

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the matter of:

TEXAS UTILITIES GENERATING  
COMPANY, et al.

Docket No. 50-445  
50-446

(Comanche Peak Steam  
Electric Station, Units 1 & 2)

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TELEPHONE CONFERENCE CALL

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

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In the matter of:
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TEXAS UTILITIES GENERATING
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: Docket Nos. 50-445
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(Comanche Peak Steam
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Electric Station, Units 1 and 2)
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TELEPHONE CONFERENCE CALL

Monday, April 25, 1983

The telephone conference call in the above-entitled matter was convened at 2:30 p.m., subject to notice, before:

JUDGE PETER BLOCH,  
Chairman, Atomic Safety & Licensing Board

JUDGE KENNETH MC COLLOM,  
Member, Atomic Safety & Licensing Board

JUDGE WALTER JORDAN,  
Member, Atomic Safety & Licensing Board

## 1 APPEARANCES:

2 FOR THE APPLICANT:

3 NICHOLAS REYNOLDS, ESQ.  
4 WILLIAM HORIN, ESQ.  
5 Debevoise & Liberman  
6 1200 17th Street, N.W.  
7 Washington, D.C.

8 FOR THE NRC STAFF:

9 STUART A. TREBY, ESQ.  
10 MARJORIE ROTHSCHILD, ESQ.  
11 Office of the Executive Legal Director  
12 U.S. Nuclear Regulatory Commission  
13 Washington, D.C. 20555

14 -and-

15 SPOTSWOOD BURRELL,  
16 NRC Project Manager

17 FOR THE STATE OF TEXAS:

18 BRIAN BERWICK, ESQ.  
19 JAMES MATTHEWS, ESQ.  
20 State Attorney General's Office  
21 Austin, Texas

22 FOR TEXAS UTILITIES SERVICE, INC.:

23 HOMER SCHMIDT

24 FOR INTERVENOR CASE:

25 JUANITA ELLIS

P R O C E E D I N G S

ar3

1  
2 JUDGE BLOCH: This is Peter Bloch, Chairman of  
3 the Licensing Board for Comanche Peak. This is a scheduled,  
4 on-the-record conference call, and for the purpose of  
5 considering various scheduling matters in the Comanche Peak  
6 case.

7 With me today by telephone are Judge McCollom  
8 and Judge Jordan.

9 Would we please answer the role on the record,  
10 please.

11 For the Applicant?

12 MR. REYNOLDS: Nick Reynolds and Bill Morin  
13 in Washington, and Homer Schmidt in Dallas.

14 JUDGE BLOCH: For Staff?

15 MR. TREBY: Stuart Treby, and with me is  
16 Marjorie Rothschild and Spotswood Burrell, the Project  
17 Manager.

18 JUDGE BLOCH: For CASE?

19 MS. ELLIS: This is Juanita Ellis, President of  
20 CASE.

21 JUDGE BLOCH: For The State of Texas?

22 MR. BERWICK: Brian Berwick.

23 JUDGE BLOCH: The matters for discussion today  
24 have largely been discussed in advance with the parties,  
25 but there are two additional items that the Board will add.

1 The first item will be discussion of a possible need  
2 for a reply to CASE's brief on the thermal expansion stresses,  
3 and the last item will be a brief discussion of Applicant's  
4 motion concerning the need for further witnesses concerning  
5 Atchison-related matters.

6 The matters that we have discussed with the  
7 parties in advance for inclusion in the conference include  
8 a legal question, the applicability or inapplicability  
9 of Part 50, Appendix E, Section V, to the issuance of  
10 Applicants in this proceeding of a materials license.

11 Second, the scheduling priorities for this  
12 hearing and the possible need for a second hearing possibly  
13 the second week in June, and the hearing priorities we  
14 asked to be addressed were the CAT report, the emergency  
15 planning issue, the Doyle matters, with special attention  
16 to the LOCA issue, and possibly the unresolved safety  
17 issues and Board notification issues.

18 I would like the parties to speak very briefly  
19 at the outset on the Board's tentative conclusion that  
20 CASE's brief raises questions on page 10 and 18. This  
21 is the brief for consideration of LOCA and design criteria  
22 for pipe supports, and these questions on pages 10 and  
23 18 and generally throughout its brief as well, relating  
24 to thermal expansion stresses would seem to require a  
25 reply by Applicant and Staff, with possible reply by the

1 State of Texas as well, primarily because Applicant does  
2 not seem to have addressed directly thermal expansion  
3 stresses by that name. They seem to be addressing thermal  
4 stresses and not thermal expansion stresses and Staff  
5 appears to be saying thermal expansion stresses, but I am  
6 unable to tell at this time whether they are directly  
7 addressing the same issue that CASE is addressing.

8 Mr. Reynolds, would you like to comment on  
9 the possible suitability of reply on this issue?

10 MR. REYNOLDS: We do think it is appropriate  
11 that we be afforded the opportunity to reply in writing.

12 JUDGE BLOCH: Would you comment on a likely  
13 timetable?

14 MR. REYNOLDS: Let me look at my calendar. By  
15 May 4?

16 JUDGE BLOCH: May 4 is your suggestion? Thank  
17 you.

18 Mr. Treby?

19 MR. TREBY: The Staff also would like to reply  
20 and May 4th is an acceptable date.

21 JUDGE BLOCH: Mr. Berwick?

22 MR. BERWICK: Yes.

23 JUDGE BLOCH: Did you expect to or want to reply  
24 on this issue?

25 MR. BERWICK: No, I wouldn't think so. No, sir.

ar6 1

MR. REYNOLDS: Mr. Chairman, there was a Ms.

2 Riley identified by the operator.

3 JUDGE BLOCH: She is the reporter.

4 MR. REYNOLDS: Oh, I see. Okay.

5 JUDGE BLOCH: Ms. Ellis, would you like to  
6 comment on the suitability of a reply?

7 MS. ELLIS: Yes, sir. I had understood that  
8 everybody would file briefs and everyone has an opportunity  
9 to reply, anyway, within -- let's see, I think by the 2nd.  
10 Was I mistaken in that?

11 JUDGE BLOCH: You may be correct in that. Mr.  
12 Reynolds, is that correct?

13 MR. REYNOLDS: Yes, it is.

14 JUDGE BLOCH: So we don't need to set a new date,  
15 do we?

16 MR. REYNOLDS: Well, you asked me what I thought  
17 a reasonable schedule date was. I said the 4th. The 2nd  
18 is fine also.

19 JUDGE BLOCH: Okay. Ms. Ellis, thank you for  
20 reminding us of having met this need previously.

21 MS. ELLIS: All right. The 4th would be fine  
22 with us also.

23 JUDGE BLOCH: Would you prefer to set it to the  
24 4th, if everyone agrees on the thing? We can do that right  
25 now. Are there any objections to the 4th being the new date?

ar7 1

MR. TREBY: The Staff has no objection.

2

JUDGE BLOCH: If there are no objections, then the 4th is the new due date.

3

4

I'd like to comment that the State of Texas served us with a paper that said it was served express mail, but I never received a copy express mail. I don't know what the problem was with the State of Texas, but we would like to receive that document on the 4th.

5

MS. ELLIS: Mr. Chairman?

6

JUDGE BLOCH: Yes, Ms. Ellis.

7

MS. ELLIS: In that regard it might be well

8

to mention at this point that Applicant's brief was

9

dated the 21st and we did not receive it until the 22nd,

10

and apparently it was not mailed until the 21st, according

11

to the Federal Express receipt deal.

12

JUDGE BLOCH: Mr. Reynolds, would you like to

13

comment on that?

14

MR. REYNOLDS: The document, I believe, was

15

due in the Board's hands on the 21st and it was received by

16

the Board on the 21st.

17

MS. ELLIS: I believe that was to all parties.

18

MR. REYNOLDS: Mr. Chairman, this goes back to a

19

long history of quibbling between CASE and the Applicants

20

and the Staff on timely filings. Our understanding has

21

consistently been that when you give us a due date, that



ar8

1 means in your hands in Bethesda on that date, and that's  
2 what we did in this case.

3 JUDGE BLOCH: We wanted it on all the parties  
4 on that date. In fact, we didn't get it until the 22nd,  
5 either, Mr. Reynolds. So we would appreciate getting it  
6 the date that it is promised.

7 MR. REYNOLDS: Okay. Well, it was delivered  
8 on the 21st. I don't know what happened there, but I  
9 will check that out to make sure it doesn't happen again.

10 MS. ELLIS: Mr. Chairman, for the record, I  
11 believe the transcript of the previous conference call on  
12 April 7th, at the bottom of page 57 and top of page 58,  
13 it reflects that it should be in the hands of all parties  
14 on the 21st.

15 JUDGE BLOCH: Mr. Reynolds, that is my recollec-  
16 tion. Do you recall it differently now?

17 MR. REYNOLDS: I don't have that transcript in  
18 front of me, but I'll take your word for it.

19 MR. BERWICK: Mr. Chairman, you said that you  
20 never got your package or that it came by ordinary mail?

21 JUDGE BLOCH: It came by ordinary mail. It  
22 never came by express mail. We have read it and we  
23 do appreciate having received it. We just hope that a  
24 procedural error will not be made next time.

25 MR. BERWICK: I thought I sent it by express.

1 Let's see. This is the one that was addressed to  
2 Bethesda, am I right?

3 JUDGE BLOCH: This is the collateral estoppel  
4 brief.

5 MR. BERWICK: But you're speaking about the one  
6 that came to yourself rather than to one of the other  
7 panel members; am I right?

8 JUDGE BLOCH: Yes.

9 MR. BERWICK: There was -- well, I have an  
10 express mail receipt and I sent them all by express mail,  
11 and if there was a slip-up in that, I'll apologize and  
12 I'll try to make sure it doesn't happen again.

13 JUDGE BLOCH: Surely.

14 MR. REYNOLDS: Mr. Chairman, so that I am  
15 perfectly clear on this, the rule is that when you give us  
16 a due date for a pleading, it is to be in everyone's hands  
17 on that date; is that correct?

18 JUDGE BLOCH: We will ordinarily approve that  
19 procedure. On request we may be able to vary it. I just  
20 want to have uniform methods of proceeding so we will all  
21 know what is expected.

22 MR. REYNOLDS: Surely.

23 JUDGE BLOCH: Now, Mr. Reynolds, do you think  
24 you could address the Appendix E, Part V question in five  
25 minutes?

ar10 1

MR. REYNOLDS: Certainly. I would suggest that it is the Staff's first foot forward, since it is their regulation, but we will go first, if you prefer it that way.

JUDGE BLOCH: If you'd prefer Staff to go first and if there is no objection, we may do it that way. Mr. Treby?

MR. TREBY: Staff is here. I have no preference who goes first. I don't know about the five minutes. I will do my best.

JUDGE BLOCH: Will it take longer, sir?

If it will, just do it expeditiously. I'll trust you on it.

MR. TREBY: All right. Do you want me to begin?

JUDGE BLOCH: Please.

MR. TREBY: What we need to go back to is a brief history of the rule. There were two proposed rules published by the Commission in 1979. One of them on September 9 -- September 19th, 1979 in the Federal Register as 44 Fed. Reg. 54308, and a second proposed rule on December 19, 1979 at 44 Fed. Reg. 75167.

The first proposed rule dealt with research reactors and facilities that were licensed under both Parts 50 and 70, such as reprocessing and fuel fabrication facilities, recovery facilities, and those types of facilities which are described in Section 70.22(i).

25

1           The second Federal Register notice dealt  
2 with power reactors and also set out Appendix E to Part 50.  
3 When the Commission published its final rule on August 19,  
4 1980, it combined these two proposed rules. The final rule  
5 is found at 45 Fed. Reg. 55402.

6           If we look at the original Appendix E that was  
7 published in the September 19, 1979 Federal Register Notice,  
8 we notice that it is V of Appendix E entitled "Implementing  
9 Procedures." There was no such language as "for a license  
10 to possess nuclear material."

11           JUDGE BLOCH: One second. Off the record.

12           (Discussion off the record.)

13           JUDGE BLOCH: Back on the record.

14           MR. TREBY: In researching this, I found a  
15 SECY paper which is SECY paper 80-275-B, and that is  
16 dated July 2, 1980.

17           MS. ELLIS: Could you tell me what kind of  
18 paper that was? I didn't understand that word.

19           MR. TREBY: SECY. S-E-C-Y, all caps. For Office  
20 of the Secretary. This is the title that is given to all  
21 Staff papers that are presented to the Commission for action.

22           MS. ELLIS: And was that 80-275-D as in Dog?

23           MR. TREBY: No, B as in Boy.

24           It is in that document that the suggestion is  
25 made that the words be added to Appendix E, as well as a few

ar12

1 other cases, that the words added to Appendix E were  
2 "a license to possess nuclear material."

3 The reason that is given in the SECY paper for  
4 adding the words was to make clear that the standards --  
5 that is, the planning objectives for NUREG 0654 that are  
6 set out in Section 50.47(d) and the exercise requirement  
7 in Appendix E are applicable only to nuclear power reactors  
8 and not to other fuel cycle facilities or research reactors.

9 JUDGE BLOCH: I'm sorry, Mr. Treby, I don't  
10 understand how the addition of those words could possibly  
11 do that. Could you explain that?

12 MR. TREBY: Yes. They added the words not only  
13 to -- in that section under V, but they added language  
14 in a number of other places. Let me see. I had my papers  
15 here and I can say exactly where they were.

16 The first place that they added -- they made  
17 some changes to this clarification was in paragraph (q)  
18 of Section 50.54 which is entitled "Conditions of License,"  
19 and what they did there was to clarify that a licensee  
20 authorized to operate a nuclear power reactor shall follow  
21 and maintain in effect emergency plans to meet the  
22 requirements of 50.47(d) and the requirements of Appendix E.  
23 They added the following words, "a licensee authorized to  
24 possess and to operate a research reactor or a fuel  
25 facility shall follow and maintain in effect emergency

1 plan which meets the requirements of Appendix E of this  
2 part."

3 They also amended that paragraph to include that  
4 a copy should go, if appropriate, to the Director of  
5 Nuclear Materials Safety & Safeguards, NMSS.

6 I think to shortcut this, what they did was they  
7 made a number of changes in various portions of the new  
8 regulations that are found in 50.54(q), (r), (s), (t) and  
9 (u), and in Appendix E to set out the different treatment  
10 that was going to be afforded power applicant reactors  
11 and those people who were licensees for a research reactor  
12 or for a fuel cycle facility such as described in Section  
13 70.22(i)

14 JUDGE BLOCH: Mr. Treby, when you say  
15 different treatment, don't you really mean the same  
16 treatment?

17 MR. TREBY: No, I mean different treatment in  
18 that an applicant for a power reactor has to meet the  
19 requirements of both 50.47(d) and the various planning  
20 standards as well as the exercise requirement, while  
21 the licensees for a research reactor or fuel cycle facility  
22 does not have to meet those requirements.

23 JUDGE BLOCH: Okay. But at least in V, where  
24 what they were doing -- it was your argument they added a  
25 requirement that it was going to apply what previously was

1 only for power reactors to these other kinds of reactors.  
2 Is that right?

3 MR. TREBY: Well, they did add it to V, but my  
4 research to date has indicated that that was an error;  
5 that they intended to only amend the changes that related  
6 to 50.54 and the rest of the regulation did not intend to  
7 make that change in V of Appendix E.

8 JUDGE BLOCH: But there is a natural presumption  
9 of the regularity of the regulation. I take it that your  
10 evidence this is a mistake is very clear?

11 MR. TREBY: Well, it is clear from looking  
12 at the SECY paper and also looking at -- there are two  
13 reg guides that shed some light on this. One is Reg Guide  
14 3.15, which sets out the standard format and content of  
15 license applications for storage only of unirradiated  
16 reactor fuel and associated radioactive material.

17 JUDGE BLOCH: Was that preceded or was it  
18 simultaneous with or was it subsequent to V?

19 MR. TREBY: That reg guide date precedes V.

20 JUDGE BLOCH: How does it help us to interpret V?

21 MR. TREBY: Well, one way in which it might help  
22 to interpret it is it's true that it precedes -- there is a  
23 reg guide which relates to the emergency planning requirement  
24 of power reactors, which is Reg Guide 1.101. That reg  
25 guide --

1 JUDGE BLOCH: If I may interrupt you, you have  
2 persuaded me that this argument is sufficiently complex  
3 that it is better done in writing. Would you agree with me  
4 on that?

5 MR. TREBY: I guess so, yes.

6 JUDGE BLOCH: Mr. Reynolds, can you make it  
7 clearer orally, or do you agree that this also should be  
8 done in writing?

9 MR. REYNOLDS: Maybe the Board could help me by  
10 explaining where it's going with this. Unfortunately I  
11 wasn't here Friday to take your call, so I didn't have  
12 the benefit of the discussion with you. But could you, sir,  
13 just explain briefly why the Board is interested in this  
14 area?

15 JUDGE BLOCH: Surely. Judge Jordan was reviewing  
16 the regulations in the course of looking over the emergency  
17 planning documents that are before us, and he happened to  
18 read into the regulation and he read V in Appendix E, and  
19 he realized that there had been a materials license issued  
20 already to Applicant. And when he brought this to my  
21 attention, I read that materials license and the accompanying  
22 evaluation, which does not appear to take cognizance of this  
23 V at all. There appears to be a breach of the technical  
24 requirement in the regulation and we are not sure where  
25 we ought to go with it, but it seems to us if there is a



1 violation of the regulation that we must take an  
2 interest in it.

3 MR. REYNOLDS: Now that you have called it to the  
4 Staff's attention, isn't it something better left with the  
5 Staff, since it was the Staff that evaluated the application  
6 for the materials license, and on the basis of the material  
7 before it, issued that license to the Applicant? And now  
8 that you have called to their attention a matter which  
9 requires further inquiry on their part, isn't that where  
10 the Board should let it lie?

11 JUDGE BLOCH: I don't think so. I think the  
12 Zimmer case stands for the opposite, that if the Staff  
13 comes up with a serious problem, not relative to a pending  
14 issue, that the Staff should be permitted to pursue that  
15 issue and the Board doesn't need to.

16 In this case the Staff did not identify this  
17 issue and the Board would like to know that the Staff is  
18 pursuing it in an appropriate fashion.

19 JUDGE JORDAN: May I just interject? At the  
20 time I was wondering whether I had failed to receive the  
21 implementation plans, and because -- if those were in  
22 existence it might well change possibly some of my conclusions  
23 that I had arrived at tentatively, and so therefore I  
24 immediately said, oh, well, here is something that may help  
25 my understanding of the situation with respect to the

1 emergency plans, and so therefore I immediately called and  
2 said have I failed to receive them? Because if they are out,  
3 I am very anxious to see them. And so if they should be  
4 out and are supposed to be out at this time, then I am  
5 anxious to have them in my hands before proceeding.

6 MR. REYNOLDS: I see.

7 Well, my understanding, sir, is that in mid-  
8 February a set of procedures was provided to the Staff.  
9 Those are draft procedures. The final procedures are in  
10 the process of being sent to the Staff and they will be sent  
11 over a period starting next week through mid-May.

12 JUDGE BLOCH: I would think, to handle the  
13 operating timetable that you envisage for possible low  
14 power testing, our problem was with the existing materials  
15 license, and if Mr. Treby agrees that it is merely error  
16 in the regulations and is not applicable, the matter will  
17 rest there. If he does not, then we will have to decide  
18 what the conditions are.

19 MR. REYNOLDS: Mr. Chairman, Bill Horin has  
20 researched this point and he would like to add a few  
21 points.

22 JUDGE BLOCH: Okay, but I'd ask Mr. Horin, if he  
23 would, only to address matters that are only so clear that  
24 we might decide it based on your oral argument.

25 MR. HORIN: Yes, Mr. Chairman, I will do that.

1           If I might add just a brief note with  
2     respect to the history of the adoption of the regulation  
3     which Mr. Treby has already described, it is my view of  
4     reviewing the applicable SECY paper that the amendments  
5     that were made to the rule proposed by the Staff in response  
6     to comments from the Office of Nuclear Materials Safety &  
7     Safeguards were to clarify those provisions of, among other  
8     things, Appendix E which applied both to power reactors  
9     and other facilities and those provisions which applied only  
10    to one or the other.

11           I think that it is consistent with that interpreta-  
12    tion if one realizes that absent that clarification there  
13    would have been no guidance in the regulation which would  
14    have directed Applicants for fuel cycle facility licenses  
15    and the timing of their submission of implementing procedures.

16           Those implementing procedures are described, or  
17    the requirements governing those implementing procedures  
18    for fuel cycle facilities, are described in Regulatory  
19    Guide 3.24 which Mr. Treby has also already discussed, or  
20    3.42, excuse me.

21           So I think the regulation -- the amendment  
22    adding the phrase "or a license to possess nuclear  
23    material" provided that added guidance.

24           I might also add that --

25           JUDGE BLOCH: Mr. Horin, would you give me some

1 rationale for why the research reactor would have to do  
2 things 180 days before they possess nuclear material, that  
3 the operator of a nuclear power plant would not have to,  
4 180 days before they possessed nuclear material?

5 MR. HORIN: Yes. In the regulations governing  
6 the application for receipt of unirradiated reactor fuel,  
7 the regulatory guide, while not providing any requirements  
8 governing emergency plans for those types of licenses,  
9 does require information to be provided with respect to  
10 the protection against criticality accidents for that  
11 material when it is received on site.

12 As part of that exercise -- and this is in  
13 Section 70.24 -- if necessary, the Staff may request  
14 some information regarding emergency procedures that would  
15 be taken in the event that a criticality accident might  
16 occur.

17 JUDGE BLOCH: Now that's a reg guide that  
18 predates Appendix E?

19 MR. HORIN: No, sir -- right, the reg guide  
20 that predates Appendix E. If you look at the more recent  
21 version of that reg guide, they mentioned the specific  
22 sections, Section 70.24 in particular, and in so mentioning  
23 they add that an applicant may request an exemption from  
24 those requirements if it makes the proper demonstration.

25 In this case, Applicants have made that

1 demonstration that adequate methods have been employed and  
2 procedures in place so that there is not a reasonable  
3 possibility of such an accident that would require such  
4 procedures. And if you will look at the special nuclear  
5 materials license, you will see that Applicants were  
6 exempted from the requirements of 70.24.

7 Now I think that demonstrates that this type  
8 of activity is one that the Staff views as not envisioning  
9 such potential hazards that it is necessary to have the  
10 emergency plans in place at the time the fuel is on the  
11 site -- it's received on site.

12 JUDGE BLOCH: I'm not sure you addressed the  
13 question, which is, wouldn't that be equally true for  
14 the research reactors? Why is there a different rule for  
15 the research reactors than for the power plants?

16 MR. HORIN: I'm afraid I don't understand the  
17 question. It appears that in this -- Mr. Treby was  
18 arguing that Appendix E, V, requires that the research  
19 reactors, the other classes of reactors, would have to have  
20 their implementing procedures in 180 days before they  
21 received materials.

22 MR. TREBY: That's not what I was arguing.

23 MR. HORIN: I'm sorry. I misunderstood it, then.

24 MR. TREBY: I guess what I was arguing was  
25 that power reactors were required to have their implementing

1 procedures in 180 days before they could get their  
2 operating license. Research reactors and other fuel  
3 elements -- or fuel cycle facilities were not required  
4 to meet the requirements of V of Appendix E.

5 JUDGE BLOCH: Oh, I see. You read the 180 days  
6 to apply only to the power reactor?

7 MR. TREBY: That is correct.

8 MR. HORIN: Okay. That had not even occurred  
9 to me. That had not occurred to me.

10 MR. TREBY: Let me also point out if you look at  
11 the regulations, Part 70, under Section 70.22, there is a  
12 footnote 3 which follows 70.22(i). That footnote reads as  
13 follows:

14 "Emergency plans shall contain the elements  
15 that are listed in Section IV, the contents of  
16 emergency plans of Appendix E to Part 50 of this chapter."

17 The reason I mention this footnote is I think  
18 that that was the cause -- the cause that led to the  
19 problem in V. The intention was to make this fuel cycle  
20 facility comply with IV and it unfortunately was carried over  
21 to V.

22 JUDGE BLOCH: I think that I am deriving some  
23 comfort from these mutual arguments.

24 Mr. Horin, have you completed your discussion?

25 MR. HORIN: Well, there are two other points

1 that I'd like to add:

2 One, if you would turn to Appendix E, the  
3 introduction thereto. The paragraph -- the third  
4 paragraph of the introduction specifically states that  
5 the potential radiological hazard to the public associated  
6 with the operation of research and test reactors and  
7 fuel facilities licensed under 10 CFR Parts 50 and 70  
8 involve considerations different than those associated  
9 with power reactors.

10 Consequently, the size of the emergency planning  
11 zone and the degree to which compliance with the  
12 requirements of this section and Sections II, III, IV and  
13 V as necessary will be determined on a case-by-case basis.

14 I think that illustrates that the Commission  
15 viewed a distinction between these different facilities  
16 and that in so amending Section V, they recognized that  
17 while there may be requirements for procedures, there  
18 would be a distinction between the handling of those  
19 procedures for power reactors and those for other facilities.

20 end 1

21  
22  
23  
24  
25

1 Another point I would add is that I spoke with  
2 our radiation protection engineer at the site, and with  
3 this very question, and he indicated that at the time,  
4 to the application for the Part 70 license, we specifically  
5 asked this question of the staff in Region IV. And they  
6 returned to us with the response that, no, those words  
7 apply to other fuel cycle facilities; they were not  
8 applicable to the receipt -- to licenses for the receipt  
9 of new fuel on site.

10 JUDGE BLOCH: Have you completed?

11 MR. HORIN: Yes, sir.

12 JUDGE BLOCH: Ms. Ellis?

13 MS. ELLIS: Yes, sir. I think I am pretty  
14 thoroughly confused right at the moment.

15 JUDGE BLOCH: Okay. If you have nothing  
16 to say, it is probably best to say nothing.

17 MS. ELLIS: Am I correct in something that  
18 Mr. Treby said -- is it correct, Mr. Treby, that  
19 Appendix E, Roman Numeral V, does apply, as you  
20 understand it, to Comanche Peak and to their getting their  
21 materials license?

22 MR. TREBY: No, that's not what I said. Roman  
23 Numeral V of Appendix E certainly applies to Comanche Peak  
24 as far as getting their operating license, and it provides  
25 that not less than 180 days prior to their operating license



1 there must be implementing procedures. I am arguing that  
2 the next words are really there in error, that in the  
3 process of amending the proposed -- the regulations, the  
4 final regulations in Appendix E, the staff inadvertently  
5 added those words to Roman Numeral V because they believed  
6 that they were helping to make it consistent to show the  
7 difference in treatment between research reactors and  
8 other fuel cycle facilities and power reactors. But if  
9 you look at Part 70.22 -- 70.22(i)footnote, you will see  
10 that that really only applies to IV of Appendix E.

11 JUDGE BLOCH: Now, Mr. Treby, before Ms. Ellis  
12 continues, I thought I understood an interpretation of  
13 this that doesn't have to rely on it being an error,  
14 merely that it says that the operating license requires  
15 implementing procedures 180 days before the license to  
16 operate is granted, and the other reactors require it  
17 before a license to possess nuclear material is granted;  
18 is that not true?

19 MR. TREBY: I guess that is the interpretation,  
20 yes.

21 JUDGE BLOCH: Mr. Reynolds, was that your  
22 understanding of it?

23 MR. REYNOLDS: Yes, sir, it is. Let me add, sir,  
24 that if you read the provision as requiring -- requiring  
25 the procedures to be in place 180 days before a nuclear

1 material license is received, then there is no need at  
2 all for a 180-day provision prior to an operating license  
3 because you have to have the one before the other.

4 In short, it would render the provision with  
5 regard to the operating license a nullity; certainly not  
6 a result that the Commission had in mind when it wrote the  
7 rule.

8 Do you understand my point?

9 JUDGE BLOCH: Yes, it is an excellent point.

10 Thank you.

11 Ms. Ellis?

12 MS. ELLIS: All right. Another thing that we  
13 are working on at the moment and we will get off as soon  
14 as we can while we are working on the other brief is a  
15 motion to stay the materials license based on specifically  
16 pages 51 and 52, items 311 through 313 of CASE's February 24th  
17 additional proposed findings of fact which has to do with  
18 certain requirements regarding pool buildings which  
19 the Applicants have not performed.

20 JUDGE BLOCH: We appreciate your telling us  
21 that you plan to file that motion, but a discussion of it  
22 at this time would be irrelevant. We are just discussing  
23 Roman Numeral V. Do you have any more comments on  
24 Roman Numeral V?

25 MS. ELLIS: No, I guess not.

1 JUDGE BLOCH: Mr. Berwick, have you?

2 MR. BERWICK: Mr. Chairman, I don't at this time.

3 However, I think that the various materials such as  
4 SECY papers are not materials that Texas has very free  
5 and easy access to. And it seems to me that to avoid  
6 unfairness, those materials ought to be supplied to us or  
7 we ought to be told where we can get them on our own and  
8 that this matter should be held in abeyance for a few  
9 days to give us an opportunity to review them and, if we  
10 see fit, to file some small piece of writing which could  
11 then be replied to.

12 I only note --

13 JUDGE BLOCH: I liked the contrast between  
14 a small piece of writing and a brief.

15 MR. BERWICK: Yes, that's right, Judge. I  
16 really meant perhaps just a brief informal letter,  
17 not a brief at all. And I think that -- I think, too,  
18 that I would agree with your suggestion that the panel  
19 ought to be very slow to go against the plain meaning and  
20 simple syntax of the first sentence of V.

21 This is a situation where the law was spread  
22 across the Federal Register and some unfairness would  
23 be worked, it seems to me, even if just a "technical  
24 unfairness" if there is such a thing, if that meaning  
25 were set aside in favor of a meaning that would reach out

1 to documents that are not generally published or even  
2 reasonably researchable by the public.

3 JUDGE BLOCH: Mr. Treby, can you remedy this  
4 problem for the state of Texas and possibly for Ms. Ellis  
5 on the SECY paper?

6 MR. TREBY: I will be happy to send them the  
7 SECY paper.

8 JUDGE BLOCH: I have listened carefully to  
9 your argument, Mr. Berwick. I would like to ask my  
10 fellow judges whether they would object to my ruling  
11 on this issue at this time. Obviously, if I rule and  
12 they disagree with it, they can disagree after I state  
13 my opinion. But do either of the judges wish that I  
14 reserve judgment on this issue at this time?

15 JUDGE MC COLLOM: Go ahead.

16 JUDGE BLOCH: Judge McCollom and Judge Jordan, I  
17 am prepared to rule at this time, subject to the understanding  
18 that if the state of Texas or Ms. Ellis file a brief for  
19 reconsideration that we would be entirely open to  
20 reconsidering what we are about to do, if there are logical  
21 arguments presented.

22 On the other hand, this was a matter that the  
23 Board brought up itself, and I am persuaded by Applicant's  
24 argument that this section does not impose a 180-day  
25 requirement on operating license applicants.

1 I am particularly persuaded by Mr. Reynolds'  
2 argument that to interpret this section that way would be  
3 inconsistent with the fact that there are two requirements  
4 where there would only have had to have been one 180 days  
5 prior to the issuance of a license to possess nuclear  
6 material. I am persuaded by this that the 180 days  
7 applies only to the power reactors, to the license for a  
8 nuclear power reactor, and not to the license to possess  
9 nuclear material for the power reactor.

10 Consequently, I am persuaded that this concern  
11 of the Board's should no longer be pursued subject to  
12 the motion for reconsideration, should one be filed shortly  
13 by either the state of Texas or by CASE.

14 Have I any brief comments from my fellow judges?

15 All right. There being none, that is the ruling  
16 of the Board and we will pass on to the next matter.

17 The next matter is scheduling priorities and the  
18 need for a second hearing week. On this matter I would  
19 suggest, unless there is an objection, that the staff is  
20 the logical party to hear from first since it is the  
21 staff's witness's ability to testify on the CAT report  
22 and also their investigative report which may provide  
23 this. Is there any objection from the staff?

24 MR. REYNOLDS: Mr. Chairman, I am sorry.  
25 A motorcycle just ran by and I lost your last sentence.

1 JUDGE BLOCH: I just ruled that we would start  
2 with the staff on this priorities issue.

3 MR. REYNOLDS: No objection.

4 JUDGE BLOCH: Please, Mr. Treby.

5 MR. TREBY: As I understand the priorities,  
6 which matter do we take up first.

7 JUDGE BLOCH: Which matters to take up first and  
8 also whether we need the second week in June as a  
9 second hearing week.

10 MR. TREBY: Well, to answer your second  
11 question first, the staff believes that we do need the  
12 second week in June as a hearing week. The staff believes  
13 that it does need to offer into the record of this  
14 proceeding the CAT report and that we will not be able  
15 to do that until the second week in June because of the  
16 managerial difficulties in covering the week presently  
17 scheduled for May 16.

18 JUDGE BLOCH: Now, Mr. Treby, you don't  
19 want to discuss it in detail that week, but is it  
20 truly the case that you can't put it in evidence?

21 MR. TREBY: No, we can offer it into evidence.

22 JUDGE BLOCH: Okay.

23 In our earlier conversations about scheduling,  
24 I thought you indicated that you might be able to testify  
25 on some of it. Is that no longer true?

1 MR. TREBY: No, that is also true. I was going  
2 to get to that. I believe that we should cover the week  
3 of May 16 what is known as the Walsh-Doyle matter dealing  
4 with pipe supports. There is a brief section of the  
5 CAT report that also deals with piping. That portion of  
6 the CAT report dealing with piping, as well as the  
7 staff's investigation report on the Walsh-Doyle matters,  
8 can all be considered at the May 16 session.

9 I guess what I would propose is that the first  
10 subject that we take up at the session to be commenced  
11 May 16 is the Walsh-Doyle matter, together with that  
12 portion of the CAT report dealing with pipe supports.  
13 And the second matter --

14 JUDGE BLOCH: Mr. Treby, on that, will the  
15 staff witnesses who prepared the investigation report  
16 be able to answer our questions about whether these  
17 were isolated incidents or were indications of systemic  
18 problems?

19 MR. TREBY: When you say the witnesses who  
20 prepared the report, are you talking about the --

21 JUDGE BLOCH: The investigation report. In  
22 other words --

23 MR. TREBY: We have two investigation reports  
24 here. One is the so-called SIT which was a special team  
25 that was put together into the Walsh-Doyle.

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1 JUDGE BLOCH: It's the SIT team that I have  
2 been calling the investigation team and the CAT team I  
3 have been calling the CAT report. We will call them SIT  
4 and CAT if you prefer.

5 MR. TREBY: All right.

6 JUDGE BLOCH: Will the people who prepared  
7 the SIT report be prepared to testify on the cause  
8 of the deficiencies that they found and whether they  
9 are specific or general? That was one of the questions  
10 that we raised with you on the telephone in the last  
11 conference.

12 MR. TREBY: Well, they will be able to address  
13 their findings. I guess -- could you elaborate on just  
14 what it is, Mr. Chairman?

15 MR. REYNOLDS: Mr. Chairman, perhaps I am  
16 confused. You were asking whether the SIT panel, which  
17 is the panel that directed the Walsh-Doyle investigation  
18 work, will be able to testify as to whether the problems  
19 reflected in that report are systemic. And my question  
20 is -- my reading of the report indicates there are no  
21 problems. So perhaps I am confused.

22 JUDGE BLOCH: Mr. Reynolds, I read that there  
23 were certain deficiencies that would have to be remedied.  
24 My problem is that we asked the last time, as I recall  
25 -- I would have to look back at the record -- that each time



1 there was a deficiency that had to be remedied that the  
2 investigators who wrote the SIT report should think about  
3 how that deficiency arose. And I guess it is a similar  
4 point to one of the points that the CAT team made also,  
5 which is that when you find a deficiency, you should think  
6 about how it arose and how similar deficiencies can be  
7 averted in the future.

8 My question is whether the SIT team will  
9 have thought about how the deficiencies which they  
10 thought could be remedied did arise and whether they  
11 were specific isolated incidents or whether they could  
12 be part of a larger pattern of problems.

13 MR. REYNOLDS: I see.

14 JUDGE BLOCH: Mr. Treby, that means also, you know,  
15 in reflecting on their own SIT report, I would think that  
16 they will have read the CAT report so that they can  
17 reflect in their own mind on the possible significance  
18 of the deficiencies that they did find.

19 MR. TREBY: Well, the team members have  
20 certainly been advised of the Board's interest. I don't  
21 have any of them present right now to ask them that question,  
22 but basically they are prepared.

23 JUDGE BLOCH: I hope that you will try to  
24 get the staff witnesses to read the CAT report before  
25 they testify.

1 MR. TREBY: Yes, the witnesses certainly will  
2 do that.

3 JUDGE BLOCH: Mr. Treby, do you believe that  
4 those matters -- the Walsh-Doyle matters testified to by  
5 the SIT team, plus the portion of the CAT report  
6 dealing with the Walsh-Doyle matters will be sufficient to  
7 occupy our attention for the five days of the first hearing?

8 MR. TREBY: No. I think that we will also  
9 be able to discuss emergency preparedness matters.

10 JUDGE BLOCH: Okay. The Board hoped that  
11 with respect to the Board inquiries at least, the  
12 ones that we will be exploring, whether we wished  
13 to take up sua sponte issues, that we will be able to  
14 limit that to four hours. We will aim at that.

15 The other issue which we believe to be related  
16 to a pending contention is the identity of the coordinator.  
17 That is, whether the county judge is an appropriate person  
18 to be the coordinator of the emergency plan.

19 JUDGE JORDAN: That is all part of the question  
20 on the emergency plans included in the four hours.

21 MR. REYNOLDS: Mr. Chairman, are you suggesting  
22 that it will take the Board four hours to conduct its  
23 inquiry into whether it has preliminary cause to make  
24 a sua sponte finding?

25 JUDGE BLOCH: No more than four hours,

1 Mr. Reynolds.

2 MR. REYNOLDS: Are we going to get more  
3 specifics on the areas into which the Board will be  
4 inquiring before we go to hearing?

5 JUDGE BLOCH: Mr. Treby, would you like to  
6 have us interrupt your presentation to hear Dr. Jordan's  
7 response to that, or would you prefer to continue it now  
8 and have us get the answer to that problem later?

9 MR. TREBY: I think I am essentially done.

10 JUDGE BLOCH: Okay. So you think that those  
11 three matters would be sufficient to take up the week?

12 MR. TREBY: Yes. To recap, the Walsh-Doyle  
13 matters together with the relevant portions of the CAT  
14 team report, emergency preparedness matters and the  
15 Board's inquiries.

16 JUDGE BLOCH: All right. Dr. Jordan, is  
17 there any way that we could help to further clarify our  
18 preliminary interest in emergency planning for the benefit  
19 of the Applicant?

20 JUDGE JORDAN: Yes, I think so. I indicated,  
21 in our previous conference, some of the areas that I  
22 would be particularly looking at. And it will be focused  
23 largely on the testimony that was presented previously  
24 in which they say -- and particularly the FEMA witnesses  
25 claim that their preliminary findings will demonstrate that

1 their conclusion that the plans are adequate will be  
2 indeed shown as part of the preliminary findings.

3 Now, I have looked at the FEMA preliminary  
4 findings. I don't find that demonstrated. And so, therefore,  
5 I will be asking the FEMA witnesses, how did you arrive  
6 at that conclusion. And I will be taking them through  
7 the preliminary findings that particularly apply to the  
8 adequacy of the off-site plans because I said my  
9 concern with the adequacy of the off-site plans has to do  
10 with the determination by FEMA that even though the plans  
11 were being presented -- were being included in the  
12 plans, it was the county judge who had the important job  
13 of making the decision of what response would be  
14 required from the population, what broadcast messages would  
15 go out, and with the lack of training, in fact, in the  
16 plan by the State of Texas which had recommendations,  
17 there should be a professional in that spot rather  
18 than a county judge.

19 I wanted to inquire as to why FEMA did not  
20 address that recommendation; the basis for including  
21 the recommendation is wrong, and I want to ask the state  
22 why they included that recommendation, if they feel it --  
23 feel it is not a necessary requirement. And so, therefore,  
24 there will be questions both to the state and to FEMA.

25 Now, there are with respect to the SER-3,

1 I have some questions with respect to the staff partly  
2 as a matter of understanding what the staff concluded  
3 and how they arrived at the conclusions that they  
4 have reached in the SER-3. But I do not expect the  
5 questions for the staff to be very extensive.

6 Most of my questions would be with respect to the  
7 state and to FEMA, although there will probably be a  
8 few for the Applicant because the Applicant, after all,  
9 has to support the plan.

10 JUDGE BLOCH: Dr. Jordan, from what I  
11 understand, you are talking about perhaps less than  
12 two hours on the issues that are now related to the  
13 county judge; is that correct?

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1 JUDGE JORDAN: In a certain sense, all of the  
2 questions bear on that. Some of them not too directly.

3 JUDGE BLOCH: But the Staff and Applicant  
4 questions you plan to ask would be pretty limited in scope,  
5 in your opinion?

6 JUDGE JORDAN: Yes, they would be quite limited  
7 in scope and have to do with the assurance that the Staff  
8 has now that the Applicants' plans are indeed adequate and,  
9 of course, the lack of implementing -- the Staff is not  
10 able to reach such conclusions because they have not had  
11 the implementing procedures at hand. They have not been  
12 able to address them, and that is a good part of the  
13 problem, and that is why I came up with the question on  
14 the implementing procedures and why it is that they were  
15 not available.

16 JUDGE BLOCH: Mr. Reynolds, I think you had  
17 some explanation. I am not sure it's limited much in scope.  
18 Is there some other way we can try to assist you?

19 MR. REYNOLDS: Well, you have done the best you  
20 can, I guess, in the circumstances. I am trying to get a  
21 handle both on the time it will take to do this and on  
22 the scope and breadth of the Board's inquiry. I can  
23 understand that the Board would like to satisfy itself  
24 that emergency planning is not a problem here, but of course  
25 we have been here on emergency plannings since last

1 September and but for the fact the Board members are  
2 here, we wouldn't be inquiring into this at all.

3 Now, again, I recognize that each Board  
4 member has sua sponte authority to satisfy themselves  
5 and it is in that pursuit that you are conducting this  
6 preliminary inquiry, but along with that I believe goes  
7 the proposition that this is Board examination only and  
8 not cross-examination by the parties who, after all, have  
9 had the opportunity to conduct full cross-examination in  
10 September.

11 JUDGE BLOCH: I would add that Dr. Jordan  
12 is thoroughly familiar with the previous testimony,  
13 and partly because of some promises made in that testimony  
14 he is now interested in pursuing this matter further.

15 Now, Mr. Reynolds, would you like to address  
16 the scheduling priorities for the first week of hearing,  
17 and also whether we need a second week to be scheduled?

18 MR. REYNOLDS: Yes. Sir, could you respond to  
19 my question as to whether or not the Board will permit  
20 cross-examination into matters which are simply preliminary  
21 inquiries for sua sponte purposes?

22 JUDGE BLOCH: I think our ruling on that will be  
23 that since some of these matters are matters not relating  
24 to the county judge, that is since some of those matters  
25 are not part of the contention, we would not ordinarily

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1 permit cross-examination, although we will permit a party  
2 to address us as to a specific function the party believes  
3 it could serve in advancing the Board's interests.

4 So it would only be as a matter of petition  
5 and not as a matter of right.

6 MR. REYNOLDS: Okay. With regard to the  
7 scheduling, in accordance with your instruction, we had  
8 discussed with the Staff the ordering of the issues and  
9 we had no problem with the Staff suggestions. That is, the  
10 pipe support design allegations first; emergency planning  
11 inquiries second; and then Board notification type questions  
12 on unresolved safety issues and the like third; and then  
13 the CAT report in its entirety fourth.

14 Our position is that we see no reason why we  
15 cannot complete all four items during the week of May 16th.  
16 The Board is well aware of the last evidentiary hearings  
17 we had in this case in September and one issue remained  
18 outstanding at that time, and that was the Staff's  
19 investigation into the pipe support design allegation.

20 Since that time, the Staff has completed its  
21 inquiry and issued its report, but also we have two new  
22 Board members, so we are not faced, as we expected, with  
23 a simple matter of completing the record on one issue but  
24 rather it appears that we are back-pedaling to address  
25 several issues. And again I recognize that new Board



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1 members must satisfy themselves on matters of concern to  
2 them.

3 JUDGE BLOCH: Mr. Reynolds, I would like to  
4 clarify the record. We will not be back-pedaling and we  
5 are not going to repeat anything that's already a matter of  
6 record. If there is merely redundant testimony, we urge  
7 you to inform us of that.

8 The matters that we wish to inquire into on  
9 these questions are not now in the record.

10 MR. REYNOLDS: I appreciate that, thank you,  
11 and we will call that to your attention if it does arise.

12 Now the point that I was leading to is that we  
13 would urge the Board to attempt to complete all matters  
14 during the week of May 16th and we would certainly be  
15 willing to continue over into Saturday, May 21st, and  
16 Sunday, May 22nd, if necessary, in order to wrap up the  
17 hearing during that week.

18 In addition, we know that the Board chairman  
19 in the past has conducted night sessions and we would  
20 certainly endorse that notion, as well.

21 JUDGE BLOCH: Well, if we could expedite the  
22 hearing in that way and conclude it, I think we would be  
23 inclined to do so. But I heard Mr. Treby say that the  
24 Staff won't be prepared to testify on the implications  
25 of the CAT report during that week. How can we handle that?

1 MR. REYNOLDS: Perhaps if the Board ordered it  
2 so, it would happen.

3 JUDGE BLOCH: Mr. Reynolds, is the Applicant  
4 prepared to testify during that week about its response  
5 to the CAT report?

6 MR. REYNOLDS: Yes, sir.

7 JUDGE BLOCH: Well, of course, my estimation is  
8 that if the Applicant can do that, that between the three  
9 items the Staff is prepared to go on, and the one you are  
10 prepared to go on, I don't understand how we could do it  
11 in less than a full week. But your judgment is that we  
12 could also have time within those five days and possibly  
13 those extra sessions that you are talking about to complete  
14 all of the Staff testimony on the CAT report?

15 MR. REYNOLDS: Oh, yes. I think so. I believe  
16 once we get into litigating the CAT report, we will find  
17 that really there aren't that many issues that require  
18 serious in-depth evidentiary hearings. I think it will  
19 fall out into a couple of issues that we could get done  
20 in a reasonably prompt fashion.

21 JUDGE BLOCH: Mr. Treby, is there a serious  
22 problem with the Staff being prepared for that week?

23 MR. TREBY: My understanding is that there might  
24 well be. I guess what I am envisioning is that there are  
25 two additional pieces of testimony, at least, additional

1 pieces of testimony that need to be put on. One relates  
2 to the CAT report itself; what was it, what was the  
3 purpose of it, and what is the conclusion that the Staff  
4 draws from it.

5 The second thing would be some additional  
6 testimony from Region IV personnel who are the people  
7 who previously testified for the Staff as to what their  
8 view of the applicants' QA/QC program is.

9 It would seem to me that for us to have a  
10 complete record, we would need to know from Region IV  
11 what is the status of their view on QA/QC now, in  
12 light of the CAT report and whatever actions may be  
13 taken by the Applicant as a result of the CAT report.

14 JUDGE BLOCH: Mr. Treby --

15 MR. TREBY: I'm not sure we'd be able to  
16 provide testimony on all those matters by May 6th, which I  
17 understand --

18 JUDGE BLOCH: May 16th.

19 MR. TREBY: The hearing is May 16th, but I  
20 understand the prefiled testimony is due on May 6th.

21 JUDGE BLOCH: That is correct. If that is your  
22 only problem, though, we might be able to arrange for an  
23 amended deadline for that purpose.

24 MS. ELLIS: Mr. Chairman?

25 JUDGE BLOCH: May I ask you a related question

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1 now, Mr. Treby? If the Staff -- excuse me. Would the  
2 Staff be ready to cross-examine Applicant witnesses  
3 concerning their response to the CAT report?

4 MR. TREBY: Yes, the Staff would be prepared  
5 to do that, assuming that we saw their prepared testimony  
6 in advance.

7 MR. REYNOLDS: Mr. Chairman, my proposal was  
8 not that we handle this matter piecemeal by having the  
9 Applicants testify and be cross-examined during the week  
10 of May 16th, and then waiting until some time in the  
11 future to have the Staff evidence. I think that the more  
12 orderly course is to first have Staff put on its case  
13 since it is its report, and then have the Applicants  
14 respond to that report with testimony, and I was proposing  
15 that we do all of that in that order during the week of  
16 May 16th.

17 JUDGE BLOCH: I understand that, Mr. Reynolds,  
18 but my reading of Mr. Treby is that the Staff is not yet  
19 prepared to be able to explain the full implications of the  
20 CAT report at this time, so I was looking for an alternate  
21 way of expediting things. Is it unacceptable to you to  
22 suggest that Applicants' response might be a matter of  
23 discussion before the Staff formally presents its CAT report?

24 MR. REYNOLDS: I think it would be so out of  
25 sequence that it would be perhaps prejudicial. For example,

1 we don't know what the Staff's testimony will be. They may  
2 take different positions because, after all, the CAT  
3 report, I believe, was a draft, was it not? Or was it?  
4 But, in any event, we have seen testimony in the past  
5 from all parties that changed positions on previous  
6 submittals. So I would rather see what they are going to  
7 say before we present our case in effect responding to  
8 their position.

9 JUDGE JORDAN: I would strongly agree with Mr.  
10 Reynolds. Expediting something like this is likely to  
11 waste time, and as soon as the Staff is ready to go with  
12 their fundamental testimony on the CAT report, what they  
13 believe the implications are and what should be the  
14 consequences, then we should go with that and not before.

15 JUDGE BLOCH: Dr. Jordan, I understand that is  
16 a preferable way. It occurs to me that I would like your  
17 response -- it occurs to me that in this situation it  
18 could be useful for the Applicant to explain what its  
19 response to this report is in fulfilling its independent  
20 responsibility to control its QA/QC program and how it  
21 can assure the Board, without first dealing with the  
22 Staff's Region IV problem -- how we can assure the Board  
23 that the QA/QC problem is working properly and give it  
24 an opportunity to put its best foot forward even before  
25 the problems are fully explained. They then have the

1 chance to come back again, of course.

2 Dr. Jordan, would you respond to that?

3 JUDGE JORDAN: Yes, gladly. I gather from -- I  
4 rather got the feeling from hearing Mr. Reynolds that it  
5 was the Applicants' -- that the Applicants felt that the  
6 amount of time required on the CAT report would be small,  
7 and therefore that they felt perhaps that the number of  
8 items -- presumably a large number of items in the CAT  
9 report could be answered neatly and quickly. And I guess  
10 that it was my -- I just had considerable doubts that  
11 that would be indeed the actual situation.

12 It would be helpful to hear what the Applicants'  
13 position is going to be with respect to the CAT report. If  
14 we knew that as soon as possible, that would be helpful,  
15 but so far as starting to address the issues in the CAT  
16 report item by item, it is a very long report and to have  
17 them do that prior to the Staff -- and, in fact, as Mr.  
18 Reynolds said, the Staff may indeed change positions on  
19 some of them. So it could even be a waste of time for  
20 them to address all the items in the CAT report.

21 JUDGE BLOCH: Mr. Reynolds, could you continue?

22 MR. REYNOLDS: Well, I would just reinforce  
23 what I said earlier, and that is that we feel very strongly  
24 that we follow the Staff on the CAT issue, even if that  
25 means waiting until some time in June to allow the Staff

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1 time to present its case and then follow that with the  
2 Applicants' case.

3 I feel very strong that the order of presentation  
4 is appropriately Staff first, Applicant second.

5 JUDGE JORDAN: I agree.

6 JUDGE MC COLLOM: It seems to me if the  
7 Staff is going to need that much time to prepare for  
8 their presentation, it suggests that there might be some  
9 evolution to the material that is in the CAT report and  
10 indeed it seems appropriate for them to make their case  
11 first.

12 JUDGE BLOCH: Thank you, Dr. McCollom.

13 Mr. Reynolds, have you completed your discussion  
14 of priorities?

15 MR. REYNOLDS: Yes, sir. Thank you.

16 JUDGE BLOCH: Mr. Treby, I'm not sure if you  
17 had a chance to comment on the question in which the Board  
18 had some disagreement publicly here.

19 MR. TREBY: Judge, the Staff has no problems  
20 presenting its evidence first and then to be followed by  
21 the Applicant.

22 JUDGE BLOCH: Except it won't be able to the  
23 first week?

24 MR. TREBY: No, we will not.

25 JUDGE BLOCH: Ms. Ellis, would you comment on

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1 priorities, please?

2 MS. ELLIS: Yes, sir. On discussing the  
3 Walsh-Doyle matter, there is one thing that we would like  
4 to ask and that is that we be given an opportunity to file  
5 rebuttal to the SIT report and also to the CAT report,  
6 possibly following discovery. It might not be necessary  
7 following discovery, I don't know, but we would like to  
8 have that opportunity.

9 JUDGE BLOCH: Well, in the event you wish  
10 further discovery, I would suggest you file a motion  
11 expeditiously, showing cause for why it needs to be filed  
12 at this time.

13 MS. ELLIS: All right.

14 JUDGE BLOCH: With respect to the right to  
15 file testimony, we have established a direct testimony  
16 filing date.

17 MS. ELLIS: And that will be in the hands of all  
18 parties on May 6th; is that correct?

19 JUDGE BLOCH: Correct.

20 MS. ELLIS: And when we were talking about  
21 the Walsh-Doyle information matter, were they thinking of --  
22 was Mr. Treby speaking of cross-examination of the Staff  
23 only, rather than rebuttal testimony as well?

24 JUDGE BLOCH: No, of course, you'd have an  
25 opportunity to present rebuttal testimony, if that issue is



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1 on the agenda.

2 MS. ELLIS: All right. The matters that we  
3 were particularly concerned about having discovery in the  
4 face of the May hearing would be regarding the CAT report  
5 as it pertains to the Walsh-Doyle information. There could  
6 be some time, I think, saved if we had discovery on it  
7 rather than trying to present cross-examination questions  
8 to the Staff on the report without having had the benefit  
9 of discovery on it.

10 JUDGE BLOCH: You feel you might be handicapped  
11 in cross-examining Staff on the portion of the CAT report  
12 dealing with Walsh-Doyle?

13 MS. ELLIS: Right. It would be primarily  
14 Section IX and also I believe some items in III and IV.

15 JUDGE BLOCH: Are there any discovery requests  
16 that you can make expeditiously in the next couple of days?

17 MS. ELLIS: Possibly. We have not really gone  
18 through and made a listing of specific things or anything  
19 like that at this point. We'll do it as fast as we possibly  
20 can and get it in the form of a motion.

21 JUDGE BLOCH: If you would. Providing that you  
22 do your best at this stage, if you were to find the need  
23 for further discovery and were going back to hearing,  
24 you can file a motion on the reason why you need further  
25 discovery at that stage, too.

r3-13

1 MS. ELLIS: All right.

2 JUDGE JORDAN: What sections did you say?

3 MS. ELLIS: I believe it's III and IV. I'd  
4 have to go into that. As far as -- other than the cross-  
5 examination --

6 JUDGE BLOCH: Ms. Ellis, I would urge as soon as  
7 you get those questions raised, that you serve them on  
8 the parties expeditiously, and if there is a problem about  
9 them, that the Board will need to resolve the difficulties  
10 as quickly as possible. So if there are any objections or  
11 problems in answering Ms. Ellis' interrogatories, the  
12 Board requests to be informed immediately.

13 MR. REYNOLDS: Mr. Chairman, I'm confused.  
14 At first I thought I understood you to say that Ms.  
15 Ellis was to file a motion to conduct further discovery,  
16 and now I hear you saying that she can file  
17 interrogatories directly on the parties. Now which is  
18 the course?

19 JUDGE BLOCH: The motion will be with the  
20 interrogatories, and your objection can be either to the  
21 motion or to the interrogatories. I just want to know as  
22 quickly as possible so we can help to resolve the problem.

23 MR. REYNOLDS: I see. Thank you.

24 MS. ELLIS: All right. This discovery will also,  
25 I take it -- will we be able to hear issues as well as

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1 discovery?

2 JUDGE BLOCH: Yes, provided the motion is  
3 granted, that's right.

4 MS. ELLIS: I just wanted to be sure it wasn't  
5 limited just to interrogatories. And in the cross-  
6 examination of the Staff witnesses regarding Walsh-Doyle  
7 and the CAT report, it would seem to me to be the first  
8 order of priorities, as far as CASE is concerned, with  
9 discovery.

10 MR. REYNOLDS: Mr. Chairman, we can't hear.

11 JUDGE BLOCH: Would you speak up?

12 MS. ELLIS: It would seem to CASE that our first  
13 order of priorities would be Walsh-Doyle and the CAT  
14 report as it pertains to Walsh-Doyle matters and the  
15 cross-examination in regard to those two things follow --  
16 the Walsh-Doyle and the CAT report cross-examination of  
17 the NRC Staff by discovery, as we discussed, followed  
18 by the emergency planning issues by the Board, and the  
19 Board's inquiry into the Board notification of unresolved  
20 safety matters.

21 And I would like the possibility to go ahead  
22 with rebuttal in May. Mr. Doyle has indicated he will be  
23 here for the May meeting. I don't know what his schedule  
24 might be in June.

25 JUDGE BLOCH: Do the other parties object to our

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1 providing some priority to make sure that we give CASE  
2 an opportunity to get its rebuttal testimony completed  
3 during this week?

4 MR. TREBY: Actually I think what we are  
5 talking about as far as CASE goes is surrebuttal. CASE  
6 has already presented its direct case and this is just  
7 rebuttal back. We have no problems with combining time  
8 as long as it is within the confines of surrebuttal.

9 JUDGE BLOCH: It's the next round, whichever  
10 round it is. It's response round.

11 MR. TREBY: Right. But I would expect it is  
12 going to be limited to the subject matter of our testimony  
13 and not bringing in all new matters.

14 JUDGE BLOCH: That is correct, Ms. Ellis. You  
15 do understand that, that the testimony would have to be  
16 directed to the new matters that are raised by the Staff  
17 in its testimony?

18 MS. ELLIS: Which includes, as I understand it,  
19 the SIT report.

20 JUDGE BLOCH: That's correct.

21 MS. ELLIS: And will it include portions of the  
22 CAT report?

23 JUDGE BLOCH: That's also correct.

24 MR. REYNOLDS: Applicants would prefer to see  
25 CASE put on its surrebuttal during the week of May 16th

ar3-16

1 for continuity of the record and so that we can close  
2 this matter out.

3 JUDGE BLOCH: Yes, that is what we were all  
4 discussing. In fact, they wanted a priority for that week  
5 because their witness may not be available in June.

6 MR. REYNOLDS: Oh, I see. Well, I think the  
7 logical way to handle it is to address the allegations of  
8 Mr. Walsh and Mr. Doyle with the Staff first, and then if  
9 there is surrebuttal by Applicants or CASE, then to take  
10 it right at that time. I would have no objection to that.

11 JUDGE BLOCH: We will keep in mind the  
12 possible subsequent unavailability of the CASE witnesses.

13 MS. ELLIS: All right. And in regard to that  
14 scheduling, if possible, we would like to proceed following  
15 the cross-examination of the Staff with perhaps at least  
16 one or both of the emergency planning and the Board's  
17 inquiries and notification to give our witness a chance  
18 to digest the cross-examination testimony of the Staff.

19 JUDGE BLOCH: May I ask, Mr. Treby, how much  
20 difficulty it would be for the Staff to have one or more  
21 people there to discuss the Board notification questions  
22 that the Board did raise?

end 3

23  
24  
25

1 MR. TREBY: It's the staff's hope that on May 6th, --  
2 and I'm writing certain responses to the Board's questions --.

3 JUDGE BLOCH: If those prove adequate that may be  
4 enough, but if it's witnesses, we might still continue to  
5 have a problem.

6 MR. TREBY: That's correct.

7 JUDGE BLOCH: That does seem a suitable way to  
8 proceed on those. Dr. Jordan, do you agree with that?

9 JUDGE JORDAN: That's right.

10 JUDGE BLOCH: Good. Mrs. Ellis, have you completed  
11 your discussion of priorities?

12 MS. ELLIS: I believe so.

13 MR. TREBY: Let me just qualify one point. When I  
14 indicated that there were certain portions of the CAT Report  
15 that were related to the Walsh-Doyle allegation, I was talking  
16 in terms of pipe supports. There are -- I'm not sure. Actually,  
17 the CAT Report looked into matters of construction practices,  
18 and as I understand it, most of Walsh-Doyle's concerns related  
19 to design problems.

20 We just thought it would be appropriate all at one  
21 time to take care of pipe supports, be they design or construc-  
22 tion problems.

23 JUDGE BLOCH: I think the Applicant understood  
24 that. Did you understand it, Mrs. Ellis?

25 MS. ELLIS: I think so.

1 JUDGE BLOCH: Okay, that's fine.

2 MS. ELLIS: However, there are matters other than  
3 just -- there are such things included in there as design  
4 problems, I understand. The interfacing is also covered in  
5 some areas.

6 JUDGE BLOCH: Yes, but the point, Ms. Ellis, is that  
7 in the first week, the Staff intends to limit its testimony  
8 to the pipe hangers -- the pipe support question.

9 MS. ELLIS: Rather than interfacing matters regarding  
10 Walsh-Doyle?

11 JUDGE BLOCH: Yes.

12 JUDGE JORDAN: I don't think that's quite right.  
13 The Staff intends to go through the Walsh-Doyle testimony  
14 mainly in their SIT Report. It does cover a little more, I  
15 believe, what Mrs. Ellis is saying. It does cover more than  
16 just pipe supports.

17 MS. ELLIS: Fine.

18 JUDGE BLOCH: But, Dr. Jordan, they're planning to  
19 submit that testimony, but to people to testify only on the  
20 pipe support question this first week.

21 JUDGE JORDAN: No, I don't understand the Staff to  
22 say that. I understood the Staff to say they would be  
23 willing -- that they were going to be there to support fully  
24 the CAT Report the first week, and certain matters of the CAT  
25 Report.

1 JUDGE BLOCH: The SIT Report the first week, yes.

2 JUDGE JORDAN: But that covers more than just pipe  
3 supports is what Mrs. Ellis is saying.

4 JUDGE BLOCH: Yes, the whole SIT Report covers the  
5 CAT Report. Is that correct?

6 MR. TREBY: Correct.

7 JUDGE BLOCH: Mrs. Ellis, do you understand?

8 MS. ELLIS: Yes. The point I was trying to make is  
9 that the CAT Report covers more things relating to Walsh-Doyle  
10 than just the pipe supports per se.

11 JUDGE BLOCH: Yes, but we will not go into those in  
12 the first week if the Staff's suggestion is adopted.

13 MS. ELLIS: All right. So -- will we still be able  
14 to get discovery on those matters so that our witness can file  
15 his rebuttal or sur-rebuttal or whatever it is?

16 JUDGE BLOCH: You may move to obtain that rapidly,  
17 please, so that we can try to resolve that matter. And you  
18 may attach the discovery request.

19 MS. ELLIS: All right.

20 JUDGE BLOCH: You may, if necessary, do that in more  
21 than one phase, also.

22 MS. ELLIS: All right.

23 JUDGE BLOCH: Mr. Berwick?

24 MR. BERWICK: I don't think I have anything to add,  
25 Mr. Chairman, on the subject of scheduling priorities.



1           JUDGE BLOCH: That being the case, the Board accepts  
2 the Staff's suggestion that the May 16th hearing will concen-  
3 trate on the SIT Report, and on those aspects of the CAT Report  
4 related to pipe support; that it will also include the  
5 emergency planning issues which have been discussed during  
6 this conference call by Dr. Jordan; that it may include  
7 unresolved safety issues and Board notifications providing  
8 that the Board first inform the Staff prior to hearing that  
9 it is not completely satisfied with the Staff's responses soon  
10 to be filed.

11           We will reserve decision to be communicated to the  
12 parties later about whether the Staff -- excuse me, -- about  
13 whether Applicant's testimony might be taken out of order.  
14 The present standing of the Board on that question is clear  
15 on the record. There are two individuals who are opposed to  
16 taking it out of order, and one who is interested in taking it  
17 out of order. That is, the order on the timetable for the  
18 hearing. We understand that.

19           This indicates a partial response to the Applicant's  
20 motion concerning the irrelevance of further testimony  
21 related to the Atchison issue. The reason it's a partial  
22 response is that the Board, at the present time, believes  
23 that there are other ways of inquiring into the non-conformance  
24 report issue, and that to some extent, additional testimony  
25 from witnesses may be merely cumulative considering Applicant's

1 non-conformance report practices. This does not mean that at  
2 some later date, witnesses concerned with the Atchison question  
3 would not be relevant, but at the present time they have no  
4 high priority in the Board's time.

5 Are there any comments on that? Mr. Reynolds?

6 MR. REYNOLDS: Does that, sir, imply that we may  
7 be faced in July or August with another hearing resurrecting  
8 these issues?

9 JUDGE BLOCH: Depending on how the evidence on  
10 non-conformance reports goes before that, and whether at that  
11 time it seems to be relevant or not.

12 MR. REYNOLDS: What do you mean by evidence on non-  
13 conformance reports?

14 JUDGE BLOCH: A portion of the CAT Report deals with  
15 practices of the Applicant in discouraging the filing of  
16 non-conformance reports, and there is some possible relevance  
17 to the Atchison testimony on non-conformance reports.

18 I believe there is other testimony on the record as  
19 well on attempts to discourage non-conformance reports.  
20 Testimony by individuals such as Mr. Steiner. So the Board has  
21 not reached any conclusions on this problem, but there is  
22 other evidence about it that may make it unnecessary to go  
23 back and talk to further individual witnesses to corroborate  
24 matters that were raised in the Atchison context.

25 MR. REYNOLDS: That seems to be clear to me.

1 JUDGE BLOCH: Mr. Treby, do you have any problems  
2 with that?

3 MR. TREBY: No, I have no problems with that. Let  
4 me just ask one question, though, with regard to the Board  
5 inquiry, the order that you just stated.

6 You indicated that the Staff was going to be sub-  
7 mitting written responses, and that's true. But my recollec-  
8 tion is that one or two of those matters might have been  
9 appropriate for the Applicant to file responses to as well.

10 JUDGE BLOCH: That's correct, and we would consider  
11 both filings before deciding that we were dissatisfied. That  
12 is correct.

13 MR. TREBY: Okay.

14 JUDGE BLOCH: Ms. Ellis, have you any comments?

15 MS. ELLIS: Would it still be appropriate to file  
16 an answer to the Applicant's brief?

17 JUDGE BLOCH: Which brief, Ms. Ellis?

18 MS. ELLIS: Rather, the motion. I'm sorry. The  
19 motion --

20 JUDGE BLOCH: If it's timely, it would still be  
21 feasible to file an answer. We have made a partial ruling on it.  
22 It may be wasteful of your time to file.

23 MS. ELLIS: All right. I'm not sure that we want to  
24 at this time.

25 JUDGE BLOCH: Mr. Berwick?

1 MR. BERWICK: I have no comment on any of that, Mr.  
2 Chairman.

3 JUDGE BLOCH: Do either of my fellow judges have  
4 a comment to make at this time?

5 JUDGE MCCOLLOM: No.

6 JUDGE JORDAN: No.

7 JUDGE ELOCH: Are there any other matters, that must  
8 be considered at this scheduling conference?

9 MS. ELLIS: Just a moment. I want to be sure I  
10 understand the scheduling. On May 16th, the SIT Report and  
11 the CAT Report, as it regards pipe supports, emergency planning  
12 and perhaps Board notification of unresolved safety issues.

13 JUDGE BLOCH: That's correct, and that would include  
14 an opportunity for you to file responsive testimony.

15 MS. ELLIS: All right. And would that have to come  
16 in any particular order in this?

17 JUDGE BOCH: We will attempt to make it come in  
18 logical order.

19 MS. ELLIS: All right. Would that be immediately  
20 following the CAT Report or the SIT Report?

21 JUDGE BLOCH: Logically, it would come either  
22 immediately following the SIT Report or following the CAT  
23 Report, depending on the nature of the testimony. We will  
24 consider that after we have seen the direct testimony you're  
25 filing.

1 MS. ELLIS: All right.

2 MR. REYNOLDS: Mr. Chairman, what have you ruled  
3 with regard to the week of May 16th, completing everything or  
4 scheduling a week in June? And if a week in June, which week?

5 JUDGE BLOCH: Thank you very much. We'd like to  
6 schedule the second week in June, which is the first week  
7 that I am personally available. I'll explain off the record.

8 (Discussion off the record.)

9 JUDGE BLOCH: Back on the record. Are there any  
10 problems with the week of June 6th for the second week of  
11 hearings?

12 JUDGE MCCOLLOM: I have the week of June 13th laid  
13 aside. Did I misunderstand you?

14 JUDGE BLOCH: One moment, let me consult my calendar.  
15 (Pause.)

16 MR. REYNOLDS: My understanding agrees with Dr.  
17 McCollom's.

18 JUDGE BLOCH: Off the record.

19 (Discussion off the record.)

20 JUDGE BLOCH: Back on the record.

21 DR. JORDAN: Could we stay off the record for one  
22 second?

23 JUDGE BLOCH: Okay. Off the record.

24 (Discussion off the record.)

25 JUDGE BLOCH: Back on the record. In our off the

1 record discussion, we established that the second week of  
2 hearing will be the week of June 13th, so we will meet from  
3 June 13th through June 17th, as the second week of hearing.

4 Are there any further matters that must be covered  
5 at this time?

6 MS. ELLIS: Yes, sir, Mr. Chairman. There's one  
7 thing that we were a little concerned about, and that is if the  
8 witnesses regarding the CAT Report will be these specific ones  
9 who have prepared each section of that report.

10 JUDGE BLOCH: Mr. Treby, could you comment?

11 MR. TREBY: We intend to provide a team leader.  
12 I'm not sure that we were planning to bring each and every  
13 member of that team to the hearing. We need to determine  
14 their availability and, you know, whether they would just be  
15 cumulative, or whether they are necessary to supplement the  
16 knowledge of the team leader.

17 JUDGE BLOCH: Mr. Treby, is it your understanding  
18 that the team leader has direct knowledge of each of the  
19 findings and each of the separate portions of that report?

20 MR. TREBY: That was my understanding, but I will  
21 verify it.

22 JUDGE BLOCH: I think it would be helpful because  
23 given the importance of the findings of that report, I think  
24 we would like to know very clearly whether some of the findings  
25 appear to be less important than they are in the document,

1 whether some of the findings might be important and that might  
2 require direct knowledge of the people who reached the conclu-  
3 sion. If the team leader has enough knowledge to go into each  
4 of those areas, it might be possible to do with his knowledge.  
5 But if we reach impasses where he cannot answer questions because  
6 he has not seen the evidence directly or is unable to follow  
7 the questioning, that would obviously delay the proceeding a  
8 great deal.

9 MR. TREBY: All right, I understand. We'll make  
10 sure that we have the appropriate people.

11 JUDGE BLOCH: Mrs. Ellis?

12 MS. ELLIS: Yes, sir. If it's determined that the  
13 team leader will be the one, we'd like to have the possibility  
14 of taking depositions from the specific ones who prepared the  
15 individual sections and especially, Section 9.

16 JUDGE BLOCH: You understand the standards for  
17 discovery against specified staff members are very stringent,  
18 but a motion of that sort would be in order if you wished to  
19 follow it. Mrs. Ellis, have you completed your concerns?

20 JUDGE JORDAN: We should get a commitment from Mr.  
21 Treby to be certain that in addition to the team leaders, that  
22 the people who prepared Section 9 would also be there. It  
23 might allay Mrs. Ellis's problems.

24 MR. TREBY: Well, I will look into that.

25 JUDGE JORDAN: All right.

1 JUDGE BLOCH: I think you should work that out with  
2 Mrs. Ellis.

3 MR. TREBY: Also, I assume that the same rules would  
4 apply, and that is that pre-filed testimony would be 10 days  
5 before the hearing and that any documents which are going to be  
6 relied upon at the hearing are exchanged among the parties 48  
7 hours ahead of time.

8 JUDGE BLOCH: That's for the second set of hearings.  
9 That's correct. And I think as we get to the close of the first  
10 week of hearings, that would be true for the second week.  
11 Mrs. Ellis?

12 MS. ELLIS: All right. One further thing. We still  
13 have not received everything on discovery. We have just this  
14 morning finally received from ITT Grinnel -- we have just received  
15 what is a protective agreement, apparently. We haven't really  
16 had time to look at it, but we received that in the mail just  
17 this morning. So thus far, we've received nothing about the  
18 design criteria from ITT Grinnel.

19 JUDGE BLOCH: Will you please review that rapidly,  
20 and if you have any problems with the protective agreement,  
21 will you please notify the parties and the Board rapidly so  
22 we can help to resolve those problems and get the information  
23 in your hands rapidly?

24 MS. ELLIS: All right. And there's another item  
25 on the NPSI design criteria. We understand that there are



1 certain things that we don't have anything in writing on and  
2 we'd like to have something in writing. We received three  
3 pages from the NPSI design criteria.

4 JUDGE BLOCH: All right. What is the inadequacy of  
5 that?

6 MS. ELLIS: There are two matters which we asked  
7 for information on, which we were told verbally from the  
8 Applicant that they were using, but we have received nothing  
9 in writing to confirm that, either from the Applicant or NPSI.  
10 We would like to have something in writing.

11 JUDGE BLOCH: Can you tell us what those two items are?

12 MS. ELLIS: Just one moment.

13 JUDGE BLOCH: Mr. Reynolds, can you clarify that, or  
14 shall we wait for Mrs. Ellis?

15 MR. REYNOLDS: I suggest we wait to hear what the  
16 items are.

17 JUDGE BLOCH: Okay.

18 MS. ELLIS: All right. There are three pages from  
19 NPSI which we have received. We had asked for three specific  
20 things. One was from the SIT Report, on page 22, the second  
21 paragraph, first two sentences. We wanted the STRUDL. That's  
22 Structural Design Language guidelines, from the NPSI guidelines.  
23 And specifically, -- even more specifically, we want all of  
24 those, but specifically, -- we wanted the STRUDL guidelines from  
25 the NPSI guidelines, including what moment to retain within the

1 two -- within the tube steel at the Richmond inserts.

2 JUDGE BLOCH: Those are guidelines, or is that the  
3 entire STRUDL model?

4 MS. ELLIS: The wording that I have here is STRUDL  
5 guidelines. I would assume it's the model, specific portions  
6 of that model or whatever they have in writing regarding the  
7 specific matter.

8 What we received in that regard was one page of  
9 a STRUDL guideline which did not include all the methods of  
10 modeling, all of the tube steel for the Richmond inserts, the  
11 insert connection details and the method of modeling the  
12 connections into tube steel member intersects.

13 JUDGE BLOCH: Mr. Reynolds, would you respond?

14 MR. REYNOLDS: Yes. With regard to the first item,  
15 my understanding is that NPSI provided Mrs. Ellis with the  
16 information that was responsive to that question.

17 With regard to the second point, that is new to us.  
18 That appears to be a new request that's being made at this time.

19 MS. ELLIS: No, sir, that's not new. That was  
20 requested -- just a moment -- I think that was requested on  
21 April 6th, according to my notes here.

22 JUDGE BLOCH: Was it discussed at our last telephone  
23 conference, Mrs. Ellis?

24 MS. ELLIS: Yes, it was one of the things discussed.  
25 I don't know in how much detail. I don't recall now.

1 JUDGE BLOCH: But we ordered at that time that a  
2 response should be made?

3 MS. ELLIS: Yes, sir.

4 JUDGE BLOCH: Mr. Reynolds, could you just confer  
5 with Mrs. Ellis after the conference today and find a reference  
6 in the transcript, and if it was requested, could you please  
7 make a good faith answer to it? If it wasn't, if it has not  
8 been requested to this point, then discovery on that matter has  
9 been closed.

10 MR. REYNOLDS: Would you inquire of Mrs. Ellis as  
11 to whether she told NPSI about this directly?

12 JUDGE BLOCH: Have you done that, Mrs. Ellis?

13 MS. ELLIS: I have talked with NPSI and with the  
14 Applicants back and forth about this matter, and it's my under-  
15 standing from the Applicants that these three pages are all  
16 the NPSI intends to provide.

17 JUDGE BLOCH: Mr. Reynolds, I think it would be more  
18 expeditious, since you are Applicant's counsel, at this stage  
19 for you to handle these few remaining discovery matters and  
20 to make sure that they're properly handled. If you would do  
21 that, please.

22 MR. REYNOLDS: We will talk to Mrs. Ellis.

23 MS. ELLIS: All right. There are a couple of other  
24 items along that regard, regarding NPSI items.

25 JUDGE BLOCH: Okay. I understand there are about

1 three matters you'll be discussing with Mr. Reynolds that relate  
2 to NPSI discovery matters, and you'll be showing him where we  
3 ordered that they be turned over, and then he will attempt in  
4 good faith to comply with our orders and comply with the discovery  
5 request.

6 MS. ELLIS: All right.

7 JUDGE BLOCH: If there's a hang-up on that, we do  
8 expect to be informed so that we can resolve it between the  
9 two of you.

10 MS. ELLIS: All right.

11 Another matter is it's our understanding from the  
12 Staff in a call from them this morning that they are sending  
13 additional information on item 84 to the Applicants who, in  
14 turn, will review it for proprietary information and then it  
15 will be provided to CASE.

16 JUDGE BLOCH: Okay. You've noted that for the record.

17 MS. ELLIS: Yes. One other thing about the Staff.  
18 We had received a phone call sometime ago regarding stipulations  
19 and there were some which the Staff would stipulate to, and  
20 this was in regard to some admissions which we had requested  
21 during the last conference call.

22 JUDGE BLOCH: I don't understand why we need to  
23 know that.

24 MS. ELLIS: There's been nothing further on these  
25 and we'd like to know whether we're going to be able to get a

1 response on the rest of them.

2 JUDGE BLOCH: Mr. Treby?

AR5 3 MR. TREBY: Mrs. Ellis is correct that we did have  
4 a telephone conversation, she and the Staff counsel. I believe  
5 that she submitted something like 230 admissions, and we told  
6 her during that phone conversation that we would be willing to  
7 stipulate to close to 100 of them.

8 JUDGE BLOCH: And I take it that what she is  
9 requesting is that that be in writing.

10 MR. TREBY: And we are going to send that in writing.  
11 We noted that there were a few additional ones that we might  
12 be willing to stipulate to but for the fact that they had some  
13 misinformation. One example would be an admission that all  
14 14 members of the SIT committee had read a certain piece of  
15 testimony. But all members of the SIT committee have read that  
16 testimony, but there are only five members on the SIT committee.

17 JUDGE BLOCH: All right, so you will answer in good  
18 faith those that have factual errors in the premise, and will  
19 stipulate to what you can.

20 MR. TREBY: Right.

21 JUDGE BLOCH: Mrs. Ellis?

22 MS. ELLIS: That was the part I just wanted to  
23 clarify to be sure that we were going to get additional  
24 information.

25 Just to be sure that I do understand at this point,

1 the door has not been closed on the possibility of other  
2 witnesses later regarding Atchison and related matters.

3 JUDGE BLOCH: Not entirely. We've expressed our  
4 opinion that it could become merely cumulative and, therefore,  
5 not admissible.

6 MS. ELLIS: And in particular, I refer to the Board  
7 order of January 4th, 1983, the bottom of page 4 continued onto  
8 the top of page 5, regarding the statement, "The Intervenor has  
9 challenged the NRC Staff's competence in handling and investi-  
10 gating QA allegations by whistleblowers, and has questioned  
11 the Staff's alleged bias in favor of the Applicant. Clearly,  
12 further evidence on these issues will be required when the  
13 evidentiary hearing resumes."

14 In other words, not -- I think the Board's rulings  
15 in the past have been consistent that the Atchison matter, when  
16 they were discussing it, did not relate wholly to Atchison  
17 himself, but perhaps to other instances along this line.

18 JUDGE BLOCH: We believe that the ruling we already  
19 made should stand; that you haven't provided grounds for  
20 reconsideration of that. I think when you receive the record  
21 you will be able to review it, and if you want to file a formal  
22 motion for reconsideration, you may.

23 It seems to me that the priorities which we set now  
24 are appropriate. Mrs. Ellis, would you like about a three-  
25 minute recess, after which you will attempt to expeditiously

1 complete your point?

2 MS. ELLIS: That would be fine, thank you.

3 JUDGE BLOCH: We'll take a three-minute recess and  
4 we'll resume promptly at that time.

5 (A short recess was taken.)

6 JUDGE BLOCH: Okay, back on the record now.

7 MS. ELLIS: All right. There's one other matter  
8 that I might mention and that is regarding the meeting place.  
9 As I've indicated before, it was much easier for I think  
10 everyone concerned when we had it at the hotel. But I'd like  
11 to throw out another suggestion for discussion by everybody.  
12 That the Board consider having the June hearing in Dallas. The  
13 Applicants and CASE are all in Dallas and the Staff, any of them  
14 that would be coming from the region, would not be -- I don't  
15 think it would be any further one way or the other for them.

16 JUDGE BLOCH: I think at this point we might have  
17 trouble and know these problems. We have noticed the hearing  
18 in Ft. Worth and we're supposed to notice our hearings 30 days  
19 in advance.

20 MS. ELLIS: I meant for the June hearing.

21 JUDGE BLOCH: Oh, for the June hearing. Are there  
22 any comments on whether the June hearing should be in Dallas?

23 MR. REYNOLDS: Well, Mr. Chairman, there is a  
24 general guidance that the Commission has given to licensing  
25 boards that hearings should be in close proximity to the site

1 of the facility, recognizing that there is no accommodation  
2 down in the vicinity of the site. We have always maintained  
3 that the closest metropolitan area to the site is the most  
4 appropriate place to have the hearing, and that is Ft. Worth.

5 JUDGE BLOCH: Mr. Treby?

6 MR. TREBY: The Staff agrees that that is the general  
7 guidance, but I'm not sure that Dallas is substantially further  
8 away than Ft. Worth. I guess the Staff doesn't have a position.

9 JUDGE BLOCH: Mr. Berwick?

10 MR. BERWICK: Oh, it doesn't make much difference to  
11 me. Dallas would probably be better, by a small degree.

12 JUDGE BLOCH: Off the record.

13 (Discussion off the record.)

14 JUDGE BLOCH: Back on the record. We've heard  
15 the comments of the parties and we will attempt to get better  
16 accommodations in Ft. Worth, since Ft. Worth is closer to the  
17 site. We will try to hold the hearings in Ft. Worth with better  
18 accommodations the next time.

19 Are there any other matters that must be considered  
20 at this time?

21 MR. REYNOLDS: No, sir.

22 JUDGE BLOCH: Okay, the meeting, then, is adjourned.

23 (Whereupon, at 4:30 p.m., the pre-hearing conference  
24 in the above-entitled matter was adjourned.)

25



CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the  
NRC COMMISSION

In the matter of: Texas Utilities Generating Co.

Date of Proceeding: April 25, 1983

Place of Proceeding: Washington, D.C.

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

Official Reporter - Typed

Ann Riley R.H.  
Official Reporter - Signature