR. TREBY: Judge Grossman, the 20th is not a good
25 day because that is inauguration day.

1 MR. EDGAR: Mr. Chairman, could I suggest -- I
2 have heard Mr. Baldwin. But honestly, this is nothing more
3 than each person filing a simple schedule for the conduct of
4 certain activities. Any lawyer should be able to do that
5 within a week. There is just no reason why anyone could not
6 file a proposed schedule within a week and why, by the same
7 token, we could not have a prehearing conference call within
8 two weeks.

9 It is just beyond all comprehension to me that
10 that simple sort of activity could not be completed within
11 that time.

12 CHAIRMAN GROSSMAN: Except that I want to give the
13 parties an opportunity to receive the transcript, and that
14 adds on two or three days. And so we are basically in the
15 same place.

16 Mr. Baldwin?

17 MR. BALDWIN: Well, in response to your order of
18 December 10th, which Mr. Edgar did receive, he filed his
19 suggested schedule dated the 29th. That was 19 days later.

20 CHAIRMAN GROSSMAN: That is when we required it,
21 so there was really no way that they could do it any
22 sooner. But it seems to me that we really will not be
23 extending any part of this schedule by having it done in
24 this form, because we are still keying everything to the SER
25 and presumably this is taking place simultaneously with the

1 preparation of the SER, and it really isn't taking any extra
2 time.

3 So I think that that is what we want to establish
4 as a schedule right now, and that is that by January 15th
5 the parties should submit their proposed schedule; and that
6 by the 21st we have -- or on the 21st we set up a conference
7 call to discuss any disagreements with regard to the
8 schedules. And I will encourage the parties to communicate
9 with each other before the conference call to attempt to
10 resolve any differences.

11 And as a matter of fact, we ought to make that a
12 directive right now that the parties confer before the 21st
13 to see if they can iron out differences and then have the
14 conference call on the 21st. We will try to arrange that
15 conference call for the morning of the 21st, but --

16 MR. EDGAR: Mr. Chairman, do I understand that --
17 I guess what I have in mind here, I want to be sure that my
18 impression is correct -- that we file the proposed
19 schedules, the parties would attempt to confer and reach a
20 resolution, in which case we would have a rather short
21 conference call? But assuming that we cannot agree on all
22 points, do I understand that the Board then would
23 essentially make a bench ruling, to be confirmed by a later
24 order?

25 CHAIRMAN GROSSMAN: Yes, that is correct, in that

1 conference call.

2 MR. TREBY: Judge Grossman, just so that I am
3 clear, when we are filing by January 15th our proposed
4 schedule, are the parties now free to propose any schedule?
5 Are we supposed to be calculating four weeks, two weeks,
6 whatever we have been discussing this past half hour or so
7 as far as scheduling?

8 CHAIRMAN GROSSMAN: What we have in mind is that
9 you refer to the transcript and use that as a starting
10 point. But in Mr. Baldwin's case, he may not want to even
11 start that, and I'm not precluding him from suggesting an
12 entirely different schedule based on some weighty reasons he
13 has. But it would seem as though the discussion we have had
14 this morning should be somewhat profitable to him in any
15 event and that he ought to refer to that in making his
16 proposals.

17 MR. TREBY: Well then, I have two suggestions. My
18 first suggestion is perhaps that at an appropriate time we
19 might take a brief recess, like 10 or 15 minutes, for the
20 parties here to get together and to sort of outline some
21 dates that we could comply with these things, so that we
22 were all starting from the same starting point. And Baldwin
23 would, of course, would indicate whether or not he has
24 problems with those dates.

25 But at least, otherwise, on the 15th we are all

1 going to be arriving with different dates.

2 CHAIRMAN GROSSMAN: Talking with each other in the
3 dark?

4 MR. TREBY: That's right.

5 CHAIRMAN GROSSMAN: I will suggest that you confer
6 before the 15th. But I would think that Mr. Baldwin would
7 be unwilling to meet with you now to agree on any starting
8 point until he has had a chance to review the files. Is
9 that correct, Mr. Baldwin?

10 MR. BALDWIN: I would be happy to speak with them,
11 but I can't make any more representations as to what I know
12 out of that file than I have made so far.

13 CHAIRMAN GROSSMAN: I think that that is the case,
14 and there is no reason why we ought to force anything
15 further on the parties now. But certainly, I would see no
16 reason why individual counsel could not call each other up
17 to consolidate their efforts or to arrive at some agreement,
18 and I don't see any reason why the parties would have to
19 wait until the 15th or whatever date that we set in order to
20 file any responses.

21 And if Mr. Edgar has his proposed schedule ready
22 on the 10th, he might certainly want to file that and serve
23 that earlier.

24 MR. TREBY: I have a second matter.

25 CHAIRMAN GROSSMAN: Yes?

1 MR. TREBY: Which I raise with some hesitation,
2 and that is the staff has another problem. And that is
3 there is a proceeding which is not the subject of this
4 prehearing conference. But one of the reasons that the
5 staff was unable to propose a suggestion as to a schedule
6 was that we have a problem with this other proceeding, which
7 is the renewal proceeding.

8 CHAIRMAN GROSSMAN: I was going to come to that in
9 a moment, and I think that we would -- well, fine. If that
10 impacts on the scheduling here, we will do it right now.

11 MR. TREBY: There is a pending petition for leave
12 to intervene which has been orally granted, but there is no
13 written order. And part of the written order would be an
14 identification of the contentions or issues in that
15 proceeding.

16 It is very likely that one of the issues in that
17 proceeding is going to deal with the geology of the site,
18 and if in fact that is true, that it deals with the geology
19 of the site, the staff would be in favor of consolidating
20 for the limited purpose of just discussing the geology of
21 the site the two proceedings, since we have a number of
22 consultants whom it would be a more efficient use of the
23 staff's resources to bring them out here at one time.

24 Now, one of the reasons we have been hesitant to
25 raise this, aside from the fact that we don't know exactly

1 what the issues in the other proceeding might be, is that we
2 were somewhat concerned about what the status of discovery
3 might be, since obviously the party in the renewal
4 proceeding is not engaged in any discovery yet. And if
5 discovery in this proceeding had been completed, we might
6 well have wished to just complete this proceeding and worry
7 about the other proceeding at some other time.

8 As I understand the way we appear to be going, we
9 are updating the discovery that we previously had in this
10 proceeding and then we are somewhat throwing open the
11 discovery for all matters thereafter, in which case, if that
12 is in fact what is occurring, perhaps it would be a better
13 use of the staff's resources to to the extent possible bring
14 into this time frame the party in the other proceeding, if
15 they can get into this discovery and be able to consolidate
16 that one issue.

17 CHAIRMAN GROSSMAN: Well, it doesn't appear that
18 the suggestion that you made in what was submitted to us
19 last weekend, what we hear this morning, is practical. And
20 let me ask, by the way, did Mr. Baldwin or Mr. Halterman
21 receive any copies of that particular document filed by the
22 staff requesting that the portion of the renewal proceeding
23 that relates to this matter be consolidated?

24 Did either of you or both of you or neither of you
25 receive that?

1 MR. TREBY: Well, Judge Grossman, the staff has
2 not made the suggestion that they be consolidated. We
3 indicated that we might consider making such a request for
4 consolidation, but we have never moved for consolidation yet
5 since we don't know what the issues in the other proceeding
6 are.

7 And, number two, since neither Mr. Baldwin nor
8 Congressman Dellums are parties to the other proceeding, we
9 did not serve our December 24th motion on them. So I would
10 be surprised if they did receive a copy of it.

11 CHAIRMAN GROSSMAN: Is Mr. Somit here this
12 morning, by the way?

13 (No response.)

14 MR. EDGAR: That is part of the problem. Mr.
15 Somit has not made this request. I mean, we are leaping one
16 step forward in speculation, I am afraid. We have no
17 problem with supporting a staff motion that an order ought
18 to be issued in due course.

19 We do have a problem of consolidation, as
20 suggested. I think that we find it impractical, but again
21 it is speculative. If Mr. Somit were pushing it, then it
22 might be another matter. We feel that we would be severely
23 prejudiced and we really don't think that the idea ought to
24 be seriously entertained.

25 But we will respond in due course, I suppose.

1 CHAIRMAN GROSSMAN: Well, one thing, it would take
2 -- I don't think that we could pass on the contentions
3 without scheduling another prehearing conference. We would
4 have a very short period for discovery, and I think that
5 would prejudice the Intervenor in that case. And thirdly, I
6 don't really think that having those issues heard again in
7 the renewal proceeding would burden that proceeding
8 unnecessarily, in view of the fact that the testimony is
9 prefiled in any event and basically all that would be done
10 in addition would be some cross-examination by the
11 Intervenor and additional witnesses by him, which would be
12 in addition to this proceeding in any event.

13 So I don't see why you would even want to
14 entertain that. I don't see anything that is really
15 persuasive in having us take that course.

16 Does anyone want to add anything further to that?

17 MR. BALDWIN: I would. I believe that this
18 proceeding is unnecessary if the license for General
19 Electric Test Reactor, now long since expired, is not
20 renewed. And in addition to the earthquake problems, there
21 are a host of other severe problems which, in the opinion of
22 a lot of people, indicate without any question that that
23 reactor should never operate again.

24 And we believe that the best thing to do with this
25 show cause proceeding is to postpone it until we find out,

1 because the license to restart the reactor may be denied.
2 And if that happens, why bother, why spend the taxpayers'
3 money and the Licensee's money and Friends of the Earth's
4 very limited funds to argue about something that is going to
5 be completely mooted if it later comes out that that license
6 is denied?

7 CHAIRMAN GROSSMAN: Well, I think that the
8 Licensee is entitled to have its plant in operation on the
9 old license while its renewal is pending, in the absence of
10 having a valid show cause order; and that it would be a
11 violation of Licensee' rights to use the pendency of the
12 show cause proceeding to keep the plant in a shutdown
13 condition on the basis of a show cause that may well be
14 resolved by having a hearing that is tailored to the issues
15 raised by the show cause.

16 I don't see that we could -- that we would be
17 getting a due process by what you suggest, and I don't see
18 how we could possibly take that course of action.

19 Mr. Edgar?

20 MR. EDGAR: No, I have nothing.

21 MR. TREBY: I tend to agree with you, Judge
22 Grossman, that they are separate proceedings, that the
23 renewal was timely filed, and that the plant, but for the
24 show cause, would be permitted to be operated; and so the
25 Licensee is entitled to have the show cause proceeding

1 concluded.

2 CHAIRMAN GROSSMAN: The point being, if I wasn't
3 clear enough, that certain issues that require a shutdown of
4 the facility, and if those issues can be resolved I don't
5 believe anyone is entitled to keep the reactor shut down
6 because it happened to have been shut down on the basis of
7 those issues; and that the license will then just continue,
8 the operations continue under the old license while the
9 renewal application is pending. That is just the way that
10 the system operates.

11 I think that we, if we are moving on to other
12 topics, we could take a break now for about ten minutes and
13 reconvene at 25 after 11:00.

14

15

16

17

18

19

20

21

22

23

24

25

1 CHAIRMAN GROSSMAN: The conference is reconvened.
2 There are some items that perhaps we can discuss
3 this morning, notwithstanding that there was not notice
4 received by Intervenor's who have not had a chance to review
5 their files. But we might as well start on these and
6 perhaps have a more extensive discussion at the final
7 prehearing conference.

8 And let me point out now that we never intended
9 that this would be considered the final prehearing
10 conference in any event and that sometime perhaps with the
11 -- approximately when the pretrial testimony is due, shortly
12 before or shortly after, we will have a final prehearing
13 conference. But one of the issues that appears involves the
14 scope of the proceeding and is a matter that has come up in
15 discovery and undoubtedly will come up in the future
16 discovery as to what can be inquired into.

17 Now, we are -- that is, the Board is inclined
18 towards the position that accident mitigation and accident
19 consequences are not part of this show cause proceeding, but
20 that those matters will be a substantial part of the safety
21 and environmental reports involved in the license renewal
22 proceeding.

23 Would Mr. Treby like to comment on that?

24 MR. TREBY: I agree with you. I think that they
25 will be addressed in the documents of this proceeding, and

1 they are not within the scope of the issues set out in the
2 Commission's order of February 13, 1978 which amended the
3 show cause order.

4 CHAIRMAN GROSSMAN: Now, one problem that concerns
5 us along that line of thinking concerns the breaching of the
6 reactor containment. I am not sure that I have fully
7 digested the staff reports or the Licensee's position, but
8 it seems from a cursory look at the materials that under
9 those positions, it is assumed that the containment will be
breached at some point.

11 Is that correct?

12 MR. TREBY: That is my understanding. Yes, I
13 think it is that we do postulate that that will occur if we
14 don't give any credit to the containment.

15 CHAIRMAN GROSSMAN: But nevertheless, is it also
16 so that both the staff and Licensee postulate that that is
17 not part of the safety system with regard to safe shutdown
18 in the case of earthquake and that therefore it is
19 unnecessary to speculate on what may occur because of that
20 breach of containment?

21 MR. EDGAR: That is correct.

22 CHAIRMAN GROSSMAN: We are not taking any position
23 on that at this point, but we do want to just note some of
24 the troublesome areas and ones that will be subject to, I am
25 sure, dispute at the time of the hearing, and possibly

1 during the later discovery.

2 Does either of the Intervenors care to make any
3 comment?

4 MR. BALDWIN: Well, again, Mr. Chairman, I do not
5 feel able adequately to argue this point since I have not
6 had a chance to review the file, and my recollection is that
7 there was an exchange of papers on the question of whether
8 or not the consequences of the meltdown of the GE test
9 reactor should be included in this proceeding or some other
10 lesser consequences from a lesser accident, and I will do
11 the best that I can based on the notes that I have made here
12 this morning.

13 Our position is and has been that there is no
14 question but that these -- that the possibility of these
15 consequences must be included in the hearing. To my
16 knowledge, the NRC has never licensed a nuclear reactor
17 knowing that there might be surface rupture directly
18 underneath in an earthquake. This is unprecedented in my
19 experience, anyway, in dealing with the NRC.

20 And so we have got to ask ourselves a question
21 since there is going to be a parade of structural engineers
22 in the hearing who will say that no structure can be
23 guaranteed safe against surface rupture; the question is
24 going to come up what happens if we do have surface rupture,
25 and it does rupture the reactor and all of the water drains

1 out. That is a credible accident sequence at the General
2 Electric test reactor.

3 It is a very old reactor. You can imagine the
4 technological complexity of an Edsel, say, built in the
5 1950s and compare that with a modern day automobile. It is
6 two completely different types of engineering, two
7 completely different, almost quantitatively, almost
8 qualitatively different types of machines. And the General
9 Electric test reactor, compared -- if you compare that with
10 the safety requirements of a reactor, the modern generation,
11 you get the same kind of comparison as comparing a car from
12 the mid-1950s and its safety systems, no seat belts and so
13 on, with a car that is made today. And everybody here
14 knows this, that if the General Electric test reactor were
15 required to meet the safety requirements imposed on reactors
16 after Three Mile Island, we could all go home.

17 And therefore it seems to me that in the situation
18 where there is an obvious deficiency of safety systems, that
19 the possibility of a more severe accident immediately arises
20 because we presume the safety systems are there for a
21 reason, that all of the safety systems which have been
22 required since the General Electric test reactor was built,
23 regardless of its size, were put there for a reason to
24 prevent serious accidents.

25 Thirdly, the General Electric test reactor is less

1 than 20 miles from two major metropolitan areas. It is
2 about 20 miles from downtown Oakland and about 19 miles from
3 downtown San Jose, and about 21 miles from downtown Palo
4 Alto, and within 50 miles of the GE test reactor there are
5 several million people, and my recollection is 5 million or
6 so, maybe a little less. And if you looked across the
7 United States for a reactor with more people within 50 miles
8 than the GE test reactor, you would find a few: Zion
9 perhaps, Indian Point, perhaps, but you could probably count
10 them on the fingers of one hand. And the potential for a
11 major accident is therefore multiplied. If there is a
12 meltdown at the reactor being built 50 miles away from
13 nowhere, out in the middle of the high plains, that is one
14 thing. You may lose a few hundred thousand acres of crops
15 or something like that. But if there is a meltdown 20 mile
16 from downtown San Jose or downtown Oakland, then that is an
17 entirely different matter.

18 In addition to that, this reactor, we have been
19 told throughout the proceeding, is small. But no study has
20 ever been done. The potential release from this so-called
21 small reactor, it is perhaps analogous to a small dragon.
22 How much damage will a small dragon do if it gets out of its
23 little steel box? Well, we don't know because no study has
24 ever been done.

25 We, as a matter of fact, Friends of the Earth,

1 have done a little bit of work in this area to try to
2 predict what is the possibility if the General Electric test
3 reactor does have a meltdown with a breach of containment,
4 and our preliminary conclusions were that you are talking
5 about possibly thousands of casualties in this generation
6 and in the future generations, people with all different
7 kinds of cancer, people born now and for hundreds of years
8 from now with various kinds of birth defects and also
9 susceptible to cancer.

10 It is not supportable in our view, and again, I do
11 not feel that I can properly argue this this morning because
12 of my lack of preparation -- it is not supportable in our
13 view to exclude the question from this hearing: what should
14 be the consequences of a major accident, because the
15 question asked in the shutdown order is: what should the
16 geologic parameters be? And you can't decide what the
17 geologic parameters should be unless you know what you are
18 trying to prevent against.

19 Now, we just simply don't know that and we have to
20 find that out.

21 CHAIRMAN GROSSMAN: You understand that no one is
22 questioning at this point whether the concerns are weighty
23 enough to be heard. The question is what is the appropriate
24 proceeding in order to consider accident consequences and
25 accident mitigation, and it is really a question of whether

1 the show cause proceeding is one in which we can go into
2 these matters, or whether they must await the renewal
3 proceeding or possibly a petition under 2.206. And that is
4 the sole concern that the Board will have as to whether
5 these matters are heard or not in this proceeding, not
6 whether the concerns are weighty enough to be heard.

7 MR. BALDWIN: The U.S. Geological Survey is very
8 much at odds with the position of the staff on the
9 potential, destructive potential of the Verona Fault. In
10 addition to that, the NRC staff at one time -- and we
11 presume they did this -- well, maybe we can't presume it,
12 but the NRC staff at one time came out with a report which
13 said flatly that this reactor cannot withstand the maximum
14 earthquake that could appear in the Verona Fault. They have
15 said that.

16 And if you follow the discussion since that time,
17 you will see from time to time a hint that yes, maybe you
18 could get eight feet, but it is kind of improbable. And
19 that is in the back of everybody's mind.

20 And so then the question arises: what if you do
21 get eight feet? The staff says that the reactor can't take
22 it, the reactor will be destroyed, and they refuse even to
23 analyze the reactor for any eight foot offset.

24 And so the question arises, what is going to
25 happen? This possibility has been acknowledged. U.S.G.S.

1 doesn't agree that the fault is benign. The staff has said
2 a year or so ago that the fault is capable of destroying the
3 reactor, and now it is not supportable in our view to come
4 in and say there is absolutely no possibility of an accident
5 severe enough to release any radiation from this reactor,
6 and therefore, we should decide in the complete absence of
7 any data on the consequences.

8 CHAIRMAN GROSSMAN: By the way, let me ask, Mr.
9 Treby, whether there are experts that the staff had intended
10 to use that it was not now intended to use that do disagree
11 with the changed position of the staff, and if there are
12 such experts, will they be available at the time of hearing,
13 notwithstanding that the staff may not want to call them as
14 its own experts?

15 MR. TREBY: I am not aware of the fact that we
16 have changed witnesses that we would present. We do intend
17 to have a representative of the U.S.G.S. as part of the
18 staff witnesses, and I might indicate that the U.S.G.S. has
19 been a consultant for the staff throughout the proceeding,
20 and in fact, there is as one of the attachments to our SCS,
21 a letter from the U.S.G.S. setting forth what their official
22 view is.

23 Now, it is possible that there may be one or two
24 individuals within the U.S.G.S. that do not agree or who
25 have some differences with that official view.

1 CHAIRMAN GROSSMAN: Is it yours --

2 MR. TREBY: The question is whether or not we
3 intend to present them. I guess that may depend on whether
4 the Board wishes to hear them or not. It is not our usual
5 practice to bring everybody from the U.S.G.S. to hearings.
6 We tend to bring to the two hour hearings the spokesman, if
7 you would, for the U.S.G.S. That is the person who is in
8 charge of regulatory affairs within the U.S.G.S. and who is
9 their liaison with us who sets forth the position of what
10 the U.S.G.S. is.

11 If you have some desire to have some identified
12 individuals, we will attempt to make them available.

13 MR. LINENBERGER: Well, Mr. Treby, going just a
14 little further along the line of Judge Grossman's question
15 to you, I am very intimately in mind of another proceeding
16 in which a panel of U.S.G.S. witnesses produced a consensus
17 position that agreed with the staff with respect to a
18 certain site evaluation, and one of the members of the panel
19 stood up and said, well, gentlemen, it must be recognized
20 that this member of the panel does not support that
21 consensus.

22 Well, okay, there is all the room for disagreement
23 amongst reasonable minded people, but the interesting thing
24 there was that this individual's lack of support of the
25 consensus opens up a line of inquiry that ultimately

1 resulted in the facility being located to another site.

2 All we are getting at here is the Board would not
3 like to be presented with consensus where there is an
4 opportunity that it might disguise the fact there are some
5 disagreements. So we would be very appreciative of the
6 opportunity to make ourselves aware of these disagreements
7 if they exist.

8 MR. TREBY: The staff appreciates that concern and
9 the staff is very sensitive to the question of the
10 dissenting opinions, and we have attempted, I believe, to --
11 and very candidly, in the SEP to set out the fact that
12 there were some differing views within the U.S.G.S., and
13 then presented what the consensus view was.

14 CHAIRMAN GROSSMAN: Well, it is our inclination
15 that the witnesses who disagree, or I'm sorry, the experts
16 who have disagreed be available at the time of the hearing
17 so that they might be questioned also.

18 MR. BALDWIN: Mr. Chairman, I sense something
19 coming up here, and I am very troubled, and if I have
20 anticipated something that is not going to happen, I
21 apologize, but I would hope that no reasonable person would
22 consider running this hearing without hearing the full
23 testimony of the three U.S.G.S. geologists who have been out
24 to Vallecitos and done the work out there. And I am
25 referring to Darrell Herd, Robert Morris and Earl Brabb.

1 All of these gentlemen are closely familiar with the site
2 geology at Vallecitos. All of them are manifestly qualified
3 to inform the Board on the site geology at the Vallecitos,
4 and all of them -- and here I am going to make a
5 representation -- all of them are going to say that the
6 staff doesn't know what they are talking about when they put
7 these parameters on the fault.

8 And if there is going to be presented to this
9 board a carefully combed U.S.G.S., politically astute
10 higher-up to represent the work of Herd, Morris and Brabb,
11 we would register outrage at that suggestion before it is
12 even made, assuming that it has been hinted at. Those
13 gentlemen know more about that site than anyone, and they
14 are going to be -- and their opinion is going to be the
15 central issue in this proceeding.

16 CHAIRMAN GROSSMAN: Well, Mr. Baldwin, I would
17 suggest that you take it on yourself to make sure that those
18 persons are available.

19 MR. BALDWIN: Well, in other proceedings,
20 intervenors have had some difficulty in freeing up
21 individual members of the U.S.G.S. to testify in nuclear
22 cases at times. It is at times the inclination of the
23 agency to send one of these gentlemen from Washington and I
24 guess we will get to that when we get to that. I hope we
25 don't.

1 CHAIRMAN GROSSMAN: Well, I think that the staff
2 is put on notice right now that we would expect that those
3 individuals would be available at the time of hearing, and
4 that they prevail upon, attempt to prevail upon U.S.G.S. to
5 make them available for us, notwithstanding that they may
6 not be the witnesses presented in support of the staff's
7 case.

8 MR. TREBY: Well, the staff first of all is
9 somewhat disturbed that there should be any hint that we
10 wouldn't or would attempt to not provide the Board with all
11 of the information that the Board desires. The sum, or all
12 of the people that have been named have been presented to
13 the ACRS and have set forth their views, and there has never
14 been any attempt by the staff to hide the views of these
15 gentlemen throughout this proceeding. There certainly
16 would not be any attempt to do so in any hearing before this
17 Board.

18 The staff will make every effort to have
19 appropriate people here from the U.S.G.S., but we cannot
20 guarantee that they will be able to provide each and every
21 person that someone may ask unless there is some subpoena or
22 some other reason for that particular witness to be at this
23 proceeding.

24 CHAIRMAN GROSSMAN: Well, let me say it is my
25 understanding --

1 MR. TREBY: We will make sure that all views are
2 brought before this Board, and that may be able to be
3 accomplished with one or two people and not with a parade of
4 ten different people from the U.S.G.S. offices.

5 CHAIRMAN GROSSMAN: Well, let me say that it is my
6 understanding from reading the record that there hasn't been
7 any attempt at disguising any positions or not disclosing
8 those positions, and that I just wanted to put the staff on
9 notice that notwithstanding that there is no requirement
10 that they require in preparing and putting forth their case,
11 there is no requirement that they have experts available who
12 they do not intend to use in support of their case, that we
13 nevertheless want these witnesses, and that is the only
14 reason that we mentioned it now, not in order to cast any
15 aspersions on any past actions which we don't see as having
16 or being culpable in any way.

17 Does anyone have anything further along those
18 lines?

19 (No response)

20 CHAIRMAN GROSSMAN: We have had some discussion in
21 the past as to burdens of proof and references from reading
22 the pretrial, prehearing conference transcript of March 16,
23 1978. We are not going to enter into an involved discussion
24 as to who has the burden of coming forward with evidence
25 here, but we do want to indicate that we would like some

1 understanding of the parties' positions as to the order that
2 the testimony will be taken at the hearing.

3 Would Mr. Edgar like to start that off?

4 MR. EDGAR: There are two things, Mr. Chairman,
5 that I would like to call to your attention that have
6 changed since that discussion.

7 The first thing is that there was reference made
8 to a proposed rulemaking, NRC rulemaking, and that
9 rulemaking notice has been withdrawn. I don't have the cite
10 for you, but I can supply that.

11 The second thing is that in fact it appears that
12 by the time the SER issues, the last piece, the soil piece,
13 there will be no difference in view as between the staff and
14 the Licensee.

15 The so-called proponent of the show cause order
16 which was originally the NRC staff will not be in a position
17 adverse to that of GE. In particular, there was a dispute
18 as between GE and the staff as to whether a fault existed.
19 But at the present time, GE does not regard that as a
20 contested issue, if you will. They are willing to postulate
21 the fault for the purpose of analysis and then consider
22 whether the facility will meet the criteria selected.

23 Further, the question of whether there is a fault
24 or not is not a serious matter in terms of the show cause
25 order at this point but merely a matter of historical

1 interest and background. It is fairly difficult to
2 understand how the case got to where it is without
3 understanding that background.

4 But I do not believe that GE will be adverse to
5 the staff on that point.

6 So then the question is what is practical to do.
7 We would argue, of course, as a legal matter, that under the
8 Environmental Defense Fund, which is an EPA case, that the
9 only theoretically possible proponent of the show cause
10 order in its original form would be the Intervenor, and that
11 he would have the burden of going forward.

12 In terms of practicalities, however, I am
13 relatively well convinced that it is in the interest of all
14 parties for the Licensee and the staff, or rather, the
15 Licensee to put its case on first, provide the evidence
16 which is more or less a baseline for the Board's examination
17 of the issues. That doesn't change the legal
18 responsibilities of the parties, but that is a matter which
19 can be treated as conclusions of law and as a practical
20 matter doesn't have to enter into the defense direction of
21 the hearing much less.

22 CHAIRMAN GROSSMAN: I was really concerned more
23 with the order of proof and the fact that there might be
24 some disagreement which I believe there won't be now in view
25 of the fact that you have indicated that the Licensee would

1 have no objection in going first in presenting the proof.

2 As to the burden of proof, I think it is basically
3 an academic question that I don't think we ought to concern
4 ourselves, and I certainly don't want to represent that I
5 understand what the withdrawal of that particular proposed
6 regulation means in view of what was said in the preamble to
7 it.

8 But, fortunately we don't have to wrestle with
9 that problem here, and I assume then the staff would be
10 going on right after the Licensee. I don't want to get an
11 absolute commitment of what doesn't appear to you, Mr.
12 Treby, but that is basically how the hearing shapes up at
13 this point.

14 MR. TREBY: No.

15 CHAIRMAN GROSSMAN: No.

16 Well, I want to be aware of --

17 MR. TREBY: I agree that it would be appropriate
18 for the Applicant to go first. However, I think that it is
19 also appropriate for the staff, as it has traditionally
20 done, to go last. The staff is -- it is an advocate, of
21 course, of the position of the staff, but it is in a sense
22 neutral as to whether or not the facility should operate or
23 not operate, and it has traditionally taken the position of
24 being the last to present evidence.

25 Therefore, we would propose that the appropriate

1 order ought to be the Applicant first, the Intervenors
2 second, and the staff last.

3 CHAIRMAN GROSSMAN: I think this is a matter that
4 Mr. Baldwin probably would not be prepared to, or Mr.
5 Halterman, to offer an opinion on at this point. If they
6 care to, feel free, but it is not a matter that is going to
7 be resolved at this point.

8 MR. HALTERMAN: I would just like to offer my
9 initial sense of that, Mr. Chairman, if I might, and would
10 like to have the opportunity to think further on it, but if
11 it is true that the position of the Licensee and the staff
12 are going to be synonymous or at least very close to each
13 other, then it makes sense to me that those positions ought
14 to be articulated side by side or one right after the other
15 with the Intervenors who may end up having to be the
16 adversary parties to this proceeding coming on behind them.

17 Typically, it would be my understanding that the
18 staff would be in an adversary relationship to the Licensee
19 in a proceeding such as this, and it would, under those
20 circumstances, make sense for them to have the opportunity
21 to wrap up and present their case after the other
22 information has been presented.

23 But under these circumstances, or the
24 circumstances as we might find them at the time this comes
25 to hearing, it seems to me that Intervenors -- and I would

1 point out that there are two, and it is not necessarily the
2 case that we will be presenting the same case -- should have
3 the opportunity to finish up.

4 I would also like to just go back, if I may have
5 the ability to do for a second, and indicate that we support
6 Mr. Baldwin's position on the issue of consequences. I
7 would just like to put that in, too.

8 CHAIRMAN GROSSMAN: Mr. Baldwin, do you have
9 anything that you want to offer at this point on that?

10 MR. BALDWIN: Again, I don't feel prepared. I
11 will say that my sense is that this staff has apparently
12 changed sides in this case, and the parties who are in favor
13 of opening the reactor have a case to make. Representation
14 has been made that there is no essential difference between
15 the views of these two parties, and the parties have a case
16 to make that it should not be opened. And show cause means
17 show cause, and if those parties want to show cause that it
18 should be reopened, then I think they ought to make their
19 case and then we should be given the opportunity after that
20 to make ours.

21 And I don't think it is reasonable to have a party
22 make its case, then for us to make our case, and then
23 another party who we hear has an almost identical case to
24 make to make it as the second piece of bread. That doesn't
25 seem to me to be a fair way to proceed. So I would split it

1 up, Licensee, staff, Intervenor No. 1 and Intervenor No. 2.

2 CHAIRMAN GROSSMAN: I see we have succeeded in
3 pinpointing what will be possibly a problem that the final
4 prehearing conference -- well, Mr. Edgar, would you like to
5 --

6 MR. EDGAR: I would just like to -- I hate to get
7 a long discussion going on this subject, but two points.
8 First of all, we are dealing with written testimony here.
9 It is not as though we are dealing with an ambush piece of
10 testimony so that Mr. Baldwin would be prejudiced if he
11 weren't last or anything like that.

12 Secondly, I think there ought to be some
13 recognition given to the status of the staff, irrespective
14 of the relationship between the staff and the Licensee
15 vis-a-vis the issues. The staff does have a status
16 traditionally in NRC licensing cases for being guardian of
17 the record, if you will, and there is a sound reason for
18 having the staff go last in testimony.

19 With written testimony, I don't see, quite
20 frankly, a particle of difference, although I believe the
21 Licensee should go first to get the basic facts on the
22 record, if there is no big problem. If the Intervenor go
23 second and then paying some recognition to the special role
24 of the staff, it is logical for them to go last.

25 CHAIRMAN GROSSMAN: I think that we have --

1 MR. BALDWIN: Well, one more brief comment.

2 If there is a party in this case whose position
3 deserves the greatest scrutiny, it is the position of the
4 staff. Actually, as far as I am concerned, it makes a lot
5 of sense for them to go first and explain to you why it is
6 that they said that the reactor was susceptible of an eight
7 foot offset and could not withstand and then don't say that
8 anymore. The defense of that, it seems to me, is going to
9 be central to the proceeding, and it ought not to be put on
10 after the Intervenors have already made their case.

11 It seems to me to be not the best way to proceed.

12 CHAIRMAN GROSSMAN: I think all of the parties can
13 be assured that they will have a full opportunity,
14 regardless of which order the testimony is presented, and to
15 rebut whichever case they are prepared to. So that really
16 is not going to be a significant problem, but I just want
17 to pinpoint what the problems might be at the final
18 prehearing conference and give you all an opportunity to
19 prepare your discussions.

20 Now, I did not notice in reading through the
21 record that there had been any notice of hearing issued.

22 Does anyone recall that a notice was issue, or
23 does anyone have an opinion as to whether one ought to be
24 issued at this point?

25 Mr. Treby?

1 MR. TREBY: We are talking about a notice of
2 hearing for the show cause proceeding?

3 CHAIRMAN GROSSMAN: Yes.

4 MR. TREBY: Well, to the best of my recollection,
5 without taking that individual point, there was an order
6 issued in the show cause proceeding following the conference
7 by your predecessor Board Chairman on March 28, 1978, in
8 which he indicated that one of the points in that order was
9 that the evidentiary hearing, the show cause proceeding
10 would be set by order of this Board at a later date.

11 I guess there was a recognition of who the parties
12 were and that an evidentiary hearing would take place. I am
13 not sure whether or not that was ever published in the
14 Federal Register or whether that would substitute in any way
15 for a formal notice of hearing.

16 And I guess that exhausts my knowledge. In answer
17 to your question as to whether one was issued, I really
18 don't know beyond the fact that this order was issued. As
19 to whether one needs to be issued, I guess there would be --

20 CHAIRMAN GROSSMAN: So I guess your answer is that
21 whatever was issued was in that March 28, 1978 order
22 following the first prehearing conference.

23 MR. TREBY: Yes, sir.

24 CHAIRMAN GROSSMAN: And that the Board then ought
25 to review that order and see whether that suffices as a

1 notice of hearing.

2 And the second question was whether we need a
3 notice of hearing in this type of proceeding, and perhaps
4 Mr. Edgar will --

5 MR. EDGAR: Yes, to my knowledge, Mr. Chairman,
6 the notice of hearing in a show cause proceeding has never
7 been a requirement. If you look at 2703(a), it talks about
8 in a proceeding in which the terms of the notice of the
9 hearing are not otherwise prescribed by this part, it then
10 defines what a notice of proceeding will contain.

11 We believe it is otherwise prescribed. If you go
12 to 2 -- well, Subpart (b), which is your enforcement
13 section, there is not contemplated that a notice of hearing
14 is required to initiate a proceeding. In fact, the
15 proceeding is initiated by issuance of the show cause
16 order. The notice that is running here under the
17 Administrative Procedures Act is required to go to the
18 Licensee because of his right. The mere fact that there is
19 otherwise an opportunity for a hearing doesn't bring into
20 play Subpart (g), and the traditional notice of hearing.

21 CHAIRMAN GROSSMAN: Well, the problem -- there are
22 a few problems. One is that as you point out, there isn't
23 any separate notice of hearing or notice of opportunity for
24 hearing published in conjunction with a show cause order.
25 And that is part of the order itself.

1 However, it appears to me that what is part of the
2 show cause order is basically what a notice of opportunity
3 for hearing is rather than a notice of hearing, and that the
4 show cause order does both. And so, it would seem that it
5 might be appropriate for the Board to issue a notice of
6 hearing.

7 Now, we recognize that the show cause regulation
8 perhaps was not written with the idea in mind of having a
9 request for a hearing by someone other than the Licensee,
10 and that is possibly why it is deficient in providing for
11 matters such as this. But in any event, I guess what we
12 ought to do is review the pertinent sections and decide
13 whether we ought to issue a notice of hearing in any event.

14 Does Mr. Treby have anything further on that?

15 MR. TREBY: No, but I do know that there is
16 another proceeding which involves a show cause order, and
17 that is the LaSalle proceeding. Although I am not -- I
18 don't recall right now whether or not an order, a notice of
19 hearing was issued in that proceeding or not, but that might
20 serve as a precedent.

21 CHAIRMAN GROSSMAN: One thing, by the way -- well,
22 Mr. Edgar, do you have anything further on that?

23 MR. EDGAR: No.

24 CHAIRMAN GROSSMAN: By the way, I would like to
25 request that in responding to discovery, we would prefer

1 that in answering interrogatories, that the parties do what
2 the staff, the practice that the staff has of first setting
3 forth the question and then answering the interrogatory.

4 It is a great convenience not to have to compare
5 two documents.

6 MR. LINENBERGER: Forgive the interruption here,
7 but there has been a considerable amount of material filed
8 in this proceeding over the last few years, and a number of
9 items ended up on -- and in essence I observed that certain
10 things were being investigated and would be reported on
11 later, certain things raised questions that would have to be
12 looked into, and at least this Board member is not sure, and
13 I am not sure that I have seen the final wrap-up on all of
14 these things.

15 Let me just cite a for instance. Back in the
16 spring of 1978, Region 5 of the Inspection and Enforcement
17 part of the organization received a copy of an unsigned
18 letter commenting on some alleged deficiencies with respect
19 to the facility. There was an investigation by Inspection
20 and Enforcement of this, and an Inspection Report filed, and
21 therein, indeed, several things seemed to be laid to rest,
22 several things were left in the posture that, well, they
23 needed to be investigated further or analyzed further or
24 something that was not fully resolved. I don't recall ever
25 seeing a documentation of the ultimate resolution.

1 Now, the only point of this comment is to say to
2 the staff and Applicant as we approach the hearing time, the
3 Board is going to be scrutinizing very carefully the
4 existence of unresolved loose ends. So, in order that the
5 Board might not be in the posture of first pulling any of
6 these on you as surprises, let us say that we strongly
7 encourage you people to look through the record and assure
8 yourselves that there are or are not any loose ends left,
9 and if there are, be prepared on your own initiative to say
10 something about them. Otherwise the Board will be asking
11 you about them.

12 We do have a pretty fine-toothed comb on some of
13 these things, and there is no point in arguing them first or
14 first raising them if it is not necessary.

15 MR. EDGAR: Mr. Linenberger, may I ask one
16 question then to get some clarification?

17 There is part of your example that I understand,
18 and then I suppose I am unclear on another part. I reviewed
19 that inspection report recently, and there is a part of that
20 inspection report that deals with a seismograph, for example.

21 Now, I could see -- let us just assume that there
22 were an open item there and it wasn't closed out and there
23 would be a concern about that as an unresolved loose end, so
24 to speak.

25 What I am a little concerned about is are we

1 talking about loose ends or other things in that inspection
2 report that have nothing to do with the show cause order? I
3 mean, it is subject matter that is quite apart from it, and
4 it doesn't bear on seismic criteria or modifications.

5 Now, just in terms of management of the hearing
6 and effort, I think we are dealing with a specific scope
7 here, and if we can go back through and try to identify the
8 loose ends that have a direct bearing on the issues, but
9 every loose end in my view has to rest with NRC's normal I&E
10 function.

11 MR. LINENBERGER: Right. In the first place,
12 talking only about those matters that do impact the three
13 issues in the order to show cause, and getting back to the
14 same example that I was talking about, it was observed in
15 the Inspection Report that there would be a necessity or an
16 attempt, I forget which, at a later date to determine the
17 condition of concrete in the corner part of some pool or
18 building or foundation or basement, and I don't recall ever
19 seeing that one cleared up.

20 Well, now, if concrete strength has gone to pot in
21 some part or in some structure, it may very well impact on
22 the show cause. It is the kind of thing, the class of thing
23 that show cause --

24 MR. EDGAR: Understood. Now I understand.

25 CHAIRMAN GROSSMAN: Does anyone have any further

1 business for us to discuss this morning?

2 Mr. Treby?

3 MR. TREBY: Yes, I have two hopefully short
4 matters which came up earlier in the prehearing conference.
5 One was that you indicated that it is your desire to have
6 this conference call early or in the morning of January 21.
7 Giving account for the time zone differences, maybe we could
8 tentatively set a time for that, because it seems to me that
9 morning out here is close to afternoon in Washington, that
10 we are probably talking in terms of nothing much earlier
11 that, let's say, 11:30 or so Eastern Standard Time, and I
12 thought perhaps while we had all of the parties here, we
13 could discuss it.

14 MR. FOREMAN: That arose because of the constraint
15 that I have, and I am free on Wednesday after 10:00 or 10:30
16 in the morning, Central Time, that is, until around 12:00 or
17 12:30, and so for my convenience, if that could be arranged.

18 MR. TREBY: 11:30 Eastern Time, in that time zone,
19 if that is a convenient time for the people on the west
20 coast. I guess that would be around 8:30 their time.

21 MR. FOREMAN: Say around 9:30, something like that.

22 MR. TREBY: I thought we could discuss this since
23 we had all of the parties here.

24 MR HALTERMAN: For my part, it is just simply a
25 matter of providing the right phone for the person who is

1 arranging the conference. If it is 8:30 it is going to be
2 my home number, and if it is later in the morning it will be
3 my office number.

4 CHAIRMAN GROSSMAN: I think that the point is then
5 that it will be best to have it about that time as far as we
6 can see now, and so the appropriate arrangements should be
7 made for that.

8 And the second point?

9 MR. TREBY: The second point was that based on the
10 discussion that we have had this afternoon, it seems to me
11 that it might be appropriate in devising the schedule of
12 events leading up to the hearing that perhaps we would have
13 our final prehearing conference before we file the testimony
14 rather than after we file the testimony, which would be
15 after discovery was concluded but before we file the
16 testimony for a number of purposes. At that point we should
17 have a fair idea of what the parties' case is going to be
18 based upon their answer to the discovery questions. And
19 secondly, perhaps at that point the Board also will have,
20 having had an opportunity to see some of this discovery,
21 have an idea of what each party's case will be, and if they
22 had any more questions they could let us know at that time,
23 so that when each of the parties filed their testimony,
24 written testimony, they will be able to address whatever
25 Board questions or concerns that they had.

1 And I guess all I am doing is throwing that out as
2 my observation. That is something that I intend to build
3 into my schedule that I am going to submit by January 15.

4 MR. EDGAR: We will address it.

5 CHAIRMAN GROSSMAN: Fine.

6 Anything further, Mr. Treby?

7 MR. TREBY: Nothing.

8 CHAIRMAN GROSSMAN: Mr. Baldwin?

9 MR. BALDWIN: There is one other thing which I
10 think perhaps we can settle with the staff, if we could have
11 five minutes to talk it over with them. Maybe we would not
12 have to discuss it at all.

13 CHAIRMAN GROSSMAN: That is fine.

14 Why don't we take a five minute recess.

15 Off the record.

16 (Discussion off the record.)

17 CHAIRMAN GROSSMAN: Back on the record.

18 It appears as though there are not going to be any
19 further matters raised.

20 Is that correct?

21 (No response.)

22 CHAIRMAN GROSSMAN: I see everyone agrees to that,
23 and the Board would like to thank you for your preparation.
24 We have had an opportunity for your participation in the
25 conference notwithstanding that you may not have received

1 notice of the holding of this hearing, and we will just
2 adjourn now.

3 Thank you.

4 (Whereupon, at 12:35 o'clock p.m., the prehearing
5 conference adjourned.)

6 - - -

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

in the matter of: General Electric Company (Vallecitos Nuclear Center)

Date of Proceeding: January 5, 1981

Docket Number: 50-70-SC

Place of Proceeding: San Francisco, Calif

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Jim Higgins

Official Reporter (Typed)

Jim Higgins

Official Reporter (Signature)