

NUCLEAR REGULATORY COMMISSION

ORIGINAL

ATOMIC SAFETY & LICENSING BOARD

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In the Matter of: :

HOUSTON LIGHTING & POWER :  
 COMPANY, ET AL. :

South Texas Nuclear Project : DOCKET NOS. 50-498 OL  
 Units 1 and 2 : 50-499 OL

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AT: Houston, Texas

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UNITED STATES OF AMERICA

BEFORE THE  
NUCLEAR REGULATORY COMMISSION

In the Matter of:	X	
	X	
HOUSTON LIGHTING & POWER	X	Docket Nos. 50-498 OL
COMPANY, ET AL	X	50-499 OL
	X	
South Texas Nuclear Project	X	
Units 1 and 2	X	

Green Auditorium  
South Texas College of Law  
1303 San Jacinto Street  
Houston, Texas

Friday  
July 24, 1981

PURSUANT TO ADJOURNMENT, the above-entitled  
matter came on for further hearing at 9:05 a.m.

APPEARANCES:

Board Members:

CHARLES BECHHOEFER, ESQ., Chairman  
Administrative Judge  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

ERNEST E. HILL, Nuclear Engineer  
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APPEARANCES: (Continued)

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9 San Antonio, Texas 78233

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C O N T E N T S

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>BOARD EXAM.</u>
Richard W. Peverley (Resuming)					
By Mr. Gay					7881
By Mr. Sinkin					7905
By Mr. Gutierrez					7965
By Judge Lamb					7973
By Judge Hill					7975
By Judge Bechhoefer					7975
By Mr. Sinkin					7983
By Mr. Reis					7984
By Mr. Sinkin					7986

E X H I B I T S

<u>NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
<u>For CEU:</u>		
30		7923
<u>For CCANP:</u>		
*		
49	7953	
50	7963	7964

\*CCANP Exhibits 40 through 48 to be identified by stipulation between HL&P and CCANP at subsequent hearing.

P R O C E E D I N G S

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

4 Before we resume the cross-examination of  
5 Mr. Peverley, are there any preliminary matters the  
6 parties wish to raise?

7 MR. HUDSON: Yes, Your Honor. We have a  
8 couple of preliminary matters.

9 First of all, in Testimony B that was filed  
10 yesterday there is one slight change in one of the  
11 questions, which I will make since I am handling this  
12 witness.

13 It is on Page 7, Line 28, the first word on  
14 the line is "original." Further in on that line the word  
15 "and" appears. "and" should be stricken and the word  
16 "with" should be inserted in lieu thereof.

17 JUDGE BECHHOEFER: Could you read it the  
18 way it should read.

19 MR. HUDSON: Okay. Line 28 will now read:  
20 "...original designer approving design changes with no  
21 first-hand..."

22 The second preliminary matter is that in  
23 looking very briefly at the transcript from yesterday  
24 in the index to the transcript the exhibit that was  
25 introduced yesterday is listed as Applicant's 48. In

1-2 1 reality it was Applicant's 47. I have confirmed that  
2 with the court reporter this morning, and I just didn't  
3 want somebody to be looking later at the transcript and  
4 think that they had lost Applicant's 47 along the line.

5 The text is correct in the text of the  
6 transcript it is referred to as Applicant's 47.

7 MR. SINKIN: Excuse me. Where was it wrong?

8 MR. HUDSON: It is wrong in the index,  
9 Page 7589.

10 Your Honor, that is all of the matters that  
11 we had. I am wondering did you wish to take up the  
12 scheduling matters that we discussed yesterday, the  
13 estimates of time and the witnesses that the Intervenors  
14 plan to present, or did you want to hold that until  
15 later?

16 JUDGE BECHHOEFER: Why don't we finish with  
17 Mr. Peverley first. Then before we adjourn we can  
18 discuss further scheduling matters to the extent  
19 necessary.

20 Mr. Gay or Mr. Sinkin, any preliminary  
21 matters?

22 MR. GAY: No, Mr. Chairman.

23 JUDGE BECHHOEFER: Does the Staff?

24 MR. GUTIERREZ: No, Mr. Chairman.

25 MR. SINKIN: Yes, Mr. Chairman. I have some.

1-3 1 We were asked by the Applicant to identify  
2 the witness we intend to call and the order in which we  
3 intend to call them.

4 Those witnesses are Mr. Vickery,  
5 Mr. Shillinsky, Mrs. Cortez, and Mr. Tibola.

6 The Applicants also asked for documents  
7 for cross-examination for introduction into evidence  
8 regarding those witnesses. At this time CCANP has no  
9 documents on which it intends to cross-examine, nor  
10 documents CCANP intends to introduce into evidence.

11 The Applicants also requested all statements,  
12 memorandum or documents of any kind pertaining to the  
13 matters witnesses are expected to testify about.

14 The only statements, memorandum, documents  
15 of any kind that CCANP has pertaining to the matters  
16 witnesses are expected to testify about are considered  
17 work products by CCANP, and, therefore, not subject to  
18 being produced.

19 Furthermore, this request is in the nature  
20 of discovery, and, therefore, very untimely.

21 That's all we have this morning.

22 MR. AXELRAD: As long as we are taking up  
23 this subject at this time, I would like to respond to  
24 Mr. Sinkin.

25 Let me just make sure that I understand.

1-4 1 First of all as to the witness list, with respect to  
2 Mrs. Cortez, the Intervenors have indicated in their  
3 subpoena list that Mrs. Cortez will testify concerning  
4 NRC Inspection Report 81-11 and 81-17, and other areas.

5 We have since been informed by the  
6 Intervenors that they will not be producing testimony  
7 with respect to 81-11. Can we now ascertain what it is  
8 that Mrs. Cortez will be testifying as to?

9 MR. SINKIN: The other areas that Mrs. Cortez  
10 will be testifying to are the interface between management  
11 and non-management personnel at the South Texas Nuclear  
12 Project.

13 MR. AXELRAD: I am not sure that I under-  
14 stand that, the relevance of that subject to the issues  
15 in this proceeding.

16 Which management and which non-management  
17 personnel are we talking about?

18 MR. SINKIN: I am not here to testify on  
19 behalf of Mrs. Cortez. I think any objections as to  
20 the relevance of her testimony can be made at the time  
21 she testifies.

22 MR. AXELRAD: Mr. Chairman, at the very  
23 least we are entitled before a witness is going to be  
24 produced an identification of the subject matter that  
25 the witness is going to testify to, with sufficient

1-5 1 detail so it could at least be ascertained whether it  
2 is conceivably relevant to the subject matter of this  
3 proceeding.

4 As the Board will recall, when the subpoena  
5 was issued she was listed as testifying with respect to  
6 81-11 and 81-17. She will no longer be testifying about  
7 that subject.

8 By the same procedure which the Board  
9 previously went through that requiring that at least a  
10 relevance be shown prior to issuing a subpoena, I would  
11 move that subpoena be withdrawn.

12 MR. SINKIN: The interface we are referring  
13 to is the daily interaction between management and non-  
14 management personnel, as experienced directly by  
15 Mrs. Cortez, and will certainly go to the managerial  
16 character and technical competence of the Applicant.

17 MR. AXELRAD: Mr. Chairman, it seems to  
18 me that what Mr. Sinkin appears to be describing are  
19 personnel matters within the organization of Brown & Root,  
20 and, certainly, those types of personnel matters are not  
21 remotely within the ambient of the managerial competence  
22 and character of Applicants, which is the subject matter  
23 of this proceeding.

24 This Board cannot possibly inquire into all  
25 aspects of how Brown & Root handles its personnel

1-6 1 relationships. There is no assertion here that the types  
2 of matters that will be testified as to will have any  
3 relationship to Quality Control, or even with respect  
4 to any safety-related aspect of the plant.

5 MR. SINKIN: Mr. Axelrad can --

6 JUDGE BECHHOEFER: Does the Staff want to  
7 make any comment?

8 Mr. Reis?

9 MR. REIS: The Staff feels that there should  
10 be some minimal connection to the either Quality Assurance  
11 or the Quality Control aspects, or safety-related aspects  
12 of the plant.

13 From that point of view, even though we talk  
14 of managerial competence and technical competence, we are  
15 talking about in the context of safety and in the context  
16 of quality.

17 I don't think there has to be a complete  
18 outline of testimony, or anything of that sort. I lost  
19 that motion once. But I do feel that there should be a  
20 little more showing of how this relates to the quality  
21 issues, or any other issue in this proceeding, rather  
22 than just managerial competence.

23 I am sure there are personnel problems at  
24 South Texas Project, as there are personnel problems at  
25 very other major construction site in the country, and



1-7 1 just because there are personnel problems, I don't think  
2 that -- there has to be a little more showing of  
3 relevance.

4 MR. SINKIN: First of all, I would say that  
5 Mr. Axelrad's characterization of the testimony is not  
6 necessarily correct, and I am not here to testify for  
7 Mrs. Cortez.

8 I would call your attention to Issue A,  
9 which talks about the record of HL&P's compliance with  
10 NRC requirements.

11 Point 3, the extent to which HL&P advocated  
12 responsibility for construction of the South Texas  
13 Project to Brown & Root. Mrs. Cortez will address that  
14 point in particular.

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1 MR. REIS: The Staff will say then that that  
2 is an issue in this proceeding, and we would have to hear  
3 her to see whether her testimony is relevant or competent  
4 or material.

5 If it is, of course, she could go ahead,  
6 and objection the Staff would keep in mind to make at the  
7 time if it is not.

8 MR. AXELRAD: Mr. Chairman, it cannot be  
9 adequate for purpose of issuing a subpoena for the  
10 Intervenors simply to say that the witness that is going  
11 to be called is going to testify with respect to an  
12 issue.

13 He has to at least describe what aspect of  
14 the issue the particular witness is going to address in  
15 some fashion.

16 (Bench Conference.)

17 MR. AXELRAD: Mr. Chairman, I am not exactly  
18 sure how we got into this particular situation, but at  
19 one time Intervenors were required, like everyone else,  
20 to identify and pretrial testimony ahead of time.

21 Then, somehow, Intervenors alluded to the  
22 fact that these people were, that they intended to call,  
23 no longer willing to testify, so they needed a subpoena  
24 or subpoenas for them.

25 But throughout this timeframe Intervenors

1 must have had in mind what it was, what the purpose was  
2 of their bringing these witnesses before this Board.  
3 And even if they are not required, as everyone else is,  
4 to submit prefiled testimony so everybody can prepare  
5 ahead of time, at the very least they owe an obligation  
6 to the Board to indicate what it is that they plan to  
7 elicit from these witnesses by subpoenaing them, and  
8 they owe to the other parties an identification of that  
9 time so the other parties can prepare ahead of time for  
10 possible cross-examination of the witnesses they are  
11 calling.

12 I cannot understand this cat-and-mouse game  
13 that Mr. Sinkin is playing. He must have some reason  
14 for calling this witness, and even if she is no longer  
15 friendly towards him, which I guess is the reason he is  
16 asking for a subpoena, he still has some idea of the  
17 type of information he expects us to solicit from her.  
18 And if he doesn't, then he should not be calling her.

19 MR. REIS: Mr. Chairman, I would like to  
20 read, to put this in context, the second sentence of  
21 2.720(a) on subpoenas.

22 "The officer to whom application is made  
23 may require a showing of general relevance of the  
24 testimony or evidence sought, and they would hold the  
25 subpoena if a such a showing was not made, but he

1 shall not attempt to determine the admissibility of  
2 evidence."

3 I think within that you have discretion  
4 to require a greater showing if you think it appropriate,  
5 without going to the admissibility of the evidence.

6 MR. AXELRAD: But it's even more than that  
7 subject. The whole point of NRC proceedings is to have  
8 prefiled testimony so people can know ahead of time what  
9 the information is going to be, so that people can be  
10 prepared, so there will not be surprises, so there is  
11 no need to recall the witness later, to adjourn, recess,  
12 and things of that kind.

13 Apart even from the subpoenaing function,  
14 Intervenors have been allowed not to file their pre-  
15 filed testimony. There were a number of reasons why  
16 that happened, and we are not rehashing that particular  
17 question.

18 But I cannot understand what is to be gained,  
19 for purposes of a complete record, by permitting  
20 Mr. Sinkin to wait until the day the witness is here and  
21 to start questioning her and not have to inform parties  
22 ahead of time what it is he expects to obtain, and why  
23 it is that he is bringing this witness before this Board.

24 (Bench Conference.)

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1 JUDGE BECHHOEFER: The Board thinks that  
2 we would like to know a little more about what  
3 Miss Cortez is going to testify about, particularly  
4 since her testimony will be on a different subject  
5 than that for which we issued the subpoena.

6 I think we need to know in a little more  
7 detail, more than just the particular contention to  
8 which it relates.

9 MR. SINKIN: Your Honor, one point I'd like  
10 to make is that since we had no idea what was going to  
11 be put on regarding 81-11 when this was prepared, we  
12 figured the most relevant thing these witnesses were  
13 going to testify about was 81-11, and that would be  
14 clearly relevant and there wouldn't be a need to go  
15 into other areas.

16 But as far as Mrs. Cortez, she will be  
17 asked to testify about the working conditions at the  
18 South Texas Nuclear Project while she was there, and  
19 about any and all attempts to make corrections on  
20 things she considered wrong in the way the project was  
21 being run, and the responses she got from the management  
22 of Brown & Root and from personnel with Houston Lighting &  
23 Power regarding those corrections.

24 JUDGE BECHHOEFER: Are these corrections --  
25 can you be a little more specific, corrections as to

2-2  
1 what? I mean, are there specific --

2 MR. SINKIN: Corrections or responses to  
3 complaints about specific deficiencies in the program  
4 that she was involved in, other problems she was aware of  
5 at the plantsite where she took her concerns to manage-  
6 ment and they were address in however management saw fit  
7 to address them, and there will be particular interface  
8 with a Houston Lighting & Power quality assurance person,  
9 and I think should give you a sufficient idea to  
10 establish the relevancy of her testimony.

11 MR. AXELRAD: Mr. Chairman, what Mr. Sinkin  
12 has just described has made it quite clear that her  
13 testimony would not be relevant to the subject matter  
14 of this proceeding.

15 Mrs. Cortez was a clerk in the electrical  
16 termination shack, in which no safety-related work was  
17 done.

18 Her testimony with respect to concerns as  
19 to the program she was involved in have no relevance to  
20 this proceeding.

21 Whatever interface she may have had with a  
22 HL&P QA person, which I guess was some conversation of  
23 one kind or another, could not have pertained to safety-  
24 related matters because she was not involved in safety-  
25 related matters, and on that basis I think it's quite clear

2-3  
1 that Mrs. Cortez should -- no subpoena should be issued  
2 for her, and that there is absolutely no need for the  
3 Board to clutter the record by having this additional  
4 witness brought in.

5 MR. SINKIN: Again, Mr. Chairman --

6 JUDGE BECHHOEFER: Well, aren't safety-related  
7 matters involved, are they or not, because that will  
8 make a difference.

9 Now, I'm including QA when I talk about  
10 safety, the operation of the QA program.

11 MR. SINKIN: There are matters related to  
12 safety-related concerns in her testimony.

13 At the same time --

14 MR. AXELRAD: Well --

15 JUDGE BECHHOEFER: Let him finish.

16 MR. SINKIN: At the same time, if we're going  
17 to talk about abdication of responsibility for construction  
18 of the South Texas Nuclear Project, I do not believe that  
19 the September 22nd, 1980, Order in any way qualified  
20 that topic, that the Commission said has Houston Lighting &  
21 Power abdicated too much responsibility to Brown & Root,  
22 and if Mrs. Cortez can testify to instances where  
23 Houston Lighting & Power personnel abdicated their  
24 responsibility to Brown & Root personnel, I believe that  
25 that is relevant to Issue A, No. 3.

2-4  
1 MR. AXELRAD: Is Mr. Sinkin finished?

2 MR. SINKIN: Yes, I am. Thank you.

3 MR. AXELRAD: Well, if Mr. Sinkin can just  
4 simply point us to what safety-related concerns she  
5 will testify to and what type of matters it is that  
6 she will discuss that relate to allocation of responsi-  
7 bility, then that will be very clear for the Board in  
8 order to issue the subpoena and it will be very simple  
9 for other parties to prepare for her forthcoming  
10 testimony.

11 But to the extent that what he is talking  
12 about, I believe, are personnel management matters  
13 within Brown & Root, I find it very difficult to believe  
14 that there is any relationship to this proceeding at all.

15 JUDGE BECHHOEFER: Well, there may be quite  
16 a thin line between what's purely a personnel matter  
17 and what --

18 MR. AXELRAD: It's in a nonsafety-related  
19 area; I find that very difficult to believe, Mr. Chairman,  
20 and again I cannot understand why Mr. Sinkin did not be  
21 more precise as to what the testimony was going to deal  
22 with.

23 MR. SINKIN: I could be --

24 JUDGE BECHHOEFER: Let me ask -- I think  
25 Mr. Reis wanted to be heard.



2-5  
1 MR. REIS: Yes. I want to say we have to  
2 divide two things. We have to look for relevance here  
3 and separate that from the admissibility of the evidence.

4 The question of relevance -- I still do not  
5 have firmly in my mind where the relevance is to really  
6 the material issues in this proceeding.

7 I'm looking at the past reports on where  
8 Mrs. Cortez worked, thinking, or reviewing them in my  
9 mind, which was the electrical termination shack, and  
10 of course there were some issues of -- even though it  
11 wasn't quite safety-related yet, the Commission was  
12 concerned because the safety-related work would eventually  
13 come from that place and there was a question of how  
14 they were keeping records and whether they were getting  
15 ready to perform safety-related work and were being  
16 properly concerned in the proper manner.

17 I can't tell yet from what Mr. Sinkin has  
18 said, though, that her testimony will be relevant to  
19 those issues, or can be relevant to those issues. I  
20 just haven't heard enough. It's very hard for me to  
21 take a position, but I don't think I've heard enough yet  
22 to say that it is relevant.

23 Certainly a subpoena can be issued and  
24 voir dire could be done. That's a possibility.

25 On the other hand, why put the woman out and



2-6  
1 have her attend the hearing unless we know she can  
2 testify to something.

3 JUDGE BECHHOEFER: The Board thinks what  
4 would be desirable is if you don't think Mrs. Cortez  
5 should testify, file a Motion to Quash and we'll hear  
6 from the parties in response, and then we'll rule on it  
7 in early September.

8 MR. AXELRAD: You would rather get that in  
9 writing rather than argue it at this point?

10 JUDGE BECHHOEFER: Yes, we'd rather get the  
11 response in writing, too, and we do think the response  
12 should delineate in some detail at least, give the  
13 parties and the Board some idea about the subject of  
14 Mrs. Cortez' testimony.

15 We're not playing surprises here. We do  
16 think as much information as possible should be on the  
17 table before we come in so parties can prepare adequately  
18 for cross-examination, so that you could confer with  
19 Mrs. Cortez and get some idea of where her testimony  
20 will -- I mean what subject areas with some specificity,  
21 and I think we'll use the normal time for motions of  
22 that sort when you -- we'll allow the Motion to Quash  
23 to be filed in the relatively near future and I think  
24 that will give enough time for responses before  
25 September.

2-7  
1 MR. AXELRAD: Mr. Chairman, I will honor  
2 your request, if that's the way you wish to proceed,  
3 but I'm not sure that I understand why this matter can't  
4 be taken care of right now. There isn't really all that  
5 much time between now and September 14th, and going  
6 through the written procedure isn't going to accomplish  
7 much.

8 The only thing that we can say in our  
9 Motion to Quash is that there is no basis shown, no  
10 relevance of her testimony in this proceeding, and  
11 that's exactly the subject matter of the Motion to Quash,  
12 and obviously the burden would be on the Intervenors to  
13 show the relevance, and I don't see why they can't do  
14 that right now.

15 They have had these people in mind as  
16 witnesses for months now, and I was going to say with  
17 the next witness, Mr. Tibola, he was listed as being --  
18 he will testify concerning NRC Special Report 81-11 and  
19 81-17.

20 Clearly, it wasn't conceived at that time he  
21 was going to testify as to anything else at all. They've  
22 said they're not going to elicit testimony on those  
23 matters. They would have to file a new motion for a  
24 subpoena at this point, it seems to me, rather than having  
25 to deal with a Motion to Quash.

2-8

1 JUDGE BECHHOEFER: Which person was this?

2 MR. SINKIN: 13, Your Honor.

3 JUDGE BECHHOEFER: Well, the responses to  
4 your motion should include both, or your motion to --

5 MR. AXELRAD: Well, why can't we just move  
6 orally right now and have it established exactly when  
7 the response has to be filed, if the Board for some  
8 reason doesn't believe he should have to respond right  
9 now?

10 MR. REIS: Your Honor --

11 MR. GAY: Mr. Chairman --

12 MR. REIS: -- really, and I support  
13 Mr. Axelrad in this.

14 As you probably know, the Staff previously  
15 made a motion to have, on subpoenaed witnesses, at least  
16 what they intended to elicit from the witness established  
17 or said in a -- something ahead of time so that the  
18 parties would be put on a par.

19 We realize that there were subpoenaed  
20 witnesses and that it was impossible to prepare direct  
21 testimony and the filing of direct testimony, but we  
22 asked that the -- and we had moved, and I guess the  
23 motion was denied, but we had moved to have the  
24 intervenors set forth the matters they intended to  
25 elicit, which we thought would give us a basis, just as

2-9

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1 pre-filed testimony gives you a basis, the way you're  
2 going and how to prepare cross.

3 Without these matters, we still need that,  
4 and that's the spirit in which I support the Applicants'  
5 motion, without looking at the technicalities of 720-A.

6 My own feeling is that it's a little broader  
7 than that, that really the other parties are entitled to  
8 know why these witnesses -- what do you intend to prove  
9 from these witnesses, just as pre-filed testimony tells  
10 you that, and that really to start the game from an  
11 equal -- start the race from an equal, from the same  
12 starting line, that this be done.

13 JUDGE BECHHOEFER: Well, I might inquire,  
14 the reason we are suggesting a Motion to Quash is  
15 because the responses that we have received so far was  
16 intended to satisfy the terms of our previous order,  
17 which did not require a complete outline of testimony  
18 but did require an outline of the general subjects upon  
19 which the witnesses would testify.

20 These two witnesses at least apparently will  
21 not testify on the matters stated in the response that  
22 we received before, and I think that's a valid reason  
23 for requiring further responses.

24 So we will accept your Motion to Quash  
25 orally. We would -- I'm tryin' to figure out response

1 time.

2 (Board conference.)

3 JUDGE BECHHOEFER: If we accept your motion  
4 as of today, the way we calculate the response should be  
5 filed by August 3rd, which is a Monday, if our calcu-  
6 lations were correct the response by Mr. Sinkin would  
7 be due by that Monday.

8 I guess, if I add correctly, the Staff has  
9 until that Friday.

10 MR. REIS: Yes. Instead of doing that, the  
11 Staff would like to respond to the motion at this point  
12 and incorporate in our response, as the transcript will  
13 show, in lieu of a written filing, if I can have the  
14 permission of the Board to do that, that we support the  
15 motion and that we think that there has to be a little  
16 more showing of relevance and a little more connecting up  
17 involved in the issues in this proceeding, which are  
18 essentially quality control/quality assurance, and that  
19 we feel that as a matter of fairness we are entitled to  
20 know a little more about where we're going and what we  
21 should prepare to cross-examine on, and therefore we feel  
22 that a little more showing is necessary in the showing of  
23 relevance.

24 JUDGE BECHHOEFER: Well, if you wait until  
25 the time when the Staff would normally respond, could you

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1 not comment on what Mr. Sinkin --

2 MR. REIS: Well, at that point, yes, maybe  
3 we will.

4 JUDGE BECHHOEFER: That's why I wanted to  
5 give you your extra five days.

6 MR. REIS: Okay.

7 JUDGE BECHHOEFER: So, Mr. Sinkin, you can  
8 respond by the 3rd of August, and the Staff by the 7th,  
9 if I calculate correctly, which is a Friday.

10 MR. AXELRAD: Mr. Chairman, may I request  
11 on behalf of Applicants, an opportunity to respond by  
12 the 7th also, since we have no idea what the Intervenors  
13 are going to allege as a showing of relevance? It would  
14 seem to me to be useful to the Board if it had, in  
15 addition to the Staff's response, whatever we might be  
16 able to contribute based upon our view of what is  
17 alleged by Intervenors in their response.

18 (Board conference.)

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1 JUDGE BECHHOEFER: We will permit you to  
2 file a response by the 7th.

3 Let me make sure that we're talking only  
4 about two witnesses now, is that correct, the two that  
5 were designated for 81-11?

6 MR. AXELRAD: That's right.

7 JUDGE BECHHOEFER: Tibola and Ms. Cortez.  
8 I don't know if I pronounced that right.

9 MR. GAY: Mr. Chairman, I would just like  
10 to make one comment, if I could.

11 I just want to make it clear for the  
12 record that CEU's silence this morning does not  
13 indicate a lack of support for CCANP, but merely my  
14 lack of familiarity with this whole issue and the lack  
15 of preparation and the lack of knowledge that this  
16 discussion was going to take place on the record  
17 this morning.

18 Mr. Jordan may well have been familiar  
19 with Ms. Cortez and her background and her statements.

20 I am not, so I don't feel comfortable  
21 arguing something --

22 JUDGE BECHHOEFER: I might say that CEU  
23 may respond to the motion to quash on the same date  
24 that Mr. Sinkin can respond to it. You have a right  
25 to respond.



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1 MR. GAY: Okay.

2 JUDGE BECHHOEFER: And the Applicants and  
3 Staff have a right to comment on that response, as well.

4 MR. AXELRAD: With respect to the other  
5 remarks of Mr. Sinkin, if I understand correctly, we  
6 have asked CEU and CCANP to provide to us any  
7 documents which they plan to use for cross-examination  
8 of the people they were going to call adversely, or  
9 any documents that they were planning to introduce into  
10 evidence through those witnesses.

11 If I understand Mr. Sinkin correctly, he  
12 has no such documents. Is that correct?

13 MR. SINKIN: That is correct.

14 MR. AXELRAD: Okay. Now, we had also  
15 asked -- Let me withdraw that.

16 We had previously discussed with both  
17 CEU and CCANP statements that they might have in their  
18 possession that people they were calling adversely  
19 might have made, and there was a tape, for example, of  
20 remarks that Mr. Kesarinath had made.

21 They had agreed and they have in fact  
22 provided to Mr. Kesarinath a copy of that tape.

23 Under the federal rules, witnesses are  
24 entitled to obtain from parties who are calling them  
25 copies of any statements that those parties have in



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1 their possession; and even though we may not have  
2 discussed the matter that generally with CEU and CCANP,  
3 do I understand correctly that if any witness asks  
4 CEU or CCANP for any statements that they have in their  
5 possession that that witness has made, that CEU and  
6 CCANP will provide those statements to those individuals?

7 MR. GAY: Mr. Chairman, I think it's clear  
8 that we have an obligation to provide that under the  
9 federal rules.

10 If a witness requests something that is in  
11 our possession, a conversation, a copy of the statement  
12 that that witness has provided to us -- that request  
13 has not come, to my knowledge.

14 MR. SINKIN: Mr. Chairman, earlier in  
15 conversations with the Applicants I had agreed to send  
16 to Mr. Kesarinath a copy of the tape that he requested  
17 from us.

18 Yesterday, when that was being prepared, a  
19 question came up about the sending of that tape, and I  
20 was going to bring that up later in the day when we had  
21 had a chance to assure ourselves that we were doing  
22 what is right and proper.

23 That is being researched at the moment, and  
24 I will have a response to that later today, probably  
25 after lunch.

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1 The particular issue involved there --

2 JUDGE BECHHOEFER: There won't be an after  
3 lunch.

4 MR. SINKIN: I mean after lunch break, that  
5 timeframe.

6 JUDGE BECHHOEFER: There won't be a lunch  
7 break.

8 MR. SINKIN: Well, the ten-minute or  
9 fifteen-minute icecream sandwich break. How's that?

10 JUDGE BECHHOEFER: Well, it depends on how  
11 long we take. We plan to adjourn as soon as  
12 Mr. Peverley....

13 MR. SINKIN: I understand. I'm sure it will  
14 be done fairly quickly.

15 JUDGE BECHHOEFER: Okay.

16 MR. SINKIN: We want to be certain that  
17 we were not doing anything that we should not be  
18 doing in releasing that tape.

19 We understand the federal rule that has  
20 been cited, and I fully expect that we will release  
21 that tape; but it has a particular characteristic to  
22 it that other such matters do not have.

23 At this time we have no pending requests  
24 from any of the witnesses we intend to call for any  
25 of their statements.

3-5 1 I don't foresee any problem with producing  
2 them, but we have no pending requests to respond to.

3 MR. AXELRAD: Okay. I was setting that up  
4 just as a predicate. I gathered that Intervenors were  
5 going to comply with such requests, which is clearly  
6 called for under the federal rules.

7 But apart from that and in addition to that  
8 we have asked the Intervenors to provide to us, as  
9 Counsel for Applicants, any prior statements that they  
10 have in their possession that these witnesses they  
11 are calling adversely may have made.

12 What we were talking about was documents  
13 such as tapes any previous memoranda that these  
14 people may have written, any memoranda that Intervenors  
15 may have in their possession reflecting previous  
16 statements of these individuals, or any notes that  
17 Intervenors might have of discussions with these  
18 individuals.

19 The reason we had made that request of them  
20 a couple of days ago, and we gave them some time to  
21 think about it, is because even though we acknowledge  
22 that it is in the nature of discovery, we have a very  
23 unusual situation here.

24 Intervenors provided us months ago a list  
25 that contained well over a hundred names. I don't recall

3-6 1 how many names, but over 200 names.

2 It was obviously impossible for us to do  
3 any meaningful discovery based upon that.

4 There were lists of people who were going  
5 to be witnesses, potential witnesses, people who had  
6 information, various categories of people on that list.

7 And then there have been shifting lists of  
8 people who are actually going to be called as witnesses.

9 We have really never had a meaningful  
10 opportunity to find out ahead of time what these  
11 witnesses were going to be called for and what they were  
12 going to say.

13 What we were making was what we thought  
14 was a very reasonable, very limited request. We were  
15 not trying to submit interrogatories or anything of  
16 that kind.

17 We weren't trying to get Intervenors to do  
18 any significant amount of work.

19 All we were trying to do was that if there  
20 were documents or notes in the possession of the  
21 Intervenors reflecting what these witnesses they are  
22 going to call have previously said, we thought it would  
23 be appropriate for all parties to have that.

24 The purpose of an NRC proceeding is to  
25 have a complete and full record. The purpose of an NRC

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proceeding and the requirements of prefiled testimony which apply to everyone else, other than the Intervenor, was to assure that there was no surprise, to make sure that everyone could prepare fully, to assure that there can be meaningful cross-examination, to assure that there is no need to call witnesses back or call surprise witnesses in rebuttal.

The request that we have made, we think, was quite reasonable.

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1 We can understand that if, among the  
2 materials we have asked for, there is anything that  
3 the Intervenors believe is privileged as attorney work  
4 produce or trial preparation material, if that material  
5 is identified and they indicate why it's privileged, then  
6 that would not be a problem, I'm sure.

7 I would suspect there may be other  
8 documents that do not come within that category;  
9 and, therefore, I would request again that the  
10 Intervenors agree to provide to us either all such  
11 statements or if there are any such statements which  
12 they do not want to provide because it's privileged, to  
13 identify that material and identify the source of its  
14 privilege, that the Board can be aware of it and we  
15 can be aware of it, and we can all agree that it need  
16 not be provided.

17 MR. SINKIN: Mr. Chairman, I would summarize  
18 our position by saying that the statements, memorandum  
19 or documents that we have regarding these witnesses are  
20 almost entirely the recording by one means or another  
21 of conversations between CCANP and these witnesses as  
22 to their experiences.

23 We consider those conversation notes or  
24 tapes or whatever they may be to be work product and to  
25 be privileged, and not subject to being produced to the

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1 Applicants.

2 MR. GAY: Mr. Chairman, I'm not going to  
3 argue the point at this moment.

4 I'm not even sure it's coming in the nature  
5 of a request from the Board for a ruling. This came as  
6 an off-the-record request between Counsel to me.

7 I have given Mr. Axelrad my position on  
8 all the things that he has requested.

9 As far as I am concerned, discovery is long  
10 since cut off. The subpoena request came to this Board  
11 and all parties in early May.

12 They've had all of those names at least  
13 since that period of time, and I've informed  
14 Mr. Axelrad that any statements that are in CEU's  
15 possession at this point in time are claimed under the  
16 attorney/client relationship and as a work product.

17 Those will not be released, but that I was  
18 willing to work with him beyond that as to any  
19 information that we had that we were going to put on  
20 in this proceeding.

21 Those statements will not be handed over.

22 MR. AXELRAD: Mr. Chairman, with respect  
23 to the statement that Mr. Sinkin made, the information  
24 that he has discussed, that he just mentioned, obviously  
25 comes within 26(b)(3).



3-10 1 So presumably, at least the witnesses will  
2 get that, whether or not he is willing to provide it to  
3 us.

4 As to any material which he claims is  
5 work product or which CEU claims is work product, I  
6 think if it's identified by date or by the type of  
7 communication involved, then we would not press the  
8 matter further from our own standpoint.

9 What we were trying to get at is that  
10 I believe -- or there may well be material in the  
11 possession of CCANP and CEU which was not prepared as  
12 under the direction of an attorney, was not prepared as  
13 part of the preparation for this hearing, conversations  
14 that were held at prior dates, and it seems to us that  
15 that material should properly be provided to the other  
16 parties so we can all be aware of the type of information  
17 which may come up.

18 MR. SINKIN: Mr. Chairman, I would point  
19 out -- I don't know what Mr. Axelrad has in his mind  
20 in terms of things that we might have that we didn't  
21 prepare.

22 We do have certain statements, such as  
23 statements made to the NRC, that were requested by  
24 the witness from the NRC and which we got a copy of.

25 Those statements are almost -- let me think.



3-1 1 I think all of those statements go to the issue of  
2 81-11, which these witnesses will not be testifying  
3 about.

4 Other than those statements, I'm about  
5 99 percent sure that everything CCANP has are the notes  
6 or other methods of recording conversations between  
7 these witnesses and representatives of CCANP.

8 MR. AXELRAD: That does not automatically  
9 make them privileged.

10 MR. HUDSON: Your Honor, if I could be  
11 heard on this.

12 JUDGE BECHHOEFER: Are the Applicants  
13 trying to draw a distinction between an attorney and  
14 a representative?

15 MR. AXELRAD: Well, until we have, at  
16 least, identification of who the notes were taken by  
17 and when they were taken --

18 JUDGE BECHHOEFER: Well, I mean, if the  
19 notes were taken by Mr. Sinkin, would you have an  
20 objection to that?

21 MR. AXELRAD: Well, if notes were made by  
22 Mr. Sinkin three years ago, before the proceeding  
23 even began, it seems to me that it's not trial  
24 material.

25 MR. SINKIN: I can assure Mr. Axelrad that

3-12 1 I did not know Frieda Cortez or anybody else in this  
2 witness list before these proceedings began, in my  
3 witness list; and that what we have are the notes of  
4 myself or of investigators retained by CCANP to have  
5 conversations with these witnesses.

6 We consider those as privileged.

7 JUDGE BECHHOEFER: Were they all in the  
8 preparation for this proceeding?

9 MR. SINKIN: Absolutely. There was no  
10 other reason.

11 Well, I will say that part of it was in  
12 preparation for providing information to the NRC for  
13 the investigation of 81-11 that we intended to  
14 introduce in these proceedings.

15 So in that sense, it was both for the  
16 investigation and the proceedings; but regardless, they  
17 are being called outside of the scope of that NRC  
18 investigation.

19 JUDGE BECHHOEFER: Are any of the statements  
20 that you're referring to made to NRC included as  
21 unidentified statements in the NRC reports?

22 MR. SINKIN: Oh, yes, but we are not  
23 putting on witnesses regarding NRC reports. So I see  
24 no need to produce their statements or to ask any  
25 questions about them.

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JUDGE BECHHOEFER: All right.

MR. HUDSON: Your Honor, if Mr. Sinkin is correct, and I've no reason to doubt him, that all of the statements are his personal notes or someone working for him of the witness, then we would agree that's attorney work product and we cannot request it.

But I would point out that under Rule 26(b)(3) of the Federal Rules of Procedure, the witness can request a verbatim transcript of any oral tape recording that Mr. Sinkin may have made for him, and that is an express exception to the attorney work product rule, and he has to make no showing of need or anything else.

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4-1 1 All he has to do is simply request that  
g 2 statement, and 26(b)(3), that paragraph I'm referring  
3 to, is an exception to the work product rule.

4 I just wanted to make that clear and be sure  
5 that's everyone's understanding.

6 JUDGE BECHHOEFER: I believe both CCANP  
7 and CEU have said they recognize that particular rule.

8 So I don't think there's a problem there,  
9 as far as I see it.

10 MR. AXELRAD: That's fine, Mr. Chairman.  
11 I don't think we have anything further with respect  
12 to Mr. Sinkin then.

13 As long as we are on this subject, could  
14 we now have an identification of the witnesses that  
15 Mr. Gay plans to call and get that subject over with?

16 MR. GAY: The order that I gave the  
17 Applicants this morning, Mr. Chairman, are Perry,  
18 Lutz, Kesarinath, Shaw and Swayze --

19 JUDGE BECHHOEFER: Slow up so I can check  
20 them off here.

21 MR. GAY: Okay. Perry, Lutz, Kesarinath,  
22 Shaw and Swayze, and we would intend --

23 JUDGE BECHHOEFER: Wait. You are going  
24 faster.

25 MR. GAY: I'm sorry.

4-2 1 JUDGE BECHHOEFER: We're having trouble  
2 finding them. I'm trying to do it on the list.

3 MR. GAY: Perry is No. 14.

4 MR. REIS: How about your QA exper??

5 MR. GAY: That's what I was just getting to.  
6 Let me get through this list first.

7 Lutz is No. 7; Kesarinath, No. 4.

8 JUDGE BECHHOEFER: You mentioned Swayze?

9 MR. GAY: Shaw is No. 4 and Swayze No. 1 --  
10 Shaw is No. 3.

11 The order was Perry, Lutz, Kesarinath,  
12 Shaw and Swayze, and it would be our intention to  
13 work Mr. Hubbard somewhere in between Mr. Lutz and  
14 Kesarinath.

15 We'd like to dedicate Mr. Hubbard at the  
16 moment to coming in that Monday of the second week and  
17 work him in in that fashion.

18 JUDGE BECHHOEFER: That will be a Monday  
19 night.

20 MR. GAY: There will be some flexibility  
21 there. It depends on where we are in the Applicants'  
22 case.

23 JUDGE BECHHOEFER: That will be a Monday  
24 night.

25 MR. AXELRAD: Is it intended that the CEU

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1 witnesses will all testify before the CCANP witnesses?

2 MR. SINKIN: That is our intention, yes.

3 MR. AXELRAD: And is the order that you  
4 listed your four witnesses the order in which you would  
5 plan to call them if they are all --

6 MR. SINKIN: As I stated, yes.

7 JUDGE LAMB: Mr. Sinkin, my list is missing  
8 one of the four. Could you just run down your list of  
9 four?

10 MR. SINKIN: All right. The four in the  
11 order in which we intend to call them at this time  
12 are No. 2.

13 JUDGE LAMB: That's Vickery?

14 MR. SINKIN: Mr. Vickery, okay. We can  
15 use the names now, yes.

16 No. 8, Mr. Shillinsky; No. 11, Cortez;  
17 and No. 13, Tibola.

18 MR. AXELRAD: Mr. Chairman, as long as  
19 we are on these matters, my recollection is not very  
20 precise, but I believe that the witnesses were being  
21 called by CEU and CCANP jointly, even though they were  
22 identified by individual organizations.

23 Again, I'm not clear as to whether this has  
24 been decided before; but is it clear that one Intervenor  
25 will not be cross-examining the witness of the other

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1 Intervenor, that the witness is being presented on behalf  
2 of both of them jointly?

3 I believe the Board required them to  
4 coordinate.

5 MR. SINKIN: Mr. Chairman, the witnesses  
6 being called by CEU are being called by CEU; and the  
7 witnesses being called by CCANP are being called by  
8 CCANP.

9 That's how it was set out in the Intervenors'  
10 requests for subpoenas, and that's how we intend to do  
11 it.

12 JUDGE BECHHOEFER: Would you anticipate  
13 cross-examining each other's witnesses?

14 MR. SINKIN: I would envision there might  
15 be an occasion on which I might want to cross-examine  
16 a CEU witness on a particular point.

17 I could envision that. I certainly do not  
18 expect any extensive cross-examination.

19 (Bench conference.)

20 JUDGE BECHHOEFER: I think we will allow  
21 that, since the parties' positions are not identical.

22 MR. AXELRAD: All right, Mr. Chairman, if  
23 that is going to be the case, then I think it would  
24 be important to assure that the order of cross-examination  
25 would be that the second Intervenor cross-examines first,



4-5 1 if he is going to cross-examine the first Intervenor's,  
2 because that really is part of the same direct case.

3 JUDGE BECHHOEFER: Yes, I think that will  
4 be done, and I think the Applicants will go third and  
5 the Staff fourth.

6 MR. REIS: Mr. Chairman, in connection with  
7 that, I just want to make sure that once somebody puts  
8 on a witness as their witness, that is their -- even  
9 though they may be an adverse witness, anybody who  
10 cross-examines, and it becomes the turn of the other  
11 Intervenor, they can't enter into new subject areas.

12 It will be examination in the same subject  
13 areas as the one who originally introduced the witness,  
14 and we don't have any far-reaching examination that  
15 goes beyond that.

16 I just wanted to say that will be the  
17 Staff's position at the appropriate time.

18 JUDGE BECHHOEFER: Yes. I assume if the  
19 Staff wants to find out about other subjects from some  
20 of these witnesses, they can call those witnesses  
21 themselves.

22 MR. REIS: Yes.

23 JUDGE BECHHOEFER: The witnesses are  
24 under subpoena for rather specific purposes.

25 Yes, that will be understood.

1 (Bench conference.)

2 JUDGE BECHHOEFER: Is there anything further  
3 before we resume the cross-examination?

4 MR. GUTIERREZ: One last thing the Staff  
5 has. It's our understanding that regardless of where  
6 the proceedings are on that second Monday in September,  
7 that's when we'll hear from Mr. Hubbard, CEU's QA/QC  
8 specialist.

9 Is that --

10 JUDGE BECHHOEFER: Yes.

11 MR. GUTIERREZ: For planning purposes, it  
12 would be helpful for us to know that.

13 JUDGE BECHHOEFER: Yes.

14 MR. GAY: That is the present. If there is  
15 any change at all, I will let you know as soon as  
16 possible.

17 MR. GUTIERREZ: Thank you.

18 MR. AXELRAD: The Staff is assuming that  
19 the Applicants' case will be completed at that point?

20 JUDGE BECHHOEFER: Is there anything further?  
21 I think we'll take about a five-minute break before we  
22 start the cross-examination.

23 (Recess taken.)

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5-1 1 JUDGE BECHHOEFER: Back on the record.

2 Whereupon,

3 RICHARD W. PEVERLEY

4 resumed the stand as a witness and, having been previously  
5 duly sworn, was examined and testified further as  
6 follows:

7 CROSS-EXAMINATION (Continued)

8 BY MR. GAY:

9 Q Mr. Peverley, let's refer to your Testimony  
10 A with regard to the error that occurred at the  
11 Mechanical Electrical Auxiliary Building.

12 On Page 7 of your testimony in Response  
13 No. 11 you note that the surveying error most likely  
14 occurred because of a reference point of the surveyor  
15 to the Fuel Handling Building centerline as opposed to  
16 the Containment Building centerline.

17 Would that still be the most accurate  
18 analysis of what happened?

19 A In my opinion, yes.

20 Q Is that just because it is the most logical  
21 thing, and it could have happened, or is it the result  
22 of an in-depth study into the problem?

23 A The investigation upon which my opinion is  
24 based was made very recently. People involved in this  
25 survey directly are no longer there.

5-2 1 In discussing this with other people in the  
2 surveying organization it was their opinion, as well as  
3 mine, that this was the most likely cause.

4 Q Were you the sole person charged with  
5 responsibility of determining this error, or determining  
6 the cause of the error?

7 A There were two points at which I was involved  
8 in investigating the cause of the error.

9 The first was as a member of the Incident  
10 Review Committee at the time the incident occurred. There  
11 were, I believe, if I remember correctly, three  
12 possibilities, put forward by the Construction Chief  
13 Engineer.

14 These were reviewed by the Incident Review  
15 Committee, and the corrective measures that were taken  
16 would have resolved problem with all three of the possible  
17 causes.

18 The Incident Review Committee found the  
19 corrective action to be adequate and it was forwarded,  
20 I believe it was forwarded along with our report to the  
21 NRC.

22 In preparation for this testimony I again  
23 investigated the incident, and, yes, I was the only one  
24 that investigated. I did, however, solicit help from  
25 some of the people over there currently in the surveying

1 organization at the site.

2 Q Let me see if I can educate myself a little  
3 bit about what a surveyor does. Is it true a surveyor  
4 works from plots with benchmarks. Does someone hand them  
5 a blueprint to work from?

6 A Yes. He uses the Engineering drawings, and  
7 he measures from established benchmarks to lay out the  
8 buildings.

9 Q Is it typical, or usual for a surveyor to  
10 reference a centerline of a particular building as the  
11 benchmark for that plot?

12 A There were two benchmarks that had been  
13 established, one for the centerline of the Reactor  
14 Containment Building, and one for the Column Line R1  
15 in the Fuel Handling Building. They were some distance  
16 apart.

17 The benchmark for the centerline of the  
18 Reactor Containment Building was somewhere between 50  
19 or 60 feet away from the one for the Fuel Handling  
20 Building.

21 The one for the Fuel Handling Building,  
22 Column R1 was much closer to the Reactor Containment  
23 Building, and much more accessible, and that is really  
24 one of the bases for our belief that they used the  
25 wrong benchmark.

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1 Q It might be helpful if we refer to your  
2 Attachment No. 1, which is the diagram of the Containment,  
3 Fuel Handling, and Mechanical Electrical Auxiliary  
4 Building, and on that you illustrate the centerlines for  
5 the Containment and Fuel Handling Building were  
6 approximately a foot off. Is that correct?

7 A Yes.

8 Q That which you testified to?

9 A Yes.

10 Q I guess the obvious question is: Was that  
11 designed that way, or is that in and of itself an error?

12 A It was designed that way.

13 Q Could you give me a reason for that?

14 MR. GUTIERREZ: Your Honor, I object. That  
15 has no materiality to this proceeding as to why it was  
16 designed that way.

17 (Bench Conference.)

18 JUDGE BECHHOEFER: We will sustain that  
19 objection.

20 BY MR. GAY:

21 Q Mr. Peverley, with regard to the document  
22 being -- I am talking about the plot or the blueprint  
23 being handed from Engineering to the Surveyor, is there  
24 any one person that is charged with that responsibility  
25 and finally checking the blueprint before it is handed

5-5 1 over to the Surveyor?

2 A. Definitely so.

3 Q Is it the same person or same group of  
4 individuals in all cases?

5 A. No. There is a system within our -- there  
6 is a measure within our Design Control System for the  
7 verification of the accuracy of design documents. This  
8 is an independent check.

9 Q Well, what I am trying to establish is was  
10 there an independent check in all cases before the blue-  
11 print is handed over to the Surveyor with a particular,  
12 what I would call a QA function of checking the blueprint  
13 before it is handed to a Surveyor?

14 A. The QA Department does not do this, no. It  
15 is done within Engineering.

16 Q In examining the possible causes for the  
17 error which occurred, did you consider the possibility  
18 that there was an Engineering mistake or that an  
19 Engineering Checker may have made a mistake on the  
20 blueprint.

21 MR. REIS: Your Honor, I object on  
22 materiality, unless it can be tied up to show this is  
23 something other than the surveying area. I think this  
24 is conjecture and speculation, and there is no basis  
25 for the question whatsoever.



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MR. GAY: I would --

MR. REIS: I wasn't finished.

JUDGE BECHHOEFER: Let Mr. Reis finish.

MR. GAY: I'm sorry.

MR. REIS: The issue and the contention involves uncontrolled survey, not plant design, and this is regarding plant design. Therefore, it is immaterial.

MR. GAY: Mr. Chairman, my response is that I am not going to plant design, but I think we have established on cross-examination of Mr. Peverley that the Surveyor works from a plot or a blueprint, and if there was an error on the blueprint, I think I should be entitled to ask a question as to whether or not that was a consideration in terms of the cause of this particular error; whether or not the error could have originated on the blueprint, as opposed to the surveying mistake.

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5-7 1 MR. SINKIN: Mr. Chairman, if I might be  
2 heard on that one, also.

3 JUDGE BECHHOEFER: Yes.

4 MR. SINKIN: It seems to me that Mr. Peverley  
5 has already testified to the fact that the decision on  
6 how the error took place was made very recently, without  
7 any of the original personnel present.

8 And what Mr. Gay seems to be exploring is  
9 the validity of that decision, which in itself was to  
10 some extent speculation.

11 (Bench Conference.)

12 MR. REIS: If I might read this and put  
13 this, the contention itself, in perspective, there has  
14 been a surveying error which has resulted in the eastern  
15 edge of the Unit 2 Mechanical Electrical Auxiliary  
16 Building being constructed one foot short in the east/west  
17 direction from its design location.

18 This error violates 10 CFR Part 50,  
19 Appendix B, Sections 10 and 11.

20 We are talking about surveying, not the  
21 design here, and, therefore, the question is immaterial.

22 MR. GAY: Mr. Chairman, I go back to the  
23 fact I didn't ask a design question.

24 JUDGE BECHHOEFER: I think the way it was  
25 asked, I will sustain the objection. The way it was

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asked at least was not within the contention.

BY MR. GAY:

Q Mr. Peverley, what I am trying to get to is the extent of the investigation that you conducted. I am asking if your investigation of the cause of the surveying error went beyond just the consideration of the actual surveyors and their work there? Did it go back into the Engineering?

A It did not.

I might point out that the design of the slab for the Unit 1 and Unit 2 Mechanical Auxiliary Building are the same.

In fact, the Unit 2 drawings are made from the Unit 1 drawing. The dimensions are the same. The Unit 1 Mechanical Auxiliary Building was correctly sized, and all the parts fit inside of it. I did not feel I had a need to investigate the drawing.

Also, after this incident occurred, the number of drawings had to be redrafted and reissued, and there was no error found in the dimensioning of the drawing during that exercise.

Q Mr. Peverley, who were the surveyors that made this error? Not just specific names, but was this Brown & Root, was it a subcontractor, or an independent --

A Brown & Root.

5-9

1 Q -- contractor?

2 A Brown & Root.

3 Q And were these individuals of Brown & Root  
4 the same individuals that surveyed for the Containment  
5 and the Fuel Handling Building?

6 A Yes.

7 Oh, I'm sorry. Let me clarify that. They  
8 were in the same organization. I am not sure exactly  
9 if they laid out any other buildings. I am sure they  
10 did.

11 Q You mentioned a few moments ago those  
12 individuals are no longer at the site. Were they  
13 disciplined for this error?

14 A No.

15 Q Did they leave prior to the investigation  
16 of this error?

17 A No.

18 Q Where are those individuals at the moment?

19 A One of them is still with Brown & Root,  
20 and I don't know where the other one is.

21 Q Was there any consideration of disciplinary  
22 action as a result of this error?

23 A Not to the best of my knowledge.

24 Q Is there any one person in Engineering that  
25 supervises surveying, or is this an independent function?

5-10 1 A The surveying organization is part of the  
2 Construction Engineering organization.

3 Q Who was the person that would have been  
4 responsible for the surveying that was taking place at  
5 this time?

6 A The Construction Chief Engineer.

7 Q Do you recall who that was at the point that  
8 the error occurred?

9 A Yes. I believe it was Mr. Resnick.

10 Q I'm sorry?

11 A Mr. Resnick. R-e-s-n-i-c-k. I believe that  
12 is how you spell his name. Sid Resnick.

13 He took over that job somewhere around that  
14 time, so he may not have been the Construction Chief  
15 Engineer. I know he was the individual that performed  
16 the investigation when the error was found.

17 Q Has there been any modification in the  
18 procedure for handling surveys since this error was  
19 discovered?

20 A Yes.

21 In fact, the modification to the procedure  
22 was made I guess before the surveying error was discovered.  
23 There was a reorganization of the surveying organization.  
24 There was additional layers of supervision placed between  
25 the Crew Chief and the head of the surveying organization.

5-11

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1           The procedure was modified to require that  
2 any -- that the monuments be checked back to the original  
3 monuments. I'm sorry, the building location monuments  
4 back to the original monuments when the building, itself,  
5 was laid out.

6           I guess I need to explain. There is two  
7 things that happen. One crew will lay out the building  
8 corners, and another crew comes back in and lays out the  
9 lines for the building, for the form people to put the  
10 forms in.

11           The procedures now require that when the  
12 second crew comes in to lay out the building that they  
13 survey back to the original monument to assure that the  
14 first crew did their job correctly. That was not in the  
15 procedure when this error occurred.

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6-1 1 Q Do you have an opinion, Mr. Peverley, as to  
2 whether or not that should have been in the procedure at  
3 the time before this error occurred?

4 A In my opinion, it should have been. In my  
5 opinion, that constitutes good surveying practice.

6 Q In your opinion, Brown & Root was in  
7 violation of good surveying practice?

8 A The word "violation" is a little hard. They  
9 were not in conformance with good surveying practice.

10 Q I'd like to move to your second set of  
11 testimony, Testimony B.

12 Let me begin by asking you a question that  
13 I wasn't able to ask you yesterday. What has happened  
14 to Mr. Robertson? Where is he now?

15 A Well, I spoke to Mr. Robertson just before  
16 he left Brown & Root. I purposely went over to talk to  
17 him. He told me that he was going to work in Djakarta,  
18 Indonesia.

19 Q Can you tell me when he left?

20 A Not exactly. It seems to me in my memory  
21 it was sometime within the last year, but I could be  
22 mistaken.

23 Q Sometime within 1980?

24 A If I remember correctly, I think it was in  
25 that time period.



1 Q Did he serve as site design resident  
2 engineer -- I forget the title -- did he serve in that  
3 function until the time that he left?

4 A No. He transferred over to construction  
5 engineering. The last duty he had was within  
6 construction engineering, and I'm not sure what his  
7 exact title was. I think he was chief construction  
8 engineer, but I'm not certain.

9 Q With regard to your testimony as to  
10 Mr. Robertson holding the function of resident design  
11 engineer, site design engineer, what period of time  
12 did that take place, from the beginning to the end when  
13 he left that position?

14 A He was the lead project site engineer from  
15 May of '78, I believe that was, to sometime in the fall,  
16 August or September. Yes, May of '78 to August or  
17 September of '78.

18 At that time an assistant engineering project  
19 manager was assigned at the site and the position was  
20 defined, procedures were modified.

21 Mr. Robertson's tenure as a project site  
22 engineer was an interim function. It was controlled,  
23 but it was still an interim function until we could get  
24 the organization in place.

25 Q One thing I wanted to clarify about your

6-3  
1 testimony, Mr. Peverley, was to get some of the time  
2 frames in perspective regarding the questions and  
3 answers that you gave.

4 Let me begin on Page 4 with Question and  
5 Answer No. 7, and you talk about the pre-plan checklist  
6 provided by quality engineering.

7 Am I correct in assuming that the time frame  
8 that you're referencing here is post-Show Cause?

9 A. No, it's pre-Show Cause.

10 Q. Was there a quality engineering function  
11 before the Show Cause Order?

12 A. There was a quality engineering function,  
13 I'm not sure it was titled that in the Houston office.

14 In fact, Mr. Purdy was part of that  
15 organization before he went to the site.

16 Q. I was just trying to recall Mr. Purdy's  
17 testimony, and maybe I'm just a little bit confused  
18 about it, but I thought that he said that QE did not  
19 exist until after the Show Cause.

20 A. As a formal organization they did not exist,  
21 but there were a number of people performing quality  
22 engineering functions, and I think they had that title  
23 as a sub-tier organization. The formal quality engineering  
24 as it is known today, or as it exists today, was not  
25 present at that time.

1 Q Let me see if I can ask if it wouldn't be  
2 more appropriate to have the quality engineering phrase  
3 that's referenced in Line 31 of Page 4 in lower case  
4 letters as opposed to being capitalized, representing  
5 an organization unto itself?

6 A Possibly.

7 Q When did the pre-planned checklist originate?

8 A I don't know.

9 Q Are you positive that that was pre-Show Cause?

10 A Yes. There were checklists in existence --  
11 I think there were always checklists in existence, but  
12 I can't tell you that for certainty.

13 It's very difficult to imagine any quality  
14 control function without a checklist. It's almost like  
15 an attorney without a yellow pad.

16 Q With regard to Question and Answer No. 10,  
17 this is a pre-Show Cause reference, is it not?

18 A Yes.

19 Q You're describing procedures in early 1976.

20 Now, on the next page, Question and Answer  
21 No. 11, at the bottom of that page, does this refer to  
22 activity prior to Show Cause, or is this strictly a  
23 description of present activity, present organizational  
24 relationship?

25 A Both.

6-5  
1 Q Now, back to Page 4, Mr. Peverley, in regard  
2 to Question No. 8, can you tell me what the -- let me  
3 strike that.

4 Can you tell me what was the relationship  
5 between QC inspectors and engineering prior to the  
6 site engineer being placed upon -- the first site  
7 design engineer?

8 A I don't really believe there was an  
9 organizational relationship. There was an informal  
10 relationship. Several of us in engineering frequently  
11 were called by QC inspectors to try to help answer  
12 questions that they had, clarifications.

13 Mr. Murphy and I both in particular were  
14 called many times.

15 Q Was that encouraged or discouraged?

16 A I really don't know the answer to that. I  
17 got quite a number of calls, so I would assume it was  
18 not discouraged.

19 Q Do you recall if there was any procedure or  
20 memo that dealt with that situation?

21 A Not prior to Mr. Robertson's arrival at the  
22 site.

23 Q Was Mr. Robertson placed upon the site in  
24 that function as site design engineer for the purpose of  
25 cutting off the calls from QC to engineering?

6-6

1 A No.

2 Q In Answer No. 10 you discuss the FREA, the  
3 field request for engineering action.

4 Which personnel were authorized to fill out  
5 FREA's?

6 A Anyone could fill one out. The authority to  
7 make a FREA a legal document was the signatures, the  
8 approval of them.

9 Q With regard to the first full paragraph that  
10 exists on Page 6 of your testimony, you mentioned there  
11 that deviations were granted on a one-time basis, in  
12 discussing the FREA's.

13 Do you know how many FREA's were filed up  
14 to that point; to the point that Mr. Robertson was  
15 placed on site?

16 A No, I don't. I certainly could get that  
17 number, but I don't have it in my head.

18 Q Do you know what percentage of FREA's were  
19 granted?

20 A The disapproval rate of FREA's ran about  
21 ten percent, somewhere around ten percent throughout  
22 the life of that system.

23 Q In the last sentence of that paragraph that  
24 I just referenced on Page 6, the sentence right before  
25 Question 11, you mention that all FREA's written against

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1 safety-related or seismic Category I documents required  
2 formal design verification.

3 What do you mean by formal design  
4 verification?

5 A. Formal design verification is a requirement  
6 of NSIN 45.2.11, Appendix B, requires an independent  
7 check, if you like, of a design or any changes thereto  
8 to ensure that it is correct.

9 We have a very rigorous and very formal  
10 program for this. We require that any design change,  
11 including FREA's, be reviewed by an independent person  
12 who is at least as competent as the originator, to  
13 assure that it was technically correct.

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1 Q Is there a blueprint or additional document-  
2 tation that must be altered to meet this formal design  
3 verification as opposed to just the routine course of  
4 preparing a FREA?

5 A Sometimes the change required -- in fact, a  
6 large percentage of the time -- the approval of the PEA  
7 required that a document be revised in conjunction  
8 with it.

9 Q I asked you a moment ago about a reason for  
10 Mr. Robertson being put in the position of site design  
11 engineer, or essentially the reason for the creation of  
12 that position, and you responded that my suggestion was  
13 not accurate.

14 On Page 7 in Answer No. 12 you begin a  
15 discussion of this particular position and you state  
16 that it was at the direction of HL&P that the decision  
17 was made to assign design engineers at the site.

18 Were you privy to the discussions that took  
19 place at that time to make that decision?

20 A Yes.

21 Q Okay. Can you give us a basis for the  
22 decision that was made? Like why did HL&P want design  
23 engineers on site?

24 A There had been some discussion prior to May  
25 of '78 for having engineers at the site. Brown & Root



6-9  
1 engineering was basically opposed to that. Construction  
2 people, both HL&P and Brown & Root, wanted to have  
3 engineers at the site.

4 It was their opinion that having to send all  
5 of these changes to Houston was taking an excessive amount  
6 of time to get approval.

7 I was at the site with another group of  
8 people for a quality assurance management review board.  
9 We got a call from Houston from one of the vice-presidents  
10 of Brown & Root who had talked to one of the vice-  
11 presidents of HL&P, and HL&P had stated they wanted us  
12 to identify an individual that day to be granted certain  
13 authority to approve FREA's at the site.

14 After the phone call we had a meeting and  
15 reviewed the qualifications of people that we had  
16 available at the site at the time. In reviewing these  
17 qualifications we found that Mr. Doug Robertson was  
18 extremely well qualified. He was a registered  
19 professional engineer and had extensive education and  
20 experience in soils as well as concrete technology,  
21 which was the primary work that was going on at the time.

22 It was decided that he would be given that  
23 position on an interim basis until such time as we  
24 could establish a full engineering organization at the  
25 site.

6-10 1 A procedure was written to grant him this  
2 authority and also place limitations on what he could do  
3 and what he couldn't do, and I believe about a week --  
4 no, I'm sorry, within about two days after he was  
5 nominated, an interim procedure was issued and the  
6 function was started.

7 Q Am I correct in assuming, then, that the  
8 primary motivation for this change was to expedite  
9 construction?

10 A Correct.

11 Q Could you tell me where Mr. Robertson was  
12 located within the structure of the organization prior  
13 to his selection? Was he in construction or was he in  
14 engineering?

15 A He was in engineering. He was assigned to  
16 the geotechnical engineering group under Mr. Pettersson,  
17 whom you have previously met, but he was assigned at  
18 the site to monitor and to consult on geotechnical  
19 activities.

20 Q Now, you mentioned, I think, that Brown & Root  
21 engineering was opposed to this change?

22 A Yes, at the time.

23 Q Why were they opposed?

24 A The person that was opposed to it was  
25 Mr. Lewis Hayden, who was then the engineering project

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✓  
1 manager.

2 I never really understood why he was opposed  
3 to it.

4 I personally thought it was a good idea,  
5 but he was the boss, so that's the way we went.

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7-1 1 Q With regard to the procedure outlined by  
g 2 Mr. Robertson, which you describe on page 8, do you know  
3 how many FREA's Mr. Robertson refused to take action on  
4 for lack of experience on his part?

5 A No, sir, I don't.

6 Q Where is the documentation found -- I'm  
7 asking in terms of a holding point, or a person who has  
8 control over the documentation that Mr. Robertson  
9 produced?

10 A There are copies of this documentation in  
11 our Engineering Document Control Center.

12 I would assume that there are also copies  
13 of these in the Site Document Control Center, but I'm  
14 not sure about that.

15 Q While Mr. Robertson occupied the position  
16 as site design engineer, was there any system for  
17 regularly reviewing his work, other than just following  
18 this procedure that you've outlined on page 8?

19 A Mr. Robertson would approve an FREA. It  
20 was then forwarded to Houston where it was reviewed by  
21 the discipline project engineer, a design verifier,  
22 my quality engineering organization and the engineering  
23 project manager.

24 Q Did Mr. Robertson receive any special  
25 training before assuming this position?

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1 A I spent the better part of an afternoon  
2 reviewing the current procedure with Mr. Robertson.  
3 Whether that's formal or not, that was about the extent  
4 of the training he had.

5 Mr. Robertson had been at the site and was  
6 familiar with the procedures, but I did spend that much  
7 time with him bringing him uptodate on what he had to  
8 do in order to comply with the system we had in effect.

9 Q Just a couple of questions about Mr. Robertson's  
10 experience and background.

11 Did he have any experience, prior to his  
12 selection, in project management?

13 A Not within Brown & Root. He had project  
14 management experience where he was previously employed.

15 He was a project engineer on the D-FW  
16 Airport.

17 Q Did he have any experience in design  
18 analysis?

19 A If I remember correctly, I think he did.

20 Q Do you recall what that experience was?

21 A No, I don't. I certainly can go back and  
22 check his resume and find out.

23 Q What was Mr. Robertson's experience on  
24 nuclear projects prior to work on the South Texas Project?

25 A I don't think he worked on a nuclear project

7-3 1 prior to South Texas Project.

2 MR. GAY: I pass the witness.

3 JUDGE BECHHOEFER: Mr. Sinkin.

4 BY MR. SINKIN:

5 Q Mr. Peverley, on your testimony, let me  
6 ask you a few general questions.

7 Do QC inspectors have a responsibility to  
8 ensure that procedures are being implemented properly,  
9 that work is being done according to procedures?

10 A At the construction site, yes.

11 Q Let me give you a hypothetical example and  
12 get your reaction.

13 If you are working in a particular form  
14 and there are ten rebar left out in one area of the form  
15 by the construction organization, and there is a report  
16 to engineering that rebar have been left out, but that  
17 report only says two were left out.

18 If engineering then proceeds to disposition  
19 that rebar being left out based on erroneous information,  
20 if a QC inspector knew that fact, would the QC inspector  
21 have any responsibility to act on that fact?

22 A Absolutely.

23 Q And what should his response be?

24 A First, on the system that was in effect at  
25 the time, QA/QC would have gotten a copy of the FREA and

7-4 1 that would have resulted in the error being brought to  
2 the attention of construction and engineering both.

3 But if it wasn't, when the FREA was  
4 dispositioned and inspection was done against the FREA,  
5 the fact that there was an error would have been  
6 identified and a nonconformance report written.

7 Q Let me be sure I understand. The FREA would  
8 be generated by anyone, I think you said.

9 A Could --

10 Q Could be generated by anyone?

11 A Correct.

12 Q So that if a construction person wrote up  
13 "two rebar missing" as an FREA, went to engineering  
14 for disposition, came back, was dispositioned.

15 A QC found out that there were actually  
16 ten missing. He would write an NCR on the FREA?

17 A Well, your hypothetical situation is  
18 getting to be a little too hypothetical.

19 First of all, the construction man would  
20 not write the FREA saying that the rebar are missing,  
21 but for some reason or another, they didn't want to  
22 install the rebar.

23 When you get up to the point of doing  
24 final inspection and you find rebar missing, then there's  
25 a requirement to write an NCR.



7-5

1 So then the disposition would have to be  
2 on the NCR.

3 Q Well, let me back up a little into that  
4 process.

5 If I, as a construction person, wrote a  
6 FREA saying, "There are two rebar missing at this  
7 location. We would like to proceed as is."

8 A Correct.

9 Q It goes up to engineering. They do the  
10 disposition. They sign off on the FREA.

11 They send the FREA back to me saying,  
12 "Go ahead."

13 The QC comes along and says, "There are  
14 rebar missing." Now, if there are only two rebar  
15 missing, I presume the construction man would show the  
16 QC man the FREA and say, "It's okay"?

17 A The inspector would inspect the placement  
18 of the form based upon the current design. The current  
19 design would include the FREA.

20 If the FREA was incorrectly written, I  
21 would hope the inspector would then write an NCR because  
22 he was being asked to approve a final -- this would be  
23 final inspection and he was being asked to approve it.

24 We require an NCR be written.

25 Q On page 6 of your testimony at line 35 --

7-6

1 A A or B?

2 Q I'm sorry, in B.

3 You state that, "In addition, all FREA's  
4 written against safety-related or seismic Category I  
5 documents required formal design verification."

6 Are the concrete procedures for placement  
7 and consolidation considered a safety-related document  
8 in that context?

9 A No.

10 Q What is a safety-related document?

11 A Now that I read the sentence, it should  
12 have said "design document."

13 Q So that sentence would be more correct  
14 if the word "design" were inserted in front of the  
15 word "documents"?

16 A That's correct.

17 Just to take the sentence by itself, it  
18 needs to be in there. Putting the sentence in context  
19 with the rest of the paragraph, the rest of the  
20 discussion is about design documents.

21 Q In your testimony on page 7, at line 10 --  
22 or I guess it's 11, the sentence beginning, "Design  
23 quality engineers do not themselves perform QA functions,"  
24 you are saying that the functions that you have defined  
25 previously in Answer 11, which is the answer we're dealing

7-7 1 with starting on page 6, are not what you consider QA  
2 functions?

3 A Design quality engineers are not part of  
4 the formal QA organization and, therefore, do not  
5 perform tasks described or required by Criterion 2  
6 of NCFR 50, Appendix B.

7 Design quality engineering within Brown &  
8 Root, as it is within many other A&E organizations,  
9 support the engineering project manager in his charter  
10 to assure that procedures are written which conform to  
11 the QA requirements, to all industry codes and  
12 standards, plus governmental regulations, plus the  
13 QA Manual, and to assist him in assuring that engineers  
14 understand these requirements and follow them; but we  
15 do not take credit as part of the formal QA program for  
16 that activity.

17 Q Answer 12 on page 7, you are discussing the  
18 HL&P order to Brown & Root to set up the site  
19 design engineer function.

20 My question is what date did Mr. Robertson  
21 assume that function?

22 A It was sometime in May of '78. I could  
23 probably find the exact date, if you need to know the  
24 exact day, but it was in that month.

25 Q I seem to remember you testified earlier

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that there was a call from Houston Lighting & Power  
to Brown & Root, vice president to vice president,  
saying, "Do this," and then very shortly thereafter it  
was done, and that that took place roughly in the  
May '78 period?

A. Yes.

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8-1 1 Q You were asked a question regarding how  
g 2 many times Mr. Robertson decided that a particular review  
3 was outside his area of technical expertise, and you  
4 said you didn't know.

5 Do you know if he ever made such a decision?

6 A Oh, yes.

7 Q Can you give me an example of one such  
8 decision where Mr. Robertson said he did not have the  
9 technical expertise?

10 A Right offhand, I have a little difficulty  
11 thinking of one. If you would like to wait until after  
12 we have our next break, I could probably find you  
13 several.

14 Q That's fine.

15 As a routine procedure, a FREA would only  
16 go to QC if some question came up during an inspection;  
17 is that correct?

18 A No. FREA was part of the design. QC  
19 reviewed the as-built configuration of the plant  
20 against the as-designed configuration.

21 So they were required to review these to  
22 make their inspection.

23 Q During their inspection, you said?

24 A Correct.

25 Q So it was at the time that they inspected

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1 that they would see the FREA? They wouldn't normally  
2 receive it as soon as it was dispositioned?

3 A Yes, they would. They were on distribution  
4 for these. After they were approved by engineering,  
5 they were distributed through the Document Control  
6 Center, and I believe that the QA Department was on the  
7 control distribution for these.

8 Q So it would go to the Quality Assurance  
9 Department, who would supply it to the quality control  
10 inspector?

11 A I would assume so.

12 Q On page 9 of your testimony, still in B,  
13 at line 31, you state that, "Through this process, there  
14 was a minimum risk of having to do some rework."

15 Is the reason for that risk that the final  
16 sign-off is being done at the same time that work has  
17 already commenced on the FREA and there might be someone  
18 who says, "No, I'm sorry, I can't sign off," so that  
19 the work done would have to be done over? Is that  
20 the risk?

21 A That's not entirely accurate.

22 The highest risk occurred in the design  
23 verification process.

24 Mr. Robertson would call the building  
25 engineer and discuss this change with the building

1 engineer, who would say, "Yeah, that looks good to me.  
2 Go ahead and do it."

3 Mr. Robertson would sign the piece of paper.  
4 It would then come up to the Houston engineering office.

5 It would then go through the approval  
6 process and go to the design verifier.

7 It was not uncommon for a design verifier  
8 to disagree with the building engineer.

9 Q And if the design verifier disagreed, you  
10 might already have a case where the work has been done,  
11 based on the oral okay?

12 A That's correct. That could have happened.

13 Q Mr. Peverley, I'm going to show you a  
14 series of documents and I'm going to ask you some  
15 questions about each of them.

16 The first document is CEU Exhibit 30, if the  
17 Applicants would provide you with a copy.

18 (Document passed to witness.)

19 This has been identified as CEU Exhibit 30,  
20 but it has not yet been admitted.

21 It's a rather thick document.

22 A What's the document? I'm having a little bit  
23 of a logistics problem.

24 Q It's the NCR on Lift 15.

25 (Counsel conferring.)



300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

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WITNESS PEVERLEY: I wonder if I can ask the Chairman if it would be out of order for the witness to ask for a short break.

JUDGE BECHHOEFER: Let's have about a ten-minute break.

(Recess taken.)

JUDGE BECHHOEFER: Back on the record.

Mr. Sinkin?

MR. SINKIN: Yes.

BY MR. SINKIN:

Q Mr. Peverley, are you now reviewing CEU Exhibit No. 30?

A If it's NCR C1219B, yes.

Q NCR S-C1219B is Exhibit 30.

A Yes.

MR. HUDSON: Is there some particular part of the document you would like the witness to review, Mr. Sinkin?

It appears to be about 100 pages long.

MR. SINKIN: Yes, it's rather lengthy, and I am going to take him to a particular page, as soon as I find it.

BY MR. SINKIN:

Q On page 39 -- Unfortunately, these are not numbered pages, so if you would just count to the

8-5

1 thirty-ninth page.

2 A If you would give me a clue what it is,  
3 maybe I can find it.

4 Q It's a memo from R. W. Peverley to  
5 C. W. Vincent dated January 9th, 1979, an interoffice  
6 memorandum.

7 JUDGE BECHHOEFER: Did you say it was  
8 page 39? I'm not trying to count them. I want to mark  
9 it.

10 MR. SINKIN: I think it's the thirty-ninth  
11 page.

12 WITNESS PEVERLEY: I must not count too well.

13 BY MR. SINKIN:

14 Q Let me see if I can give you some things  
15 on either side of it.

16 Actually, the document tends to run in  
17 chronological order. January 9th is the date of the  
18 memorandum.

19 A All right, maybe that will help.

20 MR. REIS: Can I suggest that there are  
21 numbers printed on the side of the page that are in  
22 order.

23 MR. SINKIN: Oh, absolutely. Thank you.

24 MR. REIS: And it ends in 0298.

25 MR. SINKIN: Down the right-hand edge of

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the page is a printed number. 0298 is the number I'm referring to.

WITNESS PEVERLEY: Why don't you help me find it. I certainly don't find the number or the --

MR. SINKIN: Okay.

MR. REIS: We have identified it and found it. I might suggest that there are a bunch of graphs in this package, and it's the fourth page after the graphs.

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ge  
1 MR. SINKIN: Do the Board copies contain  
2 this document?

3 JUDGE BECHHOEFER: I have it.

4 MR. SINKIN: They do? Okay. Apparently,  
5 some of the copies being used do not.

6 I have, with the gracious cooperation of  
7 the court reporter, provided a copy to Mr. Peverley  
8 that does contain this page.

9 BY MR. SINKIN:

10 Q Do you see now, Mr. Peverley, the  
11 memorandum from R. W. Peverley to C. W. Vincent on  
12 January 9th?

13 A Right.

14 Q Are you the R. W. Peverley?

15 A Yes.

16 Q Do you recall this particular memorandum?

17 A No.

18 Q Do you recall the incident to which the  
19 memorandum refers?

20 A Vaguely.

21 Q What does the NCR as a whole refer to,  
22 Mr. Peverley?

23 A Would you repeat that, please?

24 Q Why was the NCR written in the first place?

25 A Because of the voids on Lift 15.

9-2

1 Q Do you recall the incident where there were  
2 voids in Lift 15?

3 A Oh, yes, very well.

4 Q In the document, the page of the document  
5 that you referred to, the memorandum from yourself to  
6 Mr. Vincent, have you had a chance to read the whole  
7 document?

8 A You're talking about that memorandum?

9 Q That page, yes.

10 A Yes.

11 Q And you note that the memorandum involves a  
12 rejection notice on NCR C1219B?

13 A Yes.

14 Q Do you recall why there was a rejection  
15 notice?

16 A No, I don't recall that now.

17 Q Turning to the first page of the document,  
18 on the copies, the "cc" at the bottom, there's an  
19 R. W. Peverley. Is that you?

20 A I'm sorry, the first --

21 Q The very first page of the document, of  
22 the entire document.

23 A Yes, I found it. That is me.

24 MR. SINKIN: Mr. Chairman, I would move  
25 CEU No. 30 into evidence at this time.

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300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 MR. HUDSON: Your Honor, we oppose the  
2 motion on several grounds.

3 First of all, the witness has only  
4 identified one page -- correct me -- two pages, a  
5 cover memo and one other memo within the document that  
6 he's familiar with, and we're trying to get in an  
7 entire document.

8 So he cannot be, I don't think, a sponsoring  
9 witness for this entire document.

10 Secondly, I think, and more importantly,  
11 there's a relevance -- to the part that he has  
12 identified, I think there's a clear relevance objection.

13 It's not within the scope of his direct  
14 testimony. So he's being used here as a witness to  
15 put on a document about Lift 15 that CEU or CCANP in this  
16 case, would like to have in the record.

17 But the portion of the document that he's  
18 talking about does not discuss how the voids were  
19 created or how they were repaired, or anything really  
20 material to the identification and correction of this  
21 problem or its impact on any of the issues.

22 Instead, it's a one-page memorandum that  
23 deals with whether or not certain work could proceed  
24 under the QA procedures and the engineering procedures  
25 that were in effect at that time.

9-4 1 I don't really see that it's germane to  
2 the issue of the Lift 15 voids.

3 Granted, Lift 15 voids is a germane issue,  
4 but the particular memo that's been identified in the  
5 middle of this hundred-page-or-so document is not  
6 relevant to that issue.

7 Therefore, we don't think that either the  
8 entire document or the particular memo authored by  
9 Mr. Peverley should be admitted.

10 MR. REIS: Mr. Chairman, if the Staff may  
11 be heard.

12 JUDGE BECHHOEFER: Yes.

13 MR. REIS: I may be wrong, but I think  
14 there's no question of the authenticity of the document.  
15 I think it came from the Applicant. Am I wrong about  
16 that?

17 MR. GAY: That is correct.

18 MR. REIS: Okay. There's been a lot of  
19 testimony on Lift 15. I think this is the original  
20 NCR on Lift 15, and I think it would be helpful in  
21 the record.

22 JUDGE BECHHOEFER: Do your comments go to  
23 the entire document or the three pages that have been  
24 identified?

25 MR. REIS: The entire document. I thought



9-5 1 it went to the entire document.

2 MR. SINKIN: Mr. Chairman, in terms of the  
3 entire document, we have experienced before in the  
4 proceedings moving into evidence certain pages, and having  
5 the Applicants say, "This is an incomplete document and  
6 it needs to be completed," and then completing it.

7 Now, that is why precisely, that the  
8 memorandum be put in context, that the entire document  
9 was presented, to avoid just such an objection.

10 MR. GAY: Mr. Chairman, if I might just  
11 add a word, this document, if you recall, stems from  
12 earlier this week when I talked with Mr. Singleton about  
13 two or three pages.

14 In order to get two or three pages before  
15 everyone here, I reproduced the entire NCR from which  
16 those two or three pages were contained and distributed  
17 that earlier this week.

18 It was my intention to get back to it  
19 in the Warnick-Singleton panel, and I think it can come  
20 in through them.

21 Mr. Warnick is clearly listed as receiving  
22 this document, and it was my plan to subpoena him; but  
23 I think that under the Board's prior ruling, the  
24 document is clearly admissible through Mr. Peverley, if  
25 Mr. Sinkin wants to put it in through him.

9-6  
1 MR. SINKIN: I would direct the Board's  
2 attention to the transcript of June the 26th, on page  
3 6757.

4 The Board sets out the principle that is  
5 to be used for the acceptance or rejection of documents  
6 introduced into evidence, and it reads, "The principle  
7 that we are going to use, and we will use this to guide  
8 all of them, is the document has to relate either to  
9 the testimony of the panel in question, or must be  
10 a document specifically involving, either sent by or  
11 to one of the individuals on the panel. We will use  
12 the same principle for the others."

13 (Bench conference.)

14 MR. GAY: Mr. Chairman, I recall the  
15 problem about the missing pages. I think that we had  
16 a problem in Xeroxing. There were a couple of copies  
17 that were missing a few pages, but I think all the ones  
18 initially distributed did have all the pages complete.

19 I think that when I ran out to my car a  
20 few minutes ago to grab this document to hand to the  
21 Applicants so that we'd have an extra copy or two around,  
22 I inadvertently picked up the two or three copies that  
23 had missing pages.

24 JUDGE BECHHOEFER: The Board is going to  
25 admit the document.

9-7  
1 Please make sure that the copies that the  
2 reporter has and that the copies that the parties have  
3 have all the pages.

4 MR. SINKIN: Yes, we are almost certain that  
5 the originals submitted to everyone, when it was first  
6 distributed, were the correct ones.

7 There were some extras that had missing  
8 pages that we brought into the room today, because the  
9 Applicants couldn't find their copy.

10 JUDGE BECHHOEFER: And I guess we will  
11 continue to call it CEU 30.

12 MR. SINKIN: That's fine.

13 (CEU Exhibit No. 30 was  
14 received in evidence.)

15 MR. HUDSON: Mr. Sinkin, are there going to  
16 be any further questions on this document or can I  
17 have it copies?

18 MR. SINKIN: I don't believe there will be  
19 any more.

20 What I'm going to do at this point,  
21 Mr. Chairman, is distribute a package of documents.

22 All of these documents have been distributed  
23 either previously to all parties or at least to the  
24 Applicants for authentication prior to today.

25 Now, before I do that, I do need to check

9-8 1 on one thing, and that is CCANP Exhibit 33, which was  
2 brought up on the 26th of June.

3 I had a copy last night that I was looking  
4 at that was clearly not complete, and it had my  
5 notation that it was CCANP Exhibit 33.

6 I have here today a complete package on 33,  
7 and if what was distributed was not complete -- it  
8 should be 13 pages. You have perhaps something that is  
9 two or three pages.

10 MR. HUDSON: Yes, mine is two pages.

11 MR. SINKIN: Okay. We have corrected copies  
12 of that exhibit for the record.

13 I will approach this package in the order  
14 they appear in the package.

15 JUDGE BECHHOEFER: How would I know if the  
16 33 that we have is complete?

17 MR. SINKIN: If your 33 is not thirteen  
18 pages, but is instead two or three pages, then it is  
19 not a complete.

20 JUDGE BECHHOEFER: It is two or three.

21 MR. SINKIN: Okay. You will not receive a  
22 complete one that you should substitute for that one  
23 and throw that one away.

24 Let me just state for the record that I  
25 have supplied the court reporter with a corrected

9-9

1 copy of Exhibit 33.

2 JUDGE BECHHOEFER: Could we have a  
3 corrected copy?

4 MR. HUDSON: Could we have one, too?

5 (Documents passed to Counsel and Board.)

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300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

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1 MR. SINKIN: The first document, Your Honor,  
2 is Exhibit 33, which has been identified previously.

3 MR. HUDSON: Has the witness been provided  
4 a set of the documents?

5 MR. SINKIN: No, the witness has not been  
6 provided a set.

7 (Documents handed to witness.)

8 MR. SINKIN: You now have a set of the  
9 documents?

10 THE WITNESS: Yes.

11 JUDGE BECHHOEFER: Let me ask you something.  
12 Is there any -- are you going to ask questions other  
13 than identification questions on these documents?

14 I was wondering whether you and the  
15 Applicant might be able to get together and maybe save  
16 some time.

17 MR. SINKIN: Mr. Chairman, on every one of  
18 these documents, 33 through 48, Mr. Peverley has either  
19 sent the document or was involved in preparing the  
20 document, and that is the principle set out by the Board,  
21 if the Applicants are willing to accept that principle  
22 and review that indeed Mr. Peverley is the person who  
23 received the document, I don't have any need to do  
24 identification questions on each document.

25 MR. HUDSON: We're prepared to address that,

10-2  
1 Your Honor.

2 JUDGE BECHHOEFER: I'd rather do it  
3 collectively.

4 MR. HUDSON: Yes, I believe we can.

5 First of all, I would point out --

6 JUDGE BECHHOEFER: I might say I haven't  
7 reviewed these documents to know whether they're  
8 relevant to particular issues in the proceeding.

9 MR. HUDSON: We have, and that's the basis  
10 of our objection to this procedure.

11 In order for a document -- I'd ask you to  
12 bear with me, I have a rather lengthy objection, and  
13 I'd like to set out an analytical framework in which  
14 we have approached looking at these documents.

15 As I understand the rule that you've set  
16 forth, in order for a document to be admitted we first  
17 have to have a sponsoring witness, somebody to whom  
18 the document was sent or who authored the document and  
19 is knowledgeable about it, an identifying witness.

20 We grant that Mr. Peverley would be that  
21 witness for these documents.

22 Secondly, however, the document must be  
23 relevant either to the sponsoring witness' direct  
24 testimony, which none of these documents are, or they  
25 must be relevant to some other issue in the proceeding.



10-3 1           These documents, however, are not relevant  
2 to either the direct testimony or any of the other issues.

3           Let's step through those issues.

4           First of all, you have Contention 1. That  
5 addresses the surveying area in the MEAB Building. None  
6 of these documents address that.

7           1.2 is the voids in the Reactor Containment  
8 Building shell walls. None of these documents address  
9 that or they would have been admitted through the  
10 concrete contentions panel that first heard it, I mean  
11 that addressed that contention and to whom the documents  
12 were first addressed.

13           None of these documents direct -- address  
14 rebar omitted in the Ractor Containment Building. None  
15 of them address cadweld verification or membrane  
16 inspection.

17           The second contention is the falsification.  
18 Now, if Mr. Sinkin is going to claim that some of these  
19 documents were falsified, and if he will identify the  
20 witness that he's going to call to prove that, then  
21 perhaps the document can come in now subject to later  
22 tying in the relevance through this witness that he will  
23 identify for us, but he so far has not done that.

24           Next we get to Issue E. As you recall, this  
25 is the very broad issue regarding the adequacy of the

10-4  
1 structures in place.

2 It's our position that a DDR can only be  
3 relevant to that issue in some very specific fact  
4 situations which have not been shown here yet.

5 First of all, you have to keep in mind what  
6 a DDR is. It's a deficiency and disposition report.  
7 It's a document which documents a particular nonconformance.

8 The nonconformance may be in a hardware item,  
9 such as a weld or a concrete pour, or it may be a non-  
10 conformance to procedure.

11 It also documents the resolution of that item  
12 by engineering and the recurrence control that's going  
13 to occur.

14 Now, in order for a DDR to be relevant to  
15 the adequacy of the structure, it -- let's first recall  
16 that if the disposition of the DDR is rework or repair,  
17 then the adequacy of the structure is not in question.  
18 The DDR on its face shows that the problem was corrected  
19 to the satisfaction of engineering.

20 Such a document would only be relevant to  
21 Issue E if CEU or CCANP could prove that the repair was  
22 not done or was not done properly so as to call into  
23 question the adequacy of the structure.

24 Otherwise, the document on its face shows  
25 that the structures were adequate as repaired.

10-5 1 Now, if the DDR has been dispositioned and  
2 used as is, that means that engineering has evaluated  
3 this document and determined this deficiency as  
4 identified in the document, and determined that that  
5 deficiency does not affect the adequacy of the structure,  
6 and again, the DDR in that situation would only be  
7 relevant if CCANP or CEU can demonstrate through other  
8 witnesses that engineering's conclusions were wrong and  
9 that the defect is in fact or will in fact adversely  
10 affect the safety of the structure.

11 Thus, before these documents can come in on  
12 Issue E, it seems incumbent upon this Board to ask CEU  
13 or CCANP in this case how they're going to tie these in,  
14 what other witnesses are going to challenge what these  
15 documents on their face show, and the only thing they  
16 show on their face is that certain problems were dis-  
17 covered, certain problems were resolved.

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1 Now, the other issue that's been used as a  
2 catch-all in this proceeding is management competence  
3 and character.

4 We have here, oh, I would say -- last night  
5 in reviewing the group that both CEU and CCANP gave us,  
6 there were approximately 15 DDR's. They address very  
7 minute or specific construction problems.

8 To my mind, they do not evidence the  
9 character or competence of HL&P. A corporation,  
10 especially a large corporations'c character or competence  
11 is measured by, in my mind, the company's approach and  
12 its design of systems to find and resolve generic  
13 problems and root causes.

14 It's measured by its attitude of its own  
15 senior executives towards quality and towards the  
16 project, towards their responsibility in fulfilling  
17 quality objectives.

18 It's evidenced by its willingness to invest  
19 time and money necessary to find and correct problems,  
20 and it's addressed by testimony going to the over-all  
21 adequacy of the work, such as has been presented by the  
22 technical panels in this case.

23 All of these matters have been addressed,  
24 either through our management panels or through technical  
25 panels.

1           Given this extensive amount of evidence on  
2 the question of character and competence, we really  
3 don't believe that 15 highly selected DDR's in the 1977  
4 to '78 time period are going to really shed any light  
5 on HL&P's competence and character.

6           This argument could be made, however, that  
7 they're relevant in some small fashion, while they may  
8 not shed a great deal of light on character or competence  
9 they will shed some light on character or competence.

10          The problem with that is that we get into  
11 the question of redundant evidence, and I would cite  
12 the Board to Rule 403 of the Federal Rules of Evidence.

13          403 states that although relevant evidence  
14 may be excluded if its probative value is substantially  
15 outweighed by the danger of unfair prejudice, confusion  
16 of the issues, or misleading the jury, or by considerations  
17 of undue delay, waste of time, or needless presentation  
18 of cumulative evidence.

19          We believe that we have several points that  
20 are -- that several of these grounds can be used by the  
21 Board to exclude these documents.

22          First of all, there's the question of unfair  
23 prejudice. I made the point when we were in San Antonio  
24 that we don't write conformance reports. If we wrote  
25 conformance reports we would drag a truckload of them

10-8  
1 in here, if it was done by foot of concrete, and show  
2 you every foot of concrete that was placed right.

3 Instead, all we write are nonconformance  
4 reports, which are made available, have been made  
5 available to the Intervenors in discovery, so we believe  
6 by selecting 15 nonconformance reports and putting them  
7 into the record without any further testimony to really  
8 explain them, we're creating unfair prejudice in this  
9 case.

10 But more importantly, that could be overcome.  
11 More importantly, we think, are the considerations of  
12 undue delay, waste of time, and needless presentation  
13 of cumulative evidence.

14 I would ask you to reflect back on our  
15 experience with --

16 JUDGE BECHHOEFER: Let me ask you one  
17 question.

18 MR. HUDSON: Yes, sir.

19 JUDGE BECHHOEFER: If only one of these  
20 existed in isolation, I presume that could indicate a  
21 degree of -- one degree of seriousness. Would 15 of  
22 the same sort not indicate perhaps a higher degree of  
23 seriousness of whatever the problem might be?

24 In other words, if you do something wrong  
25 15 times, isn't that worse than doing it wrong once?

10-9 1 MR. HUDSON: As a general matter, I would  
2 agree with that; having reviewed these 15 or so DDR's,  
3 they do not all relate to the same subject matter.

4 (Conference among counsle.)

5 MR. HUDSON: Well, as Mr. Axelrad has  
6 pointed out, you know, omitted rebar, let's take that  
7 for an example, if you run into fact situations, and  
8 there may be hundreds of those -- in fact, I think  
9 witnesses have testified that there have probably been  
10 hundreds of examples where rebar has been omitted, but  
11 as long as it's either caught in a check by QC or it's  
12 done purposely through the FREA system, in either case  
13 engineering signs off on it, it has no significance, no  
14 safety significance, no significance to the adequacy of  
15 the structures, and those are the issues.

16 I don't think there's any issue that says it  
17 to the effect, has Brown & Root never made a mistake in  
18 building this plant, or how many mistakes have they made?

19 The question is, have they caught those  
20 mistakes, have they resolved them, and what is the  
21 over-all adequacy of the structures?

22 And that issue has been addressed in a ton  
23 of evidence so far, I think, and we'll just be creating  
24 a number of many trials if we get into more and more of  
25 these DDR's.



10-10 1 Take, for example, what happened with CEU 21.  
2 That was an NCR which documented some cosmetic repairs  
3 on the outside face of Reactor Containment Building  
4 Lifts 12, 13 and 14.

5 CEU put them in, I believe, to suggest that  
6 those should have prompted a sounding of the liner  
7 opposite in order to look for voids, which was not done.

8 However, they never directly asked that  
9 question to the witnesses. They just got the document  
10 identified. It related to the Containment Building, so  
11 it came into evidence.

12 I had to go back on direct and ask Mr. Murphy  
13 and Mr. Artuso what the significance of those matters  
14 were, and go through a series of six or seven cross-  
15 examination -- redirect questions in order to put the  
16 document into perspective.

17 Once that was done, CEU didn't ask another  
18 question about it.

19 I think we're going to have the same situation  
20 here, we're going to create the need for a little mini-  
21 trial in order to put each of these DDR's into  
22 perspective.

23 MR. GAY: Mr. Chairman, I hate to interrupt --

24 MR. HUDSON: Well, then don't, if you  
25 hate to.

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1 JUDGE BECHHOEFER: Wait until Mr. Hudson  
2 has finished.

3 MR. GAY: I think that Mr. Hudson has gone  
4 pretty far afield in building this straw man and  
5 commenting upon the evidence.

6 I'd like to hear his objection, and stick  
7 to the objection as a legal objection rather than  
8 have him testify and comment upon the evidence that's  
9 already in the record.

10 JUDGE BECHHOEFER: Well, Mr. Hudson, do  
11 you have --

12 MR. HUDSON: I was just about to conclude,  
13 Your Honor.

14 I would also point out that with respect to  
15 33 the Board has already ruled that the Intervenor has  
16 not made an adequate showing of materiality or relevance.

17 I cite the transcript at Page 6763.  
18 Identification questions to this witness are not going  
19 to establish the materiality or relevance. All they're  
20 going to do is establish a sponsoring witness, so we're  
21 no further along with this man than we were with the  
22 last panel, really, again because of basic considerations  
23 of materiality and relevance of these DDR's.

24 JUDGE BECHHOEFER: Let me ask you one more  
25 question. If we should defer -- this is just hypothetical,

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now, if we should defer ruling pending a showing of materiality, would you not object should a proper sponsoring witness not be there at the time that this materiality was demonstrated?

Would you agree that these documents -- and again, I haven't even looked through them, I'm assuming Mr. Peverley's name is on them someplace -- would you agree, if and when materiality could be demonstrated to a particular issue, that they could then be introduced at least without objection as to the lack of a sponsoring witness?

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10-13 1 MR. HUDSON: Yes, Your Honor, we would be  
2 agreeable with that, although we're somewhat reluctant  
3 to putting a lot of documents in the record with the  
4 hope that there's going to be a witness to make it relevant  
5 later.

6 JUDGE BECHHOEFER: No. I just --

7 MR. HUDSON: Well, they're not going into  
8 the record, I understand that. I correct myself. Thank  
9 you. Mr. Axelrad corrected me as well.

10 I think you can look at the documents on  
11 their face and tell if they're relevant to any of these  
12 issues.

13 I've just stepped through the possible issues  
14 that I've seen that they might be relevant to, and it's  
15 adequacy of the over-all structures would be the main one  
16 they would be relevant to, and as I pointed out, unless  
17 CEU can tell us that some day there's going to be a  
18 witness who's going to challenge the adequacy of the  
19 repairs, most of these, by the way, were dispositioned  
20 and repaired and I think --

21 MR. GAY: Why is CEU involved in this?

22 MR. HUDSON: I'm sorry; CCANP.

23 JUDGE BECHHOEFER: Does the Staff have any  
24 comment?

25 MR. REIS: Yes, Your Honor, the Staff wishes

10-14 1 to comment.

2 We think that at this stage of the proceedings  
3 there is no reason to admit these matters, although the  
4 rules of evidence talk about relevance we must also  
5 consider materiality, and I think that's what Mr. Hudson  
6 was getting at in much of his argument.

7 Although we have these individual instances  
8 that might deal apparently with some defect in construc-  
9 tion that was apparently caught and corrected, there's  
10 no showing that it's material to any of the issues here.  
11 It's no showing that that it was out of line with what  
12 had happened in other instance on other plants that is  
13 usual in construction.

14 I think that sort of issue has to be shown  
15 as well. All we have is a group of documents showing  
16 that certain things were caught during the course of  
17 construction, that there was a void formed and that  
18 somebody spotted it.

19 By the way, they do not deal, of course, with  
20 the shell walls of the Ractor Building, which is another  
21 issue, but these are other defects in other places.

22 The rules of evidence, in defining relevant  
23 evidence, it says in Rule 401, relevant evidence means  
24 evidence having a tendency to make the existence of any  
25 fact that is of consequence to the determination of the

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1 action more probable or less probable.

2 I'm not sure how this relates to anything of  
3 consequence in that although these things might have  
4 happened and maybe they shouldn't have happened, in some  
5 sense that they shouldn't have happened, it isn't shown  
6 that they in any way were wrong. They show only that  
7 they were caught, and this appears to be, or may well be,  
8 somebody would have to show before they can come in that  
9 these aren't the usual course of construction of any  
10 project, and any high-quality project, for that matter.

11 So in that sense, I don't see what they're  
12 showing and what they're offered for in the state of the  
13 record at this point.

14 I would also point out that Rule 102 says  
15 that these rules should be interpreted to eliminate  
16 unjustifiable expense and delay, and as I think we're  
17 going to, if we start proving a million different  
18 instances at a million different times, we're going to  
19 have unjustifiable expense and delay.

20 So the Staff's position is essentially that  
21 there has been no showing to show the relevance or  
22 materiality of these documents at this time and they  
23 should not be accepted into evidence.

24 MR. SINKIN: I'd like to respond to those  
25 objections, Your Honor, if I might, point by point, to

10-16 1 at least three or four of them.

2 JUDGE BECHHOEFER: Do it briefly.

3 MR. SINKIN: First of all, I believe one of  
4 Mr. Hudson's objections was that in showing technical  
5 competence and character you look to the Applicants'  
6 systems for finding and correcting problems and getting  
7 to the root causes of those problems.

8 Mr. Reis has perceptively noted that many of  
9 these DDR's deal with the problem of voids occurring in  
10 concrete. Many of them in fact cite the specification  
11 that says there shall be no voids.

12 It seems to me relevant if you've had a  
13 problem recurring over and over, as to whether you have  
14 the capability of addressing root causes, and that would  
15 be one example of how these documents might be used.

16 Secondly, as to unjustifiable expense and  
17 delay, I fully expected that one of two things would  
18 happen today, either we would abide by the rule that the  
19 Board set out on Page 6757 of the transcript, or we  
20 would have lengthy objections from the Applicants,  
21 extensive discussion and a long session trying to get  
22 these documents into evidence.

23 I think the Board has stated the rule, the  
24 principle that you were going to use -- your own words,  
25 Mr. Chairman -- the principle that we are going to use



L)-17 1 is stated in the transcript.

2 We have presented these documents pursuant to  
3 that principle, and if you're now going to change the  
4 rules in midstream, we may have to recall that panel  
5 that we let go because there's some of these documents  
6 I didn't even try to introduce through the concrete panel  
7 because the principle was stated, and I looked at them  
8 and I said, well, Mr. Peverley's coming, I'll just do it  
9 through Mr. Peverley, and I waived even trying to admit  
10 them through that panel.

11 JUDGE BECHHOEFER: Off the record.

12 (Discussion off the record.)

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AFTERNOON SESSION

12:34 P.M.

JUDGE BECHHOEFER: Back on the record.

MR. SINKIN: Mr. Chairman, I was reminded during our brief lunch break of something that I had forgotten.

During discovery where these documents were obtained we went to the vault of the South Texas Nuclear Project, and we made a number of requests to see certain documents.

A number of documents were refused to us even to look at, and the basis for that refusal was that they were not relevant to our contentions.

Documents considered relevant to our contentions were produced and copied at our request, and that is where we got these documents.

(Bench Conference.)

JUDGE BECHHOEFER: The Board has considered the request to introduce these documents. We are going to defer ruling at this time, pending a showing of materiality.

Now, we will not entertain objections on the ground of sponsorship in the future.

Our ruling before, while it did not say so in so many words, it assumed applicability of the general

11-2 1 provisions of the NRC Rules of Practice, one of which is  
2 that there be a showing of that material admitted into  
3 evidence be material to the proceeding. This does not  
4 constitute an additional condition. It's a condition  
5 which underlies all of the evidentiary rulings which we  
6 have made, and which govern our proceeding.

7 So, we will defer ruling until there is a  
8 showing of materiality of the particular documents.

9 MR. SINKIN: In terms of showing materiality  
10 I can walk through each document and ask the sponsoring  
11 witness what it is about and what the event is, and stop  
12 right there, and let the objection on materiality be  
13 entered and argued.

14 If that is the way to proceed, I will do  
15 that.

16 JUDGE BECHHOEFER: Well, in our opinion,  
17 this witness is competent to sponsor these documents,  
18 but I have understood that he is not the one to show  
19 that they are material to any particular issue.

20 MR. SINKIN: I assume the argument of  
21 materiality is among the parties.

22 JUDGE BECHHOEFER: Well, it has to be shown  
23 to be related to either a contention or an issue to be  
24 admitted.

25 MR. SINKIN: What I am trying to get at is

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1 I picked up one example from the fact that Mr. Reis  
2 noted that many of them deal with voids. And I made an  
3 argument that if we are going to talk about being able  
4 to find and correct problems, and get at the root causes,  
5 evidence that such problems existed over a long period of  
6 time were addressed and re-addressed and were not  
7 corrected would say that you might have an indication  
8 that the Applicants do not have the ability to get to  
9 root causes. That's an argument on materiality.

10 I can make that generically for any of these  
11 documents that deal with voids or defects in concert;  
12 I can make that generic argument, or I can walk through  
13 each document with the witness.

14 It seems to me it might be more efficient to  
15 do a generic argument along those lines and see what  
16 happens.

17 (Bench Conference.)

18 JUDGE BECHHOEFER: Mr. Reis.

19 MR. REIS: Mr. Chairman, we have no question  
20 that they all involve concrete construction at the site.  
21 Some of them involve voids. Some of them involve other  
22 matters involving concreting at the site.

23 The only question, really, that is before the  
24 Board is: Are we really getting to a waste of time, which  
25 is one of the reasons for excluding evidence.? In other

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1 words, where are we going with this? How does this affect  
2 the material and ultimate issues in the case, that these  
3 incidents -- even if there is a group of incidents -- and  
4 I don't know what the number is, seven, or eight, or ten  
5 incidents recorded in these documents, happened, does that  
6 show, or how does that show, as the record shows now, in  
7 what way can that show, unless we have other testimony  
8 that says that if there are seven such instances that  
9 shows from a Civil Engineering point of view that the  
10 company was incompetent, or something along that line,  
11 that they didn't have a good QA/QC program, or something?  
12 How do we connect this?

13 What we are doing here is putting in a bunch  
14 of isolated instances which means that we have to have  
15 testimony to rebutt these instances, or put them in  
16 context. And without showing more. We are not showing  
17 that it is anything but a waste of time.

18 Yes, these things probably all happened in  
19 here. I don't have any reason not to believe they  
20 happened at this point, although something might come  
21 along that might change my position on that. They all  
22 involve concreting.

23 But how will that change or tend to change  
24 any issue in this proceeding. And that is the question.  
25 And I think Mr. Hudson rightly quoted Rule 403, and I

11-5 1 quoted Rule 102 to the same effect. Rule 401 is also  
2 relevant.

3 I just don't see in weighing and within the  
4 Board's discretion of why these should be admitted.

5 JUDGE BECHHOEFER: The Board had that same  
6 feeling. We don't think we have had -- I don't think  
7 that examination of this witness would produce that  
8 showing of materiality. We need some connection to a  
9 specific contention, or some connection to the fact that  
10 maybe specific problems have not been taken care of that  
11 occurred earlier.

12 MR. SINKIN: I am not attempting to show --  
13 First of all, I am not attempting to have Mr. Peverley --  
14 I did not intend to have Mr. Peverley have to go through  
15 every one of these documents and discuss at length the  
16 event that happened. I think the NCR's or DDR's speak  
17 for themselves as to what happened. The problem is  
18 stated. The corrective action taken is stated.

19 The point that we are trying to get at: In  
20 my view, I think the entire NCR and DDR file on this  
21 plant could arguably be relevant to these proceedings,  
22 because it states in Issue A, "The record of HL&P's  
23 compliance with NRC requirements."

24 Well, every DDR or NCR is a place where  
25 their own specifications, procedures, or other control

11-6 1 mechanisms failed, and those mechanisms are supposed to  
2 operate under NRC regulations, and I think if you had  
3 the whole NCR and DDR record before you in these  
4 proceedings that you would get truly a feel for what has  
5 gone wrong at the plant, what has been done to prevent  
6 it from going wrong, whether those actions were effective,  
7 and whether we can have confidence that under Issue B the  
8 fact that they say they are doing remedial actions now  
9 means anything.

10 Beyond that, what we have done here is  
11 select one area, so as to not burden the record. We have  
12 a lot more NCR's and DDR's. We have boxes full of them.  
13 We spent whole days out at the plant making thousands  
14 copies.

15 We have selected one particular area, concrete  
16 and focused in especially on one particular problem,  
17 voids. And what we are presenting is the history of  
18 voiding at the project, what has been done to address  
19 that problem, and you can draw you own conclusions as to  
20 whether the actions taken to remedy the situation were  
21 effective, and whether the remedies now being suggested  
22 are for the same situations that supposedly were remedied  
23 before, and then, can you have confidence that those  
24 remedies will be effective.  
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One of our problems is that you have included in these proceedings Issue B on remedies. We have had testimony about the remedies, some of which one witness characterized one of the remedies as in its infancy. Well, we don't have a history of whether their remedies work that is at all comparable to the length of time this plant has been under construction.

So that's the line of reasoning that we are using. We did select a particular area. We could have selected five other areas, and brought another box full of documents in here, but we did not want to burden the record.

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11-8 1 JUDGE BECHHOEFER: I think we will continue  
2 to defer. We haven't finally ruled on it, but we will  
3 want to be assured that they are material, and so far,  
4 at least, we haven't seen that.

5 It may develop further evidence later on.  
6 We will not entertain objections, because of sponsorship.  
7 We will consider the documents properly sponsored and  
8 identified.

9 I mean when Mr. Peverley isn't here there  
10 won't be any objection because he isn't.

11 MR. HUDSON: Your Honor, these, then, are to  
12 carry the exhibit numbers that they have been assigned,  
13 we are just going to carry them identified but not  
14 admitted yet, like the other CCANP exhibits?

15 JUDGE BECHHOEFER: Yes. That is correct.

16 MR. SINKIN: Actually, Your Honor, we do  
17 have one problem in that I do not believe on the record  
18 Exhibits 40 through 48 have actually been identified.

19 Exhibits 33 through 39 were identified in  
20 San Antonio.

21 MR. HUDSON: We will enter into a stipulation  
22 as to what those documents are, so we can get on.

23 MR. SINKIN: That's fine.

24 JUDGE BECHHOEFER: Yes. Let's do that. I  
25 don't want to waste time for that kind of thing.

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1 I might point out one further thing. There  
2 are various discrepancies in every single, I was going  
3 to say nuclear plant construction job, for that matter,  
4 and I think we would have to for materiality be shown  
5 that the ones here are somehow out of the ordinary, some-  
6 how of the type that would assist us in writing a  
7 decision.

8 Merely ex number of deficiencies or voids,  
9 or whatever, may not be sufficient to make it pertinent.  
10 Now the voids in the shell of a containment were  
11 specifically a portion of a contention, and they were  
12 specifically something that perhaps differentiated this  
13 plant from others.

14 The mere existence of voids, per se, may not  
15 be material or pertinent to any decision we have to make.  
16 That's one of our problems.

17 MR. SINKIN: To me the decision you have to  
18 make, in part, --

19 MR. HUDSON: Your Honor, I object. The  
20 ruling has been made. Why does counsel continue to  
21 argue with the Bench --

22 JUDGE BECHHOEFER: I was just explaining --

23 MR. SINKIN: He was explaining something.  
24 I would like to give him a short response. Then I will  
25 get on.

11-10 1 JUDGE BECHHOEFER: -- the basis of our  
2 ruling.

3 I think we have had enough on that. You  
4 know what our ruling is, so let's proceed.

5 MR. SINKIN: Right.

6 MR. HUDSON: We will submit a written  
7 identification and stipulation of them later. They  
8 will be identified later.

9 JUDGE BECHHOEFER: We can note that on the  
10 record at the appropriate time.

11 MR. HUDSON: We are agreeing to do that. We  
12 are stipulating to stipulate.

13 JUDGE BECHHOEFER: That's just to save time.

14 MR. SINKIN: Your Honor, without spending  
15 any time on them I do have two other documents, since we  
16 won't be dealing with them today, I will mark them as  
17 49 and 50 and distribute them to all parties. They will  
18 be under the same kind of motion as these would have been,  
19 and we will have that done shortly. I won't take any time  
20 now to do it.

21 JUDGE BECHHOEFER: Is Mr. Peverley the  
22 proper person to identify them, or --

23 MR. SINKIN: Mr. Peverley is -- he is on  
24 both of them. There is one where he is one one, and there  
25 is a second document that he is not on. Quite frankly,

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1 maybe I had better ask him about this one. Let me just  
2 mark it 49 and give everybody one.

3 (CCANP Exhibit No. 49 was  
4 marked for identification.)

5 BY MR. SINKIN:

6 Q Mr. Peverley, let me ask you to first turn  
7 to the second page of the document, and ask if you are  
8 the R. W. Peverley to whom that document was sent?

9 A Yes.

10 Q In this second document it notes that it is  
11 being sent in response to your request. Do you see that?

12 A Yes.

13 Q Do you remember making that request?

14 A No. I don't remember it at this time.

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11-12 1 BY MR. SINKIN:

2 Q Looking at the first page, do you see a  
3 list of DDR's referenced at the top?

4 A Yes.

5 Q Is one of them S-199?

6 A Yes.

7 Q Turning to the second page, is the subject  
8 of that memorandum, among other things, DDR S-199?

9 A Yes.

10 MR. SINKIN: I would just ask that this be  
11 marked 49, Your Honor, and we will deal with it when the  
12 time comes.

13 (Bench Conference.)

14 BY MR. SINKIN:

15 Q Referring to this document that is now in  
16 front of you, on the first page in the copy list is the  
17 R. W. Peverley referred to yourself?

18 A Yes.

19 Q And on the second page, I believe you also  
20 appear at the bottom?

21 A That is correct.

22 Q And on the fourth page?

23 A Yes.

24 Q Then there are a number of other pages that  
25 are essentially copies of the same page within different

11-13 1 update.

2 A. (No response.)

3 Q Do you remember this particular event where  
4 the --

5 Let me call your attention to the remarks  
6 made on the NCR regarding "use as is" disposition. Do  
7 you see that?

8 A. Yes.

9 Q Out to the side is a stamp with a signature  
10 that appears to me to be D. R. Woods. Do you know if  
11 that is D. R. Woods? Just what the name is.

12 A. I think it is P. R.

13 Q P. R. Woods.

14 A. If I remember correctly.

15 Q And to the best of your recollection, who  
16 is Mr. Woods?

17 A. Mr. Woods was a geotechnical engineer at  
18 the site at the particular time, and he was appointed  
19 by me for a short period of time to review these things  
20 in the capacity of a Design Quality Engineer.

21 Q Are we talking about in this document a time  
22 that the new program had been implemented of Si' Quality  
23 Engineer dispositions?

24 A. Yes. Note the Engineering review and  
25 approval is assigned by Mr. Withrowe.



11-14 1 Q And Mr. Woods was a Site Engineer at that  
2 time?

3 A He was assigned to the Site Geotechnical  
4 Group for a short period of time. He was assigned to  
5 work as a Design Quality Engineer in my organization.

6 Q At the time he was doing this, that he was  
7 doing the -- Let me back up. Can you help me a little?

8 Right above his name is a stamp and it looks  
9 like POE review and approval.

10 A PQE, which stands for Project Quality  
11 Engineer, which was the designation of my group at that  
12 time.

13 Q How would that position relate to  
14 Mr. Robertson's position after the change was made in  
15 May 1978?

16 A Well, you recognize that this is after the  
17 time that Mr. Robertson was replaced as the only Engineer  
18 at the site.

19 We tried to have an engineering organization  
20 there that would represent what was available in Houston.  
21 Mr. Withrone was designated as Assistant Engineering  
22 Project Manager.

23 Mr. Robertson was acting in the capacity of  
24 the discipline engineer.

25 Mr. Woods was acting in the capacity of

11-15 1 Project Quality Engineer. Mr. Woods' responsibilities  
2 were to review this document in terms of its compliance  
3 with procedure and not in any technical manner whatsoever.

4 Q Is the disposition reflected in this  
5 document, well it's one disposition and it is rejected  
6 and there is another disposition maybe dealing with the  
7 first disposition of use as is, is that a site  
8 determination under that program that Mr. Robertson was  
9 in?

10 A Again, this disposition was made after  
11 Mr. Robertson was replaced as the sole Engineer at the  
12 site. This is his disposition could either be put on  
13 there by the Engineering person or proposed by the  
14 Construction person. They generally talked about this  
15 before it went into the signature cycle, and they  
16 generally agreed on what the disposition would be.

17 Q Let me take you to the next to the last  
18 page of the document. There is a notation at the bottom  
19 in the "Remarks" area that says, it looks to me like it  
20 says "QE." Is that a "QE" in there?

21 A I don't know.

22 Q Does not feel the proposed disposition of  
23 "other" is adequate. Do you see that remark?

24 A Yes.  
25

11-16

1 Q And it is signed by J. McF. Do you know who  
2 J. McF. is?

3 A No, I do not.

4 Q On the second page, QA Review Enclosure,  
5 can you tell me who Mr. Murphy was?

6 A As I recall, he was one of the QA people at  
7 the site.

8 Q And does the second page reflect that Mr.  
9 Murphy has rejected a disposition that earlier he had  
10 initialed, I believe, on the fifth page?

11 A (No response.)

12 Q Let me make that a little bit clearer.

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1           You have on the next-to-the-last page a  
2 disposition recommendation that "other" not be used,  
3 and then a suggestion that "use as is" could be used.

4           You then have on the fifth page Mr. Murphy  
5 stating that "QA would not approve a 'use as is,'" in  
6 the remarks at the bottom of the fifth page.

7           Do you see that?

8           A.     Yes.

9           Q     Then on the second page, that remark is  
10 struck through and initialed by Mr. Murphy at a later  
11 date, after the strike-through, and in the verification  
12 box it says, "Verification is not required for use as  
13 is disposition."

14           Could you explain to me what that means,  
15 "verification not being required."

16           A.     You are asking me about four questions at  
17 once.

18           If I remember correctly, and the more you  
19 talk, the more I begin to remember this condition.

20           The original disposition was that everything  
21 is okay, and then they said, "Go ahead and take the  
22 forms off to make sure that everything is okay," because  
23 if we had had improper consolidation and we took the  
24 forms off, we'd have surface defects.

25           The last time that -- I guess I would say

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1 the second page reflects that -- the third page reflects,  
2 if you see that, it says, "Upon removal of the forms of  
3 the wall," they struck through the word "will be" and  
4 said "was," and they found that there was only one  
5 very small area requiring repair, and that this was  
6 addressed in the FREA and not considered to be an  
7 indication of a problem or significant problem.

8           Since there was no problem with the NCR,  
9 there was no need to design verify it. The problem  
10 that we've always had with these standard dispositions  
11 of rework, repair, use as is, scrap, and so forth, is  
12 that sometime you get conditions such as this, and I  
13 think this is very typical in that it doesn't fall under  
14 any one of them.

15           That's why the first attempt was to say  
16 "other."

17           So in this case the correct -- it was  
18 correct to say that design verification wasn't required.

19           In reality, the correct disposition was  
20 there was no problem.

21           Q     Let me be sure I understand that.

22                     When the forms were taken off, you said  
23 there was an area that was found that needed repair.

24           A     That's correct.

25           Q     So in that sense, there was a problem?

12-3 1 A Well, there was an area that required  
2 repair. Whether or not it was a problem or not was a  
3 matter of judgment of the significance of it.

4 The date of this is 1979. At that particular  
5 time, in the concrete construction specification, there  
6 was an allowance made for correcting of surface  
7 defects, without requiring a nonconformance report.

8 If I remember correctly, and based upon  
9 the information that I have read, I would assume that  
10 the defect that was found after they removed the forms  
11 was one of those that would not be considered to be  
12 nonconforming, and that it would be corrected by a  
13 standard repair procedure, which was contained within  
14 the specification.

15 In my opinion, that doesn't constitute a  
16 problem.

17 The original contention was that there was  
18 a lack of consolidation, which has that contention  
19 been true, it should have resulted in a significant  
20 number of voids or surface defects.

21 Q Let me explore with you for one second the  
22 relationships between FREA's and NCR's.

23 You have testified to the use of the FREA.

24 In our discussion of my hypothetical rebar  
25 left out earlier on, you said that if the inspector

12-4

1 came along and found that there was rebar left out and  
2 the FREA did not cover all the rebar left out, you would  
3 write an NCR.

4 A That's what the procedure required, yes.

5 Q Do they always -- Would there be a reason  
6 that you would write an NCR that would then generate a  
7 FREA?

8 A Yes. There was at one time in the program  
9 that could happen, where a FREA would be written after  
10 the nonconformance report was written, and the FREA would  
11 be used as the basis for dispositioning the nonconformance  
12 report.

13 It soon became very apparent to us that we  
14 had two pieces of paper where one would do, and we  
15 went to the point of dispositioning the nonconformance  
16 report.

17 Q And what time period?

18 A I'm sorry, I don't remember that.

19 Q I note that here we are in January of 1979,  
20 and we have an NCR, and there's a notation on page 3  
21 of the NCR that the area is repaired based on a FREA.

22 Is that because of the nature of this  
23 particular NCR?

24 A I don't think so. I think that the  
25 concrete construction procedure required that an FREA



12-5

1 be written to disposition certain types of surface  
2 defects.

3 I believe this FREA was written to comply  
4 with the specification rather than to close out the NCR.

5 MR. SINKIN: Mr. Chairman, I would ask that  
6 this be marked CCANP Exhibit 50, and based on the witness'  
7 testimony and the fact that this is relevant to how FREA's  
8 are used, I would move its admission into evidence,  
9 subject to authentication by the Applicants, of course,  
10 since they just received it.

11 (CCANP Exhibit No. 50 was  
12 marked for identification.)

13 MR. HUDSON: Your Honor, we oppose the  
14 admission. As I understood, the witness was testifying  
15 about the FREA-NCR system without reference to this  
16 document necessary.

17 The document deals with a time period in which  
18 Mr. Robertson was not the site design engineering repre-  
19 sentative, and as I understand the subject matter of this  
20 witness' testimony it deals primarily with the contention  
21 as formulated by the Intervenors, which is that  
22 Mr. Robertson was making decisions on design changes  
23 about which he had no knowledge.

24 Therefore, I don't think it's relevant to the  
25 contention, and the testimony that has been cited was

12-6

1 really just general testimony, not with any specific  
2 reference to this piece of paper, or this exhibit.

3 MR. REIS: Mr. Chairman, the Staff would not  
4 oppose its admission. We think it is illustrative of  
5 his testimony, and he has just testified to the document,  
6 although it would not necessarily -- we think it would  
7 aid the record in illustrating what he was just talking  
8 about, since he continually referred to it.

9 JUDGE BECHHOEFER: The Board will admit that  
10 exhibit as CCANP 50.

11 (CCANP Exhibit No. 50 was  
12 received in evidence.)

13 JUDGE BECHHOEFER: That is subject to  
14 authentication.

15 MR. SINKIN: I understand. I meant to bring  
16 that up earlier. If over the recess period the Applicants  
17 have a chance to review which ones were to be authenti-  
18 cated that have not been authenticated, I think we're  
19 almost up to date, there may be the last few that were not,  
20 but if we can resolve the authentication problem.

21 I'll pass the witness, Your Honor.

22 JUDGE BECHHOEFER: All right.

23 Mr. Gutierrez or Mr. Reis?

24 MR. REIS: Mr. Gutierrez.

25 MR. GUTIERREZ: Thank you, Mr. Chairman.

12-7

## CROSS-EXAMINATION

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BY MR. GUTIERREZ:

Q Mr. Peverley, I have one line of questioning I just want to clear up.

In your, what's been referred to as Teximony A, Question and Answer 12 and following, I gather from that is what you are saying is that surveying activity is not within the scope of the requirements of Appendix B to 10 CFR Part 50. Is that your position?

A Is that Question 12?

Q Well, and following; particularly the last sentence on Page 10 you conclude, therefore neither Criteria 10, 11, nor any other section of Appendix B, for that matter, is applicable to the surveying activity in question.

And my question to you is, in that conclusion is what you're saying that surveying activity is not within the scope of the requirements of Appendix B to 10 CFR Part 50?

A No.

Q That's not what you're saying?

A No.

Q Could you explain what appears to be an inconsistency?

A Okay. There is -- let me explain how the

12-8  
1 surveying activity is presently under surveillance, and  
2 maybe that will explain what I'm trying to say.

3 The surveying equipment that's being used by  
4 the surveyors does need to be calibrated, and that does  
5 fall under 10 CFR 50 -- I'm sorry, I can't remember which  
6 one of the criterions, but test equipment, and formerly  
7 the Quality Control Department and currently the  
8 surveillance group down at the site checks the cali-  
9 bration of equipment frequently.

10 In addition, the surveying group is audited  
11 to ensure that they're complying with their procedures.  
12 They maintain -- or they receive documents, the question  
13 that I had previously in regard to drawings, they receive  
14 control drawings.

15 Their efforts do fall under the requirements  
16 of 10 CFR 50. I'm trying to remember what was said here  
17 and what it means was that it does not fall under  
18 Criterion 10 and 11 as stated as being violations of  
19 those two particular criterions.

20 Q I see. Let me again try to understand your  
21 reasoning. Is what you're saying is that since by its  
22 very nature the surveying process, the actual survey  
23 can't be inspected, observed, therefore Criteria 10 does  
24 not apply?

25 A Since it cannot be inspected in the normal  
manner of inspection, it does not apply.

13-1

1 Q To the actual surveying activity, do you  
2 have any inspection obligations, by reason of Criteria 10?

3 A The Quality Assurance Department performs  
4 inspections of the surveying group to see that their  
5 equipment is calibrated and they audit them, I believe,  
6 on a yearly basis.

7 Those are the only two activities that are  
8 currently being conducted, as I understand it.

9 Q I want to direct you to a particular sentence  
10 in Criteria 10. Do you have it handy?

11 A Yes.

12 Q And that would be the third sentence under  
13 "Inspection."

14 It says, "If inspection of processed material  
15 or products is impossible or disadvantageous, indirect  
16 control by monitoring processing methods, equipment and  
17 personnel shall be provided."

18 As I was reading that I was thinking if by its  
19 very nature surveying cannot be inspected, but it seems  
20 Appendix B, Criteria 10, is saying you should indirectly  
21 inspect by monitoring controls.

22 Is that your understanding?

23 A Well, first of all, if you read this, they're  
24 talking about material processing, pressing material.

25 However, your analysis is correct in that

13-2

1 we have been primarily talking about surveyors surveying  
2 buildings, and surveyors also lay out the internal parts  
3 of the building and the location of equipment.

4 Their work is checked when it comes time for  
5 fit-up, and quality control inspects the fit-up. If it  
6 doesn't fit, that certainly would result in a non-  
7 conformance report, as it did when internal parts didn't  
8 fit the building.

9 Q Okay. Along these same lines of indirect  
10 monitoring or indirect inspection, I want to highlight  
11 with you what those checks were at the time this survey  
12 error occurred, as opposed to what's currently in place,  
13 and I think your testimony with Mr. Gay hinted at that,  
14 procedure modifications, upgrading of personnel.

15 Could you outline that again for the record?

16 A The procedure currently requires three major  
17 changes. One is additional -- there are probably four,  
18 but we'll see how it comes out.

19 There are additional layers of supervision in  
20 the surveying organization. Each crew is well defined  
21 as to where it belongs in the organization, who's on the  
22 crew and what the duties and responsibilities of each  
23 individual are.

24 There's the crew chief, the instrument man,  
25 the guy that does the calculations and the people that

13-3

1 handle the tape.

2 In addition to that, there are some lead  
3 people that have two or three surveying crews under them.

4 The procedure requires that on major surveys,  
5 such as building locations, that all of the calculations  
6 be checked by the supervisor, all of the calculations be  
7 checked.

8 Q Is that a new requirement?

9 A That is a new requirement that is in the  
10 procedure that was not in the procedure before.

11 It also requires that on major surveys such  
12 as this that another crew independently re-do the survey,  
13 and as I explained before, this is done when the second  
14 crew goes in to lay out the building they have to go  
15 back to one of the control monuments to assure that the  
16 edges and the corners have been laid out properly.

17 And the last thing is that there is a  
18 requirement for an upgraded training of all personnel,  
19 or all key personnel, supervisory personnel every six  
20 months.

21 Q Would you agree that the second crew  
22 verification and the supervisor check is the monitoring  
23 process that is really an inspection in the sense of  
24 Criteria 10?

25 A It's an internal monitoring. I sometimes find



13-4

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1 people use inspection as one of those words, and it is  
 2 an inspection of a type, even though it's not done by a  
 3 quality control inspector.

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14-1 1 BY MR. GUTIERREZ:

2 Q One last question in this line is: Do you  
3 happen to know whether the qualifications or  
4 certifications of the Surveyors who surveyed the error  
5 that your testimony addressed, did you go back and check  
6 them, were they adequately qualified and certified?

7 A I did not. I don't know whether their  
8 records are available. I assume they are.

9 One gentleman is still in Brown & Root.  
10 The other one I don't know where he is, but I did not  
11 do that.

12 Q In the course of reviewing this incident  
13 and preparing this testimony, did you review anything  
14 that addressed the adequacy of the Surveyors that  
15 actually performed this survey?

16 A No. I did not.

17 Q One last question on Testimony B, I think  
18 you said that the installation of the Site Design Quality  
19 Engineer was not an attempt to discourage QA/QC to go to  
20 Design Engineering in Houston. In other words, wasn't  
21 a discourage to inhibit communications between those  
22 groups. Is that what you said?

23 A Could you refer to the page?

24 Q I am referring to a question and answer  
25 that you had with Mr. Gay, I think it was.

14-2

1 A I believe that -- I don't believe he said  
2 Houston, but was an attempt to have the man down there --  
3 was having him down there an attempt to thwart Inspectors  
4 from discussing things with Engineering, and it was not.

5 In fact, one of the benefits of that was  
6 that they would have an Engineer at the site whom they  
7 could discuss things with personally.

8 In addition, we always had the plan for  
9 having more Engineers down there, and I believe today  
10 we have approximately 100 Engineering people down. And  
11 we in Engineering encourage that kind of communication.

12 Q And the communication which you encourage,  
13 is with the actual QC Inspectors on the job to Design  
14 Engineering.

15 A Yes. With anybody.

16 Q I keep saying "one last question," because  
17 I am looking through my notes as we talk, and this is  
18 my last question.

19 The surveying error, which is the subject  
20 of Testimony A, that was reported to the NRC as a  
21 potential 50-55(e) item; is that correct?

22 A Yes. It was. I believe it was reported  
23 as a 50-55(e) item. And I believe the NRC has  
24 subsequently closed that part of it out.

25 MR. GUTIERREZ: The Staff passes the witness.

## BOARD EXAMINATION

15-1 1  
2 BY JUDGE LAMB:

3 Q Mr. Peverley, recognizing as you have that some  
4 of the surveying was not up to desirable standards leading  
5 to this error and that the building is now one foot  
6 narrower than it would have been otherwise, I would  
7 just like to explore precisely with you the end effects  
8 of that.

9 Does this change in the building design which  
10 resulted from the surveying error create any difficulty  
11 with the operation of any of the equipment?

12 A No, sir.

13 Q Does it create any difficulty with inspection  
14 of any of the equipment during installation or subsequent?

15 A No, sir.

16 Q Does it create any problems in the future with  
17 the maintenance of the equipment?

18 A No, sir. In fact, one of the things that  
19 was done was to assure the same space allocation for one  
20 of the tanks which was moved for that very reason.

21 Q In other words, you moved a tank to another  
22 location?

23 A The tank was moved six inches west, and  
24 six inches was taken out of the wall between the mechanical  
25 auxiliary building and the fuel handling building so that

1 there would be the same space available in that area  
2 between the tank and the wall.

3 Q Does this change create any problem with  
4 future replacement of any of the equipment?

5 A No, sir.

6 Q Does it create any other problem that I  
7 haven't thought of?

8 A Not to my knowledge. We have revised all  
9 of the drawings that had been issued at that time, and  
10 including the building overview drawings. We do not  
11 know of any problem that it created other than having  
12 to simply redo a bunch of drawings that were already  
13 out.

14 The place that the one foot was taken up,  
15 the reason it was taken up in that area, because there  
16 was the area of least congestion, and it was taken in  
17 that area so that all these problems would be minimized.

18 Q Thank you.

19 JUDGE LAMB: That's all I have.

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BOARD EXAMINATION

BY JUDGE HILL:

Q Along the same line of questioning that Dr. Lamb had, my final bottom-line question is was there any safety implication to the changes that had to be made as a result of this error?

A I guess I'm more afraid of the question than the answer. Safety implication -- there was safety considerations. The changes did not result in any increased safety hazard.

Q That's what I wanted to hear.

A Yes, sir.

JUDGE BECHHOEFER: I just have a few questions concerning the FREA system which is described, I guess, on pages 5 and 6 of Testimony B.

BOARD EXAMINATION

BY JUDGE BECHHOEFER:

Q You have described, have you not, the system, the manner in which the FREA system was supposed to work, is that correct?

A Yes, sir.

Q I would like you to turn to Staff Inspection Report 79-19 at page 90. I think I referred your counsel to that earlier.

A I have it.

1 Q In the last, the bottom paragraph on that  
2 page, does that not indicate at least in the Staff's  
3 opinion that the FREA system might not have always worked  
4 as intended?

5 A I have to explain what that signature was.  
6 I'm not sure that it was ever explained to the Staff  
7 either.

8 MR. GUTIERREZ: Excuse me. I didn't hear  
9 the page.

10 JUDGE BECHHOEFER: It's page 90, the bottom  
11 of the last paragraph.

12 MR. GUTIERREZ: Thank you.

13 JUDGE BECHHOEFER: Of 79-19.

14 BY WITNESS PEVERLEY:

15 A When the system was created, there were  
16 two signatures --

17 Okay. Let me go back, I'm sorry.

18 There are two places for two signatures at  
19 the bottom of the form. One signature is for a  
20 construction representative to say that the work was  
21 done, and another one for Houston Lighting & Power Company  
22 to say that they concurred with the work.

23 The process changed several times and in the  
24 later stages HL&P would sign the -- it was almost like  
25 a stamped signature that the original contention, or the



1 original concern on the part of HL&P was that they wanted  
2 to make sure that Brown & Root didn't put in some changes  
3 and not do the changes or attempt to get paid for doing  
4 work that really wasn't done.

5 The purpose of the construction signature was  
6 more monetary and had nothing to do with design control.  
7 The purpose of having Brown & Root sign that thing at the  
8 bottom was to assure that some responsible person from  
9 Brown & Root would certify that the work was done.

10 Q Well, at the time the work was being done,  
11 then, I take it -- would a FREA form be used in carrying  
12 out the work?

13 A The FREA form was authorization to construction  
14 to proceed with the work. It was part of the package that  
15 QC would have used to inspect the work.

16 From the standpoint of the quality control,  
17 the design control and quality control program, that signa-  
18 ture at the bottom had no meaning whatsoever. If the  
19 work wasn't done, then the QC could not have signed off  
20 that the as-built configuration was correct.

21 Q Well, my question is the contention, I think,  
22 that this relates to was that there were persons approving  
23 changes with no firsthand knowledge of the purpose of  
24 the original design. At the time the work was performed,  
25 could that description not have been accurate? Would

1 there not be a lacking of at least signatures on a form  
2 to indicate that proper approval was obtained?

3 A Well, I apologize, but I have lost  
4 continuity someplace, and I don't understand the  
5 question. Are you referring to some particular thing  
6 in page 90 or 91 that might help?

7 Q Well, it says that the signature on the FREA  
8 sometimes occurred as late as a year after the work  
9 was completed, and on occasion by a person who was not  
10 at the site at the time the work was done.

11 If that situation existed, could that not  
12 be at least a basis for the claim and the contention  
13 that the FREA's were approved by someone not qualified  
14 to do it?

15 A No, sir.

16 In the first sentence he says a sample review  
17 of FREA's in the record involved indicates the completion  
18 signature.

19 The completion signature is simply a  
20 certification by a Brown & Root Construction person that  
21 the work was done. The other signatures on the upper  
22 part of the form have to do with the approval of the  
23 design change by an engineering, somebody who is assigned  
24 to the engineering department. So, the two signatures  
25 do two different things.

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Q So at the time of the work -- I guess I misunderstood this portion of the Staff report, but at the time the work was actually done, there was some signature on the form by a person who was authorized to approve that work?

A Yes, sir.

Q I see. Well, that's what I wanted to clarify.

(Board conferring.)

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17-1 1 BY JUDGE BECHHOEFER:

2 Q Now, if there were a verbal authorization,  
3 such as there was some testimony about, how would that  
4 be reflected on the form at the time the work was actually  
5 being done?

6 A There was no verbal approval that I recall  
7 ever granted. There was -- When Mr. Robertson was  
8 given his responsibility at the site, he was to  
9 communicate with the Designer, and between the two of  
10 them they would make a decision regarding acceptability  
11 of the request.

12 Mr. Robertson would note on the form the  
13 date of the telephone conversation, and the individual  
14 that he had the conversation with, but Mr. Robertson  
15 would sign the form, and his signature on the form was  
16 authorization to the Construction people to proceed  
17 with the work.

18 Q Where I got "verbal approval" from was on  
19 the next page, Page 91 of the Staff Report, four  
20 paragraphs -- the long paragraph, four paragraphs down  
21 from the top.

22 There is a reference here to a verbal  
23 authorization to proceed, and I wondered what that  
24 referred to.

25 A I am not sure that I can answer your

17-2 1 question.

2 If there was a condition at the site where  
3 Construction people were some place within the  
4 Construction organization where it was they could do  
5 that verbally before pending the approval of the FRA,  
6 but our procedures never allowed for that, that I recall.

7 Q I see. So this would have been an isolated  
8 instance?

9 A Or it would have been something that was  
10 not allowed by procedure.

11 Q I see.

12 A I recall reading this, and I did not  
13 understand it at the time I read it, and I still don't.  
14 There were several things in here that surprised me,  
15 and I couldn't answer them. I never had an opportunity  
16 to talk to the individual that wrote this, so I am not  
17 sure I understood what was going on.

18 Q I take it you did not draw any connection  
19 between this and the specific --

20 A No, sir.

21 Q - allegations of the contentions we are  
22 talking about?

23 A No, sir.

24 JUDGE BECHHOEFER: That's all the questions  
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the Board has.

MR. HUDSON: Your Honor, we would like to take just a very short, almost a five-minute break, if we could, to review our notes, and I think we will have a very, very limited redirect, if any.

JUDGE BECHHOEFER: Fine.

We will take a five-minute break.

(A short recess was taken.)

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JUDGE BECHHOEFER: Back on the record.  
Mr. Hudson.

MR. HUDSON: Your Honor, we have no  
redirect.

JUDGE BECHHOEFER: Mr. Gay?

MR. GAY: CEU has no recross.

JUDGE BECHHOEFER: Mr. Sinkin?

MR. SINKIN: Just one question.

RECROSS-EXAMINATION

BY MR. SINKIN:

Q On Page 91 of the Order To Show Cause where  
you and Judge Bechhoefer were discussing, in the next to  
the last paragraph of that section -- I'm not counting  
the trending, just the big paragraph there --

JUDGE BECHHOEFER: Yes. That's the Inspection  
Report, by the way.

MR. SINKIN: 79-19.

JUDGE BECHHOEFER: Yes.

The Order To Show Cause.

BY MR. SINKIN:

Q -- it talks about the high turnover of  
QC Inspection personnel, and one of the affects of that  
is that the QC Inspector would not always be aware of  
previous activities, such as a FREA.

I am wondering, in our earlier discussion



18-2  
1 you said the QC Inspector would see a FREA when he went  
2 to inspect. Why would it matter whether he was a new  
3 Inspector or an old Inspector?

4 A I'm sorry. I wish I could answer your  
5 question, but I cannot. I'm not sure what the point  
6 the author of this report was trying to make.

7 MR. SINKIN: Pass the witness, Your Honor.

8 MR. REIS: Mr. Chairman, I have --

9 JUDGE BECHHOEFER: You may get a chance to  
10 ask the author at some point.

11 RE-CROSS-EXAMINATION

12 BY MR. REIS:

13 Q Mr. Peverley, you said that the signature  
14 on the FREA on the work being -- that the work was  
15 completed could be signed by somebody who was not on  
16 the site when the work was done, and that was accepted  
17 for billing practices. Did I understand you correctly?

18 A Yes, sir.

19 Q If he wasn't on the site to see the work  
20 done, how could he certify that it was done?

21 MR. HUDSON: Objection, Your Honor. The  
22 witness has explained this has to do with billing  
23 practices, and I don't believe it is relevant to the  
24 witness' testimony or any issues whether or not Brown &  
25 Root is overcharging HL&P for building this plant.

18-3 1 MR. REIS: No. It goes to the veracity of  
2 what he just testified to, to the Board Chairman, whether  
3 that was the context in which this arose. I am trying to  
4 get at that.

5 (Bench Conference.)

6 JUDGE BECHHOEFER: We will overrule the  
7 objection.

8 WITNESS PEVERLEY: Am I supposed to answer  
9 the question?

10 JUDGE BECHHOEFER: Yes, if you can.

11 WITNESS PEVERLEY: I can.

12 I created this system, so I am to blame  
13 for what is bad about it, and to be congratulated for  
14 the good part of it.

15 The signature at the bottom of the form  
16 was originally created for the purpose as I have stated  
17 it.

18 Some how or other because it was still  
19 part of the procedure and still part of the form, the  
20 original intent some how or other got lost.

21 I am not sure exactly what the time period  
22 was, but at somewhere around this time period, either  
23 right before it, or right after it, there was a big  
24 exercise where the Engineering people were required to  
25 go out into the field, to have conversations with

18-4 1        Inspectors with people who might have worked on some of  
2        the rebar people, foremen, superintendents, to verify  
3        to the best of their ability that in fact the work was  
4        done. And when they would do that and satisfy themselves,  
5        they would sign the form.

6                    I think that subsequent to HL&P's initial  
7        request to have that block signed, they lost interest  
8        in it.

9                    It is one of those holdovers that often  
10       occurs in procedures, and our new procedure has no such  
11       requirement.

12                   MR. REIS: One other matter. I was handed  
13       a note by Mr. Sinkin that he again forgot to ask a  
14       question. I will give it back to him and we will see  
15       whether anybody objects.

16                   JUDGE BECHHOEFER: Just one question?

17                   MR. SINKIN: Yes. One question.

18                   RECROSS-EXAMINATION

19       BY MR. SINKIN:

20                   Q        The witness had said that at a break he  
21       would get for me some examples of when Mr. Robertson had  
22       disqualified himself, saying he did not have the  
23       expertise. I had forgotten to ask you to give me that.

24                   A        Certainly. Just thumbing through some of  
25       the examples that I have, there were a number of places

18-5 1 where repairs were made to pipe. Seaming, seal welding  
2 of pipe joints.

3 There were a number of changes that had to  
4 do with the changing of penetration locations, electrical  
5 conduit penetration locations, piping penetration  
6 locations. Even in one case a change in the use of a  
7 particular type of backfill, which I was even kind of  
8 surprised at, but he had forwarded that to Mr.  
9 Pettersson to make the final decision.

10 Several changes to the concrete construction  
11 specifications, which were rather complex in nature.  
12 Those were some of the examples I found.

13 Q Did you determine on the Backfill I why  
14 the Chief Geotechnical Engineer at the site would not  
15 feel --

16 A I would suspicion that probably in a  
17 discussion between he and Mr. Pet ersson, Mr. Pettersson  
18 said he wanted to do it.

19 MR. SINKIN: That's all, Your Honor.

20 JUDGE BECHHOEFER: The Board has no further  
21 questions.

22 Do the Applicants have any follow-up?

23 MR. HUDSON: We would ask that Mr. Peverley  
24 be excused.

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JUDGE BECHHOEFER: Yes. Mr. Peverley may  
be excused.

(Witness excused.)

MR. PEVERLEY: Thank you very much.

JUDGE BECHHOEFER: All right.

Let's go off the record.

(Discussion off the record.)

JUDGE BECHHOEFER: Back on the record.

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19-1 1 JUGE BECHHOEFER: Before we adjourn, have we  
2 discussed all the scheduling matters we have to discuss?

3 MR. HUDSON: Earlier there had been some  
4 question about providing the witnesses with their prior  
5 statements, and Mr. Sinkin had indicated that he was  
6 researching a point on that, and I believe that he is  
7 ready to report to us about that.

8 MR. SINKIN: Yes. The particular point in  
9 question was the tape recording that includes  
10 Mr. Kesarinath, that he had requested from us, we have  
11 researched the point that was of concern to us and  
12 satisfied ourselves that there will be no problem with  
13 sending Mr. Kesarinath the tape.

14 I have the tape here. I have his address,  
15 and we will put that in the mail to him as quickly as  
16 possible.

17 We did have one matter on scheduling. I don't  
18 know if the Applicants were finished with anything they had.  
19 We have one matter, if you're finished.

20 MR. HUDSON: Yes. That's all we had.

21 MR. SINKIN: On scheduling, Your Honor, if we  
22 are to go beyond September and into October, I would like  
23 to formally request on the record that the hearings be  
24 held in Austin, Texas, and cite as reasons the unanimous  
25 resolution of the Austin City Council requesting hearings

19-2

1 be held in Austin.

2 My own particular situation, that I am there  
3 in law school, the fact that by that time we will quite  
4 likely have finished the Applicants' case, so it will not  
5 be a matter of the Applicants having to produce a large  
6 number of witnesses far from the site, and the additional  
7 point that I had occasion to discuss with a member of the  
8 Austin City Council, Mr. Duncan, his conversations when  
9 he called you, Mr. Chairman, regarding having hearings  
10 in Austin, and he said that you had indicated there might  
11 be a possibility of hearings in Austin in October.

12 I would urge the Board to follow up on that  
13 inclination and that the hearings be held in Austin. We  
14 have had six weeks of hearings -- we will have had six  
15 weeks of hearings in Houston, one week in San Antonio,  
16 one week in Bay City; Austin is a 16 percent owner in  
17 this plant and I think they're entitled to have hearings  
18 in Austin.

19 JUDGE BECHHOEFER: I did not advise Mr. Duncan  
20 that we would consider Austin. I just said we had not  
21 decided where we would hold the hearings after September,  
22 so just to correct that, I don't --

23 MR. SINKIN: I think his impression was you  
24 may have mentioned the possibility of, if the hearings  
25 were even finished, limited appearances being taken in



19-3

1 Austin in October. I think that may have come up. It's  
2 not that important.

3 JUDGE BECHHOEFER: I don't think I did.

4 MR. REIS: Mr. Chairman, that's the point I  
5 particularly wanted to get to, these hearings are taking  
6 a long time. If there is any consideration to be hearings  
7 in Austin, I ask that they only be evidentiary hearings,  
8 and that there be no further limited appearances, since  
9 we've had enough days of limited appearances. People  
10 have had an opportunity to come in and talk on limited  
11 appearances, and certainly --

12 JUDGE BECHHOEFER: The Board has already  
13 determined not to hold further limited appearance sessions  
14 wherever we hold hearings, at least in the portion of the  
15 QA portion of the hearings, shall we say; possibly before  
16 the rest of the operating license hearings we would hold  
17 more limited appearances, but not in this portion of the  
18 hearing, and that's wherever it is. That much I can  
19 assure you. Beyond that, we have not made a decision as  
20 to the October hearings.

21 We will reconfirm that we are holding the  
22 September hearings here right in this room, and so is  
23 there anything further before we adjourn?

24 (No response.)

25 JUDGE BECHHOEFER: Let me, just before we

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1 adjourn, what would the parties think of a one-week  
2 session in Austin, without limited appearances?

3 MR. HUDSON: Your Honor, I think --

4 JUDGE BECHHOEFER: In terms of convenience  
5 and that type of thing.

6 MR. HUDSON: Well, Houston is definitely more  
7 convenient for Washington counsel in terms of travel, and  
8 then people, for that matter, too, but I don't think we  
9 have any strong preference in the matter. If you can  
10 get us football tickets, we'll go to Austin.

11 (Laughter.)

12 MR. REIS: I always feel honored to go to the  
13 state capital of Texas and I have no particular objection  
14 to Austin hearings, although Houston is somewhat more  
15 convenient for the Staff.

16 JUDGE BECHHOEFER: How does that affect the  
17 Staff witnesses, which are likely to be -- that week in  
18 October, witnesses are likely to be Staff witnesses.

19 MR. REIS: It is a little more convenient in  
20 Austin -- I mean in Houston, but not materially so.

21 JUDGE BECHHOEFER: Okay. We'll take this  
22 under advisement for October.

23 MR. GAY: CEU's position is that Austin is a  
24 much more pleasant place to be than Houston.

25 JUDGE BECHHOEFER: Yes. Well, we will be

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adjourned until September 14th.

(Whereupon, at 1:47 p.m., the hearing in the above-entitled matter was adjourned, to reconvene on September 14, 1981, in Houston, Texas.)

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This is to certify that the attached proceedings before the  
NUCLEAR REGULATORY COMMISSION

in the matter of: HOUSTON LIGHTING & POWER COMPANY  
SOUTH TEXAS NUCLEAR PROJECT UNITS 1&2

DATE of proceedings: 24 July 1981

DOCKET Number: 50-498 OL; 50-499 OL

PLACE of proceedings: Houston, Texas

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

Lagailda Barnes  
Official Reporter (Typed)

*Lagailda Barnes*  
Official Reporter (Signature)