

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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4 Pennsylvania Public Utility Commission :
 v. Metropolitan Edison Company and : Docket Nos.
 5 Pennsylvania Electric Company, Respondents. : I-79080320
 * * * * * :
 6 Operating agreement among Jersey Central :
 Power and Light Company, Metropolitan Edison: G-80060098
 7 Company, Pennsylvania Electric Company and :
 GPU Nuclear Corporation. :
 8 * * * * * :
 9 Affiliated interest agreement between :
 Metropolitan Edison Company and Pennsylvania: G-80070101
 10 Electric Company relating to the proposed :
 combined management of the two companies. :
 * * * * * :
 11 Petition of JARI, Incorporated; et al. for :
 an injunction to enjoin Pennsylvania : P-80100242
 12 Electric Company and Metropolitan Edison :
 Company, and for hearings. :
 13 :
 Preliminary meeting :
 14 :
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Page 1 through page 77 Executive Chambers
 North Office Building
 Harrisburg, Pennsylvania
 Friday, November 7, 1980

Met, pursuant to notice, at 1:05 p.m.

BEFORE:

EDWARD CASEY, Administrative Law Judge

APPEARANCES:

SAMUEL B. RUSSELL, Esquire
 ALAN M. SELTZER, Esquire
 Ryan, Russell and McConaghy
 P. O. Box 699
 Reading, Pennsylvania 19603
 (For Met-Ed and Pennelec)

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1 APPEARANCES (Continued):

2 HOWARD F. MESSER, Esquire
3 DENNIS S. SHILOBOD, Esquire
4 Strassburger, McKenna, Messer,
5 Shilobod and Gutnick
6 3101 Grant Building
7 Pittsburgh, Pennsylvania 15219
8 (For JARI, Incorporated)

9 STEVEN A. MC CLAREN, Esquire
10 P. O. Bcx 3265
11 North Office Building
12 Harrisburg, Pennsylvania 17120
13 (For Commission Prosecutory Staff)

14 ASHLEY SCHANNAUER, Esquire
15 1425 Strawberry Square
16 Harrisburg, Pennsylvania 17120
17 (For Office of Consumer Advocate)

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P P O C E E D I N G S

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2 JUDGE CASEY: We will go on the record.

3 I don't feel that there's any point in waiting any
4 longer. If people come in, we will just have to bring them up
5 to date on what's happening. This meeting today was called
6 for exploratory purposes, to review the Commission's order of
7 October 24, 1980 wherein the Commission consolidated four
8 separate docketed matters pending before the Commission.

9 The first matter has been an ongoing management
10 audit investigation which commenced, I believe, sometime back
11 in August of 1979, when the Commission retained the consulting
12 firm of Theodore Barry and Associates to inquire into the past
13 and present management practices of the GPU Corporation,
14 Metropolitan-Edison Company, and The Pennsylvania Electric
15 Company, the latter two companies being the operating
16 Pennsylvania public utilities which are wholly owned subsidi-
17 aries of General Public Utility Corporation.

18 That docket number was I-79080320. The second
19 matter resulted from a so-called affiliated company agreement,
20 a type of agreement which was filed involving the Jersey
21 Central Power and Light Company, Metropolitan-Edison Company,
22 Pennsylvania Electric Company and the proposed new GPU Nuclear
23 Corporation, which at this point in time is not in existence.

24 That agreement, under the affiliated interest
25 statute, Section 2101 et seq of the Pennsylvania Public Utility

1 Code requires the Commission to review such an agreement, and
2 to either confer its approval or disapproval on the planned
3 reorganization or the formation of the nuclear corporation as
4 proposed by the agreement. The agreement states that if and
5 when the Commission confers its approval upon the formation of
6 the new corporation, that the corporation will come into
7 existence and later ratify the agreement by an amendment to the
8 original agreement. That docket number is G-80060098.

9 The third docketed matter is another affiliated
10 interest agreement between Metropolitan Edison Company and the
11 Pennsylvania Electric Company, relating to the proposed
12 combined management of the two companies. That document has
13 also been referred to in pleadings filed by an opposing party
14 as a de facto merger of the two operating Pennsylvania utili-
15 ties owned and controlled by General Public Utilities
16 Corporation. That docket number is G-80070101.

17 The fourth and final matter is a petition that was
18 filed by JARI, Incorporated, et al. for an injunction to
19 enjoin Pennsylvania Electric Company and Metropolitan Edison
20 Company, and for further hearings. The docket number is
21 P-80100242. In effect, it was alleged that General Public
22 Utility Corporation is proceeding with this plan without the
23 necessary approvals from the Pennsylvania Public Utility
24 Commission or from the Federal Energy Regulatory Commission.

25 I might say at this point that it's not my

1 intention to formally grant an injunction, but I would caution
2 the companies not to proceed with this plan, except on paper,
3 and through meetings of the various corporate officers. But,
4 do nothing in furtherance of the plan until these proceedings--
5 that is, to implement the plan, until these proceedings are
6 concluded.

7 The amount of time given to us by the Commission is
8 in my judgment not too realistic, but nevertheless we are stuck
9 with the proposed schedule contained in the ordering paragraph
10 number four of the Commission's order adopted October 24, 1980.

11 That says that all four aforementioned matters that
12 I've just referred to on the record be consolidated for the
13 purposes of hearing and assigned to an Administrative Law Judge
14 who will conduct hearings and prepare a recommended decision to
15 be placed on the public meeting agenda no later than 90 days
16 from the adoption date of this order.

17 The Commission's order, as I said, was adopted
18 October 24, 1980. The order was entered on October 29, 1980;
19 however, the adoptive date is the one that controls. According
20 to my calculations, a decision due 90 days after October 24
21 would have to be ready for public meeting the week of
22 January 19, 1981.

23 Now, the only possible relief from that schedule --
24 I have no authority, as the Administrative Law Judge, to vary
25 that schedule at all -- those parties who would be

1 inconvenienced by such a quick schedule in important matters
2 such as the ones we're involved with here, to my understanding,
3 would have to file a petition for extension directly with the
4 Commission, if they were so disposed, citing whatever consider-
5 ations and reasons they would have for wanting a later period
6 of time.

7 In reviewing the file briefly since I have
8 received the assignment, which is less than one week ago, it
9 appears that the General Public Utility Corporation and its
10 subsidiary companies would want to proceed with this matter
11 with all deliberate speed, and they've actually stated that
12 they wanted the requirement of hearings waived, that is,
13 requirement of hearings before a presiding officer.

14 However, the Commission's order controls, and
15 apparently it was the contestants or the JARI petition plus
16 perhaps a recommendation by Theodore Barry and Associates that
17 these matters be subjected to formal evidentiary hearings.

18 I'm going to stop at that point to catch my
19 breath, and we'll look at the appearance sheet to see who is
20 here today.

21 MR. RUSSELL: Could I make a comment with respect
22 to one of the items that you covered, just so everybody's
23 fully informed and up to date with what has happened?

24 JUDGE CASEY: Yes.

25 MR. RUSSELL: The agreement with respect to

1 GPU Nuclear was not directed to the incorporation or the crea-
2 tion of that as a body. It was directed to a proposed operating
3 arrangement under which that proposed new corporation would
4 operate the nuclear facilities for GPU operating subsidiaries.

5 The actual incorporation of that new company
6 proceeded under a separate path, and when the Securities and
7 Exchange Commission, under the Holding Company Act on September
8 5, authorized the organization of that company, the actual
9 paper incorporation of it did take place and it was incorpora-
10 ted on -- the papers were filed on September 11 in New Jersey.

11 It's incorporated under the laws of the state of
12 New Jersey. So, there is a paper corporation, GPU Nuclear, in
13 existence.

14 JUDGE CASEY: Has stock been issued as envisioned
15 under the terms of the agreement?

16 MR. RUSSELL: I'm not aware that there's been
17 anything other than just the paper incorporation. Obviously,
18 it would not proceed with any operations as contemplated by the
19 proposed operating agreement until the necessary authorizations
20 have been obtained. But I did want to have that clear.

21 JUDGE CASEY: While we're on the subject, Mr. Russell,
22 I might ask you -- and I don't know whether you have the
23 answers to these questions or not -- the two agreements, the
24 one calling for the creation of the GPU Nuclear Corporation and
25 the other affiliated interest type agreement calling for the

1 combined management of Pennelec and Metropolitan Edison, were
2 those agreements preceded by a resolution of the board of
3 directors of GPU Corporation and a subsequent meeting of the
4 stockholders of GPU Corporation, if you know?

5 MR. RUSSELL: There's nothing on the stockholders
6 level, GPU stockholders level, to my knowledge. I would
7 certainly think that there was action at the director level,
8 but I'd have to get data on the specifics of it. We'll get for
9 you the action by the respective directors, boards of directors.

10 JUDGE CASEY: This may not be a requirement in the
11 public utility holding company situation, but with other
12 corporate structures where mergers are proposed and so on and
13 so forth, usually the board of directors have a meeting, adopt
14 a formal resolution calling a subsequent meeting of the
15 stockholders of the corporation for a vote approving the
16 planned reorganization or any contractual-type agreements that
17 will be entered into pursuant to that reorganization.

18 MR. RUSSELL: Well, this is not a merger in the
19 formal corporate sense. This is substantially less than that
20 formal structural arrangement. It is, in other words, a common
21 officership and directorship of the two corporations, but they
22 retain their separate entities, their separate securities
23 issues, and so on.

24 They remain separate corporate entities, and they
25 are not merged in any formal corporate sense under this

1 proposal.

2 MR. SHILOBOD: Of course, Your Honor, that's a
3 matter of dispute.

4 JUDGE CASEY: It is a matter of dispute. I think
5 Mr. Shilobod and his law firm in their response of pleadings
6 have uniformly referred to the proposed action as a de facto
7 merger by Metropolitan Edison Company and Pennelec. I'm not
8 saying that the change of names, dropping the Metropolitan
9 Edison Company designation and calling them Pennelec East would
10 be the legal indicia of a complete merger.

11 But you're going to have a common board of direc-
12 tors and a common management team, is that correct?

13 MR. RUSSELL: That's what's contemplated.

14 JUDGE CASEY: And yet, retain two separate
15 companies with perhaps different service problems and
16 considerations, assets? Don't you see any conflict of interest
17 there when one president or one chairman of the board is
18 wearing two separate hats?

19 MR. RUSSELL: Actually, the fact of the matter is
20 that in the not too distant past -- at least I try to tell
21 myself it's not too distant past, because it happened not long
22 after I started practicing -- there was a common president,
23 for example. And there have been, over the years, a number of
24 common directors, and there have been cooperative arrangements
25 over the years in various areas of operations.

1 I think that, in many respects, this is not
2 significantly different from the past in a number of respects,
3 and we don't see any conflict. As a matter of fact, we see a
4 number of benefits to the two companies, to their stockholders
5 and to their ratepayers and persons in their respective service
6 territories.

7 MR. SHILOBOD: Your Honor please, you raised the
8 issue as to whether or not there could be a conflict of
9 interest. I'd only like to point out that we did take
10 depositions of Mr. Kuntz and Mr. Dieckamp in which they
11 indicated that they could not conceive of a conflict of
12 interest.

13 We will be filing copies of those depositions as
14 part of these proceedings.

15 JUDGE CASEY: All right. I don't want to get too
16 deeply into the philosophical and the legal aspects of the
17 proposals today. We have more mundane matters. But before we
18 close on this topic of conversation, we have a copy of
19 Theodore Barry and Associates preliminary report, which I'm
20 sure you're familiar with. It was rendered to the Commission
21 on or about June 26, 1980.

22 And some of the statements made, although it's a
23 very, very general overview of the situation, as far as I was
24 concerned, the statements were rather provocative when you put
25 them in the context of this hearing.

1 They are as follows. First of all, in explaining
2 their role, it says, "Developing this assessment of the
3 potential benefits and cost of GPU's proposal has been a major
4 focus of the audit since the preparation of our testimony on
5 GPU's financial viability." And, "In order to provide our
6 overall assessment, we examined each aspect of the management
7 combination, using our evaluative criteria.

8 "The original draft plan for the management
9 combination submitted by GPU in late March, 1980 did not clear-
10 ly identify how the management combination would benefit
11 Pennsylvania ratepayers. This draft plan was focused almost
12 exclusively on logistics and the implications of relocation
13 personnel, and did not include an objective evaluation of
14 potential benefits to ratepayers.

15 "It provided no compelling reason for the manage-
16 ment combination." Now, I've taken some of those remarks --not
17 out of context, but they're excerpts. Finally, on the last
18 page of that preliminary report, "The proposed reorganization
19 is a management combination, not a merger." That's your
20 theory of the legal significance of it. "As such, the legal
21 entities will continue to be separate for financing and
22 ratemaking purposes. In view of this, the only significant
23 financial implication is the potential for reduced operating
24 cost."

25 Now, I'm sure you can argue rather strenuously that

1 any reduced cost to GPU and its subsidiary companies will inure
2 to the benefits of the various ratepayers in Pennsylvania. I
3 think the question is much broader than that. And of course,
4 it's your burden of proof.

5 MR. RUSSELL: There is a final report that TB&A
6 had. Do you have that?

7 JUDGE CASEY: I don't have that at my disposal.
8 It's not in the Commission document record folders that I have
9 with me. I intend to get that before the prehearing conference
10 and review it. But, Mr. Shilobod certainly has raised an issue
11 which we'll have to investigate thoroughly, and that is, can
12 single officers who are drawn -- these officers are the key men
13 from all three companies, apparently.

14 I've seen their names. And are they going to be
15 able to divorce themselves from formal affiliations with other
16 companies and act in the best interest of both companies and
17 the parent organization all at one time? I think the company,
18 in order to show its responsibility, especially to the New York
19 financial community, may have seized upon some of the ideas
20 expressed in the Kemeny Commission report as the impetus for
21 this whole idea of combining the two companies.

22 I think it might be neater -- I don't know what the
23 considerations were when the certificates were first issued;
24 that's apparently ancient history. I know that the service
25 territories for the two Pennsylvania companies are not

1 necessarily contiguous, but it would seem to me, if you had
2 one operating utility in Pennsylvania with perhaps divisions,
3 then officers could operate without tongue in cheek, or the
4 board of directors, and control a corporation with two separate
5 operating divisions.

6 That's just my thought, and it doesn't necessarily
7 reflect what I will include in my recommended decision at the
8 end of the proceedings. I'm here with an open mind. I'm going
9 to try to be objective and listen to the evidence as it's
10 presented.

11 While we're on that subject, I don't see how we
12 could prepare a report and submit a respectable work product
13 and give counsel time to file exceptions and what have you if
14 we have not completed our hearing schedule sometime on or
15 about December 15.

16 My thought would be -- and it's going to be tough
17 on everybody, including myself -- that we try to set aside one
18 entire week, and open hearings at approximately nine a.m. in
19 the morning, and go through until four or five in the afternoon
20 unless we immediately perceive a need for night sessions.
21 That's also a possibility.

22 But, I was hoping to have the formal prehearing
23 conference not later than ten days from now. That's a little
24 flexible, a day or two either way. You'll have to check your
25 own calendars, and I'll have to check mine before we leave this

1 afternoon to see what we can work out.

2 MR. SHILOBOD: Your Honor please, I'm concerned
3 also about the time limitation upon us. If we could have the
4 prehearing conference perhaps sometime sooner, it might be
5 helpful. I'm concerned we may need a good number of hearing
6 days.

7 JUDGE CASEY: I have no objection at all,
8 Mr. Shilbod, to moving it up.

9 MR. SHILOBOD: I'm thinking something like
10 Wednesday or Thursday of next week.

11 JUDGE CASEY: My only concern was notice require-
12 ments, mainly because we have people here who I consider key
13 figures in this proceeding who for one reason or another have
14 not elected to appear today. Mr. Russell, I'd like you to
15 clear up the representation problem as soon as possible.

16 MR. RUSSELL: Mr. Hafer here is with GPU Service
17 Corporation. He's a vice-president of GPU Service Corporation.
18 It's not that they have overlooked the importance of represen-
19 tation here, but at this preliminary phase, I don't think there
20 was a desire that somebody had to be here.

21 We'll certainly clear without any question about
22 who will be appearing on their behalf at the prehearing and
23 hearings.

24 MR. SHILOBOD: Your Honor please, there's another
25 problem about representation that I don't intend to make a

1 great issue of. I think there's a conflict of interest of
2 Met-Ed and Pennelec having the same attorney.

3 JUDGE CASEY: I do. I agree with that. Apparently
4 the service sheet in this proceeding simply was obtained by
5 taking the parties and involved counsel of record from current
6 Met-Ed rate investigation. Is that the way it appears to you?

7 MR. SHILOBOD: That's correct. What appears to me
8 is that if you read the management audit reports and heard the
9 arguments before the Commission in these earlier investigations,
10 everyone was treated, all three or four of these companies, as
11 an entity. They talk about "the company."

12 And this is something that I'm hoping we can avoid
13 in these proceedings. I think anything we can do to assist
14 that would be helpful.

15 JUDGE CASEY: I have no idea how the companies or
16 the holding company intends to present its case, but I would
17 want counsel representing each corporation to be present in
18 these proceedings, and perhaps a responsible officer. I
19 noticed -- it may have been in one of the agreements -- you
20 have a common vice-president named Conover or something?

21 MR. RUSSELL: Condon, yes.

22 JUDGE CASEY: He was a vice-president from GPU, for
23 Met-Ed and for --

24 MR. RUSSELL: Each of the subsidiaries, yes

25 JUDGE CASEY: Will he be a witness in this case?

1 MR. RUSSELL: I hadn't anticipated that Mr. Condon
2 would. There certainly would be a senior officer of GPU
3 appearing as a witness.

4 MR. SHILOBOD: Your Honor, will it be possible to
5 have a list of those witnesses by the time of the prehearing
6 conference?

7 MR. RUSSELL: I think that applies to all parties.

8 MR. SHILOBOD: Fine. And I would request that if
9 the Theodore Barry report is going to be introduced, which I
10 am sure it is, that we have the very detailed background, that
11 we have a detailed breakdown of the witnesses responsible for
12 each and every portion of that management audit report, down
13 each page, if you can.

14 I don't want to be faced with a situation that we
15 so often find where one individual comes in sponsoring the
16 exhibit, swearing to its validity, and then when you ask him
17 specific questions, he says, "Well, you have to ask someone
18 else about that." We would like to know ahead of time as much
19 as possible who specifically is responsible for everything in
20 that report.

21 JUDGE CASEY: I'm not sure whether I understand.
22 You're talking about the Theodore Barry Associates report?

23 MR. SHILOBOD: That's correct, the final management
24 audit report.

25 JUDGE CASEY: As I read their preliminary report,

1 they indicated that they had six qualified consultants, and
2 they were divided. One consultant would review matters
3 pertaining to the one company. Are you saying that certain
4 corporate officers of the utilities were responsible for the
5 information that appeared in the management audit report?

6 MR. SHILOBOD: They were not officers. I believe
7 they were employees. I'm aware of at least one that was
8 apparently doing a substantial amount of the work with respect
9 to the combined management agreement. It certainly wasn't any
10 one of those parties that was named in the earlier preliminary
11 report.

12 And to me, if these are the individuals who have
13 gathered the information, and also if there is some other
14 individual who has produced the conclusions that are set forth
15 there, I'd like to know who they are in advance.

16 MR. RUSSELL: I'm somewhat confused. Are you
17 talking about TB&A employees, or GPU employees?

18 MR. SHILOBOD: I don't know who. I presume GPU
19 employees assisted, since I know a substantial amount of time
20 was spent with GPU employees.

21 MR. RUSSELL: Maybe we can find out, first of all,
22 is TB&A going to be put in, their report going to be put in?

23 MR. SHILOBOD: If that's going to be relied upon
24 in any fashion whatsoever for use in the combined management --

25 MR. RUSSELL: I've asked the question, is the TB&A

1 report going to be put in this hearing?

2 JUDGE CASEY: I don't know how we'll blend it in,
3 unless the TBA people are available to testify --it's your
4 burden of proof -- who's going to call TBA. This is a tool
5 that the Commission paid upwards of 700,000 dollars for, a
6 management audit that began sometime in August of 1979, and it
7 is not officially -- well, the formal investigation is part of
8 this proceeding.

9 But the report, if it isn't offered in evidence by
10 you as the moving party in these other three matters, or it
11 isn't presented by Mr. Shilobod in the JARI interest or other
12 parties appearing of record, how do we get the report into the
13 proceeding?

14 MR. RUSSELL: I just raise the point, because in
15 the investigation at 308, the Commission Staff, the Administra-
16 tive Staff had as its witnesses the TB&A responsible personnel
17 for the report. And I guess I've been laboring under the
18 apprehension, that would be followed here.

19 MR. MC CLAREN: I think, Judge Casey, the situation
20 is somewhat different in these proceedings. In the proceedings
21 at I-308, the Commission itself directed that the Theodore
22 Barry Associates consultants appear as witnesses, and therefore
23 the cost of their appearance and preparation of testimony was
24 included within the management audit.

25 It's my understanding that further testimony that

1 might be presented in this proceeding has not been so included.
2 The Trial Staff does not have within its budget capabilities
3 the ability to hire these consultants, and so we do not expect
4 at this time to present the Theodore Barry Associates
5 themselves.

6 JUDGE CASEY: I kind of suspected that you were
7 going to say that. Is I-308 closed?

8 MR. MC CLAREN: I don't know if it's in fact closed
9 finally. It's not open on the record.

10 MR. RUSSELL: The complaints are still outstanding
11 with respect to the temporary rates under 308, although they
12 have been assigned a different "C" docket number.

13 MR. MC CLAREN: That's true. When the temporary
14 rates were set, the Company filed a complaint against those.
15 Those have been given a separate "C" number and consolidated
16 for hearing with the rate proceeding.

17 JUDGE CASEY: I think you better take this up with
18 the Commission at the earliest opportunity, at their next
19 executive conference, because what they're doing is sort of
20 poring over the activities of TB&A into their own investigation
21 which has to be concluded as a result of this proceeding.

22 So, if the Commission doesn't put the entire report
23 into evidence and call witnesses, then the parties are at
24 liberty to ignore the report or to use it as they see fit in
25 presenting their own case.

...COUNSEL: I would point out, Your Honor, that
 ...before us is the burden of proof with
 ...affiliated interest agreement. Presuming that
 ...is not going to be filed by the company or
 ...then it's somewhat difficult for JARI to
 ...produce the name of their witnesses at the
 ...conferences if we don't know who is going to be
 ...that information is going to be presented in
 ...the document itself.

JUDGE CASEY: The problem as far as I'm concerned
 ...the Commission through the Trial Staff is a party to
 ...proceeding. The Commission instituted the proceeding.
 ...Commissioners, however, have ordered this management audit
 ...consulting contract arrangement for its own guidance --
 ...the Commissioners.

If I were to review this report, it might influence
 ...judgment in some way to act or make certain recommendations
 ...that would be inconsistent with the evidence that's presented
 ...in the proceeding. It's almost tantamount to an ex parte
 ...communication. So, I can't insist -- I might informally say,
 ...YOU KNOW, this has to come in to the record. You can't throw
 ...HUNDRED hundred and some odd thousand dollars down the drain and
 ...not be guided.

But the Commissioners themselves, after they review
 ...recommended decision, whatever it might say, could very well

1 be influenced by something that the TB&A report concludes or
2 recommends and that could cause them to override any
3 recommendation that I have. So, they have their report for
4 their own uses.

5 Whether you gentlemen see value in it, I understand
6 that there are, at least the preliminary report which sort of
7 tacitly goes along with the whole idea. There's a mention of
8 the 18 million dollar saving or economy to be achieved by GPU.
9 So, I assume Mr. Russell and his counterparts might find that
10 report very persuasive, and might want to get at least segments
11 of it into evidence.

12 MR. SHILOBOD: Your Honor please, if that report
13 is not put into evidence, then I submit the record is not going
14 to be able to include that as justification on the record for
15 the establishment of clear evidence that is in the public
16 interest to approve an affiliated interest arrangement.

17 JUDGE CASEY: I agree 100 percent.

18 MR. SHILOBOD: And we should also recognize or
19 we should be able to infer that the companies or company did
20 not deem that report was relevant. Otherwise, it would have
21 been presented.

22 MR. RUSSELL: I think the report has been equally
23 available to everybody here. The Commission may have contract-
24 ed for it in the first place, but the bill was foot by the
25 company in the last analysis.

1 And we have been, I guess mistakenly, been
2 operating under the assumption that it was going to go in, not
3 through our sponsorship, but through the organization that
4 contracted with TB&A to prepare the report in the first place.
5 So, we'll have to see what the Commission's views are about
6 the submission of it as an exhibit in this proceeding, and if
7 they don't, then we're going to have make our decision as to
8 what we're going to do with it.

9 JUDGE CASEY: Why do you believe that the bill
10 falls back on the shoulders of the company?

11 MR. RUSSELL: If you pay the bill --

12 MR. HAFER: They wrote the checks.

13 MR. RUSSELL: They wrote the checks for it.

14 JUDGE CASEY: Who wrote the checks for it?

15 MR. HAFER: Met-Ed and Pennelec.

16 JUDGE CASEY: Wasn't this under the percentage of
17 the Commission's operating --

18 MR. RUSSELL: It was a separate invoice.

19 JUDGE CASEY: You mean, you paid for service and
20 work product that went to the Commission and not to -- the
21 whole thing might be tainted. You paid the fee to Theodore
22 Barry and Associates for that management audit.

23 MR. RUSSELL: But we didn't run the audit. The
24 Commission ran the audit.

25 MR. MC CLAREN: Judge Casey, it's typical with

1 management audits in other cases and in this that the
2 Commission select the auditor, that the Commission determine
3 the scope of the audit, and that they monitor the work that is
4 performed on it through their administrative staff. And that's
5 what occurred here.

6 It's also typical that they require that the
7 utility pay for the audit. If that in fact is an infirmity,
8 it's not unique to this case, and I'm not suggesting it is an
9 infirmity. As to presenting it specifically in this case, to
10 my knowledge, the Commission has not authorized funds to
11 present those witnesses.

12 We do not have funds available to us, so we're
13 simply not in a position to present it here.

14 JUDGE CASEY: I agree. As I remember the whole
15 concept of management audits, the idea started I believe with
16 probably the Yellow Cab Company in Philadelphia. It's a post-
17 1975 development with this Commission.

18 MR. MC CLAREN: I think that's correct.

19 JUDGE CASEY: Perhaps the Commission gives differ-
20 ent treatment to that kind of consulting contract than it would
21 if it were requiring an internal study of the Commission itself.
22 I think there could be some flaws, because really -- although
23 the Commission chooses the consulting firm or the accounting
24 firm, they're not paying the freight.

25 It depends on how independent the findings are, and

1 whether Theodore Barry would put its best foot forward on the
2 utility's behalf, rather than in the public or the Commission's
3 behalf. I'm not going to get into that problem now.

4 MR. MC CLAREN: To my knowledge, there have been
5 few opportunities, too, for the Commission to pass on the
6 weight and credibility to be assigned such evidence as the
7 report. It has just simply not arisen very many times in
8 contested cases and formed a substantive part of the record.

9 MR. SHILOBOD: Your Honor please, as a matter of
10 background on this management audit report, my understanding is
11 that before the final report is issued, they are sent to the
12 companies being audited for their review and comments first
13 before the final draft is submitted or made public.

14 JUDGE CASEY: That that should have been the
15 practice and it wasn't followed?

16 MR. SHILOBOD: I understand it was followed, that
17 was what was done.

18 MR. RUSSELL: I think that's typical, and I think
19 you find that for any kind of audit, manage. . or otherwise,
20 that the auditors just want to make sure that there's no
21 mistakes in numbers and other things that the company could
22 pick up and they could have corrected before it goes into
23 final form. The suggestion that it may have led to a warping
24 of the conclusions, I don't think, is warranted.

25 MR. SHILOBOD: I didn't suggest it, Mr. Russell; I

1 pointed out what happened.

2 MR. RUSSELL: It was implied.

3 JUDGE CASEY: The whole problem with the management
4 audit -- what do you understand by management audit? It simply
5 said the past and present management practices of the company.
6 Now, is there an accent on how they handle the financial
7 affairs of the company, how they handle the nuclear generation
8 activities of the company?

9 MR. SHILOBOD: As I read it, there's virtually
10 very little dealing with those specific issues. What we're
11 dealing with is future activities of the company, and not what
12 was indicated in the order, present and past practices.

13 MR. MESSER: I think it goes beyond the typical
14 management audits that I have seen, and especially in a recent
15 proceeding just concluded with Duquesne Light Company, in the
16 Warwick Mine management audit. That audit in that case was
17 specifically directed to achieve increases in efficiency and
18 productivity.

19 This audit, in essence, is almost a selling tool to
20 say that in order to pull GPU up by its bootstraps, that this
21 is what should be done, and management has indicated this is
22 what should be done, and with a few minor modifications here,
23 we approve and believe that it can be accomplished. So I think,
24 in terms of looking at it from the perspective of it being a
25 management audit in the true sense or typical sense, it is not

1 in my opinion that type of an audit.

2 MR. RUSSELL: I think the whole framework is
3 colored by the fact that we're dealing with anything but a
4 typical situation with the GPU picture since March 28, 1979.
5 There has been no precedent for this situation.

6 MR. SHILOBOD: I merely point out the inconsistency
7 on the record. But I submit that if it's not going to be
8 reported, that may all be irrelevant. After all, if the
9 company doesn't deem it relevant for the combined management
10 agreement, who am I to say?

11 MR. RUSSELL: This is all yet to be determined,
12 what will transpire.

13 JUDGE CASEY: I think the old I-308 proceeding,
14 Mr. McClaren, that questioned the financial viability of this
15 organization and whether they had possibly forfeited their
16 right to hold a certificate because of what had happened on
17 March 28, 1979, is that correct?

18 MR. MC CLAREN: Yes, and those issues were resolved
19 in the Commission's orders. The Commission did conclude that
20 the company should remain viable, and did conclude that it
21 should retain its certificates of public convenience.

22 MR. SHILOBOD: I accent the plurality of the word
23 "certificates."

24 MR. MESSER: That was in Met-Ed only, wasn't it?

25 MR. MC CLAREN: Yes, that was with respect to

1 Met-Ed only on that issue, and the petition that JARI filed
2 arose while that proceeding was on the record and at hearing,
3 and in one of the Commission's orders, it was ruled that the
4 issue surrounding that petition and the management combination
5 should be severed or split off or kept separate in this
6 proceeding, and not in 308. So, the Commission drew a
7 distinction then.

8 JUDGE CASEY: If that's so in your judgment, what
9 is the issue in this proceeding in that connection, in that
10 specific context?

11 MR. MC CLAREN: I think when the Commission
12 instituted this investigation back in August of '79, it did so
13 in the broadest terms, but did not in any way truly define what
14 it wanted to investigate specifically. At that point, one was
15 just left in doubt as to what specifically is to be determined.

16 The events that have taken place since then, as
17 you related with the issue of whether they should retain their
18 certificate or their financial viability, have been dealt with
19 in other forums. And it appears to me that at least the most
20 pressing issue that one can identify is the issue raised by
21 the petition of JARI as to whether this management combination
22 is appropriate.

23 JUDGE CASEY: Does anyone present here this
24 afternoon have any compelling or overriding interest or
25 objection to the formation of the GPU Nuclear Corporation?

1 MR. SHILOBOD: We don't have all the information
2 we need to make that decision. From what I perceive, Pennelec
3 did not participate in the operation of nuclear facilities
4 before. It had an ownership interest in a nuclear facility
5 that was operated by Met-Ed.

6 JUDGE CASEY: Twenty-five percent, right.

7 MR. SHILOBOD: And now Met-Ed is choosing to
8 surrender those operations of those facilities to GPU Nuclear.
9 Now, if I am correct in that, I don't see that there is a
10 great deal to be gained in questioning the GPU Nuclear as a
11 separate corporation which is going to render service to Met-Ed
12 who has primary responsibility for operating those plants.

13 The fact is, Pennelec has an ownership interest,
14 and it's a non-operating ownership interest. I am not aware
15 of anything where that's to be changed. If there is, I request
16 it be put on the record, and our position with respect to GPU
17 Nuclear might be different.

18 JUDGE CASEY: Well, as I read it, and again, it
19 was very hurriedly, the ownership would remain the same, whether
20 the merger or management combination goes through or not.
21 However, the total control of the cleanup, retrofitting, future
22 operation would be in the hands of selected key executives and
23 those that they would hire in the future to run the organiza-
24 tion called GPU Nuclear Corporation, which would be a New Jersey
25 corporation under the wing of the parent, General Public

1 Utilities Service Corporation. By the way, I understand even
2 though GPU is up in Parsipity, New Jersey, that it's a
3 Pennsylvania corporation. Is that correct, Mr. Russell?

4 MR. RUSSELL: The parent corporation.

5 JUDGE CASEY: Yes. The only company that is not
6 a domestic or Pennsylvania corporation in this combine is
7 Jersey Central Power and Light, which is a New Jersey business
8 corporation, is that correct?

9 MR. RUSSELL: And then the prospective new GPU
10 Nuclear.

11 JUDGE CASEY: Since we have that as one of our
12 docket cases, what I would like -- and I think I'll speed up a
13 little at this point, and we can take additional time -- in a
14 complex case, where we have a prehearing conference, I usually
15 ask for a prehearing memorandum, just like a pretrial memoran-
16 dum in federal practice.

17 I don't want that particular thing this time. I
18 want a little different animal. I usually ask the moving party
19 only to submit a prehearing conference memorandum. This time
20 what I want is a list of the witnesses who will testify,
21 especially from the moving party, and anybody who intends to
22 put on testimony in the case.

23 And what I want is a summary from the three
24 corporations--it can be provided by GPU as the parent -- in the
25 nature of an economic impact statement, an overview of this

1 whole matter, with the emphasis on what effect this is going
2 to have on the stockholders of the GPU Corporation after the
3 management combination and the nuclear company comes into
4 effect, but in particular as far as this Commission is
5 concerned the general financial impact it will have on the
6 three main classes of ratepayers for the two operating
7 Pennsylvania utilities that will survive under another
8 management team in another name.

9 And even though it's a GPU filing or submission,
10 I think that the other affiliated companies will have to be in
11 a position to stand behind this. In other words, it will have
12 to represent a consensus of the thinking of all three companies
13 as to what benefits will be derived from this proposed
14 combination.

15 MR. SHILOBOD: Your Honor please, with due respect,
16 I have some objection to that. It's necessarily inherent in
17 your request a presumption that there should be a unity of
18 views with respect -- I think in this particular occasion, if
19 we're thinking of the best interests of the company, it may
20 very well be that the Pennelec interests are substantially
21 different from those of Met-Ed and GPU and Jersey Central,
22 particularly when we consider that it is a public utility that
23 has not only an obligation to its stockholders but also to its
24 ratepayers.

25 It's not in the nature of a normal corporate

1 sequence where we can say that their sole obligation is to
2 their stockholder.

3 JUDGE CASEY: Who are the stockholders of
4 Pennelec?

5 MR. SHILOBOD: Pennelec, all the common stock is
6 owned by GPU.

7 JUDGE CASEY: So, we're talking about GPU
8 stockholders. I think, with the holding company situation,
9 I'm trying to keep this down so it isn't too unwieldy. If
10 what you're saying, Mr. Shilobod, is that the officers and
11 general counsel and key people at Pennelec might not share the
12 same opinions and enthusiasm as the Metropolitan Edison people
13 who are under the gun, so to speak, and yet because of
14 pressures being brought to bear by the parent are going along
15 with this arrangement? If that's what your saying, you're
16 intimating that we should have a separate overview or summary
17 from each company, each of the three companies, is that what
18 you're suggesting?

19 MR. SHILOBOD: That is not what I'm suggesting,
20 because the fact is, it is just the opposite. Some of the
21 individuals who would be primary beneficiaries of this merger
22 would be Pennelec employees, and therefore I'm not sure that
23 they would fulfill their responsibilities.

24 JUDGE CASEY: You don't mean rank and file
25 employees, you mean key officers?

1 MR. SHILOBOD: That's correct, and I have no
2 doubt that the report's going to be absolutely similar. I
3 only want to make sure that we have clear delineation of these
4 companies, and necessarily in your request where you indicated
5 that GPU could prepare these for these three companies was
6 inherent at least a subconscious feeling that there was a unity
7 that should be expected, and I don't think it should be-- which
8 is the essence of our complaint.

9 JUDGE CASEY: Well, if you're concerned about my
10 subjective view of the whole thing, you have no such concern.
11 I'm thinking it's a document to be distributed to other
12 counsel in the case to help them prepare cross-examination, to
13 give them an overview, how is this?

14 So far, the whole idea is very esoteric. It's like
15 pulling all the wagons up in a circle to ward off the last
16 onslaught of the Apache, or Custer's last stand in a financial
17 sense. But I would like to know, where did these plans
18 originate? Whose thinking was this? What were the considera-
19 tions? I can see dropping Metropolitan Edison as a name.

20 It's the kind of thing I might recommend myself.

21 MR. SHILOBOD: We would have no objection to that,
22 although we don't like using Pennelec.

23 JUDGE CASEY: Frankly, I wouldn't expect -- the
24 company might be honest, if they picked this up out of the
25 clear blue, out of the Kemeny Commission report and said to

1 themselves at a meeting one day or at lunch, "Hey, that's a
2 helluva good idea, let's get going on that in a hurry."

3 MR. SHILOBOD: I don't think there's any question
4 about that. I'd only like for the record to be clear on this,
5 because I am going to continue to accent the individuality of
6 the companies. I didn't really mean to intimate that the
7 Judge was in any way prejudiced.

8 It's just a pattern of practice that I myself find
9 myself falling into, whenever you read some of this documenta-
10 tion. It's very skillfully drawn, and you have to watch that
11 you're not victimized.

12 MR. RUSSELL: Let's let that pass.

13 JUDGE CASEY: JARI has no so-called burden of proof
14 here, but it might be in your best interests, too, rather than
15 in general averments contained in a pleading or allegations, if
16 you could point to specific situations and instances where the
17 stockholders or the industrial customers in Johnstown would be
18 injured in some way, potentially, at least.

19 I don't think it stands to reason a fortiori that
20 simply because you combine a management team and physically
21 relocate an office that it's going to penalize customers. It
22 may have an impact on the employment situation; I don't know.

23 MR. MESSER: I think it should be emphasized at
24 this point, Judge, the attack upon this plan we do not believe
25 will rise and fall on the 85 or so jobs that are affected.

1 MR. SHILOBOD: We're not making that an issue.

2 MR. MESSER: It is obviously an issue of concern
3 to our clients; however, we do not believe that that is the
4 broad view of attack that we're going to take in this case,
5 and it really plays no part in our minds at this time.

6 We do intend to present witnesses that will attack
7 the facets of the plan, if the companies decide to go forward
8 with their presentation of their evidence in support of it.

9 JUDGE CASEY: On what basis, legal, financial?

10 MR. MESSER: All of it.

11 MR. SHILOBOD: It's very hard for us to say
12 exactly what we're doing, since there is some intimations that
13 there may be something other than we expected on the record.

14 JUDGE CASEY: I hate to raise the spectre of
15 jurisdictional problems, but do any of you see any juris-
16 dictional problems with this proceeding as far as the
17 Commission's authority?

18 MR. SHILOBOD: There is an obligation on the
19 Commission to investigate a proposed affiliated interest
20 arrangement.

21 JUDGE CASEY: That's clear under the statute.

22 MR. SHILOBOD: Right. It doesn't have any
23 jurisdiction, I think, over GPU as such. The fact that GPU
24 is not a party to these proceedings I don't find offensive,
25 anymore than I don't find it offensive that the stockholders of

1 Pennsylvania Power and Light do not participate in rate
2 proceedings.

3 The proceeding is between the company as an entity
4 and the other parties to the proceeding before the Public
5 Utility Commission. Stockholders are not normally party to the
6 proceedings. In this case, GPU is a stockholder, and somehow
7 we have to keep that in mind. It is frankly no different than
8 if Met-Ed wanted to merge with some other public utility, on
9 how this Commission should look at the proposed merger from the
10 standpoint of the other utility.

11 JUDGE CASEY: However, I don't see after all these
12 months and years how they could view them as a stockholder
13 only in legal contemplation. They are a holding company. They
14 call the shots for the two operating Pennsylvania utilities.
15 They are an indispensable party. They're also a Pennsylvania
16 business corporation, although a holding company and not an
17 operating utility. I grant you that.

18 MR. SHILOBOD: Your Honor, the stockholders always
19 call the shots, or they should, and I don't think that that's
20 surprising. I think the problem is that it creates a danger
21 in this situation, because the holding company chose to get
22 separate certificates of public convenience, public convenien-
23 ces. The Commission should not look behind the certificate of
24 public convenience to see who the stockholder is to decide how
25 they're going to proceed in the various proceedings before it.

1 I think it's not to be expected.

2 JUDGE CASEY: The only thing is, circumstances
3 change with the years, and every day we have proceedings
4 instituted at the Commission where certificates are being
5 altered, perhaps more in the motor carrier and transportation
6 field, but we have transfers of interest back and forth to
7 meet the present circumstances, the times.

8 So, it's not objectionable for that reason alone.
9 It's the overall effective impact of such a change. Whatever
10 the considerations were, and I wish I knew what they were -- I
11 can only speculate why the two companies -- were these two
12 companies in existence before General Public Utilities? Were
13 there predecessor old electric utilities that were acquired?

14 MR. RUSSELL: Actually, if I could just go back a
15 minute to certificates of public conveniences, as we see it,
16 this doesn't involve certificates in any way. The only time
17 certificates were raised was in connection with the Met-Ed case
18 where, in I-308, there was an investigation to decide whether
19 or not Met-Ed's certificate of public convenience should be
20 revoked.

21 We respectfully pointed out, Met-Ed had hundreds
22 of certificates of public convenience, because the fact of the
23 matter is, under the old legislation, you could set up an
24 electric company only to serve in one municipality. So, you
25 had to set up paper companies, and then merge them together.

1 Each of them had their certificates, after 1913,
2 of course. Before that, you had rights without certificates
3 that came under the grandfather clause.

4 JUDGE CASEY: Grandfather clause, yes.

5 MR. RUSSELL: So, there's hundreds and hundreds
6 of certificates of public convenience that were merged together.
7 And as central generation stations became the state of the art,
8 larger and larger units became the economic thing to do, and
9 that was done.

10 And both Pennelec, Met-Ed, North Penn which has
11 since been merged into Pennelec, Jersey Central Power and
12 Light Company which as since been merged into Jersey Central,
13 and Jersey Central, they were all part of the Associated Gas
14 and Electric System, which at that time still included Staten
15 Island Edison and Manilla Electric.

16 So, these are situations of long standing. They
17 are not something that has just sprung up in recent years to
18 create problems.

19 JUDGE CASEY: So, they evolved not all that
20 scientifically; it's not a question of Pennelec being over here
21 in Western Pennsylvania, and operating the service territory
22 which is divorced from Metropolitan Edison for good reasons;
23 this is something that came about through the process of
24 evolution, through the old Public Service Commission?

25 MR. RUSSELL: And with the advent of the Public

1 Utility Holding Company Act of 1935.

2 JUDGE CASEY: I think the Commission, even though
3 the terminology -- what the Commission is saying, in effect,
4 that all these previous operating authorities and certificates
5 have merged into two identifiable operating utilities in the
6 Commonwealth of Pennsylvania that are easily identified
7 because of service territory and board of directors and
8 officers and locations and so forth.

9 Whatever right they have to operate as of 1979 and
10 1980 is at the sufferance of this Commission, and whether we
11 call it a single certificate of public convenience or what we
12 call it, we have the right to cause them to cease operating,
13 which is a very drastic measure.

14 MR. RUSSELL: Which is not an issue in any one of
15 these proceedings.

16 JUDGE CASEY: No, not in these proceedings.

17 MR. SHILOBOD: There's another problem in this that
18 I didn't point out. I pointed out that all of the common
19 stock of Pennelec is owned by GPU. The preferred stock is
20 publicly held, and what we're assuming is that the interest of
21 one class of stockholders is the one to be represented here.

22 I think if anything, there's an absolute conflict
23 which may very well result in other litigation. I think, for
24 the Commission to take sides in this and to assume that the
25 GPU interest is the one that it should watch for and not for

1 another class of stockholders, I don't think, is appropriate.

2 MR. RUSSELL: Where is the conflict that you're
3 talking about?

4 JUDGE CASEY: Between the preferred shareholders
5 and the common stockholders, if there is a de facto merger.

6 JUDGE CASEY: I think it's up to the company,
7 although we have precious little time to be sophisticated
8 enough unequivocally what impact they think this would have
9 on the shareholders of both classes, preferred and common, for
10 the various companies, corporations.

11 MR. SHILOBOD: What we're asking is the common
12 shareholder, who has control, to express an opinion as to the
13 health of this activity with respect to another class of
14 shareholders.

15 JUDGE CASEY: Well, I can't see how you can divorce
16 them. If you would prefer, if you think it's neater and
17 cleaner, then you want Met-Ed and Pennelec to respond, the
18 management of those companies?

19 MR. SHILOBOD: As I indicated, I expect that it's
20 going to be identical. So, with those perspectives in mind,
21 I think that getting the information is what we should be
22 primarily interested in now.

23 MR. RUSSELL: Could I get back to the question of
24 jurisdiction that you touched upon just a few minutes ago?

25 JUDGE CASEY: Yes.

1 MR. RUSSELL: I think, as we would read it, GPU is
2 not in fact a formal party to these proceedings. The
3 Commission order in I-308 and in the subsequent investigation
4 does call for an investigation of management with respect to
5 the whole system.

6 We are not raising any question about jurisdiction
7 over GPU for the purposes of such an investigation. But, of
8 course, jurisdiction can be a rather slippery term, and I think
9 we would say that by going ahead with evidentiary hearings in
10 the matter, we would do so without prejudice to the possible
11 position that there are limits within which the Commission
12 can override managerial decisions. As the courts have said,
13 the Commission is not a super-board of directors. So, we'd
14 reserve that as a legal issue.

15 JUDGE CASEY: Well, you might be able to do
16 indirectly what you can't do directly. We couldn't override
17 a management decision as such, but if a management decision led
18 to a contractual undertaking which turned out to be contra the
19 public interest, we could in that respect --

20 MR. RUSSELL: That's clearly within the
21 Commission's power, certainly.

22 JUDGE CASEY: The nuclear corporation, you know
23 there would be an operating agreement among the three utilities.
24 I think the nuclear corporation, although a new corporation,
25 would be tied in with General Public Utilities Service

1 Corporation, would it not, in some way?

2 MR. RUSSELL: It would be an affiliate, certainly.
3 It would be an affiliate, and GPU Service Corporation would
4 certainly be represented at least by the same officers on a
5 number of the officers and directorships of GPU Nuclear.

6 JUDGE CASEY: So, if you could define GPU -- so
7 we could go along with Mr. Shilobod's suggestion that you have
8 the two operating utilities respond to the merger -- I know
9 that's a dirty word -- combined management agreement -- have
10 GPU present its overview of the benefits of the General
11 Public Utility Nuclear Corporation, and what impact that would
12 have on the ratepayers in Pennsylvania, and shareholders.

13 As I understand it, Mr. Russell, the operating
14 utilities and the parent would continue to own Three Mile
15 Island and any other nuclear -- Oyster Creek or whatever it is?

16 MR. RUSSELL: There would be a separate operating
17 agreement with Jersey Central for Oyster Creek with GPU Nuclear.
18 They would operate the nuclear facilities for the entire system.

19 JUDGE CASEY: So, assuming that the Three Mile
20 Island plants -- I hate to assume anything -- would at some
21 time become operational again in the future and go on line,
22 they'd be in the rate base of the utilities that own those?

23 MR. RUSSELL: The ownership interest would remain
24 the same.

25 JUDGE CASEY: And yet those utilities would

1 relinquish whatever control they would have; it's only title
2 that they would retain, and the ownership?

3 MR. RUSSELL: Under the Atomic Energy Act, there
4 is one operator for a nuclear facility. In the case of
5 Three Mile, that was Met-Ed. The other two companies had
6 ownership interest, but no operational rights. And so the
7 operating license would go from Met-Ed for Three Mile to GPU
8 Nuclear.

9 And they would then have the three owning companies
10 as owning interest only.

11 JUDGE CASEY: So then, only the NRC would have any
12 residual interest in that plant. State of New Jersey -- it
13 would be operated by a New Jersey corporation, is that correct,
14 but the Pennsylvania Commission would have -- not that it does
15 at this point -- would have nothing at all to do with the
16 Three Mile Island?

17 MR. RUSSELL: I would say the SEC, under the
18 Holding Company Act, would still have an overview.

19 JUDGE CASEY: The SEC?

20 MR. RUSSELL: Under the Holding Company Act, because
21 it's part of a holding company system.

22 JUDGE CASEY: Right, and the NRC?

23 MR. RUSSELL: Yes.

24 JUDGE CASEY: There's one other point. We've
25 covered the witnesses. The third and last point in this filing

1 is the issues that you see in this case. Keep them very brief.
2 There may be a single issue on each of these docket numbers;
3 perhaps not. Perhaps it would be combined into one issue.

4 And I would give the other parties in the case the
5 same opportunity to present their view of the basic legal
6 issues arising from this proceeding. If we have the next
7 meeting in seven days or so, I don't know how we could get
8 this information together and exchange it in that period of
9 time. That's why I was a little concerned.

10 MR. SHILOBOD: I think most of the information
11 that is going to have to be gathered is by the entities
12 requesting the approval of the affiliated interest arrangement.
13 I don't see that we have a great deal to prepare for the
14 prehearing conference. Our need is for information for what
15 is going to be on the record, and what stance is going to be
16 taken in support of that to show that it's clearly in the
17 public interest.

18 I think it's premature for us to go very far, since
19 it's uncertain what's going to be presented. Maybe my request
20 for time-shortening may be unfair to Mr. Russell. I don't know.

21 MR. RUSSELL: We currently have two base rate cases
22 and two complaints against temporary rates going, in this
23 jurisdiction, not to mention those that Mr. Hafer is involved
24 in in Jersey and otherwise, at the federal level. I would
25 seriously question that we would be in a position to supply all

1 this information next week. I'd say as early as possible the
2 following week would be the earliest target that we could
3 suggest.

4 JUDGE CASEY: I get the feeling -- I don't know
5 whether the Commission's just -- they're under pressure, too,
6 to expedite these matters and get the whole thing out of the
7 way -- I just don't think this is an appropriate amount of time
8 in a matter of this importance.

9 If I wanted to play possum, I could say, "This is
10 sort of a collateral or derivative proceeding of bigger rate
11 proceedings, and you don't have to pay that much attention to
12 it," lead you down the primrose path and not have Pennelec
13 participate the way they should or GPU, and then in the end, I
14 could wind it up very neatly and say, "The evidence in this
15 proceeding is insufficient in support of these affiliated
16 interest agreements, and therefore I decline to give my
17 recommendation."

18 So, that's the problem you and your attorney
19 colleagues and the officers of these three companies have in
20 this proceeding. You've got to come up with something that is
21 worthwhile in the short period of time that we have. Otherwise
22 I'll have nothing before me in the way of -- what was the legal
23 term of art you used, Mr. Shilobod? Clear and convincing?

24 MR. SHILOBOD: Clear evidence that it's in the
25 public interest.

1 JUDGE CASEY: Clear evidence that it's in the
2 public interest. Now, why don't we turn now to a definite date
3 for the prehearing conference, if we can. Next week, I'm sure
4 of a hearing on Thursday, I believe.

5 Before I forget, I assume all of you gentlemen are
6 already acquainted with one another from prior proceedings, but
7 the gentleman seated to my right who is taking notes over there
8 is Mr. Brett Zankel, Esquire, who is Staff legal counsel in the
9 Office of Administrative Law Judge. He will be assisting me
10 during the proceedings, my alter ego.

11 He's not going to decide the case, though. I don't
12 trust him. So, how about a date for -- did you say, next
13 Friday?

14 MR. SHILOBOD: For me, the sooner the better. I'll
15 leave it up to the Judge and Mr. Russell.

16 JUDGE CASEY: Well, Mr. Russell is the one that
17 has to get the word out. And I don't know whether you're
18 going to come in here -- and I don't mean this in any derogatory
19 sense -- with a truckload of prepared testimony and exhibits.
20 Is that going to be your approach?

21 MR. RUSSELL: I really don't think that the
22 character of the four issues, of the four proceedings here is
23 one that calls for that kind of handling. May I ask this in
24 terms of the timetable? You're requesting memoranda, and what
25 was the timing of that, at the prehearing conference or before

1 the prehearing conference?

2 JUDGE CASEY: I think with the short amount of
3 time, that you'd be lucky if you could bring it to the
4 prehearing conference. And then between the prehearing
5 conference and the first day of evidentiary hearings, the other
6 parties would have the opportunity to review this material and
7 direct their own witness' testimony to meet it, or at least
8 have some tool for cross-examination.

9 MR. SHILOBOD: If Your Honor please, if that was
10 given to us sometime in advance of the prehearing conference,
11 we'll do everything in our power to have a responsive reply to
12 it in the nature of the issues or the witnesses or whatever.

13 I would point out that it really shouldn't take a
14 great amount of time to prepare, because you would think that
15 that would have been prepared already.

16 MR. RUSSELL: One of the things that is open is
17 this TB&A situation, and when do you think what the Commission
18 might have in mind might be identified, Steve?

19 MR. MC CLAREN: I don't see any avenue to take
20 anything further to the Commission. They've already ordered
21 this. They did not authorize money. We have already sought
22 out consulting funds, and we do not have them.

23 JUDGE CASEY: You're saying "we." Do you mean
24 the Commission?

25 MR. MC CLAREN: No, I mean the Commission Trial

1 Staff.

2 JUDGE CASEY: Do you actually have a budget and
3 appropriation for purposes of calling expert witnesses?

4 MR. MC CLAREN: Well, we have an administrative
5 process to direct requests up to the director of operations
6 for funds. And we're advised, there are no funds that will be
7 authorized.

8 JUDGE CASEY: There's nothing you can do about
9 that, except to apprise them at their next meeting or tell the
10 director of operations that it has become a possible problem
11 that you can't call any of the consultant staff, or get the
12 report into evidence, into the record -- that is you, the
13 Commission -- without supporting testimony.

14 MR. MC CLAREN: I am not the Commission, Your
15 Honor. I can make the request through my bureau director,
16 through chief counsel. The chief counsel is able to inform
17 the Commission of whether we in fact are presenting witnesses
18 and consultants. I would assume the Commission is advised of
19 that. I do not and cannot consult with them on this.

20 MR. SHILOBOD: If Your Honor please, the Commission
21 under the statute is to have an investigatory proceeding of the
22 affiliated interest arrangement. I don't think it would even
23 be appropriate for them to take a step one way or another until
24 the company or companies would set forth what they think is
25 relevant.

1 MR. RUSSELL: That's a rather weird thought. You
2 mean the Commission institutes an investigation and then says
3 it's going to have hearings to get a recommended decision and
4 doesn't bring forth before the ALJ who is supposed to make a
5 recommended decision the fruits of the Commission's
6 investigation?

7 MR. MC CLAREN: The burden of proof is not upon the
8 Commission.

9 MR. RUSSELL: In an investigation, I think you'd
10 look in vain to decide where the burden of proof lies in the
11 Public Utility Code. And it seems to me that it's only logical
12 to expect that whatever fruits there are from this investiga-
13 tion should be spread on the table for all to see and
14 cross-examine and agree with or take potshots at, or otherwise.

15 MR. SHILOBOD: To pick and choose out of that
16 record necessarily implies an advocacy stance, and I don't
17 know that the Commission should be taking that yet until the
18 company puts forth its case.

19 MR. RUSSELL: You're assuming that the company has
20 a burden of proof with respect to the investigation. I think
21 that's rather presumptuous.

22 MR. SHILOBOD: With respect to establishing a right
23 to have an affiliated interest agreement approved, I think they
24 do have the burden of proof.

25 MR. RUSSELL: I'm talking about the Commission's

1 management investigation.

2 JUDGE CASEY: That's a point Mr. Russell has.
3 They're not the proponents of a new rate filing as such. I
4 know uniformly they have the burden of proof in those proceed-
5 ings. But he has raised a good point.

6 MR. MC CLAREN: Judge Casey, I think if the
7 affiliated interest agreement and the petition by JARI did not
8 exist, we would have nowhere to go. The Commission may have
9 instituted an investigation but not set out clear guidelines
10 where it wants to go, and apparently is unable to fund any
11 presentation from the management consultants.

12 But, we do have the affiliated interest agreements,
13 which the company can produce whatever case they deem is
14 appropriate to obtain your recommended approval of those, and
15 JARI has filed a petition and can raise its objections. I
16 think, to that extent, the issues can be framed, and I'm not
17 sure we can do much more.

18 JUDGE CASEY: I agree. 2102 can't be applied in a
19 vacuum. I mean, simply looking at the four corners of a
20 contract -- I think the Commission is entitled to inquire in
21 depth as to what is intended to be accomplished beyond the
22 four corners of the agreement. I'm not going to get into any
23 esoteric discussion about parol evidence or anything, but this
24 is a different matter. They just don't throw an agreement on
25 the table and say, "Here it is; approve it or disapprove it."

1 There's more to it, especially when they call
2 hearings. But Mr. Russell still had a point. The Commission
3 opened an investigation, and it's up to them to conclude it and
4 to get as much into the investigation as they legally can,
5 including formal hearings and any documentary evidence that
6 they compiled pursuant to the investigation, and that this
7 consultant's report.

8 I think what you should do, Mr. McClaren, is to
9 advise chief counsel and the director of operations and the
10 Commissioners that this problem has arisen. It's their
11 investigation, and if they want this -- they don't even have to
12 accept the consultant's work product, but if they want this to
13 form part of the record in this proceeding, they had better
14 do something about it, or else -- it's not just the Trial
15 Staff's budget that you have to worry about.

16 MR. MC CLAREN: With all due respect, Your Honor,
17 I will assume 'a burden to go back to the Commission and
18 attempt to obtain from them some indication of where they want
19 to go in this proceeding.

20 JUDGE CASEY: I don't want you to do that. I want
21 you to put the cards on the table.

22 MR. MC CLAREN: I think they have. If the
23 Commission wished to give directions to the Prosecutory Staff,
24 they would have and could have done so through that order. It
25 inappropriate for me to go to the Commission in this matter.

1 We have already inquired as to whether we have the
2 ability to put on these witnesses, and we do not. I don't
3 wish to dispute with Your Honor. I just don't want to leave an
4 impression that I'll be able to go back and somehow carry some
5 sort of a message back to the Commission. I cannot.

6 MR. SHILOBOD: Your Honor, if this is really
7 causing a conflict, perhaps the proper approach would be to
8 sever that portion of the investigation from the combined
9 management agreement issue.

10 JUDGE CASEY: Well, we can do that, as far as I'm
11 concerned, except something that was in the Commission's file
12 when the assignment was given to me, the TB&A report, doesn't
13 exist. I haven't seen the final report. If somebody attempts
14 to offer it, or excerpts, or call witnesses involved in the
15 preparation of that report during the hearings, we'll rule on
16 that matter when the time comes.

17 The report is not an exhibit. It's not in evidence
18 at this point, and it may never be. I just want you to have
19 the Commissioners appreciate what posture the thing is. If
20 they find out, or they suddenly decide -- of course, they didn't
21 spend the 700,000 dollars. As we've heard now, it was the
22 company's. So, maybe they don't really care whether the report
23 and its results enter into the proceeding at all.

24 MR. MC CLAREN: That may be an unfair characteri-
25 zation. It is a standard for the Commission not to take money

1 out of its own funds, but to direct the utility, and whether
2 they're approving a rate increase or requiring a utility to pay
3 for a management audit, they're performing the same function.
4 They are in fact passing costs on to ratepayers.

5 I think, Judge Casey, that this management
6 investigation is a vehicle. That it's been assigned to you by
7 the Commission does not necessarily require that you resolve
8 all possible issues that might be raised by such a management
9 investigation.

10 What I took to be the impetus behind the
11 Commission's statement in public meeting, which is all that
12 I'm aware, when they directed a recommended decision in 90 days
13 on the public meeting agenda was their concern with the effects
14 of withholding any approval or ultimate determination on the
15 affiliated interest agreement.

16 Those are the things which must be decided, and
17 that specific approval, I take it, is what the JARI petition
18 challenges. So, really, I say again, I think that frames the
19 issue before you. I think it presents the difficulty for the
20 company as to what sort of a case they'll present to persuade
21 Your Honor to recommend approval of those affiliated interest
22 agreements. There may be a great many other issues that will
23 never be resolved.

24 MR. RUSSELL: We have no problem with assuming the
25 burden with respect to the two contracts that we have submitted

1 for filing, but I must confess that I'm puzzled about the
2 management investigation proceeding that has been consolidated
3 for hearing. At the moment, I gather that the Staff does not
4 contemplate putting in any evidence with respect to that, is
5 that fair, or is that a misstatement?

6 MR. MC CLAPEN: No, that is correct. At this time,
7 it does not appear that we will present any witnesses.

8 MR. SHILOBOD: I may have an explanation on how
9 that happened. When our involvement initially began, we were
10 aware or we believed that the companies were proceeding to act
11 on the combined management. We filed objections in the
12 management audit proceedings. We raised issues in that
13 proceedings.

14 We then discovered that there was filing of
15 combined management agreements in another docket number. So,
16 what we were doing was chasing from docket to docket to make
17 sure we had the matter covered wherever it might be. As a
18 result, I believe we do have filings in the management audit
19 proceedings, there was captions on them with those numbers,
20 which would have given rise to the combination or the
21 consolidation by the Commission.

22 JUDGE CASEY: I heard Mr. McClaren's explanation,
23 and it sounded very logical, but really, I share Mr. Russell's
24 feelings about the combination of the first docket number. I
25 don't think that's appropriately before us. I'll be very frank.

1 I think the Commission had this animal lying around
2 and wanted to close it out, so there wouldn't be any further
3 loose ends.

4 Of course, the two agreements that have been filed
5 and JARI's petition for an injunction and to intervene are
6 legitimate matters before me. But, how we can at the very
7 eleventh hour do anything meaningful in these hearings, with
8 respect to a management audit based on the testimony that might
9 be presented in one week -- well, I'm willing to wait and see
10 if it can be done.

11 But if Commission Trial Staff has no evidence to
12 show that one or more of the companies acted improvidently in
13 the management of the affairs of the companies, or acted
14 properly and the new proposals make sense, where do you go with
15 that particular matter?

16 Of course, I'll have to cover it. It will be part
17 of the caption in my report, and I'll have to make comments
18 and findings with respect to that proceeding, but it's some-
19 thing that was tacked on to the tail of 308, that was closed
20 out, is that correct? And apparently as an afterthought, the
21 Commission decided it would be a good idea to get a professional
22 consulting firm into the picture.

23 MR. MC CLAREN: I think, Judge Casey, the context
24 of this investigation at I-320 is that it was instituted in
25 late 1979, after an initial determination of events following

1 the Three Mile Island accident, and it was intended by the
2 Commission simply to be a formal vehicle in which they could
3 undertake any hearings that might be appropriate in that area.

4 The initial order did not require that it go before
5 an Administrative Law Judge. It was an investigation that was
6 formal but off the record. It lie, essentially, dormant until
7 these affiliated interest agreements were filed, until the
8 petition by JARI was filed.

9 I appreciate the difficulty that's presented with
10 Your Honor in trying to reach a recommended decision. For the
11 Staff's part, it's unlike many other investigations where the
12 Staff may prepare an analysis for the Commission, recommending
13 an investigation, having specific problems in mind.

14 That is not the situation we're faced with here.
15 We had no part in recommending to the Commission to make this
16 investigation active. So, we're attempting to struggle with
17 it as much as Your Honor is, as to how to bring it to a
18 recommended decision in 90 days.

19 JUDGE CASEY: Any other comments?

20 (No response.)

21 JUDGE CASEY: Let's tie and try this together now.
22 Have you picked a date, or can you pick an available date
23 within the next ten days for a prehearing conference?

24 MR. RUSSELL: I think the 18th would be the best
25 suggestion I could give, and we could try to get something out

1 before then.

2 JUDGE CASEY: Let's go off the record.

3 (Discussion off the record.)

4 JUDGE CASEY: Back on the record.

5 For the balance of November, I only have one
6 hearing which has not been cancelled, and that's on Monday, the
7 17th of November. Next week, of course, we have a state
8 holiday on the 11th, Veterans Day, so that would be -- wait a
9 minute, I take that back. I apparently have one on the 13th.
10 Wednesday is open next week. Thursday, I have a
11 hearing. Friday the 14th is open.

12 MR. RUSSELL: We have hearings on the 13th and 14th
13 of next week.

14 JUDGE CASEY: In front of Judge Matuschak?

15 MR. RUSSELL: Yes.

16 JUDGE CASEY: If we could work something similar
17 as we did today, if he would wind up by noontime on Friday the
18 14th, then everybody would be around and there wouldn't be any
19 additional hardship on the parties. We could schedule it for
20 the 14th. Will you waive notices? We'll have to get, either
21 by word of mouth -- there are people here that are going to
22 complain that they weren't on notice of the prehearing
23 conference, didn't get ten days, perhaps. That's a problem.

24 MR. RUSSELL: Your Honor, I think that that's not
25 likely, and perhaps -- I'd certainly be willing to waive notice--

1 perhaps we could go ahead, and if these parties do raise
2 objection, we'll deal with them at that time. We can send
3 them whatever notification we can, and if there are objections
4 raised, correct it at that time.

5 JUDGE CASEY: All right. Do you want to call it
6 for 1:30 or 2:00 or 1:00?

7 MR. RUSSELL: What day is this?

8 JUDGE CASEY: That would be Friday, November 14.

9 MR. RUSSELL: Would you be wanting these prehearing
10 memoranda and so on at that time?

11 JUDGE CASEY: Would I want them, would I call for
12 them?

13 MR. RUSSELL: Yes.

14 JUDGE CASEY: For the benefit of the participants,
15 I think it would be good if we could have something. It may
16 have to be implemented between the prehearing conference and
17 the first day of evidentiary hearings, but if you could -- I
18 don't know what the scope of this thing would be, how many
19 pages, similar to a prehearing memorandum of some kind.

20 MR. SHILOBOD: If we could get that list of what
21 exists in document form, it would be helpful. I don't know --

22 MR. RUSSELL: You're talking about getting all this
23 together one week from today; I think it's awful optimistic.

24 MR. SHILOBOD: I don't know how much there is. I
25 was under the impression it was not a lot.

1 MR. RUSSELL: I would say, with the hearings and
2 the personnel tied up in hearings in this jurisdiction and
3 Jersey and elsewhere, we have quite a bit of trouble getting
4 a hold of our people and getting things together. So, I don't
5 mean to beg off, but it's a real practical problem.

6 JUDGE CASEY: I'm not going to foreclose anybody's
7 right to file a very brief, quick petition with the Commission
8 to extend the time period.

9 MR. SHILOBOD: I'm just concerned that that would
10 be taken as being premature. I think if I did that, it would
11 be read as an attempt on my part to delay implementation of
12 that which the company asked for on an expedited basis. And it
13 would be very difficult for me to go before the Commission. I
14 think it would be almost prejudicial to me.

15 Perhaps what we should do is the best we can in the
16 couple days before that, and file it at that time.

17 JUDGE CASEY: That may be true. All right, we'll
18 handle it that way.

19 MR. MESSER: Are we set, then, for 1:00 on the
20 14th?

21 JUDGE CASEY: One o'clock on the 14th. It might
22 be too late today, because I have to use the scheduling staff,
23 to get a brief letter notice out to all parties of record. I
24 don't even know about the hearing room arrangement. I would
25 hope we could use the same room.

1 We can either wait until the 14th and pick some
2 time in late November, early December, or we can talk about it
3 right now. It just occurred to me that if everybody had a
4 week -- and I know that's sometimes virtually impossible,
5 especially members of law firms, outside counsel to set aside
6 a whole week on such notice, as well as the utility executives
7 themselves.

8 But what's your feeling? You don't think it could
9 be covered in five days?

10 MR. SHILOBOD: It depends what they file.

11 JUDGE CASEY: It depends on what they file for the
12 14th?

13 MR. RUSSELL: I really don't think there's any
14 great mysteries.

15 MR. SHILOBOD: I don't think there is that much
16 evidence that is going to be presented, based on the deposi-
17 tions that we took. That's why we asked for a list. My
18 perception is that the list is not going to be long. I might
19 be surprised, and there might be four roomful of things that
20 I don't know about.

21 MR. RUSSELL: I'm certainly not anticipating a
22 fraction of one roomful. We certainly will have testimony in
23 support of the two contracts, but I think your suggestion that
24 it would be truckful of stuff is --

25 MR. SHILOBOD: I'm saying, I don't know.

1 MR. MESSER: The problem is, we don't know.

2 MR. SHILOBOD: There was nothing before, and
3 there's something now, and we know that there's a range in
4 between there. That's all we know.

5 MR. RUSSELL: You certainly did discuss what was
6 in the depositions of Kuntz and Dieckamp, what had transpired
7 up to that point.

8 MR. SHILOBOD: We will file the depositions, and
9 with Your Honor's permission, I'd forward a copy to Your Honor
10 in advance of the prehearing conference, unless there's
11 objections to it.

12 MR. RUSSELL: I think we have to take a look at
13 them, because I think there's a lot of repetitiousness that
14 probably would even clutter up the record.

15 MR. SHILOBOD: It's awfully difficult to file the
16 deposition and make it coherent, unless there's something
17 prejudicial, by striking things out. And so, I think you have
18 a right to review it. I'm just suggesting this as a means of
19 expediting. The company is the one that wanted these hearings
20 expedited, and I'm trying to assist.

21 I am going to move to put those depositions into
22 the record. Your Honor is going to have to review them to rule
23 on any objections that are raised.

24 JUDGE CASEY: You're not simply going to use them
25 a tool for cross-examination, to point out any prior

1 inconsistent statements or things of that nature? You want
2 the whole thing?

3 MR. SHILOBOD: I think it would be easier. I
4 think it would save time. We covered the history, I felt, of
5 what went on.

6 MR. RUSSELL: Again, I think that's something we'd
7 want to review, because my recollection was that there was
8 much there that was repetitious. And I think a decent, clean
9 record here is certainly something to be desired.

10 JUDGE CASEY: Mr. Russell, the witnesses that you
11 will call, will there be time in this proceeding to submit
12 prepared testimony, or do you think that doesn't lend itself?

13 MR. RUSSELL: Well, it's just a case of whether
14 there is time, and at this moment, I don't know. We were
15 talking about possible hearing dates. I'd say Judge Matuschak
16 has done a pretty good job this morning in carving out a good
17 bit of November, the balance of November.

18 There are also hearings in the first two weeks of
19 December. It seems to me that the beginning of the first week
20 of December certainly would be our best suggestion as to the
21 start of hearings.

22 MR. SHILOBOD: Excuse me, when was that?

23 MR. RUSSELL: The beginning of December, starting
24 Monday the first, for example.

25 MR. SHILOBOD: That depends on how much information

1 we have in front of us, how many hearing days would be
2 available after that. If we have three weeks of open hearings,
3 then this certainly should be more enough, if the information
4 given to us is adequate. If we're going to have to file
5 subpoenas and so on, that's a different story.

6 JUDGE CASEY: You're after documentary --

7 MR. SHILOBOD: I want historical tracing and
8 documentary backup to whatever the direct testimony is going to
9 be.

10 JUDGE CASEY: See, there probably wouldn't have
11 been any need for any prepared testimony, unless the companies
12 wanted to put their best foot forward. If there would have
13 been interrogatories in this case, you know -- where did these
14 ideas originate, what formal action was taken, when, where
15 and how?

16 MR. SHILOBOD: We did that in the depositions.

17 JUDGE CASEY: You did that in the depositions?
18 Maybe they would be useful for this purpose. But I'll leave
19 it up to Mr. Russell and his associate counsel in the case how
20 they want to present their case. I'm not going to say that
21 you have to have prepared testimony.

22 MR. RUSSELL: Prepared testimony helps cut down
23 hearing time, certainly. And to the extent that it can be
24 done, we would certainly endorse the idea. It's simply a
25 matter of time.

1 MR. SHILOBOD: If it would speed up presentation
2 just to have the witness in here rather than prepare the
3 testimony, that's just as well with us, also. I have no
4 objection one way or the other. The only thing is, if they're
5 going to present testimony, I think it would be helpful that,
6 if they're going to present oral testimony, that they have all
7 of the supporting evidence with them, if there is any.

8 MR. MESSER: Or, furnished beforehand.

9 MR. RUSSELL: Pardon?

10 MR. SHILOBOD: Or furnished beforehand.

11 MR. RUSSELL: I have the feeling that there's a
12 suggestion that we're hiding something.

13 MR. SHILOBOD: Not at all.

14 MR. RUSSELL: In other words, we have as much
15 interest as anybody in trying to get these matters expedited
16 and concluded.

17 MR. MESSER: That's not the suggestion. The
18 suggestion is that we don't know what's there. We don't know
19 what you have in terms of backup documentation. That's all.
20 My point originally an hour ago was, we don't know that. I'm
21 not suggesting you're hiding anything or you're attempting to.
22 We would just like to have access to it. Clear and simple,
23 that's it.

24 MR. RUSSELL: And certainly, you will have.

25 JUDGE CASEY: You said, Judge Matuschak has you

1 booked up pretty solid for the second half of November?

2 MR. RUSSELL: I'd say three days a week, up until
3 the last week, then Tuesday. Of course, Thanksgiving is
4 Thursday of the last week, and so we were going to suggest
5 starting with the first of December.

6 JUDGE CASEY: That's good. I would like to, if we
7 can, fit all this in between the first and the 15th, if that's
8 possible. That's probably a tall order. I don't even know
9 what I have myself in December. I'll have to look at the ALJ
10 scheduling calendar.

11 Are you fellows going to have to come in and stay
12 in a motel for a week, is that right, fly in from Pittsburgh?

13 MR. SHILOBOD: Judge, I spend as much time here as
14 I do with my wife, I think.

15 JUDGE CASEY: What price glory.

16 MR. MESSER: Glory or infamy.

17 JUDGE CASEY: And then you have to work around your
18 witnesses, too. You're calling witnesses?

19 MR. SHILOBOD: That's the difficulty. You know, in
20 such a short period of time, to have the case completed is
21 going to necessarily mean that we need time to go over it with
22 our own witness. It's not a situation where we have deposi-
23 tions like you would have in a trial where you would know what
24 the other side's case is going to be, and you both walk in
25 ready to go. Here, we don't even know the slightest idea what

1 is going to be presented.

2 That's the real difficulty. I think if Your Honor
3 would just keep that in mind, because if it does come up, that
4 is going to work a difficulty, and thus we may very well
5 request an extension of time. I hope that we don't have to.
6 That's why I say, if the company really wants to expedite this,
7 the sooner it gets the information to us, the sooner we'll
8 know exactly what we're going to do.

9 MR. RUSSELL: We will certainly undertake to do as
10 much as we can as soon as we can. But again I want to point
11 out that between your depositions and the material you have in
12 the annual review, I don't think you're in any position to
13 need to expect any surprises.

14 MR. SHILOBOD: Where we're uncertain is reference
15 in the review to documentation of certain plans and certainly,
16 apparently, writings that were changed then and so forth. And
17 all of that, as far as I know, occurred after --

18 MR. RUSSELL: The annual review was in June, the
19 end of June.

20 MR. SHILOBOD: I'm not sure which -- we may be
21 talking about two different documents. I was referring to the
22 audit.

23 MR. RUSSELL: No, I'm talking about the annual
24 review before the Commission.

25 MR. SHILOBOD: I never got a copy of that. I was

1 present, and I heard it, and I would have liked to have had the
2 entire presentation, but there was only copies given out to
3 the Commission.

4 MR. MESSER: We have not received a copy.

5 MR. RUSSELL: We'll see that you get a copy.

6 There were a number of them there. I don't know why you didn't
7 get one, because there were a number of handouts there.

8 MR. SHILOBOD: Well, you had some handouts, and
9 some you didn't. Some you only had for the Commission,
10 because I was scrambling to get one and there were none.

11 JUDGE CASEY: This would fall under the category
12 of documents --

13 MR. SHILOBOD: There were some we didn't get. I
14 think I got one out of a series of two or three things.

15 MR. RUSSELL: There was one folder like this.

16 MR. SHILOBOD: I did not get that. I think I got a
17 small two or three page item that was handed out, but there was
18 no copies of that available. Don't forget, at that time, there
19 were a lot of newsmen in there grabbing those things, too. I
20 simply didn't have access to one of them.

21 MR. RUSSELL: There was a pack of them there.

22 MR. SHILOBOD: I would have loved to have had it.
23 My clients wanted it.

24 MR. HAFER: You should have asked.

25 JUDGE CASEY: That I take it is the final TD&A

1 report?

2 MR. SHILOBOD: No.

3 JUDGE CASEY: Oh, I see what it is now I'm sorry.

4 MR. SHILOBOD: It's the annual review before the
5 Public Utility Commission, dated June 26, 1980, and I have a
6 copy of it. Thank you.

7 JUDGE CASEY: I have some open periods between the
8 first and the eleventh of December. On the 12th and the 16th,
9 I have other hearings. After the 16th, I have some open dates,
10 but we're running into the holiday period, which -- there are
11 still working days there, unless people are planning vacations.
12 I'm not talking about myself.

13 MR. SHILOBOD: Judge, would it be helpful, for
14 instance, to perhaps speak to Judge Matuschak about taking
15 something a week prior to the 15th or ten days to the 15th for
16 a set of hearings, and then letting him take those days in
17 there so we could have a breakup? Because, gestation is
18 extremely important.

19 JUDGE CASEY: He's going to run right into the
20 beginning of December, is that correct?

21 MR. RUSSELL: He's already scheduled the third,
22 fourth, fifth, tenth, eleventh, and twelfth.

23 JUDGE CASEY: Of December?

24 MR. RUSSELL: Yes.

25 JUDGE CASEY: That's a problem.

1 MR. RUSSELL: We can have some of our people
2 available in this proceeding. Even though that's going on, I'd
3 say there's no absolute necessity that those dates preclude
4 our participation here, although I don't think we'd like to
5 have a total double-blanketing of the entire period.

6 JUDGE CASEY: Do you have a hearing with Judge
7 Matuschak before next Friday -- oh, yes, you do. You could
8 take it up with him, and then on the afternoon of Friday, the
9 14th, give me an idea --

10 MR. RUSSELL: Could I make a suggestion; that we
11 consider scheduling in this proceeding, the first, second,
12 third, eighth, ninth and tenth? That would minimize the
13 overlap at those hearings, and give us a block of time that we
14 could sink our teeth into.

15 JUDGE CASEY: All right. How's that?

16 MR. MESSER: Fine.

17 MR. SHILOBOD: That's good.

18 JUDGE CASEY: That's six days of hearing right
19 then and there. Do you want to stick to the customary starting
20 time at ten, or do you want to move it up to nine o'clock?

21 MR. RUSSELL: I'd say nine the first morning might
22 be difficult. After we're here, it wouldn't be difficult the
23 following days.

24 MR. SHILOBOD: Our planes get in at eight o'clock

25 MR. RUSSELL: I'd say if you set the first one for

1 ten, then we could get our people in here and we could take it
2 from there.

3 JUDGE CASEY: Okay. All the other days, we'll
4 begin at nine o'clock. Now, the hearing room is my problem.
5 I'll have to work that out, and I hope to have some informa-
6 tion for you by the 14th on available hearing rooms.

7 Now, are there any loose ends that we haven't tied
8 together, based on what's going to happen on the 14th, and the
9 exchange of information, identity of witnesses?

10 MR. SHILOBOD: Our witness will be a tentative
11 witness.

12 JUDGE CASEY: How about possible order of proof.
13 We could deviate from the -- you know, the Commission ordering
14 paragraphs set it out in sort of a logical progression. Is
15 GPU going to take the point on this management audit business?

16 MR. RUSSELL: That's something I think we're going
17 to have to confer with our people and say what they have to
18 say, and see if there's anything further -- did Mr. McClaren
19 leave to see if he could find anything out?

20 JUDGE CASEY: Mr. McClaren apparently felt that he
21 was locked in a terrible philosophical disagreement with the
22 Judge, picked up his marbles and went home.

23 (Laughter.)

24 MR. RUSSELL: I'm sorry, I was looking down here
25 and I saw he was gone. I didn't realize --

1 JUDGE CASEY: I have no trouble with outside
2 counsel, but there's some very tempermental people around the
3 Commission. I've discovered that.

4 MR. RUSSELL: I'm sorry, I'm my usual unperceptive
5 self. I didn't realize what had transpired.

6 JUDGE CASEY: He either had a commitment, or maybe
7 he ran to cry wolf to the director of operations or something.

8 MR. SCHANNAUER: Before leaving, he mentioned to
9 me that he'd be back in a few minutes.

10 MR. RUSSELL: I thought maybe he went out to check
11 to see if there's some further instructions on their position.
12 But if they do nothing with respect to the investigation, then
13 we'll have to decide what our position would be.

14 JUDGE CASEY: I still don't know what the management
15 audit animal is, although you gave me a very fine overview of
16 what it might be in this case. But past and present management
17 practices takes in -- this may be indiscreet on my part, but
18 GPU has filed suit against Babcock and Wilcox in the southern
19 district of New York in the Federal District Court, in March
20 or April of 1980?

21 MR. RUSSELL: I guess the parent, McDermott, if
22 I'm not mistaken.

23 JUDGE CASEY: I read the complaint and four counts.
24 Was there a suit ever filed in Philadelphia Eastern District
25 Court around the period of time when TMI-2 was first licensed

1 and was undergoing a period of non-commercial test operation,
2 and there was a valve failure of some kind, and it caused a
3 shutdown in the summer of '78?

4 MR. RUSSELL: That was the Lonargan suit. There
5 was then a rate case pending which involved the claimed
6 inclusion of TMI-2 in base rates.

7 JUDGE CASEY: Before Judge Joseph Cohen?

8 MR. RUSSELL: Yes. And an issue was the prudence
9 of certain expenditures with respect to steam relief valves on
10 the unit. And the two large valves that had been on the unit
11 as the initial design opened at the appropriate pressure, but
12 did not reclose at the appropriate reduced pressure level, after
13 they had let off some of the steam.

14 So, they had to be replaced by three -- six
15 smaller valves, in lieu of the two of the original design. And
16 the supplier of the two large valves was the Lonargan firm in
17 Philadelphia, and they were -- we had subpoenaed one of their
18 officials to appear at a hearing, one of the rate hearings for
19 certain testimony with respect to the valves.

20 And there was great consternation at the thought
21 that one of the corporate officials would be subpoenaed to
22 appear as a witness, and there was a flurry of activity, one
23 of which was the institution of a complaint down there. To my
24 knowledge, it was just filed and sort of lay there ever since.
25 Nothing's happened to it, to my knowledge.

1 JUDGE CASEY: TMI-2 went on line December 30, 1978?

2 MR. RUSSELL: Was declared in commercial operation
3 on that date.

4 JUDGE CASEY: And that action in Philadelphia
5 Federal District Court was never settled, compromised, turned
6 down, is still pending?

7 MR. RUSSELL: To tell you the truth, so many things
8 have happened since then by way of litigation, that -- there
9 was some discussion with respect to the claim against Lonargan
10 for damages by reason of the non-functioning valves, and that
11 was handled by other counsel or their carrier's counsel or
12 something. I frankly don't have a current reading, but it may
13 have been just eliminated, withdrawn or settled or something,
14 but I don't have any reading on that.

15 JUDGE CASEY: All right. It looks as though we've
16 accomplished as much as we can today. I hope there are no
17 misunderstandings about what you gentlemen are going to try to
18 accomplish by November 14 as far as giving us a summary of your
19 position in support of the affiliated interest agreements, and
20 what I have chosen to term the economic impact on the share-
21 holders and the Pennsylvania ratepayers of the various classes
22 as a result of these proposals, including the GPU Nuclear
23 Corporation, how this might further the public interest or
24 benefit the public.

25 You may take whatever information that you have.

1 The Kemeny Commission, I never read the Kemeny Commission
2 report, but they apparently had some in-depth observations and
3 recommendations about forming a nuclear corporation to provide
4 greater expertise in operation of a nuclear facility and take it
5 away from the operating utilities whose main concern is
6 marketing of electricity, I don't know. You know what you have
7 to do there.

8 And then any of the information or the documents
9 which may have been referred to in general terms by the TB&A
10 report which is not in evidence. Perhaps you can supply those
11 writings, agreements, what-have-you, resolutions to the JARI
12 parties. Mr. Shilobod would like the former discovery, the
13 depositions that were taken of the two top-ranking corporate
14 officers, Mr. Kuntz, chairman of the board of GPU, and
15 Mr. Herman Dieckamp, president. You want that in the record
16 in toto, is that correct?

17 MR. SHILOBOD: Yes.

18 JUDGE CASEY: Do you have any objection to that,
19 Mr. Russell?

20 MR. RUSSELL: To tell you the truth, I'd like to
21 take another look at them. It's been quite some time ago that
22 I skimmed through them in the first instance.

23 JUDGE CASEY: We'll keep that open, then, until the
24 14th to decide how that discovery information will be utilized.

25 MR. SHILOBOD: You, Honor, I had an opportunity to

1 make a fast review of this annual report. When it was given,
2 I saw it as a projection on the blackboard, and wasn't aware
3 that there was a booklet given out.

4 With respect to the management combination, there
5 was a presentation given to the Public Utility Commission at
6 that time, in which it said that the projected quantity of
7 benefits of this combined management agreement would be a cost
8 reduction of ten million and a cost avoidance of eight million,
9 or an 18 million dollar per year savings.

10 I'd like to request, as soon as we can, to get all
11 of the documentation that was utilized to produce those
12 figures.

13 MR. RUSSELL: That's certainly part of what we
14 would intend to introduce.

15 MR. SHILOBOD: I'm thinking of something more than
16 summary reports. I want specific calculations in detail.

17 JUDGE CASEY: I think Mr. Russell is indicating
18 that that's the main thrust of their case in this matter, and
19 to the extent that they develop that extensively is in their
20 best interest in meeting the burden of proof on the affiliated
21 interest agreements.

22 MR. SHILOBOD: I don't want it developed. I would
23 like to have what was already prepared, not something that's
24 going to be prepared for trial. I'm thinking, what was pre-
25 pared for this to the Commission. If there is something

1 different now, I'd like it to be labeled as such, and not
2 what was utilized at that time.

3 JUDGE CASEY: Of course, you can't get the work
4 product that's prepared in advance of litigation. You want
5 anything that was contemporaneous with that meeting with the
6 Commission?

7 MR. SHILOBOD: Incidentally, under the federal
8 rules, we can get the work products now, also.

9 JUDGE CASEY: That shows you how long I've been
10 out of practice. I had trouble with that.

11 MR. MESSER: It used to be that everything was
12 work product.

13 JUDGE CASEY: Yes, and I hid behind it very
14 successfully.

15 MR. RUSSELL: They keep changing. They changed
16 the Pennsylvania rules to catch up with the federal, and then
17 the federal has changed some more.

18 MR. MESSER: I think the Pennsylvania rules now are
19 far superior.

20 JUDGE CASEY: Off the record.

21 (Discussion off the record.)

22 JUDGE CASEY: We'll go back on the record at this
23 time, and I'll say that we will recess now until 1:00 p.m. on
24 Friday, November 14, at which time a prehearing conference will
25 be held in this case, and I will attempt, no later than Monday,

1 to get the ALJ's scheduling staff to send a brief letter noti
2 to all parties on the service list that the hearing will be
3 held at that time in a hearing room to be announced, but
4 hopefully in this executive conference chamber.

5 Mr. McClaren, I apologize to you. We are just
6 about winding up here. I wasn't sure you were coming back.

7 MR. MC CLAREN: No need to apologize, Your Honor,
8 I am sorry to have had to have left, but I did have something
9 I had to take care of.

10 JUDGE CASEY: I've just recessed the hearing, but
11 we'll reopen the record briefly if you want to make a statement
12 on the record.

13 MR. RUSSELL: May we go off the record just a
14 second?

15 JUDGE CASEY: Off the record.

16 (Discussion off the record.)

17 JUDGE CASEY: On the record.

18 This hearing stands adjourned. Recess until next
19 Friday at 1:00 p.m. Thank you very much.

20 (Whereupon, at 3:30 p.m., the hearing was adjourned
21 to reconvene at 1:00 p.m. on Friday, November 14, 1980, in a
22 hearing room to be announced.)

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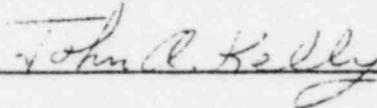
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