

May 9, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
)
CONSUMERS POWER COMPANY)
)
(Midland Plant, Units 1)
and 2))

Docket Nos. 50-329-OM
50-330-OM
50-329-OL
50-330-OL

REVISED MOTION TO REQUIRE SUBMISSION OF
CROSS-EXAMINATION PLANS, DESIGNATION OF
LEAD INTERVENORS, AND ESTABLISHMENT OF
TIME LIMITS ON CROSS-EXAMINATION

As the Licensing Board is aware, evidentiary hearings with respect to reopened Quality Assurance matters are presently scheduled to resume on June 1, 1983. The issues involved are numerous and complex, and a large volume of written testimony remains to be heard. Extensive and, at times, discursive and repetitive cross-examination of NRC Staff witnesses has taken place this week and last. Even with the Board's agreement to schedule another week of Q.A. hearings in late June, the ability of this Board to close the record in the OM proceeding and issue a timely Partial Initial Decision is in jeopardy.

In the conference call on April 19, 1983 the Licensing Board indicated its receptiveness to the idea of cross-examination plans. This motion is a formal request by

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Applicant that the Board require cross-examination plans and other measures necessary to expedite the proceeding, improve the quality of the record, and improve the fairness of the proceeding.

Specifically, for the evidentiary hearings beginning June 1, 1983 and subsequent hearings this Board should:

1. Require all parties to file cross-examination plans with the Board in accordance with the Commission's Statement of Policy on Conduct of Licensing Proceedings CLI-81-8, 13 NRC 452 (May 20, 1981). (Hereinafter "the May 20, 1981 Policy Statement").
2. Require intervenors to designate a Lead Intervenor to conduct cross-examination, on an issue by issue or witness by witness basis. See May 20, 1981 Policy Statement, 13 NRC 452, 455.
3. Require Ms. Stamiris' legal counsel to conduct all cross-examination. Failing that, preclude Ms. Stamiris from cross-examining with respect to issues which her counsel has already cross-examined on.
4. Require all parties, prior to cross-examination, to submit estimates of the time needed for such cross-examination. This should be done on an issue by issue or witness by witness basis. The Board should review such estimates for reasonableness and allow parties to exceed time limits so established only for good cause shown. See 10 CFR §§ 2.711(b); 2.718(e); 2.757(c).
5. Rigorously enforce all of the above.

As discussed below, the Licensing Board's authority to take these measures can not be questioned. The need for better controls on the conduct of this proceeding is obvious, based on a review of the volume and the quality of the record compiled to date and a realistic assessment of the numerous

witnesses and issues which still must be dealt with. In Applicant's view, these measures are essential to the timely development of a sound, manageable and reviewable record. Failure to adopt them, or equivalent measures, would be an abuse of discretion.^{1/}

II. THE LICENSING BOARD HAS THE AUTHORITY AND THE DUTY TO CONTROL THE CONDUCT OF PROCEEDINGS BEFORE IT.

The Commission's Rules of Practice, its May 20, 1981 Policy Statement, and applicable case law make it clear that Licensing Boards have the authority and the obligation to conduct their proceedings as expeditiously as practicable consistent with the development of an adequate decisional record. 10 CFR Part 2, Appendix A, Introduction and Sections V(4) and V(5); 10 CFR Sections 2.718(e), 2.757; May 20, 1981 Policy Statement, 13 NRC 452, 453; Northern States Power Co. (Prairie Island Nuclear Generating Plant, ALAB-244, 8 AEC 857 (1974), Petition for reconsideration denied, ALAB-252, 8 AEC 1175 (1975), Aff'd, CLI-75-1, 1 NRC 1 (1975); Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194 (1978).

Specific provisions in the Rules of Practice indicate that the Commission does not favor the creation of an unnecessarily large record. 10 CFR § 2.757(c) states:

1/ Applicant has been unable to reach agreement with the intervenors with respect to voluntary implementation of these or similar measures for the control of conduct of the proceeding. The NRC Staff agrees with the Applicant that these measures are both appropriate and necessary.

To prevent unnecessary delays or an unnecessarily large record, the presiding officer may:

(c) Take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination.

Similarly, 10 CFR § 2.743(c) provides that "Only relevant, material and reliable evidence which is not unduly repetitious will be admitted" See also 10 CFR Part 2, Appendix A, Section V(5); Prairie Island, supra, 8 AEC 857, 868-69. An unnecessarily large record is to be avoided not merely because of the delay involved in compiling it. An unnecessarily large record can overwhelm the abilities of the parties to summarize it in findings of fact - important points will be overlooked or lost in the sheer volume of the transcripts. The Board itself, even with the help of the parties' findings of fact, may find it exceptionally difficult to issue a thorough and timely decision. These observations are particularly true where, as in this case, there have been changes in the membership of the Licensing Board and in the representation of the parties during the pendency of the case.)

Finally, even if the Licensing Board itself is undaunted by the prospect of a huge record, it must bear in mind the more limited time and resources of the Appeal Board and higher appellate tribunals charged by law with the responsibility of reviewing the Licensing Board's decision.^{2/} An unreasonably

^{2/} The Appeal Board has complained in recent years about its workload. The Commission, which has rulemaking and administrative responsibilities as well as an adjudicatory role, routinely extends the time provided under 10 CFR § 2.786 for its appellate review, indicating that its workload is also heavy.

large and cumulative record in one case unnecessarily burdens them and also robs them of time which might better be spent on other, equally important matters. Moreover, such a record is likely to affect the quality of appellate review, because, it defeats the ability of the appellate tribunal to review the record independently.^{3/}

The Licensing Board has the authority to take the specific measures requested by Applicant in this motion. In addition to the general powers delegated to Licensing Board under 10 CFR §§ 2.711(b), 2.718(e), 2.743, and 2.757, the Commission has specifically approved the practices of setting reasonable schedules for proceedings, designating lead intervenors and filing cross-examination plans. May 20, 1981 Policy Statement, Sections A, B, and H, 13 NRC 452, 455, 457. Moreover, the Policy Statement makes it clear that, where these procedural devices are adopted, they are to be enforced.

III. THERE IS A COMPELLING NEED FOR THE LICENSING BOARD TO TAKE FURTHER ACTION TO CONTROL THIS PROCEEDING.

In this case, the record now exceeds 15,000 pages, not counting prepared testimony. There are more than 60 volumes of transcript. The record will almost certainly reach

^{3/} As to appealed issues, the volume of the record may mean that the Appeal Board or the Commission is tempted or even forced to accept in whole or in part the parties' characterization of the evidence. And of course the Appeal Board's or the Commission's ability to conduct a sua sponte review of the non-appealed issues may be frustrated by the sheer size of the task.

20,000 pages before the OM proceeding can be concluded, even if that can be done by the end of June. And the OL proceeding has barely begun. It seems clear that the evidentiary record in the combined OM:OL proceeding will be one of the largest ever compiled in an NRC adjudication.^{4/} The sheer volume of the record speaks for itself.

Moreover, the record, while certainly complete, is larded with extraneous and painfully repetitive material which makes finding and summarizing the pertinent portions a more difficult process than it should be. The parties have been allowed to conduct cross-examination far beyond the point of diminishing returns on many issues which have no reasonable chance of affecting the Board's decision in this case. The admonition of the Commission and the Appeal Board that "cross-examination is to be strictly confined to the scope of the direct examination in order to insure that it does not have the effect of expanding the boundaries of the contested issues" has been honored far more often in the breach than the observance.

Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2); ALAB 252, 8 AEC 1175, 1179 (1975) aff'd. CLI-75-1, 1 NRC 1, 2 (1975). Often cross-examination has been extremely repetitive, discursive, and even abusive. Examples of this can be found in almost every transcript, but

^{4/} The evidentiary record compiled by the Licensing Board in the TMI restart proceeding presently stands at 27,999 pages. The record compiled to date by the Indian Point Licensing Board only amounts to 12,483 pages. It is believed that in both of these cases, a larger portion of the record is devoted to limited appearance statements than in this case.

the most flagrant examples include the cross-examination of Dr. Ross Landsman on the FSAR "Block 8" matter ^{5/} and the cross-examination of Dr. John Weeks on corrosion of underground piping.^{6/}

5/ The direct examination of Dr. Ross Landsman dealt with an irregularity in the use of a procedure for completing "Block 8" in a form used by Applicant in its FSAR re-review. Dr. Landsman's direct examination was limited to 8 transcript pages. See Tr. 4844-51 (direct). His cross-examination by Ms. Stamiris lasted more than 200 transcript pages throughout the afternoon of October 14, 1981 and the morning of October 15, 1982. See Tr. 4859-5071. This issue was clearly not important enough to have wasted so much time.

6/ There is no contention on corrosion of underground piping in this proceeding. There is a contention, Stamiris Contention 4C, that remedial measures are inadequate because they fail to account for the effects of dewatering, soil settlement and seismic events on underground piping. Nevertheless, Ms. Stamiris through cross-examination was allowed to expand her contention to include corrosion, and the Staff was required to produce an expert witness, Dr. Weeks. See Tr. 7827-35; 9146-9192, 9210-20, 9294-9395, 9436-9476. Before the Board finally cut Ms. Stamiris off, the better part of three days had been spent in repetitive and confused cross-examination on a matter not in controversy in this proceeding. The Board's failure to cut this off sooner was contrary to the Appeal Board's and Commission's instructions in Prairie Island, supra, ALAB-252, 8 AEC 1175, 1179 (1975); CLI-75-1, 1 NRC 1, 2 (1975).

Unduly prolonged and repetitive cross-examination abuses the witness. Dr. Landsman and Dr. Weeks as well as more recent Staff witnesses such as Mr. Rowsome, Mr. Hulman, and Ms. Mitchell have unnecessarily been forced to repeat themselves over and over again beyond the normal limits of courtesy and patience. See. Tr. 13112 et seq.; Tr. 13441 et seq.

While these examples are admittedly extreme, the problem of rambling, repetitive, immaterial cross-examination infects virtually every transcript in the record.

To demonstrate the poor quality of the record, we have attached transcript excerpts relating to a few of the subissues discussed in the week of February 14, 1983 which show how repetitive and circular much of the cross-examination really is.^{7/} These are only two examples from a 15,000 page record which somehow must be summarized into findings of fact and a decision. The cumulative effect of this kind of record is eye-glazing and mind-numbing. It is not the kind of record the NRC or the Appeal Board will find convenient to review.

The situation has, if possible, deteriorated in this hearing session. The Board has already been forced by the prolonged nature of cross-examination to schedule an extra week of Q.A. hearings in late June, and it is dubious whether even then the record can be closed. The Board's ruling that Ms. Stamiris'

^{7/} There are two examples provided. First, excerpts are taken from the discussion of one non-conformance report, Bechtel NCR 4199 (the duct bank drilling incident), and of the stop work order that followed. Second, Applicant's witnesses testified 5 times that the excavation permit system went into effect on May 24, 1982. Many more examples of repetitive and pointless cross-examination can be provided upon request.

attorney and Ms. Stamiris herself could both cross-examine the same panel of NRC witnesses, and its unwillingness or inability to prevent such cross-examination from covering the same ground has contributed to the delay and compounded the repetitiveness of the record.^{8/} Even in light of last week's experience, the Board has been reluctant to rule that Ms. Stamiris and her counsel can not both cross-examine the same witnesses in the future.^{9/} This procedure is unfair and improper and it should be prohibited.^{10/} In short, the Licensing Board must take steps to regain control of this proceeding.

8/Examples of repetitive cross-examination (many of which involve Ms. Stamiris asking questions in subject areas already covered by her counsel, Ms. Bernabei) can be found at Tr. 14919-22, Tr. 14937-39, Tr. 14945-46, Tr. 14957-61, Tr. 14968-69, Tr. 14983-86, Tr. 14987-88, Tr. 15006-9 and Tr. 15057-59. It is true that the Board has expressed its desire that such cross-examination not overlap and on occasion sustained Applicant's objections to questions that have been asked and answered, (see e.g. Tr. 15047-48, Tr. 15006-09). Nevertheless, it is clear from the record as a whole and from the portions of the record cited in this footnote and in this motion that the Board has not been able to assert effective control over repetitive and discursive questioning.

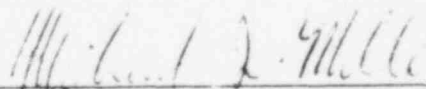
9/ See Tr. 15094-95. The Board has ruled only that Ms. Stamiris and her counsel can not both cross-examine Mr. Keppler. It has expressly declined so far to extend its ruling to the other witnesses or panels of witnesses.

10/ 10 CFR § 2.713(b) states that a person may appear in an adjudication on his or her own behalf or by an attorney at law. The regulations do not contemplate that both an intervenor and her attorney will be allowed to cross-examine, particularly with respect to the same panel of witnesses and particularly where the questions are allowed to overlap. The Rules of Practice do contemplate that repetitive and cumulative evidence will be prohibited. See, e.g. 10 CFR § 2.757(c), 2.743(c).

IV. CONCLUSION.

For the reasons stated, Applicant respectfully requests the Licensing Board to adopt the procedural measures outlined on page 2 of this brief, to expedite this proceeding, improve the quality of the record, and result in greater fairness to all parties.^{11/}

Respectfully submitted,



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^{11/} If the Licensing Board refuses to grant Applicant's motion in its entirety, we respectfully request that it certify the denied portions to the Appeal Board pursuant to 10 CFR § 2.730(f). While we recognize that this would be an interlocutory review, failure to adopt more effective measures to control the record would result in unusual delay and expense, would have a pervasive effect on the basic structure of this proceeding, and would place this Board "on a collision course" with Commission and Appeal Board policy. Cf. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB 687, 16 NRC (August 19, 1982); Public Service Electric and Gas Company (Salem Nuclear Generating Station, Unit 1), ALAB-588, 11 NRC 533, 537 n. 10 (1980); Northern States Power Co. (Prairie Island Nuclear Generating Plant) ALAB-252, 8 AEC 1175, 1180 (1975).


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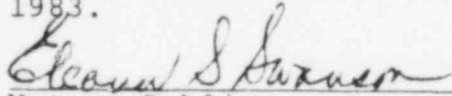
CERTIFICATE OF SERVICE

I, Michael I. Miller, one of the attorneys for Consumers Power Company, hereby certify that a copy of Applicant's "Revised Motion to Require Submission of Cross-examination Plans, Designation of Lead Intervenors, and Establishment of Time Limits on Cross-examination" was served upon all persons shown in the attached service list by deposit in the United States mail, first class, this 9th day of May, 1983.



Michael I. Miller

SUBSCRIBED AND SWORN before
me this 9th day of May,
1983.



Notary Public

My Commission Expires January 14, 1987

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BECHTEL NCR 4199: DUCT BANK

Attachment A
to Applicant's "Revised Motion
to Require Submission of Cross-
examination Plans, Designation of
Lead Intervenors, and Establish-
ment of Time Limits on Cross-
Examination"
dated May 9, 1983.

Hitting the Duct Bank - NCR 4199

11438 11-17

Ms. Stamiris: So it was approximately on April 28th when the stop-work was ordered, that it was discovered that this fluid was leaking inside of the Auxiliary Building?

A. (WITNESS BIRD) We believe it was the day before that it was noted that the drilling mud was coming out.

Q. Into the Auxiliary Building?

A. (WITNESS BIRD) Yes.

11442-44 3-4

BY MS. STAMIRIS:

Q. Mr. Bird, regarding this April 24th incident, I believe you indicated that on April 24th when the obstruction was first hit, that the people involved made the determination or believed that it was a nonsafety-related obstruction that they hit. And I'd like to know whether you are aware of any studies that were conducted or on what basis that determination was made?

A. (WITNESS BIRD) The study that we made in getting ready for preparation of this testimony, when we made it a long time ago, was to go back and see what all the available information was, and there was the notes from the people involved and logs they kept which gave us the basis for making that statement.

Q. But, I mean, at the time of the incident, on what basis was the determination made that --

A. (WITNESS BIRD) That is what I am saying, we read the logs and notes which were made at the time of the incident and the people involved that did not recognize that they were as close to the Q duct bank as they in fact were. And they thought they were several feet away.

Q. Would I be correct in assuming that there was no basis specified as for their determination that this -- I mean, why didn't they err on the side of conservatism and assume that whatever they hit could have been safety related and looked into it and stop work right then and there instead of assuming that it wasn't safety related and going on with work until you see fluid leaking into the Auxiliary Building?

11442-44 (continued)

A. (WITNESS BIRD) Again, I can't put myself exactly in their place to know what all their thinking was at the time. But from the records that was left, given the facts that they had, their decision, although it turned out to be wrong, was not all that unreasonable.

Q. Do you believe then that they acted properly under the circumstances at the time?

A. (WITNESS BIRD) I wished they had acted otherwise, but I'm not going to condemn them for their decision. I believe they had some technical rationale which supported their decision.

11444 23-25

Judge Harbour: And the duct bank was damaged on April 24th, is that correct?

Witness Bird: Yes, sir.

11506-7 7-14

Ms. Stamiris: I'll repeat. The important part of the question was: Do you, as you sit here today, believe that that was a proper handling of this chain of events?

A. (WITNESS BIRD) Yes, with an explanation.

It was clear that the individuals involved on the 24th, although they knew they had hit something, convinced themselves that they had not hit any safety-related structure.

When it was ascertained that a safety-related structure had been hit, Bechtel QC immediately got the paperwork in motion and generated the non-conformance reports that we're looking at.

Q. So, as you have described it, you believe that this was a proper application of quality assurance and quality control procedures?

A. (WITNESS BIRD) Yes.

11506-7 (continued)

Q. I believe I asked you yesterday, but I will repeat the question.

On what basis did the workers who hit the obstruction on April 24th definitely think that it was not a safety-related structure? On what basis did they make that determination?

A. (WITNESS BIRD) I remember the question from yesterday, and I don't have any better recollection today than I did yesterday on what all that basis was other than that they were sure themselves they were not that close to the duct bank.

Q. But you just have a vague recollection of that?

I mean, you don't have anymore specifics that you could tell me as to on what they based that determination?

A. (WITNESS BIRD) No, ma'am, I did no research over the night on that.

11584-6 16-4

Ms. Stamiris: Well, wouldn't it be more correct to say that you had hit something four days earlier and you had confirmed on the 28th that indeed it was this safety related electrical, or the duct bank -- safety related duct bank at the Auziliary Building?

A. (WITNESS BIRD) That could be made as a correct statement now, and for quite a while now that could be made as a correct statement, but that could not be made as a correct statement as of the 28th, because at that point in time I didn't know about the 24th. I did not see any of the backup information.

Q. Well, what were you told about this incident when you first got your phone call on the 28th?

A. (WITNESS BIRD) That we thought the electrical duct bank, the Q electrical duct bank had been hit quite a bit in operation.

11584-6 (continued)

Q. So, on the 28th, you were told that you thought they -- or that whoever was on site thought the electrical duct bank at the Auxiliary Building had been penetrated but it wasn't decided for sure at that point?

A. (WITNESS BIRD) To say it hadn't been decided for sure, it might have been for sure in some people's minds and not for sure in other people's minds. I think our conversation with NRC is the most accurate way to describe it was that we didn't have all the facts and we have to investigate.

Q. So, when you received your phone call on the 28th, is your recollection of that phone call that you were not told that something was hit on the 24th and we have now determined on the 28th that it's the electrical duct banks at the Auxiliary Building?

A. (WITNESS BIRD) I do not remember any specific information having to do with the date of the 24th in the first initial conversation with Mr. Miller.

11598-99 9-25

Ms. Stamiris: Mr. Bird, why do you think that the people who were drilling on April 24, 1982, didn't seem to have any idea that they were -- well, I should ask it more in the form of -- I will change the question.

Mr. Bird, why didn't the people who were drilling on April 24, 1982, seem to know that they were in the vicinity, at least, of the duct banks, the safety-related duct banks at the Auxiliary Building?

A. (WITNESS BIRD) The people who were doing the drilling thought they knew where the duct bank was and in fact the duct bank was as shown on the drawings. They had -- the rig had actually been misplaced over several feet from where they thought they were, so it was carelessness on the placement of the rig.

Q. Did the drawings that they had, which indicated the location of the duct bank for the auxiliary, were those drawings in fact correct in indicating the position of where the electrical -- or I don't know if it was an electrical duct bank, where the duct bank for the Auxiliary Building actually turned out to be?

11598-99 (continued)

A. (WITNESS BIRD) Yes.

Q. So there was no problem in correlation between the field design drawings that they were using and the actual location of the electrical duct bank, is that correct?

A. (WITNESS BIRD) It's my understanding they matched up when they went back to check that.

Q. Can you estimate for me how many feet off the drilling rig was from where they thought they were?

A. (WITNESS BIRD) I remember a couple. Mr. Wheeler was thinking it might have been a few more feet than that, up to five, but I remember it was a couple feet off.

Q. Since this incident on 4-24-82, represented, at least, the third such drilling incident by Mergentime or their subcontractors, was there not some procedure by which quality people wanted insure that they couldn't be a couple feet off before they started their drilling?

A. (WITNESS BIRD) At this point in time?

Q. Yes, at that point in time.

A. (WITNESS BIRD) The first two instances really had nothing to do with the physical location of the hole they were going to drill. This case was the first case where they had hit something because they were someplace other than they thought they were.

11612-13 22-2

Ms. Stamiris: Would you agree that those duct banks were damaged?

A. (WITNESS BIRD) Yes.

Q. And would you agree that they were then repaired?

A. (WITNESS BIRD) No, they have not been.

Q. They have not yet been repaired?

A. (WITNESS BIRD) That's correct.

NCR 4199 and Stop Work

11437-11438 9-10

Ms. Stamiris: Is it your understanding that -- I'd like to ask you, when was the stop-work in relation to this incident on NCR 4199 initiated?

A. (WITNESS BIRD) A stop-work was initiated on the 28th of April.

Q. And can you explain why, if the incident took place on the 24th, why the stop-work was not put into effect until the 28th?

A. (WITNESS BIRD) Yes, I can. The date of the 24th was ascertained by looking at the logs for the borings and the backup information which ascertained -- that was the first time they were over this location and hit an obstruction.

So the date of the 24th was the date assumed that that was physically when the duct bank got damaged. That was on a Saturday, I believe.

They had quit drilling in that area and had moved back and started to drill again, I believe, on Monday, but didn't. And then they started to drill again on the 28th and it was between the ascertaining that it was back on Saturday that the damage occurred when revert or the drilling mud was noted to be coming out some conduits in the Auxiliary Building.

And that is what was the real first clue that there was physical damage to something. And it was the site management organizations perception when they saw the drillers going back over the same area to say, hey, enough is enough, we're not sure what is going on here, we're not sure it's under control. And they issued a directive that the work be stopped.

11444-11445 5-5

Ms. Stamiris: Down towards the bottom of page four of your testimony regarding the -- this same incident of hitting the duct bank, there's a statement about six lines up which reads: The Consumers Power Company site manager issued a letter of April 28th confirming the verbal stop-work directive applicable to all drilling operations and sheet-piling activities by Mergemtime Corporation and its subcontractors in all Q and non-Q areas.

11444-45 (continued)

Your wording indicates that the site manager issued a letter on April 28th confirming the verbal stop-work directive.

What evidence can you point to that indicates that there was a verbal stop-work directive given on April 24th which was then confirmed on the 28th?

A. (WITNESS BIRD) The evidence does not support what you said because what you said wasn't right.

Q. Would you please explain?

A. (WITNESS BIRD) The stop work -- the verbal stop-work was on the 28th, followed up by a letter written the same day.

Q. Okay.

JUDGE HARBOUR: And the duct bank was damaged on April 24th, is that correct?

WITNESS BIRD: Yes, sir.

BY MS. STAMIRIS

Q. So the letter on April 28th -- was there a letter written on April 28th which confirmed a verbal stop-work on April 28th?

A. (WITNESS BIRD) Yes.

11446-11447 21-19

Ms. Stamiris: All right. With respect to NCR 4245 [sic], which is discussed on page five of your testimony, all right, when was the stop work of April 28th lifted, the verbal stop order?

A. (WITNESS BIRD) May 26th is my recollection.

Q. Mr. Bird, do you have any documents that you could point to that indicate the lifting of the verbal stop-work on or about May 26th?

A. The stop-work order is a quality form and I have that, yes, but it wasn't part of the testimony.

Q. What were the bases or reasons that the stop-work was lifted at that time?

A. (WITNESS BIRD) That followed the implementation of our excavation permit system and it followed by a couple days to assure that everybody had the training and understanding of what was in that permit system.

Q. Can you identify that document for me, which you said you have, which lifts the verbal stop work?

A. (WITNESS BIRD) The official title of the quality paper for the stop-work was FSW-22.

Q. And what is the date on that -- oh, is it May 26th, on FSW-22?

A. (WITNESS BIRD) For the lifting.

Q. And when was FSW-22 written?

A. May 19th.

11449-11450 1-23

Ms. Stamiris

On FSW22, which happens to be listed in the Attachment A to my motion -- this is listed as No. 15 -- when I made a brief chronology of soils events, and I noted that this stop work which was written on May 19th, 1982 was written to go retroactive back to April 28th, 1982. I'll read the paragraph under Description of condition requiring stop work action for parties who don't have a copy.

It says: (Reading)

"Several instances of drilling resulted in non-conforming conditions, the latest being hitting of an electrical duct bank documented on Bechtel NCR 4199, letter D. B. Miller to L. E. Davis, Serial CSB 6058 confirmed the verbal stop work directive given on April 28th, 1982.

"This stop work is issued to provide tracking within the quality system of the previous stop work directive and to give a closed loop mechanism to assure that the required procedural controls are in place prior to lifting the stop work."

Did this stop work of 5-19-82 -- how did it relate to the incident in NCR 4199?

A. (WITNESS BIRD) This stop work order, as we tried to explain in the block that you just read, is in fact identical in supports under the quality program, the appropriate stop work directive given by the site management organization.

Q. Why wasn't it put down on paper like this as a formal stop work order earlier than May 19th if it related to the incidents that took place in April?

A. (WITNESS BIRD) Work had been physically halted by direction of our site management organization. Given that, procedurally there is no need for us to halt work further, it was halted. So I did not have a program requirement for us to write up the stop work order.

It was a management decision that we write this up to assure ourselves there was a closed loop mechanism involving MPQAD and involving all the other appropriate parties such that we had a disciplined approach to make sure everything was correct prior to the lifting of the stop work situation.

Q. Was this written stop work dated 5-19-82 -- wasn't this written up somehow in relation to the drilling incident that took place in the observation Well 4 where the void was encountered?

A. (WITNESS BIRD) No, it wasn't.

11509-11514 15-16

Ms. Stamiris

This verbal stop-work directive, did it come from Mr. Miller?

A. (WITNESS BIRD) I believe it was Mr. Peck, but I can check that.

It was Mr. Bruce Peck.

Q. Okay. And was this -- why was this Consumers' stop-work by Mr. Peck not written up? Why was it verbal and why was there not a written stop-work at that time by Consumers on --

MS. WEST: Objection. Your Honor, I think it was very clearly testified to that the verbal stop-work was immediately followed up that day with a written stop-work.

BY MS. STAMIRIS

Q. Is that correct, Mr. Bird, that the verbal stop-work was immediately followed up that day with a written stop-work?

A. (WITNESS BIRD) I'm going to wait till I hear the objection.

CHAIRMAN BECHHOEFER: Well, that is a different question. Do you object to this one, or --

MS. WEST: I think it's clear in the testimony that they were issues the same day, but, if you wish the witness to answer --

CHAIRMAN BECHHOEFER: I think the latter question, not the first one.

BY WITNESS BIRD: A verbal stop-work authority is necessary in order that when an individual who has the authority to take such action sees something he can say halt right now. And I can say that much faster than I can go back to my office and get clerical help to write a letter.

The letter was written shortly after the verbal direction was given.

BY MS. STAMIRIS:

Q. Is this stop-work FSW-22 the stop-work that you are referring to?

A. (WITNESS BIRD) I was trying to be careful in my language between the stop work directive which was Mr. Peck's verbal work and Mr. Miller's letter versus the stop-work form, which is a quality form, which is FSW-22.

Q. Okay. By making a verbal directive and having Mr. Miller write a letter indicating a verbal directive on 4-28-82 confirming the verbal stop-work, is that recorded in your quality system in the same way as the formal stop-work order such as FSW-22 represents?

A. (WITNESS BIRD) The formal quality system gives the quality assurance organization stop-work authority on anything that has any relationship to quality -- to safety-related systems or quality activities. Beyond that, there is no -- nothing written in the program, in the quality assurance program, per se, which gives Mr. Miller the authority to stop work within the quality assurance program.

However, he is the site manager and contractually he has the responsibility to control all work out there, and he most certainly has the management authority to stop work.

Q. Well, why was this simply a verbal stop work order written up by Mr. Miller, who is not a member of the quality assurance department, as opposed to a formal written stop work by the quality assurance department on 4-28-82?

A. (WITNESS BIRD) The site management organization -- and I'm talking about Mr. Miller and Mr. Peck -- were there at the time that they saw the drilling rig going back over the same spot, for which, at that point in time, we thought there was a problem. And they most certainly took the only action they could have in saying no, stop work.

They recognized that there was a problem. They thought things weren't under control, and it turns out they were right, and they should have stopped work and they did.

Q. Well, when you indicate that this was the only action that they could have taken, could they not have written up a formal stop work order, which is a part of the quality control and quality assurance reporting system, one of the QA -- I don't know if they're all QA 9s, but these formal stop work orders?

A. (WITNESS BIRD) That was an action they could have had taken, yes.

Q. Why didn't they?

A. (WITNESS BIRD) I cannot answer why somebody did one thing versus another.

In either case, they got the end result accomplished that they wanted to accomplish right then.

Ms. Stamiris: I understand that you are saying they accomplished the result of stopping the work on that particular day and at that particular time, but we have had problems come into -- well, they're not into the record yet, but they will be in

April -- but, in the February 8th escalated enforcement action and the letter by the NRC and Mr. Keppler, one of the main problems identified in the quality assurance breakdown alleged by the special inspection team was that quality assurance or quality control reporting was not being done properly, that there was indeed a deliberate effort to keep things out of the reporting and the tracking system. And I'm wondering if this informal verbal stop work by Mr. Miller is going to be tracked and followed in your quality assurance program and system in the same way that a formal stop work order would be?

A. (WITNESS BIRD) The answer was yes, and especially in this case, in that you were reading a minute ago from the formal stop work that quality put out for the sole purpose of tracking this, the verbal and the written stop work directive that was issued by Mr. Miller such that we had was in the quality assurance program the means to assure that all the corrective action was taken prior to the lifting of the formal stop order.

Q. Okay, when that formal stop work order was written, was the purpose of it to track and follow closely all of the details related to this 4199 drilling incident?

A. (WITNESS BIRD) The purpose of it was to document and assure completion of those actions necessary to make the reason for the stop work to go away such that it could be lifted.

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Ms. Stamiris: Okay. Now, yesterday in your testimony, and I believe from what you've said today, your formal stop-order that is FSW-22 which was written up, was written in relation to this incident which took place on April 24th, 1982, is that correct?

A. (WITNESS BIRD) This incident was part of the reason given for writing the stop-work.

Q. And why was the formal stop-work order not written until May 19th, 1982 when the incident had taken place on 4-24-82, April 24th, '82?

A. (WITNESS BIRD) I believe that was asked and answered yesterday also. It was that once the work had physically been stopped, programmichally there's not a necessity to stop ssomething that's already stopped.

So I do not have a reason to issue a stop-work for any programmatic requirement.

It was a management decision to issue a stop-work on an MPQAD paper, again to provide the vehicle to assure that MPQAD and the other affected parties were all happy that the corrective action taken necessary such that we could remove this stopwork was completed and documented.

Q. As you sit here today, do you think it would have been better from a quality assurance point of view to have issued the formal stop-work, FSW-22 -- well, do you think it would have been better from a quality assurance point of view to have issued a formal MPQAD stop-work on 4-29-82?

A. (WITNESS BIRD) I don't believe there would have been any great advantage in having done that. The action Mr. Miller took was appropriate and effective.

Q. From what you're saying, then, you do not believe that this stop-work order was necessary, but were there some -- if it shouldn't have made any great difference or there was no particular advantage to having the formal MPWAD stop-work order, then why did you issue it on 5-19-82?

A. (WITNESS BIRD) Your original question was was there a great advantage to issue it at the time that the work was stopped, and there was no great advantage.

The decision was made to issue formally at some point in time later. The advantage came in at that point in time because we wanted the mechanism to document the ability to lift the stop-order.

Q. Oh, so didn't think that you could very well lift this stop-work order until you had documented formally that the stop-work had taken place, so you issued a stop-work order in order to lift it?

A. (WITNESS BIRD) That's a mischaracterization. Mr. Miller could have just as easily contractually said okay or had written another letter saying that this stop-work directive was no longer in place. That could have been done.

The advantage of putting it on the MPQAD stop-work order is that provides a better mechanism for visibility that QA is also happy with that decision.

Q. Well, I had a question in my mind that was an important follow-up question that I needed to ask next, and now I've lost it.

Oh, I know what it was. Mr. Bird, when you issued this formal stop-work order on 5-19-82, did you receive any indication from other people that you should do so?

A. (WITNESS BIRD) I'm certain I did, but I'm not sure who all the parties were.

Q. Can you remember any of the people who made you feel on 5-19-82 that you should write up a formal stop-work order? Can you remember who any of those individuals were?

A. (WITNESS BIRD) I believe that it was Mr. Cook, Mr. Marguglio and some others, which we had a general discussion, and I don't even recollect who initiated the discussion, if it was myself or Mr. Cook or Mr. Marguglio, or even some other party, on whether MPQAD ought to issue a follow-up stop order to provide a tracking mechanism.

CHAIRMAN BECHHOEFER: That is Consumers' Cook, is it not?

WITNESS BIRD: Mr. Jim Cook, yes.

BY MS STAMIRIS:

Q. When you just said that this was a formal stop-work to provide a tracking mechanism, then doesn't that indicate to you that there was some consensus that the original verbal stop work and that chain was not going to be as adequately tracked as the formal stop-work order would be?

MS. WEST: Chairman Bechhoefer, I think we've been over and over this several times. This witness has given his opinion as to why the second stop-work order was issued many times. I don't see what pursuing this line of questioning is going to add.

MS. STAMIRIS: Well, the reason I'm pursuing it is because the witness is giving different answers.

A little while ago, when I asked him, I thought he said that there was -- and I was asking specifically in terms of tracking. I thought he indicated that he didn't perceive any real difference between the informal verbal stop-work order and the letter written by Mr. Miller, who is not a member of MPQAD, and what would have actually taken place with the formal stop-work order.

And now he answered that there would be a difference and that there was a difference in tracking with a formal stop-work order from MPQAD.

Now, unless I'm remembering his answers wrong, that's the reasons I asked the question a second time.

(Discussion had off the record.)

JUDGE COWAN: Mr. Bird, you're talking about a discussion among various people as to whether MPQAD should issue a paper which would result in the proper tracking of the business, and this was in the early stages, before you actually did so.

Now, what was the conclusion of this, that you should wait and issue it later or that you shouldn't issue it at all?

WITNESS BIRD: I don't recollect the specific timing between the discussion and the time we wrote the stop-work, but it was that day or the day before. But the discussion occurred close to the time we actually issued the stop-work, not close to the time that Mr. Miller had stopped work with his directive.

JUDGE COWAN: I think that clarifies it for me.

I got the impression that this discussion occurred earlier.

WITNESS BIRD: No, it occurred close to the 19th of May, and one of the things I had to do was issue it.

CHAIRMAN BECHHOEFER: I have one further clarification. When you answered the earlier questions about the first, the verbal, and then the written stop-work order -- not Consumers but the Bechtel one -- were you referring then solely to what had happened in the field, or were you also referring to whether it would be properly tracked, where I think you were pointing out that it wouldn't have made too much difference and whether Consumers issued on at that time or whether Bechtel issued one?

Were you referring solely to what was going on in the field then, or did you also have in mind how it would be tracked in the future or accounted for in the future?

WITNESS BIRD: I believe you may be reading in more than what I intended to say.

May I make one --

CHAIRMAN BECHHOEFER: That may be what Mrs. Stamaris' problem was, too.

WITNESS BIRD: You mentioned in the start of that statement, Judge, the Bechtel stop-work order, and there is no Bechtel stop-work. We're talking about a stop-work directive verbal and a letter from Mr. Miller, who is in Consumers Power site management organization, and then the formal stop-work from MPQAD.

What I was trying to say was that Mr. Miller's directive, verbal, and letter were effective and the work, as given in the scope of his letter and his directive, was physically stopped, and that was completely effective, and from that basis there was no need for MPQAD to put out another piece of paper.

The reason that the MPQAD stop-work order was put out was to assure that there would be close-out documentation, something that's within our program which we have a form for, to document that all the corrective action is taken and be able to lift it formally with a signature on the form that's for that purpose.

MS. WEST: Chairman Bechhoefer, just for a clarification, Bechtel issued the NCR. It was Consumers that issued the stop-work order.

CHAIRMAN BECCHOEFER: I see.

Well, if Mr. Miller's letter were all that existed, or it wasn't followed up by a formal stop-work order from MPQAD, would the incidents have been put into the -- I'm not sure the trend analysis program, but something like that -- would the incident have gotten in there, or would you have to use the MPQAD system to get it into that program?

WITNESS BIRD: It was the nonconformance reports that got issued, that gets put into the trend program, not the stop-work order.

BY MS. STAMIRIS:

Q. Mr. Bird, when you indicated in response to Judge Cowan's question that the conversation with James Cook and Mr. Marguglio about the issuance or the need to issue a formal MPQAD stop-work order took place around the time of 5-19-82, did you have a similar conversation with them, or were Mr. Cook or Mr. Marguglio informed at all of the incident around April 28th, 1982?

A. (WITNESS BIRD) Mr. Cook and Mr. Marguglio were on the distribution of the letter.

Q. Of Mr. Miller's?

A. (WITNESS BIRD) Mr. Miller's letter.

Q. Okay. But I asked were you involved in any conversations with Mr. Cook or Mr. Marguglio about the drilling incident around the time frame of 4-28-82.

A. (WITNESS BIRD) I don't have any specific recollection on that.

Q. You can't remember if you discussed it with Mr. Cook or Mr. Marguglio?

A. (WITNESS BIRD) I'm sure I discussed it with a lot of people either that day or the following day. On that basis, I really can't remember all the specific people who I did discuss it with.

Q. Can you remember any?

A. (WITNESS BIRD) My oral communication records was Mr. Shafer on the same subject -- not about the stop-work at that point in time, but the one you were looking at -- that also has Mr. Marguglio and Mr. Cook on distribution. So if I didn't discuss it with them, they got it the next day.

Q. So, do you remember whether or not any of these discussions -- well, do you remember any verbal discussions with Mr. Cook or Mr. Marguglio prior to your conversation with Mr. Shafer at the NRC?

A. (WITNESS BIRD) No, I do not.

Q. By answering that way, I'm not sure if you mean you remember that there weren't any or you don't remember whether there were or not.

A. (WITNESS BIRD) I don't remember whether there were or not.

Q. Okay. Do you only keep oral communication records of your conversations with the NRC?

A. (WITNESS BIRD) No.

Q. Do you have any oral communication records -- and I don't mean particularly that form, but in terms of a telex or anything else that you could go back to that would help you refresh your recollection as to whether or not this incident had been discussed with Mr. Cook or Marguglio around 4-28-82 or prior to conversations with Mr. Shafer?

A. (WITNESS BIRD) I don't believe I have anything to go back to.
Objections: Line questioning continued

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Mr. Wilcove: Why didn't MPQAD stop this work? In other words, why did Mr. Miller have to stop this work instead of MPQAD?

A. (WITNESS BIRD) Mr. Miller and his people happened to be on -- at that location at that point in time when he came to that decision. So he had the opportunity and was there and appropriately took it.

Q. Do you know why Mr. Miller would feel it necessary to stop all Q and non-Q work if you were just concerned with hits one incident?

A. (WITNESS BIRD) That is certainly the safe course to take.

Q. When you stated that Mr. Miller stopped all Q and non-Q work because he felt that Bechtel was not in control of its subcontractors, did you mean to say in this one instance or generally speaking?

A. (WITNESS BIRD) I mean to say that he, generally speaking, had that perception. There was several incidences that had occurred before that -- which were on the other two Consumer Power nonconformance reports where MPQAD had concerns of the controls and why people could drill in the Q are without approved engineering drawings and procedures, et cetera.

A. If there were these other incidents that generated NCRs, why didn't MPQAD stop the work?

A. (WITNESS BIRD) There were two incidents before?

Q. Um-Hum

A. (WITNESS BIRD) This is the third incident. You are asking why the trigger point is at number three versus number one or number two?

Q. What I am asking is that Mr. Miller felt the need to stop, to stop Mergentime's work because of all these incidents.

And I would like to know why the MPQAD didn't perceive the same need, especially in light of the fact that Mr. Wheeler's testified that Mr Miller's fairly high up in the chain of command?

A. (WITNESS BIRD) You're asking me to try to recollect something I might have heard of what Mr. Miller's thought process was at the time, and I'm incapable of doing that.

Q. Mr. Bird, I disagree with you. I'm asking you why -- you testified that Mr. Miller stopped Mergentime's work because on a number of incidents Bechtel was not incontrol of Mergentime.

What I'm asking you is why did Mr. Miller have to do that instead of MPQAD?

A. (WITNESS BIRD) That was asked before, also, why he had to do that. It was his decision to do it. He could have decided to have MPQAD do it. If he would have brought that information to us immediately, we could have done it or we would have gone out ourselves shortly thereafter and saw the same circumstances.

We may well have come to the same conclusion ourself, without the site management organization being involved. But that's all supposition at this point in that it's a scenario that did not happen.

Q. But you testified -- and you did testify that Mr. Miller based his decision on a number of Q incidents. So what I am asking is if Mr. Miller came to that determination, shouldn't the MPQAD also have come to that determination?

MS. WEST: I'd like to object to the basis of this question. I believe the witness's testimony is being micharacterized. He did not testify that Mr. Miller based his decision on a number of Q incidents.

MS. STAMIRIS: I think he did not use those words but that is exactly what he said when he said that Mr. Miller based his perception that Bechtel was not in control on the previous incidents which were Q incidents, which were written upon quality control NRC forms.

MR. WILCOVE: He did say that Mr. Miller based his decision on a number of incidents. And at least five incidents can be shown just from the NCRs and from Consumers February 3rd, 1983, letter to the Board.

CHAIRMAN BECHHOEFER: Well, you can find out. You might want to ask him whether the incidents that Mr. Miller basis his decision on are the same ones -- likely to be the same ones that you are referring to.

Maybe, there is some incident we don't know about. Tie it down, why don't you. Why don't you try to ask that.

Or, Mr. Bird, do you know, are the other incidents that Mr. Miller had in mind the ones that are -- the incidents that are Q incidents that are reflected here or are there others?

BY THE WITNESS:

A. (WITNESS BIRD) What I do know is that the two incidents we talked about a minute ago, which there was a drilling in the Q area, for which NCRs is written by MPQAD, and the BWST undermining, I think that happened, although it was a different contract, that had happened prior to this, and that was also written on an NCR.

And since Mr. Miller is on the distribution of those nonconformance reports, he had the knowledge of those instances. But to what extent any given incident or of even things he may well be aware of, that I am not aware of, played in his coming to the conclusion to stop work directive was to be issued, I can't give those kind of weighting factors.

BY MR. WILCOVE:

Q. In light of what you were aware of, by that, I mean, in light of what MPQAD was aware of, do you feel that MPQAD should have stopped work?

A. (WITNESS BIRD) I do feel MPQAD should have stopped work in this case.

Q. At about the same time Mr. Miller stopped work?

A. (WITNESS BIRD) If about the same time means the same day, and Mr. Miller hadn't come to that conclusion, I believe it would be very probably we would have, but in fact he was there first and came to the conclusion first.

Q. Would you know whether MPQAD at the time was considering stopping work?

A. (WITNESS BIRD) Again, you are asking me whether we considered something before we had the facts. Mr. Miller had the facts first and work was being stopped before the facts became really to MPQAD's attention.

Q. I am asking you in light of what you knew, which I can count four -- at least five NCRs which -- these five NCRs and I can also count another Q NCR that is in the February 3rd, 1983, letter from Consumers Power Company to the Board, in light of those facts, those six incidents, do you feel that MPQ -- was MPQAD stopping work?

MR. STEPTOE: Objection, Chairman Bechhoefer, Mr. Wilcove is not privileged to testify in asking a question. Moreover, He -- the question assumes that the list that is in the February 3rd, 1983, letter was known to Mr. Bird at the time of the drilling incident that we're talking about.

That is something that cannot be assumed. It has to be established with proper foundation questions and this question is inappropriate and lacks proper foundation.

Also, I object to Mr. Wilcove testifying.

MR. WILCOVE: I do not believe I was testifying. I believe the record -- I just was repeating what was in the record, and that is --

MR. STEPTOE: Excuse me, that is not in the record, it's in a letter from me dated February 3rd and we have no objection to it being entered into the record. It's accurate as far as we know.

But he has to establish the witness's knowledge at the relevant time before he berates the witness about not stopping work based on knowledge which he's assuming that the witness had.

CHAIRMAN BECHHOEFER: I think that's correct. You ought to ask some foundation questions before you get into that.

11567-76 2-4

BY MS. STAMIRIS:

Q. All right, Mr. Bird, when I left off my question and I was asking the Board to require in some way that you would go back to any documents on the subject of the 4199 drilling incident and what possible conversations took place around 4-28-82 on that subject with Mr. Cook, Margulio or others, the question I'd like to ask you now in relation to that discussion is: Did the question ever arise in your mind about whether a stop work order, a formal stop work order by MPQAD should be issued at that point in time?

Ms. West: Excuse me. Chairman Bechhoefer, could I have a clarification of this question? It's uncertain what time period the question is referring to as to when the question may or may not have arisen in Mr. Bird's mind.

BY MS. STAMIRIS:

Q. Okay, what I mean to ask Mr. Bird is: Around 4-28-82, prior to or shortly after your conversation with Mr. Shafer on the subject of this drilling incident, did the question arise in your mind, as the quality assurance manager, as to whether a formal MPQAD stop work order should be instituted at that time?

A. I really don't remember if it did or not.

11567-76 (continued)

Ms. Stamiris: Well, in light of Mr. Bird's lack of recollection about the discussions and his own thoughts and actions surrounding this incident on about 4-28-82, I would like to re-request that the Board have him go back to his -- any records that are in existence about communications that took place at this point in time so that we have some way to establish in the record whether or not the question had arisen to people in charge of MPQAD that a stop work should be instituted and a deliberate decision was, or a conscious decision was made not to issue such a stop work or was it a question of a stop work by MPQAD never even arose to the people in charge.

That is the question I want pursued when he would go back and look at the telexes, records, any kind of documentation of conversations or communications at this point in time.

Ms. West: Chief Judge Bechhoefer, I have to renew my objection at this point. The question which Ms. Stamiris just asked, apparently to try to lay the foundation for this request, does not lay it.

The requests in expanded form now is even more irrelevant to the proceedings that are before us. We just have the testimony on these five NCRs. What may have been going through Mr. Bird's mind at that point does not seem to me to be relevant, especially when we have documented evidence and testimony before us that a verbal stop work was issued, a letter stop was issued that same day, and a formal stop work was issued later.

It just seems to me to be sending the Applicant on a digging request without showing any real need to complete the record before this Board.

I don't see how these documents are needed.
I think the record is complete as it is.

Ms. Stamiris: I would like to respond by saying I do not consider it a digging request in that it is very narrow, the time frame that would be involved is very narrow. The question for which I am asking him to look at records regarding this incident concerning is a very specific question.

11567-76 (continued)

Ms. Stamiris: In response to Miss West, since she has brought up this subject of I-pins and she thinks that it relates to the in-process inspection notices, as opposed to what she thinks I was talking about, I would like to bring to the parties attention -- and I'd be happy to get copies of this made and introduce it as an exhibit. For the time being, I will identify it as a quality action request dated -- well, it's signed on 7-21-82, and it was included with all the non-conformance reports that we get from the Applicant, and cited as Item 25 in my September motion, where I made Attachment A and went through a series of events.

And this quality action request by -- well, it's to L.E. Davis, who I believe is a Bechtel person, and it's signed by Byron Palmer for D.W. Puhalla. It doesn't say at the top whether it's Consumers or Bechtel, but I will read the action requested on this quality action request.

It says:

"26 QC in process inspection notices --" and it gives the date --

"identifying 71 individual deficiencies relevant to the installation of underpinning instrumentation have been issued between 7-8-82 and 7-19-82. Repetitive deficiencies, although identified by QC in accordance with their program, are contrary to the jobsite policy of doing the job right the first time. See attached."

And I didn't have anything attached to it, I don't believe.

"Construction supervision and field engineering are requested to provide corrective action to assure that construction activities are performed properly the first time and to avoid repetition of the performance noted by the above IPINS.

"This corrective action is requested to include as a minimum training of craft supervision and field engineering and, too, monitoring of work in process to ensure that ongoing work is in compliance with the specified requirements."

11567-76 (continued)

And I think the fact that there were 75 deficiencies reported between such a brief period as 7-8-82 and 7-19-82 indicates that indeed there were a lot of problems going on with these sort of incidents in the quality assurance area, and I think that it indicates that it should be looked into further to determine the seriousness of this incident and how widespread it was and whether a stop work order was considered and rejected or whether the thought of issuing a stop work order never arose to the MPQAD people.

It's a question here of trying to get a handle on the basic question which we have been faced with throughout this proceeding: Are these problems due to their unwillingness to correct problems or their inability? Is it just they didn't even realize this should be done, or is it a question that they realize and know full well that something should have been done but they deliberately turned away from it.

(Discussion had off the record.)

Ms. West: Your Honor, if I could just say one or two things.

We don't have the copy of the QAR that Mrs. Stamiris is reading from before us, but, from what she has read out of it, I see no connection with the testimony of these witnesses or especially the requests she's making of these witnesses.

It's a different time period. What she is requesting is telephone conversations that may or may not have occurred, which may or may not have led up to a stop work order. What she has read out of the QAR has nothing to do with that.

In addition, I'd just like to briefly address her later remarks.

These witnesses have pointed out over and over again that a stop work order at this time was, in fact, in effect and that the Consumer Powers MPQAD did, in fact, a few days later, issue their own formal stop work order.

It's not like work was continuing in the field and they were doing nothing about it.

11567-76 (continued)

Therefore, what I'm asking him to do is a very specific task and narrow, and its relevance to this proceeding really goes to the heart of the quality assurance and implementation of quality assurance matters that are the key issues before this Board and have been since December 6, 1979.

And in the February 8 enforcement action taken by the NRC, at the end of that action one of the very specific requirements of Consumers Power Company was that they go back and look into the incidences regarding quality assurance reporting and determine how wide spread the practice was that the special inspection team had uncovered by which there was a deliberate effort made to keep quality assurance reporting at a minimum or keep it out of the record and it didn't go into the trending system and people were told not to report quality incidents when they exceeded certain numbers. And I think this would be very much in keeping with what the NRC asked the Applicant to do and the Applicant should feel the need to do on their own is to look and see how wide-spread this practice was and if, indeed, it did extend to the soils remedial work area.

Ms. West: Your Honor, I'd like to respond to that.

The February 8th incidents and inspection report has nothing to do with the information that Mrs. Stamiris is presently seeking.

What was at issue in the February 8th report was a very specific procedure, IPINS, in process inspection notices.

What Mrs. Stamiris is seeking has nothing to do with how or whether quality related incidents are reported. What's she's looking for is information on whether anyone ever thought of issuing a stop -- an MPQAD, a formal stop work notice, that's unrelated to the issue of reporting.

11567-76 (continued)

Ms. Stamiris: I would just like to respond to that.

I don't consider from April 24th, when the original incident occurred, until May 19th, when the formal stop work was written up, to be a few days.

(Discussion had off the record.)

Ms. West: In addition, you Honor, the subject of the IPINS will be taken up during the April hearings

11582-88 3-11

BY MS. STAMIRIS:

Q. Mr. Bird, to return to the line of questioning we were on before and some questions that Mr. Wilcove asked in his cross examination on this subject, I believe that you indicated that the verbal stop work was issued by Mr. Miller because he happened to be there first and so he made the stop order. Does that agree with what you remember of your testimony?

A. (WITNESS BIRD) Well, essentially, yes. He had the first opportunity.

Q. Okay. And, in his verbal stop -- no, not verbal, but in his written record of the verbal stop work order, I believe that you indicated that Mr. Miller had come to the conclusion, or Mr. Miller perceived that Bechtel was not in control or in good control, adequate control of the Mergentime operations at that time. Does that paraphrasing capture the essence of your testimony about Mr. Bird's perception of Bechtel?

Mr. Steptoe: Mr. Miller's perception of Bechtel.

Ms. Stamiris: I'm sorry; Mr. Miller's perception of Bechtel.

BY THE WITNESS

11582-88 (continued)

A. (WITNESS BIRD) Yes, it does. To be more specific, on the work order, or on the stop work directive, it was Bechtel's control over Mergentime and any Mergentime's subcontractors.

BY MS. STAMIRIS:

Q. Mr. Bird, do you believe that -- I guess I should put a time frame on it. Do you believe now that Mr. Miller was correct in his perception that Bechtel was not in adequate control of Mergentime's operations?

A. (WITNESS BIRD) Yes.

Q. Okay. Did you believe at the time of this verbal stop work at about 4-28-82 -- did you believe at that time that Mr. Miller was essentially correct in his perception that Bechtel was not in control of the Mergentine's operations.

A. (WITNESS BIRD) I don't recollect going through that thought process whether Mr. Miller was correct or not.

The fact is that if the site manager has any reason at all that he wants to stop work Quality is 100 percent behind that because, again, if there's any indeterminacy at that's something is out of control, the safe thing to do is to stop it, get the facts and gehn go from there.

So in principle we supported it completely without even knowing his reasons.

Q. But am I correct in understanding that as of 4-28-82 that you did not have any particular opinion as to whether or not Bechtel was in control of Mergentime's operation?

A. (WITNESS BIRD) On the date of 4-28, a lot of things were happening that day. I believe I was in Jackson I got some phone calls, and I got enough information to know that something has happened to the point that we considered it to be within the ground rules that I had to call Ross Landsman. And, in fact, I talked to Mr. Shafer instead that we had hit something there.

11582-88 (continued)

I did not have all the details of what was hit what all the circumstances were involving that.

Ms. Stamiris: Well, wouldn't it be more correct to say that you had hit something four days earlier and you had confirmed on the 28th that indeed it was this safety related electrical, or the duct bank -- safety related duct bank at the Auxiliary Building?

A. (WITNESS BIRD) That could be made as a correct statement now, and for quite a while now that could be made as a correct statement, but that could not be made as a correct statement as of the 28th, because at that point in time I didn't know about the 24th. I did not see any of the backup information.

Q. Well, what were you told about this incident when you first got your phone call on the 28th?

A. (WITNESS BIRD) That we thought the electrical duct bank, the Q electrical duct bank had been hit quite a bit in operation.

Q. So, on the 28th, you were told that you thought they -- or that whoever was on site thought the electrical duct bank at the Auxiliary Building had been penetrated but it wasn't decided for sure at that point?

A. (WITNESS BIRD) To say it hadn't been decided for sure, it might have been for sure in some people's minds and not for sure in other people's minds. I think our conversation with NRC is the most accurate way to describe it was that we didn't have all the facts and we have to investigate.

Q. So, when you received your phone call on the 28th, is your recollection of that phone call that you were not told that something was hit on the 24th and we have now determined on the 28th that it's the electrical duct banks at the Auxiliary Building?

A. (WITNESS BIRD) I do not remember any specific information having to do with the date of the 24th in the first initial conversation with Mr. Miller.

11582-88 (continued)

Q. Going back to Mr. Miller's stop work that took place on 4-28-82, did you indicate that this stop work covered drilling in both Q and non-Q areas?

A. (WITNESS BIRD) Yes, it did.

Q. Okay, then why did the drilling incident, which took place on 5-19-82, which is memorialized on Attachment 7-D -- why was there still drilling going on in relation to that incident if a stop work was supposed to be in effect and was still going to be in effect until the 26th of May?

A. (WITNESS BIRD) He didn't make the complete statement. Stop work was in Q and non-Q applied to Mergentime Corporation and its subcontractors. There were some other people who were doing drilling which were not covered by the stop work.

Q. And do you believe that this was a good -- I mean, from your position as quality assurance manager, do you believe that the decision that this verbal stop work need not extend to all drilling procedures was in accordance with good quality assurance principles?

A. (WITNESS BIRD) Your question really doesn't make sense to me. There's more to it than that.

First of all, at that point in time there was more than just a verbal stop work, there was a written stop work directive, and it was written specifically to apply to the areas that it was undetermined as to whether it was in control or not.

And from that standpoint it was perfectly placed.

Q. Would you agree that the stop work that was instituted on 4-28-82 addressed the specific drilling that was going on by Mergentime but did not address the generic implications of other drilling incidents?

A. (WITNESS BIRD) That statement doesn't make enough sense to agree to disagree.

What do you mean by generic implications?

11582-88 (continued)

Q. Well, do you think that this is the best application of good quality assurance principals when you stopped the particular drilling by Mergentime but you do not address the drilling that's going on in the soils work in general?

A. (WITNESS BIRD) I think Mr. Wheeler may be able to add better statistics than I can, but my recollection was that the bulk of the drilling which would have been going on was being done by Mergentime and the Mergentime subcontractors. There were one, or possibly two -- maybe Bob can say -- other people who could drill out there or some specific things quite separate from the work that Mergentime was responsible for.

11593-4 3-25

Ms. Stamiris: This document, I would like to identify where I got it in case the Applicant is interested. It came to me in the mail with the big pile of nonconformance reports that came out under a cover letter from Mr. Brunner to the Board and all parties in this proceeding. And it was attached to the stop-work order of FSW-22, and was stapled to that in relation to this incident.

BY MS. STAMIRIS:

Q. I'd like to ask you, Mr. Bird, whether this letter from a Mr. Miller constitutes the written confirmation of the stop-work order which took place on April 28, 1982, from Mr. Miller, the site manager?

A. (WITNESS BIRD) The answer is yes, but I need to clarify that, again. This is the confirmation of the verbal stop-work order given on the 28th (indicating). They were both given on the same day.

Q. You say they were both given on the same day. This is the confirmation of the verbal stop-work order?

A. (WITNESS BIRD) Mr. Miller's letter is the confirmation of the verbal stop-work order directive.

Q. Was there any other stop-work directive that was given on the same day or stop-work order?

A. (WITNESS BIRD) The verbal and the letter, that's all there is for that day.

11593-4 (continued)

Q. Then you do not agree with the statement that Miss West made at the beginning of your cross examination today when she indicated that there was a formal stop-work issued on the -- later on the same day of the 28th in relation to this incident?

Ms. West: Chairman Bechhoefer, if I said there was a formal stop-work order, I don't recall saying that. But if I did say that there was a formal stop-work order issued on the 28th, it was entirely a tongue-slip.

Judge Harbour: Were you, indeed, referring to this (indicating)?

Ms. West: Yes, I was.

BY MS. STAMIRIS:

Q. Mr. Bird, you have testified this morning and this afternoon that Mr. Miller was the one to institute the stop-work order and that he happened to be there first and the implication being that that was why it was done by site management as opposed to MPQAD.

But this written communication that the verbal stop-work order was given by Mr. Bruce H. Peck at about 10:30 A.M. on April 28, 1982. And I would like to ask you whether Mr. Peck is a member of MPQAD?

A. (WITNESS BIRD) He is not.

Q. Is he also a member of the site management office?

A. (WITNESS BIRD) Yes, he is.

11610-11 22-13

BY MS. STAMIRIS:

Q. What is the purpose, Mr. Bird, what is the purpose of a hold tag?

A. (WITNESS BIRD) A hold tag is to prevent further work within the limits as described on a hold tag on the item for which it is applied.

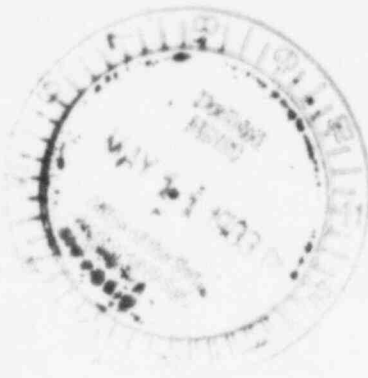
11610-11 (continued)

Q. Does the indication that no hold tags were applied on 4-29-82 represent any discrepancy in your mind between that action and the verbal stop-work that was put into effect on 4-28-82?

A. (WITNESS BIRD) No.

Q. Would you explain?

A. (WITNESS BIRD) They're two separate actions. One is a hold tag put on by the quality organization; the other was a stop-work directive from a totally different company, but which applied to the organization, total Bechtel organization and Mergentime and the subcontractors. They're just different subjects.



WHEN DID THE PERMIT SYSTEM
GO IN TO EFFECT?

Attachment B
to Applicant's "Revised Motion
to Require Submission of Cross-
examination Plans, Designation of
Lead Intervenors, and Establish-
ment of Time Limits on Cross-
Examination"
dated May 9, 1983.

When did the permit system begin?

11412 1-4

BY CHAIRMAN BECHHOEFER:

Q. What date was that procedure adopted? When was that procedure put into effect, made effective?

A. (WITNESS WHEELER) May 24th, 1982.

11417 3-15

BY MS. STAMIRIS:

Q. Do you agree that you answered me that after NCR MO142-008 you instituted a change in your quality assurance program?

A. (WITNESS BIRD) I would have to have it read back exactly, but what you just said is true. Change was implemented after that first non-conformance report was written.

Q. But not right after it? It was instituted after the second incident, or were there more incidents that took place?

A. (WITNESS BIRD) It was instituted as of the date that Mr. Wheeler said. I believe May 24th was the date that it officially went into use.

11441 20-25

Judge Harbour: So was the procedure in effect then on the date that the --

Witness Wheeler: For the duct bank?

Judge Harbour: Yes.

Witness Wheeler: No, it wasn't. May 24th was the date that the procedure was issued.

Ms. Stamiris: But, Mr. Bird, I do want to ask you, on page 1147 of yesterday's testimony, and I think perhaps you will recall testifying that the new, more stringently controlled excavation permit system that was going to come under your quality department was implemented on May 24th, 1982, is that correct?

A. (WITNESS BIRD) That's correct.

Q. The attachment -- I think the Attachment 1, I think it was the only attachment to your testimony, has somewhere in the middle of these documents you have included a quality-related Bechtel Power Corporation field instruction entitled Excavation Permit System, and it's dated 6-24-82.

And I wonder why you have included this June 24, '82, excavation permit system in the documentation to go with your testimony while your testimony refers to a May 24th excavation permit system.

A. (WITNESS BIRD) The May 24th date was the day that the original or Rev. 0 of that procedure was issued when we put our testimony together. Rev. 1 had by then, which is June 26, you said, or 24th, was then the official version as of that day.
